

# THEODORE TILTON

VS.

# HENRY WARD BEECHER,

ACTION FOR CRIM. CON.

TRIED IN THE CITY COURT OF BROOKLYN,

CHIEF JUSTICE JOSEPH NEILSON, PRESIDING.

Verbatim Report by the Official Stenographer.

WITH PORTRAITS OF

Chief Justice JOSEPH NEILSON,

Ex-Judge S. D. MORRIS,

Mrs. ELIZABETH R. TILTON,

FRANCIS D. MOULTON,

Hon. ROGER A. PRYOR,

Ex-Judge WILLIAM FULLERTON, THEODORE TILTON.

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V O L . I .

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CHAMBERS, THE CITY COURT OF BROOKLYN.

BROOKLYN, February 22d, 1875.

"TILTON VS. BEECHER."

The numbers of your report have been of great use to me. The testimony is given, as in the N Y. Tribune, with substantial correctness. In thanking you for your courtesy, I beg to express my respect for your enterprise.

Very truly yours,

J. NEILSON, Ch. J.

To McDIVITT, CAMPBELL & Co., Nassau St., N. Y.



*J. Nelson*

# THEODORE TILTON *AGAINST* HENRY WARD BEECHER,

IN THE  
CITY COURT OF BROOKLYN.

JOSEPH NEILSON, CHIEF JUSTICE, PRESIDING.

**SAMUEL D. MORRIS,**  
**THOMAS E. PEARSALL,**  
**ROGER A. PRYOR,**  
**WILLIAM FULLERTON,**  
**WILLIAM A. BEACH.**

*{ Plff's Att'y's.*

*{ Of Counsel.*

**THOMAS G. SHEARMAN,**  
**JOHN W. STERLING,**  
**JOHN L. HILL,**  
**JOHN K. PORTER,**  
**BENJAMIN F. TRACY,**  
**WILLIAM M. EVARTS.**

*{ Deft's Att'ys.*

*{ Of Counsel.*

## THE JURY:

CHESTER CARPENTER, *Foreman.*

**HENRY THYER,**  
**GEORGE HULL,**  
**CHRISTOPHER FITTER,**  
**SAMUEL FLATE,**

**A. R. CASE,**  
**EDWARD WHELAN,**  
**WILLIAM H. DAVIS,**  
**JOHN F. TAYLOR,**

**WILLIAM T. JEFFREY,**  
**GRIFFIN B. HALSTEAD,**  
**JOHN McMURN.**

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# THEODORE TILTON

*against*

## HENRY WARD BEECHER.

### THE SUMMONS.

THE CITY COURT OF BROOKLYN—THEODORE TILTON, *Plaintiff, against* HENRY WARD BEECHER, *Defendant—Summons, for Relief.*

*To the Defendant:* You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the Subscribers, at their office, No. 193 Montague street, in the city of Brooklyn, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the complaint.

Dated August 19th, 1874.

MORRIS & PEARSALL.  
*Plaintiff's Attorneys.*

### MR. TILTON'S COMPLAINT.

THE CITY COURT OF BROOKLYN—THEODORE TILTON *against* HENRY WARD BEECHER.

The plaintiff, complaining of the defendant, alleges:

I.—That on the 2d day of October, 1855, in the City of Brooklyn, plaintiff intermarried with Elizabeth M. Richards, since named and known as Elizabeth R. Tilton, and that at the time of the commission of the wrongs hereinafter mentioned the plaintiff and his said wife were living together as man and wife in the said City of Brooklyn.

II.—That the defendant contriving and wilfully intending to injure the plaintiff and deprive him of the comfort, society, aid and assistance of the said Elizabeth, the wife of the plaintiff, and to alienate and destroy her affection for him, heretofore on or about the tenth day of October, 1868, and on divers other days and times after that day and before the commencement of this action, at the house of the defendant, No. 124 Columbia street, City of Brooklyn, and at the house of the plaintiff, No. 174 Livingston street, City of Brooklyn, wrongfully and wickedly and without the privity or connivance of plaintiff, debauched and carnally knew the said Elizabeth, then and ever since the wife of the plaintiff, by means whereof the affection of the said Elizabeth for the said plaintiff was wholly alienated and destroyed; and by reason of the premises the plaintiff has wholly lost the comfort, society, aid and assistance of his said wife, which during all the time aforesaid he otherwise might and ought to have had and enjoyed.

And has suffered great distress in body and mind, to the damage of the plaintiff one hundred thousand dollars.

Wherefore the plaintiff demands judgment against the defendant for the said sum of one hundred thousand dollars for the wrongs and injuries hereinbefore set forth, besides the cost of this action.

MORRIS & PEARSALL,  
*Plaintiff's Attorneys.*

*City of Brooklyn, County of Kings, ss:*

THEODORE TILTON, being duly sworn, says that he is the plaintiff in the foregoing entitled action; that he has read the

foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

THEODORE TILTON.

Sworn to before me, this 20th  
day of August, 1874.

GEO. W. RODERICK,  
*Notary Public,*  
Kings County.

### MR. BEECHER'S ANSWER.

THE CITY COURT OF BROOKLYN—THEODORE TILTON, *Plaintiff, against* HENRY WARD BEECHER, *Defendant—Answer.*

The defendant answers to the complaint:

I.—That each and every allegation in the said complaint contained (except that the plaintiff and Miss Elizabeth M. Richards were married on October 2d, 1855, and lived together as husband and wife up to 1874) is utterly false.

II.—That this defendant never had, at any time or at any place, any unchaste or improper relations with the wife of the plaintiff, and never attempted or sought to have any such relations.

SHEARMAN & STERLING,  
*Attorneys for Defendant.*

STATE OF NEW HAMPSHIRE, }  
County of Grafton, } ss:

HENRY WARD BEECHER, being duly sworn, says:

1. That he is the defendant herein, and resides in the City of Brooklyn, Kings County, New York, but is temporarily residing at the Twin Mountain House, Coos County, New Hampshire.

2. That he is sixty-one years of age, and his occupation is that of a clergyman.

3. That the foregoing answer is true of his own knowledge.

HENRY WARD BEECHER.

Sworn and subscribed before me, }  
this 29th day of August, 1874. }

HARRY BINGHAM,  
*Justice of the Peace.*

### JUDGE NEILSON STAYS PROCEEDINGS.

On the 17th day of October, 1874, Judge Neilson, Chief Justice of the City Court of Brooklyn, granted an order requiring the plaintiff to deliver to the defendant's attorneys a statement in writing of the particular times and places at which he expected or intended to prove that any acts of adultery or criminal intercourse had taken place between the defendant and wife of the plaintiff, and of the particular times and places at which he expected or intended to prove that the defendant confessed any such act of adultery or criminal intercourse, by the 22d day of October, 1874, or show cause why such Bill of Particulars should not be delivered, and why the plaintiff should not be precluded from giving evidence on the trial of

any such acts or confessions not specified in such Bill of Particulars. In the meantime the proceedings in the case were stayed by order of Judge Neilson.

#### MR. BEECHER'S AFFIDAVIT.

In connection with the motion for a Bill of Particulars, the following affidavits were submitted :

CITY OF BROOKLYN, {  
County of Kings. }

HENRY WARD BEECHER, the defendant above-named, being duly sworn, says :

I.—This is an action brought for alleged criminal conversation with the wife of the plaintiff.

II.—The complaint was served upon my attorneys on the 21st day of August, 1874, and my answer thereto was served upon the plaintiff's attorneys on the 7th day of September, 1874.

III.—The complaint specifies only one date at which any act of improper conduct on my part is alleged to have occurred, to wit : on the 10th day of October, 1868 ; and, although it alleges in general terms that such conduct was repeated on divers other days after that time, it does not mention any other specific date, nor does it mention any place, except the residence of the plaintiff and my own residence.

IV.—Since the service of the complaint and answer herein, and on or about September 18th, 1874, the plaintiff, as I am informed and believe, published a statement over his own signature, asserting that his wife and I had both confessed to him in detail specific times and places at which we had maintained improper relations with each other, which times and places, however, other than October 10th, 1858, and the Saturday following, the plaintiff carefully refrains from mentioning, but professes to have within his own knowledge.

V.—The assertion that I ever made any such confession to him is utterly false ; but I am advised by my counsel, and believe, that such a statement indicates the intention of the plaintiff to produce manufactured evidence in support of his allegation, and by means of false testimony to surprise my counsel, at the trial, with evidence which they and I cannot be prepared to meet otherwise than by my own simple denial, on the trial of this cause.

VI.—I have no knowledge, information, belief or suspicion as to the times or places (other than those specifically mentioned in the complaint and the published statement aforesaid) at which the plaintiff intends or expects to prove, or even to assert, that any improper conduct on my part took place, and as I never did, in fact, have any improper or immoral relations with his wife, I am entirely at a loss to form any surmise concerning the probable line of proof which will be adopted by the plaintiff on the trial of this cause.

VII.—I have fully and fairly stated the case in this cause to my counsel, Thomas G. Shearman, who resides at No. 81 Hicks Street, Brooklyn, and I have a good and substantial defence to this action upon the merits thereof, as I am advised by my said counsel and verily believe ; and I am further advised by my said counsel, and believe, that I cannot safely proceed to the trial of this action without receiving a statement of the particulars of the plaintiff's charge against me, and especially of the times and places at which any and every act of adultery or improper intercourse on my part is alleged to have taken place, and of the times and places at which it is to be alleged that I made any confession to the plaintiff.

HENRY WARD BEECHER.

Sworn to this 17th day of  
October, 1874, before me. }

LUDOVIC BENNET,  
Notary Public,

In and for the State of New York.

#### MR. TILTON'S AFFIDAVIT.

CITY OF BROOKLYN, { ss :  
County of Kings. }

THEODORE TILTON, the plaintiff in the above action, being duly sworn, declares :

I.—I published on the 18th of September last, over my own signature, a careful, candid and truthful statement, in reply to previous false and calumnious publications made against me by the Rev. Henry Ward Beecher, and by a committee composed of six of his partisans, whom he had previously instigated to give him a one-sided trial for adultery, and to acquit him in defiance of his manifest guilt, freely confessed by him to many persons.

II.—My published statement, above named, contained a recital of these facts, honestly and moderately narrated, with careful intent not to overdraw, but rather to understate the actual extent and enormity of the crime of the said Beecher against me by the seduction of my wife and the ruin of my home, together, also, with his subsequent accumulation of base and dastardly acts, constituting his desperate defence against his original crime.

III.—The affidavit of said Beecher, in so far as it denies or impugns the truth of my aforesaid published statement, is utterly false, with intent to deceive the Court and the public.

IV.—The insinuation in the aforesaid affidavit of the said Beecher that I intend to produce "manufactured evidence" and "false testimony" in support of my charge of adultery against him is unfounded and malicious.

On the contrary, I believe, and so charge, that the real object and purport of said motion is to apprise said Beecher, in advance, of my evidence and witnesses, to the end that said evidence may be deceptively met by false and fabricated testimony on behalf of said Beecher, and that said witnesses may be tampered with or eligned. My belief that such is the crafty design of my opponents is based on the fact that the greater part of the evidence which has been heretofore advanced in defence of said Beecher, has been false and fabricated ; for example, the palpable falsifying of his own church records, by his recent Committee of Investigation, as pointed out in my published statement ; also, by a false and calumnious charge against Francis D. Moulton, F. B. Carpenter and myself, as blackmailers and conspirators ; also, by a pretended validity given to the silly fictions of the girl Bessie ; also, by inciting Mrs. Elizabeth R. Tilton to testify falsely that I had subjected her to imprisonment under lock and key, and had, in an inclement winter, deprived her of fire and food ; also, by the false pretence that I used the said Beecher as an instrument to extort \$7,000 from Henry C. Bowen ; also, by the despicable attempt to connect me criminally with certain honorable women, both living and dead ; also, by variously misrepresenting me to the public in false lights, for example, sometimes as a forger, and at other times as a lunatic ; also, by repeated false oaths of denial by the said Beecher to the true charge which I have made against him, of sexual commerce with Mrs. Elizabeth R. Tilton, carrying his perjury to the extent of procuring against me, on his own oath, a criminal indictment by a Grand Jury, whereas he himself was and is the real criminal.

V.—I further believe, and so charge, that the said Beecher is maintained and upheld in his present determination to evade, by false testimony, the true charge of adultery, through the strong support of powerful friends, some of whom have a direct pecuniary interest in maintaining his name before the public at its former marketable value ; and I am informed, and believe, that certain of these persons declare their purpose to sustain the said Beecher at all hazards, whether innocent or guilty.

VI.—I further believe, and so charge, that the said Beecher and his interested champions in Plymouth Church, have plentiful and opulent means at their disposal to purchase and procure false evidence in the coming trial, and intend so to do.

VII.—I further believe, and so charge, that the said Beecher's



percent demand for a bill of particulars, unusual in such actions (as I am informed), and in this instance wholly unwarranted by justice, and purposely intended for a perversion of the truth, is further designed by the defendant to procure the postponement of a trial which the ends of justice, and also the universal public opinion, demand shall be pressed to issue without technical delays.

VIII.—I reply, finally and specifically, to the said Beecher's demand for a bill of the particular times and places at which he committed his adulteries, that these times and places are already within his own knowledge.

THEO. TILTON.

Sworn to before me, this 24th {  
day of October, 1874.

RUFUS M. WILLIAMS,  
Notary Public.

# THE BILL OF PARTICULARS DENIED.

The motion for a Bill of Particulars was argued at a special term of the City Court of Brooklyn, October 30th, 1874, before Chief Justice Neilson, Messrs. Shearman and Tracy appearing for the motion and Ex-Judge S. D. Morris against it. Judge Neilson denied the motion without costs. His opinion in the case was as follows:

The complaint charges that the defendant committed the wrongful acts stated "on or about the 10th day of October, 1868, and on divers other days and times after that day and before the commencement of this action, at the house of the defendant, No. 124 Columbia street, City of Brooklyn, and at the house of the plaintiff, No. 174 Livingston street," in said city.

An answer, denying the charges, has been put in, and the issue of fact thus joined noticed for trial. An application is now made for an order requiring the plaintiff to deliver to the defendant's attorney a statement in writing of the times and places at which he expects and intends to prove that the defendant committed and confessed any such acts.

As to the places where the plaintiff may expect or intend to prove that the acts were committed, the complaint is specific; the houses and streets are designated. The information on that point, sought by this application, has been fully given.

As to the supposed confessions the complaint is silent, and properly so. Under our system of pleadings the facts are to be set forth, not the evidence of those facts. This distinction must be observed; it is expressly enjoined by the Code; has been enforced by an unbroken chain of decisions. When, therefore, the plaintiff's case is stated in the complaint, the claim or wrong being one of which the law takes cognizance, the pleader is not allowed to add averments disclosing the oral proof by which he expects or intends to support or establish his case on the trial.

But it is shown by affidavits that the plaintiff, who could not have alleged in his complaint that such confessions had been made, and might have been prudently reticent on the subject, has stated in a newspaper article that such proof existed. In view of that, the defendant's counsel claims that the plaintiff should be required to state when and where these confessions, if any, were made. The question is not simply whether it would be well for the defendant to have that additional information, but whether the Court has the power to make such a requisition. I am satisfied that we have not the power. It would be a dangerous innovation, an anomaly in practice, if every defendant who learns that there may be an attempt to prove admissions could, by motion before the Court, compel further disclosures. So far as I am advised, such an order has never been granted.

The only remaining ground of the application is as to the times when the plaintiff expects and intends to prove that the acts took place.

The complaint has it thus: "On or about the 10th day of October, 1868, and on divers other days and times after that day, &c." That is good and correct pleading. Chitty gives that form for this action, and in a note, it is said, "the injury may be stated to have been committed on divers days and times," &c. (2 Chitty Pl., 642.) But if any question could be raised in respect to that form, the defendant should have applied to have the complaint made more definite and certain.

In a case of this precise nature the complaint did not specify the places, not even the county, and Judge Reynolds, at Special Term, granted such an application before answer. That is the practice prescribed by the Code.

Under the common law system of pleading, especially where the common counts were used, a defendant might be taken by surprise as to matters touching which he had the right to be informed, and some remedial practice for the suitor's protection was necessary. Courts of equity, in the exercise of inherent powers, inaugurated a practice of the nature now invoked, and, under legislative directions, the courts of law acquired the right to order a discovery and inspection of papers, but with special limitations (14 and 15 Vict., c. 99, § 6; Wigram on Discovery, 19; 3 Rev. St., 5th ed., 292), and to require bills of particulars in certain cases, especially as to the items of an account (Code, § 158.)

The elaborate brief handed in by the learned counsel for the defendant has a large collection of the cases in which such power has been exercised, with interesting analogies and illustrations. But none of the cases apply to the legal question involved.

In his treatise on practice, Mr. Shearman says:

"As a general rule, a bill of particulars will not be ordered in an action for a tort. (See *Pyle v. Stephens*, 6 Mees. and W., 818; *Stannard v. Ullithorne*, 3 Bing., N. C., 328; *Snelling v. Chennels*, 5 Dowl., P. C., 80.) Thus it will not be ordered in an action for injuries causing death (*Murphy v. Kipp*, 1 Duer, 659), nor usually in any action for personal injuries (*Semble, Derry v. Lloyd*, 1 Chit. Rep., 726, per Best, J.)"

The learned writer proceeds to state the reason why such bills are not granted in an action for tort, to wit: that the cause of action must almost always appear with sufficient distinctness in the complaint to enable the defendant to prepare his defense, and refers to 4 Cowen R., 54, where a bill of particulars was ordered in an action for the conversion of personal property, "as avoiding great detail in the pleading," and to 5 Dowl., P. C., 80, and 6 Exch., 696, to the point that, in actions of tort, the application should be accompanied with an affidavit that the defendant does not know what the plaintiff is suing for."

This last proposition accords with several late cases in which it has been held that such bills will not be furnished if the defendant already has, or from the nature of the case, must have the best or fullest knowledge of the facts. Indeed, there are many exceptions (7 M. W., 236; 6 C. B., N. S., 678; 8 How. Pr. R., 288), and as to the general theory, a late learned and prudent Judge has said: "The law has always considered sacred the rights of both parties to keep secret their preparations and means of attack and defence." (1 Abb. Pr., N. S., 233.) As indicating the theory that the right of discovery at law has been regarded as matter proper for legislative direction, rather than for such direction as the Court, in the exercise of its supposed inherent powers, might in each case choose to grant, our statutes as to compelling discovery in respect to betting and gaming (2 R. S., 926) and illegal brokerage (2 R. S., 979), usurious transactions (3 R. S., 73), and in respect to attorneys (3 R. S., 478, 479) might well be referred to.

Moreover, as rules of practice must be general, not changed materially to conform to particular cases, a plaintiff may so shape his case as to meet exigencies, as where witnesses are hostile and refuse to disclose the facts until compelled to do so on the trial.

But, as I have said, the question is as to the power of the Court, a power to be exercised with special reference to the

system of practice established by the Legislature. The Code, in creating a new system of procedure, has prescribed the manner in which a cause of action shall be stated in the complaint, and how a pleading, if defective, may be perfected. It gives to a defendant not satisfied with the frame or terms of the complaint, remedies much more full and adequate than given under the old system. He may move to have the complaint made more definite and certain, and where the claim can be itemized, may also have a bill of particulars. To all this the Code adds the right to examine the adversary on oath before trial, and even at the trial.

But the Code allows a bill of particulars of the claim. If the wrong be the conversation of personal property, the enumeration or description of it would be as to the particulars of the claim. But an action of this peculiar class, like that for assault and battery, is sufficiently stated and described in the general allegation necessarily contained in the complaint. Extraneous incidents there may be, enhancing or diminishing the grievance, but nothing further could be said as to the claim itself. When we are treating of claims in respect to property, or contracts, or accounts, a different rule applies.

In this case the right to make that the complaint be made more definite and certain has been waived. In several cases the Courts have held that such waiver was a confession that the pleading was sufficient. Such motion was a simple and the appropriate remedy, and this application cannot be accepted, though intended as a substitute. But the question is not of much moment to the defendant, as the information to which he could have been entitled may yet be obtained by examining the plaintiff before the trial.

I think that the practice established by the Code should be followed, as thus and only thus can certainty and consistency be obtained; and that an attempt by the Court to evade that practice and substitute other modes of procedure would be unwise, if not reprehensible.

The application is denied, but without cost.

J. NEILSON,  
J. C. C.

#### THE DEFENDANT APPEALS TO THE GENERAL TERM.

On the next day the defendant's attorneys appealed from this order of Judge Neilson to the General Term of the City Court. The appeal was heard in the General Term, October 19th, 1874, by Judges Reynolds and McCue, and after argument by Mr. Shearman for the defendant, and Messrs. Morris and Beach for the plaintiff, the order denying the Bill of Particulars, was affirmed without costs, Judge Reynolds writing the opinion. A dissenting opinion was written by Judge McCue.

#### OPINION OF JUDGE REYNOLDS.

The defendant, upon this appeal, asks that the plaintiff be compelled to specify the particular times "at which he expects or intends to prove any acts of adultery," and that the plaintiff be precluded from giving evidence upon the trial of any acts not so specified. The order to show cause asked for a like specification of places. And also of the particular times and places at which alleged confessions were made.

Upon the argument before us, however, it was not claimed that the places were not sufficiently specified, and that part of the order relating to confessions was expressly waived. Even if it had not been so waived, it would obviously be beyond the province of the Court to make any such requisition.

The question before us on this appeal then is, ought the plaintiff, upon the trial, to be confined to those particular acts, the exact date of which he may be able to fix in advance; for it would be idle to compel him to name the precise time of any alleged acts, except for the purpose of excluding all others from his claim. That is the very object of the motion.

The complaint alleges the wrongful acts to have been committed "on or about the 10th day of October, 1868, and on divers other days and times after that day, and before the commencement of this action," specifying as the places two houses in the city of Brooklyn. It is admitted that this is sufficiently definite and certain for the purpose of a pleading. If not, the remedy was by motion, to be made before the service of the answer. I understand this application to be based upon the ground that the Court has power to order a bill of particulars, as incident to the general administration of justice, as well as by § 158 of the Code.

Without discussing at length and separately the question whether the Court possesses the power to restrict the plaintiff by a bill of particulars in such an action as this, I propose to rest my conclusion mainly upon the ground that this is not a proper case for the exercise of such power.

The defendant is entitled, as matter of right, to a copy of the plaintiff's account when a demand for it is applicable to the nature of the case; but the "bill of particulars of the claim" which the Court may order "in all cases," is to be required only in the exercise of a sound discretion. Upon examining the authorities cited by the defendant's counsel, it will be found that the Court in each instance has evidently had reference to the particular circumstances of the case, and the supposed ability of the party to give the information asked for.

The decisions which are relied upon as having the most direct bearing upon this application, are those cited from the English Divorce Court, where the petition for divorce is joined with an action for damages against the alleged paramour.

In these cases it seems to be common to order particulars to be given. It is worth while to observe the manner in which the cause of action is stated in the petition (corresponding to our complaint) under their practice. Take, for instance, the cases cited upon the very able brief of defendant's counsel. In *Hunt vs. Hunt and Duke*, 2 Swabey & Tristram, the petitioner was charged, by way of recrimination, with having committed adultery with three persons named, without stating time or place. In *Codrington vs. Codrington and Anderson*, 3 Swa. & Tris., the charge was that the respondent had committed adultery on divers occasions since April, 1839, with divers persons. Particulars were ordered, and the petitioner then alleged frequent acts of guilt between 1839 and 1862, with a person named at Malta, and during a journey to Switzerland, Savoy, Sardinia and Italy. Further particulars were ordered, it appearing that the information on which the charge was founded was contained in a diary and certain letters of the respondent.

In another case, *Winscom vs. Winscom & Plowden*, 8 Swa. & Tris., the allegation was of adultery in or about the year 1853, at Jubulpoor, with some man other than the petitioner. Particulars were demanded, and the order seems to have been satisfied by stating the offenses as committed with Edward Clark, at Jubulpoor, in February or March, 1853. In a Massachusetts case, *Adams vs. Adams*, 16 Pick., 254, the libel (or complaint) charged that the defendant had committed various acts of adultery, at various times, with persons unknown, during a period of eight years. It would be difficult to imagine a charge much more general and indefinite than this.

Under a system which tolerates such pleading in an action for divorce, as is instanced by the foregoing references, the complaint must of course be supplemented by a statement of particulars.

In our State the complaining party in actions for divorce has always been compelled, by the pleading, to specify the circumstances of the offence alleged, as to time and place, with as great particularity as under the system of orders adopted elsewhere. We are not referred to a divorce case in this State where an order for particulars was applied for or made. I think, too, the learned counsel was mistaken in supposing that the setting of issues in a divorce suit ever served the purpose which is sought to be attained by an order. The issues were framed upon the pleadings; these were required to allege the offence with



reasonable certainty of time and place, and if the charge was too vague, the defect was not remedied by supplying an issue containing the particulars; but the issue would not be awarded. [Codd vs. Codd, 2 John. Ch., 224; Wood vs. Wood, 2 Paige, 106.]

The practice of ordering particulars in such cases seems never to have obtained here.

Of course, bills of particulars may be ordered in certain cases and sometimes in actions of tort. We have been referred to two cases, decided by our Supreme Court. *Humphrey vs. Cotteroy*, 4 Cow., 55; was an action of trover for the conversion of a quantity of timber. A bill of particulars was ordered, and the plaintiff delivered an account, specifying so many stacks of different kinds, without giving dates or mentioning any time within which the several items arose. The Court say the date of the items should be given with as much particularity as possible. If the day cannot be stated, then the month or year. That was a case where the claim was susceptible of being resolved into particulars, or itemized, with approximate dates, as much so as an account for goods sold. The difference between such a case and this has been sufficiently discussed by Chief Justice Neilson in the Opinion at Special Term.

The other case was an action for dower, *Vischer vs. Conant*, 4 Cow., 380. "The count was in the (then) usual general form, without showing any land in certain." The Court say the proper course was the same as in ejectment, where the declaration was equally general, that is, to ascertain, by a bill of particulars for what particular land the plaintiff was proceeding.

"This proceeding to obtain a bill of particulars seems applicable to all actions in which the plaintiff declares generally without specifying particularly his cause of action."

Surely, an order requiring the plaintiff to specify what land he is claiming in a suit, does not go far as a precedent, for requiring a party to state the exact date of a secret wrongful act, alleged to have been committed against him.

The case of *Early vs. Smith*, cited from the Appendix to 12 Irish Com. Law R., comes much nearer to the matter before us.

The action was for slander, and the complaint set out the words spoken without stating time or place. The Court made an order which was modified on appeal. The prevailing opinions say, "We do not compel the plaintiff to state the specific times at which he charges the words to have been spoken, and bind him by them, or the names of the parties to whom the words were spoken, but the occasions on which the words were spoken."

One of the Judges says he had concluded to go so far, not without difficulty, and another dissented; but the decision plainly falls short of the point attempted to be reached in this case. The Court refused to bind the plaintiff to specific times.

There is a vast difference, too, between the nature of that section and of this.

It was of the essence of slander, that the words had been spoken in the presence and hearing of other people, and the plaintiff might well be presumed to have the means, easily accessible, of fixing the occasion, and with some certainty, the time, of the wrong. No such presumption naturally arises here; indeed, the contrary, to some extent appears.

So far as civil actions are concerned, the great particularity in stating time and place, in suits for divorce, seems, with us, to be peculiar to that action. Our attention has not been directed to any case in this State, and I am not at this moment aware of any, holding in an action for damages for a wrong committed, when the time of the commission of the act is not material to constitute the cause of action, that the particular time must be stated, and proved according to the allegation.

The dissenting opinion in *Early v. Smith* very forcibly says: "Hitherto the law, although it has required the plaintiff, in point of form, to allege time and place for the charge which he makes, has been perfectly settled that he is not tied up as to his proof, either as to time or place. It has been no objection that at the trial he proves the slander at one place, though he has laid

it at another, or that he proves it at one time, though he has laid it at another."

This is true as to other torts, including the offences charged in this complaint, as well as in reference to an action for slander. I quote again from the same opinion: "It is said; Oh, it is a great hardship to the defendant to go to trial without knowing the precise times and places on which the plaintiff means to rely. But that is a hardship to which plaintiffs and defendants have been subject for hundreds of years—for as long as we have records of law."

I think such is the state of the law with us to-day; unavoidably so, and that it should be inconsistent with well settled and reasonable rules, to "tie up" the plaintiff, in such an action as this, to any particular date or dates, to be stated in advance.

With all the uncertainties of human testimony no man can foresee the chances and accidents of a trial; and, as to immaterial circumstances, great latitude should be allowed.

This will be still more apparent from a consideration of the nature of the proof upon which, so far as disclosed, this plaintiff must mainly rely.

The moving affidavits make extracts from a published statement of the plaintiff, in which he speaks of confessions alleged to have been made to him by his wife and by the defendant.

It is not at present apparent how *his* confession can be made use of as evidence on the trial; as to those of the defendant, it does not appear from plaintiff's statement, as quoted, that such confessions furnished him with the information as to dates, which would enable him to comply with the order sought for, nor is it quite clear that a plaintiff in such an action ought to be compelled to rest his case upon the accuracy or reliability of data so obtained, even if the particulars were given to him.

Now, suppose the plaintiff came into court and upon the trial swears to confessions of guilt, as made to him by defendant, broad enough to sustain the complaint, if credited by the jury; suppose he succeeds in producing other witnesses who shall swear to similar confessions and to circumstances pointing in the same direction; and also introduces papers, written and signed by the defendant, which are claimed by plaintiff to be substantially confessions of the offence charged; but that any array of proof of this sort should fail to point out specific days or times of the alleged wrongs, what would be the consequence should the jury be satisfied, upon such evidence, of the defendant's guilt?

In accordance with the general rules applicable to the trial of issues—rules which I conceive to be fair and just—the plaintiff would in that case be entitled to a verdict. He would have made out (supposing the jury to have found as stated) the substance of his allegations and it would matter not whether the wrongs were committed on this day or that, within the general period covered by the complaint. But if we should make the order which is now asked for, the defendant might, in the first place, with great plausibility object to all proof which does not point to some specific time, and in the next demand a verdict of acquittal, even if the jury should believe the evidence against him, because he had not been shown to have committed the offences at the particular times to which the plaintiff had been confined by the order and the bill of particulars.

If this result would not follow upon such a state of facts, I see no object in asking for the order; and if such a result should follow, it seems to me it would be a reproach upon the administration of justice.

I think the parties can have a perfectly fair trial of the issues in the ordinary way, and I am therefore in favor of affirming the order made at Special Term, but without costs.

GEO. G. REYNOLDS, Judge.

#### OPINION OF JUDGE McCUE.

Appeal from an order made at Special Term, denying the defendant's application to compel the plaintiff to furnish a statement or bill of particulars of the times and places

when the several acts of adultery charged in the complaint were committed.

The action is for *crim. con.* The complaint alleges that the adultery was committed at the house of the plaintiff, also at the house of the defendant, both situate in the City of Brooklyn, "on or about the 10th day of October, 1863, and on divers other days and times after that day and before the commencement of this action." The answer is a full denial of each and every act of adultery.

The defendant's application was to compel the plaintiff to show cause why he should not deliver to the defendant's attorneys a statement, in writing, of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff, and of the particular times and places at which he expects or intends to prove that the defendant confessed any such acts of adultery, or criminal intercourse, or be precluded from giving evidence upon the trial of any such act or confessions not specified in such bill of particulars.

Before passing to the examination of the questions presented on this appeal, we think it proper to notice two objections raised to the defendant's application, since the early disposition of them will very much simplify our labor.

The objections referred to are: *1st*, That the defendant desires a bill of particulars of the confessions made by plaintiff's wife, which it is claimed could not be introduced against the defendant; and *2nd*, That the claim of the plaintiff "is for the loss of the affections, comforts, society and assistance of his wife; and that if the defendant had accomplished this without seduction, his liability would have been the same." (See point 14, respondent's printed points).

An examination of the order to show cause disposes of the first objection; the bill of particulars desired does not call for the confessions of the wife, only for those made by the defendant himself.

The second objection is not well taken. The loss of the affection, comfort, society and assistance of the wife are elements of damage, it is true, but the plaintiff's right of action rests alone upon the fact of the seduction of the wife, and if the plaintiff fails to prove that fact, notwithstanding that he may have lost her affections, &c., he must fail in this action. A special action on the case might give him relief, but, in this action, failing to prove that the defendant debauched the plaintiff's wife, the plaintiff has no standing in Court. It would not, therefore, follow, as stated in the 14th point referred to, that, if the defendant was entitled to have the bill of particulars applied for, he would be equally entitled to have the items of proofs, proposed to be introduced on the trial, touching the defendant's frequent visits, his presents, and the various arts by which the defendant won the affections of the plaintiff's wife.

These objections disposed of, we propose to consider the single question presented on this appeal, viz.:

Has this Court power, after issue joined in an action of *crim. con.*, to order a bill of particulars "of the divers other days and times" after the one particular day named in the complaint when the criminal conversation is claimed to have taken place, and of the particular guilty acts which, it is claimed, the defendant has confessed?

No objection is raised to the power of this Court at General Term to review the order appealed from. The order is sought to be sustained on the grounds—*First*:

That Section 158 of the Code, which provides for the delivery to either party on demand, or on the order of the Court, if "the items of an account" set up in a pleading, or "a bill of particulars of the claim" of either party, does not apply in the case of a claim such as that which forms the subject of this action; and, *Second*:

That the defendant's application should have been made under Section 160 of the Code: "When the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the Court may require the

pleading to be made definite and certain by amendment," and that, having omitted to make the application before answering, the defendant has thereby accepted the complaint as sufficient, and has waived the right to require any amendment of the complaint.

I understand the defendant's application to have been denied by his Honor the Chief Judge, not because there were no merits in the application, but because "of want of power to grant the same, as well as for other grounds stated" in the opinion of the Court. The main consideration suggested by the learned Chief Judge for refusing the application seems based upon the assumption, that if any question could be raised in relation to the form of the complaint, the defendant should have applied to have the complaint made more definite and certain; and that to compel the plaintiff to give the particulars called for, is in effect to compel him to disclose the evidence upon which the plaintiff relies to establish his cause of action on the trial.

With great respect we think this position erroneous.

The complaint as a pleading is good, and follows the established forms. There is no indefiniteness or uncertainty in the nature of the charge. It is distinctly alleged that the defendant debauched the plaintiff's wife. This act is declared to have been committed on the 10th day of October, 1863, thus bringing it within the Statute of Limitations; except for this purpose the allegation of time would have been immaterial. Proof of the adultery, therefore, on or about the date particularly alleged would establish the right of the plaintiff to recover.

That fact established, the plaintiff has a perfect cause of action, and the other matters alleged in the complaint, as to the loss of the wife's affections, society and services, enter into the cause only as bearing upon the question of damages.

The defendant could not obtain the information he asks, under this section, because it is only when the charge which he is called on to meet is not apparent in the complaint, that the Court has power to make that pleading more definite and certain.

It matters not whether the defendant did or did not debauch the plaintiff's wife at divers other days and times between the 10th day of October, 1863, and the time of the commencement of the action.

If guilty on the one day alleged, he is guilty of the wrong complained of, and the plaintiff is entitled to recover damages.

Even if the plaintiff should fail to establish the commission of an act of adultery on the 10th day of October, 1863, the charge is still definite and distinct against him; and if the plaintiff can establish the commission of a single act of criminal conversation between the said 10th day of October, 1863, and the time of the commencement of this action, his cause of action is fully established.

The Court, therefore, can give him no relief under section 160, because the nature of the charge against him is apparent on the face of the complaint, and the time immaterial, except to the defendant, to enable him to prepare for trial.

It does not follow that because the plaintiff is compelled to designate, with some reasonable particularity, those other days and times, that he is necessarily obliged to disclose the evidence by which his cause of action is to be sustained, and thus expose his preparation and means of attack. On the contrary, let us assume that one of these other days and times is the 10th day of October, 1863, and is so assigned by the plaintiff. What light is furnished to the defendant by which he can foresee, in any way, the proof by which the plaintiff, on the trial, proposes to establish the defendant's guilt?

The plaintiff has now undoubtedly the proofs within his reach by which he hopes to establish the fact, but the names of the witnesses who saw the guilty act committed, or the circumstantial evidence by which the plaintiff, in the absence of direct proof, will endeavor to establish the defendant's guilt, are not disclosed. How can it be said that to give this date, either absolutely or with reasonable approximation, affords the defendant any opportunity to tamper with or elude an unwilling wit-

ness, or enables him to manufacture testimony to meet facts and circumstances known only to the plaintiff, and not disclosed under the order applied for, and against which it seems to me impossible that he should be able to manufacture any available testimony?

I have dwelt thus at length upon this branch of the case because the decision of the Court below seems to rest mainly upon the point that the defendant had a full and ample remedy under section 160, which he has voluntarily abandoned, and that the application of the defendant called for the disclosure of the evidence upon which the plaintiff relies to establish his claim for damages.

I do not concur with the learned Chief Judge, "that the question is not of much moment to the defendant, as the information to which he could have been entitled" (that is, under Section 160) "may yet be obtained by examining the plaintiff before the trial."

Undoubtedly the plaintiff might be examined before trial, but it is difficult to imagine any line of examination, which would be permissible, which would give the defendant any information as to the days and times on which it is proposed to prove any guilty acts between the defendant and the plaintiff's wife.

If we assume, for example, as we probably should, that the plaintiff is innocent of any collusion with the alleged guilty parties; that the defendant wrongfully and wickedly, and without his privity or consent, committed this great wrong against him, and that to make out the case he relies upon statements made to him by parties who themselves have witnessed the guilty acts, or upon circumstantial evidence, or upon both, can the plaintiff be compelled to disclose either these statements or these circumstances? The statements of other parties are incompetent as evidence. The witnesses must be produced and examined upon the trial. We submit, therefore, that the examination of the plaintiff before trial does not give him the particulars he desires.

It is, however, of vital importance to the defendant that he should know, in advance of the trial, with reasonable particularity, when it is claimed that he has committed any wrong against the plaintiff, *non constat*, but that if advised of the times and occasions, he might be able to establish that he was absent from the city when it is alleged the adultery was committed, or that, because of some other facts or circumstances, the charge is equally untrue.

The plaintiff was undoubtedly prepared, at the time his action was commenced, to bring forward the necessary proofs; the complaint is sworn to, and we must assume, for the present purpose, that the plaintiff believes the matters alleged by him to be true, and that this belief is based upon facts, circumstances and information in his possession, and they ought to be very full and clear to warrant the grave charges therein made.

The answer is verified, and, as before observed, contains a full and unequivocal denial of the charges made in the complaint. We have no right to presume the defendant guilty; the burden of proof rests upon the plaintiff. The defendant may not be put upon his defense until the plaintiff has established, at least, a *prima facie* case against him, and it is therefore begging the whole question to say that the defendant, if guilty, knows, of course, all the facts which can possibly be introduced against him.

We have no right to presume that either party will attempt the manufacture of false testimony, but certainly the opportunity to do so is as free to the plaintiff as to the defendant.

It is no injustice, therefore, to ask the plaintiff to designate the times when the acts of which he complains were committed. It cannot in any way disclose his line of attack. It is fair, to the defendant, that he should be pointed with some degree of certainty to the times and occasions to enable him to meet these charges fairly. I am satisfied that this course, and this course alone, will aid the cause of justice and lead to the ascertainment of the truth.

Secondly, as to the power of the Court to grant the order. The authorities cited by the learned counsel for the defendant leave, I think, no room to doubt that in England, and in some of our sister States, the practice is well established to the full extent claimed. It is insisted, however, that this practice has never prevailed in this State, and that the only powers possessed by our courts are under Sections 158 and 160 of the Code. I have already endeavored to show that Section 160 has no application.

The first paragraph of Section 158, referring to the items of an account, clearly refers to an account stated, and has no application to the statement which the defendant seeks. (*Johnson vs. Mallory*, 2 Rob., 681.)

The concluding portion of the section has, however, a very important bearing upon the question under review.

It was undoubtedly the object of the Code to simplify the practice and proceeding in the courts of our State, and to the extent, and in the cases in which the Code undertook to lay down rules and regulations, all other statutory provisions inconsistent therewith were repealed (Sec. 468); but the rules and practice of the courts in civil actions, which were not inconsistent with the Code, were specially declared to be in force, subject to the power of the respective courts to modify and alter the same (Sec. 469).

It is declared that the distinction between legal and equitable remedies should no longer continue, and that a uniform course of proceeding should apply in all cases.

As originally framed, Sec. 158 bore this heading: "How to state an account in a pleading," and provided only for furnishing of the items of an account therein alleged. The title, so to speak, of the section, clearly indicated and limited its office. In 1851, the section was amended by providing for the delivery of a further account when the one delivered is defective, and further provided, "and the Court may in all cases order a bill of particulars of the claim of either party to be furnished."

It is evident that the Legislature meant, in this one section, to simplify and condense in the shortest possible form, but with the most enlarged application, such rules of practice as in its judgment were best calculated to bring about a furtherance of justice; and to the end that a party to the action, plaintiff as well as defendant, might be fully apprised of the full and particular claim made against him, the courts were authorized in all cases to order a bill of particulars of the claims of either party to be furnished. This provision does not apply to the nature of the charge, but rather to its extent. The precise nature of the charge, as already seen, is covered by Section 158, as well as by Section 142, which specifies that the complaint shall contain a plain and concise statement of the facts constituting the cause of action.

The charge is fully stated when the complaint alleges that the defendant debauched the plaintiff's wife, but the plaintiff's claim is that the defendant not only committed this act on one occasion, to wit: October 10, 1868, but on divers other days and times. It certainly will not be contended that the word claim can have any reference to the items of damage.

Under Section 158, then, we are of opinion that this Court has power to order the plaintiff to furnish such further particulars as the circumstances of the case require.

I have not been able to find an adjudicated case in our reports where such particulars have been ordered in a civil action, but the practice is not an unfamiliar one in criminal cases, even in our State, and in actions for divorce before the Code.

See *Lambert vs. The People*, 9 Cow., 586. Senator Spencer, who delivered the opinion of the Court, referring to the rule in criminal cases that the indictment must not only contain a description of the crime, but also a statement of the facts by which it is constituted, so as to identify the accusation, and to the rule in indictments for barratry, requiring the prosecutor to furnish a bill of particulars which should specify the particular instances, says: "This simple and plain rule is so agreeable to common sense and common justice, that it needs not any authority to support it."

In the case of *Wood vs. Wood*, an action for divorce, 2 Paige, 113, the Chancellor held "that the only safe and prudent course is to require the charge, whether of crimination or recrimination, to be stated in the pleadings, and in the issues, in such a manner that the adverse party may be prepared to meet it on the trial," and that "neither party has a right to make such a charge against the other, on mere suspicion, relying upon being able to flesh up testimony before the trial to support the allegation."

In the case of *Early vs. Smith*, 12 Irish C. L., XXXV., which was an action of slander, the defendant applied to the court for an order compelling the plaintiff to furnish the names, descriptions and addresses of the persons in whose presence the slanderous words were spoken, as well as the time when and the places where they were spoken.

The application seemed a novel one, no precedent for such an order was cited; but the court, after full examination, granted the order in a modified form, "though for the first time applied for."

It was claimed in that case, as it is in this, that such an order would enable the defendant to tamper with the plaintiff's witnesses, to which the court replied:

"That is an objection to which we should not yield; it may be raised to almost every application for a bill of particulars. The object of this application is to enable the defendant to go down to trial, knowing the case which he has to meet, and to prevent him from being taken by surprise."

The court directed the plaintiff to furnish a statement of the occasions on which the words were spoken, but not of the names descriptions and addresses of the persons present.

The power of the court under Section 158 is without limitation. The court may in all cases order a bill of particulars of the claim of either party to be furnished. This language is broad enough to cover this case, and the reason for the rule, which has obtained in our State in criminal actions and actions for divorce, applies with equal force to an action for *crim. con.* We are justified in saying that it applies with greater force in the case at bar, for the effect of a verdict against the defendant is practically to stamp, as an adulteress, a person not a party to the action, and therefore unable to make any defense in court.

We think the effect of this section is to incorporate into our practice the most liberal rules which have prevailed in other countries and States, which recognize, with us, the common law, in so far as such rules tend to bring about the more perfect administration of justice.

To recapitulate the conclusions to which we have come:

*First*—The precise nature of the charge being apparent in the complaint, the defendant could not obtain the particulars sought under the provisions of Section 160.

*Second*—The court below had power, under Section 158, to order the particulars asked for by the defendant, to the extent of compelling the plaintiff to designate with all possible particularity the times and occasions when the guilty acts were committed, whether the plaintiff was possessed of the information from the confessions of the defendant or otherwise.

*Third*—That the discretion given to the court to order such bill of particulars is a legal discretion to be exercised according to the well-established rules and practice of the court, and

*Lastly*—That the order appealed from should be reversed, without costs, however.

Dated, November 18, 1874.

A. McCUE,

Judge C. C. B.

#### APPEAL TO THE COURT OF APPEALS.

From this decision of the General Term the defendants appealed to the Court of Appeals, which having heard the arguments in the case on the 1st of December, 1874, on the 7th of

December, 1874, rendered a decision reversing that of the General Term of the City Court, in the following opinion:

#### OPINION OF THE COURT OF APPEALS.

THEODORE TILTON, Respondent, vs. HENRY WARD BEECHER, Appellant.—William M. Everts for Appellant; Roger A. Pryor, for Respondent. Rapallo, J.

The only question arising upon the present appeal which is reviewable in this court, is whether or not the court below had power to grant the application of the defendant. If it possessed that power, and, under the mistaken impression that the power did not exist, denied the application on that ground, we have jurisdiction, and it is our duty to correct that error of law, and remit the case to the court below, with a direction that the motion be heard at Special Term, on the merits. (*People vs. New-York Central Railroad Company*, 29 New York, 418; *Brown vs. Brown*, Court of Appeals, November 1874; not reported.) This is the extent to which we interfere with orders made upon applications which do not rest upon strict legal right, but involve an exercise of discretion on the part of the courts below. It is not contended on the part of the appellant, and it would have been useless to contend, that the present application was founded upon legal right, or that it did not rest in the discretion of the court, nor that if the order appealed from was the result of fair exercise of that discretion we should be asked to review it. The ground of the appeal is that the Judge to whom the application was originally made at Special Term decided that he had no power to grant the relief sought; that he erroneously held that such relief could have been applied for under section 160 of the Code of Procedure, and could be obtained by no other proceeding, and that the defendant is entitled to have this error of law corrected, and his application duly considered without being embarrassed by the legal difficulties supposed to stand in the way.

The first point for our consideration is whether in fact the case was disposed of in the court below on the question of power. If it was we are then called upon to decide whether or not the power existed, and if we find that it did, the defendant is entitled to the unembarrassed exercise of the discretion of the court in which his cause is pending upon the question whether or not justice demands that his application be granted.

The best evidence on the first point is the order of the court denying the defendant's motion. This order recites, among other things, that an order had before been granted requiring the plaintiff to show cause why he should not deliver to the defendant's attorney "a statement in writing of the particular times and places at which he expects or intends to prove that any acts of adultery or criminal intercourse took place between the defendant and the wife of the plaintiff." It denies the motion, on the ground that the court has no power to grant the same, and on other grounds stated. If the words "and on the other grounds stated," had been omitted, it is very clear that the order would conclusively establish that the motion was denied solely on the ground of a supposed want of power to grant it. What qualification, then, was intended for the insertion of these words? We must suppose that the learned Judge referred to the grounds stated by himself in the opinion which he delivered contemporaneously with the order, and in which he set forth the reasons for his decision. Any other supposition would be unreasonable. This opinion presents with much force the reasons for holding that he had no power to grant the motion. But in no part of it does he say that he has exercised his discretion as to the merits of the application, and determined that it should be denied upon the merits. The learned Judge, after commenting on the subject of bills of particulars in actions of tort, and showing that ordinarily they will not be granted in that class of actions, says: "But as I have said, the question is as to the power of the court," and he proceeds to sustain his position that the court has no such power by arguing that the defendant could have obtained an adequate remedy by a motion under section 160 of the Code to make the complaint

more definite and certain, and that that was the appropriate and sole remedy.

After a careful examination of the opinion we are satisfied that it does not in any substantial respect qualify the statement in the order that the motion was denied on the ground of want of power, and that the other grounds stated are that a different remedy is provided by the Code, and the party is confined to the one thus provided. This being the shape in which the case comes before us, we think it presents a question of law, and is therefore appealable to this court. It may not be absolutely essential to consider the question whether the particulars sought could have been obtained under section 160, by an application to make the complaint more definite and certain. If the power to order particulars existed before the enactment of that section it is not thereby abrogated. The most that could be said upon the subject is, that, if section 160 affords an appropriate remedy the court might require the party to resort to that remedy. Both remedies might consistently exist together, but so much stress has been laid on the assertion that a remedy could have been obtained under section 160, that it is proper to ascertain whether or not that position is sound.

The language of the section is: "When the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain." It will be observed that it is only where the precise nature of the charge is not apparent that an application can be made under this section. It enables a party to obtain a definite statement in the pleading of the nature of the charge intended to be made against him, but not of the particulars or circumstances, of time or place. For this purpose a different proceeding is pointed out, viz., an application under section 158, which provides, among other things, that "the court may in all cases order a bill of particulars of the claims of either party to be furnished." It is evident that in the present case there was no occasion for an application under section 160 to make the complaint more definite and certain. There is no uncertainty or indefiniteness in respect to the nature of the charge made against the defendant. The difficulty under which he claims to be laboring is that the complaint does not point out the times or occasions when the alleged offences are claimed to have been committed, but avers simply that they were committed on the 10th of October, 1888, and divers other days and times after that day, and before the commencement of this action, thus covering a period of very nearly six years, the action having been commenced in August, 1874. He denies that the acts charged were ever committed, but claims that for the purpose of preparing his defense it is necessary that he should be furnished with the particulars of the time and place in order that he may summon witnesses to rebut such evidence as may be brought against him, or explain the circumstances which may be proved, and upon which the plaintiff may rely to establish the charges.

In action upon money demand, consisting of various items, a bill of particulars of the dates and description of the transactions out of which the indebtedness is claimed to have arisen is granted almost as a matter of course; and this proceeding is so common and familiar that when a bill of particulars is spoken of it is ordinarily understood as referring to particulars of that character. But it is an error to suppose that bills of particulars are confined to actions involving an account, or to actions for the recovery of money demands arising upon contract. A bill of particulars is appropriate in all descriptions of actions when the circumstances are such that justice demands that a party should be apprised of the matters for which he is to be put on trial with greater particularity than is required by the rule of pleading. They have been ordered in actions of libel. (*Keefe v. Davis & Chapman*, 10 Pick., 767, 7; *Dowl & R.*, 774; *trespass—Johnson v. Birley*, 5 Barn. and Ald., 540; *trover—Humphrey v. Cottleton*, 4 Cowan, 54, and in ejectment—*Viecher v. Conant*, 4 Cowan, 386.) Even in criminal cases the instances in which the courts have by analogy to the practice in

civil actions ordered bills of particulars, are frequent, viz.: On an indictment for being a common barrator, where a general form of pleading is allowed, (*Hawkins v. P. C. B.*, C. 83, sec. 13; *Goddard v. Smith*, 6 Med. R., 261; *Commonwealth v. Davis*, 11 Pick., 482.) On an indictment for nuisance the prosecutor has been required to specify particulars of the separate acts of nuisance which he intended to prove, (*Rex v. Carwood* 8d, and *Ell. 815*, *Regina v. Flower*, 3 Jurist, 538, and in a prosecution of embezzlement, *Rex v. Hodgson*, 3 Carv. and Payne, 302.) And in England there is nothing more common at the present day than to order particulars to be filed in an action for divorce, either on the ground of cruelty or adultery, and this is done on the application either of the defendant, or in cases where the wife is the defendant, of the person with whom she is alleged to have committed adultery, and who under the statutes 20 and 21, Vict., chapter 85, is joined with her as co-respondent for the purpose of being mulcted in damages. These cases show very clearly the opinion of the English courts, that a bill of particulars can be ordered in an action of crim. con., because section 32 of the statute last referred to expressly provides that where the alleged adulterer is named in the petition as co-respondent, the claim made by every such petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation are now tried and decided in courts of common law. Under this provision particulars have been ordered on the application of the co-respondent as well as of the respondent. (*Higgs v. Higgs*, 11 Weekly, Rex, 154, and see *Hunt v. Hunt*, and *Duke*, 2 Sw. and Trist, 574.)

The cases in which the complainant has been required to furnish particulars on the application of the respondent, are too numerous to justify their citation here. There are nearly a dozen of them in volumes 2 and 3 of *Swaby and Tristram's Probate and Divorce Court Reports*, which we have examined, and a similar order was made by the Supreme Court of Massachusetts, in 1834, in the case of *Adams v. Adams*, 16 Pick., 254. In this State, Chancellor Walworth, in the case of *Wood v. Wood*, 3, page 103, laid down the rules which have since governed in actions between husband and wife for divorce, and rendered applications for bills of particulars unnecessary. It must be remembered that here, when the charge of adultery is denied, the issue must be tried by jury, unless the parties consent to a different mode of trial, and it is even doubtful whether they should be permitted so to consent; but in a contested case the Chancellor laid down the rule as follows:

"The only safe and prudent course is to require the charge, whether of crimination or recrimination, to be stated on the pleadings and in the issues, in such a manner that the adverse party may be prepared to meet it on the trial. If the persons with whom the adultery was committed are known, they must be named in the defendant's answer, and the adultery must be charged with reasonable certainty as to time and place. If they are unknown, that fact should be stated in the answer and in the issue, and the time and circumstances under which the adultery was committed should be set forth. Neither party has a right to make such a charge against the other on mere suspicion, relying upon being able to fish up testimony before the trial to support the allegation."

The Chancellor here speaks of setting forth the particulars in the answer, because the case then before him was one of recrimination. In the case of the *Commonwealth v. Snelling*, 13th Pick., 321, Chief Justice Shaw gave a very thorough examination to the subject of the practice of the courts of common law in requiring bills of particulars, and the principle upon which it is founded, and, after an extensive review of the authorities, came to the conclusion that the general rule to be extracted from them was that where, in the course of a suit, from any cause, a party was placed in such a situation that justice could not be done at the trial without the aid of the information to be obtained by means of a specification or bill of particulars, the court, in virtue of its general authority to regulate the

conduct of trials, had power to direct such information to be seasonably furnished. The authorities cited by him are decisions in civil cases, but by analogy he applied the principle to a criminal prosecution for libel, and sustained an order requiring the prisoner to furnish particulars of his justification of a general libelous charge against the magistrate.

The same rule is laid down in a recent case in the Court of Queen's Bench, in Ireland (*Early vs. Smith*, Cysse Com. Law. R., Appendix 35), where it was held, and on the authority of many of the same decisions which are cited by Chief Justice Shaw, that the rule which governs the courts in ordering particulars to be given, is that in all cases, whether trespass, trover, or on the case, the court has a general superintending power and control, no matter what the form of the action may be. If the complaint or declaration is conceived in vague and general terms, without specifying the circumstances under or the occasions on which the plaintiff relies, and the defendant satisfies the court, by affidavit, that either for the purpose of pleading or of defense at the trial, it is necessary that the plaintiff be more specific, and more clearly define his cause of action, the court has a general jurisdiction to order the plaintiff to give a more precise and specific description of that upon which he relies. In the case last cited a bill of particulars was ordered in a case of oral slander. Although no precedent could be found for an order for particulars in such a case, the court determined that the circumstances presented to them brought the case by analogy within the reasons of those in which particulars had been ordered, and that, therefore, they were authorized to afford the relief required.

A reference to a few of the authorities upon which these decisions were founded, will show that in almost every case in which defendant can satisfy the court that it is necessary to a fair trial that he should be apprized beforehand of the particulars of the charge which he is expected to meet, the court has authority to compel the adverse party to specify these particulars so far as in his power.

For instance, in *Doe vs. Phillips* (6 Term Rep., 597), an act of ejectment was brought. It was made to appear to the court that the action was founded upon the alleged forfeiture of a term of a lease by the breach of covenants contained in the lease. The court ordered the plaintiffs to furnish particulars of the breaches of the covenants, of the times when, &c., he meant to insist that the defendant had forfeited the lease. To the same effect was the case of *Doe vs. Brood* (2 Man. and Gr., 523, see in *Davies vs. Chapman*, 6 Adol. and Ell., 767), it was held that in an action for an escape, the plaintiff might properly be ordered by a Judge to give a particular of the alleged escape, specifying the time and place, and that the plaintiff is bound to specify them precisely, if he could, and if not, as well as he was able.

Analogous cases are to be found throughout the books in this State. It was long since recognized that in actions of ejectment, to ascertain the precise premises for which the plaintiff was proceeding, the constant course was to obtain a bill of particulars. (*Viecher vs. Conant*, 4 Cow., 396, and so in actions of trover, *Humphrey*, 50; *Cottlegan*, 4; Cow., 54). As I have already shown, there is no class of cases in which, in England, even at the present day, it is more common to order particulars to be furnished than in actions in which adultery is charged. If the charge is general and vague, particulars are always ordered. As early as the year 1692, in the case of the proceeding for divorce against the Duchess of Norfolk, before the House of Lords of England (reported in 8 Hargrave's State Trials, 85, and Howell's State Trials, vol. 12, p. 833), the Duchess demanded particulars of the charge against her. They were ordered. The complainant furnished a statement that the person charged to have committed the crime with the Duchess was John Gormaine, of, &c., and that the times were between the months of June and December, 1685, and several times since, specifying places. The petition of her husband was presented in 1692. To this charge, covering six years, she answered that the charge as

to time and place was too general, and did not answer the end of the order of the House of Lords. A further and more definite bill of particulars was then furnished, affording the complainant an extensive field for proof, but at the same time indicating to defendant the periods and occasions in respect to which she was called upon to defend herself.

Without following the line of English decisions, I come at once to those of our courts in Pennsylvania as early as 1784. In the case of *Steele vs. Steele* (1 Dall., 49), after issue was joined in an action for a divorce for cruelty, the court held that notice ought to be given of the facts intended to be proved under the general allegations of the libel. In 1803, in *Garry vs. Garry* (4 Yates, 244), the libel charged that the respondent, on the 10th of June, 1799, at the county aforesaid, and at other times and places, committed adultery with Esther Palmer and other lewd women to the plaintiff unknown, and the court held that unless the complainant, before trial, specified in a written notice the time, and places, and attendant circumstances, she should be confined in the evidence to acts of adultery committed with Esther Palmer.

In Massachusetts, in 1834, in the case of *Adams vs. Adams*, 16 Pick., 254, the libel for divorce charged acts of adultery generally, and a bill of particulars was ordered.

Most of the authorities which I have mentioned, consist of adjudications prior to the amendment of 1849 to Section 150 of the Code of Procedure, which is in these words: "And the Court may, in all cases, order a bill of particulars of the claim of either party to be furnished."

It must be borne in mind that we are discussing simply a question of power, whether in the case before us the Court below had power to order particulars to be furnished; not whether, upon the facts disclosed by the affidavits, the Court below ought or ought not to have ordered particulars, but whether it had the power to do so. If it made a mistake in that respect we must correct it. If the Code had been silent upon the subject of bills of particulars, the 489th section would probably have sufficed to preserve the authority of the Court to order particulars in all cases before accustomed. But the express authority conferred by section 158 to order particulars in all cases, especially when read in view of cases which have been, and in which particulars had been ordered, would seem to place the question beyond doubt. Many of the arguments on the part of the plaintiff are more proper to be addressed to the Court of original jurisdiction on the question of the exercise of its discretion than to this tribunal.

It is claimed that an important element in the plaintiff's case consists of confessions made by the defendant, and that, if particulars are ordered, it will be necessary to prove that he confessed the acts to have been committed at the dates specified in the bill of particulars. This is an imaginary difficulty. It would be absurd to suppose that any tribunal of ordinary intelligence would order a bill of particulars in such form as to exclude evidence of general confessions.

The same argument was used in case of *Codrington vs. Codrington*, Andrews 2, Swab and Twist, 308. After an order for particulars had been granted, the complainant delivered particulars in which he alleged that the respondent had committed frequent acts of adultery between 1859 and 1862 with one Lieut. Mildmay, at Malta, and during a Journey in Switzerland, Savoy, Sardinia and Italy. Application was made for further particulars, and it appearing that the charge was founded upon the contents of a diary and letters of the respondent which had come to the petitioner's hands, it was ordered that unless the petitioner gave further particulars he should be confined in his proof to the confessions contained in the diary and letters.

It is further urged that the defendant in such a case needs no specification of particulars, because he knows better than any other but one the details about which he seeks information. This is *petitio principii*; it assumes that the defendant has committed the acts with which he is charged, while the very question to be tried is whether or not he has committed them.

A further argument is, that to make the disclosures sought will afford the defendant an opportunity to tamper with the plaintiff's witnesses. This argument has been used in many of the cases to which I have referred, and has been uniformly rejected. The principle upon which orders for particulars are granted is the advancement of justice and the preventing of surprise at the trial. The court must see that both parties are fairly dealt with, and it cannot be presumed that it will make any order which shall shield the defendant from just responsibility.

Whether in the exercise of its discretion it should grant or refuse the order applied for we are not to decide. All that we decide is that it has the power. If it sees fit, to order particulars to be furnished, and that in deciding that it had not such power it committed an error in law which requires us to reverse its decision.

A point is made on the part of the plaintiff which requires notice. It is contended that the General Term, in affirming the order of the Special Term, must be presumed to have passed upon the merits on the facts as well as upon the law of the case, and the decision in *Tracy vs. Altemeyer*, 46 N. Y., 593, is cited in support of this point. The answer is that in the present case, it appears that the orders of the Special Term were reviewed by only two Judges of the court; that they were divided in opinion, and that it was only by force of the statute specially applicable to the City Court of the Brooklyn Laws of 1870, page 1,047, section 8, that the order stood as affirmed, the two Judges disagreeing.

Our conclusion is that the orders of the special General Term of the City Court of Brooklyn be reversed without costs, and the case remitted, to be heard at Special Term; that its discretion may be exercised upon the merits.

Chief Justice Church, Justices Folger, Rapallo, and Andrews.

#### JUDGE ALLEN'S DISSENTING OPINION.

Here follows the opinion of Judge Allen :

TILTON vs. BEECHER—ALLEN J.

If the court below had not the power to grant the motion, the order should be affirmed. If the power existed, its exercise was in the discretion of the City Court of Brooklyn, and the action of that court in the exercise of that discretion is not the subject of review in the court. In one or more cases in which we have thought the court of original jurisdiction had erred in refusing to act by reason of a supposed want of power, and have reversed the orders and remitted the proceedings to the end that the proper court might exercise the discretion the law had vested in it. In these cases it appeared by the order and record of the court that the decision of the Court below was placed exclusively on the ground of a want of power. Here we have not the record evidence. The motion at Special Term was denied for want of power, and for other reasons stated, showing conclusively that the relief was not denied solely upon the ground that the court had no power to grant it. The clear inference from the terms of the order is, that the Judge doubted whether the court had power to order the information to be furnished; but if it had the power, a proper case had not been made for the exercise of the power. If the opinion is referred to, the same conclusion will be arrived at. The Judge had evidently great doubts, and inclined to the opinion that there was a want of power, but was also of opinion that it was not a proper case for the relief if the power existed. The order at the General Term surely affirms the order without assigning or declaring the reasons, and we must assume that it was affirmed on the merits, it not appearing that it was affirmed for any other reason. If the fact that it was affirmed under the statute by a divided court, which is not stated in the order, the result would be the same. The facts giving this Court jurisdiction of the appeal must appear by the record. They do not so appear in the case. I am for the dismissal of the appeal.

Judge Grover doubts the existence of the power, but concurs in the opinion of Judge Allen.

#### JUDGE McCUE GRANTS THE BILL OF PARTICULARS

Sustained by this decision of the Court of Appeals, the counsel for the defendant renewed their application for a bill of particulars before Judge McCue, at a Special Term of the City Court, December 10, 1874. The application was granted, Judge McCue writing the following opinion :

Motion for a bill of particulars:

The court of last resort has decided that this court has power to order a bill of particulars in all descriptions of actions when the circumstances are such that justice demands that a party shall be apprised of the matters for which he is to be put on trial, with greater particularity than is required by the rules of pleading.

Application is now made by the defendant for a statement in writing, verified by the plaintiff, of the particular times and places at which he expects or intends to prove the commission of any criminal acts between the defendant and the plaintiff's wife.

After a careful examination of the papers submitted on the motion, and after deliberating upon the able and suggestive arguments of counsel, I am of opinion that the present case is a proper one for the exercise of judicial discretion, and that the plaintiff can without any injustice to himself, give the defendant the information desired by him, so as to enable him to prepare fully to meet the plaintiff's charges.

The law imposes no impossibility, and does not require from the plaintiff the designation of a precise day, at the hazard of failure of justice if he fail to prove the act upon the precise day named. It is sufficient if he designates the day with such reasonable approximation as that the defendant is fairly apprised of the charges.

In view of the affidavit of the plaintiff read on this motion, it will be sufficient for him to state in the bill of particulars to be furnished that the two acts of criminal intimacy alleged to have taken place 'on the 10th and 17th days of October, 1868, were committed on or about those days, and at either one or the other of the places mentioned in the affidavit; or, as suggested by one of the counsel for the defendant, it may be regarded as sufficient to say that these acts were committed during the month of October, 1868. Such a statement fairly acquaints the defendant with the charge he is to meet. I think it not improper to remark here, that the frankness with which the defendant's counsel concede that such a statement may be regarded as a reasonable compliance with the rule proper to be applied in such case as this renders this application more easy of disposition than it seemed to be when the motion was first made at Special Term.

The objection to giving a statement of particulars seems to rest mainly upon the ground that the designation of particular acts of adultery necessarily excludes proof of confessions made by the defendant, going to establish acts of adultery, when no time or place was named in the confession. The general confessions of the defendant may be given in evidence against himself, and they may be sufficient, if accepted in full force by the jury, to convict the defendant, and it is clear that all declarations, writings and documents which are properly admissible as evidence, may be used with all the force and effect they deserve against the defendant to establish the main issue.

The radical difference in the proposed orders submitted by the respective counsel seems to be this: The plaintiff insists that he shall not be precluded from giving evidence of acts of the defendant, by which the adulterous intercourse, charged in the complaint, may be established, "although it may not thereby appear to have been committed on any particular day, or at any particular place;" while, on the other hand, the defendant

insists that if by acts it is intended to prove specific acts of adultery, the bill of particulars should state these acts with the same fairness with reference to time, place, and circumstances, as is suggested in relation to the two acts alleged to have been committed in the month of October, 1868. I cannot well understand how any act of the defendant can be offered as proving directly and specifically the adulterous intercourse charged in the complaint, "although it may not thereby appear to have been committed on any particular day or at any particular time." Such seems to be the plaintiff's proposition. Such proof would necessarily not only establish the commission of the adultery, but also, with some degree of certainty, both the time and place.

There is no practical difficulty in reconciling this apparent antagonism, as declared by the court of last resort in the decision made in this case. "The court must see to it that both parties are fairly dealt with." If the plaintiff proposes to prove any specific acts of adultery, other than those alleged to have taken place in October, 1868, it should be so stated. If the plaintiff does not propose this, it is no hardship to limit him to proof of the specific charges which he intends to press.

The plaintiff's proposition that if he be thus limited and fail in his proofs as to the acts alleged to have taken place in October, 1868, the defendant, "though confessing his guilt as to other times and places," must necessarily be acquitted, seems to be entirely untenable.

In the shape in which the former motion was made, there was force in the objection, for it was then asked that the plaintiff should be confined in his proofs to the times mentioned in the bill of particulars. On the present application, however, it is not sought to deprive the plaintiff of the benefit of the general confessions of the defendant. Such a rule might indeed "shield a defendant from just responsibility." We propose no such restraint.

As to the specific acts of crime charged against the defendant, he should be advised of them with reasonable precision. As to the results which may follow the proofs of acts (other than specific acts of adultery), documents, confessions and any other circumstances properly admissible in evidence, they must be left to the determination of the jury under the rules laid down by the court on the trial.

I am of the opinion, therefore, first, that the plaintiff should be limited as to his proof of specific acts of adultery to those named by him in his bill of particulars; second, that this order is not to be construed as prohibiting the plaintiff from introducing on the trial of this action testimony which may be admissible under the general rules of evidence as to any acts (other than the specific acts of adultery), declarations, writings, documents and confessions, in which alleged confessions no particular time or place shall have been referred to.

No costs of this motion.

A. McCUE,  
Judge.

#### JUDGE McCUE OVERRULED.

From this decision the plaintiff's attorney took an appeal to the General Term, which, having been heard before Judges Neilson and Reynolds, an order was entered on the 29th day of December, reversing Judge McCue's order. Judges Neilson and Reynolds concurred in this decision and wrote the following opinions:

#### JUDGE NEILSON'S OPINION.

CITY COURT OF BROOKLYN—GENERAL TERM.—  
Theodore Tilton, plaintiff and appellant, vs. Henry Ward Beecher, defendant and respondent.

This is an appeal from an order of the Special Term requiring the plaintiff to furnish a bill of particulars.

The application for the particulars was made before me in the first instance, and was denied "for want of power, and on the other grounds stated." The opinion filed with that order did expressly put that denial of one branch of the application on the want of power. That was as to confessions imputed to and denied by the defendant. It was shown that the plaintiff had stated in a newspaper article that the defendant had confessed the wrongful acts charged, and the application was to compel the plaintiff to state when and where those alleged confessions had been made. The views expressed in the opinion as to the untenable character of that part of the application, and as to the want of power to grant it, were accepted by the defendant's counsel, and that claim had since been abandoned.

The Court of Appeals, Judges Allen and Grover, dissenting, reversed my order as to the other claims to discovery, on the ground that the particulars had been denied because of a supposed want of power. The closing words of the order were not, it seems, well chosen; the expression, "for want of power and on the other grounds stated," having been taken to refer not to the two modes of treatment, but the one under restraint for want of authority, and the other having regard to the merits and the discretion which should have been exercised, but to one and the same ground of rejection, namely, the mere want of authority.

It appears, therefore, that the Court of Appeals reversed the order because of that disavowal of authority; that the doctrine of the court of last resort is that the court of first resort may, in the exercise of a wise discretion, order particulars to be furnished in actions for tests, including cases of this character. That is the extent of the decision.

But that court did not and could not determine that the application which had been denied should have been granted, but left the discretion to be exercised by this court in granting or refusing such application untrammelled and untouched.

In many of the cases cited in the elaborate opinion of Judge Rapallo, the bill or narration was so vague and general that something supplemental was necessary to enable the defendant to know what the real character of the charge was. When the particulars ordered in such cases in aid of the pleading were furnished, that pleading and the particulars combined became as definite and certain as the bill or complaint presented. Such cases do not, therefore, touch the question whether the complaint before us should be supplemented by the particulars, nor were they cited with a view to that question, but simply to show that the court may, as occasions arise, order the particulars.

If this practice can be conveniently and usefully applied to most actions for torts, it is not to be assumed that it can be well applied to such a case as this.

The nature of the offense, the secrecy and studied concealment attending its perpetration, constitute an objection. A good cause of action may exist for such a wrong, to be proved only by circumstantial evidence, and the plaintiff be utterly unable to comply with an order to give particulars as to time and place. It would, we apprehend, be so in most instances, the cases in which the particulars could be safely given being quite exceptional.

The particulars, when furnished, perform a double office. First, to advise the defendant; secondly, to limit the plaintiff. It may be a shield; it may be a sword. Before they are ordered it should appear that the applicant needs the information, and that the other party can give the particulars, to be held by them as in a firm grasp in the prescribed circle, without materially impairing his rights. If the subject-matter be such as in its nature admits of general or reliable information, a thing open as the day, the particulars may be ordered without hesitation. On the contrary, if from the nature of the subject the act or offense and the circumstances are not to be thus seen, known or resolved, the order should be granted with great hesitation, or withheld.

It was therefore material to consider whether the defendant



needed the information claimed and in this form. He shows by affidavit that he had no knowledge or suspicion as to the times or places at which the plaintiff expects to prove the case; was entirely at a loss to form any surmise concerning the probable line of proof which may be adopted by the plaintiff on the trial. That being so, he stood in the attitude common to suitors pressed by what they deem an artificial or unjust claim; the field of combat opened to him as it has been to litigants for generations. He will recognize the fact; his learned counsel will accept the suggestion that a defendant cannot by an interlocutory order be put in the position he will be, given the light he will have when on the trial the plaintiff's proofs are in and his case closed. But still the inquiry is whether or not, within a due course of procedure, the information can or should be furnished. If he did need that information, when the application was first made at Special Term, does that count rest on him still? I learn from the arguments and illustrations of counsel speaking to the case in court on this and former occasions, and from the affidavits, and generally from the press, that there had been examinations before a committee, the plaintiff present as a witness, that several statements have, from time to time, been given to the public, in each the plaintiff seeking to make out his case, and in his zeal setting forth and supplying his proofs. The details of the case have thus obtained a large publicity. In addition to that we have before us the plaintiff's affidavit, used at the Special Term in resisting the last motion, in which he states what proof he has and what he has not. If not otherwise obtained, this affidavit on file gives to the defendant the desired information. This the counsel concedes by his offer to accept that affidavit as the bill of particulars.

It must be gratifying to the learned counsel for the defendant to contrast the position of his client as thus advised with the position he would have occupied had the plaintiff, according to the general course, brought his action, studiously withholding all statements of the proofs he proposes to have at his command. The application for particulars would then have had much greater support.

But it does not appear from the proofs that the plaintiff has any actual personal knowledge which could with safety be put in the form of particulars. He had at best certain information by which he may have been enlightened or may have been misled; if not misled as to the substantive fact, he may have been as to the times and places to be designated under the order.

As the defendant has thus all the information which could be extorted by the orders of the court, should he be content, or should that as to time and place be put in the form of particulars? The change in form will not add one jot or tittle to the information as given. The advantage gained might be one which the defendant, as to the exercise of his own judgment would reject, one which might operate oppressively upon the plaintiff on the trial.

A special and theoretical suggestion in favor of the particulars remains to be noticed. It is said that, as the defendant is innocent, he may be surprised on the trial, may be confronted by fabricated testimony, as to acts never dreamed of by him; that if a statement of the times and places be given, he might be prepared to prove that at such times he was absent from the State. Such apprehensions, peculiar to a nervous suitor, do not deserve much attention. The statements that plaintiff intends to introduce fabricated testimony were fully met by his affidavit, and we must respect that denial. The case is not in this respect peculiar; the like suggestion, for aught that we can see, might be made in half the cases on our calendar. I have too much faith in the ordeal to which unknown witnesses may be subjected on the trial to accept such a suggestion. In few cases could a defendant be as free from a chance of being taken by surprise. As the case is expected to last some weeks in its trial, there would be ample time for the defendant to recover from any casual surprise and meet any unexpected testimony.

On the hearing of the Special Term, Judge McCue granted

the order from which this appeal is taken. After his usual method he wrote an opinion, an opinion entitled to great respect.

But the order as framed does not in terms or in the sense and spirit conform to the opinion. It is much less liberal than the opinion, and is in several respects objectionable.

First—The plaintiff is required to state the particular times and places at which he expects and intends to offer proof of specific acts of adultery.

The requisition is somewhat in contrast with the opinion; from which it would appear that the very day need not be stated. Yet, more strongly to be contrasted with the more liberal rule stated in the case in 4th of Cowen's R., p. 55: "In a bill of particulars the date of the items should always be given with as much particularity as possible. If the precise day cannot be stated, the month or year probably can."

On the trial the order would be of binding force and would control. Secondly, the next clause in the order precludes plaintiff from offering any evidence at the trial to prove any specific act of adultery at any other time or place than stated in the particulars.

We think this improper, not only because proof otherwise admissible and somewhat circumstantial in its character would be excluded, but because an order of *non pros*, or for such preclusion should not be made until after a previous order to furnish the particulars had been disobeyed. The deprivation should follow some offense.

The residue of the order provides that the plaintiff shall not be prohibited from introducing testimony, confessions, and so forth, other than as to specific acts of adultery, though no specific time be referred to. That relates to the mere introduction of such proof, not to the effect of it when received.

At the close of the argument yesterday morning I entertained the hope that we could modify the order and in a sense affirm it, but on further examination and reflection we find that, according to our convictions, impossible, and after much deliberation are constrained to reverse the order.

J. NEILSON,

Chief Justice.

#### OPINION OF JUDGE REYNOLDS.

The Court of Appeals has decided that this Court "has the power, if it sees fit, to order particulars to be furnished," and has remitted the case to this Court to decide "whether, in the exercise of its discretion, it should grant or refuse the order applied for."

Upon the former appeal, I considered the question carefully, and came to the conclusion that this is not a proper case for the exercise of that power. With great respect for the views of my brother McCue to the contrary, I still think that the order ought not to be made, and for reasons given in the opinion then filed by me.

After all the statements and affidavits that have been made in this matter, I think there is more danger that an order so exacting as to be at all effectual would work hardship and injustice to the plaintiff, than that the defendant, without it, would suffer from surprise, upon a trial, which, as the counsel on both sides suppose, is to last for weeks.

The usual course of procedure, and the rules of evidence will, I think, conserve the rights of both parties.

I am therefore in favor of reversing the order appealed from.

GEORGE G. REYNOLDS,

J. U. C.

#### THE ORDER OF REVERSAL.

In pursuance of the above opinions, the following order was drawn by Thomas E. Pearsall, Esq., of counsel for Mr. Tilton, approved by Chief Judge Neilson, and entered on record in the Clerk's office of the City Court:

At a General Term of the City Court of Brooklyn, held at the Court House, City of Brooklyn, on the 29th day of December, 1874, present, Hon. Joseph Nellson and George G. Reynolds, Judges:

Theodore Tilton, plaintiff and appellant, against Henry Ward Beecher, defendant and respondent.

The appeal from the order entered in this action on the 11th day of December, 1874, requiring the plaintiff to furnish "a statement of particulars, setting forth the particular times and places at which he expects or intends to offer proof that any specific acts of adultery occurred between the defendant and the wife of the plaintiff, and that plaintiff be precluded from offering evidence at the trial of this action to prove the occurrence of any specific act of adultery at any other time or place than such as shall be set forth in the said statement of particulars," having been heard at the General Term of this court—

It is now on motion of Morris & Pearsall, attorneys for the appellant, after hearing Roger A. Pryor and William A. Beach, Esqs., of counsel for appellant, Thomas G. Shearman and B. F. Tracy, Esqs., of counsel for respondent, ordered that the said order appealed from be and at the same time is hereby reversed, without costs.

(A Copy.)

GEORGE W. KNAEBEL,

Acting Clerk.

The order for a Bill of Particulars having been finally refused, the suit went to trial upon Mr. Tilton's original complaint, on August 21, 1874.

The cause was called on Monday, January 4, 1875, by Judge McCue, in the Brooklyn City Court, Part I. Mr. Beecher and his counsel were present, but as the case was called two hours before the time understood by the plaintiff's counsel, Mr. Tilton was not represented, except by Mr. Pearsall, whose attendance was accidental. He answered "Ready" to the call, however, but insisted on an adjournment to the next day. Judge McCue, by right of assignment, should have held the term, but there had been an implied understanding that the case should be sent to Judge Neilson. In the preliminary contests in which Judge McCue had granted a bill of particulars, and Judge Neilson had denied it, the opinion of both Judges as to the nature of the evidence to be admitted on this particular case was foreshadowed. Naturally, Mr. Beecher's counsel were anxious that the case should be tried before Judge McCue, while the plaintiff preferred Judge Neilson. It was thought on this first day that Judge McCue would preside, but in accordance with Mr. Pearsall's desire the case was adjourned till 11 a. m. the next day,

and the matter left undecided. During the afternoon the special panel of jurors was called and sworn in Part II. of the City Court over seventy being excused, however. On the same day the testimony of James H. Drake of Staten Island, summoned for Mr. Beecher's side, was taken *de bene esse*, the witness being about to sail for Europe. His testimony was solely regarding declarations of Mr. Moulton denying the truth of the reports published in *Woodhull & Claflin's Weekly*.

On Tuesday, January 5, the question as to whether the case should be tried before Judge McCue or Judge Neilson was argued. The counsel for Mr. Beecher strenuously objected to its being sent to Judge Neilson, Mr. Evarts denying the power of the Court to dispose of the case in this way. Mr. Beach, however, insisted that an agreement made to try the case before Judge Neilson was binding. Judge McCue, after consulting with his associates, decided to send the case to the other part of the Court. Mr. Evarts took an exception, and Judge Neilson began impanelling a jury. Three jurors had been selected at the close of this day's work.

On Wednesday, eight jurymen had been obtained, and on Thursday the twelve jurors had been secured, all of whom, however, were subject to peremptory challenges. Each man was subjected to the closest scrutiny, and lawyers unite in saying that such an inspection of jurors has never before been known in this country, except, perhaps, in the case of Wm. M. Tweed.

On Friday, January 8, three of the jurors were peremptorily challenged—two by Mr. Tilton's counsel and one by the defense. Two others were excused by the mutual consent of the counsel on both sides. The places of the five thus dismissed were filled on that day, and when finally completed the jury stood as follows:

Griffin B. Halstead,  
Henry Thyer,  
George Hull,  
Christopher Fitter,  
Samuel Flate,  
A. R. Case,

Edward Whelan,  
W. H. Davis,  
John F. Taylor,  
Wm. T. Jeffrey,  
Chester Carpenter,  
John McMunn.

The relative positions of Griffin B. Halstead, the first juror, and Chester Carpenter, the eleventh, were changed by Judge Neilson, Mr. Carpenter thus becoming the foreman.

## FIRST DAY'S PROCEEDINGS.

### SCENE IN THE COURT-ROOM.

After the dull recitative of the examination of jurors, the real action of the Brooklyn scandal suit opened on Jan. 11 with the address of ex-Judge Morris. Inasmuch as the prosecution had admitted, during the argument on the bill of particulars, that no testimony had been kept in reserve, and that the evidence in the trial by jury would be the same as in the "trial by newspaper," the interest manifested in the opening appeal was not intense. It was, in fact, a review of the salient features of the case, and if the phrase "we will show" had been changed to "we have shown," it would have passed for a "summing up." As the case was opened, there are to be no surprises for the court-room or the jury during the trial, so far as the prosecution is concerned. The alleged confessions of Mr. Beecher and Mrs. Tilton to Mr. Tilton, Mr. Moulton, and others, the correspondence of Mr. Beecher, the letters of Mrs. Tilton and Mrs. Morse, the alleged clandestine correspondence between Mr. Beecher and Mrs. Tilton, which was quoted by Mr. Moulton in his first statement, and the circumstantial evidence of guilt in the efforts which Mr. Beecher made for concealment, the mortgaging of his house, the payment of Bessie Turner's school bill, etc., are the main points of the prosecution, and not one of them has the faintest flavor of novelty. The apology intrusted to Mr. Moulton seems to be the pivot of Mr. Tilton's case, around which everything else turns.

For two hours before the proceedings were opened the long corridors of the court-house were thronged, and the services of a large number of police were required. Ticket-holders alone were admitted, and long before the Judge's gavel had been heard every seat was occupied. Mr. Tilton and his group of counsel appeared promptly at 11 o'clock, and were soon followed by Mr. Beecher's body of defenders. In a moment every eye was turned to the doorway as Mr. Beecher, accompanied by Mrs. Beecher, entered the court-room. Friends near the court alley shook hands with Mr. Beecher with heartiness as he advanced. It was a small triumph as such things go, and there was a pleased expression on his face when he took his seat. A buzz of talk followed their entrance, and comments were exchanged on the propriety of Mrs. Beecher's presence. If her critics, however, expected that there were to be passages in the opening address

which would be offensive to the ear, they were doomed to disappointment, for the language was chaste and in good taste.

The jury-box was now full, and after words of caution to the audience from the bench and a few remarks by Mr. Evarts, the proceedings opened. Ex-Judge Morris began his address soon after 11 o'clock and closed at 4 o'clock, an hour having been spent at lunch. He is a man of medium height, with black hair and side-whiskers, a ruddy face, a keen glance, a sympathetic smile, and an expression which is calm without being cold. His movements are easy and graceful, his manner is cool and deliberate, and his gestures are strong and full of force, being made with the full arm in long curves. His delivery is rather monotonous, for there are no changes of tone to vibrate through an audience. In the upper register his voice has a metallic ring, and is surcharged with force and earnestness. When he is speaking calmly, without emotion, his tones are clear and incisive. After a few sentences uttered in a grave, cautious manner, a forceful gesture is made, and he breaks out with ringing tones of indignation and accusation, which in a moment are muffled and hushed to whispers too low to be heard save by the jurymen. This method is repeated with few variations, and the effect of these whispered passages is very annoying to the audience, however they may impress a jury. After a quiet narrative passage he sums up the inferences in a passionate interrogation in a high key, as for instance, "Who was the transgressor?" Then after a long pause comes the reply in a whisper, "Her forgiveness I have." The repetition of this method rendered his delivery rather tedious. His invective in regard to the letter to Mrs. Tilton, in which Mr. Beecher intimated that a meeting would be safe, was marred by this alternation of high tones and whispers.

Mr. Morris appreciated the fact that his business lay wholly with the jury, and they were rarely out of his sight. He stood a few feet in front of them, with Mr. Tilton and Mr. Moulton directly behind him, and Mr. and Mrs. Beecher facing him to his left. Occasionally, in framing an accusation, he turned toward Mr. Beecher with a sweep of the left hand, and twice, when a reference was made to Mrs. Beecher, he cast a quick glance in her direction. With these few exceptions his eyes never left the jurors, and they in turn followed him with close attention. While there were few passages of heated denunciation, there was much keen, hard analysis.

Probably the most effective sentences were those in which he took to pieces Mr. Beecher's apology and clandestine letters. The expressions, "I humble myself before you as I do before my God," "Her forgiveness I have," "Bearing the transgressions of another," and many more were held before the lens of his own interpretation until their significance seemed to enlarge under such searching analysis. The apology which was delivered to Mr. Moulton in confidence was read in a deep voice with great intensity of manner, as if he wished the words to sink deep in the memory of every juror; and when every expression had been analyzed he assumed an attitude of triumph, and vehemently striking the table declared that it was not necessary to go one step further, for that letter condemned Mr. Beecher, unless the English language could be blotted out. Mr. Morris apparently was not in very good health when he began, but he warmed to his work, and his delivery was much better later in the day.

Probably the closest listener in the court-room was Mrs. Beecher. Her eyes were fixed on the speaker's face from first to last as if there was a magic spell in his voice. Her face was strangely colorless and impassive, and her self-possession was perfect. Her forehead is high and abnormal, and is crowned with hair which is as white as snow. Her features are large, commanding and positive, and her eyes are keen and piercing. She was dressed in black with a blue woolen wrap. As she sat there, motionless, with a strange calm on her features and a peculiar glitter in her eyes, her dignity seemed to assert itself and to set at defiance the critics who judged that her right place was not beside her husband in his hour of trial.

Mr. Beecher seemed to be quite as self-possessed as his wife. At first his eyes were directed toward the jury-box, but soon they were staring vaguely at the frescoed ceiling. Subsequently he seemed to be taking notes in a small account-book, which he occasionally handed to Mr. Shearman.

Theodore Tilton's features were as impassive as Mrs. Beecher's. He faced the jury, and his eyes seldom strayed to the right or the left. He manifested not a spark of emotion, save a smile when he bent forward and whispered to Francis D. Moulton, who sat his elbow.

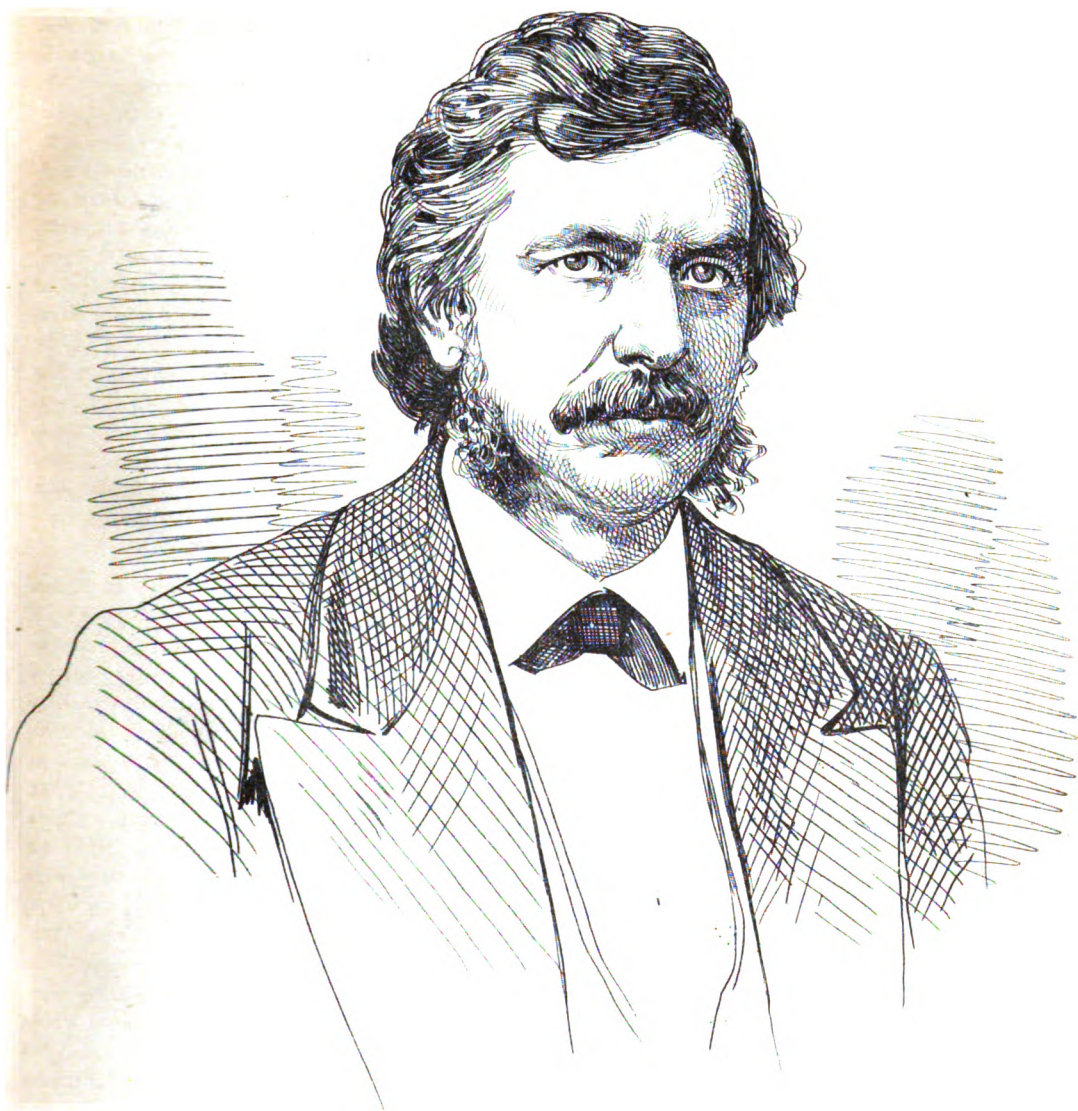
The counsel on both sides employed themselves variously, sometimes making a memorandum, sometimes exchanging whispers, but generally paying close attention to the speaker. Back of the lawyers

were the upturned faces of the spectators. The few words which Judge Neilson had addressed to the audience had insured good order and silence, and even the pauses of the speaker as he referred to his notes before him were not signals for the small, rustling movements which generally cause confusion in a court-room. Many members of Plymouth Church were present. Among those who occupied seats near Mr. Beecher were Augustus Storrs, Horatio King, Edward J. Ovington, United States Assessor Freeland, Col. Beecher, the Hon. John Oakey, Moses S. Beach, Prof. Raymond, Alderman Whitney, and the leader of Plymouth choir. Scattered throughout the court-room were prominent residents, including Col. A. C. Davis, Sheriff Williams, Harvey Farrington, Judge Moore, ex-Senator Jas. Pearce, Col. Keeney, ex-Senator John C. Perry, Judge Troy, Corporation Counsel DeWitt, and ex-Judge Garrison. At the intermission and at the close of the proceedings Mr. and Mrs. Beecher were surrounded by their friends.

#### MAIN POINTS OF THE ADDRESS.

After a quiet introduction, in which ex-Judge Morris referred to the importance of the duty which the jury had to perform, and after reading extracts from legal authorities to show that adultery was a crime of darkness and secrecy, ex-Judge Morris cast a glance down the vista of the narrative until he reached the point of Mrs. Tilton's alleged confession to her husband on July 3, 1870. After that time Mr. Tilton ceased to attend Plymouth Church. There was an arrow through his heart, but he bore the wound in silence, rising to the level of higher Christian doctrine. On Dec. 30, 1870, he confronted the man who had wronged him. Mr. Tilton accused Mr. Beecher of the crime. The charge was made and not denied, and Mr. Beecher returned after seeing Mrs. Tilton with these words on his lips: "This will kill me!" The interviews with Mr. Moulton were described, and the functions of the "Mutual Friend" were next analyzed. The letter of apology was dissected, and great stress was laid on the fact that Mr. Beecher had made no denials. Mr. Moulton's mission was to conceal something. He was in the possession of a secret that could not be intrusted to any one else. This explained why Mr. Beecher went to Mr. Moulton's house every day to plan and plot. Take out the word "adultery" and there is no sense in Mr. Moulton's connection with the case.

Here a digression was made, and the explanations offered by Mr. Beecher in his statement were con-



*H. J. Morris*



sidered. There were two elements, the defense claimed—the grief of the defendant and the honor of Mrs. Tilton. An analysis was here made of the grounds of defense, that injudicious advice had been given to Mrs. Tilton, and that Mr. Bowen had been urged to dismiss Mr. Tilton. The point made by Mr. Tilton in his last statement, that the interview at Mr. Moulton's house preceded the dismissal of Mr. Tilton, was here repeated, and the claims of the defense were denounced as a "juggle of words and phrases." The letter of apology was then taken up, sentence by sentence, and it was urged that adultery furnished the only possible explanation. The fact that Mr. Moulton, a comparative stranger, was the only one with whom he could converse on the subject, and that Mr. Beecher even held aloof from his wife, was inexplicable under any other supposition. Above all things it could not be said that Mr. Beecher did not know the meaning of the words which he used.

The second meeting at Mr. Moulton's house after the apology was written was next described. Bessy Turner, a servant, had been tattling about what she had heard in Mr. Tilton's house, and she was sent out of the way to a boarding-school in Ohio, and her expenses were paid by Mr. Beecher. This was a proof of his guilt. He mortgaged his house for \$5,000 and gave the money to Mr. Moulton to aid *The Golden Age*, without Mr. Tilton's knowledge. This could only be interpreted in one way—Mr. Beecher had wronged Mr. Tilton. The letter from Mrs. Morse to Mr. Beecher, in which she refers to his "cracking jokes" in the pulpit, Mr. Beecher's letters to Mr. Moulton and Mrs. Tilton, and other portions of the scandal correspondence, were reviewed at great length, Mr. Beecher's language being analyzed closely. The so-called clandestine correspondence between Mr. Beecher and Mrs. Tilton was finally subjected to scrutiny, and the address closed with an appeal for a verdict in favor of the man whose home had been debauched and destroyed.

#### OPENING ADDRESS OF EX-JUDGE MORRIS.

It was a little after 11 o'clock on the morning of Jan. 11, when Judge Neilson demanded silence in the courtroom where he is trying the famous Tilton-Beecher case. Admission could only be gained by tickets bearing the signature of the Judge, and just enough had been issued to fill the room without densely crowding it in any part. The day's work was begun by the Judge directing Chester Carpenter, the eleventh jurymen, to assume the place of foreman.

The Clerk—During the trial, day by day, reporters will occupy such seats as they now have, no reporter intruding on the domain of another.

Judge Neilson—The audience will come to order, and keep perfectly silent.

The Clerk here called over the list of jurors, and all answered to their names.

Judge Neilson—Are counsel prepared to proceed?

Mr. Beach—Yes, Sir, on the part of the plaintiff.

Judge Neilson—I wish it understood by the audience that under no circumstances should there be any indication of approbation or disapprobation as to anything said. The audience is here not to make demonstrations to us to signify to the jury what their views may be, but are here expected to conform to the decencies of the place and keep silence. I trust they will do so.

Mr. Evarts—If your Honor please, the counsel think we ought to have a little more space assigned to us inside the bar. The burden is at present on our learned opponents to be sure, but we are all in the same feeling on that subject, I believe. I think there is more space necessary for the accommodation of the counsel, both of the speaker and those of us who wish to take notes.

Judge Neilson—I am desirous of doing what can be done, if you will indicate what you think.

Mr. Evarts—I do not think we have our share of this trial—of the space within the bar. The very great public interest and the very unusual attendance of reporters, is, of course, a matter that we all appreciate and feel alike about, I suppose. It is clear the dimensions of the room are such that either one interest or the other will have to be a little contracted.

Mr. Beach—I think after the opening we can give you more room at the table.

Mr. Evarts—Yes, Sir; we can change the tables.

#### IMPORTANCE AND LAW OF THE ISSUE.

MAY IT PLEASE THE COURT—GENTLEMEN OF THE JURY: I congratulate you that we have at last attained a stage in this trial where it becomes our duty to present to you the general features of the case on the part of the plaintiff, and your duty to listen, as I have no doubt you will attentively, to the facts as I shall narrate them to you in what I have to say in my opening address. It is not necessary that I should remind you of the great importance of the case that is now being tried, and the solemn duty that is devolved upon you as jurors in this case. You are now called from your various avocations to discharge one of the most important duties that has ever or will ever devolve upon you as citizens. This is no ordinary case that now engages the attention of this Court, and the attention of the entire community. This is no contest between litigants to determine the right of property, nor is it a contest to determine the right to personal liberty. It is above and beyond that—more far-reaching in its consequences than any case ever tried in this country. There is not a home in this broad land, nay, there is not a home in Christendom that is not interested in the result of your deliberations. This is a trial that involves, as I said, not the right to property or liberty, but it is a trial the consequences of which reach to the very foundations of society. The home, the marriage relation, with all that is dear in that

relation, is upon trial in this case. Upon the result of your verdict to a very large extent, also, will depend the integrity of the Christian religion. The plaintiff comes in Court, and, through the ordinary forms of law, says in effect that his home has been destroyed; that his wife's affections have been taken from him; that his children have been scattered; and that a once happy home is now desolate; and that the bright visions that he had in this world of attaining distinction and positions of honor have all been blighted; that he once had a happy family—none more so in the land—but he comes to you this morning, not from that once happy family, but he comes to you this morning from a voiceless home and a cheerless fireside, and he asks you, as fathers and as brothers and as husbands, to consider his case. And against whom is this terrible charge? Is it against some casual acquaintance, some casual friend? No; but he comes here and makes this charge against one of the foremost preachers in the land; against the man who in his youth united him in matrimony, at whose altar he received baptism. His spiritual adviser, his spiritual father, taking advantage of this sacred relation, has become, instead of his protector and his comforter, his destroyer. And who is it that makes the charge? It is no unknown person, no insignificant individual that comes in court and arraigns at the bar of justice the defendant in this case, but he is a man, as well as the defendant, of preëminent abilities; a man who had risen while yet a young man to great distinction in the land as a writer and as an author, whose pen was always upon the side of the oppressed, and whose voice, as did the voice of the defendant, thundered against tyranny and oppression. Four years ago, no man of his age in this land had before him so brilliant a prospect as had Theodore Tilton. Gifted by God as few men are gifted, intellectually and physically, he had before him a most brilliant career; but all at once a cloud settles down upon his household like a pall, the bright visions have faded, and where was sunshine there is now darkness, and misery, and desolation. Before the wife of the plaintiff fell a victim to the wiles of the seducer, no man in this land had a more happy home than he possessed. I will not detain you, gentlemen, at this stage of the case, or, indeed, at all in the opening, in picturing to you the home of Theodore Tilton prior to the 8th of October, 1868. During the progress of the trial you will learn, from the evidence, the nature and the character of the home that has thus been destroyed and desolated. Suffice it to say that, during all their married life, down to the period that I have indicated, they had one of the happiest of homes, a family of children growing up about them, loved by their father and mother as few children are loved. What, gentlemen—what will you say is just retribution for a man who destroys such a home? And in this case there are features which render the crime more heinous than in most cases of this character. Mr. Tilton when a boy, grew up under the eyes of the defendant; when but a child became a member of his church; when but a child, almost before of age, he married the girl that he loved, and from that time henceforth was associated with the defendant in the closest relations, associated with him in the editorship of a religious journal for many years; a frequent visitor at his house

looking upon him almost as a father, and admiring him above all men living, placing that implicit confidence in him which can only come from an admiration and absolute confidence. When separated by the ocean before this terrible calamity, before the violation of this friendship and the destruction of this home, the two men spoke of each other and wrote of each other as only men who had mutual confidence and admiration would speak and write of each other.

It has been said that this action has been instigated because of an enmity that the plaintiff had towards the defendant, and yet during all this period prior to the time that I have stated there was the closest friendship, the greatest admiration on the part of the plaintiff for the defendant, as manifested in their mutual letters and correspondence, down to the very time of the discovery of the wrong that had been inflicted upon him. This friendship and this admiration were attested in various ways, by gifts from one to the other, by their mutual and social intercourse, by every manifestation of love and affection, and while, as we say (and we think that we shall be able to convince you twelve men beyond all peradventure)—while, as we say, the defendant was sitting, at the request of the plaintiff, for his portrait to one of the most distinguished artists of our State; while, day after day, he was going there, sitting at the request of the plaintiff, and at the expense of the plaintiff, so great was his admiration of him, the illicit intercourse that we charge against the defendant was being carried on. At the very time, as we shall show you as clear as the sun now shines, when the defendant was sitting to have his portrait painted to be hung up in the house of the plaintiff, he was carrying on his illicit intercourse, and before long—before that portrait was completed and ready to adorn the walls of the once happy home, that home had been debauched, that family had been destroyed. Where shall the portrait be hung? What wall shall it adorn?

Well, gentlemen, this crime, as you are aware, is peculiarly a crime of darkness and of secrecy. We do not expect to bring eye-witnesses here in court to testify to this crime. Of course, that could not be expected; and perhaps I might as well here now, as at any time, call your attention to what one or two of our authorities upon this subject have said, which, probably, will give you a clearer idea of the character of evidence, the nature of it, and the force of it, than I could state to you, and I will detain you but a moment in calling your attention to one or two of those authorities. Says a learned writer upon this subject, the subject of marriage and divorce, and domestic relations:

"Adultery is peculiarly a crime of darkness and secrecy. Parties are rarely surprised in it, and so it not only may, but ordinarily must, be established by circumstantial evidence."

Dr. Lushington, a high authority, observes:

"It is not necessary to prove that the adultery with which a party is charged should have occurred at any particular time and place. The Court must be satisfied that a criminal attachment subsisted between the parties, and that opportunities occurred when the intercourse, in which it is satisfied the party intended to indulge might with ordinary facility have occurred."

Cresswell, J., says:



"Every act of adultery implies three things. First, the opportunity; secondly, the disposition in the mind of the adulterer; thirdly, the same in the mind of the *particeps criminis*, and the proposition is substantially true that wherever these three are found to concur the criminal fact is committed."

In a celebrated case Dr. Lushington used this language:

"It is, then, in evidence that not merely was there a criminal attachment, but that this attachment was not rejected, that Jeffreys [the alleged *particeps criminis*] admitted his familiarity, received his correspondence, that opportunities were constant, and there is nothing to show on her [Jeffreys's] part resistance or repudiation, nor that she at all discountenanced his passion. To doubt, from such circumstances, that the consummation followed, would be to presume that the effect was not consequent upon the natural cause, and that this was a case of extraordinary exception and singular innocence."

Lord Stowell, a high authority, used this language in the 2nd of Greenleaf, page 38, from which I will read a paragraph. He observes:

"It is a fundamental rule that it is not necessary to prove the direct fact of adultery, because if it were otherwise there is not one case in a hundred in which that proof would be attainable. It is very rarely indeed that the parties are surprised in the direct fact of adultery. In every case almost the fact is inferred from circumstances that lead to it by fair inference as a necessary conclusion, and unless this were the case, and unless this were so held, no protection whatever could be given to marital rights. What are the circumstances which lead to such a conclusion cannot be laid down universally, though many of them, of a more obvious and of more frequent occurrence, are to be found in the ancient books; at the same time it is impossible to indicate them universally, because they may be infinitely diversified by the situation and character of the parties, by the state of general manners, and by many other incidental circumstances apparently slight and delicate in themselves, but which may have most important bearing in decisions upon the particular case."

As to the nature of circumstantial evidence, I will call your attention to one or two paragraphs. Chief-Justice Whitman of Maine says:

"Circumstantial evidence is often stronger and more satisfactory than direct, because it is not liable to delusion or fraud."

Chief-Justice Gibson says:

"Circumstantial evidence is in the abstract nearly, though, perhaps, not altogether, as strong as positive evidence; in the concrete it may be infinitely stronger. A fact positively sworn to by a single witness of unblemished character is not so satisfactorily proved as a fact which is the necessary consequence of a chain of other facts sworn to by many witnesses of doubtful credibility."

Chief-Justice Shaw of Massachusetts, one of our ablest jurists, in the celebrated case of Webster, said:

"The distinction, then, between direct and circumstantial evidence is this: Direct or positive evidence is where a witness can be called to testify to the precise fact which is the subject of the issue in trial; that is in a case of homicide that the party accused did cause the death of the deceased. Whatever may be the kind or force of evidence, this is the fact to be proved. But suppose no person not present on the occasion of the death and of course no person can be called to testify to it, it is wholly, unsusceptible of legal proof? Experience has shown that circumstantial evidence may be offered in such a case; that is, that a body of facts may be proved of so conclusive a character as to warrant a firm belief of the fact quite as strong and certain as that on which discreet men are accustomed to act in relation to their most important concerns. It would be injuri-

ous to the best interests of society if such proof could not avail in judicial proceedings. If it were necessary always to have positive evidence, how many criminal acts committed in the community, destructive of its peace and subversive of its order and security, would go wholly undetected and unpunished. The necessity therefore of resorting to circumstantial evidence, if it be a safe and reliable proceeding, is obvious and absolute. Crimes are secret. Most men, conscious of criminal purposes, and about the execution of criminal acts, seek the security of secrecy and darkness. It is, therefore, necessary to use all other modes of evidence besides that of direct testimony, provided such proof may be relied upon as leading to safe and satisfactory conclusions; and—thanks to a beneficent Providence—the law of nature, and the relations of things to each other, are so linked and combined together that a medium of proof is often furnished, leading to inferences and conclusions as strong as those arising from direct testimony."

There is another class of evidence of the highest importance in the investigation of crime, and that is confessions made by parties. Where a person makes a confession, uninfluenced by fear, a free and voluntary confession of crime, it is considered the highest character of evidence of the fact. Says this author:

"Full confessions of guilt by an accused party are in the nature of direct evidence, and therefore do not properly fall within the scope of the present work. A brief notice, however, of the character, &c., of confessions of this kind when deliberately and voluntarily made, are justly regarded as constituting the highest and most satisfactory species of evidence that can be presented before a tribunal. They combine the statement of the physical facts which form the basis of the charge, and which is substantially the deposition of a witness to those facts, with that other most important species of evidence which can never be directly reached and brought to view by any other means, namely: that which presents the motives and intents which instigated and directed the criminal act, and these avowed by the party, who of all others has the strongest interest to conceal them."

### LOGIC OF THE APOLOGY.

Now, I have told to you briefly the general character of our evidence. First, the act of the party accused. Secondly, the confessions of the party accused, and with this very imperfect outline of our case, the nature of our case, the general character of our evidence, I will proceed to call your attention more specifically to the facts by which we propose to establish our case. The case opens on the 3d day of July, 1870, with the confession made by the wife of the plaintiff, though not communicated to the defendant until some time afterwards. On the 3d of July, 1870, the wife of the plaintiff, with an overburdened heart, confesses her guilt to the plaintiff; and here, gentlemen, I would call your attention to a circumstance that seems to me to possess great significance. Up to this date, the relations of the plaintiff and defendant had been most cordial. Nothing had occurred to interrupt the harmony of their friendship and their good feeling toward each other, so far as the plaintiff knew. He and his wife were members of the church of the defendant; but after the 3d day of July, 1870, the plaintiff never crossed the threshold of Plymouth Church, until the 31st of October, 1873, when he appeared there for the purpose of confronting the pastor of that church, and asking him in the presence of his congregation, if he, the plaintiff, had ever spoken falsely con-

cerning him. Why was it, and this is one of the circumstances in this case, that the plaintiff, all at once, without any outward, without any apparent cause, so far as the plaintiff knew, so far as the public knew, so far as any member of the church knew; without any apparent cause, the plaintiff, who was a member of the church, who was an admirer up to that time of the defendant, who admired him beyond all other men, who placed implicit confidence in him, who trusted him, who looked upon him almost as a father; he was his spiritual father, and all at once the plaintiff ceases to attend the ministrations of Plymouth Church—why was it? He had received some wound. Something had occurred that induced him to keep away from Plymouth Church, and he keeps away. He had received a wound. There was a cause. That wound had pierced his heart, but for the sake of his children, whom he loved as he loved his life, he carried that wound in his heart; but he could not listen to the ministrations of the man who had brought this great sorrow, this ruin upon him, and he bears it in silence. He stays away from the church, and he goes to his home and about his avocation with this arrow through his heart. Well, gentlemen, for months he bore in silence this great sorrow and this great wrong, and for that, too, he has been arraigned; for that, too, he has been abused and traduced, because he did not strike down the seducer of his wife; because he rose to a higher Christian plane, and because he could forego revenge; because he carried out the Christian doctrine—for that he is arraigned.

But I will leave those elements of this case to be handled by a man who can do it with more force and power than myself. But he carries this wound until the 30th of December, 1870. On the night of the 30th of December, 1870, the plaintiff confronts the defendant with a renewed confession of his wife, and accuses him of having committed adultery. What did the defendant do? What would an innocent man have done then and there if the charge had not been true. Would he have denied it? Yes. Would he have hurled it back with indignation? Yes. Did he? No. There is no pretense, has never been from that moment until the present, that he attempted to deny it there, or that he did deny it in the most indirect manner. The charge is made; what are the circumstances immediately following the making of that charge? The defendant visits the wife of the plaintiff, then sick in bed. She gives him a paper. He returns to the house of Mr. Moulton where this charge had been made against him. Not a word escapes his lips with reference to it. After he had his interview with Mr. Tilton, in which he was directly accused of this crime, and before he leaves the house, he says to Mr. Moulton, "Have you seen Mrs. Tilton's confession?" "I have." "This will kill me, this will kill me!" No denial either to Mr. Tilton or Mr. Moulton, but this exclamation, "This will kill me, this will kill me!" If a man ever could be called upon to deny so infamous a charge as that was, don't you think that that was the time and there was the place at which to have made that denial? But what is the next step in the history of this case? Why, the following night Moulton goes around to the house of the defendant and accuses him of having taken a mean advantage, of having acted meanly towards Mr.

Tilton in procuring the paper, and asked that it be delivered up to him. He goes there as the avowed friend of Tilton, a comparative stranger to the defendant, and he asks that he deliver up this paper to him. What does he do? Does he show him the door? Oh, no! Does he ask him why he accused him of meanness, and what he means by such talk in his house, he a comparative stranger, coming there as the friend of Tilton? Does he ask him? No. What does he do? Hands him the paper and then invites him to come and see him again. Think of it. And the next night, January 1st, he goes to the house of the defendant. He is invited into his study. What does he do? Does he inquire whether Moulton has brought an apology from the plaintiff to him or not, for his conduct? Oh, no! He writes for the plaintiff, not an apology, but a letter of contrition, and it commences, "My dear friend Moulton:"—the man who was a comparative stranger, the man who the night previous had obtained from him this paper; aye, had obtained it, as it is claimed, by threat. He says to this man, who twenty-four hours prior had accused him of meanness—of taking a mean advantage—who had demanded this paper, and had obtained it from him: "My dear friend Moulton,—I ask, through you, Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself; I even wish I were dead. But others must live and suffer. I will die before any one but myself shall be inculpated. All my thoughts are running toward my friends—towards the poor child lying there praying with her folded hands. She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have. I humbly pray God that He may put it into the heart of her husband to forgive me. I have trusted this to Moulton in confidence." Gentlemen, might we not stop here? Would it be necessary if we simply wanted to make out our case against the defendant to go one step further, one step beyond that letter to prove his guilt! But we will go further. There are some circumstances which it is necessary, in connection with this part of the case, that I should explain to you. It must be conceded from this letter that the defendant had done some wrong, aye, some terrible wrong to the plaintiff. What was it? The plaintiff says that it was adultery. Mr. Moulton says that it was adultery. Mrs. Morse, in effect, says the same thing, and every act of the defendant, of the plaintiff, and of Moulton, during the three years and a half that followed, are in harmony with the fact of adultery, and utterly irreconcilable with any other theory of the case, and no human ingenuity can devise any other explanation. It is impossible. You have got to blot out the English language and all its meaning. So long as it stands no other explanation can be devised than the meaning we attribute to it. Why, adultery was the one sole fact that accounts for Moulton's connection with this case for the four years that he strove to save the defendant, with a fidelity unparalleled. Take out that word adultery, and what sense or meaning is there in his connection with the case, or was there ever any? It is the whole point, it is the focus, it is the lever upon which, for the four years this whole case worked. Why did Mr. Beecher, the de-

defendant here, want to go to Moulton's day after day, twice a day sometimes, to see him to make arrangements to plan and to plot to conceal something, if that something was not adultery? Tell me why. Oh! but it is said that Mr. Moulton has denied that there was any truth in the charge, that Tilton has denied it. Of course Moulton has. What was he there for? Was he employed by Beecher, the defendant, to admit it; was he called in to expose the facts and to give them to the world? Oh! no; his mission was concealment. That is why he was wanted. That is why Moulton was required. He, not a member of the Church, it was to conceal and not to make known. He was the possessor of a secret that could not be trusted by this Christian minister to a single person on earth. There was no man on the globe to whom he could go. There was something so terrible about this secret, whatever it was, that he could not go to his church and ask their counsel and their advice, but he must have Mr. Moulton to manage this great secret; and Mr. Moulton did manage it—and successfully for four years—and saved the defendant to Plymouth Church as certainly as the sun shines in heaven to-day, as I will show you before I get through. Long before this would Plymouth Church have been without a pastor if it had not been for the fidelity of Francis D. Moulton.

#### THEORIES OF THE DEFENSE ANALYZED.

But, gentlemen, we are not left in the dark altogether about this from another standpoint. We declare that all the acts, and all the letters to which your attention will be called for the four years concerning this subject, represent but two points. First, the grief of the defendant, and, secondly, the honor of Mrs. Tilton—the honor of Mrs. Tilton and the grief growing out of the facts that involved her honor. Well, it is said, gentlemen, that great grief was caused by injudicious advice. Mr. Tilton had lost his editorship of *The Independent* and of the *Union*; and the defendant had counseled that—his family had been nearly broken up—and the defendant had advised it, and, beyond that, there was an intimation—that I have never yet been able to solve, and hope the counsel for the defendant will be in this case—of some undefinable cause—at one time; it was that he had been informed that she had conceived an undue affection for him; at another, “that his blind heedlessness and friendship had beguiled her heart;” and, at another, an intimation that she thrust her affections upon him unsought; and all this jumble of phrases and of words without any statement as to what caused this great contrition on the part of the defendant, on the 1st of January, '71. When he says that his blind heedlessness and friendship beguiled her heart, what does he mean? What does that fact import? What is the meaning of it? Blind heedlessness and friendship beguiling the heart of the wife of the plaintiff! How was that manifest—that fact on her part? What was done in consequence of that? What did she do? What did he do? How did it develop itself, and how was it manifested? Does he mean to say, or doesn't he, that the woman tempted and he did fall? I presume that my learned friend upon the other side will have some explanation

—at least, I hope so—but I have never been able yet to discover one. But, at the time that this letter was written, Mr. Tilton's family had not been broken up; he was living with his family; and although his contract with Mr. Bowen was ended, and his loss of the position of editor had taken place, it was entirely without the influence of the defendant, and therefore furnished no cause and no reason for this great grief which was manifested. But there is one singular fact in this case that I will call your attention to right here, as it comes in appropriately at this point. This letter was written on the First of January, '71: and it is claimed, and has been claimed, that the feeling that produced that letter was brought about by the advice which Mr. Beecher had given Mrs. Tilton to separate from her husband. The point that I wish to call your attention to in this connection is this: that the advice, if ever given at all, was not until after the 27th of January, 1871, as the documentary evidence that we shall introduce before you will conclusively establish. Especially, you have the strange anomaly of the defendant's mourning over wrongs not yet committed, if they were wrongs; over acts not yet done. But let us assume that such advice was given at the time, and that he had counseled Bowen to dismiss Tilton and that Bowen had taken the advice, and that he was responsible for the loss of place on the part of the plaintiff, and that he had attempted to cause a separation on the part of Mrs. Tilton from her husband. Upon what facts did he base his action? You must recollect that, up to this time, Tilton was editor of *The Independent*, a Christian newspaper, a religious paper; that it was the representative Congregational paper of the land; and Mr. Beecher being of that denomination, and a prominent member of it, it was his duty to see, so far as he could—and especially as for many years he himself had been its editor—it was especially his duty to see that no unfit or improper man occupied the position of editor of that paper. And, now, gentlemen, I want you to bear with me while I call your attention to some specific facts right here relative to this point; some of the declarations we shall show you, of the defendant himself. In reference to this matter, he says that the “leaders” that Tilton had written in *The Independent* had aroused a storm of indignation among the Congregationalists of the North-West; and that he had indignantly himself disclaimed all responsibility for the views expressed by Mr. Tilton; in other words, that Tilton's course in that paper was such that he found it necessary to protest against it, and to disavow all connection and all responsibility for the views contained in that paper as expressed by Tilton. He says that he believed Tilton denied the Divinity of Christ, the inspiration of the Scriptures, and most of the articles of the orthodox faith; while his views as to the sanctity of the marriage relation were undergoing a constant change in the direction of Free Love. He says that Bessie Turner had given him such an account of Tilton's cruelty to his family as to shock him; and, with down-cast look, she said that Tilton had visited her chamber in the night, and sought her consent to his wishes; that he immediately visited Mrs. Tilton at her mother's, and received an account of her home life, and of the despotism of her husband, and of the management of a woman whom he had made housekeeper—it seemed like a nightmare dream to him.

The question was, whether she should go back, or separate forever from her husband. He asked permission to bring his wife to see them—whose judgment in all domestic relations he thought better than his own; and, accordingly, a second visit was made. The result of the interview was that his wife was extremely indignant towards Mr. Tilton, and declared that no consideration on earth would induce her to remain an hour with a man who had treated her with the one hundredth part of the insult and cruelty he had her. Bowen had narrated the affair at Winstead, Connecticut; and, like stories from the North-West, and Chicago, were brought against Tilton, in his own office. "Without doubt," he says, "he believed these allegations; and so did I. The other facts stated seemed to me a full corroboration." He believed, at that time, taking his declarations, that Theodore Tilton had been guilty of promiscuous immoralities. He had declared that he was bankrupt in character and morals; and, add to all this, he knew—assuming his innocence—that on the 30th of December, 1870, he had accused him falsely of one of the most diabolical crimes that he could conceive of, and that he had induced his saintly wife to join in the lie for the destruction of the defendant. And, in view of all these facts before him, he says that he went off into this paroxysm of grief because he had given this advice; and because he had thus counseled Bowen to discharge him from *The Independent*. I ask you, as fathers and as Christian men, that, if in view of these facts he had not given the advice that he says he did, and an hundredfold more emphatic, that he would not have deserved the condemnation of Christendom? If he did give that advice he did what was his bounden duty as a Christian minister to give. If he did thus counsel Bowen, he did that which it was his bounden duty as a Christian minister to do; and he would have been unfit for his high calling had he omitted to have given such advice—had he permitted, from his standpoint, Mr. Tilton to have remained one hour connected with that religious paper, if he could have prevented it, or his wife living with him one hour, if he could have prevented it. Why, gentlemen, think of it for a moment. The defendant here, the greatest preacher of the land, knowing a man then a member of his church to be a libertine, to be a bankrupt in morals and in character, to be everything that is bad, everything that makes a man despicable—think of his bowing down before such a man simply because he had done his duty and done it but tardily at that; because he had advised a separation and counseled dismissal of this libertine, this bankrupt in character and in morals, this free-lover, this bad man; think of his bowing down before him and asking his forgiveness as he asks the forgiveness of his God. No, gentlemen, no; that is not the reason. You know it, I know it, every man in the land knows it. Yet, in view of all these facts, we hear the explanation that "the case as it then appeared to my eyes was strongly against me." What case? How against him? There was a case at that time, if his theory be correct, but that was a case not against him but against the plaintiff, and that case was made out conclusively from his point of view, if it be correct, by Mrs. Tilton, by Bessie Turner; by Henry C. Bowen, by Mr. Tilton's course in *The Independent*, and by the false accusation that he had made against the de-

fendant. That was the case, then, if we are to accept these allegations and these facts, that was the case, then made against Tilton, the plaintiff, and not against the defendant. The case was all in favor of the defendant. If he did what he did do, he was deserving of the thanks of every good man and of every good woman, and if he had done it tenfold more strongly, and vigilantly, and determinedly, than he had, he would have been entitled to still greater thanks. No, gentlemen, that is not the course. Let me call your attention to the facts. Here is this terrible letter, written on the 1st of January, 1870. To whom is it entrusted? To Mr. Moulton, a comparative stranger to him at that time; they had had but two interviews, one was on Friday night, the 30th of December, when Mr. Moulton went to Mr. Beecher's house and said: "Mr. Tilton wants to see you." "It is Friday night; I have got my prayer meeting to attend to, and I cannot go." "But Mr. Tilton wants to see you." He calls a person: "Go and tell so and so to take charge of the prayer meeting," and he goes off with no more explanation than in company with this comparative stranger, abandoning his prayer meeting to other parties. Didn't he know, didn't he suspect? That is the first interview Moulton has with him, when he calls at his house and says that Mr. Tilton wants to see him. Without explanation he abandons his prayer meeting, turns it over to some one else, and goes with Moulton and receives the charge of adultery with Mr. Tilton's wife. The other interview was the night following. When Moulton got the paper back from Mr. Beecher. Those were the two interviews with reference to this matter, and then this letter is entrusted to him in confidence. Why entrusted to him in confidence? Why should it be in confidence if it didn't relate to some secret that he didn't want the world to know? If Moulton, by the possession of that had not become the possessor of some terrible secret, why was it entrusted to him? Gentlemen, do you believe for a moment that had this been any less than the charge we bring Mr. Beecher would not have consulted some of his trusted parishioners and asked their advice as to how to act in the emergency, whatever it was, other than the one we charge and shall prove to you to be true—adultery? Why, he says that there was no man on the globe with whom he could talk on this subject. Strange! What terrible subject is this about which he can talk to but a single man on the globe, and that man not a trusted parishioner of his but a comparative stranger who has become possessed of some secret. He was shut up to every human being. He could not go to his wife: he could not go to his children; he could not go to his brothers and sisters; he could not go to his church. Mr. Moulton was the only person to whom he could talk on this subject. With reference to his advice to Moulton, with reference to his advice for separation, he could go to his wife. He did go to her, because, in those matters he relied upon her judgment, only coinciding with her. What was this terrible subject about which he could talk to no human being on the globe except to this comparative stranger outside of his church? Where was the trusty parishioner of 25 years' association then, who should stand by him in his hour of trouble? No man on earth, no one to whom he could talk on this subject but the one man, Moulton. If the other side can conceive of

my other secret on earth about which a minister of the gospel can not talk with even his wife, or with his brothers and sisters, or with members of his church, I hope it will be revealed upon this trial. On the 30th of December, 1870, Mr. Beecher went forth from Moulton's with the exclamation, "This will kill me," the charge upon him made by Tilton being adultery with his wife. The first communication you have from the defendant to the plaintiff, or for the plaintiff after this charge is made is, "I humble myself before you as I do before my God." A man comes to you and accuses you falsely of an infamous crime, and the next communication you have with him you say, "I humble myself before you as I do before my God, and hope he will put it in your heart to forgive me, to forgive me!" Gentlemen, it is nonsense to argue that point, and I shall not pursue it further. It was not advice either to Mrs. Tilton or counsel to Mr. Bowen; it was something beyond that. When he asks Theodore Tilton's forgiveness, what does he mean? Forgiveness of what? Forgiveness for having received a false accusation? No, forgiveness for a wrong that he had inflicted upon Mr. Tilton, which called for the deepest humiliation and the most absolute contrition that a man could give. "He would have been a better man in my circumstances than I have been." What does that mean, gentlemen? In what circumstances would Mr. Tilton have been a better man than Mr. Beecher? What does he refer to? What terrible thing had Mr. Beecher done that should lead him to exclaim that Theodore Tilton would "have been a better man in my circumstances than I have been." Why? Theodore Tilton was bankrupt in morals and in character, he had been guilty of promiscuous immorality, he was everything that was bad; he was so brutal to his wife that the bare recital shocked Mr. Beecher; he had attempted a gross outrage upon a person in his house. If their theory be true he had done everything that was bad, and yet he says that this man, this libertine, this infidel, would "have been a better man in my circumstances than I have been."

#### MR. BEECHER'S LANGUAGE INTERPRETED.

What circumstance does he mean? What had he done that outweighed all those charges that were brought against Theodore Tilton by the defendant? What led him to exclaim that even this bad man would have been a better man in his circumstances than he was? Oh! yes; it was true. There is not a word in that letter, there was not a word uttered by that penitent man on that night that was not true. It was true, and he would have been a better man. What had he done? Why he had debauched the wife of his trusted parishioner, and she a confiding member of his church. He, taking advantage of his position and of his high calling, had debauched that woman. It is true, and he says Theodore Tilton would have been a better man in my circumstances than I have been; he [Tilton] would not have done that—that is what he means. But he will die before anyone else will be inculpated. How was Mrs. Tilton inculpated, and who was it that inculpated her? "She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have." Oh! say the counsel, of course she could not have been guilty of the crime of adultery, and yet he

guiltless. Well, gentlemen, we shall present to you during the progress of this trial, an authority high upon that subject, an authority no less than the defendant himself, who says that by no means does it happen in all cases that the seduced is an accomplice in the crime, but the sufferer. And so here, she is represented, not as guilty, because of the power that was exercised over this confiding child of the church by a strong and powerful will, because she, having implicit faith in him, yields; she is the sufferer, it is not her fault. Such is the meaning of this, "She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have." I have her forgiveness for having thus seduced her, having thus used my high office, having thus used my power and influence over her to get possession of her virtue. I am guilty, she is guiltless, I have asked her forgiveness, I have it to-day. And now I ask that God may put it into the heart of her husband to forgive me as she has forgiven me. Whatever the offense, it is perfectly clear that the defendant is the sinner and that Mrs. Tilton was the sufferer. He says, Mrs. Tilton is "guiltless, sinned against." It was with Mrs. Tilton, not her husband, that the sin was committed. It was some offense in which there was guilt, sin. She was bearing the transgressions of another. Somebody had been guilty of transgressions with her, which she, not her husband, had to bear. The only question is, Who was the transgressor? Hear the answer, "Her forgiveness I have"—I am the transgressor. He declares that he is forgiven for sin and transgression and guilt with Mrs. Tilton. Can there be anything plainer than this? Is it necessary that we should attempt to argue or present a proposition so clear and unmistakable as this? She is guiltless, sinned against—I have sinned against her. She is bearing the transgressions of another. I am the transgressor, and her forgiveness I have. "She has forgiven me for sin, for transgression and for guilt, and now will God put it into the heart of her husband to forgive me also for the sin, for this transgression, of which I have been guilty."

It cannot be said, gentlemen—and that is the only possible explanation which I could see to this—it cannot be said that the defendant in this case does not understand the meaning of the English language, that he did not know what he was talking about when he wrote these words of repentance and contrition—when he was pouring out the honest feelings of his heart and his heart's sorrow for the great wrong that he had done. No, he fully understood the import of every word that he uttered on the first of January, 1871. "I have trusted this to Moulton in confidence." Why give this to Moulton in confidence? Why should this confidence be reposed in him about a matter relating to business or mere advice in regard to family jars? No, it was the secret—the secret that he said would kill him on the night of the 30th of December, when he left the house of Mr. Moulton to go to the sick bed of this woman that he had debauched. Had Mr. Moulton been, on that night, the bearer from Mr. Beecher of a similar letter, had he come to Mr. Beecher and said, "Mr. Beecher, here is a letter I have brought you from Tilton, a letter of regret, a letter of sorrow, a letter of contrition, and he asks your forgiveness for what he did to you on the 30th of December, two nights ago. I have come to ask your pardon?"

Oh ! no, nothing of the kind, but Mr. Beecher falls down upon his knees before this man and commences his letter with an appeal to him, and closes with a prayer to God that he may soften his heart toward the man who has wrought this great ruin in his family.

The Court here took a recess of an hour.

Judge Neilson cautioned the jury as usual. The following are his words :

Gentlemen of the Jury, we are about to adjourn to two o'clock : I need not repeat to you the injunction already given. You will find it difficult perhaps to carry out that direction, but avoid conversing about it, or allowing any one to speak to you on the subject.

Judge Neilson—Those gentlemen behind the jury will please retire, and pass out. I don't wish the jury to hear any incidental conversation.

The men crowded back into the throng around the railing.

Judge Neilson—Mr. Spaulding, will you take this jury down by and by to Parker's, to a lunch. I will write a note. They will have a lunch there in a separate apartment.

Officer Spaulding departed with the jury, as directed, and the Court broke up for the recess.

The Court again convened promptly at 2 o'clock, and Mr. Morris resumed his argument as follows :

**GENTLEMEN OF THE JURY :** Men usually exhibit various emotions in proportion to the cause that gives rise to those emotions. If fear, the danger that is foreseen ; if grief, the trouble that has produced it ; and so of the various emotions. And I was about, before closing the point to which I called your attention this morning, to call your attention to that phase of this branch of the case in order that you might see what perfect harmony there was between this letter that I have called your attention to, and the condition of the party's mind, as portrayed by himself that time ; and for the further purpose of showing that it was impossible that that condition should have been produced or caused by any slight or trivial matter ; that it had for its foundation some terrible thing, whatever it was ; that the defendant, at the time that that letter was written must have been conscious of having committed some terrible wrong, and it was for that purpose that I was about calling your attention to some declarations, and I now invite your attention to them, so that you may see what perfect unison there is between the condition of the writer's mind and the letter itself.

"Believing that my presence, exclamations and counsels had tended to produce a social catastrophe, I gave expression to my feelings in an interview with a mutual friend, not in bold and incautious words, but eagerly taking the blame upon myself, and pouring out my heart to my friend in the strongest language, overburdened with the exaggeration of impassioned sorrow. It seemed to me that my life-work was to end abruptly and in disaster. I was most intensely excited indeed. I felt that my mind was in danger of giving way. I walked up and down the room pouring forth my heart in the most unrestrained grief and bitterness of self-accusation, heaping all the blame on my own head. I shed tears, and my voice broke and my distress was boundless, and I called

upon the man that I had wronged to forgive the great wrong that I had done."

You see, gentlemen, what perfect harmony there is. Take the letter of contrition, break it up into sentences, intersperse it with the language that I have just quoted, and you would not perceive which part was the letter and which part the language that I have quoted. It would sound as one outpouring of the heart, as he says, of "impassioned sorrow and grief." And yet, you are to be told that all this anguish and all this sorrow was the result of some trivial matter. Certainly, gentlemen, after the evidence in this case is in, I apprehend that it will not be claimed. I apprehend that we have heard the last forever of the intimation that all this grew out of a fear of a false accusation. If such had been the case the great grief here expressed would have been somewhat modified by the consciousness that this great wrong had been done the party thus pouring out his heart. But, gentlemen, this letter of the contrition is the one bright spot in this whole sad story. It is the honest expression of sorrow and grief. It is the outpouring of the heart for the wrong that has been done, and the ruin that has been wrought ; and if it could be repudiated, I say no, a thousand times no, it ought not to be. It is the expression of grief and sorrow and contrition for the wrong that had been wrought. Let it stand, as it will stand now and forever, as the honest confession of guilt on the part of this defendant in this case.

#### INFERENCES FROM MR. BEECHER'S ACTS.

Well, gentlemen, having called your attention very briefly and very imperfectly to the first stage in the history of this extraordinary case, as throwing a light back, reflecting upon the three or four days that had just passed in which was encompassed so much of grief and of sorrow, let us see what the first act of the defendant is in reference to this matter—what is the first thing he does in reference to this matter, after the writing of this letter of contrition, of January 1, 1871?

Let us see whether he acted as a guilty man would naturally act, or whether he acted as an innocent man would naturally have acted under the circumstances. Assuming now for the moment that a false accusation had been made against him, what would he have done ? After reflection would he not have gone to some person of whom he could have taken advice, would not he have sought out some trusty member of his congregation, some legal gentleman of his flock, and have told them, as he might have done in the sacredness of confidence, what wrong had been committed against him, and counseled and advised with them as to what should have been done with such a villain ? And do you think, if he had been innocent, that would not have been the course ? But what does he do ? Why, he acts as naturally he would after having committed the wrong that we charge him with. He says : "I have sent this letter of contrition to Mr. Tilton. I have poured out my soul to him in sorrow and in grief, and I have asked his pardon and forgiveness, but I will do more for him. I have had an interview with Mr. Henry C. Bowen, to whom I have made some statements concerning Mr. Tilton. I will at once undo that." And so, on the 2d of January he

writes a letter to Mr. Bowen, in which he says: "I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare."

Mr. Beach—What is the date of that?

Mr. Morris—January 2, 1871. The very next day after writing this letter of contrition, two days after they say this false accusation had been made, he is writing to Mr. Bowen, so anxious is he for the welfare of Mr. Theodore Tilton, the man who had made this false charge against him; and although he said but little to Mr. Bowen, "I would be unwilling that that little should weigh on your mind in a matter of such importance to his welfare." With this letter, with the original draft of this letter, he goes around to Mr. Moulton, and there he meets Mr. Tilton, on the 3d of January—the first being on Sunday and the second being observed as the 1st—on Tuesday he goes around to Mr. Moulton with this letter and meets Mr. Tilton there and then he speaks to him about this matter and expresses his sorrow at the wrong that he had done him, and hopes that it may be overlooked and that he may be forgiven. The object of this letter, you will perceive, gentlemen, was to further placate, if possible, Mr. Tilton; to show him that he was willing to aid him and assist him, that he was anxious to do anything that he could for him. He writes this letter and he says, when he wants to give force to the letter of contrition: "I should be unwilling to have anything I said, though it was but little, weigh on your mind," but on another occasion when it is desired that the force of the letter of contrition shall be broken by some wrong done on the part of the defendant, rather than the wrong that we aver, different, entirely different, language is used. Then he conversed for some time with Mr. Bowen. Mr. Bowen wishing his opinion, it was frankly given: "I did not see how he could maintain his relations with Mr. Tilton. The substance of the conversation was, that Tilton's inordinate vanity, his fatal facility for blundering, for which he had a genius, the ostentatious independence of his own opinions, and general impracticableness, would keep *The Union* at disagreement with the political party for whose service it was published. Now, added to all this, these revelations of these promiscuous immoralities would make his connection with either paper fatal to its interests. I spoke strongly and emphatically. I have no doubt that my influence was decisive and precipitated his overthrow." Then he is accounting for the condition of mind at the time the letter of contrition was written, and when force is to be given to the apology, then "I should be unwilling to have anything I said, though it was but little, weigh on your mind." But a few days after this, Mr. Beecher, through Mr. Moulton, makes the proposition that if Mr. Tilton will go to Europe with his family and spend a couple of years there that he will bear the expense. At this time, also, Bessie Turner, of whom you have heard, a young woman in the house of Mr. Tilton, had overheard conversations between Mr. and Mrs. Tilton with reference to this matter, and it was deemed prudent that she should be gotten out of the way; it was not safe to have her here in Brooklyn; it was feared she might tattle, that she might talk, and thus the secret become known, and so she is sent to a boarding school in Ohio and the expenses of her education are paid there by the defend-

ant in this action. He contributes out of his own money the expenses of Bessie Turner when she is at school in Ohio, and we want them to explain, if they can, why Mr. Beecher paid the expenses of Bessie Turner at school in Ohio. We say, gentlemen, it was because she had overheard conversations, had become possessed of some facts, and there was fear of her tattling; it was dangerous to have her here. That is the reason that it was desired and desirable that she should be removed from this city, and she was sent to Ohio, the defendant paying her expenses.

And right here, gentlemen, I will call your attention to another fact, although it is out of the order of date, but it is connected with the same topic. Mr. Beecher mortgaged his own house, raising the sum of \$5,000, which he paid to Mr. Moulton for the purpose of being paid to Mr. Tilton without Mr. Tilton's knowledge of where it came from. Mr. Tilton was the editor of *The Golden Age*. Mr. Moulton, his friend, was assisting him in raising money, had repeatedly assisted him in moneyed affairs, and Mr. Beecher, feeling the great wrong that he had done Mr. Tilton, and being desirous of having him, at least so far as worldly concerns went, satisfied, and his paper to go along prosperously, desired Mr. Moulton to be the medium of transmitting this money to Mr. Tilton without his knowledge of from whence it came; and this money was paid to Mr. Moulton by Mr. Beecher for Mr. Tilton's benefit. Will you tell me, gentlemen, that an innocent man, possessing the power and the influence that Mr. Beecher possessed in this community, will mortgage his own house to raise money to pay to a man unless he be guilty of some great wrong? No, gentlemen, that money was raised and that money was paid for the express purpose of keeping *The Golden Age* prosperous. So long, he thought, as Mr. Tilton was prosperous, at least the sharp edge of his anguish would be dulled—that he would not be so likely to expose the matter if he was peculiarly prosperous; but if, added to all his sorrow at home, if, added to this great wrong, poverty should stare him in the face, and he should be peculiarly embarrassed, he might, writhing under the great wrong that he had suffered—he might be more likely to expose the wrong. And thus it was that this money was paid, paid for the express purpose of keeping him along, and as a means of preventing the exposure of this secret to the public. It was one of the means adopted by him as having a tendency to prevent its exposure, to keep Mr. Tilton partially satisfied, so that he might not be entirely and all the time brooding over the wrong that he had suffered, but that he might be engaged in writing for his paper, conducting his paper, carrying his paper along, which he could not do unless he had the means, and when his mind was upon that enterprise it would be to that extent withdrawn from the great sorrow that he was suffering at that time in consequence of this wrong, and that is the reason that this \$5,000 was raised upon a mortgage upon his own house. And, gentlemen, men do not mortgage their houses, they do not raise money and give it to parties in this way if they are entirely innocent, nor do they do it for any trivial offense. There may be cases where parties innocent entirely have paid money in this way. I never have heard of one in my experience. I doubt whether any instance

can be given where money has been paid under such circumstances where the parties were innocent of all blame. They may not have gone so far as had the defendant in this case, but in every case that I have heard of, the money has been paid because as matter of fact parties were compromised. But, in this case, gentlemen, there will be no insinuation of that character. The evidence upon that point is too full, too clear, and too complete. That suggestion will be dropped here, as it has been by the previous investigation, and you will hear nothing of that in this case, as I will pass from that point.

#### MRS. MORSE'S LETTER.

On the 27th of this month, January—I am speaking now of the period between January the 1st and February the 7th—Mr. Beecher receives from Mrs. Morse and takes to Mr. Moulton as bearing upon this case and upon the matter in secret which he had in charge, a remarkable letter from Mrs. Morse, and I will call your attention to but one or two passages of it at this time :

"This she could endure and thrive under, but the publicity that he has given to this recent and most crushing of all troubles is what is taking the life out of her. I know of twelve persons whom he has told, and they in turn have told others. Do you know when I hear of you cracking your jokes from Sunday to Sunday, and think of the misery you have brought upon us, I think with the Psalmist, There is no God. He swears as soon as her breath leaves her body he will make this whole thing public, and this prospect, I think, is one thing which keeps her alive."

This letter was received on January 27, and taken to Mrs. Moulton on January the 28th, with Mr. Beecher's indorsement to it, together with another letter which he had received from Mrs. Morse, and which had been written to Mrs. Morse by Mrs. Tilton, and which was also taken there as having reference and relating to a part of this case, and the secret which Mr. Moulton at that time had in charge. I will not stop to read that letter now, gentlemen. I will call your attention to but a few brief passages in the letter in order that you may see to what it has reference:

"When by your threats my mother cried out in agony to me, 'Why what have you done, Elizabeth, my child?' her worst suspicions were aroused, and I laid bare my heart then, that from my lips and not yours she might receive the dagger into her heart. Did not my dear child, Florence, learn enough by insinuation, with her sweet, pure soul agonized in secret until she broke out with the dreadful question? I know not but it hath been her death blow. After this you are her indignant champion, are you? It is now too late. You have blackened my character, and it is for my loved ones that I suffer, yea, for the agony which the revelation has caused you, my cries ascend to Heaven night and day, that upon mine own head the anguish may fall. Once again I implore you for your children's sake, to whom you have a duty in this matter, that my past may be buried. Dear mother, I will now add a line to you. I should mourn greatly if my life was to be made known to father. His head would be bowed indeed to the grave."

And so all through from the beginning to the end is the confession of her guilty relations with the defendant, and he takes this letter to Mr. Moulton, as relating to the secret which he then had in charge. Do you doubt what these parties have

been talking about? Do you doubt what the secret is, and what the crime is that has been committed in view of these facts? Mrs. Tilton has confessed her guilt, first to her husband, then to her mother. Mrs. Morse is writing to the defendant about it as though he understood it, and Mr. Beecher has confessed it, as we say, in writing over and over again, and verbally to Mr. Tilton, the plaintiff, to Mr. Moulton, and to another.

#### THE SCANDAL CORRESPONDENCE.

And now, gentlemen, having called your attention to these facts, occurring subsequent to the 1st of January, when this letter of contrition was written; the fact of the letter to Bowen; his sending away Bessie Turner to boarding-school; his endeavor to have Tilton and his family go to Europe, and he pay his expenses; the letter of Mrs. Morse to him, and of Mrs. Tilton to Mrs. Morse, carried by him to Mr. Moulton, we come now to another period in the history of this case, and about which, gentlemen, there can be no two opinions. Mr. Beecher, as naturally might have been expected, was very anxious to know what the state of Mr. Tilton's feeling toward him was. He had written the letter of contrition, he had written to Bowen, he had received through Mr. Moulton the letter of assurance that Mr. Tilton would not expose his secret, because of the great love that he bore his family, but with this fact pressing upon his mind, with his anxiety lest at any moment Mr. Tilton might break out and expose the guilty secret, he was very anxious to know what was the condition of his mind. To write to him he could not; the wound that he had given was too deep. He must seek the state of his mind by consulting others, and he had chosen Mr. Moulton as his mutual friend; to him he had confided, and to him he must go to ascertain whether he stood upon a precipice or not. And so, upon the 7th of February, Mr. Moulton said to Mr. Tilton, "Mr. Beecher is anxious that I should get from you an expression of your feeling toward him." And Mr. Tilton writes a letter for Mr. Beecher, and I desire to call your attention to the significance of that letter in this place, and to show you that Mr. Tilton was actuated in bearing this wrong and this suffering by the undying love which he bore his children; that they it was that restrained him from inflicting the punishment that was due to his destroyer at the time; for their sakes, for the sake of the innocent who were involved in this matter, not only his own family, but others, yea, the family of the defendant and himself, he forbore to strike; and when appealed to by Mr. Moulton to give some expression of his feeling towards Mr. Beecher, in order that he might reassure him that Mr. Tilton did not intend to expose this secret, that he did not intend to strike, but had consented to spare, he wrote this significant letter, a portion only of which I will read:

"I say, therefore, very cheerfully, that notwithstanding the great suffering which he has caused to Elizabeth and myself, I bear him no malice, shall do him no wrong, shall discountenance every project by whomsoever proposed for any exposure of his secret to the public. I ought to add that your own good offices in this case have led me to a higher moral feeling than I might otherwise have reached. Yours, &c."

Mr. Evarts—That is to Moulton?



Mr. Morris—That is a letter to Moulton written at Mr. Beecher's request, and shown to Mr. Beecher for the purpose of reassuring him that Mr. Tilton did not intend to expose this great secret, and he says there that he will discountenance any project by whomsoever made for the exposure of the secret—of Mr. Beecher's great secret—"notwithstanding the great wrong that he has done to Elizabeth and myself." Well, gentlemen, on the same day the defendant writes two letters, and the writing is as plain and unmistakable as the writing upon the wall. There is no mistake about what the party is writing. There is no mistake as to the wrong of which he speaks. There is no mistake as to the crime which he has committed. February the 7th, mark you, now, gentlemen, while Mr. Tilton had forbore to strike, while he had agreed not to expose the secret of Mr. Beecher, the wrong that had been done his family, there was no reconciliation at this time. There was no forgiveness, as is apparent in Mr. Beecher's letter. Mr. Tilton had simply forbore to strike because in striking he must necessarily strike his own family and bury them in the common ruin.

This is written to Mr. Moulton:

"I am glad to send you a book which you will relish, or which a man on a sick bed ought to relish."

Mr. Moulton at this time was sick, confined to his house, and almost daily Mr. Beecher visited him at his house, sometimes twice a day, counseling him with reference to this matter, endeavoring to take some means, adopt measures, that would secure the burying of this secret from the public.

"I wish I had more like it that I could send you one every day, not as a repayment for your great kindness to me, for that can never be repaid, not even my love, which I give you freely. My trust in you is implicit. You have also proved yourself Theodore's friend and Elizabeth's. Does God look down from Heaven on three unhappy creatures that more need a friend than these? Is it not an intimation of God's intended mercy to all that each one of these has in you a friend? But only in you are we three united. Would to God, who orders all hearts, that by your kind intimation Theodore, Elizabeth and I could be made friends again. Theodore will have the hardest task in such a case, but has he not proved himself capable of the noblest things?"

"Theodore will have the hardest task in that case, but has he not proved himself capable of the noblest things?" Why would Theodore have the hardest task? Why should it be harder for him? So far as Mr. Beecher and Mrs. Tilton were concerned, there was no difficulty. Reconciliation, as between them, was easy. But Theodore would have the hardest task. Why should he have the hardest task? Why, because it was against him and against his household that this great wrong had been committed. "True, he would have the hardest task in such a case, but has he not proved himself capable of the noblest things?" What noble thing had Mr. Tilton done from the 30th of December, 1870, till the 7th of February, 1871? What noble thing had he done that he should call out this encomium upon his nobility? What had he done? Why, he *had* done a noble thing. He had shown himself capable of the noblest things. In what respect, and why, and how? Why, because knowing of the crime which had been committed against him, knowing the

desolation which had been brought upon his household, he forbore to strike down the assassin of his home and of his happiness. Ah! he had forbore more than that, gentlemen. Not only had he forbore to strike down the assassin of his home and his happiness, but, for the sake of his family, for the sake of his children, he had forbore to expose the man to the scorn of the world. I hope they will be able to explain what this language means if it does not mean what I have attributed to it. Certainly thus far no explanation has been vouchsafed, because it was all a muddle, as he could not recall the precise workings of his mind. You, gentlemen, will have no difficulty in recalling the precise workings of his mind when he wrote this letter, and when he wrote in these words: "He will have the hardest task in such a case." Indeed it would be a hard task. It would be rather too much to expect of human nature, a man against whom such a wrong as that had been committed, to expect friendship; but few in the world have been able to rise to that plane of divine forgiveness, and when men do stay the hand against the destroyer of a home, when they do forbear to strike down the seducer who has destroyed that home, they are held up to ignominy because of the exercise of those noble attributes, as has been done in this case; but, thank God, we are in a tribunal where it will not be available any more. "I wonder if Elizabeth knows how generously he has carried himself toward me?" In what had this generosity consisted? I will explain it to you. When he speaks of the generosity with which he had carried himself towards him, he refers to the same facts as when he said: "Has he not proved himself capable of the noblest things?" Of course it means that. It cannot mean anything else, because, prior to the 30th of December, 1870, he had declared him to be bankrupt in character, utterly worthless, but it was no noble act that he had done prior to that of which he speaks, but it was generous, forbearing and noble acts after the 30th of December and prior to the 7th of February, 1871; and I ask you, again, what had he done during that time save to stay his hand and not to cast off his wife, and not to expose the destroyer of his home to the scorn and to the just punishment that would follow such an exposure on the part of a virtuous and Christian community? This man that was everything that was bad on the 30th of December, or on the 27th of December, all at once is transformed into a perfect man, capable of the noblest things, generous beyond expression, and the only one act other than those that I have indicated that he did during that period was to charge the defendant to his face with having seduced his wife, and brought ruin upon his own home. And for this charge of seduction and debauchery of the wife, and the desolation of the home, called a perfect man, generous beyond expression, capable of the noblest things. Explain it, if you can, upon any other theory than that which I have presented. Explain it, if you can. If to falsely charge a man with the most diabolical crime known, the most infamous crime, and that man a minister of the Gospel,—if to accuse such a man, I say, of such a crime falsely, is to transform a man from a brute, a libertine and a bankrupt into a perfect man, capable of the noblest things, generous beyond expression,—if such an act is capable of thus transforming a man, then there is some sense in

the language upon the theory of the defense, otherwise not. No, gentlemen, "of course I can never speak to you again without his permission." Why not? Why not? Why not? Why, because at some time or other, at some indefinite period that cannot be stated, in some indefinite way that cannot be explained, Mr. Tilton had sent word to him that he should never enter the house again. If that word had been sent, why should he never enter the house again? What had occurred between these parties, these men who for so many years had loved and admired each other, the devoted friends, pastor and parishioner, what I say had occurred that he should forbid him ever to enter the house again? But, with that explanation, one reads:

"Would to God we three could be made friends again. Theodore would have the hardest task in such a case, but has he not shown himself capable of the noblest things? Yet he has forbidden me ever to enter his house again, and that is the reason I cannot go."

One word, gentlemen, explains all this language; every act of the defendant for the four years; every act of Mr. Moulton in connection with this; every act of all the parties perfectly explain, and all harmonize, by just using this one word—"adultery." Take "adultery" out of it and there is not as much harmony in their letters, in their acts, as you would find in a lunatic asylum.

But he writes another letter on the same day to Mrs. Tilton, and he writes this letter, as he says, by the permission of Mr. Tilton, and he requests the return of this letter by the hands of her husband, Theodore Tilton, the plaintiff. Now mark you, gentlemen, he writes this letter to Mrs. Tilton by permission of her husband, and he requests the return of it by his hands; that is, he asks permission of the man who had made a false accusation against him to write to his wife, and then wrote such a letter, and requests its return by the man who had thus made a false charge.

"When I saw you last I did not expect ever to see you again, to be alive many days. God was kinder to me than were my own thoughts."

When did he see her last? When had he seen her last? On the night of the 30th of December, 1870, he had seen her upon the sick bed; it was the night that this terrible charge was made against him. The fact of its discovery had been for the first time communicated to him, and as he left the house where it was communicated he says: "This will kill me," and he goes forth, as he said, amidst the storm. Then is when he saw her. "I did not expect to see you again, or be alive many days. God was kinder to me than were my own thoughts." What were his thoughts? What were his thoughts, and why did he never expect to see her again? What were his thoughts? Why, when this news, the fact of the discovery of this crime, had been communicated to him, it came upon him like a stroke of lightning. Well might he exclaim: "I was thunderstruck; it came upon me like a stroke of lightning." He saw then the consequences of the discovery of such a crime; he saw an indignant world denouncing the seducer, and that man a Christian minister, and, he supposed, he didn't believe he could endure the agony such a discovery would make, and he had made up his mind to end his sufferings, and to end his misery by taking his own life. Explain it upon any

other theory, if you can. God was kinder to him than were his own thoughts.

"The friend whom God sent to me, Mr. Moulton, has proved, above all friends that ever I had, able and willing to help me in this terrible emergency of my life. His hand it was that tied up the storm that was ready to burst upon our heads; his hand it was that tied up the storm that was ready to burst on our heads, on my head, and on the head of my victim."

He had tied up the storm. How had he tied up the storm? Why, he had appealed to Mr. Tilton in consequence, and for the sake of his family, for his children, and for the thousands that would be affected by such an exposure, he had induced him to forbear and not to expose this secret. That was the way the storm had been tied up by the hands of Moulton, whom he says God had sent to him in this terrible emergency of his life. Explain it by any other hypothesis if you can. But if the theory be true, just at that particular time, it was an emergency in Mr. Tilton's life, and not in the defendant's. He had lost his place. All that Mr. Beecher had done was to give a little advice. What was the emergency in his life that was so terrific that he contemplated destroying his life, and would, only for Moulton's interposition, whom God had sent him in this terrible emergency of his life? and you will see in every letter, and in every act during the entire four years of concealment, of planning and of plotting; every successful movement that has been made to keep from the public the truth, is attributed to God, and every step that looks like an exposure or tends to expose the truth to the world, is attributed to the devil. "He" (Moulton) "will be a true friend to your honor. Will you return it to me by his hands? I am very earnest in this wish for all our sakes, as such a letter ought not to be subject to even a chance of miscarriage." What does the letter refer to? What is he talking about in this letter that makes it so important to "all of us" that its contents should not be subject to the chance of miscarriage—that it should not come to the public? What are they talking about? What is the defendant talking about in this letter that makes it of such paramount importance that this statement should be returned to him, and by the hand of Mr. Moulton, so that there should be no possibility of its falling into other hands and its contents becoming known? What is he talking about? What does he refer to? What crime has it reference to? Some terrible thing—something so terrible that it induced him to contemplate the taking of his own life until God sent him Moulton, who tied up the storm that was about to burst on the heads of the seducer and the seduced. In this same letter he says: "You have no friend, Theodore excepted, who can so serve you as Moulton." Why should he thus speak of Theodore? "No friend except Theodore." Theodore is your best friend—the best friend you have in the world; and yet, but a short time before that the story of Theodore's treatment of his wife, as related by Bessie Turner, shocked him, and as related by the wife herself, seemed to him like a nightmare dream. Were there ever such changes in the transposition of opinion with reference to mortal man as this case exhibits in the defendant toward the plaintiff? And all because on the 30th of December, 1870, the plaintiff had

falsely accused the defendant of one of the most damnable crimes to be charged against a person! "He will be a true friend to her honor." Her honor was involved, and the fact that involved her honor was known to Moulton. This letter indicates that fact, that Moulton, at that time, knew all about it. She knew that he did. He is writing to her, giving her courage,—“Moulton will be a true friend to her honor.” Her honor was involved, and Mr. Moulton had charge of the secret, the exposure of which would destroy her honor. How had her honor been involved? Who had involved it? “The past is ended, but is there no wiser, higher, holier future? May not Moulton be the priest in the sanctuary of reconciliation?” What does all this mean, gentlemen? Tell me what it means. Take those letters without knowing anything of the case, or without knowing anything of the parties, each letter without signature or date, and what would you say the parties were talking about? Why the one sin of adultery, not to be named in their correspondence, except in the manner in which it is named, and it is named, to common intelligence, as plain as though “adultery” ran through every letter and was incorporated in every sentence of this correspondence for three or four years.

### THE CLANDESTINE CORRESPONDENCE.

Now I call your attention to a circumstance, as throwing light upon this transaction that occurred at this period, during this month, that sets at rest forever the fact that Mr. Moulton had in charge facts and secrets relating to the defendant's moral character, that Moulton was intrusted by him with the management of these facts, and that they related to his moral delinquency. On the 18th of February, 1871, Mr. Dana sent a note to Mr. Bonner, including a printed slip, referring to these delinquencies, threatening its publication, and Mr. Bonner immediately transmits them to Mr. Beecher, with a letter marked “strictly confidential,” and they are taken immediately to Moulton, this letter of Mr. Bonner, and the note of Mr. Dana, and the slip, although marked “strictly confidential,” and its return requested; they are taken to Mr. Moulton and put in his hands to manage the case. And Mr. Beecher takes Mr. Moulton over and introduces him to Mr. Bowen, retiring and leaving Mr. Moulton there to explain this matter, and on that occasion Mr. Moulton succeeded again in throwing off, to a certain extent, the suspicion, by denying the truth of the charge, and for that he is to be condemned? It met Mr. Beecher's approval then, and called down upon Moulton's head his blessings for four years, Sundays and week days, and on this occasion it succeeded again. Shall he be condemned because he denied the truth? Or shall you disbelieve him because he denied the truth? Oh! no. When Mr. Moulton was denying the truth of these charges, he was then a messenger sent from God. When he tells, under the solemnity in his obligation, the truth, he is a vicergerent of hell.

Well, gentlemen, I come now to consider another period in this case, running from February 7th to the 2d of April, 1872. As a part of this arrangement to keep the secret from the public, it had been agreed that neither Mr. Beecher should

write to Mrs. Tilton, or she to him, without the knowledge of Mr. Moulton; that they should have no communication with each other without his permission, and you will see by the letter of February 7th, Mr. Beecher says that it is written by permission, and that he can never speak to her again without Theodore's permission, and therefore it becomes important to ascertain what relations these parties assume to each other after that period. The matter seemed to have been reasonably settled. Theodore had written this letter of February 7th. Mr. Beecher had written to Moulton, and he had written to Mrs. Tilton, and there seemed to be a prospect that this secret would for ever be buried, and it inspired a feeling of security on the part of the defendant; and, as a consequence of that, a clandestine correspondence ensued between him and the woman whom he had debauched, and the first letter upon that subject was written to him March 8th, in which she says “My dear Friend: Does your heart bound towards all as it used? So does mine.” I will not stop to read the whole of these letters. I will only call your attention to the ideas contained in them. Mr. Beecher replies, and I will read but a sentence or two of this letter:

“If it would be a comfort to you now and then to send me a letter of true inwardness, the outcoming of your inner heart, it would be safe, for I am now at home with my sister, and it is permitted to you.”

Bear in mind, gentlemen, that when this letter was written, this is the first communication, so far as we know, that Mr. Beecher has with Mrs. Tilton after the letter of February 7th, which was written for Mr. Tilton to see, but the first private letter he writes her, or correspondence between him and Mrs. Tilton, and this, bear in mind, is long after Mrs. Tilton has written her confession, after she wrote her retraction, and after she had written the letter and it had been known to Mr. Beecher, in which she speaks of a letter he obtained as having been obtained by his dictation. Not a word. She had falsely accused him of this infamous crime. She had retracted and re-retracted, taken back and re-asserted, and in the first communication that they have upon the subject there is no allusion made to all this that has passed. No reference to it whatever on either side. Think of it, gentlemen, think of it. A woman accuses you falsely, makes a false charge against you, makes a false confession to her husband, reiterates that, and you write her a letter requesting her to communicate with you, giving the reasons why it will be safe for her to do it, and in this first correspondence there is no allusion made to what has transpired; there is no reference made to it; there is no explanation asked from the lady why she had made such a charge; how she could have made such a charge, knowing it to be false; how she could make such a charge, and then, having retracted, how she reiterates it again, and makes the additional false charge that he had extorted it from her. Not a word, no reply; but just such correspondence as you would expect between a married man and a married woman, not his wife, if improper relations existed between them. Bad enough for any married man to write such a letter as that to a married woman not his wife under any circumstances. Bad enough; but think of a minister of the Gospel holding such correspondence, under the circumstances of this letter, and no allusion what-

ever made to the fact as to what had transpired prior to this! If it is in the power of man to explain it, consistent with innocence, I should be glad to hear the explanation. I want to hear that explanation. If it is in the power of man to explain it, consistent with innocence, I want to hear it; you want to hear it. I aver that it is not. But, gentlemen, if there could be any possibility of misapprehending the meaning of this correspondence, there was a little note accompanying this, which I think leaves no doubt upon the subject:

"MY DEAR MRS. TILTON: If I don't see you to-morrow night, I will next Friday. I will be gone all the forepart of next week.  
Truly yours, H. W. B."

Why, I ask, if there was no improper relation between these parties after he took the pains to inform her that she might write him now, because it is safe; and it is safe because he is home alone with his sister? Why was it not safe if he expected a proper correspondence with a Christian woman, one of his own parishioners? Why does he take the trouble to inform her that it is safe to do it then, because then he is home there with his sister! And after the scenes of the few months prior, after the agony that he had gone through on the 30th of December, when he says in his letter of February 7th he never expected to see her again, or be alive many days, that he could never speak with her again without her husband's permission, and he didn't know then whether it would be prudent or proper, or not, without the knowledge of that husband, and without the knowledge of the man whom God had sent him, and to whom he had trusted the secret—he writes such a letter to a woman who had accused him with having improper relations with her, and then, in such a letter, putting in a slip making an appointment for a meeting. Gentlemen, we expect in this case to be judged by the same rules that you judge other men by. We expect in this case that you will judge the defendant by the same rules that you yourselves would be judged by, the same rules that you would judge other men by. We do not expect that in this case you will say that because he is a great man, because he has a great name, and that his fame extends throughout the land, that you will withdraw him in considering this case from the ordinary rules that you would apply to other men. Why, if any one of you should be caught in such a correspondence as that with another man's wife, upon that alone, without anything else, you would be pronounced an adulterer. That would be the judgment of your fellow-man, and it would be a righteous judgment. Mark you, gentlemen, this letter, too, is written by the man who says on the 1st of January, 1871, that he so blamed himself because he believed that his counsels had tended to produce social unhappiness, because he had been the cause of all the ruin and all the desolation. He was then in paroxysms of grief from the ruin that he believed himself, though unconsciously, he says, to have been the cause of, a home well nigh ruined and desolated by his confessed acts; and yet, writing to that woman, the mother, the head of that home, such a letter as that, without asking any explanation, without giving any explanation, without so

much as making allusion to all this that had preceded, that had so frenzied him, that had driven him almost mad, in fear of losing his mind—to indite such a letter as that under such circumstances, and he writes it as though nothing had ever occurred between them, on the contrary, she saying, "Does your heart bound towards all as it used? So does mine." "If you want to write it is safe now; you can do it. I am alone here with my sister, and it is permitted to you to do it. If I do not see you to-morrow night, I will on Friday; I am going away and cannot be there before." If that was you, gentlemen, any man on that jury, what do you think would be said of you by your neighbors? The knowledge of this fact alone, stripped of every other consideration, stripped of every other fact, what would be the judgment of mankind upon such acts? Well, gentlemen, the very circumstance and fact that there was this clandestine correspondence, under the circumstances, is strong evidence that there had been an improper intimacy between these parties, because if there had been an improper intimacy between these parties—with a knowledge on his part, as he says, that his counsel, his presence, had tended to produce this sorrow and this grief in the family, he would have been very careful before he would have renewed that intimacy. Certainly. Why, he had been forbidden, you recollect, ever to enter the house again; had been forbidden ever to speak to her again, and could not speak to her, and could not come to the house, and yet he says he will be there. He writes to her and reviews this intimacy clandestinely, without the knowledge of the husband, without the knowledge of the man to whom this secret had been confided. But that is not all; she writes another letter to him, in which she undertakes to frame excuses for having confessed, for having communicated the fact to her husband. The date of this is May 3d, 1871.

Mr. Evarts—What is this other one, Mr. Morris?

Mr. Morris—March 8th, 1871.

Mr. Shearman—There is no date to that.

Mr. Morris—No; but it is dated by other circumstances. We will show the date to be as given.

Mr. Evarts—But there is no date on it.

Mr. Morris—Of course, there is no date on; but we say it is March 8th, 1871.

Mr. Evarts—This one that you are now going to read is May 3, 1871?

Mr. Morris—May 3, 1871. That is the letter from Mrs. Tilton. The letter from Mr. Beecher was later. I bring it in in this connection, because it is upon the same subject. It is dated January 20, 1872, and I will read but a small portion of this.

Mr. Beach—Are you going to read the letter of May 3, 1871? You have read March 8th, but May 3 you alluded to.

Mr. Morris—I read portions of that only.

Mr. Beach—You have not read May 3.

Mr. Morris—Oh, no, [reading]: "My future, either for life or death, would be happier could I but feel that you forgive, while you forget, me. In all the sad complications of the past year my endeavour was to entirely keep from you all suffering, to bear, myself alone, leaving you forever ignorant of it. My wea-

pons were love, a large untiring generosity and nest-hiding. That I failed utterly we both know, but now I ask forgiveness."

As I say, gentlemen, the letter refers, as we claim—and it will, I think, be made manifest—to the fact that she had confessed this crime to her husband, and that she now asks his forgiveness for having made that confession to her husband. In his letter of January, 1872, the latter clause reads as follows. I will not take up your time by reading the whole of the letter :

"I shall be in New Haven next week, to begin my course of lectures to the theological classes on Preaching. My wife takes boat for Havana and Florida on Thursday. I called on Monday, but you were out."

These clandestine letters were discovered after Mrs. Tilton deserted her home on the 11th of July last, and that was the first knowledge the plaintiff had that there had been any communication between the defendant and his wife. I have already, gentlemen, called your attention to the character of these letters, and sufficiently indicated their meaning, but I will pass on to some other topics. I have been speaking, gentlemen, of the facts embraced (with the exception of the one letter to which I have just called your attention), within the period between February 7th and April 2d, 1872. The next letter in the order of these events is written by Mrs. Morse to Mr. Beecher, and by him delivered to Mr. Moulton, as the custodian of his secret, and I will call your attention to a paragraph of it as being to my mind very significant. She commences :

'MY DEAR SON.'—

Mr. Shearman—Is that January, 1871?

Mr. Morris—No; this is October the 21st, the year not given.

Mr. Shearman—1871?

Mr. Morris.—1871. It commences ;

"MY DEAR SON:—Do come and see me; I will promise that the secret of her life"—as she calls it—"shall not be mentioned. I know it is hard to bring it up as you must have suffered intensely, and we will, I fear, until released by death. Do you know, I think it strange you should ask me to call you Son, when I told Darling I felt, if you could in safety to yourself and all concerned, you would, be to me called that endearing name. Am I mistaken?—MOTHER."

"The secret of her life shall not be mentioned if you will call to see me. Come and see me, and the secret of her life which has caused you, and all of us, and will until released by death, such intense sorrow and pain, shall not be mentioned. I will not bring that up; I will not harrow your feelings by alluding to that, so that you need have no apprehension upon that score; I will not allude to the secret of her life." What are these people talking about? What does this mean, Mrs. Morse's writing to Mr. Beecher such a letter as this, in such language as that? What is this secret of her life that is tormenting them, and will, until released by death? He knows about it; she assumes the fact that he knows all about it; she assumes the fact that he knows that she knows all about it, and they talk about it as a matter well understood among them and between them. "The secret of her life shall not be mentioned;" "I know you must have suffered intensely by it, and we all shall hereafter until released by death." What are they talking about, gentlemen? What

is this secret of her life that is giving them so much pain and so much anguish, a subject that is not to be talked about among them, which must be buried, which is too piercing, too sharp-pointed, to be talked about? Leave it alone! Bury it up!

Gentlemen, in any ordinary case, where parties are judged by the ordinary rules of evidence, in any case that you might be called upon to try between people of less distinction than one now upon trial, with one half the evidence that I have detailed, to you, you would not hesitate for a moment in putting the seal of your condemnation upon the destroyer. But we dare not stop, even here. It would seem as though the case was proven over and over again by the confession of the defendant, by the confessions of his victim, by the knowledge communicated by her mother, by these letters, which are plain, clear and unmistakable. Yet, I say, we dare not stop, even here, and I propose, from this period onward, to present to you evidence still more conclusive than any that has preceded it; evidence so clear, so conclusive, so convincing, that you will not hesitate for a single moment to give us that justice which we claim at your hands. We come here from a blighted and a desolated home. The children of my client are scattered in different parts. He will return tonight to as cold, as cheerless, and as desolate a home as there is in the land. And from that home he will come in the morning to meet you, fathers, and brothers, and husbands; you coming from your happy homes, he from his desolate one. Until then I will close my remarks.

Mr. Beach—Generally we adjourn at this hour, if your Honor please.

Judge Neilson—Can you close the opening to-day?

Mr. Morris—No, sir.

Mr. Beach—It is impossible for Mr. Morris to do it.

Judge Neilson—The gentlemen will please keep their seats. Gentlemen of the jury, we now adjourn until to-morrow morning at eleven o'clock. I remind you to observe the injunction heretofore given. To enable you to avoid the throng you will please pass out with the officer before the other people leave.

When the jurymen were well away, the doors were opened and the Court room was vacated for the day.

## SECOND DAY'S PROCEEDINGS.

### CONTINUATION OF MR. MORRIS'S ADDRESS.

MRS. TILTON AND MRS. BEECHER IN THE COURT-ROOM—A SCRAP OF NEW EVIDENCE—A LETTER FROM MR. BEECHER TO MR. MOULTON—THE ARGUMENT STILL UNFINISHED.

The opening address of ex-Judge Morris in the Tilton-Beecher suit was continued on Tuesday, Jan. 12, Mrs. Tilton and Mrs. Beecher being among the auditors. His delivery was better than on the preceding day, although he was still laboring under a severe cold. He resumed his review of the letters written by Mr. Beecher to Francis D. Moulton.

Sentence after sentence was taken up and analyzed, the counsel in his anxiety to impress the jury with the significance of the extracts, repeating them again and again. A scrap of new testimony was introduced. This was an alleged letter from Mr. Beecher to Mr. Moulton in which the former resigned his position as pastor of Plymouth Church. The reading of this letter created a marked sensation among the spectators. Those, however, who have followed this case carefully have not forgotten that Mr. Beecher referred to this letter when he was examined by the Plymouth Church Investigating Committee, and explained the circumstances under which it was written. Inasmuch as it was not embodied in either of the elaborate statements presented to the public by Mr. Moulton, the defense probably concluded that it had been lost. Mr. Moulton seems to have taken excellent care of all the scandal literature which was placed in his keeping. Mr. Morris was interrupted once by applause when he paid a glowing tribute to Mr. Beecher's courage, and asserted that a thousand people with false accusations could not frighten him. Mr. Morris's argument was adroit, ingenious, and impressive.

The court-room was crowded an hour before Judge Neilson's gavel was heard. Promptly at 11 o'clock the Rev. Henry Ward Beecher, his silver-haired wife, and Col. Beecher entered the court-room and took seats near ex-Judge John K. Porter. Within a few minutes Theodore Tilton and his counsel appeared. They had scarcely taken their seats before a loud buzz ran around the court-room. Mr. Tilton cast a quick, nervous glance toward the door, and saw two ladies and Edward J. Ovington crossing the threshold. One of these ladies was Elizabeth R. Tilton; the other her friend, Anna M. Hicks. Mrs. Tilton was attired in a black silk dress and dark velvet cloak, with a black velvet hat ornamented by an ostrich feather. She removed her veil, and glanced for a moment at her husband. Mr. Tilton returned the look, and then whispered softly to Messrs. Beach and Fullerton. The lawyers simply smiled, and made no answer. Mrs. Tilton for the time was the central figure of attraction. She was very pale, and her manner was that of a timid, shy woman, who felt ill at ease under hundreds of staring eyes. The crowd instinctively instituted a comparison between her and Mrs. Beecher, and the result was

not favorable to Mrs. Tilton. It was apparent that they were opposite in character. On one side was a weak, timid, sentimental woman; on the other a positive, determined, and, even in her old age, a handsome woman. Mrs. Beecher was cool and self-possessed throughout the proceedings, notwithstanding the bitter attacks upon her husband's honor. Mrs. Tilton was evidently nervous and embarrassed. Mrs. Beecher has a classical face, full of force and expression; Mrs. Tilton's face is of a commonplace type.

At 4 o'clock ex-Judge Morris announced that he would require about one hour to close his opening remarks, and the court was adjourned. Mrs. Beecher left her seat, and, walking over to Mrs. Tilton, with an unaffected smile of good will upon her face, clasped hands with Theodore Tilton's wife. A whispered conversation, which lasted at least five minutes, followed. Immediately afterward Mrs. Tilton, Mrs. Beecher, the Rev. Henry Ward Beecher, and his counsel left the court-room by the rear entrance, followed by a large number of Plymouth Church members.

A curious crowd followed them to the sidewalk and watched every movement with eager eyes. Among the spectators were Gen. H. W. Slocum, the Rev. B. F. Halliday, assistant pastor of Plymouth Church, E. A. Studwell, Under Sheriff Daggett, Ed. J. Ovington, Moses S. Beach, the Rev. Justin D. Fulton, and the Rev. J. S. Bass.

#### THE PROCEEDINGS.

The abruptness with which the actual work in the case was resumed at the Beecher trial on Jan. 12 indicated that the Court does not intend that any time shall be unnecessarily wasted. Almost instantly on the falling of Judge Neilson's gavel, ex-Judge Morris took up the thread of his address, but not at the precise point where he rested the night previous. First he referred to some points which he had omitted in the subdivisions of his subject already treated.

#### HISTORY OF THE INTERVIEW AT MOULTON'S HOUSE.

IF THE COURT PLEASE—GENTLEMEN OF THE JURY: You observed, must have observed, yesterday, that I was laboring under a very severe indisposition, which, I regret to say, I am this morning; and in my hurry to get through with my part of the labor in this case I omitted some points to which I should have called your attention; I will briefly call your attention to some of those points now, before pursuing the discussion, at the point I left off at the close, yesterday. I called your attention to the interview had on the 30th of December, 1870, between Mr. Tilton and Mr. Beecher at Mr.

Moulton's house, when Mr. Tilton accused Mr. Beecher of adultery. I omitted to call your attention to the fact as to how that interview was brought about. On the 26th of December Mr. Tilton wrote a letter to Mr. Beecher, at the suggestion of Mr. Bowen, demanding, for reasons which he explicitly knew, his retirement from the pulpit. Prior to this, Mr. Tilton and his wife had agreed that the secret should be buried; they had agreed for the sake—he had for the sake of his family, for the sake of his children, that it should not be exposed, and she, fearing that this action on his part, although in the interest of another, might lead to complications and to disclosures that would involve her own secret; at her own solicitation this interview was sought, and it was a friendly interview. Its purposes were not to expose the secret or the crime which Mr. Beecher had committed, but, on the contrary, to put him upon his guard against another man from whom he feared certain stories that were afloat; and it was in consequence of this understanding and this arrangement that this interview was had; and the letter which Mrs. Tilton wrote the same night, the 30th of December, 1870, shows that it had been understood and agreed between her and her husband that this secret should not be made known. And it was with this letter in his possession, and the letter written the next morning by Mrs. Tilton, that Mr. Moulton had his interview with Mr. Beecher on the night of the 31st December, 1870, and the closing line of this letter is, "You and I both are pledged to do our best to avoid publicity." So that you will perceive that this interview and the statement of these facts to Mr. Beecher was not for the purpose of exposing, but to carry out the pledge that he had made to his wife, that these secrets should not be exposed, and so to put him on his guard against another, that that purpose might be attained. I called your attention briefly from that point to the leading facts and features in this case, and I will not trouble you now by recapitulating those facts, except to call your attention to one fact which I omitted to mention, and that is, that the letter to which I adverted yesterday, containing a clear, explicit, and unequivocal confession of guilt on the part of Mrs. Tilton, was written when her husband was some five or six hundred miles away from her.

#### THE FIRST GUSTS OF THE TEMPEST.

During the period of which I was speaking at the adjournment of the court, to wit, 1871, trouble began to brew in another quarter. Inquiries began to be made by certain members of Plymouth Church. Some were suggesting that action should be taken with a view of dropping Mr. Tilton's name from the record; and in the Fall of 1871 there was a meeting held by the Examining Committee for the purpose of considering the propriety of dropping his name from the roll of membership of Plymouth Church. Mr. Beecher, at his request, was appointed at that time a Committee to wait upon Mr. Tilton and, as he said, to remonstrate with him and induce his return again to the church, in which he had not entered since the 3d of July, 1870. That was the proper course to have been taken by the Committee and by Mr. Beecher if the object had been, as then stated, to remonstrate

with Mr. Tilton and induce his return again to the church; but I shall be able to show you, I think, to your satisfaction, that there was another purpose, another object, another point to be gained by this action, and that was the concealment of the crime that we charge against Mr. Beecher. True, as it is said, if a brother has gone astray you should remonstrate with him: "If thy brother shall trespass against thee, go and tell him his fault between thee and him alone. If he shall hear thee thou hast gained thy brother, but if he will not hear thee then take with thee one or two more, that in the mouth of two or three witnesses every word may be established." In this case there were not two or three more taken. The defendant knew when he was appointed on that Committee to remonstrate, as he said, with Mr. Tilton, with a view of inducing his return into the church, he knew that it was as impossible to have him return to that church as it is to move the mountain. He knew that that man had received such a wound in his heart, and at his own hand, that he never again could sit and hear the man who had thus inflicted this wound explain the law as it was thundered from Mount Sinai, or the teachings of the Master from the Mount. Action was delayed for a considerable time. Members were anxious to have a report of this Committee which was to remonstrate with the erring brother, and during the interval, instead of trying to induce him to return again to the church, what does he do? He appeals to his friend Mr. Moulton to induce him to leave the church, to resign his membership from the church, and he writes Mr. Moulton a letter, appealing to him to use his offices to induce Mr. Tilton to resign from the church:

"There are two or three who feel anxious to press action on the case. It will only serve to raise profitless excitement when we need to have quieting. There are already complexities enough. We do not want to run the risk of the complications which in such a body no man can foresee and no one control."

What were the complications of this case that could not be submitted to an investigation of the Committee of his own church, whose duty it was to investigate just such matters?

Mr. Beach—What is the date of that letter?

Mr. Morris—December 3d, 1871.

"Since the connection is really formal, and not vital or sympathetic, why should it continue with all the risk of provoking irritating measures? Every day's reflection satisfies me that this is the course of wisdom, and that he will be the stronger, and B. the weaker for it."

That is, Bowen the weaker for it.

"You said that you meant to effect it. Can't it be done promptly? If a letter is written, it had better be very short, simply announcing withdrawal, and perhaps with an expression of kind wishes, &c."

Do facts like these need any comment? The defendant, the pastor of his church, securing himself to be appointed as the sole Committee for the avowed purpose of inducing Mr. Tilton's return to the church, and at the same time, while delaying the report, planning, plotting, devising means to have him withdrawn from the church. But finally a report is made; that he had seen Theodore, and that he had had great trouble, peculiarly and otherwise, and it would be better for the Committee not to take further action at that time; and the advice was taken, and once more they have succeeded

in staving off, preventing an investigation that would reveal the truth. The reason of this action on the part of the church was the publication of the biography of Mrs. Woodhull, and Mr. Beecher. Fearing that if action was taken it would incense Mr. Tilton, and thus lead to an exposure of the whole difficulty, he was anxious to avert the threatened catastrophe and keep off the day of judgment; and the device succeeded, for a time at least. But it was only a temporary success. As were all the devices that were resorted to during the four years succeeding the commission of this crime, it was but temporary.

Foolish man! foolish men! to believe that you could permanently bury up such a crime as that! No; not until the immutable laws of Omniscience are changed! Sooner or later, such a sin will be found out. But no sooner is one difficulty, or threatened difficulty, put aside by some device, than another difficulty, as was natural and to be expected, looms up, and that contingency has to be met in the same way. Mrs. Woodhull had become possessed of some facts, and there was a threatened exposure from that quarter, and in order to prevent that, another device must be resorted to, and that was to try and placate her by kindness, and for a time that device succeeded; but like all others, it was but temporary. Mr. Moulton, Mr. Tilton, Mr. Beecher, all trying to placate her, to keep her quiet, to prevent her from making the exposure or publishing anything concerning the difficulty, because it would lead to complications that would in the end reveal the whole secret. So, when Mrs. Woodhull writes to Mr. Beecher, requesting him to preside at a meeting, he turns it over to Mr. Moulton, his friend, his protector, and asks his judgment upon it, and puts himself wholly and exclusively in his charge.

"Do with me as you think best. I have trusted you heretofore, and have never been mistaken. I trust you now."

As he says in his letter of January 2, 1872:

"If you think it is best that I should preside at the meeting I will do so. I don't want to do it; I would rather not do it, but, if you say so, I must do so. I leave all to your judgment. Though it may involve my reputation in the estimation of many; though it may subject me to criticism, as it undoubtedly will; though it may injure me in public estimation to preside as requested, yet, as you say, as you advise, so will I do."

What do you think, gentlemen, must have been the secret intrusted to Mr. Moulton that would induce Mr. Beecher so completely, so absolutely, to abandon himself to Mr. Moulton, placing his reputation in his hands, laying aside his own judgment as to what was proper in his situation, leaving it all with him, having no mind, no judgment, no will of his own with reference to his action, but leaving it all with Moulton? At this time, bear in mind, gentlemen, it was more than a year after the letter of contrition had been written; it was after the biography had been written that so much has been said about; it was after Tilton had presided at the Steinway Hall meeting—in fact, it was after he had done everything that identified his name with this woman, and all for Mr. Beecher's sake. But that is not all. After this—after Mr. Tilton himself had ceased to have anything to do with Mrs. Woodhull, we find a friendly letter from her to Mr. Beecher, dated

June 3d, 1872, in which she calls upon him for aid and assistance in the difficulties with which she was surrounded then in the Gilsey House. The proprietors threatening to turn her out, she calls upon him for aid long and long after Mr. Tilton had ceased to have anything to do with her, and after he says that he had had an interview in which she was angry and threatening, because he had peremptorily refused to preside at the meeting. And yet, notwithstanding this angry talk between them and this peremptory refusal to preside at the meeting, we find an invitation from her, and he turning it over to Mr. Moulton to decide for him long after Mr. Tilton had ceased to have anything to do with her—a friendly communication from her, an appeal to him for aid.

#### STILL ANOTHER ALLEGED CONFESSION.

And now, gentlemen, as a relief to this planning, and plotting, and devising and scheming for the purpose of covering up this crime, let me call your attention to another frank, full, open, complete and clear confession of his guilt made by himself on the 5th of February, 1872. Prior to the writing of this letter, Mr. Beecher had met Mr. Tilton in the cars going East; he had had a friendly interview with Mr. Tilton, and on his return he received a letter to which allusion is made from Mr. Tilton's wife, which induced him to fear that there was danger of some action being taken with reference to this crime, and he says of his demeanor on that occasion:

"He was kind; we talked much. At the end he told me to go on with my work without the least anxiety in so far as his feelings and actions were the occasion of apprehension."

What does that mean? In 1872—the 3d of February, 1872—over a year after it is alleged that Mr. Tilton had made a false accusation against the Pastor of Plymouth Church, you find them having this friendly conversation, and Mr. Tilton assuring Mr. Beecher that he may go on with his work without apprehensions from him. Gentlemen, was that the language and the assurance of the man who had made such a false accusation? No; it was the language of the man who had been injured and wronged to the man who had thus injured and wronged him, saying to him: "Notwithstanding the great wrong that you have inflicted upon me, I forbear; go on with your work; I shall not expose the crime that you have committed against me." If it don't mean that, gentlemen, pray what does it mean? And then speaking in a desponding mood, expressing his apprehensions that the friendship of Mr. Moulton may be cooling towards him, he says:

"But I see you but seldom, and my personal relations, environments, necessities, limitations, dangers and perplexities you cannot see or imagine. If I had not gone through this great year of sorrow, I would not have believed that any one could pass through my experience and be alive or sane."

What were these dangers? What were these environments? What were these perplexities that had so harassed him during the past year as almost to drive him to madness and to express his astonishment that he could have endured what he had endured, and be either alive or sane at that time.

"During all this time you were literally my stay and comfort. I should have fallen on the way but for the courage which you inspired and the hope which you breathed. I came back hoping that the bitterness of death was passed, but T. T.'s troubles



brought back the cloud with even severer suffering. No man can see the difficulties that environ me unless he stands where I do. To say that I have a church on my hands is simple enough, but to have the hundreds and thousands of men pressing me with his keen suspicion or anxiety or zeal, to see tendencies which, if not stopped, would break out into a ruinous deluge of me; to stop them without seeming to do it, to prevent any one questioning me, to meet and allay prejudices against T. which had their beginning years before this, to keep serene as if I was not alarmed or disturbed, to be cheerful at home and among friends when I was suffering the torments of the damned, to pass sleepless nights of en, and yet to come up fresh and full for Sunday—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearying and grinding on the nervous system. God knows that I have put more thought and judgment and earnest desire into my efforts to prepare a way for Theodore and Elizabeth than ever I did for myself a hundred fold. But chronic evils require chronic remedies. If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out; no one can offer more than that. That I do offer. Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby. I do not think that anything would be gained by it. I should be destroyed, but he would not be saved. Elizabeth and the children would have their future clouded. Life would be pleasant if I could see that rebuilt which is shattered. But I live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness cannot be endured much longer."

Do you believe, gentlemen of the jury, that it was possible for an innocent man to have penned that letter? Do you believe that that letter was written by a man understanding the full force and meaning of every word that he penned. I say, do you believe it possible that an innocent man could write such a letter as that under such or any circumstances? No, gentlemen; he had received the note of warning from Mrs. Tilton, and he was afraid that the difficulties that were then surrounding Mr. Tilton, and the great load that he was then carrying, would break him down, and that he would be unable longer to suffer in secret, as he was suffering, while to all outward appearances the man who had wrought this ruin was prosperous and receiving the plaudits of his fellow man.

It was the note, as he says in the letter, a note of warning, that he had received from Elizabeth, and fearing that there was danger ahead, he pours out again his soul to his friend, hoping thereby that the appeal might be effectual. If he had said in this letter, "I fear Theodore Tilton will expose the fact of my criminal relations with his wife," it would not have been a more clear and conclusive confession of guilt than it is. "If my destruction would place him all right, that shall not stand in the way." Place him all right? What had been done to him? Why, the pretense is that the wrong had been done to the defendant, to Mr. Beecher by Mr. Tilton, yet, with conscious guilt, with the consciousness of having wrought this great ruin, he says "If my destruction will place him all right, that shall not stand in the way." If my destruction will place him all right?—how place him all right? But while he is willing to do this, while he is willing, if his destruction would place him all right to be destroyed, he reminds his mutual friend that that would not remedy the evil; that Mrs. Tilton and the children would be left to a blight; that their future would be

clouded; that his destruction would not prevent the exposure of the secret. He would be destroyed—"I would be destroyed, but he would not be saved;" because my destruction would lead to the exposure of the very thing that we seek to avoid. But, "I am willing to step down and out. No man can offer more: this I do offer." A man than whom none in the country possessed greater power in his station, at the head of one of the largest churches, engaged in other enterprises, his name co-extensive with civilization—this man offering to step down and out, to vacate his position and retire into private life, if the man who on the 30th of December, 1870, falsely accused him of an infamous crime, says that he shall do it. Think of it for a moment! An innocent man occupying such an elevated position accused by a member of his own church, falsely, of an infamous crime, and after more than a year of planning and plotting with that member to keep the facts secret, offering to give up everything, church, paper, the "Life of Christ," and every work in which he is engaged, at the bidding of the man who had made this false accusation! If the theory of the other side be true, had Mr. Tilton offered himself up as a sacrifice there would have been some propriety in the offering. But for the man thus injured to offer himself up as a sacrifice to the man who had injured him, I submit, gentlemen, is more than human nature can conceive.

"Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby."

I am in the full flush of mental vigor, at the very acme of fame; I have dedicated my life to the cause of religion and morality; I am at the head of a great church; I am editor of a great Christian paper, largely depending upon my influence and my fame; I am writing the "Life of Christ," the delay already in which has well nigh brought ruin upon my friends who are engaged in its publication; yet, notwithstanding all these interests that I have in charge, notwithstanding all the obligations that they impose upon me to go forward in my work, notwithstanding all this—sacrifice me without hesitation, if thereby you can see the safety and happiness of the man who, on the 30th of December, 1870, falsely accused me of an infamous crime. No, gentlemen; there was something beyond that that induced Mr. Beecher on this occasion thus to offer himself up as a sacrifice. He saw before him the possibility of the exposure of this crime. He saw painted in living colors the ruin that he had wrought. He saw the desolation that he had caused; and he saw, further, the still greater, more widespread, desolation that its public knowledge would cause. Anything to prevent that, if it is possible; if it is possible to do it, do it—do it! Don't consider me; I am not worthy to be considered in this case; sacrifice me; do with me as you please. Do with me as you please, if you can thereby see the safety and happiness of the man that I have so wronged—if you can thereby build up that that has been shattered; if you can build up this home again; if you can restore there the happiness which I have destroyed. Do anything, just as you please, just what you think best; I yield myself wholly and entirely to you; I have nothing to say—"sacrifice me without hesitation!" he exclaims:

"Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time."

What does that mean—"this horror of great darkness"—in which he spent most of the time? It was the brooding over of the crime that he had committed; it was the vision, ever present before him, and haunting him day and night; that was the great darkness—the "horror of great darkness"—in which he spent most of his time. He saw children worse than orphaned; he saw a home desolated and those children scattered; he saw the aged parent of these men tottering upon the verge of the grave with dishonor that he had placed upon them; he saw his own high station stained, the robes soiled; and he saw his own family disgraced; and he saw Christendom blush at the crime that he had committed. No wonder that he lived most of the time in the horror of great darkness.

#### A SHARP ANALYSIS OF SIGNIFICANT WORDS.

"Life would be pleasant if I could see that rebuilt which is shattered." What is it that has been shattered, and what had he to do with the shattering? What does it mean? The answer has already been given in the mind of each one of you gentlemen. It was the home that had been shattered, and it was he who had shattered that home, and "Oh! if I could see that rebuilt, life would be sweet, but as it is, I live in the horror of great darkness." "To live," he exclaims, "on the sharp and ragged edge of anxiety, remorse, fear and despair cannot be endured much longer." Every word penned there so carefully was understood fully by Mr. Beecher when he penned that letter. No man understands the meaning of the English language better than he, and when he used that terrible word "remorse" he confessed his guilt. The word itself is a confession of guilt, and implies a crime behind it to cause or produce the feeling of remorse. The very meaning of the word is "to bite again." Remorse is something which keeps biting its victim, gnawing him, preying upon him. As Crogan says: "When remorse is blended with the fear of punishment, and rises to despair, it constitutes the supreme wretchedness of the mind." This is the remorse that Mr. Beecher felt; a remorse blended with the fear of punishment, that is a constant dread of discovery, for discovery carried with it its own punishment, and no wonder that it should engender in him, as our author describes it, "the supreme wretchedness of the mind." No wonder that it should, as another author describes it, "draw him nigh to the grave." There are many kinds of human wretchedness. There is poverty, sickness, bereavement. There are various types of anguish, agony, heart trouble; but remorse is "the supreme wretchedness of the mind," and that was Mr. Beecher's condition of mind when he used that word "remorse." When he used that word he confessed to all that is contained in it. He confessed to a criminality capable of producing the supreme wretchedness of the mind; a guilt which makes remorse possible; a guilt which bites and gnaws and preys upon him, biting like a serpent, stinging like an adder. What was there at this time and at this period that should place him upon "the ragged edge of anxiety and remorse, fear and despair," so far as

the world knew? So far as the world knew, Mr. Beecher was at the acme of his fame. None of these facts which subsequently were made public and so disturbed him had at that time been made public or were known. Bear in mind that at the time he was living in the "horror of great darkness," suffering the torments of the damned," "was upon the ragged edge of despair. fear and remorse," the Woodhull publication had not been given to the world, because that was not published until the 2d of November, 1873. Bear in mind that at this time that he was suffering the torments of the damned, Mr. Tilton's letter to Mr. Bowen, relating charges of moral delinquency made by Mr. Bowen, had not yet been made public, because that did not see the light of day until the 30th of April, 1873. Bear in mind that Mr. West had not at that time notified to Mr. Beecher that he intended to prefer charges against Mr. Tilton and Mr. Bowen, in which was the specification averring that on the 3d of August, 1870, Mr. Tilton had told Mrs. Bradshaw that he had discovered a criminal intimacy between Mr. Beecher and Mrs. Tilton, to which specification her name was attached as a witness. Bear in mind that at this time Mr. Tilton had not appeared at Plymouth Church, and there confronted its pastor with the question whether he had spoken falsely of him or not. Bear in mind that at this time the council that so disturbed the defendant had not yet been called, nor, until November, 1873, were the initiatory steps looking to that council taken. Bear in mind that Mr. Tilton's letter to Dr. Bacon had not been published, because that was not published until the 24th of June, 1874. At the time that he was living in this "horror of great darkness," at the time that he was suffering "the torments of the damned," none of these things had been made public. They had just passed through a successful pew renting of the church. He had delivered a course of lectures to the theological students of New-Haven with great success, which had added greatly to his already great fame. They were thinking of making preparations to celebrate what was known as the "silver wedding," the twenty-fifth year of his ministrations in that church; and at this time when to the world he was at the height of his prosperity, surrounded by powerful friends, with resources unlimited, with fame as broad as Christianity and civilization—at this moment, at this time, thus situated, thus circumstanced in the eyes of the world, standing as the foremost preacher of the age, with nothing, so far as the world knew, to cast a shadow across his pathway, he offers to give it all up; he offers to "step down and out" at the mere suggestion of Mr. Tilton.

Would you require, gentlemen, any other evidence of the guilt of the defendant than he has furnished in the letter to which I have called your attention, taken in connection with the circumstances surrounding him at that time? No; no intelligent man, no intelligent juror, I apprehend, would require any other evidence, and if this language can be explained upon any theory of innocence I shall be for one delighted to hear the explanation. I say to you, gentlemen of the jury, it cannot be explained consistent with innocence. All the sophistry and all the subtleties in the world cannot so gloss and color up the meaning of that letter as to take away the guilt there con-

fessed—as to bury the meaning of those terrible words in that letter.

Oh! but it is said that Mr. Beecher was a coward, and that is what led him to do these foolish things; and that suggestion, gentlemen, calls up another thought in my own mind. Bear in mind that these letters are written by Mr. Beecher voluntarily; they are written to the man who has been entrusted with the secret, whatever it be, and therefore it was at the time an honest expression of Mr. Beecher's feelings. If he had been an innocent man, do you think he would voluntarily have written such a letter as that to Mr. Moulton? If he had been an innocent man do you think that he would have deliberately sat down and written such a letter as that? Why, no; if he had wanted to have seen Moulton he would have seen him; but if innocent he would not have written such a letter as that. And in all the letters he has written during the four years, all the conversations that he has had in writing to Moulton, there is never one intimation that he is fearful of a false accusation being made; no intimation of that. Every letter and every act is based upon the theory of some great wrong committed by him, and not an intimation anywhere in any letter written to a third party, his devoted friend, the man sent to him by God as he says—not an intimation in any of those letters that he was fearful of a false accusation being made against him. Why, gentlemen, is it necessary upon such facts as this to dwell? An innocent man sitting down and writing such a letter as that to a friend, and that friend one in whom he placed implicit, unbounded, unquestioning faith, without ever alluding to the fact. Oh! would he not have said "Frank, this is too bad; you know that this is false—that this charge is false; it is too bad that I should suffer in consequence of that. Stop your friend, stop him." Moulton—he knew that this charge was true, or he knew that it was false—and Mr. Beecher believed that Mr. Moulton knew whether it was false or not. Did Mr. Beecher suppose for a moment that Mr. Moulton did not know whether the charge was true or false? Do you suppose that if his mind was hesitating upon that point, that he didn't know whether Mr. Moulton was aware of the truth or falsity of the charge, and that he would not have informed Mr. Moulton of the fact? It is evident that he supposed that Mr. Moulton knew or believed the charge to be true, and if he supposed that Mr. Moulton believed the charge to be true, and it was false, why didn't he undeceive him? Why didn't he say, "Moulton, you are laboring under a misapprehension here. You believe that this charge is true. It is false; it is false!" No, he says nothing of the kind; but he proceeds upon the assumption that the charge is true and that Mr. Moulton knows it to be true, and he sits down and he writes such a letter as that voluntarily to him. I ask you, gentlemen, again, do you want any further evidence of the truth of the charge that we bring against Mr. Beecher than that letter, with the surrounding circumstances under which it was written?

#### PRAISE OF MR. BEECHER'S BRAVERY.

Now, gentlemen, I come back to the suggestion that I was about to make a few moments ago. The claim that

is made now, that, situated as Mr. Beecher was, fearful of this charge being made, it was his cowardice that induced him to act as he had been acting for four years. Why, gentlemen, if there has been one distinguishing characteristic of Mr. Beecher, it has been his courage, his boldness, his fearlessness. When, in 1863, he faced the mobs of Liverpool and Manchester you recollect how his praises rang throughout this broad land for his bravery, his boldness and his courage; and when he is facing a hostile mob, a hostile crowd, surrounded by strangers, he is as bold as a lion, but when he returns to his City of Brooklyn, where he is all powerful, surrounded by powerful friends, one word from whose lips would have crushed any man who dared utter a false accusation against him, he is a coward. Ah! it is the cowardice of conscious guilt! The bravery he manifested in England was the bravery of truth—conscious truth and the justice of his cause. But here, surrounded by his church, upheld as no man ever has been by his church, in the city where he was all powerful—here he is a coward. What is it that makes him a coward? Conscious guilt. A million of minions, with their false accusations, could not frighten that man. [Murmurs of applause.] But one Tilton, with his truth, appearing before him, and he is a coward. No, gentlemen, I defend to that extent the reputation of the defendant. He is not a coward except when conscious of his guilt, and then we are all cowards. When conscious of his innocence he knows no fear, can face any danger, but his courage all vanishes in sight of the great crime that he has committed. No man can be brave, no man can be courageous when he sees before him a desolated home that he himself has made desolate. No man can be brave when he sees a once happy and loving wife and mother debauched and an outcast. No, in the presence of that man, he exclaims:

"Do with me as you choose; sacrifice me at your will—anything; I deserve it; I merit it. I offer myself up as a sacrifice to the man that I have so wronged."

But, gentlemen, this letter but breathes the spirit of all his letters upon this subject. Every letter, if written to Moulton in pure friendship, contains some allusion to this dark subject. On March 25th, 1873, he writes to Mr. Moulton, in which he says:

"I have been doing ten men's work this Winter, partly to make up lost time, and partly because I live under a cloud, feeling every month that I may be doing my last work."

He is living under a cloud, expecting that every month may be his last, because fearful and apprehensive that at any time this great secret should be made known, and if made known, that that would be the end of his usefulness. That is the way that he talked of this for a long time; and, as I will show you before I get through, was willing at any time to have vacated his pulpit, to have resigned his ministry, to have avoided the exposure of this secret.

During this time of which I am now speaking no other difficulty arose. As I said a little while ago, it has been a succession of difficulties to keep down this fact. They have had to resort, first to one device and another and another, and as one was put away another arose because of the impossibility of concealing permanently such a crime. Mr. Tilton had lost his situation. There was a penalty attached to the contract,

and that had not been adjusted or settled; and Mr. Tilton had instructed his lawyers, Judge Reynolds of this Court, and Mr. Ward, to commence suit. That was another cause of alarm. Fearful that that would lead to the exposure of the secret the defendant was anxious that some measures should be taken to prevent a suit between Mr. Tilton and Mr. Bowen, and finally an arbitration was entered into, Mr. Claflin, Mr. Storrs, I think, and Mr. Freeland being the arbitrators. At the conclusion of that arbitration, or after that arbitration, another device was resorted to to keep down the scandal that was being put afloat at this time and others, and a covenant was entered into, signed by Mr. Bowen, by Mr. Beecher, and by Mr. Tilton, and I will call your attention to a sentence of the portion signed by Mr. Beecher.

"If I have said anything injurious to the reputation of either" (that is to Tilton or Mr. Bowen) "or have detracted from their standing and fame as Christian gentlemen and members of my church, I revoke it all, and heartily covenant to repair and reinstate them to the extent of my power."

Mr. Beach—When was that?

Mr. Morris—The 2d of April, 1872. As first prepared, the part of the covenant signed by Mr. Tilton made him deny that there were any charges against Mr. Beecher, so far as he was concerned. That he refused to sign, but did sign the part agreeing not to reiterate charges Mr. Bowen had made against Mr. Beecher, it having no reference to the charge that we are investigating now; but it was one of the devices resorted to to cover up guilt and prevent the exposure of crime. And bear in mind, gentlemen, that this covenant was signed on the 2d of April, 1872, a year and a half after the charge made by Mr. Tilton against Mr. Beecher of adultery, and in that he says:

"If I have said anything injurious to the reputation of Theodore Tilton," (putting it in the singular) "or have detracted from his standing and fame, as a Christian gentleman and member of my church, I revoke it all."

What, I ask, did he, on the 2d of April, 1872, revoke, as towards Mr. Tilton? And bear in mind, at that time Mr. Tilton had written the Woodhull biography. If Mr. Beecher had for that condemned him, he revoked it all. Bear in mind that before that Mr. Tilton had presided at the Steinway Hall meeting, at which Mrs. Woodhull delivered her lecture. If Mr. Beecher condemned Mr. Tilton for that act, on the 2d of April, 1872, he revoked it all. If Mr. Tilton had excited Mr. Beecher's indignation by proclaiming free love doctrines so that *The Advance* had to be started to supersede *The Independent* in the North-West, he revoked it all. Had he said that prior to this Mr. Tilton was bankrupt in character and morals; if so, on the 2d of April, 1872, he revoked it all. Had he charged Mr. Tilton with promiscuous immoralities, if so, he revoked it all. Had he told Mr. Bowen that he was not fit to edit *The Independent*, because of his free love doctrines, because of his promiscuous immoralities, because of his brutality to his wife, because of his denying the inspiration of the Scriptures and the Divinity of Christ; if so, on the 2d of April, 1872, he revoked it all. Had he accused Mr. Tilton, or charged him with having on the 30th of December, 1870, charged him falsely with an infamous crime:

if so, he revoked it all, and proclaimed solemnly that he was a Christian gentleman. All these things had transpired prior to the 2d of April, 1872, and if Mr. Beecher up to that time knew of or had said anything derogatory to the Christian character of Mr. Tilton, he revoked it all, he was a Christian gentleman. And, but a few days after, in his own paper, he says of him:

"Those who have known him best are the most sure that he is honest in his convictions as he is fearless in their utterance, and that he is manly and straightforward in the ways in which he works for what seems to him best for man and for society."

And this is the testimony of Mr. Beecher, of a man he now declares he then knew to have been bankrupt in morals and in character, to have been guilty of promiscuous immoralities, to have been allbertine! What think you, gentlemen, the defendant means by this conduct? As well may they attempt to argue that I am now talking to you in midnight darkness, rather than in the glare of the noon-day sun, as to attempt to give any other meaning to the conduct of the defendant in this case than that I have attributed to him!

#### WIDE LATITUDE IN INTERPRETING WORDS.

I will call your attention, gentlemen, here to another circumstance. Mr. Beecher says that when Mrs. Tilton made her confessions, she said that Theodore confessed his alien loves. To Mr. Moulton, Mr. Beecher said that Mrs. Tilton told him, that when she made her confession, her husband had made similar confessions to her. She was then excusing her having confessed to Mr. Beecher, and she makes this statement to him. When they speak of alien loves, so far as Mr. Tilton is concerned, they say it means adultery; when she says to the defendant she made similar confessions to him, it don't mean adultery!

#### THE WOODHULL-CLAFLIN STORY.

Now, gentlemen, I will proceed to examine some of the facts occurring in a later stage of the history of this case: On the 2d of November, 1872, was published in what is known as *The Woodhull & Claflin Weekly*, a story in which Mr. Beecher was accused of adultery with Mrs. Elizabeth R. Tilton. At the time that this publication appeared Mr. Tilton was absent from the city and absent from the State. He was in one of the New-England States, engaged in the Presidential campaign, when the story came out accusing his pastor with adultery with his wife. What did Mr. Beecher do in connection with that story, and with that publication; and what, if an innocent man, ought he to have done is the question that now concerns you. Did he, on that occasion, act as an innocent man, or did he on that occasion act as a guilty man? What ought he, as a Christian minister, to have done? Bear in mind, gentlemen, that he was accused of the crime of adultery with the wife of the man he declared but a short time prior to have been a Christian gentleman, and an honored member of his church! And he accused of adultery with the wife of a member of his church—what should he have done? What did he do? He did nothing. He waited until Mrs. Tilton returned. Aye, yes, he did! Because the very night of the publication of that story a meeting of his trusted members, some of

whom afterwards figured on the Committee, was called together at the house of Mr. Halliday, and they are there informed that they had best take no notice of the story, but try and live it down—try and live it down—fearful that his church would take some action, would say to him, "This scandal must be investigated. Here you are charged with adultery with the wife of a member of this church, and she a member of this church," therefore, before any steps could be taken in that direction, this other device was resorted to. Another device, and that was to try and live it down. It may be that the church, it may be that the pastor of Plymouth Church, with his power, with a church that would stand by him right or wrong, guilty or innocent; it may be, with all this immense power, he could live it down, they could live it down, but how, I ask you, in the name of a kind heaven, could the woman live it down? You recollect, gentlemen—if you do not, I will state to you the fact—that after the publication of this story, there was a universal demand throughout the land—a universal call upon Mr. Beecher to speak but one reassuring word, and deny this charge. Every appeal that could be made for the cause of morality, for the sake of religion, by all that he held dear on earth, by every consideration that could be addressed to him, he was adjured to deny the truth of the story. But not a word, not a word. While the cause of religion was suffering from this scandal, and while the trusted member of his church was suffering in the estimation of all womanhood, he remained silent, as silent as the grave, and when Mr. Tilton returned, he induced him, or tried to induce him—him, himself—to publish this statement:

"In an unguarded enthusiasm, I hope well and much of one who has proved utterly unprincipled. I shall never again notice her stories, and now utterly repudiate her statement made concerning me and mine."

Was Tilton the man then to deny that story? who knew absolutely, unqualifiedly, whether the story was true or whether it was false? Mr. Beecher, and against him the charge was hurled and against a member of his church—what was his duty? What should an innocent man have done under such circumstances? Why, he would have branded it as false at the earliest possible moment. He would not have said, "I cannot do that because it proceeds from so low an origin." Oh! no. It was in the paper. I care not what paper, or what the character of the paper was; it was in the paper, and it was his duty, being innocent, to have denied the story and not stop to question its authority. But after that, it appeared in many respectable journals of the land, and those in which it did not appear united in the call upon him to say one word, and give one assurance that there was no truth in the story, that his friends in his behalf, and in the behalf of morality, might deny it. But, no; no denial, no denial. Very truly Tilton replied to him:

"You know why he sought Mrs. Woodhull's acquaintance. It was to save my family and yours from the consequences of your act, the facts about which had become known to her. They have now been published, and I will not denounce that woman to save you from the consequences of what you have done."

Why, I ask again, did he allow this pernicious story to go

throughout the land, eating into his reputation, sully the cause of religion? Why did he do it? Why did he not deny it? Because a denial would have provoked contest on her part. It would have increased the discussion, it would have led to an investigation on the part of his church, and an investigation would have been ruin, because it is of it that he speaks, when he speaks of the difficulties to prevent the "tendencies which if not stopped would break out into a ruinous defense to me." Anything that tended to investigation—anything and everything that look towards developing the truth—was a ruinous defense to him, and that is what he means in his letter. And the difficulty of preventing that tendency, of stopping those tendencies without seeming to do it. What does that mean, "without seeming to do it"? Why, he could not say anything. If he did it would give it importance, and that would lead to disclosure, and therefore he remained silent. He could not say anything in behalf of Mr. Tilton to relieve him from the unjust odium that he has suffered during these four years, of being the slanderer of the pastor of Plymouth Church, because if he did, it would give point to the charge, and so he remains quiet and allows this story to go on uncontradicted, month after month, for six months, and at last he is compelled to deny it. And only when he is compelled to deny it because of fear of more serious consequences, does he hold his peace and say nothing concerning the publication of the truth or falsity of the story.

If your Honor please, it is four minutes ahead of the time of adjourning, but this is a point at which we can conveniently take a recess.

Judge Neilson—Gentlemen of the Jury, please be in your seats promptly at 2 o'clock, to which time we will now adjourn.

### THE FIRST OF THE COMMITTEES.

The Court met exactly at 2 o'clock, pursuant to adjournment.

The Clerk called the roll of the jurors, and they all answered to their names.

Judge Neilson—Proceed, Mr. Morris.

Mr. Morris—GENTLEMEN OF THE JURY: I was calling your attention at the adjournment of the Court to the efforts made by the defendant to prevent an investigation into the facts connected with the Woodhull publication. Although that examination was delayed for a time, yet it was but a little while before a Committee was appointed, of which the defendant was a member. That Committee was appointed in December following the publication of the Woodhull story. Mr. Beecher had made efforts to have a statement made by Mr. Tilton for the purpose of relieving the story, as far as Mr. Tilton was able, of its odious features; and Mr. Tilton prepared a card, which was submitted to Mr. Beecher, which was designed for publication. In that card was quoted the language used by Mrs. Tilton in a letter written to Dr. Storrs. Mr. Beecher objected to the language in that card—the proposed card—which was, in effect, that he had solicited her to become a wife to him, together with all that that word implied, saying that the publication of such a card as that would be just as bad as to publish the entire

\*acts; and the card was not published, and no publication at the time was made with reference to it. I will not stop to call your attention to the precise language of the letter, that portion of it to which Mr. Beecher interposed his objection, but I have given you, I think, very nearly the exact language. Certainly, I have given you the exact idea, that Mr. Beecher had solicited her to be a wife to him, with all that that word or term implied. This, Mr. Beecher says, would be as bad as publishing the whole truth, the fact that he had not only solicited, but that he had accomplished his purpose; and it was with reference to this negotiation that was going on between these parties that Mr. Beecher referred when he said to his Committee, and as an inducement to have them delay action, that he had seen Mr. Tilton lately and that he would publish a card denouncing the Woodhulls. But the card was not published, and Mr. Beecher, when called upon by Mr. West, a member of that Committee, attempted to dissuade him from taking action with reference to the matter. He said to this Committee, when finally he met with them, that he believed that Theodore was one of his best friends; that he had never intentionally tried to injure him, and that by assuming a prudent course with him, they might yet save him and restore him to his former position of usefulness and influence in the church. This was December, 1872, after the publication of the Woodhull story, and he used this language toward Mr. Tilton more than two years after he had charged him with adultery with his wife; that he was one of his best friends, and that he had never tried to injure him. And as evincing his great anxiety concerning an investigation into the truth of the story that had been published by the Woodhulls, I would call your attention to one or two notes written by him to Mr. Moulton:

"Sunday, December, 1872" (the day of the month not given), "Your interview last night was very beneficial, and gave confidence. This must be looked after" (speaking of his interview with Mr. Halliday). "It is vain to build if the foundations sink under the effort. I shall see you at 10 o'clock to-morrow," etc.

And in another letter dated Monday, the day of the month and the month are not given, but at about that time, he says, in speaking of a conversation he had had with Mr. Claflin:

"I asked him if B. had ever made a statement of the very bottom facts. The real point to avoid is an appeal to the church and then a council. It would be a conflagration, and give every possible chance for parties, for hidings and evasions, and increase an hundred fold this scandal, without healing anything. Meantime I confide everything to your wisdom, as I always have with such success hitherto, that I have full trust for the future."

The real point to be avoided is an investigation on the part of the Church, and then a council. Such a proceeding as this would be a conflagration. What would make the conflagration but the revelation of the fact and the crime which we charge him with? Certainly no advice that he may have given Mrs. Tilton; certainly no counsel that he may have given Mr. Bowen; certainly no false charge would make a conflagration, because no man lived who dared make such a false charge against such a man, situated as he was. No; the conflagration would be the revelation of the truth that has been revealed, and that will be revealed now to you in this trial. Indeed, it has been a conflagration, but it has been a conflagration because

the truth has come out. It is because the facts demonstrate beyond cavil the truth of the charge that has been made against Mr. Beecher, of his adultery with the wife of Theodore Tilton.

#### CARPENTER AND CLEVELAND AS PEACEMAKERS.

And why, I ask again, gentlemen, all this anxiety, all this plotting and planning, not only with Moulton, but with Tilton himself, the very man from whom they pretend they feared a false charge? He is plotting and planning with them in order to prevent the exposure of the secrets. The man who is to make the false charge you find in consultation with Mr. Beecher, you find in consultation with Mr. Moulton, and you find them all in conference together, devising cards, preparing cards, planning this movement and planning that movement to prevent an investigation into these facts, and yet they fear a false charge, and the man who is to make the false charge is busy during all these years and all this time trying to plan and plot how he will prevent himself from making that false charge. Such, gentlemen, is the logic of this case. Such are the extremities to which the defendant is driven, in order to attempt an explanation of his conduct. Shortly after this attempt to have this card arranged for publication, Mr. Carpenter, a man whom you know by reputation, a distinguished artist in the city of New York, who had known Mr. Beecher for many years, had been his friend of twenty years' standing—he called to see him, and he made them a proposition to Mr. Beecher designed to avoid the necessity of a public investigation. He said to Mr. Beecher that they were about starting a new paper in the City of New York, and that if he would take the editorship of that, he would be relieved from the dangers, or much of the dangers that surrounded him in his own church, this one and that one pressing for investigation and for explanation, and so favorably did Mr. Beecher think of that that he went with Mr. Carpenter around to Mr. Moulton's, and there discussed the matter, the feasibility of it, it being an opportune time, as Mr. Carpenter said. He had closed his twenty-fifth year of ministration his silver wedding had been had, and he could retire without exciting comment; and after considering the proposition for some time, he said to Mr. Carpenter: "I cannot accept it now, because it will be said that I have left because of the Woodhull publication—that they have driven me out of the pulpit;" and that was the reason, and that was the only reason given by him why he did not adopt the course suggested by Mr. Carpenter. This negotiation was continued for some time; parties went to see Mr. Beecher upon the subject—those who contemplated starting the enterprise—and the negotiation fell through, simply because Mr. Beecher was afraid of the comment that it would excite in consequence of the Woodhull publication.

And now, gentlemen, I come to a period in the history of this case, if possible more conclusive, more absolutely conclusive, against the defendant than any fact to which I have directed your attention—the period closing with the 23d of June, 1873. Within this period are contained facts and events that leave no possibility of doubt as to the

truth of our charge and the guilt of the defendant. The covenant which I have called your attention to had been entered into on the 2d of April, 1873, but notwithstanding this covenant, Mr. Bowen was whispering these stories against Mr. Beecher, and another device had to be resorted to, and this time the device was to find an excuse for publishing the covenant as against Mr. Bowen, to stop his mouth, not as against Mr. Tilton to stop him, and for that purpose a plan was agreed upon, and this was the plan. Mr. Carpenter, to whom Mr. Bowen had repeated these stories, was in company with Mr. Claffin and Mr. Cleveland, and Mr. Moulton, to go and see Mr. Bowen, confront him with these stories, and unless he retracted them, to publish the covenant as against him. In pursuance of this arrangement, Mr. Beecher, on May 25th, 1873—a Sunday—sent Mr. Cleveland with his horse and buggy over to New York to hunt up Carpenter, and that night the interview was held with Mr. Bowen, in the presence of Mr. Carpenter, Mr. Cleveland, and Mr. Claffin; and Mr. Bowen not denying the charges that he had made against Mr. Beecher, the covenant was published. Mr. Beecher, on the same day that he sent his horse and buggy after Carpenter, writes a note to Mr. Moulton, in which he says:

"I sent Cleveland with my horse and buggy over to hunt Carpenter. Will you put Carpenter on his guard about making such statements. From him these bear the force of coming from headquarters."

At another time he says that the first he knew of Carpenter was that he was putting his nose in this business that did not concern him, and on Sunday, May the 25th, he is sending his horse and buggy scouring the City of New-York to find Carpenter, and bring him over here for the very purpose of this interview with Mr. Bowen. And if you look at the letters, the dates of the letters, and the conferences, and the plannings, and the plottings in this case from the beginning, four-fifths of it occurred on Sunday. Before church, after church, at Moulton's, at the church, at Mr. Beecher's, in different places, was this continual planning and plotting in order to prevent an investigation of this secret.

Five days after this conference was had at Mr. Bowen's the covenant is published, May 30, 1873, and the next day the parties came out in denunciation of Mr. Tilton as having been guilty of some great crime toward Mr. Beecher, and as having been magnanimously forgiven by him, and Mr. Beecher chided and blamed because he had not taken the parties into court, and had them punished as their crime deserved. Mr. Tilton said to Mr. Beecher:

"This I cannot, and this I will not stand any longer. You must relieve me of this injustice, or I will relieve myself. I will not, after having suffered this wrong, after having had my family destroyed, my wife debauched, I will not be held up to public odium as having committed a crime against you, and been magnanimously forgiven by you. Relieve me of this or I will relieve myself."

And on a Saturday morning, the day following, Mr. Tilton prepared this card for publication, which was exhibited to Mr. Beecher:

"To the Editor of the *Brooklyn Eagle*: Samuel Wilkeson, a business partner of Henry Ward Beecher, authorized the publication of a part of a document touching the relations of Mr. Beecher and Henry C. Bowen. This document, without the

addition of another of which I presume Mr. Wilkeson had no knowledge, grossly misrepresents Mr. Beecher's relations to myself. The extent of this misrepresentation, even by well meaning journals, is shown by the following extract from the *New York Express*: 'Something under the circumstances was due to the public, Mr. Beecher should remember, as well as to his peculiar friends, Mr. Bowen and Mr. Tilton; and hence, while it was well enough to forgive them for the great, we had almost said irreparable, injury they have done him, it is to be regretted that he did not bring the alleged slanderer or slanderers into open court, to be dealt with as they deserved.' The above indicates the feeling of many hundred men and women as to my supposed unjust behavior towards Mr. Beecher, and is based on the notion that I slandered a clergyman, that I retracted the slander, that I have been forgiven by him and have been magnanimously restored to his confidence. This is the impression which is now becoming general, and is a grievous wrong to me and my family. No longer can I consent to remain in a false position before the public. I therefore append the following statement by Mr. Beecher."

Mr. Everts—What is the date of that?

Mr. Morris—The date of that is the 31st of May, 1873. Then follows the letter of contrition, with four or five words only stricken out, to which is added:

"The above document will show whether it is I who have wronged Mr. Beecher or Mr. Beecher who has wronged me, THEODORE TILTON."

This card was shown to Mr. Beecher on the same day by Mr. Moulton, and he was informed that unless he published a card relieving Mr. Tilton from the unjust odium cast upon him by the publication of the covenant, that he, Mr. Tilton, would publish this, and at the same time Mr. Moulton submitted to Mr. Beecher for his consideration a card which Mr. Tilton had prepared for him, Mr. Beecher, to publish. He had his choice—publish the card that was proposed or one similar for himself, or Mr. Tilton would publish this card in his own vindication.

#### MR. BEECHER'S LETTER OF RESIGNATION EXPLAINED.

You will perceive, gentlemen, that in this proposed card of Mr. Tilton, he makes no charge against Mr. Beecher. He accuses Mr. Beecher of no crime whatever. He does not say that Mr. Beecher has been guilty of adultery with his wife. He makes no charge, whatever, but he simply proposed to print the letter of contrition written by Mr. Beecher, on the 1st of January, 1871, that is all. He makes him his own accuser; he holds up before him his own written confession of guilt, and appalled by the prospect, bewildered at the idea of the publication of that letter, what does he do? He writes this:

"May 31, 1873. To the Trustees of Plymouth Church: I tender herewith my resignation of the sacred ministry of Plymouth Church. For two years I have stood with great sorrow amongst you, in order to shield from shame a certain household. Since a recent publication makes this no longer possible, I resign my ministry and retire to private life.

"HENRY WARD BEECHER."

With that he goes to Moulton on Saturday night, May 31st, 1873, and delivers it to him. Moulton then chides him and calls him a coward. He takes this card, Theodore Tilton being

present, not in the same part of the house with him, but there at Moulton's—he takes this card, this letter of resignation, and shows it to Mr. Moulton. That is what Mr. Beecher proposed to do to end this.

Theodore Tilton turns to Mr. Moulton and says :

"If he publishes that with such a reason, I will shoot him on the spot. If he resigns his ministry with such a stain as that left upon my family, I will not stand it : I will not permit it. As well might he come out and confess at once, because *that* is a confession, and it would brand and blast my family.

"Among," says Mr. Beecher, "the last desperate efforts to restrain him from overwhelming himself, his family, myself, the Church, and the whole community with the fetid flood of scandal, which he had by this time accumulated, were those connected with the charges of Mr. West. \* \* Mr. Moulton insisted that everything must be done to prevent this trial, as the Examining Committee was likely to be equally divided, whether the facts sustained Mr. Tilton's plea, whether he was out of the Church or not. I was so determined to carry out my pledges to Moulton, for him, and do all in human power to save him even from himself, that I was ready to resign, if that would stop the scandal. I wrote a letter of resignation, not referring to the charges. It was not delivered. I considered that it would be a useless sacrifice to do it."

In connection with this fact let me call your attention to the fact that the charges referred to by Mr. Beecher as being the occasion for writing this letter of resignation, on the 30th of May, 1873, to wit, the charges preferred by Mr. West against Mr. Tilton, were not made until the 17th of the following October. The plea to which he referred as being the cause, and concerning which Mr. Moulton thought the Committee would be divided, was not made until the 20th of October following, and at the time that this letter of resignation was written the charges had not been made ; no steps had been taken concerning them. Talk had been had in the church with reference to investigating the facts connected with the Woodhull publication, in reference to Mr. Tilton's connection with the church after the publication of the biography, but the first notification that Mr. Beecher had, or intimation that these charges were to be preferred, was on the 26th of June, 1873, and the charges were made the following October, the plea the 20th of October. No, gentlemen, it was not to save Mr. Tilton from the investigation of these charges that Mr. Beecher wrote his letter of resignation and was willing to resign from Plymouth Church and retire to private life, but it was because Mr. Tilton was going to publish his letter of contrition which he regarded, and which is a confession of guilt; that is all. Mr. Tilton proposed to make no accusation against him; he made no accusation in this card; he made no charge whatever. He let Mr. Beecher be his own accuser. He says :

"I will publish that card, and all that it contains aside from the mere introductory portion of it is the letter of contrition."

Appalled at the prospect, driven to frenzy at the idea of that letter being made public, he writes his resignation, and offers to retire from Plymouth Church, and it was only the course taken by Mr. Moulton and the courage that Mr. Moulton infused in him on that occasion, that saved Mr. Beecher to Plymouth Church. On the 31st of May, 1873, Henry Ward Beecher would have ceased to be the pastor of Plymouth Church had it not been for Francis D. Moulton, of whom that

very church subsequently cried out: "Kill him! kill him!" Do you doubt, gentlemen, what this letter of contrition refers to? Do you doubt its meaning and its import when the mere idea of its publication drove the author of that letter to resign from his church, from his position; willing to give up his ministry and retire to private life simply because a recent publication made it no longer possible for him to maintain these secrets? The publication he refers to was the "tripartite covenant," and the comment resulting from that, unfavorable to Mr. Tilton, and Mr. Tilton's administration at last, at last to relieve himself from this unjust odium, or compel Mr. Beecher to relieve him; and when that was brought to his mind, and he could see no way out of it at that time, wearied with his sufferings he determined to put an end to them in this way, by resigning his ministry and retiring to private life.

And on the following morning, June 1st, in utter despair and desolation at the prospect before him, he writes to Mr. Moulton this letter:

"The whole earth is tranquil and the heaven is serene, as befits one who is about to finish his world life. I could do nothing on Saturday; my head was confused." (Saturday was the day that his attention was called to the intended publication of that letter of contrition.) "I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt changes, rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves. It is only fair that he should know that the publication of the card which he proposes would leave him worse off than before."

What is there in this card that was going to so affect Mr. Tilton? What is there in it that is going to leave him worse off than before? What is it that is going to leave him so badly off? Why, because the crime against his family will then be revealed. He now has the knowledge of it, but few know it. The publication of that card will leave him worse off, because that will reveal the fact that a blight has come upon his family, and a blight upon the children to which it attaches. That is why the card would leave him worse off than before. Better suffer now even as you are suffering than publish that card, because, if you do, you reveal the crime; in revealing the crime you blast your own family. "The agreement was made after my letter through you was written." This is the letter which, through him, was written; he had it a year.

"He had condoned his wife's fault. He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife, nor leave his children to a blight. I had honestly and earnestly joined in the purpose, and this has been perverted."

What did he mean when he enjoined upon him with this earnestness not to leave his children to a blight? Why, he implored him not to make a confession, that would reveal the guilt, not to do as another faithful member of his church was advising him to do, make a confession to his church of the crime that he had committed. Mr. Tilton implored him not to make such a confession, because such a confession would leave his children to a blight. And that is what he means when he says that Tilton had enjoined upon him with the utmost earnestness and solemnity, not to betray his wife, nor leave his children to a blight.



"Don't confess your crime; if you do, you leave my children to a blight." He promised not to confess, and but for that promise, or but for that appeal, in all probability, he would have yielded to the appeal of another who counseled him to confess before his church, as he had stated he had confessed before his God, and obtain their forgiveness, as he professed to have obtained the forgiveness of his God.

"I shall write for the public a statement that will bear the light of the judgment day. God will take care of me and mine. But oh! that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity, your disinterested friendship! Your noble wife, too, has been to me one of God's comforters. Therefore, there is no use in further trying. I have a strong feeling upon me, and it brings great peace with it, that I am spending my last Sunday and preaching my last sermon."

"I shall write a statement that will bear the light of the judgment day."

I shall confess before my Church and before the world the sin that I have committed, and end my earthly suffering by taking my own life. If the letter means anything other than this, I should like to hear it explained. "He had condoned his wife's fault." What had his wife done? What had she been charged with doing? What fault had she committed? His advice to her was no fault. Mr. Beecher's advice to his wife, favoring a separation, was no fault of Mrs. Tilton's that required condonement at the hands of her husband. "He had condoned his wife's fault." He had implored him not to leave his children to a blight. What was going to cast a blight upon the children but the one crime that we charge? That is the crime that would cast a blight upon the children, and the only crime that would. But, as I have said, gentlemen, on this occasion, on the 31st of May, 1873, Mr. Moulton saved Mr. Beecher to Plymouth Church. Now, in answer to the letter which was written, to which I have called your attention, on Sunday morning, June 1st, Mr. Moulton immediately sent a letter, from which I will read now but one sentence:

"June 1st.—I don't think it impossible to frame a letter which will cover the case."

On the evening of June the 1st, Mr. Carpenter, to whom I have alluded, attended Plymouth Church. After the service was over, Mr. Beecher called Mr. Carpenter aside and said to him in great anxiety, "Have you seen Theodore?" He replied, "No;" and then Mr. Beecher said, "He is going to publish my letter. Mr. Carpenter replied, "Well, what of it?"

The answer came, "It will be my ruin and his, too, because he cannot rise on my ruin." What, I ask you, in view of these accumulated and accumulating facts, does that letter refer to, the bare publication of which is going to destroy its authors and destroy the man for whom it was written? What does it mean? "It will be my ruin and his too." How will it be his ruin? How will it ruin either Mr. Beecher or Mr. Tilton, except there is but the one inference to be drawn from that letter? And there is but the one inference, and that is the existence of criminal relation between Mr. Beecher and Mrs. Tilton, the knowledge of which would ruin both, would cast a blight upon both, and ruin his family. After church he goes around to Mr. Moulton's in company with Mr. Carpenter, and on his way exclaims:

"I can bear anything but the suffering of others for my fault.

If Theodore will not do this thing, publish that letter, if he will withhold it, I will divide my fame and my fortune with him."

Oh! what terrible thing does this letter allude to that should induce such expressions, that should make him fear that the knowledge of its existence would bring ruin upon him? To suppress its publication he would divide his fortune and divide his fame. What, what I ask you, does it allude to? Need I tell you, as sensible, reasoning, intelligent men, that there is but one crime, but one domestic crime that a man can be guilty of that would lead to such consequences as the publication of this letter would have led, in the estimation of Mr. Beecher at that time? Well, he went around that night, the evening of the 31st of May, 1873, to Moulton's, his faithful friend and true, as Mr. Beecher said as late as the 8th of July last, putting his arms around his neck in the presence of Mr. Robinson—"God never raised up a truer friend to man than he."

#### BEECHER'S LETTER EXONERATING TILTON.

And this true friend, when he went to him in his sore distress and trouble, not knowing what to do, which way to turn, devised a mode of temporary escape, and instead of writing a statement that, as intimated in the letter of the 1st, would bear the light of the judgment day, this card is prepared:

"To the Editor of The Brooklyn Eagle, June 1, 1873. DEAR SIR: I have maintained silence respecting the slanders which have for some time past followed me. I should not speak now but for the sake of relieving another of unjust imputations. The document that was recently published bearing my name with others, was published without consultation either with me or with Mr. Tilton, nor with any authorisation from us. If that document should lead the public to regard Theodore Tilton as the author of the calumnies to which it alludes, it will do him great injustice. I am unwilling that he should even seem to be responsible for unjust statements whose force was derived wholly from others."

The unjust imputations referred to, in this card were that Mr. Tilton had slandered Mr. Beecher, had accused him falsely of committing crime, and had been forgiven by him. To relieve him from these unjust imputations of having done him a wrong he published this, and he says, in effect, "Mr. Tilton has not slandered me, Mr. Tilton has not wronged me, and I should be very sorry if the public should receive that impression, that he has slandered me, because others and not he, are to blame; he has not slandered me." This, gentlemen, was June 2, 1873. It was the day after the writing of the letter to which I have called your attention. It was two days after the writing of the letter of resignation. With the publication of that, Mr. Tilton was satisfied, and the card that he intended to publish was withheld. All that he asked was that he should not be held up in public as a slanderer against Mr. Beecher, when he had not slandered him; that he should not be put in the attitude of having been magnanimously forgiven by Mr. Beecher, when it was he who had shown the magnanimity towards Mr. Beecher. All that he asked was not that the secret be exposed, but that Mr. Beecher would say some word, however little, to relieve him from this unjust imputation. And when Mr. Beecher

spoke the word that he did in that card on Monday, June 2, Mr. Tilton refrained from publishing his card, or rather refrained from publishing Mr. Beecher's own accusation against himself. As might naturally be expected, the publication of such a card from Mr. Beecher at such a time and under such circumstances caused a good deal of anxious inquiry on the part of members of the church. They could not understand why it was that Mr. Beecher should publish a card of that kind, relieving Mr. Tilton from the imputation of having slandered him, of having spoken falsely against him. They could not understand this, because at that time, June 2, 1873, or prior to that time, Mr. Tilton had published the Woodhull biography. Upon the publication of that, steps were taken in the church to have his name dropped from the roll of membership. He had presided at the Steinway Hall meeting, which had subjected him to a good deal of criticism. His letter to Bowen had been published, in which Bowen made certain charges of moral delinquency against Mr. Beecher. His letter to a complaining friend had been published, in which he said :

"So when you prompt me to speak for her, you countervail her more Christian mandate of silence. Moreover, after all, the chief victim of the public displeasure is myself alone, and so long as this is happily the case, I shall try with patience to keep my answer within my own breast, lest it shoot forth like a thunderbolt through other hearts."

His story to Mrs. Bradshaw had been told two years. Mr. Beecher was aware of the fact. Members in his church knew that that story had been told to Mrs. Bradshaw, that he had accused him directly with criminal intimacy with his wife. His criticisms upon Mr. Beecher's course had been published in *The Golden Age*, containing, among others, the following language

"To think one thing and say another; to hold one philosophy in public and another in private; to offer one morality to the multitude and keep another for one's-self, is a degradation of no man so much as a minister and a blot upon nothing so much as upon religion."

It was after all these things had taken place, it was after Mr. Tilton had done all these things, on the 2d of June, 1873, that Mr. Beecher published this card concerning him, relieving him from all these unjust imputations, giving it to be understood by the world that he had never injured him, never spoken untruthfully of and concerning him, which was the truth. So that you see, gentlemen, that it was the most natural thing in the world that Mr. Beecher's friends should be astonished, knowing the facts, knowing that Mr. Tilton had accused him of adultery with his wife, knowing that he had done these things, I say it was the most natural thing in the world that they should be astonished at such a letter at such a time from Mr. Beecher in regard to Mr. Tilton. But he had no alternative. Better to resort to that device, better bear the criticisms that that letter evoked, better bear the blame that that would call down upon him,—better do anything than have his letter—his own letter—published to the world. It would proclaim his guilt. It was to prevent that catastrophe that he consented to the publication of this card. He had no alternative—"Do that, or I will do this" was the command of

Mr. Tilton upon that occasion. Guided by the wise counsels of Mr. Moulton, he published this card.

#### THE PERPLEXITIES THICKEN.

For the moment, again, the storm had passed. The friend whom God had sent him in his sore extremity had with his hand again tied up the storm that was about to burst on their heads and on our heads, and again there was partial peace concerning this crime. But, as I have said before, it could not last long. Deeper and deeper was he being involved in difficulty. His extrication from one difficulty involved him in a still greater. Temporarily preventing the publication of this letter induced inquiry concerning its publication on the part of his friends and members of his congregation. So it goes on, step by step, one difficulty coming up after another, and as fast as one device is resorted to, another becomes requisite, until the difficulties at last so accumulate that no power on earth can prevent the storm. The hand that for four years had held the gathering storm, tied up at last, fell powerless by the side of his friend, and the storm came. And when the storm came, all the fury of the gale was attempted to be turned upon the head of this God-sent friend who for so long a period had stayed off the day of reckoning.

#### BEECHER'S DREAD OF WOMEN'S TONGUES.

Having allayed the excitement in the church, having prevented the investigation there, other difficulties come up. Steps are being taken to initiate a council, and in his anxiety to ward off the threatening dangers that were gathering about him, he again appeals to his friend :

"Sunday night," (no date) : "My dear friend : . *The Eagle* ought to have nothing to-night. It is that meddling which stirs up our folks. Neither you nor Theodore ought to be troubled by the side which you served so faithfully in public. The Deacons' meeting, I think, is adjourned. I saw Bell. It was a friendly movement. The only next near danger is the women Morrell, Bradshaw, and the poor, dear child."

And what was this danger? Mrs. Morrell knew and Mrs. Bradshaw knew this dread secret, and he was afraid that the poor, dear child, as he calls her, too, might talk ; might confess again. And it was from them that he apprehended danger. How to get rid of that, how to guard against that, he did not know. Always in these extremities, in these difficulties, he turns to his friend Moulton.

"If the papers will hold off a month we can ride out the gale, and make safe anchorage, and then, when once we are in deep, tranquil waters, we will all join hands in a profound and genuine *Laus-Deo*, for through such a wilderness only a Divine Providence could have led us undevoured by the open-mouthed beasts that lay in wait for our lives."

And all this about nothing ! All this because he had given, not injudicious, but judicious advice—advice that it was his duty to give.

"Sunday A. M.," no date—upon the same point—"Your interview last night was very beneficial ; it gave confidence. This must be looked after. It is vain to build if the foundations sink under every effort."

Your interview gave confidence ; your interview with Halli day last night gave confidence. How did it give confidence Why, by that faithfulness which characterized his course

for four years, he had allayed Mr. Halliday's suspicions, and that had given confidence. That is the point that must be looked to. Under no consideration, under no circumstance must the truth be known, and whenever, by any device, whether by an evasive answer, or by a suggestion made by his friend, then he is sent of the Deity to protect and to serve Him! But, as I said, at last the charges came, and one specification of those charges is, that he had stated that he had discovered a criminal intimacy between Mr. Beecher and his wife, and the name of as respectable, as Christian a woman as lives in the City of Brooklyn was given as a witness. And with this fact upon the records of the Church, he has been denounced throughout the land as having preferred a false charge, and never until after the Investigating Committee was appointed, having accused his pastor with the crime of adultery with his wife.

There is the record, known and read of all connected with the church. Well, this charge made by Mr. West, not yielding to the counsels and the persuasions of Mr. Beecher, but actuated by a conscientious sense of his own duty in making the charge; here was another contingency to be met. Other devices must be resorted to to prevent this investigation, because if this investigation goes on, most assuredly the truth must come out. What device can we resort to? Again he turns to his God-sent friend Moulton, and the device is arranged and agreed upon by Mr. Beecher, by Mr. Moulton and by Mr. Tilton. And this is the device. Mr. Tilton is to write a letter stating that four years ago he had withdrawn voluntarily from the church, since which time he had not been a member, and therefore was not amenable to their process. Such a letter was written; and for that device, when Mr. Beecher the next day met him, he clasped him by the hands and exclaimed, "Theodore, God inspired you to write that letter." Well, that was a successful device. It prevented the investigation into the truth of the charge that Mr. West had made against Mr. Tilton of slandering the pastor of the church. But what was to be done in order to prevent, in the conclusion of that matter, any reflection upon Mr. Tilton? A simple preamble reciting the facts of his having voluntarily withdrawn from the Church, and then a resolution that the record be corrected in accordance with the fact was agreed upon.

#### TILTON'S CHALLENGE TO BEECHER IN PLYMOUTH CHURCH.

But on the 31st day of October, when the Committee were to make their report, Mr. Tilton hearing that a different report was to be made by the Committee and that he was to be placed in the attitude of having shrunk from his duty and of having avoided investigation or trial by this special plea of non-membership, wrote a letter to the Committee which was shown to Mr. Beecher, a sentence of which I will read:

Mr. Beach—What is the date of it?

Mr. Morris—31st of October, 1873. "I therefore say, first, I have never spoken against Mr. Beecher falsely; and second, if either he or the Committee shall request me to waive my non-membership and take my position once again as a member, I will do so long enough to appear this evening at the meeting to answer before the assembled congregation the following ques-

tion from either Mr. Beecher or the Committee, namely, 'Have you, Theodore Tilton, ever spoken against Henry Ward Beecher falsely?'"

And he did go there that night and attended this meeting of Plymouth Church, and when the report was made reflecting upon him and putting him in the attitude of having slandered Mr. Beecher, and then of having failed to meet the charge by putting in the special plea of non-membership, he went there before the assembled congregation, and he said in the presence of that assembled congregation and in the presence of Mr. Beecher:

"I therefore have come here to-night, not from any obligation of membership, since I am not a member, and not summoned by your Committee, for no Committee has summoned me, (it was a mere notification), but of my own free will, prompted by my self-respect, and as a matter vital to my life and honor, to say in Mr. Beecher's presence, surrounded here by his friends, that if I have slandered him I am ready to answer for it to the man whom I have slandered. If, therefore, the minister of this church has anything whereof to accuse me, let him now speak, and I shall answer, as God is my judge."

What is the answer? What would have been the answer of an innocent man, and what the answer of a guilty man? Hear it:

"I desire to say further," says Mr. Beecher, "that I do not believe that Mr. Tilton has desired in any way whatever to shirk his proper responsibility, or to evade any proper charge that might be made by the Church. He asks if I have any charge to make against him. I have none. Whatever differences have been between us have been amicably adjusted, and, so far as I am concerned, buried. I have no charges."

On the 20th of July, 1874, the defendant declared that he could not delay for an hour to defend the reputation of Mrs. Elizabeth R. Tilton, upon whose name, in connection with his, her husband had attempted to pour shame. And yet, when the publication was made on the 2d of November, 1872, the defendant did not rush to the defense of the honor of this Christian woman. And when Mr. West, in 1873, charged that Mr. Tilton had charged him with having committed adultery with his wife, giving the name of the witness, he then did not rush to the defense of the honor of Elizabeth R. Tilton. She, a member of his church, charged with this crime. He charged with this crime with her, instead of coming to her defense, the defense of her honor, he resorts to every device that he can imagine for the purpose of avoiding the investigation, for the purpose of preventing the opportunity of vindicating her chastity, if he could, to keep the thing buried up, and, in his own language, "thought that the Church had better try and live it down," while her reputation for chastity remained under this cloud. No attempt, then, to defend the honor of Mrs. Elizabeth R. Tilton. And when these charges are made, coming from such a source as they did, the Church, anxious for an investigation, the opportunity then presented him of vindicating the honor of Elizabeth R. Tilton, does he do it? No; but he tries to prevent it by a trick, by a device of words, leaving her to rest under this charge of having been debauched by her own pastor! No attempt then to rush to her

rescue. Too late now to say that he could not rest for one hour when her honor was attacked, but must rush to her rescue. Too late now to play that role of the defender of the honor of Elizabeth R. Tilton! The day is past. Years ago the opportunity was presented, because the charge was made against him when her husband was away in a distant State, when it was his duty, when he was called upon by every obligation of honor, of manhood, to defend, then, Elizabeth R. Tilton, and if the infamous charge was false to brand it as false. But he does not come. He is as silent as the grave, and so when opportunity after opportunity presents itself, she all the time resting under these charges and these imputations, instead of rushing to her rescue and defending her honor, he tries to prevent the opportunity, to set aside the opportunity in which he might defend her honor, and leaves her to sink lower and lower in the depths of infamy. Too late, I say, now, to play the role of defender of the honor of Elizabeth R. Tilton.

The following month, during November, 1873, preliminary steps were taken to call the council. On the 9th of November—Sunday—Mr. Beecher met Mr. Tilton at Moulton's, his friend, where he was in the habit of going almost daily, and he said, "Theodore, if you don't turn against me, Dr. Storrs can do me no harm." And during the council a criticism was made upon the conduct of Elizabeth R. Tilton in having accused Mr. Beecher, by a member of his own church, and the very thought of such a criticism at such a time against Mrs. Tilton and Mr. Tilton, filled him with horror; and he writes again to his friend Moulton (for he always turned to him in these hours of sore extremity) and he says—again it is Sunday—"Sunday night"—all these plottings and plannings, pretty much, were the work of the Sabbath:

"My dear Frank, is there to be no end to this trouble? Is wave to follow wave in endless succession? I was cut to the heart when C. showed me the shameful paragraph from *The Union*. Its cruelty is beyond expression. I felt like lying down and saying, 'I am tired, tired, tired of living or of trying to resist the devil of mischief.'"

Every person who did anything that seemed to point to an investigation or a development of these facts was the devil of mischief.

"I would rather have a javelin launched against me a hundred times than against those that have suffered so much, but there are some slight alleviations. The paragraph came when the public mind was engaged with the council, and with Theodore's letters. I hope it will pass without further notice. I must be again, as I have heretofore been, indebted to you for judicious counsel. On this new and flagrant element my innermost soul longs for peace; if that cannot be, for death."

And so you see, gentlemen, the terrible anxiety and terrible agony that every step, that every movement, that everything that is done tending to bring out the facts in this case, causes Mr. Beecher. I have not read the whole of this letter; I will leave some portions of it, as it is not necessary to do, in presenting my view, until we present it formally in proof.

Still later he writes another letter to Mr. Moulton, in which he says:

"Mr. Storrs has determined to force a conflict, and to use one of us to destroy the other, if possible. I am in hopes that

Theodore, who has borne so much, will not consent to be a fiail in Storrs's hands to crush me."

In the Spring of 1874, of the charge of adultery, made the 30th of December, 1870, he writes this letter to Mr. Moulton, and says he hopes that Theodore, "who has borne so much, will not consent to be a fiail in Storrs's hands to crush me." And after the council was ended that had given so much trouble, and so much anxiety and so much fear, then again arose another difficulty—a difficulty this time more formidable than all the others.

#### THE CULMINATING POINT—DR. BACON'S LETTER.

It was a difficulty that finally culminated in the exposure, and was the means of bringing us here in this Court, and before this jury. After the adjournment of the Council, unfavorable criticisms, as after the publication of the "tripartite covenant," were made against Mr. Tilton, and he was held up to the world as one of the worst of men, the creature of Mr. Beecher's magnanimity, and he (Beecher) the most magnanimous and generous of men. Again Mr. Beecher is appealed to to stop this cry, but again his courage fails him, again he manifests his cowardice, because to say to these men who were thus accusing Mr. Tilton, to say to Dr. Bacon: "Don't say that about Theodore, it is not true, it is not correct;" or, "Don't abuse him, it is not right; he has done nothing that justifies that abuse. I have wronged him; I have given him cause, don't say that; stop, please, stop, please, stop your abuse." He dare not do that; he had not the courage to do it, because Dr. Bacon would then have said: "What has this man done that he now takes blame upon himself, and that he now receives, and after all that has been said, and after all these years that he now comes forward and relieves Mr. Tilton?" He could not do it. You see, gentlemen, he could not do it. No, he had not courage to do it, and he let the thing float along, taking the chances. It could not be worse. To do that would place him in the awful position of having done wrong, and these men, then, would renew their inquiry and their energy to ascertain what the truth was, and he stood paralyzed, appalled at the prospect that was before him, and at last, unwilling to do anything to relieve Mr. Tilton, Mr. Tilton relieved himself. He published the Bacon letter that has now become historic, and ever will be. And what was the point in that letter that rang throughout Christendom? What was it that brought on this consternation? What was it that made the Christian world stand aghast? What was it? Any charge that he had made against him? Oh! no, he simply said he had been guilty of an offense against him and his family some years ago, but the people paid no attention to that. The press made no comments upon that. That they didn't look at. An offense! The word was indefinite, and that was not the thing that caused such a commotion, that caused such excitement, that caused everybody to ask every person he met, "What does this mean? What great crime has Mr. Beecher been guilty of?" What was it? Oh, it was only a quotation from the letter of contrition! A few lines from that letter—a few lines written by Henry Ward

Beecher himself sent dismay throughout the land. People said and people believed that the great preacher of the land had fallen, and that he had sinned against the commandments, that he had sinned against the precepts of our Savior—that he had committed adultery with a member of his own church, that he had debauched the wife of his bosom friend. What was it? What was it that sent this consternation throughout the land? It was Henry Ward Beecher accusing himself, standing before the world as his own accuser. Do you still doubt, gentlemen, to what that letter refers? Do you still doubt, in the face of the facts that I have already presented to you, that our charge is true, and that Henry Ward Beecher did debauch the wife of Theodore Tilton, the plaintiff? Do you doubt it? If you do, still I have hope, because I will yet present to you evidence still more conclusive, still more overwhelming. I don't mean to leave this case until you are convinced. We don't mean to leave this Court until we go out vindicated. We don't mean to leave until justice has been vindicated, and until a proper malediction, by your verdict, shall have been given to this crime, this great crime that has been committed by Henry Ward Beecher against the peace, against the family of Theodore Tilton, and against the morals of the world.

[To the Court.] If your Honor please, I can close at the morning session, I think, without occupying the whole of it. I have been sick and laboring under a great deal of pain for two days, or I should have closed to-day. I will ask about an hour in the morning.

Judge Neilson—I can appreciate the very great labor that rests upon the counsel, of course, still I was very desirous that you should have closed to-day, if you could.

Mr. Morris—I would like to have an hour in the morning. I am not physically able to conclude my opening now.

Judge Neilson—I will say to the counsel that I have handed to the foreman some tickets of entrance for his friends. [To the jury.] Gentlemen, you will remember the injunction I have heretofore given you as to this case, and the importance of your not conversing about it with each other. Please attend to-morrow morning here punctually at 11 o'clock.

### THIRD DAY'S PROCEEDINGS.

#### MR. MOULTON UNDER OATH.

**CLOSE OF MR. MORRIS'S OPENING ADDRESS—THE COURSE OF PLYMOUTH CHURCH DENOUNCED BEFORE MANY OF THE MEMBERS—MR. CARPENTER'S TESTIMONY TO BE VERY IMPORTANT—AUGUSTUS MAVERICK THE FIRST AND FRANCIS D. MOULTON THE SECOND WITNESS.**

Mr. Morris closed the opening address in the Brooklyn scandal suit on the morning of Jan. 13, and two witnesses were called to the stand—Augustus Maverick and Francis D. Moulton. Mr. Morris reviewed the proceedings of the Plymouth Church Investigating Committee after the publication of Mr. Til-

ton's letter to the Rev. Dr. Bacon, and contended that every act of Mr. Beecher in connection with that inquiry was virtually an admission of guilt. He referred to two of the witnesses for the prosecution—Francis B. Carpenter and Francis D. Moulton. The announcement that Mr. Carpenter would testify that Mr. Beecher had confessed guilt to him was a surprise to every one. After recess Augustus Maverick gave unimportant testimony in relation to Mr. Tilton's marriage; and then Mr. Moulton was examined by ex-Judge Fullerton. His testimony related to the first meeting between Mr. Tilton and Mr. Beecher at his house, the circumstances under which the apology was written, and the subsequent interview between himself and Mr. Beecher. Mr. Moulton will resume his testimony to-day.

#### ELEMENTS OF THE AUDIENCE.

Mr. Tilton's friends were in the gallery on Wednesday, Jan. 13; Mr. Beecher's in the seats back of the lawyers' tables. One might almost have imagined that it was a Friday night prayer-meeting, so numerous were the representatives of Plymouth Church. Besides Mr. Beecher and Messrs. Shearman and Hill, there were the Rev. S. P. Halliday, Roswell S. Benedict, Abijah Whitney, Elliott C. Davidson, B. G. Carpenter, Wallace E. Caldwell, E. A. Studwell, Moses K. Moody, Wm. B. Smith, George Christensen, Jas. H. Watson, Mr. Bullard and sons, Jacob B. Murray, Edward J. Ovington, Henry M. Cleveland, Capt. Eldredge, Prof. R. W. Raymond, Horatio King, Moses S. Beach, and many more. Mr. and Mrs. Beecher were thus surrounded by their friends, and breathed a Plymouth Church atmosphere. They entered the court-room quietly, and took seats slightly to the left of those which they had occupied on the previous day. A bouquet of flowers was awaiting them on one of the tables, Mrs. George Christensen repeating the attention which she had previously shown. Their two sons were on their left. Henry M. Cleveland, a member of the Investigating Committee, was on the right, and Augustus Storrs, another member, the Rev. S. B. Halliday, Prof. Raymond, and E. J. Ovington were close at hand. Mr. Morris's address was virtually an arraignment of Plymouth Church as well as of its pastor, and this body-guard from the Church seemed to be drawn together by an instinct of self-protection. The denunciations of the policy of the Church, and of the hollowness of

the investigation were received with a cynical smile, and when Mr. Moulton faced the audience from the witness-stand, many a brow in the Plymouth section of the house was clouded, and there were fierce glances of hostility, which reminded one of that stormy session in Plymouth Church when the report of the Committee was adopted, and one man was hissed and hissed.

Mrs. Tilton was accompanied by Mrs. Anna M. Field and Mrs. Thomas G. Shearman, and was escorted to the court-room by Edward J. Ovington and ex-Judge Morse. The two ladies and Mrs. Tilton's father-in-law sat apart from Mr. and Mrs. Tilton, nearly in the center of the room. Mrs. Tilton's slight, retiring figure is a foil to the more commanding presence of Mrs. Field. Before the proceedings opened there was a buzz of conversation in this part of the room, and Mrs. Tilton chatted gaily with her friends, now and then glancing timidly in the direction of her husband.

He sat alone some distance off, with his back turned and his eyes riveted upon the jury-box. His attention is absorbed in this case and he wastes no side-glances upon his estranged wife or her pastor. He rarely smiles, and his features are as calm and immutable as Mrs. Beecher's. Ex-Judge Fullerton sat between him and Mr. Moulton during the morning session. In the afternoon Mr. Tilton was the center of the circle of his counsel, and made frequent suggestions to them.

Mr. Tilton's counsel referred several times in a sneering way to the spectators as "Mr. Beecher's audience," and even threatened to bring in their own body of partisans at the next session. During the recess the tables of the counsel were moved, and it was charged that the Plymouth Church body-guard were driving Mr. Tilton's counsel into a corner near the bench. Although Mr. Tilton had only one friend close at hand besides his counsel, it was evident that he had many partisans in the audience, for when Mr. Morris concluded, the applause, although it was instantly checked, was emphatic and hearty. It came mainly from the galleries.

Among the spectators were the Rev. Mr. Maynard, the Rev. Mr. Eddy of Jersey City, the Rev. Mr. Buckley, the Rev. T. De Witt Talmage, Alderman Ripley Ropes, Police Captain McLaughlin, County Treasurer Gardner, Sheriff Williams, ex-Senator Pearce and Senator Murphy. Mr. Talmage shook hands heartily with Mr. Beecher.

The spectators throughout the session stared at the

four principal actors in this scandal tragedy. The impression is a very natural one that innocence and guilt cannot look alike, and that the features of Mr. Beecher and Mrs. Tilton on one side, or of Mr. Tilton and Mr. Moulton on the other, will, under the tension of excitement, betray the stifled secret of treason and self-loathing. Every partisan in the court-room—and outside of the bench and jury-box nearly every spectator is a partisan—is confident that he detects, unerringly, the traces of innocence or guilt in the upturned faces of the three men and the one woman. The "Tiltonite" points at Mr. Beecher, and whispers: "That face is flushed with shame; his saddened, careworn features are a confession of guilt. And Mrs. Tilton, too, shrinks back for fear of detection!" The "Beecherite," on the other hand, shakes his head as he glances at Mr. Tilton, and rejoins, in an underbreath: "There is an unrestful spirit beneath that marble calm, and his restless eyes are fired with recklessness. And Mr. Moulton—bah!" The truth is that two of the actors in this dramatic scene wear masks which fit so closely that no one can look behind them. The four faces seem to tell the same story of innocence, weariness, and anxiety. The treason and sin which must breed nightshade in two of those souls are repressed and hidden away. The jury cannot decide this case on the merits of these faces.

There was a crush in the court-room, morning and afternoon. About 3,000 applicants were turned away from the doors, and every foot of space inside was occupied. After running the blockade of the corridors the spectators were unwilling to surrender their places at noon, and the gallery lost its lunch, read newspapers during the intermission, and when the proceedings were resumed listened with unabated interest. One or two near-sighted people had opera-glasses, and used them to the annoyance of the central figures in this court drama. Judge Neilson, who has treated the audience with great indulgence, is evidently losing temper, and has intimated that there will be fewer spectators if his warnings pass unheeded. The morbid curiosity of the spectators and loungers in the corridors was illustrated at the adjournment of the proceedings at noon and at night. Files of people stood in the hall, and when the ladies appeared followed them pell-mell to their carriages. A window leading to a wide balcony in the rear of the Court-house was opened, and men and boys rushed out to take advantage of this coign of vantage until the balcony was black with spectators who were anxious to

watch the departure of the ladies. On the sidewalk a small group soon became a restless, vulgar crowd of starers. Such curiosity as this should be tempered with decency.

#### MR. MORRIS'S PERORATION.

Mr. Morris resumed his address soon after the opening of the court, and spoke for an hour and 20 minutes. His voice was clear and his delivery very effective at the outset, and although his hoarseness increased, his impassioned sentences lost none of their power. His denunciations of the Investigating Committee as constituted and managed with the single aim of stifling investigation, and his passionate accusation that Plymouth Church had falsified and suppressed its records, were delivered in ringing tones which set the teeth of the members of that Church on edge, and brought flushes of anger to their faces. Mr. Cleveland, at Mr. Beecher's elbow, could not control himself, but overcome with excitement moved about restlessly in his chair. Mr. Morris referred in the next breath to the mysterious Redpath negotiations in Boston, in which Mr. Cleveland once took great interest, and the agitation of Mr. Beecher's neighbor was stimulated. As Mr. Morris referred to the crisis in the Tilton household, when Mrs. Tilton deserted her husband and went to live "with the friends of her seducer," the lady's face flushed. But harder things were yet in store for her, such as the passage toward the close: "Let the words 'death and destruction to the seducer' be written over every door in the land."

In reading the statement which Mr. Beecher wished to have Mr. Tilton make before the Committee, the speaker's voice had a soft, sneering tone which contrasted favorably with the passionate invectives which preceded and followed the passage. His brief summary of the strongest points against Mr. Beecher was evidently modeled after the recapitulation in the second statement of Mr. Tilton. He then brushed aside the suspicions that his client could have made a false charge of this nature, and ingeniously quoted passages from Mr. Beecher's correspondence and writings in which a high opinion of Mr. Tilton was expressed. Mr. Moulton was introduced as a witness with similar skill by the citation of portions of Mr. Beecher's letters in which his trust in his mutual friend was warmly acknowledged. The "Plymouth section" smiled satirically when Mr. Moulton was enlogized as one who "had stood between the public and the truth, damming up the truth," until he was charged

with blackmail. All this time Mr. Moulton was twirling his mustache, his face betraying some annoyance when an indirect reference was made to the revenue complications of his firm. Mr. Morris made perhaps his most ingenious turn when he quoted a splendid passage from one of Mr. Beecher's sermons, delivered 20 years ago, in which an ideal adulterer and his victim were vividly portrayed. When he announced the author's name, Mr. Beecher made no attempt to conceal his amusement. The peroration was delivered so ably that applause was inevitable, although it was soon checked by the Judge's frown.

#### MR. MOULTON AS A WITNESS.

At the close of the opening argument a recess was taken until 1:30 o'clock. The common impression was that Theodore Tilton would be the first witness after the intermission, although a few lawyers predicted that the prosecution would steal a march upon the defense by taking Mr. Beecher by surprise. Ex-Judge Fullerton, after an interchange of remarks about the accommodations of the counsel, abruptly called Augustus Maverick to the stand as the first witness. Mr. Fullerton, who conducted the examination, has a full, florid face, with prominent cheek-bones and light hair and mustache. His questions are asked with such directness and simplicity that the witness is encouraged to maintain his self-possession and to answer clearly. He stands erect, with his eyes half-closed and his fingers twirling an eye-glass. An objection from the opposing counsel stirs his blood, and his replies are sharply and quickly made. His work with the first witness was soon ended, for the questions related merely to the marriage and early domestic life of Mr. Tilton.

When the name of Francis D. Moulton was called a buzz of expectation ran through the court-room. There was no response, and the spectators noticed that Mr. Tilton was sitting alone. Ex-Judge Fullerton remarked that Mr. Moulton had been compelled to go to his house to fetch some papers, and would be in the court-room before long. The "Plymouth section" chuckled over this, intimating by their smiles and nods that they had found Mr. Moulton rather uncertain in his movements during the past Summer, and that his tardiness was in keeping with his character. In 10 or 15 minutes he entered the room and quickly took the witness-chair, laying a package of papers on the floor beside him. Mr. Beecher looked him in the face, and during the remainder of the session rarely lost

sight of him. Mr. Moulton crossed his legs, folded his arms in the Napoleonic manner, and looked at the audience, but so many eyes met his gaze that his face reddened and he manifested some nervousness. He swung from side to side, took a knife from his pocket and played with it, straightened himself and then drummed with his fingers on the arm of the chair. His voice was clear at the outset, and it was evident that he intended, if he could, to answer the questions with prompt, business-like precision, like a man of the world. The first impression which he made was rather favorable, his answers being frank, unstudied, and unaffected; but the pauses between the words soon became longer, and some of his rejoinders were given in a lisping, careless manner. When he identified the letters he was studiously careful, subjecting every page to rigid scrutiny, and only assenting after he had called them back and glanced at them again.

His testimony was a repetition of certain portions of his second published statement with a few variations, but every word was listened to by the audience as if it was a fresh thing instead of a stale scandal which the world has learned by heart. After an animated passage between the counsel in reference to a section of Mr. Tilton's famous letter to Mr. Bowen concerning Miss Proctor, the court adjourned until this morning, when the witness will be recalled.

No official report of the trial is being made by the court or lawyers on either side, and yesterday, as on every former occasion when reference to the language of jurors or witnesses became necessary, Judge Neilson directed THE TRIBUNE stenographers to read the language called for from their notes. THE TRIBUNE's report is, therefore, the authority for the court and lawyers alike.

#### A TRUCE TO LEGAL ASPERITIES.

At the close of the proceedings on Wednesday, Jan. 13, neither counsel nor audience were permitted to leave the court until the jury had retired. The jury once outside of the court-room, there was a rush made for the doors by all the crowd except those who occupied seats in the immediate vicinity of Mr. Beecher, who lingered. It was while the crowd was thus hastily dispersing that a remarkable incident took place.

Mr. Beecher, with a good-natured smile and his usual genial manner, left his own counsel and stepped across the room to the table at which Mr.

Tilton's counsel sat, and reaching across it, saluted Mr. Beach, and then shook his hand. Mr. Tilton, with a stern expression upon his face, stood at this moment within two feet of the clergyman, but did not look in his direction, although he must have heard every word that was uttered.

"If," said Mr. Beecher to Judge Beach laughingly, "if I get out from between the paws of two such lions as you and Fullerton, I'll believe I am innocent, and that is what I came here to find out."

"You forget," said Mr. Beach, pointing to Mr. Evarts, "the Daniel standing among the lions, and closing their mouths."

Mr. Beecher placed one hand on Mr. Shearman's shoulder, and the other on Mr. Evarts, and remarked in a jocular way, "my lions are very harmless animals." Then turning to Mr. Morris he said, "Let me present myself to you, Judge Morris."

The ex-Judge very coldly replied, "Mr. Beecher."

The pastor of Plymouth Church was not to be repulsed in this way and continued:

"I notice that you lawyers, like preachers, know how to deliver long sermons."

There was a slight tinge of sarcasm in Mr. Morris's tones as he retorted. "Yes, Sir; I had a long story to tell."

Mr. Evarts joined in the conversation at this moment, and playfully said:

"Mr. Morris, I noticed that you expatiated only on those things which were against our side."

Mr. Morris answered in the same pleasant manner:

"I thought you could attend to the other things much better than I."

By this time the counsel were surrounded by a large crowd of curious listeners, among the number Mrs. Beecher and several members of Plymouth Church. Mr. Morris was on the point of leaving when Mr. Beecher again addressed him:

"Judge Morris, you should have come to me for a point or two. I could have 'put you up' to some things which would have made your speech appear very different."

Mr. Morris made no reply, and Mr. Tilton for the first time shot a quick glance in which mingled hate and scorn were expressed at the speaker, and then turned to Gen. Pryor. That gentleman had been listening to the conversation with an unmistakable look of disgust on his sharply cut features. Addressing Tilton, he made a brief remark in a contemptuous tone of voice, and the two left the court-room together. Mr. Fullerton did not take part in



the conversation, but looked on with an amused expression.

In the mean time Mrs. Tilton and her lady friends had left the court-room. It was several minutes, however, before Mr. Beecher and Mrs. Beecher could get away. After shaking hands with several in the crowd, they retired through the rear entrance to the Court-house. They were followed to the sidewalk by an immense crowd of men and boys, who jostled and stumbled over each other in their anxiety to catch a glimpse of the defendant and his wife.

In the crowd were many who, having been denied admission to the court-room, had stood in the cold corridors for hours determined to gratify their curiosity in some way. Mr. Beecher and his wife entered a carriage, and were driven rapidly away; and yet the crowd lingered on the sidewalk for several minutes after. Mr. Tilton and his counsel proceeded to Judge Morris's office for the purpose of arranging the letters to be introduced in Mr. Moulton's testimony.

#### THE PROCEEDINGS.

At the reassembling of the Court, on Wednesday, in the Tilton-Beecher case,—it being the eighth day of the trial, and the third day of Ex-Judge Morris' opening address for the plaintiff—Mr. Morris began on the last subdivision of his subject, namely, a resume of the events of the last eighteen months in the scandal, which are so familiar to everybody, embracing the doings of the go-betweens and "the mutual friend," the letters to newspapers, and the proceedings of the Church Committee.

#### THE LETTER OF CONTRITION THE SPARK THAT LIT THE BLAZE.

IF THE COURT PLEASE, GENTLEMEN OF THE JURY, I shall not detain you much longer in what I have to say to you. At the adjournment of the Court yesterday, I was calling your attention to the efforts that had been put forth by the defendant in this case to prevent an investigation, on the part of his church, into the charges of immoralities, which had been made against him, and I had also called your attention to the fact as to how unavailing, during the four years that have passed, have been all the efforts to bury up the fact that we now present to you. As I stated, one difficulty after another presented itself, and no sooner had a threatened investigation been averted by some trick, by some device, than another difficulty arose, and thus they continued to accumulate until at last the dread secret had to be made public: and I had called your attention to the manner in which it was made public, not by a charge against Henry Ward Beecher, but by simply publishing a part of Mr. Beecher's letter of contrition, which was accepted by everybody almost as being a confession of guilt. The publication of that portion of the letter of contrition aroused such a spirit of inquiry both in and out of the Church, that finally Mr.

Beecher was compelled to take action with reference to the matter, and on the 11th day of July, 1874, was published a letter addressed to six gentlemen, three of his congregation and three of the society, requesting them to make a thorough investigation in reference to the letter of apology or contrition; and you must remember that when that letter was published in the papers, with what satisfaction it was received by the friends and advocates of Mr. Beecher. "At last," they say, "we are to have the truth. At last he has taken steps to have a thorough investigation. Now we will know the truth. Now we will know the foundation for these rumors that have been floating about for the last four years. Now we will have a settlement for ever of this matter."

That letter was dated prior to that, on the 27th of June, I think. On the 6th of July Mrs. Tilton, without the knowledge of her husband, without any intimation that a Committee had been appointed, or was contemplated, goes before the Committee and makes a statement. At this time the plaintiff knew nothing about the appointment of a Committee at all, if one was appointed then; and on the morning of the 11th of July Mrs. Tilton abandons her home and seeks shelter with the friends of her seducer; and on that same day this letter is published, and until then, until she had appeared before the Committee, as she stated to her husband, until they had secured her, the letter was not published. Gentlemen, she but followed out the natural course in all such cases. The woman leaves her husband and takes shelter either with, or with the friends of her paramour. But, gentlemen, I call your attention to the very fact and circumstances of the appointing of this Committee as evidence of the guilt of the defendant. Had he been innocent of the charges preferred against him, or had he not been guilty of the crime that we now allege, what would have been his course? What would have been the course of any innocent man seeking a thorough and complete vindication of his character? He would have called upon the regular authorities of the church to have instituted the proceedings. He would have notified the parties who had charges to make to appear before that Committee and attend its investigation; and he would have appeared by the privilege of the party's appearing by counsel if he appeared by counsel.

#### A SEVERE IMPEACHMENT OF THE CHURCH COMMITTEE.

And yet what do we behold with reference to this investigation? Mr. Beecher naming his own Committee, selected from his own personal friends, the accuser having no voice in it—not even the church, except indirectly, was called upon by him to sanction his action. From that investigation the plaintiff is excluded. Before those six friends of Mr. Beecher appear a number of learned and astute lawyers, Mr. Tilton not being permitted to be there and cross-examine witnesses, or to be present to hear what they had to say; and I say, therefore, that the very fact that this Committee was constituted as it was, managed as it was, shows that a thorough and truthful and honest investigation into the facts was not the purpose of the appointment of that Committee. Had a Committee been appointed as it should

have been, had the plaintiff been accorded the rights that should have been accorded to him in that investigation, had he been treated with judicial impartiality, or with any degree of fairness, we would not have been here to-day in this tribunal, you would not have been called upon to discharge the solemn and important duty that you will be called upon to discharge in this case. But with that one-sided and partisan Committee, with their denunciatory report against the plaintiff, in which report the records of the church of which they were members were falsified and suppressed, when he was denounced by this friendly Committee appointed by the defendant to vindicate him at all hazards, and to denounce and convict the plaintiff at all hazards, there was no alternative left but to bring him face to face before an impartial court, before an honest and impartial jury. He did not want this suit brought here. He went to the Committee and he appealed to them to bring him in court. They refused to do it. He did not want to bring this action, because it was necessary that he should claim pecuniary damages. It was the only mode of redress left him. He wanted them to indict him for slander, if he had slandered, and take all the risk and all the chances of a conviction, assuming all the burden upon himself. They declined.

But, after this case was commenced, and in October last, the 1st of October, the defendant goes before the Grand Jury and procures an indictment against Mr. Tilton for libel. From that day until we came in Court here with this case, we have been beseeching them, imploring them, making our appeals to them, making our appeals to the court, to bring on the indictment, but they would not, and there was no alternative left, and we brought our action here, and before you we will bring our evidence, before you we will bring our wrongs, the wrongs that we have suffered, to you we will present our broken home. Before your face we arraign the seducer of our wife. Before you we arraign the man who has brought upon us all this desolation, and from you we expect the justice that has heretofore been denied us. Aye, we know that we shall receive it, because our cause is just, and God is with the right! But, gentlemen, notwithstanding this Committee was appointed by the defendant in this action, it was not the design, it was not the purpose that the facts should be made known to that Committee when it was appointed. As the defendant declared, that was not a step of his own choosing, but he was driven to it by his church. He had to do something, and having to take some step, he had selected the men himself, whom he declared could be managed and controlled; and in his estimation upon that point he was not deceived.

#### DEFENSIVE PLOTTING.

But, again, as I have said before, in this, his hour of extremity, he turns again to his friend, and another device was hit upon but not successfully carried out. After the Bacon letter, Mr. Moulton prepared a statement for Mr. Beecher to make to his congregation, which he promised to make if he said anything, Mr. Moulton advising silence; and in that proposed statement, he acknowledged that he had com-

mitted an offense against Theodore Tilton; but he concludes:

"I have committed no crime, and if this Society believes that it is due to it that I should reopen this already too painful subject, or resign, I will resign."

That statement was not made because of the criticism made by an astute lawyer that adultery was not a crime at common law, and therefore that statement did not fully meet the question and cover the ground; and from the time that this Committee was appointed, from the time that the Bacon letter was published, on the 24th of June, 1874, down to the 16th of July following, we find Mr. Beecher in consultation with Mr. Moulton day after day, time after time, writing him letters with reference to the matter. On the 10th of July he writes him a letter wanting to see him. On the same day he writes another letter requesting him to come around to his house to assist him. On the following Monday he writes another letter, and on July the 18th he writes still another.

"My dear Frank: I will be with you at seven, or a little before. I am ashamed to put a straw more upon you, and have but a single consolation, that this matter cannot distress you long, as it must soon end; that is, there will be no more anxiety about the future, whatever regrets there may be about the past."

Still later Mr. Moulton presented to Mr. Beecher a short statement prepared by Mr. Tilton for the Committee to make: he, as anxious then as ever, as anxious as Mr. Beecher himself, to prevent the exposure of this secret, which must bury his family in ruin, and in this proposed statement for the Committee he said:

"The Committee respectfully report that upon examination they find that an offense of grave character was committed by Mr. Beecher against Mr. and Mrs. Tilton."

Mr. Beecher wanted to know if Mr. Tilton would be satisfied with such a report as that made by the Committee. If Mr. Tilton would be satisfied with such a report, he would be satisfied, and, as this states, settle the matter without having the facts made public. Where, then, at this time, was the anxiety to defend the honor and fair name of Elizabeth R. Tilton? It was universally known and believed that that matter and that letter of contrition had reference to her and that her honor and her character were involved in the matter, whatever it was; and, yet notwithstanding two years prior to that this horrible story had been published by the Woodhulls, and no denial and no defense made by Mr. Beecher of this Christian woman, a member of his church, and when after that Mr. West repeats the charges in a formal manner, devices are resorted to to prevent the defense of this woman's fair name and her honor, and at last when the formality of selecting a committee of known and tried friends was gone through with, he is willing by such a statement as that, on acknowledgement that he had been guilty of an offense against Mr. and Mrs. Tilton of a grave character, to let it rest there, and, as he said before, try on his part and the part of the church to live it down. But what in Heaven's name was to become of the woman? No anxiety then to defend the fair name of Elizabeth R. Tilton; and I repeat again, as I did yesterday, that it is too late to play the role of defender of the fair name and honor of Elizabeth R. Tilton by a defense in this action.

But that is not all. When Mr. Beecher was informed that

Mr. Tilton was preparing a statement to make before the Committee presenting the facts—his letter of contrition—what does he do? Again he turns to his friend Moulton for aid and assistance, and, taking counsel together, another device was hit upon. Mr. Beecher, with his own hand, after the appointment of the Committee, after they had commenced the investigation, when he knew that Mr. Tilton was preparing his statement, with his own hand writes a statement for Mr. Tilton to make before that Committee, based upon a prior statement which he, Mr. Beecher, was to make, exonerating Mr. Tilton and doing him justice.

This is Mr. Beecher's proposed statement for Mr. Tilton to make, which I hold. The statement of Mr. Beecher being read, and if striking favorably, then a word sent substantially thus to the Committee:

"I have been three years acting under conviction that I have been wronged, but was under the imputation of being the injurer. I learn from a friend that Mr. B. in his statement to you has reversed this and has done me justice. I am willing, should he consent, to appear before you with him, and dropping the further statements which I felt it to be my duty to make for my own clearance, to settle this painful domestic difficulty, which never ought to have been made public, finally and amicably."

And that is the disposition that the defendant proposes to make of this case! Is that the disposition that the Christian world expected? Is that the disposition that the Christian world had a right to expect would be made of this case? The name of a minister standing so high, his garments soiled, the most infamous charges made against him, of having seduced the wife of his life-long friend, and a member of his church—she also a member of his church—a child who had grown up under his eye; I say, is that the disposition that a Christian world had a right to expect would be made of that matter? Is it possible to explain that consistently with innocence? Would Mr. Beecher, if an innocent man, have, under any circumstances, submitted to such a disposition of the case as that? Had he been an innocent man, and such a disposition as that had been proposed to him, would he not have hurled the proposition back with indignation and said: "What do you mean by thus insulting me? I am charged with adultery with the wife of my friend; my fair name is sullied; my sacred robes are soiled. I have said to the world that I mean to have a full and complete investigation into this abominable charge, and now you come and propose such a covering up, such a burying up of the fact as that. Away with you!" That would have been the action of any honest man, with the eyes of the world, you may say, turned toward this Committee. No question then was engrossing the attention of this land, at least so much as the investigation and the facts that were expected to be elicited by that Committee. The friends of Christianity were hoping for the vindication of Mr. Beecher. Every well-wisher of his country was hoping and praying for the deliverance of the pastor of Plymouth Church. And had he been innocent, he would have thrown open the doors wide to the world, and he would have said, not only to Tilton, but to others who had insinuated or made charges against his moral character,

defying them all, "Bring your proofs; meet me face to face before this Committee." No, no. The very parties who knew the facts, and the very parties who could establish the truth of the charge, were not requested to appear before the Committee.

#### MR. BEECHER'S ACTS INCONSISTENT WITH THE DEFENSE.

Now, gentlemen, I have, thus far, principally called your attention to the case as made out by the defendant himself, adverting to some oral testimony, but principally to the case as made out by the defendant himself, by his own acts, by his own language, by his own letters and writings and statements. And how stands the case now? Is it necessary that I should go still further in the development of this case in order to convince you of the truth of the charge that we bring against him? If it is, I begin to despair of human testimony. We say that in the facts that I have presented to you he has confessed his guilt; leaving out the verbal testimony; leaving out what he has said to other parties, that he has confessed his guilt as clear as it is possible to make it without using the vulgar words, without clothing the confession in vulgar language, it is made as clear as possible to make it in the English tongue. When he said on the 1st of January, 1871, that he had sinned and transgressed with Mrs. Tilton, he confessed his crime really. And when on the 7th of February he said that it was Moulton's hand that had tied up the storm that was about to burst on their heads in that terrible emergency of his life, he confessed his criminal intimacy with Elizabeth R. Tilton. And when he said that he passed sleepless nights and suffered the torments of the damned, that he spent much of his time in the horror of great darkness, and lived on the sharp and ragged edge of anxiety, remorse, fear and despair, he confessed his criminality with Elizabeth R. Tilton. And when, contemplating suicide for the crime that he had committed, he confessed his criminality, for suicide is confession, and the contemplation of suicide is confession. When he wrote to Moulton that Theodore had enjoined upon him not to betray his wife or leave his children to a blight, it was a confession that he had been guilty of a crime with her, the exposure of which would leave his children to a blight, and that was the crime of adultery. I might prolong this recital, but I will not do it, gentlemen. For the past four years he has been confessing his guilt, if English language means any thing.

#### INSTRUCTION TO THE JURY.

But, gentlemen, we do not rest our case upon the testimony furnished by Mr. Beecher himself alone. We go further than that; we will put upon the stand Mr. Carpenter, whose veracity I apprehend will not be questioned in this Court, and to him, we may say, Mr. Beecher made his confession. But, gentlemen, we shall not stop there; you will hear Mr. Beecher's story and you will hear the plaintiff's story. They are both interested in this transaction, and you will take that fact into consideration in weighing their testimony. Certainly no man in this case has so deep an interest as has the defendant. These facts you will take into consideration—they are both in-

interested parties and you will give their evidence such weight as you think it entitled to. And, gentlemen, let me call your attention in this connection to one fact, that when you weigh the testimony of a witness you will look and see the motive there may be for departing from the truth. You see the motive that the defendant has, that this crime be concealed? What motive can you suggest, what motive will my learned friend suggest? None has been suggested up to this time that I am aware of—none has yet been conceived. What motive will they suggest why Theodore Tilton should have made a false charge against Henry Ward Beecher—Theodore Tilton a man of culture, of education, of refined feelings, poetic temperament, a man bold, a man truthful, a man loving his family as but few men love their families—I ask the other side to give a motive, if they can, why Theodore Tilton, thus situated, would make a false charge against his wife of such infamy that would bequeath to his children that he loved, as only a father can love, a heritage of shame and disgrace, and while added to all that he should drag down his own name in infamy by making a false charge against his life-long friend, his revered pastor?

Out with such miserable presumptions! Let fools thus trifle with human intelligence; it does not belong to reasoning men!

#### MOULTON THE GUARDIAN ANGEL IN THE CASE.

No, gentlemen, you have seen in the recital that I have made, that, so far from his wanting to make a false accusation, notwithstanding the great wrong that he had suffered, notwithstanding the wound that he had received in his heart, he so loved his children that he was willing to bear his suffering and conceal the wrong that had been done to him and his family; and you have seen the devices that he resorted to in connection with the defendant and with Mr. Moulton, whose mission it was to keep this secret from the public knowledge. No, gentlemen, I will not detain you any longer upon that point; it would be a waste of time. Mr. Beecher has himself given the lie to any such insinuation, and when on the 1st of January, 1871, he humbled himself before Theodore Tilton as he did before his God, and called upon God to put it into his heart to forgive him, it put forever out of the question that he was fearing a false charge. And when he said:

"I wonder if Elizabeth knows how generously Theodore has borne himself towards me. I wish to God that we three could be made friends again. Theodore, in that case, would have the hardest task."

He put for ever out of consideration the idea that it was a false charge that he was afraid of. And when, on the 2d of April, 1872, two years or two years and a half after this accusation was made against him, he said:

"If I have said anything injurious to the reputation of Theodore Tilton, or have detracted from his standing and fame as a Christian gentleman, I revoke it all. God knows that I have put more thought, and judgment, and earnest desire into my efforts to prepare a way for Theodore and Elizabeth than I ever did for myself a hundredfold."

And when he said to her, "Theodore will hide you in his heart of hearts," he forever set at rest the insinuation that he was afraid of a false accusation. "If my destruction would pre-

pare a way for him that shall not stand in the way;" those who know him best are sure that he is honest, that he is manly, that he is straight-forward, that he is generous. He is a Christian gentleman, large hearted, forbearing, long suffering, honest, manly and straight-forward, and that is the introduction that the defendant gives to the plaintiff when he goes upon the stand to tell his sad story to you of the past five years.

But, gentlemen, we go still further than this. We shall put upon the stand, Mr. Moulton, about whom you have heard so much in all this transaction, this friend whom the defendant said God had sent to preserve him, to tie up the storm that was about to burst upon his head—this man who stood by the defendant for four years with a fidelity, with a constancy unparalleled, No sacrifice on his part was too great to make in order that he might save from shame and from disgrace the innocent parties involved in this crime. You must recollect that after the appointment of the Committee, and the Committee wrote Mr. Moulton a note requesting him to present certain facts before them—you must recollect that the press throughout the land said, "Now we will have the truth; here is a man in whom both parties have confided for four years; here is a man who has stood the mutual friend of both parties; all the facts connected with this transaction he knows; he is the friend of both, having no interest to either; let him speak, and as he speaks so will the truth be declared."

He was looked upon and regarded at that time by the whole country as the arbiter in this matter. Had he spoken then, when the public expected him to speak, and when he ought to have spoken, you would not have been here to-day, we would not have been here to-day, Mr. Beecher would not be the pastor of Plymouth Church to-day. But, with a faithfulness, as I said, unparalleled, notwithstanding he would subject himself to the criticism of the whole land by withholding the statement that he had promised to the country, yet he did withhold that statement at the solicitation of the friends of Mr. Beecher. He yielded to their pleadings, "Give him one more chance; give him one more chance"—and Moulton, as the friend, the loyal friend that he was, stepped in the breach again. He stood there between the public and the truth, damming up the truth from the public. He withheld the statement; he did give him one more chance. And then the astute lawyers, seeing their opportunity, and seeing that in the end the truth must come out, the statement must be made, have the defendant make a statement in which they accused him of blackmailing the defendant. And you recollect that that charge was rung from one end of the country to the other. People's attention was diverted from the facts, the investigation of the case, and they cried out, "Blackmail! Blackmail!" They had performed the office of the cuttle fish; they had thrown this cloud over the minds of the people, and under the cover of that they expected to escape the just criticism that the crime deserved. Well, after this charge had performed its office, it was dropped. Not even this friendly committee, selected for the purpose, had hardihood enough to consider that charge. No: it was not true, and as the defendant declared the following October upon the Twin Mountains, "A million times no—a million times no:" Francis D. Moulton is not a blackmailer.

And even then, after the first statement had been made, with all these facts presented, knowing what still remained, knowing in his own heart and soul that Francis D. Moulton told the truth, and would tell the truth with reference to this matter, he opens, even at that late day, a negotiation in order to take Mr. Moulton out of the case, that all the batteries might be turned upon Theodore Tilton, defenseless and powerless as he was, that he might be crushed and go down with the ruin of his family. For that purpose communication is opened with him, and his agent, Mr. Cleveland, is sent to Boston with full documentary power to act conclusively in his behalf in negotiating with Mr. Moulton. Upon what basis was this negotiation to proceed? With the charge of blackmail resting upon him? No. That falsehood was to be retracted. Mr. Moulton was to be set right before the community, and Mr. Tilton was to be left to fight this battle alone. But it failed. It failed. Oh! the efforts that have been made in this case to suppress the truth and to prevent an honest investigation of the facts! But, thank God! we are now before this tribunal, and we will have the facts, and we will have the truth, and we will have an honest verdict, and we will have an honest condemnation of the crime that has been committed against my client.

Why, gentlemen, do you want any additional evidence that Mr. Moulton was intrusted with the secret relating to Mr. Beecher's moral delinquency? I will give it to you, collated in brief form, a small portion of it, and but a small portion of it. He says—

Mr. Beach—Who?

Mr. Morris—Mr. Beecher. On February 7th, 1871, he says:

"I send you a token, not as a repayment for your great kindness to me, for that can never be repaid, not even by love, which I give you freely. Many, many friends has God raised up to me, but to no one of them has he ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit."

Same date:

"The friend whom God has sent to me (Moulton) has proved, above all friends that ever I had, able and willing to relieve me in this terrible emergency of my life. His hand it was that tied up the storm that was ready to burst upon our heads."

"Sept. 30, 1871.—My heart warms to you, and you might have known that I should be here, if you loved me as much as I do you. I am, my dear Frank, truly and gratefully yours."

"Feb. 5, 1872.—During all this time you are literally all my stay and comfort. I should have fallen on the way but for the courage you inspired, and the hope which you breathed. I am well nigh discouraged. If you, too, cease to trust, to love me, I am alone. I have not another person in the world to whom I could go. With sincere gratitude for your heroic friendship, and with sincere friendship, even if you love me not, I am yours, though unknown."

"Feb. 16, 1873.—Should any incident befall, remember how deeply I feel your fidelity and friendship, your long continued kindness and your affection. I confide everything to your wisdom, as I always have, with such success hitherto, that I fully trust for the future."

"June 1st, 1873.—The pain of life is but a moment; the glory of everlasting emancipation is wordless, inconceivable, full of beckoning glory. Oh! my beloved Frank, I shall know you there and forever hold fellowship with you, and look back and smile at the past!"

"July 7th, 1873.—My dear Frank: The country is beautiful,

the birds as good to me as David's harp. I only need some one to talk to, and that one is you."

"July 14th, 1873.—My dear Frank: For a thousand encouragements, for services that none can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for your confidence and affection, I owe you so much that I can neither express nor pay it."

I will not stop to call your attention to all.

"My Dear Frank: I have this morning got back, and want to send my love to you and yours. God bless you, my dear old fellow."

And, referring to him again, he says: "He is worthy of all confidence. He is worthy of all trust."

"December, 1873. This will be handed to you by my friend, Frank D. Moulton, whom I believe to be high minded and honest, and whose statements should be received by all who know him with implicit confidence."

"December 3d, 1873. I believe him to be honest to the core. I would trust him with life and property, without scruple."

"December 30th, 1873. Mr. Frank Moulton I have known for years, and I should as soon believe that I myself had set on foot stealings and cheatings as that he had, or had had the slightest suspicion of it."

"July 16th, 1874. My Dear Frank, I need to see you."

This, gentlemen, is a portion of the testimony of Mr. Beecher with reference to Francis D. Moulton, the man who, on the 31st of December, 1873, saved the defendant to Plymouth Church, made him take back the letter of resignation which he took to Mr. Moulton and delivered to him, retiring from the ministry to private life, because simply he feared the publication of his own letter of confition.

#### A VIVID PAINTING OF THE CRIME CHARGED.

Oh, well might he stand aghast, at the exposure of such a crime as he had committed! I will not attempt to portray to you the heinousness of that crime, but I will read an extract or two from an author much more capable of judging, and who can draw the picture much more vividly than I can draw it:

"The seducer! Playing upon the most sacred passions, he betrays innocence. How? By its tenderest faculties, by its trust, by its unsuspecting faith, by its honor. The victim often and often is not the accomplice so much as the sufferer, betrayed by an exorcism which bewitched her noblest affections, and became the suicide of her virtue. The betrayer, for the most intense selfishness, without one noble motive, without one pretense of honor—by lies, by a devilish jugglery of fraud, by blinding the eye, confusing the conscience, misleading the judgment, and instilling the dew of sorcery upon every flower of sweet affection—deliberately, heartlessly damns the confiding victim! Is there one shade of good intention, one glimmering trace of light? Not one. There was not the most shadowy, tremulous intention of honor. It was sheer, premeditated, wholesale ruin from beginning to end. The accursed sorcerer opens the door of the world to push her forth. She looks out all shuddering; for there is shame and sharp-toothed hatred, and chattering slander, and malignant envy, and triumphing jealousy, and murderous revenge—these are seen rising before her; clouds full of fire, that burn but will not kill! And there is for her want, poverty and gaunt famine. There is the world spread out. She sees father and mother heartlessly abandoning her; a brother's shame, a sister's anguish. It is a vision of desolation, a plundered home, an altar where honor and purity and virtue and peace have been insidiously sacrificed to the foul Moloch. All is cheerlessness to the eye, and her ear catches

the sound of sighing and mourning, walls and laments; and far down, at the horizon of the vision, the murky cloud for a moment lifts, and she sees the very bottom of infamy, the ghastliness of death, the last spasm of horrible departure, the awful thunder of final doom. All this the trembling, betrayed creature sees through the open door of the future, and with a voice that might move the dead, she turns and clasps his knees in awful agony. 'Leave me not! Oh! spare me—save me—cast me not away!' Poor thing—she is dealing with a demon! Spare her? save her? The polished scoundrel betrayed her to abandon her, and walks the street to boast his hellish deed. It becomes him as a reputation. Surely society will crush him! They will smite the wolf and seek out the bleeding lamb. Oh! my soul, believe it not! What sight is that? The drooping victim is worse used than the infernal destroyer! He is fondled, courted, passes from honor to honor, and she is crushed and mangled under the infuriate tramp of public indignation. On her mangled corpse they stand to put the laurels on the murderer's brow! When I see such things as these, I thank God there is a judgment, and that there is a hell."

Twenty years ago, gentlemen, that was the utterance of the defendant in this case; and, oh! how true, how true the judgment is, what a strange, what a striking coincidence! On the 1st of January, 1871, he says of his victim: "She is guiltless, sinned against, bearing the transgressions of another." "The victim often and often is not the accomplice so much as the sufferer." When we see that language in the letter of contrition that she is guiltless, proved that she could not have been guilty of adultery, we turn to the utterance of the defendant himself, which will stand as his condemnation upon that point. And, oh! how true, and how true have been all the prophecies of this prophetic statement, how they have been fulfilled, how the door of the cold world was opened, and how it was said that this poor woman has been so weak, so wholly subject to the strongest outside influence at the moment, that the general public can give but little weight to her testimony either for or against Mr. Beecher. And, again, that her conduct cannot be defended upon any principle of human accountability. She is the sufferer, she is the sufferer, while the seducer is here portrayed as fondled, as courted, as passing from one honor to another, and she is crushed.

"If to be the thrall of love  
And faith, too generous to defend  
Itself from him she loved, be sin,  
What hope of grace may the seducer win?"

#### AN ELOQUENT APPEAL TO THE JURY.

Gentlemen of the jury, I feel that I have detained you already too long; I certainly have detained you too long for my own strength and my own health; but I felt it my duty to present to you the considerations that I have presented to you, and if I have exhibited any warmth in the presenting of them to you, you will pardon me, I am sure, because I come to you with a heart full of grief and full of sympathy for the suffering and the wrong that my client has endured. I thank you, gentlemen, for the strict attention that you have paid to the imperfect presentation I have made of this case. I regret, for the interests of my client, that this duty had not devolved upon one of my abler associates; yet I have the satisfaction of know-

ing that I have brought to the task a conscientious devotion to the interests of my client, that nothing but a firm conviction of the justness of his case could have inspired. Oh! gentlemen, what a scene is this, what a spectacle we behold here to-day! On the one side you see a man of vast prosperity, surrounded by powerful friends, with unlimited resources. On the other side you see a man powerless and poor, coming to you from a desolate home. Already he has been made the victim of a foul charge, then the victim of a foul slander, and then again the victim of a foul persecution, unparalleled for power and relentlessness. And what has he done? Why, he was the chance possessor of a loving and beloved wife, of a happy and of an innocent home, which his bosom friend, his life-long bosom friend, his pastor, his spiritual adviser, taking advantage of that friendship, taking advantage of his absence and taking advantage of his sacred calling, has dispossessed and despoiled him of. That home is desolated, the hopes of that family blasted, the pillars of that household have been pulled down upon the idols of his worship, and nought but desolation reigns there! Oh, gentlemen, you who have children, you who know what it is to return from your daily labors to the bosom of your happy family, can appreciate the wrong and the suffering that my unhappy client has endured; but it is to you, as fathers, and as brothers, and as husbands, that we come without case, and as you love your homes, as you love your families and your children, as you regard the sacredness of your homes and as you reverence virtue and respect the sanctity of the family altar, I call upon you in the name of all that has been violated, I call upon you in the name of Christianity by the teachings of the Saviour upon the Mount, by the law thundered from Mount Sinai, by every consideration that is near and dear to us on earth, I call upon you to brand the seducer as his crime deserves to be branded.

Let it be written on every door throughout the land: "Death, destruction to the seducer;" and when you have rendered that verdict you will receive the prayers and the blessings of every virtuous mother and of every virtuous daughter in the land, and a peaceful conscience will follow you through life, will be with you in the last solemn scenes of earth, and console you when at last you stand with your life record before the ever-living God. [Applause.]

This closed Mr. Morris's address—the delivery of which took two and a half days—the last words being spoken at 12:20 o'clock.

Mr. Fullerton—May it please your Honor, it will subserve the convenience, I think, of all parties connected with this controversy if your Honor will now take a recess until 2 o'clock. We will, meanwhile, prepare our evidence, and then commence to give it.

Judge Neilson—Whatever time you say.

Mr. Everts—I rose, if your Honor please, with a view of suggesting that, as the business of the trial is now to commence, an arrangement of the tables should be made that would seem to us more suitable for the convenience of the counsel on both sides of the case, and the recess will now give an opportunity to have that arrangement made if we agree upon it.

Judge Neilson—I will leave the arrangement of the tables to yourselves, gentlemen. [To the Jury.] Gentlemen, we will now take a recess until two o'clock.

### THE TAKING OF TESTIMONY BEGUN.

At 1:30 o'clock the Court re-assembled pursuant to adjournment.

Mr. Morris—If your Honor please, we will have to make some different arrangements here as to tables. I think that one table fixed, for instance, as it was when we were getting the jury, will be more convenient. Your Honor will see that, with four or five counsel here in this space of about six feet by three, with their clients, it is utterly impossible to proceed with this case. We can't do it; it is simply an impossibility, that is all.

Judge Neilson—I made no order about that. I left it to counsel to arrange, hoping that they would do so and suit themselves mutually on both sides.

Mr. Morris—Judge Porter makes a suggestion which I think would relieve the difficulty.

Mr. Porter—I see that it is utterly unfair to my friends to be compressed within this little circle. We ought to have some arrangement by which we can be within earshot of the witnesses, and by which they can have their friends around them. It seems to me that the suggestion of Judge Morris is the best, just to change that table and put it here. We all want to see and hear. It is very desirable to us that we shall hear your Honor and hear the witnesses.

Judge Neilson—Will you gentlemen arrange that?

Mr. Evarts—If your Honor please, the difficulty is made by the fact that there is not space enough given to the plaintiff's counsel, not at the table, because they have space enough, and not in sufficient proximity to the jury and the witnesses, for they surpass us in that respect in every degree. Their farthest man is nearer than the nearest of ours. It is that they have not space enough about them. I agree that that is the difficulty. That difficulty is made by the presence of the reporters' table, which does not happen to be here and is *there*. If it were here, we should be cramped just as much as they are. Now, your Honor sees that this plan of giving a line at right angles to two sides to each set of counsel gives more opportunity within convenient space than any other arrangement can do, but it brings us out here into the room, and we need therefore to compress a little the arrangements of the reporters. That is all. I have no tenacity about the arrangements. What we want is the space.

Judge Neilson—I have no doubt the gentlemen will agree among themselves how to arrange it. They can appreciate that better than I can. Mr. Beach, how do you think it would do if that table were turned, leaving a space between the two tables.

Mr. Beach—Well, Sir, I never have been so conveniently situated as when we had the two tables, one for each counsel.

Mr. Evarts—The difficulty there was that the table for the plaintiff was very satisfactory, but the intervention of two rows of counsel, and then our table removed beyond that, threw us quite in the rear.

Judge Neilson—What do you think, Sir, if the table is turned the other way and a space left between the two?

Mr. Beach—That is quite immaterial to me.

Judge Neilson—I think that is Judge Porter's idea, Sir.

Mr. Evarts—I think Judge Porter's idea was to take this table and put it longwise.

Mr. Beach—That brings my back, when I write, to the jury.

Judge Neilson—Supposing that were turned the end this way; you have two or three feet then between the two tables.

Mr. Morris—I would make this suggestion. There are some tables in the other room—narrower tables than these—and I think if two were brought in and one set up close here for one side and the other as near as they are now anyway, and take these two cumbersome tables away—

Judge Neilson—You might do that this afternoon, but we could not do it at this moment.

Mr. Morris—But it is an impossibility. Here we are in a space about four feet by six.

Judge Neilson—That must be remedied. I don't know how to do it now.

Mr. Morris—Could not this gentleman [referring to a reporter] take a seat somewhere else so as to have a little space there? We are willing to do everything for the reporters that we can, but we must have some room.

Judge Neilson—[To the Reporter] See if there is a place where your table can be moved to. If your table were over towards the wall there, you would be quite in hearing, would you not? I think if we should build a gallery perhaps it would be better.

After a few minutes spent in arranging the seats of counsel and reporters, Judge Neilson said:

Judge Neilson—The audience will please come to order.

The clerk called the list of jurors, and all answered to their names.

Mr. Fullerton—Shall I proceed, Sir?

Judge Neilson—Yes, Sir.

Mr. Fullerton—Augustus Maverick.

### TESTIMONY OF AUGUSTUS MAVERICK.

Augustus Maverick, called and sworn on behalf of plaintiff:

Q. By Mr. Fullerton—Mr. Maverick, where do you reside?

A. In this city, Sir.

Q. Have you been a resident of Brooklyn long? A. About 15 years, with an intermission of a year, I think.

Q. Are you acquainted with Theodore Tilton? A. I am, Sir.

Q. How long have you been acquainted with him? A. Upwards of 20 years.

Q. Were you present at his marriage? A. I was, Sir.

Q. When did it take place? A. On the 2d of October, 1855.

Q. Where? A. At Mr. Beecher's house.

Q. And who performed the ceremony? A. Mr. Beecher.

Q. The defendant in this case? A. Yes, Sir.

Mr. Evarts—All that is admitted by the pleadings.

Mr. Fullerton—There are some things that I desire to prove that are not admitted there.

[To the witness]—Have you been intimate with his family since his marriage? A. Not for the past six or seven years, not

to say intimate. I have been in the habit of going to the house occasionally, but for the last five or six years only very occasionally.

Q. After his marriage were you intimate with him and his family? A. Yes, Sir, for a number of years?

Q. Do you know how many children there were or are of that marriage? A. I don't know the present number, Sir.

Q. Do you know they have children? A. Yes, Sir.

Q. Where did Mr. Tilton reside first after his marriage when he commenced keeping house? A. I cannot say where he first resided on going to keeping house, but the first that I visited him after he began to keep house to my knowledge was at his present residence—that is, 174 Livingston-st. That is the first of my actual knowledge of his housekeeping.

Q. You did not visit him at any other place where he kept house? A. Not while they were housekeeping; no, sir.

Q. How frequently did you visit him after his marriage? A. Very seldom; I made an occasional visit; I cannot say that I was upon visiting terms, that is, to be in the habit of frequent and intimate visits; it is not my custom with any one, and he was in the same position.

Q. State, if you please, who he married? A. Elizabeth Richards.

Q. Was she a resident of Brooklyn? A. Yes, sir.

Mr. Fullerton—That is all.

Mr. Shearman—Wait a moment, if your Honor please.

Mr. Evarts [after consulting with his associates]—We have nothing to ask.

Mr. Fullerton—That is all, Mr. Maverick. Francis D. Moulton.

Mr. Morris—He has gone after some papers, and is not present.

Mr. Fullerton—Mr. Moulton forgot to bring some papers with him, Sir, that he was directed to bring, and returned to his house for them. I suppose he will be here very shortly.

Judge Nelson—Very well, Sir.

After a delay of about 15 minutes, Mr. Moulton appeared in Court, and took the stand.

#### TESTIMONY OF FRANCIS D. MOULTON.

Frank D. Moulton, called and sworn on behalf of plaintiff:

Q. By Mr. Fullerton—Mr. Moulton, where do you reside? A. 49 Remsen-st.

Q. In the City of Brooklyn? A. In the City of Brooklyn.

Q. How long have you been a resident of the City of Brooklyn? A. About ten years, Sir, I think; perhaps longer.

Q. Before you became a resident of the City of Brooklyn, where did you reside? A. In New-York, Sir—Forty-ninth-st.

Q. And how long did you reside there? A. Well, Sir, in that neighborhood ever since I had been born.

Q. Were you born in the City of New-York? A. I was born in the City of New-York.

Q. Are you engaged in business in Brooklyn? A. I am engaged in business in Brooklyn and in New-York.

Q. And a member of what firm? A. A member of the firm of Woodruff & Robinson.

Q. How long have you been a member of that firm? A. A member of the firm, Sir, since 1864.

Q. Connected with it before that? A. Yes, Sir, since 1854.

Q. In what capacity prior to your becoming a partner? A. As clerk, Sir, for six years, and then I had an interest in the business, and then a copartner, dating 1854.

Q. Are you a married man? A. I am.

Q. When were you married? A. I was married in 1861, I believe, Sir.

Q. And what is your wife's name? A. Emma Moulton.

Q. Are you acquainted with Theodore Tilton? A. I am.

Q. When did you become acquainted with him? A. In 1849 or 1850.

Q. Where was he then residing? A. I don't know where he was residing. He was a student at the Free Academy when I first became acquainted with him.

Q. In New-York? A. In New-York; yes, Sir.

Q. Were you a schoolmate of his? A. I was.

Q. State whether you have been on intimate terms with him from that time to the present? A. Yes, Sir; with an intermission, perhaps, of a few years of intimacy, not of estrangement, though we lived apart. I lived in New-York and he lived in Brooklyn.

Q. And are you acquainted with his family? A. Yes, Sir.

Q. How many children has he? A. Four or five.

Q. Will you give us their names? A. Florence.

Q. How old is she? A. I believe she is sixteen years of age.

Q. Is she the oldest? A. She is the oldest.

Q. The next, please. A. Carroll, a boy.

Q. How old is he? A. About, I guess, eleven years old. And Alice.

Q. Her age, please, as near as you can recollect. A. I think Carroll is younger than Alice; Alice, I guess, is about thirteen years of age, thirteen or fourteen.

Q. There is still another, I believe? A. Yes; I don't know the name of that child, Sir; it was called Frank at one time; I understand that the name of the child has been changed since then.

By Mr. Evarts—You knew it as Frank? A. I knew it as Ralph and Frank; it was Ralph at first, and then it was changed to Frank, as an expression of the sense of its mother of my fidelity to her and its interests.

Mr. Evarts—That is immaterial. A. Certainly; I knew the child as well by the name of Frank.

By Mr. Fullerton—Have they lost any children? A. I believe one, Sir.

Q. Do you recollect when that occurred? A. I do not remember precisely the date, Sir; somewhere in 1869, I think, or 1868.

Q. The youngest child that you have spoken of, Ralph or Frank, what is its age, as near as you can tell? A. Five or six years of age; six years I should say; five years of age.

Q. Have you been upon terms of intimacy with the family of Mr. Tilton? A. I have; yes.

Q. What was the relation existing between Theodore Tilton and his wife up to the year 1870, so far as affection is concerned? A. Well, Sir, I never knew of any difference in the family up to that time.





*Francis D. Moulton*



Mr. Evarts—Up to when?

Mr. Fullerton—Up to 1870.

Q. You knew of no estrangements? A. None, Sir; no.

Q. Do you know Henry Ward Beecher? A. I do.

Q. How long have you been acquainted with him? A. Intimately, Sir, since the 30th of December, 1870.

Q. And before that did you know him? A. Not very well; no, Sir.

Q. Did you have a speaking acquaintance with him before that? A. Yes, Sir.

Q. For how long a time? A. I think that the first time I met him to speak to him was in 1868, in his church.

Q. Under what circumstances? A. In his church; I was in church with Mr. Tilton and his wife. Mr. Tilton and myself had just returned from an excursion into the country, and Mr. Beecher came to the pew to greet us. That, I think, was the first time.

Q. After that, and up to 1870, when your intimate acquaintance commenced, were you on speaking terms with him? Had you met him in the mean time? A. I met him at Page's studio.

Q. Under what circumstances? A. He was having his portrait painted and I was having mine; I met him casually.

Q. How frequently did you meet him there? A. I met him not to exceed three or four times.

Q. Where did Mr. Beecher reside? A. Mr. Evarts is speaking to you, Sir.

Q. You may state the time when you met him at Page's, if you please? A. I think it was in 1869; I think that is the year.

Q. Do you know where Mr. Beecher resided at that time? A. I understand that he resided in Brooklyn.

Q. I want to call your attention to the month of December, 1870. Did you meet Mr. Beecher during the latter part of that month, the latter part of the month of December, 1870? A. Yes, Sir.

Q. Where? A. At his house.

Q. Did you have any conversation with him? A. Yes, Sir.

Q. State, if you please, what that conversation was? A. I said to him—; I met him in his parlor—

Q. Do you recollect the day of the month? A. Yes, Sir; December the 30th.

Q. Now, you may narrate the conversation between you? A. Any of the incidents preceding it, to tell how I met him?

Q. No, Sir; just narrate the conversation first, and then I will ask you what induced the conversation.

Mr. Evarts—Mr. Moulton, will you be so good as to give it in the person of the speaker, what you said, and what he said, so far as you can? A. Thank you, I will.

Mr. Beach—No, Sir; that is not so unless you undertake to repeat his precise language. You may give the substance of it if you do not recollect the precise words. A. Yes, Sir; I said to Mr. Beecher in his parlor, "Mr. Beecher, Mr. Theodore Tilton is at my house and wishes to see you."

By Mr. Fullerton—Now, let us have it fairly understood. Do you give the substance now as nearly as you recollect it, or he words? A. I am giving it as nearly to the words as I can remember it. I certainly am giving the substance.

Q. And do not profess to give the exact words? A. No, Sir.

Q. Very well. Now go on with the narration. A. I said, "Theodore Tilton is at my house and wishes to see you to-night."

Judge Neilson—Mr. Fullerton, I am the bearer of a request that you speak a little louder. It is here in writing, Sir.

Mr. Fullerton—Well, Sir, I will conform to that request.

Mr. Morris—He has hardly room here to speak at all.

Q. Go on with the narrative, Mr. Moulton. A. He said, "This is Friday night; this is prayer-meeting night; I cannot go to see him." "Well," I said, "he wants to see you with regard to your relations with his family, and with regard to the letter that he has sent to you through Mr. Bowen. I think you better go to see him." I said: "You better send somebody down to your prayer-meeting for you," and he did.

Q. State what occurred in reference to that? A. He called to somebody in the room adjoining and told them; he sent some message to his prayer-meeting; I don't remember what it was, but he went out of the house with me, at my request.

Q. And where did you go? A. Went down to my house, Sir, where Mr. Tilton was.

Q. Where did he go after he entered your house? A. He went into the front chamber up stairs where Mr. Tilton was.

Q. And where did you go? A. I remained in the parlor.

Q. Now, Mr. Moulton, state whether that request of yours of Mr. Beecher to go to your house was in consequence of anything that had occurred between yourself and Mr. Tilton prior to your going there?

Mr. Evarts—If your Honor please.

Judge Neilson, to the witness—Say yes or no, Sir.

A. Yes.

Q. Was any conversation had between you on your way from Mr. Beecher's house to your own? A. Yes, Sir.

Q. State what that conversation was as near as you can? A. As we were going down the steps Mr. Beecher says, "What can I do? What can I do?" And I said, "I don't know. I am not a Christian; I am a heathen; but I will try to show you how well a heathen can serve you; I will try to do you some good; I will try to help you;" and we walked along together, and I told him what Mr. Bowen had said to Mr. Tilton concerning his adulteries; I told him that Mr. Bowen had charged him with adulteries in the presence of Mr. Tilton and Oliver Johnson, and—

Q. What reply? Go on with the narration. A. Yes, I will; and he said that was singular; when Bowen brought to him that letter he pledged his friendship to him; he did not inform him that he had told Tilton any such thing; and he told me furthermore that he had sympathized with Bowen in the stories told him against Tilton; that Bowen told him some stories against Tilton, and that he had sympathized with them; another remark that he made was, "This is a terrible night; there is an appropriateness in this storm;" we reached the house.

Q. You spoke of a letter which Mr. Tilton had written to him through Mr. Bowen? A. Yes, Sir.

Q. Did you ever see that letter. A. Did I ever see it?

Q. Yes, Sir. A. Yes, Sir; I have seen it; I had not seen it at that time—the original letter that was delivered.

Q. Did you ever have it in your possession? A. Yes, Sir.

Q. Have you it in your possession now? A. Yes.

Q. Just select it for me, please [handing witness a bundle of papers]. A. I don't know that I can. If you will hand me my overcoat I think I have got the document there that will enable me to do it. [Mr. Fullerton hands him his overcoat.] Have you any book with my statement in it?

Q. I can omit if you cannot find it directly.

Mr. Beach—I can give you a book, if you want a book.

The Witness—Yes; if you will let me have one of those books I think I can find it.

Mr. Fullerton—I want the original.

The Witness—I know you do. I want to find it by the mark. They are all marked.

Mr. Beach—Do you want a book?

The Witness—Yes; I would like to have one, Sir, if it is convenient.

The witness referred to a newspaper.

Mr. Fullerton—[Handing the witness a book.] That is what you wished to see?

The Witness—Yes.

Mr. Beach—At 2.15 it begins.

Mr. Fullerton—The book is not paged.

Mr. Beach—I have paged it.

Mr. Evarts—You have used that copy, I suppose?

Mr. Beach—Yes; I think it is correctly paged.

The Witness—[Examining the book.] I do not see it referred to here; I cannot tell the number; they are all marked in the exhibits.

Mr. Morris—It is marked "A," I think.

The Witness—Is it in either of those? Just see [handing Mr. Fullerton two packages of papers].

Mr. Fullerton—I will see.

The Witness—Just see if it is in your list of papers.

Mr. Morris took the packages to make a search for the paper referred to, and Mr. Fullerton continued the examination.

Q. How long was Mr. Beecher up in this front room of which you have spoken, with Mr. Tilton, on that occasion? A. Well, I should judge, about an hour, Sir.

Q. Was there any other person present that you know of? A. With him and Mr. Tilton?

Q. Yes, Sir? A. No one that I know of, Sir.

Q. And during that interview where were you? A. Down in the parlor.

Q. Was any one with you? A. No, Sir.

Q. Did you remain in the parlor until Mr. Beecher came from the front room? A. Yes, Sir.

Judge Neilson—The upper room?

Mr. Fullerton—The upper room—the upper front room. [To the witness.] And where did he go when he left the upper front room? A. I went out with him to Theodore Tilton's house, Sir.

Q. Where did you meet him after he first left the room? A. I met him at the foot of the stairs.

Q. In the hall? A. In the hall, yes, Sir.

Q. Did anything pass between you? A. Yes, Sir.

Q. State what he said? A. He asked me if I had seen the letter of confession of Elizabeth, and I told him I had, and he said, "This will kill me."

Q. Anything else said before you left the house? A. No; we walked out together.

Q. And where did you go in company with him, if anywhere? A. Went down to Theodore Tilton's house, Sir.

Q. What did you say on the way there after you left the house? A. He said to me, "This comes upon me as if struck by lightning," and I talked with him again about what Bowen had said.

Q. Repeat it? A. I told him again—I told him that I thought it very strange that Mr. Bowen should have made such charges against him to Mr. Tilton and not have told him anything about it. I said I thought it was very treacherous on Bowen's part toward Tilton. I told him that Bowen had promised to sustain the charges that he had made, and that is the substance of what was said. Neither of us, I think, were disposed to talk much, Sir.

Mr. Evarts to the witness—All observations of that kind—

The Witness—I beg pardon, Sir; I stand corrected.

Q. Have you related all that was said that you now remember before you left Mr. Tilton's house? A. Yes.

Q. Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present? A. Why, he told me that Mr. Tilton had told him of the confession of his wife to him.

Q. Just repeat now what he said upon that subject. A. Mr. Beecher told me that Mr. Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession or a copy of a confession of Elizabeth of sexual intercourse between them; and he told me that Theodore had told him of the reasons for sending to him the letter through Mr. Bowen. That is all that I remember just now.

Q. When you went to see Mr. Beecher that night, had you any paper in your possession that had been given to you by Mr. Tilton? A. By Mr. Tilton? Yes, a letter from Mrs. Tilton.

Q. Did you give it to Mr. Beecher? A. No, Sir.

Q. Did you show it to him? A. No, Sir; I didn't.

Q. Do you know whether Mr. Tilton kept a copy of that paper of which you now speak, which he gave to you? A. He made a copy of it, I think; he made a copy of it.

Q. Where did he make it? A. He made it at my house.

Q. At the time that he gave the original to you? A. Yes, Sir; he took a copy of it.

Q. And what did you do with that paper which you took from him, and of which he made a copy? A. I kept it until after the "tripartite covenant," and returned it to Mr. Tilton.

Q. And when you arrived at Mr. Tilton's house did you go in? A. No, Sir; I did not go in.

Q. Did Mr. Beecher go in? A. He did; yes, Sir.

Q. And where did you then go? A. I went home.

Q. Did he tell you of his object in going there? A. He told me that Theodore had given him permission to go to Elizabeth for confirmation of the story; nothing further than that.

Q. After leaving him there, where did you go? A. After leaving him at Mr. Tilton's?

Q. Yes, Sir? A. I said that I went to my house.

Q. You went back to your house? A. Yes, Sir.

Q. Did you see Mr. Beecher again that night? A. I did; yes, Sir.

Q. How long after you left him at Mr. Tilton's house? A. Within an hour, I should think.

Q. And where did you see him? A. In my parlor.

Q. He returned to your house, did he? A. Yes, Sir, he did.

Q. Tell me what occurred then between you? A. I went into the parlor with him, and I said to him: "Well, have you seen Elizabeth?" and he said he had. That was all he said.

Q. No further conversation? A. No.

Q. How long did he remain there with you? A. Long enough to say that, and go to the front door, and go out again; I don't know; a very short time, Sir.

Q. And where did you go with him then? A. I went with him to his house.

Q. Did you go in? A. No, Sir.

Q. What conversation, if any, did you have on the way to his house? A. Well, it was nothing but a repetition of the other conversation about Bowen, and he asked me to be friendly to him. I said I would be.

Q. Do you recollect his words when he asked you to be friendly with him? As near as you can repeat them I wish you would do so. A. He said he wanted me to be a friend to him in his terrible business.

Q. And did you part with him at his own house? A. Yes, Sir.

Q. When did you next see him? A. On the evening of December 31.

Q. That was the next day? A. Yes, Sir.

Q. After these interviews of which you have spoken? A. Yes, Sir.

Q. Now, Mr. Moulton, up to that period did Mr. Beecher say anything upon the subject of having given any advice in reference to any domestic difficulty between Tilton and his wife, or in reference to any dismissal from an editorship, or any other relation to a newspaper? A. No, Sir; no.

Q. He said nothing upon either of those subjects up to that time? A. No, Sir.

Q. Now we come to the 31st, and where did you first see him then? A. At his house.

Q. How did it happen that you went to his house? A. Well, I received a note from Theodore Tilton on the morning of the 31st of December, asking me to return to him the confession of Elizabeth which I had.

Mr. Evarts—Well, we don't want the contents of the paper.

By Mr. Fullerton—No, I only want to know how it happened that you went to Mr. Beecher's house on the morning of the 31st? A. On the 31st, not on the morning of the 31st.

Q. Well, on the 31st? A. I went there because I had been informed by Mr. Tilton—

Mr. Evarts—No matter what you had been informed.

Judge Neilson—You went there in consequence of information.

By Mr. Fullerton—Did you go there in consequence of something that occurred between you and Mr. Tilton? A. Yes, Sir.

Q. What occurred whilst you were there? A. I saw Mr. Beecher, and I said to him: "I think that before we terminate this interview, your judgment will be that it is a very strange one." And I said to him: "Do you remember that I asked you last night if anybody had seen the letter that Mr. Tilton sent to you through Mr. Bowen, and your answer was that nobody save myself had seen it;" and he remembered that. I said: "Mr. Beecher, I want to read to you a letter from Elizabeth Tilton, asking for the return of the paper which I have and the paper which she gave to you last night at your dictation," and I did read that paper to him, and I said to him, "I will read to you also another letter, in which Mrs. Tilton has informed her husband—"

Mr. Evarts—No, no; if he read the letter—

Mr. Fullerton—He is telling what he said to Mr. Beecher.

Mr. Evarts—No.

Mr. Fullerton—Yes, Sir; I beg your pardon! He is stating just what he said to Mr. Beecher. He said: "I will read to you another letter."

The witness resuming—Yes, Sir. "I will read to you a letter in which Mrs. Tilton informs her husband that she has given you a letter of retraction," and I read that also to him.

Q. You read that also to him? A. Yes, Sir.

Q. What did he reply to that? A. He said he was surprised. I said to him "Mr. Beecher, I think you have been guilty of a great meanness in getting the permission of a husband to visit his house and then going there to his wife and procuring from her what you know to be a lie. Now, I said to Mr. Beecher, "that won't save you." I said to him: "I did not see this morning much of the guidance of God in what you did, but perhaps it will all turn out for the best, for I hold the confession of Elizabeth Tilton, and if you will return that retraction to me I will burn both in your presence, or I will preserve both," and he said to me: "In case of my death this would be the only defense that my family would have against such a charge." And I said to him: "Mr. Beecher, I do not think that now you ought to take merely selfish counsel of yourself. The truth is the truth; you have got to abide by that. Where is the retraction." I said to him, "I want it." He went to the closet and got the retraction, the paper that he got from Elizabeth Tilton the night before, as he said, and handed it to me. I told him I would protect the confession—I would not give that up to Tilton—and I would protect this paper that he gave me with my life; and sitting there, Sir, I felt my pistol in my pocket, and I said: "To this extent, with my life." [Placing his hand upon his pocket].

By Mr. Evarts—You mean you took it out? A. Yes, Sir; I took it out; I felt it in my coat pocket, and I put it on my knee.

By Mr. Fullerton—Go on with the narrative. A. He said, "Of course, if this charge is made against me, if Theodore should make any charge against me, my defense would be the technical one of general denial; but with you, since you know the truth, I would throw myself upon your friendship, and what I believe to be your desire to save me." And he told me there,

he said to me, in addition, that he considered his sexual intercourse with Mrs. Tilton was natural—an expression of his love for her, as the words he used; and he said he felt justified in it on account of the love he held for her and which he knew she held for him; and said, at the close of the conversation, "my life is ended. When to me there should now come honor and rest, I find myself upon the brink of a moral Niagara, with no power to save myself, and I call upon you to save me."

Q. State, if you please, what degree of emotion he manifested, if any? A. A very great degree of emotion.

Q. How did it manifest itself? A. In excited conversation.

Q. In any other way? A. Not that I know of.

Q. I did not know but that he wept upon that occasion.

Mr. Evarts—Well—

The Witness—Well, yes, he did weep.

Q. Look at the paper which I show you, and say whether it is one of the three of which you have spoken in your testimony. [Handing witness a letter.] A. Yes, sir, that is one of them.

Q. In whose handwriting is that letter? A. Elizabeth Tilton's.

Mr. Fullerton—I propose to read it in evidence (reading):

"Saturday Morning.

"MY DEAR FRIEND FRANK:

"I want you to do me the greatest possible favor. My letter which you have and the one I gave Mr. Beecher, at his dictation, last evening, ought both to be destroyed. Please bring both to me, and I will burn them. Show this note to Theodore and Mr. Beecher; they will see the propriety of this request. Yours truly,

"E. R. TILTON."

[Letter marked Exhibit No. 1.]

Mr. Evarts, to Mr. Fullerton—Did he say how he received it?

Q. By Mr. Fullerton—How did you receive that note from her? A. I think from Elizabeth Tilton direct.

Q. From whom? A. From Elizabeth Tilton directly.

By Mr. Evarts—Not personally, do you mean? A. Yes, Sir.

Q. At her house? A. Yes, Sir.

Q. That is your recollection of it? A. Yes, Sir.

Q. Received it at her house from her? A. Yes, Sir.

By Mr. Fullerton—What else occurred during this interview at Mr. Beecher's house on the 31st? A. What is the question?

Q. What else occurred, if anything, at Mr. Beecher's house on the morning of the 31st? A. There was not anything occurred on the morning of the 31st; it was in the evening.

Q. Well, what occurred on the 31st? A. Nothing that I remember, further than that.

Q. Did you go away and leave him at his house? A. I did; yes, Sir.

Q. And where did you go? A. Went home to my house.

Q. Did you take with you the letter which Mr. Beecher gave you, called the retraction? A. Yes, Sir.

Q. And what did you do with it? A. Read it to Theodore Tilton, whom I found there.

Q. And after that what did you do with it? A. Kept it.

Q. When did you next see Mr. Beecher after that interview? A. I think it was January the 1st, Sir—the evening of January the 1st. I don't remember seeing him before that—the afternoon or evening of January the 1st.

Q. Where did you see him? A. At his house.

Q. How did it happen that you went there on January the 1st? A. By his invitation.

Q. And when was that invitation extended to you? A. December the 31st.

Q. When you were there on the occasion you have already spoken of? A. Yes, Sir.

Q. He invited you to come the following day? A. Yes, Sir.

Q. And what time in the day, as near as you can remember, was it when you went there? A. It was toward evening, Sir, I think.

Q. Did you have an interview with him? A. Yes, Sir.

Q. In what part of his house? A. In his study.

Q. Is that on the first or second floor? A. It is on the second or third floor, Sir—I believe second floor or third.

Q. State, if you please, what that interview was? A. I told Mr. Beecher that I had taken the retraction to Mr. Tilton, and that I had told Mr. Tilton that it would have been very foolish for him to have carried his threat of the morning into execution. I told him that Mr. Tilton was pleased with my having procured the retraction, and that I told Mr. Beecher that Mr. Tilton seemed to me to be—

[Mr. Evarts objected.]

Mr. Fullerton—No, Sir, not at all; it is what he narrated to Mr. Beecher. A. I told him that I thought that—I told him that Tilton told me that he had made up his mind that, no matter what came to himself, he would undertake to protect the reputation of his wife at all hazards. Then Mr. Beecher said to me that he was in misery on account of the crime that he had committed against Theodore Tilton and his wife and family; he said that he would be willing to make any reparation that was within his power; he said that Mr. Tilton, he thought, would have been a better man under the circumstances in which he had been placed than he had been; that he felt that he had done a great wrong, because he was Theodore Tilton's friend, he was his pastor, he was his wife's friend and pastor, and he wept bitterly; and I said to him, "Mr. Beecher, why don't you say that to Mr. Tilton, why don't you express to him the grief you feel, and the contrition for it. You can do no more than that, and I think I know Theodore Tilton well enough to know that he would be satisfied with that, for I know he loves his wife." Mr. Beecher told me to take pen and paper and to write at his dictation, and I did write at his dictation the letter of January 1, 1871.

Q. What was done after you wrote that letter? A. I read the letter to him, and he read it, and then he signed—

Q. Never mind, we will show that in a moment. You say you read it to him? A. Yes, Sir.

Q. Did you read it as it was? Yes, Sir, and as it is.

Q. Did he take it and read it? A. Yes, Sir.

Q. Do you mean to be understood that you read it to him, and that he read it afterward for himself? A. Yes, certainly.

Q. And did he write anything himself upon that paper or those—add anything to that letter? A. Yes, Sir.

Q. Is that the letter of which you speak? A. Yes, Sir, that is it.

Q. What part of it is in the handwriting, if any, of Mr. Beecher; the words at the foot of the last page? A. Yes, Sir.

Mr. Fullerton—I propose to read it in evidence.

[Letter submitted to Mr. Evarts.]

Q. Before reading the letter I want to ask you if you wrote it down as he dictated it? A. Word for word.

Mr. Fullerton (reading): "BROOKLYN, January 1, 1871.

"In trust with F. D. Moulton.

"MY DEAR FRIEND MOULTON:

"I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself; I even wish that I were dead. But others must live and suffer. I will die before any one but myself shall be inculpated. All my thoughts are running towards my friends, toward the poor child lying there and praying with her folded hands. She is guiltless, sinned against, bearing the transgressions of another. Her forgiveness I have. I humbly pray to God that he may put it in the heart of her husband to forgive me. I have trusted this to Moulton in confidence.

"H. W. BEECHER."

Q. Now, let me ask you, if those words which I read last, to wit: "I have trusted this to Moulton in confidence. H. W. Beecher," is what he wrote upon that paper? A. Yes, sir.

Q. In your conversation with Mr. Beecher, before the writing of that letter, you spoke something of a threat having been made: what threat did you refer to?

Q. Mr. Evarts—Did he repeat it to Mr. Beecher?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—If he repeated it to Mr. Beecher, he may testify to it; otherwise, not.

Mr. Fullerton—I should not attempt to prove it, if he had not.

Mr. Evarts—Yes, but I want the witness to understand that.

A. I told Mr. Beecher that Mr. Tilton had said that for the offense of having gone to his wife and procured that retraction, he would smite him.

Q. By Mr. Fullerton—And in your narration to Mr. Beecher, I understood you to say that you told him that you had said to Theodore that it was better that he had not put that threat in execution? A. Yes, certainly.

Mr. Evarts—That it would have been foolish.

Mr. Fullerton—Yes, whatever it was. [To the witness]. Now what was done after this paper was signed? A. Well, I left the house after having bid Mr. Beecher good-bye at the head of the stairs. The last thing that he said to me was this, that he wanted me to do my utmost for peace.

Q. And then did you separate? A. Yes, Sir; that is all that I at present remember that he said.

Q. Now, up to this time, did Mr. Beecher say anything upon the subject of having given advice in regard to any domestic difficulty between Mr. and Mrs. Tilton, or in respect of Tilton's dismissal from *The Independent* and *The Brooklyn Union*? A. Not that I remember, Sir.

Q. Did anything more occur on January the 1st than you have now related? A. No, not that I at present remember.

Q. When, if at all, did you show this letter of January 1st to Mr. Tilton? A. On the same evening.

Q. And when did you see Mr. Beecher next again? A. I think on January 2. I called at his house.

Q. A little louder? A. I called at his house on January the 2d, in the afternoon.

Q. And how did it happen that you went there January 2d? A. By invitation.

Q. Oh I well, state? A. Mr. Beecher invited me on January 1st to come January 2d.

Q. And in pursuance of that invitation you went? Yes, Sir.

Q. What occurred on the 2d of January? A. I told Mr. Beecher that Mr. Tilton's disposition seemed to me to be one that would insure the keeping down of the story; that I thought he had nothing to apprehend from Mr. ——. I told him that I thought he had nothing to apprehend from Mr. Tilton, because Mr. Tilton seemed still intent upon protecting his family.

Q. Well, what else, if anything? A. That is the substance of what I remember.

Q. Where did that interview take place? A. Up in his study or chamber, I forget which; in his study, I think.

Q. When did you next see him after January 2d? A. Ah! January the 2d Mr. Beecher asked me if I thought that it would be safe to have the sale of Plymouth pews go on.

Q. And when did he ask you that question? A. Asked it of me at the head of the stairs, on the evening of January the 2d.

Q. Well, tell us all he said upon that subject, if there was anything more? A. There was nothing more.

Q. What reply did you make? A. I told him that I thought it would be perfectly safe to have the sale of Plymouth pews go on; I felt perfectly assured that Mr. Tilton would do nothing against him or against his family.

Q. Did you learn from him, or did you then know, of your own knowledge, when the sale was to take place? A. No; I don't remember that I did know: it was to take place sometime during the next week.

Q. Up to this time had Mr. Beecher told you when these relations existing between himself and Mrs. Tilton ceased?

Mr. Evarts—Well, we would like to have the conversations, if there are any.

Mr. Fullerton—Well, there are some, and we will go on and give them.

A. He told me that, Sir, on January the first.

Q. Now what was said upon that subject? A. He said that Elizabeth Tilton had sent for him to come to her house, and told him that she believed that their relations were wrong, and he told me that he said to her, "If you believe these relations wrong, then they shall be terminated;" and he told me that he prayed with her, prayed to God with her, for help to discontinue their sexual relations.

Q. Anything else said at that time? A. And that he had from that time discontinued his intercourse with her.

Q. Did he say when that occurred? A. I think in July, 1870.

Q. Now, in any of these interviews was a letter which Mr. Tilton had written, or proposed to write, to Mr. Bowen, the subject of conversation? A. I told Mr. Beecher on January the second that Mr. Tilton was writing a letter to Mr. Bowen.

Q. Did you tell him the substance of that letter as you understood it? A. Yes, Sir.

Q. What did you say upon that subject? A. I told him that I should try to control that letter; that I should not only do

that, but do everything else that was in my power, according to my best judgment, to prevent any outbreak.

Q. Well, if you stated what you understood the contents of that letter to be, or what they were to be to Mr. Beecher, I want you to give the conversation. A. Why, I told him that Mr. Tilton intended to write to Mr. Bowen the substance of the interview between himself and Oliver Johnson, and that he intended to publish the letter, in order to give to the public an exact account of the severance of his relations with Mr. Bowen, and I told him (Mr. Beecher) that I should undertake to keep out of that letter anything that concerned Mr. Tilton and his family and Mr. Beecher.

Q. Now, what were the relations existing between Mr. Bowen and Mr. Tilton before they were severed?

[Objected to by defendant's counsel.]

Mr. Fullerton—I suppose that is proper, as spoken of in this conversation?

Mr. Evarts—Anything that he said to Mr. Beecher on that subject.

Mr. Fullerton—Well, I can prove something else besides that; I can prove the outside fact of those relations.

Mr. Evarts—I don't know that you can.

Mr. Fullerton—It does not follow that I cannot prove it because you don't know it. If you have any objection why we will hear it, of course.

Mr. Evarts—Whatever he saw, whatever he heard, is good evidence, provided the subject itself is admissible. But to ask his general statement about what the relations of Mr. Bowen and Mr. Tilton were is not evidence. How is he to find out what the honest relations were between Mr. Bowen and Mr. Tilton. Whatever he saw or heard between raises the question then whether the subject is admissible. But his judgment loses not.

Mr. Fullerton—I do not ask his judgment; I ask the fact as to the relations existing between Mr. Bowen and Mr. Tilton. They now come in question.

Judge Neilson—Well, I think you ought to be content with his general statement that they were friendly, or not; if you go beyond that it ought to be communicated to the defendant—the conversation.

Mr. Fullerton—Why, Sir, I suppose it is competent for me to show that Mr. Bowen was the proprietor of *The Independent*.

Judge Neilson—Certainly.

Mr. Fullerton—And that Mr. Tilton was in his employ as an editor. I propose to show, also, that he had a relation to *The Brooklyn Union*, and another newspaper in this city.

Mr. Evarts—I have no objection to that—their relations.

Judge Neilson—Well, go on.

Mr. Evarts—You can prove them by him or by any body else.

Mr. Fullerton—Well, that is what I propose to do. I suppose the gentleman understands some things without my saying much about them. He spoke of severed relations with Mr. Bowen. [To the witness]. Now, I want to know what those relations were. A. He was associated with Mr. Bowen as editor of *The Union*.

Q. By Mr. Hill.—Was then, or had been? A. He had been, Sir.

Q. Now, as to *The Independent*? A. He had been editor of *The Independent* and had made a contract as contributor to *The Independent*.

Q. Now repeat, if you please, what you said to Mr. Beecher in regard to this proposed letter of Mr. Tilton to Mr. Bowen, respecting what had theretofore taken place between them? A. I told him that he intended to publish that letter to make clear the reason for the severance of their relations.

Q. And it was that letter, that I understand you, you were going to try to control? A. Yes, Sir.

Q. So as to keep out of it anything of the personal matters between Mr. Beecher and Mr. Tilton—is that it? A. Yes, Sir.

Q. Very well, now, what else occurred at that time, if you remember anything else? A. I don't remember just at present anything else.

Q. Do you know anything, or did you learn anything from Mr. Beecher in regard to a letter which he had written to Mr. Bowen? A. He told me that he had written a letter to Mr. Bowen explaining—taking back something that he had said about a lady to Mr. Bowen. He had told me previously—I omitted that, Sir—he had told me previously that he had insinuated—as I told him before, the interview of December 31st, and then he told me on January 1st that he had mentioned a lady's name to Mr. Bowen, and I told him that that was very unjust, and he said he would take it back, and on January 2 he told me that he had written to Mr. Bowen taking it back.

Q. By Mr. Evarts—Unjust to whom? A. Unjust to the woman, Sir,

Q. Well, did he show you the letter? A. Yes, Sir, he showed me the rough draft of the letter, either on that occasion, or a day or two afterward.

Q. Look at the paper now shown you, and say whether that is the rough draft he showed you? A. Yes, Sir; that is it.

[Paper shown to defendant's counsel.]

Mr. Fullerton—[Reading] “Brooklyn, January 2d, 1871.

“MY DEAR MR. BOWEN: Since I saw you last Tuesday I have reason to think that the only cases of which I spoke to you in regard to Mr. Tilton were exaggerated in being reported to me, and I should be unwilling to have anything I said, though it was but little, weigh on your mind in a matter so important to his welfare. I am informed, by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us, that he knows of the whole matter about Mrs. B.” Shall I—

Judge Neilson—No; do not give the name at length.

Mr. Evarts—What does your Honor say?

Judge Neilson—Not to give the name at length; there is no occasion for it.

Mr. Evarts—Well, they must have the responsibility of reading letters or not reading them.

Mr. Beach—We take the responsibility, Sir, of giving the initials of the name.

Mr. Evarts—Will your Honor let the letter be imperfectly read?

Mr. Beach—If you want it, read it.

Mr. Evarts—Not at all: we don't read the letter, or offer it.



The responsibility is with the counsel to read the letter or omit the letter.

Judge Neilson—It does not follow, however, that the letter is to be omitted because it may contain the name of a third person, which name ought not to be given publicly. A letter might contain matter material and proper to be given, and contain the name of a third person not proper to be given. So, for the present, I make the suggestion to the counsel.

Mr. Evarts—Your Honor does not intend to rule that letters can be imperfectly read?

Judge Neilson—No.

Mr. Fullerton—It is not an imperfect reading of the letter; it is a withholding of the whole name in the interest of decency and propriety, not to arraign a person here who ought not to be arraigned.

Mr. Evarts—Your Honor does not now rule that they have a right to read the letter imperfectly?

Judge Neilson—I rule that, if the letter be at all material, they may read it, omitting the name of the third person referred to.

Mr. Evarts—To that we except.

Judge Neilson—The name of the third person referred to not being at all material.

Mr. Evarts—That we don't know.

Mr. Beach—We give the letter in evidence, and we read such part as we choose.

Mr. Fullerton—Yes, Sir; and the gentlemen can read the whole name if it subserves their purpose.

Judge Neilson—If you put in a paper, and read a few lines of it, it is all put in by you. The other side, if they desire, can read the rest of it, because you have put it in.

Mr. Evarts—Your Honor will allow us either to except, or else have it understood that the whole letter is considered as read.

Judge Neilson—Oh! the whole letter is in.

Mr. Evarts—And considered as read?

Judge Neilson—But they read such portion now as they chose, and if you read any portion of it you will be reading the document which they put in.

Mr. Evarts—I understand we will consider it all in.

Judge Neilson—Yes, Sir.

Mr. Fullerton—(Resuming the reading.) "I am informed by one on whose judgment and integrity I greatly rely, and who has the means of forming an opinion better than any of us, that he knows the whole matter about Mrs. B——, and that the stories are not true, and that the same is the case with other stories. To this I do not wish any reply. I thought it only due to justice that I should say so much. Yours,

"H. W. BEECHER."

Q. Now, when did you next have an interview with Mr. Beecher, and where? A. Within the next—within that week; I do not remember the day; I think it was the third or fourth.

Q. And where? A. At my house.

Q. Under what circumstances? A. Mr. Beecher came to the house to see me; I was at home, and Mr. Tilton was there, and they met in my presence.

Q. State whether, as far as you know, that meeting was accidental or not between those two gentlemen? A. It was accidental.

Q. Now, what occurred? A. Well, Mr. Tilton was not cordial, Sir.

Q. Now, what occurred? A. Well, Mr. Tilton was not cordial.

By Mr. Evarts—What occurred? A. Do you mean what was said?

Q. No; we want the facts first. I do not want what took place.

Mr. Fullerton—Well, I will submit that the witness has stated there was a want of cordiality between these parties on that occasion, and I want to ask him now how that was manifested.

Mr. Evarts—Not in the first place. We are certainly entitled to the facts first. I will ask the Court to decide between us.

Mr. Fullerton—I am proceeding in the proper way, and I very much dislike these interruptions, without cause, on the part of counsel.

Mr. Evarts—If your Honor please, the counsel gets a construction, and then proceeds to give the facts. Since an issue has been made, I submit that counsel cannot give a construction of what occurred, and then proceed to give the facts. He may give the construction, and then, possibly, not give the facts. We will have the facts first, as the law requires, and then we will put our construction on them, and the jury will put theirs.

Mr. Fullerton—It is a fact in this case whether upon this occasion these parties met cordially or not. It is a fact whether Mr. Tilton greeted Mr. Beecher cordially or not. That is a fact in this case.

Judge Neilson—Well, that is a fact depending on the opinion of the witness, and it would be more proper to ask, therefore, what the indications of a want of cordiality were.

Mr. Fullerton—I was asking him this very thing.

Judge Neilson—Very well, go on.

By Mr. Fullerton—How was that want of cordiality manifested? A. In Mr. Tilton not recognizing Mr. Beecher.

Q. Go on with the narration, please. A. I said to Mr. Tilton, in Mr. Beecher's presence: "Mr. Tilton, I think that your conduct here is wrong; that you have no business in my house to treat with such absolute discourtesy Mr. Beecher, until you have read his letter of contrition. He has, in my opinion, done everything that a man could do, up to the point of making a public statement of the facts. You cannot require any more. I think that, having received such an explanation from him of his feelings towards you, you should greet him at least civilly." And Mr. Beecher said, "Theodore, I hope that my expression of feeling towards you in my letter you will feel to be a sincere expression. I will do anything within reason that you may ask me to do to make reparation for the wrong I have done you. I don't see what I can do, but if there is anything proper that I can do, I should like you to indicate it." That was the substance of the conversation between Mr. Beecher and Mr. Tilton and myself, and the result of that conversation between Mr. Beecher and Mr. Tilton was that Mr. Tilton told Mr. Beecher that he certainly intended to protect his family, and that was the substance of it.

Q. What degree, if any, of emotion was manifested on that occasion? A. There was emotion manifested by Mr. Tilton,

for he turned upon me very fiercely, and said, "How can you expect me to greet this man cordially?"

Q. What was the state of Mr. Beecher's mind, as indicated by any outward emotion? A. Sorrowful, Sir. He was in tears.

Q. Have you now related all that occurred at that time, as you remember it? A. As far as I at present remember; yes, Sir.

Q. Did you see Mr. Beecher after that, and if so, when and where? A. I saw him very frequently at my house.

Q. Give us the next meeting that you recollect of? A. It was before the 10th of January.

Q. What occurred then? A. I read to Mr. Beecher the letter which Mr. Tilton had written to Mr. Bowen.

[Letter handed to witness.]

Q. Look at the paper I now show you, and say whether that is the letter you then read to him? A. Yes, Sir, that is it. This letter recalls the fact, that I don't know whether I mentioned or not, that Mr. Beecher returned to me the letter that Mr. Bowen gave to him.

Q. Repeat that. A. Mr. Beecher returned to me the letter that Mr. Bowen gave him—the letter written to Mrs. Tilton on December 26.

By Mr. Evarts—Do you mean he did at this time? A. No, Sir; January 1, I think it was.

Mr. Fullerton—I offer this letter in evidence.

Mr. Evarts—He means to say that is the very paper he showed to Mr. Beecher.

The Witness—Yes, Sir.

By Mr. Fullerton—In whose handwriting is the paper? A. Theodore Tilton's.

Mr. Fullerton—I will now read the letter from Mr. Tilton to Mr. Bowen, dated Brooklyn, Jan. 1, 1871:

"BROOKLYN, Jan. 1, 1871.

MR. HENRY O. BOWEN—

SIR: I received last evening your sudden notices breaking my two contracts—one with *The Independent*, and the other with *The Brooklyn Union*.

With reference to this act of yours I will make a plain statement of facts.

It was during the early part of the Rebellion (if I recollect aright) when you first intimated to me that the Rev. Henry Ward Beecher had committed acts of adultery for which, if you should expose him, he would be driven from his pulpit. From that time onward your references to this subject were frequent, and always accompanied with the exhibition of a deep-seated injury to your heart.

In a letter which you addressed to me from Woodstock, June 16, 1873, referring to this subject, you said: "I sometimes feel that I *must break silence*, that I *must* no longer suffer as a *dumb man*, and be made to bear a load of grief *most unjustly*. One word from me would make a *revolution* throughout Christendom, I had almost said—and *you know it*. \* \* \* \* You have just a little of the evidence from the great volume in my possession \* \* \* I am not pursuing a phantom, but solemnly boding over an awful reality."

The underscorings in this extract are your own. Subsequently to the date of this letter and at frequent intervals from then till now, you have repeated the statement that you could, at any moment, expel Henry Ward Beecher from Brooklyn. You have reiterated the same thing not only to me, but to others.

Moreover, during the year just closed, your allusions to the subject were uttered with more feeling than heretofore, and were not unfrequently couched with your emphatic declaration

that Mr. Beecher ought not to be allowed to occupy a public position as a Christian preacher and teacher.

On the 26th of December, 1870, at an interview in your house at which Mr. Oliver Johnson and I were present, you spoke freely and indignantly against Mr. Beecher as an unsafe visitor among the families of his congregation. You alluded by name to a woman, now a widow, whose husband's death you had no doubt was hastened by his knowledge that Mr. Beecher had maintained with her an improper intimacy. You avowed your knowledge of several other cases of Mr. Beecher's adulteries. Moreover, as if to leave no doubt on the mind of either Mr. Johnson or myself, you informed us that Mr. Beecher had made to you a confession of his guilt, and had with tears implored your forgiveness."

I propose not to read a part of that letter, gentlemen. I shall omit, commencing with the words, "after Mr. Johnson retired from this interview." \* \* \* \* [The letter then continues.]

"During your recital of the tale you were full of anger towards Mr. Beecher; you said with terrible emphasis that he ought not to remain a week longer in his pulpit. You immediately suggested that a demand should be made upon him to quit his sacred office. You volunteered to bear to him such a demand in the form of an open letter, which you would present to him with your own hand; and you pledged yourself to sustain the demand which this letter should make—namely, that he should, for reasons which he explicitly knew, immediately cease from his ministry of Plymouth Church and retire from Brooklyn.

The first draft of the letter did not contain the phrase 'for reasons which he explicitly knew,' and these words, (or words to this effect), were incorporated in a second, at your motion. You urged, furthermore (and very emphatically), that the letter should demand not only Mr. Beecher's abdication of his pulpit, but cessation of his writing for *The Christian Union*, a point on which you were overruled. This letter you presented to Mr. Beecher, at Mr. Freeland's house. Shortly after its presentation, you sought an interview with me in the editorial office of *The Brooklyn Union*, during which, with unaccountable emotion in your manner, your face livid with rage, you threatened with a loud voice that if I ever should inform Mr. Beecher of the statements which you had made concerning his adultery, or should compel you to adduce the evidence on which you agreed to sustain the demand for Mr. Beecher's withdrawal from Brooklyn, you would immediately deprive me of my engagement to write for *The Independent* and to edit *The Brooklyn Union*, and that in case I should ever attempt to enter the offices of these journals you would have me ejected by force. I told you that I should inform Mr. Beecher or anybody else, according to the dictates of my judgment, uninfluenced by any threat from my employer. You then excitedly retired from my presence. Hardly had your violent words ceased ringing in my ears, when I received your summary notice breaking my contracts with *The Independent* and *The Brooklyn Union*. To the foregoing narrative of facts I have only to add my surprise and regret at the sudden interruption, by your own act, of what has been, on my part towards you, a faithful friendship of fifteen years.

Truly yours,

[Signed.] THEODORE TILTON.

Q. Did you state to Mr. Beecher what Mr. Tilton proposed to do with that letter? A. Yes, Sir.

Q. What did you say to him upon that subject? A. I told him Mr. Tilton intended to publish it.

Q. What did Mr. Beecher say? A. Mr. Beecher said that the statement that he had ever confessed to Mr. Bowen, was entirely untrue; he said that he had differences with Mr. Bowen, and a settlement with Mr. Bowen, and that Mr. Bowen had never raised with him, at any such settlement, any question of adultery; he said that he presumed that he knew what one portion

of the letter referred to; I said to him, "Now, I have a business matter under the contracts to settle with Mr. Bowen of Mr. Tilton's, and I don't want to proceed to court with that claim, if taking it into court is going to rip up your relations with Mr. Tilton's family; I don't want to do that; I would rather pay him what Mr. Bowen owes him than to do that, but, Mr. Tilton," I said, "feels that he wants to publish this letter. He feels that he has taken out of it all that concerns you and your relations with his family. He wants to leave, and he is willing to leave you and Mr. Bowen in conflict," but told him that I did not approve of that. I told Mr. Beecher that I wanted to settle all matters peacefully—the Bowen question peacefully—that Mr. Bowen had acted, in my opinion, I told him, treacherously towards him, and treacherously towards Mr. Tilton. He then told me that he thought it would be necessary for him, in order that I might be guided properly in the transaction between Mr. Tilton and Mr. Bowen—that it would be necessary to tell me the truth about a certain charge made by Mr. Bowen.

Judge Neilson—Is that part of the conversation necessary?

Mr. Fullerton—I don't propose to have it.

Judge Neilson—Omit it.

Mr. Fullerton—Let him go a little further.

Mr. Everts—What is that?

Judge Neilson—Part of this conversation which may be material for us here, may be given without introducing that part of it which relates to a third person, and which, perhaps, may not be material.

Mr. Everts—We know nothing about it. We would like to have the conversation.

Judge Neilson—All that relates to these parties is proper. I think that what relates to a third party ought to be omitted. I think the part that is germane to the question may be given, and that the part that is not should be left out.

Mr. Fullerton—That was my view, if your Honor please. [To the witness.] Go on now, please, and I will tell you when to stop. A. He said he thought it would be necessary to tell me the truth with regard to himself, and to what he supposed Mr. Bowen referred in the letter in the language that he used to Mr. Tilton and recited in the letter.

Q. What language did he call your attention to? A. Give me the letter and I will show it you; I cannot repeat it.

Q. [Handing letter to witness.] Point out the part that he called your attention to. What part of the letter did Mr. Beecher call your attention to by way of explaining it? A. He said he presumed he knew to what Mr. Bowen referred in this part of the letter: "After Mr. Johnson retired from this interview you related to me the case of a woman whom you said (as nearly as I can recall your words) that Mr. Beecher took in his arms by force and accomplished upon her his deviltry."

Q. Did he then go on to explain that? A. Yes, Sir.

#### ARGUMENT ON THE PROCTOR PASSAGE.

Mr. Fullerton—I will not ask what the explanation was.

Mr. Everts—Well, if your Honor please, is that the way in which it is to be left?

Mr. Fullerton—No, not necessarily, if the other side will take the responsibility of calling it out on cross-examination.

Judge Neilson—You can call it out now, what you think is material.

Mr. Fullerton—I have called out what I think is material.

Mr. Everts—We don't understand that to be right, to characterize a conversation as an explanation, and there leave the matter. What we are entitled to is proof of what occurred between this party and Mr. Beecher on that subject.

Judge Neilson—On this subject.

Mr. Everts—On that passage in this letter.

Judge Neilson—On the subject that we have to deal with!

Mr. Everts—On that passage in that letter which they have introduced as giving a conversation between Mr. Beecher and Mr. Moulton on that subject, to wit: that it was a conversation in which Mr. Beecher explained that.

Judge Neilson—If the word "explained" was used, that justifies you in taking the view you do.

Mr. Everts—Now, they can omit calling the witness's attention to that clause in that letter, and omit interrogating him whether there was a conversation between them; but they cannot introduce it and introduce the fact that they went on to converse about it, and then dispose of it as a conversation or explanation on Mr. Bowen's part.

Judge Neilson—No, it should not appear as a matter of explanation.

Mr. Everts—They must give the evidence, or omit it. [Applause.]

Judge Neilson—Wait a moment, gentlemen. I am very much afraid there will be fewer of us here to-morrow—many fewer, for I will not permit this, and the learned counsel ought not to be interrupted in this way. The word "explanation" is used as giving a coloring you don't intend, perhaps, but which, at any rate, is not just.

Mr. Fullerton—I am quite willing it should be eliminated from the testimony, and I want it distinctly understood by your Honor that this is omitted out of consideration to a third person, who ought not to be dragged into this controversy, and if she is dragged in it will not be by me. I propose the Court should understand my object in omitting that part of the narration. I don't mean it shall be said of me that I am afraid of its effect on my client by any means, but it is in the interest of propriety that no third person should be brought into this controversy, unless it is actually necessary to elucidate the truth between these parties.

Mr. Everts—If you will state that all that relates to the Proctor matter, that will be the end of it. That has been considered by another Court.

Judge Neilson—We don't propose to receive Miss Proctor here.

Mr. Everts—I don't want, if your Honor please, a mutilation of evidence. If this witness has to be judged by this jury, he is to be judged by what he states, without the suppression of anything.

Mr. Beach—Your Honor will permit me to say, unless this should be adopted as a precedent establishing a principle in which I do not concur, that I should say a word in regard to it.

I insist that we have a right to give the whole or any part of any statement or declaration that may have been made by Mr. Beecher which we deem material to the particular matter under investigation; that it is not a rule of evidence that we should give all of what may have been said in a confession to which we have directed the attention of a witness. The material part—that which we consider essential to the interests of the party we represent—we may call out upon our examination, and if there be any part of it omitted appearing to the other side to be essential to their interests, it is entirely competent for them to give it in evidence; but it is not the rule of evidence that we shall give the whole of what Mr. Beecher may have said upon any particular occasion, material or immaterial, to the particular issue under investigation.

Judge Neilson—I understand it to be so, and to be a fundamental principle of law.

Mr. Evarts—I agree to that; but that is not the point of the inquiry.

Judge Neilson—No; that is not it.

Mr. Evarts—They may ask him what he did say, and then take what he said and stop at a certain point, and then, if we choose, to call out the rest of the conversation, it comes to us.

Mr. Beach—Mr. Evarts, will you permit me to suggest to you (as I do not wish to say anything further) that we may ask if Mr. Beecher made an explanation in regard to a given fact, and refrain from calling out that explanation?

Mr. Evarts—No, Sir.

Mr. Beach—I insist upon that proposition. We are not bound to call it out unless we choose. We may say he acted in regard to a particular matter without calling out what that action was. It may be we opened the subject as far as to permit the opposite party to give it in evidence, but we are not compelled to produce it; we are not compelled to give them any part of the declaration or any part of the acts of Mr. Beecher further than we may choose to go.

Judge Neilson—Undoubtedly, and yet it would be unsafe if you are allowed to ask witness whether the defendant made an explanation, because, in truth, what he might understand to be an explanation might not be so.

Mr. Beach—Suppose I ask if he made a declaration in regard to it, am I bound to call out that declaration?

Judge Neilson—That would be better, doubtless; but what has disturbed your opponents, I think, is the word "explanation," which has gone on the minutes, that he has made an explanation which permits of an inference adverse to him.

Mr. Fullerton—I have already stated that that might be struck out.

Judge Neilson—The clause in which that word occurs must be struck out.

Mr. Fullerton—No, Sir; not the clause, but the explanation. What we wish to omit has no bearing upon the issue in this case.

Mr. Evarts—Ah, ah, that will depend.

Mr. Fullerton—That depends on the facts we will adduce in evidence.

Mr. Evarts—It will depend on the truth or falsity of your testimony.

Mr. Fullerton—And the truth or falsity of our testimony you may test to the uttermost.

Mr. Evarts—And we will test it by facts, but not by explanation.

Mr. Fullerton—Test it in your own way, without heralding what you are going to do so vociferously.

Judge Neilson—With my permission neither of you will test anything that is not material to the issue we are trying. I don't intend to admit anything that is not material to the trial now before me.

Mr. Evarts—Is not the truth or falsity of the testimony material?

Judge Neilson—Yes, Sir, undoubtedly, but not evidence affecting third persons. I don't desire to decide a question as to third persons, or to have third persons names implicated beyond what is necessary.

Mr. Evarts—That we agree to. We have no desire to mention their names, or to have anything to do with third persons. Let them omit calling his attention to any conversation of Mr. Beecher on that subject. Leave out, or else bring it in.

Mr. Fullerton—No, I wish to have it appear his attention was called to it, and that he said something, and that something we don't deem important to the general issue, and we omit it.

Mr. Evarts—Then we ask, if his attention was called to it, if it is not material?

Mr. Fullerton—Because I think it is proper to do so.

Judge Neilson—To THE TRIBUNE stenographer—Strike out from and after, "What did he call your attention to?" You may take an exception, Mr. Fullerton, if you desire to do so.

Mr. Evarts—That phrase ought to be struck out.

Judge Neilson—Yes, from and after that. After all, you have what comes within the rule as stated by yourselves.

Mr. Fullerton—I think not, Sir.

Judge Neilson—I think we had better rule that out.

Mr. Fullerton—If your Honor please, I don't mean, if any effort of mine can prevent it, that this witness shall be placed in a false attitude, and that is what my adversaries are seeking to accomplish, in my judgment.

Judge Neilson—I don't see it in that light.

Mr. Fullerton—It may be very fair for them in the conduct of their cause; I shall not criticise their course: I am only saying I don't mean Mr. Moulton shall be placed in an attitude he ought not to occupy with reference to this branch of the case.

Judge Neilson—Certainly; but we can look at that afterwards.

Mr. Fullerton—I don't mean that it shall lie in their power, when we are through with this case, to say that he has, on any occasion heretofore, made a statement of this interview in which he has related something that took place which he has omitted here, unless it appears here that he omitted it because he was requested to do so.

Judge Neilson—That appears now, and it saves your right.

Mr. Fullerton—I don't think so; I don't think it clearly appears.

Judge Neilson—Really, as the case now appears, it does not seem to me to be material. If it becomes material hereafter to protect the witness, we can consider that.

Mr. Evarts—Requested by whom, your Honor?

Judge Neilson—Requested by the Court. I desire to leave this third person out altogether.

Mr. Evarts—Does your Honor undertake to say I requested this witness to leave a part of that out?

Judge Neilson—No; it appears on the minutes that it was left out at my suggestion. It appears, also, that the learned counsel, out of consideration to the witness, thinks that it ought to come in in some degree, and apprehends that if it does not it might operate hardly on the witness, and I have suggested to him that hereafter, if the case should call for any such protection of the witness as claimed now, even though it is now ruled out at my instance, the witness should be protected to that extent.

Mr. Fullerton—What is it?

Judge Neilson—The clause in question.

Mr. Fullerton—It don't appear on the minutes. If your Honor will allow the reporter to read it we can tell better whether our object is accomplished or not.

Judge Neilson—It is all there, and we can refer to it.

The Court here directed THE TRIBUNE stenographer to read the testimony referred to and to strike out the clause objected to. This was done.

Mr. Evarts—Do I understand your Honor to say that it appears at a certain stage of the examination of this witness that the Court requested him not to proceed further with his statement.

Judge Neilson—Yes, Sir; because it relates to a third person.

Mr. Evarts—Will your Honor be so good as to note our exception?

Judge Neilson—Yes, Sir; and because it is not material to the very question we are inquiring into.

Mr. Evarts—Will your Honor please note our exception to that direction of the Court in respect to that order of the evidence?

Judge Neilson—Yes, Sir; and also the exception of the plaintiff's counsel to the order I have made striking it out.

Messrs. Beach, Morris and Pryor (speaking together)—We don't want any exception.

#### RESUMPTION OF MOULTON'S EXAMINATION.

By Mr. Fullerton—Now, have you given us all that was said by Mr. Beecher at that interview when this letter of Mr. Tilton to Mr. Bowen was read, with the exception of what has been omitted by request? A. No, Sir.

Q. Go on with the narration? A. He said he thought the publication of the letter would result in mischief, and I told him that I would undertake to prevent its publication; that I thought I could induce Mr. Bowen without a suit to pay that money, and I would endeavor to do it, and he said he hoped I could, or words to that effect.

Q. What money was it? A. Money under the contracts due Mr. Tilton. I told Mr. Beecher that I had waited upon Mr.

Bowen at The Union office with reference to that money, and Mr. Bowen told me he didn't owe Mr. Tilton any money.

Q. Anything more at that time? A. Not that I remember just at present.

Q. Then we will proceed to the next interview between yourself and Mr. Beecher, if there was one, and state when it was and where? A. There were frequent interviews; I don't remember the next one particularly.

Q. At any one of these interviews that you have spoken of, or at any subsequent interview, was the girl Bessie Turner spoken of. A. Yes, Sir; there was a girl named Bessie Turner spoken of.

Q. When—in what interview? A. I think the interview was subsequent to the one we have just narrated.

Q. And when was it, as near as you can tell? A. I should think it was before the 15th of January.

Q. And where did it take place? A. It took place in my house.

Q. State what it was, if you please? A. I told Mr. Beecher, or rather in an interview between Mr. Beecher and myself, he had told me something that Bessie Turner—I don't remember what it was he told me—he told me Bessie Turner had said something to him concerning Mr. and Mrs. Tilton, and I told Mr. Beecher that Mr. Tilton thought Bessie Turner was a dangerous person to have about; that she was what Mr. Tilton termed—I remember his term—"a prattler," and knew (so Mr. Tilton told me) of the facts as between Mr. Beecher and Mrs. Tilton, and I said to Mr. Beecher, I thought she was better out of the way than here, and Mr. Beecher said he thought so too, and Mrs. Tilton then told Mr. Tilton (so Mr. Tilton told me) that the best place for her was out West at school, and I told Mr. Beecher that Mr. Tilton could not afford to pay her expenses, and he said to me, "Well, I will pay the expenses, or I will do anything that is necessary to keep this story down," and he approved; he said that he thought it was a good plan to send her to school, and he would pay the bills.

Q. You may state whether she was afterwards sent away to school? A. Yes, Sir; she was, to Ohio.

Q. Who superintended that? A. Who superintended the sending of her to school?

Q. Yes, Sir. A. I suppose Mr. Tilton did; I didn't.

Q. Did you superintend or have anything to do with it? A. No, Sir.

Q. What connection had you with the payment of the expense of it afterwards, if any? A. I paid the expenses.

Q. Of her schooling? A. Yes, Sir; and Mr. Beecher paid me.

Q. How many different payments did you make, do you recollect? A. I don't remember; I paid all the bills that were presented.

Q. Afterwards how did you receive your money from Mr. Beecher? A. By check and currency.

Q. How did you receive the bills? A. I think generally from Mrs. Tilton.

Q. Did you ever receive them any other way than through Mrs. Tilton; if so, state them? A. No, Sir, I don't think so.

Q. State whether you forwarded the money or your check on

o Ohio in payment of it; state how it was done? A. I generally forwarded the checks to the order of the principal of the school.

Q. Then what did you do afterwards towards reimbursement? A. Mr. Beecher reimbursed me.

Q. What did you do? Did Mr. Beecher come without any elicitation on your part, or did you send him word or write him a note? A. Sent him word.

Q. How did he make the payments to you? A. Generally in checks.

Q. Sometimes otherwise? A. Yes, Sir.

Q. How otherwise? A. In currency.

Q. And how long did that continue? A. For two or three years, I think.

The Court here adjourned until Thursday.

#### FOURTH DAY'S PROCEEDINGS.

##### MR. MOULTON'S EXPLANATIONS OF THE LETTERS.

THE DIRECT EXAMINATION OF THE WITNESS NOT OVER YET—MR. EVARTS AND MR. MOULTON FACE TO FACE—HEATED DISCUSSIONS BETWEEN COUNSEL—WHY MR. MOULTON WAS CALLED BEFORE MR. TILTON.

Francis D. Moulton resumed the witness-chair with the same briskness and self-confidence which he had displayed on the previous afternoon. There was less color in his face and his demeanor was more collected, although he still lacked the art of concealing his efforts to appear at ease. Self-consciousness is betrayed by hands, feet, and figure. He is constantly changing his position, alternately bending forward and straightening himself, his hands straying nervously from pocket to coat-lapel, and then toying with his hair, mustache, handkerchief, watch-chain, or the arm of the chair. His mild eyes are not quite so restless, although a quick sidelong glance is more natural than a steady gaze. His dress has a conscious air of studied carelessness. His manner is open and frank and his utterance is always distinct, although the tones are soft and measured, sometimes degenerating into an effeminate lisp. His manner varies somewhat; at times he speaks quickly, with business-like directness; then again he weighs his words and replies cautiously and carefully, like a man feeling his way over dangerous ground. There is a painful lack of earnestness in the man, if his bearing does him no injustice. When the gravity of the issue is considered, his replies to the most vital questions often seem flippant. He asserts that the greatest preacher in America

confessed adultery to him, and his manner is that of a listless gentleman giving his verdict upon a novel brand of champagne. He talks and acts like a man who is slightly bored with the whole subject, his mustache concealing a sneer as if this scandal-tragedy after all, to "a man of the world," is a sort of low comedy or broad farce.

Inasmuch as Mr. Moulton's main office yesterday was to identify the correspondence which had been placed in his keeping, his testimony was not, on the whole, so important as it was on the preceding day. The ordeal through which he passed was not so trying save at the close, when a foretaste of the manner in which the cross-examination would be conducted was afforded. He identified the various letters which were handed to him with great caution, reading them through and inspecting the indorsements with a business-like air. When the letter in which Mr. Beecher referred to him as a possible "priest in a new sanctuary," was read, a flushed face and downcast eyes betrayed his annoyance. After recess there was a change in his manner—the words coming faster, and less hesitation being manifested. Once he forgot himself. He was asked to describe Mr. Beecher's manner, and replied, with a coarse sneer, "Oh, he wept as usual!" When he repeated his words to Mr. Beecher in reference to Mrs. Woodhull, that he thought that she was amenable to moral influences, there was a ripple of amusement in the court-room. His advice to Mr. Beecher not to notice the Woodhull publication, as "silence would kill that story," was repeated in a harsh, grating tone, and in admitting that he had made false replies to several persons, denying that Mr. Beecher was an impure man, his voice lost none of its strength and fullness. In quoting Mr. Beecher's alleged remarks to him involving the disgrace of soliciting favors from a woman and being rejected, as a man of the world he expressed his approval of the sentiment so candidly and unservedly that the spectators laughed heartily until the Judge rebuked their indiscretion.

When a copy of Mr. Beecher's resignation, embodied in a memorandum which Mr. Moulton dictated from memory to Mr. Tilton, was introduced, the prosecution called upon the defense for the original, and Mr. Evarts, irritated by ex-Judge Fullerton's remarks, drawled out, "We—have—no—such—paper." Mr. Evarts was then permitted to ask Mr. Moulton a few questions. As a foretaste of the rigor with which the cross-examination will be conducted, this was perhaps the most ex-

citing incident of the day. Mr. Moulton braced himself in his seat and answered in a high key and a rapid manner. Mr. Evarts was not long in ferreting out the fact that Mr. Beecher was in an upper room at the time, and that there was no reason why Mr. Moulton could not have gone up stairs and procured the original instead of trusting to his memory in the dictation. Mr. Moulton was intensely excited, but made a violent effort to control himself and to meet Mr. Evarts's searching eye without flinching. The questions came quick and fast, and Mr. Evarts showed that he was master of the art of cross-examination.

#### PASSAGES AT ARMS BETWEEN COUNSEL.

One of the most interesting features in this case is the fine fencing between the counsel. As the testimony of the morning related mainly to the introduction and identification of the scandal literature, the proceedings would have been dull and monotonous if it had not been for the passages at arms between the contending camps. The intense earnestness of the senior counsel on each side, and the bristling manner of ex-Judge Fullerton, combined to render this legal skirmishing intensely exciting.

Ex-Judge Fullerton conducts the examination of a witness with consummate ability. His manner is so smooth and his questions are so direct and clear that even the most nervous of witnesses takes heart and recovers composure. He is exceedingly quick in retort, resents interruptions and interference from the other side, gives blow for blow, and, when he is defeated, opens a way for his retreat and retires in good order. He is exceedingly adroit at times, and when his opponents expose his sharp practice his assumption of dignity is so well timed that the edge is taken from his discomfiture. He bristles up at a single word from Mr. Evarts, fights hard, and only abandons the ground when he is compelled by the judge's decision. He brooks neither dictation nor criticism, and clings tenaciously to his own method of presenting the evidence. An incident will illustrate his shrewdness and coolness under defeat. Mrs. Morse's rambling letter to Mr. Beecher had been read and Mr. Moulton had repeated Mr. Tilton's admission that the skeleton in the closet of the Livingston-st. household had been exhibited, not to twelve people, but to Mrs. Bradshaw and Oliver Johnson. The lawyer was anxious to bring out another name, but the witness was evidently unwilling to drag it in. Others might have been mentioned, but he could

not remember. After vainly endeavoring to arouse Mr. Moulton's memory from a state of coma the counsel dropped the subject only to return to it unexpectedly with the innocent question, "When Mr. Tilton referred to Mr. Robinson, did Mr. Beecher?" &c. Mr. Evarts burst out laughing, and made a scornful gesture which would have disconcerted any one else, but ex-Judge Fullerton made a dignified retort and passed on as if nothing had happened.

Mr. Evarts is always on the alert, and his speeches are marvels of clearness and compactness. He sits in front of Mr. Beecher's other defenders and directly behind Mr. Tilton's lawyers. His position is typical, for he is the head and front of the defense, and presses the prosecution very closely. He is a thorough master of the art of worrying a witness and the opposing counsel. Whenever Mr. Moulton becomes indirect in his testimony, a dry hint from Mr. Evarts, such as "State what took place," or, "What was said to him, and what did he say?" holds him in check with a tight rein. On the preceding day the counsel's peculiar dryness was finely illustrated when Mr. Moulton was describing in an airy way the pistol scene, and conveying the impression that he had merely touched his pistol to emphasize his promise to protect the retraction with his life. The effect of Mr. Moulton's ingenious device was utterly spoiled by the interruption, "You took it out?" the words being so dry as almost to crackle. "Yes," said the witness, utterly disconcerted. Mr. Evarts is a thorn in ex-Judge Fullerton's side, for his interruptions are frequent, and he is not a man to be easily shaken off. He will have the evidence presented with the precision which the law demands, and he will have nothing else. In the smallest details he is persistent and tenacious, and his mastery of the principles of evidence enables him to worry his adversaries without taking an untenable position himself. His gravity, dignity, earnestness, and self-command were manifested in the sharp argument over the manner in which Mrs. Morse's letter should be presented in evidence. When he speaks, there are changes of tone which vibrate through an audience with electrical effect. His earnestness is something terrible, and, although his eyes flash and the tension of his voice is so full that it seems as if it must break, his self-command is perfect. He never wastes a word, and in his clearness of statement and grasp of the subject seems to have an advantage over his opponents. The sharp passage of arms over the introduction of Mr. Tilton's "true statement," in which Mr. Evarts

was compelled to content himself with an exception, was the most exciting of the day. "He had a written statement from which he read, and we want that paper. We want it according to the rules of evidence. I have a right to the points of law." Mr. Evarts's sentences are as direct, incisive, and clear as these.

Mr. Beach sprang to the rescue of ex-Judge Fullerton yesterday two or three times. He, too, is thoroughly in earnest, and his delivery has many elements of power. The elaborate appeal which he made in reference to Mrs. Morse's letter was delivered with splendid power and emphasis, his command of language being remarkable and his gestures direct and forcible. He had not comprehended his opponent's point, however, and Mr. Evarts in two or three quiet sentences at the close dashed cold water upon his misplaced eloquence. Mr. Beach can be as dry as Mr. Evarts. When the latter asked if he was to have an opportunity for reply, Mr. Beach quietly remarked that Mr. Evarts had already taken advantage of abundant opportunities. Again, when Mr. Evarts had called for an envelope of one of the so-called clandestine letters, and ex-Judge Fullerton had introduced first an envelope and then a letter and had then admitted reluctantly that he could not connect them, Mr. Beach by a caustic reply took the edge from Mr. Evarts's indignant protest against the tactics of the prosecution.

#### THE DAY'S TESTIMONY.

There was little in the testimony of the day that was novel. It began with the introduction of Mrs. Morse's anomalous letter to Mr. Bowen and the so-called "clandestine correspondence," and included the three letters which were exchanged between Mr. Tilton, Mr. Beecher, and Mrs. Tilton, those which passed between Mr. Beecher and Mr. Moulton in reference to the investigation of Mr. West's charges, the Woodhull scandal, and other elements of the controversy. An important hint was thrown out in regard to Mr. Carpenter's interview with Mr. Beecher in which, as alleged by ex-Judge Morris in his opening remarks, a confession of guilt was made. It now appears that this interview was the one in which Mr. Beecher's prospects in journalism were discussed and the substance of which was given to the public last Summer. In regard to Mr. Beecher's resignation, documentary evidence was offered, but it was not so direct as the public had been led to expect.

Ex-Judge Fullerton's talents as a reader were frequently called into play, for in addition to the voluminous scandal literature which had to be read to the jury as fast as Mr. Moulton could identify the letters, there was a poem to tax his powers of elocution. This was Mr. Tilton's "Sir Marmaduke's Musings," in which, as the prosecution claim, the author told the sad story of his own domestic life. Lawyers generally talk better than they read, but this was a musical poem which required very little elocution. Ex-Judge Fullerton in reading the poem without strain or effort succeeded admirably. His deep tones rang through the court-room, and a buzz of satisfaction followed the closing lines. Mr. Tilton meanwhile sat with closed eyes, probably regretting with an author's instinct that he could not read it himself to the audience.

Ex-Judge Fullerton did ample justice to Mr. Beecher's flowing sentences. Many of the letters which the public have learned by heart have fine rhetorical passages, and their effect upon an audience is marked. The oft-quoted letters to Mr. Moulton, in which Mr. Beecher describes the varied work of his life and expresses a desire for death, was read with deep feeling, and some of Mr. Beecher's friends manifested emotion. The elocutionary exercises of the day were happily varied in character, the selections having a wide range so as to include Mrs. Morse's spiteful, incongruous letter to Mr. Beecher, the ambiguous sentences of Mrs. Tilton, Mr. Tilton's review of his interview with Mr. Bowen, and Mr. Beecher's "love letters" to Mr. Moulton.

#### COURT-ROOM CURIOSITY.

The audience was composed of about the same class of people that have appeared in court on previous days of the trial. Residents of prominence were less conspicuous. In the afternoon, however, two new visitors, ex-Police Commissioner Thomas C. Acton and Jackson S. Schultz, occupied seats near Mr. Beecher. After shaking hands with him they listened very attentively to Mr. Moulton's examination. The members of Plymouth Church who sat near the defendant on the opening of the case were in the same places yesterday. It was noticeable that they appeared more attentive, and indulged in fewer smiles than on the preceding day.

Frequently during the examination ex-Judge Fullerton was interrupted by the noise of the rabble in the corridors. Three policemen guarded the entrance to the court-room, and other officers endeavored to place in line the multitude which clamored for ad-



mission. All sorts of devices to obtain entrance were resorted to, and the officers at the door were kept very busy in rejecting bogus passes, counterfeit reporters, and illegal lawyers. In many instances \$5 and even more was offered for a single ticket of admission, yet none who were willing to sell could be found.

When the Court announced that it was time to take the regular recess, the crowd within the railings concentrated in the vicinity of Mr. Beecher. Mrs. Beecher was evidently annoyed at the rude stare of several bores who jostled about her with elongated necks and bulging eyes. Her husband, however, seemed self-possessed and good-tempered. Taking his wife gently by the arm, he led her over to Mrs. Tilton. Mrs. Beecher extended her hand, which was warmly pressed by Mrs. Tilton. The two held a short, subdued conversation, Mr. Beecher joining in it only once, with a remark that brought a smile to the faces of the ladies. There was an apparent disposition on the part of the preacher to continue the conversation, but he terminated the interview somewhat abruptly, with a stately bow to Mrs. Tilton. While the conversation was proceeding, several well-dressed but ill-mannered individuals literally shoved themselves between Mr. and Mrs. Beecher, for the purpose of hearing what was being said. When he demonstrated by leaving the courtroom in company with his wife that he was not disposed to take the public into his confidence in regard to any private conversations he might have the crowd still hung to his heels and followed him to the sidewalk.

#### THE PROCEEDINGS.

The direct examination of Francis D. Moulton, by Mr. Fullerton, was resumed instantly on the formal opening of the court on Thursday. All the principals and their counsel were in their places, except Mr. Tilton and Mr. Evarts; these came in, nearly together, at 11:15 o'clock. The crowd around the doors with tickets, for whom there was no room inside, was greater than usual, and was more demonstrative, the officers having to use much force to prevent a rush in whenever any one left the court.

#### SOME OF THE WRITTEN EVIDENCE.

Mr. Fullerton—Shall I proceed, Sir?

Judge Neilson—Judge Porter, shall we proceed?

Mr. Porter—Yes, Sir.

Francis D. Moulton recalled, and the direct examination resumed.

Mr. Fullerton—In your letter yesterday you spoke of a letter—December 26, 1870—written by Mr. Tilton to Mr. Beecher, and of which Mr. Bowen was the carrier; look at the

paper I now show you, and say whether it is the letter to which you then referred [handing witness a letter]? A. Yes, Sir.

Mr. Fullerton—I propose to read it.

TILTON'S DEMAND THAT BEECHER LEAVE THE MINISTRY.

DECEMBER 26, 1870, BROOKLYN.

HENRY WARD BEECHER:

SIR: I demand that, for reasons which you explicitly understand, you immediately cease from the ministry of Plymouth Church, and that you quit the City of Brooklyn as a residence.

(Signed)

THEODORE TILTON.

[Letter marked "Exhibit No. 4."]

Q. You also spoke of a letter written by Mrs. Tilton to her husband on the night of the 30th of December, which you showed to Mr. Beecher, or read to Mr. Beecher. Look at that letter and say whether it is the one to which you refer [handing witness a letter.] A. Yes, Sir. [Letter marked "Exhibit No. 6."]

Q. You also spoke of a letter yesterday which you obtained from Mr. Beecher, and which he, the night before, had got from Mrs. Tilton. Look at the paper I now show you, and say whether that is the paper to which you then referred [handing witness a letter]. A. That is the paper, Sir. [Letter marked "Exhibit No. 5."]

Mr. Fullerton—"Exhibit No. 5" is as follows

MRS. TILTON'S RETRACTION.

DECEMBER 30, 1870.

Wearied with importunity and weakened by sickness, I gave a letter inculcating my friend Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it—almost forced—when I was in a weakened state of mind. I regret it, and recall all its statements.

(Signed)

E. R. TILTON.

I desire to say explicitly, Mr. Beecher has never offered any improper solicitations, but has always treated me in a manner becoming a Christian and a gentleman.

(Signed)

ELIZABETH R. TILTON.

Mr. Fullerton—"No. 6" is as follows:

MRS. TILTON EXPLAINS HER RETRACTION.

DECEMBER 30, 1870—Midnight.

MY DEAR HUSBAND: I desire to leave with you before going to sleep a statement that Mr. Henry Ward Beecher called upon me this evening, asked me if I would defend him against any accusation in a *council of ministers*, and I replied solemnly that I would in case the accuser was any other but my husband. He (H. W. B.) dictated a letter, which I copied as my own, to be used by him as against any other accuser except my husband. This letter was designed to vindicate Mr. Beecher against all other persons save only yourself. I was ready to give him this letter because he said with pain that my letter in your hands addressed to him, dated December 29, "had struck him dead and ended his usefulness."

You and I both are pledged to do our best to avoid publicity. God grant a speedy end to all further anxieties. Affectionately,

(Signed)

ELIZABETH.

Q. Do you remember now anything that occurred when you read to Mr. Beecher that last letter? A. He seemed surprised. Sir; that was all.

Q. Did he say anything? A. He thought it strange that Mrs. Tilton should have imparted such information to her husband. He said that.

Q. I now show you "Exhibit No. 1," which was put in evi-

dence yesterday, and ask whether that was read at the same time of the reading of the last letter which was handed to you [handing witness "Exhibit No. 1"]? A. It was.

Q. "Exhibit No. 1," you say, was read to him at the same time of reading the last letter? A. The letter which I just saw was read to him, if that is "Exhibit No. 1."

Q. It is.

Mr. Evarts—What is that?

MRS. TILTON WANTS THE CONTRADICTORY LETTERS DESTROYED.

Mr. Fullerton—

SATURDAY MORNING.

MY DEAR FRIEND FRANK: I want you to do me the greatest possible favor. My letter which you have and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed. Please bring both to me and I will burn them. Show this note to Theodore and Mr. Beecher; they will see the propriety of this request. Yours truly, E. R. TILTON.

Q. Your attention was called yesterday, at the close of your examination, to the interview with Mr. Beecher at your house some time in January, 1871; was there another meeting of the same parties at your house during that month? A. I do not remember, Sir, just at the present moment; I think there were several; I think there were two meetings in that month between them.

Q. Are you able now to state what occurred at the next one in order; I refer to one particularly when Mr. Beecher brought some letters and delivered them to you? A. There was—I will try and recall the date; I think about January 27.

Q. Of 1871? A. Yes, Sir.

Q. What occurred then? A. There was a consultation between Mr. Beecher and Mr. Tilton and myself with regard to a letter of Mrs. Morse, which Mrs. Morse had sent to Mr. Beecher; it was after January the 27th.

Q. Where was that meeting? A. It was at my house, Sir, in Clinton-st.

Q. And how was it brought about? A. Brought about by a statement in the letter itself. The letter was brought to me first by Mr. Beecher, and it contained a statement that Theodore had—

Mr. Evarts—No matter. It will speak for itself.

Q. If in consequence of anything—? A. In consequence of a statement in the letter, I thought it was necessary to have Mr. Beecher see Mr. Tilton, and they did meet, and the statement of the letter—the statement that the letter contained—was read to Mr. Tilton, and he indignantly denied—

Mr. Evarts—What took place?

Mr. Fullerton—He is telling what took place.

Mr. Evarts—No.

Mr. Fullerton—He certainly is.

Judge Neilson—Omit the word "indignantly."

Mr. Fullerton—I don't think the statement was read to Mr. Tilton when he was not there.

The Witness—Mr. Tilton denied the statement that the letter contained.

Q. Was this while Mr. Beecher was there? A. Yes, Sir.

Mr. Evarts—Now, if your Honor please, if he is speaking of that interview, we are entitled to have a statement of what each party said.

Mr. Fullerton—It is not worth while, Mr. Evarts, to take that, because I am going to give it. It is my branch of the case.

Mr. Evarts—I understand it. It is a part that is not your branch of the case that I do not like.

Mr. Fullerton—I can't help whether you like it or not. I shall give it in evidence if I am permitted.

Mr. Evarts—I want the rules of evidence to be observed, and whatever the matter of evidence shall be I will not interrupt.

Judge Neilson—Now, the conversation when Mr. Tilton and Mr. Beecher were both present the plaintiffs can give.

Mr. Evarts—I want it given as a conversation, and not characterized by the witness.

Mr. Fullerton—It has not been characterized by the witness at all.

Judge Neilson—Yes; by the word "indignant."

Mr. Fullerton—Yes, Sir; that he has a right to use under the authorities.

Judge Neilson—Let him give the conversation first.

Mr. Evarts—Yes, Sir.

Mr. Beach—Let us see if we are in error, Sir.

Judge Neilson—I don't think you are.

MR. BEACH OBJECTS TO REFLECTIONS ON MOULTON.

Mr. Beach—Well, if your Honor please, these interruptions, these reflections upon the propriety and accuracy of the statements made by the witness, and our examinations, may, perhaps, have an unfortunate influence, and I do not wish any such impression to be entertained. The witness stated that there was a letter produced, that an extract was read from that letter in the presence of Tilton and Beecher, and this witness, and that Mr. Tilton denied the truth of that extract. Now, does your Honor hold that that is not competent and regular evidence?

Judge Neilson—Oh! no.

Mr. Beach—Very well, Sir.

Judge Neilson—The primary duty, of course, is to give the conversation. It naturally may appear, and perhaps should appear, whether it was a gentle, friendly conversation, or otherwise.

Mr. Beach—Undoubtedly, Sir. We intend to give all that conversation; but that fact, Sir, that a paragraph was read from that letter, and was denied by Mr. Tilton, is competent to be given in evidence.

Judge Neilson—I do not think that was objected to.

Mr. Beach—Yes, Sir; it was objected to.

Mr. Evarts—We will see, if your Honor please. It is perfectly competent for them to say: "This extract which I now read was read to Mr. Tilton, and he denied it." It is not competent to say that an unnamed extract of the letter was read, and he denied it. What occurred in the actual collision of minds between these parties is to be spread before the jury as it occurred; and the occurrence was not the reading of an unnamed part of a letter, but the reading of an actual part of a letter, and which we want now read, and then we will see what Mr. Tilton said about it.

Judge Neilson—It is a question then as to the order of proof. There is really no disagreement between you.

Mr. Evarts—There is no disagreement that the occurrence between the parties is to be given.

Judge Neilson—Yes.

Mr. Evarts—And it is no answer, when I object to their giving something that is short of and different from that, that they intend afterwards to give what they have a right to give.

Judge Neilson—Well, the extracts denied may come in.

Mr. Fullerton—Certainly, but I cannot put them all in evidence at once.

Mr. Evarts—Well, we have heard that a great many times.

Mr. Fullerton—You will hear it a great many times more.

Mr. Evarts—I presume we shall.

Mr. Fullerton—Your interruptions will not deter me from giving my evidence.

Mr. Evarts—I am afraid not.

Mr. Fullerton—I have given now what took place between the parties, and my friend on the other side knows full well that I intend to give the whole letter in evidence and call his attention to the extracts.

Mr. Evarts—Why didn't you do it at first?

Mr. Fullerton—Because I didn't choose to. I will select my own way of giving evidence, provided I am within the rules of evidence.

Mr. Evarts—But you are not.

Mr. Fullerton—If my evidence will have more force by being put in in my particular order I do not mean to be deterred from doing it in my own way. [Laughter.]

Judge Neilson—I want to say a word to the audience. There seems to be a little disposition to interrupt the proceedings this morning. I don't think it is called for. I think the reporters set the example. They had better not.

Mr. Fullerton—See whether the paper I now hand you is the paper to which you refer. [Handing witness a letter.] A. That is the letter, Sir.

#### ARGUMENT ON THE ADMISSION OF THE MORSE LETTER.

Mr. Evarts—If your Honor please, this is a letter—I take it for granted that it is in the handwriting of Mrs. Morse—this is a letter from Mrs. Morse, the mother of Mrs. Tilton, to Mr. Beecher, which, as I understand it, was brought by Mr. Beecher, and was presented at this interview, and some portion of it was read to Mr. Tilton. That is the point of the present examination. Now this letter of Mrs. Morse's is not evidence against Mr. Beecher. That, I take it, we understand; but so far as it furnishes a part of the interview between the parties, why, it forms a part of what is evidence—that is, what passed between Mr. Tilton and Mr. Beecher—and I do not understand that it is now offered in any other way.

Mr. Fullerton—Well, I offer it in evidence to be used for any purpose. It is proper when it is in—

Judge Neilson—It can only be proper if it was talked of in that interview and conversation. In and of itself it is not evidence.

Mr. Fullerton—It is quite impossible, if your Honor please,

for me to see the propriety of this letter without referring to its contents. I will state in general terms, however, that it refers to this difficulty between these parties, and consequently becomes a part of the *res gestæ*.

Mr. Evarts—We agree that it is pertinent.

Mr. Fullerton—Well, I agree that you will not interrupt me. I am talking. It becomes important, therefore, as being a production of Mrs. Morse, sent to Mr. Beecher, referring to this difficulty, the letter having been handed by him to Mr. Moulton, and the conversation which ensued, and which I shall proceed to give in evidence, shows the propriety of introducing the whole letter in evidence in this case.

Judge Neilson—I think when your examination closes we can reconsider the question.

Mr. Evarts—Yes. I reserve my point, if your Honor please.

Judge Neilson—Certainly.

#### MRS. MORSE MAKES TROUBLE.

Mr. Fullerton—In the first place, then, Mr. Moulton, I will ask you to point out to me that part of the letter. A. The whole of the letter was read, you understand.

Q. I understand the whole of the letter was read, but point out that paragraph in the letter which made it necessary in your judgment, as you state, to send for Mr. Tilton, in order that his attention might be called to it.

Judge Neilson—Or rather which Mr. Tilton denied.

Mr. Fullerton—Well, Sir, it is the same thing.

Mr. Evarts—The part that was read?

Mr. Fullerton—He did not deny anything that was not read to him.

The Witness—You wish me to mark it, Sir, or read it?

Q. Just mark it, so that I can read it in evidence. A. [Marking the letter] Between the first two marks there.

Q. Have you now marked that paragraph in red. A. I have.

Mr. Evarts—I will look at it.

Mr. Fullerton—Yes, Sir [handing the letter to Mr. Evarts].

Q. I want you to state all the conversation that occurred between you and Mr. Beecher before you sent for Mr. Tilton, and also that which occurred after Mr. Tilton arrived there? A. Mr. Beecher brought me that letter from Mrs. Morse, and he said to me, "Here is a letter from Mrs. Morse which I would like to have you read," and I read it, and read the statement which I have marked, as well as the balance of the letter, and I said to Mr. Beecher, "I am sure that this cannot be true; in my own mind I am sure it cannot be true."

Q. What did you refer to then? A. The letter, or statement; with regard to Theodore Tilton.

Q. The statement that you have marked? A. Yes, Sir; I said, "There is a sentence in the letter which I know to be untrue; it contains an untrue statement, and I judge that the statement with regard to Mr. Tilton is quite as untruthful as that; but we can see Theodore, and find out from him directly; if he has done that he has done wrong," and I sent for Theodore, either that day or at some subsequent day; at all events, he came to an interview between Mr. Beecher and myself, and he did there deny—

Mr. Evarts—Well!

The Witness—He said, "Pardon me."

Q. He there made the denial that you referred to? A. Yes, Sir; he said it was not true that he had told twelve persons, and he said who he had told.

Mr. Evarts—They have not read the letter yet.

The Witness—I beg pardon!

Mr. Fullerton—It is proper for him to state that, whether it was read or not.

Mr. Evarts—I think not.

Q. What did Mr. Tilton say? A. He said he had not told twelve persons, and he told Mr. Beecher who he did tell—who he had told.

Mr. Fullerton—I read the extract marked, "I know of twelve persons whom he was told." Now, your Honor will perceive that without the context that has no meaning.

Mr. Evarts—Well, read the rest.

Mr. Fullerton—That Mr. Tilton could not deny but it was all read.

Mr. Evarts—Well, why didn't he mark it?

Mr. Fullerton—That was marked in the first instance

Mr. Evarts—If your Honor please, what we would like to have is, distinctly, the passage of this letter that was read to Mr. Tilton and that he denied.

Mr. Fullerton—I have read it.

Judge Neilson—I understand that is the passage just read. Then we have the conversation and you have the clause.

Mr. Fullerton—Yes, Sir; and I have read the clause in evidence.

Mr. Evarts—But, I do not understand; I have not heard the witness say that was the clause.

Judge Neilson [to the witness]—The clause which was read—is that the one marked, and that you say was denied? A. Yes, Sir.

Mr. Evarts—If the witness will take the letter and read what was denied, then we shall know.

Judge Neilson—Very well; pass the witness the letter. [Letter handed to witness.]

The Witness [reading]—

"I know the publicity that was given to this recent and most crushing of all troubles is what has taken the life out of her. I know twelve persons whom he has told."

That—"I know of twelve persons whom he has told"—was the statement which Mr. Tilton denied.

Mr. Evarts—That is all that was said? A. The whole of the letter was read.

Mr. Evarts—Your Honor understands us to say distinctly that we are entitled to the passage of the letter that was read to Mr. Tilton before he denied it.

Judge Neilson—Well, you have the denial, and you have the clause of the letter; you have them taken together.

Mr. Evarts—Yes, Sir. Now, I have not the clause of the letter yet.

Mr. Fullerton—Well, that's not my fault.

Judge Neilson—I understood the witness to read the clause in question.

Mr. Evarts—I have not so understood it. He says that is the

clause that he denied; I want the clause that was read to him before he made his denial,

Mr. Fullerton—He has stated that that is the clause that he read to him, and the clause which he denied.

Judge Neilson [to the witness]—Now, restate that, so that we may understand you perfectly. A. If you will give me the letter again.

Mr. Evarts—We want what was read before his denial.

The Witness—The whole letter was read before his denial; the specific allegation of the letter that he denied was, "I know of twelve persons whom he has told."

Mr. Fullerton—Now, in making that denial what did he say? A. He told Mr. Beecher that it was not true; said that it was not true that he had told twelve persons, and he mentioned to Mr. Beecher the names of the parties whom he had told, and I remember that Oliver Johnson's name was one mentioned.

Q. Any one else? A. I think Mrs. Bradshaw.

Q. Any one else? A. Don't remember, Sir.

Q. What other conversation was had at that time? A. Mr. Tilton said to Mr. Beecher that Mrs. Morse was a dangerous woman—a woman liable to come down to Plymouth Church at any time and denounce his relations with her daughter, and that that letter ought to be carefully answered; the answer ought to be well considered, and that it ought to be kind—kind as it could possibly be made; and the answer was written by Mr. Beecher and submitted to Mr. Tilton, at that interview, I think—at all events, it was submitted to Mr. Tilton and to me.

Q. Anything else occur? A. Not that I remember particularly.

Mr. Fullerton—I now offer the letter in evidence.

Mr. Evarts—We object to it as evidence against Mr. Beecher otherwise than as it formed part of this interview.

Judge Neilson—Why, isn't that so, Mr. Fullerton?

Mr. Fullerton—Why, Sir, we hold that the bringing of that letter to Mr. Moulton, and sending for Mr. Tilton, and the conversation which followed, render the letter evidence in the cause as a part of the *res gestæ*. I want to go on and prove that there was no denial of the allegations in that letter.

Judge Neilson—Well, why don't you go through with that proof before you offer it?

Mr. Fullerton—I am through.

Judge Neilson—Nothing that Mrs. Morse could write would be evidence in this case, of course. The question is whether what occurred at this interview was sufficient to make it evidence. It is so as to the clause in question. I think that is the extent of it.

Mr. Fullerton—I will take a further question. [To the witness.] In that conversation was there a denial by Mr. Beecher of any of the allegations in that letter? A. No, Sir; there was no denial.

#### LEGAL QUIBBLING.

Mr. Evarts—I object to that form of asking.

Judge Neilson—We will take it.

Mr. Evarts—"What took place?" should be the question.

Mr. Fullerton—Well, that is what did not take place.

Mr. Everts—If he said anything about the letter, or anything was said to him about the letter, we have a right to it.

Judge Neilson—Yes; it ought to be given.

Mr. Fullerton—What reply, if any, did Mr. Beecher make to the suggestion of Mr. Tilton or yourself that Mrs. Morse was a dangerous person—that this letter ought to be answered kindly? A. He agreed with it.

Q. What did he say? A. He said that he knew Mrs. Morse was a dangerous woman; he had told me so before.

Q. He had told you so before? A. Yes, Sir.

Q. In one of your interviews with him? A. Yes, Sir.

Q. Subsequent to the 30th of December, 1870? A. I don't remember; I think not, Sir—yes, subsequent to the 30th.

Mr. Fullerton—I think if your Honor will read this letter you will see that it is evidence in this cause.

Mr. Beach—I don't suppose, Sir, the question arises here, as to the extent or effect of this paper as evidence. That it is made evidence in the cause by the testimony of the witness seems to me perfectly clear. Mr. Beecher brings this paper to Mr. Moulton, consults with him about it; Mr. Tilton is called in to the consultation; Mr. Beecher, through Mr. Moulton, submits this letter to the consultation of Mr. Tilton; they confer about it, about all its terms and statements; they consult as to the proper mode of answering—prepare and agree upon an answer. Can there be any doubt, Sir, that that is, so far, an adoption of the letter; a part of the transaction in which these parties were then engaged as to render it admissible in evidence for the purpose of explaining their acts and declarations—submitting to the Court and jury the subject matter of that interview under the consultation then had between them? It is true, Sir, that the statements of Mrs. Morse, uncorroborated and unadopted either by the specific admission or by the equally clear and conclusive acts of Mr. Beecher, would not be evidence against him; but he brings this paper, submits all that it contains to the consideration of the two parties who were engaged in consultation with him; and, without a word of dissent or denial, adopts it *in toto*, and prepares an answer which I suppose we may submit to your Honor. Now, that is one transaction in regard to one subject matter, closely linking with the issue between these parties—bearing directly upon the subject matter of the controversy between them. Suppose, Sir, that instead of the written letter, Mrs. Morse had been present at that interview and made these declarations in the presence of Mr. Beecher, and he heard them, without a word of denial; and he then made an answer, such as is contained in the responsive letter which he wrote to Mr. Morse; would there be any doubt, if Mrs. Morse had been there speaking, instead of writing, that everything she said to Mr. Beecher bearing upon the subject matter of this controversy would be competent in evidence?

Judge Neilson—No doubt of it, at all.

Mr. Beach—Well, Sir, this is precisely the same.

Judge Neilson—Not quite. Besides, the responsive letter you speak of is not before us yet.

Mr. Beach—Ah! your Honor, but the statements in the letter are produced by Mr. Beecher, read in his presence, and submitted in silence without any denial. Suppose, Sir, that that letter

had contained an allegation against Mr. Beecher that he had had sexual intercourse with the wife of Mr. Tilton, and he does not deny it; isn't that statement evidence, Sir? And upon what principle of law would it be excluded, if a party hear an allegation to his prejudice in regard to a matter in controversy in Court and fails to resist the allegation, is it to be said that it is not competent evidence against him? Isn't it a clear and unequivocal admission? Silence, Sir, under such circumstances is confession. Silence is an adoption of the allegation made when the party is called upon by every interest due to him to speak. And that is just the condition, Sir, of this evidence. I assume for the moment, Sir, that in that letter there is a clear imputation of guilt as against Mr. Beecher? If that be so, and under the evidence of the witness, he failed to deny or explain, submitted silently to that imputation, is it to be said that that is not evidence? And does it make any difference that the charge is presented against him in the form of a writing and recorded, instead of a parol accusation? Surely no distinction in principle can be drawn from the two examples. And it is upon that theory, Sir, that in this letter are contained material statements by Mrs. Morse, which, if untrue, it was for the interest of Mr. Beecher then to deny and to resent, and if he failed to do it the law implies an acknowledgment of its truth. At any rate, it is a question, Sir, to be submitted to the jury under all the circumstances of the event. And I am told, Sir, and, if your Honor will be kind enough to send for the authority if you are in any doubt about it, the case of the People against Kelly, in the 55th of New York, is said to be an analogous case.

Judge Neilson—I can well understand the principle that you invoke; I can well understand that if Mrs. Morse were present at the speaking, and made such a charge in the conversation, it would be the defendant's interest to deny it.

Mr. Beach—Then it seems to me that, your Honor, that you concede the principle.

Mr. Everts—I have not been heard yet.

Mr. Beach—Well, I haven't perceived that you failed to take abundant opportunity to be heard. I was suggesting to his Honor that if he conceded that Mr. Beecher would be called upon to answer a parol declaration in regard to a matter material to himself, that no distinction can be drawn as between a parol and a written statement or accusation. I am entirely at a loss to see the discrimination in principle between the two examples.

The reason of the rule is that a matter is brought to the attention of a party interested which demands from him an answer under circumstances calling upon him either to assent to or to deny the truth of that matter. Well, Sir, this was presented to Mr. Beecher under circumstances which certainly called upon him for an explanation or denial, if any of the allegations contained in the letter of Mrs. Morse were untrue. It was a matter, Sir, of common interest to the parties then assembled—two of them at least. It was a matter about which they were consulting. It was a matter about which they mutually devised an answer; and if Mr. Beecher failed upon that occasion to make any proper explanation or denial, or if he did qualify or affect, by anything which he said upon that occasion, any of the declarations in that letter—why, of course, they must be

evidence; and, with the letter and the explanation or denial, they must be evidence, either in his favor or against him.

Judge Neilson—The obligation to make, on the spot, an oral denial or explanation is perhaps quite modified by the general purpose of making a written answer, the conference being had, about the spirit and tone and care with which that answer should be framed; and I learn from the argument, generally, that some answer was made.

Mr. Beach—Yes, Sir.

Judge Neilson—And when you purpose to make a written answer to a letter, I think it supersedes in a great degree the duty of making a present answer orally.

Mr. Beach—Well, Sir, we propose to give the answer; cannot give them, as my associate says, both at once.

Mr. Evarts—My objection was not such as to preclude the letter. I simply said that the letter was not evidence against Mr. Beecher, except so far as it was made evidence by what occurred with him in regard to it.

Mr. Beach—Well, I agree to that.

Mr. Evarts—That's all I said.

Mr. Beach—The difficulty is, that the Court went much further.

Mr. Fullerton—I will read it in evidence then.

Mr. Evarts—Your Honor then notes that it is admitted only for that purpose.

Mr. Fullerton [reading]:

#### MRS. MORSE'S LETTER TO BEECHER.

TO MR. BEECHER: As you have not seen fit to pay any attention to the request I left at your house, now over two weeks since, I will take this method to inform you of the state of things in Livingston street. The remark you made to me at your own door was an enigma at the time, and every day adds to the mystery. "Mrs. Beecher has adopted the child." "What child?" I asked. You replied, "Elizabeth."

Now, I ask, what earthly sense was there in that remark? Neither Mrs. Beecher, yourself, nor I can, or have, done anything to ameliorate her condition. She has been for the last three weeks with one very indifferent girl. T. has sent Bessie, with the others, away, leaving my sick and distracted child to care for all four children night and day, without fire in the furnace, or anything like comfort or nourishment in the house. She has not seen any one. He says: "She is mourning for her sin." If this be so, one twenty-four hours under his shot, I think, is enough to atone for a lifelong sin, however heinous. I know that any change in his affairs would bring more trouble upon her, and more suffering. I did not think for a moment when I asked Mrs. B. as to you call there, supposing she knew it, of course, as she said you would not go there without her.

I was innocent of making any misunderstanding if there was any; you say, keep quiet. I have all through her married life done so, and we now see our error. It has brought him to destruction, made me utterly miserable, turned me from a comfortable home, and brought his own family to beggary. I don't believe if his honest debts were paid he would have enough to buy their breakfast. This she could endure and thrive under, but the publicity he has given to this recent and most crushing of all trouble is what is taking the life out of her. I know of twelve persons whom he has told, and they in turn have told others. I had thought we had as much as we could live under from his neglect and ungovernable temper. But this is the death-blow to us both, and I doubt not Florence has hers. Do you know when I hear of your cracking your jokes from Sunday to Sunday, and think of the misery you have brought upon us, I think with the

Psalmist, "There is no God." Admitting all he says to be the invention of his half drunken brain, still the effect upon us is the same, for all he has told believe it. Now he has nothing to do, he makes a target of her night and day. I am driven to this extremity: to pray for her release from all suffering by God's taking her to himself, for if there's a heaven I know she'll go there.

The last time she was in this house she said: "Here I feel I have no home, but on the other side I know she would be more than welcome." Oh! my precious child! How my heart bleeds over you in thinking of your sufferings. Can you do anything in the matter?

Must she live in this suffering condition of mind and body with no alleviation? You or anyone else who advises her to live with him, when he is doing all he can to kill her by slow torture, is anything but a friend.

I don't know if you can understand the sentence I've written, but I'm relieved somewhat by writing. The children are kept from me, and I haven't seen my darling child but once since her return from this house.

I thought the least you could do was to put your name to the paper to help to reinstate my brother. Elizabeth was as disappointed as myself. He is still without employment, with a sick wife and five children to feed; behind with the rent, and everything else behind hand.

If your wife has adopted Lib, or you sympathize with her, I pray you to do something for our relief before it is too late. He swears, so soon as the breath leaves her body he will make this whole thing public; and this prospect, I think, is one thing which keeps her alive. I know of no other. She's without nourishment for one in her state; and in want—actual want. They would both deny it, no doubt; but it's true.

#### THE SCENES CONNECTED WITH THE MORSE LETTER

Mr. Fullerton—Now, is that all of the letter—I see there is no signature to it? A. All that I had of it, Sir.

Q. It is all Mr. Beecher brought to you? A. I believe it to be all that he brought; yes, Sir.

Q. Now, was there any other or further conversation at that time in reference to the contents of this letter? A. Yes, Sir; I said to Mr. Beecher, when he brought me the letter—at the time that he brought me the letter—that I knew that the allegation with regard to their being in want was untrue; I said to him, "I know that Mr. Tilton has a balance with our firm."

Q. Mr. Evarts—This is not the interview with Mr. Tilton? A. No; the interview with Mr. Beecher; Mr. Beecher said it was useless for him to undertake to live if this story was going from mouth to mouth, and he wanted to be satisfied—he said he wanted to be satisfied that Mr. Tilton had not stated, as that letter says he did, the fact to twelve persons, and I tried to comfort him—and I said to him: "Mr. Beecher, you may rest assured that it is untrue; I know that Mr. Tilton would not do it. I know that he has told me to whom he has told the story, and that is all there is of it, and you need not be anxious about it, in my opinion." And then I sent for Mr. Tilton—it was either that day or a day or two afterwards; at all events, he came—

Mr. Fullerton—Well, at the meeting between yourself, Mr. Tilton and Mr. Beecher, what else was said in regard to the contents of this letter—in regard to the charge brought by Mrs. Morse, if any? A. There was nothing said about the charges brought by Mrs. Morse.

Q. What conversation was there? A. Mr. Tilton said that

he certainly had not said that to twelve persons—not mentioned the fact to twelve persons.

Q. And then he went on and stated to whom he had told the story? A. Yes, Sir.

Q. And you have mentioned the names of two persons? A. Two parties; yes, Sir.

Q. Do you recollect whether he named any other person to whom he had told it? A. I do not remember now.

Q. And what did Mr. Beecher say when he was informed that it had been communicated to Mr. Robinson and Mrs. Bradshaw; what did Mr. Beecher reply when he was informed of the names of the two persons to whom Mr. Tilton said he had communicated this story? A. I do not remember his reply, sir; it was an expression of regret that it had been told to anybody.

Q. Who is Oliver Johnson? A. Oliver Johnson is now one of the editors of *The Christian Union*.

Q. What was his position at that time? A. At that time, I think that he had resigned *The Independent*; he had been one of the editors of *The Independent*, managing editor of *The Independent*; at the time that Mr. Tilton told Mr. Beecher that he had told Oliver Johnson, Oliver Johnson was on *The Independent*.

Q. And Mrs. Bradshaw, who was named, did she reside in Brooklyn? A. She did; yes, Sir.

Q. In that conversation was anything said by Mr. Tilton with reference to the charges of neglect to his family? A. Yes, Sir.

Q. What was said upon that subject? A. Mr. Tilton denied that he had neglected his family.

Mr. Evarts—What was said to him and what did he say? A. Well, Sir, as nearly as I could remember his words, he said that he had not neglected his family; that his family were not in want; and he said to Mr. Beecher, I remember, "You know that they are not"—turning to me, "You know that I am not in want."

Q. Meaning you? A. Yes, Sir.

Mr. Fullerton—I have understood you to say that at that time another letter was produced there by Mr. Beecher? A. There was a letter, Sir, produced, I think, at that interview.

Q. What letter was that? A. I do not remember, Sir, distinctly enough about that letter to speak of it.

Q. Look at the letter.

Q. [Handing letter to witness.] Look at the paper I now show you and say whether it is the reply to the letter of Mrs. Morse to Mr. Beecher? A. Yes, Sir.

Q. In whose handwriting is it? A. Mr. Beecher's.

Q. Is that the original draft? A. Yes, Sir.

Q. As amended? A. Yes, Sir.

Q. When was that prepared—at that time—that meeting? A. At that time; yes, Sir.

Q. While you were together? A. I believe so; yes, Sir.

Mr. Fullerton—I offer it in evidence.

BEECHER REPLIES TO MRS. MORSE.

Mrs. Judge MORSE:

MY DEAR MADAM: I should be very sorry to have you think I have no interest in your trouble. My course towards you hitherto should satisfy you that I have sympathized with your distress. But Mrs. Beecher and I, after full consideration.

are of one mind—that, under present circumstances, the greatest kindness to you and to all will be, in so far as we are concerned, to leave to time the rectification of all the wrongs, whether they be real or imaginary.

Mr. Evarts—Is that the draft?

Mr. Fullerton—That is the original draft as amended.

(Letter marked "Exhibit No. 8.")

The Witness—I remember at that interview Mr. Tilton specifically said to Mr. Beecher, "It will be necessary in writing that letter to so write it that if it should be lost, or come into anybody else's possession, it would not disclose the fact of any sin on your part."

Q. I understand you to say that this occurred about the last of January, 1871? A. Yes, Sir; somewhere about that time. My recollection is that the letter was brought to me, and that then some time elapsed between that and the interview.

Q. The interview between the three? A. Yes, Sir.

Q. When did you next see Mr. Beecher? A. I don't remember when I next saw him, I saw him so frequently.

Q. I call your attention to February 7, 1871. Did anything occur on that day; I refer to the day when three letters were written? A. I received a letter from Mr. Beecher on February 7; I had an interview with him before February 7.

Q. State what took place before February 7, intermediate to this last interview when the Morse letters were produced on February 7, state what occurred between you and Mr. Beecher. A. Mr. Beecher said that he wanted to be satisfied of Theodore's spirit towards him; that he was in a state of uncertainty about it, and I said to him, "I want to have Tilton in writing on this question; I want him to commit himself somewhere;" and I had, even anterior to the 27th of January, spoken to Mr. Tilton about it.

Mr. Beach [to the witness]—Unless you told that to Mr. Beecher you need not state it. A. Yes, Sir; I said to him, "I have repeatedly asked Theodore to give me a paper stating what his views were. Mr. Beecher said he would like that, too, and that explains the letter of February 7 of Theodore Tilton to me. That is what I remember about that letter."

Mr. Fullerton—Is that the letter which he wrote to you and of which you have last spoken? A. Yes, Sir; that is it, and just previous to February 7 I had a conversation with Mr. Beecher. I don't remember the date, with regard to the necessity of having matters go on properly at Livingston-st., and Mr. Beecher said, "I think that as Elizabeth is not admitted to consultations, inasmuch as she does not hear from us directly, that she ought to be assured that the spirit of Theodore toward her is kind" and he said, "But I will write a letter to Elizabeth placing the situation before her." That is the substance of the conversation which led to the letter of February 7 by Mr. Beecher to Mrs. Tilton.

Q. This letter written to you by Mr. Tilton on the 7th of February—did you show it to Mr. Beecher? A. Yes, Sir.

Q. When was it shown to him? A. Shortly after; about as soon as I received it; I don't remember the date.

Mr. Fullerton—I offer it in evidence.

TILTON BEARS BEECHER NO ENMITY.

BROOKLYN, February 7, 1871.

MY VERY DEAR FRIEND: In several conversations with me.

you have asked about my feelings towards Mr. Beecher, and yesterday you said the time had come when you would like to receive from me an expression of them in writing. I say, therefore, very cheerfully, that notwithstanding the great suffering which he has caused to Elizabeth and myself, I bear him no malice, shall do him no wrong, shall discountenance every project by whomsoever proposed for any exposure of his secret to the public, and, if I know myself at all, shall endeavor to act toward Mr. Beecher as I would have him, in similar circumstances, act toward me. I ought to add that your own good offices in this case have led me to a higher moral feeling than I might otherwise have reached. Ever yours affectionately,

THEODORE TILTON.

To FRANK MOULTON.

(Letter marked "Exhibit No. 9.")

You have spoken of a letter written to you by Mrs. Beecher on that same 7th of February, 1871. [Handing letter to witness.] Please look at that and say whether it is the letter referred to by you? A. Yes, Sir; that is the letter.

Mr. Evarts—There is no date to this letter.

Mr. Fullerton—No; I offer it in evidence, and read it.

BEECHER'S TESTIMONY TO MOULTON'S FRIENDSHIP.

FEBRUARY 7, 1871.

MY DEAR MR. MOULTON: I am glad to send you a book which you will relish, or which a man on a sick bed *ought* to relish. I wish I had more like it, and that I could send you one every day, not as a repayment of your great kindness to me, for that can never be repaid—not even by love, which I give you freely.

Many, many friends has God raised up to me, but to no one of them has he ever given the opportunity and the wisdom so to serve me as you have. My trust in you is implicit. You have also proved yourself Theodore's friend and Elizabeth's. Does God look down from Heaven on three unhappy creatures that more need a friend than these?

Is it not an intimation of God's intent of mercy to all, that each one of these has in you a tried and proved friend? But only in you are we three united. Would to God, who orders all hearts, that by your kind mediation, Theodore, Elizabeth and I, could be made friends again. Theodore will have the hardest task in such a case; but has he not proved himself capable of the noblest things?

I wonder if Elizabeth knows how generously he has carried himself towards me? Of course, I can never speak with her again, except with his permission, and I do not know that even then it would be best. My earnest longing is to see her in the full sympathy of her nature arrest in him, and to see him once more trusting her, and loving her with even a better than the old love. I am always sad in such thoughts. Is there any way out of this night? May not a day star arise?

Truly yours always, with trust and love,

(Signed)

HENRY WARD BEECHER.

(Letter marked "Exhibit No. 10.")

Q. You have also spoken of a letter written on that same day by Mr. Beecher to Mrs. Tilton. [Handing letter to witness.] Look at the paper now handed to you and say whether that is the letter that he wrote on that day to that lady? A. That is the letter.

Q. That is the one, you say? A. That is the one.

Mr. Fullerton—I put in evidence the letter of February 7, from Mr. Beecher to Mrs. Tilton:

BEECHER TO MRS. TILTON.

BROOKLYN, February 7, 1871.

MY DEAR MRS. TILTON: When I saw you last I did not expect ever to see you again or to be alive many days. God was kinder to me than were my own thoughts. The friend whom God sent to me (Mr. Moulton) has proved, above all friends that ever I had, able and willing to help me in this terrible emergency of

my life. His hand it was that tied up the storm that was ready to burst upon our head. I am not the less disposed to trust him from finding that he has your welfare most deeply and tenderly at heart. You have no friend (Theodore excepted) who has it in his power to serve you so vitally, and who will do it with so much delicacy and honor. I beseech of you, if my wishes have yet any influence, let my deliberate judgment in this matter weigh with you. It does my sore heart good to see in Mr. Moulton an unfeigned respect and honor for you. It would kill me if he thought otherwise. He will be as true a friend to your honor and happiness as a brother could be to a sister's. In him we have a common ground. You and I may meet in him. The past is ended. But is there is no future?—no wiser, higher, holier future? May not this friend stand as a priest in the new sanctuary of reconciliation, and mediate, and bless you, Theodore, and my most unhappy self? Do not let my earnestness fail of its end; you believe in my judgment. I have put myself wholly and gladly in Moulton's hands, and there I must meet you. This is sent with Theodore's consent, but he has not read it. *Will you return it to me by his hands?* I am very earnest in this wish for all our sakes, as such a letter ought not to be subject to even a chance of miscarriage.

Your unhappy friend,

(Signed)

H. W. BEECHER.

Q. What was said, if anything, to you with reference to a permission to write that letter? A. Mr. Beecher wanted me to get Theodore's permission to write it.

Q. And did you? A. I did; yes, Sir.

Q. And when you conveyed to Mr. Beecher the knowledge that Theodore had consented, what was said between you A. He said he would write the letter.

Q. How did it get into your possession, if it got there? A. It was sent to me by Mr. Beecher, or delivered to me personally by Mr. Beecher; I don't remember. Do you mean at first how did it get into my hands, or how last?

Q. How first you have answered? A. Yes, Sir; certainly.

Q. Now, Mr. Moulton, prior to that time, had anything been said about any intercourse between Mr. Beecher and Mr. Tilton or Mrs. Tilton, and how it was to be brought about, if at all? A. Oh! yes, Sir.

Q. State, if you please, what that was? A. Sir?

Q. What arrangement was made with Mr. Beecher, if any, upon that subject? A. The arrangement between Mr. Beecher and myself was this, that there was to be no interchange.

Mr. Evarts—State what took place.

Mr. Fullerton—Yes, state what took place.

The Witness—I told Mr. Beecher that I thought he had better not hold any correspondence with Mrs. Tilton without Theodore's consent, and he said he thought that would be right. That is what there was about that.

Q. When was that arrangement made? A. Some time anterior to February 7th, in the early part of the controversy.

Q. I asked you how you obtained that letter—from whom? How came it afterwards in your possession? A. It was returned by Theodore Tilton to me.

Q. Do you know whether Mrs. Tilton received it? A. I don't know; Theodore Tilton said he delivered it to her.

Q. What did you do with the letter? A. I gave it to Theodore Tilton.

Q. For delivery? A. For delivery.

Mr. Evarts—It was open, I suppose?



Mr. Fullerton—Sealed ?

The Witness—It was an open letter.

(Letter marked "Exhibit No. 7.")

Q. I am requested to ask you when Mr. Tilton returned to you the letter addressed by Mr. Beecher to Mrs. Tilton ? A. Shortly after the date of it.

Q. [Handing letter to witness.] Look at the paper now shown you, and say from whom you received it ? A. From Mr. Beecher.

Q. When ? A. After my return from the—after April the 15th some time ; I think that was the date I returned from the South. It was after my return.

Q. You may state when you left for the South and when you returned from the South ? A. I think the date of my departure was March 2d, 1871, and I returned April 15th.

Q. During that period, where were you ? A. In Florida and Georgia—generally South.

Q. How long after your return was it that this letter now in your hand was given to you by Mr. Beecher ? A. Not very long. I don't remember the date.

Q. What did he state when he gave it to you ? A. He said he had received it from Elizabeth.

Q. Did you make any observation at the time ? A. No, I don't remember that I did ; I think I made an observation like this, that it was an act of good faith on his part to give it to me.

Mr. Fullerton—I offer the letter in evidence.

ONE OF THE CLANDESTINE LETTERS.

*Wednesday.*—MY DEAR FRIEND : Does your heart bound towards all as it used ? So does mine ! I am myself again. I did not dare to tell you until I was sure ; but the bird has sung in my heart these *four* weeks, and he has covenanted with me never again to leave. "Spring has come." Because I thought it would gladden you to know this and not to trouble or embarrass you in *any way*, I now write. Of course I should like to share with you my joy, but can wait for the Beyond !

When dear Frank says I may once again go to old Plymouth, I will thank the dear Father.

Mr. Evarts—There is no date to that letter ?

Mr. Fullerton—There is no date to it.

Mr. Fullerton—In whose handwriting is that letter ? A. Elizabeth Tilton's.

Q. And do you observe there the words at the head of it, "Received March 8th ?" A. Yes, Sir.

Q. In whose handwriting is that ? A. Mr. Beecher's.

Q. Was that on the letter when he handed it to you ? A. Yes, Sir.

Mr. Evarts—Is the letter signed ?

Mr. Fullerton—The letter is not signed.

Mr. Evarts—If your Honor please, all these letters that we have seen are obviously letters that were contained in envelopes, as you can see by their shape that they are not complete sheets that were folded and addressed, and as yet no envelopes have been introduced. I call attention to it, and of course I would like to have the envelopes.

Mr. Morris—We have them.

Mr. Evarts—Well, we would like to have them.

Mr. Fullerton [handing envelope to witness]—Look at the envelope I now show you, and say in whose hand the superscription is ? A. In Mr. Beecher's.

Q. [handing letter to witness]—Look at the letter I now show you, and say in whose handwriting it is ? A. Mr. Beecher's.

Mr. Fullerton—I offer this in evidence. I read the letter.

Mr. Evarts—We understand this letter is now offered to be read as having been inclosed in that envelope.

Mr. Fullerton—I don't offer it as having been inclosed in that envelope now. I have proved the envelope to be in the handwriting of Mr. Beecher, and I have proved the letter to be in his handwriting also.

Judge Neilson—You didn't interrogate him as to the connection of the two papers.

Mr. Fullerton—No, sir ; because he does not know.

Mr. Evarts—I asked for envelopes that accompanied the letters to the parties, and I want the envelopes and the letters to go together.

Mr. Fullerton—Whenever the time comes for me to prove that letter was sent in that envelope, I shall do so ; I cannot do it with the present witness.

Mr. Evarts—You proposed it.

Mr. Fullerton—No ; I proposed it so far as to put it in evidence, and have them marked for identification, so as to be ready to go a step further and put them in evidence.

Judge Neilson—On the assumption that you will connect them hereafter, it is proper.

Mr. Evarts—I want them connected.

Judge Neilson—On the assumption that you will do that it is proper.

Mr. Beach—If the gentleman wants them connected, let him connect them.

Mr. Evarts—You bring new papers and put them in the witness's hands. After I have asked for the envelopes and letters then you produce this letter and that envelope and put them in this witness's hands. I observe there is no such relation between the two papers as necessarily connects them, and then I ask you if you put them together as one letter, as they are, as I suppose, and I don't want you to separate them hereafter.

Mr. Fullerton—I don't propose to separate them hereafter.

Mr. Evarts—Then go on.

Mr. Fullerton—I will go on when it suits me to go on ; I don't propose to take orders from you in that spirit. I think you have a little forgotten yourself to-day.

Mr. Evarts—Go on ; I waive my objection.

Mr. Fullerton—Judge Neilson, I have proceeded, if your Honor please, in an orderly course. I put the envelope in the hands of the witness, and I proved the superscription to be in the handwriting of Mr. Beecher. I then proposed to have it marked for identification. I proved by the same witness a letter in the handwriting of Mr. Beecher, which I propose to read in evidence now, and if it subserves our purpose hereafter, and not without, we shall prove by another witness that that letter was in that envelope.

Judge Neilson—Meantime this envelope is marked for identification.

Mr. Fullerton—That is all we propose to do with it now, except either on our own motion or on the dictation of my adversary.

Judge Neilson—Counsel don't intend to dictate.

Mr. Fullerton—It looks very much like it [reading].

ANOTHER OF THE CLANDESTINE LETTERS.

The blessing of God rest upon you. Every spark of life and warmth in your own house will be a star and a sun in my dwelling. Your note broke like Spring upon Winter, and gave me an inward rebound to life. No one can ever know, none but God, through what a dreary wilderness I have wandered. There was Mt. Sinai, there was the barren sand, and there was the alternation of hope and despair that marked the pilgrimage of old. If only it might lead to the Promised Land—or, like Moses, shall I die on the border. Your hope and courage are like medicine. Should God inspire you to restore and rebuild at home, and while doing it to cheer and sustain outside of it another who sorely needs help in heart and spirit, it will prove a life so noble as few are able to live, and in another world the emancipated soul may utter thanks!

If it would be of comfort to you, now and then, to send me a letter of true *inwardness*—the outcome of your inner life—it would be safe, for I am now at home here with my sister; and it is *permitted to you* and will be an exceeding refreshment to me, for your heart experiences are often like bread from heaven to the hungry. God has enriched your moral nature. May not others partake?

Mr. Fullerton—That letter, if the Court please, is also without signature.

Q. Do you know anything of the writing of that letter?  
A. No, Sir.

Q. Your permission, then, was not obtained, nor so far as you know, was Theodore's obtained for the writing of that letter?  
A. No, Sir.

(Letter marked "Exhibit No. 13.")

Mr. Fullerton—I desire to have the envelope marked for identification.

(Envelope marked "No. 13" for identification.)

Q. [Handing paper to witness.] I now show you another paper and ask you whose handwriting it is?  
A. Elizabeth Tilton's.

Q. Did it come into your possession at any time?  
A. Yes, Sir. Did it what, Sir?

Q. Did it come to you in your possession?  
A. It came into my possession; yes, Sir.

Q. From whom did you receive it?  
A. From Mr. Beecher.

Mr. Fullerton—I offer the letter in evidence.

Mr. Evarts—If your Honor please, Mr. Fullerton suggests that the air is somewhat close here.

Judge Neilson—Will the officer open that window? Pull down the upper part further, please.

Mr. Fullerton—(Reading.)

MR. BEECHER: FRIDAY, April 21, 1871.

A. Mr. Moulton has returned, will you not use your influence to have the papers in his possession destroyed? My heart bleeds night and day at the injustice of their existence

Mr. Fullerton—No signature.

Letter marked "Exhibit No. 14."

Q. [Handing letter to witness:] I hand you still another letter, and state to me, if you please, in whose handwriting it is?  
A. Elizabeth Tilton's.

Q. From whom did you receive it if any one?  
A. From Mr. Beecher.

Q. When?  
A. Does it bear date? I did not look to see whether it bore date.

Q. May 3d, 1871?  
A. About that time, Sir,

Mr. Fullerton—I offer it in evidence.

MR. BEECHER:

MAY 3, 1871.

My future either for life or death would be happier could I but feel that you forgave me while you forget me. In all the sad complications of the past years, my endeavor was entirely to keep from you all suffering, to bear myself alone, leaving you forever ignorant of it. My weapons were love, a larger untiring generosity and *nest-hiding*!

[To Mr. Shearman:] *Nest-hiding* is underscored, I believe, Mr. Shearman?

Mr. Shearman—Yes, Sir.

Mr. Fullerton—And an exclamation marked after it?

Mr. Shearman—Yes, Sir.

Mr. Fullerton—[Continuing the reading of the letter.]

"That I failed utterly, we both know, but I now ask forgiveness."

Letter marked "Exhibit No. 15."

Q. Do you remember, some time after the receipt of this letter that has been shown to you, of a poem that was published in *The Golden Age*, Theodore Tilton being the author?  
A. Yes, Sir.

Mr. Evarts—How is that relevant, if your Honor please—a poem by Mr. Tilton?

Mr. Fullerton—His Honor don't know as well as I do how it is relevant.

Mr. Evarts—Of course not.

Mr. Fullerton—Perhaps I had better tell I have not got to that point yet. I will state to your Honor, when it is proposed to be read, what the pertinency of it is.

Q. Do you recollect that poem?  
A. Very well, indeed, Sir.

Q. State what followed between you and Mr. Beecher, if anything, after the publication of that poem?  
A. I saw Mr. Beecher.

Q. Where?  
A. Walking over to New York with him—I had crossed from the Brooklyn shore with him.

Q. What did he say in regard to that poem?  
A. He said that he was very sorry that it had been published: that it almost broke his heart to read it; that he thought that Theodore Tilton ought not to have published it; that he considered it virtually a telling of the story of himself and Elizabeth. He said he thought it was indelicate for Theodore to have done it. I guess I said that, by the way, myself; yes, Sir, I said that.

Q. That it was indelicate?  
A. Yes, Sir; I said it.

Q. Was there anything said about it being a breach of the understanding about keeping the matter secret?  
A. No, Sir; not that I remember.

Mr. Fullerton—I now offer the poem in evidence.

Judge Neilson—Go on and read it.

THE SIGNIFICANT POEM.

Mr. Fullerton—It is entitled, "Sir Marmaduke's Musings. By Theodore Tilton:"

I won a noble fame,  
But, with a sudden frown,  
The people snatched my crown,  
And in the mire trod down  
My lofty name.

I bore a bounteous purse,  
And beggars by the way  
Then blessed me day by day,  
But I, grown poor as they,  
Have now their curse.

I gained what men called friends,  
But now their love is hate,  
And I have learned too late  
How mated minds unmated,  
And friendship ends.

I clasped a woman's breast,  
As if her heart I knew,  
Or fancied, would be true,  
Who proved—alas, she too  
False like the rest.

I am now all bereft—  
As when some tower doth fall,  
With battlements and wall,  
And gate and bridge and all—  
And nothing left.

But I account it worth  
All pangs of fair Love crossed—  
All loves and honors lost—  
To gain the heavens, at cost  
Of losing earth.

So, lest I be inclined  
To render ill for ill,  
Henceforth in me instill,  
Oh! God, a sweet good will  
To all mankind.

Sleepy Hollow, November 1st., 1871.

The poem was marked Exhibit No. 16.

Mr. Fullerton—If your Honor please, I could not finish another topic if I commenced it, and it would break the continuity of it. I, therefore, ask your Honor to adjourn.

Judge Nielson, to the Jury—Return to your places, Gentlemen, at 2 o'clock.

The Witness—May I "step down," your Honor?

Judge Nielson—Yes, sir.

Mr. Mallison—(the Clerk)—The Court will now take a recess until two o'clock.

### TILTON DROPPED BY THE CHURCH.

The Court met at 2 p. m., pursuant to adjournment.

FRANCIS D. MOULTON's direct examination was resumed.

Mr. Fullerton [handing witness a paper]—The paper being shown you, I ask whether you ever saw it before? A. Yes, Sir; I have seen it before.

Q. Where? A. It was sent to me by Mr. Beecher.

Q. In whose handwriting is it? A. Henry Ward Beecher's.

Q. Did you have any conversation at the time? A. About that time we had conversation; yes, Sir.

Q. Anything to which the letter may relate? A. Yes, Sir; with reference to dropping Theodore Tilton's name from the roll of the church.

Q. State what that conversation was, if it were prior to the writing of the letter in question. A. Mr. Beecher said he was exceedingly anxious that Mr. Tilton should take some action by which his name should be dropped from the roll—voluntary ac-

tion on his part. The conversation that I had with him on that subject was sometime prior to this note.

Mr. Fullerton—I offer it in evidence [handing the letter to defendant's counsel].

Q. In that conversation did Mr. Beecher give any reasons why he thought that course was advisable; if so, state what they were? A. Mr. Beecher said he thought it would save trouble in the Church if they were free from responsibility for him. He said that if he was no longer a member of the Church, why, then, they could not investigate him as a church. He said he thought there would not be any safety unless he did have his name dropped from the roll of the Church by letter, in keeping the scandal down—the facts in regard to Mr. Beecher and Mrs. Tilton.

Mr. Fullerton [reading the letter]—

#### THE LETTER EXPLAINING THE POLICY OF DROPPING TILTON'S NAME.

DECEMBER 3, 1871.

MY DEAR FRIEND: There are two or three who will feel anxious to press action on the case. It will only serve to raise profitless excitement where we need to have quieting.

There are already complexities enough. We do not want to run the risk of the complications which, in such a body, no man can foresee, and no one control. Once free from a sense of responsibility for him, and there would be a strong tendency for a kindly feeling to set in, which is now checked by the membership, without attendance, sympathy or doctrinal agreement.

Since the connection is really formal and not vital or sympathetic, why should it continue with all the risk of provoking irritating measures. Every day's reflection satisfies me that this is the course of wisdom, and that T. will be the stronger and B. the weaker for it.

You said that you meant to effect it. Can't it be done promptly? If a letter is written it had better be very short, simply announcing withdrawal, and, perhaps, with an expression of kind wishes, &c.

You will know. I shall be in town Monday and part of Tuesday. Shall I hear from you?

Dec. 3, 1871.

(Letter marked "Exhibit No. 17.")

Q. What occurred after the writing of that letter, if anything? A. I think I met Mr. Beecher after the letter, and told him that I would try to effect his wishes in that matter with Theodore Tilton.

Q. Was anything done? A. I think that it was subsequent to the letter. Yes, sir; something was done. Theodore Tilton wrote a letter—I don't remember to whom, whether it was to the Trustees of the Church or not—but wrote a letter disavowing connection with it.

Mr. Everts—No matter about the letter, it will speak for itself.

The Witness—Yes.

Q. There is still another letter, Mr. Moulton [handing witness a letter]. State whether you know anything of it? A. It is in Henry Ward Beecher's handwriting.

Q. The envelope also [handing witness the envelope]? A. Yes, sir; the envelope also.

Mr. Fullerton—I offer it in evidence.

#### THE WRITTEN PRAYER FOR MRS. TILTON.

20TH JANUARY, 1873.

Now may the God of peace that brought again from the dead our Lord Jesus, that great shepherd of the sheep, through the

blood of the everlasting covenant, make you perfect in every good work to do His will, working in you that which is well-pleasing in His sight, through Jesus Christ.

This is my prayer day and night. This world ceases to hold me as it did. I live in the thought and hope of the coming immortality, and seem to myself most of the time to be standing on the edge of the other life, wondering whether I may not at any hour hear the call to "Come up hither." I shall be in New Haven next week to begin my course of lectures to the theological class on preaching. My wife takes boat for Havana and Florida on Thursday. I called on Wednesday, but you were out. I hope you are growing stronger and happier. May the dear Lord and Savior abide with you. Very truly yours,

H. W. BEECHER.

(Letter marked "Exhibit No. 18.")

Mr. Fullerton—I also read on envelope:

Brooklyn, January 20, 8 P.M. New-York, Mrs. Elizabeth Tilton, Livingston-st., Brooklyn.

(Marked "Exhibit 18.")

Q. Still another letter, Mr. Moulton, and state in whose handwriting it is [handing witness a letter]. A. In the handwriting of Henry Ward Beecher.

Q. To whom was that letter written? A. Written to me.

Q. Did you receive it? A. I did.

Q. From him? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence.

#### MR. BEECHER'S MELANCHOLY LETTER TO MOULTON.

MONDAY, February 5, 1872.

MY DEAR FRIEND: I leave town to-day and expect to pass through from Philadelphia to New-Haven. I shall not be here till Friday.

About two weeks ago I met T. in the cars going to B. He was kind. We talked much. At the end he told me to go on with my work without the least anxiety, in so far as his feelings and actions were the occasion of apprehension.

On returning home from New-Haven (where I am three days in the week, delivering a course of lectures to the theological students), I found a note from E. saying that T. felt hard towards me, and was going to see or write me before leaving for the West.

She kindly added, "Do not be cast down. I bear this almost always, but the God in whom we trust *will deliver us all safely*. I know you do and are willing abundantly to help him, and I also know your embarrassments." These were words of warning, but also of consolation, for I believe E. is beloved of God, and that her prayers for me are sooner heard than mine for myself or for her. But it seems that a change has come to T. since I saw him in the cars. Indeed, ever since he has felt more intensely the force of the feeling in society and the humiliations which environ his enterprise; he has growingly felt that I had a power to help which I did not develop, and I believe that you have participated in this feeling. It is natural you should. T. is dearer to you than I can be. He is with you. All his trials lie open to your eye daily. But I see you but seldom, and my personal relations, environments, necessities, limitations, dangers, and perplexities you cannot see or imagine. If I had not gone through this *great year of sorrow*, I would not have believed that anyone could pass through my experience, and be *alive or sane*. I have been the centre of three distinct circles, each one of which required clear-mindedness and peculiarly inventive or origination powers, viz.:

1. The great church.
2. The newspaper.
3. The book.

The first I could neither get out of nor elight. The *sensitiveness* of so many of my people would have made any appearance of trouble or any remission of force an occasion of alarm and

notice, and have excited, when it was important that rumors should die and everything be quieted.

The newspaper I did roll off, doing but little except give general directions, and in so doing I was continually spurred and exhorted by those in interest. It could not be helped.

The "Life of Christ," long delayed, had locked up the capital of the firm, and was likely to sink them—finished it *must* be. Was ever book born of such sorrow as that was? The interior history of it will never be written.

During all this time *you*, literally, were all my *stay and comfort*. I should have fallen on the way but for the courage which you inspired and the hope which you breathed.

My vacation was profitable. I came back, hoping that the bitterness of death was passed. But T.'s troubles brought back the cloud, with even severer suffering. For all this Fall and Winter I have felt that you did not feel satisfied with me, and that I seemed, both to you and T., as contenting myself with a cautious or sluggish policy, willing to save myself but not to risk anything for T. I have again and again probed my heart to see whether I was truly liable to such feeling, and the response is unequivocal that I am not. No man can see the difficulties that environ me, unless he stands where I do.

To *say* that I have a church on my hands is simple enough—but to have the hundreds and thousands of men pressing me, each one with his keen suspicion, or anxiety, or zeal; to see tendencies which, if not stopped, would break out into ruinous defense of me; to stop them without seeming to do it; to prevent any one questioning me; to meet and allay prejudices against T. which had their beginning years before this; to keep serene, as if I was not alarmed or disturbed; to be cheerful at home and among friends when I was suffering the torments of the damned; to pass sleepless nights often, and yet to come up fresh and full for Sunday;—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearing and grinding on the nervous system.

God knows that I have put more thought and judgment and earnest desire into my efforts to prepare a way for T. and E. than ever I did for myself a hundred fold. As to the outside public, I have never lost an opportunity to soften prejudices or refute falsehoods, and to excite kindly feeling among all whom I met. I am thrown among clergymen, public men, and generally the makers of public opinion, and I have used every rational endeavor to repair the evils which have been visited upon T., and with increasing success.

But the roots of this prejudice are long. The catastrophe which precipitated him from his place only disclosed feelings that had existed long. Neither he nor you can be aware of the feelings of classes in society, on other grounds than late rumors. I mention this to explain why I *know* with *absolute* certainty that no mere statement, letter, testimony or affirmation will reach the root of affairs and reinstate them. *TIME and WORK WILL.*

But chronic evil requires *chronic remedies*. If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out. No one can offer more than that. That I do offer. Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby. I do not think that anything would be gained by it. I should be destroyed, but he would not be saved. E. and the children would have their future clouded. In one point of view I could desire the sacrifice on my part. Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time. I look upon death as sweeter-faced than any friend I have in the world. Life would be pleasant if I could see that rebuilt which is shattered. But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness, cannot be endured much longer.

I am well-high discouraged. If you, too, cease to trust me—to love me—I am alone; I have not another person in the world to whom I could go.

Well, to God I commit all. Whatever it may be here, it shall be well there. With sincere gratitude for your heroic friendship, and with sincere affection, even though you love me not, I am yours (though unknown to you).

(Signed)

H. W. B.

Q. I omitted to ask you a question in reference to the last letter but one which I read in evidence, which is marked "Exhibit 18," in which occurs this sentence: "My wife takes boat for Havana and Florida on Thursday." Was that letter written with your knowledge or approbation? A. No, sir; I didn't know anything about the letter.

Q. In whose handwriting is the paper I now hand you [handing witness a paper]? A. Henry Ward Beecher's.

Mr. Fullerton [reading the paper]—

MY DEAR MRS. TILTON: If I don't see you to-morrow night, I will next Friday, for I shall be gone all the fore part of the next week. Truly yours,

H. W. B.

(Letter marked "Exhibit No. 20.")

Q. Again, in whose handwriting is the paper that I now show you [handing witness a paper]? A. In the handwriting of Mr. Beecher.

Mr. Fullerton [reading the letter]—

BEECHER MORE BANGUINE.

MONDAY.

MY DEAR FRIEND: I called last evening as agreed, but you had stepped out. On the way to church last evening I met Claflin. He says that F. denies any such treacherous whisperings, and is in a right state.

I mentioned my proposed letter. He likes the idea. I read him the draft of it (in lecture-room). He drew back and said, better send it. I asked if B. had ever made him statement of the very bottom facts; if there were any charges I did not know. He evaded and intimated that if he had he hardly would be right in telling me. I think he would be right in telling you—ought to. I have not sent any note, and have destroyed that prepared.

The real point to avoid is an appeal to church and then a council.

It would be a conflagration, and give each possible chance for parties, for hidings and evasions, and increase an hundred-fold their scandal, without healing anything.

I shall see you as soon as I return.

Meantime I confide everything to your wisdom, as I always have, and with such success hitherto that I have full trust for future.

Don't fail to see C. and have a full and confidential talk.

Yours, ever,

Q. That letter was addressed to you, I believe? A. Yes, Sir.

Q. When was it received, as near as you can tell? A. I don't remember, Sir. If you will let me look at the letter, perhaps I can tell you something about it. [Looking at the letter.] It was received before May 25th, 1873. I fix the date by this fact, that Mr. Bowen was reported to be reiterating the charges against Mr. Beecher, and I had a conference with him, shortly after this letter, I think.

Q. Do you know, from anything that occurred between you and Mr. Beecher, who Mr. B. is in that letter? A. Yes, Sir; Mr. Bowen.

Q. And who is C. named in that letter. A. Mr. Claflin.

Q. Do you know what proposed letter there was at that time, which is spoken of in this communication? A. There was a proposed letter to Mr. Bowen.

Mr. Evarts—Q. Well, what passed between you and Mr. Beecher? A. Mr. Beecher and myself had a conference, and he said he thought he should write a letter to Mr. Bowen with regard to his stories against him.

Mr. Fullerton—Is that what is referred to in the letter?

Mr. Evarts—Well, let us hear the conversation.

## THE FIRST WOODHULL PUBLICATION AND ITS RESULTS.

Mr. Fullerton—You understand it. We will come right to it. [To the witness.] Now I want to call your attention to a publication of Mrs. Victoria Woodhull sometime in 1872. Do you remember it? A. I remember there was a publication from Victoria Woodhull in one of the New York papers, or in two of them—*The World*.

Q. Do you recollect the date of it? A. No; I don't remember the date just now. In 1872.

Mr. Shearman—The 23d of May, 1871.

Mr. Fullerton—Yes. [To the witness.] Did you read that publication? A. Yes, Sir. Are you talking now about the publication of 1871 or 1873?

Q. I am talking about the card. A. Yes, Sir, I read it.

Q. May 23, 1871, as my attention was called to the date? A. Yes, Sir.

Q. Look at the paper I now show you and say whether it is a correct copy from the newspaper as you recollect it. [Handing witness a paper.] A. Yes, Sir; I remember that.

Mr. Fullerton—I offer that in evidence. It is from *The World*, Monday, May 22, 1871.

### THE WOODHULL CARD.

A Card from Mrs. Woodhull.

To the Editor of the World:

SIR: Because I am a woman, and because I conscientiously hold opinions somewhat different from the self-elected orthodoxy which men find their profit in supporting, and because I think it my bounden duty and my absolute right to put forward my opinions, and to advocate them with my whole strength, self-elected orthodoxy assails me, vilifies me, and endeavors to cover my life with ridicule and dishonor. This has been particularly the case in reference to certain law proceedings into which I was recently drawn by the weakness of one very near relative, and the profligate selfishness of other relations. One of the charges made against me is that I live in the same house with my former husband, Dr. Woodhull, and my present husband, Col. Blood. The fact is a fact. Dr. Woodhull being sick, ailing and incapable of self-support, I felt it my duty to myself and to human nature, that he should be cared for, although his incapacity were in no wise attributable to me. My present husband, Col. Blood, not only approves of this charity, but co-operates in it. I esteem it one of the most virtuous acts of my life: but various editors have stigmatized me as a living example of immorality and unchastity. My opinions and principles are subjects of just criticism. I put myself before the public voluntarily. I know full well that the public will criticise me, my motives and actions in their own way and at their own time. I accept the position. I except to no fair analysis and examination, even if the scalpel be a little merciless. But let him that be without sin, cast the stone. I do not intend to be made the scapegoat of sacrifice to be offered up as a victim to society, by those who cover over the foulness of their lives and the feculence of their thoughts with a hypocritical mantle of fair professions, and by diverting public attention

from their own iniquity in pointing the finger at me. I know that many of my self-appointed judges and critics are deeply tainted with the vices they condemn; I live in the house with one who was my husband. I live as a wife with one who is my husband. I believe in spiritualism. I advocate free love in its highest, purest sense as the only cure for the immorality, the deep damnation by which men corrupt and disfigure God's most holy institution of sexual relation. My judges preach against "free love" openly, and practice it secretly; their outward seeming is fair, inwardly they are full of "dead men's bones and all manner of uncleanness." For example, I know of one man, a public teacher of eminence, who lives in concubinage with the wife of another public teacher of almost equal eminence. All three concur in denouncing offenses against morality. "Hypocrisy is the tribute paid by vice to virtue." So be it: but I decline to stand up as the "frightful example." I shall make it my business to analyze some of these lives, and will take my chances in the matter of libel suits.

I have no faith in critics, but I believe in justice.

VICTORIA C. WOODHULL.

(Dated) NEW-YORK, May 27, 1871.

Marked "Ex. No. 22."

Q. After the publication of that card I ask you what occurred with reference to yourself, Mr. Tilton and Mr. Beecher? A. Mr. Tilton came to me and said that he had been sent for by Victoria Woodhull, that he had gone to see her, and that she had poured out upon him stories derogatory to the character of Mr. Beecher, and had connected his (Mr. Tilton's) wife's name with Mr. Beecher as it was connected in this article. I saw Mr. Beecher about it. I told him that I thought it would be necessary in some way to influence that woman against the publication of the stories; that I thought I ought to see her, and he said he hoped I would, and I did see her in consequence of my consultation with Mr. Beecher.

Q. Up to that time had you ever seen her? A. I saw her once before I saw Mr. Beecher, once or twice.

Q. Well, go on and state what occurred? A. With Mr. Beecher?

Q. Yes, Sir. A. I have stated what occurred.

Q. After seeing her did you see Mr. Beecher? A. Yes, Sir; I saw her after Mr. Beecher, and I saw Mr. Beecher after I saw her.

Q. That is what I wanted to call your attention to. What did you state to Mr. Beecher as having occurred between yourself and Mrs. Woodhull? A. I told him that I had said to Mrs. Woodhull that the stories against Mr. Beecher had their original foundation in stories told by Mr. Bowen; that when Mr. Bowen was asked to present the evidence upon which he based his stories, he did not present that evidence, and I told him I had worked a fair influence upon the woman, that I had undertaken to show her how wrong it would be to be vindictive; there was nothing to be gained by that, and said to him that I thought that I found her amenable to moral influence, which I undertook to use upon her, and he expressed his gratification.

Q. What did he say? A. He said that he was gratified that I had had the interview with her, and thanked me for it.

Q. Nothing was published, I believe, after that, for some time at least? A. No, Sir. I believe there was, Sir, a kindly

article published in Woodhull & Claflin's paper concerning Mr. Beecher.

Mr. Evarts—Well, unless the article is to be produced, we don't care for it.

(Paper to which witness last testified, marked "Exhibit No. 23.")

Mr. Fullerton—I ask you if you recollect of anything else that occurred after your interview with Mr. Beecher, and that you have last spoken of in regard to this matter before the publication of Mrs. Woodhull in the Autumn of 1872? A. I don't at the present moment remember.

Q. Then, Sir, what occurred in November, 1872, with reference to Mrs. Woodhull? A. There was a publication in Woodhull & Claflin's paper.

Q. In regard to this? A. Yes, Sir; in regard to Mr. Beecher, Mrs. Tilton and Mr. Tilton.

Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

Q. State what occurred between you? A. Mr. Beecher said that he had come to consult with me as to what it was best to do with reference to that publication; what reply could be made to it, if any reply could be made. He said he saw no hope for him since that story had been published. I told him that I thought silence would kill that story; and that if he kept silent with regard to it, simply pointing to his past life as an answer to it, and saying that if that was not an answer he did not choose to make any, that it would kill that story, in my opinion so far as any evil effect of it upon him was concerned. We consulted frequently concerning it, and did not arrive at any other conclusion than that silence was best. I said to Mr. Beecher, "If I say anything about it I think this will be the best thing for me to say uniformly; that if the story is true, it was infamous to tell; and if it was false, it was diabolical to have told it; and that if his life was not an answer to it, I could not choose to make any—I should not choose to make any to anybody." Mr. Beecher said to me that he thought it would be judicious for me to make such a reply as that; and I met him after this conversation, and I told him that I had made such a reply as that to several parties, and it appeared to satisfy them. I told him that I had been pressed close by one or two people, and I had denied that he was an impure man—had denied that outright, I did.

Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

Mr. Evarts—Oh! the article should be produced.

Mr. Fullerton—Well, if you want the article—

Mr. Evarts—We don't want the article.

Mr. Fullerton—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

Mr. Evarts—I cannot agree to any substitute for evidence.

Mr. Fullerton—I propose to give that in evidence, Sir, whether that was charged in that paper. It is not necessary that we should produce it here.

Judge Neilson—Does the learned counsel stand upon the objection that the paper would best show ?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then you cannot do it. You must produce the paper ; if you produce the paper, and identify it, you can eliminate that one sentence.

Mr. Fullerton—Well, Sir, we will go on then with the evidence, and introduce the paper to-morrow.

Q. I want to ask you what reply Mr. Beecher made, if any, when you informed him that you had denied flatly to two or three persons that he was an impure man ? A. He thanked me for the pains I had taken.

Q. Now, during these interviews between you and Mr. Beecher with reference to that publication, where was Mr. Tilton ? A. Mr. Tilton, I believe, in the beginning, was in New Hampshire.

Q. And when he returned did he participate in any way ? A. Yes; he was present at an interview between Mr. Beecher and myself.

Q. What took place at that interview ? A. Mr. Tilton said to Mr. Beecher that he was not at all responsible for that story. Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story. That is the substance of what occurred there.

Q. Do you recollect whether there was a proposed card to publish in reference to it ? A. There was, subsequent to that interview.

Q. When was this interview that you now speak of ? A. Sometime subsequent to that—some time during that month, of the first part of December.

Q. When was the interview at which the proposed card—?

Mr. Beach—That is the one he has given the date of, isn't it ? Witness—I say it was some time in the latter part of November or December.

Q. Subsequent ? A. Yes; subsequent to this interview; yes, Sir.

Q. When was the interview at which the card appeared, or was proposed ? A. Some time after this interview, Sir—the first interview, of which we have spoken, between Mr. Tilton and Mr. Beecher, the latter part of November or December.

Mr. Beach—Well, which was the latter part of November ? A. The last, Sir.

Mr. Evarts—When was the other ? A. On election day, I think, Sir.

Q. That would be earlier ? A. Yes, Sir.

Q. Mr. Fullerton—What occurred when the card was proposed. A. Mr. Tilton declined to publish any card; he declined to consider such a card, and he said it would only lead to further controversy, and he could not denounce those women to save Mr. Beecher from the result of his crime.

Q. What did Mr. Beecher reply to that ? A. Don't remember his reply.

Q. What paper is that that is now handed you ? A. It is the handwriting of Henry Ward Beecher with regard to the pro-

posed card for Theodore Tilton to make. Mr. Tilton told Mr. Beecher at that interview that he knew perfectly well the circumstances under which he (Mr. Tilton) had come in contact with Mrs. Woodhull, and he said that Mr. Beecher must understand that such a card as that would be a very unjust card, and an untrue card for him to publish.

Mr. Fullerton—I shall offer it in evidence.

THE PROPOSED DENUNCIATION OF WOODHULL BY TILTON.

"In an unguarded enthusiasm, I hoped well and much of one who has proved utterly unprincipled. I shall never again notice her stories, and now utterly repudiate her statements made concerning me and mine."

By Mr. Evarts—That was the proposed card for Mr. Tilton to publish ? A. Mr. Beecher's proposed card ? yes, Sir.

Q. For Mr. Tilton to publish ? A. Yes, Sir; he recommended, certainly, Mr. Tilton to publish it.

Q. It was not to be signed by Mr. Beecher, it was to be signed by Mr. Tilton ? A. To be signed by Mr. Tilton : yes, Sir.

Card marked "Exhibit A—No. 23."

Mr. Fullerton—When Mr. Tilton said to Mr. Beecher, "You know the circumstances under which my acquaintance with Mrs. Woodhull commenced," did he state these circumstances ? A. Yes, Sir.

Q. What did he say ? A. He said that he had formed the acquaintance of Victoria Woodhull in the beginning in consequence of the card which originally appeared in *The World* and that from that time onward up to the Spring of 1872, he had undertaken to use his utmost influence upon her, in a kindly way, for the purpose of suppressing the story concerning Mr. Beecher and his wife, and an unguarded enthusiasm, and that Mr. Beecher knew it was not an unguarded enthusiasm that led him to Mrs. Woodhull, but that he went to her for the purpose of protecting his family, and himself and Mr. Beecher, from the result of a story which she originally threatened.

Q. Did anything else occur at that interview, which you have not related, that you remember ? A. Nothing, but that Mr. Beecher was deeply affected at the interview.

Q. How was he affected ? A. Did not see any hope, did not see how the story was to be suppressed, he said, and he wept as usual.

Q. I now call your attention to December, 1872, about the 20th, a consultation between yourself and Mr. Tilton and Mr. Beecher in regard to a statement ? A. What is the date, Sir ?

Q. About December 20 ? A. 1872 ?

Q. Yes; about a proposed statement that was — A. Oh yes, I remember it.

Q. Where did that interview take place ? A. Took place at my house in Remsen street.

Q. State, if you please, what occurred. A. There were present Mr. Tilton, Mrs. Tilton, Mr. Beecher and myself. Mr. Tilton had communicated to me his intention of publishing what he had written, which was a story of the whole affair—the account of the whole affair. He had made one alteration in it, of statement from the exact truth or had stated the exact truth in language that was delicate, and he wanted Mr. Beecher to hear it read before it

publication, and Mr. Beecher, at my invitation, came to hear it read, and Mr. Tilton said to Mr. Beecher, "I will read to you one passage from this statement, and, if you can stand that, you can stand any part of it," and he read to him a passage from that statement, which was about as follows as nearly as I can recollect.

Mr. Evarts—The statement will speak for itself.

Mr. Fullerton—What did he read?

Mr. Evarts—The statement will state.

Mr. Fullerton—No, what did he read?

Mr. Evarts—Exactly let us have the statement.

Mr. Fullerton—No, but he read from something. What did he say when he read?

Judge Neilson—I think it is a verbal communication directly to Mr. Beecher, and therefore it is admissible.

Mr. Evarts—No, I do not understand it so. He had a written paper from which he read. We want that written paper.

The Witness—Well, Mr. Tilton stated—

Mr. Evarts—Don't argue the question.

The Witness—I beg pardon.

Mr. Evarts—We think we are entitled to the written paper, and that parole evidence of its contents cannot be given.

Mr. Fullerton—I am asking what Mr. Tilton said, or read to Mr. Beecher on that occasion.

Judge Neilson—Well, ask him what he said.

By Mr. Fullerton—Well, what did he say when he read? Objected to.

Judge Neilson—Can you tell what he said, independently of the paper? A. Yes, Sir.

Mr. Evarts—Independently of reading from a paper, what did he say; that is, what other than what he read—

Mr. Fullerton—No, that is not my proposition.

Mr. Evarts—Well, I know that is not your proposition. It would not be extraordinary, if you did know it, because I have stated it very plainly.

Mr. Evarts—But his Honor has said—

Mr. Fullerton—I know his Honor has said, and you have said, and now I have a right to say, without interruption. We all have rights here.

Mr. Evarts—Of course you have rights here.

Mr. Fullerton—Well, it don't seem to be of course, from the way you addressed me now. Now, I propose to give in evidence what occurred between the parties on that occasion, and, if Mr. Tilton said or read anything, I want the witness to repeat what he said and what he read. I am not giving in evidence the document by any means. I do not propose that, and, even if I did, it is not such a document as it is necessary to produce here, in order to give it in evidence. What I desire to know is this; what communication was made, in any possible form, by Mr. Tilton to Mr. Beecher, that called from him a reply.

#### A SHARP BOUT OVER THE ADMISSION OF EVIDENCE.

Judge Neilson—Now, let us see what the answer to that is.

Mr. Evarts—The only answer on our part is that we want it

according to the rules of evidence. It is stated that Mr. Tilton had written what is characteristic as a full statement, or true statement, or something of this matter which he proposed to publish. That I understand the witness has said, and he had it then there, and the conversation was concerning that paper and its publication. Thereupon Mr. Tilton undertook to read to Mr. Beecher a part of that paper, saying, "If you can stand that part of the paper, you can stand the next." That is what this witness has testified to. Now, we want that paper and the part of it that was read as it appeared in that paper, and it is not competent to recite out of a written paper by oral proposition what the written paper is the best evidence of. Both Mr. Tilton's statement and this witness's hearing, was a statement by the one and a hearing by the other of what was written on a paper, and was not an independent statement, nor so proposed. Now, my learned friends either are going to give that statement in evidence, or not, or that part of that statement in evidence, or not. When they produce that paper we will examine it and consider the question whether the whole or the part is admissible, if the whole or the part shall be proposed. But now our objection is that the oral statement of this written paper cannot be given in evidence unless the foundation for it is shown by showing also the destruction of the paper.

Mr. Fullerton—My proposition, Sir, is embraced in these few words: I propose to show what communication was made by Mr. Tilton on that occasion to Mr. Beecher. I do not care whether it originated in his own mind or whether it was read from the paper, printed or written. It makes no difference. What it was he said to him is what I have a right to and what I propose to prove.

Judge Neilson—I think the witness can state what was said to Mr. Beecher, although the stated matter had been incorporated in writing, if he needs it as a statement—what was read.

Mr. Evarts—But, if your Honor please, he stated that he read from the paper.

Judge Neilson—Well, it was a paper which was proposed. It does not appear to have been adopted or acted upon—an imperfect thing.

Mr. Evarts—I do not know that, Sir. If your Honor knows more of it than me—

Judge Neilson—I say it does not appear.

Mr. Fullerton—You knew it at the time—

Mr. Evarts—That he had written a paper which was a true statement, and which he proposed to publish. How your Honor knows it was an imperfect paper, I am sure I do not understand.

Judge Neilson—I did not say I knew it was. I said it did not appear to have been perfected. I think this witness can state anything which Mr. Tilton said to the defendant on that occasion.

Mr. Evarts—Although it was writing from a paper?

Judge Neilson—Although part of it had been written on a paper; yes, Sir.

Mr. Evarts—We except.

Mr. Fullerton—Now go on.

Mr. Evarts—Let me understand what your exception is—to a



repetition by this witness of anything that was read as a part of that paper?

Judge Neilson—That is your objection. My ruling is that he may state anything that was stated by the plaintiff to the defendant on that occasion.

Mr. Evarts—Although it includes the recital of what was written from the paper?

Judge Neilson—Although it may include the recital of what had been written.

Mr. Evarts—What was read from the paper, if your Honor please, is what our point is. Our point, and we certainly are entitled to it, is that if this witness testifies that Mr. Tilton read from a paper, that that paper, as evidence of what he read, must be produced, and not the witness's memory.

Judge Neilson—Suppose that, prior to a conversation upon any question in interest, the witness makes a memorandum to assist him in the conversation. Is it to be doubted that he may go on with that conversation and use this paper, if need be, and afterwards prove what the conversation was without the production of the paper?

Mr. Evarts—The point is to take your Honor's ruling. I understand your Honor to have decided; but my objection is to the recital by this witness of a part of a paper that was read without the production of the paper.

Judge Neilson—My ruling is simply that he may state, if he can, all that the plaintiff said to the defendant on that occasion. That is all.

Mr. Fullerton—That is my question.

Mr. Evarts—Certainly your Honor proposes I shall either have the evidence excluded or my exception?

Judge Neilson—You take my ruling, of course.

Mr. Evarts—Ah! but your Honor refuses to rule upon my point, and states to me that you only rule upon something else. Now, I make an objection, and I bow to your Honor's ruling upon it, but I am entitled to one or the other.

Judge Neilson—I rule simply that he may state if he can all that the plaintiff said to the defendant on that occasion.

Mr. Evarts—And you don't rule that he may state any part of what was in that paper?

Judge Neilson—That is not involved in the proposition.

Mr. Evarts—Very well, then, I shall object to his reciting anything that was in that paper under your Honor's present ruling.

Judge Neilson—It is not a question of reading; it is a conversation between the parties.

Mr. Fullerton—What communication did Mr. Tilton make to Mr. Beecher at that interview? A. Mr. Tilton said to Mr. Beecher—

Mr. Evarts—Wait a moment. Did he read from a paper?

Mr. Beach—Wait one moment.

Judge Neilson—I think he may put that.

Mr. Fullerton—You have no right to interfere with my witness.

Mr. Evarts—I have a right to.

Mr. Fullerton—No; he is going on to state what Mr. Tilton said.

Mr. Evarts—Now, I have a right to the points of law, and I propose to have it.

Mr. Fullerton—I propose you shall not interrogate my witness while he is in my hands.

Mr. Evarts—Well, I propose to interrogate your witness while he is in your hands, to raise that question whether he is repeating from what is written, and it is the every day check of a witness who is proceeding to make a statement to ask whether that was in writing.

Judge Neilson—Undoubtedly where a writing exists affecting the interest of the parties.

Mr. Evarts—So I shall interrupt any witness with that ruling.

Mr. Fullerton—Well, you have done it; now, we will go on.

Mr. Evarts—Now, just answer the question.

Mr. Fullerton—State what Mr. Tilton said?

Mr. Evarts—No; answer the question whether it was in writing. [Laughter.]

Judge Neilson—I don't see why you should take such an interest in this question; it seems too simple to talk about.

Mr. Evarts—Does your Honor rule that I have no right to ask whether it was in writing?

Judge Neilson—Not with that view; your question has been taken down and exception.

Mr. Evarts—Well, if the witness now states anything that was in writing, I object to it.

Judge Neilson—Well, that saves your rights, perhaps.

#### THE FIRST PROPOSED STATEMENT.

Mr. Fullerton—Go on and state what communication—what did Mr. Tilton say to Mr. Beecher upon that occasion? A. Mr. Tilton said to Mr. Beecher: "Mr. Beecher, there is one thing in this statement which if you can stand, you can stand any part of it. Elizabeth has stated that you solicited her to become a wife to you, together with all that that implies, and I will read to you that part of the statement," and he did read to Mr. Beecher that part of the statement.

Q. Now, what did Mr. Beecher reply? A. And Mr. Beecher said, "Theodore you might just as well state the fact as to put it in that way;" and Mr. Beecher said to me after that interview that he would not stand in the position of a man who had solicited favors from a woman, and be put in the position of one who had been rejected by her, and I told him I sympathized with that view of the case. [Laughter and applause.]

Judge Neilson [to the audience]—You have the advantage to-day because of your numbers, but I certainly have the power to protect myself to-morrow morning. The audience has behaved very well to this moment. I want you to be still. I do not want your opinion upon this subject in any form.

Q. What reason, if any, did he give for making that? A. He gave the reason to me, Sir, subsequent to the interview; he went on at that interview and said to Mr. Tilton, "Mr. Tilton, of course you can do just as you please, but I think you ought not to publish that; it will kill me if you publish it."

Mr. Fullerton—I shall have to put in the original, perhaps at some future time.

Mr. Beach—Did I understand that Mr. Tilton was present at this time? A. Yes, Sir.

Mr. Fullerton—I call your attention to a still further interview in the month of December, 1872, when Mr. Carpenter was present. Do you recollect such a meeting? A. When, what, Sir?

Q. Do you recollect such a meeting—when Mr. Carpenter was present? A. In the latter part of December, 1872?

Q. Yes? A. The meeting with reference to a paper, do you mean?

Q. Yes? A. Yes.

Q. Before I go to that, however, let me ask you what reason Mr. Tilton assigned for writing this statement referred to in your last interview? A. Mr. Tilton said he thought it would be necessary to give the public some information concerning the story of Victoria Woodhull, that was the reason he gave.

Q. Now go to the interview where— A. I had a further conversation with Mr. Beecher on that subject.

Q. Well, state it? A. Yes; I had a further conversation with Mr. Beecher on the subject of that document, and I told him that I had said to Theodore Tilton that he must not publish it, that it would be cruel to publish it as against his family and as against Mr. Beecher; and that I had received from Theodore Tilton a promise that he would not publish it, and I had him put it—I told Mr. Beecher I had him put it—into a certain spot, and agree not to take it from that spot without my consent, and Mr. Beecher thanked me for this interference in his behalf.

Q. It was not published, was it? A. No, Sir.

Q. Now, the other interview in 1872, at which Mr. Carpenter was present—what occurred then?

Mr. Beach—The latter part of December, 1872? A. Mr. Carpenter spoke with Mr. Beecher about the establishment of—

Q. First tell us how you got together? A. I do not know; I believe Mr. Carpenter and Mr. Beecher came together to my house.

Q. What Mr. Carpenter [was it? A. Mr. Carpenter the artist—Frank Carpenter.

Q. Now, state what occurred. A. He wanted Mr. Beecher—he said to Mr. Beecher: “Will you entertain the idea of going into a newspaper? Wouldn’t it save all trouble if you should resign your ministry and go into a paper?” And Mr. Beecher said he was willing to take such a subject as that into consideration; and that was the substance of what occurred at that interview.

Q. Well, what was said about the paper? Give us the interview at length, as well as you can recollect it? A. I don’t remember much more about it than that.

Q. Do you recollect what time in December this was? A. The latter part of December.

Q. What, if anything, was said at that time about the length of time that Mr. Beecher had been pastor of the Church? A. I think something was said about the 25 years that he had been a pastor.

Mr. Evarts—By whom? A. By Mr. Carpenter. Mr. Carpenter referred to his illustrious career—said to Mr. Beecher: “You have had an illustrious career as a preacher; and now it seems to me that you could step from the pulpit into a journal, and save all these stories against

yourself from being told”—put it in that view—in some such way as that; I forget the substance of it.

Mr. Fullerton—Did you hear anything more about that proposition afterward? A. Yes, Sir.

Q. From whom? A. From Mr. Beecher and from Mr. Carpenter.

Q. When they were together? A. No; I do not remember that they were together.

Q. What did Mr. Beecher say in regard to it at any subsequent time? A. I had an interview with Mr. Beecher in regard to it myself. I discountenanced the proposition; told him he had not better accept any such proposition; the place for him to work was in the pulpit—there is where he belonged, and to go out of the pulpit would be a virtual confession of the Woodhull story and the rumors against him.

Q. What did he reply to that, if anything? A. Well, that is what he told Mr. Carpenter—that is what he said he would tell Mr. Carpenter, and I believe he did tell Mr. Carpenter.

Mr. Evarts—That you do not know anything about? A. I do not know anything about that—whether he told Mr. Carpenter or not.

Mr. Fullerton—Do you recollect what was termed as “The Letter to My Complaining Friend,” which was published in December, 1872? A. Yes, Sir; I remember something about it.

Q. Did you have any conversation with Mr. Beecher afterward about it? A. Yes, Sir.

Q. Did you see the letter in the newspaper? A. Yes, Sir.

Q. See if you recognize that as a reproduction of it?

Mr. Evarts—What is the date of that?

Mr. Fullerton—That is December, 1872.

Q. Do you recognize that as the letter? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence (reading).

Mr. Fullerton read a few lines and then stumbled in the reading, and at the suggestion of Mr. Beach that he had better read it over again, began again as follows:

#### THE LETTER TO THE COMPLAINING FRIEND.

NO. 174 LIVINGSTON STREET,  
BROOKLYN, December 27, 1872. }

#### MY COMPLAINING FRIEND:

Thanks for your good letter of bad advice. You say, “How easy to give the lie to the wicked story, and thus end it forever.” But stop and consider. The story is a whole library of statements—a hundred or more—and it would be strange if some of them were not correct, though I doubt if any are. To give a general denial to such an encyclopædia of assertions would be as vague and irrelevant as to take up *The Police Gazette*, with its twenty-four pages of illustrations, and say, “This is a lie.” So extensive a libel requires, if answered at all, a special denial of its several parts; and, furthermore, it requires, in this particular case, not only a denial of things misstated, but a truthful explanation of the things that remain unstated and in mystery. In other words, the false story, if met at all, should be confronted and confounded by the true one. Now, my friend, you urge me to speak; but when the truth is a sword, God’s mercy sometimes commands it sheathed. If you think I do not burn to defend my wife and little ones, you know not the fiery spirit within me. But my wife’s heart is more a fountain of charity, and quenches all resentments. She says, “Let there be no suffering, save to ourselves alone,” and forbids a vindication to the injury of others. From the beginning she has stood with her hand on my lips, saying, “Hush!” So, when

you prompt me to speak for her, you countervail her more Christian mandate of silence. Moreover, after all, the chief victim of the public displeasure is myself alone, and, so long as this is happily the case, I shall try with patience to keep my answer within my own breast, lest it shoot forth like a thunder-bolt through other hearts.

Yours truly,

THEODORE TILTON.

By Mr. Fullerton—What occurred between yourself and Mr. Beecher with reference to that letter? What newspaper was it published in? A. In one of the Brooklyn papers.

Q. Do you recollect which one? A. I think I saw it in *The Eagle*, Sir.

Mr. Fullerton—*The Brooklyn Eagle*?

[Copy of letter marked "Exhibit No. 24."]

Q. What occurred between yourself and Mr. Beecher after the publication of that letter? I saw Mr. Beecher and he said that he regretted the publication of it very much—he thought that the letter might lead to further inquiry; he said he thought it might lead to further inquiry in the matter—might lead to the telling of the whole story. I told him that I considered the letter a very injudicious one for Theodore Tilton to write; agreed with him that he ought not to have written it in the interests of peace.

Q. Is that all of that interview that you recollect. A. That is the substance of it.

#### CIRCUMSTANCES OF THE TRIPARTITE COVENANT.

Q. Do you recollect the publication of what is termed the tripartite agreement? A. Yes, Sir; I do.

Q. What occurred, if anything, between yourself and Mr. Beecher in regard to it? A. With reference to the publication of the tripartite—

Q. What occurred between you after the publication of the tripartite agreement? A. After the publication of the tripartite covenant?

Q. Yes, Sir. A. Mr. Beecher was at my house, came to my house on Saturday morning, May 31, I think it was—I think the publication of the tripartite covenant was on May the 30th—came there, I believe, because I sent for him. I sent for him because Theodore Tilton had said to me that the publication of the "tripartite covenant" placed him in the position of a man forgiven for some crime by Mr. Beecher, and that he would not stand in that position.

Q. Did you state so to Mr. Beecher? A. I told Mr. Beecher at the house—Mr. Tilton told Mr. Beecher that at the house.

Q. When Mr. Tilton told Mr. Beecher this he was present? A. Yes.

Q. Just explain again. A. Certainly, Sir.

Q. Now, you and Mr. Tilton and Mr. Beecher met there together? A. Yes, Sir. I think I sent for Mr. Beecher in consequence of Mr. Tilton having told me that this "tripartite covenant"—the publication of it—put him in the position of a man forgiven by Mr. Beecher for some crime; he was not content to stand in such a position; that that was not the truth, and he would not stand in that position.

By Judge Nelson—Then Mr. Beecher came? A. Yes, Sir.

Q. And you had an interview? A. Yes, Sir.

By Mr. Fullerton—Now what occurred?

Mr. Evarts—The question is whether Mr. Tilton was there? A. Yes, Sir.

By Mr. Fullerton—After you told him what Mr. Tilton said with regard to the effect of that tripartite agreement? A. I was giving the reasons for sending for Mr. Beecher. Now Mr. Beecher comes, or has come to the house and he is present with Mr. Tilton, and Mr. Tilton said to Mr. Beecher: "Mr. Beecher, the publication of this 'tripartite covenant' puts me in the position of a man having been forgiven by you for some crime. Now you know that is not true; I can not stand in any such position as that, nor I won't stand in any such position as that. Now I want you to set that right or I will publish this card." And he had a card for publication, into which was incorporated apart or the whole of the letter of contrition, part of it, I think, of January the 1st, 1870.

Q. The letter that has been put in evidence of Jan. 1, 1870? A. Yes, sir.

Q. And Mr. Beecher said: "Theodore, I don't see what can be done—what I can do? If you will indicate anything that I can do, I'm willing to do it; but, really, I don't see how I can. I don't think that you are right about it; I don't think that it puts you in that position." And Theodore said: "Well, it does put me in that position; and that's precisely what I shall do, unless—I shall publish this document unless you set the matter right; you ought to do it; I won't stand in that position." And Mr. Tilton, I believe, left that interview, and left me alone with Mr. Beecher, or else Mr. Beecher and myself went up into my study from the room in which we originally were; and Mr. Beecher said to me, that there seemed to be no end of complications; that as fast as we got out of one thing we seemed to get into another; that he had not been a party to the publication of the tripartite convention—that he had not been a party to it; and, if Theodore Tilton published that letter, it would simply be his death.

Q. Whose death? A. Mr. Beecher's death; I beg pardon, Sir; and I told him that I did not think it was worth while to give way to his feelings; that was what he generally did whenever an emergency came; and that if I had followed his advice, followed his fears, I should have given up the case long ago. I told him not to be distressed about it, for I thought we would find some way out; we had met difficulties before, and I told him that I thought it was not any more difficult to meet this matter than it was the Woodhull story; and if we meant to do right, one toward the other, I thought we could find a way that would settle the difficulty. If my recollection serves me right, Mr. Beecher came that Saturday night and said to me, with great despondency, that he had made up his mind to resign from Plymouth Church, and he showed to me a copy of the letter of resignation, showed to me a draft of a letter of resignation which he had prepared to be presented to the Trustees or some parties in the Church, proper parties; and I said to him that that would not do at all, that that was a virtual confession of the crime, and said that it was an act of cowardice on his part to do it—he ought to stand and undertake to prepare some sort of document that would meet the necessities

of the case, and I told him that I thought such a card as that could be prepared. I think that Theodore Tilton was in the house on Saturday night, and I told him of Mr. Beecher's proposed action. I went down stairs; I think he was in my front room, and Mr. Tilton objected to the resignation, particularly to that part of it which said that Mr. Beecher—

Mr. Evarts—Well, it was a written paper, you know.

Witness—Yes, Sir. Can I say what Mr. Tilton said?

Judge Neilson—Not unless there is consent.

Mr. Fullerton—Before we go any further, state whether that is the proposed card of Mr. Tilton.

Mr. Morris—That is a copy that I made myself from the—

Mr. Fullerton—I will substitute the original for it.

Mr. Evarts—Well, we will not quarrel about it; go on. This copy is allowed to be used for the moment in place of the original which is not at hand, but the original is to be produced, otherwise it goes for nothing.

Judge Neilson—Yes, Sir. [Paper handed to witness.]

The Witness—That is what I remember, Sir, about it.

#### TILTON'S CARD OF EXPLANATION.

To the Editor of the Brooklyn Eagle:

Samuel Wilkeson, a business partner of Henry Ward Beecher, authorized the publication of a part of a document touching the relations of Mr. Beecher and Henry C. Bowen. This document, without the addition of another, of which I presume Mr. Wilkeson had no knowledge, grossly misrepresents Mr. Beecher's relation to myself. The extent of this misrepresentation, even by well meaning journalists, is shown by the following extract from *The New York Express*:

"Something, under the circumstances, was due to the public, Mr. Beecher should remember, as well as to his peculiar friends, Mr. Bowen and Mr. Tilton, and hence, while it was well enough to forgive them for the great,—we had almost said the irreparable injury, they have done him, it is to be regretted that he did not bring the alleged slanderer or slanderers into open court, to be dealt with there as they deserved."

The above indicates the feeling of a great many good men and women as to my supposed unjust behavior towards Mr. Beecher, and is based on the notion that I have slandered a clergyman, that I have retracted the slander, and that I have been forgiven by him and magnanimously restored to his confidence. This impression, which is now becoming general, is a grievous wrong to me and my family. No longer can I consent to remain in a false position before the public. I, therefore, append the following statement by Mr. Beecher:

"BROOKLYN, January 1st, 1871.

In trust with F. D. Moulton.

MY DEAR FRIEND MOULTON: I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself. I even wish that I were dead; but others must live and suffer.

I will die before any one but myself shall be implicated. All my thoughts are running towards my friends, towards the poor child lying there and praying with her folded hands. She is guiltless—sinned against; bearing the transgression of another. Her forgiveness I have. I humbly pray God that he may put it into the heart of her husband to forgive me.

I have trusted this to Moulton in confidence.

(Signed)

H. W. BEECHER."

The above document will show whether it is I who have wronged Mr. Beecher, or Mr. Beecher who has wronged me.

THEODORE TILTON.

174 Livingston street, June 7th, 1873.

Q. [Handing paper to witness.] Do you recollect whether anything was said about the erasure in that letter of January 1st, 1870, which appears there? A. Yes, Sir; Mr. Theodore Tilton said that the introduction of that clause, if I remember rightly, would be a virtual confession, or statement of adultery between Mr. Beecher and his wife, and, therefore, it was stricken out.

Q. The words: "Bearing the transgression of another" were stricken out—erased. The whole sentence is as follows: "She is guiltless, sinned against, bearing the transgression of another. Her forgiveness I have." The words, "Bearing the transgression of another," are erased.

Mr. Evarts—Are they erased there?

Mr. Fullerton—Yes, Sir. I asked him if anything was said at that interview about the reason why those words were erased.

Mr. Evarts—Erased in that supposed publication?

Mr. Fullerton—Yes, Sir.

Mr. Fullerton—They were erased in that supposed publication, were they not, Mr. Moulton? A. Yes, Sir.

Q. What followed that interview? A. The next thing that followed was the letter of June 1st, from Mr. Beecher.

#### THE LETTER OF RESIGNATION.

Q. No; I ask your attention to the same night. Was there not a proposed resignation on the part of Mr. Beecher? A. I have said so, have I not?

Q. Well, I believe you have. Who prepared that proposed resignation? A. Mr. Beecher himself.

Q. Where did you see it first? A. In his hands.

Q. What did he say at the time? A. He said he had made up his mind that he would not try any longer to stand up against this story; that if Theodore Tilton was going to publish that, he might as well resign.

Q. [Handing paper to witness.] Look at the paper now shown you, and tell me what it is? A. This is a copy which I dictated in order that Theodore Tilton might consider exactly what the document was.

Q. From what did you dictate it? A. I dictated it from my memory of the document itself.

Mr. Fullerton, (to defendant's counsel)—Now, gentlemen, we have noticed you, I believe, to produce the original.

The original was not produced.

Mr. Fullerton—We will read from it. It is the reproduction of the original from his memory.

Paper marked "Exhibit No. 25."

Q. What became of the original? A. Mr. Beecher kept it.

Q. You did not keep it? A. No, Sir, I did not.

Mr. Evarts—I understand Mr. Moulton to have spoken of a resignation which was there before him.

Mr. Fullerton—Yes, Sir, and which he took away.

Mr. Evarts—Yes, Sir, and which he took away, and that became the subject of comment. What do you propose to do with this?

Mr. Fullerton—I propose, in the first place, to read from the original, if you produce it in obedience to the notice given to you for that purpose; and, if you do not produce it, I propose to read from this copy.

Mr. Evarts—We have no such paper.

Mr. Fullerton—No such paper as what?

Mr. Evarts—No such paper as your witness speaks of.

Mr. Fullerton—Where is the notice to produce? I call for the production of the paper described in our notice?

Mr. Evarts—We have no such paper.

Judge Neilson—Has notice been given?

Mr. Beach—The notice to produce is admitted.

Mr. Fullerton—Can you state the contents of that resignation which was proposed by Mr. Beecher on that occasion? A. Yes, Sir, I can, substantially.

Q. Do it as nearly as you can.

Mr. Evarts—Wait one moment. He can recite from memory, if he can, of course, the best way he can; but when you put a paper into his hands, we want to inquire where that was made, and when.

Mr. Beach—That is right; let him examine the witness.

Mr. Evarts—You have a memorandum now put into your hands? A. Yes, Sir.

Q. Where do you produce that from? A. I produce it from my possession.

Q. How long have you had it in your possession? A. I have had it since May 31, 1873.

Q. How came you to make that paper? A. I made it in order to submit to Mr. Tilton what Mr. Beecher proposed to do, at Mr. Tilton's solicitation.

Q. Was not Mr. Tilton present when this paper, as you call it, of Mr. Beecher was read? A. No, Sir, he was not.

Q. It was not at that meeting then? A. No, Sir; it was not at the meeting between Mr. Beecher, Mr. Tilton and myself.

Q. When did you write that? A. May 31, 1873, I think—Saturday evening, if my recollection serves me.

Q. Why didn't you send for the original? A. I didn't write it; I dictated it from memory to Mr. Tilton.

Q. It is in Mr. Tilton's handwriting? A. Yes, Sir.

Q. Written down by him by your dictation? A. Yes, Sir.

Q. Why didn't you send for the original? A. Because I went down stairs to see Mr. Tilton to tell him what it was. Mr. Beecher said he didn't want to see Mr. Tilton, and I went down stairs, knowing about this letter of resignation, wanting to tell Mr. Tilton what it was. Mr. Tilton said, "Tell me what it is; let me look at it." That is as near as I can recollect the circumstances under which this was dictated to him.

Q. Mr. Bowen, Mr. Tilton, and yourself were in the house together? A. Yes, Sir; Mr. Beecher was up stairs.

Q. And the paper you have spoken of, was that there? A. Yes.

Q. Why didn't you have it brought down, and show it to Mr. Tilton? A. Because I didn't think it necessary.

Q. You thought it better to dictate it to him. A. I didn't go down for the purpose of dictating it.

Q. You didn't send up stairs for the original? A. No, Sir, I didn't.

Q. That is the memorandum that you now speak by, is it? A. Yes, Sir; this is the memorandum I speak by.

Mr. Evarts—That is not a copy of the paper. It is a mere question of the witness' memory.

By Mr. Fullerton—I think you misunderstood a question put by the counsel on the other side. The question he put to you was this: "You, Mr. Tilton and Mr. Beecher were in the house together," to which you replied, "Yes, Sir."

Q. You don't mean you were in the same room? A. No, Sir.

Q. Give us a copy of the proposed resignation of Mr. Beecher produced there?

Mr. Evarts—Your memory of it.

Judge Neilson—State your recollection of its contents.

Mr. Beach—He can refer to the memorandum.

The Witness—It is this:

"I tender herewith my resignation of Plymouth Church. I have stood among you in sorrow for two years in order to save from shame a certain household; but since a recent publication makes this no longer possible, I now resign my ministry and retire to private life."

Q. That is as near as you can recollect the original resignation of Mr. Beecher? A. Yes, Sir; and that states substantially what was in the original paper. (To Judge Neilson.) May I state your Honor, how I came to find this?

Mr. Evarts—Not unless you are asked, I think.

Mr. Beach—I don't know.

The Witness—I would like to state it.

Mr. Fullerton—No objection to it. State it, Mr. Moulton.

The Witness—I read in Mr. Beecher's statement—

Mr. Evarts—Does your Honor say he has a right to state that?

Judge Neilson—I think the counsel had better interrogate him. He will come to it presently.

The Witness—I want to state precisely how I got it. I would like to do that. I want to state how I found this copy.

Mr. Fullerton—Where did you find it? A. I found it in this—

Mr. Porter—That paper is not in evidence.

Judge Neilson—It is not in evidence, but it is here produced among his papers.

Mr. Evarts—He wants to show how he came to find it. It is enough that he has got it.

Mr. Fullerton—I don't care for it. Just omit it, Mr. Moulton. (To Judge Neilson): I think we had better adjourn now, your Honor.

Judge Neilson—I want to appeal to the counsel. The hours of 11 and 4 have been very unusual to us. We always begin our work earlier and continue later, and to-morrow being Friday—understanding you decline to work on Saturday—I wish to know if counsel won't make it convenient to commence at 10 o'clock and end at 5?

Mr. Morris—This air will kill us all.

Judge Neilson—You would have Saturday and Sunday to recover after it, our sessions are so short.

Mr. Fullerton—I think that would be a greater tax on our strength than we could endure.

Judge Neilson—I only submit it to you.

Mr. Fullerton—Your Honor must understand that some of my associates make it an every-day business to spend their lives in such an atmosphere as this.

Judge Neilson—And, therefore, get used to it.

Mr. Fullerton—And, therefore, don't get used to it. I think it would be going beyond what human nature could endure.

The Court then adjourned until 11 o'clock Friday morning.

## FIFTH DAY'S PROCEEDINGS.

### THE DIRECT EXAMINATION UNFINISHED.

THE LATER SCENES IN THE PLYMOUTH CONTROVERSY  
REVIEWED—EFFECT OF THE PUBLICATION OF  
THE BACON LETTER—A NEW LETTER FROM MR.  
BEECHER TO MRS. MOULTON.

A vulgar, noisy, and impatient crowd hung around the court-room doors more than hour before the proceedings were opened. At least two-thirds of these loungers were not supplied with tickets of admission, and no opportunity for effecting an entrance offered itself to them. One of the peculiar features of this gathering was the presence of a number of feeble, gray-haired old men. Despite the currents of biting, frosty air which swept through the corridors, these thin-blooded old men lingered in the crowd, and gazed with envious eyes upon those who passed in without annoyance. Just before 11 o'clock some one shouted, "Here they come," and immediately there was a race to the rear of the Court-house. Mrs. Tilton, her face covered with a heavy lace veil, appeared with her escort, and Mrs. Shearman and Mrs. Anna M. Field, each with a gentleman. As the party made their way toward the court-room the conduct of the crowd was simply outrageous. Audible comments upon the appearance of Mrs. Tilton, coarse jibes about the plaintiff and the defendant as well, passed freely. With considerable difficulty the party threaded their way through the files of rude spectators into the court-room.

Opera glasses were numerous in the gallery on Friday, and in almost constant use during the day's proceedings. Mrs. Tilton, Mrs. Shearman, and Mrs. Field were subjected to much annoyance from this quarter. Fortunately for Mrs. Beecher, she was so seated that the back of her head alone was visible from the gallery. Two ladies whose faces had not previously been descried and stared at in the court-room, appeared early in the morning. They seemed to be quite at home, and listened with composure to

all that was said. Mr. Beecher and his wife left the court-room at recess and did not return. Mrs. Tilton remained during the afternoon.

Judge Reynolds and Judge Morse occupied seats beside Judge Neilson. The Hon. Henry C. Murphy and several clergymen took seats behind the defendant's counsel.

Just before the court adjourned Judge Neilson admonished the jury to be careful and abstain from conversation with any one concerning the merits of the case. The jury had hardly reached the sidewalk before a prominent member of Plymouth Church accosted a jurymen, and engaged with him in an earnest and at times noisy conversation. A crowd gathered around them immediately, supposing that the Beecher-Tilton suit was under discussion. Finally some one in the crowd shouted to the jurymen, "Don't talk to that man; he is a Beecher man." The conversation terminated abruptly, and the gentleman from Plymouth Church walked hurriedly away. The incident gave rise to varied discussion. It is believed that Judge Neilson will have something to say on the subject next Monday. Mr. Beecher's friend is the gentleman who on the night of Moulton's giving the lie to Prof. R. W. Raymond vociferously urged his ejection from the church.

### BY-PLAY OF THE PROCEEDINGS.

One of the earliest incidents of the day was the introduction of Mr. Beecher's letter to Mr. Moulton in which Mr. Tilton's character is analyzed and the writer's aspirations after immortality with its "beckoning glory" are breathed in glowing language. Ex-Judge Fullerton did full justice to Mr. Beecher's rhetoric, and Mr. Shearman, who kept his eyes upon the manuscript while his opponent used a printed copy, took pains not to interrupt him with corrections. When the letter in which Dr. Storrs is denounced was read Mr. Shearman adopted a different policy.

Two scraps of new testimony were here brought to light. According to Mr. Moulton's version Mr. Tilton threatened to shoot Mr. Beecher, if the resignation of the pastorate should be given to the world, because it would disgrace the Livingston-st. household. It was also hinted that Mrs. Moulton received a letter from Mr. Beecher on the day when her husband first read the "beckoning glory" letter. This letter has never been printed, and when it is offered will be one of the small surprises of the prosecution.

After Mr. Beecher's short cards, vindicating Mr.

Tilton after the publication of the "tripartite agreement," and challenging Mrs. Woodhull and any one else who had letters of his to bring them forward, had been introduced, the "West specifications," were read, special emphasis being laid upon the third clause, which, as Mr. Tilton's counsel claim, brings to naught the logic of Mr. Winslow in the report of the Investigating Committee. Mr. Evarts, with his usual precision and inflexibility, demanded the production of a document, and was referred by ex-Judge Fullerton to the archives of Plymouth Church. Mr. Evarts seemed nettled for a moment, but the cutting rejoinder came in the next breath: "I have never thought that Plymouth Church or the Christian religion was a party in this case." "I think so too," broke in Judge Neilson, in his genial, hearty way. "Subpena the clerk of the church!" cried Mr. Evarts, with an impatient gesture, as his opponent made an exasperating comment. Ex-Judge Fullerton may be in the right or he may be in the wrong, but one thing he always insists upon having—the last word. "There is some way, I suppose, of bringing in these things," was his closing comment.

Two expressions which fell from Mr. Moulton's lips about this time pleased the circle of Mr. Beecher's friends in the body of the house. One of them was the declaration which he made to Mr. Beecher that in his opinion Mr. Bowen had no evidence whatever against the pastor of Plymouth Church. The other was Mr. Beecher's comment upon his own speech at Plymouth Church when he declared that he had no charges to make against Mr. Tilton. "I made," said Mr. Beecher, according to the witness, "as full and generous a reply to Mr. Tilton as I could."

The witness's anxiety to play his best cards was painfully evident. He dragged in Dr. Storrs's name before it was time and strove to anticipate the purposes of his counsel. The letter in which Mr. Beecher denounced the course of Dr. Storrs was probably the most unwholesome thing which the members of Plymouth Church had to swallow during the day. There is neither religious fervor, generous thought, nor fine imagery here; the expressions are dry and harsh, and the effect of them was intensified by ex-Judge Fullerton's hard, metallic tones.

Then came Mr. Moulton's trump-card, and he played it well. Mr. Shearman and Mr. Moulton evidently detest each other, and neither of them at-

tempts to disguise the fact. Mr. Moulton's satisfaction, in recounting the circumstances under which Mr. Shearman's apology was sent to Mr. Tilton, shone from every feature. Mr. Shearman and he fairly glared at each other, the lawyer's face wearing a grim smile at intervals, and the witness's testimony being delivered so fluently and earnestly as to seem like a declamation. The witness, in repeating his words to Mr. Beecher, "I am not surprised at anything coming from Mr. Shearman; I don't think he is above such things," was very emphatic, almost vindictive, in tone, and the next moment came the sneering words, "Mr. Beecher went over it and said to me that in his opinion Mr. Shearman was a mischief-maker." Mr. Evarts had a word to say about the cause of the misunderstanding, which was a reporter's version of an interview with Mr. Shearman, and the matter was finally dropped.

Ex-Judge Fullerton had an unpleasant task at the close of the morning session. It took him 40 minutes to read the elaborate letter of Theodore Tilton to the Rev. Dr. Bacon, and the recital was exceedingly uninteresting.

Gen. Tracy had to take his turn after the recess, and the witness returned with vigor to the assault upon Mr. Beecher's legal advisers. The remark of Gen. Tracy to Messrs. Woodruff & Robinson that "in the present case lying was justifiable," called forth a laugh from the audience. The intimation that Gen. Tracy had violated the principles of professional etiquette in serving as Mr. Beecher's counsel after he had given Mr. Tilton legal advice, was made in the same declamatory style as his arraignment of Mr. Shearman. Gen. Tracy, however, was imperturbable, and only evinced amusement.

A keen passage of repartee between ex-Judge Fullerton and Mr. Evarts relieved the tedium of the afternoon's work. The prosecution had attempted to introduce testimony without connecting it with Mr. Beecher, as they were legally bound to do. Mr. Evarts protested against this irregularity, and the Judge promptly sustained him. Ex-Judge Fullerton consented to amend his method, but complained that his opponents were compelling him to put the cart before the horse. "Ah!" broke in Mr. Evarts, "You may put the cart, and never bring the horse!" Everybody smiled, but in the next breath ex-Judge Fullerton brought back the laugh to his side with the retort, "You want neither cart nor horse. You will see what the horse draws into the case."

Beyond the admission that Mr. Moulton had told his partners as early as 1871 the secret of Mr. Tilton's household and the recital of Mr. Beecher's comment on Gen. Butler's character, the closing passages of the examination were dull and spiritless. The assistance of ex-Judge Morris, who was confined to his house by illness, was sorely missed by the prosecution in the presentation of evidence. His familiarity with the correspondence and the minutest details of the case enables him to control the order of testimony, and to put his fingers on the documentary evidence without a moment of delay. His partner, Mr. Pearsall, had charge of the papers, but was so awkward at one time in finding what was wanted that Mr. Tilton nervously seized the package and worried over it himself.

#### SCANDAL BLOSSOMS.

The court-room, or rather that part of it reserved for counsel, was fragrant with the odors of hot-house plants. The violet vied with the lily, and the chaste camellia was in contrast with the petals of the "red, red rose." For several days past the table near Mr. Beecher's seat has been decorated with choice flowers from the conservatory of a friend. A beautiful bouquet of violets was placed in the vase yesterday morning, and a similar bouquet was presented to Mrs. Beecher. The wife of Theodore Tilton had no sooner taken her seat and removed the heavy lace veil which covered her face, than a member of Plymouth Church handed her a delicate cluster of violets and white rose-buds. The flowers were presented with a graceful compliment. That little bunch of flowers had a significance to her which few in the court-room appreciated. It was an intimation that she was still kindly remembered in Plymouth Church. Her thanks were expressed very unaffectedly. It is true that there were many present who smiled sardonically, and saw in the presentation an attempt to produce a dramatic effect, but such were evidently not her thoughts.

The display of flowers on "the Plymouth side of the house," as it is designated by the spectators, was very marked, and gave rise to many complimentary and uncomplimentary criticisms. Quite naturally, under the circumstances, when a magnificent and showy bouquet of roses, violets, lilies, and arbutus was brought to Mr. Tilton, it attracted the attention of the entire audience, counsel not excepted. The plaintiff blushed like an innocent school-boy as he detached

the card attached to the floral tribute, and read the inscription, "To Theodore Tilton, with the compliments of his friends." Immediately afterward a hat-box was handed to Mr. Tilton, and removing the cover, he drew forth a bouquet, if anything more conspicuous than the first. By this time the counsel and the witness on the stand ceased to attract the attention of the spectators, and Mr. Tilton and his group of counsel were under every eye. The plaintiff had scarcely deposited his gifts upon the table at which he was sitting, before two additional bouquets were passed over to him, the larger one being for ex-Judge Morris. Mr. Tilton's face turned crimson, and a smile ran around the court-room. Gen. Pryor moved uneasily in his seat, Mr. Shearman appeared much amused, ex-Judge Beach looked solemn, and Mr. Fullerton, although busily examining Moulton, stopped for a moment, and cast a quizzical glance at the sentimental offerings which seemed so strangely out of place in a court room. From one of the bouquets Mr. Tilton drew a note written on tinted paper. He read the contents with an appearance of gratification, and then placed it in his pocket.

The effect produced by the floral display indulged in by the friends of the plaintiff and the defendant was not calculated to draw out compliments for either. If the jury and spectators were romantic young ladies of poetical fancies, the floral tributes might have touched some tender chords, but the majority of the spectators in the court-room were of a practical turn of mind, and so—they simply smiled. As for Mr. Tilton, while he no doubt had a keen appreciation of the compliments bestowed, he was without question greatly embarrassed. It is safe to say that the great question at issue will not be settled in favor of the man who can show the greater number of bouquets. "Rosemary and rue" may be in order, but roses and violets are out of place just now.

#### LEGAL ASPECTS OF THE CASE.

The presentment of the evidence for the plaintiff is regarded by many lawyers as exceedingly able. The burden of his case was the documentary evidence, and it was essential that this should be introduced as early as possible. Every letter, however, had to be connected with Mr. Beecher, and Mr. Moulton was the only witness who could do this. Those letters which Mr. Beecher did not write himself were either intrusted to Mr. Moulton or the substance of them was referred to during the



interviews between them. In this way the bulk of the scandal literature which was incorporated in Mr. Moulton's statement last Summer has been set before the jury. In other respects, however, the prosecution displayed great acuteness in calling Mr. Moulton in preference to Mr. Tilton. In the first place, as the intimate associate of Mr. Beecher, from that stormy night in the closing hours of 1870 to the early sessions of the Investigating Committee in the Summer of 1874, he was able to present the case in the natural order of time from beginning to end. He began when the controversy opened, on the night when Mr. Tilton confronted Mr. Beecher and made the first charge, and he has gone on from stage to stage of the controversy until the Investigating Committee met and the rupture between himself and Mr. Beecher occurred. In so complicated a case it was exceedingly difficult to bring the details of the evidence in their natural order before the jury, but ex-Judge Fullerton has been equal to the occasion, and the jury have been spared needless confusion. Another advantage of their method was this: The first version of the whole case has been furnished, not by the plaintiff, who is most vitally interested, but by his friend, the associate of the defendant.

The cross-examination of this witness will undoubtedly be an extremely rigorous one. It will be conducted by ex-Judge Porter, who has had very little to do with the proceedings thus far. The opening address for the defendant will probably be made by Gen. Tracy, although the trust may be confided to Mr. Shearman. Mr. Evarts and ex-Judge Porter will probably sum up jointly for the defense, and Mr. Beach and Gen. Pryor for the prosecution.

#### THE PROCEEDINGS.

Ex-Judge Morris was the only one of the counsel absent when the Court opened on Friday morning. After the customary formalities, Judge Neilson asked if the counsel were ready. Then Mr. Fullerton explained that Mr. Morris was kept at home and in bed by sickness, and that his absence would greatly embarrass their actions, for he was most familiar with the voluminous documents which form so large a part of the plaintiff's case. The direct examination of Francis D. Moulton was then resumed at the point reached when the Court adjourned the previous day—with reference to what is known as the "tripartite agreement."

#### MUTUAL EFFORTS FOR CONCEALMENT.

Judge Neilson—Are the counsel ready to proceed?

Mr. Fullerton—May it please your Honor, we are somewhat embarrassed this morning on our side, by the absence of Judge

Morris—who is quite ill and unable to leave his bed—in the presentation of our documents, Judge Morris having been very familiar with them, having put his marks upon them so that he could manipulate them with convenience, and we shall have to ask your Honor's indulgence a little, probably, from time to time, on account of that embarrassment.

Judge Neilson—I very much regret his illness.

Francis D. Moulton was recalled, and the direct examination resumed:

Mr. Fullerton—Mr. Moulton, at the adjournment last night, you were detailing what occurred after the publication of the tripartite agreement, and had spoken of the proposed resignation from Plymouth Church, and of an interview which you had with Mr. Tilton in your house. I want to ask you, first, whether you reported the substance of that interview with Mr. Tilton to Mr. Beecher? A. I did; yes, Sir.

Q. And what did you say to him? A. I said that Mr. Tilton strongly objected to the publication of the resignation on the ground that it was a clear statement, in his opinion, of the shame of his wife.

Q. What did Mr. Beecher reply to that? A. The reply of Mr. Beecher to that, Sir, I do not remember; but I said to Mr. Beecher, "Clearly that is the case, Sir; clearly, if the resignation should be published, it would be a virtual confession of the fact of your relations with Mrs. Tilton, and it ought not to be done."

Q. Did you communicate to Mr. Beecher anything else that Mr. Tilton said in regard to that proposed publication? A. I told Mr. Beecher that Mr. Tilton was quite violent; Mr. Tilton said that he would shoot Mr. Beecher if he did it. I think that I mentioned that to Mr. Beecher. That is what Mr. Tilton told me, at all events.

Q. The publication did not follow, I believe? A. It did not follow.

Q. What was said about a counter-statement of any kind? A. I said to Mr. Beecher that I thought it would be possible to frame a card that would cover the case, and at all events there was between that time and Monday to consider it, and we had better consider it.

Q. Was a card proposed? A. There was, on Sunday—I think it was Sunday afternoon—Sunday evening.

Q. Who proposed the card? A. I had told Mr. Tilton, Sir, that I thought it would be wrong for him to publish the letter which he threatened to publish.

Q. Which I read in evidence yesterday? A. Yes, Sir; I told him I thought he ought not to do it. I thought he ought to undertake to find a different way, and he promised me at last that he would try, and he did; and he did prepare a card which would be satisfactory to him, which I submitted to Mr. Beecher on Sunday night; and I said to Mr. Beecher, "I think that will cover the case." In the meantime I had received a letter from Mr. Beecher.

Q. Is the letter now shown you the one that you speak of [handing witness a letter]? A. Yes, Sir; that is the letter.

Mr. Fullerton—I propose to read it.

Mr. Evarts—Is that from Mr. Beecher?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—This is the one you say you received in the meantime? A. I received it on the morning of June the 1st, Sunday morning, while I was in bed.

Q. Before the interview with Mr. Beecher? A. Of Sunday—yes, Sir.

Mr. Fullerton [reading the letter]:

SUNDAY MORNING, June 1, 1873.

MY DEAR FRANK: The whole earth is tranquil and the heaven is serene, as befits one who has about finished his world-life. I could do nothing on Saturday—my head was confused, but a good sleep has made it like crystal. I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt charges, and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves. It is only fair that he should know that the publication of the card which he proposes would leave him far worse off than before.

The agreement was made after my letter through you was written. He had it a year. He had condoned his wife's fault. He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife or leave his children to a blight. I had honestly and earnestly joined in the purpose. Then this settlement was made and signed by him. It was not my making. He revised his part so it should wholly suit him, and signed it. It stood unquestioned and unblamed for more than a year. Then it was published. Nothing but that. That which he did in private when made public excited him to fury, and he charges me with making him appear as one *graciously pardoned by me*! It was his own deliberate act, with which he was perfectly content if others saw it, and then he charges a grievous wrong home on me.

My mind is clear. I am not in haste. I shall write for the public a statement that will bear the light of the judgment day. God will take care of me and mine. When I look on earth it is a deep night. When I look to the heavens above I see the morning breaking. But, oh! that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity, your disinterested friendship. Your noble wife, too, has been to me one of God's comforters. It is such as she that renews a waning faith in womanhood. Now, Frank, I would not have you waste any more energy on a hopeless task. With such a man as T. T. there is no possible salvation for any that depend upon him. With a strong nature, he does not know how to govern it. With generous impulses, the undercurrent that rules him is self. With ardent affections, he cannot love long that which does not repay him with admiration and praise. With a strong theatric nature, he is constantly imposed upon with the idea that a position, a great stroke, a *coup d'état* is the way to success.

Besides these, he has a hundred good things about him; but these named traits make him absolutely unreliable.

Therefore, there is no use in further trying. I have a strong feeling upon me, and it brings great peace with it, that I am spending my last Sunday and preaching my last sermon.

Dear, good God, I thank thee I am indeed beginning to see rest and triumph. The pain of life is but a moment; the glory of everlasting emancipation is wordless, inconceivable, full of beckoning glory. Oh! my beloved Frank, I shall know you there, and forever hold fellowship with you, and look back and smile at the past. Your loving

H. W. B.

(Letter marked "Exhibit No. 28.")

Q. What time in the day did you receive that letter? A. In the morning, Sir.

Q. Did you see another letter written on that day by Mr. Beecher? A. This letter was inclosed in a letter to my wife, I believe.

Q. Did you see the letter addressed to your wife? A. Yes, Sir; I have seen it. I saw it then, I believe.

Mr. Fullerton—I will not produce it now. You have spoken of a card which was prepared at the time. Look at the paper now shown you and say whether it is the one. [Handing witness a card.] Was the card published? A. There was a card published; yes, Sir; substantially the card which we considered that night; some alteration from it—some alteration of it, rather.

Q. Under what circumstances did the alteration take place? A. Mr. Beecher said to me that he thought there were some words or phrases that might be left out judiciously, and they were left out.

Q. And then published? A. Yes.

Q. After the emendations that you speak of? A. Yes, Sir.

Q. Look at that paper, and say whether that is the card? [Handing witness a printed paper.]

Mr. Evarts—Is that the printed paper?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Haven't you the original?

Mr. Fullerton—That is the original.

Mr. Evarts—No; I understand Mr. Tilton wrote a card.

By Mr. Fullerton—Q. Where is the card that was written, do you know? A. I saw it a few days ago in Mr. Tilton's possession.

Mr. Fullerton—To Mr. Tilton—Well, let me have that.

Mr. Tilton—I think Mr. Moulton has it.

Mr. Fullerton—That is one of the embarrassments growing out of Judge Morris's unfortunate illness. I will produce it before I get through.

Mr. Evarts—Well, I would like it now.

Mr. Fullerton—Perhaps you would like it because we haven't got it.

Mr. Evarts—No, you have got it; the witness says you have.

The Witness—I say I saw it.

Mr. Evarts—We would not like to have this evidence go on without that paper.

Mr. Fullerton—I can read it from the newspaper and substitute the original, if that will answer your purpose.

Judge Neilson—You can do that by consent, Sir, if the counsel consent to it.

Mr. Fullerton—This is the original of the card that was published.

Mr. Evarts—Oh, well, you have not proved that.

Mr. Beach—I think we have.

Mr. Evarts—It is a part of the matter no doubt, but Mr. Tilton wrote a card which was the very matter that was proposed to Mr. Beecher's consideration, and was the topic of conversation, and some changes being made between the parties there, it was afterwards published. Now, we want the transaction as it occurred.

Mr. Beach—We proposed just now to produce the card as amended by Mr. Beecher and published. When we find the other we will produce that.

Judge Neilson—Won't that be satisfactory, Sir? If the other is not found it is to be stricken out, or reconsidered.

Mr. Evarts—Well, I do not want to accumulate too many instances of that kind. We have one lying over.

Judge Neilson—Will you hold that in reserve ?

Mr. Beach—We are under no obligation to produce the one that was originally drawn and amended by Mr. Beecher ; still, we are willing, and intend to do it.

Mr. Evarts—That is another matter.

Judge Neilson—It is proper that it should be produced, undoubtedly.

Mr. Evarts—Yes, Sir, I think so.

Mr. Fullerton—Shall I read the one that was published ?

Mr. Evarts—Are we to have the other ?

Mr. Fullerton—It is not here.

The Witness—It was not published from the manuscript that Mr. Tilton furnished, Sir.

Mr. Evarts—No ; I understand that.

Judge Neilson—There was a copy sent to the printer ?

The Witness—Mr. Beecher made a letter himself, Sir, acting upon the idea of Mr. Tilton's proposed card.

Judge Neilson—That paper you will produce when you can find it ?

Mr. Fullerton—Yes, Sir. [Reading the card.]

To the Editor of the Brooklyn Eagle.

June 3, 1873.

DEAR SIR :—I have maintained silence respecting the slanders which have for some time past followed me. I should not speak now, but for the sake of relieving another of unjust imputation. The document that was recently published, bearing my name, with others, was published without consultation, either with me or with Mr. Tilton, or with any authorization from us. If that document should lead the public to regard Theodore Tilton as the author of the calumnies to which it alludes, it will do him great injustice. I am unwilling that he should even seem to be responsible for injurious statements whose force was derived wholly from others.

H. W. BEECHER.

Marked "Exhibit No. 27."

Q. What was the document recently published ? A. The "Tripartite Covenant."

#### BOWEN AND CLAFLIN SEEKING EVIDENCE.

Q. This card that you now speak of, as I understand you, was prepared and published after the proposed resignation from the ministry ? A. Yes, Sir.

Q. The next day, was it not ? A. Published on June the 2d, Sir—Monday, June the 2d.

Q. Now, was there another card published soon after that ? A. Yes, Sir : there was a card published after that.

Q. State the circumstances under which that card was prepared ? A. What card do you refer to, Sir ?

Q. The second card of Mr. Beecher, following June 2d ? A. There was the card that I have in mind now, Sir, that I am referring to, if you will allow me to speak of that.

Q. Yes, Sir. A. It was the card with reference to the visit of Mr. Bowen to Mrs. Woodhull.

Q. That is the one, Sir ; you are right. Now, tell the circumstances under which it was prepared, and the circumstances which led to its preparation, as you learned them from Mr. Beecher ? A. There was an account in the paper of Mr. Bowen and Mr. Claflin visiting Mrs. Woodhull together, for the purpose of getting evidence.

Mr. Evarts—What is the object of this ?

Mr. Fullerton—It is only introductory, Sir, to the meeting with Mr. Beecher.

The Witness—And this account in the paper of the visit of Mr. Bowen and Mr. Claflin to Mrs. Woodhull's, for the sake of getting evidence against Mr. Beecher, I thought rather serious ; and I saw Mr. Beecher in regard to it, and I said to him, "I think, Mr. Beecher, we can make very short work of such business ; I think, and you think, that Mr. Bowen has not any evidence in his possession against you, and we better publish a card in *The Eagle*, calling upon anybody with any papers or evidences against you to produce them ;" and Mr. Beecher prepared a card with reference to that matter, which met with my approval, and I took it down to *The Eagle* office.

Q. Look at the paper now shown you and say if it is the card that you speak of ? [Handing witness a card.] A. This is the card as it was prepared ; yes, Sir.

Mr. Fullerton—I propose to read it. Go on and finish the narration ? A. Mr. Beecher was out of town, or was going out of town, upon the day that I saw Mr. Kinsella, of the *Brooklyn Eagle*, and Mr. Kinsella himself altered the phraseology somewhat, and we jointly took the responsibility of printing it with the alterations ; and I saw Mr. Beecher subsequently, and he said that he approved of the alterations, and thanked me for my kind offices in the matter ; and Mr. Beecher said to me, furthermore, "Of course Mr. Tilton will not produce any documents." "Well," I said, "of course he won't ; he hasn't got any that I know of—original documents—to produce, and of course I won't."

By Mr. Evarts—What conversation is this ? A. The conversation with Mr. Beecher, Mr. Evarts.

Q. At what interview ? A. At the interview at the preparation of this card.

Q. When that paper was there ? A. Yes ; certainly.

Mr. Fullerton—The proposed card reads as follows ;

Brooklyn, June, 1873.

I have seen in the morning papers that application has been made to Mrs. Victoria Woodhull, for certain letters of mine supposed to contain information respecting certain infamous stories against me. She has two business letters, one declining an invitation to a suffrage meeting, and the other declining to give the assistance solicited. These and all letters of mine in the hands of any other persons, they have my cordial consent to publish. I will only add, in this connection, that the stories and rumors which have, for a time, been circulated about me, are grossly untrue, and I stamp them, in general and in particular, as utterly false.

(Marked "Exhibit No. 28.")

Q. In whose handwriting is the interlineation in that card that I have just read, or proposed card ? A. Mr. Beecher's.

Q. The erasures—do you know anything of them ? A. They were made by Mr. Beecher.

By Mr. Evarts—I understand, Mr. Moulton, that that paper as it reads, omitting what is erased and reading that pencil interlineation, is as it came from Mr. Beecher ? A. Yes, Sir ; that is precisely the paper which I took to *The Brooklyn Eagle* office.

Q. And the alterations there made were not made in this paper ? A. No, Sir ; I have a copy of the article as Mr. Kinsella changed it, and wrote it in pencil.

By Mr. Fullerton—It has just been shown to you, has it not, in print? A. Yee, Sir; that is the article.

Mr. Fullerton—I now read the card as amended and published.

The Witness—There is omitted, Sir, from that lead pencil memoranda of mine some of the sentences that occur in the original letter. I did it to save time.

Mr. Fullerton—[Reading.]

To the Editor of The Brooklyn Eagle :

SIR : In a long and active life in Brooklyn it has rarely happened that *The Eagle* and myself have been in accord on questions of common concern to our fellow-citizens. I am for this reason compelled to acknowledge the unsolicited confidence and regard of which the columns of *The Eagle* of late bear testimony. I have just returned to the city to learn that application has been made to Mrs. Victoria Woodhull for letters of mine supposed to contain information respecting certain infamous stories against me.

Mr. Fullerton—I think there is some misapprehension about this. I shall have to ask the witness whether that part of it in parenthesis was published. [Handing witness the book]. A. No, Sir.

Q. That was not published? A. No, Sir.

Q. Then I am to read it without the parenthesis? A. Without the parenthesis.

Mr. Evarts—Haven't you got the very publication?

Mr. Fullerton—It does not seem to be here.

Mr. Evarts—The newspaper itself; that will show.

Mr. Fullerton—It is not here.

The Witness—I can tell you for what purpose those parenthesis were introduced.

Mr. Evarts—Well, that is no matter.

Mr. Fullerton—Not at present.

Mr. Evarts—If your Honor please, there is some danger of getting into a little confusion and doing injustice, perhaps, to one side or the other. The direct and satisfactory evidence of what was published in *The Eagle* would be, of course, the production of the newspapers, and then we could all see for ourselves what it was. I had supposed this printed letter or note, which we are all familiar with, was what was published in *The Eagle*, but it seems that we cannot trust it for that—that as Mr. Moulton says it is not the same; therefore, if they could give us the copy of *The Eagle*, we should be glad, and then we could see.

Judge Neilson—It would be better, no doubt, Sir.

Mr. Evarts—Otherwise there may be some confusion.

Mr. Fullerton—I will defer this branch of the case until we get a copy of *The Brooklyn Eagle*. Probably it would be well to strike out what was read from the card.

Judge Neilson—From the printed card?

Mr. Fullerton—From the printed card; when it is published it will all go in together

Judge Neilson—Yes, Sir; we may as well.

#### THE WEST CHARGES AGAINST TILTON.

Mr. Fullerton—I call your attention now to the 25th of June, or to an occurrence that took place about that time. Do you recollect anything that occurred in reference to

Mr. West? A. I believe Mr. West preferred charges against Mr. Tilton.

Mr. Evarts—Well, what occurred, if you please? A. Mr. Tilton brought around to my house the charges of Mr. West about that time.

Mr. Fullerton—Look at the paper now shown you, and say whether it contains the charges thus produced to you by Mr. Tilton?

Mr. Evarts—Does he name that as the paper that was produced?

Mr. Fullerton—I say that.

Mr. Evarts—I assume you are going to correct it.

Mr. Fullerton—Oh! certainly.

The Witness—Yes, Sir; that is the paper.

Q. State whether you showed those charges to Mr. Beecher?

A. I don't remember that I did.

Q. How? A. I don't remember that I showed them to Mr. Beecher.

Q. Did you have any conversation with him in regard to it?

A. Yes, Sir; I had conversation with him in regard to it.

Q. What was that conversation? A. He said that the whole matter had better go over until Fall, and in the meantime, during the vacation, I thought we could get along with that subject—try to find a way. I told him I should recommend—

Mr. Evarts—I understand that this is one of the papers that Mr. Tilton brought you; these very papers? A. Those are the papers, that is, as I remember.

Q. You showed them to Mr. Beecher? A. I don't know that I showed them to him; no, Sir.

Q. But you spoke to him about the paper Mr. Tilton had brought you? A. I spoke to him about Mr. West's charges.

Q. Mr. Fullerton—Did you state to him the substance of the charges? A. Yes, Sir; I told him I had a full conversation with Mr. Beecher about it.

Mr. Evarts—They don't seem to have been shown to Mr. Beecher?

Mr. Fullerton—Did you state the substance of the charges to Mr. Beecher? A. Yes, Sir, I did, certainly; I have answered that.

Q. And what was said by him in reply? A. Why, he hoped that he would be able to find a way to get over that matter during the Summer.

Q. And what was proposed? A. I proposed that Mr. Tilton should—or I said that Mr. Tilton proposed to me that he should—write a letter saying that he declined, on the ground of non-membership.

Q. Of Plymouth Church? A. Yes, Sir, non-membership—that he would decline, on the ground of non-membership, an investigation; I thought that was the way out.

Mr. Evarts—Well, I understood you to say that it was Mr. Tilton suggested—did I understand you to say that Mr. Tilton suggested that as a way of escape from the dilemma? A. Yes, Sir, Mr. Tilton said so.

Mr. Beach—That he should write a letter declining? A. Yes, Sir; he was willing to do that. I told Mr. Beecher that Mr. Tilton would be willing to write a letter stating that he would decline an investigation on the ground of non-membership.

Mr. Evarts—You said that because Mr. Tilton had told you so?  
A. Yes, Sir; certainly.

Mr. Fullerton—I read the charges in evidence :

BROOKLYN, Oct. 16, 1873.

MR. THEODORE TILTON.

DEAR SIR: At a meeting of the Examining Committee of Plymouth Church, held this evening, the Clerk of the Committee was instructed to forward to you a copy of the complaint and specifications made against you by Mr. Wm. F. West; and was requested to notify you that any answer to the charges that you might desire to offer to the Committee should be sent to the Clerk of the Committee on or before Thursday, Oct. 23, 1873. Inclosed I hand you a copy of the charges and specifications referred to.

Yours, very respectfully, D. W. TALLMADGE.  
393 Bridge-st.

*Copy of the Charges and Specifications made by Wm. F. West against Theodore Tilton.*

I charge Theodore Tilton, a member of this church, with having circulated and promoted scandals derogatory to the Christian integrity of our pastor, and injurious to the reputation of this church.

#### SPECIFICATIONS.

*First:* In an interview between Theodore Tilton and Rev. E. L. L. Taylor, D. D., at the office of *The Brooklyn Union*, in the Spring of 1871, the said Theodore Tilton stated that Rev. Henry Ward Beecher preached to several—seven or eight—of his mistresses every Sunday evening. Upon being rebuked by Dr. Taylor, he repeated the charge, and said that he would make it in Mr. Beecher's presence, if desired.

Witness: Rev. E. L. L. TAYLOR, D. D.

*Second:* In a conversation with Mr. Andrew Bradshaw, in the latter part of November, 1873, Theodore Tilton requested Mr. Bradshaw not to repeat certain statements which had previously been made to him by Mr. Tilton, adding that he retracted none of the accusations which he had formerly made against Mr. Beecher, but that he wished to hush the scandal on Mr. Beecher's account; that Mr. Beecher was a bad man, and not a safe person to be allowed to enter the families of his church; that if this scandal ever were cleared up, he (Mr. Tilton) would be the only one of the three involved who would be unhurt for it, and that he was silently suffering for Mr. Beecher's sin.

Witness: ANDREW BRADSHAW.

*Third:* At an interview with Mrs. Andrew Bradshaw, in Thompson's dining rooms, in Clinton-street, on or about the 3d of August, 1870, Theodore Tilton stated that he had discovered that a criminal intimacy existed between his wife and Mr. Beecher. Afterwards, in November, 1872, referring to the above conversation, Mr. Tilton said to Mrs. Bradshaw that he retracted none of the accusations which he had formerly made against Mr. Beecher.

Witness: MRS. ANDREW BRADSHAW.

(Two papers attached and marked each as "Exhibit No. 29.")

Mr. Fullerton—State whether any reply to this letter of Mr. Tallmadge was prepared? A. I think there was, Sir.

Q. Now, by whom? A. I think that the letter was prepared by Mr. Tilton.

Q. Was Mr. Beecher consulted in regard to it? A. I think I saw Mr. Beecher with regard to it; yes, Sir.

Q. It was published, wasn't it? A. It was published; yes, Sir.

Mr. Evarts—You mean to say that you did see Mr. Beecher? A. Yes, Sir; that is my recollection, that I saw Mr. Beecher.

Mr. Fullerton [addressing defendant's counsel]—Gentlemen, that is embraced in our notice to produce [showing Mr. Evarts a paper]. Plymouth Church had it.

Mr. Evarts—Yes, but Plymouth Church is not the defendant. Mr. Fullerton—I thought it was so considered, by the church at all events.

Mr. Evarts—No; we have never thought Plymouth Church or the Christian religion was defendant here.

Judge Neilson—That has been my view of the case.

Mr. Fullerton—Well, perhaps not.

Mr. Evarts—A notice to produce papers that belonged to Mr. Beecher, to have, of course we shall meet. But a notice to produce papers that, on the very face of them, are in the archives of Plymouth Church is not a notice to the defendant to produce papers in his possession.

Judge Neilson—It has no force or effect.

Mr. Fullerton—Well, Sir, we shall produce—get the paper in Court some way.

Mr. Evarts—You can very easily. Mr. Tallmadge can be subpoenaed.

Mr. Fullerton—I call your attention to something that occurred in October, 1873, growing out of a publication in *The New-York Sun*, without stating what it was. A. Growing out of a publication in *The New-York Sun*?

Q. Yes, Sir; on the subject of expelling Mr. Tilton from Plymouth Church. Do you recollect an interview in regard to that subject? A. I don't remember that.

Q. Do you recollect that Mr. Beecher was sent for, and considered at your house, in connection with Mr. Tilton, this proposed action of Plymouth Church in regard to the membership of Mr. Tilton? A. I remember that there was to be a meeting at Plymouth Church in October. I don't remember the extract from *The Sun*, whether it was in October, 1873, or not; I don't remember; but there was to be a meeting at Plymouth Church, in which the charges against Mr. Beecher were to be considered.

Q. Against Mr. Beecher? A. Against Mr. Tilton, that is, were to be considered; I had an interview with Mr. Beecher in the presence of Mr. Tilton, I think, concerning what was to be done at that meeting.

Q. Now state what that interview was, please? A. An understanding—I said to Mr. Beecher, that I thought that the proper way out of it was simply to drop Mr. Tilton's name from the roll of the Church, and Mr. Beecher agreed to that; that is as I remember the—

Q. Well, how would that prevent any action?

Mr. Evarts—Oh! well, that is not proper.

Mr. Fullerton—What was said upon that subject? A. That his not being a member of the church—I said if he was not a member of the church the charges against him could not be investigated, and consequently there could not be any exposure of the facts in the case as between himself and Mrs. Tilton.

Q. A few moments ago you spoke of a proposed letter by Mr. Tilton, in which he should decline the trial at Plymouth Church, on the ground of non-membership? A. Yes, Sir.

Q. Do you know whether such a letter was written, or not? A. I think it was written; yes, Sir.

Q. Did you go to Plymouth Church that night? A. I did not, but I had a conversation with Mr. Tilton.

Q. Did you have a conversation with Mr. Beecher in regard

to the action of Plymouth Church that night? A. I had a conversation, I have repeated it; yes, and agreed with Mr. Beecher as to what the course should be, in the presence of Mr. Tilton.

Q. No, I am speaking of what occurred at Plymouth Church that night? A. Oh! no; I was not at Plymouth Church that night.

Q. Did you have a conversation with Mr. Beecher as to what did occur? A. Afterwards, yes, Sir; with Mr. Beecher afterwards.

Q. Now, let us see what that conversation was? A. He said that Mr. Tilton had come down there—told me the circumstances; he said that Mr. Tilton had come down to the church and had said in the presence of the congregation that if he had slandered his pastor, he was there to answer for it, and Mr. Beecher said, "I made to him as full and generous a reply as I knew how to make." That is the substance of what—

Q. How long was that after the meeting at Plymouth Church? A. Not very long after; I don't remember how long.

Q. Well, was it within a few days? A. Within a few days; I should say within a day or two.

#### THE CHURCH COUNCIL AND DR. STORRS.

Q. Now the next event in the order of time that I want to call your attention to was the proposed Council of the Church. Do you recollect that? A. I recollect that there was to be a Council of Churches.

Q. And did you have an interview with Mr. Beecher in regard to it? A. Yes, Sir.

Q. State what occurred? A. Mr. Beecher did not want—Mr. Beecher said he did not want Theodore to take any part in that Council; that if he could maintain silence—not utter a word—until after the dissolution of the Council—that if that could be bridged over, he thought everything would be safe; that is substantially what I remember about it.

Q. Did he speak of Dr. Storrs in that conversation? A. After Dr. Storrs had made a speech before the Council, I received from him a letter concerning Dr. Storrs's speech; I had said to Mr. Beecher, Sir, that I understood that Dr. Storrs would consider it necessary to be severe—

Mr. Evarts—Well, this is not drawn out by any question.

Mr. Fullerton—Yes; it is drawn out by the question. I asked him whether, in that interview, he said anything in regard to Dr. Storrs.

Mr. Evarts—Whether Mr. Beecher did?

Mr. Fullerton—Yes.

Mr. Evarts—Well, how is that material?

Mr. Fullerton—That will appear after it comes in evidence.

Mr. Evarts—Oh! yes; but on the face of the matter it is immaterial.

Mr. Fullerton—It is in connection with this Church Council. Judge Neilson—'I think we will have to take it, and see whether it is.

Mr. Fullerton—Go on and state, if you please, what he said in regard to it. A. Yes, Sir; that Dr. Storrs intended to be severe on Mr. Tilton, and I told Mr. Beecher that I did not think that would be the proper course for Dr. Storrs to pursue, that I thought it was not ingenuous for him to do it.

Q. Go on and finish the conversation. A. And he said he thought it would not be right for Dr. Storrs to do it; that is before the speech of Dr. Storrs was made, Sir, now that I am speaking of; then Dr. Storrs made his speech, and followed the letter.

Q. Look at the letter which I show you now and see in whose handwriting it is? A. Mr. Beecher's handwriting; is that all that you want to know?

Q. Letter written to you? A. Yes, Sir.

Q. Did you receive it about the time of its date? A. I did.

[Letter submitted to defendant's counsel.]

Mr. Fullerton—Have you any objection to it, gentlemen?

Mr. Evarts—I suppose not.

[Confidential.]

MY DEAR FRANK: I am indignant beyond expression. Storrs's course has been an unspeakable outrage. After his pretended sympathy and friendship for Theodore he has turned against him in the most venomous manner—and it is not sincere. His professions of faith and affection for me are hollow and faithless. They are merely tactical. His object is plain. He is determined to force a conflict and to use one of us to destroy the other if possible. That is his game. By stinging Theodore he believes that he will be driven into a course which he hopes will ruin me. If ever a man betrayed another he has. I am in hopes that Theodore, who has borne so much, will be unwilling to be a flail in Storrs's hand to strike at a friend. There are one or two reasons, emphatic, for waiting until the end of the Council before taking any action.

1. That the attack on Plymouth Church and the threats against Congregationalism were so violent that the public mind is likely to be absorbed in the ecclesiastical elements and not in the personal.

2. If Plymouth Church is *disfellowshipped* it will constitute a blow at me and the church, far severer than at him.

3. That if Council does not *disfellowship* Plymouth Church, then, undoubtedly Storrs will go off into Presbyterianism, as he almost, without disguise, *threatened* in his speech, and, in that case, the emphasis will be *there*.

4. At any rate, while the fury rages in Council, it is not wise to make any more that would be one among so many, as to lose effect in a degree, and after the battle is over one can more exactly see what ought to be done. Meantime I am *patient*, as I know how to be, but pretty nearly used up with inward excitement, and must run away for a day or two and hide and sleep, or there will be a funeral.

Cordially and trustingly yours,

W. W. B.

March 25, 1874.

No one can tell under first impressions what the effect of such a speech will be. *It ought to damn Storrs.*

[Letter marked "Exhibit No. 30."]

Q. [Handing letter to witness.] There is another letter, Mr. Moulton, which you will please look at and say in whose handwriting it is? A. In the handwriting of Mr. Beecher.

Q. To whom is it addressed? A. To me.

Q. Did you receive it about the time of its date? A. I did; yes, Sir.

Mr. Fullerton—I read it in evidence:

Sunday Night, March 29, 1874.

MY DEAR FRANK: Is there to be no end of trouble? Is wave to follow wave in endless succession? I was cut to the heart when C. showed me that shameful paragraph from *The Union*. Its cruelty is beyond description. I felt like lying down and saying, "I am tired—tired of living, or of trying to resist the devil of mischief." I would rather have had a javelin launched against me a hundred times than against those that have suffer-

ed so much. The shameful indelicacy of bringing the most sacred relations into such publicity, fills me with horror.

But there are some slight alleviations. The paragraph came when the public mind was engaged with the Council and with Theodore's letters. I hope it will pass without further notice. If it is *not taken up* by other papers it will sink out of sight and be forgotten; whereas, if it be assailed, it may give it a conspicuity that it never would have had. But I shall write Shearman a letter, and give him my full feeling about it. I must again [be], as I have heretofore been, indebted to you for a judicial counsel on this new and flagrant element. My innermost soul longs for peace; and if that cannot be, for death—that *will* bring peace. My fervent hope is that this drop of gall may sink through out of sight, and not prove a mortal poison. Yours ever,

H. W. BEECHER.

I have written strongly to Shearman, and hope that he will send a letter to T., unsolicited. I am sick, head, heart and body, but must move on! I feel this morning like letting things go by the run!

[Copy of letter marked "Exhibit No. 81."]

Q. Now, Mr. Moulton, state if you please, whether you saw the paragraph in *The Union*, to which reference is there made? A. I did.

Q. State the substance of it?

Mr. Everts—We would rather have the paragraph.

Mr. Fullerton—It is not necessary, if your Honor please, we should produce those newspapers that are incidentally referred to. That is not the rule. I only wanted to know the subject matter of the article.

Judge Neilson—The subject matter we have got; I think the paper ought to be produced. You can produce it hereafter.

Mr. Fullerton—It is referred to as a collateral matter.

Judge Neilson—It is not remotely collateral. I think the paper should be produced. You can introduce it hereafter.

Q. After receiving that letter did you see Mr. Beecher? A. Yes, Sir; I saw him.

Mr. Everts—The paper is in the letter.

Mr. Fullerton—The paragraph from *The Union* is as follows—

Mr. Everts—We consent to this being read as if the paper was here. We only want to object to memory as to accuracy. We understand that to be the same.

Mr. Fullerton [reading]:

At the close of the service, a *Union* reporter approached Mr. Beecher, for the purpose of getting his views as to the Council, but he declined to be interviewed. Mr. Shearman, the Clerk of the Church, however, was communicative. He said he had received no intimation, as yet, what course the Council would pursue. In regard to the scandal on Mr. Beecher, he said, so far as Tilton was concerned, he (Tilton) was out of his mind, off his balance, and did not act reasonably. As for Mrs. Tilton, she had occasioned the whole trouble while in a half-crazed condition. She had mediumistic fits, and while under the strange power that possessed her, often spoke of the most incredible things, declared things possible that were impossible, and among the rest had slandered Mr. Beecher. Mr. Tilton himself had acknowledged that all the other things she had told him in her mediumistic trance were false and impossible; then why, asked Mr. Shearman, should the scandal on Mr. Beecher be the only truth in her crazy words?

Q. What, if anything, did Mr. Beecher say to you in regard to

that publication? A. He thought it was outrageous—he said it was.

Q. If you can recollect anything else he told you, please state it? A. He said he would write; I don't remember whether I saw him before he wrote the letter or not, but I had a conversation with him concerning that paragraph—whether it was before or after the receipt of this letter I don't remember; and I said to him: "Mr. Beecher, you know that that statement is false with regard to Theodore, and you know that it is false with regard to Elizabeth Tilton, and Theodore Tilton, unless it is corrected, will make trouble about it. It is an outrage; I am not surprised at it as coming from Mr. Shearman at all; I don't think he is above such matters." That is what I told Mr. Beecher, and Mr. Beecher said to me that he thought it was an outrage; that he thought it was a cruelty; that it caused him an almost unspeakable agony, and he wept over it, and I told him that I should go to see Mr. Shearman about it, and I did go to see Mr. Shearman about it.

Mr. Everts—No matter about what passed between you and Mr. Shearman.

The Witness—I am not going to say anything about that, Sir; I saw Mr. Beecher after I had seen Mr. Shearman, and I told Mr. Beecher that Mr. Shearman refused to read the paragraph when I placed it before him on his desk, and I told Mr. Beecher that I had subsequently taken Mr. Tilton to see Mr. Shearman, and that Mr. Shearman had made an explanation to Mr. Tilton, which Mr. Tilton denounced as false; and I saw Mr. Beecher subsequently, and I told him of a letter which Mr. Shearman had given to me to give to Mr. Tilton, which Mr. Tilton had refused to receive, on the ground that it contained a deliberate falsehood, and that unless Mr. Shearman did write another letter taking it back, as it should be retracted, that Mr. Tilton would make trouble about it; and I told Mr. Beecher subsequently that Mr. Shearman had written a letter of retraction, and had received back from me the letter which he wrote at first, and which Mr. Tilton stigmatized as a falsehood; and Mr. Beecher said to me also that it was his opinion that Mr. Shearman was a mischief-maker. [Laughter.]

Q. By Mr. Everts—You have not stated when this was? A. In an interview I had with him concerning this paragraph in *The Union*.

Q. When? A. Shortly after the paragraph in *The Union* appeared.

Mr. Beach—I suppose we have that correspondence, if it is desired to fix the date.

The Witness—The date of Mr. Shearman's letter would fix it.

Q. By Mr. Fullerton—[Handing a book to witness.] Look at that and see if it will fix the date of Mr. Shearman's letter?

Mr. Everts—The date of the conversation is all that is necessary.

Mr. Fullerton—That will enable him to fix the date of the conversation.

The Witness—It is dated April 2, 1874.

Q. Does that enable you to state when the conversation of

which you have spoken took place? A. The conversation was before Mr. Beecher's letter a short time, or after Mr. Beecher's letter a short time.

Mr. Evarts—It was all one conversation, was it? A. No, Sir; there were several conversations.

Mr. Fullerton—His statement is directly contrary to that.

Mr. Evarts—I would like to have the line drawn between what is in one and what is in the other.

Mr. Beach—That is sufficiently indicated by his examination so far.

Q. By Mr. Fullerton—Can you give the dates of these several conversations of which you speak? A. I cannot; but they were quite near together.

Q. Were you present when either of Mr. Shearman's letters were delivered? A. Present when Mr. Shearman's letter was delivered to Mr. Tilton?

Q. Yes, Sir. A. Mr. Shearman gave to me that letter of April 2.

Mr. Evarts—I suppose this is all irrelevant?

Judge Neilson—It is a mere incident in the order of dates. I think he may answer what he knows about this case, because it connects the chain.

The Witness—Mr. Shearman gave me the letter to deliver to Mr. Tilton.

Q. Who was present when you delivered the letter of April 2 to Mr. Tilton?

Mr. Evarts—Your Honor will see that it is all immaterial, and I would like to state my views in regard to it. All this matter arises out of a reporter's paragraph in *The Union*; it is not a paragraph printed by Mr. Shearman or by anybody; it is a reporter's statement of an interview with Mr. Shearman, as I understand it, in *The Brooklyn Union*, which is a paper here—*The Christian Union*, is it?

Mr. Fullerton—*The Brooklyn Union*.

Mr. Evarts—*The Brooklyn Union*, a political paper—a secular paper. What Mr. Beecher says about that is good evidence of course, and that we have; but what passes between Mr. Tilton and Mr. Moulton and Mr. Shearman afterwards, getting before the public what, it was complained, was improperly represented in that paragraph of the report of the interview, we suppose is wholly immaterial.

Mr. Beach—Undoubtedly. We don't offer anything of the kind.

Mr. Evarts—All this seems to me to be of that kind of character.

Mr. Beach—Oh! no.

Mr. Fullerton—The gentleman will see the propriety of this evidence when I inform him that I expect to prove by the witness that Mr. Beecher was present when the letter was delivered. My question, to which Mr. Evarts objected, was when this letter was delivered.

Judge Neilson—I think he can answer that, yet the general view presented by the counsel is correct, unless it is connected.

Mr. Evarts—We think it is all wholly immaterial.

Mr. Fullerton—Who was present when this letter of April 2 was delivered? A. I think Mr. Beecher was present.

Mr. Evarts—You mean to say he was present? A. I think he was present; my recollection is that he was present.

Mr. Evarts—I cannot chase after these interviews—a mere notion that a man was present.

Mr. Fullerton—You can make objections beyond all doubt. (Laughter.) The witness is not willing to say he (Beecher) was present.

Judge Neilson—The witness says he thinks he (Beecher) was present. [To the witness]. State your best recollection in regard to it? A. My best recollection is that he was present. I remember the conversation when Mr. Beecher, Mr. Tilton, Mr. Shearman and myself were present.

Q. Was that when this letter was delivered? A. I am not clear as to that. I am quite clear as to Mr. Beecher being present when the letter was delivered.

Mr. Fullerton—[Handing a letter to witness].—Look at the letter and state? A. My impression is, I showed this letter to Mr. Beecher before it was delivered to Mr. Tilton, and not that he was present when it was delivered.

Mr. Fullerton—Now, I propose to read it in evidence.

BROOKLYN, April 2, 1874.

DEAR SIR; Having seen a paragraph in *The Brooklyn Union* of Saturday last, containing a report of a statement alleged to have been made by me concerning your family and myself, I desire to assure you that this report is seriously incorrect, and that I have never authorized such a statement.

It is unnecessary to repeat here what I have actually said upon these subjects, because I am now satisfied that what I did say was erroneous, and that the rumors to which I gave some credit were without foundation. I deeply regret having been misled into an act of unintentional injustice, and am glad to take the earliest occasion to rectify it.

I beg, therefore, to withdraw all that I said upon the occasion referred to as incorrect (although then believed by me), and to repudiate entirely the statement imputed to me as untrue and unjust to all parties concerned.

Yours obediently,

Theodore Tilton, Esq.

T. G. SHEARMAN.

[Copy of letter marked "Exhibit No. 32."]

#### INSIDE HISTORY OF THE BACON LETTER.

Q. Do you recollect what is known in this controversy as "the Bacon letter?" A. Yes, Sir.

Q. When was that letter written, in point of time? A. In June of 1874.

Q. When did you first become acquainted with its existence? A. The day after its publication.

Q. From whom did you receive your information? A. From Theodore Tilton.

Q. By the Bacon letter, are we to understand it as a letter written by Theodore Tilton to Dr. Bacon? A. Yes, sir.

Q. Did you have any interview with Mr. Beecher upon that subject? A. Yes, Sir.

Q. State, if you please, what that interview was, and when it was? A. I remember an interview in my study, at which Mr. Shearman, Mr. Tilton, Mr. Beecher and myself were present. Mr. Tilton said to Mr. Beecher that he knew perfectly well that he (Tilton) was not the creature of his magnanimity, as Dr. Bacon alleged; that he was not a dog and a knave—had not been in his treatment of Mr. Beecher; and that he could not



rest under that imputation, and wanted Mr. Beecher to set the matter right with Dr. Bacon; and that if he did not, he (Theodore Tilton) should. That is substantially the conversation that I remember. That is the first conference, and then I saw Mr. Beecher afterward about it.

Q. Don't you recollect anything else that took place at that first interview; if there was any reply to the observation, I want you to state it? A. Mr. Beecher said that he didn't see what reply he could make; that the case was full of embarrassments; that, if he should make a reply to Dr. Bacon, it would be considered as something like a confession; he made some reply of that sort; I don't remember the exact language he used, but he pleaded his embarrassments; the general impression in my mind is that he was surrounded by embarrassments which made it difficult for him to do it.

Q. What was referred to when he spoke of not being the creature of Mr. Beecher's magnanimity; that he wasn't a dog or a knave? A. His own action in regard to Mr. Tilton's family; Mr. Tilton referred specifically to his action with reference to his family.

Q. Did he not refer to Dr. Bacon's articles that had appeared in *The Independent* from time to time? A. Yes, Sir; that was the subject of the conversation; but the direct reference that was made in regard to Mr. Tilton's not being the creature of his magnanimity was, that he (Mr. Beecher) knew that he (Tilton) was not the creature of his magnanimity, on account of his knowledge of Mr. Tilton's relations with his family.

Q. This proposed letter of Mr. Tilton, called the Bacon letter, was in reply to these various articles in *The Independent*? A. Yes, Sir.

Q. Was the Bacon letter there then under consideration? A. I don't remember that it was.

Q. Was it afterward produced, what Mr. Tilton proposed to publish? A. No, Sir; it was not produced at that time.

Q. At any subsequent time was it produced? A. I don't think it was to Mr. Beecher.

Q. Did you have any conversation with Mr. Beecher in regard to the contents of it? A. I had an interview with Mr. Beecher, more than one interview, in which I said I would undertake to prevent the writing of it.

Q. State what you said to him in that conversation? A. I said I would undertake to prevent the reply to the Bacon letter; that I did not think Mr. Tilton should reply to it.

Q. You said, "reply to the Bacon letter?" A. I said to Mr. Beecher, I would undertake to prevent Mr. Tilton making any reply to the Bacon letter—to Dr. Bacon.

Q. Tell us all that occurred on that subject in that interview, when you proposed to prevent the reply to Dr. Bacon? A. I told Mr. Beecher that Mr. Tilton had said to me that if he replied to Dr. Bacon, he should tell the whole truth with regard to Mr. Beecher's relations with his family; that I considered that would be an outrage, if Theodore Tilton did it upon his family; that he ought not to do it, and that feeling that way I should undertake to prevent the writing of it, and that if I could not prevent the writing of it, that I would try to prevent the publication of it; and Mr. Beecher said to me, he hoped that I would prevent the writing of that letter.

Q. What occurred then in regard to it? A. After that I saw Mr. Tilton, and I told him I thought he ought not to think of writing a reply to Dr. Bacon, that it was better for him to undertake to live it down, that I did not think the effect of Dr. Bacon's letter in *The Independent* and his speech at the college would have such an effect on him in New-England as he expected it would have, and I communicated what I had said to Mr. Tilton to Mr. Beecher, and Mr. Beecher said that he agreed with me, that he thought it would not have the effect upon Theodore Tilton in New-England that he thought it would have, that Dr. Bacon did not have such an extensive influence as he, Theodore, thought he had. Then I saw Mr. Tilton after the letter had been fully prepared; I had not seen it during its publication, and he said to me, "I think that I ought to read to you the letter." I said, "Well, if you have written it, then I would like to hear it read."

Mr. Everts—We don't want anything stated that is not connected with Mr. Beecher.

The Witness—I am going to connect it with Mr. Beecher.

Judge Nelson—Pass over your conversation with Mr. Beecher and tell the rest; that will cover the whole ground.

The Witness—I said to Mr. Beecher that I had heard the Bacon letter read before its publication; that I had undertaken, and did succeed, in having taken from that letter the phrase, "He has committed against my family a revolting crime," and of having substituted in its place a statement that instead of that he had committed an offense. I told him that that was as much as I had been able to do with Mr. Tilton, and that is the substance of what occurred.

Mr. Everts—That was after the publication? A. After the publication; I told Mr. Beecher that the letter, as originally read to me, contained the words, "has committed against me and my family a revolting crime," and I told Mr. Beecher the reason for my having substituted the words "offense" or "crime."

Mr. Fullerton—In the Bacon letter? A. In the Bacon letter.

Mr. Beach—What did you tell him? A. I said that I had an idea that if he stated that he, Beecher, had committed against him and his family a revolting crime, that as that was the truth there would be no escape from that; but if the word "offense" was used, and the apology followed the charge of offense in the words of the Bacon letter, seeing that would be considered honorable but for the attack on him by Mr. Beecher in his church, I thought that might afford a basis for reconciliation—that the use of that word "offense" would.

Q. [Handing paper to witness.] State whether you recognize the paper now shown you—whether you recognize the Bacon letter so-called? A. Yes, Sir; that is it, I think.

Mr. Fullerton—I propose to read that letter in evidence. [Reading.]

SIR: I have carefully read your New-Haven address concerning the late Council, and also your five essays on the same subject, just concluded in *The Independent*.

The numerous and extraordinary misrepresentations of my position which these writings of yours will perpetuate to my injury, if not corrected, compel me to lay before you the data for their correction—misrepresentations which, on your part, are

of course wholly unintentional, for you are incapable of doing any man a willful wrong.

In producing to your inspection some hitherto unpublished papers and documents in this case, I need first to state a few facts in chronological sequence, sufficient to explain the documentary evidence which follows.

I. After I had been for fifteen years a member of Plymouth Church, and had become meanwhile an intimate friend of the pastor, knowledge came to me in 1870 that he had committed against me an offense which I forbear to name or characterize. Prompted by my self-respect, I immediately and forever ceased my attendance on his ministry. I informed him of this determination as early as January, 1871, in the presence of a mutual friend, Mr. Francis D. Moulton.

The rules of Plymouth Church afforded me a choice between two methods of retirement: one to ask for a formal letter of dismissal; the other, to dismiss myself less formally by prolonged absence. I chose the latter. In so doing, my chief desire was to avoid giving rise to curious inquiries into the reasons for my abandoning a church in which I had been brought up from boyhood; and therefore I did not invite attention to the subject by asking for a dismissory letter, but adopted the alternative of silently staying away—relying on the rule that a prolonged absence would finally secure to me a dismissal involving no publicity to the case.

Several powerful reasons prompted me to the adoption of this alternative, among which were the following: The pastor communicated to me in writing an apology signed by his name. He also appealed to me to protect him from bringing reproach to the cause of religion. He alleged that an exposure would forbid him to re-ascend his pulpit. These, and other similar reasons, I had no right or disposition to disregard; and I acted upon them with a conscious desire to see Mr. Beecher protected rather than harmed.

II. At length my absence from the church—an absence of which not three members of the congregation, beside the pastor, knew the cause—began to excite comment in private circles.

Some of the members hinted that I had lapsed into a lamentable change of religious views—whereas my views continued to be the same as they had been for many years previous; and though they had long before ceased to find their honest expression in the formal creed which I had professed in my childhood at the altar of Plymouth Church, yet my religious faith had not changed from that early original more than the views of some of the most honored members and officers of the same church had changed within the same time.

Other persons insinuated that I had adopted un-Christian tenets concerning marriage and divorce;—whereas, touching marriage, I have always held, and still hold, with ever-increasing firmness, the one and only view common to all Christendom; and touching divorce, the substance of what I held was, and still is, the needful abrogation of our unjust New-York code, and the substitution of the more humane legislation of New-England and the West.

Other persons fancied that I had become a Spiritualist of an extravagant type;—whereas, I have never yet seen my way clear to be a Spiritualist at all—certainly not to be so much a Spiritualist as some of the most prominent members of Plymouth Church are known to be.

All these suppositions, and many others, but never the right one, became current in the church (and still are) to explain my suddenly surrendered membership; the true reason for which has been understood always by the pastor, but never by his flock.

III. At length, after many calumnious whisperings, near and far (since evil tales magnify as they travel), a weekly paper in New-York, in November, 1873, published a wicked and horrible scandal—a publication which some persons in the church ignorantly attributed in its origin and animus to me; whereas I had previously spent many months of constant and unremitting endeavor to suppress it: an endeavor in which, with an earnest motive, but a foolish judgment, I made many ill-directed sacri-

fices of my reputation, position, money, and fair prospects in life; for all which losses of things precious, since mine alone was the folly, let mine alone be the blame.

IV. In May, 1873, occurred the surreptitious publication of a tripartite agreement signed by H. C. Bowen, H. W. Beecher and myself—an agreement which, so far as I was concerned, had for its object to pledge me to silence against using or circulating charges which Mr. Bowen had made against Mr. Beecher. This covenant, as originally written, would have bound me never to speak, not only of Mr. Bowen's, but also of my own personal grievances against Mr. Beecher. I refused to sign the original paper. My position in the amended paper was this: Mr. Bowen had made grave charges against Mr. Beecher. These charges Mr. Bowen had been induced to recall in writing. I cheerfully agreed never to circulate the charges which Mr. Bowen had recalled.

V. In August, 1873, Mr. William F. West, a member of Plymouth Church, hitherto a stranger to me, came to my residence, accompanied (at his request) by my friend Mr. F. B. Carpenter, and told me that when the summer vacation was over, he (Mr. W.) meant to cite me before the church on the charge of circulating scandals against the pastor; declaring, in Mr. C.'s presence, that Mr. Beecher had acted as if the reported scandalous tales were true rather than false, and urging that I owed it to myself and the truth to go forward and become a willing witness in an investigation. I peremptorily declined to join Mr. West in his proposed investigation, and declared that as I had not been a member of Plymouth Church for several years, I could not be induced to return to that church for any purpose whatever, least of all for so distasteful a purpose as to participate in a scandal. Mr. West had meanwhile discovered that my name still remained on the church roll; from which circumstance he determined to assume that I was still a member, and to force me to trial. Accordingly, a few weeks later, he brought forward charges which were nominally made against myself, but really against the pastor—charges which, if I may characterize them by the recently published language of the present clerk of Plymouth Church, were "an indirect and insincere method of investigating one man under the false pretence of investigating another."

Some leading members, including especially the pastor, desired my co-operation in defeating Mr. West, and I cheerfully gave it. To this end, I wrote—with their pre-knowledge and at their urgent desire—a letter declining to accept a copy of the charges addressed to me as a member, on the ground that I had, four years previously, ceased my connection with the church. For this letter, I received, on the next day after sending it, the pastor's prompt and hearty thanks. An understanding was then had between Mr. Beecher and myself, in an interview at the residence of Mr. Moulton, that Mr. West's indictment against me was to be disposed of in the following way, namely: by a simple resolution to the effect that, whereas I had, four years previously, terminated my membership; and whereas, by inadvertence my name still remained on the roll; therefore resolved that the roll be amended in accordance with the fact. This was to put Mr. West's case quietly out of court without bringing up the scandal.

To my surprise and indignation, I learned on the morning of October 31, 1873, that the report which was to be presented at the church meeting to be held on that evening would not be in the simple form already indicated, but would declare that whereas I had been charged with slandering the pastor; and whereas I had been cited before the church to meet the charge; and whereas I had pleaded non-membership as an excuse for not appearing for trial; therefore resolved that I should be dropped, etc.

This gross imputation, thus foreshadowed to me, led me to appear in person at the church on that evening, there to await the reading of the forthcoming report. This report, when it came to be read, brought me the following novel intelligence, namely, "Whereas a copy of the charges was put into the

hands of the said Tilton on the 17th of October, and a request made of him that he should answer the same by the 3d of October," etc.

I do not know to this day whose hand it was that drew the above report, and therefore I am happily saved from an offensive personality when I say that the statement which I have here quoted is diametrically the opposite of the truth; for instead of my having been requested to answer the charges, I had been requested *not* to answer them.

After the public reading of the above report I arose in the meeting and said, in Mr. Beecher's presence, that if I had slandered him I would answer for it to his face; to which he replied, in an equally public manner, that he had no charge whatever to make against me.

VI. Next, growing out of the church's singular proceedings in this case, came the Congregational Council of which you were Moderator.

The above facts and events—which I have mentioned as briefly as possible, omitting their details—will serve as a sufficient groundwork whereon to base the correction of the unjust and injurious statements which you have unwittingly given of my participation and responsibility in the case. With the Congregational theories and usages which you have so ably discussed, I have no concern—you are probably right about them. But as to all the essential facts growing out of my relationship to Plymouth Church, you have been wholly misinformed—as you will see by the following proofs:

I. You say that I retired from the church, giving no announcement of my so doing to any proper officer; in other words, that I stole out secretly, letting no one in authority know of my purpose. Your language concerning me is as follows:

"His position was that he had terminated his membership four years previously—not by requesting the church (as by its rules he might have done) to drop his name from its roll," etc.

You then ask:

"Is this the beautiful non-stringency of the covenant which connects the members of that church with the body, and with each other? What sort of a covenant is that which can be dissolved at any moment, not merely by mutual consent, nor by either party giving notice to the other, but by a silent volition in the mind of either?"

The above is a thorough misstatement of the manner in which I left Plymouth Church.

On the very first occasion of my meeting the chief officer of the church, after my retirement from it, I gave notice to him of that retirement. At a later period I repeated this notice to other officers of that body. In evidence of this fact I adduce the following extract from a recent card by Mr. Thomas S. Shearman, Clerk of Plymouth Church, published in *The Independent*, June 18, 1874. He says:

"Long before any charges were preferred against him, Mr. Tilton distinctly informed the clerk of the church and various other officers and members (myself included) that he had withdrawn and that his name ought to be taken off the roll."

II. You say that I have either "a malicious heart," or "a crazy brain." I know the fountain-head of this opinion. While the Council was in session in Brooklyn, the following startling paragraph appeared in *The Brooklyn Union* of Saturday, March 28, 1874:

Mr. Fullerton—I need not read the article from *The Brooklyn Union*, which was read awhile ago.

Mr. Evarts—No, Sir.

My attention was not called to the above paragraph until after the Council had adjourned, and its members had gone to their homes. At first, I was not willing to believe that the Clerk of Plymouth Church—the same officer whose name had been officially signed to all the documents which the church had just been sending to the Council—could have been guilty of such an outrage against truth and decency as the above paragraph contained—particularly against a lady whose devout re-

ligious faith and life are at the farthest possible remove from spiritualism or fanaticism of any kind. Accordingly I procured the following sworn statement by the reporter certifying to the accuracy of his report:

Mr. Fullerton—I don't propose to read the report.

Mr. Beach—I don't know why you should not read it.

Mr. Fullerton—With the consent of my learned opponents, I leave out part of this letter, only stating that the correspondence resulted in the letter of Mr. Sherman, which I have heretofore read.

Mr. Evarts—There is no object in reading it.

III. You ask, "when did Mr. Tilton cease to be responsible to the Plymouth Church?" I answer that I first ceased my responsibility to that church when I terminated my membership four years ago. I afterwards voluntarily renewed my responsibility to the church on the evening of Oct. 31, 1873, by appearing in person at one of its public meetings, and offering to answer, then and there, in the pastor's presence, the charge that I slandered him. Less than two months ago, I still further renewed my responsibility to Plymouth Church, as will appear by the following correspondence:

BROOKLYN, May 4, 1874.

REV. HENRY WARD BEECHER, *Pastor of Plymouth Church*;  
REV. S. B. HALLIDAY, *Associate Pastor*; and Mr. THOMAS  
G. SHEARMAN, *Clerk*.

GENTLEMEN:—I address, through you, to the church of which you are officers, the following statement, which you are at liberty to communicate to the church through the Examining Committee, or in any other mode, private or public:

The Rev. Leonard Bacon, D.D., L.L.D., Moderator of the recent Congregational Council, has seen fit, since the adjournment of that body, to proclaim, publish and reiterate, with signal emphasis, and with the weight of something like official authority, a grave declaration which I here quote, namely:

"It was for the Plymouth Church," he says, "to vindicate its pastor against a damaging imputation from one of its members. But with great alacrity—the pastor himself consenting—IT THREW AWAY THE OPPORTUNITY OF VINDICATION." . . . "That act," he continued, "in which the PLYMOUTH CHURCH THREW AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR, was what gave occasion for remonstrances from neighboring churches."

. . . "There are many," he says also, "not only in Brooklyn, but elsewhere, who felt that the church had not fairly met the question, and by evading the issue had THROWN AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR."

The Moderator's declaration is thus made three times over that the Plymouth Church, in dealing with my case, THREW AWAY ITS OPPORTUNITY OF VINDICATING THE PASTOR.

This declaration so emphatically repeated by the chief mouth-piece of the Council, and put forth by him apparently as an exposition of the Council's views, compels me, as the third party to the controversy, to choose between two alternatives.

One of these is to remain contentedly in the dishonorable position of a man who denies to his former pastor an opportunity for the vindication of that pastor's character—an offense the more heinous because an unsullied character and reputation are requisite to his sacred office.

The other alternative is for me to restore to his church their lost opportunity for his vindication by presenting myself voluntarily for the same trial to which the church would have power to summon me if I were a member—a suggestion which (judging from my past experience) will subject me afresh to the unjust imputation of reviving a scandal for the suppression of which I have made more sacrifices than all other persons.

Between these two alternatives—which are all that the Moderator leaves to me—and which are both equally repugnant to my feelings—duty requires me to choose the second.

I therefore give you notice that if the Pastor, or the Examining Committee, or the church as a body, desire to repossess

the opportunity which the Moderator laments that you have thrown away. I hereby restore to you this lost opportunity as freely as if you had never parted with it.

I authorize you (if such be your pleasure) to cite me at any time within the next thirty days to appear at the bar of Plymouth Church for trial on the charge heretofore made against me, namely, that of "circulating and promoting scandal derogatory to the Christian integrity of the pastor and injurious to the reputation of the church."

My only stipulation concerning the trial is that it shall not be held with closed doors, nor in the absence of the pastor.

I regret keenly that the Moderator has imposed on me the necessity for making this communication, for nothing but necessity would exhort it.

The practical good which I seek to achieve by this proposition is that, whether accepted or declined, it will in either case effectually put an end forever to the Moderator's grave charge that Plymouth Church has been deprived through me of an opportunity to vindicate its pastor, or that its pastor has been by any act of mine deprived of an opportunity to vindicate himself.

Truly yours, THEODORE TILTON.

To the above communication I received the following reply from the clerk of the church :

BROOKLYN, May 18, 1874.

DEAR SIR: Your note of the 4th inst., inclosing a letter addressed to Mr. Beecher, Mr. Halliday, and myself, was duly received.

This letter has been read by Mr. Halliday, with whose concurrence it has been submitted to the Examining Committee; and we all deem its contents to present a question which should be decided by that Committee, and which should not be submitted to the pastor of the church, to whom, therefore, the letter has not been shown, though he has been advised of its substance.

Having consulted the members of the Committee, I am informed by them that they see no reason for accepting your proposition, or even laying it before the church.

Whatever view may be taken of the case by others, the Examining Committee and the church have seen no necessity for vindicating any member of the church from charges which no one has made, and the church has never in the twenty-seven years of its history adopted such a course. No one can, therefore, hold you responsible for the loss of an opportunity to the church to do that which it never yet has done, and probably never will do.

We do not understand your letter as implying that you have any charges to make, but to the contrary. If the Committee had so understood it, they would have readily entertained and fully investigated them.

It is proper to add that your name was dropped from the roll, not simply because of the statements made by you after charges had been preferred against you, but because months, if not years, before any charges were made you distinctly stated to various officers and members of the church that you had permanently abandoned your connection with it, thus bringing yourself expressly within the terms of our rule upon the subject.

Yours truly,

THOMAS G. SHEARMAN.

Mr. Theodore Tilton.

As the above communication by Mr. Shearman seemed to bear no official, but only a private signature, I addressed to him the following note :

174 LIVINGSTON-ST., BROOKLYN, May 23, 1874.

MR. THOMAS G. SHEARMAN, Clerk of Plymouth Church.

SIR: My recent communication addressed to the pastor, the associate pastor and the Clerk of Plymouth Church is acknowledged by you in a note which you seem to have signed merely as a private individual, and not as an officer of the church.

I call your attention to the fact that I did not address you in

your private capacity, but solely as the Clerk of Plymouth Church.

I therefore respectfully request to be informed by you definitely and in writing, whether or not I am at liberty to regard your letter as an official reply to mine.

Yours truly,

THEODORE TILTON.

Mr. Shearman's reply was as follows :

81 HICKS-ST., BROOKLYN, May 29, 1874.

DEAR SIR: In reply to your inquiry whether my letter of 18th inst. was an official answer to yours of the 4th inst., I beg to say that I did not feel at liberty, without the express authority of the church itself, to sign that letter as its clerk.

In so far as the letter stated that your proposition of May 4 was declined, it was official; since as clerk of the church I declined then, and decline now, to lay the proposal before the church itself, holding myself responsible to the church for so doing.

The remainder of the letter of 18th inst. must be regarded as my individual statement of what I believe to be the unanimous opinion of the officers of the church.

Your obedient servant, THOMAS G. SHEARMAN.

Mr. Theodore Tilton.

It will thus be seen that Mr. Shearman, in answer to my inquiry, characterizes his previous letter to me as partly official and partly unofficial, though how he could originally have expected me to draw the dividing line between its two parts without this subsequent explanation I am at a loss to understand. But the official portion of his letter (now that it has been pointed out to me) is sufficient to answer your query, "When did Mr. Tilton cease to be responsible to the Plymouth Church?" I respectfully submit that, setting aside all previous cavils and technicalities concerning the church roll, I may be fairly said to have ceased my responsibility to Plymouth Church when the clerk of that church officially informed me that my voluntary offer to return and be tried was officially declined.

IV. In your five essays you were led, through ignorance of the facts, to make several other erroneous and injurious statements concerning my case; but the corrections and explanations which I have already given will of themselves correct the others.

It now remains for me to give you some reasons why I have been prompted, after years of reticence, to lay before you the grave matters contained in this communication. Nothing could induce me to make my present use of the foregoing facts, except the conviction which the events of the last year, and particularly of the last half year, have forced upon my mind that Mr. Beecher, or his legal and other agents acting in his interest and by his consent, have shown themselves willing to sacrifice my good name for the maintenance of his. I have come slowly to this judgment—more slowly than my personal friends have done; but that I am not mistaken in it, you shall see by a few illustrative instances:

1. I have already shown you how the church, at a public meeting, on Friday evening, October 31, 1873, by an official document which was published the next morning in every leading journal in New York, gave the public falsely to understand that I had been cited to answer charges, when I had really been requested not to answer them:—a piece of ecclesiastical misrepresentation which was the more grievous to me because it was subsequently accepted by the Council as authentic, and because it is still widely believed by the public.

2. Mr. Beecher's journal, *The Christian Union*, published this official falsehood to a wide circle of readers, and took no notice of the correction which I addressed at the time in a brief note to the Council. Let me ask you to weigh the peculiar gravity of this omission by that journal. My case, as presented to the Council by the two protesting churches, was based by them, not on any private or accurate knowledge of the facts, but solely on the published misstatements of those facts by Plymouth Church. I was described by the two churches to the Council as follows :

"Specific charges of grossly un-Christian conduct are presented against him by a brother in the church, to which charges he declines to answer," etc.

You will remember that I promptly addressed to you a reply to the above, in which I used the following explicit words:

"Gentlemen of the Council, every man among you knows that I did not decline to answer."

You, as Moderator of the Council, courteously gave me the ecclesiastical reasons why my letters could not be officially laid before that body; but can you give me any honorable reason why my defense should not have been published in *The Christian Union*? If every other American journal should be destroyed, and only the files of *The Christian Union* should remain, that journal's report of my case would represent me as a culprit, first, who had slandered a clergyman; next, who had been summoned before the church to answer for this calumny; next, who had evaded this summons by resorting to the safe shelter of non-membership; and last, who on account of this moral poltroonery, had been dropped from the roll. Such is the record which Mr. Beecher's journal contains of my case, up to date.

3. During the Council, and when there seemed a probability that Plymouth Church would receive condemnation and be disestablished by the neighboring churches, Mr. Beecher inspired a message from his church to the Council, closing with these words:

"We hold that it is our right, and may be our duty, to avoid the evils incident to a public explanation or a public trial; and that such an exercise of our discretion furnishes us no good ground for the interference of other churches, *provided we neither retain within our fellowship, nor dismiss by letter, as in regular standing, persons who bring open dishonor upon the Christian name.*"

This adroit insinuation against me is what you, as Moderator of the Council, know to have been the turning point in the fortunes of Plymouth Church before that tribunal. The Council's verdict borrows almost these identical words. It says: "The accused person has not been retained in the church, nor commended to any other church." You, too, quote these words—borrowed thus doubly from the church's plea and from the Council's verdict—and you then logically say, "Therefore the abnormal method in which the charges against him (me) were disposed of was overlooked."

In other words, the Council, on reading the above excusatory petition sent up to it by Plymouth Church, found in it the one and only ground for retaining that church within the Congregational fellowship; and this one and only ground was because Mr. Beecher's final appeal to the Council represented me as a person who had neither been retained in his church, nor been recommended to any other, but who was dropped from the roll for bringing "dishonor upon the Christian name." This document—constituting Plymouth Church's ungenerous defense before the Council—was accepted by you in good faith, and has since led you to point against me the following cruel words:

"The Plymouth Church," you say, "made it known that they were no longer responsible for the dishonor which he has brought or may bring on the name of Christ. They dropped him from the roll of the church. In one word, they excommunicated him, for such a dropping from the roll was excommunication from the church."

You never could have uttered the preceding injurious words against me had not Mr. Beecher and his church-agents given you the materials for so doing by ingeniously putting before the Council a document which you, as Moderator, interpreted as being only another way of Plymouth Church's saying that I had brought dishonor on the Christian name, and had therefore been excommunicated.

Do not misunderstand me. I will not say that, in my unsuccessful management of this unhappy scandal, I have brought no "dishonor on the Christian name:" the one name which, of all others, I most seek to honor. With infinite sorrow I look back

through the last few years, and see instances in which, by the fatality of my false position, I have brought peculiar "dishonor on the Christian name:"—all which I freely acknowledge, and hope yet to repair. But I solemnly aver—and no man shall gainsay me—that the reason why Plymouth Church avoided an investigation into the scandal with which I was charged, was not because I, but another man, had "brought dishonor on the 'Christian name.'" And yet this other person, a clergyman, permitted his church to brand me before the Council with an accusation which, had I been in his place and he in mine, I would have voluntarily borne for myself in stead of casting on another.

4. I will adduce a further instance by a quotation from a letter which I had occasion to address to Mr. Beecher, dated May 1, 1874:

HENRY WARD BEECHER.

SIR: Mr. F. B. Carpenter mentions to me your saying to him that under certain conditions, involving certain disavowals by me, a sum of money would or could be raised to send me, with my family to Europe, for a term of years.

The occasion compels me to state explicitly that so long as life and self-respect continue to exist together in my breast, I shall be debarred from receiving, either directly or indirectly, any pecuniary or other favor at your hands.

The reason for this feeling on my part you know so well, that I will spare you the statement of it.

Yours truly,

THEODORE TILTON.

5. Take another instance. You will perceive that in Mr. Shearman's letter, given above—the letter officially declining my offer to return to the church to be tried—he says, under date, May 18, 1874:

"Your note of 4th inst., inclosing a letter addressed to Mr. Beecher, Mr. Halliday and myself was duly received. *This letter has been read by Mr. Halliday, with whose concurrence it has been submitted to the Examining Committee.*

And yet, a month and a half after Mr. Halliday saw this letter, and a month after Mr. Shearman had officially replied to it, *The Brooklyn Union* of June 19th, contained the following singular statement, by a reporter who visited Mr. Halliday:

"In an extract," says *The Union*, "from a letter written to *The Chicago Tribune*, it is stated that Mr. Tilton had addressed a note to the 'Trustees of Plymouth Church.' *The Tribune's* correspondent declares that Mr. Tilton 'not only expresses his willingness, but desires to answer any summons, as a witness, during the next thirty days.' A *Union* reporter (Mr. Tilton not being accessible) called on Rev. Mr. Halliday to-day, and, upon presenting the extract to him, was assured that the person who corresponded with the *Chicago Tribune* must have been misinformed. The very fact of his stating that the letter was addressed 'to the Trustees of the Church,' he said, 'was an absurdity.' The Trustees only attended to temporariness of the church. *If Mr. Tilton had written such a letter, of which, however, he had no knowledge, it would have been either addressed to the Church, to its pastor, or to some member or members.* At the last Friday evening meeting no such letter had been presented for consideration, and he was certain none had since been received, although he must say he had been absent in Massachusetts about a week. *He added that he had reason for believing that Mr. Tilton felt a little sore about what Rev. Mr. Bacon had said of him. But whether he would take to writing letters about it he couldn't say.*

And yet Mr. Halliday, according to Mr. Shearman's testimony above given, had read my letter forty days before thus denying that he had ever seen or heard of it.

A similar statement to the above appeared in the *Brooklyn Eagle*, at the same time (June 20), as follows:

"The Trustees of Plymouth Church deny that Theodore Tilton has addressed a letter to them, offering himself as a witness, and expressing a desire to answer certain charges against Mr.

Beecher, during the next thirty days. They say that the whole story is false from beginning to end."

The above are recent specimens—not solitary or unique—of the manner in which Mr. Beecher's agents have not hesitated to use the Brooklyn press, on numerous occasions, to misrepresent and pervert my case to the community in which I reside, and to the public at large.

VI. Furthermore, I regret to point to you the evidence that Plymouth Church, or rather the attorney who now acts as its clerk, is attempting to make up a false but plausible record concerning this case, for the purpose of appealing to it in future to my disadvantage. It was to this end that Mr. Shearman ingeniously incorporated in his letter to me dated May 18, 1874, the following words:

"We do not understand your letter as implying that you have any charges to make, but the contrary. *If the Committee had so understood it, they would have readily entertained and fully investigated them.*"

The manifest object of the above record is to enable the church to say, a year or five years hence, that if I ever had any charges to make against Mr. Beecher, the church had long ago given me an abundant opportunity to make them. Mr. Shearman is still more bold in his communication to *The Independent*, dated June 18, 1874. He therein says of the church:

"Its officers have, in the proper way, without parade, *given every facility for investigation that could reasonably be desired, even by the most captious critics.*"

The above statement by Mr. Shearman is made in a letter which was put forth by him ostensibly in my interest, and which I am already accused of having inspired. This leads me to disavow the declaration which I have last quoted as insincere and at variance with the truth.

VII.—Not to multiply instances needlessly, there is one other to which my self-respect compels me to allude with painful explicitness. In your New Haven speech you characterized Mr. Beecher as the most magnanimous of men, and in the context referred to me as a knave and dog. You left the public to infer that I had become in some deplorable way the creature of Mr. Beecher's magnanimity. Early in April last I called Mr. Beecher's attention to the offensiveness and injuriousness of your statement, and informed him that I should insist on its correction either by him or me. In order to provide him with an easy way to correct it, involving no humiliation to his feelings, I addressed to you the following letter:

BROOKLYN, April 3, 1874.

Rev. Leonard Bacon, D.D.:

MY DEAR SIR: I have just been reading THE TRIBUNE's report of your Yale speech on the Brooklyn Council, in which occurs the following paragraph:

"Another part of my theory is that Mr. Beecher's magnanimity is unspeakable. I never knew a man of a larger and more generous mind. One who was in relations to him the most intimate possible, said to me, 'If I wanted to secure his highest love, I would go into a church meeting and accuse him of crimes.' This is his spirit. But I think he may carry it too far. A man whose life is a treasure to the Church Universal, to his country, to his age, has no right to subject the faith in it to such a strain. Some one has said that Plymouth Church's dealing with offenders is like Dogberry's. The comparison is apt: 'If any one will not stand, let him go, and gather the guard, and thank God you are rid of such a knave.' So of Lance, who went into the stocks and the pillory to save his dog from execution for stealing puddings and geese. I think he would have done better to let the dog die. And I think Mr. Beecher would have done better to have let vengeance come on the heads of his slanderers." \* \* \*

Setting aside the satire and mirth, if there be any criticism directed toward me in these words in sobriety and earnestness, then I beg you to do me the following act of justice:

Please forward to Mr. Beecher the letter I am now writing, and ask him to inform you, on his word of honor, whether I

have been his slanderer—whether I have spoken against him falsely—whether I have evaded my just responsibility to Plymouth Church—whether I have treated him other than with the highest possible fairness—and whether he has not acknowledged to me, in large and ample terms, that my course towards him in this sorrowful business has been marked by the magnanimity which you apparently intimate has characterized his towards me.

If you write to Mr. Beecher as I have indicated, I will thank you for a line as the words or substance of his reply. With great respect I am truly yours,  
THEODORE TILTON.

In reply to the above letter you sent me the following:

NEW HAVEN, April 10, 1874.

Theodore Tilton, Esq.:

DEAR SIR: Not being in Mr. Beecher's confidence, I have doubted what I ought to do with your letter written a week ago. I was not—and am not—willing to demand of him that he shall admit me to his confidence in a matter on which he chooses to be reticent. But as the letter seems to have been written for him quite as much as for me, I have now sent it to him without asking or expecting any reply.

\* \* \* \* \*  
With the best wishes for your welfare, I am, yours, truly,  
LEONARD BACON.

It is now between two and three months since I received from you the foregoing letter, and, as I have not heard that Mr. Beecher has made a reply, either to you or me, I am at last forced to the disagreeable necessity of borrowing a reply in his own words, as follows:

BROOKLYN, Jan. 1, 1871.

I ask Theodore Tilton's forgiveness, and humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been. I can ask nothing except that he will remember all the other breaths that would ache. I will not plead for myself. I even wish that I were dead.

\* \* \* \* \*

H. W. BEECHER.

The above brief extract from Mr. Beecher's own testimony will be sufficient, without adducing the remainder of the document, to show that I have just ground to resist the imputation that I am the creature of his magnanimity.

In conclusion, the common impression that I have circulated and promoted scandals against Mr. Beecher is not true. I doubt if any other man in Brooklyn, during the whole extent of the last four years, has spoken to so few persons on this subject as I have done. A mere handful of my intimate friends—who had a right to understand the case—are the only persons to whom I have ever communicated the facts. To all other persons, I have been dumb—resisting all questions, and refusing all explanations.

If the public have heretofore considered my silence as inexplicable, let my sufficient motive be now seen in the just forbearance which I felt morally bound to show to a man who had sent me a written and absolute apology.

But my duty to continue this forbearance ceased when the spirit of that apology was violated to my injury by its author or his agents. These violations have been multitudinous already, and they threaten to multiply in the future—forcing me to protect myself against them in advance;—particularly against the cunning devices of the Clerk of the church who, acting as an attorney, appears to be conducting this business against me as if it were a case at law.

Had the fair spirit which I had a right to expect from Plymouth Church—at least for its pastor's sake—been shown toward me, I would have continued to rest in silence on Mr. Beecher's apology, and never during the remainder of my life would I have permitted any public word of mine to allude to the offense or the offender.

But the injurious measures which the author of this apology has since permitted his church to take against me with-

outprotest on his part—measures leading to the misrepresentation of my case and character by the Church to the Council, and by the Council to the general public—involving gross injuries to me which have been greatly aggravated by your writings—all these indictments, conjoining to one end, have put me before my countrymen in the character of a base and bad man:—a character which, I trust, is foreign to my nature and life. Under the accumulating weight of this odium—unjustly bestowed on me—neither patience nor charity can demand that I keep silent.

In your capacity as ex-Moderator of the Council, and as its chief expositor, you have labeled the theme of your animadversions “the celebrated case of Theodore Tilton.” You have declared that “the transaction with all its consequences belongs to history, and is in every way a legitimate subject for public criticism.” If, therefore, your estimate of the historic importance of the case is true (though I hope it is not) I now finally appeal to you as its chief historian not to represent me as playing an unmanly or dishonorable part in a case in which, so far as I can yet see, I have failed in no duty save to myself.

Truly yours, THEODORE TILTON.

Mr. Evarts—Before we adjourn will you allow me to suggest to the counsel that we would like to see, on the termination of the recess, the original papers which are substitutes for those just read?

Mr. Fullerton—That will be done unless the illness of Mr. Morris continues.

Mr. Evarts—If your Honor please, the jury, perhaps, will not like to have their dinner hour curtailed quite as much as by the extension of this reading.

Judge Neilson—Will you say a quarter after two o'clock?

Mr. Evarts—A quarter after two o'clock.

Judge Neilson, to the jury—Please be in your seats, gentlemen, at a quarter after two o'clock.

#### SUPPRESSION OF THE BACON LETTER SOUGHT.

The Court met at 2.15 p. m., pursuant to adjournment. Francis D. Moulton's direct examination was resumed.

Mr. Fullerton—Before the recess you stated that you promised Mr. Beecher, if possible, to prevent the publication of the Bacon letter. If you used any efforts in that direction, you will please now state them? A. I went to *The Golden Age* office after the—

Mr. Evarts—We don't understand that to be admissible.

Q. Did you make efforts in pursuance of your promise to Mr. Beecher to prevent the publication of that letter? A. I did.

Mr. Evarts—That we object to.

Mr. Beach—Did you apprise Mr. Beecher of the efforts you made? A. Yes, Sir, I told him what I had done.

Mr. Fullerton—What did you report to Mr. Beecher that you had done in that direction?

Mr. Evarts—We want to get it right.

Mr. Fullerton—We want to get it right.

Mr. Evarts—Yes, but we don't want to get wrong first.

Mr. Fullerton—I have a right to show what he did and what he reported.

The Witness—I said to Mr. Beecher that I went to *The Golden Age* office the day after the letter had been read to me to suggest further alterations to Mr. Tilton—charges that I deemed necessary; and I said to him that after I had made these suggestions to Mr. Tilton, he told me that the paper had gone to press.

I told Theodore that I thought—I said to Theodore that the letter ought not to be published, that I had told him that the night that he had read the letter to me in the presence of witnesses, and that I had said that to him in the presence of witnesses, and that I had said the same thing to him the day after I had heard the letter read; that he insisted on its publication; and I said to Mr. Beecher, “I have done the best I could. I have procured the introduction in this letter of the word ‘offense’ in place of the words ‘that he has committed against me and my family a revolting crime.’”

Q. Had you done, previous to that conversation with Mr. Beecher, what you reported him to have done? A. Certainly.

Q. Take the Bacon letter and point out specifically the alterations which you suggested and which were made in pursuance of your suggestion? A. [Reading from the Bacon letter.] “In producing to your inspection some hitherto unpublished papers and documents in this case, I need first to state a few facts in chronological sequence, sufficient to explain the documentary evidence which follows: 1. After I had been for fifteen years a member of Plymouth Church, and had become, meanwhile, an intimate friend of the pastor, knowledge came to me in 1870 that he had committed against me an offense which I forbear to name or characterize.” It read, Sir, in the original manuscript, if I remember correctly—the substance of it I do remember correctly—“knowledge came to me in 1870 that he had committed against me and my family a revolting crime.”

Mr. Evarts—Is the original manuscript in existence? A. I don't know, Sir, whether it is or not.

Mr. Evarts—We would like to have that, if it is.

Mr. Fullerton—Now, if any other alteration was made, please state it. A. Well, sir, I forget the alterations. Perhaps if I should read the letter carefully—

Mr. Evarts—He has not testified to any but this one.

Mr. Fullerton—Well, Mr. Evarts, I did not say he had. I only asked him, if any other alterations were made, now to state them.

Mr. Evarts—No, this is the point: This matter he has stated as having been a subject talked about between him and Mr. Beecher, but this is the only alteration that he has spoken of as being the subject between him and Mr. Beecher.

Mr. Fullerton—I still do not see the occasion of the interruption.

Judge Neilson—You might avoid the objection by asking him whether he reported any other alteration to Mr. Beecher, and, if so, what?

Mr. Evarts—Exactly.

Mr. Fullerton—That is true. I might incorporate two questions into one, but I do not know that that is absolutely necessary in the trial of a cause.

Judge Neilson—I think the testimony must be limited to the alterations that he reported to Mr. Beecher.

Mr. Fullerton—I propose to hmit it.

Mr. Evarts—One he has testified to.

Mr. Fullerton—I am aware of that. It is not worth while to indicate to me what he has testified to. I understand it perfectly well. I don't want interruption for the sake of interruptions.

Mr. Evarts—No.

Mr. Fullerton—Now, if there was any other alteration made in that document before it was printed, I want you to point it out? A. I did tell Mr. Beecher that I had suggested other alterations. I don't remember what they are now, but I told him what they were.

Q. What occurred subsequently to that in reference to the Bacon letter? Any conversation you may have had with Mr. Beecher in regard to it, you may now detail, if you please? A. Mr. Beecher said that the Bacon letter was a dead shot; I remember that expression.

Q. In what conversation did he make use of that term? A. When he came to talk to me about—when he came and said to me—asked me what reply I thought it was best to make to the Bacon letter, if any.

Q. And what reply did you counsel? A. I said to Mr. Beecher, "I recommend the same policy that we pursued in regard to the Victoria Woodhull letter or document—silence."

Q. Was any other course proposed? A. Yes, Sir; I submitted to him a paper which I had dictated to Frank Carpenter, and I said: "Mr. Beecher, if anything is said I deem it most judicious that this should be said," and I read to him that which I had dictated to Mr. Carpenter.

Q. In whose handwriting was that paper? A. That paper was in Carpenter's handwriting. Mr. Beecher asked me for a copy of it.

Q. Did you give him a copy of it? A. I did give him a copy of it.

Q. In whose handwriting was the copy? A. It was in my handwriting.

Q. Look at the paper now shown you and say whether it is the original of that paper? A. Yes, Sir; that is the original.

Q. What occurred between you and Mr. Beecher with reference to this proposed card after the interview of which you have just spoken? A. Well, I have not finished that interview.

Q. Well, please finish it? A. I said Mr. Beecher asked me for a copy of it. I gave him a copy of it, with an alteration or two in it, and he said that he would make a copy of it in his own handwriting—make a copy of that copy in his own handwriting, and submit it to some of his friends.

Q. Did he afterwards state whether he had submitted it to his friends? A. I don't remember whether he did or not, Sir.

Q. What occurred with reference to that card at any time after that? A. I met Mr. Beecher on July the 5th, I think, and I said, "Well, Mr. Beecher, you have not uttered from your pulpit, or anywhere given utterance to the words that I prepared for you; at least I have not seen any such expressions;" and he said, "No, you advised silence particularly." "Yes," I said, "I advised silence, but I think you have had a good opportunity to make that expression;" and I said, "At the Friday evening prayer-meeting your church seemed to be in entire sympathy with you, and I think you might have availed yourself of that occasion to have made that expression." And he said, "Well, I am not to blame for that. You advised silence, and I have followed the course you advised."

Mr. Fullerton—I now offer the paper in evidence.

The Witness—I had a subsequent conversation with Mr. Beecher about it, and I told him that I had seen Gen. Tracy concerning a reply to the Bacon letter, and that I had asked Gen. Tracy if he had submitted the paper to him, and I said to Mr. Beecher that Mr. Tracy's reply was that he had seen a paper in which he thought he detected my handiwork, and that Gen. Tracy had said to me that the words "I have committed no crime," really said nothing in denial of the fact as alleged by Mr. Beecher against—or as to the fact between Mr. Tilton and Mr. Beecher—or Mr. Beecher and Mrs. Tilton's relations; that as nearly as I could remember the words he said, "I have committed no crime," did not mean anything, because adultery was no crime under the common law. That is as nearly as I could repeat it, and I said to him that I had told Gen. Tracy that I did not think that was a good objection; that I thought the community would accept that card as a distinct denial—that utterance, rather; that that utterance would be accepted by the community as a distinct denial, and that it ought to be made, or some such utterance should be made, since Beecher assented—since Mr. Tilton assented to peace, since that utterance was made, or if silence was kept.

Q. You are now relating the conversation that you had with Mr. Beecher, in which you repeated the conversation that you had with Mr. Tracy? A. Precisely.

Q. And did you have that conversation with Mr. Tracy as you repeated it to Mr. Beecher? A. I did.

Mr. Fullerton—I will now read this.

Mr. Tracy—There has been an alteration in this.

The Witness—Two unessential changes.

Mr. Tracy—The one he gave to Mr. Beecher ought to be the one produced.

Mr. Evarts—Let us understand about it. I hold in my hand what is considered as an original paper, in a certain sense. [To the witness.] It is a paper in the handwriting of Mr. Carpenter, as I understand it? A. Yes, Sir.

Q. It was written by him from your dictation? A. Yes, Sir.

Q. That is, he wrote it down from what you said to him? A. Yes, Sir.

Q. This was shown to Mr. Beecher? A. I read it to him.

Q. Well, read it to him? A. Yes, sir; and I made a copy of it.

Q. And made a copy of it which was an exact copy of it? A. No; it was with one or two unessential alterations in the grammatical construction; that is all the words.

Q. That we don't know much about? A. No.

Mr. Evarts—This paper was shown to Mr. Beecher, and this paper can be read. Whenever the paper given to Mr. Beecher is to be read, why, that will have to be produced. It was changed.

Mr. Fullerton—I read as follows:

This church and community are unquestionably and justly interested through the recent publication by Theodore Tilton in answer to Dr. Leonard Bacon, of New-Haven.

It is true that I have committed an offense against Theodore Tilton, and, giving to that offense the force of his construction, I made an apology and reparation such as both he and I declared full and necessary. I am convinced that Mr. Tilton has been goaded to his defense by misrepresentations or mis-



understandings of my position towards him. I shall never be a party to the reopening of this question, which has been honorably settled as between Theodore Tilton and myself. I have committed no crime; and if this society believes that it is due to it that I should reopen this already too painful subject, or resign, I will resign. I know, as God gives me the power to judge of myself, that I am better fitted to-day, through trials and chastening, to do good, than I have ever been.

[Marked "Exhibit No. 34."]

Q. At whose suggestion, if at any one's, did you submit that paper to Mr. Tracy? A. What is the question?

Q. At whose suggestion, if at any one's, did you submit that paper to the consideration of Mr. Tracy? A. My own.

Q. And what was said by Mr. Beecher in regard to that act? A. He approved of it.

Q. What did he say, and what did you say to him? A. I said to him that I had submitted the paper to Mr. Tracy, and he said nothing further with regard to it; I don't remember that he made any reply.

Mr. Evarts—One moment, Mr. Fullerton. Isn't there some misunderstanding? I understand Mr. Moulton as testifying that he asked Mr. Tracy if Mr. Beecher had submitted it to him.

Judge Neilson—Mr. Tracy told him that he had seen the paper.

Mr. Fullerton—That is not inconsistent.

Mr. Evarts—I am only asking to get at the fact. Now I understand him to say that he submitted the paper? A. That I submitted the paper to Mr. Tracy?

Q. Yes, Sir. A. I asked him if he had seen any paper.

Mr. Evarts—Your Honor sees that I am correct about it.

Judge Neilson—The counsel accept your correction.

Mr. Fullerton—Go on and state what further was said, if anything, to Mr. Beecher in regard to that paper? A. I said that I had asked Mr. Tracy whether—I repeated the exact conversation as nearly as I could to Mr. Beecher that I had had with Mr. Tracy, and I told him what Mr. Tracy had said, and that I did not consider his objection was a good one, that was all.

Q. Had Mr. Tracy been in any way connected with this controversy prior to that time? A. He had; yes, Sir.

Q. And is that a reason why you suggested Mr. Tracy's name in that connection? A. That is the reason that I went to Mr. Tracy; yes, Sir; one of the reasons.

Q. When did Mr. Tracy's connection with the case first commence? A. After the Victoria Woodhull publication.

Q. The Autumn of 1873, that was, I think? A. Yes, Sir, November, 1873.

Q. Under what circumstances did he become connected with it? A. My partner, Mr. Woodruff, after the publication of the Victoria Woodhull story, came to me and said that I was severely criticised for my position with regard to it, and that several of his friends and of my friends thought that I should say something, make some statement with regard to it, and I said I didn't want to do it.

Mr. Evarts—That has nothing to do with this, if your Honor please.

Mr. Fullerton—I shall connect them all with Mr. Beecher.

Mr. Evarts—The Judge has indicated several times that the best way is to begin with Mr. Beecher's connection.

Judge Neilson—I think so. I think you could have him state what he reported to Mr. Beecher that occurred between him and Mr. Woodruff without repeating the conversation.

Mr. Fullerton—I can do it in that way, and I certainly will do it in that way if your Honor so instructs me, but it is not the natural order of events, and I think we are entitled, on our side, to all the force and effect growing out of the natural statement of the events as they took place.

Judge Neilson—You expect to connect him?

Mr. Fullerton—I think your Honor will give me the credit for intending in good faith to connect Mr. Beecher with all that I prove by Mr. Moulton with reference to this matter.

Judge Neilson—If you are so advised you can go on.

Mr. Fullerton—I do not want you, Mr. Moulton, to state anything that was said to you that you did not communicate to Mr. Beecher.

Mr. Evarts—If he is asked the question what he did communicate to Mr. Beecher we will take it.

Mr. Fullerton—You may take it, I think, in another way.

Mr. Evarts—I think not.

Mr. Fullerton—You may.

Mr. Evarts—We will except to any other way.

Mr. Fullerton—I don't want to put the cart before the horse.

Mr. Evarts—You may put the cart and never bring the horse, and that we don't want. [Laughter.]

Mr. Fullerton—You don't want either cart or horse. [Laughter.]

Mr. Evarts—I want both, or not have either.

Mr. Fullerton—We mean to have our horse go first if possible, and you will see what he draws into the case.

Judge Neilson—You see, gentlemen, how much a little wit costs—a very little wit. [Laughter.]

Mr. Fullerton—Well, my friend has not exhausted his store yet. I want to prove by this witness what was said to him which he afterwards communicated to Mr. Beecher, and I think there will be no misapprehension about it all. I do not design to prove anything that was said to him that was not communicated to Mr. Beecher.

Judge Neilson—Well, in the mean time, it is just as well, and of course it is more correct, to ask him what he communicated to Mr. Beecher in respect to his conversation with Mr. Woodruff, and there you have the whole matter.

Mr. Fullerton—I have the whole matter also, if your Honor please, in the question: "State what was said to you which you afterwards communicated to Mr. Beecher?"

Judge Neilson—I think you should take the other course.

#### FUN AT GEN. TRACY'S EXPENSE.

Mr. Fullerton—I will; I will acquiesce very cheerfully. [To the witness.] Now what did you state to Mr. Beecher which had been stated to you?

A. I said to Mr. Beecher that my partner, Mr. Woodruff, was very anxious that I should make some statement with regard to the Victoria Woodhull publication, inasmuch as many of his

friends and many of mine, or several of his friends and several of mine, had criticised my position in reference to the story, that they not only criticised me but they criticised the firm, for my relations to the story: and I said to Mr. Beecher that Mr. Woodruff recommended me, under the circumstances, to take counsel in the matter; and I said to Mr. Beecher that I had asked Mr. Woodruff whom he could recommend, and he said that he would recommend Mr. Tracy; and I said to Mr. Beecher that I thought Mr. Tracy was a good man to consult on the subject; that he had a good cool head on his shoulders, and I thought would give good advice; and I said to Mr. Beecher, "If you have no objection, I will consult with Gen. Tracy, but to consult with Gen. Tracy, and to get his best advice upon the subject, it will be necessary to tell Gen. Tracy the truth. If you have no objection, then, I will assent to my partner's wish, and consult with Gen. Tracy," and he said that he had no objection if I thought it was best, and I said that I did not see that I had any other course to pursue; my partner wanted me to do it, and I thought it was necessary to take advice, and that I did not know any better man to consult on the subject than Gen. Tracy. I informed Mr. Beecher afterwards; I said to Mr. Beecher afterwards that I had told my partner that I was willing to consult with Gen. Tracy, and that he had made an appointment with Gen. Tracy, and I had seen Gen. Tracy on the subject of the Victoria Woodhull story.

Q. In company with your partner? A. With my partner, yes, Sir; and I told him what transpired at that interview between Mr. Woodruff, Gen. Tracy and myself.

Q. Now, relate what you told him. A. I said to Mr. Beecher, "I told Mr. Tracy the truth of the matter; I told him the fact in the case as it was, that you had been guilty of sexual intercourse with Mrs. Elizabeth Tilton, and he said, in the presence of my partner, that if that was true it must be concealed at all hazards," and I said that Mr. Tracy said that although he did not recommend lying, this was one of the cases in which lying was justifiable. [Laughter.] And I said that my partner replied to that that he would not consent that I should publish a card with my name affixed to it denying that which was the truth; he would not allow that; and that Mr. Tracy had said, "Why can't Moulton and Tilton go to Europe for a couple of years?" I also informed Mr. Beecher afterwards, and said to him that we had had a consultation at our house—at my house—in my study, between Gen. Tracy, Mr. Woodruff and myself, and between Gen. Tracy, Mr. Woodruff, Mr. Tilton and myself, and that at that interview I told Mr. Tracy again the truth, and had laid before Mr. Tracy the letter of contrition.

Q. Of January, 1, 1870? A. January 1, 1870, yes, Sir; that I had laid before Mr. Tracy that letter.

Q. 1872? A. 1871, I mean; January 1, 1871; I said that I had told him the truth with regard to the whole matter, and that no conclusion at that interview was arrived at; that we had tried to devise a reply to the Victoria Woodhull story, but had not at that interview succeeded; and I told him that I had communicated the fact to Mr. Tilton, that I had told Gen. Tracy the fact in the case, and that Theodore

Tilton had denounced me for so doing, and had said to me that I had no business to reveal the guilt of Elizabeth to Mr. Tracy without his consent, and that I had pacified Mr. Tilton by telling him that I had considered it my duty to take the best advice I could on the question, not only for Mr. Beecher's sake—that I did not consult Mr. Tracy as Mr. Beecher's friend at all, particularly, but as the friend of all the parties, as a man capable of advising with reference to that which had better be done. I told him that after a while Theodore was willing to see Gen. Tracy, and that he went up a stair and did see Gen. Tracy in the presence of Mr. Woodruff and myself; and I told him that the first question that Mr. Tilton—the first sentence that Mr. Tilton, or about the first sentence that Mr. Tilton uttered, after the usual salutations between gentlemen was, "Mr. Tracy, I do not understand the etiquette of your profession, but as I understand it since these facts are to be laid before you, a part of which have been laid before you—or all the fact and part of the papers have been laid before you—I understand that you will not under any circumstances, in case Mr. Beecher and myself come into collision, act as his counsel;" and that Mr. Tracy had said, "Certainly not."

Q. What reply, if any, did Mr. Beecher say to this? A. Mr. Beecher said to me that he was glad that Theodore had assented to that conference, that he hoped some good would come out of it, but that he did not see himself what reply could be made, and that he considered, perhaps, that the policy of silence was the best for all concerned.

Q. Is that all that took place that you can now remember with reference to that branch of the case? A. I told Mr. Beecher that Mr. Tracy had said to Mr. Tilton in the presence of Mr. Woodruff and myself at that interview that the interest of all concerned demanded the denial of that story. That is all that I remember.

Mr. Evans—You mean of the Woodhull story? A. Of the Woodhull story; yes, Sir.

Mr. Fullerton—Then we will return to 1874 again and take up the narrative where we left it off. Do you recollect a meeting in the month of July of that year, where Mr. Beecher and yourself and Mr. Robinson were parties? A. You have reference to July the 5th?

Q. July the 5th? A. Yes; I remember that.

Q. State where that meeting occurred. A. Between Mr. Robinson, Mr. Beecher and myself?

Q. Yes, Sir. A. After Mr. Beecher and myself had left the house we walked through Remsen-st. around into Montague Terrace, and there met Mr. Robinson, and after some remarks which I do not distinctly remember, between Mr. Robinson and Mr. Beecher, Mr. Beecher put his hand over my shoulder and said, "Mr. Robinson, this is the best friend God ever raised up to a man. If it had not been for him I do not think I would be alive to-day."

Q. Which of the Mr. Robinsons? A. Mr. Jeremiah P. Robinson.

Q. State whether Mr. Beecher knew from you at that time that Mr. Robinson had been put in possession of these secrets?

A. Yes, Sir. I had told him that I had told both Mr. Woodruff and Mr. Robinson.

Q. Your two partners? A. Yes, Sir.

Q. Which Woodruff? A. Franklin Woodruff.

Q. Which Robinson? Jeremiah P. Robinson.

Q. When did you tell Mr. Beecher that you had thus communicated the secret to those two gentlemen? A. Oh! It was quite early, Sir; I don't remember.

Mr. Evarts—He did not use the word "secret."

The Witness—It was 1870, I think, I told him—1871, rather.

Q. That you told Mr. Beecher? A. Yes, Sir.

Q. And what did you tell him? A. I told him that my partners were very anxious to know what was going on; I told him that I had consulted with Mr. Robinson in the very beginning in regard to the letter of January 1, 1871, to Mr. Bowen.

Mr. Evarts—Tilton's letter? A. Yes, Sir; and that Mr. Robinson had advised very kindly that Mr. Tilton carry his own case entirely out of that letter, and not appear in it.

Mr. Fullerton—What did you tell Mr. Beecher you had told Robinson? A. I told him that I had told him the fact concerning his relation between Elizabeth Tilton and himself.

Q. What did you tell him that you had told Mr. Woodruff, your other partner? A. The same.

Q. Look at the letter now shown you and say in whose handwriting it is [handing witness a letter]? A. Mr. Beecher's, Sir.

Q. Was it received by you? A. Yes, Sir.

Q. And about its date? A. Yes, Sir.

Q. Before reading that letter I want to ask you whether at any time up to its receipt Mr. Beecher had said anything to the effect that you had failed to serve him faithfully or properly? A. No, Sir.

Q. Had he criticised in any way your conduct in the management of the affair in his behalf? A. No, Sir.

Mr. Fullerton [reading the letter]:

PRESKILL, July 7, 1872—Monday, 7 p. m.

MY DEAR FRANK: I have just arrived. I called Saturday evening to learn that you would not return till Monday. Can you come up Tuesday, or Wednesday, or Thursday? Let me know by letter or telegram. The trains are—a. m., 8, 9:10, 10, 10:45; p. m., 2, 4, 4:15, 5:30, 6:20, and 7. The 4 p. m. is express and good train; if you come in the afternoon you should allow 45 minutes from City Hall to reach Forty-second-st. station, and about one hour from your store.

I have not seen you since the card. I will take good care of you, and even if others don't think so much of you as I do I will try and make up. My vacation is begun; and am I not glad? Next week we expect company.

The drouth is severe—no real soaking since the last of May, and things are suffering; but yet the country is beautiful. The birds are as good to me as David's harp. I only need some one to talk to, and that one is you.

Come when you can, and, coming or going, believe me, faithfully and affectionately yours,  
H. W. B."

(Marked "Exhibit No. 35.")

Q. I want to ask you what card Mr. Beecher referred to in that last letter: "I have not seen you since the card?" A. The card in *The Brooklyn Eagle*, I think it refers to.

Q. That letter bears date July 7th, 1873? A. The card in *The Brooklyn Eagle* of June the 2d, I think it refers to.

Mr. Fullerton—I want to get at the number of that so as to

connect it with that letter. Mr. Pearsall can give you the number of that. It has been read in evidence.

Mr. Pearsall—A card in *The Eagle* of June, 1873?

Mr. Fullerton—Yes, Sir.

Mr. Pearsall—"No. 25," *The Eagle* card, June, 1873.

Mr. Evarts—June 7, 1873. It has not been read yet.

Mr. Fullerton—A copy of it has been read.

Mr. Evarts—The proposed card has not been read. You commenced reading one, apparently from *The Eagle*, and then a question arose.

Mr. Beach—The card as published was read.—June 2, 1873.

Q. Was that card proposed by any one, that you now hold in your hand? A. Yes, Sir; by Theodore Tilton.

Q. Did it come into your possession at the time? A. Yes, Sir.

Q. Under what circumstances? A. From Theodore Tilton.

Q. Did you show it to Mr. Beecher? A. Yes, Sir; I showed it to Mr. Beecher.

Q. And what did he say in regard to it? A. This was the card that he said would kill him if it was published.

Q. Was there any card published just prior to July, 1873, when he wrote you the letter, in which he says, "I have not seen you since the card?" A. Yes, Sir; it was a card with reference to Mr. Bowen's visit to Victoria Woodhull with Mr. Claflin.

Mr. Fullerton—That connects it; that's what I want.

The Witness—Yes, Sir.

Mr. Evarts—We do not understand the card of July 7th, '73, published in *The Eagle* has been read; you commenced reading it.

Mr. Fullerton—Certainly; that is right.

Mr. Fullerton—Look at the paper now shown you, and say in whose handwriting it is? A. Mr. Beecher's.

Q. Addressed to you? A. Yes, Sir.

Q. And did you receive it about the time of its date? A. Yes, Sir.

Mr. Evarts—Is this the letter of July 9?

Mr. Fullerton—Yes, Sir; the letter of July 9, I propose to read.

Mr. Evarts—Try to get the number of July 7.

Mr. Shearman—The stenographer has either omitted some paper which we have entered as an exhibit, or we have put something in as an exhibit which the stenographer has not.

#### CALMING INFLUENCE OF A VACATION.

Mr. Evarts—Well; we will have to correct that somehow.

Mr. Fullerton—[Reading].

THURSDAY EVENING, 9th July, 1873.

MY DEAR FRANK: Why not come on Saturday and spend Sunday? You must get your comfort out of nature and me, and not notice any withholding of countenance elsewhere. I preach in the village in the morning, but you can lie on the hillside—in peace.

The afternoon and evening will be open for all gracious influences which forests hide or heavens distill. The birds are not yet silent, though their pipes are somewhat feebler. Flowers are burnt, grass withered, grain reapt, grapes not ripe, strawberries gone, blackberries not come, raspberries in good condition and abundant, also water-melons, and, besides, a demi-john of—water!

I want to see you and show you a letter, etc. Do you hear what Bowen is doing? Will he publish? Find out if anything is on hand. Truly yours,  
H. W. B.

Send me a line Friday if you shall come, so that I may meet the train; otherwise pay your own hack hire."

[Letter marked "Exhibit No. 36.]"

Q. [Another paper handed to witness.] In whose handwriting is the letter now in your hand? A. Mr. Beecher's.

Q. Addressed to you? A. Yes, Sir.

Q. Did you receive it about the time of its date? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence. [Reading:]

MY DEAR FRANK: I looked for you on Saturday and received your note this morning—Monday.

Howard writes that T. T. has sent to Mr. Halliday a note announcing that he did not consider himself for two years a member of the church.

There is also a movement to let the other party go to trial, and also to give him an avoidance of trial by some form of letter, I don't know what. I have not been consulted. I do not mean to meddle. It is vacation. Governor Claflin and wife, of Massachusetts, will be here this week. I am getting at my writing again—at work on my book. I despaired of finishing it. I am more encouraged now. For a thousand encouragements—for services that no one can appreciate who has not been as sore-hearted as I have been, for your honorable delicacy, for confidence and affection—I owe you so much that I can neither express nor pay it. Not the least has been the great-hearted kindness and trust which your noble wife has shown, and which have lifted me out of despondencies often, though sometimes her clear truthfulness has laid me pretty flat.

I mean to run down some day. Will let you know beforehand, that I may not miss you, for, to tell the truth I am a little heart-hungry to see you: not now, because I am pressed, but because I love you, and will ever be faithfully yours,  
HENRY WARD BEECHER.

Peekskill, July 14, 1873.

[Marked "Exhibit No. 37.]"

Q. [Paper handed to witness.] In whose handwriting is the paper you now have? A. Mr. Beecher's.

Q. To whom is it addressed? A. To me.

Q. Did you receive it about the time of its date? A. I did.

Mr. Fullerton—I offer it in evidence. [Reading.]

FRIDAY NOON, October 3, 1873.

MY DEAR FRANK: I have this morning got back sound and fresh, and want to send my love to you and yours. I should see you to-morrow, and shall be out of town till evening. God bless you, my dear old fellow!  
H. W. B.

[Letter marked Exhibit No. 38.]

Q. [A paper being handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Q. Well, I won't ask to whom it is addressed. Did you receive it from him? A. I did. Yes, sir.

Mr. Fullerton [reading]—25, '73.

MY DEAR VON MOLTKE: I have seen Howard again. He says that it was not "fr." [an abbreviation for "from," I suppose,] from Theodore that Glukison got the statement, but from Carpenter. Is he reporting that view? I have told Claflin that you would come with Carpenter if he could be found, and at any rate by 9 to-night (to see Storrs), but I did not say anything about Storrs. I sent Mr. Cleveland with my horse and buggy over to hunt Carpenter. Will you put Carpenter on guard about making

such statements. From him these bear the force of coming from headquarters. Yours truly and ever.

H. W. BEECHER.

(Marked "Exhibit No. 39.")

Mr. Beach—It is "25, '73"—marked "May 25th, 1873!" A That is the date of it, Sir.

Mr. Fullerton—Can you tell when the Von Moltke letter was received? A. May 25th, 1873.

Q. Did you ever see the paper before which you now have in your hand? A. Yes, Sir.

Q. From whom did you receive it? A. From Mr. Beecher.

Q. When? A. About the time that it was written; I forge the date. The date is October 24. I fixed the date of it at on time. I think it was in 1872 or '3, somewhere there. I can fix the date after.

Q. Where were you when he delivered it to you? A. In my house.

Q. What did he say at the time that he delivered that letter to you, in regard to it? A. He said I had better take it: he didn't want any such letter around him.

Q. Did he give any reason? A. It was a dangerous letter to have around.

Q. Do you know the handwriting? A. The handwriting of Mrs. Morse.

Mr. Evarts—Well, this is a letter from Mrs. Morse, addressed to Mr. Beecher, and handed by him to Mr. Moulton. Of course it goes no further in evidence than the fact that such a letter was written by her and received by him.

Mr. Fullerton—Yes, Sir. It is as follows:

"October 21st, 1871.

"MY DEAR SON: You must pardon me for the request I now make. Can you help me in any way by the 1st of November? I am still alone, with no prospect of any one, with a rent of \$1,500 and an income of a thousand; the consequence is, with other expenses, I shall be by the 1st of the month terribly behind hand, as I agreed to pay in monthly installments. I know full well I have no claim upon you in any way, excepting your sympathy for my lonely and isolated condition. If I could be released from the house, I should gladly do so, for I am convinced it is too far out; all who have been to see my rooms say so. My darling spent most of yesterday with me. She said all she had in the way of money was \$40 per week, which was for food and all other household expenses aside from rent, and this was given her by the hands of Annie Tilton every Saturday. If you know anything of the amount it takes to find food for eight people, you must know there is little left for clothing. She told me, he (T.) didn't take any meals home, from the fact she could not get such food as he liked, to nourish his brain, and so he took his meals at Moulton's. Just think of that. I am almost crazy with the thought. Do come and see me. I will promise that the secret of her life as she calls it, shall not be mentioned. I know it is hard to bring it up, as you must have suffered intensely and we all will I fear, till released by death. Do you pray for me? If not, pray do. I never felt more rebellious than now, more in need of God's and human help. Do you know I think it strange you should ask me to call you son? When I have told, darling, I felt if you could in safety to yourself and all concerned, you would be to me all this endearing name. Am I mistaken?—Mother."

[Marked "Exhibit No. 40.]"

Mr. Evarts—Is there a date on that last letter—a date by the writer?

Mr. Fullerton—I don't know; if there is, I read it. Yes, Sir, October 24, '71, is written.

Mr. Beach—No, not on the letter itself.

Mr. Everts—How do you fix the 1871?

Mr. Fullerton—Do you know when you received that letter? A. I fix the date of the letter, Sir—I cannot fix it in any other way than by referring to the time when Annie Tilton—when Mr. Tilton was giving through Annie Tilton to his wife, an allowance of \$40 a week. I think it was 1871, Sir. I can fix the date before I get through with my testimony, positively.

Q. [Another paper handed to witness]: Where did Mr. Tilton reside in October, 1871? A. Livingston street.

Q. One-hundred-and-seventy-four? A. Yes, Sir.

Q. And where did Mrs. Morse reside at that time? A. I don't remember the number of the house, nor where.

Q. How? A. I don't remember just at present. Sir, where.

Q. Did she reside with him? A. I don't think she did; no, she did not reside with him.

Q. What paper have you in your hand now? A. A letter from Mr. Beecher, Sir.

Q. To whom? A. To me.

Mr. Fullerton—[Reading] Saturday, September, 20th, 1871. [It is out of order, and I am sorry it was not put in its order.] My Dear Friend: I feel bad not to meet you. My heart warms to you and you might have known that I should be here if you love me as much as I do you. Well, it is an inconstant world. Soberly, I should be glad to have you see how hearty I am; ready for work and hoping for a bright year. I have literally done nothing for three months, but have gone to grass, and things seem almost strange to come back among men and see business going on in earnest. I will be here on Monday at 10.

I am, my dear Frank, truly and gratefully yours,

HENRY WARD BEECHER.

[Letter marked "Exhibit No. 41.]"

Q. (A paper handed to witness.) In whose handwriting is that letter? A. Mr. Beecher's.

Q. Was it addressed to and received by you? A. It was.

Mr. Fullerton (reading):

BROOKLYN, Tuesday evening,  
2d January, 1872. }

MY DEAR MOULTON: 1. I send you V. W.'s letter to me, and a reply, which I submit to your judgment. Tell me what you think. Is it too long? Will she use it for publishing? I do not wish to have it so used. I do not mean to speak on the platform of either of the two suffrage societies. What influence I exert I prefer to do on my own hook, and I do not mean to train with either party, and it will not be fair to press me in where I do not wish to go. But I leave it for you. Judge for me. I have leaned on you hitherto, and never been sorry for it.

2. I was mistaken about the *Ch. Union* coming out so early that I could not get a notice of *G. Age* in it. It was just the other way, to be delayed, and I send you a rough proof of the first page and the *Star* article.

In the paper to-morrow a line or so will be inserted to soften a little the touch about *The Liberal Christian*.

3. Do you think I ought to keep a copy of any letters to V. W.? Do you think it would be better to write it again and not say so much? Will you keep the letter to me and send the other if you judge it wise? Will you send a line to my house in

the morning, saying what you conclude? I am full of company. Yours truly and affectionately,  
H. W. B.

Q. Now, what letter was it that was inclosed to you when that was received? A. A reply to Victoria Woodhull's letter asking that he preside.

Q. "I send you V. W.'s letter to me," What letter was that? A. Victoria Woodhull's letter asking him to preside at a meeting, or to be present at a meeting.

Q. And he inclosed to you, as I understand it here, his reply to that letter? A. Yes, Sir.

Q. What did you do with the letter and the reply? A. I replied to the letter.

Q. How long was that prior to the meeting? A. To the Saturday meeting?

Q. Yes. A. I forget how long it was prior.

Q. Well, was it a long or short time? A. Not a very long time.

Q. Some days or weeks? A. A few days, I think, or weeks; a few weeks. Will you let me look at the letter, Sir, please? I received with this letter also the rough proof of the first page of *The Christian Union*.

Q. The proof of the article? A. Yes, Sir.

Mr. Everts—What is the number of this letter of January 2, 1872, just read?

Mr. Pearsall—I have not had it marked.

[Letter marked Exhibit No. 42.]

Mr. Fullerton (paper handed to witness)—In whose handwriting is that letter? A. Mr. Beecher's.

Q. Addressed to you? A. It is, Sir.

[Letter submitted to Mr. Everts.]

Mr. Fullerton (reading):

SUNDAY MORNING February 16, 1873.

MY DEAR FRANK: I have tried three times to see you this week, but the fates were against me. I wanted to store up a little courage and hopefulness before my three weeks' absence. I revisit my old home and haunts, and shall meet great cordiality. I inclose check subject to your discretion. Should any accident befall me, remember how deeply I feel your fidelity and friendship, your long-continued kindness and your affection. With kindest remembrance to Mrs. M., I remain, yours always,  
H. W. BEECHER.

Q. What check is therein referred to? A. What is the date of it, Sir?

Q. February 16, 1873? A. I do not have any record of it here, Sir; there was a check inclosed in it; I thought I had it on this memorandum. I have not.

Q. Do you recollect what check it was? A. No, I don't; no just now.

Q. Well, do you know what the check was for? A. I suppose it was for Bessie Turner's school bill; I don't remember what it was for; I can find out.

Q. [Paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton (reading)—

MY DEAR FRANK: My papers are all here; and it would be far more convenient to have you here, if you are not too tired.

Yours, H. W. BEECHER.

[Marked "Exhibit No. 44."]

Q. [Paper handed to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton—[Reading]:

FRIDAY MORNING, July 10, 1874.

MY DEAR FRANK: Can you be seen this morning, and if so, when and where? Any time after 10 would suit me best; but *any other* hour I will make do. I came into town last night. Yours ever,  
H. W. B.  
[Marked—"Exhibit No. 45."]

Q. [Pass him No. 35.] In whose handwriting is that letter? A. Mr. Beecher's.

### MR. HALLIDAY INQUISITIVE.

Mr. Fullerton—[Reading:]

SUNDAY, a. m.

MY DEAR FRIEND: Halliday called last night. T's interview with him didn't satisfy, but disturbed. It was the same with Bell, who was present. It tended directly to unsettling. Your interview last night was *very beneficial* and gave confidence. This must be looked after. It is vain to build if the foundation sinks under every effort. I shall see you at 10:30 to-morrow, if you return by way of No. 49 Remsen-st.

Q. Now, who was Mr. Halliday, there spoken of? A. The assistant pastor of Plymouth Church.

Q. Do you know anything about this interview with Mr. Tilton, spoken of there? A. I knew that Mr. Tilton had had an interview with Mr. Halliday.

Q. And who is the Bell that is spoken of in this letter? A. He was either then or formerly superintendent of the Bethel School, a member of Plymouth Church.

Q. The letter states, "your interview last night was very beneficial and gave confidence." With whom did you have an interview? A. With Mr. Halliday.

Q. Mr. Halliday called upon you? A. Yes, Sir.

Q. What was the subject of the interview? A. The subject of the interview was—

Mr. Evarts—Did you report it to Mr. Beecher? A. Oh yes, Sir; I talked with Mr. Beecher about it afterward (laughing).

Mr. Fullerton—Answer my question now. What was the subject of the interview between you and Mr. Halliday? A. I had a conversation, Sir, previous to that—previous to my conversation with Halliday—with Mr. Beecher, in which he said that he would like to have me see Mr. Halliday, and that he would probably send Mr. Halliday to me with reference to some trouble in the church among the deacons—with reference to the stories that were going around about him and which were being considered there; and I told him that he had better send Halliday; and Halliday did come and I saw him.

Q. And that was the subject of your interview? A. Yes, Sir. Do you want to know what I said to Mr. Halliday and repeated to Mr. Beecher?

Q. Well, tell what that interview was. A. Tell it in the exact words, Sir?

Q. As near as you can recollect, give us the substance of it. A. Yes. I said to Mr. Halliday that I thought the

deacons were in pretty poor business, digging up differences that had been settled as between Mr. Beecher and Mr. Tilton; that I thought they ought to be in better business than digging out scandals. I told Mr. Halliday, in substance, and repeated it afterward to Mr. Beecher, that the stories had originated with Bowen, and that when he had been asked for the truth—when he had been asked for the evidence to support the stories he had—had n't been forthcoming with the truth; and, I believe, I told him that Mr. Beecher was guiltless; and, I told Mr. Beecher, before I saw Halliday, that I would satisfy Halliday if he would send him to me; and it was distinctly understood between Mr. Beecher and me—

By Mr. Evarts—Well, what passed?

Mr. Fullerton—Yes; what passed? A. What passed between Mr. Beecher—

Q. Yes, Sir; so that it was distinctly understood? A. I said I certainly should not tell the facts to Mr. Halliday, and the conversation that I had with Mr. Halliday I repeated to Mr. Beecher, and Mr. Beecher thanked me for it.

[Letter marked "Exhibit No. 46."]

Q. [Paper handed to witness.] In whose handwriting is that paper? A. Mr. Beecher's.

Q. (Handing paper to witness) In whose handwriting is that paper? A. Mr. Beecher's.

Mr. Fullerton—I will read it.

Sunday Night.

MY DEAR FRIEND: 1. *The Eagle* ought to have nothing to-night. It is that meddling which stirs up our folks. Neither you nor Theodore ought to be troubled by the side which you served so faithfully in public.

2. The deacons' meeting, I think, is adjourned. I saw Bell. It was a friendly movement.

3. The only near next danger is the women—Morrill, Bradshaw, and the poor, dear child.

If papers will hold off a month we can ride out the gale and make safe anchorage, and then when once we are in deep, tranquil waters, we will all join hands in a profound and genuine *Laus Deo*, for through such a wilderness only a Divine Providence could have led us undevoured by the open-mouthed beasts that lay in wait for our lives.

I go on the 12 train after a sleepless night. I am anxious about Theodore's interview with Halliday. Will you send me a line Monday night or Tuesday morning, care of H. P. Kennard, Boston, Mass.?

I shall get mails there thl Friday.

[Copy letter marked "Exhibit No. 47."] [Handing letter to witness.] In whose handwriting is that letter? A. Mr. Beecher's.

Mr. Fullerton—I will read it.

July 13, 1874.

MY DEAR FRANK: I will be with you at 7, or a little before. I am ashamed to put a straw more upon you, and have but a single consolation—that the matter cannot distress you long, as it must soon end; that is, there will be no more anxiety about the future, whatever regrets there may be for the past. Truly yours and ever,  
H. W. BEECHER.

[Copy letter marked "Exhibit No. 48."]

A MUTUAL APPROVAL OF MOULTON'S STATEMENT.

Q. Was there any new trouble threatened at any time? A. Any what?

Q. Any new trouble threatened at that time? A. What is the date?

Q. July 13, 1874. He says: "I am ashamed to put a straw more on you." Do you know what that straw was? A. We were consulting in regard to the reply he should make to the Bacon letter before the Investigating Committee.

Q. When was that Investigating Committee appointed, or, rather, when did you first hear of it? A. July 5 was the first day I heard of it, Sir.

Q. Did you hear of it from Mr. Beecher? A. Yes, Sir; he told me it was to be appointed, that there was an investigating Committee to be appointed, and he would have the naming of the members of it.

Q. Go on and state what was said on that subject.

Mr. Evans—Give us the date again.

The Witness—July 5, 1874.

Mr. Fullerton—Give us the whole of that interview, as well as you can? A. On July 5, after he had told me at my house that he intended to follow the policy of silence, or that he did follow the policy of silence I indicated; I walked out with him and he told me that the matter had to come before an investigating Committee, and I asked him if he could tell me the names and he said he could, and he mentioned over some of the names. I told him I thought it was a mistake to have an investigating Committee, but that we would try to get along with even that, and I told him that I thought I should take, or probably I should have further counsel in the matter, and he said, "Who do you mean?" I said: "Gen. Butler: I have received a letter from him asking that there be silence." He said: "Yes, I have heard something about that. A friend of him, or a Mr. Bowen in Washington, saw Gen. Butler, and he advised silence, and this Mr. Bowen told his father, and his father told me." He said he did not believe much in the moral sense of Gen. Butler but he might be a good counsellor, because he considered him a wise man, and that at all events his advice was good for silence, and that is all that transpired at that interview.

Q. You omitted to state what he said upon the subject of naming the Committee? A. I did state that he said he would have the naming of the Committee; did I not so state.

Mr. Pryor—Yes, Sir.

Mr. Fullerton—Do you recollect anything farther at that interview? A. No, Sir; he didn't tell me at that interview. I was going to say he told me at that interview that he sent Gen. Tracy to see Gen. Butler, or

that he had been to see Gen. Butler, but it was not at that interview.

Q. Did he state anything at that time, or at any time previous, in regard to the origin of the Committee, how it came about that the Committee was appointed, who suggested it, and for what purpose? A. He said that some of his people in the church granted a committee. That is all that was said about it, I believe, and that he thought it could be got along with very well. He said that, I remember.

Q. How soon after the receipt of this letter, expressing regret that another straw was to be added to your load was it that you saw Mr. Beecher? A. On July 13.

Q. On the same day? A. Yes, Sir.

Q. What occurred at that interview? A. On July 13 I had replied to his letter that I was going down to his Committee on July 13 to make a statement in accordance with their invitation, and that I should be at home until a certain hour; my letter that I wrote to him will state what that hour was; I think it was 7 o'clock; and he came around, and I read to him a statement of what I intended to make to the Committee.

Q. Who were present when that was read to him? A. I read my statement to him alone in my study.

Q. Was that statement afterward read to the Committee? A. That statement was afterward read to the Committee; before I went down to the Committee I read the statement to Theodore Tilton, who was at the house also.

Q. What did Mr. Beecher say in regard to the statement when you read it to him? A. I am about to connect Theodore Tilton with Mr. Beecher in that matter: Mr. Beecher went into the room over the parlor, where my wife was, and I said to him, "Mr. Beecher, you consider this statement honorable for me to make?" and he said, "Yes, I do;" and I told him that I had read the statement to Theodore Tilton, and he also concurred in it, and the reason that Mr. Beecher and Mr. Tilton did not meet on that day was because Mr. Beecher said to me that he did not want to see Mr. Tilton.

Q. Now, if you will point out that statement? A. That his presence was always a rebuke to him, and unnerved him, and it was useless for him to attempt to reply to him when he spoke to him as against the facts—he could not do it—he didn't want to see him.

Q. (Handing book to witness.) See if that is the statement you refer to? A. This says August 5.

Q. That is not it, then? A. No, Sir.

Q. It was July 13? A. It was July the 13th. [Addressing Mr. Tilton.] Can you find it in there, Theodore—July 13?

Mr. Fullerton—If your Honor please, I cannot find in this unpagged book the statement which I desire to put in next, and the hour of adjournment having arrived, I propose to adjourn now.

Mr. Evart.—If your Honor please, we had a substituted paper yesterday which we might as well have now.

Judge Neilson—Has he the original of the paper?

Mr. Fullerton—I have it.

Mr. Evart.—It is the proposed card Mr. Tilton was going to publish, embodying what is now called the letter of contrition.

Judge Neilson—And also *The Union* newspaper?

Mr. Evarts—Yes, Sir.

Judge Neilson—They can bring it in on Monday morning.

Mr. Fullerton—I have found this statement, if your Honor please.

Judge Neilson—Well, we will perfect that the first thing on Monday morning.

Mr. Evarts—We will go on with that on Monday, if your Honor please. We have got through, and put up our papers.

Judge Neilson to the Jury—Gentlemen, you recollect the admonition made to you, and repeated with the concurrence of the counsel on both sides, requesting you not to read about the case, or converse with any person about it, or about the details of it; also my request that if any person should approach you to attempt to speak upon the subject in your hearing with a view to influence you it is your duty to name that person to me. We will now adjourn to Monday morning, inasmuch as the engagements of the learned counsel prevent their attending to-morrow, and it will need great circumspection and prudence upon your part to avoid being communicated with. That prudence will, perhaps, be stimulated by a becoming sense of the responsibility which rests on you. I trust you will not be wanting in attention to it. There seems to be an incongruity, however, in asking the jury not to read about the case, if the newspapers, which happily find their way everywhere, like leaves in Autumn, and go into every household, and are read by the members of the household, comment on the case and discuss it in editorials and expressed opinions, and in view of that I have thought proper to suggest to the gentlemen present connected with the press to convey my expression of hope to the editors that they will not, during the progress of the trial, discuss the merits of it or of any particular phase of it. There seems to be a propriety in it and a necessity for it. I want to say to the audience, which is so large to-day, that it has been very agreeable to me indeed to observe the order and the patience with which the proceedings have been allowed to proceed. The jury will now pass out with the officer. Return, gentlemen, and be in your places on Monday morning at 11 o'clock.

The Court then broke up for the day.

## SIXTH DAY'S PROCEEDINGS.

### OPENING OF THE CROSS-EXAMINATION.

CLOSING PARTS OF THE DIRECT EXAMINATION—THE PROPOSED STATEMENTS WHICH WERE FINALLY WITHHELD—WHAT WAS SHOWN TO DR. STORRS—EX-JUDGE PORTER'S FIRST QUESTIONS.

The direct examination of Francis D. Moulton in the Tilton-Beecher suit was closed on Monday, Jan. 18, and the cross-examination was begun by ex-Judge Porter. The concluding portions of his direct testimony related mainly to the proposed statements which were prepared prior to Mr. Tilton's appearance before the Committee. Mr. Tilton's counsel contended that Mr. Beecher's disposition to smother an investigation and to compromise the case by the substitution of an equivocal for a full statement of facts was a proof of his guilt. The statement which Mr. Tilton made for presentation to the Rev. Dr. Storrs was read, the defense suddenly withdrawing an objection by which they might have excluded it.

### MR. MOULTON UNDER FIRE.

If Mr. Moulton had been dreading the ordeal of cross-examination through which he was to pass, the simplicity of the first questions must have reassured him, for they related to his age and business. Ex-Judge Porter has an erect, soldier-like figure, black hair and mustache, ruddy cheeks and pleasant though positive features. His spectacles are rarely off his face, although he has a habit of pushing them from their normal position to the higher plane of the forehead. When he rises he folds his arms across his breast, and with a sidelong glance at the witness puts the question in a tone which is as soft as it is deep. His manner soon puts a witness off his guard. His courtesy is never lost for an instant. Even when his voice swells with emotion or with repressed indignation there is a return to the measured tones of civility before the interrogation point is reached. The contrast between him and Mr. Evarts in cross-examination is very marked. Mr. Evarts had an opportunity last week for disconcerting Mr. Moulton and his method was very different from his colleague's. The questions dropped from his lips thick and fast, and the intensity of his manner, the earnestness of his mien, and the undertone of scorn in his voice combined to heat and agitate the witness. Ex-Judge Porter carries the manners of the drawing-room into court. He neither browbeats nor worries his witness. His manner, though earnest and impressive, does not strike



terror into the soul. But the witness who fancies that he is to escape from the rack because the inquisitor's voice is soft and caressing, and his manner smooth and cordial, soon finds that there is a grip of iron under the velvet paw.

Mr. Moulton, through protracted experience in the witness chair, has lost much of the nervousness which characterized his first appearance before the audience; but some of it returned when the fine irony of ex-Judge Porter's first reference to the functions of a "mutual friend" drew a smile to the faces of the auditors. Ex-Judge Porter's method of cross-examination may be termed cumulative in its effect. He leads up to a vital point through a long series of minor questions. His first point was reached after a hundred questions had been asked. The vital question was substantially this: "The inception of your friendship for the Rev. Henry Ward Beecher was on that stormy night when you heard that he debauched your friend's wife, and its termination was at the time when you refused him access to the letters by which he wished to defend himself against a foul charge?" This was the last round in a long ladder, and when it was reached every one in court saw how effective was the climax.

Mr. Moulton insisted at the outset that he had never denied to Mr. Beecher or to his agent, Gen. Tracy, access to the scandal literature during the early stages of the Plymouth Church investigation. "Be kind enough to refresh your recollection," said the counsel in his blindest manner, handing to the witness a book containing the statements of the various actors in the controversy. Mr. Moulton then described an interview which he had last Summer with Gen. Tracy, his voice rising as it always does when he refers to Mr. Beecher's counsel. Ex-Judge Porter referred to the second demand for the papers intrusted to Mr. Moulton, and the reply to Mr. Beecher's letter was read with splendid emphasis, sidelong glances at the witness accompanying the fine irony of the counsel's manner. Mr. Moulton evidently was nettled by the manner in which the business-like communication which he dashed off last Summer on his return from Narragansett Pier was interpreted, and his irritability soon manifested itself. The question was asked: "Were you the mutual friend of both these men at that time?" "As friendly to one as to the other," he rejoined. "Had he ever wronged you?" "Except when he asked me to lie for him." "You did lie for him?"

"Yes." "We have your word for it," said ex-Judge Porter, with freezing sarcasm.

Mr. Moulton's next reply was that he had furnished no copies of any of the documentary evidence to Mr. Tilton prior to the hour when Mr. Beecher demanded the letters. The retraction which Mr. Beecher surrendered to him was not dictated to Mr. Tilton, and he did not know that Mr. Tilton had copies. "Did you ever dictate to Mr. Tilton?" asked the counsel in his smooth manner. "I swear that I did not," was the quick reply. Mr. Tilton and his counsel glanced at each other uneasily at this point, for Mr. Moulton was on dangerous ground, inasmuch as Mr. Tilton, in his examination before the Investigating Committee, had admitted that he had taken shorthand notes of all the letters which appeared in his first statement, and which, he said, Mr. Moulton read to him. Then again, Mr. Moulton himself on Thursday last, had, in answer to Mr. Evarts's questions, acknowledged that he had dictated from memory to Mr. Tilton the letter of resignation which Mr. Beecher had shown to him. Mr. Beach soon sprang to his feet to object to the reception of Mr. Beecher's challenge to Mr. Moulton to produce the letters which had been intrusted to him in confidence. The debate which followed between him and Mr. Evarts was a keen, polished argument on each side, Mr. Evarts claiming that this letter marked the date of Mr. Moulton's hostility to Mr. Beecher. Mr. Evarts was finally compelled to content himself with an exception. This debate gave Mr. Moulton breathing space, and he answered the next questions relating to his slight acquaintance with Mr. Beecher before Dec. 30, 1870, with much composure and even with a smile. The rounds of the ladder were now all in place save the last. This was the question quoted earlier in this recital, and when it was asked his auditors perceived the outlines of a perfect climax, and significant glances were exchanged in many parts of the court-room. Mr. Moulton's tone changed in an instant, and during the remainder of the session his manner was quiet and subdued.

There were only a few minutes in reserve, and ex-Judge Porter contented himself with the point which he had made, although he filled up the hour with unimportant questions in relation to Mr. Moulton's intimate friendship for Mr. Tilton.

#### THE LEGAL BY-PLAY.

Ex-Judge Fullerton opened the day's proceedings with a brilliant stroke. Mr. Moulton testified that the short statement which he made before the In-

investigating Committee was regarded by Mr. Beecher as perfectly honorable. Mr. Evarts objected to the reception of the statement, and after a sharp passage of argument, in which Mr. Beach, ex-Judge Fullerton, and Mr. Evarts took part, the Judge ruled it out. Mr. Evarts was perfectly willing to admit so harmless a document if its pertinence could be shown, and ex-Judge Fullerton claimed that Mr. Beecher had expressed approval of Mr. Moulton's action, and by discountenancing the investigation which he was calling for in public had admitted in private his own guilt. When the Judge's decision was rendered, Mr. Beach in a whisper to his associate advised the introduction of certain parts of the statement. Mr. Evarts protested vigorously against the reading of parts of the statement without discrimination, and when the tactics of his opponents proved successful he made no effort to conceal his disgust.

A quick retort which Mr. Evarts made to ex-Judge Fullerton was an incident of the session. Mr. Moulton had been saying that Mr. Beecher, immediately after the appointment of the Committee, had agreed to postpone its sessions in the hope that his friend would induce Mr. Tilton to keep back the truth. Mr. Moulton had said to him, "You can do nothing more unless you confess the crime." Mr. Beecher said, "It will ruin me and kill Mr. Tilton." Mr. Evarts here raised a technical objection in his methodical way, and ex-Judge Fullerton, with a sigh which seemed to indicate that his opponent was altogether too "fussy" about some things, exclaimed, "Oh! well, we'll gratify you!" "No," said Mr. Evarts, with dignity, "you will satisfy the law."

The proposed statement which Mr. Beecher wrote Mr. Tilton would not make because, as he told Mr. Moulton, he did not care to appear the victim of a hallucination. Mr. Beecher said that it would kill him to tell the whole truth to Mr. Sage or to any member of the Committee. After Mrs. Tilton appeared before the Committee, Gen. Tracy described her manner with so much pathos that Mr. Tilton's rage cooled, and he consented to write a new statement, which he showed to Gen. Tracy.

Mr. Moulton's recital of the circumstances under which Mr. Beecher paid him \$5,000 for *The Golden Age* without the knowledge of Mr. Tilton was given very cautiously and quietly until he came to the interview with Gen. Tracy, in which he was advised to tell Mr. Tilton that the paper had been kept alive by Mr. Beecher. Gen. Tracy had attempted to in-

timidate the witness, and Mr. Moulton's tone again became declamatory in resenting such a liberty.

The admission of the statement that was shown to Dr. Storrs by Mr. Carpenter and Mr. Tilton surprised every one. The defense had a ruling in their favor and could have kept out Mrs. Tilton's short statement, but for reasons the force of which will appear when their own evidence is offered, suddenly withdrew their objections.

Mr. Moulton in correcting his own testimony gave Mr. Evarts a rare opportunity for annoying his opponents and confusing the witness just as the cross-examination was opening. Mr. Evarts had altogether the best of this passage at arms, and ex-Judge Fullerton had recourse to repartee to conceal his discomfiture. Mr. Evarts had used the expression, "exploded conversation," and his opponent rejoined, "Mr. Moulton did not explode so frequently as you do!"

Mr. and Mrs. Beecher were absent morning and afternoon. Mrs. Tilton and her Quaker friend, Mrs. Field, were present. The audience was smaller than on previous days. There were few members of Plymouth Church in attendance, and there were no bouquets in the room.

#### THE PROCEEDINGS.

All the principals in the great scandal suit were in their places on the opening of the court on Monday, which was the eleventh day of the trial. Ex-Judge Morris has so far recovered his health as to be able to resume his duties in the case. The direct examination of Mr. Moulton was resumed, the first part being in reference to his appearance before the Investigating Committee.

#### BEECHER INSINCERE IN APPROVING INVESTIGATION.

Francis D. Moulton was recalled, and the direct examination resumed.

Mr. Fullerton—Look at the paper now shown you, and see whether that is your first statement to the Committee of Investigation [handing witness a paper]? A. It is, Sir.

Q. When was it prepared? A. Prepared for reading to the Investigating Committee of Plymouth Church, July the 18th.

Mr. Evarts—If your Honor please, how is this material? This is no part of any *res gesta* that I know of. The paper was introduced to the attention of the witness as we were about adjourning. Now his attention is called to it. It is what is called the first statement?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—It is called the first statement, not the long one.

Mr. Fullerton—The first statement.

Mr. Evarts—The first statement which Mr. Moulton prepared, as he has just now stated, in reference to some pending inves-

tigation that was in progress. Of course that is not evidence on its face. It has nothing to do with this issue.

Judge Neilson—The only possible suggestion that occurs to me in favor of its being evidence is that Mr. Beecher approved its use of it.

Mr. Evarts—That will appear afterwards, I suppose. If it is intended to show that it is Mr. Beecher's statement, then we can understand that it is evidence against Mr. Beecher.

Mr. Fullerton—The gentleman's objection is premature. I have not offered the statement yet in evidence, nor have I given all the preliminary proof which I design to give before I offer it in evidence. If that preliminary proof is insufficient when the offer is made, then of course the gentleman can properly object.

Judge Neilson—It appeared that you were about to offer it; I thought you were and so did the counsel, I suppose.

Mr. Fullerton—I am about to offer it, Sir, but I have not yet offered it.

Judge Neilson—If I see an opportunity to narrow the circle of proof I should be very glad to do it, if I can do it properly.

Mr. Fullerton—Yes, Sir; but I don't want to close the circle until the proof is in, so as to shut it out.

Q. What did you do with the statement before you went before the Committee with it? A. Read it to Mr. Beecher.

Q. Where? A. At my house in Remsen-st.

Q. Any one else present besides yourself and Mr. Beecher? A. Not when I read it to him; no, Sir.

Q. When was it read to him? A. Read to him on the afternoon of the 13th, toward evening.

Q. State the conversation between you and Mr. Beecher at the time of reading it? A. I said to him, "Mr. Beecher, I have an invitation to appear before your Committee to-night, and I will read to you the statement which I intend to make there, and if it meets with your approval I should like to have you say so." I read it to him, and he said he thought it an honorable statement, and it met with his approval; he concurred in it—in the propriety of it, so far as I was concerned. After reading it to him I went down stairs with him, into the room where my wife was, and my wife said to Mr. Beecher, "What do you think of Frank's statement?" And I said, "Mr. Beecher has said it is an honorable one;" and my wife said, "You consider it honorable?" And he said, "Yes." I said then to him that I had also read it to Mr. Tilton, and he also concurred in it.

Mr. Fullerton—I now offer it in evidence.

Mr. Evarts—How is it evidence on any issue here? Here is a statement in the nature of an argument or proposition of Mr. Moulton's relation or attitude towards an investigation going on; and Mr. Beecher who is a party interested in that inquiry—and Mr. Tilton, if you please, also interested in that inquiry as the accuser—say in respect to a statement that Mr. Moulton proposes to make that it is an honorable statement for him to make. I don't know whether the statement contains any facts or not. It is a short statement, and rather in the nature of a reason for not going on any further, isn't it?

Mr. Fullerton—That is one view to be taken of it.

Mr. Evarts—It is not any evidence on any issue in this case,

and if it is admitted it must be admitted against our objection and exception.

Mr. Fullerton—I am somewhat surprised that the learned counsel should object to the reading of the statement and at the same breath confess that he does not know what is stated in it, because what is stated in it makes it proper to be read in evidence. If the learned counsel had perused it, he would see at once that it becomes an important piece of evidence in this controversy, and I can state very briefly how it becomes important. In the first place, it does state facts which have a bearing upon this issue. In the next place, it discloses a disposition upon the part of Mr. Beecher to throw obstacles in the way of this investigation which he himself had set on foot; and we suppose that it is a material fact in this case to show that while he was pretending that he wanted an investigation, in point of fact he wanted no such thing, and tried to smother it. Those two facts become very apparent by the reading of this paper.

Judge Neilson—Very well; the last fact, if it be such—the suggestion that Mr. Beecher wished to smother the investigation—is not at all material here, and I think on the whole it is my duty to rule out that paper.

Mr. Fullerton—Will your Honor hear us upon that subject?

Mr. Evarts—You have just been heard.

Mr. Fullerton—I propose to be heard again. That is for the Court and not the counsel to determine.

Judge Neilson—I cannot conceive how anything that the witness could have written, any statement of facts—we have the facts otherwise—any argument, how that could be material in any point of view in this case.

Mr. Fullerton—Why, Sir, one strong argument to be made upon the other side in this case is this, that Mr. Beecher courted this investigation; he appointed a committee for the purpose of going to the bottom of this scandal, and developing every fact that could possibly throw any light upon the subject, and hence they say he was innocent of this charge; that the scandal had no foundation in fact. Doesn't it become important for us to show while, upon the one hand he was pretending that he wanted an examination, that he was secretly trying to suppress it? Why, certainly, Sir, it turns away the edge of that instrument which they use against us in this case. It becomes very important that we should show that fact. Then, upon the other hand, I think, even if your Honor should conclude to shut it out for that reason, it must be admitted for another reason, and that is that he stated facts, and that Mr. Beecher acquiesced in those facts—said that it was a proper statement to be made; that it was an honorable statement upon the part of Mr. Moulton, and truthful.

Mr. Evarts—He has not said that.

Mr. Beach—Yes, Sir; he has said it was a true statement. Let us see from the stenographer's notes whether he said it.

Mr. Fullerton—I want to show that up to that hour Mr. Moulton was in the confidence of Mr. Beecher, and acted as he wanted him to act.

Judge Neilson—That appears. The real question is whether it does state facts, and whether Mr. Beecher assented to the

correctness of the statement of facts. Has counsel looked at the paper?

Mr. Everts—I have looked at it heretofore, generally. I haven't it before me at this moment.

Mr. Fullerton—Why, Sir, the paper acknowledges the offense.

Mr. Everts—Your Honor can look at the paper if it is desired.

Mr. Beach—There is, first, Sir, a dispute to be settled in regard to what is the evidence of the witness in regard to the recognition by Mr. Beecher of the accuracy of this statement, and [to THE TRIBUNE reporter] I therefore ask the stenographer to read the evidence of Mr. Moulton as to what Mr. Beecher said upon that subject.

[THE TRIBUNE stenographer read the testimony referred to.]

Mr. Beach—The evidence then is that when the statement was read to Mr. Beecher he concurred in it. If, therefore, the statement contains any fact material to this issue it certainly is competent to be given; and, although it is true, as your Honor says, that Mr. Moulton can make no statement that shall be conclusive upon Mr. Beecher, your Honor will recognize the truth of the proposition that when a statement of a fact is made to a party and he concurs in that statement of fact, it is an adoption of the statement and it becomes evidence against him. And, if your Honor please, that question was before you upon an earlier interlocutory question, and the case in the 55th New York was referred to, and was at that time acquiesced in by your Honor's decision, and it is a too familiar principle to be disputed. But, if your Honor please, will you regard the suggestion which is made by my associate upon the other aspect in which this evidence is important. Is it not a material fact for us to show that whenever this subject was presented or discussed, whenever upon any occasion it was advanced for investigation, whatever was the public attitude of Mr. Beecher with reference to that inquiry, yet he in secret repressed and discountenanced all investigation into the subject? Is it not a substantial fact to be given in evidence against any person, accused either of crime or of offense, that he labors at concealment, avoids investigation, endeavors to escape from all agitation of the subject? Is not concealment everywhere an evidence of guilt, and may we not in that aspect alone present this evidence, with other evidence which your Honor has received tending to the same issue and leading to the same result?

#### MOULTON'S FIRST STATEMENT EXCLUDED.

Judge Neilson—The various papers that have been put in have been read without objection. I do not recall a single one—not even Mrs. Morse's letter—that was objected to. The effect of the paper was spoken to by counsel, and that held in reserve by him, but the reading of the paper was not objected to. This is the first one, I think, that has been thus objected to. The simple question is, Mr. Everts, whether it is admissible as having been approved by Mr. Beecher.

Mr. Everts—Exactly.

Judge Neilson—There is this to be said about it at the same time. An approval by the defendant—an unqualified approval would be one thing. An approval of it as proper to be put in by the witness would be perhaps another thing.

Mr. Everts—Whenever this paper shall be read, if your Honor shall think that it is admissible, its entire harmlessness as affecting the case of this defendant will be apparent; but, nevertheless, the question arises for counsel whether matters not pertinent to an issue which includes the range and scope of what is pertinent, and enough, and an adequate variety of evidence—whether evidence not pertinent should be admitted because it is not injurious is not a question with which counsel have properly nothing to do. Here is a statement of Mr. Moulton, who occupied the position of a witness notified to attend before a church examination which had no compulsory power over him. He did not go there as a witness, but he prepared a statement which was to be for the present at least an answer for his not testifying, and he read it to Mr. Beecher and asked him if he thought it was an honorable statement for him (Mr. Moulton) to make in that behalf, and for that purpose; and then he asked Mr. Tilton the same thing, and then Mrs. Moulton, it seems, had an interest in asking the question, and the result of it is, no doubt, as it stands—that Mr. Beecher had this little short statement of half a page, which I hold in my hand, read to him, and said that it was an honorable statement for him to make, and, if you please, concurred in the propriety of his making it; that is all.

Judge Neilson—That had reference, of course, to the attitude of Mr. Moulton.

Mr. Everts—No doubt—the propriety of his making it.

Mr. Fullerton—He states some facts which bear upon this issue.

Mr. Everts—Who?

Mr. Fullerton—Mr. Moulton; in that statement.

Mr. Everts—Whatever is in that conversation that bears on the issue is not what we are now discussing. The question is whether this statement bears on the issue?

Mr. Fullerton—My reply is—

Mr. Everts—I believe I have the floor. My learned friend undertakes to say, and he is supported by his learned associate, that whatever indicates an aversion on Mr. Beecher's part to a promulgation of scandal, and an examination into scandal, is to be produced as evidence that he is guilty of a crime. There is no principle of human nature, and no rule of law, that imputes any such consequences to any such efforts. There is one simple issue to be tried in this cause, the burden of which has been assumed by this plaintiff, and that is to prove the adultery of his wife; and I would like to know how these conversations as to the latitude and mode of meeting an inquiry into that matter, and the aversion of one party to the alleged fault—the alleged guilt, being in isposed to have the inquiry made, bears upon the question, which is the real question that your Honor or the jury are occupied with—the existence of the fact.

Mr. Fullerton—I agree entirely with the learned counsel as to the issue between these parties, and as to who has taken the affirmative of that issue, and I assert again that there are facts stated in this statement which bear upon that issue. It was a statement read to Mr. Beecher, Mr. Beecher understanding perfectly well that that was to be promulgated before the Committee. Doesn't it become important, therefore, to look

into this statement and see what was there said with reference to this crime charged upon Mr. Beecher? Suppose that Mr. Moulton in that proposed statement had acknowledged Mr. Beecher's guilt, but did not think that it was a subject for investigation, that it ought to be suppressed; would not that become evidence? Why, it seems to me, if the Court please, that the proposition is too plain for argument, and if your Honor will take the statement and examine it, you will see that Mr. Moulton came directly to the point in that statement and gave his reasons why he should not testify, and those reasons bear upon this question now before the jury. There can be nothing plainer, Sir. I beg your Honor to look at this statement.

Mr. Everts—Your Honor can look at the paper.

Mr. Beach—I have sent for an authority, Sir, that I wish your Honor to see.

Judge Neilson—I do not think it will help me any to look at the paper [taking the paper].

Mr. Everts—It is a very short paper.

Mr. Fullerton—And a very significant one. There in another point of view, already presented to your Honor, this paper becomes exceedingly important. I repeat what I said before, that when Mr. Beecher makes efforts to suppress investigation, he certainly is doing something from which his guilt may be inferred. I cannot see any other inference to be drawn from it. He says to the public: "I want investigation." He says to his church: "Appoint a Committee for the purpose of investigating," but in private and in secret he is attempting in every possible way to prevent it. As a matter of course, the testimony of Mr. Moulton before that Investigating Committee was of the first importance. He had been connected with this unhappy matter from the beginning up to the time of the meeting of the Investigating Committee. He had within his knowledge facts which would enable him to determine whether the slander was groundless or well-founded. Now, if Mr. Beecher prevented or attempted to prevent him from going before that Committee, organized by himself, so as to shut out all these facts within that gentleman's knowledge, doesn't it become important? Doesn't it bear upon this question, and in connection with the flood of evidence in this case is not the jury warranted in drawing an inference from it? Does it not add to the force and to the effect of the other testimony in this cause? It cannot be said to be irrelevant. It is always competent to prove against an individual on trial for an offense that he endeavored to suppress testimony, that he got a witness to go out of the jurisdiction of a court and beyond its process, that he undertook for a compensation to withhold the truth; anything of that kind is competent in the trial of an individual for an offense. The suppression of the truth is always evidence of guilt on the part of an individual who is on trial.

Mr. Beach—I read to your Honor from the case of *Kelley v. The People*, in the 55th of New York, page 565. I read from page 577. It was a criminal case:

"When an individual is charged with an offense, or declarations are made in his presence and hearing touching the fact of the guilt or innocence of an alleged crime, and he remains silent when it would be proper for him to speak, it is the province of the jury to interpret such a silence and determine whether his silence was, under the circumstances, excused or explained.

At most, silence, under such circumstances, is but an implied acquiescence in the truth of the statements made by others, and thus presumptive evidence of guilt, and, in some cases, it may be slight, except as confirmed and corroborated by other circumstances."

In this case, your Honor perceives, it was not simple silence; it was an explicit concurrence.

"But it is some evidence, and therefore I except in those cases where the statements are made upon an occasion and under circumstances in which the individual sought to be affected could not with propriety speak, as in the progress of a judicial investigation, or in a discussion between third persons not addressed to or intended to affect the accused or induce any action in respect to him, so that for him to speak would be a manifest intrusion into a discourse to which he was not a party, the evidence is competent and should be admitted."

Your Honor will also observe that this was not a conversation between third parties. It was an appeal addressed directly to this defendant himself. It was in relation to an investigation of an offense charged against him, in which the truth of that accusation was to be investigated by a Committee selected by himself. Therefore it was proper for him to speak; the occasion demanded utterance upon his part. He knew that this statement was to be presented to that Committee, and he knew in what degree and to what extent that statement would affect that investigation. The Court proceed to say:

"Any declaration of the individual in response to a statement so made would be admissible in evidence, and an omission to make an answer to it, or notice it like other acts of the party, is to be interpreted, and such effect given to it, as evidence, in connection with the other circumstances of the case, as the Jury in their discretion shall think it entitled to. The implication of assent to a statement affecting the guilt or innocence of an individual from an omission to controvert, qualify or explain it, arises from the fact that a person knowing the truth or falsity of a statement affecting his rights made by another in his presence, will, naturally under circumstances calling for a reply, deny it if he be at liberty to do so, if he do not intend to admit it. It is no objection to the admission of the declarations of the accused as evidence, that they are made while he is under arrest; and his admission, either expressed or implied, of the truth of a statement made by others under the same circumstances, is equally admissible. His conduct and acts, as well in custody as when at large, may be given in evidence against him; and their cogency as evidence will be determined by the Jury."

Now, Sir, I do not think that argument can illustrate the application of that principle to this case.

Judge Neilson—I still think that in this instance it was understood that the witness was to make a statement to the Committee. It appears his statement had been prepared, had been submitted to Mr. Tilton. It was, in a friendly spirit no doubt, submitted to Mr. Beecher, and he had in view the fact that Mr. Moulton was making a statement—and, of course, a statement from his standpoint of view. I think the case is very much as an instance would be where a witness testifies, testifies adversely to you; and yet you admit that, differing from your view, it was honorable in him to testify as he did. The paper did not call, it seems to me, for a contradiction on the part of this defendant; and I still think I must rule it out, Sir. Take an exception.

Mr. Beach—We except. [To Mr. Fullerton.] We want it to

appear upon the record; that is all. That does not put it upon the record.

Mr. Fullerton—I want to offer parts of this, Sir, if the whole is not admitted.

Judge Neilson—Well, you can frame the offer in such form hereafter as need be.

Mr. Beach—No, Sir; we want it on the record.

Judge Neilson—Frame it in your own way.

Mr. Fullerton—Then I offer this part in evidence.

Mr. Evarts—If they are to offer any parts in evidence, they should be marked and handed to the Court for the Court to pass upon. Your Honor has held that the paper itself shall not be offered to the Jury. I ask that they be handed up to your Honor.

Judge Neilson—He has a right to say he offers to prove one clause after another.

Mr. Evarts—Yes, but the point is this, if your Honor please: he proposes to your Honor that certain parts of a written paper, notwithstanding the paper itself is not admissible (which your Honor has ruled), are admissible. Now, how he expects to make that lodgement and distinction, I don't know.

Judge Neilson—Well, the counsel can mark the parts.

Mr. Evarts—Yes, Sir, and hand it to your Honor.

Mr. Beach—That does not bring it upon the record. I do not see much difficulty in supposing that a whole instrument may not be admissible; as a whole, there may be some immaterial matter in it which would be sufficient to exclude it when offered as a whole, and yet there may be parts of it, statements of fact which we say were admitted by Mr. Beecher on that occasion, which may be admissible.

Judge Neilson—Your rights ought to be saved in respect to it, of course; any form that will do that.

Mr. Fullerton—Then I offer in evidence—

Mr. Evarts—We object.

#### A LAWYER'S SHREWD FLANK MOVEMENT.

Judge Neilson [to Mr. Fullerton]—The counsel objects to your reading it in the hearing of the Jury.

Mr. Fullerton—Well, your Honor, I can't get it on the record without reading it. Your Honor don't put it on the record by reading it.

Mr. Evarts—Why, certainly; he marks it.

Mr. Fullerton—Not at all. If it is shut out it will do no harm to the defendant. If it is let in, why then it has its natural effect.

Mr. Evarts—Of course it is always more interesting to counsel to have the evidence both in, and have an exception for ruling it out; that we understand. Now, he has got an exception to its being ruled out, and now he would like to have it in.

Judge Neilson—How does it get in when it is not admitted?

Mr. Evarts—By reading it.

Mr. Beach—Does reading a proposition make it evidence?

Mr. Evarts—It answers the purpose.

Mr. Beach—Answers the purpose? How? Does the gentleman distrust the gentlemen of the Jury that they will not obey your Honor in ruling out evidence? And does your Honor mean to deny us the privilege of making a proposal of proof?

Judge Neilson—No, Sir.

Mr. Evarts—In the ordinary mode.

Mr. Fullerton—I offer in evidence this part of the statement to wit [reading:] :

"I regret for your sakes the responsibility imposed on me of appearing there to-night. If I say anything, I must speak the truth. I do not believe that the simple curiosity of the world at large or, even of this Committee, ought to be gratified through any recitation by me of the facts which are in my possession, necessarily in confidence, through my relation to the parties. The personal differences of which I am aware, as the chosen arbitrator, have once been settled honorably between the parties, and would never have been revived except on account of recent attacks, both in and out of Plymouth Church, made upon the character of Theodore Tilton, to which he thought a reply necessary. If the present issue is to be settled, it must be, in my opinion, by the parties themselves, either together or separately, before your Committee, each taking the responsibility of his own utterance. As I am fully conversant with the facts and evidences, I shall, as between those parties, if necessary, deem it my duty to state the truth, in order to final settlement, and that the world may be well informed before pronouncing its judgment with reference to either. I therefore suggest to you that the parties first be heard, that if then you deem it necessary that I should appear before you, I will do so, to speak the truth, the whole truth and nothing but the truth."

Judge Neilson—Well, that is ruled out. You take an exception specially to that. Now the next.

Mr. Fullerton—I also offer this, to wit:

"I hold to-night, as I have held hitherto, the opinion that Mr. Beecher should frankly state that he had committed an offense against Mr. Tilton, for which it was necessary to apologize, and for which he did apologize in the language of the letter, part of which has been quoted."

Judge Neilson—Same ruling as to that, and same exception.

Mr. Fullerton—I also offer this:

"That he [referring to Mr. Beecher] should have stated frankly that he deemed it necessary for Mr. Tilton to have made the defense against Dr. Leonard Bacon, which he did make, and that he (Mr. Beecher) should refuse to be a party to the reopening of this painful subject."

Judge Neilson—Same ruling.

Mr. Fullerton—[Reading:] :

"If he had made this statement he would have stated no more than the truth, and it would have saved him and you the responsibility of a further inquiry. It is better now that the Committee should not report; and, in place of a report, Mr. Beecher himself should make the statement which I have suggested, or that if the Committee does report, the report should be a recommendation to Mr. Beecher to make such a statement."

Judge Neilson—Same ruling as to that.

Mr. Evarts [excitedly]—Now, if your Honor please, my learned friend has read every particle of this paper except mere surplusage. [Violently throwing a book on the table.]

Judge Neilson—He gets it on the record in that way; I think it is proper.

Mr. Evarts—He has done it, as I told you.

Mr. Fullerton—And I have read it because I want to offer it in evidence, except the surplusage.

Judge Neilson—I think you have done properly.

Mr. Fullerton—Is the complaint that I have not offered the surplusage?

Mr. Evarts—The situation is a very plain one. You offered a paper which was ruled out. There should have been an end of it. You then offered parts of it, as you said, on some particular discrimination, and in that respect. You read the whole paper except a mere formality.

Mr. Fullerton—And the whole paper is ruled out and all its parts?

Mr. Evarts—That was the first ruling.

Mr. Fullerton—Undoubtedly it was.

Mr. Evarts.—You said you would make the discrimination.

Mr. Fullerton.—I have discriminated.

Mr. Evarts.—Well, I don't see it. [Laughter.]

Mr. Fullerton.—The gentleman says I have not offered the surplusage. I have discriminated between the wheat and the chaff. He wants the chaff also, if I understand him right. [Laughter.] I left out just what I chose to leave out. The gentleman cannot preclude me from making my offer of testimony.

Judge Neilson—That is right. The audience don't begin well this Monday morning. This is a bad beginning. Please not to repeat that again.

By Mr. Fullerton—Now, had the Bacon letter then been published? A. Yes, Sir; the Bacon letter was published, had been published—the Bacon letter had been published.

Q. Do you know how long it had been published?

Mr. Beach—We take exception to each of those rulings.

Judge Neilson—Yes, Sir.

The Witness—June previous.

Q. State whether that Bacon letter had been the subject of conversation between yourself and Mr. Beecher? A. It had been; yes, Sir.

Q. Prior to the reading of the statement of which you have spoken? A. Yes, Sir; and was the subject of conversation at the time I spoke to him with reference to this statement.

Q. And what did Mr. Beecher say at the time you read that statement to him, if anything, with reference to the apology, so called; I refer to the letter of January 1st, 1871, in that conversation? A. I said to him, I said to Mr. Beecher—

Q. Go on? A. I said to Mr. Beecher, "I have recommended from the first—have said from the first, rather, that this Bacon letter, in my opinion, offered a basis for reconciliation on account of the introduction of the word 'offence,' and the reason that I have followed the line of them in this statement is, that I want to carry that view into the Committee, and don't want to go any further than that;" and then he said, "I concur in the propriety of that statement." After hearing my reasons he said, "I concur in the propriety of that statement," and I said to Mr. Beecher, "You consider it honorable, do you not?" and he said, "Yes, I do." That was the conversation between Mr. Beecher and myself. There was a further conversation with regard to the publication of the correspondence between Mr. Beecher and the Committee subsequently to that time.

Q. That I am coming to in a moment; when did you first learn that the Committee had been appointed? A. From Mr. Beecher, on July the 5th.

MOULTON'S LAST OFFICES AS MUTUAL FRIEND.

Q. Was there any talk between you and Mr. Beecher in regard to the composition of that Committee before it was ordered or appointed? A. He said he should have the naming of the—

Q. How? A. He said he should have the naming of the people upon it.

Q. When was that conversation? A. On July 5th.

Q. What occurred, now, immediately subsequent to July 5th in reference to the proceedings before that Committee between yourself and Mr. Beecher? A. What occurred when—on July 5th?

Q. Yes, after you learned the Committee was appointed what occurred between you and Mr. Beecher with reference to any proceedings before it?

Mr. Evarts—That has already been gone into.

Mr. Fullerton—No, Sir, it has not.

Mr. Evarts—What he has lately stated was mere repetition of what he said before.

Mr. Fullerton—I will show the gentleman that there is something that has not been developed.

Judge Neilson—Go on.

The Witness—He consulted—I saw Mr. Beecher at his house, Sir, with regard to the report which he was to make to the Committee.

Q. Now, state when that was? A. It was during the week of the 12th of July, commencing the 12th of July, between the 12th and the 20th. I saw him several times, Sir, at his house.

Q. At his house? A. Yes, Sir.

Q. With regard to what? A. With regard to the report which he should make to the Investigating Committee of his church.

Q. State whether he had it prepared? He read to me, Sir, from a paper what he proposed to say with regard to Theodore Tilton.

Q. And what was it? A. The substance of it was that he took upon himself great blame for his conduct toward Theodore Tilton and his family, and exonerated Theodore Tilton from all blame so far as concerned Tilton's action towards himself; and I said to him: "Mr. Beecher, I think that I may be able to induce Theodore Tilton not to write the statement which he is writing, if I express to him fully the ground that you take with regard to him; because I cannot see that you can do anything more, unless you confess absolutely to the Committee the crime which you have committed against him and his family. And I will try to influence Mr. Tilton upon the basis of what you have told me." And he said: "I hope you will succeed in doing that; if Theodore publishes the fact, as he has threatened to, of my relations with Mrs. Tilton, it will ruin me, but it will kill him;" and he wept in expression—in expressing to me at that time his sorrow for the crime that he had committed; and I, Sir, was deeply affected myself with his presentation of his contrition; and I went to Theodore Tilton and I told him that I thought he should not write the document which he was preparing, if he intended in that document to state, as he said he had in *The Argus* newspaper, the facts; that he ought not to do it.

Q. Well, was anything said in that conversation in reference

to a proposed report or statement? A. Not in that conversation. Sir; I am going to give you the conversation.

Q. Just come to that, please? A. Yes, Sir; certainly. I saw Mr. Beecher again, and I told him that Theodore—

Mr. Evarts—Give us the date of this? A. I'm giving the date as near as I can.

Mr. Beach—He has said there were several interviews.

The Witness—In the week—within the week, Mr. Evarts, of the 12th and 20th.

#### BEECHER SEEKS A COMPROMISE.

Mr. Evarts—When was this? A. Within that week; between the 12th and 20th I saw Mr. Beecher, and I told him that Theodore seemed to be obdurate, that I thought I would have to treat him about as I treated him before—let him work himself out, and try to prevent publication if I could, or change the form, if I could, of the presentation; and I said to him, "Mr. Beecher, isn't there any member—" I said to him, "Mr. Beecher, can't we get an adjournment; can't we get an adjournment of the Committee of Investigation?" Said I, "Time is worth more than anything else in this business with Tilton;" and he said he would try to get a postponement of the meeting which was called for the succeeding Monday; said he would write to Mr. Sage and procure a postponement, and then I asked him if anything new had occurred to him since my last interview with him; and he said, "No;" and I said to him: "Mr. Beecher, I do not—I cannot recommend you to make any report to that Investigating Committee until I can get Theodore Tilton to commit himself to what you shall say;" and he was lying on his bed at the time, and he rose from it and went to a bureau and took a piece of paper and wrote a form of proceeding something like this: "Mr. Beecher having made a statement, and that being satisfactory, the paper——"

Mr. Evarts asked that the paper be produced.

Mr. Fullerton—Well, Sir, I will gratify you.

Mr. Evarts—You will satisfy the law.

Mr. Fullerton—Well, it is easier to do that than to satisfy you. [Laughter.]

[Paper handed to witness.]

The Witness [reading]: "The statement of Mr. B. being read and, if striking favorably, a word sent substantially thus to Committee."

Q. Is that the paper that he prepared? A. Precisely, Sir; I beg pardon.

Q. I understand you that this interview, when this paper was prepared that I have now produced, was at Mr. Beecher's house? A. Yes, Sir.

Q. And he got up from his bed to write it? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence.

Q. It is in Mr. Beecher's handwriting, isn't it? A. It is.

Mr. Fullerton [reading]:

"The statement of Mr. B. being read and, if striking favorably, then a word sent, substantially thus, to Committee: [Extract.] 'I have been through years acting under conviction that I had been wronged, but was under the imputation of being the injurer. I learn from a friend that Mr. B., in his statement to you, has reversed this, and has done me justice.

I am willing, should he consent, to appear before you with him, and dropping the further statements which I felt it to be my duty to make for my own clearance, to settle this painful domestic difficulty, which never ought to have been made public, finally and amicably.'"

[Paper marked "Exhibit No. 49."]

Q. What, if anything, did Mr. Beecher propose when he handed you that paper? A. The substance of the paper itself—to make a statement to the Committee exonerating Mr. Tilton from all blame—from any injustice toward him from Mr. Beecher, and taking great blame upon himself on account of his conduct toward Mr. Tilton's family, and I said to Mr. Beecher, "Mr. Beecher, isn't there any member of your Committee beside Mr. Tracy, or isn't there any one in that Committee beside Mr. Tracy, to whom you can tell the truth; to whom I could tell it, or to whom Mr. Tracy could tell it, in order that they might guide the action of that Committee properly with reference to the fact itself? Couldn't you tell Mr. Sage?" and he said no, it would kill him. He said it almost killed him when he told him that he had been guilty of an offense; when he made the explanation that he did to him of that.

Mr. Evarts—That is Mr. Sage's? A. Yes, Sir. "Well," I said, "that is too bad; if you have not got one friend in that Committee to whom you can tell the truth, what is the use of your friends?" and that is the substance of what occurred.

Mr. Fullerton—Well, what did he wish you to do with this paper that I have just read? A. Wanted me to take it to Theodore Tilton.

Mr. Evarts—What did he say?

Mr. Fullerton—Yes, what did he say? That is the way he manifested what he wanted you to do, I suppose. Tell us what he said? A. Yes, Sir; he asked me to show that to Theodore Tilton, and I did show it to Theodore.

Q. And did you report to Mr. Beecher what Theodore said? A. I did; yes.

Q. And what did you report to him? A. I said to him that Theodore refused to consent to make himself out the victim of a hallucination; I think that was all.

Q. When was the next interview between yourself and Mr. Beecher? A. When was the next?

Q. Yes? A. I don't remember.

Mr. Beach—If he don't remember dates, refer him to the subject.

Q. Well, did Mr. Tilton publish his card? A. Yes, Sir; he published it on the 20th.

Q. On the 20th? A. I believe—no; he did not publish it on the 20th; he presented it to the Committee on the 20th.

Mr. Beach—You mean he presented his statement to the Committee on the 20th? A. He presented his report.

Q. His statement? A. Yes, Sir; he presented his statement.

By Mr. Fullerton—Before the publication or the presentation of Mr. Tilton's statement to the Committee, did he prepare a proposed report to the Committee? A. Did who?

Q. Did Mr. Tilton present a proposed report for the Committee to make? A. Yes, Sir; Mr. Tilton did, and I submitted it on the first interview of the week of the 12th to Mr. Beecher, when I told him I thought I could induce or I would try and



induce Theodore to withhold the statement he was preparing from the Committee.

Q. And you showed him then, as I understand you, Mr. Tilton's proposed report for the Committee to make? A. Yes, Sir; I submitted to him a paper which Mr. Tilton had prepared, and had expressed his willingness to abide by it before the Committee.

Q. Was this report to be made without statement by either party, or after this statement?

Mr. Evarts—What was said about it between you and Mr. Beecher?

The Witness—Mr. Beecher said to me, "Will Theodore stand by that?" I said that is what he would have done; I hope he will still be willing to do it."

By Mr. Fullerton—What was the subject of conversation then when he used that language? A. The very report which I showed to him of Mr. Tilton; I read it to him and handed it to him.

Q. A report for the Committee to make? A. Yes, Sir.

Q. [Handing paper to witness.] Look at that paper. Is that the paper you refer to? A. Yes, Sir; that is it.

#### TILTON TEMPORARILY MOLLIFIED.

Q. Now, then, in that conversation what was said in reference to the proposed statements of the respective parties? A. That they were to go before the Committee and make their statements.

Q. What statements? A. Statements of offense.

Q. Have you reference now to the proposed statement by Mr. Beecher just read in evidence, and the reply which he prepared to it? A. I have not any reference to that. That which I have just handed you was a report prepared by Theodore Tilton. I saw Mr. Beecher on that day, and I said to Mr. Beecher: "This will show you the mind Theodore has had upon this subject, and if it had not been for the publication of your correspondence, and the desertion of Theodore by his wife, he would not have been in the angry mood he is to-day, insisting upon the publication of the facts."

Q. By Judge Neilson—Was that before or after Mr. Tilton's statement had been given to the Committee? A. It was before, Sir.

Q. By Mr. Fullerton—I want you to state whether at the time of this conversation the statements which the respective parties were to make before the Committee were the subject of conversation; and if their character was then fixed, to state what they were to be? A. State that over again, if you please.

Q. You have now identified a proposed report that Mr. Tilton prepared for the Committee to make? A. Yes, Sir.

Q. And you showed it to Mr. Beecher? A. I did.

Q. And he asked you if Mr. Tilton would be satisfied with that? A. Yes, Sir.

Q. Upon what, or of what, was that proposed report to be predicated—in the shape of statements of the parties?

Mr. Evarts (to the witness)—What passed between Mr. Beecher and you?

Mr. Fullerton—I asked that; in that conversation what was said on that subject between you? A. I said to Mr. Beecher that after Mrs. Tilton had made her statement to the Committee, Mr. Tilton was very much incensed, and that Mr. Tracy in a subsequent interview with him—in an interview subsequent to Mrs. Tilton's report to the Committee, or statement to the Committee, had so presented to him the influence which her statement had had upon the Committee that it melted the anger all out of Theodore Tilton, and he was perfectly willing to make a statement to the Committee which should not contain the fact of adultery between Mr. Beecher and Mrs. Tilton; that he was perfectly willing, if Mr. Beecher would take great blame upon himself, and exonerate Theodore Tilton from dishonorable conduct towards him—from any injustice towards him—that he, Theodore Tilton, was perfectly willing to settle the matter without making any accusation before that Committee, and that he had prepared such a report for the Committee to make, and that he had shown it to General Tracy, and General Tracy had said to him, on the night of the conversation to which I refer, that the Committee seemed now to be of opinion that there was an offense, and that he thought it would not be hard to get from that Committee a report (unfavorable, it is true, to Mr. Beecher) on the ground of the offense, but which would really settle the whole business, and save all the parties concerned from dishonor in consequence of crime; that is all.

Q. And this report that you have identified is the one that you now speak of? A. That was one of them, Sir. There were two. One was a long one, and that was a short one.

By Mr. Evarts—Made at the same time? A. Yes, Sir; two. The short one was not submitted to Mr. Tracy.

[Paper marked for identification "No. 50."]

By Mr. Fullerton—[Handing paper to witness]—Look at the paper now shown you and say whether it is the other report prepared by Mr. Tilton at that time? A. This is the paper, if it is all here.

Mr. Fullerton—I offer the first report in evidence:

"Report. The Committee appointed to inquire into the offense and apology by Mr. Beecher, alluded to in Mr. Tilton's letter to Dr. Bacon, respectfully report that, after examination, they find that an offense of grave character was committed by Mr. Beecher against Mr. and Mrs. Theodore Tilton, for which he made a suitable apology to both parties, receiving in return their forgiveness and good-will. The Committee further report that this seems to them a most eminently Christian way for the settlement of difficulties, and reflects honor on all the parties concerned."

[The paper heretofore marked for identification No. 50 was here marked "Exhibit No. 50."]

Q. For fear we may not distinguish between those two reports, I want you to repeat what Mr. Beecher said when you showed to him, or read to him, the report I have just put in evidence? A. I said to him that Theodore had been in that frame of mind, and I hoped—

By Mr. Beach—What frame of mind? A. The frame of mind in which he wrote that.

Q. Well, state it? A. I said to him that that was what Theodore had been willing to do, as expressed in the statement, and I hoped that he would still consent to act in that way, and Mr.

Beecher said: "Well, do you think he will? I hope he will;" he said. That is all.

By Mr. Fullerton—Now, this frame of mind of which you have spoken on the part of Mr. Tilton I understand was superinduced by a report made to him of the effect of Mrs. Tilton's statement to the Committee? A. Yes, Sir.

Q. What statement was that? A. All that I know of that statement was what Mr. Tracy read—the statement made to the Committee by Mrs. Tilton, a statement in which she had spoken highly, General Tracy said, of her husband.

Q. Not the long statement that was published? A. I don't know that it was.

Q. What was the result of all that? A. The result of it was nothing.

Q. That report was not made, as I understand you?

Mr. Evarts—The witness has said there was another statement also there.

The Witness—Another statement also where?

Mr. Evarts—Before you at this time.

The Witness—No, Sir; I don't say there was another statement also before me at this time. I spoke to Mr. Beecher of a report which Theodore Tilton had been willing to make, and I didn't show that report to Mr. Beecher; I did not have it with me. I happened to have this in my pocket, which I submitted to him.

Mr. Evarts—I misunderstood you.

By Judge Neilson—You didn't have it with you? A. No, Sir; I didn't have it with me.

By Mr. Evarts—I think the stenographer's notes will show that there were two reports. [To the witness.] You spoke to Mr. Beecher about the long statement? A. I did speak to Mr. Beecher about it at that time.

By Judge Neilson—But you hadn't it with you? No, Sir.

Q. The paper you had with you was the one that has been read? A. Yes, Sir.

By Mr. Evarts—This short one was not shown to Gen. Tracy? A. I don't remember that it was; I could not swear that it was.

Q. You said something about some paper having been shown to Mr. Tracy? A. Yes, Sir; it was the long statement.

Q. And not the short one? A. I don't think the short one was shown. The short one was the substance of the long one, but I don't think it was shown.

[The long statement referred to by the witness was marked for identification "No. 51."]

By Mr. Fullerton—You have spoken of a card in *The Argus* published by Mr. Tilton. [Handing witness a paper.] Look at the paper now shown you and say whether that is the card referred to. A. Yes, that is the one.

Mr. Fullerton—I offer it in evidence.

Mr. Evarts—We object to this, if your Honor please. We have had no evidence from this witness connecting Mr. Beecher with this article.

Judge Neilson—This is the long statement.

Mr. Evarts—No, Sir; it is a newspaper article from Mr. Tilton, published in a newspaper; whether it had any other authenticity

than that I don't know, but nothing has been said by the witness which connects Mr. Beecher with it.

Judge Neilson—[To Mr. Fullerton]—How have you connected Mr. Beecher with it?

#### TILTON AGAIN ANGERED.

Mr. Fullerton—Something has been said by the witness with reference to it, and to make it clear, I will ask the witness a question in regard to it. [To the witness]:

Q. Between the 13th and the 20th of July, 1874, when these proposed statements were suggested to you, was anything said, and if so, what, about Theodore Tilton's card in *The Argus*? A. Yes, Sir; I told Mr. Beecher that Mr. Tilton never would have written that card if it had not been for the publication of his correspondence with the Committee and the desertion of his wife, and I said to Mr. Beecher at that interview, "Don't you know that you are doing yourself, or are liable to do yourself, a great hurt by keeping Elizabeth away from Theodore? Don't you know perfectly well the influence that that woman has had over him? If you keep her away from him it will only incense him, and you ought to send her back to him," and he said, "That can be arranged if this other matter is fixed up properly."

Mr. Evarts—I still don't see any connection between it and Mr. Beecher.

Mr. Fullerton—What other matter? A. The statements.

Mr. Evarts—I don't see any relevancy to that.

Mr. Fullerton—Why, Sir, this paper which was published on the 13th of July, 1874, caused this action on the part of Mr. Beecher in reference to those statements, the one he proposed to make, and the one he prepared for Theodore Tilton to make. It was to avert this blow, threatened in this card, and hence it becomes material in this case.

Judge Neilson—I don't see it so; I don't think it is.

Mr. Fullerton—Well, I must offer it in another point of view, so that it will appear as a part of the record, because it makes the first statement of Mr. Montton which your Honor has ruled out all the more important and significant. The reporter will please enter an exception to that last ruling.

[Paper marked for identification "No. 52.":]

Q. [Handing paper to witness]: Tell me whether the paper now shown you was received by you? A. Yes, Sir; it was.

Q. About the time of its date. A. Yes, Sir.

Q. Did you show it to Mr. Beecher? A. I did; yes, Sir.

Q. Did you read it to him, or did he read it— which? A. I don't know whether he read it, or whether I read it to him. It was either read to him, or he read it himself.

Q. When did you read it to him—how soon after its receipt? A. I don't remember, Sir, how soon after its receipt; some time after.

Q. Within what time? A. I should think within a month. I remember the conversation—something of the conversation on that subject.

Q. I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was

with regard to the difficulty of *The Golden Age*. [To Mr. Fullerton]—Will you let me look at the letter again?

Mr. Fullerton—Certainly.

The Witness [after examining the letter]—I am not sufficiently clear about that to swear in regard to it.

Mr. Evarts—What is this? A. I am not sufficiently clear that is the letter, I showed to Mr. Beecher. I have several letters from Mr. Clarke.

Q. You are not clear this was shown to Mr. Beecher? A. No, Sir; I am not clear in regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure.

Mr. Fullerton—You are not sure you showed it to him? A. No, Sir.

Mr. Evarts, to Mr. Fullerton—Well, read it?

Mr. Beach—Well, I don't know.

Mr. Fullerton—I will not read it.

Mr. Evarts—Very well, say so.

Mr. Fullerton—I have said so; if I read it, it would be because it was proper evidence, and not because you commanded it. [To the witness]—Did you receive several letters from Mr. Clarke? A. I received several letters from him.

Q. And you are not able to state whether this is the one you showed Mr. Beecher? A. No, Sir; I am not able to say this is the one I showed Mr. Beecher.

Mr. Evarts—I desire that this statement should be marked for identification.

Mr. Fullerton—I don't desire that it shall be marked for identification.

Mr. Evarts—It has been shown the witness.

Judge Neilson—If he cannot identify it, counsel has a right to withdraw it.

Mr. Evarts—He has identified it originally as a letter shown to Mr. Beecher, and he now says he is in doubt whether it was shown to Mr. Beecher, but it was made the subject of conversation with Mr. Beecher. I want it marked for identification.

Judge Neilson—That leaves it to the counsel to withdraw the paper.

Mr. Evarts—He withdraws the evidence. It should be in evidence that this letter was the subject of conversation between Mr. Beecher and this witness.

Judge Neilson—And the conversation not being given, as yet, I think he may withdraw the letter.

Mr. Evarts—If your Honor will note my exception.

Judge Neilson—Yes, Sir.

Mr. Evarts—I ask that it be marked for identification, as a letter placed in witness's hands, and concerning which he has testified. Your Honor rules it out, and we except, of course, to your ruling.

#### BEECHER'S CONTRIBUTION TO TILTON'S PAPER.

Mr. Fullerton—Who was this Mr. Clarke, of whom you have spoken? A. Mr. Clarke was associated with Mr. Tilton in *The Golden Age*.

Q. State, if you please, what you mean by *The Golden Age*? A. *The Golden Age* newspaper.

Q. Published where? A. Published in New-York.

Q. By whom? A. By Theodore Tilton.

Q. And when was it started? A. It was started in 1871.

Q. About what time in that year? A. In March.

Q. How long did it continue to be published? A. It is being published now, I think, but not with Theodore Tilton as publisher and proprietor. It changed hands some time ago.

Q. Did you ever have any conversation with Mr. Beecher about *The Golden Age*? A. Yes, Sir.

Q. When was the first conversation? A. The first conversation about *The Golden Age* was in the beginning of 1871, I think, before the establishment of it.

Q. What was that conversation?

Mr. Evarts—How is that material, if your Honor please? It may be material, of course, by what was said.

Judge Neilson [to Mr. Fullerton]—Did you ask what was said?

Mr. Fullerton—Yes, Sir. [To Mr. Evarts.] That is the way to learn how it becomes material, to listen.

Judge Neilson—Go on.

The Witness—He said he hoped Theodore would be successful in the enterprise, and he said he would like to aid, if he could, in establishing the paper, and I told Theodore of that, and Theodore said to me he could not receive any aid from Mr. Beecher in establishing the paper, and so I told Mr. Beecher. I said to Mr. Beecher that was what Mr. Tilton said. That is the first conversation I remember about it.

Q. At any subsequent interview did you have a further conversation with Mr. Beecher about *The Golden Age*? A. Yes, Sir.

Q. When was that other interview? A. The other interview was in 1873—the beginning of 1873, I think.

Q. State what it was? A. The paper was dragging—I said to Mr. Beecher that the paper was dragging, and that Mr. Clarke was trying to manage something about its purchase, that Theodore felt bitter about the paper, about its condition; that it was not prosperous as it should be, and that he wanted to write a book, and then Mr. Beecher said that he would like to help the paper, and I said to him: "Mr. Beecher, I don't see how you can help the paper; I don't see how you can subscribe any money to *The Golden Age*, and I told him that Mr. Tilton would not take any money from him—would not allow me to take any money from him, directly or indirectly, and I didn't see how it was possible for him to do anything; that that matter had better be dismissed; and then I saw him subsequently, and the talk was renewed from time to time, and as far down as to May the 3d.

Q. What year? A. 1873, I think was the year, and Mr. Beecher said to me, between January 4th and May, 1873, that he thought I could take some money and give it to Theodore Tilton as my own, and that he would not know where it came from, and he would like to have me do it. I told him I didn't want to do it; I could not do it honorably, in my opinion. Well, he said, that certainly bread ought to be kept in Theodore's mouth, that I ought to take some money from him (Beecher), and feed it out to him; that he (Beecher) could get a mortgage very readily, and give me \$5,000, and I said: "Well, I don't want to take it;" but afterwards I did take it, and I did feed it out to

*The Golden Age* and to Theodore. I told Mr. Beecher that Mr. Tilton was at work upon his book, and very much interested in that, that I was very glad of it. He said he was very glad too, and he would be glad to assist him in keeping him to work at it. Finally I took the money.

Q. When did you receive it? A. May 2d, 1873, I think it was.

Q. What was the amount? A. \$5,000.

Q. And how was it given to you? A. In bills.

Q. Did you give it to him all at once? A. No, Sir.

Q. Where did you deposit it? A. With Woodruff & Robinson, the firm of which I am a member.

Q. State whether Theodore Tilton knew that you had received that money from Mr. Beecher? A. No, Sir; he never knew it.

Q. When did he learn it first? A. He learned it after the publication of my first statement, in which the fact was stated.

Q. You never communicated it to him before? A. No, Sir; never. I told Mr. Beecher that Mr. Tracy wanted me to communicate it to him in order to prevent the publication of his statement.

Q. I am coming to that. Go on and state what that was? A. Before the publication of Mr. Tilton's statement of July 20th Mr. Tracy was at my house—

Mr. Evarts—Well, we object to that—a conversation between him and Mr. Tracy.

Mr. Fullerton—Was Mr. Beecher there? A. No, Sir; I communicated the facts to Mr. Beecher.

Mr. Evarts [to the witness]—What passed between you and Mr. Beecher?

Judge Neilson—Yes, Sir; but preliminary to that is it proper to say he saw Mr. Tracy at his house, and that he had the communication afterwards?

Mr. Fullerton—Did something take place between you and Mr. Tracy? A. Yes, Sir.

Q. Did you communicate that, whatever it was, to Mr. Beecher? A. Yes, Sir.

Q. What did you communicate to Mr. Beecher? A. I told Mr. Beecher that Mr. Tracy wanted me to communicate the fact that I had received \$5,000 from Mr. Beecher to give Mr. Tilton, in order to stop him from the publication of his statement. I said, when Mr. Tracy wanted me to tell Mr. Tilton that, that that would be a serious embarrassment to me personally, in consequence of my having received that money, and I said to Mr. Beecher that I told Mr. Tracy that I was perfectly willing to be guided by him with sound advice—with any moral, good reason—with any good reason, and I would co-operate with him to induce Theodore Tilton not to publish his statement, but I would not, on any such ground as that, undertake to stop its publication. Mr. Tracy told me that would cause me trouble if it was published, and I told him if it caused me trouble, it must cause me trouble; that I had done no wrong and I didn't fear any trouble that would come from that.

Mr. Evarts—You told that to Mr. Beecher? A. Yes, Sir.

Mr. Fullerton—What reply did Mr. Beecher make to that when you told it to him? A. I don't remember any reply that he made particularly; I don't remember any reply that he made.

#### POINTS PREVIOUSLY TOUCHED REVIEWED.

Mr. Fullerton [addressing Judge Neilson]—In the course of the communication we had to omit some papers because we hadn't them present. I now show those papers thus submitted to the witness for the purpose of having them identified.

Q. [Handing paper to witness.] What is that paper you hold in your hand? A. This is Mr. West's letter to Mr. Beecher, of June 25th.

Q. From whom did you receive it? A. I received it from Mr. Beecher.

Q. [Handing another paper to witness.] Now, pray tell me what that paper is? I need not ask that question, however. The copy has been put in evidence, and I agreed to supply the original.

Judge Neilson—He may say if that is the original.

The Witness—That is in Henry Ward Beecher's handwriting.

Mr. Evarts—The card to *The Eagle*?

The Witness—Mr. Beecher sent the card to *The Eagle* without my knowledge of it afterwards, after it had been agreed upon. That is his handwriting.

Mr. Fullerton—I now offer the first paper in evidence. [Reading].

NEW YORK, June 25th, 1873.

REV. H. W. BEECHER:

DEAR SIR: Moved by a sense of duty, as a member of Plymouth Church, I have decided to prefer charges against Henry C. Bowen and Theodore Tilton, and have requested Brother Halliday to call a meeting of the Examining Committee in order that I may make the charge before them.

Thinking that you would, perhaps, like to be made acquainted with these facts, I called last evening at Mr. Beach's house, where I was informed that you had returned to Peekskill. I therefore write you by early mail to-day.

Yours, very truly,

WM. F. WEST.

(Copy letter marked "Exhibit No. 53.")

Mr. Fullerton—If the Court please, I now offer the original of Mr. Beecher's card to *The Brooklyn Eagle*.

Judge Neilson—Which we had reference to the other day?

Mr. Fullerton—Which was read the other day, and which I did not produce.

Mr. Evarts—As we understand that card which was undertaken to be read from *The Eagle*, it appeared in the evidence that it was altered by the editor, if your Honor will remember; therefore it was not really Mr. Beecher's card, and they had not the original of that, but my recollection is that that had relation to the Woodhull matter, and this has nothing to do with that.

Mr. Fullerton—No, Sir, this is the one.

Mr. Evarts—It has not anything to do with the other. It is not the matter that was referred to there.

Mr. Fullerton—It is the original, as far as there is any original.

Mr. Evarts—It has not anything to do with it. It is an original paper, and may be proper evidence, and may be now offered for aught I know, but this is not the paper, as I understand it.

Judge Neilson—You have in mind that it was a paper that related to something else—the Woodhull paper?

Mr. Evarts—Yes, Sir.

Mr. Fullerton—Having got the paper from *The Brooklyn Eagle*,

in evidence and having produced the original, so far as there is one, I have discharged my duty and fulfilled my obligation, and if you (Mr. Evarts) don't want it read, leave it out.

Mr. Evarts—This is another card, and has been in evidence.

Mr. Fullerton—Yes; but I promised to produce the original of Mr. Beecher's. If you complain that I have fulfilled my promise, then I am sorry I made it. I now produce the original of the article as printed in *The Eagle*, which the gentlemen from the other side desired. You (Mr. Evarts) called for the paper itself in which it was published.

Judge Neilson—The card which you read in reference to *The Eagle* commenced with the fact that *The Eagle* had not been in accordance with Mr. Beecher?

Mr. Evarts—We waived that when you [Mr. Fullerton] showed us in the paper what was a copy. We didn't care for the original *Eagle* article. Then you began to read what was supposed generally was prepared by Mr. Beecher, but it appeared it was not.

Judge Neilson—There were some alterations made in it.

Mr. Fullerton—And hence I now produce that one prepared by Mr. Beecher.

Mr. Evarts—Not a bit of it. That is what was in *The Eagle*, just as what you read was from *The Eagle*.

Mr. Fullerton—And you called for the original of the Beecher article, and I have produced that.

Mr. Evarts—No, you are mistaken in thinking this original paper you have brought here has anything to do with that.

Judge Neilson—We understand that.

Mr. Fullerton—I will forgive my friend on the other side, and we won't go any further with that. I offer now in evidence the article as published in *The Brooklyn Eagle*.

Mr. Evarts—That we object to. It has been ruled out once.

Judge Neilson—Mr. Fullerton, how do you connect Mr. Beecher with it?

Mr. Fullerton—I think it is in evidence already.

Judge Neilson—Does not that card commence with reference to the fact that *The Eagle* had not been in accord with Mr. Beecher?

Mr. Fullerton—Yes, Sir.

Judge Neilson—That is the one you read.

Mr. Beach—It was partly read, I recollect, and then objected to on the ground that it had been altered after preparation by Mr. Beecher. It was then withdrawn, and the original, as prepared by Mr. Beecher, was read.

Judge Neilson, to Mr. Beach—You think, then, it was not all read.

Mr. Beach—It was not all read, as I recollect the course of the evidence, and now we propose this as it was published and afterward submitted to Mr. Beecher on his return from a temporary absence, and adopted by him.

Mr. Evarts—That may be, and that is new evidence.

Judge Neilson—Very well, we will take it in that view.

Mr. Evarts—He has not said that yet.

Judge Neilson—We will come to that.

Mr. Fullerton, [Beginning to read]—"To the Editor of the *Brooklyn Eagle*—

Mr. Evarts—We don't understand that this is material.

Judge Neilson—Counsel suggests he will connect Mr. Beecher with it.

Mr. Fullerton—He has already connected him with it, but I will do it over again.

Q. What did Mr. Beecher say to you in reference to the article published in *The Brooklyn Eagle*? A. He thanked me for it.

Mr. Beach—He said that before.

Mr. Fullerton—He said that emphatically and distinctly.

Judge Neilson—This article? A. Yes, Sir.

Mr. Fullerton—[Reading.]

*To the Editor of the Brooklyn Eagle:*

In a long and active life, it has rarely happened that *The Eagle* and myself have been in accord on questions of common concern to our fellow-citizens. I am, for this reason, impelled to acknowledge the unsolicited confidence and regard of which the columns of *The Eagle* of late bear testimony. I have just returned to the city to learn that application has been made to Mrs. Victoria Woodhull for letters of mine supposed to contain information respecting certain infamous stories against me. I have no objection to have *The Eagle* state, in any way it deems fit, that Mrs. Woodhull, or any other person or persons who may have letters of mine in their possession, have my cordial consent to publish them. In this connection, and at this time, I will only add that the stories and rumors which have for some time past been circulated about me are grossly untrue, and I stamp them in general and in particular as utterly false.

Respectfully,

HENRY WARD BEECHER

[Paper marked "Exhibit No. 55."]

Q. In one part of your testimony you speak of a statement read to Mr. Beecher and used this observation: "I will read one clause from it, and if you can stand that you can stand the whole of it, or any part of it," or words to that effect. You stated it referred to a letter of Mrs. Tilton, or a statement of Mrs. Tilton to Dr. Storrs. [Handing paper to witness.] Look at the paper which I now show you, and say whether that is the paper to which you referred? [To Judge Neilson.] The presentation of this paper was deferred, because it was not present at the time. As I stated to your Honor, we have been a little embarrassed by the unfortunate and serious illness of Judge Morris.

The Witness—Yes, Sir, that is the letter.

Mr. Evarts—If your Honor please, we can look at this paper during the recess.

Judge Neilson—Yes, Sir. [To the jury.] Gentlemen, you can retire, and please be in your seats at 2 o'clock.

#### MRS. TILTON'S TRUE STORY.

The day's session was resumed at 2 p.m., pursuant to adjournment.

Mr. Fullerton—I now offer in evidence the paper which was shown the witness before the recess.

Mr. Evarts—What has he testified to about that?

Mr. Fullerton—He referred to it, and I called his attention to that reference and asked if this was the paper to which he made that reference.

Mr. Evarts—This is a paper concerning which all that appears from its face is that under the date of December 16, 1873—or the 15th; I don't know which it is—it is signed by Mrs. Tilton and is, I suppose, in her handwriting, isn't it?

Mr. Fullerton—Yes.

Mr. Evarts—It is not addressed to any person, and I do not understand any present state of the testimony that connects it with Mr. Beecher. I may perhaps be inadvertent to something that has been said by this witness, but nothing has been presently said on the subject.

Judge Neilson—What is your view about it, Mr. Fullerton?

Mr. Fullerton—In one stage of Mr. Moulton's testimony, he related an interview between himself and Mr. Beecher and Mr. Tilton, when Mr. Tilton read to him a statement, or a part of a statement, that he proposed to make, saying, "I will read you one extract from it, and if you can stand that you can stand the whole." And I think the language was made use of as having been quoted from the statement of Mrs. Tilton, made to Dr. Storrs, and my friend upon the other side called for that statement because a quotation was made from it. I now produce the original statement from which the language was borrowed, namely, the statement of Mrs. Tilton to Dr. Storrs, or which was used in that conversation with Dr. Storrs.

Judge Neilson—I do not think that is sufficient.

Mr. Evarts—Your Honor, we will consider upon it. [To Mr. Fullerton.] Can you turn to that part of the evidence?

Mr. Fullerton—I could not now. I will ask the witness, then, a further question.

Mr. Evarts—Your Honor will remember, as my learned friend has stated, that there was a long statement—what has sometimes been called the "true story"—which it was said was read to Mr. Beecher.

Judge Neilson—And it was finally allowed to be given as a conversation.

Mr. Evarts—Yes, Sir; your Honor finally allowed a certain passage out of it. The paper we did not have here, you remember.

Judge Neilson—No.

Mr. Evarts—A certain passage out of it was permitted to be given in evidence.

Judge Neilson—As a conversation merely.

Mr. Evarts—As a conversation.

Judge Neilson—I said to Mr. Fullerton, I do not think that draws his letter in. If you adhere to your objection, I will rule it out.

Mr. Evarts—Yes, I am going to see how we stand.

Mr. Fullerton—It is ruled out.

Mr. Evarts—No; it is not ruled out.

Judge Neilson—I say, if he stands upon the objection I will rule it out.

Mr. Evarts—And I have asked, for the sake of information, what he stated in the evidence. [Referring to the stenographer's minutes.] Mr. Fullerton says, after the discussion between us, "Go on and state the communication. What did Mr. Tilton say to Mr. Beecher upon that occasion? A. Mr. Tilton said to Mr. Beecher, 'Mr. Beecher, there is one thing in this statement, which, if you can stand, you can stand any part of it. Elizabeth has stated that you solicited her to become a wife to you, together with all that that implies, and I will read to you that part of the statement.'"

And he did read to Mr. Beecher that part of the statement. Now, where does this letter come in, to that?

Mr. Morris—That is from this statement.

Mr. Evarts—Where is the witness' statement that it is from this?

Mr. Fullerton—I don't know where it is. I know it is there somewhere.

Mr. Evarts—I don't see it.

Mr. Fullerton—I will withdraw it then; it takes so much time.

Mr. Evarts—No, if your Honor please. You will hear what I have to say about it.

Mr. Fullerton—I withdraw it.

Mr. Evarts—Well, you don't withdraw it on my objection unless you hear what I have to say.

Mr. Fullerton—I withdraw it on your objection, and on the delay which follows it.

Mr. Evarts—My delay is my own affair.

Mr. Fullerton—And partly mine.

Mr. Evarts—Now, if your Honor please—

Mr. Beach—What is the gentlemen speaking to? We have withdrawn the offer.

Mr. Evarts—Perhaps I shall speak to that.

Mr. Beach—To our withdrawal of the offer?

Mr. Evarts—Yes, Sir. Now, if your Honor please, the counsel has informed us that there was some connection of this paper with what was legitimately in evidence, and that that connection was found in the examination of this witness concerning the "true story" that was read, and that it was stated that the passage in the "true story" which was called to Mr. Beecher's notice and concerning which he was told if he could stand that he could stand anything that there was in the proposed publication—that that passage was an extract from this letter. That is the statement as you make it.

Mr. Beach—Oh! no.

Mr. Fullerton—And which you deny.

Mr. Evarts—Now, if that be so in the evidence, then the paper may be admissible. I have turned to this passage of the examination of the witness, and I do not find anything of the kind.

Judge Neilson—I do not recollect any statement referring to this letter in that conversation.

Mr. Evarts—Now, of course the counsel has a right to withdraw the paper entirely.

Mr. Beach—There is a slight mistake in the statement of the counsel which I think should be corrected. Your Honor did not permit any part of that statement to be read, merely ruling that the witness could state the conversation that occurred between him and Mr. Beecher without reference to the statement. You ruled it all out.

Judge Neilson—I do not recollect that this letter was referred to in that connection. You will withdraw it, then, for the present.

Mr. Fullerton—We withdraw it, yes, Sir, on the objection being made upon the other side.

Mr. Evarts—No.

Mr. Fullerton—I know my reason for withdrawing it better

than you do, and that is because you object and spend a good deal of time about it. Now, do you withdraw your objection to this paper?

Mr. Evarts—I do.

Mr. Fullerton—Then we will consider whether we put it in; and having another paper in the hands of the witness I will go on with the testimony upon that point.

Q. What paper have you in your hand now? A. A letter from Mr. Beecher, Sir.

Q. Addressed to whom? A. To me.

Q. Was it received by you? A. It was; yes, Sir.

Q. About the time of its date? A. Yes, Sir.

Mr. Fullerton—I offer it in evidence. It is one of those letters, Sir, which was mislaid and was not put in in its proper order. Shall I read it, Mr. Evarts?

Mr. Evarts—I think so.

Mr. Fullerton (reading)—

MY DEAR FRIEND: I sent on Friday or Saturday the portrait of Titian to the store for you. I hope it may suit you.

I have been doing ten men's work this Winter—partly to make up lost time, partly because I live under a cloud, feeling every month that I may be doing my last work, and anxious to make the most of it. When Esau sold his birthright he found "no place for repentance, though he sought it carefully with tears." But I have one abiding comfort. I have known you, and found in you one who has given a new meaning to friendship. As soon as warm days come I want you to go to Peekskill with me.

I am off in an hour for Massachusetts, to be gone all the week.

I am urging forward my second volume of "Life of Christ," for "the night cometh when no man can work."

With much affection and admiration, yours truly,  
March 25, 1872, Monday morning. H. W. B.

[Marked "Exhibit No. 56."]

Mr. Fullerton—The objection being withdrawn to this paper, which I offered a moment since, I now read the paper in evidence. [Reading.]

DECEMBER 16, 1872.

In July, 1870, prompted by my duty, I informed my husband that H. W. Beecher, my friend and pastor, had solicited me to be a wife to him, together with all that this implied. Six months afterward my husband felt impelled by the circumstances of a conspiracy against him, in which Mrs. Beecher had taken part, to have an interview with Mr. Beecher.

In order that Mr. B. might know exactly what I had said to my husband, I wrote a brief statement (I have forgotten in what form) which my husband showed to Mr. Beecher. Late the same evening Mr. B. came to me (lying very sick at that time) and filled me with distress, saying I had ruined him, and wanting to know if I meant to appear against him. This I certainly did not mean to do, and the thought was agonizing to me. I then signed a paper which he wrote, to clear him in case of a trial. In this instance, as in most others, when absorbed by one great interest or feeling, the harmony of my mind is entirely disturbed, and I found on reflection that this paper was so drawn as to place me most unjustly against my husband, and on the side of Mr. Beecher. So, in order to repair so cruel a blow to my long-suffering husband, I wrote an explanation of

the first paper and my signature. Mr. Moulton procured from Mr. B. the statement which I gave to him in my agitation and excitement, and now holds it.

This ends my connection with the case.

ELIZABETH R. TILTON.

P. S.—This statement is made at the request of Mr. Carpenter, that it may be shown confidentially to Dr. Storrs and other friends with whom my husband and I am consulting.

[Marked "Exhibit No. 57."]

Mr. Beach—Is there any date to it?

Mr. Fullerton—Yes; I gave the date.

Mr. Beach—What was it?

Mr. Fullerton—Dec. 16, 1872.

Mr. Shearman—You give it as Dec. 16?

Mr. Fullerton—Yes, Sir; it is so printed.

Mr. Evarts—I ask your Honor's and the Jury's attention to the change of date there.

Mr. Shearman—It was originally written "15th," but is altered to "16th."

Mr. Evarts—It is a question of the inspection of the paper.

Mr. Fullerton—I may say, with as much propriety, that it was written the 15th, and remains the 15th still.

Mr. Evarts—Which way do you put it?

Mr. Fullerton—I don't put it any way.

Mr. Evarts—Then the paper will speak for itself, if you don't speak for it.

Mr. Fullerton—I don't speak for it.

Mr. Evarts—I suppose the paper will speak for itself.

Mr. Fullerton—Then you should not say anything more about it.

Mr. Evarts—Well, we want to understand it.

Mr. Fullerton—Well, if you think there is a point there, you are entitled to all the advantage of it. I don't see, myself, that it makes any difference whether it is the 15th or 16th. It looks like either.

Mr. Evarts—Well, we will see.

Mr. Fullerton—Commencing on Dec. 26, 1870, and ending with the investigation before the Committee of Plymouth Church, how frequently did Mr. Beecher, as near as you can now state, visit you at your house? A. Very many times, Sir; he was the most frequent visitor with the exception of my partner, who came every morning to the house.

Q. Well, give the jury some idea of the frequency of his visits when he was in the city? A. In the first part of 1871 he was at my house about every day, Sir, and sometimes twice a day; and after I returned from the South, March 2, he came there frequently when he was in town; it is very hard for me to express how frequently; sometimes once a day and sometimes twice a day, and in 1872 the same.

Q. And at what hours during the day? A. No particular hours; he would come in the morning and come in the evening, and come on Sundays.

Q. How early in the morning? A. He would come sometimes before I was out of bed, Sir.

Q. And how late at night? A. After his Sunday service, and very late during the evenings of the week.

Q. At how late an hour in the evening have you known him to call? A. I have known him to come after church service, between 9 and 10 o'clock.

Q. If he visited you at your place of business in New-York, state the fact? A. Yes, Sir.

Q. How frequently did he visit you there? A. Not very frequently, Sir; he was not a regular visitor at the office; he would come when an emergency demanded it; as, for instance, during the sessions of the Council, he came to see me after the Storrs speech.

Q. When did his visits cease, either at the house or store? A. I think, Sir, that he did not come to my house after the 18th of July, 1874; I think that was the last date.

#### MOULTON OFFERS AN EXPLANATION.

Q. You called my attention during the recess to a correction that you wanted to make in your testimony; you are at liberty to do that now. A. Yes, Sir; it is with regard to the West charges; I seem to have confused the letter of Mr. West of June 25 with the charges that Theodore Tilton brought to my house in the Fall; I don't know that it amounts to very much, yet I thought it best to correct it; I say that I talked with Mr. Beecher about the charges of West; it was about the letter of West of June 25.

Q. The one that has been put in evidence to-day? A. Yee, Sir.

Q. And what was it that he wanted to go over until after vacation? A. The investigation that West had notified him of.

Q. And when did you see the charges? A. In the Fall, I believe.

Q. The Fall subsequent to this letter of the 25th of June? A. Yes, Sir.

Q. And it was then in the Fall that you called Mr. Beecher's attention to the charges? A. Yes, Sir; I had a conversation with him about the charges. I didn't show him that paper.

Mr. Fullerton—If your Honor please, that closes the direct examination of Mr. Moulton, but at the same time I desire to say to your Honor that in the great number of exhibits that we have been compelled to handle, and the great number of subjects to which we have been compelled to call the attention of the witness, we may have omitted something, and I wish it understood now that there is nothing reserved upon our part at all intentionally, and if anything is omitted it is entirely unintentional.

Judge Neilson—If it appears to be inadvertent you will be able to correct it.

Mr. Evarts—I now ask you to produce the original of the paper that we asked from you which was read from Mr. Morris's notes, as I remember.

Mr. Fullerton—If you will indicate what that is.

Mr. Evarts—The proposed card by Mr. Tilton, which embodied some part of what is called by your witness a letter of contrition. We allowed you to read from Mr. Morris's copy that he has made for the purpose of his opening, I suppose.

Mr. Fullerton—I read the original of that letter.

Mr. Evarts—No, you didn't.

Mr. Fullerton—I did, certainly.

Mr. Evarts—We understand—the card.

Mr. Fullerton—If you will turn to the testimony.

Mr. Evarts—We all remember perfectly about it. Mr. Morris handed over some paper that was in his hand, writing, and I said, "To save time we will let you read that, you undertaking to bring the original." We have asked for it three times.

Mr. Fullerton—Well, you are certainly entitled to it, if that is the condition of things, and shall have it.

Mr. Evarts—As you are now resting, of course we want it.

Mr. Fullerton—There is the paper you called for [handing a paper to Mr. Evarts].

Q. Mr. Moulton, look at that paper which is now shown you, and say whether it is the original proposed card of Mr. Tilton to be published in *The Brooklyn Eagle* [handing witness the paper]? A. Yes, Sir; I have seen this before on the stand; yes, that is it.

Judge Neilson—Has it been marked?

Mr. Evarts—The substitute was marked.

Mr. Morris—It is "Exhibit 25."

Mr. Evarts—The witness states that this is Mr. Tilton's handwriting.

Mr. Morris—That is Mr. Tilton's handwriting? Yes Sir.

Mr. Evarts—This is to be substituted for that.

[The paper now produced is marked "Exhibit No. 25," in place of the copy heretofore marked "Exhibit No. 25."]

Mr. Evarts—Now, I ask your Honor's attention to this correction that the witness has made. Certain papers were produced, to wit, a summons and a copy of the proposed charges or actual charges made by Mr. West and the witness testified to a conversation which he had with Mr. Beecher concerning those charges as there set down, and that one part of the conversation—no matter for any of the rest of it for the purpose, at present—is that Mr. Beecher wanted the consideration of them postponed until after the vacation. Well, now, upon his correction, there was no such paper in existence before the vacation, and there was therefore no conversation between him and Mr. Beecher about that paper as of the date which he has given for it; and if the correction that he makes is allowed, takes place—of course it is allowable for the witness to correct himself—why, all the evidence on the subject of a conversation concerning those papers with Mr. Beecher, on which alone the making



them evidence was permissible, falls through. Now, whether my learned friend is able or expects to recall the matter as evidence by conversations concerning them at a later date I do not know; it is for him and his witness between them to determine; but at present the correction, as it seems to me, strikes out all the evidence concerning a supposed conversation with Mr. Beecher regarding those papers.

Judge Neilson—And applies it to the letter.

Mr. Evarts—That is for him to say, whether he applies it.

Mr. Beach—He has said it.

Mr. Evarts—Well, but the letter does not contain the charges. How can he talk about it? It is not in existence.

Mr. Fullerton—It certainly must relieve the embarrassment of the witness, having fallen into such an error, when he finds that the learned counsel have fallen into a still greater one about a very recent transaction, because he misapprehends the testimony as originally given as well as the correction now made. The correction is this, that in speaking of the West charges, he spoke of them as having been sent to him at about the same time, whereas he says now the letter of Mr. West addressed to Mr. Beecher, saying that he was going to make charges, was the first one that was sent to him, and that it was with reference to it, and to it alone, that he had the conversation with Mr. Beecher in the first instance, when Mr. Beecher wished the examination which was then threatened to go over until after the vacation—until the Autumn. Now, so far as the conversation which he related as having taken place in the Summer, it relates to that paper, the witness says, and not to the charges.

Judge Neilson—So I understand now.

Mr. Fullerton—And that the charges came the following Autumn, and that he then showed them to Mr. Beecher, and that the conversation which refers to the charges did not take place then, but took place in the Autumn.

Mr. Evarts—That is what he has not said.

Mr. Fullerton—Yes, he has said just that.

Mr. Evarts—That is, I think, what he may say some time or other, but he has not said it yet. Your Honor will see what the examination was. [Reading from the testimony of Jan. 15]

Mr. Evarts—Well, what occurred, if you please? A. Mr. Tilton brought around to my house the charges of Mr. West about that time.

Mr. Fullerton—Look at the paper now shown you, and say whether it contains the charges thus produced to you by Mr. Tilton.

Mr. Evarts—Does he name that as the paper that was produced?

Mr. Fullerton—I say that.

Mr. Evarts—I assume you are going to correct it.

Mr. Fullerton—Oh! certainly.

The Witness—Yes, Sir; that is the paper.

To the Court—He had an actual paper.

Q. State whether you showed those charges to Mr. Beecher? A. I don't remember that I did.

Q. How? A. I don't remember that I showed them to Mr. Beecher.

Q. Did you have any conversation with him in regard to it? A. Yes, Sir, I had conversation with him in regard to it.

Q. What was that conversation? A. He said that the whole matter had better go over until Fall, and in the mean time during the vacation I thought we could get along with that subject—try to find a way. I told him I should recommend—

Mr. Evarts—I understand that this is one of the papers that Mr. Tilton brought you; these very papers? A. Those are the papers—that is, as I remember.

Q. You showed them to Mr. Beecher? A. I don't know that I showed them to him. No, Sir.

Q. But you spoke to him about the paper Mr. Tilton had brought you? A. I spoke to him about Mr. West's charges.

Mr. Fullerton—Did you state to him the substance of the charges? A. Yes, Sir; I told him I had a full conversation with Mr. Beecher about it.

Mr. Evarts—They don't seem to have been shown to Mr. Beecher?

Mr. Fullerton—Did you state the substance of the charges to Mr. Beecher? A. Yes, Sir; I did, certainly; I have answered that.

Q. And what was said by him in reply? A. Why, he hoped that he would be able to find a way to get over that matter during the Summer.

Q. And what was proposed? A. I proposed that Mr. Tilton should—or I said that Mr. Tilton proposed to me that he should—write a letter saying that he declined, on the ground of non-membership.

Mr. Evarts—Now, I am not objecting to the witness correcting a statement that is made, the correction being that there never was any such conversation concerning Mr. West's charges as brought to him by Mr. Tilton.

Mr. Beach—That is not his correction.

Mr. Evarts—At that time.

Judge Neilson—At that time.

Mr. Evarts—Therefore I say what you have got here goes out.

Mr. Fullerton—No, No.

Mr. Evarts—Well, that is my statement—it goes out. If you admit that a conversation concerning the charges, which were concerning a paper which is presently before them, brought by Mr. Tilton, now that there was no such paper before them, that no such paper was brought by Mr. Tilton, and that instead of that there is a letter, not containing the charges, but a letter written by Mr.

West to Mr. Beecher, which Mr. Beecher brought to Mr. Moulton, now how are you going to put those two conversations together? You may take the witness up and examine him as to what occurred when Mr. Beecher brought that letter, and you may take him up and examine him as to what occurred in the Fall when the charges were brought—if Mr. Beecher was present, for it does not appear—but we cannot have a substitution of this testimony as it stands, as being in evidence that has been given by this witness in regard either to the letter of West to Beecher in the early Summer—because it does not profess to be—nor in regard to the charges of West in the Fall, because he has testified that he had no such conversation in the Fall.

Judge Neilson—I think this misapprehension had better be cleared up, Mr. Fullerton.

Mr. Fullerton—I will, to gratify the counsel upon the other side, and solely for that purpose.

Q. Now, state what occurred between you before the Summer vacation, in regard to anything with which Mr. West was connected. A. I received the letter of June the 25th, from Mr. West to Mr. Beecher, from Mr. Beecher, and we talked about those charges, and he wanted it to go over the Summer vacation—he wanted that matter to go over the Summer vacation.

Mr. Evarts—What was said we are entitled to.

Mr. Fullerton—Yes; what was said? A. Mr. Beecher said that he hoped the matter could go over the Summer vacation, and that then we could find a way to deal with it; I saw him in the Fall.

Judge Neilson—That was with reference to the letter? A. Yes, Sir, with reference to the letter of June 25.

Mr. Fullerton—The letter threatening the charges? A. Yes, Sir.

Mr. Evarts—Well, the letter.

Q. And did you approve of this—having it go over till Fall? A. Yes, Sir.

Q. What occurred then in the Fall with reference to the charges, when they came? A. In the Fall, the charges of Mr. West were made and the paper that I have seen here in court was brought to me by Mr. Tilton, and I saw Mr. Beecher and Mr. Tilton together, and it was decided what should be the reply; and Mr. Tilton said to Mr. Beecher, "I will claim my non-membership and thus will prevent my being cited before the church." And he did write a letter and send it to Mr. Tallmadge, I think—if I am correct about that—and then Mr. Beecher said to him, in my presence, afterwards, "Theodore, God inspired you to write that letter."

Q. Now, in this conversation that you have last spoken of between yourself, Mr. Beecher and Mr. Tilton, state whether the West charges were then and there present? A. I don't remember that they were.

Q. They were the subject, however, of the conversation? A. They were the subject of the conversation. I

think that Mr. Tilton had them in his possession there; I think so; I did not have them in my possession.

Q. Were they taken out and exhibited, do you remember? A. Mr. Tilton had them in his possession. I don't remember whether he exhibited them or not. My impression is that he did—I could not swear that he did. They were the subject of conversation, however.

Mr. Evarts—Those West charges, as they now stand on the evidence, are not entitled to be read. We ask that they be struck out. The foundation upon which he rested them as evidence has disappeared.

Judge Neilson—He said before that he could not say that Mr. Beecher saw them.

Mr. Evarts—Well, but he said that he had them there and that he stated them to him. I submit to your Honor that that exhibit must be struck out as not supported by any evidence.

Judge Neilson—I will look at the evidence as it stands. If it is not supported, it will be struck out.

Mr. Evarts—Your Honor understands our point.

Judge Neilson—Yes, Sir; I cannot recall it all now.

Mr. Evarts—No, we will not interrupt your Honor at present. We make the point, and if your Honor rules against us we shall except.

Judge Neilson—Yes, Sir.

Mr. Beach—My friend has read from the previous testimony of Mr. Moulton that at some time Mr. Moulton stated those West charges to Mr. Beecher.

Mr. Evarts—Yes, Sir, in the Summer, which happened to be some months before they were in existence.

Judge Neilson—But that same evidence now applies to a later interview.

Mr. Morris—He corrects it.

Mr. Evarts—He corrects it. When he is asked whether the charges were there or exhibited or produced, he does not know.

Mr. Fullerton—I will ask him about it.

Mr. Evarts—He cannot know any better now—better than he knew three months ago.

Mr. Fullerton—What was said in regard to the West charges at this interview between yourself, Mr. Beecher, and Mr. Tilton? Let us have it again. A. Mr. Tilton said he was going to plead his non-membership of the church, and therefore could not be cited down—to prevent his being cited before the church for trial.

Judge Neilson—He asked you what was said about the charges.

Mr. Beach—The question put to you is whether anything was said to you there, and if so, what, in regard to the nature or character of the West charges.

Mr. Evarts—Yes, that is the question put now; it has not been before.

Mr. Fullerton—Yes, it was before—the previous question.

Mr. Evarts—Well!

Mr. Beach—We propose to put it again.

Mr. Evarts—That could never happen—that conversation.

Mr. Fullerton—It did happen. It did not happen in the Summer.

Judge Neilson—One at a time.

The Witness—What is the question?

Mr. Fullerton—What was said in the conversation between yourself, Mr. Beecher, and Mr. Tilton in regard to the West charges against Mr. Beecher?

Mr. Beach—The nature of them.

Mr. Evarts—That is a leading question. This witness has made three answers that he don't remember. He has been asked three times what was said, and the answer was that Tilton would write a card declining.

Mr. Beach—Now, the witness should not be put in a false position. I think the witness has been misled by the form of the question that was put to him concerning what was said on the subject of the West charges. Now, I propose to have the question put to him, what if anything was there said in regard to the nature or character of the West charges?

Judge Neilson—In the Fall?

Mr. Beach—Yes, Sir.

Mr. Fullerton—State, Mr. Moulton, if you please! A. In regard to the nature or character of the West charges?

Q. Yes.

Judge Neilson—After they had been put in.

Mr. Evarts—After what?

Judge Neilson—After they had been put in.

Mr. Evarts—They were not put in. After they had been sent in to the church, your Honor.

Judge Neilson—That is what I mean, of course.

Mr. Fullerton—And after they had been served upon Mr. Beecher.

The Witness—There was nothing that I remember at this conversation except the fact that Mr. West had made his charges at the church, and Mr. Beecher was at the house and consulted with Mr. Tilton and myself in regard to what the answer should be to those charges.

By Judge Neilson—Was anything said as to what those charges of Mr. West were? A. We all seemed to know. There wasn't any discussion.

Judge Neilson—Well, that answers the question then.

Mr. Evarts—I think this ends the matter.

Mr. Beach—We will see.

Mr. Fullerton—You are very anxious to have it ended, but it will not be ended until it is done.

Mr. Evarts—Well, we will see.

Mr. Fullerton—Well, just wait and we will see. [To the witness.] On your former testimony—the former examination—I understood you to say that in that interview at your house between Mr. Beecher, Mr. Tilton and

yourself you stated the nature and character of the West charges?

Mr. Evarts—That I object to. There is no such thing in the evidence.

Mr. Fullerton—There is such a thing in the evidence.

Mr. Evarts—That is in the Summer, and the West charges had not been made then.

Mr. Fullerton—I don't care when it was that the conversation took place, and if the witness has made a mistake in saying that it took place in the Summer rather than in the Fall, I do not mean to be deprived of the benefit of that testimony.

Mr. Evarts—That I agree to. Now prove what took place in the Fall. Don't endeavor to call him to an exploded conversation in the Summer as evidence that he has given about what took place in the Fall.

Mr. Fullerton—Well, he didn't explode as frequently as you do, to no effect.

Judge Neilson—Put your question.

Mr. Fullerton—I say, if the conversation took place, it is immaterial when it took place. It was with reference to the charges, and of course—

Mr. Evarts—We will discuss this at some other time.

Mr. Fullerton—You are discussing it now.

Mr. Evarts—I am not.

Mr. Fullerton—You are trying to.

Judge Neilson—Be as quiet as you can, gentlemen. You interrupt the order.

Mr. Fullerton—Now I will read this over again, [reading from testimony of Jan. 15].

Q. You showed them to Mr. Beecher? A. A. I don't know that I showed them to him; no, Sir.

Q. But you spoke to him about the paper Mr. Tilton had brought you? A. I spoke to him about Mr. West's charges.

Q. Did you state to him the substance of the charges? A. Yes, Sir; I told him I had a full conversation with Mr. Beecher about it.

That is what I referred to.

Mr. Evarts—That is before the charges were made.

Mr. Fullerton—[Reading]—

Mr. Evarts—They don't seem to have been shown to Mr. Beecher

Mr. Fullerton—Did you state the substance of the charge to Mr. Beecher? A. Yes, Sir; I did, certainly; I have answered that.

Mr. Evarts—Now—

Mr. Fullerton—One moment! I have a question to put, and then you may object if you please. [To the witness.] I call your attention to that part of the evidence in this case, and ask you now whether in the Fall after the charges were made you had this conversation which I have just read?

Mr. Evarts—That I object to. That is entirely a leading question. He asks this witness whether he had in the Fall a conversation that he testified that he had in

the Spring, and which he never did have in the Spring. Now we will get what the Fall conversation was, but not in that method.

Judge Neilson—The counsel should ask him what the Fall conversation was. Ask him what was said to Mr. Beecher in regard to the West charges, or, if anything, in regard to their contents and terms.

Mr. Fullerton—Now, will you state what conversation you had with Mr. Beecher in the presence of Mr. Tilton in the Fall, with reference to the West charges? A. Yes, Sir; Mr. Beecher was at the house with Mr. Tilton, and Mr. Tilton said to Mr. Beecher, "I shall plead non-membership with reference to these charges of Mr. West, so that I shall not be cited—so that I cannot be cited before the church"—or words to that effect; that is the substance of it; and Mr. Beecher thought that that was the proper course for him to pursue, and said that he would like to have him pursue that course; that was the substance of what Mr. Beecher said. And Mr. Tilton did write a letter to the church; and Mr. Beecher subsequently met Mr. Tilton and myself, and said, "Theodore, God inspired you to write that letter."

Q. Now, is that all that you remember? A. That is all that I remember.

Q. At any time when Mr. Beecher was present, was the nature of these charges—the character of these charges—discussed and mentioned? A. Mr. Beecher said to me, on one occasion—let me see; I think it was in the Fall—I told Mr. Beecher that Mr. Tilton had come to me and said to me that Mr. West seemed to him more friendly disposed toward him (Mr. Tilton) in the Fall than he had been; and that he had been to see Mr. Tilton with reference to coming down to the church and testifying—testifying on that subject; and I said to Mr. Beecher, "I do not like it; it seems to me that with reference to his charges against you, his undertaking, nominally, to defend you is but really to ruin you." Mr. Beecher said he thought so too. That is the only conversation that I remember in reference to the church.

Q. Did you ever hear of but one set of charges made by Mr. West? A. No; I never heard of but one set of charges. I remember the conversation that I have detailed to you specifically.

Mr. Evarts—Your Honor reserves your decision upon my motion to strike out?

Judge Nelson—Yes, Sir; I will look at the evidence. Now, will the audience be as quiet as possible?

#### MR. PORTER BEGINS THE CROSS-EXAMINATION.

Mr. Moulton cross-examined by John K. Porter:

Q. What is your age? A. Thirty-eight; I was thirty-eight years of age last July—the 11th.

Q. You mentioned that you were a member of the firm of Woodruff & Robinson? A. Yes, Sir.

Q. What is the business of that firm? A. The business of that firm, Sir, is—was, when I was a member of the concern, in both of its branches, a merchandise and storage business. I am a member of the concern of Woodruff & Robinson, now, in the merchandise business.

Q. You were a general partner? A. I was a general partner in the concern in the storage and merchandise business.

Q. When did you cease to be a general partner? A. I ceased to be a general partner, Sir, on the 1st day of January, if by general partner you mean in the merchandise and storage business; yes, Sir.

Q. What is your present partnership—one of definite or indefinite duration? A. Well, Sir, so far as I know, it is of indefinite duration; it is not a limited partnership.

Q. The time of its termination is not fixed? A. The time of its termination is not fixed; it has been talked about, Sir.

Q. And is still undetermined? A. And it is still undetermined.

Q. Mr. Tilton, I observe, takes frequent occasion to speak of you as the mutual friend of himself and Mr. Beecher. That was the relation you occupied, was n't it? A. I was a friend of Mr. Tilton's and a friend of Mr. Beecher's.

Q. At what era did your friendship to Mr. Beecher have its inception? A. Well, Sir, about Dec. 30, an intimate personal friendship, 18—not an intimate personal friendship before Dec. 30, 1870, Sir.

Q. It had its termination at the time you refused to furnish him with copies of his own papers in your hands? A. No, Sir; I think not.

Q. How long after that did it continue? A. Can you give me the date, Sir, of the communication that he addressed to me? He addressed to me a communication, if I remember—perhaps I can state it to you from memory.

Mr. Beach—I think that question improperly assumes, Sir, that Mr. Moulton declined to furnish him with copies of papers. There is no such evidence, as yet.

Mr. Porter—You did decline to furnish him with copies of papers? A. I did not decline to furnish him with copies of papers.

Q. Did you decline to furnish him access to papers? A. By advice of counsel, Sir, I wrote a note to Mr. Beecher relative—in answer to a letter brought to me by Mr. Benjamin F. Tracy, at my office, Sir.

Q. You do not understand that you ever did deny to Mr. Beecher access to his papers in your hands? A. To his papers in my hands? No, Sir; I do not understand that I ever denied him access to his papers in my hands.

Q. You are not aware that he desired to obtain access

to them? A. I am aware that he desired to have me furnish, if I remember correctly, Sir, the phraseology of his note; I am aware that he desired to have me furnish him—the letter will state, if you will allow me to look at it, Sir. Perhaps you know it yourself.

Mr. Porter—Well, you have the letter.

Mr. Beach—It is printed.

Mr. Evarts—Well, it is the letter to Mr. Moulton that we want.

The Witness—There was a letter brought by Mr. Tracy to me.

Mr. Evarts—You have got it, have 'nt you? A. I have not—I do not—it may be among the papers here, Sir; I think it was dated July 24, if I remember correctly.

Mr. Evarts—If we want that letter you will have to find it, I suppose. We want the original.

Mr. Beach—He can refresh his recollection by looking at the copy, if he wants. [Book handed to witness.]

Mr. Porter—Have you the original letter addressed to you on the 24th of July, '74? A. I really do not know, Sir, whether I have or not; if I have I will produce it; I do not know whether I have or not.

Q. You were subpoenaed to produce that among other papers, were you not? A. Yes, Sir; I have a subpoena to produce papers; I shall produce them—all, Sir, that I have; I judge that I must have it; it is marked here "D."

Q. Paper marked "L," is 'nt it? A. "L;" you are correct, Sir, marked "L." Now, the reply to that letter, Sir, was made by my counsel, as I stated to you; and if you will allow me to look at that I will see whether—[Book handed back to witness.]

Q. Just identify this letter first; do you identify that letter? A. Yes, Sir; I think this is the letter.

Mr. Porter—I will read it as printed now, and will subsequently introduce the other when it is produced.

Judge Neilson—Yes, Sir.

Mr. Porter—[Reading.]—

JULY 24, 1874.

MY DEAR MR. MOULTON: I am making out a statement and I need the letters and papers in your hands. Will you send me by Tracy all the originals of my papers? Let them be numbered and an inventory taken, and I will return them to you as soon as I can see and compare, get dates, make extracts or copies, as the case may be.

Will you also send me Bowen's "Heads of Difficulty," and all letters of my sister, if any are with you?

I heard you were sick—are you about again? God grant you to see peaceful times. Yours gratefully,

F. D. MOULTON.

H. W. BEECHER.

Q. When that letter was presented what reply did you make to Mr. Tracy? A. I think I told him I was going out of town that evening.

Q. Was that all? A. Well, it is about all that I distinctly remember.

Q. Perhaps by reading what immediately follows that

letter you may be able to refresh your recollection. A. I said to Mr. Tracy that he had better take—

Q. No, no, not aloud; you can refresh your recollection? A. I think I said something of that sort to him.

Q. Something of what sort? A. That I could not honorably give Mr. Beecher documents for conflict when I had not given them to Mr. Tilton.

Q. Did Mr. Tracy request you to give copies? A. He wrote a letter to me, Sir, asking me to give copies, and put the letter in his pocket—would not give that to me; he put it in his pocket and took it away with him, Sir; I recollect that.

Q. Be kind enough to refresh your recollection by looking again at the paper you have in your hand? A. "I suggested that perhaps—"

Q. No, you need not read, except for your own information? A. He said something about copies, Sir.

Q. He did? A. Yes, Sir; and he wrote a letter.

Q. One moment. A. Pardon me, Sir.

Q. Did he ask for copies? A. He said to me that Mr. Cunningham, a friend of both parties, might be trusted to make copies, and I said I didn't think that I could furnish copies any more than I could furnish the originals; that I was going away, and I did go away, Sir.

Q. Before going away, suppose we finish the conversation—will you look once more? A. Yes, Sir.

Q. Did you state to Mr. Tracy that it would seem to you the same breach of honorable obligation as to send the originals? A. I think I said something of that sort to him, Sir; I may not have used that phraseology exactly.

Q. You say Gen. Tracy wrote a letter at that time and on that subject? A. Yes.

Q. Did you refuse to receive it? A. I did not refuse to receive it.

Q. He did not offer it? A. I don't remember that he offered it to me, Sir; he put it in his pocket, and I asked him to take the other letter back with it.

Q. Did he read it to you? A. I don't remember that he read it to me.

Q. Did he write it in your presence? A. He wrote it sitting at the desk, Sir.

Q. In your presence? A. I was present in the office when he wrote it; I didn't look over his shoulder to see what he was writing.

Q. He wrote it to you? A. I don't know whether he did or not; I could not swear to that; he wrote a letter and put it in his pocket.

Q. You did not at the time understand that it was a letter to you? A. I had no reason for understanding anything about it.

Q. Why, a few minutes since, did you say he did write you a letter, but didn't deliver it? A. He wrote a letter, Sir; if I said he wrote me a letter I could not know that he wrote me the letter, because I didn't receive a letter from him,

Q. You didn't understand it to be a letter to you? A. Mr. Tracy said, "I will write a letter asking for copies;" and he put that letter in his pocket, and I never saw that letter, nor do I remember that that letter was read to me.

Q. Was the letter from Mr. Beecher a sealed letter? A. I don't remember, Sir, whether it was or not.

Q. When you read the letter of Mr. Beecher, didn't Gen. Tracy say to you that if you would not let him have the originals, copies would serve as well? A. I think Mr. Tracy said copies might serve as well.

Q. You didn't consent to show the original, nor to furnish copies, nor to permit them to be made? A. I didn't deny the original, nor did I deny copies.

Q. And gave neither? A. I gave neither because I was going out of town, Sir.

Q. And consented to give neither? A. And consented at that time to give neither.

Q. And affirmed that you could not honorably give either? A. That I didn't think I could.

Q. When did you next hear from Mr. Beecher on that subject? A. On what subject, Sir. On the subject of producing the document?

Q. Of access to those letters? A. I don't remember the date, Sir, I don't remember.

Q. If you will just look, you will see that there was a letter dated 28th of July. When did you receive that? A. I think, Sir, that I didn't receive that letter until the 4th of August, until my return. I went away.

Q. Were your letters forwarded during your absence? A. My letters were forwarded, Sir, to Narragansett; a messenger, I believe, went with the letter to Narragansett. Some letters came to me at Boston, but this letter Sir, I did not receive.

Q. Until your return? A. I think not, Sir, to the best of my recollection.

Q. You use the phrase "you think not." Do you mean to affirm, as matter of knowledge, that you did not? A. I did not.

Q. You left on what day? A. I think on the 24th; it was the date of this letter, I believe, that I left.

Q. You returned on what day? A. I think Aug. 4, Sir.

Q. On that day did you receive this letter? A. Yes, Sir.

Mr. Porter—I will read that. I don't know whether the last letter was marked.

Mr. Pearsall—No, it was not marked.

Mr. Porter—The better way will be to mark ours "D 1," "D 2," &c.

Judge Neilson—Mr. Pearsall, will you attend to that?

Mr. Morris—I would prefer that Mr. Shearman would do that.

Mr. Shearman—It is marked "D 1."

Mr. Porter—I read now the letter of July 28:

BROOKLYN, July 28, 1874.

MY DEAR FRIEND: The Committee of Investigation are waiting mainly for you before closing their labors. I too, earnestly wish that you would come and clear your mind and memory of everything that can bear on my case. I pray you also to bring all letters and papers relating to it, which will throw any light upon it, and bring to a result this protracted case. I trust that Mrs. Moulton has been reinvigorated, and that her need of your care will not be so great as to detain you.

Mr. Porter—Did you take offense at that letter? A. Did I take offense at it? No, I think not, Sir; I don't remember of the date.

Q. Did you regard that as an indication of unfriendliness to you? A. I don't think I did, Sir.

Q. Will you look at your statement for one moment, and refresh your recollection on that subject? A. Yes, Sir; what part of it, Sir?

Q. Immediately below the last letter? A. The letter of Mr. Beecher of August the 4th, heretofore published?

Q. Just refer to it, and then answer me? A. August 4, yes, Sir.

Q. How is it? A. I did not consider the other a letter of unfriendliness; no, Sir.

Q. Nor an indication from Henry Ward Beecher of unfriendliness? A. No, Sir; the letter of June 28 you are referring to now; July 28 you are asking.

Q. July 28? A. Yes, Sir.

Q. The letter of Aug. 4 you did, didn't you? A. Where is the letter of August the 4th?

Mr. Beach—I have not heard of any of August the 4th. Mr. Evarts—He received this letter of the 28th of July on the 4th of August.

Mr. Beach—Well, that don't make the letter of the 4th of August.

The Witness—I think I can find it right away.

Mr. Pearsall—You will find it, Mr. Moulton, at page, 41.

Mr. Porter—The letter of August 4 was one in reply to yours, I think. On the 4th of August, upon receiving the letter of July 28, you wrote to Mr. Beecher? A. Note of July 24.

Q. July 24; 28th I think it is? A. You said 28th; 24th you mean?

Q. On the 4th of August you wrote a letter to him? A. On the 4th of August, yes, Sir.

Mr. Porter—I will read that letter, your Honor, and then will follow it up with the letter of Mr. Beecher.

No. 49 REMSEN-ST., BROOKLYN, AUG. 4, 1874.

MY DEAR MR. BEECHER: I received your note of July 24, informing me that you are making a statement and need the letters and papers in my hands, and asking me to send them to you for the purpose of having extracts or copies made from them, as the case may be, that you may use them in your controversy with Mr. Tilton. I should be very glad to do anything that I may do, consistent with my sense of what is due to justice and right, to aid you; but if you will reflect that I hold all the important papers intrusted to me at the desire and request and in the confidence of both parties to this unhappy affair, you will see that I cannot in honor give

them, or any of them, to either party to aid him as against the other. I have not given or shown to Mr. Tilton any documents or papers relating to your affairs since the renewal of your controversy which had been once adjusted. I need not tell you how deeply I regret your position as foes each to the other. After my long and as you, I have no doubt, fully believe, honest and faithful, effort to have you otherwise. I will sacredly hold all the papers and information I have until both parties shall request me to make them public, or to deliver them into the hands of either or both, or to lay them before the Committee, or I am compelled in a court of justice to produce them, if I can be so compelled. My regret that I am compelled to this course is softened by my belief that you will not be substantially injured by it in this regard, for all the facts are, of course, known to you, and I am bound to believe and assume that in the statement you are preparing you will only set forth the exact fact; and, if so, the documents, when produced, will only confirm and cannot contradict what you may state, so that you will suffer no loss. If, on the contrary—which I cannot presume—you desire the possession of the documents in order that you may prove your statement in a manner not to be contravened by the facts set forth in them to the disadvantage of Mr. Tilton, I should be then aiding you in doing that which I cannot believe the strictest and firmest friendship for you calls upon me to do. With grateful recollections of your kind confidence and trust in me.

I am, very truly, yours,

F. D. MOULTON.

Rev. Henry Ward Beecher, Brooklyn, N. Y.

Mr. Porter—At that time you were a mutual friend of these parties, were you? A. Up to August 4.

Q. At that time were you the mutual friend of these parties? A. I had been as friendly to one as the other, Sir.

Q. Had what? A. Had been as friendly to one as the other.

Q. My question was not as to the past, but as to that present. A. As to what?

Q. My question was, whether, when you wrote that letter, you were the mutual friend of these parties? A. I was a friend of Mr. Beecher's and a friend of Mr. Tilton's at that time that I wrote the letter, Sir.

### BEECHER WRONGS MOULTON.

Q. At that time you cherished for him the strictest and firmest friendship, did you? A. I did.

Q. Down to that time had he ever wronged you? A. I don't think that he had, except in asking me to lie for him. [Laughter.]

Q. Do you think that was a wrong? A. Now, I do; yes, Sir.

Q. Did you then? A. I did not; I thought I was saving a man who was repentant.

Q. Did you lie for him? A. I did.

Mr. Porter—We have your word. [Laughter.]

Judge Nelson—One moment; the counsel ought not to comment upon what the witness says.

Mr. Porter—Not now, perhaps. [To the witness.] Did

you mean to intimate to Mr. Beecher that Theodore Tilton had not copies of these papers of which you denied copies to him? A. I meant to say, Sir, that I had never given him a copy for the controversy.

Q. Will you now oblige me by answering my question? A. Pardon me; I thought I had answered it.

Q. Did you mean to intimate to him that Theodore Tilton had not copies of the papers of which you refused copies to him? A. Did I mean to intimate; let me understand; I wish to answer the question; if you will ask the question again I will try to.

Q. When you wrote these words did you mean to be understood by him that, as you had furnished no copies to Mr. Tilton, you would furnish none to him? A. I had furnished none to Mr. Tilton, and would furnish none to him; that is what I meant to say.

Q. And you meant so to be understood? A. I meant so to be understood.

Q. Did you furnish—well, you answered my question? A. I did, Sir.

Q. Did you hand to Theodore Tilton the retraction which you procured from Mr. Beecher the evening you visited him with a pistol? A. Did I hand it to him?

Q. Yes. A. I read it to him, and may have handed it to him; I do not remember whether I handed it to him or not; I think I did, perhaps.

Q. You don't know, then, but what you did hand it? A. I don't know but what I did.

Q. You think you did? A. I may have handed it to him to read.

Q. To copy? A. No, Sir.

Q. Did he copy it? A. I don't remember that he did.

Q. And did you dictate to him while he copied? A. No, Sir.

Q. Did Mr. Tilton afterwards send you that paper?

A. Did he afterwards send me the letter of recantation?

Q. Yes. A. My impression was that I kept it, Sir.

Q. Do you mean to deny his statement that he afterwards sent it to you?

Mr. Fullerton—One moment; I object to that.

Judge Nelson—It is objectionable, as assuming—

Mr. Fullerton—There is no statement of that kind.

Judge Nelson—Yes.

Mr. Porter—Have you read Mr. Tilton's successive statements? A. Not all of them, Sir; no; I don't remember having read the statement that you speak of.

Q. How? A. I don't remember having read the statement that you speak of, and I would not be guided by it if I had.

Q. Do you mean, then, to swear that Theodore Tilton never had that in his possession? A. No, Sir; I do not mean to swear to that.

Q. Do you mean to swear that he never had it before this controversy began? A. I don't mean to swear to that; no, Sir.

Q. You don't know but he did? A. I don't know but

what I handed it to him that night; it would have been quite natural, Sir, if I had.

Q. Do you know whether he had copies of other papers, copies of which you had denied to Mr. Beecher?

A. Do I know whether he had copies of other papers—

Q. Yes; of which you denied copies to Mr. Beecher?

A. He told me that he had made a memorandum of the letter of contrition, part of which he quoted in the Bacon letter.

Q. I was not inquiring what he told you? A. Ah! I beg pardon.

Q. I was inquiring of your knowledge of the fact that he had copies. A. I don't know that he had copies, Sir.

Q. You never knew? A. No, Sir; I had not seen any copies in his possession.

Q. Do you remember his sending that with other papers, saying that they would be more secure in your safe than in his? A. remember sending what, Sir?

Q. A retraction by Mrs. Tilton? A. I do not remember that, Sir.

Q. You do not? A. I do not remember that.

Q. Did you ever read Mr. Tilton's examination? A. Not all through; no, Sir.

Q. Did you ever dictate to him while he made copies of papers connected with this controversy? A. I do not remember that I ever did.

Q. Do you remember that you did not? A. I should swear that I did not, Sir, if I swore at all.

Q. Well, that is what I ask you, whether you do so swear? A. I should swear that I did not.

Q. You do? A. Yes, Sir; for I do not remember that I ever did.

#### MOULTON UNINTERESTED IN TILTON'S LATER STATEMENTS.

Q. Did you read Tilton's first statement?

A. Not all of it.

Q. Did you hear it read? A. No, Sir; he would not read it to me.

Q. Did you hear his second statement? A. Did I hear his second statement?—no, Sir.

Q. Nor did you read it? A. No, Sir; he would not—he would not let me read it.

Q. Well, the better way is to find yourself the questions. A. Pardon me, I forget the—

Q. You do not now know what it contained? A. I do not now know what it contained; I could not repeat it, Sir; I read it after it was published—a portion of it.

Q. Why did you stop with a portion of it? A. I don't know, Sir; I was not very much interested in it.

Q. But you remember distinctly the fact that you did not read it through? A. I remember that I did not read it through.

Q. And that you never have read it through? A. No, Sir; not all of it.

Q. You remember distinctly the fact that you have never read his examination through? A. I remember that, Sir.

Q. You remember distinctly that you have never read his last statement through? A. I remember that.

Q. Nor heard it read? A. Nor heard it read.

Q. We will return to Mr. Beecher's letter; will you turn to page 142? A. Yes, Sir.

Q. In reply to your letter of the 4th of August you received this, did you? A. In reply to what, Sir?

Q. To your letter of the 4th of August. A. Received which one, Sir? where is it?

Q. The one which you find on page 142. A. Oh! I see; yes, Sir; yes, Sir.

Mr. Beach—I do not see upon what principle these letters from Mr. Beecher are receivable.

Mr. Evarts—To show the relations of the witness with the party against whom he has testified.

Mr. Beach—Yes, Sir; but I object to these communications from Mr. Beecher to Mr. Moulton. It is intimated by counsel that they are offered in evidence for the purpose of showing the relations or the feelings between Mr. Beecher and the witness. I understood it to be abundantly settled by the authorities that for that object it is not competent to show the particulars of any one, or of any transaction as between the witness and the party; but only to ask as to the state of feeling; and if your Honor has any doubt in regard to that proposition, I shall ask you to look at the authorities upon the subject. Now, here is a series of letters proposed to be introduced, written by Mr. Beecher to Mr. Moulton. I cannot see, Sir, upon what principle they are admissible. They contain declarations upon the part of Mr. Beecher which may, perhaps, affect the merits of this controversy. They may contain allegations of fact which Mr. Moulton, for aught I know, may have admitted or failed to deny. But how those assertions upon the part of Mr. Beecher whether written or oral, can be produced upon this issue I am at a loss to perceive. It is not pretended that Mr. Tilton was present. It is not pretended that they were shown or stated to Mr. Tilton. No possible connection upon the part of Mr. Tilton, we think, is proposed to be shown; certainly none has been shown, and until that connection is proven, I submit to your Honor that they are not admissible, and I object to them.

Mr. Evarts—Certainly, these letters have nothing to do with Mr. Tilton. Mr. Moulton has shown himself by his direct examination as the depositary in the confidence of friendship of certain papers as well as a good many oral communications, if we are to trust to his remembrance of such conversations that were confidential. Now, a controversy arises in which these papers confided to him are pertinent, and made in behalf of Mr. Beecher, who had confided them to him.



and it was necessary and proper that Mr. Beecher should have the papers in reference to the inquiry that concerned the subject in respect to which those papers came into existence, and that go to show the attitude and conduct of this witness from the moment that the confidence in which the papers had been reposed required that for the purpose of the man who had reposed that confidence in him, he should have access to them, he took the attitude of denying and of excluding. And as we could have shown the conversation between them on the subject to mark the attitude, and mark the sentiments, and mark the conduct from that time forth of this witness in this controversy, so we can show the correspondence between them and the letters from Mr. Beecher to Mr. Moulton and from Mr. Moulton to Mr. Beecher on the subject matter of the attitude, or a statement of the attitude, as a conversation would be. And it is our purpose to show by this correspondence that from that time forward this witness has been hostile, active in opposition to Mr. Beecher; and this great act of refusal and exclusion, the applications made by Mr. Beecher, and the manner in which they were met by Mr. Moulton, is the initial step of that exploration and exposure of this witness's attitude.

Judge Neilson—Well, we have received the correspondence down to the point of refusal—that appears—on application for the papers or for copies, obtaining neither—that appears. Now, unless the remaining correspondence is for some other purpose than to show hostile feeling, I think it is not admissible. That fact can be shown by a general question or proved by anybody else.

Mr. Porter—But the correspondence on that day is itself conclusive evidence of hostility on the part of Mr. Moulton. Besides, in this letter from Mr. Beecher, he replies to the allegations made by Mr. Moulton in the letter addressed to him, renews his application, limits it, makes it more specific, and that reply by Mr. Moulton I propose to read as a part of the *res gestæ* in reference to the very papers in controversy.

Judge Neilson—Those two remaining letters going to the question of application and refusal?

Mr. Porter—Yes, Sir.

#### ATTEMPT TO PROVE MOULTON HOSTILE TO BEECHER.

Mr. Beach—We do not deny the proposition that it is entirely competent to show hostility, if it can be shown, on the part of Mr. Moulton against Mr. Beecher—ill feeling, malice—nor do we deny the right, in the language of the first counsel who addressed your Honor, to show that there was an active and persevering hostility on the part of Mr. Moulton toward Mr. Beecher. The question is one that has to be shown. The counsel says, and he assumes that is an

established proposition, which I deny, that he can show it by proving conversations, the details of quarrels, the details of imitations, if you please, or any other declarations upon any subject as between the two parties. I assert, Sir, that the settled doctrine of the law is that for the purpose of proving that condition of feeling between assumed parties, you cannot give the details of transactions between them from which that hostility may be inferred; that you can only ask in regard to the actual state of feeling or to acts upon the part of the witness which go to indicate a hostile sentiment. Now, this letter which is proposed to be introduced—Aug. 4, of Mr. Beecher's—if your Honor will look at it, you will see that there is an expression in the last part of it of reproach, of indignation, if you please, for refusing these originals or these copies, as the case may be. Upon what principle is that received? The fact of refusal is already established, and, so far as that is proper or improper, so far as it is indicative of any ill-sentiment on the part of Mr. Moulton towards Mr. Beecher, why your Honor will see it, and the jury may consider it, but expressions of resentment or anger, condemnation on the part of Mr. Beecher, are not to be received as evidence of that condition of feeling as between the parties. It is enough that the parties admit or deny that that feeling exists. I wish your Honor would look at this proposed letter.

Judge Neilson—It is not necessary. I think the correspondence already in clearly amounts to an application for papers or copies, and a refusal; that covers that part of it.

Mr. Evarts—Now, if you leave it there it will stand upon this letter; but that was not the end of the application. Mr. Beecher renews and enforces his applications, and is met with persistent resistance.

Judge Neilson—That is not necessary to our purpose. It is sufficient that an application was made.

Mr. Evarts—Have we not a right, if your Honor please, to show what applications we made, and how they were refused?

Judge Neilson—Here is the application made.

Mr. Evarts—We can show one application made in a certain matter. If that were the end of the matter, very well; but we persist in our application, and then we are met in the manner that we are met. It is not a repetition of the response, as before. Our application is, in the shape presented to him, an earnest of our necessity and of justice, and replied to by him in the manner that it is replied to, and we offer that evidence as in itself the most direct and most trustworthy evidence of the hostility of this witness at that stage of the matter, not by any general state of feeling, but by an espoused side, and maintenance of the opposing litigation from that time forward, and those letters are the evidence of it.

Judge Neilson—I think we have sufficient of the correspondence. I rule out this letter.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Porter—I offer first those letters from Mr. Moulton to Mr. Beecher on the 4th of August, 1874, renewing and limiting his application for that paper, and stating the specific grounds on which he claims them. Your Honor excludes it, and we except.

Judge Neilson—Yes, Sir.

Mr. Porter—I offer then the letter from Mr. Moulton in reply, on the following day, in which he declines the proposition, and states the specific grounds on which he declines. We except to your Honor's exclusion of the letters.

Mr. Porter—It was not until you received the answer on the 4th of August to your letter of that day that your friendly relations with Mr. Beecher terminated? A. Not until that time.

Q. And that letter was the commencement of their termination? A. One of the false statements in the letter was.

Judge Neilson, to the witness—Answer yes.

Mr. Porter—I now renew the offer.

Judge Neilson—I strike out the expression "false statements."

Mr. Porter—I do not object to it. I renew the offer now, that I have proved that this letter was the occasion of the termination of their relations. I now offer to read it, that your Honor may see, and that the jury may know.

Judge Neilson—It is sufficient that they did terminate friendly relations. We have sufficient evidence.

Mr. Evarts—How is that proved, if your Honor excludes that letter?

Mr. Fullerton—By the answer of the witness.

Mr. Evarts—How are the form and manner and degree of the hostility proved except by the expressions.

Judge Neilson—He has stated the fact that those relations terminated at that time.

Mr. Evarts—We are not obliged to take his answer, if your Honor please.

Q. After that did you ever enter the house of Henry Ward Beecher? A. After August 4?

Q. Yes, Sir. A. No, Sir.

Q. Did he ever enter yours? A. I don't think he has, Sir.

Q. Before the 30th of December, 1870, did you ever enter his house? A. I may have gone there with my partner on a New Year's Day to make a call.

Q. Do you remember that you ever did before that date? A. I don't distinctly remember that I did.

Q. Did he ever enter your house to your knowledge before that date? A. I don't think he did.

Q. As I understand you, the inception of your friendship for Mr. Beecher was on that stormy night when, as

you claim, you learned that he had debauched the wife of your most intimate friend? A. It was not previous to that.

Q. And its termination was at the time you refused to allow him access to the papers upon which you relied for the vindication of that charge? A. Yes, Sir.

Q. What was the inception of your friendship for Theodore Tilton? A. My early acquaintance with him, Sir.

Q. In what year did you become acquainted with him? A. In 1850, I think—1849 or 1850.

Q. Where? A. At the New-York Free Academy.

Q. What academy? A. The New-York Free Academy.

Q. Were you with him at any other institution? A. No, Sir.

Q. How long were you together there? A. Till 1854, I think.

Q. Were you classmates? A. Part of the time.

Q. Were you then on terms of the closest intimacy? A. I was intimate with him, friendly with him; he was my friend.

Q. Did he do you favors there? A. I don't remember that he did me favors.

Q. Nor any favor? A. I don't know that he did, any more than one student—

Q. You received a prize at that institution on one occasion, did you not? A. I think so; Yes, Sir, I believe I did.

Q. Was he a competitor? A. I don't remember that he was.

Q. Do you remember that he withdrew from competition in order to enable you to get that prize? A. No, Sir, I don't.

Q. Nor that he did it at your request? A. No, Sir.

Q. Who left the Academy first, you or he? A. I think he did.

Q. Where did he go? A. I believe he went into business as a reporter, or went into some newspaper office.

Q. When did he leave the Academy? A. In 1854.

Q. What did you do after that? A. On August 17, 1854, I went with Woodruff & Robinson, as a boy in their office.

Q. You remained with them in that capacity how long? A. I think six or seven years.

Q. During that time did you from time to time see Theodore Tilton? A. From 1854 to 1861 do you mean?

Q. Yes, Sir. A. Yes, Sir.

Q. Your kindly relations continued? A. Yes, Sir; they were kindly.

Q. Were you then living, in New-York or in Brooklyn? A. I lived in New-York, Sir.

Q. When did you remove to Brooklyn? A. I think it was in 1862 or 1863, somewhere along there—1863.

Q. At that time had you become a clerk in the office with the firm? A. Yes, Sir.

Q. When did you first acquire an interest in the firm? A. I think it was in 1861.

Q. When did you and Mr. Tilton come to meet more frequently? A. We came to meet more frequently after I came to Brooklyn.

Q. When was it? A. In 1863, I think.

Q. Was he residing here at that time? A. He was residing in Brooklyn, I believe.

Q. From that time were you quite intimate with him? A. Well, Sir, I didn't have time to be very intimate with anybody; I was friendly. I didn't visit his house very frequently at that time; I didn't visit anywhere.

Q. When did you begin to visit at his house? A. I think in 1863 or 1867, somewhere along there.

Q. When did he begin to visit yours? A. About that time when I moved into Clinton-st., when we became nearer neighbors.

Q. Were your families intimate? A. They were never very intimate; no, Sir.

Q. Your intimacy with Mr. Tilton was much greater than with Mrs. Tilton, of course? A. Yes, Sir.

Q. When did you first become his banker? A. He deposited money with Woodruff & Robinson in the beginning of 1871, if I recollect correctly.

Q. Were they engaged in business as bankers? A. No, Sir, he deposited money with Woodruff & Robinson—he wanted me to take it for him.

Q. In 1871? A. Yes, Sir.

Q. Was that the first occasion in which your firm had been his banker? A. I think he never had any money with us before that, Sir.

Q. Had you ever lent him money before? A. No, Sir.

Q. Never? A. Never that I know of.

Q. Had you ever engaged in any enterprise with him before that? A. Not that I now remember, Sir.

Q. Can you say that you had not? A. I think I could say so truthfully, Sir.

Q. You had before that been in the habit of visiting him frequently? A. I had been at his house quite frequently, yes, Sir.

Q. And he at yours quite frequently? A. He had been there, yes, Sir.

Q. Did he often sleep at your house? A. I don't think he did ever sleep there.

Q. Never? A. I don't remember that he ever stayed all night.

Q. Did he often take meals at your house? A. He did take meals there quite often.

Q. Breakfast? A. Sometimes.

Q. Frequently? A. I think not.

Q. Dinner? A. Dinner.

Q. Frequently? A. Yes, Sir.

Q. Did he ever take his meals at your house day after day? A. I don't remember that he was in the habit of taking them there, day after day; no, Sir.

Q. I did not inquire if it was his habit; I asked you if he ever did? A. He used to come for several days in succession; yes, Sir.

Q. Was it the subject of complaint by Mrs. Tilton? A. I never heard of it, Sir.

Q. Were you ever at his house over night? A. Never that I remember, Sir.

Q. Had you any pecuniary transaction with him prior to 1874? A. No, Sir.

Q. Did you afterward? A. Yes, Sir; after the date of this \$4,000 you mean.

Q. When first did you have any pecuniary transactions with him? A. The first was the \$4,000—the deposit of the \$4,000 with the concern.

Q. What time was that in 1871? A. It was in the beginning of 1871; in January, I think.

Q. That was at his instance? A. Yes, Sir.

Q. Not at your suggestion? A. I don't think it was.

Q. Was it for any special purpose? A. Not that I know of.

Q. Did it have any connection with any newspaper transaction? A. Not at the time it was made—not at the time it was deposited.

Q. Did he draw checks against it? A. He drew it out from time to time, by drafts I think; I don't remember now how he drew it out, whether he went to get the currency for it or drafts; I don't know now; I don't remember now.

Q. Did you bring with you your account of your transactions with him? A. I have told our bookkeeper to have it taken off.

Q. It is not yet ready? A. No, Sir.

Q. Will you be kind enough to remember to have it ready? A. Yes, Sir, certainly. Will you (Mr. Porter) be kind enough to tell me what was the last document you asked me to produce? I will make a memorandum of them now as I go along.

Mr. Porter—I don't now recall it.

The Witness—It was the letter of July 24, I think.

Mr. Pearsall—Yes, Sir.

The Witness—Yes, Sir, and now the account of Mr. Tilton. Make a memorandum for me, Mr. Pearsall, will you?

Mr. Pearsall—Yes, Sir.

Judge Neilson, to counsel—What do you propose further, gentlemen?

Mr. Morris—The hour of adjournment has arrived.

Judge Neilson—Judge Porter, do you suspend your cross-examination?

Mr. Porter—Yes, Sir.

The Court thereupon adjourned until 11 o'clock on Tuesday.

## SEVENTH DAY'S PROCEEDINGS.

## AN INDIRECT OPENING OF THE DEFENSE.

TESTIMONY RELATING TO MR. MOULTON'S ACQUAINTANCE WITH MRS. WOODHULL, HIS ACCOUNTS WITH MR. BEECHER, HIS STOCK IN THE GOLDEN AGE AND OTHER MATTERS—IMPORTANT TESTIMONY EXCLUDED.

The cross-examination of Francis D. Moulton was continued on Tuesday, Jan. 19, by ex-Judge Porter, and seemed in some respects as an indirect opening of the defense. It related mainly to his acquaintance with Mrs. Woodhull, his intimate relations with Mr. Tilton, his accounts with Mr. Beecher and his financial interest in *The Golden Age*. Evidence concerning the indictment against him and the settlement of Miss Proctor's suit was ruled out.

## SIDE-LIGHTS ON THE EVIDENCE.

If the object of a cross-examination is to drive a witness into a corner and worry him until his words are turned against himself, the defense were singularly unsuccessful on Jan. 19, and ex-Judge Porter had his time for his pains. If, however, the object of a cross-examination is to let in side lights and to change the aspects of the salient points of the controversy, the defense were singularly successful, and ex-Judge Porter had a new atmosphere for his pains. Zealous admirers of Mr. Beecher, who expected to see the witness flinch and his testimony shrivel and crack under a hot fire of cross-examination, went to lunch and subsequently to supper with impaired appetite and temper. Mr. Moulton smiled when he took his seat, smiled all the way through, and when he rose to get his overcoat, smiled again as he whispered to a friend that it was easy to tell the truth. He was not disconcerted at any stage of the proceedings, but played with his handkerchief with an expression of amusement on his face, was entirely at his ease, and, as many of Mr. Tilton's friends claimed, was "the best witness ever seen in court." But it was a cross-examination in name rather than in kind. Ex-Judge Porter made no effort to confuse him; questions were put to him in a pleasant voice and in a courteous manner; and from beginning to end there was an utter absence of the vulgar arts and cunning devices by which a lawyer aggravates the torture of the victim in the chair and casts suspicion upon his words and acts. The scope of the defense was much more comprehensive.

The jury and the auditors since the opening of

this case have been breathing the atmosphere of the plaintiff. Ex-Judge Morris, in his opening address, presented the whole case in sharp outlines, and placed Mr. Beecher's correspondence and the other documentary evidence in the case under the lens of his interpretation. All the negotiations which Mr. Moulton conducted, and all the devices by which silence was maintained, and by which the main facts of the controversy were kept beneath the surface, were analyzed in detail, and the inference was drawn again and again that every effort at compromise and concealment implied the defendant's guilt. Mr. Moulton in his testimony has strengthened these impressions. Mr. Beecher's letters have been identified and read to the jury, and the witness has himself interpreted them as confessions of guilt. The negotiations in which he took so active a part have been rehearsed by him, and Mr. Morris's construction has again been placed upon them. The jury-box has become saturated with the theories and inferences of the plaintiff's side. Obviously the defense wanted to turn on the side lights and change the color and relations of the evidence.

Mr. Moulton, in effect, was used as a witness to prepare the way for the presentation of the defendant's case, and the cross-examination was conducted, therefore, after the manner of a direct examination. This will readily be illustrated.

Mr. Moulton hitherto in this case has appeared in the light of Mr. Beecher's friend, devoting himself with untiring zeal to his service from Dec. 30, 1870, to midsummer, 1874. He has been introduced to the jury as Mr. Beecher's confidential friend, who remained true to him until the charges of blackmail were made. The defense, on the other hand, introduced Mr. Moulton as the schoolmate and life-long friend of Mr. Tilton, going fishing with him in the Summer, taking him to Narragansett Pier during several seasons, visiting him frequently, dining with him, acting as his banker, helping him when *The Golden Age* was started, lending him money, conducting the negotiations for the award of \$7,000 to him for the abrogation of the Bowen contracts, sympathizing with his views in regard to woman suffrage, and joining him in his attentions to Mrs. Woodhull.

Again, Mr. Tilton has appeared as a man who could have crushed Mr. Beecher but who was unwilling to expose him. The letter of Mr. Tilton to a friend in the West was called out by the defense to show that he had denounced Mr. Bowen as draw-

ing an assassinating dagger upon Mr. Beecher, and that he had regarded the Woodhull publication as a wrong and an insult to his wife. The reply which Mr. Tilton wrote to Mr. Bowen's notice of dismissal, it was shown, was put in type in the office of *The Golden Age*, and sent to Mr. Bowen and Mr. Beecher.

Again, the prosecution have introduced Mr. Moulton as the advocate of the policy of silence at every stage of the controversy. The defense questioned him closely in regard to his intimacy with Mrs. Woodhull, in order that the jury might infer that the first public accuser of Mr. Beecher had derived hints from him. He admitted that he had talked with her upon the subject of the scandal, but denied that he had described the pistol scene to her as she subsequently represented. He described his early visits at Mrs. Woodhull's house, and acknowledged that he had met her at Mr. Tilton's and at his own house. He did not know how Mrs. Woodhull ascertained the facts about the pistol. After the publication of her story Mr. Beecher had called his attention to the reference to a pistol, and had told him that he remembered nothing of that kind. Mr. Moulton had replied that it was not strange that he did not remember it, as no threat was made on the evening when the retraction was returned. Mr. Moulton was closely questioned during this portion of the examination, but was not disconcerted.

Mr. Moulton has hitherto appeared as the agent of Mr. Beecher in paying \$5,000 to Mr. Tilton without the knowledge of the latter. Ex-Judge Porter questioned him concerning his own financial connection with that paper and concerning its increasing expenditures.

The meeting between Mr. Tilton and Mr. Beecher on Dec. 30, 1870, had been described to the jury as relating wholly to the main cause of this action. The dismissal of Mr. Tilton from *The Independent* and *The Brooklyn Union* had nothing whatever to do with this meeting. Ex-Judge Porter elicited the fact that prior to that meeting Mr. Tilton had informed him that Mr. Bowen had threatened to dismiss him, and had described an angry interview between them in relation to Mr. Bowen's charges against Mr. Beecher. Mr. Tilton had then told him that he had no doubt that Mr. Bowen's charges against Mr. Beecher were true.

Mr. Beecher, according to the plaintiff's side, invariably shrank from making a public denial of the truth of the charges. The defense intimated that Mr. Beecher had favored a public reply to the Woodhull publication, but that Mr. Moulton had coun-

seled silence. Mr. Beecher's letter challenging Mr. Moulton to produce the letters which had been intrusted to him was read in evidence, although it had been excluded on the previous day. Mr. Moulton admitted that Mr. Tilton had assisted him in preparing a reply to this letter.

In these and other respects the cross-examination was an indirect opening of the defense. Strictly as a cross-examination, however, it was not effective, and ex-Judge Porter disappointed all who listened to him. He was too deliberate in his manner, too indirect in his questions, and too courteous in his tone. He asked three questions when one would have served as well, and he did not seem to be master of the case. Mr. Evarts suggested many questions to him at the close, and did not seem to be satisfied with the manner in which his colleague was conducting the case. Whenever Mr. Evarts rose to argue a question of law or to answer Mr. Beach's objections, the contrast between his earnestness and vigor and his colleague's caution and suavity was so strongly marked that Mr. Beecher's admirers were disposed to question the wisdom of the assignments of the counsel.

Mr. Moulton made light of the whole examination. When the argument over the admission of evidence in relation to the indictment against him and the Proctor suit was proceeding, he evinced some nervousness, but except in this instance he was cool, self-possessed, and good-humored.

When he was questioned in regard to his attendance at the Woman's Suffrage Convention in Richmond, Va., he smiled and said that his wife and son went with him, and that he introduced Mrs. Hooker as one of the speakers. Two or three times he volunteered information, and when encouraged to proceed edified Mr. Tilton's group of counsel rather than his opponents. He was asked when he had last attended a Plymouth Church meeting, and his hesitation occasioned considerable amusement until the question was modified so as to exclude the session at which he was hissed. His answers in all cases were clear and direct, and his friends were undoubtedly warranted in awarding him high praise as a witness.

#### COURT-ROOM INCIDENTS.

The court-room presented the same crowded appearance on the 19th as on the preceding days of the trial. Very few who enter in the morning leave the room before the hour of adjournment arrives. Many

of the spectators come provided with lunches, notably those who occupy seats in the gallery. Between 1 and 2 o'clock in the afternoon, ham sandwiches and mince pies are in great demand, and when the supply of these articles of indigestion fails, the hungry spectator is obliged to satisfy his appetite with a measure of roasted peanuts. After the principal characters in the great suit, the ancient vender of pies, who haunts the Court-house, ranks next in importance. He, too, appreciates his power, and bestows his favors accordingly. And his demeanor has grown cold, and haughty, and stately. This high-strung pie-man has become a part of the trial now, and he brooks no familiarity. He administered yesterday to a prominent member of Plymouth Church a crushing rebuke. "These mince pies are very bad," remarked the church member in question. "Werry bad, Sir," replied the pie-man; "but they're not half as bad as the langwidge as you've been a listunin' to all day." This pie-man on the first day of the trial was the meekest man in the court-room.

There were ten ladies in court on the 19th. Mrs. Beecher, as usual, sat beside her husband, and on her left was the wife of Colonel Beecher. Mrs. Tilton occupied her old seat by Mrs. Shearman, Mrs. Field, and Mrs. Ovington. In the rear of the court-room were two elegantly-attired ladies, who attracted considerable attention, owing to the fact that their names could not be ascertained by the other spectators. In the gallery were two ladies, one with a young and rather pretty face, the other an elderly person, fashionably dressed. They did not seem in the least embarrassed. On each side and behind them were red-shirted men who expectorated tobacco juice, and during the recess crunched peanuts and commented on the trial in coarse language. The ladies were evidently animated by feelings of curiosity quite as strong as those of their neighbors, and so they sat in their seats without leaving them once from 11 o'clock in the morning until 4 o'clock in the afternoon. Their powers of endurance must have been sadly taxed, for the air in the gallery was freighted with impurity, and besides, the ladies partook of no refreshments, despite the reproachful glances of the ancient pie-man.

Franklin Woodruff during the examination in the morning, sat beside Mr. Tilton. He entered the court-room with Mr. Moulton. In the afternoon Mayor Hunter occupied a seat beside Judge Neilson.

Scattered around the court-room were several prominent residents of Brooklyn, among the number, the Rev. Justin D. Fulton, who sat next to Mr. Beecher, the Rev. Mr. Hodge, Judge Reynolds, Gen. Dakin, Gen. Catlin, Col. Keeney, Rositer Raymond, Charity Commissioner Norris, and the Rev. Mr. Halliday.

#### MOVEMENTS OF COUNSEL.

The counsel in the case attract quite as much attention now as the plaintiff and the defendant. Every consultation is narrowly watched by the spectators, and is often invested with a significance that it does not possess. The counsel on each side drew together, and their consultations were frequent. Mr. Evarts sat by ex-Judge Porter, and right behind him were Mr. Beecher, Gen. Tracy, Mr. Shearman, and John J. Hill. Mr. Beecher made numerous suggestions to Mr. Evarts during the day, and once or twice he said something which kept his counsel smiling for several minutes. Mr. Beecher himself joined in the merriment excited by his remark. Mr. Tilton seemed in a serious mood, and paid more attention to Mr. Moulton's answers than to his counsel. Messrs. Fullerton and Beach occasionally exchanged jokes, but Mr. Morris was moody and stern throughout the day. Under his table was a valise containing two immense rolls of manuscript. These were the long statements printed by Messrs. Moulton and Tilton.

The recess was marked by an incident which removes all doubt concerning ex-Judge Morris's feeling in regard to Mr. Beecher. As soon as Judge Neilson announced that the regular intermission would be taken, Mr. Morris stepped over to Mr. Porter and called his attention to one of the answers made by the witness. Mr. Beecher, observing Mr. Morris in conversation with his counsel, addressed a jocular remark to him, but Mr. Tilton's counsel deliberately continued his conversation with ex-Judge Porter. Mr. Beecher withdrew with heightened color. Ex-Judge Morris does not hesitate to denounce the pastor of Plymouth Church, in private as well as in public.

#### THE PROCEEDINGS.

At the opening of the Court on Tuesday, Jan. 19, in the Tilton-Beecher suit, ex-Judge Porter continued the cross-examination of Francis D. Moulton. The witness was held in the same hazardous path he was drawn into the previous day, with a continuous line of ambush on either hand in the shrewd lawyer's excessive suavity. He was first questioned concerning his views on the question of Woman's Rights.

MOULTON'S ADVOCACY OF WOMAN'S RIGHTS.

Mr. Porter—You have not been able to produce the account, I believe, as yet? A. I had the account, Sir, with me yesterday, and handed it to my bookkeeper this morning to put it in such shape as would make it perfectly intelligible to you, Sir; and it will be here at one o'clock. And Mr. Tilton's account, Sir, he has himself, I understand from my bookkeeper, who furnished him an account from the book which I think is in shape for you to examine if you choose.

Q. I can do it either now or at that time.

Judge Neilson—Perhaps you had better take up both together at one o'clock then.

Q. I will proceed, then, to ask you a few questions about the extent of your intimacy with Mr. Tilton. You have mentioned that Mr. Beecher was in the habit of being at your house sometimes as often as twice a day? A. Yes, Sir.

Q. Which did you see most frequently, Mr. Tilton or Mr. Beecher, during the years of your intimacy? A. I should say I saw one about as much as the other. When Mr. Beecher was in town, I saw him almost as frequently as I did Mr. Tilton—perhaps more frequently Mr. Tilton than Mr. Beecher, Sir.

Q. Which was most at your house? A. Mr. Tilton was more frequently at my house, Sir.

Q. Were you in the habit of traveling together at times? A. We had made excursions into the country, Sir, during vacation time, together. I don't remember any other traveling we did together.

Q. Excursions of what duration? A. Well, we went fishing together sometimes, perhaps for a week.

Q. Frequently? A. Not very frequently; no, Sir.

Q. Every Summer? A. No, Sir; not every Summer.

Q. Did you ever visit watering-places together? A. Yes; I have been at Narragansett with Mr. Tilton.

Q. Through how many years was this habit of intercourse in vacations extended? A. I think the first time that I went to Narragansett with Mr. Tilton was in 1868, and we may have gone together in 1869. I do not think to exceed three times—three seasons in all, Sir—fishing.

Q. Did you travel elsewhere with him at any time. A. I don't remember now, Sir, that I did.

Q. Were you West together at any time? A. Out West?

Q. Were you at the West together at any time? A. No, Sir; I don't remember that I ever went West with him.

Q. Did you meet him at the West? A. No, Sir; I think not.

Q. Were you at Washington together at any time? A. No, Sir; I think not.

Q. Did Mr. Tilton ever go to Washington for you? A. No, Sir, I think not.

Q. Where else were you in the habit of meeting Mr. Tilton besides your own house? A. Well, Sir, he generally came to my house, and at *The Golden Age* office. I used to go to *The Golden Age* office to see him some.

Q. Were you frequently there? A. Yes, I used to go there pretty frequently during the first year of *The Golden Age*.

Q. And afterwards? A. While he was editor, Sir, I was frequently at *The Golden Age* office; yes, Sir.

Q. Were you associated in any matters connected with Wo-

man's Rights? A. I was in sympathy, Sir, with the Woman's Rights movement, as was Mr. Tilton.

Q. Did you meet at conventions or assemblages in that regard? A. I do not remember, Sir, that I was ever in a Woman's Rights convention with Mr. Tilton. Yes, I was once—in Newport, Sir.

Q. Did you go together? A. I think we did; yes, Sir.

Q. Did you ever meet him in Richmond? A. In Richmond? I think not, Sir; no.

Q. Passing over those matters which relate to the account, I desire to ask you two or three questions as to the general result. You acted as his attorney in the matter with Mr. Bowen? A. I went down to see Mr. Bowen, taking a letter of authorization from Mr. Tilton to Mr. Bowen, to settle his accounts with him.

Q. Then you did act as his attorney? A. If that be an attorneyship, Sir. I think the letter of authorization is quoted in my statement.

Q. Yes, I think it is. Have you the original here? A. I think, Sir, I have, if it is in my statement. It has been among my papers, and unquestionably is now.

Mr. Evarts—Have you that, Mr. Fullerton?

Mr. Fullerton—No.

The Witness—It is among my papers, Mr. Evarts.

Mr. Evarts—Who has charge of your papers?

The Witness—I gave them to Mr. Morris—Morris and Pear-

Mr. Morris—What is it?

Mr. Evarts—The authority from Mr. Tilton to Mr. Moulton to represent him in the Bowen controversy. I would like to see it.

Mr. Morris—They are all here. The subpoena *duces tecum* did not specify any particular paper.

The Witness [to Mr. Morris]—It was among the papers that I handed to you.

Mr. Fullerton—It is correctly quoted in that printed book, if that will serve you.

Mr. Porter—It perhaps will.

Mr. Morris—As it was not indicated which one was wanted we have brought them all here.

The Witness—If you will allow me to take a memorandum here, Mr. Porter, of the documents you want, I will have them search for them for you.

Mr. Porter—It is marked "I." If it will be convenient to you to refer to the book, then you may do so. [Handing witness the book.]

The Witness—I will remember the phraseology of that letter without the book, I think.

Mr. Morris—We could not arrange them under the subpoena. Your subpoena called for about half a bushel of papers. We have brought them here.

Mr. Evarts—What is the reason we don't have it?

Mr. Morris—We have them here.

Mr. Evarts—Well, let us have this one.

Mr. Morris—Well, here are the papers; they are not arranged and could not be.

Mr. Evarts—They have all been classified and marked, every one.

Mr. Morris—Your subpoena does not specify anything.

Mr. Evarts—No, but they are all classified and published.

Mr. Fullerton—We will look it out for you. You can read from the book and then substitute this one when it is found.

Mr. Evarts—If you cannot find it now you cannot find it at any time, I suppose.

Mr. Morris—We can find it now, Mr. Evarts, if you want to wait for an hour to do it.

Mr. Evarts—Well, that is your affair, not ours.

Mr. Morris—No, Sir; it is not our affair; we have brought the papers you called for.

Mr. Evarts—They seem to be very well arranged there, all in envelopes.

Mr. Fullerton—Those that we introduced are arranged in envelopes; if this paper is deemed of importance, I suggest to the other side that they use the printed copy, and we will substitute the original whenever it is found.

Mr. Evarts—If you will continue your search just the same, why we will go on.

Mr. Fullerton—Of course we will.

Mr. Porter—You say you remember the terms of this instrument; well, I can read it just as it is. [Reading.]

BROOKLYN, Jan. 2, 1871.

MR. H. C. BOWEN.

SIR:—I hereby authorize Mr. Francis D. Moulton to act in my behalf in full settlement with you of all my accounts growing out of my contracts for services to *The Independent* and *The Brooklyn Daily Union*.

THEO. TILTON.

[Marked "Exhibit D 4."]

Q. That was the day after he received the formal notice of dismissal? A. It was two days after he received it.

Q. Acting under that you secured how much for Mr. Tilton from Mr. Bowen?

Mr. Beach—We object to that, Sir.

Mr. Porter—On what ground?

Mr. Beach—That it is totally immaterial.

Mr. Porter—It is immaterial, except as it shows the friendly service on the part of the witness.

Mr. Morris—The amount does not.

Judge Neilson—Well, if it is a large amount it is a large service. I think it well enough to take it.

Mr. Beach—If your Honor will be kind enough to note our exception?

Q. About what amount? A. The account under the contract was finally settled by arbitration, and \$7,000—

Mr. Beach—The question was what you secured, not what was settled by arbitration.

Judge Neilson—He means to say secured in that way.

Q. What amount in all did you receive from Mr. Beecher? A. What amount in all did I receive from who?

Q. From Mr. Beecher?

Mr. Beach—For what purpose?

Mr. Porter—For any purpose.

Mr. Beach—Well, I object to that—what amount he received from Mr. Beecher for any purpose.

Judge Neilson—Well, for the purposes he mentioned.

Mr. Porter—Did you ever receive anything from Mr. Beecher except for the purposes you mentioned? A. For the tuition of

Bessie Turner and for the purpose of assisting Mr. Tilton; for no other purpose—and his family.

Q. What amount in all did you receive from Mr. Beecher? A. I have not the figures with me to state the exact amount that I received. There was \$5,000 in one amount that I received from Mr. Beecher. That was received, I believe, May 2d, 1873; and the other amounts were received from about June, 1873, down to May, 1873—various sums.

Q. Have you no idea of about the aggregate? A. I don't remember, Sir.

Mr. Beach—June, 1873, to May, 1873? A. No, Sir; not June, 1873; June, 1871, I meant. Somewhere between \$6,000 and \$7,000.

Q. In all? A. Yes, Sir.

#### MOULTON AND THE LADIES IN THE CASE.

Mr. Porter—Have you ever been on friendly terms with Mrs. Beecher? A. I think I have met her three or four times; that is all, Sir.

Q. Did you ever visit her? A. I never did visit her.

Q. Your intercourse with her has been very slight, I think? A. Very slight, Sir.

Q. Were you ever on friendly terms with Mrs. Morse, the mother of Mrs. Tilton? A. I have met Mrs. Morse several times, very pleasantly when I have met her, Sir.

Q. Were your relations those of friends? A. We were not unfriendly. There was no particular friendship, I think—what could be called friendship.

Q. Mere acquaintance? A. Acquaintance.

Q. Where did you meet her? A. I think I have met her at Mr. Tilton's house, and, I believe, once in Schermerhorn-st.

Q. You mean you met her in the street? A. No, Sir; in the house where she was living, at Schermerhorn-st.

Mr. Evarts—At her own house? A. She was living in a house in Schermerhorn-st.; yes, Sir.

Mr. Porter—Did you go there to see her? A. I went there to see her; yes, Sir.

Q. When was that? A. I don't remember what year that was.

Q. I would like the time as near as you can fix it? A. I will try and fix it before I get through with my testimony.

Q. Very well. You know Mrs. Hooker? A. I have met Mrs. Hooker two or three times, Sir.

Q. Where? A. I met her once in Richmond, and I have—

Q. On what occasion? A. She was there and addressed a Woman's Rights meeting—a Woman's Suffrage meeting in Richmond, in 1871.

Q. Did you take any part in the meeting? A. Yes, Sir.

Q. What time in 1871? A. I think it was in March, 1871.

Q. Do you remember the particular day of March? A. I really do not, Sir.

Q. What was your part in the meeting? A. I either introduced Mrs. Hooker or Paulina Wright Davis to the audience, upon the solicitation, I think, of Mrs. Hooker or of Mrs. Paulina Wright Davis; I don't remember.

Q. You were not the presiding officer? A. I was not the presiding officer; no.



Q. And did not at any time preside? A. No, I did not preside. They were there alone, unattended, and they desired me to introduce them.

Q. You did not go with them? A. I did not, Sir.

Q. Nor with either of them? A. No, Sir.

Q. Nor with any other lady? A. With my wife and a friend, Mrs. Sarah Sutherland Eddy and her daughter.

Q. I did not hear. A. Mrs. Sarah Sutherland Eddy and her daughter, and my wife and son.

Q. Were they delegates to the convention? A. They were not, Sir.

Q. This is the extent of your intercourse—acquaintance with Mrs. Hooker? A. Yes; I think that is about the extent of it.

Q. Had you any interview with her in the year 1874? A. No, Sir.

Q. You mentioned something in relation to Mrs. Beecher in connection with an inquiry as to whether the family difficulties were alluded to in one of your interviews at the house. Will you at this point state what was said in regard to her? A. I mentioned what, Sir?

Q. On Judge Fullerton's examination you mentioned that something was said of Mrs. Beecher in connection with the family difficulties at one of your interviews at Mr. Beecher's house. Will you state what was said on that subject? A. I think on the evening of December the 31st, when I went to Mr. Beecher's house, I said to him, "I understand that Mrs. Beecher is saying—is repeating stories against Mr. Tilton. Now, such stories ought to be stopped; they only tend to incense." And he said to me that Mrs. Beecher knew Mrs. Morse was a dangerous woman—or that is the substance of what he said—and yet her enmity to Theodore Tilton induced her to listen, or might induce her to listen, to Mrs. Morse; but he would try to control that. That is as near as I can remember.

Q. Was the name of any person connected with those stories mentioned, except the name of Mr. Tilton? A. Not, I think, at that interview, Sir. There may have been at that interview.

Q. Did you state what was the nature of the stories? A. I don't think I did, Sir: I don't remember now that I did.

Q. Do you remember whether you did or did not? A. Whether I stated the nature of the stories that Mr. Beecher was repeating—is that the question?

Q. My question is, whether you remember either that you did or that you did not? A. Well, will you state, then, the question exactly, so that I can understand it; let me say what I mean.

Q. Do you remember whether you did or did not refer to the nature of those stories? A. My impression is that I did.

Q. You don't remember in what terms? A. I do not remember the terms; no, Sir, just at the present moment.

Q. While you were acting as the mutual friend of these parties, Mr. Beecher very generally acted upon your advice, didn't he? A. He sometimes did, Sir.

Q. My question was whether he did very generally. A. I should say that he did very generally.

Q. Did Mr. Tilton quite frequently act contrary to your ad-

vice? A. Yes, Sir; he did sometimes act contrary to my advice.

Q. You disapproved of his sending to Mr. Beecher by the hand of Mr. Bowen the letter requiring him to resign and leave town, and so told him, did you not? A. Without the signature of Mr. Bowen I disapproved of it.

Q. It was only of that omission that you disapproved? A. That is all that I remember having disapproved.

Q. When was the letter to Mr. Bowen written—on what day? A. On December 26th, I believe, Sir, 1870.

Q. It purports to bear date on the first of January, '71; when was it in fact—

Mr. Morris—No, no; you are mistaken; 26th December.

Mr. Porter—You and I are referring to two different letters. [To the witness.] When was the letter purporting to bear date January 1st, 1871, written? A. The preparation of that letter was commenced either the night of the 31st—commenced either the night of the 31st December, '70, or the night of January 1st, or the day of January 1st, 1871.

Q. When was the letter completed in the form which it finally assumed? A. Well, Sir, very shortly; it was either completed January 1st or 2d, I think.

Q. Was it sent to Mr. Bowen? A. No, Sir; it was not sent to Mr. Bowen.

Q. When did you first see it before—when did you first see what he was writing, before or after its completion? A. During the writing of the letter, Sir, I consulted with him as to the writing.

Mr. Fullerton—Judge Porter, there are two letters of that date.

Mr. Porter—He knows the one of which I am inquiring.

Mr. Evans—The letter from Tilton to Bowen.

Mr. Porter—Did you disapprove of that letter? A. Did I disapprove of his writing it?

Q. Yes. A. No, Sir; I don't think I did at the time that he was writing it.

Q. Did you condemn it afterwards? A. I told him I thought he ought not to publish it, Sir, afterwards.

Q. Did you advise against its publication? A. I did.

Q. He published it, notwithstanding your advice? A. When did he publish it, Sir; what publication do you refer to?

Q. I think it was on the 1st.

Mr. Morris—No; you are mistaken, Judge Porter; he never published it.

Mr. Porter—When did you first see it in print, as nearly as you now remember?

Mr. Beach—There were two letters, Sir, bearing the date inquired of by counsel; it seems to me there ought to be some discrimination between them.

Q. Do you remember if there is the least doubt—you understand me as alluding to the letter, of course, in which he repeated the charges he imputed to Mr. Bowen against Mr. Beecher? A. That's the letter that I am addressing myself to.

Mr. Evans—Were there two letters to Mr. Bowen on that date?

Mr. Beach—No, Sir; there are two letters of Jan. 1, '71.

Q. Well; but I think I stated the letter to Mr. Bowen. When

did you first see that letter to Mr. Bowen published? A. I think, Sir, it was published April 20th, 1873, in *The Brooklyn Sunday Sun*, and then quoted into *The Brooklyn Eagle*, if I am correct as to date.

Q. Had you advised him against its publication? A. I did not know anything about that publication, Sir, nor did Mr. Tilton, as he told me afterwards.

Q. Had you advised against its publication before that time?

A. In January, '70; certainly, Sir.

Q. How is that? A. In January, '71; certainly, Sir.

Q. You had advised him? A. Yes, Sir.

Mr. Evarts—If your Honor please, the observation of the witness that it was published without Mr. Tilton's knowledge, as he told him afterwards—

Judge Neilson—It will be stricken out.

Mr. Evarts—It will be stricken out; and, although it may be natural enough to the witness, yet he will be so good as to refrain—

The Witness—I saw my mistake immediately after I made it, Mr. Evarts. I thank you for emphasizing it.

Q. When was it printed by Mr. Tilton? A. When was it printed by Mr. Tilton? I do not remember, Sir, that it was ever printed by Mr. Tilton. If you will call my attention to the dates of publication—

Q. Was it printed in his paper, *The Golden Age*? A. I do not remember, Sir, that it was printed in his paper, *The Golden Age*.

Q. Were proofs set up for the purpose of publication in *The Golden Age*, and did you see those proofs?

Mr. Fullerton—Well, one moment; that's a double question. I object to it, unless he testifies of his own knowledge.

Mr. Porter [to the Witness]—You hear Judge Fullerton's suggestion?

The Witness—Now, Sir, if you will repeat the question, I will try to answer it. Mr. Fullerton's objection put the question out of my mind.

Q. Were proofs prepared for publication in *The Golden Age*, and did you see those proofs? A. I saw proofs of an article which was prepared by Mr. Tilton, into which was incorporated this letter of Mr. Bowen's.

Q. Did you then advise against its publication? A. I did then advise against its publication.

Q. Who showed you those proofs? A. I think Mr. Tilton brought them to me, Sir.

Q. Did you see the poem entitled "Sir Marmaduke's Musings" indited by Mr. Tilton? A. Did I see that poem?—after it was printed, I believe, Sir.

Q. You hadn't seen it before? A. No, Sir.

Q. Heard nothing of it before? A. I don't think I ever heard anything of it before.

Q. You disapproved of its publication? A. I thought it ought not to have been published, Sir.

Q. And so told him? A. I did tell him so.

Q. Did you see the biography—did you know of his preparation of the biography of Woodhull before it appeared? A. I never heard it read, Sir, before it appeared.

Q. Did you hear of it, is my question? A. I don't remember,

Sir, that I heard of the biography of Victoria Woodhull before it appeared; I don't remember that I did.

Q. You did afterwards? A. I did afterwards; yes, Sir.

Q. Did you approve of it?

Mr. Beach—I object to that question.

Judge Neilson—Oh! I think I will admit it; it has a bearing upon the mind of the witness perhaps.

Mr. Beach—I except, Sir.

Mr. Porter—Did you approve or condemn it? A. I didn't approve of the publication of it, Sir.

#### TILTON'S OBSCURE FRIENDS.

Q. Do you remember the letter to his friend in the West? A. I remember a letter; yes, Sir.

Q. I will ask you to produce the letter.

Mr. Fullerton—What is the letter?

Mr. Porter—From Tilton to a friend in the West.

Mr. Fullerton—Well, we are not the custodian of that letter.

Mr. Evarts—It is one of the letters we have given notice to produce.

Mr. Fullerton—Produce a letter written to somebody out West?

Mr. Evarts—We don't know that—whether there was anybody out West; there is a letter called "a letter to a friend in the West." There is a variety of friends; there is a "Complaining Friend," that is one of them; then there is a letter to a "Friend in the West," which is another, and it is dated December 31st, 1873. Now, if you have got that letter we should like to have it.

The Witness—What page is it on, Mr. Evarts?

Mr. Evarts—It is page 273 of this book. We have given notice to the plaintiff, and we have subpoenaed the witness to have the letter.

Mr. Shearman—Mr. Moulton says in his statement, "it is here produced."

Mr. Fullerton—Mr. Moulton's statement is not in the case. [A paper handed to witness]

Q. I ask if that is a letter written by Mr. Tilton? A. This is in Mr. Tilton's handwriting; yes, Sir.

Mr. Evarts—Is this produced by the plaintiff or by the witness?

Mr. Beach—I don't know where it came from.

Mr. Evarts—Nor I; I only ask for information. It came from some one.

Mr. Morris—Well, produced by me from my office. Where it came from, I don't know.

Mr. Beach—It is produced by Mr. Morris.

Mr. Evarts—Then you don't say whether you produce it from the plaintiff or from the witness?

Mr. Morris—I don't know; I have got papers here from both parties.

Mr. Evarts—We can't find it out from one who don't know.

Mr. Morris—No, Sir.

Mr. Porter—I read that letter in evidence.

174 LIVINGSTON STREET,  
BROOKLYN, December 31, 1873.

MY DEAR FRIEND: I owe you a long letter. I am unwell, and a prisoner in the house, leaning back in leather-cushioned

Idleness, and writing on my chair-board before the fire. Perhaps you wonder that I have a fire, or anything but a hearth-stone, broken and crumbled, since the world has been told that my household is in ruins. And yet it is more like your last letter—brimful of love and wit, and sparkling like a fountain in midwinter.

Nevertheless you are right. I am in trouble, and I hardly see a path out of it.

It is just two years ago to-day—this very day—the last of the year—that Mr. Bowen lifted his hammer, and with an unjust blow smote asunder my two contracts, one with *The Independent* and the other with *The Brooklyn Union*. The public little suspects that this act of his turned on his fear to meet the consequences of horrible charges which he made against Henry Ward Beecher. I have kept quiet on the subject for two years through an unwillingness to harm others even for the sake of righting myself before the public. But having trusted to time for my vindication, I find that time has only thickened my difficulties until these now buffet me like a storm.

You know that Bowen long ago paid to me the assessed pecuniary damages which grew out of his breaking of the contracts, and gave me a written vindication of my course, and something like an apology for *his*. This settlement, so far as I am concerned, is final.

But Bowen's assassinating dagger drawn against Beecher has proved as unable as Macbeth's to "trammel up the consequence." And the consequence is that the air of Brooklyn is rife with stories against its chief clergyman, not growing out of the Woodhull scandal merely, but exhaled with ever-fresh foulness, like mephitic vapors, from Bowen's own charge against Beecher.

Verily, the tongue is a wild beast that no man can tame, and, like a wolf, it is now seeking to devour the chief shepherd of the flock, together, also, with my own pretty lambs.

For the last four or five weeks, or ever since I saw the Woodhull libel, I have hardly had a restful day, and I frequently dream the whole thing over at night, waking the next morning unfit for work.

Have you any conception of what it is to suffer the keenest possible injustice? If not, come and learn of me.

To say nothing of the wrong and insult to my wife, in whose sorrow I have greater sorrow, I have to bear the additional indignity of being misconstrued by half the public and by many friends.

For instance, it is supposed that I had a conspirator's hand in this unholy business, whereas I am as innocent of it as of the Nathan murder.

It is hinted that the 'Jbelous article was actually written by me; whereas (being in the north of New Hampshire), I did not know of its existence till a week after it had convulsed my own city and family. My wife never named it in her letters to me lest it should spoil my mood for public speaking. (You know I was then toiling day and night for Mr. Greeley's sake).

Then, too, it is the sneer of the clubs that I have degenerated into an apostle of free-love; whereas the whole body of my writings stands like a monument against this execrable theory.

Moreover, it is charged that I am in financial and other relations with Mrs. Woodhull; whereas I have not spoken to, nor met, nor seen her for nearly a year.

The history of my acquaintance with her is this: In the Spring of 1871, a few months after Bowen charged Beecher with the most hideous crime known to human nature, and had slammed the door of *The Independent* in my face, and when I was tolling like Hercules to keep the scandal from the public, then it was that Mrs. Woodhull, hitherto a total stranger to me, suddenly sent for me and poured into my ears, not the Bowen scandal, but a new one of her own—namely, almost the same identical tale which she printed a few weeks ago. Think of it! When I was doing my best to suppress one earthquake, Mrs. Woodhull suddenly

stood before me portentous with another. What was I to do? I resolved at all hazards to keep back the new avalanche until I could securely tie up the original storm. My fear was that she would *publish* what she told to me, and, to prevent this catastrophe, I resolved (and, as the result proves, like a fool, and yet with a fool's innocent and pure motive) to make her such a friend of mine that she would never think of doing me such a harm. So I rendered her some important services (including especially some labors of pen and ink), all with a view to put and hold her under an obligation to me and mine.

In so acting towards her I found, to my glad surprise and astonishment, that she rose almost as high in my estimation as she had done with Lucretia Mott, Mrs. H. B. Stanton, Isabella Beecher Hooker, and other excellent women. Nobody who has not met Mrs. Woodhull can have an adequate idea of the admirable impression which she is capable of producing on serious persons. Moreover, I felt that the current denunciations against her were outrageously unjust, and that, like myself, she had been put in a false position before the public, and I sympathized keenly with the aggravation of spirit which this produces. This fact lent a zeal to all I said in her defense.

Nor was it till after I had known her for a number of months, and when I discovered her purpose to libel a dozen representative women of the suffrage movement, that I suddenly opened my eyes to her real tendencies to mischief, and then it was that I indignantly repudiated her acquaintance, and have never seen her since.

Hence her late tirade.

Well, it is over, and I am left to be the chief sufferer in the public estimation.

What to do in the emergency (which is not clearing, but clouding itself daily) I have not yet decided. What I *could* do would be to take from my writing-desk, and publish to-morrow morning, the prepared narrative and vindication, which with facts and documents, my legal advisers pronounce complete.

This would explain and clarify everything, both great and small (including the Woodhull episode, which is but a minor part of the whole case), but if I publish it, I must not only violate a kind of honorable objection to be silent, which I had voluntarily imposed upon myself, but I must put my old friend Bowen to a serious risk of being smitten dead by Beecher's hand.

How far Bowen would deserve his fate I cannot say, but I know that all Plymouth Church would hunt him as a rat.

Well, perhaps the future will unravel my skein for me without my own hand; but whatever happens to my weather-beaten self, I wish to you, O prosperous comrade, a happy New Year.

Fraternally yours.

THEODORE TILTON.

P. S.—Before sending this long letter (which pays my debt to you) I have read it to my wife, who desires to supplement it by sending her love and good will to the little white cottage and its little red cheeks.

Q. From whom did you receive that letter? A. From Mr. Tilton.

[Copy of letter marked Exhibit D 5].

Q. At its date? A. I don't remember whether at its date or not.

Q. Do you remember whether it was at or about its date? A. I don't remember that.

Q. To whom is it addressed? A. I don't remember.

Q. Do you remember that it is addressed to any one.

Mr. Fullerton—One moment. The letter itself is here, and speaks for itself.

Mr. Porter—I have not seen the original.

Mr. Fullerton—I think you can tell yourself whether it is addressed to any one.

Mr. Everts—We cannot see it is addressed to any one.

Q. Do you know to whom that letter was written? A. No, Sir; I do not.

Q. You did not hear from Mr. Tilton? A. I don't know but what I might have heard that it was his intention to send it to a party; I don't know that it was ever sent to a party.

Q. You have no knowledge of its being sent? A. No, Sir.

Q. It was deposited with you among the papers in this case? A. It was given to me.

Q. You have held it ever since? A. I suppose I have; yes, Sir.

#### TILTON'S RELATIONS WITH WOODHULL.

Q. You know Mrs. Woodhull? A. I have known her; yes, Sir.

Q. When did you first see her? A. I think in the Spring of 1871.

Q. At what time in the Spring? A. I think it was somewhere in April, 1871.

Q. Do you remember what time in April? A. I do not remember distinctly the time in April, Sir.

Q. Where did you first see her? A. I think I met her first at her house.

Q. In New-York? A. Yes, Sir.

Q. Where did you next meet her? A. I think the next meeting was at Mr. Theodore Tilton's house.

Q. When was that? A. Shortly afterwards. I can fix the date by the card in *The World*. It was somewhere about the time of that card.

Mr. Porter [To the Witness:—] You will find the date of that card at page 48 of the book.

The Witness—The date of the card in *The World*? Does it bear date, Sir?

Mr. Shearman—May 22d, 1871.

Q. By Mr. Porter—You had not met her nor seen her in the meantime? A. No, Sir; the time I met her was in consequence of that card in *The World*—it was after the card in *The World* that I saw her.

Q. Shortly after? A. Yes, Sir; shortly after.

Q. You have no means of fixing the precise date? A. It was after that; I cannot fix the exact date; it was within a few days I think.

Q. Before that interview you had never seen her but once? A. I don't think I had ever seen her at all; I had never seen her before the interview at all.

Q. That was the occasion of the first interview? A. Yes Sir; the letter was the occasion of the first interview, and then I saw her at Theodore Tilton's house.

Mr. Beach—Afterwards? A. Yes, Sir; afterwards.

Q. By Mr. Porter—How long after the first interview, should you say? A. I should say within a day or two.

Q. Who was present at that interview? A. Mr. Tilton.

Q. No one else? A. I don't remember at present whether there was anybody else or not present at that interview.

Q. You had a conversation with her at that time? A. Yes, Sir.

Q. After that time did you meet her frequently? A. I met her—well I saw her whenever there was occasion for it; I should not say frequently.

Q. But from time to time? A. From time to time.

Q. When did you last see her? A. The last time I saw her I think was in the Spring before the publication of the Woodhull story. It was in April, 1872, I think—in the Spring of 1872, I should think.

Q. Where did you see her then? A. I don't remember. It was at a house where she was living—16th street, I think; I don't remember the street.

Q. In her own house? A. It was in her own house; yes, Sir.

Q. You visited her with others? A. I was with Theodore Tilton that evening, Sir; the last time I saw her.

Q. Had you visited her with him before? A. Yes, Sir.

Q. Several times before? A. Several times before. At that house do you mean?

Q. At her residence? A. Yes, Sir.

Q. Where was it at that time—in 16th street? A. I won't be sure. I don't remember the street definitely enough to say.

Q. Do you remember where it was? A. It was in 16th or 23d street, or somewhere around there. She lived in 38th street.

Q. Were you ever there in the evening? A. Yes, Sir.

Q. Usually? A. Usually in the evening.

Q. Did you ever meet her elsewhere than at her residence and at your residence and at Mr. Tilton's?

Mr. Beach—He didn't say he met her at his house.

By Mr. Porter—Did you ever meet her elsewhere than at her own residence and at Mr. Tilton's? A. Yes, Sir.

Q. Where? A. At my own house in Remsen-st.

Q. Did you ever meet her at any other place? A. I don't remember at present.

Q. Were you ever in the same house in which she was staying over night? A. I don't remember that I ever was.

Q. You have a good memory? A. Tolerably good memory; yes, Sir.

Q. Did you ever travel with her? A. No, Sir.

Q. Did you ever meet her at any place outside of New York and Brooklyn? A. I don't remember at present that I ever did.

Q. Do you remember that you did not? A. If you could jog my memory by asking me if I met her at a certain place. I don't remember now that I ever met her at any other place than Brooklyn.

Q. Do you now remember that you did not? A. I should say I now remember that I did not.

Q. How long were your interviews usually when you went to her house? A. Some of them were an hour long, and some two hours.

Q. Was your intercourse with her confined to the subject matter of Mr. Tilton and Mr. Beecher? A. Not always; no, Sir.

Q. Did you make statements to her in regard to that matter? A. I did; I have made statements to her with regard to it—with regard to the stories against Mr. Beecher.

Q. Did you in regard to Mr. Tilton? A. Did I make statements to her with regard to Mr. Tilton?

Q. Yes, Sir? A. I have made statements to her with regard to Mr. Tilton; yes, Sir.

Q. And with regard to particular ladies in connection with Mr. Tilton? A. I don't know that I ever mentioned the names of any ladies in connection with Mr. Tilton's name.

Q. Nor she? A. I don't remember that she did.

Q. Do you remember a conversation with her in relation to the interview of the 31st of December, 1870? A. Will you please put that question again?

Q. A conversation with her in reference to what transpired with Mr. Beecher on the 31st of December, 1870? A. No, Sir.

Q. Were you present at a conversation between her and Mr. Tilton in regard to what took place in that interview? A. No, Sir; I don't remember that I ever was.

Q. Did you read her published statement? A. I don't know that I read all of it.

Q. Do you know that you did not? A. I think I did not read all of it; I think I never have read all of it.

Q. What part was it you omitted? A. Well, I don't really remember what part I did omit; I knew the general drift of it.

Q. Did you state to her that you took a pistol, and went to Mr. Beecher and demanded the letter of Mrs. Tilton under penalty of instant death. A. No, Sir; I did not.

Q. Did you state anything to that effect? A. No, Sir.

Q. Did you, in that or in any other conversation, describe to her the piteous and abject beseeching of Mr. Beecher not to be exposed to the public? A. No, Sir.

Q. Nothing of that kind occurred? A. No, Sir. You asked me a moment ago, Judge Porter, if you allow me, whether I had read any part of that statement, or whether I had read the whole of it. I can tell you I did read the part of the pistol scene, and I can tell you something that would be of interest to you in regard to that. Shall I say so?

Q. If you please. A. Mr. Beecher asked me about that part of it that referred to the pistol scene, and asked me if I remembered anything about the pistol part. He said he didn't. It didn't make enough impression on him.

Q. Is that all? A. Yes, that is all—that is about all of it.

Q. You told him you did not? A. I said to Mr. Beecher, "I remember about the pistol scene; I remember precisely what there was about it; of course, there was no threat, and I don't wonder that you don't remember it."

Q. Did you ever ride with Mrs. Woodhull? A. I don't remember at present that I ever rode with Mrs. Woodhull; I don't recall it.

Q. Do you remember bringing her to your house in a carriage? A. I don't remember bringing her to my house in a carriage; I may have done so, but I don't think so.

Q. Do you remember a conversation with her in reference to procuring Mr. Beecher to preside at her meeting? A. Do I remember a conversation with her of my own?

Q. Yes, Sir. A. Or a conversation of Mr. Beecher with her?

Q. A conversation with her? A. Yes, Sir.

Q. Between yourself and her? A. Yes, Sir; we held a conversation at my house concerning it. She came there to see Mr. Beecher.

Q. Had you no conversation with her concerning it before? A. I don't remember that I had any conversation with her before. That letter was the cause of that interview.

Q. Had you heard of that letter before you heard of it from him? A. Before I heard of it from Mr. Beecher? I don't remember whether the letter was brought to me by Mr. Beecher or not; I think it was brought to me by Mr. Beecher. My statement will tell that if you will refer to it. I don't remember now how the letter was addressed.

Q. Had you heard of the project of her procuring him to preside before that letter was sent to you? A. No, Sir; I don't think I had.

Q. Do you know that you had not? A. I shall say now that I had not.

Q. Had you had any conversation with Mr. Tilton in regard to his presiding there? A. In regard to Mr. Tilton presiding there?

Q. In regard to Mr. Beecher presiding there? A. I had a conversation with Mr. Tilton the same day that Mrs. Woodhull and Mr. Beecher were at my house.

Q. Had you had any conversation with him before that? A. I don't remember that I had.

Q. Do you remember that you had not? A. I do now remember that I had not. If I should make any statement about it, I should make that statement.

Q. Do you mean that you remember now that you had no such conversation? A. I put it in the other way. I don't remember that I had any such conversation, and I don't think I did have. That is the best of my recollection.

Q. You do not remember that you did not have. Am I right? A. I cannot state it in that way, Sir, and state the truth; I say that I don't remember, and if I were undertaking to make a truthful statement to any one, I should say I had not, and deem it a truthful statement.

Q. Did you tell Mrs. Woodhull that you and Mrs. Tilton did not want Mr. Beecher to know that that letter had come at your instance? A. Did I tell Mrs. Woodhull that—ask that question again, please.

Q. Did you tell Mrs. Woodhull that you did not want Mr. Beecher to know that that letter to him came at your instance? A. No, Sir; I didn't tell Mrs. Woodhull that.

Q. Nor anything to that effect? A. No, Sir; I did not.

Q. Or at Mr. Tilton's instance? A. No, Sir.

Q. With whom did Mrs. Woodhull leave your house on that occasion? A. I don't remember.

Q. She did not remain that night? A. No, Sir; I don't think she remained that night.

Q. She never remained a night at your house? A. I don't remember that she ever did.

Q. Do you remember that she did not? A. I think I am stating the truth—I know I am stating what I believe to be the truth when I state that she did not.

Q. Did you on different occasions meet her at Theodore Tilton's? A. I think I met her at Theodore Tilton's—was at Theodore Tilton's with her twice.

Q. Only twice? A. Twice.

Q. You never met her except on those two occasions at his house? A. At his house; those are the only two I remember.

Q. When you visited her house did you ever find Mr. Tilton there when you did not go there in company with him? A. When I visited her house—please put that question again?

Q. When you visited her residence did you ever find Mr. Tilton there when you had not gone there together? A. I think not.

Q. Did he always leave when you left? A. I think he did; yes, Sir. we left together.

Q. Do you remember that you did? A. I should state, when I state what I believe to be the truth, that we left together.

Q. You were not aware of his being there on any other occasions except when you were there? A. No, Sir.

Q. No allusion was made in their conversation to interviews they had had when you were not present? A. I don't remember of any.

Q. You disapproved also of the Bacon Letter? A. Yes, Sir; I did.

Q. Advised against its publication? A. Yes, Sir.

Q. Did you advise against Mr. Tilton's first statement to the Committee? A. Well, which do you consider his first statement? He made three. There is a first statement, a second statement, and a third statement. One was verbal, if I remember right.

Q. They were not to the Committee? A. Yes, Sir.

Q. All three? A. Yes, Sir.

Q. The sworn statement. You remember the one which he called the sworn statement? A. Yes, Sir; that is the second statement.

Q. Did you advise him against presenting that statement to the Committee? A. I did; yes, Sir.

Q. Do you know how Mrs. Woodhull found out about that pistol affair? A. I do not.

Q. You only know it was not from you? A. I know that.

Q. And that it was never the subject of conversation between you and her? A. Never to my recollection.

Q. Do you remember that it was not? A. Never, Sir; never.

Q. Prior to your breach with Mr. Beecher had you told the pistol affair to any one else? A. No, Sir; not that I know of, except to my—; no, Sir; I don't think I did.

Q. To no one but Mr. Tilton? A. I don't think I ever did.

Q. I assume you did not? A. Not to Mr. Tilton.

Q. You reported the fact of the interview and the result of it to Mr. Tilton? A. I reported the interview, exactly what occurred there.

#### WHERE TILTON AND MOULTON DISAGREED.

Q. I have reference now to several points in which you disapproved of the course of Mr. Tilton. Did he propose to publish the true statement, as it was called? A. He talked about publishing the true statement; yes, Sir.

Q. Did you advise against it? A. Yes, Sir.

Q. He finally abandoned it? A. Yes, Sir; it never was published.

Q. It never was published? A. No, sir.

Q. Now, in regard to your advice to Mr. Beecher, did you condemn Mr. Beecher for obtaining the retraction from Mrs. Tilton? A. I did, Sir.

Q. Did you condemn him for wishing to have it preserved for the protection of his family and his memory, in case of his death? A. I condemned? I don't remember having condemned him for that.

Q. Did you advise him never to see Mr. Tilton? A. Did I advise him never to see Mr. Tilton?

Q. Yes, Sir? A. On that occasion?

Q. Personally? A. Yes, Sir.

Q. At the interview on the 31st of December? A. Did I advise Mr. Beecher not to see Mr. Tilton?

Q. Not to see him in Mr. Tilton's present exasperated mood? A. I don't think I did.

Q. Did you on the 1st of January? A. Advise him not to see Mr. Tilton?

Q. Not to see him? A. I don't think I did.

Q. Did you at any time? A. I don't remember that I have.

Q. Did you advise him to communicate with him through you, rather than personally? A. I don't think I ever did.

Q. Did you advise him not to publish a card denying the Woodhull calumny? A. Did I advise Mr. Beecher not to?

Q. Not to? A. I advised silence, if that is what you mean.

Q. The policy of silence? A. Yes, Sir.

Q. He spoke of publishing a denial of the libel shortly after its publication, did he not? A. We discussed whether that could be done or not, I think.

Q. You advised against it? A. I did not see how it could be done.

Q. And when you gave that advice you had not read the Woodhull libel? A. Not all of it; I understood it very well, what it charged.

Q. Have you read it down to this hour? A. I don't think I have read all of it to this hour.

Q. How do you understand its contents without reading it? A. Well, I had had conversations with people who had read it, Sir.

Q. And you inferred that you had a full report of its contents? A. I knew the charge against Mr. Beecher that that article contained.

Q. You knew it was to come before it appeared, did you not? A. Oh, no, Sir. No, Sir; I did not.

Q. You didn't need to read it in order to find out what they did charge? A. I needed to read a portion of it to find out what they did charge.

Q. How by reading a portion relating to yourself could you find out what they charged against Mr. Beecher? A. I read more than that, Sir.

Q. Did you read all that portion of the article which was prejudicial to Mr. Beecher? A. I think I did; yes, Sir.

Q. All that related to yourself? A. I think I did; yes, Sir.

Q. What else did the article contain? A. I don't know. (Laughter.)

Q. When, finally, Mr. Beecher insisted upon publishing a

card in *The Eagle*, you exercised the power he gave you to correct it? A. When what, Sir?

Q. Please refer to page 247, and you will more readily understand my question. Were the changes in the form of the card, any of them, made by you? A. Mr. Kinsella of *The Eagle* wrote the article as it appeared in *The Eagle*, and the alterations were made by him, therefore, from the card.

Q. At your suggestion and with your concurrence? A. No, Sir; with my concurrence afterwards.

Q. Mr. Beecher's card was short. Allow me to call your attention to the language, and give your reason for the change? [Reading.]

"I have seen in the morning papers that application has been made to Mrs. Victoria Woodhull for certain letters of mine supposed to contain information respecting certain infamous stories against me. She has two business letters, one declining an invitation to a suffrage meeting, and the other declining to give her assistance solicited.

These, and all letters of mine in the hands of any other persons, they have my cordial consent to publish. I will only add, in this connection, that the stories and rumors which have, for a time, been circulated about me, are grossly untrue, and I stamp them, in general and in particular, as utterly false."

Q. Do you remember why you concurred in striking out the word "false," and substituting a repetition of the word "untrue" in the same sentence? A. Do I remember what?

Q. Do you remember why you concurred in striking out the word "false," and inserting in lieu of it a repetition in the same sentence of the word "untrue?" A. I don't remember the reason why. The phraseology was made by Mr. Kinsella, of *The Eagle*.

Mr. Fullerton (to Mr. Porter)—Judge Porter, I think this a misprint in the book.

Mr. Porter—You read it yesterday, "utterly false."

Mr. Morris—We will produce the original.

Mr. Evans—It is "Exhibit 28."

Mr. Porter—I see the report yesterday was erroneous in accordance with the book, and not the Exhibit. The word should be "false."

#### GEN. BUTLER SERVING WITHOUT FEE.

Q. You disapproved and condemned Mr. Beecher calling a Committee of Investigation, did you not? A. I told him I thought it might prove a mistake.

Q. And you refused his application to give him access to the documents? A. By advice of counsel I wrote him the letter which I did on August 4th.

Q. By advice of counsel? A. Yes, Sir; I submitted his letter of July 24th, which Mr. Tracy brought to me, to my counsel.

Q. Were you in litigation at that time? A. No, Sir.

Q. Did you expect to be? A. No, Sir.

Q. Perhaps you mean, then, your adviser? A. Adviser, if you choose; that's what I mean by my adviser. I had not retained anybody as counsel; I had not paid anybody a counsel fee as a lawyer.

Q. Who was it that advised you in that way? A. Gen. Butler.

Q. When did you first confer with him? A. He wrote me a letter on July 29th or 30th, advising—

Judge Neilson—Don't state what he said.

Mr. Porter—Was that the first of your seeing him? A. That was the first I had heard from him.

Q. Had you written to him before? A. No, Sir; I had not written to him or communicated with him in any way before about it.

Q. Had he been your counsel in other matters? A. He had been a friend and adviser in the same sense as he was in this matter.

Q. He had never been your counsel? A. I never paid him a fee as a lawyer—never employed him as a lawyer.

Q. Neither you nor your firm? A. No, Sir.

Q. Had he been actively engaged with your affairs at Washington? A. No, Sir; I don't think he was actively engaged with our affairs at Washington.

Q. With your affairs at the Custom-House? A. He had been counsel for Mr. Jayne against us in that business.

Q. That was the previous relation between you and him? A. That was not the relation between him and me. I did not understand the question in that way. That was not the relation between Mr. Butler and myself.

Q. He had been counsel against you? A. He was counsel for Mr. Jayne; yes, Sir. Mr. Jayne was the special agent of the Treasury Department.

Q. He never was counsel for you? A. No, Sir; except in the sense of adviser.

Q. And his friendly advice was while he was counsel against you? A. No, Sir; there was no friendly advice when he was counsel against us.

Q. When did the friendly advice begin? A. The friendly advice was on this business between Mr. Beecher and Mr. Tilton in this controversy—personal advice to me.

Q. General Butler is a personal friend of yours, is he not? A. Yes, Sir.

Q. Was he so at the time he acted as counsel against you for Mr. Jayne? A. No, Sir; Mr. Tilton introduced me to Mr. Butler; I never knew him before that, personally, closely.

Q. He became your friend? A. He became friendly to me, certainly.

Q. Had you a controversy with the Government at that time? A. Yes, Sir; we did have.

Q. Was he instrumental in effecting an arrangement of that matter? A. Not that I ever knew of, Sir.

Q. Nor Mr. Jayne? A. Nor Mr. Jayne instrumental in effecting—?

Q. Was he instrumental in effecting it? A. We settled with the Government; we could not have settled except through Mr. Jayne.

Q. Then he was? A. Not for us; he was not instrumental.

Q. Have you known Mr. Jayne ever since that time? A. Yes, Sir.

Q. Are you and he friends also?

Mr. Beach—Wait a moment. We object to that.

Judge Neilson—I will rule it out for the present. I don't see that it is material at all.

Mr. Porter—Have you conferred with Mr. Jayne on the subject

of Mr. Beecher's affairs? A. I have not conferred with Mr. Jayne on the subject of Mr. Beecher's affairs.

Judge Neilson [to the witness]—Say no.

Q. You and he have had no conversation about it? A. Yes, Sir; we have had conversation about it.

Q. Here? A. In New York.

Q. Did you send for him with regard to it? A. No, Sir; I don't think I sent for him.

Q. Do you know whether you did or not? A. I don't think I ever sent for Mr. Jayne. I saw him at the Fifth Avenue Hotel one day.

Q. Was that the only occasion on which you conversed with him about it? A. I think I saw him at the Fifth Avenue Hotel since, and conversed with him about it, within a week, or two weeks, or three weeks, recently.

Q. Will you be good enough to repeat the date when General Butler volunteered in the matter? A. I have got the exact date I think it was June 29th or 30th, the letter I received from him.

Q. Has he since acted as your counsel through the matter? A. Yes, Sir; as my adviser in the matter: there's a distinction between "counsel" and "adviser," I believe.

Q. You said that your letter of Aug. 4th was written by his advice? A. Yes, Sir; written by him.

Q. And by him? A. Yes, Sir.

Q. Was the subsequent letter of Aug. 5th written by him? A. What was the subsequent letter of August 5th?

Q. In reply to Mr. Beecher's of August 4th, which was excluded? A. No, Sir; that was written by myself, in conjunction with Theodore Tilton.

Q. Was Mr. Tilton present when General Butler wrote the letter of August 4th? A. No, Sir.

Q. Had he been conferred with on that subject? A. No, Sir.

Q. You have at no time paid any fee to General Butler? A. I have not.

#### MOULTON'S IMPARTIALITY IMPEACHED.

Q. Nor to any counsel in connection with this litigation? A. Yes, I have. Between Mr. Tilton and Mr. Beecher?

Q. Yes, Sir? A. No, Sir; I have not paid any fee to any counsel in any litigation between Mr. Tilton and Mr. Beecher.

Q. You have paid fees to counsel who are acting for Mr. Tilton, have you not? A. I have on business of my own.

Q. Have you engaged to pay any fees in this case? A. I have not.

Q. Have you contributed to the expense of this litigation in any form, directly or indirectly? A. I don't think I have.

Q. Have you contributed to the expense of the publications which have been made from time to time in regard to it, or any of them? A. No, Sir.

Q. Or any of them? A. No, Sir; I don't think I have; I do not recall any such contribution now.

Q. Nor any payment for that purpose? A. No, Sir.

Q. You have contributed nothing? A. I have contributed nothing.

Q. Paid nothing and promised nothing? A. Paid nothing and promised nothing.

Q. All was in your branch of the litigation? A. All was what?

Q. All that you paid was in your branch of the litigation? A. Yes, Sir.

Q. In connection, I suppose, with the indictments and the civil suits?

Mr. Beach—Wait a moment.

Judge Neilson—You ought not to ask that question.

Mr. Porter—I wish to show his relation to the controversy.

Judge Neilson—I will rule it out. It is immaterial.

Mr. Evarts—Does your Honor understand it is immaterial, in regard to the witness's relation to this case, that he is under indictment, and that he is pursued in a civil suit?

Judge Neilson—It is immaterial.

Mr. Evarts—And that he has been forced to judgment in the libel suit?

Judge Neilson—All that I shall rule out.

Mr. Evarts—And that that does not bear upon the attitude of this witness in the weighing of his testimony by the Court and the Jury, your Honor understands?

Judge Neilson—No, Sir.

Mr. Beach—These proceedings are not had on the part of Mr. Beecher.

Judge Neilson—Not at all.

Mr. Evarts—We know what part they are on. I understand that your Honor says, when we offer to show the attitude of this witness under the public indictment, and in the civil suits for libels in his statements concerning this case, that that does not constitute evidence to go to his credit with the Jury for his statements in this case.

Judge Neilson—I so rule, and it has been decided more than once in this case, that the existence of an indictment don't tend to impair a witness.

Mr. Evarts—I have not said that.

Judge Neilson—I am saying it.

Mr. Evarts—I don't offer in that connection, or in the least relation to it.

Judge Neilson—I think it is immaterial.

Mr. Evarts—But it is that he is made a party defendant to the case in the same side of the controversy in which he now appears as a witness for the plaintiff here.

Judge Neilson—So made by some other person, or party.

Mr. Evarts—Well, no matter; he is in that condition.

Judge Neilson—Yes, Sir.

Mr. Evarts—Of prosecution, if you please. I don't know whether it is prosecution, or how.

Judge Neilson—I don't know.

Mr. Evarts—Nor I don't suppose we do, but that he holds that position in regard to those suits forced against him, justly or unjustly.

Judge Neilson—In regard to other parties.

Mr. Evarts—Justly or unjustly. He is indicted for a libel against Mr. Beecher in this very statement.

Judge Neilson—That would not be admissible here.

Mr. Evarts—Your Honor will so rule, of course.

Judge Neilson—Yes, Sir.

Mr. Evarts—But I wish to bring to your Honor's notice the



aspect of the matter in which it is presented. Now, anything that goes to show the animosity or the repugnance or opposition between a witness and the party against whom he is testifying, is primary evidence to show that he is not a disinterested and impartial witness, but is himself an active party in a controversy; and now we offer this witness's position in all these suits as evidence that he is not an impartial witness, but is a party to the controversy.

Judge Neilson—I am ruling on the assumption that some third person not named has had, or has some, litigation with the witness, a case in which that third person is the mover and this witness here may assume the position of a defendant, and resisting also, and more immediately connected with this, there is an indictment, upon the complaint of this defendant, against the witness in respect to this same matter, in all of which the witness stands, it would seem, upon the defensive, is not an actor, and does not appear to be aggressive, even on your own statement.

Mr. Evarts—But is not indicative of feeling against him that he had been pursued by Mr. Beecher?

Judge Neilson—That would not be sufficient to strike out the testimony.

Mr. Evarts—Does your Honor say that to show that the party against whom he is testifying here has pursued him, is not evidence that he does not stand impartial?

Judge Neilson—We have it already on record that this witness is hostile to the defendant,

Mr. Evarts—How have we that?

Judge Neilson—Avowed by himself yesterday. That fact sufficiently appears. There can be no suggestion of friendliness.

Mr. Evarts—Have we it down on the evidence?

Judge Neilson—Certainly.

Mr. Evarts—That he has said he is a hostile witness?

Judge Neilson—Not in that way; that their friendly relations ceased.

Mr. Evarts—That friendly relations ceased. That is not an avowal that he is hostile—bitterly hostile to the defendant.

Judge Neilson—Would your indictment, if put in evidence, make him appear hostile?

Mr. Evarts—That the Jury will be the judge of.

Judge Neilson—I think you must be content with an exception.

Mr. Evarts—But you say you exclude it on one ground, that it is the subject of transactions with third persons.

Judge Neilson—In part.

Mr. Evarts—On the part that has not interest with persons. How is it with third persons?

Judge Neilson—I understood from your statement that some third person had brought suit against this witness, and that he has been indicted on complaint of the defendant.

Mr. Evarts—Yes, Sir.

Judge Neilson—An indictment not yet tried.

Mr. Evarts—I don't offer the indictment as proving its truth. I offer it as a prosecution against him upon the complaint of Mr. Beecher, and your Honor excludes that as not bearing on the question whether the witness stands impartial here.

Judge Neilson—It is very clear that if A claims an immense estate against B, and B can pursue the principal witness and indict him in many indictments, that he don't ruin the witness whose testimony may be brought in support of the case against him.

Mr. Evarts—I have not offered it in that light.

Judge Neilson—I rule it out in such light.

Mr. Evarts—I offer it as affecting the animus of the witness, and certainly those things are quite extinguishable, if your Honor please.

Judge Neilson—I am very clear about this; I have not any doubt about it. I don't wish any general argument on it.

Mr. Evarts—I don't wish to argue it any further, but I wish to take your Honor's ruling.

Judge Neilson—Certainly.

Mr. Evarts—We offer to prove by this witness the position in which he stands in regard both to the public executions and the civil suits that have grown out since this controversy between Mr. Tilton and Mr. Beecher arose.

Judge Neilson—Other than this suit?

Mr. Evarts—Other than this suit. It is not necessary to particularize. Your Honor rules out the whole?

Judge Neilson—A. Yes, Sir.

Mr. Evarts—We except.

Mr. Morris—We have found the letter of authorization.

Mr. Evarts—Now your Honor has ruled upon the whole. I now offer each of the matters separately.

Judge Neilson—Let it be so framed.

Mr. Evarts—It is so understood. I except.

Judge Neilson—Certainly. [To the Jury.] Gentlemen, you will please now retire to your dinner and be in your seats at 2 o'clock.

Mr. Mallison—[The Clerk.] The Court will now take a recess until two o'clock.

#### RUPTURE OF BEECHER'S AND MOULTON'S FRIENDSHIP.

The Court met at 2 p. m., pursuant to adjournment. Francis D. Moulton recalled, and cross-examination resumed by Mr. Porter.

Q. You mentioned that your letter of August 5th was the one in which Gen. Butler did not assist you, and in which Mr. Tilton did. Where was that letter written? A. In my study at home, Sir.

Q. When? A. August the 5th. I think; the date of it. Is that the date? A. I don't remember.

Q. The date is August 5th, but you remember it was in reply to Mr. Beecher's of August the 4th? A. That is the letter. The letter in reply to Mr. Beecher's letter was prepared at my house—whether it bears date August 5th or not—in my study.

Q. At the time it was prepared was any one present except you and Mr. Tilton? A. I do not remember that there was anybody present.

Q. Who did the writing? A. Theodore Tilton.

Q. And did you engross it? A. I don't remember whether I did or not, Sir.

Q. You do not remember whether it was in his handwriting

or yours? A. I do not remember whether it was or not; I think it was in Mr. Eddy's handwriting.

Q. How is that? A. I think it was in my accountant's handwriting.

Q. Ah, yes, a copy? A. I don't remember whether it was in my handwriting or in his.

Q. That was in reply to Mr. Beecher's letter of the previous day? A. Yes, Sir.

Mr. Evarts—Is that the letter [handing witness a letter]? A. Yes, Sir; this is the letter.

Mr. Evarts—We offer this letter now in evidence, if your Honor please, with the letter to which it was an answer, which I have asked them to hand me.

Mr. Morris—The one which was ruled out yesterday?

Mr. Evarts—Yes, Sir. Your Honor then thought that those letters were not admissible, or were unnecessary—that clearly was the point of your Honor's ruling—because the testimony already given showed that the friendly relations between Mr. Moulton and Mr. Beecher had then been terminated by the letters of the 28th of July; but, really, if you look at those letters it will be found that those letters do not show the termination, but it is these letters that show the termination. But it is not in that view that—

Judge Neilson—The witness stated it.

Mr. Evarts—Well, he said that they were terminated, but the form and manner and precise way in which they were terminated could not be gathered from those letters, as there was nothing hostile in them; but the evidence now shows that a letter of Mr. Beecher to Mr. Moulton became the subject of consultation and conference between Mr. Moulton and Mr. Tilton, and that they then prepared this answer, which Mr. Tilton drafted and Mr. Moulton signed, and they sent it forth. It is, therefore, an act in which this plaintiff participated, and is a part of the transaction and relations between the two parties in reference to the investigation, or the suppression of investigation, as the case may be, concerning this controversy between them, which have formed, as your Honor knows, the staple of so much of the evidence that has been introduced. The letters formerly stood, in your Honor's appreciation of them, as merely letters between the witness and Mr. Beecher, bearing upon the question of whether or not they broke off their relations, and your Honor did not consider them important or useful to further prove that fact, as I understand it. Now, your Honor will see by these letters that when this comes to be the act of Mr. Tilton in withholding from Mr. Beecher access to these papers, it is an immediate and direct significance of the dealing by Mr. Tilton and Mr. Beecher in regard to this conference.

Judge Neilson—Mr. Beach, what do you think of this?

Mr. Beach—Your Honor will recollect that there was a letter introduced, addressed by Mr. Beecher to Mr. Moulton, bearing date July 24, 1874, making a request for the letters and papers in the hands of Mr. Moulton, relating to this controversy, and that the letter of Mr. Moulton, without our objection, in answer to that bearing date August 4th, was read in evidence. I believe also that the letter of July 28, 1874, from Mr. Beecher to Mr. Moulton, was also

given in evidence. Mr. Porter then proposed to read the reply of Mr. Beecher, bearing date August 4th, 1874, to which I objected, and that was ruled out upon the ground that the statements made by Mr. Beecher to Mr. Moulton upon this subject, detailing the particulars of what was supposed to be the origin of a breach of their friendship, was not admissible; that under the pretense of a controversy between himself and Mr. Beecher, Mr. Beecher could not fabricate declarations or introduce conversations between himself and the witness, which would bear upon the main issue in the controversy. I am not aware that the letter to which reference is now made, of August 5, 1874, was then presented for discussion or consideration. I am not aware that any offer was made of that letter or any objection taken to it on our behalf. The only objection which we made, and the only objection which I care now to make, is to the letter of August 4th, written by Mr. Beecher to Mr. Moulton, and if the object of the introduction of the letter of August 5th is to introduce in evidence, or to lay the foundation for a presentation in evidence, of the letter of Mr. Beecher of August 4th, why, then we object. So far as it is now offered for the purpose of proving declarations made or assented to upon the part of Mr. Tilton, in so far as those declarations are material to the issue, I perceive no objection to its introduction. It seems to me competent upon that ground; but I desire to preserve the objection which was made on the 18th, and upon which your Honor ruled, to the introduction in evidence of the letter of Mr. Beecher, of August 4th. I stated on the 18th Sir, what I supposed to be the rule of law, without any specific examination of the question, in regard to the admissibility of the details of controversies between a witness and the party against whom he is introduced, for the purpose of proving the presence of malice or ill-will. I have just sent, Sir—I have not looked at the authority furnished by the case of Boynton against Boynton, decided in the Court of Appeals, which appears in the 43rd of New York, at page 380:

"In an action of slander, the plaintiff, as a witness on his own behalf, stated, on cross-examination, that he had had litigation with the defendant. He was then asked how many suits he had with him, and for what cause of action. Held, that the Court below properly excluded so much of the inquiry as related to the causes of action; it was in no way material or pertinent to the issue. Its materiality consisted solely in its bearing upon the credit due to the plaintiff as a witness, and was therefore collateral in its nature. The end of such an inquiry would result in an unlimited examination of the previous litigation, and in attempts to indicate the different positions occupied by the parties engaged in it."

The authority seems to me, Sir, particularly applicable to the present question. Here the difficulties which are supposed to exist, causing estrangement and ill feeling between the witness and Mr. Beecher, were connected with the very subject of litigation in this action; and if, in a controversy between the witness and Mr. Beecher, Mr. Beecher is permitted to make declarations which are material to the main issue, which directly affect the interests of Mr. Tilton in this litigation, why, your Honor will perceive that by that mode of inquiry upon a collateral question Mr. Beecher is permitted

to introduce his own declarations to a third party against us when we were not present. If necessary, Sir, if you will permit me, I will look a moment to the opinion, which may be fuller than the marginal notes. The opinion says, Sir :

"The evidence proposed to be given by the answer to so much of the question as was excluded, was in no way material or pertinent to the issue found between the parties, and which formed the subject of the trial. Its materiality consisted solely in its bearing upon the credit due to the plaintiff, as a witness, and was, therefore, collateral in its nature. Inquiries of this character must necessarily be limited and restricted in their nature, otherwise the trial of issues upon pleadings would be often so far extended by them as to obscure the real point involved in the controversy, and obscure the mind of the jurors called upon to decide them. The object of such inquiries is to show that the witness may be giving his testimony under some feeling or impulse, inconsistent with an impartial disclosure of the truth. It is not material to inquire after the particular process or the detail of circumstances by means of which that feeling may have been produced, for the fact itself is all that the case can require to be proved, and all that the law will permit to be shown. The discovery of the motive under which the witness may, at the time, be giving his evidence, is the end and object to be attained, and that can always be accomplished by the direct inquiry concerning its existence or concerning the facts themselves ordinarily indicating the existence of improper motives. It is sufficient to show that the difficulty affecting his feelings and likely to influence his evidence, exists between the witness and the party it may be given against, and that can always be done without pursuing a detailed inquiry into the circumstances attending its development."

That authority, Sir, very abundantly sustains the proposition which I submitted to your Honor on the 18th, and which will be at once recognized as law. Now, it may be said, Sir, that this letter of Mr. Beecher, of August 4th, necessarily came under the observation of Mr. Tilton, at the time he was engaged mutually with Mr. Moulton in preparing the reply to that instrument. It will be for your Honor's consideration how far the presentation of that letter to Mr. Tilton—if it was submitted to him, which does not yet appear—and how far his acceptance or repudiation of the statements of that letter may be admissible. Certainly, sufficient yet has not been given to allow the production of that letter under that aspect of the question.

Mr. Evarts—This letter, as I understand it, is not objected to?

Judge Neilson—The letter written jointly?

Mr. Evarts—Yes, Sir.

Mr. Beach—I object to that letter, Sir, or any part of that letter which in your Honor's opinion—if you will be kind enough to scrutinize it—will lay any foundation for the introduction of Mr. Beecher's letter.

Judge Neilson—So I understand, Sir.

Mr. Evarts—May I read the letter?

Judge Neilson—You are at liberty to read the letter which was written jointly.

## THE FIRST HOSTILE WORDS BETWEEN THE FRIENDS.

Mr. Evarts—[reading]:

40 REMSEN STREET, BROOKLYN, August 5, 1874.

Rev. HENRY WARD BEECHER:

MY DEAR SIR: In all our acquaintance and friendship I have never received from you a letter of the tone of yours of August 4th. It seems unlike yourself, and to have been inspired by the same ill-advisers who had so lamentably carried your private affairs before a committee of your church, and thence before the public.

In reply, let me remind you that during the whole of the past four years all the documents, notes and memoranda which you and Mr. Tilton have intrusted to me to have been so intrusted because they had a reference to your mutual differences. I hold no papers, either of yours or his, except such as bear on this case. You speak of "memoranda of affairs not immediately connected with Mr. Tilton's matter." You probably allude here to the memoranda of your difficulties with Mr. Bowen, but these have a direct reference to your present case with Mr. Tilton, and were deposited with me by you because of such reference. You speak also of a letter or two from your brother and sister and I am sure you have not forgotten the apprehension which we entertained, lest Mrs. Hooker should fulfill a design which she foreshadowed, to invade your pulpit and read to your congregation a confession of your intimacy with Mrs. Tilton.

You speak of other papers which I hold "subject to your wishes." I hold none such, nor do I hold any subject to Mr. Tilton's wishes. The papers which I hold, both yours and his, were not given to me to be subject to the wishes of either of the parties. But the very object of my holding them has been, and still is, to prevent the wish of one party from being injuriously exercised against the other.

You are incorrect in saying that Mr. Tilton has had access to my "depository of materials;" on the contrary, I have refused Mr. Tilton such access.

During the preparation of his sworn statement he came to me and said his case would be incomplete unless I permitted him the use of all the documents, but I refused; and all he could rely upon were such notes as he had made from time to time from writings of yours, which you had written to me to be read to him, and passages of which he caught from my lips in short hand. Mr. Tilton has seen only a part of the papers in my possession, and would be more surprised to learn the entire facts of the case than you can possibly be.

What idle rumors may have existed in newspaper offices I know not; but they have not come from me.

In closing your letter you say, "I do not ask you to place before the Committee any papers which Mr. Tilton may have given you; but I do demand that you forthwith place before the Committee every paper which I have written or deposited with you." In reply I can only say that I cannot justly place before the Committee the papers of one of the parties without doing the same with the papers of the other, and I cannot do this honorably except either by legal process compelling me or else by consent in writing, not only of yourself but of Mr. Tilton, with whom I shall confer on the subject as speedily as possible.

You will, I trust, see a greater spirit of justice in this reply than you have infused into your unusual letter of August 4th.

Very respectfully,

FRANCIS D. MOULTON.

[Marked "Exhibit D 6."]

Mr. Evarts—Now, we offer the letter to which that is an answer, it having been communicated to Mr. Tilton, read by him, and quoted from by him as parts of his (Mr. Tilton's) written reply, to be signed by Moulton.

Mr. Beach—That statement may probably be assumed to be

true, Sir, from what has already appeared; but still it is not evidence, and I think it should appear by the direct examination of the witness before we withdraw our objection to its introduction. Whether the contents were brought to his observation—submitted to him—I don't know. It will be easy to prove it if it is a fact.

Judge Neilson—Suppose you interrogate him upon that subject.

Mr. Evarts—I dare say, your Honor, that it is proper that it should be done, but I make this suggestion: as there is no pretense that there was any other letter of the 4th of August from Mr. Beecher, and as this letter which I have read, every word of which was written by Mr. Tilton, is in answer in terms referring to the date of Mr. Beecher's letter—his unusual letter—and making three separate quotations from it, on every principle of evidence that has ever been practiced upon in a civil or criminal suit, the writer of an answer to a letter is affected with a knowledge of the letter which he is answering. Now, I submit to your Honor that it is but an idle form to proceed any further.

Mr. Beach—That would be true, Sir, if the letter to which the reply is made was addressed to the party making the reply, or if the whole of the letter had been quoted in the reply. Here are two parties engaged in preparing this answer. It does not appear that Mr. Tilton wrote the whole of the answer, or that he did not write portions of it at the dictation of Mr. Moulton. It does not appear, but the quotations in the answer were given by Mr. Moulton to Mr. Tilton to be incorporated in it; and it is those, perhaps somewhat technical matters, which, I insist, ought to appear before the whole of Mr. Beecher's letter is permitted to be read.

Judge Neilson—I think it is proper to interrogate the witness upon that subject.

Mr. Evarts—Does your Honor rule that this letter is not admissible without an interrogation?

Judge Neilson—I expressed a wish, Sir, that he should be asked that question.

By Mr. Porter—Did Mr. Tilton see the letter from which he quoted these passages in the reply? A. I think he did, Sir.

Mr. Beach—Wait one moment, Sir. I object to that question as assuming that Mr. Tilton quoted these passages in the reply.

Q. Did Mr. Tilton quote these passages in the reply? A. They were quoted in the reply which was made by Mr. Tilton and myself. The reply was jointly Mr. Tilton's and my own.

Q. And the letter was before you from which the extracts were taken? A. Yes, Sir.

Q. And the reply to the letter was made with reference to the letter to which it was a reply? A. Yes, Sir.

Q. By you and by Mr. Tilton? A. By Mr. Tilton and myself.

Judge Neilson—Now, I think the letter may come in.

Mr. Beach—Yes, Sir; I think it is competent.

Mr. Evarts—Have you the original?

Mr. Morris—I cannot find it. You may read from the copy.

Mr. Evarts—We will read it, but still we want to see all these original papers.

Mr. Morris—I will find it at my leisure.

Mr. Evarts—We have not seen these papers. The other side have seen them all. I would like to see them.

Mr. Morris—All the papers that we have we will furnish.

Mr. Beach—You saw this one—your own letter, I suppose.

Mr. Morris—They have served a subpoena upon us, and I have requested them to make a list of the papers that they want, and I give them notice again, or they will have to wait until we can find it.

Judge Neilson—I think it will be well, Mr. Shearman, to make a list.

Mr. Porter—(Reading):—

BROOKLYN, Aug. 4, 1874.

F. D. MOULTON, Esq.

Sir: Your letter, bearing date Aug. 4, 1874, is this moment received. Allow me to express my regret and astonishment that you refuse me permission even to see certain letters and papers in your possession, relating to the charges made against me by Theodore Tilton, and at the reasons given for the refusal.

On your solemn and repeated assurances of personal friendship, and in the unquestioning confidence with which you inspired me of your honor and fidelity, I placed in your hands for safe-keeping, various letters addressed to me from my brother, my sister, and various other parties; also, memoranda of affairs not immediately connected with Mr. Tilton's matters. I also, from time to time, addressed you confidential notes, relating to my own self, as one friend would write to another. These papers were never placed in your hands to be held for two parties, nor to be used in any way. They were to be held for me. I did not wish them to be subject to risk of loss or scattering, from my careless habits in the manner of preserving documents. They were to be held for me. In so far as these papers were concerned, you were only a friendly trustee, holding papers subject to my wishes.

Mr. Tilton has made a deadly assault upon me, and has used letters and fragments of letters, purporting to be copies of these papers. Are these extracts genuine? Are they garbled? What are their dates? What, if anything, has been left out, and what put in?

You refuse my demand for these papers on the various pleas that if I speak the truth in my statement, I do not need them; that if I make a successful use of them it will be an injury to Mr. Tilton, and that you, as a friend of both parties, are bound not to aid either in any act that shall injure the other.

But I do not desire to injure any one, but to repel an injury attempted upon me by the use of papers committed sacredly to your care. These documents have been seen and copied; they have been hawked for sale in New York newspaper offices; what purport to be my confidential notes to you are on the market. But when I demand a sight of the originals of papers of which you are only a trustee, that I may defend myself, you refuse, because you are the friend of both parties!

Mr. Tilton has access to your depository for materials with which to strike me, but I am not permitted to use them in defending myself!

I do not ask you to place before the Committee any papers which Mr. Tilton may have given you. But I do demand that you forthwith place before the Committee every paper which I have written or deposited with you.

Yours truly,

H. W. BEECHER.

[Marked "Exhibit D. 7."] ]

## TILTON'S ACCOUNT WITH MOULTON'S FIRM.

Mr. Porter—Have you the account, Mr. Moulton?

A. Yes, Sir. Which one, Sir?

Q. Both, if you please. A. There is the first one—Mr. Tilton's—and there is the other [producing papers].

Q. This is a transcript of the account of your firm with Theodore Tilton? A. Yes, Sir.

Q. It is a correct transcript of that account, and of the whole of it? A. I believe it to be so, Sir; our accountant made it.

Mr. Porter—I will introduce in evidence first the account of Theodore Tilton with Woodruff & Robinson. I will ask Mr. Hill to read it.

Mr. Hill [reading].

## THEO. TILTON in acct. with WOODRUFF &amp; ROBINSON.

		(DEBIT.)	
1871.	Feb. 3—To Cash	.....	\$500 00
	18—do	.....	500 00
	24—do	.....	500 00
Mar.	4—do	.....	500 00
	8—do	.....	1,500 00
	1—do	.....	500 00
Nov.	15—do	.....	1,113 63
	25—do	.....	250 00
1872.	Jan. 20—do	.....	1,000 00
	Apl. 26—do	.....	15 00
	May 27—do	.....	100 00
	" 27—do	.....	100 00
	" 27—do	.....	500 00
June	8—do	.....	500 00
	11—F. Woodruff guard int. on B. & M.	.....	240 63
July	8—Cash	.....	250 00
Aug.	12—do	.....	1,300 00
	22—do	.....	300 00
Sept.	1—do	.....	1,813 91
Nov.	8—F. Woodruff guard. int. on B. & M.	.....	297 60
	8—Cash	.....	500 00
Dec.	27—do	.....	600 00
1873.	Apl. 21—do	.....	170 48
			\$12,981 15

		(CREDIT.)	
1871.	Jan. 7—By Cash	.....	\$4,004 08
May	1—By bal. Interest on acc't	.....	45 21
Nov.	13—By Cash	.....	500 00
Nov.	20—do	.....	250 00
1872.	Jan. 24—do	.....	1,000 00
	Apl. 5—do	.....	7,000 00
	May 28—do	.....	100 00
Nov.	8—By bal. Interest on acc't	.....	71 28
Apl.	21—do	.....	10 65
			\$12,981 15

Mr. Fullerton—Balancing the account?

Mr. Hill—They balance.

## MOULTON'S STEWARDSHIP.

Q. The other paper which you produce purports to be a statement of receipts and disbursements of money received from H. W. Beecher by F. D. Moulton; is this a correct statement of those? A. It is a correct statement, Sir, as far as our books are concerned; I think that there are one or two checks left out; I cannot say that there are, but my impression—not checks, but currency; currency; I think there were two payments to me in currency besides that account.

Mr. Porter—This I offer in evidence.

(Marked "D, No. 9.")

Mr. Hill [reading]—This is a statement of moneys received and disbursed from H. W. Beecher by F. D. Moulton;

		On the Debit Side.	
1872.	July 19—Paid Rev. C. C. Beatty, check	.....	\$155 87
Aug.	19— " Mrs. Theo. Tilton "	.....	150 00
1873.	Jan. 19— " " "	.....	50 00
May	28— " Rev. A. M. Read, check	.....	219 75
	28— " Mrs. T. Tilton "	.....	25 00
July	8— " Rev. A. M. Read	.....	118 12
Oct.	24—Paid Mrs. T. Tilton	.....	50 60
1873.	Mar. 7— " Rev. C. C. Beatty, check	.....	245 00
April	5— " Mrs. T. Tilton, bal'ce of \$500	.....	255 00
May	3— " Theo. Tilton, check	.....	1,600 00
July	11— " Tilton, indorsed by W. Ruland, attorney, check	.....	650 00
Aug.	15—Paid to Theo. Tilton, check	.....	250 00
Sept.	12— " " " "	.....	500 00
	30— " " " "	.....	500 00
Dec.	9— " " " "	.....	260 00
	16— " A. M. Read, check	.....	200 00

1874.	Feb. 24— " Theodore Tilton, Mrs. T. T., cashed for check	.....	500 00
M'ch	30—Paid Theodore Tilton, O. W. Ruland, check	.....	\$400 00
May	2—Paid Theodore Tilton, indorsed <i>Golden Age</i> , by O. W. Ruland, attorney	.....	250 00
	" 26—Paid Theodore Tilton, check	.....	300 00

Footling, in pencil ..... \$6,078 15

		The Credit Side.	
1871.	June 26—Received check, H. W. Beecher	.....	\$155 85
Nov.	14— " " of "	.....	150 00
1872.	May 31— " " " "	.....	294 76
1873.	Feb. 18— " " " "	.....	500 00
May	2— " cash	.....	5,000 00

In pencil, footing ..... \$6,100 61

Mr. Beach (smiling)—So it seems Mr. Beecher has a balance there yet?

Mr. Porter—From what is this statement taken—I refer to the one last introduced in evidence? A. From the ledger of Woodruff & Robinson.

Q. The entries were made at the time of the respective dates in the books of your firm? A. Yes, Sir.

Q. Is the title of the account in the book that which appears in the paper? A. What is the title there, Sir? I don't—

Q. "Statement of accounts," etc.? A. No, Sir; it is taken from my account on the ledger, "Francis D. Moulton," I judge—from my account; from my own individual account, Sir.

Q. Could you bring the book and explain, or will it be necessary? A. The accountant will come, Sir, or the books.

Q. If you will do that, be kind enough to do so to-morrow; it will take less time to explain. A. Have the accountant or the books, Sir? You need the cash book and the ledger, then—you will need several cash books—cash books and the ledger.

Mr. Porter—Oh! I guess we won't want anything but the ledger; just the ledger, in order to show how it appeared.

Mr. Beach—I understand the witness to say that this is extracted from his account with the firm. I understand that; but we would like to see how it entered into his account. It is only a matter of explanation; it is much more simply done by having the book here than it is by taking the pen and—

The Witness—I can't tell you exactly how it—

Mr. Porter—How does it happen that all the sums which were received from Mr. Beecher don't appear? A. My impression is, Sir, that I received some currency from him that I immediately paid out, and which I did not deposit there and draw from.

Mr. Beach—That you did not deposit? A. That I did not deposit.

Mr. Porter—There were several instances of that kind? A. I don't know that there were several; I think there were one or two; I won't be certain about it.

Q. Have you any means of ascertaining the amounts? A. No, Sir; nothing but an impression that I have.

Q. Have you kept no memorandum? A. No, Sir; that is the memorandum as far as I have any, Sir; I have no other.

Q. This, then, is not in your books a continuous account in respect to the five thousand dollars, as well as the other matters which you say were an account of these? A. It is not in what?

Q. It is not a continuous and intermingled account? A. It is an intermingled account; yes, Sir. As I received the checks, I had the money deposited to my credit. The dates there will show. The dates and the checks will show when the amounts are placed to my credit.

By Judge Neilson—I understand there were these intermediate deposits in other matters? A. Yes, Sir; there might have been.

Judge Porter—If the books were kept as an account between you and the firm, how was it indicated that the transactions related to Mr. Beecher? A. A memorandum was put down there, Sir.

Q. And is that memorandum transcribed in full? A. I presume it is, Sir.

Mr. Beach—Oh! no; I guess not.

The Witness—I received the account with a letter from Mr. Eddy, our accountant, stating that he had taken off the account; I have not examined it.

Q. If you would be kind enough to look at it between now and to-morrow—you have one copy of this, I suppose? A. No, Sir; I have not.

Q. I thought Mr. Tilton had one in pencil? A. Mr. Tilton has one, in pencil, of his own; this is another matter; Mr. Tilton has a memorandum of the account with me.

Mr. Beach—This cannot be an account from the book. For instance, the first charge, "Paid by Rev. C. C. Beatty, check —"

Mr. Evarts—We shall have to have the books; we need not detain them.

Mr. Beach—There is nothing here to show that the checks which you paid to Beatty, or to the Rev. Mr. Read, were on behalf of Mr. Beecher? A. Yes, Sir; you will find corresponding amounts to the credit of the account there—to my credit; the checks that I paid were paid to C. C.—

Q. What is there on the books to show that the checks paid to the Rev. Mr. Beatty or Mr. Read, were paid on behalf of Mr. Beecher, or out of the Beecher account? A. What was there on the book to show that?

Mr. Porter—Yea.

The Witness—There's no other money for it to come from but Mr. Beecher's money. That account was paid from no other money but the money that Mr. Beecher gave me.

Mr. Evarts—The books do not show that.

The Witness—The books show, I think, that the entry on the book is, "Paid C. C. Beatty." Now, then, what is—

Mr. Evarts—But, what is there on the books to show that

that is from Mr. Beecher? A. The credit on the book to me is a check from Mr. Beecher, Sir; you will find it on the credit account.

Q. Corresponding in amount? A. Yes, Sir; corresponding in amount.

Q. In that way? A. Yes, Sir; if you will allow me, Mr. Porter, I will try and indicate what I mean from the paper itself. For instance, to my credit there is placed a check June 26th, \$155 85; paid Rev. C. C. Beatty, \$155 27. Then there is received a check from H. W. Beecher, \$150; paid Mrs. Theodore Tilton, \$150. Then there is paid Mrs. Theodore Tilton, \$50; paid Rev. A. M. Read, \$219 76; paid Mrs. Theodore Tilton \$25, and received from Mr. Beecher \$294 76 to offset that. Then there is received different sums credited to me \$500, and that is paid to C. C. Beatty \$245, and to Mrs. Theodore Tilton \$255, which offsets that \$500, and the account balances. Then you come to the \$5,000; paid Theodore Tilton, May 3d, \$1,000 on that; July 11th, \$650, paid Theodore Tilton, "indorsed O. W. Ruland, attorney," \$650—and August 15th paid \$250—all that comes out of the \$5,000. Then \$500, \$260; A. M. Read, \$260; Theodore Tilton, cash for Mrs. T., \$500; Theodore Tilton, indorsed by Ruland, \$400, and so on down, so that it leaves a balance in Mr. Beecher's favor here of—I don't know how much it was, Sir, to balance.

Mr. Beach—\$22? A. \$22.

Mr. Porter—Is there in the accounts of your firm, in any part, anything to show the transactions between you and Mr. Tilton not embraced in these two papers? A. Between myself personally and Mr. Tilton? No, Sir.

Q. If I understand you there was no account between your firm and Mr. Beecher? A. No, Sir.

Q. At any time? A. No, Sir.

Q. Nor between you and Mr. Beecher on the books of the firm? A. No, Sir.

Mr. Beach—Yes, Sir; but not in Mr. Beecher's name? A. Not in Mr. Beecher's name.

Mr. Porter—Well, there is this which is in his own name. The occasion for its appearing upon the books of the firm arose only when the moneys you received were deposited by you with the firm? A. Yes, Sir.

Q. And when the moneys paid out were paid by checks of the firm? A. Yes, Sir; or by currency of the firm.

Q. Or by currency? A. Or by currency.

Q. Of the firm? A. Yes, Sir.

Q. Where they were paid out of the currency from Mr. Beecher, they did not appear in the books of the firm—where you made a payment from funds received from Mr. Beecher which had not gone to the firm, there is no entry anywhere with regard to them? A. No, Sir; when I received currency—let me see if I understand your question by my answer, Sir—if I received currency from Mr. Beecher and paid it out immediately and did not deposit it with the firm, then there would be no account of it.

Q. So that there is no complete account in existence, so far as you are aware? A. Unless that be a complete account.

Q. And this, you think, is incomplete? A. I stated, Sir, that

there is an impression in my mind that I received from Mr. Beecher twice money that is not there.

Q. Are you able to say that you did not do so three times? A. Oh! if I should undertake to state the truth I should state it in that way that I did not three times.

Q. Well, are you able to? You put it hypothetically? A. Yes, Sir; I should say that I had not three times.

Q. Can you state the amounts on those two occasions? A. I cannot, Sir. I think on one of the occasions there was \$300—no, Sir.

Q. And the other a larger or less sum, should you think? A. I should think it was much about the same; perhaps \$500; and I think there was one of \$500.

Q. Making the total amount received from Mr. Beecher \$6,878 15? A. Whatever makes the total amount, Sir.

Q. \$6,900. I will now ask you a few questions in regard to the other account, returning to this at a later stage of the examination. You received from Mr. Tilton, I perceive by this account, on the 7th of January, 1871, \$4,000?

Mr. Fullerton—That is the other account.

Mr. Porter—Yes, Sir, \$4,004 08. [To the witness]: The first draft made upon that was on the 23d of February, \$500; did the \$5,000 received from Mr. Beecher enter into this account in any form? A. I don't think it did, Sir; if you will allow me, I will see whether it did or not on that paper.

Q. I assume it did not. A. I don't think it is in there, Sir; it is not there.

Q. Do you know how Mr. Tilton had before transacted his financial matters, whether with banks or bankers? A. I think he had money in bank and money with individuals.

Q. But never with your firm until then? A. No, Sir.

Q. How was this \$4,000 deposited? A. It was money which Mr. Tilton gave to me to be deposited.

Q. Was it in currency or in checks? A. I think very likely it was in checks, Sir; I don't remember.

Q. On the 6th of April, I observe, there was a deposit with your firm of \$7,000; do you remember whether that was by check or in currency? A. Mr. Henry C. Bowen's check; it was either Henry C. Bowen's check or currency drawn on Henry C. Bowen's check and deposited.

# CURIOUS WAY OF STARTING A PAPER.

Q. When was *The Golden Age* established? A. In March, I think, Sir, of 1871.

Q. Who was the proprietor and editor of that paper? A. Mr. Tilton was the editor of the paper.

Q. Was he publisher? A. He was the publisher.

Q. The proprietor? A. Well, the proprietor—I hardly know how to answer that question; Mr. Tilton's notes were given, payable, if the paper was made a success, to the parties who contributed to the paper; I suppose he might be called the proprietor of the paper.

Q. Were you one of those who gave notes for that purpose? A. Yes, Sir.

Q. Or received his note, I should say, for that purpose? A. Yes, Sir, I received his note.

Q. To what extent were you a contributor? A. I think I contributed \$1,500 at that time; subscribed \$3,000.

Q. How is that, Sir? A. I subscribed \$3,000.

Q. You paid \$1,500? A. Yes, Sir; \$1,500 was paid at that time.

Q. When did you subscribe? A. I don't remember the date—in the beginning, when subscriptions were made.

Q. Probably shortly before the paper began; before the publication of the paper? A. I should think it was; yes, Sir.

Q. When did you pay that \$1,500? A. I don't remember, Sir, when I paid it; I haven't any means of stating just now; I will find out for you, Sir.

Q. The books show? A. Yes, Sir; the books—

Q. You have no idea about the time? A. No; I haven't.

Q. Nor whether it was that year? A. Oh! it was that year.

Q. Have you an idea whether it was that Spring? A. I think it was.

Q. Paid it in cash? A. Yes, Sir.

Q. You received from Mr. Tilton a note for the amount? A. Subsequently; yes, Sir, which I returned to him.

Q. When did you receive it? A. When did I receive the note?

Q. When did you receive it? A. I cannot tell the date of it, Sir; I have no means of telling just now.

Q. The note came immediately after you had sent the amount I suppose? A. The notes were arranged by my partner, Mr. Woodruff, Sir; I don't know when they came; they were arranged for me as for all the rest, as for himself.

Q. Was the other \$1,500 ever paid? A. I think not, Sir; we gave back the notes to Mr. Tilton, and made the whole thing a gift, so that he became the sole proprietor of *The Golden Age*.

Q. That was after he had published the *Life of Victoria Woodhull*? A. I think it was; I would not be certain about that, though.

Q. You will not? A. No, Sir.

Mr. Fullerton—Well, it does not appear that he published the *Life of Victoria Woodhull* at all yet. If you want to prove that you must prove it in some other way.

Q. What interval do you think occurred between the receipt of those notes and their surrender? A. I think that the notes were surrendered the latter part of the year. I think I can ascertain positively, though, for you.

Q. Of the year 1871? A. Yes, Sir.

Q. Were they surrendered at the same time with the notes of other contributors? A. I believe they were.

Q. What was the aggregate of the contribution? A. I do not remember what the aggregate was.

Q. About how much?

Mr. Beach—I don't perceive the materiality of this inquiry, if your Honor please.

Mr. Porter—Its materiality will appear hereafter.

Mr. Beach—Well, wait one moment. The gentlemen say they will make it material. It should be shown to be material now. How much Mr. Tilton was aided in the business enterprise of

publishing *The Golden Age*, by his friends, does not seem to me to be material.

Mr. Ryarts—Not of itself, it is not, but it is a necessary part of material evidence.

Judge Neilson—I think the counsel has that subject about exhausted; perhaps he had better finish it.

Mr. Porter—Just that point; it is all I desire. A. About \$6,000 I should think.

Q. Of the whole? A. About \$6,000; yes, Sir.

Q. If I understand you, these were payable only in case it should be proved a success? A. I think—

Mr. Beach—One moment.

Mr. Porter—Did it prove a success?

Judge Neilson—He said that.

Mr. Porter—I wanted to see if it was a success.

Mr. Beach—You wanted to see whether you understood his answer by putting another question.

Mr. Porter—Well, I put that now. [To the Witness]: Did it prove a success?

Judge Neilson—I think he may answer that.

Mr. Porter—Did the paper prove a success? A. The paper was carried on. I don't know whether you call it a success or not; it didn't—the payment back—the giving back of these notes was not in accordance with the provision; it was in accordance with the idea of my partner, Mr. Woodruff, that Mr. Tilton had better be the sole proprietor, and instead of running it upon obligation any longer than the amount he had already incurred, that he had better undertake to run the paper on what he had, and own it himself, so that the property was given—that the money was given outright to him; that is the—

Q. The further obligation of the subscription was given up? A. Yes, Sir.

Q. Did any other members of your firm separately contribute? A. Yes, Sir.

Mr. Fullerton—Well, we object to that, if the Court please.

Judge Neilson—He has answered it.

Mr. Porter—Well, we waive that, Sir.

To the Witness—Did you lend anything to him individually?

A. I have from time to time let him have money; yes, I think.

Q. Is there an account of it in the books? A. No, Sir.

Q. Is there an account of it in writing, anywhere? A. No, Sir; I don't think there is; when I found he wanted money, I let him have money if I had it.

Q. In currency? A. Sometimes, and sometimes in checks; generally in currency.

Q. Sometimes in checks? A. I don't remember that I—I don't remember whether—I suppose very likely there is some in checks; that is, may be.

Q. Have you those checks? A. I should suppose I ought to have them. Yes, Sir, they will be in the concern; if I paid him any money in checks, they would appear.

Q. I ask you to look for that. A. I will.

Mr. Fullerton—That we shall object to. We shall object to that.

Mr. Morrison—The checks for 30 or 40 millions of money; it would take about four months.

Mr. Beach—If he chooses to look for you, of course we shall not object to it.

Mr. Fullerton—But we shall object to the evidence if the checks are produced.

Judge Neilson—Well, as matter of courtesy, the witness may look.

Mr. Fullerton—Well, to go into the details of their transaction here, seems to me to be out of place entirely.

By Mr. Porter—Have all those loans been repaid? A. No, Sir.

Q. Have any of them? A. No, Sir.

Q. During what period were they made? A. From 1871 down.

Q. To what period; down to the present time? A. Yes, Sir; down to the present time; not very much lately.

Q. How much in the aggregate? A. I really could not tell you, Sir.

Q. Have you no idea? A. No, Sir; I have not.

Q. Not within a few thousand dollars? A. No, Sir; they don't amount to a few thousand dollars; they don't amount to over a few thousand dollars; I should not think, in all, over \$2,000; I don't think.

Q. You can say that they didn't amount to over \$10,000? A. I know they didn't amount to over \$10,000.

Q. Nor over five? A. Nor over five.

Q. Have you indorsed for him? A. No, Sir.

Q. Nor become responsible for him? A. No, Sir.

Q. At the time this \$5,000 was paid by Mr. Beecher, can you tell what was the amount that Mr. Tilton owed to your firm?

A. What was the amount that Mr. Tilton owed to our firm?

Q. Yes, Sir. A. I don't think he owed anything to our firm.

Q. Can you tell what was the amount he owed to you? A. I cannot.

Q. Nor approximately? A. No.

Q. I now refer to the subject of your relations with these parties briefly—did Mr. Tilton draw checks on your firm? A. Draw checks; no.

Q. Did Mr. Tilton draw checks on your firm? A. No; I think he came down for the money when he wanted it, or else drew a draft. I don't know precisely how he did draw it out.

Q. Drew a draft? A. I think very likely; or came himself for our check.

Q. Will you be kind enough to see how that was, if these are the drafts?

Mr. Beach—I think you had better give him a memorandum of what you want, or let him take it, for he certainly wont remember all those requests.

Mr. Porter—I come now to the incidents of the evening of December the 30th; had you seen Mr. Tilton that day, previous to your interview with him in the evening? A. My impression is that I had not, Sir.

Q. He came to your house? A. Yes, Sir.

Q. At his request you went to the house of Mr. Beecher? A. I did, Sir.

Q. On your arrival there, did you meet Mr. Beecher at the door? A. I don't remember that I met him at the door.



Q. Did you, when you met him, meet him in a kindly spirit? A. I saluted him, Sir, as one gentleman should another.

Q. How is that? A. I saluted him as one gentleman should another, at the time, in his own house.

Q. Were you peremptory in your manner? A. I told him Mr. Tilton wanted him to come to my house.

Q. I ask if you were peremptory in your manner? A. I was polite, Sir, in my manner. I don't—

Q. Will you repeat the first words you used after greeting him? A. I said, "Mr. Beecher, Mr. Tilton wants you to come down to my house."

Q. What else? A. And he said then, that it was prayer meeting night and he didn't think he could come, and I then said: "Mr. Tilton wants to see you with regard to your relations with his family, and with regard to the letter which he sent to you through Mr. Bowen, and you had better make arrangements to let the prayer meeting go and come down with me."

Q. You had heard of that letter before? A. What letter; the letter of—

Q. Bowen? A. Yes, Sir.

Q. From whom? A. From Mr. Tilton.

Q. When? A. December 26th.

Q. Where? A. At Mr. Tilton's house.

Q. Did Mr. Tilton come to see you about it, or did you go to see him about it? A. About that letter?

Q. Yes, sir? A. No, Sir.

Q. Did he send for you? A. No, Sir.

#### MOULTON'S FIRST CONNECTION WITH THE SCANDAL.

Q. You were there casually? A. I think I was there casually; yes, Sir.

Q. He showed you the draft of that letter? A. He told me that he had sent a letter; he didn't show me a draft of a letter; told me what it was: what the substance of it was.

Q. What was said about it by Mr. Tilton. He said that he had written—that Bowen had told him of Mr. Beecher's adulteries, and he had told Mr. Bowen that Mr. Beecher had been guilty of unhandsome advances toward his wife, and that had Mr. Bowen's challenge; he had written such a letter, and he told me what the letter was.

Q. Did he tell you no more particularly what adulteries Mr. Bowen had charged upon Mr. Beecher? A. I think he told me that Mr. Bowen had charged various adulteries upon Mr. Beecher, and that Mr. Beecher had made confession to him of adulteries.

By Mr. Evarts—That is, Mr. Bowen said so? A. Yes; Mr. Bowen said so.

By Mr. Porter—Did he specify those adulteries? A. No; he did not specify them.

Q. Did he specify any of the parties who were connected with those charges? A. No, Sir.

Q. Well, what did you say to that? A. I asked him if Mr. Bowen had signed the letter with him. I asked him what unhandsome advances Mr. Beecher had made. He told me not to ask him,

he didn't want to tell me. Well, I said "Why did you send the letter through Bowen; if he was a party to that demand, why didn't you get his signature." I told him he was a fool for sending such a letter without the signature of Mr. Bowen.

Q. Was that your conversation: that he was a fool for sending it? A. Yes, Sir; without Bowen's signature.

Q. Go on. A. And he said that Mr. Bowen had promised to furnish him the evidences.

Q. On that occasion? A. No, Sir; whenever it was necessary to enforce the demand of the letter.

Q. He did then; he told you that Mr. Bowen in that interview had promised to furnish him with the evidences? A. Yes, Sir; he gave that to me as an excuse for not having had Mr. Bowen's signature when I—that is it.

Q. All that occurred at the interview? A. And I took a memorandum of what he told me. I believe the memorandum was published in my statement concerning—

Mr. Fullerton—Never mind that statement.

The Witness—Pardon me.

Q. Was that the day on which you noted the precise hour of your entering upon—of your becoming connected with this controversy? A. I noted the precise hour at which Mr. Tilton gave me the information that he gave me at that interview.

Q. What did you note it in? A. Put it on a piece of paper.

Q. Have you that paper? A. It is here.

Q. Was it a detached slip of paper? A. I don't remember; the paper will show for itself; I wrote it down.

Q. Have you it here? A. Yes, Sir; it is amongst my papers I think.

Mr. Porter—I ask for that paper.

Mr. Beach—Well, you are not entitled to see it unless you want it for evidence.

Mr. Evarts—We have a right to see it to determine whether we want it for evidence.

Mr. Beach—I submit not.

Mr. Evarts—Well, go on.

Mr. Beach—Yes; it is here.

Mr. Porter—Is it at hand?

Mr. Morris—It may take me half an hour to look through here. Unless it is for some purpose I don't propose to do it; I don't wish to.

Judge Neilson—Mr. Morris desires that a memorandum should be made of the particular dates of the documents desired, so as to look for them.

Mr. Beach—No, this presents another question. If they call for this paper as evidence, why that is one thing, and if they merely want it from curiosity to look at it, that is quite another, and we shall not furnish it.

Mr. Evarts—We shall not raise the question until the paper is here.

Mr. Beach—Well, the paper is here, and when you call for it as evidence we will look for it; and if not, we shall not.

Judge Neilson—Well, I think if you would give a memorandum of the dates of the papers to be produced it would save time.

Mr. Beach—It won't save any time, it is likely.

Mr. Fullerton—Well, all suggestion upon that subject has been wasted so far.

Judge Nelson—What could be done if the paper were brought here is quite another thing.

Mr. Fullerton—Well, the rule of evidence is very clear. If they call for it it comes.

Mr. Evarts—It would seem to be very clear from the witness that he made a memorandum at the time: that we have a right to look at it for the purpose of testing his evidence, if nothing else.

Judge Nelson—I don't need to pass upon that now.

Mr. Evarts—The paper is not here, so that we cannot raise these questions.

Mr. Porter—What was the day and the hour of the day when this communication was made? A. It was December the 26th, Sir, I think, in the afternoon.

Q. What was the hour? A. Somewhere around three o'clock, I think.

Q. When did you note the hour? A. Well, it was a pretty important communication, and I made a memorandum of it on that account.

Q. Important to you? A. No; important to Mr. Tilton.

Q. The memorandum was made for his convenience? A. I made a memorandum of it because I thought it was worth while to make a memorandum of so important an occurrence, and as his friend I made it.

Q. Did he ask you to make one? A. No, he did not; it was my own thought.

Q. You have given all the conversation that occurred between you on that occasion? A. As I at present remember the conversation; yes, Sir.

Q. Did you see him afterwards before the 30th? A. Yes, Sir, I did.

Q. Several times? A. Yes; I think I saw him two or three times.

Q. At your house and at his? A. Yes, Sir, I think at my house and at his.

Q. Did you see him on the 27th? A. I think I saw him on the 27th; yes, Sir.

Q. What occurred between you on that occasion? Where was that, first? A. I don't know whether it was the 27th or not, but the next interview that I remember with him I can give you.

Q. Where was it? A. I think it was at my house—I think so—I think it was at my house.

Q. Did he come voluntarily? A. Yes, Sir.

Q. Not in pursuance of any agreement between you? A. No, Sir.

Q. Nor at your request? A. No, Sir.

Q. What took place; state fully? A. At the interview I am speaking of now, he told me he had sent word to Mr. Bowen that he was going to see Mr. Beecher within a short time, and wanted him (Bowen) to furnish him with the evidences he promised him to furnish him with, and that Mr. Bowen had come into his presence and told Mr. Tilton that he told Mr. Beecher that he (Bowen) said he would dismiss him from the papers

Q. What papers? A. Dismiss him from his employ, rather.

Q. What did he say to that? A. He said he would not be influenced by any threat; he would do whatever in his judgment he thought was best.

Q. Did he represent that at an interview? A. Between himself and Mr. Bowen?

Q. Yes, Sir. A. Yes, Sir.

Q. Was anything said in connection with the presentation of the letter by Mr. Bowen to Mr. Beecher? A. No, Sir.

Q. Did you understand that the interview was after that had been done? A. I did not understand whether it was before or after. It was in reference to the subject I have here spoken of.

Q. You did not then know whether it had or had not been there? A. No, Sir.

Q. Had he said anything to you about it on the 26th?

Mr. Fullerton—About what?

Mr. Porter—About the sending of that letter to Mr. Bowen. [To the Witness.] My associate and I don't understand you right. Was this angry interview before or after you understand the note had been sent to Mr. Beecher? A. I didn't understand anything about the note having been delivered to Mr. Beecher at that interview.

Q. Was anything further said upon that subject then, or upon any subject? A. No, Sir; not that I remember of.

Q. What was said on that occasion at that interview? A. That is the substance of it.

Q. Do you mean to say that you have already told all that was said? A. Yes, Sir; all that was said with Mr. Tilton.

Q. Did he consult you as to his relations with Mr. Bowen? A. Did he consult me then as to his relations with Mr. Bowen? No; there was no consultation as to his relations with Mr. Bowen.

Q. Was there any conversation about the probability of the termination of their relations? A. No, Sir.

Q. And about the probable dismissal of Mr. Tilton? A. Nothing further than I have narrated.

Q. Was this a short interview with Mr. Tilton? A. It was not a very long one; I don't know how long it lasted.

Q. Only long enough for that to transpire? A. I would not say it was only long enough for that.

Q. Was anything at that time proposed to be done either by him or by you? A. No, Sir; I think not.

Q. Was anything said at that time about Mrs. Tilton? A. I don't think there was at that interview.

Q. When was the next interview that you remember? A. The next interview was on the evening of December 30th, or the afternoon or evening of December 30th, that I remember.

Q. I understood you to say there were several interviews between the 26th? A. The next interview that I remembered, I said.

Q. Had there been any conversation between you and him in regard to procuring a statement from Mrs. Tilton? A. No, Sir.

Q. None before the 29th, nor on the 30th? A. None before the 29th—if you will put the question so that I can clearly understand it

Q. Nor on the 30th? A. Will you put the question in full, please?

Q. None before the evening of the 30th? A. I don't exactly understand you.

Q. Any conversation between you and him about Mrs. Tilton before the evening of the 30th? A. No, Sir; I think not.

Q. When Mr. Tilton came to your house that evening, were you aware that Mr. Bowen failed to sustain that demand for Mr. Beecher's retirement? A. I had no conversation with Mr. Tilton about that.

Q. And hadn't heard of it? A. Hadn't heard whether he had failed or not, Sir, that I remember now.

Q. You say that Mr. Tilton's letter of the 1st of January, 1871, to Mr. Bowen, gives, in substance, and more in detail, what Mr. Tilton had said to you in the conversations of December 26th, and that of a day or two after? The conversation of a day or two after is the one referring to the excited interview? A. He gives in the letter to Mr. Bowen, bearing date January 1st, 1871, the substance of the interviews which he had with Mr. Bowen.

Q. Did Mr. Tilton, in these preceding interviews, or either of them, avow his belief in the truth of Mr. Bowen's statement in regard to Mr. Beecher? A. He said he had no doubt of the truth of Mr. Bowen's statement. On December 26th I think he said that.

Q. Did he add any statement of his own? A. Yes, Sir; he said he had no doubt, on account of the unhandsome advances which he knew Mr. Beecher had made to his wife; that, I think, he said on December 26th.

Q. Did he mention any rumors that had come to himself in regard to Mr. Beecher's moral character? A. I don't remember that he did.

#### TILTON'S FIRST CHARGE AGAINST BEECHER.

Q. Had Mr. Tilton ever said anything to you before, in regard to the moral character of Mr. Beecher, except on the occasion to which you adverted? A. With regard to the moral character of Mr. Beecher?

Q. Against the moral character of Mr. Beecher? A. I think Mr. Tilton, anterior to December 26th, had said that Mr. Beecher preached to his mistresses in Plymouth Church.

Q. When was that? A. I don't remember the date, but it was previous to December 26th.

Q. Years previous? A. No, Sir; not years.

Q. Who was present on any occasion when he used that precise language? A. I don't remember that anybody was.

Q. Are you able to say whether it was in, or before, 1870? A. It was in 1870.

Q. Are you able to say whether it was in the beginning or the latter part of that year? A. I should think it was the latter part—the last half of the year.

Q. Did he name those mistresses? A. No, Sir; he didn't.

Q. Did you make any inquiry about it? A. I did not.

Q. Prior to that, had he ever said anything to you to the detriment of Mr. Beecher's moral character? A. I think that he never said anything to the detriment of his moral character previous to 1870. He talked with me about his courage—his lack of political courage.

Q. When first, in 1870, had he spoken against his moral character otherwise? A. When what?

Q. When first, in 1870, had he spoken against his moral character otherwise? A. I thought I had answered the question.

Q. No; you answered that he did in the latter part of the year. I inquired had he before, in 1870, spoken against his moral character? A. I don't remember distinctly, Sir, that he had.

Q. You are unable to say either way upon that subject? A. Yes, Sir; I am unable to answer.

Q. When was it he had spoken in respect to his want of political courage? A. I think about the time of the Cleveland letter, whenever that was.

Q. Do you remember about what year that was? A. No, Sir; I don't. Whether it was about the time of the Cleveland letter that he spoke to him—it was certainly concerning the Cleveland letter.

Q. When he told you that Mr. Beecher preached to several of his mistresses, did you believe it?

Mr. Beach—Wait one moment.

Mr. Porter—I submit it to your Honor.

Judge Neilson—Please repeat the question.

Mr. Porter—My question was when Mr. Tilton, in 1870, told you that Mr. Beecher preached to a dozen of his mistresses, did you believe it?

Mr. Morris—He didn't say that; he didn't use that language.

Mr. Porter—To several of his mistresses.

Mr. Morris—I am not sure that he used the word "several."

Judge Neilson—Can you state it outside?

Mr. Fullerton—No; the question is, did he believe it?

Mr. Porter—I ask if the witness believed it when Mr. Tilton told him?

Judge Neilson—How is it material?

Mr. Porter—I think it is material to show the state of mind in which he went to the interview with Mr. Beecher, of which Mr. Tilton was aware, and which he had produced.

Judge Neilson—Well, the witness may answer.

Q. [By Mr. Porter]: Did you believe it? A. I couldn't believe it, Sir.

Q. And didn't? A. And didn't.

Q. Was your wife at that time a member of Mr. Beecher's church? A. She was.

Q. Does she continue to be so? A. Her name is still on the roll of Plymouth Church. She has not taken communion there since 1870. She has not partaken of communion in that church since 1870.

Q. Or attended church? A. I won't say since 1870; since she came into possession of the facts in the case.

Mr. Evarts—The date is all we ask—the time.

The Witness—I cannot state the exact date.

Mr. Porter—My inquiry was not about communion. My inquiry was when she ceased to attend Plymouth Church? A. I cannot answer that question, Sir, when she ceased to attend Plymouth Church.

Q. You do not know? A. I do not know.

Q. Did she continue to attend that church after January 1871. A. I think she did for some little time after January, 1871.

Q. Did you attend any church? A. I did not regularly attend any church at that time.

Q. Did you pay for her pew-sitting up to 1874? A. I think we had a pew in the church, and I paid for it. I don't remember whether it was up to 1873, or not. Up to 1873?

Q. Did your wife become an attendant of any other church? A. No, Sir; not that I know of.

Q. Down to the present time? A. Down to the present time.

Q. Had you, prior to 1871, been a regular attendant of Plymouth Church? A. No, Sir.

Q. Nor since? A. Nor since.

Q. When did you last attend Plymouth Church? When were you last there—I mean on the occasion of a religious service? A. On the evening of the report of the Committee, I believe, was the last time that I was there. [Laughter.]

Q. You understood that to be a religious service, did you? A. No, Sir, not very. I understood it to be a meeting in Plymouth Church. I beg pardon for answering your question, Mr. Porter, without understanding it.

Q. My inquiry was when you last attended a religious service at Plymouth Church? A. I didn't understand the question in that way, when I last attended a religious service in Plymouth Church. I don't remember.

Q. Can you remember within a year? A. I think I have been at Plymouth Church within two years, certainly, two or three times.

Q. Do you remember the occasion of your going? A. Within the last two years? No, Sir; I don't remember the occasion particularly.

Q. Was it with your wife? A. I don't remember that.

Q. Have you a distinct recollection of being at all at Plymouth Church since the occasion when you went and sat in Mr. Tilton's pew, and Mr. Beecher came and spoke to you? A. Oh! yes, Sir.

Q. What year was that? A. That was in the year 1868, I think.

Q. Was your wife's uncle, George C. Robinson—were his wife and family attendants and communicants at that church? A. They were.

Q. He was a member of the late firm of Woodruff & Robinson? A. He is a member of the firm of Woodruff & Robinson to-day.

Q. And of the late firm also? A. Yes, Sir.

Q. Were you in the habit of contributing to the funds of Plymouth Church? A. If I was ever there when there was a subscription taken up, very likely I subscribed; I don't remember.

Q. But not otherwise, except in the payment of pew rent? A. I think not.

Mr. Evarts—It is now four o'clock, the hour of adjournment, if your Honor please.

Judge Neilson—The audience will wait one moment. I wish the Jury to pass out first. [To the Jury.] Gentlemen, be in your places at 11 o'clock to-morrow.

Mr. Mallison—[The Clerk.] The Court stands adjourned until to-morrow morning at eleven o'clock.

The Court thereupon adjourned until 11 o'clock, Wednesday.

## EIGHTH DAY'S PROCEEDINGS.

### MR. TRACY CONDUCTS THE CROSS-EXAMINATION.

THE EVENTS OF THE NIGHT OF MR. BEECHER'S ALLEGED CONFESSION TOLD WITH ADDITIONS—FURTHER CONSIDERATION OF MR. BOWEN'S ALLEGED STORIES ABOUT MR. BEECHER—THE AUTHORSHIP OF MR. MOULTON'S STATEMENTS.

Those who were present at the great Brooklyn trial and complained on Tuesday that the cross-examination of Mr. Moulton by ex-Judge Porter was tedious and wearisome, had no cause for fault-finding on Wednesday. Upon the opening of the Court, Mr. Evarts took occasion to announce the fact that Mr. Porter was suffering severely from a cold, and would be unable to appear in court for at least a day or two. Counsel for the plaintiff were evidently not at all pleased by this announcement, and when Mr. Evarts remarked that the defense might have to divide between two of the counsel the labor of cross-examining Moulton, Messrs. Beach and Fullerton protested vigorously. They held that it was the practice to limit the examination of a witness to one lawyer, and Mr. Fullerton made the suggestion that if the ordinary custom in such matters were not adhered to, it might be advisable to discontinue the trial until Mr. Porter should be able to appear. While the lawyers were earnestly discussing the question, Mr. Moulton appeared entirely cool and unconcerned. He leaned back in his chair, smiled occasionally with a complacent expression, and seemed to derive considerable satisfaction from the sharp tilts between counsel. Mr. Evarts adhered to his proposition with characteristic tenacity. When it became apparent that he would carry his point, Mr. Beach took occasion to refer to the testimony of Mr. Moulton concerning Mr. Tracy's alleged dealings with him. His remarks were very pointed, and his hostility to Mr. Tracy was thinly disguised by the gravity of his manner. When Mr. Evarts remarked that Gen. Tracy needed no vindication there was a murmur of approval from the spectators. Gen. Tracy repelled the imputations made against him in a short but effective speech which closed with the remark: "And for the responsibility I now take I am prepared to answer to my conscience and my God." His dignified and impressive delivery of these words drew out applause which was promptly repressed.

Just before the hour for recess, Gen. Tracy asked

Mr. Moulton to relate the conversation which took place between Mr. Beecher and himself on the night when the defendant is alleged to have confessed that he committed adultery with Mrs. Tilton. Moulton, in the course of his narrative, stated that Mr. Beecher said to him that "he had loved Elizabeth Tilton very much, that the expression—the sexual expression of that love—was just as natural in his opinion, he had thought, as the language he had used to her." Gen. Tracy, with considerable emphasis, asked the witness how it was that in his answer he had paused to add the word "sexual," just as he had done in a similar connection in his direct examination by Mr. Fullerton. This query led to a long and sharp dispute between counsel concerning the correctness and official character of THE TRIBUNE's report of the direct examination. Mr. Beach, in sonorous tones, insisted that Mr. Moulton had not made the correction referred to by Gen. Tracy. Reference to the stenographer's notes disclosed the fact that the witness, when questioned by Mr. Fullerton, said that Mr. Beecher "considered his sexual intercourse with Mrs. Tilton was natural—an expression of his love for her." It appears that in transcribing his notes the stenographer omitted the word "as," and consequently the testimony should have read, "his sexual intercourse with Mrs. Tilton was as natural an expression," &c.

#### THE MANNER OF EXAMINATION.

The cross-examination was begun in a bland and courteous way, but there was immediately noticeable a wide diversity of manner and object between the examiner of Wednesday and the man by whom the questions of the preceding day were propounded. The answers of the witness were not given without deliberation, but he had the appearance of perfect self-possession. The contrast between Judge Porter's style of examination and Gen. Tracy's became very sharp and clear after the first few questions were put. The General's queries were announced in a manner and with an emphasis which placed the witness on his guard immediately, whereas Mr. Porter, in his quiet and persuasive way, inspired Mr. Moulton with a degree of confidence which led him more than once into unwary admissions. It was developed that the memory of the witness was defective in regard to several important events which came under his observation. He could not recall whether Mrs. Tilton were ill or not when he called upon her at the plaintiff's house to get her

letter to Mr. Beecher; he did not know whether Mr. Tilton called at the house with him, and he did not remember whether Mr. Tilton was in the house or not when he called. "I don't remember" was an expression which he used frequently. Messrs. Beach, Fullerton, and Morris came to Mr. Moulton's aid whenever opportunity offered, and their spirited objections to the questions of counsel on the other side helped the witness greatly in his efforts to appear entirely unembarrassed.

Gen. Tracy's interrogatories followed each other very rapidly, but the witness was not equally quick in his answers, and declined to reply until he comprehended their meaning thoroughly. When he admitted that he would have destroyed Mrs. Tilton's alleged confessions, if Mr. Beecher had insisted on it, after giving up Mrs. Tilton's letter of retraction, counsel for the defense exchanged smiles. Without hesitation Mr. Moulton said that he would have assumed the responsibility of destroying the letters independent of Mr. Tilton.

During the afternoon session Mr. Moulton showed less self-possession than in the morning. His answers were given more sharply, and indicated something akin to anger. He testified with apparent reluctance that Gen. Benjamin F. Butler was the author of his celebrated statement, and from that time to the hour of adjournment his answers to Gen. Tracy's interrogatories were given in a sullen kind of way which contrasted strongly with his amiable replies in the morning. Mr. Beecher and his counsel were much gratified with the day's developments, and made no attempt to conceal their satisfaction. Messrs. Beach, Fullerton, and Morris, on the contrary, were quite nervous in their movements, and neglected no chance to make an objection. They were on their feet constantly, and hotly contested every advance of the opposite side against their position.

#### MINOR MATTERS OF THE TRIAL.

"A good, contented, well-breakfasted juryman is a capital thing to get hold of," said Counselor Perker in a burst of confidence to his client, Mr. Pickwick. Mr. Perker, growing more confiding, added, "and a discontented or hungry juryman always finds for the plaintiff." This remarkable opinion does not appear in Blackstone or Coke, and for this reason the counsel for Mr. Beecher may not attach much importance to it. Yet it is a notable fact that Mr. Evarts daily insists that

the court shall adjourn as soon as the hour for recess arrives. The jury, as a consequence, have come to look upon him in a very grateful way. With but one or two exceptions the jurymen are very attentive, and their manner indicates a determination to weigh all the evidence presented fairly. On Tuesday afternoon one of the jurors indulged in a short nap, but on Wednesday they were all awake and careful listeners.

Frank B. Carpenter, the artist, whose name has had so prominent a place in connection with the scandal, made his first appearance in court on Wednesday morning. He entered with Mr. Tilton, and took a seat just behind Mr. Fullerton, in a position where he could look straight into Moulton's face. Mr. Carpenter was quite pale, and had the appearance of one who was recovering from a severe attack of illness.

The defendant and his wife listened throughout the proceedings with the utmost attention. Occasionally Mr. Beecher gave a whispered suggestion to Mr. Shearman, which was promptly acted upon. There were no ladies in court on Wednesday, except the four interested in the case. Among the spectators were two or three clergymen, Judge Tibbitts of California, Gen. Henry W. Slocum, Judge Moore, Col. Beecher, the Rev. Edward Beecher, and Francis D. Moulton's old antagonist from Plymouth Church, Prof. Rossiter R. Raymond.

A bill authorizing the continuation of the trial for another term has been forwarded to Albany. On Wednesday morning ex-Judge Fullerton called Judge Neilson's attention to the fact, and remarked that the trial might last longer than one additional term. "The bill is defective in that respect, and should provide for the continuation of the trial until it is concluded," said Judge Neilson. "That is the amendment which I was about to suggest," replied Mr. Fullerton. A short conversation concerning the matter took place between the two, and it was decided by the Judge to have the bill amended.

#### THE PROCEEDINGS.

Ex-Judge Porter has been suffering for several days from influenza, and the difficulty was so much worse on the 20th that he could not appear in Court. He hopes to take his place again in two or three days. Mr. Evarts explained these facts at the opening of the morning session. The work of Mr. Moulton's cross-examination, which Mr. Porter had been assuming, fell on Gen. Tracy. Mr. Evarts put a few questions. The intense enmity known to exist between Gen. Tracy and

Mr. Moulton led all present to anticipate a lively and interesting day, and they were not disappointed.

#### THE RULES OF CROSS-EXAMINATION.

Francis D. Moulton recalled, and cross-examination resumed:

Mr. Evarts—If your Honor please, I am sorry to announce to the Court that our associate, Judge Porter, is not well enough to be in Court. He has been laboring under a very severe influenza for four or five days, and nothing but his sense of professional obligation to continue as far as he could an examination which he had commenced on Monday—your Honor is aware the rule is that the same counsel should proceed—brought him to court on Tuesday. He was then suffering so much that he could not speak at the tone that would have been more desirable without great pain, or even as he did speak; and on Wednesday morning, as I was coming over, I received a note from him saying that he is unable to be out. He hopes, with medical aid, to be able to be with us on Thursday or Friday.

Judge Neilson—I am very sorry indeed to learn that he is ill. I knew that he was not very well on Tuesday. Will you take his place, Sir, in the cross-examination?

Mr. Evarts—Well, we shall be obliged, if your Honor please, if that is the direction of the Court, to divide the matter of the cross-examination, probably, between Gen. Tracy and myself. It is wholly unexpected to both of us that we should be called upon to act at all.

Mr. Beach—I hope an order of that kind, Sir, in regard to the course of the cross-examination will not be made. I was aware on Tuesday that my friend Judge Porter was suffering under a severe indisposition, which in a great degree incapacitated him for the performance of his duty in conducting the cross-examination, and I mentioned to him in a private remark that I thought he was in that condition and should surrender the duty to some other person; and I very much regret to see, Sir, that that incapacity has been the subject of several ungracious remarks in regard to my friend, which I do not think would have been indulged in if the cause of dissatisfaction had been known to the gentlemen who made those remarks. We quite readily consent, Sir, that any other of the counsel on the part of the defense should continue the cross-examination, but to divide that duty among several counsel I think would be such an infraction of the practice and such an injustice to us that we cannot consent to that. We would far rather that the trial should be suspended, or that the cross-examination of Mr. Moulton should be suspended until Judge Porter is able to continue it; but to give to three or four counsel upon the other side that part of the cross-examination of the witness, it seems to me will be apparent to your Honor as an impropriety in practice and as an injustice to us.

Judge Neilson—Perhaps it would, and very likely will, be unnecessary. I think the gentlemen can conform to your suggestion.

Mr. Evarts—The difficulty, as your Honor understands, and as my learned opponents well understand, of the sudden re

moval from the discharge of a responsible part of a duty in a trial of this kind, that has been assigned to one counsel, and for which preparation has been made by him, is not a trivial difficulty; nor does the fact that I am informed at 10 o'clock at my house that Judge Porter will not be here on account of illness, enable me, in passing from my house to the court-room, to be prepared to conduct the cross-examination of the witness, in regard to whom I had expected to take no part whatever; and so with my learned associate, Mr. Tracy, whose greater familiarity with the cause may enable him, no doubt, more readily to prepare himself for the conduct of the cross-examination; and it may be necessary, therefore, that as my learned friends have suggested, they should withdraw this witness and proceed with the examination of some other witness.

Judge Neilson—I think it would be better, Sir, to proceed with him now. I think you are master of the subject.

Mr. Evarts—We thought we should be allowed to conduct the cross-examination as we find it necessary in this emergency.

Judge Neilson—You can overcome the difficulty by consultation with Gen. Tracy.

Mr. Evarts—That will create delay.

Mr. Beach—Delay is better than injustice.

Mr. Evarts—It is not a question of injustice, if your Honor please. It is a mere question of the regularity of the conduct of cross-examination. The old practice used to be for two or three counsel to conduct a cross-examination.

Judge Neilson—We will endeavor to conform to the necessities of the case as they may appear, Sir.

Mr. Evarts—We suggest to your Honor that that may be necessary, and if we understand that if we think it necessary we shall have that privilege, why, then—

Judge Neilson—I don't deny it, Sir. We will see if there is any occasion for it, and I will endeavor to consult your interests in regard to it.

Mr. Fullerton—If your Honor please, we do not wish to deprive our learned adversaries of any advantage to which they are properly and legally entitled. We, of course, appreciate the disadvantage under which any one of their number will now take up the cross-examination, and so far as we are concerned, in order that they may have every possible opportunity for preparation, and keep themselves within the limit of the rule, confining the cross-examination to a single counsel, we are quite willing to take any course that your Honor may think fit and proper, under the circumstances, to relieve them from their embarrassment. We should not object to the postponement of the trial of the cause until Judge Porter should be able to return and resume his duty, nor should we object to taking up some other witness and leaving Mr. Moulton's further cross examination until they were in a state of preparation, as they are not now. We do not want it understood that we urge any course that should deprive them of any legal advantage to which they are justly entitled; but we do think that when the further cross-examination of Mr. Moulton is resumed, it should be confined to a single counsel. That is due to us, and that is nothing more than justice to the witness. Although the rule was once that a witness might be attacked by a number of counsel upon cross-examination, yet that rule has given way to

a more enlightened consideration of the subject. It is no longer the rule; it has not been the rule for many years in this State, and I trust it will never be the rule again. It is due, I say, to the witness, and it is due to our side of the case, that a single counsel should cross-examine the witness.

Judge Neilson—I appreciate what you say. I have no doubt that Mr. Evarts, who has been constantly in attendance, will find himself quite able to proceed with the cross-examination, and we will give him all the facilities we can. I think it is better to proceed that way now than to defer it, or let the proceedings stand over.

Mr. Evarts—Then the further cross-examination will be conducted by my associate, Gen. Tracy.

Judge Neilson—Very well.

#### GEN. TRACY'S CONDUCT CRITICISED.

Mr. Beach—I think, Sir, a single remark should be made in regard to that proposition on the part of the plaintiff. Your Honor is aware that in the testimony of this witness, circumstances have been disclosed which, if they are entirely accurate, would incapacitate Mr. Tracy from appearing at all in this case on the part of the defendant. I do not care, Sir, to relate testimony upon that particular subject; it is undoubtedly within the recollection of your Honor. It has been to us a subject of very embarrassing and painful consideration, Sir, whether any steps should be taken upon the part of the plaintiff in a formal application to this Court, presenting that subject for its deliberation and determination. If it be true, Sir, that in an interview between this plaintiff and Mr. Tracy a revelation of his case, to a considerable extent, was made, and an assurance given by Gen. Tracy, upon the faith of that revelation, that in case of any difficulty between Mr. Tilton and Mr. Beecher, Mr. Tracy would not appear as an adversary counsel to him, the impropriety, the indelicacy, the unprofessional act of Mr. Tracy's appearing in this trial in opposition to the plaintiff would not be countenanced by this Court. I am quite willing, Sir, to a very considerable extent, to leave that question to the consideration of the counsel himself; and it is only in consequence of this extraordinary and accidental condition of things that I am led to suggest to your Honor, and to the counsel upon the other side, that perhaps the action of Gen. Tracy in continuing the cross-examination of this witness would be unprofessional and inadmissible.

Judge Neilson—I think I must leave it to the defendant's counsel to arrange which shall cross-examine.

Mr. Evarts—Since these observations have been made, if your Honor please, perhaps I may be permitted to make a few. It is not in any vindication of Gen. Tracy, for I do not think he needs any, but it is in reference to the observations of my learned friend on a matter extraneous to the conduct of the trial in respect to the issue between these parties, to wit, in respect to a fragment of evidence that has been given by this witness, and that my learned friend thinks should disable the defendant's counsel. We have not had any verdict of this jury on this gentleman's testimony. We have not heard what is to be said upon that subject, and on his testimony it is very difficult for me to see anything in his manner of stating it even, that does

not disclose, what is apparent, as I think, otherwise, that Mr. Moulton regards himself as a party to this transaction, and that whatever passed between himself, though acting only as a friend of Mr. Beecher, and with a wise head called in to confer in the same interest—how that should be converted into a disability to continued fidelity to Mr. Beecher on Mr. Tracy's part, when a change of attitude has arisen on the part of the witness. Now, that is the way I look at that matter.

Mr. Beach—If your Honor will permit me to say, Sir, that so far as the counsel has made reference to the relation which Mr. Moulton bears to this case, to use his own phrase, it is extremely extraneous to this discussion, and is a consideration which would have been more professionally and properly addressed to the jury than intimated in this inter-lucutory debate. The counsel also forget, Sir, that by the statement of the witness, the matter upon which we rely in the remarks which we have made, arose out of an interview—not between the witness and Mr. Tracy alone, but between the plaintiff in this case and Mr. Tracy, in which the plaintiff was reluctant to have the communication of his papers and matters made to Mr. Tracy, and consented to it only upon the express assurance upon the part of Mr. Tracy that in any antagonistic difficulty between Mr. Tilton and Mr. Beecher, he would not appear as the adversary counsel against Mr. Tilton.

Judge Neilson—I understand the spirit in which you make the suggestion. It is, perhaps, not one calling for argument really; and as I said before, I must leave the counsel for the defendant to proceed and supply Judge Porter's place as they think best this morning.

Mr. Beach—Your Honor will please note our objection to the action of Mr. Tracy, and exception to your Honor's ruling.

Judge Neilson—Yes, Sir.

Mr. Evarts—Well !—

Judge Neilson—Regulate it as you please, gentlemen; that is all I want to say about it; you are quite at liberty.

Mr. Evarts—I thought that our learned friends agreed that some one might take Judge Porter's place.

Judge Neilson—Yes, Sir; I leave it to you.

Mr. Evarts—But it is not for them to pick out the person to do it; and now, when the apparent greater fitness, from acquaintance with the part of the case now suddenly to be taken up, suggests Gen. Tracy's intervention; that intervention is made the subject of these remarks, and of our exception to your Honor's permission. Now, we say to our learned friends that Judge Porter's absence is a great injury to us, as well as a great regret in respect of him personally, and we are either to go on or not to go on.

Judge Neilson—You will go on, Sir, and regulate it in your own way.

Mr. Evarts—And if it is to be made the subject of an exception, why, then, it becomes a matter of deliberation with us, if your Honor please, as to how the arrangements shall be made.

Judge Neilson—I have left you at liberty to arrange it as you think best.

Mr. Evarts—Oh! yes; but your Honor sees that we cannot arrange in five minutes the preparations. We are ready to pro-

ceed in that way, but our learned friends make an objection to that; they make an objection to that, even to the point of an exception, and under that aspect of the case we desire to be able to determine freely which course shall be taken, and if it is necessary that I now suddenly should undertake to complete this cross-examination, why, then, it is necessary that I should be prepared for it, and not prepare myself in the presence of the Court, and the public, and the newspapers. And, under that view, our learned friends are entitled to their choice, whether they would rather this matter should stand until Judge Porter comes out, and the rest of the testimony go on, or stand until to-morrow morning, with the alternative of Judge Porter then being able to be out, or of some other counsel, to whom they have no objection of any kind, proceeding.

Judge Neilson—I think it would be more orderly to proceed with this witness now and close his examination, and I have intended to say that the defendant's counsel may, either of them, as they may elect, proceed with the cross-examination; and if it requires consultation, of course you will have it.

Mr. Evarts—May we reserve the right to apply to your Honor to divide the labor?

Judge Neilson—Well.

Mr. Tracy—Before proceeding to discharge the duty devolved upon me, the remarkable statement that has been made by counsel, and the evidence that has been given by the witness, call upon me, I think, for a brief statement of my connection with this case.

Judge Neilson—I don't think it does, Mr. Tracy; it will only lead to further debate. The mere act of your proceeding is a sufficient indication to me of your view of your duty, and that is enough for me.

Mr. Tracy—I am happy that your Honor takes that view of my position. I would say, however, that I have taken no step in this case without conferring freely not only with my associates as to my duty here, but with the most eminent members of the bar not connected with this case; and every step in it I have taken, I have taken on their judgment as to what I might professionally do with honor. I understand very well the position in which this prosecution has sought to place me in this case. But I came into this case as the *friend* of this defendant. However others may have changed, I have never; no act of mine has ever been inconsistent with that friendship, and I have performed every duty by the witness and the plaintiff that honor and justice called upon me to do. As for the responsibility which I now take, I am not only prepared to answer that to my conscience, but to my God.

Judge Neilson—That is sufficient.

[Cross-examination of Moulton continued.]

#### THE LETTER OF CONTRITION ONCE A SIMPLE APOLOGY.

Mr. Tracy—I find in your statement which you prepared for Mr. Beecher to make after the publication of the Bacon letter, which is "Exhibit 34," you refer to an apology which he had made to Theodore Tilton in that statement; do



you refer to any written paper—any writing as that apology?  
A. The apology part which is quoted?

Q. Yes. A. To the paper, part of which is quoted; I think that is called an apology.

Q. In Mr. Tilton's letter to Dr. Bacon? A. Yes, Sir.

Q. That was the apology to which you refer. A. Yes, Sir.

Q. And that is the paper writing to which you understood Mr. Tilton to refer so often in the Bacon letter as Mr. Beecher's apology? A. That which is quoted in the Bacon letter—the writing?

Q. Yes, the writing? A. Yes, Sir.

Q. Will you tell us, Mr. Moulton, in what publication the name of that writing was changed from an "apology" to a "letter of contrition," first? A. In what public document—in what publication?

Q. In what publication was that first changed from an apology to a letter of contrition which you first saw?

Mr. Fullerton—One moment. That question is predicated on the assumption of a fact which is not in the case.

Judge Neilson—It appears so.

Mr. Tracy—Did you ever see it spoken of anywhere as a letter of contrition? A. I do not remember in what particular place I first heard it called—

Q. I do not ask you that; I think we will get on better if you answer my question. A. I will endeavor with the utmost courtesy.

Q. Did you ever see it in any publication as a letter of contrition until after you had had the benefit of the professional services of Gen. Butler?

Mr. Beach—That is assuming that he did see it somewhere as a letter of contrition, which does not appear.

Mr. Evarts—We can inquire if he ever did see it.

The Witness—Put the question again.

Q. Did you ever see it as a letter of contrition prior to the time when you availed yourself of the professional services of Gen. Butler?

Mr. Beach—In what form? In a publication or instrument?

Judge Neilson—He means that.

Mr. Beach—We do not know what he means—he must express it. Now if he is asking for the name applied to the instrument in some newspaper, it is immaterial and improper.

Judge Neilson—It is utterly immaterial at what time it was changed, unless the witness changed it.

Mr. Tracy—I mean any newspaper or any printed publication. When I use the word publication, I mean a printed publication. Did you see it anywhere printed as a letter of contrition before you availed yourself of the professional services of Gen. Butler?

Mr. Beach—We object.

The Witness—I don't think I ever—

Mr. Beach—Wait a moment when you hear an objection.

Judge Neilson—He answers that he does not think he did.

The Witness—I did not answer in that way.

Mr. Tracy—When had you last seen Mr. Tilton prior to your meeting him at his house on the 26th of December, '70? A. When had I last seen him?

Judge Neilson—Allow me to suggest that you should not repeat the questions.

The Witness—I shall not. Please to repeat that question again.

Q. When had you last seen Mr. Tilton prior to the interview with him at his house on the 26th December? A. I don't know when.

Q. Do you remember what day of the week the 26th was? A. I do not remember the day of the week.

Q. Was it on Monday? A. I don't remember.

Q. Had you seen him the day before? A. I don't remember that I had.

Q. Do you know that he was at your house on Sunday? A. I don't remember that.

Q. Did you know that he had published his valedictory as editor of *The Independent*, prior to that? A. I read his valedictory.

Q. I did not ask you that. I ask if you knew he had published it previous?

Mr. Beach—I think the witness is entitled to say that he knew it by reading it.

Mr. Tracy—That he says. I ask him as to his knowledge; I don't ask him what he read. I ask if he knew he had published his valedictory in *The Independent* prior to that meeting.

Judge Neilson—The only way, of course, that he can answer that is that he saw it in the paper; unless he was present and saw him write it.

Mr. Tracy—I do not object to his answering in that way; but he was proceeding to say he read it.

Judge Neilson—He could not read it without seeing it.

Mr. Evarts—It is very immaterial, perhaps; he says he did know of it and read it; and I have no objection to this form of answer. But, your Honor will see that it is quite precipitate to allege that he cannot answer any other way than that he had read it.

Mr. Tracy—I repeat. Did you know that his valedictory had been published in *The Independent* prior to Dec. 26th?

Judge Neilson—Answer, yes or no.

The Witness—I cannot answer the question, without explaining, yes or no; I do not remember now the day when it was published; but when it was published I read it.

Q. Then you knew of it at the time of publication?

Mr. Fullerton—That does not appear.

Mr. Evarts—Let us understand; I understand the witness to say that it came to his knowledge at the time it was published.

Judge Neilson—The time that he saw it in the paper.

Mr. Beach—That would be the day that he saw the paper; it may have been a week after.

Mr. Evarts—I understand his answer to be (and we are now talking of what it is, and not what it ought to be), that when it was published he then saw it.

Mr. Fullerton—I don't so understand his answer at all.

[THE TRIBUNE stenographer was here called upon to read the answer of witness.]

Mr. Tracy—Now, had you read it prior to Dec. 26th? A. If you give me the date of the editorial, I can tell you.

Q. The 22d. A. That was the date *The Independent* was issued?

Q. Yes. A. I think I read it on the first day *The Independent* was issued.

Q. Had you been, on the 26th December, informed that Mr. Tilton had made two contracts with Mr. Bowen at \$5,000 a year—one as editor of *The Union* and the other as contributor to *The Independent*? A. I have been informed that he had made contracts. I do not know whether I was informed before Dec. 26th or not.

Q. Had you been informed of that on the 26th December, prior to this interview with him? A. I don't know whether it was prior to this interview with him on the 26th or not, at the present moment; I think it was, however.

Q. Did you know that he was to have an interview on the 26th December with Mr. Bowen and Mr. Oliver Johnson before the interview occurred? A. I cannot swear now that I did know that, positively.

#### THE INTERVIEW ABOUT THE BOWEN CHARGES.

Q. Was it a week day or a Sunday, Dec. 26, when you were at his house? A. I don't remember whether a week day or Sunday.

Q. Do you remember what time of the day you went to his house on that day? A. I remember from a memorandum that I made at the time.

Q. I don't ask that; I ask if you remember the time? A. It was in the afternoon of Dec. 26th.

Q. Do you remember the time that you went there? A. Somewhere in the neighborhood of three o'clock.

Q. Was he at home when you went there? A. That I can't say, positively.

Q. Did you see Mr. Tilton on that day? A. I don't think I did.

Q. Did you wait for Mr. Tilton's return on that day? A. I don't think I waited for his return.

Q. Did you know where he was? A. I don't know that I did.

Q. Did you know what time he was to return? A. I did not.

Q. How long did you wait for him before he came? A. I do not know that I waited for him at all.

Mr. Beach—This question is on the assumption that he did wait?

Mr. Tracy—I understood him to say that he did wait, on his direct examination. But I will ask him. [To the Witness.] Was Mr. Tilton at home when you went there that day? A. I do not remember now.

Q. Do you know what took you to Mr. Tilton's house that day? A. I went there as I usually went to his house.

Q. Do you usually go to his house on week days at 3 o'clock in the afternoon? A. I go there almost any hour of the day when it is convenient.

Q. Do you go every day at 3 o'clock in the afternoon? A. No, Sir.

Q. Do you usually go every day at 3 o'clock in the afternoon? A. No, Sir; there was no usual hour for going.

Q. Are you there usually every day at his house? A. There have been times when I have been there every day.

Q. At this time were you? A. I don't think I was at that time.

Q. How often do you think at this time that you were in the habit of visiting the house on week days, during business hours? A. Well, I certainly do not remember.

Judge Neilson—State as near as you can tell?

Witness—Not very frequently.

Mr. Tracy—On informing you of the letter he had sent to Mr. Beecher by the hands of Mr. Bowen, did he tell you when he supposed that letter was to be delivered to Mr. Beecher? A. I don't think he told me when he supposed it was to be delivered.

Q. Did you make any other remark to him about his sending the letter without Bowen's signing it, except that he was a fool? Did you say to him that he was a ruined man? A. I don't think I did.

Q. Do you recollect that you did not? A. I am trying to state the truth as near as I can remember.

Judge Neilson—Say yes or no.

Mr. Evarts—We might as well say, once for all, that is covered by the oath he has taken—that he is to tell the truth. It is not necessary to repeat that.

Judge Neilson—Yes; answer yes or no?

Mr. Fullerton—We might as well say that the last question was covered by the former answer.

Mr. Tracy—That would be a ground of objection.

Mr. Fullerton—Well, perhaps so; but we will make our own form of objection.

The Witness—Now, if you will ask me the question again I will try and answer it.

Mr. Tracy—My question is, did you not so state, or do you recollect that you did not say to him that he was a ruined man? A. To the best of my recollection, I should say no.

Q. How long was that interview between you and Mr. Tilton on that occasion? A. It may have lasted half an hour or an hour.

Q. Did you learn from him at that time the object of the interview that he had with Mr. Bowen?

Mr. Fullerton—We object to that. How can his opinion be asked of the object that Mr. Tilton had?

Mr. Evarts—Your Honor has ruled that the witness may answer the preliminary question, yes or no.

Judge Neilson—The objection is, that this question asks for a deduction, and not what was said.

Mr. Tracy—I will change the form of my question. [To the Witness:] Was anything said by Mr. Tilton on that day as to the object of the interview he had with Mr. Bowen? A. I think there was, Sir.

Q. Did he tell you on that occasion that rumors affecting his moral character had come to Mr. Bowen, which led Mr. Bowen to think of breaking the contract with him which he had just made, and that the object of the interview was to enable him to explain these rumors which had reached Mr. Bowen? A. I cannot answer the question without explaining it.

Judge Neilson—Go on, Sir, and answer.

The Witness—Mr. Tilton, as I remember, said to me what he had done at the interview.

Q. I do not ask what Mr. Tilton said to you.

The Witness—May I explain, your Honor? I cannot answer the question without explaining.

Judge Neilson—The common practice is to answer and then explain afterwards.

Mr. Morris—It would be difficult to answer a speech the counsel makes to the witness.

Mr. Evarts—If there is any objection to the question that is one thing, but if the question is proper, then we are entitled to an answer.

Mr. Fullerton—Our objection is not that you are not entitled to an answer.

Judge Neilson—But then you must take the answer as it is given.

Mr. Fullerton—The question is so framed that a categorical answer may not convey the whole truth.

Mr. Beach—The question does not ask the witness to state whether Tilton did, in substance, or not say so; but it calls for him to state if Tilton said so in the precise language of the question. If the very words were not used, I ask your Honor to instruct the witness that he can answer one way or the other.

Mr. Evarts—It is not the province of the Court to instruct a witness how he can evade answering a question; and yet my learned friend asks your Honor to instruct the witness that if one word is left out he can refuse to answer such a question as that. We have asked the question, and if it is objectionable it must be objected to. If it is not objectionable then the witness should answer, and his answer will be just what his sense of the oath and his conscience dictates; but it is his answer that we are entitled to.

Judge Neilson—I want to say to Mr. Evarts that he was in error in using the word "evade," as applied to the witness on the stand.

Mr. Evarts—I submit to your Honor's correction; but this was an extraordinary proposition.

Judge Neilson—It is a proposition raised by counsel.

[THE TRIBUNE stenographer was called upon to repeat the question.]

Q. Did he tell you on that occasion that rumors affecting his moral character had come to Mr. Bowen, which led Mr. Bowen to think of breaking the contract with him which he had just made, and that the object of that interview was to enable him to explain these rumors which had reached Mr. Bowen? A. I answer that question, no.

Q. Did he tell you that that interview had been brought about by Oliver Johnson, to whom Mr. Bowen had conveyed certain rumors which he had heard about Mr. Tilton? A. No.

Q. Did he tell you at that interview that Mr. Bowen had repeated the rumors and stories which he had heard about Mr. Tilton? A. No.

Q. Did he tell you at that interview that he had attacked Mr. Beecher to Mr. Bowen, by saying that Mr. Beecher had made unhandsome proposals to his wife? A. He did say that.

Q. Did he say in that interview that he offered to join Mr. Bowen in a war upon Mr. Beecher? A. No; he did not say that.

Q. Did he say that he offered Mr. Bowen to draft the letter which he read? A. Put that question again.

Q. Did he say that he offered to Mr. Bowen to draft the letter which he had read, and which Mr. Bowen agreed to prepare to Mr. Beecher? A. No, Sir.

Q. Did he say that he did draft the letter? A. No.

Q. Did he say he wrote it? A. Yes; he wrote it.

Q. He said he wrote it? A. Yes.

Q. Now, when did you see Mr. Tilton after that interview? A. I saw him between that time and December 30th some time; I cannot remember the date now.

Q. Did you know, at the time of the second interview with Tilton, that his letter to Beecher had been delivered by Bowen? A. I did not.

Mr. Beach—What do you call the second interview?

Mr. Tracy—The first interview that occurred after the 26th of December.

Q. You did not know it had been delivered to Bowen? A. To Mr. Beecher, you mean?

Q. Yes; did you inquire whether it had? A. I did not.

Q. And you did not know then that Mr. Beecher had that letter? A. I did not.

Q. At the time of the second interview did you know that this angry interview between Bowen and Tilton had occurred? A. I did; I knew that an angry interview had occurred.

Q. An angry interview had occurred? A. Yes, Sir.

Q. Subsequently to the 26th? A. Yes, Sir.

Q. Did you know whether that interview occurred after or before Bowen had delivered the letter to Beecher. A. I did not know anything about it.

Q. You did not know anything about it? A. No, Sir.

Q. And did not ask anything about it? A. I did not.

Q. Did you at any time between the 27th or 28th and the 30th ever ask Tilton whether his letter to Beecher had been presented? A. I did not.

Q. And you did not know? A. I did not know.

Q. And you did not know prior to the 30th that the letter had been received by Beecher, or what answer Beecher had made to it? A. No, Sir.

Q. And the conversation which you thought so important, on the 26th, as to make a memorandum of, you never had asked about since? A. No, Sir.

Q. What time on the 30th did you see Mr. Tilton—what time of day? A. Towards—in the evening, I think, Sir.

Q. Where? A. At my house.

Q. Do you know about what time? A. Think before—about 6 o'clock, I should think.

Q. About 6 o'clock? A. I think so.

Q. Did he take tea at your house that night? A. I don't remember whether he did or not.

Q. Whereabouts did the interview between you and him take place? A. I think in my front chamber, up stairs.

Q. How long was that interview? A. Not very long.

Q. Well, about how long? A. Oh, I should not think it was half an hour long.

Q. Was it half an hour long? A. I should not think it was.

Q. Was it 20 minutes? A. I should say it was.

Q. Then you went from his presence to the house of Mr. Beecher? A. Yes, Sir.

Q. And you said to Mr. Beecher what you have repeated on your direct examination? A. Yes, Sir.

Mr. Morris—He repeated that in his cross-examination.

Mr. Everts—That is not a necessary interruption. Who made that interruption?

Mr. Morris—I made that interruption.

Mr. Everts—It was not a necessary interruption. We had a right to ask the witness if he did in his direct examination say so.

Mr. Morris—I object to the question, on the ground that it has been all gone over on the cross-examination minutely, and they have no right to examine the witness to-day upon the same point upon which he was minutely examined yesterday.

Judge Neilson—That is so, if your recollection is right of what took place.

Mr. Morris—I am right in my recollection.

Mr. Tracy—Your Honor will observe that the cross-examination yesterday was general—referring generally to the various aspects of the case, with Judge Porter's plan of cross-examination, to come back and take up each interview separately and distinctly by itself, in the order in which it had been testified to.

Judge Neilson—I think, as a general rule, you should take up the examination where you left off.

Mr. Tracy—That is what I am doing.

Mr. Morris—No, Sir; and I appeal to the stenographer's minutes; he has been minutely cross-examined as to this.

Mr. Tracy—The cross-examination of Judge Porter at the close of the day, yesterday, had reached in order the point that I have now stated; and I am now going on with the witness in the order in which he stated the facts on his direct examination.

Mr. Beach—Well, that maintains our proposition that hitherto it has been a mere repetition of Judge Porter's cross-examination.

Mr. Tracy—No, Sir; I have gone through one interview and exhausted it, and now I propose to go to another, and I propose to go step after step.

Judge Neilson—Do you propose to go over the same ground Judge Porter went over?

Mr. Tracy—Oh! no; Judge Porter did not go over it.

Mr. Morris—Well, we say he did.

Mr. Tracy—I can't help your saying he did.

Mr. Morris—But the stenographer's minutes will settle it.

Judge Neilson—Well, it would be burdensome to look at the minutes as we pass from one subject to another. I think the counsel should act from recollection.

Mr. Beach—Your Honor will remember that Mr. Porter cross-examined this witness specially as to the interviews of the 26th and 30th of December, and with great minuteness inquiring into interviews as between those two dates, and carried the witness through the details of this very occurrence. Now, Sir, under the embarrassment in which my friends are situated, I do not care to be very particular upon that subject, and I think they are entitled to some degree of indulgence and license in that respect, but that this is but a repetition of the examination of Judge Porter, I think, must occur very readily to my learned friends.

Mr. Tracy—Judge Porter had just reached and entered upon this branch of the case in the order in which he had arranged it, and had talked about the first interviews of Dec. 26th, 27th and 30th.

Judge Neilson—Well, proceed, and keep within the rule; don't go over the ground—

Mr. Tracy—I shall endeavor to do so. I am pursuing precisely the plan of examination marked out by Judge Porter, precisely.

Mr. Tracy—You said on your direct examination, as I understood you, that on coming down the stoop Mr. Beecher said, "What shall I do?" A. "What can I do?" I think.

Q. "What can I do?"—and your reply to that was what; please repeat it? A. "I am not a Christian, but I will try and show you how well a heathen can serve you."

Q. Did you intend that as a proffer of friendship and service to Mr. Beecher? A. I did; yes.

Q. Then at that time you intended to proffer to Mr. Beecher your friendship and your friendly aid in this matter? A. Yes, Sir.

Q. On your way up you talked, you say, about the charges—you told him the charges which Bowen had made against him and Mr. Tilton? A. Yes, Sir; something of them.

Q. And you repeated those charges to him? A. Some of them; yes, Sir.

Q. And he expressed surprise at that? A. Yes, Sir.

Q. Saying that Bowen had said nothing of that kind to him? A. Yes, Sir.

Q. Did he also add, at that interview, that Bowen had not only not said anything of that kind to him, but that he had repeated stories to him about Tilton? A. I think not at that interview, Sir.

Q. Not at that interview? A. I think not at that—not on the evening of December 30th.

Q. Well, you say you think not. Are you willing to swear that he did not? A. He did; yes, Sir.

Q. He did? A. He did; yes, on the evening of December the 30th.

Q. Then repeat what he said on that subject, please—the subject of the stories which Mr. Bowen had told him about Tilton? A. He said that Mr. Bowen had said to him that he had heard certain stories against Mr. Tilton, and Mr. Beecher said that upon the basis of rumors that he had heard, he had sympathized with Mr. Bowen.

Q. And did he say that he had expressed that sympathy to Mr. Bowen that night? A. Yes, Sir.

Q. Now, what were the stories that he said Mr. Bowen had heard about Mr. Tilton? A. He did not mention them.

Q. He didn't mention them? A. No.

Q. At all? A. No, Sir.

Q. Can you state more fully Mr. Beecher's language when he repeated that part of your interview with him? A. No, Sir; not more fully—not now.

Q. What reply did you make to that? A. To the stories?

Q. Yes, to his reference to the Bowen stories about Mr. Tilton in which Mr. Beecher had sympathized? A. I expressed surprise—I don't remember exactly what I said.

MOULTON DECLAINS AGAINST BOWEN.

Q. Can't you recollect the substance of your language? A. I think I said to Mr. Beecher that Bowen was treacherous to both of them.

Q. And was the friend of neither? A. I don't think I said that.

Q. Don't think you said that, but said he was treacherous to both? A. Yes, Sir.

Q. Did you at that time express any opinion to Mr. Beecher concerning the truth of the stories which Bowen had told about Tilton? A. No; I don't think I did.

Q. What? A. I don't think I did at that interview.

Q. Are you certain of that? A. Yes, Sir; quite certain.

Q. Quite certain? A. Yes, Sir.

Q. Did you say anything to Mr. Beecher to remove from him the impression that you believed the stories true about Mr. Tilton?

Mr. Beach—That is objected to.

Q. Did you say anything to him on the subject of whether you believed that true or false? A. I don't think I did, Sir; I don't remember that I did.

Q. Well, did you intend by your reply that Bowen was treacherous to both of them to leave the impression upon Mr. Beecher's mind that you thought the stories about Tilton true?

Mr. Morris—The question is objected to. What he intended I submit is not material; state what he said.

Judge Neilson—I think his intent must be gathered from what he said.

Mr. Evarts—Well, if your Honor please, the witness has made a reply which, on one view of it, and perhaps the correct view, carries the impression in comparing that statement with the rest of his testimony, that he meant to say that Bowen had been treacherous in telling these true stories about Tilton, or that he had been treacherous to Tilton in the matter of friendship by telling false stories; we want to know which of those views he did present to Mr. Beecher.

Judge Neilson—Doesn't that appear by his conversation on the occasion?

Mr. Evarts—He did not answer that. We are cross-examining him to get at the actual drift and purport of his conversation as it was suited to produce an impression on Mr. Beecher's mind.

Judge Neilson—You have a right to that.

Mr. Tracy—That is what we ask the question for—what he intended by his answer that he made to Mr. Beecher.

Judge Neilson—That is a different question altogether. I agree with Mr. Evarts that you are entitled to the conversation—all of it.

The Witness—I will give the conversation, shall I?

Mr. Tracy—We are cross-examining this witness. He says that he made a certain answer to Mr. Beecher which is ambiguous. Now, we ask him what he intended by that answer; what he intended to convey, because the manner of speech, the accent, the intonation of voice, all carry with them their impression, which it is impossible for the witness to repeat to the jury, and we ask him what was your intention?

Judge Neilson—Now, the weakness of that point is this, that Mr. Beecher might understand that intention one way, and the witness, as he now recollects it, might have understood it in another way, and it don't help you a bit.

Mr. Evarts—Well, we will ask him what Mr. Beecher said.

Judge Neilson—You will get the conversation, of course.

Mr. Evarts—This is a part of it.

Mr. Tracy—Does your Honor exclude the question?

Judge Neilson—With that view, the mere intent, the mental reservation.

Mr. Tracy—Does your Honor exclude the question?

Judge Neilson—Yes, Sir.

Mr. Tracy—I will take an exception, and we will pass on?

Mr. Tracy—Did Mr. Beecher make any reply to that answer of yours about the treachery of Mr. Bowen? A. I said—Yes, Sir; he made a reply.

Q. What was it? A. He thought he was treacherous.

Q. And did you then renew to him your friendship—proffer of your friendship—that you would be his friend, and serve him? A. I don't remember that that followed, Sir.

Q. Don't remember that that followed again? A. No.

Q. That you again repeated it? A. No, I don't think I did.

Q. Where was your house in Clinton-st. A. 148 Clinton.

Q. Between what streets is that? A. That is between Livingston and the street below it—what is that?—Schermhorn.

Q. Well, on entering your house that night, Mr. Beecher passed upstairs, by your direction, to the second story, front room? A. I passed him into the second story and the front room; yes, Sir.

Q. And you remained in the parlor below? A. Yes, Sir.

Q. Did you lock the front door after he went in that night? A. I don't remember that I locked the front door.

Q. You don't remember that you did? A. No; very likely I did.

Q. Don't you remember that you did? A. No, I don't remember that I did.

Q. Why, then, do you say it is very likely you did? A. Why, I usually locked the front door when I went into the house.

Q. You did? A. It is my habit; yes, Sir.

Q. When you have friends in, it is your habit to lock the front door? A. Yes, Sir, or latch.

Q. To latch or lock, which? A. Yes, Sir; latch it or lock it, just as you choose.

Q. You don't know whether you did it that night or not? A. No; I rather think I did though.

Q. After Mr. Beecher came down did you take the key out and put it in your pocket? A. No, Sir; I did not.

Q. You did not do that? A. No, Sir.

Q. After Mr. Beecher came down and you went with him to Mr. Tilton's house, on the way there, did you again talk about Mr. Bowen? A. Yes, Sir.

Q. What was the substance of your conversation in regard to Mr. Bowen on your way to Tilton's house? A. Told him again that I thought Mr. Bowen was a treacherous man. I said to Mr. Beecher "Bowen promised to sustain Mr. Tilton in those charges, and he goes to you, according to what you have said to me, and

promised to be your friend. Now, I think he is treacherous toward both of you, in having repeated the stories that he did to Tilton, and in having said what he did to you after he made those—he is treacherous to Tilton."

Q. Were the stories further talked of then about Mr. Tilton?  
A. No; reference was made to them, that is all.

Q. Did Mr. Beecher go into detail at all about the stories that Mr. Bowen had talked about Mr. Tilton? A. No, Sir, not on that occasion.

Q. Then when you were going from your house back to his house again, did you then again talk about the stories of Bowen?  
A. Yes, Sir; the talk was substantially the same, Sir.

Q. And no advance made whatever; did you simply repeat, for the third time, Mr. Moulton, the stories about Bowen without adding anything, any new feature to the conversation?

Mr. Beach—No stories about Bowen that I know of.

Q. I mean about Mr. Beecher. A. He may have altered the phraseology, but I don't think anything was added to the substance; there was nothing to add that I know of.

Q. Was there anything said in that interview about the stories in regard to Mr. Tilton? A. No.

Q. What? A. No, Sir. You are talking now about on the way from Clinton-st. to Mr. Beecher's house?

Mr. Tracy—Yes, the last time you saw him. A. Yes, Sir.

Q. Now, did you leave Mr. Beecher after having had three interviews with him on that night? A. Yes, Sir.

Q. Did you leave him without expressing any opinion as to the truth or falsity of the stories which Mr. Bowen had told Mr. Beecher about Mr. Tilton? A. I don't think I expressed any opinion as to the truth or falsity that night, Sir.

Q. Do you remember that you did not? A. I should say that I remembered that I did not.

Q. No? A. That is the best of my recollection, Sir.

Q. Did you know what the stories were? A. No, I did not know what stories Mr. Bowen had told Mr. Beecher.

Q. Did you know what stories had been told Bowen about Tilton? A. No; I did not know.

Q. You did not know? A. No; I did not know.

Q. Didn't know any of the stories that had reached Mr. Bowen's ear about Mr. Tilton? A. No.

Q. From any source? A. No; except in a general way; no names.

Q. Well, did you know; in a general way, did you know? A. Yes, Sir.

Q. What did you know in a general way?

Mr. Beach—That is objected to.

Mr. Evarts—The witness said that he didn't know names.

Mr. Beach—What if he did know the stories; are they by this witness to prove stories against Mr. Tilton that he has heard from other parties?

Judge Neilson—No; the only ground of this being admissible would be that it is part of a conversation into which you may have inquired.

Mr. Evarts—It is the subject of future evidence concerning it which we cannot give at the same breath.

Judge Neilson—I don't know about that. I think he may answer this question as further illustrating what had been said.

[Question read by TAYLOR stenographer.]

Mr. Beach—Does your Honor permit him, under that question, to repeat stories?

Judge Neilson—I don't think they ask him to repeat stories.

Mr. Beach—Why, they ask what they were; I suppose that is asking to repeat them; and they are stories that he may have heard from John, Dick or Tom in the street.

Judge Neilson—Well, the question should be amended so as not to include that.

Mr. Evarts—If your Honor please, it is the state of knowledge in the witness's mind as to what the stories were concerning which he talked to Mr. Beecher.

Judge Neilson—Now, this is the point concerning which the objection is made; that the question may call for stories, not those, perhaps, referred to in the conversation with Mr. Beecher, but stories repeated or mentioned by other people outside. The question is, Did he know what the stories were, to which reference was made in his conversation with Mr. Beecher?

Mr. Evarts—One moment; because we do not wish to transcend any of the rules of evidence; nor do we wish to bring in unnecessarily the talk of other people. This witness has testified that, during the conversation with Mr. Beecher on that night of the 30th, Mr. Beecher referred to stories that Bowen had told him to the prejudice of Tilton, in which he, Beecher, had sympathized; and this witness had expressed his views that Mr. Bowen was treacherous to both of them, etc., we won't repeat that. Now we have endeavored to learn from this witness, whether or no the character of those stories, or the details of those stories, were made the subject of conversation with Mr. Beecher, which he has satisfied us about, or recollects only what he has stated. Now we ask him whether he knew, at the time that he was talking, what those stories were.

Judge Neilson—This is admissible, if he learned it in that conversation; otherwise, not.

Mr. Evarts—Why, he did not learn it from Mr. Beecher.

Judge Neilson—Well, then, it is not admissible.

Mr. Evarts—But they talked about the stories that had passed through Mr. Bowen to the prejudice of Mr. Tilton. Now, we ask him whether he knew what these stories were at the time that he was talking with Mr. Beecher. They were talking about those stories; we ask him whether he knew what the stories were.

Judge Neilson—As disclosed in that conversation?

Mr. Evarts—Well, we don't ask him that.

#### TILTON'S ALLEGED IMPROPRIETIES.

Mr. Tracy—I will ask the question and take your Honor's ruling upon it. [To the Witness]—Did you know from any source, at the time you were talking with Mr. Beecher about the stories that Bowen had told him, what those stories—told him about Tilton—what those stories were?

(Objected to.)

Judge Neilson—That is ruled out if it is derived from other sources; admitted if it is derived from his conversation with Mr. Beecher.

Mr. Evarts—We except to your Honor's ruling.

By Mr. Tracy—Didn't you know from Mr. Tilton what the

nature of the stories were that had reached Bowen? A. I had heard from Mr. Tilton something about it; yes, Sir, I think I had.

Q. Now, answer my question. Didn't you know from Mr. Tilton what the nature of the stories were that had reached Mr. Bowen concerning him?

Mr. Fullerton—Now, if the Court please, your Honor will see that it is quite impossible for him to answer that question. He might guess it out, or surmise it, but he has no positive knowledge upon that subject, because Mr. Tilton did not know what communication Bowen had made to Mr. Beecher.

Mr. Tracy—I will ask him that.

Mr. Fullerton—You are interrupting me improperly, however, that is what you are doing; and your Honor will perceive that this witness could not learn a fact from Mr. Tilton which Mr. Tilton himself did not know; and, therefore, he cannot answer the question, except by mere guesswork.

Judge Neilson—He is not to answer by guesswork; if he answers at all he must answer in reference to what Mr. Tilton told him.

Mr. Fullerton—Your Honor will perceive, from the attitude of the case at present, that it is impossible for him to know; he had not learned it.

Mr. Tracy—My question—

Mr. Fullerton—Interrupting again improperly.

Mr. Tracy—I have a right—

Mr. Fullerton—Your Honor will perceive that Mr. Beecher did not convey the information to him. Mr. Tilton did not know what Bowen had said to Beecher. He therefore could not learn it from Tilton. Therefore the witness cannot answer the question, your Honor will see.

Mr. Beach—Will you allow me to add, Sir, the question is, "What stories did Mr. Tilton tell you had been communicated to Mr. Bowen, or were known to Mr. Bowen, concerning him, Mr. Tilton?" Now, the witness has already sworn that he did not know what stories Mr. Beecher referred to as having been told by Mr. Bowen to Mr. Beecher. Where is the evidence that the stories to which Mr. Tilton referred in his communication to Mr. Moulton were the stories which Mr. Bowen communicated to Mr. Beecher, and which Mr. Beecher referred to in the conversation with Mr. Moulton? There is an entire disconnection between them; the stories are not the same—do not appear to be the same. Now, it may be possible, Sir, it may be possible that this, as a declaration of Mr. Tilton, a party to the action, may be admissible in another connection and for another purpose, but not as throwing any light at all upon the stories which were referred to in the conversation between the witness and Mr. Beecher.

Mr. Evans—Now, if your Honor please, Mr. Tilton is the party plaintiff in this suit, and we propose to show, if we are permitted to do so, and we have no doubt your Honor will permit us—under the rules of evidence—the relations of Mr. Tilton and of Mr. Moulton in this matter to the affairs of Mr. Tilton, so far as they are pertinent to this issue. We are now asking him whether Mr. Tilton informed him what the stories were that had been told to Mr. Bowen about him, Tilton. Now my learned friend says that

that don't prove that they were the same stories that were told to Mr. Beecher. It does not, of course; but it proves what the stories were; and then, when we prove by another witness what the stories were that were told to Mr. Beecher, then we shall have seen whether they are the same stories or not.

Judge Neilson—Repeat that question to the witness.

[Question read by THE TRIBUNE stenographer.]

Judge Neilson—Now, he can answer that—that he did know, or did not, I think. How is that?

The Witness—I was not paying attention to the question.

[Question again read.] A. I think Mr. Tilton told me, Sir, something about it himself.

Q. What did he tell you? A. He told me, as near as I can remember. Sir, that Mr. Bowen had mentioned a story concerning a transaction at Winstead, Connecticut.

Q. What did he say about it—what did Bowen tell him about it? A. I don't remember the details of it.

Q. What did Tilton tell you that Bowen said about that Winstead transaction? A. That he was at Winstead with a lady, and had acted improperly with her, and that—I can't clearly separate between two stories; one that Bowen told me—whether Bowen told me, or whether Tilton: that is all that I distinctly remember that Mr. Tilton told me—which Mr. Bowen told me afterward, Sir, himself, I think.

Q. Is this all that Mr. Bowen told you about the Winstead matter? A. Yes, that is all; all I remember.

Q. You say that Mr. Tilton told you that the story was, he acted improperly toward a lady; how improperly? A. I don't know. Stopped at the—

Q. What was said? A. I don't remember anything more, Sir, than what I have said.

Q. You don't think Mr. Tilton specified? A. No.

Q. How his conduct was improper—supposed to be improper—toward the lady at Winstead? A. No.

Q. Did he name the lady? A. No, Sir.

Q. Did he name the occasion? A. I think he said that Bowen told him when he went up there lecturing.

Q. Now, didn't Mr. Tilton tell you that the story was circulated about him that he took a lady there not his wife; took a room at the hotel and took bedrooms that were adjoining and communicating? A. No.

Q. He didn't tell you that? A. No.

Q. He didn't tell you that that was the story? A. No.

Q. Well, what other story did Mr. Tilton tell you had reached Bowen? A. I don't remember any other distinctly.

Q. Don't remember any other? A. No; the language which he used to me, as nearly as I can recollect, was this—

Q. Well, we have not asked you—well, let us have it. A. That Bowen had said that stories had come to him concerning Mr. Tilton's conduct with women, and that he cited this Winstead story. That is the story, as I remember it, that Tilton told me.

Q. And didn't he cite others? A. No, sir.

Q. About his conduct with women—now, when was it that Tilton told you that? A. I think, sir, that it was anterior to December 30th.

Q. Was it anterior to December 26th?

A. No, Sir; I don't think it was.

Q. Was it on the 26th? A. No, Sir.

Q. Was it on the 27th or 28th? A. Don't remember; it was between December 26th and 30th, somewhere.

Q. Do you know where he told you that? A. No, Sir; I don't remember.

Q. Nor when? A. No.

Q. Did he tell you that the interview at Bowen's house on the 26th was concerning those stories which Mr. Bowen had heard? A. He told me those stories as having been told to him by Bowen at that interview.

Q. And did he also tell you that the object of that interview was to enable him to explain those stories to Mr. Bowen, if he could? A. I think he told me that that was the purpose of that interview, Sir.

Q. And didn't he also tell you that his contracts with Bowen were threatened unless he could explain those stories? A. No.

Q. He did not—what did you understand, then, that he was to explain them for, if it was not to save his contracts with Bowen?

Mr. Beach—Well, what he understood is not important.

Mr. Tracy—I think we are entitled to that on cross-examination, what this witness understood.

Judge Neilson—No.

Mr. Tracy—Your Honor will note an exception.

Mr. Tracy—Now, when Mr. Beecher told you, on the 30th, that Mr. Bowen had repeated to him certain stories concerning Mr. Tilton, in which he, Mr. Beecher, sympathized, didn't you understand that those were the same stories that Mr. Tilton had, previously to that night, told you had come to the ear of Mr. Bowen?

Mr. Beach—Objected to.

Judge Neilson—I think we will take that answer. Say yes or no, Sir.

[Exception by plaintiff.]

A. Yes; I supposed they referred to the same.

Q. You suppose they referred to the same? A. Didn't know any other.

Judge Neilson—To Mr. Tracy—To a gentleman of such large experience as yourself, I feel it hardly necessary to suggest that you do not repeat what the witness says; it adds to the volume of the testimony.

Mr. Tracy—And yet you made no explanation to Mr. Beecher concerning those stories on that night? A. No.

Q. So far as you know, did you leave Mr. Beecher with the impression that you believed those stories to be true?

Mr. Beach—Objected to, Sir.

Judge Neilson—I think he may answer that.

Mr. Beach—Why, Sir—well, I won't argue against your Honor's decision.

A. No, I don't think I left him with that impression,

Q. Did you say anything to remove that impression? A. Yes, Sir.

Q. What? A. That Bowen was a treacherous man, and on account of his treachery he ought not to be believed.

Q. Ought not to be believed? A. Yes. I didn't say that he

ought not to be believed on account of his treachery—it was through the use of that language that I left the impression.

Q. That you meant to leave that impression? A. Yes, Sir.

Q. Then, when you told Mr. Beecher that you thought Bowen a treacherous man, you did intend that he should understand that you thought he should not believe against Tilton the stories which Bowen had told him? A. Yes; I did not think that they were—

Q. And you said it for that purpose? A. Not wholly for that.

Q. Well, that is one of the purposes for which you said it? A. Part of it.

Q. Now, how did you understand Mr. Beecher's reply, that he thought so too, as assenting to that view?

Mr. Beach—Are we to have the witness's construction of language?

Judge Neilson—No.

Mr. Evarts—On the cross-examination, if your Honor please, as I suppose by well-settled rules of examination we are not obliged to take a witness's words as ending an inquiry. We have now got, at the end of half an hour, at the very truth that we tried to get at by a simple question half an hour ago.

Mr. Beach—Well, that proposition I dispute.

Mr. Evarts—Well, if your Honor will recur to the question your Honor ruled out, it was exactly to that point, whether what he said to Mr. Beecher was intended to convey to his mind the idea that the stories that had come to Bowen about Tilton were true or untrue.

Mr. Beach—The gentleman has got at it, then, by a change in your Honor's ruling, because you certainly ruled out that question and if you have admitted it now you have admitted it contrary to that decision.

Judge Neilson—I think the matter came in a little different aspect.

Mr. Evarts—That shows what a cross-examination is for and what its license is.

Judge Neilson—I think I will rule out this question.

Mr. Tracy—Your Honor will note our exception.

#### MR. MOULTON'S CAPACITY FOR FRIENDSHIPS.

Mr. Tracy—Mr. Moulton, when you left your own house on the night of the 30th to go to the house of Mr. Beecher, you left it as the friend of Mr. Tilton, did you not? A. Yes, Sir.

Q. Called into this controversy by him? A. Yes, Sir.

Q. To aid him? A. Yes, Sir.

Q. You were not at that time the friend of Mr. Beecher? A. I was not his enemy; I was not his personal—

Q. I didn't ask you that? A. What do you mean by "friend" then?

Q. Don't you understand? A. I don't exactly in the way that you put the question.

Q. Well, I put the question again, Sir, and I shall leave you to answer it as you understand it. Were you, at the time that you left your own house, on the night of the 30th, the friend of Mr. Beecher?



Mr. Beach—Now, I submit that the answer is perfectly proper.

Mr. Everts—We haven't heard it yet.

Mr. Beach—Yes; you have had it.

Judge Neilson—State how the fact was in your own way.

A. I had known—I had met Mr. Beecher, Sir; I was not his enemy; I was not his close, personal, intimate friend.

Judge Neilson—That answers it sufficiently.

Q. You went from your own house as the friend of Tilton, and as soon as Mr. Beecher got into the street, as I understand you, you proffered your friendship to him in this matter? A. I did.

Q. And services? A. Yes, Sir.

Q. Did you do that with Mr. Tilton's consent and knowledge?

A. I had not conferred with him about it.

Q. I didn't ask you that; I asked you whether you did it with his consent or knowledge? A. No, neither.

### A SHARP CROSS-QUESTIONING.

Q. You did it without his knowledge; the letter that you carried to Mr. Beecher on that night, was it in an envelope?

A. I didn't carry a letter to Mr. Beecher, Sir.

Q. On the night of the 30th? A. I had a letter in my pocket.

Q. Well, you had a letter in your pocket? A. Yes, Sir.

Q. Was that letter in an envelope? A. I don't remember whether it was or not.

Q. Do you know whether it was addressed—there was an address on it directed to the Rev. Henry Ward Beecher? A. I know there was not.

Q. There was not? A. No.

Q. Did you deliver that letter to Mr. Beecher that night? A. No, Sir.

Q. Did he ever see it, to your knowledge? A. No, Sir.

Q. Now we will come to the night of the 31st. What time of night did Mr. Tilton leave your house on the night of the 30th?

A. I think he left quite late, Sir.

Q. When did you see him again? A. I saw him on the morning of the 31st.

Q. On the morning of the 31st? A. Yes, Sir.

Q. What time in the morning? A. Before I left for my business, Sir; somewhere between seven and nine o'clock, I should think.

Q. Where; at your own house? A. Yes, Sir.

Q. Did you go to your business that morning? A. I did; yes.

Q. What time? A. Between seven and nine.

Q. From your own house? A. I don't remember, Sir, whether I went to Mr. Tilton's house before I went to my business, or afterward.

Q. Don't remember that? A. No; sometimes I went to the docks and returned.

Q. I didn't ask you what your habit was; I was inquiring what you did that morning. Now, you did go there sometime during that day? A. Did go where?

Q. To Mr. Tilton's house? A. My impression is that I did; yes, Sir; and my recollection, to the best of my recollection, is that I went there that morning.

Q. Either before or after you went to the docks? A. My recollection is that I did.

Q. Who went with you? A. I don't remember.

Q. Did you see Mrs. Tilton? A. I think I did; yes, Sir. My recollection is that I went to the house and saw Mrs. Tilton.

Q. Where did you see her? A. In her room, I think, Sir.

Q. In her room? A. Yes, Sir.

Q. Sick room? A. Yes, Sir; I don't know whether it was a sick room or not. I saw her.

Q. Was she in bed or not? A. I don't remember.

Q. Don't remember whether she was in bed or not? A. No.

Q. Do you know whether she was sick or not? A. I think she was ill.

Q. Well, was she in bed ill? A. I don't remember.

Q. Do you mean to say that you don't know whether she was sick or well? A. She was ill, I think, Sir.

Q. You say she was ill? A. She was ill—

Mr. Fullerton—"She was ill, I think."

Q. Do you mean to say whether she was ill or not? A. She was ill, I think, Sir.

Judge Neilson—That is the third or fourth time he has answered it.

Mr. Beach—Well, he is not a physician.

Mr. Everts—If your Honor please, cannot you tell whether a man or woman is sick, without being a physician?

Judge Neilson—Not always.

Mr. Everts—Not always, but sometimes you can.

Judge Neilson—He says: "She was ill, I think."

Mr. Everts—We know how sick she was, and how she was disposed at the time; and if this witness cannot tell us whether he knows or remembers whether this woman was sick or well at that time, then he may not remember other things.

Judge Neilson—Well, Sir, my own judgment is, that when a layman says of the lady he visited, that "she was ill, I think," it is a fair answer and a full answer. You may ask the witness, undoubtedly, why he thinks she was ill, what was the appearance—

Q. Who was with you in her room? A. I don't remember.

Q. Do you mean to say that you don't remember whether anybody at all was with you, or whether you were alone? A. I don't remember, Sir.

Q. Was her husband with you? A. I don't remember that he was.

Q. Do you remember that he was not? A. I don't remember that he was not.

Q. Did he go to the house with you? A. I don't remember that.

Q. Do you know how you went to that house? A. If I went to the house I rode.

Q. Did Mr. Tilton ride with you? A. I don't think he did.

Q. Do you remember that he did not? A. To the best—the best of my recollection is that he did not.

Q. Was he in the house when you went there? A. I don't recollect.

Q. Whether he was or not? A. No.

Q. From the time you went in, until the time you came away, you don't recollect of seeing Mr. Tilton there? A. I do not.

Q. And don't know that he was there? A. Don't recollect that he was.

Q. Or that he was not? A. Don't recollect that he was there.

Q. Well, do you recollect that he was not? A. I don't recollect that he was there.

Q. Was that letter written in your presence? A. Don't remember whether it was or not.

Q. Don't remember whether it was or not? A. No, Sir.

Judge Neilson—Why repeat that, General, you are burdening the case.

Mr. Tracy—Excuse me [to the witness]. From whose hand did you receive that letter? A. I think I received it from the hand of Elizabeth directly.

Q. Do you know whether you did or not? A. It was either given to me directly by Elizabeth Tilton, or it was sent to me by a messenger to my house. My recollection is that I went to the house that morning—I am undertaking to give my recollection.

Q. Now, I understand you to say that you don't know whether you went to the house and got this letter from Mrs. Tilton, or whether it was sent to you by a messenger to your house? A. I am giving my recollection, Sir; I think I went to the house; to the best of my recollection I went to the house, Gen. Tracy.

Q. Will you say that that letter was not delivered to you by the hand of Theodore Tilton? A. I don't recollect that it was.

Q. Will you say that it was not? A. I won't say that it was not.

Q. What time of evening was it when you left your house to go to Mr. Beecher's on the 31st? A. It was after seven o'clock in the evening.

Q. After seven o'clock? A. Yes, Sir, I should think it was. The best of my recollection is it was after seven o'clock.

Q. You found Mr. Beecher on the evening of the 31st? A. Yes, Sir.

Q. Where? A. He was not at home, Sir, when I called at the house?

Q. Well? A. And a messenger from his house, somebody from his house, came after me and said that his mother, I think, knew where he was; I think it was one of Mr. Beecher's sons, and I went back and waited for him. He came.

Q. Where did you have your interview with him? A. Upstairs in the back room, Sir, I think.

Q. Second or third story? A. I should think it was the second story, Sir. I won't be certain about that.

Q. In the study? A. Don't remember that it was the study.

Q. In the bedroom? A. My impression is, Sir, that it was; my recollection is that it was.

Q. Now, how did you commence that interview with Mr. Beecher that night? A. Well, I said to him that I thought that he would consider the subject of it a strange one; that his judgment would say that it was rather a strange interview; and I recalled something of the conversation, I think, of the previous evening to him, and I said to him, "You got Theodore's permission last night to go down and see his wife, and you procured from her a retraction of her confession, and you procured what I must term a lie, and I think you are

guilty of great meanness in doing that; I think you are." I told him that I had received a note from Theodore in the morning, asking back the confession of his wife, and that I had seen Theodore, and that he was very angry about Mr. Beecher's conduct—about his conduct—and I said: "Mr. Beecher, I didn't see much of the guidance of God in what you did, but at the same time, there may be a Providence in it after all. I have come for that retraction. I think you had better give it up to me. I will burn both the confession and the retraction in your presence, if you choose, or I will hold both;" and I read to him the letter which Elizabeth Tilton had either sent or given to me, and I read also a letter which Theodore Tilton had given to me, dated "Midnight," in which his wife informed him of the, whatever you call it, recantation.

Mr. Evarts—Those letters are in evidence.

The Witness—I believe so, yes; and he said to me that this recantation would be his only, would be the only defense of his family—I am giving his language as nearly as I recollect it, Sir—would be the only defense of his family, in case he was attacked; and I said to him: "Mr. Beecher, I don't see how you have erred as you have; I don't understand it; you have had criminal connection with Mrs. Tilton, and you go down and you get this paper; I don't see how you could have performed two such acts. Mr. Tilton's disposition last night, when I went home, or when I saw him after going home, was peaceful. He said that no matter what might come to himself, he would protect his wife and family, intended to do that." And Mr. Beecher then said to me with great sorrow, weeping, that he had loved Elizabeth Tilton very much; that through his love for her, if he had fallen at all, he had fallen; that the expression, the sexual expression of that love, was just as natural in his opinion—he had thought so—as the language that he used to her; that if he had fallen at all, he had fallen in that way, through love and not through lust, or words to that effect, and he said—

Mr. Tracy—Now, witness, excuse me.

The Witness—And he said, "This will be my defense; my only defense, in case I was attacked, but with you I throw myself upon your friendship and upon what I really believe to be your desire to do the best for all parties;" and as I was leaving him, he said, as nearly as I can recollect—afterward the language made great impression upon me—that he felt that he was upon the brink of a moral Niagara, with no power to save himself, and he wanted me to save him, and that is the substance of the interview as nearly as—

Mr. Morris—Wanted you to save him? A. Yes, Sir; and he gave me back the retraction.

Q. Now, will you explain to the Court and Jury how it happened that in repeating Mr. Beecher's remarks, you first said that he said his expression toward Mrs. Tilton—correcting yourself, you said his sexual expression toward Mrs. Tilton—will you tell us how it happened—intercourse. I mean; intercourse—expression. Will you explain to the Court and Jury how it was that you made the slip? A. I don't understand the slip. If you will explain it, Sir?

Q. In repeating Mr. Beecher's language on this occasion, you first said that—

Mr. Shearman—He considered his expression—then he stopped and said, his "sexual expression of his love for Elizabeth." Those were the exact words.

Mr. Tracy—Can you tell how that happened—why you repeated it in that way? A. Here, in this—?

Mr. Tracy—Yes, Sir. A. Well, I dropped a word; that's all, Sir.

Q. That is your answer; you dropped the word? A. I meant to say precisely what I did say—his sexual expression—that his sexual intercourse—

Q. Are you aware that you made exactly the same mistake on your direct examination? A. No.

Q. You are not aware of that fact? A. No, Sir. [Book produced and referred to by Mr. Tracy.]

#### A PRECISIAN CORRECTED.

Mr. Morris—Now, if that is to be read, I ask that it be read from the original stenographic notes, because they are incorrectly printed; and that is not the only inaccuracy.

Judge Neilson—Errors will creep into the press, where they are—

Mr. Morris—There is one in this case.

Mr. Evarts—Does anybody say there is an error here?

Mr. Morris—Yes, Sir, I do; in the printing of it.

Mr. Evarts—Well, where is your proof of it?

Mr. Morris—Well, I do say so.

Mr. Evarts—Show us the proof.

Mr. Morris—I call then for the original stenographic notes. The stenographer called my attention to it himself, and I saw that it was incorrect, and he said that the mistake had been made in the THE TRIBUNE office; that his manuscript was correct, and the production of the notes will show that that was incorrectly printed.

Mr. Evarts—It is certainly quite competent for counsel on either side to appeal to the original stenographic notes.

Judge Neilson—This correction is one that can be made in the re-direct examination.

Mr. Evarts—Or the stenographer can be produced.

Mr. Morris—But we object to their assuming that the printing is correct in reference to this testimony of the witness, because it is not.

Mr. Tracy—Well, it is very clear he made the same mistake now.

Mr. Beach—This may as well be understood. We say there is an incorrect report in THE TRIBUNE on that point. Now, I wish to say, Sir, as this subject has been suggested now, that at the commencement of this trial it was named to me by one of the counsel on the other side that the report of THE TRIBUNE should be adopted as the official report of the trial; and I see that THE TRIBUNE stenographer, as I understand—or that a stenographer—

Judge Neilson—The one who is assisting THE TRIBUNE stenographers is the official stenographer of this Court, and is now acting as far as he can in connection with them.

Mr. Beach—Yes, Sir; we certainly intended to make no reflection upon them, Sir, or their accuracy. But I wish to state to your Honor, that some reporters, whether the official or not the official stenographers, have mentioned to the counsel for the plaintiff that there are several inaccuracies in THE TRIBUNE report of the testimony. And it is through that representation made by the stenographers that we have raised the question which is now presented to your Honor; and I continue observations upon it for another purpose. It seems, Sir, upon both sides the report in THE TRIBUNE has been adopted as the official report of the proceedings upon this trial. When we find that the report in THE TRIBUNE, in matters which we deem essential to a true representation of this trial, varies from the stenographer's notes, and, when that is brought to our attention by the official stenographer, we wish to enter a protest to your Honor against accepting THE TRIBUNE report as the official report of this trial, that we may not be under any misapprehension afterwards. And, I may be permitted to say, Sir, in addition, that, having studied with some care the report of the trial as it has appeared in THE TRIBUNE, knowing that it had been designated in this way by mutual consent as the official report of this trial, I have been very much dissatisfied by the fact that there are comments prefixed to the report of the trial in THE TRIBUNE which are unfair and unjust towards the plaintiff and which make, I think, false inferences and false statements in regard to the course of the trial. Your Honor will observe that to every report of the evidence in this case in THE TRIBUNE there is prefixed a sort of summary or syllabus giving representations in regard to the object of counsel, the results accomplished by counsel, and representations in regard to the character of the evidence and the effect of the evidence, whether prejudicial to one side or the other. I am unwilling, Sir, that these comments should be presented in what is accepted as an official report of the trial, and attached to the statement of the evidence, incorrect in many of its particulars.

Judge Neilson—That forms no part of the report of the case, of course.

Mr. Beach—No, Sir; but your Honor requested, with great propriety (and we supposed that the courtesy, at least, of the official paper reporting this trial would accede to that request), that the report should not be accompanied by editorial comments; and, if so, Sir, I insist that they shall be at least partial, and not tinctured and poisoned by the prejudice of the editorial department of that paper.

Mr. Evarts—Impartial.

Mr. Beach—Impartial, Sir, I mean.

Mr. Evarts—So that, we may make errors even ourselves. I wish to say one word, if your Honor please. The general discussion about reports of newspapers does not seem to be very pertinent, unless some application is to be made to your Honor in the matter.

Mr. Beach—Why, it is an application, or a statement, that we do not accept the report of that paper as the official report.

Mr. Evarts—No one has ever asked THE TRIBUNE report to be accepted as an authority superseding the official report.

Mr. Beach—Well, you are mistaken.

Mr. Evarts—I have not heard it.

Mr. Beach—Well, there are some things about which you have never heard.

Mr. Evarts—Now, some inquiry has arisen here as to whether, in our dealing with this witness in our legitimate manner, we may not have adopted a report in *THE TRIBUNE*, as a report (as it would presumptively be accepted by all of us) correct in this very matter in question. If the objection is made that the report in *THE TRIBUNE* is not such as we assumed, not having been the testimony in fact, then let the stenographic report that is official be produced before us. We never shall arrive at a conclusion whether there is a discrepancy between the official report and *THE TRIBUNE* report, much less as to which is the more correct, unless we have the two things before us. Now, I think my learned friends, if they pursue the matter further, will find that the official report gives the facts as we have assumed them in our cross-examination of the witness.

Judge Neilson—That may be, Sir, but that particular subject has been exhausted by the examiner, and if there be an error in the use of a word, as assumed by General Tracy, on his cross-examination, that can be corrected on the re-direct, rather than now.

Mr. Evarts—And by producing the official report?

Judge Neilson—Yes, Sir.

The Court here took the usual recess.

The Court met at 2 p. m., pursuant to adjournment. Francis D. Moulton recalled, and cross-examination resumed.

[The last question and answer of the morning session read by *THE TRIBUNE*'s reporter to the witness.]

Mr. Tracy—At what stage of that conversation did you read Mrs. Tilton's letter requesting a return of the retraction?

Mr. Morris—The Exhibits are not here; they are over at the office.

Mr. Tracy—We cannot get along without them.

Mr. Morris—They will be here in a few minutes.

Mr. Tracy—Do you remember whether that letter was in an envelope? A. I think it was in an envelope, addressed to me, Sir.

Q. Have you got the envelope? A. I don't know, Sir, whether it is among the papers or not. All the papers that I have got I have handed to Judge Morris.

Q. Do you know whether the direction of that envelope was in Mrs. Tilton's handwriting? Well, have you got the envelope? Can you get it? We would like it if you have it.

Mr. Morris—We haven't the envelope; I have never seen it.

Q. Do you know what became of it? A. I suppose it was torn off and destroyed, Sir.

Q. Do you say it was; have you any recollection on that subject? A. No distinct recollection; if the envelope is not there it was destroyed—if it is not among the papers.

Q. You don't know whether it is among the papers or not? A. I don't know, Sir; I don't recollect whether it is or not; I have handed Judge Morris all the papers that I have got.

Mr. Evarts—Your Honor will remember that we referred to the fact that all these notes and letters were produced without

envelopes, and yet they showed that they must have been in envelopes, that is, they were not complete sealed or closed papers, and we were told that the envelopes were all in hand and we could have access to them.

Mr. Beach—Oh! no.

Mr. Evarts—I mean those which you had.

Mr. Beach—Yes.

Mr. Evarts—I don't mean to say that you said they had all been preserved, but that you had some envelopes, and whatever you had you had here.

Mr. Morris—Yes.

Mr. Evarts—Now, we would like to see if there is this envelope.

Mr. Beach—We tell you that there is none.

Mr. Evarts—Has it been searched for?

Mr. Morris—Yes, it has; and we have not got it.

Mr. Evarts—Have you searched for this? We never asked you for it before.

Mr. Beach—You are cross-examining Mr. Morris now.

Mr. Evarts—No.

Mr. Morris—I say we have; and we have not got it.

Mr. Evarts—Very well.

Mr. Morris—I have never seen it.

Q. At what stage of the interview with Mr. Beecher on that night did you read to him that letter? A. I think I read it to him after I read to him the letter of Mrs. Tilton to her husband informing him of the fact.

Q. You read, then, what we call the explanation of the retraction, first? A. Yes, Sir.

Q. And then read her letter requesting its return? A. Yes, Sir, after that, I think; that is the best of my recollection.

Mr. Tracy—I want that letter.

Mr. Morris—I can give the printed one; there it is [handing Mr. Tracy the book.]

Mr. Evarts—Well, you will have the original here?

Mr. Morris—Yes, Sir.

#### MR. BEECHER'S HARD ALTERNATIVE.

Q. I understand you to say that you told Mr. Beecher that if he would surrender that retraction you would destroy the accusation—what I call an accusation and that you call Mrs. Tilton's confession—you would destroy that paper and the retraction in his presence.

Mr. Beach—No, that was not the statement.

Judge Neilson—He says so.

Mr. Fullerton—No. I beg your Honor's pardon!

Mr. Evarts—We understand him to have said so.

The Witness—I said to Mr. Beecher that if Mr. Beecher desired—

Q. You would destroy it? A. Yes, Sir.

Q. What did Mr. Beecher say to that? A. He said that if any accusation was made against him that this retraction would be the only defense which his family would have—words to that effect.

Q. And then did you tell him that if you did not destroy you would keep them both together? A. I told him I would keep the retraction and keep the confession; yes, Sir.

Q. So that one should never be seen without the other? A. So that one should never be seen without the other.

Q. You said you would keep them together? A. I told him I would keep both; I did not use the word "together."

Q. Preserve both? A. Preserve both.

Q. Didn't you mean by that to be understood that they should not be separated? A. I meant that I should keep them both in my possession.

Q. Didn't you mean by that to be understood by Mr. Beecher that those two papers should never be separated?

Mr. Beach—Why, Sir, that does not convey any intimation to the witness of what the counsel desires to be answered. They were separate papers. Does he mean that they should be annexed together and never detached, the one from the other, or that the one should never be shown without the other? It is impossible to answer a question of that character without more discrimination.

Mr. Evarts—We understand all that. This witness has said, "I said to Mr. Beecher, I will destroy them both or keep them both," and Mr. Beecher said, "This retraction will be the only evidence against the charge." Now the question is, "Did you mean by saying that you would keep them both that you would keep them so that one did not appear without the other?"

Mr. Beach—Well, that is well enough.

Judge Neilson—How is that, Mr. Moulton? Say yes or no to that? A. I cannot answer yes or no without an explanation to that. That I would keep them both—I said that I would destroy them both in his presence if he desired, or I would keep them both; I would keep both papers; not necessarily together, but keep them both safe, not to be made public, either of them. That is my understanding, Sir.

Mr. Tracy—Did you intend to be understood that you would keep those papers, so that one should not be shown without the other, or should not appear without the other?

Mr. Beach—The question is, Sir, what the witness meant at that time?

Mr. Tracy—Yes, Sir.

Judge Neilson—Answer that.

A. I meant to keep both of those papers sacredly; the recantation for Mr. Beecher's sake, and the confession for Mr. Tilton's sake, who had given them to me. That is what I meant. My idea was, when I said that—my idea was that this confession never should be made against Mr. Beecher without his having the recantation to meet it with. That is what I meant.

Q. And that they should not be shown and separated, so that one should appear without the other?

Mr. Beach—That is not a question.

Mr. Tracy—Yes, Sir.

Mr. Beach—No, that is not a question; that is a declaration of the counsel.

Q. Did you so mean to be understood that one of these papers should not be shown or appear before the public without the other? A. I meant that Mr. Beecher's recantation which he handed me should be used by him in his defense in case an attack was made upon him upon the basis of the other paper. That is it, Sir; if the other paper was used he should have his to use against it. I try to explain it, Sir.

Q. Didn't you also mean that that paper should be preserved so that if any attack was made upon him the recantation should appear to be a retraction of the accusation.

Mr. Beach—That is arguing, Sir, in regard to the effect of the paper.

Mr. Tracy—No, Sir.

Mr. Beach—Yes, Sir. I object to that question.

Judge Neilson—Let the stenographer read the question.

THE TRIBUNE stenographer read the question, as follows: "Didn't you also mean that that paper should be preserved, so that if any attack was made upon him, the recantation should appear to be a retraction of the accusation."

Mr. Tracy—Answer the question.

Mr. Fullerton—That is objected to.

Judge Neilson—Let him answer that.

The Witness—I can answer it with an explanation. I meant that they should both be presented together or both be destroyed together.

Judge Neilson—I understood you virtually to say that before, some time ago. [To Mr. Tracy.] Go on, now.

Q. When you offered to destroy those papers in Mr. Beecher's presence had you the authority of Theodore Tilton to make that offer? A. I don't remember that I had.

Q. You had not? A. According to the best of my recollection, I had not.

Q. Do you mean to say that you had not? A. According to the best of my recollection, Sir, I had not.

Q. Then do you mean to be understood as saying that you received from the hands of Theodore Tilton that accusation of his wife against Mr. Beecher, and, having pledged your friendship to Mr. Beecher the night before, you took it to him and offered to destroy it without the authority or permission of Theodore Tilton? A. On my own responsibility I did think that, Sir.

Q. And you would have destroyed it that night? A. Yes, Sir, I would.

Q. Would that have bound Mr. Tilton to any course on the subject?

Mr. Beach—I object to that.

Q. Did you so understand?

Mr. Fullerton—I object to that.

Judge Neilson—I rule that out.

Mr. Evarts—We except, if your Honor please.

Judge Neilson—The witness gives a certain answer, the words of which convey a certain meaning, and it is our business to interpret the meaning of the words used; and you do not need his interpretation.

Mr. Evarts—He has said, if your Honor please, that he did it on his own responsibility.

Judge Neilson—Yes; and in the same connection that he had no authority from Mr. Tilton.

Mr. Evarts—Now, I want to get that distinctly.

Judge Neilson—He has given it. There is nothing gained by repeating it.

Mr. Evarts—If your Honor will allow me, I want to have no escape from the act that had been done. There was nothing in that act that would have bound Mr. Tilton to any suppression, whatever.

Judge Neilson—The paper would have been destroyed; that is all.

Mr. Evarts—I am not discussing what the effect of the thing is. There was nothing in that act, of which he assumed the responsibility, that, by reason of anything that had passed between Mr. Tilton and himself, would have bound Mr. Tilton not to renew it immediately.

Mr. Beach—That is it. It was for somebody else besides the witness to determine that.

Mr. Evarts—Oh! no.

Judge Neilson—Well, we have got this down distinctly and in such a way that it cannot be evaded.

Mr. Tracy—I will put another question, your Honor.

Mr. Evarts—The question is asked and ruled out, and an exception is taken.

Judge Neilson—Yes, Sir.

Mr. Tracy—Did Mr. Tilton know that you bore the letter to Mr. Beecher from Mrs. Tilton? A. My best recollection is that I showed the letter to Theodore, in accordance—

Q. Before going? A. Yes, Sir.

Q. And that letter called for the return of the papers, that they might be burned, did it not?

Mr. Beach—The paper will show for itself.

Mr. Tracy—Well, I am waiting for it.

Mr. Beach—You have got it in print before you.

Mr. Evarts—We want the original.

Q. Now, Sir, did you say to Mr. Beecher that Mr. Tilton knew of this letter from Mrs. Tilton, and knew that you came with it to request the return of that paper? A. I do not remember saying any such thing; to the best of my recollection I did not.

Q. What? A. To the best of my recollection, I did not say that.

Q. Did you tell Mr. Beecher that the object that Mrs. Tilton had in procuring the return of those papers was that they might be burned? A. I read the letter to Mr. Beecher; I do not remember saying anything further than the letter itself.

Q. And you did not tell him whether Mr. Tilton knew of that letter or not? A. I do not remember that I did, to my recollection.

Q. Didn't he ask you? A. I don't recollect that he did.

Q. And yet you say that, on the authority of this letter, you would have taken the responsibility of not only burning the retraction but burning a paper which you had received from the hands of Mr. Tilton that night in the presence of Mr. Beecher?

Mr. Fullerton—I object to that.

Judge Neilson—He does not say upon the authority of that letter.

Mr. Beach—No, Sir.

Judge Neilson—He said he would have done it.

Q. Would you have done it upon the authority of that letter?

Mr. Fullerton—I object to that.

Judge Neilson—He has said he would have done it.

Mr. Tracy—There was no authority in the letter in respect to the burning of it—nothing upon that subject.

Judge Neilson—I think he may answer. Answer, Mr. Moulton; would you have done it under the authority of that letter?

Mr. Beach—What letter do you refer to?

Mr. Tracy—I refer to the letter of Mrs. Tilton asking for the return of these papers, that they might be destroyed, which letter the witness says was shown to Theodore Tilton before he went to Mr. Beecher's house that night.

Judge Neilson—Now, if Mr. Beecher had consented to the destruction of both papers, the question is, whether you would have destroyed them upon the authority of that letter which you had taken there with you, or upon your own individual responsibility? A. That letter would have influenced me somewhat with regard to it.

Mr. Tracy—And the fact that Tilton had seen it, would not that have influenced you also? A. I think my own thought in regard to the transaction would have influenced me more than either.

Q. Now, do you say that you made this assurance to Mr. Beecher, that if he would surrender that retraction to you, and permit it to be destroyed, you would destroy it with the accusation, without having any authority from Theodore Tilton, or knowing from Theodore in any manner whether, if that was done, it was to end both the accusation and the retraction? A. I would have destroyed the papers on the spot, Sir.

Q. I didn't ask you that, Sir. That is not an answer to my question. Will the stenographer read my question?

THE TRIBUNE stenographer read the last question.

A. Yes; I should have done it on the spot without any authority from Theodore Tilton.

Judge Neilson—Your answer "Yes," then, answers the question?

Mr. Tracy—No, Sir.

Mr. Fullerton—No; that would be wrong.

Mr. Beach—The question is not very perspicuous.

Judge Neilson—[To THE TRIBUNE stenographer.] Read the answer.

THE TRIBUNE stenographer read the last answer.

Judge Neilson—Do you wish to add anything to that answer? A. No, Sir; that covers it.

Mr. Tracy—I put the question, whether you made that representation to Mr. Beecher without having any authority from Theodore Tilton? A. I don't recollect that I had any authority from Theodore Tilton.

Q. Then you mean to say that you did make that representation to him without authority?

Mr. Fullerton—He has said over and over again that he had no authority.

Q. Then you mean to say that you did make that representation to him without having any authority? A. Without having any authority.

Q. Then did you know of anything, in case that retraction had been destroyed, that night, which would have prevented Mr. Tilton from renewing the charge the next day? A. Yes.

Q. You did? A. Yes.

Q. What? A. Mr. Tilton's expression to me that he was going to save his family—that he did not want any harm to come to his family. That was my thought.

Q. And that you understood as a declaration from Theodore Tilton that he did not intend to make public this accusation against Mr. Tilton? A. Precisely.

Q. And that you understood from Tilton for the first, when?  
A. On the night of the 30th.

Q. Before you went to Beecher? A. No, Sir.

Mr. Tracy—This is the letter. [Reading the letter marked "Exhibit 1."]

SATURDAY MORNING.

MY DEAR FRIEND FRANK: I want you to do me the greatest possible favor. My letter which you have, and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed.

Please bring both to me and I will burn them. Show this note to Theodore and Mrs. Beecher. They will see the propriety of this request.

Yours truly,

E. R. TILTON.

Q. Now, did Mr. Beecher on that same evening have any talk with you in regard to the stories which Bowen had told against Mr. Tilton? A. On the evening of December 31st?

Q. Yes. A. Not on the evening of December 31st, I recollect now, Sir.

Q. Is that the way you have always recollected it? A. I think it is.

Q. Please look at the book where I have marked it, and see if that will refresh your memory. [Handing witness the book.]

Mr. Fullerton—What page is that, Mr. Moulton?

The Witness—It is on this book, the 239th page.

Q. Turn over the page also, please, and look at that. [Witness refers to the page indicated.] I will ask you, did not Mr. Beecher tell you on that occasion that he had sympathized with Bowen and had taken sides with him against Tilton? A. He told me—not on this occasion; it was on the evening of December the 30th; that is my recollection now. I think this is a misstatement.

Q. He told you that? A. Yes, Sir; I think this is in error in that respect.

Q. As to the date only? A. Yes.

Q. That it occurred on the evening of the 30th? A. Well, perhaps, I don't understand all of your question. With regard to Bowen he spoke.

Q. Yes; let me have no misunderstanding about it. You now say that you think on the evening of the 30th Mr. Beecher said that he had sympathized with Bowen and had taken sides with him as against Tilton? A. He had taken sides with him as against Tilton?

Q. Yes? A. Yes; that he had taken sides with him as against Tilton, and sympathized with Mr. Bowen's story.

Q. In consequence of the stories which were in circulation in regard to him, and especially the one specific case where he had been informed that Mr. Tilton had had improper relations with a woman whom he named? A. Yes, Sir; that did not occur on the evening of December the 30th; that occurred on the evening of January 1st, if my memory serves me right now.

Q. That part of it occurred on the evening of Jan. 1st? A. Yes, Sir.

Mr. Evarts—The whole of it? A. No, Sir; "And especially of one specific case." My recollection tells me—

Mr. Evarts—It is only a question to get it right.

Mr. Tracy—Your recollection now is that, recurring to what he had told you on the evening of the 30th about having sympathized with Bowen and taken sides as against Tilton, he

added that he did it on account of these stories in regard to a certain woman? A. No; that on Jan. 1st he spoke of this "one specific case;" he spoke of "one specific case" or Jan. 1st.

Q. Now, didn't he on the evening of the 31st, in speaking of that same thing, offer to write a letter to Mr. Bower taking back what he had said in regard to him? A. On the evening of December 31st?

Q. Yes. A. No, Sir.

Q. That occurred, you say, on the 1st? A. Yes, Sir.

Q. When was it that he showed you the draft of letter for that purpose—that he proposed to write Bowen to correct what he had said about that? A. It was either at his house on January the 2d or at my house after January the 2d.

Q. Now, do you mean to say that this letter, a rough draft of it, was not shown you either on the evening of the 31st or on the evening of the 1st of January? A. Yes, Sir; I don't mean to say it was not on the evening—yes, it was not on the evening of the 1st; it was either at his house on the 2d of January or at my house after the 2d of January.

Q. Then that is a part of another conversation that has got mixed here, is it? A. What is a part?

Mr. Beach—Got mixed where?

Mr. Evarts—No matter—

Mr. Beach—Yes, it is matter.

Mr. Evarts—Let him refresh himself before you ask him. We want the facts as they are.

Q. Did he tell you on that evening at any time?

Mr. Beach—What evening?

Mr. Tracy—Either on the 31st or the 1st, and if so, which—or the 30th, that Mrs. Beecher and himself had been expressing great sympathy towards Mrs. Tilton, and taking an active interest with her against her husband? A. Where is that, Sir?

Q. That is on the next page right over, after the signature to the letter? A. I spoke to him on the evening of December 31st, about certain stories that Theodore Tilton had told me that Mrs. Beecher was circulating against him, and to the best of my recollection, Mr. Beecher said to me that Mrs. Beecher received her information from Mrs. Morse, who she believed to be a dangerous woman, and yet her enmity to Theodore Tilton was such that she entered into sympathy, and he sympathized himself with those stories.

Q. When do you say that was—the 31st? A. Yes.

Q. Now, what were those stories which Mrs. Beecher had received, and with which she and Mr. Beecher sympathized? A. I don't remember, Sir, what they were.

Q. Don't remember anything about them? A. I don't remember, Sir, now; no, Sir, I don't recollect what they were.

Q. They were mentioned, were they not? A. I think they were mentioned subsequently; I do not think they were mentioned on that night fully.

Q. Was the nature of them spoken of? A. I do not remember that the nature of them was spoken of on the night of Dec. 31st, Sir.

Q. How were they referred to? A. As stories injurious. I

told Mr. Beecher the stories that Tilton had told me that Mrs. Beecher was circulating against him.

Q. How did you describe them? A. I think as infidelities. I think I may have used the word "infidelity."

Q. What else did you say? A. That is all that I recollect now.

Q. The infidelities of whom? A. Of Mr. Tilton.

Q. Were the names of the persons mentioned? A. No; no names were mentioned that night.

Q. No names mentioned that night at all? A. No, Sir.

Q. What did you say to Mr. Beecher about those stories? A. I told him those stories ought to be stopped.

Q. What else did you say about them? A. I don't remember saying anything else.

Q. Did you tell him that they ought to be stopped because they were false? A. I don't think I said that they were false.

Q. Did you say anything about their truth or falsity? A. I don't think I did.

Q. Did you mean that Mr. Beecher should understand you as saying that these stories should be stopped even if they were true and you believed them to be true? A. No.

Q. Well, then, didn't you say that the stories were untrue and should be stopped? A. No, I did not on that occasion; I don't remember saying that they were untrue.

Q. Did you say anything on the subject, whether they were true, or not? A. I told him that those stories ought to be stopped. That is all that I remember having said. I am giving all that I remember.

Q. And gave no reason whatever why they should be stopped? A. I don't remember that I did, Sir.

Q. Did you intend to leave an impression on Mr. Beecher's mind that those stories were true? A. No, Sir.

Mr. Fullerton—I object to that.

Q. You did not? A. No, Sir.

Mr. Fullerton—That is a form of question very frequently put, and it is improper.

Q. Did you intend to leave upon his mind an impression that you believed them to be untrue?

Mr. Fullerton—I object to that.

Judge Neilson—If he said anything on the subject he can speak; otherwise not.

Mr. Tracy—Then I understand your Honor as excluding the question.

Judge Neilson—Yes, in that way. If he said anything on the subject he can speak about it.

Mr. Evarts—We have had, I think, if your Honor please, this question answered before. You will observe that a witness speaking of a conversation that took place four years ago, begins by saying that he doesn't profess to give every word—of course we understand that—but to give the entire purport of it. Very well. Now, as it is the purport that he undertakes to give, we cannot exhaust the testimony by saying: "Did you use these words," or "those words," but, "Was the purport of what you said to him such as to leave an impression on his mind that the stories concerning which you were talking to him were true or false?"

Judge Neilson—That would be proper as calling for something more than mere intent and construction, because it would cover words that were used or might have been used.

Mr. Evarts—Was the purport of what you said to him such as to leave on his mind the impression that you thought those stories were true, or that you thought they were not?

Mr. Fullerton—He has already given the purport.

Judge Neilson—I think he has; but I think he may answer it.

Mr. Fullerton—Is not the jury to be the judge of the intent from the purport?

Judge Neilson—I think so.

Mr. Fullerton—It seems extraordinary if they have a right to go through with a long cross-examination of this witness as to what the purport of his language was, and after that go through with it and ask what intent he had in using it, and whether it was to produce such a result upon the mind of the listener. Why, if your Honor please, the jury are to judge of the intent from the language itself, or the purport of it, as given by the witness. It is a great waste of time, in my judgment, as well as a violation of the legal rule.

Mr. Beach—It is more than a waste of time, your Honor.

Mr. Fullerton—Yes, it is an evil example.

Mr. Beach—Your Honor will permit me to add this observation: Where this witness is unable to give the language of a conversation to which his attention is directed, it is proper to ask him what was the substance of what was said upon the occasion. This question goes further. It asks not only what was the substance or the purport of the conversation, but it asks the witness also to give his judgment or opinion whether that purport had the effect of leaving upon the mind of Mr. Beecher a certain impression. Now, that is usurping the office of the Court and the jury, Sir. It is not for this witness to say what would be the impression or the effect of the language, or the substance of the language as given, upon the hearer. That is for the jury to say, and it is to that part, that feature of the question, that we respectfully submit the objection lies.

Judge Neilson—Now repeat this question. I think many of these interrogatories are very extreme, especially when they require the witness to state what impression he intends to convey or what his intent was. [To THE TRIBUNE stenographer.] Just repeat the question, please.

THE TRIBUNE stenographer read the question as follows: "Was the purport of what you said to him such as to leave on his mind the impression that you thought those stories were true, or that you thought they were not?"

Judge Neilson—Answer that.

Mr. Beach—We except, if your Honor overrules our objection.

Judge Neilson—Yes, Sir.

Mr. Tracy—Just answer? A. Repeat the question, again, please?

THE TRIBUNE stenographer read the question again.

The Witness—No, Sir; the purport was not to leave upon his mind the impression that they were untrue, rather than that they were true.



HISTORY OF THE RETRACTION AND THE RECAN-  
TATION.

Q. Now, the two papers that you received that night and had with you at Mr. Beecher's, the accusation and the retraction—will you give the history of them from that time forward?

Mr. Beach—No, the accusation and the request.

Mr. Tracy—No, Sir; the accusation and the retraction. Beecher gave him the retraction and Tilton gave him the accusation.

Mr. Evarts—And he had them both.

Mr. Tracy—He had them both there. [To the witness] Now, when you got that from Beecher, and they were together in your possession; now will you give the history of those two papers from that time forward? A. I will give that, Sir, as nearly as I can. I took the recantation back to Theodore Tilton—back to my house and found Theodore Tilton there, and read it to him, and may have handed it to him to read, for aught I know, and then I put the papers, the confession and the retraction, into my bureau drawer, and then had it locked up in my safe after that, over in New-York. After the tripartite covenant was signed, Mr. Tilton wanted the confession, as he said, as an act of good faith toward his wife, and I gave it to him and it was destroyed; at least he told me that his wife destroyed it.

Q. That he gave it to her and he saw her destroy it? A. Yes, Sir; so I understood it.

Q. When was that? A. I think the "tripartite covenant" was in April, 1872; I think so; and it was a day or two after that, perhaps two days after that, that I gave to him the confession.

Q. From that time to the present where has the retraction been?

Mr. Fullerton—One moment. That other question is not answered.

Mr. Evarts—He didn't ask it.

Judge Neilson—We asked for the history of both papers; he has given the history of one.

Mr. Tracy—Yes, he says they were both together in his safe up to that time. Now, my question is, what became of the retraction afterward? A. I locked it up in my tin box, Sir, and kept it.

Q. Where? A. In my house.

Q. Until when? A. I think until I published this statement, Sir; I used it in this statement—in the first statement.

Q. After that what was done with it? A. I think before that I showed it to you at my house one night after the publication of the Woodhull story.

Q. Yes. A. And then I put it back into the box and kept it.

Q. Kept it? A. Yes, Sir.

Q. You say you kept it in a box until about the time that you published this statement on the 4th of August, and now where has it been since? A. Been in my possession—been in the box.

Q. Been in the box? A. Been in the box.

Q. Well, is it in your possession now? A. It was handed to Judge Morris among the other papers.

Q. When was it handed to Judge Morris? A. It was handed to Judge Morris since this suit was commenced.

Q. Is it in your possession now, or Mr. Tilton's, which? A. In Judge Morris's.

Q. Well, Judge Morris is Mr. Tilton's counsel, isn't he, in this suit? A. Yes, Sir; he is Mr. Tilton's counsel.

Q. Then you meant to say that you kept this retraction until Theodore Tilton brought a suit against Mr. Beecher, and then you surrendered it to his counsel, did you?

Judge Neilson—That question is quite unnecessary. The fact appears distinctly without that question.

Mr. Evarts—If your Honor please, there are a variety of papers in the hands of these gentlemen, and very properly. We do not know whether they are in their hands as counsel for Mr. Tilton—

Judge Neilson—Well, the witness has answered as to this paper all he can say, I suppose.

Mr. Evarts—We do not know, if your Honor please, until we learn from people who can speak on the subject, whether these papers that are now here and produced and handed to this witness are in the possession of this plaintiff, or only in the possession of these gentlemen for this witness.

Judge Neilson—The inquiry is as to this one paper which he states he took at a certain time and then he gave it to Judge Morris, and the fact appears that Mr. Morris is one of the attorneys—engaged as one of the counsel for the plaintiff.

Mr. Evarts—Yes, Sir; that is so.

Judge Neilson—This witness gave him that paper. That covers the whole ground. I merely meant to say that it covered all that the question called for.

Mr. Evarts—Are we to understand, then, that all these papers that belong to this witness and were placed in his hands by either party, and are being produced here by the counsel, are in Mr. Tilton's hands?

Mr. Fullerton—The gentleman can understand what he likes.

Mr. Evarts—We want to ask the question about it.

Mr. Fullerton—You have asked it and he has answered it. The question is whether you will learn a thing by its being said once or twice, or whether he will repeat a thing until you understand it.

Mr. Evarts—If your Honor please, this is not the question. If he answered once that he put it in Mr. Morris's hands as Mr. Tilton's counsel, that is enough, but if he merely answered, "I put it in Mr. Morris's hand," why, then, we have no other evidence about this paper than we have about all these papers, that they came—and very properly—from Mr. Morris's hands. The question is whether Mr. Morris holds them for him or for Mr. Tilton, by his authority.

Mr. Beach—Why don't you ask him that?

Mr. Evarts—Well, that is our question.

Mr. Beach—No, that is not the question.

Judge Neilson—I thought when I interrupted you—I am sorry I did for it is a waste of time—that you were putting a question that has been distinctly answered.

Mr. Tracy—I was not intending to put a question that had been answered. I did intend to put a question to the witness

which would call for an answer, that is, "Did you place these papers in the hands of Mr. Morris as Mr. Tilton's counsel in this case?"

Mr. Fullerton—That is not the question that was asked.

Judge Neilson—The question asked would emphasize what has been said before as to his intention.

Mr. Fullerton—And it is a re-hash of the whole testimony on that subject.

Mr. Tracy—Whether you placed this paper in the hands of Mr. Morris as the attorney of Mr. Tilton in this case? A. No, Sir; I did not place it in Mr. Morris's hands as the attorney of Mr. Tilton in this case; I received a subpoena from your office, and have consulted with Judge Morris about the terms of the subpoena, and have handed him my papers, and among others this paper.

Q. And you never put it in his hands before? A. I do not recollect that I ever did, Sir.

Q. Do you remember that you did not? A. To the best of my recollection, I did not.

Q. Then you mean to say that the paper is still in your hands, under this subpoena? A. I understand it to be so. I understand that that paper is for production in this Court.

Q. What was the exact date when you delivered this to Mr. Morris? A. I don't remember, Sir.

Mr. Evarts—Since the trial commenced? A. Yes, Sir; I have undertaken to give Judge Morris all the papers called for by your subpoena. I have undertaken to do that.

Mr. Tracy—Mr. Tilton asked for this accusation, that it might be destroyed, and you surrendered it to him for that purpose? A. Yes, Sir; Mr. Tilton asked for it that it might be destroyed.

Q. And you surrendered it to him for that purpose? A. Yes, Sir, after the tripartite covenant in April, 1872.

#### AUTHORSHIP OF MOULTON'S STATEMENTS.

Q. Now, Mr. Moulton, you have made and published two public statements, have you not, touching this matter? A. Yes, Sir.

Q. Both made after the publication of Mr. Beecher's statement? A. Both made after the publication of Mr. Beecher's statement.

Q. Where were those statements prepared? A. Those statements were prepared by Gen. Butler—

Q. I didn't ask by whom they were prepared; I asked where they were prepared? A. They were prepared, Sir, at Bay View and at Lowell; the first was prepared at Bay View and the other at Lowell.

Q. Were you present during the preparation of the first statement? A. I was.

Q. And directed its preparation? A. I gave to Gen. Butler, as my friend, the papers, and he made out the statement, himself, Sir.

Q. How about the other? A. The second statement was in about the same way, Sir.

Q. Do you know the manner in which these statements were made out? I will put a more direct question. Did you dic-

tate to a stenographer who took down your dictation? A. Did I dictate to a stenographer?

Q. Yes? A. No, I think not; I dictated a portion of the second statement, I think, to a stenographer—a portion of it only.

Q. Were you present when Gen. Butler dictated to a stenographer? A. Not all of the time; no, Sir.

Q. Most of the time? A. Which one are you talking about now, Sir?

Q. The first statement, we will say. A. Yes; most of the time, I think.

Q. How did Gen. Butler get possession of the facts except from your dictation or statement, aside from what were contained in the writings? Wasn't it from your statement that Gen. Butler got possession of the facts that were incorporated into these statements? A. I gave to him the facts, Sir, as I recollected them at the time.

Q. Verbally? A. Verbally.

Q. How many days was that first statement in preparation? A. I don't remember how many days.

Q. Was it several? A. It was part of several days, Sir.

Q. Did you bring it back with you here on your return to the city on the 4th of August. A. I think I did; yes, Sir; I will correct an answer that I made a few moments ago with regard to Judge Morris; I had that recantation with me there with Gen. Butler.

Q. Did you have also with you there the letter of Mrs. Tilton requesting the return of these papers that they might be burned? A. Yes, sir; I think I did; if that is in my statement I had it there.

Q. Well, supposing it is not; I don't care about that; did you have it there? A. I recollect that I had it there, I think, Sir, to the best of my recollection.

Q. We will not say anything about what is in your statement, or what is not? A. Yes; you offered me the statement, Sir, to guide my memory.

Q. Certainly. We don't object to your refreshing your mind by the statement. How many days was the second statement in preparation? A. I forget, Sir, how many days it was; several days.

Q. And what length of time intervened between the preparation of the first and second statements? A. I don't remember, Sir.

Q. About how long? Can't you refresh your mind by the book there? A. The second statement was prepared after Mr. Beecher's statement was made to your Committee, Sir, whatever date that was. I don't remember the date.

Q. I have understood you to say—perhaps I have misunderstood you—that they were both prepared after Mr. Beecher's statement? A. The first one was prepared before Mr. Beecher's statement—was prepared before Mr. Beecher's statement was made, I think; yes, Sir; before. It was prepared before; the second one was prepared after. I understood your question to be whether they were not both published after. Did I misunderstand you, Sir?

Q. I am not certain, Sir. A. I don't think I did.

Q. I am not certain, Sir. It is all right now, any way? A. Yes, Sir.

Q. What time intervened between the publication of the first statement and the preparation of the second? A. What time intervened between the publication of the first statement and the preparation of the second?

Q. Yes, Sir. You may just look at the date. A. I don't think this book furnishes the date.

Mr. Shearman—The first was published August 21st, and the second was published September 11th.

The Witness—I commenced to prepare—to make preparations for the second statement immediately after the first one—a short time after the first one.

Mr. Tracy—And you published it as soon as it was completed?

Judge Nellson—What do you mean by publishing? A. Gave it to the newspapers, Sir, to publish.

Q. They were both published in *The Graphic*, were they not? A. Yes, Sir.

Q. And your first statement was widely circulated before your second statement was completed?

Mr. Fullerton—I don't think that is important, Sir, in this case.

Judge Nellson—Whether it was published; that covers it, perhaps.

Mr. Fullerton—The publisher can tell better about that.

Mr. Tracy—I suppose the witness knows that it was widely circulated.

Mr. Fullerton—What difference does it make in this case whether it was widely circulated or not?

Mr. Evarts—That we will sum up on.

Mr. Fullerton—We will sum it up now. I object to it. Now sum it up.

Judge Nellson—It was published, and if he knows it was widely circulated, I think he can say so.

Mr. Fullerton—It seems to me that it is quite immaterial.

Mr. Tracy—It may be.

Judge Nellson—Do you know whether it was widely circulated, Sir? A. I don't know how widely it was circulated.

Mr. Tracy—Don't you know that it was widely circulated? A. I know that it was published in *The Graphic*. That is all I know about it.

Q. Don't you know it was published in other papers? A. I read it in *The Graphic*, Sir; I don't remember having read it in the other papers.

Q. You don't know that it was published, for instance, in *The New-York Herald* or *TRIBUNE*? A. In full, I do not.

Q. Was the larger portion of it published? A. I don't know that.

Q. Don't know that? A. No.

Q. Was any of it published in *THE TRIBUNE*, or *The Herald*, or *The Sun*, or *T'is World*, to your knowledge? A. I don't recollect.

Q. You don't remember? A. No.

Q. Do you know the fact whether your statement was published in any other paper except *The Graphic*?

Mr. Fullerton—Now, does the Court permit this long investigation about the different papers in which that statement was

published? I do not see how it adds to its force at all, that it was widely circulated.

Mr. Tracy—I will show you.

Mr. Fullerton—I am not asking you to show me, I am objecting to your question.

Judge Nellson—I think we will let him answer.

Mr. Fullerton—Well, Sir, if your Honor sees fit to let it in I have nothing to say.

Mr. Tracy—What is the answer? A. What is the question?

THE TRIBUNE stenographer read the question as follows: "Do you know the fact whether your statement was published in any other paper except *The Graphic*?" A. I don't know the fact, Sir, that it was.

Mr. Beach—I am perfectly willing he should give his supposition or his presumption, if they want it.

Mr. Evarts—We don't want his supposition; we want the state of his knowledge.

Mr. Tracy—Now, do you know this fact, whether the statements and omissions of statements—what your first statement stated, and what it omitted to state—were subjects of criticism by the public press before your second statement was completed? Do you know that? A. Whether the statements of what it omitted—

Mr. Evarts—What was in, or what was out.

Q. Whether it was a subject of criticism by the public press before your second statement was completed? A. I was told, I think, by Gen. Butler, that it was.

Q. I didn't ask what you were told. I ask you, Sir, whether you know the fact. I don't propose to go into declarations and conversations. A. I don't recollect the fact now, Sir. What I do recollect is that Gen. Butler told me that I was criticised for something that the first statement omitted.

Q. I don't ask you what he told you. A. Well, I don't know that you do.

Q. Did you show either of these statements before their publication to Theodore Tilton? A. I think I read a portion of the first one.

Q. I did not ask you whether you read it; I asked you whether you showed it to him, and whether it was the subject of conversation? A. It was the subject of conversation before publication; yes, Sir.

Q. And did you make Mr. Tilton acquainted with the contents of that statement before its publication?

Mr. Evarts—Which one are you speaking of?

Mr. Tracy—The first one now?

A. I think I did; yes, Sir.

Q. Did he have it in his possession? A. It was either read by him or read to him, Sir.

Q. You don't know which? How long before it was published? A. Just before it was published.

#### THE PURPOSE OF MOULTON'S STATEMENTS.

Q. Did he also see your second statement before it was published? A. Yes, Sir.

Q. Did he have that in his possession? A. I don't know that he had it in his possession. I had it in mine.

Q. Did you read it to him, or did he read it? A. He read it.

Q. Before its publication? A. Yes, Sir.

Q. Previous to that Mr. Tilton had also published a statement in regard to this matter, had he not? A. He published his sworn statement, I believe.

Q. And his cross-examination to his sworn statement had also been published, had it not, previous to that? A. I don't recollect whether his cross-examination had been published or not; I think his sworn statement was published.

Q. Did you read the first statement to any one else besides Tilton before publishing it? A. I did not read the first statement to any one besides before publishing it.

Q. Besides Mr. Tilton? A. No, Sir.

Q. Did you the second? A. No; I did not read the second statement to any one else.

Q. Then Theodore Tilton was the only party saw your legal friend and adviser, who knew or was permitted to know the contents of this statement before publication? A. No; I did not answer in that way.

Q. I asked whether you had read or permitted to be read either of these statements by any one else besides Theodore Tilton. I understood you to say you had not? A. I understood you to say, "had read."

Q. Read or permitted to be read?

Mr. Beach—No; that was not the question.

Mr. Tracy—Now I put the question: Had you permitted any other person to read either of these statements before publication? A. I think Mr. Morris read the second statement, or a portion of it.

Q. Any one else? A. Not that I remember.

Judge Neilson—Bear in mind, General Tracy, that you are inquiring as to collateral matter, and that the answers of the witness will be conclusive upon you.

Mr. Tracy—So I understand.

Mr. Evarts—Not only conclusive, but quite satisfactory.

Mr. Fullerton—Then they are content with trifles.

Mr. Evarts—We are asking for the very thing that we are getting, and we are content with that.

Mr. Beach—We would have given you a stipulation to this same thing.

Mr. Tracy—We would rather have it in before the Jury as evidence. We have too many papers already.

Mr. Beach—I think you have had too many papers for your satisfaction.

Mr. Tracy—Well, we are content. [To the witness.] Now, Mr. Tilton and Mr. Morris were the only two persons who had been permitted to become acquainted with the contents of these statements before publication? A. Yes; according to my best recollection that is so.

Q. Was this suit pending at the time you showed the second statement to Mr. Morris? A. I don't remember.

Q. Do you remember whether it was or not? A. No; I do not remember the time when the suit was commenced.

Q. Did you show the paper to Mr. Morris, as the attorney and counsel of Theodore Tilton? A. No, Sir.

Q. And you made these publications, did you not, because you deemed yourself a party to this controversy? A. No, Sir.

Mr. Beach—What controversy?

Mr. Tracy—This controversy. [To the witness.] You did not? A. No, Sir.

Q. Let me refresh your memory by referring to the book, at page 234. Please to refresh your memory. A. Yes, Sir; where is it?

Q. Look at the fourth paragraph from the end of your statement? A. That is the sentence commencing, "I do not know."

Q. We do not call for the contents; that is the sentence, and I want you to look at it and refresh your memory? A. "Not to aid either party to the controversy."

Q. I only want you to refresh your memory? A. I think that is a correct statement.

Q. Does it refresh your memory on this subject? A. I do not think it does.

Q. As to the point of view in which you published this statement? A. I don't think it refreshes my memory.

Q. You think, after reading that, you did not publish these statements as a party to this controversy, or to protect yourself?

Mr. Beach—That is quite a different question.

Mr. Tracy—Ah!

Mr. Beach—It is, ah!

Mr. Tracy—When I say to this controversy, I do not mean this suit, but to the controversy between Mr. Beecher and Mr. Tilton. If you understand me as referring to this suit by the word "controversy" you misunderstand me.

The Witness—What is the question now?

Q. I repeat the question whether you published either of these statements in the point of view of your own relation to the controversy then before the public?

Mr. Morris—That is the first time you have asked that question instead of repeating it.

The Witness—I would like to have the question read.

(THE TRIBUNE stenographer read the question.) A. I would like to explain the reason why; I cannot answer the question, yes or no.

Q. I want you to answer the question, if you please? A. I cannot answer it fully without saying more than yes or no.

Judge Neilson—Then proceed.

The Witness—I published the statement because of the attack of Mr. Beecher upon me.

Q. And you considered that as raising a controversy before the public in which you were a party, did you not? A. I considered it as something of a controversy between Mr. Beecher and myself.

Q. Before the public; and as a party to that controversy you published these statements? A. Yes, Sir.

Mr. Tracy—Now, we have got it.

Mr. Fullerton—Yes, you have got it, and you had it before.

Mr. Evarts—We have got his sworn statement.

Mr. Fullerton—You have, and that is not a thing for you to boast of.

Mr. Evarts—It is what we wanted anyhow.

Mr. Fullerton—A great many men get what they want, and don't think it satisfactory.

Judge Neilson—Now, gentlemen, proceed with the examination.

SOME FACTS OMITTED IN THE STATEMENTS.

Mr. Tracy—Now, Mr. Moulton, coming back—at the time that you were giving Gen. Butler the facts, for either of these statements, did you communicate to him the fact that you have sworn to on this trial in answer to this question: "Let me ask you, was anything said as to the substance of the interview between Mr. Beecher and Mr. Tilton, when you were not present" (that is the interview of the 30th; I read from your direct examination); and you in your answer say: "Why, he told me that Mr. Tilton had told him of the confession of his wife to him." Now, Sir, did you state that fact to Gen. Butler when he prepared your statements? A. Let me see the question on the direct examination [Book handed to the witness.] What interview is that, Gen. Tracy? Mr. Tracy—The evening of the 30th—the night that you went to Mr. Beecher's.

The Witness—I don't think I told that. You refer now to my answer where he told me that Mr. Tilton had told him of the confession of his wife to him. That is what you ask.

Mr. Tracy—Yes.

The Witness—I don't recollect that I told Mr. Butler that.

Q. You don't recollect that you told Gen. Butler? A. No; I don't recollect that.

Q. Then you were asked: "Just repeat now, what he said upon that subject." "A. Mr. Beecher told me that Mr. Tilton had told him that Elizabeth had confessed, and had read to him what either was a confession or a copy of a confession of Elizabeth, of sexual intercourse between them; and he told me that Theodore had told him of the reasons of sending to him the letter through Mr. Bowen. That is all that I remember just now." Now, you told Gen. Butler that? A. I don't remember that I did.

Q. Don't you remember that you did not? A. To the best of my recollection, I did not.

Q. In either of these statements? A. No, Sir,

Q. Did you state to Gen. Butler this: "Do you know whether Mr. Tilton kept a copy of that paper of which you now speak, which he gave to you?" "A. He made a copy of it, I think; he made a copy of it." Did you tell that to Gen. Butler? A. That is with reference to the confession itself?

Q. Yes. A. I think I told him that.

Q. You think you told him that? A. I think so.

Q. I will ask you hereafter to point it out to me in which statement. A. All I told Gen. Butler is not in the statement.

Q. No matter. I ask now what you told Gen. Butler?

Mr. Fullerton—And the counsel will ask you to point out in the statement what was not there.

Mr. Tracy—I will ask him to point out whether it was there. I didn't understand the witness to say that it was not there. [To the Witness.] Q. Then, did you tell him this: "Did he tell you of his object in going there?" "A. He told me that Theodore had given him permission to go to Elizabeth for confirmation of the story; nothing further than that." A. I think I told Gen. Butler that,

Q. You think you did? A. Yes, Sir.

Q. On your direct examination, you say, speaking of the in-

terview of December 31st: "He [that is Mr. Beecher] said, of course if this charge is made against me, if Theodore should make any charge against me, my defense would be the technical one of general denial; but with you, since you know the truth, I would throw myself upon your friendship and what I believe to be your desire to save me." A. Where is that?

Q. That is on page 109 of my book, down toward the bottom of the column. A. I think I told him the substance of that, Sir. I tried to give him as near as I could.

Q. I did not ask what you tried to do, but what you recollect that you did. Do you recollect that you told Gen. Butler that? A. My recollection is that I told him the substance of it—yes, Sir.

Q. Did you also give to Gen. Butler the letter of Mrs. Tilton calling for that paper? A. I took the paper to Gen. Butler.

Q. Did you give him that paper and call his attention to it? A. I think that paper was among them.

Q. You did? A. Yes; I think that paper was among them.

Q. Has the statement, that you read that letter to Mr. Beecher, on the night of obtaining that retraction, ever been publicly stated by you, before you stated it as a witness upon this stand. A. Publicly stated? No, I think not.

Q. You think not? A. I do not think it has.

Q. You presented that letter in one of your statements, did you not? A. Yes, Sir.

Q. In which? A. I think in the first.

Q. But you did not state that. That interview with Mr. Beecher has always been published as if he surrendered that retraction on your demand, and on yours alone, until this trial, has it not?

Mr. Fullerton—We object, unless the counsel explains what he means by "has always been published."

Mr. Tracy—I will amend my question. [To the Witness.] That interview with Mr. Beecher has always been published as if he surrendered that retraction on your demand, and yours alone, until this trial, so far as you know, has it not? A. Yes, I think it has.

Q. You always knew that representation of that interview between yourself and Mr. Beecher to be false, did you not? A. What representation?

Q. The representation of that interview; that that retraction was surrendered by him to you, and upon your demand alone? A. No, Sir.

Q. You did not know it to be false? A. No; I gave my recollection of it.

Q. Did you know it to be untrue? A. It did not correctly state it; it did not fully state it.

Q. Then you knew it did not fully state the truth, did you not?

Mr. Fullerton—What?

Mr. Tracy—The one in which that interview has been published.

Mr. Fullerton—Published where?

Mr. Tracy—Anywhere.

The Witness—I gave my recollection of it at the time; that is all I could do.

Q. Answer my question. Did you not always know the true

account of that interview would have included the letter of Mrs. Tilton? A. No; I did not remember it at the time that I made that statement.

Q. You mean to say, then, that while you had possession of this letter of Mrs. Tilton, during the two years and upwards of this controversy, you never remembered the fact that you obtained that retraction from Mr. Beecher, by presenting Mrs. Tilton's letter, requesting its return that it might be destroyed?

Mr. Morris—We object to the assumption that there has been two years of this controversy.

Mr. Beach—Worse than that. The question assumes as true that this retraction was obtained by the presentation of Mrs. Tilton's letter, which is in direct contravention of the evidence.

Mr. Evarts—The question does not say that it was obtained by means of that.

Mr. Fullerton—It does so assume.

Mr. Evarts—It should not. That is not the point. The point of the inquiry is that the surrender of the retraction which Mr. Beecher had, was obtained by the use of this letter at the time that it was obtained. The contrary has always been published, as he states. Now General Tracy asks if the gentlemen knew during this time that this letter had been presented to Mr. Beecher.

Mr. Beach—The contrary has not been the universal statement. The fact simply is that Mr. Moulton now reveals in his evidence that when the application was made to Mr. Beecher for this retraction, he read the letter of request from Mrs. Tilton, and the additional fact now appears that the circumstance of reading that letter to Mr. Beecher had been omitted in the statement that has been given by Mr. Moulton.

Mr. Evarts—The existence of the letter—the presentation of the letter?

Mr. Beach—Not the existence of the letter, for it had been published.

Judge Neilson—In other words, the letter is not referred to in the statement.

Mr. Beach—Not only has it been referred to, but was published.

Mr. Tracy—Published without any connection with this interview.

Mr. Beach—No; the question is as to the omission of the witness in his statement to reveal that, on the application to Mr. Beecher, this letter was presented to him at the time. Now the question assumes that the retraction on that occasion was obtained on the presentation solely of that letter.

Mr. Evarts—No, it does not.

Mr. Beach—It was a mere omission of the letter from the statement.

Mr. Tracy—A very remarkable omission. I characterize it a willful omission.

Judge Neilson—I don't think that that expression is called for.

Mr. Tracy—I don't think that either expression is. The gentleman had no right to say it was a "mere omission."

[The witness calls for a reading of the question, which is read by THE TRIBUNE stenographer.]

Mr. Beach—Now that assumes two or three facts.

Mr. Tracy—I will change the form of the question.

Mr. Beach—To an intelligible question, that the witness can understand.

Mr. Fullerton—One that you can understand yourself.

Mr. Tracy—I will try to understand it myself.

Q. Do you mean to say that it never occurred to you that you presented and read that letter of Mrs. Tilton to Mr. Beecher on this night of obtaining this retraction, until after you had made both of your statements? A. Yes, Sir; I did mean to say that. Let me explain my answer to that question.

Q. Do you mean to say that it never occurred to you that you presented and read that letter of Mrs. Tilton to Mr. Beecher, on this night of obtaining this retraction, until after you had made both of your statements? A. No, I do not mean to say that. My answer to that question was wrong. I will explain the answer. I mean to say it did not occur to me at the time that I made the statement. That is the way that I want to answer the question. I want to strike out of my answer the part that it never occurred to me; it did occur to me.

Mr. Evarts—The answer of the witness is no; and now he makes an explanation.

Mr. Fullerton—The answer "no," simply, was wrong when he understood the question.

Mr. Beach—Will your Honor permit me to suggest: The witness answered the question first in the affirmative, and then upon the explanation answered it no, and answered it correctly no. He then asked your Honor for permission to explain, which was accorded him, and he has done so.

Mr. Evarts—That is exactly what we have just stated. [Applause.]

Judge Neilson—Gentlemen, do you think that it promotes the business of the Court to reward counsel by your applause? I think not, and you had better refrain. The counsel here are gentlemen who do not require to be encouraged or applauded.

Mr. Tracy—I wish to see how the record stands, with the view of putting another question.

[THE TRIBUNE stenographer was directed to read the question and answer again, and did so.]

Q. How long, prior to your making these two statements, did you recollect the fact of your having presented this letter to Mr. Beecher and read it to him on the night of obtaining this retraction? A. I cannot say, Sir; it had not been in my mind on this subject for a long time; there had not been anything in my mind for a long time.

Q. You cannot say how long? A. For a good while; I do not think I charged my mind with the interview particularly after it occurred.

Q. Until when? A. Until I commenced to make the statement—until I was with Gen. Butler; and at that time I undertook to tell Gen. Butler—

Q. No matter about that—the time is what we want, and that we have got. Now, your attention was first called to this interview between yourself and Mr. Beecher by the publication of the statement in what is known as the Woodhull statement? A. Called to what?

Q. To this interview between yourself and Mr. Beecher—by

any public statement, first in the Woodhull statement? A. By any public statement? I think that was it.

Q. Did you at the time of that statement remember that you presented to Mr. Beecher this letter on the night that you obtained that retraction, and read it? A. I do not recollect that I remembered it then. I do not recollect now that I remembered it then.

Q. Did you recollect it at any time intermediate to the publication of the Woodhull statement and the making of this last publication? A. I don't know that I did; I don't know that I tried to recollect the circumstance.

Q. Explain your answer that you have already made, by telling us what you mean when you say that it had occurred to you, and your answer saying that it never had occurred to you was erroneous?

Mr. Beach—That is not so. He always remembered it. There is quite a difference between having it in the memory and having it occur to a party at different times, or at a series of times.

Mr. Everts—That is the question—had it never occurred to him?

Mr. Tracy—Now, I ask you, beginning with the first publication; let me see if I understand you correctly; I understand you to say, now, that when you read the Woodhull publication, with its account of that interview, the fact that you did present to Mr. Beecher that letter on that night did not occur to you?

Mr. Beach—That question improperly assumes the Woodhull statement refers to that interview, and contains an account of it.

Mr. Tracy—The witness has already sworn to that in the pistol scene.

Mr. Beach—He has not.

Mr. Tracy—I take it that when he referred to the pistol scene he has already sworn to it.

Judge Neilson—What the counsel suggests is that it did not appear that the fact was in the Woodhull statement.

Mr. Tracy—The fact was not in the Woodhull statement; that is just the point.

Mr. Beach—For the purpose of this discussion, I deny that.

Mr. Everts—Are you arguing it now?

Mr. Beach—I am arguing against your question.

Judge Neilson—What is your present question?

Mr. Tracy—The question is: Did you read that part of the Woodhull statement which referred to the interview between yourself and Mr. Beecher on the night this retraction was obtained? Did you read it?

Mr. Beach—I object to that as assuming that something appeared in the Woodhull statement.

Judge Neilson—That is a good objection.

Mr. Tracy—Does your Honor decide that the paper being in evidence collaterally, the witness cannot be asked whether he read it?

Judge Neilson—The Woodhull paper is not in evidence collaterally, or in any other way, and I decide that in putting the question you cannot assume a fact that has not been proved.

Mr. Tracy—I asked him whether he read it.

Mr. Fullerton—No, you did not ask him that.

[Mr. Fullerton asked THE TRIBUNE stenographer to read the question, and it was done.]

Mr. Tracy—I understand the counsel to say that he talked about the Woodhull statement.

Mr. Tracy then read from the witness's testimony of yesterday, published in THE TRIBUNE, as follows:

Q. Did you read her published statement? A. I don't know that I read all of it.

Q. Do you know that you did not? A. I think I did not read all of it; I think I never have read all of it.

Q. What part was it you omitted? A. Well, I don't really remember what part I did omit; I knew the general drift of it.

Q. Did you state to her that you took a pistol, and went to Mr. Beecher and demanded the letter of Mrs. Tilton under penalty of instant death? A. No, Sir; I did not.

Q. Did you state anything to that effect? A. No, Sir.

Q. Did you, in that or in any other conversation, describe to her the piteous and abject beseeching of Mr. Beecher not to be exposed to the public? A. No, Sir.

Q. Nothing of that kind occurred? A. No, Sir. You asked me a moment ago, Judge Porter, if you allow me, whether I had read any part of that statement, or whether I had read the whole of it. I can tell you I did read the part of the pistol scene, and I can tell you something that would be of interest to you in regard to that. Shall I say so?

Q. If you please. A. Mr. Beecher asked me about that part of it that referred to the pistol scene, and asked me if I remembered anything about the pistol part. He said he didn't. It didn't make enough impression on him.

Q. Is that all? A. Yes; that is all—that is about all of it."

Mr. Tracy—Now, the pistol scene is this interview.

Mr. Beach—The counsel has succeeded in throwing utter darkness upon this matter.

Mr. Tracy—Now I ask you whether the Woodhull publication recalled the fact to you that you presented this letter to Mr. Beecher, on the night that you obtained the retraction?

Mr. Beach—That question is proper. I have no objection to that.

The Witness—I don't remember whether it did or not.

Q. Then if that did not bring it to your mind, tell us when and where it was that you did remember the fact that you presented that letter to Mr. Beecher on that night? A. Yes, I will.

Q. When did you remember it? A. Well Sir, a few days ago—say a few days ago—perhaps two or three weeks ago—two or three weeks ago Theodore Tilton told me—

Q. I don't ask what he told you; I asked when you remembered it? A. I think two or three weeks ago.

Q. That answers the question. That is the first that you recollect the fact? A. I did not say so.

Q. Well, is it? A. Since when?

Q. Since it occurred? A. No, I don't think it was.

Q. How long do you remember that fact? A. I don't know how long I remember it.

Q. That is enough on that subject. Now, after the night of the

31st of December, when did you next see Mr. Tilton? A. After the night of the 31st of December, when did I next see Mr. Tilton?

Q. Yes, Sir. A. I saw him January 1st, I think.

Q. What time of day? A. I cannot remember the time of day.

Q. Where? A. I think at my house in Clinton-st.

Q. Did he come by appointment? A. I don't remember that he did.

Q. What day of the week was January 1st that year? A. I think it was Sunday.

Q. Did you know on that day that he had been discharged by Mr. Bowen from *The Union* and as contributor to *The Independent*—on the 1st day of January? A. I think I learned it for the first time on the night of the 31st of December.

Q. What time of night? A. Very late, when I got home.

Q. After you returned from Mr. Beecher? A. Yes, Sir. I say "very late;" not very late—somewhere between nine and twelve o'clock.

Q. But it was after you returned from Mr. Beecher, and after you had obtained this retraction? A. Yes, Sir.

Q. That was the first you knew of it? A. Yes, Sir.

Q. That is, the discharge? A. Yes; That was the first I knew of it?

Q. What time of day did you visit Mr. Beecher on the 1st of January? A. I think it was about—it was in the afternoon, some time toward evening.

Q. What time? A. I don't remember the time exactly. It was between four and seven o'clock, I think.

Q. Can you approximate any nearer than that? A. I don't think I can now; somewhere between four and seven.

Q. Do you recollect whether it was before or after dark when you went there? A. It was before dark, I think.

Q. Was it after dark when you left? A. I think the gas was lighted when I left.

Q. And where was that interview? A. In his study, Sir; I think it was in his study.

Q. Was the gas lighted when you went in? A. I don't think it was.

Q. Did you find him in the study, or did he go there with you? A. I think we went into the study together.

Q. How long had you been there, do you think, before the gas was lighted? A. Oh! I suppose an hour or more.

Q. How long did you remain at that interview with him? A. I guess I may have remained an hour and a half or two hours.

Q. You remember distinctly his lighting the gas that night, do you?

Mr. Beach—He has not said so. The counsel assumes that the gas was lighted.

Mr. Tracy—I understand him to say that the gas was lighted.

Judge Neilson—He said the gas was not lit when he went there and it was lit when he left.

Mr. Morris—He said that he thought that the gas was lit when he left.

Judge Neilson—Now he is asked if he remembers distinctly Mr. Beecher lighting the gas.

Mr. Beach—The question assumes that the gas was lighted in the study.

Mr. Tracy—The witness says the gas was not lit when he went in, and that it was lit when he came away. He says that the interview was in the study; and now I ask him if he saw Mr. Beecher light the gas?

Mr. Morris—The witness did not say that the gas was lighted when he left; he said that he thought it was: that was the testimony.

Mr. Tracy—Did you see Mr. Beecher light the gas? A. I don't remember that Mr. Beecher lit the gas.

Q. Did you light it? A. I don't know whether I did or not.

Q. Did any third party come in to light the gas? A. I don't remember.

Q. Was it lit when you came away? A. In the study?

Q. Yes? A. I don't remember that it was in the study.

Q. Where was it lit, if not in the study? A. I don't know that it was lit anywhere; I think the gas was lit when I went away.

Q. Do you mean to say that the gas was lit in the street when you went away? A. I think it was.

Mr. Tracy—It is now four o'clock, if your Honor please, the hour of adjournment.

Judge Neilson—I suppose you think it is time the gas were lit.

Mr. Tracy—No, Sir; I think it is time to extinguish it. [Laughter.]

The Clerk—The Court stands adjourned until eleven o'clock, on Friday.

## NINTH DAY'S PROCEEDINGS.

THE FIRST WITNESS FURTHER EXAMINED.  
THE FOURTH DAY OF THE CROSS-EXAMINATION OF  
FRANCIS D. MOULTON—CONTINUED ABSENCE OF  
EX-JUDGE PORTER—THE LETTER OF CONTRITION  
ANALYZED—ITS AUTHENTICITY QUESTIONED.

Thursday, Jan. 21, Gen. Tracy took up the cross-questioning of Mr. Moulton at the point where it terminated on Wednesday, and after a few unimportant queries, the questioner came to the consideration of the celebrated letter of "contrition," alleged to have been written at Mr. Beecher's dictation. During the examination upon this theme there was profound silence in the courtroom, and every eye was turned on the witness. He seemed entirely at ease, and display no hesitancy in replying to Gen. Tracy's significant inquiries. The first admission made by him was that he could not remember any letter in which Mr. Beecher addressed him as "My dear Frank," except the one which was asserted to have been written at the defendant's dictation. The witness was examined carefully and at length concerning the manner in which the letter was written. The



sensation of the day followed. Mr. Shearman read the letter, as he said, for the purpose of having its construction well understood. Immediately after the reading Mr. Shearman said a "t" had been added to the word "can," and the words "for myself" placed after the word "plead," so as to make the sentence read: "I will not plead for myself."

The remarks of counsel aroused excited interest among the spectators, for it was the first attack upon the authenticity of the celebrated letter on which so much depends in the great trial. The jury looked eagerly from witness to counsel and from counsel to witness. To add to the impression he had produced, Mr. Shearman then stated that two different kinds of ink were used on the letter. Another ripple of excitement ran through the court-room. Some of the jurymen looked sharply first at the plaintiff and then at Mr. Moulton, as if expecting an explanation from one or the other. Mr. Moulton smiled complacently. Mr. Morris was greatly excited. Jumping to his feet, he asked for the letter. Upon receiving it, he, with Judge Fullerton, went over it hastily. Then Mr. Morris accused Mr. Shearman of having tried to create a false impression. He declared with warmth that it was plain that the pen used in writing the letter did not deliver the ink freely, and in this way he accounted for the difference in the appearance of the several parts. An attempt to make a further explanation was cut short by a prompt objection from Mr. Evarts. The assertions made by counsel for the defense plainly annoyed Mr. Tilton's lawyers. Nothing of particular importance was developed during the rest of the session except the introduction of two letters written by Bessie Turner. Her statements in these letters would seem to show that she left Mr. Tilton's house for a seminary because she knew of the alleged relations between Mrs. Tilton and Mr. Beecher.

#### LEGAL ASPERITIES.

There were several unusually lively controversies between counsel on Thursday, which added greatly to the interest of the proceedings. Encounters of this character relieve the monotony of the examination, and never fail to attract the close attention of even the dullest-minded spectator. In the art of repartee Mr. Fullerton, Mr. Beach, and Mr. Evarts overtop the remaining counsel. Gen. Tracy, on one or two occasions, stung by the rapier-like thrusts of ex-Judge Fullerton, has tried to meet his adversary

with similar weapons, but could hardly have been altogether pleased with the result.

Mr. Beach, in the course of Moulton's examination, made a statement in regard to the testimony of the witness which he found to be incorrect. He therefore apologized. Gen. Tracy smiled somewhat sardonically, and remarked dryly that he was glad that counsel had made at least one correction. "You will always find me correcting myself when I am wrong," replied Mr. Beach. "Yes, I am glad that *you* do," retorted Gen. Tracy, as he glanced at Mr. Fullerton, meaningly. The latter flamed up in an instant; then, in his peculiarly sarcastic way, said to Gen. Tracy, "We hope that *you* will not attempt to correct all your mistakes, for it will take up all your time. We want to go on with this trial." On another occasion Gen. Tracy told the witness that he was "reasoning" and not answering the question put to him. Mr. Fullerton broke in, in an undertone, "Yes, reasoning, and that is where we have the advantage of you."

Mr. Shearman also came in for a share of Mr. Fullerton's criticisms on Thursday, but he received them good-naturedly, and with apparent unconcern. While preparing to read the alleged letter of contrition, he remarked that he should read the punctuation just as it was in the paper he held. "You cannot read punctuation, but you may observe it," said Mr. Fullerton sharply, and the trivial criticism brought a grim smile to Mr. Evarts's features. Mr. Fullerton made another thrust at Gen. Tracy in the afternoon. This was when the latter asked Mr. Moulton if he could tell him how to punctuate. Mr. Fullerton, in a very bland way, objected to the question: "If counsel is asking for his own information I don't object, otherwise I do." The spectators smiled, and there was just the faintest twinkle of mirth in Judge Neilson's eyes as he rapped for order. Mr. Fullerton remained quiet for the remainder of the day, but Judge Beach availed himself of every opportunity to take Gen. Tracy to task. The cross-examiner, in exhibiting the letter of "contrition" to Mr. Moulton, asked him if he generally spread so little matter over so large a space.

"It strikes me," remarked Judge Beach in an undertone audible only to counsel and a few reporters; "it strikes me that the learned counsel is spreading much smaller matter over as much space."

An incident occurred during the afternoon session which seemed to afford no little satisfaction to Mr.

Tilton's adherents. Mr. Evarts, on rising to address the Court, was told rather sharply by Judge Neilson that his efforts to instruct the Court were uncalled for, but the lawyer addressed did not appear at all disconcerted, and blandly disavowed the intention attributed to him.

#### NOTES IN THE COURT-ROOM.

The continued composure of the first witness for the prosecution under the severe cross-examination which he has been subjected to is remarkable. With the exception of two or three slight breaks, Mr. Moulton has appeared quite as self-possessed as the counsel examining him. Truthful or untruthful as a witness may be, it is no easy matter to preserve one's temper under the attacks of a cross-examiner, even if he is not a thorough master of his art. At one moment addressed as if a criminal, the next sneered at, and again confused with a series of puzzling interrogatories put in quick succession, many an honest witness has been forced into embarrassments suggestive of guilt. Not so with Mr. Moulton. He answers just when he pleases and appears at times to take pleasure in replying in such a way as to require the putting of another question. His remarkable memory excited admiration at the opening of the trial. When he repeated, word for word, from recollection, Mr. Beecher's alleged letter of resignation, he was applauded, but on Thursday his memory seemed defective.

It is seldom that Mr. Moulton's answers are such as the cross-examiner expects. One striking case in point was noticeable in Thursday's examination. "You write and compose well, do you not?" asked Gen. Tracy. (An affirmative answer was plainly expected.) "No, I think not," replied the witness with a smile, and Gen. Tracy pursued that line of investigation no further.

Francis B. Carpenter, the artist, was in court again during the sessions of Thursday, and listened with the utmost attention to the proceedings. There were only a few prominent citizens of Brooklyn present, but among the number were the Hon. H. W. Slocum, the Hon. Henry C. Murphy, Wm. Marshall, and Judge Reynolds.

#### THE PROCEEDINGS.

Mr. Porter's indisposition continues, and so Gen. Tracy went on with Mr. Moulton's cross-examination on Thursday. The unwholesome stories about Tilton's improprieties with Bessie Turner and others were the subject of the first question. Then a heavy cross-fire was brought to bear upon

the witness with reference to the paper known as "the letter of contrition." The wit of all of Mr. Beecher's lawyers actively engaged in the case was in the field in this attack, Mr. Evarts and Mr. Shearman stepping to Gen. Tracy's side almost every alternate minute with advice or hints, and themselves taking part in the questioning.

#### BESSIE TURNER'S STORIES.

Francis D. Moulton recalled, and the cross-examination continued:

Judge Neilson—Will the counsel proceed?

Mr. Evarts—There is one point, if your Honor please, that was reserved for your Honor's consideration and determination, which perhaps it may be proper now to call up, if your Honor has considered it, or, if not, to ask your attention to it.

Judge Neilson—As to the admission of a paper?

Mr. Evarts—As to the admission of what is called the West charges on the evidence as it stood after the witness's correction.

Judge Neilson—I think I will let it stand, Sir, and you may take an exception to it; Judge Porter is still ill.

Mr. Evarts—Yes, Sir; Judge Porter is still ill, though his physician hopes he may be able to be out to-morrow, though that is not certain; it is necessary for us, of course, to know whether the paper is in or not.

Judge Neilson—Consider it in.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Tracy—Mr. Moulton, how long was the interview which you had with Mr. Beecher on January 1st? A. My impression is, Sir, that it may have lasted an hour or two.

Q. Can't you approximate more nearly than that? A. No, Sir; not more nearly than that.

Q. At what point of the interview did you begin to write the letter—the paper that was written on that day? A. Shortly after the termination of the first expressions of Mr. Beecher. Call it the beginning, if you please; not the first thing, but the beginning, after he had expressed to me his sorrow for what he had done.

Q. Was Mr. Beecher moved with deep feeling on that day? A. He was, Sir.

Q. Was he walking the floor most of the time during that interview? A. I don't think he was, Sir; my recollection is that he was not.

Q. Was he sitting or standing? A. I think he was sitting, Sir, by the table.

Q. By the table? A. Yes, Sir; I think so.

Q. What was your position? A. I was sitting.

Q. Where? A. By a table, I think; I think there was a table there.

Q. At the same table? A. I should think it was the same table; yes, Sir.

Q. On different sides of the table? A. My recollection is that Mr. Beecher was at the end; I was in the front of it; as if one should be seated as Mr. Beach is, Sir.

Q. Was it some remark that Mr. Beecher had made express-

ing his feeling towards Theodore Tilton that led you to suggest the writing of that paper, or a paper? A. Yes, Sir.

Q. Then you suggested it, did you? A. I said to him that he better put that—

Q. Answer my question. Are you the one who, at that interview, suggested the preparation of a paper?

Judge Neilson [to the Witness]—You were proceeding to answer. Go on, Sir.

A. Yes, I suppose I might have been considered the person that suggested it.

Mr. Tracy—Were you the person? A. If your Honor will allow me to explain—

Judge Neilson—State what you said. You were proceeding a minute ago. That is the way to answer. State what you said.

A. Yes, Sir. I said, "Mr. Beecher, if you feel in this way towards Mr. Tilton, it seems to me that if you should so express yourself to him it would make an end of this trouble. It seems to me that it would be the best thing that you could do to so state to him." And then he said to me, "Take pen and paper, and I will."

Q. How long had that interview continued between you before that began? A. Not very long, Sir.

Q. Before you took pen and paper? A. Not very long—not half an hour—I should not think it was half an hour.

Q. Upon how many different subjects had you conversed before you began to write? A. Only on one or two. As near as my recollection serves me, I told him about taking back—I said to him, "Mr. Beecher, I took back that recantation to Theodore last night," and I said to Mr. Beecher, "He seems to me to be in the spirit of saving his family, no matter what comes to himself," and then Mr. Beecher proceeded to say that he felt great sorrow.

Q. I did not ask you what either party said; I asked you for the subjects that you conversed on? A. Well, that was it.

Q. That was one subject? A. Yes, Sir, the recantation, and then his expression of sorrow followed it.

Q. Was anything said about Mr. Tilton's condition financially and his prospects now that he had been discharged from the employment of Mr. Bowen? A. No, Sir.

Q. Nothing at all? A. No, Sir.

Q. At no part of that interview? A. No, Sir.

Q. Either before or after the writing of the letter—of the paper? A. No, Sir.

Q. Did you tell Mr. Beecher that Mr. Tilton had received letters dismissing him from Bowen's service? A. I don't remember that I did, Sir, at that stage of the conversation.

Q. At any stage of the conversation? A. Very likely I did, Sir; I don't remember that I did.

Q. What? A. Very likely I did, Sir; I don't remember that I did.

Q. Well, did you? A. I don't recollect now that I did, Sir.

Q. Do you recollect that you did not? A. I haven't any recollection upon that subject.

Q. You had learned it for the first the night before? A. Yes, Sir.

Q. This was the first interview you had had with Mr. Beecher after learning that fact? A. Yes, Sir.

Q. And you don't recollect of having mentioned it? A. I don't recollect that now, Sir; no.

Q. Did you have any further talk about the stories that Bowen had circulated in regard to Tilton, at that interview before the writing of the paper? A. No, Sir; I think not.

Q. You think not? A. No, Sir; not before the writing of the paper.

Q. Did you, at any time during that interview? A. Yes, Sir.

Q. After the writing of the paper? A. My recollection is that it was after the writing of the paper; yes, Sir.

Q. How long after? A. Well, I should say shortly after.

Q. What did Mr. Beecher say at that interview about these stories? A. He said that he had mentioned in his interview with Mr. Bowen when Bowen brought him the letter demanding his retirement—he said that he had told Bowen—I think that Mr. Bowen had mentioned the name of a woman, and Mr. Beecher said that he had heard the same story, and had rather joined Mr. Bowen in that story, and he said he would take it back.

Q. He mentioned the name of a woman? A. He said that he had heard the name of a woman. He said that he had heard the same story.

Q. Was her name mentioned there between you and Mr. Beecher? A. Yes, Sir; her name was mentioned.

Q. What was said about the woman? A. He said that Mr. Bowen had told him of Mr. Tilton's intimacy with this woman, or of the stories concerning his intimacy with this woman; that he, Mr. Beecher, had told Mr. Bowen that he had heard the same stories concerning her; and I said to Mr. Beecher—is that right, Sir?

Q. Go on. A. And I said to Mr. Beecher that I thought it was very unjust towards the woman and very unjust towards Theodore; that I knew both parties and I did not think that there was anything wrong between them at all, and from my acquaintance with Theodore Tilton I had the highest confidence in him, and from my knowledge of the woman, and from my acquaintance with her, I had the highest confidence in her, and I didn't think any such story was true. That is the substance.

Q. You pronounced it untrue, didn't you? A. Yes, Sir.

Q. Didn't you say you knew all about their relations and you knew they were untrue? A. No, Sir; I didn't say that.

Q. Didn't you say you knew enough about their relations to know that they were untrue? A. No, Sir; I said from what I knew of their relations—from what I knew I should judge it to be untrue and unjust.

Q. Did you say you should judge it to be? A. Sir.

Q. Did you say that you should judge it to be untrue? A. The substance of what I said, Sir, was the word "judge."

Q. Didn't you say that, from what you knew of their relations, you knew that that story was untrue? A. From what I knew of the parties, Sir; not of their relations.

A. Well, of the parties? A. Yes, Sir; I believed the stories were untrue.

Q. What did Mr. Beecher say in answer to that? A. He said he was very glad to hear it.

Q. Did Mr. Bowen state the particulars of what he knew of their relations?

Mr. Beach—Bowen? Bowen was not there.

Q. When Mr. Beecher told you that he was glad to hear that it was untrue, did he express any sorrow for having repeated that story to Mr. Bowen? A. Yes, Sir; he said he was sorry.

Q. That he had repeated it? A. Yes, Sir.

Q. How did he say, and what on that subject? A. He said he was very sorry if he had done an injustice to the woman and to Theodore.

Q. And to Theodore? A. Yes, Sir.

Q. Didn't he express himself warmly on that subject of the injustice that he had done them? A. He expressed himself sincerely, Sir, I should say, and he said he would write a note to Mr. Bowen taking it back.

Q. Did he draft a note there? A. No, Sir.

Q. Well, did he write it there? A. No, Sir.

Mr. Evarts—I think there is a question before this that is not answered.

Mr. Beach—No, it was not answered, because I said Mr. Bowen was not there.

Mr. Evarts—[To THE TRIBUNE stenographer]. Read the question.

THE TRIBUNE stenographer read the question referred to, as follows: "Did Mr. Bowen state the particulars of what he knew of their relations?"

Mr. Tracy—We will pass that. [To the Witness.]

Q. Did Mr. Beecher at that interview state anything about Bessie Turner? A. I don't think he did at that interview, Sir.

Q. Had he, at any of the interviews previous to that, said anything about Bessie Turner? A. I don't remember that he had, Sir, said anything about Bessie Turner.

Q. Her name had not transpired? A. Not up to that time.

Q. Up to that time? A. No, Sir.

Q. When do you remember its transpiring between Mr. Beecher and yourself first? A. Some time after the first of January.

Q. Well, that is quite indefinite. Can't you be more definite than that? A. I should think, Sir, it was between January 1st and January 10th.

Q. Didn't Mr. Beecher tell you at that interview that the girl Bessie Turner had come to him along in the last days of December, and reported to him one or two scenes as having transpired between her and Theodore Tilton? A. No, Sir.

Q. You knew the girl Bessie Turner at that time, did you not? A. I had seen her at Mr. Tilton's house.

Q. She was a girl living in Mr. Tilton's family—a young girl was she not? A. I saw her at Mr. Tilton's house; I believe she was living there.

Q. Don't you know she was living there? A. I believe she was; I think she was living there, Sir.

Mr. Tracy—[To the Court.] Your Honor made a suggestion that I did not hear.

Judge Neilson—He had answered that she was living there.

Mr. Tracy—I understood the witness to say that he saw her at the house.

Q. How long a time had she been living there? A. I don't really know.

Q. When Mr. Beecher spoke to you about Bessie Turner,

whether it was on this day or some subsequent day, did he tell you the particulars of what Bessie Turner had told him? A. Of what she had told him personally?

Q. Yes, Sir; concerning Theodore Tilton? A. I don't know whether he told me what she had told him personally. He certainly mentioned Bessie Turner's name, and said that the information came from her; whether from her directly or not, Sir, I don't remember. I think it did.

Q. What was the information that he stated as coming from Bessie Turner concerning her relations with Theodore Tilton? A. That the story was that Theodore Tilton had carried her from her bed to his own; some such story as that.

Q. In the night? A. I don't remember whether it was in the night, Sir. I suppose it was in the night.

Q. Well, didn't you understand it to have been in the night? A. I suppose I did; yes, Sir.

Q. And didn't you understand that he had attempted to detain her in bed for some little time? A. I didn't understand anything, except that he had taken her from her bed, Sir; that is all.

Q. And carried her to his own? A. Yes, Sir.

Q. In the night time? A. Yes, Sir.

Q. Did you understand whether he had got in bed with her? A. I didn't understand that, Sir.

Q. Did you understand that there was only one instance of that? A. That is all, Sir.

Q. Did you understand that she had represented him as on another occasion coming to her bed in the night? A. No.

Q. You never heard of but one transaction? A. That is all, Sir.

Q. In regard to Bessie Turner? A. That is all.

Q. When that was told to you what did you say about it? A. Well, I said I could not believe that story, it seemed to me entirely improbable.

Q. What did Mr. Beecher say? A. He said that was the story; that is all.

Q. Did he speak of that as one of the stories that he had mentioned to Bowen? A. No, Sir.

Q. He did not? A. No, Sir.

Q. What other stories did he say that he had mentioned to Bowen? A. That is the only one that I call to mind—the Bullard story.

Q. That is the only one of which he gave you details? A. Yes, Sir.

Q. But did he say that he had mentioned to Mr. Bowen other stories concerning Theodore Tilton? A. No, Sir; I think that is the only one—the Bullard story.

Q. Do you mean to say that Mr. Beecher did not mention any other names? A. That is all that I recollect, Sir; that he told me that he had mentioned Mrs. Bullard's name to Mr. Bowen.

Q. Did he say or not that he had told Bowen of other stories concerning Tilton, without mentioning names? A. I don't remember that he did.

Q. You don't remember that he did? A. No, Sir.

Q. Now, when he told you about Bessie Turner, didn't you express yourself concerning that story to me more strongly than you do now? A. I don't know whether—I don't remem-

ber whether I did or not, Sir; the substance of what I have said to you I stated to him.

Q. Did he tell you at the time that Bessie Turner had told other people of this story besides yourself? A. I think that he may have told me that, Sir.

Q. You learned the fact either from Mr. Beecher or some one else that she had told this story to other people, did you not?

Mr. Beach—Wait one moment. What he learned from other people I object to.

Mr. Evarts—That was not the question, if your Honor please; that he heard it *either* from Mr. Beecher or other people.

Judge Neilson—If he heard it from other people, it is immaterial.

Mr. Evarts—That is not our question, if your Honor will allow me. We are trying to find out whether he heard it from Mr. Beecher.

Judge Neilson—Yes.

Mr. Evarts—That the story had been told to other people. The witness is not certain about that, as I understand. Now we ask him whether, either from Mr. Beecher or from some one else, he had heard that she had told the story to others—as a part of the further examination. "Now don't you remember that you heard it from Mr. Beecher?"

Judge Neilson—Whatever Mr. Beecher said is to be received, not beyond that.

Mr. Evarts—That is our point, of course, to get at what he said, and to probe him to get at it.

Mr. Tracy—Your Honor rules out the question as it stands?

Judge Neilson—So far as it relates to other people.

Mr. Tracy—Your Honor will note our exception.

Judge Neilson—The current rumors of the town I do not wish to hear.

Q. At the time you were having this interview with Mr. Beecher about Bessie Turner, did you know at that time that Bessie Turner—had you heard or did you know at that time that Bessie Turner had told the story to other people besides Mr. Beecher? A. No; I did not know at that time.

Q. Now, at this interview on the first of January was the Winstead matter again talked about between yourself and Mr. Beecher? A. No, Sir; I think not, Sir; no.

Q. Was anything further said about the stories that Bowen had told concerning Beecher at that time—or Tilton, I mean? A. I think not.

Q. That Bowen had told concerning Tilton? A. No; I think not.

Q. Was not the subject of Mr. Tilton's relations with another lady a matter of conversation between you and Mr. Beecher? A. No, Sir.

Q. Did you never hear from Mr. Beecher at any time that Mr. Bowen had reported to him the name of another woman with whom Mr. Tilton was connected? A. No, no.

Q. Had you heard at the time you were talking with Mr. Beecher, that Mr. Bowen had charged Mr. Tilton with having made an improper proposition to another lady, and that— A. No, Sir.

Mr. Beach—[To the witness.] Wait one moment; please do

not answer; his question was not finished; and I do not get an opportunity to object.

The Witness—Pardon me, Sir.

Q. Did you never hear that?

Mr. Beach—That is objected to.

Judge Neilson—Ruled out.

Q. Did you never hear it from Mr. Tilton or from Mr. Beecher?

Mr. Beach—Hear what?

Mr. Tracy—That Bowen had charged Mr. Tilton, prior to discharging him, with improper relations, or with an improper attempt in respect to another woman? A. Did I ever hear it?

Q. From either Tilton or from Mr. Beecher?

Judge Neilson—That Bowen had so charged?

Mr. Tracy—That Bowen so charged? A. I don't recollect that I did; I don't recollect that.

Q. Are you sure that you did not? A. I haven't any recollection about it now, Sir.

Q. At that interview of Jan. 1st, did Mr. Beecher mention to you that his wife had taken an active interest in behalf of Mrs. Tilton as against her husband? A. Not at that interview; my recollection is, that it was not at that interview, Sir; it was the interview of Dec. 31st; I spoke to him about it myself.

Q. You think that that subject was not referred to again in this conversation at Jan. 1st? A. My recollection is that it was not.

Q. Well, what subjects did you and Mr. Beecher converse about on that day; just name the topics of conversation so far as you can remember? A. The effect of the recantation upon Theodore Tilton; Mr. Beecher's expression of contrition for the crime that he had committed against Elizabeth Tilton and Theodore Tilton, and his expression of regret that he had mentioned Mrs. Bullard's name to Mr. Bowen; those are the three distinct subjects that I now recollect.

Q. And the only three that you recollect? A. Those are the three, Sir.

Q. I understand you now to say that it was on Dec. 31st that Mr. Beecher told you that Mrs. Beecher and himself had been taking an active part with Mrs. Tilton against her husband? A. My recollection is that way; yes, Sir.

#### MISSION OF THE LETTER OF CONTRITION.

Q. Now, when you began to write this letter, you say Mr. Beecher dictated it? A. Yes, Sir.

Q. Did he dictate all of it? A. Yes, Sir; he dictated all of it.

Q. Every word that you wrote on that paper was dictated by Mr. Beecher? A. My recollection is, Sir, that I put over the top of it, "In Trust with F. D. Moulton," myself, either before or after the letter was finished.

Q. Can you tell which? A. I think it was put over before, Sir.

Q. And that part of it was not dictated by Mr. Beecher? A. That part of it was not dictated by Mr. Beecher; my recollection.

Q. Was everything else on the paper dictated by Mr. Beecher? A. Every word, Sir, with the exception of that that he wrote himself.

Q. Did he dictate it, sentence by sentence? A. He did.

Q. And you wrote it down, sentence by sentence, as he dictated it? A. I did.

Q. Will you produce that? [Letter produced.] Did he dictate the words, "My Dear Friend Moulton?" A. He did.

Q. Have you, from Mr. Beecher, during the four years of correspondence, any other communication from him that commences, "My Dear Friend Moulton?" A. I am sure I don't know, Sir, whether I have or not.

Q. Don't you know whether you have or not? A. I do not.

Q. Can you recall a single one which he ever commenced, addressed to you in that way? A. I cannot, Sir; I cannot recollect the way in which any of them commences.

Q. He has written you a great many letters, has he not? A. He has.

Q. You put the words, "In Trust with F. D. Moulton," at the head of the paper, and Mr. Beecher at the bottom of it? A. Yes, Sir.

Q. Did you have any conversation about what that meant—what it was—

Mr. Fullerton—One moment; that is a mistake. It is a misstatement of what is there; it is an incorrect quotation from the paper.

Mr. Tracy—Well, it is, in one sense, that it is not literal—literally repeating both phrases; but, with that exception, it is as near literal as one-expression can make the two; and it is a declaration of trust at the bottom and foot of the letter.

Q. Now, did you have a conversation with Mr. Beecher as to the nature of this trust? A. I think I did; yes, Sir.

Q. What was to be the nature of the trust in which you took that letter—that paper? A. I was to do with that paper, as a friend of Mr. Beecher, what I thought it was judicious to do with it—was to show it to Theodore Tilton—was to show it to Theodore Tilton.

Q. Judicious with reference to what object? A. With reference to the reconciliation of the differences between Mr. Tilton and Mr. Beecher.

Q. You were to show it to Mr. Tilton? A. Show it to him, or hand it to him, and let him read it through.

Q. Which? A. Anything that I chose to do with it; it was an absolute trust with me, to do with it as I saw fit.

Q. To use for that object? A. Yes, sir.

Q. What else were you to do with it? A. What else was I to do with it?

Q. Yes. A. Anything that I chose, in accordance with that purpose.

Q. Were you to part with it? A. Was I to part with it? No, Sir; I was to keep it; not to part with it, Sir, to anybody but Theodore Tilton.

Q. Were you to part with it to Theodore Tilton? A. To do anything with it with regard to Theodore Tilton that I chose for the purpose of reconciliation.

Q. Were you to give it to Theodore Tilton? A. Give it to him, if I saw fit.

Q. What was said about it? A. That is the purport of what was said about it.

Q. Was it said that you could deliver this paper to Theodore

Tilton, and leave it with him if you saw fit? A. There was no restriction whatever put upon my action with regard to it.

Judge Neilson—Then that was not said, as I understand? A. No, Sir.

Q. That was not said? A. No, Sir.

Q. Was anything said except what would be implied by the phrase, "in trust"? A. I told Mr. Beecher that I thought it better—that these words better be put over the top of it: "In Trust with F. D. Moulton," in order that that letter might be under my control; that was the point, Sir.

Q. And it was put there for that purpose? A. Yes; by me.

Q. Now, was there anything further said than what you have now stated in regard to the nature and object of this trust? A. I don't recollect, Sir, at present, that there was.

Q. When I say, "by what you have now stated," I mean what you have last repeated. A. Yes, Sir.

Q. You understand the question? A. Well, Sir; will you repeat it, so that I may understand it fully; perhaps I do not.

Q. Was there anything else said as to the nature and object of this trust, except that it was put there to show that this letter was to remain in your custody and under your control? A. Under my control; I don't think there was anything else.

Q. Nothing else said about that? A. I do not remember that there was.

Q. Now, what did you do with this paper when you got it? A. I took it to Theodore Tilton after I left the house and read it to him.

Q. Same night? A. Yes, Sir.

Q. Did you give it to him? A. I don't know whether I handed it to him or not to read, or whether I read it to him; my impression was—is, that I read it to him.

Q. Will you say that you did not deliver this paper to Theodore Tilton and leave it with him for a time? A. I did not leave it with him for any time that night, Sir; I don't think I did.

Q. That night? A. He did not take it away from the house, if that is what you mean.

#### HOW MOULTON DISCHARGED THE TRUST.

Q. No, that is not my question. Didn't you deliver this paper to Theodore Tilton and leave it with him for a time? A. Well, Sir, I don't recollect whether I did or not.

Q. Do you recollect that you did not? A. I haven't any recollection, Sir, as to whether I read it to him; as to whether I read it to him, or whether he took it from my hands to read, my recollection is not specific as to either point.

Q. If he took it from your hands to read, have you any recollection as to how long he kept it? A. I have not.

Q. Can you say that Theodore Tilton did not have this paper in his possession for at least one hour on the night you obtained it? A. I could not say that he had not, Sir.

Q. No, Sir. Can you say that he did not have it for two hours in his possession? A. Well, my recollection, Sir, would be that he had not. If I was to state my recollection—that he hadn't it for two hours.

Q. He didn't have it for so long as two hours? A. No, Sir.

Q. What did you do on receiving it back from Mr. Tilton?

Mr. Morris—He has not said he received it back, yet.

Q. Did you come in possession of the paper?

Mr. Morris—He has not said he parted with it, yet.

Mr. Tracy—We know what he said. When do you next recollect being in possession of this paper?

Mr. Morris—Now, I submit that he has not said that he recollects being out of possession of it yet. The question assumes a fact that has not yet been proven.

Mr. Tracy—I assume the fact that he has been in possession of it. Now, I ask when he next remembers definitely of being in possession of this paper?

Mr. Morris—The point is that he has not stated yet that he was ever out of the possession of it.

Mr. Evans—[Earnestly.] The point is this: that he don't recollect. Now, we want him to recollect when he knows he had it. [Laughter.]

Mr. Morris—Well, that is another question. The question is not a proper question, and I object to it.

Judge Neilson—If you handed this to Mr. Tilton at all, did he hand it back to you? A. I think he did, Sir.

Mr. Tracy—Don't you know whether he handed it back to you that same evening or not, if he had it? A. If he had it?

Q. Yes. A. My recollection is that the paper was not out of my possession all that night; that I had it.

Q. Then you remember definitely of having had it the next morning, do you? A. I don't remember definitely having had it the next morning.

Q. What did you do with it that night or the next day? A. I put it in my bureau drawer.

Q. When did you put it in your bureau drawer? A. That night.

Q. Sure? A. I think so, stating to the best of my recollection.

Q. What time of night? A. After I got through with Theodore Tilton.

Q. What time of night was it? A. I don't remember.

Q. You don't remember? A. No.

Q. When did you next see this paper? A. I don't remember when I next saw it, Sir.

Q. Well, when do you next remember of having seen it? A. Distinctly, Sir, after the Victoria Woodhull publication, I remember, in your presence.

Q. Do you mean to say that you have no recollection of having seen this paper from the time you put it in your bureau drawer in December, 1870, until after the Woodhull publication? A. I don't remember anything about it, Sir, definitely, up to that time.

Q. Now, which publication was that of the Woodhull's that you refer to? A. The publication of the Victoria Woodhull story.

Q. 1872? A. Yes, Sir; 1872, I think.

Q. Well, when you wanted this paper after that publication, did you find it in your bureau drawer? A. No, Sir; found it in a tin box.

Q. In a tin box? A. I must have taken it from the bureau drawer and put it in the tin box, I suppose.

Q. Where was the tin box? A. The tin box was in my house.

Q. Was that paper never in your safe? A. I don't think that the confession—that that paper was ever in my safe, Sir; I don't remember that it was.

Q. In New-York? A. I don't think it was.

Q. And where was the tin box kept in your house? A. Kept in the closet in my front chamber, I think.

Q. Locked? A. Yes, Sir; locked.

Q. With what sort of a lock? A. Little padlock.

Q. One of those little cheap padlocks? A. Locked with a small lock, Sir, about so—

Q. Do you remember of ever having had that tin box out in presence of Theodore Tilton from the time of receiving this letter of December, 1870, until after the Woodhull publication? A. I don't recollect distinctly the occasion; I may have had it out, Sir.

Q. Don't you know you had it out frequently in his presence? A. No, I don't remember that I had it out frequently in his presence, Sir.

Q. Well, then, at the next time that you remember of having seen this paper, do you also remember that Theodore Tilton had a copy of it? A. No, I don't remember that he had a copy of it.

Q. When did you first know that Theodore Tilton had a copy of it? A. It was either—I think that the Bacon letter, Sir, or else the "True Story" letter, if the thing was in that; it was in one or the other, but I don't think it—

Q. Well, those two transactions or stories are some ways apart, are they not? When was the "True Story" prepared? A. I don't know; I believe it was prepared in the latter part of December, 1872.

Q. And when the Bacon letter? A. The Bacon letter was in eighteen hundred and—this year, wasn't it—last year, 1874.

Q. And now do you mean to say that you can't tell on which occasion it was that you found Mr. Tilton had—do you mean to say that you can't tell at which date it was you first knew that Theodore Tilton had a copy of this paper? A. I can't, no; not to swear to it now; I don't remember, Sir, whether it was in the "True Story" or not; that is the reason that I can't swear here.

Q. You never remember to have seen the paper until after the Woodhull publication, and you never remember to have known that Tilton had a copy of it until one day that you speak of? A. No; that is the best of my recollection now?

Q. How did you find out that he had a copy of it then? A. The Bacon letter?

Q. This—when you did know it—when you learned that he had a copy, how did you learn it? A. Learned it from him.

Q. From him? A. From the publication of the Bacon letter, when he read it to me.

Q. Do you mean then to say that that was the first time that you knew that he had a copy? A. That is the first time, to my recollection.

Q. Now, Sir; didn't he make a copy of this letter in your presence the very night you read it to him, and the first night you received it from Mr. Beecher? A. No, Sir; I don't recollect that he did.

Q. Do you recollect whether he did or not? A. My recollection is that he did not, Sir.

Q. And will you swear that you did not know that he made a copy of that letter that night before you put it in your bureau drawer? A. Yes, Sir; I should swear to that, Sir.

Q. Didn't Mr. Tilton write that letter down, this letter down, in shorthand or otherwise, at the time you read it? A. I don't recollect that he did; my recollection is that he did not.

Q. Your recollection is that he did not? A. My recollection is that he did not, Sir.

Q. Now, we will come back to the composition of the letter. Well, I will ask this question before I come back to the composition of the letter: If he didn't do it on that night, did you ever give him any other opportunity to make a copy? A. I may have shown him the letter, Sir; if he asked me for it, very likely I did.

Q. Will you say whether you did not? A. I cannot say whether I did or not. I say that if he had asked me for it, I very likely should.

Q. That is not an answer, Sir. I am not asking what you very likely should, but I am trying to ask what you remember that you did? A. I don't remember that I did, Sir.

Q. Then, so far as you know, up to the publication of the Bacon letter, Tilton had no other opportunity to make a copy?

Mr. Beach—The witness has said that he was uncertain whether it was at the time of the Bacon letter or at the time of the true statement.

Mr. Evarts—We understand it not. In the later answer of the witness he fixed the Bacon letter as the date when he first knew it.

Mr. Beach—He did not.

Mr. Evarts—I will refer to the stenographer.

Mr. Beach—The witness was carried to that result by a leading question assuming that fact, and in the face of his direct explanation that he was uncertain which of those periods was the time when he obtained that information.

Mr. Evarts—We have our views of the testimony, Sir, and we do not like to be interrupted in the cross-examination. If there is any question of it, the stenographer's note can be appealed to.

Mr. Beach—Well, Sir, although the counsel may not like to be interrupted, when I object to a question it seems to be a necessity that he should be.

Mr. Evarts—You stated in the previous testimony.

Mr. Beach—My objection to the question was, Sir, that it improperly assumes that the first knowledge of the witness that Mr. Tilton had a copy of this letter was at the publication of the Bacon letter.

Judge Neilson—I understand him that he got to know the fact certainly when he saw it in the Bacon letter, but he cannot say when he got the copy.

Mr. Evarts—That we understand.

Mr. Beach—Well, your Honor is under a wrong impression. I submit in regard to the testimony of the witness upon that subject, for the witness explicitly stated that he could not say when he first received that information whether at one time or the other.

Judge Neilson—Well, then, it is qualified in that way.

Mr. Evarts—Afterwards corrected.

Judge Neilson—But he got to a certainty of it when he saw the Bacon letter.

Mr. Beach—I insist that he did not afterward correct it.

Mr. Evarts—That is for the stenographer to decide.

Mr. Beach—That is for us to decide when the question is based upon an improper assumption of fact.

[Question read by THE TRIBUNE stenographer.]

Judge Neilson—"So far as you know or recollect;" please to qualify it in that way.

The Witness—Will you read the question again, Mr. Stenographer?

[Question re-read by TRIBUNE stenographer.]

Judge Neilson—Insert "or remember" after the word "known."

Mr. Evarts [to the witness]—There is no objection. A. I don't recollect, Sir, that he had.

Mr. Tracy—Now, do you know how Mr. Tilton got the copy that he made—that he had—when you read the Bacon letter? A. I don't know specifically; no, Sir.

Q. You say you don't know specifically? A. No, Sir.

Q. Do you know? A. No, Sir.

Q. That is an answer? A. Yes, Sir.

Q. Did you ever give him a copy? A. No, Sir.

Q. Did he ever take a copy with your knowledge? A. Not that I remember, Sir.

Q. Don't you remember whether he did or not? A. No.

Q. Do you mean to say now that you don't remember whether you gave him a copy of this letter?

Mr. Fullerton—That has been answered over and over again.

Judge Neilson—He said he had not given him a copy; I think he has answered that point clearly; he did not furnish a copy, and he don't remember how he got the copy.

Q. Did you give him an opportunity to make or take a copy of it?

Mr. Beach—Now, I submit to your Honor that the witness has stated upon the previous examination that he might have handed that letter to Mr. Tilton, and that, undoubtedly, if Tilton applied to him for it, he did so.

Mr. Tracy—Now, that is reasoning; we want to get facts.

Mr. Fullerton—There we have the advantage of you.

Judge Neilson—I think the witness has answered fully.

Mr. Evarts—Well, if your Honor please, we regard this testimony as important, as subsequent testimony will show, and we do not want to be retarded in our cross-examination by the objections of our learned friends if our questions are proper.

Judge Neilson—Do you think it proper to repeat a question again and again?

Mr. Evarts—No, Sir. We do think it proper, and fair to the witness also, to have his answers explicit, he understanding what the question is. Now, he says he don't know how Mr. Tilton got the copy. That is answered; we do not repeat that question. We ask him now, did you ever give, in fact, Mr. Tilton an opportunity to take or make a copy of that paper?

Judge Neilson—Hasn't he answered that?

Mr. Evarts—Let him answer it if he can.



Judge Neilson—Well, what is the answer to that question?

The Witness—To me or to the stenographer, Sir?

Judge Neilson—To you? A. I don't recollect, Sir, that I ever gave him an opportunity.

Judge Neilson—Well, so I understood before.

Q. Now, Mr. Moulton, you were educated at the New-York Academy, now called the New-York College, were you not? A. Yes, Sir.

Q. Since you have been in the firm, you have carried on very much of the correspondence of your firm, have you not? A. Not very much of it.

Q. Not very much of it? A. No, Sir.

Q. Whose department is that? A. Mr. Woodruff's and Mr. Macley's.

Q. You write well, or compose well, do you not?

Mr. Fullerton—Well, I don't suppose that that is—

The Witness—I don't think I do, Sir.

Judge Neilson—He has made the same answer I would make.

The Witness—I don't think I do; thank your Honor.

Q. Well, you carry on a large correspondence, do you not? A. No, Sir.

Q. You do not? A. No, Sir; I do not.

Q. A large correspondence? A. No, Sir.

Q. You write many letters every week, do you not? A. No, Sir.

Q. Do not? A. No, Sir.

Q. Do you not carry on a correspondence with literary people? A. No, Sir.

Q. Have you never? A. Yes—slightly.

Q. You understand the rules of composition and punctuation, do you not?

Mr. Fullerton—I object to this—just one moment.

The Witness—[Answering.] Not very well.

Mr. Fullerton—It is trifling with the time of the Court.

Mr. Tracy—It may be.

Mr. Fullerton—It not only may be, but it is.

Mr. Tracy—Well, that is for the Court.

Judge Neilson—He has answered that question.

Q. Do you understand, after a period, how you should commence the next sentence—whether with a capital or a small letter? A. Yes, I do. [Laughter.]

Judge Neilson—Will the audience keep quiet, please.

Mr. Fullerton—Well, if the counsel are asking these questions for their own information, I won't object. [Renewed laughter.] It seems to me to be trifling.

Judge Neilson—Will the audience please be— [To Mr. Evarts, who was rising.] If you say a word, it will be something that will excite commotion among the audience. Will you please be quiet? Proceed, Mr. Tracy.

#### THE LETTER OF CONTRITION ANALYZED.

Q. Now, Mr. Moulton, I understand you to say that Mr. Beecher dictated this letter sentence by sentence? A. Yes, Sir.

Q. And you wrote it down, sentence by sentence, as he dictated? A. Yes, Sir.

Q. And he dictated it deliberately? A. Yes, Sir.

Q. And you wrote it deliberately? A. Wrote it as he dictated it.

Q. Did you write all that Mr. Beecher said? A. Every word.

Q. And you say that this letter was not written hastily and as rapidly as you could write it? A. It was written as rapidly as I could write it.

Q. Was it written hastily? A. Written rapidly; I don't know what you mean by hastily.

Q. Written rapidly; very well. Was it written by you in the effort to catch the sentences as Mr. Beecher was speaking them? A. As he uttered them for me to write down—as fast as it was necessary to write for that purpose I wrote.

Q. And you wrote after a man who was dictating, rather than after a man who was talking and whose sentences you were seeking to catch as he talked? A. Yes, Sir; a man dictating.

Q. [Handing paper to witness.] Is that your usual handwriting? A. It is a little more distinct than usual. I usually write with a steel pen? This looks as though it was written with a quill.

Q. Do you remember whether you wrote with a steel pen, a gold pen, or a quill? A. I cannot recollect. This looks as though I wrote with a quill pen.

Q. As matter of recollection, do you recollect what sort of a pen you wrote with? A. I cannot recollect whether it was a quill pen or a steel pen.

Q. Was it one or the other? A. My impression is that it was a quill pen.

Mr. Evarts—You mean steel or gold pen?

Mr. Fullerton—No; he means quill pen.

Mr. Evarts—You mean quill, or steel, or gold?

Mr. Fullerton—He says it is his impression he wrote it with a quill pen.

Mr. Tracy—I desire now to read this letter with the punctuation and the writing. I want it read as it is written.

Mr. Shearman—I will read this exactly as it is written here.

Mr. Fullerton—Of course you will.

Mr. Shearman—It never has been read as it is written.

Mr. Fullerton—I beg your pardon, Sir, it has been.

Mr. Evarts—No, Sir, not read with the punctuation. He didn't read the punctuation.

Mr. Fullerton—You don't read punctuation; you observe it.

Mr. Shearman [reading]:

BROOKLYN, January 1, '71.

In trust with F. D. Moulton.

I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God, he would have been a better man, in my circumstances than I have been. I can ask nothing except that he will remember all the other hearts that would ache. I will not plead. I even wish that I were dead, but others must live and suffer. I will die before any one but myself shall be inculpated. All my thoughts are running toward my friends toward the poor child lying there and praying with her folded hands; She is guiltless. Sinned against bearing the transgressions of another Her forgiveness I have, I humbly pray to God that he may put it into the heart of her husband to forgive me.

I have trusted this to Moulton in confidence.

H. W. BEECHER.

The Witness—That is correct.

Mr. Shearman—I have read this as it was written. The word

"I can't" is corrected by striking out the "t." After the words "I will not plead," there are subsequently inserted the words "for myself," but the color of the ink is different where the "t" is crossed and where the words "for myself" are inserted.

Mr. Beach—Now the question rises whether the gentleman has read it according to the punctuation.

Mr. Evarts—That will be for the jury.

Mr. Fullerton—The gentleman promised to read it as it was, and when he got through he confessed he read it as it was not.

Judge Neilson—I thought he read it very well.

Mr. Fullerton—Oh! he read it very well.

Mr. Evarts—He read it according to the original edition, but not according to the revised edition.

Mr. Tracy—You say Mr. Beecher dictated all that first sentence as a single sentence, do you?

Mr. Fullerton—He didn't say that.

The Witness—I said he dictated every word of it.

Mr. Tracy—I ask you whether Mr. Beecher on that occasion dictated everything, down to the first period marked in that letter, as a single sentence?

Mr. Morris—There is one point, if your Honor please, I desire to say a word in reference to. The counsel attempted to give a false impression with reference to this letter, and spoke about the different colored ink. Now, the whole letter makes it manifest that the pen did not deliver the ink freely, and a part of many of the words, sometimes the middle of a word, will be pale. For instance, the beginning of that word is one color and the two letters "g" "h" are pale and the "t" is black, showing the pen did not deliver the ink regularly and uniformly.

Mr. Evarts—If you please, we object to all this. It is quite competent for our learned friends to comment on this manuscript. It does not falsify our comments that they can make others.

Mr. Beach—It does answer their comments when they are incorrect.

Mr. Evarts—We call the witness's attention to it, and it is the honest way, before he leaves the stand, and we intend to do it.

Judge Neilson—Some impressions are created on your part in reference to the letter or the ink of the letter in this writing, which perhaps justifies the counsel on the other side making a remark on the subject.

Mr. Tracy—I ask you whether Mr. Beecher on that occasion dictated everything down to the first period marked in that letter as a single sentence.

Mr. Beach—The witness has said no such thing.

Mr. Tracy—I know that, and that is the reason I ask him.

THE TRIBUNE stenographer was here directed by the Court to read the last question to the witness, which he did.

Mr. Beach—I was mistaken.

Mr. Tracy—I am glad you acknowledge for once you are mistaken.

Mr. Beach—You will find me always ready to acknowledge my mistakes. They are very frequent and common.

Mr. Fullerton—You are consuming a great deal of time. We want you to go on with the case.

The Witness—What is the close of the sentence?

Q. Did Mr. Beecher dictate the letter down to the word "been," in the language I have read as a single sentence? A. He dictated every word. If your Honor will allow me to explain—

Mr. Tracy—Answer my question first.

The Witness—I cannot answer it yes or no without an explanation.

Judge Neilson—[To Mr. Tracy.] That answers your question yes or no.

The Witness—I want to explain that answer, if your Honor will allow me.

Mr. Tracy—No; if you cannot answer that question, that is all.

The Witness—Very well.

Judge Neilson—Put another question.

Q. Can you remember what the first sentence was that Mr. Beecher dictated in that letter? A. Every word of the letter he dictated.

Q. I didn't ask you that. I ask you what the first sentence was that he dictated? A. I wrote the words just as they came from his lips, and I cannot tell you the first sentence that he dictated.

Judge Neilson—Did he dictate it in the order in which it is there? A. Yes, Sir; that is what I wanted to explain.

Mr. Tracy—You cannot tell the first sentence that he dictated; do you say that? A. The words in the first sentence of this letter, he dictated every word of it.

Q. You have said that he dictated it sentence by sentence, and that you wrote it sentence by sentence as he dictated it. Now, I ask you if you can tell us what the first sentence was that he dictated as a sentence and that you wrote as a sentence? A. I can tell you what I understand about it; my understanding is, the first sentence he dictated was, "I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God. He would have been a better man in my circumstances than I have been." That is my recollection of the first sentence he dictated.

Mr. Fullerton—It is proper here that I should call attention to one fact.

Mr. Tracy—I submit it is not.

Mr. Fullerton—I ask the permission of the Court to do it.

Mr. Evarts—I object.

Mr. Fullerton—I understand you object, but notwithstanding that objection I call the attention of the Court to one thing in connection with the writing of this paper just at that point.

Mr. Evarts—I object to it, and don't go on until his Honor rules on my objection.

Mr. Fullerton—I shall go on.

Mr. Evarts—I object to his calling any attention to any fact while we are cross-examining this witness on this paper. Let him call attention to it afterwards.

Mr. Fullerton—I think it ought to be stated now because it is a misreading of the letter.

Judge Neilson—Then you can correct it on the re-direct.

Mr. Everts—We have a right to cross-examine this witness.

Judge Neilson—I don't need to be told that. The learned counsel on both sides are so anxious to argue that I quite understand it. [To Mr. Fullerton.] I think you had better reserve it for your re-direct; it may be a serious matter.

Mr. Fullerton—I will reserve it, and it will be a serious matter.

Mr. Tracy—We are as serious as a pickle here.

Mr. Fullerton—Yes, and you grow more and more so.

Mr. Tracy—Yes, Sir; my nature is very serious.

Judge Neilson—The only objection now to what Mr. Fullerton thought himself called upon to say is that some suggestion on his part might put the witness on his guard.

Mr. Fullerton—Nothing of that kind was in my mind.

Judge Neilson—That might be in your mind.

Mr. Beach—We cannot know that until we hear the suggestion. It may be entirely proper, but you won't hear it. There is no reason it should be given if the other side object.

Mr. Tracy—I don't think there is any delay on account of my putting questions.

Judge Neilson—I don't know.

Mr. Tracy—Will you tell us the next sentence that Mr. Beecher dictated as such that you wrote as such in that letter? A. I can tell you the next sentence that I wrote as such.

Q. Can you tell us the next sentence that he dictated as such and that you wrote as such? A. I can give you every word he dictated in the sense that I understand it.

Mr. Tracy—That will be satisfactory.

The Witness—"I can ask nothing except that he will remember all the other hearts that would ache. I will not plead for myself. I even wish that I were dead but others must live and suffer."

Q. What was the next sentence? A. "I will die before any one but myself shall be inculpated," is the next sentence.

Q. What next? A. "All my thoughts are turning toward my friends."

Q. Turning? A. Running.

Q. Which is it? A. I think it is running.

Q. Have you any doubt about that? A. No, Sir; I don't think I have.

Q. Go on. A. "Running toward my friends, toward the poor child lying there praying with her folded hands; she 's guiltless."

Q. Is there a full stop after the word "hands"? A. No, Sir; a semi-colon. "She is guiltless, sinned against, bearing the transgression of another;" that is the sentence—the next sentence that Mr. Beecher dictated to me, as I recollect it.

Q. Is there a period after the word "guiltless," or not? A. No, Sir; a comma.

Q. What is the next? A. "Her forgiveness I have. I humbly pray to God that he may put it into the heart of her husband to forgive me." That is the next sentence which I recollect that Mr. Beecher dictated.

Q. How long were you writing that paper? A. Not very long.

Q. About how long should you say? A. Long enough to write it; I don't know. It was dictated right straight along.

Q. Do you write rapidly, or otherwise? A. Oh! fairly, Sir; not very rapidly, nor very slow.

Q. Now, do you not write with a good deal of difficulty, mechanically, Mr. Moulton? A. I don't think I write with a great deal of difficulty.

Q. When you are with either Mr. Beecher or Mr. Tilton, are you in the habit of having them dictate to you and you write, or is it your habit to have them write and submit to your criticism? A. I cannot say that there is a habit either way.

Q. Of the numerous letters and correspondence that have passed between you and Mr. Beecher, that have been written by Mr. Beecher, can you name a single instance where he dictated any other paper than this, and you wrote it? A. I don't recollect any such instance.

Q. Any such instance? A. No, Sir.

Q. During the four years? A. I don't recollect any such instance.

Q. Now, Mr. Moulton, is that in your ordinary handwriting in respect to the size of the letter, and the matter on a page—the smallness of the matter on a page? A. Is that in my ordinary handwriting?

Q. Yes, Sir. A. No, Sir, I don't ordinarily write with a quill pen.

Q. Is it your ordinary style to spread so little matter over so great a space? A. Well, to spread a very little matter over a very great space?

Q. Is it your ordinary style to spread so little matter over so great a space as you have here? A. I don't know that I can answer that without an explanation. I write a very irregular hand, if your Honor will allow me to say so; I write sometimes one way, and sometimes another.

Q. You mean to say you cannot answer the question whether you ordinarily spread as little matter over so great a space or not? A. I think I have often done it, Sir.

Mr. Beach—I think the counsel has given us an example of spreading very little matter on a very great space.

Q. When did you next see Mr. Beecher after you left on the 1st of January? A. On the 2d, I think.

Q. Where? A. At his house.

Q. What room in his house? A. I think I met him, Sir, in the parlor or back parlor, and went up stairs with him from the parlor?

Q. Into what room? A. I don't remember what room.

Q. Do you remember whether your interview was in the study or not? A. I don't remember distinctly whether it was in the study or not.

Q. Do you remember who let you into that room on that occasion? A. On January 2d?

Q. Yes, Sir? A. No, Sir; I don't remember now. January 2d, I mean.

Q. What time of day did you go there? A. I think in the afternoon, somewhere about five or six o'clock.

Q. Five or six o'clock? A. Somewhere about that; between four and six o'clock.

Q. How long did you remain? A. Not very long.

Q. About how long? A. I don't recollect. I think perhaps an hour, perhaps half an hour or an hour; it may be two hours. I cannot remember it, it is so far back.

Q. Was your interview with him on that occasion alone? A. Yes, Sir.

Q. Was it on that day that he showed you the draft of this letter that he had prepared to send to Mr. Bowen? A. Either that day, or a day or two after; I think it was on that day.

Q. Did he read it to you on that day?

Mr. Tracy—[To plaintiff's counsel.] Gentlemen, will you give me that Exhibit?

Mr. Morris—What one?

Mr. Tracy—The letter of January 2d.

Mr. Morris—You must call for them by the numbers. We cannot furnish them unless you call for them by the numbers.

Mr. Tracy—Did you understand the last question that I put to you? A. I don't know really that I do.

Q. Did he read it to you on that day? A. Either that day or the day after.

Q. What did you say on his reading that letter to you? A. I don't recollect precisely what I did say; substantially that it was just.

Q. It was just and truthful, as far as you understood it? A. Yes, Sir; very likely that.

Q. And did you understand yourself to be the party of whom he spoke when he said, "On the assurances of one," so-and-so, "I am satisfied that my statement did him justice?" A. Yes, Sir.

Q. You were the party? A. I think so; yes, Sir.

Q. And so understood yourself? A. Yes, Sir.

Q. On whose assurances he wrote that letter? A. Yes, Sir.

#### TILTON'S UPBRAIDING OF BOWEN.

Q. Now, I understood you to say, on your direct examination, that on January 2d it was that you told Mr. Beecher that Mr. Tilton was writing a letter to Mr. Bowen? A. I think it was on that day—yes, Sir. Mr. Tilton was writing a letter on January 1st, and I think I told Mr. Beecher on that day.

Q. Is it your recollection you told him on that day? A. Yes, Sir.

Q. On January 2d? A. Yes, Sir.

Q. I understand you to say, then, that you had four different interviews with Mr. Beecher on four successive days—Dec. 30th, Dec. 31st, Jan. 1st and Jan. 2d—at the house of Mr. Beecher? A. Dec. 30th, Dec. 31st, Jan. 1st and Jan. 2d—yes, Sir.

Q. On four successive days, then, you distinctly recollect the fact of having those interviews with Mr. Beecher? A. Yes, Sir.

Mr. Fullerton—That is repeating it right over for the third time.

Q. Now, it was at that interview of January 2d that you spoke to him about Mr. Tilton preparing a letter. What did you say to him about it? A. I said Mr. Tilton was preparing a letter for Mr. Bowen, in which he was going to state substantially what Mr. Bowen had said to him (Tilton) concerning Mr. Beecher, and that I should strive to keep out of it all allusion to Mr. Beecher and to Mr. Tilton and his wife—have the letter simply express what Mr. Bowen had said to him (Tilton) concerning Mr. Beecher.

Q. Well? A. And that after Mr. Tilton had written it, I undertook to get possession of it, and hold it.

Q. For what purpose would you hold it? A. For what purpose? For the purpose of negotiating with Mr. Bowen, among others, and for the purpose of saving the families of all interested—saving all exposure of facts. I didn't approve of that letter.

Mr. Tracy—I didn't ask you that.

The Witness—Pardon me, Sir.

Mr. Evarts—Strike that out.

Q. Did you repeat that to Mr. Beecher—the substance of the stories that Mr. Bowen had told Mr. Tilton concerning him, and which Mr. Tilton was to write Mr. Bowen about? A. Did I tell him that?

Q. Yes, Sir; on that day? A. No, Sir; I don't think I told him the substance.

Q. Didn't he ask you what they were? A. No, Sir; I don't think I did.

Q. He didn't ask at all? A. I don't recollect either, to my recollection.

Q. You simply told him Mr. Tilton was writing a letter in which he was going to state what slanders or stories Mr. Bowen had told about Mr. Beecher, and Mr. Beecher did not ask you if you knew what they were? A. I don't remember that he did; a general charge—

Q. Well, what was it? A. Nothing but the general charge of adultery. I have said that before.

Q. Did you talk about that then? A. Not the specific charge of adultery; it was only charges of adultery.

Q. Did you say to Mr. Beecher on that occasion it was in regard to Mr. Bowen's charges of adultery against him? A. I think I did; yes, Sir.

Q. And you were going to get possession of that letter if you could, and use it in negotiating with Mr. Bowen?

Mr. Fullerton—He did not state that.

Mr. Evarts—He did.

Judge Neilson—Ask if he was. Your question assumes he was.

Mr. Beach—The question states but part of the purpose which the witness stated.

Mr. Tracy—The object will be accomplished. [To the Witness.] What do you say? You were going to get possession of that letter, if you could, and use it in negotiating with Mr. Bowen?

Mr. Beach—That is a statement.

Judge Neilson—Yes; that is a statement. [To Mr. Tracy.] Put your question again.

Q. Did you tell Mr. Beecher that you would get possession of that letter, if you could, in order to use it in negotiating with Mr. Bowen? A. I told him I would get possession of that letter if I could.

Q. Did you tell him the purpose for which you would get possession of it? A. Yes, Sir; I did.

Q. What was it? A. For the purpose of letting Mr. Bowen know exactly what he did to Mr. Tilton, and for the purpose of keeping peace between all the parties.

Q. Did you tell him you would use it for the purpose of negotiating with Bowen? A. Substantially that, yes.

Q. What did you tell Mr. Beecher was the object of having this letter written? A. Mr. Tilton wanted to publish it.

Q. For what purpose? A. To make clear by the publication the reasons for the severance of his relations with Mr. Bowen.

Q. And you told that to Mr. Beecher? A. Yes, Sir; I believe I did.

Q. And that you should prevent the publication of that letter? A. I told him I would try to do it.

Q. How did you know that Mr. Tilton was going to publish it? A. How did I know?

Q. Yes, Sir. A. He stated to me that he thought he should.

Q. Before it was written, he stated that? A. Sir?

Q. Before it was written, he stated that? A. When he first commenced to write it, the evening of Jan. 1st.

Q. Where did he begin to write it? A. At my house, I believe.

Q. At your house? A. I think so.

Q. Did he finish it on that evening? A. On the evening of Jan. 1st.

Q. Yes, Sir. A. I don't think he did finish it all.

Q. How far did it proceed? A. I do not recollect.

Q. Do you know that he did not write the whole of it on that night? A. A rough draft of it was finished at my house that night.

Q. The draft of it was finished at your house on that night? A. I think so.

Q. Jan. 1st? A. Yes, Sir.

Q. That was after you had brought the paper that you had got from Mr. Beecher on that day, to Mr. Tilton, and showed it to him? A. He was writing when I got there.

Q. And he finished it that same evening? A. I think he did—the rough draft of it.

Q. And was going to publish it? A. Yes, Sir; he thought of publishing it.

Q. He so expressed himself? A. I recollect that subject.

Q. How did you come to meet Mr. Beecher on the 2d of January. A. By his invitation.

Q. Given on the 1st? A. Yes, Sir.

Q. Was Mr. Beecher at home on the 2d, when you called? A. I think he was; yes, Sir.

Q. Now, if your statement to General Butler—  
The Witness—Which one?

Mr. Tracy—Well, either. Did you say to him that Mr. Beecher asked him if he thought it would be safe for the sale of the Plymouth pews to go on? A. I think I did.

Q. And that was asked at the head of the stairs on Jan. 2d? A. I think I did; yes, Sir.

Q. And that you told him: "I told him I thought it would be perfectly safe to have the sale of Plymouth pews go on. I felt perfectly sure Mr. Tilton would do nothing against him or his family?" A. Yes, Sir.

Q. You told that to General Butler? A. Yes, Sir.

#### TERMS OF BEECHER'S PRAYER FOR HELP.

Q. Did you also tell this to General Butler: "He said that Elizabeth Tilton had sent for him to come to her house, and told him she believed her relations were wrong. And

he told me he said to her: 'If you believe these relations wrong, then they should be terminated.' And he told me that he prayed with her—prayed to God with her for help to discontinue their sexual relations." A. I think I told him that.

Q. You told General Butler that? A. Yes, Sir.

Q. As a part of this same interview?  
Mr. Beach—What same interview?

Mr. Tracy—The interview I have been speaking of. [To the Witness.] At what interview did you tell General Butler that?

A. I think that was the interview of Jan. 1st.

Q. At what interview with General Butler did you communicate that fact to him? A. My recollection is, it was at Bay View.

Q. At Bay View? A. I think so.

Q. Did General Butler advise you to expunge that from your statement?

Mr. Beach—That I object to.

Q. Did I understand you to say you thought this interview between yourself and Mr. Beecher in regard to prayer was on Jan. 1st? A. I had that impression when I spoke.

Q. When do you say, as a matter of fact, it was? A. I should think it was Jan. 1st.

Q. Jan. 1st that he spoke of prayer? A. Yes, Sir.

Q. And not Jan. 2d? A. That would be my impression.

Q. Do you mean to say that, on Jan. 1st, in that interview that Mr. Beecher told you he had prayed to God for help to discontinue his sexual relations with Mrs. Tilton? A. Yes, Sir.

Q. Using the word "sexual" in that connection? A. Yes, Sir.

Q. Did he say that he had used that word in his prayer? A. Did he say that he had used that word in his prayer?

Q. Yes, Sir. A. He said that he had prayed to God for help to discontinue their sexual relations. That was substantially what he said to me, as I remember it.

Q. Did he say the word "sexual" in that connection? A. He used the word "sexual," yes, Sir.

Q. Did he say that that was a part of his prayer, that he wanted help to discontinue his sexual relations? A. Will you allow me to state what he said?

Q. I asked you if he said that was part of his prayer? A. He said he prayed to God for help to discontinue their sexual relations. That is what he told me.

Q. The words "sexual relation" were the words that Mr. Beecher always used to characterize the relation between himself and Mrs. Tilton, were they? A. I don't recollect that, Sir, whether they were always.

Q. Have you repeated any other phrase, or any other word, than the word "sexual"? A. I don't know whether I have or not.

Q. Do you know whether that is a word that Mr. Beecher is in the habit of using to characterize the sexual act out of wedlock?

Mr. Beach—That I object to.  
The Witness—I have heard him use a worse term.

Mr. Tracy—I did not ask you that. I ask you this, whether

the word "sexual," to characterize that act out of wedlock, is not an unusual word to use?

Mr. Fullerton—That I object to.

Judge Neilson—We all know that as well as the witness does.

Mr. Beach—Perhaps not as familiarly as some others.

Judge Neilson—We are expected to know the use of that word as well as the witness.

Mr. Tracy—Now, Mr. Moulton, did you at any time come into possession of papers written by Bessie Turner? [To plaintiff's counsel.] Will you, gentlemen, produce the Bessie Turner documents?

Mr. Morris—I don't know that I have them here; but I say to the counsel again, as I have repeatedly, all along, that if they will give a list of what they want, we will endeavor to arrange them.

Mr. Everts—We may have to ask the witness to bring those papers, and to put them in our hands, that we may find them, or in the hands of the Court.

Judge Neilson—You can call for them from time to time as you wish them. They are safe enough where they are.

Mr. Everts—They are safe, but we don't get them.

Judge Neilson—I suggested, the day before yesterday, that a list should be made of what letters you wanted.

Mr. Everts—There is not any such multitude of them. They have been all through the mill, and stamped and numbered, and that is known to the public, and you can count them all. Fifty of them have already been given in evidence, and it is others that we ask for.

Judge Neilson—You must have them.

Mr. Everts—And we are entitled to them.

Judge Neilson—Yes, Sir.

Mr. Morris—I give them notice now, again, that I am not going to spend time unnecessarily for the accommodation of counsel on the other side, when I have made so reasonable a request as I have made. They may call for papers in this way, and I will take my time to find them.

Mr. Everts—We have that distinct notice, now, and therefore I would like to have the papers put in my hands.

Judge Neilson—It is well enough as it is. I suggested the day before yesterday that a list should be made of those you wanted.

Mr. Everts—They are the witness's papers, brought in under my subpoena.

Judge Neilson—Well, he will produce them when wanted.

Mr. Morris—And we have a good many papers brought in under subpoena that they have no right to.

Mr. Everts—Will the witness keep his own papers?

Judge Neilson [to Mr. Everts]: As you want a paper call for it, and it must be produced.

Mr. Morris—I will look over my package to find the paper.

Mr. Everts—That you can do.

Mr. Morris—That I propose to do without your permission.

Mr. Fullerton—If the Court please, if the counsel on the other side will indicate what other papers they will probably want during the present day, we will select them out from the papers in our possession.

Mr. Everts—If my friends desire to assist us, if they will sep-

arate the papers which have not been given in evidence, and that have been brought here under subpoena, from those that have been given in evidence, it will be easy to find the few papers we want.

Mr. Morris—I understand that better than the counsel. There is a large package here, and we will have to go over them all.

Judge Neilson—Mr. Morris, do the best you can; we shall have to wait.

#### BESSIE TURNER'S LETTERS EXCLUDED.

Mr. Tracy—I will try and occupy the time of your Honor until one o'clock with another matter; I will have to pass over this matter and refer to it again. Q. Now, Mr. Moulton, was there anything said at any time in the first days of January about the future of Mr. Tilton between yourself and Mr. Beecher? A. About the future of Mr. Tilton?

Q. Yes, Sir. A. Yes, Sir.

Q. Was it talked, and in pursuance of that talk, did you try to have him reinstated upon *The Independent and Union*? A. No, Sir.

Q. Did you never have any talk with Mr. Bowen on that subject? A. Yes, Sir.

Q. When was that talk with Mr. Bowen on the subject of reinstating Mr. Tilton? A. Well, Sir, it was previous to the 15th of January; shall I tell you what I said?

Mr. Tracy—When I ask it.

The Witness—I beg pardon, Sir.

Mr. Everts—It is not necessary for you to cross-examine us.

The Witness—I beg pardon, Sir, I did not do it discourteously.

Mr. Tracy—Previous to that, in conversation with Mr. Bowen, had Mr. Beecher sent his letter retracting the stories that he told you about Mr. Tilton.

Mr. Fullerton—I object to that. It is not fair to characterize the letter.

Judge Neilson—Previous to that time he sent the letter?

Mr. Tracy—The letter has been in evidence.

Mr. Fullerton—There is no reason why you should characterize it in that way.

Mr. Tracy—The objection to characterizing it is introducing the evidence. It is referred to as a letter.

Judge Neilson—Refer to it as a letter, or by a mark or date.

Mr. Tracy—I don't know which number. [To the Witness]—It is a letter which you say you saw the draft of on the second of January?

Mr. Fullerton—It is the letter of the 2d of January. It is the only letter of that kind in evidence.

Mr. Tracy—It is the letter of the 2d of January. Had Mr. Beecher sent that letter to Mr. Bowen before your conversation with Mr. Bowen? A. Yes, Sir; he told me he had; I don't know whether he did or not.

Q. Had you obtained, previous to that time, also a letter from Mrs. Tilton, denying she had ever desired a separation from her husband?

Mr. Fullerton—I object to that.

Mr. Tracy—Then I call for that letter also.

Q. I ask if you obtained a letter upon that subject from Mrs. Tilton?

Mr. Fullerton—I object to that.

Mr. Tracy—What is the objection?

Mr. Fullerton—That you cannot ask the contents of a letter that is in evidence.

Judge Neilson—It savors somewhat of that.

Mr. Tracy—I asked if he had got a letter on that subject. I am merely doing it to determine the letter; I am not asking for the contents of the letter.

Mr. Beach—Well, we will hand you the letter.

Mr. Fullerton—You would not tell us five minutes ago that you wanted that letter.

Mr. Tracy—I didn't want it then; I didn't know then that I would want your letter. It is only to fill up the time until one o'clock that I want it. I will try and pass on for a moment to something else.

Mr. Morris [handing Mr. Tracy two letters]—Here are the Bessie Turner letters.

Mr. Tracy [handing letters to witness]—Did you ever see those two letters, which I now hand to you, before? A. Yes, Sir.

Q. Did you bring them here under a subpoena? A. I handed them to Judge Morris to be brought here.

Q. When did they first come into your possession? A. About the time of their dates. What are their dates, General, please? Q. One is January 12th and the other January 10th, 1871.

You have had them continuously from that time until the time of delivering them to Judge Morris? A. Were they not in my statement? I think they were in my first statement.

Judge Neilson—[To the witness]: You think you have had them ever since? A. Yes, Sir; I have had them ever since.

Mr. Tracy—Do you know how you received them? A. I don't remember, Sir, exactly how I received them, whether by a messenger or by mail.

Q. What time did you receive them? A. About that time.

Q. About this time. Where was Bessie Turner living at the time? A. I think she was at Mr. Tilton's house; I won't be certain about that.

Q. What did you do with the papers on receiving them? A. Put them away.

Q. Did you ever talk with Mr. Tilton about them? A. About the letters?

Q. About these letters? A. No, Sir; not until after I got them.

Q. Until after you got them. Did Mr. Tilton bring those letters to you? A. I don't remember whether he did or not.

Q. You remember talking to him about them? A. Yes, Sir; after I got them,

Q. Did you show them to him? A. I guess I read them to him; yes, Sir, or he read them himself.

Q. And you have kept them ever since? A. Yes, Sir.

Q. And you don't know whether you received them from him or in some other way? A. No, Sir; I don't remember.

Mr. Tracy—We offer them in evidence.

Mr. Fullerton—We object to them.

Mr. Tracy—Are those the only letters that you received from

Bessie Turner, or papers signed by Bessie Turner? A. They are all that I recollect now; yes, Sir.

Q. How long after getting these papers was the arrangement made about Bessie Turner going away? A. I think it was made before I got them.

Q. Before you got them? A. Yes, Sir.

Q. Were those obtained before she went away in pursuance of the arrangement? A. In pursuance of the arrangement? I don't remember whether it was in pursuance of that arrangement or not.

Q. Perhaps you misunderstand my question. Had she gone away in pursuance of the arrangement before you received the letters, or did she go away after? A. I don't know whether she went away before or after.

Q. In other words, you don't remember when she went away? A. No, Sir; I don't remember when she went away.

Q. Did she not go away along in January, about the 15th? A. I don't recollect, Sir, when she went away. My bill will show, General, when she went away. The bill and papers I have got will show.

Q. Have you got anything which will show you when she left? A. I think it will show when she entered the seminary.

Q. Will it show when she left Brooklyn? A. I don't think I have got anything to show when she left Brooklyn.

Q. Do you remember if it was about February 7? A. No, Sir; I don't remember that.

Mr. Tracy—I offer the letters in evidence.

Judge Neilson—State to me why you think they are admissible. They are letters by a third person, Bessie Turner.

Mr. Tracy—We think they are admissible for this reason: This witness has already testified that the girl, Bessie Turner, was sent away because she had got information concerning Mr. Beecher and Mrs. Tilton, and that Mr. Beecher paid her board for that reason, because of that information. Now we propose to show that at the very time, or before she went away, this witness was in possession of the documents which show the reason why she went away, and that reason was because she reported strange words concerning Mr. Tilton and herself.

Judge Neilson—In other words, you offer a statement written by Bessie Turner, going to the question of why she went away, as evidence. I don't think it is.

Mr. Evarts—If your Honor please, this is the point: It has been made a subject of evidence here, as bearing upon the guilt of Mr. Beecher, that he cooperated with this witness and with Mr. Tilton in having Bessie Turner sent away from here, because she was in possession of, and would be in danger of, stating things prejudicial to Mr. Beecher in respect of his relations with Mrs. Tilton. Now, we prove, as a matter of fact, that she was sent away, as has already been stated, and as the only preliminary of sealing her mouth or correcting any prattle, as it is called, that she had been or might be induced to indulge in; that it was her written corrections, not of stories to the prejudice of Mrs. Tilton and Mr. Beecher, or either of them, but of stories to the prejudice of Mr. Tilton in respect to herself.

Judge Neilson—I must rule them out.

Mr. Evarts—If your Honor please, we desire to read the letters

in order that your Honor's ruling may be applied to the actual facts of this case.

Mr. Beach—We object to their reading them.

Judge Neilson—Avowing the fact; to illustrate it, I must apply the same ruling as I did the other day. He may read the letters.

Mr. Beach—We follow the principle of our learned friends in objecting.

Mr. Evarts—I offer those letters?

Judge Neilson—Yes.

Mr. Evarts [reading]:

JANUARY 12.

MY DEAR MRS. TILTON:

The story that Mr. Tilton once lifted me from my bed and carried me screaming to his own, and attempted to violate my person, is a wicked lie.

Yours truly, BESSIE TURNER.

That was the document that was taken from her before sending her away. I offer it in evidence.

Judge Neilson—I rule it out.

Mr. Beach—We withdraw our objection.

Judge Neilson—Mark it.

[Copy letter marked "Exhibit D 10."]

Mr. Evarts [reading]:

BROOKLYN, January 10, 1871.

MY DEAR MRS. TILTON: I want to tell you something. Your mother, Mrs. Morse, has repeatedly attempted to hire me, by offering me dresses and presents, to go to certain persons and tell them stories injurious to the character of your husband. I have been persuaded that the kind attentions shown me by Mr. Tilton for years were dishonorable demonstrations. I never at the time thought that Mr. Tilton's caresses were for such a purpose. I do not want to be made use of by Mrs. Morse, or any one else, to bring trouble on my two best friends, you and your husband. Bye-bye,

BESSIE TURNER.

Mr. Beach—We withdraw our objection to that.

[Copy letter marked "Exhibit D. 11."]

Judge Neilson—The audience will please remain seated until the jury pass out. [To the jury.] Gentlemen, please be in your seats at 2 o'clock.

Mr. Mallison (the Clerk)—This Court will now take a recess until 2 o'clock.

#### BESSIE TURNER'S SCHOOL BILLS.

The Court met at 2 p. m., pursuant to adjournment. Francis D. Moulton was recalled, and the cross-examination resumed.

Mr. Tracy—I call your attention to the writing on that envelope containing exhibits. [Handing witness an envelope.] Do you know that handwriting? A. Yes, Sir.

Q. In whose handwriting is it? A. I think it is Theodore Tilton's.

Mr. Tracy—I desire to put that envelope in evidence.

Judge Neilson—Yes, Sir.

[Marked "Exhibit D 12."]

Q. Do you know when it was you received the first money from Mr. Beecher, after receiving—the first money you received from Mr. Beecher? Do you know when it was? A. The first money that I received?

Q. Yes, Sir. A. I think it is in the statement which I have

handed to you, Sir. I think that was the first money that I received.

Q. Do you desire the account? A. Yes, I would like to see it, please [taking the account]. June 26.

Q. What year? A. 1871.

Q. What amount? A. \$155 85.

Q. Do you know how you received that? A. By check.

Q. Is the check presented to you the check by which that was paid? A. How is that, Sir?

Q. Is that the check received from Mr. Beecher for that amount? A. Yes, Sir; I think that is the check.

Q. How did you receive it? A. I suppose I received it inclosed in an envelope.

Q. Do you know anything about how Mr. Beecher came to send you that check? A. How he came to send it to me?

Q. Yes, Sir. A. Through information from me, I presume, Sir.

Q. Have you any recollection on the subject? A. I recollect that I informed him of the bill for Bessie Turner's schooling, Sir, and I got that check for it.

[Check marked "Exhibit D 13."]

Q. Have you got the bill? A. I think I have; yes, Sir.

Q. Let us have it, please.

The Witness—I think you have those papers, Judge Morris.

Mr. Morris—I will look for it.

Q. Was that the first bill that you have received or known of, for Bessie Turner's schooling? A. Yes, Sir.

Q. From whom was that bill received? A. I think from either Mrs. Tilton directly or the Principal of the school. Mrs. Tilton, I think, sent it to me.

Q. Who is the Principal of the school?

A. C. C. Beatty, I think, is the name. The bills will show, Sir, that are there.

Q. You don't know whether you wrote Mr. Beecher, informing him of that bill, or whether you saw him and told him of it? A. I communicated the fact to him, in some way, Sir.

Q. When did you get the next check? A. The next check seems to be November 15, Sir.

Q. Of what year? A. 1871.

Q. What amount is that? A. November 19, 1871, \$150.

Mr. Beach—What was the date of the first? A. The date of the first was June 26, 1871, \$155 85.

Mr. Tracy—On that day you received \$150 from Mr. Beecher? A. Yes, Sir.

Q. Do you know how you received it? A. By check.

Q. Do you know how you communicated the fact to Mr. Beecher that that amount was required? A. I don't remember, Sir, how. Mrs. Tilton, I think, sent me word that she wanted it for Bessie Turner.

Q. Is that the check that you received from Mr. Beecher for that amount? [Handing witness a check.] A. Yes, Sir.

[Marked, "Exhibit D 14."]

Q. When did you receive the next money from Mr. Beecher? A. According to this account, May 31.

Q. What year? A. 1872.

Q. For what amount? A. \$294 76.

Q. Have you got the bill of that? A. I have got the bill of





*Elizabeth C. Tilton.*



\$219 76 for that, and \$35 I paid to Mrs. Tilton upon her request—I think the note is among my papers—and \$50 I paid to Mrs. Tilton at her request, which makes \$294 76, which was a reimbursement for that amount.

Q. A reimbursement of money which you had previously paid for Mrs. Tilton? A. Yes, Sir, to the order of Rev. A. M. Reid. I got the bills from Mrs. Tilton, I think.

Q. You got those bills from Mrs. Tilton. [To plaintiff's counsel.] Will you give them to us, gentlemen?

Mr. Morris—We will take a memorandum of them and find them as soon as we can. What is it you want now?

Mr. Tracy—All the bills; the bills of Mrs. Tilton, and the bill for \$219.

A. Did you have a bill also for the \$150? A. I don't think there is any bill for \$150. I don't remember that there is. All the bills I have got, Mr. Tracy, on the subject, are there.

Q. And are you able to say that the \$150 in November, 1871, was applied by you to the payment of —, for Bessie Turner? I received from Mrs. Tilton a request for \$150 in August, and paid it.

Q. In August? A. In August, I paid her \$150, and did not get the check to reimburse me for it until November.

Q. Then you mean to say that the \$150 in November was to reimburse you for \$150 advanced to Mrs. Tilton in August? A. That I gave Mrs. Tilton, yes, Sir; my impression is that there is a bill for \$150 there; I won't be certain of it though.

Q. And have you any note or memorandum by which you requested the payment of that \$150 of Mr. Beecher? A. No, Sir.

Q. You don't know how you communicated that request to him? A. No, I do not; I don't recollect.

Q. Is the check now presented to you the check by which you received payment for the \$294 [handing witness a check]? A. I believe it to be; yes, Sir.

Q. What is the date of that, please? A. The date of this check is May 29, 1872; the date that it went on deposit with Woodruff & Robinson was May 31.

[Marked "Exhibit D 15."]

Q. Do you know when you received the next money from Mr. Beecher? A. According to this account, Sir, February 18, 1873.

Q. How much was that? A. \$500.

Q. What was it for? A. It appears here, Sir, that it was paid March the 7th, \$245, to Mr. Beatty, and April 5, Mrs. Tilton the balance of the \$500—\$255.

Q. Have you got the bills of those? A. I have got the bills of \$245, I think.

Q. No bill from Mrs. Tilton? A. For the \$255? No.

Q. Or any note requesting payment? A. No, I don't think I have.

Q. How did you make that payment to Mrs. Tilton? A. I think I made it to her directly.

Q. By check or in currency? A. I think in currency.

Q. Do you recollect? A. It does not state here, so that I don't recollect, Sir.

Q. Have you any recollection—as a matter of recollection have you any recollection on the subject? A. My recollection is that I paid it to Mrs. Tilton directly, in currency, Sir.

Q. Where? A. At her house, I think.

Q. Did you go to her house for that purpose? A. Think I did; yes, Sir.

Q. In pursuance of a note requesting you to call? A. I don't think I received any note, Sir.

Q. How was the fact communicated to you that she wanted money? A. I don't remember, Sir.

Q. Was it by Mr. Tilton? A. I think not, Sir.

Q. Why do you think not? A. Because he did not communicate any such things to me.

Q. Do you know that fact? A. I know that fact.

Q. Then will you tell us how you came to go to the house of Mrs. Tilton to pay that \$255? A. I should say by request of Mrs. Tilton.

Q. Have you any recollection on the subject? A. That is the only recollection I have, Sir. I don't know how I could have done it in any other way.

Q. You have no note? A. No, Sir; I don't think I have. If I have, it is in the—

Q. When did you pay the next money? A. The next money was paid—the next money was received, according to this account, \$5,000—

Q. The next? A. According to this account?

Q. That is another matter. We will not open that at present. Is the note now presented to you in your handwriting [handing witness a paper]? A. Yes Sir.

Q. Did you send it to Mr. Beecher? A. I judge I did, Sir, from this. [Handing the paper back to Mr. Tracy.]

Q. Did he send you— A. Will you let me see the note again. What is the date of it, Mr. Tracy, if you please?

Q. Oct. 21, 1872, I read it. I will hand it back to you, to make sure of that, Sir. A. [Taking the note]. Oct. 21, 1872.

Q. Did you receive the amount from Mr. Tracy therein requested? A. It appears so; yes, Sir.

Q. Allow me to read it. [Taking the note from the witness.] A. I do not see it down so on the account here, and I see a check May 31, 1872, \$294 76.

Mr. Tracy [reading]:

New-York, October 21, 1872.

DEAR SIR: Will you be kind enough to send me your check for \$294 76. Very truly, yours,

FRANCIS D. MOULTON.

May 23, \$219.76, \$25, \$50.

October 21, \$274.71.

[Marked "Exhibit D., 16."]

The Witness—I do not see anything here, Sir, [referring to the account] to correspond with that.

Q. Do you know to what use you applied this money? A. I do not, Sir, except as it is here, \$219 76 to Mr. Reid, and \$25 and \$50 to Mrs. Tilton; that is the way it says on that paper.

Q. That was paid when? A. This was paid May 28th and Oct. 26th.

Mr. Tracy—[To Mr. Morris]—Have you found the bills and accounts?

Mr. Morris—No, Sir; I am looking for them. I have found some of them.

Q. Had you any business transaction yourself with Mr. Beecher which would call for that amount of money? A. I don't recollect that I had Sir, any other.

Q. Can you explain in any way how you came to call on him for that amount of money in October, 1872? A. I can, Sir, from that account. That account is the only guide that I have, Sir. It is a mistake of the bookkeeper, or my own mistake, Sir, if it is a mistake. I don't know anything about it.

Q. Is the paper now handed you the first bill that you received for the expenses of Bessie Turner? [Handing witness a paper.] A. I believe it is; yes, Sir.

Q. And you paid it as above stated? A. Yes, Sir.

Q. How did you pay it? A. Paid it by check.

Q. Whose check? A. Woodruff & Robinson's—\$155 27. There is a note on the inside of this, Mr. Tracy, to Mrs. Tilton. Did you notice it?

Q. I did not. A. There is.

Mr. Fullerton—I ask that those papers be now put in evidence.

Mr. Tracy—I ask to put in the bill at present. We will see what the note is.

The Witness—The note is a part of it.

Mr. Tracy—That may be, but we offer the bill now, and the check by which it was paid. What is the date of that bill? A. It says June, 1871.

Q. What was the time of payment? A. July 19th.

Q. I will pass to the next that seems to be in the order of date. Can you tell whether that is the next bill you received? [Handing witness a paper.] A. No; here is another prior to that.

Mr. Fullerton—Do we understand that the letter accompanying the first bill is—

Mr. Tracy—I will see, Sir, in a moment.

Mr. Evarts—It is not yet in evidence.

Mr. Fullerton—You are bound to put it in evidence.

Mr. Evarts—I think not.

Mr. Tracy—That is a question for the Court.

The Witness—\$219 76, Mr. Tracy, seems to be the next one.

Q. What date is that? A. The date of the bill is January 24th, 1872.

Q. And how is that paid? A. Paid by check, Sir, Woodruff & Robinson's—paid by Woodruff & Robinson's check.

Q. Do you know how you got your pay for that? A. I presume from Mr. Beecher, Sir.

Q. Well, I mean by check, or how was the pay for that bill included in—what Exhibit is it? A. It was intended to be included in the bill for \$294 76, I think.

Q. Then it is included in Mr. Beecher's check, Exhibit No. — what, Mr. Moulton, please? A. This one.

Q. Yes; what is that number? A. "D. 15, F. M. A."

Q. Yes; that is it? A. Yes, Sir.

Q. Now what is the next bill? A. The one that I hold in my hand here, Sir, is June 27th, 1872.

Q. Was that the next bill that you received in order of time? A. I presume it was, Sir.

Q. What was the amount of that bill? A. \$118 12.

Q. And the next one? A. Where is the next one?

[Mr. Tracy passes a paper to the witness.]

The Witness—June, 1873; yes, Sir.

Q. Was that the next bill in order of time? A. I don't remember, Sir, whether it was the next; I think the account will show, won't it, Sir?

Q. I have passed you up now, I believe, all the bills that have been handed up?

Mr. Beach—I guess not.

The Witness—There was one that was sent, like this, and settled the balance for \$300, I think; this is \$245.

Q. What date is that bill? A. This bill is January, 1873.

Q. Was that the next bill that you received in order of time? A. That was the next bill, I suppose, Sir; all I know is by the date, Sir; this is January, 1873, the date of this.

Mr. Beach—You have got one there June, 1873?

The Witness—Yes, Sir.

Mr. Tracy—I will put them in in the order of time. [To the witness]: Do those constitute all the bills that you received for Bessie Turner's schooling? A. They are all that I am in possession of.

Q. Are they all that you know of? A. Yes, Sir; they are all that I know of.

Q. Are they all that you have paid, to your knowledge? A. The account shows all the bills that I paid, Sir; yes, Sir. All the bills that I paid are on that account, if the account is correct.

Q. Are those all the bills you have? A. These are all the bills I have, Sir.

Mr. Shearman [reading]:

*Statement of Account.*

STEUBENVILLE FEMALE SEMINARY.

Miss BESSIE TURNER, To A. M. REID, Dr.

Advanced Items.	For Boarding 9-10 S.....	\$76 50
Books & Sta.....	4 14 Tuition, Prin. Class.....	10 80
Music.....	5 10 Washing.....	7 23
Phys. & Med.....	6 00 Fire (2 mos.).....	4 00
	26 4.50	
Seat in Ch.....	1 00 Music (doub. les.) use Piano.	40 50
	\$16 24	

"Adv. Item"..... 16 24

Am't.....\$155 27

June, 1871.

STEUBENVILLE, June 8th, 1871.

Mrs. TILTON: I send you with this a statement of Miss Turner's bill for the past half-school year.

Bessie is doing very well in her studies, and is quite a favorite with us.

Sometimes she is not very well, but I think, on the whole, her health is improving.

Could you not come and make us a visit and bring Mr. Tilton with you? A little rest would do you both good. Very respectfully yours,  
A. M. REID.

Bessie is making very good progress in music and in some of her common branches, as Arithmetic, Geography and Spelling.

No. 20996.

NEW-YORK, July 19, 1871.

Metropolitan National Bank.—Pay to the order of Rev. C. C. Beatty, one hundred and fifty-five dollars and twenty-seven cents.

\$155 27.

WOODRUFF & ROBINSON.

Indorsed "Charles C. Beatty," "A. M. Reid" and the bank indorsements.

The above bill, accompanying letters and check each marked "Ex. D 17."

# TESTIMONY OF FRANCIS D. MOULTON.

221

Steuenville Female Seminary.—Rev. C. C. Beatty, D. D.,  
LL.D., Superintendent; Rev. A. M. Reid, Ph. D., Principal.  
Miss BESSIE TURNER, Dr.

Music.....	\$5 75	For boarding 7-10 session.....	\$59 50
Stores.....	5 85	Tuition, Middle Class.....	9 80
Music.....	4 50	Washing.....	5 70
Stationery.....	77	(35 ded. 5)	
		Music and use of piano, doub..	80 00
		Heated air.....	2 00
	\$16 87	Advanced as per account on margin.....	16 87
Amount.....			\$123 87
Cr. Received in advance.....			\$123 87
Balance due.....			5 75
Cr. Mistake in pieces of music.....			\$118 12
Am't due.....			

June 27, 1872.

Rec'd Payment, A. M. REID.

Steuenville Female Seminary, July 9, 1872.

Francis D. Moulton, Esq., 49 Remsen-st., Brooklyn.

DEAR SIR:—Yours containing draft \$118 12 for am't of Bessie Turner's bill is received. Please send bill receipted.

Bessie is a good and studious girl and is making good progress in her various studies. Very truly yours, A. M. REID.

Mechanics' National Bank,

83 Wall Street, New-York, July 8, 1872. }

Pay to Rev. A. M. Reid or order, One Hundred Eighteen 12-100 Dollars.

\$118 12.

WOODRUFF & ROBINSON.

Indorsed—"A. M. Reid," and the Bank indorsements.

The above Bill, the accompanying letter and check, each marked "Ex. D. 18."

STEUENVILLE FEMALE SEMINARY. Rev. C. C. BEATTY, D.D.,  
LL.D., Superintendent. Rev. A. M. REID, Ph. D., Principal.  
Miss BESSIE TURNER,

To A. M. REID.

Dr.			
Physicians.....	\$4 00	For boarding two quarters.....	\$85 00
Express.....	1 08	Tuition Pri. and Mld. classes...	12 00
Cash, Store, &c. 18 00		Washing.....	5 78
Books and Sta. 5 10		Music and use of Piano extra.	47 00
Music.....	1 55	Heated air.....	2 00
Seat in church.. 1 50		Boarding, vaca. 9 weeks @ \$4 1/4.	38 25
Reading R.....	50	Advanced as per account on margin.....	29 73
	\$29 73		
Amount.....			\$219 76

Amount.....

Received in advance.....

Balance due.....

Received payment,

January 24, 1874. A. M. REID.

No. 22311. NEW-YORK, May 28, 1872.

Metropolitan National Bank,

Pay to the order of Rev. A. M. Reid Two Hundred Nineteen 76-100 Dollars.

\$219 76.

WOODRUFF & ROBINSON.

Indorsed—"A. M. Reid," and the Bank indorsements.

The above bill and check each marked "Exhibit D. 19."

STEUENVILLE FEMALE SEMINARY, Rev. C. C. Beatty, D.D.  
LL.D., Superintendent. Rev. A. M. Reid, Ph. D., Principal.  
Miss BESSIE TURNER, Dr.

Adv. Rems:		For boarding, two quarters...	\$87 50
Store account....	27 09	Tuition, primary class.....	12 00
Books and sta'ry. 5 50		Washing.....	4 50
Pieces music.....	3 40	Music and use of piano (5 l. a w.).....	62 50
Seat in church....	1 50	Heated air.....	8 50
Reading-room....	50	German.....	10 00
Cash.....	5 00	Vacation, five weeks.....	20 00
	\$43 99	Trip to Frankfort Springs..	7 87
		Advanced as per account on margin.....	42 99
Amount.....			\$250 86
Deduct for loss.....			5 86
Balance due.....			\$245 00

Received payment in full, by check, March 6, 1873,

CHARLES C. BEATTY,

Jan. '73. Per A. M. REID.

Session ends Feb. 3d.

No. 23386.

New-York, March 6, 1873.

Metropolitan National Bank.

Pay to the order of Rev. C. C. Beatty, Two Hundred and Forty-five Dollars.

WOODRUFF & ROBINSON.

Indorsed—"Charles C. Beatty," and the Bank indorsements.

The above bill and check each marked "Ex. D 20."

Miss BESSIE TURNER,

To A. M. REID, Dr.

Advanced.		For Boarding, one session.....	\$87 50
For pew rent....	\$1 50	Tuition, mid. cl.....	14 00
Reading R.....	0 50	Washing.....	4 70
Music.....	4 75	German, one session.....	10 00
Store.....	52 08	Heated air.....	2 50
Sewing.....	5 40	Room alone.....	5 00
Physician.....	0 90	Music M. P. (2 1/4 l.).....	62 50
	\$65 13		

Books and stat'y. 4 75 Advanced Items..... 69 88

Amount..... \$256 08

Cr. by deduction one quarter school bill (\$186.20)..... 46 55

Balance due..... \$209 53

June, 1873,

New-York, December 16, 1873.

Mechanics National Bank.

Pay to the order of A. M. Reid, Two hundred dollars. (\$200.)

WOODRUFF & ROBINSON.

Indorsed—"A. M. Reid," and the Bank indorsements.

The above bill and check each marked "Ex. D. 21."

STEUENVILLE FEMALE SEMINARY, Dec. 6, 1873.

MRS. E. R. TILTON:

Dear Friend: If you could send me the balance due on Bessie Turner's bill for last year before the first of January, it would confer a great favor. A number of large bills will be due at that time which must be met. The balance of the bill was \$209 53. Call the balance \$200.

The Bill was..... \$256 08

Deduct X School bill..... 46 55

Amount..... \$209 53

If you can send me the amount due, it will be a great favor at the present time.

Bessie is now visiting friends in Pittsburgh.

I have tried to get her a place.

I doubt whether she is willing to do such things as she is fitted to do. I do hope she will get along well, and yet I feel anxious about her. I asked her to come back to school awhile if she could not get any other place. With great consideration,

Yours, A. M. REID.

[Marked "Ex. D 22."]

STEUENVILLE SEMINARY, Dec. 18—"73.

F. D. MOULTON, Esq.:

Dear Sir: Yours, containing check for \$200 in full for school bill is rec'd. This pays all her indebtedness to this date.

Very truly yours, A. M. REID.

[Marked "Ex. D 23."]

Mr. Tracy—That terminated the transaction of Bessie Turner's school bills, didn't it? A. I believe it did.

Q. After that you had nothing more to do with her? A. Not after she got through with her schooling.

Mr. Shearman—[Reading.]

TUESDAY, January 18th, 1873.

DEAR FRANCIS: Be kind enough to send me \$50 for Bessie. I want to inclose it in to-morrow's mail.

Yours gratefully,

ELIZABETH.

The Witness—What date is that?

Mr. Shearman—January 18th, 1873.

[Marked "Exhibit D, No. 24."]

Mr. Everts—We ask for any notes that covered these pay-

ments that Mr. Moulton mentioned as having been made to Mrs. Tilton. This last note has been read as one of them. It is the only one which has been handed to us as far as I know.

Mr. Morris—I have handed all that I have found yet.

The Witness—I handed to Judge Morris all that I had, Sir. I don't know whether there are any more or not. If there are, I will try and find them.

Mr. Morris—There is the letter you called for.

Mr. Tracy—Now, you have spoken of three letters, all dated 7th of February, 1871; two by Mr. Beecher, one by Mr. Tilton? A. Two by what, Sir?

Q. Two by Mr. Beecher and one by Mr. Tilton, 7th February, 1871, the three letters? A. That is the letter from Mr. Beecher to me?

Q. Yes, Sir? A. And the letter from Mr. Tilton to me?

Q. Yes, Sir? A. And the letter from Mr. Beecher to Mrs. Tilton?

Q. Those I infer were all written by prearrangement, were they not? A. I don't know of any prearrangement particularly about it.

Mr. Evarts—They are all in evidence.

Mr. Tracy—They are all dated the same day, are they not? A. They are all dated the same day.

Q. Well, they were written in pursuance of a conversation that preceded their writing, were they not? A. I suppose they were written in consequence of conversation that preceded their writing.

Q. And their object was the reconciliation of the parties, the more perfect reconciliation of the parties, was it not? A. Yes, Sir.

Q. Now, after those—the date of those letters, the relations of the parties were friendly, were they not? A. After Feb. 7th?

Q. Yes, Sir. A. Yes, Sir; they were friendly for some time.

Q. For some time? A. Yes, Sir.

#### STORY OF TILTON'S NEWSPAPER REHEARSED.

Q. Soon after that *The Golden Age* was founded, was it not? A. I believe, Sir, in March. March 2d, 1872—1871. March 2d, 1871.

Q. And it had been determined on for some time before—before the first number was issued? A. Yes, Sir.

Q. Now, how long after the separation of Tilton from Bowen was the starting of *The Golden Age* determined on or discussed? A. Well, Sir, I think in the beginning of January—I should think it was January it was talked about.

Q. It began to be talked about in January? A. Either in January or February, Sir; I don't remember which.

Q. And arrangements were set on foot and prosecuted, until it was started and the first number issued? A. Yes, Sir.

Q. Now, will you explain in detail just how that paper was started, and what was its financial basis? A. Financial basis of *The Golden Age*?

Q. Yes, Sir. A. The paper was started from a conversation between Mr. Woodruff and Mr. Tilton.

Q. I don't care to go into the details of that conversation. I want you to go on and show how the money was raised for it,

and who owned it. A. Well, Mr. Woodruff arranged for the money for it, Sir. Mr. Woodruff and Mr. Tilton coöperated in regard to that.

Q. Well, what was done? I don't care what was said, but what was done? A. Certain subscriptions were made—certain subscriptions were made by different parties for the paper.

Q. Well, who were the subscribers for the paper—I mean—subscribers to this fund? A. Theodore Tilton embarked in it all the means that he had—\$4,000, I think—at that time.

Q. How much? A. \$4,000, I think he had at that time—\$4,000 or \$5,000.

Q. Was that money that was deposited with your firm? A. Yes, Sir.

Q. Then who else subscribed? A. Mr. Mason, I think, Mr. Woodruff—

Q. How much did Mr. Mason subscribe? A. I really don't remember, Sir. I think it was \$3,000; \$1,500 or \$3,000.

Q. What Mason? A. John W. Mason.

Q. What is his business? A. With the firm of Samuel Thompson's Nephew.

Q. Who else subscribed? A. Jackson S. Schultz, and a Mr. Southwick.

Q. How much did they respectively subscribe? A. Well, I forget really how much. I don't know at the time—I think it was \$1,500 apiece, or \$750 apiece.

Q. One or the other. This Mr. Southwick is Mr. Schultz's partner? A. Yes, sir.

Q. Who else subscribed? A. Mr. Woodruff.

Q. How much did he subscribe? A. Mr. Robinson—Mr. Woodruff subscribed \$3,000, if I remember rightly, and I subscribed \$3,000, and Mr. Robinson subscribed a thousand.

Q. Well? A. I believe those were all, all that I recollect at present.

Q. Can you state here the aggregate of those subscriptions if you can? A. I have not got it with me—

Q. Now, what were the terms of those subscriptions; it was not a stock enterprise was it? A. It was not an incorporation as I understood it; no, it was not an incorporation.

Q. What were the terms of that subscription? A. The terms of the subscription were, that the subscription should be paid and Mr. Tilton should give his notes, I believe, for the amount.

Q. Payable to these subscribers? A. Payable to those subscribers.

Q. Payable when and out of what fund? A. Payable out of—payable by Theodore Tilton.

Q. Well, absolutely? A. I cannot give you the facts about that, Mr. Tracy, because I don't know them exactly enough to give them, but Mr. Woodruff can give them for you. If I knew all about it, Sir, I would.

Q. Did Mr. Tilton give his notes for the subscriptions? A. Mr. Tilton drew the money in proportion.

Q. Did he give the subscribers his notes? A. Yes, Sir, he gave—I believe he did.

Q. And then took from them their subscriptions as they were paid in? Now, how were those subscriptions to be paid in? A. Paid in when they were wanted—paid in when they were wanted by Theodore Tilton.



Q. By yourself as one—yes, Sir. Now, after the 2d of March, Tilton was engaged, I suppose, continuously on *The Golden Age*, wasn't he, for some considerable period of time? A. I think he was; yes, Sir.

Q. Giving all his time and thought to that paper? A. Yes, I suppose so.

Q. And did you meet Mr. Beecher frequently after that? A. I met Mr. Beecher during 1871, after the establishment of *The Golden Age*.

Q. Frequently, did you not? A. Yes, Sir, frequently.

Q. And did you see Mr. Beecher and Tilton together frequently? A. Not very frequently; no, Sir.

Q. Well, did you occasionally? A. Once in awhile.

Q. Where, and under what circumstances? A. I think they generally met at my house, Sir.

Q. How often did they meet at your house, should you say? A. Not very often, Sir.

Q. What was your habit about going to Mr. Beecher's house? Mr. Beach—At that time?

Mr. Tracy—Yes, Sir.

The Witness—Going to whose house?

Q. Mr. Beecher's? A. I didn't go there very frequently.

Q. In 1871? A. No, Sir.

Q. How often was Mr. Beecher at your house? A. Well, he was there quite frequently, Sir.

Q. Did he see your family? A. He saw my wife sometimes.

Q. Well, frequently dine with you or take a meal with you? A. No, Sir, not very.

Q. Not very? A. No, Sir.

Q. But sometimes? A. I don't remember that he ever took any; I don't think that he took meals with us over three or four times.

Q. Well, was Tilton present on those occasions? A. I remember one occasion when Tilton was present.

Q. Not more than one? A. Not at the table; no, Sir.

Q. Was it at dinner? A. It was at dinner, yes, Sir.

Q. Did you have other company present? A. Yes, Sir.

Q. Did you ever see Mr. Beecher at Tilton's house after that?

Mr. Beach—After what?

Mr. Tracy—After the starting of *The Golden Age*; that is the period of which I am now inquiring? A. Yes, Sir; I was at Tilton's house with Mr. Beecher and Mrs. Woodhull after that.

Q. Yes; when was that? A. It was in 1871, I think.

Q. What time? A. I don't remember what time it was in 1871.

Q. Well, about what time? A. It was before the publication, I think, of the Woodhull biography.

Q. Before that? A. Yes, Sir.

Q. What time of day did you see them there? A. My recollection is that it was in the afternoon.

Q. How long did they stay there? A. I guess, perhaps, they were there half an hour or an hour.

Q. Tilton present? A. I believe he was.

Q. Well, is that the only occasion you ever saw Mr. Beecher at Tilton's house, after the starting of *The Golden Age*?

A. Yes, Sir. I think it is the only occasion. I think that was the only occasion, Sir.

Q. Where else have you seen them together? A. I have seen them together at my house in—

Q. In 1871, I mean? A. In the year 1871?

Q. Yes, Sir; I will confine it prior to the writing and publishing of the life, the biography, of Mrs. Woodhull, in 1871; before that publication did you see them together at your house?

Mr. Morris—When was that publication?

Mr. Tracy—The witness will tell us.

Q. When was it? [To the witness.] A. My impression is, Sir, it was in the latter part of 1871.

Q. Wasn't it in September, 1870? A. Not 1870—1871 you mean.

Q. In 1871? A. I don't remember whether it was in September or not. I think it was though.

Q. September? A. I think it was.

Q. Wasn't it issued on the 14th of September? A. I don't recollect.

Q. Well, it was about that time, anyway? A. It was about that time, I should think.

Q. Now, between the starting of *The Golden Age* and that period, how often should you say you had seen Mr. Beecher and Mr. Tilton at your house together? A. Oh, not often, Sir; I don't think over three or four times.

Q. Had you seen them elsewhere together besides at your house and Tilton's house? A. I think on February 27th—somewhere around that—I went over with Mr. Beecher to New York, to Mr. Bonner's office, on some business, and Mr. Beecher then went to *The Golden Age* office, and my impression is that I went from Mr. Bonner's to *The Golden Age* office, and found Mr. Tilton there, Mr. Beecher there.

Q. With Tilton? A. For a moment; just for a moment, yes, Sir.

Q. With Tilton? A. Yes, sir, I think he was there for a moment with him.

Q. Did you ever see him at *The Golden Age* office on any other occasion? A. No, not that I remember.

Q. Did you ever see them walking together in the street on any occasion? A. No.

Q. What is the answer? A. No, Sir.

Q. Do you remember of being in company with Mr. Tilton and Mr. Beecher at a yacht race—regatta? A. Yes, Sir; I don't think that was in 1871. I think there is a letter, Sir, among the papers that will fix the date.

Q. Well, when was it? Now that I am on that transaction I will fix the date of it. When was it? A. Well, I really don't remember, Sir; it was not in 1871.

Q. Well, was it after 1871? A. I think so. I can fix the date precisely, Sir, by the paper.

Q. If you can, we would rather have it fixed now. A. I cannot fix it from my memory.

Q. No; if you have got any paper in your possession that will enable you to fix the date of it, fix it right here. A. I think I remember reading, among those papers, a letter from Mr. Beecher accepting an invitation to go with Horace Greeley; it was during Horace Greeley's life.

Mr. Evarts—Have you got a letter from Mr. Beecher accepting an invitation to go on this yacht race?

Mr. Morris—I don't remember ever seeing that letter.

Mr. Evarts—Mr. Moulton says it is among your papers.

Mr. Morris—I think not; I will look.

Q. Well, what was the regatta—that was Ashbury's yacht race, wasn't it; the English regatta? A. I think it was; I think it was between the Sappho and the Livonia.

Mr. Evarts—The English yacht? A. Yes, I believe so.

Q. Now, can't you fix the year of that?

Mr. Morris—We have found the letter. [Letter handed to witness.]

Mr. Evarts—That is to you, Mr. Moulton?

Mr. Beach—I do not perceive the materiality of that letter.

Mr. Tracy—Only to fix the date? A. Yes, October 30th, '71, this seems to be dated, Sir.

Mr. Evarts—That is the paper? A. I think this is it.

Q. That is the paper you referred to that fixes the date? A. I think this is the one, Sir; that is the one I referred to.

Q. Well, that refreshes your recollection as to the time? A. Yes, Sir.

Q. Of the yacht race? A. Yes, Sir; I think that was the yacht race referred to.

Q. And that date is Oct. 30th, 1871? A. That was either the—Mr. Tilton was along, I believe, that day; we either went to a yacht race, or went down to look at the warehouses along the shore; I think it was a yacht race.

Mr. Tracy—Now, who went? Were you three on that yacht race? A. I believe we were; yes, Sir.

Q. And companions together on that day? A. Well, I believe that Mr. Tilton talked. I think Oliver Johnson was along that day, if it is the day that I remember, and Mr. Tilton talked with Oliver Johnson chiefly that day, and Mr. Beecher and myself were together a good deal.

Q. Well, were not you all four together? A. I don't recollect whether we were all four together or not; I guess very likely we were.

Q. Do you know how you went to the yacht? A. How we went to the yacht?

Mr. Tracy—Yes. A. Went on a steam-tug.

Q. How did you go to the steam-tug? Go in a carriage together? A. No; I think not; I think we went separately; I went for some of the guests; I believe I stopped for Horace Greeley, and did not find him that day. On the whole I guess Mr. Greeley was not along, after all.

Q. Who invited Mr. Beecher and Mr. Tilton to go on that race? A. I did.

Q. You invited them both? A. Yes, Sir.

Q. And did you invite Mr. Greeley also? A. Yes, Sir.

Q. Did Mr. Greeley go? A. My impression is, Sir, that I missed him by a minute, and he did not go.

Q. And he did not go? A. Yes, Sir.

Q. Was not long? A. I believe not.

Q. How long were you on that regatta? A. May be three or four hours.

Q. Did you dine on board the yacht? A. On board the yacht? No, Sir.

Q. On board the steamer? A. I don't know; I don't remember whether we had any refreshments on board or not, Sir; I think not.

Q. Well, now, I call your attention to another occasion when you went down on some vessel viewing the warehouses; do you remember that? A. I may confound the two, Sir; I do not know:

Q. How? A. I may confound the two; I think it was on the same occasion; there may have been two occasions, and there may have been only one.

Q. If there were two occasions, were Beecher and Tilton together on the two occasions? A. I do not recollect, really, Sir, whether they were or not.

Q. Were they together on the warehouse occasion? A. I really do not recollect; they were together on one occasion that I remember; that is all that I can recollect about.

Q. That is all you remember about? A. Yes, Sir.

Q. Well, *The Golden Age* started prosperously, didn't it?

Judge Neilson—State your impression, as far as you could judge? A. My impression is that it was prosperous. I have a letter from Moses Colt Tyler that I found among my papers—

Q. Well, we are asking you now—

Judge Neilson—He answered that he thought it started prosperously.

The Witness—I am giving my authority for the thought.

Mr. Tracy—Well, we will be contented with your thought.

The Witness—Thank you, Sir.

Q. Well, I will recur to that letter. Now, can you say, on reading that, whether it was the warehouse or the yacht race that it refers to? A. Well, I really cannot—My impression is that it was the yacht race.

Q. It was one or the other, or else both were included at the same time? A. It was one or the other; at all events, there was one occasion, I believe, when Mr. Tilton and Mr. Beecher were together on a—

Q. Do you remember that on coming from the warehouse excursion Mr. Beecher and Mr. Tilton went to your house and dined together? A. I do not recollect that.

Q. Don't recollect whether they did or not? A. No; haven't any recollection about it.

Q. You have no recollection as to how you returned from that excursion—you don't remember whether they did or not? A. I remember that, after the yacht race—I recollect that, after the yacht race, Mr. Beecher and myself were at our house together.

Q. Beecher and yourself? A. Yes, Sir.

Q. Wasn't Tilton along? A. I don't recollect.

Q. Don't recollect whether he was or not? A. I do not; no, Sir.

Q. Now, the publication of the life of Victoria Woodhull by Theodore Tilton was in September, '70? A. No; I did not say that.

Q. '71—Was that published in *The Golden Age*? A. In *The Golden Age*? I think not, Sir.

Q. Wasn't it published in the supplement to *The Golden Age*? A. No, Sir.



Q. And then put into a tract—one of *The Golden Age* tracts?

A. I don't think it was ever published in *The Golden Age*, Sir.

Q. Have you got a copy of that life? A. I do not think I have.

Mr. Evarts—[to plaintiff's counsel]—We gave you notice to produce it, if you had any such copy.

Mr. Morris—It does not appear that the plaintiff has it.

Mr. Evarts—We would like to have it, if you have got it.

Mr. Morris—We have not got it.

Mr. Evarts—We gave them notice to produce the composition of that life, and they say that they have not got it, so we may have to have a copy of it.

Judge Neilson—The manuscript, I suppose, passed to the printer; it is not often reclaimed.

Mr. Evarts—Very likely; of course.

Mr. Tracy—How large a pamphlet was that? A. A small pamphlet, as I recollect; but I did not read it all.

Q. You read the most of it? A. No, I don't think I did.

Judge Neilson—He answered the other day, I think,

Mr. Tracy—No, not the "Life;" that was another composition.

The Witness—Is there anything to be done with this letter that I hold?

Mr. Tracy—No; I think not. Now, was it after the publication of the "Life of Victoria Woodhull" that this change, that you have already spoken of in your evidence, was made in the subscription to *The Golden Age*? A. I think it was after the publication of the "Life of Victoria Woodhull."

Q. How long after? A. I don't exactly recollect. Sir.

Q. Well, can't you approximate to it? A. No, I cannot; I shall be able to, I think, before I finish my evidence; I had a letter that fixed the date for which I have made a search and have not found.

Q. Now state in detail what that change was that occurred in *The Golden Age* after the publication of that Life? A. Mr. Woodruff thought best that Mr.—

Q. Just state what was done; I don't care what you thought, or—

Judge Neilson—So far as you know what was done. You told us the other day as to your own. A. When it came to payment of the subscription—of the last half of the subscription. Mr. Woodruff thought it better that Mr. Woodruff—that Mr. Tilton should have *The Golden Age* as his own property—become sole proprietor of it; and so the notes were surrendered to Mr. Tilton. When that was, Sir, I don't remember.

Q. And what was received by the subscribers for the half of the subscription already paid in? A. Their notes, I believe—What was received, what?

Q. What did the subscribers receive from Mr. Tilton for the half of the subscription which they had already paid in? A. Nothing that I know of.

Q. They gave that to him? A. Yes, Sir.

Q. In other words, they gave him what they had already paid in, in consideration of his releasing them from the other half of their subscriptions; that was it, was it not? A. He did release them from the other half of their subscriptions.

Q. Well, the one was the consideration for the other, wasn't it? A. I suppose it was.

Q. And that was done by all the subscribers, including yourself? A. Yes, Sir.

Q. Now, are you not able to approximate to the time when that occurred? A. I really am not, Mr. Tracy; I hope to fix it for you before my testimony is concluded.

Q. About how soon after the publication was it? A. I really don't remember, Sir; if I recollected anything about it I would state it freely.

Q. Can you tell whether it was before or after the Steinway Hall meeting? A. I don't recollect that.

Q. You say you got a letter that will enable you to fix that date? A. I have had such a letter; yes, Sir.

Mr. Tracy—We will thank you to refresh your memory.

The Witness—Or I have been informed of such a letter—I have seen such a letter.

Mr. Shearman—We have subpoenaed the plaintiff in this case (*duces tecum*), to produce the original manuscript of the Life of Mrs. Woodhull, and also a printed copy. We have also given him notice to produce—

Judge Neilson—I don't think you can compel him to bring a printed copy. You can buy that, perhaps, at the store. [Laughter.]

Mr. Tracy—Unfortunately, we cannot, your Honor.

Mr. Evarts—It is not a question arising as to whether we can or cannot, at present. We have taken the proper steps to have him do it, and the question is whether he brings it or not.

Mr. Fullerton—He cannot—

Mr. Evarts—Not the printed copy.

Mr. Fullerton—We haven't got any copy.

Mr. Evarts—Then we shall have to refer to other evidence.

Mr. Tracy—Well, you remember that such a Life was issued as one of *The Golden Age* tracts, do you not?

Mr. Morris—He has not said so.

Judge Neilson—He has said he does not remember that it was.

Mr. Tracy—That it was.

Mr. Pryor—That it was not.

Judge Neilson—Well, what did you say? A. He asked me if it was—

Mr. Beach—Well, I don't see the materiality of that inquiry.

Mr. Tracy—Was, or was not the Life of Victoria Woodhull, written by Theodore Tilton, issued as one of *The Golden Age* tracts?

Mr. Beach—I object to that question.

Judge Neilson—I think he has answered. Let him answer. Do you know whether it was or not? A. It was issued in a tract, Sir. I don't recollect whether it was one of *The Golden Age* Tracts or not.

Q. There was a series called "*Golden Age Tracts*," was there not? A. I don't know that there was a series. There were some *Golden Age* tracts.

Q. Numbered "Tract 1," "2," "3," and so on? A. I don't recollect that.

Q. Don't recollect that? A. No, Sir.

Q. Well, that was a *Golden Age* tract, wasn't it; and issued from *The Golden Age* office. A. I don't know that it was.

Q. The Life of Victoria Woodhull?

Mr. Fullerton—He has said that.

Judge Neilson—He has said that he knows that it was issued in *The Golden Age* office; he does not know that it was one of *The Golden Age* tracts.

Mr. Tracy—Now, wasn't the fact of the issuing of that tract—the publication of the Life of Victoria Woodhull—very injurious to *The Golden Age*?

[Objected to.]

Judge Neilson—Ruled out, Sir.

Q. Wasn't it the occasion of this transaction by which the subscribers asked, or were relieved from their subscription, in consideration of their surrendering the notes.

Mr. Fullerton—That is objected to.

Judge Neilson—I think he can answer that, so far as he himself is concerned, but not as to the others.

Mr. Morris—That is not the question.

Judge Neilson—How was it as to you personally?

Mr. Beach—Well, that is immaterial. How is it material?

Judge Neilson—I don't know. I only assume that it is possibly material in some view.

Mr. Beach—Well, when the question is objected to, your Honor should see the materiality of it.

Judge Neilson—I don't see the materiality of it.

Mr. Beach—Or see the mode in which it can be connected with the trial as material. What the publication of the Life of Victoria Woodhull has to do with the inquiry now before your Honor, we are not able to perceive.

Mr. Tracy—I will ask you one other question.

Mr. Evarts—The Judge says he may answer this question.

Judge Neilson—I rule that he may answer as far as he is personally concerned, assuming that he cannot answer as to the motives of the other persons. I take an exception to that.

Mr. Evarts—Well, let us have your answer? A. It did not have any effect upon me, Sir.

Mr. Tracy—That was not the occasion of it, then, so far as you were concerned? A. No, Sir.

Judge Neilson—You lose time by repeating; that don't help it.

Mr. Tracy—His answer was that it did not have any effect upon him.

Judge Neilson—Well, that is conclusive; that ends the inquiry; go on.

Mr. Tracy—I ask another question. What was the cause of your retiring or surrendering your subscription and giving back the note?

Mr. Fullerton—I object to it.

Mr. Evarts—Why?

Mr. Fullerton—Why, because it is not of importance.

Judge Neilson—I think he may answer it.

Mr. Fullerton—It does seem to me there ought to be some appearance—

Judge Neilson—I think there ought to be some limit, but still I think he may answer that.

Mr. Fullerton—Would your Honor ask the counsel to point out some application that can be made of that testimony to his case, if they know: if they don't know, why that will ex-

cuse them. It certainly seems to me as irrelevant as anything can possibly be.

Judge Neilson—Mr. Tracy, in view of the objection, state how you deem it material, please?

Mr. Tracy—I deem it material to show, first, the relations of this witness to the plaintiff; to show his knowledge of the disaster that came upon the plaintiff at this time, and to show the materiality of this fact in regard to another piece of evidence which the plaintiff has introduced here preliminary to a question which I am about to ask the witness.

Judge Neilson—Well, pass to that question, perhaps that will enlighten us.

Mr. Evarts—Does your Honor rule out the question?

Judge Neilson—At present, as immaterial.

Mr. Evarts—Then, your Honor, we except to the ruling.

Mr. Tracy—Do you remember the publication of Mr. Tilton, called "Sir Marmaduke's Musings?" A. Yes, Sir.

Q. When was that published—the poem? A. I forget the date, just at the moment.

Q. Can't you fix about the time? A. It is in evidence, the paper, Sir; I don't remember the date; there are too many dates.

Mr. Evarts—Perhaps the date has been given in evidence already.

The Witness—Yes, the date is there.

Judge Neilson—The paper—but the most difficult thing, of course, for the witness to remember, is dates.

Mr. Tracy—It is November 1st, I believe.

Judge Neilson—It is in the book, isn't it?

Mr. Tracy—November 1st, 1871.

Mr. Tracy—Now, was it published about that time, according to your recollection? A. I don't remember the date; I saw it about the time it was published, whatever that date was.

Q. Well, do you recollect now that it was in the Fall of 1871, about November? A. I don't recollect that, Sir; but I assume that to be the date.

#### MORE ABOUT THE WOODHULL BIOGRAPHY.

Q. Well, was it after the publication of the Life of Victoria Woodhull? A. I don't recollect that.

Q. Was it after this settlement that was made in regard to the subscriptions for *The Golden Age*? A. I don't recollect that.

Q. Now, Mr. Moulton, don't you know the fact from Mr. Tilton that the publication of the Life of Victoria Woodhull was disastrous to him and his enterprise—his newspaper enterprise? A. Will you repeat the question?

Q. Don't you know from Mr. Tilton that the publication of the Life of Victoria Woodhull, in September, 1871, was disastrous to him and his newspaper enterprise? A. He has never told me that.

Q. He has never told you that? A. No, Sir.

Q. Has he ever talked with you on the subject of the effect that the publication of that Life had upon the prosperity of *The Golden Age*? A. I talked with him about it; he didn't with me at the time.

Q. You talked with him but he did not with you? A. Yes, Sir.

Q. Tell us what you talked to him? A. I told him that I thought he ought not to have published it.

Q. Well, why? A. Well, I told him that it seemed—so many statements in it seemed extravagant to me—many statements in it seemed extravagant; I did not think it was a necessary work to do; and his reply to that—his reply to that—when I said that he didn't talk to me, I mean that he didn't open the subject; I opened the subject of the conversation; his reply to me was, that he did it as a friendly act to Mrs. Woodruff from the manuscripts furnished him by her husband; that it was simply a revision by him, but that—

Mr. Tracy—Well, now, Mr. Moulton—

Mr. Beach (to Mr. Tracy)—Wait! wait! wait!

Judge Neilson—Let him state the conversation, please.

Mr. Tracy—I did not ask him for the conversation.

Judge Neilson—Go on, Sir.

Mr. Evarts—Let us get it.

The Witness—That it was simply a revision of the manuscript of—of her husband, and that he thought that people would detect his handiwork in it, and therefore he thought he would put his name to it, and I told him that I didn't think that that was a very good reason. He said he would take the responsibility of it, and that was the sum and substance of it, with the exception—and he said it was a friendly act; he said it was a friendly act, and right, in the interest of the repression of the scandal against Mr. Beecher, his wife, and himself; it was in the interest of his family and Mr. Beecher that he had done it, and if he had made a mistake, why that was all there was of it.

Q. Anything more? A. No; I don't remember anything more.

Q. Well now, do you recollect that he ever talked to you about it? A. I have just given—

Q. Do you now? A. I have just given the conversation.

Q. You now do recollect that he talked with you on the subject of that life? A. Yes, Sir.

Q. Now, did he talk to you about the effect that it had on him and the effect that it had on his newspaper? A. No.

Q. He did not? A. No.

Q. Did you talk to him on that subject? A. I told him that I thought the effect of it would be disastrous upon the paper.

Q. What did he say to that? A. I don't recollect his reply to that.

Q. Did he make any at all? A. He may have made it, but I do not recollect it, Sir.

Q. Do you know, as a matter of fact, what the effect was upon the paper?

Mr. Beach—No, as a matter of fact?

Mr. Tracy—Yes, sir; that is the question. Do you know, as a matter of fact, what the effect of that publication was upon the paper?

Mr. Beach—I understand this question, if your Honor please, not as calling for a judgment or opinion of the witness, but that he is asked personal knowledge of a fact of that character.

Mr. Evarts—It is not necessary to explain; we would like to have an answer.

Mr. Beach—It is; yes, Sir. I want the witness to under-

stand what it calls for. I am regular and I am in order; and I am not to be subdued by this objection. I submit that it is the duty of the Court to instruct a witness when requested by counsel that the interrogatory put calls for his personal knowledge of the fact as to the effect produced by that publication on *The Golden Age*.

Judge Neilson—I think that is so.

Mr. Evarts—I submit, if your Honor please, it is time enough to appeal to the Court to take a witness from the hands of the cross-examining counsel to explain to him when the witness feels the need of explanation, and not when the counsel does. [Laughter.]

Mr. Beach—It is not when the counsel feels or the witness feels. If the question was intended, or is understood, as calling for the opinion or judgment of the witness, then, of course, we shall object to it, and it is only for the purpose of having the question understood by your Honor and the witness that the suggestion is made.

Mr. Evarts—Now we would like to have an answer.

[Question read by THE TRIBUNE stenographer.] The Witness—Of what? That was not all the question, was it?

Mr. Tracy—It seems so. That is what he has read to you.

Judge Neilson—It is a peculiar question and requires some consideration.

The Witness—Will you read the question again, Mr. Stenographer?

[Question again read.]

The Witness—Of what?

Mr. Tracy—Of the publication? A. Of the publication? I don't know, as a matter of fact.

Q. What it was? A. No.

Q. You were a subscriber at the time? A. I took the paper at the time.

Q. I mean a subscriber to the fund at that time? A. Subscriber to the fund? Yes, Sir.

Q. Interested in that enterprise? A. Yes, Sir.

Q. By your subscription? A. Yes, Sir.

Q. And how long did you remain so interested after that publication? A. I don't recollect, Sir.

Judge Neilson—We have had that; we have been over that.

Mr. Tracy—I beg your Honor's pardon, we have not had the time.

Mr. Beach—He told you repeatedly that he could not tell you the time.

Q. Did you remain a week after that? A. I don't recollect, Sir, how long I remained.

Q. Will you swear that you remained a week after that publication? A. I cannot fix the date at all; I cannot recollect anything about it.

Q. Did you go out at the same time the other people did? A. I did.

Q. Now, what was the occasion of your going out? A. To give to Mr. Tilton, in accordance with Mr. Woodruff's view of the case, the sole proprietorship of the paper. As far as I am concerned, that was the reason.

Q. And upon what was that resolution taken to give to Mr.

Tilton the amount of subscription already paid into that paper?  
A. Will you ask the question again?

Q. Upon what was that resolution to give to Mr. Tilton the amount of subscriptions already paid in in that paper taken?

Mr. Morris—He has answered that question two or three times.

Mr. Tracy—The question has not been put before. He may have answered it.

Mr. Morris—Yes, he has. He said it was the suggestion—

Mr. Evarts—Now, we don't want that.

Judge Neilson—Will the audience please be quiet one moment. Excuse me, Mr. Evarts, I understand this perfectly. I don't need any instructions about it.

Mr. Evarts—If your Honor please—

Judge Neilson—You generally rise for the purpose of instructing the Court. I don't happen just now to need that.

Mr. Evarts—I don't rise for that purpose now, and I don't know that I ever did, except to call the Court's attention to what I supposed—

Judge Neilson—I have had the pleasure to so understand it when you did arise before; I think the answer to this question may be given, although it has been answered already.

[Question read by THE TRIBUNE stenographer.]

The Witness—Mr. Woodruff said that he thought it would be better for Theodore Tilton to be sole proprietor of the paper; so I—

Q. Upon what occasion did he say that? What was the occasion of his saying that, do you know? A. I suppose it was at a time when the paper needed the further subscriptions that were called for.

Q. Called for the further subscription? A. I think it was.

Q. And the subscribers were not going to pay them? A. I don't know anything about that.

Q. How would it have been with yours? A. I should have paid mine.

Q. If the others had not? A. If the others had not.

Q. Why didn't you? A. For the reason that I have stated.

Q. Was it not the suggestion of Mr. Woodruff that the subscribers should not pay any more to that enterprise? A. I didn't so understand it.

Q. You did not so understand it? A. No, Sir; not to me.

Q. That was the effect of the suggestion when it was carried out.

Judge Neilson—That we know. We don't need to illustrate that.

Q. You say the object of this was to make Mr. Tilton sole proprietor of that paper. Was he not the sole proprietor of it already? A. I didn't consider him the sole proprietor of it.

Q. You did not? A. No, Sir.

Q. In whose name was that property? A. Theodore Tilton's, I suppose.

Q. Who else had any interest in its profits but Theodore Tilton? A. I don't know that anybody did.

Q. Or its losses? A. I should think that the subscribers did. If *The Golden Age* was a success I had that interest in it, as far as I was concerned.

Q. Had you had the success of Mr. Tilton's ability to pay? A. No, Sir, the success of the paper.

Q. Do you say that your subscription—that Theodore Tilton's notes were payable on condition that the paper was a success? A. Yes, sir; I think that was the phraseology, as far as I recollect.

Judge Neilson—That fact you stated before.

Mr. Tracy—I had reference to my cross-examination.

Judge Neilson—The comment was unnecessary. Interrogate the witness, but don't make observations. I take it that you, as a lawyer, would very likely think, in equity, that persons who did contribute to this fund would have an equitable interest in that establishment—could some day close it up—and upon this frame a bill to that effect, but this witness could not tell you how it is.

Mr. Evarts—It is purely a question of fact; and not of law. The question is whether they had any participation in the profits of this enterprise or its losses.

Judge Neilson—They had none except their money.

Mr. Evarts—I believe it is very clear that if the affair was not prosperous Mr. Tilton would not be able to pay them. I suppose it is very clear. The Court, I think, has got it wrong.

Judge Neilson—Go on, Mr. Tracy.

Q. Will you tell us on what conditions those notes were payable, or to be payable? A. Notes that Mr. Tilton gave to the subscribers, you mean?

Q. Yes, Sir. A. I think payable on the success of *The Golden Age*.

Q. Who was to determine that question?

Mr. Beach—I object to the form of that question.

Judge Neilson—[To the witness.]—Is the form of the note expressed?

The Witness—I don't recollect the precise expression, your Honor.

Mr. Tracy—That was the substance of it? A. Yes, Sir.

Q. These notes were not to be paid except in case *The Golden Age* was a success?

Mr. Beach—That is a matter of reason.

Q. Was not that the fact?

Mr. Fullerton—That has been stated over and over again.

Judge Neilson—[To the witness.] Is that so, that the notes were not to be paid except in case *The Golden Age* was a success? A. Unless *The Golden Age* was a success they were not to be payable.

Q. That you so understood? A. Yes, Sir.

Mr. Tracy—Now, he has answered the question.

Mr. Morris—He answered it before four or five times.

Mr. Tracy—Did you ever talk with Theodore Tilton about the publication of the poem entitled "Sir Marmaduke's Musings," before it was published? Did you know it until you read it in the publication? A. I think not.

Q. How long after the publication of this *Life* was the Steinway Hall meeting? A. I don't recollect the date of the Steinway Hall meeting.

Q. It is said to be November 20th. Do you recollect it was in November? A. November 24th of what year?

Q. 1871? A. I think it was in November, 1871.

Q. You had made the acquaintance of Victoria Woodhull some time in the Spring previous, you say? A. Yes, Sir.

Q. How often had you seen her from the Spring until the Steinway Hall meeting?

Mr. Beach—I think Judge Porter went over that question.

Judge Neilson—I think he did, too.

Mr. Tracy—If he asked that question, I will not ask it again.

Mr. Beach—He asked numerous questions on that subject.

Mr. Tracy—He did ask some questions on that subject—some general questions.

Mr. Beach—They were very specific questions. I think you are incorrect. If you are going to abandon that line of examination, very well; but if not, I insist it is a mere repetition.

Judge Neilson—Counsel ought not to repeat, and I trust he will not repeat, if he can avoid it.

Q. How often was Victoria Woodhull at your house during the year 1871? A. Well, perhaps four or five times.

Q. How often did she dine at your house?

Mr. Fullerton—This has all been gone over.

Judge Neilson—Not as to dining, I guess.

Mr. Fullerton—Yes, your Honor; it has been fully gone over.

By Judge Neilson—Do you recollect how often she dined with you, presuming she did dine with you?

Mr. Tracy—I think he said once to me that she did dine with him.

Judge Neilson—How often did she dine with you? A. I don't recollect how many times; I guess two or three times.

Mr. Tracy—Can you state more definitely than that? A. No, Sir.

Q. Did she meet your wife when she came there? A. Yes, she did.

Q. Did you urge your wife to make her acquaintance and become a friend of hers? A. I did become friendly to her.

Q. How often was she there in 1872 before you parted company with her? A. I don't recollect.

Q. Well, can you approximate to it? A. No, Sir.

Q. Can you not tell about how often she was there in 1872?

A. No, Sir, I don't recollect that she was there in 1872.

Q. Do you mean to say you don't recollect whether she was there at all? A. In 1872?

Q. I am content with that answer if that is your answer. When did you see her last? A. I forget the date exactly. It was in the Spring of 1872, I think.

Q. The Spring of 1872? A. I think so; yes, Sir.

Q. Can you fix about the date? A. I think it was in April; I won't be certain about that. I answered Judge Porter that question.

Q. Did you see her last in company with Theodore Tilton? A. I think Theodore Tilton was with me on that occasion.

Mr. Morris—Judge Porter went minutely over all this.

The Witness—Yes, Sir, he did.

Mr. Morris—All these questions were asked over and over again. Is it in order that they may come in to-morrow and go over this again, and so continue it?

Mr. Tracy—I am not repeating questions I asked.

Mr. Morris—Yes, but you are repeating questions your asso-

ciate asked; the same questions and the same subject were gone over minutely by Judge Porter.

Judge Neilson—[To Mr. Tracy]: You are about through with that?

Mr. Tracy—I am not, Sir.

Mr. Morris—We object. We say this subject was gone over minutely by Judge Porter, and exhausted by him.

Mr. Beach—Not only that, but there was an offensive particularity in the questions put by Judge Porter on this subject, conveying the most indecorous implication.

Mr. Evarts—That does not bear on this question.

Mr. Beach—Yes, Sir; it does.

Mr. Fullerton—You ought to have a suggestion on this subject, whether you are reexamining him on the subject Judge Porter went over.

Mr. Morris—We appeal to the stenographer's minutes, and say he is going over the same ground that has been gone over already.

Judge Neilson—Mr. Shearman, have you the book here?

Mr. Evarts—Yes, Sir; we will look.

Mr. Tracy—The question is whether he parted with her in company with Theodore Tilton.

Judge Neilson—That mere circumstance would not prevent you from reiterating on the general subject.

Mr. Tracy—Judge Porter didn't examine in detail on this subject any more than he did on any other that I am aware of.

Judge Neilson—You have the report before you. Can you find it?

Mr. Shearman—It will take some time?

Mr. Beach—Yes, Sir, it will take some time; it is quite protracted.

Mr. Shearman—We will state the substance of it.

Mr. Fullerton—I can state it from memory.

Mr. Evarts—We will look at it to see?

Judge Neilson—Gen. Tracy, pass that subject, and we will look at that in the mean time.

Mr. Beach—Well, perhaps the next question will not be objectionable.

Mr. Shearman—Mr. Tracy suggests to me it was not covered by Judge Porter's examination.

Mr. Tracy—My last question was preliminary to the question I am now about to put. Did you and Mr. Tilton have any difficulty with her at the time you last saw her? A. I don't recollect that we did.

Q. Was it the occasion of the article known as "Tit for Tat" that you saw her at that time? A. I don't recollect any such article at that time.

Q. You don't recollect any such article at that time? A. No, Sir, not at that time.

Q. Do you recollect that article called "Tit for Tat?" A. I never saw such an article.

Q. You never were present at any interview between Mr. Tilton and Mrs. Victoria Woodhull when that was the subject of conversation? A. No, Sir; not that I recollect of.

Mr. Tracy—Then that answers this question on that subject.

Mr. Fullerton—I suppose so.

Q. Did you ever see that article called "Tit for Tat?"

Mr. Fullerton—He said twice he never did.

Mr. Tracy—I don't remember that.

Mr. Fullerton—Then I understand we adjourn, if you don't remember that.

Judge Neilson—No, we have half an hour yet; we lost half an hour this morning.

Mr. Fullerton—We lost a great deal since.

Mr. Tracy—I have reference to an article called "Tit for Tat."

Mr. Evarts—It is 4 o'clock.

Mr. Tracy—I will ask this question now. [To the witness]: Did you ever hear of an article from Mr. Tilton, which Mrs. Victoria Woodhull proposed to publish, called "Tit for Tat?" A. I don't recollect of ever having heard of it from Mr. Tilton.

Q. Did you ever hear from Mr. Tilton of an article proposed to be published by Mrs. Woodhull, which she sent around for private circulation, threatening to publish in it the names of certain ladies that were mentioned? A. Did I ever hear of that article?

Q. Yes, Sir, from Mr. Tilton? A. I don't recollect that I ever heard of it from Mr. Tilton.

Q. And you never had any interview with Mrs. Woodhull on the subject of such an article? A. I don't recollect that I ever did.

Q. Was the last interview that you had with her friendly? A. It was, as far as I was concerned, a friendly interview.

Q. Was it, as far as she was concerned? A. Yes, Sir; I think it was.

Q. Was it also friendly on the part of Mr. Tilton? A. I don't recollect that it was unfriendly.

Judge Neilson [addressing the Jury]—Gentlemen, we will now adjourn. Please be in your places by eleven o'clock to-morrow morning.

The Witness—Can I step down, your Honor?

Judge Neilson—Yes, Sir. I wish the witnesses and counsel would be here punctually at 11 o'clock to-morrow.

Mr. Mallison—The Court now stands adjourned until to-morrow morning. The counsel and witnesses are respectfully requested to be punctual at that hour.

The Court thereupon adjourned until 11 o'clock Friday.

## TENTH DAY'S PROCEEDINGS.

### MORE QUESTIONS TO THE FIRST WITNESS.

#### NUMEROUS WRANGLES BETWEEN THE LAWYERS—

#### THE ARBITRATION PROCEEDINGS BETWEEN MR.

#### TILTON AND MR. BOWEN SIFTED—ATTEMPT TO

#### CONNECT THE PLAINTIFF WITH FREE LOVE DOC-

#### TRINES—THE TRIPARTITE COVENANT TAKEN UP

#### —THE CROSS-EXAMINATION NOT CONCLUDED.

Friday, Jan. 23, was perhaps the least eventful day of the great trial. There was no sensation for the entertainment of the audience, and there were no opportunities for brilliant and effective repartee by counsel on either side. The proceedings of four hours bristled with technicalities, and the war of words was almost entirely waged in side issues.

The arguments of the lawyers occupied most of the time of the Court, and the success seemed equally divided. The subject upon which Mr. Moulton was first questioned was the business connection between Mr. Tilton and Henry C. Bowen, principally in regard to the disruption of their relations, and the settlement of the controversy by arbitration. During his examination regarding the latter point the witness seemed anxious to offer some bit of evidence which Mr. Tracy, with equal anxiety, tried to suppress. However, when Mr. Moulton was finally asked what the result of the arbitration was, he replied, "The payment of \$7,000 by Mr. Bowen; but," he added quickly, and before Mr. Tracy could check him, "Mr. Bowen had offered \$5,000 before the decision of the arbitrators." By the amused glances exchanged by the counsel of Mr. Tilton, it was apparent that they believed that Mr. Moulton's gratuitous information had dulled the point of their opponents' weapon.

The tripartite agreement was introduced as evidence by Mr. Evarts, who read the document with great seriousness and emphasis, and invested the covenant with a solemnity which a casual reading would not discover. This is the first time that the original agreement has appeared in court. It is written on ordinary legal-cap, and the name of Mr. Tilton is so blotted as to be almost unrecognizable.

The biography of Victoria Woodhull was shown by Mr. Evarts, who desired to place it in evidence. He held it up and with a voice slightly touched by sarcasm he read the title page from the beginning to the end, taking pains to show that it was one of "The Golden Age Tracts." Judge Neilson ruled it out immediately, and Mr. Evarts in an address of nearly 10 minutes endeavored to show that the book identified Mr. Tilton with Mrs. Woodhull's doctrines regarding the marriage relation. But Judge Beach repudiated that idea, and said, moreover, that no proof had been presented that Mrs. Woodhull was a believer in free love. Mr. Evarts effectually demolished the latter argument by producing a newspaper article put in evidence by Mr. Beach himself, in which Mrs. Woodhull avowed herself to be a free lover. But Judge Neilson would not change his original decision, saying that the matter was not pertinent, and adding, "Suppose Mr. Tilton had written a life of Mr. Bowen?" Mr. Tilton, with an involuntary shake of the head, expressed his opinion of such a supposition.

At the afternoon session the witness was examined regarding Mr. Tilton's sources of income.

Mr. Moulton was asked at this point to give the name of a person who had given money to him for Mr. Tilton. The witness appealed to the Court that he be not obliged to answer, and a long contest followed as to the propriety and justice of the admission of the names of outside persons. Judge Neilson left it to the judgment of the defendant's counsel whether they would demand the name, but he so couched his language that it would have been exceedingly discourteous had the counsel insisted on revealing the name, and accordingly it was not brought out. A sharp cross-examination of an hour followed the last argument, in which at times Mr. Tracy became very aggressive in his questions, and the witness rather aggravating in his replies. A vigorous attempt was made to cause a part of the statement of the scandal in *Woodhull and Claflin's Weekly* to be read in evidence, but so strongly was the motion opposed by Messrs. Beach and Fullerton, and so tenaciously did they contest every point, that that part of the examination was temporarily abandoned by the defense.

At 10 minutes after 4 o'clock Mr. Tracy paused and suggested that it was time to adjourn. Judge Neilson was quick in expressing his disapproval of continuing the cross-examination of Mr. Moulton next week. Professional and judicial reputation was at stake, he said. The witness had already been on the stand four and a half days. Mr. Moulton smiled, and said he was willing to continue all night, if necessary. The lawyers carried their point, and the Court adjourned until 11 a. m. on Monday.

#### TRIAL SCENES.

If there were anything which would be likely to diminish the number of spectators attendant daily upon the Brooklyn suit, the disagreeable condition of the weather on Friday might have been expected to have that result. Slippery, sloppy sidewalks and a drizzling rain-storm, varied at intervals by a fall of hail, were made matters of minor import by those who determined to witness for themselves the progress of the great trial. Considerations of personal comfort, wet feet, the risks of all the ills that flesh might fall heir to through exposure to the weather, were overborne by the strained eagerness of curiosity. Hence the court-room was crowded as usual for a full half hour before the opening of the proceedings. The corridor running by the door of the room was jammed with the same noisy crowd noticed upon previous days. Why they were there is one of those

things past finding out. There was nothing for them to see but the closed doors of the court-room and two stalwart but shivering officers standing guard. There was nothing for them to hear but occasionally the faint murmur of lawyers' voices. Yet the crowd stood for hours upon the cold pavement, waiting Micawber-like for something to turn up. Many of these people came from distant parts of the city, and some from other States. One old man, apparently over three score and ten, was very much depressed in spirits because he was unable to obtain admission. Taking by the hand a reporter who was about to enter the court-room, the aged man said with tears in his eyes that he had come all the way from Elizabeth, New-Jersey, to see the trial. "And," he added, "if I don't get in thar and get one look at Henry Ward Beecher, my wife Sairy will fret and scold dreadfully."

The examination on Friday was rather tedious, and the only thing which relieved the dullness of the proceedings was an occasional wrangle between counsel. At times Mr. Beecher leaned back in his chair with a weary expression upon his ruddy countenance, and from 3 o'clock until 4 he appeared to sleep soundly. Mrs. Beecher seemed tired too, and as for Moulton he yawned frequently, and moved about uneasily in his chair. Shortly after the recess a juror left the court-room for a few moments, and the witness drew a sigh of relief. The air in the room was foul and heavy, and this may account for the sleepy appearance of the jurymen. Indeed, the counsel themselves seemed under some soporific influence. In the gallery, several individuals who followed the opening of proceedings with interest, slumbered sweetly in the afternoon. The Judge himself seemed drowsy. At recess, Mr. Moulton and Mr. Evarts held a brief conversation. That it was entirely of a friendly character was apparent from the smiling way in which they addressed each other. This incident for a time prevented the spectators from falling into dreamy unconsciousness, and they were accordingly grateful.

Since Monday several extravagantly dressed women have applied for seats in court without success, and even on Friday, disagreeable as the day was, two or three women tried to obtain entrance. Mrs. Shearman, Mrs. Tilton, Mrs. Beecher, and Mrs. Field were the only ladies admitted.

Judge Henry M. Moore occupied a seat beside Judge Neilson in the afternoon. Francis B. Carpenter sat near Theodore Tilton, and Henry M. Cleve-

land, a member of the Plymouth Church Investigating Committee, was seated by the side of Mrs. Beecher during the morning session. The Hon. Henry C. Murphy, the Hon. H. W. Slocum, and the Hon. John Oakey were in their accustomed places.

#### THE PROCEEDINGS.

Ex-Judge Porter is still absent from the Court. Gen. Tracy took up the cross-examination of Mr. Moulton on Friday, Jan. 22, with reference to Woodhull's relations with Mr. Beecher and Mr. Tilton. The next subject touched in the cross-questioning, was Tilton's contracts with Bowen. The day was about the duldest of the trial thus far.

#### WOODHULL'S STEINWAY HALL LECTURE.

Francis D. Moulton was recalled, and the cross-examination resumed.

Judge Neilson—I wish, before we commence, to ask the audience to be quiet. This one request made now, well understood, will save the necessity of saying anything about it all day. Our time is very precious; every interruption wastes time.

Mr. Tracy—Mr. Moulton, did you advise the defendant to preside for Mrs. Woodhull at the Steinway Hall meeting? A. I don't think I did, Sir.

Q. Were you furnished with her speech in print before the meeting? A. I was not, Sir.

Q. Did you have it in your possession before that time? A. I did not, Sir.

Q. Did you ever see it before that? A. I did not, Sir.

Q. Was Mr. Tilton furnished with it in your presence? A. Never.

Q. Did you see it in manuscript? A. Never.

Q. Was it furnished to Mr. Tilton in your presence in manuscript? A. Never.

Q. Was any paper furnished him which was said to be her speech that she was to deliver at the Steinway Hall meeting? A. In my presence, Sir?

Q. Yes, Sir. A. Never.

Q. Did you ever see it in Mr. Tilton's presence? A. I never did.

Q. In Mr. Tilton's possession? A. I never did.

Q. Were you ever present when Mrs. Woodhull and yourself and Tilton were present, when Mr. Tilton urged Mr. Beecher to preside at the Steinway Hall meeting? A. I don't recollect, Sir, that I ever heard Mr. Tilton urge Mr. Beecher to preside. I think I have a letter, Gen. Tracy, from Mrs. Woodhull to Mr. Beecher on that subject.

Q. That has been introduced, hasn't it? A. I don't know whether it has or not.

Mr. Tracy—I think it has; has it not, Mr. Beach?

Mr. Beach—The letter of Mr. Beecher in answer to it, or proposed letter, has been introduced.

The Witness—It is a proposed answer to another letter, Mr. Beach.

Q. Did you and Mr. Tilton ever take Mrs. Woodhull into the presence of Mr. Beecher and attempt—undertake to persuade

him to preside at that meeting? A. Will you ask the question again, Gen. Tracy?

Mr. Tracy—Will the stenographer read the question?

THE TRIBUNE stenographer repeated the question.

A. No, Sir; I don't remember any such occasion as that.

Q. Did you ever go into his presence together, you three, for that purpose? A. I don't recollect whether we three went, Mr. Tracy, but I recollect that Mrs. Woodhull and myself were in Mr. Beecher's presence.

Q. Well, I am talking about you and Mr. Tilton and Mrs. Woodhull. Did you ever hear Mr. Tilton, in the presence of yourself and Mrs. Woodhull, say to Mr. Beecher, "Mr. Beecher, some day you have got to fall. Go and introduce this woman and win the radicals of the country and it will break your fall?" A. I don't remember ever having heard that, Sir.

A. You were never present at any such interview, to your knowledge? A. No, Sir.

Q. Were you present at the Steinway Hall meeting? A. I was; yes, Sir.

Q. Did you go there in company with Mrs. Tilton? A. I did.

Q. Did Mr. Tilton preside? A. He introduced Mrs. Woodhull.

Q. Well, did he preside? A. To that extent.

Q. Who occupied the chair? A. I think he did, Sir. Is that what you mean by presiding?

Q. I leave that for you to determine what you mean by presiding. A. I want to answer your question properly, that is all. I beg pardon, Sir.

Q. Did he occupy the chair and introduce Mrs. Woodhull on that occasion? A. He introduced Mrs. Woodhull and then occupied the chair afterwards. [Laughter.]

Q. Well, he did not take the chair before introducing Mrs. Woodhull? A. I remember his walking to the front of the platform with his overcoat in his hand, and introducing her. That is my recollection of it. I am giving it as I remember it.

Q. Did you listen to her speech that night? A. To almost all of it. I don't know that I heard the whole of it.

Q. What was the subject of that speech? A. I don't recollect, Sir, what the subject was. I don't recollect what she called the title of her speech.

Q. Well, you heard it? A. Yes, Sir.

Q. Don't you remember on what subject it was, what subject she discussed in that speech? A. Well, I cannot recollect, Sir, definitely enough to state it accurately.

Q. Can't you state the point of the speech. A. It was the relation of man to woman, I guess, and woman to man, as near as I can state it, and woman to society.

Q. Wasn't it on the marriage relation? A. I really don't recollect, Sir, whether that was the title or not.

Q. I didn't ask you about the title. A. You asked me what the speech was on, whether it was on the marriage relation.

Q. Yes; I asked you whether the subject of her speech was not the marriage relation? A. That, I say, I cannot tell you.

Q. You can't tell that? A. No, Sir.

Judge Neilson—I think you have gone far enough with that, Mr. Tracy.

Q. Was it not what is called the doctrines of free love?



Judge Neilson—General, do you wish to go into that?

Mr. Tracy—I do.

Judge Neilson—If you do, I will spend all day, but I don't think it is pertinent.

Mr. Tracy—We would not have asked the question unless we had thought it pertinent.

Judge Neilson—I think it is not, Sir.

Mr. Tracy—We bow to the opinion of the Court.

Judge Neilson—My view is simply this: if Mr. Tilton, before he introduced this speaker, knew what the speech was, had seen it, and had been furnished with it, and then introduced her, he would be responsible for what was said; but if he did not know what the subject was, the mere fact of his introducing the speaker does not make him responsible for what followed; it does not affect it. That is my view of it.

Mr. Tracy—We can only show one fact at a time, your Honor. We show that he introduced her, and heard the speech. Then we may show by other witnesses that he knew what the speech was to be before it was delivered.

Judge Neilson—When you can do that, resume this subject.

Mr. Tracy—And recall this witness?

Judge Neilson—Any way you please.

Mr. Tracy—We desire to have this question answered now.

Judge Neilson—I rule it out.

Mr. Tracy—Your Honor will note our exception.

Mr. Evarts—Will the stenographer read the question?

THE TRIBUNE stenographer read the question as follows:

"Q. Was it not on what is called the doctrines of free love?"

Mr. Evarts—Is that objected to on the other side?

Judge Neilson—I do not understand it is. I objected to it.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—I will

Mr. Evarts—Your Honor directs it not to be answered?

Judge Neilson—I do.

Mr. Evarts—And we except.

Mr. Tracy—Do you know whether the friendly relations between Mr. Tilton and Mrs. Woodhull continued after that speech? A. I think they did, Sir. What was the date of the speech, Sir? What was the date of the Woodhull speech, if you please?

Q. Nov. 20th, 1871? A. Yes.

Q. Did your friendly relations with Mrs. Woodhull continue after that speech? A. Yes, Sir.

Q. Did you have her at your house after that speech? A. I don't recollect.

Q. You don't recollect? A. No.

Q. Don't you recollect that you did not? A. I have not any recollection about it, Sir.

Q. You speak of a day when Mrs. Woodhull was at your house, when the subject of her speech was talked of. Was Mr. Tilton present at your house on that day? A. He was there, I think, Sir.

Q. With her? A. I don't remember whether he was with her or not, Sir.

Q. Was he in the house and in her presence that day? A. I think he saw her on that day; yes, Sir?

Q. And conversed with her? A. I think he did; yes, Sir.

Q. Do you know whether he went away with her? A. I don't recollect that, Sir.

Mr. Tracy—Now I renew the question that I put before.

Judge Neilson—He may answer it now. [To the stenographer.] Read the question.

THE TRIBUNE stenographer read the question, as follows: "Was it not on what was called the doctrines of free love?" A. I don't know precisely the doctrines of free love, and therefore I cannot answer that question. I should suppose that the public construed it so, Sir, if you will allow that.

Q. Yes; that is enough. You mean by the public, the people who heard it, don't you?

Mr. Beach—Well, we don't want his supposition as to what others construed it.

Mr. Evarts—Well, that is enough.

Judge Neilson—That will answer.

#### TILTON'S TROUBLE WITH BOWEN.

Q. You have stated that you was Mrs. Moulton's attorney for the collection of the Bowen claim.

Mr. Beach—Mr. Tilton's attorney, I suppose you mean?

Mr. Tracy—Mr. Tilton's attorney for the collection of the Bowen claim.

Mr. Beach—He didn't state that. He said he had that authority.

Mr. Morris—The authority has been introduced, and he said that he had the authority.

Mr. Tracy—And the power of attorney is in evidence, isn't it?

The Witness—No, Sir.

Mr. Morris—He said he didn't know whether you would consider it an attorney or not.

Mr. Tracy—I mean the attorney in fact.

Judge Neilson—The very question was put to him before and he was troubled about the word "attorney."

Mr. Tracy—Well, agent, then.

The Witness—Mr. Tilton authorized me—which is the fact—generally to settle his claim with Mr. Bowen.

Q. Did you undertake the charge? A. Yes, Sir; I did.

Q. To collect that claim of Mr. Bowen? A. Yes, Sir; I did.

Q. When did he authorize you first? A. About January 1st or 2d; January 1st, I think. The letter will show, Sir.

Q. And in pursuance of that authority did you see and have an interview with Mr. Bowen? A. Yes, Sir.

Q. Did you present Mr. Tilton's claim to him? A. Yes, Sir.

Q. What amount did you demand of him? A. I think it was something like \$7,000.

Q. What was his answer to the claim when you presented it?

Mr. Fullerton—I don't think that is material, Sir.

Judge Neilson—As they have a right to ask whether it was presented, I think they may take the answer that Mr. Bowen made as a part of the same thing. It is, I believe, very immaterial.

Mr. Fullerton—Of course, and we may follow it up by showing that it was a good claim and all paid for.

Mr. Evarts—The materiality, your Honor will see, will depend upon what the answer was.

Mr. Tracy—What was his answer to the claim? A. He said

he didn't think he owed Mr. Tilton any money, and that he would arbitrate if I thought he did.

Q. Why?

Mr. Evarts—Did he say?

Mr. Tracy—Did he say why he didn't think he owed Mr. Tilton any money?

Mr. Beach—Are those declarations to be permitted, Sir?

Judge Neilson—We took them the other day, and this same answer.

Mr. Beach—What if we did, Sir? That is another reason why it should not be received to-day. But I submit to your Honor that it is entirely immaterial what Mr. Bowen may have said in regard to the reasons why he resisted that claim.

Judge Neilson—I think so, too.

Mr. Evarts—Our view, if your Honor please, is simply this: that Mr. Tilton, having put Mr. Moulton as his representative in the prosecution—presentation, prosecution, negotiation and settlement of that claim, what passed between Mr. Bowen and the other side and this witness is as if it passed between Mr. Bowen and Mr. Tilton; and that we have the same right to show it as if the conversation was between Mr. Bowen and Mr. Tilton.

Judge Neilson—So far as it relates —

Mr. Evarts—So far as it relates to the subject. That is our view, and if your Honor excludes that view as suitable, then it comes under some other rule of law; but that is our proposition.

Judge Neilson—I think you may answer that.

Mr. Fullerton—Are we to try the merits of that controversy? The validity of that claim did not depend at all upon what Mr. Bowen said of it. Are we to go into the trial of that claim over again?

Judge Neilson—Of course it is going to the extreme. Mr. Bowen might say many things that a gentleman ought not to say on being presented with that claim.

Mr. Fullerton—Well, your Honor, they will contend upon the other side that this claim was unfounded, because Mr. Bowen probably said at that time it was unfounded.

Judge Neilson—He has not said that. He said he didn't owe him any money, the other day.

Mr. Fullerton—Now, if that is proved in this case, why, it is necessary for us to disprove it by showing it was a legitimate claim, and introduce these contracts in evidence for the purpose of determining that question. Your Honor will perceive that Mr. Bowen could not create a defense on that occasion to this claim. Suppose he had alleged that Mr. Tilton had broken his contracts, it would not establish the fact. Suppose he had alleged the contracts were forgeries, it would not have established the fact. We certainly cannot go into that side issue here, although we have not any apprehension as to the result, but we have got enough on our hands here without trying that cause over again, which has been settled by arbitration, as we all very well know.

Mr. Evarts—It will be time to question our right to try that cause over again when we attempt to do so. It is not likely that we shall; we have no occasion to try it over again. Your Honor has ruled on the question.

Judge Neilson—You will answer, Mr. Moulton, with especial care to the question of the claim and its validity, and not extraneous matters. What answer do you make? A. What is the question?

THE TRIBUNE stenographer read the question as follows: "Did he say why he did not think he owed Mr. Tilton any money?" A. No; he did not say why, Sir. He said he did not think he owed Mr. Tilton any money, and if I thought he did he would be willing to arbitrate.

Q. When was that interview? A. It was in the first part of January, between January 1st and January 10th, Sir.

Q. What was the next step you took after that in the collection of this claim? A. I saw Mr. Bowen at my house; he came there; he came to the house and said again that he was willing to arbitrate, and although Mr. Tilton had told me, in the meantime, that he was perfectly willing to arbitrate, I said that I did not want to arbitrate, and I said, "Mr. Bowen, this is my reason. The contract provides—there is a specific provision in the contract with regard to the termination of it in the way that you have terminated it. The contract has a plain provision—has several plain provisions alluding to its termination; that is, it can be terminated at the end of six months by notice without the payment of any penalty; or it can be terminated by death, or it can be terminated at once by the payment of a certain sum of money." I forget what that was now; I think it is \$2,500 or \$3,000. Whatever it was, I mentioned it to him; it was mentioned in the contract. He said that he thought the contract required arbitration; that there was a provision in the contract that if there was any difference between the editor of the paper and the publisher, that then the contract provided that the interpretation of the contract with reference to that difference should be submitted to arbitration; and I said to him: "Mr. Bowen that provision—that section of the contract is with regard to the interpretation of Mr. Tilton's duties towards you as publisher—his duties as editor towards you as publisher—and of your duties as publisher towards him as editor. There is a difference between that clause and the one following it which is a plain provision for the payment of so much money on the breaking of the contract. Now on that ground I don't want to arbitrate." And there is another ground that was expressed to him, which, if you want me to tell you, I will.

Q. You may state what you expressed to him, now? A. That is about it.

Q. What did he say to that? A. He objected again; he said he was perfectly willing to arbitrate.

Q. Did he say that he owed Mr. Tilton no money at that time? A. No, Sir; I don't think he said he owed Mr. Tilton no money. He was willing to leave the matter to arbitration.

Q. He was not willing to pay, however, without arbitration, was he? A. No.

Q. Did you bring a suit against him for the claim? A. No; Mr. Tilton did, I believe, subsequently.

Q. Well, did you direct the bringing of the suit? A. No; Mr. Tilton, I believe, commenced the suit.

Q. You did not confer with counsel on that subject? A. I don't think I conferred with counsel on that subject.

Q. Or employed them yourself? A. No; I didn't employ them or pay them.

Q. Then Tilton afterwards commenced the suit against Bowen? A. Yes, Sir,

Q. Do you know about what time? A. I forget the exact time. I think I have got a letter.

Q. Approximate to the time as nearly as you can? A. It was in the latter part of 1871 or beginning of 1872, I think.

Q. How many interviews have you had with Mr. Bowen on the subject of this claim, between the time of the last interview mentioned by you and the commencement of this suit? A. I don't know; several, Sir; I do not know how many.

Q. A good many had you not? A. Not a very great many; so, Sir.

Q. Didn't he ever say to you, in any of those conversations, that he thought he had good cause for breaking his contracts with Tilton? A. He said that he thought—on the first morning that I saw him, that was the conversation—he said, I think, the first morning that I saw him, that he thought he didn't owe Tilton any money.

Q. The question is not that—the question I put to you? A. Well, I will explain the answer, if you please.

Mr. Everts—Go on. A. I have explained it, Sir.

Q. I will put you this question; Didn't Mr. Bowen, at any interview that you had with him, say that he thought he had good cause for breaking his contract with Mr. Tilton?

Mr. Everts—That is already answered.

Q. Now, did he ever state to you in any of those conversations why he thought he had cause for breaking Mr. Tilton's contract? A. I do not recollect, Sir, that he stated to me the cause.

Q. Do you recollect that he did not? A. I haven't any recollection on the subject, Sir; whether he told me the causes, now or not; I do not think he did.

Q. Was there a period, when, after the suit was brought, you and Mr. Bowen ceased to have conversation in regard to the settlement of the claim? A. After the suit was brought, Sir, I think I did not see Mr. Bowen at all.

Q. Did not see him at all? A. I do not think I did, Sir; I do not remember of ever having seen him.

Q. Do you remember of seeing, at any time prior to this settlement of this claim, an article known as the "Golden Age Article," which had been prepared for print, embodying the letter of Mr. Tilton to Mr. Bowen, dated Jan. 1st, 1871? A. It is rather a long question.

[Question repeated by THE TRIBUNE stenographer.] A. I remember having seen a proof of an article for *The Golden Age*, corrected by Oliver Johnson, Sir, I think, with that letter in it; yes, Sir.

Q. Incorporating that letter in it? A. Yes, Sir.

Q. Was that article ever published in *The Golden Age*? A. No. I think not; don't recollect that it ever was.

Q. [Paper handed to witness]. I call your attention, Mr. Moulton, to the article on that paper, headed: "A Personal Statement." Will you look at it, and see if that is the article you refer to? A. I have the article that I refer to in the papers here; I would like to refer to it and compare them; I can tell then positively.

Q. Look at that. [Another paper handed to witness.]

The Witness—Do you only want me to look at the first part of it?

Mr. Tracy—I want you to satisfy yourself whether it is the article you saw.

Mr. Fullerton—Whether it is the paper you saw—that is the question.

Mr. Tracy—No.

Mr. Beach—Well, Mr. Pearsall, you had better read one.

Mr. Morris—Yes; go on and compare. [Mr. Pearsall here read a paper to the witness in an undertone, while the witness examined the paper in his hand.]

The Witness—There seems to be a disagreement between these—between the first paragraph.

Mr. Fullerton—Well, then, you can answer the question without explaining it.

The Witness—What is the question?

Mr. Tracy—Now, will you answer the question, whether you ever saw the article that is in print—the printed article that is attached to the paper I handed you. A. May I look at the whole paper?

Q. If you want to, yes; if it is necessary in order to tell whether you ever saw that article? A. Yes; I think I saw the article that was appended to the tripartite covenant. That is the reason I asked you if I could look at the whole paper, Mr. Tracy. Now, Mr. Pearsall, will you follow the reading.

Mr. Pearsall—I will read it. [Reading and comparison resumed by Mr. Pearsall and the witness.]

The Witness—Now, what is the question? Do you want this back, Mr. Tracy?

Mr. Tracy—Now, are you able to say whether you ever saw this printed article that is attached to this paper before? A. I can't swear, Sir, specifically, whether I ever saw that or not; I saw something like it.

#### PEACE DECLARED BUT NOT PRESERVED.

Q. The paper that I have presented to you is what is known as the tripartite agreement, isn't it? A. Yes, Sir.

Q. Were you present at that arbitration? A. I believe I was present at that arbitration; yes, Sir.

Q. Were you present when this paper was signed? A. I was not present when it was signed.

Q. Did you ever see it before? A. I think I have seen the paper before—yes, Sir; Mr. Beecher was not there, Sir, at that interview; so, therefore, I did not see it signed.

Q. I did not ask why you did not see it? A. Well, I was only telling you why.

Q. When did you see it first, do you think? A. When did I see it first?

Q. Yes? A. That paper I think I saw for the first time that night, Sir.

Q. Was the printed paper attached to it at that time? A. I don't remember whether it was or not, distinctly.

Q. Didn't you examine it that night as carefully as you have here to-day? A. My impression is that the printed paper was attached to it; I can't swear whether I examined it specifically or not.

Q. Don't you know it was attached to it? A. No; I could not swear that it was.

Q. Didn't you furnish it? A. Didn't I furnish it?

A. Yes? A. I don't remember that I did.

Q. Do you remember that you did not? A. I haven't any recollection as to whether I did or not.

Q. Do you know where that article came from, that printed paper that is attached to the tripartite agreement? A. I could not swear, Sir, as to where it came from.

Q. Do you know whether the plaintiff furnished it? A. Whether Mr. Tilton furnished it?

Q. Yes? A. I don't know whether he did or not.

Q. Did you ever see this printed article in anybody else's hands besides Mr. Tilton or yourself unattached to this paper? A. That printed article?

Q. Yes? A. I can't swear that I ever saw that printed article.

Q. Did you ever see what is known as the "Golden Age Article"? A. Yes, and I have just had the—I have just produced the one that I saw.

Q. In anybody else's hands besides yours and Theodore Tilton's? A. Yes; in Mr. Beecher's hands.

Q. In Mr. Beecher's hands? A. In Mr. Beecher's hands; yes, Sir.

Q. With the exception of the three that you have named, did you ever see it in any one else's hands? A. I can't swear whether it was ever in anybody else's hands or not.

Q. I did not ask you that; I asked you whether you ever saw it? A. In anybody else's hands?

Q. Yes? A. I can't swear that I ever saw it in anybody else's hands.

Q. You have no recollection of ever seeing it in any one else's hands? A. Except in Mr. Beecher's, Mr. Tilton's and myself?

Q. Yes? A. I think in Mr. Claflin's.

Q. In your presence? A. Yes; in my presence.

Q. During the arbitration? A. No; I don't think during the arbitration—before the arbitration.

Q. Before the arbitration? A. Yes, Sir; I think Mr. Claflin was given an article by somebody.

Q. How long before the arbitration. A. Oh! some time before the arbitration.

Q. By whom was he given the article? A. I don't recollect by whom it was given to him.

Q. Don't you recollect whether you gave it to him? A. I don't recollect whether Mr. Beecher handed him a copy of it, or whether Mr. Tilton handed him a copy of it, or whether I did.

Q. Were there two different articles printed from the office of *The Golden Age*, embodying this letter of January 1st? A. The article, Sir, that I remember to have seen is this proof which I produce here.

Q. Answer my question? A. I will try to; I am endeavoring to; I want to answer you courteously.

Q. Now, I ask you if there were two different articles printed from *The Golden Age* office embodying this letter of January 1st? A. I don't know of any two different articles except this one that you have in your possession and this one here, which seems to be different. I cannot answer the question, Sir, with-

out answering it in that way, intelligently. I submit to the Court.

Q. Will you pass up that paper? A. Yes, Sir; Mr. Morris has it. Is there any other way, your Honor, in which I can answer the question?

Judge Neilson—I don't think there is, Sir.

Mr. Tracy—Now, Mr. Tilton's signature is to this paper, isn't it? A. I will see, Sir. [Paper handed to witness.]

Mr. Tracy—You connect this paper with the arbitration, I understand, in all your questions to me?

Q. Yes? A. Well, the arbitration was before this paper was submitted—I would like to make that correction—it was the evening of the arbitration that this paper was submitted, but the arbitration was before this paper was signed on money matters.

Mr. Evarts—The paper was present at the arbitration? A. Not at the arbitration; no, Sir.

Mr. Tracy—The arbitration was one evening and— A. No, Sir; it was the evening of the arbitration. It was after the arbitration, on the evening of the arbitration.

Q. But after the arbitration? A. Yes, Sir.

Q. That this paper was submitted? A. Yes, Sir; by Mr. Claflin?

Q. Yes, and signed? A. Yes, Sir.

Q. Now did you show this "Golden Age Article" to Mr. Beecher at any time prior to that arbitration? A. Yes, Sir.

Q. Where? A. At my house.

Q. At your house? A. Yes, Sir.

Q. Do you know whether it was shown to Mr. Bowen by anyone prior to that arbitration? A. I think Mr. Claflin told me that he had shown it to Mr. Bowen; I won't be certain about that.

Mr. Evarts—Well, that is hearsay.

The Witness—I don't.

Q. Well, was Mr. Claflin Bowen's arbitrator? A. I don't know whether he was or not; he was one of the arbitrators; I think he was, however.

Q. You think he was? A. I think so.

Q. Do you know whether the article was also shown to Mr. Wilkinson before the arbitration by Mr. Tilton? A. I don't know that, Sir; could not swear that it was.

Q. What? A. I could not swear that it was; I don't recollect having seen it shown to him.

Q. How long before this arbitration was this shown to Mr. Beecher and given to Mr. Claflin? A. How long before the arbitration?

Q. Yes. A. It was some time before the arbitration.

Q. Well, can't you approximate the time? A. I don't remember, Sir, how long.

Q. Wasn't it in March, 1872? A. It was after Mr. Tilton's return from the West, whenever that was.

Q. Well, what time did he return from the West? A. I don't recollect the month, Sir; I don't recollect the month.

Q. How soon after you showed that article to Mr. Beecher and gave a copy of it to Mr. Claflin was the arbitration agreed upon? A. It was some time before we consented to the arbitration; we consulted the lawyers first about it.

Q. Did you give the article to Mr. Claflin with a view of

having it shown to Mr. Bowen? A. I don't remember whether I gave it to Mr. Claflin or not.

Q. How many talks did you have with Mr. Claflin prior to the arbitration? A. That, really, I don't recollect.

Q. You had some? A. Had one or two I guess.

Mr. Tracy—Now we offer the agreement in evidence.

Mr. Fullerton—No objection.

Mr. Evarts—No objection to my relieving Mr. Tracy?

Mr. Fullerton—Oh! I think you all need that.

Mr. Evarts [reading the tripartite agreement]:

We three men, earnestly desiring to remove all causes of offense existing between us, real or fancied, and to make Christian reparation for injuries done or supposed to be done, and to efface the disturbed past, and to provide concord, goodwill and love for the future, do declare and covenant each to the others, as follows:

I.—I, Henry C. Bowen, having given credit, perhaps without due consideration, to tales and innuendoes affecting Henry Ward Beecher, and being influenced by them, as was natural to a man who receives impressions suddenly, to the extent of repeating them (guardedly, however, and within limitations, and not for the purpose of injuring him, but strictly in the confidence of consultation), now feel that therein I did him wrong. Therefore I disavow all the charges and imputations that have been attributed to me as having been by me made against Henry Ward Beecher; and I declare, fully and without reserve, that I know nothing which should prevent me from extending to him my most cordial friendship, confidence, and Christian fellowship. And I expressly withdraw all the charges, imputations, and innuendoes imputed as having been made and uttered by me, and set forth in a letter written by me to Theodore Tilton, on the 1st of January, 1831 (a copy of which letter is hereto annexed), and I sincerely regret having made any imputations, charges, or innuendoes unfavorable to the Christian character of Mr. Beecher. And I covenant and promise that for all future time I will never, by word or deed, recur to, repeat, or allude to any or either of said charges, imputations, and innuendoes.

II.—And I, Theodore Tilton, do, of my free will and friendly spirit towards Henry C. Bowen and Henry Ward Beecher, hereby covenant and agree that I will never again repeat, by word of mouth or otherwise, any of the allegations or imputations or innuendoes contained in my letters hereunto annexed, or any other injurious imputations or allegations suggested by or growing out of these, and that I will never again bring up or hint at any cause of difference or ground of complaint heretofore existing between the said Henry C. Bowen and myself, or the said Henry Ward Beecher.

III.—And I, Henry Ward Beecher, put the past forever out of sight and out of memory. I deeply regret the causes for suspicion, jealousy and estrangement which have come between us. It is a joy to me to have my old regard for Henry C. Bowen and Theodore Tilton restored, and a happiness to me to resume the old relations of love, respect and reliance, to each and both of them. If I have said anything injurious to the reputation of either, or have detracted from their standing and fame as Christian gentlemen and members of my church, I revoke it all and heartily covenant to repair and reinstate them to the extent of my power.

H. C. BOWEN.  
THEODORE TILTON.  
H. W. BEECHER.

Brooklyn, April 2, 1872.

Annexed to this is a paper called "A Personal Statement." It is headed thus in writing: "Theodore Tilton's letter to Mr. Bowen above mentioned," and then begins the printed matter; "A Personal Statement" being the heading of the article. [Again reading]:

The editor of *The Golden Age* has been many times solicited by friends and encouraged by enemies to explain the sudden sundering of his relations with Mr. Henry C. Bowen. For a long time his only answer to such requests and innuendoes, was the silence which ought to shield one's private matters from public gossip. But, during a recent journey of some thousands of miles through the North-West, among people whose familiar acquaintance he had made in former years, and whose good opinion he is unwilling to lose, he became convinced that a proper sense of self-respect required on his return the publication of the appended letter. It was written within a few hours after the severance of his business associations with Mr. Bowen and was confided to the care of a friend, by whom its contents were laid before the person to whom it was addressed. As so many false stories had been told of the occurrence to which it refers, the writer has finally determined to confront these fictions with the facts. After many months of ever-increasing misrepresentation, not to say slander, this course is now imperative."

And the rest of the article is, if your Honor please, the letter from Mr. Tilton to Mr. Bowen, of the date of "Brooklyn, Jan. 1st, 1871," which is already in evidence.

Mr. Fullerton called Mr. Evarts's attention to the fact that the article was continued on another page.

Mr. Evarts—I beg pardon. I see another page. After that letter the article proceeds:

As a sequel to the above letter, it should be added that Mr. Bowen, after charging Mr. Beecher with extraordinary criminality after declaring that the accused had made to him a confession of guilt, imploring forgiveness with tears; after investigating a demand that Mr. Beecher should forthwith vacate his ministry; after protesting that he could and would sustain this demand with complete evidence for its enforcement; after acting as the bearer of this demand in person—after all this, he went immediately to Beecher in the guise not of accuser, but of champion, and pledged to him the protection of his friendship and counsel against the very indictment which he himself had inspired, incited and presented. In other words, while secretly arranging Mr. Beecher's destruction he openly presented himself to his victim as his safeguard and refuge. In the whole history of treason there is no darker instance of shameless duplicity and malicious craft. The writer, wholly unsuspecting of the double part which Mr. Bowen was dexterously playing, was first made aware of this villainy by the excited conversation above described, followed immediately by the termination of his engagement as a special contributor of *The Independent* and as editor of *The Union*, the contracts having been just newly made and the ink with which they were signed being hardly dry. When a copy of the above letter was laid before Mr. Beecher he indignantly denied Mr. Bowen's charges, each and all, and with peculiar anger pronounced the alleged confession of guilt the most diabolical of lies. With the issue between these two contestants the editor of *The Golden Age* has nothing to do, except to regret the painful necessity which now at last compels the above publication involving their names.

[Paper marked "Exhibit D, 25."]

#### THE TILTON-BOWEN ARBITRATORS.

Mr. Tracy—This paper, as I understand you to say, was present at the arbitration, or the same evening of the arbitration, but after the arbitration was concluded? A. Yes, Sir.

Q. Who were the arbitrators on that occasion? A. Charles Storrs, Horace B. Claflin and James Freelan.

Q. Who was Mr. Tilton's arbitrator? A. I really don't know.

Q. Was it not understood that each party chose one? A. I don't know how they were chosen; they were agreed upon between Mr. Claflin, Mr. Tilton and myself in some way; I don't recollect exactly how they were chosen.

Q. Don't you know who named Charles Storrs? A. I don't know.

Q. Don't you know he was named as the friend of Mr. Tilton on that arbitration? A. I don't remember that.

Q. What was the result of the arbitration? A. The result of the arbitration was—I might mention an instance, Gen. Tracy, before the arbitration, if you desire it.

Mr. Tracy—Please answer my question. We will get on more rapidly if you do. A. The result of the arbitration was that Mr. Tilton was awarded \$7,000.

Q. To be paid by Mr. Bowen? A. Yes, Sir.

Q. Was that payment made? A. Yes, Sir; he drew his check for it there.

Q. And that is the \$7,000 that was subsequently deposited with your firm? A. Yes, Sir.

Q. Mentioned in the accounts here? A. Yes, Sir; I believe it is mentioned in the accounts.

Mr. Evarts—Yes, it is so mentioned.

The Witness—Yes, Sir; Mr. Bowen offered to pay \$5,000 before the arbitration, Mr. Tracy.

Mr. Tracy—Well, we will pass that. [To Judge Neilson.] That I take is stricken out, your Honor.

Judge Neilson—Well, it is not a falsehood.

Mr. Tracy—Did you witness any reconciliation between Mr. Tilton and Mr. Beecher after that contract was signed? A. I don't recollect witnessing any reconciliation.

Q. Did you witness any friendly act between them immediately after the signing of that contract? A. No more friendly than before—nothing to distinguish the previous action.

Q. Did you see them together after that frequently? A. No, Sir; I have not seen them together after that frequently; I have not seen them frequently together; I have not ever seen them frequently together.

Q. Did you see them after that together occasionally? A. Not very often, Sir.

Q. Occasionally? A. I remember one occasion.

Q. Not more than one? A. It was at my house; perhaps two or three; I don't know; I don't recall them now. If you can recall them to me I can answer.

Mr. Evarts [to plaintiff's counsel]—Will you give us "Exhibit No. 42?"

Mr. Morris [handing paper to Mr. Tracy]—There it is.

Q. Do you remember your letter to Mr. Beecher of Jan. 8d, 1872?

Mr. Morris—Jan. 2d, is it not?

Mr. Evarts [handing paper to witness]—Look at that "Exhibit." That is already in evidence—your letter answering that; don't you remember that letter? A. I remember it; I am looking over it to see all that is in it.

Mr. Tracy—I am not asking you that. [Handing paper to

witness.] I call your attention to the printed letter now shown you, and ask if it is your reply to "Exhibit No. 42?"

Mr. Shearman—Marked in pencil Jan. 8d, 1872.

The Witness—I think I wrote such a letter as that; I could tell if I saw the original.

Mr. Tracy—And sent it to Mr. Beecher? A. I think so.

Q. Do you know whether you have the original letter, or a copy of it, in your possession? A. I think I have a copy of it if it was in my statement.

Q. In manuscript? A. Yes, Sir.

Mr. Shearman—It is marked "Exhibit 66."

The Witness—It is quoted in my first statement, Mr. Shearman, is it not?

Mr. Shearman—Yes, Sir; I think so.

Mr. Morris—What is the date of it?

Mr. Shearman—It has no date. It is marked in pencil January 3d, 1872.

Mr. Tracy—I understand you to say you wrote Mr. Beecher such a letter. Was it in reply to "Exhibit No. 42"? A. I think it was; yes, Sir.

Mr. Shearman [reading]:

MY DEAR SIR: First with reference to Mrs. Woodhull's letter and your answer. I think that you would have done better to accept the invitation to speak in Washington, but if lecture interferes your letter in reply is good enough, and will bear publication.

With relation to your notice of *The Golden Age*, I tell you frankly, as your friend, that I am ashamed of it, and would rather you would have written nothing. Your early associations with, and your present knowledge of the man who edits that paper, are grounds upon which you might have so written that no reader would have doubted that, in your opinion, Theodore Tilton's public and private integrity was unquestionable. If the article had been written to compliment *The Independent*, it would receive my unqualified approval.

Mr. Fullerton—Is that marked?

Mr. Shearman—The stenographer will have to mark a copy of it.

[Copy of letter marked "Exhibit D, 26."]

Mr. Moulton—[Aside to a reporter.] This is dreadful; wake me up if I go to sleep.

Mr. Tracy—[Handing a paper to witness]: Is that *The Golden Age* tract, known as the Life of Victoria Woodhull by Theodore Tilton? A. I do not know whether it is or not.

Q. I understood you to say you read that?

Mr. Fullerton—No, you did not understand him so; you could not have understood him so.

Q. Did I ask you that question last night? A. I think you asked me something like that.

Q. Did you ever see that tract before? A. I think I have seen such a tract as this.

Q. Did you read what is known as the Life of Victoria Woodhull, when it was published? A. No, Sir.

Q. Did you read any part of it? A. I think I read some portion of it.

Mr. Fullerton—That has been gone over.

Mr. Tracy—You admit that is the Life as published?

Mr. Beach—I believe this is the first occasion when you have called for any admission.

ARGUMENT ON THE ADMISSION OF THE WOODHULL BIOGRAPHY.

Q. Mr. Evarts—We offer this in evidence as The Golden Age tract.

Mr. Beach—We object to it.

Mr. Evarts—It is headed: "Golden Age Tract, No. 3; Victoria C. Woodhull, Biographical Sketch by Theodore Tilton. 'He that uttereth a slander is a fool.'—Solomon, Prov. x., 18

"Published at the office of *The Golden Age*, 9 Spruce-st., New-York, 1871.

"Entered according to act of Congress, in the year 1871, by Theodore Tilton, in the office of the Librarian of Congress, at Washington."

We offer to read that.

Judge Neilson—It is offered, and I rule it out.

Mr. Evarts—On the subject of identification, or as not being admissible evidence.

Judge Neilson—Not being admissible evidence.

Mr. Evarts—It is necessary, perhaps, if your Honor please, to recall—

Judge Neilson—[To Mr. Evarts]—I will be happy to hear you.

Mr. Evarts—It is necessary to call your Honor's attention to some preceding testimony, which we think connects this with the matter. The time of this transaction, as I will point it out by testimony, was September, 1871, and it was after that that the Steinway Hall meeting was held, concerning which the evidence has now been given here and admitted. This was brought up yesterday, and there was then no copy in court that we could use at the moment. I did not then understand that there was any doubt or difficulty about the testimony. This writing of Theodore Tilton, if it be pertinent to this controversy, is, of course, an act of his, and of the consequences of which he cannot complain. It comes within the general rule of evidence that the acts of a party may be given in evidence against him. Now, it was this Life of Victoria Woodhull that produced the impression upon the public mind which was disastrous to Mr. Tilton's position as an editor, and of his newspaper as a public print. It was a most definite, authentic, deliberate form of allying himself in the view of a religious and general public with these doctrines of free love, and with this lady as one of its advocates and champions. It will speak for itself in that regard, and I will not further characterize it. Thereupon, in the disaster that followed from it, in culmination of a process that had been going on, the effort was made by Mr. Tilton, and by Mr. Moulton in coöperation with him, to compel Mr. Beecher to take no attitude in reference to these free love doctrines and in reference to this lady, one of the champions of such doctrines, that should indorse Mr. Tilton's relation to them, and indorse, to some extent at least (and presiding at a public meeting is a very general and definite extent for a public man to do) the doctrine of that school and of its champions; and the operations that were brought to bear upon Mr. Beecher in reference to these subjects of complaint and discussion, to produce that benefit, than which none could be more important. No mere pecuniary measure or aid could equal it. That was to reconstruct the ruin of the public position Mr. Tilton was thus

placed in, by softening or correcting it by the powerful influence of Mr. Beecher, and, as we have shown, this next step following about the Steinway Hall meeting, so we shall proceed, showing that all these efforts, as they are called, at suppression of facts, whatever they were, whichever side has the correct view of what the facts were, seem to have been easy enough in the control of the only parties who knew anything of them, if there were an honest and sincere co-operation in keeping what was a private grief, in whatever form it was, from the public notice. But, as this witness has detailed, every now and then there was coming out some publication—some discussion. There was the card of Mrs. Woodhull, in the Spring of 1871; there was later on afterwards the full publication of an article in the Fall of 1872; and so on, until finally, in the Bacon letter, there are constant introductions of the subject to the public notice, which we suppose, in the nature of facts and evidence and in direct proof to be introduced—partly introduced already—are connected with the movements of Mr. Tilton and knowledge and co-operation of Mr. Moulton, the witness, and that there was no sincerity, no action of a sincere nature, towards suppression, but the constantly keeping alive a condition more or less obscure, of scandal and reproach in reference to Mr. Beecher, made the occasions of the interview and the transactions which this witness has detailed with Mr. Beecher, and this Life of Victoria Woodhull, is the definite evidence of Mr. Tilton's prostration in fortune and in reputation in respect to his credit and vocation of an editor, and accounts for "Sir Marmaduke's Musings," which have been put in evidence by our learned friends.

Mr. Tracy—Published six weeks after this was written.

Mr. Evarts—Published six weeks after this catastrophe, by this extraordinary folly, if you please, of this publication. Now, in the poem of "Sir Marmaduke's Musings"—very eloquent and very beautiful, but very general, the course of ruin in which he finally came to succumb, contains the evidence of that destruction of worldly prosperity and of public repute as having relation to these matters of his public credit and of his commercial prosperity in regard to these matters of his editorship, and his connection and public influence as a lecturer. With that view, if your Honor please, we offer this evidence.

Mr. Beach—The argument which has been submitted by the counsel, it seems to me, your Honor, would be more appropriate in another and subsequent stage of these proceedings. It consists of assumptions of facts which I submit do not appear from the evidence, and of a system of reasoning which is simply argument, and, as we maintain, unfounded in the evidence. That the fortunes of Mr. Theodore Tilton, at the period spoken of, were prostrated, we do not propose to deny. That he was suffering pecuniary embarrassments and was enduring to a very considerable extent, for some reason or other, the disapprobation of a portion of the community, is certainly very distinctly apparent. If I understand the argument of the learned counsel, he proposes, by the introduction of this biography of Mrs. Woodhull, to attribute that decline in condition to its publication. In the first place, Sir, there is no evidence before your Honor creating any connection between the fortunes of Mr. Tilton and the publication of

this article. The proof of that fact would in itself be very difficult and necessarily indefinite unless the counsel were permitted to prove, by the opinions or declarations of others, the specific effect which it produced upon the community. But assuming that there are any legitimate means of evidence by which that assumption could be demonstrated, there is nothing yet in the evidence to show any relation between the two things. My friend, Mr. Evarts, gives very proper credit to the poetical effusion of this plaintiff, entitled: "Sir Marmaduke's Musings," and he assumes to say that that is but a poetical and pathetic description of the injury to his prospects and conditions produced by his connection with Mrs. Woodhull. Pray, your Honor, where is the evidence of that? It certainly has not yet been revealed, and is purely a matter of argument upon the part of the learned counsel. But, Sir, I do not propose here to answer this argument. As I said before, at the proper time, and I trust, in a proper manner, this whole theory of the defense will be examined upon the evidence and the facts revealed by that evidence. And it may be possible, Sir, that upon that occasion it will be easy to show that the misfortunes which fell upon this plaintiff originated from altogether a different and more efficient cause—a cause clearly and abundantly recognized by the defendant. Now, the specific objection to the introduction of this tract is, first, that there is not evidence sufficient to justify your Honor in attributing the authorship of this article to Mr. Tilton. It may be a technical objection to the nature of the proof, but yet, may it please your Honor, in the course of our evidence we have been driven by that sort of objection to a great deal of difficulty so far in the presentation of our evidence; as, for instance, driving us to the production of the archives of Plymouth Church, entirely under the command of the officers of this defense. We do not, therefore, choose to aid an objection of this character. The printing or professed printing of this paper at the office of *The Golden Age* attributing upon its title-page its authorship to Theodore Tilton, or the printing of an entry of the copyright in the proper office of the Government, by no means identifies or concludes Mr. Tilton upon the question of authorship, and therefore submit that until they make more clear and definite proof upon that subject that expression of itself is abundant. Now, I do not understand, Sir, that this paper is offered for any other object than to demonstrate the proposition of the counsel that this was the origin of the difficulties which at the time or subsequently embarrassed Mr. Tilton. Well, your Honor must necessarily look at the nature of the article itself for the purpose of determining whether it could have legitimately any such effect, whether it is material to establish that fact, and unless you see in the substance and character of the production a cause efficient to produce the results which are attached to it, of course in that view it is not receivable. Well, Sir, it is said that this lady, Mrs. Woodhull, at this time was a professor of what is called the free love doctrine. It is said that she was an advocate of the movement in favor of Women's Rights. Where is the evidence of that, Sir? The legitimate and proper evidence of the fact? A. True, in the lecture at Steinway

Hall, as this witness says, this lady lectured upon the relations existing and proposed as between man and woman, but where is the evidence that in that lecture there was any license, any improper theory advanced, any document of free love which would shock the moral and social sentiment of the community? As yet we have no proof upon that subject, and, from the information I have, at the time when these gentlemen were associated with this lady she by no means had promulgated any such tenets, or avowed any such opinions in regard to these relations, and your Honor will perceive, I think, that in all the elements to render this document essential or to associate the sentiments of Mrs. Woodhull and the connection of Theodore Tilton with those sentiments here concerned, the case so far is as barren of that sort of evidence which would permit the introduction of that argument, and upon these grounds, without pursuing this discussion, may it please your Honor, both in regard to the materiality of this paper and to its authenticity, we submit it is objectionable.

Mr. Evarts—I didn't understand your Honor as ruling this out on any question of identification of the paper.

Mr. Beach—I ask his Honor now to rule upon it.

Judge Nelson—Simply my opinion that it was not evidence; nevertheless I wished to hear you on that.

Mr. Evarts—I didn't make any observation, your Honor will remember, for I didn't understand it was necessary. Now my learned friends complain that, in raising this question of evidence, I have exposed a theory concerning this case, in regard to which evidence has been produced and is to be produced, and that I have assumed facts and then have connected those facts with reasoning, which he calls argument, as bearing upon that theory, and he says that he shall, at the proper time, comment upon that theory and also enforce his own. That he will do and that we shall do. But the intermediate questions that arise are that the law shall furnish appropriate and pertinent evidence that may be invoked by the one side and the other properly in support of their theories, and the burden no doubt is upon us when asked by your Honor to show how a paper that in many suits might be wholly immaterial becomes material in this. And I attempted to do so, and it is no answer to say that the theory may not be supported finally by adequate evidence to sustain it, because that you cannot tell until you get to the end of the case. Step by step each party proposes what is itself irrelevant, but what may, if united by me, form a part of a material web of testimony when the whole is completed. Now, this publication, as is shown already by this witness, took place before, although he could not say that it was the cause of the new basis upon which the contributors and supporters of the pecuniary aid to *The Golden Age* withdrew their further payment under that contribution, and preferred that Mr. Tilton should be the sole responsible owner of that concern, and as to the question, as this witness has also testified, upon their showing that Mr. Tilton wrote this *Life* and the reason he wrote it, and the degree of composition that he furnished to it, in the revisal, if you please, of some rough material that were supplied to him by this lady and her husband. My learned friends have forgotten also that they put in evidence this card of Mrs. Woodhull's in *The World*



dated May 30th, 1871, in which she states, and states with eloquence and with force, and without the doctrines on this subject of free love between the sexes, that she regards as important to the welfare of society and as destined to overthrow the corrupting influences of marriage.

Mr. Fullerton—She gives a definition to the term there, however.

Mr. Evarts—She does, and she put it in, and I say she has done it with eloquence as well; and those are the doctrines which this witness has testified she avowed in the lecture and which he says are what the public popularly regard as the doctrines of free love. Now, the philosophy, the morality, the utility and the promise of improvement of society in respect to those doctrines, or their opposite, we don't at present discuss. It is a plain practical matter whether in the present state of feeling in this wide community of ours, of this country, the connection of an editor of the importance and credit of Mr. Tilton had heretofore had in connection with which his publications and newspapers did or did not furnish the occasion, and was the operative cause of the destruction of his prosperity. My learned friend means to argue from the proof that its date is wrong, and as it is caused by another adequate reason in which he implies, doubtless, from the relation of Mr. Beecher, the very subject of this dispute. Very well. That is legitimate for him. My point is to have the proofs in. He may argue, and I may argue, in support of the various propositions that we rightfully present to your Honor and to the jury, upon evidence justly proved under the rules of evidence for that purpose. Now, in regard to the identification.

#### THE WOODHULL BIOGRAPHY EXCLUDED.

Judge Neilson—I assume it as identified.

Mr. Evarts—Yes, Sir. I suppose it is not necessary for me to say anything with regard to that. That is all that it is necessary for me to say.

Judge Neilson—Still regarding it as the life of Mrs. Woodhull, I think it is not evidence before us, and I shall therefore exclude it.

Mr. Evarts—Does your Honor recall, what I have already alluded to—the testimony of this witness concerning it being written by Theodore Tilton and the manner in which he wrote it?

Judge Neilson—He said a draft had been prepared by her husband and he revised it and re-wrote it and put his name to it.

Mr. Evarts—We propose to put that very thing concerning which he testified in evidence.

Mr. Beach—That they brought out on their cross-examination. They cannot get in evidence in that way.

Mr. Evarts—How much it will turn out, on further explanation, that Mr. Tilton contributed to the authorship—how much he received from others, why, that of course we cannot anticipate now.

Judge Neilson—I cannot conceive how the biography of this lady, assuming that it represents her life truly or untruly, is material to us.

Mr. Evarts—That we agree to. It is only on Mr. Tilton's presentation of it that we consider it pertinent.

Judge Neilson—Suppose he had written the life of Mr. Bowen.

Mr. Evarts—It might or not be evidence according to whether, as an act of his, it was evidence. We all agree that the biography of this lady is not a matter in itself at issue here; but the connection of this party, Mr. Tilton, as the specific author of that biography, is the point of view in which we offer it.

Judge Neilson—I shall have to exclude it.

Mr. Evarts—Will your Honor be so good as to note our exception?

Judge Neilson—Yes, Sir.

#### THE CROSS-EXAMINATION RESUMED.

Mr. Tracy—Do you remember what was known as the Woodhull scandal: I think it has been referred to once or twice during the examination? A. Yes, Sir, it has been referred to.

Q. That was published on the 28th of October, 1872, I believe. A. I don't recollect distinctly now the date. It was some time in October or November—the early part of November, 1872.

Q. From the date of the tripartite agreement down to the publication of that scandal, what had been Mr. Tilton's occupation, as a whole? What had he been employed at during the Summer? A. I think on the paper, if I recollect right.

Q. On *The Golden Age*? Yes, I think so.

Q. Had he not also been engaged in the political campaign that year? A. The almanacs are running wild in my head. Yes, he had been on the political campaign, I believe, for Mr. Greeley.

Q. He went, soon after the tripartite agreement, to Cincinnati? A. I don't remember when he went to Cincinnati; at the time of the Convention, whatever date that was.

Q. Nothing occurred of importance between these parties, that you recollect, during the Summer of 1872? A. No, Sir; I think not; nothing that I know of.

Q. There was a term of quiet and peace? A. Is that a question?

Q. Yes, Sir; was there not? A. Mr. Tilton was away and Mr. Beecher was here.

Q. You recall nothing about it? A. No, Sir; I don't recall anything.

Q. After the Woodhull publication, I understand you to say that you had frequent interviews with Mr. Bowen? A. Yes, Sir, I did.

Q. On the subject of what answer should be made to him? A. Yes, Sir.

Q. I understand you also to say that you advised silence? A. Yes, Sir.

Mr. Evarts—That paper, if your Honor please, was brought into evidence by your learned friends in the way of testimony concerning it; and, as we understand it, they are to produce and put it in evidence.

Mr. Fullerton—I do not know how the gentleman came to understand that.

Mr. Evarts—By the testimony, if you want to look at it, that

you, when being allowed to talk concerning it, were so allowed upon the ground that you were going to produce it in proof.

Mr. Fullerton—I don't recall anything of that kind in the evidence—anything from which a promise could be implied.

Judge Neilson—No promise; we had general evidence on the subject.

Mr. Evarts—Well, we'll see. [Reading from testimony of Jan. 14.]

Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

Mr. Evarts—Oh! the article should be produced.

Mr. Fullerton—Well, if you want the article—

Mr. Evarts—We don't want the article.

Mr. Fullerton—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

Mr. Evarts—I cannot agree to any substitute for evidence.

Mr. Fullerton—I propose to give that in evidence, Sir; whether that was charged in that paper. It is not necessary that we should produce it here.

Judge Neilson—Does the learned counsel stand upon the objection that the paper would best show it?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then you cannot do it. You must produce the paper; if you produce the paper, and identify it, you can eliminate that one sentence.

Mr. Fullerton—Well, Sir, we will go on then with the evidence, and introduce the paper to-morrow.

Judge Neilson—Which he didn't do.

Mr. Evarts—It was overlooked, of course.

Mr. Fullerton—Now, he calls upon me to produce it.

Mr. Evarts—Now, it is in evidence; it is regarded, by arrangement between counsel, as if it were in evidence, or else the further examination would not have been allowed to go on.

Judge Neilson—In other words, they wished to show a certain clause in it; and it was ruled they could not do that without producing the paper, and counsel might have thought he would have to refer to the subject, and did not do it.

Mr. Evarts—We called upon them, and we say to them to put it in evidence.

Judge Neilson—[To plaintiff's counsel]—Have you got the paper?

Mr. Fullerton—No, Sir.

Judge Neilson—How anything this woman could say, could possibly affect the issue here, I cannot conceive.

Mr. Evarts—It is a subject of concealment with Mr. Beecher. That article is the basis of voluminous testimony on the part of this witness as to what took place between him and Mr. Beecher concerning it. It is one of the charges against Beecher—his action towards the suppression of what this article charged—as evidence of his guilt in concealing it. Now, the best evidence, as I then insisted as to what the article did charge, was that the article should be produced; and your Honor so ruled, and the counsel said he would produce it “to-morrow.” It passed over.

Mr. Fullerton—If I had produced it as I promised, it would have been evidence only of the fact that there was such a charge in the paper.

Mr. Evarts—That is all.

Mr. Beach—There was no effort to produce it.

Mr. Fullerton—No, not at all.

Mr. Beach—It was only an avowal of the purpose, that the plaintiff would feel bound to abide by it, if we chose.

Mr. Evarts—You went on with the examination of the paper.

Mr. Beach—Not as to that.

Judge Neilson—Not as to the contents of it.

Mr. Evarts—Your Honor sees my learned friend is quoted right, that that article don't prove its truth, but the article proves the charge it makes and don't prove any other charges; and the way to prove the charges it makes is to read the article; and then the existence of these articles and their communication to Mr. Beecher, affect him with a knowledge of them; and then comes the statements of suppression.

Judge Neilson—Or answering.

Mr. Evarts—Or answering; and the argument is that Mr. Beecher is guilty, because he wanted to suppress it or aid in suppressing it. Let us see what it was.

Judge Neilson—I think you are right. [To the plaintiff's counsel.] Gentlemen, do you produce the paper?

I do not now; I have not got it.

Judge Neilson—Counsel calls for it.

Mr. Beach—If we have not got the paper, that is an answer to it. They do not trace it to our possession.

Mr. Morris—We have not got it, and never had it.

Mr. Evarts—Counsel say, in the conduct of their cause, “Well, we will produce it.” Now, if they say they have not been able to find it, and didn't have it—

Judge Neilson—Is that paper in print anywhere in any of the documents?

Mr. Evarts—It is for these gentlemen to say. They said they would produce it to-morrow.

Mr. Fullerton—Yes, Sir, I think I have seen a copy of it in the hands of my learned friends to-day.

Judge Neilson—Why not admit that, and let it pass? Why not accept that as if it were the original? Would it not save time?

Mr. Evarts—Your Honor will remember there was a long cross-examination of the witness as to whether he had furnished the information.

Judge Neilson—I think in as much as they refer to the article, and the conversation with Mr. Beecher was given in respect to it, and the advice about answering or suppressing was the subject of discussion and consideration, you therefore have the right to produce the article and see what it was.

Mr. Beach—We did not refer to the article. We referred to a precise and definite subject—a charge in the article.

Judge Neilson—Supposed to be embraced in the paper?

Mr. Beach—Yes, Sir; it is embraced in the paper, but I understood your Honor to say, in consequence of that reference to that publication, we were under obligations to produce and give in evidence the whole article, or that it was admissible on the one side, or the other. Now, as I am informed in regard to that article, it contains a good deal of extraneous matter, not bearing upon that question of the particular accusation, which was considered detrimental, and which it was the purpose of the parties to avoid or suppress, and therefore I hope your Honor

will look at the article before you shall rule that the whole of it can be introduced.

Judge Neilson—I think they should be allowed to produce so much of it as will enable us to consider the evidence which has been given.

Mr. Beach—That we have no objection to.

Judge Neilson—Counsel will exercise his judgment on that subject.

Mr. Evarts—My learned friend must produce that article. Your Honor continues as follows [reading]:

Judge Neilson—Then you cannot do it. You must produce the paper; if you produce the paper, and identify it, you can eliminate that one sentence.

Mr. Fullerton—Well, Sir, we will go on then with the evidence, and introduce the paper to-morrow.

Q. I want to ask you what reply Mr. Beecher made, if anything, when you informed him that you had denied flatly to two or three persons that he was an impure man? A. He thanked me for the pains I had taken.

Q. Now, during these interviews between you and Mr. Beecher with reference to that publication, where was Mr. Tilton? A. Mr. Tilton, I believe, in the beginning was in New Hampshire.

Q. And when he returned did he participate in any way? A. Yes; he was present at an interview between Mr. Beecher and myself.

Q. What took place at that interview? A. Mr. Tilton said to Mr. Beecher that he was not at all responsible for that story. Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story.

Judge Neilson—And you must be allowed to know what story it was.

Mr. Evarts [reading]:

Mr. Beecher said he did not believe he was. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. Mr. Beecher told him he did not see exactly how to meet it, at that interview—that is what was said there. I told Mr. Tilton that I thought it was best to be silent, not to attempt any reply to the story. That is the substance of what occurred there.

Then they went on to talk about a card which was proposed as an answer to this paper, and all this course of examination that I have read would have been excluded upon your Honor's ruling and my objection, but for the statement that they were going to produce the paper as a part of their evidence.

Mr. Morris—That is a mistake.

Mr. Evarts—I have read it.

Mr. Morris—No doubt, but your statement is incorrect.

Mr. Beach—The gentleman misapprehends, and, I think, misconstrues the evidence.

Judge Neilson—The only point is whether you can find and produce the paper, under the obligation that it is to be put in evidence, and whether you are not bound to put the paper in evidence in view of the special circumstances—can supply the paper and put it in itself.

Mr. Beach—The precise question presented by the counsel is that we assumed an obligation to put in evidence the paper.

Mr. Evarts—I did, and that the examination went on only upon that examination.

Mr. Beach—And I assert that every particle of that examination is admissible in evidence in the absence of the paper, and without producing it.

Mr. Morris—And the specific question was abandoned upon which that understanding was had.

Judge Neilson—Having given all that evidence in respect to the paper after producing it, assuming you could do so, not having given the contents, they are at liberty to produce the paper and show it contained no charges, but, on the contrary, is a mere advertisement of a house for sale.

Mr. Beach—Oh! certainly, that I accede to, if that is your Honor's view.

Judge Neilson—Then it is a mere matter of form whether you read it or they, under the circumstances.

Mr. Evarts—It is by no means a matter of form, if your Honor please. It is a part of their proofs. Not one word was allowed to proceed by your Honor, in that inquiry which I read to you, except upon the statement of the counsel that they would produce the paper, and it went on, therefore, as if the paper were here.

Judge Neilson—Assuming any way they cannot produce it.

Mr. Evarts—I have not any such evidence. I must have some affidavit of that.

Mr. Morris—Well, make your affidavits: we don't want to make any.

Mr. Evarts—I don't know about this. We were very yielding about it, and said "Very well, if you are going to produce the paper, go on," and they go on, and make all the inquiries after your Honor had closed their mouths, except upon the paper being produced. They talked —

Judge Neilson—As to the contents.

Mr. Evarts—Talked about that story, it being the subject that Mr. Beecher talked about.

Judge Neilson—That requires an answer in some form, that we should know what it was.

Mr. Evarts—You can not say what it was.

Judge Neilson—I give you liberty to read that, on your assurance to read it from the printed paper, they declining to read it.

Mr. Evarts—I shall read it as their evidence.

Mr. Beach—No, Sir.

Mr. Fullerton—No, you won't,

Mr. Evarts—You will object, I suppose.

Mr. Fullerton—We don't require any assistance from the other side at all in producing our evidence; we will try to take care of that matter ourselves. If that is to be read on our side, I want to say something about it.

Mr. Beach—I don't want any misapprehension in regard to this. I repeat the gentleman's inception of attitude of this question, as arising upon the evidence, is under an entire misapprehension—unintentional, of course—and an entire misrepresentation of the manner in which this question arose before your Honor. You must allow me to read a little:

Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

Q. State what occurred between you? A. Mr. Beecher said

that he had come to consult with me as to what it was best to do with reference to that publication; what reply could be made to it, if any reply could be made. He said he saw no hope for him since that story had been published. I told him that I thought silence would kill that story; and that if he kept silent with regard to it, simply pointing to his past life as an answer to it, and saying that if that was not an answer he did not choose to make any; that it would kill that story, in my opinion, so far as any evil effects of it upon him was concerned. We consulted frequently concerning it, and did not arrive at any other conclusion than that silence was best. I said to Mr. Beecher, 'If I say anything about it I think this will be the best thing for me to say uniformly; that if the story is true, it was infamous to tell; and if it was false, it was diabolical to have told it; and that if his life was not an answer to it I could not choose to make any—I should not choose to make any to anybody.' Mr. Beecher said to me that he thought it would be judicious for me to make such a reply as that; and I met him after this conversation, and I told him that I had made such a reply as that to several parties, and it appeared to satisfy them. I told him that I had been pressed close by one or two people, and I had denied that he was an impure man—had denied that outright, I did.

Q. Well, I want to ask you whether in this article published by Mrs. Woodhull, illicit intercourse between Mr. Beecher and Mrs. Tilton was charged?

Now, that raised Mr. Evarts to an objection that they wanted the paper, but all that preceded that, in regard to the interview between this witness and Mr. Beecher, was entirely competent and proper in the absence of the article itself. It was the declaration of Mr. Beecher, in that conversation, that characterized it, by asserting the probable effect it would produce. Then, sir, Mr. Evarts says the article should be produced:

Mr. Fullerton—Well, if you want the article——

Mr. Evarts—We don't want the article.

Yet the counsel says we undertook to produce it to them, and are bound now to produce it when they disclaimed all desire for the article. [Reading]—

Mr. Fullerton—You can have the whole of it in, or have that part in. I propose to leave it out if you will admit an answer to that question, and pay no further attention to it.

Mr. Evarts—I cannot agree to any substitute for evidence.

Mr. Fullerton—I propose to give that in evidence, Sir; whether that was charged in that paper. It is not necessary that we should produce it here.

Judge Neilson—Does the learned counsel stand upon the objection that the paper would best show?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then you cannot do it. You must produce the paper.

Then Mr. Fullerton says "we must go on with the evidence." What was the precise question before your Honor? That which was put by Mr. Fullerton whether the particular matter he drew attention to was published in that article. The objection was to that evidence. Mr. Fullerton then says, "I will go on with the evidence," and he did go on with their evidence, not as to what the article contained, but as to the transactions between this witness and Mr. Beecher in regard to it, which were entirely competent in the absence of the article.

Judge Neilson—Still it is not to be denied, in view of that evidence, that they would have a right to put it in.

Mr. Beach—I did not object to that, but when this gentleman (Mr. Evarts) rises and says he reads this as our evidence, and asserts that we assumed an obligation, legal or honorable, to

produce that paper, I deny it, and the whole effort of the gentleman is to throw upon us the theory of producing this article, or this extract from the article.

Mr. Evarts—That I argue, to hold you to your promise. This is my purpose.

Judge Neilson—You can read the article.

Mr. Beach—Will you permit me to say to the counsel that I think I have the support of an objection to this question, and while it is always a very great delight to me to listen to the gentleman, it is difficult for me to reply to him, and I do not want to be called upon to reply to another argument except as a matter of courtesy.

Mr. Evarts—Now, I will make a proposition of my own. I have read to your Honor this evidence which followed what my learned friend has said. When I said, "We don't want the article," I meant to say, "We are not putting in proof here; if you continue to put in that proof here, we want the article you were after putting in proof." Now, Sir, as I understand, this plaintiff and his counsel refuse to produce that paper according to that promise, I move to strike out every particle of this witness's evidence that relates to the subject of the Woodhull scandal, from beginning to end.

Mr. Beach—In other words, if your Honor please, when we prove, upon an allusion made to that article, the declaration of Mr. Beecher—"that will ruin me"—and when he enters into devices with this witness for the purpose of avoiding that ruinous effect upon himself, that must be stricken out unless we produce that paper.

Mr. Evarts—That was my motion.

Judge Neilson—I could not grant that motion without selecting the particular passages which, perhaps, in the paper ought to be stricken out; but, under all the circumstances, regarding this as a misapprehension, the paper will be regarded as before the Court; and you (Mr. Evarts) can read it; and, if they do not produce it, then you can read it from the printed paper.

Mr. Fullerton—I hope your Honor will draw a distinction between the article in the paper and that part of it to which reference was made by me in this examination.

Judge Neilson—Yes, Sir.

Mr. Fullerton—It don't follow that a volume shall come in evidence because a paragraph was alluded to.

Judge Neilson—Well, he will first read that paragraph that points to your evidence; and he shall exercise his judgment in regard to reading the whole of it.

Mr. Evarts—We shall read all that which relates to your story of Mr. Beecher, in regard to the conversation.

Mr. Fullerton—You propose to do it! I don't understand the counsel on the other side shall determine what he shall do.

Mr. Evarts—Of course.

Judge Neilson—As the paper was referred to—a story was referred to—he may read so much of it as covers those two considerations. I think it would be very pleasant to hear that before we adjourn.

Mr. Evarts—If your Honor please, I am reminded by some of the jurors that their hour of adjournment has arrived.

Judge Neilson—[To the jurors.] The jury will return at a quarter after two o'clock punctually.

Mr. Mallison (the Clerk)—The Court will now take a recess until fifteen minutes after two o'clock.

MOULTON'S INTERVIEWS WITH WOODHULL.

The Court met at 2:15 pursuant to adjournment.

Francis D. Moulton was recalled, and the cross-examination resumed.

Mr. Tracy—Do you know when it was that you had your first interview with Mr. Beecher, after the publication of the Woodhull scandal? A. Not precisely the date, Sir, no; shortly after.

Q. Can you tell about how long? A. I don't remember.

Q. Whether it was a week or a month, or two weeks or ten days? A. It was not a month, Sir, I think.

Q. Was it two weeks? A. I had an interview with him I think preceding the interview that I had between Tilton and Mr. Beecher and myself.

Q. Of which you have spoken? A. Yes, Sir.

Q. Can you state with any definiteness when you had your first interview? A. I cannot state precisely, Sir; no.

Q. Was it the same day that the scandal was first published? A. I don't remember that. It was after the scandal was published.

Q. I know; now, was it a week or ten days or what? A. Mr. Tracy, I would tell you if I recollected, but I don't.

Q. Can't you approximate within a time—from one to two weeks? A. I think it was within a week. I don't remember the day that it appeared.

Q. Can you fix the time when the interview to which you have referred on your direct examination as occurring at your house, between yourself and Tilton and Beecher—can you tell when that was? A. It was on election day, I think, Sir.

Q. Between yourself and Beecher and Mr. Tilton? A. Yes, Sir, I think it was on election day.

Q. Did I understand you to say that at that interview Mr. Tilton had a statement written and which he asked Mr. Beecher if he could stand that he could stand anything? A. Oh! no.

Q. That is another. Now I read an extract from what is known as the Woodhull scandal. "My friend"—meaning you, for they have used your name before—"My friend took a pistol"—

Mr. Beach—One moment, Sir.

Mr. Tracy—Well, I read the passage. "My friend took the pistol."

Mr. Beach—One moment, Sir. I do not think that it should be asserted that the gentleman reads from what is called the Woodhull scandal.

Mr. Tracy—The paper is before the Court. The Court will take judicial notice whether it is or not.

Judge Neilson—The gentlemen can say whether they know that is the paper. If they do, I think we can take that to save time.

Mr. Evarts—Mr. Morris, just look at that newspaper and see.

Mr. Morris—Well, I cannot tell.

Mr. Evarts—Well, then we will go on. They say they cannot tell anything about it.

Mr. Fullerton—No; we don't say that.

Mr. Evarts—We read from *Woodhull and Claflin's Weekly* of

May 17, 1873, a paper which is a republication of the issue of that date, of the publication of November, 1872.

Mr. Shearman—I have here the original paper of November 2d, 1872, although it is a little more convenient to read from the other one.

Mr. Evarts—"New York, December 2d, 1872."

Mr. Shearman—That is the original paper.

Judge Neilson—There seems to be no doubt about that.

Mr. Evarts—This is more convenient to take to the witness, I suppose. This purports to be a republication of the whole article. It is not resumé of any kind.

Mr. Tracy—I begin to read the extract again: "I went to him and stated the case fully. We were both members of Plymouth Church. My friend took a pistol and went to Mr. Beecher, and demanded the letter of Mrs. Tilton's under penalty of instant death." [To the witness.] Did you do that? A. Did I do what, Sir?

Q. What is stated—what I just read? A. Demanding—

Q. Yes; is that statement true?

Mr. Morris—Is that to be gone over again?

Mr. Fullerton—That very question was put to him.

Judge Neilson—He has given all the particulars; I think you can ask him this question, though, although he has sworn that it is not so.

Mr. Morris—Yes, Sir; he has been asked the very question.

Mr. Tracy—I did not understand your Honor.

Judge Neilson—He has gone over that ground fully and particularly, and given us word for word all about it.

Mr. Evarts—We will see, if your Honor please.

Mr. Tracy—He has said that he never had any such transaction. Now, I am reading from the paper itself, and asking him if it is true.

Judge Neilson—What I mean to say is this, that he has stated that interview circumstantially and in detail, the conversation, the circumstance of the pistol, and how he recollects it.

Mr. Evarts—We do not propose to renew that.

Mr. Morris—And beyond that, he denies that very fact in his testimony. He has been asked in regard to that very fact.

Mr. Evarts—We do not propose to renew that matter. We have now got the paper before him, and we read that statement from the paper as it is, and ask him if it is true.

Judge Neilson—Well, I say I think we can ask him that.

Mr. Beach—No, Sir. The peculiarity of this proceeding on the part of the counsel is that they do not ask the witness simply whether that fact is true, but they are attempting to draw in this paper, this publication, by assuming to read from the publication—from the paper of Woodhull & Claflin.

Mr. Evarts—Precisely.

Mr. Beach—Now, Sir, we do not want our silence to be assumed as approving that statement of the counsel.

Judge Neilson—The form of the question is unnecessarily hostile. This witness should be treated as every other witness, and there may be witnesses about whom I shall have a good deal of solicitude. It is a question that bristles with hostility. Can't you put it in a different form?

Mr. Tracy—I don't know how I can put it in a different form, except to read the extract and ask him if it is true.

Mr. Beach—I object to their reading the extract from anything.

Judge Neilson—You can ask him if he did that.

Mr. Fullerton—That they have asked him.

Mr. Beach—Let them ask it again.

Mr. Tracy—I ask then, witness, if you did what is there stated?

Mr. Morris—We object to that. You may ask what he did, but what is there stated I don't care anything about.

Mr. Beach—The counsel does not follow the instructions of your Honor in putting the question.

Judge Neilson—He gave us to understand that he could not.

Mr. Morris—Well, he can.

Judge Neilson—I do not think on a cross-examination he is bound by the simple form of asking what he did, because he has told that on the direct.

Mr. Morris—He may ask if he did so and so, not what is there stated.

Mr. Evarts—That is exactly what we are asking, if he did what is there stated?

Mr. Fullerton—How does it appear that it is there stated?

Mr. Evarts—We have just read it.

Mr. Fullerton—You have no right to read it. It is not in evidence.

Mr. Evarts—Yes, your Honor has said that it is before the Court.

Mr. Fullerton—Who brings it before the Court? We have it before the Court, it is true, but it is not in evidence.

Judge Neilson—One at a time, gentlemen. The paper is brought before the Court under very peculiar circumstances owing to the evidence that has been received and some misapprehension as to the duty of putting it in, and therefore it was that I thought it proper to regard it as before the Court and allow them to read it.

Mr. Fullerton—Now, if your Honor please, let us have a proper understanding in regard to it.

Judge Neilson—That is just the point.

Mr. Fullerton—Can it be pretended by the other side that they can put the whole of that publication in evidence because a specific charge in it was alluded to in the direct examination of the witness a few days since.

Judge Neilson—No.

Mr. Fullerton—That being so, let us proceed a step further then. This part that they now pretend to read is not in evidence under that ruling. If anything is in evidence which is contained in that paper it is the charge against Mr. Beecher, and that alone, and now they do not propose to read that charge against Mr. Beecher, but they propose to read something else, which something else is not in evidence, because the whole paper, as a production, is not in evidence. It is very clear, Sir, it seems to me.

Judge Neilson—Then the orderly way, you think, would be for them to read first, under this permission given, what is supposed to be applicable, and then to interrogate the witness.

Mr. Fullerton—They should read that which is within your Honor's ruling, whatever that may be, and nothing beyond it, because there is nothing plainer than a single paragraph having

been read from a paper it does not follow that the whole production is in evidence.

Mr. Morris—That question was not answered.

Mr. Fullerton—I know it was not answered.

Judge Neilson—What constrained the Court to let in that paper was the suggestion that it revealed the scandal and contained a story, which story had been referred to by the witness in his previous examination.

Mr. Fullerton—The question put to the witness was whether in that production there was a charge of illicit intercourse on the part of Mr. Beecher with a lady therein named. That was the question?

Mr. Evarts—By us?

Mr. Fullerton—No, by us.

Mr. Evarts—We are not putting your question over again.

Mr. Fullerton—I know it, but I am, for the purpose of illustrating my argument.

Judge Neilson—I propose that you read such part of the paper as you deem material, and then interrogate him.

Mr. Fullerton—Such part of the paper as *they* deem material?

Judge Neilson—Well, within the sense that we are acting, as to the story and the charge.

Mr. Fullerton—The charge against Mr. Beecher?

Mr. Evarts—As to the story that this witness has spoken of as the subject of conversation between him and Mr. Beecher.

Judge Neilson—Yes, Sir; now, read such part of it as you understand covers that.

Mr. Fullerton—I supposed Sir, that they were to read such parts as the Court understands cover it.

Judge Neilson—I say the story and the charge.

Mr. Fullerton—Your Honor's understanding and my friends' understanding on the other side would be two things.

Mr. Evarts—How are we to come together?

Mr. Beach—I ask that you submit to us what you propose to read.

Judge Neilson—Yes, that, I think, would be a wise step.

Mr. Tracy—I propose to read: "I had one friend"—*that* [handing the paper to Mr. Beach.]

Judge Neilson—Well, proceed and read it, gentlemen.

Mr. Beach—I think it more proper, Sir, that your Honor should look at this than I should. I have marked, Sir, the point.

Judge Neilson—Have you marked the point that they propose to read?

Mr. Beach—Yes, Sir.

Mr. Evarts—It is Mr. Beach's marking.

Mr. Beach—What? Mr. Beach's marking? It is marked under the direction of Mr. Tracy.

Mr. Evarts—Well, I say—

Mr. Beach—It purports to be an interview between a reporter and Mrs. Woodhull, commencing *there* and ending the third page from there, [indicating the portion referred to], and I object to it as incompetent and immaterial.

Judge Neilson—Mr. Tracy, you have it before you; what part do you propose to read?

Mr. Tracy—The part beginning with "Reporter."

Judge Neilson—On the second page?

Mr. Tracy—I don't know what page it is on.

Judge Neilson—Well, the second page in this book. Down to what point?

Mr. Tracy—Down to the end of that interview.

Mr. Beach—The third page from that.

Judge Neilson—including the letter of a third person here?

Mr. Beach—including everything, Sir.

Mr. Tracy—We don't care about the third person's name, your Honor. It will take some little time to go over that and select out, perhaps, the names of third parties. We want the story simply as it relates to Mr. Beecher and the witness and Mr. Tilton, as told there.

Mr. Evarts—We want what formed the basis of the conversation, which this witness has detailed, between him and Mr. Beecher.

Mr. Beach—The difficulty is to ascertain what that is.

Judge Neilson—That is the difficulty. Here is a reference in the third column of the fourth page—a reference to Mrs. Tilton. I cannot conceive that any evidence we have had would justify the reading of that. I cannot conceive that it is material, what this writer says about Mrs. Tilton. That was not the subject of discussion between the witness and the defendant.

Mr. Tracy—It will take so long, your Honor, to go over that and pick out the different paragraphs, perhaps, that relate strictly to the parties here, that I had better move to another part of the cross-examination, and renew this.

Judge Neilson—I think so, and mark the specific passages, in brief.

Mr. Tracy—My plan of examination was to read now the paragraphs that related strictly to the parties and to this witness. I did not propose to read anything that did not relate to their witness, and finish my cross-examination of him on that subject, and then at our leisure put in such parts of the paper as we desired to have in. That was the plan that I originally marked out for myself.

Judge Neilson—Haven't you the examination of the witness before you already on these very points?

Mr. Evarts—Not with this paper before us. We can proceed with something else.

Judge Neilson—Well, supposing you do that.

Mr. Tracy—That is the way I originally proposed to do it.

Judge Neilson—Proceed to some other subject and dissect this at your leisure.

#### MOULTON'S LOANS TO TILTON.

Mr. Tracy—We can renew this just as well.

Judge Neilson—And use as little of it as you can help. It is like medicine. Don't take too much of it; it is unpleasant. [Laughter.] Go on, Mr. Tracy.

Mr. Fullerton—We object that the medicine don't suit the disease at all.

Mr. Tracy—That you can only tell by trying. That is the way the doctors do.

Mr. Fullerton—That is the way lawyers do sometimes; but I guess doctors don't, who understand themselves.

Mr. Tracy—Now, Mr. Moulton, will you tell us what source of revenue Mr. Tilton had, to your knowledge, from January 1st, 1871, down to May 1st, 1874? A. What source of revenue?

Q. What source or sources of revenue he had, to your knowledge, from January 1st, 1871, to May 1st, 1874? A. He had on deposit with Woodruff & Robinson some money, Sir. He had the subscriptions to *The Golden Age*, and he had—when I speak of subscriptions, I mean to the capital stock of *The Golden Age*.

Mr. Evarts—Contributions? A. Yes, Sir; contributions, that is a better word; and then the subscriptions to *The Golden Age*, an income from the paper, Sir, and he had also \$7,000 from Mr. Bowen; and from May 3d, 1873, I think that was the date, May 3d, 1873, or May 2d, 1873, the \$5,000 which he didn't know anything about, however.

Mr. Beach—He is giving the capital instead of sources of revenue.

Mr. Tracy—He is not giving the sources of income. I move that the last answer of the witness be stricken out.

Judge Neilson—The words "he did not know anything about it" are stricken out.

Mr. Tracy—That \$5,000—you refer to the \$5,000 which came from Mr. Beecher? A. I refer to the \$5,000 that Mr. Beecher gave to me for him; yes, Sir.

Q. Have you named now all the sources of revenue that he had, to your knowledge? A. I don't know whether the book, Sir, was issued—"Tempest Tossed" was issued before May 1st 1874, or not—whether he had finished it.

Q. Well, do you know whether he had received any income from it before May 1st, 1874. A. I don't know whether he had received any income from that or not.

Q. Do you know whether he received any income from *The Golden Age*, or whether it failed to pay expenses? A. I don't know that of my own knowledge, Sir.

Q. Have you now named all the sources of income that Mr. Tilton had, to your knowledge? A. Of income—I think I have; yes, Sir.

Q. Does that include borrowed money? A. From me?

Q. From anybody? Does it include your borrowed money that you loaned him? A. I don't know; I have not mentioned that, Sir; there was not so much of that, I find.

Q. In addition to what you have mentioned, were your loans to him? A. Yes, Sir.

Q. Had he any other source of income to your knowledge? A. Not that I know of.

Q. No other loans? A. From anybody else?

Q. Yes, Sir. A. Not that I know of.

Q. No other funds applied to the support of *The Golden Age*? A. None that I know of.

Q. What amount of income did he receive from your loans? A. I have had it examined, Sir, and I cannot determine that. I had our accountant—I told Mr. Porter that I would have him look over the books, but there is nothing by which I could be guided, Sir.

Q. Have you brought your books here? A. No, I have not brought the books here.

Q. I thought you were to bring the books here of Woodruff & Robinson. Do you know of his having any income from lec-

tures during that period? A. Yes, he did, I believe, have income from lectures, which I did not recall when I answered your question.

Q. How much? A. I don't know.

Q. What years? A. My impression is that he lectured in the beginning of 1871, Sir, and in the Winter of 1871 and the Spring of 1872; I think so; I won't be certain about that.

Q. Now, do you know whether his lecture seasons did or did not produce any income? A. They did produce some, Sir; I don't know how much.

Q. You do not know how much? A. No.

Q. Now, have you named all? A. I think I have, Sir, as far as I recollect.

Q. Were your firm his bankers during this time? A. He had money on deposit, Sir with our firm.

Q. Had he any other bank account to your knowledge? A. I don't know that he had.

Q. How did that account stand in April—2d or 5th, is it, when he received and deposited with you \$7,000?

Mr. Fullerton—That appears by the account itself, Sir.

Judge Neilson—There are both accounts there.

The Witness—I cannot state from memory, Sir.

Mr. Tracy—I will show you the account. How often had you loaned him money; should you say, during this time? A. Not very often, Sir.

Q. Loaned it on his application? A. Sometimes I asked him if he wanted any money.

Q. And if he said he did you loaned it to him, did you? A. Yes, Sir; generally.

Q. What amounts have you loaned him?

Mr. Fullerton—That is all gone over, Sir.

Judge Neilson—Yes, Sir; "When he wanted money I gave it to him," he said, "and generally in currency."

The Witness—Mr. Porter asked me if it exceeded \$5,000, and I answered him no, Mr. Tracy.

Q. Mr. Tracy—In the aggregate? A. Yes, Sir, he asked me if it exceeded \$5,000 in the aggregate.

Q. Now, I ask you what is the largest amount you loaned him at any one time? A. I don't recollect.

Q. Were these loans independent of your contribution? A. Yes, Sir.

Q. How large is the largest amount you recollect of loaning him at any one time? A. I don't recollect, Sir, anything about it—what was the largest amount.

Q. Do you recollect of loaning him as high as \$500 at any one time?

Mr. Morris—Your Honor, is this to be gone over again? It has all been gone over with particularity.

Mr. Tracy—It has been gone over just as every other subject has been gone over.

Mr. Fullerton—That is so.

Mr. Tracy—Judge Porter asked one or two questions about the fact whether he had loaned him money.

Judge Neilson—Oh! more than one or two questions; he examined him as much I think as in his judgment the point called for.

Mr. Tracy—Our recollection is that he only asked him as to

the aggregate amount and nothing as to the details. That is our recollection on our side.

Mr. Morris—It is a mistake.

Judge Neilson—He asked him as to loans.

Mr. Tracy—So Judge Porter touched on every point generally.

Judge Neilson—I said you could ask him this question. Perhaps that will satisfy you.

Q. Can you state whether you ever loaned him as high as \$500 at any one time? A. I cannot, Sir; but I can state that I never loaned him to exceed \$500, I think, at any one time.

Q. Will you look at the account, and tell us whether his account with Woodruff & Robinson was overdrawn at the time he received the money from Bowen? A. It would appear from this, Sir, that the account was overdrawn \$584 39.

Q. At the time he received the \$7,000 of Bowen? A. It would appear so from this, Sir.

Q. Now, Sir, from the account when was that \$7,000 exhausted, and the entire amount in your firm's hands belonging to him exhausted?

Mr. Fullerton—I dislike to trouble your Honor with objections, but it does seem to me that this is a waste of time. There are the figures which prove whatever they do prove, and there is no necessity for any one's swearing to them.

Mr. Morris—The account has been read in evidence, Mr. Tracy.

Mr. Tracy—Well, but the balances.

Mr. Morris—Yes, the balances, every item of the account, both sides.

Judge Neilson—You might substitute the word "withdrawn" for "exhausted."

Mr. Tracy—Yes, the stenographer may change the question.

The Witness—Shall I add it up to answer your last question?

Mr. Tracy—Yes, if it will not take too long. Don't it show readily?

The witness—What is the last question, General?

Mr. Tracy—When the whole amount was withdrawn? A. The account seems to be closed on April 21st.

Q. When was the last item withdrawn; when did he draw the last item of that account? A. \$170 48 seems to have been drawn here on April 21st, 1873.

Q. When was the next to the last item drawn? A. December 21st—December 27th, according to this account—\$6.

Q. Now, will you tell us whether that did not withdraw the entire account? A. The account seems to have been balanced on April 21st, 1873.

Q. I ask you to tell us whether, when he drew on the 27th of December, the draft, he had anything remaining, and, if so how much? A. When he drew the draft on the 27th of December?

Q. Yes, Sir? A. I wish Mr. Shearman would add this up; I cannot see; my eyesight is not good enough.

Mr. Evarts—We will verify it.

The Witness—I can hardly see, Sir.

Mr. Tracy—Very well, Sir, pass it back; we will do that. [Taking the account from the witness.]

The Witness—The account is as it stands. I don't know anything about it further than that.



Q. What source of income had Mr. Tilton from January 1st, 1873, to the receipt of the \$5,000 by you from Mr. Beecher in May, 1873? A. I don't know that he had any, Sir, except from *The Golden Age*—whether that paid or not—the receipts from that.

Q. That you don't know? A. No; I don't know.

Q. Did you loan him any money during that time? A. I don't recollect that I did, Sir.

Q. Did any one else contribute any money to him during that time to your knowledge—during that period? A. Not to my knowledge; no, Sir.

Q. You had an interview with Mr. Beecher on the subject of this \$5,000 before you received it from him? A. Yes, Sir.

Q. Do you remember where that interview was? A. Well, there were interviews at my house about it.

Q. You say interviews? A. Yes, Sir.

Q. More than one? A. I think there was more than one; yes, Sir.

Q. Having reference to this \$5,000? A. Having reference to help for *The Golden Age*.

Q. Well, I am talking about the \$5,000 now. A. Yes; I think there was more than one with reference to the \$5,000.

Q. At either of those interviews did you present to Mr. Beecher drafts or checks of any person, saying to him in substance, "This is friendship;" "This is what I call friendship?" A. I don't remember that phraseology, Sir.

Q. Well, did you show him drafts from any person which you had received as a contribution to *The Golden Age*, or to Theodore Tilton, either? A. If you will allow me, Sir, I will tell you as nearly as I recollect what I did show him.

Q. Yes, Sir. A. There was a friend of mine, and of Mr. Tilton, who sent me either a check or two checks, and in addition to it a note, I forget for how much, which the person wanted me to discount and use as I saw fit for *The Golden Age*. I didn't think it was best to do it, and returned it.

Mr. Evarts—What you told Mr. Beecher, not what you thought? A. I told Mr. Beecher that Mr. Tilton would not take that money.

Mr. Tracy—What was the aggregate? A. That I don't remember, Sir.

Q. Don't you remember anything about it? A. No; I don't recollect about it; I have asked about it since to find out.

Judge Neilson—You showed him these papers, did you? A. Yes, Sir, that is all; I don't remember anything about the amount.

Mr. Tracy—Do you remember whether it was as high as \$5,000? A. I don't recollect, Sir.

Q. Do you remember whether it was as high as \$3,000? A. I don't recollect.

Q. Was there more than one draft or check to make up the gross amount? A. I think, Sir, that there were two pieces of paper; I think there was one check and one note.

Q. Whose was it? A. Shall I answer that question, your Honor?

Judge Neilson—It don't seem to be material.

Mr. Evarts—We think it is material, if your Honor please.

Mr. Morris—We object

Mr. Evarts—It is a part of the conversation with Beecher.

Judge Neilson—No name was mentioned.

Mr. Evarts—He does not say that.

Judge Neilson—It does not appear in the evidence that any name was mentioned.

Mr. Evarts—Well, we ask him if it was, and if the name was mentioned to Mr. Beecher?

Mr. Morris—We object.

Mr. Evarts—We infer from the fact that Mr. Tilton said he would not accept it from that source.

Judge Neilson—I do not think the name is material.

Mr. Tracy—We desire to hear all the conversation.

Judge Neilson—You can have all the conversation, and I will allow you to get it. Go on with the examination. I think his name ought not to be mentioned. That is all, I think.

Mr. Tracy—You say you showed Mr. Beecher those drafts? A. Yes, Sir.

Q. Did he see the name? A. I think he did.

Q. Was the name mentioned? A. I think it was.

Judge Neilson—Then you can give it, if it was mentioned in the conversation?

The Witness—Shall I give it, your Honor?

Judge Neilson—Yes, if it was mentioned in the conversation, you can give it.

Mr. Beach—One moment. I was busy and I have not particularly understood this question, but do not think it follows, because immaterial, impertinent, or scandalous or offensive matter may have been mentioned in that conversation which has no connection with the subsequent matter of this controversy, it necessarily comes in evidence. If needful I will send for authorities to satisfy your Honor, that where one party calls for a conversation and it is given, the other party may give the remainder of the conversation, so far as it is material to explain that which has been put in evidence, but it does not make the whole matter which Mr. Beecher may have asserted in that conversation material.

Mr. Evarts—We have not asked him about Mr. Beecher.

Mr. Beach—I don't know what the conversation was, that was particularly referred to. I understand, Sir, that this was a conversation between Tilton, Moulton and Beecher in regard to a contribution.

Judge Neilson—No; Tilton was not present.

Mr. Beach—Moulton and Beecher.

Judge Neilson—Tilton was not present.

Mr. Beach—Tilton was not then present. Well, even if he had been present it would make no difference. A declaration by Mr. Beecher in regard to a third person—

Mr. Evarts—We have not asked for Mr. Beecher's declaration; we are not asking for Mr. Beecher's declaration.

Mr. Beach—What is it you are asking?

Mr. Evarts—We are asking what this witness said to Mr. Beecher.

Mr. Beach—That don't make any difference, Sir, whether it was said by one party or the other; it is totally immaterial.

Judge Neilson—It appears that a third person, acting, perhaps in the interest of *The Golden Age*, sent a check and note, suggesting that the note be discounted and the money applied.

It was not thought wise to discount the note. Those papers were shown to Mr. Beecher, and some conversation had in respect to it. The question was whether the witness did not say to Mr. Beecher, in reference to those papers, "that is friendship indeed," or something of that kind.

Mr. Evarts—Yes, Sir.

Judge Neilson—The whole thing is collateral.

Mr. Beach—That is what I was going to remark.

Judge Neilson—It don't touch the issue we are trying at all, although it may have some bearing upon the other matter, whether Mr. Tilton had any means or not,

Mr. Evarts—We do not regard it as collateral. If your Honor will allow us to state how it comes in.

Judge Neilson—Yes, Sir.

Mr. Evarts—This witness has undertaken to give the interview between him and Mr. Beecher which led to Mr. Beecher's contribution of \$5,000, and the instructions concerning it, all which is adduced here as evidence, in the shape which he has presented it especially, of crimination against Mr. Beecher in that contribution. Now, we propose to show what did pass between this witness and Mr. Beecher antecedent to his payment of the \$5,000, and the witness has told us that there was more than one interview. Now we are getting at those interviews. That is the way it comes in, and we propose to show exactly what did pass between this witness and Mr. Beecher, and then we will see whether the construction that has been put upon it in what has already been given is the true one.

Mr. Beach—The witness has given no construction to it; he has merely related interviews which have been called for by the counsel upon the other side, none of which have been introduced by us on that subject.

Mr. Evarts—In a previous interview. On your own evidence he gave one of the interviews that preceded the \$5,000.

Judge Neilson—Now, you can have all the rest of that interview, if all of the conversation was not given.

Mr. Evarts—We can have the preceding interview also. The *res* to be proved is what passed between this witness and Mr. Beecher that bears upon Mr. Beecher's contribution. It is just as much part of the *res* if it happened in a conversation prior to the one that he has detailed. I submit to your Honor that that is very clear.

Mr. Beach—We have not given an interview, Sir, upon that subject, I mean the subject of contributions to *The Golden Age*, or the revenues of *The Golden Age* and its fortunes in any particular, Sir. We gave in evidence the interview at which Mr. Beecher contributed \$5,000 for some purpose. Now all of that interview relating to the subject concerning which we inquired, of course is evidence. We gave the whole of it, I suppose, so that the gentlemen are satisfied with it.

Judge Neilson—Also a prior interview when it was stated that \$5,000 on mortgage could easily be got.

Mr. Beach—Yes, Sir. Now the proposition is upon their part to prove another interview between Mr. Moulton and Mr. Beecher in regard to a contribution of a third person toward *The Golden Age*, which was rejected.

Mr. Morris—And as to who that person was.

Mr. Beach—That interview is not competent evidence against us. What Moulton and Beecher may have declared in the interview to which we have not directed our attention is competent to be proven against us.

Judge Neilson—Everybody will agree to that. Counsel will agree to that, of course.

Mr. Beach—Well, if they concede that, they concede the principle which excludes all the evidence in regard to this interview.

Judge Neilson—Unless it occurred in one of the interviews as to which you inquired.

Mr. Beach—Certainly; they don't propose that.

Mr. Evarts—Does your Honor say we cannot show interviews between this witness, in reference to this transaction which he undertook to carry on and conduct with Mr. Beecher, and that they can pick out which they please, and we cannot prove the others?

Judge Neilson—I mean to say that when they have inquired into any conversation, you can inquire as to the rest of it.

Mr. Evarts—That we understand.

#### MORE ABOUT THE GOLDEN AGE MONEY.

Judge Neilson—I mean to say, also, that as to this \$5,000 or the raising of it, if Mr. Beecher gave any instructions, you can go into that; as to the person who was appointed to distribute or apply the money—that is, as to the act of a third person. That is before us already. This discussion came up in regard to the name of that third person, which I think is not material. I don't see why it is material.

Mr. Evarts—Yes, your Honor cannot see why it is material until it appears and until the conversation is given. Our difficulty is this, if your Honor please: the witness is sworn to tell the truth, the whole truth, and nothing but the truth, and we undertake to examine him concerning what was actually said and done between him and Mr. Beecher. Now, there is no authority that I know of that can absolve him from telling the truth as it occurred.

Judge Neilson—He don't ask to be absolved, counselor, and it is not necessary to reiterate the form of his oath; of course we know that.

Mr. Evarts—I submit to your Honor's rebuke, but submit that I am not aware of any rule of evidence—

Judge Neilson—It does not follow that because the witness swears to tell the truth, the whole truth, that he is therefore to tell everything.

Mr. Evarts—Everything that is pertinently inquired of.

Judge Neilson—Exactly.

Mr. Evarts—And, therefore, as it was. How can it be predicted, if the interview is pertinent, that this or that should be omitted from it?

Judge Neilson—We really have this interview, excepting the name of a third person.

Mr. Evarts—We haven't the whole of the interview.

Judge Neilson—Well, I think we will take the rest of it; yet I appeal to you whether you think it proper that this third person should be named. If you say, as counsel, that he should be, the witness may name him.

Mr. Evarts—Very well; it establishes the rule of evidence.

Judge Neilson—Suppose it should be one of your learned associates, would you like to have his name brought in here?

Mr. Evarts—Your Honor is assuming that there is something discreditable. There is not that I know of.

Judge Neilson—Well, I am assuming that gentlemen may have private transactions or gifts which they don't wish to have made public.

Mr. Fullerton—Especially if they were rejected.

Judge Neilson—Do you say it is material?

Mr. Evarts—I will consult with my associates. Your Honor sees the difficulty that where we are dealing with material and important interests of people in litigation we cannot, of course, always exercise that degree of courtesy and consideration that we would be glad to do in reference to third persons; that your Honor understands as well as any one of us that have any experience in the profession. Of course, your Honor has had experience both at the bench and at the bar, and I think your Honor knows that the bar never do desire to press inquiries that they do not regard as material; I mean as affecting third persons. We are not satisfied with the condition of the matter as passing between this witness and Mr. Beecher, as it stands now.

Judge Neilson—I purpose to allow you to take the rest of the interview, because so much of it has been given, suggesting to your own consideration the propriety of leaving out the name of that third person.

Mr. Evarts—Well, perhaps we may do that.

Judge Neilson—You can come to an end in that way, you know.

Mr. Fullerton—Well, I don't know about referring the propriety of that course to the counsel upon the other side. If it is improper in your Honor's judgment, then I would respectfully ask that your Honor's judgment should be carried into effect.

Judge Neilson—I generally try to do that.

Mr. Fullerton—I am aware that your Honor generally tries to do that, and that your Honor generally succeeds also; and if it be improper to give the name of the third person, then it ought to be shut out, because it would not make it any less improper that it was referred to counsel on the other side for their judgment in regard to it. Your Honor will perceive this conversation, a part of which they have called out, was not referred to by the witness upon his direct examination. It is not, therefore, within the rule which your Honor has suggested, that where a part of a conversation was called for by ourselves, they have a right to the balance of it. It is not that case.

Judge Neilson—No.

Mr. Fullerton—But it is a question where they call for another conversation upon their own responsibility, and hence it is collateral, and they cannot dispute it hereafter or disprove it hereafter.

Judge Neilson—It is collateral unless it took the form of instruction in regard to the use of this money.

Mr. Fullerton—Well, Sir, it does not take that form. Let us see just how the thing stands: they say, or they prove by Mr. Moulton, that on a certain occasion he received from

some third person, whose name has not been made known, a letter containing a draft and a check, with instructions to use it for the benefit of *The Golden Age*, and that Mr. Tilton said he would not have it used for *The Golden Age*.

Mr. Evarts—He has not said that.

Mr. Fullerton—And he has been asked whether or not he showed these papers to Mr. Beecher, and he says that he did. Then he was further asked, was the name of the person attached to this letter used in that conversation? His answer was in the affirmative, and they call for that name. Now, that is the question before the Court, and can anybody see that that becomes material in this controversy? It is collateral matter, and they cannot contradict it. Even if the name should be given, they could not produce the person for the purpose of showing that it was untrue.

Mr. Evarts—That is not our object.

Mr. Fullerton—It is purely collateral, and therefore they have no right to it. They may have a right to the other part of the conversation inasmuch as a part of it has been given, as your Honor has suggested; but when giving evidence of collateral matter, your Honor has a right to stop them, especially in a question of this kind, where they seek to give the name of a third person who has no earthly connection with this controversy, and who ought not to be drawn into it at all.

Judge Neilson—I think the learned counsel was accepting my suggestion not to exact the name.

Mr. Evarts—There is nothing collateral about this. It is not brought in to impeach the witness—not in the least; it is a part of the direct subject of the inquiry, just as what you gave in evidence was the subject of inquiry.

Mr. Beach—That we deny, your Honor.

Mr. Evarts—I know you deny it; it is not collateral. How a conversation one day is collateral and next day specific, I can not understand.

Judge Neilson—Well, now, you can exact this name. Do you ask him to give the name or not?

Mr. Tracy—Not at present.

The Witness—Shall I give the conversation?

Judge Neilson—Everything except the name of the person who sent the papers.

Mr. Beach—Does your Honor rule that the declarations Mr. Beecher may have made in that conversation as to other matters than the \$500 is admissible?

Mr. Evarts—When we come to that, it will be time enough to consider it.

Judge Neilson—The inquiry relates to the \$5,000.

Mr. Evarts—Of course it does.

Judge Neilson—Meantime you take an exception. Go on, witness.

The Witness—Shall I give the conversation?

Mr. Tracy—Yes; omitting the name.

Judge Neilson—From the point where you dropped it.

Q. You recollect when you left it off; you say that you told Mr. Beecher Mr. Tilton would not accept that money; you said you would not discount that draft; you showed him these papers; now what did you say? Was there a letter accompany-

ing those papers? A. I think there was a letter, Sir, accompanying those papers.

Q. Was there currency also inclosed? A. I don't think there was, Sir.

Q. Now, go on and state what occurred—what was said? A. I said to Mr. Beecher that I had spoken to Mr. Tilton about this gift, and that Mr. Tilton said he could not accept it; that he had no way of returning the money that he knew about; and I said also to Mr. Beecher that I could not honorably take this money from this person and apply it to Mr. Tilton's use without informing him about it, and I did not see how that money could be used therefore. That is the substance of the conversation, Sir, as nearly as I remember it.

Judge Neilson—Now, he asked you whether in that connection you said to Mr. Beecher, in showing him the papers, "This is friendship, indeed." or something of that kind.

Mr. Tracy—Did you make any remark characteristic of the mode of tendering such a fund? A. I think I said something about its being an expression of friendship; yes, Sir.

Q. Can you repeat the language that you used? A. I can't repeat the language that I used; no, Sir.

Q. Wasn't it, in substance, "This is friendship, indeed?" A. No, it was not in that shape.

Q. Repeat the substance of it, as near as you can? A. I have, Sir.

Q. You can't do it? Well, now, was that money received and used, or was it returned? A. No, Sir; it was not—it was not.

Q. No part of it received?

Mr. Fullerton—Just one moment.

Judge Neilson—I think we have gone far enough with that.

Mr. Fullerton—The answer was not full—"Was the money received or was it returned?" His answer is, "It was not."

The Witness—I mean it was not used for *The Golden Age*.

Q. It was not received; was it returned? A. Yes, Sir; I returned it myself.

Q. Had you any talk with Mr. Tilton about it? A. Yes, Sir; I had.

Q. What was it? A. I told him of the offer of this party, the request of this party to let him have this money, and my recollection is that there was a caution in the note itself not to say anything about it—not to say anything about it to Mr. Tilton, but I could not give it to him, in my opinion, without telling him about it, and I told him frankly who the party was and what the amount was, and he said he certainly could not take it; he had no way of returning the money that was loaned to him, or given to him, and he could not do it in that way.

Q. Was the party known to Mr. Tilton? A. Yes, Sir.

Q. Known to Mr. Beecher also? A. Known to Mr. Beecher; yes, Sir.

Q. And a friend of Mr. Tilton. A. A friend of Mr. Tilton; yes, Sir.

Q. Now, do you say that Mr. Tilton said that he had no way of returning it—repaying it—and therefore he could not take it? A. Yes, Sir; he said something substantially like that, Sir.

Q. Was it tendered to him as a loan, or a gift? A. Well; I

think it was intended to be either one or the other: it was to be used for *The Golden Age*.

Q. How did you present it to him—how did you present it to Mr. Tilton; as a loan, or a gift? A. I guess as a gift.

Q. Now, how soon after that was the money received from Mr. Beecher? A. I don't recollect the date of that conversation, Sir; I don't recollect the date of this transaction.

Q. How soon after? About how soon? A. Well, I can tell you the date that the money was received from Mr. Beecher; I cannot tell you how soon after.

Q. I don't care when that was; I want to know what time.

Mr. Evarts—He said this was before.

Question, by Mr. Tracy—How near were they together? A. I don't recollect.

Q. Well, can't you approximate? A. No; I cannot approximate; I don't recollect.

Q. Was there anything said by Mr. Beecher at this time about raising the five thousand dollars himself? A. I don't recollect that there was, at that interview, Sir.

Q. Now, how soon after that did Mr. Beecher come to you and talk about raising five thousand dollars? A. I do not recollect, Sir.

Q. Can you tell whether it was three days or two days, or one week or three weeks? A. No, I cannot.

Q. Cannot tell anything about it? A. No.

Q. Was it a month? A. I do not know.

Q. Was it six months? A. I don't know.

Q. You say you don't know whether it was six months. A. No; I do not know.

Mr. Fullerton—He has said so; and you heard him say so distinctly.

Judge Neilson—Now, I ask the witness, can't you give the date? A. I cannot; I have tried to ascertain the date, your Honor; I saw the reference, your Honor, in the—

Mr. Evarts—It is not a question of date; it's a question of proximity of the transaction, no matter what the dates were.

Judge Neilson—Well, the witness must be allowed to answer.

The Witness—If your Honor please, I should like to make this explanation; I saw the notice in Mr. Beecher's statement that this examination has reference to, and I have tried in good faith to find out the amounts and the dates, and I have not been able to.

Q. Can you tell the season of the year when you had this conversation and exhibited these papers? A. No, Sir; I cannot swear what it was.

Q. Can you tell what season of the year it was? A. No, I cannot.

Q. Whether it was Winter or Spring? A. No, I cannot; whether Winter or Spring.

Q. Where was this interview between you and Mr. Beecher? A. I think it was at my house.

Q. Mr. Beecher came to you and spoke about the \$5,000; now, how soon after that interview, where he spoke of the five thousand dollars, did you receive the money from him?

Mr. Beach—Spoke of what five thousand dollars?

Mr. Tracy—Spoke of raising five thousand dollars, I understood him; he has already said that on your examination.

Q. Now, how soon after that was it that you received the money from Mr. Beecher? A. I don't remember that either.

Q. Can't you approximate to the time? A. No; I cannot approximate to the time; it wasn't a very great while.

Q. Was it a week? A. I don't know whether it was a week or not, Sir; it may have been a month.

Q. Well; do you know the time when you received it? A. I know the time when I received it precisely.

Q. On receiving it, what did you do with it? A. Took it over to New York and deposited it with the firm of Woodruff & Robinson, to my credit.

Q. Did you send any part of it to Tilton? A. I think I sent him a thousand dollars—the account will show—on the next day, Sir.

Q. What happened between you and Tilton when you sent him that thousand dollars? A. I sent him the thousand dollars with a demand note, Sir; with a note for him to sign.

Q. In whose favor? A. "On demand I promise to pay to the order of Theodore Tilton," I think the way it was drawn; I think it was; and he returned the money to me, saying that he could not—that he could not borrow any money on demand and give that note for it, because he had no means of answering to that responsibility.

Q. Of repaying? A. Yes, Sir.

Q. Well, what did you do then? A. Then I sent him the check for a thousand dollars as a gift.

Q. What did you do? A. What did I do? I sent him a check for a thousand dollars.

Q. Did you accompany it with a note? A. I don't think I did; don't remember whether I did or not.

Q. Or any note to be given for the thousand dollars? A. No.

Q. No communication accompanied the check? A. I don't recollect that there was.

Q. Well, what became of that? A. He used it, I suppose; I don't know what became of it.

Q. What occurred between you and Mr. Tilton after that about that thousand dollars? A. I do not recollect what did occur.

Q. Anything? A. Not that I recollect of particularly; we may have had some conversation about it; I don't remember what it was.

Q. Didn't Mr. Tilton ever introduce the subject? A. He may have done so.

Q. Did he? A. I do not recollect whether he did or not; I don't recollect any specific interview at which it was done.

Q. Did you ever introduce the subject to him? A. I don't remember whether I ever did or not; very likely I did.

Q. Was it ever the subject of conversation, directly or indirectly, between you and Tilton, so far as you know? A. I think it was; yes, Sir.

Q. Then what was said? A. I will try to recollect the substance of it.

Q. When was the conversation? A. I don't remember how shortly after the giving of the thousand dollars it was; I don't remember how shortly after that or how long after that it was.

Q. Cannot you approximate to the time? A. Well, it was not but a few days; I guess not to exceed a few days.

Q. Well, then, what occurred? A. I don't recollect distinctly enough to state, I think, what did occur. There was an allusion made to the fact that I had sent him a note, substantially that for him to sign, and he reiterated what he had said in the note, in reply to the first note that I sent to him, and I said then. "Very well, take this money and you can have the money and return it when you are able to return it;" that is all; that is the substance of what was said; I don't recollect the conversation accurately.

Q. What do you mean by saying, "Take the money?" A. Use it.

Q. Hadn't he used it already? A. I don't know whether he had or not.

Q. You don't know how long this interview was after the sending of the check? A. Oh! it was within a few days, Sir; the natural time of such a conversation. I don't recollect when I saw him after it, Sir; I am trying to answer your question as well as I can.

Q. But you don't know whether he made use of the check at that time or not? A. I really do not.

Q. When did you send him the next amount of money? A. I don't know; the account will show.

Q. I pass you the account? A. It would appear to be, Sir, by this account, July 11th, 1873.

Q. How much? A. \$650.

Q. How came you to send him that? A. I heard, either from him or Mr. Ruland, I don't remember which, that the paper wanted that money or something about his wants; I don't know what.

Q. Was there any note sent with it? A. Don't recollect, Sir; don't know whether there is or not. All the papers I have got with reference to it are produced here under your subpoena.

Q. Have you any note or memorandum written to him at the time of paying over that money, or sending that money? A. I think not, Sir.

Mr. Fullerton—What money? A. \$650.

Mr. Tracy—Have you got any application from either Mr. Ruland or Mr. Tilton for that \$650? A. I don't know, Sir, that I have; all the applications are in the papers here.

Mr. Evarts—We would like them.

Mr. Tracy—We would like all of them.

Mr. Fullerton—All of what?

Mr. Tracy—All the applications from either Tilton or Ruland for this—for money.

Mr. Beach—I don't understand the witness to say that he has any.

Mr. Tracy—Then we want that fact stated, that he has not.

Mr. Evarts—The witness said that there were applications.

Mr. Beach—No; I beg your pardon.

Judge Neilson—He said all the applications, assuming that there might be some, were among the papers. Better pass to some other subject; you only have about an hour to finish your cross-examination. In the meantime, Judge Morris will look.

The Witness—I remember one note, I think, from Mr. Ru-

## THE TILTON-BEECHER TRIAL.

land, that I put in there, Mr. Tracy; the check is there, Sir, for the \$1,000 that you just called for, if you will look at it.

Mr. Tracy—We would like to put it in. What number will that be?

[Paper marked "D, 27."]

Mr. Morris—Have you got the date of that?

The Witness—This is May 3d. Shall I mark it off here as delivered to the stenographer?

Mr. Morris—Yes, Sir.

Mr. Tracy—Now the second? A. The second is \$650, Sir. That check is also there.

Q. Now, I pass up the application that has been handed us. Will you say whether you have any application from either Ruland or Moulton for the payment of \$650 in July?

Judge Nelson—From either Ruland or Tilton?

Mr. Tracy—Ruland or Tilton, I thank your Honor.

The Witness—I had either a verbal or written communication from either one or the other, but I haven't it here. If this be all that is in the papers, this is all I have got.

Q. Well, you have no written application? A. It appears not —

Mr. Evarts—No application that has been found? A. No, Sir. I have made a diligent search for the papers, and have undertaken to comply with your subpoena, as far as possible.

Mr. Tracy—Is that the letter which accompanied the first offer of the thousand dollars of May 3d [handing paper to witness]? A. Yes, Sir; Mr. Tilton's answer is: "I cannot borrow any money, for I see no way of returning it." That is his answer.

[Paper marked "D, 28."]

Mr. Tracy [reading]:

NEW-YORK, May 3d, 1873.

DEAR THEODORE: I inclose to you check for \$1,000, for which please sign the inclosed.

Yours,

F. D. MOULTON.

Mr. Tracy—Now, was that letter returned to you with the note of Mr. Tilton on it at the time? A. Yes, Sir, precisely; and the check too.

Q. And the check also? A. Yes, Sir.

Mr. Tracy [reading]:

DEAR FRANK: I cannot borrow any money, for I see no way of returning it.

Hastily,

T. T.

The Witness—That is it, Sir. The next check is August 15th. Did you have that, Sir?

Mr. Tracy—Yes. When did you send him the next sum of money? A. July the 11th—I made a mistake in July the 11th.

Q. For how much? A. \$650.

Q. Well, is that the second or third? A. That is the second, Sir, and indorsed by O. W. Ruland. I think, Sir; isn't it? [Check handed to witness.] Yes, Sir.

Mr. Tracy—I omitted to read the first check in evidence. [Reading.]

NEW-YORK, May 3d, 1873.

*Mechanics' National Bank:*

WOODRUFF & ROBINSON.

Pay to the order of F. D. Moulton, \$1,000.

Indorsed: Pay to the order of Theodore Tilton.

Indorsed: "Theodore Tilton."

F. D. MOULTON.

I read now the second check:

NEW-YORK, July 11th, 1873.

*Metropolitan National Bank:*

Pay to the order of F. D. Moulton, \$650.

WOODRUFF & ROBINSON.

Indorsed: Pay to the order of Theodore Tilton.

F. D. MOULTON.

Indorsed: Theodore Tilton.

O. W. RULAND, Attorney.

Mr. Tracy—Now, when did you pay the next money? A. August 15th, according to this account.

Q. Did anything pass between you and Mr. Tilton that you recollect of with regard to the payment of the last amount, \$650? A. Nothing that I recollect of, Sir, except that there must have passed a request.

Q. State what you recollect. We will take what you recollect, and not what you reason on the subject. Do you recollect any communication passing between you and Theodore Tilton on the subject?

Mr. Evarts—Conversation of any kind passing between you? A. I don't recollect any conversation, Sir.

Mr. Tracy—You recollect no conversation? A. No.

Q. How came you to send it? A. Upon some verbal or written application from Theodore; some verbal communication from him in conversation with him. I never sent it without such—

Q. Was it for a loan? A. Was it for a loan?

Q. Yes? A. Well, he has probably told me that he was short of money; that is generally the form of the conversation.

Q. Yes; short of money? A. The next one is Aug. 15th, according to this account, \$250.

Q. [Paper handed to witness.] Is the check presented, the check by which that amount was paid? A. Aug. 15th; yes, Sir.

[Check marked "D, 30."]

The Witness—This makes the third—this one.

Mr. Tracy [reading]:

NEW-YORK, August 15th, 1873.

*Metropolitan National Bank:*

Pay to the order of Theodore Tilton, \$250.

WOODRUFF & ROBINSON."

Indorsed: Pay to bearer. Theodore Tilton.

Q. Now, what communication passed between you and Mr. Tilton in regard to that \$250? A. Substantially the same, Sir; I don't suppose —

Q. When did you send him the next amount? A. The next amount, Sir, seems to be September 12th, 1873.

Q. How much? A. \$500.

Q. I hand you the check; see if that is the check by which he paid that amount? A. September 12th; it is, Sir.

[Check marked "D 31."]

Mr. Tracy, [reading]:

NEW-YORK, September 12th, 1873.

*Mechanics' National Bank.*

Pay to the order of F. D. Moulton Five Hundred Dollars.

WOODRUFF & ROBINSON.

Pay to the order of Theodore Tilton.

F. D. MOULTON.

Indorsed—Theodore Tilton.

Q. What communication passed between you and Mr. Tilton

at the time you sent him that check? A. Substantially the same, Sir.

Q. As before? A. As before; yes, Sir.

Q. When did you send him the next money? A. September 30th, 1873, \$500. Do you want these papers? [Check handed to witness.] September 30th, \$500, appears to be the check, Sir.

[Check marked "D. 32."]

Mr. Tracy—[Reading.]

NEW-YORK, September 30th, 1873.

*Mechanics' National Bank.*

Pay to the order of Theodore Tilton Five Hundred Dollars.

WOODRUFF & ROBINSON.

Indorsed—Theodore Tilton.

Q. Next. A. Next one is December 9th, \$260.

Q. What communication passed between you and Mr. Tilton when you sent him the amount last named? A. Substantially the same; I don't remember anything different.

Q. Exhibit 32: what is the answer? A. Substantially the same; I don't remember any—

Q. Is the check presented the check for the last amount? A. Yes, Sir.

[Check marked "D 33."]

Mr. Tracy, [Reading.]

NEW-YORK, December 9th, 1873.

*Mechanics' National Bank.*

Pay to the order of F. D. Moulton \$260.

WOODRUFF & ROBINSON.

Indorsed—Pay to the order of Theodore Tilton.

F. D. MOULTON.

Indorsed—Theodore Tilton.

Q. Now, the next amount? A. The next amount seems to be a check to A. W. Reid, for Bessie Turner's school-bill, out of that \$5,000; I think you did not take that check, yesterday, Mr. Tracy? Or, you did take it yesterday, I think; I think you had it among your checks yesterday; it was a check for \$300, December 16th. That is in.

Mr. Tracy—Pass from that, then.

The Witness—Yes, Sir.

Mr. Tracy—Did Theodore Tilton make any application for you to pay that bill at that time? A. The A. M. Reid bill? No, Sir; he had nothing to do with the payment of those bills.

Q. Pass to the next one? A. The next one appears to be Feb. 24th, 1874, \$300.

Q. Was the check presented by which it was paid? A. Yes, Sir.

[Check marked "Exhibit D, 34."]

Mr. Tracy—[Reading:]

NEW-YORK, Feb. 24th, 1874.

*Metropolitan National Bank.*

Pay to the order of F. D. Moulton, Five Hundred Dollars.

WOODRUFF & ROBINSON.

\$300.

Indorsed—Pay to the order of Theodore Tilton.

F. D. MOULTON.

THEODORE TILTON.

"Cash'd for Mrs. Theodore Tilton," it reads.

Q. Whose handwriting is that?

A. It is the cashier's, I suppose: not our cashier, the cashier of the bank.

Q. "Cashier for Mrs. Theodore Tilton?" A. That is it.

Q. What application was made to you for that amount of money? A. Substantially the same.

Q. As before? A. Yes, Sir.

Q. When did you pay the next? A. The next was paid March 30th, \$400. That is under the letter you had of Mr. Ruland.

Q. [Handing check to witness] Have you the check for the last payment? A. \$400. Yes, Sir.

[Check marked "Exhibit D 35."]

Mr. Tracy—[Reading:]

NEW-YORK, March 30th, 1874.

*Mechanics' National Bank.*

Pay to the order of F. D. Moulton, Four Hundred Dollars.

WOODRUFF & ROBINSON.

\$400.

Indorsed—Pay to the order of O. W. Ruland.

F. D. MOULTON.

O. W. RULAND.

JOHN J. MURPHY.

The Witness—I don't know who John J. Murphy is.

Q. What application did you have for that sum of money? A. A letter.

Q. [Handing letter to witness.] Is the letter presented Mr. Ruland's application for that sum of money? A. Yes, Sir; that is it.

[“Letter marked,” Exhibit D 36.”]

Mr. Tracy—[Reading:]

*The Golden Age.*

*Private.*

NEW-YORK, March 30, 1874.

Dear Mr. Moulton: We are in a tight spot. Mr. St. John is away, and we have no money and no paper. Can't get the latter without the former. We owe about four hundred dollars for paper, and the firm we have been ordering from refuse to let us have any more without money. Haven't any paper for this week's issue.

Truly yours,

O. W. RULAND.

If you can do anything for us I trust you will, to help tide over this chasm.

The Witness—There is a reply to it.

Q. The last check was sent in pursuance of that request? A. Yes, Sir, and the acknowledgement of it.

Q. [Handing letter to witness.] Is that the acknowledgement of the receipt of it? A. Yes, Sir, that is it.

[Letter marked Exhibit D, 37.]

Mr. Tracy [reading:]

*The Golden Age.*

NEW-YORK, March 30th, 1874.

DEAR MR. MOULTON: I am more grateful than I can tell you for the noble and generous way you came to the rescue of *The Golden Age* this afternoon. Truly your friend,

O. W. RULAND.

Q. Did that check of \$400 exhaust the \$5,000 in your hands? A. I will add it up and see, Sir; I think not; the next check paid is May 2d, \$250.

Q. [Handing check to witness.] Is the check now presented the check by which you paid the last amount? A. Yes, Sir.

[Check marked "Exhibit D, 38."]

Mr. Tracy [reading:]

NEW-YORK, May 2d, 1874.

*The Mechanic's National Bank:*

Pay to the order of F. D. Moulton, two hundred and fifty dollars.

\$250.

WOODRUFF & ROBINSON.

Indorsed: F. D. Moulton,  
Golden Age,  
O. W. RULAND, Att'y."

Q. What application did you receive for that amount of money?  
A. Substantially the same.

Q. Substantially the same as the verbal applications which you have heretofore stated? A. Verbal or written.

Q. Not the same as the written? A. All the applications were verbal or written from either Mr. Tilton or Mr. Kuland.

Q. When you have named a written application you say the verbal application was substantially the same as you have stated? A. That is not what I mean to say. I have not any further written communications here, but the applications that were made for this money to me were substantially the same.

Mr. Evarts—They were short, and wanted money? A. Yes, Sir; that is about it, Mr. Evarts.

Mr. Tracy—When did you pay the next amount? A. May 26th.  
Q. [Handing check to witness.] Is the check presented the check by which you paid that amount? A. Yes, sir.

Mr. Tracy [reading]:

NEW-YORK, May 26th, 1874.

*The Mechanics' National Bank:*

Pay to the order of F. D. Moulton, Esq., three hundred dollars.

\$300.

WOODRUFF & ROBINSON.

Indorsed: "Pay to the order of Theodore Tilton.

F. D. MOULTON,  
THEODORE TILTON.

Q. When did you pay the next? A. That seems to be all, Sir.

Mr. Morris—[To defendant's counsel.] Here is a check of \$150 to Mrs. Tilton. I suppose you want that also?

Mr. Tracy—If it is from the \$5,000 we do. This is August, 1869.

Mr. Morris—We hadn't it yesterday. You called for it then, and we produce it now.

Mr. Beach—[To the witness.] Those items which you have given don't exhaust the \$5,000.

Mr. Tracy—That is what we want to know.

The Witness—The whole amount, as it stands, seems to be \$4 and \$10 since the receipt of that \$5,000, paid out according to the check you have got; the account, as it stands here, is \$6,100 66 received from Mr. Beecher, and paid out \$6,078 15.

Mr. Beach—I think the witness is erroneous; I made those checks amount to \$4,916.

The Witness—It may be that I am mistaken.

Mr. Tracy—We will not stand for a few dollars.

Mr. Beach—Stand for a few dollars! I don't know but that you are standing for any number of dollars.

The Witness—I think you made a mistake, Mr. Beach, if you will pardon me.

Mr. Tracy—You have given the last payment you made on account of that \$5,000? A. I have given the last payment I made to the concern of Woodruff & Robinson, and this is the total account as it stands.

Q. Do you desire to see this check of \$150? A. I don't desire to see it.

Q. Do you know about it? A. Yes, Sir, I know about it. It

is dated August 19th, \$150, on a request from Mrs. Tilton, I believe.

Q. Was that on account of Mrs. Tilton's bills? A. It was used by Mrs. Tilton on that account, I suppose; I don't know. It was paid to her by her request, I suppose; it is entered in the account.

Q. To Bessie Turner? A. No, Sir, to Mrs. Tilton, just as the check is. Are all the checks, Mr. Tracy, in the account?

[Check marked "Exhibit D, 40."]

Mr. Tracy—This is indorsed by Mrs. Tilton, indorsed by Elijah Lovejoy. Pay to G. F. Baker, esq., or order, J. H. Brouck, I think it is, Cashier.

Q. From the time you received this money until you had paid out the whole amount, did nothing pass between you and Mr. Tilton by which he knew whether this was your loan to him, or gift to him, or how he came by that amount of money? A. He never knew it as money, except from me; the money was from me, if I understand your question.

Q. Nothing passed between you on the subject? A. Nothing passed between us on the subject.

Q. Whether it was a gift or a loan? A. Nothing except that first letter. I tried to make it a loan, and he so understands it, as a loan.

Mr. Tracy—We won't talk about how he understands it. The question is, what passed. I move that that be struck out, how he understood it.

Judge Neilson—Strike that out.

The Witness—I will tell you what I said to Mr. Tilton; perhaps that will do.

Mr. Tracy—I understand you to say nothing passed except the note. Do I understand you correctly? A. Not entirely. I sent the note to Mr. Tilton, as I said before, and he returned it to me, and then a few days afterwards I saw him, and he stated to me substantially what was in his note, and then I said to him, substantially, "Well, then, this need not be returned until you are able to return it"—something of that sort. He didn't want to give me a note on demand.

Mr. Tracy—Tell what he said.

Judge Neilson—He is trying to.

Mr. Tracy—After that did nothing pass about all these other payments?

Mr. Beach—No payments.

Mr. Tracy—Loans?

Mr. Beach—No loans.

Mr. Tracy—Well, loans, payments, or anything you like.

Judge Neilson—Did anything else pass between you as to those other sums afterwards? A. No, Sir; I don't think so.

Mr. Tracy—Did he ever thank you for them? A. Yes, Sir; he thanked me for them.

Q. Tell us what he said? A. I don't remember what he said; I cannot recollect now what he said.

Q. Can you not recollect the substance of what he said? A. He didn't thank me for every amount; I don't recollect that he thanked me for every amount, but he frequently expressed his thanks to me.

Q. What did he thank you for? A. For my kindness to him.



Q. When? A. At his house. I remember one night after I made the loan to Mr. Ruland, I showed him Mr. Ruland's grateful expression to me, and he thanked me.

Q. What did he say? A. He said he thanked me for my kindness.

Q. On any other occasion did you call his attention to any specific advance, and have a conversation with him about it? A. I don't recollect that I did.

Q. You remember that same occasion? A. That is all I recollect at this present moment; that is all that occurs to me at this present moment.

Q. Did you leave this matter between you and Mr. Tilton with the impression to Mr. Tilton that this was a gift of yours—all of this amount of money? A. The impression, I think, upon his mind was that it was a gift, if he was never able to return it; but if he was able to return it, he should return it.

Q. How did that impression arise? A. From what I said to him in the first conversation. You are asking me about my impression?

Q. That related to the \$1,000? A. Yes, Sir.

Q. And to nothing else? A. That is what it related to.

Q. Was the subject ever alluded to again after that? A. I don't recollect at the present moment, except on the occasion I had referred to.

Q. What limit was there understood to be then, and why did it stop at this time? A. Why did it stop? I was out of funds, and I didn't give him any more.

Q. Were further applications made? A. I don't recollect that any further applications were made.

Q. No further applications were made?

Mr. Beach—[To the witness.] Finish your answer, if there is any qualification to it.

The Witness—The last conversation that I had with him, that I recollect, was that he wanted to be rid of *The Golden Age*, that he could not—that he wanted to dispose of *The Golden Age*, and he did dispose of it.

Q. When was that? A. I don't recollect the date.

Q. Can you not tell about when it was? A. No, Sir; I cannot tell about when it was, even. It was told to Mr. Carpenter. The date Mr. Carpenter can fix when he comes on the stand, if he does come on it.

Mr. Evarts—I don't know anything about Mr. Carpenter.

The Witness—I am trying to find the date.

Mr. Tracy—Can you fix the season of the year it was, or the year? A. I don't recollect when it was; it was in the early part of 1874, I think; I won't be certain about it.

Q. Was it not immediately after your last advance from this fund? A. No, Sir. What was the date of my last advance? I will try to fix it, if I can, for you.

Mr. Beach—May 26th, 1874.

Mr. Tracy—May 26, it is stated to be, 1874. Now, Sir, was not that transfer of *The Golden Age* made on the exhaustion of the last payment from this fund? A. I don't think it was. That is my recollection of it. I don't think it was. I will try to fix it for you.

Q. Cannot you tell whether it was two weeks, or three weeks, or three months after that? A. I cannot.

Q. You cannot tell anything about it? A. No, Sir.

Q. Now, from the time you received this money, in May, 1873, until it was exhausted, had Mr. Tilton no source of revenue to your knowledge except this fund? A. I don't know that he had, Sir.

Q. Did this account stop of itself, or were applications made to you, and refused by you, because there was no money? A. They were stopped by me when the account was out.

Q. Were there applications renewed? A. I don't recollect.

Judge Neilson—He answered that before, that there were none.

Mr. Tracy—Has any of this money been returned to you. A. No, Sir; not yet. [Laughter.]

Mr. Evarts—It is now four o'clock.

Judge Neilson—I want you to close the examination of this witness, gentlemen. Our reputation, professionally and morally, is involved.

The Witness—I will stay all night, Judge, as far as I am concerned.

Judge Neilson—I wish, as a matter of economy, gentlemen, you would finish the examination of this witness this evening.

Mr. Tracy—It is impossible to finish it this evening.

Judge Neilson—How many days will it take you to finish it?

Mr. Tracy—I hoped to close it to-day when I came in Court this morning, if your Honor please; but it now looks as if it will take Monday to close it.

Judge Neilson—It ought not to.

Mr. Evarts—We don't think it ought to; but it takes a great deal of time to get through with this matter.

Judge Neilson—I think, gentlemen, you ought to commence earlier and sit later to dispose of the witness. I do not wish to be oppressive to you, but considering the value of your time now, you ought to go on and close the examination.

Mr. Evarts—We feel that pressure very much, no doubt; but the feeling on both sides has been that we make no real gain by attempting to prolong the session.

Mr. Beach [to Mr. Evarts]—I quite agree with you.

Mr. Evarts—That is our feeling. It is no pleasure to us to prolong the matter, as your Honor suggests. On the contrary, it is very burdensome to us professionally.

Judge Neilson—I wish the audience to keep perfectly silent, and keep their seats until the jury retire.

Mr. Evarts—We are through with this branch, and we shall try not to take much longer.

Judge Neilson [to the Jury]—Gentlemen, please be in your seats punctually at 11 o'clock on Monday morning.

The Court thereupon adjourned to Monday morning, at 11 o'clock.

## ELEVENTH DAY'S PROCEEDINGS.

THE CROSS-QUESTIONING CONTINUED.  
THE FORMER STATEMENTS OF THE WITNESS BROUGHT UP—HIS PAST FRIENDSHIP AND RECENT HOSTILITY TO THE DEFENDANT—THE BEARING OF THE WOODHULL STATEMENT.

Mr. Tracy pressed Mr. Moulton more closely on Monday than he has done before. The questioning was severe and searching, and the witness was more on the alert than he usually appears to be. At the opening his demeanor was characterized by the most imperturbable coolness, but as the questions were put by Mr. Tracy with increased severity, Mr. Moulton buttoned his coat closely to the throat and his face became slightly flushed as though he were somewhat out of temper. Perhaps the highest point to which the evident though stifled excitement arose was when the fact of the publication of an article unfavorable to Mr. Beecher, printed in a Brooklyn Sunday newspaper, was broached. Having shown that the article was printed from *The Golden Age* proofs, Mr. Tracy drew himself up to his full height, advanced toward the witness, and, stretching his arm above Mr. Beach's head and pointing his finger straight at Mr. Moulton, he asked in loud, grating tones, "Now, Sir, how long after that publication did you receive the \$5,000 from Mr. Beecher?" There was a breathless pause for a moment, during which the witness was twirling about in his revolving chair and stroking his mustache with one hand, while the other was in his pocket. Then, with the utmost placidity of manner, the witness replied that he could not recollect.

Mr. Moulton seemed to delight in bringing Mr. Tracy's name within the pale of the scandal. Thus, when Mr. Tracy asked him to fix the time when he (Mr. Moulton) heard Mr. Tilton's "true story" read, the witness said: "It was in the Winter of 1872. You'll remember it, Mr. Tracy; you were there and went to sleep." Also, when Mr. Tracy wished to know how thick a certain roll of manuscript was, he said: "I can't remember; you saw it, General, and perhaps can tell."

The first step toward the impeachment of Mr. Moulton's testimony was taken at the afternoon session by the aid of affidavits of many prominent members of the Produce Exchange and others, who had sworn that Mr. Moulton, after the Woodhull publication, had said that the story was false, and also that since the Plymouth investigation he had

shown violent hostility toward Mr. Beecher. With those affidavits in his hand Mr. Tracy put his questions. Among the first queries was this:

"Did you say to Mr. Wallace Caldwell that Mr. Beecher was a liar and a libertine, and that if personal violence would do any good that you would cut him down?" "No, Sir!" emphatically replied Mr. Moulton.

The witness was asked if he had made similar statements to Mr. Storrs, Mr. Tenney, and many other gentlemen, and although he remembered having talked with those persons, he seemed to have forgotten entirely what he said. In one case, when asked whether he had said to W. D. Barbour that Mr. Beecher was a perjurer and a libertine, he answered, "I may have said that Mr. Beecher was a libertine and a perjurer—as he is."

Mrs. Woodhull's notorious paper, which has been dragged into the controversy, has been the cause of serious dispute. The crevice through which it crawled will show the ingenious character of the warfare carried on by the lawyers. Mr. Fullerton last week introduced the Woodhull statement of Jan. 2, 1872, to show that Mr. Beecher was accused and did not deny the crime therein charged. Mr. Beecher's lawyers thought they saw a weak spot there, and on Friday tried to introduce various parts of the same article giving Mrs. Woodhull's views regarding the marriage relation, and further asserted that Messrs. Moulton and Tilton were also charged with heinous crimes by the same paper, which *they* had not denied. This step immediately aroused all of Mr. Tilton's lawyers, and they fought the motion so fiercely that the matter had to be adjourned until Monday, when the engagement was resumed. Mr. Beach ridiculed the idea advanced by his opponents, but Mr. Evarts neatly turned the point by saying that the argument of Mr. Beach was a satire on the old proverb that "what is sauce for the goose is sauce for the gander." That thrust gave Mr. Fullerton an opportunity to say to Judge Neilson that "the fact that the decalogue contains the commandment, 'Thou shalt not commit adultery,' does not justify their reading the story of Ananias and Sapphira."

The result of the contest was that Judge Neilson ruled out nearly all the parts read, exceptions being taken to those portions admitted.

## OPENING SCENES OF THE WEEK.

The court-room was uncomfortably cool on Monday morning, but every one and everything looked

bright and fresh within it. The sunlight streaming into the tall windows and filtered through the yellow curtains tinged everything with its hue from the bald head of the first jurymen and the forms in the audience to Judge Neilson's bench and the tables and chairs. Faces that on Friday told of weariness and loss of vitality had grown younger, and the work of the new week seemed at least not to be dreaded. Judge Neilson was as usual in court before the lawyers of the plaintiff and defendant; and as the latter entered he greeted them cheerily with a smile and a nod. Mr. Evarts first threaded his way through the crowd, his slight form a little bent, and with his tall hat carelessly upon the back of his head. He carried a large valise, which he placed under the table, remarking to the jury, with a laugh as he did so, that he had yet to learn that his retainer paid him for "walking across the river on loose ice." Messrs. Pryor, Shearman, Beach, and Tracy, came in a few moments after, and at precisely 11 o'clock Mr. Moulton appeared. He bowed to the Judge and the lawyers, and immediately took the witness chair, in which he had already sat seven days and a half. Mr. Morris bustled in on the heels of Mr. Moulton, with his ponderous packets of envelopes containing the scandal literature, which he placed before him upon his table in consecutive order, as if they were chessmen, and needed to be upon a certain square. Mr. Tilton strode in alone and took his accustomed position, and Mr. Fullerton, who followed him, carried a copy of *Woodhull and Claflin's Weekly*, over which hostilities were to be opened.

#### THOSE WHO LISTENED ON MONDAY.

The spectators in the court-room had little to talk about in the morning except the absence of Mr. and Mrs. Beecher. It was finally ascertained that the defendant was suffering from a severe cold, and the curiosity of the crowd on that subject was appeased. But when it was noticed that Mrs. Tilton and her lady friends did not make their appearance, the crowd had a fresh subject for speculation and discussion. The cause of Mrs. Tilton's absence could not be certainly ascertained, but various reasons were given by persons in the court-room who professed to know whereof they were talking. One said she was absent because counsel for defense thought her presence might be unfavorably commented on; another insisted that she was ill, and a third claimed to have learned from one of the lady's friends that

she was too sensitive to listen to the testimony given against her by Mr. Moulton. The statement that she was suffering from indisposition received the most credence. Throughout the day's proceedings there were no ladies in court. The Plymouth Church seats were filled by the regular attendants on the trial, Mr. Beecher's youngest son, and the Rev. Mr. Halliday, the assistant pastor of Plymouth Church, being seated in the front row, near Mr. Shearman.

Mr. Tilton was in court promptly at 11 o'clock, and appeared to be in excellent spirits. Upon taking his seat he glanced over at the chair usually occupied by Mr. Beecher, and then turned around and looked at that part of the house where Mrs. Tilton is accustomed to sit while in court. He looked that way frequently during the day, as if expecting Mrs. Tilton's appearance on the scene.

#### THE PROCEEDINGS.

Ex-Judge Porter was expected to be in Court on Monday, Jan 25, but the gentleman thought it unwise to expose himself out of doors to the cutting March-like wind in the present state of his health. After an apology from Mr. Evarts for his associate's continued absence, the cross-examination of Mr. Moulton was resumed. The various publications which, taken together, make up what is known as "the Woodhull scandal," were read in whole or in part by Mr. Shearman, and the witness was questioned about them.

#### THE WOODHULL SCANDAL LITERATURE.

Francis D. Moulton was recalled, and the cross-examination continued:

Mr. Evarts—If your Honor please, we had hoped that our associate, Judge Porter, would be able to be in Court to-day, but the severity of the weather yesterday was such, of course, as to prevent him from for the first time taking the air, and he will not be in Court to-day, but I hope that he will be able to-morrow. He has not left his room since he was taken sick.

Mr. Shearman—I have now got the original copy of this paper.

Judge Neilson—Have you marked the portions that ought to come in under this ruling?

Mr. Shearman—We have, Sir; and we have made them just as few as possible, for the purpose of showing what the charge was to be denied by these three parties.

Judge Neilson—Then you will please to read it.

Mr. Shearman—The following are extracts from the publication of Mrs. Victoria C. Woodhull, November 2, 1872. It was actually issued October 28, 1872:

Subsequently I published a letter in *The World*, in which was the following sentence: "I know a clergyman of eminence in Brooklyn who lives in concubinage with the wife of another clergyman of equal eminence."

It was generally and well understood, among the people of the press especially, that both of these references were to this case of Mr. Beecher's, and it came to be generally suspected

that I was better informed regarding the facts of the case than others, and was reserving publicity of my knowledge for a more convenient season. This suspicion—

Mr. Fullerton—No; that is as far as you can read under the rule.

Mr. Shearman—Well, we propose to offer the following as part of the evidence which these gentlemen have produced.

Judge Neilson—Now, read that separately under the ruling.

Mr. Fullerton—Your Honor will understand that so far as he read we do not object. I do object however—

Judge Neilson—Now, he reads under the rule what it may be necessary to read in order to fix his exception, provided it is not admissible.

Mr. Fullerton—Yes, Sir.

Judge Neilson—Read that portion, if you please.

Mr. Shearman [reading]:

This suspicion was heightened nearly into conviction when it transpired that Theodore Tilton was an earnest and apparently conscientious advocate of many of my radical theories, as appeared in his far-famed biography of me, and in numerous other publications in *The Golden Age* and elsewhere. Mr. Tilton's warmest friends were shocked at his course, and when he added to his remarkable proceedings, his brilliant advocacy of my Fourteenth Amendment theory, in his letters to Horace Greeley, Chas. Sumner and Matt Carpenter, they considered him irremediably committed to the most radical of all radicals.

Mr. Fullerton—That part, Sir, is objected to.

Judge Neilson—Mr. Shearman, it seems to me that there is no prior evidence that would call for that particular clause.

Mr. Shearman—Our theory in regard to that is that this was a charge made against all three of these gentlemen, and they met—so Mr. Moulton has testified—to consult about the charge that was made in effect against all of them.

Judge Neilson—And with a view—

Mr. Shearman—With a view to a common answer or a separate answer, or to no answer.

Judge Neilson—With a view to a common answer.

Mr. Shearman—With a view to an answer or silence.

Mr. Fullerton—It was not a charge against three.

Judge Neilson—That is ruled out and you take an exception.

Mr. Shearman—Yes, Sir.

Mr. Evans—Your Honor will not overlook our general proposition that they having introduced the story as being in mass the subject of conversation with Mr. Beecher we have a right to read it as so introduced by them; and upon the further proposition that we regard it as in upon their side. It is proper, of course, that we should state the views that your Honor may see them.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Well, the more frequently they are stated the better it will appear for us, because the objection grows out of the statement itself without any reply.

Judge Neilson—I understand that the story was referred to in the evidence upon the part of the plaintiff as injurious to the defendant, and calling for some answer from him, or perhaps to be met with entire silence, that the course to be pursued was uncertain in regard to that. So much of the article as has a bearing upon that is received. You have an exception to the other.

Mr. Shearman—Let me call your attention to this fact. In Judge Morris's opening he dwelt very largely upon the fact that no answer was made to this article by Mr. Beecher, and that consultations were held between Mr. Beecher, Mr. Tilton and Mr. Moulton in regard to what was to be done; and it was agreed, as Mr. Moulton says, that none of them should answer. Now, it has been argued from that already before the jury, that that is evidence of guilt upon the part of Mr. Beecher, that the fact that he did not answer these charges against him was evidence to go to the jury that they were true, and very strong evidence. Now, if we show your Honor upon their own evidence, upon a paper which they introduce, that here were charges not only against Mr. Beecher, but against Mr. Moulton and against Mr. Tilton—charges which we presume they will not deem to be true—charges of a vile and odious nature against those persons as well as against Mr. Beecher, is it not part of the proper evidence to be brought in at once in this case for the jury to look at collectively, so that they may say, "Why, charges were made against all of these three men; one was accused of as bad an act as another. One was accused of adultery, it is true, but the husband was accused of connivance with the adultery, of a positive re-introduction of the adulterer into his family. The husband was accused of that more odious crime than adultery, the recommendation to his wife to commit adultery again, and the Mutual Friend was accused of the vile crime of going with a pistol and presenting it at the head of the defendant and demanding a paper." Now, the counsel may say of the witness now on the stand that that charge against him was not true. We presume that Mr. Tilton will say when on the stand that the charge against him was not true. We assume that, and have we not a right to show that those charges were made in conjunction with the other charge against Mr. Beecher, that they were all inseparably mixed together, and that there was no more reason why Mr. Beecher should be deemed guilty for not answering, than why Mr. Moulton should be deemed guilty of taking a pistol and threatening murder, and Mr. Tilton be deemed guilty of the worse crime of reintroducing the adulterer to his wife and asking him over again to commit adultery as often as he pleased.

Judge Neilson—I feel the force of your explanation.

Mr. Morris—The counsel has misstated a portion of my opening.

Judge Neilson—So I was going to say. I will read that and will perhaps correct this ruling, or let the exception stand as it is.

Mr. Morris—But the counsel, Sir, has made a misstatement in reference to my opening, which I have a right to correct right here, and I propose to do it. In speaking of the reference that I made to the fact that Mr. Beecher did not deny—made no denial to the publication of this article, I said that it remained without any denial for the space of about six months. In the following Spring, after the publication of the tripartite covenant, and after Mr. Bowen and Mr. Claffin had visited Mrs. Woodhull to ascertain what evidence she might have in her possession, it was then in connection with those facts and circumstances that Mr. Beecher did publish a short card in *The Brooklyn Eagle*, and

that was six months after the publication of this article, and that was my statement to the jury.

Judge Neilson—I will read that part of the opening, Mr. Morris.

Mr. Shearman—The difference then, Sir, which Mr. Morris now makes between the attitude of these three gentlemen that are charged with this atrocious crime is that Mr. Beecher is presumptively guilty, because he did not deny it for six months, but that others are presumptively innocent because they never denied it at all.

Mr. Morris—Your Honor understands very well that this is a specious statement. Your Honor knows, and every man in this community knows, that Mr. Beecher was the man, and the sole man, called upon to deny them.

Mr. Shearman—We will see.

Mr. Morris—There was no call on the part of the press that Mr. Moulton or Mr. Tilton should deny. Mr. Beecher was the man charged, and he was the man called upon to deny, and he was silent.

Judge Neilson—All that will, perhaps, be governed by the jury in the end. I will hear what further portion you wish to read.

Mr. Shearman—I am not aware that the calls of the newspapers are evidence at all. Here are the facts, and what they call for we are to give.

Mr. Morris—You are making a misstatement of the evidence.

Mr. Shearman—The next paragraph we propose to read is on the third column. [Reading:]

Reporter—Now, Mrs. Woodhull, would you state, in the most condensed way, your opinions on this subject as they differ from those avowed and ostensibly believed by the public at large?

Mrs. Woodhull—

Mr. Fullerton—One moment. That I object to.

Mr. Shearman—Very good. Let us state it first and see what his Honor's ruling is.

Mr. Fullerton—Does the gentleman offer that as a part of the charge against Mr. Beecher?

Mr. Shearman—I offer it as a part of the charge made against these three gentlemen collectively. I say, if your Honor please, that it is impossible to separate the charges made by Mrs. Woodhull into three distinct, unconnected charges against these three gentlemen respectively. That cannot be done. It was a single charge, a charge that Mr. Beecher had committed adultery with the wife of Mr. Tilton; that Mr. Tilton, first indignant about that, not only became, through the influence of Mrs. Woodhull, reconciled to it, but approved of it and rejoiced in it; and she charges Mr. Moulton, the mutual friend, with going with a pistol to extort, by putting it at the head of Mr. Beecher, a paper, and afterwards standing by, a mutual friend, and approving of the whole thing. It is all one transaction.

Judge Neilson—This paper is brought before us first because in the evidence of the plaintiff—this witness's—reference was made to a specific article—a specific charge, a single clause, which therefore ought to be read. There is in that same evidence a reference to the Woodhull story and it became desirable to have what the story was. It was, of course, simply referred

to by the witness as a story prejudicial to Mr. Beecher and annoying to him.

Mr. Fullerton—Referred to only as that, and all the object we had in view in calling attention to the publication by Mrs. Woodhull was to show that there was a charge therein made against Mr. Beecher which he did not deny, and which under the advice of his friends he refused to deny. Now, the counsel upon the other side constantly drags in the allegation that there is a charge here against these three persons, that all were alike charged with infamous offenses. There is no occasion to do that except to illustrate the old adage that misery loves company. There is no reason at all, so far as the trial of this issue is concerned, why any charges against Mr. Tilton or any charges against Mr. Moulton contained in that publication should be alluded to for a single moment. It has no bearing whatever upon the issues between these parties. There may be charges there against these gentlemen, but they were not called upon to deny those charges. Whenever they are put upon trial for any offense and the charge in that publication has any bearing upon the issue, then they will be judged for having kept silent, if they did keep silent. I object, therefore, to the reading of that part of this paper under the ruling of your Honor, and if the counsel on the other side takes the responsibility of offering this part, which he now proposes to read, as referring to the charges made by Mrs. Woodhull against Mr. Beecher, why then let it be so understood; but the object of offering it is very apparent. Here is a promulgation of Mrs. Woodhull's peculiar doctrines upon the subject of marriage. I don't know what that has to do with this case. The gentleman may offer it if he chooses, but I wish to know in what view he offers it, whether he offers it with reference to the charges against Mr. Beecher, and if not, then under what ruling of your Honor does he offer it?

Mr. Shearman—If your Honor please—

Judge Neilson—If you will read now—I understand it.

Mr. Shearman—Allow me to say, however, your Honor, that it was the whole Woodhull story that was made the subject of conversation, and that the witness did not say simply that it was the charge against Mr. Beecher contained in that story that was made the subject of conversation, but the Woodhull story, and they consulted as to what answer they should make to it, and the question was raised as to what Mr. Tilton could say in reply, as well as what Mr. Beecher could say in reply.

Mr. Morris—Let the counsel call our attention to the evidence.

Mr. Shearman—I read from the evidence:

Then, Sir [says Mr. Fullerton], what occurred in November, 1872, with reference to Mrs. Woodhull? A. There was a publication in Woodhull and Claflin's paper.

Q. In regard to that? A. Yes, in regard to Mr. Beecher, Mrs. Woodhull and Mr. Tilton.

Q. Now, what occurred upon that publication? A. I saw Mr. Beecher shortly after the publication.

Then goes on the conversation all about the story. Mr. Tilton asked Mr. Beecher how he thought it was best to meet that story. There is not a single case, your Honor, in which it was said that there was a consultation how they had better meet the charge against Mr. Beecher contained in that story; not an instance of it.

Judge Neilson—But the story—we are very glad to learn it is a story.

Mr. Beach—Your Honor will remark from the reading of the evidence that it was the story in regard to this—that is, in regard to this matter, this accusation, the subject of this trial.

Mr. Shearman—I do not see that.

Mr. Beach—You have just read it.

Mr. Shearman—I have read it just as it is written. They consulted for that purpose.

Mr. Beach—Now, Sir, the question of Mr. Fullerton calling for a portion of the Woodhull story, was in regard to this transaction, that is, the charge against Mr. Beecher. Now, Sir, for what was that offered? For the purpose of showing a specific charge of adultery against Mr. Beecher, and the manner in which he met that accusation, the policy which he adopted and the advice of his friends in regard to it. What do they now propose to read? A portion of this publication, not in regard to the charge against Mr. Beecher, but in regard to the charge against Tilton and Moulton, having no connection whatever with the issue before your Honor. And what will be the result, your Honor, if it is read, publishing charges against Mr. Moulton and Mr. Tilton? Why, that we have side issues raised in regard to the truth of those charges, and they must be investigated. If they are permitted to be read, Sir, promulgating false charges on this trial against Mr. Tilton and against Mr. Moulton, the whole merits of those accusations must be opened before your Honor and this jury for investigation, and we are led at once into collateral issues which will exhaust the time of this Court most unprofitably and needlessly. Now, I submit to your Honor, that the only object of the reading of this portion of this publication of Mrs. Woodhull, is to insinuate an accusation against the plaintiff in this case and the witness upon the stand, drawing in issue their connection with Mrs. Woodhull, which connection may be shown by legitimate evidence, if you please, but not by the declarations of that lady herself. The effect is to introduce, as evidence against these gentlemen the charges, the insinuations, the inculpations of Mrs. Woodhull as against these parties, unverified by any sanction whatever of a court of justice. I submit to your Honor it would be a gross injustice to permit that sort of evidence to be introduced.

Mr. Evarts—We are entitled, I think, to close the argument.

Mr. Beach—I think not, Sir, when we make an objection.

Mr. Evarts—Now, my learned friend's last proposition seems to me but a somewhat refined and elegant proposition of the old maxim, that what is sauce for goose is sauce for gander. The argument here is, that when this story came out, which is an entire novel, if you please, narrative, it became the subject of conversation, and the conversation has been detailed, so far as it has been detailed, as applying to the whole story. "That story" is what it is called. It was not in Court, and it was to be produced the next day. It is now here. Now, the argument for which it was introduced was this: that there being a proposition of a charge therein against Mr. Beecher in connection with this matter of Mr. Tilton and himself, that the consultations and the desires to have it answered ending in not answering it, indicate an inability to

answer it or an inclination not to tell the truth. But when the substantive matters that bear to the prejudice of Mr. Tilton and Mr. Moulton in this argument are offered to be read, my learned friend says that though the facts may be learned by judicial evidence, yet Mrs. Woodhull cannot be heard to make the imputation. Hasn't she been heard to make the imputation against Mr. Beecher, the non-answer of which is the argument against Mr. Beecher, and, by the same proposition, when her statements against Moulton and Tilton are known to them, and form the subject of consultation for a joint answer against a joint libel, is not the same argument that if they did not answer, then they admit the truth against them? The argument may be worth nothing or worth much; and it is the same argument, it is the same course of evidence, it is the same legitimate evidence that a charge was made known to them, made the subject of conversation, the propriety and duty of an answer to it was made the subject of consultation in the same light and in the same sense, and the concurring judgments were that silence was the best course. Now, if that is sound as an imputation against Mr. Beecher, it is sound as an imputation against Mr. Tilton and against Mr. Moulton. And my learned friend understands that when a husband brings an action of this kind, involving the question of the adultery of his wife, why all the topics that bear upon that issue as between husband and wife necessarily come into play. They are not collateral questions. We have not introduced the Woodhull story; it has been introduced on the other side to bear heavily against our client for his omission to answer, or the manner in which he did answer.

Mr. Beach—The only answer necessary to that argument is, that it is founded entirely upon a false assumption that there was a mutual consultation as to the manner in which the charges of Mrs. Woodhull against Tilton and Moulton should be met.

Judge Neilson—I understand; the question was how Mr. Beecher should meet it, whether by silence or some kind of an answer.

Mr. Fullerton—I beg your Honor to bear in mind that the paragraph which they now propose to read has no reference to the charge against Mr. Tilton or against Mr. Moulton or Mr. Beecher. They propose to read now the atrocious sentiments of this woman in regard to the marital relation. That is all they propose, and if your Honor will take the paper and read the paragraph which the gentlemen now offer to read you will see that I am strictly right.

Judge Neilson—Yes, I think you are right; he would have a right to read it, however, in order to form his exception.

Mr. Fullerton—Well, I only want to know whether the gentleman reads it as coming within your Honor's ruling that he might read everything that related to the charge.

Mr. Shearman—I do read it.

Mr. Fullerton—I do not see what relation there is between her sentiments in regard to marriage and the charge against Mr. Beecher, Mr. Tilton and Mr. Moulton. Because we have alluded in our evidence to this story inculpating Mr. Beecher does not give them the right to prove

everything else in the story by any means. If we could prove, or have occasion to prove on this trial that the Decalogue contained the words, "Thou shalt not commit adultery," it does not give them the right to read in evidence the story of Ananias and Sapphira in another part of the same volume.

Mr. Shearman [Reading]:

Now, Mrs. Woodhull, would you state in the most condensed way your opinions on this subject, as they differ from those avowed and ostensibly loved by the public at large?

Mrs. Woodhull—I believe that the marriage institution, like slavery and monarchy, and many other things which have been good and necessary in their day, is now *effete*, and in a general sense injurious, instead of being beneficial to the community, although, of course, it must continue to linger until better institutions can be formed. I mean by marriage, in this connection, any *forced or obligatory tie* between the sexes, any *legal intervention or constraint* to prevent people from adjusting their love relations precisely as they do their religious affairs in this country, in complete personal freedom; changing and improving them from time to time, and according to circumstances.

Judge Neilson—Now, as to that clause, it is merely an atrocious sentiment stated by that writer, and stated as her opinion simply. I rule that out, and allow you to take an exception.

Mr. Shearman—Will your Honor allow me to read the paragraph?

Judge Neilson—The last paragraph may be proper; but, as to this, take an exception.

Mr. Shearman—The next paragraph we propose to read is from the second column:

Reporter—Is it possible that Mr. Tilton confided this story to you? It seems too monstrous to be believed.

Mrs. Woodhull—He certainly did, and what is more, I am persuaded that in his inmost mind he will not be otherwise than glad when the skeleton in his closet is revealed to the world, if thereby the abuses which lurk like vipers under the cloak of social conservatism may be exposed and the causes removed. Mr. Tilton looks deeper into the soul of things than most men, and is braver than most.

Mr. Beach—That is objected to.

Judge Neilson—Same ruling as to that, of course.

Mr. Shearman—What is your ruling?

Judge Neilson—That it is not germane to the matter before us, and that you can read it simply for the purpose of pointing your exception.

Mr. Shearman—Then we will take an exception. The next paragraph is as follows:

His revelations were made subsequently, at sundry times, and during months of friendly intercourse, as occasion brought the subject up. I will, however, condense his statements to me, and state the facts as he related them, as consecutively as possible. I kept notes of the conversations, as they occurred from time to time; and the matter is so much impressed upon my mind that I have no hesitation in relating them from memory.

Reporter—Do not you fear that, by taking the responsibility of this *exposé*, you may involve yourself in trouble. Even if all you relate should be true, may not those involved deny it *in toto*, even the fact of their having made the statements?

Mrs. Woodhull—I do not fear anything of the sort. I know this thing must come out; and the statement of the plain unvarnished truth will outweigh all the perjuries that can be invented, if it come to that pass. I have been charged with attempts at blackmailing, but I tell you, Sir, there is not money enough in these two cities to purchase my silence in this matter.

I believe it is my duty and my mission to carry the torch to light up and destroy the heap of rottenness, which, in the name of religion, marital sanctity and social purity, now passes as the social system. I know there are other churches just as false, other pastors just as recreant to their professed ideas of morality—by their immorality you know I mean their hypocrisy. I am glad that just this one case comes to me to be exposed. This is a great congregation. He is a most eminent man. When a beacon is fired on the mountain, the little hills are lighted up. This exposition will send inquisition through all the churches and what is termed conservative society.

Judge Neilson—Same ruling as to that; you will take an exception.

Mr. Shearman—The next paragraph which we offer is the following—words put into the mouth of Mr. Tilton; and the gentleman will pardon me if I do not read literally to show that it is what Mr. Tilton said, because I could not do that without putting—

Mr. Fullerton—Where is that?

Mr. Shearman—I am endeavoring—we are all endeavoring to put as little of this as is possible in.

Judge Neilson—Some of those atrocious sentiments ought to be omitted, I think.

Mr. Shearman—It is this paragraph that I propose to read now, as put by Mrs. Woodhull in the mouth of Mr. Tilton.

I had one friend who was like a brother, Mr. Frank Moulton. I went to him and stated the case fully. We were both members of Plymouth Church. My friend took a pistol, went to Mr. Beecher, and demanded the letter of Mrs. Tilton, under penalty of instant death.

Judge Neilson—That will remain in, although it already appears that Mr. Moulton was not a member of Plymouth Church.

Mr. Fullerton—And that he did not take a pistol and demand the paper.

Judge Neilson—Well, that is the clause referred to in your evidence?

Mr. Fullerton—No, Sir; we did not refer to it at all. They have referred to it upon the cross-examination, and asked if it were true, and they have proved themselves that it was untrue.

Mr. Shearman—That is precisely what we wanted to prove; the next paragraph—turn over the page.

Mr. Beach—We except, Sir, to that ruling.

Mr. Shearman—I propose to read a short paragraph, and to state that, although no name is mentioned in this particular paragraph, it refers to Mr. Tilton.

Mr. Beach—Well, that statement we move to have—

Mr. Shearman—I am offering this to the gentlemen because they object to having a great deal of this come in; and your Honor, as I think very properly, objects to having too much of this matter in. If I were to read enough of the article to show that it referred to Mr. Tilton, I should have to read the whole paragraph. If they object to my statement, I shall have to read the whole paragraph.

Judge Neilson—Well, you can read the passage that you have in mind just now.

Mr. Shearman—[Showing paper to Mr. Fullerton.] If you object to my stating that it refers to Mr. Tilton—

Mr. Fullerton—One moment.

Mr. Shearman—Well, your Honor, I offer, if the gentlemen

on the other side do not object, to have it understood and assumed that the paragraph which I now read relates to Mr. Tilton. If they object, I shall then read the whole of a long paragraph, to show that it does.

Judge Neilson—Well, read that paragraph; let us see what it is.

Mr. Shearman—This paragraph is as follows, Mrs. Woodhull, speaking of Mr. Tilton :

I assumed at once, and got a sufficient admission, as I always do in such cases, that he was not exactly a vestal virgin himself; that his real life was something very different from the awful virtue he was preaching.

Judge Neilson—The awful virtue he was preaching?

Mr. Shearman—Yes, Sir; "the awful virtue he was preaching."

Mr. Pryor—So we preach virtue?

Mr. Shearman—The next paragraph which I—

Mr. Fullerton—One moment. Does your Honor admit that? That is, the offer to read?

Judge Neilson—I think we will admit that; we will let that stand.

Mr. Fullerton—We except.

Mr. Shearman—The next paragraph is as follows:

Reporter—Then Mr. Tilton became, as it were, your pupil, and you instructed him in your theories?

Mrs. Woodhull—Yes, I suppose that is a correct statement.

We offer that; and now, if your Honor please, we renew our former offer of the exposition of Mrs. Woodhull's views.

Judge Neilson—That last clause is not received. You take an exception. She says, "I suppose." It is a remarkable degree of modesty on her part, particularly in speaking of a fact which she knows.

Mr. Fullerton—It is not so remarkable as the offer in evidence.

Mr. Shearman—We also offer the paragraph formerly excluded, in which Mrs. Woodhull states her views concerning the marriage institution, and her belief that it is effete and ought to be superseded. We offer it in connection with this last paragraph, in which she says that she supposes Mr. Tilton became her pupil and was instructed in her theories.

Judge Neilson—Yes, it will stand on the former ruling.

Mr. Shearman—And also with the paragraph last admitted with reference to his not being exactly a vestal virgin. Your Honor rules it out?

Judge Neilson—Yes, I will hold to the ruling before made.

Mr. Shearman—We offer it, as you understand, as being one of the charges made against Mr. Tilton, in connection with charges against Mr. Beecher, and we take an exception.

Mr. Fullerton—In other words, Mr. Tilton was charged with not being a virgin, and you believed it.

Mr. Shearman—I don't see the point. As Judge Fullerton's remarks are always brilliant, if I do not see the point, I suppose it is my fault, not his. The next paragraph I shall offer is the following:

I was then contemplating my Steinway Hall speech on social freedom, and prepared it in the hope of being able to persuade Mr. Beecher to preside for me, and thus make a way for himself into a con-

sistent life on the radical platform. I made my speech as soft as I conscientiously could. I toned it down in order that it might not frighten him. When it was in type, I went to his study and gave him a copy, and asked him to read it carefully, and give me his candid opinion concerning it. Meantime, I had told Mr. Tilton and Mr. Moulton that I was going to ask Mr. Beecher to preside, and they agreed to press the matter with him.

I also offer the following paragraph to accompany that:

A few days before the lecture I sent a note to Mr. Beecher asking him to preside for me. This alarmed him. He went with it to Messrs. Tilton and Moulton, asking advice. They gave it to him in the affirmative, telling him they considered it eminently fitting that he should pursue the course indicated by me as his only safety; but it was not urged in such a way as to indicate that they had known the request was to have been made.

#### THE WOODHULL PUBLICATION EXCLUDED.

Mr. Fullerton—Well, Sir, they are objected to upon the same ground.

Mr. Shearman—This should be connected with what I last read, "They then took me again with them and endeavored to persuade him." We offer that your Honor.

Judge Neilson—Those are ruled out. You take an exception as to the whole or any part of it.

Mr. Evarts—Perhaps your Honor might remember that these also bear upon the question of the efforts charged upon Mr. Beecher of trying to conciliate this lady and to temporize concerning this story by showing that these gentlemen, Mr. Tilton and Mr. Moulton, were acting in her interest to accomplish the result, to wit, the benefit to the school of morals and philosophy of which she was an advocate. We have had a great deal about that, and this bears upon that.

Mr. Fullerton—Yes, Sir; and your Honor will not forget, after that observation, that Mr. Moulton's connection with this woman, from first to last, was simply for the purpose of saving Mr. Beecher from exposure; that his acquaintance commenced when he undertook to save him, and ended when he found that he could not accomplish his object.

Mr. Evarts—That is your view?

Mr. Fullerton—Yes; that is my view; that is the reason I mention it.

Mr. Evarts—We offer this as bearing on that view and contradicting it.

Judge Neilson—I cannot receive it, I think, Sir; Mr. Shearman, that exhausts the argument?

Mr. Evarts—Our exceptions have been noted. I think.

Judge Neilson—Yes, Sir; generally they are. I say generally, if there is any omission of an exception where an objection has been made. I wish to say generally that, if there is any casual omission of the exception in connection with any objection, it can be entered hereafter.

Mr. Beach—I hope not. I trust your Honor will not give the party an exception which he does not take. I am seriously opposed to that rule in the settlement of cases, and I think the party should take his exception on the trial.

Mr. Evarts—His Honor means where the line of exception is already indicated, I suppose.



Mr. Beach—I don't know what he means, but I object to that rule.

Mr. Evarts—Now, have we your Honor's ruling upon this general proposition of ours—that the introduction which the plaintiffs had given to this story this publication, entitles us to read such parts of it, irrespective of the question, whether they, by themselves, are admissible. I understand your Honor necessarily to rule against us on that view.

Mr. Beach—I understand his Honor to have ruled that you are at liberty to give in evidence any part of this publication which tends to qualify or explain the portion of it to which we referred in our evidence. That is the rule, at any rate, for which we contend, and we ask no other rule.

Judge Neilson—Well, I ruled at first, that this statement was brought in in a sense, to a certain degree, by the evidence which has been given on the part of the plaintiff with reference to the pistol scene, and with reference to the story, and we have heard so much of the story as we supposed applied to the matter referred to by that evidence. I think that is all the ruling that is called for.

Mr. Morris—We have heard just the portion that does not apply to that.

Mr. Fullerton—Your Honor forgets that everything in relation to the pistol scene was called out in the cross-examination, and not upon the direct at all.

Judge Neilson—It may be so. I think we will proceed now.

Mr. Evarts—Now, my learned friend has just laid down a rule that, I think, would have admitted all the evidence that your Honor has excluded; that is to say, that we have a right to read any part of this that qualifies or affects the part that they have introduced in evidence.

Judge Neilson—My intention was to let you read any part of this which would point the evidence given on the part of the plaintiff, and show what it was that was referred to—statements, story, or whatever.

Mr. Evarts—That we understand, and we submit to your Honor's ruling, that, in your Honor's disposition of the matter, the parts that you have included do, and the parts that you have excluded do not, come within that rule. Now, I wish to preserve the exception on the question of our right to read all parts of this statement, by reason of the plaintiff's introduction of the part already given.

Judge Neilson—I could not hold that, and you take an exception on that.

Mr. Evarts—We take an exception.

#### DETAILS ABOUT THE TRUE STORY.

Mr. Tracy—Did you ever read or hear read a paper which Tilton prepared, which he calls his "True Story"? A. I don't know that I heard the whole of it, Sir, read—that I read the whole of it or heard the whole of it read. I don't recollect; read portions of it, at all events.

Q. Well, did you hear the most of it read? A. Perhaps I did—I don't—

Q. Well, did you? Perhaps you did, is no answer at all. A. I am trying to give a correct answer.

Mr. Tracy—I submit that the witness ought to answer the question that I put to him.

Judge Neilson—What is your best recollection about it? A. Well, will you put the question? I am trying to give—  
[Question read by THE TRIBUNE stenographer.]

A. My recollection is that I either read or heard the most of it.

Q. Now, will you say that you did not either read or hear read the whole of it? A. I should say that my recollection—my best recollection is that I did not read or hear read the whole of it, Sir.

Q. When was that story prepared—that statement prepared? A. My impression was, Sir, in the latter part of December, '73. If you will allow me to state when I think I heard the most of it read, it was one evening when you were present in my study, when you went to sleep and was not quite interested—

Mr. Evarts—That is not an answer to any question.

The Witness—Well, I am only trying—

Mr. Fullerton—It gives the time, however.

Mr. Beach—It is a very proper way to fix it by reference to an event.

Mr. Evarts—The difficulty is that he had not been asked to fix it.

Mr. Fullerton—Yes, he had been asked to fix the time.

Mr. Tracy—Was that story prepared and read as Mr. Tilton's answer to the Woodhull publication? A. Was it prepared—may the stenographer read the question?

Judge Neilson—Was it prepared and read as an answer to the Woodhull publication?

Mr. Fullerton—That we object to; he is asking for the operation of some mind other than his own.

Judge Neilson—Was it said whether or not it was prepared as an answer to the Woodhull statement?

Mr. Tracy—I accept the amendment.

The Witness—I do not think that that was said.

Mr. Tracy—What do you say? A. I don't remember that that was said.

Q. Wasn't the statement presented to you by Mr. Tilton as his proposed answer to that publication? A. I don't recollect its being presented as an answer to that publication, Sir.

Q. Wasn't it presented to you as a statement which he had prepared, and which he proposed to publish in consequence of the Woodhull publication? A. My recollection is something like that was said, Sir, in consequence of it.

Q. Do you remember what were the subjects of which that story treated? A. There is only one part of it, Sir, that I distinctly recollect; one incident, which I described here; I don't remember what it distinctly treated of.

Q. Well, answer my question. Do you remember the subjects of which that story treated? A. Not all of them; no, Sir.

Q. Not all of them? A. No, Sir.

Q. What subjects do you remember that it did treat of?

Mr. Fullerton—That is objected to.

Mr. Tracy—That is what was called "The True Story" by Mr. Tilton.

Mr. Fullerton—We object to it.

Judge Neilson—Have you the paper in court?

Mr. Tracy—We have not; we have given them notice to produce it.

Judge Neilson—Was the thing published? A. No, Sir; it was not published.

Judge Neilson—Well, unless you produce it, they have a right to inquire into the contents, of course. Do you call for the paper?

Mr. Tracy—We do, and they fail to produce it.

Judge Neilson—If they fail to produce it, or account for it, you have a right to give the contents of it.

Mr. Fullerton—We have already avowed the fact that the paper was destroyed. It is not in existence.

Mr. Evarts—Avowed it here in the trial?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Very well, that gives us a right to go into its contents.

Mr. Tracy—Now, will you answer my question? I will repeat it. What were the subjects of which that story treated? A. I don't recollect all, Sir, of the subjects.

Q. What subjects do you recollect of which it treated? A. The relation between Mrs. Tilton and Mr. Beecher.

Q. Did it also treat of Mr. Tilton's relation with Mr. Bowen and the causes which led to his dismissal? A. I don't recollect, Sir, whether it did or not. I have a distinct recollection of the incident which I narrated before from this stand, and that is all.

Q. Did it treat of Mr. Tilton's relations to the Woodhulls and their publications? A. I don't recollect that.

Q. Do you recollect whether or not it referred to the publication of the Woodhulls? A. I don't recollect that, Sir. I will tell you exactly what I do recollect—

Q. How long a paper was it? A. Quite long; I forget how long.

Q. Very long, wasn't it? A. What do you mean by very long?

Q. Well, wasn't it more than one hundred foolscap pages? A. I don't recollect whether it was or not.

Q. Didn't it make as thick a manuscript as that? [Showing a manuscript to witness]. A. As thick as that, no.

Q. That? A. No.

Q. That? A. No; I don't think it did.

Q. How thick was it? A. Well, I don't think it was one hundred pages. You heard it read. I don't know how much.

Mr. Evarts—I ask that that be struck out; the conversations of the witness with the counsel are not admissible.

Judge Neilson—Yes.

The Witness—Excuse me.

Q. Did he carry it in a black cover? A. It was wound up—rolled up; yes, Sir.

Q. Well, Sir, what did it say—did it contain any statement from Mrs. Tilton concerning her relation with Mr. Beecher? A. My impression, Sir, is that the letter which she wrote to Dr. Storrs, or the purport of that letter, was in the statement.

Q. Yes, Sir; that is, it stated in substance, then, that, "prompted by my duty, I informed my husband that Mr. H. W. Beecher, my friend and pastor, had solicited me to be a wife to

him, together with all that implied." A. I think that is it, Sir.

Q. That was the substance of the statement; did that paper contain any other statement of her relations with Mr. Beecher than contained in that paragraph? A. I don't recollect that it did, Sir.

Q. Did the paper also contain a copy of what you now call the letter of contrition? A. I don't recollect that; I don't think it did; my impression is that it did not—not all of it.

Q. Did it contain any part of it? A. I think very likely it contained some part of it.

Q. Did it? A. I don't recollect; I am trying to answer the question truthfully.

Q. Don't you remember that that true statement contained a copy of all or of a part of what you call the letter of contrition? A. I don't really recollect.

Q. And that it was introduced into that paper as proof of the charge which Mrs. Tilton made against Mr. Beecher? A. I don't recollect that, Sir; no; I have stated all that I recollect.

Q. Was there any charge of adultery between Mr. Beecher and Mrs. Tilton set forth in that paper? A. There is nothing, Sir, except what I have narrated; that is all that I recollect of.

Q. Do you not remember that, after quoting this charge of Mr. Tilton against Mr. Beecher, that Mr. Tilton, in that statement, proceeded to eulogize his wife for the delicate manner in which she had resisted the advances of her pastor? A. I don't recollect that, Sir.

Q. You don't? A. No.

Q. Do you remember whether he said anything on the subject? A. I really don't, Sir.

Q. It may have contained it then, for aught you remember? A. If I had any recollection about it, Sir, I should state it. I haven't.

Q. You have no recollection on that subject. On Mr. Tilton's meeting Mr. Beecher first after the publication of the Woodhull scandal, were you present at that meeting? A. I believe I was, Sir, on the election day. I recollect that as the first, that is what I mean to say, General.

Q. First you saw them? A. Yes, Sir.

Q. Do you remember that Mr. Tilton grasped Mr. Beecher with both his hands—grasped Mr. Beecher's hand with both his, and shook it heartily, and expressed his sympathy with Mr. Beecher for this publication? A. I recollect that he shook hands with Mr. Beecher, Sir.

Q. Didn't he grasp Mr. Beecher's hand with both his and shake it earnestly, and express his profound sympathy with him on account of this scandalous publication? A. He shook his hand and expressed his profound regret for the publication.

Q. Didn't he shake Mr. Beecher's hand with both of his? A. Well, I don't remember whether he used both hands or not, Mr. Tracy.

Q. You remember that he shook hands? A. Yes, I remember that.

Q. Haven't you said that he took Mr. Beecher's hand in both of his, and shook it heartily and expressed his profound regret and sympathy? A. I don't know that I ever did.

Q. Didn't you tell the Rev. Mr. Halliday so at your house soon after this Woodhull publication? A. I don't recollect that I did.

Q. Will you say that you did not? A. If I had any recollection about it I would make the statement according to my recollection, but I have not.

Q. You mean by that that you have no recollection on the subject? A. As to whether I told Mr. Halliday or not, as to whether your question:—that is it, Sir.

Mr. Fullerton—That is it! A. Yes, Sir; that is the way.

Q. Now, do you not know that Mr. Tilton was unwilling to make any other reply to the Woodhull statement than that which was contained in the "True Story?" A. That he was unwilling to make any other reply?

Q. Yes. A. No; if you will allow me to explain—

Q. No, answer my question; do you not know that fact? That he was unwilling? I could not say that I did know that he was unwilling to make any other statement, Sir.

#### TILTON ALWAYS READY TO EXONERATE HIS WIFE.

Q. Was he not willing to make a statement which should exonerate his wife from the charge of adultery, but which should, at the same time, put Mr. Beecher in the position of having solicited it?

The Witness—Will the stenographer read that question?

[Question read by THE TRIBUNE stenographer.]

A. I don't think I could say yes or no to that question, and answer it positively. He was willing to clear his wife, but I don't remember that he was willing to put Mr. Beecher in the position of having solicited. I don't think—

Q. You remember that he was willing to make a statement which should exonerate his wife from the charge of adultery? A. He seemed to be always willing to do that at any time.

Q. Make a public statement which should declare that she was not guilty of adultery? A. I don't know whether a public statement or not; he was willing to make a statement.

Q. Well, do you know that that statement of his called the "True Story;" do you not know that it was prepared by him with a view to publication? A. Yes, Sir; I think, Mr. Tracy, if you will allow me, I think I can answer your—

Mr. Tracy—You have answered my question; at least, I accept it as a full answer.

Mr. Beach—No, Sir; if he wants to add anything to it to qualify it or explain it—

Mr. Tracy—That depends on what it is.

Mr. Beach—Then you had better hear it.

The Witness—I have a recollection of an interview—

Mr. Tracy—Now, I have not called on you for an interview; I have asked a simple question, whether that statement was prepared by Mr. Tilton with a view to publication. He says it was. I submit that is an answer to the question.

Mr. Beach—If the witness wishes to change that question, or correct an answer which he has made inaccurately to a previous question, he has a right to correct it.

Mr. Tracy—Oh! if he has made a mistake—

The Witness—My only purpose was to give a full statement

of the truth. My only purpose was to tell the truth fully about it; that is all the thought that was in my mind.

Judge Neilson—The objection which the counsel made was that you seemed to be proceeding to refer to some other occasion about which he had not inquired.

The Witness—I will tell your Honor precisely what I wanted to do—

Mr. Evarts—Well, I submit that our first duty is with this question. The point is this: not that it is permissible for the witness to explain; that we understand; but it does not form a part of our cross-examination. When he has fully answered the question put to him, it is for the other side to take up the examination.

Mr. Beach—Suppose he wishes to correct a matter—

Mr. Evarts—That is another matter.

Judge Neilson—He could correct, but he could not refer to another and independent occasion.

The Witness—No, Sir. Mr. Tracy asks me whether Mr. Tilton was not willing to make a statement which should clear his wife and yet leave Mr. Beecher subject to the imputation of having improperly solicited. Now, I answered that question as well as I could; but I remember an interview between Mr. Beecher and Tilton in which Mr. Tilton was perfectly willing that Mr. Beecher should take the responsibility of denying, and the cards were prepared for that purpose.

Judge Neilson—That is an occasion as to which he had inquired.

The Witness—I understood his question to cover all occasions that I knew about.

Mr. Tracy—Oh! no.

The Witness—Yes, Sir.

Mr. Tracy—There is no question about what Mr. Tilton was willing to do. He is answering to what Mr. Tilton was willing Mr. Beecher should do. My question was, what statement Tilton was willing to make.

The Witness—If you will allow the stenographer to read the question.

THE TRIBUNE stenographer [reading]:

Was he not willing to make a statement which should exonerate his wife from the charge of adultery, and which should at the same time put Mr. Beecher in the position of having solicited it?

The Witness—Now, your Honor, at the time that the publication of the statement was talked about, there was this interview that I have a recollection of, or an impression concerning, and at which Mr. Tilton was perfectly willing that his wife—

Mr. Tracy—I object. I have not asked him what he was willing Mr. Beecher should do. I have asked the simple question, whether Mr. Tilton was unwilling to make any statement himself except one, which, while it exonerated his wife, put Mr. Beecher in the position of having solicited her.

Judge Neilson—But your question does not point to any particular occasion; and, therefore, I think we will take the answer, and see what it is.

Mr. Tracy—Excuse me a moment; the witness is not proceeding to answer my question as to what statement Mr. Tilton

was willing to make; but he is proceeding to state what Mr. Tilton said he was willing Mr. Beecher should do.

The Witness—They were then discussing the publication of the statement, your Honor.

Mr. Tracy—My question is this: What statement was Mr. Tilton willing to make?

Judge Neilson—Now, can you answer that more fully than you have—what statement Mr. Tilton was willing to make? A. Mr. Tilton had prepared the statement to which I have referred, called the "True Story," I think that was; and he was perfectly willing to forego the publication of it, and leave Mr. Beecher and Mrs. Tilton to deny. Your Honor, that is what I want—

Mr. Tracy—I did not ask that.

Judge Neilson—I think that is embraced in the question.

Mr. Tracy—Your Honor will note my objection. I object to the last part of the answer, what he was willing Mr. Beecher and Mrs. Tilton should do, as not responsive to my question.

Judge Neilson—I don't think that bears upon it.

#### THE COMPLAINING FRIEND LETTER.

Q. Do you remember the publication of Mr. Tilton's letter to "A Complaining Friend?" A. I remember of such a publication; yes, Sir.

Q. Did you know of it before it was published? A. No, Sir.

Mr. Morris—That has all been gone over before.

Mr. Tracy—I don't remember that it has.

Q. He published that without your knowledge? A. Yes, Sir; he published it without my knowledge.

Q. Did not that bring out what was known as another emergency in this case—the publication of that card? A. I don't recollect now whether it did or not; I don't think it did bring on another emergency.

Q. Did you see Mr. Beecher about it? A. Yes, Sir; I had an interview with him about it.

Q. A consultation? A. It was an interview; it was talked about.

Q. Did you still advise silence, notwithstanding that publication? A. I thought no reply was necessary.

Q. Didn't Mr. Beecher think that a reply was necessary—that Tilton having spoken in this letter to "A Complaining Friend," didn't Mr. Beecher then think that a reply was necessary? A. I think not.

Q. You think not? A. I think not.

Q. You know you advised against it? A. I adhered to the policy of silence, after a full consideration of all the interests that were involved.

Q. Don't you remember that you and Mr. Beecher had an interview on the subject of that publication, when Mr. Beecher told you that he thought that letter made it necessary for him to deny that statement? A. No, Sir.

Q. You don't remember that? A. No, Sir.

Q. And that you advised silence? A. No, Sir.

Q. Do you remember of having seen in Mr. Beecher's hands, about that time, a note addressed to you containing a denial of the Woodhull charge, for publication? A. No, Sir.

Q. You do not remember it? A. No, Sir.

Q. Never saw it? A. I don't recollect that I ever saw such a paper.

Q. Did Mr. Beecher tell you he had prepared one? A. I don't recollect that he ever did; I don't think he did.

Q. [Handing paper to witness.] Now, Sir, I hand you that, and ask you if, after the publication of the letter to a "Complaining Friend," Mr. Beecher did not present you that and consult with you in regard to the propriety of its publication? A. No, Sir; I don't think I ever saw that letter in my life; I don't think I ever did.

Q. Turn over and see the card? A. No, Sir; I think this is the card that Mr. Tilton—I never saw it—I think that is the card Mr. Tilton was willing—

Mr. Evarts—You say you never saw it; that is enough.

The Witness—I beg your pardon.

Mr. Evarts—Did you see it? A. Never saw it.

[Paper marked for identification "Exhibit D, 41."]

Mr. Fullerton—Let me see that paper.

Mr. Evarts—It is not in evidence.

Mr. Fullerton—I ask to see that paper.

Judge Neilson—You will have to wait until it is put in evidence.

Mr. Fullerton—I beg your pardon; I am not compelled to wait until that time; we are entitled to see it now; it has been placed in the hands of the witness, and he has been asked a question in regard to it. That entitles us to look at it.

Judge Neilson—[To Mr. Evarts.] Is there any objection to show it to them?

Mr. Evarts—As a matter of private gratification to the counsel we will permit him to look at it; we will be very courteous. But, in the regular course of proceedings, it seems to us plain, it is a paper they are not entitled to see until we put it in evidence.

Judge Neilson—I think you can hold it until you offer it in evidence, the witness not having said as yet that he saw it.

Mr. Evarts—We therefore have no right to offer it in evidence?

Judge Neilson—No, Sir.

Mr. Fullerton—But I have a right, on the re-direct examination, to call the attention of the witness to the paper.

Mr. Evarts—No doubt.

Mr. Fullerton—Then I have a right to look at it.

Mr. Evarts—Then you will have.

Judge Neilson—Then you agree, gentlemen.

Mr. Fullerton—We do not agree, if your Honor please. We agree that I have a right to see it before I re-examine the witness. I claim that I have a right to see it now. They say I have a right to see it then.

Judge Neilson—You will have a right to see it, if the witness had made a material answer that he saw it.

Mr. Fullerton—but that they do claim, the answer he made is material, that he never saw it before.

Mr. Evarts—We do not. We would be very glad to put it in evidence, but our difficulty is, we have no right to do so.

Judge Neilson—When he [Mr. Fullerton] calls attention to it on the re-direct, he will have a right to see it.

Mr. Evans—We don't offer to read it. We would be glad to read it now.

Mr. Fullerton—I will show your Honor an authority as proof that I have a right to see it now.

Judge Nellson—It may be that you are right. If it was more material, perhaps I should remember the rule better.

#### SUGGESTIONS OF A BLACKMAILING SCHEME.

Q. I think you have stated that you remembered the publication of the Tilton letter to Mr. Bowen of January 1st, in which he recites Mr. Bowen's charges of adultery against Mr. Beecher. That was published in a Sunday newspaper of April 20, 1873, was it not? A. I think it was published in *The Eagle*—yes, Sir, or *Sunday Press*. I didn't see it in *The Sunday Press*. My recollection is I saw that letter published in *The Eagle*. I will see.

Q. It is *The Golden Age* article, which was published, and the "tripartite agreement," which recited the letter of Mr. Tilton to Mr. Bowen, written January 1st, 1871, in which he recites the charges of adultery which he (Bowen) had made against Beecher at the interview on December 26 at Mr. Bowen's house? A. I don't recollect having seen all this. It may be I was told; my impression is I was told that in *The Eagle*. It strikes me I was out of town when it appeared, but I was told of the publication of the letter of Mr. Tilton to Mr. Bowen in *The Eagle*.

Q. Taken from a Sunday newspaper? A. I don't know whether I was told it was taken from a Sunday newspaper.

Q. But didn't you learn it was first published in a Sunday newspaper in Brooklyn? A. I think I learned that subsequently. The point I learned was that this letter of Mr. Tilton to Mr. Bowen was published and I saw Mr. Bowen about it.

Q. That was this first publication? A. I suppose it was.

Q. You know it was? A. I don't recollect of any other now.

Q. As far as you know, it was? A. That is all that I recollect about it now; I don't think it was published.

Q. Do you know how *The Press* got hold of that letter? A. I do not.

Q. Did you have anything to do with *The Press* getting possession of that letter to publish it? A. No, Sir.

Q. Don't you know that that *Golden Age* article as published, when first published in Brooklyn was published from a copy that came from Mr. Tilton? A. I don't know anything about that.

Q. That was given by him to John W. Harman? A. I don't know that; no, Sir.

Q. Did Mr. Tilton ever talk with you about how it came to be published? A. I think I asked him how it came to be published, and he told me he did not know.

Q. I did not ask you that; he told you he did not know? A. Yes, Sir; he told me he did not know.

Q. Did you ask him how it happened that anybody got hold of the proof-sheets of that article that were struck off in *The Golden Age*? A. I asked him about that.

Q. How did he account for it? A. I don't recollect how he accounted for it; he did not know anything about it, my recollection is; he will probably be able to tell you that.

Q. That publication brought on another emergency in this matter, did it not? A. It was talked of.

Q. And created a good deal of excitement, didn't it? A. I believe it did.

Q. You saw Mr. Beecher at once about it, did you not? A. Yes, Sir; I think I saw Mr. Beecher about it. I think he came to see me about it.

Q. And created a good deal of excitement, you say? This publication of the letter from Mr. Tilton to Mr. Bowen, reciting Mr. Bowen's charges of adultery against Mr. Beecher, preceded the publication of the tripartite agreement, did it not? A. Yes, Sir, it preceded it?

Q. Will you tell us how long it was after you first learned of the publication of this letter to Mr. Beecher, or before Mr. Beecher had promised to give Mr. Tilton \$5,000? A. How long it was before that?

Q. Yes, Sir? A. When was the \$5,000 given? I think that was May 2d, was it not?

Q. Yes, Sir; May 2d, 1873? A. How long it was before that?

Q. Yes, Sir; how long the publication of this letter of Mr. Tilton's to Mr. Bowen, reciting Mr. Bowen's charges of adultery against Mr. Beecher—how long it was that that was published before Mr. Beecher had agreed to pay you \$5,000 for the use of Mr. Tilton? A. That was published April 20th, and he gave me the \$5,000 on May 2d.

Q. When did he agree to give it? A. I really do not recollect the day when he agreed to give it.

Q. How long do you think it was after its publication? A. If I recollected it I should have stated it to you. It did not have anything to do with this publication.

Mr. Tracy—I did not ask you that. That we will argue to the jury. I move that that be stricken out.

Judge Nellson—Strike that out. The answer of the witness and your [Mr. Tracy's] observations both go out.

Mr. Tracy—Do you remember how long it was after this publication that you had your first talk with Mr. Beecher about money for Mr. Tilton? A. I don't think it was after it at all; at the present moment I don't remember.

Q. Do you remember whether it was after it? A. I think it was not after it.

Q. You think it was not after it? A. I think not; I cannot fix the date. If you have got anything that will fix the date I will try and tell you, General.

Q. How many talks did you have with Mr. Beecher about the \$5,000? A. I had several.

Q. When was the last one before you got the money? A. Immediately before I got it, on the road down to the bank.

Q. Did Mr. Beecher used to say to you at times that he heard that Mr. Tilton was talking privately against him? A. No, Sir; I don't recollect that he did.

Q. You never recollect any such interview as that? A. That Mr. Tilton was talking privately against him?—no, Sir.

Q. Don't you know that you frequently assured Mr. Beecher that the reports that he heard that Mr. Tilton was talking about him were untrue? A. The only recollection I have about it is in the first part of 1871, just before the Mrs. Morse letter was brought to me, that then Mr. Beecher did say something to me about it. Since then I don't recollect about it.

Q. Didn't you often say that you would investigate such

rumors, and make reports to Mr. Beecher of what the facts were? A. I don't—such rumors in connection with Mr. Tilton's name, you mean?

Q. Yes, Sir. A. There were rumors that people were talking of.

Q. That Mr. Tilton was talking against Mr. Beecher privately? A. No, Sir; I don't recollect that.

Q. Or that he was talking against him? A. No, Sir; that others were talking against him, he wrote me a letter once.

Q. The question was about Mr. Tilton. A. No, Sir; I don't recollect that at the present moment.

Q. You don't recollect to have ever undertaken to trace up those reports, and afterwards reported to Mr. Beecher that they were unfounded, and that your investigation had shown you Mr. Tilton had not been talking about him? A. There may have been some such thing, but I don't recollect it at present.

Q. [Handing letter to witness.] Will you look at that letter? A. Yes, Sir.

Q. Is that your writing? A. Yes, Sir; that is my writing.

Q. Will you fix the date of it? A. I will try to. I will read it and see. [To Mr. Tracy.] Can you read one word *here* in this letter, Mr. Tracy?

Mr. Tracy—I don't think I could; I would not like to undertake it. It is your handwriting isn't it? A. Yes, Sir.

Mr. Fullerton—But he wrote it for Mr. Beecher to read.

Judge Neilson—Perhaps the stenographer can read it.

Mr. Tracy—Yes, Sir; it begins "Dear Friend;" perhaps we can read it.

The Witness—This was some time, I suppose, in the Greeley campaign?

Mr. Tracy—I suppose so.

The Witness—I cannot read the whole context.

Mr. Shearman [reading]:

T.'s statement out of which Cleveland has tried to make mischief, was passed upon your remark at our table that you would cease to be editor of *The Christian Union* when it condescended to personal attacks on Mr. Greeley.

His remark was: "Mr. B. will cease to be editor when the paper personally attacks G." C. said, "What do you mean by that?" I replied your chief knows.

You may rest assured that any story hereafter brought to you representing T. in any other than a friendly spirit toward you is a misrepresentation or misapprehension, and I want you to treat it accordingly; then no mischief can be done. Cleveland tried to pump Theodore and also yourself.

I hope you have left no impression unfriendly to T. on C.'s mind.

Now, again, all is right, and I pray God that it may remain so. Right everywhere. Yours, F. D. M.

You can readily understand how C. gave to T.'s statement the coloring of the floating stores.

The Witness—I think I can fix the date of it.

Q. Who are C. and T.? A. Cleveland and Tilton. I will try to fix the date for you as near as I can.

Q. When do you think it was? A. I think it was on the evening Mr. Tilton made his speech at the Academy of Music in favor of Greeley, because Mr. Beecher and Mr. Tilton were both with me dining with some friends, and I think it was about that time

Q. That was the time the conversion of Mr. Beecher occurred? A. Precisely so; it was a short time after that.

Q. That was entirely a friendly dinner, was it not? A. It seemed to be.

Q. The company understood at that dinner that Mr. Beecher was for Mr. Grant and Mr. Tilton was for Mr. Greeley? A. I think they did; yes, Sir.

Q. And it was a friendly dinner and a friendly talk? A. Seemed to be.

Q. But the occasion of writing this letter was some time after that? A. Not a great while; I don't fix it as the beginning of the season for the letter.

Q. Was that the only instance where you had followed up reports that had reached Mr. Beecher of Mr. Tilton's unfriendly remarks, and assured him that his information was entirely a mistake, and that Mr. Tilton was entirely friendly?

Mr. Fullerton—I object to the form of that statement. He asks if that is the only instance of that kind. That is not an instance of that kind.

Mr. Tracy—Certainly it is, if there is anything in the letter.

Judge Neilson—I think he may answer that.

Mr. Fullerton—It is a misconstruction of the letter.

The Witness—Will the stenographer read the question?

[THE TRIBUNE stenographer read the question.]

The Witness—I don't recollect.

Judge Neilson—You mean you don't remember any other occasion? A. I don't remember any other question, and didn't recollect this until it was brought to my attention.

#### MOULTON'S ANSWER TO THE LETTER OF RESIGNATION.

Mr. Tracy—You have spoken of seeing in Mr. Beecher's hands what you called his resignation on the evening of the 31st of May, in your house? A. Yes, Sir.

Q. That was Saturday evening, was it not? A. I think that was the evening I saw it.

Q. 31st of May, 1873? A. I think that was the evening I saw the resignation.

Q. And it was the next day that you received the letter that has been given in evidence, dated June 1st, 1873? A. I received a letter dated June 1st, 1873.

Q. Did you see Mr. Tilton on that Sunday? A. I think very likely he was at the house; yes, Sir; I believe he was at the house.

Q. What time did he come there? A. In the afternoon, I think.

Q. How late in the afternoon? A. I don't know; somewhere about from twelve to three; about dinner time.

Q. What time of day did you receive this letter from Mr. Beecher, do you know? A. In the morning early.

Q. How early? A. Before I was up.

Q. Does it always follow that is early on Sunday morning? A. Not always; but it was about nine o'clock, I should think, I got the letter; it was before half-past ten; if you want me to fix it, I will be able to fix it accurately.

Q. Did you answer that letter? A. Yes, Sir.

Q. What time of day did you answer it? A. Right away, Sir; in bed.

Q. You answered it in bed, you think? A. Yes, Sir; my wife brought me the paper to answer it with; I think I recollect that.

Mr. Evarts—The details are unimportant, what your wife did or didn't do.

The Witness—Your instructions to me, Mr. Evarts, have seemed to be so peculiar to the truth itself, that I beg pardon for trying to tell all the truth.

Mr. Tracy [handing letter to witness]—Is the letter now presented to you your answer to Mr. Beecher's letter of Sunday morning, June 1st, 1873?

Mr. Shearman—You are satisfied that is your handwriting? A. Yes, Sir; I am satisfied it is my letter, with the exception of the words that are underlined; I don't know that that makes much difference; I don't think I underlined it.

Mr. Evarts—You mean the underscoring? A. Yes, Sir; the underscoring may not be mine; the letter is mine with that exception. Can you tell, Mr. Shearman, whether that underscoring is mine or not?

Mr. Shearman—Yes, if you want me to tell you.

Mr. Beach—He cannot tell you that.

Mr. Evarts—It is presumptively your underscoring, and that erasing is yours, is it not? A. I didn't say that. [The witness refers again to the letter.] Yes, Sir, I think that was the beginning of the letter.

Q. And you yourself crossed it out and wrote the rest? A. I think very likely I did. I don't remember scratching it out.

Mr. Evarts—I will begin the letter, as you did, with the part that is scratched out first.

MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning. I know you can stand if the whole case was published to-morrow, and in my opinion, it shows a selfish faith in God too—

And then the writer stops and erases and begins again.

Mr. Shearman—I beg your pardon, if your Honor please. As this letter was originally published, it was published correctly, but in re-publishing it in this book, there seems to be an erasure, and I am afraid Mr. Evarts cannot read this writing, and I will therefore read it. [Reading:]

SUNDAY, June 1, 1873.

MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning. If the truth must be spoken, let it be. I know you can stand if the whole case was published to-morrow, and in my opinion it shows a selfish faith in God—

Mr. Evarts—The rest is right.

Mr. Shearman—The rest is right.

Mr. Evarts—Then he begins:

SUNDAY, June 1st, 1873.

MY DEAR FRIEND: Your letter makes this first Sabbath of Summer dark and cold like a vault. You have never inspired me with courage or hope, and if I had listened to you alone my hands would have dropped helpless long ago. You don't begin to be in the danger to-day that has faced you many times before. If you now look it square in the eyes it will cower and shrink away again. You know that I have never been in sympathy with, but that I absolutely abhor, the unmanly mood out of which your letter of this morning came. This mood is a reservoir of

milddew. You can stand it if the whole case were published to-morrow. In my opinion it shows only a selfish faith in God to go whining into heaven, if you could, with a truth that you are not courageous enough, with God's help and faith in God, to try to live on earth. You know that I love you, and because I do I shall try and try and try as in the past. You are mistaken when you say that Theodore charges you with making him appear as one graciously pardoned by you. He said the form in which it was published in some of the papers made it so appear, and it was from this that he asked relief. I do not think it impossible to frame a letter which will cover the case. May God bless you. I know he will protect you. FRANK.

Mr. Tracy—Now, just previous to June 1st, the "tripartite agreement" had been published, had it not? A. Exactly; yes, Sir.

Q. When was it published? A. Published, I think, on the 30th or 29th of May—the 30th of May.

Q. On the next day, June 2d, you got Mr. Beecher to publish the card which has been put in evidence, exonerating Mr. Tilton from the suspicion of being the author of Mr. Bowen's charge, did you not? A. I don't think I said that. On Sunday night I submitted to Mr. Beecher a card, the substance of which he published the next day in *The Eagle*.

Q. That was June 2d? A. Yes, Sir; that was June 2d; there is the original.

Q. And which has been given in evidence here? A. No, Sir; it has not.

Mr. Morris—No; the one that was admitted was not. Here it is. [Handing a paper to Mr. Tracy.]

Mr. Evarts—We do not allude to anything not in evidence. There was something published.

Q. When was the card that was published agreed upon? A. Sunday night, I believe.

Q. Sunday night? A. Sunday night; yes, Sir.

Q. The card that was published? A. Yes, Sir.

Q. Where was that agreed upon? A. In my study, I think.

Q. Mr. Beecher's threat to resign led Mr. Tilton, did it not, to forego the publication of the card which he had threatened to publish on Saturday? A. No, Sir; I don't think it had anything to do with it.

Q. He didn't publish it, did he? A. He was going to publish it on Monday. He was not going to publish it on Saturday.

Q. The card he was going to publish on Saturday, he didn't publish it, did he? A. No, Sir.

Q. When was the interview between you and Mr. Tilton when you first were informed that he intended to publish that card? A. Saturday morning, I think.

Q. When did you learn that he had given up publishing that card? A. I think it was Sunday afternoon; I didn't understand that he had given up publishing the card, if you please.

Q. I ask you when you did learn it? If it was not Sunday afternoon when was it? A. Monday.

Q. You learned on Monday he did not intend to publish that card? A. Yes, Sir, I think it was Monday.

Q. And was not that after Mr. Beecher's threats to resign? A. That was after Mr. Beecher's threats to resign; yes, Sir.

Q. And after you had communicated that threat to Mr. TR-

ton? A. I think it was; yes, Sir. I will tell you about the card if you want me to.

[Paper marked Exhibit D. 43.]

Q. Now, I ask you this question: was the card which was published on January 2d prepared by Mr. Tilton? A. I think the original draft of it was; yes, Sir—not as published; it was published with an alteration from that original draft, but the draft which Mr. Tilton prepared I submitted to Mr. Beecher, and he made one to suit himself, which was substantially that card.

Q. Now, the card that you say you dictated to Mr. Carpenter after the Bacon letter, did you dictate that from any paper? A. No, Sir.

Q. Had it been reduced to writing previous to your dictating it? A. Never.

Q. Where did you dictate it? A. I think it was at Delmonico's; in the front room, on the second or third floor of Delmonico's.

Q. Were you dining there together? Which Delmonico? A. Chambers street. No, I did not get there in time to dine, I recollect that.

Q. What time was it? A. It was in the afternoon.

Mr. Evarts—Who were together? A. Mr. Tilton, Mr. Carpenter, and myself were together.

Mr. Tracy—Mr. Tilton, yourself, and Mr. Carpenter were together at the time that card was dictated? A. Yes, Sir.

Q. Were you there for the purpose of a meal? A. I came up there to get my dinner. Dinner was over. I promised to go there to dine.

Q. Did the two come with you? A. No, Sir, they were there before me.

Q. They had had their dinner? A. Yes, Sir.

Q. Were you to meet them at dinner? A. I believe I was.

Q. You met there in pursuance of an appointment, you being too late for dinner? A. Yes, Sir; I believe so.

Q. And was this card, which you proposed to be published, or this statement which you proposed Mr. Beecher should publish, in reply to the Bacon letter? A. Any answer to the Bacon letter? No, I did not propose he should publish it—to speak it from his platform.

Mr. Tracy—That is what I call publishing.

The Witness—Yes, Sir.

Mr. Tracy—That was prepared at Delmonico's, Mr. Tilton, you and Mr. Carpenter being present? A. Yes, Sir, I dictated it. All the dictation is mine; every word of it.

Q. How many interviews had you had with Mr. Tilton after the publication of the Bacon letter, and before you dictated this card? A. Not many.

Q. How many? A. I don't recollect. What is the date of the publication of the Bacon letter?

Q. June 25th I believe. A. What day of the week was it? This was Friday. I think Mr. Beecher was to have a prayer meeting that night; that is one way I fixed this, and I think it was the week of the publication of the Bacon letter; I think so.

Q. Do you know what day *The Golden Age* goes to press? A. No, Sir; I don't remember the day; I don't remember that,

but my impression is that it was Friday of the week of the publication of the article in *The Golden Age*.

Q. You saw it in the morning papers on Thursday morning? A. I don't recollect what day it was.

Q. Don't you recollect *The Golden Age* went to press on Wednesday night? A. I don't know that.

Q. And was distributed on Wednesday night? A. I saw you immediately after, and you can fix— [Laughter.]

Mr. Tracy—I did not ask you that.

The Witness—I only suggest how I can fix the date. I want to fix the date accurately. I didn't mean to make any fun then, Mr. Tracy. I will tell you the thought that was in my mind.

Mr. Tracy—I don't want that. You do very well when you answer my questions.

The Witness—I would like to state exactly what I had in my mind.

Judge Neilson—If it was necessary. We assume it was something proper, of course.

The Witness—He (Mr. Tracy) asked me to fix the date, and I wanted to fix it; and, if your Honor will allow me, I will state how I wanted to fix it.

Judge Neilson—It was an effort on your part to fix the date in that particular way?

The Witness—Precisely, Sir.

Mr. Evarts—This topic we are now through with, and your Honor will observe that it is just one o'clock, our hour for taking recess.

Judge Neilson [to the Jury]—Gentlemen, you will please be in your seats at two o'clock.

The Witness [to Judge Neilson]—May I step down, your Honor?

Judge Neilson—Yes, Sir.

The Court met at 2 p m., pursuant to adjournment. Francis D. Moulton was recalled, and the cross-examination resumed.

Mr. Tracy—Have you seen that letter before, Mr. Moulton? [Handing witness a paper.] A. Yes, Sir.

Q. When did you see it first? A. I think in the latter part of December, 1872.

Q. About the time of its date? A. I don't think it is dated. Somewhere in the neighborhood of the letter of the "Complaining Friend," Sir.

Q. Was it before or after the publication of the letter to the "Complaining Friend?" A. I think it was after, Sir.

Q. Where did you get that letter; how did it come to you? A. I think by Mr. Tilton's hand.

Q. And lest with you? A. Yes, Sir.

Q. By him? A. Yes, Sir.

Mr. Tracy—I propose to offer it in evidence, your Honor. [Handing the letter to plaintiff's counsel.]

Mr. Beach—We have no objection.

Mr. Shearman [reading]:

Mr. Moulton:

MY DEAR FRIEND: For my husband's sake and my children's, I hereby testify, with all my woman's soul, that I am innocent of the crime of impure conduct alleged against me. I have been to my husband a true wife; in his love I wish to live and die. My early affection for him still burns with its maiden flame; all the more for what he has borne for my sake, both



public and private wrongs. His plan to keep back scandals long ago threatened against me I never approved, and the result shows it unavailing; but few would have risked so much as he has sacrificed for others ever since the conspiracy began against him two years ago.

Having had power to strike others, he has foreborne to use it, and allowed himself to be injured instead. No wound is so great to me as the imputation that he is among my accusers. I bless him every day for his faith in me, which swerves not, and for standing my champion against all my accusers.

ELIZABETH R. TILTON.

[Marked "Exhibit D, 44."]

Q. You have spoken of what you told Mr. Beecher Mr. Tracy advised you in regard to the Woodhull scandal. Did you tell Mr. Beecher that Mr. Tracy advised you to deny that part of the Woodhull story that related to yourself, so far as it represented you to be an actor or present at any action? A. I don't recollect, Sir, whether I told him that or not.

#### MOULTON'S PICTURES OF TILTON AND BEECHER.

Q. Mr. Moulton, have you a portrait of Mr. Beecher hanging in your house now? A. No, Sir.

Q. When did you take it down? A. Some little time ago; I forget how long ago; after I got William Paige's portrait; I forget how long ago that was.

Q. About how long ago? A. Within a year, I should think.

Q. Can't you give it nearer than that? A. I don't recollect, Sir; I know distinctly when it was done; that is, I don't remember the date, but I know when it was done, and why.

Q. I don't ask you why; I ask you now for the time? A. I cannot fix the time, Sir.

Q. Do you say you took it down when you got some one else's portrait? A. Yes, Sir; I didn't have any room for William Paige's portrait, and I put William Paige's portrait in Mr. Beecher's place.

Q. William Paige, the artist? A. Yes, Sir.

Q. And Mr. Beecher's portrait was painted by Mr. Paige? A. Yes, Sir.

Q. Now, can't you recollect the season of the year when you took that down? A. I really cannot, Mr. Tracy. I would tell you if I could. It is not very long ago, not very long.

Q. Was it three months ago? A. This is —

Q. January? A. January; yes.

Q. The 25th? A. Yes; December, November, October—I should think it was over three months ago. I should think it was.

Q. Is it about three months ago? A. I should think it was more than three months ago.

Q. When was it? A. Within the year some time; I can't tell you.

Q. Oh! yes; when was it? A. I can't recollect.

Q. Don't you know that it is since August? A. No; I don't know that it is since August.

Q. Don't you know that it is since your statement before the Committee of Aug. 5th? A. I don't recollect, Sir, that it was since then.

Q. Don't you know that that portrait hung in your house, Mr. Moulton, after you made your statement before the Com-

mittee of Aug. 5th, in your front parlor? A. Now, I don't recollect, Mr. Tracy; very likely it did; I cannot say; if I recollected about it, I would tell you.

Q. You mean to say that you don't recollect? A. I mean to say that I don't; precisely; that is my answer; yes, Sir.

Q. How long had it hung there? A. I think Mr. Tilton gave me that portrait, Sir.

Q. I didn't ask you anything about that, Sir. I asked you how long it had hung there? A. I was trying to fix the date, Sir, by the gift.

Q. Just fix the date in your own mind and announce it. It is not necessary that you should think so everybody can hear you? A. I will try not to, Sir.

Mr. Morris—It is not necessary that counsel should assume the tone he does, quite.

The Witness—I think that portrait was given to me by Theodore Tilton—

Q. I didn't ask you that, Sir. I submit now, your Honor, that that is not a proper answer. A. Well, ask me the question again, General.

Q. I have asked you twice.

Judge Neilson—How long did it hang there in your parlor? He don't ask the precise date; up to about what time? A. Yes, Sir. I understand now. It was hung there in the latter part of 1871, I think, Sir; I think so.

Q. And it continued to hang there from that time until it was removed, as you have now stated? A. Yes, Sir.

Q. And was Mr. Tilton's hanging in your back parlor at the same time? A. Mr. Tilton's picture hung in my back parlor; in the dining-room, Sir, over the mantel-piece.

Q. And Mr. Beecher's portrait and Mr. Tilton's portrait are in the front parlor, and the other in the back parlor—were they the two leading pictures in your house? A. No, Sir; they were two leading pictures. I had three portraits of Mr. Payne, my own besides.

Q. Was your own portrait there too? A. Yes, Sir.

Q. In what room was your own portrait? A. In the front parlor.

Q. In the same room with Mr. Beecher's? A. Yes, Sir.

Q. You have stated in a previous part of your examination that your wife had not attended communion at Plymouth Church recently. That communion is held immediately after the morning service, is it not? A. I don't recollect about that.

Q. You don't know? A. I don't recollect.

Q. Didn't you at one time state that you also was a member of the congregation at Plymouth Church? A. I may have done so; I don't know.

Q. Well, didn't you, just after August 31, the next day after that meeting—didn't you publish a card stating that you were a member of Plymouth congregation, and as such had a right to be there, and that your wife was a member of the church? A. I think very likely I did. I was not a member of any other congregation.

Q. No. That is good reasoning. A. Yes, fair.

Q. And did you state that your wife was a member of that church? A. Yes, I think I did. If you will allow me, Mr. Tracy, I would like to tell you why I think I did.

Q. Well, we are content that you thought so, at present? A. Well, I have reference to a communication that I made after the meeting in Plymouth Church.

Q. So have I. Now, don't you know, Mr. Moulton, that your habit of lying in bed late on Sunday morning, and having company at mid-day at dinner on Sundays, has prevented your wife from attending the morning service at Plymouth Church? A. No, I don't know that.

Q. You don't know that? A. No.

Q. You know that she has not attended the morning service usually, do you not? A. I do not think she has very frequently, Sir, attended it since 1870.

Q. Has she not attended the evening service? A. Not more frequently than the morning, I think, Sir.

Q. Not more frequently than the morning? A. No, Sir; not more frequently.

Q. You have spoken of the letter that you wrote to Mr. Beecher on August 5, in reply to his letter, in regard to his demand for his papers in your possession. Now, I am calling your attention to August 5, at the time that that letter was written? A. Exactly; I understand.

Q. In which you say you will confer with Mr. Tilton as soon as possible? A. Yes, Sir.

Q. Did you write Mr. Tilton on the same subject? A. Right immediately there, Sir.

Q. Right there? A. Yes, Sir; put it on record at once.

Q. And Mr. Tilton present at the time you wrote him? A. I do not recollect whether he was or not, Sir, when I wrote the letter.

Q. You say he wrote the letter to Mr. Beecher? A. Yes, Sir.

Q. Now, was your letter to him written at the same time? A. Written right away after; shortly after, I mean, by right after.

Q. Was not he present, and did not he answer your letter right there? A. He answered my letter that same day, whether it was right there or not.

Q. Did he draw his answer right in your study? A. I do not recollect whether he drew his answer right in my study, or not. My impression is that he did.

Q. Did he draft your letter to him, or did you draft it? A. I think I drafted it.

Q. Have you got the draft? A. I think I have.

Mr. Tracy—[To plaintiff's counsel.] I would like you to produce that.

Mr. Morris—We have not got it.

Mr. Evarts—Will the witness look among his papers?

The Witness—I will; I will try and find it, Mr. Evarts.

Mr. Tracy—We would like it now.

The Witness—I do not know whether it is amongst those papers now. That is the reason I spoke. I thought Mr. Evarts alluded to my trying to find it elsewhere.

Mr. Tracy—Will you say, as a matter of recollection, that Mr. Tilton did not draft your letter to him, and make his reply to you in the same room and before you separated that evening? A. He did not draft that letter; my recollection is that he did not draft that, Sir; I drafted that.

Mr. Fullerton—This reminds me, if your Honor please, that

I ought to make a correction of something I said before the recess, which I did not learn until the recess, that a part of the "True Story," so called, was preserved; the whole of it was not destroyed. I stated that the "True Story" had been destroyed; I understand that some fragments of it were retained.

#### AUTHORSHIP OF MOULTON'S FIRST STATEMENT TO THE COMMITTEE.

Mr. Tracy—You made three communications, did you not, to the Committee? A. I made the first one, I think, on July 13. That is the first one I made, I believe.

Q. When was the second? A. The second was when I said that if—

Q. I did not ask you what you said; only give the date that you made it. A. I do not remember the date.

Q. I will refer you to it. A. I think it was August the 6th. I think it was; I don't remember exactly.

[Defendant's counsel here paused in the cross-examination for two or three minutes.]

Mr. Pearsall—Are you waiting for us?

Mr. Tracy—Yes, Sir.

Mr. Morris—What do you wish?

Mr. Tracy—Those papers.

Mr. Morris—There is Moulton's statement to the Committee. [Producing paper.]

The Witness—That is not it at all. I do not believe that there is any original draft of it there—of that first statement.

Judge Neilson—Haven't you it in print?

Mr. Tracy—I am talking about the first statement.

Mr. Morris—I haven't got it.

Judge Neilson—You have it in print, have you not?

Mr. Tracy—We have it in print; yes, Sir.

Judge Neilson—Can't you use that?

Mr. Tracy—It is not the object to use it—my calling for it.

Q. Do you know who drafted that statement? A. My original statement?

Q. Yes, Sir. A. I did myself; I wrote my first statement.

Q. Who was present when you did it? A. I dictated it in the presence—I dictated it to Theodore Tilton; I don't remember who else was present. Is that what you mean by drafting?

Q. Mr. Tilton was present then when it was drafted? A. Yes, Sir; I dictated it to him.

Q. Then Mr. Tilton wrote it, didn't he? A. I don't remember whether he wrote it or not. I copied it from his writing. I guess, myself.

Q. You copied it from his writing? A. I guess so; yes, Sir.

Mr. Morris—He took it in shorthand? A. He took it in shorthand. I think Mr. Carpenter and Mr. Redpath were present, too, at that time. I think so; one or the other of them. I have some recollection of it.

Mr. Tracy—You have spoken of a conversation which occurred at your house between yourself, Mr. Tilton and myself in which you say that his anger was melted. I refer to that conversation for the mere purpose of fixing a date. Did you at any time soon after that see in Mr. Tilton's house a proposed

report to the Committee—for the Committee? A. Soon after that conversation with him?

Q. Yes. A. Yes, Sir; I think I did, a long report.

Mr. Tracy. [To plaintiff's counsel]—Gentlemen, will you produce that? [To the witness.] Referring to that report. I ask you the fact whether you know that Mr. Tilton went to the members of the Committee and urged them to accept that report—to one or more members of the Committee? A. I don't know that; no.

Q. You introduced—a short report has been introduced which seems to have been prepared about the same time. Do you know in whose handwriting that report is? A. Yes, Sir: the short one?

Q. Yes, Sir, as it was introduced in evidence? A. Yes, Sir; Robert Eddy's.

Q. He is your bookkeeper? A. Yes, Sir.

Q. From what did he copy it, do you know? A. I think he copied it from an original draft by Mr. Tilton or by myself.

Q. Do you know which? A. Mr. Tilton, I believe.

Q. Do you know whether as a matter of fact that short report was prepared after the long one of which we are now speaking? A. My impression is it was; yes, I think so.

A. Do you know at whose suggestion that short report was prepared? A. No; I do not know at whose suggestion, Mr. Tracy.

Q. Was it at yours or Mr. Tilton's suggestion? A. I think it was Mr. Tilton's idea. It was prepared about the time of the long one.

Q. That is the report that you call the long report, is it not [handing witness a manuscript]? A. I believe that is it, Sir [handing back the paper].

Q. This is the report, is it? A. I think that is it; yes, Sir.

Judge Neilson—The proposed report?

Mr. Tracy—Yes, the proposed report—Mr. Tilton's proposed report for the Committee.

Judge Neilson—Being the second in order.

Mr. Tracy—Being the first in order of time, the second one that was introduced in evidence.

Mr. Shearman—The paper is in the handwriting of Mr. Tilton. [Reading]:

#### TILTON'S PROPOSED VERDICT FOR THE CHURCH COMMITTEE.

The undersigned, constituting the Committee of Plymouth Church, to whom were referred certain recent publications of Dr. Leonard Bacon and Mr. Theodore Tilton, hereby present their unanimous report.

The Committee sought and obtained a personal interview with each of the three following named persons, to wit: Mr. Tilton, Mrs. Tilton, and the pastor, all of whom responded to the searching questions of the Committee with freedom and candor. Documents, letters, and papers pertaining to the case were carefully considered. A multiplicity of details, needing to be duly weighed, occasioned a somewhat protracted investigation. The Committee hope that the apparent tardiness of their report will be compensated to the parties by rectifying an erroneous public sentiment under which they have all suffered misrepresentation.

I. The Committee's first interview was with Mrs. Elizabeth R. Tilton, whose testimony was given with a modesty and touching sincerity that deeply moved those who listened to it.

Her straightforward narrative was an unconscious vindication of her innocence and purity of character, and confirmed by evidences in the documents. She repelled with warm feeling the idea that her husband was the author of calumnious statements against her, or had ever treated her with other than chivalrous consideration and protection. She paid a high tribute to his character, and also to the fortitude with which he had borne prolonged injustice.

II. The Committee further find that Mr. Tilton, in his relations with the pastor, had a just cause of offense, and had received a voluntary apology. Mr. Tilton declined to characterize the offence for the following reasons: First, because the necessary evidence which should accompany any statement would include the names of persons who had happily escaped thus far the tongue of public gossip; next, that the apology was designed to cover a complicated transaction, its details, difficult of exact or just statements; and last, that no possible good could arise from satisfying the public curiosity on this point. Mr. Tilton, after concluding his testimony, respectfully called the attention of the Committee to the fact that the Clerk of the Church had spoken calumniously of Mr. Tilton during the late council, and had since unqualifiedly contradicted and retracted his statements as untrue and unjust, and he (Mr. T.) requested the Committee to ratify and confirm that apology, making honorable record of the same in their report, which is hereby cheerfully done.

III. The Committee further find that the Rev. Henry Ward Beecher's evidence corroborated the statements of Mr. and Mrs. Tilton. He also said the church action of which Mr. Tilton had complained had not been inspired by the pastor, but had been taken independently by the church; that the popular impression that Mr. Tilton had been in the habit of speaking against him was unjust to Mr. T., and was owing mainly to the unwelcome introduction into the church of charges against Mr. T. by a mere handful of persons, who, in so doing, had received no countenance from the great mass of the congregation or from the pastor. He said that the apology had been invested by the public press with an undue mystery; that, after having been led by his own precipitancy and folly into wrong, he saw no singularity of behavior in a Christian man (particularly a clergyman) acknowledging his offense. He had always preached this doctrine to others, and would not shrink from applying it to himself.

The Committee, after hearing the three witnesses already referred to, felt unanimously that any regrets previously entertained concerning the publication of Mr. Tilton's letter to Dr. Bacon should give way to grateful acknowledgments of the providential opportunity which this publication has unexpectedly afforded, to draw forth the testimony which the Committee have thus reported in brief, but in sufficient fullness, as they believe, to explain and put at rest forever a vexatious scandal. The Committee are likewise of opinion, based on the testimony submitted to them, that no unprejudiced court of inquiry could have reviewed this case, as thus presented in person by its principal figures, without being strikingly impressed with the moral integrity and elevation of character of the parties; and accordingly the Committee cannot forbear to state that the Rev. Henry Ward Beecher, Mr. Theodore Tilton, and Mrs. Tilton (and in an especial manner the latter), must and should receive the increased sympathy and respect of Plymouth Church and congregation.

(Signed).

[Marked "Ex. D 45."]

#### TILTON'S SEPARATION FROM HIS WIFE.

Mr. Tracy—There are two or three mistakes in this, and therefore the copy should be taken from the draft and not from the printed copy. It is not very important, but there are three of them. [To the Witness.]

Now, Mr. Moulton, at that interview, of which you have spoken at your house, between yourself, Mr. Tilton and myself, did you accompany Mr. Tilton to the door that night when he went home? A. I think I did, Sir.

Q. Down stairs? A. Yes, Sir.

Q. Did you tell him, while standing on the step or at the door that night, to go home and be reconciled to his wife, that the time had not come to fight her yet? A. No, Sir; I did not use that last expression.

Q. Did you use the first? A. Well, put it in the form of a question and I will answer it, Sir.

Q. D did you tell him that night at the door to go home and be reconciled to his wife? A. I told him something like that, Sir; I did not use precisely that language.

Q. In substance that, did you? A. I advised him to go back to his wife; yes, Sir.

Q. And did you add that the time had not come yet for him to fight his wife? A. No; I don't recollect.

Q. Or words to that effect? A. No, Sir; no.

Q. He had separated from his wife at that time, had he not? A. He told me, I think it was on that morning, that he had left her the night before on learning that she had gone to the—

Q. In consequence of her going before the Committee? A. Yes, Sir, in consequence of her having gone before the Committee. Whatever day that was, he told me on the morning after that, I think.

Mr. Fullerton—Told you what? A. On the morning after that, on the morning after his wife had been before the Committee, Mr. Tilton told me that he had left the house.

Mr. Tracy—That she had come home that night, and told him that she had been before the Committee? A. Yes, Sir.

Q. Did he tell you that he was in bed?

Mr. Everts—No matter what passed between them; he said that he had left in consequence.

Q. And you understood that he went back that night to his wife, did you not? A. Yes, Sir.

Q. And the next morning, or the next morning but one—which was it that he presented to you this report? A. I don't recollect whether it was the next morning or the next morning but one. He submitted it to you and me together when he did submit it.

Q. How long did he and his wife remain together after that? A. I don't recollect how long. She left him, I think, on Saturday, if I recollect right—Saturday of that week.

Q. Was it until she left and went to Mr. Ovington's; did they remain together until she left and went to Ovington's? A. Whatever day it was, Sir, she went to Mr. Ovington's; I cannot recollect.

Q. I did not ask you the date. As a matter of fact they remained together, didn't they, until his wife left home? A. I don't know how long they remained together. I understood they did.

Q. Did Mr. Beecher at any time ask you for the return of the paper that you now call the letter of contrition? A. Ask me for it—no.

Q. Never asked you for it? A. No.

Q. Did you at any time ever tell him that you had burned that paper? A. Never.

Q. You never did? A. Never.

Q. His statement that you had so told him had been published in the newspapers before you made either of your statements, had it not?

Mr. Beach—Wait one moment. We object to that.

Mr. Tracy—I will change the question. Had his statement—what is known as Mr. Beecher's statement before the Committee, and his cross-examination, been published before you made either of your statements? As I think that has transpired already. A. Yes, Sir; yes, I think—yes, certainly, before I made either of my statements. No, I made the first—

Q. Before you published either of them? A. No; my statement of July 18 was published before that. The short statement of July 18 was published on July 14, in which that letter was referred to.

Q. I mean either of your long statements.

Judge Neilson—Either of the two last statements? A. No, Sir.

Mr. Tracy—Both of those were published after Mr. Beecher's statement? A. Yes, Sir.

Q. The first long statement of yours was prepared before Beecher's statement was published, was it not? A. Not altogether, I believe.

Q. The first statement that Gen. Butler prepared for you. Well, I don't know whether it was the first that he prepared or not, but the first that was published in *The Graphic*? A. Before Mr. Beecher prepared his?

Q. Before Mr. Beecher published his? A. Before Mr. Beecher published his?

Q. Before it was published? A. Before Mr. Beecher's was published—that is the question you ask me?

Q. Yes, Sir. A. Whether that statement was published before Mr. Beecher's statement was published?

Q. Yes, Sir. A. I think it was; yes, Sir. What day was Mr. Beecher's published, Mr. Tracy?

Q. Aug. 14. A. What day was my statement made to the Committee, do you remember?

Mr. Shearman—Aug. 5.

#### THE MOULTON-BEECHER FRIENDSHIP QUICKLY TURNED TO ENMITY.

Mr. Tracy—Have you recently expressed hostility—violent hostility—towards Mr. Beecher? A. I don't recollect that I have. How recently, Sir?

Q. Within three months? A. Within three months?

Q. Yes, Sir. A. I think very likely—

Mr. Beach—A general question of that kind is not admissible. It must be pointed to time and place and some circumstance.

Mr. Tracy—it is—within three months.

Judge Neilson—Well, he has answered it.

The Witness—What is it now?

Mr. Tracy—I say within three months; haven't you since the publication of his statement?

Mr. Beach—To whom?

Mr. Tracy—We will get at it.

Mr. Beach—No, Sir—

Judge Neilson—You must point his attention to time and place, or the persons present.

Mr. Evarts—It is not a question of contradicting him, it is asking him a question.

Judge Neilson—I don't know.

Mr. Evarts—When it becomes a question of contradicting then we are obliged to give time and place.

Judge Neilson—I think it would be fair to the witness to specify time and place.

Mr. Evarts—How do we know anything about it? Your Honor is assuming that the question is asked for the purpose of contradicting him, and that we have the means of contradicting him. Your Honor is entirely right, of course, if that were the case. Whenever you wish to proceed thus to impeach, we do not differ as to what the rules are, but we have a right, as matter of direct evidence of the witness's own mouth, to prove that he has expressed hostility towards Mr. Beecher.

Judge Neilson—Undoubtedly.

Mr. Evarts—It is not with a view of contradicting him; it is with a view of proving it.

#### THE WITNESS AGGRESSIVE.

Mr. Beach—There is no doubt of that, Sir, that they may prove that the witness has hostility—that he entertains ill feeling; but when they ask for the declaration of the witness, at any time, or for any purpose, the rule is invariable that they must direct the attention of the witness to the time and the place and the person to whom the expression was made.

Mr. Evarts—I think my friend will see that it is only as a foundation to contradict him that we must do that.

Mr. Beach—Well we do not know whether they are making a foundation to contradict or not.

Mr. Evarts—The way would be that when we brought some one up to contradict him, some one would say we had not directed his attention to the time and place.

Judge Neilson—There are two considerations in regard to it; one is as to the question of fairness to the witness, the other of policy. You should direct his attention, if you can, to the occasion.

Mr. Tracy—If he says he is, we may ask him when and where.

Judge Neilson—Let him answer the question. Repeat the question, Mr. Stenographer.

Mr. Fullerton—He has answered.

THE TRIBUNE stenographer [reading]:

Q. Have you recently expressed hostility—violent hostility towards Mr. Beecher? A. I don't recollect that I have. How recently, Sir?

Q. Within three months? A. Within three months?

Q. Yes, Sir. A. I think very likely—

The Witness—What do you mean by violent hostility?

Mr. Tracy—I put that question to you.

Judge Neilson—As you understand the word, have you expressed violent hostility or not? A. Yes, Sir; I have expressed hostility to Mr. Beecher.

Mr. Tracy—Have you expressed violent hostility to him? A. I have expressed hostility violently. [Laughter.]

Q. Have you expressed a determination to do him great violence, or a willingness to do him great violence? A. Not that I remember—not great violence.

Q. Do you know Mr. Caldwell? A. Yes, Sir; I know him.

Q. H. S. Caldwell? A. Yes; Sir; I know him.

Q. Did you say to him, within a month or thereabouts, in your house, "Mr. Beecher is a liar and a libertine, and, damn him, if personal violence would do any good, I would cut him down in a minute?" A. No, sir.

Q. Have you said that within two months to Mr. Caldwell? A. No, Sir.

Q. Did you ever say it to Mr. Caldwell? A. No, Sir.

Q. Or anything like it? A. No, nothing like that. I thought he was a sneak—

Mr. Evarts—What do you say? A. I thought Caldwell was a sneak when he came to the house.

Mr. Evarts—We ask to strike that out.

Judge Neilson—Strike that out.

Mr. Fullerton—He ought to have been struck out when he came to the house—

Judge Neilson—No laughter! Stenographer, strike that out; that was not an answer to the question.

Mr. Tracy—Did you express a similar sentiment to Augustus Storrs within three months at your house?

Mr. Beach—Oh! a similar sentiment—

Mr. Tracy—Well, the same sentiment towards Mr. Beecher? A. To Augustus Storrs?

Q. To Augustus Storrs, in presence of his brother Charles? A. No.

Q. Or did you to Charles, in presence of his brother Augustus? A. No.

Q. Didn't you say in their presence, at your house—since the termination of the libel suit of Miss Proctor against you—didn't you say to them in your house, that Mr. Beecher was a sneak and liar; and that if they said so, damn him, you would shoot him? A. That if what?

Q. If they said so? A. If they said so, I would shoot him?

Q. Yes.

Judge Neilson—Did you say that? A. I don't exactly understand the form of the question. No; I didn't say that.

Mr. Tracy—Did you say anything in substance like that? A. No.

Q. Did you express any willingness to commit violence against Mr. Beecher in their presence? A. No.

Q. Did you say that he was a sneak and liar, in their presence? A. I don't recollect that I said that.

Q. Did you express any willingness or disposition to commit violence against Mr. Beecher? A. No.

Q. Did you express any hostile sentiment toward Mr. Beecher in their presence? A. I think I did, Sir; I will tell you all I said, as near as I recollect, if you would like to have it.

Q. That will be proper when they tell you to tell us what you said? A. All right.

Q. Have you not in conversation with Mr. A. W. Tenney, United States District Attorney of this District, recently expressed yourself in violent terms of hatred towards Mr. Beecher? A. In violent terms of hatred?

Q. Yes. A. Not in violent terms of love; I don't know that I said I hated him.

Q. That is not my question; I don't ask you that. I ask you to answer it—on the ferry-boat on the East River?

Mr. Beach—The expression, or the substance of the expression, should be given, Sir. "Violent terms of hatred" does not call for the declaration of the witness as it was made.

Judge Neilson—Well, the practice is no doubt to ask him if he did not make a certain specific statement, or in substance something like that. The question you do put depends upon the construction—it is somewhat a matter of construction. What one person might understand by violence, another might not.

Mr. Tracy—Certainly, that argument will be in order when we offer to contradict him, if we do not amplify this statement.

Judge Neilson—It is not an argument; it is a suggestion by the Court.

Mr. Evarts—We do not differ as to the basis of contradiction, but we do claim the right to have the witness's first answer which may be sufficient.

Judge Neilson—Now, the question is as to what he said to Mr. Tenney.

The Witness—Well, Sir, what is the question?

Mr. Tracy—The question is, have you not in conversation with Mr. A. W. Tenney expressed yourself in violent terms of hatred towards Mr. Beecher within three months?

Mr. Fullerton—Well, Sir, that is objected to. Suppose they should produce Mr. Tenney, and ask him whether Mr. Moulton—

Judge Neilson—They would not upon that general statement.

Mr. Fullerton—Certainly not; but then they would claim the right to prove by Mr. Tenney what Mr. Moulton said; and then, if we objected, of course we would be subjected to criticism.

Judge Neilson—Before they call the District Attorney they will have to ask this gentleman what he said.

Mr. Fullerton—If the statement is given in evidence, then the jury will judge whether it is violent or not.

Mr. Evarts—If your Honor please, then we do not differ as to the contradiction. The objection is to be made to us when we attempt to contradict that we have not laid the basis. That is the ordinary course of this matter. We are endeavoring to prove by this witness, without contradiction and without support, that he has said these things under the general rule.

Judge Neilson—Now, the question is whether you said that to Mr. Tenney on the boat.

Mr. Beach—That is not the question; your Honor gets the question right, but the counsel do not.

Judge Neilson—I bring the boat in.

[Question read by THE TRIBUNE stenographer.]

A. I expressed myself against Mr. Beecher.

Q. To Mr. Tenney? A. Yes, I think so.

Q. Didn't you express yourself violently? A. Perhaps I did; I don't recollect now the expression that I used distinctly.

Q. Didn't you call him a liar? A. I don't recollect that I did; I might have done so.

Q. Sneak? A. I don't recollect that I did.

Q. And a libertine? A. I don't recollect.

Q. Accompanying each one with an oath? A. I don't recollect that I did, Sir.

Q. Well, you say that you did not? A. If I had any recollection about it I should state my recollection, Sir. I don't remember the language.

Q. Well, that is to say you have no recollection upon the subject? A. I don't recollect the language. I expressed myself, I guess, on two occasions to Mr. Tenney against Mr. Beecher instead of one.

Q. When was the other? A. I don't know. I think in Montague-st., somewhere.

Q. How recently? A. Not very long ago. I don't recollect how long ago.

Q. Have you not repeatedly declared your intention to crush Mr. Beecher at any cost? A. No; I don't think I have said that I would crush him at any cost.

Q. Well, have you avowed your determination to crush him? A. No; I think not; I have not put it in that language, I think.

Q. Have you avowed your intention to drive him out of Brooklyn? A. No, I think not.

Q. Didn't you say to Augustus Storrs, in presence of his brother Charles, or when the two were present, didn't you say that you intended to drive Mr. Beecher out of Brooklyn? A. No, I didn't; I may have said I thought he ought to be driven, but I didn't say that I was going to drive him.

Q. You did say that he ought to be driven out of Brooklyn? A. No, I don't recollect that.

Q. Oh! you don't recollect that? While the Investigating Committee was in session, didn't you send for the brother of a member of that Committee, and have him call upon you—a brother of a member of that Committee, and threaten him that, unless at least one member of the Committee dissented from their report in favor of Mr. Beecher, you would publish, or cause to be published, a scandalous statement about a lady? A. No.

Q. You didn't? A. No; I will tell you what I said to him, if you want to know.

Q. Answer my questions first, and then we will see. A. All right.

Q. Pending the investigation? A. I did send for the brother of a member of that Committee; that part is true.

Q. Pending the investigation and before the report was made did you send for Charles Storrs, and have an interview with him? A. I did; yes, Sir.

Q. Did you tell him that if his brother Augustus hadn't signed the report he must not, or, if he had, he must take his name from it? A. I did not tell him that.

Q. Did you tell him that if he did not do one or the other, that is, if he didn't omit to sign, or take his name from it, if he had signed, you should make a publication concerning a person that would break the heart of Charles Storrs? A. No, I didn't.

Q. You didn't state that? A. No.

Q. And when he asked you if you meant Miss Proctor, didn't you say, "I call no names?" A. I said "I call no names."

Q. But it was "a person that would break your heart?" A. I said I called no names, but I didn't say anything about breaking hearts.

Q. If you did not use that language, didn't you say it was a lady who—a friend of his? A. I don't know whether I said it was a friend of his or not, Sir.

Q. Then did you threaten to make the publication? A. No.

Q. Concerning some person, if Mr. Augustus Storrs didn't either refuse to sign the report, or if he had signed it, to take his name from it? A. No I didn't threaten, Sir.

Q. Did you threaten Charles Storrs that you would make such a publication in any contingency? A. No.

Q. Did you state to him that you would make such a publication, or that you might make such a publication? A. I stated to him that I might make a publication.

Q. About whom? A. It might be necessary to refer to a person in the publication that it would be necessary for me to make.

Q. How did you describe the person? A. I don't think I described her. I think he asked me if I referred to Miss Proctor—

Q. Then what did you say to that? A. I told him that I should not mention any names.

Q. Did you say in any way that it was a person that would break his heart, or that it was a person in whom he was interested, a friend of his? A. Don't recollect that language; no.

Q. Was Miss Proctor an inmate of Mr. Storrs's family at the time?

Judge Neilson—One moment, now. The other day I professed a very earnest solicitude that third persons should remain unnamed—was very emphatic, I think, for me, when Miss Proctor was named by some person: I requested that those names should be omitted, and they might be omitted from your question, I think: I want that omitted out of the answer.

Mr. Fullerton—If your Honor please, it has not been omitted; your Honor's wish has not been complied with, in that respect.

Judge Neilson—I don't know whether that was when Mr. Tracy was here, or before he came in.

Mr. Moulton—He was here.

Judge Neilson—But I certainly did wish, and expressed that wish, that those names of third persons should be left out. I think it is a great pity that you should commit the error of bringing their names in.

Mr. Evarts—The witness brought her name in.

Mr. Fullerton—No, he did not.

Mr. Evarts—He did directly.

Mr. Fullerton—No, he did not, Sir.

Mr. Evarts—He said at this interview Mr. Storrs asked him if he meant Miss Proctor.

Judge Neilson—That is the question put by Gen. Tracy.

Mr. Evarts—It was not a question put by him. There was no question put by us that reached any person. The question was, whether he told him that if he didn't do so and so, he, this witness would publish a statement, concerning a person, that would break his heart. Now, your Honor certainly does not mean to say that, when we are trying this issue between these parties, we haven't a right to prove such statements as that.

Judge Neilson—Said the question would, of course.

Mr. Evarts—No; then the witness says, "I did not. He asked me if I meant Miss Proctor."

Mr. Morris—Now, the name of Miss Proctor was mentioned by counsel first.

Mr. Evarts—Look at the stenographer's notes.

Judge Neilson—I don't think Mr. Tracy was present when I suggested to Judge Porter not to mention the names of third persons.

Mr. Tracy—Oh! I was.

Mr. Beach—Mr. Stenographer, please read the last question.

Mr. Tracy—I do not hesitate to take the responsibility of introducing Miss Proctor's name here to-day.

Judge Neilson—Well, there is a responsibility beyond this.

Mr. Tracy—Very well, I introduce the name of Miss Proctor here to-day in a way that is entirely creditable to the lady.

Judge Neilson—It is not a question of creditability?

Mr. Tracy—It may be, but it is entirely creditable to her. I am showing that this witness attempted to coerce her friends in their action on this Committee as the penalty of his not making a publication concerning her.

Mr. Fullerton—The gentleman will fail in that attempt.

Mr. Tracy—Not much.

Mr. Fullerton—We will see if you don't.

Mr. Evarts—How does that become proper?

Mr. Beach—I believe I have endeavored to get the ear of the Court for a moment, and Gen. Tracy interrupted me, and now the senior counsel interrupts me.

Mr. Evarts—I haven't interrupted. I have asked that the question might be read.

Mr. Beach—So have I. [Last question was read by THE TRIBUNE stenographer.]

Mr. Beach—Yes, Sir; then the name of Miss Proctor was first mentioned in the question put by Gen. Tracy?

Mr. Evarts—Go back to the witness's answer before that, and you will find Miss Proctor's name in the witness's answer.

Mr. Morris—I say it was first mentioned by Mr. Tracy.

THE TRIBUNE stenographer [reading]:

Q. How did you describe the person? A. I don't think I described her; I think he asked me if I referred to Miss Proctor.

Q. Well, what did you say to that? A. I told him that I should not mention any names.

Mr. Beach—Now, your Honor, I submit that this inquiry in regard to what transpired with reference to Mr. Storrs, is not at all material to the inquiry which the counsel are pursuing. The object is to prove ill-will on the part of this witness toward Mr. Beecher; that is the professed object of their inquiry; and this conversation as between Mr. Storrs, so far as it relates to the action of the Committee, or to Miss Proctor, or any other lady, I submit, is not material, and I ask that that whole inquiry be struck out.

Mr. Evarts—We propose to show this witness's hostility; his proceedings indicating hostility; his making himself a party to the procedures against Mr. Beecher; his threats to those who are engaged concerning the inquiry in the mode and form in which the witness showed this attitude and expressed this hostility; and the laws of evidence permit us to do so, and make it the only proper way to do so. Now, upon

the inquiry of fact, your Honor sees that we were entirely right. We desired to get from this witness what was pertinent and material, that he had threatened a member of the Committee that unless he took a position of dissent either by abstaining—withholding and withdrawing his name from the report, as the case might be—he (witness) might be forced, or might be led to make a publication that would affect and afflict Mr. Storrs. And we leave it for the witness to say whether he did or not. Well, his course of answers it is not necessary for us to repeat. Then we press him to get out the principal fact, which he will not give in general terms; and, finally, it comes down to this: "How did you describe that person?" He would not say that it was anybody that would break his heart; he would not say that it was anybody that was connected with Mr. Storrs in any such general relation as would omit a name; and we then say to him, how did you describe the person concerning whom you were talking to Mr. Storrs? Then he says, "I think it was Mr. Storrs who asked me if I referred to Miss Proctor." Now, that shows that the conversation was had; that he did assume this attitude towards Mr. Storrs in dealing with some person; that abstinence from public comment about it would be desirable, and the contrary afflictive to Mr. Storrs. That is what we set out to prove.

Mr. Beach—The examination, Sir, of the testimony of the witness shows that the first intimation that Miss Proctor's name was connected with this conversation, as the person in regard to whom any statement was to be made, or any revelation made, comes from the other side.

Mr. Evarts—Not in the least.

Mr. Beach—It does, Sir. When the witness said that Mr. Storrs asked him if Miss Proctor was referred to, the witness answers, "I mention no names." And, then, they went on with the inquiry, which draws from the witness this fact, that Miss Proctor was the person alluded to; and, so far as the bringing out of her name in connection with this scandal is concerned, the responsibility rests upon the gentleman making this inquiry. Now, Sir, we have avoided that; we have resisted it as far as we can. We make no imputations upon third persons, and would relieve everybody except the immediate parties to this controversy from any reflections which might arise out of connection with this difficulty. If the gentlemen persist in introducing the name of that lady, they must do it upon their own responsibility.

Mr. Fullerton—And it may be necessary for us hereafter, if the other side put us in such an attitude as to make it necessary to prove what did occur with regard to that lady for the purpose of justifying the witness. They take the responsibility of the whole thing.

Mr. Evarts—We have no difficulty in assuming responsibilities if they are cast upon us; we do not venture upon them in the conduct of our side in this case. But we have not any responsibility about what you do in consequence of what we do. You will do as you are advised. We will take care of our own side.

Mr. Beach—It seems to me that you are violating the order of debate, and insisting upon the last word in an argument upon our objection.

Mr. Evarts—But you say always something new.

Mr. Beach—No, we do not; no new ideas.

Mr. Evarts—Now, my friends have undertaken to present an attitude, a sort of defiance upon this subject; certainly no one on our side of the case wishes to make any imputations upon Miss Proctor; we never believe a word of either the threatened publication or the actual publication.

Judge Neilson—Why refer to the actual publication?

Mr. Evarts—Well, because the actual publication is in the matter.

Judge Neilson—No, it is not in; it is not in, and with my consent it won't be in, as far as this case is concerned.

Mr. Evarts—I dare say it may not, but we are not the side that are to be made the subject of imputation of wishing to bring Miss Proctor in.

Judge Neilson—The examination will be as it now stands with the exception that Miss Proctor's name will be stricken out, and it shall be omitted hereafter. Whatever occurs, I should not allow any evidence to vindicate that lady, as I certainly should if the subject were brought up here properly.

Mr. Evarts—Your Honor will note our exception to that direction.

Judge Neilson—Yes, as to the hostility of this witness, whether you characterize it as violent or not; whatever it may be you have a right to show that, of course.

Mr. Tracy—What did you say to Mr. Storrs concerning what you would do? A. I said to Mr. Storrs that I had understood that I was not to be cross-examined by the Committee.

Mr. Tracy—I have reference to the publication.

Mr. Beach—Wait one moment.

Judge Neilson—I think he has answered; go on.

Mr. Evarts—That took place at this interview? A. That I understood that I was not to be cross-examined by the Committee; that I had come from Lowell for the purpose of that cross-examination, and that I did not want his brother to sign that report until I had an opportunity of being cross-examined by the Committee; for if his brother did sign that report without giving me an opportunity to be cross-examined, he could not possibly know the truth, and that if that report was signed, and it was against me, as I understood it should be, I should make a publication of facts in reply, and that publication, as I understood my counsel advised it, would perhaps cross the threshold of his family, and came to see him as a personal friend, telling him that I did not want to do any such thing, and I said to him: "I want you, Mr. Charles Storrs, to put it only upon the ground of my being cross-examined. Tell your brother that I don't want him to sign that report until I have had an opportunity for cross-examination, in order that the facts which I have stated in print may be fully known." That is what I said. I went to see Charles Storrs as a friend, Sir. I have given it as nearly as I recollect it.

Q. Do you know William B. Barber? A. Yes, Sir.

Q. Did you have a conversation with him on the floor of the Produce Exchange within two or three months on the subject of Mr. Beecher? A. I don't recollect whether it was within two or three months, or not. I had a conversation with him on the floor of the Exchange about the time of the Victoria Wood



hull publication, and I rather think during the time of the Investigating Committee.

Q. Haven't you since the Investigating Committee? A. I may have done so; I don't recollect precisely about it now. I see him every day on 'Change when I am there and he is there.

Q. Didn't you tell him that Mr. Beecher was a damned perjurer and libertine? A. I don't know whether I told him he was a damned perjurer and libertine. I may have told him he was a perjurer and libertine, as he is. [A murmur in the audience.]

Q. Did you tell Mr. Barber so? A. I don't recollect whether I told Mr. Barber so or not, Sir.

Judge Neilson—Will the audience keep quiet!

Mr. Tracy—Have you ever threatened persons with danger to themselves if they should testify on behalf of the defendant? A. No, I have not threatened persons if they should testify on behalf of the defendant.

Q. Have you threatened any person? A. No, I have not threatened any person.

Q. Did you threaten Mr. Armour that you would crush him if he should testify against you on this trial? A. No, I did not threaten Mr. Armour that I would crush him.

Q. Do you know him? A. Yes; he is not the man to be crushed easily.

Q. Have you had any conversation with him on the subject of his testimony? A. I don't recollect having any conversation with him on the subject of his testimony. I had a conversation with him in regard to an interview that purported to come from him in the paper.

Q. Yes; did you state to him that you would crush him? A. No.

Q. Did you ever threaten to crush him for anything? A. No.

Q. Did you have any talk with him about his being a witness on this trial? A. I don't think I said anything to him about his being a witness; no I don't think I did; he is not a man I would use such language to, Mr. Tracy.

Q. [Book produced and handed to witness.] Now, Mr. Moulton, during your interview with Mr. Beecher on the night of 30th of December, '70, was there anything said by Mr. Beecher as to the truth or falsity of Mrs. Tilton's confession? A. Does your Honor permit them to go back for the fifth time to that interview of the 30th?

Judge Neilson—Well, it is on the ground that some question he thinks proper is inadvertently omitted.

Mr. Evarts—This is a question excluded. We ask him whether at that interview, there was anything said by Mr. Beecher concerning the truth or falsity of that confession—the same question—and there is no rule of law that you can't do it for the fifth time, if you can do it the fourth. But this is the first time the question has been asked.

Mr. Fullerton—The first time this question has been asked, but it is the fifth time the transactions of the 30th have been gone over, and my objection is that they cannot return to it again.

Judge Neilson—Who were present?

Mr. Evarts—It is an interview between himself and Mr. Beecher.

Judge Neilson—He has stated the conversation.

Mr. Evarts—The conversation has been given; now we ask him whether there was anything said by Mr. Beecher concerning the truth or falsity, either way, of Mrs. Tilton's accusation.

Judge Neilson—I think we will allow that.

Mr. Beach said—Do you mean in direct terms or do you mean by implication?

Mr. Evarts—We ask the question.

Mr. Beach—It may be necessary to go over the whole interview for the purpose of telling whether anything was said in regard to its truth or its falsity?

Judge Neilson—Now read the question, Mr. Stenographer.

[The last question by Mr. Evarts read by THE TRIBUNE stenographer.]

Mr. Beach—I submit that that question calls upon the witness to give a judgment or construction in regard to the conversation which he has already detailed.

Mr. Evarts—This is a cross-examination.

Mr. Beach—If it is a cross-examination they can't ask him to give a judgment as to the meaning of the language which was used, and it may impose upon the witness the necessity of seeing or referring to the testimony which he has given relating to the details of that conversation.

Mr. Evarts—We are cross-examining this witness, and we do not like to have suggestions made to him as to what may be a necessary answer for him to make.

Judge Neilson—Still, you are sensible of the fact that you are allowed to go back to it after having exhausted the interview.

Mr. Evarts—We have closed our cross-examination in general now, and we are closing up the points that are to be considered.

Mr. Beach—My suggestion was that the question should call for the witness to answer whether anything was directly said by Mr. Beecher in regard to the truth or falsity of that confession.

Mr. Evarts—That is exactly what the question is, whether at that interview anything was said by Mr. Beecher concerning the truth or falsity of the accusation?

Mr. Beach—I think no one but the gentleman will perceive the difference between that question and that construction of it.

Judge Neilson—Take that last down as the question. It may be a modification of the other question.

[Question read by TRIBUNE stenographer.]

Mr. Evarts—That interview of December 13th, 1870, is included in the question of course.

Judge Neilson—The accusation in what, in Mrs. Tilton's letter?

Mr. Evarts—Yes, Sir.

The Witness—The only word that was said to me by Mr. Beecher in regard to Mrs. Tilton's confession, was at the foot of the stairs, when he asked me, "Have you seen the confession?" and I said I had, and he said, "This will kill me."

Q. That is all that was said? A. That is all that was said, Sir. Now whether that is a denial or not I don't know.

Mr. Tracy—After the interview between Mr. Beecher and

Mr. Tilton had closed that night, did Mr. Tilton say to you that all Mr. Beecher said touching the confession of his wife's adulteries was—did Mr. Tilton say to you that all the answer that Mr. Beecher made to him after what he had said to him was: "This is all a dream, Theodore"? A. Mr. Tilton told me that after he had spoken to Mr. Beecher, Mr. Beecher said: "This is all a dream, Theodore;" something like that.

Mr. Evarts—Do you say that that is all the answer that Mr. Beecher made? A. He said that that was the answer that Mr. Beecher made. I remember that Sir; that is all I remember.

#### HINTS ABOUT THE DEFENSE'S WITNESSES.

Q. Do you know Senator John C. Jacobs of this city? A. Yes, Sir; I know him.

Q. Did you ever have any conversation with him at Albany at any time in regard to the Beecher-Tilton scandal? A. I don't recollect whether I did or not.

Q. Did you at Albany, in the Spring or Winter of 1873, during the session of the Legislature of 1873, in a conversation with Mr. Jacobs, where the Beecher-Tilton scandal was the subject of conversation, say to him that if this matter was ever investigated Mr. Beecher would prove to be all right? A. I don't recollect whether I did or not.

Q. Do you remember that you did not? A. If I had any recollection about it I would tell you.

Q. You mean to say, then, that you have no recollection? A. I have not any recollection about that.

Q. Have you a recollection of conversing with him on that subject? A. I think I did talk with Mr. Jacobs about it; yes, Sir.

Q. In that conversation did you say anything in substance like what I have repeated? A. I think I carried the impression that Mr. Beecher was not a guilty man—I think so.

Q. And didn't you say, in substance, that whenever the truth of this matter was known, Mr. Beecher would prove to be an innocent man? A. I don't recollect that, Sir. My impression with regard to what I have said, I have just given you.

Q. What was it? A. All I recollect—the impression that I gave him was that Mr. Beecher was not a guilty man.

Q. How did you give him that impression? A. I must have given it in words.

Q. Were the substance of the words by which you conveyed that impression to him that when the truth was known, or that when this matter was investigated, Mr. Beecher would prove to be an innocent man? A. I don't recollect those to be the words, or the substance of the words.

Q. Did you say anything on the subject of what the result would be of an investigation? A. I don't recollect that I did.

Q. Do you know Archibald Baxter? A. Yes, Sir.

Q. Of this city? A. Yes, Sir.

Q. Did you have any conversation with him touching the Woodhull scandal? A. Yes, Sir.

Q. When was it? A. On 'Change; somewhere in the neighborhood of the publication.

Q. Soon after the publication? A. Yes, Sir.

Q. What did you say to him about it? A. I don't recollect the precise language. I had two conversations with him.

Q. Did you say to him, in substance, that Mr. Beecher was not guilty of the charge made against him in the Woodhull publication? A. No, Sir. I think when I was pressed by Mr. Baxter I told him Mr. Beecher was a pure man.

Q. You told him Mr. Beecher was a pure man? A. Yes, Sir; that I thought he was, something of that sort.

Q. You say you were pressed by him. Didn't you volunteer to go to him? A. I volunteered the first time to go to him; the first conversation I had with him when I spoke to him about the Woodhull publication, in that conversation I told him Mr. Bowen was originally the author of the stories, that the stories originated with Mr. Bowen, that when Mr. Bowen had been asked to produce the evidence he had failed to do it, and that the differences between Mr. Bowen and Mr. Tilton had been settled; and about the Woodhull publication I said if it was true it was infamous, and if it was false it was diabolical, and if Mr. Beecher's life was not an answer I did not choose to make any; and the second conversation, I think Mr. Baxter came to me about it, and pressed me concerning it with some questions, and I think I told him in substance—I denied the guilt of Mr. Beecher, and told him he was a pure man—something of that sort.

Q. Did you say this to Mr. Baxter, in substance, "If you will only be patient you will be convinced that Mr. Beecher is as good a man as you (Baxter) ever believed him to be"? A. I really don't recollect the conversation. I didn't give him an opinion adverse to Mr. Beecher.

Q. Do you say you did not use that language to him? A. If I had any means of recalling the language I would do it; but I cannot recall the language.

Q. Will you say that you did not use that language to Mr. Baxter? A. No, Sir; I have not any recollection about it. I gave him a very high opinion about Mr. Beecher, however.

Q. Did Mr. Baxter ask you if you did not mean purity in a special sense? A. I don't recollect that.

Q. Did you make any reply? A. Make any reply to what? Mr. Fullerton—To what you don't recollect?

The Witness—I could not.

Mr. Tracy—Didn't Mr. Baxter say: "There are different meanings to the word pure. Do you mean that Mr. Beecher is pure in the ordinary sense of that word? Was he chaste? Had he broken the seventh commandment?" A. I don't recollect that; I guess I gave him an idea that he had not broken the seventh commandment.

Q. What did you say to him? A. I don't recollect.

Q. Did Mr. Baxter ask you this question? A. I don't recollect whether he did or not, but I gave him a very high opinion of Mr. Beecher.

Q. Will you say he did not? A. If I had any recollection about it I would answer you.

Q. Will you say you have no recollection that he did not ask you this question? A. If I had any recollection about it I should, but I have not. I am giving you the impression I gave Mr. Baxter.

Q. I am asking you what Mr. Baxter asked you? A. If I could tell you I would.

Q. You cannot tell? A. No, Sir; I cannot tell.

Q. What reply did you make to these questions? [Laughter.] What reply did you make to Mr. Baxter? Did you not say in answer to these questions, "He is pure in that sense"? A. I don't recollect.

Q. "Not only is he now, but he always has been, a pure man, as I believe." Did you say that to Mr. Baxter? A. I don't recollect the answer.

Q. Will you swear you did not make that reply to him? A. If I had any recollection about it I would give it to you. I don't understand how I can answer it any more positively than I am answering it.

Judge Neilson—He simply wants you to say whether you recollect or not. A. I have not any recollection of the form of the answer.

Q. Then you cannot say he did not? A. I don't recollect those words, your Honor. The impression I gave him was that Mr. Beecher was a pure man.

Mr. Evarts—We are entitled to have an answer, it seems to us. It is the usual course of examination.

The Witness—If Mr. Baxter should say I did, I should say I did.

Mr. Evarts—He can tell us whether he can say he didn't say it.

Judge Neilson—Can you say you did not use those words? A. I cannot say I did not use those words.

Mr. Tracy—Do you know Edward A. Biden? A. Yes, Sir; I know him. I believe he is an elevator man.

Q. Is he a member of the Produce Exchange? A. Yes, Sir.

Q. Have you had conversations with him touching the Woodhull story? A. I believe I have had, once or twice; yes, Sir.

Q. When did you have those conversations? A. I think I have seen him about it about the time of the Woodhull publication.

Q. Where? A. On the Exchange.

Q. Did you speak to him on the subject of this scandal? A. Not at length; I avoided talking with him very long about it.

Q. You spoke to him on the subject? A. I believe so.

Q. Did you say to him: "It is false; there is not a word of truth in it, as far as Mr. Beecher is concerned?" A. I don't recollect that I used those words to him.

Q. Did you use anything in substance like that? A. I may have told him the story was untrue.

Q. Did you say it was untrue as far as Mr. Beecher was concerned? A. I don't recollect that.

Q. Did you say that there was was not a word of truth in that? A. I don't recollect that neither.

Q. Did you use any such language in substance? A. I don't recollect that. I gave that impression to him, I think.

Q. Do you know J. Haynes Drake? A. Yes, Sir.

Q. Did you have any conversation with him? A. Yes, Sir.

Q. On the subject of the Woodhull publication? A. I believe I did, a short conversation with him.

Q. Where? A. On the Exchange.

Q. Did you say to him: (speaking of the Woodhull publication, with reference to Mr. Beecher) "It is a damned mess of women's fables?" A. No, Sir; I don't recollect using that language.

Q. Did you use anything in substance like that? A. No, Sir; I will tell you what I did say. I said if the story was true it was infamous, and if it was false it was diabolical, and if Mr. Beecher's life was not an answer to it I didn't choose to make any; and that is the substance of what I said to Mr. Drake.

Q. Do you remember that you did not say to him, "it is a damned mess of women's fables?" A. I think I should swear to the best of my recollection that I did not use that language.

Q. Did you use anything in substance like that? A. Not quite as weak as that; no, Sir.

Q. Did Mr. Drake say: "It would take a good deal of such testimony as that to convince me that Mr. Beecher is criminally guilty?" A. I don't recollect that he did.

Q. And in reply, did you say: "As to the criminality there is not in it a shadow of truth, and if Mr. Beecher's career is not a sufficient refutation to slanders from such a source, you don't deserve to have your mind satisfied?" A. I said the latter part; I don't remember the other part. The impression I gave to him was this, that if Mr. Beecher's life was not an answer to it I didn't choose to make any to him.

Q. Didn't you say, as to the criminality, "there is not a shadow of truth in it?" A. I don't recollect having said that.

Q. Will you swear you did not say that? A. I will swear I have not any recollection about it.

Q. Will you swear you didn't say it? A. How can I swear I didn't say it if I cannot recollect what I said? [To Judge Neilson.] Your Honor, am I answering properly, or not?

Judge Neilson—I think you have answered the question fairly.

Mr. Tracy—Did you say, in substance, so? Did you substantially use the words: "As to the criminality there is not a shadow of truth in it?" A. I don't recollect it.

Q. Anything like that, in substance? A. I can give you the substance of what I recollect, as near as I can recollect it.

Q. Do you know William B. Barber? A. Yes, Sir; I said I did a good while ago.

Q. Is he a member of the Produce Exchange? A. Yes, Sir.

Q. Did you have a talk with him on the subject of the Woodhull publication? A. Yes, Sir.

Mr. Morris—You have been all over that, Mr. Tracy.

Mr. Tracy—Oh, no, Sir.

Q. How soon did it occur after the publication? A. I think on the same day it happened.

Q. Did you say to him, speaking of the Woodhull publication, "There is not a particle of truth in the statement as against Mr. Beecher?" A. No, Sir; I did not say that to him; I recollect what I did say.

Q. Didn't you add, "Mr. Beecher is as pure a man as ever lived?" A. No, Sir, I didn't add that to him. Shall I tell you what I said to him? I can give you that conversation.

Mr. Fullerton—No, they don't want you to tell that.

The Witness—[To Judge Neilson]—Can I not tell, your Honor, what I said?

Judge Neilson—By-and-bye you will get a chance.

Q. Do you know A. H. Davis? A. I don't recollect him now.

Q. Of the firm of Barling & Davis? A. Yes, sir; I know him pretty well.

Q. Did you have a talk with him concerning the Woodhull publication? A. I don't recollect whether I did or not.

Q. At the Custom House and at your place of business? A. don't recollect.

Q. Did he ask you "what does this Woodhull scandal mean—Is there any truth in it?" A. I don't recollect speaking to him upon the subject at all.

Q. And did you reply, "There is not a word of truth in it. I think it is a shame, after Mr. Beecher has lived so long, that anybody should believe it?" A. I don't recollect having met Mr. Davis.

Q. Did you have any such conversation with him, in substance? A. I don't recollect having met him on the subject.

Judge Neilson—Or having had such a conversation? A. No, Sir, nor having having had such a conversation.

Mr. Tracy—Do you know Reuben W. Ropes? A. Yes, Sir.

Q. Did you have any conversation with him about November, 1873, touching the Woodhull publication? A. I don't recollect whether it was in November, 1873. My impression is that I had a conversation with him coming up Wall-st. Ferry here.

Q. Yes, Sir, that is the place. A. Well?

Q. Did he say to you: "I have never happened to meet you to speak with you since the affair of the Beecher-Woodhull publication. Did you go to Mr. Beecher's house with a pistol and demand a paper, as stated in Woodhull & Claflin's paper?" and did you say in answer to that, "It is a damned infernal lie?" A. I don't recollect whether I swore in his presence or not, but that is substantially what I said to him.

Q. And did you add, "You happen to know more of this case than I do. Now, is there any truth in regard to the scandal in regard to Mr. Beecher?" and did you reply "They are a pack of infernal lies?" A. I don't know whether I used that language or not, but I guess I gave Mr. Ropes the impression that Mr. Beecher was perfectly pure, and that the stories were lies.

Q. You said so, in substance? A. I gave that impression, whether I said it in substance. I don't remember the words.

Q. Do you know Edwin A. Studwell? A. A man that used to live South—a Florida improvement man?

Q. Yes, Sir. A. I don't know him very well. I have met him; I don't recollect having met him on this subject.

Q. Did you see him in Florida when you were there in 1871? A. Yes, Sir.

Q. And talked with him? A. Yes, Sir; that was before the Woodhull story.

Q. Yes, Sir; in 1871? A. Yes, Sir; in March, 1871, was it not? Yes, Sir; I met him in March, 1871, in Jacksonville.

Q. Did you have a talk with him in Florida in the Spring of 1871, in regard to the stories about Mr. Beecher and Mrs. Tilton? A. I don't recollect that I did.

Q. Did you say to him that you had all the papers in the case and letters relating to it, and that it was all a damned slander against Mr. Beecher? A. I don't recollect whether I did or not.

Q. Did you say anything in substance like that? A. I don't recollect having any conversation with Mr. Studwell about it.

Q. Did you say anything to him on that subject, leaving out

the oath, with the exceptions I have stated? A. Very likely I had that in if I talked to him. I don't remember having talked to him at all.

Q. Do you know Charles H. Cadwell? A. What is his business; provision man—is that it?

Mr. Shearman—115 Broad-st.? A. I don't know where his office is. I remember Mr. Cadwell, who used to be with Charles Parker. I don't know whether that is the man you refer to or not.

Mr. Tracy—That is the man. A. I don't remember having talked with him about it; I may have done so.

Q. You say you don't remember talking with him on the subject of the Woodhull scandal? A. I don't remember.

Q. Within a short time after its publication? A. I don't recollect.

Q. On a train of cars going to Boston? A. I don't recollect that I did. I recollect going on a train of cars to Boston, but I don't recollect talking with him about it.

Q. Shortly after the Woodhull publication? A. I don't recollect whether shortly after the Woodhull publication or not.

Q. On your way to Boston, speaking of this talk about Mr. Beecher in the Woodhull publication, did you say there was no truth in any of the rumors respecting Mr. Beecher? A. I don't recollect it.

Q. Did you say anything to him in reference to that? A. I don't recollect that I did; I recollect I didn't say anything against Mr. Beecher to him, if that will answer you.

Q. Did you tell him in substance this: that "If Mr. Beecher should the next day tell Plymouth Church all the facts pertaining to his life, there would not be a single person in it, who could impute a single blemish to the purity of their pastor?" A. I don't recollect having used that language.

Q. Did you use anything in substance like that? A. I don't recollect any conversation with Mr. Cadwell at all on the subject.

Q. Are you willing to say you did not say this to him? A. I am not willing to say I did not. I say I have not any recollection of talking with Mr. Cadwell. I would not have any objection to telling exactly what I did say, if I remembered it.

Q. Do you know Mr. Halliday, Assistant Pastor of Plymouth Church? A. Slightly; yes, Sir.

Q. Did you have any talk with him on the subject of the Woodhull publication? A. I don't know whether it was about the Woodhull publication or not. He came to me after the Deacons' meeting, and I talked with him about the stories against Mr. Beecher. Can you give me the date of the conversation?

Q. About Nov. 23d, 1872—December or November. A. Very likely there was some talk about the Victoria Woodhull publication.

Q. At your house? A. Yes, Sir.

Q. Did you tell him: "Mr. Halliday, I know all about this affair, if anybody knows?" A. I don't recollect the language. I conveyed to him the impression that Mr. Beecher was guiltless of any charge against him.

Q. I understand that; but I ask you definitely the question? A. I cannot tell you definitely.

Q. Did you tell him: "I know all about this affair; if anybody knows?" A. I don't recollect that.

Q. Do you recollect that you said that to him in substance? A. No, Sir; I don't recollect that I said it in substance.

Q. And did you add, bringing your hand down on the table: "I know he is guiltless?" A. I don't know whether I brought my hand down on the table at that point or not; but I know, when I brought it down, I said "it was a damned shame for the Deacons to be digging into a scandal that had been settled between the parties."

Q. Did you say that he was guiltless? A. I think I did; yes, Sir.

Q. Did you add in that conversation with Mr. Halliday, "I am not a member of your church, but my wife is. Do you suppose that if Mr. Beecher is a bad man I would allow him to sit there at my table with my wife?" A. My impression is that I didn't say that part.

Q. Your impression is that you didn't say that part? A. Yes, Sir, my impression is that I didn't.

Q. Will you swear you didn't? A. Yes, Sir; I will swear that my impression is that I didn't.

Q. Did you or not say it? A. I am telling all I know about it—my impression about it.

Q. Will you say you didn't? A. How can I say that when I don't recollect? I am giving you my best recollection.

Q. Can you say you didn't? A. My recollection is not—that I didn't; that is my best recollection, that I didn't.

Q. Are you ready to swear that you didn't say those words? A. I am ready to swear that to the best of my recollection I didn't say those words. Is that a correct answer, Mr. Evarts?

Mr. Evarts—Answer according to your conscience.

The Witness—My conscience directs the answer, but is the phraseology correct? [Laughter.]

Mr. Tracy—Did you add further: "Why, Mr. Halliday, Mr. Tilton is friendly to Mr. Beecher." Did you say that? A. I don't recollect whether I did or not.

Q. "When he (Tilton) came back from his campaign in New-Hampshire on the morning after election, he sat precisely where you did on the sofa, and when Mr. Beecher came through that door he (Tilton) sprang to his feet and went to him, and, with both hands, shook hands with him in *this* way (showing how), and expressed his sorrow and intense regret at the appearance of that, and disclaimed all knowledge of it, and offered to do anything he could to repair the mischief?" A. Something of that sort I said to him. I don't remember the two hands part of it.

Q. Did you say anything in substance like it? A. How is that?—taking Mr. Beecher's hands in both of his?

Q. Yes, Sir. A. I don't recollect saying that, but I think very likely I recited to him the substance of the interview between Mr. Beecher and Mr. Tilton in November.

Q. Substantially you stated that? A. Yes, Sir, substantially like that—something like it—and I think I told him that Mr. Tilton was friendly to him; I think so.

Q. Did you also say this [referring to the Woodhull publication]: "I have denied this. Tilton denied it. Mrs. Stanton has denied it," and didn't you name another person who had denied

it, and then add, "All have denied but Pauline Davis, and she is in Europe and cannot deny it, because of her absence. Now, what more can be done?" A. I think I said something like that.

Q. Did you, in substance, say that? A. Something like that.

Q. Do you know Mr. Swan, of the firm of R. Moore & Co.? A. I don't recall the name.

Q. You know Mr. Swan? A. I know Mr. Swan of Grinnell, Minturn & Co.

Q. Did you meet him in Armour & Co.'s? A. I don't know the name of Mr. Armour's partner, whether it is Mr. Swan or not.

Q. Do you know Mr. Armour's partner? A. I know him by sight; I don't remember his name.

Q. Did you have a talk with him on the subject of your difficulty in this conversation? A. The difficulty is in recollecting the name of Mr. Swan.

Mr. Tracy—I will try if I can identify him any more.

The Witness—I am almost ashamed to say I don't know that gentleman's name, because I know him so well.

Mr. Tracy—Do you know the man I refer to as Mr. Swan? A. I don't recollect.

Q. Do you know of one of that name? A. I don't know that I know of one of that name.

Q. Do you know a Mr. Swan with whom you have talked about your difficulties? A. I really don't know a Mr. Swan with whom I have talked, and if this partner of Mr. Armour's is the Mr. Swan you mean, I don't remember of having talked with him. Perhaps you will get along with that.

Q. Do you know a Mr. Swan with whom you are on terms of intimacy? A. No, Sir; only an acquaintance of Grinnell, Minturn & Co's. I have known him a great many years.

Q. Did you talk with him about your difficulties with Mr. Beecher? A. No, Sir, not that I recollect. There is no Mr. Swan with whom I have talked that I know of.

Mr. Evarts—We will find out more about Mr. Swan.

The Witness—Well!

Mr. Evarts—It is the hour of adjournment. I am very happy to state to your Honor that we have very few matters to go on with in reference to this witness.

Mr. Fullerton—We think this matter ought to be concluded this afternoon.

Mr. Evarts—We think not. We want to adjourn at the usual hour.

Mr. Beach—I agree with your proposition.

The Witness—I do not.

Mr. Fullerton—That proposition must be mine then, I think.

Mr. Beach—Yes, Sir.

Mr. Fullerton—I think we ought to finish the cross-examination of this witness to-day; I think it ought to be concluded to-day. Your Honor was disposed to conclude it on Friday, and they said they would not probably occupy the whole of to-day.

Judge Nelson—Still, I make a good deal of allowance for the circumstance that Mr. Tracy was called into the cross-examination without preparation, and he might not, therefore, be able to proceed readily as he otherwise would.

The Witness—[To a reporter.] Oh, dear!

Judge Neilson—[To the audience.] I wish gentlemen would keep their seats. [To the Jurors.] The Jury will please be in their places at 11 o'clock to-morrow morning.

Mr. Mallison—[The Clerk.] The Court now stands adjourned until Tuesday morning at 11 o'clock.

## TWELFTH DAY'S PROCEEDINGS.

### MOULTON'S TENTH DAY.

**STRONG EFFORTS OF THE COUNSEL OF MR. BEECHER TO GET IN A LETTER PREVIOUSLY RULED OUT—A SHARP CONTACT OF LEGAL WITS.**

Mr. Tilton entered the court-room alone, as usual. Mr. Beecher arrived a few moments afterward, followed by his wife and two sons, and the members of the Plymouth delegation, now thinner and less demonstrative than any day before. The reason of Mr. Beecher's absence on the day previous was a severe cold. As the court-room was uncomfortably cool, Mrs. Beecher did not remove her bonnet or shawl during the day. The absence of Mrs. Tilton and her lady friends, who have not been present since Friday, was again the occasion of remark, but the cause was seemingly unknown to any one.

Ex-Judge Porter appeared in Court and was heartily welcomed by the counsel for the plaintiff and defendant. He did not resume the examination but busied himself all day in arranging the papers of the defense. Mr. Porter has not entirely recovered and was looking unwell on Tuesday. One of the pleasing incidents of the day was the courteous inquiry by Judge Neilson from the bench as to the health of ex-Judge Porter. It is hard to say whether Judge Porter was most complimented or confused by the manner in which, in the midst of the proceeding, he was singled out for judicial notice. The counsel on both sides were engaged at the moment in looking up letters which had been called for, and there was perfect stillness in the court, and attention was fixed on no special subject. The minute he arose, therefore, to step toward the bench Mr. Porter became the center of observation and of interest, and, as if recognizing this, he appeared to hesitate and palpably blushed. A smile passed over the features of his associates, who recognized the awkwardness of Mr. Porter's situation, and rather enjoyed his perplexity. The ex-Judge, notwithstanding his frequent prominence in courts of all grades, evidently suffers embarrassment still under too marked public notice, and would shirk rather than seek it.

The most painful incident of the trial occurred

on Tuesday morning shortly after Mr. Moulton took the stand, and for the first time, perhaps, during the whole of his long examination Mr. Moulton was regarded with other feelings than those of admiration by his friends and dislike by the friends of Mr. Beecher. He became to all a subject of sympathy, for the greatest bereavement a man can suffer—the loss of a loving mother—was communicated to him while yet a witness. Soon after the first questions had been answered, Mr. Moulton was informed that a messenger with important intelligence awaited him in the chambers of the City Court, adjoining Part II. Mr. Moulton was excused by the Court, and utterly unsuspecting of what he was to be told, (for he was not even aware his mother had been ill), he left the court-room. Ex-Judge Fullerton communicated the intelligence to the Court during the few minutes Mr. Moulton was in the ante-room, so that when Mr. Moulton returned all eyes were fixed upon him, and the momentary buzz of conversation which had followed the announcement suddenly broke off. Mr. Tilton watched anxiously the face of his friend to observe the effect of the news upon him. Mr. Beecher bent forward in his chair, gazing intently at him, while Mrs. Beecher leaned her head upon her right hand, and looked sadly and almost with solicitude upon her husband's enemy. Mr. Moulton exercised his great control over his nerves, and before his counsel could communicate to him the decision of the Court that he could at once retire, and finish his examination at a later day, he loudly announced that he was ready to go on.

Mrs. Moulton died suddenly about 6 o'clock on Tuesday morning at the residence of her husband No. 580 Lexington-ave. She had been ill only a few days with pneumonia, contracted by imprudent exposure to the cold weather. She was 68 years old, and usually enjoyed very good health. By going out of doors in her slippers on Thursday of last week, she caught a severe cold which confined her to her room. She was attended by Dr. Packard, and on Sunday appeared to be much better, although on account of her great age her physician feared a relapse. On Monday she suffered from severe spasms in the breast, and Dr. Packard called in Dr. Flint for consultation. Monday night Mrs. Moulton again appeared to get much better, and during the night she slept lightly at intervals. Toward daylight she grew rapidly worse, and died seemingly without pain at 8:20 a. m. on Tuesday. Naturally Mrs. Moulton felt great interest in the Beecher-Til-

ton trial in which her son plays so prominent a part, and during her sickness she worried a good deal on account of it. Not more than 12 hours before her death she asked anxiously after the reports of her son's cross-examination in the evening papers, and conversed with her husband in regard to it. It is thought that the strain of her anxiety and worry about the trial, in her weakened condition, may have indirectly hastened her death.

#### LEGAL PASSAGES AT ARMS.

The evidence brought out in the redirect examination of Mr. Moulton was merely the fringe of the texture of Mr. Moulton's testimony. Mr. Fullerton went according to no almanac, but skipped from the events of 1870 to those of 1874, and back again, as rapidly as the arguments and exceptions of the opposing counsel would allow. Mr. Moulton's remarkable performance on Tuesday of repeating Mr. Tilton's introduction of Mrs. Woodhull at Steinway Hall, several years ago, almost word for word, was regarded with surprise and admiration and a ripple of laughter came from the audience as the closing remarks were recited, viz.: "She may be a fanatic or a fool, but I would rather be considered both in one than to deny to a woman the freedom of speech."

The canceled notes of Mr. Tilton to Jackson S. Schultz, J. C. Southwick, Franklin Woodruff, J. W. Robinson, John W. Mason and Francis D. Moulton, for sums of from \$500 to \$1,500 were read. Those notes were, it was shown, canceled and returned as a testimonial to Mr. Tilton. The subjects regarding the picture of Mr. Beecher in Mr. Moulton's house, the alleged hostility of the witness toward the defendant, the conference regarding the production of Mr. Beecher's letters before the Plymouth Investigating Committee, and many other familiar topics were referred to. Every step was contested hotly by Mr. Evarts, and more than once the lawyers became so entangled in their exceptions and protests that it engaged all the ingenuity of Judge Neilson to straighten them out.

Tuesday witnessed one of the most adroit pieces of cross-examination which the trial thus far has developed. It was conducted by Mr. Tracy, but directed by Mr. Evarts and aided in by Mr. Shearman. For some reason or other the counsel for the defense were extremely solicitous of getting before the jury a letter of W. T. Clark of *The Golden Age*, which on the direct examination a too hasty objection on their part had ruled out.

Its importance was not very apparent to the audience, unless the fact that it emphasized the financial embarrassments of Tilton about the time that the policy of "Grace, Mercy and Peace" was abandoned, about a year ago. Whatever the reasons, the counsel appeared determined to get this letter in, and as often as the Judge ruled that it had not been sufficiently identified—and he so ruled three times—Mr. Tracy returned to the attack with a question or two, and Mr. Evarts thereupon based a new argument. At last, evidently abandoning the hope of securing its admission, Mr. Tracy began a series of questions, each of which embodied one of the many declarations contained in Mr. Clark's letter, so that in the end the jury heard the whole letter read. Mr. Tracy took pains to do this as openly as possible, making no effort to conceal from the opposing counsel the fact that he was literally reading the letter; the same tactics had been employed by the counsel of Mr. Tilton, and Mr. Tracy was therefore not afraid of interruption.

The sharpest and most amusing passage of arms that occurred among the lawyers on Tuesday was between Mr. Evarts and Mr. Fullerton, and it illustrates fairly the quickness of thought sometimes displayed in the court-room. Just before the closing of the cross-examination there was a long pause. Its length wearing out at last the patience of Mr. Fullerton, he asked the Court if there was no way to make the other side go on.

"How better can we go on?" asked Mr. Evarts.

"Why, by going on," sharply replied Mr. Fullerton.

"Perhaps you would go on if you were on our side," said the defendant's counsel.

"No," significantly rejoined Mr. Fullerton, "if I were on your side I would not go on."

#### THE PROCEEDINGS.

Ex-Judge Porter was again in his place among the defendant's counsel, but he took no active part in the morning's proceedings. The closing hours of the cross-examination of Mr. Moulton—conducted as usual by Gen. Tracy—were mainly occupied by the introduction of letters in Mr. Moulton's possession not previously put in evidence. Mr. Shearman read most of these papers. The Perkins letter was the first produced

#### ANOTHER BATCH OF LETTERS INTRODUCED.

Francis D. Moulton was recalled, and the cross examination continued.

Mr. Tracy—Mr. Moulton, will you hand to us now any letters that you have from Mr. Beecher which have not been given in evidence? A. All letters that I have, Sir?

Q. Yes, Sir; all the letters that you have from Mr. Beecher?

Mr. Morris—I will select them out, those that I have here.

Mr. Tracy—With the envelopes, if you have them, in which they were sent.

Mr. Beach—I think, your Honor, we ought to inquire of the counsel for what purpose they demand the possession of these papers. They are addressed to Mr. Moulton, and some of them we may want to use in the course of the trial.

Mr. Evarts—We will hand them back; we expect to restore them to the hands from which we receive them.

Judge Neilson—They expect to restore them for use.

Mr. Evarts—Yes, Sir. They are papers which do not belong to the plaintiff, but belong to the witness, and which he brings here under subpoena.

Judge Neilson—While you are looking for the papers I would like to say to Judge Porter, whom I am very glad to see with us this morning, that while continuing this cross-examination of Mr. Moulton by Mr. Tracy, on the ostensible ground that to break up the cross-examination would break the continuity of the testimony, the real motive was lest the Judge should find some of his work unfinished, and be tempted to return sooner than he ought to to his labors. Do you find the papers, gentlemen?

Mr. Morris—Yes, Sir.

Mr. Evarts—We have some of them.

Mr. Morris—We are marking them as fast as we can.

Mr. Tracy—I will go on with some other subject. There is one question, your Honor, which I asked last night, to which I did not receive an answer on account of the inability to identify the proposed witness.

The Witness—I have identified the witness.

Mr. Tracy—I should have taken that up this morning, but I have not the book here.

The Witness—Mr. Swan is the one.

Mr. Tracy—Yes, Mr. Swan.

The Witness—I sent over to New-York this morning about it. I found out that the partner of Mr. Armour was Mr. Swan.

Mr. Tracy—We will not talk about that, Mr. Moulton, until I get the book here, so we can close it when we enter upon it.

The Witness—All right, Sir.

Q. I hand you a letter dated Feb. 13th, 1871, which I ask you to examine. [Handing witness a letter.] Did you ever see that letter before, Mr. Moulton? A. Yes, Sir; I think I have.

Q. Where did you first see it? A. It was brought to me by Mr. Beecher, to my house in Clinton-st., I believe.

Q. Was it the subject of conversation between yourself and Mr. Beecher? A. Yes, Sir.

Q. Was Mr. Tilton present at that conversation? A. I don't think he was.

Mr. Tracy—I will introduce that letter.

Mr. Shearman—[Reading.]—

Box 44, Station D,  
New-York, February 13th, 1871.

MY DEAR UNCLE: After some consideration, I decide to inform you of a matter concerning you.—

Mr. Beach—What is it? Let us see it. [Taking the letter.]

Mr. Shearman—It is a letter written by Mr. F. B. Perkins to Mr. Beecher.

Mr. Tracy—Mr. Perkins is the nephew of Mr. Beecher, is he not? A. Mr. Beecher told me he was.

Box 44, Station D,  
New-York, February 13, 1871. }

MY DEAR UNCLE: After some consideration I decide to inform you of a matter concerning you. Tilton has been justifying or excusing his recent intrigues with women by alleging that you have been detected in the like adulteries, the same having been hushed up out of consideration for the parties. This I know.

You may, of course, do what you like with this letter. I suppose such talk dies quickest unanswered. I have thought it best to let you know what is being said about you, and by whom. However, for whether you act in the matter or not, it has been displeasing to me to suppose such things done without your knowledge. I have thought other people base, but Theodore Tilton has in this action dived into the very sub-cellar of the ver back-house of infamy. In case you should choose to let him know of this, I am responsible, and don't seek any concealment.

Very truly yours,

F. B. PARKINS.

To REV. HENRY WARD BEECHER.

P. S.—I can't say Tilton said "adulteries." He was referring to his late intrigues with Mrs. — and others, however he may have described them. What I am informed of is the excuse by implicating you in "similar" affairs.

F. B. P.

[Marked "Exhibit D, 48."]

Mr. Shearman—I will say to your Honor that the name is mentioned in full here, but I have complied with your Honor's direction.

Mr. Tracy—You say that yourself, Mr. Tilton and Mr. Beecher consulted as to the answer that should be made to that letter? A. I didn't say that, Sir.

Q. Ah! I misunderstood you. Was that the fact? A. No, Sir.

Q. Were you present when the subject of what answer should be made to it was discussed and considered? A. Yes, Sir; with Mr. Beecher alone.

Q. Not with Mr. Tilton? A. Not with Mr. Tilton.

Q. Did Mr. Tilton take any part in the discussion of the answer that should be made to it? A. I told Mr. Beecher that I would submit his answer to Mr. Tilton, and he promised to wait until I could consult Tilton about it, but he sent the answer, I found afterwards, before I saw Mr. Tilton.

Q. Did you see Mr. Tilton and consult with him in regard to the answer? A. I believe I did; my recollection is that I did.

Q. Did he dictate an answer for Mr. Beecher to that letter? A. No, Sir, he told me substantially what he wanted to be his answer.

Q. And you took it down? A. Yes, Sir; I wrote it down.

Q. At the time? A. I don't remember whether it was at the time or not. I wrote down substantially what he said.

Q. [Handing a book to the witness]—Look at that book and see if it refreshes your memory on the subject? A. I remember substantially what was in the book. [The witness refers to the book.] It does not particularly refresh my memory.

Q. [Handing letter to witness]—Is that Mr. Beecher's answer to the note of Mr. Perkins? A. Yes, Sir; I believe that is the answer, and there is also a note there that Theodore Tilton—

Mr. Tracy—Dictated to you? A. What he expressed or dic-



tated, I wrote; I do not remember whether he dictated that or not.

Q. You wrote it down from his dictation? A. From what he told me; I don't think I wrote from his dictation.

Q. And that is what he thought the answer should be? A. Yes, Sir; that is substantially what I suppose he thought the answer should be.

Mr. Shearman—The following is the answer which Mr. Beecher wrote:

FEBRUARY 23, 1871.

MY DEAR FRED: Whatever Mr. Tilton formerly said against me—and I know the substance of it—*he has withdrawn*, and frankly confessed that he had been misled by the statements of one who, when confronted, backed down from his charges.

In some sense I am in part to blame for his indignation, for I lent a credulous ear to the reports about *him*, which I have reason to believe were exaggerated or wholly false. After a full conference and explanation, there remained between us no misunderstanding, but mutual good will and reconciliation have taken the place of exasperation. Of course, I shall not chase after rumors that will soon run themselves out of breath if left alone. If my friends will put their foot silently on any coal or hot cinders, and crush them out, *without talking*, the miserable lies will be as dead in New-York in a little time as they are in Brooklyn. But I do not any the less thank you for your affectionate solicitude, and for your loyalty to my good name. I should have replied earlier, but your letter came when I was out of town.

I had to go out again immediately. If the papers do not meddle, this slander will fall still-born—dead as Julius Caesar. If a *sensation* should be got up, of course there are enough little enemies to fan the matter and create annoyance, though no final damage. I am, your affectionate uncle, H. W. B.

Mr. Shearman—The note which Mr. Tilton prepared as a substitute for this, to be sent to Mr. Perkins, is as follows, indorsed on the back of the same letter in Mr. Moulton's handwriting:

An enemy of mine, as I now learn, poisoned the mind of Theodore Tilton by telling him stories concerning me, T. T. being angered against me because I had quoted similar stories against him, which I had heard from the same party, retaliated. Theodore and I, through a mutual friend, were brought together, and found upon mutual explanations that both were the victims of the same slanderer.

#### MOULTON APPRISED OF HIS MOTHER'S DEATH.

Mr. Fullerton—Will your Honor permit the witness to step to the door? A messenger wishes to see him.

Judge Neilson—The suggestion is that the witness step to the door.

Mr. Evarts—We ask him to wait for a moment, not for any new subject, but only to see whether we have read the whole of this.

Mr. Shearman—The following additional words, leaving the paper unfinished:

"Theodore has taken pains to say to parties that"—

The Witness—Shall I read it?

[Mr. Shearman hands the letter to the witness.]

The Witness—That is my handwriting.

Judge Neilson—Can you read it?

Mr. Evarts—It has been read.

Mr. Tracy—Do you remember about it now, on looking at it?

A. No, Sir; I don't remember whether that sentence was concluded or not. That is what you are asking me about—the last sentence?

Mr. Tracy—Yes, Sir.

The Witness [To Judge Neilson]—Shall I step to the door now, your Honor?

Judge Neilson—Yes, Sir.

Mr. Fullerton—May it please your Honor, I suppose the witness will not be able to return to complete his cross-examination, or to subject himself to the re-direct examination. The sudden and unexpected death of his mother makes it necessary that he should, I suppose, give attention to his family, which is now afflicted. It occurred a few minutes since.

Judge Neilson—His mother died this morning?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Has he just learned the fact?

Mr. Fullerton—He has not learned it yet.

Judge Neilson—Then, gentlemen, it will have to be deferred.

Mr. Evarts—During the last moment of the witness's examination the intelligence was conveyed to my learned friend, Judge Fullerton, not having yet reached the witness, and he spoke to me on the subject, and the result is this communication to him, which, of course, will require that your Honor and ourselves should accede to whatever his wishes may be in regard to it.

Mr. Fullerton—I suppose it had better be deferred to some future day in the course of this trial, when he can return.

Judge Neilson—Of course that will be very proper.

The Witness—I have just heard of my mother's death, and I will continue this examination if it does not take too long.

Judge Neilson—It is agreed that it shall be deferred.

(The Witness takes the witness stand.)

Judge Neilson—Nothing will be gained by your continuation of the examination now.

Mr. Fullerton—The witness thinks he had rather finish it now, so as not to be under the necessity of returning.

Judge Neilson—It will be necessary that the witness shall return, perhaps, in a day or two. I think this had better be deferred.

Mr. Evarts—Of course, as we suppose, it will be necessary; that the entire exhaustion on one side or the other of this witness cannot be proceeded with; and that being so, we would prefer that it should cease now, rather than at another time.

Mr. Beach—I have made a request to the witness, that he should overcome his private and personal grief, out of regard to a public duty. I think it is desirable that his cross-examination should close, and he has yielded to my request, and will conclude the examination.

Judge Neilson—Have you agreed about the re-direct examination, when that shall be concluded?

Mr. Shearman—Mr. Beach says he will go on with the re-direct examination also.

[Paper heretofore shown witness marked "Exhibit D., 47."]

Mr. Tracy—The witness may not be aware of the length of time that his examination may continue.

The Witness—I will wait, Sir, until it is finished.

## THE CROSS-EXAMINATION CONTINUED.

Mr. Tracy—Now, Mr. Moulton, do you know how Mr. Tilton came by the copy of Mr. Beecher's letter of Feb. 5, 1872? A. Do I know how he came by a copy of it?

Q. Yes, Sir. A. I do not. That is the letter of Feb. 5, 1872?

Q. It is the long letter of Feb. 5, 1872? A. I don't know.

Mr. Shearman—It is the one that refers to the church, the newspapers and the book.

The Witness—Let me look at it, and perhaps I can tell you. [Mr. Shearman hands witness the book, which he examines.] I don't know how he came by a copy of it.

Q. Did you give him a copy of it? A. No, Sir; I never gave him a copy of it.

Q. Did you ever permit him to make a copy of it? A. I don't remember of his having taken a copy in my presence; I think I read the letter to him, or may have handed it to him to read.

Q. Could he have made a copy of it in your presence without your knowing it? A. I don't know; I don't recollect that he ever made a copy of it in my presence.

Q. That is not exactly the question that I asked? A. I don't think he could.

Q. Was he not a stenographer and short-hand writer? A. Yes, Sir; a short-hand writer.

Q. Was it not his habit to take a copy of these papers in short-hand? A. No, Sir; I don't recollect that it was.

Q. He could not have taken it in short-hand in your presence, when you were reading it, without your knowing it? A. Not without my knowing; I might not recollect now that he did.

Q. Do you mean to say you never intentionally permitted him to have a copy of that letter of February 5, 1872? A. I never intentionally permitted him to have a copy of it.

Q. Or to take a copy of it? A. Or he to take a copy of it; I may have read it to him, or may have handed him the paper, and if he wanted a copy of it, I might have allowed him to take it.

Q. You think you would have allowed him? A. I might have.

Q. Do you recollect of handing it to him? A. I don't recollect of handing it to him; I may have done so, however, for him to read.

Q. Can you tell us how he obtained a copy of the Beecher letter of June 1, 1873? A. I cannot tell. I read him that letter.

Q. When did you read it to him? A. I don't know. I may have read it to him on Sunday. I don't recollect when I left it with him precisely.

Q. Did you leave it with him? A. I don't think I did.

Q. Do you recollect whether you did or not? A. I don't recollect whether I did or not.

Q. How did he obtain a copy of Mr. Beecher's letter of Feb. 7, 1871, addressed to you? A. What was that letter?

Q. That is the letter where three letters were written all on the same day—two by Mr. Beecher, and one by Mr. Tilton. A. I know there were three letters dated on the same day. Which is the one you refer to?

Q. I refer to Mr. Beecher's letter to you. How did he get a copy of that letter? A. I don't know how he got a copy of it.

Q. You never gave him a copy of it? A. I never recollect doing so.

Q. Nor permitted him to make it? A. I don't know that I did. I was in the habit of showing him letters.

Q. Were you in the habit of leaving them with him? A. No, Sir; I was not in the habit of leaving them with him.

Q. Do you remember of leaving Mr. Beecher's letter with him? A. I don't recollect having left any letter with him; I may have done so though.

Q. Do you know how he obtained a copy of Mrs. Hooker's letter to Mr. Beecher which Mr. Beecher left with you? A. My impression is, Mr. Beecher gave him the letter itself.

Q. Do you know that fact? A. My impression is that he did; my impression, rather, is that he did. We were all in consultation about it together; and that is my impression that Mr. Beecher gave him that letter—showed it to him.

Q. And left it with him? A. And left it with him.

Q. Did you get it from Mr. Tilton or from Mr. Beecher? A. I forget whether I got it from Mr. Tilton or Mr. Beecher; but they were both consulting together about the letter of Mrs. Hooker.

Q. Did Mr. Tilton make a copy of it that day? A. I don't recollect.

Q. Was it left with you that day? A. I don't recollect; I think it was given to Theodore Tilton; I won't be certain, but I think it was.

Q. Mrs. Hooker's letter of Nov. 1st, 1873, I am talking about now. A. The Hooker correspondence, whatever it was, was the subject of discussion between Theodore Tilton, Mr. Beecher and myself, when the letter was read; whether he made a copy of it, I don't know; I certainly was present at part of the interview.

Q. Do you know when that interview was? A. I cannot remember the date. It was about the time that—; it was before Mrs. Hooker came to town.

Q. You don't remember the date? A. No, Sir; I don't remember the date; the date Theodore Tilton went up-town.

Q. I didn't ask you that. A. I am trying to fix it for you.

Q. Was Thomas K. Beecher's letter present at that time? A. My impression is that it was; I won't be certain about it.

Q. And you don't know whether Mr. Beecher left these letters with you that day, or whether he left them with Mr. Tilton, and you got them from Mr. Tilton? A. We were all together; I don't recollect whether he gave them to him or gave them to me.

Q. Who took these papers at the breaking up of the interview, you or Tilton? A. My impression is it was Tilton; I won't be certain about it; Mr. Beecher may have taken some at that interview and brought them back—something of that sort.

Q. Do you mean to say you have no recollection on the subject? A. I have only an impression. My impression is Mr. Tilton had those letters; that is my impression about it. He was certainly as much a party to the Hooker business as I was.

Mr. Tracy—I am not asking that.

The Witness—I am only trying to give you the truth of the matter.

TILTON'S FOOTPRINTS IN ALL THE CORRESPONDENCE.

Q. Now, of the numerous letters and papers that you have written for publication by Mr. Beecher, the letters that you have submitted to him for publication, which have not been published by him—

The Witness—Letters which I have submitted to who for publication?

Mr. Tracy—Letters or statements to Mr. Beecher. During this controversy of four years, will you name any paper or document that was not either written by Mr. Tilton or prepared by you in his immediate presence prior to the time of your consultation with Gen. Butler in 1874?

Mr. Fullerton—We object to that. They have gone over each letter and each statement and each document with great particularity in that respect, and asked questions in regard to the individual documents; so that exhausts the subject.

Mr. Evarts—This question is intended to exhaust that subject undoubtedly. Nothing has been overlooked.

Mr. Fullerton—I object to the subject being exhausted after it is exhausted.

Mr. Evarts—I think not. We want to know if there is any letter that was not written in the manner that this question asks; if so, we would like to see it.

[The Court directed THE TRIBUNE stenographer to read the question, which was done.]

Mr. Beach—That question calls for the witness to give a summary of the testimony already given, and it is not within the recollection or power of any man to do it.

The Witness—I cannot do that.

Mr. Evarts—We asked him to point out another letter.

Judge Neilson—It is a very long question, and has reference to a great number of papers, each paper having been already the subject of examination.

Mr. Tracy—Most of them have been.

Judge Neilson—I do not conceive the witness could well or safely answer it either way. At any rate, upon the ground that you have been over the individual papers, each speaking for itself, and the testimony in connection with each, I rule out the question.

Mr. Evarts—Your Honor will note our exception.

Mr. Tracy—Have you any paper in your possession, Mr. Moulton, draft or copy, which has not been prepared by Tilton, or by you in his immediate presence?

Mr. Fullerton—We make the same objection.

Mr. Tracy—I mean papers that were intended for Mr. Beecher either to publish or sign.

Judge Neilson—And you mean other than those which have been produced?

Mr. Tracy—Yes.

Judge Neilson—He may not understand the question.

The Witness—I have not any paper that I have not sought to produce.

Judge Neilson—He means have you any others than have been produced?

The Witness—I have not that I know of.

Q. Now, Mr. Moulton, I call your attention to this book

again, pages 304 and 305. I call your attention to the proposed statement. A. "Moulton's proposed statement for Mr. Beecher." Sir?

Mr. Tracy—Yes, Sir. A. Yes, Sir.

Q. That is the proposed statement that you asked him to make after the Bacon letter, admitting an offense? A. Which I submitted to him for his judgment, Sir, after the Bacon letter.

Q. Now, Sir, did you offer him on that occasion that if he would make that statement, admitting an offense, you would sustain it, and would burn all the papers that you had in your possession? A. I don't think I stated it in that way, Sir. I said that—if you will allow me to tell what I did say to Mr. Beecher, according to the best of my recollection—is that in order?

Mr. Evarts—No.

The Witness—I will undertake to state exactly what I said, to the best of my recollection.

Q. Will you give me the book? I think I can frame a question. Have you read what appears on page 305? A. I have not; no.

Q. Just refresh your memory by that. [Handing book to witness.] A. I think very likely; this suggests to me that I may have said something of that sort, Sir.

Q. Very well; I will ask you—just give me the book and I will frame my question.

The Witness—On July the 5th that was; there are two different interviews; I didn't say that at the first interview, Sir.

Q. After you had presented to him this proposed statement which you asked him to make, which is "Exhibit 94," did you not on July 5th say to Mr. Beecher—

Judge Neilson—Mr. Tracy, he didn't say he asked him to make it; perhaps you had better amend the question.

Mr. Tracy—I understood that he had said that before.

Judge Neilson—No, the witness don't say he asked him to make it.

The Witness—I said I submitted it to his judgment.

Judge Neilson—He said he submitted it to him.

Mr. Tracy—Very well; after you had submitted this proposed statement to Mr. Beecher for him to make? A. I said I thought it was best; I thought it would be a good thing for him to do to make that statement—not for him to make—

Q. Now, I am only calling your attention to the time it was submitted; now, after that I asked you? A. I am only asking that the question be properly framed, Mr. Tracy.

Q. Did you not say to him that Mr. Tilton had committed himself to a settlement if that is said, and "if it is said and he demands anything further, so far as I am concerned, I shall destroy every paper and everything I have bearing on the subject, and if he wants to open the thing he will have to open it without any aid or confirmation from me"? A. I think very likely I said something of that sort to him, Sir.

DR. STORRS CRITICISED.

Q. In the course of your direct examination you have referred—there has been introduced a letter from Mr. Beecher to you, referring to Dr. Storrs and to his action during the councils; did you have a conversation with Mr. Beecher

Just prior to the writing of that letter by him in which you stated to him in substance, that Dr. Storrs had written a letter to Mr. Tilton, advising him in advance of what he was to say in his speech, and saying that he should have to defend Mr. Beecher and appear to criticise him, Tilton, severely? A. I don't think I mentioned any letter, Sir.

Q. Well, did you say that Dr. Storrs had said that to Tilton? A. I said that I had understood so—at least not said it to Mr. Tilton. I beg pardon.

Q. You understood — A. That some such message had been sent.

Q. That Dr. Storrs had said that of Tilton? A. Yes, Sir.

Q. Now, didn't Dr. Storrs say, or didn't you report to Mr. Beecher, that Dr. Storrs had said that he had communicated to Mr. Tilton the fact that he should criticise Mr. Tilton in his speech and defend Mr. Beecher in the Council, or appear to defend him? A. I said to Mr. Beecher that some such notice as that had been sent to Tilton; some such message; he had received some such communication from somebody, simply in the nature of hearsay, Sir; I had no authority for that particularly, except the person who told me.

Q. And didn't you say to Mr. Beecher that that was an act of insincerity on the part of Dr. Storrs? A. I think I said if that was true it was insincere; I thought it was.

Q. You said if that was true of Dr. Storrs you thought them insincere? A. Yes, Sir; I did, too.

Q. How long did that conversation between you and Mr. Beecher precede the writing of this letter? A. I really don't recollect.

Q. Well, was it a day or two? A. I don't recollect, Sir; I don't remember that it preceded it even; I don't remember even that it preceded it.

Q. Didn't you, in talking with Mr. Beecher, quote Dr. Storrs as saying that while he should attack Mr. Tilton, that that would be all flummery? A. No; I did not use any such language as that, that that would be all flummery.

Q. What did you say? A. I don't recollect, Sir, precisely what I said; I don't think I said anything like that. I think I have stated substantially what I said to Mr. Beecher—all that I recollect.

Q. Repeat it again, please, consecutively? A. Well, won't the stenographer read it?

Q. Won't you repeat it? A. I will try to.

Judge Neilson—The simple question is what you said to Mr. Beecher about Dr. Storrs? A. All that I remember, your Honor, is that I said to Mr. Beecher that I had heard that Dr. Storrs had sent that communication to Mr. Tilton; that it would be necessary to be severe upon him, or something of that sort; and I said that I thought there was insincerity in that; that is the substance; all that I recollect.

Q. You said that to Mr. Beecher? A. I think I did, Sir, substantially.

Q. By whom did you understand the message had been sent, or the communication had been sent by Dr. Storrs? A. Well, I don't recollect—

Mr. Beach—He does not say that it had been sent.

Mr. Tracy—Well, he says Mr. Tilton had received a communication from Dr. Storrs.

Judge Neilson—He understood he received it?

Mr. Tracy—Yes, Sir.

Q. By whom did you understand that? A. I don't recollect whether I understood the party or not at that time, Sir.

Q. Did you understand that that message was sent through Carpenter? A. I did not understand that it was a message sent through anybody, but I understood that somebody had sent a communication to Mr. Tilton.

Q. Did you understand that it was a communication sent by Mr. Carpenter?

Mr. Beach—You don't let the witness answer questions; you interrupt him.

The Witness—Now, Mr. Tracy, I understood that Dr. Storrs had said it to somebody who had communicated it to Mr. Tilton, that in that speech Dr. Storrs would deem it necessary to be severe upon Mr. Tilton. Now, whether it was a message or not intended to be conveyed to Mr. Tilton, I don't know.

Q. We don't ask that. A. Well, all right then.

Q. What did you say to Mr. Beecher about who had communicated that story? A. I don't recollect, Sir, who.

Q. Didn't you mention the name of Carpenter? A. I don't recollect that I did, Sir, now.

Q. Did you hear the name of Carpenter mentioned in connection with that communication? A. I don't recollect.

Mr. Beach—Well, that is inadmissible, Sir.

Mr. Tracy—I desire to call your attention, now, to an interview to which you have referred as occurring between yourself and Mr. Beecher prior to or on January 10, 1871, where the Bowen letter was the subject of conversation—Tilton's letter to Bowen of the date of January first; have you omitted from that interview anything except what you have omitted at the request of the Court, as referring to a third party? A. I think I have omitted that Tilton was present in my direct-examination.

Q. Well, you stated that. A. I did not state it in my direct examination. In reading over my direct examination I made a note; I think I am correct about it, Sir; it was some time ago I was glancing over my direct examination, and I think that was left out.

Q. The question I asked you is, whether you have omitted from that conversation anything except what you have omitted at the request of the Court, concerning a third party. A. I don't think I have, Sir.

Q. With that exception you have stated the whole of that interview. A. I think I have; yes, Sir.

#### ANOTHER DISCUSSION ON THE CLARK LETTER.

Q. I hand you this letter, Mr. Moulton, a letter from Mr. Clark; I understood you to say that you had several letters from Mr. Clark, which you showed to Mr. Beecher. A. No; I did not say that I had several which I showed; I don't understand that I said that. I said that I did not recollect distinctly that I had shown this letter to Mr. Beecher.

Q. What did you say on the subject of having shown Mr. Clark's letter to Mr. Beecher? A. I said I was under the im-

pression that I had shown a letter or letters of Mr. Clark to Mr. Beecher.

Q. Then you have other letters of Clark besides that? A. I was under the impression that I had other letters; I have made a search for them and cannot find them, if I had any; that seems to be the only one.

Q. Isn't that the letter you showed to Mr. Beecher? A. I don't think it is, Sir; I don't think it is; I am not clear about it.

Q. You think, now, you never showed any of Mr. Clark's letters to Mr. Beecher? A. My impression is that I did, but I don't recollect distinctly enough about this letter to state it. I told the counsel when I showed this letter originally to them that I was under the impression that I had showed it to Mr. Beecher, but I didn't know it distinctly enough—didn't recollect it distinctly enough when it was submitted to me in Court to say so.

Q. If you showed any letter of Mr. Clark's to Mr. Beecher, that is the one, isn't it? A. I can't say whether it is or not.

Q. I understand you to say that is the only one you find from Mr. Clark? A. It is the only one I find from Mr. Clark; I don't mean to say that it is the only one I had from Mr. Clark.

Q. Do you mean to say that you had any more letters from Mr. Clark? A. Yes, Sir; I had more letters from Mr. Clark; I had before and after.

Q. Where are they? A. I don't know, Sir; I suppose they must have been destroyed.

Q. When and where did you destroy them? A. Well, I suppose at the time, or shortly after.

Q. Do you remember anything about it? A. I do not.

Q. Do you remember of ever receiving a letter from Mr. Clark and destroying it? A. Yes, Sir; I should suppose I had received and destroyed letters from Mr. Clark.

Q. Do you recollect distinctly having torn up or destroyed them? A. No; I don't recollect having torn up and destroyed them.

Q. Isn't that the only letter that you remember having received from Mr. Clark? A. No; it is not the only one I remember having received from Mr. Clark.

Q. Do you remember of having shown any other letter than that to Mr. Beecher?

Mr. Beach—Well that is assuming that he showed that.

Mr. Tracy—No.

The Witness—I have either stated the contents of other letters to Mr. Beecher, and may have stated the contents of this letter to Mr. Beecher; I am only undertaking to give you the truth, Mr. Tracy, as I can recollect it; if you want any more, I cannot give it to you.

Mr. Tracy—Now we offer to read that letter.

Mr. Tracy—Mr. Clark, what capacity did he hold in *The Golden Age*? What was his position on *The Golden Age*? A. He was an editor.

Mr. Shearman—He was Mr. Tilton's assistant editor.

Q. Mr. Clark was assistant editor on *The Golden Age*, wasn't he? A. Yes, Sir; he was employed by Mr. Tilton, I suppose, as assistant editor.

Mr. Shearman—[Reading:]

"Golden Age Office, Jan. 4."—

Mr. Beach—Well, wait. The letter is not identified—it is not admissible.

[Letter handed to plaintiff's counsel.]

Mr. Fullerton—I don't care to read this long letter through. We object to it.

Mr. Evarts—This is the letter that my learned friend produced and presented to the witness on the direct examination and he said that he had shown it to Mr. Beecher. My learned friend then commenced to read it in evidence, when the witness recalled it to his hands, looked it over, and said that he could not be sure, or he could not remember that he had shown this letter to Mr. Beecher; that he had several letters from Mr. Clark, which he showed to Mr. Beecher, and that he talked with Mr. Beecher about them. He could not be sure that he had shown this letter. We have now cross-examined him on the subject of there being any other letters, or of his memory of having shown any other letters, and probed his memory in regard to this letter, and we consider the state of the evidence from him such as entitles us to read this as having been shown to Mr. Beecher, which was the ground on which they were expecting to read it. But the witness recalled the statement and the letter into his hands.

Judge Neilson—The question is now whether it is identified as the letter that was shown.

Mr. Fullerton—I adopt the gentleman's argument as the best one that could possibly be made upon our side of the case, in objection to this document; but I do not adopt his conclusion. The witness did recall the letter, and he recalled what he said in regard to having shown it to Mr. Beecher. That took away my right to read it in evidence, and consequently I did not read it in evidence. They immediately raised an objection on the other side, which objection was well founded, and was acquiesced in by myself. Now they have not added anything to that testimony at all.

Judge Neilson—That is the question.

Mr. Fullerton—Not a jot or tittle. They have simply proved by the witness that he has received other letters from Mr. Clark, and that he thinks that he stated the contents of one or more to him, or read one or more of them to Mr. Beecher; but he cannot identify this letter as one of them which he read to Mr. Beecher, or the contents of which he stated to him. It leaves it exactly where it was before; therefore the letter is not admissible.

Mr. Evarts—It is a question of fact for the jury whether this was shown to Mr. Beecher.

Judge Neilson—I think the question is for the Court whether that is identified as the letter. If you do not identify it now, perhaps you can in the progress of the case.

Mr. Evarts—I, of course, submit to your Honor's correction about the matter as finally disposing of it. But we certainly have changed the situation from what it was before. The witness had distinctly stated—and so it will appear if we recur to his evidence—that he did show some letter of Mr. Clark to Mr. Beecher, but he could not say that he showed this one; but that others he did show, and did have, and did talk about, etc. He said that he talked with Mr. Beecher about this letter, as I

understand him. We said, "Why, you are showing a letter from Mr. Clark to Mr. Moulton; it is not a letter which affects Mr. Beecher until you show that it formed the subject of conversation." Then the letter is shown to us, and we now prove by the witness that this is the only letter that he has.

Judge Neilson—That he has?

Mr. Evarts—That he has; that he has no recollection of having destroyed any letter—

Judge Neilson—The simple question is whether he identifies this letter as the one he spoke of to Mr. Beecher.

Mr. Evarts—Exactly. He has no recollection of having destroyed any other letter. I so understand him. He has just given his evidence; of course, I have no object in misstating it. He has no recollection of having destroyed any other letter, but he may have destroyed them. This letter, it seems, he has, and has preserved, and the contents of the letter will show that it was a matter concerning which conversation was had with Mr. Beecher—that is, the affairs of *The Golden Age*. It has been abundantly proved, and we submit to your Honor that it is sufficiently identified to be permitted to be read in evidence as a part of the dealing between this witness and Mr. Beecher, concerning the affairs of *The Golden Age*, as communicated in letters of Mr. Clark. It is the only letter that is produced; it is the only letter, in respect to the absolute existence of which there is clear evidence; and there is clear evidence that Clark's letters formed the subject of conversation to Mr. Beecher; and, on the witness's direct examination, he said that he showed him some. We say that, as it now stands, however, putting this as presumptive and on the evidence, the only letter concerning whose existence there is clear proof—and the witness's testimony is distinct that some letter of Mr. Clark's, on this subject, he did show to Mr. Beecher.

Mr. Fullerton—The absurdity of this proposition will be seen at once if you put the gentleman's proposition in the shape of a syllogism. Mr. Clark did write several letters to Mr. Moulton; Mr. Moulton has found only one of those letters, the rest he has destroyed, and therefore the one he has found must be the letter which he showed Mr. Beecher. Now, that is a fair statement of the case. There is not the slightest evidence in the world that this is the letter which he showed to Mr. Beecher. There is not evidence enough from which it can be inferred at all. We regard the letter as quite immaterial in any aspect of the case, for any side of the case; but certainly it has not been identified as the letter which was shown to Mr. Beecher, or the contents of which were stated to Mr. Beecher, to make it evidence in the case.

Judge Neilson—That is a point of doubt with me. I think you will have to identify it further. I think you will have to hold it until you can identify it further, gentlemen. It may have been the letter—probably was—but it does not appear that it was.

Mr. Tracy—Have you searched for any other letters of Mr. Clark? A. Yes, Sir; I have myself, and have asked my wife to. Perhaps she may find some to-day.

Q. This is the only one you find? A. Yes, Sir.

Mr. Evarts—This is the witness's direct examination. [Reading]:

Q. [Handing paper to witness]. Tell me whether the paper now shown you was received by you? A. Yes, Sir; it was.

Q. About the time of its date? A. Yes, Sir.

Q. Did you show it to Mr. Beecher? A. I did; yes, Sir.

Q. Did you read it to him, or did he read it, which? A. I don't know whether he read it or whether I read it to him. It was either read to him, or he read it himself.

Q. When did you read it to him, how soon after its receipt? A. I don't remember, Sir, how soon after the receipt; some time after.

Q. Within what time? A. I should think within a month. I remember the conversation—something of the conversation on that subject.

Q. I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was with regard to the difficulties of *The Golden Age*. [To Mr. Fullerton.] Will you let me look at that letter again.

Mr. Fullerton—Certainly.

The Witness—[After examining the letter.] I am not sufficiently clear about that to swear in regard to it.

Mr. Evarts—What is it?

The Witness—I am not sufficiently clear that this is the letter that I showed to Mr. Beecher. I have several letters from Mr. Clark.

Q. You are not clear this was shown to Mr. Beecher? A. No, Sir; I am clear with regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure.

Now, it seems he has no other letter now, that he has no recollection of having destroyed any other as a specific act or fact, and it stands very distinctly on his original examination that that letter he did show, and that he talked with him about that letter. Now, if we have exhausted all present existence, all definite evidence that any other letters ever did exist, can we not rely upon their direct evidence and our cross-examination to submit the question that that is the letter concerning which he had conversed with Mr. Beecher. He says he had conversations about that letter. He cannot say that he showed it to him—as it ultimately ends; but the doubt, the whole doubt that withdrew the fact, once testified to, that he had shown it to him, that he either read it, or that it was read to him, &c., that disturbance arose because there were supposed to be other letters which he still had, and the matter was reserved then. Now, there are no other letters, none can be found; and we submit to your Honor that we have sufficiently identified that letter as being shown to Mr. Beecher, if any letter was shown to him, and there is no disturbance of the fact that some letter was shown to him, either read to him or read by him, and the fact that this letter was talked about to Mr. Beecher by Mr. Moulton. We now offer to read it.

Mr. Beach—This question, Sir, when it was presented to your Honor on the original offer of this paper, was decided, deliberately, and after argument by counsel. Your Honor then held that the paper was not sufficiently identified to authorize the defendant's counsel to have it marked for identification. Your Honor said to counsel that the paper was not so identified that it was not within the control of the plaintiff's counsel, who held it, and permitted them, under an exception taken by Mr. Evarts, to withdraw it from marking for identification. Has the evidence now given, Sir, changed the attitude of the question? This witness says he knows that he

had other letters from Mr. Clark; that he supposed he had them in his possession; that he has made diligent search for them, and cannot find them, and that he supposes they were destroyed, although he has no distinct present recollection as to the particular act of destruction; but that he had other letters, and that they are lost, is beyond all controversy upon this evidence. He says, Sir, that he cannot recollect whether this letter, or another of the letters which has been destroyed, was shown to Mr. Beecher, or formed the subject of conversation between them. The general topic of the letter in regard to the difficulties connected with *The Golden Age*, was matter of discourse between this witness and Mr. Beecher, and that, of course, is competent; but how the declarations of Mr. Clark, in a written form to Mr. Moulton, not communicated to either of these parties, can be made evidence by the counsel upon the other side, without a clear identification of the paper, as having been thus submitted, I am unable to perceive; and I submit to your Honor that this question having once been decided, and the counsel taking an exception, that there has been no new evidence given which should re-open the investigation.

Mr. Evarts—I only wish to read a part of the evidence. My learned friend is not right in saying that this witness is uncertain whether this letter or the other was the subject of conversation. He is perfectly clear on that point:

Q. You are not clear this was shown to Mr. Beecher? A. No, Sir, not clear in regard to that. I want to correct my statement in regard to that. That the letter was a subject of conversation I am sure, but that I showed it to him I am not sure.

Mr. Beach [reading]:

I want you to tell the conversation you had with Mr. Beecher with reference to that letter? A. It was with regard to the difficulties of *The Golden Age*.

Not with reference especially to that letter.

Mr. Evarts—The letter is full of it; that is all there is of it.

Mr. Beach—I don't know about that.

Judge Neilson—I think you will have to identify the letter further. You can do that, doubtless, in the progress of the case.

Mr. Evarts—I don't know how that is. I have got through with this witness on this letter. I don't know any other mode. I have got through with this witness on this letter, Sir.

Judge Neilson—I think it is not sufficiently identified yet.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Evarts—We think that we are entitled to read it, whether it was shown to him or not, on the clear statement that the subject of it—

Mr. Beach—I make, if your Honor please, a suggestion to the discretion of the Court, whether, when we make objection to evidence, we shall not have the ordinary privilege of counsel of closing the discussion upon the point, especially after the decision of the Court has been rendered.

Mr. Tracy—Now, Mr. Moulton, was that letter shown to Mr. Tilton? A. I don't recollect whether it was or not.

Q. Was it ever the subject of conversation between you and Tilton? A. I don't recollect whether the letter was or not. The purpose of Mr. Clark to purchase *The Golden Age* was, Sir.

Mr. Evarts—We submit that the whole subject of this letter is exactly what this witness, in his direct examination, was asked about—the conversation concerning it—and stated it to be, to wit, he talked to Mr. Beecher about the difficulties of *The Golden Age*.

Judge Neilson—There may be another letter on the same subject for aught we know.

Mr. Evarts—But are we to take the presumption that there might have been another letter?

Judge Neilson—He has sworn that there were other letters.

Mr. Evarts—I don't understand, if your Honor please, —

Mr. Morris—Is this an appeal from your Honor's decision that they are arguing?

Mr. Evarts—I don't understand that there were other letters.

Judge Neilson—He says he had other letters.

Mr. Evarts—Your Honor, that is exactly the point; that as it stands on his present examination, there is not any clear memory or statement of his that there ever were any other letters.

Judge Neilson—I understand him to say there were other letters.

Mr. Evarts—He has said so at some time in his examination, but we do not so submit the fact to be. Of course we would be very willing, as a matter of evidence, to present such other evidence as there might be, but your Honor sees that this witness, to whom the letter was written, and who was the agent that communicated it, seems to be the only witness to that fact that there is.

Mr. Fullerton—That is no reason why it should be admitted.

Mr. Evarts—No; but his Honor thinks it should be further identified. It is not, therefore, a question of whether we should reserve it, but whether your Honor excludes the letter finally.

Judge Neilson—I exclude it simply because it does not seem to be sufficiently identified as the one that was the subject of conversation.

Mr. Evarts—Well, your Honor, we suppose that there is no doubt on his own testimony of that. He says he is sure of it.

Judge Neilson—Proceed, Mr. Tracy.

Mr. Tracy—Mr. Moulton, what passed between you and Mr. Beecher concerning the difficulties of *The Golden Age* at that conversation where a letter from Clark was talked of? A. I talked with Mr. Beecher, Sir, about Mr. Clark's purchasing *The Golden Age*—about his desire to do it.

Q. Did you repeat to Mr. Beecher what Mr. Clark said about it? A. I think I did, Sir, substantially what Mr. Clark said.

Q. Did you repeat to him substantially what Mr. Clark had said to you in a letter? A. I had no other means but that; what he said to me in a letter and verbally. I met Mr. Clark, I think, about the time at *The Golden Age* office as well. Verbally and by letters.

Q. Did you say to Mr. Beecher that Mr. Clark had told you that he thought at one time that he would get some one who would purchase *The Golden Age* of Mr. Tilton? A. I told Mr. Beecher that Mr. Clark was trying to purchase *The Golden Age*—talked of it.

Q. Did you tell him that Mr. Clark had told you that at one time he thought he could get some other person to purchase

*The Golden Age*, but had tried and failed? A. To get some other person than himself, Sir?

Q. Yes, Sir. A. I don't recollect whether I did or not. I talked with him in a general way about it. I can't remember that precisely, Sir.

Q. Did you tell Mr. Beecher that Mr. Clark's trial to find some one who would purchase *The Golden Age* had failed? A. I don't recollect that I did, Sir.

Q. That Mr. Clark said so? A. I don't recollect that either.

Q. Did you tell Mr. Beecher that Mr. Clark said that the men he had spoken to had such painful impressions, if not seated prejudice, against Mr. Tilton, that they were unwilling to even seriously consider the matter? A. I don't think I told him that, Sir.

Q. You don't think you did tell him that? A. No, Sir.

Q. Did you tell him that Mr. Clark told you that he, Clark, had been blamed for retaining a connection with such a man and paper? A. I don't recollect that, Sir; no, Sir.

Q. Do you recollect that you did not so tell him? A. If I had any recollection about it, Sir, I would tell you.

Q. Did you tell him that Mr. Clark told you that two or three men who had no prejudice against Mr. Tilton saw no field and no future for the paper and advised its giving up? A. No, I don't recollect having told him that.

Q. Did you tell him anything of that kind? A. I don't remember.

Q. Did you tell him anything of that kind, in substance? A. I don't remember that.

Q. And especially, did Mr. Clark add, the name of the editor was a millstone upon it? A. No, I don't remember that.

Q. Did you tell him anything of that kind? A. I don't recollect that I did, Sir.

Q. Did you tell Mr. Beecher that Mr. Clark had said that the name of the editor, Mr. Tilton, was a millstone upon the paper? A. I don't recollect that I did, Sir.

Q. Do you remember that you did not? A. I have no recollection about it, Sir. If I recollected that I did I should tell you. My impression is that I did not tell him.

Q. Did you tell him that Mr. Clark said the newspaper men with whom he had conversed had advised the starting of a new paper and allowing *The Golden Age* to sink? A. I don't remember that I did, Sir.

Q. Do you remember that you did not? A. I don't remember that I did not, or that I did, Sir.

Q. Did you tell him that Mr. Clark had informed you that he (Clark) had found on inquiry a much deeper and stronger prejudice against Mr. Tilton than he had imagined, and that he (Clark) had been a good deal depressed by it—by that information? A. My impression is that I did not tell him anything of the kind, Sir.

Q. Nothing in substance that? A. No.

Q. Did you tell him that Mr. Clark had informed you that he wrote this explanation to you because he could not tell it to Mr. Tilton without wounding his already lacerated heart. A. No.

Q. Did you tell Mr. Beecher that Mr. Clark had informed you that he thought Mr. Tilton ought to go abroad into another

atmosphere and new scenes? Did you tell Mr. Beecher that? A. I don't recollect that I did, Sir.

Q. Anything of the kind; did you tell him that Mr. Clark had made any suggestion to you about Mr. Tilton going abroad? A. I don't remember that I did, Sir; I don't think I did.

Q. Do you remember that you did not? A. I say I don't think I did, Sir.

Q. Now, can you state what it was in the letter of Mr. Clark—any letter of Mr. Clark—that you did talk to Mr. Beecher about? A. I think it was a letter of Mr. Clark's in which he talked about the purchasing of *The Golden Age*, and I communicated or showed to Mr. Beecher that letter—communicated the substance of it, namely, that Mr. Clark was going to try to buy *The Golden Age*.

Q. Now, look at that letter and say if that is not the letter? [Handing witness a letter.] A. I don't think it is, Sir; I don't think it is.

Q. Will you swear that it is not the letter? A. I will swear that my impression is that it is not the letter. My impression is that the letter was a shorter one, which simply communicated to me Mr. Clark's intention of purchasing; I think it was, Sir. I have tried to find all the letters that I had, and probably may find it yet; if I do I will present it to you.

Mr. Tracy—That is all.

Judge Nellson—Are you through?

Mr. Tracy—There are some envelopes.

Mr. Morris—Will you please hand those letters back that you have not used, all of them?

Mr. Tracy—You have produced certain letters from Mr. Beecher this morning which, we understand, are all that you have in your possession. Have you destroyed any of Mr. Beecher's letters to you? A. I should think I had, Sir.

Q. You think you have? A. Yes, Sir.

Q. Intentionally? A. Intentionally? I could not have done it unintentionally.

Q. Did you do it intentionally? A. Why, of course I did.

Q. Now, when? A. I suppose when I received them, or about the time.

Q. Do you know when? A. I know I have not since your subpoena, Sir.

Q. When before the subpoena did you destroy them? A. I cannot tell precisely when, Sir.

Q. Can you tell anything about it? A. No; not precisely; no.

Mr. Everts—There was an envelope that was identified and not put in evidence. We will read that.

Mr. Tracy—It is postmarked—"Brooklyn, May 6, 5 p. m., New-York. Mrs. Elizabeth Tilton, Care of Theodore Tilton, Esq., Brooklyn, New-York."

[Marked "Exhibit D 48."]

Q. The handwriting of that envelope—is that Mr. Tilton's handwriting? [Handing witness the envelope.] A. Yes, Sir.

Mr. Fullerton—Well, you mean the whole of it is in his handwriting?

The Witness—No, not the whole. The superscription. The memorandum is not.

Mr. Fullerton—There is no distinction between the superscription and the memorandum, in your answer.



The Witness—I beg pardon.

Judge Neilson—The answer applied to the direction of the letter.

Mr. Fullerton—And therefore was an error.

Mr. Evarts—Give us the letter that was in that envelope. [Handing envelope to plaintiff's counsel.]

Mr. Morris—I don't know what letter you refer to.

Mr. Evarts—If your Honor please, I ask the counsel to produce the letter that was in that envelope.

Mr. Morris—I say I don't know what letter was in it.

Mr. Shearman—We ask you to produce a letter from Mrs. Tilton to Mr. Moulton, written Feb. 10 or 11, 1872.

Mr. Evarts—It is postmarked Lafayette.

Mr. Shearman—Lafayette, Indiana.

Mr. Evarts—Lafayette, Indiana, February 12, and we assume it was 1872. Now, if you will find the letter.

Mr. Morris—A letter from whom?

Mr. Shearman—A letter from Mrs. Tilton to Mr. Moulton. The letter is marked "II" in the original statement.

Mr. Evarts—The Clark letter we ask the stenographer to mark for identification, as being that concerning which your Honor has ruled.

[Letter marked "Exhibit D 49 for identification."]

Mr. Evarts—We wish this paper identified as the letter in that envelope.

Mr. Tracy—Is that the letter that came under that envelope? [Handing witness a letter.] A. I think it is; yes, Sir.

Mr. Evarts—We ask to have them marked for identification. We do not offer them now.

[The letter is marked "Exhibit D 50 for identification."] The envelope is marked "Exhibit D 51 for identification."]

Q. We have called on you for all envelopes in which letters were received by you and you have produced three, two of which have been marked for identification. Have you any other?

Mr. Morris—Oh! we have produced a number more.

Mr. Tracy—Envelopes? Where are they?

Mr. Morris—Over there, with the letters in them.

Mr. Evarts—You mean those that you gave us this morning?

Mr. Morris—Yes, Sir.

Judge Neilson—He can answer whether he has any more than those produced, without stopping to number them.

Mr. Fullerton—Yes. But he cannot answer that question put.

Mr. Tracy—Wait a moment; the question was put under a misapprehension. [To the witness]—Have you any other envelopes that belong to any papers that have been put in evidence on either side? A. None that I know of; no.

Q. What has become of them? A. I suppose they have been destroyed; I haven't got any.

Q. Do you remember destroying them? A. I don't remember precisely when I destroyed them. They must be destroyed. I haven't got them.

Q. Do you remember destroying them? A. I do not remember having destroyed them; I know I haven't got them; that is all.

Q. Do you remember whether in Exhibits 49 and 50 marked

for identification—whether in that envelope there was also a letter inclosed for Mrs. Tilton? A. I don't really remember, Sir, whether there was or not; I rather think there was not though.

Q. You don't remember? A. My impression is that there was not.

Mr. Fullerton—I think there ought to be some way of quickening the other side in their movements.

Mr. Evarts—What would you suggest?

Mr. Fullerton—I would suggest that you go on.

Mr. Evarts—That is exactly what we are suggesting now.

Mr. Fullerton—It takes you too long to make the suggestion.

Mr. Evarts—How would you remedy that?

Mr. Fullerton—By going on.

Mr. Evarts—That is, provided you were on our side in the case.

Mr. Fullerton—No; if I was on your side I would not go on. [Laughter.]

#### THE SUGGESTIONS OF IMPEACHMENT AGAIN.

Q. You say you have identified the gentleman, Mr. Swan, with whom you were supposed to have a conversation? A. I will tell you what I did do; I sent over a young man this morning to find out whether Mr. Armour's partner's name was Swan, and I believe that to be the man.

Q. Did you say to him on any occasion since the publication of Mr. Beecher's statement, that you and Mr. Beecher were in controversy, and that you had got to destroy him, or he would destroy you? A. I don't recollect that.

Q. Did you say anything in substance like that? A. I don't recollect that I did; I have not any recollection of saying any such thing as that.

Q. You remember talking with him about it? A. I don't remember having talked with him about it.

Q. This conversation was in the City of New-York? A. I don't remember any conversation on the subject. I know Mr. Swan.

Judge Neilson—It may be another Swan.

Mr. Evarts—Swans are not so plenty.

Mr. Tracy—Did you say anything to him on the subject of destroying Mr. Beecher? A. I don't recollect that I did.

Mr. Tracy—That is all; we are through.

#### THE RE-DIRECT EXAMINATION.

Mr. Fullerton—You were asked a moment since in regard to the envelopes which contained Mr. Beecher's letters. How many of them have you produced? A. I produced all I had.

Q. About how many in number? A. The record seems to show you have produced but two or three, in consequence of the form or structures of the questions put to you by the other side? A. I don't remember how many I produced; I produced all I had.

Q. About how many are there? I only want it to go on the records that there are more than three? A. There are more than three.

Q. Do you recollect destroying any of the envelopes? A. Tearing them?

Q. Yes, Sir; or burning them? A. I don't recollect precisely about it. I must have done so.

Q. Do you think you must have done so because you have not got an envelope to match each letter that is produced? A. Yes, Sir; precisely.

Q. You reason it out? A. Yes, Sir.

Q. But you have no positive recollection of destroying any one of them? A. I didn't undertake to keep the envelopes.

Q. In regard to the letters of Mr. Beecher, have you any distinct recollection of destroying any of his letters? A. I remember tearing up some of his letters after reading them, when they didn't interest me very much.

Q. Did they relate to this controversy that is going on in any way? A. No, Sir; I don't think they did.

Q. Did you preserve every letter that related to the controversy? A. Every letter of importance, I think I did; any letter I considered of any importance I preserved.

Q. You have been asked with regard to your conversation on July 5th in respect to the proposed statement made at that time, commencing, "This church and community are unquestionably interested," &c. What did you say to Mr. Beecher at the time that publication was proposed, or was the subject of conversation?

Mr. Evarts—We object to the renewal of the inquiry. The conversation was affirmatively gone into by our learned friends as a part of their direct-examination, and all that we have asked him was what occurred this morning, which was whether he didn't say so and so. That does not give them a right to re-examine him as to the conversation. It is their examination and their conversation, and our cross-examination.

Judge Neilson—Unless there is something that requires explanation, that is all.

Mr. Evarts—He might re-examine him in regard to what he said to us in that conversation, but he has commenced by asking him what that conversation was, which has already been produced as affirmative evidence on their part.

Mr. Fullerton—It is not to be expected, if the Court please, that any witness after the lapse of such a length of time, would be able to state the whole of the conversation which took place between himself and another person. The witness's attention was called to this statement, which is "Exhibit No. 34," and to what he said to Mr. Beecher at the time, and he went on to give that part of the conversation, which was then within his recollection. He has undergone a severe cross-examination in respect to that conversation, and he has been asked if he did not say such and such things, which were incorporated in the question, bringing up to his mind something that he had not theretofore stated; and he stated once or twice during that cross-examination that he was willing to state what he said to Mr. Beecher on that subject—that is to say, the subject incorporated in the question. Now, if there was anything said on that subject which the witness didn't recollect when he was on his direct examination, it is proper for me now to call it out.

Judge Neilson—Especially as he was not allowed to state it when he was cross-examined.

Mr. Fullerton—Yes, Sir; that is the reason why I put the

question. Of course, we cannot shut our eyes to the conclusion that these questions were put to him with a view of contradicting him by some other witness, and it is right and proper that he should state what he did say to Mr. Beecher on that subject, at that time, if he did not say the exact things which were incorporated in the question put to him.

Mr. Evarts—My learned friend is altogether out there. We are not going to contradict him. We wanted to prove that he said it and he said he did.

Judge Neilson—I think he may answer the question.

Mr. Evarts—One moment, if your Honor please. This is re-direct examination. It is a very grave matter, if we are to understand that the reproduction of one of these interviews is authorized, or some part of it.

Judge Neilson—My recollection is that the witness, when interrogated on the cross-examination, in answering, said he could state what was said, but was not allowed to, as he had then no right to do, except upon the consent of counsel examining him.

Mr. Evarts—I agree that what pertains to that very point of the conversation that we brought out, may be; I don't argue against that; I only argue against the generality of the conversation—that the whole conversation may be gone into.

Judge Neilson—You are at liberty to read what he said in the re-direct, and then the inquiry might be shortened.

Mr. Tracy—This is a conversation that occurred between the witness and Mr. Beecher one Sunday, on the 5th of July, when they had a walk on Sunday, when the witness introduced Mr. Robinson as one of the parties to the conversation. That will identify the conversation as I understand it. That was the conversation of last July, 1874. He was examined fully on that matter, and on cross-examination we asked him, didn't you in that conversation tell Mr. Beecher thus and so.

Mr. Fullerton—And in reply he said, "I didn't tell him that, but I will tell you what he said if you will let me."

Mr. Tracy—The counsel is mistaken. The witness said, "I did say so." That is the answer of the witness—"I did say so."

Mr. Fullerton—That is not the way the evidence stands in that regard.

Mr. Evarts—We call attention to the direct examination. [Reading]:

Was any other course proposed? A. Yes, Sir; I submitted to him a paper which I had dictated to Frank Carpenter, and I said; "Mr. Beecher, if anything is said I deem it most judicious that this should be said," and I read to him that which I had dictated to Mr. Carpenter.

That is the paper concerning which the examination and cross-examination proceeded. [Again reading]:

Q. In whose handwriting was that paper? A. That paper was in Carpenter's handwriting. Mr. Beecher asked me for a copy of it.

Q. Did you give him a copy of it? A. I did give him a copy of it.

Q. In whose handwriting was the copy? A. It was in my handwriting.

Q. Look at the paper now shown to you, and say whether it is the original of that paper. A. Yes, Sir; that is the original.

Q. What occurred between you and Mr. Beecher with reference to this proposed card after the interview of which you

have just spoken? A. Well, I have not finished that interview.

Q. Well, please finish it? A. I said Mr. Beecher asked me for a copy of it. I gave him a copy of it, with an alteration or two in it, and he said that he would make a copy of it in his own handwriting—make a copy of that copy in his own handwriting, and submit it to some of his friends.

Q. Did he afterwards state whether he had submitted it to his friends? A. I don't remember whether he did or not, Sir.

Q. What occurred with reference to that card at any time after that?

That was the subject of the examination.

The Witness—That was not July 5th.

Q. What occurred with reference to that card at any time after that?

Then Mr. Beecher's answer, and then the witness, and then Mr. Beecher, and then Mr. Fullerton said: "I now offer the paper in evidence." Then the witness said: "I had a subsequent conversation with Mr. Beecher about it and I told him that I had seen General Tracy concerning a reply to the Bacon letter." All that was gone into. I don't see that it is proper. All we have said will appear by the evidence to-day.

Mr. Beach—Then he was asked, "when that card was presented or shown to Mr. Beecher, did you not say thus and thus?" Suppose the witness answers that he did say that, on re-examination are we not permitted, his memory having been refreshed by that specific question, he having added to the conversation—may we not ask him, "What else did you say in that connection?"

Judge Neilson—Yes, Sir.

Mr. Evarts—In that connection.

Mr. Beach—Yes, Sir.

Mr. Evarts—We have not objected to that.

Mr. Beach—If he says, he did not answer thus and thus, as inquired of, "but I will tell you what I did say;" are we not permitted to ask him what it was?

Judge Neilson—You are.

Mr. Beach—That is the course we are pursuing.

Judge Neilson—The apprehension of the counsel was, that the question called upon the witness to repeat the entire conversation, including what was given on the direct.

Mr. Fullerton—Your attention was called, on the cross-examination, to the conversation which you had with Mr. Beecher on July 5, in regard to a proposed statement, and you were asked whether you did not say in that conversation certain things to Mr. Beecher. I understood you to say you did not, but that you did say something that you would tell if you were permitted; you were not permitted. I now ask you to state what you did say on that occasion.

Mr. Evarts—That we object to.

Mr. Fullerton—It would have been well to have raised the objection after the question was completed.

Judge Neilson—I think I must allow that.

Mr. Evarts—I beg your honor's pardon. The point is, that the witness has not so answered; he has said that he did say what we asked him, and not that he didn't.

Mr. Fullerton—The decision of the Court is usually the end of argument, but it seems to be the commencement of it in this

case. I don't know when my friends will be satisfied with the presentation of their objection to this inquiry.

Mr. Evarts—This is the first time the question has been asked, and the first time I objected to it; and I have given as a reason that it assumes a statement exactly the opposite of the fact.

Mr. Fullerton—The same question was put in substance ten minutes ago, and the intervening time was exhausted in your argument, after the Court had decided the question admissible half a dozen times.

Mr. Evarts—I am always ready to take a reprimand from you, of course.

Mr. Fullerton—But it don't seem to do you any good.

Judge Neilson—I think counsel, instead of repeating the testimony, ought to put his question specifically as to anything that was omitted.

Mr. Fullerton—I have directed the attention of the witness specifically to the question put, and to his answer, and asked him to state what else was said on that subject at that time.

Judge Neilson—He can answer that.

Mr. Evarts—My objection is that you don't state the answer properly, and I object to it.

Mr. Fullerton—The gentleman's objection has been stated half a dozen times.

Judge Neilson—I intimate now, that you can ask him, "What else was said; whether you are correct in your recollection or not?"

Mr. Evarts—The objection to the question is just as good.

Mr. Fullerton—But not better.

Mr. Evarts—If your Honor requires him to modify the question, very well; if not, I wish to object to it, and to have my objection noted.

Mr. Fullerton—The objection is made; we have got the decision and the exception is noted. Is there anything else?

Mr. Evarts—I do not understand that the Court to have so decided.

Judge Neilson—[To Mr. Fullerton.] Does your question call for a repetition of the original evidence?

Mr. Fullerton—No, Sir.

Judge Neilson—Then proceed.

The Witness—Will the stenographer repeat the question?

[THE TRIBUNE stenographer here read the question.]

Mr. Evarts—Your Honor will note my exception to the allowance of the question as it now reads.

Judge Neilson—[To the witness.] What further did you say?

The Witness—My recollection is that I told Mr. Beecher that Mr. Tilton had committed himself in that interview at Delmonico's to peace if Mr. Beecher kept silent, or made the statements which he did make, and my impression is also that I told him that if that course was followed, I should destroy the documents.

Mr. Beach—It is now one o'clock.

The Witness—I think we had better go now; I want to make some arrangements at one o'clock.

Mr. Beach—What do you prefer?

The Witness—I prefer to go on. I will come back here after I make my arrangements at home. I want to finish it to-day.

Judge Neilson—The jurors will be in their seats at two o'clock. (To the audience)—gentlemen will wait until the jury retire.

Mr. Mallison (the Clerk)—The court will now take a recess until two o'clock.

#### HOW MOULTON BECAME BEECHER'S ENEMY.

After the recess Mr. Moulton's direct examination was continued.

Mr. Fullerton—Do you recollect a letter that was put in evidence on your cross-examination, written by Mrs. Tilton to yourself, commencing "for my husband's sake and my children I hereby testify with all my woman's soul, &c.," A. Yes, Sir.

Q. Having now found the letter, I place it in your hands, and ask you the origin of that letter?

Mr. Tracy—Wait a moment. To that question I trust the witness will not be permitted to give conversations between himself and Mr. Tilton on that subject.

Judge Neilson—Well, it would not be proper to give conversations with Mr. Tilton unless it is one that has been called out on their part.

Mr. Beach—Or unless it was communicated to Mr. Beecher.

Judge Neilson—Yes; and in that case you might begin with Mr. Beecher first.

Mr. Fullerton—What was said in reference to that letter in the presence of Mr. Beecher, or which was communicated to Mr. Beecher.

Mr. Tracy—That we object to, your Honor. We have not gone into any such conversation, and if they had any such conversation with Mr. Beecher, in regard to that letter or any other letter, it is affirmative proof which they should have gone into. We have simply proposed the letter in evidence, and proved that Mr. Tilton presented it to the witness. We have gone into no conversation about it.

Judge Neilson—That raises the subject, and allows him to prove what was said to Mr. Beecher, if anything, about the letter. It could not be asked before, because the letter was not produced. I think it is proper.

Mr. Tracy—Your Honor will note our exception.

The Witness—I sent for Mr. Beecher to come to my house, Sir, one morning in the latter part of December, 1872, and he came, and I told him that Mrs. Tilton had said to Mr. Tilton that she thought there better be a denial of the stories, and that she had written a letter to me which Mr. Tilton had handed to me, and so far as Mr. Tilton was concerned, he was perfectly willing that they should take the responsibility of such denial—Mrs. Tilton should, and that he might if he choose; and I left Mr. Beecher and Mr. Tilton together—or rather before that Mrs. Tilton was sent for and Mrs. Tilton came, and I am under the impression, Sir, that I remarked before I left that interview, that I didn't see much good at that late hour of a denial, and that is what I remember about the letter, Sir.

Q. Was that letter present during that conversation? A. Yes, Sir, that letter was present.

Q. Did you show it to Mr. Beecher during that conversation? A. I showed it to Mr. Beecher; yes, Sir.

Q. The letter is "Exhibit D. 44." Did he make any observations in regard to it? A. I left him alone, Sir, after Mrs. Tilton came with Mr. Tilton; the interview I was not present at after that.

Q. The denials were never published, I believe? A. No, Sir; that is the only one I ever saw.

Q. Now, you have been asked in regard to your hostility to Mr. Beecher. I ask you when that hostility, if it may be so termed, commenced? A. When I found, Sir, through his—through having read a portion of his published statement—that in return for my kindness towards him he had sought to ruin me by false charges against me, as I deemed then, and do now.

Q. Up to that time you had felt friendly towards him? A. I was not in hostility to him, Sir, to that time.

Q. Whatever you may have said in regard to him since that time was in consequence of that publication of his? A. Yes, Sir.

Mr. Evarts—That I object to.

Judge Neilson—We will take it.

The Witness—I have answered it, yes, Sir.

Judge Neilson—They go to the *quo animo* of the witness.

Mr. Evarts—Whether it was in consequence of it we judge by knowing if it is after that. It is right of course to prove facts, and then conclusions are to be drawn by the Court and the jury.

Judge Neilson—I think we will allow the question.

Mr. Evarts—Your Honor will please note my exception.

Q. Was there any other cause of hostility? A. No.

Q. Now, your attention has been called to the letter of Aug. 4th, in reply to one of Mr. Beecher written the latter part of July; what did Mr. Tilton say in regard to that letter when you showed it to him? A. What was that letter, Sir?

Mr. Fullerton—Just hand him the letter of Aug. 4th. You will find it in the first part of Judge Porter's cross-examination. [Book handed to the witness.]

Q. What is it marked? A. Marked "D, 7."

Q. The letter of August 4th, then, marked "D 7," being shown to you, I ask you what Tilton said in regard to it when it was shown to him?

Mr. Evarts—That we object to. What Tilton said to Moulton is not evidence against us.

Judge Neilson—On what ground is it evidence?

Mr. Fullerton—It is a part of the *res geste*. They prove that the letter was exhibited to Mr. Tilton, and they mean to draw an inference from it.

Mr. Beach—They seek to conclude him by the contents of the letter—his seeing it. Now, what answer did he make?

Mr. Fullerton—They mean to argue that he acquiesced in the sentiments expressed in that letter. Now, they can't foreclose Mr. Tilton in that way.

Mr. Evarts—We can at any time prove what Tilton did, and the plaintiff cannot; that is the principal proposition of evidence. Now, we have proved in regard to this, if I comprehend the subject matter of the present inquiry rightly, to be the letter of Mr. Beecher to Mr. Moulton of the 4th of August, and Mr. Moulton's reply of the 5th. We have proved that this letter of Mr. Beecher's was shown to

Mr. Tilton, and that Mr. Tilton made the answer which was sent. Now, those are acts of Mr. Tilton. That Mr. Tilton said he was doing those acts with Mr. Moulton with whom he was acting is not evidence against us. We got the letter and we prove that it proceeds from Mr. Tilton in the form that he writes it and Mr. Moulton signs it. Now, out of our proof of that action of the plaintiff, all whose acts which are pertinent, we have a right to prove, and none of which they have a right to prove, they seek to bring in the conversation that took place between Mr. Moulton and Mr. Tilton while these acts were being performed. That is, as I understood the evidence, and I know no rule of evidence which permits it.

Mr. Beach—Will the counsel permit me to call his attention to a rule of evidence fundamental, that when an act is given in evidence, any accompanying declarations qualifying or explaining the act are admissible as a part of the *res gestæ*.

Mr. Evarts—I agree to that.

Mr. Beach—Well, if he agrees to that he proves the act of Mr. Tilton upon the presentation of this letter to him. Now, we propose to prove what Mr. Tilton said in connection with the act of reception or the act of drafting the reply to that letter.

Mr. Evarts—The reason we proved the act is the *res gestæ* can be proved as between Tilton and Beecher. Now, the reasoning of my learned friends and the proposition of evidence is sound if, when Tilton delivered that letter to Mr. Beecher, supposing he had delivered it, and so there was an act between them in that form, then what Mr. Tilton said when he delivered it if we omitted it, they could prove, no doubt. But the note is Tilton's writing—a letter for Moulton in answer to Mr. Beecher, which letter is sent to Mr. Beecher. That is the action of Tilton that we proved. Now, they prove the conversation between the writer and the amanuensis, the dictator and the man who furnishes the handwriting at the time that it was going on; that is the present proposition.

Mr. Beach—Counsel will please observe that we ask no question as to a declaration of Mr. Tilton in regard to the letter which he drafted and sent to Mr. Beecher; the question is as to the letter from Mr. Beecher which was presented to him.

Judge Neilson—I understand that. What did he say when he saw the letter? I think he can give that, Sir.

Mr. Evarts—Doesn't it transcend any rule as yet considered whereby everything that passed between this witness and third persons, including Mr. Tilton, in order to affect Mr. Beecher, should have been brought home to him. Now, that has not been done.

Judge Neilson—This is part of the act of receiving the letter. I admit it with that view.

Mr. Fullerton—It was a letter which they put in evidence.

Mr. Evarts—If your Honor please, Mr. Moulton receives a letter from Mr. Beecher, he goes and shows it to Tilton, and the conversation between them is to be given in evidence?

Judge Neilson—As a part of the act; yes, Sir.

Mr. Beach—That is what they prove—showing the letter to Mr. Tilton—for without that they could not introduce it at all, and upon the theories that he approved it when it was brought to his attention.

Mr. Evarts—The theory is of proving that he made the answer which we have given in evidence.

Judge Neilson—We will receive what was said in immediate connection of receiving the letter.

Mr. Evarts—Between Mr. Tilton and Mr. Moulton?

Judge Neilson—Yes, Sir.

Mr. Evarts—Your Honor will be so kind as to note our exception.

The Witness—I said to Mr. Tilton that the statement in the letter that Mr. Beecher had placed in my hands for merely safe-keeping, letters addressed to him from his brother and sister and various other parties, and also memoranda of affairs not immediately connected with Mr. Tilton's matters, were untrue—that that statement was untrue—and I asked him to recall the circumstances, and he said he did recall the circumstances, and he did recall them.

Q. Who recalled that? A. Mr. Tilton said he remembered the letters of Mrs. Hooker, and remembered—

Mr. Evarts—What he said, I suppose, is—

Mr. Fullerton—That is what he has stated.

The Witness—Yes, I will tell you what he said before.

Judge Neilson—Please to understand it is what he said in immediate connection with his seeing the letter.

The Witness—Yes, Sir, precisely so.

Judge Neilson—And nothing beyond that.

The Witness—Precisely,

Judge Neilson—Go on.

The Witness—He said to me "Don't you remember in that connection that Mr. Beecher wanted me to go and see Mrs. Hooker, and that I did go to see Mrs. Hooker, and that I did for the purpose of quieting her as against making the charge of adultery against him, charging her with adultery; and don't you remember upon the same authority, I mean that she proposed to charge Mr. Beecher and Mrs. Tilton with adultery, and I came back and told Mr. Beecher that, and he seemed to be satisfied with it, and was delighted with it: don't you remember that?" he said to me, and he recalled it, and I did remember it.

Mr. Evarts—Said what you said? A. I said yes; I remembered it in substance.

Mr. Evarts—Asserting that you did remember it, is not stating what you said.

The Witness—I stated that as—

Mr. Fullerton—Never mind.

The Witness—Pardon me.

Mr. Fullerton—I call your attention—

The Witness—Wait a moment. Mr. Tilton also said—you know I have not had access to your depository of materials, and that is about all, and then he—

Mr. Evarts—Now, if your Honor please, the evidence having been given, I move to strike it out entirely, as no part of the *res gestæ* whatever, and a mere form of bringing in conversation between these parties concerning some facts in this case.

Judge Neilson—The motion is denied. You take exception.

Mr. Evarts—We except to your Honor's decision.

Mr. Fullerton—I call your attention to the letter of August the 5th, and that to part of it referring to a proposed consent from both Mr. Beecher and Mr. Tilton to use these papers in

your hands, and I ask you whether at that time you procured a consent from either party.

The Witness—Almost immediately, Sir, after the writing of the letter from Mr. Tilton—

Mr. Evarts—One moment.

Mr. Fullerton—I ask if he procured a consent to use these papers from any one.

[Book shown to Mr. Evarts with explanations of counsel.]

Mr. Evarts—As I understand this present question, this letter has nothing to do with it except as a suggestion to the mind of the witness. Whenever he undertakes to prove the occurrence of telling him, why then I will object to it. The point of this inquiry, as I understand it, is to prove action between Mr. Tilton and himself, and all such action I object to, as the general rule of evidence entitles me to object to it. That something must occur to take it up—

Judge Neilson—Some arrangement or suggestion procuring consent.

Mr. Evarts—It was not a suggestion. A communication was made to Mr. Beecher in this letter which Mr. Tilton wrote, referring to that subject. But it was not a transaction in which Mr. Beecher took any part or was invited to take any part. Then, therefore, because a man has said in a letter to Mr. Beecher, that he will not do a thing without doing something else first—on that mere statement, which we had nothing to do with except to receive it, they propose to show that he afterwards did the things that he said he would do. The question is whether the things—whether he said he would do them or did not say he would do them, are matters that affect Mr. Beecher—

Judge Neilson—What is your proposition.

Mr. Fullerton—My proposition is this, Sir: To prove that Mr. Moulton obtained consent from Mr. Tilton to use these papers then in Moulton's hands, having in the first place construed Mr. Beecher's letter into a consent on his part. And I do it for this purpose: They intend upon the other side to draw an inference against Mr. Moulton, for the reason that he refused to give either the originals or copies of those papers to Mr. Beecher upon his application. His reply, as your Honor recollects, was that he was the custodian of them for the benefit of both parties, and that he would not give them to either one without the consent of the other.

Judge Neilson—What is the paper that shows Mr. Beecher's assent?

Mr. Fullerton—The letter of Aug. 4th?

The Witness [Reading]: "I do demand that you forthwith place before the Committee every paper which I have written, or deposited with you." My answer reads: "In reply I can only say that I cannot justly place before the Committee the papers of one of the parties without doing the same with the papers of the other, and I cannot do this honorably except either by legal process compelling me or else by consent in writing, not only of yourself, but of Mr. Tilton, with whom I shall confer on the subject as speedily as possible."

Mr. Fullerton—Now, it is proper for me to show consistency in the conduct of this witness, by showing that he procured

that consent of Mr. Tilton, and then went before the Committee to give the papers.

Judge Neilson—Well, you must show the acts to be separate. they must be separate.

Mr. Evarts—The difficulty is, that the act does not affect us; it is no act of Mr. Beecher's, or that affects him; it is not so proposed. It is proposed as an act of Mr. Tilton's with this witness.

Judge Neilson—The witness proposes to have the consent; and I rule that he may prove the consent that he obtained from both or either of the parties.

[Exception by Defendant.]

Mr. Fullerton—Now what did you do in that regard? A. Immediately procured the consent of Theodore Tilton, Sir.

Q. And then? A. Went to the Committee.

Q. Then you went to the Committee? A. Yes, Sir.

Q. With the papers? A. Yes, Sir; or, rather, I went to the Committee—

Judge Neilson—That was after the communication from Mr. Beecher? A. Yes, Sir.

Mr. Evarts—We object to all this.

Judge Neilson—Well, Mr. Beecher called for the papers; then he procured Mr. Tilton's consent to use the papers.

Mr. Evarts—He didn't give them to Mr. Beecher after that. The only point with us was that Mr. Beecher applied to him and he made this reply which Mr. Tilton sanctioned and wrote; that is the end of that transaction. Now, they seek to show the consistency of the witness. We have nothing to do with that; we are not trying his consistency, nor the fact of what he did with third persons to make it consistency.

Judge Neilson—No; but I simply rule that it is competent for him to state whether or not he got Mr. Tilton's consent to use the papers.

Mr. Evarts—That has been made the subject of an exception, and that disposes of that. Then he goes on to state, after he got the consent, "I then took the papers and went before the Committee."

The Witness—I made a mistake in saying that I then took the papers.

Mr. Evarts—Well, took the papers afterwards and went before the Committee. We have nothing to do with that.

The Witness—Well, I made a mistake, if you have that impression.

Judge Neilson—Well, that last line may be stricken out.

The Witness—I went before the Committee with a statement after he went, and stated to the Committee that, having had the consent, I would—

Mr. Evarts—We object to this.

Mr. Beach—Well, you listen one moment.

Mr. Evarts—No, for this reason, that I have called his Honor's attention to the additional statement; and his Honor said that that should be stricken out. Now, while that is pending, I object to the witness going on with other matters.

Mr. Beach—Well, I am going on, it is not the witness; I am just now stating to your Honor a proposition. The demand from Mr. Beecher was that these papers should be furnished either to him or the Committee. Mr.

Moulton says: "I cannot do that, Mr. Beecher, without procuring the consent of Mr. Tilton." Mr. Moulton immediately procures the consent of Mr. Tilton, and then complies with the demand of Mr. Beecher. Now, why have they given these letters and this demand? How was the demand permissible except for the purpose of showing an unfriendliness of sentiment on the part of Mr. Moulton—except for the purpose of arguing that when Mr. Beecher demanded from Mr. Moulton that he should produce these papers before the Committee he refused. And as the evidence now stands, Sir, if you strike out the latter part of this witness's testimony, that is the attitude in which this witness is placed.

Judge Neilson—That should be stricken out and should be the subject of a question; so that it can be objected to. It is consistent enough up to that point.

Mr. Fullerton—When you got the consent of Mr. Tilton therefor, did you go before the Committee, and, if so, what did you do?

[Objected to.]

Judge Neilson—No, that is wrong; did you take the papers before the Committee?

Mr. Beach—Did you go before the Committee and tender the papers demanded by Mr. Beecher?

[Objected to.]

A. I did.

Mr. Fullerton—That would be objected to on the ground that it was leading; and, therefore, I ask him what he did when he got there. After you got that consent what did you do with the papers?

Mr. Evarts—That we object to.

A. I withheld the papers at the solicitation of Gen. Tracy, Mr. Beecher's representative, from the Committee, in consultation with my counsel, Gen. Butler.

Q. What, subsequently, did you do with the papers? A. I published my—I published the—I produced the papers quoted. It needs an explanation, your Honor.

Judge Neilson—The question is, whether you took these papers to the Committee or furnished them. A. No, I didn't take them to the Committee.

Mr. Fullerton—Or, furnished them? A. I did not; and I will tell you why.

Mr. Morris—You were going on to state—

The Witness—I went before the Committee, if your Honor will allow me to state: I went before the Committee next day, and stated to the Committee that, having had the consent of both parties, I should, on a certain day, produce the papers; I think that day was to be Saturday, and the meeting of the Committee was postponed until Monday; and, in the meantime, Gen. Tracy was in consultation with Gen. Butler.

Judge Neilson—Leave that out. [Laughter.]

Mr. Evarts—That is all the case, anyhow.

The Witness—No, it is not.

Judge Neilson—I suppose that what occurs between the witness and Mr. Tracy and Gen. Butler is not to be received.

The Witness—Gen. Tracy claimed to be the representative, your Honor, of Mr. Beecher.

Mr. Evarts—Don't argue about this.

The Witness—I don't choose to argue; I am only stating to his Honor what I think I have a right to state.

Mr. Evarts—Now, none of that is in evidence. These statements made to your Honor, they form no part of the record of the evidence.

Judge Neilson—It is competent for the counsel to prove that those papers, in some form, were furnished pursuant to the demand made on one side, or the demand on one side and consent on the other.

Mr. Evarts—That your Honor has ruled, and that is of course received under the ruling.

Judge Neilson—Well, he can interrogate him then with that view.

Mr. Fullerton—I asked him the reason why he did not—

Mr. Evarts—That is objected to.

Mr. Fullerton—One moment, if you please; there is the point that you cannot talk all the while.

Judge Neilson—Well, without asking him his reason, you can ask what he did in that respect.

Mr. Fullerton—Yes, Sir. I wish to know what he did in that respect, and I wish this witness to be fairly understood in regard to this matter; why he did not go before the Committee and take all the papers; if he did not, there is a reason for it.

Mr. Evarts—That I object to.

Mr. Fullerton—After you got the consent of both parties to these papers, did you go before the Committee and offer to produce them? A. I went before the Committee, yes, Sir, and stated that I would produce them. If you will find the communication, Sir (I don't know where it is in this book), that I made to the Committee—I think it was on August 5th or 6th that I made it, promising to go before them on Saturday.

Mr. Evarts—That is the very one that was rejected by your Honor as not being admissible heretofore.

Mr. Beach—It is made admissible now.

Judge Neilson—Go on.

Mr. Evarts—This is under my exception.

Judge Neilson—I don't intend to have you understand that I rule that any communications made by the witness to the Committee are to be received at present. I haven't that view.

Mr. Evarts—Then I ask that to be struck out.

Judge Neilson—The contents of the paper are not given. We have the naked fact that he sent a communication on the subject to the Committee.

Mr. Fullerton—That is an application to strike out something before it goes in.

Mr. Evarts—I did not move to strike that out.

The Witness—I immediately proceeded, your Honor, to comply with the request of both parties, and went before the Committee for that purpose. That is all that I propose to state.

Mr. Evarts—Now that is not evidence.

Mr. Fullerton—It is evidence because the Court has admitted it. [To the Witness]: Did you go before the Committee after that, and did you take any part of those papers, and if so, what part? A. Yes, Sir; I went before the Committee after that, and I took the papers that were quoted by Mr. Tilton in his state.

ment to the Committee, and there is a reason why I did not take any more, if you want that.

Mr. Fullerton—Well, I want to know the reason why he didn't take—

Mr. Evarts—I object to it. Certainly if the acts of the witness are admitted we are not to take the reasons of his not acting otherwise.

Judge Neilson—That is another question.

Mr. Fullerton—But they seek to condemn this witness because he did not give Mr. Beecher an opportunity of seeing these papers, and because he did not take them before the Committee as requested.

Judge Neilson—You have proved he took the papers before the Committee.

Mr. Fullerton—I have proved he took a part. May I not prove the reason he did not take the rest?

Judge Neilson—No matter about the reason.

Mr. Beach—Suppose Mr. Beecher had told him not to produce them?

Mr. Evarts—Well, prove that.

Mr. Fullerton—How will I prove it, unless you permit me to ask the question?

Mr. Evarts—Now, all those papers, what become of them we all know. Their subsequent history has been testified to.

The Witness—No, it has not. The history has not been—

#### REFLECTIONS ON THE WITNESS RESENTED.

Mr. Evarts—He does not say that he took them before the Committee. The only question is what the reason was he did not take them; that I object to.

Mr. Fullerton—We will see now if we haven't a right to this testimony. I repeat they seek to put this witness in a false attitude, and they mean to keep him there, if they can do so by preventing him from giving the reason why he did not do a certain thing. He had the choice either to give those papers to Mr. Beecher, or to take them before the Committee. He took a part of them before the Committee. I propose to show the reason why he did not take the balance; that it was in harmony with the wish of the other side that they were withheld, as supposed by their suggestion, and at their request.

Judge Neilson—Well, you may prove that.

Mr. Fullerton—Well, I hope I will be able to without a thousand and one interruptions.

Mr. Evarts—I must interrupt when I consider the evidence illegal, your Honor, and I propose to do it.

Judge Neilson—That is understood, and you take an exception to this.

Mr. Fullerton—Well, if the exception is the end of it, I shall be very happy.

Mr. Evarts—Now, I don't propose to be talked to any more. I don't institute any of these observations between counsel, never, and I don't propose to submit to it.

Judge Neilson—You have a right to be heard whenever you think the question calls for it.

Mr. Fullerton—I propose to make just those observations

when counsel insist upon arguing a question that has been decided by your Honor over and over again.

Judge Neilson—I don't think the counsel meant to do that. Go on.

Mr. Fullerton—Why did not you take the balance of the papers before the Committee?

Mr. Evarts—That is objected to.

Mr. Fullerton—That we understand, it is objected to.

Mr. Evarts—I propose to have it entered every time.

Judge Neilson—Now, what is the question?

The Witness—Now, what is the question?

Mr. Fullerton—I am afraid to repeat the question because there may be another objection and exception. [Laughter.]

The Witness—What is the question? Read it.

Judge Neilson—Read the question.

THE TRIBUNE stenographer read the question as follows: "Why didn't you take the balance of the papers before the Committee?" A. On Sunday preceding the Monday on which I had agreed to take the papers before the Committee, Gen. Tracy; if I remember the day correctly, I think I do—went with me to the Fifth Avenue Hotel to see Gen. Butler with reference to the suppression of the statement, and I saw Gen. Butler with Gen. Tracy.

Mr. Evarts—Any interview of that kind we object to. Here is a narrative that took place—supposed to have taken place between Gen. Butler and Mr. Tracy. Now, that is not evidence.

Judge Neilson—Now, if upon that conference he refrained, we want the result; that is all; not the conversation. If, in view of that interview on that conversation, he was restrained or not restrained from taking the additional papers, he may state that fact, as going to show the animus of the witness, acting in good faith or bad faith. Now, get him to do that. [To the Witness.] You had a conversation? A I had a conversation, Sir. Shall I give it?

Judge Neilson—With Gen. Tracy and Gen. Butler. I don't ask what the conversation was.

The Witness—Very well, Sir.

Judge Neilson [to Mr. Fullerton]—Now, ask the question.

Mr. Fullerton—Did you refrain from taking those papers before the Committee in consequence of anything that occurred there on the occasion to which you refer? A. Yes.

Judge Neilson—Well, that gives it sufficiently.

Q. Who did Gen. Tracy represent on that occasion?

Mr. Evarts—Well.

The Witness—He said he represented Mr. Beecher. [Laughter.]

Mr. Evarts—Well, I objected.

Judge Neilson—Take it, Sir; let it stand. Take an exception.

Mr. Evarts—Yes, Sir.

Judge Neilson—Go on.

Q. Was it with his approbation that you withheld them? A. With whose approbation, Sir?

Q. Mr. Tracy's? A. It was at his request.

Q. And that is the reason why you did not take the balance before the Committee, is it—the balance of the papers? A.



That is one of the reasons. I will give the balance of the reasons. Shall I?

Mr. Beach—No; we have got enough.

Q. Did you have another meeting the next day? A. Yes, Sir.

Q. Where? A. At my house.

Q. Who was present? A. Mr. William C. Kingsley, Mr. Franklin Woodruff, my father and Gen. Butler.

Q. Any one else? A. And my wife.

Q. Was Mr. Tracy there? A. No, I believe not; he came that evening though, after I had been to the Committee.

Q. Did anything occur that evening after you had been to the Committee with regard to these papers that you did not produce?

Mr. Evarts—With whom?

Mr. Fullerton—With General Tracy.

Judge Neilson—I think that is sufficiently accounted for.

Mr. Evarts—Yes, Sir.

The Witness—Yes, Sir; there was something.

Judge Neilson—Well, we will let that stand, then.

Mr. Fullerton—Now, Mr. Moulton, what statement was then under consideration when you thus went to the Fifth Avenue Hotel and had this conversation?

Mr. Evarts—The conversation at the Fifth Avenue Hotel?

Mr. Fullerton—Yes.

Judge Neilson—What statement was under consideration?

Mr. Fullerton—Yes.

The Witness—The first long statement that I prepared, which was preceded in the publication, that I made of it by a card to the public.

Mr. Evarts—You describe it as the first long one? A. Well—

Mr. Fullerton—Never mind! never mind!

The Witness—I can't help minding him.

Mr. Fullerton—I know; this talk back and forth between you and the counsel is out of order, in my judgment.

The Witness—Well, Sir, I beg pardon.

Q. Did you know, or did Mr. Tilton know at any time that he was furnished with money directly or indirectly, from Mr. Beecher? A. No, Sir.

Q. Did Mrs. Tilton know that any money that was furnished to her came directly or indirectly from Mr. Beecher? A. I don't think she did.

Q. You didn't tell her, did you? A. I did not.

Q. Your attention has been called to your intimacy with Mrs. Woodhull? A. Yes, Sir.

Q. And you have stated when it commenced and when it ended, I believe? A. I believe I have; yes.

Q. I want you to state, Sir, now, what caused you to permit or to cultivate that intimacy—acquaintance or intimacy?

Mr. Evarts—The direct examination has gone into that, Sir, and we cross-examined him upon it.

Mr. Fullerton—I have a right to show now, Sir, what object he had in view.

Mr. Evarts—That he showed on his direct examination.

Mr. Fullerton—No, he did not show it.

Judge Neilson—Partially. I think, not wholly.

Mr. Evarts—Just so far as they saw fit. It is *their* subject,

and they were not to leave it unless we have laid a foundation for some inquiry concerning the matters that we brought out; but that is not this inquiry. The question is, what the motives and reasons of his acquaintance with this woman were, which was the very thing which was the subject of direct examination.

Mr. Fullerton—Your Honor will perceive that, since the direct examination, they have put in a portion of this Woodhull scandal, which makes it necessary now that we should account for this gentleman's acquaintance with that woman who promulgated those doctrines.

#### MOULTON'S SENTIMENTS TOWARDS WOODHULL.

Judge Neilson—I think you may ask him what led to that acquaintance, and what let to its continuance.

Mr. Evarts—I will call your Honor's attention to this.

Judge Neilson—I recollect it generally, Sir. I think he may ask what led to that acquaintance and what let to its continuance. [To Mr. Fullerton.] Now put the question, Sir.

Mr. Fullerton—Now, may I go on, Sir?

Judge Neilson—Go on.

Mr. Fullerton—What led to your acquaintance with Mrs. Woodhull, and to its continuance?

Mr. Evarts—Your Honor will note an objection to that as being a recurrence to a subject already affirmatively introduced by them.

Judge Neilson—Yes, Sir.

The Witness—The desire, Sir, entirely, for the suppression of the stories against Mr. Beecher in connection with Mrs. Tilton, and his adultery with Mrs. Tilton.

Q. Were you acquainted with Mrs. Woodhull until these scandals were abroad? A. I never was acquainted with her, Sir, before; I never became acquainted with her, Sir, until after her card in *The World*; I stated it already.

Mr. Evarts—That was all stated on the direct.

Q. In which she foreshadowed an intention to publish this scandal? A. Yes.

Q. For what reason was she invited to your house? A. In order that I might use the better my influence upon her for the suppression of the story of Mr. Beecher's adulteries with Mrs. Tilton.

Q. State whether your wife objected to her being brought there? A. My wife did object to her being brought there.

Q. And whom did she consult upon the subject? A. Mr. Beecher.

Q. Were you present when Mr. Beecher gave her some advice on the subject? A. No. Mr. Beecher told me the advice that he gave.

Q. What did he say he advised her to do? A. Mr. Beecher said that my wife had said to him that I had asked that Mrs. Woodhull come to the house; and Mr. Beecher said that my wife had objected; and he said that he told her that he did not think association with Mrs. Woodhull could hurt her, and that he thought it to be her duty to co-operate with me for the suppression of these stories concerning him and Mrs. Tilton.

Q. Had you any sympathy with Mrs. Woodhull in her free-love doctrines?

Mr. Evarts—That I object to.

The Witness—I had not known her, Sir; no, I had not any sympathy with Mrs. Woodhull in her free-love doctrines.

Q. Did you know what her doctrines were before her speech at Steinway Hall upon that subject? A. No, I did not know anything about them.

Q. You were present, I understand you, at that meeting? A. I was—yes, Sir.

Q. You have told us that Mr. Tilton introduced the speaker? A. I have—yes, Sir.

Q. Will you tell us, as near as you can, what words were used in that introduction? A. Yes Sir.

Q. Please to do so?

Mr. Evarts—Well, your Honor.

Judge Neilson—That was proved by you, you know.

Mr. Fullerton—They proved the fact.

Mr. Evarts—Now, can we prove her whole lecture?

Mr. Fullerton—Not by proving what he said, because he did not repeat it.

Mr. Evarts—Can we prove her whole lecture?

Mr. Fullerton—That question does not come up.

Judge Neilson—I think you have it sufficiently; he introduced her.

Mr. Evarts—That is the point of my objection.

Judge Neilson—I think that is sufficient. It don't appear that he commended it.

Mr. Fullerton—They have laid the foundation, as they think, for an argument that Mr. Tilton is to be held responsible for all the doctrines promulgated there that night, because he introduced the speaker.

Judge Neilson—I have decided that he was not, unless it appeared that he knew before what the lecture was to be.

Mr. Fullerton—I may prove what he said when he introduced her, I suppose.

Judge Neilson—I do not see the value of it; it is not suggested that he commended her.

Mr. Fullerton—But it will be argued that he commended her.

Judge Neilson—I hardly think it.

Mr. Evarts—We certainly shall argue that the introduction of a lady to a public audience to deliver a free-love lecture is an assumption of responsibility towards the public for what she has to say.

Mr. Fullerton—Your Honor therefore sees you cannot anticipate what they will argue on the other side.

Mr. Evarts—The measure and extent of it, of course, is a subject of argument.

Judge Neilson—I have already ruled, I think, that unless it appears that Mr. Tilton knew what the lecture was to be—what the subject was to be—he was not responsible for the lecture following the introduction; and not being a prophet, or the son of a prophet, he could not foresee what she was to say.

Mr. Fullerton—Your Honor has been admonished by the counsel on the other side as to the line of argument they design to follow.

Judge Neilson—I think I shall take care that the jury shall not misinterpret it. I think there will be no misconception.

Mr. Fullerton—There will not be, if we are permitted to give this evidence.

Judge Neilson—I have decided that point.

Mr. Beach—It seems to me this question is altogether aside from that. It appears that Mr. Tilton introduced Mrs. Woodhull to the audience. Now is it to be seriously argued, when they prove the result of what Mr. Tilton said and did upon that occasion, that we cannot get at the details, and ask what he said by which he did the act which they prove he did.

Judge Neilson—If you did not introduce her, you could prove it, of course, by way of contradiction, but if all you did do was to introduce her, you can well afford to leave it there.

Mr. Beach—What is an introduction? We may afford to leave it under your Honor's ruling; but, Sir, I submit, when they prove an act done by Mr. Tilton, which must of necessity be accompanied by words, and do not give the words, may we not prove them?

Judge Neilson—I do not think that it is material. He went forward with his coat on his arm, and introduced her. That is all we have.

#### MINING UNDER THE CROSS-EXAMINATION.

Mr. Beach—He must have said something to introduce her.

Judge Neilson—It cannot be material here.

Mr. Beach—Your Honor will perceive that it may be immensely material to us, Sir. Suppose Mr. Tilton had said in that introduction to the audience, "Ladies and gentlemen: I am requested to present Mrs. Woodhull to you this evening, but I caution you that I am not responsible for anything she may say." Is not that admissible, Sir?

Judge Neilson—You may prove that if you can.

Mr. Beach—It is just what we are going to prove.

Judge Neilson—I hardly think it is to be expected that a gentleman would take such a precaution as that.

Mr. Beach—Very possibly, but I give it as an illustration.

Judge Neilson—We will take it.

Mr. Evarts—Your Honor will note our exception.

Mr. Fullerton—Repeat, as nearly as you can remember them, the words with which he introduced Mrs. Woodhull to the audience at Steinway Hall on that evening? A. Do I need, in the answer to that question, to precede that introduction at all?

Q. No.

Judge Neilson—When he came forward with his coat on his arm, to introduce her, what did he say? A. As nearly as I can remember, Sir, I have not read it.

Mr. Evarts—We ought to know whether he remembers anything about it.

The Witness—I shall give it as nearly as I can recollect it: "Ladies and gentlemen—It is quite unusual for me to be in town during the lecture season, and I unexpectedly find myself here to-night. I find that several representative men have been asked to introduce the lady who will address you, to this audience, and some have refused on the ground that they knew nothing of her character, and others on the ground that they are in doubt as to her views. As to the first, I think I know that, and will therefore take the responsibility of vouching for

It. As to the second point, I do not know what her views are. I have never heard her express them. She may be a fanatic and a fool. I would rather be both in one than to lack the courage to ask from an American audience, for a woman, the right of freedom of speech." [Laughter and applause.]

Q. Was that the substance of it? A. That was the substance of it, except the applause that followed. [Laughter.]

Q. Then followed the lecture? A. Then followed the lecture; yes, Sir.

Q. Now, Mr. Moulton, did you and Mr. Tilton have an engagement that evening at a place other than Steinway Hall? A. Yes, Sir; we did.

Q. Whose proposition was it to go to Steinway Hall that night? A. Mr. Tilton had an engagement to dine with me at my house, and I went to *The Golden Age* office for him to have him come to my house, and he said—

Judge Neilson—Do not say what he said.

Mr. Fullerton—I propose to show that going to Steinway Hall was merely accidental that night.

Judge Neilson—Prove that; not by conversation.

Mr. Fullerton—I can hardly prove it in any other way.

Mr. Evarts—That is the trouble. The conversation between him and Mr. Tilton does not prove as against Mr. Beecher how he happened to go there.

Judge Neilson—No.

Mr. Evarts—That is the trouble with all of it, that the proof, so far as we are concerned, does not derive any authority from anything that proceeded from us.

Judge Neilson—Mr. Fullerton, go on.

Q. At whose suggestion was it that you went there that night? A. Mr. Tilton said that as we had not—

Judge Neilson—Do not say what was said.

The Witness—I beg pardon.

Mr. Evarts—I object to the question at whose suggestion he went, unless Mr. Beecher is connected with it. Your Honor can see that the whole narrative of these two men's lives can be given under this.

Judge Neilson—We do not propose to take the conversation at all. At whose suggestion?

Mr. Fullerton—At what time in the afternoon or evening was the suggestion made?

Mr. Evarts—That I object to.

Judge Neilson—We will take it.

The Witness—About six o'clock, between five and six.

Mr. Evarts—Why is it at all material, your Honor, and how does it become evidence against us, whether it was accidental or whether the suggestion of third persons, or the suggestion of a newspaper, or what not? It has not the quality of evidence bearing against us in this case.

Judge Neilson—I think it should be received, Sir.

Q. What time in the afternoon was the suggestion made?

Mr. Tracy—Your Honor will note our exception?

Judge Neilson—Yes, Sir.

A. Between five and six o'clock, Sir.

Q. What was your dinner hour? A. Six.

Q. You had no thought then of going to Steinway Hall until that suggestion was made? A. No.

Mr. Evarts—That I object to.

The Witness—No.

Judge Neilson—They certainly have a right to prove that this introduction which you have shown came about casually or accidentally, was not a fixed, set purpose, or whatever the character of it was, not to give conversations. That is the extent of my ruling. Go on, Sir.

Mr. Evarts—Your Honor has my exceptions?

Judge Neilson—Yes, Sir.

Q. You have spoken of the Produce Exchange. That is an institution in New York, I believe? A. Yes, Sir.

Q. Are you a member of it? A. I am.

Q. How long have you been a member of it? A. For a good many years. I don't know how many.

Q. How many members are there in that institution? A. I think there are 2,000 or 2,500.

Q. How many are there in daily attendance, generally? A. I should think 1,500 or 2,000, as near as I can estimate it.

Q. How frequently do you attend the Produce Exchange? A. Every day—every business day, when I am in town.

Q. Now, will you state how many different men—give us some kind of an estimate—accosted you in reference to this scandal, after these statements were made? A. A great many, Sir. I don't know how many. A great many.

Q. Give us some idea of the number—the daily number that accosted you concerning it after this scandal broke out?

Mr. Evarts—You mean after the Woodhull publication?

Mr. Fullerton—Yes, Sir.

A. I don't know; 15 or 20 a day, I should think, during the excitement of it, at least.

Q. Sometimes more? A. Yes, Sir.

Q. What was your object in answering them?

Mr. Evarts—That I object to.

The Witness—To mislead.

Mr. Evarts—That I object to, if your Honor please.

Judge Neilson—That is already ruled upon.

Mr. Evarts—I object to it as evidence in itself. Every man is to be judged by his words.

Judge Neilson—I cannot take that.

Mr. Fullerton—It was not objected to at the time he did it.

Mr. Evarts—Certainly.

Mr. Fullerton—No, Sir; it was all right then. I have a right to prove why he did it, and who approbated it.

Mr. Evarts—Then you get the evidence; but your asking him why he did it does not get any evidence.

Mr. Beach—Your Honor, we have not proved that, except in very general terms. They put questions to this witness, and proved his declarations made to specific parties at specific times and places. We now propose to prove by him that those declarations which he admits to have made were made with this same purpose, that he spoke of it generally, and to show that the answers which he gave were dictated by Mr. Beecher.

Judge Neilson—That is a modification of the question put. I think that view is correct. Your question related to all the persons that accosted him.

Mr. Fullerton—Certainly it does.

Judge Neilson—The question, if limited to those whose names have been given by them—

Mr. Fullerton—Well, they are legion, Sir.

Judge Neilson—I think he may answer that, as to all those.

Mr. Evarts—He may answer whatever Mr. Beecher said to him concerning all those.

Judge Neilson—All those, Sir.

Mr. Evarts—But nothing else, of his own movements, of his mind and reasons.

Judge Neilson—He may state his reasons, provided he afterwards communicated it to Mr. Beecher.

Mr. Evarts—Well, but are we to assume that he did? Your Honor has frequently said that the better way is to begin with what he did communicate to Mr. Beecher.

Judge Neilson—Well, we have some evidence on the subject already.

Mr. Evarts—It is already in.

Judge Neilson—Yes; now as applied to these persons.

Mr. Evarts—We don't want more brought in unless it is brought in legitimately.

Judge Neilson—In regard to these persons you have named.

Mr. Evarts—That is, whatever passed between Mr. Beecher and this witness concerning any of these witnesses, separate from what is already introduced, I suppose might be legitimate evidence; but that is not the point of the present inquiry.

Mr. Fullerton—What object had you in view in replying to those people in the Produce Exchange who accosted you and questioned you in reference to this scandal?

Mr. Evarts—That we object to.

The Witness—To give Mr. Beecher a character for purity.

Mr. Beach [To the witness]: They object. You should not answer.

The Witness—I beg pardon.

Mr. Evarts—Your Honor heard the question?

Judge Neilson—Yes, Sir, I admit it, and you take an exception.

Judge Neilson—He has answered.

The Witness—I have answered.

Q. What idea did you mean to convey to these people?

Mr. Beach—I would like to have the answer read.

THE TRIBUNE stenographer read the answer referred to as follows: "To give Mr. Beecher a character for purity."

Q. You used appropriate language for that purpose, did you? A. Yes, Sir.

Mr. Evarts—That I object to. The words he used are the words to be given in evidence.

Judge Neilson—You have got it.

Mr. Evarts—What authority is there to ask a witness to state evidence, and then ask for a statement by the witness himself that he used words appropriate?

Judge Neilson—As he understood it.

Mr. Evarts—I understood that; but, your Honor, how does it become a subject of evidence, when it is what he said that you and the jury must judge of, and not take the witness's construction?

Judge Neilson—We will take it.

Mr. Evarts—I move to strike out the answer.

Judge Neilson—Denied.

Mr. Evarts—We except.

Judge Neilson—Proceed.

Q. What passed between you and Mr. Beecher in regard to what you said, or what you were to say to any persons, who catechized you on the subject?

Mr. Evarts—That we object to, as they have examined him about it.

Judge Neilson—I think that is proper if applied expressly to any of these gentlemen whom you have named.

Mr. Evarts—Undoubtedly. If they will take Mr. Buck or Mr. Swan or Mr. Baxter—

Judge Neilson—You need not name him.

Mr. Evarts—There is the point, if your Honor please.

Judge Neilson—You have named them all and the answer of the witness should be applied to some of those persons.

Mr. Evarts—Now, if your Honor please, it is not permissible for this witness to apply the past evidence argumentatively to these people. That is *his* affair. What Mr. Beecher said to him he has already testified to. Now, if he has anything more that Mr. Beecher said to him concerning these particular cases, he may now be inquired of undoubtedly upon the particular cases having been brought in by us. But that is not the effort. The effort is not to give any new fact concerning Mr. Beecher, but to apply by the witness's argument or statement some previous statements of Mr. Beecher, to these particular circumstances.

Judge Neilson—I don't know whether they were previous and general or not.

Mr. Evarts—I ask to be guarded against any such consequences. If each of these cases can be put to the witness, and it is said, "What did Mr. Beecher say to you concerning what you said or what you should say to Mr. Swan?"—that is a question, possibly, admissible.

Judge Neilson—It is not to be expected that the witness could have gone to Mr. Beecher and said to him, "I had a conversation with A. and told him so, and with B. and told him so and so."

Mr. Evarts—It is not for us to suppose what could and could not be done.

Judge Neilson—Mr. Fullerton, will you proceed? I think there is a line proper—

Mr. Evarts—There is a limit, if your Honor please.

Judge Neilson—No doubt there is a limit. [To Mr. Fullerton]: You must have an idea.

Mr. Fullerton—I have a distinct idea, and that idea is shadowed forth in my question.

Judge Neilson—Go on, in respect to any of these persons named on the cross-examination.

#### ADVICE TO NEWSPAPERS.

Mr. Beach—Now, if your Honor please I must interrupt this examination for the purpose of stating to your Honor a fact which has just been communicated to me by a gentleman who acts here as a reporter. He states to me that he has received the points from some of the counsel engaged in this case, and they are not confined upon the part of the

plaintiff, in regard to a review which he is writing of the cross-examination of the testimony of Mr. Moulton. That will be, Sir, a commentary upon the proceedings in this trial, which I undertake to say will be a statutory contempt, subjecting the party who writes it to proper dealing on the part of this Court; and I ask your Honor to admonish that gentleman, and any other person who appears here under favor of the Court to report the proceedings of this trial, to abstain from comments of that character. I don't know, Sir, whether they will be favorable or unfavorable. I care not what their character may be. We ask no such favors from the press, and I give the gentlemen notice that if any paper whose reporter is admitted to the floor of this Court upon this trial, publishes comments upon the statement of Mr. Moulton or any other witness, that I shall bring the matter formally before the Court under proceedings for contempt.

Judge Neilson—Of course I can now do no less than make the suggestion that you think I should make, that it would be well for the gentleman to refrain. My source of security all along has been that the Jury do not, pending this trial, read the papers. I am entirely satisfied they do not. Beyond that I have no way—

Mr. Beach—By statute, Sir, it is made a contempt of the Court for the public press to comment upon the proceedings of a public trial, and gentlemen who do it are brought under the jurisdiction of the Court; and, I think, Sir, that our causes have suffered prejudice enough, upon the one side or the other, by what I deem an entirely impertinent and improper interference of the press by those comments.

Judge Neilson—The press should refrain, undoubtedly, from those points. Still, I say the security is with the Jury and in their faithful observance of what has been said to them, because if the New York or Brooklyn papers should refrain from comments we have no assurance that the New-Jersey or Philadelphia papers would do so.

Mr. Beach—They are out of our jurisdiction.

Judge Neilson—They may come to the eyes of the Jury. Proceed.

[THE TRIBUNE stenographer reads the question.]

Q. What passed between you and Mr. Beecher in regard to what you said, or what you were to say to any person who criticised you on the subject?

Mr. Evarts—That we object to as recalling what has been already testified to on the subject.

Witness—Can I answer it?

Judge Neilson—Proceed.

The Witness—I remember, Sir, having said to Mr. Beecher that I had been questioned by Mr. Baxter on the subject, and by others whose names I do not now recollect, and that I had undertaken to mislead them, by stating to them, in the first place, that if the story was true, it was infamous, and if false, it was diabolical; that if his life was not an answer to it, I did not choose to make any, that I did not think it was necessary; that being pressed close I had denied the truth of the criminal intercourse with Mrs. Tilton, and said he was a pure man. And he thanked

me; he said he thanked me for doing that; and he said there was only one way, since lying was necessary, and that was to lie sublimely.

Q. Do you recollect the conversation had with Mr. Halliday? A. Yes, I remember that.

Q. What was that conversation? A. The purport of it was that Mr. Beecher was a guiltless man. This I told Mr. Beecher: that I had undertaken to tell Mr. Halliday it was a shameful proceeding for deacons to dig into a scandal that had been already settled amicably between the parties, and Mr. Beecher thanked me.

Q. Do you recollect the letter put in evidence from Mr. Beecher to yourself, wherein he says, in substance, "your conversation with Mr. Halliday was quieting?" A. Yes; I saw him after that letter, too.

Q. What took place after that letter? A. He spoke of the letter, and thanked me for my interview with Mr. Halliday.

Q. Mr. Halliday was the Assistant Minister? A. Yes, Sir. Have you got the letter?

Q. Your interview with Mr. Halliday satisfied him? A. Something of that sort.

Q. What did Mr. Halliday question you about? A. Mr. Halliday asked me about the stories against Mr. Beecher and his alleged intercourse with Mrs. Tilton, &c.

Q. Did he tell you his object in making those inquiries? A. He said something about a Deacons' meeting; I don't know exactly what it was.

Mr. Evarts—This has all been given in evidence before on the direct.

Judge Neilson—You have called out the conversation with Mr. Halliday since.

Mr. Evarts—That is this witness's conversation with Mr. Halliday.

Mr. Beach—You asked for it.

Judge Neilson—The general rule is that counsel shall not have the witness repeat the evidence given on the direct. No doubt that is the rule.

Mr. Beach—Undoubtedly, Sir. We do not seek to do that. After the interview with Mr. Halliday he talked with Mr. Beecher about it.

Mr. Evarts—That is the only reason you got it in before. [Reading]: "What was the subject of the interview? A. The subject of the interview was with Mr. Halliday. Mr. Evarts—Did you repeat it to Mr. Beecher? Witness—Oh, yes, Sir. I talked with Mr. Beecher about it afterwards." Then Mr. Fullerton went on, "Q. What was the subject of the interview between you and Mr. Halliday?" And then he goes on and gives the whole interview.

Judge Neilson—You are correct if what you refer to is this interview.

Mr. Evarts—Undoubtedly. No other.

Judge Neilson—The counsel must accept the admonition.

Mr. Fullerton—From whom do I understand it comes, your Honor? I am entirely correct. I am only proving something that grows out of the cross-examination, referring to this branch of the examination; not elicited on the direct.

Judge Neilson—You have a right to do that.

Mr. Evarts—My objection is, it is not that. It is the direct examination reproduced, out of which the cross-examination grew, that he is now inquiring about.

Mr. Beach—We proved the conversation with Mr. Halliday, and we are proving it was repeated to Mr. Beecher.

Mr. Evarts—That you have proved also. The only reason you proved your conversation with Mr. Halliday was, that you proved it was repeated to Mr. Beecher.

Mr. Beach—Yes, Sir; but we have not proved what Mr. Beecher said. You (Mr. Evarts) did not read that. Mr. Tracy says you have been reading it. You read what passed between Mr. Halliday and the witness.

Judge Neilson—If my memory is correct, I learn now, for the first time, that after this interview with Mr. Halliday, Mr. Beecher approved and thanked him for what he said. I think that is new matter.

Mr. Evarts—That is all here in the direct. May I say just how it was; I have it here: "I repeated it to Mr. Beecher, and Mr. Beecher thanked me for it."

Mr. Fullerton—Look at the letter of June 1st. It is the letter marked "Exhibit D 43," to which I call your attention. Do you recollect that? A. Yes, I recollect it; my letter.

Q. I call your attention to the phrase: "You can stand if the whole case were published to-morrow." What is it you meant by that expression?

Mr. Evarts—That I object to. There is the expression. It is plain English.

Judge Neilson—I think he can tell what it refers to. I do not think he can tell what it means. The question here is whether you can ask the witness to give the construction of a passage which is very good English. I think you cannot.

Mr. Fullerton—You cannot if it is in a contract; but if in a letter written by a witness on the stand, who has no interest in the suit, you can always.

Mr. Evarts—I object to any evidence which goes to interpret this plain language.

Judge Neilson—I so rule.

Mr. Evarts—The question is not allowed.

Judge Neilson—The witness writes with a certain intent, certain words, what the other side understands according to the fair and reasonable interpretation of what is written. I think it must stand in that way.

Mr. Fullerton—This letter is given in evidence, not for its effect upon the case, but for the purpose of affecting the witness on the stand.

Q. Had you any conversation with Mr. Beecher about the time of writing that letter? A. Yes, Sir; on Sunday night.

Q. When was that letter written? A. On Sunday morning.

Q. State, if you please, what that conversation was?

Mr. Evarts—Has not that been gone into before?

Mr. Fullerton—No, Sir.

Mr. Evarts—Was not every interview gone into with Mr. Beecher?

Judge Neilson—He is to take that conversation with special reference to this letter.

Mr. Evarts—If there was any.

Mr. Fullerton—Yes, Sir.

Mr. Beach—Or with reference to that expression, that he could stand if the whole case were known, etc.

Mr. Evarts—Primarily, every interview I have gone into; they have no right to inquire into it except in reference to our inquiries concerning it. The introduction of this letter is not an inquiry of ours concerning the interview, and if everything we introduce is to give a right to additional statements and interviews that have already been passed through and exhausted, why, of course, it is idle for us to give any evidence.

Judge Neilson—Such a thing might happen, as that evidence might be given on your part that would bring something to the mind of the witness not suggested or inquired about before. Go on.

Mr. Fullerton—State the conversation.

Mr. Evarts—I object to this general referring to an interview already given in evidence.

The Witness—Mr. Beecher came to my house on the evening of the Sunday on which this letter was written, and I said to Mr. Beecher, "You never give me any strength at all. If I was to follow you my hands would drop useless. You give me no courage; you give me no hope. Whenever there is an emergency to face in the matter, whether it is easy or whether it is hard to meet, you drop; you don't suggest the way out. Now, if you were to express to your congregation the contrition which you have expressed to me in consequence of your intercourse with Mrs. Tilton, they, in my opinion, would forgive you, and you could stand. I don't see any necessity for the hopelessness of your letter this morning. It is nothing but discouragement, and that is what I meant by the expression, 'You can stand if the whole case were known.'"

Q. What reply did he make to that? A. He considered that the card that was published on the morning of June 2d—

Judge Neilson—Did he make any verbal reply then and there? A. He said he could not feel hope, he was hopeless. He could not help expressing his feeling. That was the substance of what he said, and he said he came to me for strength. That is what he came for, he said.

Mr. Tracy—Did he say that more than once to you? A. Yes, Sir; many times.

Q. Did he ever say that to you of a Sunday evening on his way to church? A. This was Sunday evening; I am talking about this Sunday evening.

Q. What did he say on one occasion, or more than one occasion, of the meeting when he was on his way to church, when he would stop at your house?

Mr. Evarts—Is this not something we have gone into?

Judge Neilson—Counsel ought not to repeat what has been gone into; I hope he won't.

Mr. Evarts—The question is not whether it is a repetition of what was said. The question is whether it is a recurrence to a subject that he went through with, which is not lawful except in connection with something we have shown on cross-examination.

Mr. Fullerton—It is not a recurrence to a subject which has been gone through with.

Judge Neilson—Go on.

## WEAKNESS OF MR. BEECHER DWELT UPON.

The Witness—He used that expression or the substance of it to me very often on Friday evenings, before going to his prayer meeting, and on Sundays, and on various days of the week; I don't recollect the particular days.

Q. What was the expression? A. On which evening—on this evening?

Q. No, that we have got; on the other evenings. A. He said he wanted to get help and courage enough to face his people.

Q. Did you relate on your cross-examination all that occurred between you and Charles Storrs, when you went to see him in reference to the report which the Committee contemplated? A. I did not relate the whole of that—the cause of it, and all about it.

Q. I want you to relate all the conversation between yourself and Charles Storrs, if you did not relate it on your cross-examination? A. I told Charles Storrs, as near as I can recollect, that when I was at Lowell Gen. Butler read to me from the Boston papers that the Committee were not going to cross-examine me, and that I then telegraphed my partner, Mr. Woodruff, to see Mr. Sage, and tell him that I should be in New-York the next morning for cross-examination; that I had telegraphed Mr. Woodruff to have him (Charles Storrs) come to see me, and I presumed that he was there in answer to that dispatch, and I said to Mr. Storrs, "Mr. Storrs, Mr. Beecher has confessed to me, in the presence of another, adultery with a woman other than Mrs. Tilton. My counsel deemed it necessary that the papers and statement which I made to him concerning that event should go into the statement which I am about to make. I understand your brother is a member of this Investigating Committee. I want to say to you that I would like to have you see your brother, and not have him sign that report until I have had an opportunity to be cross-examined upon the statement which I have published. I want you to particularly put it upon that ground, namely, that I don't want to have him sign that report until I have had an opportunity to be cross-examined by the Committee;" and Mr. Storrs said to me, "I suppose you refer to a lady," &c., mentioning her name, and I said, "I do not mention any names. My disposition is not to hurt anybody. I have sent for you as a friend to come here for the purpose which I now explain to you," and that is what I said to Charles Storrs, as near as I can remember.

Q. Did you say anything on this subject to this effect, that your cross-examination would do away with the necessity of publishing a statement? A. Yes, Sir; I said something of that sort to him, substantially that; I said to Charles Storrs that Mr. Beecher had mentioned the woman's name, and he did.

Mr. Evarts—That last is not good evidence.

The Witness—I don't know whether it is or not.

Mr. Evarts—It is not without the inquiry, and the witness is not to volunteer evidence.

Judge Neilson—I don't know that he intends to volunteer.

Mr. Evarts—I didn't say he was intending to volunteer.

Judge Neilson—I think that last statement should be struck out.

Mr. Beach—Not the whole of it.

Judge Neilson—The statement that Mr. Beecher mentioned the lady's name.

Mr. Evarts—That is within your Honor's allowance, but the witness went on to state, "and he did state," etc.

Judge Neilson—Strike that out.

Q. Was what you said to Charles Storrs, true?

Mr. Evarts—That I object to.

Judge Neilson—That is ruled out. It is true as far as concerns himself and his examination, and what he said by the advice of counsel.

Mr. Evarts—They cannot give evidence in that way, by asking a man if what he told him on a subject was true.

Judge Neilson—I have ruled on that. Your comprehensive statement would get in that what this witness said to this third person was true.

Mr. Fullerton—No; was it true that Mr. Beecher made that statement to him, not that Mr. Beecher's statement was true.

Judge Neilson—No.

Mr. Fullerton—I would like to show that what the witness said to Mr. Storrs was true.

Judge Neilson—It is not material to us at all.

Mr. Fullerton—In your cross-examination you stated that Mr. Tilton told you his wife had been before the Committee, and had left the house. What else did he state to you in that conversation? A. That his wife had been before the Committee, and that he had left the house.

Q. That he had left the house in consequence of it, I understood you to say. A. Yes, Sir, it was in consequence of his wife having been before the Committee, and he said that he should never go back to it.

Q. Give us the whole conversation.

Mr. Evarts—That depends on whether it relates to this subject.

Judge Neilson—A subject you introduced.

Mr. Evarts—We prove the single fact that he left the house and that he told him so, and that he advised him to go back.

Judge Neilson—Is not the rest of the conversation material?

Mr. Evarts—If it related to other matters.

Judge Neilson—No, if it related to this matter.

Mr. Evarts—If it related to his leaving and going back.

Judge Neilson—If it related to the subject matter of the conversation.

Mr. Evarts—Your Honor sees that if, under cover of that, a narrative of conversations of what passed between Mr. Tilton and his wife, in general relating to this matter of controversy, is to be introduced, it is a very different inquiry.

Judge Neilson—The general proposition is that you, having introduced part of the conversation, he can call for the rest.

Mr. Evarts—All that relates to that subject, I apprehend, and nothing more. If in the same interview, they go on and talk of other matters, I have not introduced anything, of course.

Mr. Beach—We do not differ with the counsel in regard to the rule.

Mr. Fullerton—Not at all. The gentleman is making objections before the questions are asked.

Mr. Evarts—The questions are general, and the disposition of the witness is to answer freely.

Mr. Fullerton—I am glad to hear the gentleman's good opinion of him.

Mr. Evarts—That is so.

Mr. Fullerton—Answer the question.

The Witness—He said he had told his wife that he had not known of the appointment of the Committee, and she had not told him that she was going, and he didn't want her to go to any Committee without consulting him and letting him know she was going, and he didn't like that sort of conduct. That was substantially the point.

Q. Did he state whether or not he was informed of the substance of that statement, or that he was ignorant of it? A. He did not know anything about it.

Q. He did not know anything about it? A. No, Sir.

Q. Did he state in that conversation when he first heard of the appointment of the Committee? A. I think he stated that that was the first he had heard of it. I do not recollect distinctly about that; I think that is what he said—that he had not heard of it before that.

Q. Do you recollect when this conversation took place? A. It took place during the week of the 5th of July, I think; between the 5th and the 12th of July, I think.

Q. Do you know how soon it was after Mrs. Tilton had been before the Committee? A. How soon it was after what?

Q. After Mrs. Tilton had been before the Committee? A. I think she had been before the Committee that day—the evening on which he saw her, if my recollection serves me right.

Q. (Handing paper to witness) I now put in your hand Exhibit D 45, which is the proposed report of Mr. Tilton in his handwriting. From whom did you receive that? A. I think from Mr. Tilton.

Q. What did he say in regard to it at the time he gave it to you?

Mr. Evarts—That we object to, if your Honor please—whatever he said concerning the use of it, or whatever was to be done with it. If that is introduced by us, why, that is all very well. A discussion on the subject between these two gentlemen, because we have proved an act of Mr. Tilton with the paper, does not seem admissible.

Mr. Fullerton—Of course, we have a right to show what Mr. Tilton said when he passed the document over. Your Honor understands perfectly well that in that period of the history of this scandal, they were doing a great many different things for the purpose of concealing from the world the truth, and this was one of the schemes for that purpose that was to patch up and gloss over this whole affair. It was for the purpose of saving his wife and children that this was got up.

Judge Neilson—I think you are confined to any conversation he had with, or in the presence of, or that was brought to the knowledge of Mr. Beecher.

Mr. Fullerton—I don't want to imitate the counsel on the other side, by arguing a question after it is decided; but I ask your Honor to consider, for a single moment, that I am now

trying to prove what Mr. Tilton said at the time of the actual handing of that paper to Mr. Moulton.

The Witness—Mr. Tracy was a party to it, and he said he remembered Mr. Beecher.

Mr. Beach—Counsel on the other side conceded we had a right to show what Mr. Tilton said as to the paper, and what was to be done with it.

Judge Neilson—Instructions, of course.

Mr. Evarts—That is, instructions as to that paper; but not conversations concerning its contents.

Mr. Beach—Not concerning its contents. We are not going to ask anything in regard to its contents; but if I hand your Honor a certain paper, with a request to do a certain thing with it, for a certain purpose,—is not that evidence?

Judge Neilson—Yes, Sir.

Mr. Evarts—If I say, "I give you that paper to give it to Mr. Beecher"—But to say, "I give it to you for the purpose of deceiving him,"—that is not an admissible conversation.

Mr. Beach—I say it is. I give you a paper, and I say, "I want you to use that paper in a particular way, for a particular purpose."

Judge Neilson—That you may show.

Mr. Evarts—That is to be shown against them, and not in favor of them.

Judge Neilson—We cannot see how that will be.

Mr. Evarts—We could show that if we saw fit. We proved their action, and then they endeavor to explain, by words that passed between them, their action, which we, by way of cross-examination, can prove, because we affect them with what they say; but they cannot affect themselves as towards us, with what passed between them.

Mr. Beach—Let me put an illustration to your Honor. I consider this rule of some practical importance, and I pledged myself to furnish to your Honor authorities sustaining the proposition which I submitted a while ago, that wherever the act of any party is given in evidence his declaration accompanying that act is admissible to explain or to qualify. It is a general and fundamental proposition of evidence; and, suppose, if the gentleman's doctrine was applied to all the various circumstances which arise in a court of justice—suppose a man was indicted for striking me, Mr. Evarts comes to me and delivers a blow in my face, and at the instant of delivering that blow he accuses me of having injured him in some form. He gives the motive and the purpose with which he delivers that act. Can that act be proved against Mr. Evarts without permitting him to give the declaration accompanying the act, showing the motive and the purpose. Suppose he said to me, "Mr. Beach, you have assaulted me, or you have circulated infamous slanders against me or my family," may not that be given in evidence to characterize the transactions? And whoever heard that declarations accompanying an act given in evidence against a party or a witness cannot be given for the purpose of explaining the circumstance and the motive which is to qualify and characterize the transactions? What is the meaning of the rule of law that what happens upon a particular occasion may be given in evidence as a part of the *res gestæ*, whether they are acts or declarations. Anything



which is material to be proved, may be proved by the accompanying and surrounding circumstances.

Judge Neilson—Material to the act?

Mr. Beach—Certainly, your Honor, material to the act.

Judge Neilson—I think you agree about that. Proceed, Mr. Fullerton.

Mr. Evarts—Let me say this: My learned friend puts to you a case which is within the recognized rules of evidence, although the case otherwise is not a supposable one, either that he should have given me an offense, or that I should have struck him in the face. But I deliver the blow, and at the same time say, as accompanying the act, to the man to whom the blow is given, what is sought is to be affected by the blow. That is a spoken act. That is not hearsay. That is a part of the blow; but here the point is—

Judge Neilson—It goes to the question of malice.

Mr. Evarts—It is a part of the blow. It is a spoken act. Some confusion, no doubt, arises in lawyers' discussions about hearsay, because that comes by word of mouth, but your Honor is familiar with the distinction that our learned friend has given, of a spoken act—of the act of doing; but here we give a paper as used in a certain way, to wit, a paper written by Mr. Tilton, and brought by Mr. Moulton from Mr. Tilton, and proposed in a subsequent conversation to be read before the council. We have a right to show that Mr. Tilton did take the paper. Now, if he gave instructions to take the paper, and lay it before the council, or carry it to Mr. Beecher, that is a part of the act of delivering it to him; it comes within the spoken acts; but this question is large enough to draw out, and so, I suppose, is intended to draw out a larger line of mere hearsay evidence, to wit, conversations between Mr. Moulton and Mr. Tilton with which Mr. Beecher cannot be affected.

Judge Neilson—That distinction must be observed. Go on Mr. Fullerton.

Mr. Fullerton—When anything comes out that is a refraction of the rule counsel can raise his objection.

Mr. Evarts—We have a right to have questions properly framed.

Mr. Fullerton—The Court says the question is proper. I repeat the question.

Mr. Evarts—What is the question?

Judge Neilson—Let the stenographer read it.

[THE TRIBUNE stenographer read the question].

Mr. Evarts—I understand your Honor's instruction is, what is to be done with the paper?

Judge Neilson—What he said in regard to it—the paper.

Mr. Evarts—That will cover its contents. I object to the question, if your Honor please, and you will please note my exception.

The Witness—Mr. Tilton said to me, in accordance with the consultation that had taken place the night before between Gen. Tracy, himself and myself, that he had gone home and that he had dictated in part to Elizabeth a statement for the Committee to sign, which he had copied, and which he handed to me. This was the document: I believe, that he handed to me, and I subsequently—

Judge Neilson—Did he tell you what to do with it?

The Witness—He said it was a report for the Committee in accordance with the consultation, and I saw Mr. Tilton and Mr. Tracy subsequently together, and Mr. Tilton read this to Mr. Tracy, or Mr. Tracy—

Mr. Evarts—We object to this. Mr. Tracy is not Mr. Beecher.

Judge Neilson—The mere act of reading it, I think, is correct.

Mr. Evarts—If read between Mr. Tilton and Mr. Moulton it would not be evidence. If read between Mr. Tilton, Mr. Moulton and a third person it would not be evidence. If it was with Mr. Beecher it would be.

Judge Neilson—He has answered your question. That last should be struck out.

Q. What did you do with that statement you now hold in your hand? A. I kept it.

Q. It was not used? A. No, Sir.

Q. At that time had either Mr. Tilton or Mr. Beecher been before the Committee that you know of? A. No, Sir, I think not at that time, not to my knowledge at all.

Q. Did you have any conversation with Mr. Beecher in regard to that proposed report? A. I don't recollect whether in regard to this one; I think I alluded to this report in the conversation with him in his house.

Q. In what way did you allude to it? A. I think I told Mr. Beecher, during the week of the 12th of July, that Mr. Tilton had prepared a statement.

Mr. Evarts—That is a direct examination that has heretofore been gone into.

Mr. Beach—Not in regard to this witness.

Mr. Fullerton—This report is introduced by the other side. We now learn of it for the first time on cross-examination.

Mr. Evarts—Not at all.

Mr. Fullerton—We learn its contents for the first time.

Mr. Evarts—I think you had the paper in your hand, and that was the long statement, and you put in the short one, and the witness talked about the long one and the short one.

The Witness—I didn't have the long one with me when I went to see Mr. Beecher.

Mr. Fullerton—It was put in evidence on the cross-examination, for the first time.

Judge Neilson—We will take the statement.

Q. In what way did you allude to that statement in your conversation with Mr. Beecher?

Mr. Evarts—I object.

Mr. Beach—Go on.

The Witness—You told me not to go on, Mr. Beach, when there was an objection.

Mr. Beach—I now say you may go on.

The Witness—I told Mr. Beecher, during the week of July 12th, that Mr. Tilton had consultations with Gen. Tracy and myself, in which Gen. Tracy had pictured to Mr. Tilton the interview that his wife had with the Committee; that Mr. Tilton had prepared a statement.

Mr. Evarts—I submit, your Honor, that that precise conversation was given before.

Judge Neilson—It may not have appeared before that it related to this very report.

Mr. Evarts—This very remark—

Judge Neilson—Go on.

The Witness—That he had prepared this report, and that if it had not been for Mrs. Tilton's having left the house, and the publication of his correspondence with the Committee, that this thing would probably have been accepted, because Mr. Tracy had told Mr. Tilton that he thought he could get substantially this adopted by the Committee. That is as near as I can recollect the conversation concerning this statement.

Q. What reply did he make? A. I don't recollect what his reply was. It was at that point that I showed him the short statement which I had in my pocket.

#### HOW BEECHER'S PORTRAIT WAS PRESERVED.

Q. Some importance has been attached to the portrait of Mr. Beecher that was once hung in your house and has been taken down. I will ask you a single question in regard to it. Where did that portrait hang when you first put it upon the wall—Mr. Beecher's portrait? A. It hung in my parlor in Remsen street on the wall.

Q. Where did it come from? A. It came from Mr. Tilton's.

Q. When? A. I don't recollect the date when.

Q. About what time? A. I should think some time in 1871.

Q. How long did it hang in that place? A. It hung there until Mr. Paige's portrait came there, a few months ago.

Q. Then it was taken down, and Mr. Paige's put in its place? A. Yes, Sir.

Q. What was done with Mr. Beecher's? A. Put up-stairs, on the mantelpiece.

Q. Preserved? A. Yes, Sir.

Q. In good condition? A. Oh! yes, Sir. Standing along side of an engraving of Cupid and Psyche.

Mr. Evarts—I ask that this be stricken out.

Judge Neilson—Yes.

Mr. Evarts—I ask your Honor to state to the witness, who does not yet seem to have learned, that such observations are improper.

The Witness—I understood Mr. Fullerton asked me where it was, and I told him. I didn't mean to be vulgar or abrupt, only to be specific.

#### A SHARP FINANCIAL POLICY.

Q. You were asked in regard to the notes that were given by Mr. Tilton to the various subscribers to the stock of *The Golden Age*. [Handing papers to witness.] Look at the four papers which I now show you, and say whether they are the notes which you alluded to? A. Yes, Sir; those are the ones.

Q. Whilst counsel are examining those notes, I will show you a letter, and ask you whether that is the letter accompanying the return of the note? A. Yes, Sir.

Q. [Handing paper to witness.] Look at the other paper now shown you, and say whether that accompanied them or preceded them? A. Yes, Sir; this is the note that accompanied it.

Mr. Fullerton—I offer this in evidence:

NEW-YORK, September 15, 1871.

\$1,500. For value received, I promise to pay Francis D. Moulton fifteen hundred dollars, with interest at the rate of seven per cent. per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

NEW-YORK, September 15th, 1871.

\$1,500. For value received, I promise to pay Franklin Woodruff fifteen hundred dollars, with interest at the rate of seven per cent. per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

NEW-YORK, September 15th, 1871.

\$750. For value received, I promise to pay John C. Southwick seven hundred and fifty dollars, with interest at the rate of seven per cent. per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

NEW-YORK, September 15, 1871.

\$750. For value received, I promise to pay Jackson S. Schultz seven hundred and fifty dollars, with interest at the rate of seven per cent. per annum; the payment of principal and interest to be contingent upon the success of *The Golden Age*, of which newspaper I am the sole editor and proprietor.

THEODORE TILTON.

Mr. Fullerton—They are all signed "Theodore Tilton," and are all marked "canceled."

The notes are put in evidence and marked "Exhibits No. 58," "No. 59," "No. 60" and "No. 61."

Mr. Fullerton—I now offer in evidence this letter.

November 10th, 1872.

DEAR THEODORE:—I have it all fixed. You are free, so be brave. Your notes will all be given up, canceled and returned to you to-morrow. Inclosed find small bill of interest, for which I must ask the money to feed the orphans.

Very truly yours,

F. WOODRUFF.

[Marked "Ex. No. 62."]

Mr. Fullerton—Now, I read this paper.

NEW-YORK, June 11th, 1873.

MR. THEODORE TILTON—

Dear Sir: We, the undersigned, desiring to contribute to the loss sustained by you in establishing *The Golden Age*, do cheerfully return herewith the notes canceled which you gave for money loaned. Wishing you continued success and prosperity in the years to come, and congratulating you on having so successfully founded the paper, and that you are now free from debt,

We are, dear Sir, yours truly,

F. WOODRUFF, \$1,500,

FRANCIS D. MOULTON, \$1,500.

JOHN W. MASON, \$1,000.

JOHN C. SOUTHWICK, \$750.

J. S. SCHULTZ, \$750.

J. P. ROBINSON, [by F. WOODRUFF,] \$500.

Q. These notes bear date Sept. 15, 1871. I want to know, now, with reference to that date, when the Woodhull biography was written and published? A. It was before that, I believe.

Mr. Evarts—That has been offered in evidence.

Mr. Fullerton—I know it has.

Mr. Evarts—No, but to repeat matter of evidence, for argumentative juxtaposition.

Mr. Fullerton—My friend on the other side made a great point in his case—

Mr. Evarts—That is argument.

Mr. Fullerton—I am glad you think so. I am arguing.

Mr. Evarts—What I object to is your reproducing proof.

Judge Neilson—The precise date is not given.

Mr. Fullerton—No, Sir.

Judge Neilson—The fact that it was published appears.

Mr. Fullerton—I want to know whether the Woodhull biography was published before or after these notes.

Judge Neilson—That he may answer.

The Witness—I think it was before.

Q. How long? A. I don't remember the date; some time before.

Q. The notes were given in 1871, and given up in 1872. A. Was your question, when the notes were given?

Q. When the notes were given with reference to the publication of the Woodhull biography? A. The notes were given after the publication of the Woodhull biography.

Q. Do you remember how long after? A. I don't remember the date; I cannot recall it.

Judge Neilson—It appeared on the cross-examination, the notes were given up after that publication.

Mr. Fullerton—Yes, Sir; and it was argued that it was in consequence of it.

Mr. Morris—Whereas the fact is, they were not given. The notes had no inscription until after the publication of that.

Mr. Evarts—We will see; we object to arguing the matter as we go along.

Mr. Morris—You should not object much to arguing, for you are all the time at it.

Mr. Fullerton—It is suggested that I should ask you whether these notes were given up at the date of the Woodruff letter? A. My recollection is that they were.

Mr. Evarts—It is now four o'clock.

Mr. Beach—We had better go on a little longer. How will you be in the morning, Frank?

The Witness—I don't know, Sir.

Mr. Beach—[After consulting with witness.] Your Honor knows that Mr. Moulton has not been able to go to his residence this day, since he heard of his mother's death, and he tells me he would prefer to have as much of this afternoon as possible. I think he can arrange his affairs so as to be here in the morning at the usual hour.

Judge Neilson—Then we will adjourn.

The Court was then adjourned to 11 o'clock Wednesday.

## THIRTEENTH DAY'S PROCEEDINGS.

### THREE NEW WITNESSES CALLED.

TESTIMONY OF MRS. MARTHA A. BRADSHAW AND WM. F. WEST—FRANKLIN WOODRUFF CALLED.

Anticipations of the appearance of new witnesses and curiosity to know who they were to be as well as to hear what they had to say filled the court-room on Wednesday with the great crowd which on the first days of Mr. Moulton's testimony made the room uncomfortable. On no day has the crowd been greater or more attentive.

Mr. Moulton's ordeal as a witness ended at noon. Mr. Fullerton resigned him to the hands of the opposing counsel 15 minutes after the opening of the court, after having attempted only to gather a few fragmentary bits of testimony. The recross-examination was short, but it was also sharp. Mr. Tracy's questions were precise and delivered rapidly, and Mr. Moulton's replies were equally positive. Only when Mr. Tracy asked whether he (Mr. Tracy) knew what Mr. Moulton's statement to the Committee was to be before Mr. Moulton appeared before the Committee, "No," answered the witness; "but you knew what you wanted it to be." Gen. Tracy asked that the witness be admonished for thus replying, but Judge Neilson unhesitatingly refused, saying that the witness had been tried and tortured for nearly ten days by the counsel on both sides, and he should therefore be excused without any sort of reprimand. When Mr. Tracy asked Mr. Moulton for his views of the marriage relation, there was an evidence of merriment on the part of the audience in apparent anticipation of some singular views on the part of the witness. But he replied unhesitatingly in plain terms. Mr. Moulton was placed in the witness chair two weeks ago on Wednesday, at 2 p. m., and was under examination nearly 11 days, which amounts to saying that he was engaged for very nearly 44 hours in hearing questions and making replies.

The entrance of Mr. Morris by way of the door leading into the ante-room of the court a few moments before noon, with a strange lady at his side, caused marked sensation in the audience, which was manifested by the visible stretching of necks and audible whisperings. She was conducted to the witness chair, and gave her name in a low tone as Mrs. Martha A. Bradshaw. Mrs. Bradshaw is a pleasant-looking lady of about 45 years of age, very quiet and retiring in manner, and evidently felt the embarrassment of her position. She was dressed plainly in

black, and enveloped in a black cashmere shawl. According to her testimony, she has been a member of Plymouth Church and has known Mr. Beecher for 23 years, and has been acquainted with Mr. and Mrs. Tilton for nearly as long a time. Of the latter the witness had occasion to say that she was a most refined and sweet-minded woman, whom no one could know without loving. As she spoke these words, the voice of the witness, which had before been scarcely audible, sank to a whisper, and her eyes filled with tears. During her entire examination she sat almost immovable, with downcast and tearful eyes, but she gave her testimony clearly and without hesitation.

In the various statements and in the opening address of Mr. Morris, great stress was laid upon the evidence which Mrs. Bradshaw was expected to give, and it had been hinted that she would add important documentary testimony to the case in favor of Mr. Tilton. Her letter to Mr. Beecher proved to be one asking advice as to what she should do in reply to the summons of the Church Committee which was to try the "West charges" against Mr. Tilton for slandering Mr. Beecher, and asking him to deny Mr. Tilton's story to her, that she might mitigate what she would be compelled to tell the Committee. Throughout the letter there is no intimation that she believed Mr. Tilton's story or doubted Mr. Beecher's and Mrs. Tilton's innocence. Mr. Beecher's reply proved to be another of the many letters counseling silence as the best method of killing slanders.

Wm. F. West, formerly a deacon of Plymouth Church, and the person who made the charges against Theodore Tilton as a member of the church, was the first witness examined after recess. Mr. West is a mild looking gentleman of about 40 years. His examination was mainly regarding the manner of his placing his charges against Mr. Tilton before the church and regarding conversations with Mr. Beecher at which the latter, the witness said, tried to make him withdraw or postpone the charges.

Franklin B. Woodruff, the partner of Mr. Moulton, was called at half-past three o'clock, but after asking him a few formal questions the counsel became engaged in an exciting debate. While that discussion was in progress the hour of 4 arrived, and the Court adjourned.

#### THE PROCEEDINGS.

At the outset of the morning session on Wednesday, Judge Neilson called attention to what he deemed the unnecessarily prolix arguments of counsel over trivial points in the

case, and proposed a means of economizing time spent in this way. The re-direct examination was resumed, the questions being with a view to explaining away the suggestions of a black-malling scheme made in the cross-examination.

#### THE ACCUSED NEVER DENIED HIS GUILT.

Francis D. Moulton was recalled and the re-direct examination continued.

Judge Neilson—I wish to say to the counsel on each side, before we proceed this morning, that on looking over the report of the proceedings I have been, as perhaps they have been, a little surprised to see how much time is spent on some minor and really unimportant points, and I think we might economize time, and it will suit me better, if the counsel would raise specifically, in clean cut terms, any objection they wish to make, and if it is one that I understand and desire to decide at once, to be content with an exception. If, on the other hand, it is a point that the counsel think is worth discussion, they will indicate that, and then it will be my wish to hear discussion on the subject. I think we might economize time in that way, gentlemen.

Mr. Evarts—If your Honor please, I observe in one of the morning papers some observations in regard to the painful position in which the witness was placed by the great and sudden affliction which overtook him yesterday, and which is made the occasion of some observations reflecting upon counsel, as if they had not appreciated that situation, and had, notwithstanding it, insisted upon prolonging the examination of the witness. Now, as your Honor understands, the Court and the counsel on both sides at once placed the matter wholly at the choice of the witness.

Judge Neilson—That is certainly so.

Mr. Evarts—And I am sure agrees with us in that statement; nor was there any basis for any such imputation.

Judge Neilson—None whatever. I am very sorry it was made.

Mr. Fullerton—And for reasons for which it is not necessary to state here, the witness thought advisable that he should go on and complete his cross-examination and re-direct, if it did not occupy too much time.

Judge Neilson—It was a question properly addressed to the witness, and if he felt the case burdensome, and that he ought to shake it off his hands, it was a question addressed to him.

Mr. Fullerton—Yes, Sir; I was pleased with the alacrity with which the counsel on the other side consented to take just such course as the witness desired. Shall I proceed, Sir?

Judge Neilson—Yes, Sir.

Mr. Fullerton—At the close of the sitting yesterday, Mr. Moulton, I was calling your attention to the article published in *The Golden Age*, embodying the letter of Mr. Tilton to Mr. Bowen of Jan. 1, 1871. You stated upon your cross-examination that the copy which was appended to the tripartite agreement was not exactly like the one which you had seen. I hand you now the paper and ask you whether that is the copy which you saw [handing witness a paper]? A. Yes, Sir; this is the copy that I saw.

Q. In what respect does it differ from the one attached to the

tripartite agreement? A. I indicated what these differences were, and specially also, Sir, that there were some differences in the print; and then, I think, the last clause here in writing by Oliver Johnson was not in the copy that was attached to the tripartite covenant. Is that the answer?

Q. That is it. I understand you to say then these words at the bottom of this proof, namely, "that being the case, this publication which is necessary to my own defense, can do him no injury," was not in the printed slip. A. That was my recollection, Sir, from it the other day when I was looking at it.

Q. These words are in the handwriting of Oliver Johnson, I understand you to say? A. Yes, Sir.

The paper shown to the witness is marked "Exhibit No. 64."

Q. You have been asked upon the cross-examination in reference to the publication of the letter to Mr. Bowen in connection with the payment of the \$5,000 by Mr. Beecher; I wish to ask you whether Mr. Beecher mentioned the publication of that letter in connection with the payment of the \$5,000, or in connection with whatever was said prior to the payment of the \$5,000? A. Never, Sir.

Q. That was not alluded to by him, as I understand you? A. No.

Q. Where did you get the notes which were produced and read in evidence yesterday, and the two letters accompanying them? A. From Mr. Theodore Tilton.

Q. They were not in your possession, were they? A. No. Sir.

Q. You have been asked with respect to Theodore Tilton's valedictory, and as to the time when you first saw it; what valedictory did you refer to? A. The valedictory of Theodore Tilton in *The Independent*—the valedictory as editor of *The Independent*.

Q. When he ceased to be editor and became the chief correspondent, was it? A. Contributor.

Q. It was not a valedictory after his connection with the two papers ceased at all, was it? A. No, Sir.

Q. I call your attention for a moment to the letter of Dec. 26, 1870, and ask you this question, whether you knew of the existence of that letter until after it had been sent? A. No, Sir.

Q. Your answer, then, that you disapproved of that letter, had reference to the knowledge that you derived from Mr. Tilton of its contents after it had been sent? A. Yes, Sir.

Q. You disapproved the sending of it. A. After it had been written; yes, Sir.

Q. And your disapproval was founded on the fact that Bowen did not father his own charges by signing the paper? A. I thought he ought to have signed the paper, Sir; that was my objection to it.

Q. There is but one other question, Mr. Moulton, and it is this: In any of the conversations to which your attention has been called upon your cross-examination by the other side with Mr. Beecher, or to which your attention was directed upon the direct examination, did Mr. Beecher ever deny to you his sexual intercourse with Mrs. Tilton? A. Never.

Mr. Fullerton—That is all.

## THE RE-CROSS-EXAMINATION.

The re-cross-examination was then begun by Mr. Tracy.

Q. Mr. Moulton, at the time the notes which have been introduced in evidence connected with *The Golden Age* were given, what proportion of the original subscription had been paid in? A. What proportion? I really don't recollect, Mr. Tracy. I think it was paid in the day that the notes were given, or about that time. Mr. Woodruff can tell you about that better than I can. I don't remember.

Q. What proportion of the subscription had been or was paid in on that day? A. On the day that the notes were given?

Q. Yes, Sir. A. My recollection does not serve me, Sir, on that point, I think. Perhaps the account—

Q. Don't you know how much your original subscription was? A. The original subscription was \$3,000.

Q. What? A. The original subscription was \$3,000.

Q. Now, how much of that had you paid at the time of receiving this note from Theodore Tilton? A. I don't remember precisely about it, Sir, but my impression is that the one half of that subscription was called for at the time the notes were given, and the notes were given in consequence of the payment of it. I won't be certain about it. I haven't anything to guide my memory about it.

Judge Neilson—The subscription that you paid, however, was \$1,500? A. \$1,500.

Mr. Tracy—And had all the other subscribers paid one half of their original subscription? A. My impression is that they had, Sir, at the time that the notes were given.

Q. They had made these subscriptions prior to the starting of the paper, had they not? A. Prior to the starting of the paper.

Q. Can you tell us the form of that original subscription; what were its terms? A. I cannot.

Q. Can't you tell anything about it? A. No. I don't remember. We subscribed \$3,000—I subscribed \$3,000 for *The Golden Age*.

Q. Now, can't you tell us anything about the terms of that subscription? A. Nothing but that I subscribed \$3,000 for *The Golden Age*.

Q. What was you to have in consideration of that subscription? A. I don't know that I was to have anything. I was to lose it.

Q. Were you to give Theodore Tilton \$3,000 in consideration of his starting *The Golden Age*? A. Well, I thought it was about as good as giving it; I didn't expect to get anything from it.

Q. I didn't ask you that; I only ask you what you agreed to do? A. I agreed to subscribe \$3,000 for *The Golden Age*.

Q. Yes, Sir; and what was you to have in consideration of that subscription? A. I don't think there was any agreement made as to what I was to have, Sir.

Q. Nothing at all? A. I don't think there was.

Q. No understanding about it? A. No, I don't think there was; not that I recollect.

Q. And was there not with the other subscribers so far as you know? A. I don't recollect. Mr. Woodruff conducted it

entirely, Mr. Tracy, and so he would be able to inform you; I cannot.

Q. Do you mean to say that the paper which started on this subscription in March, had run until the 15th of September without having any part of that subscription paid in? A. I think Theodore Tilton drew his own money up to that time. My impression is that he had money and he paid it out as long as it lasted. I think so.

Q. Now, don't you know, Mr. Moulton, that the agreement between yourself and the other subscribers and Theodore Tilton, at the time these notes were given, was that they were to pay one-half of their original subscription in consideration of being released from the other half and his giving them his notes for the one-half which they had paid in, payable on *The Golden Age* becoming a success? A. No, I don't think that was the agreement at the time the notes were given. That was quite subsequent to it.

Q. That was quite subsequent to it? A. I think it was; that is my recollection.

Q. When was that agreement made, then, if it was not made at the time of giving the notes? A. I think it was made in 1872, some time.

Q. What was the agreement in 1872; repeat it? A. Well, I can't repeat it, Sir.

Q. Can't you repeat the substance of it? A. That Theodore Tilton was to have the whole thing—not call for the balance of the subscription, and have the whole subscription as a gift to him, without any obligation to return it.

Q. Do you mean to say, then, that the liability of the original subscribers for the whole subscription continued until 1872, when these notes were surrendered? A. My impression is that it did, Sir.

Q. That is your explanation of it? A. Yes, Sir; that is my explanation of it.

Mr. Tracy—Then, how did it happen that in 1871 he gave his notes for one-half of the subscription instead of the whole of it? A. Because he only got one-half.

Q. Ah! he gave his notes then for the half put in? A. That is all he wanted—that is the amount of money that he wanted, if I recollect correctly; but Mr. Woodruff conducted the whole of that negotiation, and he will be able to tell you.

Q. Now, do you know anything about how much money Tilton received on that subscription at the time of giving these notes in 1871? A. At the time of giving?

Q. Yes? A. My impression is that he received the whole at the time of giving.

Q. You now mean to say that he received the whole? A. Received the whole \$1,500.

Q. Do you mean to say that he received it all prior to that time, or that he received it on that day? A. I said that I did not recollect a few moments ago; I haven't anything to guide my memory with regard to it.

Q. Do you mean to say now that you can't tell anything about that? A. My impression is that the money was paid on or about the day that the notes were given. Won't the account explain it, that you got?

Q. Now, do you know what he did with that money? A.

I think he put it on deposit with Woodruff & Robinson, and drew it; I think the account will show what time it was paid.

Q. Now, will you take that account with Woodruff & Robinson and point to his deposit on that day of one-half those moneys, amounting to about \$8,000—one-half of them will be that? A. What is the date, September 20th?

Q. September 15th, 1871. A. Don't see it here, Sir.

Q. Is there any deposit on or about the 15th of September 1871, there? A. No; don't appear to be.

Q. Then what time from September 15th, is there a deposit at all on that account? A. On what account, on account of the paper?

Q. On account of Theodore Tilton; a deposit in that account. A. February 3d, \$500; February 13th, \$500; February 24th, 1871, \$500; March 4th, \$500; March 8th, \$1,500; May 1st, \$500, and November 15th, \$500.

Q. That is 1872, that last? A. No; November 15th, \$500; November 25th, twenty-five—

Q. Then there is no deposit in that account as I understand you, from March to November, 1871? A. Yes; there is a deposit from March to November, 1871.

Q. What is it? A. \$500.

Q. When? A. March 4th, \$500.

Q. I say from March to November there is no deposit in the account? A. Oh! yes; March 8th, \$1,500.

Judge Neilson—He means from the end of March; after March? A. Yes, Sir; there is.

Q. What is it? A. May 1st, \$500.

Q. Is there any other? A. To the first of November?

Q. Yes. A. No, Sir; the next one is November 15th.

Q. Now, what do you understand those deposits along in March and May of 1871, to be?

Mr. Fullerton—One moment, I think we must object, Sir.

Mr. Tracy—I don't press the question, Sir.

Mr. Fullerton—I did not object in the first instance, because I thought it would save time to let them ask the question, but your Honor perceives that is not in reply to anything on the subject.

Mr. Tracy—I submit it is directly in reply.

Judge Neilson—If there be any fact in connection with either of the depositions which you deem material, you may ask him.

Mr. Tracy—Well, I won't ask that question; I don't think it worth while taking up time about it. The account shows for itself.

#### HOW FAR TILTON VOUCHES FOR WOODHULL.

Mr. Tracy—Now, you gave yesterday what purported to be the speech of Theodore Tilton, introducing Victoria C. Woodhull, at the Steinway Hall meeting? A. Ye, Sir.

Q. When had your attention been called to the words that Mr. Tilton used, subsequent to the making of the speech, prior to yesterday? A. They were called, Sir, to the words that he used in the speech on the night that he made the speech.

Q. I say after? A. And then after that they were called to it in the paper, and I had occasion then within almost every day, I guess, for a week afterwards to state Theodore Tilton's connection with that Steinway Hall meeting,

and had occasion to speak of his speech. I have not seen it from that time to this.

Q. From what time? A. Well, I should say from a fortnight after the speech.

Q. Until when? A. Until I was asked to produce it from memory, yesterday. I produced it from memory.

Q. Had you talked with Tilton on the subject of what he did? A. Have I talked with him?

Q. Had you prior to your testimony yesterday? A. Had I talked with him? I talked with him prior to that. Oh, yes, Sir; I talked with him prior to that.

Q. How long prior? A. About the time of the meeting.

Q. Well, recently? A. After that.

Q. Recently? A. No, Sir, not recently; no.

Q. Within three months? A. I talked with him, I think, day before yesterday; I dictated the speech to P. B. White at my house, and told Mr. Tilton that I had dictated it.

Q. Was Mr. Tilton present when you dictated it? A. No, Sir, he was not.

Q. I show you a copy of *The New-York World* of Nov. 21st. Will you look at what purports to be Mr. Tilton's speech, as reported in *The World*, and tell us whether it is correct or not [paper handed to witness]? A. It was either this or the report of *The Herald* next day that I saw. Have you got the report of *The Herald*?

Q. No, Sir; I have not. It is either that or a report in *The Herald* next day from which you read it? A. Yes, Sir.

Q. And to which you referred, I suppose, for the next two weeks from time to time. Now, what do you say? Is that report in *The New-York World* a correct report of Mr. Tilton's speech? A. It is something like it, as I remember it.

Q. Now, isn't it substantially like it, as you remember it? A. I think that there was something about freedom of speech, in his speech, Sir.

Q. You think there was? A. Yes.

Q. Well, I will read this speech to you, and ask you if this is not substantially the speech

Mr. Fullerton—One moment, he has read the speech himself and knows whether it is right or not.

Mr. Tracy—I have a right to ask him whether certain things did not occur there, and refresh his memory.

Judge Neilson—I don't think you can read it. You can ask him if it is substantially—and wherein it differs from his recollection.

Q. Now, does it differ, in your recollection, from Mr. Tilton's speech only in the fact that you see nothing here about freedom of speech? A. I think not; if you will let me have it, I will try to point out what I—[Paper handed back to witness] I don't remember, first, that he said that—"I was met at the door by a member of the Committee."

Q. You don't remember that? A. No.

Q. Will you say he did not say it? A. I don't recollect that he said it.

Q. Well, will you say he did not say that? A. How am I to say that? If you will—

Q. I don't know, Sir; I ask you; I am questioning you—not

you me. A. My impression is that he did not say it; I cannot— How can I—

Q. Do you mean by that, that that is your recollection? A. That is what I mean.

Q. Yes, Sir; I am content. A. My impression is, also, that this clause, "Now, as to her character, I know it and believe in it and vouch for it—" my recollection of that is that, "Now, as to her character, I think I know it and believe in it;" not "believe in it;" I don't remember "believe in it." I remember the word "vouch;" and I don't remember the hisses; and my memory with regard to the other is, "I would rather be —," "It may be that she is a fanatic; it may be I am a fool." My recollection of that is that he said "It may be that she is a fanatic and a fool." "But before high Heaven I would rather be both fanatic and fool in one than be such a coward as would deny to a woman the sacred right of free speech." My recollection of that was that, "to be such a coward as would refuse to ask from an audience for a woman the right of freedom of speech." "I desire to say that, five minutes ago, I did not expect to appear here;" I do not recollect that. "Allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years, I have the honor of introducing to you Victoria Woodhull, who will address you on the subject of social freedom." I don't remember his saying that: "Allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years."

Q. You mean to say that you qualify it by putting in fifteen or twenty years? A. No—"allow me the privilege of saying that, with as much pride as ever prompted me to the performance of any act within fifteen or twenty years—" my recollection of the fact is only that, "I have the honor of introducing to you Victoria Woodhull." Then, I don't remember, "who will address you on the subject of social freedom."

Q. You don't remember that clause? A. No, I don't remember that clause; I am giving you my recollection of it.

Q. Now, will you say that he did not say, "now, as to her character, I know it, and believe it, and vouch for it—" ? Will you swear that he did not use that language? A. My impression is, Sir, that he did not say "I believe in it;" I remember his saying "I know it," and I remember the word "vouch"—that I am giving from my recollection of it.

Q. Now, will you say that he did not close his speech by saying: "I have the honor of introducing to you Victoria C. Woodhull, who will address you upon the subject of social freedom?" A. I won't say that he did not say it; I say that I don't recollect that he said that.

Q. Well, that purports to be a stenographic report of his speech, doesn't it?

Mr. Beach—That I object to.

Q. Now, Mr. Moulton, that speech that you dictated to Mr. White, did he write down? A. Yes, Sir.

Q. Did you give it to him? A. Did I give it to him? No, I kept it.

Q. Kept it in your possession? A. I kept it; yes, Sir.

Q. Have you ever seen what purported to be a manuscript of Mr. Tilton's speech in his hands within a day or two? A. Never, Sir. There was a party present when I dictated it, Mr. Tracy.

Mr. Tracy—I didn't ask you that.

Judge Neilson—Well, it was proper, because otherwise he would leave us under the impression that Mr. White was the only person there, and presently it would appear as if it were a contradiction, when it appeared somebody else was there. Therefore, I think the suggestion was proper on the part of the witness.

The Witness—Yes, Sir, I thought it was proper.

Mr. Evarts—If your Honor please, as it was not an answer to any question, and as while cross-examining counsel has possession of the witness, they are entitled that he should say nothing that is not an answer to the question, although it is quite immaterial in this particular instance, yet —

Judge Neilson—I don't think that rule would exclude an innocent observation of that kind, which naturally might occur to any witness.

Mr. Evarts—I don't mean that it would call for reproach, but certainly it cannot be the interposition of evidence, at the will of the witness, whether it is important or unimportant, while he is under cross-examination.

Mr. Beach—I think it is proper for the witness, Sir, to relieve himself from misapprehension.

Judge Neilson—I think it was proper; at any rate, it was a very natural thing that any witness might do.

Mr. Evarts—That might be, we have made no animadversion upon it whatever.

#### MOULTON CONTRADICTS GEN. TRACY.

Q. You referred to an interview at the Fifth Avenue Hotel, where you say I was present and Gen. Butler? A. Yes, Sir.

Q. And you say that you did not present certain papers to the Committee because I requested you not to? A. Yes, Sir.

Q. Will you state what papers I requested you not to present? A. What papers you requested me not to present? You requested me not to make my statement.

Q. I will ask you this question. Was not the only papers that I requested you not to present, or spoke to you on the subject of not presenting to the Committee, or to the public, that was in your statement, the letter of Mrs. Hooker to her brother, Mr. John Hooker's letter to his wife, and Thomas K. Beecher's letter to his sister? A. No, Sir; they were not the only letters.

Q. They were not? A. No, Sir; they were not.

Q. Did I not on that occasion and on other occasions say to you, when speaking of those letters, that I did not see how any honorable man could make those letters public? A. No, Sir; you didn't.

Q. I never said that to you? A. No, Sir, you didn't.

Q. Did you not say to me, in answer to that, that those letters had been given to you by Mr. Beecher in connection with his case, and was not my reply that I didn't see how either you or Mr. Beecher could take the responsibility of making the private

letters written to him, and the private letter of a husband to his wife, and the private letter of a brother to his sister, public, without the consent of the writers? A. I don't recollect that you ever said anything of the kind, Mr. Tracy. It was not until the Saturday night previous that those letters were to go into the statement, the night before you saw Gen. Butler at the Fifth Avenue Hotel. They were not in the statement, therefore, the night before.

Q. I don't ask you what was in your statement, or what was out of it; I am asking what I said and what reply you made to me? A. Yes, Sir.

Q. Now, do you say that it was determined at the Fifth Avenue Hotel, that night, that you should not present your statement to the Committee? A. I say that it was determined —

Mr. Tracy—Please answer my question.

Mr. Beach—He is not bound to answer it yes or no.

The Witness—I cannot answer it, your Honor, yes or no, without an explanation.

Judge Neilson—Go on, I think he may answer it.

Mr. Tracy—What did your Honor say?

Judge Neilson—I think he may proceed.

Mr. Tracy—I ask him a direct question, which I submit admits of a direct answer, yes or no.

The Witness—I cannot answer it yes or no, without an explanation.

Judge Neilson—[To the witness.] That you have a right to give on your re-direct, and we will explain it afterwards.

Mr. Beach—This question calls for precise language, precise words, and the witness may answer the substance without giving the language which was then used as near as he remembers.

Judge Neilson—That is the general rule, no doubt, still [to the witness] let us see what your answer is.

The Witness—What is the question?

Mr. Tracy—Read the question, Mr. Stenographer.

THE TRIBUNE stenographer read the question.

The Witness—It was determined that there should be a consultation with reference to not presenting it at that time.

Q. And that consultation was had the next morning, was it not? A. Yes, Sir; the next day, and at my house.

Q. With people whom you brought there? A. Yes, Sir; with people whom I brought there.

Q. For the purpose of determining your action as to whether you should present your statement to the Committee, or not? A. For the purpose of finally determining it.

Q. Who was present then? A. William C. Kingsley, Franklin Woodruff, my father and my wife.

Q. I was absent? A. You were not there. You didn't come to the house until after the short statement was made.

Q. Was not the subject of what you were to state before the Committee that afternoon, there deliberated upon, and determined in that conversation? A. Yes, Sir; it was.

Q. So far as you know, do you know that I had any knowledge of what your action was to be that afternoon, whether in presenting or withholding that report, until you made your appearance in the presence of the Committee? A. I don't think



you knew what the final action was to be. You knew what you wanted it to be, though.

Mr. Tracy—I submit that is a remark—

Judge Neilson—Strike out that last clause. It was not called for in the reply to your question, Mr. Tracy.

Mr. Tracy—Ought it not to be accompanied with an admonition to the witness that he should not volunteer anything?

Judge Neilson—No, Sir, because he has been here six or eight or ten days burdened and tortured by both sides, therefore I shall not admonish him. [To the witness.] Answer the question simply the counsel has put.

Q. Did I ever ask you in the world to withhold from your statement or any statement of yours to the Committee any paper that Henry Ward Beecher had ever written to you on the subject? A. Yes, Sir.

Q. Was not my request or suggestion to you on the subject confined entirely to private papers of other people which had not been written by him? A. No, Sir.

Q. You said in answer to counsel yesterday that you were not in sympathy with Mrs. Woodhull's sentiments on the marriage relation. Do you mean by that that you do not agree with her on that subject? A. I don't think I agree with her on that subject; no, Sir.

Q. Will you state to us what your views are? A. Yes, Sir.

Q. On the subject of the marriage relation? A. I believe in fidelity to your wife and in your wife's fidelity to you, and if you are not faithful to your wife, that you do wrong, that you ought to be punished for it severely; and if your wife is not faithful to you she ought to be punished for it severely; that is as near as I can get at it.

Q. What is your belief on the subject of divorce? A. On the subject of divorce?

Mr. Tracy—I don't suppose that properly comes in.

The Witness—I have not reached a conclusion on that subject, the laws are so various in all the States, and there is so much to be said on that subject I really don't—

Q. Have you read *The Golden Age* on that subject? A. Have I ever read *The Golden Age* on that subject?

Q. Yes, Sir. A. I think I have; I don't know.

Q. Have you talked to Mr. Tilton on the subject of divorce? A. Yes, Sir.

Q. Do you and he agree in sentiment on the subject? A. I don't know that we do exactly. I don't know exactly what his sentiments are. He has not arrived at a conclusion, I guess, in regard to it yet.

Q. Did you ever read his article to Horace Greeley on the subject of divorce? A. I forget whether I ever did or not; I don't remember. If you will point it out to me perhaps I can tell you.

Q. Will you tell wherein you differ with Mr. Tilton on the subject of marriage and divorce?

Mr. Fullerton—He says he does not know Mr. Tilton's sentiments on that subject; therefore he cannot tell the difference between his own sentiments and those he don't know anything about.

The Witness—I could not state to you Mr. Tilton's sentiments. He is a rigid monogamist, that I know; too much so, I think.

Q. Have you not read *The Golden Age*, and what has appeared on that subject from Mr. Tilton from time to time? A. I don't think I read all of it. I don't read very much; I cannot: my eyes are not good enough.

Q. Did you read his article to Horace Greeley on that subject? A. I cannot say. If you let me look at it I can tell you. [To Mr. Beach.]—Is it right for me to look at it?

Mr. Beach—Yes, gain all the information you can.

The Witness—I read some portion of this, Sir, I think.

Mr. Tracy—You read some portion of that article? A. Yes, Sir, I think I did.

Mr. Tracy—Now, I read and ask you if you agree with this?

Mr. Fullerton—I object to it.

Mr. Evarts—Why?

Mr. Fullerton—Because it is improper.

Judge Neilson [to Mr. Tracy]—Let me hear your views about it, Mr. Tracy, how it is proper.

Mr. Tracy—He has said he did not sympathize with Mrs. Woodhull on the subject of divorce; he says he don't know fully what Mr. Tilton's views are on that subject, and he don't know whether he agrees with him or not. I desire to ask him whether that has not been the subject of conversation between himself and Tilton, and whether they do not agree in that particular.

Judge Neilson—Is that a re-examination?

Mr. Tracy—I think it is, your Honor. They introduced the evidence of what his sentiments were on the subject of marriage and divorce.

Judge Neilson—As to his sympathizing with that woman and her views?

Mr. Tracy—And he said he did not. We are showing he did.

Mr. Fullerton—Those are not her views.

Mr. Tracy—I don't know that.

Mr. Fullerton—Then, if you don't know that, you ought not to ask him.

Mr. Tracy—We will get at that.

Judge Neilson—I think I must rule it out, Mr. Tracy.

Mr. Tracy—I offer to read, for the purpose of taking an exception, and I offer to follow it by showing those are the views of Mr. Tilton and Mrs. Woodhull on the subject of marriage and divorce.

Judge Neilson—It is ruled out as not called for or proper as a re-cross-examination.

Mr. Tracy—We offer to show their views are identical—Mr. Tilton's, Mr. Moulton's and Mrs. Woodhull's—on the subject of marriage and divorce.

Mr. Beach—That is a broad and general offer which, of course, cannot be passed upon on that point.

Mr. Tracy—This is a part of that plan of proof.

Mr. Beach—The Judge says he cannot receive it.

Judge Neilson—I cannot receive it.

Mr. Tracy—Your Honor will note our exception.

Q. Have you ever talked with gentlemen on the subject of free love or the marriage relation, or on the subject of social freedom? A. I talked with you once on it, I know.

Q. Did you ever talk with Mr. Armour or Stephen K. Lane on the subject?

Mr. Fullerton—I object to that.

Q. And in which you expressed your belief in the doctrine of free love as publicly understood?

Judge Neilson—Ruled out for the same reason, as immaterial.

Mr. Everts—This is to contradict the witness. He has stated his views.

Judge Neilson—He has stated he did not sympathize with Mrs. Woodhull in her views on that subject.

Mr. Everts—For all that, he has given his views, which are somewhat rigid.

Judge Neilson—On your cross-examination?

Mr. Everts—I agree; and now we ask him if he has not said the opposite, and named witnesses, by whom we expect to contradict him.

Judge Neilson—It cannot be received.

Mr. Everts—Your Honor will take our offer.

Judge Neilson—[To the stenographer.] Note the offer and exception.

Mr. Everts—We offer to inquire of him concerning his statement to named witnesses at interviews with them, in which he has given his sentiments on the subject of free love, to the contrary of what he has now declared them on the stand, with a view of calling those witnesses to contradict him.

Judge Neilson—It is ruled out, Sir.

Q. You stated on your re-direct something about the number of people who conversed with you on the subject of the Woodhull scandal after its publication, and you said 15 or 20 a day. For how many days do you think that continued? A. I don't know. I should think, perhaps, a fortnight.

Q. Forty days? A. A fortnight.

Judge Neilson—He said that on his former examination; about two weeks, he said.

Mr. Tracy—That is all with this witness, your Honor.

### THE RE-RE-DIRECT EXAMINATION.

The re-re-direct examination was begun.

Mr. Fullerton—Your attention has been called to certain conversations between yourself and Mr. Tracy with regard to this matter, and you have been asked whether you did not say certain things. Now, I ask what you did say to Mr. Tracy on this occasion?

Mr. Tracy—That I object to. I have inquired of no interview that they did not go into.

Judge Neilson—Is that the point where it was suggested he should answer and explain afterwards?

Mr. Fullerton—Yes, Sir; that is strictly within your Honor's ruling yesterday on a similar objection. Of course, we are to presume that they are laying the foundation for an attempted contradiction; and while the witness denies having said certain things, we have a right to prove that he said certain other things.

Judge Neilson—Well, you may ask him that question, I think.

Q. What was said upon those occasions?

Judge Neilson—On the occasion pointed out by Mr. Tracy's question?

Mr. Tracy—They examined about that interview at the Fifth Avenue Hotel fully, and went into all they desired to go into about it; and he stated that he withheld these papers at my request. Now, I ask him simply if the only papers I asked him to withhold, or requested him to withhold, were not certain definite papers which I named. It is the only inquiry.

Judge Neilson—... that he says no.

Mr. Fullerton—Now, I wish to know the balance of the conversation.

Mr. Beach—That was not the only inquiry. Certainly counsel examined him as to the point whether or not the statement was settled on at that time, but not on any conversation—asked him in regard to the contents of the statement.

Mr. Tracy—At his own house, at which I was not present?

Mr. Fullerton—At the Fifth Avenue Hotel.

Mr. Tracy—A. No, Sir; except so far as I asked him. The only request I made to him was on the subject of certain definite papers?

Judge Neilson—That is my recollection now; and the question is whether they cannot ask him what he really said. I think they may.

Mr. Tracy—On the subject of this paper.

Judge Neilson—On the subject of this inquiry.

Mr. Tracy—Then it will be limited to the subject of this particular paper.

Judge Neilson—That particular occasion when he says you did not simply ask him to retain certain papers; the inquiry now is what he did say on that occasion.

Mr. Everts—Your Honor will notice we do not introduce that conversation. We cross-examined only in reference to their previous examination of him, and only cross-examined on this particular point. That certainly does not give any right to resume the whole interview as we can see, nor do I understand your Honor so to rule.

Judge Neilson—I still think he may answer the question.

The Witness—What is the question?

(THE TRIBUNE stenographer read the question.)

Mr. Tracy—Confine yourself to the occasion inquired of. That is the occasion of the Fifth Avenue Hotel?

Mr. Fullerton—That is one of them.

Mr. Tracy—Let us take one conversation at a time, and see what reply we will get.

Mr. Fullerton—You are asking about what I know. We will get it out in our own way.

Mr. Tracy—I asked no question which called for that retort. This inquiry relates to the conversation at the hotel. Your Honor will note our exception to the admission of our interview.

The Witness—I said to Gen. Butler at that interview, "I have brought Mr. Tracy to you to determine with regard to this statement. Mr. Tracy has said to me he did not want me to make this statement; I want to do exactly that which is honorable in the premises. I wish you and Mr. Tracy would talk it over. Mr. Tracy sat down and talked it over with Mr. Butler,

and said to Gen. Butler, in my presence, that he thought the letters and documents of Mr. Beecher ought not to be produced in my statement; and that is the substance of the conversation as I remember it at that time; and when Gen. Tracy went away I saw Gen. Butler, and he said Gen. Tracy's idea was——"

Mr. Fullerton—You need not state what Mr. Butler said in Mr. Tracy's absence. Now, go to the occasion referred to by Mr. Tracy's examination of you.

Mr. Tracy—What was that occasion?

Judge Neilson—Where was that occasion?

The Witness—Mr. Tracy did not name it.

Mr. Beach—The occasion at Mr. Moulton's house, when Mr. Tracy inquired of him whether it was upon that occasion that the form of statement was finally agreed upon.

Judge Neilson—That was an occasion when he was not present.

Mr. Beach—That makes no difference. The witness says it was finally agreed upon. We want to know why it was agreed upon, and how it was agreed upon.

Judge Neilson—I think we must leave it as it is. Mr. Tracy was not present.

Mr. Fullerton—Do you recollect an interview in the back room when the Committee was sitting in Mr. Storrs's house, when you went to present your statement? A. I remember Mr. Tracy was there when I presented a statement.

Mr. Evarts—We object to that on the ground that it is not any part of our re-cross-examination.

Mr. Fullerton—Mr. Tracy asked the witness whether at any time before the statement was presented to the Committee he (Tracy) knew what the statement was to be.

Mr. Tracy—With his knowledge.

Mr. Fullerton—I know that, and what I now ask him is to try and draw his attention to an interview between him and Mr. Tracy at another place, in the back room where the Committee sat, at which time Mr. Moulton stated to Mr. Tracy what his statement was, and Mr. Tracy approved of it. That is a direct answer to the inquiry which was put by Mr. Tracy.

Mr. Evarts—Then we asked him a general question, and he answered it.

Mr. Beach—We try to show he is mistaken by calling his attention to an interview.

Mr. Evarts—And now they say, having asked him the general question and getting a general negative, that that gives him a right to go into all interviews and conversations that they may wish to explore to prove he has been incorrect in that statement. We don't go into that.

Mr. Tracy—The question stands in this way. The witness testified on his direct examination that it was determined at the Fifth Avenue Hotel, at my request, that his statement should be withheld. On his cross-examination he testified that it was determined at a conversation at his own house, at which I was not present, the ensuing day. Then I asked him the question whether he had any knowledge that I knew, prior to his appearance at Mr. Storrs's, before the Committee on that day, what his statement was to be, and he said he had no such knowledge.

The Witness (to Judge Neilson)—That is just the point on

which I wished to make an explanation in my answer, if your Honor please. It was not finally determined; Mr. Tracy did not know what the final determination was to be.

Mr. Beach—The witness has corrected that misstatement of Gen. Tracy. The point is just this: Mr. Tracy has extracted from this witness the answer that he (Tracy) did not know of the statement of Mr. Moulton until after or at the time he appeared before the Committee. We believe that that was a mistaken answer upon the part of the witness; and for the purpose of refreshing his recollection, and enabling him to correct that answer, we, in our re-direct examination, call his attention to an interview between him and Mr. Tracy, in which Mr. Tracy was informed of the very fact which, on cross-examination, the witness has mistakenly answered he did not know. Now, is there any rule——

Judge Neilson—That is a correction the witness has a right to make, of course.

Mr. Beach—Certainly.

Mr. Tracy—According to the question put, it is after his appearance before the Committee.

Mr. Beach—No, it is not.

Judge Neilson—Well, I think we will hear the correction.

Mr. Tracy—Your Honor will note my exception.

The Witness—I saw Mr. Tracy in the Committee room before I made the report to the Committee, and told him I had in my statement only presented the documents quoted by Theodore Tilton in his statement.

Q. What reply did he make to that?

Mr. Tracy—I object to that, your Honor.

Judge Neilson—That covers the point that Mr. Tracy didn't know.

Mr. Fullerton—His reply might indicate very clearly that he knew, and understood and comprehended it, and approbated it.

Judge Neilson—This indicates it clearly enough.

# THE RE-RE-CROSS-EXAMINATION.

The re-re-cross-examination then took place.

Mr. Tracy—That was in the Committee room, you say? A. In the Committee room, I think; yes, Sir.

Q. And in the presence of the Committee? A. In the parlor. I forgot they knew it. When I say "the Committee room" I mean Mr. Storrs's house.

Q. In the parlor? A. They were in the back parlor, and I think you came out in the front parlor.

Q. Did you come into the room? A. I think so.

Q. Then you, for the first time, informed me what your report was to be? A. I think so; yes, Sir.

Q. That is your short statement, is it not, that you submitted to the Committee that day? A. The time at which I presented to the Committee the documents quoted by Theodore Tilton in the statement.

Q. What day of the month was that? A. I don't recollect the day of the month.

Q. It was your statement before the Committee, not what is known as your long statement? A. No, Sir; that was not made until after Mr. Beecher made his.

Q. Not either of your long statements? A. It was not either of my long statements.

Judge Neilson—It was not either of those papers you said Gen. Butler prepared? A. No, Sir; it was a modification of the first statement Gen. Butler prepared. The meeting in my house, I would like to explain, was in consequence of the meeting at the Fifth Avenue Hotel between Mr. Tracy and Gen. Butler and myself, and Gen. Butler told Mr. Tracy that there would be a conference at my house the next day, and promised that he would present the views of Mr. Tracy at the meeting next day at my house. Mr. Woodruff was in favor of making the report, and my wife was in favor of withholding it, and it was determined to withhold it.

Mr. Evarts—I move to strike that out.

Judge Neilson—I think not; that is explanation.

Mr. Evarts—This is every conversation between him and General Butler outside of the time Gen. Tracy was there.

Judge Neilson—They don't object to that, of course; it was understood the night before, there was to be conference next morning on this subject. The next morning there was a conference held. What General Butler said and what Mr. Woodruff said ought to be stricken out, of course.

Mr. Evarts—If your Honor will pardon me for being somewhat explicit here, I ask to strike out all that this witness has given not in response to any question, but which is a volunteer statement on the ground that it is not admissible evidence, especially from the fact of its not being drawn out by any question of ours. Now, the parties on the part of the plaintiff sought to introduce a conversation, or the witness sought to introduce before, a conversation between General Butler and himself when Gen. Tracy was not present, which was promptly rejected by my learned friend. I understand what he has now voluntarily said is exactly what he was going to say then.

Mr. Beach—I suggest to Mr. Evarts, Sir, that he is mistaken in regard to what the witness said concerning the declaration of Mr. Butler that there should be a consultation next morning. That was in the presence of Mr. Tracy.

The Witness—That is the point exactly.

Judge Neilson—The general statement is received by way of explanation, to show that the purpose of the night before was carried out, except that Mr. Tracy was not present.

The Witness—That is it exactly, Sir.

Judge Neilson—But the words on that occasion said by Mr. Woodruff and by Mr. Moulton are stricken out. Now, that is all by this witness, I understand.

Mr. Beach—Yes, Sir.

Judge Neilson—Mr. Moulton, you can retire.

Mr. Evarts—Your Honor will note our exception to the motion to strike it all out.

Judge Neilson—Yes, Sir.

#### TESTIMONY OF MRS. MARTHA A. BRADSHAW

Martha E. Bradshaw, called and sworn on behalf of the plaintiff.

By Mr. Fullerton—Mrs. Bradshaw, where do you reside? A. 485 Henry-st.

Q. In this city? A. Yes, Sir.

Q. How long have you resided in Brooklyn? A. About 23 years.

Q. Please state your husband's name? A. Andrew Bradshaw.

Q. Is he engaged in business? A. Yes, Sir.

Q. Where, please? A. I think it is now in—

Q. In what city? A. In New York.

Q. Were you ever connected with Plymouth Church? A. Yes, Sir; I am still.

Q. As a communicant? Yes, Sir; my name is still on the roll on the book.

Mr. Evarts—If your Honor please, we have great difficulty in hearing the witness.

Judge Neilson—Yes, Sir; the lady must speak louder, and will, I hope.

Mr. Fullerton—There is a little disturbance in the room.

Judge Neilson—It is quite necessary that gentlemen should be very quiet, in order to enable the counsel to hear the witness, and the jury to hear the witness, which is the vital thing just now.

Q. How long have you been connected with Plymouth Church? A. I have attended there about 22 years, I think.

Q. How long a communicant of the church? A. Perhaps it was a year or two after I began to attend there before I united with the church. I cannot give the date exactly.

Judge Neilson—Which would make about twenty years?

Mr. Fullerton—That would be it, Sir. If they wish I will repeat the answers of the witness. "Perhaps it was a year or two after I began to attend."

The Witness—I think it was longer than that.

Q. About how much longer? A. I cannot tell exactly.

Q. And I understand you that your name is on the roll still? A. Yes, Sir.

Q. When did you last commune at the church?

Mr. Shearman—To that we object, if your Honor please. I don't see what that has to do with this case.

Judge Neilson—No, I don't see.

Mr. Fullerton—Very well; I will not put it then. [To the witness.] Were you connected with the Sunday-school of the church in any way? A. Yes, Sir; I am still.

Q. In what capacity? A. As teacher.

Q. And how long have you been a teacher of the Sunday school, or connected with that church? A. Eighteen years.

Q. Do you know Theodore Tilton? A. Yes, Sir.

Q. And Elizabeth R. Tilton, his wife? A. Yes, Sir.

Q. How long have you known them? A. About twenty years.

Q. Have the two families exchanged visits? A. Yes, Sir.

Q. What degree of intimacy existed between your family and that of Mr. Tilton? A. Mrs. Tilton, during that time, has been my most intimate friend.

Q. "Mrs. Tilton, during that time, has been my most intimate friend?"

Judge Neilson—You will continue that as far as it agrees—

able. Here is a request from some reporter that you will. As far as it is agreeable repeat the answers.

Mr. Fullerton—I will as long as it is agreeable to my learned adversaries.

Q. Were visits exchanged between the two families? A. Yes, Sir.

Q. How frequently? A. Very frequently. I have been there myself generally two or three times a week.

Q. And how often did Mrs. Tilton visit you? A. Not so often.

Q. How long did that intimacy and these friendly visits continue? A. They always have until within a very short time.

Q. Do you know Henry Ward Beecher? A. Yes, Sir.

Q. How long have you known him? A. About 23 years.

Q. Did you become intimately acquainted with him? A. No, Sir; not very intimately.

Q. Did he call at your house ever? A. He has occasionally.

Q. How frequently? A. Very seldom.

Q. Making friendly or pastoral visits? A. Social visits.

Q. And did you call at his house? A. I have been there many times.

Q. Many times? A. No, not many.

#### THE WEST CHARGES AGAINST TILTON.

Q. Do you know William F. West? A. Yes, Sir.

Q. Do you know the fact that he preferred charges against Theodore Tilton for having slandered Henry Ward Beecher?

Mr. Evarts—That we object to, if your Honor please, as an improper question. If there is any fact they wish to ask her about, any paper or document or anything, of course she is competent to speak concerning that identical thing. This description we object to.

Mr. Fullerton—I ask her if she knew the fact that such charges were made?

Judge Neilson—I think you should modify that question. Does she know the fact that the charges were made, without specifying what they are?

Mr. Fullerton—I will do it in that way. [To the witness]: Do you know the fact that charges were made by Mr. West against Mr. Tilton for slandering Henry Ward Beecher?

Mr. Evarts—No; that is the point that we object to.

Mr. Shearman—I desire that this witness should be instructed; this lady has probably never been on the witness stand before; that she should be instructed that she is to speak of her personal knowledge.

Judge Neilson—Yes, Sir.

Mr. Beach—It is an introductory question, as a foundation for a further question.

Judge Neilson—Yes; but the counsel desires you to omit the statement of the contents of the charges.

Mr. Fullerton—I know, Sir, but I am not disposed, unless I am instructed by the Court, to conform to that request.

Judge Neilson—All you want is the fact that she knows that charges were made by Mr. West.

Mr. Fullerton—And because I want to know it I ask the question.

Mr. Beach—Will the stenographer read the question?

THE TRIBUNE stenographer read the question as follows: "Do you know the fact that charges were made by Mr. West against Mr. Tilton for slandering Henry Ward Beecher?"

Judge Neilson—Now, if you will omit "for slandering Henry Ward Beecher" the question is allowed. Strike those words out.

Mr. Fullerton—If I had put the question, leaving those words out, my adversaries would have objected to it for good reason.

Judge Neilson—I don't know.

Mr. Evarts—You certainly give us good reasons now.

Mr. Beach—Well, Sir, we want—

Mr. Evarts—Let it pass.

Mr. Beach—No, Sir; I won't let it pass. We want to know whether the charges which Mr. West preferred against Mr. Tilton were connected with Mr. Beecher, for an introduction to the question to be presented to this lady, whether in consequence of those charges she had a communication with Mr. Beecher in relation to them.

Judge Neilson—Now, I assume that only one set of charges was preferred by Mr. West, and I think the learned counsel can learn whether she remembers or was aware that charges were presented by Mr. West. That opens the door for the subsequent interview between them without inquiring into the contents.

Mr. Fullerton—Did you ever see the charges, or what purported to be the charges, of Mr. West against Mr. Tilton? A. After they were made.

Q. Were you asked to be a witness? A. Yes, Sir.

Q. For the purpose of proving those charges?

Mr. Shearman—To that we object? It does not appear by whom she was asked.

Mr. Fullerton—No, it does not.

Judge Neilson—We will take the general fact. It goes to show that her attention was called to the subject. Will gentlemen be quiet, please?

Q. Would you recognize, do you think—

Mr. Beach—She has answered that.

THE TRIBUNE stenographer read the question and answer as follows:

Q. Were you asked to be a witness? A. Yes, Sir.

Q. For the purpose of proving those charges?

Q. Were you asked to be a witness for the purpose of proving those charges? A. Yes, Sir.

Q. Would you recognize the charges if you saw them? A. Yes, Sir.

Q. Look at the paper which I now hand you, and after reading it or glancing at it, say whether those are the charges which you saw? [Handing witness a paper.] A. Yes, Sir.

Mr. Evarts—We understand that that paper she saw.

Mr. Fullerton—No.

Mr. Evarts—Well, that is what we want to know.

Mr. Fullerton—I did not ask her that. This is "Exhibit 29."

Judge Neilson—You asked her if she recognized those as the charges.

Mr. Fullerton—Yes, Sir.

Judge Neilson—What does she say to that? I think she may answer that.

Mr. Fullerton—She has answered that; she says that she does recognize it as the charges.

Mr. Evarts—Unless they call her attention to the paper, and the answer has connection with the paper, I think it is objectionable. If this is the paper that she speaks of, then that is another matter.

Mr. Fullerton—I did not ask the lady whether this is the paper that she saw.

Mr. Evarts—Now, if your Honor please, you cannot hand the witness a paper that is not identified by the witness or anybody else, and refresh a witness's recollection by a strange paper and have her say: "Why, those are the charges, I remember." You have a right to ask her whether those charges, to wit, this very statement of them, she recognizes as having known of.

Judge Neilson—She recognized the statement?

Mr. Evarts—Yes, Sir.

Judge Neilson—The vital thing not being whether it is the same paper, or not?

Mr. Evarts—Well, that is the difficulty in the way of evidence.

Judge Neilson—We have been driven to that several times in the course of the case.

Mr. Evarts—That paper has not been identified in any way as ever having been seen by the witness before.

The Witness—[To Mr. Fullerton.] That is what I understood you to mean, Sir, what is there stated.

Mr. Fullerton—That is just what I asked you.

Mr. Evarts—This paper?

Mr. Fullerton—No; what is there stated.

Mr. Evarts—Don't animadvert upon me.

Mr. Fullerton—No; I am not animadverting upon you. I am emphasizing what the witness says.

Mr. Evarts—Emphasize to the Court and jury.

Judge Neilson—You except?

Mr. Evarts—We except, unless it is understood to apply to the paper itself.

Q. Now, Mrs. Bradshaw, after having seen those charges, and after having been requested to become a witness to prove them, did you have any communication with Mr. Beecher? A. Yes, Sir; I did.

Q. Was it a verbal communication, or by letter? A. By letter.

Q. Did you write to Mr. Beecher? A. I did, Sir.

#### BRISK TILTS BETWEEN COUNSEL.

Mr. Fullerton—Gentlemen, notice has been given to you, I believe, to produce that letter, and I now call upon you to produce it.

Mr. Evarts—The notice was given to me orally, here in Court, since the Court commenced.

Mr. Morris—Not orally—in writing.

Mr. Evarts—I beg your pardon. It was handed to us, and we have not had time to produce that paper.

Judge Neilson—The notice is too short unless it was covered by a prior notice—a former notice.

Mr. Shearman—No, your Honor, it was not.

Mr. Morris—We have been exchanging notices during the trial on both sides.

Judge Neilson—The notice is as good as any paper here, although only made here.

Mr. Evarts—Exactly, as to anything we have it is good, but we have not had any opportunity to examine to see whether we have it.

Mr. Shearman—I will say to your Honor that if I had the paper with me, I think I should know it, and I should produce it immediately. I have not that paper here, and I have not had an opportunity to go to Mr. Beecher's house.

Judge Neilson—I assume that you have not had an opportunity.

Mr. Beach—I think an hour and a half is time enough to send to Mr. Beecher's house.

Mr. Evarts—To look for papers?

Mr. Beach—To look for papers. There is to be no grand examination for the purpose of finding this letter. Mr. Beecher could at once refer to it upon his files if he kept it.

Judge Neilson—Gentlemen, suppose you pass to some other topic. This would be a good notice at two o'clock.

Mr. Evarts—So we understand.

Mr. Fullerton—Did you preserve a copy of the letter which you sent to Mr. Beecher? A. Yes, Sir.

Q. Look at the paper now shown you and say whether it is the copy that you preserved? [handing witness a paper.] A. Yes, Sir.

Mr. Fullerton—Shall I read it in evidence or not, subject to having the original substituted?

Judge Neilson—No. Mark it for identification for the present, and hold it until two o'clock.

Mr. Evarts—Then we will make further answer on the subject of the search.

Mr. Shearman—Suppose you admit the printed copy.

Mr. Fullerton—No; you have established the precedent. Those things come home to roost very often.

Mr. Evarts—There is nothing here to roost about.

Mr. Fullerton—You are off of the roost.

Mr. Evarts—We want to look for this paper, and we have a perfect right to say so.

Mr. Fullerton—That is what we did say.

Mr. Evarts—No; you said something about coming home to roost.

Mr. Fullerton—We want to remind our adversaries that the word we now use is one of their own getting up.

Mr. Evarts—There is no difficulty at all.

Judge Neilson—No, Sir.

Mr. Beach—But the counsel referred to the goose and the gander, and it naturally reminds us of the roost, and we therefore say that.

Judge Neilson—The gentleman has been quoting Shakespeare and not choosing the best parts of it. [Laughter.]

Mr. Shearman—I will say that I only did that out of courtesy to the gentlemen on the other side, for the purpose of finding the paper, because the fact is that the description given me is

so vague that it is only by some intuition that I can ever find this letter at all.

Mr. Fullerton—I can give the date.

Mr. Shearman—I don't want it.

Mr. Fullerton—But you must have it. It is October 4, 1873.

Mr. Shearman—Their notice does not cover any such letter, your Honor, and it shows how a little courtesy on the part of counsel might be profitable to themselves.

Mr. Fullerton—Ah! that is a lesson you should have learned yesterday.

Mr. Beach—We fear the Greeks, Sir, bearing gifts.

Mr. Fullerton—If the notice is insufficient, we will remedy that by giving—

Mr. Beach—Well, they have got the notice now.

Mr. Evarts—Yes, we have got it now for the first time; we never had it before.

Judge Neilson—Yes, it is so understood.

Mr. Beach—What is the notice?

Mr. Morris—The notice is wrong as to the date, but it refers to the substance.

Mr. Shearman—How do we know but there may be a hundred letters of Mrs. Bradshaw?

Mr. Evarts—They have given a notice to produce a letter of a different date. They would have to correct that notice, which they now have done.

Mr. Fullerton—Their attention has been called to the substance of it. The date, under the circumstances, was very unimportant.

Judge Neilson—You can resume this branch of the subject at two o'clock, when they will probably produce the letter.

Mr. Fullerton—I cannot go any further with the witness.

Mr. Beach—Yes, we can put in the letter of Mr. Beecher, and we can put in the copy if they do not produce the original.

Mr. Fullerton—I don't want to put in the letter of Mr. Beecher first.

Judge Neilson—Could not you save time, gentlemen, by using the copy?

The Witness—It is an exact copy, and was written before the letter was sent.

Mr. Fullerton—Look at the paper now shown you, and say whether it is a reply of Mr. Beecher to the letter which you sent to him? [Handing witness a paper.] A. Yes, Sir.

Letter marked "Ex. 66 for identification."

### TILTON'S FAMILY ORDINARILY HAPPY.

Q. Now, Mrs. Bradshaw, you have told us that you were intimate in Mr. Tilton's family. I wish to ask you about the degree of affection which existed in that family between the husband and the wife, as manifested in their daily intercourse, when you were present? A. I always considered them an ordinarily happy family.

Q. "I always considered them an ordinarily happy family." Did I understand you correctly? A. Yes, Sir.

Mr. Evarts—An ordinarily happy family.

Mr. Fullerton—Yes, Sir. [To the witness.] And that judgment was based upon observation while you were there, was it? A. Yes, Sir.

Q. What was the general character and disposition of Mrs. Tilton in her family? A. Most delicate and refined and sweet-minded in every way. No one could know her and not love her.

Q. And up to what time was this degree of affection manifested, in this family, that you have spoken of? A. I never knew of any serious trouble until within three or four years—three years perhaps.

Mr. Fullerton—That is all with the witness.

Judge Neilson—Then you will resume with this witness at two o'clock?

Mr. Beach—No, Sir.

Mr. Fullerton—No, Sir, we are through with her.

Mr. Evarts—We will cross-examine her when the paper is produced.

Judge Neilson—Is this copy of the letter in by consent?

Mr. Beach—No, Sir; the copy of the letter is proven. If they produce the original and furnish it, we will introduce that with the reply; if not, we will introduce the copy. There is no occasion for the suspension of this cross-examination.

Judge Neilson—Then go on.

Mr. Fullerton—There is one other question I will ask. [To the witness.] Is that the envelope in which Mr. Beecher's letter to you was sent? [Handing witness an envelope.] A. Yes, Sir.

Marked "Ex. 63, for identification."

Mr. Evarts—If you will show us that letter we will see about it.

Mr. Fullerton—The copy?

Mr. Evarts—Yes, Sir.

### A NEW LETTER OF BEECHER'S, ADVISING SILENCE.

Mr. Evarts—If your Honor please, this copy, this lady gives a very trustworthy account of it—I mean in respect of accuracy; and we shall be able to correct it if there happens to be any discrepancy.

Mr. Beach—You consent then to our reading it, substituting it for the original?

Mr. Evarts—Yes, Sir; referring to the original if we find any occasion to do so.

Mr. Fullerton—I read first the letter of Mrs. Bradshaw:

BROOKLYN, October 4, 1873.

Mr. Beecher:

DEAR FRIEND: I want very much, if you are willing, to have a few words with you in regard to the statement which I, in good faith, consented to make before the Church Committee in your behalf and Elizabeth's, for I felt that my intimacy with her and my love for her and for you gave me a right to speak in her vindication. I could not and would not believe that you had been otherwise than basely calumniated. Now, Mr. and Mrs. Tilton come and warn me not to do it, if I value your welfare; and refer me to you for advice in the matter. I shall be governed entirely by what you say, for I would part with my right hand sooner than to destroy the love and confidence which is reposed in you all over the world. Will you see me for a few moments here or wherever you may appoint. Or, must I accept Theodore's awful story for truth. Do mitigate it, be it ever so little, if you can. Elizabeth has never made any confessions to me. God knows that I do not seek an interview from any motives of morbid curiosity;

the subject is too painful for that. Believe me, you have no sincerer friend than  
M. A. BRADSHAW.

Please do not send a verbal answer by Mr. Halliday, to whom I intrust this note; because I do not wish to intrude at your house. Of course I do not wish to see you if you prefer otherwise; but send me a line in reply, if you do not come, that I may know what to do, for I cannot take the word of any other person in this matter.  
M. A. B.

[Letter marked as read.]

I now read the reply of Mr. Beecher:

Confidential.

OCTOBER 7, 1873.

MY DEAR FRIEND: I thank you for your cordial and sympathizing note, and accept your expressions of confidence and affection; and I need not say to you how sincerely I reciprocate them. In regard to the matter of which you speak, let me say frankly that I think you will do the greatest good to all parties concerned by pursuing the course which I have done from the first, namely, refusing to allow the public to meddle with domestic and private affairs. It is impossible ever to bring domestic matters, complicated by elements which cannot be stated or understood, and without which all explanations will be barren, into public without doing a deal more harm than good. To be left absolutely alone is the sure and safe remedy; and, in this case, whatever difficulties have arisen have been amicably adjusted by those most deeply concerned. I know very well that the impulse of affection leads a generous nature to wish to fly to a friend's succor; and I am sure that you would not spare yourself any pains to help those who need you. But, happily, the best help you can give is to continue to love and trust those whom you have always trusted, and to refuse to have any hand in giving mischievous publicity to private affairs, even by allowing them to be discussed in your presence.

With sincere affection, old and new, I remain,

Very truly yours, HENRY WARD BEECHER.

MRS. MATTIE BRADSHAW.

The envelope is addressed: "Mrs. M. A. Bradshaw, 485 Henry-st., Brooklyn."

[Letter and envelope marked as read.]

Mr. Fullerton—I will ask you this further question: Did you appear before the Committee to give evidence? A. No, Sir.

#### CROSS-EXAMINATION OF MRS. BRADSHAW.

The cross-examination was then begun.

Mr. Shearman—With reference to this paper, designated as Mr. West's charges, did you ever see that precise paper that was shown you by the counsel? A. No, Sir.

Q. Did you ever see any paper of that kind—a paper of that kind? A. No, Sir; I think not.

Q. No? A. I think after he had made his charges, he read them to me to see if he had them correct.

Q. Mr. West read you something?

Mr. Fullerton—No, no; not something; he read his charges?

Q. About what time did he read those charges to you? A. I cannot recollect, Sir, exactly.

Q. Did he ever read them to you before Sept., '73? I mean the charges as stated in that paper. You will be kind enough to let her look at that paper. [Paper handed to witness.] A. I don't recollect the time exactly.

Q. Will you look at that paper and refresh your memory, and say whether you cannot tell us, certainly, that you never saw or heard those charges before September or October, 1873?

A. I don't recollect the time when the matter was under consideration before the Church; that is, what month it was.

Q. How near was it to the time of your writing that letter that you first heard Mr. West read these charges that are in that paper? A. Within a very short time.

Q. That letter was dated the 4th of October, I believe? A. Yes, Sir.

Q. 1873? Were these charges read to you or brought to your notice by Mr. West, these precise charges I mean, before or after you wrote your letter of Oct. 4th, 1873? A. Before that.

Q. And very shortly before? A. Yes, Sir; I should say so.

Q. I understood you to say that Mr. and Mrs. Tilton's family were an ordinarily happy family until three or four years; can't you fix the date any more definitely than that, Mrs. Bradshaw? A. I never knew of any serious unhappiness until after Mrs. Woodhull's publication.

Q. That was in November, 1872? A. Whenever it was.

Q. You have said that Mrs. Tilton was a delicate, refined and sweet minded lady; was she not also a devoted wife and mother? A. Yes, Sir, eminently.

Q. Eminently so. Did you see any change in Mrs. Tilton's demeanor to her husband, any change in her manifestations of affection and devotion down to the period you have named, 1872? A. No, Sir.

Q. Was she not just as devoted a wife and mother during the years 1869, 1870 and 1871 as you had ever known her to be before? A. Yes, Sir.

Q. Did you not frequently converse with Mrs. Tilton about her husband, I mean with reference to her feelings toward him, in '69 and '70? A. Yes, Sir, or rather she did with me.

Q. Did she not uniformly manifest affection and devotion toward her husband in those two years? A. What two years.

Q. 1869 and '70? A. So far as I remember.

Q. How was it in the year 1868, especially in the Fall, the latter part of 1868? A. I have no special remembrance of that time.

Q. There was nothing noticeable or distinguishable from the general course, between Mr. and Mrs. Tilton, down to the period you have named in 1872? A. No, Sir.

Q. Were you acquainted with the religious views of Mr. and Mrs. Tilton during these years? A. Yes, Sir.

Q. Did you know of any change taking place in the mind of Mr. Tilton in respect to religious subjects? A. Yes, Sir. His wife has very frequently spoken to me of that.

Mr. Shearman—That I did not ask. If you object to that about the wife—

Mr. Evarts—We do not call for Mrs. Tilton's statements.

Mr. Beach—Well, that will be struck out then.

Mr. Shearman—Yes.

Mr. Shearman—You have said that you knew of no serious troubles between them, but did you know of any trouble or difficulty growing up between them on account of difference in religious opinions?

Mr. Beach—Well, do you call for that from the declarations of Mrs. Tilton?

Mr. Evarts—In just the same sense in which you have called for what she observed in that family. She said she knew of no



serious troubles up to a certain time. Now, we ask her if she did know of troubles growing out of the discord in religious opinions between Mr. and Mrs. Tilton.

Mr. Fullerton—We do not ask for what Mrs. Tilton said.

Mr. Evarts—It is the same kind of evidence—the observations she has noticed.

Mr. Beach—Ah! If she gives the declaration of Mrs. Tilton—

Mr. Shearman—Well, we didn't ask for the declarations of Mrs. Tilton.

Mr. Beach—That is just what we asked you. Mr. Evarts refused to answer and you do answer.

Judge Neilson—[To Witness.] You understand that in answering you will speak from your general knowledge, and not from what Mrs. Tilton told you. Now, stenographer, read the question.

[Question read by TRIBUNE stenographer.]

A. No trouble or difficulty, only it made her unhappy.

Q. Mrs. Tilton was an eminently religious woman, wasn't she? A. She was, Sir.

Q. Did you ever meet Mr. Beecher at Mrs. Tilton's house? A. Yes, Sir.

Q. Frequently? A. No, Sir.

Q. Did you see him in company with Mrs. Tilton either there or elsewhere frequently? A. No, Sir.

Q. But did you see them together sometimes? A. Very seldom.

Q. What was their demeanor and conduct toward each other when you did see them together? I don't ask what they said, but their demeanor and conduct, was it—

Mr. Fullerton—No, no.

Judge Neilson—He means apparent.

Q. I mean was it proper and decorous, as you observed it? A. Yes, Sir; eminently so.

Mr. Evarts—It might be judicious, both for this witness and any other who may not be able to speak so as to be heard by the jury, that the stenographer himself, when he has written the answer, should read it. Then we should all know what it was. It might save the time of the counsel, too.

Mr. Fullerton—You have, in reply to a question put to you by counsel upon the other side, touching the difference in religious sentiment between Mr. and Mrs. Tilton, observe that it only made Mrs. Tilton unhappy. Did you learn that from what Mrs. Tilton said, or any other way? A. Yes, Sir; from what she said.

Q. You learned it altogether that way, did you not? A. Yes, Sir; I don't remember any other.

This closed the examination of the witness, and the Court took a recess till two o'clock.

Mr. Shearman—If your Honor please, I desire to say that during the recess I made some examination for the letter, but without success; I have no doubt that we will be able to find it, and if we do, to-morrow morning I will be able to present it to your Honor.

Mr. Fullerton—Now, shall I proceed?

Judge Neilson—Yes, Sir.

TESTIMONY OF MR. WILLIAM F. WEST.

William F. West called by the plaintiff and sworn.

Mr. Fullerton—Where do you reside, Mr. West? A. 175 Madison street, in this city.

Q. Where do you carry on business? A. I am cashier for a banking-house in New-York.

Q. Were you ever in any way connected with Plymouth Church? A. Yes, Sir, I was a member of Plymouth Church, and am yet.

Q. When did your membership commence? A. Some eight or nine years ago.

Q. Have you ever been an officer in the church? A. I have, Sir.

Q. What office did you hold? A. I was a member of the Examining Committee for two years, and a deacon of the church for three years.

Q. During what period were you a member of the Examining Committee? A. From 1868 to 1870, I think, Sir.

Q. During what period were you a deacon in the church? A. From 1870 to 1873.

Q. Then you ceased to be a deacon? A. Yes, Sir.

Q. I want to call your attention to what occurred in the Autumn of 1871, after the publication of what is known as the Woodhull biography—if there was any action taken in regard to that matter, and, if so, what was it?

Mr. Evarts—Action by whom?

Mr. Fullerton—I will ask a leading question, if you prefer it.

Mr. Evarts—No.

Mr. Fullerton—It will not introduce any paper.

Mr. Evarts—I have no doubt you think it proper, but we object.

Mr. Fullerton—I withdraw the question.

Mr. Fullerton—What occurred between you and Mr. Beecher, if anything, in reference to the Woodhull biography? A. Mr. Beecher made a request of the Examining Committee, of which I was then a member, that he should be appointed as a Committee of one to confer with Mr. Tilton with regard to it.

Q. What action was taken in pursuance of that request? A. Mr. Beecher reported—

Q. No, what action was taken? A. The Examining Committee appointed Mr. Beecher such a Committee.

Q. Were any instructions given to the Committee after he was appointed, and, if so, what were they?

Mr. Evarts—That is objected to; it is only Mr. Beecher's relation to the subject, we take it, that we are concerned with.

Mr. Fullerton—I suppose we may show what instructions were given by the Examining Committee to Mr. Beecher, as a matter of course.

Mr. Evarts—Were they in writing?

Mr. Fullerton—Were they in writing? A. No, Sir, not that I know of; the Committee requested him to report as soon as possible.

Q. Was the object of appointing a Committee stated at the time of the appointment? A. It was; the Committee was to confer with Mr. Tilton with reference to the severance of his

relations with the church. It was thought by the Committee—

Mr. Evarts—No matter what.

Mr. Fullerton—If it was expressed at the time, state it?

The Witness—It was expressed at the meeting of the Committee.

Mr. Evarts—To Mr. Beecher?

The Witness—I don't remember whether Mr. Beecher was present.

Mr. Fullerton—State what occurred in Mr. Beecher's presence in that regard? A. The action which occurred in Mr. Beecher's presence was at a subsequent meeting, when Mr. Beecher made his report. Mr. Beecher reported to the Committee.

Mr. Evarts—Is that in writing? A. No, not that I remember; I think not.

Mr. Fullerton—Go on.

The Witness—Mr. Beecher reported to the Committee that he had seen Mr. Tilton; that he was in a very critical position. I am not repeating Mr. Beecher's words, now. I took no memorandum of that at the time; I am simply giving from memory the substance of the report; if there is anything incorrect with reference to it, the books of the Committee will show where my memory fails me. Mr. Beecher reported that he had seen Mr. Tilton; that Mr. Tilton at that time was in a very critical position; that he had many troubles, pecuniary and otherwise; that he had been surrounded by bad influences, and that he thought it would be better to leave Mr. Tilton to the influence of his friends, and for the church to take no action, or for the Committee, rather, to take no action with reference to severing his relations with the church. That report was adopted and no action taken.

Q. No action taken? A. No, Sir.

Q. Now, was any action taken subsequent to that by the church, through its proper officers, in reference to Mr. Tilton?

Mr. Evarts—Well, in regard to Mr. Beecher, we will insist upon his connection.

Mr. Fullerton—You can answer. A. Yes, Sir.

Q. When? A. In November, 1872, I think.

Q. After what event? A. After the publication of Mrs. Woodhull's statement.

Q. Was it known as the Woodhull scandal? A. Yes, Sir.

Q. What was done after that in reference to Mr. Beecher? A. Mr. Beecher sent a request, or at least Mr. Halliday so stated to the Committee.

Mr. Evarts—We object.

Mr. Fullerton—Did you confer with Mr. Beecher afterwards in reference to it? A. I did confer with Mr. Beecher afterwards.

Q. In reference to this communication from Mr. Halliday? A. Yes, Sir.

Mr. Evarts—Whatever the conference was with Mr. Beecher, that we are entitled to.

Mr. Fullerton—That is just what I ask for.

The Witness—Mr. Halliday stated to the deacons of the church, at a deacons' meeting—

Mr. Evarts—That we object to.

Judge Neilson—Ask what passed with Mr. Beecher.

Mr. Fullerton—If he had a conversation with Mr. Beecher subsequent to that, in which this was repeated, is not that brought within your Honor's ruling?

Judge Neilson—Do you expect to show that?

Mr. Fullerton—The witness has so stated to me.

Mr. Evarts—This very question your Honor has disposed of. The short way is to show what occurred with Mr. Beecher; and if that requires anything antecedent to explain it, it will be time enough to take that up.

Mr. Fullerton—You think the shorter way is to go all round?

Mr. Evarts—We want to proceed in the correct way.

Mr. Fullerton—What did you say to Mr. Beecher in reference to what Halliday had communicated to the Committee? A. I called upon Mr. Beecher at his house; I cannot fix the date exactly; it was in November—the early part of November, 1872—and informed him that he had been appointed by the Examining Committee a member of a Sub-Committee, to confer with Mr. Tilton in regard to his position in relation to the Woodhull scandal.

Q. Did you tell him at whose request the Committee was appointed? A. This Committee was appointed on my motion.

Q. Did you tell him so? A. I told Mr. Beecher so.

Q. What was Mr. Beecher's reply to that information? A. Mr. Beecher told me that he thought it would be better to meet this whole scandal by silence—to make no effort to investigate it; and I replied to him that I thought that was a mistaken policy; that the church was suffering very much from the scandal; that I thought that the only way to meet the scandal was to strike it down and utterly destroy it. I told him that Mr. Tilton was a member of the church, as I understood it; that he was named by Mrs. Woodhull as her authority for the scandal; that I thought Mr. Tilton should be called upon to explain his position in the matter. Mr. Beecher replied that there was some force in what I said, and he said that he would meet with the Committee, but he was very busy at that time; that it would be two or three weeks before he could find time to meet with the Committee. I replied to that that the church was suffering very much, that I thought a meeting should be held at once. We were interrupted at that stage of the conversation and went to the other room. This conversation had taken place in Mr. Beecher's study. We then went into the front parlor, and Mr. Beecher resumed the conversation there by saying that this whole story rested solely upon the assertions of two prostitutes; that if he should pay any attention to it, that no prominent man in the country would be safe from their attacks; but he said that if any person of responsibility would make such an attack upon him, that I would see how quickly he would reply to it. I told him that it seemed to me that Mr. Tilton was a responsible person; that he was named as the author—the originator of the scandal; that I thought it was his duty to deny the assertions made by Mrs. Woodhull; and if he did not do that, that the Church should take the matter up; and if he did not explain his position satisfactorily, that he should be dismissed from the Church; and as the result of this conversation, Mr. Beecher named a day when he would meet with the Committee at his house, some two weeks after that time.

Q. Did he meet the Committee? A. He did meet with the Committee; and the Committee met at his house, either the latter part of November or the early part of December, 1873.

Q. What occurred at that meeting? A. Mr. Beecher told the Committee that he had seen Theodore with regard to this matter; that Theodore had expressed to him his great grief and sorrow at the publication by Mrs. Woodhull, and had offered to do anything in his power to neutralize the effect of it. He spoke of the friendship which existed between Mr. Tilton and himself; and said that he did not think Mr. Tilton had intentionally done anything to injure him; that he thought Mr. Tilton would in a short time—before the first of January succeeding—publish in *The Golden Age* a card, in which he would denounce Mrs. Woodhull, and in which he would deny the truth of her story; and he advised that the Committee should take no action; that they should await the publication of the card. The Committee decided to do this—that is, to recommend such action to the Examining Committee; but also to recommend at the same time that this sub-committee should be continued, in order that if Mr. Tilton did not publish such a card, he might be waited upon by the Committee afterwards.

Q. Was such a card published? A. Not to my knowledge.

Q. Then what action followed on the part of the Committee because of the non-publication of the card? A. No action was taken to my knowledge.

Q. What next occurred in reference to this matter in which Mr. Beecher participated? A. The next interview I had with Mr. Beecher with reference to the matter, as I remember, was on the night that I laid the charges before the Examining Committee against Mr. Tilton.

#### BEECHER'S POSITION TOWARDS THE WEST CHARGES.

Q. That is what I want to call your attention to. Now, state the history of that, if you please? A. I made charges before the Examining Committee on the night of the 27th of June, 1873—Friday night.

Q. Charges against whom? A. Against Theodore Tilton.

Mr. Evarts—In writing? A. In writing.

Mr. Fullerton—Were they laid before the Committee? A. They were laid before the Committee.

Q. And left with the Committee? A. No; I think not. They were returned to me to be amended, the first time I laid them before the Committee.

Q. Did you amend them? A. I did.

Q. Did you lay the amended charges before the Committee? A. I did.

Q. When were the amended charges put before the Committee? A. On the evening of the first of July, if I remember correctly.

Q. 1873? A. 1873.

Q. Did you leave these charges with the Committee? A. I did; they were accepted by the Committee at the time, and the Clerk was instructed to forward them to Mr. Tilton.

Mr. Fullerton—I call for those charges, under our notice.

Mr. Evarts—You must subpoena the Clerk to bring them.

Mr. Morris—We have subpoenaed him. Mr. Shearman said that we should have them.

Mr. Shearman—The gentleman is in attendance with the papers.

Mr. Fullerton—But you do not produce them on my call.

Mr. Evarts—You have no right to call upon us for papers not in our possession. The clerk is here.

Mr. Beach—We ask the clerk to hand the papers over to us—these charges. It seems to me that it is but a mere form to pass them over through the counsel.

Mr. Fullerton—Before the papers are produced, you may state the interview that you had with Mr. Beecher before laying the amended charges before the Committee? A. I wrote to Mr. Beecher on the twenty-fifth of June, I think it was, stating to him—

Mr. Evarts—No matter what—you wrote a letter.

The Witness—Excuse me.

Mr. Fullerton—That letter is in evidence.

Mr. Evarts—And it speaks for itself.

Mr. Fullerton—Yes, it speaks for itself.

Q. Were you here when your letter was read in evidence? A. I was not.

Q. Look at the paper now shown you, and state whether that is the letter you wrote to Mr. Beecher? I show you "Exhibit 53," already in evidence. A. It is, Sir.

Q. How soon after sending that letter to Mr. Beecher, if at all, did you see him? A. I saw him on Friday evening, the 27th of June.

Q. Where? A. At the lecture room of Plymouth Church.

Q. What occurred between you and him at that time? A. The Examining Committee had just left the lecture room in order to receive my charges.

Mr. Evarts—Never mind that.

The Witness—I speak of that, because our conversation referred to it, and Mr. Beecher came towards me, and told me he had received my letter; that he was glad to hear from me, and he thought I was taking the right course; but he said, "This is not a good time to bring this matter before the church; many members of the church are going into the country soon, and it will be better to postpone the matter, but if you will put it off until the Fall I will then unite with you in having a thorough investigation." I told Mr. Beecher I was opposed to any delay in the matter; that I felt action ought to be taken at once; that the scandal was doing great damage to the church, and that I should proceed in the matter at once—"use every effort in my power." I think these were the words that I used—to bring this matter to an issue with Mr. Tilton. Mr. Beecher said to me, "If you do that, Sir, you will act contrary to my wishes." Our conversation was interrupted at that time by Captain Charles Duncan, who came to the door and said that the Examining Committee wished to see us.

Q. Whom did he address? A. He addressed Mr. Beecher and myself; Mr. Beecher said "to see whom?" Captain Duncan said, "Yourself and Brother West." Mr. Beecher replied, "I have nothing to say to the Committee." Captain Duncan said, "Brother West had a matter to lay before them."

Mr. Beecher then again turned to me and said "Brother West knows very well what my wishes in this matter are." I told Mr. Beecher I was sorry to act contrary to his wishes, but I was compelled to do it by a sense of duty. I followed Capt. Duncan, and went into the vestry room.

Q. When Mr. Beecher made his last remark to you, what was his tone and manner? A. His tone was angry and threatening.

Q. You have stated you went up-stairs before the Committee? A. I did.

Q. Did Mr. Beecher go with you? A. He did not.

Q. Did you lay the charges before the Committee when you went up there? A. I did.

Q. And are these the charges you placed before them? [Handing paper to witness]. A. These are not the charges I placed before them on that evening; these are the amended charges.

Q. Where are the charges you laid before the Committee first that evening? A. I have them in my pocket, I think.

Q. Then produce them, if you please. [Paper shown witness.] I ask you to take a pencil, and mark in red, the charges that were placed before the Committee that evening? A. Do you mean to write in the margin?

Q. No; encircle the part as read—surround it.

The witness does so.

Q. Having marked that part of this paper in red, I ask you when the balance of it was added? A. It was not added; the remainder of the paper contains charges against another person.

Judge Neilson—In connection with Mr. Tilton? A. Not in connection with Mr. Tilton.

Mr. Fullerton—What knowledge had Mr. Beecher of these charges that you have thus marked in the paper before you presented them to the Committee? A. I told Mr. Beecher that I intended to lay the charges before the Committee, and I told him the substance of the charges.

Mr. Fullerton—I now offer them in evidence.

Mr. Evarts—He did not read them.

The Witness—He did not read all of them.

Mr. Fullerton—I now read this paper:

BROOKLYN, June 27, 1873.

*To the Examining Committee of Plymouth Church, Brooklyn:*

DEAR BRETHREN: Impelled by a sense of duty as a member of this Church, I hereby make before you the following charges and requests:

1st. I charge Theodore Tilton, a member of this church, with having at various times and to different persons, accused the pastor of this Church of conduct derogatory to his christian integrity, and injurious to the reputation of this church, and I request that the said Theodore Tilton be summoned to appear before this Committee, and, in case of failure on his part to retract said accusations or to prove them to be true, to show cause why he should not be expelled from membership with this church.

I name as witnesses who will testify in support of the above charge: Rev. E. L. Taylor, D. D., at No. 150 Nassau street, New-York; Rev. J. L. Hodge, D. D., No. 66 Harrison Place, Brooklyn; Rev. — Fulton, D. D.; and Andrew Bradshaw, No. 485 Henry street.

Paper marked "Exhibit 67."

Q. Were these charges afterwards amended? A. They were;

the Committee returned them to me and requested me to amend them by adding specifications.

Q. Look at the paper now shown you and say whether it contains the amended charges? A. It does down to a certain point.

Mr. Shearman—Indicate with a pencil mark. Please indicate it by a mark [showing witness paper]? A. That is not the whole of the charges they finally accepted; there are two specifications there only.

Q. These are not the charges finally accepted by the Committee? A. These were accepted at the time; the third specification was afterwards added and accepted.

Q. Was afterwards added? A. Yes, Sir.

Mr. Fullerton—I now put them in evidence.

Mr. Evarts—It is not shown that Mr. Beecher saw this.

Mr. Fullerton [showing paper to witness]—Is this the third specification? A. It is.

Mr. Shearman—But that was not put in at the time? A. No, Sir.

Mr. Shearman—Not for months afterwards?

Mr. Fullerton—Never mind, Mr. Shearman.

Mr. Beach—Our object is to ascertain what was finally accepted by the Committee—as finally pending before the Committee. That is all that is important.

Mr. Fullerton—Now, Mr. West, what knowledge had Mr. Beecher of these amended charges—the third specification? A. The same knowledge that he had of those that were made the evening before.

Q. State, if you please, what happened? A. I told Mr. Beecher the substance of the charges.

Q. As they are contained in these amended charges? A. In these amended charges—not with the third specification.

Q. Without the third specification? A. Yes Sir.

Mr. Evarts—We apprehend that does not entitle them to read these charges. The witness says he stated the substance of the charges. The mere fact of stating them to Mr. Beecher would not entitle the reading of this paper. He has given no conversation concerning them on the part of Mr. Beecher which shows that he had any knowledge of what these charges were. And here was a written paper. He puts it before us that he told Mr. Beecher the substance of it, and that leaves a large region of uncertainty whether the whole paper was brought to the attention of Mr. Beecher.

Judge Neilson—I will admit it.

Mr. Evarts—We except.

Mr. Fullerton—[Reading:]

BROOKLYN, July 1st, 1873.

*To the Examining Committee of Plymouth Church, Brooklyn, N. Y.:*

DEAR BRETHREN: It must be well known to you that a great and terrible scandal has for some time past been publicly proclaimed, to the great injury of the good name of our beloved pastor, and of our church, and, as I believe, to the great injury of the Christian cause wherever our pastor and our church are known.

It is generally understood that this wicked scandal has originated with and been circulated by certain members of our own church, who charge immoral practices of the worst possible character against our pastor.

Now, to the end that justice may be done to all concerned,

and that the Christian religion may be speedily relieved from the stain and reproach which this scandal seems to cast upon it, I, a member of this church, respectfully request that you immediately institute a thorough and earnest investigation as to the truth of the following charges and specifications:

1st. I charge Theodore Tilton, a member of this church, with having circulated and promoted scandals derogatory to the Christian integrity of our Pastor, and injurious to the reputation of this church.

**SPECIFICATIONS,**

1st. In an interview between Theodore Tilton and Rev. E. L. Taylor, D. D. at the office of *The Brooklyn Union* in the Spring of 1871, the said Theodore Tilton stated that Rev. Henry Ward Beecher preached to several (7 or 8) of his mistresses every Sunday evening. Upon being rebuked by Dr. Taylor, he reiterated the charge, and said that he would make it in Mr. Beecher's presence if desired.

Witness: Rev. E. L. L. TAYLOR, D. D., 150 Nassau-st., New-York City.

In a conversation with Mr. Andrew Bradshaw at his residence, in the latter part of November, 1872, Theodore Tilton requested Mr. Bradshaw not to repeat certain statements which had previously been made to him by Mr. Tilton, adding that he retracted none of the accusations which he had formerly made against Mr. Beecher, but that he wished to hush the scandal on Mr. Beecher's account; that Mr. Beecher was a bad man, and not a safe person to be allowed to enter the families of his church; that if this scandal ever were cleared up, he (Tilton) would be the only one of the three involved who would be unhurt by it, and that he was silently suffering now for Mr. Beecher's sake.

Witness: ANDREW BRADSHAW, 485 Henry-st., Brooklyn, N.Y.

I will only add that I make these charges not from any feeling of ill-will toward the accused, but from a sense of duty as a member of this church, and with the desire and hope that this scandal may cease and that the stain now resting upon our church may be removed.

Yours fraternally,

WM. F. WEST.

[The paper was marked "Exhibit 63."]

**BEECHER ABSENT FROM COMMITTEE MEETINGS.**

Mr. Fullerton—What, if anything, occurred between yourself and Mr. Beecher in regard to Specification 3d? A. Nothing excepting that Mr. Beecher was a member of the Examining Committee, and as such, that specification was brought before him, the same as before any other member of the Committee.

Q. Where did the Committee meet when this specification was placed before them? A. They met in the parlors of the church.

Q. Who placed it before them? A. I placed it before them.

Q. Was Mr. Beecher on that Committee at that time? A. He was not present at that meeting.

Q. Was he present at any meeting when this specification came up? A. Not to my knowledge.

Q. Do you know whether it ever came to Mr. Beecher's knowledge from any conversation you had with him? A. No, Sir.

Q. I now show you "Exhibit 29," consisting of a letter of Mr. Tallmadge and something else. Did you ever see those before or either of them? [Handing witness papers]. A. I never saw this particular paper.

Q. In whose handwriting are the papers? A. In the handwriting of Mr. Tallmadge.

Q. Both of them? A. I should judge so, as far as I can tell.

Q. What office did he hold at that time? A. He was assistant clerk of the church, and clerk of the Examining Committee.

Q. Did this third specification form a part of your charges, as you at length placed them before the Committee? A. It did.

Mr. Evarts—I object that the third specification has utterly failed to be brought to the notice of Mr. Beecher, as it now stands on the evidence.

Judge Neilson—It cannot be read, but I think this question can be answered.

Mr. Evarts—If your Honor please, a single observation. It is of no importance what it constituted, or to whom it was known if it constituted no part of anything that was brought to Mr. Beecher's knowledge, because the argument is not concerning this Committee having before them this, that or the other thing, but concerning Mr. Beecher's knowledge of that fact.

Mr. Fullerton—There is more than one way to show that this third specification was brought home to Mr. Beecher's knowledge.

Judge Neilson—It was not read, but it may have been brought home to his knowledge.

Mr. Beach—Will your Honor please consider one thing, that we have given several interviews between Mr. Moulton and Mr. Beecher in regard to the West charges, which were made before the Committee, in which those charges have been recognized by Mr. Beecher in those conversations, he being one of the Examining Committee, before which they were pending. Now, Sir, it is perfectly competent for me, I submit to you, under that recognition by Mr. Beecher, to show what those charges were as they were finally adopted by that Committee.

Judge Neilson—All that might well occur, and yet this third specification never actually came under his notice; and my opinion is that at present this mere formal question can be answered, showing that it is a part of the proceedings, and it remains to be seen whether it can be brought home to Mr. Beecher.

Mr. Fullerton—That is just the view I take of it, exactly, because I shall supplement this testimony with other upon this subject.

Mr. Evarts—Your Honor will note our exception as it stands at present.

Judge Neilson—Yes, Sir.

Q. Now, the question, Mr. West, is whether this third specification formed a part of your charges, as you finally submitted them to the Committee? A. It did.

Mr. Beach—You had better have that marked for identification.

[Marked "Ex. 66, for identification."]

Q. As near as you can tell, when were these amended charges placed before the Committee? A. I can give you the exact date if you would like it, by referring to a copy that I have of them.

Q. Refer to any memorandum that you have so as to enable you to answer the question. A. [Referring to memorandum.] September 2, 1873.

Q. State, if you please, who composed that Committee. A. Who composed it?

Q. At that time; yes, Sir. A. Do you wish the names?

Q. If you please. A. I don't know that I can do that. There were a large number. The Committee was composed of the Pastor and Assistant Pastor of the church, of the deacons and of the members of the Committee who were elected as such.

Q. Are you speaking now of the Committee before whom you laid the amended charges? A. Yes, Sir; I thought that was what you referred to.

Q. It was? A. The Examining Committee.

Q. Who was the assistant Pastor at that time? A. Rev. S. B. Halliday.

Q. Was any action taken by that Committee that you know of? A. The Committee passed the resolution directing the church to send the charges.

Mr. Shearman—Well?

Mr. Fullerton—Now, gentlemen, will you be kind enough—

Judge Neilson—The answer taken down will simply be that the Committee adopted the resolution.

Mr. Fullerton—Yes, Sir. [To defendant's counsel.] If you will furnish me that resolution now I will put it in—the resolution passed by the Committee on the presentation of the amended charges of Mr. West.

Mr. Tracy—There is no paper here.

Q. What resolution was offered and passed by the Committee in reference to the amended charges which you read before them?

Mr. Shearman—To that we object. It is not shown that Mr. Beecher was present; besides, it is not even shown that this witness was present, or that he was a member of the Committee.

Mr. Beach—It is shown that he was a member of the Committee.

Mr. Shearman—I beg pardon; he was not a member of the Committee at this time, as the witness himself will say, I think.

Mr. Fullerton—He was not a member of the Committee, but he states that he went and presented these amended charges.

Mr. Shearman—I beg pardon, he has not even said that yet. The gentleman—if you will excuse me—confounds the interview of July 1 with that of September 2, or if not, he is asking his question in such shape that the witness will.

Mr. Fullerton—Well, what position do you take about it? you say I am mistaken. [To the witness.] Haven't I asked you if you went and presented these charges, with the 3d specification attached? A. With the 3d specification? yes, Sir; that was in September.

Q. Now, I ask you what action the Committee took when you thus presented those amended charges and specifications? A. They accepted that specification.

Mr. Shearman—One moment. To that we object. There is no evidence that Mr. Beecher was present.

Judge Neilson [to the witness]—The question is whether Mr. Beecher was present.

The Witness—He was not present.

Mr. Fullerton—That does not preclude me from giving the evidence, Sir, in my judgment.

Judge Neilson—I think it does. I think you might put in a record, although he was not present; but not to affect him personally.

Mr. Fullerton—This is a record.

Judge Neilson—No; it seems to have been informal.

Mr. Fullerton—I don't understand the difference between putting in a record and putting in what took place at the time. Suppose we follow this up by showing that Mr. Beecher subsequently became aware of the action of this Committee?

Judge Neilson—We will take it up again, if you wish, when you find that out.

Mr. Fullerton—Then I will say this, that I have already proved that he was aware of it. I propose now to prove that the Committee directed that notice should be given and a copy of these charges should be served. We have already proved that a notice was given, which has been read in evidence. We have proved that the charges were served, and they have been read in evidence. And we have proved various conversations between Mr. Beecher and others in respect to these very charges, containing the third charge.

Mr. Evans—There I think you are mistaken.

Judge Neilson—The last conversation, being to the effect that Mr. West persisted in presenting the charges, adhered to that, although Mr. Beecher advised the contrary; but there is no suggestion that Mr. Beecher knew what action the Committee took, I think, in the way of resolution.

Mr. Beach—You are confining your observations, Sir, to the conversations with Mr. West; we refer to those between Mr. Moulton and Mr. Beecher.

Mr. Evans—We say there was no such conversation with Mr. Moulton.

Judge Neilson—I think Mr. Moulton did not say—

Mr. Fullerton—I can recur to this subject again?

Judge Neilson—You may exercise your judgment. I think it does not yet appear that Mr. Beecher knew that it was adopted by the Committee.

Mr. Fullerton—If I exercised my judgment, Sir, I should go on. Now, I think I have laid the foundation for it. I think it is clearly admissible in evidence. It is not necessary that I should connect Mr. Beecher, step by step, with the action taken by a Committee of that church with reference to this scandal, if in the end we prove that he was aware of what they did. I propose to show what he said with reference to the action of this Committee, what advice he gave with reference to this investigation then set on foot by this witness by the presentation of these charges.

Judge Neilson—You may reserve that point.

Mr. Fullerton—Your Honor will bear in mind that Mr. Moulton gave evidence with respect to these charges, that Mr. Beecher said to him that he must get them over until after vacation—until Fall; and that he did get them passed over until Fall; and then he gave subsequently a conversation between himself and Mr. Beecher in regard to these very charges, in the Autumn of 1873. The question was, how they should be met.

Judge Neilson—The point before us is whether this Commit

tee adopted a resolution, a thing that Mr. Moulton does not appear to have known, and a thing which it does not appear that Mr. Beecher knew. Therefore I think the objection is good as far as it goes. At the same time, if it were a record of the Church, I think it might be read as such. It does not appear to be.

Mr. Evarts—Your Honor will understand that we do not agree with this narrative of Mr. Moulton's testimony. On the contrary, it is testimony that was retracted and never was replaced by any substitute; and we objected, your Honor will remember, to have the paper remain evidence, but your Honor decided that it should remain.

Mr. Fullerton—Well, I will go on. [To the Witness.] Were these charges ever tried before that Committee that you are aware of?

Mr. Shearman—We object to that until it is shown that Mr. Beecher was present.

Judge Neilson—I think he may answer that.

The Witness—Not to my knowledge.

Q. Do you know that anything was done by the Committee in regard to it?

Mr. Evarts—He did not continue a member of the Committee.

The Witness—A copy of it was sent to Mr. Tilton in October.

Mr. Shearman—I object to that. He simply asks whether anything was done. I suppose a proper answer is yes or no; that is all Judge Fullerton desires.

Mr. Fullerton—I will make my desires known better than you can. [To the witness.] Was a copy of these charges served upon Mr. Tilton within your knowledge?

Mr. Shearman—To that we object. It has got nothing to do with Mr. Beecher. The fact is, your Honor, as the witness has very properly said, Mr. Beecher was not present on any of the occasions; he had nothing to do with the action; and this is an attempt to make him responsible for what his church did in its own independent government, being a congregational body not subject to the domination of any pastor or priest—doing what the Church saw fit. Now, Mr. Beecher is not answerable for what the Church did or did not do unless he was a part of that transaction.

Judge Neilson—I think a sufficient answer to the question is that it does not appear, and there is no suggestion that Mr. West himself personally served the papers upon Mr. Tilton. He only knows from information.

Mr. Fullerton—My question, Sir, involves actual, personal knowledge upon his part, whether he served them himself or was present when some other person served them.

Judge Neilson—Well, you may ask him that.

Mr. Fullerton—I asked him whether he has any knowledge upon the subject.

Judge Neilson—I misapprehended you. Go on.

Mr. Evarts—If it is limited to an answer of that kind, go on.

Judge Neilson (to the stenographer)—Read the question.

THE TRIBUNE's stenographer read the question as follows:

"Was a copy of those charges served upon Mr. Tilton within your knowledge?" A. I cannot answer that question without

an explanation, that I can see, your Honor. It depends upon what you call my knowledge.

Q. Were you present when they were served? A. I was not.

Q. Did you serve them yourself? A. I did not.

Q. Did you have any conversation with Mr. Beecher with reference to their service upon Mr. Tilton? A. I did not.

Q. Now, pass from that, then. What else took place between yourself and Mr. Beecher with reference to this scandal, if anything? A. I don't remember any other interview in regard to it.

Q. Do you recollect an occurrence in Plymouth Church when Mr. Tilton addressed the congregation there? A. I do, Sir.

Q. When was that occurrence? A. I think it was the 31st of October, 1873. It was after the presentation of these charges.

Q. State, if you please, what occurred at that time?

Mr. Evarts—We assume Mr. Beecher was there.

Mr. Fullerton—Yes, that is right.

The Witness—It would be rather difficult for me to do it. It was a long meeting and I think an account of it took up some columns in the papers—two or three columns.

Q. What was before the body at that time—what question? A. Before the Church at that time, the question was a resolution which had been presented or which was brought before the church by the Examining Committee with reference to these charges which had been made against Mr. Beecher.

Mr. Evarts—A written resolution? A. Yes, Sir; I understand it was written. It was read from a paper.

Mr. Fullerton—It went upon the record, did it? A. Yes, Sir.

Mr. Fullerton—Now, gentlemen, if you will produce that I will put it in. [To the Witness.] Give us the date again. A. October 31st, as I remember it, 1873.

Mr. Fullerton—I read. It is under the head of Thursday evening, October 23d, 1873. [To the Witness.] Is that the right date? A. October 23d.

Mr. Beach—That was the resolution? A. Yes, Sir.

Mr. Shearman—The proper date is Friday evening, October 31st. That was when action was taken.

Mr. Fullerton [reading]:

*Whereas*, Charges were preferred to this Committee by William F. West against Theodore Tilton; and

*Whereas*, A Special Committee having been appointed by this Committee to wait upon said Tilton in reference to said charges, said Tilton on the evening of the 6th of October instant made answer to that Special Committee in these words: "I have not for nearly four years past been an attendant of Plymouth Church, nor have I considered myself a member of it, and I do not now, nor does the pastor of the church consider me a member, and I do not hold myself amenable to its jurisdiction in any manner whatever;" and

*Whereas*, Theodore Tilton, in a reply to a communication addressed to him by the Clerk of this Committee, and which communication, with a copy of the charges preferred against him by William F. West, were put into the hands of said Tilton on the 17th day of October inst., and a request made of him that he should answer the same by the 23d day of October inst., says in a letter addressed to the Clerk of this Committee, under date of October 22d, 1873: "It is about four years since I terminated all connection with the Church, and am not now a member thereof; therefore, the document addressed to me in that capacity I cannot receive;" and

Whereas it thus appears that Theodore Tilton, a member of this Church, has abandoned his connection with the Church by prolonged absence from all its services, and ordinances; therefore,

*Resolved.* That this Committee recommend to the church that the name of Theodore Tilton be dropped from the roll of membership of the church, as provided by Rule No. 7.

Brother White moved to amend the resolution, so as to recommend to the church to excommunicate Mr. Tilton, in place of dropping from the roll. The amendment was lost.

The ayes and noes being called for on the preambles and resolution, the vote stood as follows:

Ayes—Duncan, Moody, Ropes, Garbutt, Hawkins, Howard, Belder, Day and Halliday; and sisters Pratt, Moody, Fitzgerald and Halliday—13.

Noes—Benedict, White, Rush, Tallmadge and Manchester—5. The Committee then adjourned.

D. W. TALLMADGE, Clerk.

Q. Is that the resolution that you speak of? A. That is the resolution; yes, Sir. It was offered on the 31st.

Q. Now, I recall your attention to the scene in church, when Mr. Tilton addressed the body. What occurred then?

Mr. Everts—We understand this report was in before that meeting.

Mr. Fullerton—Certainly.

The Witness—Mr. Tilton asked permission to speak, as I remember it, and the Moderator said that Mr. Tilton did not need to ask permission, as he was a member of the church and had the right to speak. Mr. Tilton then said, in substance, that a report had been spread that he had slandered the pastor of this church; that he had come there to say, in Mr. Beecher's presence, and in the presence of his friends, that if he had slandered him he was there to answer to the man whom he had slandered; that if Beecher had aught to say against him, if he would say it, he would answer him, as God was his judge. Words to that effect. I don't remember that those were the exact words.

Q. What followed that address? A. There was some applause, I believe, that followed.

Q. Well, I had not reference to that; but were any other remarks made by any other person that evening? A. Mr. Beecher made some remarks. There were some remarks made by various members of the church, as I remember.

Q. I call attention particularly to Mr. Beecher's remarks. What did he say in reference to this proposition of Mr. Tilton to meet any accusation against him? A. I remember it; he said that he had nothing—he had no charges to make against Mr. Tilton.

Q. Was that the substance of what he said in reply? A. Yes, Sir, in reply to that.

Q. Did you see Mrs. Bradshaw with reference to giving evidence to sustain these charges? A. I did.

Mr. Everts—That we object to, if your Honor please. Anything passing between this witness and Mrs. Bradshaw we object to.

Judge Neilson—The more fact that he saw her is proper.

Mr. Everts—It is not important.

Q. Did you show her the charges which you had preferred, or any of them? A. I did.

Mr. Everts—We object to it.

Judge Neilson—I think he can state whether he showed her the charges or not.

Mr. Everts—The point is, that it is all irrelevant, as it does not touch Mr. Beecher. Of course, he knows concerning what he speaks, and therefore is a good witness in that regard, but it does not appear to us how anything that passed between him and Mrs. Bradshaw is material in this case. There is no foundation laid for it, as we suppose.

Judge Neilson—None of the conversation can be given. You can prove the naked fact that he showed the charges, if he did, to that lady.

Q. Did you show anything to Mrs. Bradshaw, and if so, what? A. I showed her the third specification of the charges.

Q. When was that done? A. It was in July or August; I cannot fix the date any more definitely than that—1873.

#### CROSS-EXAMINATION OF MR. WEST.

Mr. Shearman—In regard to Mr. Beecher's remarks at that meeting of October 31, 1873, don't you remember that Mr. Beecher said that, so far as he was concerned, all the difficulties that there had been between Theodore Tilton were buried? A. I remember something of that kind; yes, Sir.

Q. Don't you remember of his saying that he was sure that, as far as Mr. Tilton was concerned, they were all buried? A. Yes, Sir; I think I remember that?

Q. Did Mr. Tilton make any reply to Mr. Beecher's speech? A. No, Sir.

Q. He was present at the time, was he not? A. Yes, Sir; he was present.

Q. Go back to the time when you say that Mr. Beecher was appointed a Sub-Committee by the Examining Committee, when you were a member; will you please refresh your memory and consider whether it is not the fact that Mr. Beecher was actually appointed a Committee and said that he would see Mr. Tilton in an informal way. A. Well, as I remember it, Sir, he was appointed a Committee.

Q. But you are not sure of that are you? A. I remember that he was asked for a report several times; he was to see him, and he did make a report finally to the Committee.

Q. The report which you have described? A. Yes, Sir.

Q. Now, Sir, will you go back to that report and say whether you can say with certainty that Mr. Beecher made, himself, that report at all? A. Yes, Sir, I can; I can remember his position when he made it; I remember him perfectly as he sat in the room and made the report; I remember who were present at the time.

Q. Was not the report which Mr. Beecher made, and which you remember, a simple statement that he had been unable to find Mr. Tilton; that he was out of town; and was not this other report, which you have described at such length, a statement at second-hand, purporting to come from Mr. Beecher, but not made by Mr. Beecher in your presence? A. No, Sir.

Q. Of that you are positive? A. That I am as positive of as I can be. It was over three years ago it occurred, but as positive as I can be of anything.

Q. Was this the only committee that was appointed at or



about that time—in fact, while you were a member of the Examining Committee in Mr. Tilton's case? A. No, Sir; there was one appointed in 1872—November, 1872.

Q. Was this the only one appointed in 1871? A. The only one that I knew anything about, or that I remember now.

Q. And that was a committee of one only, consisting of Mr. Beecher? A. Yes, Sir.

Q. When was this report made by Mr. Beecher, which you have described at length? A. It was, I think, in the early part of December—November or December of 1871.

Q. Was it not the first of December? A. I could not be positive as to the date.

Q. Just about that time? A. As I say, I made no memorandum of it at the time; it is simply as it exists in my memory I relate it here.

Q. Would your memory be refreshed by looking at the minutes of the Examining Committee? A. I think it would; yes, Sir.

Q. There is the meeting—this is the meeting of Dec. 1st, 1871, [turning book to witness]. Just refresh your memory and state whether Mr. Beecher was present at that meeting of Dec. 1st, 1871? A. That is not the meeting, I think, Mr. Shearman.

Q. Well, Sir, at the meeting of Dec. 1, 1871, the pastor was not present, was he? A. According to the minutes, he was not.

Q. Well, Sir, does not your recollection agree? A. No, Sir, I don't remember that meeting. I don't remember any of these special meetings. I simply remember the fact of Mr. Beecher making such a report as I speak of.

Q. You were present at that meeting of December, 1871? A. It is so stated there.

Q. But you believe you were? A. Yes, Sir, I believe I was.

Q. But you cannot remember anything about it? A. I can't remember anything particularly; no, Sir.

Q. Now, Sir, will you look at the meeting of December 15, 1871, and state in the first place that was not the ordinary meeting of the Examining Committee which was heard in the lecture room in presence of the church—whether this was not an ordinary meeting of the Examining Committee in the presence of all the church in the lecture room? A. Yes, Sir; it seems to be.

Q. Now, Sir, at that meeting was any business transacted with reference to Mr. Tilton? A. No, Sir, there was no business transacted before the church with regard to it. The matter was not brought before the church. I remember that distinctly.

Q. There never was anything done with reference to Mr. Tilton's name in meetings of the Examining Committee which were held in presence of the church, was there? A. No, Sir.

Q. Now, will you look at the meeting of Dec. 22, 1871, and state whether the pastor was not absent from that meeting—whether Mr. Beecher was not absent from that meeting, and Mr. Halliday officiated in his absence? A. It is so stated, yes, Sir.

Q. Well, Sir, is not that correct? A. Yes, Sir; I have no reason to doubt it.

Q. Now, will you look at the meeting of December 29, 1871, and state whether any action was taken upon the matter of Mr. Tilton, at that meeting? A. I see no record of it.

Q. Well, Sir, don't you think, doesn't your recollection agree with that record, that no action was taken at the meeting of December 29, 1871, concerning Mr. Tilton? A. Yes, Sir; I know that it was not as late as that; I am positive of it.

Q. Wasn't it in the early part of December that this action to which you have referred was taken? A. It might have been in October, or it might have been in November; I cannot remember it any nearer than that.

Q. When Mr. Beecher was present? A. When he was present at one of the meetings.

Q. Will you be kind enough, after looking at this book, to look at the meeting of Nov. 3, 1871, and state whether that was not the meeting at which, for the first time, the pastor said anything on the subject of Mr. Tilton's case? A. Yes; I think so.

Q. And, on that occasion, was not all the substance of what he said, that he deemed it best that he should see Mr. Tilton; and that he would do so, and report to the Committee at an early day? A. That is as I remember it.

Q. Now, Sir, can you find any record there of the appointment of Mr. Beecher as a Committee to wait on Mr. Tilton? A. As being—as requesting that he should be permitted to see Mr. Tilton and report to the Committee in regard to it.

Q. That is what you called being appointed a Committee of one to wait upon him; isn't it? A. Yes, that is what I referred to.

Q. And was not that all about it? A. Yes, that was all about it; I think the record is correct.

Q. This was what I corrected in my question a little while ago, when I asked you if the fact was not that Mr. Beecher was never appointed a Committee, but was requested in an informal way, or requested himself in an informal way, an opportunity to confer with Mr. Tilton?

Mr. Morris—That already appears.

Q. And now that your memory is refreshed by looking at the record, are you not prepared to admit that you are entirely mistaken in saying that Mr. Beecher made this report which you have stated, and that the fact is that Mr. Halliday made a report in the absence of Mr. Beecher, and that that is the one which you have in your mind? A. If you will allow me to look at the record of the other meeting a moment, Mr. Shearman, please. After looking at the record I will state what I think were the facts in the case. I think that it was at the meeting of Nov. 3d, that the pastor made the statement with regard to Mr. Tilton in regard to his being in difficulty, and said that he had better see him.

Q. But that was before he was appointed a Committee? A. That was before he was appointed a Committee; yes, I think you are right about that, according to the records.

Q. Will you look at this pamphlet, and say whether that is the Life of Mrs. Woodhull, to which you referred as having been the occasion of the Committee's inquiry into Mr. Tilton's case, in 1871? A. I do not know, Sir; I have never read it; I do not know whether that is the one or not.

Q. Wasn't it in consequence of and upon the ground of a publication having been made by Mr. Tilton or some biography of Victoria C. Woodhull, upon which you urged the Committee to take action

In Mr. Tilton's case in 1871: was not that the ground stated by you to the Committee, or one of the grounds? A. That was one of the grounds; yes; one of the grounds.

Q. Hadn't you even seen the Life of Mrs. Woodhull at all? A. I think I had seen it on the news stands and heard it talked about.

Q. Well, cannot you recollect distinctly, by seeing it on the news stands, that it was substantially that paper? A. Well, as I remember it on the news-stands, it was a larger pamphlet than that; but still, I cannot be positive about it.

Q. Just look at it, and satisfy yourself? A. Well, Sir, I cannot possibly identify it in any way, because I do not remember anything about it.

Judge Neilson—That is all.

#### TESTIMONY OF FRANKLIN WOODRUFF.

Franklin Woodruff called on behalf of plaintiff, and sworn.

Mr. Fullerton—You are one of the firm of Woodruff & Robinson? A. I am.

Q. And a partner of Francis D. Moulton? A. I am.

Q. Do you recollect an interview between yourself, and Mr. Moulton, and Mr. Benjamin F. Tracy, which occurred at your office in the city of New-York—at Mr. Tracy's office? A. I do.

Q. When did that occur? A. I think it was very shortly after the publication of the Woodhull scandal.

Q. The Autumn of 1872? A. Yes, Sir.

Q. Was there more than one interview at that office? A. One interview between Mr. Moulton, Mr. Tracy and myself; but there was one by myself and Mr. Tracy prior—the evening before—to the interview that I had with Mr. Moulton and Mr. Tracy together.

Q. I want you to relate what occurred at the interview between yourself, Mr. Moulton and Mr. Tracy?

Mr. Evarts—That we object to, if your Honor please, Mr. Beecher not being present.

Mr. Beach—We have already shown by Mr. Moulton that it was communicated to Mr. Beecher.

Judge Neilson—I think we will receive it.

Mr. Evarts—Your Honor will note our exception.

Mr. Fullerton—Now state, if you please. A. Do you want me to state the interview with Mr. Tracy before the —?

Q. No, Sir; the interview with you three gentlemen. A. We met at Mr. Tracy's office; I think it was about half-past eight or nine o'clock, in the morning, in consultation growing out of this scandal that had been published by the Woodhull-Claffin paper.

Mr. Evarts—Excuse me a moment. I think your Honor may be wrong. If I am right in my present recollection, what was communicated to Mr. Beecher was given in evidence, to wit, the witness Moulton was allowed to state what he told Mr. Beecher concerning an interview that had taken place.

Judge Neilson—That refers to this interview.

Mr. Evarts—But Mr. Fullerton was not allowed to state what the interview was. There is a difference between narrating what he told Mr. Beecher, which might have no foundation in fact, as your Honor may see—I, of course, mean it only as an

illustration of the difference between telling what happened, and proving what happened. Now, Mr. Moulton was not allowed to prove what took place between Mr. Tracy, and Mr. Beecher, and himself.

Judge Neilson—It was unnecessary, inasmuch as he told Mr. Beecher afterwards.

Mr. Evarts—Well, he was allowed to tell what he told Mr. Beecher; whether it was true or not was not the question then up. But he was not allowed to prove what took place, and this witness cannot be allowed, as we think, to prove what took place. It does not make it evidence as to what took place that Mr. Beecher was told that it took place. In other words, the distinction is between proving what was communicated to Mr. Beecher, which is good evidence, of course, because it comes to his ears, and then proving that what was communicated to him really took place, when it took place without his presence and knowledge.

Mr. Fullerton—Well, it having been communicated to Mr. Beecher, we now propose to prove that it did take place.

Mr. Evarts—Well, that does not give you a right.

Judge Neilson—No; the right comes in, if at all, on the theory that Mr. Tracy some way represented Mr. Beecher, or acted for him.

Mr. Evarts—Yes, Sir, that we understand.

Judge Neilson—And we have some general evidence on that subject.

Mr. Evarts—Your Honor has not admitted any evidence as yet based on that proposition.

Judge Neilson—It was not necessary.

Mr. Evarts—I don't say it was; I only say it is the question now before you. But I submit to your Honor that there is no evidence that affects Mr. Tracy's presence as being the presence of Mr. Beecher, and it is a matter of some considerable importance of course. I am not aware that there is any evidence that Mr. Beecher has sent Mr. Tracy in his place so that conversations with Mr. Tracy can be proved as conversations with Mr. Beecher. That is what is now proposed to be done.

Mr. Fullerton—May I go on?

Judge Neilson—No, I am in doubt about this. I don't wish to be hasty about it; I would like to hear your views.

Mr. Beach—This is the evidence, Sir. Mr. Moulton was asked this question by Mr. Fullerton:

Q. Now, what did you state to Mr. Beecher which had been stated to you? A. I said to Mr. Beecher that my partner, Mr. Woodruff, was very anxious that I should make some statement with regard to the Victoria Woodhull publication, inasmuch as many of his friends and many of mine, or several of his friends and several of mine, had criticised my position in reference to the story, that they not only criticised me but they criticised the firm, for my relations to the story; and I said to Mr. Beecher that Mr. Woodruff recommended me, under the circumstances, to take counsel in the matter; and I said to Mr. Beecher that I had asked Mr. Woodruff whom he could recommend, and he said that he would recommend Mr. Tracy; and I said to Mr. Beecher that I thought Mr. Tracy was a good man to consult on the subject; that he had a good cool head on his shoulders, and I thought would give good advice; and I said to Mr. Beecher, "If you have no objection, I will consult with Gen. Tracy, but as ~~as~~."

Gen. Tracy, and to get his best advice upon the subject, it will be necessary to tell Gen. Tracy the truth. If you have no objection, then, I will assent to my partner's wish, and consult with Gen. Tracy," and he said that he had no objection if I thought it was best, and I said that I did not see that I had any other course to pursue; my partner wanted me to do it, and I thought it was necessary to take advice, and that I did not know any better man to consult on the subject than Gen. Tracy.

It appears sufficiently from that that this interview between Mr. Tracy and Mr. Moulton and Mr. Woodruff was acquiesced in and recommended by Mr. Beecher himself, and that Mr. Moulton went to that interview representing the interests of Mr. Beecher, for whom he was acting, not for himself. Upon what subject was he to take advice? What was the business that led to the consultation of Gen. Tracy? Why, Sir, it was the business of Mr. Beecher. It was for the purpose of getting advice from a wise and sound gentleman, recommended by Mr. Beecher, upon that business; and when Mr. Moulton went to that interview, he went as the accredited agent of Mr. Beecher for that purpose, and consulted with the man recommended by Mr. Woodruff and approved by Mr. Beecher; and whatever occurred in that interview was communicated to Mr. Beecher; and, whether communicated or not, was yet an interview between his authorized agent to hold it with the parties with whom it was held. Independent of that, Sir, we have shown otherwise that Mr. Tracy assumed to represent the interest of Mr. Beecher in his interviews with Mr. Moulton. But, Sir, if Mr. Beecher had been at that interview, why, of course we could prove it as it occurred. Not having been present, so far in this examination, you have admitted the details of that interview as they were communicated to Mr. Beecher, and you have held as matter of law, as it undoubtedly is the law, that that interview having been communicated to Mr. Beecher, it becomes evidence as against him. Well, it is said by my learned friend there is quite a difference between detailing what transpired at an interview to Mr. Beecher and proving the facts which occurred at that interview. Well, that results, if your Honor please, I think, in this very dilemma from the course of proof to which your Honor has restricted us in the proving of those communications. I suppose the ordinary and orderly mode of proof, would have been to have given evidence by Mr. Moulton, of the facts, the details of conversations occurring at that interview, and then proving that they were communicated to Mr. Beecher. Your Honor has directed the subsequent order of proof—

Judge Neilson—As a matter of economy.

Mr. Beach—Yes, Sir, as a matter of economy; but it must not result, when we are endeavoring to economize time, in the reversal of a principal of law and a rule of evidence. Mr. Beecher having been made aware of that interview, and of the facts that transpired there, all that occurred becomes evidence against him. Was it not communicated to him? Mr. Moulton swears it was, and it is precisely the same then as if Mr. Beecher had been transposed to that very interview, and had heard all that occurred, and all that was communicated to him by Mr. Moulton. Now, Sir, if he is charged with the effect of that inter-

view, have we not a right to prove it by the ordinary means and volume of evidence? Is it to be said that we are restricted to the one witness, Mr. Moulton, who made the communication to Mr. Beecher?

Mr. Evarts—I have not said that.

Mr. Beach—Yes, Sir; but certainly that is the effect of the argument of the gentleman.

Mr. Evarts—I said you could not prove it by Mr. Moulton, and you were not allowed to prove it.

Mr. Beach—Could not prove it by Mr. Moulton! Did we not prove it by Mr. Moulton?

Mr. Evarts—Not in the least. You proved what Mr. Moulton told Mr. Beecher.

Mr. Beach—And Mr. Moulton swears that that was what transpired at that interview.

Mr. Evarts—No; what he told Mr. Beecher transpired.

Mr. Tracy [to Mr. Beach]—No; he has not said that.

Mr. Evarts—He was not allowed to swear, Sir.

Judge Neilson—It would have been allowable. The order of proof was at my suggestion. It seemed a waste of time to have the witness state what occurred at the interview, and then that he afterwards repeated it to Mr. Beecher, being a re-statement of the same thing, and simply with that view, to economy, the witness, at my suggestion, proceeded at once to state what occurred with Mr. Beecher on the subject.

Mr. Beach—The question—the answer to which I have read in part, was: "Now what did you state to Mr. Beecher which had been stated to you." That is, at that interview.

Mr. Evarts—Stated to Mr. Beecher?

Judge Neilson—Yes.

Mr. Beach [reading]: "Well I stated to Mr. Beecher what had been stated to me at that interview."

Mr. Evarts—That is what he stated.

Mr. Beach—Certainly it is what he stated, but it contains the affirmation that what he stated was what had been stated to him at that interview. The question is: "In company with your partner? A. With my partner; yes, Sir; and I told him what transpired at that interview between Mr. Woodruff, Gen. Tracy, and myself." Now, can the gentleman say that what Mr. Moulton stated to Mr. Beecher Mr. Moulton did not affirm was stated to him at that interview? Your Honor has held that we could prove what occurred at that interview, because it was stated to Mr. Beecher, and was adopted or rejected by him, as the fact might be. If adopted, then he adopted that interview as it occurred, and as stated by him, and Mr. Moulton having stated it occurred as there stated, I again ask the question, which the gentleman says he did not propound as a proposition, whether it is not possible we may prove the terms of that interview, as stated by Mr. Beecher, by additional evidence.

Mr. Evarts—We have never objected to that evidence. What you can prove by one witness you can prove by two, I suppose; but you cannot prove it by either, as I submit. The whole point, if your Honor please, of a narrative made to Mr. Beecher, is to affect him by his response or answer to it. That response or answer comes as his action upon what is narrated to him. If it is falsely narrated, if no such thing ever

took place, nevertheless it answers the purpose of being the communication made to him, upon which his response, which is to affect him, was made. Whenever you undertake to carry into that communication, as affecting him, his hearing it, and responding to it, or being silent, as the case may be, you undertake to prove the fact that did occur in a meeting at which he was not present, to which he was not a party; then you have gained no right to prove a matter which occurs without his being a party to it, simply because you have narrated to him the occurrence. What affects him is his receipt of the narration, and not its truth, or the fact. Then supposing it happened otherwise than as narrated. It is only what passes to Mr. Beecher that becomes the subject of evidence affecting him. Now let us look at the other proposition, that Mr. Tracy stands in this conference of three as if Mr. Beecher was there (for that is what it must come to) and what is the evidence? That Mr. Moulton said those Produce Exchange people had criticised him and his firm in reference to this Woodhull publication, and his (Moulton's) connection with it, and that his partners thought that something ought to be done about it, and some consultation to be had about it; and he told Mr. Beecher that Mr. Tracy would be a good man to consult with, and that in consulting with him he would have to tell him the truth. Very well, this affects Mr. Beecher, and Mr. Beecher says he is a very good man to consult with. Now, when those two gentlemen, in behalf of their relation to the matter, were taking consultation with Mr. Tracy, does that make Mr. Tracy the substitute for Mr. Beecher? Why, he was their own man, picked out by themselves to talk with in reference to their relations to the matter, and Mr. Beecher was told by Mr. Moulton (and that is the pregnancy of it), that he would have to tell Mr. Tracy the truth. Mr. Beecher had no objection to his telling him the truth. That don't follow that what he did tell him affected Mr. Beecher as if it had been told to Mr. Beecher himself, and yet it must come to that, or else Mr. Tracy's presence there does not affect Mr. Beecher at all. It is apparent, on Mr. Moulton's testimony, that Mr. Tracy had no fee paid him; he was not in the relation of a lawyer employed by Mr. Beecher, or a lawyer employed by Mr. Moulton, or Mr. Robinson. He was only the intelligent and experienced lawyer brought into consultation; but in the matter of that consultation, for the interest of Mr. Moulton, and of Mr. Robinson, it might be necessary to tell him the truth concerning Mr. Beecher.

Judge Neilson—And Mr. Beecher was a party to it, because the conference had been agreed upon—adopted upon his approval.

Mr. Evarts—I appeal to your Honor on that point. Consulted with him about this matter, if you please. "He is a good man." Then Mr. Moulton, says: "I may have to tell him the truth about your affairs." Mr. Beecher, says: "I have no objection to that," but that don't affect Mr. Beecher.

Mr. Beach—Gen. Pryor referred me to a case, and I have sent for the book.

Mr. Evarts—There is no pretense that Mr. Beecher ever com-

municated with Mr. Tracy, or said a word to him, or employed him in the least.

Mr. Beach—It is not necessary that he should. If I authorize a man to have a conference with another in reference to my business, to act as my representative and agent on an occasion, I submit to your Honor that what he says and does in regard to the subject of his agency is competent against me.

Mr. Evarts—The difficulty is, there is not the least scintilla of evidence of that kind. These gentlemen went to talk with Mr. Tracy about their own interest; but Mr. Moulton thought proper to say to Mr. Beecher, "In talking with him for our interest, I may have to tell him the truth about you." Mr. Beecher had no objection to the truth being told by him. That is the only connection Mr. Beecher has with that.

Judge Neilson [to Mr. Fullerton]—Is there any other topic you could go on with while we are waiting?

Mr. Fullerton—No, Sir; there are other interviews of the same character, involving precisely the same question, and therefore it would not be profitable to go on, on account of the same difficulty.

Mr. Evarts—It is near the hour of adjournment.

Mr. Beach [referring to book]—This authority is a distinct recognition of the principle I stated, but it is not so direct and specific that I should be able to state it to your Honor, but I don't understand that our friends on the other side deny the proposition that if Mr. Moulton had authority from Mr. Beecher to hold this interview with Mr. Tracy, why, then, the evidence which we propose is admissible. And it seems to come to the question whether or not the evidence which I have read to your Honor of the preliminary consultation between Mr. Moulton and Mr. Beecher in regard to taking advice from Mr. Tracy constitutes that agency, and I submit to your Honor that it does.

Mr. Tracy—You don't claim that Mr. Beecher would be bound by my advice?

Mr. Fullerton—No; not as bad as that.

Mr. Beach—I don't think that is a misfortune he is held to; but whether good or bad advice was given by Mr. Tracy on that occasion, the fact that Mr. Moulton was sent with the approval and approbation of Mr. Beecher to talk, it at least authenticates the advice as it was subsequently communicated by Mr. Moulton to Mr. Beecher; but unless your Honor wishes to see some authority on the question, I don't care to discuss it any further.

Judge Neilson—The proposition stated is simply economy of time.

Mr. Evarts—Your Honor sees my learned friend has sought to rely on some concurrence I have with him. I don't agree with him in the least.

Mr. Beach—No, I supposed you would concur with me in the point of evidence I have stated.

Mr. Evarts—If Mr. Beecher takes Mr. Tracy and says to him: "Mr. Moulton wishes to talk with you, or Mr. Robinson wishes to talk with you, and I wish to go in my behalf and talk with him," then what passed affects Mr. Beecher. The evidence is simply that Mr. Beecher said "consult with that gentleman, he is as good as any one, about your affairs."

The proposition you make to me, that you will have to tell him the truth, that constitutes no objection in my mind."

Judge Neilson—The question is whether the interview was had with the concurrence of Mr. Beecher or both parties.

Mr. Evarts—The question is whether Mr. Beecher is there present by that representation. Without that no evidence can be given against him, I submit—Whatever your Honor should recognize as a substitution, by an agent sent by Mr. Beecher to represent him in that interview. Now, that evidence is that these gentlemen wanted to talk with him about their relation to the scandal, and the only point upon which Mr. Moulton thought right to speak to Mr. Beecher was that in the consideration about their own affairs they might be able to tell Mr. Tracy concerning Mr. Beecher's affairs, and Mr. Beecher makes no objection to that. I submit there is not a particle of evidence beyond that.

Mr. Beach—Is it necessary for me to read this testimony again to your Honor?

Mr. Evarts—I heard it read before. That is the view I take of it.

Mr. Beach—You heard it read very unprofitably, because if there is anything apparent from the testimony of Mr. Moulton it is that the subject which was to be discussed in the proposed interview with Mr. Tracy was that which related to the interests of Mr. Beecher. There is not a single intimation, not a word in what I have read here in any part of this testimony, to indicate that the subject of the interview or of the advice of Mr. Woodruff to Mr. Moulton to take counsel had any relation whatever to the charges made in the Woodhull publication, or to the remarks made in the Woodhull publication connected either with Mr. Tilton or with Mr. Moulton.

Mr. Evarts—Have you read any word that you think is an authority to Mr. Tracy to act for Mr. Beecher?

Judge Neilson—I don't see the precise point. Any authority to Mr. Tracy? Authority to these persons to have an interview and to confer on this subject; and for that purpose to state the truth to a third person.

Mr. Evarts—But does that prove that it was the truth?

Judge Neilson—Oh! no.

Mr. Evarts—We don't know what took place.

Judge Neilson—That is the point.

Mr. Evarts—The point is that you must get Mr. Beecher there, somehow or other, or else what took place is of no consequence.

Judge Neilson—I see; that is your point. We will now adjourn. [To the jurors.] Please be here punctually to-morrow morning at eleven o'clock.

Mr. Mallison (Clerk)—This Court stands adjourned to Thursday at eleven o'clock.

## FOURTEENTH DAY'S PROCEEDINGS.

### MR. TILTON ON THE STAND.

IMPORTANT SPEECHES BY MR. EVARTS AND MR. PRYOR—IS A HUSBAND INCOMPETENT TO PROVE HIS WIFE'S DISHONOR?—THE MOST INTERESTING AND IMPORTANT QUESTION RAISED DURING THE TRIAL.

It has been known for days that Mr. Tilton would be called as a witness, and it was anticipated that no effort would be left untried to prevent his acceptance as a competent person to testify. The first indication of the approaching contest was the entrance of the lawyers' clerks with arms full of bulky law books, and hostilities were fairly opened soon after noon. Mr. Woodruff had stepped down from the witness chair, and there was a hurried consultation among the plaintiff's counsel. Then suddenly, at a sign from Mr. Fullerton, Mr. Tilton arose from his seat and stepped quickly to the vacant chair, amid the surprised murmurs of the audience. "I offer Mr. Tilton as a witness," said Mr. Fullerton, quietly. "But stop a moment," expostulated Mr. Evarts; "we object to him." Then followed a momentary scene of confusion in the space assigned to the lawyers. The clerks of the counsel sprang up and began the removal of the legal volumes from the floor to the tables upon which they were spread open at selected places; the lawyers on each side consulted among themselves earnestly; the jurymen wearily changed their positions in their chairs, and the audience sat almost breathless, craning their necks and awaiting eagerly the first note of the struggle.

Without formality Mr. Evarts began his argument against the competency of Mr. Tilton as a witness. In the mean time the plaintiff sat in the witness chair squarely facing the audience for the first time since the beginning of the trial, and therefore the object of general observation. He had not removed his overcoat, which he wore thrown open loosely, and he also continued to wear his gloves, as he usually does in the court-room. Mr. Evarts began his argument at 12:10, and had not concluded at recess—1 o'clock. He was earnest and eloquent, and the jury and audience listened with quiet attention. Recess came, and Mr. Evarts was not half done. The interval over, he resumed, but the witness chair was vacant, and Mr. Tilton sat beside his counsel. During the address, which lasted nearly two hours, there were several faint expressions of an inclination to applaud among the

spectators, but with that exception perfect quiet reigned, and the last hour of Mr. Evarts's argument was delivered without interruption.

It had been taken for granted that Mr. Beach would reply to Mr. Evarts, and it was therefore a surprise when Gen. Pryor arose, bowed to the Court, and proceeded to speak. Up to this time Gen. Pryor had not taken an active public part in the case, and there was, therefore, considerable curiosity to hear him. It did not take many moments to see that he was an eloquent orator. His declamation is eccentric, his gesticulation earnest and profuse, and his temperament evidently is nervously excitable. At times he bends forward and lowers his voice almost to a whisper. Then, suddenly, as he becomes aroused, his Indian-like figure straightens, his face lights up with intense earnestness, and his voice rings out clearly as a bell. Sometimes he speaks very slowly, long pauses occurring between his sentences, but at other times the words flow from his mouth without effort, and his delivery is wonderfully rapid. Gen. Pryor had not finished speaking at the hour of adjournment.

The last moments of Wednesday's session were occupied by an argument regarding the admission of Franklin Woodruff's testimony relating to a meeting at which Mr. Beecher was not present. The decision was postponed to Thursday morning, when Judge Neilson said that he had decided to admit the testimony objected to by the defense. Mr. Woodruff therefore resumed his seat in the witness chair and Judge Fullerton continued the examination. A part of Mr. Woodruff's testimony which attracted considerable attention was the statement that Mr. Tilton told Mr. Tracy that the crime with which he charged Mr. Beecher was adultery, but the woman was not named. Mr. Tracy conducted the cross-examination, entering fully into events before briefly narrated by Mr. Woodruff. Judge Neilson had explained previously that it might not be best to enter into any explanation of Mr. Tracy's professional conduct, as he was not on trial and needed no vindication; and therefore that subject was not pressed further than was necessary.

#### THE PROCEEDINGS.

The day's work began on Thursday with a long decision by Judge Neilson on a question, raised the previous evening, as to the admissibility of testimony concerning the interview between Mr. Moulton, Mr. Franklin Woodruff and Gen.

Tracy. The pith of the question—as of several others which have taken much time for their discussion and decision—was whether Mr. Beecher was connected with the conversation. Counsel for the defense objected to the testimony on the ground that Mr. Beecher had nothing to do with the meeting. The Court overruled the objection. Mr. Beach then called attention to what he deemed unnecessary and in some respects unjust newspaper comments on the trial, and wanted them stopped, or at least limited.

#### THE MOULTON-TRACY-WOODRUFF INTERVIEW ADMITTED.

Judge Neilson—I have given consideration to the question presented last evening and, in the first place, I think all notion of the professional relation on the part of Mr. Tracy is to be dismissed from the question as not necessary to it. I think we cannot recognize that he was there in a professional capacity. In the next place, as to the course of business in view of the decisions which have been made, I have not, at any time, decided, and of course could not, that a witness might not state an interview with another person, and then the fact that he repeated that to the party in interest. That is done every day; and ordinarily the mere suggestion of counsel that he purposes to pursue it and connect it, is deemed sufficient, and that act on the part of counsel, where he has the confidence of the Court, would ordinarily be regarded as sufficient to justify that inquiry, first, as to the conversation between the witness and the third person, and afterward repeating it to the party in interest. What might look as a decision of the Court was simply a direction, acquiesced in by the counsel, and with a view to save time, and so it is that we have saved time by going directly to the question whether a conversation had with a third person was repeated to the defendant, understood by him, and what was said or done by him in that relation; otherwise it would involve a repetition of the same thing. That, as I say, was a mere direction with a view to save time, and it was acquiesced in by counsel. The question now presented is, however, somewhat different. I have gone over the testimony carefully, and the question, of course, must be decided with a view to the proofs now before us, and I gather from those proofs very clearly that the former witness stated to the defendant that he had had conversation with various persons, alluding to his partners, and gave them to understand that there was a sense of unpleasantness and uneasiness in respect to it, and he desired some relief in some way, some conference with some wise person touching the answers he should give to the importunities he met with in respect to the scandal published in the papers. The evidence shows that upon that conference with the defendant it was agreed that Mr. Tracy should be consulted, and I regard that precisely as that the parties might agree that any layman of respectability might be consulted in respect to it. There was an agreement with this the present witness and Mr. Tracy to confer, and they did confer, and further, it appears from the evidence that after that conference it was reported to the defendant, and he approved of it and adopted it; and so, speaking simply with reference to the evidence before us, I

find it my duty to overrule this objection and receive the evidence. The counsel will take an exception.

Mr. Everts—Your Honor understands that we except to the decision.

Judge Neilson—Yes, Sir.

#### MR. MORRIS NOT DISCOURTEOUS TO MR. BEECHER.

Mr. Beach—I am obliged once again to draw your Honor's attention to an ungrateful subject. You will remember that, some days ago, being dissatisfied with the comments which were daily attached in the publication by THE TRIBUNE of the proceedings of this trial, on behalf of the plaintiff I protested against the reports of that paper being received under the official sanction of this Court as an official report.

Judge Neilson—That was rather as to the introductory comments. was it not?

Mr. Beach—Yes, Sir. Now, I am furnished this morning with what purports to be Part 1st of the trial of Henry Ward Beecher, and it is inscribed "An Official Verbatim Report." I have not had time to examine in detail the proceedings contained in this pamphlet, but we have detected on the face of these pages several inaccuracies and omissions, which we think do great injustice to the cause of the plaintiff, and with permission, Sir, very briefly I will present one or two examples of the manner in which this report is prepared and presented to the public under the approval, apparently, of your Honor. First, in regard to counsel—and I refer but to one instance, Sir, in that relation. On page 152 of this pamphlet, speaking of an introduction which occurred between Mr. Beecher and two of the counsel of the plaintiff, of whom Mr. Morris was one, this pamphlet proceeds to say :

The recess was marked by an incident which removes all doubt concerning Ex-Judge Morris's feelings in regard to Mr. Beecher. As soon as Judge Neilson announced that the regular intermission would be taken, Mr. Morris stepped over to Mr. Porter and called his attention to one of the answers made by the witness. Mr. Beecher, observing Mr. Morris in conversation with his counsel, passed a jocular remark to him, but Mr. Tilton's counsel deliberately continued his conversation with Ex-Judge Porter. Mr. Beecher withdrew with heightened color. Ex-Judge Morris does not hesitate to denounce the pastor of Plymouth Church in private as well as in public.

Of course, Sir, I was not an observer of that interview, or if near enough to observe it I did not notice it ; but I am authorized to say upon the part of Judge Morris that it is an entirely inaccurate report of what occurred. Mr. Morris was addressing to Mr. Porter some question of interest, and in the pursuit of the inquiries and the answers, Mr. Beecher approached the gentlemen and made some light and trivial remark which did not require from Mr. Morris immediate attention, and the conversation between him and Mr. Porter was pursued without the slightest intention upon the part of Judge Morris of manifesting any incivility towards Mr. Beecher. And I may be permitted to say, Sir, that I know nothing in the relations of the plaintiff's counsel to the defendant in this case which would call from them for any expression of discourtesy or incivility toward Mr. Beecher. No matter what may be the merits of this trial, Sir; no matter what may be its result, nevertheless we do not belong to that class of the profession how

adopt all the vindictiveness and passions which a litigation between parties may happen to excite with others. And, so far as I am concerned, Sir, I am very free to say that upon no occasion, as a gentleman, should I consider myself justified in offering the least rudeness towards the defendant in this action. And as to the allegation, Sir, in the concluding phrase of the quotation I have read, I am authorized by Judge Morris to say that it is utterly untrue that he denounced Mr. Beecher in public or private. He would consider it, Sir, as an unjustifiable course upon his part, whatever may be his views in regard to the truth of this litigation. In regard to witnesses, Sir—

Mr. Shearman—At page 52 there is a similar misstatement.

Mr. Beach—I am asked by Mr. Shearman, upon the part of the defendant, to refer to page 52, and see if it is a similar statement.

Mr. Shearman—Misstatement.

#### DESCRIPTION OF MOULTON AS A WITNESS.

Mr. Beach—Well, Sir, the report, on page 52, so far as it relates to Mr. Beecher and myself, may be substantially true, but the spirit of it, so far as I am able now to read it, is entirely at variance with the motives and, I think, with the actions both of Mr. Beecher and of myself, to whom he was being introduced. I may say, Sir, perhaps, with propriety here, that the counsel upon the part of the defendant were courteous enough before making that introduction, to myself, and I believe, also, to Judge Morris, to ask if it would be in any sense disagreeable to us, and I never before, Sir, having had the pleasure of an introduction to Mr. Beecher, was quite happy to welcome the occasion for that event. It is a great mistake, Sir, to suppose that the counsel on the part of the plaintiff enter into any of the asperities which may have been created in the bosoms of others, out of this most unfortunate transaction. We are here, Sir, to discharge a professional duty and to discharge it in the ordinary manner, without indicating what may be our personal sentiments and feeling in regard to the whole transaction. On page 72, Sir, in commenting upon the testimony of Mr. Moulton, this pamphlet says, speaking of that gentleman:

There is a painful lack of earnestness in the man if his bearing does him no injustice. When the gravity of the issue is considered his replies to the most vital questions often seem flippant. He asserts that the greatest preacher in America confessed adultery to him, and his manner is that of a listless gentleman giving his verdict upon a novel brand of champagne.

On page 97, Sir, another paragraph fell under my observation :

The witness's anxiety to play his best cards was painfully evident. He dragged in Dr. Storrs's name before it was time, and strove to anticipate the purpose of his counsel.

Well, Sir, at the head of every day's proceedings are attached comments of this character. I need not say to your Honor that, in our opinion, they do great injustice to the character, the manner and the spirit of Mr. Moulton upon the stand; and the occasion justifies me in saying that for propriety of demeanor, for suavity and gentlemanly conduct, for a high degree of intelligence in his conception of and answers to questions, no gentleman under my observa-

tion has ever sustained an examination of the length and severity to which Mr. Moulton was subjected with more credit and honor, both to his heart and his mind, and I am sure that your Honor will agree in that remark. And I am also quite sure, Sir, that whatever idea in other respects our friends upon the other side may entertain in regard to Mr. Moulton, they do not participate in these ungenerous, and uncandid, and severe criticisms upon his manner and mode of giving his testimony. Now, if your Honor please, I do not dispute the right of THE TRIBUNE, or any other member of the press, in its capacity as a public journal, to express whatever ideas and criticisms it may choose to publish in regard to counsel, or witnesses or Court. They have the utmost freedom in that respect, and, so far as I am concerned, I am quite free to admit that their comments, unfavorable to myself, are, most probably, entirely accurate and just. But when those comments, those private opinions of THE TRIBUNE, not only with regard to the proceedings in this court-room, but to transactions which transpired during the recess of the Court, are affixed to its report of the trial, ushered to the public under the official sanction of this Court, we are justified, I think, in asking from your Honor a disclaimer of that official character, and we do ask it.

Judge Neilson—I regret that those causes of criticism should arise, and will communicate with the editor of THE TRIBUNE upon the subject, in reference to the future publications, which I hope may be rendered satisfactory. Will you proceed now, Mr. Fullerton?

#### MR. EVARTS ON NEWSPAPER CRITICISM.

Mr. Evarts—I may, perhaps, be permitted to say a word, if your Honor please. Whatever either my learned associates or myself may have to say in regard to Mr. Moulton as a witness will be said at the proper stage of the cause, and under the proper responsibility of counsel, and for a legitimate purpose; and we do not sympathize with any criticisms of witnesses or of counsel on one side or the other in the trial of the cause. We, the counsel, are not on trial, nor have we exposed ourselves voluntarily to exhibition. We are here in the discharge, on one side and the other, of responsible, difficult, solemn duties; and the mere fact that, as all proceedings in Court are public, there is a crowd here, and as the interest of the community centers upon this trial, the press is largely and properly interested in disseminating the facts of the trial throughout the country, does not, in our judgment, expose any of us to the criticism that belongs to actors on the stage from men who pay for tickets to be amused at the exhibition.

Judge Neilson—Proceed Mr. Fullerton.

#### MR. WOODRUFF'S TESTIMONY RESUMED.

Franklin Woodruff was then recalled and examined by Mr. Fullerton.

Q. I recall your attention to an interview between yourself, Mr. Moulton and Mr. Tracy, which took place in the Fall of '72 at Mr. Tracy's office, and ask you what then and there occurred? A. I called at Mr. Tracy's office, with Mr. Moulton, I think it was about half-past eight o'clock in the morning, for the pur-

pose of Mr. Moulton's relating to Mr. Tracy the history of this scandal case.

Mr. Evarts—No matter what the purpose was. What occurred between you? A. Well, Mr. Moulton immediately—

Judge Neilson—Mr. Fullerton, keep your witness within the line.

The Witness—Mr. Moulton immediately proceeded to tell Gen. Tracy all about the case.

Q. What did he tell him—just repeat it now? A. And his connection with the case. He told him that the essential points of this Woodhull scandal were true. He told him of what he had been doing in regard to the case, commencing back at the time when he went to Mr. Beecher—when he went for Mr. Beecher on the prayer meeting evening, and told him what Mr. Beecher had done—told him what he had done—

Mr. Evarts—State to us what he told him.

Judge Neilson—Get your witness to the point, Mr. Fullerton.

Mr. Fullerton—I want you to state what Mr. Moulton said. Do not, please, state that he told you about such a thing, but tell us what he said in regard to that thing—the substance of it; of course you cannot repeat the words? A. Well, he told Gen. Tracy, as I have stated, that the essential points of his story, as published in the paper, were true; and he told him that he went for Mr. Beecher on a certain evening; that Mr. Beecher went to his house, and from there to Mrs. Tilton's. He told Gen. Tracy that Mrs. Tilton had written a confession, and afterwards a retraction; and he told Gen. Tracy what he had done—how he had—

Q. What did he say he had done? A. He told him that he had striven to keep the thing covered up—keep the whole story covered up—and that, so far, he had been able to; but now the story was published by the Woodhull-Claffin paper. He told him that I was very urgent, that he should consult Gen. Tracy as counsel, that what he might do should be done wisely; that I feared—or at least I expected—that he would have to make some statement, and that if he did so, it was necessary to do it under the advice of counsel; and he had been asked, he told Gen. Tracy, to deny the story.

Q. How is that; repeat that? A. He told Gen. Tracy that he had been asked to deny the story in a public card; that I had objected and protested against it, and that he was not willing to do it. General Tracy said in reply—

Mr. Evarts—If your Honor please, I object to what Gen. Tracy said being given in evidence by this witness.

Judge Neilson—It is a part of the conversation.

Mr. Evarts—This witness has now said—as it now stands, this witness has made Gen. Tracy his counsel.

Judge Neilson—He did not say—

Mr. Evarts—But, your Honor, in these last three words of the witness, he has so said, as we regard it.

Judge Neilson—I think we must take it all, Sir.

Mr. Evarts—Your Honor will be so good as to note our exception to this specifically, and to anything from Gen. Tracy.

The Witness—I objected to Mr. Moulton making any statement in a public card.

Q. What did you say? A. I said that I would protest against;



that I would not, as he was a partner of mine—that I would not allow it; that I thought it would be very wrong to make any such statement of a story that he knew was true—deny it in a public card. Gen. Tracy replied that he did not recommend lying, but he thought in some cases—in this case particularly—that a man would be justified in denying that story; and I replied to Gen. Tracy that for half of Brooklyn I would not have Mr. Moulton or any other gentleman come out in a public denial with a written card. And Gen. Tracy spoke and says: "Can't Moulton and Tilton go to Europe for one or two years?" I said no, that could not be done; Mr. Robinson, the other partner, was in Europe, and that would be utterly impossible. Then Mr. Moulton—or, at least, Mr. Moulton said that he had observed silence, and he thought that was the only thing to do. I concurred in that, and Gen. Tracy said that silence was the best for all parties—to cover it up—best for all interests. That was the sum and substance, pretty much, of the conversation that morning. And then we met again, three or four days after, at Moulton's house in Remsen street.

Q. Now, give us that?

Mr. Evarts—That has not been brought in.

Mr. Fullerton—Oh yes; it is.

Mr. Evarts—Not with Mr. Beecher.

Mr. Fullerton—Certainly it has. [To the witness:] Go on.

Mr. Evarts—Your Honor will note our exception.

The Witness—We met at Mr. Moulton's house—it was a Sunday evening after our conversation—by appointment; Mr. Tilton was there, Mr. Moulton was there, and I was there, and Gen. Tracy came there; we all went up into Mr. Moulton's study in the top story of the house, and there Mr. Moulton and Mr. Tilton told Gen. Tracy about the case, and, in addition to what Mr. Moulton said, showed Gen. Tracy the letter of contrition, and Gen. Tracy read it; but Mr. Tilton had expressed an unwillingness to have Gen. Tracy brought into the case.

Q. What did he say? A. Mr. Tilton—

Mr. Evarts—In Mr. Tracy's presence?

The Witness—He said to Gen. Tracy: "If Mr. Beecher and I shall ever get into law or into court in regard to the matter, could you or would you ever be counsel on his side," and Gen. Tracy said no, that he could not and should not; that he need not have any fears on that score. He went on to show him the letter of contrition; talked about the case as published in the Woodhull statement; and that is the sum and substance of the interview, only that Gen. Tracy recommended silence as essential and absolutely necessary for each and all the parties; that it was the best thing to keep the thing covered up; there seemed to be nothing else to do.

Q. Now, do I understand you to say that the letter of contrition was shown to Mr. Tracy after he made use of this observation in regard to not being Mr. Beecher's counsel? A. Yes, Sir; it was shown to him that evening afterwards.

Q. Did Mr. Tilton say anything manifesting an unwillingness to have Gen. Tracy brought in, and if so, what? A. He did; he said that he did not want any other parties to know about it; he thought it unwise to consult Mr. Tracy; and as Gen. Tracy at-

tended Mr. Beecher's church, he thought it might be unwise to have him in the case.

Judge Neilson—Was that in Mr. Tracy's presence?

The Witness—No; he did not say that in Gen. Tracy's presence.

Mr. Fullerton—Well, that will be stricken out.

Mr. Evarts—I understand the last answer is to be stricken out.

Judge Neilson—Yes; strike it out.

Mr. Fullerton—What did he say in Gen. Tracy's presence, if anything, about his unwillingness to have anything disclosed to him? A. I don't think he said anything in his presence.

Mr. Fullerton—That is all.

Here there was a pause, the defendant's counsel consulting together.

Mr. Beach—While the counsel on the other side are consulting, it may be proper for me to say in regard to the extraneous matter of which I spoke this morning, that this pamphlet does not profess to be published by THE TRIBUNE office, but by McDevitt, Campbell & Co., publishers; the contents of the report and comments upon the proceedings are contained in it as they appeared in THE TRIBUNE.

Judge Neilson—I would like to say before the cross-examination proceeds, that while the learned counsel will exercise their own judgment in regard to the cross-examining the witness as they think proper, I think it may be well to divest the question at once of all suggestion that Mr. Tracy is in any sense on trial. It is not so. Possibly that might make the cross-examination briefer and more kindly. Mr. Tracy is known to us as a gentleman of very high character, very conscientious in the discharge of his duty, and it is not necessary that he should on this occasion be vindicated in any sense whatever. Therefore we had better confine ourselves to the real merits.

Mr. Tracy—I am obliged to your Honor, and I will try so far as I am able.

#### CROSS-EXAMINATION OF MR. WOODRUFF.

Mr. Woodruff was then cross-examined by Mr. Tracy:

Q. Mr. Woodruff, are you definite as to the time of morning the interview was had at my office? A. I am pretty definite—somewhere between eight and nine o'clock.

Q. About how long did it last, do you think? A. I should think about half an hour to an hour.

Q. Did you meet Mr. Moulton on your way to your business?

A. No, Sir.

Q. You called to introduce Mr. Moulton to me that morning, did you not? A. Yes, Sir.

Q. I never had seen him? A. I don't know that you had.

Q. You did introduce him to me that morning? A. I did.

Q. And you had known me for some time? A. I had.

Q. And your senior partner had known me? A. I don't know as to that.

Q. Well, you came into my office and introduced Mr. Moulton to me? A. I did.

Q. And stated the subject of the introduction. Did you not

say that you had called for the purpose of making an appointment when we could have a longer and more definite conversation on the subject? A. No, Sir; I saw you the evening previous, and probably had half an hour or three-quarters of an hour interview with you the evening before, and made this appointment for the next morning.

Q. Were there any papers present at the time you were at my office? A. I don't think there were.

Q. None at all? A. None that I remember.

Q. Not even the Woodhull publication? A. None that I recollect.

Q. The talk in my office was entirely general? A. It was about this case.

Q. But entirely general about the case? A. It was very fully about the case, I should think, as I recollect it.

Q. The object of consulting me was to ascertain what answer ought to be made to the Woodhull publication, was it not? A. Certainly.

Q. You felt that some reply ought to be made to it? A. I felt that Mr. Moulton would have to say something.

Q. Now, did you think that the Woodhull publication rested upon apparent information obtained from Moulton? Was that the reason of your thinking that he ought to make some answer? A. No, Sir; there were a great many people speaking to me about it—asking why Mr. Moulton did not come out and say something—why he did not deny it?

Q. It was because the article referred to him in some place as the source of information? A. Referred to him and also to Mr. Beecher.

Q. It referred to Mr. Moulton as the source of some of the information given in the article? A. Certainly, Sir.

Q. Particularly the pistol scene? A. Yes, Sir.

Q. You stated to me in conversation, did you not, that there were papers which it would be absolutely necessary for me to see before I could express any definite opinion as to what answer ought to be made? A. Yes, Sir.

Q. You said you had some papers? A. I didn't say I had, but Mr. Moulton did.

Q. Mr. Moulton said he had some, and I said, did I not, that it was impossible for me to express any opinion in the absence of these papers? A. Any positive opinion; you expressed yourself that silence was the only true course to pursue.

Q. But I could not decide that definitely at all, without seeing the papers? A. I don't know that you decided absolutely the question; I thought you were pretty firm in your views that that was the course to pursue, and the only course.

Q. Well, the object of the interview the next Sunday was that I might see the papers, and get more full information on the subject? A. Certainly; that the whole thing might be further considered.

Q. Do you recollect the time of day that I came to Mr. Moulton's house that afternoon? A. I don't know that I can tell the exact time; it was—somewhere in the afternoon, pretty near night, about four or five o'clock.

Q. Was it not about three o'clock? A. It might be three o'clock.

Q. Do you recollect Mr. Tilton was in the house when I came? A. I don't think he was.

Q. Do you recollect that I went to Mr. Moulton's study on Sunday afternoon, where I was shown the papers, and you were present and Mr. Moulton? A. I remember we were up there.

Q. Alone? A. For a very short time.

Q. Before Mr. Tilton came in? A. Yes.

Q. Now, were not some papers shown me there, and was not the object of going into the study to show me some of these papers? A. No; I think this occurred: I think Moulton talked with you, and after a moment went down stairs for Mr. Tilton, and he came up. I don't think that the papers were shown you until after Tilton came into the room; that is my recollection.

Q. Don't you remember that what was called the letter of apology was shown me on my first going into the room? A. No, Sir; I don't think that was shown you until after Mr. Tilton came up; that is my recollection.

Q. Don't you recollect my criticism on the paper that day? A. I remember some remark you made about it.

Q. Don't you remember, also, that the retraction was shown me? A. No, Sir, I don't.

Q. And the explanation of the retraction? A. I don't; I recollect talking about it; I don't recollect that that paper was shown you.

Q. Don't you think Mr. Moulton showed to me those three papers on Sunday afternoon? A. I don't know; very likely he did.

#### ON WHAT THE SCANDAL RESTS.

Q. Don't you recollect this? After I was shown that letter of contrition and criticised it, don't you remember that I asked Mr. Moulton, "Now, Mr. Moulton, on what does this scandal rest aside from these papers?"

Mr. Beach—I object to that question as assuming that Mr. Tracy criticised it.

Mr. Tracy—He said I did.

Mr. Beach—No, Sir; he said you made some remarks about it.

Mr. Tracy—That was his answer to my question of criticism.

Mr. Tracy—After that, don't you remember that I asked Mr. Moulton, "On what does this scandal rest aside from these papers?" And didn't he say to me, "It rests upon some statements that Mrs. Tilton has made to her husband"? A. Yes, Sir; I think he said that.

Q. And did I not ask him what it was; don't you remember my asking him that? A. I think you did.

Q. And didn't he say that he would prefer, if Mr. Tilton would consent, to have Mr. Tilton state that to me in his own words? A. No, Sir; I don't recollect that.

Q. And then didn't he go down stairs and bring Mr. Tilton up? A. No, Sir; I don't recollect it in that way; according to my recollection he went down stairs after Mr. Tilton very soon after we went up.

Q. Whether Mr. Tilton was there or not, didn't he say that he preferred to have Mr. Tilton state that in his own way? A. I don't recollect his saying that.

Q. Mr. Tilton did state it to me, didn't he? A. I don't recollect of his stating it to you.

Q. Don't you? A. No, Sir.

Q. Do you remember his having what is called "The True Story" there that afternoon? A. No, Sir.

Q. You do not? A. No, Sir.

Q. The big paper? A. No, Sir; I don't think I ever saw or heard of anything of that until Christmas after; that is according to my recollection.

Q. Did he read there that "True Story"? A. I don't recollect it. I should say not.

Q. Did Mr. Tilton make any statement to me of what his accusation against Mr. Beecher was? A. He said it was an accusation of adultery.

Q. Mr. Tilton said so to me? A. I so understood it.

Q. What did he say? A. He said Mr. Beecher had been guilty of adultery.

Q. With his wife? A. I don't know that he said with his wife; I am not sure he said with his wife.

Q. Were you ever present at any other interview with me between us four in that study? A. No, Sir; I think not; I don't recollect any other.

Q. And do you say that you never were present when Mr. Tilton read to me there what he called "The True Story"? A. I say that I have not the slightest recollection that the reading of that "True Story" occurred there, or that it ever occurred before you when I was present.

Q. You have no recollection? A. None at all. The "True Story," the first time I ever saw it I think it was Christmas Day, or Christmas Eve, that Mr. Tilton came to my house.

Q. What time did you leave Mr. Moulton's house that day? A. I guess it was ten o'clock.

Q. At night? A. At night.

Q. Who left first, do you remember? A. You and I left together, and we walked up as far as Clinton street together.

Q. That is the only interview at which you say we were ever present? A. That is the only interview when we were all present that I recollect of.

Q. Did you ever hear what was called the "true story" read? A. I did; yes, Sir.

Judge Neilson—But that was afterwards, I understand you? A. Yes, Sir, that was afterwards.

Mr. Tracy—The Woodhull scandal was present there that afternoon, was it not, on Sunday. A. I think it was.

Q. And that was the first interview that we had ever had where the papers were all present, so that I could consider the question of what—

Mr. Beach—Wait one moment.

The Witness—That was the interview —

Mr. Beach—Wait one moment.

Mr. Tracy—Was this the first interview that we had ever had when the Woodhull scandal was present? A. I think so; I would not swear positively; it might have been present that morning.

Q. And it was the first interview where what is called the apology or letter of contrition was present? A. The letter of contrition—I don't know; it is called three or four names.

Q. It was where the retraction was present and the explanation of the retraction? A. Yes, Sir.

Q. Do you remember my being shown any other paper that day by Mr. Moulton? A. I do not.

Q. You say that interview began about three or four o'clock in the afternoon and broke up at ten o'clock at night? A. I say according to my recollection it commenced somewhere from four or five o'clock, and that we stayed there until ten o'clock; it might have been half-past ten or eleven o'clock—half-past ten.

Q. Will you tell us what we were doing all that time? A. I believe we went down to supper; we spent part of the time in eating and drinking.

Q. How long did that take? A. I guess an hour or an hour and a half.

Q. What were we doing the balance of the time? A. Discussing this scandal?

Q. In its various phases? A. Yes, Sir.

Q. The Woodhull scandal? A. Yes, Sir.

Q. Do you remember that the pistol scene was discussed there? A. I think it was; yes, Sir; I recollect it was spoken about.

Q. And do you remember that the scene was also discussed, where the scandal represented Mrs. Woodhull with Mr. Moulton and Mr. Tilton together in the presence of Mr. Beecher, urging him to proceed to the Steinway Hall meeting—whether that interview was discussed? A. I think there was something said about it; I think so.

Q. Mr. Moulton there denied that the pistol scene was correctly reported in the papers, didn't he? A. I think he said it was not correctly reported.

Q. Did he also say that he never took or went with Mrs. Woodhull, in the presence of Mr. Beecher and Mr. Tilton, when Mr. Tilton urged him to preside at the Steinway Hall meeting? A. I don't recollect that.

Q. Don't you remember that I said to Mr. Moulton, "In so far as this story relates to you, I don't see but you can deny it—the part of it that relates to you?" A. Well, I think you did say something of the kind.

Q. And he admitted it, didn't he? A. Well, I don't recollect clearly about that, whether he admitted it or denied it, or not.

Q. Then, did I not take up this Woodhull story, paragraph by paragraph, so far as it related to Mr. Tilton? A. I think that was talked about and discussed.

Q. Paragraph by paragraph? A. I don't recollect it was discussed paragraph by paragraph, but I know it was generally talked about.

Q. And the object of my doing that was to ascertain how far the parties to it could deny it? A. Yes, Sir; I suppose so.

Q. Now, did not Mr. Moulton deny there that afternoon expressly that he had ever communicated this information to Mrs. Woodhull? A. I don't recollect that he did.

Q. You don't recollect that he did deny it? A. I don't recollect that he did.

Q. Do you mean to say that he admitted it? A. No, Sir; I don't mean to say he admitted it.

Q. Do you mean to say that the subject of whether or not he had communicated this subject to Mrs. Woodhull was discussed? A. It might have been discussed.

Q. Don't you remember that it was? A. No, Sir.

Q. [Referring to a copy of *The Woodhull & Claflin Weekly*.]

I will take, for instance, one scene here, about the "Child and the Grave;" do you remember that scene? A. I remember it being talked about somewhere; I cannot tell.

Q. Do you remember that this paragraph was read and talked about:

Mrs. Woodhull—His revelations were made subsequently, at sundry times, and during months of friendly intercourse, as occasion brought the subject up. I will, however, condense his statements to me, and state the facts as he related them, as consecutively as possible. I kept notes of the conversations as they occurred from time to time, but the matter is so much impressed on my mind that I have no hesitation in relating them from memory.

Reporter—Do you not fear that by taking the responsibility of this *exposé* you may involve yourself in trouble? Even if all you relate should be true, may not those involved deny it *in toto*, even the fact of their having made the statements?

Mrs. Woodhull—I do not fear anything of the sort. I know this thing must come out, and the statement of the plain, unvarnished truth will outweigh all the perjuries that can be invented, if it come to that pass. I have been charged with attempts at blackmailing, but I tell you, Sir, there is not money enough in these two cities to purchase my silence in this matter. I believe it is my duty and my mission to carry the torch, etc.

After that, Mrs. Woodhull again says:

Mr. Tilton first began to have suspicions of Mr. Beecher—

Mr. Fullerton—I object.

Judge Neilson—He has a right to recall the attention of the witness to parts of the paper to see if that helps his reply, and to see what answer he will make. I think that is the idea.

Mr. Fullerton—I think he has accomplished his purpose by reading as much as he has read.

Mr. Tracy—I say, frankly, I have to read much of this paper.

Mr. Fullerton—It seems to me he is taking occasion to read this paper when it ought not to be read.

Judge Neilson—Counsel ought not to continue to read the paper beyond what ought to be read.

Mr. Beach—I suppose the Court will admonish the jury that they are not to take it as true, because Mr. Tracy reads it.

Mr. Tracy—I am reading this for the purpose of calling the attention of the witness to it.

Judge Neilson—You are reading it to see if you can refresh the recollection of the witness?

Mr. Tracy—Yes, Sir; so that he will recollect that this scene was said to be false. [Reading:]

Mr. Tilton first began to have suspicions of Mr. Beecher on his own return from a long lecturing tour through the West. He questioned his little daughter privately in his study regarding what had transpired in his absence. The tale of iniquitous horror that was revealed to me was, he said, "enough to turn the heart of a stranger to stone, to say nothing of a husband and father." It was not the fact of the intimacy alone, but in addition to that the terrible orgies—so he said—of which his house had been made the scene, and the boldness with which matters had been carried on in the presence of his children—"These things drove me mad," said he, "and I went to Elizabeth and confronted her with the child and the damning tale she had told me. My wife did not deny the charge, nor attempt any palliation."

Do you remember that occurrence? A. I remember it somewhere, but I don't recollect it distinctly on that night.

Q. Was Mr. Tilton asked whether he had communicated such facts as that to Mrs. Woodhull? A. I don't recollect.

Q. And you don't recollect whether he admitted or denied that he had made that communication to Mrs. Woodhull. A. No, Sir.

#### REAL PURPOSE OF THE INTERVIEW.

Q. Do you mean to say generally that you don't remember whether Mr. Tilton denied having been the author of this information—of this article? A. I recollect that he denied it somewhere; I don't know whether it was there or not.

Q. Didn't he deny it then and there? A. Very likely he might have done so, but I don't recollect that he did. General, if you will allow me to say a word, I took very little interest in the discussion of that paper; I read it and heard it read once or twice; I lay on the sofa smoking a cigar and I paid very little attention to the discussion on that part of it.

Q. But you paid attention enough to it to say — A. I know it was there and talked about.

Q. That I was going over it, paragraph by paragraph, to see what these parties would probably deny? A. Yes, Sir; I think you were going over it.

Q. Was not the whole subject of that interview to see what disposition could be made of this Woodhull publication? A. It was that, I suppose, and the whole scandal together.

Q. That was the whole scandal before the public at that time? A. That was all that had been published that I know of.

Q. Do you remember, during that interview, Mr. Tilton's expression about *The Police Gazette*, saying, "although you see a hundred lies in it, and you know there are a hundred lies in it, yet you cannot say the whole paper is a lie." Do you remember that expression being made? A. No, Sir.

Q. You don't remember that reference to *The Police Gazette*? A. Yes, Sir.

Q. You say you were lying on the sofa? A. Yes, Sir.

Q. You are not able to repeat very much of that interview consecutively, are you? A. No, Sir; not a great deal of it; I did not lay it up with care.

Q. Were you asleep any of the time? A. No, Sir; I was not, according to my recollection.

Q. Now, do you remember of my advising Mr. Moulton to sign a card denying the Woodhull statement, in so far as it related to him? A. No, Sir; I don't think you advised him to sign a card.

Q. I said he could safely, did I not? A. Well, I don't recollect that you did General.

Q. Do you remember Mr. Tilton and me having an argument that afternoon as to whether he could truthfully deny the Woodhull publication or not? A. I think you talked about it, but I couldn't state the substance of the discussion.

Q. Was it not in that discussion between Mr. Tilton and myself, I arguing that from his statement to me he

could deny the Woodhull card—was it not in that connection that he said “You cannot take *The Police Gazette* and say because you see a hundred lies in it, that the whole paper is a lie?” A. I don’t recollect anything about *The Police Gazette*.

Q. “You can’t say the paper is all a lie?” A. I don’t remember that.

Q. You don’t recollect that phraseology? A. No, Sir.

Q. You say he charged Mr. Beecher with being an adulterer that day in my presence? A. He said he had been guilty of adultery.

Q. Didn’t I turn to him then and say, “Do you mean with your wife?” And was not his reply to me, “No, Sir; with another woman?” A. No, Sir; I don’t recollect that you said that.

Q. You don’t remember that? A. No, Sir.

Q. Do you remember any allusion to another woman that day in that conversation? A. I don’t recollect any allusion to any woman, only that Mr. Beecher had been guilty of adultery; he did not say with whom.

#### WOODRUFF’S AID TO TILTON’S PAPER.

Q. Were you interested in *The Golden Age* in some way at its commencement?

Q. Just what did you do in connection with *The Golden Age*—state your connection with it? A. Well, Sir, I was in the habit of going to Mr. Moulton frequently about the beginning of 1871; I met Mr. Tilton there once or twice; I had rarely ever met him before that; I knew him slightly; and he told me about his being thrown out of *The Union* and *Independent*, and Mr. Moulton had talked with me about the case of Mr. Tilton’s position, and Mr. Tilton was out of employment, and he expressed a wish that if he could only have a paper, and I, without thinking of it, asked him what it would cost to start a paper. He said he thought a paper could be started with \$15,000 or \$20,000 capital, and the paper question was talked over, and we went and talked with other people about it, and finally we started a subscription paper, which I and others signed, and *The Golden Age* was started the 1st of March, I think, 1871.

Q. You subscribed how much yourself? A. I subscribed \$3,000.

Q. And how much was subscribed in all? A. I think \$12,000; Mr. Tilton, I believe, had several thousand dollars of his own beside—\$4,000 or \$5,000 or \$6,000.

Q. That made up the capital of *The Golden Age*? A. I don’t know that it made up the capital of *The Golden Age*; that was the money that was subscribed.

Q. That is all that you knew of what constituted the capital? A. Yes, Sir.

Q. What Mr. Tilton had in ready money with you and what you subscribed was understood to be the financial basis of the paper, was it not? A. I suppose so; yes, Sir.

Q. I mean you and the other gentlemen who subscribed liberally? A. Yes, Sir.

Q. Now, how was that subscription to be payable? A. Well, I believe I was to call it in, or ask for it as it was wanted along, from time to time.

Q. And did you call it in? A. I did; it passed through my hands.

Q. When did you call it in? A. Well, I think it was along somewhere in the late Summer or Fall of that year; it might have been later; I can’t recollect; it was some time after.

Q. Was more than one payment made, or was half paid at one time? A. Well, I think the half was paid at one time.

Q. You don’t remember when it was definitely? A. No, Sir.

Q. Now, what did you get for that subscription? A. I took a note from Mr. Tilton; I took Mr. Tilton’s note.

Q. For the whole of it? A. No, Sir; for what I paid, the half; I only paid in \$1,500.

Q. You paid in \$1,500? A. Yes, Sir, and took his note.

Q. And took his note? A. Yes, Sir.

Q. For that \$1,500? A. Yes, Sir.

Q. The notes that have been introduced in the case are for the one-half of the subscription which was paid in? A. Yes, Sir.

Q. Well, you saw Mr. Southwick about it also, did you not—one of the subscribers? A. Yes, Sir.

Q. And you said to Mr. Southwick, did you not, that you had arranged it so that if the subscribers paid in one-half of the subscription, Mr. Tilton would give his notes for that amount, payable when *The Golden Age* was a success, and release the subscribers from the other half of the subscription? A. No, Sir; it did not occur that way at all.

Mr. Beach—Wait a moment. We object to that question. What passed between him and Mr. Southwick is not evidence here.

The Witness—Mr. Southwick drew these notes. That was his form of the notes.

Q. Have you ever paid the whole \$3,000? A. No, Sir; I have not.

Q. Have you ever been released from it? A. Yes, Sir.

Q. By whom? A. It was done in this way. I think in June, 1872, Mr. Tilton says, one day, that *The Golden Age* is about paying its way, and that he only owed two or three hundred dollars; and says I, “Is that so?” and says he, “Yes.” Says I, “You are in remarkable good shape.” “Yes.” And I remembered that he had \$7,000 deposited with the firm that he had just received a few days before from Mr. Bowen, and I said to Mr. Tilton, “Now, instead of calling in for the rest of this money, wouldn’t it be better for these people that have—for the contributions—for the notes—for the amount that has been paid in, that they should surrender them as a part of the loss that had been incurred in starting *The Golden Age*, and instead of calling in the other \$6,000, and you have \$12,000 in debt, not call it in, relinquish it, and be free of debt.” Well, that was discussed, and he said he did not think they would do it. I said, “I think they would do it,” and he said it would be a very generous thing if they did. I told him I would try it; so I saw them, and that was the way it was disposed of.

Q. And the basis of that was the \$7,000 which he had with you? A. Not the basis of it. I knew he had several thousand dollars in money, and he said he was about paying his expenses, and he then owed two or three hundred dollars.

Q. It was the amount of money that he then had on deposit with you, together with what he said about the paper that led to the suggestion? A. No; I thought he was in good shape to be free of debt and take the thing and carry it along himself, taking all the circumstances.

Q. Yes, I understand; and it was the amount of money that he had on deposit with you at that time, together with his statement as to the prosperity of the paper, that led you to make that suggestion? A. I think those were the circumstances; yes, Sir.

Q. Do you remember about how much he had on deposit with you at the time he made that suggestion? A. I think he had seven or eight thousand dollars, it might have been more, it might not have been so much.

Q. That was the Bowen money? A. I presume so; I don't know positively.

Q. And that was done at that time, was it? A. What was one?

Q. I mean the arrangement for the surrender of the one-half of the subscription? A. Made on the 10th of June, when those notes were returned; my note shows that.

Q. The 10th of June? A. I think it was the 10th of June, 1872, that they were returned.

Q. Do you think that the return of the notes that have been introduced in evidence followed immediately on this suggestion of Mr. Tilton? A. What suggestion?

Q. Your suggestion to Mr. Tilton about the condition of the paper? A. Very soon after. It was a very few days that I was engaged in consummating it.

Q. Isn't there any way by which you can tell us when the half of these subscriptions were paid to Tilton? A. I don't believe there is, without a great deal of trouble. I might possibly find the checks by searching all through the papers of the firm of Woodruff and Robinson.

Q. What? A. The paid checks might possibly be found.

Q. Don't his account with your firm show that? A. He had other moneys there, and I could not tell. It might have been mixed together, you know.

Q. Would not your own account with the firm show your payment of the subscription? A. I think it would.

Q. Have you looked to see when it was? A. No, Sir; I have not.

Q. Will you? A. I will if you want me to.

Q. We do want you to. A. All right.

Q. We want to know exactly when you paid that subscription. You paid at the same time with the others, do you think? A. No, I don't think it was all paid at once.

Q. Were they paid about the same time? A. Well, there might have been a few weeks' difference. I don't think I asked for the money any faster than it was wanted.

Q. We want the facts, the dates when they were paid in; that is all? A. Yea.

Mr. Tracy—That is all.

The Witness—When do you want those dates, Gen. Tracy?

Mr. Tracy—Just as soon as you can get them.

Judge Neilson—[To Mr. Fullerton.] Do you wish to re-examine?

Mr. Fullerton—No, Sir.

#### TILTON'S RIGHT TO TESTIFY DENIED.

Theodore Tilton was called to the witness stand at this juncture. The Clerk began to administer the oath, when he was interrupted by counsel for the defense with an appeal to the Court denying Mr. Tilton's right to be a witness in the case. The senior counsel, Mr. Evarts, made the appeal, citing authorities and examples in proof of the claim set up. Following is Mr. Evarts's argument.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Wait a moment, Mr. Clerk.

Mr. Fullerton—We offer Mr. Tilton as a witness.

Mr. Evarts—I object to him as a witness in the cause. The plaintiff is now called, as we understand, and offered to be sworn as a witness in his own behalf on the issue of this trial. That issue, as a question of fact, is solely and distinctly the adultery of his wife. That is the fact on which his right of action arises, on that alone; and as his wife's adultery, and the question of whether Mr. Beecher is a man of upright morals in this behalf, or guilty of this crime, is wholly immaterial in respect of Mr. Beecher's relation, except as the responsible person against whom the law gives recourse for the injury that has arisen from the wife's adultery, which has invaded the family, destroyed its unity, and, in the language of the law, been the cause by which he has lost the fellowship of his wife. Now, at the common law there would seem to be no question that neither husband nor wife can be called as a witness, not only upon an issue as grave as this against the character and conduct of the other, and as deep in its penetration into the unity of marriage, but on any of the more ordinary aspersions of character, or interferences with the family relation: and it is only, as I suppose, from there being some impression that in certain limited, statutory interferences with the integrity of the common law rule in this behalf, there have come to be occasions in which husband and wife can testify against or for one another, that it can be presumed or pretended that Mr. Tilton is a witness here on this issue. But if I was satisfied, your Honor, that the common law rule as obtaining in this State is of the regard and completeness that I have imputed to it, I think I shall have no difficulty in satisfying your Honor that the legislation of this State, so far from permitting any such disturbance or deviation from that rule in a case of this kind, has, on the other hand, completely confirmed it and refused to disturb it. It seems to be utterly unquestionable that the wife cannot be a witness in this case. The wife of this plaintiff cannot be a witness to sustain her life and character. The wife of Mr. Beecher cannot be a witness to defend her husband, because the common law has said, great as is the interest of the administration of justice, all-powerful as it should be, to draw into Court all evidence that can speak the truth within the rules of evidence, yet the administration of justice was made for society, not society for the administration of justice; and there are certain institutions of society lying at the base of our civilization, sustaining the whole fabric of its prosperity, its purity, its dignity and its strength, which must not

be undermined, or corrupted, or disfigured, or defiled, under the notion that in the administration of justice the truth must be sought in every quarter and from every witness. Thus the great minds, legislative, judicial, the great moralists, the great religious teachers, have all combined to say that there are certain limits imposed by the nature of human society in the fabric as it is constituted, for our defense and protection, that cannot be overpassed. That, of client and attorney, that of clergyman and penitent, that of physician and patient, are, however, trivial compared with the relation of husband and wife, barriers against the introduction of evidence from sources thus protected; because, without that respect of the law to those relations, no client could confide in a lawyer to defend him, no patient in a physician to save him, no penitent in a priest or clergyman to aid him. But when we come to the relation of husband and wife, it is the foundation of our civilized society; for though nature provides the sexual attraction, yet it is the civil and religious institution of marriage that makes civilized Christian communities instead of loose and lustful herdings of the human race. Now, the common law, built up by masculine understandings that have raised its great establishment, uses no fine and sentimental phrases, such as come from platform orators, or from eloquent lawyers, but it understands the institution that it has undertaken to frame, and it protects it accordingly. It provides that when man and woman come together under the Divine law of purity, that they twain shall become one flesh, and thus that the population of the world shall be furnished, and not otherwise, consistently with the Divine command. And when the common law says that a man and his wife are one, or, in Lord Coke's language, "As two souls in one person"—it is said no man shall put asunder those who are thus joined together, and, least of all, in the name of law, shall the administration of justice pull and tear asunder this conjugal relation by the step of the sheriff or the precept of the judge that compels one to come and betray the other. It is not when the question comes before the Court so much the interest, or the duty, or the particular circumstances of the individual case of marriage that is thus brought up for attention, as the institution itself. It is the happy marriages, it is the unbroken marriages, it is the whole system of marriage, by which husband and wife are in the supreme confidence within their household and in each other's embrace, that no interests of society, no law of the land, can invade. And if every Englishman and every American prides himself upon the inviolability of his threshold against the king or all the power of government, except within certain strict mandates of the law authorizing a forcible passage of it, how much more important that all that makes the inviolability of the threshold important, to wit, the inviolability of the family and the protection of the marriage, should be sustained by the law against the king or the mandate, albeit, of the law!

DIFFERENT ASPECTS OF THE QUESTION.

Now, there are various aspects in which this matter presents itself in respect to this institution of marriage that do not, perhaps, readily rise to the mind as suggested by the particular circumstances of any case in which the question is agitated. Let us

suppose that a happy marriage has been invaded by a seducer, and that the wife has confessed to her husband and the husband has pardoned her, and they two, renewing their fidelity, continue to preserve the threatened unity, and have children born them on their renewed love. Now, while that fidelity continues, and that happiness is maintained, a stranger, by a libel suit, undertakes to fortify himself by compelling the husband to come and prove his wife's pardoned fault, and break that marriage, and disgrace and degrade his children. Does the law do that? I think not. Suppose that, in the case I have imagined, the guilty wife had as partner in her guilt a husband in another marriage, and after this pardon and these years of continued affection and of a family the fruits of it, there comes up a difficulty in the first family, in the family of which the seducer was the husband, and by new discoveries of a jealous wife there is an institution of a suit in regard to that husband's adultery, to wit, his adultery with this wife of the other marriage. Now, does our law permit this wife, suing for her divorce, to prove the adultery of her husband by bringing from this other family the husband to prove the adultery of his wife, his own wife, under those circumstances? I think not. And no case can be found that justifies any such proposition. Will the law, then, allow the question of whether the marriage relation is thus to be disturbed to depend upon the voluntary disposition of the husband? Is that the way the law deals with the general interests of society? And if you can imagine the baseness that could bring a husband into Court after having received a confession and pardoned it, and lived with his wife years in that relation, if you can conceive the baseness that such a husband should voluntarily appear as a witness, does the law change its rule in respect of the sanctity and protection of marriage by the difference between whether the law compels, or the law allows of voluntary production of testimony by a husband? I think your Honor will find nothing in the books that justifies any such opinion.

But there is another general relation of this subject in a different attitude, in which the community are interested. Suppose that a husband, instead of having discovered an adultery of his wife, has invented an adultery of his wife. Suppose that through the processes of law there is sought to be worked out a scheme of degradation and menace on the community, well known to the police, that is, a combination of corrupt married pairs to make victims of third persons. Now, is it permitted by our law that the wife should bring about attitudes implicating any impropriety, and then that the husband should be allowed to come into Court and prove the wife's adultery by the confession, as it would be said, of the paramour? No; this law in respect to the marriage relation is not merely a law *inter sese* in its protection of society, not merely a law *inter sese* between the married people, not only a protection of the marriage against innovation by one to the injury of the other, or by the public to disturb; but it is a position of the married people to society in which they move that is not to be disturbed. See how, if a husband is to be admitted to testify in issues of this kind, how the law, defective and inconsistent, necessarily, if it allows it, involves the interest of justice and throws down the protection of the opposite party. Suppose a husband gives false

testimony by which a defendant is destroyed in that suit, and suppose the wife of the husband thus witnessing can prove it is falsehood (I do not now speak of her exclusion from that suit; to that I have already referred), but when the defendant in that money action undertakes to vindicate truth and justice at the bar, and indicts the false witness, the husband, for perjury, the law says the sanctity of the marriage relation does not permit you to call his wife to convict him. The rules of law are universal, they are prescient, they are comprehensive, and they do not undertake to do by halves and imperfectly what the absolute interests of society require to be done completely and perfectly.

WORDS OF WISE COMMENTATORS CITED.

Now, if your Honor please, as I have no doubt that your Honor will consider the question here to be disposed of as grave and important, not only in reference to this trial, but in reference to the general administration of justice and the interest of marriage, I may be permitted to call your attention to the uniform tenor of the commentators of authority upon this rule, and to say that it is, in substance, a rule not so much of the law or evidence as of the law of marriage. "Bacon's Abridgment" gives, as the reason of the rule, the implacable dissensions which might be caused by it and the great danger of perjury in taking the oaths of persons under so great a bias, and the extreme hardship of the case. And Best adds to this observation of Bacon :

"This rule was not limited to protecting from disclosure matters communicated in nuptial confidence, or facts, the knowledge of which had been acquired in consequence of the relation of husband and wife, and was as absolute prohibition of the testimony of the witness to any facts affecting the husband or wife, as the case might be, however the knowledge of this fact might have been acquired."

He goes on with this observation, which it is right that I should call attention to, though the book shows the limit of it:

"But the rule only applied where the husband or wife was a party to the suit, in which the other was called as a witness, and did not extend to collateral proceedings between third parties."

But your Honor understands that this commentary was written in a state of the law where an idea that a party to a suit could himself be a witness was excluded by the mere fact that he was a party, and therefore it loses its pertinency.

In an action for wages, Chief Justice Lee, who was the eminent successor of Lord Hardwicke, refused to let the wife's confession of a receipt of £20 be given in evidence, saying:

"Husband and wife cannot be admitted to be witnesses for each other, because their interests are absolutely the same; nor against each other, because contrary to the legal policy of marriage."

Cord's Rights of Married Women says:

"The declarations of the wife are not evidence for the husband; and in an action for criminal conversation, the wife's confessions are not evidence for the husband."

Coke upon Littleton says:

"*Note.*—It hath been resolved by the justices that a wife cannot be produced either against or for her husband, *qua sunt duae animae in carne una*, and it might be a case of implacable discord and dissension between the husband and the wife, and a means of great inconvenience."

Epimiseus says, N. P., 382:

"These [husband and wife] being one person in the consideration of the law, and their interest absolutely the same, they cannot be witnesses for each other, nor against each other, on account of its being likely to create disputes, and so against the policy of marriage." \* \* \* \* \*

"And this rule is founded on the policy of the law, and not on the ground of interest."

Gilbert on Evidence, after laying down the rule of exclusion as a corollary from the exclusion of the party, says of the contrary rule:

"Such a law would occasion implacable divisions and quarrels, and destroy the very legal policy of marriage, that has so contrived it that their interest should be but one; which it could never be, if wives were admitted to destroy the interest of their husbands, and the peace of families could not be easily maintained if the law admitted any attestation against the wife."

Gilbert again says:

"The rule of exclusion of husband and wife is grounded on the identity of interest on public policy. The former reason being assigned for not permitting them to testify for each other and the latter not allowing them to be called against each other."

Greenleaf, our own eminent commentary, says:

"Communications between husband and wife belong to the class of privileged communications and are therefore protected, independently of the ground of interest and identity, which precludes the parties from testifying for or against each other. The happiness of the married state requires there should be the most unlimited confidence between husband and wife; and this confidence the law secures, by providing that it shall be kept forever inviolable; that nothing shall be extracted from the bosom of the wife which was confided there by the husband. Therefore, after the parties are separated, whether it be by divorce or by the death of the husband, the wife is still precluded from disclosing any conversation with him; though she may be admitted to testify to facts which came to her knowledge by means equally accessible to any person not standing in that relation."

And he adds again:

"This exclusion [that of husband and wife] is founded partly on the identity of their legal rights and partly on principles of public policy, which lie at the basis of civil society. For it is essential to the happiness of social life, that the confidence subsisting between husband and wife should be sacredly protected and cherished in its most unlimited extent."

Kent says (2 Kent's Comm., 178):

"The husband and wife cannot be witnesses for or against each other in a civil suit. This is a well settled principle of law and equity, and it is founded as well on the interest of the parties being the same as on public policy."

Peake on the "Law of Evidence" speaks of this relation as coming under a rule of this kind:

"We are now to consider those who stand in a different situation, and are excluded not by reason of any disability, but on account of higher duties, either domestic or public, binding them to silence."

"It has been before mentioned, that no one can be a witness for himself; and it follows of course that husband and wife, whose interests the law has united, are incompetent to give evidence of each other, or any other person whose interests are the same; and the law, considering the policy of marriage, also prevents them from giving evidence against each other; for it would be hard that the wife, who could not be a witness for her husband, should be a witness against him: such a rule would occasion implacable divisions and quarrels between them."



And again :

"The rule of law does not merely prevent a husband or wife from giving evidence for the purpose of criminating each other; it goes much further, and precludes any evidence which has the *least tendency* to it, or which directly prejudices the civil rights of each other. Neither in a civil action, nor a criminal prosecution, are they permitted to give any evidence which, in its future effects, may criminate each other; and this rule is so inviolable, that no consent of the other party will authorize the breach of it."

Phillips on Evidence supports the rule, placing it upon the same principles I have stated:

"The reason for excluding the husband and wife from giving evidence, either for or against each other, is founded partly on their identity of interest, and partly on a principle of public policy which deems it necessary to guard the security and confidence of private life, even at the risk of an occasional failure of justice. They cannot be witnesses for each other, because their interests are absolutely the same; they are not witnesses against each other, because this is inconsistent with the relation of marriage."

And Reeves, in his "Domestic Relations," and other commentators, says on that relation that the removal of the disqualification of interest does not affect the first-mentioned reason, because, when one is called for the other, either examination might bring out facts making for or against the other. Reeves says distinctly:

"It is a rule of law that husband and wife cannot be witnesses for or against each other. This is peculiar to the relation of husband and wife." \* \* \* \*  
 "The principle of the rule arises from that anxious solicitude which the law discovers to preserve domestic tranquillity." \* \* \* \*  
 "In the case of husband and wife, if the husband and wife and their antagonist all agree that the wife may be a witness, the law interferes and prevents it. This shows that it is not because the wife is interested that she is prevented from being a witness; for the right of the opposite party to object to an interested witness may be waived; but to suffer such a waiver in the case of a husband and wife has a tendency to disturb that domestic tranquillity which is so desirable; and, therefore, the law forbids it."

In the quaint language of 2 Rolle Abr. [686]:

"A married woman cannot be a witness for or against her husband, inasmuch as they are one in law, and inasmuch as 'displeasure' can arise between them, or perjury, or other great 'inconvenience.'"

In Scholer's Domestic Relations [2d Ed.], published in 1870, this principle is insisted upon and enlarged, and Starkie in his Evidence says [page 103]:

"On grounds of public policy it is a general rule that the husband and wife cannot give evidence to affect each other, either, as it seems, civilly or criminally. For to admit such evidence, would occasion domestic dissension and discord; it would compel a violation of that confidence which ought, from the nature of the relation, to be regarded as sacred; and it would be arming each of the parties with the means of offense which might be used for very dangerous purposes."

On page 709 he adds :

"Where neither of them is either a party to the suit, or interested in the general result, the husband or wife is, it seems, competent to prove any fact, provided the evidence does not directly criminate the other, or, as it seems, involve the disclosure of some communication made by the other."

This matter of "criminate," as the authorities will show,

means not exposure to criminal justice, but to the imputations that carry opprobrium.

"Where a man or wife are divorced by Act of Parliament, a wife is not competent to prove a contract made by her husband previous to the divorce, because the confidence between a man and wife should be kept forever inviolable."

In Tyler on Infancy and Coverture [320, Ed. 1868, page 70], this same principle is laid down.

I will now offer your Honor some of the leading cases in the English law and in our own law and the law of our sister States. In *Bentley v. Cooke* (3 Dougl., 422), Lord Mansfield says:

"There has never been an instance, either in a civil or criminal case, where the husband or wife has been permitted to be a witness for or against the other, except in case of necessity, and that necessity is not a general necessity, as where no other witness can be had, but a particular necessity, as where, for instance, the wife would otherwise be exposed without remedy to personal injury. I think the husband was not a competent witness."

Now, the husband was there called by the defendant to prove the former's marriage to plaintiff, who had sued as a *femme sole*, and on his evidence she was nonsuited.

The case of necessity, as your Honor is aware, is where a wife is permitted in the criminal law to testify against personal violence; for otherwise the husband would be protected by the law against all sorts of personal and private injury to the wife in the absence of any other witness.

In *Davis v. Dinwoody*, 4 T. R. (678), Lord Kenyon says:

"Independently of the question of interest, husbands and wives are not admitted as witnesses either for or against each other. From their being so nearly connected, they are supposed to have such a bias upon their minds that they are not to be permitted to give evidence either for or against each other."

That was a case where neither husband nor wife were parties. And these two cases which I have just read of Lord Mansfield and Lord Kenyon are approved in 9th New-York, page 154.

Now, to show that divorce does not open the mouths of either party to the previous marriage, in the case of *Munroe & Twisleton* (Peake's Add'l'l. Cas. 219), Lord Alvanley says:

"To prove any fact arising after divorce this lady [the divorced wife] is a competent witness, but not to prove a contract or anything else which happened during the coverture. She was at that time bound to secrecy; what she did [sic] might be in consequence of the trust and confidence reposed in her by her husband."

Now, that action was of this kind: Assumpsit for the board of an infant. She, who at the time of the transaction was defendant's wife, since divorced, was called as a witness to prove the contract. Lord Alvanley says:

"It shall never be endured that the confidence which the law has created while the parties remained in the most intimate of all relations, shall be broken whenever, by the misconduct of one party (for misconduct alone can have that effect) the relation has been dissolved."

And in the case of *Doker and Hasler* (Ryan and Moody, 196), Best, C. J., says:

"I remember that in that case [*Monroe vs. Twisleton*, Peake's Add'l'l. Cas. 219], in which I was counsel, Lord Alvanley refused to allow a woman, after a divorce, to speak to conversations which had passed between herself and her husband

during the existence of the marriage. I am satisfied with the propriety of that decision, and I think that the happiness of the marriage state requires that the confidence between man and wife should be kept forever inviolable."

This was an action by an administrator for a false return to a *fi fa*. The defense was that the execution was fraudulently taken out to protect the goods of the testator against his assignee in bankruptcy. To prove this the testator's widow was called to testify as to a conversation between herself and her deceased husband, and the testimony was rejected.

In the case of *O'Connor vs. Majoribanks* [5 Scott's new 394; 4 Manning and Granger, 435]. In following *Monroe vs. Twisleton*, the Court (Tindal, C. J., Caltman & Maule, J.J.) says:

"A wife shall never give evidence either for her husband or against him; not for him, because their interests are the same; and not against him, because thereby dissension and dispute might arise in families. We are asked to confine our judgment only to cases of confidential communications; but I think that would be dangerous and inconvenient. It is either to abide by Lord Alvanley's judgment in the case of *Monroe v. Twisleton* [above]; that is the better and sounder doctrine."

In *Barbat v. Allen* [7 Exch., 609, S. C. 10 Eng. L. and Eq., 596], this case of *O'Connor v. Majoribank* was cited as holding that the rule of exclusion does not stand on the ground of the sacredness of conjugal communications, quoting Maule, J.:

"The rule can hardly stand upon that ground; but Pollock, C. B., says: 'I am not prepared to express an assent to those observations. The rule is, that so far as the law can respect those communications it does so, but it cannot do so in all instances where the husband and wife are not parties to the proceeding at all.'"

In *Stapleton vs. Croft* (21 Law Journal, N. S., Q. B. 247), it was held, Campbell, C. J., giving the opinion, though it was after Lord Brougham's act was passed, which introduced certain latitude for husband and wife, as the statute has it, that—

"The disqualification of husbands and wives rests not merely on the ground of interest, or union of incapacity, but one reason is to preserve the peace of families. Wightmans says the reason for excluding the evidence in question rests not merely on interest, but upon a much larger view of the relation existing between husband and wife."

Now, the New-York cases. I cite to your Honor *The People vs. Mercein* (8 Paige, 50) for some observations of Chancellor Walworth. This case your Honor will recollect. Chancellor Walworth says:

"The wife is prohibited from being a witness against her husband, upon the principle that the happiness of the married relation requires that perfect confidence should subsist between the husband and wife; so that he may freely communicate with her in relation to his business, and to all the various transactions of his life, in the full assurance that she can never afterwards be compelled, or even permitted, to give evidence against him to his injury, or as to any matters thus communicated."

This was a *habeas corpus* to relator's father-in-law, to bring before the Court relator's wife and child. The wife was said to be properly admitted to prove acts of cruelty by her husband towards her, but not his general character or any other misconduct.

Judge Neilson—Mr. Evarts, would it be agreeable to you to suspend at this point? It is now 1 o'clock.

Mr. Evarts—Quite so.

The Court then took a recess until 2 o'clock.

#### SOME ENGLISH PRECEDENTS.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Evarts resumed his argument.

Mr. Evarts—If your Honor please, I had been diverted to a line of authorities in our own country a little earlier than I should have done, and I wish to call your Honor's attention to a line of English cases of considerable importance on this general rule. I cite the case of the *King vs. Luffe*, in the 8th of East., 183. This was a case known to the English law and to our law as a bastardy case, the point being, as your Honor understands, to fix the responsibility upon a putative father and of a bastard child, in order to save the public from the expense that it otherwise would be put to. Those cases in form are of the King, or Crown, or the Parish, or some public representation against the putative father, so that your Honor sees that no party intervenes there to make a rule growing out of the question of who is party. The Parish is on one side and the putative father on the other, to whom the bastard child is to be attributed. And the question came up whether the mother of the bastard, being a married woman, the husband of the woman could be admitted as a witness to prove anything that tended to produce the conclusion of the adultery of his wife being the mother of this child, not by her husband but by the putative father; and one part of the proof for the public was to prove that this child, born of parents in wedlock, was not the child of the husband, but of the putative father, and one necessary link, or important link was or might be to prove the non-access of the husband to the wife during the period of gestation with the child; and the husband on the ordinary necessities or convenience of the law would be the natural witness to prove that incidental fact in the proof of his wife's adultery—his own non-access during the period to which the gestation was to be attributed. And it was held by the courts that the husband could not be admitted as a witness to prove non-access, and on the ground of the marital relation, that he could not be heard to furnish testimony that formed any part of the proof of the imputation of this grave criminality on the part of the wife. And I use the word criminality in regard to this fault, offense, or sin, because it is the language uniformly of the law, and of the law books, and does not turn at all upon the question whether adultery has been made by legislation—as it was not at common law, and is not at common law anywhere—a crime. In England it was not a crime. There was no criminal exposure by any such proof concerning the wife any more than there is in the State of New-York; but yet English Courts pass upon it in reference to this line of cases, and on this mere point of the non-access as provable by the husband, as excluded by that policy of the law that does not permit husband or wife to testify concerning one another, and to the prejudice of the other in matters of this nature, Lord Ellenborough says:

"Three exceptions have been taken to this order: first, that the wife was examined generally and alone to the fact of non-access, and that the order is founded on her evidence alone; whereas it is laid down in the cases that an order of this sort cannot be made on the evidence of the wife alone, but that there must be other proof of the non-access. This objection is grounded upon a principle of public policy, which

prohibits the wife from being examined against her husband in any matter affecting his interest or character, unless in cases of interest where, from the nature of the thing, no other witnesses can probably have been present; but exceptions of that sort have been used; and that it is necessary, and on that point allowable, to examine her."

Now, this case, dealing with the general proposition as applied to that line of cases, came up for consideration in another case. *The King vs. The Inhabitants of Kea*—the name of a town—in the 11th of East, 133.

"A woman cannot give evidence of the non-access of her husband to bastardize her issue, though he be dead at the time of her examination as a witness, and therefore an order of sessions stated by that court to be founded in part upon credence given to her testimony of that fact, was quashed."

Lord Ellenborough, Ch. J., when this case was called on, said "that to hold this evidence receivable would be in direct contradiction to *The King vs. Reading*, and other cases, which were not meant to be overruled in *The King vs. Luffe*; the Court in that case intending that the wife had been examined only to those facts which she might legally prove, and not to the non-access of her husband. the principle of public policy precluding her from being a witness to that fact."

And the rest of the Court signified their concurrence in this opinion. Then the counsel argued that the difference was made because in this case, when the wife was called, her husband was dead, and they argued that point and said if the Court considered that the rule stood on the broad ground of general public policy affecting the children born during the marriage, as well as the parties themselves, they could not pretend to argue in support of the order. That is, if the difference that they sought to raise to the Court did not make a distinction, because the rule of the Court was upon the whole broad ground of public policy, they could not attempt to make that distinction.

"The Court unanimously assent to this, and Le Blanc, J., added that they were bound on the statement of this case to notice the objection taken to the competency of the wife to prove the fact of non-access."

We cannot bring a book that we wanted from the library, but I refer your Honor and my learned friends to the case of *Pope agt. Pope*, 1st of Moody & Ryan, 269. It is a more modern case. In our own American reports is the report of the case of *The State v. Herman*, 13 Iredell, North Carolina Reports, 502, which sustains these English cases as being the law of this country. And the same principle in the case of *The State agt. Pettaway*, 8d Hawks, N. C. Reports. And a certain case of *Dennison v. Page*, 29 Penn. State Reports, 430, from which I read:

"A mother of a child born in wedlock, but begotten before, is incompetent to prove that the child was not begotten by the man who became her husband before the birth of the child, and in the absence of other evidence of non-access."

This is an important decision, if your Honor please. in which the whole doctrine is considered, and the conclusion is based upon this general proposition of the protection of marriage against any invasion by the administration of justice.

The case of *The King v. The Inhabitants of Cliviger*, in 2 Durnford & East, 133. There they say that a wife shall not be

called in any case to give evidence even tending to criminate her husband.

"In case of a settlement where a marriage had been proved between two paupers, the first wife of the husband is not a competent witness to prove a former marriage with him, because such evidence tended to show him to be guilty of bigamy."

It is not a bigamous marriage which he speaks of; it is an authentic marriage, which he is not permitted to prove, although the case was not of an indictment for bigamy, but only a case of settlement, raised in the general form that I have stated.

#### SOME AMERICAN PRECEDENTS.

There are some Virginia cases; the case of *Robin* and others, paupers, against *King*, in which the Court of Appeals of Virginia, the highest Court of that State, says:

"In a suit by persons held in slavery against their master to recover their freedom, the defendant claimed the plaintiffs as slaves by purchase of them as slaves from W. K. The plaintiffs offered K. K., widow of W. K., to prove that W. K. in his lifetime, before sale to defendant, repeatedly declared in presence of his family, and without injunction of secrecy, that the mother of plaintiffs, then held by him in slavery, was an Indian woman."

Which would negative the idea of the progeny being slaves, as your Honor understands.

"Held, the widow not a competent witness to prove such declaration of her deceased husband."

Though death had terminated the relation, yet the wife could not speak even of a matter of that kind, though it was not a question of any personal interest of hers or the estate.

Now, a very important case in the Supreme Court of the United States, is the case of *Stein vs. Bowman*, in the 13th of Peters, 209:

"It is a general rule that neither husband nor wife can be a witness for or against each other. This rule is subject to some exceptions, as when the husband commits an offense against the person of his wife. The husband and wife may be called as witnesses in the same cases, and if in their statement of facts they should contradict each other, that would not destroy the competency of either. It would not follow from such contradiction that either was guilty of perjury, and in some cases the wife may be a witness under peculiar circumstances where the husband may be interested in the question, and to some extent in the event of the cause."

Now the peculiar circumstances of this case will strike your Honor.

"The wife cannot be a witness to criminate her husband, or to state that which she has learned from him in their confidential intercourse. The rule which protects the domestic relations from exposure, rests upon considerations connected with the peace of families, and it is considered that this principle does not afford protection to the husband and wife while they are at liberty to invoke it or not at their discretion, when the question is propounded; but it renders them incompetent to disclose facts in evidence in violation of the rule. The husband [as in this case] being dead, does not weaken the principle. It would seem rather to increase than lessen the force of the rule."

Now, the matter to which the wife was brought as a witness after her husband's death, in behalf of one of the parties against whom her husband had testified, was a suit in which the husband during his lifetime has testified and now is dead, and the wife was adduced as a witness to contradict those statements of the husband, and to show that the transaction was not as he represented.

ed it, but was a fraudulent transaction—to his knowledge, I mean. Mr. Justice McLean delivered the opinion of the Court, and all the learned Justices, which included at that time the late eminent Chief-Justice Taney, Judge Story, Mr. Justice Thompson of our State, Judge McLean, Judge Baldwin, Judge Wayne, Judge Barbour, Judge Catron and Judge McKimley—and the Court was filled with those eminent Judges—establish the proposition in its fullest extent, and upon the principles of the interest of society lay down so extensive a rule as to exclude the wife under the peculiar circumstances that I have stated.

“The law does not seem to be entirely settled how far in a collateral case a wife may be examined on matters in which her husband may be eventually interested. Nor whether in such a case she may not be asked questions as to the facts that may in some measure tend to criminate her husband, but which afford no ground for the foundation for a prosecution. The decisions which have been made upon these points seem to have been influenced by the circumstances of each case, and they are somewhat contradictory. It is, however, admitted in all the cases that a wife is not competent, except in cases of violence upon her person, directly to criminate her husband or to disclose that which she has learned from him in their confidential intercourse.”

He then alludes to analogies that have been involved upon the relations of attorney and client:

“The rule which protects an attorney in such a case is founded upon public policy, and may be essential in the administration of justice. But this privilege is the privilege of the client and not of the attorney. The rule which protects the domestic relations from exposure rests upon considerations connected with the peace of families; and it is conceived that this principle does not merely afford protection to the husband and wife which they are at liberty to invoke or not at their discretion when the question is propounded. But it renders them incompetent to disclose facts in evidence in violation of the rule. And it is well that the principle does not rest on the discretion of the parties. If it did, in most instances it would afford no substantial protection to persons uninstructed in their rights and thrown off their guard and embarrassed by searching interrogatories.”

“In the present case, the witness was called to discredit her husband, to prove, in fact”——

That is not in issue; but to prove, in a suit in which her husband had testified, contrary testimony, that he had sworn falsely—if she was to be believed, of course. There was a contradiction between them.

“To prove in fact that he had committed perjury, and the establishment of the fact, depended on his own confessions, confessions which if ever made were made in all the confidence that subsists between husband and wife. It is true the husband was dead (of course he could not be indicted or tried) but this does not weaken the principle. Can the wife, under such circumstances, either voluntarily be permitted or by force of authority be compelled to state facts in evidence which render infamous the character of her husband?”

That is the proposition upon which it turns—“to render infamous the character of her husband.”

“We think most clearly that she cannot be. Public policy and established principles forbid it.”

“The rule is founded upon the deepest and soundest principles of our nature, principles which have grown out of those domestic relations which constitute the basis of civil society, and which are essential to the enjoyment of that confidence which should subsist between those who are connected by the

nearest and dearest relations of life. To break down or impair the great principles which protect the sanctity of husband and wife would be to destroy the best solace of human existence.”

Judge Gaston, whose reputation is well known to the lawyers of our country, a celebrated North Carolina Judge, in the case of the State v. Curen Jolly, in the 3d of Devereux and Battle's Reports, 110, says:

“The husband, even after divorce, not competent to prove the adultery of his wife on her prosecution therefor.”

The next case in New York that I ask your attention to is that of Babcock v. Booth, 2 Hill, 181, where the opinion is given by Judge Bronson. The Court says:

“It is sound policy to exclude the wife whenever she is called either against the husband or his representative, and asked to disclose any fact which came to her knowledge in consequence of the intimate relation which once existed between herself and her husband.”

The decision below was reversed for admitting the testimony of a widow in behalf of the defendant in a suit by her husband's administrator, so far as it applied to statements made by the husband to her alone concerning the subject of the controversy. In Burrill v. Bull, 3 Sandford, Ch. 15, Vice-Chancellor Sandford lays it down that by O'Connor v. Majoribanks (6 Lond. Jur., 509; S. C. 5, Scott's New Rep., 394) the case that I read to your Honor from the King's Bench:

“The rule was established on consideration that husband and wife should not be witnesses either for or against each other in civil cases; and, that without regard to the circumstance whether the fact came to them confidentially or otherwise, neither could be permitted, even after the marriage terminated, to testify concerning what transpired between them during the marriage, or came to their knowledge by reason of the relation of husband and wife.”

In the case of Hasbrook v. Vandervoort, 9 N. Y., 153, the action involved the wife's separate estate, but she was not a party to the record, though having an interest in the result of the suit. Her husband was offered as a witness. Held, that although his wife would be competent as a witness by reason of the incompetency of interest having been removed by the Code, the husband's incompetency was not removed. It is the settled rule in this State that the husband's incompetency rests on the marriage relation and not on interest.

“A husband is not a competent witness for or against the trustee of his wife's separate estate, in a suit between the trustee and a third person in relation to the trust estate. The principle which excludes the testimony of husband or wife, where the other is a party or interested in the suit, depends merely upon the relations existing between the witness and the party, and not at all upon the interest of the witness in the event of the suit.”

Judge Johnson, of the Court of Appeals, delivers the opinion of the Court, and goes through the text-books and the authorities, and, as I understand them, affirms the rules of law as existing in this State, as the common law, as being the same as those that I have stated. The true ground of the rule is also stated in the cases that I have just read from the American Reports.

“Upon them all it is entirely clear that the rule of the exclusion of husband or wife, where the other is a party or interested in the event, depends merely upon the existence of the relation, and not at all upon the existence in the party offered as a wit-

ness, of an interest in the event independent of that which the law could attribute to him by reason of the marriage relation."

The argument here was that our law having changed the rule of evidence that excluded interested witnesses, that the old rule of excluding a witness brought as this wife was proposed to be, rested on the ground of interest in the witness, and the Court exclude that idea and say no.

"The rule that excluded husband and wife in this regard was part of the rule of the institution of marriage, and the change of the rule in respect of interest as affecting witnesses in general, or parties in general, does not touch that relation, and the witness is still excluded."

"In any trial or inquiry, in any suit, action or proceeding, in any court, or before any person having by law or consent of parties authority to examine witnesses, or hear evidence, the husband or wife of any party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as hereinafter stated, be competent and compellable to give evidence the same as any other witness on behalf of any party to such suit, action or proceeding."

Now, that section in terms, if the subject matter of the suit did not otherwise dispose of the question and make it unimportant, that section, in terms, would not admit Mr. Tilton, but would admit Mrs. Tilton, because Mr. Tilton is not the husband or wife of any party to this suit, but Mrs. Tilton is the wife of a party to this suit, to wit, the plaintiff. Now, in letting in the husband and wife there nevertheless was a statutory restriction upon the latitude of the evidence that should be allowed from either; and that I will read, if your Honor please, which is the third section, before I call attention to the second. I was saying, if your Honor please, that the enabling section which I have read, which lets in husband or wife in certain judicial inquiries is, nevertheless, limited; and I first call attention to the limitation before I consider the second section, which shows that this statute has no application to this case. Where they are competent and compellable, it is provided:

"No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage."

So, there your Honor perceives, even in case where they can be used as witnesses, there is a limitation upon the largeness of their testimony; and, though it would not strike a legal reasoner as very satisfactory that the limitation should be simply that a husband or wife should not be compelled to disclose confidential communications, and leave it therefore that they might volunteer, yet there is an attempt on the part of the Legislature to furnish a rule that protects to a certain extent the sacredness of confidential communications. Now, that act, and that act alone, has disturbed the rule of the common law on the subject of the admissibility of this witness, Mr. Tilton, here; and the reason that it has disturbed it is by the clause or section of exclusion—of the alteration of the statute upon a case such as is now pending before your Honor. And that is found in the second section:

"Nothing herein contained shall render any husband or wife competent or compellable to give evidence for or against the other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, or in any action or proceeding instituted in consequence of adultery, or in any action or

proceeding for divorce on account of adultery, except to prove the fact of marriage, or in any action or proceeding for or on account of criminal conversation."

The Court conclude that:

"In consideration of the witness being incompetent at common law, and not upon the ground of interest in the event, he must remain incompetent until some statute shall remove that ground of incompetency."

SPECIAL REASONS WHY TILTON SHOULD NOT TESTIFY.

Now, a statute was passed in 1867 which opens the testimony of husband and wife to a certain extent and in certain cases. The report which I now read from arose after the passage and taking effect of that statute, the 40th New York reports, the case of Southwick vs. Southwick, page 510. It was an action brought by plaintiff against her husband to recover an alleged balance of moneys in his hands belonging to her separate estate and received by him as her agent. The defense was payment. On the trial, the defendant offered himself as a witness in his own behalf. The plaintiff's counsel objected that he was incompetent. There your Honor sees it was a mere money interest between husband and wife, in which the wife sued and the husband defended on the ground of payment and offered himself as a witness. Now, as I understand from an examination of this case, the competency of the witness for the evidence for which he was called was within the allowance of this statute, and the question was whether the principle by which death or divorce excluded at common law just as thoroughly as the continuance of the marriage relation excluded such testimony, whether this statute could be considered as letting in evidence arising in the course of a marriage, which evidence arose prior to the passage of the act. That was the solitary point there to be decided, and of course I do not cite the case for that purpose, because that is not pertinent here; but as a necessary foundation for the judicial determination of whether the witness there was excluded or not, it became necessary for the Court to determine what the rule of common law anterior to the Statute of 1867 upon this point was, and whether it did rest entirely and thoroughly not upon interest, but upon the marital relation. And they examined, therefore, this line of cases to which I have called your attention, even more particularly, perhaps, than the Court had had before them—had under view. And as I understand this case, it determines that the common law of this State, up to the time that this decision is given, is the common law as I have given it in the English authorities, and would exclude and does exclude any evidence of a husband bearing against the interest or character of his wife, or of the wife against the husband, as well as any question involving the interests of one or the other; and then the question was what had this Statute of 1867 done in reference to this relation of husband and wife and the introduction of either as a witness in a controversy in which the character or the interests of the other were concerned, and they held that the proposition of the appellant, that this Statute must be considered as enabling only for concurrences in married life subsequent to its date is untenable; that the common

law, until changed, excluded upon the grounds of policy, but that the Statute of 1867 had changed the common law in its application to that case. We thus have the highest authorities of our State sustaining the proposition that, until Statute changes the common law rule applicable to a case of this kind, it remains the law of this State that a witness proposed as this one is must be excluded.

Now, at common law no party could be a witness, no formal party to a suit could be a witness. And in a large number of cases in which this question might have arisen, but for the fact that the witness was a party, it could not arise because the common law swept out at once all parties as witnesses. Our code has now put the matter of parties [and I think my learned friends will not question my proposition] simply upon this ground; that the party is not, from the fact of being a party, to be excluded as a witness, and the question when a party is called is the same as to his exclusion, as it would be if he were not a party. There is nothing, therefore, in that that changes the rule of the common law in this regard. Mr. Tilton is no more admissible for being a party here, than he would be if he were not a party. Then came the Act of 1867, which was intended to moderate and qualify, on matters of interest, the exclusion of husband and wife. For when the practice that interested witnesses should no longer be excluded came in, all efforts to introduce husband and wife on the ground that their exclusion rested on interest, failed before the courts, for they said: "No, it rests upon the marriage relation." Now, our legislation has varied the rule of the common law, and with specific intent to liberalize the production of evidence from husband and wife in matters in which they are concerned. That enactment is found in the Session Laws second volume of laws of 1867, page 2221. It is a brief law; your Honor, of course, has had it before you repeatedly.

The law stands, then, on the rule of evidence upon the common law; for the statute, with wise respect to the nature of the inquiry, has seen that no public policy could tolerate the admission of evidence of either party against the other in that inquiry, to any extent whatever, and that any careless expectation of legislation that you could introduce into such issues and such controversies, the testimony of either, and expect to limit, or reduce or confine it by any rule of protecting what was confidence, or excluding what was criminating, would be a vain and illusory effort that would leave both the marriage relation and the administration of justice in equal disgrace and danger. We have now this state of things, and I need only ask your Honor's attention to the decision of the General Term of the Supreme Court of this State in the Fourth Department, since the passage of this act, and in a *crim. con.* case—the case of *Dann v. Kingham*, in the first of New York Supreme Court Reports, page 462. Now, the single fact to which the plaintiff was proposed to be called as a witness in this case of *Dann and Kingham* (a plaintiff standing as Mr. Tilton stands here), was to prove the marriage between him and his wife. That is not a question arising in the confidence of marriage. A marriage is always celebrated in the face of the Church and the world; therefore, the proof of that fact did not come within any reason

or any rule of exclusion from its arising in the confidence of marriage. It happened to be a very grave, practical question for the plaintiff. The marriage, we may suppose, was in common or humble life, and had occurred before a Justice of the Peace, and doubtless without any troops of attendants and friends; and the Justice of the Peace was dead, and the record or certificate which the law requires, and permits to be authentic when conformed to law when produced, was found to be defective, and it could not be used; and the plaintiff stood apparently as the witness that must prove the marriage, or it could not be proved at all, and he offered to prove it, and by the rules of the common law, aside from the marriage relation, he, of course, was a good witness: it occurred in his presence; he was attending to the subject, and knew all about it. He was excluded, and every effort of counsel, either arguing upon a change of policy, or upon statutory efficacy of the legislation of 1867, by which this witness could be called for "that single fact and act, was overruled by the Court; and although this statute had expressly provided that in a prosecution for bigamy the first marriage might be proved by the husband or wife, and that in an action of divorce, though the parties were excluded for every other fact, they could be admitted to prove the fact of the marriage that was sought to be dissolved, as no such saving right had been applied by the Legislature to the action of *crim. con.*, though doubtless the same reason might apply. The Court could find no change in the common law as applicable to an action of *crim. con.*, produced by the statute books of the State of New York. We are unable, if the Court please, to see any pretense that by the statutes of New-York Mr. Tilton is made competent. We see nothing to shake the proposition that by the common law of this State, if this action had been pending and he had been called before the passage of that statute, he could not be a witness, and he stands in the same position now.

#### A QUESTION OF LAW, NOT OF FAIRNESS.

Now, it may seem, if the Court please, that there is some notion of fairness in respect to the testimony pro and con. In this case, that the plaintiff might reasonably expect to be admitted as a witness if the defendant is. The difficulty is that he is tied by rules of law that relate to him and sustain against his will his loyalty to marriage and the wife, and in order that all other men may know that loyalty to marriage and the wife or husband reciprocally is a part of the law of our land not determinable by the caprice or will, vicious or benevolent, of any particular witness. But in a larger sense from how inequitable a change of law that should disturb the marriage relation in its sanctity, and should open the mouth of the husband and close that of the wife. What precludes Mrs. Tilton from being a witness in this suit? Is she to prove any disgrace upon her husband? None. Is she to prove any peril or ruin to her children? None. She is to testify against the money interest of this plaintiff in his action for damages from this defendant. She would uphold everything great and dear and permanent, but she affects the money recovery and the common law excludes her on that ground, and no change of the statute has introduced her. And yet it is sup-





*Rugby & Rugby.*





posed that the common law that shuts the mouth of the witness who knows the truth, and whom the law presumes innocent until she is proved guilty, says she cannot defend herself because she is the wife of this husband, and he can destroy her because he is the husband of this wife. I apprehend the common law has been guilty of no such folly since its foundations were laid, and on this, if your Honor please, we submit the proposition.

MR. EVARTS CONTROVERTED.

Gen. Roger A. Pryor, of counsel for the plaintiff, answered the argument of Mr. Evarts. His remarks were apparently as full of quotations of authorities sustaining his views of the question as were those of his opponent. He occupied the remainder of the session, and will resume his argument on Friday morning.

ARGUMENT OF MR. PRYOR.

Mr. Pryor—If your Honor please, I speak to the Court on a dry, technical question of law, and, accordingly, I shall adhere strictly to the point in dispute, and shall urge no topic which, in my judgment, does not bear directly on the solution of the problem. The question in its simplest form is this: Is a plaintiff in an action of criminal conversation a competent witness on his own behalf? Now, Sir, it is not pretended on this side that at common law the plaintiff would have been a competent witness. The common law, proceeding upon the hypothesis of the depravity of human nature and its inability to resist any the least solicitation of interest to speak falsely, arbitrarily and peremptorily excluded from the witness box all interested in the event of the cause, and, by consequence, the parties, the very persons who from the necessity of the case were most familiar with the facts in controversy, and most competent to shed light upon the litigation, were made incompetent to testify. These unphilosophical and mischievous ideas were exploded by the writings of Jeremy Bentham, who propounded and inculcated the principle that all persons should be admitted to testify, without respect of character or condition, and that their trustworthiness should be submitted to the discrimination of a jury; in other words, he promulgated the principle of credibility as a substitute for the old common law principle of competency. Nor, Sir, was it long before these speculations of the enlightened reformer were incorporated in the practical jurisprudence of Great Britain. In 1843, by Lord Denman's act, the disability to become a witness, arising from interest and infamy, was abrogated. In 1851, by Lord Brougham's act, the incapacity growing out of the relation of a party to a cause was removed; and in 1853, by Lord Campbell's act, the incompetency of coverture was abolished. Impelled by the same principle, and running along the same line, and by the same stages to the same end, was the legislation of this State. Hence, in 1846, by constitutional ordinance, the incapacity to be a witness arising from defect of religious principle was abolished. In 1848, the incompetency of interest was abolished. In 1857, the incompetency of a party to the action was

abolished. In 1857, the incompetency arising from the relation of husband and wife to testify for and against each other was abolished; and subsequently we have attained in this enlightened and humane course, to the degree that now a criminal, indicted, is admitted to testify on his own behalf. I cite this course of legislation, if your Honor please, not in a vain display of information, but as showing that both speculatively and practically, both in the teachings of philosophers and in the acts of legislatures, the barbarous policy of incompetency has been removed, and in its stead the principle has been deliberately adopted by England and this State, that the question of evidence is determined by the more enlightened criterion of credibility.

Now, Sir, I have said that in 1857 an act was passed by the Legislature of New-York removing the incapacity to testify growing out of the relation of a party to the cause. The phraseology of that enactment is material to the present discussion;

"A party to an action or proceeding may be examined as a witness in his own behalf the same as any other witness," with certain exceptions not relevant to this inquiry or to this cause. You observe the phraseology—"A party to an action or proceeding may be examined as a witness in his own behalf, the same as any other witness." The terms of this statute, meanwhile, have been subjected to successive modifications, but, observe, never to the intent or to the effect of restricting or narrowing its operation, but always with the obvious object and irresistible result of enlarging and amplifying its consequences and efficacy. Hence, whereas the Act of 1857 merely admits a party to testify in his own behalf, by a subsequent alteration of its language, he was made compellable to testify against himself; and now that statute, that enactment, transferred to another section of the code, reads in these large terms:

"No person offered as a witness in any action or proceeding in any court, or before any officers acting judicially, shall be excluded by reason of his interest in the event of the action or proceeding, or because he is a party thereto."

This is the law which governs this case. This is the charter of this plaintiff's privilege and prerogative to tell in this action his own sad story of wretchedness and wrong.

Now, Sir, come back to the Act of 1857. Soon that Act, innovating upon the traditional principles of the common law, and so doing affront to all the prejudices of the profession, albeit so plain and unequivocal in its phraseology, was subject to discussion and to judicial construction. A series of cases were decided determining the meaning and effect of this Act of 1857, and which I beg to cite to your Honor. The question was this: although a party to the action may testify for himself, although the Act of 1857 did remove the disability upon a party to the action, the question under discussion and propounded for judicial construction was this: did the act have an *ultra* effect beyond that of removing the disability of a party, and did it operate to enable a party to testify not merely for himself, but for wife or husband, as the case may be? On the one side it was contended that the effect of the Act merely was to legalize and legitimate a party to the action as a wit-

ness, and that it was not the intent of the Legislature nor the effect of its enactment to accomplish this ulterior purpose, namely, to break down another distinct and special ground of incompetency, that of coverture. Now, Sir, it was upon that question that the decisions to which I beg to invite your Honor's attention were cited. The first, the case of *Potter vs. Marsh* (30 Barb., page 506, Supreme Court Decision in 1860) was an action of slander against husband and wife, for defamation of plaintiff by defendant's wife. Both defendants offered themselves as witnesses; first each in his and her own behalf; and, secondly, each for the other. The witnesses were excluded and plaintiff had a verdict. The case was appealed to the General Term, and the ruling of the Trial Judge reversed. The question, argued and adjudicated at General Term was, whether married persons, when properly parties to actions, are competent witnesses. The decision of the General Term sustained their competency, and this decision was affirmed by the Court of Appeals in 1863, as appears by reference to 24 Howard, 610, note. Not only was this decision of *Potter vs. Marsh* affirmed in the Court of Appeals, but was subsequently cited with approbation and recognition in the case of *Wehrkampft vs. Willett* (4 Abbott, Court of Appeals decision); a case reported also in 1st Keys.

In this case of *Potter vs. Marsh*, occurs the language which I beg to reproduce, because it answers much more logically, much more decisively, and with a greater weight of authority than I could pretend to, a large portion of the learned gentleman's argument. The Court says:

"But in this case, the defendants were offered as witnesses in their own behalf, as well as for each other. If the rational and common law rule for excluding husband and wife was based solely upon the union of interests created by the marital relation, that disqualification having been removed, it was that the parties to the record, the defendants in the case, were admissible as witnesses for each other. But whether the common law rule stood alone upon the grounds of interests or not, being parties to the record, and necessarily so, they are most certainly competent as witnesses in their own behalf."

Such is the letter and such is the spirit of the enactment.

"A party to an action or proceeding may be examined in his own behalf same as any other witness."

Then the Court proceeds and says:

"No limitation, no qualification, no restriction is imposed by the law-making power. What right then has the Court to fritter away, by judicial construction, the plain letter of the statute, to make an exceptional case, when one party shall be deprived of the benefit of his own testimony, while his opponent is permitted to testify? Clearly none."

—said the Court.

*Barton vs. Gledhill*, (12 Abbott, old series 246, New-York Common Pleas), decided in 1861. The action was by husband and wife, against husband and wife, for slander of plaintiff's wife by defendant's wife. Each plaintiff offered himself and herself as a witness, in his and her own behalf, and were rejected. Held, that Section 399 of the Code (1857) permitted husband and wife, though the husband or wife of a co-party, to testify in his or her own behalf. Section 399 of the Code is the Act of 1857. Your Honor will observe, it is here held, that Section 399 of the Code permitted the

husband or wife, though the husband or wife of a co-party, to testify in his or her own behalf.

*People vs. Chamberlain* (23 N. Y., 85, Court of Appeals, 1861) was an indictment for perjury against a husband who swore in an action of divorce that he had no intercourse with his wife, the defendant. Held, that under Section 399 of the Code (1857), a husband, party to the action, was a competent witness against his wife, party to the action, and *vice versa*.

*Hooper vs. Hooper*, (43 Barb., p. 297, Supreme Court, 1865) was an action by plaintiff against defendant and wife for assault and battery by defendant's wife. Defendant's wife offered herself as a witness in her own behalf, and was excluded. Held, error; for by Section 399 of the Code (1857), the wife, *as*, and *because* a party to the action, was a competent witness in her own behalf, although joined as defendant with her husband. Now, Sir, what said the Court in this decision of *Hooper vs. Hooper*? They say this: "What did the Legislature intend by this amendment of the law of evidence?" referring to the Act of 1857 as amended.

"Did it intend by the words 'a party to an action,' a special or particular class of parties—parties who had nominal or real interests—parties who were *feme sole* or *femes covert*, the latter sued with or without their husbands? If we accept what the Legislature has said in very plain, concise, and unequivocal language, as an indication of its meaning and intention, we must adopt the conclusion that the disability to give evidence in one's own behalf is removed from all who may become or be made parties to actions and proceedings. If it was intended to include all parties, and extend to them the amendment, what other or better language could have been employed to signify such intention? I submit that none more appropriate or significant could have been employed. And if it was designed to perpetuate the disability of a particular class of parties—married women, sued or suing in conjunction with their husbands, I submit the Legislature would have said so in words, and not left it to inference and implication. When the Legislature speaks in plain, precise, positive and unambiguous terms, the courts are bound to accept what they have said for what they intend, rather than to seek an intention at variance with their expressed language in reasons and causes which, however cogent and controlling they may appear to us, may never have occurred to or influenced them. The framers of this amendment knew, quite well, that married women with their husbands were, in numerous cases, necessary and indispensable parties to legal proceedings, and without whose presence upon the record complete and adequate remedies could not be administered. And it is reasonable to think that if this numerous class were to be excepted from the effect of the radical innovation in the old law of evidence, the Legislature would have signified such intention in so many words."

*Hall vs. Hall*, 30 Howard, page 59, shows that husband or wife, parties to the action, are not competent witnesses for or against each other, yet still in such case each is admissible to testify in his or her own behalf.

*White vs. Stafford*, 35 Barber, page 419, rules that a wife, not a party to the action, was not then a competent witness for the husband; but that under section 399 of the Code, the Act of 1857, all parties to an action are competent in their own behalf.

*Card vs. Card*, 39th N. Y. Reports, page 317, holds that section 399 of the Code makes "a party to an action a competent witness

in his own behalf, though associated on the same side with his wife as a party." (Opinion by Woodruff, J.)

Also, see *Shirley vs. Vail*, 30th Howard, page 407, Court of Appeals, per Grover, J.

*Smith vs. Smith*, 15th Howard, page 165, was a suit by a wife for divorce, on the ground of adultery, and the plaintiff was admitted as a witness. Held, error; for the Act of 1857 qualifies parties to an action as witnesses, yet, it does not enable husband or wife to testify one against the other, in an action between them.

In *Maverick and wife against the Eighth-avenue R. R. Co.*, 36th N. Y. Reports (1867), it was held that "the husband, as a party, was a competent witness for himself, though suing jointly with the wife. The language of the Court there is extremely applicable and cogent upon the present discussion; but I do not mean to detain your Honor with a full production of it.

*Wehrkamp vs. Willett*, 4 Abbott, Court of Appeals decisions, page 548 (1867), was an action by a wife against the sheriff for levying on her goods under an execution against the husband. The contention was, that as the sheriff claimed the goods as the property of the husband, the husband was virtually a party to the action, and so plaintiff, the wife, was disabled to testify in her own behalf.

At page 558, Mullen, J., says—a single paragraph I cite :

"By section 399 of the Code it was provided that a party to an action, or special proceeding, may be examined in his own behalf or in behalf of any other, in the same manner and subject to the same rules of examination as any other witness. This statute makes every party a competent witness. There is no exception; and the courts have no power to create exceptions to the operations of statutes, unless the exception is necessary to prevent injustice, or obviously at war with the intention of the Legislature that it should be excluded."

*Carpenter vs. White*, 46 Barbour, page 293 (1866), decides that in an action of *crim. con.* the wife is an incompetent witness, not being either nominally or really a party to the action. In such action, the husband is the only party in interest.

*Babbott and wife vs. Thomas*, 31 Barbour, page 277 (1859), was an action by husband and wife to cancel a bond and mortgage and to restrain the foreclosure of the mortgage. The husband offered himself as a witness to prove usury in the consideration. Held, that the husband was a competent witness in his own behalf, notwithstanding the wife's interest in the event of the suit, by reason of her inchoate right of dower in the mortgage premises.

In *Schaffer vs. Reuter et al.*, 37 Barbour, page 44 (1862), it was ruled that, when husband and wife are co-defendants, she is a competent witness in her own behalf.

In *Matteson vs. N. Y. C. R. R. Co.*, 62 Barbour, page 364 (decision in 1862), affirmed by the Court of Appeals, 35 N. Y. page 487, it was held that husband and wife are competent witnesses for and against each other in all cases where they are parties to the action.

*Shoemaker vs. McKee* (Supreme Court 1860, G. T.), 19 How: 86—was an action by a judgment creditor against husband and wife to set aside a fraudulent conveyance from the husband to the wife. The defendant, wife, offered herself as a witness in her own behalf and admitted. Held, no error—because, under

section 399 Code, as a party to the action, she was a competent witness in her own behalf, though joined with her husband.

#### DEDUCTIONS FROM FORMER DECISIONS.

Now, Sir, what is the result of this line of decisions—decisions emanating not only from the courts of primary jurisdiction, but ratified and affirmed by your tribunal of last resort? What one principle is there—even when those courts differ upon another question—what one principle is there that stands out salient and uncontested? It is this: That a party to an action, being husband or wife, in every and in any action, when the husband and wife is not also a party to the action on one side of the record or the other; that then, in all these cases, that party to the action, he or she, husband or wife, is a competent witness in her own or his own behalf. And I challenge my learned adversaries, with all their extraordinary and admirable research, to find in the reports of this State, since the Act of 1857, one solitary decision which says that a wife or a husband, party to the action, testifying not for or against husband or wife, party to the action, that the husband or wife, when a party to the action, is incompetent to testify, when the husband or wife, as the case may be, is not likewise, and also a party to the action. Now, Sir, we have then this rule, this principle, peremptorily and imperatively established in the jurisprudence of New York, namely, that any person and every person, in any and every action, is entitled—because he is a party, and merely because he is a party—is entitled, has the right *quâ* party, because a party, and in consequence only of being a party—is entitled to be admitted to the witness-box and to testify in his own or her own behalf, provided he does not testify, or she does not testify for or against the husband or wife, likewise a party to the action. Now, I challenge a solitary decision in the Courts of this State since that time, in contravention of this rule, stating it, as I do, with its proper limitations and qualifications.

Wherefore, Sir, by virtue of this enactment of 1857, subsequently altered and modified down to 1869, in the phraseology in which it presents itself to us now and controls this case; wherefore, we say this plaintiff in this action is a competent and admissible witness.

But we arrive at the same conclusion by another process of reasoning. The law upon the subject as it now stands is in these words :

"No person offered as a witness in any action or proceeding before any Court or before any officer acting judicially, shall be excluded because he is a party thereto."

You observe the change in the phraseology of the statute from what it was in 1857. None shall be excluded "because of being a party to the action."

Now, Sir, this plaintiff presents himself, a party to the cause in an action of criminal conversation. At common law, as I have already shown indisputably, he would not have been a competent witness; and why not a competent witness at common law? Merely, solely and exclusively because he was a party to the action. That was the only disability which incapacitated him, and repelled him at common law from the witness box. So when the Legislature say that no party shall be excluded from the witness box because he is a party,

then there is no other obstacle intervening between the plaintiff and his testimony in this case. In England they have a statute known as Lord Campbell's Act. That statute, like this, removed the disability of a party to the action to testify. Now observe, if your Honor please: "Removed the disability of the party to the action," and that is all it accomplished. It did not go further; but they added an exception that a plaintiff in an action of criminal conversation should not testify; showing plainly that when they removed the incompetency of a party that the plaintiff in an action of criminal conversation would be competent and admissible as a witness. Hence, the necessity of an exception repelling him from the witness box. There is no resisting that argument. If the removal of the disability of a party did not admit the plaintiff in an action of criminal conversation as a competent witness, then there was no occasion for that exception, and when they make a peremptory and positive exception to that enactment, to the effect that a plaintiff in an action of criminal conversation, should not testify in his own behalf, they concede that when you remove the disqualification of a party to the action, necessarily the plaintiff in an action of criminal conversation would be a competent witness. And, in effect, so says Judge Wright, I am compelled to hurry along so rapidly, I am almost afraid I do not make myself very clear.

Judge Neilson—Take your time.

Mr. Pryor—I say Judge Wright, in the case of *Wehrkampft vs. Willett*, admits the same principle. Pardon me, that was an action of conversion by a wife against the Sheriff for levying on her property under an execution against the husband. She was admitted to testify, which was claimed on the part of the appellant as being error, and he carried the case to the Court of Appeals, and his argument was this: Granted that the effect of the Act of 1857—this is the appellant's argument—was to permit any party to any action to testify on his own behalf, yet a husband, for instance, cannot testify for or against his wife when she is virtually a party of the action. And their second proposition was that inasmuch as in this case the Sheriff claimed through the husband, and inasmuch as he had an interest in the event of the action, because if the property, involved in the case, was adjudicated to be his simply, it went to the payment of his debts. Upon that species of argument they held that he was virtually a party to the action. You see the case is very important in many aspects. The point to which I allude is now is this, that Judge Wright concedes in his argument, assumes it as a postulate in his argument, as a first principle, whence to be argued, not a point of contention to be argued about; he assumed that when the statute removed the disability of a party to the action that then every other disability fell with it. I mean the disability involved in this case. The rule at common law did not prohibit husband and wife from testifying in a civil action, unless one or the other, or both, were parties, or directly interested in the subject of the action. The common law did not, I repeat, prohibit the husband or wife from testifying in a civil action unless one or

the other, or both, were parties directly interested in the subject of the action. There the husband was not a party. The wife propounded herself as a witness. Nor had he such a right as would have disqualified the wife, by strict common law rules, from testifying. The action was in no proper sense against him. He made no claim to the property, and the Court held the wife a competent witness in her own behalf.

Now, thus I say, that in this action the plaintiff at common law would have been a competent witness, save for the fact that he is a party to the action; and that that disability having been removed, he is therefore validated by operation of old common law principles, as a witness, and made to testify here. So then, as well upon principle as upon authority, as well by precedent as by reasoning, we arrive at the settled conclusion that by virtue of the Act of 1857, as amended by subsequent statute, that this plaintiff as a plaintiff, because a plaintiff, consequent upon his relation of plaintiff to the action, was a competent witness in his own behalf. Then the question arises whether the Act of 1867 disfranchises, disables him to be a witness in the cause, makes him, as is contended by the other side, an incompetent witness the case.

#### MODERN LEGISLATION ON THE QUESTION.

Now, in view of the uniform traditional current of legislation and decision in England and in this State, as I have adduced them to your Honor, in view, I say, of this uniform and unbroken series of acts of legislation, all tending in one direction, without ebb or returning tide, in the direction of enlarging the sphere of competency, and removing all the obstacles to the admissibility of a witness—I say, in view of this series of legislation and adjudication, we are confronted at the threshold with an *a priori* argument relative to the Act of 1867, that it wrought no such change as contended for in the Act of 1857. It is not to be presumed, in the absence of express language to the contrary, that without adequate cause the Legislature would renounce its old principle, recede from its deliberately adopted pathway, and relapse into the obsolete, abandoned maxims of the common law. I say this is a valid, cogent and palpable argument—an argument irresistible before your Honor, unless it be met and overthrown by the language of the statute. Well, Sir, so far from being repelled and overthrown by the language of the statute, we find the title and text of the act conclusively establish and decisively clinch and determine the law as we maintain it, namely, show to a demonstration, beyond cavil, beyond question, that the Act of 1867 does not conflict with the Act of 1857—does not affect or impair its efficacy. Why, what is the title of the act?—"An act to enable husband and wife," not a restrictive, but an enlarging act; not a disabling, but an enabling statute. Hence, plainly, it was not within the intent of the Legislature, they did not design the effect by this act to disfranchise and to disqualify any man competent to be a witness; but they meant to create a new competency, and to bring upon the stage a class of witnesses, theretofore not qualified to speak. And, if your Honor please, let us look now to the very language of the act, to see whether or no it disqualifies and inca-

positates Mr. Tilton as a witness. The learned counsel on the other side relied with confident presumption (I will not say with presumptuous confidence) upon the phraseology of this act as disqualifying the plaintiff here from being a witness. If your Honor will do me the kindness to follow the terms of the statute. I apprehend there can be no question about it :

"In any trial or inquiry in any suit, action, or proceedings in any court, or before any person having by law competent authority, in any trial or inquiry, in any suit, trial, or proceeding, in any court, or before any person having by law the consent of parties or authority to examine witnesses or bear evidence of husband or wife, of any party thereto, or of any person in whose behalf such suit, action, or proceeding is brought, prosecuted, or opposed or defended, shall, except as hereinafter stated, be competent and compellable to give evidence, the same as any other witness on behalf of any party to such suit, action, or proceeding."

Now, what is the case provided by the enacting part of the statute? The case provided there is where a witness, husband or wife, as the case may be, is propounded to testify for or against husband or wife, *a party to the action*. These are the very words of the statute. Where the husband or wife, as a witness, is propounded against husband or wife, "party to the action." There is no escape. That is plain, intelligible, and not to be contradicted. Now, then, what is the exception? May it please your Honor, the office of an exception is to take something from the enacting clause of the statute—to abstract or deduct a particular thing which otherwise would have fallen under the class or category provided for by the enacting part of the statute.

Hence an exception necessarily covers the same thing that the principal provision does. Now, let us read the exception in that light:

"Nothing herein contained shall render any husband or wife competent to give evidence for or against the other, in any action of criminal conversation or adultery."

That is to say, husband or wife shall not be competent or compellable to give evidence against husband or wife *in a case where he or she is a party to the action*. There is no resisting that. First, it contemplates a case where the husband or wife, witness, is adduced to testify for or against husband or wife, and secondly and further, where he is so adduced to testify, not against a wife having a sentimental interest in the action, but against a wife or a husband, *party to the action*. That is the reading of the statute. Hence your Honor will perceive, in view of the uniform policy in this State, in view of the very title of the act, blazoned upon its threshold, so to speak, in view of the literal and the large phraseology and effect of the Act, in view of all this you perceive, that this Act of 1867 does not touch the Act of 1857. They move, so to speak, in different orbits, with no point of contact between them, in lines parallel that run on to infinity without intersection. They cover different subject matters; they contemplate different ends. The act of 1857 contemplated the witness in his absolute individuality, namely, as a party to the action, and provides that he might testify for himself. The act of 1867 contemplates the witness in his marital relation, in the relation of husband or wife, and pro-

vides when he may and when he may not testify for or against the other, husband or wife, as the case may be. So that the two acts, I repeat, are not in conflict or in contact either. On the contrary, the one is a supplement to the other. The first provides only when a husband might testify or a wife might testify by reason of being a party to the action. The other removes the bar which is interposed between husband and wife testifying for or against each other when they are parties to the action.

MRS. TILTON'S ATTITUDE TOWARD THE ACTION.

But it may be said on the other side, and in fact it was intimated—indeed we have a premonition of it from the declarations of my learned friend—it may be argued that virtually Mrs. Tilton is a party to this action; at any rate, that she has such an interest in the action as makes her, if not a titular, at least a virtual party to the action. Now, Sir, "interest," as applied to the qualification or disqualification of a witness, is a term well known to the law. Formerly, as has been already developed in the discussion, interest disqualified a witness. Well, what interest? Why, no other interest but a pecuniary interest. A pecuniary interest of six cents was sufficient to make a witness incompetent, but no other interest; and it is another illustration of the absurdity and barbarous jargon of the old common law, that, whereas an interest in the event of an action of six cents, made the most reputable man in the community an incompetent witness, yet no other interest, no matter what it might be, disqualified or affected him. Hence it was that while a person having this interest of six cents in the event of the cause was incompetent, yet a father might testify against a son, a brother against a sister, a daughter against her mother—might so testify, not only in a cause involving money, but testify in a cause involving liberty, reputation, aye, life itself. Hence I say that the word "interest" in the clause means a financial interest. Now, Sir, what financial interest, what pecuniary interest, what material interest has Mrs. Tilton in this action? I repeat, she has a prodigious interest; she has an interest of character; she has the same interest, however, that the children have, that the friends have, the same in kind, though not in degree. It is an interest of feeling; it is an interest of repute, but it is not the interest which the common law recognized as necessary and as efficacious, to constitute one a party in interest, a party to the cause, and so incompetent as a witness. Hence, in 46 Barbour, you will find the very point assumed in argument. It is the case of *Carpenter vs. White*, page 291; an action of criminal conversation, and the husband had the audacious impudence (my friends would say on the other side) to offer his wife as a witness to prove the fact of adultery. And by what argument did he undertake to prove that she was a competent witness? His first and major premise was that all persons who were parties to the case were by virtue of the Act of 1857 made competent witnesses. Now, this wife of this man is virtually (if not virtuously) a party to the case, is a person in interest, and therefore she is a competent witness. But the Court at General Term indignantly scouted it, and said that a wife, in an action of criminal

conversation, has no interest in the cause—is not a party in interest—is not a party directly or obliquely to the action—but on the contrary that it is brought solely and exclusively for the benefit of the husband. Hence, if your Honor please, inasmuch then as the Act of 1867 excludes a husband and wife in an action of criminal conversation, from testifying for or against a party to the action; and inasmuch as Mr. Tilton here does not offer himself to testify against his wife, a party to the action, he is not within the terms or the spirit or contemplation of this statute. Mrs. Tilton is within the very terms of the act. Why? Because her situation answers to all the conditions which the statute prescribes as a ground of disqualification and incompetency. This is an action of criminal conversation. She is the wife of the plaintiff, and if she were to offer herself as a witness, or to be offered as a witness, then she would be testifying in an action of criminal conversation for or against her husband, party to the action. And that is what the law meant; and why it intended to exclude her is obvious enough. My learned friend could not with his ingenuity have failed to stumble upon the reason. A husband cannot bring an action for criminal conversation and then produce his wife as a witness in his own behalf, because there might be a corrupt conspiracy between them. That was the ground for it, and an all-sufficient ground. Then, Sir, having, I think, deferentially, submissively, may I say, demonstrated, that by the Act of 1867, this plaintiff in this cause is a competent witness in his own behalf, and having demonstrated that by the text of the statute—the letter of the statute—he is not specially disqualified, I come to consider, and we are now in the condition to consider, the citation of the authority to the contrary. It is the case of *Dann vs. Kingman*. Now, if your Honor please, I am not here to impugn the doctrine of *stare decisis*; on the contrary, if I know myself, I have an almost superstitious veneration for precedent. Nevertheless I have been taught by my reading that the authority may be taken away. Mr. Ram, in his exquisite treatise on "Legal Judgment," page 67, holds this language:

"A precedent possesses the binding force mentioned, either if in the mind of the Court it is wholly unimpeachable on the ground of want of principle, or otherwise; or, if impeachable, the objection to which it is so exposed, is not, in the consideration of the Court sufficient to exclude its title to be authority."

In a subsequent chapter, he enumerates the conditions and circumstances that discredit and debilitate and destroy a precedent as a binding authority. He says:

"One decision may not be a binding authority, if the principle or reason on which it is grounded, or some other cause, makes it defective. In an after case the soundness of the earlier decision may be inquired into, and if on examination it is in the mind of the Court thought to be unfit to stand, that decision it is allowed to reject as a binding authority. A decision may be so disregarded if it is contrary to reason and common experience and its effect would be to make confusion in property, or if it 'outrages all reason and sense,' or if, it being a case which turned on the construction of the terms of a particular instrument, 'the Court ought there to have come to a contrary conclusion,' 'the Court there had not adopted the true construction, nor that which was warranted by the ordinary rules of criticism or language,' or if the judg-

ment was 'founded on a mistake of the law;' or if it does not appear that, in the case decided, the attention of the Court had been directed to a strong authority upon the point."

Now, Sir, in view of this canon of construction ascertaining or determining the effect of a precedent as a binding authority let us consider this case of *Dann vs. Kingman*.

The attention of counsel was here called to the fact that it was four o'clock, and the Court adjourned to 11 o'clock Friday.

## FIFTEENTH DAY'S PROCEEDINGS.

### THE QUESTION OF MR. TILTON'S RIGHT TO TESTIFY.

GEN. PRYOR CONCLUDES HIS ARGUMENT—MR. BEACH DRAWS A PICTURE OF MR. TILTON'S ALLEGED WRONGS—THE DEBATE CONCLUDED BY MR. EVARTS—THE DECISION TO BE RENDERED ON MONDAY.

The eloquent appeals made on Friday by the legal champions of Mr. Beecher and Mr. Tilton, regarding the competency of the latter as a witness, were preludes prophetic of the flights of oratory that are to be witnessed toward the closing of the trial, when all the evidence has been heard. In that respect the day was one of the most notable ones on the calendar of scandal events. The verdict of the least intelligent part of the audience was that the proceedings were dull and uninteresting, and during the reading of the dry and technical points of law, and the arguments of the lawyers thereon, many heads in the gallery nodded with drowsiness, and the rustle of newspapers frequently arose above the speaker's voice. To the many lawyers present, however, the arguments were of the highest interest. Gen. Pryor resumed his argument, continuing until noon, quoting and explaining rapidly and with accuracy his authorities. His manner was more quiet than on Thursday, and he was evidently more at ease. He closed rather abruptly, having only referred during his entire address to the legal points of the case.

Mr. Beach, who unexpectedly arose and begged to touch upon some points not referred to by his associate, viewed the case from a social point of view, and drew such a picture of Mr. Beecher's alleged crime that the audience were fairly overcome. Mr. Beach had not concluded at 1 o'clock, and the court therefore adjourned for an hour.

Mr. Beach resumed his speech, and did not fail to take advantage of the door left open by Mr. Evarts in departing from the legal aspect of the case to speak of the asserted baseness of Mr. Tilton in

wishing to testify against his wife. His retort was very earnest—almost passionate. Mr. Beecher sat immovable, and his face neither changed in color nor expression, while he looked fixedly at the chandelier below the center of the ceiling, and listened to the stinging words of the plaintiff's counsel.

Mr. Beach sat down, tired by his effort, and before he was fairly seated Mr. Evarts was on his feet. He did not think Mr. Beach's words called for, and he accused him of introducing at this time in the trial a speech which should have been delivered at the close, adding that the only excuse that the plaintiff's counsel could have was that the evidence at a later stage would not justify such words. Mr. Evarts did not again refer to this subject. Later on he challenged his adversaries to show any law making a husband and wife competent witnesses against each other. Mr. Beach immediately met the challenge, and a short passage at arms followed, Mr. Beach referring the Court to the case of Southwick against Southwick as answer. Mr. Evarts did not think that his argument had been answered, and continued. It was 10 minutes before 4 o'clock when he finished, and Mr. Beach then arose. Glancing at the clock he said that it had been his intention to reply to some of the opposing counsel's arguments, but, it being late, he would refrain and submit the case as it stood.

Judge Neilson said the argument had been of great interest to him, and he would give it all possible consideration. He would not write an opinion, as that would savor of pedantry; but he would give his conclusions on Monday morning.

Audiences every day crowd the court-room and listen to the eloquent appeals of the counsel for their respective clients, the learned arguments and clever repartee, but they have no idea of the great amount of labor and research that is performed by the younger and less prominent lawyers. One phase of that work is displayed by the struggle just concluded regarding Mr. Tilton's competency as a witness. Before the trial began counsel for the plaintiff did not anticipate much trouble in placing their client on the witness stand. But one day Mr. Pearsall discovered points in the Reports of the case of Dann against Kingdom, which might be damaging to the theory of the plaintiff's admissibility. This opened the eyes of his associates, and they instructed Mr. Pearsall to investigate the case further, and continued research brought to light the case of Petry against Howe, before the same judge, in which the former decision was reversed and the

husband was allowed to testify. The result was as was expected. Mr. Evarts cited the case of Dann against Kingdom, and Mr. Pryor answered by quoting the case of Petry against Howe.

On the side of Mr. Beecher, Mr. Abbott, the author of "Abbott's Digest," has been an active though quiet worker; and while his colleagues have been placed prominently before the public and have been admired and applauded, he has been doing not less effective work in furnishing them with authorities for their arguments and statements.

## THE PROCEEDINGS—VERBATIM.

### THE JUDGE'S REQUEST TO JOURNALISTS.

Judge Neilson—Counsel will remember that yesterday morning on objection being made to matter contained in a pamphlet, I said I would write to the editor. Afterwards, however, finding that it was not published by the editor of the newspaper but by an independent publishing house, I wrote to that house calling their attention to what they might see in this morning's paper by way of criticism, recommending them hereafter to refrain from prefacing each day's proceedings with comments objectionable; also saying I thought it hard that a citizen should not be allowed to attend here as a witness under a subpoena and perform his duty by way of testifying, without having personal filings and descriptions of him given. It is radically wrong, and an abuse. I also stated to the publisher I hoped the pamphlets hereafter would be so unobjectionable that I should have the pleasure of hearing counsel commend them instead of complain of them. The same writer that would give a personal description of the witness yesterday, Mr. Woodruff—a personal description offensive to him, doubtless, and to his family—might hereafter describe other witnesses as if they were angelic. and the contrast so sharp would operate improperly; and it is improper, utterly. I do not purpose, however, hereafter to, on my own motion, call attention to this subject. I have said to the press all I can say. I am compelled now to speak of it because my attention has been called to it by some of the newspapers who appeal to me and say I ought to suppress this, and by numerous letters received from very respectable gentlemen calling my attention to it; but I shall not on my own part voluntarily recur to the subject, but in this way commend it to the attention of those who have occasion to speak of the trial in their papers.

### MR. PRYOR'S ARGUMENT RESUMED.

Mr. Pryor—If your Honor please, yesterday, on the adjournment, the immediate topic of discussion was whether the antecedent and independent competency of the plaintiff to be a witness on his own behalf had been impaired or affected—a competency, you will remember, conferred by the Act of 1857—had been impaired or affected by the Act of the 10th of May, 1867, and it was entirely obvious, it had been demonstrated by reference to the title of the Act of 1867, by

reference to its text, by consideration of its pervading and prevailing import—it was demonstratively obvious that there was no clash or collision between the Act of 1857 and the Act of 1867; that, on the contrary, they covered different subject matters, contemplated different ends, and accomplished different and dissimilar results—were, indeed, component parts of an harmonious whole. Now, then, it is a familiar maxim of the law that a former statute is not repealed by a subsequent statute, except the provisions of the two are irreconcilably incompatible, and that if the two may stand together the two shall stand, and full effect and operation be given to each. So, then, it resulted logically and legally that the competency to be a witness in his own behalf, conferred upon this plaintiff by the Act of 1857, was not affected or disparaged by the subsequent Act of 1867. Nevertheless, the research of the learned gentlemen on the other side has discovered and produced a decision—for argument's sake, indeed, in candor I must allow it is not *obiter dictum*, and is an adjudication to the point—their research has produced a case of *Dann vs. Kingdom*, reported in 1 N. Y. Supreme Court Reports, wherein it is held, and as I have admitted, it is adjudicated that the Act of 1867 does disqualify the plaintiff to be a witness in his own behalf.

Judge Neilson—Is that the case in which Judge Smith wrote the opinion?

Mr. Pryor—That is the case, Sir. Now, please your Honor, if that were a decision of any superior tribunal, of your own General Term, much more if it were a decision of the Court of last resort—the Court of Appeals—then no alternative would be left to your Honor but to bow in submissive silence to the adjudication, no matter how repugnant to right and to reason. But this is not the decision of a superior tribunal. It is the decision not of the Court of Appeals or of your own General Term, but is the decision of the General Term of another Court of only co-ordinate jurisdiction, and therefore, albeit *prima facie* entitled to respect and consideration, nevertheless, it is open and accessible to criticism, and if it be plainly repugnant to reason and right, and to common sense, the privilege is conferred upon your Honor to scout and reject it.

JUDGE NEILSON INSTRUCTS THE COUNSEL.

Judge Neilson—I will mention to you the rule we adopt in this Court, Mr. Pryor. In respect to the decisions of Courts other than the Court of Appeals in this State, we accept them, and as far as we think they are sound and just, adopt and follow them; and in like degree, though perhaps in a less degree, we accept the decisions of other States, also of the Courts in England, holding to ourselves the right to consider—the right and duty to consider the weight of the opinion as resting upon reason and upon authorities cited from other sources, and which may or may not be commended to our judgment in the premises.

MR. PRYOR EXPLAINS HIS POSITION.

Mr. Pryor—I supposed, if your Honor please, as you have stated, that the criterion of authenticity and authority attaching to the decision of another Court, was its conformity to reason, and I was proceeding to exhibit conclusively, I deferentially submit, and with all respect to the learned Court by whom the

decision was promulgated, that this decision is absolutely repugnant to reason, and has no shadow of foundation in the basis upon which it purports to be established. My learned friend, using the license legitimately belonging to counsel, imagined that this case had been argued by the profession with research and vigilance; but the report exhibits nothing of the kind, and the opinion of the Judge himself, as you will observe, is embodied in this brief, curt paragraph:

“The plaintiff was not a competent witness to prove such marriage. The Act of 1867, to enable husband and wife to be witnesses for and against each other (Laws 1867, Chap 887), expressly excepts the cases where the question of adultery of the husband or wife is in controversy, except to prove a former marriage, in case of bigamy, and the fact of marriage in actions of divorce.”

Thus you perceive that the learned Judge arrives at the conclusion by no process of reason, nor is he sustained in the conclusion by any citation of authority, but he merely reaches it *per saltum*, and announces it oracularly as an *ipse dixit*. And what is that *ipse dixit*? Why, that the Act of 1867 prohibits a wife in an action involving a question of adultery from being a witness. Now, Sir, the Act of 1867 accomplishes no such thing. The decision therefore is founded upon a plain, palpable misreading and misconstruction of the very Act upon which it purports to be founded. Bear in mind, now, the words of the Judge, that this second section of the Act of 1867 forbids a party in an action involving a question of adultery from being a witness, that is to say, from being a witness absolutely and unqualifiedly. He announced the proposition in general terms without restriction or modification; whereas, what are the terms of the Act itself?

“Nothing herein contained shall render any husband or wife competent or compellable to give evidence *for or against the other*.”

Not competent or compellable merely to give evidence, but competent and compellable to give evidence *for or against the other*

“In any criminal action or proceeding (except to prove the fact of marriage, except in case of bigamy) or in any action or proceeding instituted in consequence of adultery, or in any action or proceeding for divorce on account of adultery (except to prove the fact of marriage) or in any action or proceeding for or on account of criminal conversation.”

Now, Sir, the sentence is long and involved, and likely upon a cursory perusal, inasmuch as the qualifying clause is found in the second line of the sentence, before the learned Judge arrived at the concluding line he had dropped from his mind and his memory those qualifying words, namely, “for or against the other.” So he announced that this Act, in peremptory and absolute terms excluded husband or wife from being a witness in an action of criminal conversation; whereas, the Act only excludes husband or wife from being a witness in an action of criminal conversation *for or against the other*.

TILTON NOT A WITNESS AGAINST HIS WIFE.

Now, Sir, this witness is not proffered here, this witness does not offer to take the stand and testify in this case, in legal sense for or against the wife. He presents himself to testify against the wife's alleged seducer. He proposes, under the solemnity of an oath, to swear to the adultery of Henry Ward Beecher.



It is not for or against the wife, in a legal sense, that he proposes to testify, and therefore his qualification or competency to be a witness is not affected or disparaged by this exception in the Act of 1867. Wherefore, then, this decision of the learned Justice, inasmuch as—and I beg your Honor to bear in mind—inasmuch as the learned Court put their decision exclusively upon the terms of this Act, inasmuch as they do not pretend or contend that, independently of this Act, he would not be a competent witness, but on the contrary, by implication assume in the argument that but for this Act, by the principles of the common law, and in conformity to the Act of 1857, he would be a competent witness; and repose their decision exclusively and alone upon the terms of this Act; and, that foundation sinking beneath them, vanishes out of sight and consideration their decision. But, Sir, I say that is the solitary decision in the books in support of the position of my learned adversary. Indeed, it is the solitary decision in the books expounding the particular meaning and effect of the Act of 1867, with the exception of a Special Term decision, to which my learned associate will call your Honor's attention—a Special Term decision of the Superior Court reported in 7 Robinson. Now, Sir, although that be the only decision in construction of the Act of 1867, it is not the only case that has occurred under the operation of the Act of 1867. In 49 Barbour you will find, at page 106, the case of Bunnell vs. Greathead, which was an action, like this, of criminal conversation, in which the plaintiff propounded himself as a witness, and was accepted as a witness, and was admitted as a witness, and testified as a witness, and he alone testified to the fact of the wife's adultery. Now, Sir, learned counsel appeared there on both sides—an able Court, the General Term of this Department, over which presided Mr. Justice Gilbert; and these able members of the bar and members of the bench, then having this Act of 1867 concretely applied to that case, brought to their attention, it never occurred to them that the Act of 1867 affected the competency of the plaintiff in an action of criminal conversation; but on the contrary, by concession, they admitted without question or cavil, that he was a competent witness, and so competent a witness, that he got a verdict of \$10,000 damages, whereupon the cause was appealed to the General Term, and the defendant, of course, exerted himself, and the counsel—enterprising and ingenious counsel, Judge Nelson among them, Homer A. Nelson—exerted themselves with a view to annul and reverse that judgment and that verdict, and they tortured ingenuity and research to find some ground upon which to batter down that judgment; yet it never occurred to them to urge the objection that the plaintiff, under the Act of 1867, was not a competent witness. The judgment was reversed, but upon another ground, namely, that the husband had connived at the wife's adultery—reversed upon that ground, with no suggestion, with no intimation that he was not absolutely qualified and competent witness, not only to testify, if your Honor please, in popular parlance, in his own behalf, but to testify to the wife's adultery, and so against her.

Again, may it please your Honor, by reference to Vol. 4 New-York Supreme Court Reports, page 85, you will observe the

case of Petrie vs. Howe, decided in 1874—whereas Dann vs. Kingdom was decided the year before—which case of Petrie vs. Howe was also an action of criminal intercourse, a very peculiar case in many respects, but decisive in the particular now under consideration. There the husband was permitted to testify, and was permitted to testify without question of his competency as a witness, permitted to testify to the result of obtaining a verdict. From the judgment entered upon that verdict an appeal was taken to the General Term, and the case was elaborately argued, we may suppose, by the bar, certainly elaborately considered by the Court, and there was no objection taken either by counsel or by the General Term of the Court that the plaintiff had been improperly admitted as a witness. There was no hint or suggestion that by virtue of the Act of 1867 he ceased to be a competent witness. On the contrary, the judgment was attacked for errors—errors in the admission of evidence—other evidence. But there was no hint or suggestion, I repeat, either by the counsel for the appellant or by the Court, that the witness was not an entirely competent witness. On the contrary, by implication, by omitting such an exception, they, in effect, admitted that he was competent.

A JUDGE'S WISE SECOND THOUGHT.

And observe, may it please your Honor, the opinion at the General Term was written by Judge E. Darwin Smith, the very Judge who pronounced the decision in Dann vs. Kingdom. Hence, what is the inference? That his own sober second thought, with a more deliberate consideration, had conducted him to the conclusion that his decision in Dann v. Kingdom was erroneous and could not stand. Be it how it may that he arrived at the conclusion, clearly it is that in this case of Petrie v. Howe, he silently, without objection, conceded the competency of the witness. Now, Sir, this then is the only decision in our path; a decision not of any superior tribunal; a decision perfunctory and ill-considered, and unsustained by any principle or authority, a decision which is manifestly repugnant to the very statute upon which it purports to be founded; and the question is, will your Honor be guided by that decision? You, Sir, are placed in this dilemma. Here is a peremptory, positive enactment of the sovereign people of the State of New-York declaring that no witness shall be excluded because he is a party. On the other hand, here is a decision characterized and discredited by the circumstances which I have recited, saying that he shall not be admitted. Which will you obey? I have no hesitation in conjecturing that your Honor will obey the imperative and plain mandate of the law, because this opinion, this decision, is too frail a yoke to subjugate your Honor's independent intelligence.

ANOTHER OBJECTION ANSWERED.

The learned gentleman urged another and an independent reason why the plaintiff is not a competent witness in this action in his own behalf, that reason being based upon this proposition of law which he promulgated, namely, that in a collateral proceeding, that is to say, in an action between third parties, neither husband nor wife can give testimony tending to criminate the other. Your Honor observes the terms of the proposition. Now, the first reply to that is this: that though the proposition

be sound and valid, it does not go to the question here under debate. The question here under debate is whether this witness is a competent witness, whether he may be sworn as a witness; whereas, this proposition, if true, does not touch the question of his competency, but goes only to intercept the delivery of particular testimony—namely, testimony tending to incriminate the wife—so that upon the strength of that very proposition, if it be true, he is a competent witness, must be sworn, and is entitled to testify generally in the cause; but if the proposition be true, when he comes to deliver testimony incriminating the wife, then the gentlemen on the other side may interpose and arrest the evidence. But, if your Honor please, the proposition is not a valid, sound, true proposition of law. It is not law; it is not the law of England; pre-eminently and emphatically it is not the law of New-York, that in a collateral proceeding, that is, an action between third parties, husband and wife may not give testimony tending to incriminate one another. The earliest indication of that rule of law was thrown out in *Rex vs. Cliviger*; indeed, not only thrown out, but, I concede, adjudicated in that case, a case which my learned adversary either has not discovered to have been overruled, or else in the abandon of discussion, he forgot to call your Honor's attention to the cases which have rejected and overruled it; for, soon afterward, in the case of *Rex vs. Bathwick*, reported in the 2d of Barnwall & Adolphus; and then again in the case of *Rex vs. All Saints*, reported in 6th Maule and Selwyn, that very Court which originally promulgated this rule, retired from this position, renounced the principle, recalled the rule and effectually overruled it; and in those two cases the husband or the wife was admitted to testify in one case, although the testimony went directly to convict the husband of perjury, and in the other case went directly to convict him both of perjury and of bigamy. Now, thus the case was overruled there. But meanwhile the erroneous decision had got some headway, and your Honor knows with what fecundity erroneous decisions propagate themselves; so eventually that rule of law got incorporated in some books of no authority, and was adopted by some of the courts in this country inasmuch that although the rule has been renounced in England and the principle repudiated, yet I frankly admit that in some of the reports of this country it is still an actual living principle. But not in New-York; it never has been the law in this State, and it is not, therefore, law to-day. Nor has it been recognized as a canon in the law of evidence by any authentic and authoritative text writer. What says Greenleaf, Vol. I. of his treatise on evidence. Sec. 342?

"But they, the husband and wife, are not admissible as witnesses against each other where either is directly interested in the event of the proceedings, whether civil or criminal."—(Speaking of the common law.) "Yet in collateral proceedings not immediately affecting their mutual interest, their evidence is receivable, notwithstanding it may tend to criminate or may contradict the other, or may subject the other to a legal demand."

"Notwithstanding it may tend to criminate," Greenleaf announces that to be the rule of law. And so, Mr. Phillips, in his book—which I without invidious comparison may say stands at the head of the works upon the subject of evidence—announces the rule thus:

"Although the husband and wife are not allowed to be witnesses against each other where either is directly and immediately interested in the event of a proceeding, whether civil or criminal, yet in collateral proceedings not immediately affecting their mutual relations, their evidence is receivable, notwithstanding that the evidence of the one tends to contradict the other, or may subject the other to a legal demand or even to a criminal charge."

And in the latest work upon the same subject, I allude to Mr. Roscoe's book upon criminal evidence, at page 123 he dogmatically announces the law thus (adverting to the rule laid down in *Rex vs. Cliviger*, which I have already animadverted upon)—adverting to that rule, and then announcing the true rule, where husband and wife are excluded from testifying the one against the other at common law. May it please your Honor, he says:

"But the rule only extends to cases where the husband or wife are actually on their trial, that they may give evidence tending to criminate the one or the other, except where the person against whom the evidence points is actually on his trial. It was once thought otherwise, but the mistake (clearly a mistake) seems to have arisen from not having drawn the distinction clear enough between competency and privilege."

And so, in a recent case in this State, reported in Abbott's Practice Reports, New Series, Vol. V., at page 55, the title of the case, *The Royal Insurance Company vs. Noble*, Mr. Justice Barrett propounds the principle in these words:

"The evidence of husband and wife is undoubtedly receivable in a collateral proceeding for the purpose of proving any fact material to the issue, and that although the fact so testified to by the one may tend to criminate or contradict the other."

That, Sir, is the language of the law of the State of New York.

#### THE LAW IN RHODE ISLAND.

In Rhode Island, the rule as contended for by the learned gentleman on the other side, had been carried perhaps to as far an extent as in any other State. It was one of the States whose jurisprudence had been invaded and vitiated by the original error propounded in *Rex vs. Cliviger*, but in a recent case (*The State vs. Briggs*, IX. R. L. 361) the Court of Appeals of that State had the authority and the correctness of the old rule, the rule contended for by the gentleman on the other side, brought directly under criticism and review. The case is stated by Durfee, J.:

"The defendant was convicted in the Court of Common Pleas on an indictment for procuring an abortion on one Mary Jane Fisher. The case comes up on a bill of exceptions for alleged erroneous rulings of the Court below. The first two exceptions are based on the following grounds, to wit: That the said Mary Jane Fisher was, at the time of the alleged offense, a single woman, having never been married; that she afterwards intermarried with one Edwin A. Hackett; that said Hackett was the person by whom she was got with the child for whose miscarriage she was operated on; that said Hackett employed the defendant to perform the operation, and came to him with the said Mary Jane for the purpose of having it performed; that, on the trial of the defendant in the Court below, the said Hackett and his wife were called as witnesses for the government, and admitted to testify against the objection of the defendant, the objection being that the testimony of each of them would tend to criminate the other of an indictable offense, that is to say, here of the offense of fornication" (in Rhode Island fornication is a penal offense) "and his participation in the offense for which the defendant was indicted."

That is, being an accomplice in the abortion. Now, Sir, the Court, in pronouncing judgment, held the decision of the rule in the Court below to be correct in admitting the evidence, and say, reviewing the cases:

"Some of these cases recognize the distinction suggested in the cases of *Rex vs. All Saints*, and *Rex vs. Bathwick*, between testimony which is directly criminative and that which is criminative only when connected with other testimony, husband and wife being deemed competent witnesses to give testimony, in collateral cases, is of the former description. But upon principle we find no satisfactory ground for the distinction. The supposed disqualification of husband and wife to give, in collateral cases, testimony directly criminative of each other, is said to rest on the policy of avoiding dissensions between husband and wife; and, if so, the disqualification ought to be complete, for such dissensions, differing only in degrees of virulence, would be likely to result from testimony which tends to criminate, as well as from that which is directly criminative. There are logically only two alternatives, either to exclude the testimony entirely, or to admit it to any extent in collateral proceedings, provided that no use can afterward accrue therefrom in any direct proceeding."

They then say the true rule and the sounder rule, the logical rule and the philosophical rule, is to admit the testimony of the wife, and the decision below was ratified. Finally, by way of authority on this subject, I will cite to your Honor the opinion of one who was indeed an oracle of the law, I mean the late Judge Cowen, who in a note appended to page 69, volume 1, of "Phillips Upon Evidence," note 40, uses this language:

"Indeed, it would seem to be now the settled doctrine, both on authority and principle, that husband and wife may be received to contradict or criminate each other in a collateral matter, *i. e.*, in all cases except where one is called to contradict or criminate the other as a party to some cause."

Now, Sir, thus stands the law, upon the best authorities; upon the weight of the preponderating decisions in England and by the uniform decisions in New-York, namely, that in a collateral proceeding—that is to say, in an action between third parties—husband or wife is competent and compellable; certainly competent (there was a question whether compellable) to testify, although that testimony tended directly to criminate the other, husband or wife, as the case might be. But, if your Honor please, though the proposition of law be sound, though the rule be valid as laid down by the learned gentleman, it does not touch this case. What are the terms of the rule? We are considering it now upon the hypothesis that it is sound law that neither husband nor wife, in a collateral proceeding, shall give testimony tending to what?—criminate the other; that is to say, tending to accuse or convict the other of a criminal charge. It was never heard, it was never hinted, that husband or wife was incompetent, in a collateral proceeding, to give evidence which tended merely to the disparagement or to the infamy of the other.

AN EXAMPLE FROM NEW-JERSEY PRACTICE.

Instead of wasting your time and wearing out your patience with copious citations of authorities which I have at hand, I have selected one authority from the State (New-Jersey) where the law, as contended for by my learned adversaries, has been carried to as extreme an extent as in any State. I have selected, I say, a case from that State wherein the limitation of the rule,

as I now state it, is propounded by the Court—propounded, too, with avowed reluctance, yet propounded under the constraint of a uniform stress and strain of authority. The Court say in *State vs. Wilson*, 2 Vroom R.:

"But in the case now before this Court the charge of the husband was direct; his testimony was that he came upon his wife *flagrante delicto*.

"As the imputation was direct, the only consideration which remains is, was it a crimination within the meaning of the rule? As the wife had been tried and acquitted, the charge was of an offense for which she could be indicted."

Now, adultery in New-Jersey is an indictable offense. Mark, I read this only as an authority for the limitation upon the rule, as I have stated it. The Court say:

"It was not enough that it attributed moral turpitude; a technical crime, that is, an act in its nature indictable, must be the direct imputation of the evidence. It was admitted that this rule was an imperfect one, that accusations in the form of evidence proceeding from husband and wife, against each other, of acts highly ignominious and disgraceful, though not indictable, would be sure to occasion family dissensions; but the suggestion was rejected, and rule as above stated was adopted on the ground of its eminent practicalness. It was said in the language of the Judge delivering the opinion of the Court, '*what crimes involve moral turpitude we can settle with some degree of accuracy; but what charges, not amounting to crime, involve moral fraud and turpitude is exceedingly difficult of solution.*' The object of the Court was to establish a uniform and practical rule, easy to be understood and applied; and the criterion adopted was that husband and wife were inadmissible for the purpose of directly charging each other with any offense *which in its nature was indictable.*"

That is the extent of the rule.

"The disqualification does not arise from the hazard which might result to the party accused of becoming subjected to a prosecution by reason of the evidence—that would have been to put to the rule on the ground of interest—but from the fact that it was safe to assume that all offenses which were indictable were of such disgraceful character that if imputed by one married person against the other, ill-will and want of harmony would be the inevitable result. The indictability of the offense merely fixed the grade of crime which might not be charged."

"I think," says the Judge, "the rule thus adopted should not be narrowed. My inclination would be to extend it, if that could be legally effected, so as to prevent husband and wife from charging each other with any act which is essentially infamous in general estimation; but the authorities do not warrant such an amplification, and we must administer the law as it is handed down to us."

Thus, this Judge, eager himself under any circumstances to prevent husband and wife even in a collateral proceeding from testifying one against the other, impatient as he is of the limitation, yet frankly admits the restriction and says, although it may collide with his own ideas of propriety and of policy, that he has no alternative under the stress of traditional authority but to obey the limitation—which limitation is of the rule propounded by the gentleman on the other side. Admitting it, for argument's sake, to be sound, still in a collateral proceeding—that is, in an action between third parties—husband or wife can testify against each other, when their evidence does not tend to accuse or convict them of a criminal offense, an offense indictable in its nature.

FINAL CONCLUSIONS.

Now, Sir, suppose the plaintiff here is admitted to the witness

box, and gives evidence tending to convict, or actually convicting, the wife of adultery. Does that convict her; does that tend to convict her; does that accuse her of crime? No, Sir; not in New-York. By the Levitical law, as your Honor is aware, both husband and wife were denounced to death for the act of adultery, which law, though severe, must be commended for its impartiality, in view of the tendency of disposition in modern civilization, which is rather to applaud the man for his exploits of antr'y, and to heap the load of ignominy upon the wretched and unhappy woman. So, in 1650, when the principles of Puritanism—principles borrowed from the Mosaic dispensation—were predominant in the Government of Great Britain, those bigoted fanatics passed a law denouncing death against adultery. But, upon the return of reason and the Stuarts, that law was repealed; and it never was the law in New-York, it never was a portion of the common law of England, that adultery was a crime. Open licentiousness is a crime, and indictable at common law, but adultery never was a crime at common law. The common law left adultery to the cognizance solely of the ecclesiastical courts, who chastised it *pro salute animæ*, as they expressed it. Adultery never was a crime by the law of New-York; is not a crime to-day with us. It is regarded as a private wrong, exposing the *tort feasor* to an action for civil damages, but it was never considered a penal offense making him obnoxious to a criminal prosecution. Hence, although the rule contended for by the learned gentleman be sound in all its parts, yet it is inapplicable here, because the testimony which the plaintiff may give, and will give, though tending to convict the wife of adultery, does not tend to accuse her of a criminal offense. So that for these reasons, without detaining you with any amplification of the argument, the second ground presented by the learned gentleman wholly fails—fails because, if sound, it does not go to the competency of the witness, but to the admissibility of the testimony he may give—inapplicable, because it does not tend to convict the wife of a criminal offense, and inoperative because, in truth, it is not the law of the State of New-York.

The learned gentleman endeavored to fortify his position against the competency of the plaintiff, by arguments drawn from general considerations of policy. Now, Sir, those topics, if addressed to a legislature meditating the adoption of an act upon the subject, would be relevant and might be persuasive. But your Honor sits there not to make, but to declare the law, and upon an inquiry what the law is, debate as to what the law ought to be is immaterial and irrelevant. So, then, notwithstanding the temptation presented to me by the field of discussion opened by the learned gentleman, I conceive that I have discharged the duty imposed upon me of demonstrating (I say it with becoming humility) that the plaintiff is a competent witness and should be sworn.

#### OTHER VIEWS OF PLAINTIFF'S COUNSEL.

As soon as Gen. Pryor had finished, Mr. Beach, the senior counsel for Mr. Tilton, began an argument in further proof of the competency of his client to testify. His remarks occupied about three hours of the session.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Will your Honor accept some few additional observations? The discussion of this question, Sir, has been anticipated by us, and the general conduct of the argument has been assigned to my learned colleague, who has just addressed you. The able, logical and exhaustive argument which he has submitted well justifies that selection, and little is left on the field of this discussion for me but to glean something of the fragments of it which have been left comparatively unnoticed. You will not expect me, Sir, nor shall I attempt to review or repeat, to any extent, the considerations which have been already presented, but shall confine myself in a great degree to remark upon those general topics which have been introduced by our learned adversary. Listening, Sir, to his brilliant and impressive exordium I was led to regret that I was not gifted with those qualities which would enable me in some faint and far off degree to emulate his sonorous rhetoric. I am not, and I shall not attempt it. But I am consoled somewhat by the reflection that this is an argument upon a question of law, addressed to a court of law; that I speak to a mind learned and experienced, and not likely to be moved from its self-possession by the declamation of counsel. That declamation, Sir, would, to my mind, have been far more impressive had it been uttered in the cause of one who had not forgotten the precepts taught by his professional representative; on behalf of one who has invaded the sanctity and privacy of domestic life, and who, as the evidence now stands, has seduced that wife from her allegiance and himself introduced her before his packed Committee to review the secrets of domestic intercourse—introduced, Sir, upon that occasion to vilify and abuse the husband who now seeks the occasion to vindicate himself from the aspersions; to tell to your Honor and to the community the true story of the sad, lamentable difference which has broken up a happy and honored home, scattered its inmates upon the cold charities of the world.

#### THE DEFENSE'S PROPOSITION UNJUST.

I do not accept, Sir, the issue tendered by my learned friend. Reduced to its simple proposition, in practical application to this case, the proposition of the counsel is that Henry Ward Beecher is a witness in this action, and Theodore Tilton is not. Whatever Henry Ward Beecher upon that stand may choose to say, however he may stigmatize Theodore Tilton, if perchance he should swear that from the lips of Theodore Tilton forgiveness has been liberally tendered—nay, if he should swear that he has paid Theodore Tilton for the wrong and received a discharge for his outrage upon his rights, the justice and impartiality of the law still excludes Theodore Tilton from answering the imputations. It presents, Sir, just that conclusion, and if your Honor yields to the proposition, it effects just that practical result,

that Henry Ward Beecher is free and at liberty to testify to whatever his conscience will permit—the accused seducer may attempt as a witness to free himself from the accusation, and the wronged and outraged husband must sit with lips sealed by the law, and can offer to this Court and jury no testimony in support of his action. Before your Honor shall reach a conclusion of that character, so unjust in all its theory and mischievous in all its consequences, you must be driven to it by clear and satisfactory authority. It is contrary to our notions of justice. It seems to be contrary to the theory of our laws of evidence, and works a practical wrong which would outrage the common sense of the community.

GRAVITY OF THE QUESTION.

Now, Sir, I admit this is a grave issue, important not only as affecting this principle established by the wisdom and the experience of the past, but grave and important in its relations to those other subjects of domestic concern and public policy submitted to your Honor. I agree, Sir, that the law cherishes with tenderness the family and the home, and well it is, Sir, that it is so; for I too agree with my learned friend that upon them rests the true foundation of every well regulated society and Government. It is there that those lessons of purity and wisdom are taught, forming the mind for the discharge of those exalted duties which belong to every member of society, and from them must come the agents who are to carry onward and upward the great mystery of man's creation. I agree that no society or Government can stand—virtuously stand—except upon the maintenance of the sanctity and the virtue of the domestic circle. So I agree too, Sir, that there is much of beauty and sacredness in the idea of unity attached to the marriage relation. That idea of the confluence of two souls mingling all their affections and sympathies and interests in one, and hand in hand meeting the contingencies and adversities of life with mutual encouragement and love, is well calculated to excite the beautiful imagery of my learned adversary. It appeals, Sir, directly and feelingly to my own sympathies, but are we to forget that in what is called the progress of civilization that that idea has been mangled and torn asunder? Are we to be blind to the legislation of the present? Are we to ignore the fact that all these ideas have been exploded and destroyed by what I deem the vandalism of modern legislation? In 1848 that unity was effectually impaired under its notions and by the common law the wife could not sue the husband. She had no status in the Courts except in the wide discretion and the exalted equity of a Court of Chancery. Yet she may now bring her action. By the common law the wife could hold no separate personal property except by ante-nuptial settlement or by the decree of a Court of Equity, and yet now she may go out into the world and barter and trade and tussle with the energies of commercial and business life. Once her true sphere was in the domestic circle and around the hearthstone, cultivating those tender sentiments and qualities which were at once her grace and glory, but to-day by the voice and power of legislation she is ushered into the busy scenes of life and becomes an active and independent actor in all struggles. The counsel says this idea of unity, this consecration of the domestic

circle cannot be torn by the rude hand of the law. Sir, it has been mangled and torn. That identity of interest, that union of soul has been separated not only by the voice of legal theory but by the practical application of it to the ordinary concerns of life. My learned friends have produced here, Sir, a wonderful mass of authorities gathered from the adjudications under the modern law both in England and in the States of this country. But, Sir, as you know the rules of evidence, nay, the principles of law as applicable to distinct communities and to the States of our own confederacy, are regulated by the special legislation of each State, differing in each, conflicting in each, founded upon adverse principles, sustaining diverse policies as they are instigated by the particular notions of the special communities to which they are to be applied.

MODERN IDEAS THE TRUER GUIDES.

And how is this question to be adjudged, Sir? By the law of England as it was, or by the law of England of to-day? By the legislation of our associated States, or by the legislation and the law and the policy of the State of New-York? Certainly, Sir, by the latter, and what need to gather those ancient authorities pronounced under a rule and a policy inapplicable to the present condition of our society, and asserting none of the rights which, by modern legislation, have been conferred mutually upon husband and wife. My friends have been digging among fossils of a past generation. They are gathering here the dead carcasses of exploded theories and adjudications, and confronting them in ghastly contrast with what professes to be the improvement of modern times. Sir, we are not to be governed by them. Your Honor is to decide this case in consonance with the ideas of this day, as they are established by the Legislature and the law of this State, guided, I admit, by those general considerations of propriety, and by those rules which govern the construction and applications of statutes and decisions. For examining those, Sir, in answer to the illustration of my learned friend, and to aid somewhat the idea of the real unpractical issue which is presented by this objection, permit me to follow him in an illustration. I imagine, Sir, a happy and honored and a cultured home. The wife a frail and feeble and delicate woman, eminently devotional and pious in all her impulses, and, as has been shown in this case, and will be shown hereafter, devoted to the husband of her early choice and the father of her children. She had a pastor, learned and eminent, gifted beyond his fellows, one who stood at the very head of his honored and sacred profession, one whose words were listened to with deference and with acceptance. Ah! Sir, he had those qualities of mind and heart; he had that persuasive power of eloquence, that insidious and silver tongue which would lure an angel from its paradise. He was her accepted and chosen teacher and guide. She looked up to him with a veneration second only to that with which she regarded her God. Nay, if an incarnate Christ had come down with the glory of Calvary upon his brow and the love or sacrifice in his eyes, she could not have bowed to him with more obedience and idolatrous deference than this woman rendered to her pastor and her earthly God. From her childhood, Sir, she was under his teaching and

dominion. He was almost an inmate of her home. In the confidence of a husband and a friend, a pupil of this aged and venerable and gifted man, he was welcomed with confidence and affection. He exerted upon her, Sir, all his arts, his specious wisdom, his playful devotion. All the efforts of his gifted nature were banded to the seduction of this happy and beloved wife and mother, and she fell. And do you wonder, Sir? Is she to be blamed for the act? Is this a prosecution of her? Is the action thereafter brought by her wronged husband an action against her for her condemnation? Oh! no, Sir. Consider how strong he was, and how weak she was. Consider how submissive she was to his teachings, and imagine with what a specious and insidious tongue he propounded to her the theory which he advanced, that fornication was but a natural expression of love! He taught her to believe in pious adultery. By slow, but by steady steps, he led her along upon false paths to the precipice from which she fell. That seducer is brought into a court of justice to answer for his crime. Husband wronged, seducer guilty, stand before the immaculate justice of the law, and before which each has to answer for the deeds done in respect to this woman. And we are told, Sir—should be told, Sir, in such a case, according to the logic of my learned friend—that this aged and venerable and gifted seducer may take the stand and pollish and apologize for his guilt, and present all the defenses of his practiced and learned ingenuity, and that the husband must be still and silent, and that this is the law—the law which is not a respecter of persons, a law which holds out steady and even justice to litigants before it, and with all the sophistry of his great powers, my learned friend subsidizes them to establish that doctrine of injustice and wrong. I say again, Sir, before your Honor will adopt any such conclusion, before you will approve any such doctrine, you must be driven to it by the force of an irresistible and legal logic. Thank God there is, in my belief, no such rule in the law of this State! There is no such injustice in the policy of our Legislature.

#### A REVIEW OF THE AUTHORITIES.

I do not propose, Sir, to examine at any considerable length authorities referred to or commented upon; but I understand my learned adversary to declare that the policy of the common law, excluding a husband and wife as witnesses for or against each other, is founded upon the harmony and inviolability of the domestic relation. I deny that proposition, Sir. It is maintained, undoubtedly, by many of the English authorities, and is in one authority in this State alluded to as the ground of exclusion, but in later and better considered authorities, I submit to your Honor, the dogma has no support whatever. And I refer again, Sir, to the case of *Marsh vs. Potter* already spoken of, to the opinion of Mr. Justice James, which is the most elaborate and thorough examination not only of the policy but the state of decision upon this subject which can be found in our own, or, I think, in any other reports, and which has been adopted and affirmed by the Court of Appeals.

"Upon the competency of witnesses," says this learned Judge, "the common law proceeded in distrust of human nature. It believed a witness thus interested to be incapable of verity, and there consequently grew up under it a system of re-

strictions which rarely, if ever, allowed the facts in a given case to come out fully, and was often the occasion of great hardship and injustice. The objections to such a system were too manifest to escape attention. Many thought the attainment of truth would be best promoted by opening every source of information in a given case, and that all persons cognizant of any fact bearing upon the case, and especially those ordinarily most conversant with them, the parties themselves should be permitted to speak. They expressed confidence in man, and a belief in the existence of human integrity. They believed in the capacity of human nature, although interested, to speak the truth, and in the ability of triers of questions of fact to detect falsehood. From such a basis of thought there have sprung up within a few years in England, and in some of the States of this country, radical changes in the admissibility and competency of persons as witnesses. A new system has developed itself, whose foundations are laid in common sense and on enlightened policy, and its superiority over the old is no longer questioned, except by the few who have no confidence in the present, no hope in the future, and who deem our only safety is in keeping fast anchored to the past."

Omitting a few paragraphs, Sir, he says:

"Actions between married persons should constitute no exception to the general rule of practice. Each represent well-defined rights of action, both as concerns property and personal rights. Suitors can institute them, courts must entertain them, and triers must decide them. So, in actions where husband and wife are co-plaintiffs or co-defendants, husband and wife may sue and be sued, and the husband must, in some instances, be sued with the wife. Such actions must be entertained and tried by the courts. The simple question, then, is, shall such actions be tried in the ordinary way, or by some exceptional method? Will the law, while it entertains them, say—that they shall be decided rightly, so far as practicable, or that it is a matter of no consequence how they are disposed of? Or, if their decision is a matter of some concern to the law, shall the means most approved for arriving at a result consonant with the dignity of the law and the rights of individuals in other cases be employed in those actions, or shall the triers be left to grope their way through a partial darkness to a conclusion? In other words, shall the husband's mouth be closed in his own behalf, while his wife is a co-party, though permitted to speak if sued alone?"

Indeed—

"though permitted to speak if sued alone, it is a rule of the common law that husband or wife cannot be witnesses for or against each other. The first branch is based entirely upon interest; the second upon interest and public policy. All persons interested in the action were at common law held incompetent to testify therein. This, of course, excluded the parties to the records. At common law the wife's civil existence was merged in that of the husband, and the two were regarded as but one person. She had no separate right of property or of action, and hence was excluded from being a witness in her husband's behalf. This identity of interest was also the real support of the rule excluding the wife as a witness against the husband. In consequence of this identity of interest"—[and in both senses the word "interest" is italicized]—"husband and wife uniformly appeared before the Court in a friendly attitude. Legally their relation was one of mutual confidence and harmony. There was every reason to fear, therefore, that in the event of the introduction of one of them at the suit of an adversary of the other some testimony would be elicited which would be detrimental to the interests of the other, and therefrom domestic ill-feeling and discord result. The peace of families would thus be jeopardized merely to subserve the pecuniary interests of third persons."

And he proceeds, Sir, in citing elementary authorities, and he concludes by saying:

"I think it clear, therefore, that the true principle which excludes the husband or the wife of the party from being a witness for or against each other was the union of interest and privilege existing between them."

And that privilege refers, Sir, to confidential communications, and has no connection with the idea of public policy, or with the harmony of the domestic relation.

"It is true, authorities could be cited which state that it is with a view of preserving the peace of families, and where it is said that the admission of such testimony would lead to dissension and unhappiness, and, probably, to perjury, and that the confidence existing between husband and wife should be sacredly cherished. But if those cases are carefully examined it will be found that this question, in its origin and cause, was not fully considered."

And then he proceeds to examine them, Sir, and says:

"With respect to the protection of confident communications between husband and wife there is good reason for such protection at all times."

But no such principle has been brought into practice.

"The decisions excluding husbands or wives of parties are often accompanied with sacred declarations in favor of such protection; but is the exclusion extended to all the testimony, whether it was confidential or not? and, as no protection was given to conjugal confidence in respect to witnesses, these parties were as much within the reason of the rule, as it existed, as the other class, it may be safely affirmed that no such rule has as yet been established. As to the authorities, most of the decisions in favor of excluding the wives of parties were given in cases where the husbands were excluded, and, therefore, no matter how strong may have been the expression of public policy, and in favor of preventing domestic discord, &c., all those conditions are consistent with the principle that interest was the ground of objection."

He then proceeds to reason upon the effect of the Code abolishing the disqualification of interest, and finally holds, in consonance with the opinions I have read to your Honor.

I ask your attention, Sir, to the case of *Wehrkampff vs. Willett*, to be found in the 4th volume of Abbott's Court of Appeals Decisions, at page 548. That was a case where the wife was a party plaintiff, and offered herself as a witness, and where the question was whether the property which had been seized by the sheriff, against whom the action was brought, belonged to the wife or to the husband. The question was whether she was a competent witness. It was held she was. And I read this, Sir, for two purposes. First, to maintain the doctrine asserted by Justice James, that the exclusion of the wife or the husband, as the case might be, was not founded upon the idea of domestic harmony; and, second, to show that in an action like the present, even at common law, the objection of being a party removed the husband or wife as a sole party, the other not being a party would be competent as a witness. The Court says:

"The rule of the common law did not prohibit husband and wife from testifying in a civil action, unless one or the other or both were parties, or directly interested in the subject of the action. Here the husband was not a party, nor had he any such interest as would have disqualified the wife by strict common law rules. The action was in no proper sense against him. He made no claim to the property taken and sold by the defendant, and had no interest in the litigation, unless, indeed, to have his debts paid from property to which he laid no claim." \* \* \* "The code provides that a party to an action, etc., may be examined as a witness in his own behalf, or in behalf of any

other party, in the same manner, and subject to the same rules of examination as any other witness," except "that neither husband nor wife shall be required to disclose any communication made by one to the other." \* \* \* \*

"The letter of the Statute certainly extends to married persons not having conflicting interests," [conflicting interest of parties.] "and the exception is a plain indication of the legislative intention to change or codify the common law rule as to the admissibility of husband and wife as witnesses."

And yet all the argument presented by my learned friend, all his glowing oratory concerning the sanctity and permanence of the domestic relation, are founded exclusively upon the doctrine of this law thus avowed by the Court of last resort to have been changed by the legislation of the present.

"The reason of the latter rule for not admitting husband and wife, as witnesses for each other, was because of an identity of interest; nor were they admitted against each other, because this was deemed contrary to the legal policy of marriage. 'Husband and wife,' says Blackstone, 'are not allowed to be evidence for or against each other, partly because it is impossible that their testimony should be indifferent, but principally because of the union of persons; and therefore if they were admitted to be witnesses for each other, they would contradict our maxim of law—'No one shall be a witness in his own cause;' and if against each other, they would contradict another maxim—'No one is obliged to convict himself.'"

And you see, Sir, upon what the policy of the common law rested; and you see how clearly this idea of unity, of identity of interest—I had almost said of person, certainly of heart—is abrogated by the laws of this State.

Says Baron Gilbert:

"If they (husband and wife) swear for each other, they are not believed, because their interests are absolutely the same, and therefore they can give no more credit when they attest for each other than when a man attests for himself; and it would be very hard if a wife should be allowed as evidence against her husband, when she cannot attest for him. Such a law would occasion implacable quarrels and divisions, and destroy the very legal policy of marriage; but of late years in this State, material and radical changes have been made in the law of husband and wife, and, in the law of evidence, and the competency and admissibility of witnesses, undermining, in a great degree, the uses of and practically abrogating the common law rule."

MR. FOLGER CITED.

Now, if your Honor pleases, it is the effort of my learned friend to re-establish that rule; to roll back the assumed course of progress and growth of legislation; to ask your Honor to reanimate the abrogated lessons and principles of the past; to rule in defiance not only of the policy but of the mandate of the present law of the State. And, hence, as I before remarked, all the authority, all the principles, all the notions of propriety, of delicacy, of public policy, which have been so eloquently advanced by my learned friend, are disposed of by these adjudications pronounced under a different policy and with different views; and which, as our Court of last resort says, "as abrogated by the legislation of the past few years. I ask attention again, for a moment, to the case cited and commented upon by my learned friend, of *Southwick vs. Southwick* (49 New York). In that case, if your Honor please, the question presented was whether, in an action brought by the wife against her husband to recover an alleged balance of money

they were witnesses for or against each other in the action. Mr. Folger, eminent for his careful and learned analysis of the law, and for his patient industry in the formation of his opinions, says: "

"The first question made in this case is, whether the defendant was properly admitted as a witness in his own behalf against the plaintiff, his wife. It is claimed that the provisions of the Act of 1867 (3 Laws of 1867, p. 23-21), do not enable the defendant to become a witness against his wife in an action in which they are the only antagonistic parties. I have reached the opposite conclusion. It must be conceded that the object of the enactment was to alter the common law rule, which forbade the husband or wife being a witness for or against the other."

I noticed a current remark of our learned adversary that, by the first section of the Act of 1867, although it would enable the wife to be a witness against the husband in an action brought by him against a third party, that it did not render the husband competent. That question, certainly, was considered in this case. The Court stated what was the object and the spirit of the law; and if you will follow the course of legislation, the tardy and reluctant steps by which it has been driven by public sentiment to reach its present condition, even as declared it this very authority, your Honor will find that the law of 1867 was enacted as but a complement to the other invasions upon common law principles previously established; that it was enacted for the very and avowed purpose of making the husband and wife competent for or against each other, with certain exceptions provided for in Section 2; that it was intended to uproot the old policy of the common law upon this subject; and, that the sentimental theories upon which that policy was founded had been abandoned by modern thought and modern enactment—beautiful, charming as they are, and fit subjects for the oratory of my learned friend as they are, but not fit subjects for discussion in a legal argument to a court of justice.

Judge Folger continues:

"I have reached the opposite conclusion. It must be considered that the object of the enactment was to alter the common law, which forbade the husband or wife being a witness for or against the other. Its object was to make available, in the trial of issues of evidence, the classes of witnesses whom the rules of the common law excluded. It designated this class as a husband of any party to the action, and as the wife of any party to the action. It declared that all persons falling within these designations should be competent and compellable to give evidence the same as any other witnesses; it declared, further, that they should be thus competent and compellable on behalf of any party to the action."

Now mark, Sir, the next sentence.

"It is conceded that when the husband or the wife is a party to the action and the other is not, that the husband or the wife so being a party to the action, as the case may be, is within the language of the statute."

That is the statute of 1867, where he is competent and compellable to be a witness. It was conceded, Sir, and assumed by Court and counsel, although this was an action between husband and wife, that if one alone was a party to the action, that one might be a witness in the action. And, Sir, it was upon a grave discussion as to the spirit and effect of this statute of 1867 before a learned Court, conducted by learned counsel; and on all sides it was conceded, it was assumed and declared by the Court as the conclusion accepted by itself, that

where the husband or the wife alone was a party as against the third person, that the husband or the wife, as the case might be, was a competent and compellable witness in that action. But it is contended that this language does not disclose an intention that he or she might be a witness for or against the other, where both are parties to the action and antagonistic in it. I ask your Honor's attention to another case in this authority. It is not necessary for me to read, Sir, the introductory review of the authorities—the English authorities and our own—preceding the paragraph which I think important. But speaking of the old rule, he says;

"It was to be maintained for the sake of the present and the future, that by an adherence to the rule, for the public good"—[The public policy of my learned friend]—"that by an adherence to the rule for the public good, married folks might be assured of secrecy; neither death nor divorce could abrogate the rule, so it continued imperative upon the courts, and must after death or divorce be enforced for the sake of the public, though it could no longer help or harm the parties. But the statute in question discards the rule of the common law and abrogates it; and for us, save as to confidential communications, it no longer exists. Husband and wife may now and for the future be witnesses as to all which passes between them not having that quality."

That is the quality of confidential privileged communications. But, Sir, it is said that this is a destruction of conjugal felicity; that in its practical effect it must necessarily introduce wrangle, dissension into the domestic circle, and uproot the policy of unity and union upon which the principles and the decision of the common law rested. Well, Sir, the law should be uniform; if a public policy of that character is to be pursued, it should be universal. There should be no conflict of inconsistency in its application to the varied cases of human life; and how is it to be preserved, if, as our Court of Appeals in this case ruled, husband and wife may sue each other, and husband and wife may be witness against each other? Does it not involve, just as equally as the present example, conflict with this idea of domestic harmony? Is not the unity of the conjugal relation just as directly assailed? Will not discord and enmity in the household be equally nurtured and propagated by allowing husband and wife not only to sue each other, but when they are parties to an action, to be witnesses against each other, each swearing in support of their discordant interest, each testifying to mutual transactions between themselves, each maintaining an opposite theory of fact, and each reflecting upon the credibility and integrity of the other; and if this beautiful idea of unity and union and harmony exists to-day, how comes it that the doctrine of this case is established?

Suppose another case, Sir; suppose a husband brings an action against a third party, not for the seduction of his wife, but for enticing her from his home. These actions are quite common, Sir. Is the husband a witness there, and will anybody dispute it? And, yet, does not that action necessarily involve the quarrels and dissensions of private conjugal life? And in a case of that character the husband was called as a witness, as I will show your Honor. The answer in the case supposed set up that the husband was brutal, unkind; that he provided poorly for his family; that



the wife had just and reasonable cause for deserting her home. Why does that not at once suggest dissension, discord, separation, death to the family union? And, yet, the husband is a competent witness for or against himself, and may be called by the defendant against himself to ask the very facts alleged in the answer, and so, Sir, a witness for himself. And there, as between the husband and a third party, are introduced all the elements which strike at the very foundation and life of domestic felicity, utterly inconsistent, Sir, with the idea of my learned friend, and with a continuance of the common law upon which he rests his objection. I may as well here, Sir, refer to the case of 7th Robinson, 581, where, in an action for debauching and enticing away the plaintiff's wife, the answer alleged that the wife was compelled to leave the plaintiff's house by reason of his cruel and inhuman treatment, and immoral conduct, he having introduced a lewd woman into his house and kept her there for purposes of sexual intercourse. Held

"That the plaintiff being examined as a witness for the defendant before trial might be inquired as to the matter set up, and competent to answer."

It makes no difference that he was called against himself, for the rule of exclusion applied equally where the husband or wife was offered for or against her husband, and the principle of the rule of exclusion was equally applicable to the one condition as the other. Now your Honor will bear in mind that in this argument the question as to the inviolability of confidential communications is not involved at all. That is a question of privilege, not of the competency of the witness. As to all other matters husband and wife are competent, but they are not compellable to disclose these confidential communications. And I think, Sir, nine-tenths of the authorities produced by my learned friend from the common law but enunciate that doctrine; and all their beautiful theories are founded upon the idea in regard to these, the conferences and communications which spring out of the intimacy and the faith of conjugal life, neither husband nor wife can disclose them during the lives of the other nor after the death of the one. They are forever sacred—sacred to the privacy of that relation, while they are founded upon the faith of that privacy.

The progress, Sir, of legislation upon this subject has been very ably analyzed and presented by my learned friend; but will your Honor permit me to read again a short extract from the opinion of Justice James, upon which I have already drawn so largely. Your Honor will remember the slow and the struggling course of that legislation. First, Sir, the disability of interest was removed; then the disability of party, so far as to permit an adversary to call an opposite party; then it was removed as to all parties, with some exceptions, as connected with assignees, administrators, &c. Then you will perceive that, up to that period, all the impediments of the common law as to the competency of the witness were removed, except the single one of the disability of marriage. And then came the law of 1867, conceived in the spirit and enacted in the policy declared in the case of *Southwick vs. Southwick*, 49th N. Y. For the purpose of opening all the avenues of truth

founded upon a confidence, not only in the integrity, but in the intelligence of human nature:—first, in the integrity that, under the solemn sanction of an oath, witnesses would tell the truth; and, second, upon the intelligence of the Court and jury, that, if the witness wandered from the truth, the error could be detected and repaired. And so, Sir, Mr. Justice James says:

"Of late years material changes have been made in the law of husband and wife, both in this country and in England, but particularly in this State. The wife has been admitted to separate rights of property, and as a consequence to separate rights of action, even as against the husband himself. The marriage contract has lost its ancient feature of indissolubility, and actions between parties for the breach of it are constantly before the Courts, in the case of an action between these persons, whether in regard to some disputed property, or by the husband for a divorce, or by the wife for a separation. It is idle to assert that they stand before the Court in that amicable attitude in which in civil suits they invariably stood at common law. Radical changes have also been effected within the last sixteen years in the law of evidence and the admissibility of witnesses. England took the initiatory step by the passage of Lord Denman's Act of 1843. Its general feature was that no person offered as a witness in a civil case should be excluded by reason of incapacity from crime or from interest, with the proviso that the same should not extend to the party to the record, and some others enumerated, nor the husband and wife of such person respectively. Lord Brougham's Act was passed in 1851. The first section repealed all the proviso of Lord Denman's Act except that relating to husband and wife. The second section made the parties to actions competent witnesses. The third section made husbands and wives of parties in criminal proceedings incompetent; and the fourth section rendered the statute inapplicable to actions founded upon adultery or breach of promise of marriage."

But, Sir, I will not trouble your Honor with reading more.

Judge Neilson—Will it be convenient to suspend here for recess?

Mr. Beach—Yes, Sir; I had hoped to conclude my argument before the recess, but I can suspend here.

The Court then took a recess of an hour.

MR. BEACH'S OWN WORDS TURNED AGAINST HIM.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Beach resumed his address.

Mr. Beach—If your Honor please, as I understood the argument of the learned gentleman upon the other side, it was divided into two branches; the first rested upon the ancient rule and policy of the common law, and the other was founded upon the special legislation of this State. The first I have considered so far as it appears to me important or justifiable in view of the argument of my learned colleague, and I pass from it with the single remark that this case presents this singular peculiarity, that the defendant hitherto has published his demand to all the world for the production of all possible evidence that could be produced against him. To all the earth he has given a public challenge demanding that everybody who can throw any light upon this mixed and troubled controversy should appear and present it. To-day, through his counsel, he seeks to close the principal avenue of evidence. To his adversary, whom, a while ago, he called upon to appear

before his chosen tribunal and exhibit his proofs, he makes the objection of incompetency. It is not for me to say, Sir, whether the confidence of that challenge rested upon the circumstance that the revelations were to be made before his own chosen judges, appointed by and ruled by himself, and that to-day that challenge is answered before a reliable and competent tribunal and under the sanction of judicial law. At any rate, it is a remarkable inconsistency, and the imagination will necessarily rove in the fancy for the reasons which should thus have altered the tone of confidence and defiance on the part of this defendant.

#### THE SIGNIFICANCE OF THE TRIAL.

But, Sir, this litigation, although represented by my learned friend as a mercenary pursuit upon the part of this plaintiff of money compensation, to which I shall allude hereafter, is by no means an action of that character. It includes questions of higher interest to the community and to the parties. Its object is far purer and mightier than the mere consideration of damages. It looks to the vindication of one for whom vindication is necessary—that is, the plaintiff in this action. It involves the question whether a prominent and eminent leader of the Christianity of the age is to be stricken down by the scorn and condemnation of mankind; and the vast interest which rolls around this case, as connected with these public and far-reaching consequences, is a far higher and greater consideration than the technical and simple question of the ultimate judgment for mere damages which is to be expected alone from this Jury. Undoubtedly, Sir, the counsel for this defendant, in the pursuit of their duty, are quite entitled to present any technical objection to the admission of evidence which may to their judgment appear appropriate and proper; but, whether they know it or not, those objections which seek to exclude light and to still hide in darkness the alleged sin of this defendant, reflect no credit upon his character, and will not aid in the effort at his justification.

#### MORE ABOUT JUSTICE SMITH'S DECISION.

I pass now, Sir, to a very brief consideration of the Law of 1867, and the decision of Mr. Justice Smith, and as I read that decision, Sir, far greater import has been given to it than it deserves. Your Honor will be good enough to perceive that the simple question decided in this case is that the husband, in an action brought by himself for criminal conversation with his wife, was not a competent witness to prove the fact of marriage, and that fact alone. He was not offered as a witness generally in the case to sustain the allegation of seduction, but, as the statement of the case and the opinion of the Court says, the single proposition of fact to which he was tendered was to prove the marriage between himself and his wife. And mark the reason of the Court. After the statement of the case, which is:

"At the trial at the Onondaga Circuit, the plaintiff, to prove his marriage, was offered as a witness on his own behalf. This was objected to by the defendant, the objection sustained, and the evidence excluded, to which the plaintiff excepted."

It is not necessary to state, Sir, the preliminary circumstances

which led to the necessity of his being offered upon that single and exclusive fact, but the Court say:

"It has long been settled that in actions for criminal conversation and divorce, and in prosecutions for bigamy, an actual marriage must be proved, and that in these cases the cohabitation of the parties as man and wife, their declarations or admissions, or the reputation of an existing marriage, or the plaintiff's acknowledgment of the woman as his wife, and holding her out as such to his friends and acquaintances, and her reception in the family as such, are not sufficient to maintain the suit."

And he refers to a number of authorities, and says:

"The proof offered by the witness Dann, the plaintiff, was of the class held sufficient, and was properly excluded within these cases."

And that was the ruling, and that was the whole extent of the decision. Then it was argued on the part of the appellant that he was a witness, made a witness under the Act of 1867, and the Court passed upon that very grave and important question with the simple remark, read by my learned colleague, but which I wish to repeat: "The plaintiff was not a competent witness." For what? Not a competent witness in the case? No, Sir: he was not offered as such; he was not passed upon as such. The plaintiff was not a competent witness to prove such marriage, and to that extent, and to that only, did the Court construe the application of the Act of 1867. The Court proceeds to say:

"The Act of 1867, to enable husband and wife to be witnesses for or against each other, expressly excepts the cases where the question of adultery of the husband or the wife is in controversy, except to prove a former marriage in case of bigamy, and the fact of marriage in actions for divorce."

And with that single remark, Sir, without any examination of previous authorities, without any investigation of the principle or the policy of the Act of 1867, the Court passes that very important question. I submit to your Honor that in itself it is not a decision upon the point which is now presented, where the plaintiff is offered as a witness generally in the case, not only as to the fact of seduction or adultery, but to all the other questions of collateral importance, and upon collateral issues which have arisen and will necessarily arise in the course of the investigation. Now, Sir, I think I may be pardoned in making one single additional suggestion, sufficiently intimated perhaps, by my learned colleague, upon this law of 1867. It has been read to your Honor. By its first section it makes husband and wife competent witnesses in all cases, without any limitation. Comments upon this Act expressive of its spirit, and policy, and effect, I have read to your Honor from the decisions of the Court of Appeals. Its object, its purpose was to remove that single remaining impediment from the competency of all witnesses in all cases, subject to the limitations contained in section 2 of the Act. That is declared by the court of last resort. Now, the error of Justice Smith arose from a superficial consideration of the limitations contained in section 2. He evidently misapprehended the effect of that section; evidently he misapplied it, as the ordinary common sense and intelligence of any gentleman will lead him to perceive on listening to the simple reading of the section:

"Nothing herein contained shall render any husband or wife

competent or compellable to give evidence for or against the other."

In any of the actions enumerated, of which we may assume this to be one. Now, Sir, the test, the soul of this section is the words "for or against each other." By the first section they are made competent witnesses in all actions and upon all occasions and between all parties. The Legislature then say that section shall not be construed as qualifying them as witnesses for or against each other. Is not that, Sir, the clear reading, the plain, intelligible, unambiguous language of the statute, and before either is disqualified under that section, must it not appear that he or she is offered as a witness for or against the other? And is it conceivable that any judicial mind brought deliberately to the consideration of that section can misconceive its import and the principle which it intends to announce, that principle being simply, although the impediments of the common law are removed, although the ideas of the unity of the marriage relation are exploded, although the fact of actions between husband and wife, and testimony from husband and wife, may destroy the sentiments of the connubial relation, nevertheless they shall not be witnesses for or against each other. Then the question at once arises, Sir, in an action of this character, brought against the seducer, is the husband competent to testify against him? And still, leaning upon the exploded notions of the common law, my friend contends he is not, because it would interrupt and destroy the unity and harmony of the conjugal relation.

But, Sir, this is not an action against the wife. She is not a party. As is conceded, she cannot be a witness. It seeks no remedy against her. It asks no judgment against her; and whatever may be the final determination of this action, she yet stands before the world and the law as the legal wedded wife of Theodore Tilton. Whatever judgment you may enter is powerless to strip her of a single wifely right. She is the wife of this plaintiff, entitled to all the legal consideration, a claimant for all the legal duties arising out of that relation. And how, then, can the testimony of the husband in this cause be considered as either for or against her? Those terms must be applied in a legal sense. He must be a witness against her in a legal meaning. She must be a party, or else the judgment must be such as will affect and conclude her interests. I have shown your Honor, I think, that no such consequences can be claimed from the result of this litigation. To-morrow or to-day she might file her bill for a divorce. To-morrow or to-day she might commence her action for a legal separation and for alimony. To-morrow or to-day, girded by the law of the land, notwithstanding her inexcusable desertion of her husband's home, she may appear on its threshold and demand admission as wife. Does anybody dispute it? Are the difficulties between these two parties at all affected by the miserable occurrence of the past year or of the past four years? No, Sir; and my friends perceive, must perceive, this attitude, this relation as between this husband and wife.

Now, my friend has referred you to the case in 46 Barbour, showing that this is the true construction of the language of this section, "for or against each other," showing in an action of crim.

con. as between the husband and the seducer, the wife has no such legal relation to the litigation as to constitute an interest in herself, and by abundant authority he has shown you that that other idea of the exclusion of the one or the other on account of the effect or object of the testimony when offered to stigmatize or criminate the other, is exploded by the authorities of this and of sister States. I will not again refer, Sir, as I had intended, to the decision of Southwick vs. Southwick, in the 49 of New York. If your Honor shall be inclined to examine the case, I think you will find that it sustains the views which have been presented.

CLOSING OBSERVATIONS ON THE OBJECTION.

Now, Sir, what is left of the objection? Under the light of this legislation and these authorities, with these judicial commentaries upon the spirit and effect of the successive acts remaining, the impediments to the introduction of witnesses, and to the light of all possible evidence, it being shown that the doctrines of the common law have been exploded by recent legislation, it having been over and over again asserted by the highest court of this State, what remains, I repeat, of the objection, and why is it, either upon authority or upon principle, that this plaintiff is excluded from that witness stand?

DARKER ASPECTS OF THE CASE.

I am at a loss, Sir, to perceive upon what theory, upon what principle, upon what principle either of policy or of law, that exclusion can be maintained. I know that evidence may be drawn from this witness, if sworn, which will reflect upon the chastity and the honor of his wife. I know that fact has given and will give to my learned friend an opportunity to decant upon the horrid and the barbarous appearance of such disagreement and controversy between parties so hoily and dearly connected; and he has drawn a painful and pitiful picture of the deserted and wronged wife, dishonored and crushed by the testimony of a husband in eager chase after the gold of his adversary. He has presented this wife in an argumentative allegory, as listening to the accusations of her husband, hearing the revelation of her confessed dishonor published to all the world, and yet compelled to sit silent, without a possible answer from her lips to the supposed calumny. But the answer of the law is that which I have already given, Sir, that she is not interested in the event of this suit, that her rights are unimpaired and untouched, and she may claim all the privileges of the relation existing between her and the plaintiff. But that picture, Sir, has another side. Will that be the first revelation of her asserted guilt? Will the testimony from the lips of the husband be the first dark shadow which gathers upon her womanly and wifely character? In this or in any other conceivable case of seduction, is it the action like this, or the testimony in the action like this, which crushes and ruins womanhood? No, Sir, no, Sir. The shame, the disgrace, the destruction which this wife suffers, and must suffer, starts earlier in the history of this unfortunate transaction. It is not the husband who reveals the wife's dishonor; it is the seducer, Sir. Long before this action was commenced, the dark cloud had enshrouded this wife. This action was not commenced until that wife,

stimulated by her seducer, had deserted the house of her husband. This action was not commenced until that wife, led by that seducer, appeared before his chosen tribunal, and vented her spleen and indignation against this husband. Long before this action was commenced, the shadow had fallen over that household, and a happy and honored home was distracted and dissevered. The argument does not apply, Sir. The picture is not appropriate to this occasion or this case. It is not appropriate to any occasion, because I assert it as an invariable principle, that the dishonor and the ruin which follows the path of the seducer commences long before the husband is apprised of his own dishonor. It comes, Sir, in alienated love; it comes in inevitable discord and contention; it comes, at last, in the clear revelation to the distracted heart of the husband of his wife's seduction and dishonor. Whatever may be said by Theodore Tilton upon that stand will not add a jot or tittle to the agony, the shame or the remorse of that wife.

#### MONEY NOT BOUGHT BY THE PLAINTIFF.

But this is a suit for money, Sir; my client is represented as thus treading over the reputation and the honor of his wife in a greedy chase after the gold of this defendant. Why, Sir, did not the counsel know better? If not, his associate and your Honor know better. How long ago was it that in this cause, and before your Honor, the proffer was made to abandon this action for damages, if my learned friends would but press forward their intimation for a libel in asserting the adultery of this defendant with his wife. Theodore Tilton seeks no damages from this defendant. He would not stain and burn his palm with his gold; but he seeks, Sir, a vindication. The sin of this defendant has followed him with destructive efficacy. This defendant has gathered around him the comments and the condemnation of society; his fortunes have been prostrated. Those consequences which always follow in the path of guilt, and especially of this sin, have clung to him with an iron tenacity. Must he sit silent, Sir? Is there no redress? For the wronged husband and the violated home, does the law afford no vengeance? Why, Sir, it is, I think, a shame, although I believe I differ with my learned colleague in that respect; but I think it a burning shame to the law of this State, and of every other State where that law is wanting, that the seducer may not be pursued as a criminal; that licentiousness of this character is not punished by the heaviest judgment of the law, as it was condemned and punished by that infallible law which knows no error. But no remedy is given, Sir. What must Theodore Tilton do? Must he suffer the animadversions of society? Must he lose wife and home, and see the seducer triumphant flourishing, glorying in his impunity, the happiest man in all this assembly? [Applause.] Does the law afford no redress? None adequate, Sir; and the only resource left to my client, given him by the law, was this action, or to take that other remedy condemned by the law of the State, but sanctioned by the common law of humanity, which reaches the heart and the life of the seducer. And had he done that, Sir, instead of standing before your Honor in his appeal for vindication and

justice, he would have been arraigned as a criminal, and in danger of his life. But yet my friends reproach us for bringing this action. "You should be quiet, Mr. Tilton; you should not venture to accuse Henry Ward Beecher of adultery, because, forsooth, it implicates and criminales your wife; you have lost her love and society; it has been won from you by the specious seductions of this defendant. Your home is desecrated and dishonored and your fortunes withered and destroyed, and the seducer, I repeat, is glorying in his impunity from punishment. But, still, be quiet; and, if you venture to adopt the only remedy which the law gives you, eloquent counsel shall hold you up to the scorn and contempt of a Court and a jury and all mankind."

Well, Sir, to my mind there is something excessively repugnant in this idea of a civil action founded upon seduction. It hurts the better sentiments of our nature. It revolts that affection upon which family and home rest, and upon which society and government depend. But, when the law leaves no other remedy than that; aye, Sir, when the law gives to the dishonored husband no other revenge but that, consistently with its own teachings, it ill becomes the ministers of the law to reproach the husband who resorts to that redress. Now, Sir, I am aware that these thoughts and remarks are not pertinent to this discussion. They do not belong to the law of this argument; and, it is only because my learned friend, in his specious and insidious way, sought to inculcate this idea of disgrace and dishonor from the mere fact of bringing this action that I have wandered from the correct path of discussion, for the purpose of remedying that great mistake and wrong. This is all, Sir, I have to submit to your Honor. I can but repeat the spirit of the argument which my learned colleague and myself have addressed to you. I can but implore you, out of regard for the great interests involved in your decision of this question, out of regard for those great questions of law and of public policy which are necessarily involved in the discussion and in the decision, to examine it with deliberation and care (if the attention of your Honor has not already been directed to this question), and to give us a decision which shall be in harmony with the spirit, if I may call it, of our present civilization; a decision which shall not stand in repugnance to the principles which have been announced so repeatedly, so emphatically, by the highest Courts of our State.

#### DEFENSE'S COUNSEL CLOSE THE ARGUMENT.

Mr. Evarts replied to the arguments of Gen. Pryor and Mr. Beach, closing—as he had opened—the question on the part of the defense. His arguments occupied the remainder of the day. Judge Neilson will deliver a verbal decision on the question Monday morning.

#### MR. EVARTS'S REPLY.

Mr. Evarts—The aversion that my learned friend avows to this money action by a husband respecting the honor of his wife is an aversion that is shared by the law, and by morals, and by society. And, what my learned friend well understands, and your Honor, it never was tolerated in the

remedies of jurisprudence upon its own motive or for its own sake. It was in the system of the judicial procedures of the country from which we take our law, only as a step of sincere and honest investigation, before a jury, of the fact; because the final remedy of the law which gave, for this great cause, divorce, could only be exerted by Parliament; not upon petitions or examinations in committee rooms and by confessions and collusions, but what the law regarded as an open and sincere investigation of the fact, in which the husband, governed by every consideration that should withhold him if he was not sincere, impelled to it by no possibility of motive, except the requirements of the law that forbade his divorce, except by this public demonstration of the reality of the crime, should, before a jury and in the form of an action against the injurer of his domestic peace, establish the fact, in order that Parliament might grant him a divorce upon that established fact. And when the English law gave to ordinary judicial inquiries the method and the result of divorce upon judicial investigation, it suppressed the iniquity and the disgrace of the action for criminal conversation; permitted no husband, who did not pursue his wife with the honest purpose of divorce, to open his mouth or raise his hand against her in any court of justice; permitted only a union of a co-respondent, the deceiver as a part of the procedure of divorce, and excluded a husband who "had condoned his wife's fault"—and so never could be heard to ask for a divorce—from raising the question of inquiry or of proof against any alleged deceiver. And now it is to the credit of our jurisprudence, and the morality and dignity and manliness of our people, that while now for a long time our courts have had this jurisdiction of divorce, cases for criminal conversation have disappeared from the annals of our law, except in the very lower ranks of life and under the grave suspicion that it was for lucre's sake that the action was brought. And why? No longer necessary by a system of law that made the investigation useful or important toward a divorce, the sincerity of a husband who did not desire divorce and yet did desire money or vengeance (as my learned friend has not scrupled to call the motive of this action) was not treated by the law as consistent with the morals of society or with the purposes of the administration of justice. The solemn, the universal injunction of the law to a husband who finds fault thus in his wife is that he shall then speak or forever after hold his tongue; and if he pardons and renews the embraces of marriage, no Court hears his further complaint in any desire of separation from his wife. In England the same fact closes all inquiry, in every form, concerning the fact thus buried forever and destroyed.

Now, if your Honor please, in all that I had to say concerning the presentation of this plaintiff as a witness, to prove his wife's adultery. I spoke wholly upon the principles and the theory of law and society, I gave him the benefit of the proposition, of the basis of the argument, that he was coming here to prove the thing, and that it must be assumed, for the purpose of my argument, to your Honor that what proof he gave would tend in that direction, and might produce that result. And my learned friend

has found in that an excuse, in the middle of the plaintiff's case, to assume for invective and vituperation, as in a closed and completed trial, the truth of the charges against this defendant. So imprudent, so injurious a method to the cause of this plaintiff, but one consideration could have misled my learned friend into, and that was this—that at no future stage of this case would the state of the proofs have given him such support and justification as now.

Now, if your Honor please, what is the question of law, and how have the authorities and the discussions of my learned friend varied from or impugned any proposition that I make? We are discussing the question of the admissibility of this plaintiff upon the law of evidence and the law of the married relation, as they concurrently exist in this State at the present time. And I submitted to your Honor, and I do not find any impression made to the contrary of this proposition, that, under the Code, dealing with the law of evidence in its general direction, there is no pretence that it opens the mouth of the husband or wife in any regard whatever where the principles of the common law excluded them. My learned friends have thought it worth their while to occupy a great part of their attention, and of the time of the court, in a careful examination of a series of decisions which were based upon a law of 1857, concerning evidence, a provision in the Code which, by some unhappy constructions, or some unfortunate looseness, let in the idea that in opening witnesses who formerly were excluded for interest, thereby husband and wife were admissible on the ground that interest was the basis of their exclusion. Those cases of *Potter vs. Marsh*, and *Wehrkamp vs. Willett*, and several other cases cited in that connection, whether the reason was good or bad, whether it was ineffectual or whether it gave some practical rule or not, have all become unimportant for this present discussion, because that regulation of the law of evidence has been repealed, and the general law of evidence stands now upon the Code as it has read since 1869, which by no possibility can be tortured into any other effect than the generalization that interest shall no longer exclude, and that the fact of being a party shall not place that party on any other plane of being a witness than if he were not a party. Now, my learned friend who first addressed you for the introduction of the witness no doubt undertook to say and to think that there was something in that state of the law that I have spoken of that in terms permitted the introduction of the husband or wife as witnesses. And so far as there was a phrase of that kind, it was, perhaps, in great part, the basis of the reasoning which finally came to an end by the experience of the community, of the profession, and of the Judges, which led to the final position on the subject of the general rules of evidence found in the Code of 1869. All the reasoning, then, of Judge James, in this case of *Potter vs. Marsh*, is wholly unimportant now. And that Judge James himself, before the change of the statutory law, did not regard the doctrine of competency for husband and wife, now contended for, as embraced in the then state of the law, is to be found in the case of *Chamberlain vs. the People*, in the Court of Appeals, in the 23d of New-York. I read from page 88:

"In thus holding, it does not follow that the evidence given on the hearing was admissible. On the contrary, I am clearly of the opinion that it was not. A rule of law intervenes to prevent it. It is well settled that neither husband nor wife are competent to prove non-access during wedlock, whatever may be the form of legal proceedings or whosoever may be the parties thereto"—citing the case to which I call your Honor's attention. "This rule was established independently of any possible motives of interest in the particular case, upon principles of public policy and decency, and it has not been and was not intended to be changed or affected by the Code."

Mr. Beach—Mr. Evarts, will you permit me to refer you to a paragraph in that case which adopts and approves the decision of *Potter vs. Marsh*, in the 30 of Barbour—a preceding paragraph which you did not observe?

Mr. Evarts—But the difficulty is that the Court did not concur in that observation.

Mr. Beach—Certainly; it was in the opinion of the same Judge.

#### THE GAUNTLET OF DEBATE DROPPED AND ACCEPTED.

Mr. Evarts—Yes, but not of the Court; the Court did not pass upon the question of the competency of husband and wife as witnesses against each other generally in a suit between them. Now, that was a point upon which Justice James continued his observations that he had made in *Potter vs. Marsh*. But, notwithstanding those observations and his adherence to them, he did not pretend that the rule, as he contended for it in *Potter vs. Marsh*, covered the proposition that the husband or wife could not testify against the credit and fame of the other. It must then appear very plain to your Honor that the law governing the admissibility of husband or wife as witnesses against or for one another in suits, all suits, finds its present home and support, limits and authority, in the statute of 1867. Will my learned friends point to any statute in this State that enables husband and wife to testify, at the present moment, except that statute of 1867? I challenge contradiction of that proposition. That law is the only statutory authority enabling or restricting—within the ability conferred—husband and wife to appear as witnesses for or against one another in the cases that are within its purview.

Mr. Beach—That challenge should not go entirely unanswered, Sir. By reference to the case of *Southwick vs. Southwick* in the 49th of New-York, your Honor will perceive, without an examination of previous determinations, that it was considered as an open question upon which there was considerable diversity of judicial sentiment, whether or not husband and wife were made competent witnesses for or against each other by the enactments of the Code of Procedure, by those enactments of the Code which at present abolish the incompetency on the ground of interest or of being a party to the action. And all the decisions which are culminated in the remarks in the 49th New-York were passed, not upon the peculiar provisions of the section of the Code of 1837, but upon the proposition that the disabilities of interest and of being parties to the action have been abolished.

Mr. Evarts—Well, I do not understand my challenge to be met, for I do not understand that there is now a proposition, in

any of the courts of this State, that, under the general removal of interest as a bar to competency, husband and wife come in, or, that under the provision that being a party shall not exclude as a witness, there is any enabling authority in a party to testify beyond what he could as a witness if he were not a party. Now, the case in the 9th of New-York to which I call your Honor's attention, while these vague, uncertain determinations and loose language of the Code still remained the subjects of judicial debate, settled finally that the removal of the disqualification of interest did not introduce husband and wife, but that they stood upon the law of marriage. I need add but one authority to those to which I call your Honor's attention, and that is of the greatest authority, and the present modern law as declared by that great authority. I mean the Supreme Court of the United States, in the case of *Lucas vs. Brooks*, in the 18th of Wallace's Reports, page 452, decided in October, 1873. The first is that the Court refused to admit in evidence the deposition of Catherine Lucas, the wife of the defendant; that it is a rule of the common law, a wife cannot be received as a witness for or against her husband, except in suits between them, or in criminal cases where he is prosecuted for wrong done to her, is not controverted. But, it is argued, because Congress has enacted that in civil actions in the courts of the United States, there shall be no exclusion of any witness because he is a party to or interested in the issue tried, the wife is competent to testify for her husband. Now, that is the very question that has been argued at such length.

Mr. Beach—Oh, no—

Mr. Evarts—On the effect of these earlier statutes and of the Code.

Mr. Beach—Oh!

Mr. Evarts—The only question which you argued upon that, was precisely that. Undoubtedly the Act of Congress has cut up by the roots all objections to the competency of a witness on account of interest; but the objection to the wife's testifying on behalf of her husband is not and never has been that she has any interest in the issue to which he is a party. It rests solely upon public policy. To that the statute has no application. Now, in the case, "*In re Rideout's Trusts*," (10th of Equity Cases, Law Reports, English,) Vice-Chancellor James holds, when appealed to to say that this legislation in regard to the admissibility of evidence, let in the husband and wife—

Mr. Beach—What page is that?

Mr. Evarts—Page 44.

"Now, I do not like to say that the effect of the statute is to supersede the old rule. If it be so, it will now be in the power of any husband or wife alone to bastardize issue. I am afraid you must give me some other evidence."

Chief Justice Redfield, in Vermont, an authority well known to us both in his judicial capacity as general commentator, rules in the case of *Manchester vs. Manchester*, that a wife cannot become a witness under the Act of 1852 for or against her husband in any civil suit or proceeding, the Act of 1852 being the Act concerning the removal of disability of interest,

and being a party and equal in all respects to our Statute. Word for word, my learned friend says, with our statute. And, may it please your Honor, by the law of this State, there never was any pretense that the rule of marital exclusion was restricted to cases where the conjux, the party in the marriage, to be affected is a party even to cases where at least one was a party. The rule was amended in *Babcock vs. Booth*, where neither was a party, a case precisely like *Hasbrouck vs. Vandervoort* in the 9th of New-York, where neither was a party and where the husband was excluded because his wife had an interest although his wife would have been competent.

In *O'Connor vs. Majoribanks* (5th Scott, new R.), neither was a party and yet the wife was excluded; and this, the leading English case, is fully recognized and adopted as representing the true rule of the Court of Appeals, as I have shown your Honor in the case of *Hasbrouck vs. Vandervoort* and *Southwick vs. Southwick*.

The case of the Royal Insurance Co. *vs. Noble*, in the 5th of Abbott, in the Court of Common Pleas of the City of New-York, a court of the same important jurisdiction with your Honor's Court, Judge Barrett says:

"I am still of the opinion that the facts stated in the affidavit of King are admissible. The evidence of husband and wife is undoubtedly receivable in a collateral proceeding for the purpose of proving any fact material to the issue, and that although the facts so testified to by the one may tend to criminate or contradict the other. The fact is admitted as bearing upon the issue, and that without reference to its tendency; but there is no authority for admitting either husband or wife in any proceeding whatever for the sole and direct purpose of impeaching the other's testimony."

And why not? Because it was an attack upon the other in regard to morality, in regard to crime.

Roscoe, on the law *vis à vis*, the same commentator whom my learned friend cited on the criminal law, says:

"So, though not a party to the suit, neither the wife nor husband of an incompetent witness was competent."

Now the proposition is made that, in the present state of our laws, although this husband would be excluded from maintaining, as a witness, the issue of his wife's adultery (which is the only issue in this case), although he be excluded from that, if adultery were criminally punishable in our courts, yet the rules of law which protect the husband and wife against each other's testimony are regulated and controlled by the proposition whether the public law makes it a crime. Well, now, that is a novel proposition, and for some causes in which the courts of other States have been led into the proposition rather apparently to find some rule of demarkation than being satisfied upon the principle, for the leading case from New-Jersey, relied upon by our learned friend, was a case where the learned Judge refuses the proposition made to him to enlarge the rule of admission even over that obstacle—refuses to do so, states his own opinion that it ought to cover the question of adultery, even when adultery is not a crime, and then excludes the witness because adultery was a crime, and therefore in either view the law was to be excluded. I say that is a novelty. For all the English doctrine grew up and was enforced under a system of the law where adultery was not a crime, and

yet it is spoken of as a crime in the courts. It is spoken of as criminating the party. It is spoken of as within the rule that a witness is not compelled to criminate himself. He was not obliged to admit, in answer to questions for a true sexual connection, adulteries or not adulteries, that would criminate himself. When, therefore, our courts and the English courts lay down the rule that a husband or wife shall not be allowed to testify to any matters that criminate the other, nobody in England was shrewd enough to raise the objection that that means the crime that can be best punished by fine or imprisonment under statute or common law. These bastardy cases involved nothing but adultery, and yet the mouths of husband and wife were closed upon that. Why? Because it criminated the other party to the conjugal relation.

#### RECENT DECISIONS CITED TO SUSTAIN OBJECTION.

Now, the law of all these States confessedly excludes, both from the maintenance of the public justice or of any private remedies, the testimony of the husband or the wife to the adultery of the other. Maine, New-Hampshire, Vermont, Connecticut, Massachusetts, New-Jersey and North Carolina, those States also having statutes, make adultery criminal. Now, no case is produced in this State that undertakes to say that in an action of this kind the wife or husband may thus criminate the other upon an issue of adultery, because it is not made a public crime. And the English cases to which I now call your attention conclusively show that in that country the legal epithet and description of charges of this kind is criminal and incriminating. I refer your Honor to *Faussett vs. Faussett*, in the 7th note of ecclesiastical cases, pages 72, 94.

"It is true this is not a criminal proceeding,"—this was in the ecclesiastical court—"to lead to any punishment of the nature of fine or imprisonment, but nevertheless in every suit for a divorce by reason of adultery itself, a question of guilty or not guilty of a crime," and the evidence is excluded.

The case of *King vs. King*, in 2d Robertson English Ecclesiastical Reports, Dr. Lushington says:

"The right of a party to exclude answers depends on the form of proceeding. If the suit be prosecuted by articles, an account can answers be at all exacted. In a civil case a contrary rule prevails. Answers are due, but ingrafted on that rule is this exception: that the party giving his answers is entitled to object to answer to so much of a plea as may criminate him. The question which I have now to determine is whether the husband is entitled to final answers to his libel. When I suggested to counsel to confine themselves to the 16th article of the libel, I did so considering that the validity of the agreement would be better tried on that than the other articles. Looking at the averment standing in that article without reference to any other part of the libel it would certainly be extremely difficult for me to say there is any circumstance which could criminate the wife; but unless those averments tend in some way to establish the charge against her, I cannot understand why they were introduced. The chain of evidence is to be completed by a line of links. How far any one may be important or unimportant, I am not in a position to determine."

And that, at that stage of the proof, although on the mere purport of the questions, it might not appear that it tended to

criminate her in this sense concerning adultery, yet that she should not be compelled to answer in that behalf until it appeared that the effect of the questions was wholly innocent.

The case of *Schultes vs. Hodgson*, 1st Adams Ecclesiastical Reports, English, the question was in an ecclesiastical case touching the party's manner of correction of his excesses, more especially touching and concerning the crimes of fornication, adultery and incontinency committed by him and complained thereof.

"In criminal suits the defendant's answers upon oath are not to be required even to thus adduce the positions which are not in themselves criminatory."

But that is enough for us, if your Honor please, on this question—enough of authorities on this question—which in my learned friend's apprehension has nothing substantial in respect to the quality of the acts complained of to base a decision upon. It is made to rest entirely, not upon the quality of the act as criminal and in the appreciation of society, but upon the pretense of the Legislature in making it, or not making it a public crime.

In the case of *Southwick vs. Southwick*, Rexford, in the 6th of Cowan, page 254, the question arises in the form of whether a witness was bound or not to answer a question that carried that degree of imputation to him of illicit sexual connection, and the testimony was excluded, and the Court of Error upheld it as justifiably excluded, on the ground that it came within the law which protects a witness against criminating himself, and yet there was no indictable offense.

Mr. Beach—On the ground that the witness was not compelled to disgrace himself.

Mr. Evarts—The very cases I have read, in England, on the crimes of fornication, adultery and incontinency, a witness would not answer, and yet they were not indictable offenses. A very famous case, in which Lord Mansfield laid down the general rules of evidence as bearing upon a case of this kind, that is, a case of criminal conversation, establishing the proposition as the English law, that the action was called a criminal, and treated as a criminal one, though treated on the civil side of the court, and the same rigor and fullness of proofs is required on the part of a plaintiff in an action of this kind, as is required by the law for the conviction of a defendant in a criminal case, and under that the rule was established which occasioned so much inconvenience in the case of *Dann vs. Kingdom*, that the marriage must be proved in an action of *crim. con.* with the same formality and distinctness as in a criminal indictment, and that marriage by reputation could not be proved. So much, then, for that view.

Now, the question is also raised by our learned friends that this is not an action in which the husband is on one side, and the wife on the other. Wherever, if your Honor please, the issue is of the wife's adultery it is not a collateral suit; it is not a collateral proceeding; it is not an action of libel for imputed adultery to the husband or the wife; it is not an action for perjury, concerning evidence given on such a trial; it is the very trial itself in which the plaintiff proposes, as the cause of his action in his complaint, the adultery of the wife, and seeks his remedy against the defendant as the guilty party ac-

complishing that adultery with his wife. And, now, what becomes of the provisions of this law of 1867, which expressly says that its enabling clauses in respect to removal of disqualifications of witnesses that are husband and wife, shall not include the permission of any wife or husband to testify for or against the other in an action of criminal conversation. Did your Honor ever hear of an action of criminal conversation in which the husband was the plaintiff, and the wife a formal defendant? And, yet, this whole statute is stultified if this antagonism between husband and wife on this issue of the adultery of the wife is not one of those issues, and thus a form of action respecting that issue, which the second section of the statute of 1867 has denounced as not being within the competency according to testimony of husband and wife. I think my learned friends can make no answer to that, nor can any judicial astuteness find a reply to it. The meaning of the Legislature is plain. It is a meaning based upon, and in conformity with, the exclusions which the English statutes have retained, although in the race of liberalism in respect to testimony the English statutes have, if anything, outrun our own. But they have held on to this, though they open the mouths of husband and wife, as our statute does, in ordinary forms of legislation, and on ordinary issues they have, and we, following them, have opened the mouth of husband and wife to no single jot or tittle of evidence in an action in which adultery forms the subject of inquiry, whether it be divorce, bigamy or criminal conversation.

Mr. Pryor—Or breach of promise of marriage.

Mr. Evarts—That is not necessary for my purpose. Now, in this very valuable treatise of Taylor on Evidence, Vol. 2. page 1172, where the statutes are reviewed and presented in due collocation, that have enlarged the competency of witnesses either in respect of interest or as parties, or in connection with the marriage relation, he says:

"The first class of persons whose evidence is in general excluded comprises the parties to any suit or proceeding instituted in consequence of adultery. Any proceedings which have their origin based upon a fact of adultery has the support of the judicial inquiry,"

and this following the statute it is applied—and the citation I now read from is on page 1,177—in terms of inclusion to these actions:

"Although on proceedings for judicial separation, by reason of adultery, for dissolution of marriage, and for damages against the supposed adulterer, the parties to the record are, except to the limited extent just mentioned, incompetent witnesses, this doctrine of exclusion does not extend to other statutes instituted in the Divorce Court,"

—that is, suits for separation for cruelty, as your Honor knows, and other classes of limited divorce by the English law.

Now, there is no case in our courts in which it has been held that a witness, as matter of law, that a witness, husband or wife, could be a witness in a *crim. con.* case since the enlargement of the law of evidence. In *Bunnell vs. Greathead* (49 Barb., 109) it does not appear that the objection was taken at the trial; and it does appear from the grounds on which the new trial was asked that the objection could not



have been raised at the General Term. My learned friend has referred to that case as a case that was considered both at Special and at General Term. The exception was not taken at Special Term. Of course it could not be taken at General Term. The motion for a new trial at General Term was on the ground that the verdict was excessive; of surprise, that the verdict was against the weight of evidence, and of newly discovered evidence, not matter of error, as your Honor notices, any of them.

Now, in *Dann vs. Kingdom* we have the points here, and the matter was presented to the Court by the plaintiff there at General Term, and judgment of the Court in both, upon reason and authority, and the result of that judgment is as has been stated.

In *Hicks vs. Bradner* (3 Abb. Ct. App. Dec., p. 362,) the plaintiff was not a witness, and was not offered.

In *Petrie vs. Howe* (4 Supreme Ct. Rep.) the objection was not taken, as appears by the case and points.

In *Taylor vs. Jennings*, in the seventh of Robertson, the question of the exclusion of testimony injuriously affecting the *con-jux* of the witness was not involved. The question was whether (in an action to charge his wife with adultery) the plaintiff could refuse to testify as to his own adultery.

Now, my learned friends have said that *Rex vs. Cliviger* has been overruled, and the cases of *Rex vs. All Saints*, and *Rex vs. Bathwick* have been referred to. An examination of these cases will show what we supposed we well understood before, that *Rex vs. Cliviger* in its decision is not overruled, but only is a more comprehensive *dicta* or reason of the Court going beyond the decision here reduced by the subsequent reasoning of these cases. And, as we called your Honor's attention to the matter before, the value of *Rex vs. Cliviger* remains unimpaired for authority in this State, because it is expressly approved by the Court of Appeals in the case in the 9th of New-York, of *Habrouck vs. Vandervoort*, and no questions of its authority are presented.

Now, with the statute in its text, and some comments upon that, I shall have concluded my observations. Our learned friends seem to have a notion, at least the learned counsel who first addressed your Honor for the plaintiff seemed to have a notion, from his view of the law of evidence, as existing by statute at the time this statute was passed, that the rules of a general nature for the admission of parties or interested witnesses covered the case of husband and wife, and that this statute was to be considered, or that we considered it, as a sort of disabling statute. I confess I am unable to take any such view of the statute, nor did I understand that my learned friend's argument very well cohered on that subject. The Act as described is an enabling Act, and attention was called by my learned opponent to that: "An Act to enable husband and wife, or either of them, to be as witness for or against the other, or on behalf of any party in certain cases." Now, my proposition is that when this Act was passed, the rule of our State, as evidenced by the decision in *Southwick vs. Southwick*, in 49th New-York, and in the case in the 49th of New-York, was that a husband and wife could not tes-

tify in this case now pending. Does this Act enable either of them to testify here, is the sole question.

"In any trial or inquiry, in any suit, action, or proceeding, in any court, or before any person having by law or consent of parties, authority to examine witnesses or hear evidence, the husband or wife of party thereto, or of any person in whose behalf any such suit, action or proceeding is brought, prosecuted, opposed or defended, shall, except as hereinafter stated, be competent and compellable to give evidence the same as any other witness, on behalf of any party to such suit, action or proceeding."

Now, that would not admit either Mr. or Mrs. Tilton in this action. What were the exceptions? First of all, an exception limiting the privilege or the extent of testimony that could by compulsion be drawn. It was applicable to all cases in which a husband was a witness. That limitation was, "No husband or wife shall be compellable to disclose any confidential communication made by one to the other during their marriage."

Now, your Honor will notice that any qualification in regard to the range of evidence that could be obtained from them was a qualification that might be tolerated in the ordinary course of litigation in which they might be invoked as witnesses. It was a very difficult—a very perilous rule, it seems to me, in two particulars. In the first place, it did not limit in the least the voluntary volume of testimony that a husband or a wife could give; and to have a witness whose mouth is opened to volunteer statements, and then is closed by the law to compulsory searches for truth from the other side, is a very dangerous condition of the law of evidence, difficult for lawyers, difficult for courts, difficult for juries to determine the truth. If a witness comes upon the stand with the law not dominant over his will, but his will dominant over the law, I would like to know who would wish to be responsible for the trial of causes or their determination. But there is another very perilous and very difficult limitation, and that is the determination as a rule of demarkation between what is lawful and what is excluded, the exclusion being defined as "any confidential communication made by one to the other during their marriage." Now, I do not adduce these qualifications for the purpose of criticism or fault-finding with legislation, but simply to adduce them as necessary qualifications in the opinion of the Legislature, notwithstanding all defects of the prior administration of the limitations upon the introduction of husband and wife known in ordinary litigations. Well might the Legislature stand appalled at the notion of opening the mouth of husband or wife on a question of adultery of the other, and seek to have justice done consistently with limitations that it should be only when they volunteered, and never to compel them; that it should be limited only to what did not take place in the confidence of marriage, and leave out everything that did, and thus expose the defendant in a suit like this to a volunteer plaintiff to open his mouth concerning the relations, so far as he pleased, and close it against the probing of the testimony by the opposite side, and to indulge in evidence that bore against the defendant from his, the plaintiff's, the husband's, particular opportunities to know of his wife's actions; and

then when the defendant, by his counsel, undertook to press him about the other things he knew in his wife's action and conduct that would exclude and defend the defense against his charge, that on his mere will he could say: "Oh, that is the province of what I learned by the confidential communications of marriage."

Now the Legislature, impressed with the difficulty of invading the rule of the common law under which we have prospered so long, yielded to the liberalization, but yet restricted it. It said, as the English law had said, with regard to any judicial action that arises in consequence of adultery, this enabling act has no effect, for we can put no limitations that will not do injustice, and we can see no expediency that will justify the admission at all. Consequently the exceptions that are stated in the first section, in its enabling clause, and taken out of its operation, includes what I now read:

"Nothing herein contained shall render any husband or wife competent or compellable to give evidence for or against the other in any criminal action or proceeding, except to prove the fact of marriage in case of bigamy, or in any action or proceeding instituted in consequence of adultery, or in any action or proceeding for divorce on account of adultery, or in any action for or on account of criminal conversation."

The genius and the policy of the British limitation was followed strictly here. If as a citizen, if as a member of society, I look with horror at this invasion of the privacy of marriage, and have sought to enforce these considerations upon your Honor, I confess as a lawyer, owing a duty to the administration of justice, both to the learned Court and the jury, who hear all that we say and do, I feel entire incompetency to deal with a witness introduced into the trial of this cause, if I must examine him *in vinculis*, and he can close his mouth whenever I seek to compel his testimony. I look with dismay upon the sad disfigured fragments of evidence that the search after truth are to be displayed before this jury if this will of the husband is master over me, and not the law master over him. I look with dismay also upon the other current of separation, which is to withhold from me and from my client's cause the defense of penetration into the conjugal relations, that he can close under this law, as having been gained by confidential communications between himself and his wife.

Now, if the Court please, something has been said about the admission of the defendant and the exclusion of the plaintiff. I do not in the least qualify, nor did the law ever undertake to qualify, while its rules were as I have read them, and when its rules are still the same as I have proposed to your Honor, that in a certain sense it was a subordination of the full scope of the administration of justice, but only because it was to maintain the institution on which society itself rested. Who shall say that it is profane to swear by the gift on the altar, but not by the altar that consecrates the gift. All the efforts of law and of civil society are to maintain, invigorate, preserve, purify, exalt the structure that, as a perpetual habitation for liberty and justice, has been furnished by the wisdom and courage of our ancestors. [Applause.]

Mr. Beach—I did intend, Sir, to ask from the Court permission to notice the new authorities which have been presented

by my learned friend, but the hour of adjournment is so near that I waive the privilege, and we submit the question.

#### A DECISION TO BE GIVEN MONDAY.

Judge Neilson—I can only say to the learned counsel, whose arguments have been of very great interest to the Court, that I will endeavor to give the subject, regarding it of grave importance, all possible consideration; not to write an opinion, however, which I do not conceive to be part of the office of a Judge presiding at *Nisi Prius*, and would savor somewhat of pedantry; therefore the learned counsel will expect nothing more than a statement of my conclusion, when we meet; and that I will endeavor to give frankly, so that either side can take advantage of any error I may commit.

Mr. Evarts—There is a single consideration I wish to state, in answer to some observations of your Honor. A considerable argument was made to reduce the authority of the case of *Dann vs. Kingdom*, on the ground that it was a decision made without due consideration. But your Honor will notice that Justice Talcott and Justice Mullen and Justice Smith concurred with the Justice who presided at the trial, making up the four of that department; and this authority is well understood in this State. But a proposition is made that, because your Honor's Court is not in the line of appeal to the Supreme Court, but stands upon equal footing of direct appeal to the Court of Appeals, this decision is not binding upon your Honor; and your Honor gave us to understand the general doctrines and feeling of the Court in that regard. Our proposition is this, if your Honor please, that, to a Judge at *Nisi Prius*, the decision of the General Term of the Supreme Court is binding as an authority, just as much in the courts of the Superior Court and Common Pleas of New-York, and the Buffalo Court, and your Honor's Court, which stand upon the same constitutional footing and have the same direct appeal. The Supreme Court has, by the Constitution, general jurisdiction of all cases of law and equity. It is the general court of law and equity of the whole State; and it is that court which preserves the unity of the law in its preliminary state; and, so far has the respect for the decision of a General Term of the Supreme Court been carried by the Legislature, that the decision of the General Term of the Supreme Court of the State—any General Term—protects all parties acting and relying upon it, although by subsequent appeal, the Act of the Legislature upon which such proceedings were supposed to be predicated, should be declared finally unconstitutional. Now, we submit to your Honor, that it is extremely inconvenient, if it should be held that, while this decision of the General Term that I have adduced, binds the Supreme Courts of this district, binds them (your Honor's friends and judicial associates) in all *Nisi Prius* proceedings in their Courts, it is less binding upon one of your Honors sitting at *Nisi Prius* in this Court. For then you have the most unseemly antagonism of competition, that the same population, governed by the same laws, governed

by the same judicial fabric in general, have a preference and choice between the Supreme Court and your Honor's Court at *Nisi Prius* as to the prevalence of one or the other rule of law in the first instance for a trial.

#### JUDGE NEILSON INDUSTRIOUS.

Judge Neilson—I wish to ask the counsel, most of whom have occasion to come from New-York, whether they are not willing to work to-morrow. I think to-morrow is Saturday.

Mr. Fullerton—It is in New-York; I don't know how it is here. [Laughter.]

Mr. Evarts—I have no hesitation in saying that I should not like to surrender my Saturdays to this case.

Judge Neilson—Then I wish to make this inquiry, whether it will be agreeable to the counsel if we should meet next week not at 11, but at 10:30 in the morning, and adjourn not at 4, but at 4:30, which will give us an hour more each day, and more than an additional day in the course of the week. I wish to know if counsel cannot be constrained to consent to that. I do not wish to be unreasonable, but I put it to you.

Mr. Evarts—If your Honor please, it is proper that we should say (and I know my learned friends will concur) that a case of so much magnitude and importance, and of so wide a range of consideration pressing upon counsel in respect of evidence, and the production of it, has, in my judgment, never been brought to a trial, in the experience of our profession, so soon after it was at issue, as this, that has thrown upon counsel, I doubt not, on both sides (probably less upon the plaintiff's side than upon ours, because they were masters of the situation, and could choose when to bring it on more than we)—has placed a very great and necessary labor upon us, and we have only the fragments of the day to consume in that way. We think that we save more time in Court, by having those portions of the day out of Court, than if we were in attendance here.

Mr. Beach—I agree entirely with the views of my learned friend.

Judge Neilson—I wish to ask Mr. Evarts, in relation to the question before us, before we adjourn: Suppose a husband indicted and on trial for an assault upon his wife, with intent to kill, or an assault upon one of their children with intent to kill, or for the crime of bigamy, can a husband, or not, under the Act of 1869, present himself as a witness, and be heard as a witness, irrespective of any limitation affecting the marriage relation, irrespective of the question how it shall smite the wife, or how affect her? And does that illustrate in any degree any tendency on the part of the Legislature to make free inroads upon that which had, long time before, been the settled rule of law?

Mr. Evarts—The terms of the statute should, wisely, be before us, if your Honor please. But we understand that that is a statute in its whole purpose, directed to placing defendants in criminal proceedings in a position to be witnesses if they chose and not compellable, and that it is declared by the Act itself to be subject to all possible limitations that would apply to other witnesses.

Judge Neilson—And no more.

Mr. Evarts—No more. I do not mean to all witnesses, but to any kind of witnesses.

Judge Neilson—All competent witnesses.

Mr. Evarts—All witnesses that stood in the predicament toward the evidence that they did. But whether that would aid us much on this point I do not see.

Mr. Fullerton—May I ask your Honor when the decision of this point which has just been argued will be announced?

Judge Neilson—At our meeting on Monday morning.

Mr. Shearman here handed up a printed copy of points to the Court, at the same time handing a copy to the counsel for the plaintiff.

Mr. Beach—I do not think it is proper to hand up a printed copy of an argument on the other side.

Mr. Shearman—I have given you a copy.

Mr. Beach—You have just handed one to me. A pretty time! Giving me no time to answer.

Judge Neilson—I do not need it. [The Judge refused to take the printed copy.] I was about to say in separating, not to meet again until Monday morning, that I would remind the jury not to read the newspapers. This intimation will be more acceptable from the observations which have fallen from counsel as to the comments of the newspapers and to the spirit in which some editors are disposed to refer to the case and to the parties in it, and to possibly discuss the questions. I said this morning that I was making the last appeal that I should make to the editors of the newspapers, and I should not occupy the time of the Court by reference voluntarily to that matter. I also mentioned that I had received letters from intelligent gentlemen abroad, complaining of some newspapers and calling my attention to the remarks of other editors in regard to what had been published. All this will admonish you more than my mere words can, to refrain from reading the papers. As I said, this is a solemn duty on your part and you must feel the weight of it, and I have no doubt you will carry out the suggestions made by the Court entirely, and with the best intention. We will now adjourn until 11 o'clock on Monday morning.

The Court was then adjourned.

## SIXTEENTH DAY'S PROCEEDINGS.

### TILTON'S EVIDENCE TAKEN.

HE TELLS THE STORY OF HIS EARLY CAREER—HIS FINANCIAL CONDITION IN 1871—THE LETTER OF CONFESSION EXCLUDED.

At the opening of the Court in Brooklyn, on Monday, in the case of Mr. Tilton against Mr. Beecher, Judge Neilson decided that the plaintiff was a competent witness, but that he could not testify to confidential communications. Mr. Tilton was then sworn and was examined during the remainder of the day. The principal points reached were concerning the memorable interviews between Mr. Tilton

and Mr. Beecher on Dec. 30, 1870, and the subsequent meetings. The contents of the letter of confession offered from memory by the witness were ruled out. Mr. Tilton swore that instead of being a bankrupt in 1871 he owned property valued at \$30,000.

The silence of the court-room was first broken on Monday morning by the deep voice of Judge Neilson announcing his decision that Mr. Tilton was (1) competent to testify in his own behalf, but (2) that he was not competent to testify to any confidential communications touching the principal question in issue.

Mr. Tilton ascended the stand. He stood with his back to the audience and took the oath, and then sat down. But before any questions were asked, Mr. Beach said that he had not taken an exception, because he supposed that the Judge meant by confidential communication the legal technical definition of that term. Judge Neilson suggested in a dry way that the counsel might better take an exception. Mr. Evarts then explained his view of the decision, ending by taking an exception to the ruling of the Judge. Mr. Beach, however, took none, and without further interruption the examination of the awaiting witness proceeded. In giving the names of his children the witness prefixed with emphasis and studied care the word "our," *e. g.*, "our daughter Florence," "our son," etc. For the first time the details of Mr. Tilton's financial condition were made known, and according to the witness his property in the early days of 1871 was worth altogether about \$30,000, his income consisting of interest on \$1,000 or more in banks, \$5,000 from lectures, \$1,000 or \$2,000 from his books, and \$6,000 in the hands of Mr. Moulton. The meeting at Mr. Moulton's house between the witness and Mr. Beecher on Dec. 30, 1870, was fully described, every detail being narrated with precision from the time when, as the witness stated, he entered the room and locked the door, putting the key into his pocket, until Mr. Beecher left the house. The alleged verbal confession of Mrs. Tilton to her husband was repeated with painful exactness, there being no attempt to gloss over the literal language used.

A sharp debate followed the request of Mr. Fullerton that the witness repeat the contents of Mrs. Tilton's letter of confession, produced at that interview and there destroyed. Mr. Evarts opened the discussion and Mr. Beach responded. Clerks were sent out for authorities and returned with armfuls of law books. It seemed for a few moments that a long and severe struggle was about to begin, but Judge

Neilson abruptly closed it by asking that Mr. Fullerton go on temporarily, without touching the contents of the letter. Mr. Tilton's theory of his wife's asserted love for Mr. Beecher was repeated, and his former policy of excusing her action was strictly adhered to. Mr. Bowen's name was frequently mentioned in the testimony, his alleged accusations against Mr. Beecher being repeated so far as they were considered pertinent to this case.

After recess, Judge Neilson ruled out the letter of confession, hesitating when Mr. Beach brought further arguments to bear, but adhering to his decision after hearing both sides. The Court adjourned at 5 minutes before 4 o'clock.

#### THE WITNESS AND HIS HEARERS.

As Mr. Tilton ascended the witness stand and swore to tell the truth and nothing but the truth, every eye in the court-room watched his actions and his face with sharp curiosity. The people in the audience leaned eagerly forward and awaited almost breathlessly the first words to fall from his lips. Mr. Tilton did not seem to be at perfect ease at first, but in the hands of Mr. Fullerton he soon gained entire composure. During the examination he sat perfectly upright in his chair, his coat buttoned tightly about him, and while his demeanor in court has always been dignified it now seemed severe, and the little color he usually has in his face had entirely deserted it. He gave his testimony thoughtfully, choosing his words with great care, and speaking with almost aggravating deliberation. His replies almost always incorporated the question, so that without the queries his answers would make a continuous story. He seldom said "Yee" or "No," and his answers sometimes were long even to wearisomeness. Occasionally he would wander beyond the legal limits prescribed, and it was necessary to check him. During Mr. Tilton's examination on Monday he seemed to see no one except the person questioning him. His eyes never wandered toward his wife, and if he saw her at all it was simply in a sweeping glance. He looked first at the ceiling and then at the floor, meeting no one's gaze except that of Mr. Fullerton, whom he looked at steadfastly whenever he was speaking. Mr. Beecher's face was a study. During the entire narration of his accuser he looked at him unflinchingly, taking notes occasionally, but listening to every word with close attention. When Mr. Tilton described Mr. Beecher's agitation on various occasions, the latter smiled broadly, and laughingly



*Theodore Tilton*





whispered to his wife. He did not once change color, and there was never the slightest sign of agitation in his manner. Mrs. Beecher's face wore an amused expression nearly all day, and several times, as the witness told of matters which she seemed to consider absurd, she laughed and looked trustfully up into her husband's face. It was many minutes before Mrs. Tilton turned her eyes toward her husband. She was veiled, and while the first few questions and answers were given she sat with downcast eyes. After a time she ventured to glance toward Mr. Tilton and afterward watched him closely, not wavering even when he was giving the worst testimony against herself and her former pastor.

### THE PROCEEDINGS—VERBATIM.

#### TILTON DECLARED A COMPETENT WITNESS.

Judge Neilson—In determining the question raised by this objection, the Court holds:

I. That the plaintiff is competent to be sworn and to testify in his own behalf.

II. That touching the principal question in issue, he is not competent to testify to any confidential communications.

It is considered that this qualified direction respects the present state of our law of evidence, as the same has received legislative and judicial expression, and also respects what may remain of the rule which imposes silence or restraint by reason of the marital relation, and on grounds of public interest or policy.

#### SCOPE OF JUDGE NEILSON'S DECISION.

Mr. Evarts—Your Honor will note our exception to Mr. Tilton being sworn in the case.

Judge Neilson—Yes, Sir.

Theodore Tilton, the plaintiff, called and sworn on his own behalf.

Mr. Beach—In regard to your second ruling, on the part of the plaintiff, Sir, perhaps we ought to say that we understand that second proposition of the Court to rule the general principle, which we have not disputed, that husband or wife as a witness is incompetent to speak of what are technically called confidential relations between them. We take no exception, Sir, to that ruling, but I suppose it is understood that under that decision the question what shall constitute such a communication as arising from the confidence and faith of the conjugal relation, is an open question to be decided upon the particular circumstances of any such communication when it shall be presented to your Honor. If the decision is intended to be enlarged beyond that scope and meaning, why, we certainly should take an exception to it, but I do not so understand it.

Judge Neilson—The exception better be entered, Sir.

Mr. Evarts—We understand your Honor's ruling as on this head covering what we regard as the rule of law under that consideration, even where the law permits a married person to be sworn, and that it covers everything that grows out either in the way of oral communication or of personal observation between husband and wife, that arises during the confidence of their marriage. On another point discussed by counsel, that is, whether a husband or a wife can be heard to speak against the other upon a charge of adultery, your Honor has not determinately ruled, and probably some questions may come up that counsel will present to your attention for ruling as the inquiry proceeds.

Mr. Beach—Your Honor will remember that upon the part of the plaintiff, there was no discussion whatever as to the character of confidential relations. What constitutes such a communication between husband and wife as to fall under that rule of exclusion was not at all discussed. We did not suppose it raised by the objection, which was one simply to the competency of the witness, and not to his capacity to speak as to particular subjects which may have transpired during the existence of the marriage relation, and we suppose that the admissibility of that class of evidence would be presented, if objection was taken in the course of the examination of Mr. Tilton, and that your Honor would then listen to such authorities and discussion as might be appropriate, and rule as you should understand the proof or evidence to be.

Judge Neilson—Still, I think the line of demarkation would be very simple. The counsel can easily observe it. It may be that I shall have occasion to hear you both perhaps on that matter.

Mr. Beach—I think, your Honor, that there are some authorities upon that subject which it may, perhaps, be proper to submit to you in a few days.

Judge Neilson—If there is occasion, I should be happy to hear you, Sir.

### TESTIMONY OF THEODORE TILTON.

Mr. Fullerton—You are the plaintiff in this action, I believe, Mr. Tilton? A. Yes, Sir.

Q. What is your age? A. About 39.

Q. Where were you born? A. In the City of New-York.

Q. How long have you resided in the City of Brooklyn? A. I think about between 20 and 25 years; I cannot fix the exact point.

Q. Where were you educated? A. In the City of New-York.

Q. When were you married? A. On the 2d of October, 1855.

Q. And by Mr. Beecher, I believe, as has already been proved? A. Yes, Sir.

Q. What is the age of your wife? A. She is about 41.

Q. Older than yourself, then? A. She is between one and two years older; I don't know exactly how many months.

Q. How many children have you living? A. Four.

Q. Please state their names and ages. A. The oldest is our daughter Florence, who is about 18 years old; the next our daughter Alice, who is now about 16; the next our son Harold, who is about 12; and the youngest our son Ralph, who is about 6.

Q. Have you lost any children? A. Two.

Q. What were their respective ages at the time of their death?

A. They both died in infancy.

Q. State when they died? A. I don't think at this moment I can give the date of their death.

Q. What has been your occupation since your majority? A. A literary profession.

Q. And connected with what, if you please? A. My earliest literary employment was in connection with *The New-York Churchman*; then in connection with *The New-York Observer*; then in connection with *The New-York Independent*; then in connection with *The Brooklyn Union*; and, finally, in connection with *The Golden Age*.

Q. When did you become connected with *The Independent*? A. I think it was in the Spring of 1856.

Q. Who was the editor or editors of that paper at that time? A. The editors were three clergymen: Rev. Dr. Joseph P. Thompson, D.D., Rev. Leonard Bacon, D.D., and Rev. Dr. Storrs, of Brooklyn.

Q. When did they cease to edit that paper, and who succeeded them? A. I do not remember the year at which they terminated their engagement; they were succeeded by Rev. Henry Ward Beecher.

Q. And at what particular time did your connection with that paper commence? A. Mine commenced, as I have already answered, I think, in the Spring of 1856. I was on *The Independent* under its original three editors, in a subordinate capacity. I remained on *The Independent* in a somewhat advanced position under Mr. Beecher; and I afterward, on the occasion of Mr. Beecher's retirement from the editorial chair, became his successor, as the editor of *The Independent*.

Q. At what time did Mr. Beecher become editor of that paper, as near as you can recollect? A. I do not remember the year. Mr. Beach—Well, about?

Mr. Fullerton—As near as you can get at it? A. Well, I should have to guess if I answered; I think somewhere about 1860 or 1861; perhaps a little later.

Q. How long did he remain editor of the paper? A. He terminated his editorship after his return from England; I believe that was in 1863 or 1864.

Q. And what was the character of the relations existing between you and him during his editorship of that paper? A. Do you mean our official relations or our personal?

Q. Both. A. My official relation to Mr. Beecher during his editorship of *The Independent* was that of his associate—I was not technically called the managing editor; but I presume that designation is as accurate a one as I could give; I held under Mr. Beecher what has since been generally regarded as the office of managing editor, though I believe at that time that term was not in use.

Q. Socially, what were your relations? A. Mr. Beecher and I were very intimate.

Q. And up to what time did that intimacy continue? A. Until the Spring of 1870.

Q. During the period that you have spoken of, did you become connected with Plymouth Church in any way? A. I have

been connected with Plymouth Church, in one way or another, ever since my boyhood.

Q. State, if you please, in what way? A. I at first became connected with the Sunday-School; I was a scholar in the school; I was a teacher in the school; I was the Librarian of the school; I was the Associate Superintendent of the school; I finally became the Acting Superintendent of the school. Then, in 1853, I became a member of the church, though the offices which I held in relation to the Sunday-School were some of them, before 1853, and many of them continued after that date.

Q. Who officiated at the ceremony of your introduction to the church? A. The pastor and all the congregation.

Q. The pastor, Mr. Beecher, at that time? A. Yes, Sir.

Q. During all the time that you have spoken of, I believe, he was pastor of the church? A. Yes, Sir.

Q. Was your wife connected with the church? A. My wife became a member of Plymouth Church, I think, two years before I joined; I think her membership dates from 1851.

Q. Did she remain connected with the church, as a member, up to 1871? A. I think her name is still on the roll of membership; I will not be positive, however, as to that last answer.

Q. During Mr. Beecher's absence in Europe, of which you have spoken, state whether there was a correspondence kept up between you? A. Yes, Sir; I don't remember how often I wrote to Mr. Beecher; I wrote to him on several occasions, giving him the progress of affairs at home, and I received some letters from him at that period, one of which, a long and striking letter, was afterward published by Mrs. Stowe in her biography of him.

Q. Now, how long have you been acquainted with Francis D. Moulton? A. Ever since my school-days.

Q. State, as near as you can, when that acquaintance commenced? A. I should think as far back as 1848 or '49 or '50; somewhere there.

Q. And has it continued up to the present time? A. Yes, Sir.

Q. How long has Mr. Moulton resided in Brooklyn? A. I think about ten or a dozen years; perhaps not quite so long.

Q. Were you in school together? A. Yes, Sir.

Q. Where? A. At the institution which was then called the Free Academy, and which is now known as the College of the City of New-York.

Q. Have you been intimate friends during all that period of time? A. We were very intimate during our college days. When those days were over Mr. Moulton continued to reside in New-York; I came to Brooklyn; I did not then see him very often. At length he came to reside in Brooklyn in my own neighborhood, and then our early intimacy was renewed and has continued to this hour.

#### TILTON'S FINANCIAL INTERESTS.

Q. I want to ask you in relation to your property. In the month of December, 1870, what property were you the owner of? A. At what date?

Q. In December, 1870. A. Well, Sir, I shall have to speak—

Q. At the commencement of 1871. I don't want an exact ac-



count, but give me an approximate estimate of the property, and what it consisted of? A. I owned a house, in which I lived, No. 174 Livingston-st., which, with its library, furniture and pictures, I suppose was valued at about \$25,000. I owned a piece of property in Llewellyn Park, New-Jersey, valued at about \$10,000. I owned a share of THE NEW-YORK TRIBUNE, valued, I think, at that time, a little more than \$10,000. I owned a small farm out West—

Q. What State, please? A. In Iowa; valued at about \$1,500. I owned a piece of land, a little fragment of it, near Prospect Park, in this city, valued at about a thousand dollars. I had also some money at interest at that time, four or five thousand dollars. Those are all the items that occur to me at this moment.

Q. If there were any liens upon this property you will please state them? A. There were none except in two instances; there was a mortgage on my house, I think the amount was \$7,500. There was a mortgage on another piece of property, or rather not a mortgage, but I had assigned it by a power of attorney to my father, valued about \$10,000. With that exception every thing else was free and clear. I suppose I had at that time—you wish me to give you the sum total?

Q. The sum total, if you please? A. I suppose that on the occasion of my retirement from *The Independent* and *The Brooklyn Union*, which is the date at which you inquire?

Q. Yes? A. My property free and clear of all incumbrance would have amounted to about \$30,000, perhaps \$35,000.

Q. Now, after the 1st of January, 1871, were you in the receipt of any income, and if so, what income? A. Well, Sir, I cannot say that I was in the receipt of a steady income, but I was in the receipt of—yes, I was also—in the first place I had money at interest, about \$4,000 or \$5,000, which yielded me some income.

Q. Where was that? A. That was deposited with the firm of Woodruff & Robinson. I received also—

Q. Go on. A. If I understand your question, it is what sums of money I have received since?

Q. What sources of income had you after the 1st of January, 1871? A. Well, about \$4,000 deposited with the firm of Woodruff & Robinson; about \$1,000 I should say in round numbers, not able to be more accurate, in one or two of the banks in this city; \$7,000 which I received under my contracts with Mr. Bowen; \$5,000 in round numbers as the result of my lecturing season in the Winter of 1871-2; between \$1,000 and \$2,000 on my books from my publishers; \$6,000 subscribed, as Mr. Woodruff has explained, as a capital for *The Golden Age*; in addition to that, about \$6,000 in all from Mr. Moulton.

Q. Now, Sir, did you have any other incomes beyond what you have stated? A. No, Sir. I beg your pardon, Mr. Fullerton; did I mention my lectures? Yes, I did.

Q. You mentioned your lectures. Was there any income from *The Golden Age* at all? A. Yes, Sir; there was a large income from *The Golden Age*, but there was also a large outgo; there was no profit.

Q. Was there any net income? A. During that period?

Q. Yes. A. Oh! yes; I should think about \$40,000.

Q. Net income over and above the expenses? A. Oh! no, Sir; I think not; very slight at all events.

Q. What debts did you owe at that time, if any? A. At what time, Sir?

Q. After January, 1871, over and above the liens upon that property of which you have spoken? A. Oh! I had no debts, Sir, other than the current household expenses; I don't think I ever was in debt over \$1,000 at any one time.

Q. As to *The Golden Age*—state whether that was largely indebted, or otherwise? A. *The Golden Age* at the time of its commencement, as Mr. Woodruff has explained, owed \$6,000 to the gentlemen who contributed it. They afterward returned me their notes, making that money a free gift. That canceled that debt. The only other debts which *The Golden Age* ever had were debts for current expenses, and I don't think that at any time they ever ran above \$500, or \$700, or \$1,000.

Q. Not beyond that at any time? A. I don't recall any instance at present at which the debts of *The Golden Age* were over \$1,000.

Q. You have spoken of \$6,000 or thereabouts received from Mr. Moulton? A. Yes, Sir.

Q. Did you know the source of that money? A. I did not, Sir.

Q. Did you know that any part of it came directly or indirectly from Mr. Beecher. A. No, Sir; not a cent.

Q. When did you first learn it? A. When Mr. Moulton wrote the fact in his second statement, I think.

Q. In 1874? A. Yes, Sir.

Q. And you didn't know it until that time? A. Never until then.

Q. Now, Mr. Tilton, I want to call your attention to the month of December, 1870, the 30th day of that month, and ask you whether on that day you had an interview with Henry Ward Beecher? A. I had an interview with Henry Ward Beecher on the evening of that day.

Q. On the evening of the 30th of December, 1870? A. Yes, Sir.

Q. Where did the interview take place? A. It took place in the second floor, front room, of Mr. Moulton's house at his then residence, No. 143 Clinton-st., Brooklyn.

Q. What length of time did the interview occupy? A. I should think three-quarters of an hour, possibly an hour.

Q. Who were present at that interview? A. Mr. Beecher and I.

Q. No one else? A. Mr. Moulton at the first moment of it, but he instantly retired.

Q. Will you now state what occurred at that interview?

#### FIRST ARGUMENT OVER TILTON'S TESTIMONY.

Mr. Evarts—Now, if your Honor please, I think it is proper that we should suggest to your Honor, and if you agree with us you may instruct the witness, that he is not at liberty to repeat in the testimony here anything that he said there that was derived by a confidential communication from his wife.

Mr. Fullerton—We suppose that your Honor will give the witness no such instructions as that, because it would not be in harmony with the decision that your Honor has just announced touching this very subject. I suppose I am at liberty to prove by this witness all that occurred between himself and Henry

Ward Beecher on the date embodied in the question—what he said to Mr. Beecher and what Mr. Beecher said in reply to him. It makes no difference where the witness learned the facts that he communicated to Mr. Beecher. Even if he learned them from his wife and communicated them to Mr. Beecher, we have a right to that evidence in this case. I suppose the objection is premature, Sir, or the request rather premature, because it would be better to wait until the particular question arises.

Mr. Evarts—The difficulty is that the question, which was proper enough in general, was a general question to draw out an entire interview, and under the ordinary rules of evidence it would be admissible, because it occurred with Mr. Beecher, and therefore I must intercept the illegal evidence at this stage, or run the risk of its being introduced. Now, the authorities seem to be very clear. In the case of *Dawson vs. Hall* (3 Mich. Supreme Ct., 390)—held, that it is a well settled rule that the declarations of husband and wife are subject to the same rule of exclusion which governs their testimony as witnesses. Greenleaf's Evidence (394, section 341) is to the same effect. In the case of *Gardner vs. Klutts* (8 Jones L.—N. C. 375, Supreme Court) it was held that as a wife is not a competent witness for or against her husband, it follows that her declarations cannot be evidence for or against him. Otherwise, in the language of the Court, "more weight is given to what she says when not under oath than to what she would say on oath, which is absurd." It is held that this applies to written as well as to verbal declarations. The fact that a wife cannot be examined as a witness by reason of her husband's being a party is not a reason for admitting evidence of her declarations. Now, your Honor will perceive that it is quite impossible to adhere to the proposition that the husband or wife cannot give evidence against the other upon the ground of public policy, and no protection of the marriage relation, when the point of evidence sought to be decided arises in the confidence of marriage. If that rule is to be transcended and trampled upon by the mere introduction of a communication, of that confidential communication made by the husband or the wife to a third person, and then in the shape of an introduction of the evidence between the husband and the wife and the third person, the confidence of marriage is violated. When I say "third person," I mean a person not one of the married pair. I don't mean a third person in respect to the controversy, but a third person in reference to the marriage. Now, when husband and wife violate the confidence of a communication made to them in that relation by communicating it to another person, that communication may be provable, but it cannot be provable by the husband or wife; that must make a part of that proof, the diverging of the confidential communication.

Judge Neilson—Within the ruling I intend to make, I should not receive any evidence of any statement or communication by the plaintiff's wife. This question, however, is very different. The question is, whether in a conversation (assuming there may have been some communication)—whether in a conversation between the parties, the conversation may not be given in evidence, although it may, in a sense, involve what may have been

learned in that form of confidential communication? That rule will be transgressed from, if, in the conversation given between the parties, the party was allowed to state that his wife had given that information. I could not permit that, of course.

Mr. Beach—I hope your Honor will not rule that way without hearing authorities. Your Honor is anticipating a question which we have avoided discussion upon hitherto.

Judge Neilson—You may not quite understand me. I am strongly impressed with the belief that any conversation between the parties to this action may be given, but if that conversation reveals in any degree any communication received from the wife, although as part of the conversation with the defendant he is at liberty to give it, he would not be at liberty to go yet further back and state that the wife actually gave him that confidence as narrated in that conversation, whatever it might be.

Mr. Beach—That leaves the main question open for discussion, and I will not trouble your Honor with any remarks upon it unless it becomes necessary to do so. But I hope your Honor will hold your mind open to the discussion of the question of what constituted a confidential communication between husband and wife of which neither can speak, and what circumstances modify that communication, so that he may disclose it, and what is the state of our statutory law at this day upon that subject.

Mr. Evarts—Your Honor will be good enough to note my exception to any evidence on this subject. The question is a proper enough question in its form. My objection, however, in advance of testimony is to any evidence on the part of this witness in answer to this general question that may contain a statement of any confidential communication from his wife, although it may have been communicated to Mr. Beecher.

Judge Neilson—Yes, I will note your exception.

Mr. Evarts—I want to raise that point of law, and I will take an exception if your Honor has decided not to exclude the testimony.

Mr. Fullerton—I think the question will not arise in the examination of this witness at all.

#### THE FIRST HOSTILE MEETING AT MOULTON'S.

Mr. Fullerton—Now, go on and state what occurred between yourself and Henry Ward Beecher on the evening of the 31st December, 1870, at Mr. Moulton's house? A. Mr. Moulton brought Mr. Beecher to the door, bowed to me and said, "I have brought Mr. Beecher at your request." Mr. Moulton then retired, closing the door behind him. I did not salute Mr. Beecher nor he me. He crossed the room and took an easy chair by the window. I crossed the room in the other direction, went to the door, locked it, took out the key and put it in my pocket. I then re-crossed the room, and sat in a chair opposite to Mr. Beecher. The conversation that took place I cannot undertake to repeat accurately. That is to say, I will not attempt to give the words, except at certain points, because what was said was mostly said by me, and I have no special gift at recalling words. I can better call what he said than what I said. I began, as I remember, somewhat in this way—I think I am entirely accurate as to the first

words spoken, and they were these. I said: "I presume, Sir, that you received from me a few days ago, through Mr. Bowen, a letter demanding your retirement from your pulpit and from the City of Brooklyn." He said: "I did." I then said to him: "I have called you here to-night in order to say to you that you may consider that letter unwritten—unsent—blotted out—no longer in existence." He then said to me, bowing his head: "I thank you." I replied to that: "Your thanks should not go to me, but to Elizabeth. It is in her behalf that I hold this interview, and whatever I shall say here or in consequence of this meeting is not for your sake, nor for my sake, but for her sake." I then asked him whether Mr. Moulton had shown to him a statement which Elizabeth had written—

Mr. Evarts—Now, if your Honor please, I interpose an objection, that on the witness's own statement, this was an interview held in the confidence of the wife and in her behalf, and he cannot avoid it.

Judge Neilson—Take an exception.

The Witness—He said to me that Mr. Moulton had shown him no statement. I then said: "Do you not then understand the object of this interview?" "I do," said he, "in general terms." I then replied: "You should understand it more specifically. I will read to you a statement which Elizabeth has made. Mr. Moulton has the original; I have a copy; I will read to you the copy." I then put my hand into my pocket, took out some papers, and while searching for the copy which I had made of Mrs. Tilton's paper, he said to me: "Before reading that, Theodore, I wish you would tell me what Mr. Bowen has been saying against me." I replied to him that I had not summoned him to the interview for the purpose of discussing with him Mr. Bowen's affairs, but that he should go to Mr. Bowen himself. Nevertheless, as he asked me the question, I would say that Mr. Bowen, in an interview with me on the preceding day, had made a statement that: "You have been guilty of adulteries with numerous members of your congregation ever since your Indianapolis pastorate, all down through these 25 years; that you are not a safe man to dwell in a Christian community; that he knows numerous cases where you have shipwrecked the happiness of Christian homes; that he is determined you shall no longer edit *The Christian Union*; that you shall no longer speak in Plymouth Church, and he says distinctly that you are a wolf in the fold and that you should be extirpated." Mr. Beecher said it was a matter of amazement to him that Mr. Bowen should have so spoken: "For," he said, "when Mr. Bowen delivered to me your letter demanding my retirement from the pulpit he appeared to be friendly, and he offered me his friendly services in the matter." I then said to him that I had joined with Mr. Bowen at the beginning of the week in making that demand upon him to retire; that I had written that letter at Mr. Bowen's suggestion; that Mr. Bowen had requested that such a letter should be written, and had said that the reason why he could not write it himself was that in the preceding February—that is, February, 1870—he (Bowen) had had a reconciliation with Mr. Beecher, and that Mr. Beecher had begged his pardon and had bent himself on the floor and wept, and Mr. Bowen had freely granted him forgiveness for the crimes which he had committed, and that Mr. Bowen said in view of

having granted that forgiveness he could not initiate proceedings against Mr. Beecher, but that if I would initiate them by sending such a challenge he (Bowen) would sustain that demand, and in the interest of morality and religion expel Mr. Beecher from his pulpit and from the city. That he furthermore had said that he (Bowen) had it in his power at any time to drive Mr. Beecher out of Brooklyn within twelve hours. Mr. Beecher again spoke of his astonishment that Mr. Bowen should have said such things to him—or to me—on Monday, and then have expressed himself in a friendly way, as Mr. Beecher described it, on the occasion of delivering him the letter. I then told Mr. Beecher that after I had had this interview with Mr. Bowen I had narrated the substance of it to my wife; that my wife was ill, and that this intelligence filled her with profound distress; and that she had instantly said to me that it was a violation of my pledge and promise to her, made in the preceding Summer, that I would never do the Rev. Henry Ward Beecher any harm, or ever assist in any exposure of his secret to the public. She said to me: "If Mr. Bowen makes a war upon Mr. Beecher, and if you" [that is, myself] "join in it, and if Mr. Beecher retires from his pulpit, as he must under such an attack, everybody will, sooner or later, know the reason why, and that," said she to me, "will be to my shame and to the children's shame, and I cannot endure it."

Mr. Evarts—Now, if your Honor please, this indicates the nature of the communication concerning which my objection applies. I am understood, of course, as objecting distinctly to every branch of this.

Mr. Fullerton—Of course.

The Witness—Mr. Beecher then asked me what I meant by speaking in that way of Elizabeth and her shame; so I then read to him the copy of Mrs. Tilton's confession—a copy which I had made in the early part of the evening, the original of which was in Mr. Moulton's possession.

Q. What did you read to him?

Mr. Evarts—The paper.

Mr. Fullerton—Where is that paper? A. That paper has been destroyed.

Q. When was it destroyed? A. It was destroyed by Mrs. Tilton's own hand.

Q. The copy you took, I mean? A. The copy was destroyed that evening during the interview.

Q. During the interview? A. Yes, Sir.

Q. In Mr. Beecher's presence? A. Yes, Sir.

Q. Now, the original? A. The original was destroyed two years later by Mrs. Tilton in my presence.

Q. Is that the one that Mr. Moulton speaks of in his testimony? A. Yes, Sir.

Q. Destroyed immediately after the "tripartite agreement" was signed? A. Yes, Sir; after the tripartite agreement was signed at Mr. Moulton's house.

Q. That is the one Mr. Moulton spoke of as having been destroyed at that time? A. Yes, Sir.

Q. Now, what was that paper that you thus read to Mr. Beecher?

ARGUMENT ON THE ADMISSION OF THE CONFES-  
SION.

Mr. Evarts—I object to the witness giving the contents of that paper, on the ground that it appears by the testimony of the witness that it has been willfully destroyed.

Mr. Fullerton—If the gentleman means by “willfully,” that it was destroyed “purposely”—

Mr. Evarts—Yes, Sir; for the purpose of blotting it out of existence.

Mr. Fullerton—That does not prevent us from giving the contents of it.

Mr. Evarts—If we are to be judged by papers, let us be judged by papers, and not by papers that have been willfully destroyed; and when the parties admit that spoliation of evidence they must take the consequences of having destroyed the paper, and not reproduce not the paper but a remembrance of it.

Mr. Fullerton—The gentleman is exceedingly anxious to be judged by a paper he knows is destroyed and cannot be produced.

Judge Neilson—It has long been settled that in a case where a party would have the right to prove the loss of an instrument, and so admit evidence of its contents, he cannot be allowed to do so, provided he himself has destroyed the paper. The question is, whether this is a destruction of a paper by this witness.

Mr. Fullerton—This paper was not destroyed at a time when any litigation was contemplated; it was not destroyed for the purpose of depriving anybody from any benefit that might arise out of its particular phrases or what was written in it at all—no such object as that, as your Honor will see after a moment. It was destroyed because it was not thought advisable to keep such a paper in existence. Your Honor understands perfectly well the circumstances under which the original was destroyed. That is already in evidence. Mr. Moulton says he kept it until after the Spring of 1872, when the “tripartite agreement” was executed, and then it was delivered up to Mr. Tilton; and Mr. Tilton says his wife, in his presence, destroyed it; and your Honor will perceive that there was a reason at that time for the destruction of this paper which it was very proper to execute and carry into effect. The only reason I ever heard why we cannot give parole evidence of a written paper that has been destroyed is because it has been destroyed in fraud, for the purpose of obliterating the contents of the paper so that an advantage might be obtained in giving parole evidence of it. No such object existed in the mind of any party at that time at all. That is very apparent. The rule does not apply to a copy of the paper at all; it only applies to the original.

Judge Neilson—I am in doubt about your right to give the contents of a paper written by Mrs. Tilton, even if the papers were hers.

Mr. Fullerton—Why, Sir, this paper was read to Mr. Beecher; it was a communication to Mr. Beecher by Mrs. Tilton. It was not a communication made to anybody else, and your Honor will perceive in a moment it was designed by Mrs. Tilton for Mr. Beecher, and originally in the hands of Mr. Moulton—was intended for him; it was not delivered by Mr. Moulton to Mr. Beecher, and for that reason the copy was resorted to. Now,

what we propose to put in evidence here is a communication made by Mrs. Tilton to Mr. Beecher.

Judge Neilson—Under the ruling you have a right to do that. The question is whether you have a right to re-state a paper written by Mrs. Tilton. That is my doubt.

Mr. Evarts—A paper destroyed.

Mr. Beach—Your Honor has ruled your first proposition in regard to the right to re-state a paper written by Mrs. Tilton in your former decision. The only question now which is presented is upon the destruction of the paper.

Judge Neilson—I have not decided any such question.

Mr. Beach—I understand your Honor to decide that whatever was communicated to Mr. Beecher, although it may have been the statement of Mrs. Tilton, was admissible as between Mr. Beecher and the witness. Now, this witness states the contents of a paper not written by Mrs. Tilton, but written by himself, and which he says was in the possession of Mr. Beecher, being a copy of a statement originally drawn by Mrs. Tilton—that not being present. Now, the object of this evidence is not to prove any communication as between Mrs. Tilton and her husband: the purpose of it is to prove a communication made to Mr. Beecher, and to hear his answer to that communication—a communication which in itself, if your Honor please, reflects upon the conduct and character of Mr. Beecher, made under deliberate circumstances, at an interview called for the purpose of presenting to him a charge. The object and effect of this evidence is to show that either Mr. Beecher denied, or qualified, or admitted it. Now, no matter what the communication was, no matter from what source it originated, no matter in what form it was communicated, it is still a statement made to this defendant upon an occasion when he was called upon to defend himself from its force; and the character of the defendant presents the point and the pith of this evidence. Now, the paper referred to, in itself, did not prove the truth of what it contained. Any declaration that Mr. Tilton may have made to Mr. Beecher upon that occasion was not conclusive evidence of the proof of the charge. Its character as truth or falsehood depended entirely upon the conduct and the declaration of Mr. Beecher made in response to it. Suppose Mr. Tilton had taken from his pocket a paper and said to Mr. Beecher, reading it, “I accuse you of having illicit intercourse with my wife on a certain day;” that did not prove anything in itself; it was no evidence whatever to support the allegation. The force and effect of it depended upon the conduct and declaration of Mr. Beecher in answer to that accusation. Now, it does not involve at all a question of confidential communication as between husband and wife; and the only point of this objection, as I understand it, is that this paper was voluntarily destroyed by Mr. Tilton upon that very occasion; and, therefore, he cannot reproduce it from recollection. Now, I suppose we know very well what the rule is in regard to secondary proof of instruments lost or destroyed. I agree that, if this paper was destroyed with a fraudulent purpose, for the purpose of suppressing proof, for the purpose of advancing the interest of the party who then held it in possession, why, he cannot give *parole* evidence of its contents. But if it

was destroyed, as we propose to show, by a joint agreement and understanding, an admission and acquiescence of both these parties, at the time, they being the contesting parties and the only parties to be affected by its operation, why, then there was a mutual arrangement that this paper was no longer necessary and proper to be preserved, and that it should be destroyed. Will it be said that where two parties thus agree to the destruction of an instrument that the mouths of both of them are forever closed from publishing its contents—that it was not an innocent destruction in the way of business or by agreement, as between parties, and not possessing the fraudulent characteristic which closes the mouths of both as to its contents? Allow me to read to your Honor from the case of *Taylor vs. Riggs*:

"It is not, by any means, a matter of course to let a party give secondary evidence, even where he produces proof of the fact of the destruction. If the destruction was accidental, and occurred without his agency or assent, or even if it was voluntary and his own act, but yet done under a mistake so as to rebut all idea of contemplated fraud, inferior evidence will usually be allowed."

Now, our purpose is to show your Honor the circumstances under which this paper was destroyed, repudiating utterly the idea that there was any fraudulent purpose in the act, or that there could be any fraudulent effect resulting from it.

"Thus, should a party destroy a paper under the erroneous impression that it could be of no further value, he may, notwithstanding, prove its contents by secondary evidence."

These parties had not only a conversation, but I may say a partial reconciliation upon this occasion. They came to an understanding in regard to the contents of that instrument, and the use of the contents at that time I may freely admit, as I understand that was the fact. Here, then, is a destruction of the paper not only upon the part of Mr. Tilton, with the idea that it could be of no further use, but with the entire concurrence of Mr. Beecher, the defendant, in that conclusion. That destruction by mutual consent under the idea that then the subject matter contained in that paper was forever closed as between them, however subsequent circumstances may have revived the subject and introduced it to this controversy, nevertheless in the fact of that destruction under the impression then entertained by both of them, it cannot close the mouth of either of them as to the contents of the papers.

"Or should he destroy a note on its being paid in bank bills, he supposing at the time that they were genuine when in truth they were counterfeit, the same result would follow."

Suppose it should turn out on this occasion that upon certain assertions and considerations presented to Mr. Tilton as to the time he was drawn to the conclusion that this paper would be of no further use, but that subsequent actions on the part of Mr. Beecher revived the necessity for its use, can it be said any more than in the case of a note paid with counterfeit bills, the note being destroyed under the idea that it would be of no further use, can it be said that secondary evidence under like circumstances and involving the same principle, cannot be given? Now, the rule is:

"But a party who, under no pretense of mistake or accident, voluntarily destroys primary evidence to prevent its being used against him, or to create the excuse for its non-production, to injure the opposite party or for other fraudulent purposes,

thereby excludes himself from the benefit of inferior evidence."

It is only when the circumstances attending the destruction give rise to the imputation of a fraudulent intent, that a party is ever excluded from giving secondary evidence.

Mr. Evans—This paper formed, it is said, the basis of the errand and the basis of the communication between these parties. It was destroyed voluntarily by this witness; the original was destroyed afterwards voluntarily by himself and his wife. Whenever anybody undertakes to prove that Mr. Beecher destroyed either, or consented to the destruction of either, it will be time enough to talk about another basis of my objection than that upon which I now put it. Now, what does the law think of the kind of evidence—the oral substitute for such papers, or oral communications remembered years afterwards by a witness who says he cannot give the words? Let me read to your Honor from what Judge Redfield says, in his edition of *Greenleaf*, Sec. 200:

"In a somewhat extended experience of jury trials," says Judge Redfield in his edition of *Greenleaf on Evidence*, 239, § 200, "we have been compelled to the conclusion that the most unreliable of all evidence is that of the oral admissions of the party, and especially where they purport to have been made during the pendency of the action, or after the parties were in a state of controversy. It is not uncommon for different witnesses of the same conversation to give precisely opposite accounts of it, and in some instances it will appear that the witness deposes to the statements of one party as coming from the other, and it is not very uncommon to find witnesses of the best intentions repeating the declarations of the party in his own favor as the fullest admissions of the utter falsity of his claim. When we reflect upon the inaccuracy of many witnesses in their original comprehension of a conversation, their extreme liability to mingle subsequent facts and occurrences with the original transactions, and the impossibility of recollecting the precise terms used by the party, or of translating them by exact equivalents, we must conclude there is no substantial reliance upon this class of testimony. The fact, too, that in the final trial of open questions of fact, both sides are largely supported by evidence of this character in the majority of instances, must lead all cautious triers of facts greatly to distrust its reliability."

Now when that kind of evidence is sought to be substituted for a written letter, *littera scripta manet*, give us that and we shall know what they talked about and what was said. It is the destruction of that paper that has been the motive and the opportunity of keeping alive this scandal to this time. That paper, produced, would show exactly what was said and proposed as the subject of accusation and of consideration. That paper in the original, it is said, was in the hands of Moulton, and his pledge and promise to Mr. Beecher was that he would keep that paper, with the paper that Mr. Beecher surrendered to him, which was its retraction, so that the two should not be separated, and it should be known precisely, whenever any opportunity was raised for scandal, what the charge was and what the retraction was; and that trust assumed, upon which Mr. Beecher delivered to Mr. Moulton the retraction for safe keeping, that pledge was violated by the separation of the papers and the destruction of the one by Mr. Tilton and his wife. Now, the copy he has destroyed; and what is the rule of law in regard to persons who seek to adduce this unsatisfactory evidence which "cautious triers of facts" pay little attention to, in the

place of what all of us desire to have here as the very written proposition that was considered. In the case of *Blade vs. Nolan*, 12 Wend., giving the decision:

"Held, that proof that plaintiff deliberately and voluntarily burned the promissory note on which his suit was subsequently brought, would not authorize the introduction of inferior or secondary evidence. And *add*, that the rule allowing secondary evidence cannot be extended beyond the case where the paper was lost or destroyed by time, mistake or accident (including loss by negligence or laches of the party as his attorney), and the Court add: "*We know of no honest purpose for which a party, without any mistake or misapprehension, would deliberately destroy the evidence of an existing debt, and we will not presume one. From the necessity and hardship of the case, the courts have allowed the party to be a competent witness to prove the loss or destruction of papers, but it will be an unreasonable indulgence, and a violation of the just maxim that no one shall take advantage of his own wrong, to permit this testimony where he has designedly destroyed it.*"

If, then, the obliteration of this direct proof was the settled purpose of the witness who now appears to give its contents, that is enough. Other people's interests are not to be placed in a worse position when the motives upon which he destroyed the accurate evidence are replaced by motives for reproducing its older effect. In the case of *Renner vs. Bank of Columbia*, 9 Wheat, 581,

"The Court, Thompson, J., says: 'This rule of evidence must be so applied as to promote the ends of justice and guard against fraud or imposition. If the circumstances will justify a well grounded belief that the original paper is kept back by design, no secondary evidence ought to be admitted.'"

In the case of *Broadwell vs. Stiles*, 3 Halst. N. J., 58, it appeared that the plaintiff himself had obliterated the indorsements on a note, so that the handwriting could not be judged of, and he at the trial offered to prove by witnesses that the erased signature was not the genuine signature, which was permitted. The erasure was voluntary and not by accident or mistake. It was not pretended that it was by accident; it was voluntary.

The Court say: "He who voluntarily, without accident or mistake, destroys primary evidence, thereby deprives himself of the production and use of secondary evidence. The best evidence is required, and if a party having such in his power voluntarily destroys it, the law knows no relaxation for him, whatever may be given to accident or misfortune. The fact of destruction excites suspicion and unfavorable presumption. \* \* \*

\* \* To admit of evidence under such circumstances is as repugnant to principle as to deny a party the cross-examination of the witness of his adversary."

Now, your Honor will perceive, it does not speak of fraud. Consider before you purposely destroy an instrument, whether or no you wish to preserve its contents alive. The destruction here was on the motive of suppressing the contents, and not having the paper known. Now, when the interests of other parties require that if the paper is produced in any shape it shall be produced in its real shape, it cannot be subverted by the act of the witness himself, that has substituted his oral memory for the written instrument, under its voluntary destruction. The Court say to do that is as repugnant to principle as to deny a party the cross-examination of the witness of his adversary. In 2 Abb. Ct. App. Dec. (1864) the exception to the rule admitting secondary evidence is stated thus:

"If the papers be purposely destroyed by a party having an interest in its contents, he shall not be permitted to substitute secondary evidence, because the willful destruction of the more reliable witness tends to throw suspicion upon the verity and authenticity of the inferior evidence."

Now, there was a single case before the Supreme Court of Massachusetts known as the *Count Johannes vs. Bennett* (5 Allen Mass., 169). Count Johannes being a suitor for the hand of a woman, her parents were greatly fearful that their daughter would accept him, and procured defendant, a clergyman who had formerly been the pastor of the family, to write her a letter dissuading her from the match. The Count received the letter from his intended wife, and the day before their marriage he burned it, and did not take a copy. He subsequently sued the writer for libel. Held, that it was error to allow him to testify to its contents without first rebutting the presumption against him arising from its destruction. It does not appear that this ground for the objection to the oral evidence was assigned at the trial. The Court say this

"Was a violation of the cardinal principle that when it appears that a party has destroyed an instrument or document, the presumption arises that if it had been produced it would have been against his interest, or in some essential particular unfavorable to his claims under it."

Now, this is the inference the law draws, not dependent upon any fact. The rule of substitution is reluctantly accepted by the law, and only to avoid the greater injustice or misfortune of accident or mistake disturbing the authenticity of evidence. Now, the circumstances of this case are all one way in their indication. This interview thus held turned wholly on that paper. That was what this witness talked about; that is what Mr. Beecher talked about if he opened his mouth; that is the subject, the interest and the purpose he disclosed. It was that this communication should be the end of all. That is this witness's view. Now, this paper was destroyed. Mr. Beecher's only desire was that that paper, when it originally became the subject of consideration between him and Moulton, and he was asked to give up the retraction of that paper, that the papers should not be separated, that he should keep his own, or, if he gave it up, he should know that the paper to which it applied was kept in the same condition also for evidence. Now, whenever Mr. Beecher is shown as a party to the destruction of either of these papers, it will be time enough to suggest that the rule I have insisted upon is to be buried.

Mr. Tilton—Will your Honor have the kindness to inform me whether I can name the circumstances?

Mr. Beach—Wait one moment, Mr. Tilton.

Mr. Evarts—There is a very prominent case of *Farall vs. Farall*, in 4 New-Hampshire, where it was held that where a grantee canceled a deed with the intent to re-vest the title (and the deed not delivered or recorded), that it would not have this effect directly, yet the destruction being voluntary, he could not give it in evidence, and so indirectly it should work the consequence intended.

Judge Neilson—The deed must have been delivered in that case.

Mr. Evarts—Yes; but probably not recorded.

Mr. Beach—This case last read by the learned counsel, I think, illustrates the proposition which I intended to submit to your Honor, that all these cases read by the counsel apply to examples where the instrument in question was in some degree the foundation of the action, or direct and influential evidence in itself of the action. Now, this paper, Sir, which we offer to prove the contents of, was an incidental circumstance in the course of the interview between the parties to this action. The counsel falsely assumes that it was the foundation of the interview. It may have been the instigation of that interview, but it was by no means the essential subject-matter of the communication which then passed between these parties. Had not that paper been produced and read from, had Mr. Tilton upon that occasion stated from recollection and by parole, as he did state to Mr. Beecher, the contents of that instrument, nobody would pretend that the paper itself must be produced. It was not what the paper contained; it was what Mr. Tilton stated to Mr. Beecher, the impression conveyed to the mind of Mr. Beecher in regard to the subject of the then communication made by Mr. Tilton. Whether it came from the paper or from the unaided recollection of the witness is totally immaterial. In the case of the deed, the deed was the evidence of title. In this case the paper which Mr. Tilton read from was not evidence at all as between the parties. Your Honor perceives at once that the declarations contained in the paper cannot be held as evidence of the fact which it recited. It was the statement which the paper conveyed to Mr. Beecher I repeat, and his acceptance or rejection of its truth, which constitutes the pith of the evidence, and whether Mr. Tilton stated the contents of that paper correctly or erroneously is a matter totally immaterial. It was the idea conveyed to the mind of Mr. Beecher, no matter what form of words, it was the substance of the fact communicated to him that he was called upon to meet upon that occasion. But will your Honor permit me to refer you again more particularly to the case of *Riggs vs. Taylor*, 9 Wheaton, 483.

"Thus, should a party destroy a paper under the erroneous impression that it could be of no further use, he may, notwithstanding, prove its contents by secondary evidence."

Now, Sir, that is the general principle applicable to all cases. And it is not true, as the counsel assumes, that the law permits this secondary evidence reluctantly. If a party destroys an original under a mistake of fact, under the idea that it is of no longer use, as if he destroys a paid note, supposed to be paid by genuine bank bills, or as if he throws aside a letter written in the ordinary course of business which he does not conceive important to preserve, whenever it becomes necessary to prove the contents of the note or of the letter, the law, in the pursuit of truth and justice, and with indulgence to the circumstances under which the paper may have been destroyed, permits the secondary evidence, and there is no reluctance on the part of the law in the permission; there is nothing in the rule which is an indulgence to either of the parties: and it is only when the destruction appears to have been not only voluntary, but fraudu-

lent, that the party is concluded by its destruction; I conceive, Sir, that this law is abundantly established, not only by authority but upon principle. But your Honor will perceive that we propose to show this destruction was by the mutual concurrence of the parties to the interview on that occasion. Mr. Beecher concurred in it; and the result of that interview produced the destruction of the paper; and if subsequent developments between the parties renders the contents of that letter at all material, there is nothing in this rule which precludes either from testifying. The gentleman apprehends mischievous effects from this rule, and at the time of the decisions to which he referred, and upon which we must chiefly rely, there was some force in the suggestion as to a party who destroys a paper in regard to which he seeks to give secondary evidence, the lips of his adversary being closed as to its contents. But here Mr. Tilton gains no advantage. Mr. Beecher is a witness equally competent, we may assume equally credible, with himself, knows the contents of this paper, as communicated to him. He is at perfect liberty to dispute the testimony of Mr. Tilton, in regard to its contents, and may himself give the general idea and impression of the subject in the paper handed to him. Where is the mischief, Sir, where is the danger? If there is any misapprehension in the recollection of Mr. Tilton, it will be met at once by the conflicting memory of Mr. Beecher. The evidence of these gentlemen, their credibility being equal, is balanced upon that question, and it simply becomes a point of memory as between the two. And so far, Sir, as the argument of the learned counsel is directed to the question of the credibility and the effect of the confessions or declarations or proof of them made by parole, it is not necessary for me to discuss here that question. Counsel has used the occasion for the purpose of making some suggestions which may be pertinent in the ultimate argument of this cause, but do not seem to me to be so here; and I, therefore, submit to your Honor, as this paper is but an incident in a general conversation, a transaction as between these parties, and as it was destroyed by the mutual assent of both parties, nay, with the concurrence and at the request of Mrs. Tilton herself, I submit to your Honor that this evidence must of necessity be competent, and it is essential for the purpose of understanding what was the declaration by Mr. Beecher upon that occasion, and giving point and effect to those declarations.

Judge Nelson—Mr. Fullerton, proceed with your examination, omitting for the present the contents of that letter or paper.

#### THE VERBAL RECITAL OF GUILT.

Mr. Fullerton—What did you say to Mr. Beecher upon that occasion? A. After I read to him the paper he lifted his hand as if he were about to speak, and I said, "No, Sir; hear me through, and speak then;" and I then detailed to him what, by the ruling of his Honor, I am not permitted to disclose here, that is, the story which Mrs. Tilton had told me in the middle of the preceding Summer.

Mr. Beach—No, Sir; that is not excluded.

Mr. Evarts—We object to it.

Mr. Fullerton—Well, it is not excluded yet.

Judge Neilson—Well, give the conversation, whatever it was.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Give us the conversation. A. I told Mr. Beecher that in the early part of July, previous to that interview, Mrs. Tilton had come home unexpectedly from the country, and had said to me that the object of her return was to communicate to me a secret, which had long been resting on her mind like a burden, which she wished to throw off; that she had, on several previous occasions, come almost to the point of making such a statement to me, and once in particular while on a sick bed, but that she had never until then, having been restored to health, been brought quite to the point of courage to make the disclosure; that before she would announce to me what the secret was, she exacted from me a pledge that I would do no harm to the person concerning whom the secret was to be told, and furthermore, that I would not communicate to that person the fact that she had made such a revelation to me, because, as she said, she wished to inform him of that revelation herself; that I had given to her this pledge, my word of honor, that I would neither disclose her secret, whatever it might be, nor would I injure the person concerning whom the secret was to be told; that she then said to me that it was a secret between herself and the Rev. Henry Ward Beecher, her pastor; that, as I was well aware, there had been, during a long course of years, a friendship between herself and her pastor; that this friendship, contrary to my expectation or belief, had been in later years more than friendship, it had been love; that it had been more than love, it had been sexual intimacy; that this sexual intimacy had begun shortly after the death of her son Paul; that she had been in a tender frame of mind, consequent upon that bereavement; that she had received much consolation during that shadow on our house, from her pastor; that she had made a visit to his house while she was still suffering from that sorrow, and that there, on the 10th of October, 1868, she had surrendered her body to him in sexual embrace; that she had repeated such an act on the following Saturday evening at her own residence, 174 Livingston-street; that she had consequent upon those two occasions, repeated such acts at various times, at his residence and at hers, and at other places—such acts of sexual intercourse—continuing from the Fall of 1868 to the Spring of 1870; that in July, 1870, she had made to me a confession in detail of those acts; that she had given to me also, during that recital, many of the reasonings by her pastor communicated to her to change what was her original scruples against such a sexual intimacy.

Mr. Evarts—Mr. Tilton, do I understand that this is what you said to Mr. Beecher? A. Precisely, Sir; that she had in the early stages of their friendship been greatly distressed at rumors concerning Mr. Beecher's moral integrity; that she wished to shew to him that there was a woman who was superior to the silly flatteries with which many ladies in his congregation had courted his society; that she wished to

demonstrate the honor and the dignity of her sex; that she had done so in her own thought, until finally she had been persuaded by him, that as their love was proper and not wrong, therefore it followed that any expression of that love, whether by the shake of the hand, or the kiss of the lips, or even bodily intercourse, since it all was the expression of that which in itself was not wrong, therefore that bodily intercourse was not wrong; that she had said to me that Mr. Beecher had professed to her a greater love than he had ever shown to any woman in his life; that she and I both knew that for years his home had not been a happy one; that his wife had not been a satisfactory wife to him; that she wished—that he wished to find in her, Elizabeth, the consolation, the help to his mind, and the solace of life which had been denied to him by the unfortunate marriage at home; that he had made these arguments to her during the early years of their friendship, and she had steadfastly resisted; that he had many times fondled her to the degree that it required on her part almost bodily resistance to be rid of him; that after her final surrender during the period of her sorrow, in October, 1868, he had then many times solicited her when she had refused; that the occasions of her yielding her body to him had not been numerous, but that his solicitations had been frequent and urgent, and sometimes almost violent; that she made this confession to me because the sense of deceitfulness in her mind was a pain to her conscience; that she had gone away from home in the Spring—parting from me—under a cloud, as I knew, and that I had written to her in her absence a letter, saying that unless she told me the truth, that if she ever lied to me as she had done in reference to a few minor matters, that I never again could hold her in any respect; that that letter had rankled in her thought and heart; that she felt that she never could look me honestly in the face again until she had made a full and free confession; that she had come down from the country on purpose to make it, and that she had made it with great modesty and delicacy and womanly feeling, without giving evidence that the great fact which she confessed was wrong, but that the wrong which she wished to throw from her mind was mainly the necessary deceit with which she had hitherto concealed it from her husband. In making this recital of what I said on that occasion to Mr. Beecher, I beg again to remind the Court that I do not undertake to repeat the exact language which I used. It was a long story. I told it from a little memorandum which I had made, of dates, times, extracts from letters—a little memorandum made on the back of the white envelope, unaddressed, in which Mrs. Tilton's statement that evening had been lodged; I had taken out the statement and handed it to Mr. Moulton; I had said to him—

Mr. Evarts—Well?

#### MRS. TILTON'S INTERCESSION FOR BEECHER.

Mr. Fullerton—You need not state that. A. On the back of that envelope I had made these memoranda; the copy was made on the same envelope, and in my narration to Mr. Beecher I unconsciously picked the paper to pieces, and at the end of my narrative I had destroyed not



only the memoranda of the conversation but also the copy of the paper which Mr. Moulton possessed. I furthermore told Mr. Beecher on that occasion that Mrs. Tilton, after her confession in July, had gone into the country; that she had become a broken-hearted woman; that later in the Summer she had gone from her country avocation home, to the far West, or rather to a considerable distance in the West; that she had returned from the West a few weeks previous to this interview, I think about the 1st of December, this interview taking place on the 30th; that shortly after her return, or almost the first conspicuous incident that happened to her husband since her return, was the interview which I had had with Mr. Bowen on the 29th of December, which had resulted in my demand upon Mr. Beecher that he should retire from his pulpit. I told him that I had informed Mrs. Tilton of what I had done with Mr. Bowen, and that she received the intelligence with an expression of heart-break and grief. I believe, however, I have already recited that. I told him that in regard to the statement which she had written, that it had come about in this way: she had asked me as soon as I had informed her of the letter that I had written to Mr. Bowen—she had asked me immediately to send for Mr. Beecher, and to hold an interview with him in her sick chamber, that she might hear me say to him that that letter should be withdrawn, that she might hear with her own ears, immediately, and before he should have any time to be troubled about it; that though I had joined with Mr. Bowen in demanding Mr. Beecher's retirement from the pulpit, yet for my wife's sake, and for the word of honor which I had pledged to her to do Mr. Beecher no harm, that I should send for him and that she should hear me immediately and without delay take back that letter, and assure Mr. Beecher that I would not unite with Mr. Bowen in making any assault upon him, or in demanding him to quit the pulpit or the city. I told Mr. Beecher furthermore that I had refused to acquiesce in Mrs. Tilton's request that such a personal interview should be held between him and me, in my wife's chamber. I then told him that she had insisted four or five times, until finally she begged me to be the bearer of a letter to him; that I had then declined that; that finally, she asked me if I could not devise some method which would not be humiliating to my pride, to have an interview with him—a friendly interview, as friendly as possible, and after thinking the matter over, that I had said to her that if she would agree I would request Mr. Moulton to bring about such an interview between Mr. Beecher and myself. She said she was only too happy to hear me say so, and she wrote a statement to which I have referred, to be the basis of an interview between Mr. Beecher and myself which Mr. Moulton should bring about. After she wrote it, which was on the 29th of December, I still felt great reluctance that Mr. Moulton should know the facts of the case.

Judge Neilson—Better adhere to that in your conversation.

Mr. Fullerton—He is telling Mr. Beecher.

Judge Neilson—Oh!

The Witness—That I had carried that letter—

Mr. Evarts—Is this what you told Mr. Beecher? A. Yes, Sir; that I had carried that letter ever since yesterday, that is, since the 29th, and had only made up my mind a few hours ago, I said, to permit Mr. Moulton to know the facts, and to bring about the interview. I cannot remember distinctly all that I said to Mr. Beecher, the substance of it; the main portion of it consisted in the recital to him, as nearly as I could, of Mrs. Tilton's story. Toward the conclusion of it, I again reminded him of the object for which I had sent for him, which was that though I had communicated to him, through Bowen, a demand for his retirement from his pulpit, yet that, at my wife's earnest entreaty, I revoked that demand, and for my wife's sake, and not his or mine, I pledged to him my word that I would not assist Mr. Bowen in the hostility which he had meditated against Mr. Beecher.

Q. Are you through now with your narrative substantially?

A. At the close of the narrative, Mr. Beecher sat in his chair, and I thought he was about to speak; I waited a moment; his face, and his head, and his neck, were blood-red, and I feared for the moment that there would be some accident to him. He burst out with these words: "Theodore, I am in a dream; this is Dante's Inferno." I had meanwhile gone to the door, unlocked it, but partly opened it, and said to him: "You are free to retire." He did not seem to hear what I said; and I again pointed to the door and said that he might go. He rose and walked toward the door, as if he was going out without saying to me a word; then he suddenly turned, and looking me in the face he said: "May I go once again, and for the last time, to see Elizabeth?" I instantly answered no, and then, yes. If I am allowed to state the reason I will state the reason.

Q. No; state what you said? A. I said no, and then yes; then I said: "But in going to see Elizabeth, see to it, Sir, that you do not chide her for the confession which she has made. She is at home—sick, heartbroken. I charge you that you visit upon her no reproach for confessing to her husband; for if you smite her with a word," I said, "I will smite you in a ten-fold degree. I have hitherto spared your life when I had power to destroy it; I spare it now for Elizabeth's sake; but if you reproach her I will smite your name before all the world." As he turned to go away, I said to him—I don't think I can recall the exact words, but the substance was this, that I can remember—"that his duty was henceforth so to conduct his battle with Bowen that Elizabeth and her name and fame should not be involved." He stood a moment on the threshold, and putting both his hands, in this way, up to his head—the redness in his face increasing all the while—he said: "This is all a wild whirl!" and he left me and went down the stairs.

Q. Did you go to the head of the stairs? A. I did.

Q. State whether you saw Mr. Moulton when you arrived there? A. I saw Mr. Moulton at the foot of the stairs.

Q. Did you hear what occurred between Mr. Moulton and Mr. Beecher? A. I did.

Q. State what it was? A. Mr. Beecher went down the stairs with his hand on the rail, staggering, and I thought he was about to fall; coming toward the foot of the stairs Mr. Moulton there stood and I heard Mr. Beecher say to Mr. Moulton: "Have

you seen Elizabeth's confession?" Mr. Moulton bowed and said, "Yes; I have." Mr. Beecher then said: "This will kill me."

Q. And what became of these two persons then? A. Mr. Beecher and Mr. Moulton immediately went into the parlor and closed the door behind them.

Mr. Fullerton—I suppose I need not commence a new topic, Sir; it is the hour of adjournment.

Judge Neilson—Gentlemen will please keep their seats a moment. The Jury will be in their seats at two o'clock.

After recess the examination of Mr. Tilton was resumed, as below:

Mr. Fullerton—In that interview did you state to Mr. Beecher anything about the fact whether you had learned that no communication had been made to him of Elizabeth's confession to you? A. Yes, Sir.

Q. What did you say upon that subject? A. I told Mr. Beecher that when I had written to Mr. Bowen, and had sent the letter demanding his retirement from his pulpit, that I immediately communicated that fact to Mrs. Tilton, who said at once that Mr. Beecher might not and probably would not understand the reason of that demand, because she had not yet communicated to him the fact that she had ever divulged to me the story of their criminal relationship.

Q. Did she tell you anything further upon that subject, about the communication of the fact to Mr. Beecher?

Mr. Evarts—With that we have nothing to do.

Mr. Fullerton—Which was communicated to Mr. Beecher?

Mr. Evarts—Well, I think we are entitled to have the question put distinctly. "Did you say anything further to Mr. Beecher?"

Mr. Fullerton—Well, that's the question I have put, only in my form instead of the gentleman's, that is all.

Mr. Evarts—No, it is not permitted to ask this witness to tell whether his wife told him anything.

Judge Neilson—Of course.

Mr. Fullerton—And for that reason I have not asked it.

Mr. Evarts—Ah! your question was, "Did she tell you anything else which you communicated to Mr. Beecher?"

Mr. Fullerton—Yes, Sir.

Mr. Evarts—And that is not allowable.

Mr. Fullerton.—Yes, it is allowable.

Mr. Evarts—Well, the Court has said otherwise.

Judge Neilson—Suppose you ask him whether he said anything to Mr. Beecher on that subject, and, if so, what.

Mr. Fullerton—Very well, Sir; let that be the question, then; all that I want is the fact. [To the witness]: Did you say anything further to Mr. Beecher upon that subject? A. I don't recollect anything in particular, except that I mentioned to him the reason why she had made a written statement of a fact which he, of course, knew as well as she, and that the reason for her communicating in writing the fact that she had confessed to me, was that she had never previously communicated that fact to him, namely, her confession to me—in other words that the letter—

Mr. Beach—Yes, yes, in other words: state—

The Witness—In other words, that the note or paper which

Mrs. Tilton wrote, and which Mr. Moulton then had in his possession, and of which I read a copy to Mr. Beecher, was written by Mrs. Tilton because she had not previously informed Mr. Beecher that she had made a confession to me, and that that was the method which she took to inform him that she had made to her husband such a confession.

Mr. Evarts—You told all this to Mr. Beecher, did you? A. The substance of it all; yes, Sir; I can't give the exact words in which—it was a long narrative.

Mr. Fullerton—Now, I will put this question to you. State, as near as you can recollect, the contents of this paper which you read to Mr. Beecher.

Mr. Evarts—Well, that we object to; you have destroyed it.

Judge Neilson—I must rule that out.

#### ANOTHER CONTEST OVER THE WRITTEN CONFESSION.

Mr. Fullerton—Enter an exception to that ruling. [To the Witness]: State as near as you can what you stated to Mr. Beecher from that paper which you held in your hand.

Judge Neilson—He has given us the conversation.

Mr. Fullerton—The conversation, Sir, which occurred subsequent to the reading of the paper.

Judge Neilson—I don't think this is a paper that ought to be repeated here in any sense. I so rule, and you take an exception, please.

Mr. Fullerton—Well, I only put it in another form so as to save the exception.

Mr. Beach—But the proposition now is to prove what the witness said to Mr. Beecher was the confession or statement of his wife.

Judge Neilson—Yes.

Mr. Evarts—He has stated that already.

Judge Neilson—In other words, giving him the contents of the paper.

Mr. Beach—Certainly.

Judge Neilson—Well, I rule it out.

Mr. Evarts—He said that he read it.

Mr. Beach—Wait one moment; I think we should understand this, Sir. Does your Honor rule this out upon the idea that it was a confidential communication?

Judge Neilson—Partially so. I don't think it is proper for me to receive anything that this lady writes under any circumstances, unless it comes in without objection. Two of her letters are in already, because they were read without objection. My ruling is on both grounds.

Mr. Beach—Well, is your Honor's mind open to approach on this subject?

Judge Neilson—Well, really, I hardly think it is now. I have a very firm conviction about it.

Mr. Beach—And your Honor will not listen to authorities in point?

Judge Neilson—Oh! I don't say that, Sir. I would be sorry to say that, even, unless it was some elementary statement which we ought both to know, of course.

Mr. Beach—Have you sent for Greenleaf?

Mr. Fullerton—Yes, Sir.

Mr. Beach—In a case before Lord Hardwicke, Phillips says, in the first of Cowen and Hills, notes upon the text :

"He would not suffer a wife to be a witness though her husband consented. 'The rule,' he said, 'is for the peace of families, and such consent should never be encouraged.' But in another case, Best, Chief Justice, expressed his willingness to receive the evidence of the defendant's wife, if the defendant consented ; but there he refused his consent. Where a party consents that his wife shall be examined as a witness against himself, there can be no violation of confidence, which is a principal ground of the rule of exclusion. But the probability that, if such evidence were generally admitted, family dissensions might be increased, is not altogether obviated by the circumstance of the consent."

Now, here, Sir, we show, not only the consent of the wife, but the express injunction of the wife that this should be communicated to Mr. Beecher. It was prepared for the very purpose of communication to him, and intrusted to her husband for that purpose. Here, then, are the two parties who are alone competent to insist upon the inviolability of what are called confidential communications, agreeing that they shall be communicated to another party, that party being himself intimately interested in the subject of the communication. Now, under this ruling, Sir, that here is the common consent of the parties to the communication of this matter to Mr. Beecher for the common safety and preservation of both the parties and with reference to a common desired result, it avoids entirely the objection of confidential communication.

"But the same reason applies to the declaration of the husband or wife. Where an action is brought by or against the husband, or by the husband and wife jointly, in right of the wife, the general rule is that the declarations of the wife are not evidence against or for the husband. In the action for trespass, etc.—in an action for goods supplied to the defendant's wife, who, as it appeared, lived separate, upon an allowance from him—it was held that her declarations as to the receipt of the allowance could not be admitted in his favor. A discourse between the husband and wife in the presence of a third person, may be given in evidence against the husband, like any other conversation in which he may have been concerned. Letters written by the husband or wife are subject to the same rule as their declarations."

Now, it makes no difference, Sir, that this communication came from Mrs. Tilton in the shape of a letter or a statement. I suppose it will be adjudged precisely the same as if Mrs. Tilton was present, making this declaration through her husband, authorizing the husband to make the declaration, or making to the husband in the presence of Mr. Beecher, the declaration contained in this instrument. Here is express authority, Sir, that such a communication between the husband and wife, in the presence of a third party, can be proved. And it seems to me, if your Honor recurs for one moment to the principle of the rule upon which this exclusion is founded, you will perceive that such declarations must be admissible. The rule of exclusion, Sir, is founded in the idea that the communication is made in the secrecy of the domestic household, and upon the faith of the relation between husband and wife; that it is a communication of secrecy which each understands to be inviolable, and which is necessary to be cultivated for the purpose of promoting the confidence of the marital

relation. Your Honor will at once grant that this is the rule—the principle upon which the rule is founded. Here is a communication evidently not made upon such reliance. Mrs. Tilton never read this statement to her husband in the confidence and faith of their relation, and upon the belief that it would be confined to his own breast. On the contrary, it was made for the purpose of communication to the very man to whom it was communicated. Now, Sir, the idea of secrecy, the idea that there was any confidence or faith as resting upon the relation of husband and wife, between her and Mr. Tilton, is entirely disposed of by that consideration. And how will your Honor answer this express authority ?

Judge Neilson—I confess I think I should find it difficult, on second thought, to answer it. I would like to hear Mr. Evarts on that point.

Mr. Beach—I had a reference, Sir, if your Honor will permit me to refer the counsel to it. While the gentleman is addressing you, Sir, I will find the additional authority. I do not put my hands upon it at the moment.

Mr. Evarts—My learned friend puts it on the proposition, as I understand him, cited from "Phillips on Evidence," that a discourse between the husband and wife, in the presence of a third person, may be given in evidence against the husband like any other conversation in which he may have been concerned; that is the proposition. Now, that proposition, correct enough, no doubt, in the case in which it is laid down, would require a good deal of qualification as to its not being a confidential communication, notwithstanding there was a third person present, because there might be a third person in the position of counsel, or a third person in the position of physician, or a third person in the position of parent or adviser in the very confidence which was being reposed. But obviously that case was not concerned in an inquiry of that kind. Now, it is said, that this letter, or written paper, addressed by Mrs. Tilton to some one, I suppose—Mr. Beecher, perhaps—is not in the position of a confidential communication, because it was confided to the husband to be repeated to Mr. Beecher.

Judge Neilson—That is the point.

Mr. Evarts—But, if your Honor please, the confidence in the husband by the wife was that it was to be repeated to Mr. Beecher in her interest and for the privacy of the matter and to avoid promulgation. I take the witness's own view of it. That was used in that interest and for that purpose, and the whole object of this interview was the securing, from Mr. Beecher of suppression of any controversy, in any tendency it might have, to involve this question of this wife. That is the story. One would suppose Mr. Beecher might be trusted if there was any truth in this matter to keep this thing private on his own account, as people usually do in their own interest. But that is the story; that is the proposition. And now, when the paper is destroyed, the proposition is to promulgate its contents (notwithstanding the destruction of its terms which the wife might be willing to be bound by and which could be read), as what she had consented to have communicated to Mr. Beecher, and, after the destruction of this little shred of protection of the wife's pa

in her husband's mouth, on the plea, that it was not confidential, a reproduction of the destroyed paper. Now, if your Honor please, I have not heard any answer satisfactory to my views of the law, and I have not heard from your Honor that you had heard any such views as entitled this speaker to take the place of his wife's statement and of that written paper which he has destroyed. Is it pretended that anything that has fallen from him now, in the way of evidence about that paper, has changed it from the position in which it stood when he said that he had destroyed it, and when my learned friends propose to put the proposition of its introduction on the consent of Mr. Beecher to its destruction. We have had the narrative of picking a paper to pieces. Now, whenever that is brought up it may be time for me to remark upon that; but I stand now upon my proposition in the first place that the whole narrative is inadmissible, as proceeding out, on his own theory of it, from a confidence of the wife, the letter as much as any other part of it, and the letter itself, as an item of evidence orally, because it has been destroyed. Because, your Honor will notice that if there has been any change of this copy, in its manner of destruction, the original at least was destroyed voluntarily by this husband and this wife.

Mr. Beach—The additional authority to which I wish to draw your Honor's attention is contained in the notes to "Phillips on Evidence," by Edwards, in a note to the 65th page of the first volume:

"The husband being dead, the wife is not incompetent to prove a fact coming to her knowledge by the open declaration of her husband in the presence of other parties"—referring to the 14th of New-Hampshire and other cases.

"But she cannot disclose communications made to her alone."

Now, the rule of exclusion, as your Honor has already heard from repeated authorities, applies as well to the case where the husband or wife, one of them, is dead, or to the case of a divorce. And yet it is here held in our own courts, that she may testify to what is expressly called open declarations of her husband and in the presence of third persons. My proposition is that if Mrs. Tilton had been present at this interview between her husband and Mr. Beecher, that everything she and her husband said upon that occasion would be competent, because, in the language of the authority, it was an open declaration in presence of third persons, and avoided entirely the idea of confidence and faith in reliance upon the matrimonial connection. How is it possible, if your Honor please, to say that a communication which husband and wife make in the presence of a crowd, or in the presence of a single person, is a privileged communication upon the idea that it is communicated between the two as a secret extorted by the confidence and the faith of the relation between the parties, and as necessary to the continuance and the maintenance inviolable of that relation, and of all the associations which spring out of that relation. Here is a changed condition, Sir. Here is, as we must accept the evidence in its present condition, a dishonored wife making the communication of her disgrace to her husband, and directing that husband to have an interview with her seducer, and the whole subject of the crime conversed between the two. Can it

be said that a communication of that character is a confidential communication, founded upon the relation of husband and wife and given only upon the faith of that relation and in the confidence of its inviolability. With great respect, Sir, may I not say, what utter nonsense it is to contend that any such confidence existed between these parties at that time, or that this communication was made in reliance upon it, when the wife in making it directs the husband to communicate it to her seducer? But, says the counsel, this was made for the benefit of the wife, to secure to her concealment and secrecy and immunity. What, according to the evidence, was the cause of this communication? Why, this husband had united with Mr. Bowen in a scheme to demand Mr. Beecher's retirement from the pulpit, and from his residence in the City of Brooklyn. It afflicted her sensitiveness and her sympathies. He was a great and good man, whom she loved, and whom she did not wish to be destroyed. She had extorted from her husband, at the time of her original communication, that he never would lift his hand in hostility against the person to whom the secret related, and in the pursuance of that feeling, and in its sympathy, when she found this husband uniting with the enemy of Mr. Beecher, she implores him to desist, in lists upon it as a concession from him to her, not for the purpose of protecting her from any disclosure but for the purpose of carrying out the original pledge which she in her love for this man exacted, given by Mr. Tilton at the time the original communication was made. It was to protect and preserve Mr. Beecher, it was to save him from the cooperation of her husband in the attack and hostility which that husband and the wife understood Mr. Bowen was then prosecuting against Mr. Beecher, and for his protection she directs her husband in pursuance of her wish to have an interview with Mr. Beecher to assure him of his friendship and his aid in opposition to Mr. Bowen. Now, your Honor, if it is to be held under these circumstances that a communication of this character, made for this purpose, stated to Mr. Beecher, is not to be received in evidence, I ask your Honor to find some way of escape from these authorities to the effect that declarations of this character are admissible—admissible under all circumstances and for all purposes. So far as the counsel's objection to the whole of this interview is concerned, I understand your Honor to have ruled that question, and I do not propose to discuss it unless your Honor wishes to hear further debate and further authority upon that question; but I am very well assured, your Honor, that, if, according to your Honor's ruling, we are entitled to give this interview between these two contending parties upon this subject, that this letter, the statement of which was made to Mr. Beecher, the contents of which he understood, and if we are further at liberty to prove the manner in which he met that statement, this letter, although it may be destroyed, must be evidence against him. Now, Sir, I was mistaken in stating to your Honor upon my former argument that this paper was destroyed by the mutual assent of the parties. From my general understanding of what the evidence would be I had supposed that there was a more deliberate and self-possessed conference between these two gentlemen, and that

there was some agreement in consonance with the wish and desire of Mrs. Tilton; but it now turns out, Sir, that in the agitation of that narrative made by Mr. Tilton to Mr. Beecher he unconsciously destroyed this paper contained in the envelope upon which he had memorandums of the subject upon which he was communicating to Mr. Beecher. I have read to your Honor, that if a paper is destroyed by mistake, without any intention of suppressing evidence, without any fraudulent purpose, that secondary evidence of its contents is admissible. This rule applies, Sir, where there is an unconscious destruction, where it is done without any purpose, without any consciousness at the time that it is being destroyed, and doesn't it fall under that rule which holds that where papers are destroyed by mere accident, it is competent to give secondary evidence? I submit to your Honor that it does, that these authorities are so direct and pertinent upon this question, that there is no possibility, independently of the reasoning, upon principle for the exclusion of this paper.

#### THE WRITTEN CONFESSION EXCLUDED.

Judge Neilson—I still think, Sir, that I must rule out the paper. Take an exception.

Mr. Evarts—I now move, if your Honor please, to raise this question, which formed, no doubt, a considerable element in our discussions of last week, and which I do not propose to renew at any length. I move to strike out the evidence given of this interview, because it is evidence upon the part of the husband pertinent to the issue, if at all pertinent to the issue, with the purpose and the tendency to disparage the reputation of the wife, to wit, to prove her adultery. Of course it does not prove it. It is merely a statement by their witness of what passed between him and Mr. Beecher, as based upon something that may or may not have passed between him and his wife. Your Honor has not allowed that to be proved as a matter of fact. But now the purport and tendency of this evidence, to wit, as a link or part of the progress of the proofs toward the demonstration of the adultery of the wife, is apparent. The generality of the question permitted an exploring of the interview, and when it is given it shows that its tendency and pertinency, if it have any proper tendency, and have any pertinency, is to prove an adultery of the wife as a link or part of the proof. I move to strike it out, it not being competent by our laws for the husband or the wife to testify against the repute of another in that degree of crimination.

Judge Neilson—You must take an exception, Sir; I deny the motion.

#### THE UNEXPECTED MEETING AT MOULTON'S.

Mr. Fullerton—I then call your attention, Mr. Tilton, to an interview with Mr. Beecher on or about the 3d of January, 1871. Do you recollect such an interview? A. Yes, Sir.

Q. Where did it take place? A. It took place in precisely the same room in which the other was held, that is, the second story, front room, in Mr. Moulton's house in Clinton str. et.

Q. Under what circumstances did you and Mr. Beecher

meet there on that day? A. Under these: I went to Mr. Moulton's house during the forenoon, perhaps not long after the morning. Mr. Moulton had not yet risen, being slightly unwell. While I was sitting with him the door bell rang and suddenly, without any expectation on my part, and I think also without any expectation on Mr. Moulton's part, Mr. Beecher entered the room.

Q. Now, please state what occurred at that interview? A. I instantly arose from my chair, and what I did I do not exactly know. I only remember that Mr. Moulton suddenly said to me that I ought not to refuse to salute Mr. Beecher in his house. I said to Mr. Moulton, "How can you expect me to speak to a man who has ruined my wife, broken my home, and who then gets my permission, in a sad and serious hour, to visit that woman, and uses that permission for the purpose of dictating to her and making her write down a lie?" Mr. Moulton then said to me, "But, Theodore, you must remember that Mr. Beecher has sent to you a letter through me humbling himself before you as he does before God. What more can you ask of him? What more could you ask of any man in such circumstances as that?" "Furthermore," said he, "this is my house, and Mr. Beecher is at present my guest, and you will oblige me," said Mr. Moulton, "if you will speak to him, at least as much as to say, good morning." I did say, "Mr. Beecher, Good morning." Mr. Beecher meanwhile sat on the edge of Mr. Moulton's bed. He turned around to me and said: "Theodore, I don't marvel that you do not feel like speaking to me. I feel more dread of being spoken to by you than you can possibly feel repugnance in speaking. All I have to say is," he remarked, "that I hope you found it in your heart to accept the communication which I made to you through Mr. Moulton. I dictated it," he said, "out of heartbreak and anguish. It expressed my sincere feelings. Nevertheless," said he, "I know it was but words, and words are little and nothing, and no words of mine, nor any acts of mine can ever undo the great wrong that I have done to you and to Elizabeth." He then said, "I do not put in any plea for myself, but only for her. Indeed, if you wish to carry out the demand which was communicated to me in your letter of Christmas Day, that I should retire from my pulpit, you have only to say the word and I will retire. The renting of the pews shall not go on. I will bow my head and go out of public life; only," said he, "I have this request to make—that if it be necessary for you to make a public recital of this case, that you will give me notice in advance of your intention to do so, in order that I may either go out of the world by suicide, or else escape from the face of my friends by a voyage to some foreign land. And, furthermore," he said, "I ask you to do me this favor: that whoever else in the wide world is to be informed of the facts of this case, at least my wife shall never know anything on the subject, for she is not only your enemy but may very readily become mine. If you can spare her the pang of having these facts communicated to her, I will consider that it is an additional occasion of gratitude." He said also that he did not wish me to understand that he solicited any mercy for himself alone, but only for his family,

and particularly for Elizabeth. He said: "I do not beg at all for myself, but for her. She was not to blame. I was altogether at fault. My sacred office and my years should have combined to have made me her guardian, not her tempter." He furthermore told me that the relationship which had existed between himself and Elizabeth, had not always been marked by sexual intimacy; that the earlier years of it were free from any such taint and crime, and that only during the last year, or a little more than a year, he said, and that year shortened by a country vacation, had that sexual intimacy existed. He furthermore said that he did not know how he could offer any mitigation or excuse for himself, and yet he said he wanted me to believe for Elizabeth's sake, and also for his own, that he had never sought her for any vulgar end, but that their sexual commerce had been through love, and not through lust; that he had never met any woman whom he had loved so well; that he had sought companionship in her mind; that he had taken manuscripts to her that she might be his critic; and that the blame—and this he repeated two or three times over—"The blame," he said, "belonged to me and not to her." And he added—and when he did so the tears came into his eyes—he added some words like these: "Tell me, before you go away, can you possibly ever reinstate Elizabeth in your respect and love?" He then buried his face in his hands; he sat on the edge or near the foot of Mr. Moulton's bed, and he used some figure of speech; I won't undertake to quote the exact words, but the picture was like this: he drew the figure of a man sitting on a brink, and said that he was dizzy, and was like one on the edge of hell. The only other words that I remember this moment, which he said, were to the effect that he was in great grief through Mr. Bowen's action in my case, the termination of my engagements with Mr. Bowen's papers, and said he felt that Mr. Bowen's suddenly changed mind had been largely due to statements which Mrs. Beecher had made to Mr. Bowen, and to statements which he himself had made, though he said that Mrs. Beecher had been more mischievous in her utterances than he. He mentioned also that he had voluntarily written a letter to Mr. Bowen, either that day or the day before, in which he had taken back some of the unkind references or injurious statements which he had made to Mr. Bowen concerning me.

Q. How long did that last interview last? A. I don't know how long Mr. Beecher and Mr. Moulton remained together. I remember that Mr. Beecher said something—I cannot distinctly bring it to my mind at this moment—which led him into a violent outburst of grief. He sat and wept again and again, and his face assumed a very peculiar redness, in the midst of which Mr. Moulton asked me if I would retire and leave the two together alone, which I did.

Q. Did you at that time leave the house? A. Yes, Sir.

Q. Nothing further, then, occurred that day? A. Nothing further occurred that day. I am not able at this moment to say whether or not I have given you all the conversation that took place. I have a floating recollection in my mind that I have omitted something, but at present I do not distinctly recall what it is.

#### THE SECOND MEETING AT MOULTON'S.

Q. Then, if you please, we will go to the next interview, of January 7th, or about that date. Do you recollect on that day of having an interview with Mr. Beecher? A. I don't recollect precisely as to a date. I remember that after the interview which I have just narrated, either in whole or possibly only in part—a few days after that interview I was sent for by Mr. Moulton to go to his house. It was in the afternoon. He was in his parlor. He said that he had not been well enough to go out, and wanted to see me on a matter of importance. Mr. Beecher was present. The letter which I had written to Mr. Henry C. Bowen, dated the 1st of January, was under discussion. I had been sent for by Mr. Moulton—

Q. One moment. Look at "Exhibit No. 3," and see if it is the letter to which you make reference? [Handing witness "Exhibit No. 3."] A. Yes, Sir.

Q. Now you may go on. A. I had been sent for by Mr. Moulton to enter into some consultation in reference to that letter. That was the object of the interview.

Q. What occurred at the interview? A. Mr. Moulton read that letter aloud. He told Mr. Beecher that I had written it, feeling that I must make some explanation to the public for the sudden cessation of my relationship with *The Independent* and *The Brooklyn Union*. I say Mr. Moulton stated that; possibly it was I who stated that; I am not clear as to that point. At all events, either Mr. Moulton or myself—and on second thought I am rather inclined to think it was I who said that my relationships with Mr. Bowen had been suddenly terminated in a manner to excite public comment; namely, that the last copy of *The Independent*, or the one next to the last, in December, 1870, had announced to the public that I was to be no longer the editor of that paper, but its special contributor, and that I was to be five years the editor of *The Brooklyn Union*.

Mr. Evarts—Mr. Tilton, do you mean you said all this? A. I said all this as part of the explanation which I gave for my action toward that letter. I said that the announcement had been made in *The Independent*, with a great flourish of trumpets and with much eulogy and glowing reference to myself, that I was to be hereafter the editor of a daily paper and to be special contributor to *The Independent*, and that Mr. Bowen had put forth the announcement in a very complimentary manner to myself, and that the next intimation which the public had concerning me, through the press at large, was, that those contracts had been suddenly terminated; that I was not to be a contributor to *The Independent*, that I was not to be the editor of *The Brooklyn Union* for five years, and no reasons were given; and I said, that in view of that extraordinary announcement, and in view of the sudden cessation of that promised engagement, some explanation was due by me to the public to account for that event, and that the explanation which I designed to make to the public was a plain and simple recital of the exact facts narrated by Mr. Bowen in an interview with me on the 26th of December; also the exact facts that occurred in an interview between him and me two or three days after, when he grew angry and violent; also the exact facts of his terminating my engagements with

those two papers a day or two after that interview; that I felt that duty to myself required a plain statement of the facts in the case; that accordingly under that sense of duty I had written a letter to Mr. Bowen reciting all the facts; that I had written it very carefully, taking the advice of Mr. Jeremiah P. Robinson, of Mr. Moulton, of Mr. Gordon L. Ford, and that acting upon their advice, and particularly upon the advice of the oldest of those gentlemen, Mr. Robinson, I had studiously kept out of this letter all ground of difference between Mr. Beecher and myself. I had only stated in the letter the ground of difference between Mr. Bowen and myself, and I had prepared the letter and expected to publish it; that Mr. Moulton had counseled me not to publish it, and that that was the way the case then stood. My recollection is that at that point of the narrative, Mr. Moulton either said to Mr. Beecher that he had counseled me not to publish the letter, or else he said to me, "Theodore, you know that I have been opposed to the publication of this letter or to the recital to the public of any of the facts therein contained;" I cannot undertake to give all the conversation that ensued. The next point of the interview was, not as to the publication of the letter, for I yielded my acquiescence to Mr. Moulton's rather peremptory request and demand—

Mr. Everts—Confine yourself to what you said, Mr. Tilton.

The Witness—Yes, Sir. Mr. Moulton then held a consultation with Mr. Beecher as to the contents of the letter, the point of that conversation being this, as I remember Mr. Moulton said: "Mr. Beecher, I do not want to know anything from curiosity as to the truth or falsity of the charges which Mr. Bowen makes against you; I have no wish to inquire. Mr. Bowen is a man for whom I have very little respect, and I do not want to interfere in your affairs with him any further than I can be of service to you. Tell me this, however," said Mr. Moulton, "is there anything in this letter which you are afraid to meet in case it should be published? In other words, has Mr. Bowen any rod which he can hold over you? Has he any evidence to prove either these or any similar charges, or anything against your moral character?" Mr. Beecher in reply to that said, in substance—and he spoke with much anger, and I think he took the letter in his hands and pointed to some of the statements in it—he said in substance that so far from it being true, as Mr. Bowen had alleged, that he, Mr. Beecher, had made to Mr. Bowen any confessions of adultery, that he, Mr. Beecher, had a settlement with Mr. Bowen in the previous February, that that settlement had been reduced to writing, and signed at the time, that it contained numerous items and covered the whole field of their dispute, and there was in it no reference to any such thing as adultery—that he could produce, if necessary, to Mr. Moulton, the heads of that settlement, and Mr. Moulton would see for himself that there was no accusation by Mr. Bowen against him, Mr. Beecher, of any such crime as adultery. He said, furthermore, that so far as Mr. Bowen's general charges against him were concerned—I remember that he lifted his right hand and brought it down upon his knee with a good deal of force—says he: "I am not afraid to face Bowen either here or anywhere as to any statement he may make." He

then said to Mr. Moulton, not to me, but in my presence: "Now, it may be very natural for you to suppose that, in view of such charges as these, I would deny the truth even if they were true; but in order to convince you that I do not deny the truth, I am going to admit that Mr. Bowen has pointed to a story in which there is some truth, though not as Mr. Bowen has stated it." Mr. Beecher then turned over the pages of the letter, and hunting through the pages, put his finger on a statement made in the letter to the effect that he, Beecher, had been charged by Mr. Bowen with a violent assault.

#### LAWYERS' SARCASM.

Judge Neilson—Does that relate to a third person?

Mr. Fullerton—I will stop him in a moment.

Mr. Everts—I don't understand the right of my learned friend to stop him.

Mr. Fullerton—Well, I don't suppose my right depends on my friend's understanding of it, by any means. Whenever it becomes apparent that he is going to speak in reference to a third person, I will stop him.

Judge Neilson—[To the Witness.] I wish simply to say this, if the conversation relates to a third person you are not to name that third person.

Mr. Everts—That direction, if your Honor please, I except to, as I did before?

Mr. Fullerton—The learned counsel is at liberty to call it out, but I won't take the responsibility of calling it out. I will say, in justice to myself, that I shall not permit, without calling your Honor's attention to it, any further relation of that story.

Mr. Everts—The better way is to have the parts of the letter pointed out.

Mr. Fullerton—I suppose it is sufficient to say it is the same part which Mr. Moulton's attention was called to.

Mr. Everts—The letter is before him, and he can call it out.

Mr. Fullerton—I leave that for the gentleman to do on cross-examination. [To the Witness.] Omitting that part, go on and state what else occurred during that interview, if anything did? A. Mr. Beecher said there was a peculiar malignity in Mr. Bowen's charge against him of having committed violence, because there had been no violence; there had been mutual acquiescence, that he had never committed any violence upon any woman, and God knew that he had committed no violence upon that woman.

Q. You need not go any further into that. Omit all that relates to that event, and state what else occurred in the conversation.

Mr. Everts—I object to that construction on the part of the counsel being permitted in the taking of evidence.

Judge Neilson—It is always proper to omit part of a conversation not necessary to the question under investigation.

Mr. Everts—It is a part of the testimony, if your Honor please, that they are giving and producing as pertinent to this investigation.

Mr. Fullerton—No; it is a part of the testimony I am not giving.

Mr. Everts—Now, the conversation concerning the letter is a part of the evidence that they introduce as binding.

Judge Neilson—Of course it is.

Mr. Evarts—And any interruption of instruction by counsel to a witness to omit a part of the truth, in my judgment is not authorized by the rules of evidence.

Mr. Fullerton—Your Honor knows perfectly well why I omit it.

Judge Neilson—I instruct that it be omitted if it relates to a third person.

Mr. Fullerton—It does relate to a third person, and I don't desire to call it out on that account.

Mr. Evarts—All the charges relate to third persons. All the charges relate to immoralities with women.

Judge Neilson—We have nothing to do with immoralities with women.

Mr. Evarts—Then let the subject be left out and not introduce it until it becomes inconvenient and runs against contradiction; that cannot be tolerated.

Mr. Fullerton—It is inconvenient in no other respect than that it would be improper to introduce a third person into this trial when it can subserve no good purpose, but would subserve a bad purpose.

Mr. Evarts—The time to consider that is before you begin, and not when you get into the middle of it.

Judge Neilson—Let me ask Mr. Evarts if he thinks it would be incumbent upon him to omit part of a conversation, part of which may be pertinent to the issue on trial and part not—if he would be constrained to omit it all because part of it would not be properly receivable?

Mr. Evarts—I don't desire to go any further at present, than to say to my learned friend that the time to consider whether he would extract any evidence from this witness on the subject of the incident referred to in that letter was before he began upon it, and not in the middle of it.

Mr. Fullerton—I don't choose to put myself in any such attitude as that. I know what use the counsel would make of it if no reference were made to that subject, and I mean to deprive him of that weapon of attack on our side.

Judge Neilson—Let that pass over.

Mr. Evarts—Now he proposes to deprive me of both weapons.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—He proposes to deprive me of the weapon of admission because he don't admit it, and he proposes to deprive me of the weapon that would destroy the statement because he don't give the whole of it.

Mr. Fullerton—I have given you an opportunity to say something which was out of place, and that will probably make up for it. The gentleman can call out that branch of the conversation, if he is disposed to take the responsibility of doing so. We will see whether he will or not.

Judge Neilson—I think those last passages ought to be struck out; they are not necessary.

Mr. Fullerton—I haven't the slightest objection to striking out the last passages in the answer of the witness, and I only want them to go so far as to enable your Honor to see what interview I refer to, so that your Honor will see the motive which prompted me to leave it out, which would commend itself to every right-minded person.

Mr. Evarts—It cannot be with our consent that they undertake to produce before this jury evidence, and then stop it, and then consent, after it has had some influence, to have it struck out. When I propose to strike out, that is on my responsibility.

Judge Neilson—Go on. Pass to another subject.

Mr. Fullerton—And what I propose to leave out is on my responsibility.

Mr. Evarts—You propose to leave out part of it.

Mr. Fullerton—I have not put it in yet, and I don't mean you shall force me to do it. [To the Witness.] Now, I call your attention to an interview. Have you given all of that interview that you remember, leaving that part of it out? A. The interview was mainly devoted to a consideration of that which must be left out. I remember that towards the close of it Mr. Beecher said that though he had assured us that he was not afraid to face Mr. Bowen, on the ground that Mr. Bowen could produce no evidence against him, yet he did not wish to have this letter published, and if I could see my way clear to a justification in some other and less dangerous way he hoped I would adopt it, for he said that the public were only too willing to believe charges against a clergyman, and that if these charges which Mr. Bowen had made should be made public, many people would believe them, whether true or false, and that in proportion as people believed in Mr. Bowen's stories against him they would be likely to believe in any accusations that might—any rumors that might be set afloat concerning himself and Elizabeth, and just in proportion as rumors should get afloat in reference to himself and Elizabeth, people would be likely to go back and believe in the charges that Mr. Bowen had brought against him; so he said, for the safety of Elizabeth, and for his own protection, he hoped that I would not print that letter, but seek some other method of vindicating myself before the public.

Q. Was that letter then published? A. No, Sir, I never published that letter.

Q. Now what else occurred there, if anything? A. I don't remember anything at this moment.

Q. Did you break up then, and separate? A. My impression is that Mr. Moulton asked me if I would retire; that was his usual method in my interviews with Mr. Beecher. I was sent for, and the interview was held, and Mr. Moulton usually had something which he wished to say.

Q. It ended in that way, did it? A. Yes, Sir.

#### THE FEARS THAT MOULTON'S SICKNESS AROUSED.

Q. Then, I wish to call your attention to another interview in the same month, between the 15th and 20th of January, between yourself and Mr. Beecher. Do you recollect such an interview? A. I recollect that very shortly after the interview which I have been adverting to, Mr. Moulton was taken seriously ill, and at the height of that illness he lay at the point of death. I went to the house one day, and the servant told me that Mr. Beecher was up stairs. I did not go up; I remained in the parlor. Pretty soon Mr. Beecher came down stairs, and, noticing through the door that I was in the parlor, came in and said, with great agitation of manner: "Frank is very sick; he is at the grave's edge. I am afraid he will die, and



if he dies, Theodore, what will then become of your case and mine?" He stood a moment, and when I made no reply, he said to me, with tears in his eyes: "Theodore, Frank has saved my life, and I would willingly, to-day, give my life to save Frank's;" and he stepped quickly forward towards me, and put both hands against my face in *this* manner (illustrating), and kissed me on the forehead, and suddenly retired from the room, and from the house.

Q. Now, do you recollect another interview with Mr. Beecher towards the close of the same month, and on or about the 28th or 29th of January; and, if so, tell us where it took place, and what it was. A. I recollect another interview with Mr. Beecher, though whether it was towards the close of that month, or in the beginning of the month following, I am unable to say. It was after Mr. Moulton had got well enough to receive guests, and to talk with us in his bed-chamber. I was sent for to that interview.

Q. And where did it take place? A. It took place in Mr. Moulton's sick room.

Q. Now, give us the interview as nearly as you recollect it. A. Perhaps I am wrong in that last answer. My impression is that Mr. Moulton was then well enough to go out of his room, and that we went into one room, and out of that into another; I won't be positive about that. The object of that interview—

Mr. Evarts—What took place?

Mr. Fullerton—Yes, what took place?

#### THE MISCHIEF WORKED BY MRS. MORSE.

The Witness—I had been sent for by Mr. Moulton to come. When I arrived there Mr. Beecher was present. Mr. Moulton held in his hand a letter which Mr. Beecher had received from Mrs. Morse, Mrs. Tilton's mother. Mr. Beecher had brought that letter to Mr. Moulton, and there were some statements in that letter, concerning which I was asked to make explanation.

Now, one moment please. [Handing paper to Witness.] Look at "Exhibit No. 7," and say whether that is the letter of Mrs. Morse, of which you have just spoken? A. The letter of Mrs. Morse, which was then under discussion, had a date on the top. This seems to have no date. Still, Mr. Fullerton, I find, on looking at it, that this is the letter, though the top seems to have been cut off.

Q. That is as it has been published in the newspapers. What is the number of the Exhibit? A. Number Seven.

Q. You recognize that as the letter which was the subject of conversation then? A. Yes, Sir.

Q. Your attention was called to some particular part of it, I understand you to say? A. Yes, Sir.

Q. Now, tell us the interview? A. Mr. Moulton wanted to know whether I had told twelve persons of Mr. Beecher's criminal relationship with Mrs. Tilton; I said I had not. Mr. Moulton then said that this letter of Mrs. Morse had made that charge against me. I said: "Let me see it." So I took the letter, and I read it, and I said: "Mrs. Morse's statement that I had told twelve persons the story was as false as another statement which the letter contained, somewhere in it, I won't stop to point out exactly, namely, that I had not money

enough to buy my family food to eat." I turned to Mr. Moulton and I said, "You know well enough how false that statement is;" and I turned to Mr. Beecher, and I said, "Moulton understands well enough how false that statement is, because his firm are my bankers, and I have several thousand dollars there on deposit, now; I don't know how much." Mr. Moulton said he had already made that statement to Mr. Beecher; that he knew that one statement in this letter was false, namely, about my lack of money, and that he believed the other was false, namely, that I had told twelve persons. Mr. Beecher then asked me what persons I had told. I told him I had told some persons. I then said that after Mrs. Tilton had made her confession to me in July, 1870, that I had shortly after that informed Oliver Johnson and Mrs. Martha Bradshaw; that during the Summer I had informed no other person, but I told him possibly twelve did know of that fact. I said that shortly after Mr. Johnson and Mrs. Bradshaw were informed, Mrs. Tilton had informed her mother, Mrs. Morse. I said, furthermore, that during the Summer Mrs. Tilton's brother, Mr. Joseph H. Richards, had come to me one day, and asked me whether or not I had noticed Mr. Beecher's visits to my house, and whether I was quite sure that they were altogether of a pastoral character. I told Mr. Beecher, also, that Mrs. Morse, on hearing the story from Mrs. Tilton, had communicated it to Mr. Richards, and that I believed Mr. Richards had informed his wife. I told him, also, that Mrs. Morse was propagating the story in this way, namely, that she was saying among her family and relatives that Theodore made such and such charges against Elizabeth, and that her method of denouncing me for making such charges was a very fatal way of propagating the charges themselves. I told him that Mr. Moulton had informed his two partners, as necessary adjuncts to his own mind, in their consultations, and that so far as any other persons knowing about the tale, that intelligence must have been received through Mrs. Morse's very free communications, in the manner in which I have described. I told him that the only persons whom I had ever informed were Oliver Johnson, Martha A. Bradshaw, and Francis D. Moulton. Some other letters were there produced besides this one.

Q. [Handing paper to Witness.] In that connection I hand you a paper, and ask you whether that was produced at that time? A. Yes, Sir.

Q. Who produced it? A. This letter was present at that time. I am unable to say whether Mr. Moulton produced it to Mr. Beecher. The letter was there.

Q. State whether it was the subject of conversation? A. Yes, Sir.

Q. What was said in regard to it? A. I was asked whether or not I had made the charge which that letter contained.

Mr. Evarts—Wait one moment.

The Witness—I beg your pardon.

Mr. Fullerton—I don't offer it in evidence yet. I ask those questions preparatory to making the offer.

Mr. Evarts—I don't see that this letter affects me.

Mr. Fullerton—Then I will try and make it affect you. [To the Witness.]

Mr. Fullerton—What was said in reference to this letter? A.

I don't know who brought that letter to that interview. I was not for to be present at the interview, and letters were there brought me.

Q. What did Mr. Beecher say in regard to that letter? A. Mr. Beecher asked me whether or not I had ever said that he preached to forty of his mistresses, the allusion being to a statement contained in that letter. I told him that during the Summer I had very frequently made remarks to his detriment, that I had not spared him; but whether or not I had made that identical remark, I could not say. I called his attention to the fact that that letter was simply a copy of the letter which Mrs. Tilton had written to me during the Summer or the Fall, and that it was before I had received from him his letter which is now known as the letter of contrition, and before Mr. Moulton had undertaken to keep the peace between us. I told him I had made no such statement since the time of that letter, and that I could not say whether I had used such expressions as that letter contained, but I would not deny having spoken severely against him to some friends in the Summer.

Q. Did Mr. Beecher say in that conversation where he got that letter?

Mr. Evarts—He has not said that he had it.

Mr. Fullerton—He can say whether he had it or not.

Mr. Evarts—You have no right to assume anything.

Mr. Fullerton—No, I don't assume anything; I merely ask that question, whether Mr. Beecher said he had that letter.

Judge Nelson—Ask him where it came from.

Mr. Evarts—If your Honor please, it assumes something, and it is not necessary to lead the witness, either.

Mr. Fullerton—Then, I will put the question as your Honor suggests. All I care for is the fact; I do not care what particular question is put to elicit it. [To the Witness.] What was said, if anything, about the origin of that letter? A. I do not know that anything was said about the origin of the letter. The point of the conversation was the contents of the letter, and the fact that Mrs. Morse had been writing such things. And I remember asking Mr. Beecher whether or not he had among his papers any other letter of Mrs. Morse's, which, being opened by his wife, or by any other person, might give unconscious evidence against himself and Mrs. Tilton, and he said "No." I told him Mrs. Morse was a very dangerous woman, and that if she was in the habit of writing to him, he might expect letters from her at any time; that I had received letters from her threatening my life; that I had received letters from her threatening me with personal violence, and that I had received letters against my sanity, and letters describing me as a drunkard and a brute, and letters of various kinds; and she might take a sudden turn of mind and write him letters. I told him that Mrs. Morse had very freely spoken of the case in certain moods of her mind, not at all concealing but rather revealing her daughter's guilt; and that if he encouraged letter writing to him by Mrs. Morse, she would be likely on any occasion to send him a letter which, if the wrong person opened it, would let out the whole story.

Q. What else occurred there? A. I told Mr. Moulton, or

both, that this letter—I don't now refer to the letter lying before you, but the letter which was dated January 28th, and which was made the origin of the interview, Jan. 27th—I told him that that letter should be answered; that, owing to Mrs. Morse's peculiar temperament, if he did not answer it, if he treated it with neglect, if he allowed it to go unnoticed, she might take offense and strike him and Elizabeth some unexpected blow. I told him that I had a long experience with Mrs. Morse and that she was a woman amenable to courtesy and kindness; but that if she took offense, she was very reckless in her conduct and utterances, and that for the safety of Elizabeth it would be necessary that Mrs. Morse should be dealt with in a very kindly way; and I recommended that the answer to that letter should be one which would convey to her a sense of Mr. Beecher's kindly feeling; and, also, that it should be such a letter as that Mrs. Morse, in some other mood of mind, could not possibly use to Elizabeth's detriment.

#### MRS. TILTON'S LETTER OF REMORSE TO HER MOTHER EXCLUDED.

Q. State whether the letter which it was proposed should be sent as a reply to Mrs. Morse was prepared at that time? A. A letter was prepared by Mr. Beecher in reply to that, and I have seen the manuscript of it; it is in evidence. I will not say—I cannot absolutely swear—that he wrote the reply on the spot; but I am very distinct in my recollection of this point, namely, that the spirit and the substance of that reply were agreed upon at that interview; whether the actual draft of the reply was then made, I have forgotten.

Q. Look at "Exhibit 8," and see whether that is the letter to which you refer? A. If this is correctly printed, it is the one to which I refer.

Q. Do you recollect anything else that occurred in that interview? A. Yes, Sir; during that interview I took out from my pocket and exhibited a letter which Mrs. Morse had addressed to Mr. Bowen; it was a little trifle; an anonymous letter she had sent to *The Brooklyn Union*, and which a young gentleman connected with that paper had sent to me. I do not know whether it is in evidence; the substance of it is this—

Q. You need not state what it was unless you read it there. A. I did; I read it as an instance of the peculiar kind of correspondence to which she was addicted.

Q. Pass over that, and state whether there was anything else in that interview which you remember. A. Nothing occurs to me at this time.

Q. This letter which I have shown you, which you say was there at that interview, in whose hands did you first see it? A. A. It is in Elizabeth's hand.

Q. No, not that; in whose hands did you see it at that interview; in Mr. Moulton's or Mr. Beecher's? A. I cannot say; two or three letters were there; this letter and a letter dated Jan. 28th; and my recollection is that there were one or two others that Mrs. Morse had written, but I will not be positive as to that.

Q. Was anything said by Mr. Beecher in regard to any parts

of this letter? A. If you hand me the letter a moment, I will endeavor to refresh my mind.

Q. Look over it and see [handing the letter]. A. He asked me what I understood to be the state of Elizabeth's mind and heart; how she bore her burden; whether or not she could survive under the weight of the calamity that had fallen upon her. He asked me some very sympathizing questions, Sir, about that; I think perhaps they had better be omitted.

Mr. Fullerton—If your Honor please, we offer that letter in evidence.

Mr. Evarts—I am at a loss to see on what ground. If your Honor please, this is a letter from Mrs. Tilton to Mrs. Morse—between third parties—and how it is evidence, I do not understand. They have given a conversation concerning one statement in it (that is, if there is such a statement in it). It is assumed that there is something there which introduces the idea of Mr. Tilton having asserted that Mr. Beecher preached to forty of his mistresses every Sunday, and the witness has testified about that. We cannot remember the identical expression; but he said something of that spirit during the Summer; and in regard to that, the conversation is legitimate; but the fact that there was a letter presented that suggested a topic of conversation, certainly does not give them the right to read a long letter between other parties. The letter was not the subject of discussion; but this matter, whether Mr. Tilton had said that he preached to forty of his mistresses, was the subject under discussion. Now, the fact that here is a letter which was talked about, certainly does not give them the right to read it.

Mr. Beach—It is offered on the same ground upon which we offered all the papers produced in evidence, that they were brought to the attention and observation of Mr. Beecher, and were known to him. Mr. Tilton was sent for, and found Mr. Beecher and Mr. Moulton in consultation over this letter and others, and one particular passage, referring particularly to Mr. Tilton, is presented to his mind,—and he is asked whether or not he made that statement. But the whole letter was before Mr. Moulton and Mr. Beecher, before Mr. Tilton was called to the conference.

Mr. Evarts—How does that give you the right to put it in evidence?

Mr. Beach—How does it give us the right! We find the letter in the possession of Mr. Beecher, and under his observation.

Mr. Evarts—Suppose it was here in our hands, as his counsel, having been in his hands for six months.

Mr. Beach—That would be a privileged communication between counsel and client.

Mr. Evarts—If this very letter had been in Mr. Beecher's hands for six months, and then put into our hands as counsel, would that give you the right to read a letter between third persons, because one party of the suit has got it in his hands?

Mr. Beach—Certainly, if it was the subject of consultation between Mr. Beecher and others, and the reply to be made to it; if there was anything in the letter which relates to the subject of litigation or this difficulty between the parties, it is competent.

Mr. Evarts—My learned friend is in confusion. This letter

was not the subject of consultation; it was the other letter which was made the reply.

Mr. Beach—I am not in confusion. This letter was present, and the habits of Mrs. Morse and the necessity of making some reply and the subject matter of this letter were subjects of consultation, as between Mr. Beecher and the others.

Judge Neilson—The letter of Mrs. Morse and the reply are both in.

Mr. Beach—I know that.

Mr. Evarts—But that was a letter to Mr. Beecher.

Mr. Beach—It was. What matter? If it was a letter before him, the contents or statements of which he was called upon to deny; if the subject of the letter was matter of consultation between them, so far as it was the subject matter of consultation, the letter is in evidence.

Judge Neilson—I don't think that what was said in regard to the letter is sufficient to justify us in receiving it. I think I will have to rule it out.

#### BEECHER'S LATER LETTERS TO MRS. TILTON.

Mr. Fullerton—I shall call your attention to the 7th of February. Do you recollect meeting Mr. Beecher on that day? A. No, Sir; I do not.

Q. Do you recollect of having written a letter to Mr. Moulton about that date? A. Yes, Sir.

Q. Look at that paper, and say whether it is the letter. It is the 7th of February, and is marked "Exhibit No. 2." Is that the letter you wrote on that date? A. Yes, Sir.

Q. Did you see Mr. Beecher soon after writing that letter? A. I saw Mr. Beecher about that time, once or twice, at Mr. Moulton's house.

Q. Do you remember what occurred on those occasions? A. He thanked me for writing this letter.

Q. What did he say in regard to this "Exhibit No. 2?"

Mr. Evarts—After he received it?

Mr. Fullerton—Yes, after he received it. A. I do not remember the particular phraseology in which he expressed himself.

Q. Give the substance of it? A. He spoke to me about having seen the letter, and thanked me for writing it.

Q. Were you the bearer of a letter, about that date, to Mrs. Tilton, from Mr. Beecher? A. Yes, Sir; I was the bearer of two letters; I was the bearer of a letter which Mr. Beecher wrote to Mrs. Tilton, and as Mr. Beecher had at the same time, or about the same time, written a letter to Mr. Moulton, in which he referred to Mrs. Tilton and myself, I was allowed by Mr. Moulton to bear that letter to Mrs. Tilton, and I showed her the two, and then returned both to Mr. Moulton.

Q. Look at "Exhibit 10," and say whether that is the letter which Mr. Beecher wrote to Mr. Moulton, and which you showed to Mrs. Tilton? A. Yes, Sir; that is the letter.

Q. Now look at "Exhibit No. 11," and say whether it is the letter written by Mr. Beecher to Mrs. Tilton, and which you were the bearer of at the same time you showed "Exhibit 10?" A. Yes, Sir; this is the letter.

Mr. Evarts—The letter of Mr. Beecher to Mrs. Tilton is in

evidence; but the fact of showing Mr. Moulton's letter to Mr. Beecher is no act of Mr. Beecher.

Mr. Fullerton—We do not give that.

Mr. Evarts—We object to that evidence.

Mr. Fullerton—The letter is in evidence.

Mr. Evarts—It is, and has been for some weeks.

Mr. Fullerton—It is not outlawed.

Mr. Evarts—But the fact of your witness taking Mr. Moulton's letters to Mr. Beecher is not the act of Mr. Beecher.

Mr. Fullerton—I have not pretended that that was the act of Mr. Beecher.

Judge Neilson—That letter was taken without Mr. Beecher's authority.

Mr. Evarts—The taking of that letter of Mr. Beecher to Mr. Moulton to Mrs. Tilton is not evidence. Whether it is of any importance I do not know.

Mr. Fullerton—Then, if you do not know whether it is of any importance, you should not object.

Mr. Evarts—I do not know whether you regard it of importance or not, but I think it is objectionable.

Mr. Fullerton—If you object to everything that I think important, you will be objecting a good while.

Mr. Evarts—I do not object to it because you think it important, but because it is illegal.

Mr. Fullerton—I have shown, if your Honor please, that the letter was carried by Mr. Tilton to his wife, and shown to her. That is an act; there is no communication connected with it. If I do not make any further use of that fact in this case hereafter, it will go for nothing.

Judge Neilson—It will be very harmless; we will let it stand for the present.

Mr. Fullerton—Unless I connect it.

Judge Neilson—Yes; but still the counsel had a right to call attention to it.

Mr. Evarts—When you connect it properly that will be another thing.

Mr. Fullerton—I cannot prove two things at once.

Mr. Fullerton—Do you recollect whether it was on the 7th of February that you were the bearer of this letter? A. No, Sir. I should not swear at all as to the date, except so far as the letters themselves bear date; the dates are on the letters, and not in my mind at all.

Q. You can state whether you were the bearer of this letter on the day it bears date? A. No, Sir; but about that time; I should say, perhaps the day after—a day or two after.

Q. When did you next see Mr. Beecher after you were the bearer of these two letters? A. I think my next interview with Mr. Beecher after that was just before Mr. Moulton was getting ready to go to the South; I sent for him to come to my house.

Q. Before going to that interview, I propose to ask you, did you learn from Mr. Beecher why you were made the bearer of that letter from himself to Elizabeth? A. Mr. Beecher, whenever he met me, and particularly at that time, always asked after Elizabeth—asked for her state of mind; asked whether or not she could endure to live; asked whether or not I was restoring her in any degree to my respect; he put such questions as these, if that is an answer to your inquiry.

Mr. Fullerton—Yes.

The Witness—And he wanted me to be assured that Mr. Moulton, who was endeavoring to keep peace between us all, held her in kindly regard, and did not frown upon her because she had forfeited her honor; he was very anxious that Elizabeth should be assured of that fact.

Q. What was said, if anything, about the writing of this letter? A. He told me also that he wanted her to know that I had acted towards him in an honorable way. If you will permit me to say, Mr. Fullerton, that Mr. Beecher at that time dropped numerous expressions to me of profuse gratitude, which I feel I cannot, consistently with my proper sense of self-respect and pride, utter here. It was burdensome to me at the time, and it will be disagreeable to me to state it.

Q. Was it in consequence of anything he said to you that you were the bearer of this letter, dated February—the letter to Mrs. Tilton? A. Let me see if I understand the question?

Q. Was it in consequence of anything that occurred in that interview that you became the bearer of the letter dated Feb. 7th, from Mr. Beecher to Mrs. Tilton? A. If you let me see the letter again.

Q. It is this expression, "This is sent with Theodore's consent, but he has not read it. Will you return it to me by his hands?" A. Ah! Mr. Moulton asked me if I would permit Mr. Beecher to write a letter to Elizabeth, and I told Mr. Moulton that he must act in that matter as he saw fit; that I should neither give nor withhold my permission; that my wife was a free agent, as I was; that I would neither accept from her permission or denial, and that I would not accord to her permission or denial; that she had a sovereign right to receive letters, and that Mr. Moulton himself should be the dictator in the matter as to whether any letter should be sent; Mr. Moulton then said to me: "I will construe that as a permission on your part."

Q. From whom did you receive this letter? A. This letter? I received this letter from Mr. Moulton's hand, I think; possibly from Mr. Beecher's; I will not be certain.

Q. By whom was it returned, if you know? A. From Mrs. Tilton?

Q. Yes. A. It was returned by me; I carried it to Mrs. Tilton and she read it; at the same time also I carried the other letter which Mr. Beecher wrote to Mr. Moulton.

Q. And to whom did you return that letter? A. To Mr. Moulton; I did so because the letter itself requested its return.

Mr. Fullerton—If your Honor please, the next interview to which I shall call the witness's attention, is a lengthy one, and I shall not be able to complete it to-night. As it is within four minutes of the hour of adjournment, I propose that we adjourn.

Judge Neilson—The Court will now adjourn. The jurors will be in their places promptly at 11 o'clock to-morrow.

The Court was then adjourned until 11 o'clock on Tuesday morning.

## SEVENTEENTH DAY'S PROCEEDINGS.

## MR. TILTON'S SECOND DAY.

EXPLANATION OF THE PLAINTIFF'S RELATIONS TO  
MRS. WOODHULL—THE BOWEN ARBITRATION  
PROCEEDINGS—THE TRIPARTITE COVENANT—MR.  
TILTON'S NARRATIVE PROLONGED—ATTENTIVE  
LISTENERS TO THE TESTIMONY.

The trial dragged on Tuesday. Mr. Tilton ascended the witness stand at exactly 11 o'clock, and took up the thread of the story where it had been dropped the night before. He began with the narration of an interview in February, 1872, when Mr. Beecher, according to the witness, went to Mr. Tilton's house, and conversed in relation to the supposed shadow over the life of the boy Ralph. Mr. Tilton says that Mr. Beecher positively assured him that there was no shadow, and the interview closed amicably. The plaintiff described fully his relations to Mrs. Woodhull from the beginning of his acquaintance with her, soon after the publication of *The World* article, until their friendship was broken through disagreement. Mr. Moulton's statement that the woman was dangerous, and his advice that she be dealt gently with, was explained. The full story of the composition and revision of Mrs. Woodhull's biography was made public for the first time. Mr. Tilton says that the woman's husband wrote it; she brought it to him, and asked him to rewrite it. He did so, leaving out many extravagant statements, but Mrs. Woodhull was dissatisfied. She wanted him to put in the incident of her raising a child from the dead. "Without that incident," she said, "the book would be the play of Hamlet with Hamlet left out." She also wanted it written that Demosthenes communicated to the world through her. The circumstances which led Mr. Tilton to preside at the Steinway Hall meeting were narrated, and the witness stated that the direct cause of his doing so was that Mrs. Woodhull was going on the stage alone, saying that there was no man brave enough to go there with her. Mr. Tilton evidently does not now court the friendship of Mrs. Woodhull, for he incidentally referred to her lecture on "Finance" as harmless and stupid. Much of the testimony tended to excuse Mr. Tilton's connection with Mrs. Woodhull, and in concluding his evidence regarding her the witness turned sharply upon the jury, and said: "I say before God that Mr. Beecher is as much to blame for my connection with Mrs. Woodhull as I am myself."

The wearisome story of the arbitration proceedings between Mr. Bowen and Mr. Tilton was repeated, and Mr. Fullerton read effectively the article of Mr. Beecher in *The Christian Union* published about that time, in which Mr. Tilton was referred to as a brilliant young writer and orator. The reading of the note seemed to affect Mr. Tilton, for he closed his eyes and the tears rolled down his cheeks. Mr. Tilton next explained the circumstances of his membership in Plymouth Church, and why he severed the connection.

After the recess the various interviews and complications of 1872 were described. Letters and cards published and not published, conversations, interviews, covenants, etc., were given entire or in fragments, or merely referred to. At the meeting held late in 1872, at which Messrs. Moulton, Woodruff, Tracy, and Tilton and Mr. Beecher were present, Mr. Tracy was represented as promising Mr. Tilton "as a gentleman and a lawyer" that he would not appear for Mr. Beecher in case litigation arose between the latter and Mr. Tilton. A new document was added to the scandal literature in the form of a card written by Mr. Beecher denying in emphatic terms the crime of which he had been accused. Mr. Tilton said that the card was satisfactory to Mr. Moulton, Mrs. Tilton, and himself, but Mr. Beecher, for some reason, did not publish it. The time of the publication of the tripartite agreement on Decoration Day, in 1873, was at length reached, and Mr. Tilton said that he had nothing to do with having it printed. That publication was followed by the printing of a card by Mr. Beecher, in *The Brooklyn Eagle*, mentioning Mr. Tilton in connection with his accusers. Mr. Tilton then, he says, wrote a card vindicating himself, and signed Mr. Beecher's name. He sent it to the Plymouth pastor, and it was also published. About this time, in June, 1873, according to the witness, there was a stormy interview between himself and Mr. Moulton, after he had learned that Mr. Beecher had expressed an intention to resign from Plymouth Church. Mr. Tilton said he was very angry, and told Mr. Moulton that if Mr. Beecher resigned at that time, thus reflecting on the children of the witness, he (Tilton) would shoot Mr. Beecher. The charges of Mr. West against Mr. Tilton, as a member of Plymouth Church, for slandering the pastor, were very fully reviewed, and occupied nearly all of the last hour of the day's proceedings. In connection with that subject a letter written by Mr. Tilton to Sam-

uel E. Belcher, a member of the Examining Committee, just before the meeting of the Church was held at which Mr. Tilton's name was dropped from the rolls, was introduced and read. In this Mr. Tilton wrote that he had "not accused Mr. Beecher falsely." Immediately after this part of the examination had been concluded, Mr. Fullerton laughingly remarked that a motion to adjourn was always in order, and as it was then several minutes after four, Judge Neilson ended the day's proceedings.

#### FACES IN THE COURT-ROOM.

The novelty of the trial appears to be about exhausted for the jurors. Most of them seem to accept fully the idea that they are to listen to the evidence and the ruling of the court without attending to anything else. The foreman, Mr. Carpenter, gives them a good example, as he sits in his chair close by the witness with his body turned so that he can look full in the face of the speaker. This watchfulness he keeps up during the entire day with an unchanging expression of interest. His face, against which he sometimes holds the ivory handle of his cane, is always grave. Upon it neither the dry wit of the judge nor the humor of the lawyers provokes a smile. The rest of the jury imitate their foreman in turning to the witness, but several of them do not appear to be so intensely interested in the proceedings, and during the afternoon session on Tuesday it was observed that one of the jurors on the front seat had his eyes closed. His attitude quickly changed, however, and his eye brightened when Mr. Fullerton said that a motion to adjourn was always in order. The rest of the jury leave the court with the air of men who have had hard work in attending for four hours to the great trial.

Mr. and Mrs. Beecher occupied their regular places during both sessions on Tuesday. The contrast between the bearing of Mr. Beecher and that of his wife was very marked. His attitude throughout the day was unchanged by anything either in the testimony or the disputes of the lawyers. His face was very calm and was almost constantly turned to the witness chair with an expression of quiet interest. His note-book was in his lap, but he did not make much use of it. It seemed to be his desire that he should not be conspicuous either to the spectators or the jury. Mrs. Beecher, on the contrary, was almost demonstrative in her expression of concern in everything pertaining to the trial.

#### THE PLAINTIFF AND THE LAWYERS.

Mr. Tilton's bearing on the witness stand was such on Tuesday that it leaves no doubt that he was nervous on the first day of his examination. The flurried and somewhat awkward manner exhibited on Monday gave place to coolness and ease during the last two hours of Tuesday's session, though his confidence is very different from that shown by Mr. Moulton. The latter's replies were short and crisp; Mr. Tilton's are longer and fuller, but he talks slowly and with great earnestness. Mr. Moulton rested easily back in his chair; Mr. Tilton half rises with interest and emphasizes his words with movements of his head. Mr. Moulton seemed candid and familiar; Mr. Tilton is comparatively distant and dignified.

A day seldom passes that Mr. Evarts does not perpetrate some dry joke, which generally has the effect of disturbing the person at whom it is pointed and causing a laugh among those who observe it. Mr. Tilton, in speaking on Tuesday of a certain interview with Mr. Beecher, said that he was writing at the time; "using such an inkstand as that," he added, pointing to the lawyers' table. "This one?" asked Mr. Evarts, rising and placing his hand upon an inkstand. "No; that one," rejoined Mr. Tilton, pointing to another. "Oh! that one," said Mr. Evarts, touching another one. It was not that one, but Mr. Evarts seemed determined to discover the inkstand which resembled that which the witness had used, and he continued his questioning until he did so. It served as a satire upon the extreme minuteness with which Mr. Tilton details incidents.

#### THE PROCEEDINGS—VERBATIM.

##### A CURIOUS INCIDENT.

The Court met at 11 a. m., pursuant to adjournment.

While the Clerk was calling the list of jurors, the Count Johannes addressed the Court: "May it please your Honor—"

Judge Neilson—We do not pursue that practice.

The Clerk then finished the calling of the jury.

Count Johannes—May it please your Honor, I am a counselor of this Court, and I claim the privilege of addressing your Honor. In my absence yesterday my brother Evarts, who is my friend, quoted from a Massachusetts Report in reference to me, and, as published by the press, most injurious; and I believe it to be simply what took place. I do not believe there was any intention on the part of my brother Evarts to injure me. I have the honor of the acquaintance of the counsel on both sides. In Massachusetts I was approaching for marriage with a lady, and a revered gentleman interposed a letter of libel upon me and

destroyed five visits to that lady [laughter] important; and on the day before the marriage in generosity I burned that letter; and on the next day after my marriage he wrote another letter. I brought my action, and for those five visits lost, the jury gave me one hundred dollars for each, for I have power of language as well as Henry Ward Beecher, and one hour with a lady is equal to three months with mere clods of humanity. [Loud and long laughter.]

Judge Neilson—That will do.

Count Johannes—I wish to vindicate myself. I see Judge Porter there in melancholy thought, and I know that he will upon every occasion do me justice.

Judge Neilson—Will the audience keep silent. I hope the audience will pay sufficient regard to this. The citation made by Mr. Evarts was from an authority; the citation was made correctly as stated in that authority, and I am very happy that there is no ground of complaint.

Count Johannes—Not the slightest, only that Allen, the reporter, was my enemy, and he did not report what was right. I say with Shakespeare, then, "I'll have no more reports." I am much obliged to your Honor. [Laughter.]

#### MR. TILTON DEMANDS THE TRUTH.

Theodore Tilton was then recalled, and the direct examination continued.

Mr. Fullerton—Mr. Tilton, I had, at the close of the session yesterday, followed this case down to February 7, 1871. I believe we concluded that interview. Do you recollect when you next saw and had an interview with Mr. Beecher? A. Yes, Sir.

Q. When did it take place? A. It took place shortly after that time.

Q. And where? A. At my house.

Q. Can you give us the date exactly of that interview? A. I have no means of identifying the date other than that it was shortly after the writing of those three letters, all of which bear date of February 7.

Q. You refer to the letters to which your attention was called yesterday, I suppose? A. Yes, Sir; at the close of the examination.

Q. You may now state what occurred at that interview. The jury will hear you more distinctly if you look towards them?

A. Mr. Beecher came to my house one morning, about the first or second week, probably the second week—yes, certainly, the second week in February, 1871. He had come in pursuance of a request which I had sent to him through Mr. Moulton. I had told Mr. Moulton that I wanted to see Mr. Beecher at my house. Mr. Beecher came in the morning, while I was at breakfast. I rose from the table, met him in the parlor, and told him to go up stairs into my study. He immediately went up, and I followed him. I closed the door behind me, and after he took his seat I said to him: "I have called you hither, Sir, in order that you may remove, if you can, a shadow from the future life of the little boy, Ralph. His mother has assigned to me a date at which your criminal intimacy with her begun. This little boy was born a few months after that. If the date which his mother has given is correct, it will save a dishonor attaching to his name. I want you to tell me, as before God, whether or not

that date is right. I want, if possible, to shield him, but I want more than that to know the truth. Tell me the truth." And he told me, on his word of honor, as before God, that the date which Mrs. Tilton had assigned was the correct date. At that moment Mrs. Tilton herself, who had followed me up stairs, came into the room, and when I stated to her the point of conversation, she burst into tears, and asseverated, as she had once or twice done before, that the date which she had given was correct.

Mr. Evarts—If your Honor please, I ask to strike out, "as she had once or twice before done." That is no part of the conversation, and the wife's statements are not to be given in evidence.

Judge Neilson—It may be stricken out.

Mr. Fullerton—One moment. If I understood the witness correctly, it was what Mrs. Tilton said upon that occasion.

Judge Neilson—It is simply the phrase, "as she had done once or twice before."

Mr. Fullerton—But it is what she said upon that occasion.

Judge Neilson—No.

Mr. Fullerton—Please read, Mr. Reporter?

THE TRIBUNE stenographer read the passage referred to as follows: "and asseverated, as she had once or twice done before, that the date she had given was correct."

Judge Neilson—The phrase, "once or twice before," does not strengthen your evidence.

Mr. Evarts—No matter whether it strengthens it or not, it is within the rule.

Mr. Fullerton—It is not within the rule. It is not within the rule laid down by this or any other Court, that I ever heard of.

Judge Neilson—I think we will strike it out.

Mr. Fullerton—I suppose your Honor strikes it out because it relates to a prior conversation between herself and her husband?

Judge Neilson—Yes, Sir.

Mr. Fullerton—Not because she did not say it on that occasion?

Mr. Evarts—She did not say it on that occasion. According to his statement he interpolates in narrating what she did say, a confirmation of some previous statement that she had made.

Judge Neilson—It is stricken out simply because it is a previous statement.

Mr. Evarts—The objection to the other conversation is covered by my previous exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Now, Mr. Tilton, state whether in that conversation that morning in your study the date was named, and, if so, who named it?

Mr. Evarts—I think we should have what was said, Sir.

Judge Neilson—Yes, first exhaust according to his recollection what was said, and then call his attention to anything he has omitted.

Mr. Fullerton—Very well. If such be the case we will do that.

The Witness—Mr. Beecher asked me what date Elizabeth had named. I told him Elizabeth had named as the date at which their criminal intimacy began, Oct. 10th, 1868. He replied

that he had no faculty for dates and had made no record, but he believed in his soul that she had told me the truth. He said a few other things on that occasion which I trust I shall not be requested to reproduce here, since a proper delicacy would forbid their utterance.

Q. I shall not ask for them. Omitting those things to which you have now made allusion, state what else took place upon that occasion.

Mr. Evarts—If there are parts to be omitted they should not be characterized.

Judge Neilson—That is so.

Mr. Evarts—We do not like to have characterization and then omission from delicacy. If the parts are to be omitted, let there be silence about them.

The Witness—I will—

Mr. Fullerton—Never mind, Mr. Tilton. Let it stand just as it is.

Judge Neilson—The witness had in mind, no doubt, the statement that he was omitting, and he took that form of expression.

Mr. Evarts—I am not criticising the witness.

Mr. Fullerton—It was very proper for the witness, being asked to give the whole interview, to say that he had omitted parts, and to give a reason why he omitted them. [To the Witness.] Omitting, then, that part of the interview to which you have made reference, state what else occurred at that interview? A. Some remarks were made which I cannot exactly recall that fell from Mr. Beecher's lips, expressing grief and misery, and he burst into tears. That was the actual remainder of the interview. He left and went to Mr. Moulton's house, and in the afternoon of the same day sent me a message, through Mr. Moulton, assuring me—

Mr. Evarts—No matter.

Mr. Fullerton—Never mind that.

Judge Neilson—Well, he sent you a message through Mr. Moulton? A. Yes, Sir.

Mr. Fullerton—How long did that interview last? A. Ten or fifteen minutes.

Q. Did Mr. Beecher say where he was going when he left? A. He did not; the only information I had as to where he did go was from Mr. Moulton's statement made to me during the afternoon that Mr. Beecher had visited him and left a message for him.

#### MRS. WOODHULL'S UNWELCOME SUMMONS.

Q. I pass over, then, to the publication of Mrs. Woodhull's card in *The New-York World*; do you recollect about when that occurred? A. Yes, Sir; perfectly well.

Q. State if you had any interview with Mr. Beecher in reference to it? A. I did, Sir.

Q. And where did it take place? A. It took place at Mr. Moulton's house.

Q. And in whose presence? A. Mr. Moulton's presence.

Q. Please state what occurred on that occasion? A. I told Mr. Beecher that after the appearance of Mrs. Woodhull's card of May 22d, 1871, she had sent to the office of *The Golden Age* a message that she desired to see me; that she had also come

herself to the office and left in person a communication with my office editor that she desired to see me; that I went down to see her at her office, she being then a stranger to me; that on reaching her office she put into my hand a copy there of *The World* of the date of that day, and she asked me, pointing out a card which she had signed and which was there printed—she asked me to read it. I began to read it. She said: "I wish you would read it aloud." I then read the remainder of it which I had not already read to myself, I read the remainder of it aloud, including a statement to the effect that she knew that a public teacher in a neighboring city was living in concubinage with the wife of another public teacher in the same city, and that she meant to expose that relationship, and that she would do so regardless of the consequences and fearless of libel suits. I told him that I had read it with a shudder and that as soon as I had finished the reading of it and laid down the paper she turned upon me and asked: "Do you know, Sir, to whom I refer in that card?" I said to him that I replied in a cavalier way: "How can I tell to whom you refer in a blind card like this?" I told him that she had then said: "I refer, Sir, to the Rev. Henry Ward Beecher and your wife." I told him that this announcement filled me with astonishment, and that Mrs. Woodhull instantly said to me: "I read, Sir, by the expression on your face that my charge is true." I told him that I could not remember in what words I had met and endeavored to throw off her accusation; that she instantly followed it with a recital in vehement terms, in most excited manner, of a dozen or twenty particulars, extravagant and violent, all of which, or a portion of it, she afterward gathered together in the card of November the 2d, 1872.

Mr. Evarts—You didn't tell him that? A. No, Sir; I was explaining to the jury; I cannot remember all the particulars which she recited to me, only I remember that after they were printed that that brought it to my mind. The substance of the story which she told me was that there had been a criminal relationship between Mr. Beecher and Mrs. Tilton; that Mrs. Tilton had confessed it on her door steps, I believe, to Mrs. Davis, of Providence, and to other persons, and that when I had received the intelligence from her, I had used some violence upon her; that I had taken her down to Greenwood Cemetery, and in the presence of the graves of her children, stripped her hand of the wedding ring which I had once put there, and had trampled it with my heel into the sod of the grave of one of her children; that I had become a drunkard in consequence of that calamity, and had on numerous occasions struck my wife; that I had kicked her during pregnancy; that I had in every way vilified and abused her; that I had brought this crime to the attention of Mr. Beecher through Mr. Moulton, and that he had gone down—he, Mr. Moulton, had gone down—to Mr. Beecher and with a pistol pointed at his head or breast had demanded back some papers at the peril of his life. She went on in that strain. I will not undertake to give all the particulars, but as I said before I may repeat that I saw them afterwards gathered together in the article of Nov. 2d, 1872. I told Mr. Beecher that I had left Mrs. Woodhull to go to Mr. Moulton; that I had informed Mr. Moulton briefly and hurriedly of that strange interview; that Mr. Moulton had instantly said the



woman must be crazy; she must be dealt with; I must see her. I told Mr. Beecher that in pursuance of that determination by Mr. Moulton he and I took a carriage I believe that very night, at all events a night or two afterwards, but very near that time, and we drove to Mrs. Woodhull's house; I told Mr. Beecher that we there—we, that is, Moulton and I—had had an interview with Mrs. Woodhull; that during this interview she occupied our attention not with the story, except in very slight part, but mainly with an extravagant account of her views of spiritualism; that she had stood in the middle of the floor, and had built a kind of ladder with her hands between the earth and the heavens, on which she said the angels ascended and descended; that there was communication between the two worlds; that she had referred slightly to my interview and to the scandal, and that Mr. Moulton had said to her that it was wrong for anybody to be vindictive, wrong for any woman to speak ill of another, and that she had only to go to Brooklyn to see Mrs. Tilton, and she would find in her delicate and gentle manners and life an entire refutation of any such cruel story. I told Mr. Beecher that Mr. Moulton and I, on coming away that night, had discussed in the carriage how we should get along with Mrs. Woodhull; that Mr. Moulton expressed on that occasion his full conviction that the woman was not in her right mind, and that she must be dealt with as a dangerous person and by kindness, and I told him that if he had any suggestions in the matter as to how we should meet this new danger, confront this new enemy, I wanted to hear them; and it was in that way that Mr. Beecher and Mr. Moulton and I came into consultation as to how to treat with Mrs. Woodhull, and to deal with her threats to expose the secret between Mr. Beecher and Mrs. Tilton. From that time onward, for four or five months, Mr. Moulton, Mr. Beecher and I were in occasional consultation as to how to meet the dangers which were likely to arise to our cause from that quarter. I can detail, if you think it advisable, the successive steps that we took.

#### DESPERATE EFFORTS TO DISARM WOODHULL.

Q. I want to know what successive steps you took, and also what suggestions Mr. Beecher made, if any, from time to time, with regard to that apprehended danger?

Mr. Evarts—Those steps which Mr. Beecher did not know we will dispense with.

The Witness—There were no steps in the business with which Mr. Beecher was not as much connected as either Mr. Moulton or myself, from beginning to end.

Judge Neilson—The counsel meant conversations when Mr. Beecher was present. [To Mr. Fullerton.] You intend that, I suppose?

Mr. Fullerton—Undoubtedly, Sir; and the witness so understands it.

The Witness—Mr. Beecher at this interview was greatly agitated. Mr. Moulton told him he thought there was no cause for alarm; that we could bring influences to bear upon Mrs. Woodhull to quiet her and keep down the threatened publication. Mr. Moulton said he did not see what reason a woman

could have who didn't know either Mr. Beecher or Mr. Moulton or myself—who could not be supposed to have any personal enmity against us or any interests in us. Mr. Moulton said he did not see what motive the woman could have for carrying forward any enmity, and that she needed only to be touched by kindness in order that all the enmity which had thus far exhibited itself in the threat might disappear. Mr. Moulton said that his method was—his proposition was—to treat her with kindness, do some service for her, put her under some obligation to us. Mr. Beecher said that he would very cheerfully co-operate in that plan, and he thought it was the best and the only plan. He asked me if I would co-operate. I said I would; and we agreed, as part of the method by which we should deal with Mrs. Woodhull, that we would become personally acquainted with her; that we would treat her as gentlemen should treat a lady, and that we would in that manner put her under obligation to us—social obligation, kindly obligation. We agreed, also, that as she was a woman we would put her under the restraint of womanly acquaintanceship; in other words, that she should make Mrs. Tilton's acquaintance and Mrs. Moulton's. Mr. Beecher said it was impossible for him to do anything in that regard with Mrs. Beecher; that she would never make any alliance with him to any such end; she was a hard woman to get along with, and she must be left out of that account. In pursuance of this conversation, Mrs. Woodhull was invited by me to come to my house. There she made Mrs. Tilton's acquaintance, much against Mrs. Tilton's wish. In pursuance of the same arrangement, she was taken to Mr. Moulton's house and was introduced to Mrs. Moulton, very much against her wish. Mrs. Moulton objected so strongly that she went to Mr. Beecher and Mr. Beecher had a personal interview with her—

Mr. Evarts—Well, now, you were not present.

Mr. Fullerton—One moment.

Mr. Evarts—Well, that I assume from the language of the witness.

Mr. Fullerton—I would not offer it unless I would be able to connect it. [To the Witness.] You may state what, afterwards, Mr. Beecher said to you on that subject. A. Mr. Beecher told me that he hoped that the two ladies (referring to Mrs. Tilton and Mrs. Moulton) would be able with our help to hold Mrs. Woodhull under kindly obligations to us, and that he hoped that neither of them would make any objection to her coming either to my house or to Mrs. Moulton's. He told me that he had spoken to Mrs. Moulton on the subject—he never told me that he had spoken to Mrs. Tilton on the subject. I don't know that he ever did speak to her. I know both from himself and from Mrs. Moulton, and from Mr. Moulton, that Mr. Beecher did have an interview with Mrs. Moulton on that subject, and request her to invite Mrs. Woodhull to her house in pursuance of that same arrangement a few weeks after the publication of Mrs. Woodhull's threatening card of May 22, 1871. I carried out my part in good faith by the publication in *The Golden Age* of an article alluding to various ladies connected with the movement for woman's enfran-

chisement, in which I alluded in a complimentary manner to Mrs. Woodhull.

Mr. Everts—Is that article here?

Mr. Fullerton—Not that I know of.

The Witness—Shortly afterward Mrs. Woodhull sent for me and told me that she had been engaged with Gen. Butler, and, I think, Judge Loughridge of Iowa, both Members of Congress and both members of the Judiciary Committee of Congress—that she had been engaged with those gentlemen in getting Congress, or a Committee of Congress, to report to this effect, namely, that the XIVth and XVth Amendments of the Constitution of the United States, strictly and technically interpreted, would accord, as they now stand, the right of suffrage to women, on the ground that those two amendments give suffrage to all citizens, and that women are citizens; therefore, by those two amendments women are likewise voters. She told me that Gen. Butler had written an elaborate report to that effect, but that it was not in such a shape as to command the popular attention. She told me, also, that her husband had written that same idea in an elaborate form, but that his writing was too didactic to command the popular attention, and she asked me if I would consider that topic, would take up the argument, handle it, master it, and would put it in popular form. I said I would look into it. I took up the argument, and, thinking thereby to do her a service, I spent a week in putting that argument in a close and compact shape, in as good English as I could command, and I addressed it in the form of a public letter or tract to Mr. Charles Sumner. That was one service which I did for her in pursuance of the arrangement to which I have already adverted.

#### HOW THE WOODHULL BIOGRAPHY WAS WRITTEN.

Some time after that—a few weeks—Mrs. Woodhull again sent for me and put into my hands a roll of manuscript which she said was a biographical sketch of her life, written by her husband; that it was not written as satisfactorily to her as she desired it to be; and she asked me if I would take it and read it, and either revise it, or amend it, or make it out anew, that it might the more readily command the popular ear. I took that manuscript and I read it, and I read it twice; and, instead of merely revising it, I sat down, and, at one heat, I wrote in a—in what I designed to be a newspaper article—the sum and the substance of that narrative, a biographical sketch of Mrs. Woodhull. After it was done I took it to her house in the evening. I read it to her. I had done it as well as I could. She expressed great dissatisfaction with it. She said to me: "You have left out the most important parts." "Well," I said, "I have left out some extravagant parts which I thought would mar the narrative." Said she, "I wish you would put them in again." "What?" I said, "Do you want me to say that you have called a dead child to life?" "Yes," said she, "I do; for to write my life and leave out that incident would be to play the part of Hamlet with Hamlet omitted." I said, "Do you want me to say, as this narrative has done by

your husband, that you have had the power to heal the sick, like the apostles?" "Yes," said she, "I do, because that is the exact truth." And I asked her if she wanted me to say also that she had communication from the spirit world from the Greek orator Demosthenes; and she said, "Yes; for sometimes he speaks through me." "Very well," I said, "If you want them all in I will put them in." So I took that manuscript, which I thought I had completed, and I sat at the writing-table in her third room, her back parlor—it was a Summer night—and I spent two or three hours in writing in these supplemental incidents. I was until two or three o'clock in the morning. I completed the manuscript. When it was done I threw myself down on the sofa and slept all night, and took breakfast in the morning, and read it to the family. They pronounced it perfect. I went and published it. That is the history of that sketch. A few weeks after that, possibly six or seven, Mr. Moulton told me one day that he had received from Mrs. Woodhull a letter, or that he had received from Mr. Beecher a letter which she had written to him, asking that he might preside at a public meeting in Steinway Hall, and I went the next day to Mr. Moulton's house on purpose to be present at an interview appointed to be held between Mrs. Woodhull, Mr. Beecher and Mr. Moulton. I reached the house too late. Mrs. Woodhull had been there and had gone. Mr. Beecher then was there; Mr. Moulton was there. They told me the result of the interview. Mrs. Woodhull had urged him to preside at her lecture, and he had made objections to doing so. I told him that I thought he might preside; that I had once presided at a lecture for her; and, by the way, in my narrative I have omitted to state that one evening I presided for her at Cooper Institute when she delivered a lecture on Finance—a perfectly harmless and stupid production, of which I think nobody has heard since. I said, "I have once presided for Mrs. Woodhull; nothing came of it; no harm grew out of it, and if you will go and preside at her meeting you can do it without harm to yourself, and you will put her in that public way under such obligation to you that I think she has been put under to me. I don't think that woman can ever turn and injure me after what I have done for her, and if you will in some public way identify yourself as being friendly to her—not that you agree with what she says, but if you will go and preside at that meeting, I think she will consider that an act of courtesy done by you, and it will be a new bond by which we shall all be able to hold her against any ebullition of her strange mind." Mr. Beecher did not positively decline, but he didn't see how he could do it. Nevertheless, if during the afternoon, he said, he came to a different conclusion, he would go and preside. I went that evening with Mr. Moulton purely out of curiosity to the meeting; I had no expectation of going; I had not been invited to go, and nothing had been said to me about presiding. A great crowd was present; we were there a few minutes before eight. Mr. Moulton said, "Why we can't get in." I replied, "There are more doors than one to Steinway Hall, I have been here before; there is a rear entrance. I went around to the rear entrance; I went up stairs and I

heard somebody say that there were no brave men in these cities, that several gentlemen had been asked to preside at that meeting, and no man had the courage. I saw Mrs. Woodhull, and she was weeping. She said she did not believe there was a courageous man on the face of the earth. "Well," I said, "that is a very singular accusation to make." Said she, "Nobody will preside for me; several gentlemen have been asked; everybody declines, and I am going upon the platform alone," and she started to go. I said, "Wait a moment, I will not have you go before that great audience alone. I was born in this city, and people will hear me, and I will introduce you," and I caught up my hat and my coat, and I stepped in front of her to the platform, and I made a little speech which Mr. Moulton repeated to you the other day. That is the history of the Steinway Hall meeting. That was the last public service, if it was one, that I rendered to Mrs. Woodhull. On the next day I went out of town for my lecturing season; this was in November, 1871. I was gone all the Winter, with occasional days at home, until the next March or April, and at that time Mr. Moulton and I made a call upon her, a friendly call, which he has detailed in his narrative to you.

Mr. Evans—It is not necessary to refer to Mr. Moulton.

#### MRS. WOODHULL UNSHEATHS HER SWORD.

The Witness—Two or three days after that my attention was called to what purported to be an article prepared and put in type for Mrs. Woodhull's paper, an article—I was trying to remember the title; it has slipped me at this moment—the title was "Tit for Tat." It was an article in which she violently assailed a dozen or twenty—

Mr. Evans—I suppose, if your Honor please, we can hardly have the contents of a long article recited.

Mr. Fullerton—Q. Well, without stating the contents of the article, state what took place in reference to it? A. I read that article. I went straightway to Mrs. Woodhull's office, and I saw her, and I asked her if she had written such an article, or had it written for her, or designed to print it, an article—

Q. Well, go on. A. She said it should not be printed, and I left. Two or three days afterward I found that it had not been printed, but that multitudinous slips of it had been struck off, and these slips had been sent about, so that, though it was not published in a technical sense, it had been really published. I then went down to her. I told her that I had defended her as a woman when she was attacked, and that now, as she had in return attacked other women, I washed my hands of her forever. I walked out of her office, and I have never seen her from that day. I will say further, that I reported the substance of that incident to Mr. Beecher at Mr. Moulton's house, and Mr. Beecher said to me he thought I had done an unwise thing to break my acquaintance with that woman; that she had been sufficiently dangerous even when we were on friendly terms with her, and there was no telling what she might do if we became her enemies, and he asked me not to exhibit enmity toward her. He urged me to continue with Mr. Moulton the

same kindly services in order to strengthen the same influence to which I have adverted in the past months. I wish to say distinctly to the jury that my relationship to Mrs. Woodhull was a foolish one and a wrong one, as the event has justified, and I do not ask any man to defend me for it, but to blame me for it. But I say here before God that Mr. Beecher is as much responsible for my connection with Mrs. Woodhull as I am myself.

Q. Now, Mr. Tilton, I want to call your attention to the tract you prepared, and to the biography, and to ask you what knowledge, if any, Mr. Beecher had of their publication, and what he said in regard to them, if anything? A. Mr. Beecher never said anything to me in regard to any of the publications that I made in reference to Mrs. Woodhull, other than something to express his thanks multitudinously for all those services.

Mr. Evans—Now, wait one moment; what did he say? "He never said anything other than something." What he said is what we want.

Mr. Fullerton—That is what I am going to give you, and I will do it without any interruption.

Mr. Evans—I will interrupt the witness, because he is going to do otherwise than what is right.

Mr. Fullerton—Now, go on. A. Mr. Beecher very frequently inquired of Mr. Moulton and myself how we were getting along with Mrs. Woodhull, and I remember one particular occasion, when he was in peculiar agitation on the subject. The circumstances were these: Mrs. Stowe was writing a novel and publishing it in Mr. Beecher's paper, *The Christian Union*. Mrs. Woodhull sent for me, and asked me if I had read a chapter of it which contained a satire upon herself. I said, "No, I never read a word of it, and I didn't know there was any such satire." Mrs. Woodhull told me there was a certain chapter in this novel—I cannot point it out, for I did not read it myself—which was aimed directly at her, satirizing her under an assumed name, and that she meant to strike the Beecher family. She said that two of the sisters, Mrs. Stowe and Miss Catharine Beecher, had vilified her, and that Henry Ward Beecher, their brother, ought to stop that vilification; that she would hold him responsible for any satire published against her in his paper, and that she meant to strike him, and to pierce him to the quick. I said to her, "Mrs. Woodhull, if you will stop and think that in striking him you are striking yourself, perhaps you will not do it." She said, "What do you mean?" I said, "When ever a woman before the public is vindictive, and draws the dagger to attack others, the result is that she will, sooner or later, destroy herself." I said to her, "Now, if you wish to answer Mrs. Stowe's attack, do it in a way of superior gracefulness, gentleness and charity;" and her face lighted up at that suggestion; and I told Mr. Beecher what I had said to her, and he said, "What do you suppose the woman will do?" I said, "I think Mrs. Woodhull's paper next week will contain, not an attack upon you, but some kindly reference." The paper came out next week with a very kindly article.

Mr. Evans—Is that article here?

The Witness—I don't know that it is.

Judge Neilson—It came out next week with an article?

A. Yes, Sir; it came out next week with an article, and Mr. Beecher read it, and he said to me, "For the kindness that is here expressed I owe to you my thanks." I instance that as one of the numerous illustrations to show the anxiety which Mr. Beecher exhibited to Mr. Moulton and to me in reference to the manner in which we were dealing with Mrs. Woodhull.

Q. Now, then, how long before going to Steinway Hall on the evening of her lecture, where you introduced her, had you contemplated going? A. I had not contemplated going at all.

Q. And you came to the conclusion to go about how long before you started? A. I should think about thirty minutes.

Q. You were under no promise to preside there that night? A. None whatever.

Q. You say you saw an article entitled "Tit for Tat;" where did you see it first? A. It was brought to me at my office by somebody; I have forgotten whom.

Q. Do you recollect who it was? A. I recollect now, Sir. It was brought to me by a lady from California; she came to show me a California statute, and this article fell out accidentally. I picked it up.

#### MR. TILTON ASSAILED IN PLYMOUTH CHURCH.

Q. We will now pass over to December, 1871. If anything occurred during that month with regard to retiring from Plymouth Church, I want you to state what that was. A. In the first or second week, as near as I can remember, of December, 1871, Mr. Beecher came one evening to Mr. Moulton's study when I was present. It was either just before his Sunday night sermon, or before his Friday night prayer-meeting, I don't know which; I remember he said he had not much time to spend, because he had to go to his meeting. He asked me if Mr. Moulton had conferred with me on the subject of my formally retiring from the Church. I told him that Mr. Moulton had said something to me on the subject. I think I told him that Mr. Moulton had shown me a letter which he had written to me on the subject, but I told him that I had expressed to Mr. Moulton my reasons for not retiring from the Church. Mr. Moulton came in, and we had a little talk on the subject together. Mr. Moulton said that he had brought the matter to my attention—this he said to Mr. Beecher. He told Mr. Beecher that he (Moulton) had one view of the subject, and I had another; and, said he, "I will leave Theodore to explain his own reasons in his own way." Mr. Moulton then left the study, and what I said to Mr. Beecher was substantially this; it was a rather hurried interview. He said to me, however, in the beginning, that in view of the events of the Summer and Fall, by a publication of the Woodhull sketch and my presiding at the Steinway Hall meeting, and the little poem called "Sir Marmaduke's Musings," there had grown up in the Church a feeling on the part of the members and leaders that I had been an intense spiritualist, that I had wholly abandoned the orthodox faith, and that I had not attended the Church for a year or nearly two years, and as my name was being banded up and down the community, they felt that, as a Church, there should be some inquiry made into the matter.

Mr. Beecher said: "You know, Theodore, how dreadful and distressing this is to my feelings, particularly as I understand how you have come into your disrepute; but what can I do? How can I explain to my church members? They are crowding me on every hand. They are saying to me that here is a young man who has been your friend for many years; he has not been here to church for a year and a half, and he is the author of these strange publications, and he is entering into all manner of vagaries, and we must inquire into it." Mr. Beecher said to me: "Now, Theodore, I understand perfectly well the position you have taken, and which you took long ago, that you never again would come to the church, and that you considered yourself not a member of it; but you must remember that your name is still on the roll, and I don't know how I shall get along with our embarrassments. Will you not, therefore, make my position easy by writing to the church a formal letter asking your dismissal, and I will see that that letter is given to you without any reflection." I told him no. I said: "Mr. Beecher, in reference to any criticisms made upon me because I have made a sketch of Mrs. Woodhull's life, or presided at a public meeting on her behalf, you know perfectly well the reasons that have led me to do it, and you have no right to make these reasons a thorn in my side now." I said, furthermore, that as to any offense in the little verses called "Sir Marmaduke's Musings" you have only to treat it as a farmer treats a nettle; clutch it in your right hand and crush it; handle it boldly; put it into *The Christian Union* or read it at your prayer meeting; treat it as if it had been written by Mrs. Stowe, or by some of your friends; treat it as if it was a matter not dangerous to you at all. You can get rid of that very easily." I said: "As to the only remaining thing, my retirement from the church, get rid of that in this way: Say I told you, a year and a half ago, as I did at one of my earliest interviews, that I had then abandoned the church; it is known as a matter of fact that I have never crossed the threshold of the church since then; assume a power and take my name from the roll, or have a new roll printed with my name omitted. If it is dangerous to call attention to the fact that my name is there, get rid of it." I said: "I cannot, with any self respect, ask your church to give me a letter of dismissal after the lapse of this year and a half since I have dismissed myself, because now, if I write such a letter, it will impugn what I have been doing for the last year and a half, and, therefore," I said, "you will remember distinctly I told you I would never again cross the threshold of your church." I told him that I thought that would be very easily got along with if he treated the subject boldly, and assumed that my name ought not to be on the roll. I gave him some of the reasons why I could not consistently ask for any letter of dismissal. One of these reasons was this: "You put your request to me on the ground that my views are different from those of my childhood," but I said, "certainly they are; but allow me to remind you that my views are not different from the views of many members of your church in good standing. I am not more radical in any of my views than Deacon Freeland, or Mr. Cladin, or

any other member in good standing in your church, and it would be a falsehood to say that I must retire from your church because of any liberality in my religious views, for," I said, "your church is well known throughout Christendom as being an asylum for all looseness and liberality of Christian views, and if I retire from your church, particularly as criticisms have been made against me for verging toward liberality of Christian sentiment, people would say 'Well, if Theodore has grown so loose and liberal in his views that he must on that account leave Plymouth Church, where, then, will he go?'" I said: "My views are liberal enough to entitle me to ask a letter of dismissal from an orthodox Congregational church, but they are too liberal to allow me to remain in good standing in the church, and on that ground I cannot ask any dismissal. Furthermore," I said, "although you must remember I have been absent from your church for a year and a half, still my wife and daughters remain members, and their names are on the roll, and that if I retire from the church, leaving them in their membership, it will not produce upon the public the impression that family difficulties have been obliterated, but that family difficulties have been created. I gave him further reasons on that occasion, all of which, perhaps, I have no need to detail here. At all events, as the substance of that interview, I peremptorily declined to ask a letter of dismissal from the church, and told him he must handle the subject in some other way.

#### THE INTERVIEW IN THE CARS.

Q. Do you recollect any time after the interview of which you have now spoken of meeting Mr. Beecher in the cars when going to Boston? A. Yes, Sir.

Q. Do you recollect about what time that was? A. I met Mr. Beecher in the cars one morning a very few weeks after the interview which I have just detailed; I don't remember whether I was going to Boston or coming away from Boston. I remember quite early in the morning, while I was sitting in the cars, writing from just such an inkstand as that I remember—

Mr. Evarts—Which inkstand? A. That one. [Indicating for the counsel.] Mr. Beecher was in the cars. He came up to me and he said, "How is it possible that you can write in the cars?" I said, "I have a travelling inkstand, as you see, and do a great deal of my work in the cars." "Well," said he: "What are you writing?" I was going to hold up my manuscript to him that he might see for himself. Said he: "I hope it is not another 'Sir Marmaduke' poem." I said: "No, it is prose; I am writing an essay on John Wohlmann." Said he: "May I look at the book?" I handed him the book which I was reading, and I said to him: "I read this book because it is a fountain of peace." He drew a long breath, and he said: "A fountain of peace! Tell me where it is; I want to drink of it." He said: "If there is peace in this book, in Heaven's name I must read it, for," he said, "I have come to the conclusion that there is to be no peace for me any more in this life." He then said that he had been thinking of my interview that he had with me at Mr. Moulton's, and that he was a good deal distressed the more he thought of it that I could not write a letter asking for my retirement from that church. He said: "I think trouble will grow

out of it; I cannot give to my people the reason for your absence, and you are a public man, and they will inquire into you, and you have enemies in the church and I cannot suppress them." Said he: "I foresee trouble." I told him that I did not see how trouble could arise if he himself met it firmly. I told him I thought he was allowing one danger to grow up that he might suppress, and I mentioned to him that his newspaper, *The Christian Union*, had shown certain signs of unfriendliness to me. I said: "I don't care for the criticisms of your paper, but I don't think it will conduce to the public regard of our harmony to have your paper criticise me." "Well," said he, "Theodore, the people in my office are rather inimical to you, and I wish I might get some one here to whom I might intrust our secret, so that that paper might assume a more friendly face to the public," a suggestion which he afterwards carried out.

Mr. Evarts—I ask to have struck out the words: "A suggestion which he afterwards carried out."

The Witness—I refer to the introduction of Oliver Johnson, as the editor of that paper, at my request.

Mr. Evarts—Whenever that comes up as a fact—

Judge Neilson—Strike out those words.

Mr. Fullerton—It is perfectly immaterial.

The Witness—I told Mr. Beecher that whatever sources of anxiety he might have in the church on the part of gentlemen who wished to make inquiries into the scandal, which was then just beginning to rise, and which was limited and confined to a very narrow circle—I said: "You must remember there can be no inquiries which don't come through me; no harm can come to you unless I create it; no blow can be struck at you unless I strike it. Now," I said, "go on with your work; have no apprehension on my account." I said: "Of course, my anxiety is not for your safety—it is for Elizabeth; but in protecting Elizabeth I necessarily shield you. Now, you do your work, and don't be downcast, for Moulton tells me you are always full of heartbreaking anguish; relieve your mind from any apprehensions as to any possible danger that may arise through me." He took my hand and he shook it, and he thanked me, and tears came into his eyes, and he suddenly left me, in order, as I supposed, that the passengers might not witness a scene between us. That was the substance of that interview.

#### THE TILTON-BOWEN ARBITRATION.

Q. Now, Mr. Tilton, we come to the arbitration between yourself and Mr. Bowen. When did that occur? A. That occurred about four months after the interview which I have now described.

Q. Bringing it to some time in April, 1872? A. Yes, Sir; shortly after my interview with Mr. Beecher in the cars, which I have related, I went West on a lecturing tour. During that trip of travel I had inquiries put to me by people as to why I had so suddenly sundered my relationship to *The Independent* and *The Brooklyn Union*, particularly after the public announcement had been made that I was going to be connected with those two papers for a term of years. Lecture committees and friends throughout the West said unless there should be some explanation of

that fact, the reasons of my withdrawal from this paper, permanent injury would attach to me. That impression was made very strongly on my mind during my journey, and when I came home, towards the last of March, I consulted with a few of my friends as to how I should remove that impression. One of those persons I remember was Oliver Johnson. I consulted also with others, and as the time had been so long since my retirement from those papers there seemed to be no other recourse—there seemed to be no other alternative left than to explain the fact of my retirement; and in order to explain that fact, in consequence of that fact, as I said a short time before, I wrote a proposed letter to Mr. Bowen, now in evidence, and dated January 1st, 1871. I resolved, in order to put an end to the scandals which were arising to my detriment at that time—scandals taking many different forms, one form that I had been dismissed for drunkenness; another form that I had been dismissed for this, that and the other cause—many different forms—said: "I will put an end to this business, and give the reason why I had suddenly retired from *The Independent* and *The Union*," and, accordingly, I published, or wrote, with Mr. Oliver Johnson's assistance and co-operation, my letter to Mr. Bowen dated January 1st, 1871. I designed to publish it. Mr. Moulton was violently opposed to the publication. He said to me: "Theodore, to right yourself in this case you are doing great injury to another, and I don't think your own justification will justify you in publishing this article. Mr. Moulton expressed himself, and I may say so strongly that I felt the force of his words. He took the article, and he said that he would endeavor to find some other way of rectifying that injurious impression. I ought to say that at the same time I had instituted, or rather Mr. Ward, my counsel in my absence, just before my return, had instituted a suit against Mr. Bowen for the payment of the unpaid money which he still owed me, and Mr. Moulton undertook to keep that case out of court, and at the same time undertook to keep this article out of the newspapers. He said, "Better have no litigation; better have no publication; the peaceful way is the best way." I said, "I am perfectly willing for peace, provided it can be peace based on justice, but I am tired of perpetual misrepresentation." He had an interview with Mr. Beecher, at which I was present—a very brief interview. The only feature of it, as connected with Mr. Beecher, as I distinctly remember, was, Mr. Beecher begged me, if possible, to find some other way than the publication of that article. "Why," I said to him, "You have always said that you were not afraid of Mr. Bowen, and, indeed, you have gone so far on one or two occasions as to say you wished your trouble with Mr. Bowen might be brought to a head; that you thought you could strike this away with one blow; that Mr. Bowen had no ground of grievance, and that he could bring no evidence against you." "I know" said he, "I am not afraid of Bowen if the fight comes, but," said he, "you must remember, Theodore, that a clergyman's reputation is like a woman's, to cast upon it a suspicion is almost as bad as to load it down with proofs." And he begged me very strongly not to publish the article, and his wishes had weight. I remember on that occasion that he wept. Perhaps, however, I ought not so frequently to allude to that.

Q. Look at the paper now shown you, being "Exhibit No. 64," and say whether it is the article you prepared? A. That is the article that Mr. Johnson and I prepared together.

Q. What part of it is in Mr. Johnson's handwriting? A. That is Mr. Johnson's handwriting, the manuscript appended to the article.

Q. The manuscript appended to the article? A. Yes, Sir; but Mr. Johnson had some share also in the composition of the article.

Q. What position did Mr. Johnson fill at that time? A. Mr. Johnson was then the editor of *THE WEEKLY TRIBUNE*. The particular part of this article which came from Mr. Johnson—

Mr. Evarts—We have nothing to do with Mr. Johnson.

Mr. Fullerton—Never mind that, then. Did you regard these stories which were afloat in the West, and which you heard of West when on your lecturing tour as detrimental and prejudicial to your character? A. Why, Sir, they were horrible stories. They were stories that I—

Judge Neilson—That answers the question.

The Witness—They were not detrimental to my character; they were detrimental to my reputation.

Mr. Fullerton—Did you regard it as necessary, for your reputation, to refute them by the publication of that article? A. I did.

Q. Had you any other object in view in preparing that article? A. None whatever.

Mr. Evarts—I don't know that we have anything to do with that.

Judge Neilson—Perhaps that has gone far enough.

Mr. Evarts—People are to be judged by their conduct.

Mr. Fullerton—Well, we will get at people's motives.

Mr. Beach—They are sometimes judged by their motives.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Facts can be shown. Horrible stories are shown.

Mr. Fullerton—We have a right to show what motives prompted that.

Judge Neilson—Still, in general, a motive is a mere inference from the act.

Mr. Fullerton—Your Honor will understand a different motive is imputed to him.

Judge Neilson—You have the fact.

Mr. Evarts—That is the trouble, that they are not allowed to state what was the motive. His acts must be judged of by those to whom they are submitted.

Mr. Fullerton—That is not a good rule of law or philosophy either.

Mr. Evarts—You cannot examine him as to that.

Judge Neilson—Go on.

Mr. Fullerton—Had the preparation and the publication, or the proposed publication of that article any connection at all with your prosecuting the claim against Mr. Beecher?

Mr. Evarts—That I object to.

The Witness—Not at all.

Judge Neilson—The article is in.

Mr. Evarts—I have a right to cross-examine this witness about his motives; they have not a right to do so.

Judge Neilson—I think the objection is well taken.

Mr. Fullerton—I have a right to examine him about his motives, but not to cross-examine him about them.

Judge Neilson—If it appears from the article that it had some connection with the claim upon Bowen, then the inquiry would be proper, but if it does not appear from the article that it had some connection with the claim upon Bowen, then it is unnecessary.

Mr. Fullerton—I put the question for the purpose of having it remembered that I propose to prove it, because it may be necessary for me to do it in reply.

Judge Neilson—We will recollect it.

Mr. Fullerton—Your Honor will be good enough to bear in mind that the proposition has been made.

Q. Do you recollect the occasion of the execution of the tripartite agreement, so called? A. I do, Sir.

Mr. Fullerton—[To defendant's counsel.] Will you be kind enough to let me have the original? [To the witness.] I will put this other question, Sir; you need not answer it, Mr. Tilton, until you see what disposition is made of it. Were you advised at the time, and did you so believe, in good faith, that you were entitled at law to recover the \$7,000 which you afterwards got from Mr. Henry C. Bowen?

Judge Neilson—I think he may answer that; yes or no.

Mr. Evarts—If your Honor please, that of course lets in my inquiries as to who gave him the advice, and on what it was founded.

Judge Neilson—Yes, Sir.

The Witness—Am I to answer, Sir?

Mr. Fullerton—Yes, Sir.

The Witness—[To the stenographer.] Will you do me the favor to again repeat it?

THE TRIBUNE stenographer read the question.

Mr. Evarts—This inquiry, if it is allowed to be put, lets in the inquiry into what the advice was, by whom given, and on what facts it depends.

Mr. Beach—I do not see any necessity of your Honor ruling upon that just now.

Mr. Fullerton—When the question comes up—

Judge Neilson—I will rule when it does come up, but I only intimate now that I think that opens the door to them.

Mr. Evarts—My friend must not complain of surprise.

Mr. Fullerton—I am not surprised at anything.

Mr. Evarts—Well, you won't be.

Mr. Fullerton—No, not at all; but sufficient unto the day is the evil thereof.

Judge Neilson—He don't object to your being surprised; he says you should not complain of it.

Mr. Fullerton—No, Sir; I should not be surprised, nor will I complain of anything they do; but what I do not want is this: that the counsel upon the other side should ask your Honor to decide in advance upon a question that may come up some four or five weeks hence.

Mr. Evarts—You have heard his intimation as to that.

Judge Neilson—Read this question to the witness.

THE TRIBUNE stenographer repeated the question. "Q. Were you advised at the time, and did you so believe in good

faith, that you were entitled at law to recover the \$7,000 which you afterwards got from Mr. Henry C. Bowen?"

Judge Neilson—Say yes or no.

The Witness—Yes, Sir. I understand your Honor to limit me as to that answer, not to say who advised me.

Judge Neilson—No; that answers the question.

The Witness—Perhaps I ought to add, Sir, that I have that advice in writing.

Judge Neilson—No.

Mr. Fullerton—I should have asked you in its proper connection whether you did write a letter to the church or any of its officers, in order to effectuate your intent, as expressed to Mr. Beecher in that conversation, in dissolving your connection, or in getting your name from the roll? A. At a later period, Sir, I wrote, at Mr. Oliver Johnson's request, a little note, which was to quiet the scruples of Mr. Halliday.

Mr. Evarts—Well, well! we don't want the matter characterized.

Mr. Fullerton—No, if you will just give us the note.

Mr. Evarts—The note will speak for itself. It is of no consequence at whose request it was written.

Q. Did you have the note published in your statement? A. I have never seen that note since.

Mr. Beach—They have got it.

Mr. Fullerton—They have got it. I have asked for it. Brother Shearman will find it, I guess.

The Witness—My impression is, however, that that note was not written until the Summer of 1873. It had no connection with the events that we have just been narrating.

Mr. Fullerton—I will pass from that subject, then, until you find the note.

Mr. Beach—They have got it.

Mr. Evarts—[Producing the papers.] They do not seem to be admissible as acts towards the church, but there is nothing in them that we have any objection to.

Mr. Fullerton—First, the letter from Oliver Johnson. [Reading:]

NEW-YORK, July 10, 1873.

MY DEAR MR. TILTON: I frequently hear it said that you are a member of Plymouth Church, whereas I have understood that you withdrew from it several years ago. Am I right or wrong? Yours truly,

OLIVER JOHNSON.

Marked "Exhibit No. 71."

Mr. Fullerton—I now read the answer to that letter:

BROOKLYN, July 11, 1873.

MY DEAR MR. JOHNSON: You are right in your recollection. I am as much surprised as you are that anybody should consider me a member of Plymouth Church. It is now verging toward four years since I ceased my association with it. You know that I left it even before leaving *The Independent*. In my name is still on the records it is just as an old nest clings to a tree after the bird has flown.

Ever yours,

THEODORE TILTON.

Marked "Exhibit 72."

Mr. Fullerton—There is another letter in this connection that I desire to put in, but it does not seem to be at hand.

Mr. Beach—Mr. Tallmadge, I understand, will produce it this afternoon.

## HOW OTHER CRIBS WERE HUSHED.

Mr. Fullerton—I will call your attention then to another subject. Something has been said as to a proposition to treat you different in *The Christian Union*. Just refer back to that subject. What was said upon that subject? A. What was said by whom?

Q. Mr. Beecher, when his attention was called to it? A. I think the first I heard from Mr. Beecher on that subject was in the interview which I held with him on the cars either going to Boston or coming away from Boston in the early part of January, 1872. At two or three times subsequent to that, during that same year, 1872, and particularly toward the close of the year, in November and December, Mr. Beecher said that in his judgment it would be necessary to have some one in *The Christian Union*, some editor of his paper who could handle that journal with more skill in reference to the scandal; hitherto, unkindly remarks had been made in his paper about me, and he wanted remarks of a different character to be made; he wanted the case now wisely handled, and he said: "I cannot trust any of my editors to do it, they are not friendly to you, and they do not know any of the facts in the case, and that is a great misfortune." I suggested to him that I could point out a way to remedy that difficulty. I said to him: "In the first place, your paper is dull and needs improvement, and if you will take my office editor, who used to be with me on *The Independent*, namely, Mr. Oliver Johnson, who knows all the facts in this case, or at least who knows the central fact, from my having confessed it to him in the Summer of 1870, and if you will make him your managing editor, he will greatly improve your paper for one thing, and he will handle this business with necessary skill and kindness for another thing." Mr. Beecher said that was a good suggestion. He said he would consult with his associates in the office about it. He afterwards told me that he had consulted with them; some of them were favorable, some were unfavorable. He reported to me from time to time during a number of weeks the progress of the negotiation, or rather the process by which he was attempting to open the door of *The Christian Union* for the admission of Mr. Johnson as its editor, without exciting any undue suspicion on the part of those gentlemen already there connected with the staff. Finally, Mr. Beecher told me that the way was clear to invite Mr. Johnson in, and he asked me what compensation I thought Mr. Johnson should have; what kind of arrangement ought to be made. I told him I thought Mr. Johnson was master of his profession and was growing old, and he ought to have \$5,000 a year, and he ought to have a contract by which his relationship to the paper should be preserved and maintained for a term of years. I wrote that contract, and Mr. Johnson went into *The Christian Union* and became its managing editor, and is its managing editor to this day, I believe, under that contract which I wrote.

Q. Something was said, I believe, at one time, of the unfriendly character of some article in *The Christian Union* toward you; when was that conversation? A. At various times during the year 1872 Mr. Beecher spoke to me of the difficulties which he had in his office. There was a disposition, he

said, on the part of gentlemen in his office to make flings at me; he generally kept them out of the paper; he told these gentlemen that they must not do such things; still he said that they would creep in; and the very fact that these gentlemen were writing such things, and he was put to the perpetual necessity of suppressing them—that that of itself was a cause of suspicion, and gave him great trouble and worry. That was one of the reasons why he wanted a managing editor who was friendly to me.

Q. I call your attention now to an extract from *The Christian Union*, on page 337 [referring to printed book], and ask what preceded it—the publication of it—between you and Mr. Beecher? [Handing witness the printed book.] A. After Mr. Bowen paid to me the \$7,000 which the arbitrators awarded under the contract, Mr. Claflin asked me, or perhaps Mr. Moulton asked me as coming from Mr. Claflin, whether or not I would sign a document to the effect that if Mr. Bowen took back all the charges which he had made against Mr. Beecher, I would cease to circulate those charges. I said I would do so with profound pleasure, because I considered that every accusation set afloat against Mr. Beecher by Mr. Bowen or by anybody else, might, in the long run, add weight to the accusations which might arise against Mrs. Tilton. A paper was drawn, indeed it had been drawn on the day of the arbitration, perhaps the day before. After the arbitration that paper, with some changes—changes made at my suggestion, with a view more definitely to make clear the point which I have just stated, namely—

Mr. Evarts—The changes will speak for themselves.

The Witness—I signed that paper.

Q. Do you now refer to the tripartite agreement? A. I do, Sir. What was your next question, Sir?

Q. What preceded the publication of that extract from *The Christian Union*? A. After Mr. Bowen, on that evening, drew his check to pay me the money, which he did on the spot, he said to me that he had never entertained any—I beg pardon, Sir, for not addressing the jury—he said to me that he never had entertained any unfriendly feelings towards me, and that if I supposed he had, that I was mistaken, and that he desired to make any public reparation which I thought proper. I told him that I desired the publication in the subsequent *Independent* of a little note of mine, and of some proper answer on his part. He said he would make such a publication, and did make such a publication. In addition to that publication he sent to me two private notes, taking back—

Mr. Evarts—No matter about the contents of the notes.

Mr. Fullerton—No; do not give the contents of the notes.

The Witness—Well, I can give you the notes. All this was published in Mr. Bowen's paper, either on the first week or the second; at all events, the first issue that followed the arbitration, very highly—

Mr. Evarts—Well.

Mr. Fullerton—I will put it in evidence.

The Witness—Very well. In Mr. Beecher's paper of the week following, he took out what Mr. Bowen had published in *The Independent*, copied it in *The Christian Union*, and he accompanied it with comments in my justification and vindication.



Q. Is the article before you the commentaries of *The Christian Union* upon that occasion? A. Yes, Sir; I now hold it in my hand.

Mr. Fullerton—I now propose to read it.

Mr. Everts—The narrative of the witness includes the publication in *The Independent* as the text upon which this in *The Christian Union* is based.

Mr. Fullerton—It is not the opinion of Mr. Beecher in regard to the article in *The Independent* that I care about; it is the expression of his opinion irrespective of that article—although that was the pretext for it—in regard to Mr. Tilton himself.

Mr. Everts—The transaction, if it be given as a publication, should be given in its own dimensions, that we may have the benefit, on the one side or the other, of it—its true features, that is all.

Judge Neilson—In other words, you think *The Independent* should be put in as well as *The Union*?

Mr. Everts—Yes, Sir.

Mr. Fullerton—There is no objection to it at all.

Judge Neilson—Read this part first and consider the other in; and it can be marked hereafter.

Mr. Fullerton—I will read this part now.

Mr. Beach—I do not suppose it to be the rule, because we put in something that Mr. Beecher said, that we are obliged to put in what it is founded on.

Mr. Everts—No; but it does depend on whether you now agree to put it in or not. I will go on with my objection if you do not.

Mr. Fullerton—I do not agree to put it in, because I do not know that I can find it yet; I have never seen it myself; I have only seen the commentary from *The Christian Union* upon that article, and the independent opinion which Mr. Beecher expressed in regard to Mr. Tilton.

Judge Neilson—I think it will be well to put the article in hereafter, when it is found.

Mr. Beach—We have not the slightest objection.

The Witness—I will state.

Mr. Fullerton—That the article in *The Independent* to which you refer is partly quoted in the page before you.

Mr. Everts—Which makes it still more important that we should have the whole.

Mr. Fullerton—No.

Judge Neilson—I think it is just as well.

Mr. Fullerton—This is from *The Union*, of April 17th, 1873:

This honorable testimony from Mr. Bowen ought to clear away the misconceptions which have shaded the path of this brilliant young writer. *We have never parted with our faith that time would reconquer for Theodore Tilton the place in journalism, literature and reform to which his talents and past services entitle him.* \* \* \* \* Upon this testimony of the estimation in which his principles and character are held by a wise and strong man, who was closely associated with him for fifteen years in the conduct of *The Independent*, the public must needs put aside prejudices of judgment which they have permitted to cloud this young orator and writer. Those who know him best are the most sure that he is *honest in his convictions, as he is fearless in their utterance, and that he is manly and straightforward in the ways in which he works for what seems to him best for man and for society.*

We trust that the gold in *The Golden Age* will not grow dim, but that, dropping its dross in the refining fires, it will shine with the luster of gold seven times refined and purified.

Marked "Exhibit No. 73."

#### MR. TILTON AGAIN SUGGESTS RESIGNATION.

Q. Do you recollect the occasion when Mr. Beecher dined at Mr. Moulton's and you were present? A. Yes, Sir.

Q. Do you recollect when it occurred? A. I cannot fix the precise date. If anybody knows the night on which I spoke in the Academy of Music during the Greeley campaign, it was that night.

Q. It was that night? A. Yes, Sir.

Q. It was in the Autumn of the year, then, 1873? A. It was October, I think.

Q. Do you recollect anything that occurred at that time? A. The only feature of the occasion which can have any reference to the subject now in hand is this: Mr. Beecher said to me either that he was going to have or had had a silver wedding in his church—the celebration of the twenty-fifth year of his ministry. I do not remember whether it had just passed or was just to come; at all events it was still fresh; it was a topic then in his mind, and he brought it to my attention. He spoke to me about his popularity and the strength of his friends and his friendships, of his coming to the acme of his life, and he told me also that it was a great delight to him to hear that I had gone during the Summer at the head of troops of friends, likewise, resuming my public career. He said to me that he had noticed however, in human affairs, that when men were at the point of their prosperity, they were sometimes nearest to their downfall, and he asked me if there were any particular, pressing and eminent dangers in our case. I said to Mr. Beecher on that occasion that I had a suggestion to make to him, which perhaps would not come with a good grace from me; nevertheless I did it in the interest of Elizabeth and future peace. I said to him, "You have terminated or are to terminate with great honor the 25th year of your ministry. It is a good time for you to resign. You can hope for nothing better in this world in the way of honor in your pulpit than you have achieved. You are writing the Life of Christ, the second volume is not completed, and you will have a good excuse to go to the Holy Land. It can be known to all the world that you have gone to see with your own eyes the footprints of the Master whose life you are now writing, and if you now resign it will be a fitting time to do so, and such a resignation, which heretofore would have been accompanied with suspicion and danger, would be now, in my judgment, the surest way to provide peace for the future." I said, "I do not ask you to do it, but I am in constant apprehension that something will arise where there are so many curious eyes prying into our secret, and so many gossiping tongues talking of our affairs—I fear," I said, "that something will arise to make it dangerous for you to continue longer in your pulpit, and you will never have such an opportunity to resign amid the world's good opinion as now. I ask you to think of it." That was the substance of what I

said. He said he thought the suggestion was a good one and he would think of it. That is all that I remember that occurred on that evening.

#### MRS. WOODHULL'S ATTACK.

Q. I then pass to the publication of the Woodhull scandal, so called, of November, 1872. Do you recollect its publication? A. Yes, Sir.

Q. Now, if there was a meeting subsequently to that publication between yourself and Mr. Beecher, I want you to state what it was. A. That publication was made while I was in the northern part of New-Hampshire concluding my labors in that campaign. I came home to Brooklyn on the morning of the Presidential election, which I think was November the 5th. As soon as I entered the house, Mrs. Tilton, with great distress, put into my hands a copy of *Woodhull & Claflin's Weekly*, which was the first knowledge I had of the publication of the story. I read it twice over, as swiftly as my eyes would run up and down the columns, and I made haste to Mr. Moulton's house, and he sent for Mr. Beecher to meet me, and we had an interview. I was informed at that interview either by Mr. Beecher or by Mr. Moulton—I have forgotten who; perhaps by both—that the paper had been before the city for a week or ten days. My impression is that it had been the town talk not merely from the date of its publication, which was November 2d; I was informed, I think, that it was widely circulated up and down the streets several days previous to its actual date, some time towards the end of October; in other words, that it had been going up and down before the public for a whole week, and perhaps more, during my absence. That morning, however, was the first intimation that I had that any such publication was in existence. They informed me that they had had a talk about it, and that the best judgment to which they could arrive after these talks was that the story would be best killed by silence, and they wanted to know if I had any suggestion different from that. I do not know that I can repeat the conversation on that occasion. The substance of it was that no other course was left than silence, but I remember that silence was determined upon, not because the story could not be denied, for the particulars of the story were but the truth—

Mr. EVARTS—Well, we better have what passed.

Mr. BEACH—If anything was said upon that subject the witness can state it.

The WITNESS—Mr. Beecher said the reason why he felt that the best policy would be to say nothing on the subject in public was this, that if any denial was made it would only provoke the Woodhulls to reproduce the story in some other form, to reiterate it; that a denial would not quell it; that they evidently meant mischief, and that they would repeat it in one form or another; and that if it was denied once it would have to be denied twice, and perhaps three times, and many times. That was the reason why the policy of silence was agreed upon, and not because the story could not in its essential parts—

Mr. EVARTS—Not "because." What was said in the reasons given by him?

Mr. FULLERTON—Was there more than one meeting on that subject? A. Yes, Sir; there were several.

Q. Where did they generally take place? A. Always in Mr. Moulton's study.

Q. Do you recollect anything else that was said by Mr. Beecher at any one of those meetings? A. At one of those meetings a little later than that, he said that he had changed his mind in regard to the policy of having nothing said in public; he said that he thought that I ought to publish a card; and he prepared a card. That card—I think it has been given in evidence. I told him that the objection to publishing any card was, by me, that I was the wrong man to say anything on the subject; that as the story connected Mrs. Tilton with himself he was the proper person to publish anything, if anything was to be published. I said, "The public at large will understand that I am the third party in the case and that it would be very natural for a husband to deny such a story concerning his wife; that I was not the proper person either to deny or to explain or to do anything about it."

Q. Look at the card now shown you, and say whether it is the one proposed by Mr. Beecher upon that occasion [handing witness Exhibit No. 23]? A. Yes, Sir; this is the card.

Mr. FULLERTON—It is the one commencing "In an unguarded enthusiasm I hoped well and much of one who has proved utterly untrue. I shall never again indorse her story, and now utterly repudiate her story as concerning me and mine."

To the WITNESS—What became of that card: was it published? A. This piece of paper?

Q. No; was it published; that is what I want to get at? A. No, Sir; I objected to it in toto.

Q. What objections did you raise in the presence of Mr. Beecher? A. I told Mr. Beecher that I was not the proper person to publish anything whatever on the subject; that he might do as he choose; he might deny it, and I would never contradict his denial, but that I would publish nothing, that I ought to publish nothing, and in particular I would publish no such flimsy card as that. I said to him that he knew very well that my relations with Mrs. Woodhull had not been prompted by an unguarded enthusiasm; that I had gone to Mrs. Woodhull, deliberately, and by design, to protect Elizabeth; that he had been a partner in that design, that it was no unguarded enthusiasm by either him or Mr. Moulton or me; and I said furthermore, "Suppose I should publish this card, what would the public say of it? They would simply say this: that 'Mr. Tilton's wife has been violently attacked in the public prints, and what does he do in view of that attack? He simply publishes a card vindicating himself, shaking himself free and clear from the odium that had hitherto attached to him for his associations with Mrs. Woodhull.'" I said: "This is not a card in vindication of Elizabeth, nor in vindication of you, but in vindication of me; and the attack is made upon you and upon her, and no vindication of myself by my pen will answer the purpose." I rejected the card. I said that I would have nothing to do with

any such publication; and I told him, furthermore—and I was very angry when I said it—that I was aroused and indignant to think that he endeavored to put upon me the responsibility of meeting that Woodhull story. I told him that he was involved with Mrs. Tilton, and that if her vindication was to come, if he was a brave man it should come by him at whatever cost, and I rolled upon him whatever responsibility was to be assumed in the case.

Mr. Fullerton—I shall not finish another topic, Sir, if I take it up.

The Court then took a recess until 2 p. m.

#### THE TRACY INTERVIEW AT MOULTON'S.

After recess the direct examination was continued as follows:

Mr. Fullerton—I call your attention next to an interview at Mr. Moulton's house, soon after the publication of the Woodhull story, where Mr. Tracy was present; do you recollect such an interview? A. I do, Sir.

Q. Who were present at that interview? A. Mr. Tracy, Mr. Franklin Woodruff, Mr. Francis D. Moulton and myself.

Q. And it took place, I believe, in the study of Mr. Moulton? A. Yes, Sir.

Q. What occurred after you joined those three gentlemen?

Mr. Evarts—Won't you give the date?

Mr. Fullerton—Yes; soon after the publication of the Woodhull Scandal.

The Witness—As to the date, my impression is that it was on the first Sunday night succeeding, but I will not be—I will not swear that that is the accurate date. The interview took place not far from that time.

Q. Was it the first Sunday evening after you returned from New-Hampshire? A. I think it was; at the same time I could not bind myself to that statement.

Q. Now, please state what occurred? A. I cannot state what occurred at the whole interview, for I—

Q. What occurred after you joined the party, my question was? A. I was sent for to go to Mr. Moulton's house; Mr. Moulton met me in his front room on the second story—I think in the early part of the evening, I will not be accurate as to that—and told me—

Q. No; you may omit what Mr. Moulton told you. Relate only what occurred after you came into the presence of Mr. Tracy? A. Well, Sir, I went into the presence of Mr. Tracy.

Mr. Evarts—Your Honor will notice, this is an interview at which Mr. Beecher was not present.

Judge Neilson—Subject to the same question that was raised when Mr. Woodruff was examined.

Mr. Evarts—We object to any evidence concerning it.

Mr. Fullerton—Precisely the same question, and relates to the same interview.

Mr. Evarts—Your Honor will note my exception.

Judge Neilson—Now, begin at what you first heard and follow through.

The Witness—Well, Sir, I don't see how I could make intelligible to the jury what I said to Mr. Tracy at first without an explanation of how I came to say it.

Q. Well, that is our misfortune; just state what took place after you arrived in the room? A. Well, I went up into the study—I there saw Mr. Tracy and Mr. Woodruff; Mr. Moulton had accompanied me to the study: I was the first to speak, and I said, as nearly as I can recollect: "Mr. Tracy, this whole interview is without my consent and against my protest; I have not authorized you in any way, through any party, to be the custodian of any of the facts in this case. I now learn that some of them have been communicated to you, and that you are to see the rest, and to examine the papers. I have not been consulted, and I protest; but," I said, "as the case has gone so far, as Mr. Moulton informs me that by Mr. Beecher's advice, and Mr. Woodruff's, and his own, you have been taken without my knowledge into consultation on this case, I want to exact from you a pledge and promise in advance." He said, "What is it?" I said, "I am not a lawyer, Sir, and do not understand the etiquette of your profession; but I want you, either as a lawyer or a gentleman, to give me your word of honor, that if Mr. Beecher and I should ever come into collision, he on the one side and I on the other, you would not act as his counsel against me. I will not consult with you unless you give me that pledge." He said, "Mr. Tilton, I give you that pledge both as a lawyer and as a gentleman." I said, "Very well;" and we then proceeded to a consultation.

Q. Now, Sir, what occurred further at that consultation? A. The first incident which I remember distinctly was the handing over to Mr. Tracy by Mr. Moulton of the document now in evidence, and known as the letter of contrition. In other words, Mr. Beecher's communication to me through Mr. Moulton, dated January 1st, 1871.

Q. Did he peruse it? A. Did Mr. Tracy peruse it?

Q. Yes. A. Yes, Sir; he held it in his hand; it consisted of three sheets, and he read one and put that under the bottom, and then the other and that under the bottom, and then the other; and I think he read it in that way four or five times over; and at the conclusion of the reading he laid the paper down on the table and, said he: "Great God! I have never known anything like this!" And, said he, "The man who could dictate such a paper as this, who could express so much grief and heartbreak, has already been punished enough; and he ought not to be further exposed; his griefs ought not to be exposed to the world."

Q. What further occurred at that interview, if you recollect? A. Mr. Tracy told me that it was a case which ought to be very summarily treated. He said that he had told Mr. Woodruff, and had told Mr. Moulton, and he would tell me, that while in the ordinary affairs of life lying was not justifiable but was reprehensible, yet this was a case in which the truth ought to be denied, and that lying was right. He said, furthermore, said he: "I address that statement, Mr. Tilton, particularly to you as I have done to them, for the reason that if the facts in this case are ever made public, if the story is ever confirmed, it will not only ruin Mr. Beecher and your wife—of course," said he, "it will ruin them; but it will also ruin you, because the world will never forgive you for having condoned your wife's crime."

Q. Well, Sir; if you recollect anything further at that interview, you will please state it? A. Mr. Woodruff was very emphatic in his prohibition to Mr. Moulton, of what seemed to have been Mr. Moulton's purpose—to publish a card of denial. I do not—I do not remember distinctly how much of the previous interview—how much of the earlier portion of the interview at which I was not present, was communicated to me. I remember most distinctly Mr. Tracy's remarks, because he was, at that time, to me a stranger, or almost entirely a stranger—the upshot of the interview was that—

Mr. Evarts—Well, we do not want the upshot.

The Witness—That nothing could be done except silence.

Q. What reply, if any, did you make to the observation of Mr. Tracy that it would ruin Mr. Beecher, and your wife, and yourself, in case this thing was ever promulgated? A. I told him that I was perfectly well aware that it would be ruin to all parties, and that my great solicitude was the protection of Elizabeth; that as to the other persons in the case, they were both men, and might take their chances. Ruin would not so absolutely ruin them as it would the woman, and my chief anxiety was the protection of Elizabeth's name and fame.

#### MR. TILTON'S DIPLOMACY WITH MRS. HOOKER.

Q. Do you recollect, soon after this, that Mr. Beecher came into your presence, and brought some correspondence—some letters from third persons? A. Yes, Sir.

Q. Do you recollect when it was? A. I am able to identify the date by reference to the proximity of that occurrence to the death, or funeral—I have forgotten which, but either the death or the funeral—of Horace Greeley. It was in the latter end of November, or the beginning of December.

Q. 1872? A. 1872.

Q. Where did the interview take place? A. It took place in the same familiar spot at which most of the interviews were held—that is, in Mr. Moulton's study, in the upper part of his house.

Q. And who were present? A. Henry Ward Beecher, Francis D. Moulton and myself.

Q. And what occurred? A. The substance of what occurred was this: Mr. Beecher brought a number of letters, or, at all events, a handful of writings by his sister, Mrs. Hooker, saying that Mrs. Hooker had threatened to come down to Brooklyn and invade his pulpit—

Mr. Evarts—He said?

Mr. Fullerton—No; Mr. Beecher said, presenting the letters, saying—

Mr. Evarts—That is what I want to know, if the letters said so, or if he said so.

The Witness—Didn't I say that Mr. Beecher said so?

Mr. Evarts—You said, "presented the letters, saying, 'Haven't I a right to know which it is?'"

Mr. Fullerton—And haven't I a right to tell you if you want to know. I can quote his language as well as he can—

Mr. Evarts—I haven't found any fault with his language. I have a right to understand the witness as he goes on. It is a part of my duty.

Judge Neilson—Certainly.

Mr. Evarts—And when a phrase is used that might apply to either speech or letters, I have a right to know which the witness means.

Judge Neilson—I think it was well to have it understood.

Mr. Fullerton—I think there can be no misunderstanding as to the meaning of the term; and I quoted so that he might understand it. The word "saying" don't refer to the letters; it refers to Mr. Beecher.

Mr. Evarts—That is exactly what I asked.

Mr. Fullerton—That is the reason I quote the language so that you might know.

Mr. Evarts—We won't dispute about it. We have found out now. It is a right I shall exercise.

The Witness—Well, am I to begin again?

Mr. Fullerton—Yes, please.

The Witness—Mr. Beecher came into Moulton's house about the time I have mentioned—I think it was between the death and the burial of Mr. Greeley—saying with a good deal of excitement of manner, and holding out some papers in his hands which he said he had received from his sister, Mrs. Hooker—he said that his sister had threatened to come down to Brooklyn and to invade his pulpit, and to read from the desk a confession of his relations with Mrs. Tilton to the entire congregation, and said he, "What shall I do?" and he showed Mr. Moulton and me the letters. Mr. Moulton read them; I read them. Mr. Beecher said: "What do you think of the condition of a man who gets such letters as this from a member of his own family;" and he expressed profound grief, great agitation, excitement, and he repeatedly asked: "What is to be done. Is there no end of trouble and complication." Mr. Moulton asked me what I thought ought to be done. After some reflection, I said: "Give me the letters, and I will go and see Mrs. Hooker. I will stop this mischief;" and I took the letters, and I saw Mrs. Hooker, and I stopped the mischief.

Q. Nothing occurred in the way of carrying out the threat that was revealed to you there, on the part of Mrs. Hooker? A. No, Sir.

Q. Where did you see Mrs. Hooker? A. I saw her at the residence—I don't know how far your Honor permits me to mention the names of third parties.

Q. No; just say where you saw her. A. I saw her in the city of New-York, at the residence of a friend of hers.

Q. How long after this conversation was it that you saw her?

Mr. Evarts—There is not the least objection to the names being mentioned, so far as we are concerned.

Judge Neilson—You can interrogate, if you think it is proper or necessary.

Mr. Fullerton—I do not think it is necessary. It has no connection with our testimony.

Mr. Evarts—None of our friends—we have no hesitation—

The Witness—I have restrained from mentioning the name solely because it was a lady. I think the names of too many ladies have been brought in this controversy already.

Q. How long was it after the interview that you saw Mrs. Hooker?

FUN FOR THE GALLERY.

Mr. Evarts—Now, if your Honor please, that carries some aspersion upon a lady to say that there was any lady—that the fact that Mrs. Hooker was an inmate of her house assumes an aspersion. Why, you might as well object to saying that she was at the Astor House or anywhere else. No aspersion comes from Mrs. Hooker's being anywhere.

Judge Neilson—No; I don't understand so.

The Witness—I desire to say, your Honor—

Mr. Fullerton—Just one moment, Mr. Tilton.

Judge Neilson—The lady who occupied the house can be named if you require it when you come to cross-examine; it seems to me immaterial.

Mr. Evarts—Very likely it is immaterial; but don't couple it with the question of delicacy as the witness does.

Mr. Beach—No, Sir; he don't.

Mr. Evarts—He said that too many ladies' names had been mentioned already.

Judge Neilson—Well, that was an unnecessary remark.

Mr. Evarts—There have been ladies on the other side, not on our side, that there has been any objection to be made about.

Mr. Beach—That is quite a mistake.

Mr. Fullerton—And a very grave one. The gentleman almost provokes me to say something, probably that he won't relish very much.

Judge Neilson—Don't get provoked.

Mr. Fullerton—No, I will not, only it is well to warn the other side not to open that question. I say it was very proper to withhold that lady's name, not because it was any reproach to Mrs. Hooker or the lady, but because it was entirely unnecessary to mention her name in connection with this controversy.

Mr. Evarts—It was not proper to couple it with the suggestion of delicacy by which other people's names had been omitted.

Mr. Fullerton—Well, it was our delicacy and not yours. [Laughter.]

Mr. Evarts—Your delicacy required those other names to be omitted, but we have no such delicacy in regard to any of ours.

Judge Neilson—The difficulty with the Court, gentlemen, is that you are both right on this occasion. [Renewed laughter.]

Mr. Fullerton—Then that is the first time my friend has gained an advantage.

Mr. Fullerton—How long was that interview with Mrs. Hooker? A. How long was the interview?

Q. Yes. A. I should say, perhaps an hour or more.

Q. Did you see her more than once? A. I saw her only once on that business; I met her at Mr. Greeley's funeral by accident.

Q. Did you communicate to Mr. Beecher the result or substance of the interview that you had with Mrs. Hooker? A. I did, Sir.

Q. How soon after the interview took place? A. Well, I don't know whether it was on that day or the next; it was as soon after as convenient.

Q. Without stating what the interview was, what did Mr.

Beecher say in regard to it? A. I don't remember the phraseology which he used.

Mr. Evarts—How can that be material if we don't know what he was replying to?

Judge Neilson—It might be difficult to understand it, perhaps; we can tell better after we see.

Mr. Fullerton—What was the substance of what he said? A. The substance of what he said was that he was profoundly thankful that he had escaped a great danger which menaced him from a member of his own family.

Q. Now was there any other meeting with Mr. Beecher? A. He made certain other remarks about that member of his family, which I thought ought not to be repeated.

Mr. Fullerton—I don't care for them; I don't ask for them at all. All I want is to get out the material part of the interview.

Mr. Evarts—Well, if your Honor please, we don't like these aspersions. As I have frequently had occasion to say, if topics are not proper to be introduced let them be left out.

Judge Neilson—The counsel has said to the witness that he does not wish to interrogate him on that subject.

Mr. Fullerton—That is just the principle that I wish to adopt.

Mr. Evarts—No; but is accompanied with suggestions that they are suppressed on some ground of delicacy.

Mr. Beach—Well, that is the ground; that is the reason they are suppressed, and we avow it.

Mr. Evarts—That carries an aspersion.

Mr. Beach—Very well, if it does we can't help it; it is true.

Mr. Evarts—You can't help it! If you don't ask for a conversation nothing is said about it. The witness is responsible for giving conversations that you do not ask for.

Mr. Beach—We did ask for it. But this idea that we are to be lectured by the counsel every time we leave out immaterial matter which we think not necessary and which might reflect upon this defendant, we are about tired of. We exercise our right professions to do that, and when we are called upon we say we do it because we do not wish to state anything unnecessary or offensive.

Mr. Evarts—Then we say that the only proper rule for counsel is to omit the introduction of the evidence, and not to bring it in and suppress it with an aspersion concerning it.

Mr. Beach—Very well, Sir, we will be guided by our own sense of propriety; we ask for a portion of an interview, and we say we omit the rest because we do not want unnecessarily to reflect upon or injure the feelings of anybody.

Mr. Evarts—That is exactly the point.

Mr. Beach—Yes, Sir; that is the point, and if the gentleman has other ideas of professional propriety he can practice them; we will follow our own. [Appause.]

Mr. Evarts—I shall appeal to the Court also. Now, there is no right of counsel to say that he suppresses a statement because it will be injurious to the defendant.

Mr. Beach—I didn't say to the defendant.

Mr. Evarts—It has been said in this very discussion.

Mr. Beach—No, Sir.

Judge Neilson—He did not say injurious to the defendant.

All I could say is, that counsel in examining the witness and calling his attention to an interview, may interrogate him as to so much of that interview as is material to the question being tried, leaving the rest out.

Mr. Evarts—That there is no doubt about.

Judge Nelson—And your position is that it shall be left out without being characterized. Nothing is gained by characterizing it, of course. Proceed, Mr. Fullerton.

#### THE POLICY OF SILENCE ABANDONED.

Mr. Fullerton—It is not a characterization at all. It is simply omitted. [To the witness.] I want to call your attention next to an occurrence after the publication of the Woodhull scandal—some proposition to counteract it. Do you recollect such an interview—such a meeting? A. I do, Sir.

Q. State, if you please, when it took place, as near as you can recollect? A. To the best of my recollection, about a fortnight more or less after my interview with Mrs. Hooker, and the suppression of her attempt, Mr. Beecher came to Mr. Moulton's study, and I was present, and he said that, in his judgment, the time had passed when silence concerning the Woodhull scandal was a wise policy, there was so much clamor on the part of the public as manifested in the press; so much inquiry in his church and congregation; so many demands made upon him by his friends, that the pressure was getting to be unendurable. He said that he thought at that late day, which was five or six weeks after the publication November the 2d—he said he thought that no card of denial would then answer, but that a plan might be devised to explain to the public, to give to the press, what might have been—what the public might regard as the true nucleus of the scandal, and his suggestion was this—I remember he said: "People argue in this way, not that the Woodhull story is true, because its extravagance is against it, but that they naturally say, 'Where there is so much smoke there must be some fire,' and that though that story is not true, nevertheless something must be true; in other words, under the surface of the story which was published there must be something of a black and damnable character. Now," he said, "suppose we should appeal to that sentiment in the community; suppose for instance that some reputable paper speaking semi-officially as authorized by the parties in the case—say THE NEW-YORK TRIBUNE—should publish an editorial to the effect that there was some ground for Mrs. Woodhull's publication;" not the ground which she stated, but that that ground existed in certain stories which Mr. Henry C. Bowen had told a year or two previous against Mr. Beecher and which Mr. Bowen himself had in a written instrument six months before, namely, April 2d, 1873, retracted. "Now," said he, "suppose we get some semi-editorial utterances, not signed by our own names, to that effect, that there was this ground for those stories. Let that be stated and let us cut from the tripartite covenant the section which Mr. Bowen signed, retracting those stories, and let us put that into the newspapers. It will satisfy public curiosity; people will say, 'Well, we always knew there

must be something in the Woodhull story, and now we know what it is; it is a collection of stories which Bowen has told and which Bowen has retracted.' " Mr. Beecher suggested that as a device, in the middle of December, 1873, to meet and counteract the Woodhull tale.

Q. Now, what was said in reply to that suggestion? A. Mr. Beecher asked Mr. Moulton's opinion of it and Mr. Moulton turned and said: "Theodore, what is your opinion." I said: "My opinion of it is that it will be fatal policy." Mr. Beecher asked why. I said: "In the first place, Mr. Bowen did not willingly sign the tripartite covenant, and he has always said since to his friends, making no hesitation in the statement, that he did not retract anything; that that covenant was so loosely drawn that he could drive a coach and four through it; that the retraction was no retraction; that any lawyer could pick it to pieces; that he had signed it at Claflin's request, and that it was no denial practically." I said furthermore that if Mr. Bowen was the same man then that I had known him to be in years previous, and I thought I knew him as well any other man did, for I had served with him fifteen years, I said: "If you drive Mr. Bowen to the wall, and he has got any evidence in his possession against you, he will turn and fight, and he may strike you a death blow before you are aware." I said: "Beware how you put Bowen in a corner unless you are sure that he has got no evidence." Then followed a discussion as to whether Mr. Bowen had any evidence. Mr. Beecher said that Mr. Bowen could not possibly bring any evidence against him of any of the general charges that he had made, and the only danger that he apprehended was that in a certain particular case there might be some scrap of writing; he didn't know whether there was. Then followed an interview, Sir, which I think I have no right to repeat.

Q. No; don't mention that interview. It is an interview with a third person, where Mr. Beecher was not present at all? A. Yes, Sir.

Q. That brings me to December, 1873? A. Pardon me, Sir, we are already in December; that last interview—

Q. Well, that brings me later in December. If you recollect anything else that occurred at that other interview you may mention it. What else occurred at that interview, if there is anything? A. I have my doubts whether I have a right to state it. The substance of it was that a request was made to me by Mr. Beecher to ascertain—

Q. No, I don't want that part of it. If there was anything else, omitting that, you may state what it was? A. No, Sir; nothing else.

Q. I supposed that was all; I will call your attention, then, to a later day in December in which the letter of Mrs. Tilton to Dr. Storrs was under consideration; you recollect such an interview. A. Yes, Sir.

Q. Relate what occurred at that time.

Mr. Evarts—Was Mr. Beecher present?

Mr. Fullerton—Yes, Sir.

The Witness—Toward the close of December I had an interview with Mr. Beecher and Mr. Moulton, at which a discussion was held as to the propriety and feasibility of publishing a statement which I had meanwhile devised with a view to offset

and confront the Woodhull tale. The subsequent stages of that interview I see no way of making plain, except by a narrative of the facts which intervened.

Q. Well, state nothing except when Mr. Beecher was present? A. I told Mr. Beecher that the suggestion which he had made a few weeks before—a few days before, perhaps, a fortnight before—as to introducing the tripartite covenant, or a section of it, into a proposed card to the public, had led me to consider the propriety of publishing, or, at all events, of writing, a story at some considerable length, including that covenant and including certain other documents in the case, all which, taken together, might give to the public some satisfactory solution of the original of the Woodhull scandal without at the same time confessing the whole truth. I told him that his suggestion of publishing a portion of that covenant had inspired me to the preparation of a document, in which the entire covenant should be included, together with other papers. I told him, furthermore, I had consulted on that subject with Rev. Dr. Storrs of this city; that I had gone to him as a good man, a calm man, and a wise man, and had asked him what, in his judgment, the public sentiment of Brooklyn required at my hands in this business, and that Dr. Storrs had advised me to act calmly; to put together the facts, and papers and documents, in the shape in which they could be proved, and then submit them to him, and after I had given him facts in that accurate shape, he would give me the best judgment that he could form. I told Mr. Beecher that, in pursuance of that suggestion I had once or twice seen Dr. Storrs, and that one occasion I had requested Mrs. Tilton to go with me, but she had preferred not to do so, but had written a statement or letter which I had shown to Dr. Storrs; that I had included that letter thus written by Mrs. Tilton to Dr. Storrs—that I had included it in the proposed statement which I meant for the public.

Q. One moment; in this connection I want to prove by you—to identify rather, the paper already in proof: I refer to "Exhibit 57." You may go on with the narrative, then, Mr. Tilton.

Mr. Beach—The last you said was that you had included that letter in your proposed statement? A. Yes, Sir.

Mr. Fullerton—Well, I will ask you this question, did you refer to Elizabeth's letter, dated December 16th, 1872, commencing "In July, 1870, prompted by my duty," &c.; A. Yes, Sir; that is the letter.

Q. Very well, that identifies it? A. Mr. Beecher uttered an exclamation somewhat to this effect—I think, in these identical words, "Oh! Theodore, of all men in the world I wish you had kept clear of Dr. Storrs." I told him that I had gone to Dr. Storrs, because I thought that no man in the city of Brooklyn more thoroughly understood the sentiment of the Christian community here, and that he had never been an intimate friend of mine, and that I should get from him not partisan advice, but cool judgment. And I said, furthermore, "Why should you object to my having gone to Dr. Storrs? I have all ways supposed that for twenty-five years he had been one of your most intimate friends." "Ah," said he, "that is the reason why I object to your going to him; I shall never

be able to meet Dr. Storrs again on that account." Mr. Moulton asked me to read to Mr. Beecher the proposed document. I told him that it was not completed; that it was completed to this extent—the framework of it was written, but that it included documents, and wherever a document was to be inserted, as I didn't have the originals, and, in some cases, not the copies, I could not give him a very clear idea of the document itself. I said: "For instance, I have no copy of the tripartite covenant; that I must get from Mr. Claflin; but," I said, "I will read to you a part of it, and if you can stand that, you can stand the rest." So I took from my pocket the original letter of Mrs. Tilton, a copy of which I expected to embody with the covenant, and I read that to Mr. Beecher, and after I read it to him he turned to Mr. Moulton and he said, "This will kill me; you need not read any more," and I instantly determined not to print the document; not to publish it. That was between Christmas and New Year's; I think it was the day after Christmas; that is my impression now. I went home that night and I prepared, in conjunction with Mrs. Tilton, a little card, reading it to her—a card subsequently known as the "Letter to a Complaining Friend." That was published, I think, on the 27th of December. Greatly to my chagrin, it had some ugly comments prefixed to it in *The Brooklyn Eagle*. Mrs. Tilton, who had joined with me in approving the card—

Mr. Evarts—Well—

Mr. Fullerton—Omit that, Mr. Tilton. If Mr. Beecher said anything in regard to that letter or card.

The Witness—I told him the reason why I had published it, thinking that it would conduce to peace, but that Mrs. Tilton had been so greatly disturbed by the comments which that card elicited, that she asked me whether it would not be possible to deny the whole story out and out. And she suggested, and this I communicated to Mr. Beecher, that the true policy ought to have been in the beginning to have denied the story; that we were all foolish for not having denied it; and that, though time had elapsed, it was not yet too late to deny it; and she wanted to write a denial on her own account, and wanted Mr. Beecher to co-operate in that denial. I told her that anything that she wanted done she might do on her own responsibility; and, I think, on the 28th of December—

Mr. Evarts—You related all this to Mr. Beecher as what you had told her?

The Witness—Yes, Sir; on the 28th or 29th of December she wrote a card which I produced to Mr. Beecher; and in producing it I said to him that it was her request that he should write a similar card of denial; this interview was at Mr. Moulton's house; I think on the last day of the year, or one of the last days of the year, very near the last day of the year; and Mr. Beecher said that if I would never turn back upon him he would join with Mrs. Tilton in making a denial. "But," said he, "it will be idle for me to deny this story leaving you at liberty at any time to publish my letter to you through Mr. Moulton; but," said he, "if you will give me your word of honor that you will never, under any circumstances, make my denial of no effect, I will join in such a card." I told him that he might never—that he never would have anything to fear from

me, except he himself should become the aggressor; and that then I should defend myself at all hazards; but that if the peace was to be kept it was in his power to keep it. Mr. Beecher then sat at Mr. Moulton's table and wrote a card; and after he wrote it he dictated it to me; and I have a phonographic copy of it. I have never seen it in print—

Mr. Fullerton—[To the defendant's counsel]: You have the original of it?

The Witness—It was a card, the object of which—

Mr. Fullerton—No; I will put it in evidence.

Mr. Shearman—[Searching among papers.] Suppose you read a few lines.

Mr. Beach—No, no; we call for that card.

Mr. Shearman—That is all; I just want to identify it.

Mr. Beach—You know what card I mean.

Mr. Shearman—I do not; I know I have some, of course.

Mr. Beach—Well, it is a card Mr. Beecher wrote—

Mr. Shearman—We do not know at all whether it is the same thing. I do not know about his notes.

Mr. Beach—Mr. Beecher knows what card he prepared.

Mr. Morris—Let us have the paper and we will tell whether it is the one we want.

Mr. Beach—It is no question of Mr. Tilton's notes; we call on you for an original paper.

Mr. Evarts—We want to know what the paper is which you ask.

Mr. Fullerton—It was a denial prepared by Mr. Beecher at that time, and exists still, I believe, in your possession, in his handwriting.

Mr. Morris—That is what we want—you know what we want Mr. Shearman.

Judge Neilson—If the witness can read the first line and the last line, would that not assist in identifying it?

Mr. Fullerton—There is but one paper of that character, and it was prepared at that time.

The Witness—It was offered here in court the other day.

Mr. Fullerton—It is here, and reference was had to it.

Mr. Beach—The witness can soon tell whether that is the paper or not.

The Witness [To Mr. Beach]—Let me read this to you.

Mr. Beach—Oh! no. [To defendant's counsel.] This is not the one, gentlemen. [To the witness] Did you look on the inside?

[The witness here compared his shorthand copy of the letter and the letter itself, with THE TRIBUNE stenographer.]

Mr. Fullerton—Is that the paper? A. That is the paper.

Mr. Fullerton—When I said, your Honor, it was not the paper, I didn't observe that there were two documents upon one sheet. The inside of the paper I had not seen. I now offer it in evidence [reading]:

BROOKLYN, December 29th, 1872.

I solemnly deny the scandalous charges made against me and Mrs. Elizabeth R. Tilton. Especially and emphatically I deny that there has been any criminal intercourse, or any color of a reason for such a charge. My acquaintance with Mrs. Tilton has inspired me with the highest esteem for her modesty, propriety and womanly graces. I authorize her or her husband and children, to make use of this dec-

laration, and I desire to state, in addition, that Mr. Tilton, during the whole of this shameful scandal has uniformly spoken in the highest terms of his wife, and has shown to me the highest proofs of friendship.

(Signed) HENRY WARD BEECHER.

The Witness—The expression I have here is, "her modesty, propriety and womanly graces."

Mr. Evarts—No matter about your comments.

The Witness—[To Mr. Fullerton.] I don't think you read that correct. I recognize the error because Mr. Beecher put in that phrase about Mrs. Tilton at my request, and I was the author of that sentence, and would like to have it read correctly.

Mr. Beach—State your correction.

Mr. Evarts—No; you cannot correct an original paper by a copy.

Judge Neilson—The suggestion was that, perhaps, it had not been read correctly.

The Witness—That is a mistake.

Mr. Fullerton—I read it correctly, then?

The Witness—Yes, Sir.

[Paper marked "Exhibit No. 74."]

Mr. Fullerton—Go on with the narration as to what occurred at the time of the preparation of that letter just read.

Mr. Evarts—Mr. Fullerton, was Mr. Moulton present at this time?

Mr. Fullerton—[To the witness.] You may answer that question.

The Witness—Mr. Moulton was present at the early part of this interview; he was very busy that morning, and said that he would have to leave us. Mr. Beecher sat at the table and wrote this card, and prefixed to it a little private note to Mr. Moulton, which he had not read, and of which I have a copy, however, the object of which was to form part of the card. The two notes together were to form part of the same card.

Q. It appears on the same sheet there? A. Yes, Sir. Read it.

Mr. Fullerton—I read that note in evidence [reading]:

MY DEAR MOULTON: I promptly comply with your suggestion of giving an explicit denial of the stories which connect my name criminally with Mrs. Tilton. The very thought of being obliged to say anything to clear her fair name shocks me, and I have hitherto acted under advice in refraining

Very truly yours,

(Signed) HENRY WARD BEECHER.

The Witness—After Mr. Beecher wrote his card he asked me—

Mr. Evarts—This card?

Mr. Fullerton—This paper just read.

The Witness—After Mr. Beecher wrote that paper, two notes, he asked me if I thought it would be satisfactory. I told him I would rather have Mrs. Tilton's opinion on the subject, and I would send for her. It happened that just at that time Frank Carpenter called at the house, and I requested him, as a favor, to go to my house and bring Mrs. Tilton. Mr. Carpenter went around to my house and brought Mrs. Tilton to that interview. This card was read to her, and it was entirely satisfactory to her. Mr. Moulton was absent; he had gone to the river front. Mr. Beecher said he would take the card which he



had written, and would consider it during the day. In the evening I asked Mr. Moulton if he had seen Mr. Beecher, and what had come of the card. He said he had not seen Mr. Beecher, and had heard nothing of him. I made another and similar inquiry the next day, and the next, but nothing ever came of the card. It was not published.

Q. State whether Mrs. Tilton prepared a card at that time? A. She prepared a card the day before, which I brought out that morning and exhibited to Mr. Beecher, as being Mrs. Tilton's wish—that card is already in evidence—and said that Mrs. Tilton's desire was that Mr. Beecher should prepare a companion piece to that card, so that hers and his might be published, but neither was published.

Q. [Handing paper to witness.] Look at that paper, marked "Exhibit D 44," and say whether it is the card prepared by Mrs. Tilton? A. Yes, Sir.

Q. Which you brought and exhibited to Mr. Beecher? A. Yes, Sir.

Q. Now, if anything was said upon that occasion as to your joining in such a card, I want you to state what it was? A. Nothing was said to me about my joining in such a card. Mr. Beecher said to me, in going away, that there was only one danger in publishing his card, which was, that on some future occasion, if he and I should be at disagreement, and I should publish his letter from me to Mr. Moulton—

Mr. Everts—That you have just stated.

Mr. Beach—Go on.

The Witness—That his card would put him at a disadvantage before the public, because it would convict him, not only of his original crime, but of his subsequent lie to hide it.

Q. Did you say anything to them about publishing this card on their own responsibility and not upon yours, and, if so, what was it? A. I said I was perfectly willing they should publish that card, and I told Mr. Beecher that the only possibility of his ever coming into collision with me, or of my ever coming into collision with him, would be in consequence of some injustice; that I should never lift my hand against him except in self-defense, and that if he should refrain from striking me I would never do him any harm.

Q. When was this letter to "A Complaining Friend" published? A. I think it was published on the 26th or 27th or 28th of December, somewhere in that week. The letter itself is dated and will be authority.

Q. Will you state what Mr. Beecher said in regard to the letter? A. He told me he thought it was a very injudicious statement, that it would excite the very comment which I had expected it to quell.

Q. What was the occasion for the difficulty at that time which called forth the letter to "A Complaining Friend"? A. Why, Sir, during that month of December, 1872, the public pressure put upon me to do something in regard to Mrs. Woodhull's story was utterly beyond the power of any language to describe. Every newspaper throughout the land was demanding that some explanation should be made—demanding that Mr. Beecher should make it, demanding that Mr. Bowen should make it, demanding that I should make it, demanding that we all should make it, and there was a pressure in the City of

Brooklyn, and there was a pressure in the church and everywhere—the very air seemed to rest upon us.

Q. What did Mr. Beecher say in regard to that state of things, as to the necessity of doing something? A. I have already mentioned that about a fortnight before the interview I have just given Mr. Beecher had devised, as a plan of meeting it, that we should cut the tripartite covenant in two and take out Mr. Bowen's part and charge him with all the slander, and make him bear the burden of retracting it.

Q. And this letter to "A Complaining Friend" succeeded that? A. Yes, Sir; about ten or fifteen days.

Q. And arose out of the same emergency? A. Yes Sir. I will also say that during that month of December I prepared another statement, the long document, which has become technically styled, I don't know why, "The True Story," for it was not a true story, it was a false one, as Mr. Beecher said he could not bear the publication of that, that it would kill him, and as the card to "The Complaining Friend," as he expressed it, only caused the very comment which I sought to quell, I prepared another statement—a brief letter to a friend out West, I think—yes, Sir; it has been read in evidence. It bore date, I believe, on the very next day, perhaps the very last day of the year, or, at all events, it was written with a view to herald in the New Year season. There were a dozen different devices—some by Mr. Moulton, some by Mr. Beecher, and some by me—in that month.

Mr. Everts—This general interview we must object to; I ask that that be struck out. He says there were a dozen devices.

Judge Nelson—That may be struck out.

Mr. Fullerton—I will put something better in its place.

Mr. Fullerton—I want to ask you whether this story entitled the "True Story," and the letter to "A Complaining Friend," and the letter out West, as it may be known, were all prepared during this emergency that you speak of, growing out of the pressure brought to bear upon you in regard to this scandal? A. Yes, Sir; they were all written within ten or fifteen days when the whole community was hounding us to make some explanation, and we were seeking to make some explanation which would not utterly destroy us all.

Q. I want to call your attention to the publication of the letter to Mr. Bowen which you prepared, January 1st, 1871, in *The Brooklyn Eagle*, I think it was, or *The Brooklyn Sunday Press*, whatever its name is.

Judge Nelson—I think we had no *Sunday Press* at that time.

Mr. Shearman—1873.

Mr. Morris—*Sunday Press*?

Mr. Fullerton—*Sunday Press*.

The Witness—That letter was published in the *Brooklyn Sunday Press* in April, 1873.

Mr. Morris—April, 20th?

The Witness—April 20th.

Mr. Fullerton—That is in evidence.

Mr. Morris—Yes; that letter is in evidence.

Mr. Fullerton—How long after its publication did you see it? A. I saw it the next night in *The Brooklyn Eagle*.

Q. Did you take the paper at the time? A. *The Sunday Press?*

Q. Yes, Sir? A. No, Sir; I don't think I ever saw the copy.

Q. Did you see the copy with the paper published in it? A. No, Sir.

Q. Who drew your attention to it? A. I saw it in *The Eagle* the following night.

Q. It was extracted in *The Brooklyn Eagle*? A. Yes, Sir.

Q. And there is where you saw it? A. Yes, Sir.

Q. What connection had you with the publication of that letter? A. None whatever.

Q. Do you know of your own knowledge how it got in the paper? A. Yes, Sir.

Q. Of your own knowledge? A. Not of my own knowledge, except that so far as the gentlemen are here present who published it, and they told me.

Q. I will ask a broader question. Had you any connection, directly or indirectly, with the publication of that letter? A. Not a particle.

Q. Had you any knowledge that it was to be published, before it was published? A. None whatever.

Q. Any intimation that it was to be published? A. None.

Q. Or suspicion that it was to be published? A. None.

Mr. Fullerton—Well, I guess that covers the ground. Now, was there a proposed card after the publication of that letter? A. I proposed then a form of card for Mr. Beecher to publish, based upon his proposed form of the preceding November, but I don't think it was brought to Mr. Beecher's attention at all by Mr. Moulton. I drafted it, and showed it to Mr. Moulton, and I think that it was the end of it.

#### THE TRIPARTITE COVENANT.

Q. I then pass to the month of May, 1873. I believe the tripartite agreement was then published, was it not? A. Yes, Sir.

Q. What occurred after the publication of that tripartite agreement? In the first place I will ask you if you had any connection with the publication of it? A. No, Sir.

Q. Were you connected, directly or indirectly, with its publication? A. No, Sir.

Q. Did you know that it was to be published? A. I did not.

Q. Now, what occurred after its publication? A. You mean what occurred between Mr. Beecher and me?

Q. Yes, Sir. A. The tripartite covenant was published on the morning of Dedication Day, Friday, May 30th, 1873, and published with a prefix attached, signed "Suffolk," written by Samuel Wilkeson, Mr. Beecher's business partner.

Mr. Evarts—You don't know about that. You were asked what it was signed.

The Witness—It was signed "Suffolk."

Mr. Evarts—It is no matter who wrote it.

The Witness—And the explanation given why it was published was that Mr. Bowen, who had the year previous retracted those stories, was still repeating them.

Mr. Evarts—You mean in the paper?

The Witness—An explanation was given in the paper; yes, Sir—the prefatory note signed "Suffolk."

Judge Neilson—That speaks for itself, Mr. Tilton. We always take the paper.

The Witness—Yes, Sir.

Mr. Fullerton—Have you got that letter signed "Suffolk?" A. No, Sir; I am not my brother's keeper.

Q. You may go on and state what occurred between you and Mr. Beecher in reference to it? A. The tripartite covenant being in the journals of Friday morning, May 30th, 1873, was accompanied with comments in many cases to this effect, namely, that there was evidence that Mr. Bowen and Mr. Tilton had committed some nameless and horrible crime against Mr. Beecher, for which he had graciously pardoned us, but that in so doing he had committed an offense against society, that instead of pardoning us he should have had us brought into the Courts of Justice and had us punished for slander and sent to jail.

Mr. Evarts—Is this what you said to Mr. Beecher? A. No, Sir.

Mr. Evarts—This is part of a newspaper.

Mr. Beach—It is part of surrounding circumstances.

Mr. Evarts—That must be struck out. The question was a very proper one—what passed between himself and Mr. Beecher.

Mr. Fullerton—And he how states what passed, which is proper.

Judge Neilson—It may be struck out.

Mr. Fullerton—Yes, Sir; I will put it in in another place.

Mr. Fullerton—What occurred between you and Mr. Beecher? A. I went around to Mr. Moulton's house on the next morning, and I told Mr. Beecher then that I had on the previous evening consulted with some of my friends in New-York.

Mr. Evarts—Was Mr. Beecher there? A. Mr. Beecher came there in a few minutes, for we sent for him.

Mr. Fullerton—Commence the narration when he got there? A. Mr. Beecher was sent for. Mr. Moulton had some conversation with me regarding the publication of this tripartite covenant. Mr. Moulton characterized it as an act of bad faith, because the tripartite covenant had been the joint property of the three signers—Mr. Bowen, Mr. Beecher and myself—and that neither one of those signers had a right to publish it without the consent of both of the others; that it had been published in an unwarrantable way, and that the criticisms it had produced were of such a character that no man could be expected to hear them and not make answer. I told Mr. Beecher that the comments which that publication had elicited in one day made it necessary that there should be a prompt and emphatic disclaimer either by him or by me, I didn't care which, of any such intimation as that I had committed against him a crime, when he knew that it was he who had committed against me a crime. I told him I would not permit the public press to put me in the position of having been pardoned by him for some atrocity, which was all the greater in the public imagination because it was not named, and that he must correct, or that I would, the impression which that publication produced. I told him that I had, in consultation with friends

on the previous evening, resolved on my method of preventing it, if my method was to be adopted, and that method would be to publish in a brief card Mr. Beecher's letter, now known as the letter of contrition, dated Jan. 1, 1871, with a comment appended; that the public would see from the above card whether I had committed a crime against Mr. Beecher, or Mr. Beecher had committed a crime against me; but I told him I didn't wish to resort to such a severe method as that, which was the only method I could adopt, if the matter of the correction was left to me. I said that he had better correct it himself; that he could do it in a milder way, without involving such a cost to his feelings. I had prepared a card to that effect for publication in *The Brooklyn Eagle* of that night. Mr. Moulton dissuaded me from publishing it that night, saying: "Give me a little time; let Sunday intervene; it will do on Monday; meanwhile we will have opportunity for reflection." I presented to Mr. Moulton a complete clean draft of a card which I proposed, in case the responsibility of correcting that impression should devolve upon me, in case Mr. Beecher would not accept what I presented to Mr. Moulton—the form of this card I proposed to publish in *The Brooklyn Eagle* on the following Monday; and I left that to be conned over by him, and for Mr. Beecher to discuss it, and for them to come to some conclusion about it, and I left. The next incident in the matter occurred during the evening of that day. I went around to Mr. Moulton's house on Saturday evening. That would be May 1st, 1873. I was going up into the study. Mr. Moulton told me not to go up, for Mr. Beecher was there, and he did not wish us to meet. I remained down stairs. Pretty soon Mr. Moulton came down to me and said that Mr. Beecher was in great despondency, and had proposed, as his method of settling the case, to resign his ministry. Mr. Moulton dictated to me from memory a copy of the letter of resignation which he said Mr. Beecher had on that night brought. Mr. Moulton said to me: "What do you think of that as an expedient?" I said, "You may tell Mr. Beecher if he resigns his ministry in this crisis, flinging back that shadow on my family, I will shoot him on the street." Whether he communicated that to Mr. Beecher or not I don't know.

Q. Is that the proposed card of which you have just spoken? A. Yes; that is it.

Q. The part of it in print; what was it taken from? A. The part in print was taken from *The N. Y. Express*. Whether this identical fragment was taken from *The Express* or not I cannot say. But my impression is that this article appeared in *The Express* of Friday afternoon, and was copied into some of the New-York papers of Saturday morning—I won't be certain of it—or went into *The Brooklyn Eagle*.

Q. At all events it was a commentary of the press upon your attitude? A. Yes, Sir; that is the identical commentary.

Mr. Fullerton—This is "Exhibit No. 25."

Mr. Fullerton—[Handing paper to witness.] Now look at the paper which I show you and tell me what that is. A. This is a copy of a card which I proposed to Mr. Beecher on that occasion to sign, in order to get rid of that one.

Q. In order to get rid of "Exhibit No. 25," you proposed that one in your hand? A. Yes, Sir.

Mr. Fullerton—And that will be marked—

Mr. Evarts—Let us see that.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—That is new.

Mr. Morris—Yes, Sir.

[Paper marked for identification "No. 75."]

Mr. Fullerton—The last paper is marked "Exhibit No. 75." Did Mr. Beecher see this "Exhibit No. 75?" A. Yes, Sir, he must have seen it, because he published the next day almost the identical reproduction of it.

Mr. Evarts—The fact is that he saw it.

Mr. Fullerton—[Handing paper to witness.] Look at "Exhibit No. 77," and say whether it is the card prepared and published by Mr. Beecher in lieu of this—

Mr. Evarts—I don't know anything about that. Let us see. This paper is proved by this witness having been drawn by him, and of course the right to offer it in evidence will depend on its having been submitted to Mr. Beecher, or in some way having received his sanction as part of the transaction. Whenever that is supplied it can be read.

Mr. Fullerton—"Exhibit No. 75" was not published, I believe. What was published? A. What is "Exhibit No. 75?"

Q. The proposed card which has been called to your attention. A. Yes, Sir; it was published the next day, with one or two trifling alterations. The substance of it was published in *The Brooklyn Eagle*, Jan. 2d, 1873.

Mr. Fullerton—That is sufficient now.

Mr. Evarts—We don't think it identifies it. That paper was published, no doubt, and is in proof. This witness drew a card; that might be proper, if he can say it was shown to Mr. Beecher. We don't want an argumentative statement that Mr. Beecher saw it, because he published something different from it, although like it. The question is whether he saw the paper.

Mr. Fullerton—What did you do with "Exhibit No. 75?" A. I will tell you. After Mr. Beecher, on Saturday evening, May 31, 1873, had prepared his letter of resignation, and I had sent him that message through Mr. Moulton, that he must find some other way, I went early next morning, or pretty early the next morning, to Mr. Moulton's house, to see what had been the result of Mr. Beecher's later consultations with Mr. Moulton on that Saturday night after I had left the house, for in leaving I had left them together. Mr. Moulton told me—

Q. No; not unless Mr. Beecher was there. Don't state anything Mr. Moulton told you, unless Mr. Beecher was there. A. I was about to say that he showed me a letter just received from Mr. Beecher.

Q. Is that in evidence? A. Yes, Sir. I asked Mr. Moulton—

Q. [Handing letter to witness.] Is that the letter which he showed you at that time from Mr. Beecher? A. Yes, Sir. I asked Mr. Moulton what Mr. Beecher had resolved upon, whereupon he showed me that letter.

Mr. Morris—"Exhibit No. 26."

Mr. Fullerton—Without relating what occurred between you and Mr. Moulton, tell us what you did with "Exhibit No. 75," the letter addressed to Mr. Kinsella? A. I don't understand any art of answering that question, unless I mention what precedes it, because this hung on a previous occurrence.

Q. After you prepared it, what did you do with it, where did it go, into whose hands did you put it? A. I put it into Mr. Moulton's hands to be communicated to Mr. Beecher.

Mr. Fullerton—That is all I want.

Mr. Beach—That paper he says was published the next day.

The Witness—Yes, Sir.

Judge Neilson—With some trifling alterations.

Mr. Beach—Very well, Sir.

Judge Neilson—The relation and connection of the two papers, we can spell out as well as the witness.

Mr. Fullerton—Then I offer it in evidence.

Judge Neilson—I think you can put it in.

Mr. Evarts—Why didn't you put it in.

Mr. Beach—Because it is the same thing Mr. Beecher reproduced in print the next day.

Mr. Evarts—How do we know it was connected with Mr. Beecher?

Mr. Beach—Because he says it was published.

Mr. Evarts—You can't make an argumentative proposition that Mr. Beecher had copied that from this.

The Witness—Mr. Evarts, I will inform you that Mr. Beecher copied his from mine.

Mr. Evarts—Did he do it in your presence? A. He did not do it in my presence.

Mr. Evarts—Then you cannot testify in regard to it.

Mr. Beach—Unless he knows it from some subsequent interview with Mr. Beecher.

Mr. Evarts—If Mr. Beecher told him he copied it, that brings a recognition of the paper. When you bring that recognition, then you can offer it in evidence.

Mr. Beach—I don't know of any better recognition that can be given of a paper than the fact that it was sent by the draughtsman to Mr. Beecher, and that Mr. Beecher published it *in hæc verba* the next day, with a few trifling alterations. I think that is a pretty substantial recognition of the paper.

Judge Neilson—I think, upon that view, the paper can be put in, as I suggested before.

Mr. Evarts—Your Honor will note my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton (reading):—

DEAR KINSELLA: I have maintained silence under the continual slanders that have for some time followed me. I do not now propose to defend myself. The recent publication of a document which bears my name among others, was made without consultation with either Theodore Tilton or myself, or our authorization. If that document should lead the public to regard Mr. Tilton as the author of the calumnies to which it alluded, or any other slander against me, it will do him great injustice. Mr. Tilton's course towards me has been that of a man of honor and integrity.

Yours,

HENRY WARD BEECHER.

[Paper heretofore marked for identification No. 75, now marked "Exhibit No. 75"].

Q. Now, who was Mr. Kinsella? A. I don't know, Sir.

Mr. Beach—What was his business and situation? A. Oh! I thought you meant what was his function in this case.

Mr. Fullerton—No.

The Witness—Oh! Kinsella was the editor of *The Brooklyn Eagle*.

Q. In which the publication appeared? A. Yes, Sir. Perhaps I ought to mention. Mr. Fullerton, that the alterations in that card were submitted by Mr. Beecher to me, through Mr. Moulton, before they were made, on Sunday night.

Mr. Evarts—Your Honor has my exception to the reading of this paper.

Judge Neilson—Yes, Sir.

#### MR. TILTON PACIFIES MR. BEECHER.

Q. We will now pass to 1873, Mr. Tilton, the month of June; do you recollect an interview on Sunday night, at Mr. Moulton's house? A. That is the interview that I have just been mentioning, Sir, Sunday night, June 1st, 1873.

Mr. Beach—Upon that night you did not see Mr. Beecher, I believe? A. Mr. Moulton would not permit us to see each other, and kept Mr. Beecher up stairs and me down. He said the two men were not in a frame of mind to meet each other.

Mr. Fullerton—What effect did this card of Mr. Beecher have on himself? A. On Mr. Beecher?

Q. Yes; in what frame of mind was he after its publication?

Judge Neilson—In other words, did you see him again?

Mr. Fullerton—Yes. A. I do not at this moment remember the first day I saw Mr. Beecher after that publication.

Q. Do you recollect anything that occurred about the 10th or 12th of June, soon after? A. The 10th or 12th of June?

Q. Yes; do you recollect sending him something to the church? A. Do you mean a little scrap of paper?

Q. Yes, Sir. A. I don't know that I could fix that little scrap of paper to the 10th or 12th of June. The circumstances, as they lie in my memory, are these: The publication of this little card of the 2d of June, 1873, excited a great deal of comment. Mr. Beecher told me that all his friends were pressing him to know why in the world he had published such a card exonerating me, saying that I was not the author of the scandals, and giving me a good character before the world; he said he had been pestered by his friends to know the reason, and that he was like a lamb in a thicket in the midst of those criticisms, and that the inquiries into the reasons for that card had given him great perplexity. I think he told me also that there was a threat at that time on the part of Mr. West to institute inquiries into the case; at all events Mr. Beecher said to me that the troubles which had grown up in consequence of the publication of that card were so great as to throw him into great depression. He communicated that to me and to Mr. Moulton, and two or three different times during that month of June; and one morning when he was in a particularly low state, so Mr. Moulton informed me, I sent him a little scripture text, a favorite text of his, from which he used to preach in the past days. I wrote it on a scrap of paper and sent it up into his

pulpit—"Grace, mercy and peace,"—and signed my initials to it. He found it in his pulpit when he went to preach. He told me a few days afterwards that there never had been a sunbeam that brought him more brightness than that. He said that my spirit toward him lifted him up or cast him down, and thanked me for it very profusely. But I won't undertake to fix the exact day of that little paper. It did not have any date, only it was in that time of great depression when he was cast down, and Mr. Moulton asked me to lift him up.

#### PLANS FOR EVADING THE WEST CHARGES.

Q. Do you recollect the letter of Mr. West to Mr. Beecher, foreshadowing the charges that he afterwards preferred? A. I do recollect seeing the letter. I think I had never seen it until this legal proceeding, but I remember a letter was sent by Mr. West to Mr. Beecher. Mr. Beecher came round to Mr. Moulton and to me and said that Mr. West had made up his mind to institute charges against me, and Mr. Beecher wanted to know what was the best policy to do—to proceed upon—in reference to that forthcoming inquiry.

Q. What occurred? A. All that occurred was—on my part at least—was simply this, that I did not see how they could make any inquiry unless I consented to go there and be inquired into, and that there could be no investigation of any sort if I kept away; that it would take seven chains to drag me down to the church to that investigation; he might rest assured that no harm would come through me. Then, either Mr. Moulton or I, or Mr. Beecher, I don't know who, suggested that, as a temporary relief, it would be well to treat the charges with some little kindness, not to rebuff them, not to say, "No, we shall never look into these;" but to say, "The time of year is bad; it is June; July is upon us, and the Summer vacation has come. Throw this thing over until the Autumn; give them a half welcome and a half rebuff." That was the policy agreed upon.

Q. Anything said at that time as to whether you were subject to the jurisdiction of the Court, or was that subsequently? A. The West charges occupied the attention of Mr. Moulton and myself at intervals during the Summer. Mr. West made me a visit during the Summer, though I think that was during Mr. Beecher's absence in the country. I don't remember precisely the date of Mr. West's call. I think it was in the early part of August. He came to see me. He was then a stranger to me. I did not know him by sight.

Mr. Evans.—It is no matter what passed between you.

Q. Pass, then, to the month of October, if you please. What occurred then in regard to the West charges? A. At some time in the month of October—I don't remember the date, though the paper itself bears a date—I was waited upon at the office of *The Golden Age*, by Mr. Tallmadge, the clerk of the Examining Committee of Plymouth Church, who presented to me a formal copy of the charges which Mr. West had made against me, to the effect that I had been slandering Mr. Beecher.

Q. These charges, I believe, that were thus served upon you, are in evidence? A. Yes, Sir, the identical paper.

Q. Look at "Exhibit No. 29," and say whether you recognize it as the charges referred to. [Handing to witness "Exhibit No. 29."] A. This is a printed copy.

Q. Well, there are the originals. [Handing witness papers.]

A. That is the paper, Sir,—two papers.

Q. The letter accompanied it also, did it—of Mr. Tallmadge?

A. Yes, Sir; both papers—as you see them.

Q. They have been read in evidence. How long after that did you see Mr. Beecher? A. I don't know how many days, but speedily after that. I did not see Mr. Beecher; Mr. Beecher saw me.

Q. Where did he see you? A. At Mr. Moulton's house.

Q. What occurred? A. He wanted to know what we would do in reference to Mr. West's revival of his charges.

Q. State whether the charges were there, and exhibited? A. I do not know whether they were or not.

Q. Do you know whether Mr. Beecher saw them? A. I don't know.

Q. Well, go on with your narration. A. He spoke to me about them. I had received my copy. I don't know whether he had ever seen that identical copy or not.

Q. What occurred there in regard to them? A. He said to me that everything depended on me. I told him if that was true, I could very easily handle the case. I then informed him that Mr. West had visited me during the Summer, and that he had substantially indicated to me, though he did not say it in plain words, that he (Mr. West) had originally instituted these charges against me in June, because he thought I was really guilty of slandering Mr. Beecher; that during the Summer he, Mr. West, had changed his mind on that subject, and had come to the conclusion that Mr. Beecher was the guilty man, but that, having brought his charges before the church in the regular way, he desired that they should be called up in the Autumn, and urged upon me, as a matter of duty and for my own vindication, that I should appear before the church to answer the charges; that in answering them I would throw the blame where it belonged, and clear myself. I told Mr. Beecher that Mr. West was a stranger to me, and that I entered into no obligations with him, and that I had told him very frankly that I had been for nearly four years out of the church, that I had never crossed the threshold of it, never attended services there, never expected to do so so long as I lived, and that nothing would now induce me to return to the church, and least of all would any temptation lure me to go there for the sake of mingling in an investigation into a scandal. I told Mr. Beecher that Mr. West had argued with me about my duty to go, and had said to me that my name was on the roll, and that I was still a member, and that the church had authority over me, and that he, Mr. West, had taken the advice of well-known congregational clergymen, who understood the order and polity of the church, and that when the Autumn came he meant to call up these charges and to assume that I was a member, and to treat with me as a member, and to force me to trial. I told Mr. Beecher that I had informed Mr. West that no powers could force me to trial, that I should take the ground, which was the true ground, that I was not a member of Plymouth Church, that I had informed the pastor to that effect three or four years ago, that I had never been in the church and

was not a member, and that the error was in supposing that the mere fact of the accidental retention of my name on the roll could create a member of a man who had no membership. I told Mr. Beecher that Mr. West pressed me, and said that in a friendly spirit toward me he meant to call up the charge. I told him, however, that Mr. West was guarded in his expression; he would not say absolutely that he believed in Mr. Beecher's guilt, only that if Mr. Beecher was guilty he was acting during the Summer as a guilty man would act, and exactly as an innocent man would not act. I told Mr. Beecher that now that the charges had been presented to me in a regular form, I would assume toward them the same attitude which I had previously announced to him when the first premonitions were given in the month of June and July, that I should stand on my non-membership; that I should say I was out of the church; that the record was wrong; that they should revise the roll. He said to me: "Theodore, if you take that ground all will be safe; but if by any means they can bring you before us for examination everything will be lost." I said, "They cannot carry me before the tribunal of the church without my consent, and I shall never give my consent." I then told Mr. Beecher that he must assist in fighting off Mr. West's charges. He said that the trouble was to deal with those members of the church who took the technical theory that because my name was on the roll and because I had never asked for letters of dismissal, that therefore the church was in duty bound by its own precedents and policy to try me as if I was a member. He said there was a number of gentlemen in the church who took that ground, and that they were the difficult members to deal with; and in view of that difficulty I suggested to Mr. Beecher a form of action to which he approved. That form was this. I said, "Suppose you draft a resolution something like this: '*Resolved*, That as Mr. Theodore Tilton has not been, for four years, a member of this church, that the roll that contains his name be amended in accordance with that fact.'" That was my proposition for satisfying the consciences of those gentlemen who thought I was a member because my name was on the roll. Mr. Beecher approved that proposition, the essence of it being that I was not a member, and that the roll should be amended to recognize that fact. That was the policy that we agreed upon.

Q. Did you write to Mr. Tallmadge? A. I did, Sir.

Q. Is that the letter which you wrote? [Handing witness a paper.] A. That is the letter, Sir.

Q. I offer it in evidence.

Mr. Evarts—That comes under the same objection and under the same rule of admitting it, I suppose, that the charges do?

Judge Neilson—Yes, Sir.

Mr. Evarts—Therefore, if your Honor will only note my objection and my exception to its admission.

Judge Neilson—It comes in collaterally—incidentally.

Mr. Fullerton [reading]:

174 LIVINGSTON STREET, )  
BROOKLYN, October 23d, 1873. }

Mr. D. W. TALLMADGE (Clerk):

My Dear Sir: I have received from you an official paper addressed to me, as a member of Plymouth Church. Nearly four years ago I terminated my connection with that church, and

am not now a member thereof. Therefore, the document addressed to me in that capacity I cannot receive. To avoid any seeming discourtesy in returning it herewith, I retain it, subject to your discretion. With my best wishes for the prosperity of the church. I remain,

Yours truly,

THEODORE TILTON.

[Marked "Exhibit No. 76."]

Q. Did anything else occur after the proposition of this resolution which you proposed should be adopted? A. After I sent that letter to Mr. Tallmadge I was in at Mr. Moulton's house one morning—I think it was the very day after the letter had been delivered—or if it was not the next day it was very shortly afterwards, and Mr. Beecher came in, and on seeing me he came up to me and caught my hand in both of his, and said: "Theodore, God inspired you to write that letter."

#### MR. TILTON'S LAST VISIT TO PLYMOUTH CHURCH.

Q. What action did the church take in regard to it? A. On the morning of the 31st October, 1873—I believe I am correct in the date—it was the morning of the day on the evening of which action was to be taken by the church in reference to these charges; on the morning of that day I saw in one of the New-York papers—I forget which—I think *The Sun*—some intimation that the action that night, instead of being in accordance with the bargain made between Mr. Beecher and me, namely, that the roll should be amended in accordance with the fact of my non-membership—I saw an article saying that the action that night was to result in my excommunication from the church, on the ground that charges had been brought against me for slandering the minister; and that when I was cited to appear before the church to answer them, I had, in a mean-spirited way, put in the plea that I was not a member, and had shirked my responsibility, evaded my duty, and in that manner was to be dealt with by the church and to be punished with expulsion. I went around to Mr. Moulton's house and I called his attention to that statement and I asked him to send for Mr. Beecher, which he did. Mr. Beecher came. I called Mr. Beecher's attention to that statement and I asked him what was to be the action that night. I said: "You and I have agreed what the action shall be. I have written a letter to the church saying that I am not a member, but I have written that letter in your interest. I have written that letter for the purpose of fighting off this investigation. I did not write that letter with a view to evade any duty. I am perfectly willing, if you are, to go down to the church and face this investigation. Tell me, what is the action to-night to be, and what is the meaning of this newspaper forth-putting, and threat and premonition that I am to be expelled? He said he did not know exactly what the action was to be, and he spoke some very severe words against Mr. West, and he said he was in great trouble. I told him I could not afford the risk of any mistake that night; that if this newspaper foreshadowed the true action, namely, that I was to be held up before the public as having made charges against him and as having meanly shrunk away from my duty of answering them by so base a plea as non-

membership, that I never would submit to it. He begged me to consult Mr. Samuel Belcher, a member of the Examining Committee. He said Mr. Belcher could tell me exactly what the action was to be. I told him that I would write to Mr. Belcher. I told him that I would not permit the church to put me on record, for my future to be clouded by, as under any such base insinuation that I was not able to meet any such charges. I left Mr. Beecher, or rather Mr. Beecher left me; he left the house; I went up into the study and I wrote to a member of the Examining Committee, Mr. Samuel E. Belcher, a letter.

Q. Is that the letter you wrote him [handing witness a letter]? A. Yea, Sir; that is the original draft of it; I made a clean copy and carried it over to him, and delivered it into his hand in person.

Q. Go on with the narrative now. A. I carried it over to New-York.

Mr. Evarts—Well, the question whether Mr. Beecher—

Judge Neilson—You delivered it to Mr. Belcher. That is all you can say about it.

Mr. Fullerton—That is all; that is all I propose to have him say now. [To the witness]: Go on with the narration.

A. I delivered it to Mr. Belcher; I then went to my office and I prepared a copy of it which I sent to Mr. Tallmadge, the clerk. The substance of the letter was—

Q. No, never mind that; I will read the thing itself by and bye. When was the action of the church to be had? A. That night.

Q. Did you go to the church that night? A. I did, Sir.

Q. What occurred there? A. I rose and made a speech.

Q. Just tell us from the time you entered the church until you left, what occurred in the presence of Mr. Beecher? A. About eight o'clock I went into the church. The prayer-meeting was in progress. I waited through it to the end. At the end the meeting resolved itself by Congregational custom into a business meeting, and one of the members was appointed Moderator, and the action which had been heralded in the newspapers of that morning was brought forth for consummation.

Mr. Evarts—What took place?

The Witness—In other words, a series of resolutions was read; I cannot repeat them, but the substance was that I had made charges against Mr. Beecher, that I had been summoned to answer for them, and that my answer was, that I was not a member, and therefore dropped my name from the roll; and as soon as I heard that record read I rose to my feet, and I made a brief statement to that congregation to the effect that if I had slandered Mr. Beecher I was there to answer for it to his face; and Mr. Beecher rose and said that he had no charges to make against me. The entire proceedings are given in the chronicles of the day. I won't undertake to repeat the exact words.

Q. Did Mr. Beecher say anything about the letter to Mr. Belcher after that? A. Yes, Sir.

Q. What did he say? A. Mr. Beecher told me that he was

afraid that trouble might arise in view of my letter to Mr. Belcher, not because I had sent it to Mr. Belcher, for he was his friend, but because I had sent a copy of it to Mr. Tallmadge, and he said that he did not then know whether Mr. Tallmadge was inclined to be friendly or hostile to the investigation, but he said he had procured the copy of it and it was in his possession. I do not distinctly remember whether he said Mr. Belcher's copy of it or Mr. Tallmadge's copy of it; at all events he told me that there was no danger of that letter going on the church records.

Mr. Fullerton—I propose to read it now.

Mr. Evarts—The same objection, Sir.

Mr. Fullerton [reading];

BROOKLYN, October 31, 1873.

MR. SAMUEL E. BELCHER.

*My dear Sir:*—As you are a mutual friend of Mr. Beecher and myself, and as you are likewise a member of the Examining Committee of Plymouth Church, now occupied with an unhappy scandal, I desire to put into your hands, to be used publicly or privately at your discretion, the following statement, namely,

I wrote a few days ago to your Committee, stating that I had not for four years held any connection whatever with Plymouth Church, and, therefore, could not with propriety act the part of a member in any proceedings.

But, since writing that note, I learn from the public papers that because my name still appears on the church books, I am therefore still considered a member, sufficiently so at least to be indicted by one of the members for slandering the pastor. A hint is also thrown out that I am thus refusing to submit myself to the church tribunal, in order to escape the responsibility of my slanderous words.

I therefore say, first, I have never spoken against Mr. Beecher falsely; and, second, if either he or the Church Committee shall request me to waive my non-membership and take my position once again, I will do so as a member long enough to appear this evening at the meeting to answer, before the assembled congregation or Committee, the following question, either from Mr. Beecher or the Committee; namely:

"Have you, Theodore Tilton, ever spoken against Henry Ward Beecher, falsely?"

I request you to show this letter to Mr. Beecher before the action of the Committee to-night. Let me add that my explicitness in this matter is solely with a view to protect myself against any unjust suspicion or reflection in future that I have ever sought to evade any just responsibility of mine to Plymouth Church.

I retain a copy of this letter to be used as I shall see fit.

Fraternally yours, THEODORE TILTON.

[Marked "Exhibit No. 77"].

Mr. Fullerton—A motion to adjourn is always in order, I believe.

The Court thereupon adjourned to eleven o'clock on Wednesday morning.

## EIGHTEENTH DAY'S PROCEEDINGS.

## QUESTION AND CROSS-QUESTION TO MR. TILTON.

WHY THE PLAINTIFF WROTE HIS LETTER TO DR. BACON—A PART OF THE FAMOUS CORRESPONDENCE BETWEEN MR. TILTON AND HIS WIFE READ—MR. EVARTS BEGINS THE CROSS-EXAMINATION.

Mr. Tilton's testimony on Wednesday was not startling, but from beginning to end the interest in it was not once allowed to droop. The testimony first adverted to the Congregational Council in 1874, to the time when Mr. Tilton first heard of its organization, and to what followed. The familiar occurrences surrounding the famous Bacon letter were lightly touched upon. It was soon after this that Mr. Tilton last met and spoke to Mr. Beecher. He told Mr. Beecher on that occasion that Dr. Bacon had called him (Mr. Tilton) a knave and a liar and a creature of Mr. Beecher's magnanimity, and added that Mr. Beecher must deny Dr. Bacon's statements or he (Mr. Tilton) would. Mr. Beecher made no reply and went away. Until they met in the court-room, the two men did not again see each other. A letter from Mr. Tilton to Mr. Beecher, dated in May, 1874, was introduced, in which the writer wrote that he had heard from Mr. Carpenter that Mr. Beecher desired to offer Mr. Tilton pecuniary aid. The latter closed by declining money directly or indirectly, and Mr. Fullerton read it with the grieved expression which the writer evidently intended to convey. Another communication, written to Mr. Shearman and other members of Plymouth Church, was read. It contained quotations from the Bacon letter, and said that if it was desired to try Mr. Tilton for the charges against him he would appear at the bar of Plymouth Church and answer them.

This brought the examination to the events connected with the Plymouth Investigation Committee. The witness said that Mrs. Tilton first informed him of the Committee's existence about 10 o'clock one night early in July. The letter of Mr. Beecher appointing the Committee appeared in the newspapers the same week, and Mrs. Tilton left her home on the day when it was published. The examination then went back to the time when Bessie Turner entered Mr. Tilton's house, who knew her as Lizzie McDermott, "a little waif of a thing," as he described her. When asked whether the story about his having acted improperly toward the girl was true or false, the wit-

ness replied emphatically, "Not a word of truth in it, nor a fact for its foundation. Pure fiction." A debate arose regarding the next topic which was about one of the proposed reports of Mr. Tilton to the Investigating Committee. Judge Neilson was at first inclined to rule out the details of the interview at which that report was suggested, as asserted, by Mr. Tracy, but Mr. Fullerton and Mr. Beach brought to bear very strong arguments for its admission, and finally won their point.

Judge Fullerton then announced that the direct examination was ended, with the exception of the reading of some letters written prior to the alleged commission of adultery. These would be read later. Mr. Evarts, who was to conduct the cross-examination, decidedly objected to that arrangement, and he continued to protest, when Mr. Beach explained that the letters bore reference simply to damages. A heated but amusing skirmish of words followed this misunderstanding. Mr. Beach said that counsel for the plaintiff would be obliged to occupy the next few hours in identifying all the letters, three or four hundred in number, and they would introduce afterward the few they desired to read. "You must introduce them before I cross-examine," exclaimed Mr. Evarts, decidedly, emphasizing with equal force every word and syllable. "No, we won't introduce them before you cross-examine," replied Mr. Beach, jerking out each word with a shake of the head. "We'll see," rejoined Mr. Beecher's senior counsel, in a drawling schoolboy fashion, which was exceedingly funny. After Mr. Beach had responded, "We will see," there seemed to be nothing further to say, and Judge Neilson, apparently amused by the quarrel, suggested that there ought to be some way to agree. Mr. Fullerton replied that the plaintiff's counsel had hundreds of letters, but only wished to introduce about a score of them. There was a momentary pause, both sides being stubborn and determined not to compromise. Then Mr. Evarts said, with a yawn, "Well, gentlemen, we've nothing to do with your case."

"Thank you for that," retorted Mr. Fullerton, shortly, while Mr. Beach added, "We've considerable to do with yours."

This provoked the first laughter of the day, in which all the counsel joined. It was finally agreed to adjourn until 2 o'clock, it being then about 12:30.

After recess, the direct examination was continued. Mr. Tilton said that during his lecturing tours he wrote to his wife every day, and she wrote to him



as often. About 20 of the letters, written in 1867 and 1868, were then read by Mr. Fullerton. They are the poetical letters of love between the plaintiff and his wife which have been so much commented on, and Mr. Fullerton threw into the reading of them much sympathy and fervor. The direct examination was concluded without further questioning at 3:05.

Interesting as had been the morning session, it was reserved for later hours of the day to develop one of the most striking features of the trial—the cross-examination of Theodore Tilton by William M. Evarts. Mr. Evarts arose slowly from his seat, and without formality put his first question, while Mr. Tilton changed his position and answered it with composure. The questioning was unbroken by any misunderstanding until Mr. Tilton was asked whether Mrs. Tilton's residence had been at Mr. Ovington's since she separated from him. He declined to say that it had been, and finally said, "Her residence is at my house." Then Mr. Evarts asked the witness what he meant when he said that his age was about 39, to which Mr. Tilton replied that he meant exactly what he said. After this there were frequent sharp exchanges of words between the examiner and the plaintiff, but always in good nature, Mr. Evarts being invariably suave and Mr. Tilton extremely dignified. Mr. Tilton did not lose an opportunity to praise his wife, and once when asked whether she enjoyed and sought the company of people with great minds, he replied, "No; she rather went to the lowly and unfortunate. She was a lovely woman." "I agree with you," commented Mr. Evarts.

Mr. Tilton's religious views were next inquired about. Mr. Evarts examined him closely on that subject, as to whether Mr. Tilton's change in belief had caused his wife much sorrow, and whether there was also a great difference in the religious views of Mr. Tilton and Mr. Beecher. The political controversies between the two men were next taken up, and the events following the Cleveland Convention, when Mr. Tilton severely attacked Mr. Beecher, were reviewed. Before this subject was exhausted the hour of adjournment arrived and the examination was abruptly broken off.

#### THE PROCEEDINGS—VERBATIM.

##### THE COMMOTION MADE BY THE COUNCIL.

The Court met at 11 a. m., pursuant to adjournment.

Theodore Tilton was called, and the direct examination continued.

Mr. Fullerton—Mr. Tilton, when did you first hear of the proposed Council of the church? A. I think, Sir, that the first intimation that I had that a Council was likely to be held was given to me by Mr. Beecher, at Mr. Moulton's house, one Sunday afternoon; I think the second Sunday after my appearance in Plymouth Church at which I made the speech. The date, therefore, was in the early part of November.

Q. 1873? A. 1873.

Q. Now detail, as near as you can recollect, the conversation that you had with Mr. Beecher at that time? A. I stepped into Mr. Moulton's house one Sunday afternoon, and Mr. Beecher was there, and he said to me that trouble had arisen out of my speech at the church, and out of the action of the church in particular reference to Mr. Halliday's card. Mr. Halliday had published a card as clerk of the church certifying that my retirement from the church and the erasure of my name from the roll was without reflection upon me. That card had been printed in *The Sun*. Mr. Beecher said that a good deal of comment had been made by that card, mischievous comment in ecclesiastical circles; that some of the neighboring churches, and I think he said in particular Dr. Storrs's church and Mr. Buddington's church, or leading members of those two churches, were taking the ground that it was against the Congregational order that a member should be dismissed as I was, while charges were pending against me, and still be allowed to carry off from the clerk of the church a certificate that it was without reflection. He said he thought mischief would grow out of it, and that intimations had been given to him that a Council would be held. I think also he told me that certain papers had been sent to him introductory to that end, namely, the holding of a Council. On second thought, I now do remember he spoke of papers, and told me that while he could not state their contents exactly, if I would go and see Mr. Halliday I would be able to judge for myself the danger which then threatened.

Q. Did he make any observation at that time in respect of your joint action with reference to that proposed Council? A. Yes, Sir.

Q. What did he say upon that subject? A. He told me that a Council was always a dangerous thing; that nobody ever could tell where such a body would end, what proceedings they would resort to, what the issue would be; and he asked me if I had any advice or suggestions to give in the matter. I told him that I was not an ecclesiast and knew nothing about the management of Councils. He then said, as near as I can recollect his words: "Theodore, all will depend on you in this case, as in other cases; if you will stand by me, if you will not turn against me, if you will not lend any influence to an investigation or to a Council, Dr. Storrs can do me no harm." I told him that I should lend myself not at all to any investigation, or any Council, or to any such proceedings—he might rest assured of that.

Q. Well, was the Council called? A. The Council was not called at that time.

Q. Afterwards I mean—was it afterwards called? A. Yes, Sir.

Q. And after it convened did you have any conversation with

Mr. Beecher in regard to it? A. The only conversation that I now distinctly recall with Mr. Beecher subsequent to the interview which I have related occurred one night in the street. It comes to me at this moment. If you will wait a moment I will endeavor to fix the time. It was on the night when Mr. Beecher made in Plymouth Church a speech referring to Dr. Storrs, saying that he was sorry that Dr. Storrs's ability and his great genius were not appreciated, that he ought to have been brought up in the West. It was on that night. Mr. Moulton and I were anxious to know the result of the church meeting that night.

It was one of the preliminary pieces of business before the calling of the Council. I was particularly solicitous to know what the church was going to do in reference to an invitation from the two sister churches to meet in Plymouth Church lecture-room and have a friendly talk as to the action taken in my case. I went down with Mr. Moulton to the prayer meeting; I did not go in, but I waited until it was over; Mr. Moulton and I both waited, anxious to know what action the church had taken or would take. Mr. Beecher met us, and said to Mr. Moulton: "I am all in a dripping sweat. I have just been making the greatest speech of my life. My church will do just exactly as I say. We are going to stand on an independent basis. We can whisk the Council down the wind. We can set them all agog." He then turned around and recognized me. This was in the dark, and he told me the substance of what he had said; he said he had never been so roused in any public speech in his life. He was quivering from head to foot, and he would have to stand against an iron railing or lamp-post to steady himself. I thought he was going to fall in the street. He told me he thought the danger was past; that the church would do exactly as he wished.

Q. When, in reference to this event that you now speak of, was the Bacon letter published? A. Oh, the Bacon letter was not published until June, 1874.

Q. After its publication did you call the attention of Mr. Beecher to it? A. No, Sir; I never met Mr. Beecher since the Bacon letter, save as I have met him here in the court-room.

#### MR. TILTON'S LAST WORDS WITH MR. BEECHER.

Q. Did you ever have any talk with Mr. Beecher in regard to the Bacon letter? A. I had a talk with Mr. Beecher, not in regard to the Bacon letter, but in regard to the charges which Dr. Bacon had made.

Q. I did not frame my question as I meant to have done. With regard to the charges referred to in the Bacon letter, I should have said? A. Yes, Sir.

Q. When was that conversation? A. I cannot fix the precise date, but it was an interview held in Mr. Moulton's study, I think about the middle of April, 1874, just after the Council.

Q. And what part of the charges of Dr. Bacon against you did you call the attention of Mr. Beecher to? A. Dr. Bacon had charged me with being a knave and a dog.

Q. What did you say to Mr. Beecher upon that subject? A. I told Mr. Beecher that that was a very grave charge to come from Dr. Bacon, the leading Congregational clergyman of New-England, my former senior editor of *The Independent*; that it

might as well be made against me by Mr. Sumner; that I could not sit still under any such imputation, and I said: "Mr. Beecher, you must correct this or else I shall be compelled to do so. You may correct it in your own way, in any mild and gentle way. If it is left to me to correct, I must do it in a more serious way." He said to me on that occasion, or rather I said to him on that occasion: "I am not willing, Mr. Beecher, to be put before the world as the creature of your magnanimity, whereas you know that you are the creature of mine." Perhaps I ought to say, to make that entirely clear, that this was an interview which I had with Mr. Beecher, to which I had summoned him, in order that he might be present when Mr. Thomas G. Shearman presented to me his written apology for having insulted Mrs. Tilton in public, at the Plymouth prayer meeting.

Mr. Evarts—We will have that stricken out.

Judge Neilson—Strike it out, unless the counsel require it.

Mr. Fullerton—It is immaterial.

Mr. Beach—I do not want to strike out the fact. I suppose that he had summoned Mr. Beecher to that interview.

Judge Neilson—No, Sir; from that.

Mr. Fullerton—You recollect anything else that occurred at that interview? A. I recollect my talking with Mr. Shearman, and my receiving his apology.

Q. I mean with Mr. Beecher? A. No, Sir; Mr. Beecher left, and that is the last time I ever spoke with him.

Mr. Evarts—That will have to be stricken out also.

Judge Neilson—Yes, Sir.

Mr. Beach—No, Sir; not with our consent.

Judge Neilson—The answer will be: "No, Sir; Mr. Beecher left." If the counsel wishes to learn more, he may inquire.

Mr. Evarts—This constitutes a part of the conversation with Mr. Beecher.

Mr. Beach—I understand that Mr. Beecher was present at this interview.

Judge Neilson—Ascertain how that is; ascertain if there was any reference to Mr. Shearman's matter while Mr. Beecher was yet there.

The Witness—Yes, Sir.

Mr. Beach—We do not care about that.

Mr. Fullerton—I don't care about that. The correspondence between Mr. Tilton and Mr. Shearman is already in evidence as a part of the Bacon letter.

Judge Neilson—It is as well to leave it there.

Mr. Fullerton—What reply, if any, did Mr. Beecher make to the suggestion that that must be corrected, either by himself or you? A. Mr. Beecher made no reply whatever, from being restrained by Mr. Shearman's presence, who had not yet learned the facts in the case.

Mr. Evarts—That is not evidence.

Judge Neilson—The word "restrained" is not.

Mr. Beach—Was Mr. Shearman then present?

The Witness—Mr. Shearman was then present.

Judge Neilson—Mr. Shearman just then came in, did he? A. No, Sir.

Judge Neilson—He was in? A. Mr. Beecher was summoned to that interview to be present by previous arrangement.

Mr. EVARTS—That is not evidence.

Judge NEILSON—That we have down.

Mr. BEACH—I don't know whether it is evidence or not. He says by previous arrangement. We will see whether it is evidence.

Mr. EVARTS—Of course if you had a previous conversation with Mr. Beecher you can give that. I make no objection to anything which Mr. Beecher said.

Judge NEILSON—All the counsel now seem to call for, is the conversation with Mr. Beecher.

Mr. EVARTS—Now, he says that Mr. Beecher made no reply, and he then proceeds to state, because he was restrained by Mr. Shearman's presence. That is not proper.

Mr. FULLERTON—Was Mr. Shearman present during that interview? A. Yes, Sir; that was an interview called for the reception of Mr. Shearman's apology.

Q. Did Mr. Shearman and Mr. Beecher leave together? A. No, Sir; Mr. Shearman remained.

Q. Which left first? A. Mr. Beecher.

Q. Mr. Shearman remained behind with you? A. Yes, Sir.

Q. How was Mr. Beecher summoned there? A. By me.

Q. Through whose instrumentality? A. Through a telegram in Mr. Moulton's house.

Q. Sending a telegram? A. Yes, Sir.

Q. Did you inform him in that telegram?—A. I did not address the telegram to him; Mr. Moulton sent him the telegram.

Q. Was that the last meeting you had with Mr. Beecher? A. Yes, Sir; the last time I ever exchanged a word with him, according to my present recollection.

#### MR. BEECHER'S OFFERS OF MONEY FOR THE GENERAL GOOD.

Q. Tell me, if you please, in whose handwriting that letter is? [Handing letter to witness.] A. It is in mine, Sir.

Q. Did you send it to Mr. Beecher? A. I did, Sir.

Mr. FULLERTON—The letter is produced by the other side, upon my call, and I offer it in evidence.

Mr. EVARTS—This is a letter from Mr. Tilton to Mr. Beecher, received by him, and I suppose is admissible as evidence of that fact, that he wrote such a letter to him. It carries no evidence further than that.

Judge NEILSON—No, Sir.

Mr. EVARTS—It is not evidence of the truth of it.

Mr. FULLERTON [reading]:

THE GOLDEN AGE, May 2d, 1874.

HENRY WARD BEECHER.

SIR: I have just this morning learned, to my surprise and sorrow, that Mr. F. B. Carpenter, whose good will toward both you and me is unquestionable, has consulted you concerning the use of your money, influence and good offices for the enlargement of the capital of *The Golden Age*. Mr. Carpenter mentions to me also your saying to him that, under certain conditions involving certain disavowals by me, a sum of money would, or could, be raised to send me with my family to Europe for a term of years. Of course you need no assurance that such an application or suggestion is wholly unauthorized by me, and is inexpressibly repugnant to my feel-

ings. The occasion compels me to state explicitly that so long as life and self-respect continue to exist together in my breast I shall be debarred from receiving either directly or indirectly any pecuniary or other favor at your hands. The reason for this feeling on my part, you know so well, that I spare you the statement of it.

Truly yours,

THEODORE TILTON.

[Marked "Exhibit 78."]

Mr. FULLERTON—I have called upon my friend Mr. Shearman for a letter of May 4th, and inasmuch as he does not find it at once he consents kindly that I should read it from the book.

Mr. EVARTS—It is a letter to the three jointly, is it not? If it was delivered to Mr. Beecher, it will come within the same rule. But if it was delivered only to Mr. Shearman, I don't see that it would. The way a letter comes to be evidence that passes from A. to B., is the fact that B. receives it. No letter proves its contents, but the fact that it comes to a person is the substantive fact. Now, a person by writing a letter to three men and proving that he gave it to one of them, you cannot read it in evidence against the other two, unless they are partners or something of that kind.

Mr. FULLERTON—Unless we bring it home to Mr. Beecher's knowledge of course it will go for nothing. That we propose to do.

Judge NEILSON—Do you expect to do so?

Mr. FULLERTON—Yes, Sir.

Judge NEILSON—Go on.

Mr. EVARTS—Your Honor will note our exception.

Judge NEILSON—Yes; it is accepted on the assurance that he expects to bring it home to the knowledge of Mr. Beecher.

Mr. EVARTS—There may be some circumstances where it is a matter in of difference, but here is a long letter, to which, perhaps, importance is attached, I dare say—I don't know how that may be—by my learned friends; and it is hardly right, it seems to me, that we should be called upon to submit to the reading of that paper, on some notion that Mr. Beecher has something to do with it, without having the link supplied.

Judge NEILSON—I propose in this instance to accept the statement of counsel that he expects to connect it, perhaps by some other witness.

Mr. FULLERTON—By some other witness not yet called.

Judge NEILSON—I think he may read it on that assurance.

Mr. EVARTS—That is no doubt within the discretion of the Court, but we submit it is not a case where that allowance should be permitted. Your Honor will note our exception to the evidence on its face.

Judge NEILSON—Yes, Sir.

Mr. FULLERTON [Reading]:

BROOKLYN, May 4, 1874.

Rev. Henry Ward Beecher, Pastor of Plymouth Church; Rev. S. B. Halliday, Associate Pastor, and Mr. Thomas G. Shearman, Clerk.

GENTLEMEN: I address, through you, to the Church of which you are officers, the following statement, which you are at liberty to communicate to the Church through the Examining Committee, or in any other mode, private or public.

The Rev. Leonard Bacon, D. D., LL. D., Moderator of the recent Congregational Council, has seen fit, since the adjournment of that body, to proclaim, publish and reiterate, with signal emphasis, and with the weight of something like official authority, a grave declaration, which I here quote, namely:

"It was for the Plymouth Church," he says, "to vindicate its pastor against a damaging imputation from one of its members. But with great alacrity—the pastor himself consenting—IT THREW AWAY THE OPPORTUNITY OF VINDICATION." \* \* \* "That act," he continued, "in which THE PLYMOUTH CHURCH THREW AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR, was what gave occasion for remonstrances from neighboring churches." \* \* \* "There are many," he says also, "not only in Brooklyn, but elsewhere, who felt that the Church had not fairly met the question, and by evading the issue had THROWN AWAY THE OPPORTUNITY OF VINDICATING ITS PASTOR."

The Moderator's declaration is thus made three times over that the Plymouth Church, in dealing with my case, THREW AWAY ITS OPPORTUNITY OF VINDICATING THE PASTOR.

This declaration so emphatically repeated by the chief mouth-piece of the Council, and put forth by him apparently as an exposition of the Council's views, compels me, as a third party to the controversy, to choose between two alternatives.

One of these is to remain contentedly in the dishonorable position of a man who denies to his former pastor an opportunity for the vindication of that pastor's character—an offense the more heinous because an unsullied character and reputation are requisites to his sacred office.

The other alternative is for me to restore to his Church their lost opportunity for his vindication by presenting myself voluntarily for the same trial to which the Church would have power to summon me, if I were a member: a suggestion which (judging from my past experience) will subject me afresh to the unjust imputation of reviving a scandal for the suppression of which I have made more sacrifices than all other persons.

Between these two alternatives—which are all that the Moderator leaves to me—and which are both equally repugnant to my feelings—duty requires me to choose the second.

I therefore give you notice that if the Pastor, or the Examining Committee, or the Church as a body, desire to repossess the opportunity which the Moderator laments that you have thrown away, I hereby restore to you this lost opportunity as freely as if you had never parted with it.

I authorize you (if such be your pleasure) to cite me at any time within the next thirty days to appear at the bar of Plymouth Church for trial on the charge heretofore made against me, namely, that of "circulating and promoting scandals derogatory to the Christian integrity of the pastor and injurious to the reputation of the Church."

My only stipulation concerning the trial is that it shall not be held with closed doors, nor in the absence of the pastor.

I regret keenly that the Moderator has imposed on me the necessity for making this communication, for nothing but necessity would extort it.

The practical good which I seek to achieve by this proposition is that whether accepted or declined, it will in either case effectually put an end forever to the Moderator's grave charge that Plymouth Church has been deprived through me of an opportunity to vindicate its pastor, or that its pastor has been by any act of mine deprived of an opportunity to vindicate himself.

Truly yours,

THEODORE TILTON.

[Marked "Exhibit No. 79."]

#### THE CHURCH COMMITTEE AND KINDRED TOPICS.

Q. When did you first hear of the appointment of a Committee of Plymouth Church to inquire into this scandal?

A. I first heard of it one evening, about ten o'clock, from Mrs. Tilton, who had come in—

Q. Well, don't state what she said. Do you know what day of the month it was? A. I think it was in the early part of the

week that began with the 5th, 6th or 7th of July; shortly after the 4th of July; a few days after.

Q. Was the correspondence, at that time, published which called the Committee? A. No, Sir.

Q. It had not yet been published? A. No, Sir.

Q. How long after that event, that is to say, when you first heard that there was a Committee, was that correspondence published? A. Several days afterwards. The correspondence, I remember, which called the Committee into action was published on the 11th of July—Saturday morning, the 11th of July; I believe I am accurate in that date—1874.

Mr. Fullerton—I offer in evidence the correspondence which resulted in the appointment of that Committee [reading]:

BROOKLYN, June 27, 1874.

GENTLEMEN: In the present state of public feeling I owe it to my friends and to the Church and the Society over which I am pastor to have some proper investigation made of the rumors, insinuations or charges made respecting my conduct as compromised by the late publication made by Mr. Tilton. I have thought that both the Church and the Society should be represented; and I take the liberty of asking the following gentlemen to serve in this inquiry and to do that which truth and justice may require; and I beg each of the gentlemen named will consider this as if it had been separately and personally sent to him; namely:

From the Church—Henry W. Sage, Augustus Storrs and Henry M. Cleveland.

From the Society—Horace B. Clafin, John Winalow and S. V. White.

I desire you, when you have satisfied yourselves by an impartial and thorough examination of all sources of evidence, to communicate to the Examining Committee or to the Church such action as then may seem to you right and wise.

HENRY WARD BEECHER.

[Marked "Exhibit No. 80."]

Q. When did you first know of the existence of that letter?

A. I first saw that letter in print on the morning of July the 11th, Saturday, if I am correct as to the date. I saw either that letter or a similar letter in manuscript the night before, in the hands of Mr. Henry M. Cleveland, on the occasion of my first appearance before the Committee, the Committee being then an exclusively private body, its existence not having been heralded to the public.

Q. And when did you first know of the existence of the Committee? A. I first learned of the existence of the Committee in the early part of that week, I think, or several days previous.

Q. How long after the date of this letter, June 27, 1874? A. I think the day on which I learned of the existence of the Committee was possibly July 6th or July 8th, and this letter was dated June 27. It must have been nearly two weeks.

Q. Up to that time had your wife remained under your roof? A. Yes, Sir.

Q. When did she leave? A. She left on the morning of the publication of that correspondence by Mr. Beecher, informing the world that he had appointed a Committee.

Q. That was July the 11th, I understand? A. I believe that was July the 11th.

Q. As near as you can recollect? A. That is the best of my recollection. It was a Saturday morning.

Q. Did she leave with your consent? A. No, Sir.

Q. Against your will? A. She left early in the morning.

Q. How early? A. She did not leave against my will, Sir. No, Sir; because she was a free, sovereign actor in the business. She never did anything against my will. She had a will of her own and acted according to it.

Q. But it was not at your request? A. No, Sir.

Q. Consent? A. It was not with my consent. It was to my great surprise and grief. At the same time I did not undertake to restrain her, Mr. Fullerton. I never applied any coercion to her any way.

Mr. Evarts—Well, the generalities, if your Honor please, are not evidence. I ask that they be struck out.

Judge Neilson—No, they are not—the simple fact that he did not try to restrain her.

Mr. Evarts—That he never applied any coercion to her on any subject, is not evidence.

Q. Now, I want to ask a few miscellaneous questions. Do you recollect the proposed report to the Committee of Investigation that has been put in evidence? A. Well, Sir, there were three or four proposed reports, all of which I believe have been put in evidence, one by Mr. Beecher and two by me.

Q. The one that you prepared for the Committee? A. I prepared two for the Committee.

Q. There is only one in evidence, however? A. Ah! I beg your pardon, Sir.

Q. I limit my question to the proposed report for the Committee, in evidence. Is that the short one or the long one? A. It is the short one.

Q. It is the short one. I want you to state under what circumstances the short report was prepared? A. The circumstances were these. Mrs. Tilton came home one evening, and informed me that she had been down—I beg pardon for not addressing the jury—Mrs. Tilton came home one evening about 10 o'clock and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church, and I asked what committee. She said a Committee to inquire into my letter to Dr. Bacon, to do away with the scandal, and she said that she had denied everything—blotted it all out.

#### AN OLD TECHNICAL QUESTION REVIVED.

Mr. Evarts—If your Honor please, the occasion of his preparing this report may, perhaps, justify an allusion to what passed between him and his wife as the basis of that, but that occasion does not give the right to detail conversations between himself and his wife.

Judge Neilson—So I think, Sir.

Mr. Beach—Well, Sir, this interruption should have come a little earlier, Sir; but if any of it is stricken out, what has been taken in regard wholly to that interview should be stricken out.

Judge Neilson—Well, it fixes the occasion; that is the effect of it.

Mr. Fullerton—It is certainly proper and important that this jury should be informed of the circumstances which led to the preparation of that report, because it cannot be properly understood unless those circumstances are proved.

Judge Neilson—One is the circumstance that she had been before the Committee.

Mr. Fullerton—Yes, Sir; another is that she had informed him that she had denied the whole thing.

Judge Neilson—I don't think you can give that.

Mr. Fullerton—Why, Sir, that is the gist of the whole affair.

Mr. Evarts—That is already in evidence.

Mr. Fullerton—The report was based upon that fact.

Mr. Evarts—That is all in evidence. That I have not objected to. That is an occasion. I don't know, of course, what did pass between this gentleman and his wife afterwards, only it is not a matter that by fixing an occasion by an introduction to the report, gives an opportunity to go on and give a conversation between them.

Judge Neilson—I think not, Sir.

Mr. Evarts—I think it should go no further—that is, no further in respect to the conversation.

Judge Neilson—I think he can say, after giving the conversation, that in consequence of what was said he was led—if that was one of the circumstances that led him—to make the report.

Mr. Fullerton—Then it will not appear that this report was the natural result of what was communicated to him.

Judge Neilson—I think he can say that in consequence of what was communicated to him he was led to the idea of making this report, without giving the conversation; then you have it.

Mr. Fullerton—The report may be a *non sequitur*. It may not be the natural result of the conversation. It may be thus argued. It is certainly proper for us to show the basis of that report, the information that was communicated to him, because if he is to be judged by the act, then, as a matter of course, it ought to be in the light of surrounding circumstances.

Judge Neilson—Yes, Sir; but we cannot take the conversation between them, in my judgment.

Mr. Evarts—The substantive fact that she told him that she had been before the Council and denied all the charges, is already in. That is sufficient foundation, it seems to me.

Judge Neilson—You will agree with the counsel in that, I think.

Mr. Fullerton—How, Sir?

Judge Neilson—The counsel says that the substantive fact that she had been before the Council and denied the charges is already in. That covers the fact.

Mr. Fullerton—No, Sir; not by any means. We either want the whole or none. They cannot wait until a part of it is out and then object to the balance.

Judge Neilson—You cannot take the conversation any further, Sir.

Mr. Fullerton—Then I suppose it all goes out.

Judge Neilson—Oh, no! I think it stands where it is. It appears now that she communicated the fact that she had been before the Committee and denied all the charges.

Mr. Fullerton—Yes, but I want what further she said. I want to show why she denied them, the reasons that she gave for it. Why, it cannot be that this conversation is to be chipped in two suddenly in that way, and the reason that she gave for denying this story before the Committee not given.

Judge Neilson—We cannot take it.

Mr. Beach—Why, your Honor, is it permissible for counsel upon the other side to permit us to examine in regard to a conversation between Mr. Tilton and his wife, and allow them to proceed to a certain stage and then object; and your Honor excludes what follows, and they retain the portion that has been given? Is that possible? If it is improper for us to give the balance of this conversation, it was improper for us to give any of it; but counsel sat quiet while the witness upon the stand was detailing this conversation between himself and his wife, until it reached a particular point where they desired to get the fact that Mrs. Tilton upon that occasion said that she denied before the Committee the whole of the fact, and then object and shut out the answer which Mr. Tilton made to that announcement that she had given the denial. Your Honor surely will not permit that injustice to be practiced. The counsel should have objected the moment we entered upon this conversation if he intended to raise the question of its inadmissibility, and not allow it to proceed to a particular stage where it was favorable to them, and when we ask to give the answer—the explanation on the part of Mr. Tilton—then to exclude that. The whole must be given, or the whole stricken out, I submit to your Honor.

Judge Neilson—It may be hard, Sir, but I think the objection must be sustained at the point where it was made.

Mr. Fullerton—It is not a question of whether the objection should be sustained. The question is whether the whole conversation is to go out, inasmuch as the balance of it—

Judge Neilson—There has been no motion to strike out as yet.

Mr. Fullerton—Why, it is my suggestion, that if they deprive us of the benefit of the whole of the conversation, that the part of it already given in evidence should go out with it.

Mr. Evarts—Do you make a motion to strike it out?

Mr. Fullerton—I make that suggestion to the Court.

Mr. Evarts—Until you make the motion I won't discuss it.

Mr. Beach—Well, we do make the motion, Sir. Your Honor ruling that we can go no further with the conversation, we now move to strike out that which has been given.

Mr. Evarts—To strike out the whole?

Mr. Beach—Yes, Sir.

Mr. Evarts—Now, some criticism has been made on my position. Will the stenographer be so good as to read the question which was asked to this witness?

THE TRIBUNE stenographer read the question as follows: "I want you to state under what circumstances the short report was prepared?"

Mr. Evarts—Now, is there anything in that question that I ought not to have objected to? When my learned friends ask a question of this witness, saying, "State a conversation between yourself and your wife," and I sit still and allow him to go on with the conversation, then it will be time enough to criticize me for stopping him and not letting him go through.

Mr. Beach—Well, that was just the criticism in which I indulged.

Mr. Evarts—I know you did; but your question was not that Your question was, "Under what circumstances was this paper prepared?" and under that he starts off to give as an inducement to the paper a communication of a situation, before this Committee, of his wife.

Judge Neilson—That was probably directed to the commencement of the circumstances under which the witness prepared it.

Mr. Evarts—Any circumstances. Now, any other circumstances can be given—such as, after that this was done or that was done—that is, if they come from parties that are properly before us. It is not a criticism upon me for allowing a part of the conversation thus asked for. It will be time enough, I say, when a question is asked or a conversation, to say if I will allow a part of it I might allow the whole. But the question was of the circumstances—in respect to an inducement. Then I say, "Do not, under cover of that, go on and narrate a conversation between husband and wife."

Mr. Beach—The issue between us, Sir, cannot be avoided by the gentleman. I say that he sat still while this witness detailed a very considerable part of a conversation between himself and his wife, and that it was the duty of the gentleman, if he intended to object to any part of that interview, to interpose the objection when the narrative on the part of the witness commenced, and that it is unjust and illegal to permit the half of that conversation to be given until it reaches the point so far satisfactory to the counsel upon the other side, and when they apprehend that the remaining portion of it will be unfavorable to their interest, then to shut the mouth of the witness by an objection, I say it is untimely and inadmissible; but if, under the ruling of your Honor, the objection is to be sustained, that the whole conversation should be given—that it cannot thus be mangled and misrepresented—in its true scope and effect to place the party who offers it in a disadvantageous position—if your Honor will permit me, Sir, a moment, I think I can refer to authorities upon the subject. I do not wish to detain the Court, Sir, but I will present it to your Honor hereafter.

Judge Neilson—Well, we will proceed, Mr. Fullerton, reserving this until I can hear the counsel further on the subject; I would be very happy to hear him, of course.

Mr. Fullerton—Your Honor will bear in mind while considering it, that this report was not written because Mrs. Tilton made that declaration (that she denied the whole story), but the report was written and presented for other reasons, which will be manifest when that conversation is divulged. I will pass to another topic. [To the witness.] Did Mr. Beecher ever inform you who published the tripartite agreement? A. I do not remember that the publication of it was made a matter of talk between us, other than that the fact of its publication needed an answer. I know who published it.

Q. Well, did you learn it from him? A. No, Sir.

Q. Or, was it ever spoken of in any conversation between you and him? A. I do not remember that it was. It was published by Mr. Wilkeson and Mr. Cleveland.

Judge Neilson—He did not ask who it was published by.  
The Witness—I beg your pardon, Sir.

A LITTLE HISTORY OF BESSIE TURNER.

Q. Mr. Tilton, who was Bessie Turner? A. She was a little girl who came to our house; I cannot well remember how many years ago, under the name of Lizzie McDermott; I should think perhaps—well I should have to guess—a dozen or fifteen years ago. She was a little waif of a thing. If you wish me to state something about her—

Q. Well, under what circumstances did she come in your family; from whence did she come? A. My impression is that, in some way or other, through an old Sunday-school teacher either of myself or of Mrs. Tilton's; indeed I—my present recollection is that Mr. Libby, of the firm of A. T. Stewart & Co., knew something of her. I won't be accurate; I would not undertake to substantiate that, however. She came there through Mrs. Tilton's invitation, I believe, just as it might be given to any servant, any girl—any office boy—came there to help do the work of the house, take care of the children.

Q. And how long did she reside with you? A. I do not know whether she resided continuously at our house until 1870 or not; I think that in the Summer of 1870 she was away in the West at Mrs. Putnam's house, at Marietta, but at all events, the period of her residence at our house must have terminated somewhere in 1870. Then she came back from the West with Mrs. Tilton and was a day or two at the house; and then she was sent off to school by Mr. Beecher.

Q. What time? A. She was sent off two or three weeks after the writing of what is called the letter of contrition.

Q. Did you ever have any conversation with Mr. Beecher in regard to her absence at that time? A. In regard to her absence?

Q. Yes, Sir. A. The only conversation I have ever had with Mr. Beecher on the subject has been from time to time to answer an occasional question whether or not she was prattling or making mischievous talk.

Q. Where was she when those conversations occurred? A. Where was she?

Q. Yes, Sir. A. She was away in Ohio, at school.

Q. At school? Now, who made the arrangements for her departure? A. Mrs. Tilton and Mr. Moulton together.

Q. Do you recollect the time of her leaving? A. I think she left very speedily after Mr. Beecher sent me his letter through Mr. Moulton; some time in January, 1871.

Q. Some time in January, 1871? A. Yes, Sir.

Q. Now, I want to ask you this general question, whether, from first to last, Mr. Beecher ever denied the criminal intercourse with Mrs. Tilton? A. No, Sir. [After a pause.] I would like to amend that answer, Mr. Fullerton, by saying that whenever he spoke of it he always said that the criminality attached to him alone and not to Mrs. Tilton; always insisted that she had not been to blame; he was the person on whom the condemnation should fall.

Mr. Evarts—Well I object to that last, if your Honor please, as not responsive to the question, and if it is intended to draw

it out, to its being made the subject of a question. The question was fully answered; it was a very plain one. It was not whether he had ever denied the criminal intercourse of Mrs. Tilton with him, but whether he had ever denied criminal intercourse of his with Mrs. Tilton, if a distinction is sought to be established.

Mr. Fullerton—It is a proper piece of evidence.

Mr. Evarts—I am not yet through. And, if your Honor please, it is a piece of evidence which if sought to be extracted by a question, I should object to—the question. It is not responsive, and if it is not a proper subject of evidence, why then it must not be introduced. It must be shut out at present and introduced by some question to which I will object. I have a right to object to answers, when they come out not responsive to a question.

The Witness—I would like the—

Mr. Evarts—And the generality of such testimony, of course, is inadmissible. It is inadmissible to say that he always said so and so, because it does not mean what he always said, I suppose, even in that sense. At any rate the proper way is to give evidence of what he said and when he said it, etc., and then we will judge of its connection. I ask your Honor that it should be struck out. If my learned friend thinks he is entitled to draw it in, why, then, let it be drawn in by some question that will raise the point.

Mr. Fullerton—I suppose it is a proper piece of evidence, and it makes no difference whether it is in response to a question put directly for the purpose of extracting it or whether it is given as it was given by the witness. The manner in which Mr. Beecher spoke of that intimacy is competent proof. If he took the blame all upon himself and excused the lady, why it is proper that we should know that fact. It is hardly worth while to call his attention to the various conversations that he had with Mr. Beecher upon that subject, to know the particular words that he used to convey that idea, so long as that idea was conveyed.

Judge Neilson—I think we will let it stand. The learned counsel has the benefit of an objection to it substantially as if the question were put in form.

Mr. Evarts—Yes, Sir; I move to strike it out and your Honor overrules the motion.

Judge Neilson—Yes.

Mr. Evarts—I move to strike out the last clause.

Judge Neilson—The last clause, yes, Sir.

Mr. Evarts—We except to the refusal.

Mr. Fullerton—I will call your attention again to Bessie Turner. What was her age when she left you in 1871? A. I don't think that any of us knew her age.

Judge Neilson—Well, about; as near as you can guess.

Mr. Fullerton—Judging from her appearance what would you say her age was? A. When she left us in 1871?

Q. Yes, Sir. A. Well, I should have to guess; I should say 15 or 16, perhaps.

Q. Not older than that? A. I don't know; I think not.

Q. How? A. I think not; I don't know how old she was; perhaps she might have been older.

Q. Did she act in the capacity of a servant in the family while she was there? A. Yes, Sir.

Q. You have heard during the progress of this case, something said in regard to improper conduct on your part in connection with that girl. Now, I wish to ask you in reference to that, did anything occur such as is shadowed forth in the testimony, namely, that you went to her bedroom in the night and took her screaming from her room to your own bed? A. There is not a word of truth in it, Sir, nor any fact to found it upon; pure fiction.

Q. Anything improper ever take place between you and her? A. No, Sir; I never showed her anything but kindness during all the years of her residence in my house.

#### THE DISCUSSION RENEWED.

Mr. Fullerton here asked Mr. Beach in regard to the authority which he had undertaken to read to the Court.

Mr. Beach—At this instant I am not able to lay my hand upon the authority, but can when I have an opportunity at the library. But I find an intimation of the rule under the commentary in Cowen and Hill's Notes upon the question of secondary evidence, where secondary evidence is offered, the primary not being present. And Mr. Edwards, the commentator on the original text of Cowen and Hill's Notes, says:

"We have seen that where secondary evidence is offered it must be objected to in season, or its competency cannot be questioned," etc., referring to variety of authorities.

"It has been held too late to object if the testimony on the side of the party offering the secondary evidence is closed. The objection should be made when the evidence is offered, so as to afford the party an opportunity of obviating it."

Though this does not meet the precise question, Sir, or give the true reasons for exacting a timely objection where incompetent evidence is offered, yet I submit to your Honor it is a parallel rule of evidence. I do not care to repeat to your Honor the suggestions which I urged upon you before; that it is highly unjust to permit evidence which may be objectionable to be in part received, especially to the extent to which the narrative of this witness as to the interview between himself and his wife was offered, and then by an objection, after resting until he had got sufficient of the interview to satisfy his purpose, shut out the explanatory portions of the interview which followed. Now, the defendant, by resting upon his objection, has permitted us to proceed in the detail of that interview to the Court and the jury so far as to get a communication by Mrs. Tilton to him that on appearing before the Committee she denied the whole charge. And there we are interrupted and we are not permitted to give the reply which was made by Mr. Tilton, or the subsequent declarations of Mrs. Tilton, showing the reasons why she made that denial, or perhaps qualifying the character of the communication that she made to Mr. Tilton. We submit to your Honor that we should be permitted to give the whole of that interview, or else that the part which has been given should be stricken out.

Judge Neilson—I should be very sorry to deprive you of any right you have in the matter, and the question can be held until you have an opportunity to look at it.

Mr. Beach—Very well, Sir, that will do.

Mr. Fullerton—I intended to put in those reports after that question was determined. It is a little embarrassing to continue that line of investigation without having this question disposed of; however, I will endeavor to do so. I will hand the short report to the witness and ask him a further question in regard to it. [Paper handed to the witness]. Look at "Exhibit No. 50" and state whether you recognize it as one of the reports alluded to? A. Yes, Sir.

Mr. Shearman—I understand it has been marked for identification, but never put in.

Mr. Fullerton—What did you do with that report—"Exhibit No. 50?" A. I think I showed this report, and also another, to Gen. Tracy, who told me that—

Mr. Evarts—That we object to.

Judge Neilson—You must not tell what he said, Sir.

Q. What did you do with the report?

Mr. Evarts—If Mr. Beecher is to be affected when—

Mr. Fullerton—It is shut out.

Mr. Evarts—I am not speaking of the answer he was making, but of the general inquiry. There is evidence about this report given by Mr. Moulton?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Under which it has been received in evidence. Now, whatever this witness can properly bring into the evidence now must be received from something that has passed between him and Mr. Beecher, concerning it, I suppose.

Judge Neilson—That is so, certainly, as to conversations. He may, nevertheless, state what he did by way of showing an act, as that he put it in, or did something with it.

#### GEN. TRACY'S ADVICE ADMITTED.

Mr. Fullerton—What did you do with the report?

A. I put this report and the other into the hands of Mr. Moulton, in pursuance of a suggestion from Gen. Tracy.

Mr. Evarts—That part I object to—"in pursuance of a suggestion."

Judge Neilson—Strike out the "in pursuance."

Mr. Fullerton—Why, Sir, it is a part of the *res gestæ*.

Judge Neilson—Oh! no. He put that in the hands of Mr. Moulton; that is all you inquired for.

Mr. Fullerton—May I not ask at whose suggestion?

Judge Neilson—It is not material, I think.

Mr. Evarts—No; not unless it was ours.

Mr. Fullerton—In the first place I would not put the question to you; I did not ask for your suggestion.

Mr. Evarts—Our parties I mean.

The Witness—Mr. Tracy said if I made any report short of charging—

Mr. Fullerton—Never mind what Mr. Tracy said; it is ruled out. Under what circumstances did you prepare that report? A. Under a suggestion from Gen. Tracy.

Q. I put the question now—what was that suggestion? Don't answer it.

Mr. Evarts—That we object to.



Judge Neilson—I think it is sufficiently in that he made the suggestion at that time.

Mr. Fullerton—Had you at the time of the preparation of that report heard that any evidence had been given before the Committee? A. I had only heard that Mrs. Tilton had been before the Committee—

Q. Had you heard what evidence she had given? A. Gen. Tracy had told me.

Mr. Fullerton—Now, Sir, I propose to show what General Tracy told him in regard to that. I will put the question. What did General Tracy tell you in respect to the evidence that had been given before the Committee when you prepared that report? You need not answer.

The Witness—You say I need not answer?

Mr. Fullerton—No; it is objected to, I suppose.

Judge Neilson—I do not think it has been objected to. Ascertain if it is objected to.

Mr. Everts—(after consultation)—We see no foundation for any such question as this, if your Honor please.

Judge Neilson—Do I understand you to object to it?

Mr. Everts—We object.

Judge Neilson—I think you cannot give it.

Mr. Fullerton—Well, it seems hard, Sir, that Mr. Tilton should be judged by a paper which he drew, without letting in the circumstances under which he drew it, the information which he had received which led to it. His information was received from a person intimately connected with that investigation. Your Honor has learned during the progress of this case that there was a movement made every now and then, for the purpose of accomplishing some object, without developing the truth. What was done was to cover up the truth and not to expose it. Now, if Mr. Tilton, for the purpose of accomplishing any object like that which was in harmony with the wish of all parties concerned, and interested in the question, has prepared a paper, why then surely he ought to be judged by the paper and the circumstances together.

Judge Neilson—I think you have it—

Mr. Fullerton—How, Sir?

Judge Neilson—I think the motive in preparing it is plain enough from all the evidence. It has been spoken of before, you know, by another witness.

Mr. Fullerton—Yes, Sir. It has been spoken about before by another witness, but that witness was not qualified to speak of the motives which actuated the writer. He alone can speak of those.

Mr. Beach (to Mr. Fullerton)—Why, Mr. Moulton gave that interview. It is in evidence.

Mr. Fullerton (after consultation with Mr. Beach)—I am reminded by my associate of the testimony of Mr. Moulton upon that subject, which had escaped me for the moment.

Judge Neilson—I think he explained it.

Mr. Fullerton—Then is there any objection to having it explained twice? I didn't know that it was improper because it had been once given in evidence. Mr. Moulton testifies that Mr. Tilton was much softened in his feelings by what Mr. Tracy revealed to him as to the nature of the testimony

given by Mrs. Tilton before that Examining Committee, and in order to effect her purpose—the purpose that she had in view, in denying the truth of the story which was afloat, and which had led to the investigation—I say, in harmony with that he prepared this report for the purpose of covering up this great scandal.

Judge Neilson—That is your inference from your comprehension of the whole evidence so far. You think that is properly drawn from the evidence.

Mr. Fullerton—Properly drawn from what I know is in the mind of this witness and from the evidence he can give if it is permitted.

Mr. Beach—Your Honor is under an entire misapprehension in regard to the testimony of Mr. Moulton. It was called out by the other side that Mr. Tilton, being highly incensed at the appearance of his wife before the Committee, was bent upon some hostile action; that he then had an interview, in the presence of Mr. Moulton, with Mr. Tracy, and Mr. Tracy then represented to him the character of his wife's evidence, so that he was mollified and softened, and was induced to prepare this report. Now, they gave him evidence the interview at which Mr. Tilton was present, and now—Mr. Tilton being on the stand—we ask him to detail that interview—the same thing—the same subject matter which they gave in evidence, and it certainly is not objectionable as cumulative evidence.

Judge Neilson—No.

Mr. Beach—And they having introduced the interview and the facts which there occurred, certainly we are not precluded from proving the same interview by another witness.

Judge Neilson—Well, then, call his attention to the interview and then learn—

Mr. Beach—That is just what we are trying to do, Sir.

Judge Neilson—No, no; learn if he was induced to prepare this report in that way.

Mr. Fullerton—That question covers the exact ground on which I have already put it.

Mr. Everts—We would like to be pointed to the evidence that is said to have come in on our examination, if that is the basis of the allegation.

Judge Neilson—Well, we will take it on that basis.

Mr. Fullerton—[To the Witness.] Now, under what circumstances did you prepare that short report?

Mr. Everts—If your Honor please, we don't assent to that.

Judge Neilson—No; your objection is noted.

Mr. Everts—No; but it is a question of fact, not of law. We only ask that we may be referred to the evidence upon our part that is now claimed.

Judge Neilson—My recollection is general that there was evidence of that character.

Mr. Everts—Yes, Sir; but it was on their own part.

Judge Neilson—I don't recollect who called it out.

Mr. Everts—That is the very point I want to be satisfied on. Your Honor allows the evidence. We must make our objection.

Judge Neilson—Well, proceed.

Mr. Everts—Note an exception to its admission.

Mr. Fullerton—Now, if that report was drawn by you in consequence of any communication made to you by Mr. Tracy, of which Mr. Moulton spoke in his testimony, you go on and state it.

Mr. Evarts—That question I object to, if your Honor please, Judge Neilson—Yes, Sir.

The Witness—I had two interviews with Gen. Tracy; two or three.

Judge Neilson—Come to the one mentioned by Mr. Moulton, if you recollect it.

Mr. Evarts—With reference to this statement

The Witness—I think Mr. Moulton mentioned all those interviews because they all had reference to the same thing.

Mr. Beach—Yes, he did mention them all.

Mr. Evarts—They hadn't all reference to this paper.

Mr. Beach—Well, we want to give this evidence in regard to this interview of which Mr. Moulton spoke.

Judge Neilson—As leading to this paper.

Mr. Beach—Well, Sir, in reference to anything.

Mr. Evarts—Very well, I object.

Mr. Beach—That is your right.

Mr. Evarts—The only ruling has been that you had a right to call his attention to what passed leading to the preparation of this paper.

Judge Neilson—As a circumstance leading to its preparation.

Mr. Evarts—Yes, Sir, this paper or any other.

#### GEN. TRACY AS A PEACE-MAKER.

Q. Now, Mr. Tilton, go on and state. A. Gen. Tracy told me that I need have no anxiety concerning the formation of a Committee; that Mrs. Tilton had gone down to the Committee, at Mr. Ovington's house; that previous to the assembling of it, he, Gen. Tracy, had instructed her what to say and how to say it—put the questions to her, that she might make no blunders in answering them; that when she came before the Committee she astonished and surprised all of them with her eloquent allusions to her pastor and to her husband; that she denied everything; that there had been any wrong between herself and Mr. Beecher, or that there had been any proposal of wrong by him towards her, or that there was any foundation whatever for the scandal; and Gen. Tracy, in making this narration, wept. [Laughter.] He said he never had witnessed such a spectacle in his life. "Now," said he, "if you take right advantage of Mrs. Tilton's appearance before that Committee, and of the tender hearts of those gentlemen towards all the parties in the case, and particularly towards you," he said, meaning myself, "now is an opportunity to suppress the scandal forever. It is a woman's right," he says, "to deny it; let her deny it; let her stand on the denial. Now, coöperate with that denial, and it can be made a success." What Gen. Tracy said to me made a great impression on my mind. I said: "If there is any chance of saving Elizabeth, or of saving her name and fair fame, and blotting out the scandal on her name forever, I will be only too glad to coöperate with it." I told Gen. Tracy I would like him to explain to me what the method of procedure would be by the Committee. He

said something like this: "There are a number of gentlemen, and they can summon whom they choose. They can summon Mr. Beecher, and he can say what he chooses, little or much; they can summon Mrs. Tilton, and she can say what she chooses, little or much; they can summon you, and you can say what you choose, little or much, and the Committee will be bound to make their report, not on the basis of the truth, for they won't inquire enough to get the truth; they will be bound to make their report on the basis of what those people choose to put down before them, and what you will choose to put down before them; only," he said, "a proper, gentlemanly and respectful report would be to the advantage of all parties." That was Gen. Tracy's language. I told him I would coöperate with the plan.

Judge Neilson—Thereupon what did he do? A. What did Gen. Tracy do?

Judge Neilson—That is my suggestion to you: Thereupon what did he do?

Mr. Fullerton—The "thereupon" don't quite come in quite yet, if you please. [Laughter.]

The Witness—Gen. Tracy then asked me what sort of a report would satisfy me, what kind of a report I would stand by. I told him I would stand by any report which did me no injustice, and which reinstated Elizabeth. "Well," said he, "all I want you to bear in mind is this: you may make any kind of report you choose which don't charge Mr. Beecher with adultery, or with any such crime as that he cannot maintain his pulpit. Make the offense anything you choose, and I will procure the passage of the report, only," said he, "of course the Committee could not bring in a report that he was guilty of adultery, or of anything that compromised his character and standing as a clergyman. Make a report of that kind, and you can make it *ad libitum*, according to your own wish and will." In accordance with that suggestion I made two drafts of that report. This [referring to the written report the witness held in his hand] is one, and the other is the long one.

Q. Now, look at the other one. Is that the other report you spoke of. "Exhibit D, 45?" A. Yes, Sir.

Q. Why were two reports prepared at that time? A. The first one which I prepared I dictated to Mrs. Tilton. *This* is it.

Q. That is "Exhibit D, 45?" A. Yes, Sir, the long one; I read it to Gen. Tracy, and he said that some alterations, or suggested that some alterations, might be made for its improvement. I then thought that, perhaps, if the Committee's proceedings were to be made public—

Mr. Evarts—No matter what you thought.

The Witness—That a brief report would be better, and I prepared this.

Mr. Fullerton—You wrote a brief report? A. Yes, Sir.

Judge Neilson—And thereupon you were led to make the brief report? A. Yes, Sir; I presented both reports to Mr. Moulton, and said that I would be satisfied with either, but that Mrs. Tilton was more pleased with *this* one, the large one.

THE QUESTION OF DAMAGES.

Mr. Fullerton—If your Honor please, I desire to give in evidence, before the case is closed, some correspondence which took place between Mrs. and Mr. Tilton within a year, probably, next preceding July, 1870.

Judge Neilson—On the question of damages?

Mr. Fullerton—Yes, Sir; so as to show the relations existing between them. I suppose I can find that correspondence in a moment, probably.

Judge Neilson—You can refer to that, and put it in when you find it.

Mr. Fullerton—Yes, Sir, I wish to ask that privilege. If a little time is given us, I can shorten the examination considerably.

Judge Neilson—In the meantime you can refer to this other question, if Judge Beach thinks proper to consider it further.

Mr. Fullerton—That closes the direct examination.

Mr. Everts—We would rather not, if your Honor please, proceed with the cross-examination until this very important part of it, to wit, the correspondence which is named, is given in evidence.

Judge Neilson—That will relate to another question.

Mr. Everts—No, Sir; with great respect to your Honor, that is an important matter; it is a part of the substantive relations between the husband and wife, running through a year, and evidenced by written communications.

Judge Neilson—But bearing upon the question of damages.

Mr. Everts—I don't understand that to be the purpose.

Judge Neilson—I understood it so.

Mr. Beach—Of course.

Judge Neilson—Their right to introduce the correspondence would be with reference to that question, the question of damages, up to the time of the proposed offense.

Mr. Everts—It is a part of their right in the action to show certain relations between the parties in the suit, and the degree of impression that comes from the proof is to be disclosed when the proof is in; but your Honor sees that is an important thing for us to know, although they may have the motive of damages, yet the correspondence may be important to us in other relations as bearing upon the question of principal proof on the principal issue, which, of course, affects the character and conduct of these parties; and this plaintiff being the witness, I think your Honor will see that parties have a right to be more imperative than usual in inquiring in regard to it.

Judge Neilson—You have a right to have the direct examination closed before the cross-examination is commenced, if you think proper.

Mr. Beach—Will your Honor please consider that the correspondence to which we refer embraces a bundle of about that magnitude. [Referring to a bundle of papers in the hands of counsel.]

Mr. Morris—Oh! three times that.

Judge Neilson—You should make some selection.

Mr. Beach—We don't propose to introduce the whole of that correspondence. What we want is an opportunity to select from it such portions of different dates, giving their general charac-

ter, as will support our view of those relations. Now, will your Honor permit me to say that all we require from this witness is the simple identification of the papers. He gives no substantive evidence himself beyond that, and it is a matter entirely within the discretion of your Honor whether that branch of the examination shall be suspended until a future occasion. It is quite evident, if your Honor please, that this correspondence can have no possible relation to this case, except upon the question of damages.

Judge Neilson—Yes.

Mr. Beach—For whatever may be the result which this correspondence may show between the parties, even if it was hostile, and quarrelsome, and restrained, I don't understand that that affects the principal question, or would justify Henry Ward Beecher in seducing the plaintiff's wife.

Judge Neilson—Oh! no; it would not go to that question at all.

Mr. Beach—It is only to the question of damages.

Judge Neilson—It is a question now of mere economy whether the counsel cannot consent to proceed with the cross-examination.

Mr. Fullerton—I will make this proposition to the other side. I can have this correspondence ready to-morrow morning, and can have the letters identified and put in evidence, so that they can proceed to cross-examine whenever they see fit.

Judge Neilson—[To Mr. Everts.] I think that will save your rights. It might be an economy of time to do so.

Mr. Everts—The difficulty is this: we have made no suggestion that quarrelsome couples should have their privacy invaded by anybody. My only proposition is that I wish to have all the evidence that is to be produced from this witness before the Court before I cross-examine him. I do not know how much any future evidence may be affected by my cross-examination, and though we are very unwilling to put our learned friends to inconvenience, yet they have had possession of these papers always, the parties and themselves, and they can go on with another witness, or they can have an adjournment, if they wish. I do not now propose, by any consent of my own, to undertake to examine him, or to have this witness examined upon our part unless he is through on his own part, and your Honor, I think—

Judge Neilson—I recognize that fact, if you think it proper to hold to it.

Mr. Beach—We will occupy the time of your Honor, by identifying every one of them. We will introduce them by and bye.

Mr. Everts—You will introduce them before I cross-examine him.

Mr. Beach—No, we won't introduce them before you cross-examine him.

Mr. Everts—Then, we will see.

Mr. Beach—Then, we will see.

Judge Neilson—I think it would be better to agree upon a theory that will save time.

Mr. Beach—I quite agree with that suggestion, if your Honor please.

Judge Neilson—I think before they finish the cross-examination they ought to see these letters.

Mr. Beach—Your Honor won't compel us to produce our evidence until we are prepared to produce it. I suppose your Honor will recognize our right to identify the papers, and then produce what will seem proper to us.

Judge Neilson—I don't say the contrary of that, but they would still have the right to cross-examine him on any paper you introduce.

Mr. Beach—Certainly they can, when we introduce it, but they cannot compel us to introduce it now.

Mr. Everts—Well, that depends—

Judge Neilson—Proceed, gentlemen, and identify your papers; it may take time.

Mr. Fullerton—It will take time, if your Honor please, for there are some hundred of them, not over a score of which do we propose to introduce.

Mr. Beach—Oh! not so many.

Mr. Everts—[To plaintiff's counsel.] Well, gentlemen, we have nothing to do with your case.

Mr. Fullerton—I am very thankful for that.

Mr. Beach—[To Mr. Everts.] But we have considerable to do with yours.

Mr. Fullerton—I have sent for the letters. They will be here in a moment.

Judge Neilson—[To the Jury.] Gentlemen of the Jury: In order to economize time, and to give these gentlemen an opportunity to select papers, those that are found to be proper, we will take our recess now, and until half-past one o'clock.

Mr. Beach—That won't help us.

Judge Neilson—Yes; you can select them in that time.

Mr. Beach—We cannot do it; we cannot go over 200 or 300 letters in that time, and at the same time get reasonable refreshments.

Judge Neilson—Can you proceed with another witness, and let this witness stand aside until to-morrow morning?

Mr. Beach—We can do it, if your Honor will give us the usual time of adjournment, until 3 o'clock.

Judge Neilson—Do you mean from now until 3 o'clock?

Mr. Beach—Yes, Sir.

Judge Neilson—Will the officer see that that place is cleared. The jury will remain in their seats. [To the jury.] Gentlemen, please be in your seats at 3 o'clock.

#### MRS. TILTON'S LETTERS TO HER HUSBAND.

The Court met at 2 o'clock, pursuant to adjournment, and the direct examination of Mr. Tilton was continued.

Mr. Fullerton—At what time did you usually go away on your lecture season? A. Sometimes in October, and sometimes in November.

Q. And how long would you generally be absent from home? A. Sometimes until February or March.

Q. Succeeding? A. Yes, Sir.

Q. Were you in the habit of visiting home in the interim? A. I was, whenever my engagements would permit me to come home. The season ordinarily occupied about from seventy to eighty engagements, inclusive of Saturday nights.

Q. And during this absence, did you correspond with your wife? A. Yes, Sir.

Q. How frequently did you write to her usually? A. Excuse me, what was your question?

Q. How frequently did you write to her usually? A. Oh! I always wrote to her every day.

Q. And how frequently did she write to you? A. Every day, I think. There may have been occasional exceptions. That was the rule.

Q. Every day? A. I wrote to her every day, and she wrote to me every day. That was the rule of correspondence.

Q. [Handing letters to witness.] State whether those are some of the letters written to you by your wife during your absence in 1897? A. Yes, Sir.

Mr. Fullerton—I offers these letters in evidence. [Reading:]

AT YOUR DESK—MONDAY, JAN. 7th, 1897.

MY PRECIOUS HUSBAND: I find our language very poor in superlatives when I attempt to describe my soul's love. What a delicious way you have of rebuking and reaching me! I will never again forget to date my letters, be sure, yet as I have written daily to you I supposed you would receive them in regular succession, and it did not occur to me that the date was always necessary.

And then, my sweet, will you talk to me as you write? pretending always that you think I am the loveliest and best of little wives.

My bump of approbateness is so thoroughly satisfied when you praise me—tho' it be true or not, I am content. I go singing and light-hearted about my work, every difficulty is straightened, and life is sweet.

Yes, darling, I will join you in your New Year resolution, as far as possible. I will go hand in hand with you, yet you know your strides will far outreach mine.

Skipping a part, she says: "What a blessing you are to me in every way. Mrs. Belcher made a long call on me to-day, and sent much love to you. Mattie and Katy Bradshaw also called. Please mention Mr. Ovington in some of your letters, it would so gratify him that you remembered him. I bless God for your continued good health. Do not go to places off the railroad, where you must expose yourself by long rides. You cannot afford to risk your precious life thus. The little girls I'm afraid are going to have their wish by having the whooping cough; they cough dreadfully. Good-night, love. Shall we ever be done with our caressings, when this long waiting is ended? Yours entirely,

ELIZABETH.

[Marked "Exhibit No. 81."]

Mr. Fullerton [reading]:

THE SHIP'S CABIN, AT MY DESK, JANUARY 9th, 1897.

MY BELOVED: It is quite time you should have a little insight into the manner in which I am using your hard wrought earnings. I sent you a list of my receipts and outlays since your departure. My heart is sick at the figures, while I make confession with shame and sorrow that I can do no better in my situation.

Had my bumps of benevolence and approbateness been smaller, then would I more nearly realize your ideal! Yet I could change the color of my eyes as well as change in these respects, I fear.

Journey's bill, White & Nichols's, Valentine & Bergen's, Roland Johnson and others have sent in again at the New Year, so I have thought it necessary to ask of Mr. Storrs their amount, as you said I might do. Please answer this letter with particular rebuke, if you feel it. I wait to hear. About this time every year my vital forces grow poor, and this, therefore, I have endured, felons and

other eruptions. I have now an inflamed eyelid and looseness of the bowels, which renders my coming to you impracticable, if no other obstacle offered itself.

I know there is an undercurrent of hope in your heart that I will be in Chicago, as with me I have hoped that somehow I would go, but I cannot.

Last night I went alone to Mr. Blanchard's reading of Dickens, which I enjoyed. I called a few moments before the reading on Mrs. Ford, who is to be sick next week. Mrs. Robert Benedict called here to-day. One of the greatest causes for gratitude which I have, is in your continued good health.

Once more I would bless you for your delicious letters. They will be a legacy to my children when I no longer live to preserve them. I will try to take better care of my wretched self because the best man in all the world loves me.

Yours, with entire devotion, WIFEY.

[Marked "Exhibit No. 82."]

Mr. Fullerton [reading]:

OUR HOME, Jan. 10, 1867.

MY DEAR ONE: I feel how poor and meagre my letters are in comparison with yours.

When the envelope inclosing an account of your Saturday night's lecture at Mt. Vernon, and Sunday's reflections on the forest walk in Winter, together with a letter to Libby, and one to the little girls, was received to-day, a happier household it would be impossible to find than we were while reading them. We all bless you, love you, and pray for you.

Now, I fain would delight and comfort you in like manner, but the gift is nae given to me. Ah, well, my darling, it is my love that makes you happy, so all those parts of your letter which give me your soul, tho' extravagant, thrill me all over with ecstacy. My great bugbear and nightmare is, that I will hide my love or treat you ill when you return. Better that I die ere we meet again!

It rejoices me to hear you are happy and enjoy your life. The children and myself have never been so happy in our lives as this Winter in our home. Its beauty continues, nay, grows. So full of your dear self. May no unclean spirits enter here to defile it!

I have not been out to-day, nor had company. A snow storm raged this morning. I am reading the histories to the children. I accomplished very little of what I expected to do this Winter—have reached the height of my attainments in human learning I fear. Perhaps I may learn a more excellent love of the "Great Teacher." For this knowledge I hunger and thirst. How delightful that we are of one mind. You call me your "heart's twin." I want to be.

My eye is better to-day, but an influenza threatens me. The children's cough continues the same. Pray without ceasing that God would perfect our love. Good night. Sometimes I lie awake hours because I cannot nestle in your arms.

ELIZABETH.

[Marked "Exhibit No. 83."]

"WED., Feb. 13th, 1867.

"What shall I give to my beloved" to-day? He has my heart—my entire life. Is there aught else a woman can give? But it hath little power to cheer or bless, parted by time and space! We will be very happy when again we reunite our lives. I feel so buoyant and yet so fearful lest I fail to bless you.

I have been again with Mr. O. He is not well to-day. Mr. and Mrs. Belcher took tea with me last eve. A good time we had chatting of you and singing hymns. My children are a perpetual delight to me. Were ever parents so rich in the almost perfect natures of their children?

Mr. Chittenden was burned out yesterday; a very heavy loss. You will doubtless hear of it through the papers.

I shall go to-night to hear Mr. Beecher open the Fraternity course. I am more and more inclined to have you break loose from *The Independent* and lead a more perfect literary life, or else start a new paper which shall be more for you. How good

Oliver's personal looks. I have read it three or four times already. "Theodore will close his Western engagements at Salem, O., Mar. 5, after which he will return to New-York."

Pray take care of your precious body, for tho' I am your sole lover still we manage very poorly in this world without the body.

"When I sue

God for myself, He hears that name of thine

And sees within my eyes the tears of two.

My lips hunger to kiss you. Adieu,

YOUR OWN

[Marked "Exhibit No. 84."]

Q. [Handing letters to witness.] Look at these letters of 1868, and say whether they are letters written by your wife to you?

A. Yes, Sir.

Mr. Fullerton [reading]:

SUNDAY MORNING, Jan. 28, 1868.

MY BELOVED: Don't you know the peculiar phase of Christ's character as a *lover* is so precious to me because of my consecration and devotion to you? I learn to love you from my love to Him. I have learned to love Him from loving you! I couple you with Him, nor do I consider it one whit irreverent as a *man*, bowed with grief for my *sins*. And as every day I adorn myself consciously as a bride to meet her bridegroom so in like manner I lift imploring hands that my *soul's love* may be prepared. I wished the little girls after you left us, with overflowing eyes and hearts, consecrated ourselves to our work and to you. Do not fear but that God heard, well pleased, the aspirations of those little children. I will arouse all my energies to make them happy, that they may not suffer with loneliness for you—while I constantly inspire them with reverence and love for you. My waking thoughts last night were of you; my rising thoughts this morning were of you. I bless you. I know you. I love you. God sustain us and help us both to keep our vows.

Yours entirely,

ELIZABETH,

Wife.

The children each send their love to you.

[Marked "Exhibit No. 85."]

TUESDAY, Feb. 4, '68.

MY DARLING: I write to you now in the morning instead of the evening, because the shadows of loneliness fall on me then, and I fear to darken your spirits.

Yours, inclosing \$100, from Newcastle reached me last night. I have now rec'd \$300—\$110 is my salary up to Feb. 1st. I feel the credit of my reputation as a financier depends upon the judicious manner I lay out these precious funds. I see in those bank notes the brains and blood of my heart's treasure, and the cause of the mutual separations!

If you expect me to save every month, as when I paid the carpet bill, I cannot, darling; for to do that I had to encroach upon this month's salary. However, I do expect to do something, and rest assured *I will not involve you any more*. I am obliged to pay for the repairing of the roof of our house; this last storm of snow made havoc in the ceilings of the spare room and my sitting room. I shall pay for it directly, so as not to incur another debt."

Mr. Fullerton—The rest is of a personal character. [Resuming the reading:]

You say that the four miles walk at Newcastle was a whole gospel to my soul. I read that over and over, and thanked God with all my soul for giving you that experience. I see you now walking in the sunshine, heartfelt, joyful, praising God. You did not need me then, but I follow on; and would fain catch the hem of your garment as you pass along, that I too may have a blessing.

I yearn and pray unweariedly to grow worthy of your love.  
Bye.

Yours, undividedly,

WIFE ELIZABETH.

[Marked "Exhibit No. 86."]

Mr. Fullerton [reading]:

FRIDAY EVENING, Feb. 14, 1868.

My —: Supply to gratify your own heart most perfectly some endearing epithet. I sent you my valentine this morning, and because I have laid out work for the morrow with the little girls, I come again to you to-night, that you may not miss my Saturday's letter.

Blessings on you, blessings on you, beloved. Yours from Crawfordsville—I shall ever remember that place with gladness—came to-day. To hear that you are happy, cheerful, and loving me, is more than even my faith could hope. I wept over it, I laughed over it, I prayed over it, and in the midst of my exultation Mattie called in, and tho' I was under vows not to read your letters, I did the next best thing, which was to get the bottle of wine you sent me the night you left and drink your bodily and spiritual health. While we were doing so, Mrs. Rooker called, and I got her a glass that she might mingle her blessing with ours upon you; I am sure they will follow you. Mattie has hungered to hear from you. I think she feels a little sore that Mr. B. visits here. See how great a power he and your dear self have over the heart. She said, 'Lib, I heard through Mrs. Morrill that Mr. B. called on you Wednesday. I believe he likes you ever so much.' Now, my darling, I have often urged him to visit Mattie, believing he would find her more comforting and restful than I can be. She would be refreshed and cheered, while for me, I who am rich in the fullness of your delicious love, have no need. Save for his sake, I am gratified if I may minister and thank God the while. Oh! dear Theodore, husband, how much I rejoice in your love—am kept in perfect humiliation—that he who knows me so well should love so grandly. This is the theme of all my thoughts. No other sentiment or creature have power to move me.

The cords of my heart are set to the harmony of love for you. Now, how I may be able to express this to you, when you return, I know not; that the flame will always burn I know, but that by reason of infirmities it shall glow through the cheek and through the eye, I know not. In God is my trust; He knows my heart's desire. I implore you to live by faith, and not by sight, with regard to your dear little wife. Now, to Him who is able to keep both soul and body, I commit you this night. Farewell.

Yours devotedly,

ELIZABETH.

[Marked "Exhibit No. 87."]

SUNDAY EVENING, March 15, 1868.

My Dearly Beloved: I find myself running to the calendar as often to discover the date of your return, as before my babes are born I watch the date of their birth. I have settled my mind to receive you two weeks from to-day; do not disappoint me. But I shall have nothing to say to you save love, for have I not faithfully told you each day's events and experience? Now, this is unfortunate. There remains naught for me to recapitulate, and I crave your patience in advance. If the thought of seeing you is so delicious, what will be the reality? To-day I have had great satisfaction with my dear family. I have one supreme wish for our children, that they may now learn and accept the intimacy of the friend, God, which will help them rule their own spirit—conquerors they will there be. Kate kindly spent the day with me, going to church for the first time in many years. I know you are nowise interested in her or in her family, yet I am to her the one and only one bright spot in the world; were I to neglect that or be indifferent to her, all faith in God and humanity would be blotted out; it is almost moral night with her, yet there is a ray coming from my sympathy which lightens and cheers her.

Be not displeased with me therefore. I have been asked to be relieved of this burden for your sake, but it still remains, and I feel it my duty.

Kate McElrath is to be married on the 7th of April. Her mother sent me an urgent wish that we both might be present. Charity Whitney—that was—had a little son born yesterday. Edgar is here visiting. Sis. will go to-morrow to Sarah Storrs's for a few weeks. There is left upon my sheet a short space which I wish to fill up with thanks abundantly for your beautiful loves expressed in your letters. Think not my appreciating a pleasure comparable to the space I allow for expressing it!

I love you solemnly, utterly, truly. Come to me,

Your own

ELIZABETH.

[Marked "Exhibit No. 88."]

Q. Look at the letter of 1869, and say whether it was written to you by your wife? [Hearing witness a paper.] A. Yes, Sir.

THURSDAY, NOON, January 26, 1869.

Dearly Beloved: It is with delight and for refreshment that I hasten, as opportunity offers, to sit down without interruption to write and think of you. Is it not true that I write of you as well as to you? Oh! my own dear husband, could I but enjoy your companionship now a little while. I cannot understand why the demons weariness, fault-finding, ungenerous selfishness, and many hateful little spirits, perpetually hang about me when you are with me, to modify and lessen our possible enjoyment.

I was thinking, last evening, when looking out upon the clear, beautiful moon-light, how different were the shadows of nature, though they be the shadows of night, from the shadows of the mind and heart; the former purifies, cheers, the latter depresses. I was grieved not to mail a line to you early this morning, but last night my usual time for chatting with you was occupied by a visit from Mrs. Wheeler, and an evening call from Mr. and Mrs. Fayden. Besides, my sweet, you must realize the little unborn is growing finely; you would hardly believe how changed is your little wife's personnel. Consequently, I am tired almost always. It is not without pain and trembling that I look forward to your homecoming, unable as I shall be to minister to you—sickness and confusion at home. You may not rest here. I am impotent to help it, so that I actually suffer in anticipation, as I know I shall in the realization.

\* \* \* \* \*  
Will you write to Mattie? I am starving for a letter; none since Thursday last. Mr. Maverick and father had a long discussion of three hours here this morning. They confessed that each for ten years have not been allowed to talk, Mr. Maverick, like mother, saying I have no time to talk, it's all waste time to argue, etc. Father will see Mr. S. this afternoon, and told Mrs. M. that he would like nothing better than to bring about a reconciliation between her and her husband. Darling, Mrs. Wheeler expressed a great deal of affection and interest for you, and your work—sent her love expressed in any manner as I thought best to convey it. This pleased me very much, as I should be happy to have all my friends love you. Ira made his speech Sunday, and will give you an account of it, though Kit says he does hate to, but will keep his word. It is now 5 p. m., and Carroll is waiting to take this rambling letter to the office.

Good bye and good night.

Your own dear wife, who is proud and fond of her husband.

[Marked "Exhibit 89."]

#### MR. TILTON'S LETTERS TO HIS WIFE.

Q. Look at the letters I now show you and say whether they are the letters, or some of them, which you wrote

to your wife during your absence [handing witness letters]? A. Yes, Sir.

CRAWFORDSVILLE, IND.,  
SUNDAY MORNING, Feb. 9, 1898. }

*My Dear Angel:* I dreamed of you all last night, and awoke thinking of you this morning. How much I want to see you! How I yearn after you! How my soul blesses you day by day! I can never describe how precious your love of your husband has appeared to him during these few weeks past. Your singleness, your fervor, your purity, your devotion—they fill my mind and heart with reverence, adoration and humility.

I regard my last evening spent with you at home as the most memorable point in my whole life. You opened for me, that night, the gate of Heaven, which had so long seemed shut.

Ever since, I have had nothing but glory, thanksgiving, and praise. If ever a man was made a new creature, that man was I: no more despondency—no more repining—no more vain regrets—no more loss of self-respect—no more groveling in the dust. On the contrary, I am once again a man among men, and a Christian among Christians. Now, this transformation I owe to yourself, to your irrepressible love and devotion, to your ceaseless prayers, and to your victorious faith.

You always have in your power either to crown or dethrone me. You have the chief ruling influence of my life. Your words, your wishes, your looks, your thoughts, act on me like magic. When I am doing you an injury, or slight, or hardness, I am made so miserable that I do not wish to live. When I am making you happy, I walk like a Prince newly come into his kingdom.

Your letters, since I have been from home this last time, have been the dearest you have ever penned. They are loyal in their tone. Each one fills me with renewed pride and joy in my wife. O, my darling, in comparison with such love as you express, how poor is the friendship of all other friends! I have never seen any one who loves as you do. You have the richest of all human hearts. I am pledged to you forever. My vows I shall keep and not break. With God's help and with yours I shall be the faithful-est man in the world. Blessings on your soul this Sabbath day.

Ever yours, THEODORE.

[Marked "Exhibit No. 90."]

CLINTON, IA., Feb. 20, 1898.

*Pat:* Helgho! Five of your letters have just come to me all in a bunch! "Here's richness!" They have put me into such a merry humor that my blood has been laughing up and down my veins. They made an actual handful—nay, more than that—a heartful.

Hereafter give yourself a longer interval between the day of writing and the day when you expect that I will receive the letter. Perhaps a week is not too much.

I am sorry to learn that the letter from Warren, Ohio, in which I enclosed you a \$50 bill, has not reached you. I have just dropped a note of inquiry to Warren on the subject. This town is on the west bank of the Mississippi. I have just come to it late in the afternoon, and expect to fly away from it in the train immediately after my lecture. I am spending the few remaining minutes of sunlight in perusing these lines—the only chance I shall get to write to you from Clinton at all.

My last was from Crawfordsville. My second visit to that little college town was full of pleasure. I was very cordially received, had a crowded house, got the boys out of debt and went away in fine humor, reaching Chicago at 9 in the evening. I was met at the station by Col. Elliott who said that Betsey was at the Opera hearing Janauschek. "Accoutered as I was" he took me around, and I heard two-thirds of the German play of Adrienne Le Couvreur. Anna Dickinson sat two seats in front of us. I spoke to her after the lecture, and introduced Betsey and the Colonel. I slept at 698, and left early this morning.

The picture Madonna had arrived in good condition, and was hanging on the wall. It is very neatly framed, and looks pure and royal. Betsey was pleased, but the old fragrance has gone out of "the prairie rose." The flower is still comely, interesting and agreeable, but I marvel at myself for once thinking it so fragrant above all the rest of the garden. It is gone forever! It can never be to me henceforth anything but a common plant. This figure of speech is a mystery which I think you will understand. I intimate no names. The corner of this sheet crowds itself against the pile of letters as they are lying on the table—just as I would like to crowd my hands into yours, or both of yours into both of mine, at this blessed moment.

How I would like to be at home to-day! Or else how I would like to see you here! The weather is warm enough for grass to grow, birds to build, and hearts to love. You ask me if I like to read the recitation of your love. Yes, my darling! Every bird loves to hear his mate sing. Your love for me, as expressed in your letters, is my chief joy and rejoicing in this world. It makes life seem a braver thing to me. It makes my journeys nothing but bright trifles, and my hardship a bagatelle. It puts vigor into my step and joy into my work. I look round at my fellow-travelers in the cars, and my co-workers everywhere, and ask myself, "I wonder if these people have as much spring and motive for work as I now have?" The thought of giving you a home free and clear of debt is a tonic to my whole system. I am somewhat wearied, thin, and pale, but never was so cheering in all my life, never so free from fretfulness, never so thankful for my prosperity, and never so happy in my love for wife and children. This makes a man of me day by day.

I very rarely have any depression of spirits. The old claim has gone away entirely; the day has dawned. I have been trying to get a chance to write to the children, but the people who are to see me will not permit me to do so this afternoon. Give the chicks my truest love, and a kiss all around.

Faithfully yours, THEODORE.

That word "faithfully" means a great deal.

[Marked "Exhibit No. 91."]

MONONGAHELA HOUSE,  
PITTSBURGH, PENN., Jan. 10, 1890. }

*My Darling Wife:* I owe the short remainder of this evening to you and shall fulfill my debt.

I was unable to keep my promise (made in the previous letter) to write you on Sunday. Early on Sunday morning I went to see a lawyer to study from his books the legality or illegality of the New York Legislature's revocation of the Fifteenth Amendment. In the afternoon I addressed a meeting of children. In the evening I wrote an editorial article—reaching past midnight. All this you know was not here in Pittsburgh but in Tidoute. This morning, since my editorial could not go fast enough by mail to reach the office before Tuesday afternoon, I telegraphed it in full. It contains both legal and poetical quotations, and I am curious to see how many blunders will be made in transmitting it. The title is "The Mutineers at Albany." I had previously sent a leader on "Mr. Pip and his great Expectations." My sojourn in Tidoute was made very agreeable by kind and hospitable friends who entertained me with the piano, the flute, the vox humana, the voices of two canaries and a mocking bird.

My journey from Tidoute to Pittsburgh (which I was nearly the whole day in making) lay all the way along the banks of the Allegheny—one of the most wild, picturesque and romantic of rivers. The weather was lovely and the scenery charming. I do not know of a more beautiful panorama from a car window. I alluded to it to-night in opening my lecture.

The house was crowded, every seat in the Academy of Music being filled, gallery and all. After I have spoken in Pittsburgh I always feel that I have got through with the most

Important occasion which my western trip presents. Pittsburgh is my western Boston.

I send you herewith a sorrowful letter from a stranger in Wisconsin, which, if you care to do so, you may answer.

With the exception of your lead pencil note from Garrison's I have not heard from home since I came away. I suppose, of course, that you have written, but all the mail trains seem to be out of joint, and nothing arrives in time. My last week's earnings I sent to Frank Moulton, in order that he might pay for the share of *The Union* stock which I purchased of La Famee. I had given my note to La Famee for \$450, payable Jan. 1st. So that debt is out of the way. I now owe Mr. Johnson \$500, and Mr. Storrs \$500. And I am keeping an accurate account of what I owe to you. Paying my debts is as intoxicating as wine; it is one of the chief delights of life.

You have never seen the oil regions. I have been in them four days. During the time have seen hardly less than a thousand oil-wells, some of them a thousand feet deep; some of them yielding a hundred barrels a day, and making their owners as rich as princes; and some of them dry, useless and profitless—a means of ruining many speculators. I must have passed the very spot to-day where Washington crossed the Alleghany on a raft. If that thrifty gentleman had suspected the existence of petroleum, he might have spent his life in sinking wells, building derricks, and tanking oil, and have never become the Father of his Country.

I have received to-night a telegraphic dispatch from Steubenville, O., inviting me to make my sojourn to-morrow at the Female Seminary in that place, which I expect to do.

Give my love to the children, and say that I shall take an early opportunity to write them a letter. But, as a general rule, my only chance to get a pen in my hand is between my lecture and my bed-time; and oftentimes the Committee steal away even this little bit of coveted leisure. So my letters cannot be numerous.

My remembrances to Sophia, and to the other members of "my house and heart."

Lovingly yours,

THEODORE.

[Marked "Exhibit No. 92."]

SPRINGFIELD, OHIO,  
*Sunday Night,*  
January 16, 1870. }

*My dear Wife:* A fierce rain is falling, and the window panes are pelted with it. My sojourn is in a stately house, on a high ridge of land, and overlooking the Lagonda Valley. The exposed, commanding situation gives me all the voices of the storm. Heaven's great organ blows to-night. I repeat my cry of "No letters." One letter, indeed, I *did* receive last evening, but it was the one which you had sent to Tidioute a week before. I have received none *direct from home*. It was because I worried myself with thinking that something was wrong that I sent you the telegram from Columbus. The answer to that telegram came promptly—I received it on the same day that I sent the dispatch.

I am writing these lines from the most vexatious of ink-stands, a little, aged glass bottle, with an ebb-tide of muddy ink at the bottom of it. I want to write you a long and gossipy lingo, but here, in a rich man's house, I have hardly ink enough to sign my name.

Mem: When strangers, particularly if they are literary men, make a visit to *our house*, provide them with good ink even if you have to give them a bad breakfast.

What you said in the delayed letter from Tidioute about finance, and about your new-found pleasure in financiering, has determined me to make you my banker for the funds which I receive during the rest of my journey. Deposit them in the savings bank.

A happy pair, a ten weeks' bride and groom, are in the house—both young, handsome and jubilant; the light of the honeymoon shines in their faces—

youth at the prow, and pleasure at the helm. Oh! the merry, merry days when *we* were young! I worked all night long on Friday in writing my comments on Mr. Stowe's "Lady Byron Vindicated." I wrote the entire article between bed-time and morning. After all I fear that the slow mail trains pay such respect to the Sabbath as will detain my letter too late for next week's paper.

Frank Moulton will take care of the business on which La Famee called. I cannot pen with this pitiful ink the love which my heart prompts me to send, for there is only one more drop in the bottle, and *that* I must save for directing the envelope.

Affectionately yours,

THEODORE.

[Marked "Exhibit No. 93."]

DES MOINES, IOWA,  
*Sunday Evening,*  
January 30th, 1870. }

*My Dear Pet:* In this far-away town, the extreme limit of my journey, I feel my homesickness more than ever before. To-morrow morning I begin a slow march eastward, but I shall feel like a sailor tossed on the sea until I get to my final haven of rest in my own house. There is but one home. Yesterday I made a visit to the Legislature, which is now here in session. It is a fine looking body of men. During my brief presence in the Senate, an old law which did not permit a mother to inherit a dead child's property on equal terms with the father, was taken up, discussed, put to vote and unanimously repealed. Think of it! An advanced measure like this receiving no dissenting vote! I was never before so greatly pleased with any spectacle in a legislative body. It will not be a dozen years before woman suffrage will be the law of Iowa. One hundred members of the Legislature were present at my lecture last evening. This afternoon I took a long walk with Gov. Merrill and Attorney-General O'Connor and visited the grounds of the projected capital of the State.

My room at the hotel has been constantly filled with callers ever since I came here yesterday morning. The town is full of public men. I have received much kindness from many people. Every year I get more and more Westernized. I shall send Cad. to begin his fortunes on the west bank of the Mississippi. The supper-bell now rings, and I am waited for at the table by some gentlemen with whom I have promised to drink a cup of tea.

Respectfully, yours,

THEODORE.

[Marked "Exhibit No. 94."]

BERLIN, O., Feb. 21.

*My Darling:* This is the last night of my dreary correspondence and homesick absence. I feel like one, who, having waited through the night, now watches for the morning. Wednesday at Whitehall (on Lake Champlain) will complete my programme. Then, as Browning says:

"Only a touch and we combine."

Affectionately yours,

THEODORE.

[Marked "Exhibit No. 95."]

Q. In some of these letters Mrs. Tilton made reference to her salary. What did that mean, Mr. Tilton? A. Well, it meant that she had all the money that I had; I usually sent her my earnings. Perhaps that particular letter, if you can give me the date of it, may bring some special arrangement to my mind; I don't remember now.

Q. I don't recollect its date. A. There was a time when she had a bank account of her own; I don't know whether it was that time or not.

Q. Was there any allowance made her or any specific sum at any time during any period, for pin money, or anything of that kind? A. I don't remember that, Sir.

Mr. Beach—Something was said about \$40 a week.



The Witness—That was two or three years afterwards, 1872. She had a bank account. I sometimes used to deposit money to her credit when I went away, and she had a bank account in one or two of the banks in Brooklyn; not two at a time; sometimes at one bank and sometimes at another.

Mr. Fullerton—Something has been said about \$40 a week; what does that mean—in one of the letters read some days ago? A. Oh! my impression is that that refers to the Fall of 1873. I had forgotten it. All I know about it is what the letter itself mentioned.

Q. In some of your letters you say you have received no letters from home since you left. Did you afterward receive letters which had been forwarded to you but which had failed to reach you? A. Yes, Sir; I was frequently subject to accidents on the trains, running into the snow and getting detained, and then going to the post-office I would find no letters there. Sometimes they would be sent on from one office to another. One letter has pursued me through three or four towns. Occasionally half a dozen letters would come together. For instance, a letter would go to one town after I had left and it would be sent to the next town, and it would reach town after I had gone and it would be sent to the next, and reach that town after I had gone; so, sometimes, half a dozen letters were made up in a bundle by some kind postmaster who knew where I was, and they would come to me all in a heap.

Q. Before the recess you said something to the effect that Mr. Beecher had sent Bessie Turner away. What knowledge have you of any act of Mr. Beecher's in that respect; I mean your personal knowledge?

Mr. Evarts—From Mr. Beecher?

Mr. Fullerton—Yes, Sir; from Mr. Beecher.

The Witness—My knowledge was derived from Mr. Moulton.

Q. Not from Mr. Beecher. Very well. During Bessie Turner's absence at school did you furnish any money directly or indirectly for her expenses? A. Did I?

Q. Yes, Sir. A. No, Sir; not any, not a penny.

Mr. Fullerton—I believe that is all.

#### CROSS-EXAMINATION BY MR. EVARTS.

The cross-examination of Mr. Tilton was then begun. Mr. William M. Evarts, the senior counsel of the defense, himself conducted the examination. The separation of Mr. and Mrs. Tilton was first considered, and then the questioning of the counsel branched off on Mr. Tilton's views of churches in general.

#### THE SEPARATION OF HUSBAND AND WIFE.

Mr. Evarts—Mr. Tilton, from the time you were married until your wife left you as you have stated, about the 8th of July, 1874, was there any separation of home or residence between you other than such as happened by journeys or engagements that took you apart? A. No, Sir. Perhaps I should qualify that answer by saying that in the early part of December, 1870, Mrs. Tilton went two or three days to her mother's house, at her mother's request, and came back.

Q. Well, leaving you? A. Well, it has since been called a sep-

aration. I did not regard it so at the time. I wish to be entirely accurate in my answers.

Q. It was a separation in the sense of her being away from the house and at her mother's a certain period of time? A. Two or three days, I think.

Q. And with that exception you lived together as man and wife from your marriage until she left you on the 8th of July?

Mr. Morris—The 11th.

Mr. Evarts—The 11th; is it the 11th? Well? A. Yes, Sir.

Q. Now, just preceding this 11th of July, did you leave her and the house in the sense of intended or purposed separation? A. I did, Sir; on the night of Monday, Tuesday, or Wednesday—I don't know which—of that week, but it was the night on which she came home and reported to me that she had united with Mr. Tracy to deny the story.

Q. No, no; the night that you have spoken of that she told you that she had been to the meeting? A. Yes, Sir.

Q. And you did then leave as with the purpose of separation. Did you take leave of her in that sense? A. I left the house—yes, Sir.

Q. Now when did you come back; can you give us this day? A. Well, it was the night of her appearance before the Committee and of her announcement to me that a Committee was in existence. If you can give me that date that would be the date.

Q. This appearance of Mrs. Tilton before the Committee we understand to have been on the 6th of July? A. What day of the week was that, Mr. Evarts?

Q. That I don't know.

Mr. Beecher—Monday, Mr. Shearman says.

Mr. Evarts—If the 11th was Saturday then the 6th was Monday. A. Yes, Sir; that was the night.

Q. Very well. Were you at home when Mrs. Tilton came to the house that night? A. Yes, Sir; I was in my library.

Q. And that was late at night, wasn't it? A. Not very; about ten o'clock.

Q. Now, when did you leave her and the house as with the purpose of separating? A. About an hour afterwards.

Q. That same night? A. Yes, Sir.

Q. What day did you return and what part of the day? A. I returned the next morning to see Gen. Tracy.

Q. Well, I mean to return to your house? A. Well, Gen. Tracy gave me such an account—

Q. No matter about that. A. —of her appearance before the Committee that I went back home to see her.

Q. No matter. Mr. Tilton, will you really be so good now as to answer my questions? A. I shall endeavor to do so.

Q. When did you return to the house? A. I think the next day, possibly the next afternoon. That is my present impression.

Q. And did you thereafter remain with your wife as you had been before? A. I did, Sir.

Q. Now, are you able to say distinctly whether that was the 7th that you returned, or the 8th? A. What day was Monday?

Q. Monday was the 8th. A. My impression is—

Q. Or was it in the night between those two days; late, I mean, in the night between those two days? A. No, Sir, I don't think

It was late in the night. My impression is that it was the next day, in the afternoon; still I won't undertake to state that positively.

Q. Well, it is not material. Now, what time of the day did Mrs. Tilton leave your house on the 11th? A. I should think about six o'clock in the morning, possibly a little later.

Q. Did she take leave of you? A. Yes, Sir; she woke me up and bade me good-bye, and said she was going to go away forever.

Q. And did she tell you where she was going? A. She did, Sir; she told me she was going to Mr. Ovington's.

Q. And did you afterwards follow her or see her there? A. I did. I went down and took breakfast there.

Q. With her? A. And with the family.

Q. Where she was; and, so far as you know has she resided in that family ever since? A. I don't know, Sir.

Q. So far as you know? A. She has been out of town in Connecticut, I understand, since.

Q. But as a residence, so far as you know, has it been there? A. I have heard of her being there and at other places. Whether it is her residence or not I cannot say.

Q. Have you heard of her being at any other place as a residence than Mr. Ovington's? A. I don't know what you mean by residence. I have heard of her being in Connecticut and being in New-Jersey.

Q. You know the difference, I take it, between a visit and a residence? A. Yes, Sir.

Q. Well, now will you answer? A. I don't understand that her residence is at Mr. Ovington's.

Q. Where do you understand it is? A. I understand it is at my house.

Q. Yes; very well. Have you heard of her being at any other place as a residence except Mr. Ovington's? A. I never have heard of her being at Mr. Ovington's as a residence.

Q. You think she still resides at your house? A. I think that is her residence; she does not reside at her residence. (Laughter.)

Judge Neilson—Gentlemen, will you please be quiet.

Q. I observe you say, when asked your age, that you are about thirty-nine. What do you mean by that? A. I meant exactly what I said.

Q. Don't you know your age? A. Yes, Sir.

Q. Well, what is it? A. I am about thirty-nine.

Q. When were you born? A. October 2, 1835—1835.

Q. Now, at the time of your marriage, what was the situation or employment in which you were? A. I was connected, I think, at that time with *The New-York Observer*; yes, Sir; I believe I am correct in that.

Q. And what was your wife's position in respect to residence or occupation, if any, at that time? A. My wife resided at No. 48 Livingston-st. with her mother.

Q. Who was then a widow? A. Yes, Sir.

Q. And had no employment other than as a member of that family, I suppose? She was not in any pursuit of life; she was not a teacher? A. Do you now refer to her mother or herself?

Q. To herself. A. No, Sir; she had no occupation.

Q. And what were your respective ages at that time? A. I was married on the day I was twenty years old. Mrs. Tilton was between one and two years older than I.

Q. And how had your acquaintance which led to your marriage been formed, and where? A. I became acquainted with her when I was about ten years old. Her family then lived in New-York on the same square with my father's house. I was a schoolmate of her brother, Joseph H. Richards. I knew her when she was a very little girl.

Q. And were you familiar as play mates or school mates? A. Yes, Sir.

Q. At that early age? A. Yes, Sir; I was more familiar with her brother at that early age than I was with her, because I went with him to school and saw her frequently at his mother's house.

Q. And how long prior to your marriage had the ordinary attentions leading to marriage commenced? A. I think, Sir, from about the time I was sixteen years old.

Q. So that you were very well acquainted with her at the time you married her? A. Yes, Sir.

Q. And she with you? A. Yes, Sir.

Q. And from that time till she left you, was not the intercourse between you that would make two persons understand and know one another as close and intimate and constant as is possible in human affairs? A. Yes, Sir.

Q. Now, Sir, what estimate do you put upon the intellectual powers of your wife? A. I think she has more than common brain.

Q. What upon her education? A. I was about to say she had more than the ordinary education; but perhaps I ought not to make such a statement. She was educated at the Packer Institute in this city—went through a full course, I believe. She has the ordinary education of a young woman who has gone through a female college.

Q. That is the formal education? A. Yes, Sir.

Q. Then in the discipline of literature and companionship, with elevated characters, and the discipline of life, how do you place her in respect of education? A. She has always been fond of books, she has read constantly, I won't say to any very profound degree. She was fond of reading aloud to me and of being read aloud to by me. She was always fond of whatever was good in literature, art, or music. She was fond of poetry.

Q. Well, now, in association with men of elevated talents and character, what have been her opportunities? A. Do you mean that as another form of asking me what public men have been in the habit of coming to my house?

Q. I do not care to get at names, you know. My object is to show whether she has had associations with elevated and cultivated people during the course of her married life. I have no objection to any names, but, then, it is with no such purpose? A. Well, Sir, during all our married life we have had guests at our house, and we have very frequently visited other houses, and she has seen very many men and women of rank and cultivation.

Q. And appreciated and shared with you that companionship, has she not? A. Yes, Sir; to a certain degree. I do not think she ever cared very much for men because of their rank or fame.

Q. Not externally, but their characters and faculties—didn't she estimate men according to them? A. I think that she always took the greatest interest in those who were most necessitous—those that were most suffering. I do not think that she looked to the high estates of the world, but rather bent to the lowly and to the unfortunate.

Q. She was of a kindly nature and a charitable disposition? A. She was a very lovely woman, Sir.

Q. Now, your career during this time since your marriage has been that of a journalist in his different stages, and of a writer and of a public speaker either at the lyceum or at the hustings, has it not? A. Yes, Sir.

Q. And your habits at home, so far as you have been at home, as your engagements permitted, have been those of a reader and writer, have they not? A. Yes, Sir.

Q. Did your wife participate in those interests and employments of yours with you? A. Yes, Sir; I very frequently read to her what I had written. Sometimes she acted as my amanuensis.

Q. And did she give you the benefit of her sympathy and aid in any way that you needed in that regard? A. She did, if she agreed with what I wrote. If she did not she gave me the opposite.

Q. But at any rate, the subject was shared between you, either in concurrence or in opposition, was it? A. Yes, Sir; she always knew all my thoughts, all my labors.

Q. And you hers? A. I think not, as the result has proved.

Q. Well, but for the result which is the matter now in dispute? A. Yes, Sir.

Q. Leaving that out? A. Yes, Sir; I had perfect confidence in her. I am speaking now of the earlier years.

Q. Well, you mean—well, we will go into that more in particular hereafter. Now, Mr. Tilton, what about her domestic occupations and interest; did they soon after your marriage and so on occupy a good deal of her time, her strength, her affections and her interest? A. Yes, Sir.

Q. And those were wholly of your and the children's comfort and well-being, were they not? A. No, Sir; they always included the well-being of all persons who came within the sphere of her influence. She was in no sense a selfish woman.

Q. I spoke of within the house. She had no interest inside the house but yours and the children's, had she? A. She was not selfish to that degree, Sir. She was a very liberal, catholic-minded woman, and did good to whosoever she touched; all guests, all relatives, her family and my family, her mother and my mother.

Q. And guests at her house? A. Yes, Sir.

Q. From that connection and otherwise? A. Yes, Sir.

Q. And for all she cared and labored as a wife should? A. Yes, Sir; most beautifully.

Q. Now, Mr. Tilton, you were both members of Plymouth Church when you were married? A. I think that—well—let me see; she became a member in 1851, I became a member in 1853; we were married in 1855—yes, Sir.

Q. And in joining that church, and in the religious sentiments and opinions which led to that solemnity, did you share

each other's feelings and purposes at the time? A. I think we did, Sir, completely.

Q. And at that time there was a harmony between you and her, both in religious opinion and religious feeling and affections; was there not? A. Yes, Sir; very strong.

# A DELINEATION OF MRS. TILTON'S CHARACTER.

Q. Were either of you, from that early time, and how long, occupied in labors of Christian charity or service connected with the church or as a part of the church's duty to those who needed aid and instruction? A. I don't know that I understand exactly what you refer to; we were both connected with the Sunday-school. Is that the line of labor, Sir, that you refer to?

Q. That is included, no doubt. A. As for works of charity, she has always been engaged in them.

Q. And did you participate with her? A. Well, sir, I was not her equal in those directions; very few people are.

Q. How long did those labors and habits upon her part in this direction of Christian duty continue? A. I presume they continue to this hour. Understand me, I am not referring to any association of hers with the church or the Sunday-school at present.

Q. No, I understand. Do you remember one form of her labors in connection with the church or religion, a Bethel school? A. I do, sir.

Q. And what was that? A. At the school called the Bethel connected with Plymouth Church; there was a large class of women residing in the poorer neighborhoods. I believe as a necessary condition of membership in that class they must be mothers—that is my present recollection; and she was their leader and teacher.

Q. And how long was that particular form of her labors? A. I cannot answer as to the date.

Q. But a series of years? A. Yes, Sir; I think so.

Q. And do you remember what years it embraced? A. I do not.

Q. Well, within some reasonable limits can you tell? A. No, Sir; I cannot.

Q. Did it cover the years from 1865, we will say, to 1870? A. I should not like to give any date from my recollection—I have a very poor memory of dates; but it was a long period, and her service was very devoted.

Q. And she was greatly interested in it? A. Yes, Sir.

Q. How much time did it consume, and on what days? Was it on Sunday that the actual teaching was given? A. The actual teaching was given on Sunday, but it consumed more time—she prepared herself, her whole heart was on her duty. She made little notes and sketches in advance of the lessons which she was going to teach them; occasionally some of the women of her class would call and see her.

Q. Now, in regard to the disposition of your wife; was she of a sympathetic and affectionate nature? A. Yes, Sir.

Q. Very notably so? A. Yes, Sir, to a very rich degree.

Q. Leaving out, now, a consideration of this matter in issue here, what have you to say regarding your wife's opinions and

feeling's concerning feminine chastity? A. I think my wife loves everything good and hates everything bad; and I believe to-day she is a good woman—

Q. Well, we do not differ from you.

Mr. Fullerton—She was, Sir.

Mr. Everts—Now—

Mr. Fullerton—One moment; he was going to make—

The Witness—I was going to say that I have never blamed her for the blame which belongs, not to her, but to her betrayer.

Q. Well, I desired to omit that subject. We shall come to that before we get through, but, still, the point is whether she was—whether you observed and can speak of her as to her character in that particular of feminine delicacy and pride in woman's chastity? A. I don't think that that topic ever came up for discussion with her or for any signal appreciation; and I do not think that the theme at all entered into her mind.

Q. Have you not said of her that she was a great stickler for the purity of her sex? A. She became so after her downfall.

Q. Well, a great champion of the purity of her sex; have you not said that of her? A. She is a great champion of the industrial and educational and political rights of her sex.

Q. Well, have you or not expressed that view of her character—that she was a great stickler for the purity of woman? A. Yes, Sir; for all—

Q. A great champion of the purity of her sex? A. All that is included in the dignity and nobility of womanhood. She has always had great pride in her sex; she has always considered that her sex was the equal of ours, and therein I have always agreed with her.

Q. And that its virtue was a supreme interest of the sex? A. I do not think that in considering the sex she has ever singled out the one quality of chastity for any especial thought or comment. I do not think that that subject ever floated through her mind. The interest which she had in her sex was in its general elevation, its education, its enlargement of opportunities, its widening of privileges.

Q. Now let me ask your attention to this observation, and see whether you will recognize it as having been made: "Elizabeth always felt that when Mr. Beecher went to such and such a place there were women who would flatter him; I don't think she did at all; she has always been a stickler for the honor of her sex. She said to herself, 'I will represent my sex' " ? A. Yes, Sir.

Q. I read from the 64th page; those are your opinions about her now, are they? A. Oh! certainly; yes, Sir.

Q. Now, Sir, as to delicacy of behavior on the part of women towards the other sex, what was her disposition and habit in that regard? A. She was a perfect lady, Sir.

Q. And what was her exaction in that respect from other women with whom she had or professed friendship? A. I don't think she had any friendships for any women from whom she had to make any such exactions. She associated with ladies like herself.

Q. Was she not distressed at any suggestion of impropriety on the part of women in their relations with men? A. Why, Sir, every lady would be, and she was a lady.

Q. You think that she was? A. Yes, Sir.

Q. Now, Sir, in regard to your own habits of mind as bearing upon this question of evidence, you have made several statements for publication growing out of this matter, have you not? A. Yes, Sir.

Q. And you have appeared before the Committee and some sort of an examination has been had? A. I appeared before a Committee, but no sort of an examination was had.

Q. Well, you didn't consider it any sort of an examination? A. No, Sir; there was—

Q. There was time occupied about it? A. Oh! yes, a whole Summer.

Q. Not with you? A. Either with me or concerning me.

Q. Well, well; I mean your own presence and examination there? A. No.

Q. Now how is your memory as to dates, and the order and sequence of occurrences? A. I have always thought that my memory of dates was rather below the average.

Q. And in regard to memory have you not stated as the character of your mind that you remembered by pictures? A. Yes, Sir; I remember many things by pictures.

Q. And that was rather the habit of your memory of what was vivid in the shape of a picture being retained—has not that been your expression? A. If I understand what you mean—for instance, I should remember this scene which I now witness rather by the picture itself than by the date; that is to say a year hence, if you endeavored to bring up to my mind to-day's scene, I should do it not by the date but by the picture in my memory.

Q. Have you not said in some of these examinations that you remembered by the reproduction from your imagination? A. I don't think that would be a possible process of the human mind; don't think I could have said it.

Q. Think you said anything of the kind? A. I think we remember through the memory, not the imagination.

#### MR. TILTON'S RELIGION.

Q. Now, in regard to this association and sympathy in religious opinions and feelings with your wife—you have suffered some change in theological opinions and in religious feelings, have you not? A. I have not suffered that change, Sir; the word suffering must not be applied to that change except in its transitory state of suffering for a time.

Q. Well, I don't use suffering in a sense of anguish? A. I have rejoiced in the change.

Q. Well, we will take that—suffering change is being the subject of change I suppose in English—however you have rejoiced in the change? A. Yes, Sir.

Q. Now, at what period of time did this change in your theological opinions, in which you rejoice, occur? A. Well, Sir, to give you an answer that shall be entirely clear, perhaps I may be permitted to say that I was brought up from childhood in the Old School Presbyterian Church of which Dr. Alexander was pastor in New-York; that my earliest religious bent was toward extreme Calvinism; that that tendency in my later years received a good deal of modification perhaps I might say liberalization through Mr. Beecher's preaching in Plymouth

Church, and that when I approached my thirtieth year my religious views passed through a still greater change in the direction of what might be called Unitarianism, though I am not a member of that body.

Q. Well, that included a surrender of the doctrines of the divinity of Christ and of the atonement, as understood in orthodox or Calvinistic opinions? A. I don't know what you mean by a surrender, Sir.

Q. A parting with? A. Yes, Sir.

Q. It did? A. I do not reject the divinity of Christ; I do not accept the theory of Christ's deity. I do not regard Jesus Christ as the Jehovah who made the world, but there is a very large and sweet sense in which I think any thoughtful man would accept the divinity of Christ.

Q. Well, you gave up the doctrine as it was understood in Calvinistic teachings, in which you had been reared? A. I gave up the doctrine which I could not understand. I never gave up any doctrine which I thoroughly understood.

Q. Yes; I didn't ask you if you understood it, but as it was understood did you or did you not—as it was held? A. As it was held by whom?

Q. In the Calvinistic teaching in which you had been reared? A. Oh! yes, Sir. I abandoned that when I became a member of Plymouth Church.

Q. Well, had this second change that you made in 1865—that comes to about '65 I think, about the time you were thirty? A. Yes, Sir; I won't be positive as to that date.

Q. Well, I am not particular as to the day; perhaps you cannot date from a single day. A. No, Sir.

Q. A gradual process—but by that time that you have mentioned, when you had come to be about thirty, you then gave up the doctrine of the divinity of Christ as held in the orthodox churches, and believed no more than is held in the Unitarian churches? A. Well, I don't know how far that doctrine is held in orthodox churches, and I don't know exactly how far there is a difference in that doctrine as in Unitarian churches. The views which I have concerning the character of Jesus Christ are those which I have already stated—that Jesus Christ was not Jehovah—

Q. No matter if you have already stated them. Do you know enough about it to know whether the concurrence of opinion on these subjects, which prevailed between yourself and your wife when you were married, was broken by this progress or change in your opinions? A. Yes, Sir.

Q. So that by the time you reached the age of thirty you and she no longer agreed in views concerning those doctrines of the Christian religion? A. I should rather say, Sir, that perhaps we had agreed in those features until I was thirty, and that at that time we began to disagree.

Q. Then this change occurred? A. Yes, Sir.

Q. You then disagreed? A. Yes, Sir.

Q. Now, what effect or impression upon your wife and her happiness did this change in your opinions produce? A. In one sense the change in my religious views produced upon her mind a good deal of unhappiness. She wanted me to believe as she did; in fact she wanted me to become a clergyman.

Q. And a clergyman of the faith in which you had both been brought up? A. She wanted me to agree with her.

Q. And you did not? A. I did not.

Q. Now, did it or not cause her great anguish of spirit and great suffering in her life? A. There were times and hours in which she wrestled with herself, and with me and with God, that my views might exactly harmonize with hers.

Q. And hers remained the same that they had been, did not they? A. I think that in two or three essential respects her views have changed; I think, in other words, that she grew to abandon the notion of a hell; she followed the lead of Plymouth Church in that abandonment.

Q. Now, have you not used this expression in this connection: "If I had been a minister, none of this trouble would have come; she was always in sorrow that I was not a minister"? A. Well, Sir, I can't say that she was always in sorrow; her regret was that my professional career had not been that of a clergyman.

#### MR. TILTON'S ATTITUDE TOWARD CHURCHES IN GENERAL.

Q. Well, now, at this time had you not come to such a pitch of feeling in regard to clergymen and churches, that you were actually hostile to them, and despised and hated them? A. There came a period, in 1870, when my views of clergymen changed; not until then.

Q. Well, I have asked you about another period?

Judge Neilson—He says not until then.

Mr. Evarts—Ah! I did not understand you. You say not until then? A. Not until then; no, Sir.

Mr. Evarts—Very well, then, that is an answer.

The Witness—Mr. Evarts, permit me to say that I do not wish to overcloud the fair fame of all clergymen with the sins of one.

Mr. Evarts—Well, I haven't asked you to do so, and we will not take that as part of an answer to any question I put.

Mr. Beach—Well, I don't know; that is a qualification to the answer which he gave, and properly, I think.

Mr. Evarts—Not very important when it is not an answer.

Mr. Beach—Well, I think it is to the other clergymen.

Mr. Evarts—Now, Sir, have you not said that your hatred to churches commenced upon, and because of, the slavery relations of the churches? A. I have never spoken of hatred to the churches. I know what you are reading from, Sir; it is the report of my cross-examination, which I disavow.

Mr. Evarts—No matter what I am reading from; it is for you to answer the questions which I put you.

Mr. Beach—Well, it is proper for him to speak of a time when he used that term.

The Witness—I took this ground, that, during the anti-slavery controversy, I was an extreme Abolitionist, and the great enemy that we had to encounter in our labors as Abolitionists was the Christian Church, and the Rev. Albert Barnes of Philadelphia, the author of "Barnes's Notes," said distinctly, and it was a watchword of our enterprise, "The American church is the bulwark of American slavery." Therefore we struck at the church for the sake of

striking asunder the slave's chain. In that sense I was opposed to ecclesiastical organizations; I had no hatred to individual churches, or members, or ministers.

Q. Well, of course we will assume that in regard to individuals. You did under these influences of a public nature that you have spoken of, come to have feelings of hostility and bitterness concerning church organizations, did you not? A. Concerning ecclesiastical organizations, concerning churches, not in their religious features, but in their ecclesiastical features; concerning churches as governing bodies.

Q. Now, in that connection did you not come to the feeling and opinion of despising ministers generally, and the church as it existed in this country from these antagonisms? A. I thought that in the early stages of the anti-slavery movement the clergy, like all other professional men, were, like Erasmus of old, cowardly; that they were not leaders of 'public sentiment, but rather the followers of it. There were many noble and conspicuous exceptions to that, and in those days Mr. Beecher himself was a shining example.

Q. Nevertheless the point comes—did you not, from these motives, and under those antagonisms, come into hostility or hatred of the churches and contempt for the ministers that were of the position that you have ascribed generally to the clergy? A. I think I should answer your question no, Sir, and yet if I could explain I could give you more fully my views.

Q. Well, I have no objection to your explaining. A. I think this—that when any great public measure arises and is new; when any great reform starts which the world needs, the last help it generally gets is from the old conservative organizations called churches; that is what I mean.

Q. And from the ministers of those churches? A. Well, from the churches as bodies.

Q. Yes; and the ministers of them? A. I don't know that it applies any more particularly to the ministers than it does to other members.

Q. Other members of the church? A. Yes, Sir.

Q. Collectively. Well now these feelings of yours in this regard were not conceded from your wife—they were known to her, were they not? A. These views were taught us in Plymouth Church; that was the doctrine of Plymouth Church. My wife believed it and I believed it, and we all despised the slaveholding Christianity of that day; we were all of one mind concerning it. Mr. Beecher preached against it. He used to say frequently that he was ashamed of his calling; that is to say, that he was ashamed of the men who were in it because they were cowardly.

#### MR. TILTON'S FIRST DISPUTES WITH MR. BEECHER.

Q. Very well; now when did you first come to any occasion of public contest or disagreement with Mr. Beecher, in the course of your and his public life and employment? A. Well, Sir; we had a friendly discussion in 1859 or 1860, concerning the disposition of some missionary funds.

Q. That was in Plymouth Church, wasn't it? A. Yes, Sir.

Q. And it was a somewhat animated and serious dissent between you, wasn't it? A. Well, Sir, it was like the dissent between you and Mr. Beach, entirely fraternal. It was a con-

test, but it was marked with great friendliness; there was no enmity between us.

Mr. Beach—What date was that? A. That, I think, was in the Winter of 1859 or 1860, possibly '60 and '61.

Q. Well, these were between yours and Mr. Beecher's opinions, not as representatives of clients or third persons? A. It was not a clash of opinion, Sir; we were alike in opinion. It was simply a question as to whether Plymouth Church, as an anti-slavery organization, ought to contribute its missionary funds to a society out West that held men in bondage. I took the ground that our church ought not to do so. He took the ground that our church ought to do so, and we discussed it.

Q. The details of it are not important; but it was an animated and somewhat severe dissent between you, wasn't it? A. It was as severe as this: he met me just before I went into the pulpit that night to make my speech, patted me on the shoulder, and said, "Theodore, go and do as well as you can;" and the next day, after the discussion was over, he came around to see me, and said, "Theodore, I am proud of you." That was the severity of the discussion.

Q. Oh! I don't mean personal animosity; I speak of your difference of opinion on a public question. Don't you recognize that fact now? A. I don't recognize the applicability of your word "severity" as applied to a difference of opinion.

Q. I have asked you for the first; was that the first occasion of any public difference or debate of any serious character between you? A. I don't know but that on several occasions previous to that, in the discussions in the church meetings, I may have taken ground one way and he another on certain topics. He always encouraged the utmost latitude of discussion.

Q. If there was nothing noticeable, I don't care to inquire into it, and so you may have— A. Oh! there never was a more friendly discussion than the one between Mr. Beecher and myself concerning those missionary funds.

Q. And in that discussion you were of opposing opinions, and so continued to be notwithstanding, for the— A. No, Sir; we were not of opposing opinions; we were of the same opinions, but the question was whether we could, as anti-slavery men, apply those opinions to a certain particular case.

Q. Well, I mean opposing opinions concerning the subject of actual debate; that was so, wasn't it? A. Yes; the difference being as to whether the money should be applied or should not be applied; it did not reach to a difference on moral or religious views—a question of the distribution of money.

Q. Now, after this, did there arise an occasion of political difference between you, as public men, on a question that generally you had concurred in before? A. How soon after this?

Q. O, I can't tell when it was—not connected with this. A. I don't remember that there was any serious difference between Mr. Beecher and myself on any political question until he took the ground—in a sermon, I think, in 1860 perhaps—no, perhaps later—that a military emancipation was impossible. I resisted that sermon. A military emancipation was afterward wrought out. I think that is the first disagreement we had as to political views.

Q. Well, then, afterwards there was a Cleveland affair, was there not? A. Yes, Sir.

Q. When was that? A. I don't remember the year.

Q. Well, can't you tell us about when it was in connection with the public events or affairs of politics? A. Well, Sir, I am ashamed to say that I don't fix it in the almanac of my memory. Somebody here present, though, must know the date of the Cleveland Convention.

Q. Well, it was at the time of the Cleveland Convention, wasn't it? A. Yes, Sir.

Q. And what was that Convention, a political Convention?

A. Well, I can't—yes, it was a political Convention—O! yes.

Q. It was in connection with the politics of the country? A. Yes, Sir.

Q. And there you took decided, opposite grounds to him, did you not? A. Yes, Sir; very decided.

Q. And was that a broad, a severe difference of opinion? A. Yes, Sir.

Q. That was? A. I thought he was wrong, and I said so.

Mr. Evarts—We will stop at this stage, if your Honor please.

The Court then adjourned until 11 o'clock on Thursday.

## NINETEENTH DAY'S PROCEEDINGS.

### MR. TILTON'S FURTHER CROSS-EXAMINATION.

POEMS, EDITORIALS AND LETTERS ON LOVE, MARRIAGE AND POLITICS READ IN COURT—THE SOCIAL AND PUBLIC RELATIONS OF THE WITNESS TO MR. BEECHER—THE WOODHULL BIOGRAPHY RULED OUT.

A brilliant light was turned on Thursday upon the obscure and sensational events of the great trial now pending in Brooklyn. A stranger not familiar with court procedure might in the morning easily have thought himself in a place of amusement, for Mr. Tilton's examination and its surroundings resembled more a literary entertainment than a trial. The audience was certainly a large and an appreciative one, while those who interested them were prominent and able. The programme did not lack novelty. The reading of a beautiful song of love written by Mr. Tilton and read by Mr. Evarts; discussions about politics, woman's rights, and free love; newspaper satires and editorials on the same subjects, and a long debate on the rights of editors, a pleasant vein of humor running through the whole—this is an outline of the progress made. During the forenoon only the brighter, fresher pictures of Mr. Tilton's and Mr. Beecher's intercourse were shown. Its darker phases were for a time hidden, but during the last hour of the proceedings the curtain was drawn aside and events bearing

more directly on the scandal were dealt with. Mr. Evarts first produced a copy of the letter of Mr. Beecher to the Cleveland Convention in 1866, which Mr. Tilton so severely condemned at the time. The witness declined to identify it because it was a newspaper slip and had many corrections in the margin, and took occasion to say that in that controversy Mr. Beecher and Mr. Evarts were on the side of President Johnson, while he was on the other side. Mr. Evarts rebuked Mr. Tilton very sharply, saying that his name should not be dragged in. The testimony of this witness frequently brings Mr. Beecher's name before the jury. When he was asked to date the time when he began to take an interest in the cause of woman's rights, he said that it was after he heard Mr. Beecher's speech on that subject at the Cooper Institute; and again he said, "I modified my views upon social questions and have published my principal denunciations of social crimes since Mr. Beecher's invasion of my home came to my knowledge in 1870." Several times afterward Mr. Beecher's name was thus connected with various matters in which Mr. Tilton had taken an interest.

Mr. Evarts asked the witness when he entertained discussions on the "new social opinions" in regard to the social connection of sexes. Mr. Tilton inquired what was meant by the "new social opinions." Mr. Evarts did not wish to apply the opprobrious term free love, and so he defined it in the following admirable words: "The opinions that assert greater freedom in the matter of marriage and its dissolution, and its maintenance only during continued attraction or affection."

Considerable amusement was provoked when Mr. Shearman approached the witness staggering under the weight of a large file of *The Independent* for 1870. Mr. Beach laughingly went to his assistance, and they held the volume before Mr. Tilton, who was asked to identify the leading editorial entitled "Love, Marriage, and Divorce;" this he did, and it was read by Mr. Shearman. A satire directed at Mr. Tilton in *The Hearth and Home* was next read. It first praised him very highly as an orator and writer, speaking of him as a children's friend, and quoting Mr. Tilton's little nursery rhyme beginning "Baby bly, here's a fly," and other poems; the article afterward expressed grief for his connection with Mrs. Woodhull, and closed with a pretended obituary of him. Mr. Tilton's reply to that article was also read; it contained a reference to Mrs. Woodhull.

Perhaps the most entertaining part of the entire proceedings was the reading by Mr. Evarts of Mr. Tilton's exquisite poem, entitled "French with a Master," each verse of which closes with the words *Aimer, aimer, c'est à vivre* (To love, to love, this it is to live). The poem lost nothing in the hands of the reader. The constant repetition of the words *Aimer, aimer, c'est à vivre* caused a ripple of amusement to run throughout the room, which swelled each time the line was repeated, until, when the last verse closed, there was an outright burst of laughter, in which the Judge, the jury, Mr. Evarts, and Mr. Tilton joined heartily. After quiet had been restored, a copy of *The Golden Age* containing Mr. Greeley's letter on the question of marriage and Mr. Tilton's reply to it was produced, and it gave Mr. Fullerton an opportunity to show his readiness at reply. The Judge had ruled that the defense were not obliged to introduce every part of those letters, adding to Mr. Fullerton that it might be a burden to him to read them in the re-direct examination. "Ah, no," rejoined the counselor, "it is never a burden to me to read anything Mr. Tilton has written." As Mr. Shearman began to read, Mr. Tilton asked Mr. Evarts as a personal favor to read the article. The latter declined, however, saying that "it would be contempt of court."

An animated and interesting discussion arose at this point regarding the rights and responsibilities of editors and publishers, caused by an attempt to read a paragraph quoted from a Troy newspaper in *The Golden Age*, giving a part of a lecture by Mrs. Woodhull. Mr. Tilton laid down the precept that "sole editors are those who least read their own paper," and he added: "*The Golden Age*, like any fair-minded or liberal newspaper, prints the news. That is an extract from a speech of Mrs. Woodhull's, printed without comment, exactly as it would in the same column print an extract from the speech of Mr. Evarts." Mr. Evarts, with a wry face, answered that that would be an empty compliment, as nothing of that kind was ever done by him, and Mr. Beach laughingly said to him, "It proves you cannot save yourself from distinction, no matter how you try." The paragraph was ruled out. An article in *The Golden Age*, which Mr. Tilton said he did not write, was then shown. A rather remarkable incident occurred at this moment, in Mr. Tilton's calling his examiner to his side and speaking confidentially to him for several moments. Mr. Evarts then walked back and resumed his examination, in the course of which Mr. Tilton appealed to the Judge and asked

that he be not obliged to give the name of the writer of the last-named article, as it was a lady. He said that he had just given Mr. Evarts the hint that the writer was a lady. Mr. Evarts retorted that he had not divulged it. The witness made a rejoinder, and while Mr. Evarts was replying to him, Mr. Beach, glancing at the clock which then indicated that it was exactly 1 o'clock, suggested that Mr. Evarts and the witness be allowed to continue the discussion during recess.

The afternoon session began with a discussion over the introduction of Mr. Tilton's biography of Mrs. Woodhull. The book was ruled out by Judge Neilson. The Cleveland letter in perfect form was next introduced and read by ex-Judge Porter, which is the first public service in the case he has performed since his illness. The relations between Mr. Beecher and Mr. Tilton were again made the subject of investigation. Mr. Tilton thought, when he first became acquainted with Mr. Beecher, that the latter was "a big boy, companionable and winning." "Guileless?" queried Mr. Evarts. "No. The craftiest persons I know of are boys—newsboys, for instance." In later years, Mr. Tilton said, "the fine gold of his idol became dimmed." Mr. Beecher's visits to the house of Mr. Tilton were the next subject entered upon, and it was shown that Mr. Beecher had at first to be urged by Mr. Tilton to visit the latter's wife. The witness paid an enthusiastic tribute to Francis D. Moulton, saying that he was the successor of Sir Philip Sydney. At this point the examination was broken off for the day.

Judge Neilson was more lenient than usual on Thursday with the laughter in the court-room; partly, perhaps, because it was in the main confined to the lawyers and those most interested in the suit, and partly because the wit and humor of the day were irresistible. He reproved the audience only once, and then very gently. His leniency was not abused, however, and the spectators were very orderly during the day, except just before the adjournment of the court, when a considerable disturbance was made by several persons leaving the room together.

## THE PROCEEDINGS—VERBATIM.

### A BRILLIANT CROSS-EXAMINATION.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Tilton was recalled, and his cross-examination was continued by Mr. Evarts.

Mr. Evarts—[Paper handed to witness.] Mr. Tilton, that



seems to be rather an imperfect print of a document. Please look at that and see if that is the political situation, and that the document called the Cleveland letter. It seems to be a Western print of some kind, and been corrected by city paper; but we could not get a file taken from the office without more trouble than it was worth. A. Well, Sir, I should not like to give you an opinion upon that.

Q. Well, I don't ask your literary opinion; I ask you to look at that, if that is the Cleveland letter, as it purports to be—if that is the situation and that the action on Mr. Beecher's part which we were last talking about when we left the stand? A. Do you mean is this the letter which Mr. Beecher sent to the Cleveland Convention?

Q. Yes, the Cleveland Convention. A. Well, Sir, I have not read that letter since that time. Here are three sheets marked with one hundred corrections. I should not like to say whether it was or not.

Q. Well, can you, judging for yourself by looking at that, recall enough of the situation to know whether that was the Cleveland letter? A. Well, Sir, I should not.

Q. Could not do that? A. I could not say whether that was or not. If it were my letter I should pronounce upon it, but as it is another man's I don't want to give an opinion.

Q. And you cannot say then, whether, looking at this paper, you can see from it that this was the occasion of that political difference between you and Mr. Beecher? A. That appears to be a letter addressed by Mr. Beecher to that Convention, which somebody has corrected, marking on the margin corrections to the number, I should think, of a hundred. Whether the text is the original, and whether the corrections belong to it, or whether it is genuine, I am unable to say, since I was not the author of it.

Q. Now, I have not asked you any of those questions, but have asked whether, by looking at this paper, you can recall to mind whether or no this is the situation in politics which this letter refers to that was the subject of the dissent between Mr. Beecher and yourself? A. The subject of dissent between Mr. Beecher and myself grew out of the political situation at that time; Mr. Beecher and you were on the side of President Johnson, but I was opposed to him; that is all I remember.

Mr. Evarts—Now, Mr. Tilton, I beg you not to introduce me into your testimony. I am not here under your action at all. You are here—

Mr. Beach—I object, Sir, to the gentleman—Wait one moment.

Mr. Evarts [continuing]—To answer my questions.

Mr. Fullerton—Well, put your questions.

Mr. Evarts [continuing]—And under cross-examination, and there is not any occasion for any answers that do not proceed from a question.

The Witness—I thought I was giving you a very direct answer.

Judge Neilson—The practice is to answer the question put as distinctly as you find yourself able to do, and not refer to the counsel in your answer.

Mr. Beach—Yes, Sir; but the question was in regard to the political situation at the time of the difference between Mr.

Beecher and himself, and as Mr. Evarts was a principal part of that political situation, it was not improper for the witness to refer to it.

Mr. Evarts—Why, I didn't have anything to do with it, that I know.

Mr. Beach—Well, the witness was telling you you did.

Mr. Evarts—Not in the least.

Judge Neilson—Well, you may be forgiven if you had anything to do with it.

Mr. Evarts—Well, these allusions are not of any interest, and I at least do not wish any responsibility for making myself important. [To the witness.] Do you think that by reading what purported to be a letter of Mr. Beecher, as sent to them, you could determine whether or no it was the one that you considered and replied to, or discussed, in your difference with him? A. I do not need, Sir, to hear any letter, true or false, correctly or incorrectly printed, to recall the differences which I had with Mr. Beecher at that time; it was a difference known and read of all men.

Q. Now, for the date of it. A. That I don't remember.

Q. Do you think that it was in August or September, 1866? A. I don't remember, Sir. If you say that is the date I will accept it.

Mr. Evarts—I don't say anything about it; this letter purports to be of that date, but then I supposed you might know a little something about the date of the matter in reference to your mutual affairs. Was it in the year 1866? A. That I do not remember now.

Q. Now, had that discussion a relation to the then current policy or politics of the Republican party, to which you both belonged? A. What discussion do you refer to?

Q. This Cleveland matter? A. I don't remember it as a discussion. Do you mean Mr. Beecher's letter?

Q. No; this situation in politics which you say you don't need to have recalled by Mr. Beecher's letter in order to know what the matter was? A. Well, do I understand you to ask me that a situation in politics has reference to a political matter? Of course it does.

Mr. Evarts—I ask you—Will the stenographer please repeat the question?

THE TRIBUNE stenographer [reading]: "Q. Now, had that discussion a relation to the then current policy or politics of the Republican party, to which you both belonged?" A. Yes, Sir.

#### MR. TILTON DENIES BEING A RADICAL.

Q. And was it a matter of considerable excitement and attention in the councils of the party and of its adherents? A. Yes, Sir; I think the Republican party very generally believed that Mr. Beecher at that time betrayed it.

Judge Neilson—He don't ask you that.

Mr. Evarts—Oh! that answers my question. [To the witness.] The general opinion of the Republican party was that Mr. Beecher then betrayed it? A. Yes, Sir.

Q. You then took quite the opposite and hostile position to that? A. I stood with the main body of the Republican party and made a protest against Mr. Beecher's action.

Q. And did you make his letter and his position a matter of public discussion on your part in the sense that you have now expressed yourself? A. I did, Sir, in a very direct manner.

Q. Now, in both these differences that you have spoken of—in the discussion about the application of the funds of the church in reference to a charitable society, and this about the crisis in politics, if we may call it so, of 1866—were you on what was considered and called the more radical side and view, and Mr. Beecher the other way? A. No, Sir; I was then with the general bulk and body of the Republican party, and Mr. Beecher was in a small wing that went over to the support of Mr. Johnson. The radicals in politics were far ahead of both of us.

Q. Now, about the church—about the missionary society—that hadn't anything to do— A. What was your question about that?

Q. Whether you, on that question of the missionary society—you know what I refer to. A. Yes, Sir.

Q. The differences you had—whether you there were on the more radical side and Mr. Beecher on what was called the more conservative? A. No, Sir; I was on the true, solid and old-fashioned conservative ground, and all the liberal members of the missionary society sustained me in it, and printed my speech on that occasion for general distribution—stood on the early ground of the fathers.

Q. Well, there you had, as you think, the support of the greater portion of the good opinion of the party or the community? A. Of the religious community; yes, Sir.

Q. And in the other of the political community? A. Yes, Sir.

Q. Now, from that time forward, were there any particular public questions or occasions which brought you into public antagonism? A. No, Sir; not that I remember, and I think there were none.

#### WOMEN'S RIGHTS AND ITS EARLY ADVOCATES.

Q. Now, Sir, how early did you take part in the movements in reference to women's rights, or woman suffrage, or that topic of public consideration? A. I think that shortly after Mr. Beecher made a speech in Cooper Institute, declaring for women's rights, Mrs. Tilton said that I ought to join in that enterprise, that it was right and proper, and I entered in it.

Q. You need not mention what Mrs. Tilton said; I ask to have that struck out, if your Honor please.

Judge Neilson—Yes.

Q. I ask you a certain time, and only desire that you will consider the question? A. Well, the best date that I can give you is to go back to Mr. Beecher's public declarations in Cooper Institute. He made a speech there which was printed as a tract. I rather think that that was the beginning of my espousal of that cause. If you know the date of that, it begins there.

A. Well, I am sure I don't know; I never had one. A. Oh! yes, Sir, he made a very magnificent speech on that subject.

Q. Well, you know it but I don't. Now the point is to get the date, if I can. If you will remember something of which you can get a date in order to remember that date? A. Well, I

remember that occasion, Sir; I don't remember the date of it. I told you yesterday that I remembered occasions much better than dates.

Q. Have you any idea about when it was, in the course of years? A. Fifteen years ago, I should think, at a rough guess.

Q. Well, that is about 1860? A. I think it was before the war; it may have been twenty years ago, for aught I know.

Q. Well, on that question were you on the side of the advanced opinions in regard to women's rights and suffrage, etc.? A. Well, I suppose that all persons who have espoused the cause of women's suffrage may, in one sense, be regarded as on the side of advanced opinions. In so far as that is true, I was on that side.

Q. You were in the advanced opinions on that subject? A. Well, there was only one opinion on that subject.

Mr. Beach—On what subject?

Mr. Evarts—Women's rights and women's suffrage—there was but one? A. There was but one opinion on that subject; and the great world regarded those who held it as being in the advance; I suppose it may be naturally called, properly called, an advanced opinion.

Q. Well, then, from the best faculty that you have of understanding my question—advancement—you think so; and that you were in favor of the advanced opinions on that subject? A. Well, Sir, I was in favor of woman suffrage, if that is an advanced opinion. It is a pretty old one now.

Q. Now, with whom among the votaries or champions of that opinion did your espousal of it bring you in connection? A. Chiefly with Henry Ward Beecher and Mrs. Elizabeth Tilton, and all the other advocates of it who came up afterward and in due order.

Q. You had known both those persons before, had you not? A. Before what?

Q. Before you went into this movement? A. Yes, Sir; I had known them from childhood.

Q. Now, with what other persons did your association or espousal of this cause bring you into connection? A. Well, Sir, I should think sooner or later in association more or less intimate with a thousand writers and speakers, and advocates and thinkers, good men and women who held that view.

Q. All eminent? A. No, Sir; there are not a thousand eminent people in the country.

Q. Well, will you give us the names of some of the more eminent and noticeable of them? A. Gen. Butler was one, Chief-Justice Chase was another, Mrs. H. B. Stanton was another, Isabella Beecher Hooker was another, Lucretia Mott was another, Wendell Phillips was another, William Lloyd Garrison was another, Anna Dickinson was another; why, Sir, if I should write that goodly catalogue it would take me a long time.

Q. Well, did you name Miss Anthony among them? A. I have forgotten whether I did or not; I ought to name her at all events.

Q. Intended? A. No list of those advocates ought to leave out her name.

Q. Exactly. Now, through what channels of public influence of the press or otherwise, did you advocate that cause?

A. Through *The Independent*, and through all the journals that I have had any control of, and the public platform.

Mr. Beach—And tracts?

Q. Did you publish tracts also? A. Oh! yes; down in the late times, after it got popular.

MR. TILTON'S OPINIONS ABOUT DIVORCE.

Q. Now, Mr. Tilton, at what period, if at all, did you entertain discussions in any public prints of which you had control of the new social opinions and views in regard to the regulation of the social connections of the sexes? A. Well, Sir, will you tell me a little more distinctly what you mean by "the new social opinions?"

Q. Well, I don't wish to give it an opprobrious name, nor do I wish to characterize it improperly, but the opinions that concern greater freedom in respect of marriage and its dissolution, and its maintenance only during continued attraction or affection, and not permanently after those sentiments had changed? A. Well, Sir, I think the chief denunciations which I have made against looseness in the marriage relations have been published since Mr. Beecher invaded my house in 1870. My attention had not been specially called to the subject before that. I afterwards published some tracts.

Q. Now, will you give us the time in which you had given place to discussions in any journal under your direction in favor of the liberality of divorce and looseness of marriage? A. Yes, Sir; the date of that began with Mr. Beecher's performance of the Richardson and McFarland marriage in the Astor House. I defended him for that in *The Independent*. After I established *The Golden Age* I admitted large discussion in favor of liberality of divorce. Can you oblige me with the date of that performance?

Mr. Evarts—I know nothing whatever about that, if you ask for information.

The Witness—I ask for the date.

Mr. Evarts—I don't know anything about it.

Mr. Beach—He is just as bad at dates as you are.

Mr. Evarts—No; I am not under examination about things in which I have taken part.

The Witness—Well, I took no part in that ceremony.

Mr. Evarts—Well, you referred to it, but I prefer not to have these discussions; I will endeavor to be polite whenever you ask for information outside of the case, but anything further—

Mr. Shearman—[Handing witness a large file of *The Independent*.] *Independent* of Dec. 1st, 1870; look at that article. A. Yes, Sir; I see it.

Mr. Beach—[To Mr. Shearman]. I will help you, Mr. Shearman. [Laughter.]

Mr. Shearman—I am quite able to stand it; I am only afraid of troubling the reporters.

Mr. Evarts—[To Mr. Beach.] I did not know that you had got into position.

Mr. Beach—I have.

Mr. Evarts—Mr. Tilton cannot see it so far off.

The Witness—I don't need to see it.

Mr. Evarts—You looked at that article under the date of that issue? A. Yes, Sir; I see it.

Q. You were the editor at that time, were you not? A. Yes, Sir.

Q. That article was published as the leading editorial of that day, was it not? A. Well, yes, Sir; there it is; it speaks for itself.

Q. And was it written by you? A. It was, Sir.

Mr. Shearman—I now read from *The Independent* of December 1st, 1870. The column reads as follows:

*The Independent.*

THEODORE TILTON, Editor.

HENRY C. BOWEN, Publisher and Proprietor.

NEW-YORK, December 1, 1870.

LOVE, MARRIAGE AND DIVORCE.

"To love, to love—this is to live."

So sang a poet of France. If this is French sentiment, it is also apostolic philosophy.

"He that hath loved another," said St. Paul, "hath fulfilled the law." And, as if to give to this truth a stamp of universal currency he recoinced it into the golden text, "Love is the fulfilling of the law." This is another way of saying that love is the supreme function of life.

But what is love? Who has analyzed it, of what gossamer is it woven or out of what adamant is it hewn? What are its quintessential elements? and especially does it outlive life or must it die with death?

The poets sing a various song on this wondrous theme—jarring their harps to a strife of clashing sounds. Here, for instance, is William Morris, making Andromeda, in "The Earthly Paradise," say to Perseus:

"Oh, love, to think that love can pass away!  
That, soon or late, to us shall come a day  
When this shall be forgotten! E'en this kiss,  
That makes us now forget the high God's bliss,  
And sons of men, with all their misery."

And, furthermore, in the same poem:

"Love while ye may: if twain grow into one,  
'Tis for a little while—the time goes by.  
No hatred 'twixt the pair of friends doth lie;  
No trouble break their hearts; and yet, and yet,  
How could it be? We strove not to forget;  
Rather in vain to that old time we clung;  
Its hopes and wishes round our hearts we hung;  
We played old parts; we used old names. In vain.  
We go our ways, and twain once more are twain."

But, as if to give a sweet lie to all this doleful prophecy, Mrs. Browning, the St. Cecilia of her sex, exclaims:

"Say never, ye loved once!  
God is too near above, the grave below.  
And all our moments go  
Too quickly past our souls, for saying so."  
\* \* \* \* \*  
"Love strikes one hour—LOVE. Those never loved  
Who dreamed that they loved once."

To which let us add the following snatch from a German song:

"Child, tell me how love cometh?  
It comes unsought, unsent.  
And tell me how love goeth?  
That was not love which went."

Now, if it could be settled that human love, is, in its essence, immortal; that death does not cut, nor the grave rot the silken cord; then, in approaching the problem of marriages, we could definitely say: "There is but one bond, and it knows no breaking; it binds two souls for time and eternally, so that nothing, either in this world or the next, can divide them from each other, any more than either can be divided from itself. It creates and justifies the instinctiveness exclusiveness—the unselfish selfishness—whereby love claims its own and no;

another's; yearning only for its only mate. It gives a reason for one of the prejudices which many hold without reason; we mean the building of a second marriage like a monument on the sepulchre on the first."

But the common voice of mankind replies, "Marriage is dissolved by death." Now, of the soul's dearest passion this may be a righter a wrong philosophy; but accepting this universal opinion as correctly interpreting our inherent nature, the question arises, since marriage is dissolved by death, is it dissoluble by anything else? If so, by what?

To answer what breaks we must inquire what makes the marriage bond.

The Divine Moralist who preached the Sermon on the Mount when He said, "Be ye therefore perfect, even as your Father in heaven is perfect," held up an ideal of human character impossible of mortal attainment—the despair of flesh-clogged souls. In like manner, in the few and fragmentary notes which his biographers have saved of his utterances on marriage He holds up an ideal, the highest ever conceived, beautiful to struggle after, but impossible to attain. He did not rest marriage on the mere legal union of two persons whom the law, uniting, enacts to be one flesh; but transcending this tie and hallowing it, He taught a spiritual union, which should be so subtle in its willing band, so exclusive in its mutual allegiance, and so reverent of its married mate that "the brief indulgence of a single vagrant fancy" was an infidelity to such wedlock. Who can abide this test? Judged by so immaculate a morality, "there is none good; no, not one."

Nevertheless, as the only just ideal of human character is after all, the divine, and nothing short of it, so the only right ideal of a true marriage is impossible—the perfect picture which Christ sketched. But as there is an approximate realization of this character, notwithstanding the weaknesses of human nature, so also there is a reasonable approach to this marriage, notwithstanding the vicissitudes of human love. Thus a husband and wife—if they have rich hearts and generous minds—if their sympathies interflow like confluent streams—may love each other with such devotion, with such exaltation, with such coronation as to attain to the royal estate which Shakespeare called "a measureless content;" realizing in each a faithfulness of love that could not possibly betray or deceive its other self; a love so infinite that it could contain only its own fullness; a love which, like the sea, could never depart out of its own bosom.

Now, this is the love and the only love that spiritually constitutes marriage; and marriage, however legally enacted, yet without this "spirit of unity" to "create its bond of peace" can be, under Christ's theory, nothing but divorce.

The greatest question which has been propounded to modern society is: What is to be the legal status and what the social fate of persons who find themselves married, but not mated? The common and pusillanimous answer is: To remain in a bondage which it is ostracism to break. But a just moral sense, piercing a sham morality, which is only another name for custom, asks, What excuse can be given to God and to virtue for keeping two human beings in an enforced union which each knows to be degrading to both their souls? A public opinion which compels the juxtaposition, or which forbids the disconnection of an unmated pair, who are tied, not knit—chained, not wedded—violates the ethics of Him who, preaching from the mountain-top of morals, taught so terrible a distinction between love and lust. Marriage without love is a sin against God—a sin which, like other sins, is to be repented of, ceased from and put away. No matter with what solemn ceremony the twain may have been made one, yet, when love departs, then marriage ceases, and divorce begins. This is the essence of Christ's idea. To say that He granted divorce only for a gross and fleshly crime is to forget that He called the eye a paramour and the heart of wanton's bed. Even granting that one of his speeches

seems to call adultery the only divorce, yet in His other maxims in illustrating what He meant by adultery, He set forth an ideal of so faithful a fidelity that most marriages estimated by this standard would be proved adulterous and be pronounced by His withering judgment null and void.

How shallow, then, it is to say with the Roman Church, that there shall be no divorce, not even for fleshly lust; or with the Episcopal, no divorce except for just this and this only; or, with the Presbyterian, no divorce except for this and for desertion; or with the Methodist missionary board, no divorce except for these and for heathenism; or, with the civil laws of some of our States, no divorce except for a few of the more common and hideous offenses which daily report themselves to our Courts.

John Milton was right in declaring (we do not quote his words, but only his meaning), that whatever nullifies marriage justifies divorce. With faint echo we repeat the same truth, which, to our mind, seems so true as to be fundamental. Nor, in following Milton, do we wander in a dangerous path. This man was no loose philosopher—no *blasé* gallant—no free lover. For, though his voice thundered for freedom of divorce, it pleaded with sweet eloquence for strictness in marriage. Learning as well as we may from so illustrious a teacher, this journal, with its liberal views on divorce, remains an austere moralist on marriage. It utterly spurns, rejects and repudiates the doctrine of free love. It stands at the very antipodes of this philosophy. It holds that a man and woman whose mutual love is not sufficient to inspire mutual fidelity, prove thereby that they have never known the fullness, purity and all sufficiency of the one love which makes marriage sacred, and which keeps it so. The only marriage worthy to be called by the name of that great sacrament is the exclusive union of one with one, not the patriarch union of one with many, and not the modern *sub-rosa* union of many with each other. Marriage, if it be marriage at all, is the unswerving faithfulness of husband and wife, admitting no intervening mistress for the one, no supplemental paramour for the other.

But this idea (and this idea cannot but be true) carries with it as its logical sequence (and this too cannot but be true) the irresistible conclusion that marriage, if broken, and whether broken by the body or the soul, is divorce. Infidelity of the body is not so great a sin against marriage as the infidelity of the soul. If there is divorce for the one, there should all the more be divorce for the other. Human society needs, for its purification, a more chivalrous fidelity to marriage—a more honorable respect for divorce. A nation without marriage would be without civilization. A nation without divorce must be without virtue. In France, the law tolerates no divorce; and so the people practice universal license. In Prussia, the law opens seven gates of exit from marriage, and so the fashionable standard of morality is almost puritanic.

Now, the proverb warns us that "history is philosophy teaching by example." Apply this philosophic warning to our own land. Our American society is covering itself with a growing mildew of free love. This corroding fungus is everywhere so plain that all eyes are beginning to see it. What is the cause? And what the cure?

The cause is twofold. First, in the injudicious and lamentable haste with which the law is invoked to tie a knot between two persons who only fancy, but have not proved their fitness for each other; and second, in a public opinion which, forbidding the dissolution of such ill made contracts, forces imprisoned spirits, fretting at a captivity from which they cannot openly break, to take covert refuge in secret sin.

The cure is likewise twofold. First, in a higher and holier idea of marriage—including the chastity which should accompany it, the devotion which should foster it, and the love which should hallow it; and next, in public opinion expressed author-

tatively in our civil statutes, enacting that whatever in point of moral nullifies marriage, should in point of law authorize divorce.

God grant that there may come a time in the legislation of our country when the laws of the land shall be founded on the facts of the soul!

Mr. Evarts—[Handing paper to witness.] Will you look at that and say whether you recognize that as a production of yours—I am sure I don't know whether it is or not? A. I should have to compare that with the original. It strikes me on the first glance that it is a garbled copy. I have not read the original since it was first published. I can—

Q. You can verify it, can you? A. I can produce it to you. I don't impute everything to a person because I see it in print. I know nothing about it. It is an imperfect copy, I think.

Q. [Handing paper to witness]: Do you recognize that as *The Graphic* newspaper? A. No, Sir, I do not; it may be so, but I don't recognise it; I can procure for you though, a correct copy if you desire it.

Mr. Evarts—Well, I will. I will have this marked for identification as the paper shown the witness.

Mr. Beach—Oh, no; it is not identified.

Mr. Evarts—It is marked for identification as the paper shown the witness.

Judge Neilson—It is produced as the original until the original is substituted.

Mr. Beach—It should not be marked until it is identified.

Mr. Evarts—We don't mark papers as exhibits until they are identified. I marked this as a paper I have submitted to the witness.

Judge Neilson—So that it may be held until the production of the other paper.

Mr. Evarts—Yes, Sir.

Mr. Evarts—Will you produce that in the morning or after the recess? A. The original was printed in *The Golden Age*, and if it will be any pleasure for you to have it, I will send over and beg the gentleman who owns the paper to procure a copy or else lend you the file.

Mr. Evarts—I don't wish to put you to any unnecessary trouble. This professes to be an entire poem, I think. [Handing paper to witness.] Look at that date and say whether that enables you to remember or not—I don't know anything about it—about the time you wrote it? A. August 1st, 1873. This is the date of an advertisement on the back of the paper.

Mr. Evarts—It only shows that is about the date of the newspaper. Of course it may have been written years before.

Mr. Fullerton—What paper was it published in?

The Witness [To Mr. Evarts]—What question do you wish me to answer?

Mr. Evarts—I only asked you if you can remember now about the date of its being written, whether that assists you anything about it. A. No, Sir; but I can procure for you the original.

Q. And the date? A. Yes, Sir; the paper which contains it.

Q. Will you look at that first article and say if that was written by you? [Handing witness a copy of *The Golden Age*.] A. No, Sir; the first article is a selection from *Hearth and Home*.

Mr. Beach—What was the question?

The Witness—He asked me if the first article was written by me, and I said no.

Mr. Evarts—If you look at it you will see what the text is.

The Witness—The second article was written by me, not the first.

Q. The first was taken from the newspaper, and you wrote underneath it a reply to it? A. A reply to it; yes, Sir.

Mr. Beach—Is that from *The Golden Age*?

Mr. Evarts—From *The Golden Age*.

The Witness—Perhaps I ought to inform you, Mr. Evarts, that that article was one of the numerous devices.

Mr. Evarts—Well, now—

The Witness—Which Mr. Beecher and Mr. Moulton and I entered into.

Mr. Evarts—Wait until I ask you.

Judge Neilson—Wait until the counsel interrogates you.

Mr. Evarts—There will be an opportunity for you to explain on the re-direct examination, anything that I omit.

The Witness—I don't care to make the explanation, Sir.

Mr. Evarts—Very well, then, as we none of us care about it.

Mr. Shearman—I read from *The Golden Age* of October 14th, 1871. There are two articles; one is written in reply to the other. I shall read only a part of that, to which it is a reply—just enough to explain the second. [To Mr. Beach.] Do you say you wish me to read the whole of what Mr. Tilton said?

Mr. Beach—Yes, Sir.

Mr. Shearman [reading]: "*In Memoriam—Theodore Tilton.*"

Mr. Evarts—Well, it is from *The Hearth and Home*.

Mr. Shearman—Yes, Sir; I read from *The Hearth and Home* of October 14th, 1871:

#### IN MEMORIAM—THEODORE TILTON.

[From *Hearth and Home* October 14, 1871.]

It is with peculiar sadness that we write these words. They recall the vision of the young man who sprang all at once into public favor, giving such evidence of genius as few men have furnished. Writing double-leaded leaders full of force and fire, singing songs full of sweetness, uttering orations full of wit and eloquence, his sunny looks wore at once the "triple crown of editor, orator and poet." Succeeding to the vacant chair of Beecher, he more than filled it. He introduced a new era in religious journalism. In those golden days he made his paper all that the name *Independent* could mean. It bowed neither to sect nor party, and its words scorched a villain in the ranks of its own friends as fearlessly as they did an opponent. The paper under his editorship scorned to follow its party. It led. Like a new knight, the gallant young journalist uttered his battle cry and rode bravely to victory. Men laughed at him, but they followed him. He had a noble ideal of journalism. He wrote witty things against an opponent, but did not use his columns to gratify personal spleen. And when the worst attacks were made upon him he said to a friend, "I must not let these things sour me. I cannot afford to let my own temper become spoiled. And I want to leave journalism better than I found it." His enemies said that he greatly over-estimated his own position. Perhaps he did. But there was no wronged or down-trodden person appealed to him in vain.

Mr. Shearman—The counsel for the plaintiff desire me to read the whole, including the poetry. The Court will pardon me for introducing so much poetry into the case.

He was a singer of sweet songs—songs full of brave cath-

Mcity of spirit, full of deep religious feeling, full of high moral sentiment—songs full of lofty patriotism. Nothing shows a man's freshness of heart more than his ability to please children. And from one ocean to the other, little children sang with him that most perfect nursery rhyme which begins :

"Baby Bly,  
Here's a fly:  
Let us watch him, you and I,  
How he crawls  
Up the walls,  
Yet he never falls!  
I believe with those six legs,  
You and I could walk on eggs!  
There he goes  
On his toes,  
Tickling baby's nose!"

In times of patriotic fervor his great "Bell Roland" rang out with no doubtful peal. The religious heart was touched with the sad minor key of such poems as "The Crown of Thorns," in which there is devoutness enough of feeling and wittiness enough of conceit, to make it worthy of Jeremy Taylor. There is a solemn genuine faith in his words,

"So in my heart of stone  
I sepulchre thy death.  
While thoughts of Thee, like roses blown,  
Bring sweetness in their breath.

"Arise not, Oh my dead!  
As He whom Mary sought,  
And found an empty tomb instead,  
Her spices all for naught.

"Oh Lord! not so depart  
From my enshrining breast,  
But lie anointed in a heart,  
That by Thy death is blest,

"Or, if Thou shalt arise,  
Abandon not thy grave.  
But bear it with Thee to the skies,  
A heart that Thou shalt save."

And then he wrote "A Layman's Confession of Faith," every line of which is worthy of quotation in an obituary such as this. There is one passage in it, which in this day of Woodhulls and free love advocacy we cannot forbear quoting :

"I love one woman with a holy fire,  
Whom I revere as priestess of my house;  
I stand with wondering awe before my babes,  
Till they rebuke me to a nobler life."

Never did this young Apollo write more fervently and gracefully than when he spoke of his wife and his home, and it is gratifying to know that his gallant devotion, so often expressed, so gracefully wreathed in his dedication of his poems to the sweetness and sanctity of home life, was an inspiration in the same direction to his crowd of admirers.

It is with inexpressible sadness, for we admired and loved him, that we bring this memorial article to a close. Can it be possible that we shall no more hear that brave voice pleading the cause of right and duty—that we shall no more hear that poetic gift breathing out sweetness, devoutness and purity of feeling. Can it be that he who struck down with remorse his best friend when he thought that friend recreant, shall not live to speak now against those who would defile the sanctuary of the home to which he was so devoted, teaching their doctrines of devils as a cloak to their lust? What would we not give for one stroke of that old scimeter at those who put darkness in the place of light. But we must bear our sorrow, mournfully reflecting on the light so brilliant that has gone out in darkness as utter.

We know there is a pseudo-Tilton who uses the graces of rhetoric to gild the character of a woman about whom it is enough to say that she edits a paper abominable in morals and

coarse in its utterances! There is a Tilton who writes insane things about spirits of ancient Greek orators inspiring the meretricious rhetoric of a woman who advocates free love! There is a Tilton who sees a Golden Age in French Communism. But that is quite another affair. We have hastened to pay our tribute to the memory of Theodore Tilton, ere this later and counterfeit Tilton should cause the world utterly to forget the brave deeds of Theodore Tilton the lamented.

#### MR. TILTON'S REPLY TO THE ABOVE.

To the Editor of *The Hearth and Home*:

MY DEAR SIR: I am fond of wit, even at my own expense. Your clever satire of last week, speaking of me as one dead, and giving me (as Captain Luce of the Arctic had) an opportunity to read, before I did, the estimate which my fellow countrymen will put upon me after my death, has almost tempted me into sending you a retort in kind—just for jest.

But I remember a story told of Dr. Williams and Dr. Emmons—two old Congregational clergymen whom you and I reverence more for their characters than their creeds.

They agreed with each other that as soon as either should die the other should preach the funeral sermon. Dr. Williams shortly afterward retired from the ministry, and, having nothing to do, composed with ornate pen a flowery and funereal tribute to his friend—under some such heading, I suppose, as "In Memoriam—Dr. Emmons." When the brilliant panegyric was finished, its author carried it to Dr. Emmons (just as you sent me last week's *Hearth and Home*) and treated him (as you treated me) to an *ante-mortem* monument to undeparted worth. The strain of compliment being high, Dr. Emmons, who thought he was getting more praise than he deserved, interrupted the reading by saying, "Is there not too much encomium?"—to which the reader suddenly replied, "Hash, Dr. Emmons, you are dead!"

But Dr. Emmons was not dead to the fine flattery of his friend, nor am I to yours. Furthermore, as in my case, the praise is tempered with blame, the latter, perhaps, being better deserved than the former. I will substitute for my first thought, which was fun, a sober second thought, full of serious intent.

If, therefore, amid the roses which you have heaped upon me, I can detect the red thorns or exact points of your criticism, they seem to be—

First. That I am an advocate of "Free Love."

No, my friend, you are wrong in this supposition. When and where have I ever advocated "free love?" In what writings or speeches of mine have you ever seen any vindication, or anything but condemnation, of the idea popularly known as "free love?" I have characterized this phrase as "a beautiful term designating a revolting thing." The original coiners of the word flung it as a reproach at certain socialists; and they meant by it the promiscuous intermingling or commerce of the sexes—an idea, which, to me, is an affront to our higher human nature—a degrading of men and women to a level with a lower world. "Free love," thus defined and practiced, is treason to good morals; and I am therefore opposed to it or to any other baseness.

But, in justice to a number of noble reformers (to whom more honor will be rendered in the next generation than they can look for in this), I ought to say that this term is used by them in a technical sense, as meaning "love, free from the civil law;" or, in other words, that marriage and divorce should be (at least to a great extent) removed from the realm of legislation and left (as religion is left in free countries) to be governed by its own higher law. If this definition shall be popularly and permanently attached to the term "free love," then, as I thoroughly believe in this idea, I shall cheerfully accept this designation.

My opinions on marriage and divorce are the same now as when I first formed them, which was during my college days, by reading the writings of John Milton. I teach no different doctrines now from those which I first faintly sounded on en-

tering (somewhat premature) into public life. Milton's essay on Divorce—which I studied for style and logic, and with a boy's natural repugnance for the whole subject—became, by that study, as much a part of my intellectual constitution as Blackstone's lectures are to a lawyer. If that great essay—by one of the first minds of the world—has ever been answered, I have not seen the answer. True, my friend Mr. Greeley sometimes overthrows it with a hasty paragraph or two, but it will live after *THE TRIBUNE* is forgotten.

Secondly, you chide me for vindicating a lady who has suffered more private sorrow, and more public obloquy than fall to the lot of ordinary mortals. This criticism I accept with pride. When I know a woman well, and believe her to be honorable and pure, and she is attacked by "the mob of gentlemen who write with ease," and is reviled by slanderers who strike at her from the safe shelter of an anonymous press, I hope I shall never be coward enough to withhold my own poor pen from her defense. I have an extensive acquaintance among public men and women of our time, including many whom I believe to be uncommonly pure and white in their moral and social character; for instance, Lucretia Mott, Horace Greeley, Mrs. Stanton, Charles Sumner, Harriet Beecher Stowe, Wendell Phillips, Laura Curtis Bullard, and others; and among these—the peer of any in all that constitutes personal purity of life—I place Victoria C. Woodhull. I speak from knowledge; I weigh my words; I mean what I say; and I stand by it. But I am ashamed of my many brethren of the press who, without evidence, without provocation, and without inquiry, have made haste to strike a woman whose private life is a white lily of blamelessness, and who, if altogether a fanatic, is also altogether a Christian.

Thirdly, you call me a Spiritualist. Well, so was President Lincoln. Why should you assassinate me on this account? There are more Spiritualists than Methodists; and the one sect has just as much right to its opinions as the other—at least, in a country which professes to tolerate all religions. But the truth is, that although I have seen many marvels of so-called spirit manifestations, I have no satisfactory theory on the subject; and I know too little of Spiritualism to write with authority concerning it, or even to bear the honorable name of membership in its fraternity. But I think I have enough fairness of mind to write a biography of Bishop Simpson from a Methodist point of view, or of Elder Evans from a Shaker point of view, or of Mrs. Woodhull from a Spiritualistic point of view—even though I am not a Methodist, or Shaker, or Spiritualist.

Fourthly, speaking like a Paris prefect of police, you denounce me as a Communist. Yes, I am. I accept your indictment as I would a rosette, and wear it in my button-hole. I never saw Henri Delescluse, but he was a man after my own heart, and I mourn him as I would any other hero or martyr. Communism is not agrarianism, as many people ignorantly imagine; it is republicanism, and Americans ought everywhere to honor it. The Commune offered to France what the Republic refused it—namely, local self-government. Among all the semi-successful frauds of our time, the greatest is the pretended Republic of which Thiers is at the head to-day, and of which I trust he will be at the foot to-morrow. The atrocities in Paris did not come from the Commune, but from Versailles. It was the Commune, not the Republic, that should have triumphed. A few writers and speakers among us have had the courage to applaud the Commune; such as Wendell Phillips, Charles A. Dana, George Wilkes and John Russell Young; and I rejoice to remember that not one of these clear headed men was ahead of myself, either with voice or pen, in vindicating the noblest attempt at political liberty which Europe ever saw or crushed. But the Commune will yet arise and reign! God speed it!

In conclusion, let me add that I have never been a contributor

to *Hearth and Home*, nor do I know that any of my writings (except your last week's quotations from the poems of my "green and salad days,") have ever been reprinted in your columns; but if you will give me a brotherly hint that I shall be welcome to the space of a second letter for the purpose of stating my views on the social questions now stirring the public pulse, I will gladly enable your readers to judge for themselves whether these views are right or wrong.

Meanwhile, for my own "hearth and home" (to which you so kindly allude) I send to yours (at which all the public find a weekly welcome) the fraternal greetings of yours, forgivingly,

THEODORE TILTON.

[Marked "Exhibit 53."]

#### ANOTHER POEM ADMITTED.

Mr. Evans—My learned friends say that this effusion may be read now [referring to the poem "French with a Master"] to be corrected afterwards, if it is found to be different. It is apparently complete. [Reading:]

#### FRENCH WITH A MASTER.

##### A NEW POEM BY THEODORE TILTON.

*Aimer, aimer, c'est à vivre,  
[To love, to love, this is it to live.]*

Teach you French? I will, my dear!  
Sit down and con your lesson here.  
What did Adam say to Eve?  
*Aimer, aimer, c'est à vivre.*

Don't pronounce the last word long;  
Make it short to suit the song;  
Rhyme it to your flowing sleeve,  
*Aimer, aimer, c'est à vivre.*

Sleeve, I said, but what's the harm  
If I really meant your arm?  
Mine shall twine it (by your leave),  
*Aimer, aimer, c'est à vivre.*

Learning French is full of slips;  
Do as I do with the lips;  
Here's the right way, you perceive,  
*Aimer, aimer, c'est à vivre.*

French is always spoken best  
Breathing deeply from the chest;  
Darling, does your bosom heave?  
*Aimer, aimer, c'est à vivre.*

Now, my dainty little sprite,  
Have I taught your lesson right?  
Then what pay shall I receive?  
*Aimer, aimer, c'est à vivre.*

Will you think me ever bold  
If I linger to be told,  
Whether you yourself believe,  
*Aimer, aimer, c'est à vivre.*

Pretty pupil, when you say  
All the French to me to-day,  
Do you mean it or deceive?  
*Aimer, aimer, c'est à vivre.*

Tell me, may I understand  
When I press your little hand,  
That our hearts together cleave?  
*Aimer, aimer, c'est à vivre.*

Have you, in your tresses room  
For some orange buds to bloom?  
May I such a garland weave?  
*Aimer, aimer, c'est à vivre.*

Or, if I presume too much,  
Teaching French by sense of touch.  
Grant me pardon and reprieve!  
*Aimer, aimer, c'est à vivre.*

..... Sweetheart, no! you cannot go!  
..... Let me sit and hold you so.  
..... Adam did the same to Eve!  
..... *Aimer, aimer, c'est à vivre.*

[Masked "H. D. 54."]

[Upbraiding laughter.]

Judge Neilson—That is quite sufficient, gentlemen—quite sufficient. ....

Mr. Morris—I guess we better accept that as the original.

Mr. Everts—Yes, Sir.

Mr. Fullerton—For fear the original is not as good as that, Sir, we will accept that as the original.

#### MR. TILTON'S FREE-LOVE DISCUSSIONS.

Q. Look at this article, Mr. Tilton, the article which contains the parts pencil marked there, and say if it was written by you and published in your newspaper? [Handing witness a copy of *The Golden Age*.] A. Yes, Sir. I beg your pardon, Mr. Everts. Did you call my attention to any special article?

Q. I asked about the article that has some pencil marks drawn against portions of it? A. Yes, Sir, I wrote that. My name is signed to it.

Mr. Beach—What is it?

Mr. Shearman—It is an article entitled "Mr. Tilton's Rejoinder to Mr. Greeley."

Mr. Morris—What is the date of it?

Mr. Shearman—Published in *The Golden Age* of September 9th, 1871. This is a long article constituting eight paragraphs. As only one of them is material to this point—

Mr. Everts—The others relate to other topics.

Mr. Shearman—Yes, Sir, they relate to other topics.

Mr. Fullerton—Do you read the article to which it is a reply?

Mr. Shearman—It is not published in this paper.

The Witness—Yes, Sir, it is published there.

Mr. Shearman—Oh, is it?

Mr. Everts—The rejoinder is published here.

Mr. Fullerton—If we have the sermon, let us have the text.

Mr. Beach—Then we shall have to read the whole of that article.

Mr. Everts—Well, we will read our part.

Mr. Shearman—I read the third paragraph of Mr. Tilton's rejoinder.

Mr. Morris—Just read Mr. Greeley's letter first.

Mr. Shearman—No, it is not necessary.

The Witness—Won't you read the whole article?

Mr. Beach—I think it is the rule, Sir, that where an answering letter is read, the letter to which it was a reply should be read also.

Judge Neilson—I think that is the rule. Perhaps if counsel will look at it they can judge whether it is material.

Mr. Everts—Your Honor, we understand exactly what the rule is. All that can be claimed by our learned friends is that it

gives them a right to read any part of the paper to which it is a reply, if they see fit. They cannot make us read it.

Mr. Beach—I differ with my learned friend in regard to the rule.

Mr. Everts—We had the opposite view in the early part of this trial.

Mr. Beach—Never, Sir, in this trial.

Mr. Everts—I think so.

Mr. Beach—No, Sir. You are mistaken.

Judge Neilson—I have had occasion to say that where one party puts a paper in they were at liberty to read a part of it.

Mr. Beach—No doubt, Sir.

Judge Neilson—But it was deemed all put in by them, and the other side could read any portion of it they thought proper.

Mr. Fullerton—That does not present this case.

Judge Neilson—No, Sir.

Mr. Everts—How does it fall to present this case? Supposing it is all in, are we obliged to read it all? Is not that precisely the question, and in accordance with every ruling, that a party reads what he thinks is important to himself, and the other side have a right to read what they think proper?

Mr. Fullerton—Then his answer is incomprehensible without we have the article to which it is a reply.

Mr. Everts—That is a misfortune.

Mr. Fullerton—I want to mend your misfortunes as well as I can by proposing that the whole article be read in the first instance, and then see whether we think the reply is appropriate.

Mr. Everts—I do not understand that we are obliged to read the whole article to get at the point which is important to us.

Judge Neilson—I think the whole must be deemed put in by you.

Mr. Everts—That may be.

Judge Neilson—And you read such part as you now think proper, and they can afterwards call attention to other parts. I think that will answer. [To Mr. Fullerton.] It may burden you with subsequent reading perhaps.

Mr. Fullerton—It won't be any burden for me to read anything that Mr. Tilton has written, Sir. [Laughter.]

Mr. Everts—This discussion between these two gentlemen—Mr. Greeley and Mr. Tilton—which was somewhat elaborate, represents other subjects, as I understand—I have never seen the letter—other subjects than this, and we have found a paragraph of Mr. Greeley's that seems to relate to this topic. If our learned friends prefer—

The Witness—The whole subject is one.

Mr. Beach—But this is offered as an admission or statement made by Mr. Tilton. Mr. Tilton says that "if a person, in making an admission against his own interest, refers to a written paper without which the admission is not complete, the contents of the paper ought to be shown before the statement can be used as evidence against the party."

Mr. Everts—Shown to the witness?

Mr. Beach—Shown to the witness? No, Sir; shown to the Court and Jury, who are to understand the admission and construe it.

Mr. Everts—Well, that is the rule of evidence that your Honor has passed upon, that it gives the right to the other side



to use it. There is not any rule by which we are obliged to read everything that they have a right to. It certainly has not been applied in this case.

Judge Neilson—Well, we will apply that now, leaving the other side to read, as yours, any portion they may think proper hereafter.

Mr. Shearman—I read now an extract from Mr. Greeley's letter, including the whole of one separate paragraph. The paragraphs are numbered 1, 2, 3.

The Witness—Mr. Everts, will you do me a personal favor, Sir? Will you do me a personal favor? Read this article yourself.

[Mr. Shearman laughed scornfully.]

Mr. Everts—It would be a contempt of Court, I am afraid.

Judge Neilson—Which part do you read; which section; which number do you read now?

Mr. Shearman—From the paper of September 9th, 1871.

Judge Neilson—The number of the paragraph you read?

Mr. Shearman—The first paragraph of Mr. Greeley's letter? [Reading:]

I. You ask me what I mean by "Free Love." Let me illustrate:

Here are a husband and wife, each fifty years old, who have lived in wedlock a quarter of a century, and have had six or eight children, of whom half survive. The pains and cares of maternity have nearly worn out the wife, while the husband is still in the prime of manly vigor and strength. He has filled a wider sphere and enjoyed better opportunities for mental culture than she has, and feels himself her intellectual superior. Among his acquaintances is a younger, fairer, fresher woman, not so richly dowered with worldly wealth, who admires and is admired by him—who, in fact, is willing, if invited, to be his "affinity," and he is more than willing that she shall. If they "take up" with each other, their arrangement, or whatever you please to call it, is just what I execrate as "Free Love." You know that such alliances exist. I feel that they are abhorred of God and a chief cause of human degradation, family disruption and general wretchedness. In short, I hold the man who has sworn to love and cherish one woman till death, *not free* to love another while that woman lives and strives to fulfill toward him the duties of a loving wife. Hence, I intensely hate "Free Love;" and I hate all inculcation that a marriage may rightfully be dissolved, except for flagrant, deliberate adultery, while husband and wife both live.

I now read the third paragraph of Mr. Tilton's reply, which is as follows, in this letter in which this subject is referred to:

III. A just inference from your letter is that I advocate Free Love. On the contrary, I stiffly oppose it. The latest bulletin of Mr. Stephen Pearl Andrews castigates me because I hold that the heart's ideal is monogamic marriage—the supreme love of one man for one woman through life, and (I hope) beyond death. But this is only my own view—I do not judge for others. Furthermore, I hold that love, and love only, constitutes marriage; that marriage makes the bond, not the bond marriage: and that as the contract is to "love and honor," so when the love and honor end, the contract dissolves, and the marriage ceases. I cheerfully relieve Mr. Henry B. Blackwell and other martinets in Boston by frankly acknowledging that I differ in these views from most other woman suffragists. But I am willing to take all the obloquy which this difference invokes on the few who are right from the many who are wrong. I would no more permit the law of the land to enchain me to a woman whom I did not love, or who did not love me, than I would permit the same law to handcuff

me as a slave to a master on a plantation. There are higher laws than civil statutes, and I am a rebel against the State's too impertinent interference between man and wife. Love should be like religion—free from mandate by the civil law. Now, you may strike me for saying this, but the next generation will gild this sentiment with fine gold. As Kossuth said, "I can wait."

[Paper "Marked D 54."]

Judge Neilson—There is something farther.

Mr. Bench—It is, nevertheless, an answer to the paragraph read by Mr. Greeley.

Judge Neilson—It should be read now, I suppose.

Mr. Fullerton—It is our right to read it now, if they do not, I believe.

Mr. Shearman—We will read it—the 4th and 5th:

IV. You say, "I hate all inculcation that a marriage may be rightfully dissolved except for flagrant, deliberate adultery, while husband and wife both live." I am ashamed of such a sentiment from your pen. Thousands of good women, like Mrs. McFarland, have obtained divorces from drunken and beastly husbands, not on account of adultery, but of sottishness or cruelty. By what right, divine or human, shall you remand these emancipated women to the loathsome embraces of men from whom they have fled in fear of their lives? Thousands of women, appealing to merciful and humane courts, have obtained divorces because husbands have deserted them, or mangled them, or starved them, or otherwise wrongly treated them. Why will you cruelly affront all womankind, by saying to each one of these suffering women, "Your divorce is stripped of all moral sanction, and I point at you the finger of obloquy, because you have asked the law to deliver you out of the jaws of death, and out of the gates of hell."

V. You have instanced a married pair who, after a quarter of a century of wedlock, exhibit the husband in his prime, the wife in her decay. "He," you say, "has filled a wide sphere and enjoyed better opportunities for mental culture than she has, and feels himself her intellectual superior." What an innocent confession you here make of your own damning theory of marriage! Doom a woman to be man's inferior from the very beginning of her married life, and what can you expect her to be at the end of it? Why does a woman, after twenty years of wedlock, show more physical and mental dilapidation than a man? It is because, during these years, you and your fellow thinkers sentence her to be man's subordinate, not his equal—his servant, not his mate. Why should "the pains and cares of maternity wear her out," except that you enacted a common law of marriage which either tyrannously forces or tacitly expects a woman to bear more children than she wants? Why should she be intellectually stupid and empty, except that, all her life long, you and THE TRIBUNE have shut her out from her husband's opportunities? Why should her husband have "a wider sphere" than hers, except that you and he have conspired to crowd her into a narrower one? Why should he enjoy better opportunities for mental culture than she, except that you have written and published your threats that even if your own daughters should attempt to fit themselves for something higher than household employment, or, in other words, should try to rise to the level of their father's genius, you would step down like Jacob sorrowfully into the grave? I frankly assert, because I solemnly believe, that the young men and women who marry to-day, and who derive their notions of the marriage relation from such teachers as you, will inevitably grow apart, until, at the end of a "quarter of a century of wedlock," they will find themselves in the very antithesis which you have described. Beware lest they curse your memory for bringing them to it!

## IMPERSONALITY IN JOURNALISM DISCUSSED.

Mr. Evarts—[Handing paper to witness.] Look at that issue.

The Witness—Will you read it?

Mr. Evarts—No; nothing exhibitary is admitted in a court of justice.

The Witness [after a pause]—Did you ask me a question, Mr. Evarts?

Mr. Evarts—I asked you to look at that and at the issue of the paper, and see if that appeared in the paper when you were its editor? A. Yes, Sir; it is an extract from *The Troy Times*. I didn't write it.

Mr. Evarts—No; it don't purport to be written by you.

The Witness—I don't think I ever saw it until this moment.

Mr. Evarts—Still it is in your newspaper. [To the Court.] I propose, if your Honor please, to read this article which I showed my learned friends.

The Witness—It is a little extract made in the news column from a Troy paper.

Mr. Evarts—Well, we will see what it is.

Mr. Beach—I understand the counsel to propose to read an extract from *The Troy Times*, which was published in *The Golden Age* during Mr. Tilton's proprietorship of that paper. Mr. Tilton says he does not know that he ever saw it until it is shown to him now on the stand.

Judge Neilson—It cannot be read, therefore.

Mr. Morris—He says he thinks he did.

Mr. Beach—We object to it.

Judge Neilson—It cannot be read.

Mr. Evarts—We offer to read this paper, *The Golden Age*, of which Mr. Tilton was sole editor and proprietor if I understand the evidence.

The Witness—The sole editor is always the man who least reads his own paper.

Mr. Evarts—Well, some of the subscribers, perhaps, don't read it any more. [Laughter.] I don't know how that can be; but the proposition is, if your Honor please, that by his publication of it in this paper Mr. Tilton ostensibly holds himself out as the presenter of these propositions to his people—his public. Now, by itself it would amount to perhaps very little, but having shown by the articles already written, and in some degree, perhaps a less degree, by the oral evidence of this witness, his relations to the opinions of Mrs. Woodhull, we think we have a right to present to the Court and the jury this publication of those opinions without dissent or reproach as the position of his paper on this subject thereby shown.

Judge Neilson—I think you cannot read it unless it appears it was published with his knowledge. My friend, the late District Attorney, suggested that question the other day. He indicted the editor of a local paper for an article published in it, and the indictment failed because the article appeared in the paper without the knowledge of the editor. I always thought that principle was correct as applied to his case. There are very many things in a paper that an editor may not see, that may be put in by a subordinate, which he may not think of sufficient importance afterwards to correct.

Mr. Evarts—I agree. It is not on the ground of a personal approval of a particular difficulty.

Mr. Fullerton—Especially if the editor is absent three months in a year lecturing.

Mr. Evarts—But if a public editor presents an article of this kind in consonance with the direct editorial views of his own putting forth in the same paper, we consider it as an element of the paper's position on that question, to wit, the paper of which he is the responsible and continuing editor. I will ask him about that.

The Witness—"The editor holds himself in no wise responsible for the views of the correspondents," printed over the top of the paper.

Mr. Evarts—This is not the views of the correspondents, and so far as that goes perhaps it is an advertisement, but you hold yourself responsible for all the rest. However, I will ask you now whether you saw that article and approved of that extract? A. I don't think that I ever saw it until this moment.

Q. And approved of its insertion in your paper? A. I neither approved nor disapproved of it. It is the habit of *The Golden Age*, and of any other liberal, fair-minded newspaper, to print the news, and here is an extract.

Q. From a speech of Mrs. Woodhull? A. From a speech of Mrs. Woodhull, printed without comment, exactly as in the same column an extract from the speech of Mr. Evarts might be printed without comment. [Laughter.]

Judge Neilson—He means the Boston gentleman. However, it had better be omitted. It cannot be read.

Mr. Evarts—It is rather an empty compliment, for nothing of the kind has ever been done for me.

Mr. Beach—It proves you cannot save yourself from distinction, however much you may try.

Mr. Evarts—I have not assumed that form, so far, in *The Golden Age*, I believe. [To the Court.] Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

Mr. Evarts—[Handing paper to witness.] Here is an issue of Sept 16th, 1871—an article on marrying and unmarried. That is your newspaper? A. That is my newspaper, Sir.

Q. And that is not an extract from any other paper? A. No, Sir.

Mr. Evarts—I offer to read this article.

Mr. Fullerton—That does not entitle the gentleman to read it.

Mr. Evarts—Well, I don't know that—extracts from other papers, anything that appears in quotation marks, is the question disposed of heretofore. Now, I propose to hold an editor responsible in the sphere of public opinion and morality for articles that are published in his newspaper, whether he is personally the writer of them or not, if they appear as the issue of his paper and not credited to any other source.

Judge Neilson—Original matter?

Mr. Evarts—Original matter.

Mr. Fullerton—That is a different question. Does this appear to be original matter? He has not yet shown that.

Judge Neilson—Inspect the paper and see.

Mr. Fullerton—I don't want to inspect the paper and see.

The gentleman has not made his proof and laid the foundation for the production of it.

Mr. Evarts—My proposition is that an editor and publisher of a public newspaper is responsible to public opinion and public morals for the original articles which are put forth in his newspaper, whether he personally writes them or not. The very essence of the independence of journalism as now claimed (and it is not for me to say it is not justly claimed either) is that there must be an impersonality in regard to what a newspaper itself proposes and sets forth as its, the newspaper's, utterances to the public. Now, the other question was of an extract from another paper, and it was a very different matter.

Mr. Beach—They defended it on the same principle.

Mr. Fullerton—The proposition is this, that Mr. Tilton shall be judged by everything that appears in *The Golden Age*, except that which is an extract from another paper.

Mr. Beach—You are right.

Mr. Fullerton—I am right. That is the proposition of the other side, and it is an extraordinary proposition. How can we hold Mr. Tilton responsible for what appears in that paper without his authority and without his knowledge or sanction in any way? Surely that cannot be done. Your Honor will perceive that correspondents claim the right to be heard in the public press, and they are given an opportunity to be heard, not because their sentiments are in harmony with the sentiments of the editor or proprietor of the paper, but they may be admitted for the purpose of combating them. That is often the case. Now, there is not the slightest proof in this case, so far as this article which they now propose to read is concerned, that it was ever brought under the observation of Mr. Tilton, or that he ever knew that one line of it had ever been published in *The Golden Age*. Now, until they bring the knowledge of it home to him, to show that he approved it, he is not to be responsible for it. It certainly would be extraordinary if an editor was responsible for an article extracted from another paper and published in his own paper, when he put it there for the purpose only of combating it and showing its falsity, and showing its immorality. An editor is sometimes held legally responsible for everything that appears in his paper, but that question arises in a different way and under different circumstances, and in a different case from the one now on trial. They seek to hold him morally responsible for what is in his paper. They seem to say those must be his sentiments because they are published in his paper; but that is a *non sequitur*. They are not his because they appear there at all.

Mr. Beach—May I add a single word, if your Honor please? I think, with reference to the principle and the object with which this character of evidence is offered, we can very readily discern the principle by which its admission should be governed. These articles are offered as declarations made on the part of Mr. Tilton, expressive of his sentiments in regard to topics which are considered on the other side odious, for the purpose of identifying him with what are called the "advanced or libertine opinions on the subject of marriage," and that relation. It is now offered to prove an article which was published in the paper, of which the plaintiff was proprietor. It is sought to prove that that article is an expression of the opinions, upon a

given subject, of Mr. Tilton. There is not proof that he knew of the publication of the article. There is not the slightest proof that he approves of the sentiments which it expresses. But now, Sir, looking at the purpose and effect of the proof, upon what principle is it that Mr. Tilton is to be judged, by an article which appeared in a paper with which he was connected, when it does not appear, even presumptively, that he was acquainted with the contents of the article; and when it may, on perchance does, express opinions which would be entirely repulsive to his judgment and heart? Look at it in another light, and by analogy. A principal is sometimes held to be responsible for the declarations of his agents where these declarations are authoritative and made in the course of the business which has been confided to the action of that agent. That is not the relation as between the proprietor of a newspaper and the paper itself. These are not declarations made by an agent empowered to express the sentiments of Mr. Tilton upon the marriage relation. The relation of principal and agent is not established, nor is the extent of the authority established which would confer upon a writer for that paper, although in the employment of Mr. Tilton, to express or reveal the opinions which Mr. Tilton may entertain upon this subject, and in whatever light you may regard it, Sir, as it now stands unaided by proof of knowledge or approbation on the part of Mr. Tilton, it is simple declaration of a third party made through an organ which was generally controlled by the plaintiff. Now, I submit to your Honor with great confidence, but with respect, that articles of that character, expressions of that character not traced to Mr. Tilton or to his approval, should not be received for the purpose of characterizing his sentiments upon any subject. But your Honor has decided that question. I submit it is precisely in principle the same proposition which was submitted when the extract from *The Troy Times* was offered to be read. That was published in Mr. Tilton's paper. It was his paper, in some degree his agent or his oracle, but yet he is not responsible—when his private and personal opinions are sought to be attached to him he is not responsible for all the expressions which may appear in the paper. If this is admitted, why was not the extract from *The Troy Times* admissible? If without any proof, knowledge or approval, he is to be judged by this article, why not by the article which appears in his paper, whether it be an extract from another or not. This is not his composition, this is not his declaration of sentiments. It is the expression of a third party, precisely the same as the article from *The Troy Times* expresses the opinions and sentiments of another, and it seems to me the principle applicable to the two cases is perfectly identical, and it must be recognized as a sound principle.

Mr. Evarts—Now, if your Honor will observe the attitude which Mr. Tilton and his newspaper occupy to the subject under discussion, and in reference to which the testimony is pertinent, if pertinent at all. Having shown that Mr. Tilton is the editor and proprietor of this newspaper, whatever is the character of his newspaper as put forth in its issues to the public, upon which the public pass in denouncing his publications and his position as a publisher of opinions in this community, calls upon him, not on the question of his individual responsibility

as author of this or that paragraph, but upon his editorial, his proprietorial responsibility for diffusing these sentiments through the community. He is held civilly responsible for trespasses upon individual rights in an action of libel, no matter whether he wrote it himself or not. The law has settled that question, that he who publishes is responsible for the publication; and in the case of criminal responsibility, the law is no doubt as your Honor has suggested. But it is *prima facie* enough to hold criminally an editor, that the complained of article for which he is criminally prosecuted is in his paper; and it depends upon him to prove, not only that he did not write it—that would have been no excuse for him—but that it was not inserted with his knowledge and under general authority which he had given to a subordinate in relation to such matters; but beyond that, that when its existence was brought to his notice, he did all that he could to extirpate it from the paper and exclude it from circulation, as in the case to which your Honor refers, in the matter of the prosecution of the editor of *The Argus*; for I assume that is the case to which your Honor was alluding. Now, as bearing upon the fortunes and prosperity of this *Golden Age*, the credit and esteem of Mr. Tilton with the community. No discriminations, as matter of fact, are made by the readers of a journal of those who approve or those who denounce such sentiments, whether it is known that they are from the pen of Mr. Tilton. They are from his office, from his issue, from his presentation to public influence, and for public results of those doctrines in his newspaper; and it might be, if it had been important, that a ground might have been found to press upon your Honor that when he puts forth speeches of this or that public orator, whether Mrs. Woodhull or any one else, that his paper becomes an organ and a means of dissemination of those opinions, and if they are odious, if they are offensive, if they are destructive, and the paper is systematically made the means of their dissemination, why, on the sphere of criminality and morality, which is the sphere which we are now discussing, the editor is responsible as being his issue of those sentiments, whether he wrote them with his own hand or not.

Judge Neilson—In the case of an action of libel, the responsibility for the publication of the article, although it may be taken from another paper, rests upon the principle, that the third person injured—the plaintiff in the case—is to be protected, for his individual protection. The case of an indictment where that is referred to, the Court had reference to the public interest, the public security. The other question, to wit, whether articles published tended to make *The Golden Age* a good and proper paper, or leave it subject to criticism, and so fall into disrepute and generally inculcate bad manners, is not a moral—is not the question before us. The question before us has to do with the individual sentiments of this witness.

Mr. Evarts—Yes, Sir; we agree to that.

Judge Neilson—If the case before us involved the question whether he was a good editor, whether he kept his contracts as published, or not, that again would be different; but this goes to the state of morals of the witness, to his individual

sentiments, and I, therefore, think the inquiry should be confined to articles written by himself, or published with his knowledge and sanction; and as the proof now stands I think this article cannot be read.

Mr. Evarts—Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

#### MR. TILTON SHIELDS HIS CONTRIBUTORS.

Mr. Evarts—[Handing paper to witness.] Look at that article and say if you wrote it?

The Witness—Mr. Evarts, will you step here a moment. [To the Court.] May I speak confidentially to the counsel a moment, your Honor.

Judge Neilson—Yes, Sir, if he permits it.

[Mr. Evarts and the witness here consulted together for a short time.]

Q. Now, I ask you if you wrote that, Mr. Tilton? A. No, Sir.

Q. Was it published with your knowledge and approval? A. No, Sir.

Q. Did you in any way exhibit, either in that issue or in any subsequent issue, any disapproval of that article? A. I didn't observe either this article or the other, until two or three weeks after my attention was publicly called to it. Then I ascertained to my great astonishment—

Q. You mean the one that was excluded? A. Yes, Sir; they were both written by the same pen.

Q. That purported to be a speech of Mrs. Woodhull? A. No, Sir. Here are two articles printed from a correspondent.

Mr. Evarts—No, I have not asked you that.

The Witness—I thought this was another. There are two in succession.

Mr. Beach—You were asked if you expressed any disapproval? A. I did; I expressed a good deal of dissent and regretted their publication.

Mr. Evarts—Don't talk about their publication, who was the writer of that one? A. I find on looking at this one that it is written by a member of an orthodox Congregational church and a contributor to *The Christian Union*, and a member of Mr. Beecher's coterie of writers.

Mr. Evarts—Now, we may as well have the name—otherwise we will all be aspersed. Who was the writer?

The Witness—[To the Court.] I ask your Honor's permission to shelter the name of the writer, it being a lady.

Mr. Evarts—I don't know who the lady is, nor do I care who she is, but it seems to be some disparagement—

Judge Neilson—I hardly think so. I think the witness should omit it.

Mr. Evarts—The whole circle seems aspersed.

The Witness—I called Mr. Evarts to me and gave him that hint in private.

Mr. Evarts—I told you I had not asked you who wrote it.

The Witness—But I told you it was written by one of Mr. Beecher's personal friends.

Mr. Evarts—You gave it to me in confidence, and I didn't divulge it.

The Witness—But you mean to put a question to me to make me divulge it.

Judge Neilson—You can answer whether you wrote it.

Mr. Beach—I think the witness and Mr. Evarts should continue this discussion during the recess. It is now one o'clock. [Laughter.]

Mr. Evarts—We should lose our audience, which is the only motive for its continuance. [To the witness.] Now, you have not answered, I think, my question whether you had, either in this issue, or in any subsequent one, said anything in your paper in discountenance of this article or approval of it? A. No, Sir: I spoke personally about it.

Q. You mean to the writer? A. Yes, Sir.

Q. Not to the public? A. To some of the writer's friends.

Mr. Evarts—Now, I apprehend, if your Honor please, that I am entitled to read the article.

Judge Neilson—The same ruling as to the other.

Mr. Morris—He says he disavowed it.

Mr. Evarts—He says he did not in his newspaper disavow it, but spoke to the writer about it. We so understand him. He spoke to the writer, he says.

Judge Neilson—He didn't disavow it in his paper. He did otherwise disavow it. I think I shall rule it out.

Mr. Evarts—Your Honor will note our exception. The article has so bad a name, I think it ought to be read on its own account to show that it is not so bad as it is represented.

Judge Neilson—We will now take our recess. [To the jurors.] Gentlemen, please be in your seats punctually at 2 o'clock.

#### THE WOODHULL BIOGRAPHY AGAIN RULED OUT.

After recess the cross-examination was continued as follows:

Mr. Evarts—[Paper handed to witness.] Look at this and see if that is an issue of your press? A. All except "B. F. Tracy, January 22, 1874."

Q. Well, that happens to be the name of the owner of it, that is not printed, is it? A. No, Sir.

Q. That hardly could be an issue of any man's press, could it? A. Certainly not of mine.

Q. Well, I ask you if that was the issue of your press? A. I say all but the written name on it.

Q. This is the Life of Mrs. Woodhull, about the manner of composition of which you testified in your direct examination. A. Not her life, Sir, but a narrative of it.

Q. Well, a biographical sketch of it? A. Yes, Sir.

Q. It is the paper, the production, of which you spoke as to the manner of its composition? A. Yes, Sir.

Mr. Evarts—I offer this in evidence now. The witness has given us statements concerning its composition, as your Honor will remember. In his direct examination introduced by my learned friend. I suppose, of course, I am entitled to put it in evidence.

Mr. Beach—If your Honor please, I do not deem this publication admissible. It has been once ruled out by your Honor. Perhaps the circumstances are somewhat changed under which it is now offered. But it appears that that sketch of Mrs.

Woodhull was corrected after preparation by her husband by Mr. Tilton, and certain parts of it which were not his authorship, as they were prepared by the husband of Mrs. Woodhull, were omitted in the sketch which was written and prepared by Mr. Tilton, with which he was not in harmony, and that it was, so far as he had any connection with it, prepared and issued in pursuance of an arrangement between himself and Mr. Beecher and Mr. Moulton for the purpose of suppressing the scandal which is now under examination. It is offered for the purpose of concluding Mr. Tilton, or identifying him, at least, with the opinions of that lady, which she expressed. And when it appears as plainly as it does under the evidence as it now stands, without contradiction, that they were not his own opinions in regard to that person; when it is clear that it was prepared for a common purpose between the plaintiff and Mr. Beecher, it seems to me that it is immaterial. The object of its production, as I said, was to identify Mr. Tilton with certain opinions and sentiments, and to prove his approbation in regard to the public history of this lady and her opinions. When it is perfectly apparent that it is not a real expression of his views; that it was a device or stratagem arranged upon between these parties for a specific purpose, acknowledged and known to be a mere device, and not a candid and sincere expression of an opinion on the part of the writer, it seems to me that the introduction of such a paper is wide from the purpose for which it is offered, and that it is in itself immaterial. I therefore submit to your Honor that the general opinions which may be given by Mr. Tilton in regard to the character of a public personage, even if they were the expression of his own real sentiments in regard to that person or to the doctrines which she might advance, are immaterial to any issue in this case. But your Honor will further perceive, so far as I have observed the nature of the evidence now offered, that it is not by any means in itself an adoption of the opinions which are imputed to that lady. It is a sketch or history of a public person in connection with the particular subject out of which, or in connection with which, she has grown notorious. Now, how does that become material, Sir, in this action? It is only upon the argument and theory that such a sketch or history of a public personage is an approval of the doctrines or opinions which that person may be supposed to maintain. I submit to your Honor that a history either of a nation or an individual, is not, in its whole, matter of evidence as against itself, either in regard to the facts or the events which it may detail, and that the approbation of a historic personage by a historian is by no means an adoption of all the opinions or an approval of all the acts which may be attached to that person. The effort is, by the production of this sketch of the life of Mrs. Woodhull, to connect and identify Mrs. Tilton with all the opprobrium, whether just or unjust, which the public may have attached to her supposed notions or doctrines. Now, your Honor must see in the production which is offered, some direct approval or adoption of those supposed sentiments, that a historian cannot be charged, as I have said to your Honor, with the character of the nation or individual which may be the subject of his writ

ing. And in that view, if your Honor please, you have heretofore excluded this article as a whole, and have permitted only, I believe, a certain extract or certain extracts to be read from it for the purpose of applying or characterizing certain other testimony.

Judge Neilson—It was the other article.

Mr. Beach—It was from the other article, then, I understand. Now, I submit to your Honor, that before this paper should be received as a whole, it should be submitted to your Honor in some form, either by reading or by personal examination, so that you may understand the nature of its contents and see how far it may be material and appropriate to the issue we are trying. Because, your Honor will perceive, the examination and cross-examination thus far have raised the necessity, and this will but increase the necessity of examining in regard to the real sentiments which Mr. Tilton may, at the time, have entertained in regard to this person, or in regard to the opinions and tenets which were publicly imputed to her at the time. It seems to me we are wandering far off into ranges of collateral inquiry, which are unnecessarily occupying the time of the Court, and will not tend to any elucidation of the particular interests which are to be passed upon by your Honor and the Jury. We, therefore, object to this article as it is offered, in bulk.

Mr. Evans—This seems to be the simplest matter in the world, if your Honor please. Evidence has been introduced in the direct examination of this witness concerning his composition of this book; how, at one stage of its progress, it had dissatisfied the subject of the sketch; and how he subsequently completed it that night, occupying the greater part of the night, and read it to the family of that household the next morning, and it was pronounced a perfect success; something of that kind; some very high encomium passed upon it by that lady and her family. Now, when we undertake to show the thing that he did, they say we cannot show the thing that he did; the manner of its being done, is the only thing that is suitable in evidence. Now, that seems a monstrous proposition. They can introduce in direct evidence from this witness, the author of this book, of the way he wrote that book, and that is pertinent evidence; and then, when we undertake to prove the thing that he did, that is not pertinent evidence. Now, in regard to some general views, they won't, it seems to me, bear examination any better than this particular objection. My learned friend speaks of the state of the evidence as uncontradicted in regard to the degree of harmony that existed between the opinions of this witness and author and this lady, the subject of the memoir. Well, it does not follow that because testimony is not contradicted that it is accepted, and in the same sense in which my learned friends may wish it to be by the triers of questions of fact. But under the evidence it certainly is a question for this Jury to determine if it be a subject to be discussed as an element of fact in this case, what the degree of sympathy, of unity, of confederacy between this lady and this witness and author, in respect to the dissemination of these doctrines and the glorification of the chief champion of

them in this country creates. I know no better or safer way for the witness than to take his own eulogy upon the woman, coupled with his own explanation of how he happened to give the eulogy. There is no injustice done in that. In regard to a supposed concurrence on Mr. Beecher's part in this production—well, that seems rather fanciful, because all that has been said about Mr. Beecher in the connection was that he approved of stopping the dissemination of these slanders by kindness and influence with this lady. He never has been heard to approve of this *Life of Victoria Woodhull*, or its sentiments, or its applause. But if he had it would not make it any less important that, instead of the vague, uncertain and nebulous views about the lady and about the author in connection with the work, the work itself should be the subject to which attention is to be directed—whether Mr. Beecher on the one hand or Mr. Tilton on the other is to be held responsible for it. Now, the connection of this subject with the issues in this cause is two-fold: First, in its primary relation as the evidence of sentiments, of associations, of commitment, of involvement, in these doctrines and with their representative as bearing upon his position then before maintained in reference to the more accepted views of religion and of morals, and the more acceptable organs of public influence through which Mr. Tilton had been acting. It bears also strongly, as your Honor will well remember, upon the question of the swift destruction upon the interests of *The Golden Age* and its proprietor, of his position and repute before the public which followed from this publication—this very publication, and to meet any ideas that are to be introduced that any harm has come to his prosperity or his fortunes in consequence of the complaint he now makes of the injury which he has suffered from this defendant, and which from the principal issues and the issues on which the whole case depends. Now, if your Honor please, on the simplest proposition, if evidence concerning the thing has been given, the manner of its composition, why then the thing itself may be shown, and then on the grounds I have mentioned it seems to me clearly admissible.

Mr. Fullerton—I think it would be well, if the Court please, to understand the exact attitude of the persons interested in suppressing this scandal in 1871, when this so-called biography was published. Your Honor will recollect that, prior to its publication, this card of Victoria Woodhull appeared in one or more of the New York papers, in which she foreshadowed an intent upon her part to publish this scandal to the world. As a matter of course, this was a cause of great alarm and apprehension, an alarm which reached Mr. Beecher as well as Mr. Tilton. If it lay in the range of human effort it was to be suppressed. They came to the conclusion to leave nothing undone which could be done for the purpose of silencing this threatened exposure. They met together; they consulted as to what should be the course they should adopt to accomplish a common end and to effectuate a common purpose. They supposed that the scandal was effectually suppressed at that time, but here a new danger had arisen, a lion in the way, or, considering the sex of the person

who threatened the exposure, I may term it a lioness in the way, not the less dangerous. And it was agreed that Mr. Tilton should go forward to extract the teeth of this dangerous animal, and to substitute the kindly purr for the wicked and threatening growl. He went forward to accomplish that end, not only on his own behalf but on behalf of Mr. Henry Ward Beecher, and with his approval. And, Sir, he wrote that biography for a common purpose—to repress this scandal for the benefit of the one as well as for the benefit of the other, and when his labors closed he received his commendation. I suppose that if to accomplish that object, Mr. Tilton had been called upon to write a glowing eulogy upon Judas Iscariot he would have done it, and it would have received the defendant's blessing. And now, Sir, it is with a bad grace that Mr. Beecher, the defendant in this case, turns upon Theodore Tilton and holds him responsible for the sentiments expressed in that biography, holding him up as an immoral man and promulgating immoral and dangerous sentiments in the community, for the purpose of relieving himself from the consequences of the charge now preferred against him. I call your Honor's attention to these circumstances to the end that you may see that as the proof now stands, Mr. Beecher is to be held responsible for this publication as well as Mr. Tilton. If it should reflect, peradventure, upon the one it reflects equally upon the other. Mr. Beecher will be held responsible for it under the evidence in this case as much as Mr. Tilton, and I think that neither, under the circumstances, is to be held responsible for it. When your Honor views the circumstances which gave rise to the writing of that life, the object which these parties had to effect, and that they effected it by the publication of this biography, you will see that it is improper testimony in this cause, and can serve no good purpose if it is read in evidence.

Mr. Evarts—I am at a loss to perceive, if your Honor please, why, because Mr. Beecher will be effected by it, it makes it any the less improper to be offered in evidence.

Mr. Beach—I think, your Honor, that in making these objections the usual order of argument should be pursued.

Mr. Evarts—Why, then, these new suggestions?

Mr. Beach—There are no new suggestions; they are only amplified and enforced.

Mr. Fullerton—I shall not fail to make a suggestion for Mr. Beecher's benefit, if the other side fail to do so.

Mr. Evarts—And, after all, what you say in his favor may not go very far then.

Mr. Fullerton—Well, it may go far enough to reach him and do him good.

Mr. Evarts—And get his thanks.

Mr. Fullerton—Yes, as Tilton did.

Mr. Evarts—Moulton has had so many! Now, if your Honor please, this is really a matter of considerable importance in regard to the effect of the evidence in this cause. Here is a proposition to prove. We now agree when it is in it may be wrested or probably used by my learned friends to the destruction of the defendant. That is not the question now. And ever since the judgment of Solomon as to the mother of the child you can generally tell which has the true

affection for the piece of testimony, the one that wants it in or the one that wants it out.

Judge Neilson—I think I must rule it out, Sir; I can not receive it.

Mr. Fullerton—Solomon's judgment was as to the child, not the mother of it.

Mr. Evarts—Well, the child; this is the child.

Mr. Fullerton—Yes, but it turns out to be an illegitimate one.

Mr. Evarts—Mark this for identification.

[Book marked for identification.]

Judge Neilson—I ask the reporters to remember that any movement on their part or any conversation on their part, however low, is fatal to the hearing of the reporter who happens to be further off, and is very oppressive. They ought to be considerate towards one another.

#### THE CLEVELAND LETTER ADMITTED.

Mr. Evarts—Your Honor will be so good as to note our exception to this ruling. The Cleveland letter, Sir, of which we have now a better record from the files of the *Herald*, is produced. [Book shown to witness.]

Mr. Shearman—Date of September 2d.

The Witness—Well, what of it?

Judge Neilson—See if you recognize that as the Cleveland letter.

Mr. Beach—Whose? Mr. Beecher's?

Mr. Evarts—Yes, Sir; Mr. Beecher's letter. [To the witness.]

Look at it at your leisure.

The Witness—Do you wish me to read it?

Judge Neilson—At your leisure. Look through it enough to see whether it is the letter.

Mr. Evarts—[Producing a sheet.] Here is a more manageable form of it. I suppose it is the same thing.

The Witness—Well, I will read it.

Judge Neilson—Perhaps by recalling the mode of statement or argument—

The Witness—Here is a letter dated "Peekskill, August 30, 1866," signed "Henry Ward Beecher," and I presume it is the Cleveland letter.

Judge Neilson—See if you recognize the sentiment or argument.

The Witness—I don't think there was any argument used. [Examining the paper.]

Mr. Evarts—Have you looked at it, Mr. Tilton? A. Satisfactorily, Sir; for what?

Q. To answer whether that was the basis of the controversy.

A. I have no manner of doubt, Sir, that this is the letter.

Mr. Evarts—I offer it in evidence.

Mr. Beach—We object to it.

Judge Neilson—I think we will receive it, Sir. It is supposed to be the basis of some departure between them.

Mr. Beach—That may be, but it is not at all admissible.

Mr. Morris—Well, that, if your Honor please, will render it necessary to read the speech of Mr. Beecher, in reference to that letter, in the Academy of Music, subsequently. It will let on the whole of that matter, that it will take a week to read.

Mr. Beecher made a speech in the Academy of Music shortly after, retracting that letter, a long speech which I had the pleasure of hearing—about two and a half hours. It will be necessary to show it.

Judge Nelson—No. The proof of the general fact that he made it will be sufficient.

Mr. Morris—No; we will have to read the speech to show that he did.

Judge Nelson—I think this is admissible under the evidence.

Judge Porter [Reading]:

LETTER OF HENRY WARD BEECHER ON NATIONAL RESTORATION.

In their letter of invitation to Mr. Beecher to act as chaplain, the Special Committee of the Soldiers' and Sailors' Convention, to be held at Cleveland on the 17th, say: Your name has been selected by the Executive Committee from sincere admiration of your character and as the only tribute within their power to pay in acknowledgment of your noble devotion to the cause of the Union and your earnest and increasing efforts in behalf of our soldiers and sailors during the recent war.

REV. HENRY WARD BEECHER'S REPLY.

PREAKILL, Thursday, Aug. 30th, 1866.

CHAS. G. HALPINE, Brevet Brig.-Gen.; H. W. SLOCUM, Maj.-Gen.; GORDON GRANGER, Maj.-Gen., *Committee*.

GENTLEMEN: I am obliged to you for the invitation which you have made to me to act as Chaplain to the Convention of Sailors and Soldiers about to convene at Cleveland. I cannot attend it, but I heartily wish it and all other conventions, of what party soever, success, whose object is the restoration of all the States late in rebellion to their Federal relations.

Our theory of government has no place for a State except in the Union. It is just taken for granted that the duties and responsibilities of a State in Federal relations tend to its political health, and to that of the whole nation. Even Territories are hastily brought in, often before the prescribed conditions are fulfilled, as if it were dangerous to have a community outside of the great body politic.

Had the loyal Senators and Representatives of Tennessee been admitted at once, on the assembling of Congress, and, in moderate succession, Arkansas, Georgia, Alabama, North Carolina and Virginia, the public mind of the South would have been far more healthy than it is, and those States which lingered on probation to the last would have been under a more salutary influence to good conduct than if a dozen armies watched over them.

Every month that we delay this healthful step complicates the case. The excluded population, enough unsettled before, grows more irritable; the army becomes indispensable to local government, and supersedes it; the Government at Washington is called to interfere in one and another difficulty, and this will be done ineptly, and sometimes with great injustice—for our Government, wisely adapted to its own proper functions, is utterly devoid of those habits, and unacquainted with the instruments which fit a centralized government to exercise authority in remote States over local affairs. Every attempt to perform such duties has resulted in mistakes which have excited the nation. But whatever imprudence there may be in the method, the real criticism should be against the regulation of such duties of the General Government.

The Federal Government is unfit to exercise minor police and local government, and will inevitably blunder when it attempts it. To keep a half score of States under Federal authority, but without nationalities and responsibilities; to oblige the central authority to govern half of the territory of the Union by Federal civil officers and by the army, is a policy not only uncongenial to our ideas and principles, but preëminently dangerous to the spirit of our Government. However humane the ends sought and the motives, it is in fact, a course of instruction, preparing our

Government to be despotic, and familiarizing the people to a stretch of authority which can never be other than dangerous to liberty.

I am aware that good men are withheld from advocating the prompt and successive admission of the exiled States by the fear, chiefly, of its effect upon parties and upon freedmen.

It is said, that if admitted to Congress, the Southern Senators and Representatives will coalesce with the Northern Democrats and rule the country. Is this nation, then, to remain dismembered to save the ends of parties? Have we learned no wisdom by the history of the last ten years, in which just this course of sacrificing the nation to the exigencies of parties plunged us into rebellion and war?

Even admit that the power would pass into the hands of a party made up of Southern men, and the hitherto dishonored and misled Democracy of the North, that power could not be used just as they pleased. The war has changed not alone institutions, but ideas. The whole country has advanced. Public sentiment is exalted far beyond what it has been at any former period. A new party would, like a river, be obliged to seek its channels in the already existing slopes and forms of the continent.

We have entered a new era of liberty. The style of thought is free and more noble. The young men of our times are regenerated. The great army has been a school, and hundreds of thousands of men are gone home to preach a true and noble view of human rights. All the industrial interests of society are moving with increased wisdom toward intelligence and liberty. Everywhere—in churches, in literature, in natural sciences, in physical industries, in social questions, as well as in politics—the nation feels that the Winter is over, and a new Spring hangs in the horizon and works through all the elements. In this happily changed and advanced condition of things, no party of the retrograde can maintain itself. Everything marches, and parties must march.

I hear with wonder and shame and scorn the fear of a few that the South once more in adjustment with the Federal Government will rule this nation! The North is rich—never so rich; the South is poor—never before so poor. The population of the North is nearly double that of the South. The industry of the North, in diversity, in forwardness and productiveness, in all the machinery and education required for manufacturing, is half a century in advance of the South; churches in the North crown every hill, and schools swarm in every neighborhood; while the South has but scattered lights, at long distance, like light-houses twinkling along the edge of a continent of darkness. In the presence of such a contrast how mean and craven is the fear that the South will rule the policy of the land! That it will have an influence, that it will contribute in time most important influences or restraints, we are glad to believe; but if it rises at once to the control of the Government it will be because the North, demoralized by prosperity and besotted by groveling interests, refuses to discharge its share of political duty. In such a case the South not only will control the Government, but it ought to do it.

It is feared, with more reason, that the restoration of the South to her full independence will be detrimental to the freedmen. The sooner we dismise from our minds the idea that the freedmen can be classified and separated from the white population, and nursed and defended by themselves, the better it will be for them and us. The negro is part and parcel of Southern society. He cannot be prosperous while it is unprospered. Its evils will rebound upon him. Its happiness and reinvigoration cannot be kept from his participation. The restoration of the South to amicable relations with the North, the reorganization of its industry, the reinspiration of its enterprise and thrift, will all redound to the freedman's benefit. Nothing is so dangerous to the freedman as an unsettled state of society in the South. On him comes all the spite and anger and caprice and



revenge. He will be made the scapegoat of lawless and heartless men. Unless we turn the Government into a vast military machine there cannot be armies enough to protect the freedman while Southern society remains insurrectionary. If Southern society is calmed, settled and occupied, and soothed, with new hopes and prosperous industries, no armies will be needed. Riots will subside, lawless hangers on will be driven off or better governed, and a way will be gradually opened up to the freedmen, through education and industry, to full citizenship, with all its honors and duties.

Civilization is a growth. None can escape that forty years in the wilderness who travel from the Egypt of ignorance to the promised land of civilization. The freedmen must take their march. I have full faith in the results. If they have the stamina to undergo the hardships which every uncivilized people has undergone in their upward progress, they will in due time take their place among us. That place cannot be bought, nor bequeathed, nor gained by sleight-of-hand. It will come to sobriety, virtue, industry and frugality. As the nation cannot be sound until the South is prosperous, so, on the other extreme, a healthy condition of civil society in the South is indispensable to the welfare of the freedmen.

Refusing to admit loyal Senators and Representatives from the South to Congress will not help the freedmen. It will not secure for them the vote. It will not protect them. It will not secure any amendment of our Constitution, however just and wise. It will only increase the dangers and complicate the difficulties. Whether we regard the whole nation, or any section of it, or class in it, the first demand of our time is, entire reunion!

Once united, we can, by schools, churches, a free press and increasing free speech, attack each evil and secure every good. Meanwhile the great chasm which rebellion made is not filled up; it grows deeper and stretches wider! Out of it rises dread spectres and threatening sounds. Let that gulf be closed and bury in it slavery, sectional animosity and all strifes and hatreds!

It is fit that the brave men who on sea and land faced death to save the nation should now by their voice and vote consummate what their swords rendered possible.

For the sake of the freedmen, for the sake of the South and its millions of our fellow-countrymen, for our own sake, and for the great cause of freedom and civilization, I urge the immediate reunion of all the parts which rebellion and war have shattered.

I am, truly yours,

HENRY WARD BEECHER.

[Marked "Ex. D, 57."]

#### MORE OF MR. AND MRS. TILTON'S LETTERS TO BE INTRODUCED.

Mr. Beach—We are, Sir, in our examination of the letters of Mrs. Tilton and her husband, falling upon one occasionally which we would like to introduce at some stage of the examination.

Judge Neilson—You can at the close of the cross-examination.

Mr. Beach—Very well.

Mr. Evarts—Well, if your Honor please—

Judge Neilson—I will reserve that right.

Mr. Evarts—Well, your Honor, we both agree that they should be introduced as soon as we find them.

Judge Neilson—It will break the continuity of your examination.

Mr. Evarts—No, not at all; we would rather have them in because we would have to have a re-direct on them.

Judge Neilson—Just as you please.

Mr. Beach—We will read them as we find them. We will go over, Sir, more accurately this correspondence in the course of the evening, and in the morning we will state the result, or very soon.

Judge Neilson—Well.

Mr. Evarts—If your Honor please, the witness has been subpoenaed on our part to produce various papers, among them the letters between himself and his wife, and we have endeavored to make a memorandum of those which at present we wish, and have handed it to the counsel. We are desirous of them as promptly as may be. I only give notice to the counsel that it is at the approaching stage of my examination that I shall want to use them—the letters of Mr. Tilton and of Mrs. Tilton. If at the same time you can give us those that you wish to ask about—

Mr. Morris—Well, that we can't do to-night.

Mr. Evarts—Until I get the whole of the letters I shall be unable to go on further with any consideration of this present topic. I have got through with the publications.

#### MR. TILTON'S EARLY ACQUAINTANCE WITH MR. BEECHER.

Q. Now, Mr. Tilton, I will ask you concerning your personal relations with the defendant, Mr. Beecher. In general we know their origin and progress, by your direct examination. Now, did you become well acquainted with Mr. Beecher, in the years of your knowledge of him, prior to the year 1870? A. I thought I knew him thoroughly, but I found I was mis taken.

Q. Well, that is a subsequent discovery? A. Yes, Sir.

Q. Up to that time; you thought you knew him very well, did you not? A. Yes, Sir.

Q. And your intercourse with him was such as would lead you to suppose that he knew you very well? A. Yes, Sir.

Q. Now, won't you describe to me the early sentiments that you entertained toward Mr. Beecher, say up to the time when you became an assistant editor—I think you did—of *The Independent*; he became editor and you became an assistant editor, did you not? A. Yes, Sir.

Q. Now, we will take it up to that time; what time was that—about 1860 or 1861? A. When I became editor-in-chief?

Q. When you became assistant editor. After his return from Europe you became editor in full. You did not become editor-in-chief until after Mr. Beecher returned from Europe, I understand? A. No, Sir.

Q. And you became assistant editor— A. In 1864.

Q. As early as 1856? A. Yes, Sir.

Q. Well, we will say up to that time. In the first place, your acquaintance with him commenced when you were how old? A. I shall have to guess.

Judge Neilson—The question is, about how old?

Mr. Evarts—Yes, Sir.

The Witness—You objected to my answering that way yesterday. Will you do me the favor to put it in some form, so I can make you a correct answer?

Q. At what age—about what age were you when you first

became acquainted with Mr. Beecher? A. I think when I was about 16 or 17 years old, perhaps a little older.

Q. But was that acquaintance cotemporaneous with your taking up your residence in Brooklyn? A. I think it began a little before that.

Q. Now, in what form of association or acquaintance were you at first connected with him? A. I used to go his church at first; I then went to his Sunday school; I then became associated with him in *The Independent*; and in all of those ways I was more or less intimate with him.

Q. But he was a man in maturity of life and strength and repute when you first became acquainted with him, was he not? A. I don't think he had reached his maturity of life; I don't know at what age you fix the maturity of life.

Q. Well, I am not speculating about it as a general thing. I am asking you a plain question. A. I don't know Mr. Beecher's age at that time. I don't know it at the present time.

Q. Well, you know something of it, don't you? A. Something of his age?

Q. Yes, Sir. A. I think he is between—

Q. Some general notion. A. Between sixty and sixty-five, if I understand anything about it. Still, I won't undertake to speak another man's age.

Q. Well, now we will take the best answer you can give us. [To the stenographer.] Now, will you read the question?

THE TRIBUNE stenographer read the question as follows:

“Q. But he was a man in maturity of life and strength and repute when you first became acquainted with him, was he not?” A. I don't think he had come either to the maturity of his strength or repute at that time.

Q. Do you use maturity, then, in the sense of zenith or culmination? A. I use it in the sense in which I suppose you wish me to answer.

Q. Was he a man of mature years and settled position in his profession and before the public? A. Well, Sir, when I knew him I always regarded him as a big boy rather than a man at all. He was a man of large fame and had a great church and was in the exercise of very manly and illustrious powers.

Q. Well, in what sense do you wish to be understood that he seemed to you like a big boy? A. Because his manner was large, and hearty, and gay, and companionable, and winning.

Q. Guileless? A. No, Sir.

Q. How? A. No, Sir.

Q. Don't that come within the description of “like a boy”? A. Well, Sir, the craftiest people I know of are boys; news-boys, for instance.

Q. Well, I don't know them.

Mr. Beach—They know the gentleman very well.

Q. Well, do you not use this phrase “like a boy” in the sense of frankness and generosity of character and demeanor? You have used the phrase; now I suppose that that is the reasonable sense of it? A. When I say that Mr. Beecher in his earlier years was like a big boy, I mean to say there was a certain bouncing character to his life and manner. He was very companionable hale-fellow-well-met, fond of a joke and a

frolic, fond of the things which boys liked. That made him very companionable to us, for I was very little more than a boy myself.

Q. And all the other young people? A. Yes, Sir; I thought he was the most charming man I ever saw.

Q. You thought so then? A. Yes, Sir.

Q. And in looking back you think so of that period? A. Do I think now that that was my thought at that time?

Q. Yes, Sir; in looking back upon him as you remember him, you think of him at that period as the most charming man you ever knew? A. Yes, Sir; I have since met men, who in all those qualities I think excel him very greatly, but at that time, in those early years, Mr. Beecher was my man of all men. I had not seen the world so extensively, and had not measured him with other men.

Q. Well, I don't now speak so much of admiration or abilities as of the regard for his character, and these qualities that you have mentioned. You say you thought he was charming? A. I loved him, Sir, next to my father.

#### MR. TILTON'S ESTIMATE OF MR. BEECHER.

Q. Now, up to what period of your acquaintance with Mr. Beecher did you retain these opinions concerning him and these feelings towards him? A. Well, Sir, as I grew older and mingled with the world and saw other men, the fine gold of my idol gradually became dim. I saw that he was not the greatest man in the world, nor the pleasantest man in the world, nor the frankest man in the world. I met other men his peers, other men his superiors, as time grew on and I grew older. I suppose that is the common experience with all young men—that they have idols in their youth, and as they grow older their idols are overthrown. That has been the case with most of mine.

Q. Did these successful rivals of Mr. Beecher in your estimation come into as intimate and constant companionship with you as he did? A. I don't know to whom you refer when you speak of successful rivals.

Q. You have just described them; that you found better, &c.—in your esteem? A. For instance when I came to know Mr. Charles Sumner, I ranked him very much beyond Mr. Beecher, both intellectually, morally and in every other way; when I came—

Q. About what date was that?

Mr. Beach—Let him answer.

The Witness—When I came to know Mr. Greeley intimately I put him at a considerable height above Mr. Beecher, both in point of intellect, of morality, of sincerity and of unselfish devotion to the public good; I might mention other men, but if you mean to ask me whether the men who in my later years were high in my affection and admiration—if you mean to ask me whether I ever became as intimate with those men, as in my early life I had been with Mr. Beecher, I should have to say no, unless, perhaps, Mr. Greeley formed an exception.

Q. Now, about the dates of these elevations above Mr. Beecher which your larger acquaintance among men assigned to the new acquaintances. You have given us only when you got acquainted with Mr. Greeley and when you got acquainted with Mr. Sum-

ner. Now, if you can, give us the date—my point was—when you began to change in your estimate of Mr. Beecher—about, of course? A. My only answer to that question is, Sir, that in proportion as I enlarged my acquaintanceship among public men, here and there one rose around me to a greater height than Mr. Beecher. He stood among them; he was among the great men of the country; but there were great men before Agamemnon, and there will be great men after.

Q. Well, that still leaves us a little vague as to when the time was, for we don't know all these facts that you do, and we are trying to get at it. A. Well, Sir, the process of change that brought up other men in my estimation to an equal rank with Mr. Beecher, and brought up some of them to a superior rank, began so long ago and was so imperceptible in its progress that I could not note its beginning. I should not be able to fix any such date in my own mind.

Q. Now, how early did there come to be, if at all, any cooling or break in regard to the sentiments and affections which you entertained towards Mr. Beecher? A. I don't know, Sir, that there was ever any actual break between Mr. Beecher and myself through any of the political divergencies to some of which you have alluded, and the chief of which was consequent upon the Cleveland letter. He would be better authority on that subject than I am. I have reason to believe that he was very sore touching the comments which I made on the Cleveland letter, still it did not break our friendship. I remember distinctly having a talk with him only a few days after the publication of that letter and of my comments on it. What I mean distinctly is, Mr. Evarts, that I ceased, as I grew older, to look upon Mr. Beecher as a leader, either in politics, or art, or religion; not that I dethroned him in my respect, but that he was less to me, as I grew older, a leader than he had been originally.

Q. Do you ascribe that change to him, or to yourself? A. Well, Sir, I think quite likely it was due to my own growth to a certain degree. I think if any other man had occupied the same position in my heart's affection in my youth, I should probably have thought less of him, or at least less of his great superiority over other men, as time progressed, but I was not responsible for Mr. Beecher's betrayal of the Republican party in 1865. That he was responsible for, and his church rose up against him.

Q. Oh! well, now. A. And he retracted it in the Academy of Music.

Q. I won't go into any church dissensions. It is only your relations to Mr. Beecher. Now, when did you come to a pretty firm notion that Mr. Beecher was not as great and important a person intellectually as you had supposed? A. Well, when I was perhaps 25 or 26 or 27 years old; still I must give you that answer very indefinitely.

Q. And that opinion has increased, has it not, since then? A. Yes, Sir.

Q. Now, do you remember—? A. Do not understand me, Mr. Evarts, as disparaging Mr. Beecher's intellectual powers now, not at all.

Q. You still have a certain respect for him? A. I have a re-

spect for his strength. I respect the giant's strength, as the poet says; though it is base to use it with a giant's strength.

Q. Do you remember coming to a conclusion that Mr. Beecher had got his growth and was to decline in public power and influence and others were to pass beyond him? A. I do not understand your question, Sir.

Q. The stenographer will repeat it.

THE TRIBUNE stenographer repeated the question.

Mr. Beach—Do you mean intellectual growth?

Mr. Evarts—Yes, Sir; not his bulk.

Mr. Beach—It may be growth in public estimation, not necessarily bulk.

Mr. Evarts—Well, it means his intellectual position and the public's opinion.

The Witness—I don't know, Sir, that I ever stopped to consider the question whether Mr. Beecher, in my judgment, had come to his intellectual growth or not. I don't know whether he has come to it yet.

#### WHERE MR. TILTON ESTEEMED HIMSELF MR. BEECHER'S SUPERIOR.

Q. Do you remember comparing yourself with him upon the occasion of your discussions about church missionary appropriations, if that describes the occasion, and that you had overmatched him in that controversy? A. That speech is in a pamphlet, Sir; it will speak for itself. I know he was wrong; it is very easy to beat a man any time who is in the wrong.

Q. Well, now, rather it is your conclusions and consciousness about it than the fact that I am asking whether you then came to the conclusion that you had quite overmatched him in that fight? A. Well, Sir, if I had come to that conclusion, I should not have any right to state it here.

Q. You are excused from any immodesty in the statement, for it is required from you as a part of your testimony. A. If I should say that I have overmatched him in that struggle it would be immodest. If I should say that I had not I should lie.

Q. Very well, now we have got the truth. Now, in the Cleveland letter controversy and the political diversions and antagonisms that grew up then, did you then think that you had overmatched him in sagacity and authority, both in the principles you assumed and in their acceptance with the party? A. No, Sir, there was no discussion at that time; all that I did toward the Cleveland letter was simply to use the journal which I edited, and which was, to a great degree, the mouthpiece of the Republican party. All that I then did toward the Cleveland letter was to enter my protest against that crime against liberty which that letter committed.

Q. Crime against liberty? A. Crime against liberty. And if you will ask me what that crime was, I will state it.

Q. No, no.

Mr. Beach—We will ask that.

Mr. Evarts—If it is important to my learned friends they will draw it out.

Mr. Fullerton—Yes, we will get it.

Q. Now, this feeling toward Mr. Beecher, as you have de-

scribed it, and its modifications, as I understand you now, met with no serious catastrophe of any kind, until this matter of 1870? A. No, Sir: we always remained personal friends until 1870.

#### MR. BEECHER'S RELATIONS TO MR. TILTON'S FAMILY.

Q. I judged that from your last answers. Now, during all this period, what were Mr. Beecher's relations to your family or your household? A. Well, Sir, I was married in 1855 by Mr. Beecher.

Q. Run through your residences, if you please. You were married in 1855? A. Yes, Sir.

Q. Now, where did you reside first, and for what period? A. I resided first at No. 48 Livingston-st., Brooklyn; I don't know how long.

Q. At your mother-in-law's? A. Yes, Sir.

Q. Mrs. Morse's? A. Yes, Sir.

Q. Or Mrs. Richards, she was then, I think? A. Yes, Sir; I then resided in Oxford-st., Brooklyn.

Q. Have you stated how many years you resided in Livingston-st.? A. I don't remember.

Q. Well, several years, wasn't it? A. Yes. I don't know how many several is. Then I returned to Livingston-st. and bought a house, where I now reside.

Q. Well, then you went to Oxford-st., and was that residence at some greater distance from Mr. Beecher's than your more recent residence? A. Yes, Sir,

Q. It was in another quarter of the town? A. Yes, Sir.

Q. How long did you live in Oxford-st? A. That I could not say.

Q. Well, a number of years? A. Yes, Sir; a number, I think.

Q. And you cannot give us the beginning or the end of the period? A. My impression is, that I moved away from Oxford street about eight years ago. I won't be certain; eight or nine years ago.

Q. Did you go from Oxford street immediately to your present residence, or did you go back to Mrs. Morse's family? A. My impression is I went directly to my house which I had bought, but all such dates lie in my mind in great obscurity. Still, I will endeavor to find them for you.

Q. How far back, then, does your present memory place the date of your going to your present Livingston street house? A. I should think eight or nine years ago.

Q. That would be about 1855? A. 1855.

Q. 1855 or 1856? A. I think I went there in the Fall of 1856. That is my present recollection.

Q. Now, Sir, in the early years of your married life, was Mr. Beecher in the habit of coming to your house, while you were in Oxford street, we will say, and previous to that? A. No, Sir.

Q. He was not. Were you and your wife in the habit of going to his house? A. I was in the habit of going to his house, but my wife was very shy and modest, and very seldom went with me.

Q. But you went there very frequently in connection with your employments? A. Yes, Sir.

Q. Your employments were such as to carry you to his house? A. During the early stages of my assisting Mr. Beecher, when he was chief editor of *The Independent*, I went to his house carrying him proofs and having consultations and so on quite frequently.

Q. Didn't you report his sermons, or something of that kind, before that? A. Yes, Sir. He did not deliver his sermons in his house.

Q. But I didn't know but the proofs, &c.? A. I don't remember that that took me to his house so much as when I became his assistant editor of *The Independent*.

Q. Now, during these earlier years, did you urge upon Mr. Beecher to be more frequent in his visits to your family—to your house? A. Yes, Sir; I always used to be glad of his coming, and always asked him to come again, and scolded him when he did not come.

Q. You understood at that time that your wife had a great admiration for him, did you not? A. I don't think I asked him to come so much on her account. In those early years, she regarded him as so great a man that she was a little afraid of him.

Q. Yes, that I understand, or at least I have seen it so stated. But don't you remember urging him to come because your wife had so great an affection for him, and you wished him to come? A. Not exactly that. I used to urge him to come for this reason. I always wanted Elizabeth to share in anything that I had. I thought that Mr. Beecher paid a great deal more respect to me than he did to my wife, and, therefore, I wanted him to come and make himself a guest in my house, not merely for my sake, but also for hers.

Q. Did you not feel in these early years, until you urged him to visit your house, that in comparison with some other of his parishioners, considering your intimate relation with him, he rather slighted your family? A. Yes, Sir.

Q. So you urged him to repair that wrong and please your wife by coming there? A. Please me by coming there.

Q. Pleased you by coming to see your wife? A. Yes, Sir, I always considered that any honor paid to her was a great delight to me; and if he slighted her I obdied him for it.

Q. Did he ever slight her in this sense? A. He used to be very frequently with me, walk the street with me, went to picture galleries with me, into the libraries with me, everywhere around the town with me, and he very seldom came to my house. I thought I was stealing away too large a share of him and that my wife ought to have a larger part of him.

Q. It was for that that you chid him and urged him to come to your house? A. Yes, Sir.

Q. Did you not use expressions of this kind to him, that there was a little woman at your house that loved him dearly, and urge him to come? A. I don't know whether I did or not, but if I did it would have been perfectly true.

Q. Now, after your removal to your present house, after you left Oxford street and before the period of 1858, we will say now, were not Mr. Beecher's visits at your house more frequent than they had been at Oxford street? A. Oh, yes. I don't

remember that he was ever in my Oxford street house once. Perhaps he was, but I don't recall it.

Q. At any rate there was a very great difference in that respect. A. Yes, Sir.

Q. Now, when did you begin to be absent from your family for the purposes of your lecture engagements; I mean for any lecture season or period of time? A. I am afraid I cannot answer that question. My present impression though—I fear it will not be altogether accurate—is that my first prolonged trip of lecturing in the far West was in the Winter of 1864 and '5, somewhere there. Perhaps I am wrong about it.

Q. Well, and from the time that that habit of your life commenced, did it continue every season, and up to what time? A. It continued almost every season. My impression is that in the Winter of 1870 and '71—yes, more than my impression, my exact knowledge is that I did not lecture.

Q. Yes; that has been stated before. A. Yes, Sir.

Q. Then you did lecture in 1871-'2? A. Yes, Sir.

Q. Was that the last year—your season of lectures? A. It is the last season in which I made any extensive trip.

Q. Then from 1864-'5—if that was the commencement—up to 1871-'2, with the omission of 1870-'1, you had this employment of a portion of your year? A. Yes, Sir.

Q. And was it substantially the same portion of the year; was it from Fall into Spring? A. Yes, Sir.

Q. Now, in reference to your lectures and this employment—this adoption of that mode of public influence—was that a subject of conversation between you and Mr. Beecher; was that one of the things that his interests made the subject of conversation with you, or your confidence in him the subject of conversation with him? A. I don't remember of ever having any talk with him in regard to my lecturing. If I had it does not come up to my mind at present.

Q. Before going on these seasons of lectures, do you remember having desired Mr. Beecher to call upon your wife during your absence? A. I don't think I ever made him any such request later than the time of the Cleveland year; perhaps I did, but I don't think I did.

Q. You mean later than until after that occurrence? A. Yes, Sir.

Q. But before that you did? A. I think quite likely I did; yes, Sir.

Q. Was it a habit of your wife, in your daily letters that you have spoken of to you, to mention Mr. Beecher's calls? A. Yes, Sir.

Q. How frequently were you and your wife visitors or guests at Mr. Beecher's house, and through what period of time? A. The last time I was ever at Mr. Beecher's house that I remember was when our army lay at Bladensburg, if anybody knows that date, when I came home from Washington with a commission for his son in the artillery.

Q. You connect it with that occurrence? A. Yes, Sir. It was when Simon Cameron was Secretary of War.

Q. That was about 1861. You think that was the last time you were ever at his house? A. I believe that is the last time;

nevertheless I may have been there since; if so I don't remember it now.

Q. Your not going to his house after that period is not an indication that there was any change in your relations with him at that time, is it? A. No, Sir; not with him personally.

Q. Not with him personally? A. No, Sir; I could not explain why I didn't go there after that period without involving the name of a lady of his household.

Q. I suppose it is not necessary to go into details, perhaps, but was your absence owing to any disposition on your part toward Mrs. Beecher, or any disposition on her part toward you? A. Yes, Sir; owing to a disposition on her part toward me.

Q. Now, this occurrence that brings Bladensburg to your mind was an occasion on which you performed what Mr. Beecher regarded as a very great personal service for him, was it not? A. He so regarded it. Yes, Sir.

Q. And so far as your disposition in that act, he was entitled to regard it as an act of friendship upon your part, was he not? A. I always thought he overestimated the service, and gave me more gratitude than my act required.

Q. That is in amount; but your disposition was as friendly as the act was friendly? A. My purpose was not only friendly, but it was affectionate and loyal.

Q. And he so understood it? A. Yes, Sir.

Q. And, perhaps, overestimated it? A. I think he did.

Q. But you have always known that he regarded that as a very gracious service that had been rendered to him in a point in which his affections were greatly interested? A. He told me that I had saved one of the members of his family from destruction; I didn't see the imminent destruction.

Q. It had relation to his son's position in the army, had it not—one of the sons? A. I would rather not say to what it refers.

Judge Neilson—General facts.

Mr. Evarts—General facts.

Q. It had relation to his son? A. I don't know how I could explain it without casting some disparagement on the member to whom I allude.

Q. You can say whether it alluded to the son in the army? A. I will say it if you take the responsibility of evoking it.

Mr. Evarts—I don't provoke any answer than that—

Judge Neilson—"Evoked" was the word he used.

The Witness—I simply say this, that under the direction of the Court I undertake to keep out the names of third persons in my narrative, particularly where to mention them would be to disparage them.

Mr. Evarts—I have offered you an opportunity of saying yes or no to a question.

The Witness—Ask me the question; I will say yes or no.

Mr. Evarts—The last question I put to you was whether that service had relation to his son in the army? A. It had relation to his son out of the army.

Q. His son who had been in the army? A. Yes, Sir.

Q. And who afterward went back into the army? A. Yes, Sir.

## PAIGE'S PORTRAITS OF TILTON'S FRIENDS.

Q. Now, do you remember having a portrait of Mr. Beecher painted, and what time it was? A. Yes, Sir.

Q. When was that? A. To the best of my recollection, Mr. Beecher began to sit for that portrait in the Fall of 1866, and the picture was finished in the Spring of 1869.

Q. In what way and at what time did you propose to him that he should allow you to have his portrait painted? A. I told Mr. Beecher that I wanted the portraits of a few of my personal friends, the men who had been a good deal to me in my public life, and who had been connected with the cause of liberty, and I named Wendell Phillips, Horace Greeley, Charles Sumner and Henry Ward Beecher. I proposed to have the portraits of those four men painted by William Paige, whom I regard as the first of our American artists. The first of the portraits painted was that of Wendell Phillips, which now hangs on my wall.

Q. And the next? A. Mr. Beecher's was the second. Mr. Greeley had made one or two calls to the studio to have his portrait painted. Mr. Sumner had done the same.

Q. You did not actually succeed in getting portraits of the others? A. No, Sir.

Q. Now, do you remember when that portrait was sent to Mr. Moulton's house? A. I cannot remember the exact date. I think it was some time in the Fall of 1870, or perhaps in the first month or two of 1871.

Q. And there it has remained ever since. A. Yes, Sir. My recollection was that it was sent there in the Summer of 1870—my best recollection at present.

Mr. Beach—What is that?

The Witness—I was saying that my refreshed recollection is that it was sent there in the Summer of 1870—still I may be wrong about the exact date; but I may be totally wrong as to that date, because I have not thought of it since.

Mr. Everts—You mean the date when it was sent to Mr. Moulton's house? A. Yes, Sir. But I remember the date of the receipt.

Mr. Everts—We will put this paper in evidence, if your Honor please. [Reads]:

Received by Theodore Tilton, by draft from Aurora, N. Y., dated February 25, 1869, \$500, being payment in full for portrait of Rev. Henry Ward Beecher.

April 1st, 1869.

Q. That is your writing, is it not? [Handing paper to witness.] A. It was my money that paid for it.

Q. That is your writing? A. Yes, Sir; all except the signature, which is William Paige's.

Q. Signed by William Paige? A. Yes, Sir.

[Marked "Exhibit D 58."]

Q. You say the date of sending to Mr. Moulton you cannot fix with any certainty, as you have never thought of it since? A. I have never thought of it since as being connected with any particular event or date.

Q. Now, up to the time of July, 1870, had you observed in the demeanor of Mr. Beecher towards your wife, or of your wife towards Mr. Beecher, any variance from that ordinary relation

which you had been familiar with? A. No, Sir. One or two little incidents happened a number of years before that, which Mrs. Tilton explained away and which left no impression on me.

Q. They passed by? A. Yes, Sir. They had gone by.

Q. There was nothing in the later years that you noticed in their demeanor towards each other different from what you had always seen? A. No, Sir.

## THE TILTON-MOULTON FRIENDSHIP.

Q. Now, with regard to Mr. Moulton, you have given us the general circumstances of your acquaintance with him and familiarity. How confident and intimate were your habits of companionship with him in general? I mean, now, to leave out any relation to this subject which has been testified to by him? A. Well, Sir, for many years Mr. Moulton and I have been bosom friends—a very high, noble man, and much beloved. My affection for him was very strong, and we were very intimate.

Q. And his disposition towards you of the same character? A. I think I may say that it has always been so.

Q. And that carries you back to your boyhood? A. Yes, Sir.

Q. And continues up to the present time? A. Yes, Sir.

Q. Were you in the habit of having amusements together, such amusements as men have?

Mr. Beach—Well, that is very general.

The Witness—We had not time for many amusements. We used to go fishing occasionally.

Q. Go to places of amusement together, and the theater? A. Oh! yes, Sir.

Q. And such like? A. Yes, Sir, we have gone to the theater together, and to the opera. I thought you meant sports like fishing.

Q. It covers the whole matter that would be the natural companionship between intimate friends in regard to amusements, or the habits of Mr. Moulton and yourself. A. Well, Sir, I don't know that—that if you mean whether we played cards together, or played billiards together, or anything of that kind, we never had any such amusements.

Mr. Everts—Well, it is time enough for you to impute that to me when I ask it.

Mr. Beach—I think your question embraced that class of amusements.

Mr. Everts—Especially as I never play.

The Witness—I may have misunderstood you. I intended to answer your question properly.

Mr. Beach—The answer was perfectly proper.

Mr. Everts—I didn't seek to inquire into the particulars of your amusements.

The Witness—I thought you asked me whether we had the amusements that men ordinarily have.

Q. Those which you usually took, did you usually take them together? A. Yes, Sir.

Q. And how much were you in the habit of being at his house at meals as a formal guest or as a social guest? A. After the destruction of my own house, Mr. Moulton's house

was really my home—that is to say, it was the home of my thought and solace.

Q. Now, how about the meals; how much were you in the habit of taking meals there, either as a formal guest or socially? A. Oh! I was there a great deal, a very great deal.

Q. And from what period did that form of intimacy date, or habit date? A. From the first of January, 1871.

Q. Now, throw this outside of any of these dates—that we may very well understand, but we will say prior to the first of January, 1870, which is a year before, what were your habits of personal and social intimacy in that regard, about being often at his house at meals, either socially or as a formal guest? A. Oh, very rarely at his house at meals before that.

Q. Very rarely? A. I took my meals at my own house before that; after that, I very rarely sat at my own table.

Q. And generally at his? A. Not generally, but very frequently.

Q. Now, when you had occasion to seek a confident friend, as I suppose that you had—I understood that you had, in this month of December, 1870—was there any one else that was at all comparable in his relations with you, to Mr. Moulton, as the person that you should confide in? A. There was no man among my personal friends at that time in whose ability, integrity and loyalty, all combined, and in whose genius of administration and great courage of thought and action, that I could compare with Francis D. Moulton.

Q. And you resorted to him in that view, and in the relation that he then held to you as a friend? A. I did, Sir; and had occasion to be thankful for it ever since.

Q. And that selection on your part has, in your judgment, been justified by his conduct towards you since? A. Yes, Sir; I think that Francis D. Moulton is the successor of Sir Phillip Sidney in all that is honorable, manly and magnificent in friendship.

#### A FIVE MINUTES WRANGLE.

Mr. Evarts—[To Mr. Morris.] Now, have you got those letters ready?

Mr. Morris—We have not, Mr. Evarts; I find they are written on different sheets, and they were not pinned together, and we will have to select them to-night. I had my young man assorting them out, but he brings parts of them here only. We keep them separated.

Mr. Evarts—Those you have got together, will you let us have them that we can look over them to-night—those that are within our call.

Mr. Morris—You have got all that we have got perfected. We will have them ready for you in the morning.

Mr. Evarts—I say those that you have got, if you will let us have them to look over to-night.

Mr. Morris—I say you have got what we have got perfected. We have got some parts here, and we will get the balance.

Mr. Tracy—We have only got three letters.

Mr. Beach—And that is all you will get.

Mr. Fullerton—That is all you are entitled to.

Mr. Evarts—We can subpoena the witness, I suppose, and get them.

Mr. Morris—Subpenaing the witness would not entitle you to take the letters from the Court. You don't propose to take the letters from the Court.

Mr. Evarts—We don't ask to take the mass of letters; we propose to take what you have selected so that we may save time to-night as well as you.

Mr. Morris—I say we have those.

Mr. Evarts—If your Honor please, I pass to another subject, in which I need all these letters to be here that I can get. [To Mr. Morris.] Why don't you produce them?

Mr. Morris—Because you are not entitled to them.

Mr. Evarts—Why should we not have them as we had them before?

Judge Neilson—I understand the counsel promises to produce the letters in the morning.

Mr. Morris—Yes, Sir; but we produce them when the Court opens in the morning. They cannot call for letters and take them away.

Judge Neilson—I understand you will produce them here in the morning.

Mr. Morris—Yes, Sir.

Mr. Evarts—If the witness insists he will not part with letters over night, that is all right.

Mr. Morris—He does insist upon it.

Mr. Evarts—I suggested that we should have them in order that we might save time as well as you.

Mr. Morris—We propose you shall have them.

Judge Neilson—Is the jury ready to retire?

Mr. Beach—Wait one moment, if your Honor please.

Mr. Evarts—[Handing letters to witness.] Look at those letters and say if they are letters from your wife. One of them is incomplete, is it not? A. Those two are letters, and *this* is part of a letter.

Mr. Evarts—[To Mr. Morris.] Mr. Morris, this is incomplete.

Mr. Morris—Yes, I know it is.

Mr. Beach—[To Mr. Morris.] See if you can restore the balance, Mr. Morris.

Mr. Morris—We can if we have the parts we have got.

Mr. Evarts—I believe this has been printed.

Mr. Morris—No; only a portion of it.

Mr. Evarts—The letter of February 8d, 1868, which I put in evidence, will be marked "Exhibit D 59;" the letter of February 20th, 1868, will be marked "Exhibit D 60," and the letter of—

The Witness—Let me look at that again.

Mr. Evarts—The imperfect one?

The Witness—No, the one you think is imperfect.

Mr. Evarts [handing letter to witness]: Yes, Sir; that is the one.

The Witness—That is imperfect, evidently.

Mr. Evarts—Yes, Sir; there is no doubt about that. The letter dated February 26th, 1868, will be marked "Exhibit D 61."

[The letters were marked respectively "Exhibits D 59, 60 and 61."]

Mr. Beach—[To Mr. Evarts]—Which of those is incomplete ?

Mr. Evarts—It is the first one, February 3d, 1868.

Mr. Beach—I don't know that this incomplete letter—how happens this ?

Mr. Morris—They were on different sheets of paper and they became separated.

Mr. Beach—It seems to me in its imperfect condition it ought not to be introduced. I have not the letter to see.

Mr. Evarts—Then we will take all we can get.

Mr. Beach—Well, not when you can have the whole of it.

Mr. Evarts—If we don't get the whole of it, we will take this part of it.

Mr. Beach—That is all right.

Judge Neilson—Our uniform plan is to have the jury pass out first, and I wish very much that gentlemen will retain their seats for a few moments. [To the Jury.] Gentlemen, be in your seats at 11 o'clock in the morning.

Mr. Mallison—This Court stands adjourned until to-morrow morning at 11 o'clock.

The Court was thereupon adjourned until 11 o'clock on Friday.

## TWENTIETH DAY'S PROCEEDINGS.

### MR. AND MRS. TILTON'S CORRESPONDENCE.

LETTERS BETWEEN THE PLAINTIFF AND HIS WIFE  
PRIOR TO 1868—A DAY DEVOTED TO THEIR  
READING—ABSENCE OF THE USUAL INTEREST IN  
THE CASE.

There was nothing all day but the monotonous reading of Mr. Shearman, relieved occasionally by Mr. Evarts going over the correspondence of Mr. and Mrs. Tilton, covering the years between 1865 and 1868, inclusive, extracts from which have already been published. There were blinking eyes and nodding heads in the gallery, and looks of weariness upon the faces of the idle counsel. It was without doubt the most uninteresting day of the trial.

A discovery which caused some comment was the result of the comparison of an extract from a letter of Mrs. Tilton, in Mr. Tilton's "Statement," and an original copy of the letter itself. It was found that Mrs. Tilton's language had been changed in the Statement. She wrote, "To love is praiseworthy, but to abuse your gift of influence is a sin." In Mr. Tilton's Statement the sentence read, "To love is praiseworthy, but to abuse the gift is a sin." Mr. Tilton said that the statement was in Augustus Maverick's handwriting.

Mr. Tilton came into court a few minutes before 11 o'clock on Friday, and going directly to the witness-chair waited for the proceedings to begin. His cross-examination was not resumed for a little time,

no one appearing to be in a hurry to enter upon the day's work. Mr. and Mrs. Beecher came in a few minutes after Mr. Tilton. Mr. Beecher's face was very ruddy, and wore a pleasant smile as though the walk from Columbia-st. in the cold wind had raised his spirits and animated him. He and Mr. Beach shook hands and chatted together with an appearance of pleasant cordiality.

During the reading of the letters by Mr. Shearman, Mr. Tilton sat quietly in the witness-chair. His eyes were turned during most of the time to the sunlight on the window curtain behind the jury. He apparently took very little interest in the letters read, but was ready in giving all the explanations asked of him by Mr. Evarts.

Francis D. Moulton came into court soon after midday, for the first time since the conclusion of his testimony. He took a seat behind the jury, from which Mr. Tilton alone, of those interested in the case, could be seen by him. He only remained in court about half an hour.

Judge Reynolds occupied the bench with Judge Neilson during the afternoon.

## THE PROCEEDINGS—VERBATIM.

### MR. BEECHER'S EARLY REGARD FOR MR. TILTON

The Court met at 11 a. m., pursuant to adjournment.

Mr. Evarts—[To Mr. Morris.] Have you got the letters ?

Mr. Morris—We cannot find them according to the dates here. I have got them sorted out in years. I cannot find the dates as they are on the schedule handed to me. The dates do not seem to correspond.

Mr. Evarts—Well, give us the year then, and we will see if we can find them.

Mr. Morris—Yes, Sir.

Mr. Evarts—Most of them have been the subject of publication—parts of them. I will go on for a moment with some of the others.

Theodore Tilton was then recalled, and the cross-examination resumed.

Mr. Evarts—Look at that, Mr. Tilton, and say in whose handwriting it is. A. It is in Mr. Beecher's.

Q. Do you remember the occasion and the circumstance under which you received that ? A. I remember the occasion to which it alludes. I cannot remember the exact place and time of receiving that little note.

Q. Oh ! well, I don't care for that. I mean the occasion. A. Yes, Sir.

Q. Was it in regard to that service in respect of his son, which you have before spoken of ? A. It was in regard to what he called that service, Sir.

Mr. Evarts [reading]:



MY DEAR THEODORE: I should be glad if whenever you use this inkstand you shall be reminded of my gratitude to you for love services rendered.

H. W. B.

[Marked "Exhibit D, 62."]

Mr. Beach—Any date?

Mr. Everts—There is no date.

Q. [To the Witness.] This relates, as its occasion, to the service which you had performed and which he regarded very highly, as you have stated, in reference to his son, does it not?

A. Yes, Sir.

Q. And it was accompanied with the gift of an inkstand? A. Yes, Sir. Permit me to say, Mr. Everts, that I have nowhere said that he regarded it very highly.

Q. He thanked you very highly? A. Yes, Sir; he did. I always thought he overestimated the services, but I never—

Q. Well, that I have understood you to say. A. But I never allowed myself to refer to that, or to say to anybody about it that I regarded it as a very momentous service done to him. I have very rarely alluded to it myself.

Q. Look at that, and say in whose handwriting that is? [Handing witness a letter.] A. Mr. Beecher's.

Q. And that envelope? A. In the same handwriting.

Mr. Everts [Reading]:

MARCH 17th, 1864.

MY DEARLY BELOVED THEODORE: I thank you. I read your notice of father and mother with tears. All others that I have seen are cold by its side. I felt its sympathy and love deeply.

Yours ever,

H. W. B.

[Letter and envelope each marked "Exhibit D, 63."]

# MR. BEECHER PREDICTS THE GROWING INFLUENCE OF SCIENCE OVER RELIGION.

Q. Look at that and see if it is Mr. Beecher's—say in whose handwriting it is? [Handing witness a letter.] A. It is in Mr. Beecher's handwriting, Sir. I should like to look at it, it is so long since I have seen it.

Q. Well, I will read it aloud to you. A. I was afraid that letter had been lost. I am glad somebody has found it.

Mr. Everts [Reading]:

JUNE 3d, 1867.

MY DEAR THEODORE: In thinking over our conversation respecting your position on religious matters, it occurs to me that you are liable to do yourself an unnecessary injustice by supposing or affirming that you have wandered from received opinions, whereas it seems to me that you have simply entered that stage of development in which every active mind explores the grounds and reasons of belief for himself. Now, it is impossible for one, unless cautious even to coldness, to pursue such investigations without great oscillations of belief, without seeming at one time averse to one view, and then again seeking it with greater avidity than ever. It is a question so wide, so grave, that one ought not to commit himself upon the hasty result of a year or several years' reading. You seem to me to follow your sympathies largely in investigation. This has its advantages, and is one way of study; but it requires far more time and caution, inasmuch as it will surely lead you to accept things from poetic or emotive reasons, which are but half true, which need and will get by longer experience much modification. The formation of opinions upon religious questions in such a nature as yours is a matter of growth more than of logic. Under such a state of facts, therefore, I would submit whether you can wisely or even truly say you stand on this or on that ground, and whether you do not, in justice to your own final self, ac-

quire all the privileges accorded to those who are investigating. In part I write from experience. I look back upon periods when, if I had expressed the then results of thought and reading, I should have committed myself to views which I have outlived or left behind. I find myself, slowly but surely, going toward those views of human nature and of divine government which have underlaid for a thousand years the Evangelical churches. It seems to me that I discern, arising from studies in natural science, a surer foothold of these views than they have ever had, in so far as theology is concerned. If I have one purpose or aim, it is to secure for the truths now developing in the spheres of natural science a religious spirit and a harmonization with all the great cardinal truths of religion which have thus far characterized the Christian system. I turn with more and more chill and dread from that bleak and fruitless desert of naturalism which so many are hailing as a second paradise. I regard the labors of naturalists as indispensable to the final adjustment of truth, and I would encourage such men as Spencer to say whatever is given them, not because they bare the full truth, but because they bring out the truth, and because the human mind must pass through that stage before it will come to the rest and glory of the final Christianity, the second coming of Christ—morally, not historically—in which He shall reign in heaven and on earth over faith and science, and unite and harmonize both. Believe me, Theodore, that I have great sympathy in your developments, and affection for you, and should be glad to help and sorry to hinder.

I have given up the idea of starting a newspaper. I am sure that I could not bear the strain and yet carry on my church. I am truly yours,

H. W. BEECHER.

[Marked "Exhibit D, 64."]

Q. Mr. Tilton, when your wife left your house, as you have stated, did she leave the house and what was in it, or did she take anything with her? A. I don't know that she took anything with her, except my love and good will.

Q. Very well. And that she has still, has she? A. I cannot answer for her. Sir; I don't know what mischief Mr. Tracy has made in the business.

# HOW THE CORRESPONDENCE OF HUSBAND AND WIFE WAS PUBLISHED.

Q. Now, Sir, there was a publication made of a selection from your and her letters; I mean by "selection" that it was not the entire correspondence. Was that made by you, or through your procurement? A. No, Sir; it was neither made by me nor through my procurement; it was made somewhat against my wish and will.

Q. But pray who did make it? A. Who did make what, Sir?

Q. That publication. A. *The Chicago Tribune*.

Q. Were not those letters left in the house when your wife left? A. Yes, Sir.

Q. How did *The Chicago Tribune* get access to those letters?

A. Through the advice and desire of my friend and counsel, Judge Morris.

Q. Ah! did he have the ransacking of the whole of them? A. I think, Sir, he is too much of a gentleman—

Q. I didn't ask about that. I don't know whether he had the opportunity. A. What do you mean by ransacking?

Q. The opportunity for examination.

Judge Neilson—He means did he have the whole of them—did he have an opportunity to examine the whole of them? A. All letters found in the house?

Q. Yes. A. He did; I believe he did.

Q. Was that by the advice of counsel?

Mr. Fullerton—One moment! One moment! I do not see the pertinency of these inquiries.

Mr. Evarts—Then he should not have made the answer about his counsel.

Mr. Fullerton—Oh! that was your question.

Mr. Evarts—I did not ask about the counsel. He threw that in.

The Witness—Do you mean that Mr. Morris did that by the advice of counsel?

Mr. Evarts—No.

The Witness—He is himself counsel?

Mr. Evarts—I mean whether this giving of all these papers to *The Chicago Tribune*, or to its representative, was by advice of your counsel.

Mr. Beach—It does not appear that *The Chicago Tribune* had the letters to themselves.

Mr. Evarts—He has just said they had the opportunity.

The Witness—Ah! you are mistaken, Mr. Evarts; the extracts that were published were communicated to *The Chicago Tribune*; those extracts were made by the advice and at the suggestion of my counsel.

Q. Very well; I thought that I asked you whether *The Chicago Tribune* had access and opportunity to examine all those papers. A. I didn't understand you to put the question so; I understand you to ask whether Judge Morris had the ransacking of those papers.

Mr. Beach—That was the question.

Mr. Evarts—No; you are all in error. The question will speak for itself. In answer to one of my questions the witness said that whatever he then spoke of, it was done by the advice of his counsel. Then I afterwards asked him—or what I intended to ask him was—whether *The Chicago Tribune* had the opportunity to examine all the papers. Now, it seems the witness understood me as applying that question to Judge Morris.

Judge Neilson—Let the stenographer read the question.

[THE TRIBUNE stenographer read the question.]

Judge Neilson—The witness understood "he" to apply to Judge Morris, and I myself so understood it.

Mr. Evarts—I didn't so understand it, and I had no such intention, and therefore did not understand why that answer should be given.

Q. Now, then, you understood my question to refer to Judge Morris, and not to the representative of *The Chicago Tribune*? A. Yes, Sir.

Mr. Fullerton—It was *The Chicago Tribune*—the neuter gender.

Mr. Evarts—But it was the representative of the paper.

Mr. Evarts—Now, any communication or opportunity to examine or know of the letters themselves given to *The Chicago Tribune* or its representative, were they selections or portions that were furnished to it? A. Yes, Sir; the representative of that paper did not see the original manuscript.

Q. How is it you say that they were not published by your act or procurement? A. I will tell you, Sir.

Mr. Fullerton—I don't think that is proper.

Judge Neilson—They were published by his act and procurement, through his counsel, Mr. Morris, and by his advice.

Mr. Evarts—I have a right to ask the witness what he meant when he said they were published rather against his will.

The Witness—Do you wish me to answer?

Q. Yes, Sir. A. During the early consultations I had with my friend, Judge Morris, I put into his hands the papers. He read them and said: "These letters ought to be published, or, at least, liberal and copious extracts from them." I said: "No, they are private letters, and I think there is an impropriety in publishing them." He said, on the contrary, the case was of such seriousness and gravity and had been so greatly misrepresented, that he thought justice required they should be published. He then suggested that good taste, perhaps, would lead to their publication, not here in Brooklyn, in either of the local papers, but at some distant point; and at that time a visit was made to my house by an agent of *The Chicago Tribune*; Judge Morris made his acquaintance, and communicated to this agent written extracts from those letters, and in that way they were published.

Q. Did you in any way communicate with your wife and get her assent to this publication? A. I did not, Sir; my wife was not then living at my house; she had deserted me.

Q. We knew that. Now, in whose handwriting were those extracts which were delivered to the newspaper, as you know or believe? A. In the handwriting of some stenographic reporter. We had half a dozen in our service at the time; I don't remember at this moment who it was that made the copy.

Q. His name is not material. It was a person in that relation? A. Yes, Sir.

Q. From whose dictation did he take them down? A. Nobody's.

Q. You mean he copied them himself? A. Yes.

Q. In shorthand? A. I don't know how they were copied.

Q. No matter; he copied them from the papers? A. Yes.

Q. Let me call your attention to the last part of the sixth article—from *there to there*, and read it [handing witness his own published statement.] After you have looked at it I will ask you a question. [Witness looks at the paper.] Is that an extract from a letter of your wife as given there? A. I don't know how correctly that is printed, Sir; but if it be printed correctly, as taken from my sworn statement, it is an extract.

Mr. Evarts—The passage is this—

Mr. Fullerton—Wait a moment. What is this?

Mr. Evarts—I am going to read the passage for him.

Mr. Beach—We object.

Mr. Evarts—He says if it is correctly printed as he wrote it in his statement it is correct.

Mr. Fullerton—But it does not follow that you can read it.

Mr. Evarts—I propose to read it out and let him see if it is correct.

Judge Neilson—That can be done, and it can be corrected if not correctly printed.

Mr. Fullerton—But the possibility of correcting it does not make it admissible at this stage of the case. In the first place there is the original of this paper somewhere, and it can be produced and not a copy.

Judge Neilson—I understood the witness to recognize that as part of his statement.

Mr. Evarts—And he is now on cross-examination. Part of my substantive proof is that this is the statement.

The Witness—I do not understand you. The passage you want me to read was no part of my statement, but an extract from one of Mrs. Tilton's letters.

Q. But it is in your statement. A. You asked me if it was part of my statement. I said it was, if correctly printed. The original letter is here.

Q. The original of what? A. The original letter from which that extract was made.

Mr. Evarts—I will now read this:

To love is praiseworthy; but to abuse the gift is sin. Here I am strong. No demonstrations or fascinations could cause me to yield my womanhood.

Q. Please look at your statement, and say, after looking at it, whether you can give the date of the letter from which that extract is taken? A. There is no date here.

Q. But what precedes it? A. Do you wish me to read what precedes it?

Q. No; I wish you to look at it and then say if you can give the date of the letter from which that extract was taken? A. I can give it by referring to the letter itself.

Q. I don't ask you for that letter, Mr. Tilton. It is your own sworn statement which is now before you? A. No, Sir.

Q. You cannot answer? A. You say it is my sworn statement. Here is a printed document full of corrections.

Q. There are no corrections that I know of. A. What are these marks?

Q. These are my notes on it. [Laughter.] A. Oh! Now, what is your question?

Q. My question is, after refreshing your recollection by looking at this print of your sworn statement, whether you can say what the date of the letter was from which you extracted that passage that I have read? A. I just now discover, in looking at that a second time, that in between your pencil marks there is a date here—February—something, 1868.

Q. Are your eyes good? A. Not so good as some people's; that looks like Feb. 8th; perhaps it is Feb. the 3d or 8th—I do not know which.

Q. Well, I don't see how my pencil marks interfere with it? A. I didn't notice that line.

Q. Well, is it Feb. 3d, 1868, isn't it? A. Yes, Sir; I think it is.

# OTHER LETTERS OF MRS. TILTON TO HER HUSBAND.

Mr. Evarts—Now, I will read that.

The Witness—I don't know whether that date is correctly printed in that transcript, Mr. Evarts.

Mr. Evarts—Very well, we will see. We want the letter itself. This is "Exhibit D, 59." [Reading]:

MONDAY, February 8d, 1868, {  
9 o'clock (I think it is) a. m. }

What may I bring to my beloved this bright morning? A large, throbbing heart, full of love, single in its aim and purpose to bless and cheer him. Is it acceptable, sweet one? As

my body grows daily in strength, my enthusiasm bubbles up perpetually, so that I even felt I saw you reflected in my eyes this morning, when my thoughts of you literally filled me as to gush out of my face. Most truly do I love, and I am resolved nevermore to repress the expression of it. I have lived under the fatal mistake that I would make you selfish, but oh! what it has cost me to learn that a large, generous love cannot, in its very nature, minister but to our best and holy states! The picture of your dear face, most constant with me, is one glowing with love, but always bearing the look of one that has suffered. Can I, who am the cause thereof, ever again be indifferent? Nay, the little life which remaineth is consecrated to restore, if possible, the beautiful image I have marred. There is no sacrifice too great that I would not enthusiastically make to this end. If God will only consider me worthy to work with him. I have been thinking, my darling, that knowing as you do your immense power over an audience to move them at your will, that same power you have with all public men over any woman whom you may love. To love is praiseworthy, but to abuse your gift of influence is a sin. Therefore I would fain help restore to you that which I broke down—SELF-RESPECT. Your manhood and its purity and dignity if you feel it is stronger than even love itself. I know this because here I am strong. No demonstrations or fascinations could cause me to yield my womanhood. You have not yet replied to my inquiry whether the giving you my whole heart in my letters offends you. I was with you all day yesterday, Sunday. What holy associations cluster around that day in our own experiences. The morning hours suggesting Mattie's death, and who can tell what that hath done for us, and now the evening memorable forever of confessions, with repentings, cleansing and sacred vows! I wanted to write to you, but could not. I went to church in the morning, was blessed, spoke with Mr. Bowen, who was cordial, and Professor Raymond. He commences another course of readings at the Packer to-night with Henry the 8th—\$5 a course. Were you out—

Mr. Evarts—There the letter terminates, it being an imperfect one. [To the witness.] Now, Sir, will you look at that which is not printed and say if that is a page of your original statement in your handwriting? A. No, Sir.

Mr. Tracy—It is not in his handwriting, Mr. Evarts; it is sworn to.

Q. It is not in your handwriting? A. It is not in my handwriting.

Q. Do you recognize it as a copy of a paper written by you? A. It is in the handwriting of Mr. Augustus Maverick, and I presume from what you show me, these are two leaves from the copy of my sworn statement which I left with the Committee. Let me look at it, please?

Q. And which was signed by you? A. Signed by me.

Q. See if that is the last page of it? [Handing paper to witness.] A. It seems to be all right, Sir.

Mr. Evarts—I will read this now. This passage from the letter, your Honor will notice, is of the date of February 3d, 1868, quite anterior to any dates of difficulty or difference between this pair. I read as it is here.

To love is praiseworthy, but to abuse the gift is sin. Here I am strong. No demonstrations or fascinations could cause me to yield my womanhood.

Mr. Beach—Do you want these marked. [Referring to the slips last shown witness.]

Mr. Evarts—No; I will take care of them.

Mr. Beach—I do not wish to take care of them, but I want to know—

Mr. Evarts—As I get on.

Mr. Beach—[To the Court.] The counsel, after proving these two pages, has read a portion of them, and I ask that they be marked.

Mr. Evarts—That is for me to say, Sir, when I offer them.

Mr. Beach—But he has read from them. He has read them in evidence.

Mr. Evarts—Well, I will take care of my own examination.

Judge Neilson—He purposes to offer them, I suppose.

Mr. Beach—Well, he has read them; we have some rights with those papers.

Mr. Evarts—You will have all your rights, but I will take care of my present examination.

Mr. Beach—I am not troubling your examination; I am asking that a paper from which the counsel reads shall be marked by the Court so that we shall know what it is.

Mr. Evarts—It is unnecessary to mark it at this instant.

Judge Neilson—It should be marked, but perhaps he will read more of it; it must be marked.

Mr. Beach—Well, that is all I insist upon, that it must be marked; we want to use it.

Mr. Evarts—I now read the passage from the original, beginning and ending where this supposed extract does:

To love is praiseworthy, but to abuse your gift of influence is a sin, therefore I would feign help restore to you what I broke down—self-respect. Your manhood and its purity and dignity if you feel it is stronger than even love itself! I know this because here I am strong. No demonstrations or fascinations could cause me to yield my womanhood.

Mr. Evarts—Now, if your Honor please, these two leaves will be marked as the paper shown by me to the witness.

Mr. Fullerton—And as read.

Mr. Evarts—From which I read a passage—to wit, an extract from a letter.

Mr. Fullerton—Yes, Sir; which is a part of the paper.

Mr. Evarts—Well, it is not the whole of it.

[Two sheets each marked "Exhibit D, 65."]

Mr. Evarts—This letter of the 3d of February which I have read, the original letter—the passage that I have read from it—beginning, "To love is praiseworthy," and ending, "No demonstrations or fascinations could cause me to yield my womanhood"—did you not understand from that letter that your wife then considered adultery a sin? A. Yes, Sir; I quoted it as a beautiful illustration of her own sense of the dignity of her sex and of herself as respecting it. That was the use which I made of that extract in my sworn statement to certify to her strength of character at that time.

Q. Exactly; and that she then regarded adultery as a sin? A. Yes, Sir; I think she does now.

Mr. Shearman—May it please your Honor the letters which I now read to the jury are letters written by Mrs. Tilton to her husband. [Reading]:

MONDAY, JAN. 29th. (Probably 1867.)

MY BELOVED: I am very sorry my letters are lost, they contained so much that stranger eyes should never see.

I was obliged to omit my Saturday and Sunday letter as usual.

Mr. Haakell came over Sunday afternoon. We went to hear

Mr. Beecher, who preached an uncommonly fine sermon on the divinity of man, from the text "Ye are Gods." In the morning Dr. Storrs preached for us. A collection was taken up for our city missions, amounting to nearly \$6,000.

Mr. B—called Saturday. He came tired and gloomy, but he said I had the most calming and peaceful influence over him, more so than any one he ever knew. I believe he loves you. We talked of you. He brought me two pretty flowers in pots, and said as he went out, "What a pretty house this is; I wish I lived here." It would make me very happy if you could look in upon us without his knowing it.

Deacon Freeland called in to-day. He wanted to know if I was good enough to live in so pretty and tasteful a home.

Mr. Shearman—I will pass over a passage relating to other matters.

The picture which came from Springfield has just reached me. I do not like it. It is old, thin and cold looking.

Nevertheless I talk to it, love and caress it. It would please you to know how much Carroll talks of you—often cries to see you.

The children are passing through the stages of the hooping cough very comfortably—thanks to homeopathy. It is nearly 12 o'clock and I must say good night, adding with it my very best love. Soon I shall look again upon your dear face and be satisfied. But if I was traveling about with you I know my body is not in the condition to bear journeying without great fatigue, and though I might look upon your face, yet absent from these children in Winter. I could not say I am satisfied, but when you are in your own home once again I shall then be perfectly at rest. "Oh, haster 'round ye wheels of time!"

God keep us both.

YOUR DARLING

[Marked "Exhibit D, 66."]

Mr. Evarts—[To Mr. Shearman.] Is that marked?

Mr. Beach—Well, I don't know about this letter.

Mr. Shearman—I read what I found written.

Mr. Beach—No, you didn't.

Mr. Shearman—"Probably 1867," is written in ink.

Mr. Beach—Who by?

Mr. Shearman—Not by us; that is very certain.

Mr. Beach—I don't know whether it is very certain or not.

Mr. Shearman—It came directly from your associate.

Mr. Evarts—It was not shown to the witness. It was taken directly from you.

Mr. Beach—The difficulty is, if your Honor please, that Mr. Shearman read the date as if it had been dated 1867.

Mr. Evarts [Handling letter to witness]: That is your wife's handwriting, is it not, except that little memorandum? A. Yes, Sir.

Q. That is not hers? A. No, Sir.

Q. Whose handwriting is that? A. I should judge, looking at it, that it was in the handwriting of one of the stenographers; it may possibly be my own with a steel pen. I very rarely write with a steel pen. I am inclined to think it is my own.

Q. Is that in ink? A. Yes, Sir.

Mr. Evarts—Pale ink. The date of the letter, if your Honor please, as given by the writer, Mrs. Tilton, is marked "Monday, January 29th." Then under it is written, in different ink, a memorandum, "probably 1867," and that Mr. Tilton says is either the stenographer's or possibly his own.

The Witness—Possibly mine.

Q. You suppose that to be the real date of the letter, do you

not? A. Yes, Sir; it would be easy to ascertain by finding out whether January 28, in the year 1867, fell on Monday.

Mr. Evarts—Of course that would help, yes, no doubt. That would fix it really, for within any range we have, there would probably be but one.

The Witness—Yes, Sir.

Mr. Evarts—I was going to ask you, in regard to some of the contents of this letter, that perhaps will fix the date. You heard the letter read, didn't you? A. Yes, Sir; I heard part of it read.

Q. You heard all that was read? A. Yes, Sir.

Q. Perhaps you didn't listen to it. I don't know how that was. A. I was not listening very attentively.

Q. [Handing letter to witness]: I want to know whether, by looking at that letter, you can remember whether the delicate condition of health that Mrs. Tilton refers to as preventing her journey to the West to meet you—whether she was then recently getting up from her confinement? A. I don't remember, Sir, from the date.

Q. You cannot give the birthdays of your children from memory? A. No, Sir.

Q. Have you no mode of giving us the exact birthdays of your children—any family record—any Bible? A. When I had a wife in my house I always referred to her for such information; I have none now, so I have to go without it. There is no record in my Bible; I went the other day to see—I thought there was—but there is none.

Mr. Evarts—We should like these dates, if we could get them, but we have no means of getting them.

The Witness—I presume if you refer to Mrs. Tilton, she can answer you immediately on the spot.

Mr. Shearman—January 28, 1867, came on Monday.

Mr. Evarts—January 28, 1867, Mr. Shearman says, did come on Monday.

The Witness—Yes, Sir.

Mr. Porter—We have a calendar here.

Mr. Evarts—So that letter dated January, 1867, written very soon after your new house was occupied by you, refers to the house—the present house, &c.? A. I think so.

Q. The Fall of 1866 you went in there? A. I think I did; yes, Sir.

Mr. Evarts—I don't know about the dates of these births, but it occurred to me that I had seen something to fix them. Perhaps it is not so. Now, go on, Mr. Shearman.

Mr. Shearman [Reading]:

SUNDAY EVENING, Feb. 2d, 1867.

MY DEARLY BELOVED: I bless the inventor or creator, whatever his name—who made the calendar, and February the shortest month in the year. My thoughts now are ever on your home coming, and it is a daily growing anxiety how I shall present myself and abide in your love. Our children will delight and satisfy you for they have grown in every good work and way and are altogether lovely.

Carroll is certainly the personification of love itself.

If love be the fulfilling of the law, when are not the conditions for his highest life established?

I realize with the Vicar of Wakefield, how great a wealth we have in our children. They are already high up—beyond us—

as Christ looks upon pure living. He has revealed himself to my babes. Blessed be his name.

The Church, to-night, was filled with medical students, Mr. B— preaching before their Christian Union. He certainly is greatly roused this Winter, and works most earnestly.

Will you not on your return throw in your inspiration and join us in fulfilling our vows as members of this Christian Church? Your beautiful spirit would help many there, as it does everywhere. And to me there is no spot so sacred in all this earth as Plymouth Church! Full of delicious memories. If we now, with all its members, bring into it our various rich and growing experiences, its later days would gloriously fulfill the enthusiasm of its beginning. These are my own thoughts, darling, and I feel that of late years we have both come short of our duty here.

I, with all my soul, have joined with you whenever any line of duty seemed plain to you; and from henceforth have I more utterly consecrated myself thereto. Now, therefore, I write your sympathy of thought and action with me. This Winter has blessed us both; though suffering, I rejoice unutterably that your bodily vigor is sustained, and even better than when you left home. I am not as well in body, though I do feel I have made some victories over my temper. I have striven for Christ's sake—who has been most precious to me—and for yours to array myself with purity of thought and action—and you know what it costs of struggle!

Once more my beloved, accept my most devout thanks for your patience and fidelity to help me onward and upward. Yet I dare not invite you to come and live again with me lest I bring disappointment and misery upon you. My soul is full, my eyes overflow while I write.

I must be victor! But I will sin if I go not to bed and sleep. At church, to-day, Mr. Studwell wished me to thank you for the reply to his letter, as you had paid no attention to it. Good night. Your own.

Mr. Fullerton—These letters don't appear to be marked as we go along.

Mr. Shearman—I will have them marked.

[Letter dated February 3, 1867, marked "Exhibit D, 67."]

Mr. Shearman [Reading]:

SATURDAY EVENING, February 1st, 1868.

MY BELOVED: The last day of the week I have been accustomed to look for your home-coming, so that to-day and this evening I am peculiarly lonely. Your precious letter from Pittsburgh came in your stead, which I have read four times already. Blessings on you, dearest, they have the last Winter's ring in them. I did not dare expect you would remember your aforesaid punctuality. Your closing lines are, "have I not a great heart when all its foundations are stirred?" Yes, most truly. Beloved, generous, noble, pure, I do thoroughly feel beyond all other men. Forgive me for telling you when forbidden. By so much as you are great. I too stretch out to reach you and thus we do lift up each other. God forbid I may never more drag you down!! Oh, well I know as far as I am capable I love you. Now, to keep this fire high and generous is the ideal before me. I am glad you carried a trunk, and are comfortable. I realize with mingled pain and pleasure, how much more satisfactory your physical life is away from home, and may be an ideal wife and children are in fact more helpful to you even as the memory of my Father has been more of an inspiration to me than his presence would have been. In this, separations become blessings; yet, with myself, darling, in my present growing passion and admiration and sympathy, I am only perfectly contented and restful when you are with me. These latter months, I have thought, looked and yearned for the hour when you would be home with longings unutterable; surely you must have felt the joy in my eye. I know that now mother, children or friend have no longer possession of my heart: the supreme place is

yours forever; are you really glad to hear this, my sweet? When you speak your love for me it is delicious harmony to my soul.

The flowers you ordered came to-day; I kissed every one, then I gave them over to Flory to arrange, as she desired to. I gave a few to gladden Carroll, and as I read the line to him in your letter where you say you were "more proud to be loved by your little children than to be the President of the United States," large tears filled his eyes, and he said, "I *do* love my Papa." We do not at all realize the blessings we have in our children! I have filled my sheet with the tale of my love—so old but *ever* fresh and gushing in me. I will now tell you of the guests I have had since I wrote you yesterday.

Susan Anthony came to tea last night, and went away after breakfast. I learned nothing particular from her; was entertained with her talk; and regarded your wish by curbing my enthusiasm for you, while I must impress unmistakably the minds of all I meet the single end and aim of my life—to be faithful in so far as I *know* to the great privilege whereto I am called. "Elizabeth, thou art highly favored, chosen among women," are words ever sounding in my ears.

About eleven o'clock to-day, Mr. B. called. Now, beloved, let not even the shadow of a *shadow* fall on your dear heart because of this, now, henceforth or forever. He cannot by *any possibility* be much to me, since I have known you. I implore you to believe it and look at me as in the Day of Judgment I shall be revealed to you. Do not think it audacious in me to say I am to him a good deal, a rest, and can you understand it I appear even cheerful and helpful to him. He told me in confidence that Mrs. — and his family were at his house; that Mr. G— had sold most of his insurance policies; what remained was not equal in amount to what Mrs. G— had been accustomed for pin money—that on Monday she with her three younger children would return to their place in the country, while he, Mr. B—, kept the three older sons at his house, for they could not even pay the cheapest board, and on a personal matter he intended to get employment for them—they having been with their father in business only. He *said* his sympathies had gone out for them more than if they were his own—they all as a family seemed so unfitted for poverty.

After seeing the children, I asked him if he would go with me to Mattie's and see the bust—without any hesitation he said he would. I immediately got ready, and I took my first walk to the Court-st. cars, without much difficulty, so that I feel free again and will walk out every pleasant day. We found neither Mattie or Mack at home to my great disappointment, seeing only Laura Bradshaw and Gip—and your dear head, darling, which on second seeing is more than ever to me. Mr. B— expressed great satisfaction with it, feeling it was far better than he expected to find it, and he believed as correct a likeness as you could have. He is very desirous for Mack to try him. We came directly home, nothing noteworthy occurring, save that he left at the door with the remark that "he had had a very pleasant morning."

You once told me you did not believe that I gave you a correct account of his visits, and you always felt that I repressed much. Sweet, do you still believe this? I strive in my poor word-painting to give you the *spirit* and impression which I give him, and he to me. It would be my supreme wish and delight to have you *always* with me. This trinity of friendship I pray for always. I gave Miss — her money. She desired me to thank you sincerely for your generosity. Carroll will come down for dinner to-morrow.

I will try to have a letter awaiting you at every appointment. Now, darling, *good-night*. I hope to dream of you, love.

Tell me frankly what I can be or do for you, because I am altogether  
YOUR OWN.

[Marked "Exhibit D, 68."]

Mr. Shearman [Reading]:

NURSERY, Sunday eve, March 8, 1868.

MY BELOVED: All alone, save Eliza in the kitchen and the children all asleep about me, while I have been trying to imagine my state when I shall again live with you and behold your precious form. *This*, I think, I have decided—no more chidings, scoldings! An inexpressible tenderness has grown up in my soul towards you. I never saw my path as clear as now—that whatever you may do, say or be, it becometh me to be the Christian wife and mother! The full meaning of those words, when developed from a nature impotent as mine, I most thoroughly understand. If I may lead my children *now* to an intimate love and trust in God, He manifesting Himself to babes, as He has promised, then to this great source of happiness strong bodies be added, I will risk intellectual training and knowledge. You say in your last, you are so drained and wearied, that when you come to me you can but bring "skim milk." It hath been so in all times past with both of us. Perhaps we have not had our love up high and supreme; the one delight of our lives, or maybe our frailty—weak bodies—have not been able to meet the demands of society and home duties. Mr. Beecher gave us a pleasant episode yesterday—a visit of more than an hour. He said, with great earnestness, you never could know the gratification your letter appreciating "Norwood" gave him. He meant to give you the American edition and me the English, or vice versa, so that we may have one each.

\* \* \* \* \*  
That I may be acceptable to you is my constant prayer.

Good night.

WIFE.

[Marked "Exhibit D, 69."]

Mr. Shearman [Reading]:

FRIDAY MORNING, January 23, 1869.

MY DEAR BELOVED: Your Monday's letter from Clinton, Ohio, telling me of your convalescence I have just received, and if my poor, dull, heavy "letters do you any good as a medicine," I have cause for gratitude. I'm sure, now that you have actually begun to speak every night, the necessity for constant effort, I hope, may keep off despondency—and I will promise to write more cheerily because of my successful efforts to live better.

My heart aches this morning at the death of Mrs. Monroe. She was the first of the three friends to go—mother and Mrs. Lombard remain. I am praying for mother all the time. You remember that she came over most sympathetically to dear Paul's funeral. \* \* \* \* \*

Forgive me that I want so much love—yet my soul cries, "Give, give!" I believe I am big enough to supply even your big heart with love—if you'll only let me.

Farewell,

WIFE ELIZABETH.

Mr. Shearman—In passing over a passage or two, I say that none of these passages that are omitted reflect anything on any one; they are all perfectly proper, of course, but they have some allusion to the lady's domestic affairs, and to the domestic affairs of other ladies. Everything that is omitted is eminently proper, but I try to omit anything that might disclose family affairs of other ladies; but in doing so by accident I omitted this clause, not that it is of any importance, but I will read it:

"Phoebe and Alice have sent me their autographs, so I have them all now but yours. Frank Moulton came round to read me his letter from you. It delighted him greatly. Flory appears now quite well again."

[Marked "Exhibit D, 70."]

Mr. Shearman—There were two exhibits that were put in last night that were not read, which I will now read—two letters of 1868. One has been read. [Reading]

THURSDAY EVENING, February 20, 1868.

MY BELOVED: I am so lonesome and heartsick for your companionship to-night that I hesitate to write lest my mood may depress you. Yet I cannot wish you home, for I am persuaded you are happier where you are. While I long to be with you, I am haunted continually with fears that your cheery face will soon be shadowed and the dear head droop! This thought is agony to me, and I have spent many hours since your absence weeping because of it.

I would fain make the path smooth for your feet, or in other words direct the children and the household that they minister harmony only, but *I know* I cannot, and *I am afraid*! You are at Clinton to-night. I try to fancy each night where you are, when you begin your lecture and when end, the lonely bed after the weary day, &c. But I know you are happy and make others happy. This is a comfort to me. I bless God for your health and your generous love to me. I took my second lesson on the melodeon to-day, to my great satisfaction. The most that I have yet learned is, how very little I know. This knowledge is stimulating. Oliver told me that Mr. Hatfield had written to Gilbert Haven urging him strongly to accept *The Independent* office. But I hear that the Methodists will make him a bishop. I am greatly interested in the paper and all that pertains to it. Will you talk with me in the future about all that interests you? Let us be more frank and free toward each other. The children are all well.

I have paid all your bills but Journey's, but in order to do so I drew on my salary, \$40; the losing of the \$50 from Warren would have prevented that; as it is, I am very much pinched, as I could not spare \$30 last month and \$40 this. Our household expenses are nearly the same as when you are home, for the family is large and we eat good food, though no dainties. Bessie is doing better since her head is clearer by being left alone from her unfortunate relatives. I do not scold her any more, darling. She has been the one cause of trouble between us since we have lived in this house; but, as I said before, I cannot bear to make you miserable by my harshness. I think in this you will find a change in me.

Good night. "Good angels guard thy sleep."

WIFE.

Mr. Evarts—Mr. Tilton, who is "Oliver," referred to—the first name, Oliver; your wife speaks of Oliver? A. Oh, Oliver Johnson.

Mr. Shearman [reading]:

WEDNESDAY, Feb. 26, 1868.

MY DEAR HUSBAND:

Let me tell you of the events—

Mr. Evarts—What is that date?

Mr. Shearman—February 26. It is in Mrs. Tilton's handwriting.

Mr. Evarts—The only date is Wednesday, February 26th, put in by the writer. There seems to be a memorandum. [Handing witness the letter.] Say whose that is? A. I judge it to be mine, Sir, written with a steel pen.

Mr. Evarts—Probably 1868. The same reference to the calendar will settle that.

The Witness—Judge Porter can settle that in a moment.

Mr. Shearman—The stenographer will understand that these two papers that I have here were marked last night—"D, 60," and "D, 61."

Mr. Evarts—It appears that Wednesday was the 26th of February, 1868.

Mr. Shearman [reading]:

WEDNESDAY, Feb. 26, [1868.]

MY DEAR HUSBAND: Let me tell you the events of yesterday. Directly after breakfast I read aloud the entire editorial sheet

and the Washington letter of THE TRIBUNE, concerning the Impeachment. I wish I might be with you at these times. Andy has gone a little too far. Congress acted promptly at last. I know how this turn in affairs affects your spirits. God is showing His face again after so long an hiding. How blessed is this re-assurance. Now, I say to myself—with Andy removed, and your wife restored, and your debts most paid, what remains but to be happy? I feel jubilant, for God is good. After reading I went to the Police Station, where I met seven other ladies, and their seven clocks all waiting for the Judge to hear our complaints; he did not come until near 4 o'clock—losing my dinner and my patience, besides my clock will be of no value probably as they have all been at the pawnbroker's, knocked about, cases broken and works destroyed to many of them. Then I went to Aunt Hannah's, as I knew her enthusiasm over the day's news needed an outlet to a sympathizing ear, and staid there to tea. Was too tired to write you on coming home and went to bed.

I forgot to tell you in my last that on Monday eve I heard Mr. Raymond read "Othello" to my great delight and profit, I trust. I am going to-day to visit Mattie, making the most of Mrs. Mitchell's stay with me. Mr. B— put our baby to sleep, laid him down and covered him up, the last time he was here—said whenever we could not quiet him, send for him, and he would come. His call amused the children very much. This crumpled sheet is the only scrap of paper in the house. Excuse it and the writing, my sweet. Oh, how proud I am of you. I'm sure we will be happier in the future—Had we begun our lives where now we start! All well; expect your mother this week.

Farewell.

YOUR OWN.

[Marked "Exhibit D, 61."]

SUNDAY, Feb. 7th, 1869.

MY BELOVED: I have just finished reading to Emma Lowell's "Extreme Unction," and the chapter in "Norwood" of Parson Buell's grief in the death of his wife. It is very touching, and I realized for a moment what that agony must be, the parting at the river between a husband and wife who have truly loved—how inevitable it is! God only can sustain the one who remains, while He enables the one who departs to say, "I shall be satisfied!"

Allow me to say, without cant, that God has given me a blessing to-day. He has enabled me to do something for Him, and that conscious privilege overflows my heart utterly. At home he helped me to be patient, willing, yea, glad, to spend myself for others; and in the Bethel—my little room was crowded—the interest increases in my class. They all love me. I feel it, because I too love every one. I do indeed feel grateful for the encouragement they give me in these new labors. I tell you rather more at length than usual of my work here, because I earnestly wish your sympathy and to feel free to talk with you of everything in which I am interested—as in "Auld Lang Syne." How'er imperfect we may appear to each other, yet the dear Lord does not hesitate to use us. Now, to-night, I give myself to you—my best, my worst, "just as I am," take me once again into your confidence; bear with my follies as in early days. I consecrate myself to you so long as I shall live, before God this night as a fitting close of this Sabbath day. Forgive all my infirmities and help me to overcome to final victory. Wilt thou? So will I you, if you permit. The freedom with which you write of Paul gives me great pleasure. Then the fountains are unsealed and we flow together. I talk not so much of him—yet this new mysterious feeling I know, which I never before have uttered—a kind of awe, or waiting, listening to learn what he will do for me—and an agony of fear at times lest I should fall by reason of sin what he could bring. Already in many things I am a *changed woman* through his precious ministrations; yet, fearing such a statement may be too positive, let me modify it by a *woman changing*.

Your change of route upsets my reckoning, and I am not able

to place you to-night, which I regret because, as I told you before, I have known not only what place you are each night, but also which letter of mine you will find there. After Friday I shall be all right again; meanwhile I hope you will enjoy to the utmost your recreation with dear friends.

I have no items of news to-day. I am trying to be a *cheerful, good woman*—that's good news.

Good-night. If I might only write an easy, flowing, beautiful letter to my Beloved!

ELIZABETH, Wife.

P. S.—Lizzie Wood sent her love to you to-day, which I forgot, and Frank Moulton called to say that he had spoken to the prisoners at the Penitentiary and would write you about it. Mattie mailed you a letter for Danville.

All these things I forgot earlier in my letter.

YOUR OWN.

[Marked "Exhibit D, 71."]

Mr. Everts—Mr. Tilton, this refers to a domestic affliction in the death of your child Paul, does it not? A. Well, Sir, my mind was wandering away during the reading.

Q. I only wanted to fix a date if I could? A. If you will let me see the letter a moment.

Q. This letter is dated Feb. 7, 1869. I call your attention to this: "The freedom with which you write of Paul gives me great pleasure." A. That was our little son who died.

Q. He died the preceding Summer, did he not? A. Yes, Sir; in 1868.

Q. "Mattie mailed you a letter from Danville." Who is Mattie? A. She, Sir, was our dear and honored friend Mrs. Bradshaw.

Q. The lady who has been a witness? A. Yes, Sir.

Q. And there is a reference in one of the letters to May—by the name of May, and in reference to a bust of yours. Who was May? A. That was a reference to Miss Mary Bradshaw, the daughter of Mrs. Bradshaw.

Q. The daughter of this same lady? A. Yes, Sir; she is now the wife of a professor in Washington, and was at that time an art student, and had made a bust of Mr. Beecher, and also one of myself.

Mr. Shearman [Reading]: "August 8, 1869."

The Witness—Mr. Everts, before the next letter is read, perhaps I ought to modify my last remark. I did not get the date of the letter that you read, and possibly those two busts had not then been made, but were made afterwards.

Mr. Everts—Oh, well, but the letter refers to one bust—your bust, and to Mr. Beecher's wish to have another.

The Witness—Yes, Sir.

Mr. Beach—It was not at the time of the last letter, but the previous letter.

The Witness—Very well.

Mr. Everts—The letter itself indicates that. They were looking at her bust of you, and then Mr. Beecher said he would like to have her make one of him.

The Witness—And she made one of him afterwards.

Mr. Everts—Afterwards.

Mr. Shearman [Reading]:

AUGUST 8, 1869.

MY DEAR HUSBAND: My heart sorrows to-night for my loss in the death of Mrs. Elliott. Pity dear mother, as one after one of her friends leave her. Minister to her if you can, my darling.

Oh, dear Theodore, may I not persuade you to love the Lord Jesus Christ? Do not let this entreaty estrange us more, for my

pillow oft is wet with tears and prayers that we may come into sympathy in our religious natures. Do have patience with me, for, as the time remains to us, I feel as though my heart would break if I did not speak to you—not that I am right in any sense, and you are wrong; God forbid! but we are not one in feeling, and it is impossible for me to be indifferent, especially while God blesses me with dear children.

I once again ask forgiveness if I have offended you by showing my heart. Our dear baby grows finely. Carroll suffered much to-day by having nitrate of silver put upon his fingers, but he desired it himself; he is desirous to reform this habit.

I am extremely glad that Mr. Greeley is to be with you. I hope you will have unalloyed comfort with him. Give him my love, as you know I have it for him. Make him as comfortable as you can. Your letters coming daily are my sustenance really, although they give me only your other life.

I commenced a letter to-day to Mrs. Moulton, acknowledging her kindness. I weigh 108½ pounds. I hope to reward your loving care by an increase of ten or twelve pounds when next you see me. Good night! Your dear wife,

ELIZABETH.

[Marked "Exhibit D, 72."]

Mr. Shearman [Reading]:

SUNDAY EVENING, Feb. 28th, 1869.

MY BELOVED: "This is the last day of Winter," little Carroll said as he got into bed to-night. "Papa will soon be here." "Yes," I replied, "Spring will certainly come, and I hope in three Sundays more Papa will come as surely!"

We had a delightful "sing" after tea—read in turns two chapters in the Bible, then followed our little prayer meeting. I felt it was good and acceptable. You were not forgotten, be assured. Blessings must follow the prayers of little children for their parents.

My Bethel meeting to-day was good. I am sure no one of the little band went away uncheered. How munificently God rewards the faintest, feeblest efforts we make for the good of others.

I will go back a little and tell you yesterday's story, a day so full as to crowd out entirely my writing you. First of all, then, my heart overflowed toward you, because of your generous, kind letter concerning mother. She was quite touched by it, and desired me to give you her thanks for your sympathy, saying again, as she has often said before, "Because I made an idol of you, Elizabeth, is why Theodore has made me so wretched. I have felt he did not appreciate you, and often neglected you, but I want to forgive all the agony he has caused me."

This was the first time your name has been mentioned since her stay with me. Forgive the indelicacy of quoting her remark; it seemed to me a concession on her part toward you; the least sign I must welcome as a promise of the fulfillment of my life-long prayers—my married life, I mean.

My head and heart have been so full of divorce cases since you left—this difficulty of mother's following on the heels of Mrs. —has been a kind of experience of which I have had quite enough. Were I a lawyer I would certainly change my profession or beg, rather than investigate such miseries.

Now, my sweet, after so long a tale let me for our mutual refreshment turn to our own sweet love. I bless God that it abideth! Among the terrible changes of many hearts, God has kept us steadfast, with a growing love, admiration and respect for each other. Oh, let us praise His name forever! All the differences, misunderstandings, we have had are as Whittier says "like mountain ranges overpast."

"If God be for us, who can be against us?"

Give me your patience while I spread out before you the fruitage of your beautiful love, like the rare-cut flowers of a bouquet. They are the closing words of your letters—select and precious,



reminding me of the soul-stirring benedictions of the Apostles' Epistles.

Fruit No. 1.—"But among all my losses, I have lost no jot or tittle of my ever-increasing love for the sweetest of wives, and the fairest of children." "My heart longs for you to-day."

"Grace, mercy and peace.

Ever thine."

"You and the chicks, and the house, and all are in my thoughts every day and hour."

"Good bye, and all hail!

Ever yours."

"With overflowing love I am now and ever, yours devotedly."

"I send you now, as ever, the fervid love of yours devotedly."

"I think you and I are yet to walk in Paradise together."

"I would rather have my wife and children at this moment than all the honors under the sun."

"Every day of my life I love you more and more, and shall unto the end." "With my whole soul I am yours faithfully."

"If now I had a little personal comforting and petting from the little lady at No. 136, I would be perfectly satisfied."

"But Paul and I keep our companionship. To you, his mother, be God's peace." "I love you fervently and entirely. Blessings with you always." Then, fearing that these extreme delights "would make a woman mad outright," you have six epistles ending: "Yours in dust and ashes." "Yours doggedly." "God help your sorrowful and groaning husband." "Yours achingly," &c.

How like you the receiving a letter from yourself? I keep a list of these delicious tit-bits. Most tenderly believe it. Thou knowest that I love thee.

Good night.

WIFE ELIZABETH.

Mr. Shearman—There is a postscript, though not marked so. [Reading]:

A little home news. Went with Mattie to the organ concert. I send the inclosed programme.

\* \* \* \* \*  
Do you remember when you returned last year Mr. Mitchell brought little Paul down in the parlor to see you, and the smile of welcome he gave? I wish so it might be that the dear little expected might be brought to you in like manner. You would then avoid my suffering, and all would then be happiness. Flory says: "Oh, Mamma, if you were not obliged to suffer and be sick, how happy we all should be."

I have a great unwillingness that those who love me should suffer for me.

Once more, good night.

YOUR DEAR WIFE.

[Marked "Exhibit D, 78."]

Mr. Evarts—It is past our hour of adjournment.

The Court here took a recess until two o'clock.

#### ANOTHER INSTALMENT OF LETTERS.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—If your Honor please, we owe to your Honor and the jury an apology for being a little late. We were engaged in the examination of some papers, and the lapse of time did not strike us as of very much concern.

Mr. Shearman—I am sorry that we have to read the letters a little out of order. There is some difficulty in finding them.

Mr. Shearman then read the following letter, which was marked "Exhibit D, 74."

FRIDAY NIGHT, Dec. 28th, 1866.

MY OWN TRUE MATE:

One of the most severe days we have had. Have not been out except to call on Mr. Ovington. A consultation was held

upon his case to-day, resulting in assuring his wife that with great care, he might recover. I seem to have some power to cheer him, wherefore I give about an hour a day to him. I was obliged to call in Dr. Barker, for Flory was sick this afternoon, and already his remedies have helped her. She had anticipated much during the holidays—a visit to Jo's, and other places have been given up—but she bears it well.

Annie had a fine time at Emma Beach's party last night—it was a grand affair. She will not go back to Nyack—stay with me awhile, and I hope you will decide to send her to Lexington, tho' perhaps rest from study this Winter would be best. She seems very happy with me, and while you are away I am glad of her company—since she has learned to be agreeable, and is far more helpful than of old. Burrows's wife has a son two weeks old. I have not been there.

My beloved, I have been thinking of my love for Mr. B—considerably of late, and those thoughts you shall have. I remember Hannah Moore says: "My heart in its new sympathy for one abounds towards all." Now, I think I have lived a richer, happier life since I have known him. And have you not loved me more ardently since you saw another high nature appreciated me? Certain it is that I never in all my life had such rapture of enthusiasm in my love for you—something akin to the birth of another babe—a new fountain was opened, enriching all—especially toward you, the one being supreme in my soul. "I love thee with the breath, smiles, tears, of all my life!—and if God choose I shall but love thee better after death."

It is not possible for any human creature to supersede you in my heart. Above all you rise grand, highest, best. I praise God that He is teaching me of His great mercy and love, shown by His gift of so great a heart as your own, to be mine. For many years I did not realize the blessing. What remorse it brings to me! Memories bitter, awful! But to return to Mr. B—. He has been the guide of our youth, and until the three last dreadful years, when our confidence was shaken in him—we trusted him as no other human being. During these early years, the mention of his name, to meet him, or, better still, a visit from him, my cheek would flush with pleasure—an experience common to all his parishioners of both sexes. It is not strange, then, darling, that on a more intimate acquaintance my delight and pleasure should increase. Of course I realize what attracts you both to me is a supposed purity of soul you find in me. Therefore it is that never before have I had such wrestlings with God, that He would reveal Himself to me, and ever in my ears I hear "The pure in heart shall see God." Oh, fulfill this promise unto me, my Lord and my God! Darling husband, I have endeavored to express to you, without cant or any such thing—my true feelings, as they appear to me. It is true that I live in an agony of soul daily; nevertheless I am profoundly happy in my privileges, opportunities and blessings.

God is with us. We have had great experiences this Winter. He will keep us, I am sure—our trust is in Him.

Let us pour out our souls in prayer that we may never sin as before, when we meet again. Will it be possible that I shall ever again cause you a pang. God in great mercy forbid!!

Good night.

Oh, for one embrace. My whole being goes out toward you. I believe it does. May I not hope now that between us there is a true union of souls? Holy Spirit, searcher of all hearts, incline us wholly toward one another!

Yours,

Mr. Evarts—Mr. Tilton, I will ask you one question about this Annie. She appears to be mentioned in some other letters also? A. Mrs. Leslie.

Q. She was then a young lady? A. She is still, Sir.

Q. I was going to ask about her age? A. A grown young lady. What was the date of that letter?

Q. A grown young lady at that time? A. Yes. What was the date of that letter?

Q. December 28, 1866. A. Well, she was a young maid at that time.

Mr. Shearman—Have you any more letters, Mr. Morris?

Mr. Morris—Here are some on the list we have not found yet.

Mr. Shearman—I will now read this letter:

MONDAY MORNING, Feb. 24th, 1868.

MY DARLING OF DARLINGS: I am most happy to sit down in writing talk with you. This is my first break in my daily correspondence. Saturday to Monday, owing to Sis and Eddie, Joe and Fanny coming up on Saturday to spend Sunday with me, and Sunday, when I yearned to write to you after church, was prevented by calls from Mr. Ovington and friend, Mr. Augustus Storrs, Mr. Freeland, and the Rev. Mr. Adams, which occupied the whole afternoon. Then I gave an hour to my children, to our mutual delight, and the evening passed with Joseph and Fanny, until weary, I was forced to go to bed without giving you my Sabbath love. To-day I thank you; I thank you for a look into your heart—for, with one or two exceptions, you have not shown it to me since you went away. Your work and fatigue is the cause I know. Oh! my beloved, I feel unutterable love and sympathy for you in your anguish and "heart-break," as you say. It is too true you have given largely, grandly, and bountifully of your best love to friends, aye even to your wife, while in return you have received most often indifference, and at best, love not deserving the name, in comparison with thine own. Do you wonder that I couple your love, your presence, and relation to me, with the Saviour's? I lift you up sacredly and keep you in that exalted and holy place, where I reverence, respect—and love with the fervency of my whole being. Whatever capacity I have, I offer it you. The closing lines of your letter are these words: "I shall hardly venture again upon a great friendship—your love shall be *enough* for the remaining days." That word *enough* seems a stoicism in which you have resolved to live your life. But I pray God He will supply you with friendship pure and wisely love, which your great heart demands, withholding not himself as the chief love, which consenteth not tho' it burn, and whose effects are always perfect rest and peace. Again, in one of your letters you close with "faithfully yours—that word 'faithful' means a great deal." Yes, darling, I believe it, trust it, and give you the same surety with regard to myself. I am faithful to you, have been always, and shall forever be, world without end. Call not this assurance impious. There are some things we know. Blessed be God. I sorrow more than you can, for your lost friendship—as my soul stings with remorse that I was the cause—and yet for all this, you love me. Henceforth let no one point the finger at your Christianity. The love which is in Christ Jesus abounds in your soul. Flory is persistent in her wish to unite with the church. Shall she do so when you return, at the May communion—that—

Mr. Shearman—This letter is broken off here, and there should be another sheet, which is lost.

[The letter was marked "Exhibit D, 75."]

Mr. Shearman then read the following, which was marked "Exhibit D, 76:"

TUESDAY AFTERNOON, Feb. 18th, 1868.

MY DARLING HUSBAND: You have made me rich to-day; your letter from Lincoln came this morning, and this night Eliza brought me the full epistle from Chicago. I read every word eagerly; drop instantly whatever I am doing when the postman comes, and give myself up utterly, body and soul, locking the doors to prevent intruders, just as we are wont to do after an absence. I am heartily glad you are with the dear good friends in Chicago. How I wish I could have been with you? I hope you have impressed upon Elizabeth

my profound respect and love for her. How grateful it was to your poor tired head to rest there in the bosom of those dear ones! I am so glad, so thankful, the opportunity was given you, even tho' it cost the Des Moines appointment and two letters of mine awaiting you. I never realized as now I do, your arduous labors, and the great hindrance and drag I have been to your young, beautiful life.

I yearn to caress and tenderly care for you, read, sing, and gladden those dear eyes once again. I feel as never before, how dreadful a thing it is to wound or stab any human heart by sharp, stinging words. Perhaps the dear Father has given me another lease of life, that I may learn this lesson. I praise him for his goodness. Then again, darling, I have felt so heart-sick that there are so few great men and women. The idea of a faithful, true marriage will be lost out of the world—certainly out of the literary and refined world—unless we renew it.

It amused me much to hear of your namesake, Tilton Prince. Prince Tilton is our pet's name. I shall have much to tell you of our dear friend, Mr. B—. He has opened his heart, as you would love and admire him. To believe in one human being strengthens one's faith in God. Now, what shall I add of love? I am devoted to you. I want that your latter days may be the brightest and richest of all your life. It is fearful to contemplate the wrecks there are in human life.

Believe in me,

Yours always,

ELIZABETH, WIFE.

Mr. Shearman here paused, looking for some letters.

Mr. Morris—We have here more of hers, that are not on your list, however.

#### OTHER LETTERS OF MR. TILTON TO HIS WIFE.

Mr. Shearman—While searching for one or two more of Mrs. Tilton's, not found easily at present,—counsel not agreeing as to them,—I will read some letters of Mr. Tilton to his wife.

Mr. Shearman then read the following, which was marked "Exhibit D, 77."

AT THE OFFICE,  
Tuesday Morning, Aug. 21, 1866.

MY WELL-BELOVED WIFE: I enjoyed your recent visit as I never enjoyed a similar occasion in all my life—in some respects, more than any preceding similar visits. The memory of it lingers in my mind, as the fragrance of a garden clings to one's garments long after walking through it. It is only now and then, I suppose, in the lives of the best of good people, that they appear to each other at the very brightest point of moral development and spiritual ripeness. But it is certain that you showed yourself very lovely to me on that beautiful Sunday evening. I register that scene in my memory, classing it with the other choicest remembrances of my whole life, ranking it among the joys that are never to be forgotten. I would to God I were not so easily overcome by my own worldly-mindedness as to be brought so quickly and fatally down from my heavenly moods and the earth. But this belongs to the infirmity of human nature. I have walked like a king ever since that evening. No labor has been too arduous—no sacrifice too great for me. It is such fruition that our mutual love ought always, or oftener, to bear. May God make us wise, rich and pure.

Forever yours,

THEODORE.

Mr. Shearman next read the following, which was marked "Exhibit D, 78."

LAFORTE, INDIANA, Dec. 6, 1866.

MY DARLING: I have ridden all day long, and am just arrived, at dark, about an hour before my lecture. I am so excited in

mind by a sense of my being imprisoned away from home, barred out by impassable walls, hindered from seeing you by cruel obstacles, that I can do nothing at this moment but make an outburst of feelings. I ought now to be composing myself for my task, but I feel more like taking flight eastward, in the next train. All day long I have been reading "Griffith Gaunt." Go to the bookstore, buy a copy, and read it—that is, if you would like to be doing the same thing with myself. I am not yet far enough in the story to know its moral meaning, but it has excited me considerably. It turns on jealousy. I am not jealous. Nor do I know the feeling. I think any man is a fool who is jealous. If he is jealous *without* cause, he is foolish: if *with* cause, more foolish. But I am somewhat disturbed, and have been for a long while past, at the diminishing faith which I entertain for human nature. Human characters do not seem so lovely to me as they once did. Perhaps this view is temporary—the result of a passing shadow. Or, rather, perhaps it is because I do not entertain so fond an opinion of my own character—its moral strength and unbending rectitude—as I once supposed I could justly entertain. During my travels, I have had profound reflections on my life. I am a weak man, supposed to be strong; a selfish man, supposed to be the world's lover and helper; an earthly minded man, supposed to be more Christian than my fellows. I cannot endure the mockery; it breeds agony in me. At this moment I am completely wretched, yet expect in ten minutes to step forth to a public welcome. The outside life is one thing, the inside another. I dare not show the inside to the world. And yet I must show it perpetually to God. I am endeavoring to live a manly life—not what the over generous world shall so esteem, but what in my inmost conscience I shall know to be such. I have had many wrestlings of my soul with Heaven, of late. I feel myself scarred, spotted, miserable and unworthy. From this feeling dawns the day. I have taken refuge in my lecture at night, sometimes turning it almost into a sermon. I have come to feel exactly as the Prodigal felt. An inward revelation of a man's self to himself is an awful thing. It lifts my face to the eternal world. Henceforth my prayer is that God may keep me nearer to Himself. My life is so unprofitable that I sometimes dare not turn round and look upon it. You cannot guess for what one thing I most yearn to see you. It is to kneel by your side at our familiar evening prayer. My prayers of late have seemed all spiritless without you. I am never so true a man as in my prayers—when I have prayed with my arm around your neck. It seems to me now that I cannot live this Winter without at least seeing you once or twice—if for no other moments than just these greater of all moments. I see with agony in the retrospect, how my life has been marred by social influences coming from your mother—how they disastrously have affected us both. If you should ever appear to me anything less than the ideal woman, the Christian saint that I know you to be, I shall not care to live a day longer. I cannot write further. I must stop to go to my audience. It is dreadful to be so full of feeling as I am at this moment.

God bless you!

THEODORE.

Mr. Shearman then read the following, which was marked "Exhibit D, 79 :—"

IN THE CASE,  
NORTHERN INDIANA, }  
Dec. 7, 1886.

MY DARLING: This rattling train shakes my pencil, but I must endeavor to write to say that I have just finished "Griffith Gaunt."

It is a powerful and interesting story, well constructed, though not remarkably well written. I don't care particularly whether you read it or not. It has not baptized and anointed me like our mutual reading of "Felix Holt." Do you not often recall that sweet evening, in Twelfth street, when late at

night we finished that heroic story? I can see you at this moment, lying propped on the sofa, your red shawl around your shoulders, and your waterproof cloak over your feet. That night and the day that followed it filled me as full of human happiness as my heart could hold. "Griffith Gaunt" ends in a far sweeter and more agreeable manner than one expects when he is in the midst of its pages. But I have never met a character in any romance equal to one which, if I were a romancist, I could draw from a certain woman I know. The novels turn too much on love as a passion, as a jealousy, as a madness, as an intense adoration for the time being, and it is only here and there that one sees in a novel the true and perfect love of a true and perfect woman—the love that swells in the soul rather than in the heart. Men and women who have the mere natural instinct for loving love with the heart; but they who have a true *genius* for loving, love with the soul. The noblest part of love is honor, fidelity, constancy, self-abnegation—not the clasp of the hand, nor the kiss of the lips, nor the ecstasy of fondness. Sometimes that which most delights the heart most cheats the soul. It is for this reason that lovers ought sometimes to be separated. Now, to bear each other in memories, in daily and hourly pictures of the fancy, in constant mutual communings of soul, without a contrast of the flesh, in perpetual nearness, notwithstanding miles of distance, in an abiding reverence, unfeigned, lofty and ennobling. This is the great prerogative of true love.

No man loves a woman as a woman loves a man, until he has attained to such an experience as this of the union of two souls by their noblest possible interchange. But, in some lives this comes not at all; and, in the best lives, it comes only at the crowning moments. O that we were heroic enough to seek always to live our best possible life! I am trying more than ever.

God help us both. Thine immortally,

THEODORE.

QUINCY, ILL., Dec. 12, 1886.

MY DARLING OF DARLINGS: I have just written two letters to the little girls, and have only a minute left for adding a kiss for their mother. Oh, how I long to see you! I yearn, and long, and pine to be at home. I never knew the strength of my home attachments till this Winter. I never fully comprehended how thoroughly we are a part of each other till this separation. I bleed like a grape-vine broken off. But I cannot say that I am not cheerful. My work seems important, and my Winter (if I am spared through it) will be the most useful one of all my life. I am lecturing in dead earnest. I have a message to deliver. I could not endure to speak night after night on any merely literary or entertaining theme. I believe I love my country purely and passionately and seek her honor and integrity. I must write while yet the strength and life last. I have always had a sense that neither would last for many years.

Ever yours,

THEODORE.

[Marked "D, 80."]

DUBUQUE, IOWA, Dec. 27, 1886.

MY DARLING: I came hither this morning, and found your letter awaiting me. Hereafter I trust I shall receive all your letters. This makes the third time I have crossed the Mississippi, not counting recrossings. The beautiful river this morning was nowhere to be seen. It flows silently under a bridge of solid ice. I crossed in a sleigh. The ride was more than a mile from bank to bank. The far-western atmosphere, by which I mean Iowa, Minnesota and Kansas, is very pure, dry and healthful. To-day is a perfect specimen of such atmospheric healthfulness. After breakfast I toiled up the steep bluffs, clad in my furs, to keep off Jack Frost. My panting and struggling rewarded me with rosy cheeks; but I had no wife near by to kiss them. My health is excellent, but I think I am looking older than usual. Last night the villainous time-table robbed me of my rest. But I am having a long day of leisure to make up

for the theft. I have been busy about three hours in getting off answers to lecture-committees. If I had six tongues instead of one, I could employ them all, and every night. I had a touch of home sickness this morning. It came from the sunshine that poured into my room from the lustrous south-east. The walls, the carpet, the chairs all glowed and glittered under the touch of the Goldsmith. I wanted then a certain shining face to sit in my rocking chair, on whose eyes I might look, and on whose lips I might hang. I allow these and such like words to fill me awhile with a delicious sadness, and then I fight them down and go to work. I don't expect, however, to be lonesome much longer, for I am to meet you in Chicago. Now that the other man has gone off lecturing (as your letter mentions) you can afford to come to me. You ought to be enjoying what I am enjoying on this magnificent trip—for instance, this afternoon, a dinner-party. Leave home, children, kith and kin, and cleave unto him to whom you originally promised to cleave. You promised the other man to cleave to me, and yet you leave me all alone and cleave to him. "O Frailty! thy name is woman." If you can get anybody to pour tea for you, and to take sauce from the servants, and to receive pastoral visits, I shall expect to meet you under the roof of Robert Hatfield.

Yours eternally,

THEODORE.

[Marked "D, 81."]

BATTLE CREEK, Michigan, Jan. 30, 1867.

MY OTHER SELF: I cannot tell you how much pleasure I find in just sitting down, at odd moments, and dropping you a few hasty lines, either about something or nothing, or midway between. This daily, and sometimes twice-daily habit, has done more to keep me cheerful under my inevitable home-longings than I before supposed possible. There is something in the exchange of letters that ranks next to the greeting of palm to palm. When I receive one of your letters the sheet seems to contain more than your mere writing; it is something which has been touched by your hand, which has caught a pulse of your feeling, and which represents more than the words can possibly say. I have always felt a little guilty after throwing away even an envelope on which you had written my name. Think, therefore, what a bankruptcy I suffered when I lost the packet of all your daily letters for six weeks! I lost them from my too great care; for I carried them in my pocket, which I could always reach, and would not trust them to my valise, which was not always under my eye. I had filed them carefully, put each in its order of date, interleaved them with the few letters which the children wrote, and kept the roll as sacred archives. I meant, on my return home, to put them in an iron safe, and bequeath them to the children, to show to Florence's sons and daughters how much their grandfather and grandmother loved one another in the olden time. But those delightful manuscripts belong now to the lost literatures of the world.

Ever yours,

THEODORE.

[Marked "D, 82."]

ON THE CARS, CHICAGO TO MILWAUKEE, {  
Tuesday, Feb. 14th, '67.

MY DARLING: I wrote to you a hurried sheet this morning from the Sherman House, while waiting for Henry M. Smith to breakfast with me. He did not come; I ate my breakfast alone. Once again on the cars, and once again confronting a lecture-appointment, I feel that I am once again at work, after my two days of pleasant rest.

And I confess that rest is sweet. I do not mean rest for wearied limbs, though that, too, is sweet; but rest for one's spirit; rest in the midst of a circle of kind and loving friends; rest to one's own vagrant, untamed and unconquerable homesickness; rest in the tranquillity of spiritual peace.

I have been enjoying two days of such rest. The spell is still on me this morning. I rode five hours to Princetown yesterday afternoon, and five hours back, after midnight, on purpose to spend a long and delicious evening with

the Lovejoy family. This family and its influences have helped to make me a better man. The very roof seems to spread over me a benediction. I am grateful for the Providence that ordered my steps last December to the threshold of this cottage. Tarrying with these dear people has been a new experience in friendship—a new delight of life.

The whole subject of friendship has been much in my mind this Winter.

I am satisfied that whoso makes no intimate or confidential friends, both among men and among women, friends with whom he girdles himself round about as with a halo—friends who are prone to keep him lifted perpetually toward his highest life—friends whose friendship is a kind of sacred wedding that knows no sex—such a man neglects one of the greatest of human opportunities for intellectual, moral and spiritual growth. \* \* \* The old religious teachings, the orthodox view, the dread of punishment, the atonement, have less and less power over my mind. Of course you will mourn over this. But I must be an honest man. I don't believe in orthodoxy, and therefore I will not pretend to do so. From you as from God, I have no secrets. So I tell you day by day my thoughts. And these are my thoughts this morning. But the car is now growing crowded; a man has taken a seat at my elbow, and I must stop writing. Blessings on your saintly head!

Ever yours,

THEODORE.

[Marked "D, 83."]

Mr. Shearman—I asked for a letter of Feb. 14th, 1867, and it looks as if there were two letters of that date; you have only given us one of that date.

Mr. Morris—That is the only one we have.

Mr. Shearman—This is not the one that is printed. The letter which has been handed us was originally dated Feb. 14th, 1865. It is then altered to 1867. I do not know how to account for that; but it does not correspond with the one that is published, dated Feb. 14th, 1867.

Mr. Fullerton—Oh! yes, there are two of February 14th.

[A consultation here took place among counsel.]

Mr. Evarts—In regard to this letter of January 31st, 1866. Do you consider your search such as to show that it is not in existence or cannot be found?

Mr. Morris—Well, I don't know.

Mr. Evarts—Well, I would like to read this copy.

Mr. Morris—We don't know whether that is a copy of the letter.

Mr. Evarts—We are entitled to one or the other; we want the letter for other reasons. It seems there is only a part of it that is printed here, and we want the part that is printed here if we cannot get the rest.

Mr. Beach—What did you do with this letter of February 14th, 1867?

Mr. Evarts—That is not the one; there are two of that date; that is not the one.

Mr. Beach—If your Honor please, in the last exhibit which was presented [No. 83] Mr. Shearman read I think from the printed book and not from the original, and he has omitted several portions of the letter, they having been omitted in the book, and we think they should be read in connection.

Mr. Evarts—We will read it all; it is Mr. Tilton's letter.

Mr. Shearman—I had no objection to read the letter, but it struck me it was getting on private families.

Mr. Fullerton—Yes, Sir; it strikes you in a tender spot, in my judgment.

Mr. Shearman—If your Honor please, I will read the passages that were omitted; I glanced hastily at it as I was reading it. [Reading:]

I have had abundant occasion this Winter to test the impressions which different kinds of new friends make upon my mind and heart. "Ye have not many fathers in Israel," said Paul; in addition to which I have also found that one has not many mothers, or sisters, or brothers, or friends. The number of people who mate each other—who fit one another exactly—who are (to use your word) "counterparts," is very small. A man must see in his friend something that supplements himself. That for which we hunger in another is that which is needed to keep us from being incomplete ourselves. The best type of friendship, therefore, is that which excites the souls of true friends to their highest spiritual states. My friends are legion, and yet only here and there one affects me powerfully in my moral nature. By most of my friends I am influenced (so far as I can see) for neither better nor worse; but by a few whose names are precious, I am purified and ennobled. Their society is like a ministry of angels. To talk with them, to live among them, to be near them, or simply to be thinking of them is a blessedness.

I have lately realized this in an exquisite and delightful degree.

And this fact reveals the one prolonged mistake of my past life—my association with your mother. I can now plainly see what I might have been if, for instance, I could have lived under such a roof as sheltered me in Princeton, instead of breathing, during all these years, the atmosphere of Livingston-street. If my mother-in-law had been such a woman as Mrs. Lovjoy, and the influences of Brooklyn had been like the influences of Princeton, I believe that I might have grown by this time as unselfish as a good woman. How much more I would then have been to yourself and the children! How many pangs you might have been saved! How many unknown joys you might have experienced! I have not been a wise man or I would not have consented, eleven years ago, to pitch my tent in a bank of fog. Moreover, let us beware of the tragic and dreadful mistake of teaching to our children that when they shall be married their first and chief allegiance will still be to their parents as heretofore, and that only a secondary fealty is sufficient between husband and wife. I have never seen so plainly as I have seen this Winter what Livingston-street mildew I have been carrying on my garments for eleven years. Six months ago I was accustomed to say to myself in my secret hours, "Theodore Tilton, it is time for you to die; your soul grows not whiter but darker; die soon and save yourself from total destruction." But, I believe that if I shall return to Brooklyn at all, I shall return a different man. God grant it! I know that I have tried to wash myself clean at the fountain of a better life."

Then follows the passage: "The old religious teachings, etc."

Mr. Beach—That is February 12th, 1867?

Mr. Shearman—February 12th, 1867. I now read the letter of March 18th, 1867.

TUESDAY, March 18, 1871.  
OSWEGO, N. Y.

MY DEAR WIFE: Although it is now near midnight, and I am much fatigued and very sleepy. I will not retire without first dropping into the mail a line of remembrance and message of love to a woman whom I sometimes vex but whom I always revere.

I spoke in Troy last evening to a large audience—as many as could be crowded into the Brooklyn Athenæum, but I spoke with wretched hesitation and broken fluency—often using ungrammatical expressions, and thoroughly displeasing myself with my performance. But to-night, before an equal and even better audience, I was myself again—easy, hearty, and victorious. So you see that the temporary moods of my mind color

all my work, for the time being, with their own passing hues, whether dark or bright.

But I cannot afford thus to be led away captive of gloominess and bad blood. I must endeavor more completely to conquer myself in future. "Greater is he who ruleth his own spirit than he who taketh a city."

Despondency is my lurking enemy. It lies in wait for me in my most familiar haunts. And it most often entraps me under my own roof.

But I think my two or three recent days of darkness have been, on the whole, a moral benefit, in that they have revealed to my mind its most easily temptable points. It was good for the Pilgrim to go into the Valley of the Shadow of Death. "No chastening for the present is joyous but grievous; nevertheless, afterward it worketh out the peaceable fruits of righteousness."

So, after my overthrow, I rise once again out of the dust, to re-begin the battle of self-conquest—to be again, I doubt not, defeated a thousand times. Well, during all the Winter, I was as one clothed in kings' apparel: and it is very high time, therefore, that I should, for a little while, wear beggars' rags. The soul's life must have its needful changes from joy to sorrow.

I came home from the West respecting myself too highly. My crown there was suddenly taken off and cast to the earth. I am now dispossessed of my portion, and wander like an exile banished from my former complacent self. But, O, happy misfortune! that carried a man first into miserable wretchedness in order that it may then carry him, like the prodigal, back to his Father's house.

As Luther thanked God for his sins, so I, too, can thank Him for my sorrowful glooms.

Be assured that whatever happens, whether cloudy or clear skies, I love you boundlessly and forever.

THEODORE.

[Marked "D, 84."]

ROCHESTER, N. Y., March 21, 1867.

MY DEAR PET: I am, in this midnight hour, in the same hotel, and in the same room wherein you and I were quartered eleven and a half years ago on our wedding tour! What a history these years unfold to our backward gaze! Gray hairs have stolen upon us since then; time and care have jointly wrinkled our brows; joys and sorrows have checkered our path; four children have been given to us on earth, and one of these has been taken back to heaven. You have had sickness; I have had toil; both of us may now look back to that wedding pilgrimage and smile at how little we then knew of human life! Thank God, the years grow richer as we grow older! Not yet conquerors of ourselves, we are nevertheless nearer the victory now than then. I would not exchange the present for the past! With what self-complacency I looked upon my life in those "green and salad days!" How strong I thought myself for the battle! The revelations of later years subdue a man's pride by teaching him his weakness. At this retrospective moment, in this charmed chamber, I am humble, sad and calm. Life is sober, as I now look upon it. Death is near, as I now think of it. Heaven is sweet, as I now wait for it. I have not made the best or even a good use of my last ten years. I have less faith in my usual integrity now than at any former period of my life. It is hard to live well. Nevertheless, my dear pet, we will try again to realize more perfectly our ideals. May God bless us both, now and ever. Adieu.

Yours, THEODORE.

[Marked "D, 85."]

FLINT, MICHIGAN, Feb. 6, 1867.

MY QUEEN AND MISTRESS: I have been thinking of you all the livelong morning, and it is now afternoon. My two letters of yesterday, which I left behind me at Ypsilanti to be mailed to-day, were too barren, dry, and worthless to be sent to such a dear woman as you are. Your own sweet letter, received to-day, makes me chide myself for such chaps as I unwillingly sent you last night. No letter of all the dear, delightful many that you have written, has filled me with more pleasure than to-day's. It is the one

which you may recall when I mention that it inclosed Alice's note and the enigma cards. (Thank the dear little girl for writing to her papa, and tell her that this very morning I bought valentines for all my children, including Libbie. Tell her, also, that I have puzzled my brain over the enigma, but cannot solve the mystery.) But I was speaking of your letter. It is so full of your love, that you have, this day, set yourself unconsciously before me in such noble proportions as to hide all the rest of the universe; and nothing, either in Heaven above or Earth beneath, seems at this moment so great, so pure, or so beautiful as your own, true, wifely love for your unworthy husband.

In fact, this morning I was suffering from undue fatigue, owing to an entirely sleepless night; and my mind was in an unclean and groveling frame—haunted with low thoughts. I am a hard subject for self-conquering—as you know. And this morning I could not get any honorable or manly mastery over myself, although I tried hard for the victory.

But when your dear letter came my soul took wings like a lark. "A word in season, how good it is." A little piece of white paper, with a loving woman's handwriting on it changed the whole face of nature, and the whole temper of my spirit, in a single moment. How powerful and how beneficent is the influence of love! And I now see, by the light of my Winter's experience, that you have been profoundly right in demanding, not only a constant mutual love, but a constant mutual expression of it. Hereafter, I shall judge the needs of your heart by the needs of mine, and be more prodigal in my daily outpouring of what hitherto has been too often unexpressed or half expressed. Sometimes we allow our loves simply to be taken for granted, whereas we would both enjoy each other's love the more by coloring our own into a repeated confession of words. "Confession is good for the soul," says the poet; and I hereby confess that I love you as fervently as any man ever loved any woman on the earth, or perhaps in the heavens.

My disappointment at not meeting you in Chicago was as great as virtually to strike me soul-dead for several days thereafter. I wasted on that blighted hope the juices of one whole week of my pilgrimage. The reaction left me without the power of experiencing and enjoying any high and devout emotions. My heart seemed awhile to be gone, and in its place there was an insensibility to joy. That Chicago expectation was one of the "supreme moments" of a lifetime.

And Alice's letter seems to intimate that you are coming to meet me on my way. Can this be true? I do not allow myself to believe it. For I shall not build such another air-castle as I reared on Wabash avenue, only to have it fall, like Samson's temple, on my head. No; I look forward to the end of my Winter's work, feeling that I shall be repaid for my whole long separation by my first kiss of welcome under my own roof. Dearly beloved, God bless you forever more. Yours,

THEODORE.

[Marked "D, 86."]

LA CROSSE, Wisconsin, Feb. 21, 1867.

MY DARLING: This day I have received your pleasant letter of a week. I look forward eagerly to each new place on my programme for the sake of the letter which I am there to find awaiting me. Your letters have been and are my daily meat and drink. This last letter of yours inclosed your sweet note of Elizabeth Lovejoy—which I shall immediately mail to her in Princeton. In return for the great kindness of the Lovejoys, I sent them some books from Milwaukee—Mr. Towson's writings on Art, the Golden Treasury, a copy of Tennyson, and other volumes. I hope I may get a chance to spend another evening in their college before my return, but I do not see how I can arrange to do so. I inclose to you Oliver's letter, received this morning. So you see that there are men, as well as women, who love your husband. I am sorry to hear that Mr. Beecher had a poor house in Brook-

lyn. In view of his kind attentions to you this Winter, all my old love for him has revived, and my heart would once more greet him as of old. I sometimes quarrel with my friends on the surface, but never at the bottom. With yourself, oh! friend above all friends! I am a perpetual love.

Yours,

THEODORE.

[Marked "D, 87."]

Mr. Shearman—I now read a letter dating back to 1865, a letter of Mr. Tilton to Mrs. Tilton.

Mr. Beach—What date?

Mr. Shearman—January 18th, 1865. [Reading]:

WEDGELL HOUSE, CLEVELAND, Jan. 13, 1865.

MY DARLING WIFE: I have omitted another day to write to you. No help for it. Forgive me.

Yesterday morning, still maintaining headquarters at Cincinnati, I was invited by Rev. Dr. Reed, Editor of *The Western Christian Advocate*, to cross the river to Covington, Kentucky, to visit the father and mother of Lieut. Gen. Grant. I was greatly interested in this visit. \* \* \*

#### SOME WORDS ABOUT GEN. GRANT EXCLUDED.

Here follows a long account of General Grant's private history.

Mr. Beach—Better read it.

Mr. Everts—We do not desire to read it at present, and therefore omit it.

Mr. Beach—That is not permissible in this case.

Mr. Everts—That is permissible both in this case and in every other case. It is considered in for anybody to read the rest, and to read it as our evidence.

Mr. Beach—Well, I maintain that it is not perfectly settled in this case, or any other case in regard to a letter.

Judge Neilson—The question has not been spoken to as to the effect of a letter. I think you could take time to read it, perhaps.

Mr. Everts—There is no compulsion on the counsel at any stage of the case, to read any part of a letter that they do not consider pertinent to their case, and if the other side thinks any part of it pertinent to theirs they can read it as being the evidence of the other side and not their own. That I agree to.

Judge Neilson—That was the rule we applied to other papers. Still I think it would save time to read it, Mr. Shearman.

Mr. Everts—What? By reading the whole? This is a matter that has nothing to do with any relations between those parties, a long affair about General Grant's father and mother.

Mr. Beach—I don't know what it is; they have read a portion in regard to General Grant.

Mr. Everts—We say that we don't wish to read the rest.

Mr. Beach—I have heard you say that—

Mr. Everts—And we don't propose to read it.

Mr. Beach—That I have understood before; that is what I was objecting to. [To Mr. Shearman]: Wait one moment; don't go on just yet.

Mr. Everts—Look at the letter as long as you please.

Mr. Beach—I shall not be long about it. I don't know but it may bear on the Third Term, &c.

[Letter submitted to Mr. Beach for inspection.]

Mr. Shearman [Reading]:

\* \* \* \* \*

The next time I go on a long journey I will take you along, if for no other reason than to do the mending!

This afternoon's train brought me to Cleveland—the most beautiful city of the West. I immediately searched out the Rev. Samuel Wolcott, who delivered to me your dear, kind letter of January 5, which is the latest I have received from you. I am hoping to get another to-morrow. Your letters are like wine to my thirst. On opening the envelope, I am always disappointed if the letter is not a long one. I am glad Mr. Beecher called on you. I will write to thank him for it. I have not had a line from him, but I have had two brief notes from Mr. Greeley.

My speech in Cleveland is to-morrow night—after which I shall spend Sunday here, and return by way of Pittsburgh, hoping to reach home by Wednesday or Thursday. But I may delay a day or two longer on the road if a good reason arises.

You say, I am glad you write you are homesick. I reply, I am glad you write the same. If God spares me to return, I am sure our loves will be nobler than ever. I feel myself spiritually profited by my experiences of travel. I have clung to you as with an anchor every day of my absence. The thought of your constant love fills me with tenderness and yearning. And the dear children grow dearer and dearer. Kiss them all for their father's sake. Remember me always in your prayers.

Dear, sweet pet, good night.

[Marked "Exhibit D, 88."]

THEODORE.

#### MRS. TILTON'S LETTERS AGAIN.

Mr. Shearman—We now return to the letters of Mrs. Tilton to her husband.

FRIDAY EVE., Jan. 25th, —.

There is no year given by Mrs. Tilton to the letter, but it is marked both in pencil and in ink in another hand, "1867."

Mr. Fullerton—January 25th?

Mr. Shearman—January 25th. Friday did come on January 27th, 1867. No doubt this is right. [Reading].

FRIDAY EVE., Jan. 25th, 1867.

#### MY OWN DEAR HUSBAND:

Four letters from you reached me to-day, including one to Mrs. Desmond and Oliver's letter to you. I did not go to Mrs. D.—'s wedding as it was celebrated at Mrs. Merriam's in Springfield. Mother went on and has not yet returned. I will forward your letter though not the kiss. I think in reference to Oliver's opinion of Mr. B.—as his rewards were made to Mr. Bowen, and they are embittered toward one another, that what Mr. B.—said of you may appear very different through the coloring that Mr. Bowen may give it. Oh, how my soul yearns over you two dear men! You, my beloved, are higher up than he; this I believe. Will you not join me in prayer that God would keep him as he is keeping us? Oh, let us pray for him! You are not willing to leave him to the evil influences which surround him. He is in a delusion with regard to himself, and pitifully mistaken in his opinion of you. I can never rest satisfied until you both see eye to eye, and love one another as you once did. This will not come to pass as quickly by estrangement. But with all the earnestness of my being, I commit you both to God's love. He has signally blessed you both, and he will keep his own beloved. Why I was so mysteriously brought in as actor in this friendship, I know not, yet no experience of all my life has made my soul ache so verily, as the apparent lack of Christian manliness in this beloved man. Mattie feels as I do. I saw her to-day. She said she recd. two letters from you to-day. I do love him very dearly, and I do love you supremely, utterly, believe it. Perhaps if I by God's grace keep myself white, I may bless you both. I am striving. God bless this trinity! I can nor will no denial take.

I will be more patient and forbearing toward Libby from henceforth. I pen you my vow. Hereafter I guard my temper. You shall have a soul-pure wife by 'and bye. I am ashamed that I am so often unattractive to the Great Lover of my soul. I am striving to make myself beautiful that He may admire me! You know full well how far short I come, but this is my aim. If He can only say my life is blameless, you and I will then be satisfied. Cheer up, my darling, the work is mighty to which you are called, and you are doing it nobly. I love you like Mrs. Browning loved. Don't you know it? Pray for me always. I pray for you, though I have such assurances of God's love and care for you, that you seem high up and safe. If I could sit in your lap, and look into your dear eyes now, I'm afraid 'twould be more than I could bear. At any rate I should have a good cry, that I am now going to have without you. It always baptizes me—to use your word. Carroll is with me in bed. Annie is at mother's. I have had only two or three guests with me all night since you've been gone. Angels guard all.

Good night.

YOUR OWN WIFE.

[Marked "Exhibit D, 89."]

WEDNESDAY MORN., March 4th, 1868.

Yes, darling, I know you want me! If ever I may serve you it is when overtaxed and weary. I am most grateful that *then* you turn to me. Oh, how almost *perfectly* could I minister this Winter, my heart glows so perpetually. I am conscious of great inward awakening toward you—if I live I shall teach my children to *begin* their loves where now I am. I cannot conceive of anything more delicious than a *life* consecrated to a faithful love. Oh, why did I sleep so long?

The check for Journey's bill has arrived, but no tidings from the Warren letter. It makes me very happy to pay this bill, which I will to-day. The procuring of my clothes has always been a great trouble to me.

Mattie took tea with me Monday night, and we went to the closing reading for the Winter of Prof. Raymond's course. He read the "Tempest" finely. She returned with me and staid all night.

Fanny Kemble is in N. Y. I should be *satisfied* could I go with you to hear her.

Beaule is improving, or rather *I am*.

No callers for some days. The weather is very cold; the deepest snow this Winter has fallen since Sunday.

Will you go to Marietta? I insist that I miss you more than you do me. I am alone a great deal, and choose it. But *soon* I shall see my beloved! I must now to my work. Adieu.

YOUR OWN DEAR WIFE.

[Marked "Exhibit D, 90."]

THURSDAY EVENING, January 13th, 1870.

#### MY DEAR HUSBAND:

You once *said*; and often acted, that I was always craving sentiment. It is, verily, true! I am what I am. Therefore, to such a nature as mine Jesus Christ, as he discovers himself to me, is unutterably precious. Let my tongue cleave to my mouth if I fail to bear testimony to His unchangeable love.

Your letter reached me yesterday. How it lightened my day like a glory. You are well beloved by *one human*, and therefore it is love struggling and unperfected. I do not, however, comfort myself in my humanity, rather whenever I am victor over it. Oh! how slow is the warfare. Yesterday Sophy went to Mrs. Ely's, and is there still. Parker Pillsbury and Susan Anthony took tea with me, and stayed all night. I have called for a meeting of the ex-committee that I may send Mattie to Washington in my stead. Mrs. Hooker has written me that Mrs. Stowe sailed to-day for Florida, and that she should like to take her place as guest at Senator Pomeroy's. I therefore wrote to the Senator if such a change would be agreeable. Sophy will go if Mattie goes. I wish the three ladies might be entertained under that hospitable roof.

To-day has been a quiet day. Mr. Beecher called. He is in fine spirits making calls. He devotes Wednesdays and Thurs-

days "till further notice;" has 300 to make; made twenty to-day; enjoys it immensely. Called on the Wheelock's to-day, and kissed them all round, Lizzy Wood included, he said [Laughter.] I told him that Alice had named her doll Rose Wentworth. Mrs. Beach and Emma called on mother to-day, greatly to mother's gratification, as she has had very few calls since her separation. Eva and Annie Tilton are getting up a surprise party for her next Tuesday night, and I have invited her old friends, including Mrs. Wheeler and Ira. Jo and Fanny are coming, and Dr. Talmadge.

I read the dear children your letter. Was glad you spoke to children last Sunday. The baby has recovered. Alice goes to school until 12 o'clock daily. Carroll is well, but Flory is still quite sick and low spirited; cries often. I still sleep on the lounge beside her. The diphtheria is a much to be dreaded disease; it goes hard with the darling, her tonsils being weak from a former attack. This enas another of my matter of fact epistles, but so endeth not the love of your darlings, wifey and four precious children.

[Marked "Ex. D, 91."]

Mr. Evarts—I will read a letter from Mr. Tilton to his wife, dated Nov. 3, 1868. [Reading:]

AT THE OFFICE, Nov. 3, 1868.

MY DEARY: Your kind and loving note falls so pleasantly on my spirits that I would immediately go home this afternoon were it not that I have engaged to go out this evening.

There is so much sunshine pouring into my little office at this moment that I think I never knew a brighter day in my life; and I hope that some of the light and warmth will steal into and remain within my cold and cruel heart.

It is the greatest regret of my life that I do not seem constituted so as to make you as happy as you deserve to be; but I have the best of intentions—and the worst of success.

The cause of so much trouble at home is my general anxiety about everything. Latterly I worry more or less concerning every matter which I touch. I have hardly ten minutes a day of uninterrupted free from care. This may seem an exaggerated statement; but it is the painful truth. I feel as if I were growing old before my time. Lights that used to burn within me have been quenched. Hopes are faded; ambition is killed; life seems a failure.

As I cannot bear to see any expression of pain, or sorrow, or regret, on your face, I cannot bring myself to speak to you familiarly on any subject connected with any of our sorrows—not even Paul, our chief. I am literally *tormented* at having no grave for his crumbling clay. Every allusion to the subject has been a pang through my heart.

Then, too, all my religious doubts and difficulties have been, and are, and I fear must be, shut within myself, because I cannot open my mouth to you concerning them without giving you a wound. You are the finest fibered soul that ever was put into a body; you jar at my touch, and I am apt to touch you too rudely.

As for my own character, I saw, at the time of Paul's death, what it was to be a man, and how far short of it I am myself; and I have ever since been utterly overwhelmed with my own worthlessness, selfishness, degradation and wickedness. At some time I expect to recover from this slough of despond, but not now; I must remain longer in suffering before I can emerge into peace. I have been overthrown, and, before I rise, I must be made to feel, like Antæus, that strength comes from touching the ground.

But the chief of all my miseries is this: that I impart them to others. Let me say, with the utmost fervor of protestation, that neither you, nor the children, nor the house, nor the servant, nor anything that is within our gates—not one alone—nor all combined—no, none of these persons or things *has the slightest originating share in my troubles*. Those troubles (such as they are) are of my own making. Would to God they

were also of my own enduring! But they have to be inflicted upon others—upon yourself and the children. It is this fact that doubles my affliction.

But your kind and tender words, pencilled in the studio this morning, were very precious to me—sweeter than honey in the honeycomb. I write this letter on purpose to thank you for them. God bless you evermore.

Lovingly yours,

THEODORE.

[Marked "Exhibit D, 92."]

Mr. Evarts—Mr. Tilton, this was written at your office in New-York, I suppose? A. Will you let me see it, Sir [looking at the letter]; yes, Sir.

Q. And the studio referred to in the last paragraph. "Your kind and tender words pencilled in the studio this morning;" is that Mr. Paige's studio? A. I presume, Sir, it is Mr. Paige's studio where she was sitting for her portrait.

Q. Have you the note to which this letter refers? A. I think probably it is among the papers.

Mr. Evarts—[To plaintiff's counsel.] I should like that note.

The Witness—I do not recall it at present.

Mr. Morris—I have never seen such a note.

Mr. Beach—November 3, 1868?

#### ANOTHER BATCH OF LETTERS TO BE PRODUCED.

Mr. Evarts—It would be on that date, probably.

Now, if your Honor please, there are three letters of Mrs. Tilton's that we desire to have the first thing on Monday morning, if our friends can find them in the interval—January 31, 1868.

Mr. Morris—Just hand us a list.

Mr. Evarts—Well, I am giving them to you now. January 31 1868; March 6, 1869; August 13, without a date, but I suppose about 1869, though it is not printed with the date of that year, but it is printed among the letters of 1869, and is found at the foot of the page on which the letter of August 3, 1869, which has been produced and been given in evidence, is found. The letters of Mr. Tilton I will give you next. Letter of October 25, 1865; of December 2, 1866; February 14, 1867; January 15, 1869; August 23, 1869, and July 31, 1865. That will probably conclude the exhibit of letters.

Mr. Morris—Mr. Shearman, you have some letters that I have used in evidence; will you be kind enough to return us those? There is quite a large number that have not been read in evidence.

Mr. Evarts—I have handed back several.

Mr. Morris—Yes; but only a small portion of them.

Mr. Porter—I handed to Mr. Evarts all that I had except those that were put in evidence.

Mr. Evarts—There may be some by accident. I guess you will find them.

Mr. Porter—You handed me some, and I handed them to Mr. Evarts and Mr. Evarts handed them back, all except those that were read.

Mr. Evarts—Some of them we did put in evidence.

Mr. Morris—I want those that have not been read in evidence.

Mr. Evarts—Exactly; but we have given them back.

Mr. Morris—I think, if you look, you will find that you have not,



Mr. Evarts—We will look for them.

Mr. Morris—Those that have been read in evidence are marked.

Mr. Evarts—If we find them they will be handed to you, without doubt.

Mr. Shearman—We read all that are on our list.

Mr. Morris—That is not what I refer to. If you will just take the exhibits that have been read, they are marked, and you have some letters that have not been read in evidence.

Mr. Porter—They are those that I handed to Mr. Evarts, and which Mr. Evarts handed back.

Mr. Evarts—It may be that some letters that you handed to Judge Porter have not been handed back to you; so we will look for them and find them.

Mr. Morris—It would not take but a moment, because the exhibits are marked.

Mr. Porter—The gentleman does not seem to understand me. Mr. Shearman was engaged in reading at the time he handed me a package of letters. I handed them over to Mr. Evarts for examination. Two of them we have selected out and have since given in evidence; the rest were handed over by Mr. Evarts to them.

Mr. Morris—My impression is that you are mistaken, Judge Porter.

Mr. Porter—We cannot be, for we have not been out of this room.

Mr. Evarts—It may be some have got in among the exhibits. We will look for them now. It has reached the hour of adjournment, your Honor.

Judge Neilson—Gentlemen, we separate now, with the admonition you have heretofore heard in respect to the case, and your duty in regard to it, which I need not repeat. I trust it is all fresh in your minds. As the learned counsel cannot attend to-morrow, we separate now until Monday morning at 11 o'clock, at which time you will please attend.

Mr. Mallison (Clerk)—The Court stands adjourned till Monday morning at 11 o'clock.

## TWENTY-FIRST DAY'S PROCEEDINGS.

### MR. TILTON CLOSELY QUESTIONED.

MR. BOWEN'S BUSINESS RELATIONS WITH THE PLAINTIFF—THE EFFECT EXPECTED FROM THE LETTER OF DEMAND—OLIVER JOHNSON'S CONNECTION WITH THE CASE.

Mr. Tilton's sixth day in the witness-chair was one of the most trying ones for him of the examination. The first hour was devoted to gathering and reading the last scraps of the correspondence between Mr. Tilton and his wife previous to 1870. These letters, like the others before read, were mainly in regard to personal and family affairs, Mrs. Tilton's writing being always hopeful; her husband's generally desponding. In the first letter which was read,

the plaintiff discussed the career and character of Jesus Christ. Nearly all of his letters, in fact, contain some reference to religious subjects. In one epistle, written while lecturing in the West, Mr. Tilton deploras his disappointment in Mr. Beecher, and makes this resolve: "Henceforth I take no pattern after public men—great men—famous men."

After the reading of the letters, Mr. Evarts resumed the questioning by inquiring regarding the connection of the witness with Oliver Johnson. Mr. Tilton described Mr. Johnson as "an old gentleman living in New-York." This part of the examination led to a very sharp encounter between Mr. Evarts and the witness. Mr. Evarts seemed curt, as if intending to repel any familiarity on the part of the witness, while Mr. Tilton appeared inclined to argue questions with his examiner. Mr. Tilton's career on *The Independent* was next reviewed, Mr. Evarts questioning the witness as to whether the circulation of that paper had increased during his editorship of it, but he would only testify to what Mr. Bowen had told him. After this the cross-examination proceeded for a short time in a more pleasant tone. The relations between Mr. Tilton and Mr. Bowen were thoroughly sifted, the interview between the two men on Dec. 23, 1870, being again reviewed. The scandals circulated about Mr. Tilton, which were the subject of that meeting, were inquired about, Mr. Tilton denouncing all of them as lies.

After recapitulating the circumstances of the writing of the letter demanding Mr. Beecher's retirement from his pulpit and from Brooklyn, were related. Mr. Tilton said that he believed then that Mr. Beecher would be driven from Brooklyn, adding "as he will be." There was a very amusing descent from a high pitch to absurdity when the witness was under questions about the angry interview between Mr. Bowen and Mr. Tilton on the day subsequent to the sending of the letter of demand. Mr. Evarts became more vehement than he had been before since the beginning of the cross-examination, and, advancing toward the witness, and shaking his long finger toward him, he asked in harsh voice: "Did you at your house that day, your first visit to it after this interview with Bowen, say to the nurse and others there, others than your wife, that you were ruined?" "No!" replied Mr. Tilton, firmly; and then, soon after, he asked, "Who was the nurse, Mr. Evarts?"

The witness was obliged to again repeat the names of the persons whom he had informed of Mr. Beecher's alleged impurities, before they became a

matter of general circulation. During the examination on this point, all the pleasant humor which had been shown before seemed to have suddenly gone out.

Mr. Evarts made an exceedingly searching inquiry regarding the so-called confession of Mrs. Tilton, and the copy of it made by Mr. Tilton, both of which, the latter says, were destroyed—the first by his wife, the copy by himself. No question touching this topic was left unasked, and the witness positively asserted that the original “confession” and its copy were destroyed. The conversation between Mr. Beecher and Mr. Tilton on the night that the former first saw Mrs. Tilton’s “confession” was referred to, and Mr. Evarts was questioning the witness regarding his wife’s health at that time when the hour of adjournment arrived.

Mr. Tilton appears to be somewhat captious at times, as when Mr. Evarts asked him if he was “sure,” etc., and he answered that he was “certain,” etc., following his reply with an explanation of the difference between the meaning of the two words. If these criticisms annoyed Mr. Evarts, his conduct did not indicate it. At other times Mr. Tilton’s exactness was amusing, and caused Judge Neilson more severely to admonish the audience than he has had occasion to do for several days.

## THE PROCEEDINGS—VERBATIM.

### STILL ANOTHER FLOOD OF LETTERS.

The Court met at 11 a. m., pursuant to adjournment.

Theodore Tilton recalled. Cross-examination continued.

Mr. Evarts—Our learned friends have produced us, I think, all the letters we have asked for, excepting one that we can read from the book, they say, and which they do not find, but one of them is somewhat imperfect. First a letter of Mr. Tilton to his wife. [Reading]:

MR. TILTON SPECULATES ON POSSIBILITIES IN THE LIFE OF JESUS.

OSKOSH, WIS., Feb. 14, 1867.

MY DEAR ORTHODOX WIFE: I have been speculating considerably lately on the character and career of Jesus, and I wonder whether you will be shocked when I mention one of my meditations. It is this: How would He have appeared in the character of a married man? Certainly, even to your reverential and adoring view of Him as “God manifested in the flesh,” there ought to be nothing profane in the supposition. If He consented to be born of a woman, why might He not have consented to be married to a woman? And, if He was the son of an earthly parent, why might He not have been the Father of a mortal child? He loved some of His disciples better than others, as, for instance, John. He undoubtedly loved some few women devotedly, perhaps passionately. Now, why might He not have loved one, chief and chosen among those women, on whom He might have poured the whole fullness of His heart, and on whose finger He might have set a marriage ring, making

her, indeed, like the Church, the “Bride of Christ?” I confess that if a new historic investigation should reveal the proof that Jesus was a married man, instead of an unmarried lover of all the world, I would see an additional glory in the most wonderful of all historic characters. Nor do I know of any evidence to show that He was never married.

If either Mary or Martha, or any other saintly woman, had been His wife the fact would probably have been mentioned, and yet what would we have known of His friend Peter’s wife except for the fact that her mother was once sick of a fever? Men’s wives are not necessarily known to history. Of course, the probability is that Jesus was never married; yet this is by no means a certainty. And as there remains a possibility that he was, it is a pleasing reflection for me that, while he was living in Capernaum, in the house of Peter (one of His disciples), He might there have enjoyed also the still sweeter companionship of a wife of His own. I know that even Renan says, “Jesus never married.” Even admitting the fact, however, this does not deny the propriety of His marrying, if he had chosen to marry.

But, if Jesus had taken a wife and fathered a family, I believe that this fact would have so completely humanized Him in the eyes of all the world that He never would have been regarded as God, or the Only-Begotten Son of God. And yet, if, as the son of Mary, He had become the husband of a Galilean girl, and these twain had dwelt in a cottage by the Lake of Genesareth, and unto them had been born children like those of whom He said, “Suffer them to come unto me,” let me inquire whether or not you would love the character of Jesus any less than you love it now? Answer. Your Heterodox husband,

THEODORE TILTON.

[Marked “Exhibit D, 93.”]

MR. TILTON LAMENTS PERSONAL AND FAMILY EXTRAVAGANCES.

Mr. Evarts—I read a letter of Mr. Tilton to his wife:

AKRON, O., Jan. 15, 1869.

MY DEAR WIFE: Ever since last October I have been lecturing every week,—sometimes every night, and the proceeds have all been swallowed up in my extravagant debts. If this spendthrift tendency of mine is ever to be curbed it must be by your helpful criticism of it—not by a parallel liberality of outlay by yourself. I am putting myself daily to as much fatigue as human nature can endure, in order, if possible, to clear off my obligations to my creditors, and to keep afterwards abreast with the world. Your letter, a few days ago, stating that you could not live on your salary, made me sick at heart, and temporarily I felt like giving up my journey and going home. To-day you send me a bill of \$58 for Cad’s clothes—an amount which I regard as so great for a family of our moderate resources as to be almost as wicked as my own outlays for pictures. In all the three weeks of my last absence I have not made, above expenses, \$400. Not one penny of all my lecture earnings for years has ever yet gone into a bank. I look upon our money-spending tendencies as cruelly wrong. At this moment I am well-nigh broken down in voice, and know not how I shall get through with to-night’s lecture. Am I wrong when I say that I cannot look with equanimity on squandering so much money in fine dresses for the children? My heart suffers a pang in saying this, but I cannot help saying it. We must either sell our establishment in Brooklyn or else manage it on a less expensive scale. I have made a vow to buy not another picture, and not another unnecessary article, during the present year. It is with something like a shudder that I look forward to the prolonged slavery of public lecturing every Winter, and if the proceeds are to be freely thrown away by both of us I may as well stop it now. I have suffered for ten days past an agony of remorse at the fruitless exertions I have made by three years of speaking—fruitless, because their harvest has been unprofitably spent. Judging by all the families I visit, I know that we are literally throwing away our inheritance. At last I am aroused; and I appeal to you to put a peremptory check upon any and every

unnecessary expenditure which *you see me make*. Dress the children in calico for a year, and let me get out of my misery.

Yours in dust and ashes,  
[Marked "Exhibit D, 94."] THEODORE TILTON.

MRS. TILTON GRATEFUL FOR CONFIDENCE.

Mr. Evarts—I now read a letter from Mrs. Tilton to her husband :

FRIDAY, Jan. 31st, 1868—11 o'clock p. m.

MY DEAR HUSBAND: I have just returned from Mattie's, and saw your bust; loved it, and could not bear to leave that precious head behind me. I felt a sense of cruelty. Oh, Theodore, darling, I am haunted night and day by the remorse of knowing that because of my harshness and indifference to you you were driven to despair—perhaps sin, and these last years of unhappiness. I sometimes feel it to be the unpardonable sin. God cannot forgive me. But if you only may be restored to your former loveliness, I shall be content to live my life in penance, yea, in disgrace. I am the chief of sinners!! I understand perfectly how you have felt. I carry in my soul this burden black of sin, yet appear to my children and friends calm and happy. "Woe unto you, whited sepulcher," I hear perpetually. I will carry these agonies gladly, for I know a life of happiness awaits you.

To return to the bust. The spirit of your face is caught in its earnestness; the eyes do not quite suit me, but this must ever be the fault of statuary. I received this morning your letter from Syracuse inclosing check for \$100. It makes me *very happy* that you give me an exact statement of your affairs. I appreciate the confidence, after all you have suffered through me, to the depths of my soul, and shall try to follow your wish in *every particular*, and tho' I'm a poor housekeeper and provider, I never felt so great an impulse to use my judgment and all my faculties to help you. If the past were not ever present, I believe I might yet bless you. You are the only human being I have harmed! Oh! wretched woman that I am!

I learned from Mattie that Mrs. Gibson was left entirely destitute, Mr. G——having even sold his life insurance a few weeks before his death. Mrs. Gibson and all the family are visiting at Mr. Beecher's since the funeral. I have not seen him since you left, nor do not wish to unless he believes in and loves you perfectly.

Darling, we must both cultivate our self-respect by being what we seem—then will be fulfilled my ideal marriage—to you and you only a wife—but contact of the body with no other—while then, a pure friendship with *many* may be enjoyed, ennobling us. Let us have not even a shadow of doubt of each other—tho' all the world are weak yet will *we* be strong.

God accept and bless us *both*.

Now are we *one*.

By bye,  
Faithfully yours,

Be not offended that I iterate and reiterate my love. I *must*, but destroy all my letters.

[This letter was marked Exhibit D, 95.]

Mr. Evarts—I now read a letter from Mr. Tilton to his wife, dated Dec. 2d, ('66 in pencil). [To witness.] Mr. Tilton, here is a memorandum in pencil, as of the year, which does not form part of the original. Is that your memorandum? A. I cannot say it is mine, but it is probably mine. It is marked "'66" in the same manner in which other letters have been marked; that is to say, on referring to the almanac I saw that Sunday night fell on Dec. 2d, in the year 1866.

Q. And that is your mark as the year this letter was written? A. I presume it is.

MR. TILTON TIRED OF PUBLIC LIFE AND PUBLIC CHARACTERS.

Mr. Evarts—[Reading]:

SUNDAY NIGHT, AKRON, OHIO, }  
December 2d, '66. }

MY DARLING:

I have just been moved to write a long letter to Mrs. Bradshaw about May. It is chiefly about having a purpose in life, and how to carry it out. Of late, I have been thinking much of my own life. You know that I don't attach as much importance as many do to certain churchly ideas of the Christian life. It seems to me that the truest method, and the surest, of developing a Christian character, is never to swerve from one's own inward ideal of right, whether or not this ideal be in conformity with the prevailing conventional notions of good men, or of the best of men. I have been looking back upon my ten years of public life, and judging of its motives. Looking back thus, I can see that I have been always earnest and straightforward, but always too much in the interest of myself, and too little willing to be counted as nothing in comparison with the work which I have been set, as an instrument, to perform. Lately I have been endeavoring to ascertain what are my earthly ambitions; to struggle with them and conquer them. I have no ambition to be rich—and never had; none to be in political office; none for social or fashionable pre-eminence; none, that I can detect, for oratorical distinction; and not a great deal for a literary reputation. My public notoriety occasionally flushes me with pleasure. But on the whole, I believe I can truthfully say that I have in great measure put aside the idols which I used to worship. I once believed, judging by my personal experience, that public life—particularly such as life as that of a young man prematurely famous—was bad for the character; crippling to the soul. I used to feel this at times in many keen self-reproaches. But when one has at first tasted the sweets of reputation, and at last of their insipidity, I think he gets a more sober, philosophical and just view of what is valuable, and what is valueless in life, than in almost any other way. As a consequence, many of the men of great fame whom I intimately know, make no such ruling impression on my mind as many of my private friends do. But if I had no reputation myself, I should still be dazzled with theirs, as I was once dazzled years ago. For instance, I like Mr. Beecher in many respects as well as I ever did. But he has ceased to be my soul's prop—ceased to inspire me to my best life. I believe he is not as morally great as he once was. I do not now refer at all to his political views. His political views have made no change in my feelings toward him as a friend. But there was an older virtue which has since gone out of him—an influence which used to brighten my life when I came under its ray; an influence, however, which became gradually quenched like a vanishing sunbeam. Henceforth I take no patterns after public men—great men—famous men. They are not so good as my wife and children. Half an hour's talk with Mrs. Bradshaw makes me a better man than a half dozen sermons could do. I have had a sweet Sabbath day—one that has baptized my soul. I spoke to a thousand children this afternoon, and I have been in a glow ever since. This will account for the fact that I have written two such sermonic letters. But now I send, good-night.

Forever yours,

THEODORE.

MRS. TILTON GLAD TO BE RELIEVED OF BESSIE TURNER.

[This letter was marked "Exhibit D, 96."]

Mr. Shearman—I read a letter from Mrs. Tilton:

SATURDAY, A.M., Mar. 6, 1869.

MY DARLING: I have looked with great annoyance and pain on the map to learn your whereabouts, and realized the immense labors you were going through before your letter just now rec'd, desired me to do so. Don't make a Western tour again; with your salary and the engagements near home, we will try to pay off our debt and educate our children. Besides, the little new baby will reward us both for our labors I feel sure. The snow is falling fast; how full of happiness I should be, could I comfort you to-day!

Kitty Belcher is visiting Flory, and they are making caramels in the kitchen.

The note from Philadelphia is very curious. Beattie is all right. She comes to Sunday-school every Sunday, and visits me once a fortnight: is boarding at the Home, and has fallen in with some rich families in Fifth-ave., where she has found enough to do sewing by the day, and they pay her amply. She has been to several concerts in New York, and received a very gay valentine, and on the whole appears quite contented. She does all the playing for the Institution, every evening, for the girls to dance. Has had but one sick headache. I feel thankful daily that I am relieved of her care.

Do you not know when I may look for you? I have come to the end of my printed list; now only the few changed appointments remain.

Mother's affairs stand at *status quo*. She sleeps well. This change I never expected. All under my roof seems marvelous to me.

That luxurious ride in the cars was followed by weariness, vexation and disappointment. How very, very often has it been thus with us in our life.

And I am impotent to help you. Farewell.

Your dear WIFE.

I mailed a hasty line to you last night to Kokomo—so did Frank Moulton. I only now discovered the mistake.

[This letter was marked "Exhibit D 97."]

Mr. Shearman then asked for a letter of August 28, 1869, from Mr. Tilton to Mrs. Tilton.

Mr. Morris—You have read that letter.

Mr. Shearman—No; we have read everything we could get.

Mr. Fullerton—There is no objection to their reading it again if they wish to.

Mr. Shearman—That was another letter, New-York, Aug. 28. This letter I want is dated, "Saturday Night, Brooklyn, Aug. 28, 1869."

Mr. Morris—We have no such letter as that.

Mr. Shearman—Oh, yes; there is such a letter.

Mr. Fullerton [searching in his side pocket]—The reason they could not find it is, I had it. [Produces letter.]

MR. TILTON UNFASTENS THE FLOODGATES OF HIS LOVE.

Mr. Evarts—I will now read this letter:

SATURDAY NIGHT.  
BROOKLYN, Aug. 28, 1869. }

MY DEAR WIFE: I find myself alone, but hardly lonesome, wearier but not sleepy, restless but not without peace of soul to-night; and so I turn my thoughts to you and the children in your mountain nest.

My letters of late have been so hurried and barren that I have sometimes wished I had not sent such and such a one. I know your sensitiveness to my words, and I have been chiding myself for allowing you to see by pen and ink that I have been greatly driven day and night, for two or three weeks past, to the apparent neglect of you and your cares. But to-night, although my table lies covered with unfinished work, I end it with abruptness for the sake of expressing to you some thoughts which have lately been occupying my mind, or rather some feelings which have been stirring my heart, in reference to our married life.

I will confess frankly that I have passed the most wretched Summer of all my life, and no one knows it but myself—indeed, no one who has been with me has seen me other than outwardly gay and cheerful. All the exhibitions which I have made of myself to my friends have been of unusual hilarity. This has been the utmost shallowness of superficiality. One thing I have enjoyed, that is, my work. It has been unusually heavy, and therefore unusually beneficent. But, leaving my work aside, all my other pleasures have been pains. For two or

three weeks I resolutely repressed all allusions to my feelings, when writing to you—not wishing to mar your vacation. But as the time of your home-coming cannot be very far off, I open the floodgates to-night. I will therefore say that I have missed you for the past month with something of the same awfulness and heart-break as if I had lost you forever by death. The idea has haunted me that perhaps I should never see you again, and this has prostrated my spirit to an agonizing humility, and led me into ten thousand self-reproaches for the past. Of course I do not lay any stress on any superstition. I expect to see you again, and hope to do so as soon as you think advisable for the children to return. But I have discovered, by searching the depths of my soul, that *I love you more than any human ought to love another*. I have seen some noble women this Summer—whom I admire, and whom, in a certain way, I love. All my life I have known something of the nature and experience of true friendship. From my early years I have loved and loved you. But all the past experiences of my heart's affections have been as nothing compared with the unusual and solemn sense which I have had during all the hilarities of this Newport week, that the only human being who touches my highest nature is yourself. This being the case, I am filled with distress to think that I must keep you uninformed, for the sake of your own tranquillity, of many of my thoughts, and of some of my conduct. I would to God I were a man worthy of your goodness, your self-denial, and your singleness of heart. Occasionally, in some supreme hour, I am your fit mate; but at all other times you are high above me. But if you could know the inward reverence which I have borne toward you for many days past, even while appearing to be absorbed in the companionship of other ladies, and particularly at Newport, I am sure you would almost dread to be so much loved by any human (and, therefore, infirm and wayward) creature like myself. I have several times tried to keep myself from writing you any such letter as this, because it is unlike most of my past correspondence. It is my request that no other eye shall ever see it except your own. Indeed, after this letter is in the mail, I shall probably grieve to think I wrote it. But, on the other hand, I shall never feel content until I have in some measure confessed to you that, all Summer long, I have trembled at the thought that you are almost as much to me as God himself, and yet that I am constantly treating you as ungratefully as I treat Him.

One thing more, but I do not urge it, or even request it. I only state it. If you could come here and stay with me two or three days in this house, with no other person to intrude upon our communion, I would bless you for it as long as I live. I want to show you my heart, and its too great load.

Yours in frankness, THEODORE.

During the reading of this letter Mr. Porter handed a printed edition of the letters to Mr. Evarts, telling him he would find it easier to read.

Mr. Evarts—There are some words in the original which appear to be omitted in the printed copy.

Mr. Evarts here puzzled over a word, which he read "codicil," and Mr. Tilton said: Bring it to me, Mr. Evarts, and I will interpret it.

Mr. Evarts—Oh, the language is clear enough; it is only the writing I find difficulty with.

Mr. Tilton—It is not a codicil; it is my will. [Laughter.]

[This letter was marked, "Exhibit D 98."]

#### MORE ABOUT THE PUBLICATION OF THE LETTERS.

Mr. Evarts—Mr. Tilton, you have said something about the publication of these letters having been arranged to

be made at a remote point, rather than here? A. Yes, Sir.

Q. Do you remember making an application to one of the leading papers in this city to republish them, here in New-York, from the Chicago papers? A. No, Sir; I made no such application. One of the leading daily newspapers of New-York made such an application to me for permission to print them, which I refused.

Q. What paper was that? A. THE NEW-YORK TRIBUNE.

Q. Do you remember making an application to *The Herald*? No, Sir; I remember *The Herald* making an application to me for my sworn statement; that also I refused.

Mr. Evarts—Yes, well, I am not talking about that, and I ask if your Honor please to have that struck out.

Judge Neilson—Yes, Sir; strike it out. It was not called for by your question.

Q. And you are quite sure that you did not make any application or suggestion to a New-York paper to republish from the Chicago paper these letters? A. To republish?

Q. Yes. A. Oh, that is quite another matter; I trusted—

Q. That was my first question, I think. A. Oh I didn't understand you, Sir. After the letters were published in Chicago it was my wish, or rather it was Judge Morris's wish, that they might be republished here, and when Mr. La Fontaine, then the managing editor or city editor of *The Herald*, told me that he was going to republish part, but not the whole, he requested me to use my judgment in the selection of such parts as I would prefer to have printed. I made that selection; I think about one-half of the letters were republished in *The New-York Herald*, the selection being made by myself in connection with Gen. Pryor; Gen. Pryor and I went over to *The Herald* office one night and did it.

#### MR. TILTON'S RELATIONS WITH OLIVER JOHNSON.

Q. Who is Oliver Johnson, and what relations had he to you in business, or in personal intimacy or family friendship? A. Well, Sir, that is a pretty long question, it will require a pretty long answer.

Q. Yes. A. Who is Oliver Johnson; I begin with that?

Q. Yes. A. Oliver Johnson is an old gentleman, living in New-York, who used to be editor of *The Anti-Slavery Standard*, who afterwards became my associate editor in *The Independent*, and whom I afterward put into *The Christian Union* to help Mr. Beecher carry his case, so that the public eye could not see it, and who is now on that paper.

Q. That is not my question? A. I thought you wanted to know his connection with this case.

Mr. Evarts—I ask to have that struck out, please. I have asked who Oliver Johnson was.

Judge Neilson—Yes.

Mr. Evarts—That is the head that he is now on, and argumentative observations about—

Judge Neilson—That last remark about getting him into *The Union* is not necessary. Strike that out.

Mr. Beach—It already appears in evidence.

Mr. Evarts—It does not appear as part of my evidence.

The Witness—Mr. Evarts, you will excuse me. I understood

your question to refer to Mr. Johnson in his connection with this case.

Mr. Evarts—I have not said a word about his connection with this case; not a word.

The Witness—Well, Sir, if you wish then to know who Mr. Johnson was I can answer that very accurately by giving you a written biography of him which he has prepared for me to use; to print after his death. [Laughter.]

Judge Neilson—That is not an answer to his question. You have already stated what he was.

Q. Is that the best answer you can give to my question who Oliver Johnson is? A. You asked me who he was, Sir, not who he is; "*Carthago fuit*."

Q. Tell us, if you can, who Oliver Johnson is, what his relations were to you in business, what in personal intimacy and what acquaintance with your family—which is my original question? A. Well, Sir, didn't I answer it?

Mr. Evarts—Don't ask me whether you have answered it. Go on and answer it now. A. Well, I think I have answered it. I told you that so far as Mr. Johnson was related to me, he was my associate editor in *The Independent*. What else do you wish to know about him?

Q. I want to know your personal intimacy with him. A. For a number of years Mr. Johnson and I were very intimate.

Q. When did that intimacy begin? A. I think when I was about twenty-one or two years old.

Q. And have you been acquainted with him ever since? A. Yes, Sir.

Q. And are you acquainted with him now? A. I think not, Sir; I should not recognize him in the street if I met him; for that reason I should say I am not acquainted with him.

Q. You would know his person, wouldn't you? A. Oh, yes, Sir; that is all I should care to know. [Laughter.]

Q. Now, how long did the intimacy which began when you were twenty or twenty-one years old continue? A. Continued until after I put him in *The Christian Union*.

Q. Until you put him into *The Christian Union*? A. Yes, Sir.

Q. Which was about four years ago? A. No, Sir.

Q. Three years ago? A. That comes of the error of using the word "about." I recognize the correctness of your criticism the other day; it was about two years ago.

Q. About two years ago—well, you are now about thirty-nine; this was about two years ago—37—21—that would be sixteen years of intimate acquaintance you had with Mr. Johnson? A. Well, Sir, you are better in figures than I am. I will take your word for it.

Q. Now, Sir, what was Mr. Johnson's employment in connection with newspapers, and what your association with him during that period of time? A. When I first became acquainted with Mr. Johnson he was then the editor of *The Anti-Slavery Standard* in New-York; he afterward became my associate in the editorship of *The Independent*.

Q. From what date this latter fact? A. Well, Sir, I cannot give it to you exactly; I think Mr. Johnson was about seven years with me in *The Independent*; we retired about the same time; he lingered two or three weeks longer than I did, but we

practically retired at the same time; he went out because I did; that retirement was at the close of the year 1870. My impression is that he remained with me about seven years, though I won't be positive as to that.

Q. Now, part of that time you were assistant editor under Mr. Beecher, and part of that time you were editor-in-chief, were you not? Part of those seven years that you speak of you were editor of *The Independent* under Mr. — O! no; you date from 1863 when you commenced; you were editor-in-chief the whole of these seven years? A. Yes, Sir; Mr. Johnson was not in *The Independent* while Mr. Beecher was there.

Q. No; he began then with you? A. Yes, Sir.

Q. Began with you and left with you? A. Yes, Sir; he did not begin with me; I began many years earlier in *The Independent*.

Q. I mean began with your being editor-in-chief? A. I don't think that is true either; still it may be.

Q. You have already told us that you began as editor-in-chief after Mr. Beecher's return from Europe? Yes, Sir.

Q. Very well, that was in 1863? A. I think you are correct.

Q. Very well, Mr. Johnson came in in 1863 and went out— A. I don't say that he did.

Q. You said seven years? A. I said seven years, perhaps; I wish to be accurate.

Q. Well, as far as you recollect, Mr. Johnson came in with you, and went out with you? A. No, Sir; I don't recollect that at all. I had been fifteen years in *The Independent*. Mr. Johnson about seven years.

Q. Well, I mean came in with you when you became editor-in-chief, and went out when you left it? A. Well, that may possibly be so, but as I am under oath I will not swear to what I do not accurately know.

Q. Now, during that period, what degree of personal intimacy, outside of business relations, did you also have with him? A. Very great.

Q. And how frequent and how acceptable a visitor was he in your house? A. I always liked him, but Mrs. Tilton never did; never wished to have him come.

Q. Well, did he come? A. He came very frequently; yes, Sir.

Q. Very frequently, notwithstanding? A. Well, I say very frequently—no, not very frequently, for I was away lecturing most of the time, and he came occasionally. She thought he was a heretic in religion and did not wish me to bring him there.

Q. Now, when he left *The Independent*, at the same time that you did, what employment did he then go into? A. He became the editor of *THE WEEKLY TRIBUNE*, under Horace Greeley.

Q. And your friendship and intimacy continued with him during that time? A. Yes, Sir.

Q. And then, in 1872, about two years ago, you had some hand, as you have stated, in placing him in *The Christian Union*? A. Yes, Sir; I think it was about the beginning of 1873; that is my impression; I won't be accurate as to the date.

Q. Well, about two years ago—and has he remained there ever since? A. I don't know anything about that, Sir.

Q. Now, Sir, in these lecturing tours of yours that preceded

1870—that is, preceded the season of 1870 and 1871—take, for instance, the last two years 1868-'69 and 1869-'70, what was the aggregate of your receipts or emoluments from that source of income? A. You mean each season?

Q. Yes? A. Well, I don't know that I can answer from memory. Wasn't there some statement in one of the letters read this morning? My impression is, in the rough, that for a number of years in succession I received from my lectures about \$8,000 or \$9,000, from which my travelling expenses had to be deducted. I don't know the net increase.

Q. Well, it would leave \$7,000 or \$8,000 or something? A. I should think so; yes, Sir.

Q. Each year? A. Yes, Sir; I think so; about that.

#### THE INDEPENDENT UNDER MR. TILTON.

Q. Now, when you took possession of *The Independent* as editor-in-chief, and Mr. Beecher left it, what was its strength in circulation, and its credit and repute in the country? A. It had a very good circulation, and had a very fair repute, except in orthodox circles. Mr. Beecher had cast over it a reputation for heresy, and I had cast upon it a reputation for extreme radicalism in the anti-slavery movement. Still, as both those reputations were in my judgment good, I think I may say *The Independent* stood well.

Q. And can you give us about what its circulation was? A. I don't remember, Sir; that is Mr. Bowen's secret.

Q. You have some notion about it, haven't you—did you know at the time? A. I haven't any means of fixing the circulation of *The Independent*.

Q. Did you know at the time? A. I presume I did, from time to time.

Q. You have forgotten, have you? A. Forgotten, I think.

Q. Now, can you remember whether its circulation was increased under your administration? A. Yes, Sir.

Q. Wasn't it very largely increased? A. Mr. Bowen always said so; whether or not that was exactly true I don't know.

Q. What made you doubt?

Mr. Beach—He does not say that he doubted.

Mr. Evarts—He says he does not know whether it is true or not.

The Witness—Well, the publishers of newspapers always draw a long bow, Mr. Evarts, in making their prospectuses.

Mr. Evarts—Well, I don't know how that is; I have never published a newspaper.

The Witness—*The Independent* was always put—

Q. You were editor, and you must tell us, if you can, whether it did not rise very largely under your administration from the subscription list as it stood when Mr. Beecher left? A. Why, Sir, I think *The Independent*, for the last fifteen years, under Mr. Beecher, under Dr. Thompson, under myself, has had a steady growth, until the time when the anti-slavery movement was settled and the war was over. After that I don't know anything about it.

Q. Well, but you know it from the time of 1863 to 1870 while you were the principal editor of it, do you not? A. Yes, Sir.

Q. Well, now, that is the very period, and the only period I am asking you about. A. I remember this—this I have a dis-

distinct recollection of, that just at the time of my retirement, either that week or the next, Mr. Bowen published in *The Independent* a highly flattering article concerning the prosperity of his paper, in which I remember he gave a long list of 10,500 post-offices to which it had gone; pointed to that fact as an instance of its unparalleled prosperity. I happen to remember that.

Q. What was its circulation when you left? A. That I do not know, Sir, except that it went, as I say, to 10,500 post-offices.

Q. Then you cannot tell us whether the paper had gained in strength and circulation under your administration or not? A. Yes, Sir; I know that it had; I know from constant proclamations which the publisher made year by year. He had a habit of occasionally putting before the reader the past history of the paper, comparing the receipts of the first six months of this year with the first six months of last year; and all these showings always made for the prosperity of *The Independent*. That journal was like a revolution which never went back; at least, according to the statements made by its publisher.

Q. And yet you cannot give us any notion of what its real strength and circulation was, or what you suppose it to be, at or about the time that you left it? A. I don't think I ever asked any question about it, Mr. Evarts. I was in the—

Q. And your own observation and interest as an editor of the paper did not lead you to have any knowledge on the subject? A. I unquestionably, from time to time, knew something about the circulation of the paper, but it was constantly fluctuating; and as I have been out of it for four years, I would not undertake to say what the circulation was. I have an indistinct recollection that when I first went into *The Independent*, Mr. Bowen then told me that the circulation was 17,000. I remember these figures; but what it was when I left I do not know. I suppose, perhaps, it was 50,000; 60,000; perhaps; I don't know; but that is a very rough guess, and I may be doing great injustice to much higher numbers.

Q. Well, that was something of a growth, then; from 17,000 to 50,000, wasn't it? A. Well, I think I might say so; yes, Sir; I agree with you in that.

Q. What was your contract or relation with *The Independent*, securing or providing for your position as editor? A. Well, Sir, I had a great many contracts with *The Independent*. I went into *The Independent* on a salary of \$700; I left it on a salary of \$7,000.

Q. No; as editor-in-chief—editor-in-chief, if you will listen to my questions—. A. I did not hear you say "editor-in-chief."

Q. As editor, what was your contract with *The Independent*, in which your position and emoluments were provided for, from the time that you became the chief editor, in 1863? A. When I was editor-in-chief, in 1863, I do not remember what my salary was; it was not a very large one. From time to time during the following seven years my salary was increased; I do not remember the successive steps.

Q. Well, what had it come to be at or before December, 1870? A. At or before?

Q. Yes, Sir? A. It will require two answers, because at December, 1870, was one thing, and before that was another.

Q. Well, give us both answers if you please, then? A. In the early part of December, 1870, Mr.— Perhaps I ought to go back a step earlier than that. During most of the seven years of my chief-editorship of *The Independent* I had an arrangement with Mr. Bowen, by which I was permitted at the same time to lecture; my nights were free; the duties which my contracts compelled me to perform did not exceed the writing of the leading article every week, together with the general supervision of the paper, so that I was free to lecture; and during a number of years my income from my lecturing under that liberal arrangement of the publisher was about the same as my salary. Then, when I came home—

Q. Now, as my only object was to get at your salary, will you be so good as to state what it was? A. Well, Sir, I do not understand what you mean by getting at my salary.

Q. You have given me an answer that your salary was about what you got from your lectures? A. Yes, Sir.

Q. Now, will you tell me what your salary was; I care nothing about your lectures? A. Well, Sir, you differ in that respect from most of your fellow-citizens.

Q. I have got through with it; I have asked you about your lectures, and got through the \$7,000; now, will you tell me what your salary was? A. I will, if you will tell me at what time you want to know it.

Q. Before December, 1870? A. Well, Sir, my salary was at various points, fixed at various times before this.

Q. Give me all of them? A. Well, I told you a little while ago that I went into that paper on a salary of \$700; it was variously increased—

Q. Now, as editor-in-chief, what were your respective salaries through that period of your editing? A. That I do not remember; you will have to refer to Mr. Bowen when you get him on the stand.

Q. Do you mean to say that you can give no information to us concerning your salary at different periods during the seven years of your editorship? A. Mr. Evarts, I mean to say exactly that I do not remember what my salary was in *The Independent* ten years ago; I remember that it was advanced by successive steps until it came to be, from \$700 a year to \$7,000 a year; that is what I remember.

Q. When did it come to be \$7,000 a year? A. I think in the year 1869, but I won't be certain of that.

Q. Now, what was it immediately before it was changed to \$7,000? A. That I don't remember; I think it was about \$5,000, together with some percentage of the profits, though I won't be certain of that.

Q. And how long did that arrangement continue—\$5,000 and a part of the profits? A. I don't know; it is so long since I have had any such income as that, that all is a dim haze and fog in my mind. It is a pleasure to me, Sir, to have you revive it, even in that unsubstantial way.

Mr. Evarts—Well, it would be a greater pleasure to me if I could revive it a little better.

The Witness—Well, Sir, if you could make it actual it would be a supreme delight. [Laughter.]

Mr. Evarts—I am afraid the community must do that for you.  
Judge Neilson—I really wish the audience would be quiet.

Q. Now, what was it at the stage before it was fixed at \$5,000 and a share of the profits? A. Well, Mr. Evarts, I have already told you I don't know; I can tell you again I don't know.

Q. Didn't it, when you became editor-in-chief, in 1863, then become \$5,000 and a share of the profits? A. That is my impression, but I will not be certain—you say in 1863, \$5,000 and a share of the profits.

Q. When you became editor-in-chief? A. No; I don't think at that time it was as large as that.

Q. What do you think it was at that time? A. I don't remember, Mr. Evarts; I will send over a respectful request to the office of *The Independent* that those figures may be given to you. I have no authority over there; I have not been in there for four years; but I have no doubt they would be happy to oblige you.

Mr. Evarts—It is not my affair, it is yours.

Mr. Fullerton—It is what you want to get.

Mr. Evarts—I want to get it from him. [To the witness.] Now, as I understand, at the beginning of December, 1870, your position, vocation and income was your position as a lecturer and a writer, and in your salary from *The Independent*? A. Excuse me, Sir; I don't understand your question.

Q. At the beginning of December, 1870, your position and vocation was in regard to employments and emoluments—your position as a lecturer, as an author, if you please, and as editor of *The Independent*, with your salary of \$7,000 a year? A. You are entirely wrong there, Mr. Evarts; at the beginning of 1870—

Q. December, 1870? A. At the beginning of December, 1870, I was not a lecturer; I was then editor of *The Independent* and editor also of *The Brooklyn Union*, having assumed those later functions to the exclusion of lecturing.

Q. Editor of *The Union*? A. Yes, Sir; I was going to tell you a little while ago when you interrupted me.

Q. Had you formally abandoned lecturing, do you mean? A. Why, certainly, I had to give them up when I became editor of *The Brooklyn Union*.

Q. So that 1869 and 1870 terminated your distinct vocation as a lecturer? A. Yes, Sir.

Q. Now when did you go into *The Brooklyn Union*? While you were editor of *The Independent* were you also editor of *The Brooklyn Union*? A. For a few months; yes, Sir.

Q. That was a secular paper, wasn't it? A. Yes, Sir; so was the other.

Q. *The Independent*? A. Yes, Sir.

Q. Now, when was the period of your editorship of *The Brooklyn Union*? A. It began May 1st, 1870, and ended December 31st, 1870, at 9 o'clock at night.

Q. What was your position of salary or compensation in *The Brooklyn Union*? A. I think, Sir, it was \$100 a week.

Q. Well, then, that was your position at the beginning of December, and your two salaries in these newspapers and such occasional employment as an author as might be? A. No, Sir; I hadn't any occasional employment as an author, because I bound myself not to be an author.

Q. Not to be an author? A. That is to say, I bound myself to limit my labors to those two papers, and not to write outside.

Q. Very well, then, at the beginning of December the salaries from those two newspapers were your whole income from your labors? A. Yes, Sir; except so far as I had some little money at interest.

Q. Well, that was not from your labors? A. Not from my labors? That is the only way I ever got it.

Judge Neilson—Your answer was correct as first given.

Q. Well, money from investments and not money earned—and that money at interest you have stated to us as being a balance that was, afterwards perhaps, deposited with Woodruff & Robinson? A. Yes, Sir; only a trifle.

#### MR. TILTON'S WEALTH.

Q. Now, you have spoken of your property as of this period of time, the first of January, 1871. What property had you that brought you any income or emolument? A. At that time?

Q. Yes, Sir; the first of January, 1871? A. I don't think any of it brought income.

Q. Except this money on deposit? A. That is all.

Q. That is all? A. That is my recollection at the present moment.

Q. Was not all the rest of it an occasion of expense and taxation, or otherwise? A. Yes, Sir.

Q. Now, you have assigned the sum of \$25,000 as the value of your house and furniture and books; and what you include in your domestic establishment, I suppose? A. Yes, Sir; pictures, musical instruments, and so on.

Q. How much of that \$25,000 do you attribute to the house, and how much to the furniture, pictures, &c.? A. I suppose my house to be worth—

Q. At that time? A. About \$17,500, I should say, house and lot.

Q. And there was a mortgage of \$7,500 on it? A. Yes, Sir.

Q. You have spoken of a share in *THE TRIBUNE* as composing part of your property? A. Yes, Sir; I also spoke of a part of my property held by my father under power of attorney. That was the part I alluded to.

Q. The nominal value of that was what? A. I was once offered for it \$10,250; I don't know what it is worth now.

Q. Had you, treating it as of that value, any interest in it, coming to yourself beyond what went to others. A. I never allowed myself to use a penny of it.

Q. I don't speak of that as using it? A. It always went to my parents.

Q. And you did get no income from it to yourself personally? A. Never a cent from the beginning.

Q. Now, you have spoken of some property at Llewellyn Park, I think? A. Yes Sir.

Q. Do you still own that? A. Yes, Sir.

Q. What value did you assign to that? A. Mr. Huscull, of whom—

Q. We won't take the particulars, but what value did you assign to that in your estimate of your property in 1871?



A. About \$10,000 nominally. I was told, then, by Mr. Huscull it was worth \$15,000.

Q. You assigned \$10,000? A. Yes, Sir.

Q. Do you still own it? A. Yes, Sir.

Q. Was it under any mortgage at that time? A. Not a cent—free and clear.

Q. Do you understand what its value now is? A. It ought to be worth more, I should think.

Q. Do you know anything about it? A. No, Sir; very little.

Q. Is it now subject to a mortgage? A. No, Sir.

Q. Have you more than one piece of real estate over there in Llewellyn Park? A. No, Sir; three acres lying side by side like three eggs in a nest.

Q. Do you say that that is not subject to any mortgage? A. I don't think it is subject to any mortgage; I don't know. It was free and clear when I purchased it. I have never mortgaged it since.

Q. On what present basis do you put the idea that it has continued to be worth \$10,000? A. Well, I didn't want to say it was worth more than that, though, as I say, the original projector of the park told me never to sell it for less than \$15,000. I have always estimated it at about \$10,000.

Q. Have you offered it for sale for less than \$10,000? A. I have tried to get Mr. Moulton to buy it, but he preferred not to take property of mine, but to lend money—to crowd money upon me.

Q. Was any rate fixed at which you would part with it—that he might take it at? A. I told Mr. Moulton and Mr. Woodruff, either of them or both of them, that they might have it for whatever they in their business judgment considered it to be worth, but nothing came of the offer.

Q. Do you remember \$2,500 being an estimate that was put upon its value? A. What, Sir?

Q. Do you remember \$2,500 being an estimate that was put upon its value? A. No, Sir.

Q. At any time? A. No, Sir.

Q. Now, your Prospect Park lot; you put that at about \$1,000? A. Yes, Sir.

Q. What became of that? Have you got that still? A. What is that, Sir?

Q. Have you got that still? A. Yes, Sir: I have it still, unless some one has run off with it for taxes. I understand Mr. Shearman has been looking it up, and, perhaps, he can tell you better. They told me Mr. Shearman had been making some inquiries about it the other day. I understand it was sold for taxes—that there were \$8 taxes on it.

Q. Do you know it has been sold for taxes? A. I don't know. It is the first time I have thought of it in two or three years; I almost forgot it until it was revived the other day in Court here.

#### MR. TILTON'S LATER DEALINGS WITH MR. BOWEN.

Q. Now, Mr. Tilton, at some time in the month of December—I don't know that you have fixed the date—you ceased to be the editor of *The Independent*, and were put upon some other establishment with that paper, were you not? A. Yes, Sir; the other establishment was *The Brooklyn Union*.

Q. No; some other establishment with the *The Independent*, not that of editor. At some time in December you ceased to be editor of *The Independent*, and had your relations fixed with it upon some other basis? A. Yes, Sir; I thought you spoke of some other establishment.

Judge Neilson—In that department? A. Yes, Sir.

Mr. Evarts—Now, when was that done? A. I think the date of that settlement, or the assigning of the new contracts, what you call the new establishment—

Q. The new basis? A. Was December 20th or 21st or 22d; somewhere there, towards the latter part of that month.

Q. How long had that arrangement been in contemplation or negotiation before it was thus consummated? A. Well, Sir, a number of weeks.

Q. And how was it brought about—by you or Mr. Bowen's first moving in it? A. Well, Sir, do you wish me to narrate the steps that led to it?

Q. Briefly; I don't care about them; I have no interest in the details; I only want to know how the transaction went on. A. Mr. Bowen, somewhere in the month of November, I should say, of the year 1870—possibly a little earlier, possibly a little later—told me that, in consequence of various reasons pressing upon his own mind, he wanted to become editor-in-chief of *The Independent*. One of those reasons—

Mr. Evarts—Well, its no matter; I don't care about that.

Mr. Beach—Well, I don't know; you asked for the steps, and you will get them.

Mr. Evarts—I don't care what his reasons were.

Mr. Beach—What he stated is proper.

Mr. Evarts—He opened the matter to you, did he? A. Yes, Sir.

Q. He opened the matter, and told you that? A. Yes, Sir.

Q. Very well. What was proposed, if anything, by him, as to the termination of your editorship, or any substitution or replacement of your employment in another form? A. When Mr. Bowen informed me that he wanted to become editor of *The Independent*, I instantly—not instantly, but a few days afterwards—resolved that I would no longer remain in *The Brooklyn Union*.

Q. That is, if you left *The Independent*? A. If I left *The Independent*. In other words, I wanted to be free to lecture; I didn't want to stay at home and bind myself to one paper. Mr. Bowen gave me a notice some time in November, or the early part of December of that year—notice, legal and proper under our then existing contracts, that he wanted to possess himself of his own paper at six months hence. That would have been about June, 1871. In pursuance of that notice, or in answer to that notice concerning *The Independent*, I told Mr. Bowen at the same time, namely, June, 1871, about six months hence I would yield up *The Brooklyn Union*.

Q. You each had that right toward the other under your contracts? A. Yes, Sir; under the then contracts.

Q. To terminate in six months? A. To terminate in six months. He did not wish me to give up *The Brooklyn Union*. I had then only been a few months connected with it, and he said it was prospering, and we had a number of friendly interviews, the purport of which was whether or not

we could come to some arrangement by which I could go on with *The Brooklyn Union*, and at the same time write for *The Independent*, so that from both newspapers my soon forthcoming and expected income would be as much as I could get from devoting my whole labor to the lecture and lyceum platform. As the result of that conference, or of those conferences, toward the end of September, about the 20th, as I say, somewhere there, I signed a contract with Mr. Bowen to become the editor of *The Union* for five years, at a salary of \$5,000 a year, with ten per cent of the profits.

Q. Have you those contracts? A. No, Sir.

Mr. Evarts—[To Mr. Morris.] Will you produce them?

Mr. Morris—They were left with the arbitrators; they were yielded up then.

The Witness—I signed, also, a contract the same evening to become special contributor to *The Independent* for a term of years, I have forgotten how many, for \$5,200 a year. That arrangement left Mr. Bowen free and clear to be editor of *The Independent* in chief, and me free and clear to be editor of *The Union* in chief.

Q. \$5,200, each of you? A. Yes, Sir, each of us.

Q. Each \$5,200? A. Yes, Sir; only that in case of *The Union* there was an addition to the \$5,200, namely, ten per cent of the profits of the establishment.

Q. Those contracts were given up at the time of the arbitration, were they? You say you have not got them now? A. Oh, they were given up; yes, Sir, canceled.

Q. Ended, as papers?

Mr. Beach—Not at the time of the arbitration; they were not canceled then.

Mr. Morris—They were canceled before the arbitration.

Mr. Evarts—The contracts were canceled, substituting contracts, but the papers themselves were given up, as I understand? A. I gave up the two papers themselves, having written the word "canceled" on them.

Q. At the time of the arbitration? A. I gave them to Mr. Bowen on the night he paid me the \$7,000.

Q. So you have not got them now? A. No, Sir.

Q. Now, what provision did these contracts contain in regard to the right on one side or the other to terminate them? A. Those contracts were written by me, and contained these provisions, namely: they might be terminated by the death of either party; they might be terminated by one party giving to the other six months' notice in advance, or they might be terminated at once by either party paying to the other a forfeit equal to one half year's income under the contracts.

Q. That is, either contract might be terminated in these ways? A. Yes, Sir.

Q. They were not tied together so that if one was terminated the other must be? A. No, Sir.

Q. Now, your valedictory was published, I think in *The Independent*—it has been stated the date, I believe. Do you remember the date of it? A. Yes, Sir.

Q. The 22d of December? A. December 22d, 1870.

Q. Now, when first did anything come up between you and Mr. Bowen in disturbance of, or in connection with the newly

made contracts? A. Nothing came up in connection with the newly made contracts until they were suddenly broken.

Q. When first did anything come up between you and Mr. Bowen in regard to your continuing in or ceasing to be in his employment under one or both of those contracts? A. Nothing, until the contracts were broken.

Mr. Beach—He asks the date.

The Witness—December 31st, 1870.

Mr. Evarts—How was that notified to you, this occurrence on the 31st of December? A. I think Mr. Bowen sent me round a little note.

Q. Have you that note? A. I have not been able to find it. I don't know whether that note was surrendered on the night of the tripartite covenant or not. My impression—I have some indistinct impression what that note was—that Mr. Bowen wanted back the paper which I had. I rather think I sent him back the note in connection with another note, but I won't be certain.

Q. You received it on the 31st of December? A. Yes, Sir; late in the evening. Perhaps I ought to mention that a few days before that I had a quarrelsome and angry interview with Mr. Bowen, in which he stated that if I did a certain thing he would terminate my relationship to him—a sort of a threat.

Q. Do you remember what the date of that was? A. Yes, Sir. No, I don't. It was either one or two days after December 26th; whether it was the 27th or the 28th I don't know.

Q. It was either the 27th or the 28th? A. I think so. At all events it was a day or two after that.

Q. That is your recollection; it was either the 27th or the 28th of December? A. Yes, Sir.

Q. Now, had you prior to this interview that you have now alluded to, and subsequent to the signing of your new-made contracts, any interview with Mr. Bowen concerning yourself as employed, or to continue to be employed in these newspapers? A. No, Sir; none whatever; I had an interview with Mr. Bowen on the morning of December 26th, but it was not in reference to any termination of any contract, or the reversal of any contract, or the shaping of any business arrangement; it was an interview of my own making.

Q. And didn't relate to any question of your personal acceptability or continuance there? A. No, Sir; Mr. Bowen had been talking—how people had been talking of me to Mr. Bowen, and I went down to see about it. I thought the frank way was to have an interview with him face to face.

Q. That was the 26th? A. Yes, Sir.

Q. Was that the first occasion of an interview after the signing of the contracts on the 26th? A. Was that the first interview I had with Mr. Bowen?

Q. Yes, Sir. A. The first one I remember. I don't know. I think quite likely I may have met him every day at the office.

Q. But no interview that had any significance or made any impression on you? A. Perhaps I ought to say this was Saturday evening.

MR. BOWEN'S SUDDEN COLDNESS TOWARDS MR. TILTON.

Q. Which would have been the 24th? A. Yes, Sir; which would have been the 24th. I think Mr. Johnson came around and took tea at my house, or, at all events, he came to my house and told me some one had been speaking evil of me to Mr. Bowen. Mr. Johnson was a warm personal friend of mine at the time. I asked him to go with me to Mr. Bowen's house. We went down early in the evening. Mr. Bowen came to the front door, I think, robed in his dressing-gown. I asked him what he had been hearing to my prejudice. He said, "Mr. Tilton, I have got all my new editors here now in a consultation, and I don't want to waste the time. Monday will be a holiday; wont you come around Monday morning and see me about it?" I said, "Yes, I will come around Monday morning." I asked Mr. Johnson to be there, and he was there.

Q. Then it was that Mr. Johnson had communicated to you that there would be some, or was some occasion, or there would be some propriety in your seeing Mr. Bowen, was it? A. No, Sir; Mr. Johnson told me that somebody had been speaking evil of me to Mr. Bowen. I said, "Very well; if that is the case I will go and see Mr. Bowen at his house," and asked Mr. Johnson to accompany me.

Q. Didn't Mr. Johnson suggest to you that you had better see Mr. Bowen about it? A. I think not; I think that was my own spontaneous impulse, that I asked Mr. Johnson to go with me; still he might have suggested it or acquiesced in it, as he was a discreet man.

Q. Didn't you understand Mr. Johnson had come over to see you that afternoon for the purpose of suggesting this? A. That I don't remember; still, it would have been just like him to do so.

Q. And in your interest, and as a friendly act? A. Yes, Sir.

Q. Now, about what time of day on Monday did you go to Mr. Bowen's? A. Oh, in the afternoon, sometime.

Q. And Mr. Johnson was with you during that whole interview? A. No, Sir; Mr. Johnson left before the interview was ended.

Q. Before it was ended? A. I think Mr. Johnson left in time to go over to New-York for the Christmas dinner. That is my impression.

Q. Then it was a long interview? A. I don't think it was very long.

Q. About how long? A. Well, I don't know; perhaps an hour and a half; perhaps longer; perhaps shorter.

A. And about how much of that time did Mr. Johnson remain? A. I could not say at this length of time.

Q. Perhaps you can tell us whether he was there during the greater part of the interview or not. Your saying leaving to get the dinner would not carry him over very early necessarily? A. My impression is that Mr. Johnson was there during the greater part of the interview, but not during the most important part of the interview.

Q. The most important part occurred after he left, you think? A. The most vivid parts; yes, Sir.

Q. You mean by that the most violent part? A. No; the most dramatic part.

Q. Now, who introduced that conversation, and how was it introduced? A. That morning?

Q. Yes. A. Oh! I don't remember that. Probably I did my self.

Q. You cannot tell us what you said to Mr. Bowen at the outset? A. No, Sir.

Q. Can you tell us what Mr. Bowen said to you at the outset? A. I think he said "Good morning."

Q. Can you tell us what Mr. Johnson said at the outset, if he said anything? A. No, Sir.

Q. You did have some conversation there, you three together, didn't you? A. Yes, Sir; I can tell you the substance of the conversation.

Q. Well, I will go on with my question. Now, did you or not inform Mr. Bowen that you would come there for the purpose of talking with him in regard to any stories that he had heard against you? A. I came there, Sir; I went there.

Q. Did you tell him that? A. I don't remember what I told him, but I quite likely told him just that for that was precisely the object of the interview.

Q. Did he then tell you what the stories were? A. No, Sir; he only told me there were stories, I pressed him to know what they were, but he would not tell me.

Q. Did he tell you what the nature of the stories was? A. He told me the stories were coming down on me like an avalanche. That I remember. Mr. Bowen is given to metaphors.

Q. And the nature? A. Threatening to sweep me away; stories of immoralities; stories of atrocity. He pictured the scenes very vividly.

Q. He did? A. Yes, Sir; but he would not tell me what they were, and he would not tell me who told him; but the substance of the interview I had with him was: "Mr. Bowen," I said "bring here to me in your presence everybody who has anything against me, and let us have it out face to face." He said, "That is fair." Then we went to another topic.

THE COMPOSITION OF MR. BOWEN'S AVALANCHE.

Q. Now, was not enough said there to make you understand that the stories related to immorality or profligacy with women? A. Stories, Sir, concerning my relations with women, and my drinking, and my brutality, and other things—a dreadful volume of it—all that went to make Mr. Bowen's avalanche. He told me that they came to him from all quarters of the world, all of a sudden. [Laughter.]

Q. And did you suggest in any way, or did it come to be a matter considered there, that if these stories were true you would have to leave his employment? A. No, Sir; he said if those stories were true I ought not to live a day longer, and I agreed with him in that sentiment. [Laughter.]

Judge Neilson—Silence!

Q. Didn't you understand that the reason for your seeing Mr. Bowen, or your friend, Mr. Johnson, thinking it proper for you to see Mr. Bowen was that the stories that had been told him concerning you were such as would not tolerate your continuing in his employment? A. Not at all,

Sir; for Mr. Bowen had for fifteen years retailed himself just such stories concerning Mr. Beecher, and he had all that time been Mr. Beecher's chief pewholder, and Mr. Beecher had been his chief writer, and no such stories as those would have affected Mr. Bowen's regard for any man in his employ, whether as minister or editor. [Murmur in the audience.]

Q. Well, that is very bad for Mr. Bowen. He was above prejudices of that kind? A. Yes, Sir; entirely so. He abolished them all in the House of God. [A louder demonstration.]

Judge Neilson—Will the audience keep quiet? The business is interrupted by it.

Q. Now, were you aware at that time of the particulars of any injurious stories respecting yourself in this direction? A. No, Sir; the horror of the whole business was that it was all unknown; it was an avalanche coming upon me in the dark. I didn't know what it was, but I felt that my first duty as a gentleman was to go and see Mr. Bowen face to face, and, as I said before, the substance of the conversation was—

Q. No matter, that is not what I am now asking? A. To bring the accusers face to face. He said that was fair.

Q. That you have said already; but my question now is whether you were not yourself aware of the alleged circumstances of profligacy or immorality that were told to your prejudice. A. No, Sir; I did not know them until a few days afterwards, when Mr. Beecher certified that he had been my slanderer by taking it back in writing.

Q. And you had never heard any of these rumors concerning your conduct in this relation, prejudicial to you until Mr. Bowen told you that there was an avalanche upon you? A. In what relation?

Q. In these relations with women? A. No, Sir.

Q. You never heard of it? A. Just about that time, either before or after, there was a little evening newspaper in New York scandalized the community by saying that I was going to Europe to elope with a lady. [Laughter.] She had already gone several months before—a few months before. That is the only story I ever heard. That was a lie.

Q. Well, I am not speaking of the truth of the stories. I only want to know the state of your knowledge or mind at that time. Well, that you had been aware of, that imputation? A. I am not certain at this distance of time whether it occurred a little after or a little before.

Q. Well, isn't it very probable that it was before? A. I don't know, Sir.

Mr. Beach—Well, no matter about probabilities.

Mr. Evarts—Well, I ask, isn't it very probable that it was before? A. I don't know whether it was or not. There is no end to the probabilities of slander.

Q. I agree. A. Or the improbabilities.

Q. I only want to find the state of slander as it became known to you. A. Yes, Sir.

Q. Did this imputation, that you were aware of, contain any particulars as to person or circumstances? A. Yes, Sir; there was a bold and vulgar allusion to a very honored lady in this city.

Q. Very well; I didn't care to disturb the matter further than to know what you had heard concerning stories about yourself. A. Yes.

Q. Had you heard prior to this of stories to your prejudice connected with any transaction at Winsted, Connecticut? A. No, Sir; oh, yes, there had been a long time before, a story published to the effect that I had gone to Winsted with a lady not my wife—published some time during the political campaign.

Q. The political campaign of what year—1868? A. I don't remember. I was away off in the West, and Oliver Johnson sent that out to me. That was three or four years before that.

Q. That you had heard of them. A. That was an old tale; yes, Sir.

Q. Still, you had heard of it? A. Yes, Sir, years before.

Q. Now, had you heard of a story injurious to yourself in connection with any female at Faribault, in Minnesota? A. No, Sir; never have heard any such story until now. I didn't know that there was such a one.

Q. Well, that you had not heard of? A. No, Sir; what is the story?

Mr. Beach—Oh, no!

The Witness—Let us have it.

Mr. Beach—No; we are getting enough that is immaterial and incompetent now.

Mr. Evarts—I don't propagate the stories. I want to know the state of your knowledge; that is all. Do you mean to say, then, that this information from Mr. Bowen that there were current these stories to your prejudice was a surprise to you? A. Yes, Sir; I should think it would be to any man.

Q. Well, I don't know that. I am only asking of yourself.

A. Well, I am only speaking for myself, Sir.

Q. It was a surprise to you that there should be such stories? A. Yes, Sir; it was an astonishment.

Q. Please look at this letter and at the date of it, and see if that is not a mistaken date. Shouldn't it be January, 1870? It is a common error, you know, of keeping the old year. I, of course, know nothing about it? A. You must let me read the letter.

Q. Oh, Yes; you may read the letter. [Handing witness the letter.] A. Now, Mr. Evarts, will you ask me again what question you desire to put?

Q. My only question was whether, upon looking at that date, you could say whether that was an erroneous date, that it was really 1870 instead of 1869, or not. You know it is a common error at the first days of a new year that one may make; whether there is anything about that letter that enables you to say whether that is the true date, 1869, or whether the true date is 1870? A. This is dated Tidoute, Pennsylvania, January 8, 1869. I was unquestionably lecturing there. I might refer to some little memorandum book of my lectures. I could not say from anything here.

Q. Well, you remember writing the letter, and the occasion of its being written, I suppose? A. Yes, Sir.

Q. But you cannot say now whether it was written in 1869? A. I think Mr. Johnson wanted me to write something; that is my impression.

Q. No matter. I only want to get at this date. You cannot give it, you say? A. No, Sir; but I can look on my memorandum book and see whether I was in Tidloute in 1869 or not.

Q. Of course, on its face, it would be perfectly regular that it should be 1869? A. Yes, Sir.

Mr. Evarts—I propose to read that. [Handing the paper to plaintiff's counsel.] Your Honor, it has reached the hour of adjournment.

The Court here took a recess until 2 p. m.

The Court met at 2 p. m., pursuant to adjournment.

Theodore Tilton was recalled and the cross-examination resumed.

Mr. Evarts—Have you been able to fix in any way whether that should be a date of 1870 or 1869? [Handing witness a letter.] A. I have not given any thought to the subject, Sir. I didn't go to my own house during the recess.

Mr. Evarts [to plaintiff's counsel]—Will you give us the 1869 and 1870 letters? [To the Witness]: Where is this place of Tidloute? Is that the proper pronounciation of it? A. No, Sir.

Q. How is it pronounced? A. Pronounced "Tidlute," I think.

Q. Where is it? A. In Pennsylvania somewhere. I lectured there once; that is all I know about the place.

Q. Somewhere in the oil-regions? A. I don't know about that now.

Q. Now, don't you remember whether you were there in January, 1869, or January, 1870? A. I don't remember anything more than the date of the letter, Sir.

Q. Won't you look at this collection of letters? [Handing witness the book.] There are some dates in January, 1869, about this time. A. Are these correctly printed?

Q. I suppose they are; I know nothing about them. We have assumed them to be so. A. Well, Sir, what do you wish me to do with these?

Q. Look over those of 1870 and see whether from those dates, supposing them to be correct, it would not be the year 1870 when you were in Tidloute on the 8th of January, and not 1869? A. I think that certain letters have been put in evidence already from Tidloute. I presume they have dates. I don't remember at this moment whether I lectured there more seasons than one or not.

Q. But you would not have been in Ohio on the 10th if you were in Tidloute on the 8th, would you? A. Well, Sir, I can't understand why.

Mr. Fullerton—It is very easy to travel that distance.

Mr. Evarts—Well, but he was on a lecturing tour. Both 1869-70 and 1868-69 you were on a regular lecture tour, were you not? A. How is that?

Q. Both the seasons of 1869-70 and of 1868-69 you were off on a lecture tour? A. Yes, I think so.

Q. You have read this letter, haven't you? A. You handed it to me this morning. I glanced at it hastily. Do you desire me to read it?

Q. Yes; you may read it if you wish to. I want to ask you whether in reading the letter you then can recall whether the incident which that letter refers to, occurred in 1869 or 1868. It

had occurred prior to that letter of course? A. Yes, Sir; Mr. Evarts, I will tell you how to fix the date exactly. Produce in court Mrs. Tilton's memorandum books or diaries for the last four or five years. She took them away from the house. It was at her request that I took this protegee of hers there. She will fix the date exactly by her diary.

Q. I am not talking about the contents of the letter at all; I want the date of it.

Judge Neilson—He wants to know whether you can fix the date? A. May it please your Honor, the date is here—Jan. 8th, 1869.

Q. Do you think that is the correct date? A. I should have said it was the correct date, and then Mr. Evarts casts a doubt upon it.

Q. Can you see by to-morrow morning whether it is correct or not? A. Well, I have no access to Mrs. Tilton's diary.

Q. We are not talking about her diary.

Mr. Evarts—No! no! we have nothing to do with that.

The Witness—I will look, Sir, through my own—

Mr. Evarts—Your own letters, if you have the originals of those that are printed, will show you where you were on the 10th of January, in both of those years? A. Mr. Evarts, you have had the originals in your hands of all those letters.

Q. I have not read all the letters. A. You have had them, as I understand.

Q. All that have been printed I have not had, except what I have read. A. They are at your service.

Q. All that have been read are in evidence, of course; but all that have been printed have not been read in evidence; but as you have the originals here in your own handwriting, you can tell by them whether you were in the oil-regions on the 8th of January, 1869, or the 8th of January, 1870? A. Well, Sir, the letters will speak for themselves. There they are; and if the letters don't speak for themselves, I think, perhaps, my little books of record, my little lecture note-books, of which I have several at home, may fix the date. I do not see, though, why the date should not be correct as it is written.

Q. Of course, only you know that in the first days of January it is a common error to put the wrong year. That you know, don't you? A. It is with some people, Sir.

Q. Well, it happens to anybody, I suppose; it certainly does to me? A. Yes.

Q. And I suppose it happens to any one. Well, now, can you remember whether this matter of Winsted did occur antecedent to January, 1869, or only antecedent to Jan. 8, 1870? A. My impression is that it was a considerable period before that, but as I said before my memory of dates is not very good unless associated with some event which bears a date. Mrs. Tilton can tell you all about it, Sir.

Q. Well, I don't know how that is. I don't know what she has to do with this? A. Well, I will tell you what she had to do with it, Sir.

Mr. Beach—No, no.

Judge Neilson—No.

The Witness—I beg your pardon.

Judge Neilson—Don't refer to Mrs. Tilton again, please.

Q. Now, look at that letter and say if that refers to what has

been spoken of here, and I think on Mr. Moulton's examination, as the Winsted letter? [Handing witness letter.] A. Yes Sir.

Q. And my only object is to get at the date of it—if I can. You spoke of it as being an old story? A. Yes, Sir, a very disgraceful one, too.

Q. Well, I dare say. That we have nothing to do with. It is only the question of the stories that were presented. A. I supposed that it was in that particular that it interested you most.

Q. We are quite aware that persons are scandalized. You may have been as well as other people; but the date of it, and your knowledge of it are important to me, and if you can fix that by an examination of your original letters, or if you will take this printed pamphlet that will fix it, I suppose? A. I will do my best to oblige you.

Q. Now, at this interview between you and Bowen, was there a particularization or a reference to a charge that had been made against you to Mr. Bowen on the part of a lady that was connected, in some way, as contributor, or otherwise, with the paper of which you were the editor? A. Not that I know of, Sir; nothing of that sort was mentioned.

Q. Well, of course I am speaking of what was mentioned. You say, then, that at that interview Mr. Bowen did not inform you that he had received an accusation against you on the part of a lady that was employed in connection with those newspapers? A. No, Sir; he never in his life gave me any such information—never, from that day to this.

Q. How did this part of the interview, then, that related to yourself, and yourself alone, close—that Bowen was to confront you, or that— A. It closed in this way: I told Mr. Bowen that if anybody had anything to say against me let him invite that person, and also invite me, to a personal interview, face to face, in Mr. Bowen's presence. Mr. Bowen replied, "That is fair."

Q. And that is the way that branch of it closed? A. Yes, Sir, that is the way it ended.

Q. Now, you have stated that at that interview, Mr. Bowen opened upon charges against Mr. Beecher? A. What is that, Sir?

Q. Mr. Bowen at this interview opened upon charges against Mr. Beecher? A. Opened upon charges?

Q. Yes. A. He opened the charges; he didn't open upon them. [Laughter.]

Q. My question will stand, and we will take your answer. What had led to that in any previous conversation on that occasion that you had had with Mr. Bowen? A. This, Sir; after Mr. Bowen said that that would be fair, he changed the subject; he said to me that in view of my recently formed contracts to write for *The Independent*, and to become editor of the *The Brooklyn Union*, that he hoped I would put my whole life and fire into *The Brooklyn Union*, that I would treat all Brooklyn topics with great particularity, and that I would make among them one conspicuous and chief, namely, Plymouth Church and all its affairs, for he said: "That church has a large congregation, and many of the readers of *The Union* are there," and he then said, "I notice that you have not given particular attention to the church, and indeed you have not attended the church for some months, and your absence has been

rather noticed by me." I told him that I never again should cross the threshold of Plymouth Church.

Q. Mr. Johnson was present at this part of the conversation, was he not? A. I think he was, but I would not be quite certain at what time Mr. Johnson left. I think Mr. Johnson threw in some such remark as this: "Perhaps Mr. Tilton has a reason for not going to Plymouth Church;" something of that kind.

Q. You think he was there? A. I think he was there at a part of that conversation.

Q. And that he did throw in an observation? A. I think he did; yes, Sir.

Q. Of that character? A. And I think that Mr. Johnson very shortly afterwards left. In other words, when the conversation concerning the stories about me was ended, Mr. Johnson left, either then or a little afterwards. He did not stay long to hear our discussion about the papers.

Q. But staid until after Mr. Bowen had opened on this subject of using *The Brooklyn Union* in discussion of Plymouth Church matters? A. Well, I think he did; at all events, Mr. Johnson made some remark about reasons which I might possibly have for not going to Plymouth Church. That is as near as I can recollect.

Q. And you then made the observation that you have just repeated? A. I don't know that I made it then; I think perhaps I might have made it before, or possibly I made it after.

Q. You mean before Johnson's; you made it either before or after Johnson's remark? A. Yes, Sir; I made it sometime during the interview.

Q. In this connection his observation was made in connection with yours, or yours in connection with his, was it not? A. Yes, Sir, but it was not so much in reference to the paper as it was in reference to my going to church.

Q. Well, I am not talking now about the paper, I am talking now about the observations? A. Yes.

Q. Well, how did the matter go on then on Mr. Bowen's part after that observation of yours? A. After Mr. Johnson left?

Q. No, I don't care. I will find out whether he was there or not, if I can, but after this observation of yours? A. I don't think very much was said until after Mr. Johnson left, when Mr. Bowen put some questions to me to know why it was that I did not go to Plymouth Church. That is the part that I now distinctly remember.

#### MR. BOWEN'S DENUNCIATION OF MR. BEECHER.

Q. When did Mr. Bowen commence stating his accusations or imputations against Mr. Beecher? A. I can't remember exactly at what part of the conversation he did. Some of them were stated before Mr. Johnson went away; others were stated after he went away.

Q. Well, did he pursue the matter at some length? A. Well, yes; at some length, necessarily.

Q. You have given on the direct examination, have you not, substantially what he said? A. Yes, Sir.

Q. As you remember it? A. Yes, Sir.

Q. What did you say after he had completed the accusations against Mr. Beecher? A. I don't think he did complete them; I think he kept reiterating them.

Q. Well, but he left off some time or other, didn't he? A. Not until I left the house.

Q. Didn't he? A. No.

Q. Well, when he had got through with them for the first time, what did you say—anything? A. Do you mean what I said at such a particular moment? I don't identify any such particular moment.

Q. It is not as to the lapse of time; it is as to the stage of the conversation. If you don't remember, why I can't help it; if you do, I want to know. A. Mr. Bowen was very solicitous to know from me what Mr. Beecher's relation had been to Mrs. Tilton.

Q. And asked, did he? A. Yes, after Mr. Johnson went away. I had said before Mr. Johnson went away that Mr. Beecher had been guilty of dishonorable behavior towards Mrs. Tilton.

Q. That you stated while Mr. Johnson was there? A. Yes, Sir; or that in substance.

Q. When did the suggestion of the preparation of this letter of demand on Mr. Beecher come up? A. I think that came up in Mr. Bowen's private conversation with me, toward the close of that interview.

Q. Which suggested it, you or he? A. Mr. Bowen suggested it. He said that Mr. Beecher ought not to be allowed to preach in his church.

Mr. Evarts—[To plaintiff's counsel] I would like this letter of demand, one of the early exhibits, No. 4.

[Mr. Morris produced the letter called for.]

Q. Take this, if you please, Mr. Tilton. [Handing witness the exhibit.] Now, the suggestion first came from Mr. Bowen. What was that suggestion? What did he say? A. Mr. Bowen said in substance that Mr. Beecher ought not to be allowed to remain in his pulpit or in the city; that he ought to be driven out. Mr. Bowen then said that he could take no steps towards the accomplishment of such an object as that, because he had in the previous February received from Mr. Beecher a humiliating confession of his guilt, and that Mr. Bowen had given him pardon.

Q. Well, that you stated in your direct examination? A. Yes, Sir; Mr. Bowen, however, stated that if I would make this demand, which he could not in honor, as he stated, initiate, that he would substantiate it and would bring the volume of evidence which he possessed to see that it was carried into execution. That is the substance of it.

Q. I believe you said that on your direct examination. Now, he having so stated it, how did you give your assent to acting in the manner that he suggested? A. I said to him, "Give me a pen and a sheet of paper and I will write it." He said, "I will carry it."

Q. Is that the original draft that you wrote? [Referring to a paper.] A. No, Sir.

Q. Well, have you the original draft? A. Yes, Sir.

Q. At any rate it was amended before it was finally copied there, was it? A. What is that?

Q. The draft as originally written was changed in some words before it was copied? A. Yes, Sir.

Q. Do you remember what the change was? I don't care

anything about the paper. A. Well, I remember, perhaps, with sufficient accuracy to say that this clause was admitted, "for reasons which I explicitly understand." Whether the original draft was in precisely these words I don't know, but that is the substance.

Q. Was all the original draft, including the amendment, in your handwriting? A. The original draft did not include the amendment.

Q. Well, including the amendment that was put upon it, wasn't the amendment put on the draft? Of course it may not have been. A. I think not, Sir; perhaps it was not; still I will not answer positively, Sir.

Q. I supposed the amendment was put on it and then the complete copy taken from it. I don't know? A. It may be. I think the paper exists.

Q. Very well, that is the change, at any rate. And the address, is that your own also? [Showing witness the address.] A. Yes, Sir; I wrote it all except the small writing there; that is Mr. Moulton's.

Q. Well, we can tell. All that belongs to it as a letter and an address is in your handwriting? A. Yes, Sir; every bit of it.

Q. Now, when you gave this letter to Mr. Bowen was the envelope closed or sealed? A. I think it was open, Sir; that is my impression.

Q. It was given to him, was it not, by you, and taken by him to be carried as an open letter to Mr. Beecher? A. Yes, Sir; that is my recollection. Is not the envelope open now?

Q. It is open now? A. I mean has it been sealed?

Q. You may see whether it has been sealed. [Handing witness the envelope.] It now bears the marks of having been closed? A. Yes, Sir; it was not closed by me.

Q. And was not intended to be? A. No, Sir; it was an open letter as I wrote it. Mr. Bowen must have opened it before delivering it.

Q. It was intended to be carried by Bowen open? A. Yes, Sir.

Q. Intended by you to be carried by him open? A. Yes, Sir; and mentioned and described by me to Mr. Moulton that afternoon.

Q. So that this closing it which has taken place— A. Was not by me.

Q. Was not by you or by him with your consent or purpose? A. Not at all, Sir. Still I didn't lay any injunction upon Mr. Bowen not to close it. That was no feature in the case. Mr. Bowen well knew the contents of the letter. It was an open letter, he and I were jointly responsible for it.

Mr. Evarts—[Reading]:

Henry Ward Beecher.

December 26th, 1870.

Sir: I demand that for reasons which you explicitly understand, you immediately cease from the ministry—

Mr. Beach—Why is it read now?

Mr. Evarts—Because I want to use its contents [continuing to read] from the ministry of Plymouth Church, and that you quit the City of Brooklyn as a residence.

[Signed] THEODORE TILTON.

Q. That was written so, I suppose? [Referring to the word "Signed."] A. Yes, Sir.

Q. Now, Mr. Tilton, how soon after this did you inquire, and how soon after inquiring did you hear, what had happened concerning and at the delivery of this letter? A. I made no inquiry about it, Sir.

Q. Well, how soon did knowledge come to you concerning it? A. The first knowledge that came to me concerning it was through Mr. Beecher's own statement to me on Friday night of that week, Dec. 30th, that it had been delivered. I took it for granted, however, that it had been promptly delivered. That is my recollection at present.

#### MR. BOWEN REGRETS HIS HIGH WORDS.

Q. Now, Mr. Tilton, let me recall your attention to the fact that prior to that interview with Mr. Beecher, to which you have now alluded, you had an interview with Mr. Bowen. A. I did, Sir.

Q. What day was that interview? A. I don't remember whether it was Dec. 27th or 28th.

Q. It was one or the other? A. One or the other; I think so.

Q. Now, at that interview did not the question on the subject of this letter being delivered by Bowen to Mr. Beecher, and the occurrence thereupon, become the subject of conversation between you and Mr. Bowen? A. No, Sir; Mr. Bowen was in a wild anger and I had no conversation with him at all. It was the last interview I had previous to the tripartite covenant two years after.

Q. Now, how did this interview on the 27th or 28th with Bowen come about? A. I will tell you exactly, Sir.

Q. Did he send for you or did you go to him spontaneously? A. Neither, Sir.

Q. Well, how did you get together? A. I will tell you. After I had written this letter on the 26th of December, I told Mr. Moulton about it that afternoon. He told me with great emphasis that I was a fool.

Q. Well, that you have told us. A. Yes, Sir; so that either the next morning or the morning after—my impression is the very next morning—I sent a message to Mr. Bowen by advice of Mr. Moulton, or rather, not by his advice, but by my own judgment, growing out of a suggestion of his, namely, that Mr. Bowen's name ought to have been attached to such a demand, inasmuch as he was to have sustained and enforced it; so I sent a message—I forgot whether by note, I think by note—to Mr. Bowen, informing him that I was going to have an interview with Mr. Beecher, face to face. Mr. Bowen came pell mell around to the office and then came the angry interview.

Q. What time of day was this interview? A. It was in the forenoon sometime.

Q. Can't you now recollect whether it was the 27th; whether it was not the very day after—? A. Well, I don't know; it was either that or the day after.

Q. Wouldn't you have probably learned something about the letter on the next day if you had heard nothing from him about it? A. What is that, Sir?

Q. Wouldn't you have sought for some information concerning this letter on the next day if you had not heard from him on that day? A. From whom should I seek it, Sir?

Q. Mr. Bowen. A. Why, I had parted from him in anger. I would not have met him; I would not have spoken to him.

Q. No, no; not at this time. You had not parted with him in anger then when you sent him off on this errand to Beecher? A. I don't understand your question.

Q. Well, now, just listen. If you had not heard something from Bowen on the day immediately following the 26th, wouldn't you have been likely to have sent for him to learn about the reception that the note sent to Beecher had met?

Mr. Fullerton—One moment. I think this case will be long enough without such speculative questions as that.

Judge Neilson—I think he may answer that. A. If I understand the purport of your question, the answer is this: that if Mr. Bowen had come around on that morning in an equable frame of mind, I should certainly have said, "Mr. Bowen, tell me the fate of the letter," but he came around in great anger and there was no conversation between us.

Q. That is not my point. The point is that he did come around the very next morning, and if it had not been that he came you would have been likely to have made some inquiry on that day concerning the reception? A. I think quite likely, yes, Sir; it may be true.

Q. So I supposed. A. I don't say for certain that he came that morning; yet perhaps it was that morning.

Q. That it was the very next morning? A. Yes; but still I won't say for certain.

Q. Now he came around and saw you in your office alone, I suppose? A. He and I together, yes, Sir.

Q. Well, you were alone—nobody else there? A. Nobody there.

Q. Now, can you tell us what the first thing said at that interview was? A. Oh, I don't know the first thing.

Q. Do you know which spoke first? A. No, I don't know. Mr. Bowen was in a great state of excitement. His face was as white as a wall.

Q. Now, do you mean to say, upon reflection, that not a word was said about the delivery to Mr. Beecher, and his reception of this note? A. I mean to say exactly that, Sir. Mr. Bowen was in great anger. The substance of what he said was, that if I divulged to Mr. Beecher the accusations which he, Mr. Bowen, had made against Mr. Beecher, that he, Mr. Bowen, would cease all his relations to me, and that I should never again cross the threshold of his office, or enter his house. He said that with great vehemence and emphasis. That was the substance of the conversation. It was a very brief interview; he allowed me no time to ask questions of any sort.

Q. Do you mean he left without giving you an opportunity to say anything to him? A. I think the sum and substance of what I said to him was to answer pride for pride, scorn for scorn; that I would not be deterred by his threats; that I should tell Mr. Beecher or any other person, utterly uninfluenced by any denunciations of that kind. That is all I remember of the interview.



WHAT MR. TILTON EXPECTED OF THE JOINT DEMAND OF MR. BEECHER.

Q. And you had no curiosity about the delivery of the note or its reception? A. I did not have a great deal of curiosity about it.

Q. Why didn't you ask Bowen about it? A. Well, because Mr. Bowen was not a man to be asked questions of then. He went out of the office slamming the door behind him. I was not the man to seek him out afterwards. The only persons that knew anything about the matter were Mr. Beecher and Mr. Bowen. I could not see either of them.

Q. Well, Mr. Bowen was there. A. Mr. Bowen left.

Q. Now, when you sent—when you wrote this demand on Mr. Beecher and sent Mr. Bowen, or delivered it to Mr. Bowen to communicate as your joint act, as you have stated— A. Yes, Sir.

Q. What was your object in sending it; what result did you expect from sending it? A. My object was to strike him right to the heart, Sir.

Q. Now, what result did you expect from thus striking him right to the heart? A. That he would be pricked and wounded as he has been.

Q. And nothing more? A. Nothing more.

Q. You did not expect that he would be driven from the pulpit or from Brooklyn? A. Yes, Sir; I did.

Q. You did? A. Yes, Sir; and he will, too. [Sensation.]

Q. Then you did expect— A. I certainly did, Sir.

Q. That from the delivery of that message to him he would be driven from his pulpit and from Brooklyn? A. Mr. Bowen said that he could drive him out of his pulpit in twelve hours. I believed what Mr. Bowen said.

Q. And you thought this would do it? A. Yes, Sir; I thought that Mr. Bowen would do it.

Q. Well, this method would do it? A. I didn't think that my little letter alone would do it.

Judge Neilson—He says "this method."

The Witness—This method. Mr. Bowen said that he would drive him out of his pulpit in twelve hours.

Q. And you believed him? A. I believed him; yes, Sir.

Q. And you together sent, as your joint act, this letter? A. Yes, Sir; we did.

Q. And you expected that result from it? A. Yes, Sir, I did.

Q. Now, Mr. Tilton, how soon did you go to your house that day, after this interview with Mr. Bowen, the 27th or 28th—whatever it was? A. You mean on the day that I sent the letter demanding Mr. Beecher's retirement?

Q. No; on the day of your last interview with Mr. Bowen? A. I do not remember.

Q. Your usual time, so far as you remember, was it? A. I cannot say that.

Q. What was your usual time of going home from your office under ordinary circumstances? A. Usually I went home and took lunch at 1 o'clock.

Q. And returned to business? A. Yes, Sir.

Q. Now, when you returned to your house that day, were you excited and did you exhibit excitement in your house; I

leave out all reference now to any interview or intercourse with your wife? A. I cannot remember that, Sir.

Q. You do not remember being excited? A. No, Sir; it would be quite likely.

Q. In consequence of this interview with Mr. Bowen? A. I don't remember being in my house; I do not bring up the circumstance.

Q. You don't remember being in your house at all? A. No, Sir.

Q. Did you at your house on that day, on your first visit to it after this interview with Mr. Bowen, say to the nurse and others there (others than your wife) that you were ruined? A. No, Sir; I did not.

Q. Nothing of that kind? A. No, Sir; I was not ruined.

Q. I did not ask you whether you were ruined; I asked you whether you told the nurse and other persons than your wife (whom I leave out of the inquiry) that you were ruined? A. Well, I answer you no.

Q. Well, so let it stand? A. Yes, Sir; I was not in the habit of talking of my business affairs to the nurse. [Laughter.]

Q. I was not arguing about it; I only want you to answer my questions.

Judge Neilson—Please only to answer the questions. I wish the gentlemen would be quiet in Court.

The Witness—I do not remember who the nurse was. What was the nurse's name, Mr. Evarts?

Mr. Evarts—My dear Sir, when I am on the witness stand I will answer all I know. [Laughter.]

Mr. Beach—That will take a very long answer.

Mr. Evarts—Do you think so? [To the witness.] Be kind enough just to answer my questions.

Judge Neilson—Only answer the questions.

The Witness—Mr. Evarts sets me the example of stating everything he knows.

Mr. Evarts—Oh, no. Do you remember being in any excitement or having any impression that the result of this attack upon Mr. Beecher was going to be disastrous to you? A. Not at all, Sir. How could it have been disastrous?

Q. I do not reason with you. I only ask whether you had that impression? A. I had not.

Q. Do you not remember on that occasion of coming to your house on that day, after this interview with Mr. Bowen, that you got out your valedictory in *The Independent*, and paced up and down, and exhibiting great excitement, and immediately went to work preparing papers connected with this subject? A. No, Sir, I have no such recollection.

Q. You recollect nothing of the kind? A. Nothing of the sort, Sir.

Q. Did you inform Mr. Moulton of this angry interview with Bowen? A. I think I did, Sir.

Q. And did you then plan any step, in connection with Mr. Beecher, thereupon? A. No, Sir.

Q. None whatever? A. Not that I recollect.

Q. Now, Mr. Tilton, you knew of *The Christian Union*, Mr. Beecher's newspaper, at the time of its establishment, did you not? A. When was it established?

Q. Well, that is exactly what I was going to ask you. [Laugh-

ter.] I understand that it was established in the beginning of the year 1870—January, 1870; in other words, that it had been in existence through the year, the month of December of which we are now talking about? A. I could not have answered that question, but I take your statement for it.

Q. Do you recall enough of the situation to know that Mr. Beecher's newspaper, *The Christian Union*, had been established before this month of December, in which your connection with *The Independent* terminated? A. That it had or had not?

Q. That it had? A. My impression is Mr. Beecher was writing editorial articles either in *The Church Union* or *Christian Union* for a number of months previous to that, but I will not be positive.

Q. Do you mean that you, being the editor of *The Independent* all through that year of 1870, did not know whether Mr. Beecher's paper, *The Christian Union*, was in existence during that time? A. *The Christian Union* or *The Church Union* he had some connection with; my impression is that his connection with a newspaper at that time was with *The Church Union*, and not *Christian Union*.

*The Church Union* was turned into the *The Christian Union*? A. Yes, Sir; but I do not remember what name the paper bore at that time.

Q. I don't care which name it bore, but Mr. Beecher was the editor of this religious paper, in Brooklyn, wasn't he? A. Brooklyn?

Q. Or New York? A. I think he was.

Q. Prior to this time of which we are speaking? A. Whether editor-in-chief of *The Church Union* I am unable to say; I do not recollect the precise nature of his relation with the paper; the only recollection I have is that, during 1869, he resumed editorial labors in some form; I have an indistinct recollection of that.

Mr. Everts—[Looking for a letter.] Have you that letter, Mr. Shearman?

The Witness—I think in my letter the name of the paper is given—in my letter to Mr. Bowen; whether it was *The Christian Union* or *The Church Union* I do not exactly recollect.

Q. Oh, this is the letter [showing letter]—a letter from yourself to Bowen, January 1st, 1871? A. That mentions the paper; that will give the correct name.

Q. It is in evidence here. Just look at this letter and see if it will not recall the name? A. Yes, Sir; it was called *The Christian Union* at that time; it had been previously called *The Church Union*.

Q. And, it was a part of the conversation of Mr. Bowen in regard to Mr. Beecher, that the letter should demand not only Mr. Beecher's abdication of his pulpit, but the cessation of his writing for *The Christian Union*? A. Yes, Sir; that is what Mr. Bowen demanded.

Q. But that was left out of the letter or summons? A. Yes, Sir.

Q. Now, Sir, at that time, do you know how large the circulation of this paper of Mr. Beecher's had become? A. No, Sir; I do not.

Q. And at this time—and if so, how long before, if you know,

had there been started a rival paper at the West, which interfered with the former ground of patronage of *The Independent*? A. I do not know of any such paper, Sir. Do you refer to *The Advance*?

Q. Yes, Sir. A. Old Sidney Morse used to say that all newspapers helped each other, and I do not think that any one paper injures another.

Q. Did you know of the establishment of *The Advance* as a newspaper in the West? A. Yes, Sir.

Q. Appealing for patronage to the religious community? A. Yes, Sir.

Q. When was that established? A. I should think in 1868 or 1869; I think about that; I cannot remember distinctly.

Q. And do you know that it was established because of dissatisfaction in some circles, or quarters or sections of opinion at the West with *The Independent*? A. I think it was; yes, Sir; I think that was one ground; *The Independent* was too liberal.

Q. And this paper was meant to be more orthodox? A. Oh! I don't know about being more orthodox; I think *The Independent* was orthodox; orthodoxy is my doctrine; heterodoxy is yours, Mr. Everts.

Q. Heterodox in the sense that you mention in your letters; this paper was more orthodox, and yours "liberal"? A. Yes. *The Advance*, as I understand, was started to be a representative mouthpiece of the Congregational denomination. *The Independent* had cut loose from that denomination; had swung clear, and declared itself no longer an organ of the denomination; there was an organ of the denomination in Boston called *The Congregationalist*. There was no organ of the denomination in New York when I ceased to have *The Independent* their organ; they wanted such an organ in the West, and they started *The Advance*. That is the best account that I am able to give of the starting of that paper.

Q. And that had been going for two or three years—about two years? A. I will not be accurate as to the date.

Q. Now, how was Mr. Bowen overruled in not including in this summons upon Mr. Beecher that he should retire from supporting *The Christian Union*? A. After I wrote that note Mr. Bowen said, "Why did you not put in that he should not write for *The Christian Union*?" I said, "I have put in enough."

Q. And he yielded? A. He said nothing more about it.

#### MR. TILTON'S INSINUATIONS AGAINST MR. BEECHER'S MORALITY.

Q. Now, Sir, you have stated that in the interview with Mr. Beecher on the 30th of December you had narrated to him, as communicated to you by your wife, certain conversations between your wife and him? A. Yes, Sir.

Q. And you gave us, as a part of what you stated to him, that this communication had come to you in July, 1870? A. Yes, Sir.

Q. Now, Sir, between July, 1870, and the 30th day of December, 1870, had you spoken in any terms to anybody concerning any relations between Mr. Beecher and your wife? A. Yes, Sir.

Q. Have you named in your direct examination all the per-

persons to whom you had said anything in that interval concerning any relations between your wife and Mr. Beecher? A. I think I named that I gave Oliver Johnson, and Mrs. Bradshaw, and Mr. Moulton the entire truth; I spoke to certain other persons to whom I did not tell all the story; Mr. Bowen was one of those.

Q. I do not know what you said, but you told him the entire truth—you said that you spoke to him. Now, did you speak to any other parties? A. Members of the family?

Q. Members of your own family. A. I suppose I may call my mother-in-law a member of my own family; I spoke to Mr. Richards and to his wife about it.

Q. You did yourself? A. I think I did.

Q. To all these people? A. Yes, Sir.

Q. You have, in your direct examination, spoken of these last named people as having been spoken to by some persons? A. By Mrs. Morse; yes, Sir.

Q. But do you now say that you spoke to them yourself? A. They had been spoken to by Mrs. Morse, and I then spoke to them; I did not tell the story originally to them.

Q. Now, in the same interval you had, in general terms of imputation upon Mr. Beecher, in respect of morality, used severe language—had you not? A. I believe that I had once or twice spoken roughly of him; I don't remember that I did, but words were brought to me afterwards as coming from me, and I think quite likely that I used them; I refer, now, to a remark that I had said that Mr. Beecher preached to his mistresses; I don't remember having made it, but I presume that I did.

Q. The language that I understand you to have spoken about in your direct examination, which was imputed to you, was that you had said he preached before forty of his mistresses? A. I do not undertake to be accurate, Sir, as to the number.

Q. That may be; but the words which were imputed to you as having been said were "forty of his mistresses." A. It was put to me that I had said that he had preached to his mistresses; it might be "seven" or "several."

Q. You are mistaken; it was put to you, by reading from a letter, that you had said he had preached to forty of his mistresses. A. Yes, that was stated to me; that was afterwards, in the charges brought by Mr. West—it was stated that I said that he had preached to "seven" or "several" of his mistresses.

Q. I don't mean those charges by Mr. West; I am speaking of a long time afterwards; that was in 1867, and that was two years afterwards. Now, I understand you to answer that you cannot remember that you expressed the number of mistresses? A. Yes, Sir.

Q. But that you did express that sentiment, during this interview? A. Understand me correctly; I do not remember having made such a remark; but it was attributed to me, and I think all the probabilities are that I made such a remark; but I do not remember whom I made it to.

Q. But it was attributed to you at a point of time very near the transaction, on that occasion? A. On what occasion?

Q. The occasion of your making this charge; this letter that was before you, in which the inquiry was put to you whether you had said that, was in the month of January, 1871, was it

not? A. No, Sir; that was in the month of November, 1870.

Q. No? A. Yes, Sir. I beg pardon.

Q. You do not know what I am talking about. A. I do know exactly, Sir.

Q. No, you do not know what I am talking about. A. I do, Sir, exactly.

Q. No; there was a certain meeting in 1871. A. Yes, Sir.

Q. And at that meeting Mr. Beecher, and Mr. Moulton and you were together, and a letter containing such a charge was presented to you to know whether you had said so? A. That is correct so far as it goes.

Q. That was in January? A. Yes, Sir; I had received the letter in the previous November.

Q. I don't know anything about that: I do not care about it, and I do not inquire about it. It is enough that in January the question was put to you, whether you had not, in the preceding few months between July and that date, made that imputation. Then the matter was fresh in your mind, was it not, in January, 1871, when Mr. Beecher, and Mr. Moulton, and yourself were present? A. It was.

Q. Whether or not you had accused Mr. Beecher of preaching to forty of his mistresses or not, during the preceding Summer? A. Yes, Sir; I made answer that probably I had spoken very roughly, that I had not spared him.

Q. And you believe you did say that? A. I will not say I used such an expression; I think the probabilities all are that during the Summer I made use of that expression, or its equivalent, without any definite accuracy as to the number.

Q. To whom did you make use of that expression? A. I think quite likely to Mrs. Morse or to Mr. Richards; I don't know to whom; as I said before, I don't remember having made the remark; but as it was brought home to me in one of my wife's letters during the Summer, the chances are that I said it; that is what I mean.

Q. Now, beyond these general statements to Mr. Beecher's prejudice during that period of time, and these statements, whatever they were, that you had made to the persons you have named, had you said anything to any one else? A. Well, sir, I would not like to answer that question; perhaps I had; because from July, 1870, to the end of that year, I was not under any restraining influences to Mr. Moulton, and I spoke my mind very freely sometimes.

Q. And for aught you know you mentioned this thing at some times to other people besides? A. I am very certain I did not say anything to Mrs. Tilton's detriment, except to those three persons that I have named, but I did not spare Mr. Beecher.

Q. You mean to Moulton and Johnson and Mr. Bradshaw? A. Yes, Sir; I had some conversation with Judge Morse; I don't know how far that went, nor do I know whether he first obtained what he knew from me or from some one else.

Mr. Everts—I did not ask that.

Mr. Beach—It is very proper for him to mention.

Mr. Everts—It may be proper for him to say when some one asks him.

Mr. Beach—It is proper for him as a qualification of his answer.

MR. TILTON'S OPINION OF THE EXAMINING  
COMMITTEE.

Mr. Evarts—Do you remember about an attendance before this Church Committee and an examination by question and answer there—do you? A. No, Sir; remember going before the Committee; I decline to have it called an examination; it was not.

Q. No matter what it was. You remember being there, and questions being put to you and your making answers? A. Yes, Sir; that I remember.

Q. Now, Sir, did you not say on that occasion in answer to this question: "I ask what evidence you stated against Mr. Beecher to Mr. Bowen,"—in answer to that question, did you not make this answer: "I must answer your questions in my own way. I came to tell you the whole truth, and not fragments of the truth. Mr. Bowen wanted me to speak more in the paper of Plymouth Church. Mr. Johnson said: 'Perhaps Mr. Tilton has a reason for not going to Plymouth Church,' and thereupon Mr. Bowen was curious to know the reason. I, in a solitary phrase, said that there was a personal, domestic reason why I could not go there consistently with my self-respect; that Mr. Beecher had been unhandsome in his approaches to my wife. That is the sum and substance of all I have ever said on this subject, to the very few people to whom I have spoken of it?" A. What is your question?

Q. Didn't you in answer to the question read to you, make that answer? A. I didn't make the last part of that answer, Sir, and I repudiated in a public card that report of my interview. I distinctly, before the Committee, charged Mr. Beecher with adultery, and they did not put it in the report.

Q. Well, now, I am not asking you about that. It has nothing to do with it. I have asked you a simple question, whether in answer to the question I read to you, you did not make the answer that I read to you? A. I did not, Sir.

Q. Very well; what you did afterwards I have nothing to do with.

The Witness—I did not, Sir; in other words, that Committee were informed by me—

Mr. Evarts—No matter.

The Witness—It is the last clause.

Mr. Evarts—I have not asked you anything about it.

Mr. Beach—Well, he has a right to answer that he made a part of that reply and part he did not. That is just what he was saying when you interrupted him.

Mr. Evarts—No, he was not.

Mr. Beach—Well, I say that he was.

Mr. Evarts—I say he was not.

Mr. Beach—The minutes will show.

Mr. Evarts—He was talking about his repudiation of the report.

Mr. Beach—He was not, Sir, when the counsel last interrupted him.

Mr. Evarts—Well, I say he was.

The Witness—That was the substance of what I said to Mr.

Bowen. I didn't tell him the whole story, but I had told others the whole story, but very few.

Mr. Evarts—Now, I have not asked you. You say that you did not make that last part of the answer? A. No, Sir; I say that the answer is imperfect; part of it is omitted; that is the answer that I generally made. There were a few exceptions to that answer, namely, Mr. Johnson, Mr. Moulton and Mrs. Bradshaw.

Q. Well, with those exceptions, was the sum and substance of all that you had ever said to the persons to whom you spoke, that Mr. Beecher had made unhandsome approaches to your wife? A. Yes, Sir; impure proposals; that is the sum and the substance. I did not wish to incriminate Mrs. Tilton.

Q. No matter what you wished; the fact was that that is all that you said? A. That is all I said.

Q. With the exception of these three persons? A. Well, understand me, Mr. Evarts, the three persons to whom I allude are persons to whom I told the story—there were other persons to whom I talked, to whom Mrs. Tilton told the story, and Mrs. Morse told the story.

Mr. Evarts—That you don't know anything about?

The Witness—I do know all about it.

Q. I am talking about persons to whom you communicated information. A. Yes, Sir, but I volunteered the whole story to those three persons, with the addition, perhaps, of Judge Morse.

Q. About him you don't remember? A. I don't remember the exact extent of that conversation with him.

Q. Now, when you were communicating the whole story, that is another matter—but with the exception of those three persons, the sum and substance of what you communicated yourself to other people was the unhandsome proposals, or the impure advances? A. Yes, Sir; and then perhaps I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

Q. I have not asked you that. I ask you a voluntary communication which you made to outside people? A. I don't remember any other voluntary communication to outside people.

Q. Now, Sir, when you first spoke to Mr. Moulton on the subject of any relations between Mr. Beecher and your wife, was not all that you told him, that Mr. Beecher had made unhandsome approaches or impure proposals to your wife? A. Yes, Sir, that was December 26th. That is all I told him on that day.

Q. That is all you told him that day? A. Yes, Sir.

Q. And that was the first time that you had spoken to him at all on the subject? A. Yes, Sir.

MR. TILTON'S PRAISE OF HIS WIFE.

Q. On this same examination, in answer to this question: "Have you not frequently asserted the purity of your wife?" did you make this answer: "No, I have always had a strange technical use of words; I have always used words that conveyed that impression?" A. I cannot see any sense in that word "strange," Sir; I think there must be some misprint; what I meant was that I had always tried—

Q. Well, I ask whether you made that answer or not? A. Well, I did not make use of any such words as "strange technical use;" it is evidently a misprint; you can see it yourself.

Q. I don't know anything about it. You say you did not make that answer? A. Why, I say, Sir, that of course I did not make any such answer: "A strange technical use of words!" There is some other—it is wrong—bad English—it is not right. I will tell you what I said—

Q. Well, did you say, "I have always used words that conveyed that impression?" A. I did, Sir, and I always used such words on purpose, to convey to everybody the impression that she was a pure and good woman, and if any word of mine will carry that impression around the earth to-day, I should like to utter it from this stand.

Q. Well, then, you did use words that were intended to convey the impression of the purity of your wife? A. I did, Sir. But I did not use it in that form. I did not use the word "purity." I used other words. I think she is a pure woman.

Q. You used words that conveyed that impression? A. Yes, Sir.

Q. But used other words to do it, with the intention to convey? A. Yes, Sir.

Q. And with the effect of conveying? A. Yes, Sir; with that deliberate design, for I hold, with Mr. Beecher, that she is guiltless.

Q. And with that constant effect? A. Yes, Sir.

#### THE FIRST HOSTILE INTERVIEW REHEARSED.

Q. Now, Mr. Tilton, you had at one time in your possession a note or memorandum of some kind, as you have stated in your direct examination, written by Mrs. Tilton on the 29th of December, 1870, which you gave to Mr. Moulton when he went to bring Mr. Beecher to the interview with you on the 30th? A. Yes, Sir.

Q. At what part of the day of the 29th was that paper obtained? A. Well, Sir, at this moment I don't recollect.

Q. Don't you recall to yourself the occasion and the scene on which you obtained it. I don't ask you to describe it, I only want to know whether you recall or not, to yourself, the occasion on which you received that paper from Mrs. Tilton? A. I didn't see it written, Sir.

Q. What? A. I didn't see it written at all; not that I remember.

Q. Well, after receiving that paper, did it remain in your possession, and uncommunicated to any other person during the whole of the 29th and during the whole of the 30th, until you handed it to Mr. Moulton? A. Yes, Sir; nobody else saw it but Mr. Moulton.

Q. And Mr. Moulton did not see it until you handed it to him at his house when he was starting to go to Mr. Beecher's? A. Not until then.

Q. Now, Sir, was that written on an ordinary note paper of your wife's? A. It was—what do you mean by an ordinary note paper? My recollection is that it was quite a *petite* note sheet. Whether it was ordinary or extraordinary, I could not say.

Q. Well, I said ordinary note paper of your wife's. We have

various exhibits here—what you call a small piece of note paper? A. Yes, Sir; I think so.

Q. "*Petite*," you call it? A. Yes, Sir.

Q. Was it in an envelope? A. It was inclosed in a white envelope without direction on it.

Q. And that was of the ordinary size for such a note? A. Well, I don't remember the size of it.

Q. Well, it was an ordinary letter envelope or note paper envelope for such a note, wasn't it? A. That I don't remember—whether the envelope exactly fitted the paper or not; I don't recall.

Q. Well, you received them both together, did you not? A. Yes, Sir, I think I did.

Q. And from your wife, I suppose? A. My recollection is that she handed it to me in that condition; this little memorandum inclosed in a white envelope, unsealed; that is my best recollection.

Q. Unaddressed and unsealed? A. Unaddressed and unsealed; that is my recollection.

Q. Very well; now, when you went to Mr. Moulton, had you prearranged the transaction that you proposed to carry on on the 30th? A. I don't think I understand your question exactly, Sir.

Q. Had you preconceived with Mr. Moulton the course of your proceedings on the night of the 30th of December? A. No, Sir; Mr. Moulton, as yet, knew nothing of my plan; nobody but Mrs. Tilton knew anything about it.

Q. Then, whatever you said or did with him that night was the first, and all that you said or did with him previous to the interview on the subject of that interview? A. I don't—Do you mean to ask me whether I had had any conversation with Mr. Moulton at all between the 28th of December and the 30th?

Q. About procuring this interview of the 30th? A. Oh, no.

Q. Nothing before? A. No.

Q. Very well; you went, then, to Mr. Moulton's house with this note inside this envelope? A. Yes, Sir.

Q. Now, why did you give him the note to carry to Mr. Beecher? A. I will tell you exactly why. I asked Mr. Moulton if he would go down and bring Mr. Beecher to me for an interview on a matter of great importance, concerning Mr. Beecher's relations to my family. Mr. Moulton said he would; "But," said he, "it is prayer-meeting night, and it may not be convenient for him to come." I told him it was on a matter of very great importance I wanted to see him, and I suddenly took that paper out of my pocket, and I said: "Mr. Beecher will come, without doubt, when he knows the object of this interview. At the same time I don't care to have you state the object of the interview if he will come without it; I would rather break it to him myself. But if he makes any objection to coming, then you may take this paper and show it to him; then he will come."

Q. And he took it and left the envelope with you? A. I took it out of the envelope; put back the envelope—I made a copy of it right on the spot on that envelope. Mr. Moulton read it, and expressed great amazement.

Q. Well, he took off this paper—this original paper? A. Yes, Sir.

Q. And left you with the envelope? A. Yes, Sir.

Q. You then and there copying on the envelope? A. I did not copy it after Mr. Moulton went off; I copied it before he went off.

Q. No; I say, you then and there copying it on the envelope before he went? A. Yes, Sir.

Q. And when you thus copied this letter, this note, on the envelope, there was nothing written on it at all? A. Yes, Sir; there was the copy which I had just made.

Q. Well, that is after you had done it? A. Yes, Sir.

Q. But there was no writing on that envelope? A. No, Sir.

Q. Until you made this copy? A. Nothing at all on it; no, Sir; I made that copy in a few little shorthand lines.

Q. And I suppose upon the smooth side of the envelope? A. Well, Sir, I presume so.

Q. Now, between the time that Mr. Moulton went away and Mr. Beecher came to the interview did you write anything else on that envelope? A. I did, Sir; I took my pencil and I made two or three little dates, memoranda, and so on, all in shorthand notes.

Q. And nothing else? A. No, Sir; not that I recollect.

Q. Do you recollect what those dates and memoranda were? A. Yes, Sir, they were little dates connected with Mrs. Tilton's narrative to me, and also some little extracts which were then fresh in my mind from her letters in the West—broken-hearted letters which she had written; they were little memoranda of some things I wanted to say to Mr. Beecher when he came.

Q. Did you make whatever entries of extracts or allusions to her letters that you have now spoken all from memory, or did you have the letters there? A. O! simply from memory.

Q. Simply from memory? A. Yes, Sir.

Q. During this interview, from its commencement to its close, had you in your possession or hands, for use in that interview, any other written paper than this envelope on which you had made these notes? A. No, Sir.

Q. None whatever? A. No, Sir; not that I recollect; I don't remember any.

Q. And that has been destroyed? A. That I picked to pieces in talking.

Q. Now, just answer my question: that has been destroyed? A. Yes, Sir; that is all I remember.

Q. Now, Sir, when did you receive back the original note or memorandum of Mrs. Tilton that you had handed to Mr. Moulton for the particular use you have described? A. I received it back shortly after the signing of the tripartite covenant in April, 1873.

Q. Yes; for what purpose, and what was done with it? A. I did not want to die leaving that paper in existence; I begged it from Mr. Moulton, carried it back to Mrs. Tilton; she destroyed it.

Q. In your presence? A. Yes, Sir; in my presence; I saw her destroy it.

Q. And you know that it was the very paper? A. That it was the very paper.

Q. Yes; do you know that the paper thus destroyed was the very paper that you had that night? A. Oh! yes, Sir.

Q. Then every original paper, or copy, or memorandum that was before you, or that was used in this interview of the 30th of December has been destroyed, hasn't it? A. There was only that one; only that little envelope.

Q. Everything has been destroyed that was in writing, either an original, or copy, or memorandum? A. Well, there was nothing but that little envelope—one thing.

Q. Well, that is so; it has all been destroyed, whatever there was? A. Well, this is the only thing that was destroyed.

Q. Well, two things, because your wife's original note—A. That was not before us that night; Mr. Moulton had it.

Q. Well, it had been before you; you had it and gave it to Mr. Moulton? A. Well, but it was not present at that interview.

Q. Well, I know I have not confused the matter at all; every paper you had that night in reference to this interview, either the original or this memorandum, copy, or the memoranda of notes for that interview have been destroyed? A. The little envelope which contained the copy and the memoranda was destroyed that night, and the original confession itself was destroyed two years afterwards; that is the whole story.

Q. Now, when Mr. Beecher came and took the seat as you have described, the first thing you said to him was about your previous demand, wasn't it? A. I said something to him about his having received, I presume, the letter of demand.

Q. You have stated it in your direct examination; that was the first matter that you introduced to his notice—an inquiry whether he had received it or not, and that he had received, as you presumed? A. No, Sir; I did not ask if he had received it; I told him that I presumed he had.

Q. Well, that was a form of inquiry, as I understand it. However, that was said; and that was the first thing that you did say, and he assented to the fact that he had received it, didn't he? A. Yes, Sir.

Q. Now, what did you say to him then on the subject of that order or demand? A. I told him that I wanted him to consider that demand unwritten, not made—blotted out.

Q. You wished then to put yourself towards him as if you never had sent that demand? A. Precisely that.

Q. Precisely that? A. Yes, Sir.

Q. You did not occupy, then, the same position, or have the same disposition in regard to that demand at that moment that you had, at the time you had sent it on the preceding Monday? A. No, Sir; I did not. On Monday I forgot my wife; and afterward I remembered her.

Q. You had entirely changed your position in that regard? A. Yes, Sir; for my wife's sake I had.

Q. And you wanted the thing undone? A. Yes, Sir.

Q. And intended that it should so stand between you and Mr. Beecher, if it could? A. Yes, Sir; told him so very distinctly.

Q. Now, do you remember whether, in that interview, you were seated, or whether you maintained a standing position while Mr. Beecher was sitting? A. I remember exactly.

Q. And you are sure that you were seated during the whole

of that interview? A. I remember that Mr. Beecher was seated. Did you ask me about myself?

Q. I am asking about yourself, whether you did not maintain a standing position while Mr. Beecher was seated? A. I think I sat part of the time and stood part of the time. I am not so positive about myself at this moment. I think I sat too.

Q. How will you have it? A. I don't know at this moment. The scene is not so vivid in my mind at present. I have been all day long under a very severe and painful illness.

Mr. Evarts—I am very sorry for that, but I would like to get at the fact.

The Witness—Mr. Beecher remained seated during the whole; that I remember very distinctly.

Q. That you have stated, and I didn't ask you generally. Then you cannot say whether you were seated, or whether you were standing? A. I think I sat part of the time, and stood part of the time.

Q. Now, before you entered upon recounting the narrative or address to Mr. Beecher concerning his relations with your wife, there was also some other topic of conversation, was there not, after you told Mr. Beecher that you wished that summons or demand, whatever it was called to him, treated as if it never had been made? A. Yes, Sir.

Q. There was some conversation between you and him before he commenced to state his relations with your wife? A. When I was putting my hand in my pocket to find the memorandum I remember he asked me what Mr. Bowen had been saying against him. I then narrated what I put in my direct examination.

Q. You told him the substance of what Mr. Bowen had said? A. Yes, Sir.

Q. And he gave you certain answers of surprise, &c., at that, did he not? A. Yes, Sir.

Q. As you have stated; A. Yes, Sir.

Q. And not until you got through with both of those subjects did you introduce this matter of his relations with your wife. A. What do you mean by "both of those subjects?"

Q. Why, about the demand and about what Mr. Bowen had said about Mr. Beecher? A. I introduced the whole evening by referring to the letter of demand, and also to my wife's request that it might be recalled. When I was taking it out Mr. Beecher asked me what Mr. Bowen said, and I told him. The whole interview was in reference to Mrs. Tilton.

Q. No matter what it had reference to; I only want to get at what occurred. Had you this memorandum before you, made as you have now stated, when you went on with this discourse with him that you have given? A. I cannot say it was a discourse.

Q. Well, address? A. No, Sir; it was not an address; it was a statement.

Q. Well, a statement to him? A. Yes, Sir.

Q. It was interrupted by him, was it? A. I remember his making a little attempt to interrupt at one time, and I told him to hear me to the end. There was practically no interruption on his part.

Q. What form of demonstration did you recognize as an attempt to interrupt you? A. I thought he was going to speak.

Q. He made a motion as if he was going to speak? A. I don't distinctly remember it.

Q. Something you treated as a purpose of speaking? A. Yes, Sir.

Q. At what stage of your statement was that purposed interruption; do you remember? A. I think it was at the conclusion of my reading Mrs. Tilton's confession.

Q. This little paper which you had—you call it a confession? A. Yes, Sir.

Q. It was this little paper which you had on that table? A. Yes, Sir; that is my present recollection.

Q. Did you read that at the outset of your statement to him? A. I read that; it was not the first of the interview; the first part of the interview, as I remember, was my reference to his having received a letter.

Q. Oh, well; I agree. But after you got through that, after you had got upon the matter of his relations with your wife, was the reading of that paper the first thing that was done? A. I don't remember whether that was at the very beginning, or whether it was somewhere in its proper place in the narrative; that I do not recall at the present moment.

Q. You cannot say whether it was at the outset, or near the outset, or not? A. No, Sir; there was no formal manner of presenting the case.

Q. But as soon as that was brought to his notice he made as if to interrupt you by speaking? A. He made as if to say something; yes, Sir.

Q. Then how did you arrest that purpose? A. I said simply, "Hear me to the end;" something of that sort.

Q. Now, when you had got through—he did listen to you to the end—didn't he? A. Yes, Sir.

Q. Without interruption? A. Yes, Sir.

#### A BIT OF LITERARY CRITICISM.

Q. And when you had got through, did he not say this: "Theodore, this is all a dream?" A. As near as I remember, he said: "Theodore, I am like one in a dream. This is *Dante's Inferno*," or "I am in *Dante's Inferno*;" some such expression as that.

Q. Are you sure that he referred to *Dante's Inferno*? A. Yes, Sir; I am not sure, I am certain.

Mr. Evarts—Well, I don't know the distinction; but there is some, I suppose.

Mr. Fullerton—He is certain.

The Witness—Excuse me, Mr. Evarts; I did not mean to be captious as to the word. I am certain the sun rose this morning, and I am sure it will rise to-morrow morning. I am certain as to past facts, and I am sure as to future facts, which must, in the necessary order, come about. I beg your pardon for being so critical in that small degree.

Mr. Evarts—I am not so sure you are right about it.

The Witness—I am certain I am right about it.

Q. Now, Mr. Tilton, do you remember Mr. Beecher expressing a doubt, or intimating a doubt, as to whether Mrs. Tilton had

written any such paper? A. No, Sir; he never intimated any such thing.

Q. You are quite sure of that? A. No, Sir; I am quite certain.

Q. Now, don't you remember that on an expression of doubt or surprise concerning Mrs. Tilton having written any such paper as that—you had no original before you? A. No, Sir.

Q. You then said to him, "It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote that letter?" A. Ah! but that was my suggestion, and not his.

Q. I ask you whether you did not say that to him? A. I don't remember using any such expression as that. Do you take that from my examination before the Committee?

Mr. Everts—Well, I will show you where I take it from before I get through. [Laughter.]

#### THE AUTHENTICITY OF THE CONFESSION.

The Witness—As I understood you to say, you asked me whether Mr. Beecher threw any doubt—

Mr. Everts—Yes.

The Witness—*—*as to whether Mrs. Tilton had made that confession?

Mr. Everts—An expression of doubt, or uncertainty, or surprise, as to Mrs. Tilton having written any such note? A. Ah! what I think he expressed was a great deal of surprise that she should have written that, not any doubt as to its character or contents, and that he wanted permission to go again and see Mrs. Tilton, and I said he might go.

Q. I am not asking you that; I am asking you whether he used language to carry that impression to you of doubt or uncertainty in his mind, or surprise in his mind, at Mrs. Tilton having written any such note? A. No, Sir; but great grief and surprise.

Q. At what? A. At having done it—not doubt, but surprise.

Q. Great surprise at her having done it? A. There is difference between casting a doubt on the character of—

Q. I am not asking you that; I am trying to get facts. In answer to that expression that you describe as surprise, did you say, "It is but a few squares to my house. Go and ask Mrs. Tilton for yourself, whether or not she wrote that letter?" A. Well, I may, perhaps, have used some such expression as that; I don't remember, but it was not in reference to any doubt.

Q. Well, no matter, you used the expression? A. But only as to surprise.

Q. Now, thereupon did he indicate a purpose of going? A. He went staggering down stairs.

Q. Did he indicate to you a purpose of going to your house? A. No, Sir; he didn't say anything on the subject that I remember now.

Q. Didn't you know that he was going to your house then? A. I presumed he would go; I don't remember that he said he was going.

Q. I ask you if he didn't indicate to you, so that you understood him, that he was going then and there to your house? A.

I don't know that he indicated in any way other than by asking me if he might go, or my saying to him he might go.

Q. You said that, we will suppose. I want to know whether, when he made a movement to leave the room and the house, you didn't understand he was going to your house? A. Ah! I did, but did not frame any special indication he made. He and Mr. Moulton went out together, and I understood they went to my house, and afterwards I learned that they did.

Q. And when Mr. Beecher came back that night you had no further conversation with him? A. No, Sir.

Q. Did you see him again? A. I did not see him at all. He came into the parlor, and he had a conversation with Mr. Moulton that night with me.

Q. And that terminated the transaction that night between you and Mr. Beecher? A. Yes, Sir.

Q. Now, Mr. Tilton, what was the condition of Mrs. Tilton's health from the 24th of December until the 12th of January following? A. She was getting better every day from an illness.

Q. She suffered a miscarriage, did she not, on the 24th of December? A. I am not sure that was the date, but quite likely it was—somewhere about there.

Q. Her illness, whatever it was, arose from a miscarriage? A. Yes, Sir.

Q. And had she, during that preceding Summer or Autumn, had a similar illness from miscarriage? A. What, Sir?

Q. Had she, during the preceding Summer or Autumn, had an illness from a miscarriage? A. Not that I now remember.

Q. You don't remember that? A. She never had but one.

Q. That year? A. I don't think she ever had but one in her life.

Q. Of course I do not desire to inquire? A. I have never heard of any but one.

Q. Now, who attended her as physician during that time? A. My recollection is Dr. Skiles did, but I won't be certain about that.

Q. If not he, who else? A. Well, I don't remember anybody else.

Q. Do you know what nurse attended her? A. No. I don't recollect.

Q. Did you know at the time that a nurse did attend her? A. Well, I presume I did, but I don't remember now of a nurse.

Q. Now, was she seriously sick during the week from the 24th of December to the 31st of December? A. Well, Sir, on the 24th of December, if that was the date, I thought she was seriously sick, but the seriousness passed away. She got up very shortly.

Q. But shortly after when—the 24th? A. Yes, Sir; I mean to say that she was on her way to recovery; that was the serious date; she began to get better every day.

Q. Still, was she confined to her sick chamber and to her bed during that month? A. During the remainder of the month?

Q. Yes, Sir. A. I think she was; I don't remember when she first got around the house.

Q. It was at least later than the 1st of January? A. I think it was.



Q. So that she was, during this whole period, under this sickness, and confined to her room and her bed? A. She was to her room, I think; I won't say about her bed all the time.

Q. Substantially to her bed, was she not? Didn't you know about it at the time? A. I knew about it, but it is impossible for me to state the day on which she first began to walk around her room. That is the point of difficulty.

Q. I am only asking you if it didn't continue a week? A. That is exactly what I am saying I cannot tell.

Q. She was under the physician's care, was she not, during the whole of that week? A. That I don't remember, but I presume she was. She always was when she was sick.

Q. And under the care of her nurse all that week? A. I don't remember about the nurse, but I presume she was.

Mr. Evarts [To Judge Neilson]—It is four o'clock, if your Honor please.

Judge Neilson—Gentlemen will please keep seated for a moment. Will gentlemen wait a moment until the jury pass out? [To the jury]: Gentlemen, be in your seats to-morrow morning at 11 o'clock.

The Court thereupon adjourned to 11 o'clock on Tuesday.

## TWENTY-SECOND DAY'S PROCEEDINGS.

### CHRISTMAS WEEK IN 1870.

THE PLAINTIFF'S RELATIONS WITH MRS. WOODHULL AGAIN EXAMINED—HIS CONTRACTS WITH MR. BOWEN AND HIS BUSINESS COMPLICATIONS LOOKED INTO—MRS. TILTON'S CATHERINE GAUNT LETTER—THE MEMORABLE INTERVIEW OF THE PLAINTIFF AND DEFENDANT.

TUESDAY, Feb. 9, 1875.

The gloomy and mysterious events of Christmas week, 1870—the meetings of the plaintiff with Mr. Beecher, Mr. Bowen, and Mr. Moulton—were again gone over to some extent to-day, but the statements elicited did not seem to add to the character of the evidence, but only to the bulk of it. The form of the defense is gradually unfolding itself, and Mr. Evarts seems to be a master of the facts in the possession of his side. The questions asked to-day made it evident that Mr. Tilton's business troubles with Mr. Bowen and his private controversies with Mr. Beecher, which were crowded into that last week of 1870, are to be connected in the theory of the defense. The plaintiff's connection with Mrs. Woodhull is also brought out in strong colors. One of the leading questions of the counsel was whether the witness ever went to his house with Mrs. Woodhull in a carriage, left her and went into the house, getting the papers in this case, and returning and talk-

ing to her about them. Mr. Tilton denied that there ever was such an occurrence.

Mr. Evarts endeavored to connect Mr. Tilton with Mrs. Woodhull in regard to a procession in this city to the memory of Rossel, the French Communist, who was executed. The witness said that he did not know that Mrs. Woodhull was in the procession, and that he walked in the line with John Swinton. 'Did you walk all the way with him?' asked Mr. Evarts. All the answer the plaintiff made to this was to wheel quickly in his chair and inquire in the blandest tones of Mr. Swinton, who stood behind him, "was it all the way?" Mr. Tilton took occasion to eulogize Rossel highly, and told Mr. Evarts that it was an insult to suggest that the Communist was executed for having put to death the Archbishop of Paris.

Before the court adjourned for recess, Judge Neilson announced that he had received a letter saying that persons standing behind the jury-box had, within hearing of the jurymen, made remarks about the case. He commented severely upon this, and threatened summary punishment to any one caught in such an act. At the suggestion of Mr. Evarts the Judge decided that no one be allowed to stand behind the jury thereafter. After the interval for lunch, Chester Carpenter, the foreman of the jury, arose with his associates, and addressed the Court, saying that they had heard nothing improper, and that the communication to the Judge was an unjust reflection upon them. Judge Neilson replied that he was happy to know that there was no cause for complaint.

The document known as the "Catherine Gaunt letter" was made an important point at issue, and Mr. Evarts introduced it for the purpose of showing that in the copy of that letter made by Mr. Maverick and introduced into Mr. Tilton's statement to the Plymouth Investigating Committee Mr. Tilton had omitted an important part; also that in subsequent publications that part of the letter was left out. As presented to the Committee a portion of the letter was omitted, but Mr. Tilton swore that he had the original with him when he presented his statement, and subsequently a copy of *The Graphic*, with the letter printed in full, was shown. The third attempt on the part of the defense to introduce the Woodhull biography was made, and this time, after a short discussion, with partial success. This little pamphlet has been the cause of more or less debate at different times ever since Mr. Moulton took the

witness chair, and the parts which Mr. Evarts was allowed to read were listened to with great interest.

The poem "Sir Marmaduke's Musings" was introduced, and four or five verses of it read, peculiar stress being laid upon the clause about the disappointment in love. Mr. Evarts asked Mr. Tilton if he did not believe that this admitted reference to his wife would be understood by the public, and thus again "stir up" the scandal. Mr. Tilton said that if he had thought that the poem would have such an effect he would have cut off his right hand before he would have written it. After this the inquiry went back to Mrs. Woodhull and her connection with the case, Mr. Evarts asking Mr. Tilton if he could tell how it was that Mr. Beecher knew before its publication of the intended printing of the scandalous account in 1873. The witness replied that Mr. Beecher had told him that a man had called upon him with proofs of the article and that Mr. Beecher had suggested that it was an attempt at black-mail. At this point the court was adjourned.

### THE PROCEEDINGS—VERBATIM.

#### MR. TILTON'S EXPERIENCE WITH MORTGAGES.

The Court met at 11 a. m., pursuant to adjournment, and Theodore Tilton was recalled and the cross-examination resumed.

Mr. Beach—Mr. Tilton desires, Sir, to make an explanation in regard to an answer he gave yesterday.

The Witness—Your Honor, I made an answer yesterday, Mr. Evarts, to a question that you put to me concerning a mortgage on my house. I find on inquiry that the circumstances are these, somewhat or slightly different from the narrative yesterday: There is a mortgage on my house of \$7,500. That is a principal mortgage. Collateral to that, not to increase the debt, however, there is a mortgage on the property in the Llewellyn Park. I was not aware of that fact until this morning.

Mr. Evarts—That is, you did not recall it? A. I was not aware of it, Sir, until it was brought to my attention this morning.

Q. Well, do you mean it is a mortgage that you did not make? A. It is a mortgage that I did not know was made. I deposited in the hands of a friend of mine, who held the mortgage on my house, the deed of this property in Llewellyn Park as collateral; that is to say, so that in case of any depreciation of property my house in Brooklyn, on being sold, should not pay the mortgage, that here might be another piece of property which might supplement that deficiency. I was not aware until this morning that a mortgage had been put upon the Llewellyn Park property.

Q. An additional mortgage to secure the same debt that the principal mortgage did, but not increasing the debt? A. Not increasing the obligation.

Q. To whom was the principal mortgage, and to whom was the collateral mortgage? A. To Mr. Franklin Woodruff.

Q. And who was the friend with whom you intrusted this discretion of giving the additional mortgage? A. Mr. Franklin Woodruff.

Q. Mr. Franklin Woodruff? A. Yes, Sir.

Q. The mortgagee was Franklin Woodruff? A. Yes, Sir; I was not aware of the inaccuracy until Mr. Woodruff called this morning.

Q. Well, I don't get it through my head yet. Mr. Woodruff was the mortgagee; that I understand. He was the person to whom you owed the money? A. Yes, Sir.

Q. And to whom the mortgage on your Livingston-st house had been made? A. Yes, Sir.

Q. And to whom this collateral or additional mortgage was made? A. Yes, Sir; as further security.

Q. Well, I understand that; there is no difficulty about that; but who executed this collateral mortgage to Mr. Woodruff? A. Well, I presume he executed it himself; that is to say—

Q. That is the part I cannot understand? A. Well, I will tell you the story, Mr. Woodruff—Mr. Evarts, I mean.

Judge Neilson—The counsel's idea is that you must have executed the mortgage though you have forgotten it.

Mr. Fullerton—I don't understand that there was any mortgage any way; it was a deposit of a deed of the Llewellyn Park property, as an equitable mortgage, if you please.

Mr. Evarts—We don't know.

Judge Neilson—That is the way of it?

The Witness—Mr. Woodruff called on me this morning and said there was an inaccuracy there, and perhaps I better correct it. I was not aware until he mentioned to me the circumstance this morning, and I confess I do not now quite understand it.

Mr. Evarts—Well, I still less.

The Witness—I have been in Court a good while, but am not yet a lawyer.

Mr. Beach—The probability is that you executed a collateral mortgage.

Mr. Evarts—Well, that, Sir—

Judge Neilson—Or deposited a deed as an equitable mortgage.

The Witness—I remember that I deposited the mortgage.

Mr. Evarts—At any rate, it would be no evidence—our conjecture.

Judge Neilson—It is a correction.

Mr. Evarts—It is a correction I agree, so far as that goes. [To the Witness]: Now, have you any idea or recollection, Mr. Tilton, of having authorized anybody else as your attorney or representative to make a mortgage on your Llewellyn property? A. No, Sir.

Q. Quite sure of that? A. I know; quite certain of that.

Q. Well, I suppose the shortest way would be to have these mortgages brought into Court. Mr. Woodruff has got them, hasn't he? A. Yes, Sir.

Q. And we can see what they are—if they are important? A. Mr. Woodruff is a very clear business man, and he will explain everything to you, Sir, in a few words.

Q. You have spoken of the value of that Llewellyn Park lot.

What did you pay for it? A. I bought it piecemeal at different times.

Q. What did you pay or it piecemeal at different times? A. My impression is that I paid about \$4,500 for a portion of it in the advertising columns of *The Independent*.

Q. That is, by advertising? A. Yes, Sir; that is to say, that a portion of what would have been my due from *The Independent* went to the payment of advertising in that journal, those advertisements being inserted by the gentleman of whom I bought the property.

Q. Yes; in other words you— A. And an acre of the property was made to me as a gift by the same man.

Q. \$4,500 was for the advertisements, and was not the rest for the editorials about the property? A. No, Sir; I never sold my editorials, Sir.

Q. Well, who was this gentleman that made you this gift? A. Mr. Llewellyn Hascall.

Q. The founder and promoter of that enterprise? A. The founder of the park, an old friend of mine; yes, Sir. Many years ago he gave me an acre of ground there to tempt me out there to live, and afterwards bought some other.

Q. Well, no matter. So that you did not pay any cash for it? A. Yes, Sir; I paid cash for a portion of it. I loaned him some money when he was in tight place; I have forgotten how much; \$600 I believe.

Q. Yes. A. And I had some land afterward, so that finally I had three acres instead of one.

Q. Now, don't you know now, since the matter was recalled to you by Mr. Woodruff, that there is a mortgage on record on that Llewellyn Park property? A. I only know what he mentioned to me this morning, Sir. I had a very hurried interview with him, and I don't understand the legal transactions; but Mr. Woodruff will explain it to you, Sir.

#### PURPOSE OF THE CONFESION EXPLAINED.

Q. Yes, very likely. I am not certain that I am right, Mr. Tilton [looking over some memorandums], as to whether your contract made on the 20th or about the 20th of December, with Mr. Bowen, so far as respected *The Independent*, was a five years or a two years' contract? A. Well, Sir, I don't possess those papers. I remember very distinctly that the contract with *The Union* was five years.

Q. Yes, that I understand. A. I don't remember so distinctly how long the contract with *The Independent* was; my impression is, two or three years; I won't be certain, though.

Q. Now, let me recall you to that. Wasn't it two years, on your best recollection now? A. I should not say distinctly, Sir; I don't know; perhaps it was, perhaps it was; still I won't be accurate.

Q. Now, Sir, when you gave to Mr. Moulton, on the night of the 30th December, this letter in your wife's handwriting, or this document in your wife's handwriting, you say that you thought that if Mr. Beecher interposed objections to coming, that that would induce him to come, didn't you? A. Words to that effect; yes, Sir.

Q. And that it was not to be used unless necessary for that purpose? A. I didn't say that exactly, Sir. I said that I

didn't wish Mr. Moulton himself to break that subject to Mr. Beecher unless it was necessary.

Q. I mean used by Mr. Moulton? A. Yes, Sir.

Q. Not to be used by Mr. Moulton on that occasion? A. No, Sir.

Q. With Mr. Beecher, unless it proved necessary? A. No, Sir; that was my intent.

Q. Now, you thought that that note would fetch Mr. Beecher to this interview, didn't you? A. I knew it would; yes, Sir.

Q. You knew it would? A. Yes, Sir.

Q. Now, Mr. Tilton, wasn't it got for that purpose? A. For what purpose?

Q. To fetch Mr. Beecher to that interview? A. No, Sir; it was got for the purpose of being the basis on which I, as an honorable man, maintaining my self-respect, could hold that interview with him.

Q. Very well; when did it first occur to you to use it for that purpose, of fetching Mr. Beecher? A. Will you state your question again, if you please?

Q. When did it first occur to you to use it for the purpose of fetching Mr. Beecher to the interview? A. On the day in which the interview was held. It was written the day before.

Q. No matter; we won't go away from it. My question is when did it occur to you to use that paper for the purpose of fetching Mr. Beecher? A. That thought never occurred to me, I think, until Mr. Moulton suggested, a few minutes before going, that possibly he might not come.

Q. Well, that is your best recollection, is it? A. Yes, Sir.

Q. But it was a sudden use of the paper? A. The object—I don't understand your question, Mr. Evarts.

Q. That it was a sudden use of the paper not premeditated? A. By Mr. Moulton?

Q. By you? A. I designed to use the paper in my interview with Mr. Beecher.

Q. That I understand, but the using it to fetch Mr. Beecher was a sudden and not a premeditated use? A. It was a spontaneous impulse; yes, Sir.

Q. Now, Mr. Tilton, I understand you to have said in your direct examination that the motive and object of this interview with Mr. Beecher had solely relation to the protection of the relations between your wife and Mr. Beecher being brought out into publicity or discussion by reason of, or in connection with, any controversy that might arise between Mr. Bowen and Mr. Beecher? A. Well, Sir, if I understand your question, that was the purpose.

Q. That was? A. Yes, Sir; that is to say, the object of that interview was to protect Elizabeth.

Q. Yes. Well, and in connection with the fear of publicity growing out of a controversy or agitation between Mr. Bowen and Mr. Beecher? A. Yes, Sir.

Q. Now, that was it? A. Yes, Sir.

Q. Were you afraid? A. No, Sir.

Q. Wait a moment; I haven't got through with the question. [Laughter.] As a naked question, I dare say you are never afraid, but that is not my question. Were you afraid— A. No, Sir; oh, I beg your pardon; I thought—

Q. Now, I warned you, Mr. Tilton, it was not my whole

question. A. Well, Sir, I accept your warning, Sir; I am sorry you are disconcerted.

Judge Neilson—Wait till the question is put, Mr. Tilton, and then answer it.

Q. Were you afraid that Mr. Beecher would give publicity to these supposed relations? A. Oh, no, Sir.

Q. What? A. No, Sir.

Q. Not the least? A. Not at all.

#### THE HELPING HAND OF MR. MOULTON.

Q. Now, Sir, you received late, you say, on the night of the 31st, from Mr. Bowen, notice of your dismissal—of the termination of your contracts. That notice is not here—not to be found. Did that notice include also a statement that he was ready to pay or settle all demands, and wished to do so? A. I don't remember as to that, Sir; very brief letter; note, as I recollect it. My impression is that Mr. Moulton had those notes; I won't be certain about it.

Mr. Everts—We should like it if we could get it; if any of you gentlemen can give it to us, we, of course, will not inquire about its contents.

Mr. Morris—I haven't got it.

Mr. Everts—We have understood before that it could not be had; isn't that so, Mr. Morris?

Mr. Morris—Yes, Sir.

Q. Wasn't the notification that you received from Bowen that your engagement with *The Independent* and *The Union* would then and there terminate, and that he was ready to settle with you in full of all demands? A. I don't remember the contents of his note; all I remember about it now, at this distance of time, is that it was a brief note—I think two notes—one as publisher of *The Independent* and one as president of *The Brooklyn Union Association*. I gave them to Mr. Moulton; that is all I recollect about that.

Q. Can you say now that they did or did not contain this latter clause, that he was ready to settle with you in full of all demands? A. I have given you all the recollection that I have touching the document or note at present.

Q. Well, you can't say? A. Not at present; no, Sir.

Q. You will not say that they did not? A. No, Sir.

Q. Now, Sir, at what hour in the evening did you receive that notification? A. I should think about nine o'clock, or half past; somewhere in the middle of the evening.

Q. That was Saturday night? A. It was the last night of the year; yes, it was Saturday night.

Q. Now, you received it at your house, didn't you? A. Yes, Sir.

Q. And what did you do with it, or about it, after receiving it? A. Went around to Mr. Moulton's house with it.

Q. Had you seen him before that evening? A. Had I seen him before that evening?

Q. Yes? A. Why, Sir, I had known him for fifteen years.

Q. No; had you seen him that evening before? A. Oh, I think not, Sir.

Q. You think you hadn't seen him? A. I don't remember that I had seen him; my present impression is that I had not; I think I had been at home all the evening.

Q. And your occasion and errand was from the receipt of this from Mr. Bowen, wasn't it? A. Yes, Sir; I went around to talk to him about it.

Q. Where did you see him then? A. Mr. Moulton was not at home.

Q. Well, what happened then? A. I sat there at his writing-desk and began a reply to Bowen's letter.

Q. Well, when did he come in? A. Mr. Moulton came in from Mr. Beecher's house a little later in the evening.

Q. Well, he came in at any rate? A. Yes, Sir.

Q. He came in? A. Yes.

#### THE SOOTHING INFLUENCE OF CHURCH CHIMES SOUGHT.

Q. And then, did you continue an interview there, or did you go out into the streets? A. We continued an interview there, and I think that later in the evening, as the year was waning, and the bells of St. Ann's began to ring, I think we went out in the street to listen to them; that is my recollection.

Q. Well, do you recollect that you went out into the street? A. Yes, Sir.

Q. Now, Sir, when you first saw Moulton at his house, didn't you invite him out of doors? A. When I first saw him?

Q. That evening, then? A. Why, no; I didn't.

Q. Didn't invite him out of doors? A. I did not immediately; he invited me to read the papers which he had got from Mr. Beecher first.

Judge Neilson—From Mr. Bowen, you mean?

The Witness—No, Sir; Mr. Beecher. He had just brought home the retraction.

Q. Now, do you remember how many hours you walked the streets that night with Mr. Moulton? A. Well, I don't think we walked a great many hours, Sir.

Q. Well, give us how many about? A. My recollection is that just as the year was stepping across the bridge into the new one, we went out to hear the chimes of St. Ann's.

Q. Well, when the chimes were over did you separate immediately? A. I don't remember whether we did immediately, Sir.

Q. Didn't you have a prolonged interview in the street, proposed by yourself to be in the streets, which occupied one or two hours? A. I had a walk with Mr. Moulton late at night; I had been greatly aroused by the information which he had brought to me from Mr. Beecher's, and late in the evening, as my habit is, I walked—he walked with me—and the New Year overtook us there.

Q. That is all you can say about it? A. That is all I can say.

Q. You cannot say whether it was two hours you walked together that Winter night? A. No, I can't say.

Q. And you are quite certain that you did not take him out into the streets at the first of your call that night? A. No, Sir, because at the first of my call that night —

Q. No matter about the reason; are you certain? A. He was not there at the first; he came in afterward.

Q. Are you certain that you did not take him out as soon as he came in and you saw him? A. Yes, Sir; I think so.

Q. You think so? A. Because he had a message to communicate to me.

Q. I don't care what the reasons are; are you certain that you did not take him out? Couldn't he communicate his message to you in the street as well as any other talk? A. I think quite likely he might have done that; that is to say, he had the ability to do it.

Q. Yes, Sir; now, what is your recollection? Did you take him out into the street for this interview of yours with him from the beginning of your seeing him that night? A. I don't think that I did, Sir; I have an indistinct recollection that I went home hurriedly to inform Elizabeth of the return of the papers, and came back for Mr. Moulton—still I won't be positive about that—and that then we walked the streets; I won't be certain of that.

Q. Now, Sir, New Year's was Sunday; when did you prepare—begin to prepare—the letter to Mr. Bowen of the date of the 1st of January? A. I began to prepare it the night before.

Q. That is the night of the 31st? A. Yes, Sir.

Q. And when did you finish it? A. Well, Sir; I think it was finished the next day with the exception of some revisions which were incorporated into it after consulting with Mr. Jeremiah Robinson, Franklin—no Mr. Moulton, Gordon L. Ford and others.

Q. Now, Sir, there is nothing in that letter about Mr. Beecher's relations to you or your wife? A. No, Sir; all that matter was designedly omitted.

Q. By you? A. Yes, Sir.

Q. And did these gentlemen advise you to leave out any such matter? A. Mr. Robinson advised me to carry myself out of the case entirely; that was his expression.

Q. Well I mean about this letter; I am not going into any general conversation; they gave you some advice about this letter? A. Yes, Sir; Mr. Robinson in particular.

Q. Now, did they in the preparation of that letter, and while that was going on, advise you not to have any of the relations between Mr. Beecher and your wife in that letter? A. I had written the letter and submitted it to Mr. Robinson, and his suggestion to me was to keep myself out of the letter—my own case out of the letter.

#### THE RESTRAINING INFLUENCE OF MR. TILTON'S FRIENDS.

Q. But you were out of it—you had finished the letter? A. I was somewhat in it, Sir.

Q. Do you mean you altered the letter afterwards? A. I did, in obedience to their suggestions afterwards.

Q. Ah! Then you had meditated putting them in. A. No, Sir; my letter was too personal and fiery as I first wrote it. Mr. Robinson said to be calm and judicious, and so I took out certain phrases of the letter. I do not know what they were. He said if my letter was published, it would have a better effect if it was perfectly calm and judicious, and I thought his advice was good,

and so I omitted certain phrases which I thought were too impetuous and wrathful.

Q. As towards Bowen? A. Yes, Sir, as towards Bowen; the idea being that there was something in the letter.

Mr. Everts—No matter about that. This is a cross-examination.

Mr. Tilton—[continuing his answer]: That would reveal something hidden.

Q. No matter about your idea. Now, you showed it to Mr. Ford? A. Yes, Sir.

Q. In the state it was when you showed it to Mr. Robinson? A. No, Sir; Mr. Ford saw it, I think, on Sunday morning—New Year's day; I was in the act of composing it, I think, and he came upon me in my parlor when I was writing it.

Q. And you showed it to him? A. I read it to him; at least I read to him all there was of it then, in the state in which it was then.

Q. Was not the whole of it finished? A. I showed him all there was of it.

Q. Was not the whole of it there? A. No, Sir; there was not; that is, the letter was not in its completed state until certainly, January the 2d.

Q. Have you not told us that the whole of the changes were there, that you took something out? I want to know when you showed it to him whether it had all in it that ever was in it? A. Mr. Ford? I do not remember precisely the condition that that letter was in on New Year's morning, when I showed it to him; I think the essence of it was the same as it is now, only the phraseology may have been a little indiscreet.

Q. Did he advise striking out anything? A. No, Sir; he did not give me any advice whatever; I didn't ask him for any advice; I simply read it to him.

Q. Did you understand Mr. Ford's relations to one of the ladies referred to in that letter? A. I do not understand any relations that Mr. Ford had to any lady except his wife.

Q. I am not speaking of improper relations; I am speaking of relations?

Mr. Beach—He is not speaking of immoral relations.

The Witness—Please to ask your question again?

Mr. Everts—You say you do not. You are not aware of his relations as trustee to one of the ladies referred to in that letter to Mr. Bowen?

Mr. Beach—I do not understand that any specific lady is named in the letter.

Mr. Everts—I do not say named; I say referred to.

The Witness—I do not understand your question.

Q. Did you know that Mr. Bowen stood in the relation of trustee to one of the ladies referred to in your letter to Mr. Bowen? A. I did not, Sir, and I do not know it yet. I never heard of any such fact.

Q. At all events, Mr. Ford did not advise you to leave out a part of the letter? A. I don't think Mr. Ford gave me any advice on that subject.

Q. I thought that you left out of this letter all reference to your wife's affairs on the advice of Mr. Robinson, Mr. Ford and some others? A. No, Sir; I wrote it, and I said that Mr. Robinson had advised me.

Mr. Morris—He did not say that he left them out on their suggestion, because he did not state there was anything referring to his wife, or anything of that kind.

Mr. Everts—That would be "taking" them out; I said "leave" them out.

Judge Neilson—I got the impression from the witness that it was his original purpose to leave out all reference to his wife.

The Witness—There was no word of disparagement of my wife in that letter.

Q. I agree to that. We have it here? A. I mean in the original draft—the original design.

Q. Have you not said that you left out any connection of your wife's affairs with the concurring advice of these gentlemen? A. I said nothing of the kind.

Q. What did you say? A. I said this: that I had advised with Mr. Robinson about that letter, who instructed me to make it more calm and temperate and to carry myself out of it—my personalities—my fire and feeling; I never for one moment thought of introducing my wife into this letter with any disparagement; there never was any allusion to her in it.

Q. Now, Sir, in your direct examination did you not say this [referring to this letter and the preparation of it], that "acting under a sense of duty I had written a letter to Mr. Bowen, reciting all the facts; that I had written it very carefully, taking the advice of Jeremiah P. Robinson and Mr. Moulton and Mr. Gordon L. Ford, and that acting upon their advice, and particularly upon the advice of the oldest of these gentlemen, Mr. Robinson, I had studiously kept out of this letter all grounds of difference between Mr. Beecher and myself?" A. Yes, Sir, I said something of that kind.

Q. Very well? A. The conversation I had with Mr. Ford, I think, was about the phraseology of it.

Q. That is true as you stated it in your direct examination? A. Yes, Sir; but I did not discuss with these gentlemen Mr. Beecher's affairs with me.

Q. No matter—this is a cross-examination? A. Yes, Sir,

Q. Now, when did you hand that paper—that Bowen letter—to Mr. Moulton? A. I don't remember the day. It was one of the very first days of January—as soon as it was completed and a clean copy made of it.

Q. Now, upon giving that letter to Mr. Moulton, did you express a wish or desire to have your affairs with Mr. Bowen speedily settled or closed? A. No, Sir; I expressed that desire—

Q. No matter; you say you did not at this time. A. I did not say that I didn't at this time; I did at this time, but not in connection with that letter.

Q. At this interview? A. I do not remember the interview; I saw him about every day at that time; I gave Mr. Moulton a specific note authorizing him to settle my affairs.

Q. That is not what I am talking about. That is in evidence already. A. Yes, Sir.

Q. Did you on giving that letter to Mr. Moulton explain to him the desire that your pecuniary affairs (not using that phrase necessarily, but referring to them) should be speedily settled with Mr. Bowen. A. No, Sir; I do not think that Mr. Moul-

ton had this copy of the letter until a day or two after the authorization.

Q. You do not think you told him so? A. I do not say I did not; I told Mr. Moulton that I wanted my affairs settled, and I gave him a note to Mr. Bowen authorizing him to settle.

Q. You did tell him that you wanted your affairs settled up as soon as might be? A. Yes, Sir; that was the 2d of January that I gave him the note; that will speak for itself.

Q. You gave him the letter to Mr. Bowen, I suppose, at the same time? A. My impression is that this letter was not clearly copied until the 3d or 4th—perhaps the 3d.

Q. Did you—at that time and at that conversation in which you gave him that letter, and at which you expressed the desire to have the matter speedily settled—ask him (Moulton) to be one of the arbitrators to close this? A. I did, Sir. I made him the request; whether it was in the act of giving him the letter I do not remember.

Q. At that stage of the business and before you made him an attorney, of course? A. Mr. Moulton is not an attorney.

Mr. Morris—That is argumentative.

Mr. Everts—I know it is, and it is quite within my privilege.

Mr. Morris—I think not.

Mr. Everts—Did you name the other arbitrators at that time, or either of them? A. What other arbitrators?

Q. Of the three. You asked him to be one of three arbitrators? A. I don't think I had any right to name any of the others.

Q. I did not ask you what you had a right to do; I asked you what you did? A. I don't remember the name of the three; I did subsequently select three out of the list presented by Mr. Bowen.

Q. That is quite another matter; but you asked him to be one of three arbitrators. Did he not on that request of yours desire you to commit your case to his care? A. Yes, Sir; he did.

Q. He did? A. I don't know whether it was immediately consequent upon that request; but he desired me to submit it to him.

Q. Do you think now that it was not consequent upon that request? A. I think about that time.

Q. It was before you gave him the power? A. I gave him the power.

Q. After that suggestion? A. In consequence of his request—yes, Sir.

Q. [Handing paper to witness.] That is the paper that you gave him, is it not? A. This is a paper in Mr. Moulton's handwriting; it seems to be a copy of a letter which I gave him; I take it for granted that the copy is accurate.

Mr. Everts—This is in evidence, is it not?

Mr. Fullerton—Let me see.

Mr. Everts—Mr. Shearman, did you not give me this as an exhibit?

Mr. Shearman—It came in the papers as "Exhibit D, 4." [Looking at it.] Yes; that is the only one we have had; it is Mr. Moulton's copy.

Mr. Everts—Has it been marked?

Mr. Shearman—Yes; it is marked "D, 4."

Mr. Everts—Where?

Mr. Shearman—It must have been marked on the envelope; the stenographer had better mark it now. He marked it on the envelope instead of on the paper.

Mr. Everts—But it is in evidence.

Mr. Fullerton—It is already marked.

Mr. Everts—It is supposed to be marked, but the mark is not on it.

[THE TRIBUNE stenographer here marked the paper "Exhibit D, 4."]

Q. Now, Sir, did you place in Mr. Moulton's hands, at that time, anything but this letter to Mr. Bowen, of the 18th of January? [Turning to Mr. Shearman; What is that Exhibit?] No matter. Did you place in Mr. Moulton's hands, at that time, anything but this authorization and the letter to Bowen?

Mr. Beach—That implies an assumption, I think, that he placed both papers in his hands at that time.

Mr. Everts—I do not mean to reconsider what he said. Did he place anything?

Judge Neilson—You do not mean to imply that they were both handed to him together?

Mr. Everts—No, Sir; that is not my question.

Mr. Beach—The question implies that.

Mr. Everts—No; you handed that to him?

The Witness—Mr. Everts, if you wish to know the papers that I put into Mr. Moulton's hands, I can tell you.

Mr. Everts—At that time, in reference to Mr. Bowen?

The Witness—Yes, I will tell you. I gave him three papers—one, a little note, authorizing Mr. Moulton to settle my affairs with him; the other, a copy of my contract with *The Independent*, and the other a copy of my contract with *The Brooklyn Union*; these were the three papers that I put into Mr. Moulton's hands. Further than that, I do not know that I put anything into his hands.

Q. Did you give him the Bowen letter that you testified to? A. Yes; but I did not put it into his hands; I sent it down to Mr. Bowen; but he declined to take it to Mr. Bowen.

Q. What? A. He did not want to take it to Mr. Bowen.

Q. Then you offered it to him? A. My first proposition about that paper was to publish it; Mr. Moulton did not wish it published; I then wanted him to deliver it to Mr. Bowen; he took charge of it.

Q. And he did take charge of it? A. Yes, Sir.

Q. And you gave it to him? A. What do you mean by "giving it to him?"—that I made over a deed of it?

Q. Handed it to him? A. Yes, Sir; I handed it to him; that is the only way that he could have got it.

Mr. Everts—I think so, unless he ravished it. [Laughter.]

The Witness—He read it to Mr. Bowen about the 8th or 10th of January.

Q. Very well; no matter. There has been testimony to that purpose, I believe; something about that. Now, Sir, when did you first learn from Mr. Moulton, or anybody else, that Mr. Bowen did not pay that money? A. I do not remember the exact date of Mr. Moulton's first interview with Mr. Bowen; some time early in January.

Q. Immediately after that, was it, that he made some report to you about it? A. Yes, Sir, very shortly.

Q. And that report at least included the fact that Mr. Bowen refused to pay? A. No, Sir.

Q. Well, then, what did it include? A. I think the first report that came from Mr. Bowen was the payment of \$1,000 to me, which he owed me upon some notes I held; that is my best recollection, but I will not be accurate as to the time. Mr. Bowen wanted an arbitration—wanted not only a settlement of our pecuniary matters, but he wanted a settlement of other matters.

Q. I did not ask for that? A. What is it that you ask for, Mr. Everts?

Q. I ask when you first received notice, through Mr. Moulton, from Mr. Bowen that he did not pay these liquidated damages? A. I do not know the date, but it was very early in January.

Q. Now, did you also learn that he also wanted an arbitration? A. Yes, Sir; we both wanted it.

Q. Both wanted an arbitration? A. Yes, Sir; Mr. Moulton forbade it.

Q. That was at an early stage of the matter? A. Yes, Sir.

Q. And Mr. Moulton prohibited it? A. Yes, Sir.

Q. Now, the actual arbitration was not held until somewhere in the Spring—April, I think—of 1872, was it? A. It was held on the 2d of April, 1872, I think.

Q. Now, you never saw Mr. Bowen, I suppose, personally about these matters at all? A. I do not remember that I exchanged a word with Mr. Bowen from the day that I left him in *The Union* office in 1870 until the 2d of April, 1872; if I did it was an accidental meeting in the street.

Q. I don't know anything about that; that is your view of the matter. From that break in your employment until the time he paid you your money you had had no intercourse with him? A. I have an indistinct recollection that on New Year's Day I met him at somebody's house.

Q. But that was casually, if it occurred at all? A. Yes, Sir.

Q. Now, you have stated, I think, in your direct examination that Mrs. Tilton was informed of (I don't know whether you used the word "trouble" or "business affairs") as they went on, have you not? A. What business affairs?

Q. With Bowen? A. What week do you allude to?

Q. That week in December? A. There are four weeks in December.

Q. You have no idea of what week I am referring to? A. No, Sir; I have not; I suppose you are referring to the early part of December.

Q. I will tell you what week I am referring to—from the 24th to the 31st of December? A. I had no business affairs with Mr. Bowen during that week.

Q. Had you an interview with Mr. Bowen during that week? A. I had an interview with Mr. Bowen on the 26th of December.

Q. And another on the 27th or 28th? A. Yes, Sir; not about business matters; quite different from business matters; matters of scandal and the expulsion of Mr. Beecher from his pulpit.

## MRS. TILTON'S MEDIATION.

Q. Yes, we have heard exactly about that. Now, have you not on your direct examination said that Mrs. Tilton was informed of these occurrences? A. Yes, Sir; but you have described them as "business" occurrences.

Q. I consider them business occurrences in my view of it. A. But I did not interpret to Mrs. Tilton your views of the case, Mr. Evarts.

Q. No, not at all. And it was in consequence of this information, as I understood you on the direct examination, that she felt solicitude to have some intercourse between you and Mr. Beecher? A. Well, Sir; my answer to that question is this—

Q. I don't ask for any conversation, I only ask whether you have not said on your direct examination, that in consequence of this threatening controversy between Mr. Bowen and Mr. Beecher, your wife felt anxiety; and that that led to your interview with Mr. Bowen? A. Mrs. Tilton thought if Mr. Bowen and I drove Mr. Beecher out of his pulpit, all the world would know the reason, and that would convict her.

Q. I didn't ask you that. I asked you if you did not say that on your direct examination? A. I stated the substance of that.

Q. That it was in consequence of your wife knowing of the threatened trouble between Mr. Bowen and Mr. Beecher that she was solicitous you should have an interview with Mr. Bowen? A. Yes; her fear and anxiety; that was it.

Q. Now, you went on and you came to the transactions of the 7th of February, where three letters were written and communicated to the persons to whom they were addressed; after that, as I understand, there was no trouble of any kind or concern in reference to any publicity until the Woodhull card of May 22d, 1871; is that so? A. That was the first threat that was published. Mrs. Woodhull published a card, dated May 22d, 1871, threatening to expose these stories.

Q. We have got that in evidence and we do not need to repeat it. That was the first, wasn't it? A. The first one I knew anything of.

Q. I am taking your knowledge. Now, during how much of that time had Mr. Moulton—this interval between Feb. 7th and this 22d of May—how long a part of the time had Mr. Moulton been absent? A. Mr. Moulton went to Florida in that interval; I do not remember exactly the date of his going and returning; I should think he was gone about six weeks.

Q. And before his leaving that serious illness occurred, didn't it? A. Yes, Sir.

Q. And he went, probably, on account of his health? A. Yes, Sir.

Q. So that he had been shut out pretty much all the while from the date of his—how long did that sickness continue before he went South? A. My impression is, he was sick about—I think the culmination of his sickness was about the middle of January, and that it was a very slow recovery.

Q. So that from the middle of January until his return from the South, he was pretty much shut up from any activity in any matter, wasn't he? A. He was not shut up when he was on his way to the South.

Q. Shut out from any activity in any matters here? His

absence and his sickness covered pretty much from the middle of January until his return from the South? A. Yes, Sir; but that is quite another thing from his being "shut out." Mr. Moulton carried on his business in his sick-bed, like a general in his tent. He never was "shut out" from any activity.

Q. But he didn't go about much? A. No, Sir; not when he was confined to his room.

Mr. Evarts—During that period he did not, of course.

## WHO GAVE MRS. WOODHULL THE STORY.

Q. Now, Sir, as I understand the matter, all that had passed between you and Mr. Moulton and Mr. Beecher regarding any relations with your wife during this period were confidential, and for the purpose of being kept secret and assisting in keeping secret whatever those relations were? A. Yes, Sir; and that was the design of Mr. Moulton's labors in the matter.

Q. And the conferences and actions towards that design were not intended to be made public, were they? A. Not at all, Sir.

Q. Not in the least. Now, Sir, did you ever suspect Mr. Beecher of having communicated to Mrs. Woodhull the basis of her threat of May 22d? A. No, Sir, nor to any other person.

Q. You never suspected him? A. Not at all, Sir.

Q. That I suppose; it may be inferred from your views of this case. Did you ever suspect Mr. Moulton? A. No, Sir.

Q. —of communicating to Mrs. Woodhull any of these matters? A. I answered that question before you asked it.

Mr. Evarts—Well, you know what the Scriptures say about a man that answers a question before it is asked?

The Witness—Mr. Moulton is above suspicion.

Mr. Evarts—You say you did not? A. I did not.

Q. I understand you, then, that when you first went to see Mrs. Woodhull on the appearance of that card, which was only a premonition, she then gave you substantially all the matters that she published in the Fall of 1872? A. Yes, Sir; all the horrid incidents, and more besides. She didn't connect them with various persons, as she did then.

Q. I gathered from your examination that there was nothing that she knew in the Fall of 1872, or professed to know, that she didn't know or profess to know in May, 1871? A. Well, for instance, she didn't tell me in May, 1871, that she had carried the proof of her Steinway Hall speech into Mr. Beecher's study, and had there given it to him. That was the subsequent fact. What she told me was in the various, vivid and extraordinary instances of criminal relationship which existed.

Q. And the pistol scene, and all that? A. Yes, Sir; not as it happened, but as it didn't happen.

Q. Well, as she stated it she told it to you then? A. She told me—

Q. Now, no matter; I don't care what she told you. I only want to know whether I am right in understanding your direct examination. A. What is your understanding of it?

Q. This: that all the matters that related in her article of 1872 to Mr. Beecher's relations to your wife, and to any operations or movements of yourself or Mr. Moulton with Mr. Beecher in the same connection—all that was contained in her article of 1872 tha



had any bearing and relation she mentioned to you in May, 1871? A. I won't undertake to say that she mentioned in May, 1871, every identical particular which she afterwards put into her story of November, 1872. I do undertake to say that all the extravagant incidents of that story of 1872, namely—well, I won't rehearse them.

Mr. Evarts—Well, no matter.

The Witness—They were spread out in a very violent and energetic speech by her to me in May, 1871.

Mr. Evarts—That is what I understood.

The Witness—But when she told me her story in May, it was unconnected with the various persons, ladies and gentlemen.

Mr. Evarts—Other people? A. Yes, Sir, whom she first named as her authorities.

Mr. Evarts—Well, we don't care about that. I am not talking about that. At that time, in May, 1871, she didn't give you any authority? A. No, Sir, I asked her and she declined to give me any.

Mr. Evarts—Now, you say you read that note with a shudder? A. Yes, Sir.

Q. And had you any doubt when you read it that that reference to a distinguished teacher and the wife of another distinguished teacher would be understood by the public in Brooklyn as relating to Mr. Beecher? A. No, Sir, I had not any expectation; I had not any thought that the public would understand it; but when she put it into my hand, and I read it, I swiftly interpreted it to myself, and as it contained a threat of exposure and publication I shuddered from head to foot in contemplation of it.

Q. It didn't strike you, then, that that publication would risk the public having an idea that your family and Mr. Beecher's were referred to by it? A. No, Sir, not the card itself; but the card itself contained a threat to expose those facts dimly hinted at in it, and it was that threatened publication which would have carried dismay through our household.

Q. Exactly; I only wanted to know what the state of your mind was. You considered, then, that the publication of Mrs. Woodhull, so far as it stated that she knew of a case, &c., unconnected with any threat of giving more particulars? A. Yes, Sir.

Q. You thought that would be a harmless publication in these communities, did you? A. No, Sir; I didn't think it would be a harmless communication, but I didn't suppose, if the card had stood just at that point, that the great public would have imagined Mr. Beecher and Mrs. Tilton to be meant.

Q. You didn't think anybody in Brooklyn, where there are so many teachers, would have thought which ones of them they were? A. There would have been a small, narrow circle which would have known, but the great public would not have known.

Q. Does not a small, narrow circle in scandal tend to become a large, wide circle? A. I think it does; yes, Sir.

Q. Now, Mr. Tilton, have you any doubt that that publication stopping, as I have suggested, and as you have accepted, with that announcement of the fact, that she knew that that of itself carried danger of scandal concerning your family and Mr. Beecher, whether there would be any truth or falsehood in it? A. Why, Sir, inasmuch as a certain number of people must

have known to what it referred, there would have been to that extent danger; still, I don't think that that card of itself would have multiplied the number of people who did know; it was the threat of the publication which the card contained that was the menace of evil.

Q. And the actual publication of that, without the particulars, you did not consider as conveying any spark of scandal in these communities? A. Oh, I would not say it was not a spark; I think any such publication would be a spark.

#### MR. MORSE DECLARED THE TATTLER.

Q. Well, I suppose so. Very well. Now, as you did not suspect Mr. Beecher or Mr. Moulton of having informed Mrs. Woodhull, how did you imagine she had got her information? A. Through the open gate of the lips of Mrs. Nathan B. Morse.

Q. That was your theory? A. Yes, Sir; not that it went from Mrs. Morse directly to Mrs. Woodhull, but that it went through many mouths. Mrs. Morse was in the habit of saying that I made such and such charges.

Q. No matter; I didn't ask you that. A. And they got to Mrs. Woodhull's ears.

Q. I didn't ask you a word about that. You suspected, then, that what Mrs. Morse had publicly said— A. Privately said.

Q. Well, privately said with the publicity that had reached Mrs. Woodhull, because you don't mean that she whispered it in Mrs. Woodhull's ears? A. No, Sir; she didn't whisper it in any one's ears; she spoke it loud.

Q. Well, that is what I call public. You thought that was the source of Mrs. Woodhull's information? A. Yes, Sir; the original source, that the stories went from her. They certainly did not go from me, nor from Mr. Moulton, nor from Mr. Beecher.

Q. And I understand you to say that neither of you had communicated any of the occurrences during this confidential intercourse in the early month of 1871 and the close of 1872? A. What is that you understand?

Q. That neither you, nor Mr. Moulton, nor Mr. Beecher, had communicated those stages and conferences that took place between you three to anybody? A. I cannot speak for Mr. Beecher or for Mr. Moulton; I spoke to a few of my friends about some of the maneuvers that had been made.

Q. During this period? A. Yes, Sir; for instance, I said to a number of friends that Mr. Beecher had gone and got a retraction.

Mr. Evarts—I won't take any instance; this is a cross-examination.

The Witness—Don't make it more cross than is necessary. [Laughter.]

Mr. Evarts—No, it is mild in manner, no doubt.

The Witness—I don't think it is.

Mr. Evarts—But it is an examination that authorizes no spontaneous statements.

Judge Neilson—[To the witness.] The practice is to answer questions simply.

Mr. Evarts—Answer the question; that is my right, and you have a right to stop then. I have a right to limit my question, and you have a right to stop. Now, you had then, during that

interval before May, 1871, told more or less of confidential friends, had you? A. Yes, Sir.

Q. Of the steps and stages of the confidential communications? A. Yes, Sir, I had.

**MR. TILTON'S ACTUAL DISPOSITION TOWARDS MR. BEECHER.**

Q. Very well? A. I cannot answer whether Mr. Beecher had, or whether Mr. Moulton had, but I had.

Q. That you can answer for? A. Yes, Sir; and I undertook to tell you that when you said you understood to the contrary.

Q. Well, I think I did understand to the contrary. I now understand it both ways.

The Witness—But understand that, in communicating that, I never spoke to Mrs. Tilton's disparagement. I had never been very particularly anxious to save Mr. Beecher.

Q. You were not? A. No, Sir.

Q. You were not anxious to save Mr. Beecher? A. No, Sir.

Q. Although it led to disclosures about your wife? A. No, Sir; the only protection I put over Mr. Beecher was just so far as it was necessary to protect Mrs. Tilton; and if it had not been necessary to protect Mrs. Tilton I should have allowed Mr. Beecher to go to his destruction four years ago.

Mr. Evarts—That I understand to be your disposition.

The Witness—Yes, Sir; I don't wish to disguise it.

Mr. Evarts—It would be difficult if you did; that we agree about. But, still, all the motive for going to Mr. Beecher was solicitude to protect Mrs. Tilton? A. Yes, Sir.

Q. And yet, after that, you did not scruple to tell as much as you chose of the confidential matters between you and Mr. Beecher and Mr. Moulton? A. I never had a confidence with Henry Ward Beecher in my life.

Q. Will you answer my question now? A. Yes, Sir.

Mr. Evarts—[To THE TRIBUNE stenographer.] Read the question.

The Witness—I have answered it in that statement.

[THE TRIBUNE stenographer read the question to the witness.]

Mr. Beach—The answer is proper.

Judge Neilson—It is proper so far. He can add whether he scrupled.

Mr. Evarts—Is that all the answer you can make? A. Well, Sir, I think that is a very comprehensive answer.

Mr. Evarts—Well, there may be a difference of opinion about that.

Mr. Fullerton—It is not worth while to explain that.

Mr. Evarts—No, we won't debate that. [To the witness.] I understand you to say, that notwithstanding the whole motive of this interview of the 30th, and of what followed, it was to protect your wife, and not with love to Mr. Beecher; yet you didn't scruple immediately after, or while they were going on, to disclose as much as you pleased of what was going on? A. Yes, Sir; I should—

Mr. Evarts—Very well, that is enough.

Mr. Beach—No, that is not enough.

The Witness—I mean to say, Mr. Evarts, that I was under no obligation to keep any secret. I had kept the transaction

secret on my wife's account, but not from any obligation that I was under to the Rev. Henry Ward Beecher.

Q. I have not asked you anything about that. I asked you whether you kept it secret? A. I did from any persons except from the few who knew the essential facts in the case.

Q. You did except from those to whom you told it? A. Yes, Sir; except from those to whom I had originally told the crime.

Q. But you didn't scruple to tell to whom you pleased, what you pleased, concerning these transactions while they were going on?

Judge Neilson [to the witness]—Now, say you did or did not?

The Witness—Must I answer, your Honor, as to the scruple which I had?

Judge Neilson—Whether you did or did not, and then explain, if you wish.

The Witness—I have told you, Mr. Evarts, to whom I spoke.

Mr. Evarts—You selected who you would speak to, and you told them what you saw fit? A. I selected whom I would speak to.

Q. And you told what you saw fit? A. Yes, Sir; and not what I did not see fit.

Q. Now, so far as you know, was it not from your utterances that there ever came the first leakage of the transactions thus purposed and carried out during that early season, that finally reached Mrs. Woodhull? A. No, Sir; it was from Mrs. Morse.

Q. Yes, but how did she find out what had passed, confidentially or privately between Mr. Moulton, Mr. Beecher and yourself? A. Because I told her and she told all the world.

Q. She is one of the persons— A. Yes, Sir.

Q. That you told? A. Yes, Sir.

Q. And you knew her infirmity before you told her? A. Yes Sir; I did. [Laughter.]

Judge Neilson—I shall be obliged to adjourn the Court. I will not sit here and attempt to administer justice with this disposition on the part of the audience. It is perfectly amazing. All the gentlemen in my view are respectable and intelligent, citizens, and yet without respect to the occasion or the Court, they continually interrupt the proceedings. I regret it very much; it disturbs the counsel; it is disrespectful to the Court; it does no good.

Mr. Evarts—Well, was any part of your shudder, when you read this card to Mrs. Woodhull, occasioned by your fear that your imprudence might have contributed to her knowledge? A. I don't understand how to divide a shudder into parts.

Mr. Evarts—As I recollect it was a spasm of agonized feeling on my part. What its component parts were I don't know.

Q. And a complete surprise, was it not? A. It certainly was a complete surprise.

Q. You didn't then have in your mind that you told Mrs. Morse and knew her infirmities of speech before you told her? A. I instantly imagined whence the stories came.

MR. TILTON'S COUNSEL IN THE BOWEN TROUBLE.

Q. Well, that is what I call making it a part of the shudder. Now, up to this stage of the matter no particular progress—this is through that Winter; I have now come to a date in May—up to that time no particular progress had been made in collecting your money from Mr. Bowen? A. I don't know that Mr. Moulton made any effort to do so. He was sick. Perhaps he did some.

Q. As a matter of fact, there was no particular progress made in that matter? A. The money was not collected. I don't know what progress was made in the matter.

Q. You didn't know of any progress? A. All I knew was that the money was not collected.

Q. Now, when was it that you took advice concerning that pecuniary interest between you and Mr. Bowen?

Mr. Beach—When first?

Mr. Evarts—He has spoken of it in his direct examination.

Mr. Beach [to the witness]—He means legal advice.

Mr. Evarts—Yes, Sir. You have spoken in your direct examination of having taken advice. A. I consulted Frederick A. Ward; I don't remember the date; I think a year elapsed, though.

Q. Was Mr. Ward alone in business, or was his a partnership? A. No, Sir; Mr. Ward was the law partner of Judge Reynolds.

Q. Of the present Judge Reynolds, who was then at the bar? A. Yes, Sir.

Q. And you took advice with them in regard to the collection of that claim? A. No, Sir; I did not.

Q. Well, what did you do? That is what I asked you, when you took advice concerning the collection of your claim against Mr. Bowen? A. I didn't understand your question in that way. I understood your question to be when I took legal advice in reference to this business.

Q. My friend, Mr. Beach, asked me if I meant legal advice, but I didn't intend to give up the rest of my question. My question was when you first took legal advice concerning the collection of your claim against Mr. Bowen? A. I never took any advice as to that point.

Q. Never at all? A. No, Sir. The legal advice was as to the validity of the contracts.

Mr. Evarts—I did not ask you that.

The Witness—Whether the contract was good—

Mr. Evarts—Still—

The Witness—Perhaps in a secondary sense it might be regarded as advice concerning the collection of the claim.

Q. I should regard it so; still, I cannot tell how that is. You did, then, take legal advice as to the validity of your pecuniary claim against Mr. Bowen upon the contracts of these gentlemen that you have named. A. I took advice as to this point, namely, whether those contracts which I had drawn, I not being a lawyer, were good for the \$7,000. Judge Reynolds said they would stand till doomsday, that they were as good as any one could have made.

Q. That was, the damages for an immediate dissolution? A. Yes, Sir.

Q. Now, come to the \$7,000. It would be \$5,200, and where did the other \$1,800 come from?

The Witness—I beg your pardon; I didn't hear; I was coughing.

Mr. Evarts—I will ask you. There is a penalty—I have understood it was half the salary—which would be beyond \$5,000.

Mr. Morris—Yes, Sir, and a certain percentage.

Mr. Evarts—Well, I am asking you (the Witness). There was some penalty for breaking the contracts without notice, was there not? A. Yes, Sir.

Q. And was that named as half the annual salaries on the two papers, or was it named as \$5,000 in a round sum? A. It was not named in a round sum.

Q. Very well; it was half the salaries. Well, that would be \$5,200? A. I don't think it was half the salaries. Permit me to explain. I think the penalty for breaking the contract with *The Independent* was half the salary. The penalty for breaking the contract with *The Union* was half the salary, together with half the profits of that year.

Q. The percentage? A. That is my recollection of it; I won't be positive of it.

Q. That is half of your percentage of the profits? A. Yes, Sir.

Q. It was in that way that \$7,000 came to be the sum; it included this percentage? A. Yes, Sir.

Q. That is so, is it not? The sum of \$7,000 that is spoken of was made up of half the salaries and of half the supposed percentage? A. Together with some unpaid salary.

Q. That is what I want to get at, whether the whole \$7,000 was in the nature of penalty, or whether it included a debt for past due arrears or something of that kind? A. I think there were certain sums for money due on my salary that had not been paid; I don't remember all the items.

Q. And they were counted into the \$7,000? A. Yes, Sir; together with the interest.

Q. Now, did you take advice at the same time, or at any time before the collection of the matter, respecting the validity of Mr. Bowen's defenses against its payment? A. No, Sir; he had not any.

Q. Well, he didn't pay? A. No, Sir, he didn't pay immediately; he did afterwards.

Q. He hadn't any good defense perhaps, but he didn't pay? A. Well, he had not any at all.

Q. Why didn't he pay you then? A. I will tell you why he didn't pay me.

Q. Well? A. Mr. Bowen wanted to arbitrate. In the beginning of January, 1871, he wanted to make the payment of the money he thought I needed, and he wanted, through the payment of that money, to get me to sign a paper to the effect that he and I would keep the peace. He was afraid, in other words, of the storm which he had raised between himself and Mr. Beecher, and he wanted an arbitration in order that not only business affairs but other difficulties should be settled. I understand exactly the reason why he wanted an arbitration. Mr. Moulton forbade it.

Q. Did he give you that reason, or was this only your under-

standing? A. No, Sir, he didn't give it; I extracted it from his mind.

Q. That is your understanding of it? A. Yes, Sir.

Q. But he didn't give it. Now, did Mr. Bowen ever admit to you, after you began to collect or wished to collect those liquidated damages or what not—did he ever admit to you that he owed any part of it? A. I have already told you I never laid eyes on Mr. Bowen, at least for a personal interview, between December 26th, 1870, and the night when he paid me the \$7,000 in 1872.

Q. Then he never did admit to you that he owed you a dollar? A. I never exchanged a word with him on any subject.

Q. Well, it is an argumentative mode of putting it. A. He never admitted or denied; I never conversed with him.

Mr. Morris—You mean the 27th or the 28th. A. Yes, Sir; the 27th or the 28th.

#### MR. TILTON'S EARLY QUARRELS WITH MR. BOWEN.

Q. Now, Mr. Bowen did make you a payment of a certain amount at that time, or very early in January; didn't he? A. He didn't make it to me; he made it to Mr. Moulton.

Q. Well, under that authority that Mr. Moulton had? A. Oh! no; that was quite another affair; these were notes that I held.

Q. Well, he did pay you some money, anyhow? A. Yes, not having any reference to my business with *The Independent*, or with *The Union*. I held Mr. Bowen's notes for \$4,000, or thereabouts, a matter entirely distinct from my business.

Q. They were not then arrears of salary, or anything of that kind; the notes were not for arrears of salary or anything of that kind? A. Oh, no, Sir; no, Sir; nothing of that sort.

Q. Money loaned by you, were they? A. My impression is that I had sold to Mr. Bowen some shares in *The Brooklyn Union* stock, which I held at an early period, and also my impression is that he took some notes from Mr. Gibson.

Q. Well, we won't go into details. A. At all events I held Mr. Bowen's notes for between \$4,000 and \$5,000.

Q. And they were not for arrears of salary or past dues? A. No, Sir; they had nothing to do with *The Independent* or *The Brooklyn Union*.

Q. That is enough. Now, do you remember a short time before these matters between you and Mr. Bowen arose, the situation in which, from some difference between you as to the support by your paper of a political candidate here, there was a trouble between you and Mr. Bowen? A. Yes, that is *The Brooklyn Union*.

Q. I mean that. That was a secular paper. Now, didn't Mr. Bowen then intimate to you that he might terminate your connection with that paper for that difference of opinion? A. I will tell you what Mr. Bowen said. He came into the office one day during the local campaign, I think August or September, and there was a certain candidate for office—I need not mention him.

Q. For Congress, I suppose. A. Well—

Q. Well, it is of no consequence? A. I better not name him.

Q. It was very public at the time? A. A bolt in the Republican party had been made on his account. A certain section of

the party wanted to repudiate him. I didn't know very much about the matter, but I took the paper in the line of the bolters, because they seemed to be the most respectable part of the community. Mr. Bowen came down from Connecticut and wanted me to support him. I declined, and he pressed the matter. I said, "Mr. Bowen, I am the editor of this paper by a contract, and it is impossible." He said to me that there was one way by which he could become the master of his own paper, and I said "Yes, and there is only one. So long as I am the editor by contract, I shall not support that man." It was a little flurry between us, the first and only one that we had had in 15 years.

Q. Well, he told you that there was one way, and that was by changing the editor? A. Yes; I told him that that was the only way—he must break his contract and take the penalty.

Q. And you went on, and the candidate was defeated, wasn't he?

Mr. Beach—Oh! well! well! well! that is quite unimportant.

Mr. Fullerton—We will keep out of politics, I guess.

Mr. Evarts—You persisted in your course with the paper? A. I certainly did, Sir.

Mr. Beach—Bolts don't often succeed, except in Carpenter's case.

#### MR. TILTON'S INTRODUCTION TO MRS. WOODHULL.

Mr. Evarts—Now, when you went over to see Mrs. Woodhull on this sort of summons, in May, 1871, she was not—her person was not a stranger to you, was it? A. What visit do you allude to, Sir?

Q. When you went over after the sort of summons she sent you to come and see her in reference to her publication of May 22d, 1871? A. I had seen her once and been introduced to her.

Q. When was that, and under what circumstances? A. One day—I can't recall the date—shortly before that occurrence, a gentleman called at my office, and in the course of some conversation asked me if I had ever seen Mrs. Woodhull, the Broad-st. broker. I said no, I never had. He told me she was a very remarkable woman.

Q. I don't care about all this detail, you know, I only want the circumstances. A. I walked down town with him into her office and was introduced to her. I had an interview I suppose four or five minutes long. That was the first time I saw her. After that, very shortly after that, came this card, when she sent for me.

Q. About how soon was this; about what date was this previous interview? A. My impression is that it was a very short time previous to the publication of this card.

Q. Do you think during that month of May? A. I think so; yes, Sir.

Q. Well, there you saw her alone in her office? A. No, Sir; I saw her husband there and one or two other persons. I don't remember all the persons there. It was a sort of levee.

Q. Did this gentleman go with you? A. Oh! yes; he introduced me.

Q. Introduced you, and remained, did he? A. Yes, Sir.

Q. But it was an interview in her office, was it not? A. Yes, Sir.

Q. Only yourself, and your friend, and— A. My impression is that others were there.

Q. And this lady and her husband? A. Yes, Sir. I think that others besides were there in the office; that is my impression. There was quite a number of people there, but I won't be certain about that.

Q. Now, Sir, when did you last see Mrs. Woodhull? A. The last time I saw her, Sir, was in the month of April, 1872, shortly before the Cincinnati Convention that nominated Mr. Greeley.

Q. And what interrupted or broke off your intercourse with her at that time? A. Did I not give that in my direct examination?

Mr. Beach—Never mind—never mind; he wants you to repeat it.

Mr. Evarts—I don't care about it being the same; I only want the fact.

The Witness—My attention had been called about that time to an article, the proof slip of which was shown to me, in which Mrs. Woodhull proposed to vilify and blacken the names of a dozen or fifteen well-known ladies connected with the Woman's Suffrage Movement. I went down to see her, and asked her whether or not that was her article, whether it had been prepared by her, whether she designed to publish it; and the substance of the reply that she made was that she did not design to publish it, that she had not written it, that she did not approve of it; but a few days afterwards I learned that though the slip had not been published, still proofs had been taken of it, and it had been sent hither and yon, I was told, to the various editors and other people, and I then went down and upbraided her for that, and had an interview with her such as I have related, and turned my back upon her, and never saw her since.

Q. Well, that is the article that you have spoken of—either you—you have spoken of it; I don't know whether you gave it the name of the *Tit-for-Tat* article? A. That is my impression as to the title; yes, Sir.

Q. That is the title? A. Yes, Sir.

Q. And among these ladies thus exposed to public comment were acquaintances of yours, were there not? A. Every one of them was an intimate acquaintance.

Q. Every one of these fifteen ladies? A. Yes, Sir; I knew every one, I think, personally. I knew all the ladies connected with the women's suffrage movement more or less intimately.

Q. And that was your personal feeling or resentment about the matter, that these ladies were among your friends, and persons for whom you had respect? A. Yes, Sir; I told Mrs. Woodhull that I felt outraged, that a woman whom I had defended against the attacks of others, should now herself turn around and attack other women. I washed my hands of it from that moment.

#### EXTENT OF THE TILTON-WOODHULL INTIMACY.

Q. How frequently had you seen Mrs. Woodhull during the period that your intercourse did continue? A. My acquaintanceship with Mrs. Woodhull began—

Q. Well, we have got the date? A. Wait a moment!

Q. And the end. Now, how frequently during that? A. Well, during the eleven months, from the beginning to the end, I had a long lecture season in the Winter, and I think a Summer vacation. That left perhaps five or six months, during which I saw her; perhaps six or seven months. Does that answer your question?

Q. No, not in the least. A. Well, what is it you want to know?

Judge Nellson—How often.

Mr. Evarts—How frequently did you see her?

The Witness—Oh, I beg your pardon. I saw her very frequently—sometimes at her house and sometimes at her office, generally at her office.

Q. Did you see her elsewhere than at either her house or her office, and elsewhere than on the occasions that have been spoken of at your house or at Mr. Moulton's? A. I saw her at Mr. Moulton's house, and saw her at my house.

Q. Well, that we will leave out; we have had that? A. I don't remember ever seeing her anywhere else.

Q. Have you seen her at your house at other times than any that you have mentioned? A. No, Sir; I think she was three times at my house.

Q. Well, those are mentioned; do you remember an occasion during that Summer of your acquaintance with her in which you went down with her to Coney Island? A. Yes, Sir.

Q. And bathed? A. No, Sir.

Q. You don't remember the bathing? A. No.

Q. Well, was she at your house before you went down with her to Coney Island that day? A. I think that she and her husband came and stayed all night at my house one Saturday night, and part of Sunday; during which Mr. Beecher made them a visit in the afternoon, Mrs. Tilton later in the afternoon. Whether they stayed at my house two nights or one I have forgotten; possibly two nights.

Q. Well, had that any connection with this visit to Coney Island? A. I think, Sir, that when we went to Coney Island it was a Saturday afternoon, and that on coming back it was the same Saturday evening that they stayed all night; I won't be positive about that.

Q. See if you can refresh your recollection; do you remember taking a carriage? A. The carriage took me.

Q. [After a pause.] At your house and her in it with nobody else, and going to Coney Island and there bathing together? A. No, Sir; I was never in the water with her, except in the hot water in which I have been put these last years. [Laughter.]

Q. And returning and going to Mr. Moulton's house with her, and then going in this carriage to her house in New-York late that night? A. No, Sir; I don't remember that, but quite likely it may have occurred, all except the bathing.

Q. The rest you think is very likely? A. There is nothing improbable in it.

Q. Do you remember on returning from Coney Island with her, stopping at your house, leaving her in the carriage, going in, getting some manuscripts, talking with her about them and showing them on your way to Moulton's, and that they related to this business with Mr. Beecher? A. No, Sir; no, Sir.

Q. You don't rememoer anything of that kind? A. No, Sir; no such incident ever occurred.

Q. Nothing of that kind? A. No, Sir.

Q. Now, when you went thus late at night after the Coney Island excursion to her house, did the carriage leave you there and was it dismissed? A. I don't remember, Sir; I don't remember the circumstances.

Q. No; but you say it may have happened, all but the bathing? A. Yes, Sir; it may have happened.

Mr. Morris—He didn't say it did happen.

Mr. Evarts—Well, it was natural.

The Witness—I showed her a great many courtesies; I don't remember precisely whether that was one.

Q. Whether that was one of them you don't remember? A. No, Sir. But I never showed her any manuscripts having reference to Mr. Beecher or this business; that I know, Sir.

Q. That you are quite certain of? A. That I know.

Q. No narrative? A. No, Sir.

Q. No cards, no proposed publications? A. No, Sir.

Q. Nothing? A. No, Sir; there were no proposed publications to be made until long after—

Q. Well, don't argue about it, the facts are all I am looking for. A. I am giving you the facts, not the argument.

Q. Very well; you say there were none; all I want is your memory. A. I say there were none that were proposed to be made until long after my acquaintance with her ceased.

Q. Now, Sir, do you know how Mrs. Woodhull got her reference in her article to the Catherine Gaunt letter, as it is called, that your wife wrote you? A. I don't know what reference you alluded to.

Q. If there is such a reference, do you know where she got it? A. No, Sir; except that I talked very freely among my personal friends about Mrs. Tilton and her letters.

Q. At all times did you? A. Not at all times; no, Sir; at fit times, certain times.

Q. Yes. You did not then respect your wife's solicitude that no eye but yours should see her letters? A. I obeyed no such injunction as that, Sir; I talked with the few people who knew the facts.

Q. Among those few people did you talk to Victoria Woodhull about the Catherine Gaunt letter? A. No, no, Sir; never; nor any other letter of Mrs. Tilton's.

Q. Then, so far as you know, if there is a reference in the Woodhull publication to the Catherine Gaunt letter of your wife, you don't know how she became possessed of the fact that there was such a letter? A. Why, except that she became possessed of it as she got possessed of the other particulars through circumstances floating to her ear through other persons; didn't get them from me.

Q. And thus floating they must have originally started from your references to the Catherine Gaunt letter? A. Anything that anybody knew of the Catherine Gaunt letter must have come originally from me, because that letter was written to me; yes, Sir.

Q. That is exactly what I want to know. A. But I didn't state it to Mrs. Woodhull.

#### MR. TILTON AS A DEFENDER OF THE COMMUNE.

Q. No, so you say. Now, Sir, do you remember an incident in which you and Mrs. Woodhull and her sister appeared in a public procession on Sunday in honor of the Commune in the streets of New-York? A. I remember a procession, Sir, in honor of the Commune, in which I appeared, and in which I afterwards understood that they appeared, but we did not appear together, and thousands of persons appeared in that same procession. I walked arm in arm with my friend John Swinton on that occasion.

Q. All the way? A. Oh! I don't know. [Turning to Mr. Swinton.] Was it all the way?

Q. Now, did you carry a banner in that procession? A. I did not.

Q. No part of the way? A. No part of the way.

Q. Neither in a carriage nor on foot? A. Neither in a carriage nor on foot. That was a procession in honor of the revered memory of Rossel, whom the French Government put to death, and whose name ought to live, being the synonym of liberty.

Q. Exactly; he was one of the Communists, wasn't he? A. Yes, Sir, and a sublime man.

Q. And he was put to death? A. By judicial murder.

Q. By judgment for having executed the Chief Justice of France and the Archbishop of Paris? A. No, round the world, no; it is an insult to his memory to suggest it.

Q. They were executed, were they not, by the Commune? A. Yes, Sir—no, not by the Commune.

Mr. Evarts—The Chief Justice of France and the Archbishop of Paris were—

The Witness—[Interrupting.] I say here under oath that the memory of young Rossel is sweet and clean, and I honor him before all mankind.

Mr. Evarts—Now, that is an episode.

Mr. Beach—Well, I think you are getting up an episode if you are going into the history of the Commune.

Mr. Evarts—I understand it, but I didn't introduce the episode.

Mr. Beach—Well, this is your cross-examination, you introduced the Commune.

Mr. Evarts—I did the public procession with these ladies; that I introduced.

Mr. Beach—We don't want an examination into the history of that trial upon this.

Mr. Evarts—Well, he had gone into a eulogy of Rossel.

Mr. Fullerton—As he properly might. He had nothing to do with that procession, at all.

Mr. Evarts—Only I want to see the grounds of the eulogy.

Mr. Fullerton—You have seen them.

Mr. Evarts—Yes, Sir.

Mr. Fullerton—Well, if you was satisfied with them—

Mr. Evarts—I am entirely satisfied with them. [To the witness.] Now, you say that until after that procession on that Sunday, you didn't know that Mrs. Woodhull and Miss Claflin, an unmarried lady I believe, were in it? A. Never knew anything about it, Sir, until it was all over.

Q. And did you see it in the papers for the first? A. I don't

remember how the information came to me; however, my impression is that I called at the house that evening and there ascertained it; that is my recollection, but I won't be certain about it.

Q. Went to Mrs. Woodhull's? A. Yes, Sir; I think I did; but I won't be sure of that.

Q. That was on the 21st of December, wasn't it? A. I don't know.

Q. Or 17th of December? A. Don't know.

Q. Well, you remember it was cold weather? A. Don't remember anything about that; I remember it was a Sunday. The police of New-York were going to deny us the right of making an exhibition.

Q. And you made it? A. Yes, Sir; we did, believing this to be a free country.

Q. Well, you don't seem to have been interrupted by anybody. Then you think no such scene as your carrying a banner and their holding the tassels could have occurred during that procession by any possibility. A. Why, Sir, it could have occurred very easily, but it didn't.

Q. Well, I mean could not have occurred as matter of fact? A. Yes, that is the only way it could have occurred.

Q. On that occasion without your knowing it now? A. Do you mean to ask me whether I could have carried a banner on that occasion without my knowing it?

Q. Without knowing it now? A. Well, Sir, I didn't carry a banner on that occasion; I walked arm in arm with my personal friend.

Q. And nobody else during the whole procession? A. Yes, Sir; but allow me to observe, Mr. Evarts, that if I had carried a banner it would only have been to my honor, and not discredit; I had no objection to carrying a banner to the memory of such a man. He went to the scaffold, Sir, with a Bible in his hand, kissing it, and his soul went up to God. No man need be ashamed of carrying a banner for him.

Q. Very well; you are entitled to that view. Now, how frequently did you, during this period of your acquaintance with Mrs. Woodhull, go with her to Coney Island? A. I recollect going with her once; perhaps I went twice.

Q. Didn't you go more? A. No, Sir; I think not.

Q. Are you certain you didn't go more? A. No; I ain't certain about anything.

Q. And did you go boating, if you didn't go bathing? A. I went once rowing on the Harlem River with Mrs. Woodhull and her husband.

Q. Was that on Sunday? A. I don't remember; quite likely.

Q. Were these visits at Coney Island on Sunday, any of them? A. My impression is that they were on Saturday; I won't be certain, though.

Q. It might have been Sunday? A. I have been there Sunday; yes, Sir.

Q. Well, with her. I have nothing to do with your other amusement. A. It may just as well have been on Sunday as any other day.

Q. On any other day, so far as you were concerned? A. Yes, Sir.

Q. Or she? A. I think quite likely.

Judge Neilson—I wish to say that a communication has been handed up from a very respectable person stating that yesterday the persons standing behind the jury—not the same persons there now—were heard to make remarks in respect to this case in the hearing of the jury, and that is the subject of the complaint. I want it understood that that is a grave offense, and one which the Court would punish severely and summarily, without respect to the person who might be guilty of it, and I hope no such thing will occur again, and if it does, I charge the officers to notify me of it on the instant. The gentlemen present have seen my solicitude to enable the jury to go out without being subject to the casual observations that people might think proper to make, and I think it is hard that citizens should so far forget the respect due to the jury as to indulge in observations in their presence.

Mr. Evarts—If your Honor please, I have observed (without thinking any evil of it, though of course), that sometimes the spectators or audience would lean over that rail, immediately behind the jury, and, of course, would bring themselves quite in proximity, and although of course, there is a desire that there should be as much space for visitors as possible, yet it really seems to me as if that space behind the jury might be kept clear.

Judge Neilson—Well, Sir, it shall be so hereafter.

The usual recess was here taken.

#### THE CATHERINE GAUNT LETTER AS WRITTEN AND AS PUBLISHED.

The Court met at 2 o'clock, pursuant to adjournment. Theodore Tilton was recalled, and the cross-examination resumed.

Mr. Carpenter (foreman of the jury)—May it please the Court, I am requested by the jury to say that there never has been an improper word expressed in their hearing by any person in the rear.

Judge Neilson—I am very happy to hear it.

Mr. Carpenter—And they consider that communication sent to the Court as an unjust reflection upon them.

Judge Neilson—It may have arisen from some misapprehension. I am very happy to hear it, Sir.

Mr. Evarts—Please look at that letter, and say if that is the Catherine Gaunt letter, so-called?

Mr. Fullerton—What page is that, Mr. Evarts?

Mr. Evarts—I don't know; there is no paging by which we can find it.

The Witness—This seems to be a reproduction, Sir; I don't know whether it is correctly printed or not.

Q. Well, of course—the question of printing. We have got the original letter here. Now, that is produced by you, is it not, in your sworn statement, as it is called? A. I think it is, Sir.

Q. Look at that letter, as there printed, and see if that purports to be a whole letter; whether any omissions are noted? A. I could not say whether any omissions are made here. The

whole letter was lithographed in *The Graphic*, I believe—my impression is.

Q. Well, I only ask you whether there are noted any omissions in this? A. Well, Sir, I could not answer as to that, except—

Q. I did not ask you whether any omissions are made, but whether any are noted, whether there is any indication of omission. A. Here?

Mr. Beach—What? In the print?

Mr. Evarts—In that print; yes.

Mr. Beach—I don't think that is proper, Sir.

The Witness—I don't understand your question, Mr. Evarts.

Mr. Beach—If the object of that examination is to show that any part of the letter was suppressed intentionally, unless it is shown that Mr. Tilton had something to do with the printing, it cannot be important; I object, therefore, to that question.

Mr. Evarts—You object because the printing does not affect him?

Mr. Beach—Yes, Sir.

The Witness—I remember that the Catherine Gaunt letter has never been printed correctly that I know of, except in the lithographic transcript in *The Graphic* newspaper. I think it was printed there; it had many errors.

Q. Is the lithograph in this book? A. I think very few of those transcripts are put in that book.

Mr. Beach—No, I don't think it is. Yes, that must be.

Mr. Evarts—No, it don't seem to be here. [To the witness.] You speak with some assurance, Mr. Tilton, but was this Catherine Gaunt letter ever lithographed at all. A. Well, Sir, it was given to *The Graphic* office to be lithographed. I cannot say for certain whether everything was lithographed that was sent over there. I know I sent it there myself.

Q. To be lithographed? A. Yes, Sir; I think a number of the letters that were sent there were not lithographed. Whether that was included, now, or not I don't know.

Q. Look at those leaves? [Handing witness some half sheets of legal cap.] A. This is Mr. Maverick's handwriting.

Q. You recognize them as Mr. Maverick's handwriting? A. Yes, Sir.

Q. And as the Catherine Gaunt letter? A. No; not as the Catherine Gaunt letter, but it appears to be a copy of it, or of a part of it. I don't know whether it is all here or not.

Q. Well, that is the letter—that is a reproduction of the letter that we are talking about? A. It is a reproduction either of the letter or a part of the letter, I don't know which. You can easily compare it with the original, if you have the original.

Q. Yes; I understand that. Now, those leaves—do they purport to be a whole letter? A. I don't think they do.

Q. Is there any mark on those of asterisks or omissions of any kind? A. I don't see any.

Q. Anything to indicate that that was not the whole letter? A. I don't see any; nor is there anything to indicate that this is a quotation at all. My recollection is, Mr. Evarts, that that letter—that there was some blunder in the printing of it, that some line or two was left out, and I recollect of sending it over to *The Graphic*. It was lithographed there, I think. My impression

is that you will find it lithographed in one of the impressions from *The Graphic* office, but I won't be certain.

Q. Well, if there is a passage left out there that is not from a blunder in printing, is it [referring to the manuscript?] A. No, Sir; I don't know whether it is left out there or not.

Q. No; it does not appear.

Mr. Fullerton—Let it appear.

The Witness—I remember that after that sworn statement was published I made some little comparison between that and the original manuscripts, and found some little errors, some little omissions.

Q. Yes, Do you remember that there was one in the Catherine Gaunt letter? A. It strikes me that there was, of some sort, Sir. I don't exactly know.

Q. Unimportant?

Mr. Fullerton—One moment! We object to that.

The Witness—I don't know what you consider unimportant.

Mr. Evarts—Why is it objectionable—whether it is unimportant?

Mr. Fullerton—Let us see what it was, and then we will see whether it was important or not.

Mr. Beach—The omission will show for itself whether it is important or not.

Mr. Evarts—Yes, but a man's notice of an omission may show whether he thought it was important.

Mr. Fullerton—That is not the question before the Court.

Mr. Evarts—That is my question.

Mr. Fullerton—Not now it is not.

Mr. Evarts—[To the witness.] Did you see an omission that struck you as important, or was it only unimportant? A. I remember that when that sworn statement was printed, as it was printed without my authority, and without my revision, I feared that there were many typographical errors in it. It was printed with an omission in one part, asterisks being thrown in. I remember some time afterward looking to see how far the documents had been incorrectly or correctly printed. I remember there was an error in Mr. Beecher's letter of the 1st of January. It said their "breasts" would ache instead of their "hearts," and there was an error I remember of the word "never" instead of "not," somewhere else, and my impression is that there was some omission in the Catherine Gaunt letter, and one or two other letters, and I sent that over to *The Graphic* office, I think, to have it reproduced.

Q. Lithographed? A. Yes; my impression is that you will find it printed there.

Q. Now, I will repeat my question. When you saw an omission, if you did see it, in the print of the Catherine Gaunt letter, as compared with the original, did the omission strike you as important, or only as unimportant?

Mr. Beach—The witness does not state positively that he saw any omission in the Catherine Gaunt letter.

The Witness—I don't remember particularly, Sir.

Mr. Beach—It is assuming it, Sir.

Mr. Evarts—[To the witness:] What do you say to that?

Mr. Beach—Wait one moment. He won't say anything about it.

Mr. Evarts—What is the objection?



Mr. Beach—I object to it as assuming that there was an omission in the printing of the Catherine Gaunt letter.

Judge Neilson—The question rather is if he did observe an omission, did it strike him as important or not.

The Witness—I think there was a sentence or so left out.

Judge Neilson—The question is whether it struck you as important.

Mr. Evarts—Or unimportant.

The Witness—Important to what end?

Mr. Evarts—To any end—to the truthfulness of the publication of the letter. A. No, Sir; it did not.

Q. It did not? No, Sir.

Q. Well, we will see. A. My recollection is that there was something in it about a renewal of a marriage vow—something of that kind.

Q. You look at the print while I read you the original. [Reading]: “My dear Theodore.” This is dated “Schoharie, June 20, 1871. My dear Theodore.”

Mr. Morris—One moment, Mr. Evarts.

Mr. Evarts—Oh, I beg your pardon.

[Mr. Morris searches for the letter in the printed book.]

The Witness—I ought to mention, Mr. Evarts, that I never compared that with the printing in this book, but with the printing in *The Argus* newspaper.

Mr. Evarts—Well. [Reading]:

MY DEAR THEODORE: To-day, through the ministry of Catherine Gaunt, a character of fiction, my eyes have been opened for the first time in my experience, so that I see clearly my sin! It was when I knew that I was loved, to suffer it to grow to a passion. A virtuous woman should check instantly an absorbing love. But it appeared to me in such false light. That the love I felt and received could harm no one, not even you, I have believed unflinching until four o'clock this afternoon, when the heavenly vision dawned upon me. I see now, as never before, the wrong I have done you, and hasten immediately to ask your pardon, with a penitence so sincere that henceforth (if reason remains) you may trust me implicitly. Oh! my dear Theo., though your opinions are not restful or congenial to my soul, yet my own integrity and purity are a sacred and holy thing to me. Bless God, with me, for Catherine Gaunt, and for all the sure leadings of an all-wise and loving Providence. Yes; now I feel quite prepared to renew my marriage vow with you, to keep it as the Saviour requireth, who looketh at the eye and the heart. Never before could I say this.

Mr. Porter—From what you now read is omitted.

Mr. Evarts—From what I now read is omitted.

#### DISCUSSION UPON THE GAUNT LETTER.

Mr. Beach—I object to it. I object, that remarks of that kind should be made in the presence of the Jury and the counsel.

Mr. Evarts—I am comparing the published letter with this letter.

Judge Neilson—The form of publication is utterly immaterial unless the witness had the control and supervision of the publication.

Mr. Evarts—No doubt; no doubt.

Judge Neilson—Therefore a variance would not be of any moment.

Mr. Evarts—I have shown him the text of this letter in the handwriting of his friend, Mr. Maverick, who copied the statement that he presented to the Committee.

Judge Neilson—That don't advance you a single step, because he may not have copied correctly.

Mr. Evarts—He may not, but there are no suspicions of that kind.

Judge Neilson—If he did not copy correctly, is the witness responsible for that?

Mr. Evarts—It is the original presented to the Committee.

Mr. Porter—And sworn to by Mr. Tilton.

Mr. Fullerton—That has not yet appeared. That is the answer to that.

Mr. Porter—I said it was in his sworn statement.

Judge Neilson—It does not appear in what form it is in that statement, if it be there at all.

Mr. Fullerton—No, Sir.

Mr. Evarts—I have produced it to him and asked him if it purported to be there a whole letter.

Mr. Beach—He has presented to Mr. Tilton a professed reprint of his statement.

Mr. Evarts—I presented to him his copyist's copy—Mr. Maverick's copy.

Judge Neilson—Was he his copyist?

Mr. Evarts—Yes; he stated that fact.

Judge Neilson—It don't appear.

Mr. Tracy—This is the original. It is a copy which Mr. Maverick, and which he testified before, when we had another letter up, was the copying of Mr. Maverick, his clerk, and that that copying went before the Committee.

Judge Neilson—I did not recall the fact, Mr. Evarts, that the paper you showed the witness before, and which was in Mr. Maverick's handwriting, included the Gaunt letter.

Mr. Beach—Well, Sir, it does not appear.

Judge Neilson—It was another part of it.

Mr. Evarts—Your Honor is quite right about it. I did not then show him the Gaunt letter in that connection, but I now show him the Gaunt letter in this same handwriting of Mr. Maverick, which he recognizes.

The Witness—Mr. Evarts, let me say—

Mr. Fullerton—Just one moment, now.

Mr. Beach—It may be necessary.

Mr. Evarts—Well, Mr. Tilton, what have you to say?

The Witness—I would like to say this: that if there is any error in the copying it should not be accredited to Mr. Maverick, because he is a very methodical and accurate man. If there is any blunder it is probably mine.

Judge Neilson—Are you conscious of any change or alteration? A. No, Sir; not at all.

Q. Did you direct any? A. I did not, Sir.

Mr. Evarts—Ah! well, if your Honor please—

Judge Neilson—Well, you have the witness.

Mr. Evarts—The witness is mine.

Mr. Beach—Oh, no; not yours beyond the control of the Court.

The Witness—I simply do not wish another man chargeable with any error of mine; that is all.

Mr. Evarts—No, no; we will take care of that. Now, I propose to read the omission.

Judge Neilson—I think you may proceed.

Mr. Fullerton—If your Honor please, let us understand ourselves exactly. What is this paper that they show to the witness which they call the Catherine Gaunt letter? It is stated to be a part of the statement of Mr. Tilton which was sworn to and which went before the Committee; but that is a bare statement of counsel; it is not proved in the case yet, so as to be a part of the case and of which action can be predicated. Now, until that is put in evidence so that that fact will appear, why, as a matter of course we cannot take it for granted, simply because it is asserted to be so, that the Catherine Gaunt letter is a part of that statement, and that that is here now in Court. Mr. Maverick did make a copy of Mr. Tilton's statement; but is this a part of the copy of which Mr. Tilton speaks? Mr. Maverick may have made more than one. He may for some purpose of his own have made another copy. We know nothing upon that subject at all. Now, surely your Honor would not permit them to point out discrepancies between this paper which they have in hand and the witness's statement, without laying the foundation for such proof, because it is undoubtedly the object of the other side to hold Mr. Tilton responsible for some kind of change in that document.

Mr. Evarts—We certainly do.

Judge Neilson—It has also been stated that it was a sworn statement. Have we any such statement before us?

Mr. Fullerton—Not at all, and that is what I am speaking about now. There is no such statement before the Court at all.

Judge Neilson—Then it is improper to speak of it as a sworn statement.

Mr. Fullerton—It is now proper to speak of it as a sworn statement, and it is improper to speak of it as his statement that Mr. Maverick copied, until we are informed of that fact in the proper way.

Mr. Beach—They do not show the statement here that Mr. Maverick copied.

Mr. Fullerton—No. They produce some loose leaves, a part of what they call a statement, and ask in whose handwriting it is. That is as far as they have gone. The statement is either to be in evidence, or out of evidence, one or the other.

Mr. Evarts—Now, if your Honor please, the point of imputation is this, and it is a very serious one. The point of imputation is that Mr. Tilton has presented before the Committee of the church—

The Witness—That identical letter you hold in your hand, the original manuscript. I carried it there.

Judge Neilson—One moment; don't interrupt the counsel.

Mr. Evarts—And has published, in the same manner, a letter of his wife, presented as a vital point affecting her, that is not a letter of his wife, but the omission of the part omitted changes its sense and effect. Now, that is the imputation.

Judge Neilson—Now, the question is, whether, in order to support that suggestion, it is not necessary for you to produce the statement, which, it is said, has been sworn to, so it may be compared with the letter.

Mr. Evarts—Now, all that I propose to produce—and that I will do in fairness to the witness, that he may give any explanation that he can in advance of the reading of the true letter, and of a scrutiny of the difference, of how there happened to be that omission. I hand him a printed book containing that letter, and ask his attention to that letter, and nothing else, as thus printed, and he says he cannot be responsible for the print. I then hand him the letter, and nothing else, as in the handwriting of his amanuensis, and as laid before the Committee. That is the letter. I do not want anything to do with his statement.

Mr. Fullerton—It does not appear that that letter was before the Committee.

Mr. Evarts—And I then ask him whether that letter purports to be a whole letter, as thus written, and contains any indication of omission, to get rid of any difficulty about printing; and I understand the witness that it does not. Then he has given us statements that he observed, or may have observed, some time or other, that there was a difference between the Catherine Gaunt letter as printed, as used, and the Catherine Gaunt letter as written by his wife, and that he sent it over to *The Graphic*, he thinks, to be lithographed, or, as he first stated, it was lithographed in *The Graphic*, as I supposed he remembered; but now he does not remember that it was lithographed, but that he sent it, and supposes, no doubt, that it was. Well, whether it was lithographed will appear from *The Graphic* itself whenever we look back. Now, I am reading, as is my right, the true letter by his wife, and I have a right, as it seems to me, to show every publication of that hitherto under the supervision of that witness in any degree, has omitted this passage, and sacrificed, in so far, the truthfulness of this letter; and then the magnitude of the sacrifice will appear by comparing the letter as printed, and used, with the letter as written by the wife.

Judge Neilson—You have a right to read the letter, but the production of the statement itself is as necessary to support your suggestion of discrepancy as the production of the letter itself would be.

Mr. Evarts—How does your Honor mean as to the production of the statement otherwise than of the manuscript letter as contained in the statement?

Judge Neilson—Here is a detached leaf written by the same party, it is said. It does not appear that it was a part of the statement. It may have been incorrectly written. I don't see how you can institute a comparison between the letter and the statement without both being here. The presence of one is as necessary as the presence of the other.

Mr. Evarts—I understand your Honor perhaps to lay down some proposition that may be necessarily observed, but whether it has not been abused is the question. It is not certainly necessary that I wish to compare a letter contained in a publication for which this witness is responsible, with a letter as

written, to show the difference, that I should use the statement in the rest of it, because I have nothing to do with that.

Judge Neilson—You have a right to show that he published it untruly; no doubt about that.

Mr. Evarts—Now, your Honor thinks that on the present proof concerning the statement already in, that does not appear.

Judge Neilson—So it strikes me, Sir.

Mr. Evarts—Well, that we already have in.

The Witness—Mr. Evarts, may I borrow the manuscript a moment?

Mr. Evarts—Certainly. [Handing witness Mr. Maverick's copy.]

The Witness—I mean the letter.

Mr. Evarts—The letter itself.

The Witness—Yes, Sir.

Mr. Evarts—Yes. [Handing the witness the letter.]

The Witness—My impression is that those little marks on top show that it has been lithographed in *The Graphic* office, I feel morally certain of it; at the same time, I will not swear to it.

Mr. Evarts—Well, I don't know, of course. *The Graphic* will speak for itself whether it is lithographed.

The Witness—Yes, Sir.

Mr. Evarts—Now, look at that letter and say whether you believe that manuscript which I place in your hands to be the manuscript of the letter as it was presented before the Committee?

Mr. Fullerton—That we object to.

The Witness—I presented—

Mr. Fullerton—Just one moment; we object to it; he asks for the mere matter of belief of this witness as to a matter that can be certainly proved more satisfactorily by the statement itself.

Judge Neilson—He should ask if he knows.

Mr. Evarts—Well, do you know or believe? I have a right to either.

Mr. Fullerton—You have a right to put it either way.

Mr. Evarts—Yes; and I have a right to an answer.

Mr. Fullerton—And I have a right to object before you get it.

Mr. Evarts—Do you know or believe that that manuscript of this letter, which you now hold in your hands, was in those very leaves as they are now in your hands, a part of the statement as you personally laid it before the Church Committee?

Mr. Fullerton—That I object to.

Judge Neilson—I think I will take the answer.

Mr. Fullerton—Whether he knows or believes?

Judge Neilson—Whether he knows.

Mr. Fullerton—Well, that is not the question, Sir; that is not the question, whether he knows it; the question is, whether he knows or believes it.

Mr. Evarts—I think we are entitled on cross-examination to the witness's belief about the fact.

Mr. Fullerton—If they want to compare the Catherine Gaunt letter with anything that was placed before the Committee, why, as a matter of course, they have a right to do so. But

they must show, in the first place, what was placed before the Committee.

Mr. Evarts—Yes, and I am going to show.

Mr. Fullerton—This is a mere matter of belief on the part of the witness.

Mr. Evarts—Oh! well, well, well!—On a cross-examination—

Mr. Beach—Your Honor will recollect the rule of law, I think, that where a witness is cross-examined in regard to the contents of a paper, the paper itself must be introduced and submitted to his inspection. It is so decided in the Court of Appeals.

Judge Neilson—Oh, yes; I do not mean any decision by that.

Mr. Beach—Well, then, they present to him something in the handwriting of Mr. Maverick and do not ask him whether that was a part of the statement, but whether he believes it was a part of the statement, or a copy of a portion of the statement which was submitted to the Committee.

Mr. Evarts—No; not a copy—the identical leaves that were presented.

Mr. Beach—Very well; whether he knows or believes that that was a part of the identical statement submitted to the Committee.

Judge Neilson—The belief is objectionable, if it savors of speculation. The inquiry is as to the knowledge of the witness.

Mr. Beach—Well, I suppose it is sufficient to present that part of the paper to which the question refers, and if the witness can identify that as a portion of his statement, why I certainly have no objection to that.

Mr. Evarts—Yes, Sir; very well. Now, Mr. Tilton—

The Witness—What is the question?

Mr. Evarts—Read the question to him, please.

[Question read by THE TRIBUNE stenographer.]

Mr. Evarts—I asked you to read the last one; there were some variations in the general phrasology of it.

The stenographer stated that the question read was the last one.

Mr. Evarts—Now, I will make a new question, and take your Honor's ruling. Now, if you will write down, Mr. Stenographer, my question. [To the Witness]: Do you know or believe that the written leaves which you hold in your hands, are the copy of the Catherine Gaunt letter, that you personally laid before the Committee on the Church examination? Now, wait if they object to that question.

Judge Neilson—I think he may answer that. Look at the paper?

A. I have every reason to believe, Sir, that this is Mr. Maverick's copy, or a few leaves of Mr. Maverick's copy of the sworn statement which I laid before that Committee, which statement included a copy of the Catherine Gaunt letter, and which statement, in being laid before the Committee, was accompanied also with the original manuscript of the Catherine Gaunt letter which I carried to the Committee, which manuscript you now hold in your hand.

Judge Neilson—But the question also was whether you recognized these papers as parts of your statement, those leaves?

The Witness—Your Honor, those leaves—

Mr. Evarts—What was your Honor's remark?

Judge Neilson—I suggested to him that I thought your question also involved this, whether those leaves were part of his statement.

Mr. Evarts—No; I did not include that—whether those were the very leaves that he laid before the Committee. I do not care what they were in.

Judge Neilson—Do you say they are the very leaves?

Mr. Fullerton—No; he says he has reason to believe.

The Witness—I say I have every reason to believe, Sir, that those few leaves are part of Mr. Maverick's copy.

Judge Neilson—They do not ask you that; no matter about his writing.

Mr. Evarts—Of course that is unnecessary.

Judge Neilson—The question is, whether those leaves formed part of the statement—those very leaves.

Mr. Evarts—If your Honor please, we will have, if it is proper—

Judge Neilson—Well, you interrogate him.

Mr. Evarts—It is not in that view I was speaking. I was going to say if your Honor will think it proper, we will have the answer as the stenographer has taken it down.

[Answer read by THE TRIBUNE stenographer.]

Mr. Evarts—Very well; all very well so far—now I will ask another question. Those very leaves that you hold in your hand, were they or not the very leaves, so far as they went, of the statement that was put before the Committee? A. Well, Sir, I have every reason to believe they are.

Q. Yes, that I understand. A. Yes, Sir.

Mr. Beach—What? That those were placed before the Committee?

Mr. Evarts—Those very leaves were before the Committee.

The Witness—I have every reason to believe that those pages 92, 93, 94, 95 and 96, were part of Mr. Maverick's copy of the sworn statement which I laid in person before the Committee.

Judge Neilson—No; the inquiry is whether it was a part of the sworn statement itself.

Mr. Evarts—Well, it precedes—if your Honor please: "A copy of which I in person laid before the Committee"—he has just said that.

Judge Neilson—But suppose he does say that is a copy of the paper which he laid before the Committee?

Mr. Evarts—He does not say that. I beg your Honor's pardon. He says: "this is Mr. Maverick's copy, which copy I, in person, handed to the Committee."

Judge Neilson—Is that so, Sir?

The Witness—Yes, Sir, I say I have every reason to believe it is so.

Judge Neilson—I understood you to say that you had every reason to believe that this was a copy of your statement, of so much of your statement.

Mr. Evarts—No, it was the copy made for the purpose and which he handed to the Committee.

Judge Neilson—And which was copied in the statement, those very leaves?

The Witness—If your Honor please, I wrote a statement; my handwriting was bad and I had it copied, and I laid the clean

copy, which Mr. Maverick had the kindness to make, before the Committee. I laid the copy before the Committee; the original I kept myself. This is part of the copy which I laid before the Committee. That is it.

#### THE OMISSIONS FROM THE GAUNT LETTERS.

Mr. Evarts—Now, you have said that at the same time, you laid before the Committee as I understand you, this letter! A. Yes, Sir. I carried to the Committee at their request, a great package of Mrs. Tilton's letters; all the letters, and proposed to read them, but I was interrupted on the ground that it would take too much time—this letter being among them—but a special Committee was appointed, consisting of Mr. Winslow, to call on me and see these letters.

Q. Well, now, was not this about the way the matter went, that you carried a quantity of letters and other manuscripts for—what I mean— A. What is that?

Q. You carried a quantity of manuscripts there, including this letter? A. I carried Mrs. Tilton's letters; yes, Sir.

Q. And your own? A. I don't think I carried mine.

Q. You carried a quantity—you did not carry the whole, did you? A. I did carry every letter I had of hers.

Q. The whole? A. Yes, Sir; a package as large as that.

Q. And none of them were read? A. Yes, Sir; two or three of them were read; I began to read them.

Q. By you? A. Yes, Sir; by me; and somebody made a motion or a suggestion that it would take too much time, and then Mr. Winslow, if I remember right, was appointed by the Committee to wait upon me and make an examination of these letters at his leisure. That is my recollection of the circumstances.

Q. And this letter itself was not read before the Committee that night. A. No, Sir; it was not the night: it was the day. I began chronologically to read them and was interrupted.

Q. Didn't get to this? A. No, Sir; but it was there before the Committee. It was in the Committee room.

Q. It was in the Committee room and in your possession? A. Yes, Sir.

Mr. Evarts—As you now state. Now, we will point out the omissions if your Honor please. I will begin at this paragraph. [Reading]: "Yea, now I feel quite prepared to renew my marriage vow with you and to keep it as the Saviour requireth it, who looketh at the eye and the heart. Never before could I say this. I know not"—tell me when I resume what is printed—"Never before could I say this." Now I begin. "I know not"—is that in?

Mr. Porter—That sentence is not in the printed book.

Mr. Evarts—Now, tell me when I read anything that is in there. [Reading]: "I know not that you are yet able, or ever will be, to say this to me. Still, with what profound thankfulness that I am come to this sure foundation, and that my feet are planted on the rock of this great truth you cannot at all realize."

Mr. Porter—All that portion is omitted in the copy furnished to me.

Mr. Evarts—I will begin again. [Reading]: "When you yearn toward me with any true feeling"—

Mr. Porter—The word "any" is omitted.

Mr. Evarts [reading]—"with any true feeling, be assured of the tried, purified and restored love of Elizabeth. Schoharie, June 29th, 1871."

[Letter handed to stenographer to mark]

Mr. Beach—Well, you are going to put that Maverick copy in, ain't you? You want it?

Mr. Evarts—Yes, Sir; I will mark it for identification, if you choose.

Mr. Beach—Well, it will be marked as evidence, I suppose.

Judge Neilson—Certainly; it has been read.

Mr. Evarts—I mark it, Sir, as an identification of the paper that I showed to the witness, and only such.

Mr. Beach—If your Honor please, that paper, the Maverick copy, has been held by one of the counsel, and statements made to the jury that certain passages were omitted from it. Those statements are not evidence; to prove the omission, I insist that the Maverick copy should be in evidence.

Judge Neilson—It is not before us with any such view to correction unless it is evidence.

Mr. Beach—The statements of counsel are not evidence.

Mr. Evarts—I put a certain paper in the witness's hands, and he states that that is a paper that, as a copy of the Catherine Gaunt letter, was placed by him before the Committee, and I then read the Catherine Gaunt letter as it was written, and the comparison follows in the province of the jury and of the Judge, by looking at those two papers.

Judge Neilson—Well, to the end of that comparison, one paper must be before the Court as well as the other.

Mr. Evarts—And to the end of that comparison, I now mark the paper that I showed the witness.

Mr. Morris—In evidence?

Mr. Evarts—Mark it as in evidence, as shown to the witness; that is all.

Mr. Beach—Well, I ask from the counsel an avowal, whether that paper, the Maverick copy, is presented in evidence?

Mr. Evarts—And I state to the gentleman that I have it marked to identify it, just as I offered it in evidence, to wit: a paper shown to the witness.

Mr. Beach—Oh, well, if it is in evidence, that is all I want.

Judge Neilson—It is before the Court, or we know nothing about it.

Mr. Morris—Unless it is in evidence, we say that that is precisely as the original letter is, verbatim.

Judge Neilson—The comparison goes for nothing.

Mr. Beach—I move now to strike out from the stenographer's minutes, all allegations of counsel, that there was any omission in that Maverick copy of any part of the Catherine Gaunt letter, as read by the counsel.

Judge Neilson—That is granted, unless they put the Maverick paper in evidence.

Mr. Evarts—The statements of counsel are quite unimportant for comparison of papers; we will reproduce them at the proper time.

Judge Neilson—I suppose they are regarded as before us.

Mr. Evarts—This is the paper I showed to the witness, and what I showed it to him for appears in his oral examination. I now have it marked as shown to the witness.

Judge Neilson—That is a matter of form undoubtedly, but the jury have before them certain statements in regard to the discrepancy, and those statements in regard to the discrepancy are not proper here unless the papers are before us.

Mr. Evarts—There is no doubt that they are to depend upon the comparison of the papers, and all that has been done as we went on with the case is, we have compared written letters with printed ones, and pointed out the differences as we read them.

Judge Neilson—They are both considered as read then.

Mr. Beach—And both in evidence.

Judge Neilson—Yes, Sir, unless in evidence you have no comparison; we have been wasting our time.

Mr. Evarts—No doubt, no doubt. Unless the paper that he says he put before the Committee in these leaves is in evidence, there is no comparison.

[Letter marked "D, 99;" Maverick copy marked "D, 100," on each sheet.]

#### THE WOODHULL BIOGRAPHY DISCUSSED.

Mr. Evarts—We were proceeding with your intercourse with Mrs. Woodhull when this Catherine Gaunt letter came out in connection with it. Now, do you remember any public services that you performed for Mrs. Woodhull, except the presiding at her meeting, and the writing of her biography, and the writing of a letter to Mr. Sumner, I think, on the XIVth Amendment, wasn't it—Woman's Suffrage? A. I wrote also a letter to Senator Carpenter.

Q. What was that for? A. Same subject.

Q. Same subject? Those were the public topics? A. Those are all that I remember, Sir, now.

Q. Now, about how long after this 22d of May introduction, or after this 22d of May visit, was it before you wrote this Life of Mrs. Woodhull? A. That is, do you inquire concerning the interval of time between my—between Mrs. Woodhull's card of May and the writing of that?

Q. Yes? A. This was written about the first of September, I think, the same year.

Q. Along after—the same year? A. Yes.

Q. And when was the subject of writing it first introduced to you? A. Well, shortly before it was done, I think.

Q. And in that time, that space of time, you had become very well acquainted with her, had you not? A. Well, Sir, I thought I was

Q. Her traits of mind and of heart, disposition, and her relations and purposes toward the good of society, etc.? A. I thought I understood them, Sir; but I found I was mistaken.

Q. You afterward found you were mistaken? A. Yes, Sir.

Q. But then you thought you understood them well? A. I made the same mistake in her that I had in Mr. Beecher.

Q. Now, here is a marked copy, "Exhibit D, 86;" just look at that while I read from this—

Mr. Beach—Well, Sir; what do you propose?

Mr. Evarts—Well, you will hear in a minute.

Mr. Beach—You propose to be reading from something?

Mr. Evarts—I do.

Mr. Beach—Well, what was it you propose to read from? I want to know. [To the Court.] I ask the counsel what he is proposing to read from; he has not the kindness to answer me.

Mr. Evarts—No; I had the kindness to answer you, which was that you would hear when I made my question; I am going to make it now.

Judge Neilson—It will appear in the question. Well, let us see.

Mr. Evarts—Please listen to this passage which I read to you, and say whether it is your composition, and expressed the sentiments, as you then held them, about Mrs. Victoria Claflin Woodhull?

Mr. Beach—I object to that, Sir, as immaterial. Counsel, I understand, is reading an extract from the life of Mrs. Woodhull, which your Honor has once excluded.

Mr. Evarts—Yes; but excluded, I think, on the ground that it did not follow that a person was responsible for the opinions expressed in the biography of this or that person, and, to meet that difficulty I am asking him whether he did write this, and whether it expressed his opinions as he then had them.

Mr. Beach—It was not upon that ground alone that your Honor ruled. Your Honor ruled that his expression of opinions in regard to the character or mission of Mrs. Woodhull were immaterial, incompetent evidence. I do not understand, Sir, that the opinions which this witness entertained of that lady, at any particular period of her public or private career, are at all important in this investigation; and I understand that to be the sentiment which your Honor entertained at the time we had the discussion over the admission of the Life.

Mr. Evarts—We have had no ruling, and it would be quite contrary to the course of this evidence to hold, and your Honor has given no such intimation, I am sure, as that an exposure of this witness's relations to these opinions and these votaries of them, was not an important part, of greater or less importance, as it may be, in this case. The point was that, although I had identified Mr. Tilton as the writer of this Life and the publisher of this Life, yet that I could not read from that Life as evidence of what his opinions and views concerning the private and public relations of this lady were, because the mere printing and publishing, as my learned friend said, of a history, did not prove that the writer entertained those opinions concerning the history, or approved the facts that he narrated. There are some passages in this Life, that, with your Honor's permission, I propose to read, as expressing in terms, this writer's opinions concerning this lady and her character, and her principles; and to ask him if those were not his real opinions at the time, and thus avoid the difficulty of doing injustice to him, by treating a literary production as if it were an avowal of his own sentiments.

Judge Neilson—My ruling had this additional basis; to wit: that it appeared before us that her husband had prepared this document; had made a draft of it; perhaps, not being a writer, he had left it in a rude state, and, as we may suppose, the witness put it in a style fit for publication. That had something to do with my ruling.

Mr. Evarts—That was the original view presented; but this witness displaced that view by his own statement of the way that he wrote the paper—that he wrote it "all in a heat"; that it was not a correction of the manuscript, but he wrote it and presented it to the lady, and she pronounced it a failure; he made it better, and then she pronounced it perfect.

Judge Neilson—She pronounced it a failure, because he had omitted some extravagant parts which her husband had put in, and which she wanted replaced. If this were only a single question, I would be disposed to allow it. Do you intend to go into the whole matter?

Mr. Evarts—No, I intend to confine myself to a few points of this writer's opinions concerning this lady.

Mr. Beach—I don't understand how this becomes evidence in any way. I don't entirely comprehend the view with which it is offered. The plaintiff appears as a witness on the stand. I suppose this evidence is offered with a view to impeach his credibility. They propose to show, by the evidence now offered, that this witness eulogized this lady in a review of her course and career. How do we know, Sir—what evidence is there in this case to show what were her sentiments, or what was the conduct of this lady?

Judge Neilson—Up to that point of time.

Mr. Beach—Yes, Sir; up to that point of time. How are they laying the foundation to impeach the credibility of the witness, by proving his opinions or sentiment of the conduct of a woman, whose sentiments or conduct are not the subject of proof before the Jury, where the Jury must be held to be entirely ignorant of the subject of the biography? It is a simple proposition to prove a eulogistic history of a woman with whom or about whom this Jury cannot legally have any knowledge or connection.

#### THE WOODHULL BIOGRAPHY ADMITTED.

Judge Neilson—If we receive this, we are to receive it as if he read some expressions from a newspaper, and asked the witness if those were his sentiments.

Mr. Evarts—If he was the author of them, and if they were his sentiments.

Mr. Beach—If it is proposed to read something that has not a legitimate and material effect upon some material issue in the case, as the credibility of the witness, or some other issue, it is totally immaterial and inadmissible. Now, I ask, your Honor, what legal effect will it have upon any aspect of this case, or upon any party or witness in this case, to prove that Mr. Tilton, in this publication, approved of the character or conduct of Mrs. Woodhull? What knowledge—what legal knowledge have we of Mrs. Woodhull? What representation has been given here which should render the testimony of this witness entitled to less credibility because he had connection with Mrs. Woodhull, or association with Mrs. Woodhull, in any way. There is no evidence at all, Sir. I do not understand the counsel to propose to give any proof in regard to that. Your Honor or the jury cannot take judicial information as to the tenets or career of Mrs. Woodhull; and in that sense, I submit to your Honor, it is entirely immaterial evidence, unless my friend intends to go further

and enlighten us somewhat in regard to the doctrines and course of life of this lady.

Judge Neilson—I think we will take the answer to the question, and you can have your exception, Mr. Beach.

Mr. Evarts—You have this life? A. I never wish to see it again.

Q. The heading is "Mr. Tilton's account of Mrs. Woodhull." You gave that title to it? A. That is the biography.

Judge Neilson—That is not properly a part of your inquiry; not necessarily a part of your inquiry.

Mr. Evarts—No, it is not a part of this inquiry. I read:

I shall swiftly sketch the life of Victoria Claflin Woodhull, a young woman whose career has been as singular as any heroine's in a romance, whose ability is of a rare and whose character of the rarest type; whose personal sufferings are of themselves a whole drama of pathos; whose name (through the malice of some and the ignorance of others) has caught a shadow in strange contrast with the whiteness of her life; whose position as a representative of her sex in the greatest reform of modern times renders her an object of peculiar interest to her fellow-citizens; and whose character (inasmuch as I know her well) I can portray without color or tinge from any other partiality save that I hold her in uncommon respect.

Q. Did you write that, Mr. Tilton. A. I did, Sir.

Q. And did that, as I have thus read it to you, express your opinions as then entertained? A. When I wrote that biography I believed a good portion of it; I made an extravagant statement of it with a view to conduce to the purpose—

Q. For rhetorical effect? A. No, Sir; not for rhetoric.

Q. For what? A. I have already told you that Mr. Moulton, Mr. Beecher and I were set on the enterprise of hardening and controlling that woman, and I believed, to a considerable degree, during my early months of acquaintance with her, that she was much tranced. I did not believe in her extravagances.

Q. I am speaking of the period when you wrote this? A. I wrote that in the first months of my acquaintance with her.

Q. You wrote it in September? A. Yes, Sir; and I had been acquainted with her three or four months.

Mr. Beach—The gentleman has succeeded in interrupting the answer of the witness.

Mr. Evarts—That is my right.

Mr. Beach—No, he has not the right to interrupt the witness's answer.

Judge Neilson—If the answer is responsive?

Mr. Beach—It was responsive.

Mr. Evarts—That is a matter of opinion.

Mr. Beach—Let us hear the answer of the witness.

[The TRIBUNE stenographer read the question and answer.]

Mr. Beach—[To the witness]: You had got so far; now finish your answer.

Mr. Evarts—We will see about that. My question was if he wrote that and if these were his opinions at the time.

Judge Neilson—He stated they were, in part, and in part they were not.

Mr. Evarts—That is a certain point of time. Now, how he came to have those opinions is nothing to do with the ques-

tion. The point is whether he held them when he wrote them.

Judge Neilson—The witness has answered that he did in part and in part he did not.

Mr. Beach—He went further; the witness said that he wrote extravagantly with a view to conduce to a certain purpose. The question counsel then presented to him was, "With a view to rhetoric?" and he answered, "No," and he went on explaining the view with which he wrote it, in answer to an interrupting question put by the counsel.

Judge Neilson—I think that is proper that we have down.

Mr. Beach—No, Sir; it was interrupted.

Mr. Evarts—That is down, and then I was going on—

Mr. Beach—This is most astonishing. Your Honor heard the question and the answer read, and the interruption, and it was right for the witness to explain.

Judge Neilson—But still the question is if he has not substantially answered the question; I think he has.

Mr. Evarts—[To Mr. Beach.] You can draw it out further on re-direct examination.

Mr. Morris—But is it not the right of the witness to answer fully?

Judge Neilson—I believe he has answered that he did believe it in part, and he did not believe in the extravagancies.

Mr. Fullerton—He went on further and said that himself and Mr. Beecher and Mr. Moulton had agreed upon a line of conduct with reference to this woman, and in making the explanation he was interrupted.

Judge Neilson—He said that and it is down.

Mr. Fullerton—One-half of what he said is down and the rest of it is not down on paper.

Mr. Evarts—That is only a reproduction of what he said on his direct examination. He referred very clearly to that before. Now, I will read this extract. [Beginning to read]:

Judge Neilson—Turn over a page or two, Mr. Evarts. [Laughter.]

Mr. Evarts—Oh! yes, Sir; I have but very few passages to read, and this is quite short. Please listen to this and see whether you wrote that, and whether it expressed your sentiments at that time. [Reading]:

One of her texts is, "I will lift up mine eyes to the hills whence cometh my help—my help cometh from the Lord who made Heaven and Earth."

The Witness—I believe in that.

Mr. Evarts [continuing to read]:

She reminds me of the old engraving of St. Gregory dictating his homilies under the outspread wing of the Holy Dove.

Did you write that? A. I did.

Q. Did it express your sentiments at the time? A. That was not a sentiment; it was a reminiscence of a picture that hangs in my library; that is to say a woman who had this text (she had it written somewhere on a card over her desk), and it reminded me of that picture; any one who could habitually live with such a text as that, and whose life, whether truly or falsely, pretends to be guided by such a text, reminded me of a picture in my library of St. Gregory dictating his homilies under the outspread wing of the Holy Dove.

Q. You knew that lady, and had known her for months? A. Yes, Sir.

Judge Neilson—He says that reminds him of this picture,

Mr. Evarts—That is what he said—that it reminded him of the old engraving of St. Gregory.

Mr. Fullerton—It is not worth while to let us have it again; if there is any other question to put, let us have it and make some progress.

Judge Neilson—He has answered that.

Mr. Evarts—Please listen to this, and say whether you wrote it, and whether it expressed your views concerning her and her opinions, as you then entertained them:

On social questions, her theories are similar to those which have long been taught by John Stuart Mill and Mrs. H. B. Stanton, and which are styled by some as free-love doctrines, while others reject this appellation on account of its popular association with the idea of a promiscuous intimacy between the sexes—the essence of her system being that marriage is of the heart and not of the law, that when love ends marriage should end with it, being dissolved by nature, and that no civil statute should outwardly bind two hearts which have been inwardly sund-red; and finally, in religion, she is a spiritualist of the most mystical and ethereal type.

Did you write that, or did that express your views concerning her opinions as you then entertained them? A. I wrote that, and I think that is an accurate statement of her opinions as she then held them; that is not an expression of my opinions, but of hers.

Q. That is a statement of her opinions as you understand them? A. Yes, Sir; when that statement was made she had never made any extravagant utterances on the subject of free-love: she always quoted Stuart Mill and Mrs. Stanton as her exemplars.

Q. Now, please answer this, which I am happy to say is the last sentence of the biography, as well as of my inquiries:

Known only as a rash iconoclast, and ranked even with the most uncouth of those noise-makers who are waking a sleepy world before its time, she beats her daily gong of business and reform with notes not musical, but strong, yet mellows the outward rudeness of the rhythm by the inward and devout song of one of the sincerest, most reverent, and divinely-gifted of human souls.

Q. Did you write that, and did that express your opinions then? A. I wrote that, Sir; that is no part of the extravagances in the sketch; it culminated in that.

Q. And that is the end? A. Yes; I had not so high an opinion of her as that, Sir.

Q. But still your opinions were in that direction, though they did not get so high? A. What, Sir?

Q. Your opinions were in that direction, although they did not reach so high? A. No, Sir; that was part of the design; that was part of the little sketch, to make it thoroughly acceptable to her, so that it might accomplish its service.

#### COUNSEL MAKE A CORRECTION.

Mr. Fullerton—There is one question here in reference to the publication in *The Graphic*. You asked whether there was not an omission in the Catherine Gaunt letter. You spoke of *The Graphic*. I find *The Graphic* here and the part

which was omitted is lithographed. I think the witness ought to answer the whole question.

The Witness—I respectfully ask the Court that Mr. Evarts may do me justice in respect to the Catherine Gaunt letter.

Mr. Evarts—It is not necessary; I stated that when the publication in *The Graphic* was produced it would of course speak for itself.

The Witness—I desire also, Mr. Evarts, that it shall speak for me. Be kind enough to inform the jury that it was there lithographed as it was written exactly. I would do the same for you under the same circumstances.

Mr. Evarts—I will do exactly as I said I would, that when *The Graphic* was produced with it in I would present it. That I will do.

The Witness—Thank you.

Mr. Evarts—But I looked over what appear to be a reproduction of *The Graphic*—what do you call them?

The Witness—*Fac-similes*; it is an exact one.

Mr. Evarts—And the Catherine Gaunt letter is not among them in this book.

Mr. Fullerton—That is the difficulty. That book no one seems to be responsible for; it is *nullus in filius*.

Mr. Evarts—That I agree to. I do not want to hold any one responsible for it; it was the only material we had.

Mr. Evarts—Now, this is *The Graphic* of September 18, 1874, and that was the first, perhaps the only issue of this? A. That is the only time I ever published the Catherine Gaunt letter, and that publication is correct.

Q. Now, look at that paper, and say whether it is the issue of *The Graphic* in which the publication—the lithographic publication or *fac simile* publication of certain letters was made by you and at your request? A. It is, Sir.

Q. And were any such papers so published as *fac similes* in any other issue. Do you know whether that included all, or were there any others? A. There were very many documents published in *fac simile* in connection with Mr. Moulton's statement. This letter was published in connection with mine.

Q. And this is the only publication of *fac similes* in connection with your statement that you made? A. Yes, Sir; this is the only time that I published the Catherine Gaunt letter, and I published it exactly correct.

Q. That speaks for itself. But my point is this—whether you made any other publication of *fac similes* except what is found in this number of *The Graphic*? A. I never made any other publication of this letter in *fac simile* or any other way but that which is in your hands.

Q. I do not confine myself to the Catherine Gaunt letter. Did you publish any statement or number of *fac similes* of any of the documents or papers except what are on these sheets which I now hold? A. No, Sir; the other statements were published by Mr. Moulton.

Mr. Evarts—Now I have it. Now, the letter, as here *fac similed*, contains the omitted passage and the omitted word "any," and it answers entirely I presume to the original letter. *This is The Graphic* of September 18, 1874.

The Witness—I thank you, Sir.

Q. Now, you furnished this? A. I did, Sir.



Mr. Everts—I suppose this had better be marked.

Mr. Beach—Oh! no, for Heaven's sake; there are enough.

Judge Neilson—The statement is taken in evidence.

Mr. Everts—It may be marked for identification.

Mr. Beach—There will be no trouble about it.

Judge Neilson—The stenographer has down the date of the paper, probably.

Q. Now, after this September publication of yours—this was published in *The Golden Age* and *Golden Age Tracts*? A. It was not published in *The Golden Age*.

Q. Published in *The Golden Age* Tract alone? A. Yes, Sir.

Q. Was there a larger circulation of them? A. I don't remember about that.

Q. You know there were a good many thousand of them distributed by you?

Mr. Fullerton—We object to that.

Judge Neilson [To the witness]: You may give the general fact.

Mr. Fullerton—How does it become material in this case?

Judge Neilson—I don't see, but still I think we will take the general fact.

Mr. Everts—Were there a good many thousand of them sold? A. No, Sir. I think not, Sir; I think that it was reprinted in the newspapers; I don't think very many copies of the tract were sold.

Q. The market was spoiled by reproduction in that way? A. No, Sir; I don't know whether the market was spoiled or not.

Q. You presented it in that light, that it was multiplied in the newspapers, and so there were less sales than there might have been? A. You can judge of that as well as I, Sir.

Q. You brought it out. You said it was published in the newspapers. In what connection did you bring that out? A. In answer to your question.

Q. Bearing on the question of the sales in this form? A. No, Sir. You asked me how widely it had been circulated. I didn't understand you to ask me how widely it had been sold.

Q. Yes, Sir? A. I don't remember that the sales amounted to very much.

Q. Do you remember that they were announced in your paper as having been sold to the amount of twelve thousand? A. Copies?

Q. Yes, Sir. A. I do not remember.

Q. Do you remember what the emoluments were from the publication?

Mr. Fullerton—Is that proper?

Mr. Everts—Why not?

Judge Neilson—I do not see.

Mr. Beach—Why is it? I cannot see what it has to do with the issue.

Mr. Everts—It is not of itself very material. It is a single circumstance. It is not very material, but it is good evidence, I suppose.

Mr. Fullerton—I don't see that it has any allusion to this.

Mr. Everts—You don't see any application of the Woodhull matter to this case, I suppose?

Mr. Fullerton—No; I did not.

Mr. Everts—That is the difficulty. We passed that a long while ago.

Mr. Fullerton—It was a matter got up by Mr. Beecher, the witness and Mr. Moulton.

Mr. Everts—I don't care enough about it, if you object to it.

Judge Neilson—The question assumes that there were emoluments, and there may not have been any.

#### THE STEINWAY HALL SPEECH.

Mr. Everts—If the objection is insisted upon, I will waive the question. [To the witness]: Now, Sir, you made a speech at this Steinway Hall meeting, at the opening of it. A. I said a few words, which Mr. Moulton quoted the other day.

Q. Can you give that speech? A. No, Sir; nor any other that I ever made.

Q. You cannot give it, then, from memory now? A. No, Sir.

Q. Did you hear it as given by Mr. Moulton the other day? A. Yes, Sir.

Q. How did that reproduction of it strike you, from your own memory of it? A. Well, Sir; it struck me as being a very fair one.

Q. Now, do you remember an interruption or disorder occurring at that meeting at which you intervened. A. I have a dim recollection that somebody in the gallery tried to interrupt the speaker, and I stepped forward and made some remark; I have forgotten what.

Q. Let me see if I can recall to you a passage in the speech—in the lecture, if it was a lecture—of Mrs. Woodhull. Do you remember her saying in the course of this lecture or address, that Congress ought to pass a law liberating all persons from their marriage relations, and leaving them to seek such affinities as they pleased? A. No, Sir.

Q. And that on that there arose disorder in the audience? A. I don't remember any particular passage in the speech whatever.

Q. You cannot say whether that was the one on which that disorder arose. A. No, Sir. The scene that arises in my mind, in reference to your question, was an interruption by some persons who tried to interject some remarks, and my recollection is I said; "Wait until the speaker gets through, then there will be an opportunity for any one to reply." That is my recollection of it.

Q. My question is whether that interruption—which was one of dissent or disapprobation, was it not? A. Yes, Sir.

Q. My question is whether that interruption was not upon her promulgation of that proposition? A. I don't remember at what particular point the interruption was.

Q. Do you remember whether your call or statement to the audience was, that you knew what was in, or to be in her address, and there would be nothing worse in the rest of it than what she said, and that they might as well hear her through? A. Oh! No, Sir; I didn't know what she was going to say.

Q. Did you or not have in your hands the slips of her speech while she was delivering it? A. No, Sir.

Q. You did not? A. No, Sir.

## THE WORLD CARD.

Q. Now, as I understand you, Mr. Tilton, your acquaintance and intimacy, of the degree that it had attained with this lady, would have continued, for aught we have now heard, except for this "Tit for Tat" article coming up? A. I cannot answer as to that, Sir.

Q. That is the only interruption that you have spoken of? A. Well, when the interruption came, that ended it.

Q. Well, we know you said so. Now, Sir, after the publication of this card of Mrs. Woodhull in *The World* in May, did not that publication attract comment and scandal concerning Mr. Beecher and your family? A. I don't think it did. I don't now remember that the card attracted much attention, and I cannot recall any instance of any person, outside of the very intimate circle of my acquaintance, who had any idea to whom that was pointed.

Q. Very well. That was the happy state of things, was it not, in the community in that regard, that nothing was moved or agitated by that card? A. I cannot say.

Q. So far as you knew, or so far as you observed, nothing material? A. I cannot say the card produced no impression.

Q. Nothing material—nothing that occasioned solicitude or attention from you? A. No, Sir; I think not, because the threat which the card contained had not been carried into execution.

Q. We have heard the card. No harm came from it.

Mr. Fullerton—[To the witness]: You don't understand his (Mr. Evarts's) question.

Mr. Evarts—[To Mr. Fullerton]: Anything you want with me?

Mr. Fullerton—Yes, Sir. [To the witness.] You don't understand his (Mr. Evarts's) question. He was answering it when you (Mr. Evarts) used another word, whether it occasioned solicitude or attention from him.

The Witness—I understood you to ask, Mr. Evarts, whether the publication of Mrs. Woodhull's card in 1871, with these blind allusions to Mr. Beecher and to Mrs. Tilton, produced public comment.

Mr. Evarts—Yes, Sir, produced any comment, and then I used another word, or attracted any solicitude or attention on your part? A. On my part?

Q. Yes, Sir. A. Oh! it attracted great solicitude on my part.

Q. It is not whether the card attracted it, but whether anything arose. You told us about the card, and your going there. Now, did there follow from that, in the comments of scandal, anything that excited your solicitude or attention? A. My impression is that in *The World* newspaper some time afterwards there were some references very pointed, and still rather blind, at Mr. Beecher—mischievous articles, which some people might understand, and which the great public might not; I have a recollection of that sort.

Q. But still nothing that came to any head? A. I don't know what you mean by coming to a head.

Mr. Evarts—Well, I cannot explain. It is one of those things—

Mr. Fullerton—That no fellow can find out.

## MR. TILTON'S SIGNIFICANT POEM.

Mr. Evarts—That no one can make any more simple. [To the witness.] Now, when did you publish "Sir Marmaduke's Musings?" A. The poem bears its own date.

Q. Well, I know it does, but I don't know that it appears it was published at that time or not. It was published about the time it is dated—about the time of its date it was published? A. Oh! yes, Sir, somewhere about that time.

Q. So I supposed. Now, at this date, November, 1871, there was a condition of quiet and freedom from agitation about this scandal, was there not? A. The scandal had not yet been made public. It was not made public until a year afterwards, until Mrs. Woodhull's tale of November, 1872.

Q. This affair had reached no further than Mrs. Woodhull's card, and no public attention had followed from that card to your family or Mr. Beecher's? A. Well, Sir, I cannot say that no attention had; I don't think the newspapers spoke in an unkindly manner, either of Mr. Beecher or of Mrs. Tilton, in consequence of Mrs. Woodhull's card of May, 1872. How far private talk goes, I cannot understand.

Q. What you didn't hear you cannot speak of; but you knew of no public attention to it? A. No, Sir, not such as followed a year after.

Q. Where did you publish this poem of yours? A. In *The Golden Age*.

Q. And published it under your own name, did you not? A. No, Sir.

Q. You did not? A. No, Sir, as you will see by looking at it.

Q. I do not find anything here. A. It is over my own name, Mr. Evarts.

Q. Oh, well, well; as matter of fact, without discussing the criticism, it is under your own name as it is here.

Judge Nellson—[To the witness.] It is put out with your name?

The Witness—Yes, Sir.

Mr. Evarts—Now, it reads here: "Sir Marmaduke's Musings, by Theodore Tilton," and then follows the poem? A. Yes, Sir; it was not published in that way by me.

Q. You signed it? A. Yes, Sir.

Q. Now, was this in its conception by you a personal experience of yours that you meant to put forth? A. Well, Sir, I suppose that the only answer I can give to that is that every man who writes must write out of the fountain of his own experience. How far that is fanciful, how far it was personal at the time of its composition, I could not at this late date say. It must be judged, as all literary productions are judged, taking their color from the mood of the writer, from his experience of life, hope or despair.

Q. Well, do you mean to say that there is no part of this poem that in its conception took yourself and your experience of life as its subject? A. Yes, Sir, one stanza.

Q. And only one, you think? A. Well, one in particular, and the others in a modified form.

Q. Very well. Now, we will see. I will read you this clause and see whether that includes your personal experience? A. If you will allow me to say, at the beginning, the subject of that

little poem was to express, in the form of a soliloquy, the grief and sorrows of a man utterly broken down in every one of the points in which a successful life might have been continued as a success.

Q. And which are named here? A. Yes, Sir.

Q. Very well, I suppose so. I will ask your attention to this phrase, and see if it was to that intent:

I won a noble fame,  
But, with a sudden frown,  
The people snatched my crown,  
And in the mire trod down  
My lofty name.

Was that an expression of your sentiments in regard to yourself and your own position? A. No, Sir, not in any other degree than as a hint or suggestion of a man who had stood well with the public, and who had lost something of the tribute which the public had theretofore paid to him.

Q. Of course I do not mean to hold you for mere poetic licence or expression. Now, this:

I bore a bounteous purse,  
And beggars by the way  
Then blessed me day by day,  
But I, grown poor as they,  
Have now their curse.

Was that also an expression of your sentiments? A. That is poetic licence.

Q. A little extravagant? A. Yes, Sir; for I never bore a very bounteous purse, and I don't think any beggar ever had any occasion to curse me. [Laughter.]

Judge Neilson—[To the audience]: Now, be quiet.

Mr. Evarts—

I gained what men call friends,  
But now their love is hate,  
And I have learned, too late,  
How mated minds unmate,  
And friendship ends.

Was that an expression of your sentiments and feeling? A. No, Sir; I don't think there was anything particularly pointed in that to my case; on the contrary, my friends, perhaps, were closer to me than ever.

#### THE POEM NOT AUTOBIOGRAPHICAL.

Q. So you think there was no appositeness in that phrase to your experience in life? A. That is to say, it was not an autobiographical transcript of my particular experience.

Q. And that carries no parallel with any experience of yours, you think? A. No, Sir.

Mr. Evarts—[reading]:

I clasped a woman's breast,  
As if her heart I knew  
Or fancied would be true.  
Who proved—alas! she too—  
False like the rest.

Did that refer to any experience of your own, as you intended to express it? A. Yes, Sir.

Q. Did you not suppose that the public who read that under your name would carry some connection from it to your wife and your family? A. No, Sir.

Q. You did not? A. No, Sir.

Q. It never entered your head? A. No, Sir; it may have been a rash heedlessness on my part to fling it before the public. If I had the slightest thought that the public would have gathered from those little lines any reproach on Elizabeth they never should have gone into print.

Q. Now, Sir, this was six months after the card of Mrs. Woodhull, in May, and was after there had been in circulation enough of imputations upon your wife to have reached Mrs. Woodhull in May, and yet you think in November following a publication by you in your own newspaper of that verse could carry no danger towards your family as being its subject. A. I will answer you, Mr. Evarts. If I had stopped to reflect that the publication of that little poem which I wrote one day on a railway train, would have led any human being to have supposed that I meant Elizabeth, I would have cut off my right hand rather than have printed it.

Q. What motive led you to print it? A. The same motive which leads me to print everything which I write.

Q. And no other or more important motive than that? A. None whatever.

Mr. Evarts—Now, we have another verse:

I am now all bereft,  
As when some tower doth fall,  
With battlements and wall,  
And gate and bridge and all,  
And nothing left.

Was that a parallel in the conception of this poem to your own experience of life? A. No, Sir; I do not think it was particularly. I had my children left.

Q. Now, Sir, as I understand it, the principal and most important trait that is included in that poem is the verse that refers to your deceit in love—being deceived in love? A. State that again, if you please.

Mr. Evarts—[To THE TRIBUNE stenographer.] Read the question.

THE TRIBUNE stenographer read the question.

A. Yes, Sir.

#### HINT OF A BLACKMAILING SCHEME.

Q. And you were absent on a political campaign at the time the Woodhull publication of 1873 was made, as you have stated? A. Yes, Sir.

Q. Did you ever see or hear of that publication, or any portion of it, being in slips and proposed to be published before it was published? A. No, Sir; all I ever heard on that subject was after I got home, through Mr. Beecher, who said that it had been presented to him, or at least he had been spoken in advance of its publication; and, as I understood, some blackmail had been leveled on him.

Q. You have made some statement about that representation not in your direct examination.

Mr. Beach—No, Sir.

The Witness—Oh, no Sir, I never saw any slips of it; I did not know it was going to be published.

Q. Whatever you did do, since you have begun it, we will hear now. What did you hear through Mr. Beecher about the Woodhull publication having been

brought to his notice before it appeared? A. My impression is that he made a statement to the effect that a few days before it was published some person had called upon him and notified him that such a publication was going to be made, and that he considered the call in the light of a threatening visit, and had rebuffed the man.

Q. Sent him away? A. Yes, Sir; that is the substance of it.

Q. That is all? A. I don't know who it was that made the call; my impression is that he made some allusion to that in some of his public utterances.

Mr. Evarts—Yes; in some one of his statements. [To the witness.] Now, when did you leave New York to start on this tour on which you were absent at the time of the publication? A. Well, Sir, I spent nearly all the time between the Cincinnati Convention in May and the Presidential election—nearly all the time.

Q. You mean the campaign in general? A. Yes, Sir.

Q. Well, this particular absence I refer to. How much were you in New-York in the month of October? A. My impression is that I came home after the Maine election and spoke in the Academy of Music, and then hastily returned to New-England, in order to fill up a part of the time in the State of New-Hampshire.

Q. Then you think you were not much in New-York in October? A. No, Sir; not much.

Q. Did you have any communication of any kind, either personal or by letter, with Mrs. Woodhull from the time that you broke off about the "Tit for Tat" letter until this publication of the Beecher scandal? A. Until then?

Q. Yes, Sir. A. I had not then.

Q. Well, I say until then. I am not asking you about any other thing than that? A. The last time I had any communication with Mrs. Woodhull was in April, 1872. I have never had any communication with her since, from that time to this.

Q. That is exactly what I have asked you—no written or personal communication with her? A. No, Sir; I have not had any interchange of any sort.

Q. Did she have any personal communication, or send any written communication to you? A. Not that I know of.

Q. In that interval? A. Not that I know of, Sir.

Q. It didn't come to your notice, if she did, you say? A. No, Sir.

Mr. Evarts—[To the Court.] We have reached the usual hour of adjournment, if your Honor please.

The Witness—Or, if she did, I have forgotten it. At all events, I have never made any answer to any.

Judge Neilson—[To the Jurors.] Please attend to-morrow morning at eleven o'clock.

Mr. Mallison [the Clerk]—The Court now stands adjourned until Wednesday morning at eleven o'clock.

## TWENTY-THIRD DAY'S PROCEEDINGS.

### CROSS-QUESTIONING NEAR ITS END.

THE WOODHULL RELATIONS FURTHER PROBED—

MR. BOWEN'S PARTICIPATION SIFTED AGAIN—  
DETACHED LEAVES OF THE "TRUE STORY."

WEDNESDAY, Feb. 10, 1875.

The stream of testimony to-day flowed in smoothly; it was only once or twice ruffled, and then only slightly. It became evident after the first hour or two that the cross-examination was drawing to a close. Mr. Evarts dwelt on many of the occurrences of the past four years, some of which were fresh in the minds of those who have followed the progress of the trial, while others were new. The so-called Winsted scandal was first taken up, and Mr. Evarts read a letter written in Tidioute, Penn., in January, 1870, to a Mr. Hastings, in which were explained the circumstances of Mr. Tilton's visit to Winsted, Conn., during which scandal arose.

A half hour or more was devoted to-day to Mrs. Woodhull's relations to the case, the main matter inquired about being whether the witness had heard before November, 1872, that slips of the publication in Mrs. Woodhull's paper were in existence several months previous to its publication, Mr. Tilton replied "No," squarely. He was questioned about the frequency of his calls upon Mrs. Woodhull at her office and at her home. Very close inquiry was made regarding the manner in which Mr. Tilton spent the 3d, 4th, and 5th of July, 1871, the examination being pressed to ascertain whether the witness passed a part of each of those days and one or all of the nights at Mrs. Woodhull's house. The witness did not recall any such occurrence, and insisted that he never passed more than one night under Mrs. Woodhull's roof. Mr. Tilton's reasons for publishing *fac simile* copies of his letters in *The Graphic* were asked for; he said that he had been accused of forging letters, and it was to remove that imputation that he thus printed exact copies of the originals. There was a long examination about the manner in which the plaintiff regained possession of his infant child during the time in 1870 when Mrs. Tilton was living with her mother, having left her husband, carrying the child with her.

The queries then jumped to the consideration of events four years later, and to the plaintiff's appearance before the Plymouth Investigating Committee. Mr. Evarts read from Mr. Tilton's cross-

examination on that occasion the latter's explanation, or theory, of his wife's alleged crime. Other parts of that examination were read, some of which the witness admitted, while others, he asserted, were wrongly reported. Mr. Evarts now asked Mr. Tilton if he was an expert phonographer, whereupon the witness quoted Solomon's words, "Let another man praise thee, and not thine own mouth." Mr. Evarts demanded rather sharply what Solomon had to do with this case, and insisted on Mr. Tilton's answering, which he did in the affirmative. This led to inquiries as to what letters from Mr. Beecher to Mr. Moulton had been copied by Mr. Tilton. He named some of the letters, saying that he had only copied a few. Further inquiries were then made respecting Bessie Turner, Mr. Bowen, and various interviews held during 1870 and 1871. The deprecatory and sympathetic letter of Mr. Beecher written to Mrs. Tilton subsequent to the publication of the scandal in 1872—six months afterward, Mr. Tilton says—was read by Mr. Evarts. Although this letter has been published before, its contents were listened to with evident interest by the audience.

The conversation with the Rev. Mr. Halliday, at which, in the presence of Mr. Bell, Mr. Tilton is alleged to have earnestly denied the story of the scandal, was brought by means of questions before the witness. This interview seemed to be very dim in Mr. Tilton's memory. Many of the statements ascribed to him he described as very weak, and others he could remember nothing about. The statement of Mr. Tilton in 1872, known as "The True Story," was very minutely considered. It appears that, besides the paper shown to various persons, there was an original draft, which only a few saw. This, Mr. Tilton says, was destroyed when the other copy was made. The second copy, the witness testified, was shown to Wm. C. De Witt, Geo. A. Bell, Gen. Tracy, Franklin Woodruff, John W. Harman, and a few others. The original draft Dr. Storrs, Mr. Clark of *The Golden Age*, and others saw, either in whole or part. Mr. Tilton last saw the second copy in the Spring of 1873, when he gave it to his wife. She told her husband (he says) that she had destroyed it, but after she left his house he found a few of the last pages in a bureau drawer.

Afterward the attention of the witness was turned back to January, 1871, when he contemplated the publication of Mr. Bowen's letter. His reasons for this purpose, he said, were that on his lecture-tour in the West many scandals were circulated, arising

from his separation from *The Independent and The Union*, and it was reported that he was an embezzler, had been divorced, etc. The people demanded an explanation, and he wished Mr. Bowen's letter published to clear his name. The tripartite agreement was next put to the test, and the manner of its composition again investigated.

One of the numerous good points which Mr. Evarts daily makes, and which from their very dryness frequently pass unnoticed by the audience, was put to-day when Mr. Tilton so far forgot himself as to violate a rule in the use of language which he laid down to Mr. Evarts on the day before, at the risk of being captious, namely, in the signification of the words "certain" and "sure." The witness said that he was "sure." "'Certain,' you mean," said Mr. Evarts. But Mr. Tilton continued, apparently oblivious of the correction of the examiner, who was obliged to laugh heartily at his own joke, while Judge Neilson's eyes twinkled with merriment.

## THE PROCEEDINGS—VERBATIM.

### THE WINSTED SCANDAL.

The Court met at 11 a. m., pursuant to adjournment. Theodore Tilton was recalled and his cross-examination resumed.

Mr. Evarts—Mr. Tilton, you were to attempt to verify the question of whether that was a correct date or a mistaken one. [Showing witness a letter.] A. I have done so, Sir.

Q. What date was it? A. I will give it to you, Sir. [Referring to a memorandum book.] What is the date of that letter, Mr. Evarts?

Q. The date is January 8, 1869—Tidioute, Pennsylvania, January 8, 1869? A. Yes, Sir. Well, I have consulted a memorandum book of my lecture season in 1868-'9 and find that on January 8, 1869, I was at the Ohio University, Delaware City. I find also on application to Mr. Mumford, my lecture agent, that I was at Winsted—or rather that I was at Tidioute, Pennsylvania, January 8, 1870; also that I was at Winsted December 28, 1869.

Q. December 28, 1869? A. Yes, Sir.

Q. Then you say that the proper date of that letter should have been— A. Should have been 1870; yes, Sir. It must have been just such an error as you pointed out, customary with writers at the beginning of a new year.

Mr. Evarts—I will read this letter. [To Mr. Fullerton.] Have you seen it?

Mr. Fullerton—Yes, Sir; I have seen it.

### MR. TILTON'S EXPLANATION OF THE WINSTED SCANDAL.

Mr. Evarts [reading]:

TIDIOUTE, Pa., Jan. 8, 1869.

MY DEAR MR. HASTINGS: The "lady" to whom you refer is a young school girl who was spending a holiday vacation at our house, and who, since I was not going to lecture any nearer

New-York than Winsted, went with me to that place to hear the lecture.

Arriving at Winsted (where I *expected* to be sent to a private house), I was put into a room in the hotel which had fire, and *she* into one which had no fire. I could not exchange rooms with her, for I could not be without a fire myself. So I called for two rocking chairs, and she sat at my stove and read to me till I threw myself on the bed and went to sleep.

This was in the afternoon—just after dinner.

Pretty soon some gentlemen called (perhaps yourself—for I cannot remember names), and I went to the church to fix the platform, then went to the scythe factory, and about town, hardly returning till near dark, or very late.

Meanwhile the "lady" had gone to sleep and wakened again, and was sitting by the stove when I returned.

If any servant saw her with her "dress unbuttoned," it must have been while she was asleep, and when he took advantage of my absence to intrude upon a young girl in a lone and strange place.

I never saw her with her "dress unbuttoned."

Shortly after my return from the scythe factory, the minister called to see me, and it was then that I ordered cider, and we drank it together—all three of us. He remained with me till the lecture, and after it was over took my young companion and myself to his own house, gave us supper and more cider, and accompanied us back to the hotel, when, without going into my room at all, the child went straight to bed in her own, and I saw no more of her till morning. But perhaps the *servant* stole in upon her a second time, and saw her with her "dress unbuttoned."

I wish you would say to the proprietor of the hotel (for I cannot recall either the name of the place or the house) that his servant who would thus treat his master's guests—and who, particularly, would associate such indelicate thoughts with a mere child—and who would tattle concerning what he saw in rooms whose occupants themselves summoned him in freely, is what, among honorable men, passes for a *sneak*.

This, since you ask for it, is the exact statement of the case.

I am yours, truly,

THEODORE TILTON.

[Marked "Exhibit D, 101."]

Q. Now, Mr. Tilton, that is the matter that is known and has been spoken of as the Winsted imputation, or scandal, or whatever it has been called? A. Yes, Sir.

Q. And it was more recent in its relation to the period of December, 1870, than you had supposed, is it not? A. Well, six or seven years ago.

Q. I thought you spoke of it in your testimony as an old story? A. Yes, Sir.

Q. This occurrence was in a year of the time that Mr. Bowen and you were talking about the charges against you? A. It seems now, by the date—by the correct date, to have been little over a year. I had supposed that it was perhaps a year or two—two or three years, somewhere in the past.

Q. I thought you said it was the 23th of December, 1869, that you were at Winsted. A. I learned that fact yesterday by telegram.

Q. Well, I know. That was less than a year from the time that you were talking with Mr. Bowen? A. Does it say 23th? Yes, it is about a year.

Q. I do not mean that it was less than a year; it was just a year. we will call it? A. The difference between Dec. 25th and 23th or 29th.

Q. This letter appears to have been written to some friend or acquaintance in answer to some inquiries or suggestions about

this occurrence, was it not? A. I cannot recall who the gentleman is, Mr. Hastings by name, to whom it is written. My recollection is of the matter that while I was off lecturing somewhere in Pennsylvania or the West, Mr. Johnson, who was then my associate in *The Independent*, had received some question from some member of a committee there—

Q. At Winsted? A. At Winsted; yes, Sir—or some statement that the story was being used to my discredit, and he wished some explanation of it. That is my recollection.

Q. And this letter was written to this gentleman, whoever he may be, in consequence of your hearing of some reproach to you in this connection, and this is given as the explanation of it? A. Yes, Sir; that is the best recollection I have on the subject, now. I had forgotten the name of the gentleman until you revived it yesterday.

Q. And at the time that you wrote that letter, of course you had a fresh recollection of the occurrence. It was written within ten days after it happened at Winsted? A. Yes, Sir; so it seems by the dates. I had forgotten that fact when you spoke of it, yesterday.

#### CIRCULATION OF THE WOODHULL SCANDAL.

Q. Oh, well, of course. Mr. Tilton, did you know or hear of the existence of slips in advance of publication of the Woodhull scandal, before it was published? A. No, Sir.

Q. Did you— A. Let me amend that, Mr. Evarts. Perhaps I did not understand your question. After my return from New-Hampshire to the interview at Mr. Moulton's house—

Q. You have told us that—

Mr. Beach—Let him finish.

The Witness—I was then informed that either slips or the story in some shape had been presented to Mr. Beecher a fortnight previously.

Q. That I understand; but you then heard it for the first time? A. Yes, Sir; for the first time.

Q. After the publication, as you have stated? A. Yes, Sir.

Q. Have you never heard that for several months before the publication of the Woodhull scandal slips of it were exhibited in the different newspaper offices of the City of New-York, or some of them? A. I have heard in late days a statement to this effect, that certain newspapers had the essence of the story, but in what shape I never understood.

Q. Well, the essence of the story that afterward appeared in the Woodhull publication you mean? A. Well, the essence of the story of Mr. Beecher's relationships with Mrs. Tilton.

Q. Well, you did hear— A. For instance, I had heard that some gentlemen in *The Eagle* office have said that they knew the story a long while ago—had it in their office—but what the foundation for the statement is, I have never understood.

Q. Well, I have made no inquiry concerning anything except this publication that the Woodhulls made? A. Yes, Sir.

Q. Now, do you remember to have heard that that publication of the Woodhulls, as it appeared in November, in whole or in part, had been put into the shape of slips or type, and had been exhibited in some, or one, of the newspaper offices of the City of New-York other than Mrs. Woodhull's own publication office? A. No, Sir.

Mr. Beach—Well, Mr. Evarts, when did you ask as to his hearing this?

Mr. Evarts—I will follow it up, you know, as to the time, when I get the fact. [To the witness.] You say you never—

The Witness—In this way—

Mr. Beach—Wait.

The Witness—In this way—

Mr. Beach—When I ask you to wait, will you please wait? I object, Sir, to his asking from this witness whether he has ever heard this up to this day.

Judge Neilson—[To Mr. Evarts.] I think you mean prior to its publication?

Mr. Evarts—I have a right, I think, your Honor, with great submission, in a cross-examination to find out first whether he ever heard, and then find out what time it was.

Judge Neilson—Was not your inquiry confined—

Mr. Evarts—No, it was not confined in terms. The point of the inquiry will now turn upon whether I get his knowledge prior to that time, but I must submit that I am not obliged to ask him in the first instance in a cross-examination if I want to get at a fact of that kind; I may first get at the fact whether he ever heard, and then I may fix the time when he heard it.

Mr. Beach—I submit, if your Honor please, when the answer to that question might essentially be that Mr. Tilton had heard of it since publication, or within a very recent time, that it would be incompetent evidence, and therefore I submit to you that the question shall be limited to the time of publication, or before the publication.

Mr. Evarts—That would be requiring a cross-examiner to tell the witness what was the point that he wished to arrive at.

Mr. Beach—There is no necessity for any great concealment, Sir, about a question of this kind.

Mr. Evarts—Oh, I agree.

Mr. Beach—The witness is asked—is sought to be asked, and the evidence is sought to be extracted from him, that prior to this publication he had heard of the fact that there were slips in existence of the whole or part of it. Now, that is material, and that alone is material, and to present a question which calls for information or rumors after that period, of the witness, is totally immaterial.

Judge Neilson—He should distinguish, certainly. I think he may answer. I think he has answered.

Mr. Evarts—Now, Mr. Tilton. [To the stenographer.] Won't you please read the question, Mr. Stenographer?

THE TRIBUNE stenographer read the question as follows: "Q. Now do you remember to have heard that that publication of the Woodhulls, as it appeared in November, in whole or in part, had been put into the shape of slips or type, and had been exhibited in some, or one, of the newspaper offices of the City of New-York other than Mrs. Woodhull's own publication office?"

Mr. Beach—I object to your question, unless it is limited to the time prior to the publication; but I do not understand that that is related.

Judge Neilson—Take an exception.

Mr. Evarts—Now, please to answer.

The Witness—I never heard any such story as that until

within the last year or two; I think I read it in *The Brooklyn Eagle*, a statement that the story was an old story, and had been known to some editors a long time: that is the substance of what I know about it.

MR. TILTON'S CALLS ON MRS. WOODHULL.

Q. Now, will you be so good as to give me some notion, as near as you can, of the frequency with which you were in Mrs. Woodhull's publication office, or business office, which ever it was, during the period of time that you have assigned as the space of your acquaintance? A. I think I said yesterday that I was there very frequently; I don't know how frequently.

Q. Were you there every day? A. No, Sir.

Q. Were you there several times a week? A. No, Sir.

Q. Were you there every week? A. I do not know that I was; I went whenever occasion required it.

Q. Well, I want the fact, how often you went? A. Well, with no regularity; a good many times altogether.

Q. Now, can't you recall to your mind that you went there at least once a week on the average? A. No, Sir.

Q. During that time? A. I should not like to say that, because there was no regularity in my going; I went when occasion required.

Q. Occasion required? A. Yes, Sir; sometimes when it did not require.

Q. Do you remember whether you went habitually when you were sent for, or went spontaneously? A. I always went when I was sent for.

Q. And did you sometimes go spontaneously? A. Yes, Sir.

Q. Can you give me any notion of the number of times that you were a visitor at the house of Mrs. Woodhull during that period of your acquaintance? A. I should say, perhaps, in all, ten or a dozen; still I won't be accurate—won't be positive.

Q. Can you give us any notion of the number of times that you passed the night under her roof? A. Yes, Sir; exactly.

Q. How many? A. Once.

Q. And once only? A. Once only.

Q. And that was in September? Well, I don't know that—I don't know that you fixed the date of that. A. That was on the occasion to which I referred in my cross-examination.

Q. Yes, on the occasion. But have you fixed the date of it? A. Yes, Sir.

Q. The date of the occasion—was it September? A. It was the month of September; I do not remember the precise date.

Q. Very well, that is near enough. Now, can you tell me where you were from the 3d to the 5th of July, 1871? A. What is that, Sir?

Q. Can you tell me where you were from the 3d to the 5th of July, 1871? A. Well, Sir, I have no data in my mind to answer that question on the spur.

Q. Well, you notice that the 4th of July came in between those days? A. Yes, Sir.

Q. Now, can you tell us how you spent the 4th of July, and the day before and after it, in that year? A. Well, I do not remember, Sir.

Q. Did you spend those days, or any part of them, in the company of Mrs. Woodhull? A. Well, that I do not remember.

Q. Did you spend those days, or any part of them, at the house of Mrs. Woodhull? A. That I do not remember.

Q. Did you spend either of the nights connected with those days at the house of Mrs. Woodhull? A. I was never at Mrs. Woodhull's house on any night, save one; the one which I have named.

Q. Then, I will ask you now this direct question: whether those three days, the 3d, 4th and 5th of July, 1871, you were not in the company of Mrs. Woodhull, or at her house, and did not spend either those three nights, or one of those nights, at her house? A. I will answer part of that question, Sir, with a peremptory no; I did not spend either one, or two, or three of those nights; whether or not during those three days I saw her, I cannot at this distance of time say.

Q. Do you mean to say that, in regard to an occurrence as far back as July, 1871, and relating to the mode of spending that holiday and the days about it, you have no recollection whatever? A. I have not any, Sir, at all.

Q. None whatever? A. If anything noteworthy had occurred on that day I should have remembered it, but it is all a blank in my mind.

Q. Do you mean by noteworthy anything worth repeating? A. Anything that would be salient in my memory, Sir; anything that I should make a feature of in my thought or remembrance.

Q. Then, if you had spent those three days in her company, leaving out the nights, that would not have been a salient fact in your intercourse with that lady that would fix itself in your memory? A. That would have depended entirely on what transpired.

Q. The passage of the three days in her company, consecutively, would not have been a noticeable fact in the course of your intercourse with her that Summer? A. Yes, Sir, it would have been a very noticeable fact.

Q. Very? A. Yes, Sir—I never passed three days—

Q. Now, will you tell us whether you did or did not pass those days, or some part of them, in her company that Summer? A. Well, Sir, I never passed any three days in her company; whether or not I passed any part of three days, or fragment of three days, that I cannot say.

Q. Parts of three days—you cannot say whether you passed a part of three consecutive days surrounding that holiday in her company? A. No, Sir; I cannot.

Q. And that, if you had done it, would not have been such a noticeable fact in your intercourse with her as would impress itself on your memory? A. Yes, it would, Sir; if I had passed any considerable portion of three days with her I should have remembered it at this moment; if I had seen her in a chance way, three days in succession, I could easily have forgotten it.

Q. In a chance way? A. Yes, Sir.

Q. But would you regard a visit to her, at her own house on three consecutive days, a chance occurrence that would leave no impression on your memory? A. I think if I had gone there three days in succession I should have remembered it, because there must have been some particular occasion to have required

it, and I should have remembered the occasion if

Q. Do you remember where Mrs. Tilton was three days of July, 1871? A. No, Sir; not without some—

Q. She was in the country, was she not? A. I don't ber; what year do you now allude to?

Q. 1871? A. Well, I can answer that question by referring to some of her correspondence here; I think that she was at that time in Schoharie, by the date of the "Catherine Gaunt letter" which you read yesterday.

Q. Very well, that is all I want, where she was. A. I think so; yes, Sir; but that is the only way I know it; could not remember it of itself.

Q. It is immaterial to me how you know, if your recollection, the best of your memory, is that she was at Schoharie. A. Well, I know she was if her letter was dated July; but that is the only way I know it.

Q. Very well, she was at Schoharie?

Mr. Fullerton—No; he does not say that.

Mr. Evarts—Connected with the "Catherine Gaunt letter."

Mr. Beach—He says he knows by that letter.

Mr. Evarts—Well, that is not the 4th of July.

The Witness—My impression is, Sir, that in my statement there is a little letter from Mrs. Tilton, dated July 4th, Schoharie, or July 1st or 2d, Schoharie. That is the only way I remember it.

Q. But the best recollection that you have in your mind is that your wife was at Schoharie at that time? A. That is, provided those letters confirm that recollection.

Mr. Evarts—Well, no matter; if you find occasion to correct yourself hereafter, why of course you will have the opportunity to do so.

Mr. Beach—Well, he has a perfect right to qualify his answer now by reference to those letters.

Judge Neilson—Yes, he has a right to do that.

Mr. Evarts—Not in the least, I suppose; he has a right to answer my question whether he remembers where his wife was.

Mr. Beach—He says he does not remember except by reference to the date of certain letters from his wife.

Mr. Evarts—He says he has no doubt of it.

Judge Neilson—I was about to suggest to counsel that it was quite proper for the witness to add, if he wished to, she was at Schoharie, but he is aided to get at the fact by a letter of hers written from that place.

Mr. Evarts—Well, that is the way he happens to know.

Mr. Fullerton—Well, he does not say that.

Mr. Evarts—It is not of the least consequence to me what he says, if he will only say what his recollection is.

Judge Neilson—Aided by her letter.

Mr. Evarts—I don't care what he gets it by.

Mr. Beach—He answers that he has no recollection of the fact independent of the dates of these letters.

Mr. Evarts—That is all very well; but from that recollection he thinks she was at Schoharie.

Mr. Beach—Exactly.

Mr. Evarts—Very well.



Mr. Beach—That is not a recollection, it is a dependence upon the letters.

Mr. Evarts—Very well. [To the witness.] The date of the Catherine Gaunt letter is June 29th, 1871? A. I did not base my answer altogether on that letter, but also on another letter of Mrs. Tilton's, quoted in my last statement, which I think is dated July.

Mr. Fullerton—Never mind; we won't speak of anything that is not in evidence.

#### GEN. BUTLER AND MR. TILTON VISIT MRS. WOODHULL.

Mr. Evarts—We don't care anything about any other letters. Do you remember an occasion during that period of your acquaintance with Mrs. Woodhull in which you and she were together in the company of a lawyer of Lowell, a Mr. Cowley, in the City of New-York, either at one of your offices, yours or Mrs. Woodhull's, or any other place of meeting, in which you heard Mrs. Woodhull narrate to him the substance or subject of her subsequent publication in 1872? A. No, Sir; I was in company with Mrs. Woodhull and a lawyer from Lowell, but that lawyer was Gen. Butler.

Q. At that time were you? A. I don't remember any other lawyer, and I do not remember the person whose name you now mention.

Q. Well, I am not inquiring about Gen. Butler, you know. You have said something about him; did you mean to say that you were in Mrs. Woodhull's company with Gen. Butler during that period of your acquaintance? A. I mean to say that one evening Gen. Butler and I were at Mrs. Woodhull's house.

Q. During that period of time? A. Oh! I can't remember the date.

Q. Well, during the period of this intercourse or acquaintance between you and Mrs. Woodhull? A. Yes, Sir; I was not there at any other period.

Mr. Evarts—Very well; that is all I asked. However, if your Honor please, I have no occasion to retain this matter in regard to Gen. Butler. I made no inquiry concerning it.

Judge Neilson—I think it is proper to let it stand.

The Witness—I know no such person as you mention.

Mr. Evarts—I haven't made the least inquiry.

Judge Neilson—I know, but still it is proper.

Mr. Beach—You asked him if he meant to say that he was in company with Gen. Butler.

Mr. Evarts—After he had mentioned it.

Mr. Beach—If you go on inquiring about it, you make it your evidence.

Mr. Evarts—It is not a matter that I care anything about, only it is not introduced by me.

Judge Neilson—Except your inquiry related to a lawyer of a certain name—

Mr. Evarts—Mr. Cowley.

Judge Neilson—And his answer relates to a lawyer of a different name. It may as well stand as it is.

Mr. Evarts—Very well; it is nothing that I care anything about, only I didn't introduce it.

Judge Neilson—You are not chargeable with introducing his name here at all.

Mr. Evarts—Now, you don't recall the name, then, of any lawyer, named Cowley, of Lowell? A. No, Sir; never heard of such a name until you just mentioned it; don't know the man.

Q. And you don't remember the fact of being in the presence of some third person while Mrs. Woodhull narrated the substance of her subsequent publication? A. Only Mr. Moulton; I heard her once speak of it in his presence, and no other persons.

Q. No other persons? A. No, Sir.

Q. [Handing paper to witness.] Please look at the passage I have marked (in pencil), and see if you find in that an allusion to the Griffith Gaunt letter? A. That is an allusion to the Griffith Gaunt letter; yes, Sir.

Q. And this paper is an issue of *Woodhull and Claflin's Weekly* of May 17th, 1873, is it not? A. Yes, Sir; of 1873.

#### OBJECT OF THE FAC-SIMILE PUBLICATIONS.

Q. Mr. Tilton, now that we are on this letter for a moment—What induced the *fac-simile* publication of such letters and papers as were thus published by you? A. I will tell you, Sir. I had been accused by some of Mr. Beecher's friends with having forged documents; I wished that the document that I had, should be exhibited to the public as correct and genuine. I adopted this very admirable method of *fac simile* to prove that fact.

Q. And that publication was after the commencement of this suit of yours, was it? A. I don't remember when the suit began; that publication of mine was made last September.

Q. Yes; we have shown the paper, haven't we. A. Yes, Sir.

Mr. Evarts—There is no dispute; the suit was commenced on the 19th of August, I think; is there, Mr. Morris?

Mr. Morris—I think that was the date.

Mr. Evarts—The suit was commenced on the 19th of August. [To the witness:] In the publication of the letters of yourself and your wife as now found in this book, this pamphlet, they have headings, as edited or described by the headings; did you furnish those headings?

Mr. Fullerton—One moment—I object; the fact is not in evidence.

Mr. Evarts—You object to the question.

Mr. Fullerton—I do.

Mr. Evarts—Very well; I will ask another one.

Mr. Fullerton—That is right.

Mr. Evarts—Not necessarily.

Mr. Fullerton—No; not because you do it.

Mr. Evarts—Now, Mr. Tilton, as you saw the letters as published in *The Chicago Tribune*—as you have spoken of the fact of their publication—had the headings or descriptive titles to them been furnished; and, if so, did you furnish them?

Mr. Fullerton—The same objection, Sir.

Judge Neilson—I think he may answer that.

Mr. Evarts—How is that, Mr. Tilton? A. Well, Sir, it is a long time since I have seen the letters in *The Chicago Tribune*,

and I have forgotten the exact shape in which they there appeared.

Q. Did you, in advance of their publication anywhere, furnish titles or descriptive headings for them? A. I don't remember that.

Q. You don't remember whether you did or not? A. No, Sir; I don't remember whether I did it or Mr. Underhill did it, at this moment—my stenographer.

Q. You know that it was done by one or the other of you? A. No, Sir; I don't know that it was done at all. Mr. Underhill and I together—though he principally—had to do with the preparation of these manuscripts for the press; exactly how much he did, and exactly how much I did, I don't remember, and at this moment I don't remember exactly what was done.

Q. Then it is not fastened on your memory now whether in the Summer of last year, in preparing or proposing the publication of yours and your wife's letters, which was actually made, you furnished the titles or descriptive headings of those papers? A. I don't remember at this moment; no, Sir.

#### MRS. TILTON'S FIRST DESERTION OF HER HUSBAND.

Q. How long before this illness of your wife, in December (the date of which I think we fixed as commencing after the 24th of December), how long before that was it that she had left your house and gone to her mother's? A. She didn't leave my house and go to her mother's; she came home from the West, and on the day of her home-coming, I think, she went to her mother's; that is my recollection of it.

Q. As to the fact; you have not given us the date any otherwise? A. I think her return from the West was the first of December; possibly the last of November; I don't know the exact day. By the way, Mr. Everts, I am reminded just at this point, that I wish to make a slight correction in the report of my testimony; it is concerning the report as it appears, of Mrs. Morse's conversation with me; those conversations were held during the Summer and the Fall of 1870, while she was first my neighbor, then my housekeeper; I had no conversations with Mrs. Morse after she left my house in the Autumn of 1870; I think that during the four years that followed, I never had seen her or spoken to her. I make this correction because in one of the journals, this morning —

Mr. Everts—No matter what was the cause of the correction—you make this correction? A. Yes, Sir.

Judge Neilson—He is stating what called his attention to it.

Mr. Everts—It is an explanation of his testimony. I have no objection to its being made. [To the Witness.] Mr. Tilton, you had among your acquaintances and contributors to *The Independent*, at that time, a clergyman, the Rev. Mr. Gilbert Haven, had you not? A. I don't remember whether he was a contributor at that time; he had been for many years a personal friend of mine.

Q. You knew him very well? A. Yes, Sir; he was one of my most intimate friends.

Q. He is now a Bishop of the Methodist Episcopal Church? A. Yes, Sir.

Q. Do you remember of his being at your house in Novem-

ber of that year, and spending some days there—spending at least one night there? A. Bishop Haven has been at my house perhaps a hundred times. I cannot say he was there in November, or at any particular date.

Q. You cannot. Then you cannot recall, perhaps, whether at the time he made that visit and spent the night at your house—about that season or in that season—Mrs. Tilton was back from the West and was at your house? A. I simply recall the fact that Bishop Haven—both before he became a bishop and after—made many visits at my house.

Mr. Everts—I beg your pardon, I was not listening. A. I simply was saying that I recall the fact that Bishop Haven has for many years past made many visits at my house. I cannot recall the time.

Q. I understand that, and it is immaterial that you should not be able to remember. But you do not remember, as matter of fact, that at the time that Rev. Mr. Haven did make that visit to your house, about that time, in November, that Mrs. Tilton was there, back from the West? A. I do not remember that now; no, Sir.

Q. Now, upon further consideration can you or not tell us whether Mrs. Tilton did not come to your house from the West, and whether she did not remain there for at least a week or ten days before she left and went to her mother's? A. I cannot answer positively; my recollection is that on the morning she came from the West, she went to her mother's house; that on the morning she came from the West she first came to my house, and during the day she went to her mother's house, and then returned and told me that her mother insisted that she should no longer live at home.

Q. I do not care for the conversation. A. My recollection is that she then departed; whether that day or a few days after I will not be positive.

Q. When she arrived from the West did you not receive her at the cars? A. I did; I went over in the carriage and received her.

Q. To New-York? A. Yes, Sir.

Q. And she came to your house? A. Yes, Sir.

Q. She went to see her mother that day—you are sure of that? A. I think she did.

Q. And she came back to your house from her mother's? A. Yes; at all events she told me; the point I remember is that she told me of her mother's conversation.

Q. You remember that she did come and talk with you, and therefore you know that she was there? A. Yes, Sir.

Q. Now, can you recollect it was not until a week or ten days after that first return of hers, and her visit to her mother, and her return to your house from her mother's—that it was not until a week or ten days after that that she left your house and remained away? A. It may have been, Sir; I cannot testify positively.

Q. Now, how many days was she so absent and at her mother's on that occasion? A. My recollection is, two or three; I have no means of identifying the number.

Mr. Fullerton—Two or three what? A. Two or three days; that is my recollection; it may have been longer or shorter.

Mr. Everts—Now, do you remember her coming to your office

during the time of her absence from the house or not? A. Yes, Sir; I remember sending for her to come down to the office of *The Brooklyn Union*, one day.

Q. And she came? A. Yes, Sir.

#### HOW MR. TILTON REGAINED HIS CHILD.

Q. Now, had she with her, at her mother's, in this absence, her infant child? A. I think she had, Sir.

Q. And do you remember during her call at your office, at your request, sending for the infant child, and taking it from Mrs. Morse, in your wife's absence, to your own house? A. Not during Mrs. Tilton's call at *The Union* office, Sir; I remember sending for the child very peremptorily, but it was not during Mrs. Tilton's call on me at *The Union* office.

Q. Was it not during Mrs. Tilton's absence from her mother's, upon your invitation? A. No, Sir; Mrs. Tilton made the call on me at the Brooklyn office, on a matter of business.

Q. When you sent for her? A. Yes, Sir.

Q. My inquiry is whether, during her call, and that absence thus procured, you did not send for her infant child and take it away from her mother's, and bring it to your house? A. No, Sir; my sending for the child had nothing to do with the interview, and was not at the time; at all events, it was not at that time of the day.

Q. When was it that you sent for the child? A. I cannot identify the date. I think I wrote a note; if that note exists, and has a date, that will identify it, but my memory does not.

Q. Do you remember by whom you sent it? A. I have a recollection it was sent by Miss Ellen Dennis, the housekeeper; that is, I will not be sure of it.

Q. And did she know the contents of it, and the errand on which she was sent? A. I do not remember at present.

Q. Did she bring the child to your house, and separately from the mother? A. That I do not remember.

Q. You do not remember? A. I cannot remember whether she brought the child; the child came.

Q. It did not come alone? A. No, Sir; the child came; but whether Mrs. Tilton brought the child, or not, I do not know; the circumstance is utterly indistinct.

Q. You do not remember whether the child was brought to your house upon that message? A. That I remember, Sir; but who brought the child I do not remember.

Q. And brought separately from the mother? A. I remember this—that Mrs. Morse had taken Mrs. Tilton away from her home, which is forbid, and I sent for the child—to have the child brought back—

Mr. Evarts—If your Honor please, I must insist upon the witness not putting in that which is not responsive.

The Witness—[Continuing.] But who brought the child back I cannot remember; the child was brought back at my command.

Mr. Evarts—I must object to this answer. I ask that it be—Well, it is not material. [To the witness.] And do you now remember that after this possession, acquired of the infant child, Mrs. Tilton returned to your house? A. Mrs. Tilton returned.

Q. And after you had the child? A. That I do not remember.

Q. But it was not before? A. I do not remember that.

Q. She did not come, leaving the infant child, did she? A. I have a recollection that Mrs. Tilton, about that time, went to New Brunswick, to see her daughter who was there at school.

Q. Well, what is your best recollection, Mr. Tilton? A. I have just given it to you, Sir.

Q. Is it that Mrs. Tilton returned to your house after you had possession of the infant child? A. I do not remember, Sir; the point at which my memory fails me is this—whether or not the child was brought back to my house while Mrs. Tilton was away, namely in New Brunswick; I have some recollection of that, but I don't fix the time; the child was brought to my house by my order: that I remember very distinctly.

Q. And in your wife's absence, as you believe? A. That I do not know.

Q. You don't know about that? A. No, I am not certain about it; I will not swear to it.

Q. The best recollection you have about the matter is that in the mother's absence you got the child? A. That is my best recollection; I will not make oath to it.

Q. And that after that she came back to your house? A. I don't remember whether she then considered my house her home, or not, because it all hinges on whether she was in New Brunswick at that time.

Q. I do not ask you that. I ask whether she came to your house, not whether she thought it her home or not? A. Yes, Sir, she certainly did come.

Q. [Handing paper to witness.] Please look at this and see if that is the message that you sent for the child? A. I judge it to be so, Sir.

Q. Have you any doubt about it? A. None whatever.

Mr. Evarts—I will now read this:

"Ellen, wrap the baby very carefully and bring him home immediately.  
THEODORE TILTON.  
6:15 p. m."

Q. Who is "Ellen?" A. Miss Ellen Dennis, my housekeeper.

Q. Have you any doubt now that the baby came back under that message, and in the manner there directed? A. I have never had any doubt; I told you the child came by my order, but by whose hand I do not remember.

Q. Have you any doubt now that it came by the hand of Ellen, in pursuance of the errand on which she went? A. All I know of it is what that paper states; I know I sent for the child, and the child was brought to me.

Q. Do you mean that you have no recollection whatever concerning that transaction, except what this paper furnishes?

Judge Nelson—Oh, no!

Mr. Fullerton—He does not state that at all.

Judge Nelson—No; I understand him to say that he has no recollection of who carried the child back—whether Ellen or somebody else.

The Witness—That is so, Sir.

Mr. Evarts—Let me read the note again.

Mr. Fullerton—There is no dispute as to the contents of the letter.

Mr. Evarts—But I asked him, on refreshing his mind by looking at this letter, whether he has now any doubt that the child was brought back under that order and according to that direction?

Mr. Fullerton—I object to that—one moment.

Judge Neilson—I think he can answer that.

Mr. Fullerton—That question has been answered twice.

Judge Neilson—I think it has, but he may answer it again. [To the witness.] Have you any doubt on that subject?

Mr. Fullerton—I think it is time my learned friend should become satisfied with two answers to the same question, without requiring it to be answered a third time. But if your Honor will take notice, that has been the practice of the learned counsel.

Mr. Evarts—It is very easy to satisfy me with one answer.

Mr. Fullerton—Then you ought not to put it again. If you put it after you are satisfied, it is all the worse.

Judge Neilson—I think he may answer that.

[THE TRIBUNE stenographer was here called upon to read the question and answer as given, and the question was repeated.]

The Witness—My answer to that is, that the note does not, in the slightest degree, refresh my mind; I stated before that the child was brought back under my order; I would not now be willing to swear, after having seen the note, that the little babe was brought by Miss Ellen Dennis, because a servant might have brought the child; I have no personal knowledge as to the child having been brought back to my house by this person or by that person; my knowledge is that the child was away, and that I sent for the child, and that in obedience to my order the child was brought back.

Q. And this was the order? A. Yes, this is the order. Have I made it clear, Mr. Evarts?

Q. Were you at home when the child came. A. I don't remember that.

Q. You observe that this note is dated 6:15 p. m.? A. Yes, Sir.

Q. Now, do you not remember whether you were at home when the child came? A. I remember nothing about it except that note.

Q. Do you remember how old the child was at that time?

Judge Neilson—Counsel means about how old.

The Witness—That is a sort of problem which always puzzled me. The child was born in June, 1869, and that was December, 1870. How old would that be?

Mr. Fullerton—Nearly eighteen months.

The Witness—Yes, Sir.

Mr. Evarts—That shows how old it was. Do you remember whether the child was then sick? A. No, Sir; the child could not have been very sick or it would not have been moved.

[The note was marked "Exhibit D, 102."]

#### MR. TILTON'S ANSWERS TO THE COMMITTEE.

Q. Mr. Tilton, upon the occasion of your attendance and hearing and answering questions before the Committee of the church, please say if this occurred: Did you, upon being asked this question, "You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession, she insisted

to you that she had not violated her marriage vow?"— In answer to that, did you say: "Yes, Elizabeth was in a sort of vaporous, light cloud; she was between light and dark; she could not see that it was wrong; she maintained to her mother, in my presence, that she had not done wrong; she cannot bear to do wrong; a sense of having done wrong is enough to crush her; she naturally seeks, for her own peace of conscience, a verdict; she never would have had these relations if she had supposed, at the time, that they were wrong. Elizabeth never does anything that at the time seems wrong. For such a large moral nature there is a lack of a certain balance and equipoise; she has not a will that guides and restrains, but Elizabeth never does, at any time, that which does not have the stamp of her conscience, at the time, upon it." Did you say that in answer to the question that has been read to you? A. I said something like that, Sir; I do not know how accurately it is reported.

Q. Substantially, did you say that? A. There is a phrase there about her saying that she had not "violated her marriage vow." I think that as I put it was that "she thought she had not"—not that she positively insisted she had not; but the substance of that statement, I think, is very true of Mrs. Tilton. If you will let me look at it now, or read it over again—

Mr. Evarts—I will do so.

The Witness—Then I will tell you where I think it true, and where I think it is not.

Q. I will ask you another question and then hand it to you; they are connected. On this answer being made by you, so far as it was made, were you then asked this question: "Do you say that she did or did not insist that she had—" [To Mr. Fullerton.] I suppose the question should read "not" violated her marriage vow—it reads "violated" her marriage vow.

Mr. Fullerton—You must not appeal to me to know how it should read; I do not know anything about it.

Mr. Evarts—Well, in answer to the question put to you, did you say: "She always was saying that it never seemed to her wrong; and 'Theodore, I do not now see that I have wronged you'?"

A. She frequently said that during the year.

Q. Did you make this answer? That is all I have asked you I asked you what she said? A. Something like that.

Q. You did? A. I won't make oath to the words. I should like to read it a little more carefully before I answer it definitely.

Mr. Evarts—That is enough for me. We have got your answer now, and if you wish to look at the passages I have read you can. [Handing book to witness.] Look at the passage included in brackets.

The Witness—With some little corrections I would be very happy to have this statement stand, Mr. Evarts.

Mr. Evarts—Well, now.

The Witness—Shall I make the corrections?

Mr. Evarts—[To THE TRIBUNE stenographer.] Won't you read the answers?

THE TRIBUNE stenographer read the answers.

Mr. Evarts—I am satisfied with those answers; I don't ask anything further of this witness in that regard. [To the witness]

Q. On that occasion were you asked this question, and did you make the answer that I shall read, following it? This is the question: "Q. Well, she is a character who could have an intimacy and reverence and enthusiasm for a man of Mr. Beecher's temperament and religious convictions and teachings, and carry it to an extreme length without the thought of passion or criminality?" A. I do not think the thought of passion and of criminality were in her breast at all; I think they were altogether in his. I think she thought only of her love and reverence." Did you answer that? A. I don't remember whether I did or not, Sir; but if I didn't then I answer it here now. That is the truth.

Q. Were you then asked, "Such a character would not excite the thought of jealousy as to her?" A. Not in the slightest; I never had the slightest feeling of jealousy in regard to Elizabeth." A. What is your question?

Q. Whether you were asked that question, and made that answer? A. I don't remember, Sir; but it is true. I had unlimited confidence in her.

Q. Were you asked this question immediately following what you have now been inquired about—this is the question: "The fact that she was manifesting this enthusiasm and all that would not lead you to suspect her motives and purity originally?" Did you answer: "It would not; later it did." A. I don't remember the latter clause of that. Evidently the answer which I gave to that question was that never until the disclosures came out had I put any other than an innocent interpretation on her relationship to Mr. Beecher.

Q. So that you say now, no; never until those alleged disclosures, did you put anything but an innocent interpretation upon it? A. No, Sir; never until then.

Q. Never until then? A. No, Sir.

Q. Were you then asked this question, and did you make this answer: "For how long a period?" A. I do not know; I remember I wrote, Sir, some letters which, if she has kept them, would fix the date. There was a time when I felt that Mr. Beecher was using his influence greatly upon her." A. Yes, Sir; but that was not in any passionate way.

Q. You made that answer? A. I don't remember my answer to the Committee. I am speaking now the truth as it exists.

Q. If you made that answer, you say you didn't mean to convey it in any passionate view? A. No, Sir; I meant, Mr. Evarts, to say that until the story was told me by her own lips in July, 1870, I had put no harmful construction on her relation, having, as I have just stated, unlimited confidence in my wife.

Q. Excepting that (I do not take your answer as to anything that came from her which I have not asked about, and which the law excludes), you mean to say until the date in July, that you have referred to? A. Yes, Sir.

Q. Were you then following, and in this line of inquiry, asked this: "To control her in her domestic relations with you?" A. No; but to win her. He was always trying to get her to say that she loved him better than me." A. No, Sir; that was part of the story which she told me in July.

Q. You don't admit this? A. No, Sir; that came to me—

Q. That question and answer you don't recognize? A. No Sir; I do not.

Q. Are you quite sure that the question and answer were not as they read here? A. They could not have been in that connection.

Q. Very well; that is your answer? A. But I remember her saying—

Q. Were you then asked this question: "She never would say?" and did you answer, "I don't think she ever did?" A. That is part, also, of her statement which she made to me.

Q. I don't ask you that. My only question to you is, and your answer must be confined to it, whether that question was put to you and whether you made that answer to it? A. Mr. Evarts, I have no knowledge of the questions put to me on that occasion, or the answers I made to them, other than the imperfect record in that purported cross-examination, which I repudiated, except to say that now, when you put the questions to me again, I must answer them out of my memory as to the exact truth.

Q. No, you must answer as to the exact truth about which you are asked, which is whether that question was asked you and whether you made that answer. That is all. I am not asking you whether it was true, but simply whether such a question was asked you, and whether such an answer was made by you? A. I have given you the answer I must have made to the question. Those answers, there are some of them correct and some of them incorrect; there is a great deal of bungling.

Q. I am taking your statement as to whether such a question was asked you and whether such an answer was made by you? A. Yes, Sir.

Q. That is the end of my question, and the answer to the same. It is not a question concerning the truth, but whether that question was asked and answered? A. Yes, Sir.

Q. Were you then asked this question: "You do not believe she ever felt or believed it, do you?" A. What is that, Sir?

Q. The previous subject was whether she ever would say she loved Mr. Beecher better than you, and now follows this next question. The answer, as I have read it to you, was that you don't think she ever did. You don't, as I understand it, recognize these questions and answers. Then I asked you this one. Now, following that, were you asked this question: "You do not believe she ever felt or believed it, do you?" And did you answer to that question, "No; that is to say, in one sense, she loved him. She loved his religious views; she loved him as an evangelical minister, and I don't think that, on the whole, he was as much to her as I was. Still, of course, Mr. Tracy, I cannot question her motive. If she should say he was more to her than I was, I could not dispute it." Did you hear such a question, and did you make such an answer on that occasion? A. I don't remember either the question or the answer; but what is incorrect in the answer is the phrase, "I don't question her motive." There is no sense in the phrase in that connection. What I evidently meant to say was, that I would not question her own assertion. In other words, if she should say that she loved Mr. Beecher more than she loved me, why, I would take her word for it.

Q. With that correction, do you, or not, remember that such a question was asked, and whether such an answer was made? A. No, Sir; I don't remember either the question or the answer.

## HOW MR. TILTON USED HIS SHORTHAND.

Q. Mr. Tilton, you are an expert phonographer, are you not—a practiced phonographic reporter? A. Well, Sir, I am a phonographer.

Q. And you have had a long practice in it as part of your profession? A. I studied phonography when I was a boy; I have not practiced it very much since.

Q. Didn't you, during a good many years, practice phonography? A. No, Sir; oh! well, incidentally, not professionally.

Q. Well, for some years, you did professionally? A. I have reported some of your speeches, Sir.

Mr. Evarts—Well, that would not give you much practice, for I made very few.

Mr. Beach—I don't know. They were pretty long when they were made. [Laughter.]

Mr. Evarts—Now, Mr. Tilton, will you tell us, or not, whether you are an expert phonographer? A. Solomon says: "Let another praise thee, and not thine own lips."

Q. Well, what has Solomon to do with your case? A. He is the wisest man I know of myself.

Judge Neilson—[To the witness.] The question is whether you consider yourself an expert phonographer.

The Witness—Well, Sir, I shall have to answer yes, but it is under compulsion.

Judge Neilson—Certainly.

Mr. Evarts—That will stand, and that is an answer to my question. [To the witness.] Now, during the period of the conferences and consultations and reading and hearing papers which have been spoken of in your own direct testimony, in which you and Mr. Beecher, or you, Mr. Beecher and Mr. Moulton took part, were you in the habit of making phonographic copies of all papers that were in Mr. Moulton's hands, that came to your notice or knowledge? A. No, Sir; I made some notes of some which I thought important; not a great many.

Q. Did you not habitually and systematically take phonographic copies of all papers that were brought to your notice during these conferences and consultations?

Mr. Fullerton—That is the same question right over again, precisely.

The Witness—[To Mr. Evarts.] Oh! no, Sir.

Mr. Fullerton—I am willing he should answer it; but once is enough.

Mr. Evarts—[To the witness.] You did not? A. No, Sir; I did not; I made notes of very few of them; not one-twentieth part of the whole papers. That is a rough guess.

Q. Can you state those that you did thus copy? A. Well, Sir, if you will bring me my last statement I can point out to you those which I made copies of.

Judge Neilson—He wants your present recollection.

Mr. Beach—It will probably be refreshed by his statement.

Mr. Evarts—I have nothing to do with refreshing his recollection.

Mr. Beach—[To the witness.] Then you are not bound to refresh your memory; let it be.

Mr. Evarts—[To the witness.] I will take your answer: can you state those of which you did make copies in the way that I

have inquired of? A. If you will pass the papers under review before my eye, I can tell you every one; but I cannot evoke them out of the pile and make them stand before my memory.

Q. Your memory regarding the transactions as they occurred, and the papers as they arose in these transactions, does not enable you to remember any paper that you copied? A. Oh! yes, Sir.

Q. Now, will you give me those? A. I was simply saying I should not like to recite here from memory, under oath, all the papers that I copied.

Q. I asked you to name those that you did. A. You asked me to name all; now you ask me to name one.

Judge Neilson—[To the witness.] Name those that you did copy.

Mr. Evarts—Name all that you remember? A. I made a copy of Mr. Beecher's letter of January 1st, 1871, called the letter of contrition.

Q. When did you do that? A. On the same evening when I saw it.

Q. Now, go on with any others. A. I made a copy of the letter of the 7th of February, which Mr. Beecher sent to Mrs. Tilton through my hands; also a copy of Mr. Beecher's letter of the 7th of February.

Q. And at the time, I suppose? A. At that time, which I borrowed to shew to Mrs. Tilton, I made both of those; I remember that.

Q. That is the letter to Mr. Moulton of the 7th of February? A. Yes, Sir.

A. And those you made at the time? A. Yes, Sir.

Q. The copies you made at the time? A. I made copies of my own letters.

Q. You kept copies of your own letters, or made copies of them? A. Yes, Sir; for instance, my letter to Mr. Bowen of January 1st, 1871, and generally of my own letters. My impression is that of all the many letters outside of those which Mr. Beecher sent to Mr. Moulton—forty or fifty, are there not?

Q. I don't know. A. That I made a copy of a fragment of two, namely, part of the letter of June 1st, 1873, and part, or two parts, of Mr. Beecher's letter dated February something, 1872.

Mr. Morris—February 5th.

The Witness—The "ragged edge letter," as it is called.

Mr. Morris—Yes, February 5th.

The Witness—Just at this moment I don't remember making any other copy, still I won't stand on it.

Mr. Evarts—Well, I understand that. This is your present recollection? A. Yes, Sir.

Q. Now, are you quite certain that you did not copy the whole of these two last named letters—that of June 1st and that of February 5th? A. I am quite sure, Sir.

Q. "Certain," was my question? A. Yes, Sir; no, I only had parts. That letter of February 5th, 1872—is that the "ragged edge letter?"

Q. Yes, Sir. A. Yes, Sir, I had a copy of fragments of that, and afterward made the error in my sworn statement of supposing they were extracted from two different letters.

Q. Now, that is the basis of your present recollection as to your making copies of papers as they passed along? A. Well,

Sir, if you would give me all the papers, all the letters in the case; that I may take them up one by one, I think then I can tell you whether I copied this or didn't copy that.

Q. But, without that aid, this is all you can now remember? A. Yes, Sir.

Q. And, as I understand you, you are quite certain that, as a general thing, you did not so copy them? A. Oh! as a general thing I did not, Sir; I copied very little—very few. There was a multitudinous correspondence of four years, of which I copied a very small portion; indeed, I saw a very small portion of it.

Q. Now, did you, on this examination before the Committee, in answer to a question, make the answer which I will read: "Q. Can you produce a copy? A. I do not know, and I am sorry I cannot tell you. I have a mass of phonographic notes. Whenever these letters came, whenever there was anything in them that Frank wanted me to see, he would read them to me. Whenever Mr. Beecher said anything that he thought, being read to me would gratify my feelings and conduce to a compromise of peace between us, speaking of the kindness with which I had treated him, or of the difficulties, Frank read them to me, and, as I wrote shorthand, I always used to make a copy of them." A. I did not say "always;" I said I sometimes did, very rarely.

Q. You think that, in your answer, you used the word "sometimes" instead of "always"? A. Well, I don't know what I said in my answer other than what is there. I know exactly that a little handful of notes—

Q. My only question is whether you were asked that question, and whether you made that answer to it? A. It is utterly impossible that I should have said "always," because I did not always make them; I very rarely made them.

Q. That is a question of morals, whether a man may say a thing he didn't do. My question is whether you did, or not? A. Well, Sir; I don't remember either the question or the fact, telling you the fact.

Q. That I didn't inquire about; I have got through with that. Now, will you tell us what system of phonography it was that you practiced? There are systems of various names, are there not—various styles? A. Well, Sir, when I learned phonography it was called Pitman's System; I don't know that it has been changed since. My friend, Mr. Munson, has introduced some improvements, and I believe the new system bears his name. Phonography is distinct from stenography.

Q. You practiced phonography? A. Yes, Sir.

Q. And it was Pitman's system? When was it you learned it? A. Oh, when I was quite a boy.

Q. After you had left the Academy? A. Oh, no, Sir! long before I left the Academy.

Q. Before you left the Academy? A. When I was a boy at a public school.

#### NO LETTERS DESTROYED BY MR. TILTON.

Q. Now, Sir, have you at any time destroyed any of Mr. Beecher's letters that passed or came to your notice during these transactions? A. What is that, Sir?

Q. Have you at any time destroyed any of Mr. Beecher's letters that passed in these transactions, or came to your notice at any time? A. I never had any of Mr. Beecher's letters,

Sir. Mr. Beecher never wrote me any letters. I don't understand what you refer to.

Q. Well, I will have to repeat my question. Have you at any time destroyed any letters or papers from Mr. Beecher, that came in any of these transactions, conferences, or consultations, or came to your notice during the period between the 28th of December, 1870, and the present time? A. No, Sir.

Q. Very well. A. I never had any to destroy.

Judge Neilson—That is not necessary to the answer. Say "No;" that answers it.

The Witness—Yes, Sir.

Q. Have you destroyed any papers or letters of Mr. Moulton? A. No, Sir; not one.

Q. That arose in the same way and during the same period? A. No, Sir.

Q. Or any of your own, either to Mr. Beecher or to Mr. Moulton, or that was used or shown to either of them during the progress of this—of these consultations between you? A. No, Sir; none whatever. May it please your Honor, I think perhaps that answer ought to be amended to this extent. Mr. Moulton is in the habit very frequently of writing me two or three little lines, saying, "Dear Theodore, come around and join me at supper"—something of that sort. I never kept any such notes as those.

Judge Neilson—You have a right to qualify it.

Mr. Evarts—Oh! Of course.

The Witness—I didn't quite understand the purport of your question, Mr. Evarts.

Mr. Evarts—You understand the meaning of it now? A. Yes, Sir.

Q. You don't understand the objects you mean. A. No, Sir.

Q. Well, I didn't intend to tell you. A. Well, how can you expect me to give you a proper answer?

Mr. Evarts—Well, I don't know.

Mr. Beach—I think the object is very apparent.

Mr. Evarts—Well, the witness says it is not to him.

Mr. Beach—He attributes that to your mystery, which I do not.

Mr. Evarts—I haven't any mystery about it, not the least.

The Witness—I have just said under oath that I have not destroyed any of Mr. Moulton's letters in the last four years. I presume I have destroyed many little notes.

Mr. Evarts—Well, you may make any qualification, of course.

Judge Neilson—Well, you have never destroyed any notes or letters except little notes? A. Yes, Sir; I have destroyed no important paper.

Mr. Evarts—My inquiry was substantially, of course, confined to papers that had arisen and been the subject of consideration? A. Yes. Well, I wish to make my answer consistent with my oath.

#### BESSIE TURNER'S LETTERS.

Mr. Evarts—Of course it is entirely proper. Do you remember, Mr. Tilton, that very soon after the 1st of January, 1871, an inmate of your house, Miss Bessie Turner

as she has been called, left it and went to the West? You remember that fact? A. I remember that she went to the West, but—

Q. Well, that is all that is asked. A. You spoke of her as an inmate of my house, which leads me to say that notwithstanding the fact that I answered you a day or two ago that she had resided there until 1870, I find, on reflection, that previous to that time she had gone to a public institution of some sort, I don't know exactly what, and had also resided awhile in the family of Mr. David Dewa, of New York. I think those circumstances had faded from my mind when I answered. In other words, she had not been living in my house—

Q. Continuously? A. Continuously. I don't think she was there during the year 1870 at all.

Q. That is, not continuously from the time when she first came to you until the time she left? A. No, Sir.

Q. She was not there continuously during that whole period? A. No, Sir. I don't think she had lived there for a considerable period preceding that.

Q. Now, can you give me the periods of these absences that you have now adverted to? A. No, Sir; I cannot.

Q. Can you state what year either or both of them were? A. Either or both of what, Sir?

Judge Neilson—The absences.

Mr. Evarts—The absences. Can you state the year during which either or both of the absences occurred? A. No, Sir; I cannot.

Q. Very well. A. Yes.

Q. Was it near this time of 1870? A. My present impression is that possibly, in 1868 and '69, she was away, either at this institution or at Mr. Dow's family, and then she went away to the West and was there when Mrs. Tilton was West, and returned with Mrs. Tilton from the West. That is the best recollection I have.

Q. That is, during that year 1870? A. Yes, Sir.

Q. So that your idea, so far as you have it in your memory, is that the year, 1870, was the time of these absences? A. Either that year or the year preceding, but I cannot speak definitely.

Mr. Beach—I understood him to say that his impression was that she was not there during 1870.

Mr. Evarts—I say, these absences occurred during the year 1870.

The Witness—A. Yes, Sir; my impression is, she did not reside at my house during the year 1870 nor 1869. That is my impression.

Q. Both years? A. Yes, Sir; that is my recollection?

Q. Then substantially both those years she could not be considered a member of your family? A. Yes, Sir; still I may be wrong about it.

Q. Very well; I don't know how that is; I want to get it straight before we start.

Mr. Beach [To Mr. FuHerton]—He has just started.

Mr. Evarts—Yes; on this I have just started. [To witness]—Now, before she went to the West she wrote, did she not, two letters? A. What is that, Sir?

Q. Before she went to the West, in January, 1871, or after January, 1871, she wrote two letters, did she not, which have been given in evidence here? A. Yes, Sir; I presume they are hers. I didn't see her write them. Her name is signed to them.

Q. You know what letters I refer to? A. Yes, Sir.

Q. They are in evidence here? A. Yes, Sir.

Q. And you have them in your mind sufficiently to be a basis — A. Yes, Sir.

Mr. Evarts—[To the Court.] I am reminded, Sir, by my associate and my opponent together, that it is one o'clock.

Judge Neilson—Wouldn't it be convenient to close your cross-examination before the recess?

Mr. Evarts—That would depend entirely, Sir, upon how convenient it would be to postpone the recess until I had finished my cross-examination. [Laughter.]

Judge Neilson—Will gentlemen keep their seats a moment. [To the Jury.] Please return at two o'clock.

Mr. Mallison—[Clerk.] The Court will now take a recess until two o'clock.

### A POSSIBLE SCANDAL FORGOTTEN.

After recess, the cross-examination of Mr. Tilton was continued as follows:

Mr. Evarts—Mr. Tilton, before Miss Bessie Turner left for the West, in or after January, 1871, were any letters taken from her, written by her, except these letters that have been given in evidence—these two that I asked your attention to? A. I know nothing of any such circumstance, Sir.

Q. Of any other letters? A. No, Sir.

Q. Well, that is what I understand—that you don't know of any other letters having been taken or written by her? A. No, Sir.

Q. Do you remember, Mr. Tilton, whether, upon the occasion of the conversation between you and Mr. Bowen on the occasion when Oliver Johnson was present at a part of the interview, in December, before the 26th or on the 26th of December—do you remember whether or no, in regard to any stories about you as there made the subject of consideration, there was any reference to an occurrence with which you were charged with being connected in Northfield, Minnesota? A. No, Sir.

Q. Do you remember when you were in Northfield, Minnesota, in one of your lecturing tours? A. Could not fix the date.

Q. But do you remember of being there at all? A. Remember of lecturing there once.

Q. Now, do you remember when that was? A. I could not fix it.

Q. Which season? A. It is a good while ago; several years ago; six or seven years ago, I should think; I remember staying at the house of a clergyman.

Q. Well, I want to fix the date of that if I can, if your memory will enable you to do so. Was it in '67-8 or '68-9, or earlier? A. I could not fix that, Sir, but I think I can get the date for you by applying to my lecture agent, as I did yesterday for the date at Tidlouta.



Q. Well, we will have to get the date, of course, correctly, if it is to be had at all. A. What circumstance do you refer to?

Q. Well, I go on now. You remember lecturing there, and being the guest of a clergyman there? A. Yes, Sir.

Q. And the date of that we, perhaps, would like. Well, do you remember, as among the stories or imputations, without regard to the question whether there was anything in it or not, that there was a topic or subject of imputation or charge against you in reference to your conduct while there? A. Never heard of it, Sir, until this moment.

Q. Never heard of it up to this time? A. No, Sir.

Q. And it was not a topic mentioned or referred to, so as to define it—mark it, in that conversation between you and Mr. Bowen? A. No, Sir; I have never heard anything about it until your mention of it now.

Q. Very well; you have referred to an occurrence, Mr. Tilton, upon an occasion which you put somewhere I think, from the 15th to the 20th of January, 1871, an occasion during Mr. Moulton's serious illness, in which Mr. Beecher accosted you, meeting you at the house of Mr. Moulton as he was leaving it, and saluted you with a kiss on the forehead? A. Yes, Sir.

Q. Do you remember that occurrence? A. Yes, Sir.

Q. Now, in the years of your acquaintance with Mr. Beecher, and up to the time of any estrangement at whatever date you put that fact in your intercourse, were you and Mr. Beecher in the habit of saluting one another with a kiss? A. No, Sir; we had done so in earlier years occasionally.

Q. Well, I have asked you up to the period of any estrangement between you? A. Oh, I beg your pardon: I thought you asked me during these last four years.

Q. Oh, no, I say up to the period of any estrangement between you? A. Yes, Sir.

Q. Had you been in the habit of saluting one another with a kiss? A. Not in the habit, Sir; but it had been done.

Q. Well, was it a frequent occurrence? A. No, Sir; not frequent.

Q. But it was occasional? A. Yes, Sir.

Q. There was nothing marked or unusual, was there, during the period of this friendship of yours that you should salute one another with a kiss? There was no habit, Sir; it was rather a noticeable event that any such thing happened.

#### CHRISTENING OF THE LETTER OF CONTRITION.

Q. It would be rather a noticeable occurrence, yes. Mr. Tilton, when did this name for the paper of the 1st of January, 1871, of the Letter of Contrition first come to be given to it? A. I don't know, Sir.

Q. Was it not spoken of and described, so far as you know, up to the time of this trial, as an apology?

Mr. Beach—I submit, Sir, that that is wholly immaterial what it may have been spoken of abroad.

Judge Neilson—Do you mean spoken of between the parties?

Mr. Evarts—Yes, Sir; between the parties.

Mr. Beach—Between the parties, well that is not the question.

Judge Neilson—I cannot conceive it would be proper except in that view.

Mr. Evarts—People that hadn't anything to do with it, of course, I don't care what they called it. [To the witnesses]: Hadn't it been in any descriptions of it so far as you know occurring between Mr. Moulton and yourself or in which you gave publicity to any descriptions of it, spoken of as the apology until the time of this trial? A. Do I understand you now to refer to the manner in which it has been characterized by Mr. Beecher in talking with me?

Q. By you or Mr. Moulton in any description, public or private, that you have given of it, hasn't it been called an apology? A. Mr. Beecher always characterized it as my letter through Mr. Moulton—that was his word; there was never any characterization put upon it until I characterized it in the Bacon letter as an apology.

Q. As an apology. Then, up to the time of this trial, so far as any characterization by you was concerned, it had not been called an apology? A. No, Sir; I don't think that any characterization was given to it until—certainly not by me—until the narrative which I designed to publish in the Fall or Winter of 1872. I think there I characterized it as an apology.

Q. I don't ask anything about the contents of any paper. So far as you know, in any reference to it by descriptive titles, had it been called by you an apology up to the time of this trial? A. Well, it had been called in various ways; it depended on the person that I spoke to. I once or twice referred to Mr. Beecher—I once or twice spoke to Mr. Beecher on the subject, always speaking of it as *his* letter.

Q. Well, I don't ask you any conversation. I only—

Mr. Beach—Yes, you do.

Mr. Evarts—No, I don't ask for any conversation at all.

Mr. Beach—Well, I don't see how anybody can characterize it without conversing.

Mr. Evarts—I only ask for a single fact, whether he had described it, when he had given a descriptive title to it—not when he had spoken about it—by any other description than that of an apology.

Mr. Beach—Well, he was about to tell you?

Mr. Evarts—He was about to tell me the conversations that he had had concerning it, which I did not ask for.

Judge Neilson—This might be answered yes, or no.

The Witness—Well, Sir, I don't remember making any description of it whatever.

Mr. Evarts—What is the answer? A. I said I did not recollect ever having made any special description of it.

Q. Yes; except in the Bacon letter. There you called it an apology? A. Oh! yes, Sir; there it was characterized as an apology.

Q. Now, when and how did this descriptive name for it that has been used in this trial—of "The Letter of Contrition"—originate; did it originate with you? A. My impression is, Sir, that when a portion of the letter was printed, in what is called the Bacon letter, the newspaper press very generally characterized it as Mr. Beecher's letter of contrition.

Q. You think that name is taken from that public criticism upon it? A. That is my best recollection, Sir.

**Q.** Were you in your examination before the Committee asked this question, and did you make the answer that I read to it? [Reading:] "Did you, or did you not, as a matter of fact, accept the apology which Mr. Beecher made and forgive the offense?" **A.** I accepted the apology and forgave the offense with as much largeness as I thought it was possible for a Christian man to assume." Were you asked that question, and did you make that answer? **A.** I think quite likely, Sir; I have no distinct recollection of it.

**Q.** Were you asked this question, and did you make this answer upon the same appearance before the Committee, and examination [reading]: "I ask you whether your relations and feelings towards Mr. Beecher, since January 1st, 1871, have not been friendly?" **A.** Yes, Sir; my relations and feelings toward him since January, 1871, when he made the apology, down to the time when the church began to put out its right hand and take me by the throat, were friendly."

The Witness—Well, Sir, friendly in the sense that they were not hostile.

**Q.** Well, I ask you only whether you were asked that question and made that answer? **A.** Well, Sir, will you be kind enough to read a little further; and I think you will come to a modification of the statement.

**Mr. Evarts**—I will read the next question. I only want, however, your answer whether you made that?

**Mr. Beach**—Well, he says with a modification.

**Mr. Evarts**—No, he does not say a modification; he made it in the next one.

The Witness—Please read a little further, **Mr. Evarts**.

**Mr. Evarts**—I will. I will read the next, but that has not disposed of the present question. I ask you whether that question was asked you, and you made that answer? **A.** Well, Sir, all I can say about that is, that I don't remember either the question or the answer, except as I have read both question and answer in that report; that is all the aid I have to my memory on the subject.

**Q.** Well, I must take your answer, whatever it is. Was that question asked you and did you make that answer? **A.** Well, Sir, I say I don't know whether it was asked me, and I don't know whether I made that answer; the probability is something like that was asked me and that I answered something like that, only that I beg you to do me the favor to read a little further, for I think there is a modification of the answer.

**Q.** I told you that I would, but that does not dispose of the question whether that was asked and answered.

**Mr. Beach**—Well, he has disposed of it.

**Mr. Evarts**—I know. This is the next question; and I ask you whether this question was asked you, and whether you made the answer [reading]: "They are not now friendly, but they were friendly up to the beginning of the action of the church?" **A.** Yes, Sir; that is to say, they were friendly in the sense that we were not in collision with each other."

The Witness—Yes, Sir; that is the only sense in which **Mr. Beecher** and I have been friends for the last four years.

**Q.** Now, these two questions and answers, you think, then, were asked and made? **A.** All I know about whether they were asked or answered is simply the record of them in that book,

that report; I have no recollection other than that record of it.

**Mr. Evarts**—Well, my only point is, to find out from you whether they were asked and answered.

**Mr. Fullerton**—Well, he has answered the question three or four different times.

**Mr. Evarts**—Yes; I won't criticise him, however; it is not my business to do that. What do you say? Were both these questions asked and both answered?

**Mr. Fullerton**—Now, he has asked the question three times.

**Mr. Evarts**—Now, which way has he answered it?

**Mr. Fullerton**—Well, I am not here to tell you.

**Mr. Beach**—He has answered it by saying that he has no recollection independent of the record in this book.

**Mr. Evarts**—I do not understand that. Will you read the answer that has been made, stenographer?

[Last answer of the witness read by THE TRIBUNE stenographer.]

**Q.** Now, upon that record and that recollection, will you say whether or not the questions were asked and the answers given? **A.** Cannot say, Sir. The chief questions which I recollect in regard to that Committee were the questions which were not asked me.

#### MR. BEECHER'S LETTERS ABOUT MRS. WOODHULL'S STORY.

**Mr. Evarts**—No matter; I don't ask you anything else; I am not asking for any new information—only, whether you did, or not, say a certain thing at a certain time. Just look at that letter, **Mr. Tilton**, and say in whose handwriting it is? [Letter handed to the witness.] **A.** It is in the handwriting of **Mr. Beecher**, Sir.

**Q.** Do you remember receiving that and conveying it to your wife? **A.** Yes, Sir.

**Q.** You received it from **Mr. Beecher** personally? **A.** No, Sir.

**Q.** From **Mr. Moulton**? **A.** Yes, Sir.

**Q.** There is no date on this; do you remember, in any connection, what time, what year, what part of a year it was? **A.** My recollection is, Sir, it was written about six months after the events to which it alludes; and the date was omitted in order—

**Q.** Well, no matter about it; I only want to get the fact.

The Witness—To make no inconsistency.

**Q.** You think it was written in the—? **A.** Spring of 1873.

**Mr. Evarts** [reading]:

**MY DEAR MRS. TILTON:** I hoped that you would be shielded from the knowledge of the great wrong that has been done to you, and through you to universal womanhood. I can hardly bear to speak of it, or allude to a matter than which nothing can be imagined more painful to a pure and womanly nature. I pray daily for you "that your faith fail not." You yourself know the way and the power of prayer. God has been your refuge in many sorrows before. He will now hide you in his pavilion until the storm be overpast. The rain that beats down the flower to the earth will pass at length, and the stem, bent, but not broken, will rise again and blossom as before.

Every pure woman on earth will feel that this wanton and unprovoked assault is aimed at you, but reaches to universal womanhood.

Meantime your dear children will love you with double ten-

deanness, and Theodore, against whom these shafts are hurled, will hide you in his heart of hearts.

I am glad that this revelation from the pit has given him a slight of the danger that was before hidden by specious appearance and promises of usefulness.

Mr. Morris—It is a misprint here (i. e., in a book which he held).

Mr. Evarts—"Specious," it is here—"by specious appearances and promises of usefulness. May God keep him in courage in the arduous struggle which he wages against adversity, and bring him out, though much tried, like gold seven times fined.

I have not spoken of myself. No word could express the sharpness and depth of my sorrow in your behalf, my dear and honored friend. God walks in the fire by the side of those He loves and, in heaven, neither you nor Theodore, nor I, shall regret the discipline, how hard sever it may seem now.

May He restrain and turn those poor creatures who have been given over to all this sorrowful harm to those who have deserved no such treatment at their hands.

I commend you to my mother's God, my dear friend! May His smile bring light in darkness, and His love be a perpetual Summer to you!

Very truly yours,

HENRY WARD BEECHER.

Q. The occurrence to which this refers is the publication of the Woodhull scandal, is it not? A. Yes, Sir; which had taken place several months previous.

Q. Well, which had taken place; we know when it took place. What it refers to is the Woodhull scandal? A. Yes, Sir.

Mr. Evarts—The publication of the Woodhull scandal.

[Letter marked "D, 103."]

#### WHAT MR. TILTON SAID TO MR. HALLIDAY.

Q. After the publication of the Woodhull scandal in November, 1872, did you have a conversation with Mr. Halliday on the subject of that scandal, or anything that should be said or done in consequence of it? A. I remember a conversation that I had with Mr. Halliday in company with Mr. Bell; I do not remember the date precisely.

Q. Very well; that is the time to which I refer. A. Yes.

Q. Where was that? A. At Mr. Halliday's house.

Q. And by previous appointment? A. That I have forgotten, Sir.

Q. Well, I don't know, I am sure. You were together there; you three persons were together there on this occasion? A. Yes, Sir.

Q. Was it by previous appointment or not? A. I have already answered you, Sir.

Q. Well, you mean that you don't know; is that your answer, that you don't know? A. I have already answered that I did not recollect.

Q. Very well; then so far as you remember about it, it was mere chance that you three were together, was it? A. I have already answered that, Sir.

Q. Well, do you answer it in that way, that it was mere chance that you came together, so far as you know? A. No, Sir.

Q. Well, what is the answer? A. I have told you that I did not recollect whether it was by previous appointment. I could

not say it was by mere chance unless I knew it was by mere chance.

Q. Well, so far as you have any recollection concerning the circumstances, it was a chance interview, was it? A. No, Sir.

Q. Well, how otherwise? A. I have no recollection whether it was a chance interview, or an interview by appointment. I have no recollection on the subject.

Q. Were you then in the habit of being at Mr. Halliday's? A. No, Sir.

Q. Can you say whether this was on the 18th of November? A. No, Sir.

Q. Or about that time? A. No, Sir.

Mr. Beach—What year?

Mr. Evarts—1872—very shortly after the publication. [To the witness.] What degree of acquaintance had you with Mr. Halliday prior to that interview? A. Very slight, Sir; I don't know that I had had any.

Q. Now, upon coming into Mr. Halliday's presence, or at the commencement of any discourse or conversation with him, did you say, "I want to see you?" A. I don't remember that, Sir.

Q. Do you remember how the conversation was introduced? A. No, Sir.

Q. Do you remember, at that stage of the matter, taking a seat? A. No, Sir.

Q. On the sofa? A. No, Sir.

Q. You don't remember whether you continued standing or sat down? Did you then say, "I came at the request of my friend, Frank Moulton, to speak with you concerning the Woodhull scandal?" A. I don't remember whether I did or not, Sir. The circumstances have passed out of my mind, so that I cannot answer positively.

Q. Do you remember, then, upon Mr. Bell's concluding some conversation he had with Mr. Halliday, and rising to leave, your saying to him, "George, don't go?" A. That I said "George?"

Q. "Don't go;" yes, to Mr. Bell. A. No, Sir; I never called him George in my life.

Q. Very well. A. I may have asked him not to go, but I did not address him that way.

Q. Well, you may have asked him not to go, but you do not think you addressed him by his first name? A. I don't think I did.

Q. Were you not well acquainted with Mr. Bell? A. I have known Mr. Bell from my boyhood, but not intimately; I don't think I ever should have ventured to speak to him with that degree of familiarity.

Q. Well, I don't care about that; but you knew him; he was not a stranger to you, as Mr. Halliday was? A. Not at all—a man whom I hold in very high respect.

Q. And you knew him quite well at that time. And then did Mr. Halliday, in answer to a look of Mr. Bell's to him, say: "Don't go; if Mr. Tilton wants you, stop?" A. I don't remember that, Sir.

Q. Did you then, in the presence of those two gentlemen, say this: "I have called to see Mr. Halliday at the request of my friend, Frank Moulton, to speak with him concerning the Woodhull scandal. I have come to deny it. It is as false as

can be. There is not a word of truth in it." Did you say that? A. I don't remember that I did, Sir; it is quite likely that I did, though; either that or the substance of it. Mr. Moulton and I pursued the same plan of denial.

Q. Now, don't qualify. I am asking you simply whether you said this or that thing. [To the Court.] I ask that anything be struck out, your Honor, that is not an answer to that.

Mr. Beach—Well, I don't know. What do you want struck out?

Mr. Evarts—Well, I ask his Honor to so rule.

Judge Neilson—The witness will confine himself to your questions.

Mr. Evarts—And what he has said in addition I ask to have struck out.

Judge Neilson—Yes, Sir.

Mr. Beach—That leaves it quite uncertain what is struck out. Judge Neilson—That last remark.

Mr. Beach—Very well—about Mr. Moulton. That we have no objection to.

Q. Did you then say that the whole thing was a mere fabrication? A. I do not know that I used that phraseology, but I remember using some very energetic words, to blot out from their minds the idea that there was anything in that story. I do not think I used any such weak stuff as that. [Laughter.] I think I swept it away at a breath.

Q. This is less strong than you put it, is it? A. I trust so; yes, Sir.

Q. Did you disclaim all knowledge of its publication? A. I don't remember that; probably I did.

Q. Did you state that you were away campaigning when it made its appearance, and were perfectly astonished when it was printed? A. I don't remember that I said that.

Q. Did you, referring to that publication, also say, "It is just as false as it would be for me to go over to New-York and say that the tree in front of Mr. Halliday's house was covered with five hundred flags, representing all nations of the earth?" A. I don't remember that, Sir. I didn't know that he had a house in New York.

Q. I will read the question to you again? A. Thank you, Sir.

Q. Did you say, "It is just as false as it would be for me to go over to New-York and say that the tree in front of Mr. Halliday's house was covered with five hundred flags, representing all nations of the earth?" A. I don't remember any such expression as that.

Q. Is that weak, do you think? A. I should think it was rather weak; yes, Sir. I don't mean to say that it was not mine because it was weak.

Mr. Fullerton—Well, don't let us take a week to dispose of it. I am tired of this.

Q. Did you then, or did you during that conversation, and after the points as to which I have questioned you—did you say to Mr. Halliday and Mr. Bell, "My wife is as pure as light?" A. No, Sir. I will tell you what I said at that point. I wanted to say something more assuring than that to those gentlemen. I said, as I remember, something like this: "You won't regard my testimony as of any avail.

Go to Mr. Beecher and he himself will tell you that Elizabeth is as pure as gold, as pure as light," or some such expression as that.

Q. Well, that is the very next question I was going to ask you. Now, I want your answer to this one, whether you did not say, "my wife is as pure as light?" A. I don't remember whether I did or not; but if I did not then, I say it now.

Q. Yes; and did you not add, "You ask Mr. Beecher; he will tell you she is as pure as gold?" A. Well, something of that sort.

Q. Something of that sort? A. Yes.

#### THE WRITING OF THE TRUE STORY.

Q. Now, Mr. Tilton, I understand that somewhere along towards the end of December, 1872, there was in existence, or in course of preparation, a paper which has been here, I think, called or described as a "True Story?" A. Yes, Sir.

Q. Who wrote that paper? A. I wrote it.

Q. When did you write it? A. The latter end of December, 1872.

Q. Was it written out with all the documents which its frame included at that time? Was it in a complete form of composition, which included the documents that it embraced in its scheme? A. My impression is that one or two documents were not in; for instance, the tripartite covenant. I think that I had no copy of that. Mr. Claflin possessed that. My recollection is that the document was to be included.

Q. But with that exception you think it had been reduced to a complete form, so that an ordinary reader could take it up and follow it? A. My impression is that perhaps one or two other papers were not in.

Q. But otherwise it was in a shape that any one who could read writing could read it and understand it? A. Could understand all that was there.

Q. It was not phonographic or stenographic characters merely? A. No, Sir.

Q. It was in English? A. What is that, Sir?

Q. It was in English, and in our ordinary— A. As good English as I could write.

Q. Yes. Now when if at all was that document ever made complete by including what may have been the omitted document? A. I do not think, Sir, it was ever made complete by the inclusion of the tripartite covenant. That is my best recollection.

Q. Or any otherwise than as it then read? You have said you thought perhaps some other papers might have been omitted? A. Yes, Sir.

Q. Was it all written out in a more complete form than it then was? A. My recollection is that it was never in manuscript so complete as it ought to have been for publication, if it had been sent to press; that is to say, the tripartite covenant was never incorporated into it. Nevertheless, I am not positive as to that.

Q. But there was a place designated for that to come in, was there? A. Yes, that is my recollection.

Q. So that the bringing of that document and inserting it would have made the paper complete? A. There may, perhaps, have been two or three other breaks.

Q. Have you any recollection that there was? A. I will not speak positively, it is so long since I have seen the manuscript.

Q. Now, Sir, how bulky a paper was that? A. I think it would have occupied about two or three columns of a newspaper, printed.

Q. It was written on—what was it on—foolscap paper? A. I think it was; yes, Sir.

Q. And written on one side only? A. Yes, Sir.

Q. Now, about how many sheets of foolscap? A. I don't remember.

Q. How? A. I don't remember.

Q. Well, a good many? It would take a good many? A. Yes, Sir.

Q. I don't know so much about columns of a newspaper as an editor? A. I don't know how many sheets it was.

Q. It would take a pretty thick pamphlet, wouldn't it? A. Well, it would be as thick as your hand perhaps, rolled up.

Q. I mean of the foolscap; not more than that? A. I should think it was perhaps—well, a little thicker than that. [Referring to stenographer's note-book, about half an inch thick.] I don't know how thick it was, Sir.

Q. How many copies of that were ever made by you, or to your knowledge? A. No copy of it.

Q. No copy of it made? A. No, Sir; not by me or to my knowledge. I never saw any copy of it.

Q. Was that paper ever destroyed? A. To my best knowledge it was destroyed by Mrs. Tilton. She told me so. Whether that is—

Q. No matter about the communication from your wife? A. That is all I know about it.

Q. But so far as you believe, it was destroyed? A. Yes, Sir.

Q. But not by you personally? A. Not by me.

Q. Not by your design? A. No, Sir; she told me that she had destroyed it.

Q. Well, I don't care for any conversation between you and your wife. You believe it was destroyed, but not by you, and not by your design? A. I believe so; yes, Sir.

Q. Now, when did you last see that paper in existence, or know of its existence? A. A great while ago, Sir; I don't remember.

Q. How long, about, so far as your recollection goes, did it continue to be in existence to your knowledge? A. I don't know, Sir. I only know that last Spring, I think, Mrs. Tilton told me that she had destroyed it. When she destroyed it, I don't know.

Q. I don't ask for anything that comes from your wife to you? A. Yes, Sir.

Q. Then so far as you know of its existence—and my inquiry was solely how long you continued to see it, or to know of its existence otherwise? A. I don't remember that I ever saw it since the Spring of 1873; somewhere about that time.

Q. And you did see it to your recollection as late as that? A. I don't think I saw it very long after the time it was written. I

was put away in an iron safe. Perhaps I did; I don't remember.

Q. You don't remember how late? A. No, Sir.

Q. But some months at least it existed, did it not? A. I cannot answer as to that; I have no distinct recollection about it.

#### WHO HAD ACCESS TO THE TRUE STORY.

Q. Do you remember handing that paper to any person and leaving it for perusal? A. Yes, Sir.

Q. At the will of that person? A. Yes, Sir; several persons.

Q. Now, Sir, can you give us the names of those persons? A. I showed it to the Hon. William C. DeWitt, of this city, for one.

Q. And when? A. I don't remember when.

Q. Anybody else? A. I showed it to Mr. George A. Bell.

Q. When? A. I don't remember that.

Q. Now, in showing it to Mr. DeWitt, did you leave it in his possession? A. I did, Sir.

Q. And for how long did he retain it? A. A day or two, I think.

Q. And with Mr. Bell, how was it? Did you leave it in his possession, and how long did you leave it? A. I should think he had it a day or two; I don't remember how long.

Q. Now, to whom else did you show it? A. I think I showed it to Mr. Duncklee of this city; I don't remember his first name.

Q. Well, he is a well-known person, is he not? A. Yes, Sir.

Q. D-u-n-c-k-l-e-e? A. I don't know how he spells it.

Q. And did you leave it with him? A. I think I did, Sir.

Q. Give me any other person, if you please, that you remember. A. I don't remember them at present, but I showed it to a number of persons.

Q. And those are the only names you can give? A. Those are the only names that occur to me at present.

Q. Did you so show and so leave this "True Story," as it is called, with Mr. Goodrich—William W. Goodrich? A. No, Sir.

Q. You did not? A. No, Sir; I never showed it to him at all.

Q. Did you show it to or leave it with the Rev. Dr. Storrs? A. I read the original—

Q. Now, my question, if you please— A. No, Sir; not the completed manuscript.

Q. Did you show it to or leave it with him? A. No, Sir.

Q. As a whole? A. No, Sir.

Q. Now, you did read some part of it? A. The—

Q. No matter; I don't ask you what part. A. I didn't read any part of it to him.

#### SHARP WORDS BETWEEN THE LAWYERS.

Q. You did not show any part of it to him? A. No, Sir; not of that paper.

Judge Neilson—Let us get the answer.

The Witness—That answer is not correct.

Judge Neilson—I understand him to say that he read a portion of the draft.

Mr. Evarts—No.

The Witness—Well, Mr. Evarts, I am under oath, and I desire that my answer may be correct.

Mr. Evarts—Of course.

The Witness—I didn't show that document to Dr. Storrs; that is to say, the document which you have now described. You have asked me about the pamphlet, how thick it was, &c.

Mr. Evarts—Exactly.

The Witness—And I say the sum and substance of it—

Mr. Evarts—Well, I am not now—

Judge Neilson—I think he has a right to answer that, otherwise it would be a misconception. That paper was, in a sense, the foundation of this.

Mr. Evarts—Now, if your Honor please, am I not permitted to inquire concerning a complete paper?

Judge Neilson—Yes, Sir.

Mr. Evarts—I mean the physical pamphlet, and nothing else; with whom he left it, and to whom he showed it. Now, if not leaving that with Mr. Storrs, and not showing him the whole of it, he had read a part of it or showed a part of it, that very pamphlet, to him, why that would have been a proper interrogatory.

Judge Neilson—Now, I understand the witness states he read a part of the draft to him.

Mr. Evarts—That is also a matter of subsequent inquiry.

Mr. Beach—Permit me to say, Mr. Evarts, that the question was not as to that specific paper, the pamphlet.

Mr. Evarts—Well, Sir, if I haven't it so, it is my mistake.

Mr. Beach—Allow me to make—

Mr. Evarts—Well, I want to say—

Mr. Beach—Do you persist in interrupting me when I address the Court?

Mr. Evarts—No, Sir.

Mr. Beach—I ask you to wait until I continue my remarks?

Mr. Evarts—Well, now, if you choose to continue.

Mr. Beach—I do choose to continue; but I desire you not to interrupt me in that way.

Mr. Evarts—I interrupted you to say that is my question.

Mr. Beach—I understand your question as well as you do. The question that was put to the witness was whether that paper which was called the "True Story," was read or shown to Dr. Storrs. The question was not whether the specific pamphlet which he had inquired about, was read or shown to him, as the stenographer's minutes will show. This draft was a part of the "True Story," was the preparation of the "True Story," and it necessarily called upon the witness for the explanation which he sought to give.

Judge Neilson—And the general denial could not well be reconciled with the fact that he had read a portion of the draft of that paper to Dr. Storrs.

Mr. Evarts—Now, if your Honor please, if the witness has supposed that at any stage of these questions concerning the persons to whom he had shown, or with whom they had left this paper, I referred to anything else except this completed manuscript, of which there was no other copy, then I will allow his answers to be corrected in any way that is proper.

Judge Neilson—We understand that now.

Mr. Evarts—But that I have a right to confine my question to that completed pamphlet and nothing else, I think cannot be denied.

Judge Neilson—Well, if that is avowed—

Mr. Evarts—Of course it is avowed.

Judge Neilson—And the witness is allowed to explain, then there is no misapprehension; otherwise there is room for criticism.

Mr. Evarts—I agree. So far, I say, if your Honor please, if there is the least doubt that the preceding questions and answers have been correctly understood by the witness, as applying to that completed pamphlet, as I have definitely reduced it to existence, why, I am willing any modification should be made which you please.

Mr. Beach—The stenographer will please read the last question.

THE TRIBUNE stenographer read as follows:

Did you show it to or leave it with the Rev. Dr. Storrs? A. I read the original—

Q. Now, my question, if you please? A. No, Sir, not the completed manuscript.

Q. Did you show it to or leave it with him? A. No, Sir.

Q. As a whole? A. No, Sir.

#### THE READERS OF THE TRUE STORY.

Mr. Evarts—Now we are right about it—that the completed manuscript, as I have reduced it to existence, and as you have answered about it, you did not exhibit to Dr. Storrs? A. No, Sir.

Q. And did not hand to him or read to him anything out of that paper? A. No, Sir; because I had already read the substance.

Mr. Evarts—No matter what your reasons were. We will have that struck out. You did not do it. Did you show that manuscript, completed as it was, to Charles Storrs, and if so, did you leave it with him? A. I think not, Sir.

Q. Did you show it to or leave it with. (and I now speak of the pamphlet itself—the written manuscript) to Mr. Paige, the artist? A. I do not remember whether I did or not; I think not, but still I will not be certain.

Q. Did you to Mr. B. F. Tracy—that very paper? A. Yes, Sir; I read him every word of that from beginning to end.

Q. Did you to Mr. Franklin Woodruff? A. Yes, Sir.

Q. Did you to Mr. Frank D. Moulton? A. I don't remember whether I ever read it to Mr. Moulton or not.

Q. Do you remember whether you ever left it in his hand? A. It was practically in his hands most of the time; it was under his control.

Q. Yes, Sir—you mean in his possession. That is what I mean by being in his hands. Did you leave it in his possession? A. It was in his control.

Mr. Beach—Oh, answer the question directly.

The Witness—My impression is that Mr. Moulton had it in his safe for a time; that is my best recollection.

Q. Very well; then it was in his possession. Did you show it to or leave it with Mr. James B. Mix? A. No, Sir.

Q. Do you know him? A. Very well.

Q. Is he a Brooklyn man? A. Yes, Sir.

Q. Did you show it to or leave it with Mr. F. B. Carpenter? A. My impression is I showed him the original draft—read him the original draft.

Q. I am not asking a question about the original draft; I am asking questions about the completed paper. A. I showed him either one or the other, I cannot say which.

Q. And you cannot say but that you did show him the completed paper? A. No, I cannot say which.

Q. Did you show it to or leave it with Mr. Samuel E. Belcher? A. I think not, Sir; I think I showed him—

Q. No matter what else you showed him—did you show him that? A. I think not, Sir.

Q. Did you show it to or leave it with Mr. John W. Harman? A. Yes, Sir.

Q. Both showed it to him and left it with him? A. Yes, Sir; I think I did.

Q. Did you show it to and leave it with Mr. James Redpath? A. No, Sir, I think not; I don't remember about it.

Q. You know Mr. Redpath? A. Perfectly well.

Q. And were in the habit of seeing him at that time? A. Mr. Redpath lives in Boston. He came over to my house and stayed there.

Q. Stayed at your house as a friend? A. Yes, Sir.

Q. Now, what do you say as to him? A. I have already answered.

Q. Have you no recollection of having showed it to him? A. I have already answered you, Sir.

Q. Well? A. If I had any recollection, Mr. Evarts, I should tell you cheerfully.

Q. I have no doubt of that. Do you recollect that you did not show it to him? A. I have already said that I had no recollection on the subject; how then can I recollect? I cannot.

Q. You have no recollection on the subject? A. No, Sir.

Q. Did you show it (this completed manuscript) to, or leave it with Mr. Thomas Kinsella? A. No, Sir.

Q. Neither showed it to him nor left it with him? A. No, Sir.

Q. Did you show it to Mr. William T. Clark, or leave it with him? A. I don't remember about that.

Q. Was Mr. Clark the assistant or editor of your paper? A. He was my associate editor; yes, Sir.

Q. He is the gentleman, I suppose, you refer to? A. My doubt as to Mr. Clark is, Mr. Evarts, whether he saw the completed copy or the original draft; I make the same answer concerning him that I did concerning Dr. Storrs.

Q. Now, I understand you to be clear that you never showed the complete paper to Dr. Storrs? A. I say I make the same answer to that concerning Mr. Clark; my recollection is that I showed him the original draft.

Q. I have not asked about anything else but the completed paper; you think you did not show Mr. Clark that—I do not know which way your answer is. Do you say whether you did, or did not, show Mr. Clark the completed paper? A. I don't know which it was—the one or the other.

Q. Did you show the paper to Mr. Whitney—Ald. Whitney I believe he is called? A. I think not, Sir; I showed him a copy of Mr. Beecher's letter of contrition.

Q. No matter about anything else; I am not inquiring about anything else. If your Honor please, I ask that his answer about anything else be stricken out.

Judge Neilson—That is proper.

The Witness—I think not.

Q. Do you remember offering it to him, rolled up, and his not taking it? A. No, Sir.

Q. You don't remember that occurrence. Now, Sir, the previous or earlier draft, if there was such a paper in any complete form (and you may describe how complete it was, if you please), did you show that to any of the persons that I have named? A. Well, Sir, I have already told you I showed it to Dr. Storrs.

Q. Now, we will see. What was this first draft?—how complete was it? A. It was just like the other; the other was a copy of it; the first draft was criss-crossed with interlineations of composition.

Q. Then, as I understand you, the matter of the first draft was the same as of the other paper? A. Yes, Sir, perhaps I ought to mention, Mr. Evarts, since you ask me as to the pamphlet completed, that very few persons ever saw the pamphlet with its final additions—namely, the two letters, one by Mrs. Tilton, and one by Mr. Beecher, written on almost the last day of the year.

Q. Which are in evidence here? A. Yes; these were written in afterwards; I do not think any one ever saw it with them.

Q. With these in it? A. Yes, Sir.

Mr. Evarts—Your Honor will remember that both of these letters are in evidence here. They are the two letters of Mrs. Tilton and Mr. Beecher, written in the end of December, 1872, which were proposed to be published, but were not published. Now if I can get the numbers of these exhibits, we can make this answer definite, if your Honor please, so that we can understand it.

[Mr. Shearman here handed Mr. Evarts "Exhibit D, 44."]

Q. [Showing paper to witness.] This is one of the letters to which you refer? A. Yes, Sir.

Mr. Evarts—"Exhibit D, 44;" this is Mrs. Tilton's letter. Now, I ask for the plaintiff's "Exhibit No. 74."

Mr. Fullerton—"No. 74" instead of "44"?

Mr. Evarts—No; I mean the other one.

Mr. Beach—[To Mr. Pearsall.] Hand him "Exhibit 74."

Mr. Pearsall—I have it here in the printed form.

Mr. Evarts—That will answer every purpose—to show it to him in print.

[Mr. Evarts then handed the witness the printed copy.]

The Witness—Now, what is the question, Sir?

Mr. Evarts—The question is whether that is the other letter? A. Yes, Sir.

Q. You have seen the original of the other. I understand you as now saying, as a part of, or applicable to all your answers in regard to what is called the complete statement, that probably at the time it was shown to either of the persons to whom it was shown, it did not contain these papers, "Exhibit D, 44" and "Exhibit 74"? A. No, Sir; you misunderstand me. The persons who saw the document before these two cards were written, of course could not have seen the cards copied in it. The persons who saw the document after these two cards were written, saw these cards copied in it.

Q. That is your explanation. Let us make this plain. Do

you remember when these two documents "Exhibit 74" and "Exhibit D, 44" were added or supplied to this "True Statement"? A. I think I copied them in as soon as I received them.

Q. As soon as they came into existence, about? A. That is my impression; yes, Sir.

Q. And that all persons to whom you showed the "True Story," in its complete form, after that date, saw it with these letters; and those to whom it was shown prior to that, saw it without them? A. Yes, Sir; very few persons saw it prior to that time, because it was not written until between Christmas and New Year's.

Q. You say, then, very few people saw it without those letters in? A. Yes, Sir.

Q. That is your idea; I thought it was the other way. Now, this original draft—did you show that or read it to Dr. Storrs? A. Yes, Sir; I read it to him.

Q. Read him the whole of it? A. Yes, Sir.

Q. And when did you do that? A. When did I do it?

Q. Yes. A. I did that, I should say, somewhere about the 20th of December.

Mr. Beach—Name the year.

The Witness—1872.

Mr. Evarts—1872; it is all 1872.

The Witness—I am not testifying as to the date exactly.

Q. About that time—about the 20th of December, 1872? A. Somewhere about that date; that is my best recollection.

Q. Now, did you show the draft, in the shape it was perfected, to Mr. Charles Storrs? A. I don't remember that I did, Sir.

Q. Did you show it to Mr. Paige, the artist? A. I do not remember that.

Q. Or to Mr. Dunklee? A. My impression is that Mr. Dunklee saw the complete pamphlet. Mr. Evarts calls it a "pamphlet." It was not a pamphlet; it was simply a roll of paper.

Mr. Beach—You had better not call it a pamphlet, because he does, improperly.

The Witness—He has misled me; it was a roll of paper.

Mr. Evarts—I understand that; there is no dispute what it was. It was written out and reduced to complete form, so that the documents appeared exactly that you have named. Did you show this draft to Mr. James B. Mix? A. I showed Mr. Mix some loose sheets—a portion.

Q. You did not show him the whole? A. No, Sir.

Q. Did you leave these loose sheets with him? A. No, Sir.

Q. Did you show this original draft to Mr. Samuel Belcher? A. That I do not remember.

Q. Did you leave it with him? A. I do not remember.

Q. Did you show that original draft to Mr. Redpath? A. I do not remember.

Q. Now, what became of this original draft? A. As soon as I copied it—made a clean copy of it—the original sheets, I think, went into my waste basket.

Q. So that is not in existence now? A. I think not, Sir.

Q. Do you know of any copy of that paper being now in existence? A. No, Sir.

Q. Now, I have understood you to say that you read the complete paper to Mr. Tracy? A. Yes, Sir.

Q. And you mean not the draft? A. The completed paper.

Q. Yes, the completed paper. Now, when and where was that? A. In Mr. Moulton's study.

Q. In an interview which has been made the subject of testimony here? A. Well, Sir, it seems to me something has been said about it; I think it was between Christmas and New Year's.

Q. Between Christmas and New Year's? A. Somewhere about that time.

Q. Now, Sir, when you say that this paper and this draft of it are destroyed, and you do not know of any copy of it in existence, I understand you that you mean that the whole of them are destroyed. A. There was no copy, Sir, that I know of; and this one being destroyed by Mrs. Tilton, I do not know of any other being in existence.

Q. All parts of it were destroyed? A. No, Sir; two or three of the final pages of it remain.

Q. Of what? A. Of this document.

Q. That includes these letters; doesn't it? A. I don't know exactly how much.

Q. Then you do understand that two or three pages remain; you say it is the last part? A. Two or three of the final pages which were written on, together with several blank sheets not written on, I found in my wife's bureau, after she deserted her home. I have those sheets still.

Judge Neilson—Mr. Fullerton announced that fact to us the other day.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—My object is to get at the facts; that is all I am after.

Q. And, excepting this, no part that you know of, either of the completed paper, or of the draft, or of any copy of them in existence?

The Witness [to Judge Neilson]—I do not know whether I should answer that yes or no.

Judge Neilson [to the Witness]—You can answer; he says so far as you know.

The Witness—Yes, Sir; the point is, I don't know whether my answer grammatically required "yes" or "no" to the question.

Judge Neilson—I think either will be right, Sir.

Mr. Evarts—Now, gentlemen, will you produce those parts that are preserved?

Mr. Fullerton—We cannot at this moment, because, I believe, they are not here.

Mr. Evarts—Well, that is a good answer for this time, of course.

Mr. Beach—A good answer for the day.

Mr. Evarts—Yes; for the day. I asked for them; my friend says they are not in Court, which is of course satisfactory.

Q. Mr. Tilton, let me recall your attention a moment to the date of any supposed interview in which you showed this complete statement to Mr. Tracy. Do you now say that it was between Christmas and New Year of 1872? A. I think it was, Sir; it was either then, or, possibly, a little later.



Q. Not earlier? A. Oh! no; it could not have been earlier, because the completed manuscript was not in existence earlier.

Q. Very well. Then, if you did show him something in this nature earlier than Christmas, it was not the completed paper? A. I didn't show him anything earlier than Christmas.

Q. Have you not in your previous examination put the date of this interview with Mr. Tracy earlier than between Christmas and New Year's? A. The interview which I had with Mr. Tracy, Mr. Woodruff and Mr. Moulton occurred in November, six weeks previous to this.

Q. At that time did you show him—I won't say the completed paper, because it was not then completed—but did you show him the draft of this statement, or read it to him? A. No, Sir; it was not in existence. The draft didn't come into existence until a month or so after. I didn't show anything to Mr. Tracy in that first interview. Mr. Moulton showed him the letter of contrition, and certain other papers.

Q. Now, at the interview at which you did show the contemplated paper, as you think—as you say, to Mr. Tracy, who were present? A. Mr. Francis D. Moulton.

Q. And nobody else? A. Nobody else; three of us in the study.

Q. Where was that? A. Up in the study in Mr. Moulton's house.

Q. And that is distinct from the interview at which Mr. Woodruff was also present? A. Oh, yes, Sir, they were nearly two or three weeks apart—six weeks, or two months apart, those two interviews.

Q. Now, Sir, was not the interview at which you showed Mr. Tracy any paper or draft of the "True Story" about, or exactly the 15th of December? A. No, Sir, it was either two, three or four weeks after that.

Q. That is, it was either between Christmas and New Year's, or later? A. Or else later, yes, Sir.

Q. Now, can you give us the date of the destruction of the draft otherwise than that it was done as soon as you had completed the original? A. Oh! I think that as fast as I copied the sheets they went into the waste basket. That is all I recollect about it.

Q. You have no other recollection concerning it than that? A. No, Sir.

Q. And you cannot give us more exactly the day or the date on which you did make that copy of this paper? A. I should think that—I have a recollection that Mr. Carpenter has a note in his diary that it was finished on Christmas day.

Q. That the copying was finished? A. Yes, Sir.

Mr. Evarts—Well, that is not good evidence.

The Witness—No, not the copying.

Mr. Evarts—The copy?

The Witness—Yes, Sir, the copy.

Mr. Evarts—That is not good evidence.

The Witness—You asked me to fix the date. I may be wrong about it.

Mr. Evarts—As far as you can fix it, it was Christmas? A. Somewhere about that time.

Q. Now, how early did you begin the writing or drafting of the original? A. I should think somewhere about the 20th of December, perhaps.

#### DR. STORRS'S ADVICE ABOUT THE TRUE STORY.

Q. How are you able to fix that date, and with what assurance? A. I fix that date by the date of a visit which I made to Dr. Storrs, to which I carried Mrs. Tilton's letter of December 16th.

Q. Yes; well, you mean that the 20th of December was the date of the visit to Dr. Storrs? A. No, Sir, I think the date of that letter, namely, December 16th.

Q. Then, at the time of that visit you had not commenced the draft?

Judge Neilson—The copy.

The Witness—I think I had, perhaps, put together some notes of a draft, or I had possibly made some copies of the paper that I might read them to Dr. Storrs, that I might have his judgment, which I did get, and out of that judgment I wrote the paper.

Q. Well, no matter about that. I want to get at the date when you began to prepare what was physically the draft of this "True Story"? A. My recollection is about the middle of December—from the middle to the 20th.

Q. I mean this actual draft that you have spoken of as a paper in existence? A. Yes, Sir.

Q. When did you begin that? A. I think somewhere about the middle of December.

Q. That is all that I ask? A. That is my best recollection.

Q. And you then had an interview with Dr. Storrs, had you? A. I had two or three interviews.

Q. Well, you had one, then, on the 16th of December? A. Yes, Sir.

Q. And at that time you had not commenced the draft, had you? A. I don't remember whether I had commenced it, or not.

Q. You cannot say that you had any part of the draft with you when you went to Dr. Storrs? A. No, Sir; I don't recollect.

Q. Now, when next did you see Dr. Storrs? A. I don't remember the date.

Q. Be as clear as may be? A. I saw Dr. Storrs three or four times; I don't remember the dates of these interviews. One was in November, one was in the early part of December, and another was, perhaps, towards the middle or towards the close; I cannot recollect.

Q. My only point at present is to know what state this "True Story," in draft or completed copy, was when you showed it to Dr. Storrs? A. I read to Dr. Storrs the loose sheets of the substance of the whole paper; I don't remember on what day I did it.

Q. Did you read then from this physical paper that has been called the draft? A. Physical paper called the draft?

Q. Yes, Sir. A. Certainly; yes, Sir.

Q. You did? A. I read to him the paper which was afterwards copied in a more cleanly way—

Mr. Evarts—Well!

Mr. Fullerton—One moment.

The Witness—and which were stitched together and constitute what you call the pamphlet.

Q. Called the completed copy? A. Yes, Sir.

Q. Then this draft was the paper which you had when you

showed Dr. Storrs any part of it; that is, when you showed anything that was in the shape of a composition called the "True Story"? A. Well, Sir, I am not sure, but think I had two interviews with Dr. Storrs, one in reference to the documents themselves, before they were joined together in a draft.

Q. That might be, but that I am not inquiring about. A. What is it you are asking me about, Mr. Evarts?

Q. I want you to fix the date of the interview with Dr. Storrs in which you had physically present the draft, or any part of the draft of the "True Story" A. Well, Sir, I cannot fix the date.

Q. You cannot? A. No, Sir.

Q. But it was subsequent to the 16th of December? A. To the best of my recollection.

### THE STORIES THAT CAUSED THE BOWEN LETTERS.

Q. I come now to the period of the meditated publication of your letter to Mr. Bowen of the 1st of January, 1871. You had returned from the West, as I understand? A. Yes, Sir.

Q. And found a condition of rumor and implication here that made you think it was necessary to have some publication? A. Yea, Sir.

Q. You had been on a lecturing tour, had you not? A. Yes, Sir.

Q. That was the season of 1871-'2? A. Yes, Sir.

Q. Did Mrs. Tilton accompany you on that tour? A. She did, on a part of it.

Q. How many months or weeks? A. I don't remember that. We went away off into the North-West, I think.

Q. The greater part of the tour? A. I think not; a portion of it.

Q. Now, as you traversed this region for the purposes of your lecture, as I understand, you found prevalent there stories which I think you have characterized as horrible stories to your prejudice? A. No, Sir, I didn't.

Q. I thought you had? A. No, Sir, no such characterization.

Q. Well, what was it? A. I will tell you what I found in the West. I found this, a good deal of mystery growing out of the fact that at the close of December, 1870, *The Independent* had in a eulogistic way announced that I was to be editor of *The Brooklyn Union*, and to contribute to that paper, and that then very suddenly the newspaper press of the country announced that my relationship with those two papers had been sundered, and people wanted to know the reason why; every one said I must make an explanation.

Mr. Evarts [reading from *THE TRIBUNE* report]:

Mr. Fullerton—Never mind that. Did you regard these stories which were afloat in the West, and which you heard of West, when on your lecturing tour, as detrimental and prejudicial to your character? A. Why, Sir, they were horrible stories.

A. I thought you were referring to the interview I had with Mr. Bowen, Dec. 26th, in which I quoted his word "Avalanche."

Mr. Evarts—Oh! no, I am referring to this very period.

Judge Neilson—This relates to stories which he heard while he was on his lecturing tour.

Mr. Evarts—While he was out West.

Judge Neilson—And not after his return.

Mr. Evarts—Of course that is what I am asking him. I understood the witness, on his direct examination, to say that on his return from the West he thought it necessary that some publication should be made to meet a state of things that was then in existence.

The Witness—Yes, Sir; the mystery was why I should be so suddenly retired, and many people were filling the gap with all sorts of explanations, stories and the like.

Q. I understood you said that on your direct examination, and I am now recalling your attention to that period. Now, what was the nature and character of these horrible stories that you heard out West? A. Well, I heard one story to the effect that I had become a drunkard; I heard another story to the effect that I had been divorced; I heard another story to the effect that I had embezzled money—I don't know what the stories were.

Q. Well, these stories were discreditable, of course, in their nature? A. Yes, Sir; they were.

Q. And on your return you brought up the matter of publishing this Bowen letter? A. Yes, Sir; to explain the true reasons why I went out of those two papers.

Q. When was this return, and when was it, as matter of fact—no point of date—that you commenced preparing and indicating a purpose of publishing that letter? A. I think it was the month of March, 1872.

Mr. Beach—[To *THE TRIBUNE* stenographer.] Please read the question.

[*THE TRIBUNE* stenographer read the question.]

Mr. Evarts—If the question is incorrect I will correct it.

Mr. Beach—I think it is.

Mr. Evarts—Preparing for or indicating a purpose of publishing that letter. [To the witness.] Now, with whom did you confer, if with any one, concerning the preparation of any statement to accompany the publication of that letter? A. I conferred with Mr. Oliver Johnson, to the best of my recollection, and with Mr. Moulton. I don't know that I conferred with any one else; if so, I have forgotten at the present moment.

Q. Well, how early was the new matter that was to accompany the republication of the letter itself completed and put in type? A. I don't understand that.

Q. How early was the new matter that was to accompany the reproduction of the Bowen letter itself prepared and put in type? A. You mean the exact date?

Q. Yes, Sir, as near as I can get it. A. I don't remember.

Q. I want to know. Was it before the end of March? A. I don't remember that; I should think somewhere towards the end of March.

Q. Somewhere towards the end of March? A. I should think so, Sir. I have no means of fixing the exact date.

Q. But that is your best recollection? A. Well, Sir, I have no recollection other than that which attaches to the date of the signing of the tripartite covenant, which was April, 1872.

Q. Exactly? A. The preparation of the article was shortly before that, and that is what fixes it.

Q. And it was put in type shortly before that, was it not? A. Yes, Sir.

Q. Now, to whom, when this was put in type, was it shown? A. Mr. Moulton showed it; I don't remember that it was shown to anybody other than the persons concerned in its preparation—Mr. Johnson and Mr. Moulton; Mr. Moulton, I think, showed it to Mr. Beecher.

Q. I believe that has been spoken to? A. Yes, Sir.

Q. To whom did you show it? A. I don't think I showed it to anybody: I don't remember that I did.

Q. Was it not shown to Mr. Bowen? A. Mr. Claflin showed it to Mr. Bowen, I think.

Q. You know that Mr. Bowen saw it? A. I don't know it in the sense that a man can testify under oath. I was told Mr. Claflin took it to Mr. Bowen; I was not present.

#### THE CHANGES IN THE TRIPARTITE COVENANT.

Q. And that was before the tripartite agreement was signed? A. Yes, Sir.

Q. The tripartite agreement is in evidence, and it was dated the 2d day of April, do you remember? A. Yes, Sir, that is the date of it.

Q. Now, before the tripartite agreement was reduced to its actual form in which it is signed, and brought in evidence here, had there been a previous preparation of any clause in it in which you were concerned? A. Yes, Sir; there was a previous preparation of that paper by Mr. Wilkeson, containing a clause which I declined to sign.

Mr. Evarts [to Mr. Shearman]—Have you got that paper, the tripartite agreement?

Mr. Shearman—Yes, Sir. [Handing paper to Mr. Evarts.]

Mr. Evarts [handing paper to Witness]—Take that, if you please. Now, before that was signed, as it now reads, there was a draft or proposed agreement for signature that differed from that? A. Yes, Sir; differed very greatly from this.

Q. Now, have you a copy of that as proposed? A. Only such a copy as exists in the printed books.

Q. You have not the paper itself, have you? A. No, Sir.

Q. In which clause, if it was confined to one clause of that agreement, was this difference—in which clause was this difference of the preparation? A. If you show me the book I will point it out to you.

Judge Neilson—He means which clause in that before you. Is it numbered?

Mr. Evarts—Yes, Sir.

The Witness—This is the completed draft, your Honor; he is speaking of the original draft.

Mr. Evarts—My question is, in which of the clauses, as they now appear in the completed paper, was the difference between the paper and the draft—in which of those clauses? A. Changes were made in two clauses.

Q. Then give us both? A. In Bowen's clause and in my clause.

Q. They are numbered there, are they not? A. Yes, Sir; Mr.

Bowen's is No. 1, and mine is No. 2. Changes were made in both before Mr. Bowen signed, and before I signed.

Q. The difference between those papers as actually signed, and the draft as considered before, was in the first and second clauses? A. Yes, Sir.

Q. Was there any difference in the third clause, or Mr. Beecher's clause, that is, I suppose? A. All I know about it is what I see in this book, and I am just reminding myself that I have testified to what I don't know really of my own knowledge, only as I see it here.

Q. Well, you have a right to refresh your recollection from anything in which you have reasonable confidence. You have that book before you, have you, in which that statement is? A. Yes, Sir.

Q. Now, with that advantage, or without that advantage, you recollect that there was a difference between the draft and this paper? A. Yes, Sir.

Q. And in the clause that was to be signed by you? A. Yes, Sir.

Q. As well as in that which was to be signed by Mr. Bowen? A. Yes, Sir.

Q. Now, do you know of any preservation of the original draft? A. No, Sir.

Q. Do you know whether the original paper itself is in existence, or not? A. I do not; all I know is what I see here in this book, which purports to be a copy of the original draft.

Mr. Evarts—I believe it is in existence, and, if your Honor please, we would wish to go on with that. It is in our possession if it is in anybody's. If it is insisted upon, we can have that here to-morrow morning, if your Honor please. The material point that the paper itself should be here is to proceed with the inquiry.

Judge Neilson—[To the Jury.] Gentlemen, please be in your places at eleven o'clock to-morrow.

Mr. Mallison (Clerk)—The Court stands adjourned until to-morrow morning at eleven o'clock.

The Court thereupon adjourned until eleven o'clock on Thursday.

#### TWENTY-FOURTH DAY'S PROCEEDINGS.

##### MISSING FRAGMENTS OF THE "TRUE STORY."

THE TRIPARTITE COVENANT AND THE BOWEN ARBITRATION—PART OF THE "TRUE STORY" PRODUCED BY MR. TILTON—THE REMAINDER, SUPPOSED TO BE DESTROYED, BROUGHT IN BY THE DEFENSE—THE CROSS-EXAMINATION OF MR. TILTON ALMOST COMPLETED.

THURSDAY, Feb. 11, 1875.

The tripartite covenant may be an important weapon in the hands of the defense. The direction in which Mr. Beecher's counselors expect to wield it was more than faintly foreshadowed during the two hours that it was the object of Mr. Evarts's questions to the plaintiff to-day. As Mr. Moulton

has sworn, the tripartite covenant was completed by the affixing of the signatures on April 2, 1871, while the arbitrators in the case of Mr. Tilton against Mr. Bowen made their award earlier on the same day. The defense may try to show that the two transactions hinged upon each other; to that end Mr. Evarts's inquiries yesterday tended. His questions, put seemingly with little thought as to their consecutive order, were in regard both to the tripartite covenant and to the Bowen arbitration, and so skillfully did the examiner "dove-tail" his queries about the two subjects that they seemed to become inseparable events. The meeting at Mr. Moulton's house in regard to the covenant was first described by the witness, who said that he, then and there, expressed his willingness to sign the agreement "twenty times over," if Mr. Bowen would sign, but when he more fully comprehended the clause touching himself, he declined to put his name to it, and that brought about the change. The next questions were as to whether Mr. Tilton received the check for \$7,000 from Mr. Bowen before or after he signed the paper. The witness said it was before. There was a very minute examination of the manner in which the covenant was composed and signed, and the witness gave, as the best of his belief, that Mr. Bowen signed it first; himself second; Mr. Beecher last. The well-known Bowen letter, which formed a part of the tripartite agreement, and was published in a Brooklyn Sunday newspaper some time afterward, was closely traced from the day on which it was printed on "slips" in *The Golden Age* office. Mr. Tilton said that he knew nothing of the manner in which the Sunday newspaper obtained a copy of the letter, although he had thought, because Mr. Kinsella had said that Mr. Beecher had shown him the tripartite covenant, that it was through Mr. Kinsella that the letter had found its way into print.

Mr. Evarts now called for the portion of the so-called "True Story" in the possession of the prosecution, but it was found that Mr. Tilton had it at home. He promised to produce it after recess, and Mr. Evarts proceeded to other subjects to fill the remaining few minutes of the morning session. The questioning then brought replies that from 1866 to 1870, inclusive, the witness attended Plymouth Church eight or ten times a year; that he never except once remained at Mrs. Woodhull's house until midnight; and also that he had no access to the papers in Mr. Moulton's hands after the appearance of the Bacon letter.

#### A DOCUMENT THAT SEEMS TO BE A SURPRISE.

The most interesting occurrence of the week was the production of a copy of the so-called "True Story," written by Mr. Tilton in the latter part of 1872, subsequent to the publication of Mrs. Woodhull's story. After recess Mr. Tilton took from his pocket the pages of the statement which Mrs. Tilton left in a bureau drawer after she left his house last Summer. They are ordinary foolscap sheets, unnumbered, and written very carelessly. The edges of one side, which had been stitched together, are much mutilated. They constitute the concluding pages of the "Story," and were supposed by Mr. Tilton to have been destroyed by Mrs. Tilton. Mr. Evarts took the pages from the witness and all of Mr. Beecher's lawyers examined them carefully, after which they consulted together for a few moments. Then Mr. Evarts arose, and from a bulky book which he held in his arms, he read this sentence: "One day last month when I was in Northern New-Hampshire, a scandalous publication burst like a cloud over my home in Brooklyn, and shed a sudden shadow on my wife's good name."

He then asked Mr. Tilton whether that was the way in which the "True Story" began. From this question and from those following, it was evident to the counsel for the plaintiff that the defense were in possession of a copy at least, of the "True Story." It was not until after several questions had been answered by Mr. Tilton (who did not remember the phraseology but admitted that such statements were contained in the "True Story") that his counsel ventured to offer a protest. Then Judge Fullerton, and afterward Mr. Beach, insisted that the defendant was giving secondary evidence of an instrument, the loss of which had not been proved. Judge Neilson ruled that Mr. Evarts was in order, and the latter declined to give his opponents any clew regarding the document from which he was reading. There was a great deal of speculation as to the manner in which the counsel for the defense had obtained the copy.

The "True Story" comprises charges against Mr. Beecher, Mrs. Beecher, Mr. Bowen, and Mrs. Morse, the writer being very vehement against the two men, while he accuses Mrs. Morse of making malicious and cunning statements against her family, and Mrs. Beecher of being his enemy for years, and of having attempted to injure him. The charge against Mr. Beecher is that he had asked Mrs. Tilton

"to be a wife to him together with all that this implies."

After the reading of each sentence Mr. Tilton was asked whether that clause was included in the "Story." The phraseology seemed dim in his memory, but he generally testified to the correctness of the substance of the sentences. In one place where the action of his retirement from *The Independent* is discussed, occurs the sentence: "I took off my crown and laid it at his (Bowen's) feet." "Is that yours?" asked Mr. Evarts. "It sounds just like me," replied the witness, with the shadow of a smile on his face; "I think I must have said it." Mr. Evarts laughed, and was joined by the audience. It was nearly 4 o'clock when the subject of the "True Story" was exhausted.

### THE PROCEEDINGS—VERBATIM.

#### MR. TILTON CANNOT INDICATE THE CHANGES IN THE COVENANT.

The Court met at 11 a. m., pursuant to adjournment. Theodore Tilton was recalled and his cross-examination resumed.

Mr. Evarts—We were speaking, Mr. Tilton, of the transaction of the tripartite agreement, and of the previous draft differing from the actual paper, you remember? A. Yes, Sir.

Q. You have no copy of that draft, as you have stated, I believe? A. Not unless the printed book is a copy.

Q. Yes, unless the printed book is a copy. Now, I ask you to look—that purports to be a copy—in this printed book, and see if you recognize that as the draft that was replaced by the actual paper? [Handing witness the book] A. I cannot say whether this was the original draft or not. It purports to be.

Q. Look at it and peruse it, if you please, and say whether that now seems to you to be the draft? A. All I can say is, Sir, that it purports to be; I cannot say that it is not, nor that it is.

Q. Well, have you no recollection concerning the draft, the paper which was altered, and altered by your request, or altered in consequence of some suggestion of yours—can't you, from any recollection placing you back in the transaction, say whether or not that is a faithful copy, so far as substance and any sense of the thing is concerned? A. I recollect very distinctly, Sir, that there was a draft presented to me which, when I carefully read it over, I declined to sign; and that I made alterations or amendments in that draft, perhaps re-wrote a part of it; and that the paper that I signed was not the first one, without the alterations, but the second one, in which my alterations had been made.

Q. That we understand. A. Now, whether this is a copy of that first draft as it originally came from Mr. Wilkeson's hand, I have no other knowledge than the mere fact that this book says so.

Q. Well, won't you read the article that relates to yourself,

not aloud, but read it, and see whether that article is in your recollection—to the best of your belief, the article relating to yourself in the draft? A. I could not swear, Mr. Evarts, that this was the identical phraseology which Mr. Wilkeson first submitted to me.

Q. On perusing that article to which I have last called your attention, does anything occur to your memory as having been in that article in the draft—that is, not there now—that is, not in the print before you? A. No especial phraseology or sentence.

Q. In so reading what is now before you in that article, does it occur to your memory that there is anything omitted in the print before you that was in that article in the draft? A. No, Sir.

Q. Then, so far as you know and believe, that article, as in print before you, is in substance and meaning as it was in the draft? A. Well, I could not say that, Mr. Evarts.

#### MR. WILKESON'S DRAFT OF THE COVENANT.

Q. Well, you remember nothing wanting, and you remember nothing additional in the draft? A. I don't remember the phraseology of that original draft distinctly enough to compare it in my recollection with this printed form. I cannot swear that this was that draft or not. I won't swear that this is not.

Mr. Evarts—We will have this identified in some way.

Mr. Fullerton—What page is it on?

Mr. Evarts—It is blank.

Mr. Morris—It is in Mr. Wilkeson's statement.

Mr. Evarts—Yes, it is not necessary to have any further identification.

Mr. Morris—No.

Mr. Evarts—That it is the supposed draft that is contained in this book.

Mr. Fullerton—It is in Wilkeson's statement.

Q. Now, in whose handwriting was the draft as it was before you while the transaction was going on? A. I have an impression that it was in Mr. Wilkeson's handwriting, but I am not very positive as to that. I notice that the tripartite covenant in its final shape as signed by the three of us, and which you put into my hand yesterday, was in Mr. Wilkeson's hand.

Q. And your recollection is that the draft was in his handwriting? A. No, Sir; I didn't say that.

Q. Well, state it yourself again, if you please? A. That is my impression, but I am not positive that the original draft was also in his hand.

Q. Mr. Samuel Wilkeson? A. Mr. Samuel W. Wilkeson, I think. I don't remember whether there is a middle name or not.

Q. Well, it is Mr. Samuel Wilkeson? A. Yes, Sir.

Q. Now, who were present when this draft was thus shown to you as you have stated? A. You mean the original draft, or the final one?

Q. The original draft? A. I don't know whether it was shown to me at all. I think it was read, and I think the occurrence took place in Mr. Moulton's study. The scene as it rises to my

mind now seems to include Mr. Claflin, Mr. Wilkeson, Mr. Moulton and myself. That is my best recollection at present.

Q. And was it a pre-arranged meeting? A. That I don't remember, Sir.

Q. You cannot say but it was casual? A. I don't remember any previous appointment; I think Mr. — I don't know; I couldn't answer.

Q. Do you think it was a chance gathering of these four people? A. I should not think it was a chance gathering.

Q. What hour of the day was it? A. This meeting at Mr. Moulton's?

Q. Yes. A. That I don't remember.

Q. Do you remember whether it was day or evening—morning or evening, or what not? A. I cannot speak positively as to that. I have a kind of impression that it was evening; still—

Q. Still it might have been the morning? A. Well, I would not want to swear positively to that which is so indistinct in my mind.

Q. Well, either way—either way it is indistinct; whether it was morning or evening is indistinct? A. Yes, Sir.

Q. Now, was the paper as thus before you, read to you, or shown to you, proposed for your then present signature? A. I don't remember that, Sir.

#### THE PROPOSAL OF THE TRIPARTITE COVENANT.

Q. Did you, on reading or hearing read that draft on that occasion, express your readiness to sign it, and offer to do it immediately? A. My recollection about the circumstance is this: that Mr. Claflin asked me, either on that day or perhaps a preceding day, whether or not, in case Mr. Bowen could be induced to withdraw the statements which he had made against Mr. Beecher, and would withdraw them in writing—whether or not I would bind myself in writing not to make any use or circulation of Mr. Bowen's statements, and I answered with great readiness I would. My further recollection is that the original draft was brought to this occasion—to the interview of which I am speaking—with a view to accomplish that end. My still further recollection is that the draft was read, and when the paragraph assigned to Mr. Bowen had been read I burst out with the expression, "Mr. Bowen will never sign that." Mr. Claflin said something like this: "Mr. Bowen has got to sign it." I don't remember very distinctly about the concluding part of the covenant. I recollect this, however, saying that if Mr. Bowen would sign that I would sign it twenty times over; in other words, that if Mr. Bowen would blot out so sweepingly—

Mr. Evarts—No matter.

Mr. Beach—Yes, he is stating.

The Witness [continuing]—As that paper, I would sign it.

Mr. Evarts—He is giving—

Mr. Beach—He is giving the substance of what he said.

The Witness—I told Mr. Claflin very distinctly that I didn't think Mr. Bowen would sign it. Mr. Claflin said Mr. Bowen would have to sign it. I said, "If Mr. Bowen will blot out his own words in that way I will sign any such paper a dozen times over." But the discussion of the paper was had in reference to the clause concerning Mr. Bowen. Afterwards, when it came to

what was written for me to sign, I declined to sign my paragraph.

Mr. Evarts—Well, that is after. I think that this may be struck out.

Judge Neilson—I think it is proper.

Mr. Evarts—I have not asked him any question as to what transpired after.

Judge Neilson—It relates to the general inquiry.

Mr. Evarts—Will your Honor allow the question to be read?

Judge Neilson—You have been taking his general recollection of what was said.

Mr. Evarts—Your Honor will see by the reading of the question what my inquiry was. Will the stenographer read the question?

THE TRIBUNE stenographer read the question as follows: "Did you, on reading or hearing read that draft on that occasion, express your readiness to sign it, and offer to do it immediately?"

Judge Neilson—I think that calls generally for all that was said on the occasion, as bearing on that. It is a very comprehensive question, unlike most of your inquiries.

Mr. Evarts—It strikes me, on the other hand—if your Honor will allow me to state—that it was emphatically a question, on the cross-examination, that admits of an answer, yes or no, and requires nothing more.

Mr. Beach—He was asked, if your Honor please—

Mr. Evarts—Well, I don't propose—

Mr. Beach—Wait a moment.

Mr. Evarts—I don't propose to discuss it any further.

Mr. Beach—Well, I do. He was asked whether he offered to sign it. He goes on to state what he has stated in reference to the clause concerning Mr. Bowen, and was then proceeding to say that when the clause relating to himself was read he found fault with it and refused to sign it in that shape, and just at that point the counsel interrupted the witness.

Judge Neilson—Your theory is that if the counsel wants his question answered yes or no, he should have intervened at once.

Mr. Beach—Yes, Sir.

Judge Neilson—Instead of allowing him to proceed with a general explanation?

Mr. Beach—Yes, Sir.

Judge Neilson—I think we will let it stand as it is.

Mr. Evarts—Oh, well, I don't object, only I didn't want it to go on continuously, as if it were an answer to my question.

#### WRANGLES OVER THE LEGALITY OF ANSWERS.

Mr. Evarts—Oh, well, if your Honor please, I don't object to that, only I do not want to let him go on continuously as if in answer to my question. [To the witness.] Now, did you then and there, after this statement that you were ready to sign it a dozen times, or twenty times, whichever it was, did you then and there offer and propose, by movement or words, to actually sign the paper at that moment? A. I remember, Sir, as a gesture expressive of my willingness to sign such a paper, I took up a pen and made a motion like this—"I will sign it twenty times over."

Mr. Evarts—Yes, Sir.

The Witness—But when I come to look closely at the paragraph, Sir, and saw—

Mr. Evarts—That is an answer.

Mr. Beach—No, Sir; it is not. The question is whether he offered to sign it, or made any gesture—

Judge Neilson—Suppose he qualified that; I think we ought to take the whole statement.

Mr. Evarts—Now, if your Honor please, how can I conduct a cross-examination if it is in the power of this witness—and I do not speak of him differently from any other witness—if it is in the power of this witness to interpose explanations that are not a part of the answer to my question. He has abundant opportunity, your Honor knows—

Judge Neilson—He ought to confine himself to your question, of course.

Mr. Evarts—He has abundant opportunity to explain on re-direct examination, or a subsequent explanation may be given.

Judge Neilson—Well, I think when a statement is taken in part it ought to be taken entire.

Mr. Evarts—Well, that would expose one very much to the mercy of the witness.

Mr. Beach—I insist, Sir, that in the answer to that question whether he then offered to sign that paper, that the witness having said that, when the article relating to Mr. Bowen was read, he took up his pen and manifested his readiness both by gesture and declarations to sign, that he should be permitted to conclude the balance of the answer which he has undertaken to give; that when he saw or heard read the paragraph relating to himself, he then refused to sign that paper.

Judge Neilson—Without modification.

Mr. Evarts—I do not so understand that he has said anything of that kind; nothing of the kind.

Mr. Beach—Well, we will see whether he has.

Mr. Evarts—[To the witness.] Had not the whole paper been read to you when you offered to sign—

Mr. Beach—Wait one moment; I object to the question; do not answer the question. I submit that, before this counsel shall be permitted to put another question, the witness shall be permitted to answer the question he has undertaken to answer and partly answered.

Judge Neilson—I think so. The inquiry was whether this gentleman was not ready and willing and did not offer to sign. He proceeds to state, illustrating his answer by the flourish he made at the time. I think he should be allowed to add, if he saw occasion to change his mind—allowed to add that.

Mr. Evarts—That is a subsequent matter. I want the fact as it occurred; and it is that he was then and there ready to sign, and took a pen for the purpose.

The Witness—I was ready to sign exactly what I stated, whether the other two—

Mr. Evarts—Well, now, I have not asked him as to what his readiness to sign was.

Judge Neilson—I think what he was proceeding to answer was called for by your question.

Mr. Evarts—I asked him what he then and there did.

Judge Neilson—Yes.

Mr. Evarts—I asked for gesture or word.

Judge Neilson—Yes; he gave it.

Mr. Evarts—Well, then, there is an end of it.

Mr. Beach—No; it is not.

Mr. Evarts—How has he a right to go into what he was thinking about.

Mr. Beach—Nobody asked that.

Judge Neilson—But he has a right to this: if you fix him to the point that he was ready and willing and by a flourish of the pen he did offer to sign it, as he states, a dozen times, that would fix him to the fact that he had bound himself to sign it, or had promised to do so, and recognized it as correct; and, therefore, the witness ought to be allowed to say whether, upon further noticing the paper, he saw objection.

Mr. Evarts—That he would be allowed to say on the re-direct examination, perhaps.

Judge Neilson—It would be an awkward thing to stand, I think, on the cross-examination.

Mr. Beach—It would not be a true answer to the question which he was undertaking to answer.

Mr. Evarts—Now, if your Honor please, I have asked him, and given him the full liberty of the word and gesture then exhibited, and now I take the word and gesture in full; I won't cut out anything of that, but as for interposition of what he and why, in his own mind, he was ready to do, I must insist it is no part of my examination.

Judge Neilson—If he saw, then and there, occasion to qualify the expression of readiness to sign, he should be allowed to state it.

Mr. Evarts—If he did there; but that is not the point of what he is going on to say. I will take all that occurred from this witness at that interview.

Judge Neilson—At that interview; that is all.

Mr. Evarts—Very well; but I will take it, with your Honor's permission, in my own inquiries.

Mr. Fullerton—Well, you will take it in his answers also.

Mr. Beach—If your Honor will recur to the stenographer's minutes, you will get the precise phrase of the witness at the moment he was interrupted. He gave the gesture of his readiness to sign, and then went on with a "but," to say: "When I saw the paragraph relating to myself;" and there the counsel interrupted him.

Judge Neilson—I think he has a right to state that. Otherwise, he stands as a person who agreed or consented to sign. Whatever he said and did at that interview, he has a right to say.

Judge Neilson—Did you, at that interview, see the paper; did you inspect it? A. I don't think, Sir, that I saw the paper at all.

Judge Neilson—Well, now that disposes of it.

Mr. Evarts—If your Honor please—

Judge Neilson—I am adopting your theory, now.

The Witness—Your Honor understood me, of course. I saw the paper in the hands of the gentlemen there, but I don't think I had it in my own hands at all.

Judge Neilson—You did not examine it to see what it contained? A. No, Sir.

Judge Neilson—Now, I adopt your theory.

Mr. Beach—But it was read to him on that occasion.

Judge Neilson—Was it read at that time.

The Witness—I don't remember distinctly whether the concluding paragraphs were read or not.

Mr. Evarts—Now, we will go on.

Judge Neilson—Yes, we will go on, please. [Laughter.]

Mr. Evarts—Now, Mr. Tilton, before you made this gesture and this statement of readiness to sign, had you read or heard read the whole paper? A. I don't remember, Sir, whether the remaining portion was read or not; I know that—I remember by the impression which the reading made upon my mind, namely this, that when the long and effusive and glowing paragraph was put into Mr. Bowen's mouth, of retraction of all that he had said, I burst in, saying, "If Bowen will sign that, I will sign it twenty times over;" something of that sort. It was that part of the document brought to my attention; whether the remaining portion of it was then read or not, I don't know. I know this, however, that as soon as that document with its remaining portions was before me for my signature and I read it carefully, that I utterly repudiated it.

Mr. Evarts—Well, we won't take that answer. It is to come yet from further questions if it comes at all.

Mr. Fullerton—It comes now.

Mr. Evarts—I submit to your Honor that it is not within the rule.

Judge Neilson—We will let it stand.

Mr. Evarts—I ask to have it struck out, if your Honor please; it is not the statement of anything that he said or did in answer to any question.

Judge Neilson—I think it is proper, as qualifying the other part of the answer, Let it stand.

#### WRANGLES OVER THE LEGALITY OF QUESTIONS.

Mr. Evarts—Will your Honor be so good as to note my exception. [To the witness]: Do you mean to say, Mr. Tilton, that when you heard or knew of only the part that affected Mr. Bowen's signature, you were ready to sign?

Mr. Fullerton—One moment—I object to that.

Mr. Evarts—That is my question.

Mr. Fullerton—I know it is your question; that is the reason I do object to it; he has already stated the fact that when that paragraph was read he expressed a willingness to sign, and he has repeated it over three times, and now the question is put for the fourth. I object upon the ground that the question is distinctly, emphatically and repeatedly answered already.

Mr. Evarts—No such question has been asked. Whatever has been said has been said by the witness voluntarily, and I now ask this question.

Judge Neilson—I think he may answer.

Mr. Fullerton—It is only a consumption of time for nothing.

[Last question repeated by THE TRIBUNE stenographer.]

The Witness—Yes, Sir.

Mr. Fullerton—Now, after having said it, he asks him if he means to say it; that is the import of the question.

Mr. Evarts—Exactly. He has voluntarily made a statement not in answer to any question of mine.

Mr. Fullerton—Now, you ask him if he means to state it.

Mr. Evarts—I do, and I have got his answer.

Judge Neilson—We will allow that.

Mr. Evarts—That you mean to say? A. What was that?

Q. You do; you have answered, haven't you? A. Well, I don't understand now what your last question was.

Mr. Evarts—Won't you read the question again?

[Question again read.]

A. My recollection is, Sir, that I burst in with an extravagant expression that, "If Bowen will say that and sign that and blot that out, I will agree never again to circulate it; I will sign it twenty times over;" something like that; that is my best recollection.

Mr. Fullerton—Same thing over again.

Mr. Evarts—Are you finding fault with me or the witness?

Mr. Fullerton—I am finding fault with the mode of examination.

Mr. Evarts—I have never asked him the question over again.

Mr. Fullerton—No, but you have asked him if he means to state, and now he has said the same thing over again.

Mr. Evarts—He has said exactly the same thing.

Judge Neilson—Well, you seem to agree, gentlemen; go on.

Mr. Fullerton—Impatience at the repetition of the same thing over and over again which we had all day yesterday—

Mr. Evarts—Yes.

Judge Neilson—We cannot try the counsel, you know; we have got enough to do without that.

Mr. Fullerton—I don't want to try him; I only wanted to suggest to your Honor that there is a great deal of time lost in the repetition of answers and questions.

Judge Neilson—Well, that ought not to be, of course.

Mr. Evarts—Well, we will go on. [To the Witness.] When you made the gesture or expressed the purpose of readiness to sign, what prevented your execution of that purpose? A. Why, Sir, because a man makes a gesture he does not go and perform the act.

Q. I asked you what it was that prevented you? A. Prevented what?

Judge Neilson—That is implied plainly enough; he says, "If Bowen will do so and so." Mr. Bowen had not then signed.

Mr. Evarts—Does your Honor hold that my question is illegal?

Judge Neilson—I merely suggest that it does not seem to be necessary. The statement was that "If Bowen will sign that I will sign it a dozen or twenty times." Well, he had not signed it.

Mr. Evarts—If your Honor please, my question is either allowable or not allowable.

Judge Neilson—I make the suggestion.

Mr. Morris—Well, I object. The question assumes a fact that has not yet been proven, and I ask that the stenographer read the question. The witness has not pretended that he attempted on that occasion to sign that paper. The counsel assumed that he had.

Mr. Evarts—We won't discuss the past.

Judge Neilson—What is the question?



Mr. Beach—Well, that is a proper suggestion ; we wont discuss the past.

Mr. Morris—I ask that the question be read ; I say it is an improper question, as assuming a fact that has not been proved.

Mr. Evarts—That is very proper, that the question be read.

Mr. Beach—The point is that the question assumes that there was a present purpose at the time of that gesture on the part of the witness to sign immediately the paper. No such thing appears.

Judge Neilson—Well, I suggested to the counsel that the whole thing was problematical, depending on the action of Mr. Bowen. Mr. Bowen had not yet acted, however. Go on.

Mr. Evarts—I am endeavoring to get the scene as it occurred. I have no knowledge concerning it that I shall venture to interpose in place of that of the witness. I must get it from him.

Judge Neilson—Although it appears that Bowen had not signed, and the statement is “if he will sign.”

Mr. Evarts—Well, isn't this a little discussing the effect of the evidence rather than the—

Mr. Beach—No, it is the character of the question that it assumes something that is a false impression.

Judge Neilson—Read that question. All this trouble arises from my departing from my usual course in making a suggestion perhaps. I will not do so again.

[Question read : “When you made the gesture or expressed the purpose of readiness to sign, what prevented your execution of that purpose ?”]

Mr. Beach—We object to the question upon the ground that it assumes that the witness then expressed a purpose of readiness to sign.

Mr. Evarts—We have had that over and over again.

Mr. Beach—No we haven't.

Mr. Evarts—That something or other prevented it.

Judge Neilson—I don't think you have got the correct conception of the evidence, allow me to say, as given. When Bowen had not yet signed, the witness says : “If Mr. Bowen will sign—do all that—I will do so and so.” It is hardly proper to understand that as a declaration of readiness and willingness, then and there, on the part of the witness to sign, Mr. Evarts—I don't propose to discuss the weight with the jury of this or that exhibit of an occurrence.

Judge Neilson—Well, you are entitled to all that took place there.

Mr. Evarts—Now, my question is, I suppose, a proper one ?

[Question again read.]

Judge Neilson—Now, I disallow that, unless you leave out the word “purpose.” He did not express a purpose to sign it then and there ; he had expressed a willingness. Strike out the word “purpose,” and I will allow the question.

#### MR. BOWEN'S CONSENT MOST DOUBTFUL.

Mr. Evarts—I will. [To the witness.] What prevented the then present signing of it ?

Judge Neilson—Modify it in that way, Sir. [To the witness.] Now, answer it.

The Witness—Why, Sir, the paper was in no condition then to be signed. Mr. Bowen had not seen it—had not been seen either by Mr. Bowen or Mr. Beecher, so far as I knew.

Q. How did you know anything about that ? A. That is my recollection of it now.

Q. Who told you that ? A. My impression is that the paper was brought there fresh that day by Mr. Claflin, possibly by Mr. Wilkeson—the purport of their inquiry being this: whether or not, in case Mr. Bowen should sign such a paper, would I then sign it ; that is my recollection of the object of the interview. I said : “If Mr. Bowen will, certainly I will—twenty times over.”

Q. Now, what is your answer to the question, what prevented you then and there signing it ? A. I don't know that anything prevented me ; I might have signed it if I had chosen. If I had insisted on signing, I presume I could have signed it, and they would have been only too happy to have had me do it.

Q. Then, so far as you can now state to us, nothing prevented the signing of it that came from anybody else ? A. I don't know of any purpose to sign it ; I expressed my willingness to sign it, not my intention to sign it—my willingness.

Q. You took a pen in your hand, didn't you ? A. I took a pen in my hand and made a gesture, just as you are doing at me ; that is my best recollection ; yes, Sir. I was sitting at a table and took up a pen in this way. I said : “Bring me that paper if Mr. Bowen will sign it I will sign it,” and took up a pen, &c.

Q. Now, do you remember some one saying to you, “Don't sign it first, or perhaps Bowen won't be so willing to sign after you have ?” A. No, Sir ; I don't recollect anything of the kind.

Q. Are you certain that nothing of that kind was said ? A. By whom ? Mr. Claflin—Mr. Wilkeson ?

Q. By anybody ? A. I don't remember anything of that kind being said. Mr. Moulton may have expressed some doubt that Bowen would sign it ; I expressed a doubt ; I think both expressed doubts.

Q. Well, have you no recollection or impression that some one said what I have embodied in my last question ? A. What was that, Sir ?

[Question read by TRIBUNE stenographer—“Now, do you remember some one saying to you, don't sign it first or perhaps Mr. Bowen won't be so willing to sign after you have ?”]

The Witness—I don't recollect anything of that sort ; my impression is that Mr. Moulton said that he didn't believe that Mr. Bowen would sign it, or something of that kind ; throw the same kind of doubt on it that I had thrown.

Q. Do you remember whether Mr. Claflin said anything at this point ? A. I remember Mr. Claflin clinching his hand together in this way, saying : “Mr. Bowen has got to sign it.” That is what I remember.

Q. Do you remember Mr. Claflin saying you better not sign it before Bowen does, for perhaps he won't be so willing to sign after you have signed ? A. No, Sir ; I don't remember that.

Q. Are you certain he did not say that ? A. Oh ! I won't be certain, but I have no recollection on the subject.

Q. Now, Sir, do you think that the whole of that paper was not read by you, or read to you, that evening at that interview ?

A. I have already said, Sir, that I don't remember whether it was or not.

Q. Whether it was or not? A. This is true, however; that if the remaining paragraphs were read, they were glazed over; they were not talked about and my attention was not specifically drawn to them, for I remember being struck as soon as I took the paper myself the next day and read it carefully over, with the extraordinary words that were put into my mouth, which I said I would never sign to the day of doom.

Q. Very well, now; is it your best impression that at that interview, occurring to see whether you would sign the paper, the parts of it that affected yourself were not made the subject of consideration? A. I don't think they were, Sir, any further than that—would I be willing, in case Mr. Bowen signed, to sign myself.

Q. And how was it to be decided or determined whether you would sign the paper if the parts that were to affect you were not considered? A. What is that, Sir?

Q. How were you to decide whether or no you would sign that paper if the parts that affected you in it were not considered? A. Why, Mr. Everts, the part which I was to assume in that agreement had already been spoken of, namely, would I pledge myself, in case Mr. Bowen blotted out his charges against Mr. Beecher, not to circulate those charges after he had blotted them out; we had orally talked of it.

Q. With whom? A. Mr. Claflin.

Q. Anybody else? A. Well, Mr. Moulton.

Q. In company with Mr. Claflin? A. I think so.

Q. Yes. Very well, when were those previous conversations? A. I think Mr. Claflin came to Mr. Moulton's house one day about it.

Q. While you were there? A. Yes, Sir.

Q. How long before this? A. Well, I should think a day or two.

Q. A day or two? A. Yes, Sir; but that is a little distinct in my mind. I remember having a conversation with Mr. Claflin, in Mr. Moulton's parlor.

Q. Upon some day—a day or two, or about that, before this meeting? A. Yes, Sir.

Q. You are quite confident of that, are you? A. I think there were two or three interviews with Mr. Claflin, mainly held, however, by Mr. Moulton before this agreement culminated.

Q. Well, I only speak of those at which you were present? A. Yes, Sir, I distinctly remember being present at two with Mr. Claflin—the one was in Mr. Moulton's parlor, another in Mr. Moulton's study. At the same time they may be two parts of one interview.

Q. Still, your best impression is that a day or two or more before this occasion where the paper was present you had had a discussion with Mr. Claflin and Mr. Moulton about a paper to be prepared? A. I don't think we had had any discussion about a paper.

Q. Well, about the subject? A. Yes, Sir.

Q. That was afterwards contained, more or less, in the paper? A. Yes, Sir.

Q. Now, who took away that paper? A. What paper, Sir?

Q. That draft. A. I don't remember.

Q. That night—that interview? A. I don't remember.

Q. Did you take it away? A. I don't remember that; don't remember whether I took it away, or saw it the next day in Mr. Wilkeson's office, or a day or two after.

Q. Now, did you see it again and when? A. When I was asked to sign it I declined to do so; I declined to sign the paragraph attributed to me.

Q. That is not my question.

Judge Neilson—The question was when did you see it again?

The Witness—Well, it was when I was expected to sign it; I don't remember that particular date—about that same time.

Q. Can't you tell me when, in relation to this interview which you have described, when the draft was there, when you next saw it? A. I don't remember the day or the hour.

Q. No; but how near the time? A. Oh, I should think very near.

Q. And where? A. My recollection is that it was in Wilkeson's office, in what used to be the North Pacific Railroad; that is my best recollection.

Q. In whose possession was it then? A. I think it was in his.

Q. Well, did you call for it? A. I don't remember that.

Q. Was it reduced? A. Why, it was there between us.

Q. Whether you asked for it or not, you don't know? A. I do not remember; whether or no, I had had it meanwhile, in order to change my paragraph, I don't know—

Q. No matter—the fact, that is what I am trying to get at? A. I do not remember.

Q. At the fact whether you had it or not? A. Well, I do not remember.

Q. Now, at this interview—this meeting with Mr. Wilkeson, when this draft was again before you, did you then peruse and consider the whole of it? A. That I cannot answer; my recollection is, Mr. Everts—

Q. Well, that is all I have asked you—you cannot say whether you perused it, considered it?

Mr. Beach—Then?

Mr. Everts—Then I mean, of course, I have your answer.

Mr. Beach—Yes, but you broke him up in an addition to the answer which might have been acceptable.

Q. When again did you see that draft? A. I don't remember the date.

Mr. Beach—Do you understand him to say that it was the draft he saw?

Mr. Everts—Yes.

Mr. Beach—I don't.

Mr. Everts—Well, I will get that right. [To the witness.] I have asked you about the draft; it was the draft you saw at Wilkeson's, wasn't it? A. I was going to tell you what my recollection was, and then you stopped me.

Q. Stenographer, you read my last question to see if I didn't get an answer to it. Was it the draft that was before you and Wilkeson, at this interview at the Northern Pacific Railroad office? There was some paper before you—was it the draft? Now, that is the only question. A. I do not know whether it was Wilkeson's draft of what he proposed for me to sign, or

whether it was my draft of what I proposed to sign; it may have been both drafts.

Q. Can you or no tell me whether or not Wilkeson's draft which had been before you at the interview with Clafin, Moulton and himself was before you, too, before Wilkeson and yourself at this interview at the railroad office? A. That may have been; if so, then it was there in order that my proposed change should be put into it.

Q. No matter what it was there for. I have not asked you what it was for when there. I asked you if it was there? A. I don't know.

Q. You don't remember? A. No.

Q. Either way? A. No.

Q. When, if at all, was that draft taken into your possession and made the subject of amendment or change by you? A. I do not remember the exact date.

#### THE WAY THE AWARD WAS MADE.

Q. Now, have you a copy of the award that was made by these arbitrators. A. Yes; it consisted of Bowen's check for \$7,000; I believe I have it; that is the only copy.

Q. You got the check? A. I do not know whether I have or not; I got the money.

Q. Well, I would like to see it.

Judge Neilson—You would not naturally have the check. A. I do not know whether I have it or not; Mr. Bowen has it—

Judge Neilson—It would go back to Bowen, of course. A. Yes.

Mr. Evarts—But I do not know whether he has it; of course, he would not keep the check as a security for money.

Judge Neilson—He would not delay drawing the money.

Mr. Evarts—It has been already proved that the money has been drawn and deposited; it is the paper itself that I would like to get.

Mr. Morris—Well, we haven't got it, of course.

The Witness—What paper do you refer to?

Q. Mr. Bowen's check. A. Well, no, Sir; I had Mr. Bowen's money; that is what— You asked me if I had a copy of the award; I told you that the only award was Mr. Bowen's check—there was no other paper. That is all I cared for—cared for to get.

Q. Now, was Mr. Moulton with you when you received that check? A. My impression is that all the arbitrators were there.

Q. Mr. Moulton was not an arbitrator? A. No, Sir. He was there too; it was held in his dining room.

Q. Well, I am asking for the fact; was Mr. Moulton there? A. Yes, Sir; he was there.

Q. And did you then and there hand over to him the check? A. No, Sir; he then and there handed over to me the check.

Q. No; but to Mr. Moulton, I am talking about? A. Oh! I don't remember that—my impression is I kept it.

Q. Well, do you remember Mr. Moulton was there? A. Yes.

Q. Now, my question is, did you then and there hand the check to him? A. Mr. Moulton?

Q. Yes. A. I think not; I think I took the check home; showed it to my wife.

Q. Have you a clear recollection of that? A. No, Sir; not very clear; I think I gave the check next day to Franklin Woodruff for deposit.

Q. As a deposit? A. Yes, Sir; that is my recollection.

Q. Next day after you received it? A. I think so; perhaps two days after.

Q. And not to Moulton personally? A. I think not, Sir.

#### RECORDS OF THE CHANGES IN THE COVENANT.

Q. Now, where have you any draft or record of any changes you have made in this original draft? A. Have I any draft of them?

Q. Have you any draft; yes? Any draft or record? A. No, Sir; but Wilkeson has.

Q. Of the changes? A. He has the paragraph which I proposed; it was in my writing: I displaced his paragraph and substituted my own; he has that.

Q. He did have it at that time? A. Yes; and he copied from that—made the clean copy in his own handwriting.

Q. It was left in his possession—that draft? A. Yes, I believe it was.

Q. Your draft, as you remember, then, the article relating to this in the tripartite agreement, is in your own language? A. I do not know whether it is entirely in my own language; I think it is in my own handwriting. My recollection is (if you will hand me the book) that I adopted a part of Wilkeson's paragraph.

Q. That, of course, may be; I mean to say that the paragraph as it appears, was as you presented it in shape? A. I do not think I composed the entire paragraph. I think I took a part of his composition and changed it—but my recollection is that the whole paragraph which I proposed to sign he handed over to me in my handwriting; and that he then made the clean copy of the covenant with my section copied from my handwriting in it, and that then I signed it.

Q. Then as it reads it is as you presented it for insertion? A. Yes, Sir.

#### HOW THE SIGNED PAPER WAS EXECUTED.

Q. Now, when you presented this paragraph for insertion, was the copy ready for signature, prepared, in your presence? A. That I do not remember.

Q. By Mr. Wilkeson? A. I don't remember that.

Q. You do not remember it? A. No, Sir.

Q. You do not remember whether you signed it at that interview? A. I don't remember; no, Sir.

Q. Do you remember that you signed it the first of the parties? A. I don't remember that.

Q. Do you remember whether the parties were together when it was signed, and signed it in the presence of each other? A. I remember that they were not; they never were together.

Q. Never were together? A. No, Sir.

Q. And what signatures were on it when you signed it, if there were any, you do not know? A. I don't remember; my impression is that Mr. Beecher signed it first.

Q. That it was on when you signed? A. That is my impression; I will not be certain.

Q. And that Mr. Bowen's was not on when you signed? A. I don't remember, Mr. Evarts; on second thought, my impression is that Mr. Bowen signed it first; that I signed it next and wrote my name over his; and that Mr. Beecher signed it last, and wrote 'his name over mine; fulfilling the Scripture, that "the first shall be last and the last first;" that is my recollection. I will not be positive.

Q. That differs from your recollection a moment ago? A. Yes, Sir; it comes to my mind.

Q. Was this paper executed in triplicate? A. No, Sir; there was only one copy.

Q. Only one copy? A. Yes, Sir; that was the understanding; that understanding was not kept, however, for Mr. Wilkeson retained a copy, and afterwards published it without authority.

Mr. Evarts—I ask to have all that stricken out.

Judge Neilson—Strike it out, undoubtedly.

Mr. Evarts—I asked you if it was in triplicate, and you said there was only one copy? A. No, Sir; I did not say that. I said the solemn agreement was that there should be only one copy, but that was broken.

Q. That is not my question; I asked whether it was executed in triplicate, or if there was only one copy executed? A. I say that our understanding was that there should be only one copy, but there were two copies; Mr. Wilkeson made one and kept it.

Mr. Evarts—That is not my question. I ask if it was executed in triplicate? A. Only one paper was signed.

Mr. Evarts—That is all my question. I ask that all the other part be stricken out.

Judge Neilson—Certainly; the rest can be inquired of afterwards.

Mr. Evarts—Undoubtedly, if important.

#### OTHER CIRCUMSTANCES OF THE COVENANT.

Q. Who kept that single copy? A. Mr. Horace B. Claflin.

Q. Was it delivered to him in your presence? A. I do not remember.

Q. In whose hands did you leave it when you signed it? A. My best recollection is it was—perhaps Charles Storrs; possibly Frank Moulton's; still—

Q. Charles Storrs was one of the arbitrators? A. Yes, Sir; I will not be positive about that.

Q. But he was one of the arbitrators? A. Oh! yes, Sir.

Q. Now, who were present when you signed it? A. I do not remember that.

Q. Well, somebody was; you remember some one? A. I don't remember that anybody was; I don't remember now; I don't remember where I signed it.

Q. Well, was Mr. Wilkeson present? A. That I do not remember.

Q. Was Mr. Claflin present? A. I do not remember that.

Q. Was Mr. Storrs? A. I don't remember that.

Q. Was Mr. Freeland? A. I don't remember; I remember that he was not.

Q. You remember that Mr. Freeland was not? A. Yes, Sir, because he had nothing to do with the business.

Q. No matter about your reason. You remember that he was not? A. Yes, Sir.

Q. Was Mr. Bowen present? A. No, Sir.

Q. Was Mr. Moulton present? A. Possibly; he may have been; I am not sure.

Q. But this scene is not before you? A. No, Sir.

Q. So that you can reproduce it at all, in the persons that were there? A. No, Sir; I do not remember the place or the time that I put my name on that paper, and that is the reason of my indistinctness.

Q. You have nothing before you now—no picture in which you can present it at all? A. No, Sir; it does not come up to my mind.

Q. And can you not tell us at all whether it was left in your hands, after you signed it, or whether it was left in some one else's hands, after your signing it? A. Well, Sir, my memory is too indistinct to answer that; my impression is that the paper lingered for several days before all the signatures were got; whether Charles Storrs got them or Mr. Moulton got them I do not know.

Q. Now, Sir, do you remember whether or no you had received the check of Mr. Bowen before you signed this paper? A. I received the check of Mr. Bowen on the night of the arbitration. I don't think the paper was signed until a few days after that.

Q. Are you certain of that? A. I think I am positive of that, Sir.

#### SEVERE STRICTURES ON MR. WILKESON.

Q. Upon reflection, can you recall whether you had not signed the paper, and were without your money after it was signed? A. No, Sir; no such incident occurred. That was Mr. Wilkeson's statement, and it was a falsehood, put before the Investigating Committee; Mr. Wilkeson published a statement to the effect that I declined to sign the tripartite covenant, because Mr. Bowen had not paid me; that was a lie; Mr. Bowen paid me on the spot, the spur, within half an hour from the arbitration.

Q. Now, your recollection is distinct, is it, that you had the check before you signed the paper? A. My recollection is this, Sir, that the check was paid to me on that very night of the arbitration; and the paper was signed some days afterwards—first one signature, then another, and then another.

Q. It is your own signature that I speak of? A. My impression is that my signature was two or three days afterwards; that I had had this discussion with Mr. Wilkeson about the paragraph that I was to sign.

Q. Are you certain that you received the check before you signed the paper? A. Yes, Sir, because the paper was not signed until afterwards.

Q. Now you say you cannot remember when or where you signed that paper? A. I don't remember the exact spot; I remember there was a discussion which followed it, of two or three days.

Q. Nor the exact time? A. No, Sir; only I remember this very distinctly, that the signing of the paper had nothing to do with the arbitration, or the payment of the money.

Mr. Evarts—That I did not ask you, and I will ask to have it struck out. Mr. Stenographer, that will be struck out.

Mr. Evarts [to Mr. Morris]—Now, gentlemen, have you the pages of the “True Story,” as it is called?

Mr. Morris—No, Sir; I have not got them.

Mr. Evarts—I ask now, if your Honor please, from the counsel of the plaintiff, the production of the preserved pages of the “True Story;” I gave them notice.

Judge Neilson—They will undoubtedly give them up if they have them.

Mr. Evarts—I gave them notice to produce them yesterday—that I would need them this morning.

Mr. Beach—They ought to have been produced. What is the reason they have not, Mr. Morris?

Mr. Morris—I have not got them in my possession.

The Witness—I didn’t understand that I was requested to bring them.

Mr. Evarts—No matter.

Mr. Beach—Oh! yes; it is matter.

Mr. Evarts—I was not asking him any question; I was asking the papers from counsel.

The Witness—I will bring them to you at 2 o’clock.

Mr. Morris—[To Mr. Evarts.] I didn’t have them, Mr. Evarts.

Judge Neilson—Mr. Evarts, perhaps if you proceed to some other topic, they will bring them at 2 o’clock.

Mr. Beach—Yes, we will bring them to you at 2 o’clock, after Mr. Tilton goes home from the witness stand; he didn’t understand that he was to bring them; he thought that the request was addressed to counsel. I didn’t think of attending to it, as I supposed Mr. Morris had all the papers.

#### THE READERS OF THE BOWEN LETTER.

Mr. Evarts—We will pass, then, if your Honor please, to another subject. [To the witness]: Now Mr. Tilton, you prepared for publication, or put in type, Mr. Bowen’s letter, with comments—do you remember? A. Yes, Sir.

Q. Now, Sir, has the date of that been fixed—the date of this publication? [Turning to Mr. Shearman.] Has that been fixed, Mr. Shearman?

The Witness—The end of March, 1872.

Mr. Evarts—Yes; I think you did fix it.

The Witness—I mentioned it to you yesterday.

Q. Yes; now, when you put that in type or shape, as it is here, as an exhibit, to whom did you show it? A. I don’t know that I showed it to anybody after it was in type; I discussed it with Oliver Johnson before it was in type.

Q. That we have; now it was put in this slip form? A. Yes, Sir.

Q. My question is to whom did you show it?

Mr. Beach—After that?

Mr. Evarts—Yes, after it was in that shape.

The Witness—I don’t recall, at this time any one to whom I showed it; Mr. Moulton had it and showed it to Mr. Beecher, I think.

Q. Oh! that is what he did; I ask what you did? A. My

impression is that Mr. Beecher was present, and that Mr. Moulton showed it to him, and that I was present.

Q. And in your presence? A. I think so.

Q. Now, to whom else did you show it? A. Outside of my counsel, I don’t remember anybody, at present.

Q. You think you did show it to your counsel? A. I think I showed it to Mr. Ward; I don’t know whether I showed it to Judge Reynolds or not.

Q. Are you confident in your recollection, Mr. Tilton, that you did not show this, at that time, to any one but Mr. Moulton and Mr. Beecher and your counsel? A. I think at that time nobody saw it; after that time a number of people saw it.

Q. I speak now of that time. A. I don’t remember now that any one saw it, except through Mr. Moulton; Mr. Claflin saw it, and Mr. Bowen, but not through me.

Q. I speak of what you did? A. Still I may be wrong about it; I don’t remember.

Q. And how soon after this do you think you did begin to show it to other persons? A. My impression is that nobody saw it until after the Woodhull publication, in November, and I was joining with Mr. Moulton in making devices, as part of the—

Mr. Evarts—No matter. I ask that that be struck out. It is the date that I am asking for. Was it not in December, 1872? A. Yes, Sir.

Q. Do you remember whether you showed it to Mr. Wilkeson before the tripartite agreement or covenant was signed? A. Why, it was part of the tripartite agreement—the article.

Q. Before it was made a part of it? Why, of course.

Q. Before it had been agreed upon? A. It was a part of the tripartite covenant—pasted fast to it.

Mr. Evarts—I understand that.

Mr. Beach—It must have been shown, then, to Mr. Wilkeson.

Mr. Evarts—We will see. [To the witness]: How early did you show it to Mr. Wilkeson? That is the fair way to put it. A. Do you mean on that day?

Q. How early in the transaction of the tripartite agreement did you show that paper to Mr. Wilkeson? A. I don’t remember, Sir.

Q. Did you show it to him before it became part of the tripartite agreement, and before the text of the tripartite agreement had been presented? A. Why, of course.

Q. Very well? A. How otherwise could it have been made a part of the agreement?

Q. It is not necessary to reason with me about it. I take your answer—“of course you did.” Now, can you tell me at what time you did show it to Mr. Wilkeson? A. No, Sir; while these negotiations were pending—while this discussion was pending.

Q. And before the tripartite agreement had received the consent of the parties, or it had been adopted—before it was ever written by Wilkeson? A. Why, yes, Sir; for the writing of it referred to this paper.

Q. Did you show it to him before the arbitration was agreed upon? A. I don’t remember.

## WHEN THE ARBITRATION WAS AGREED TO.

Q. Now, when was the arbitration agreed upon?

A. That I don't know. You will have to ask Mr. Moulton.

Q. And how long a time before the tripartite agreement, or the award, you cannot tell? A. Oh, a few days before.

Q. Recently—quite a few days. And up to that time no arbitration had been fixed? A. To what time?

Q. Up to this time—just a few days before the tripartite agreement and the award, or either of them. No arbitration had been agreed upon for the differences between Mr. Bowen and yourself. A. No arbitration save that one; there was only one arbitration; that was only a few days before.

Q. It was ended by an award? A. Yes, only a few days; I do not know; I don't remember how many—not many.

Q. Had you then any suit pending—commenced against Mr. Bowen? A. Yes, Sir.

Q. In what court? A. Well, I don't know in what court—perhaps this one; Mr. Ward commenced a suit in my absence.

Q. There was a suit pending, which had been commenced during your absence? A. I don't know whether it was a suit, or whether it was what you call supplementary proceedings. Is that a suit?

Mr. Belcher [laughing]—Oh, no.

The Witness—To take testimony, or something of that kind.

Mr. Evarts—I once heard of a young lawyer who commenced a suit by a *fi fa*; and in that sense it might be a suit.

The Witness—Mr. Ward can tell you just what it was.

Q. It was a suit or some proceeding? A. Some proceeding; I don't know whether it was a suit.

Mr. Evarts—Some proceeding at law, for the collection of a claim—is your notion? A. Yes, Sir.

Q. I have gone back, I think, from the question. You said December. Now, who did you show this article to in December, including the Bowen letter—this slip? I don't remember that I showed it to anybody, simply as an article by itself, but only in connection with what was called the "True Story;" perhaps, however, I did to Mr. Belcher; I think I did to Samuel Belcher.

Q. Now, I am inquiring about nothing at present except this article put into slip form, in type, by itself and as a separate paper. You think you showed that to Mr. Belcher? A. Yes, Sir.

Q. And at this time, in December? A. I do not remember; it may have been earlier than that.

## HOW THE PROOFS OF THE LETTER WERE GUARDED.

Q. Do you remember how many slips you had of that paper? A. Three slips were printed, I think; I afterwards learned that a printer had found one and showed it—

Q. I do not ask that; I ask how many slips were made? A. I think three slips.

Q. If there were more printed let me know it? A. I afterwards learned that a copy had been dropped, as I was told, from

my pocket in my printing office; whether that was true I do not know; but I was told that a printer found it and showed it to the Rev. Dr. Field, editor of *The Evangelist*, whose printing office was on the next floor to mine.

Q. This was all rumor? A. It was not all rumor, for the Doctor told me that he saw it.

Q. I thought you said that you were told; you say he saw it? A. Yes, Sir; but he did not see it through me; he saw it through another party.

Q. You did not show it to Dr. Field? A. No, Sir; I did not.

Q. And you knew only of three slips? A. That is all; I think there was a third; I think only three altogether.

Q. Now, what became of these three slips? A. One went to Mr. Wilkeson, and is imbedded in the tripartite covenant, and is here in Court; the other is in our possession, with Mr. Johnson's amendments.

Q. We have that here.

Mr. Morris—It is in evidence.

The Witness—Is it?

Mr. Evarts—That is two.

The Witness—I have the idea that there was only one completed slip.

Q. That is two. Now, where is the third? A. Only one completed slip. I have given you an account of them.

Q. I have had two, give us the third? I have already told you that one copy was picked up by a printer.

Q. You heard that? A. I think that was an incomplete copy, without Mr. Johnson's manuscript amendments. The copy which Judge Morris and I have is incomplete, except so far as it is completed in Mr. Johnson's handwriting; I think the copy in the tripartite covenant is complete in type; still I will not be certain.

Q. Well, now, these three slips are all you know of? A. They are all; perhaps I had a complete one myself; I do not know; I think it was quite likely I had.

Q. Then one was lost, and the other two are produced here? A. Yes, Sir; I think I had a complete slip of my own, on second thought.

Q. Besides? A. I think I had.

Q. What became of that? A. I think that was the one I showed to Mr. Belcher; I don't know what has become of it; I think I showed it to Mr. Harman; I don't know what has become of it.

Q. That would make a fourth? A. Yes, Sir; that would be a fourth.

Q. Now, were these slips struck off at the same time? A. I think they were; I think they were struck off at two different times; that is, I think, after Mr. Johnson's amendments were written in manuscript on the proof, then the proof was corrected.

Q. Exactly; but I mean at the same period of time? A. Yes, Sir, within a day or two; then the type was distributed.

Q. Yes; now, Mr. Tilton, are you quite certain that the type was not preserved in that shape, for a considerable length of time, and not distributed? A. I gave orders that the type should be kept, meanwhile, in Mr. Russell's care, and that no

printer should get access to it, and the moment the slips were made the type was destroyed.

Q. Was that done, as you understood? A. I have every reason to believe it was.

Q. Then you do not know that after being preserved in your safe, or the safe of the establishment, in the composition of the type? A. It never was preserved in any safe; it was locked up over night, in order that nobody might surreptitiously get a copy of it.

Q. Then, in December, there were no slips, except such as had been made in the preceding March? A. No, Sir.

Q. Now, did you give one of those slips to Mr. John W. Harman in December? A. I loaned him one.

Q. Well, you left it in his possession? A. Yes, Sir; I will not be sure of the date; it may have been November; I rather think it was.

Q. About that time; it was after the Woodhull publication? A. I think I showed it to Mr. Harman long before that.

Q. Before the Woodhull publication? A. Yes, Sir; and then I showed it to him afterwards. He wanted to borrow it afterwards. Mr. Harman was an intimate friend of mine, and I consulted him frequently about my affairs, and I showed him that slip.

Q. I didn't understand you as saying, just now, that Mr. Harman was one of those you showed it to.

Mr. Beach—He did.

Judge Neilson—He mentioned his name before.

Mr. Evarts—I understand that, but I understood he mentioned that as having been shown to him after the Woodhull scandal.

The Witness—I think he sent a request to me that he might see that proof, to refresh his mind with the contents.

Q. That is, after the scandal he sent that request? A. Yes, Sir.

Q. And you think you showed it to him before? A. Yes, Sir; I think he also wanted to see Mr. Bowen's letters to me.

Q. No matter about anything else. Strike out all that relates to that.

Q. Now, do you remember, in November or December, after the Woodhull scandal, handing this to Mr. Harman upon his request, or otherwise, and saying to him that you didn't care what he did with it? A. No, Sir; I don't remember that. Mr. Harman borrowed my letters from Mr. Bowen, and that slip—

Q. I am not asking you that. No matter, Mr. Tilton; I am not inquiring about that. I am asking about this very slip, whether you handed it to, or left it with, Mr. Harman upon his request, or otherwise, after the Woodhull scandal was published, and told him you didn't care what he did with it? A. No, Sir; I gave no such—

Mr. Evarts—Well?

The Witness—You must allow me, Mr. Evarts, to speak the exact meaning. I committed it to Mr. Harman's discretion, that he might make such use of it as he, in his judgment, thought right. I didn't say to him I didn't care what he did with it; I cared a good deal what he did with it.

MR. TILTON DISTRUSTS A BROTHER JOURNALIST.

Q. What form of words did you use in confiding this discretion to Mr. Harman? A. Words to this effect: that I committed it to his judgment and care. Mr. Harman had it two or three times. On one occasion I remember that a gentleman from a newspaper office had called to see me, and wanted very much to see that proof, and I didn't show it to him. I think he said that Mr. Harman had spoken of it. I went to Mr. Harman's house with the proof; Mr. Harman was not there. I left it with him—I left it at his house, inclosed in a note; I don't know what that note said.

Q. But that note confided the discretion, did it? A. Yes, Sir. In other words, I would not show it to this gentleman from a newspaper office on his request, but I went to Mr. Harman's house to see him. He was not there. I left it in a sealed envelope with him with some request; I don't remember the phraseology.

Q. But expressive of submitting it to his discretion to do what he thought best with it? A. I committed it to Mr. Harman's discretion to do what he thought right under the circumstances.

Q. Who was the newspaper man who came to you? A. [Pointing.] That man over there, Mr. McKelway.

Q. Mr. McKelway of *The Eagle*? A. Yes, Sir.

Q. And after that did he apply to you for it for publication? A. Mr. McKelway?

Q. Yes, Sir. A. I don't remember whether he did or not.

Q. What is the best recollection that you have? A. My impression is that he wanted to see it. I didn't feel safe in showing it to him. He intimated to me that he had talked on the subject, I think, with Mr. Harman; at all events, I knew Mr. McKelway was a very enterprising newspaper man and I didn't wish to put it into his hands for publication.

Q. You understood that, in his enterprising way, he had come to you with the purpose of publishing it, if he could, didn't you? A. No, Sir; I don't think he came there with such an intention; I think he came as a personal friend; I think he came disavowing any desire to publish it, but rather to know the circumstances.

Q. Are you sure he disavowed the purpose of publishing it? A. Mr. McKelway made a very kindly and pleasant call on me one evening to sympathize with me in regard to this scandal.

Q. Well, no matter about the generalities. In consequence of that call from Mr. McKelway you put this in the hands of Mr. Harman? A. It had been in Mr. Harman's hands before.

Q. I understand that, but you put it in this sealed package with this note? A. Yes, Sir; Mr. McKelway wanted to see it, and I didn't want to show it to him.

Q. And you submitted it to Mr. Harman to decide? A. Yes, Sir; I thought if Mr. Harman was willing Mr. McKelway should see it—if his judgment dictated it, he might do as he chose with it.

Q. Now, Sir, that paper was published in Brooklyn? A. Yes, Sir.

Q. How soon after you had put this sealed in Mr. Harman's hands? A. I should think five or six months afterward.

Q. Five or six months? A. Yes, Sir.

Q. Now, did you have any notice that it was going to be printed or published before it was published? A. No, Sir.

Q. Was your seeing it in *The Eagle*—as you have stated, I believe—

Mr. Beach—No.

Mr. Evarts—He says he saw it copied into *The Eagle*.

The Witness—It was copied into *The Eagle* one Monday night.

Mr. Evarts—That is where you saw it? A. Yes, Sir.

Q. Was your seeing it in *The Eagle* the first suspicion you had that it was going to be published? A. I don't know whether I saw it in *The Sunday Press* or not.

Q. Or in the other papers? A. Yes, Sir.

Q. I thought you were uncertain about seeing it in *The Eagle*, and that is the reason I put it in this way? A. There had been two or three threats to publish it before that, and I wanted to see Mr. Van Anden about it.

Q. Who had made these threats? A. I don't know; there had been some talk that that letter was in *The Eagle* office, and I once had a little conversation with Mr. Van Anden—

Mr. Evarts—Well—

Mr. Beach—Wait, wait!

The Witness— —and I told him that to publish anything of that sort would be only to publish part of the story.

Mr. Evarts—If the witness will only wait, I am objecting to his answer.

Mr. Beach—Well, so am I.

Mr. Evarts—I beg your pardon. [To the witness.] Now, Mr. Tilton, who made these threats of publication? A. I don't remember; I think it was simply the floating gossip of the town that *The Eagle* had possession of a scandal which it might publish if it would. I don't know that any threats were made; I should not call them threats; it was gossip.

Q. Do you know Mr. McDermott, connected with the press in Brooklyn? A. Yes, Sir.

Q. Was he connected with *The Sunday Press* at the time this paper appeared in it? A. I afterward learned that he was.

Q. Now, do you remember his seeing you in advance of any publication of it in *The Sunday Press* or *The Eagle*, and informing you that it was going to be published? A. No, Sir. I remember that after he had published it, he came into my office of *The Golden Age* and I ordered him out.

Mr. Evarts—Well, I ask to have that struck out.

Mr. Fullerton—That he was ordered out.

Mr. Evarts—Yes. The stenographer will strike that out.

#### AN OLD JOKE REVIVED.

Mr. Evarts—Are you quite sure that Mr. McDermott didn't tell you in advance of that publication that it was going to be published? A. Yes, Sir, as certain as that the day of judgment will come.

Q. As that is a future event, you should say "sure," should you not? A. That is one of those things of which we are all certain. It is a saying of the Almighty.

Q. But still it is the future? A. The Great I Am; The Evermore Present.

Mr. Evarts—Well.

Mr. Fullerton—[To Mr. Evarts.] You give it up, do you?

Mr. Evarts—You mean by that that you are entirely certain that he did not come to you? A. I did not know Mr. McDermott—I didn't know him until he came into my office and presented his card after the publication. I asked him if he was the man who published that paper, and he said he was, and I ordered him out of the office.

Q. That is all very well. You did not know the man? A. I did not know him at all.

Q. Do you know that any one came to you and told you in advance of its publication that it was going to be published? A. No, Sir, I have no recollection of any such thing.

Q. Are you certain that nobody came to you and told you that it was going to be published in advance of its publication? A. No, Sir, I have no recollection of any such thing at all.

#### HOW THE BOWEN LETTER REACHED THE PUBLIC.

Q. As far as you know and understand, Mr. Tilton, this slip that you had confided to Mr. Harman was the source from which the publication came, was it not? A. Not at all.

Q. Well, what slips do you understand it came from? A. My understanding is this: I never quite comprehended until a few days ago how that slip came to be published. When I saw Mr. Kinsella's correspondence published, he said in that that Mr. Beecher had shown to him the tripartite covenant, or, at all events, Mr. Bowen's denial, and I saw there an explanation of how, possibly, *The Eagle* might have got hold of that article.

Q. Well, that is, you saw that the tripartite covenant might have furnished the means of the publication? A. Yes, Sir.

Q. That was your own imagination, was it not? A. Yes, Sir.

Q. That it did? A. I never have known until this day exactly how *The Eagle* got hold of the paragraph.

Q. Then you don't know that the copy given to Mr. Harman by you was the means or source of the publication? A. No, Sir; I do not.

Q. Did you ever receive back from Mr. Harman that slip that you confided to him, or did it ever come back into your possession? A. I think he gave it back to me.

Q. When? A. I think about that time.

Q. About what time? A. Shortly afterward. That is my impression. Shortly after the time when it was—

Q. Published? A. No, Sir. Shortly after the time when it was confided to him.

Q. That is your impression? A. I think so. Mr. Harman would know better about that than I.

Q. Where is it? A. Well, Sir, my—I don't know where it is if it is not the same proof that we have here in evidence.

Q. You have but one, have you? A. It may have been that one or it may have been another. If it is another, I don't know where it is.

Q. Have you any recollection that it ever was returned to you? A. I think it was returned with Mr. Bowen's letters. That is my impression. I won't be certain, because once or twice Mr. Harman and I saw the paper and talked the matter over.

Q. You won't be positive that it ever came back to you? A.



Mr. Harman will know better about it than I; I think it did, though, come back.

Q. I have understood you to say, Mr. Tilton, that there were but three copies, either in the incomplete or the complete form, of this slip? A. I said afterward there might have been another.

Q. Well, I remember that, of course. A. Yes, Sir.

Q. That would make a fourth? A. Yes, Sir.

Q. That, perchance, is a fourth? A. Yes, Sir.

Q. But that is all, complete or incomplete? A. That is all that I remember of.

Q. That you know of? A. Yes, Sir.

# MR. TILTON AS A CHURCH-GOER.

Mr. Evarts—We will have the True Story here at two o'clock, if your Honor please. I can occupy the space between now and then, with some things I omitted. [To the witness.] Do you remember, Mr. Tilton, whether or not you had left off going to Plymouth Church, or did leave off going to Plymouth Church as early as 1866? A. No, Sir, I had not; I went occasionally all the way down until the Spring of 1870.

Q. Now, how often do you think you went to that church in the year 1866? A. I don't remember.

Q. Did you go more than twice in that whole year? A. Oh! I went several times; I used to go occasionally.

Q. Not more than two or three times in a year, did you? A. Oh, yes.

Q. Just give us the fact? A. I know nothing about it; I went to church down until the Spring of 1870.

Q. 1866 I am asking you about? A. I don't remember the year; I cannot remember how many times.

Q. You did go occasionally in 1866? A. And in 1867, 1868, 1869 and 1870.

Q. Now, did you go more than two or three times in that year? A. I don't remember, Sir. I should say I went probably eight or nine times, perhaps a dozen times.

Q. Now, in the year 1867, did you go at all, and, if at all, did you go more than two or three times? A. I cannot say how many times.

Q. And, in the year 1868, what was your habit of attending that church? A. I think I went to church about as other people do.

Q. There is a great difference in that. A. What is that?

Q. There is a great difference in people as to the frequency with which they go to church. A. Yes, Sir.

Q. I would rather have your personal recollection? A. My recollection is that I went to Plymouth Church with more or less frequency while I was in town during all the years up to the Spring of 1870. You must remember, Mr. Evarts, that I was always away lecturing during three months of the year.

Q. We have got the history of it. A. And then Plymouth Church was closed two other months of the year.

Q. We won't argue about it; the fact about it is what I want if I can get it, whether you went in the year 1868 more than two or three times to that Church? A. I think I went with more or less frequency all the way up to 1870.

Q. Will you tell me how many times you went? A. I don't know how many times I went.

Q. So, in 1869, did you then go more than two or three times? A. I think I shall make the same answer; I don't know how many times.

# WHAT PREPOSSESSED MR. TILTON IN FAVOR OF MRS. WOODHULL.

Q. You have said, Mr. Tilton, in regard to your visits at Mrs. Woodhull's house that you never passed but one night there? A. Yes, Sir; I have said that.

Q. Now, how late have you been there on those occasions? A. I should say eleven o'clock, perhaps.

Q. Not later? A. I guess not.

Q. Not till one, two or three or four in the morning? A. No, Sir; never in the small hours.

Q. Left at twelve? A. Yes, Sir.

Q. Were you ever on the second floor or the bedroom floor of that house? A. Yes, Sir; I went all through the house once in order that Mrs. Woodhull might show to me that every room was as bare as a barn. There was only one room occupied in it. That was her room, her husband's study, and another room which Mr. Andrews occupied. Every room in the house, from the top to the bottom, was as bare as a new house.

Q. Had it ever been stripped? A. I don't think it had ever been furnished.

Q. When was that? A. The circumstances are these—

Q. I am asking you the time of the year—when? A. I don't remember the date. I remember the circumstances. The circumstances are these: she asked me—

Q. I don't ask you for the circumstances; I ask you to give me the time as near as you can? A. Well, I tell you I cannot.

Q. You know whether it was in September or whether it was in June, or whether it was this or that part of your habit of visiting there? A. In the very early part of my acquaintance.

Q. In the very early part of your acquaintance? A. Yes, Sir; she wanted me to go through the house to see that there was nothing in it.

Q. And it was substantially bare? A. Yes, Sir; it was as bare as a new house.

Q. Was it a large, fine house? A. It was a splendid house.

Q. A double house? A. I don't know what you call a double house.

Q. A house with rooms on both sides of the door? A. I don't remember that; there was only one room furnished and that was the parlor.

Q. Did it continue to be in this condition during the whole period of your visiting there? A. I don't remember; I never went up stairs but that once.

Q. And that is all you know about it? Yes, Sir.

Q. As I understand you? A. That is all I know about it; yes, Sir. She told me her house had been called a house of ill repute, and she wanted me to see the whole of the house throughout, that there never was a chair nor a bed nor any article of furniture in it from the top to the bottom, save only the room she occupied and the room Mr. Andrews occupied and I think one which her mother and her sister occupied; otherwise

it was a great, empty, bare house. That was one of the circumstances that impressed me with the idea that she was a trauced woman.

Q. Do you understand whether it had been stripped by the lease or executions, or anything of that kind? A. No, Sir; I simply understood that it was an unoccupied house—that is to say, an unfurnished house.

Q. And had always been so? A. I never asked any question about it; I never thought on the subject from that day to this.

Q. Well, Sir, do you mean to say that you don't know whether it was ever refurnished? A. I don't know anything about it; I never heard anything about it. I don't know whether it is or not,

Mr. Morris—"Refurnished" implies that it had been furnished.

Mr. Evarts—Yes, Sir.

The Witness—I never understood anything about it; I never knew.

Q. During the period of your acquaintance you never knew whether it had been furnished? A. No, Sir.

Q. In whole or in part, beyond what you then knew? A. No, Sir.

MR. MOULTON DECLARED A FAITHFUL STEWARD.

Q. How early after the publication of the Bacon letter by you—your letter to Dr. Bacon—how early after that did any more papers, or copies of papers, which had been in Mr. Moulton's hands, connected with this matter, come into yours? A. My present impression is that none of them came into my hands. That is to say, when I made my sworn statement, which was a month after the Bacon letter, I then had no access to the papers. Then they were published in Mr. Beecher's statement.

Mr. Evarts—I am not asking you anything about Mr. Beecher's statement.

The Witness—Am trying to work it out in my own mind.

Mr. Evarts—I don't want you to work it out loud. I am willing you should reflect on it, of course; but my question is only in regard to a point of time.

The Witness—Yes, Sir.

Mr. Beach—I understand the question to ask when they came into his possession.

Mr. Evarts—Yes, that is so, in point of time.

The Witness—Well, Sir, they never came into my possession. I have seen the papers since this suit has gone on.

Mr. Evarts—Well, the question is this: How soon after the publication of the Bacon letter did either the papers themselves, that had been in Mr. Moulton's possession, or copies of them, and which were not already in your possession, come into your possession? Now, you say—

Mr. Morris—He has answered.

Mr. Evarts—I understand he has answered.

The Witness—I don't understand your question now.

Q. I asked you yesterday about the paper you had and what copies of papers you had. A. Yes, Sir; and I told you as well as I could.

Q. Well, we agree. That is all ended. Now, how soon after

you published the Bacon letter did any papers that were not before that time in your hands, or any copies of papers that were not before that time in your hands, of the papers which were in Mr. Moulton's hands, come into your possession?

Mr. Morris—You are a little mistaken, Mr. Evarts, in regard to your recollection of what occurred yesterday. Your inquiries yesterday were solely with reference to the copies that he had made of papers, and not whether any letters were in his possession or not; and he didn't speak of any letters as being in his possession, and you are assuming, Mr. Evarts—

Mr. Evarts—I am not assuming anything.

Judge Neilson—His question also reaches copies which may have been published.

Mr. Beach—Yes, Sir; but it improperly includes original papers, assuming that some had come into the possession of Mr. Tilton before that.

Mr. Morris—And there is no evidence that he had any—none whatever.

Judge Neilson—I think he may answer that question.

Mr. Evarts—I don't want to assume anything, but I want to find out when any papers he had beforehand came to him.

Judge Neilson—Or copies.

Mr. Evarts—Yes, Sir.

Mr. Beach—Well, your Honor, the question of the counsel, I think, improperly assumes that there were papers—original papers—which had been in Mr. Moulton's hands, that had been transferred to Mr. Tilton's possession before the Bacon letter.

Mr. Evarts—I don't think it does, if your Honor please.

Judge Neilson—Well, read the question. You don't intend that, I suppose, Mr. Evarts.

Mr. Evarts—No, Sir, I want to get at when papers which he had not beforehand came to him. If he didn't have any before, why, then, let him say so, of course.

Mr. Beach—Yes, Sir, but it rather misleads the witness. You don't want to do anything improper, I suppose?

Mr. Evarts—No; I only want his knowledge as to that point of time. [To THE TRIBUNE stenographer.] Please read the question.

THE TRIBUNE stenographer read the following question:

"Q. Now, how soon after you published the Bacon letter did any papers that were not before that time in your hands, or any copies of papers that were not before that time in your hands, of the papers that were in Mr. Moulton's hands, come into your possession?"

Mr. Evarts—I don't think that assumes anything.

The Witness—I don't remember that any papers or any copies of papers came into my possession from Mr. Moulton's hands.

Q. From Mr. Moulton's hands, at all? A. I don't remember any. Mr. Moulton published, after that in his own statements, the documents which he had.

Judge Neilson—Those copies came to your notice? A. Those copies came to my notice.

Mr. Evarts—The witness understands the inquiry—what came from Mr. Moulton's hands. [To the witness]: I understand you to say that none did? A. I don't recollect of any, Sir. I recollect very distinctly going to Mr. Moulton, before my sworn statement was made,

and asking that I might see some of the papers; and he declined—peremptorily refused.

Q. That you remember distinctly? A. Yes, Sir; and I had to make my statement on the basis of very meager materials, which I had in my own possession.

Q. [Handing book to witness]—Now, Sir, if you will refresh your recollection by looking at that last clause of the preliminary statement? A. Yes, Sir.

Q. Now, Sir, upon looking at that will you tell me when the papers, or copies of papers, that you there refer to, did come into your hands? A. Will you allow me to read this sentence?

Mr. Evans—Yes, Sir, that sentence. This is part of my sworn statement: "I will add that the original documents referred to in the ensuing sworn statement are, for the most part, in my possession, but that the apology and a few other papers are in the hands of Francis D. Moulton." The original documents which I introduced into my sworn statement were, for the most part, Mrs. Tilton's letters and mine.

Mr. Evans—Well, no matter what they were.

Judge Neilson—I think he has a right to say what they were.

Mr. Beach [to Mr. Evans]—When you produced that and referred to the evidence, he has a right to refer to the other.

Mr. Evans—Now, whatever papers you there refer to, how long had they been in your possession? A. Ever since they were enacted—years.

Q. Of course your wife's letters and your own, we assume they had been. A. Yes, Sir.

Q. Now, had you not, when you were preparing your statement for the Committee, received from Mr. Moulton any statement or copies of papers which, up to that time, you had not in your possession? A. No, Sir, Mr. Moulton was—

Mr. Evans—Very well, that is so.

The Witness—Close as an oyster; he denied me every scrap. That is the reason my sworn statement is so meager, and contained some errors.

Q. No matter about your sworn statement. The fact is that, between the time of publishing the Bacon Letter and the time you made your sworn statement, you had not received from Mr. Moulton either documents in his possession or copies of documents in his possession that you did not have, and took during the course of the transactions themselves? A. No, Sir; Mr. Moulton—

Mr. Evans—Well?

The Witness—Very angrily refused me any such assistance.

Mr. Evans—Well, that emphasizes it; that is all. [To Judge Neilson]: Now, if you please, it is our hour for taking a recess.

Judge Neilson [To the Jury]: Jurors will return at two o'clock, gentlemen.

Mr. Mallison—The Court will now take a recess until two o'clock.

#### FRAGMENTS OF THE TRUE STORY PRODUCED.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Tilton's cross examination was resumed.

Mr. Evans—[To plaintiff's counsel.] Have you those papers?

Mr. Beach—Yes, the witness has them.

The Witness—There they are, Mr. Evans. [Handing Mr. Evans the papers.]

Mr. Evans—Mr. Tilton, these papers now produced by you—are they parts of the draft or of the completed copy? A. The completed copy, Sir.

Q. But there seem to be blanks in them? A. Seem to be what?

Q. Blanks. A. Yes, Sir; a space not filled up. I mentioned to you that there were one or two documents that had not been copied in.

Q. This is what you call the completed copy? A. Yes, Sir. You see where it has been stitched together.

Q. Perhaps that is the only blank there is? A. You notice here where the stitching has been?

Q. Yes, I see. I am only asking you whether this is what is called the completed copy, or the draft? A. Yes, Sir. You remember, Sir, that I told you that even the completed copy had never been absolutely completed, so as to suit it for publication.

Q. Yes; I am not questioning the copy, but wish to know which of the two concerns these belong to. A. Yes, Sir.

Q. Now, these are all that you have been able to find, or that you know of being in existence? A. Yes, Sir; that is every scrap.

Q. And there is no copy in any form of any of the rest of it? A. Not that I know of.

Q. That you know of? A. None, in my knowledge.

#### THE FRAGMENTS READ.

Q. Mr. Tilton, please listen to what I shall now read you and say if you recognize it as the commencement of this "True Story": "One day last month, when I was in the north of New-Hampshire, a scandalous publication burst like a cloud over my home in Brooklyn, and shed a sudden shadow on my wife's good name." Do you remember that as the first sentence of your "True Story"? A. I don't remember that distinct phraseology. My recollection is that it was something like that. I cannot positively swear that that is the accurate sentence.

Q. "A week afterwards, when I returned and first saw the libel, I wrote a card denouncing the outrage, but acting on the advice—" (There is a blank in this, and that I cannot fill.) "withheld it from the press and maintained a contemptuous silence." Do you remember that? A. No, Sir; I could not swear that that was a sentence of it.

Q. Well, do you recognize that as in substance what it was? A. Well, perhaps I might say in substance.

Q. "Moreover, no form of card that I could devise, though I drafted two or three, seemed an adequate answer to the circumstantial details of the calumnious indictment." Do you recognize that? A. That may have been correct, Sir.

Q. "Instead of a card, I then proposed an explanatory narrative, meeting the false heads point by point, but this also I was advised against, particularly by Mrs. Tilton, who from the beginning begged me to publish no vindication of her whatever." A. Something of that sort.

Q. "The ingenious and plausible statement put forth against

her could be thoroughly refuted only by a plain recital of the true story to contradict the false one, and as the true story involves a disagreeable reference to other names, some of which have not hitherto been mentioned in the case, she prefers to suffer obloquy herself, rather than fling it off to fall as a stain upon others, and withholds from me her permission to unvail the whole facts." A. I cannot swear as to the accuracy of that, Sir. It was something in that vein.

Q. "But even against her will I am going to put them in writing, not, however, for the use of the public, but only of a few personal friends. I do this for two distinct purposes: first, for her sake, because a constrained silence will permanently injure her reputation; and next, for my sake, because I owe to these friends a frank explanation of what they have deemed erratic in my public course for the last two years, or since my retirement from *The Independent* and *The Brooklyn Union*." Do you recognize that as a part of your statement? A. No, Sir; I don't remember it; but if you say it is, it is.

Q. Oh, I don't; I, don't say so. A. It was something in that spirit.

Q. In that spirit? A. Yes, Sir.

Q. "About ten or eleven years ago Henry C. Bowen, for whom I was then working as a subordinate in *The Independent* office, told me one evening while crossing the Fulton Ferry that Henry Ward Beecher was guilty of adultery, a practice begun in Indianapolis and continued in Brooklyn." Do you remember that? A. I don't remember that as part of the statement. I remember Mr. Bowen telling me that.

Q. You recognize this as in accordance with the fact, if you had stated it? A. Yes, Sir.

Q. "Between the years 1860 and 1870, Mr. Bowen repeated the accusation not less than a hundred times, frequently exhibiting the deep sense of a personal injury, and sometimes saying that if he were so minded he could drive Mr. Beecher from his pulpit?" A. I guess that is correct, Sir.

Q. Do you recognize that? A. I do not remember the phraseology, but that is in substance correct.

Q. "During part of this time?" I am only asking you whether it constituted a part of your statement, you know? A. Well, Sir, I simply say, in answer to that, that I cannot remember—

Q. The words? A. The words or the phraseology of a statement written so long ago? I should not like to swear that that identical expression was in the statement; still, as you read it, the narration revives to me with some distinctness.

Q. "During part of this time Mr. Beecher was editor in charge of *The Independent*, and I was his lieutenant. Afterward he retired, and I succeeded to the chair. Both before Mr. Beecher's retirement, and afterwards, Mr. B. was in the habit of saying that the pastor of Plymouth Church was a dangerous visitor among the females of his congregation." Do you remember that as a part of your statement? A. I do not distinctly remember it as a part of my statement. I very distinctly remember it as a part of Mr. Bowen's statements.

Q. "This gossip I always heard with unwilling ears, having no more taste for scandal then than now, and I would not note it here except that it is one of the pivots on which the ensuing

history turns." Do you recognize that sentence? A. No, Sir; I do not remember that sentence.

Q. How? A. I do not remember that sentence. I do not remember accurately enough to swear to it, Mr. Evarts.

Q. But does it strike you— A. If you will put that entire document into my possession, and let me read it from beginning to end, I think I could tell you whether it was an accurate transcript of that paper or not; but I cannot swear, sentence by sentence, to a paper which was written a long while ago, and which I have not seen for a year or two.

Q. You have a right, of course, to qualify your statements concerning it?

Judge Neilson—It being understood all the time, Mr. Tilton, that the counsel hardly expects you to recollect the very words.

Mr. Evarts—No.

Judge Neilson—But the substance, the sentiment, rather than the very words.

Mr. Evarts—You are quite at liberty to qualify your statements of recollection or non-recollection. [Reading:] "As a further statement still more unwillingly opened, yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the Summer of 1870, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*, Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher, which, to use her own words, lest I should wrong him by using mine, she afterwards noted down in a memorandum as follows: 'Mr. H. W. Beecher—'"

#### THE FRAGMENTS OBJECTED TO.

Mr. Fullerton—Mr. Evarts, let us understand what we are doing before we go any further. We ought to know whether the counsel on the other side have the true statement. If so, it ought to be produced and speak for itself.

Mr. Evarts—I think I am quite in order.

Mr. Fullerton—Well, so am I. I think it is proper for us to ask whether they have got that true statement?

Judge Neilson—Well, what does the counsel say to the request?

Mr. Evarts—At a proper stage of the matter they may ask. At present I think I am quite in order, if your Honor please, in reading to him.

Mr. Fullerton—Well, I don't know what they are reading from.

Mr. Evarts—Nor is it at all material.

Mr. Fullerton—It is not merely for you to know, but it is for me.

Mr. Morris—We may want to read the balance.

Mr. Evarts—Perhaps there won't be a balance.

Mr. Fullerton—That is a novel way of getting in as evidence a statement, if that is what they are doing. I do not understand that they can read paragraph by paragraph in that way and ask if it was a part of the statement.

Judge Neilson—They ought not to, if they have a correct copy. If they have not I think they can read this.

A HINT THAT THE TRUE STORY WAS PRESERVED.

Mr. Fullerton—They may have the original for aught we know.

Mr. Evarts—Oh, no, scarcely.

Mr. Fullerton—You may have a correct copy, then.

Mr. Evarts—Ah! it is possible.

Judge Neilson—If they have a correct copy they might produce it.

Mr. Fullerton—Certainly, that is what we propose. We have no objection to their offering the copy in evidence if they have it, and if they have it I think that good faith requires that they should announce it, so that we understand exactly what we are doing.

Mr. Evarts—It may be very proper at some stage of the trial to raise some of these questions, but I take it I am quite in order in asking these questions.

Mr. Fullerton—No; I think not.

Mr. Beach—Well, we will see. The objection, Sir, assumes this form, that they are now giving secondary evidence of an instrument the loss of which they have not proven. There is no evidence but what the original exists in their possession, or in the possession of some person over whom they have apparently absolute control, and until they prove the loss of the instrument they cannot resort to this mode of proving it.

Judge Neilson—Has it been traced into their possession?

Mr. Evarts—No, Sir.

Judge Neilson—It has not been traced to their possession?

Mr. Beach—It has been traced to the possession of Mrs. Tilton.

Judge Neilson—By whom it was destroyed?

Mr. Beach—By whom this witness was informed that it was destroyed, but it turns out that a portion of it was afterwards found by this witness, after Mrs. Tilton left his house. Now, whether or not she has the possession of the other portion of this original document does not appear.

Judge Neilson—She might have it and it could not be got.

Mr. Beach—Very well, that they do not show. They have given no proof of the loss by tracing it from the hands of the person into whose custody it was originally put. Another proposition, Sir, that if the original instrument is lost there is a copy of it—an authentic copy of it, the possession of which they do not disclaim, that is the best secondary evidence of the contents. Now, my objection is, Sir, that without any of this proof giving them license to introduce secondary evidence, the course now pursued by the counsel is improper.

Judge Neilson—I think, in view of the circumstance that the paper was in the hands of Mrs. Tilton, and understood to have been destroyed, but a small portion of it finally found—only a portion of it—this witness, ignorant of the existence of any more, he may take this course, but I at the same time think that counsel might well be interrogated and might well answer frankly whether he has got a correct copy or not.

Mr. Beach—Well, Sir, ought they not to show, before they are permitted to give secondary evidence of the contents of this document, that they have at least applied to the party in whose possession it was? It does not follow, Sir, because Mrs. Tilton may have told her husband that it was de-

stroyed, or because he understood that it was destroyed, that that was actually the fact. They show no application made to the party in whose custody the instrument was when this witness had the last knowledge of it. Now, I think, Sir, that your Honor should require at least that we should have proof of an application to that source of information in regard to the existence of the original document. And if it should appear that they have made that application and were unable to obtain it, why, it might be a satisfactory answer to the rule; but without that, I submit to your Honor that we have no adequate or sufficient proof of the loss, nor any search made for it, that would justify the introduction of secondary evidence.

Judge Neilson—I should feel the force of that much more strongly if the witness had not found and produced this fragment of it, but finding and producing a fragment of it helps the suggestion that the rest may be destroyed.

Mr. Fullerton—Yes, your Honor, but they are not reading from the fragment; they are not using the fragment, they are using something else, which presupposes that something else in the shape of a copy or original exists. That is the difficulty about it.

Judge Neilson—I don't know but you ought to use this method. I think we will go on, gentlemen. Take an exception.

#### MORE QUOTATIONS FROM THE TRUE STORY.

Mr. Evarts—Now, I must begin again.

Judge Neilson—Don't commence at the commencement.

Mr. Evarts—No; but this sentence that I was reading: "As a further statement still more unwillingly opened, yet necessary to an explanation—" A. "Still more unwillingly" what, Sir?

Q. "Opened"—"as a further statement still more unwillingly opened." A. I don't understand that.

Q. "Yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the Summer of 1870, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*. Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher which, to use her own words, lest I should wrong him by using mine, she afterwards noted down in a memorandum, as follows:—" A. Now, Mr. Evarts, if you will let me interrupt you.

Q. Well, I will not. A. The document that comes there is the document in evidence, and I can tell by holding the original document, whether you are reading what follows correctly.

Q. I will not be interrupted, Sir.

Mr. Beach—Well, you have been.

Mr. Evarts—[Reading]: "Mr. H. W. Beecher, my friend and pastor."

The Witness—Will you hand me that?

Mr. Fullerton—No! Just one moment! You don't want to look at anything. We will regulate it.

Mr. Evarts [Reading]: "'Mr. H. W. Beecher, my friend and pastor, solicited me to be a wife to him, together with all that this implies.' I borrow the above fact from my wife's hand-

writing, and forbid myself from pausing at this point either to blacken it with epithet or to lighten it with any explanation." Do you recognize that statement as being a part of your "True Story"? A. I should strike out the word—

Mr. Fullerton—One moment, now! Do you recognize it as a part of the "True Story"? That is the question—as it is read.

Mr. Evarts—Now, will you go on and answer; you would strike out what?

Mr. Fullerton—No, I object.

Mr. Evarts—It is a cross-examination.

Mr. Fullerton—I know it is a cross-examination, but I want the question answered correctly.

Mr. Evarts—I never heard that counsel could stop a witness on a cross-examination in that way.

Mr. Fullerton—You have often done it, Sir, in this trial.

Judge Neilson—I think counsel could stop a witness if the witness were departing from what he thought to be an answer to the question put by his opponent.

Mr. Fullerton—It admits of yes or no, and I want an answer.

Mr. Evarts—Ah! ah! Now, does your Honor understand that when I am cross-examining the witness, counsel on his part have a right to object that he must answer yes or no?

Judge Neilson—I think the counsel can make suggestions to that effect.

Mr. Evarts—I agree, but are they proper suggestions; do they stop the witness's mouth?

Judge Neilson—Then again it is not quite worth while to emphasize the fact that it is a cross-examination. This is a new matter brought out by you.

Mr. Evarts—Well, Sir; we will not dispute about that.

Judge Neilson—Now, I think the witness could answer yes or no, whether he does recognize it or does not. If any explanations afterwards are called for of course he can make them.

Mr. Evarts—Does your Honor instruct the witness that he must?

Judge Neilson—I instruct him that he should.

#### MR. TILTON JEALOUS OF HIS ENGLISH.

Mr. Evarts—I mean that he should. Will your Honor be so good as to note my exception to that instruction? [To the Witness]: Now, Mr. Witness. A. I think I should say, Sir, that the substance of that was mine, but I think that if you have copied it from the original, there are two words incorrectly copied.

Q. What are those? A. One is the word "opened," and the other "any."

Q. What should the word "opened" be, do you think? A. I don't know, but it seems to me to have no sense there.

Q. And the word "any" in what connection? A. It spoils the antithesis. Read it.

Q. The very last sentence? A. Yes, Sir. Read it?

Mr. Evarts—[Reading]: "I borrow the above fact from my wife's handwriting, and forbid myself from pausing at this point, either to blacken it with epithet or to lighten it with any explanation." A. "Blacken it with epithet or lighten it with explanation."

Judge Neilson—In other words, that is the way you think you would have written it?

The Witness—Yes, Sir, I think so; but your Honor will understand I cannot swear that I wrote it as it stands there; but I certainly do not think I wrote it as you have read.

Mr. Evarts [Reading]: "The subject of my wife's recital was communicated a few weeks afterwards by me to O. J. and F. D. M., and by my wife to her mother, and thence to some relatives. Mr. Beecher was absent from the State at the time, it being his vacation." Do you hear that? A. I do not remember the initials.

Q. How? A. I did not write it in initials. I wrote the names in full if I wrote it at all. I didn't do it in that blind way.

Q. Well, otherwise than that? A. I cannot swear positively.

Q. "During the Summer and Fall of the year 1870, I spoke of the case to a few friends, exhibiting more anger than charity towards Mr. Beecher, though to Mr. Bowen, whose two papers I was then editing, I was silent and unwilling to add any fuel to his indignation against the man whom he seemed preparing to destroy." Do you remember that?

Mr. Fullerton—I object to that, Sir. That, I take it, is a leading question, and it is evidence in chief of the other side; it is not cross-examination.

Judge Neilson—Well, your inquiry in the sense of it is, whether he recognizes that as a part of what he wrote.

Mr. Evarts—Yes, Sir.

Mr. Fullerton—Yes, Sir, and it admits of yes or no. It is a leading question if a leading question can be formed.

Judge Neilson—He is obliged to ask a question in that leading form somewhat, in order to get at the fact.

Mr. Fullerton—Ah! Sir, but if they have got a copy they can hand it to him and ask him the direct question.

Judge Neilson—Well, take an exception.

Mr. Evarts—My learned friend does not propose as a rule of examination that a cross-examination cannot lead?

Judge Neilson—I have ruled on this.

Mr. Evarts—You can lead a hostile witness even in a direct examination.

Mr. Fullerton—I hold you cannot get a copy of a paper in evidence in that way.

#### MRS. MORSE'S INFIRMITIES DESCRIBED.

Mr. Evarts. Ah! [Reading]:

"My wife's mother now began to play an important part in my relations to Mr. Bowen and Mr. Beecher, and in the relations of these two persons to each other. This lady has been for years a chronic subject of manias and frenzies, and notoriously irresponsible in her tirades on any subject that excites her morbid feeling. One of her physicians, the late Dr. Barker, of Brooklyn, recommended several years ago that she be treated to an—"in," it seems to be—"an institution for the insane."

A. What is that, Sir?

Q. "One of her physicians, the late Dr. Barker of Brooklyn, recommended several years ago that she be treated in an institution for the insane?" A. Oh, "in." I thought you said "to,"

Q. "Among her eccentricities which I allude to, not to reprobate their author, whom disease may largely exempt from censure, she attempted, about that time, to take the life of her husband, the Hon. N. B. Morse, by clutching his throat and strangling him with such powerful energy that her grasp was loosened with difficulty by the inmates of the house, and her fury quenched with chloroform; a circumstance speedily followed by a legal separation between her husband and herself."

A. Is that "cutting his throat?"

Q. "Clutching." A. Oh! "cutting;" yes, Sir.

Q. Do you recognize that as a part? A. I do not remember the exact statement. I know the facts to which the paragraph points.

Q. But was that subject included in your— A. I think, Sir, that there was a very sharp statement of Mrs. Morse's troubles and mine included in the statement, but I don't know whether that is one or not.

Q. "In a less degree she had used violence towards other members connected with her by blood or marriage, and had frequently written letters to me threatening my life;" do you recognize that? A. I don't remember that statement. I remember the fact of her writing such letters, threatening my life.

Q. "In a less degree she had used violence toward other persons connected with her by blood or marriage, and had frequently written letters to me, threatening my life—" Do you recognize that? A. I do not remember that statement; I remember the fact of her writing such letters, threatening my life.

Q. "Her ingenuity of statement against her relatives during the spasms of her insane hysterics is cunning and malicious in the extreme. At the same time, in saying this, I bear testimony to the innate kindness and beautiful affection of her nature. By those who knew her well, her peculiarities are understood; but, to her casual acquaintances, they generally remain successfully hidden in the—" There is a blank here—a single word, I suppose. "—demeanor of one of the most peaceable and fascinating persons."

Q. Do you remember that as part of your true story? A. No, Sir; but, if that blank was supplied, I think it would be a very accurate statement of the lady's character and habits.

#### TROUBLE ABOUT IDENTIFYING THE STORY PIECE-MEAL.

Q. "The unhappiness which she has occasioned to every member of my own family had increased year by year, until, at last, Mrs. Tilton and I had been compelled to forbid her to enter our house—" Do you remember that? A. I do not remember it as part of the statement; no, Sir. If your Honor will instruct me in regard to these answers; I am constantly recalling to myself that I am under oath, and I wish that my answers may be consistent with the solemnity of that oath. Here a series of sentences are brought up before me, and I am asked to swear whether or not two or three years ago I wrote such and such sentences. I am unable to say positively that I did; it would be very easy to put an incorrect sentence before me and make me think, for the time, that it was part of a document which I wrote—I do not wish unwittingly to swear

to a wrong; and I now again—I was about to say, I request (perhaps I have no right to make a request)—at the same time I will state that if that document be put into my hands, so that I can read it from beginning to end, I think I should have no difficulty in identifying it as the document alluded to; identifying it as a whole.

Judge Neilson—If it be the document.

The Witness—If it be the document?

Mr. Fullerton—And that is what we think ought to be done.

Judge Neilson—Mr. Tilton, as the counsel read a sentence to you, if you recollect it, or recognize it, as portion of what you wrote, you will so answer; if you do not, you will answer that you don't. If, in substance, it seems to be what you wrote, though it may not be in the very words, you will answer that way; but in no instance recall what was stated to you outside, either by Mr. Moulton or Mrs. Moree. The question all the time to you is whether, according to your present recollection, you recognize what is read as part of what you wrote; that is the only suggestion.

The Witness—I will ask your Honor one further instruction: if I answer, sentence by sentence, "It was something like that," without saying, "It was exactly that?"

Judge Neilson—Well, you have a right to do that—have that privilege; or, in substance—or, if you do not recognize it.

Mr. Beach—There is no occasion for the witness saying whether or not the statement as read to him was the fact or not.

Judge Neilson—No; that I suggest to him.

Mr. Beach—That is wandering from the question entirely.

Mr. Everts—That is so; my inquiry is only as to its being a part of his statement.

Judge Neilson—Will you take the original when you come down to it? Will you take the original part when you come down to it?

Mr. Everts—Oh, I dare say I shall—I can't find there is anything in it.

Mr. Beach—Where is the original?

Judge Neilson—All the time you understand that we might have received this—if you had an opportunity to read the paper at large deliberately.

The Witness—Your Honor will please understand that all the precaution I desire to take is not to be run into taking a false oath concerning a technicality difficult of remembrance.

Judge Neilson—Yes, Sir.

Mr. Everts—I think I left off the clause, Mr. Tilton, which spoke of the fact—which says—"until, at last, Mrs. Tilton and I had been compelled to forbid her to enter our house—"

Do you remember whether what I now read was a part of your statement? A. I cannot say, Sir, with sufficient accuracy to swear to it.

Q. "As illustrations of the mischief which Mrs. Morse had wrought against us, she spoke of Mrs. Tilton two years ago to our oldest daughter, Miss Florence Tilton (then thirteen years old), in terms of crimination revolting to any pure girl's mind, and most terrible when spoken to such a girl against her own mother, being nothing less than the central accusation in the great scandal, which another mad woman afterwards published to the world."

Q. Do you remember that as a part of your statement? A. I do not remember the phraseology, Sir.

Q. "Mrs. Morse once went to a lawyer in Brooklyn, and with a plausible air consulted him about a divorce between my wife and me—a fact which we learned only by accident not until it had spread its bat's-wings and gone flying abroad?" A. I think that was in it, Sir.

Q. Yes. "She wrote to sundry journalists anonymous letters to prejudice me in their estimation, and I trace to her fertile brain the tale that I once took my wife by the hair of the head and kicked her during illness. But I forbear to narrate a hundred instances which come to my mind of her mischief-making propensities. It is sufficient to say in reference to my case with Mr. Bowen and Mr. Beecher, and to the case of each against the other, that she made a careful and malicious use of the few facts in her possession and of the many fancies which there engendered in her diseased and unhappy mind?" A. I can't swear to the words, Sir.

Q. But in the substance does it strike you as part? A. Well, that passage does not arise to my mind; I won't say that it was not in it.

Q. Very well. "Mrs. Morse, in plotting her insane mischief, chose a confederate for a brief time in Mrs. H. W. B."—Beecher, I suppose—"another lady of abnormal type, whose peculiarities, having less aggravation, are also less pardonable than Mrs. Morse's." A. I think that was in it, Sir, or something like it.

Q. "For eleven years, Mrs. Beecher and I have not been on speaking terms, nor have I ever had so relentless an enemy. Strange it is, the cause of the hostility was an act of kindness which I performed for one of her children, an act for which her husband has never ceased to speak gratefully, and which he commemorated at the time, by sending me a beautiful gift in bronze. She never spoke to me afterwards." Do you recognize that? A. Something like it was in the statement.

Q. "To the readers of these manuscript pages, which are chiefly for Brooklyn use, she needs no description here." A. I think that was there, Sir.

#### THE WEBSTER DIFFICULTY WITH MR. BEECHER.

Q. "In the Fall of 1870, Mr. Bowen urged me to support, in *The Union*, Mr. E. D. Webster for Congress, a Republican nomination which many of the best citizens of that party had publicly repudiated, against one a meeting at the Academy had made, Judge George Reynolds being the chief speaker." Do you remember of there being anything about that Webster matter in the— A. No; I don't remember that.

Mr. Evarts—Well, I will read it.

The Witness—Moreover, Sir; I am very sure that in speaking of Judge Reynolds, I should have given him his full name, George C. Reynolds.

Q. George G. Reynolds, isn't it? A. George G.—

Q. Oh, I dare say. "I declined to support Mr. Webster, though as I knew nothing against him personally, I made no war on his character. Mr. Bowen repeated his plea in Webster's behalf, and I repeated my refusal. Mr. Bowen then

stated there was one way in which *The Brooklyn Union* could be made to support Mr. Webster, and that was by dismissing its editor. I answered: 'Yes; but that is the only way.' This was the first instance, in all my relations with Mr. Bowen, covering fifteen years, in which I had ever known him to attempt to bend the integrity of my mind. Mr. Webster was defeated, and he credited his misfortune to me, and maligns me for it to this day." Do you remember that as part? A. No, Sir; I don't remember any part of that.

Q. Don't remember anything about that. "After this difficulty, Mr. Bowen gave me to understand that as he owned two newspapers, he meant to edit at least one of them; accordingly he chose the lion's share, taking *The Independent* for himself and leaving *The Union* for me." Do you remember that? A. Don't remember that expression. No, Sir,

Q. The sense of it do you remember as being included in your— A. No, I don't bring it up to my mind.

Q. "He said, that he could not reasonably hope for more than ten remaining years of active life, and that if he was to win any fame or position to bequeath to his children, he must do it within that time. So without a murmur, I took off my crown and laid it at his feet, and said 'God save the King!'" Do you remember that? A. No, but it sounds just like me. I think I must have said it, [Laughter.]

Q. "We never made a treaty"—

Mr. Beach—"We then made."

Mr. Evarts—"We then made a treaty, and two contracts were drawn up between us, by which Mr. Bowen was to be editor-in-chief of *The Independent*, as I had been, and I its leading special contributor, as Mr. Beecher had been in the days of the *Star Papers*." Do you recognize that? A. I don't recollect the expression.

Q. But the sense of it? A. I don't remember that any such statement was in my story. Of course I don't say that it was not there, Mr. Evarts.

Q. No; that I understand, of course. Do you remember whether any statement about your business affairs was in the statement? A. Oh, yes, Sir.

Mr. Evarts—Very well.

The Witness—I tried to make that statement very ingeniously.

Q. Yes. "This arrangement to last two years at \$5,000 a year. Furthermore, I was to be also the editor-in-chief of *The Union*, giving up my lectures, an arrangement to last five years at \$5,000, together with ten per cent. of the net profits, which promised to be \$5,000 more, making all told, my yearly income \$15,000. Do you remember that as a part of your statement; your True Story? A. I think there was something like that in the statement, but I am very sure that I should have said, not \$5,000, because it was \$5,200 in each of these two cases. The probability is that I would have been absolutely accurate; both salaries were \$100 a week.



MR. TILTON'S GIFT TO MR. JOHNSON AND MR. BOWEN'S TO MR. TILTON.

Q. "When these negotiations were accomplished, I stated them, or notified them privately to Oliver Johnson, my assistant on *The Independent*, and sent him my gold watch as a parting tribute to the faithfulness with which he had toiled at my side, and to the love which I cherished for the man." Do you remember that as being in your statement? A. I remember, making an allusion of that kind to Mr. Johnson. I don't remember the—

Q. Words? A. "Stated" or "noticed;" what is that sentence, please read it again.

Mr. Evarts—Well, the word is "stated" or "noticed."

Mr. Beach—It could not have been "noticed."

Mr. Evarts—Well, I say I do the best, I can. The proper English word would be "communicat."

Mr. Beach—"Stated" is just as good English.

Mr. Evarts—Yes. "In answer to this token, there came the following fragrant, precious letter from his pen"—which letter I haven't here.

The Witness—Please read it, Mr. Evarts.

Mr. Evarts—I haven't the letter.

The Witness—I will furnish you the original. Will you do me the favor to read it?

Q. It is still in your possession? A. Yes, Sir.

Q. "In addition to the above letter, which is the chief letter, merely, I now cherish of long editorship of *The Independent* —"

The Witness—What is that, Sir?

Mr. Evarts—Well, it is a little blind; I will read it, however, the best I can.

Mr. Beach—It is elliptical; it is not complete.

Mr. Evarts—Yes. "I received from Mr. Bowen a gift of a gold watch, to replace the one I had given away."

The Witness—Yes, Sir. That is the watch. [Taking his watch from his pocket.]

Q. That happened? A. Yes, Sir; I know it.

Q. You still have it? A. That is it, Sir; that must be true.

Q. "Then under date of December 23d, 1870, *The Independent* contained the following valedictory and response."

The Witness—Under date of what?

Q. Under date of December 22d, 1870? A. Yes, Sir.

Q. "*The Independent* contained the following valedictory and response?" A. Yes, Sir.

Q. Those are not here, but those are printed papers? A. Yes, Sir.

Mr. Beach—Not in.

Mr. Evarts—Not in this paper that I have.

Mr. Beach—And not in evidence yet.

The Witness—You will do me the favor to read them when I present them, will you, Sir?

Mr. Evarts—Oh, yes. I am willing they should be read. "Two days later, namely, Saturday, December 24th, Mr. Johnson mentioned to me that some strange tales concerning me had been planted like seeds in Mr. Bowen's ears, and that Mr.

Bowen, without specifying them, was annoyed by them." Do you remember that as being in your statement? A. I don't remember that phraseology, Sir.

Q. "Later, on the same day, Mr. Johnson said that Mr. Bowen had received a report that I was about to abscond to Europe to join"—a blank which I will not fill—"who was already there. On the following Monday, December 26th, 1870, in a conversation with Mr. Bowen, Mr. J. being present, a budget of Mrs. Morse's ingenious fiction, together with some other gossip, was referred to and discussed, and Mr. Bowen dismissing the subject, said that as I was to be for five years the editor of *The Brooklyn Union*, he hoped hereafter that I would devote more attention than I had previously done to Plymouth Church." Do you recognize that as part of your statement? A. Something like that. I don't know whether that is correctly stated or not.

Q. "He instanced my not attending service there any more, and begged me to be a constant witness of all the proceedings, with a view to make them topics of remark. I then informed him that I had not been at the church for months past, and should probably no more be seen inside its walls, which opinion I stated to him in a few words in Mr. Johnson's—" "I stated to him in a few words in Mr. Johnson's presence, my wife's communication concerning Mr. Beecher—"

Mr. Beach—Well, that is blind.

The Witness—That is bad English.

Mr. Evarts—Yes, that I understand.

Mr. Beach—It is unintelligible.

Mr. Fullerton—It is a good question, though.

Mr. Evarts—"Occasion," instead of "opinion," "and should probably be no more seen inside its walls, on which occasion I stated to him in a few words, in Mr. Johnson's presence, my wife's communication concerning Mr. Beecher." Do you remember that as a part of your true statement? A. I don't think there was any such bungling sentence as that in it.

Q. Well, aside from the words, the substance of it? A. I think the substance was probably there.

Q. "Mr. Bowen's indignation at Mr. Beecher was extreme. He arose from his chair, talked vehemently, gestured angrily, and said that Mr. Beecher must be made to quit the pulpit. He then reiterated all the charges that he had made many times before, and said, in addition, that Mr. Beecher had, in February, 1870, confessed his adulteries to Mr. Bowen, and implored his forgiveness with tears." Do you remember that as a part of your statement? A. Something like that.

THE CAUSE OF MR. BOWEN'S ENMITY SUGGESTED.

Q. "The interview at which this confession took place I think he said was held at Mr. James Freeland's house?" A. I don't remember that.

Q. "I forgave him," said Mr. Bowen, "but he still goes on with his crimes and criminal attempts just the same as ever. You ought to proceed against him instantly. Don't let him preach another sermon. If I was free to take action as you, I would expel him from his pulpit and he should never write a word again for *The Christian Union*." I then said, "Mr. Bowen, why are you not still more

free than I am?" Do you remember that as a—? A. Something like it.

Q. "Because," said he, 'Mr. Beecher made a confession to me and asked my pardon, which I granted, and I cannot re-open a settled quarrel; but if you will make a charge I will furnish the proof?' A. Something like that.

Q. "At a later period of the conversation, and after Mr. J. had left, Mr. Bowen rose to a still higher heat, brought me pen and ink, and challenged me to write to Mr. Beecher, demanding that he should retire from the pulpit and *The Christian Union*." A. Something like that.

Q. "I will bear a letter to him," said Mr. Bowen, 'and will sustain the demand with proofs. There will be no resistance. Mr. Beecher will not deny, cannot deny, dare not deny them.' A. Something like that.

Q. "Mr. Bowen put his case with such energy, and with such a passionate plea in it that I would enable him, without his breaking his treaty with Mr. Beecher, to reopen his old warfare upon him, and excited within me such a revived remembrance of the wrongs which Mr. Beecher had done to my own heart that I wrote a draft of a note, which I altered and rewrote and left finally changed as follows:

DECEMBER 26th, 1870. }  
BROOKLYN. }

HENRY WARD BEECHER.

Sir: I demand that, for reasons which you explicitly understand, you immediately cease from the ministry of Plymouth Church, and that you quit the city of Brooklyn as a residence.  
(Signed) T. T.

Theodore Tilton? A. No, Sir; it was never signed "T. T.;" it was signed by my whole name.

Q. Yes; we have had it in evidence? A. Yes, Sir; well, I didn't do it in a half way.

Q. This, I believe, agrees with the—"I put the above letter into Mr. Bowen's hands, to be immediately delivered by him in person to Mr. Beecher, and then I went home. During the afternoon Mr. Moulton called on me and I mentioned to him the occurrence of the morning ending with the letter. He called me foolish, 'because,' said he, 'you ought never to have written a letter at all, but if written it ought to have had Mr. Bowen's signature to it as well as your own. You have left him a chance to play you a trick. You have made your demand all alone. What if he leaves you to support it all alone? Mr. Moulton then took a sheet of paper and entered on it the following memorandum: 'Brooklyn, December 26th, 1870. T. T. informed me to-day that he had sent a note to Mr. Beecher, of which Mr. H. C. Bowen was the bearer, demanding that he, Mr. Beecher, should retire from the pulpit and quit the City of Brooklyn. The letter was an open one. H. C. Bowen knew the contents of it, and said that he, Bowen, would sustain T. in the demand.' Do you remember putting that memorandum into your "True Story"? A. Yes, Sir; I did.

Q. "A day or two afterwards, prompted by my wife's wish and Mrs. M.'s advice, I resolved that I would send for Mr. Beecher to meet me at a personal interview, either in their presence, or with me alone. I dispatched to Mr. Bowen a messenger with a notification of this intention. On the receipt of this intelligence by Mr. Bowen,

which I supposed would gratify him, he came into my editorial chamber, and, with a look of desperation on his countenance such as I had never seen there before, and with an anger and passion of which I had never dreamed him capable, and with the manner more of an insane than of a rational man, began to threaten me that, if in any interview I might have with Mr. Beecher, either then or at any other time, I should divulge to Mr. Beecher what he (Bowen) had said against him, or should intimate that he (Bowen) had any hand in the letter requiring Mr. Beecher to vacate his pulpit, I would be cashiered from *The Independent* and *The Union*, and that the police should be called to cast me into the streets." Do you remember that? A. I cannot swear to the phraseology.

Q. Or the substance? A. Well, yes, in the main, I think; I cannot know all the details; I cannot say how I stated it precisely.

Q. [Reading:] "After, some words of indignation which I uttered in reply, Mr. Bowen abruptly retired from the office, leaving me in as great a state of astonishment as I had ever experienced." Is that part of your statement? A. I don't recollect that.

Q. [Reading:] "I informed my wife and Mrs. Moulton, and afterwards Mr. Johnson, of this incident, concerning which Mr. Moulton remarked that it did not surprise him in the least; and then, by the joint advice of all, I determined to summon Mr. Beecher to the contemplated interview." Do you remember that as a part of your statement? A. No, Sir.

Q. [Reading:] "To this end Mrs. T. wrote a brief note, addressed to Mr. Beecher through me, stating that she had given me the disclosure of July 1st, 1870, concerning him, and that her husband would speak to him face to face." Do you remember a statement of that kind? A. I don't remember the phraseology of it.

Q. [Reading:] "On Friday evening, December 30th, I went to Mr. Moulton's house. Mr. Moulton went after Mr. Beecher, and brought him. This was early in the evening, Mr. Beecher leaving his prayer meeting, usual on that evening, to go without his leadership. My interview was with Mr. Beecher alone. I read to him my wife's letter, and said to him what I shall not here repeat. He sat like a statue under my brief remarks, and at the close bowed to me and said, 'This is all a dream.'"

The Witness—I don't remember that.

Q. Don't remember that? A. No, Sir.

Mr. Fullerton—How was that? A. I don't remember the exact phraseology in which it is put there.

Mr. Evarts—[Reading:] "He affected to disbelieve that Mrs. Tilton had written the letter, and denied everything with a royal negative."

The Witness—Yes, I remember putting that in, in order to cloak the statement—make it easy.

Mr. Evarts—Ah! Well, I did not ask you that; my sole question was whether this was in your statement. A. Yes, Sir, it was in—put in there for a purpose.

Mr. Evarts—Well, that will all be left out—the purpose that it was put in for.

The Witness—I remember that being put in.

Mr. Evarts—If your Honor please, I ask that that all be stricken out.

Judge Neilson—The answer is "he remembers it;" very well.

Mr. Evarts—Yes, that is all; the rest must go out.

Mr. Evarts—[Reading:] "I then said, 'it is about a few squares to my house go and ask Mrs. T. for yourself whether or not she wrote the letter'; he went and returned in half an hour." Is that part of your statement? A. I don't remember that.

Q. You don't remember that? [Reading:] "I did not see him. Mr. Moulton asked him what had taken place at Mrs. Tilton's? He remarked that he had seen that lady; but he did nothing more, and left. This was about 11 o'clock at night."

The Witness—I don't remember that.

Q. [Reading:] "Shortly after he left, I left. On reaching home I found that Mrs. Tilton, who was then seriously ill and in bed, was agitated and distressed. She said that Mr. B. had been there, telling her that she had pursued and slain him."

The Witness—Done what, Sir?

Mr. Evarts—"That she had pursued and slain him."

The Witness—I do not remember any such expression as "pursued;" there must be some mistake there.

Mr. Evarts—"That he would be tried by a counsel of ministers and his career ended, and that he was a dead man unless she would save him from his fate. She said, moreover, that, after talking to her in this strain, and exhibiting great and terrible feeling, Mr. B. went to her writing desk, and taking out pen and paper, brought them to her bedside, and putting them into her nervous hands, dictated to her, what she copied—a paper of which she could not recall the phraseology." Was that in your statement? A. Something like that, I think.

Q. Something like that? But I should have added, "could not recall the phraseology, nor, to a certainty, the substance and meaning," which completes the sentence. It was at the foot of the other page. [Reading:] "Shortly after narrating to me the above occurrence she resumed her pen and ink and wrote the following statement." That is the statement that is in evidence here?

The Witness—Yes, Sir.

Q. But is not on this paper. [Reads again:] "The next morning, in response to a note from me, Mr. Moulton came to my house, and, after an interview with my wife, received from her, in writing, a request to procure the return of the paper which, in her agitation, she had given to Mr. B. the night before—a paper all the more important for, as it is seen, she was uncertain of its real design."

The Witness—I don't remember that.

Mr. Evarts—[Reading:] "That evening, which was Saturday, brought to me a new surprise, closing a week of sensations with one which fittingly capped the climax, namely, a notification from Mr. Bowen that my engagements with *The Independent* and with *The Union* would then and there terminate, and that he was ready to settle with me in full of all demands." Do you remember that being in your statement? A. I do not remember.

Q. Well, was the substance? A. I do not remember that.

Q. "In these words Mr. Bowen broke his two contracts which he had just made with me, which were also"—

The Witness—There is something wrong there.

Mr. Evarts—"And which were also then a week old," it is so here, "and to each of which was attached a provision that it could be terminated by death or by six months' notice, or immediately on paying a forfeit of \$2,500, but in no other way."

The Witness—Please read that phrase, "in these words." What does that mean?

Mr. Evarts—"In these words, Mr. Bowen broke his two contracts which he had just made with me."

The Witness—Well, in what words?

Mr. Evarts—Well, that I have just read.

Mr. Fullerton—Never mind, Mr. Tilton, let them read their own paper in their own way.

Mr. Evarts—The witness has a right to his explanation.

Mr. Fullerton—So have I a right to say to him what I do.

The Witness—I think that must have been "in other words."

Judge Neilson—"In these words" refers to what immediately preceded, if it refers to anything.

The Witness—But no words were quoted from Mr. Bowen.

Mr. Evarts—Well, it is immaterial. You think it should be "in other words."

The Witness—Well, I merely want to know what I have got to swear to, that is all.

Mr. Fullerton—Well, you have not got to swear to anything but what he reads as a part of your statement; if it is not, you will say so.

Mr. Evarts—And in what respect it is.

Mr. Beach—He is not obliged to answer in that way.

Mr. Evarts—No.

Judge Neilson—He does not suggest that it should be "other words."

Mr. Evarts—He doesn't? I thought I understood him to say so.

The Witness—I simply thought it might be so.

Mr. Evarts—Yes; it came from him, Sir.

Judge Neilson—As better English—better sense?

The Witness—That is all.

Judge Neilson—Not as being in that paper?

The Witness—No, Sir; I don't remember any such unimportant sentence as that.

Mr. Evarts—I did not make the sentence.

Judge Neilson—That is true. It was his criticism.

Mr. Evarts—I will read it either way. [Reading:] "In these words Mr. Bowen broke these two contracts which he had just made with me, and which were also then a week old, and to each of which was attached a provision that it could be terminated by death, or by six months' notice, or immediately on paying a forfeit of \$2,500; but in no other way."

Q. Do you remember a statement concerning the contracts in your paper? A. I do not remember distinctly—no, Sir.

Q. [Reading:] "Mr. Bowen thus suddenly laid himself liable to pay \$5,000, for breaking his two contracts together, of course, with 10 per cent. of *The*

Union's profits, due to me up to date, from May 1st to December 31st—eight months."

The Witness—I do not remember.

Q. Don't remember that being in the statement? A. No, Sir.

Q. [Reading]: "I received this notification late in the evening of the last day of the year, after which I first informed my wife, and bidding her not to be troubled, then sought Mr. Moulton's house; I invited him out of doors, and paced with him the wintry streets, till the chimes of St. Ann's rung out the old and rung in the new year." Do you remember that being in the statement? A. I remember the chimes; I think there must be some sentence left out there.

Mr. Evarts—Well, none that I am aware of.

The Witness—Still, I don't know; I don't know whether I put the whole Saturday night in or not; perhaps only a part of it.

Q. [Reading]: "The next day I furnished a New Year's gift for Mr. Bowen in the shape of the following letter." That refers to the letter of January 1st? A. Yes, Sir.

Q. [Reading]: "After writing the above letter, I gave it to Mr. Moulton to be by him delivered to Mr. Bowen; and as I wished speedily to settle my affairs with my late employer, I asked Mr. Moulton to be one of three arbitrators for the purpose. Mr. Moulton desired me to commit the whole case to his hands, lest in the hands of myself I should be tempted to do injury to Mr. Beecher. I consented to write the following"—which is the authority.

The Witness—Well, that is badly bungled, Sir. I don't think I wrote it in that way.

Q. You don't remember about that?

Mr. Morris—He doesn't mean by that to say that he doesn't remember any authority.

Mr. Evarts—Oh, no. [To the witness]: Do you remember whether the authority was put into the "True Story"? A. My authorization, do you mean?

Mr. Evarts—Yes; was it included in that paper? A. I don't remember, Sir; but I think quite likely it was.

Q. "On the night of January 1st, 1871, Mr. Moulton called on Mr. Beecher, and after a protracted interview returned, and immediately gave to me an account of the interview, which I took down from his lips in phonographic notes; these notes, after two years, I now reopen for the first time and digest therefrom the following report."

The Witness—"Reopen?"

Q. Yes, Sir. A. Strange word.

Q. "These notes, after two years I now reopen for the first time, and digest therefrom the following report." A. I don't understand that word "reopen."

Q. Well, it is not for me to suggest, except that they might be closed up in an envelope or shut up in a drawer? A. Well, perhaps they were; yes, Sir.

Q. Well, what do you think of that; do you think that was in your statement? A. I don't remember the phrase; I remember that I took from Mr. Moulton's lips the narrative.

Mr. Beach—Well, you are stating now as to the fact, and not as to the contents of this statement.

The Witness—And afterwards used a part of the narrative, and put a frame it into the statement.

Mr. Evarts—The question is only whether this was in your "True Story" as you composed it? A. Well, it is very difficult for me to swear exactly what was in and what was not. I have to go by the facts themselves rather than by the mere statement of them.

Mr. Beach—That is the only safe way.

Mr. Evarts—Well, I proceed to read them: "I called at Mr. Beecher's. He was not at home. I left my card; presently his son came running after me saying his mother knew where his father was, and that he would go for him; I went back to the house and Mr. Beecher came in; he invited me up stairs; I told him he would probably consider it the strangest interview he ever had with mortal man. Said I: 'Mr. Beecher, I wish to tell you first how minutely I recollect your conversation of last evening. I came to tell you as a friend meaning to do you as good service as ever any friend did to another. On our way to my house I asked you if any one had seen the letter besides yourself, the letter of T. T. demanding your retirement from the pulpit; you said none save one, besides myself. I asked if that one was H. C. B. You made no reply. You recollect it, do you not?' He said, 'I do.' 'I do not press any answer from you now; so far as you do not answer me you do not respond to the friendship which I profess for you.'" Do you remember that part of your statement? A. I remember there was something like that; I don't know whether that is accurate or not.

Mr. Evarts—Now, if your Honor please, I am sorry to say that that is all I have of the True Statement—the "True Story" in any form.

Mr. Fullerton—I am sorry to say that it does not appear to be, in part, the "True Statement."

The Court—How is it as to the portion preserved?

Mr. Beach—That is not all that you have. You have these three or four pages.

Mr. Evarts—Well, I say all that I have of my own source.

#### MR. TILTON'S DEFENSE IN THE TRUE STORY.

Mr. Evarts—I will now read from this paper.

[Taking up the preserved sheets.]

Mr. Beach—What are you reading from?

Mr. Evarts—I am reading from the original paper produced by Mr. Tilton. "Mrs. Davis, in *The Springfield Republican*, December 9th, 1872"—

The Witness—It was put into my hands at the time; I don't know whether it was from *The Springfield Republican* or not.

Mr. Evarts—[To the witness.] This printed paper was put into your hands—this statement?

The Witness—Certainly.

Mr. Evarts [reading]:

A WITNESS WHO REPUDIATES.

"Mrs. Paulina Wright Davis, of Providence, was given as a chief witness in Mrs. Woodhull's scandalous Beecher-Tilton

libel. But in a note just received from her in Europe, Mrs. Davis thus utterly repudiates, in gross and in detail, the statements concerning her relation to the case, and gives the most damaging direct blow to the whole libel that has yet been rendered: [This appears to be quoted.] "In relation to the Tilton versus Beecher affair, I have only this to say: I was never on any terms of intimacy with the families of either party; I never visited at Mr. Tilton's but once in my life, and that was ten years ago, in company with Mr. and Mrs. Johnson. A year or two ago I called at Mr. Tilton's house for some books which I had lent to Mr. T. I then saw Mrs. Tilton for ten or fifteen minutes. I have met Mrs. Tilton two or three times at the houses of mutual friends; but at no time has there been the slightest approach to a confidential conversation between us, nor have I insinuated that there had been. If Mrs. T. has ever in my presence spoken of Mr. Beecher, it has been in terms of respect, as a man of honor and her pastor. I did believe that Mrs. Woodhull was going to do a great work for woman; I am grieved that she has failed in what she gave promise of doing."

[Reading from the "True Story:"] "I have not seen the original manuscript of Mrs. Davis's letter, as above printed, nor do I know to whom it was addressed; but a similar letter was sent by her from Paris to Oliver Johnson, which I have seen and here transcribe as follows:" That does not seem to be transcribed?

The Witness—No, Sir; Mr. Johnson showed me the letter, but I failed at the time to take a copy of it, and afterwards I did not get the copy.

Mr. Evarts—He, perhaps, has it. [Reading:] Mrs. Stanton, in a letter to a friend in New-York, dated Boston, November 5th, 1872 (a few days after the Woodhull publication appeared), says:

[MRS. STANTON'S STATEMENT.]

"I have had a grand time visiting friends here, but my pleasure has been fearfully marred by this Woodhull paper. I thought it dead. 'False in one point, false in all,' is a good old Latin motto. The filthy words—" [Pausing.]

The Witness—I will read it for you if you wish, Mr. Evarts.

Mr. Evarts—"The filthy words—language," I think it is.

The Witness—I guess it must be a mis-writing; I guess it is "the filthy language she puts into my mouth." I have written it "words."

Mr. Evarts—"The filthy language she puts into my mouth is utterly false. I never spoke to that woman but once on the subject, about five minutes, fortunately in the presence of one witness, a gentleman, and simply replied in general terms to a question that I had heard the rumor. 'Say this to T. T., and tell him I shall stand by him in the hour of need.'

With kind regards, ever yours,

(Signed by) MRS. H. B. STANTON."

["Note.—I possess the original of the above letter.—T. T."]

Mr. Evarts [reading from the loose sheets]: "In addition to the testimony of Mrs. Davis and Mrs. Stanton, above given, my wife's own solemn and truthful declaration, is as follows:

[MRS. TILTON'S STATEMENT.]

The statement that Mrs. Davis was ever intimate with me, or a frequent guest at my house, is a fabrication. Many years ago, nearly a dozen, when we lived in Oxford-st., she once spent part of a day with me, in company with Mary Ann Johnson. Two or three years ago she called for a few minutes with Mrs. Stanton, at our house in Livingston-st. With these two exceptions, certainly ten years apart, Mrs. Davis has never been under our roof. I know her very slightly indeed. I never had a confidential talk with her on any

subject, and never told to Mrs. Davis or to any other person, the preposterous and wicked slander put upon me in Mrs. Woodhull's libel. ELIZABETH R. TILTON."

Mr. Evarts [Reading:]: "My family and others by bringing these same stories—" There is apparently, Mr. Fullerton, some leaf missing; this is not continuous.

Mr. Fullerton—It is more than "apparently," Sir; it is so.

Mr. Evarts—Well, we will see. I understood the witness to bring all that he had.

The Witness—Perhaps you read the sheets out of their order, Mr. Evarts.

Mr. Evarts—I may have done so. They are not numbered at all that I see.

The Witness—No, Sir.

Mr. Fullerton—There is a break there.

Mr. Evarts—What I have read thus far has been continuous and this is not. However there is no paging. [Reading:] "My family and others by flinging these stories broadcast to all the world as she has since done."—It is a complete sentence. "To complete the chain of documents belonging to this case, I now insert the two of chief importance, namely, the direct testimony of Mrs. Tilton and of Mr. Beecher as to the alleged criminality of their relations."

[MRS. TILTON'S STATEMENT.]

Mr. MOULTON—*My Dear Friend*: For my husband's sake, and my children's, I hereby testify with all my woman's soul—

The Witness—Those are the two cards already in evidence.

Mr. Evarts—Yes, Sir; I know they are; but here is a word I cannot make out:

that I am innocent of the crime of impure conduct alleged against me.

I have been to my husband a true wife. In his love I wish to live and die. My early affection for him still burns with its maiden flame; *all the more* for what he has borne for my sake, both private and public wrongs. His plan to keep back scandals long ago threatened against me I never approved, and the result shows it unavailing. But few would have risked so much as he has sacrificed for others, ever since the conspiracy began against him two years ago.

Having had power to strike others he has forbore to do it, and allowed himself to be injured instead. No wound to me is so great as the impression that he is among my accusers. I bless him every day for his faith in me, which swerves not, and for standing my champion against all adversaries.

ELIZABETH R. TILTON.

[MR. BEECHER'S STATEMENT.]

MY DEAR MR. MOULTON: I promptly comply with your suggestion of giving an explicit denial of the stories which connected my name criminally with Mrs. Tilton's. The very thought of being obliged to say anything to clear her fair fame shocks me. And I have hitherto acted under advice in refraining.

Very truly,

HENRY WARD BEECHER.

Mr. Evarts—Then it goes on:

BROOKLYN, Dec. 29.

I solemnly deny the scandalous charges made against me and Mrs. Eliz. R. Tilton. Especially and emphatically I deny that there has been any criminal intercourse or any color of reason for such a charge.

My acquaintance with Mrs. Tilton has inspired me with the highest esteem for her modesty, propriety and womanly grace.

I authorize her or her husband and children to use this declaration.

I desire to state in addition that Mr. Tilton, during the whole

of this shameful scandal, has uniformly spoken in the highest terms of his wife, and has shown to me the strongest proofs of friendship.

Mr. Beach—[Handing the missing sheets of "The True Story" to the witness]. Take those.

The Witness—I don't want them.

Mr. Beach—You may as well keep them.

The Witness—An lar: they to go in evidence?

Mr. Beach—Keep them, I tell you.

#### MR. TILTON'S ALLEGED TESTIMONY TO MRS. WOODHULL'S VIRTUE.

Mr. Evarts—Do you know Jackson S. Schultz of New-York? A. Yes, Sir.

Q. How long and how well have you known him? A. I have known him a number of years, but not very well.

Q. Was he one of the subscribers to your fund for *The Golden Age*? A. Yes, Sir; he subscribed \$750 for it.

Q. And his partner, Mr. Southwick, another? A. Yes, Sir; a similar amount.

Q. Do you remember in a conversation with Mr. Schultz in the Spring of 1871 or the Winter of 1871-'2, either time, saying to Mr. Jackson S. Schultz that Mr. Beecher was responsible for your quarrel with Mr. Bowen, and that the whole Plymouth Church crowd were hypocrites, that you would expose them all, and could and would blow the roof off unless they came to your terms, and settle with you on your terms? A. No, Sir, the man who threatened to blow the roof from Plymouth Church was Oliver Johnson.

Q. Now, I never asked you that, and I will have that struck out. That will be struck out, if your Honor please.

Judge Neilson—The answer as it stands is "No."

Mr. Evarts—Did you say to Mr. Schultz, on either of these occasions, in substance or effect what I have said to you? A. No, Sir, I did not; my interview with Mr. Schultz—

Mr. Beach—Wait a moment.

The Witness—Was in the presence of Franklin Woodruff.

Mr. Beach—Wait, Mr. Tilton, when you are asked.

Mr. Evarts—No matter; you said nothing to him; you remember distinctly that you did not say anything to him of the substance or effect of this statement? A. I had some conversation with Mr. Schultz—

Q. Nothing? A. No, Sir.

Mr. Fullerton—One moment.

Mr. Evarts—It is right enough he should say that.

Judge Neilson—I don't know, under your former rule perhaps it is. It is put down—"I had some conversation with him."

The Witness—Yes, Sir.

Mr. Evarts—You had some conversation with him? A. Yes, Sir.

Q. And you refer to that conversation with him yesterday? A. Yes, Sir.

Q. Where was that? A. At his own house.

Q. In New-York City? A. Yes, Sir.

Q. Where you had gone for the purpose of seeing him? A. Yes, Sir; with Mr. Woodruff.

Q. Which Mr. Woodruff? A. Franklin Woodruff.

Q. Do you remember when it was? A. Yes, Sir; it was in the early Winter of 1871.

Q. 1871-'2? A. It was in the early year, January, 1871—January or possibly February, 1871.

Q. Of 1871? A. Yes, Sir; and I remember exactly what I said to him.

Judge Neilson—He didn't ask you that.

Mr. Evarts—That I don't ask. [To the witness]: In that conversation, or in any other conversation with him, you didn't say anything of that kind? A. No, Sir; I never used any such language to anybody.

Mr. Evarts—I have not asked you about the language; I have asked you about the substance.

Judge Neilson—We have the fact. That is all.

The Witness—Yes, Sir.

Mr. Evarts—Did you, in that conversation with Mr. Schultz, of which you have spoken—as you had a conversation—or at any time during the year 1871 or the year 1872, say to him, in answer to his inquiry whether Mr. Beecher had improper relations with your wife that your wife was as pure as the driven snow—that she was as pure as an angel? A. Yes, Sir; I did.

Mr. Evarts—You did! [Laughter.]

Judge Neilson—Silence.

Q. You know Mr. Southwick? A. Yes, Sir; in about the same way I know Mr. Schultz.

Q. And he, as you have stated, was one of the contributors to your *Golden Age* fund? A. Yes, Sir.

Q. Do you remember meeting him soon after the publication of the life of Woodhull on the ferry-boat, and his asking you if you were out of your mind and you replied to him; "I know what you mean. You refer to my life of Woodhull, which I glory in," or words to that effect? A. I don't remember anything about that.

Q. You don't remember? A. No, Sir.

Q. Do you remember any conversation with him? A. Oh, I have met Mr. Southwick many times on the ferry-boat; I don't remember any one in particular.

Q. Do you remember anything in connection with this subject? A. No, Sir.

Q. Did you proceed to say on this occasion to Mr. Southwick, "I took an oath before Almighty God, on my bended knees, when I was oppressed by H. C. Bowen, that the first poor creature who applied to me for assistance I would aid him or her, and that poor creature came in the person of Mrs. Woodhull, whom I know to be a natural lady and as pure as an angel?" A. I don't remember anything about it, Sir; I think that is a fiction.

Q. You don't remember any such conversation? A. I had a great deal of conversation with Mr. Southwick on the ferry-boat from time to time about Mrs. Woodhull—a great deal of satirical talk, battledore and shuttlecock to and fro; I don't remember any of the particulars of it. I remember one day he said to me: "Holloa, how are the Woodhulls," and I said: "Holloa, how are the Claffins," he being one of them. All

I remember about it is our chaffing about it in a friendly way—a semi-satirical sort of way.

Q. You don't remember saying this to him? A. No, Sir; I do not.

Q. Either chaffing or not chaffing? A. No, Sir; I do not. If I did, it was chaffing.

Q. Well, you didn't say it? A. No, Sir.

Judge Neilson—Is that all of the cross-examination?

Mr. Evarts—No, not quite, if your Honor please.

Judge Neilson [To Mr. Evarts]—Proceed, Sir. I think you had better close now. I think it is due to your opponents that you should close now, so that they may know what their to-morrow's work will be. I will remain as long as you wish.

Mr. Evarts—If your Honor requires it, that we should break the rule and go on now, of course I submit.

Judge Neilson—I don't require it, Sir; I only earnestly wish it, Sir. You will not be long in the morning.

Mr. Evarts—No, Sir. I have stated to your Honor that the conduct of a four hours' cross-examination, and the preparation in the interval for it, is as much as I think I could properly do.

Judge Neilson—I think it is.

Mr. Evarts—And I must ask your Honor to allow me to finish this in the same way.

Judge Neilson—Yes, Sir. [To the audience]: I wish, gentlemen, you would keep your seats until the Jury retire. [To the Jury]: Please be in your seats to-morrow at 11 o'clock.

Mr. Mallison—This Court now stands adjourned until to-morrow morning at 11 o'clock.

The Court thereupon adjourned until 11 o'clock on Friday.

## TWENTY-FIFTH DAY'S PROCEEDINGS.

### THE ICE BLOCKADE MAKES A HOLIDAY.

MR. EVARTS, TWO ASSOCIATES, AND A JURYMEN DELAYED IN THE MORNING—AN ADJOURNMENT TO 2 O'CLOCK—FURTHER PROGRESS POSTPONED TILL MONDAY.

FRIDAY, Feb. 12, 1875.

There was an abrupt and unexpected halt to-day in the proceedings of the Beecher-Tilton trial, on account of the enforced absence of Mr. William M. Evarts, ex-Judge Porter, and Mr. Abbott, of the counsel for the defense, and of John M. Taylor, the eighth jurymen. Judge Neilson was on the bench 10 or 15 minutes before 11 o'clock and listened to an argument in an equity case, which occupied the time until the hour for opening the great trial. The plaintiff's lawyers were ready, but Mr. Evarts and two of his junior associates and one of the jurymen were not in their places. It was soon ascertained that the ice in the East River was the cause of absence. The minutes slipped away until it was nearly half an hour after the usual hour for opening. Mr. Beach

and Judge Fullerton had come from New-York at 10 o'clock, and no other boats followed the one on which they crossed for an hour or more. Therefore, at the suggestion of Mr. Beach, with the concurrence of Mr. Shearman, the court was adjourned until 2 o'clock, the hour for the afternoon session.

Soon after the adjournment, Judge Neilson received a telegram from Mr. Evarts saying that there was a prospect of considerable delay at the ferry, and that one of the jurymen was on the same boat with himself. This boat was the Pacific of the South Ferry, which had started from Brooklyn about 8 o'clock, and after cruising about the river for several hours, put into Fulton Ferry on the New-York side. The Pacific, in returning, made a landing at a pier near the Wall-st. Ferry, after floating about for one hour and a half. The counsel were not worried by the delay, as they knew the trial could not proceed without the jurymen who was with them. It is said that as the boat was drawing near the landing, Mr. Evarts laughingly cautioned Mr. Taylor, the jurymen, to be careful in getting ashore, saying, "if you should be lost all our labor in the case would be for naught, for a jury cannot be replaced. If one of the counsel should be lost some substitute could be obtained."

Judge Neilson resumed his seat at 2 o'clock, and all the jurors were in their places. Mr. Tilton took his seat in the witness-chair, and in a moment the counsel filed in. Mr. Evarts and his colleagues were warmly greeted by Judge Neilson and the jury. Mr. and Mrs. Beecher and Mrs. Tilton and her friends came in about this time. The audience was very large, and many of the persons present had been waiting in their seats during the prolonged recess, afraid of losing their places. Mr. Evarts and Mr. Beach were observed to go up to the bench and engage in a whispered conference with Judge Neilson, after which they resumed their places. Mr. Evarts then addressed the Court, saying that he had an imperative engagement in New-York at 4:30 p. m., and that Mr. Beach had an appointment at 5 o'clock. If the trial were continued, there would be danger that they might fail in their engagements. They therefore asked for an adjournment until Monday. Mr. Beach concurred, and Judge Neilson complied with the request. Among those in the court-room to-day were Judge Kirkpatrick of Pittsburgh, Penn., and Francis J. Dupignac.

From the first days of the trial a class of unscrupulous

pulous meddlers have been sending anonymous letters to the jurymen with the idea of poisoning their minds. These letters are generally given into the hands of Judge Neilson, who destroys them, as it is impossible to detect the writers. Mr. Carpenter, the foreman of the jury, received a letter to-day written apparently by a lady. He informed Judge Neilson of the fact and was instructed to destroy the letter.

## THE PROCEEDINGS—VERBATIM.

### THE ICE EMBARGO CAUSES ADJOURNMENT.

The Court met at 11 a. m., pursuant to adjournment. Mr. Evarts and ex-Judge Porter, of defendant's counsel, being detained by the ice embargo, an adjournment was had to 2 o'clock.

Mr. Beach—If your Honor please, it is very obvious that some of our friends on the other side are detained by the ice-block in the river, and it is suggested by some of the jurymen that we might as well take our recess at this point until 2 o'clock, as there is no likelihood of the river being open until that time, and that they can employ themselves in their business for an hour or two.

Judge Neilson—What is your view about it personally? You came over this morning, didn't you?

Mr. Beach—We came over, Sir, early, we came over at ten o'clock, and soon after that the passage for the boats was closed.

Judge Neilson—What do you think about it, Mr. Shearman?

Mr. Shearman—Well, I think, your Honor, we might about as well adjourn, at any rate, until one o'clock.

Mr. Beach—Oh, we don't want to come here at one. That is the hour of adjournment.

Judge Neilson—Well, gentlemen, that seems to be the view, then.

A Juror—We are not averse to one o'clock, if that is the order of the Court.

Mr. Beach—It might as well be two

Mr. Carpenter [Foreman of the jury]—I think we better say until two o'clock.

Judge Neilson—Will gentlemen please keep their seats a few minutes? The Court has not adjourned.

Mr. Fullerton—I suggest that Mr. Shearman, in the meantime, go over to New-York after them. [Laughter.]

Judge Neilson—We will meet at two o'clock, gentlemen of the jury, please.

The Court then took a recess until two o'clock.

### AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

[The five sheets of the original of the "True Story" were each marked "Exhibit D, 104."]

Mr. Evarts—Your Honor is probably sufficiently aware of the condition of navigation between New-York and Brooklyn, to know that it accounts for the absence of the jurymen, who, unfortunately, was on that side of the water, and of the counsel for the defendant, who are always there at night; and we now present to your Honor this state of circumstances. Our boat was an hour and a half on the water, to say nothing of the delay before starting. I have made the only appointment that I have been able to make during the week, at the close of the court, to complete some very important matters that are to be sent to Washington to-night, and I do not wish, if I can avoid it, to be under any difficulty or danger of not being at my office at half-past four o'clock. My friend Mr. Beach, also, has some important engagement, which requires him to be in the city at the hour of five, I believe; and under these circumstances, upon conference, we feel that unless your Honor should feel that the progress of the trial should constrain you to the contrary, that we should really lose but little now in taking our adjournment until Monday; otherwise we might lose all opportunity of getting across and be placed at great disadvantage.

Mr. Beach—Under any circumstances, Sir, we should be compelled to ask your Honor to make an earlier adjournment this afternoon than is usual, and I do not think any substantial progress could be made in the examination, or the close of the examination of Mr. Tilton, before we should be compelled to present that request to your Honor, and I do not think we should make any available progress by proceeding for the remainder of the day which, under those circumstances, would be left; and, therefore, we concur in the request of Mr. Evarts that your Honor should adjourn now until Monday.

Judge Neilson—Well, in view of the uncertainty of your being able to return, of which you have a better means of judging than I have, having seen the condition of the ferry, and regarding your engagements as very important, and your chance to keep them precarious if we continue the business, I think I ought to comply with your request. [To the jury.] When we adjourn, gentlemen, we do so until Monday morning at 11 o'clock. Gentlemen will keep their seats a few moments. [To the Clerk.] Adjourn the Court and let the crowd go away.

Mr. Mallison (Clerk)—The Court stands adjourned until Monday morning, at 11 o'clock.

Judge Neilson—The jury will please remain a moment. Now, those gentlemen that could not wait until the jury are gone, will please retire. [To the jury.] Now, gentlemen of the jury, you will please retire. I hope to see you safe here Monday morning.



## TWENTY-SIXTH DAY'S PROCEEDINGS.

THE PLAINTIFF'S CROSS-EXAMINATION  
ENDED.

HIS THREAT TO SHOOT MR. BEECHER—WHY THE LETTER TO DR. BACON WAS WRITTEN—MR. MOULTON'S FINANCIAL TRANSACTIONS WITH MR. TILTON—THE WITNESS EXPLAINS HIS THEORY THAT HIS WIFE IS PURE AND YET GUILTY OF ADULTERY—INTRODUCTION OF EIGHT PHOTOGRAPHS OF MR. BEECHER FOUND IN A CLOSET AFTER MRS. TILTON LEFT HER HUSBAND.

MONDAY, Feb. 15, 1875.

Promptly at 11 o'clock to-day Mr. Evarts resumed his cross-examination of Mr. Tilton. From the first it was evident that the questioning by the defense was drawing to a close, and when recess arrived Mr. Evarts announced that he would finish with the reading of three letters after the interval. The queries followed no regular line of examination, but were intended to close all the gaps in the investigation by the defense. The first question was regarding a statement in the "True Story," about Mr. Beecher's alleged immoralities, which Mr. Evarts said he overlooked when reading it last week. The stereotyped reply of the witness, that he did not remember the exact words, was given. The examiner next inquired what the witness meant when he said that he would shoot Mr. Beecher if he resigned from Plymouth Church, casting a shadow on his (the witness's) family, and Mr. Tilton replied that he meant just what he said. "Would you have shot him?" asked Mr. Evarts, with a tone of surprise. "I presume I should," replied Mr. Tilton in the most listless manner.

After bringing out the denial of the witness that he wrote or dictated the letter of Mrs. Tilton in September, 1872, in which she denies the story of crime, Mr. Evarts passed to the consideration of events surrounding the conduct and support of *The Golden Age*. The letter from Mr. Clarke, formerly its associate editor, in which the writer said that Mr. Tilton's name was a millstone on the paper, was offered for the third time, and again ruled out. This letter was first introduced by the plaintiff and objected to by the defense, and ruled out. Twice after that the defense has attempted to introduce it but has not succeeded, but to-day most of its contents were made known by putting the statements contained in it in the shape of questions. The witness was asked if he had heard of a

project of starting a new political paper founded upon the situation of politics existing at the time of Mr. Greeley's death. He had heard of such an enterprise, but had no part in it. Then the witness was asked if he were ever editor of the paper *The Revolution*, and he said he was not. A prospectus of that periodical—a little sheet of paper—was shown, and it gave occasion for the first joke of the day, which was the observation of Judge Neilson that if that was *The Revolution* it was a very small revolution. It was ascertained that Mr. Tilton received nothing for *The Golden Age* when he disposed of it to Mr. Clarke. The witness was next asked what induced him to write the Bacon letter. He gave five or six reasons, which he said made the provocation. The questioning brought a statement that the witness believed that after 1872 Mr. Beecher intended to strike him down at the first opportunity. The witness was asked about some of his statements while under examination before the Plymouth Investigating Committee, particularly in regard to his letters written to the Congregational Council, he having said, as is alleged, that he did not care whether the scandal came out as a result of these letters or not. There was also close inquiry about the manner in which his "Statement" came to be published in *The Brooklyn Argus*. The witness said that he was at Delmonico's when he first heard that it had been published. He repeatedly asserted that he had no hint of its intended publication before it was printed.

Mr. Tilton, it seems from his testimony, has had no employment since he left *The Golden Age*, though he has an income. The witness swore that Mr. Moulton had contributed nothing toward the expenses of this suit. At this stage the hour of recess arrived, and the court adjourned for an hour. The cross-examination only lasted fifteen minutes after the interval, that time being occupied by the reading of three letters from Mr. Tilton to his wife, written in 1868. Without formality Mr. Evarts sat down, his task finished, and ex-Judge Fullerton arose and began putting the questions of the redirect examination. The first matter of importance reached was, whether Mr. Tilton knew that his wife was to leave him, as she did in 1874, soon after her appearance before the Investigating Committee. He said that he did not. Perhaps the most comprehensive explanation that the witness has yet made regarding his remarkable theory of his wife's alleged sin was called out by

Mr. Fullerton's question, how he reconciled the statement that his wife loved everything good and hated everything bad, with the fact that she is charged with adultery.

Still more literature was added to the already large collection now in the hands of the lawyers. Besides the letters read during the last moments of the cross-examination, Mr. Fullerton introduced Mr. Tilton's protest in *The Independent* against Mr. Beecher's letter to the Cleveland Convention, which the defense had introduced; also the portions of the plaintiff's reply to Mr. Greeley's letter regarding woman's rights, which in its reading the defense had omitted.

The witness was made to give his views of marriage and divorce. The former he said was the union of one man to one woman for life, and possibly beyond life, for better or for worse. His views of divorce, he said, were shared by the mass of the people of the United States. In the New-England States, and in nearly all of the Western States, a woman may get a divorce from her husband if he treats her brutally, neglects to support her, is an habitual drunkard, or for other reasons. New-York, Mr. Tilton proceeded to say, has a unique code, which is out of harmony with the sisterhood of States, allowing divorce from only one cause. The witness denied that he ever had other views of divorce, or that he believed in "free love" doctrines.

The little poem entitled "French with a Master," the reading of which by Mr. Evarts has been one of the bright episodes of the trial, was referred to by Mr. Fullerton as having been introduced by the defense as an expression of indelicacy. To show that such a meaning was not intended, Mr. Fullerton read one of the verses in which "orange buds" are mentioned, and asked the author to give the prose of his poetry, which he did, saying that it was the story of a lover teaching French to his sweetheart and proposing marriage to her.

The most notable incident of the day was the introduction by Mr. Fullerton of a little box containing eight photographs of Mr. Beecher, taken in different positions and most of them at different times, which Mr. Tilton testified he found in a little closet in which his wife kept her letters and gifts from Mr. Beecher. Mr. Evarts objected to putting in evidence regarding the contents of the closet. Judge Neilson decided, however, that Mr. Fullerton might "open the closet," to which the counsel rejoined that

he had it open already, but his opponent wished to close it. The photographs were passed among the jurymen, and examined with interest. They are all cabinet photographs, except a carte de visite on which Mr. Beecher's autograph is written, and a "tin-type," locket size. The last half hour of the afternoon session was given to an examination regarding Mr. Tilton's religious views—his early belief, the cause, time, and nature of the change in them, and his present convictions.

## THE PROCEEDINGS—VERBATIM.

### ANOTHER BIT OF THE TRUE STORY.

The Court met at 11 a. m., pursuant to adjournment. Theodore Tilton was recalled and the cross-examination resumed.

Mr. Evarts—I find, if your Honor please, in looking over the notes of the testimony, and this paper, that I omitted a paragraph in my inquiries of this witness, which I will now put to him.

Judge Neilson—In the so-called "True Story"?

Mr. Evarts—In the so-called "True Story." It immediately precedes that which relates to Mrs. Morse. It is a short paragraph which escaped my eye. [To the witness.] I ask you whether this was a part of your "True Story:" "At the same time, by other persons and from other quarters, stories were set afloat concerning Mr. Beecher of the same damaging kind; for instance, there came from Washington a statement, traceable I know not to whom, that Mr. Beecher preached every Sunday to a dozen of his mistresses." Was that in your true statement? A. I cannot swear positively that it was.

Q. You cannot swear that it was not? A. No, Sir.

### MR. TILTON'S THREAT TO SHOOT MR. BEECHER.

Q. Mr. Tilton, you remember, in the course of the direct examination, the stage of this matter when Mr. Beecher proposed a resignation of his pastorate? A. Yes, Sir.

Q. You remember that? A. Yes, Sir.

Mr. Evarts—[To plaintiff's counsel.] That was not an exhibit?

Mr. Morris—No, Sir; Mr. Moulton stated the contents.

Mr. Evarts—I was looking for it as an exhibit.

Mr. Fullerton—It was not an exhibit; Mr. Moulton gave it from recollection.

Mr. Evarts—Exhibit No. 26 I want. It is another matter. I shall want that in a moment.

[Mr. Morris produced Exhibit No. 26.]

Q. I understand you to have stated, in connection with that resignation—which we do not find for the moment; perhaps it is sufficiently in your mind—I understand you to have stated, upon hearing that resignation recited to you by Mr. Moulton—the proposed resignation recited to you by Mr. Moulton—that you stated that if Mr. Beecher resigned you would shoot him in the street? A. Not that, Sir.

Q. What was it you said? A. I said that if he resigned, flinging back a shadow on my family, I would shoot him in the street.

Q. You meant by that, that if he resigned with such a resignation as that? A. Yes, Sir.

Q. That was read to you? A. Yes, Sir.

Q. That if he wrote that resignation and resigned, you would shoot him in the street? A. Yes, Sir; because he alluded to my family in it.

Q. What did you mean by that? A. Exactly what I said.

Q. And if he had resigned, you would have shot him in the street, would you? A. Well, I presume I should.

Q. Here it is:

"I tender herewith my resignation of Plymouth Church. I have stood among you in sorrow for two years in order to save from shame a certain household, but since a recent publication makes this no longer possible, I now resign my ministry, and retire to private life."

That is the resignation, is it not? A. I don't remember the phraseology of it. I remember that the resignation contained a pointed allusion to my family.

Q. Well, that is the paper? A. I did not object to his resigning. I only objected to his flinging back a shadow on Elizabeth.

Q. Yes; very well. Now, this was about June, 1873? A. It was May 31st.

Q. Well, I say about June, 1873? A. It was May 31st; Saturday night.

#### AUTHORSHIP OF ONE OF MR. MOULTON'S LETTERS QUESTIONED.

Q. On the 1st of June you were at Mr. Moulton's house? A. Yes, Sir; that was Sunday.

Q. 1873. Do you remember, Mr. Tilton, at what hour of the day you were there first, if you were there more than once? A. My impression is I was there twice—once during the day and then during the evening. That is my present recollection.

Q. How early in the day were you there? A. That I don't remember.

Q. Was Mr. Moulton then abed? A. I don't remember that.

Q. Look at this Exhibit D, 43, which is Mr. Moulton's letter of that day to Mr. Beecher, and say whether you were present when that letter was written? [Handing witness Exhibit D, 43.] A. No, Sir; I was not.

Q. When did it first come to your knowledge that it had been written? A. I do not think I ever saw the letter until this—until it appeared. I think, in one of the statements last Summer. I remember, however, that during the day Mr. Moulton informed me that Mr. Beecher had written him a letter, and he had written a reply, but he did not show me the reply.

Q. And you were not at Moulton's, you think, until after he had received Mr. Beecher's letter and written his reply? A. That is my recollection, Sir. I think the letter which Mr. Beecher sent to Mr. Moulton on that day was sent early in the morning, that is my impression, and was received by Mrs. Moulton before Mr. Moulton had arisen.

Q. Well, we have the evidence on that subject. A. And that

this reply by Mr. Moulton was written in bed; but I don't know those facts from personal knowledge.

Q. You are quite certain, Mr. Tilton, are you, that you were not present and did not take any part in the preparation of this letter? A. Oh, not at all, Sir.

#### A LETTER OF MRS. TILTON'S ATTRIBUTED TO MR. TILTON.

Q. Let me call your attention now, Mr. Tilton, to a letter of your wife's in the end of December, 1872, beginning, "My dear Friend: For my husband's sake and my children's." You remember the letter? A. Yes, Sir.

Q. Did you write that letter? A. I did not, Sir.

Q. Did you draft it? A. No, Sir.

Q. Was it written by your wife without any intervention from you? A. It was written by my wife in consultation with me. She wanted to have it written. She wanted a card denying Mrs. Woodhull's story.

Q. Well, that has all been testified to. A. I think she consulted me as to the phraseology of it, in parts.

Q. I think you have said that Mr. Beecher and yourself and your wife were together at Mr. Moulton's? A. Yes, Sir.

Q. At this time, the time that these two letters were considered before you? A. Mrs. Tilton's letter had been written, I think, before that. She was present in order that Mr. Beecher's card might be seen by her and be judged satisfactory by her.

Q. Well, she was there? A. Yes, Sir.

Q. We won't repeat the matter, for that is testified to. Now, when you came there, or when your wife came there at this interview, and for this interview, was that letter then there in your handwriting, and was it then and there and afterwards copied by your wife and signed? A. I don't remember whether I took the original letter of Mrs. Tilton's there, or whether I took a copy of it; at all events, either the original or a copy was there, in order that Mr. Beecher might see exactly what Elizabeth desired to do and had done; in other words, to see her card to which he was requested by her to present a companion piece.

Q. Well, I understand. You think then that the letter which appears as your wife's may have been produced there at that interview in your handwriting? A. I think that either the original in her handwriting, or a copy in mine, was there. I know the card was there in some form.

Q. That we understand. A. Then she afterward came herself.

Q. But the proposition that I wish to ask your attention to is this: that it was there in your handwriting, and was then and there copied by her and signed? A. No; it was not so.

Q. That is not so? A. No, Sir.

Q. Wasn't it on that occasion complete as her writing and with her signature? A. I think, Sir, it had been written complete by her signature and all, either the day before or that morning. I know the first idea of that interview did not contemplate her presence at all, but her personal presence there was in order that she might see Mr. Beecher's card and pronounce her opinion as to that.

Q. You cannot say, then, as I understand, whether there was at any time, at that interview, then present, this letter in her handwriting and signed by her? A. Well, I have already said that either that letter, in her handwriting and signed by her, was there, namely, the original, or else that I had carried a copy of it there.

Q. In your handwriting? A. Yes; I don't know which.

Q. And which, you cannot say? A. I cannot state now which; no, Sir.

#### THE CLARKE LETTER AGAIN PRODUCED.

Q. [Letter handed to witness.] Look at this paper, which is marked for identification 49, known as the Clarke letter, and read the letter, if you please? A. Do you wish me to read it, Sir?

Mr. Everts—Yes. [Letter read by the witness.]

Q. Did you see that letter, or know of its being written, at the time that it was written? A. No, Sir; I do not think I did; Mr. Moulton and Mr. Clarke were very intimate personal friends, and I very frequently was present with them at their talks about the paper; I don't think I saw this letter until it was turned up here during the trial. Still, I may have done so; it has escaped my mind if I have.

Q. Mr. Clarke at that time was the managing editor, wasn't he, of *The Golden Age*, or in some way associated in its conduct? A. He was an associate editor; yes, Sir.

Q. Were you aware at this date, or about this time—beginning of the year '78—of a purpose or wish that *The Golden Age* should be disposed of? A. Wish on my part?

Q. Yes. A. Well, Sir, I have had that wish for a long while; I don't remember exactly the date at which it began.

Q. Well, were you aware of efforts to dispose of it? A. I was aware of this—Mr. Clarke, my associate, who had been previously editor-in-chief of a newspaper, had several times talked with me about the possibility of his becoming owner of *The Golden Age*, and being editor-in-chief of that; and it was a project which I always favored. I desired a long time ago to abandon the newspaper, and go into other literary toils. He was solicitous to have the paper, and very frequently talked on that subject; but I could not fix the date at which those talks first began.

Q. Well, were you aware, Mr. Tilton, of the sentiments or prejudices regarding your connection with that newspaper—which affected its commercial prosperity, its pecuniary prosperity—in the sense in which this letter of Mr. Clarke presents it? A. Well, Sir, I do not know—

Mr. Fullerton—Well, one moment; that question is predicated upon a letter not in evidence.

Mr. Everts—But I have shown it to him.

Mr. Fullerton—That is very true, but his answer will be unintelligible unless the letter is in.

Judge Neilson—Yes, Sir.

Mr. Everts—We should be very glad to get it in.

Mr. Beach—No doubt about that.

Judge Neilson—[To Mr. Everts.] Cannot you frame your question omitting the letter?

Mr. Everts—[To the witness.] Were you aware that in the efforts to dispose of this newspaper it was found that those to

whom it was offered had such a painful impression, if not seated prejudice, against Mr. Tilton that they were unwilling to even seriously consider the matter, and that Mr. Clarke had been blamed for retaining a connection with such a man and paper? A. No, Sir; I was not aware of it, for he states in the letter that he did not inform me—

Mr. Beach—Wait, wait!

Judge Neilson—"I was not aware of that"—that is the answer to it.

Q. Were you aware of the feeling in regard to the paper from your connection with it, even with those who had no prejudice against you, that they saw no field and no future for the paper, and that they advised its giving up, especially as its editor was a millstone upon it? A. No, Sir; was not aware of that.

Q. You were not aware of that? A. No, Sir.

Q. And yet you don't feel sure but that you saw this letter? A. Well, I cannot say that I did not see the letter; I have no recollection of the letter; I would not swear positively that I had not seen it; I don't think I ever saw it until it was produced here.

#### MR. TILTON'S HEALTH ALWAYS GOOD.

Q. Were you aware at this time that it was proposed or considered, on the part of Mr. Clarke or any other of your friends interested in you and the paper, that you ought to go abroad into another atmosphere and new scenes? A. I don't remember that anybody spoke to me on the subject.

Q. You don't remember of that being considered by Mr. Clarke and yourself, or other friends, in connection with your then position in *The Golden Age* and the situation of that paper? A. No, Sir; some friends of mine, after I got through writing a book, which was a number of months later, thought that I had better go abroad and get rested. I don't remember any such suggestion at the time of that letter.

Q. Who were those friends? A. Well, I think Mr. Clarke was one, possibly Mr. Carpenter—some personal friends; I had been working a year very hard and they said, "Run over and spend a Summer vacation in Europe."

Q. Were you aware that at this time your condition of health and spirits gave uneasiness to your friends in regard to your health? A. No, Sir.

Q. They desired some change of scene for your recreation? A. I don't know of any ground for such anxiety, Sir; my health has always been very fair until I got into this trial—bad atmosphere.

Q. Have you any doubt that at this time Mr. Clarke, in his conversations with you, did advise your going abroad? A. Well, Sir, I don't remember that, whether he did or not; I cannot fix any—the date of any—conversation with Mr. Clarke. I remember that, as I said before, after I got through writing the book and had prepared it for the press, Mr. Clarke and a few other friends said, "Now is the time for you to run over and spend a Summer vacation in Europe;" that did not take place until several months after this letter was written.

THE CLARKE LETTER AGAIN RULED OUT.

Mr. Evarts—I now offer, if your Honor please, to read this letter which has been twice proposed—once by my learned friends, and then again on our part.

Mr. Beach—The situation is not changed, Sir, since your Honor ruled it out.

Judge Neilson—The first time the suggestion was that the letter of Mr. Clarke was shown to Mr. Beecher; then there was an attempt to identify it as the one shown on your objection of failure to show that, and an offer on your part and an attempt to identify it. Have we now anything additional?

Mr. Evarts—I now offer it as shown to Mr. Tilton, leaving it a question on his statement which is not positive that it was or that it was not.

Judge Neilson—I don't think a paper becomes evidence by merely proving that it was shown to the witness.

Mr. Evarts—No, but to the party; not merely to the witness but to the party. Mr. Clarke and he were in this relation of association and interest in regard to *The Golden Age*, and this is a letter to Mr. Moulton concerning that affair.

Judge Neilson—By Mr. Clarke?

Mr. Evarts—By Mr. Clarke; and the witness says that he cannot say that it was, or that it was not, shown to him.

Judge Neilson—I don't think that it is evidence.

Mr. Evarts—I suppose that it may be a question, under the circumstances, whether or not the jury would conclude that it was shown to him or was not shown to him.

Mr. Beach—It is not a question for the jury, Mr. Evarts—I beg pardon.

Judge Neilson—I don't think it is admissible.

Mr. Beach—I was going to remark, if the counsel will permit me, that it is a question for the Court to determine the facts in regard to the competency of evidence.

Mr. Evarts—Yes; it is for the Court, no doubt, but the Court often determines such questions by saying: "There is dispute here whether that is so or not; that is a question of fact, and upon the determination of that question of fact it will be determined whether this evidence is admissible or not."

A PROJECT BORN OF THE POLITICAL EVENTS OF 1872.

Judge Neilson—That would be a correct disposition of the question where there was some evidence on each side, and some doubt, and where the matter in its nature was material. I don't think this is evidence.

Mr. Evarts—Your Honor will be so good, then, as to note my exception. [To the witness.] Do you remember about this time, which you will notice was at the close of the political campaign and after the death of Mr. Greeley—do you remember in the latter part of that year or the beginning of the following year of a project being considered by you, of the establishment of a new political paper founded upon the then situation of politics and of Mr. Greeley's death, and so the effect that had or might have upon the already established paper *THE TRIBUNE*? A. No such project was considered by me; I heard of

some such project talked of by others, but I had no part or lot in it.

Q. Well, but was that project entertained by your friends in reference to a connection of yourself with it? A. Not in the slightest degree that I know of; I never had any idea of joining any such enterprise.

Q. Well, did you hear of that at the time?

Mr. Beach—Hear of what?

Mr. Evarts—Of a project on the part of some of your friends.

Mr. Beach—On his behalf?

Mr. Evarts—No; of establishing such a newspaper—of establishing a newspaper.

Mr. Beach—Well, what if he did hear of it?

Judge Neilson—He has said that he did. [To the witness.] I understand you so.

The Witness—I heard of two or three different projects talked of, but they were not my projects.

Mr. Evarts—That I have understood you to say. Well, who were these friends of yours that you understood were entertaining or talking about such a project?

Mr. Beach—He did not say that any of his friends talked about it. You are assuming it.

Mr. Evarts—I submit it to your Honor. [To the witness:] Now, is that so?

The Witness—Ask your question again.

Q. Were those friends of yours that you understood were entertaining a project of establishing a new paper? A. Well, friends in one sense—I think the enterprise came from Mr. Cornell; I don't know that I ever saw him. There were two or three enterprises started.

Q. Connected with a new paper? A. Yes, Sir; I had nothing at all to do with it whatever; all I know on the subject is my remembrance of the gossip at the time.

Q. And it was at about this period—the end of the year 1872 or the beginning of the year 1873, wasn't it? A. My impression is that that was later. I refer to certain enterprises which culminated in the newspaper called *The Republic*, lately established in New-York and—

Q. Well, that is a very recent matter? A. Well, it was talked of a long time before. Do you allude to *The Brooklyn Union*, Mr. Evarts?

Q. Oh, no. A. Because some gentlemen in this city wanted to buy that for me and I declined.

MR. TILTON DENIES ANY INTEREST IN THE REVOLUTION.

Q. Oh, no. During what period of time was there a newspaper published here, either in Brooklyn or New-York, called *The Revolution*? A. Well, Sir, it was published for a number of years; I don't remember its beginning or end.

Q. About when? A. Can't say.

Q. Well, it was somewhere within these years that we have been talking of, wasn't it? A. My impression is that it began before the affairs that have been discussed.

Q. Before 1870? A. Oh, yes; many years before.

Mr. Beach—Oh, yes; it was discontinued before 1870.

The Witness—I think not.

Mr. Beach—Yes, Sir, it was.

Mr. Evarts—Well, I am trying to get at the fact.

Mr. Beach—Well I took it through all its existence.

Mr. Evarts [To the witness]—Well, we will take the best of your recollection when this *Revolution* newspaper existed and was published. A. I can't say when it was founded, Sir.

Q. Well, you can't recollect sufficiently to state when that affair—that newspaper was current? A. It was founded by Miss Susan B. Anthony and Mrs. H. B. Stanton, but in what year I don't remember; I should say, at a rough guess, somewhere about 1835, but I may be wrong about it.

Q. And when do you think it terminated? A. Well, Mr. Beach says before 1870, but I am inclined to think that it lasted longer than that.

Q. And were you, at any time, editor of that? A. No, Sir.

Q. Who were editors of that paper at the time that you knew of its existence?

Mr. Fullerton—It seems to me that that is foreign to this issue.

Mr. Evarts—Well, that depends.

Mr. Fullerton—That depends on something you have not suggested yet.

Judge Neilson—I don't see the materiality of it. As, perhaps, counsel does, I think he may answer it.

Mr. Fullerton—Well, I think the Court ought to see the materiality of it.

Mr. Evarts—I have never heard before, if your Honor please, that the question of relevancy or materiality applied to a cross-examination, except under the restraint of the Court when it perceives manifestly either a trivial or a prolix inquiry.

Mr. Fullerton—That is just the character of the inquiry I suggest.

Mr. Evarts—Well, that is not so polite as it might be. As it is the first question that is asked, it could hardly be said to be within that rule.

Judge Neilson—I think he may answer.

Mr. Fullerton—Well, I think it is prolix; it is not impolite to suggest that.

Mr. Evarts—Oh, yes, it is.

Mr. Fullerton—Well, you will have to stand it, then, because it is prolix.

Mr. Evarts—The cross-examination may be prolix, but the topic is not, because I have just begun on it.

Mr. Beach—Well, the discussion is—

Mr. Evarts [To the witness]—Who were the editors? A. It was edited from time to time by Mrs. Anthony, Mrs. Stanton, Mr. Pillsbury and Mrs. Bullard; I don't know whether she was the last editor or not—yes, Sir; there was one other editor later, Mr. Clarke.

Q. Perhaps this may refresh your recollection as to names. [Offering a paper to witness.] A. No, Sir; my recollection don't need any refreshment about that; I know it perfectly.

Q. Well, that is dated— A. I think I have given you all the editors of the paper.

Q. That is dated June 2d, 1870.

Judge Neilson—Is that the paper?

Mr. Evarts—This is the prospectus of it.

Judge Neilson—Oh!—I was going to say it was a small revolution if that was the paper. [Laughter.]

Q. Were you the editor or assistant editor at that time on that paper? A. No, Sir.

Q. Please look at that article and say if that was written by you? A. I don't remember, Sir.

Q. Well, do you recognize this style as yours? A. Well, Sir, I could not say at this—perhaps it was, perhaps not; there is nothing very particularly noticeable about it. I may have had something to do with the article; perhaps I did.

#### THE TILTON-MOULTON-TRACY INTERVIEW.

Q. You have spoken of an interview between yourself, Mr. Moulton and Mr. Tracy, alone, subsequent to an interview in which Mr. Franklin Woodruff, you remember— A. Yes, Sir.

Q. Now, can you fix the time at which this interview at which you and Mr. Tracy and Mr. Moulton were together and no others—can you fix the time that that occurred? A. I fixed the time the other day, Sir; between Christmas and New Years, or else later.

Q. Do you remember what day of the week it was, or don't you know? A. No, Sir.

Q. Whether it was a week day or a Sunday? A. I do not.

Q. Do you remember whether it was in the day time or in the evening? A. It was in the evening.

Q. And do you remember how that meeting came about; how it was produced? A. I do not remember, Sir.

Q. Was it a casual meeting? A. I don't remember that.

Q. Do you know how long it lasted? A. I know it lasted so long that General Tracy went to sleep. [Laughter.]

Q. And at what hour of the night did it terminate? A. I don't remember that.

#### MR. MOULTON'S PRINCELY GENEROSITY.

Q. Have you any account of the money transactions between you and Mr. Moulton? A. No; other than the firm of Woodruff & Robinson show on their books.

Q. What amounts of money— A. Ah! I ought to say the books of *The Golden Age*.

Q. The books of *The Golden Age* also contain an account? A. Well, the books of *The Golden Age* will contain an account of moneys paid to it.

Q. Paid to it? A. Yes, Sir; at least I presume they do. I am not the owner or bookkeeper; I have not seen the books for a long while.

Q. Who has those books now? A. The present proprietors of the paper.

Q. Who are they? A. Well, they are strangers to me; they are gentlemen lately connected with *The Christian Union*; I think one is Mr. Wetherby, the other Mr. Johnson; I think also Mr. Clarke. I don't know the exact proprietary status of the paper.

Q. Well, they have the establishment, and you suppose the books of the old concern are with the new? A. Yes, Sir; that is my supposition.

Q. Now, can you tell us what amount you are now indebted

n to Mr. Moulton? A. I don't know I am indebted to him at all, Sir; it was with Mr. Moulton's free consent that I sold *The Golden Age*, with all implied obligations resting upon it, which came from the moneys that he advanced, amounting to a few thousand dollars, perhaps \$5,000 or \$6,000.

Q. How much were you at any time indebted to Mr. Moulton? A. I should think, perhaps, in one view of the case, I was indebted to him five thousand dollars, or six thousand dollars.

Q. At what date had your debt come to that amount? A. I should think about the time I sold the paper.

Q. When was that? A. The first of June, 1874.

Q. Had you at any time repaid to him any loan, or reduced in any way your debt to him? A. No, Sir; Mr. Moulton would not take anything in return; I tried to get Mr. Moulton to take my property at Llewellyn Park; he said, "No, wait;" then I tried to get him to take one-half, or one-third, or one-quarter of *The Golden Age*, and he said he would in due time, if there was no reimbursement in any other way; Mr. Moulton told me to be very much at my ease about it, which is just like him, for he is a princely man.

Q. At the time of this conversation with Mr. Moulton, was the amount of your debt named or spoken of between you? A. During the year, while I was writing a book—which was from September, 1873, to September, 1874—I very rarely went to the office; I stayed all the time at my house, and Mr. Moulton told me that he would see that the paper was kept going during that time, not to disturb myself about it; once or twice during that year, I spoke to him about his kindness to the paper, and told him that I was carrying an obligation which I did not know how I was going to pay. He always said to me, "Be quiet and easy in your mind, for if there is no other way of payment, I will take one-half of the paper or one-third of the paper, and reimburse myself in that way."

Q. It appears by the evidence, as I understand it, that commencing with a certain sum of \$1,000 on the third of May, 1873, you received, between that date and the end of May, 1874, the sum of \$5,000 or thereabouts from Mr. Moulton. How did you receive those sums of money? A. I think they were generally paid by Mr. Moulton to Mr. Ruland.

Q. Have you any mode of verifying the fact? Will the accounts of *The Golden Age* show? A. I don't know whether they will or not; I have not looked at the accounts; I never kept them, and I never looked three times into the books of the paper; my impression is that Mr. Ruland generally got a check, and came to me to indorse it, or something of that kind.

Q. When the first note was sent to you, and a voucher required of you, you declined to become a debtor? A. Yes, Sir.

Q. And you then immediately received the \$1,000? A. Shortly afterwards, Sir.

Q. Well, the next day, or some days afterward, did you not? A. I don't remember how soon; the circumstances were there—

Q. Now, did not you consider yourself a debtor when you did take that money? A. Yes, I did.

Q. Very well; that is enough? A. In a moral sense.

Q. And so thereafter, with all the sums that you received from Mr. Moulton, you considered yourself his debtor, did you not? A. I certainly did; I would not take money from any man without a desire to return it.

Q. What distinction, then, did you draw between willingness to be made a debtor, without a prospect of repaying, and willingness to give a voucher for the debt? A. Mr. Moulton sent to me one day a check for \$1,000, desiring me by the hands of the messenger to give a note for it, or something of that kind—I do not know exactly what; I returned it, saying that I could not borrow the \$1,000, for I did not see my way clear of paying it back; Mr. Moulton then came to me in person and said, "Now, I know you need the money; never mind giving any obligation about paying it back; I have trust in your good fortune and your integrity; consider yourself under no obligation." Under these circumstances I took the money and applied it to the paper. He said that he would reimburse himself in some other way if I could not pay him the money.

Q. Did he name the way in which he would reimburse himself? A. Yes, Sir. He said: "There is the Llewellyn Park property, and there is the paper;" and, said he: "I can reimburse myself at any time, so don't you be disturbed."

Q. Then you understood that he was satisfied to give you the money without any voucher or security other than your property and a belief in your integrity? A. I understood it was more—an act of friendship between Mr. Moulton and myself; not a business transaction between one man and another, but the act of the loving friend, who, out of his abundance, was willing to help me in my necessities.

Q. And who, being aware of your property and trusting in your integrity, he told you he could get the money when he needed it?

Mr. Fullerton—He did not say that.

Mr. Evarts—I think he did. I understood it so.

The Witness—No; he said he knew that if ever my fortunes came again to flood tide, I would repay him, and he said, "at all events, without that, if you should die, you have property enough to reimburse me; so take it and make yourself comfortable about it."

Q. Very well. A. It is not every man that would have done it; but Mr. Moulton was just the man to do just that.

Q. Now, when did that course of his liberality and of your acceptance of it terminate, and how? A. I don't think it ever has terminated.

Q. You mean that he has continued to advance you money up to the present time? A. No, Sir; I think he would if I needed it.

Q. What I inquire is, when the actual advance of money to you by Mr. Moulton in the course of this his liberality, and your acceptance of it came to an end, and how? A. Well, Sir, the principal need of money was to float the paper along; after I sold the paper, that necessity ended with that sale; from that time to this, Sir, I have been in a better condition.

#### SALE OF "THE GOLDEN AGE."

Q. On the sale of this paper what did you receive?

A. The paper was somewhat in debt—perhaps about \$1,000, or

a little less, I think; it was in another sense more largely in debt to Mr. Clarke, to whom I had paid a very meager salary—less than his services were worth; I always considered that I owed him \$5,000 or \$10,000 more than he had been paid, and I sold the paper to him on condition that he would assume all the obligations and would consider it a settlement in full as between himself and me.

Q. So that on the sale nothing passed to you of a pecuniary benefit? A. No, Sir; none at all.

Q. Can you fix definitely the time of that sale? A. June 1st, 1874; possibly July 1st—June or July; I won't say which.

Q. Now, this last payment to you, on Mr. Moulton's account, or according to Mr. Moulton's account, was on the 26th day of May, 1874. Did you or not ascertain that you were to receive any further advances from Mr. Moulton? A. No, Sir; I do not remember anything of that kind; I had for a year begged Mr. Moulton to let the paper stop; he did not want it to stop; I wanted it to stop; I wanted to get out of it; he forbade it, and said "if the paper stopped the case would be injured and I owed it to all the parties to keep the paper going."

Q. This money then received by you from Mr. Moulton was in part applied to your family expenses, wasn't it? A. I made whatever use of it my needs required.

#### MR. MOULTON WITHOUT SECURITY FOR HIS LOANS.

Q. Have you ever given Mr. Moulton security for any of these advances upon your pictures, or any of them? A. Never, Sir, at all.

Q. Have you ever sent any of them, except this one—the portrait of Mr. Beecher—to him or to his house? A. Oh, at various times in early years I used to give him an engraving.

Q. I am not speaking of gifts? A. Oh, I have never since that; no, Sir.

Q. In no other sense? A. I gave him my own portrait; Mr. Paige painted Mr. Beecher and myself.

Q. That was a gift, a present? A. Yes, Sir.

Q. Do you remember a painting of the Saviour that was produced by Mr. Paige for you? A. Yes, Sir.

Q. Was that retained at your house, or was it sent to Mr. Moulton's? A. About two or three years ago Mr. Moulton borrowed it for awhile, and it hung a week or two on his wall while he had some guests there, and then it was brought back again to my house.

#### MM. TILTON PREPARES FOR AN EXPECTED MOB.

Q. Where is it now? A. It is now in the house of Mr. Franklin Woodruff; I was told that I was going to be mobbed by the same congregation that mobbed Mr. Moulton, and I took the picture out of the house and sent it to his for safe-keeping.

#### THE PROPOSED HELP OF ANOTHER FRIEND.

Q. Did Mr. Moulton communicate to you, Mr. Tilton, the fact that some friend had proposed to make an advance of \$5,000 in aid of your necessities, or those of your new paper? A. No, Sir; I never heard of any such proposition.

Q. You never heard of that? Then, before this \$1,000 was sent to you by Mr. Moulton, do you mean to say that you had not been made aware that some friend or well-wisher of yours had proposed to Mr. Moulton a loan of something like \$5,000? A. No, Sir; Mr. Moulton informed me that a friend of his and mine had proposed a loan of \$1,000; and I objected to it.

Q. Then this transaction, which Mr. Moulton has testified to, of a proposition of a friend to make this advance, had not been communicated to you? A. I do not remember any such proposition, Sir, of \$5,000; I remember Mr. Moulton speaking to me of a friend who had, through him, desired to contribute to the capital of *The Golden Age* \$1,000.

Q. Yes; well? A. I remember that, but I do not remember any proposition of \$5,000 from anybody.

Q. Did that precede this advance of the \$1,000? A. I do not remember when it was made; I do not think that I was informed of it at the time; I think intelligence was brought to me of it afterwards in casual conversation.

Q. Then I understand you that the transaction which Mr. Moulton has testified to, of somebody's proposition of \$3,000 or \$5,000, or any sum, which he had told Mr. Beecher you could not properly accept—that that transaction never became known to you? A. I never heard any transaction in that amount, Sir; I only know the proposition of a friend to contribute \$1,000 to *The Golden Age*; I never heard of anything else.

Q. Now, when was that? A. I do not remember the date at all.

Q. Well, who was that friend?

Mr. Fullerton—I think it is not worth while to go into that; we object.

Mr. Evarts—I don't know anything about this transaction; I want to inquire about it.

Mr. Fullerton—Your not knowing anything about it does not make it evidence.

Mr. Beach—I don't know why the counsel should know anything about it.

Judge Neilson—Probably it is the same thing that we had up before.

The Witness—Precisely the same, Sir.

Mr. Evarts—I don't know that; it certainly is a different sum.

Judge Neilson—On that occasion we took some pains to exclude the names; at least, I recommended that and you acquiesced.

Mr. Evarts—The difficulty is that this witness has put this in the place of that transaction, and not as that transaction; I have endeavored to get from this witness whether that transaction, concerning which Mr. Moulton testified, had been communicated to him.

Mr. Fullerton—Oh, no.

Mr. Evarts—And I understand that he rejects that, and does not believe that he ever heard of it.

Mr. Fullerton—Oh! no, no.

Mr. Evarts—How do I know but this is the same transaction with the \$3,000 which Mr. Moulton spoke of?

Judge Neilson—It is utterly immaterial whether it is or not.



MR. MOULTON'S TESTIMONY QUESTIONED.

Mr. Evarts—That is another view, if your Honor please, whether it be material or not. I am entitled, I assume, to show whether or not Mr. Moulton's statement of that transaction, as communicated to him, and his answer to it—if that occurrence took place. Now, if he admits the transaction in the shape that Mr. Moulton puts it, that is very well—that is the end of that; but he does not; he excludes it entirely and interposes some other transaction entirely different in its features.

Judge Neilson—He says that no \$3,000 transaction was communicated to him.

Mr. Evarts—The question was only whether it was \$3,000 or \$5,000. However, we will not repeat the testimony; it is all written down. Now, on this cross-examination, this \$1,000 may or may not stand as a substitute for this other transaction; but it is for me to find out whether it does or does not.

Judge Neilson—You have just got the information from the witness on that \$1,000 transaction.

Mr. Evarts—Not definitely.

Judge Neilson—Well, add to its definiteness, and let us see what it is.

Mr. Evarts—I have Mr. Moulton's testimony concerning a large sum of money, and that he communicated the facts about it to Mr. Beecher, and communicated Mr. Tilton's dealing with the proposition to Mr. Beecher.

Judge Neilson—The witness does not recollect that transaction at all, but he does recollect a proposition of \$1,000; I may be mistaken; it may be the same transaction or it may not; in either event it is utterly immaterial; it is a suggestion not carried out—a bare suggestion—a naked suggestion—a fruitless suggestion, utterly fruitless. However, interrogate him if you attach any importance to it.

Mr. Evarts—It certainly is material whether Mr. Moulton has stated the truth about it or not.

Mr. Fullerton—The counsel on the other side is laboring under a very grave mistake in regard to the evidence in this case as it now stands. Mr. Moulton testified that there was a proposition made by a third person to contribute \$1,000 to the capital of *The Golden Age* through him; that he communicated that proposition to Mr. Tilton, and it was rejected, and that the note was sent back—the note for \$1,000 returned to the person making the proposition. Mr. Tilton has, within the last few minutes, stated to the counsel on the other side that that was the \$1,000 of which he has been at present speaking; so that the two transactions are identical; there can be no doubt about that. Now there never has been any proposition to contribute \$3,000 to the capital of *The Golden Age* by anybody; no such sum has ever entered into this testimony, except what was incorporated into a question put by the counsel on the other side during the present cross-examination, is that the proposition made by Mr. Beecher to contribute to *The Golden Age* is entirely different from the proposition of the other person to contribute \$1,000.

Judge Neilson—Separate and apart. Go on, Mr. Evarts, we will see.

Mr. Evarts—My inquiry is, from whom this \$1,000 proposition you speak of came?

Mr. Fullerton—That is objected to, because it did not come from Mr. Beecher.

Judge Neilson—Then it is immaterial, utterly immaterial, and rule it out; there should be an end somewhere.

Mr. Evarts—If your Honor please, is it to be held that it is immaterial for me to show that Mr. Moulton's statements in regard to the matter were not the truth?

Judge Neilson—This matter about the \$1,000 is utterly immaterial; I rule out your last question; that is the extent of my ruling.

Mr. Evarts—If you Honor please, note my exception to your ruling.

Mr. Evarts—When was this proposition of the \$1,000 advance made to you? A. I cannot fix the exact date; all I know about it is what Mr. Moulton told me; that is very indistinct in my recollection; I never knew anything about it of my own knowledge at all.

Q. What did Mr. Moulton tell you? A. I don't remember that very distinctly, except that the substance of it was that a friend of his and of mine had proposed through him, in a delicate way, to buy a share of *The Golden Age* to the amount of \$1,000, and I rejected the proposition; that is the substance of it, Sir.

Q. And that was anterior to the receipt of this \$1,000 that Moulton sent you? A. Well, I cannot fix the date, Sir.

MR. TILTON'S PURPOSE IN THE BACON LETTER.

Q. When you wrote the letter to Dr. Bacon, Mr. Tilton, what had occurred in reference to this scandal, so-called, that induced you to write that letter? A. There had occurred a series of measures in Plymouth Church detrimental to me; there had occurred a council growing out of these measures, wherein Plymouth Church was arraigned, and there had occurred a defense on the part of Plymouth Church to that Council, which represented me as having brought dishonor on the Christian name, whereas it was another man that had brought such dishonor.

Mr. Evarts—We will not go into that now.

The Witness—And there had occurred a public lecture by Dr. Bacon, the moderator of that Council, when he went home, after the Council was adjourned, and he said publicly in New-Haven, summing up the results of the Council, that I was a knave and a dog, and Mr. Beecher the most magnanimous of men; and there had occurred also after that a series of articles in *The Independent* by Dr. Bacon, five or six in number, emphasizing that idea. There had occurred also a public insult to Mrs. Tilton and me by Mr. Thomas G. Shearman, clerk of Plymouth Church. There had occurred also an apology by Mr. Shearman to me, and there had occurred a proposition on my part towards Mr. Beecher, that this mischief which Dr. Bacon had done to me should be corrected by Mr. Beecher; and there had occurred an interval of three months wherein he had taken no measure to correct it. Then I corrected it myself by writing my letter to Dr. Bacon. All

these measures are set forth in the letter to Dr. Bacon, now in evidence.

Q. Now, did you regard your letter to Dr. Bacon as disclosing an imputation against the honor of your wife and your children? A. I did not, Sir; on the contrary, I took particular pains in framing my letter to Dr. Bacon to speak in complimentary phrase of my wife; and I intended that letter, while vindicating me, should also vindicate her.

Q. You did not then consider that letter as carrying any imputation upon the honor of your wife or of your family? A. I did not, Sir; on the contrary, I considered it carried her vindication and mine also, and I think, if you refer to the letter, you will see that it does.

Q. Well, that is your view of it. As I understand you, the object of writing that letter was your own vindication? A. Yes, Sir.

Q. Against the imputations that had been thrown upon you in the various ways that you have suggested? A. Yes, Sir.

Q. Did you regard Mr. Beecher as in any way responsible for this Council that had been got up against his church? A. The Council was got up with reference to actions in Plymouth Church which he might have controlled and suppressed.

Q. And which you think he did not, when he might? A. Yes, Sir; I think he did not.

Q. And in that way, then, you think he is responsible for the Council? A. Oh! I don't know how to trace responsibility for a public body, to any individual man.

Q. Do you think Mr. Beecher was responsible for any of Dr. Bacon's speeches or articles in *The Independent*? A. Mr. Beecher had given the occasions concerning which Dr. Bacon wrote them, and in that degree he was responsible.

Q. How do you mean the occasions? A. Mr. Beecher's affairs; Mr. Beecher's crime; Mr. Beecher's measures against me in the Church; Mr. Beecher's defense before the Council, which was to my detriment—all those together were the text of Dr. Bacon's articles.

Q. What measures against you in the Church had Mr. Beecher taken? A. Mr. Beecher, as I have just said, was arraigned before the Council—practically, morally—and his defense was a paper presented before the Committee, the essence of which was that my retirement from the Church should not fling a shadow on the Church, because I had brought dishonor on the Christian name. They had given me no letter of recommendation, they said. If you will read the documents sent by Plymouth Church to the Council you will see Mr. Beecher vindicated himself at my expense.

Q. Where is this paper of the Church, as you say, or of Mr. Beecher, that takes any such grounds as that? A. I presume it is in Mr. Shearman's tin box.

Q. Are you speaking of the action of the Council? A. No, Sir; I am speaking of the documents which Plymouth Church itself sent to the Council to be its own vindication in that body. It was an unmanly vindication, by striking me.

Q. Very well; you thought, then, that this vindication of Plymouth Church before the Council carried an imputation upon you? A. I know it did, Sir.

Q. That was your opinion at the time? A. No, Sir; Dr. Bacon

took it up and quoted it in his letter, and threw it at me as straight as an arrow to a mark. Dr. Bacon said, in so many terms, that Plymouth Church accused me of bringing dishonor on the Christian name.

Q. I know what Dr. Bacon said, but I am trying to find out what Mr. Beecher said? A. Oh, then, you must ask him. [Laughter.]

Q. What was there in that situation that made Mr. Beecher responsible for any of those offenses against you that you find in Dr. Bacon's letter? A. I will tell you, Sir. Mr. Beecher came out of his church one night, as I have described in my direct examination, meeting Mr. Moulton and me against the iron rail—

Q. Well, we have had that once. A. Saying he could control his church; that they would do exactly what he wished; that he held them in his right hand, and any action which Mr. Beecher had designated for Plymouth Church to do, as necessary to this case, Mr. Shearman and the other managers would have done. Mr. Beecher was thoroughly and absolutely responsible. They would have done anything he said.

Judge Neilson—At any rate, that is the view you took? A. Yes, Sir; that is the view I took.

Judge Neilson—Those were the motives of the witness in writing it, whether he was mistaken or not.

Mr. Evarts—That was your view? A. Yes, Sir.

Q. That those slurs upon you could have been prevented by Mr. Beecher, and were not? A. I know they could have been; yes, Sir.

Q. And were not? A. Yes, Sir; and were not.

Q. And that was the offense of Mr. Beecher? A. No, Sir, that was not the whole offense of Mr. Beecher; it was part of it.

Q. I mean in this connection, as against you? A. If you read the Bacon letter you will see the whole volume of it set forth. It is not an offense which one phrase of a sentence can carry. It was an offense of great magnitude, many incidents in detail, stretching through four years.

Q. You mean to say that, during the whole four years, you have understood Mr. Beecher to be ready or desirous to fasten affronts upon you, and cause irritation with you? A. No, Sir; I don't think he was ever ready or desirous to do that. I think that, perhaps, his wish was to the contrary; but he was in the midst of a Church which he might have controlled, but which he had not the courage and the nerve to control. He is the unwitting author of his own exposure.

Q. Then you don't impute, or didn't impute, in your opinion any design on his part in this relation, but inability or want of courage to exercise a will that he might have exercised? A. I think in the year 1871 and 1872 it was mere lack of courage; I think that later Mr. Beecher felt that, as soon as the opportunity was safe in which he could turn upon me and strike me down, he meant to do so. That is my judgment. I submit it with deference.

Q. How early did you come to that latter conclusion?

A. I came to that conclusion after my last interview with Mr. Beecher, in Mr. Moulton's study, in which I gave him the opportunity to rectify the mischief which the Council had done,

and which Dr. Bacon had done, and which the Church had done; and during the three months which followed, when he did nothing, I came to that conclusion, that Mr. Beecher was going to turn upon me, to strike me, and I then said to myself: "The time has come in which I must defend myself against him and the Church," and hence the Bacon letter.

Q. And you then resolved, did you not, that you would vindicate yourself, no matter what happened about the scandal, or your wife and family? A. No, Sir; I then resolved that I would vindicate myself, and I sought my wife's vindication in mine; and the Bacon letter includes my wife's vindication in mine, like a jewel set in a ring, with honor and praise. I never sought any vindication at the expense of Elizabeth.

#### MR. TILTON'S LETTERS TO THE COUNCIL.

Q. Did you write letters to the Council when it was in session? A. Yes, Sir; I wrote two.

Q. On your examination before the Committee of the Church, were you asked this question, and did you give the answer that I will read: "You knew that the effect of your letters to the Council would be to revive the scandal, did you not?" A. No, I did not; I wrote them to vindicate myself. I did not care whether they revived the scandal or not." A. I don't remember that.

Q. Were you then asked this question, and did you make the answer which I will read: "Didn't you know what the effect would be? A. I thought of vindicating myself. I had been attacked, and I wrote a defense. The scandal had to take care of itself. I was not so tender toward the scandal that I should refrain from defending myself, if it would revive it even?" A. I don't remember the phraseology.

Q. Did you make statements equivalent to those? A. I don't remember.

Q. Do you remember, when you were before this Committee, this question being asked you: "Have you the letters here?" A. No, Sir?" A. I don't remember that.

#### MR. TILTON'S DISTRUST OF THE COMMITTEE.

Q. Then this question being put to you: "I thought that you were to bring them?" A. All the originals from which I have quoted I will carry before Judge Reynolds, or any Judge, in the presence of General Tracy. I have great confidence in you, gentlemen, but I don't propose to produce the originals here. If you will release one of your number to go with me before any magistrate I will produce them; Mr. Moulton will, of course, be asked to produce his for examination, line by line; I do not suppose you would snatch them away, or keep them, but at the same time, I propose that if you would see the originals General Tracy should go with me." Do you remember that? A. I don't remember proposing that General Tracy should go with me; my idea is that I asked that Mr. Winslow might go; that is my recollection, still I may be wrong about it.

Q. Subsequently I think it was arranged that Mr. Winslow was to go? A. Yes, Sir.

Q. But that is not my present point. Do you think you were

asked that question, and that you made that answer? A. I remember not exactly the question, nor exactly the answer, but something like that. In other words, I remember telling those gentlemen, in substance, that I was there, one man, alone, without counsel, without a secretary, without a friend, and I had been warned not to take those papers down among those gentlemen, and I told them so frankly to their faces.

Q. Then you do not remember the principal fact, that you didn't have the letters there, and that you refused to bring them there, and put them before them? A. Why, Mr. Evarts I took the letters there before my examination was concluded. I was there four or five days. On one of the days I took before that Committee as large a bundle of letters as we brought into the church—yes, as large as *that*. [Indicating.]

Q. You receded, you mean, from this position which you took? A. Well, those gentlemen seemed to think that I had entertained an erroneous notion, that they were not unfriendly to me but friendly. Mr. Clafin, I think, said that the letters would be all safe; I don't know but Mr. Tracy said the same thing. At all events, I think Mr. Tracy asked me to recall the remark, and I said: "Very well, I will do it; I will bring you the letters."

Q. And then you brought them there in bulk? A. Yes, Sir.

Q. At a subsequent meeting? A. Yes, Sir.

Q. On this appearance before the Committee of the Church or Society were you asked this question and did you make this answer: "You have brought forward the letter of your wife where she describes herself as having received new light, as having read the character of Catherine Gaunt in Griffith Gaunt. Have you read the character of Catherine Gaunt?" A. Yesterday I said no, but I have an impression that I have. A friend of mine yesterday morning said 'it is a singular result from a Terrible Temptation.' Charles Read has written a book called 'A Terrible Temptation.' I have never read that book, but, on second thought, I think I have read 'Griffith Gaunt.' My impression is that I wrote something to Elizabeth about it, and asked her to read it." Were you asked that question, and did you make that answer? A. I think something like it.

Q. Were you then asked this: "Did you think that the guilt of Catherine Gaunt was adultery?" A. I had no idea that I did." A. I think quite likely I did.

Q. On this examination were you asked this question, and did you make the answer that I shall read? "Did Mrs. Woodhull know of the antipathy of Mrs. Tilton to her?" A. Yes, Sir; you could see it in the woman's eyes; they flashed fire. The moment they saw each other their eyes flashed fire?" A. That was true, Sir, of one special occasion.

Q. Did you make this answer? A. I don't think I made it as it stands there. I think I gave a narrative of one particular occasion to which it referred. It was only true in one instance.

Q. Were you ever asked this question immediately following: "It was perfectly evident, then, when the women came together, that they were thoroughly antagonistic?" A. Oh! yes; thoroughly?" A. It was true of that occasion; yes, Sir.

Q. I ask you if you made that answer? There is no occasion that I know of. A. Well.

Q. Then, were you asked this question: "Bitterly so? A. I cannot say that Elizabeth had bitterness. She had a certain strong, moral and religious repugnance." Were you asked that question, and did you make that answer? A. I think quite likely.

Q. Were you asked this question before the Committee, and did you make this answer: "You say that you have not reported this scandal to the Woodhull women or woman, but you do not deny that you had frequently spoken harshly of Mr. Beecher to her? A. Oh! Not harshly; I have spoken critically of him, but always with a view to have her do no harm to him. I expressed my opinion about it." A. I don't remember that, Sir.

Q. Can you say that you were not asked that question, and that you didn't make that answer? A. I have said I don't remember anything about either question or answer.

#### THE SURREPTITIOUS PUBLICATION OF MR. TILTON'S SWORN TESTIMONY.

Q. Mr. Tilton, the proceedings of this Committee, at the time that you appeared before them and presented a statement, were secret, were they not? A. No, Sir; they were published every day in *The Brooklyn Eagle*.

Q. When did you publish—did you make public your sworn statement that you made before that Committee—that you presented to that Committee? A. You ask me when did I?

Q. I asked you if you did? A. No, Sir, I did not.

Q. When did you know of its being in a public newspaper? A. I was in New-York on the night of the day when it appeared in Brooklyn, if you remember what day that was—I think July 20 or 21. Was it July 21? I was in New York, up town, at Delmonico's, with several friends, and in the evening, I think about nine or ten o'clock, a telegram was sent up there to one of those gentlemen there, he being the editor of a newspaper, that this publication had been made. That is the first knowledge I had of it.

Q. Was it the very day that you had presented it to the Committee? A. No, Sir; it was the next day.

Q. The next day? A. Yes, Sir.

Q. Had you given a copy of it for publication? A. I had not.

Q. Was it published from the copy that you had presented to the Committee? A. It was not.

Q. How do you account for its publication? A. It was published by Mr. Augustus Maverick, who made the copy which I laid before the Committee. He made, unbeknown to me, a copy, as I am informed, during the very night when I was before the Committee, and on his own responsibility, and without my knowledge, but thinking to accomplish thereby my vindication before the public, he published that statement in *The Argus* of July 21.

Q. Was Mr. Maverick your friend—confidential friend? A. Mr. Maverick had been a friend of mine for many years. He was my groomsmen on the occasion of my marriage.

Q. He is the gentleman who was a witness here in your cause, was he not? A. Yes, Sir.

Q. And did your friendship remain unbroken after its publication? A. It did, Sir.

Q. He was an editor, was he not, a manager of a newspaper?

A. He is the managing editor of *The Brooklyn Argus*.

Q. And was at that time? A. Yes, Sir.

Q. And that you knew? A. Yes, Sir.

Q. Mr. Tilton, were you asked before the issue of that paper, *The Argus*, containing this statement, by any one connected with that newspaper, whether the copy they had was a correct copy? A. I didn't know they had any copy.

Judge Neilson—Well, answer the question.

The Witness—What is that, Sir?

Judge Neilson—Say yes or no.

Mr. Evarts—Say yes or no. Were you asked by any one connected with the newspaper, establishment of *The Argus*, in advance of the appearance of the paper which contained this statement of yours, whether the copy that *The Argus* had and was to publish was a correct copy or not? A. No, Sir.

Q. Had you no interview of that kind in which the fact appeared that that paper had a copy and was going to publish it, and you were consulted as to whether it was correct? A. No, Sir; no such interview; no such topic; no such hint or suspicion on my part.

Q. Did you receive information that Maverick was proposing to publish it, before it was published? A. I did not, Sir.

Q. Did you receive from Mr. Moulton that night warning that Maverick would publish it? A. I did not, Sir.

Q. Do you know, Mr. Tilton, whether the copy from which Mr. Maverick made this publication bears your actual signature at the end of it? A. What is that, Sir?

Q. Do you know whether the copy from which Mr. Maverick made his publication bears your signature? A. No copy of it bore my signature, save my own original copy—save my own original draft.

Q. Then he had no copy that had your signature? A. No, Sir; he had my original draft, which he copied for the Investigating Committee, and I presume he made from that the copy which was published in *The Argus*—if it was his copy; I don't know that *The Argus* published it from his copy. I never inquired who did; I don't know who made the copy.

Q. Well, did the draft contain your signature? A. Well, that I don't remember.

Q. And did he have possession of the draft? A. He did.

A. And retain it? A. Yes, Sir.

Q. With your knowledge? A. The circumstances were these: My original draft was almost illegible from the numerous alterations in it. Mr. Maverick made a copy for presentation to the Committee. I asked him if he would make for me at his leisure during the week a copy for my own use—preservation—inasmuch as my original draft could not be read by anybody without much pain, and he said that he would come the next evening after the paper was out, and perhaps during two evenings make a clean copy for me to preserve. In that way he had the original in his possession for that use—to that end.

Q. At the time of the publication, had he the original? A.

No, Sir; he had brought it back the next morning to my house, with three or four pages copied, saying to me that he had been busy, and that he would come in during that evening or the next evening, and complete the copy. That was in order to make the deception more complete, the stratagem perfect.

Q. Was Mr. Moulton at your house the night before the publication? A. Mr. Moulton came around about twelve o'clock that night, I think, with Mr. John Russell Young. Mr. Young besought me to give the manuscript to *The Herald*.

Q. Did he come to you, or find you, at a subsequent interview later in that night—did Mr. Moulton? A. No, Sir; Mr. Moulton, Mr. Young and I were all together that night.

Q. Well, now, after that interview, did Mr. Moulton come to you later that night and see you again? A. I don't remember that he did.

Q. Between one and two o'clock in the morning? A. That I don't remember.

Q. Where were you that night? A. At my own house.

#### MR. TILTON'S HARD BATTLE TO KEEP UPPERMOST.

Q. Since you left *The Golden Age*, Mr. Tilton, what have your occupations been? A. Well, Sir, mainly struggling to live in a city in which Plymouth Church has three thousand men seeking to put me down. I have been mainly dealing with this scandal since last May, fighting for life.

Q. Have you had no avocation, or employment, or income? A. I have had no settled employment; I have had an income. My hands have been very full with this case, Mr. Evarts, ever since last May.

Q. Well; now do you— A. They bid fair to be until next May.

#### MR. MOULTON NO CONTRIBUTOR TO THE COSTS OF THE SUIT.

Q. Do you know of Mr. Moulton contributing anything towards the expense of this suit? A. No, Sir; I do not. He has never contributed anything towards my expenses in this suit; I know that.

Q. And to your knowledge he has not contributed anything towards the expenses of this suit? A. No, Sir; not to my knowledge.

Mr. Evarts—There are three letters, if you Honor please, that we asked for this morning and which we will put in evidence, and then my cross-examination will be closed. They are of some length. Perhaps they had better be read after the adjournment. It will take no more time than now.

Judge Neilson—The gentlemen of the jury will retire. Be in your places at 2 o'clock, gentlemen.

The Court then took a recess until 2 p. m.

#### MORE OF MR. TILTON'S LETTERS TO HIS WIFE.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Tilton's cross-examination was continued.

Mr. Evarts—Mr. Tilton, I want to fix one or two dates. Do you remember whether the death of your son Paul was the 25th of August, 1869? A. It was not, Sir; it was in the latter part of August, 1863.

Q. I mean in 1868; I beg your pardon? A. Yes, Sir.

Q. It was the latter part of August, 1868? A. Yes, Sir.

Q. Now, whether you have given the day of the birth of your youngest child— A. I think it was the 21st of June, 1869, but I—

Q. I thought you had given it; I remember it has struck me. I believe it is the 20th? A. 20th or 21st; I always speak with some apprehension of dates.

Mr. Evarts—That is all, I believe.

Mr. Shearman—If your Honor please, I will now read some letters, Sir, from Mr. Tilton to his wife.

[Reading]:

#### MUTUAL CONFESSIONS GIVE PEACE TO THE HUSBAND.

HUDSON RIVER R. R., 31st-ST. DEPOT.  
Jan. 26, 1868. }

MY DARLING:

I am housed in the sleeping car for the beginning of my westward journey. Last Winter, I began it in the morning; this Winter, at evening. On that memorable morning last Winter, I went away dispirited, and only half a man; to-night, I am full of courage, hope, and high resolve.

You have never seemed so noble to me as during last evening and this day. You are not only all, but more than all, that any man can need or ever can deserve. Life never seemed to me to be more full of objects and ends worth living for, than since our recent long interview and mutual confessions. I am by nature so frank that the attempt to hide my feelings, to cloak my shortcomings, to deny utterance to my inward sorrows, had lately driven me almost to despair.

The secret of all my long-continued moodiness has been—dissatisfaction, not with you, but with myself. I was once well enough content to be esteemed at something better than my merit, but of late all such estimates of me have been horribly repulsive to my mind. They have revealed me to myself in the character of a hypocrite, a deceiver, a whitened sepulchre filled with a dead man's bones. Above all things it has been dreadful for me to hear praises of myself from you and Florence. I could not rest content under the idea that either of you felt that my gloom was occasioned by anything lacking in yourselves, but only in my own self.

Mattie's company to the depot was very comforting. She is without her equal in her way. She is the personification of moral uprightness. You and she were formed by nature for mates. If women could marry women, you ought to marry each other. She is a strong pillar; I lean against her and feel steadied. Just as I was coming away from the office I received a present of a bottle of wine, made by the Rev. Dr. Holland, a friend of mine. I sent the bottle by Mattie to you, that you and she together might drink it when you meet, and particularly that you might drink it to my health and happiness.

The little children seemed very lovely to me as I parted from them this afternoon. I see all your faces in my mind's eye at this moment, as you appeared at the windows with tears in your eyes. That picture I shall carry with me in all my journey. And I hear myself saying my last words over again, "Peace be unto this house."

All this day has been full of victory. It has been a better day to me than any day for a long, long time past. The first nightfall of my journey fulfills the promise that "at eventime there shall be light." I am writing these lines, using for a desk the large-printed New Testament which you gave me. Florence will know where I am, when I say that I am standing in the wash-bowl nook of the sleeping-car. My berth is "number 7, lower." I wish she were to be its joint occupant with her father to-night. I believe that Alice would like sleeping-cars, for they would make her think of dolls' houses.

I hardly realize that I am outward bound on so long a jour-

ney. In fact I am at this moment to be more in Livingston, than here. Since I have been in the car, I have been wondering if any of my fellow-passengers have left such beautiful families as mine behind them. I think sometimes that I have the sweetest family that God ever gave to a man. God grant that I may return to you all.

With unutterable \* \* \* I am yours "now, henceforth and forever."

THEODORE.

Mr. Evarts—"Mattie" there referred to is Mrs. Bradshaw, isn't she? A. Yes, Sir.

Mr. Shearman—From the next letter I will omit simply some private, personal matters, with the consent of counsel:

THE MUTUAL CONFESSIONS AGAIN MENTIONED.

MONONGAHELA HOUSE,  
PITTSBURG, Jan. 30, 1868. }

It is now about midnight and I ought to be snug in my bed, for I have had a hard day's and also a hard night's work. But your letter of this afternoon was so full of affection and so beautiful in the manner of its expression that I must do something for the sake of expressing my heart's feelings. I have never loved you more than now, nor have I ever had a more serene, cheerful, hopeful and patient spirit than at this very time. Our memorable interview on the evening before I left you lingers with me like a sunset in the sky; it makes all my thoughts rosy and all my feelings pure. I seem, all of a sudden, to have grown ten years younger in hope and ten years older in strength. The knowledge of your love, your confidence, your respect, your satisfaction in me, this is more than all that the rest of the world can give, and far more than I can ever deserve.

Mr. Shearman—I will read an additional passage, the concluding passage of this letter. [Reading:]

My mind of late, or rather my heart, has gone out very tenderly toward the children. I am made more proud to be loved and yearned after by them than to be the President of the United States. But, most of all, my strongest passion in this life is to be greatly loved by their mother. Oh! my sweet wife, I have a great heart when its fountains are stirred and loose, have I not?

Affectionately thine,

THEODORE.

Mr. Evarts—That is all.

Some delay here occurred in looking for another letter.

Mr. Evarts—Mr. Fullerton, it is not necessary to delay the examination. We want this paper if you can find it, but if we have any occasion to ask the witness about it it will be an isolated matter, unconnected with anything else.

RE-DIRECT EXAMINATION OF MR. TILTON.

This closed the cross-examination of Mr. Tilton.

Mr. Fullerton immediately began the re-direct examination.

MRS. TILTON'S FIRST DESERTION AGAIN DESCRIBED.

Mr. Fullerton—Mr. Tilton, calling your attention to the various letters that have been introduced, both on your own behalf and on behalf of the defendant, I desire to ask you this general question, whether they were received about the time of their respective dates? A. Yes, Sir; the only exception I now think of is in the case of Mr. Beecher's letter written to Mrs. Tilton after the Woodhull story. That was written a number of months afterwards, but I believe that has no date.

Q. No. On the cross-examination you were asked in regard to the absence of your wife some time in December, 1860, at her mother's. I think you stated that it was immediately upon

her return from the country—where had she been? A. She had been spending the Autumn in Marietta, Ohio.

Q. Do you recollect the time of her leaving to go to Marietta?

A. I can't fix the exact date.

Q. How early in the Autumn do you think it was? A. I should think it might have been the last of September—possibly the 1st of October.

Q. With whom did she remain there? A. She remained with a friend of our family, Mrs. Putnam.

Q. And, according to your best recollection now, how soon after her return from Marietta was it that she went to her mother's house? A. Well, Sir, my recollection is—although I won't be positive about it—that she returned to my house, having been brought there by me in a carriage, and that during the day she went to her mother's house, then returned and told me that her mother insisted that she should no longer live at home with me, and that she then went, either that day, or a very few days after to her mother's house.

Q. You met her in the carriage on her return from Marietta, did you not? A. Yes, Sir, I went over to the depot.

Q. And escorted her to your house? A. I did.

Q. And how did you learn of her coming? A. Why she notified me by letter.

Q. Where did her mother then live? A. 'Round the corner from my house.

Q. Were all the children taken with her to her mother's, or, did some of them remain with you? A. I don't remember that any of the children were taken, except perhaps the baby.

Q. Now, will you tell us how old that child was called "the baby?" A. Well, I remember that the child could walk and talk a little baby talk—why the child was born in September—in June, 1869, and this was December, 1870; the child was eighteen months old.

Q. Yes, that is the child that you had a correspondence about, wasn't it, where you wrote a peremptory order for the nurse? A. Yes, Sir.

Q. To bring it home? A. The little boy Ralph.

Q. How long did she remain away at her mother's at that time? A. Well, my recollection is, only two or three days; I don't know that she remained as long as that. During that interval I think she went to New-Brunswick, New-Jersey, to make a visit to my daughter Florence, who was there at school. My recollection is that during Mrs. Tilton's absence in New-Brunswick I sent for the baby, not being willing that the baby should be in the hands of Mrs. Morse.

Q. Well, beyond saying that her mother insisted upon it that she should not live there any longer—was there anything said indicating an intention upon her part to remain permanently away?

Mr. Evarts—This is an inquiry for conversations between husband and wife, which I have not gone into.

Mr. Fullerton—Oh, yes; you did go into them.

The Witness—No, Sir; I don't remember any such thing as that.

Q. How long before she returned? A. She returned from New-Brunswick a few days before her sickness; her sickness

was dated—her sickness occurred on the 24th of December; she returned from New-Brunswick just a few days before that.

Q. How long was she absent from your house, after leaving it, before she returned? That was my question. A. Well, Sir, only a few days; I can't say how long; I have no means of fixing the date.

MRS. TILTON'S SECOND DESERTION.

Q. Well, your attention has been called to an absence of hers from the house on the 6th of July, I think it was, 1874. Do you recollect that—when she went to Mr. Ovington's? A. The 6th of July—if that be the date at which she went before the Committee, then the circumstances are fresh in my mind.

Q. That was the date to which Mr. Evarts called your attention as the day which she left? A. My impression is that there is a little confusion in the evidence as to whether she went before the Committee on the 6th or 8th. Which date was it, the 6th or 8th?

Mr. Evarts—The eleventh she left.

Mr. Fullerton—Very well; it is a misprint then—whatever day it was in July, 1874, when she left your house. A. Oh, Sir, that was July 11, Saturday.

Q. Well, I want to call your attention to that evening, and state what occurred when she did leave? A. She left at six o'clock in the morning, or between six and seven, telling me that she was going to leave me permanently, forever. I was greatly surprised at the announcement; I had not yet risen to the—; in fact, I was waked out of my sleep in order that she might deliver that message to me. She left, saying that she was going to the Ovingtons. I rose and went down there myself; made a call; took breakfast with the family.

Q. Well, now, was she the day before at home? A. Yes, Sir.

Q. And the evening before? A. Yes, Sir.

Q. Had she expressed any determination to leave on the day or the evening before? A. Not the slightest.

Q. This took you, you say, by surprise? A. Yes, Sir; the greatest surprise I ever had in my life, except one.

Q. Well, had she spent that night in your house? A. She had.

Q. Was she dressed in the morning when she announced this to you? A. Yes, Sir; bonnet and gloves.

Q. Did you know that she had been in the act of dressing prior to her appearing before you? A. I did not, Sir.

Q. Had you any intimation, directly or indirectly, up to that moment, that she intended to leave you? A. Not a shadow of it.

Q. It had not been fore-shadowed by any word or act on her part? A. Not in the slightest degree.

Q. How long was that after she had been before the Committee? A. She had been before the Committee on a night of that same week, either Monday, July 6th, or Wednesday, July 8th. I don't think that day has been definitely fixed in the evidence, and it is not definitely fixed in my mind.

Q. Did you know that she was going before that Committee? A. No, Sir.

Q. When she went did you know of the existence of her

Committee at the time that she went before it? A. No, Sir; I had never heard of any Committee.

Q. It was done secretly then, and without your knowledge? A. Yes, Sir.

Q. And from whom did you learn what took place before that Committee, when she was before it? A. I learned first from her own report on the night when she came back. Afterward, I learned from Gen. Tracy.

MRS. TILTON'S RELIGIOUS SENTIMENTS HER FATAL ENEMY.

Q. Now, Mr. Tilton, I want to ask you with reference to Mrs. Tilton, and as to the facility with which a person with whom she was well acquainted, and whom she admired, would influence her action. What was her disposition in that regard? A. She was an extremely sympathetic woman, taking the ideas of others readily—not that she lacked ideas of her own—ready to yield to advice. If I understand your question, Sir, that is the answer to it.

Q. Yes, Sir, that is it? A. Yes, Sir, that was her characteristic in an uncommon degree.

Q. Would she be the more readily influenced if her religious feeling or sentiment was appealed to? A. Yes, Sir.

Q. And you think she would the more readily yield if she thought her action would promote the cause of religion? A. Yes, Sir.

Q. In the view that she took of it? A. Yes, Sir.

Q. In answer to a question put by Mr. Evarts with regard to your wife, you answered, "I think my wife loves everything good and hates everything bad, and I believe to-day she is a good woman." Now, Mr. Tilton, I want to ask you the foundation for that belief in view of this charge which has been preferred against your wife—in other words, how you reconcile that statement of yours with the fact that she is charged with adultery? A. Well, Sir, that is a sad question.

Q. Well. A. I can answer only for my own judgments of her behavior, not for other people's opinions. You must remember, Sir, that I knew Elizabeth when I was ten years old; that I became her confessed lover at sixteen; that I was married to her at twenty; and that, for fifteen years of her married life, I held her in my reverence perhaps almost to the point of making her an idol of my worship; and when she came to her downfall, it was the necessity of my own heart—I must find some excuse for her; other people might blame, but I must pardon her. I found that excuse in the fact that she had been wrapped up in her religious teacher and guide; she had surrendered her convictions to him; she followed his beck and lead trustingly; she would go after him like one blinded; I think she sinned her sin as one in a trance; I don't think she was a free agent. I think she would have done his bidding if, like the heathen priest in the Hindoo-land, he had bade her fling her child into the Ganges or cast herself under the Juggernaut. That was my excuse for Elizabeth. May I add another word, Sir?

Mr. Fullerton—Yes, Sir.

## THE BIBLE PROPOSED IN EVIDENCE.

Mr. Tilton—Where is the Bible? [The book handed to the witness.] I will give you a better answer, Sir, than my own, if I can find it. [Searching in the book.]

Mr. Evarts—I think I must object to this, if your Honor please. The witness is apparently proceeding to read a portion of the Sacred Scriptures.

Mr. Fullerton—Well?

Mr. Evarts—It does not strike me—

Judge Neilson—Do you think that would be incongruous?

Mr. Evarts—It gives us a right to put in the whole book, if he reads a part. [Laughter.]

Mr. Fullerton—Well, Sir, that would bring on your own condemnation. Well, never mind, Mr. Tilton.

[The book was closed and laid away.]

## THE DIFFERENCES CAUSED BY THE CLEVELAND LETTER.

Q. The next subject to which Mr. Evarts called your attention was this political difficulty between yourself and Mr. Beecher, and to the Cleveland letter. In what was your protest, as you termed it upon your cross-examination, published—the protest to that Cleveland letter. A. Published, Sir, in *The Independent*, immediately after the publication of the Cleveland letter.

Q. Did that lead to any alienation between you two? A. I think not, Sir.

Q. After the publication of the Cleveland letter and your protest, was your intercourse as friendly as it ever had been? A. As far as I now remember.

Q. Now, in what respect did you disagree with the sentiments expressed in the Cleveland letter, which was read here in evidence? A. Do you ask me, Sir, the grounds?

Mr. Beach—What was the point of difference?

Mr. Fullerton—Yes; the point of difference between you and Mr. Beecher. A. Why, Sir, it was a very manifest one.

Q. State it, if you please? A. In order to make it plain, you must go back to the political situation in the year 1866, must you not?

Q. Yes, Sir. A. Mr. Beecher and I were members of the Republican party. *The Independent*, of which I was then the editor, was, if I may be allowed to say so, one of the most conspicuous, and perhaps also one of the most reliable mouthpieces of the Republican party. I was bound in honor to illustrate and defend the views of that party, inasmuch as I was the custodian of one of its great journals. Mr. Beecher's Cleveland letter was an offense against the Republican party, and that offense consisted in this fact: He recommended in the Cleveland letter the restitution of the Southern States to their representation in Congress without the prefixing of any conditions to secure the liberty of the negroes, by whose aid we had conquered the Rebellion. For instance, the position of the Republican party was this: we had just ended a revolution in which the Free States had conquered the Slave States. The question was what shall be the terms proposed by the conqueror on the conquered. The Republican party said: "We will ad-

mit the Southern States on certain conditions, namely—they must blot out every ordinance of secession, they must repudiate the rebel debt, they must acquiesce in the Constitutional Amendments abolishing Slavery, and they must secure to the negro the elective franchise." The Republican party made all these conditions. The Republican party said to the Southern States: "Accept these conditions, and then you may return to Congress." Mr. Beecher, on the contrary, and the fragment of the party that he represented, said: "No; return to Congress first and then settle the conditions afterwards." The point of dispute between Mr. Beecher and myself, or rather, I may say, between Mr. Beecher and the Republican party, at that time was simply this: he wanted the Southern States to come back without conditions, and we wanted the Southern States to come back with conditions, the main and central condition being the right of the negro to his franchise.

Q. Now, Mr. Tilton, won't you step down and look at that, and say whether it is your protest? You can do that better than I can carry it to you. [Referring to a bound volume of *The Independent*.] A. [Looking at the article.] Yes, Sir.

Mr. Fullerton—I propose to read that in evidence [Reading]:

## MR. BEECHER.

With profound surprise and grief, we have read Mr. Beecher's letter to the Cleveland Convention. Our friends will find it in another column. Would to God it needed no other commentary in this journal than a regretful silence! But a sense of duty constrains us to accompany its publication with a solemn protest against the public course to which it commits its author. This letter quenches our last hope that Mr. Beecher was to unite with the friends, instead of the enemies, of his country. We know and love him well. No man's motives are purer; no man more affectionately reveres his native land. But, under the spell of an unhappy blindness which has rested on his eyes for a year past, he has done more injury to the American Republic than has been done by any other citizen except Andrew Johnson. We had secretly cherished the conviction that Mr. Beecher, during his last few months of silence concerning public affairs, had been a sad and thoughtful witness of the mischievous policy of the President. We could not force our mind to believe that, in the great civil struggles of the approaching Autumn, the minister of Plymouth Church would be found on the side of Clement L. Vallandigham, the pirate Semmes, and the murderers at New-Orleans. Of course, Mr. Beecher loathes these men; of course, his letter is in a loftier and purer strain than the common tone of Copperhead politics; but the humiliating fact remains, that Mr. Beecher deliberately and officially, under his hand and seal, has entered into league and covenant with the Johnson party; a party whose only hope of victory is by a league of traitors against loyal men. This is Mr. Beecher's position! It is a solemn hour for the nation. "He that is not for us is against us." By Mr. Beecher's past record, by his inherent sympathy with universal liberty, by his ancient scorn of treachery in public men, he belongs to the loyal party from whom, like a self-dishonored leader, he has become a voluntary deserter. Mr. Beecher's public attitude at the present moment is the attitude of a man who is putting a great reputation to the ignoble use of debasing his country. If, in view of this awful fact, this journal were to lend through silence a seeming acquiescence, or even an implied palliation, we would justly be held an accomplice in the guilt. Since the case, therefore, compels us to speak, we have no other alternative than to choose the strongest possible words of condemnation. We have only to add that if any of Mr. Beecher's friends, or of our own, shall





*William Fullerton*



feel pain at reading this protest, let them imagine the greater pain of writing it.

Q. I understand you now that that article did not break up your friendly relations at all? A. No, Sir; not in the least. Mr. Beecher felt hurt and sore, but we met and conversed as we had done before. It did not occasion any cessation of our friendship.

Q. Were you present at any time after the writing of that protest in the Academy of Music, when Mr. Beecher addressed an audience upon the subjects embraced in his Cleveland letter? A. I have an indistinct recollection of a speech which Mr. Beecher made at the Academy of Music, at the close of which I was called out to make a reply, but the speech and the reply are filmy before my mind, and I do not bring them up readily. I do know, however, that Mr. Beecher made a very elaborate oration at the Academy of Music, in which he substantially receded from the position taken in the Cleveland letter, a position to which he was pushed by the great mass of the Republican party, and by the powerful pressure in his own church, and by, I believe, the public prayers in his behalf of Mr. Shearman, the Clerk of the church. [Laughter.]

#### MR. BEECHER AND MRS. TILTON LEADERS IN THE RANKS OF WOMAN'S RIGHTS.

Q. Now, Sir, we come to the subject of Woman's Rights, or Woman's Suffrage, and you were asked how early you took part in movements in reference to those subjects. Your reply to that question called attention to something that occurred at Plymouth Church. Do you know what Mr. Beecher's views were on those subjects? A. Oh, Sir, Mr. Beecher's views on the subject of Woman's Suffrage were expressed. I think, earlier than almost any public man of equal rank and fame in this country. He was always a chosen leader and favorite orator of that movement, ever since the movement had any head or front.

Q. And what part did Mrs. Tilton take, if any, in regard to that matter? A. Mrs. Tilton was a very active agent in the management of that cause in the City of Brooklyn. When the great meetings were held here, at the Academy of Music, over which Mrs. Field presided, and at which Mr. Beecher spoke, Mrs. Tilton was generally the Committee of Management, sometimes the head of the Committee on Resolutions; and when the American Woman's Suffrage Society was founded, of which Mr. Beecher was the President, Mrs. Tilton was the one and only representative in the officership of that society for the whole State of New-York.

Q. When did she first avow her sentiments upon those subjects, do you know? A. Oh, Sir, many years ago; before I did. It was she who inspired me to take those views. They are correct views, Sir.

#### MR. TILTON'S VIEWS OF MARRIAGE AND DIVORCE.

Q. Your attention was also called, Mr. Tilton, to the subject of the liberality of divorce and the looseness of marriage. I want to ask you what your views are on that subject? A. Well, Sir, that is two subjects. Looseness of marriage is one thing, and liberality of divorce is quite another.

Mr. Beach—Well, upon both-subjects.

Mr. Fullerton—Upon both subjects. Take them in order, if you please.

Mr. Evarts—If your Honor please, the only pertinency of these inquiries was in respect to the relations of this gentleman with his wife, from this discord in their social and religious opinions. Now, as the testimony shows that was an occasion of discord, it certainly is not of the least consequence what his present opinions are on any subject of morals or ethics. The question, I say, becomes pertinent only as its creating discord of sentiment between him and his wife, which has been abundantly proved out of his own testimony.

Mr. Fullerton—Well, Sir, the gentleman is laboring under a misapprehension in regard to it. He undertook to prove what the witness's views were in regard to these subjects—I suppose for an entirely different object—and I have no doubt that these views, as he regards them, will be used for a different purpose hereafter. It certainly is competent for us to show, in reply to what they have shown, what his views really were, at the time, upon these two subjects.

Judge Neilson—In the way of correcting the impression that might have arisen on their examination.

Mr. Fullerton—Certainly, Sir.

Mr. Evarts—Where is the cross-examination?

Mr. Fullerton you will find it commencing at page 463.

Mr. Evarts—This cross-examination, which seems to be the basis of the present inquiry, arises in this way:

Q. Now, Mr. Tilton, at what period, if at all, did you entertain discussions in any public print of which you had control, of the new social opinions and views in regard to the regulation of the social connections of the sexes? A. Well, Sir, will you tell me a little more distinctly what you mean by the new social opinions?

Q. Well, I do not wish to give it an opprobrious name, nor do I wish to characterize it improperly; but the opinions that concern greater freedom in respect to marriage, and its dissolution, and its maintenance only during continued attraction and affection, and not permanently if those sentiments had changed?

Then he gives an answer which certainly is no basis for this inquiry; and so on. Then I give the sentiments as he published them in his newspaper—my point being, not what his opinions were, if he had secret opinions, but as to the opinions that he promulgated; and I proved them by their promulgation. There are several aspects, no doubt, in which this proof is pertinent; but it has to do with the public position that this witness took on the subject, and which I have proved by his publications. Now, my learned friend, as I understand, asks him what his real opinions were at that time. That is quite immaterial if they were different from his published opinions; and if they were the same as his published opinions, why then, of course it is immaterial.

Judge Neilson—I suppose they intend, in some degree, to qualify or illustrate.

Mr. Evarts—How would it qualify the publication of them to have it said that he now entertains different views?

Judge Neilson—I don't say it would.

Mr. Evarts—If they will show a publication that qualifies them, that would be in the line of inquiry which I pursued; that would be legitimate, no doubt.

Judge Neilson—I think there is a deeper sense, a much deeper sense, in all that testimony, if I understand your theory, that perhaps goes to the moral status of the witness.

Mr. Beach—Exactly.

Judge Neilson—His integrity.

Mr. Beach—Exactly.

Judge Neilson—A departure from what seems to be the proper state in which a man's heart ought to be; and possibly that might be the subject of inference which this may explain.

Mr. Evarts—But even then we have a right to infer from the publications of his views.

Judge Neilson—Undoubtedly.

Mr. Evarts—Which I have given in evidence. Now, to show that his real opinions were different from his publication of them would not tend to reinstate, in regard to weight.

Mr. Fullerton—I don't propose to prove that his real opinions were different from his published opinions at all; that is not my object.

Judge Neilson—I will take it, Sir.

Mr. Evarts—Your Honor will be so good as to note my exception.

Mr. Fullerton—Now, Mr. Tilton, will you go on and give us your views in relation to marriage.

Mr. Beach—As they existed at that time in these publications which have been given in evidence upon the other side.

The Witness—Well, Sir, I have never since I can remember, since I came to the years of having any thoughts at all, entertained any other views on the subject of marriage and divorce than those which I will express now very briefly. First, as to marriage, I hold concerning it the one common opinion entertained throughout all Christendom—held, I believe, in all civilized society, by all good men and women—that it is the union of one man and one woman for life, for better or worse, through storm and calm—not only for life perhaps, but possibly beyond life. As to divorce, I hold the common opinion entertained not in this State, or in our Knickerbocker legislation, but that wider and more general opinion which is incorporated in the legislation of the New-England States on the one hand, and the Western States on the other. It seems to be not generally known that the State of New-York has a very singular, unique and exceptional code of divorce. This State is out of harmony with all the sisterhood of States on the subject of divorce. For instance, here, under our legislation, there is divorce for one solitary cause, and for that alone; whereas, in Connecticut, in Massachusetts, in New-Hampshire, on the one hand, and in Pennsylvania, Ohio, and in all the Western States on the other, there is divorce for a multitude of reasons. I will give an illustration. I hold, for instance, as the great body of the American people do, that if a woman's husband treats her brutally, she is entitled, if she wishes it, to a divorce. I hold that if he neglects to support her, and allows her to go into extreme poverty and privation, she is entitled, if she wishes it, to a divorce. I hold that if he is an habitual drunkard, rendering the life of his wife and children dangerous from his frantic spasms, that she is entitled, if she wishes it, to a divorce. So I might state other grounds

on which a woman is entitled, if she wishes it, to a divorce. Now, Sir, those grounds are held legal and valid for divorce in almost every State of the Union except New-York. A woman who goes into a court in New-Haven and says to a judge and jury that her husband brutally treats her, will get a divorce, because the law don't interfere, the law permits a divorce; but if that same woman living, not in Connecticut but in Brooklyn, should go into Judge Reynolds's court and carry the same evidence before a judge and jury she could get no divorce, and the judge's reply would be, "Madam, however just your cause is, the law of this State peremptorily forbids divorce save for one cause." Now, I thought that the civilization of our day, the good of society, the peace of the family, the sanctity of marriage, all combined to demand that we should change our New-York code of divorce, and adopt in its place the New-England code or the Western code. Does that answer your question?

Q. Giving divorce for different causes? A. Yes, Sir.

Q. It is not your doctrine, then, that husband and wife should be separated at will according to their own notion of propriety, but it should be regulated by law? A. Why, certainly, Sir. My only point is that the law should not interfere in such cases as I have named. Let me give you another illustration. For instance, the law of New-Hampshire permits divorce for desertion, the time being one year; that is to say, in New-Hampshire, which is a good old New-England State, if a man runs away from his wife and stays away a year, the law gives her, if she wants it, a divorce; but, in the State of New-York, a man may run away from his wife and go to China and live 70 years, and she cannot get, however much she may desire it, a divorce. Now, I would like to ask the intelligent judgment of the world why there should be such a law in New-Hampshire giving divorce for desertion for one year, and why there should be a prohibition of divorce in New-York State for desertion for a lifetime.

Q. Then it is not your doctrine, Mr. Tilton, as I understand you, that a man has a right to desert his wife simply because he thinks he has discovered an affinity in another woman? A. No, Sir; that is the doctrine of devils and damnation.

#### MR. TILTON AN ENEMY OF FREE LOVE DOCTRINES.

Q. That is the doctrine of free-love, is it not? A. I didn't know that free-love had any other doctrine except the secrecy of bad behavior.

Q. Well, this doctrine of free-love—have you ever advocated it? A. I have never, Sir, and all my writings, and they are a volume, on the subject, contain repeated references, over and over again, of condemnation of free-love, long before I had any occasion to find my own heart pierced with the bitter reflection that there had been free-love in my own house, and that my family had been destroyed thereby.

Mr. Beach—There was something said in these publications which have been read, Mr. Tilton, toward the sentiment that marriage should continue no longer than there was union of soul; what do you mean by that expression?

Mr. Fullerton—Do you mean anything else than that the principle prevailing in the State, if you please, of Connecticut, should prevail everywhere, that a court of competent jurisdiction should pronounce between a couple where there was such an incompatibility of temper as that they could not live together in harmony and peace? A. That is precisely what I mean. That is precisely what is forbidden here in the State of New-York by law. The Court may be willing to grant it but the law is against it. In Connecticut the court is willing to grant it, and the law is not against it. It is all in a nutshell, Sir. I simply wish that the law of our State should be made to resemble the law of the New-England and the Western States.

Q. Well, you have never advocated any such doctrine as this, that the civil law, as you term it, should have no control over the subject of divorce? A. Not at all, Sir; not at all, Sir.

Q. Your doctrine is that the law should regulate it, and be more liberal in providing causes. A. Precisely. Marriage under the civil law is a contract, and I want the civil law to regard the contract liberally.

“FRENCH WITH A MASTER” EXPLAINED.

Q. Now, Mr. Tilton, a poem was read here by Mr. Everts, entitled, “A New Poem by Theodore Tilton. French with a Master.” I see in it there is a reference to orange buds in this way:

Have you in your tresses room  
For some orange buds to bloom?

Why was allusion made to orange buds in that poem? A. Why, Sir, I think the meaning must be very apparent. The little poem was the story of a teacher sitting down giving a lesson to his pupil, and falling in love with her, and ending by a proposal of marriage. He asks her if she has room in her tresses for some orange blossoms. Orange blossoms are the symbol of marriage. A bride wears orange buds in her hair. To ask a lady if she will accept an orange bud is the oriental way of proffering marriage.

Q. And it was to that that you had reference in constructing this poem, wasn't it? A. Certainly.

Q. And you did not mean to convey any indelicate or immoral idea in the construction of that poem at all, did you? A. On the contrary, Sir, I endeavored to convey the purest idea.

Q. I suppose it is very apparent, but our friends upon the other side did not seem to regard it so. A. The only thing bad in the poem is the French. That line is not correctly printed. Very well, never mind.

Q. Well, it is good enough French for me.

Mr. Beach [To Mr. Fullerton]—That line suited Everts exactly.

Mr. Fullerton—Yes.

The Witness—It should be *Almer, almer, ah! c'est nînre*.

Judge Neilson—That is a misprint? A. Yes, Sir; but I am afraid I am responsible for the blunder. I am not much of a Frenchman.

MR. TILTON'S OLD-TIME DISCUSSIONS OF WOMAN'S RIGHTS.

Mr. Fullerton [To defendant's counsel]—Now, if you will give me *The Golden Age* of September 9th, 1871, the one from which you read the reply to Mr. Greeley.

Mr. Shearman produces the paper called for.

Mr. Fullerton—I propose to read Article VII., contained in the reply of Mr. Tilton, his “Rejoinder to Mr. Greeley,” from which the other side read Articles V. and VI. It is as follows:

I cannot overrate my sense of the importance of Woman's Suffrage. It is an infinitely higher question than the abolition of Slavery. Anybody with a human heart could see that the slave ought to be set free. But it takes a finer discernment, a deeper penetration, to discover that woman must be enfranchised. You have proved yourself competent to the lower, but incompetent to the higher reform. It must go on without you. It loses much by losing your stout pen, but you, lose more by losing your golden opportunity to make THE TRIBUNE its banner of battle. Womanhood is a sacred thing, and yet THE TRIBUNE insults it every day. The center of the world is home, and yet you bind a chain on the freedom which should reign within it. The chief hell on earth is a marriage profaned, and yet you lock the door to all escape from it. The industrial necessity of our day is better pay for woman, and yet you deny them the ballot to procure it. The incentive to prostitution is hunger, and yet you give its victims only a tenth part of man's opportunity to save themselves from it. You are working a cruel wrong to society—undoing the beneficence of a lifetime, and now you quench all hope of your ever showing any future and growing kindness toward woman's enfranchisement. Nothing remains for its friends but to fight you as its enemy. Consider, therefore, that war is declared.

MRS. MORSE'S THREAT TO DESTROY MR. BEECHER'S PORTRAIT.

Mr. Fullerton—I now come to the portrait of Mr. Beecher, which is said to have been removed from your house. Do you remember when it was removed, Mr. Tilton? A. I cannot fix the date, Sir, but it was several years ago.

Q. Well, perhaps you can tell us the occasion for its removal? A. Oh, yes, Sir.

Q. Tell us, if you please, what it was? A. Mrs. Morse had threatened to cut it to pieces.

Q. State the circumstances under which that threat was made? A. In the Autumn of 1870—

Mr. Everts—Well, if your Honor please, we are not to have the conversation between Mrs. Morse and this witness on any act in this case.

Mr. Fullerton—Yes, if it shows the reason for the removal of this portrait.

Judge Neilson—If you have the fact that its removal was caused by some threats of hers, without the threats, will not that do?

Mr. Fullerton—No, Sir. It is imputed to Mr. Tilton as an offense, in some way or other, that this portrait was removed from his dwelling. I don't know what use the other side intend to put it to.

Judge Neilson—You have the right to ask why it was removed.

Mr. Evarts—And the witness has already said that it was because Mrs. Morse threatened to cut it to pieces.

Mr. Fullerton—Let us see whether the threat was such a one that she was determined to carry it out.

Mr. Evarts—He has given the threat, that it was cut to pieces, and that he sent it away.

Judge Neilson—That it was sent away to preserve it. That is as much as you want.

Mr. Beach—It does not appear whether the spirit in which the threat was made was such as to cause an apprehension of its being carried out.

Judge Neilson—You can ask whether it was said in jest or in earnest.

Mr. Fullerton—I want to show that it was not through any feeling of affection that it was made.

Mr. Evarts—That will be assumed, that it was not. Besides, this is not introduced under any cross-examination of mine upon the subject.

Mr. Beach—You brought the thing in on the cross-examination of Mr. Moulton, and then you renewed it on the cross-examination of Mr. Tilton.

Judge Neilson—I think you have a right to account for its removal, but not to put in the conversation.

Mr. Evarts—That is all I object to—the conversation; I do not object to their accounting for its removal.

Mr. Fullerton—What kind of a threat did Mrs. Morse make in regard to this portrait?

Mr. Evarts—That I object to. He has already stated that she threatened to cut it in pieces.

Mr. Fullerton—I propose to ask the question that your Honor allows.

Judge Neilson—Yea.

Mr. Evarts—Will your Honor be kind enough to note my exception?

Judge Neilson—Yes, Sir.

The Witness—She threatened to plunge her scissors into it.

Q. Did you believe at the time that she intended to carry her threat into execution? A. Yes, Sir, I did.

Q. What was her demeanor, her manner, at that time?

Mr. Evarts—We object.

The Court—You may say whether it was in jest or in earnest.

The Witness—Oh, Sir, it was in earnest; it was a frenzy.

Mr. Fullerton—Where was the portrait hanging at the time? A. It was not hanging.

Q. Where was it at the time? A. It was in my house; it was standing on the floor; I had taken it down from the wall shortly after July 3d. I am not permitted to state the cause.

Q. Well? A. And a very short time after that Mrs. Morse, having received the same—

Mr. Evarts—We object to that.

Judge Neilson—Mrs. Morse made this threat? A. Yes, Sir.

Q. And you removed it for its preservation? A. I put it in a closet first, yes, Sir; and I was afraid she would invade the house, and seek it out and cut it, so I had it sent to Mr. Moulton's.

Judge Neilson—That accounts for its removal.

THE TELL-TALE ARTICLES LEFT BY MRS. TILTON.

Mr. Fullerton—You have been asked whether your wife took anything with her when she left your house. I want to ask you this other question, Mr. Tilton, — what she left behind her when she left the house, in the shape of correspondence, do you recollect finding any correspondence left, with Mr. Beecher? A. Yes, Sir.

Q. Where did you find it? A. I found them in a little out-of-the-way closet, under lock and key. I found a number of letters written by Mr. Beecher to her, some of them without signature; letters that have been given in evidence, together with a box of photographs of his face.

Q. What among—among what? A. Among various books that he had given her—quite a little library of books.

Mr. Evarts—I object. Now, if your Honor please, how does this become a pertinent subject of inquiry in respect to any cross-examination of mine? The whole inquiry of mine, was whether she took anything with her when she left the house, and the answer was that she took nothing but his love and good-will. Now, is that a basis for them to introduce all that was left in the house?

Judge Neilson—No.

Mr. Fullerton—Strictly speaking, I should have put this question upon the direct examination.

Judge Neilson—If it is a mere inadvertence or omission you can supply it now.

Mr. Fullerton—It was, Sir, an omission.

Judge Neilson—Then you can supply it now, they having the right to cross-examine on it. My experience is sufficient to know that the most able counsel will sometimes overlook a matter.

Mr. Evarts—Well, if my learned friend puts it upon that ground.

Judge Neilson—I understand it so.

Mr. Beach—A portion of the fact did not come to our knowledge until after the direct examination had been through.

Mr. Evarts—Your Honor will recognize the propriety of holding counsel to the strict rule, when a party is being examined.

Judge Neilson—Yea.

Mr. Fullerton—Look at the box now shown you and its contents and say where you found it. A. I found it, Sir, in the same spot in which I found Mr. Beecher's letters to Mrs. Tilton; the letters which have been given in evidence.

Q. Describe the spot more particularly. A. It was a little closet about as high as that (holding up his hands).

Q. Don't say as high as that; but say how high it was. A. A little closet about three feet high and two feet wide, in a corner of the room. It was filled with gifts which Mr. Beecher had made to Mrs. Tilton—many of them books.

Mr. Evarts—I object. That is not a description of the closet.

The Witness—And I found these pictures among those books.

Mr. Evarts—I object. When he is asked to describe a closet, he introduces gifts made by Mr. Beecher. That does not come within your Honor's ruling.

Mr. Fullerton—Yes, it does; it describes the closet by describing what is in it. [Laughter.]

Mr. Evarts—No; my learned friend cannot describe it in that way.

Mr. Beach—When you describe a man, you describe what is in him pretty much. [Laughter.]

Mr. Evarts—It is very well, perhaps, to point a witticism, but it is not a description of the closet to give the contents of the closet. If you have a right to give the contents of the closet, that is one thing.

Mr. Fullerton—The objection, then, is just this—that the evidence is not responsive to my question; not that it is improper in itself.

Mr. Evarts—The objection is this—that it is evidence in chief, not given at the outset, and now not covered by this inadvertence.

Mr. Fullerton—It is covered by the ruling of your Honor, however, that, being omitted through an inadvertence, it can now be given.

Mr. Evarts—I don't understand my learned friend to say that all the evidence concerning this subject of gifts or what not, was omitted by inadvertence. Whenever my learned friend puts himself upon that—that the whole line of evidence touching gifts between Mr. Beecher and Mrs. Tilton was omitted by inadvertence, then we will have to deal with it upon that proposition. But I have not understood him to put himself upon that.

Mr. Fullerton—And the reason my friend has not understood it so, is because I have not done it.

Mr. Evarts—Exactly.

Mr. Fullerton—Now, if your Honor please, we propose to show where this box was found, and where these letters were found; I propose to show the character of the closet, what it was used for; and for the purpose of showing the intent of putting these things there, I propose to show what was there; that it was a place for keeping these gifts; that they were kept secretly, out of the way, where they did not meet the eye of any one about the house; and I submit that it is proper for me to show that.

Judge Neilson—If you say this subject did not occur to you on the direct.

Mr. Fullerton—I knew nothing of this box and its contents at all on the direct examination; it has come to my knowledge since. I knew, however, of these three or four letters which have been admitted, which were left behind by Mrs. Tilton at the time of her abandoning her home; but I did not know that they were found in this closet; and I intended to ask Mr. Tilton on the direct examination if he found these letters in the house after Mrs. Tilton left.

Mr. Evarts—That is covered by the inadvertence, and is covered by your Honor's ruling. Now, all the rest is not introduced by any examination of mine, and is not under the plea of inadvertence, and, therefore, is not a proper subject of inquiry.

Judge Neilson—No.

Mr. Fullerton—The reason why I did not inquire as to the contents of the closet, was that I did not know of it; I was ignorant of this closet.

Judge Neilson—I think, under the circumstances, you can open the closet and let us see what is in it. [Laughter.]

Mr. Fullerton—We have got it open, if your Honor please, but they don't want to let us see what was in it.

Mr. Evarts—Now, if your Honor please, how does it affect Mr. Beecher where this lady kept the presents that he gave her. If he gave her any presents clandestinely, that is one thing; but if they were given openly, and were afterwards kept in a closet, how does that affect the character of the gifts?

Mr. Beach—A present generally keeps the character that is impressed upon it when it is given.

Mr. Fullerton—I think if we could show that this lady wore a concealed locket, given to her by Mr. Beecher, with his portrait, we should be permitted to show it.

Mr. Evarts—You would, no doubt, show it, if you could.

Mr. Beach—I don't know about that; we might have a little compassion for the lady.

Mr. Evarts—I object to the inquiry.

Judge Neilson—We will take it.

Mr. Fullerton—You found this box, with its contents, in this closet? A. Yes, Sir.

Q. What was this closet used for?

Mr. Evarts—I object.

The Witness—It was a little bit of a closet; I do not know that it was used for any other purpose than the preservation of these gifts.

#### PHOTOGRAPHS OF MR. BEECHER PROPOSED IN EVIDENCE.

Q. Are these all likenesses of Mr. Beecher? [Handing witness photographs]. A. Yes, every one.

Q. Are they all different likenesses, taken in different attitudes? A. Yes, Sir.

Mr. Fullerton—If your Honor please, I offer these in evidence.

Mr. Evarts—Let us look at them.

Mr. Fullerton—Certainly; [counting] there are six of them.

Mr. Evarts—Are these offered in evidence?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—For what?

Mr. Fullerton—To show that they are good likenesses, in the first place, and in the second place, that they were in the possession of Mrs. Tilton. [Laughter.]

Mr. Evarts—I do not know, if your Honor please, what there is about this evidence that is considered of any importance. These are photograph likenesses.

Judge Neilson—I think it would answer your purpose, Mr. Fullerton, if you would have him state the number of them.

Mr. Fullerton—How, Sir?

Judge Neilson—To state how many there are.

Mr. Evarts—[To Mr. Beach]: I am willing the jury should see them.

Mr. Beach—Well, the counsel says that he is willing the jury should see them.

Mr. Evarts—I am willing the jury should see them, but I do not see what evidence they are in this case; they might have

seen them at Sarony's, where they were taken—as many of them as they wished.

Mr. Fullerton—They could not have seen these at Sarony's when they were taken.

Mr. Everts—Sarony took more than one copy.

Mr. Fullerton—But he did not keep them.

Mr. Everts—You don't know about that.

Mr. Fullerton—He did not keep those that were found in the cabinet, any way.

Mr. Everts—Now, this illustrates the point of the objection. Anything you trace to Mr. Beecher in the way of presentation of photographs may have such weight as my learned friend may choose to give it, and your Honor and the jury may think it deserves; but the fact of finding half a dozen photographs of Mr. Beecher in the possession of this lady certainly does not tend to prove anything that is in issue here. We would, all of us, be very unwilling to judge from any such trivial circumstance as having a print of a public picture in the possession of a person.

Mr. Fullerton—Well, a single one might not be suspicious, but when you find seven of them then you begin to regard it with some degree of suspicion. I think the force of the inference to be drawn from this fact does not depend at all upon whether Mr. Beecher gave the pictures to this lady or not. I think there is an inference to be drawn from the fact that pictures of him were found in her possession.

Judge Neilson—Yes; but as the learned counsel says, it does not implicate Mr. Beecher. It might all be without his knowledge.

Mr. Fullerton—It is very true that it might be without his knowledge; but it tends to show to some extent the degree of regard and affection that this lady retained for him. It may enable the jury to come to a conclusion in regard to another branch of the case with some facility; in connection with the affectionate letters written by her in regard to him, I think they are very potent evidence in this case; and the fact that I want to call attention to largely, is the fact that no two of the pictures are alike.

Judge Neilson—We have the fact that they were found there, and I suggest that we may take down a description of them, with the fact whether they were all taken by the same artist.

Mr. Beach—That is enough, I think.

Mr. Fullerton—The most of them were taken by the same artist, but in different attitudes, and the inference is that they were taken at different times.

Mr. Everts—I don't know what that inference has to do with it.

Judge Neilson—That inference may account for having so many—that they are different.

Mr. Everts—Still, they might have been taken at the same time.

Mr. Fullerton—But not in the same attitude.

Mr. Everts—My learned friend exposes the defect of his offer. If we were trying Mrs. Tilton, then the possession of these pictures might be some evidence against her, because it would be, in some degree, her act. But they say that Mrs. Tilton's act in getting these pictures, not from Mr. Beecher,

but from any source, and having them in her possession, is evidence against Mr. Beecher.

Judge Neilson—No; they do not quite say that. Well, Mr. Fullerton?

Mr. Fullerton—Look at the two letters I now show you, being "Exhibits 13" and "18," and say whether they are among those you found in the cupboard when Mrs. Tilton left?

Mr. Everts—Are these the ones already in?

Mr. Fullerton—Yes, they are already in.

#### THE PHOTOGRAPHS ADMITTED.

Mr. Everts—I would like to know if these photographs are in evidence or not.

Judge Neilson—No; we have a description of them; they are not in evidence; they cannot print them in the case; they cannot make an exhibit of them; they are described on the notes.

Mr. Fullerton—They are in evidence, however, Sir.

Judge Neilson—That is, they have been read to the jury.

Mr. Fullerton—Shown to the jury—exhibited to the jury; they are in evidence the same as an instrument is put in evidence in a case of homicide; it does not go into the case bodily, but it is an exhibit.

Mr. Everts—I want to know, with a view of taking my exception, if these heads have been put in evidence?

Judge Neilson—I think they are not in evidence, but a description of them.

Mr. Everts—If your Honor please, note my exception to the fact of the pictures or their description being admitted in evidence.

Judge Neilson—Yes.

#### THE LETTERS FOUND IN THE CUPBOARD.

Mr. Fullerton—What do you say as to those two letters? A. What is your question?

Q. Look at that signature and state in whose handwriting it is? A. Mr. Beecher's handwriting.

Q. Mr. Beecher's own handwriting? A. Yes, Sir.

Q. "H. W. Beecher" is in his own handwriting? A. Yes, Sir.

Mr. Fullerton—That is a good enough description of that one.

Mr. Everts—I don't think, if your Honor please, that there is any point to be taken between the pictures and their description—I mean as to the force of the legal objection. I would as soon have the pictures in as their description; the legal point is the same.

Judge Neilson—I don't know whether it is exactly.

Mr. Everts—It so strikes me. If they are entitled to prove, as against Mr. Beecher, anything concerning the pictures, I would as lief have the pictures as the description.

Judge Neilson—It is a mere circumstance. Let the stenographer read what has been said upon that subject.

[THE TRIBUNE stenographer then read:]

Q. [Handing letter to witness.] Look at that and see whether you found that letter in the closet after your wife left? A. I did.



Q. Exhibits No. 12, 13, and 20 were found in the closet after your wife left? A. Yes, Sir.

Mr. Fullerton—I would like to learn definitely from the Court how far these are to be regarded as in evidence, because it will be necessary to show them to the jury and call attention to some facts connected with them.

Judge Neilson—In order to save the rights of your opponent, I shall regard them as in evidence.

Mr. Evarts—Your Honor will please note our exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Then they will be marked.

[The photographs of Mr. Beecher shown witness were marked respectively Exhibits 96, 97, 98, 99, 100 and 101.]

Mr. Fullerton—If the Court please, I have found another picture of Mr. Beecher, but it is a very small one.

Judge Neilson—Has that picture been framed?

Mr. Beach—No, Sir, except in a paper frame.

[Marked Exhibit 102.]

#### SOME OF THE HUSBAND'S LETTERS EXPLAINED.

Mr. Fullerton—If your Honor please, Mr. Shearman did not read all of the letter of January 30th, 1868, dated at the Monongahela House, and I want to read the balance of it. [Reading]:

MONONGAHELA HOUSE,  
Pittsburgh, Jan. 30, 1868.

*My Darling:* I am here in one of my old, familiar, and favorite hotels. A good welcome has always awaited me in this smoky, Presbyterian city. From the beginning, my audiences here have been large; none ever larger than to-night's, which filled every tier of the Academy of Music. I had full liberty of utterance, and spoke as well as I usually succeed in doing, when I do my best.

I crump your loving letter, which awaited my arrival, and greeted me as with a kiss, had something to do with my good spirits and my evening's success.

All the colored men in this hotel know me and are full of attentions. My face gets shaved with unusual care, my boots get blacked to an unwonted polish, and my hot-bath is arranged with noticeable nicety.

I am now well established in my new housekeeping. My plan of traveling with a trunk, instead of a mere carpet-bag, is a great addition to my comfort; in fact, it is a positive luxury. My little reticule has become quite a curiosity shop. It contains my New Testament; the North American Review; a new English tooth-brush; a long, patent-pointed lead-pencil; a little portfolio for writing in the cars; a comb and brush; a wisp-broom; a railroad map; a roll of letter-stamps and a wad of ice-cream candy.

My trunk is carefully set right once a day, but gets dreadfully topey-turvid in the baggage-man's hands. In opening it, I always find the stockings sticking among the shirt-bosoms, and the handkerchiefs scattered about among the legs of my flannel-drawers. It is lucky that I carry no bottles of wine, for they would be broken a dozen times a day, and my shirts made of the color of robin redbreast's bib.

A gentleman to-night said that the Pittsburgh papers had lately quoted your remark about your four children; and he wondered whether or no so young a looking man as I could lawfully have so many!

All this day, while riding thither in the cars from Cleveland (for I had to go all the way to Cleveland to get here in time for my lecture to-night), I spent in writing an article to *The Independent*, entitled "The Tongue of Fire; or Extemporaneous Preaching."

I inclose a hundred dollar bill. Perhaps it is risky to send money by the mail, in large amounts, but I must leave too early in the morning to get a draft at the bank. Use it according to your discretion in paying the debts. I hope I do not frighten you with the long list of them which I sent in my last letter. I simply made that exact statement in order to appoint you my cashier and business agent—

the balance of it Mr. Shearman read. I will call your attention, Mr. Tilton, to this other letter read by Mr. Shearman, dated January 26th, 1868.

Mr. Beach—Written in lead pencil in the cars.

Mr. Fullerton—Written in lead pencil at the depot. I call your attention to this paragraph:

The secret of all my long-continued moodiness has been dissatisfaction not with you, but with myself. I was once well enough content to be esteemed at something better than my merit. But of late all such estimates of me have been horribly repulsive to my mind. They have revealed me to myself in the character of a hypocrite, a deceiver, a whitened sepulchre filled with dead man's bones. Above all things it has been dreadful for me to hear praises of myself from you and Florence, &c.

I ask you what occasioned you to write in that strain at that time?

Mr. Evarts—That I object to.

Judge Neilson—I will take it, Sir.

Mr. Evarts—The language must speak for itself.

Judge Neilson—Yes, Sir; if there is any circumstance, though, he may state it—a circumstance causing him to write that.

Mr. Evarts—This is calling for matter that is no evidence against us. This letter, on one side or the other, was put in in regard to the disposition of these parties towards each other, my friends having taken the lead in introducing it.

Judge Neilson—But this is a letter put in by you [Mr. Evarts].

Mr. Fullerton—Yes, Sir, and we follow it.

Judge Neilson—And they call, perhaps, for some circumstance that tends to illustrate that.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Perhaps it is imaginable that there would be some answer that would be within the rule of evidence.

Judge Neilson—Simply with that view I admit this.

Mr. Evarts—But to ask a witness to explain the moods and feelings that he has expressed, it does not strike me that it is within the matter, and if it relates to anything that was in confidence between the husband and the wife, it should be excluded.

Mr. Beach—Where they give in evidence the declaration of a party, I submit that it is always proper to ask the party that is to be affected by that language, what was the sense in which he used it?

Judge Neilson—What led him to use it?

Mr. Fullerton—Yes, Sir; and in this connection I will call his attention to this other letter of a similar character, where he appears to be in a melancholy mood, signing himself, "Yours in dust and ashes," &c.

Mr. Evarts—This opens a large door, if, whenever he writes a letter, it is to be shown how he came to write it.

Mr. Fullerton—It does open it. If my learned friend put in a letter written by Theodore Tilton with a view of using what he there said against him in this case, it is proper that he should explain that.

Judge Neilson—There are certain things proper in that view, undoubtedly. We will take this, and see what it is.

Mr. Evarts—Your Honor will please note my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—My question is, what occasioned you to write letters of that character and description, to which I have called your attention?

Mr. Beach—[To Mr. Fullerton.] I would get that letter of January 26th, 1868, first, separately.

#### THE REVOLUTION IN MR. TILTON'S RELIGIOUS VIEWS.

Mr. Fullerton—[To the witness.] Speak, if you please, of the letter of Jan. 26th, 1868, to which I first called your attention? A. I have no particular recollection of that letter more than the other letters, or of that special mood more than the other and similar moods. The reading of the letters has thrown up to the surface many similar experiences, all grounded in early religious convictions, which, in later years, were passing through my mind, causing me great suffering. I can only explain it, Sir, by reference to myself, which, perhaps, may not be appropriate to give.

Mr. Beach—It is necessary you should do so, Mr. Tilton.

Mr. Fullerton—Yes, I hope you will do it, Mr. Tilton.

The Witness—I was brought up from my early childhood under the dominion of the extremest school of the old Presbyterian faith. I learned it when I was a boy—a very small boy, under ten years of age. I received it from the hands of Dr. Alexander, and from my early childhood I was accustomed to take those dread and majestic views of life and of the future, the magnificence of God's greatness, the perfection of His purity, in comparison with which any human character was dwarfed and shriveled. All the early years of my life I spent very much—I was going to say—like a monk in a monastery. I was a religious ascetic. I would have cut off my right hand rather than have written a letter on the Sabbath day. I was extreme and rigid. The scenes of the other world were powerful with me. I was brought up to the conviction that all men were miserable sinners, and when I came, in later years, to abandon that view of God and of human character, still the resonance of those views have ever left their echoes in my mind; I always heard them. Walking along the street, and hearing the touch of an organ in a church, will, at this very hour, bring back to me all the reverberations of that old theology, and so my letters, many of them, written in a languid mood, or after having exhausted my physical strength, going to the hotel between ten o'clock and midnight, express those words. I cannot describe to you, Sir, the intellectual suffering that I had for two or three years, based upon that early trouble in which I was very severely grounded, and which caused me four years of struggle and

laceration to get through with. It made me a moody man—at times a disagreeable man. Looking into myself, I thought myself a bad man. I humbled myself in dust and ashes; I think any man does who has a sense of God. Never mind what his later views are, the early education comes rolling up like a wave. It comes upon me now just the same as ever. I don't know whether my description is intelligible to you or not.

Q. Now, Mr. Tilton, in this connection—

Mr. Evarts—Does your Honor consider this evidence as within the rule?

Judge Neilson—Yes, Sir, precisely as it would be proper to allow a man to testify when he wrote a certain letter that he was sick, or had the gout, or had been three nights without sleep, or any other circumstance of that kind qualifying his then condition.

Mr. Evarts—The trouble is that the witness says he has no recollection concerning any particular impressions that he had. Judge Neilson—Except a general statement.

Mr. Evarts—And then he relates the experience of his early years.

Mr. Beach—No, he does not say he has no recollection of any particular impressions. He said he had no recollection of that particular letter.

Judge Neilson—I think we will let it stand.

Mr. Evarts—Your Honor will be so good as to note my motion to strike it out, and your Honor's ruling, and my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton—I understood you to say, Mr. Tilton, that it gave you great pain and anguish when you were undergoing this change of religious sentiment in giving up the old views for the new? A. Yes, Sir; for a period of four years there were many days and hours in which, if I should describe my inner life, I should have to borrow Cowper's figure, where he speaks of the frog creeping through the ooze of the Acheron.

Q. Are those expressions of humility and self-abasement which are found throughout this correspondence the result of this change in religious sentiment?

Mr. Evarts—That I object to. The generalization of all this kind of correspondence, and the assigning of a reason by a leading question of that kind, I think is not within the rule of a re-direct examination. I am willing the letter should be inquired about, and if there is anything in his memory that enables him to assign any fact that bears upon the letter, why that is one thing; but a good many letters have been read, and a good many forms of expression have been used, and now my learned friend asks him whether, in the course of this correspondence, those moody phrases were not the result of this religious experience.

Judge Neilson—The question ought not to be leading, otherwise I think he may ask it.

Mr. Evarts—It is opening very widely the explanation of written words by external feelings not otherwise expressed.

Mr. Fullerton—This question runs through many years, and at times we find Mr. Tilton in moods of despondency.

Judge Neilson—And you think you will account for it?

Mr. Fullerton—Yes, Sir.

Judge Neilson—And he seeks to account for it in this way.

Mr. Fullerton—Yes, Sir; he seeks to account for it in this way. It is altogether proper he should explain it, because these expressions of humility and self-abasement will be referred to and differently accounted for unless they are explained. [To THE TRIBUNE stenographer.] Read the question.

THE TRIBUNE stenographer read the question, as follows:

Are these expressions of humility and self-abasement which are found throughout this correspondence the result of this change in religious sentiment?

Mr. Evarts—That I object to.

The Witness—[To Judge Neilson.] Am I to answer, Sir.

Judge Neilson—Yes, Sir.

Mr. Evarts—I object to it, both in substance and as leading.

Judge Neilson—Well, it is leading.

Mr. Fullerton—What is that?

Judge Neilson—He [Mr. Evarts] suggests the question is leading; it is leading.

Mr. Fullerton—Well, it is somewhat leading, it is true, but it is allowable under the circumstances, and considering the subject of inquiry.

Judge Neilson—I think you can easily modify the question so that it will not be objectionable.

Q. What occasioned those expressions of yours of despondency and humility found in your letters, to which attention has been called?

Mr. Evarts—That we object to.

Mr. Fullerton—That we understand.

Mr. Evarts—And we except to your Honor's ruling.

Judge Neilson—Yes, Sir.

The Witness—They were occasioned by the inward struggles which I have already described.

Q. I call your attention to a letter of your wife's put in evidence by the other side, dated February 28, 1869, in which she quotes from your letter as follows—

Mr. Beach—Various expressions used in such moods, and then goes on to quote them as follows:

Mr. Fullerton—[Reading]:

Then feeling that these extreme delights would make a woman mad outright, you have six letters ending: "Yours in dust and ashes;" "Your sorrowful and groaning husband;" "Your suffering husband;" "Yours doggedly," and "Yours in agony."

A. I cannot account for them in detail. I don't know what individual letter any particular sentence there quoted may have applied to, but the general mood out of which each letter was written was that mood of self-abasement which so often came upon me in consequence of my early education, and which still clouds me at times.

Q. In this connection I will ask you what change your religious sentiments did undergo—

Mr. Evarts—What is the question?

Mr. Fullerton—The question is: I will ask you what change your religious sentiments did undergo, and as it meets another branch of the case to which I shall put a question by-and-by, I may as well dispose of it now.

Judge Neilson—I know it does.

The Witness—I hardly know in what words to state accurately the change. It was a passage from extreme Calvinistic views, not merely rigid Presbyterian views, but extreme, severe, overpowering Calvinistic views. I passed from those to a more genial view of God and of His kindly disposition towards man. I think I removed from my mind the apprehensions of future judgment, the wrath to come. I suppose the one great point, that on which my chief struggle took place, was as to what theologians call the Deity of Jesus Christ. I had been brought up to recognize Jesus of Nazareth as the Lord Jehovah, and I passed from that to the Unitarian view, which recognizes Him as the Master and Teacher of us all, still less in degree than God the Father. I had held the one view with such tenacity, and it had gone down to the depth of my conviction so far, that the displacement of it shook me to the very foundations of my life; I reeled under it; and the misery which it brought to me was all the greater because I was not able to speak about those views to Elizabeth without giving her great pain; so my mouth became closed. Perhaps I ought to say, also, in accounting for some of the letters, that I had made her a pledge some years ago when I first went on a journey that I would always write her my exact thoughts, whether they were good or bad. I made it a point of honor with me to tell her all my behavior, whether it was fretful, selfish, or peevish, or whether I thought I was conquering myself. I never hid anything from her, Sir.

Q. Now, Mr. Tilton—

Mr. Evarts—I move to strike that out as not responsive to the question.

Judge Neilson—I think I will let it stand. It is a negative, and does not do you any harm.

Q. Can you give me the date of the commencement of this change in your religious views? A. I cannot fix the day or the month, but I know the circumstances out of which it grew.

Q. State them, if you please? A. I became editor of *The Independent* when I was quite young, and my hands were immediately filled with public questions—the Anti-Slavery movement, the prosecution of the war, the reconstruction of the Union. I used that journal, which was ostensibly a religious and theological newspaper—I used it not for any religious or theological purposes, but for those numerous questions. I occupied my mind with those; and during that occupancy—during that busy employment with public questions, I never had leisure to examine the foundations of those religious opinions in which I had been brought up from childhood. But, when slavery was abolished, and the war was over, and my occupation, in a certain sense, was gone, on finding a religious paper on my hands, I turned to examine the theology in which I had been trained from childhood, and it gradually faded away before my inquiry. Then came the struggles to which I have referred.

#### ORIGIN OF MR. TILTON'S LATER RELIGIOUS BELIEFS.

Q. And where were you attending divine service during this period? A. Plymouth Church.

Q. Had the doctrines taught there anything to do with this

change? A. Yes, Sir; I think that the doctrines taught there were the origin of the change; I think I simply carried the change which Mr. Beecher has introduced into modern theology and thought a step or two farther than he has carried them.

Q. You believe in the existence of a God? A. Yes, Sir; very profoundly.

Q. In his omniscience and omnipresence? A. Yes, Sir.

Q. Do you believe in the divinity of Christ? A. I do, with a proper limitation as to the meaning of the word "divinity." I believe in the divinity as contradistinguished from the deity of Christ; in other words, if you will permit me to explain—

Q. Certainly. A. Perhaps you noticed that, in one of the letters which Mrs. Tilton wrote to me, she speaks of a sermon by Mr. Beecher, with a title "The Divinity of Man." Now, I hold, in a still larger, and broader, and more far-reaching sense, the divinity of Christ. At the same time, I do not rank in my thought the functions and character of Jesus Christ with the functions and character of God the Father; I did in my childhood; I have ceased so to do, and that is the principal point of change in my faith.

Q. It amounts to about this, then, I think, Mr. Tilton, you are nearer to a Unitarian than anything else? A. Yes, Sir, I am not a church member of any sect.

Mr. Fullerton—If your Honor please, it is after the time for the adjournment, and I propose to stop here.

Judge Neilson—Very well, [To the jurors]: Please be in your seats to-morrow at 11 o'clock.

The Court thereupon adjourned till 11 o'clock on Tuesday.

## TWENTY-SEVENTH DAY'S PROCEEDINGS.

A NEW WITNESS FOR THE PLAINTIFF.  
A FORMER SERVANT IN MR. TILTON'S FAMILY GIVES  
UNEXPECTED TESTIMONY—WHAT SHE SAW, AND  
WHAT SHE HEARD MR. BEECHER AND MRS.  
TILTON SAY—AN ATTEMPT TO INTRODUCE MR.  
TILTON'S SWORN STATEMENT—LONG DISCUSSIONS  
BY THE COUNSEL.

TUESDAY, Feb. 16, 1875.

The testimony elicited from Mr. Tilton to-day was fragmentary in its character, and every step in the way of the re-direct examination was contested by Mr. Evarts. Mr. Fullerton's first question was in regard to Mr. Tilton's religious belief, and in answer the witness said that he believed in the immortality of the soul.

Section VI. of Mr. Tilton's Statement, containing the sentence, "To love is praiseworthy," etc., a part of which was misquoted, was offered and objected to by the defense. The objection was overruled, and Mr. Fullerton was allowed to read the section, after which the witness testified that he did not purposely misquote Mrs. Tilton's letter, his object being to compliment his wife, not misrepresent her. The "True

Story" was then turned to, and amid the frequent objections of Mr. Evarts, and the consequent discussions, the witness was allowed to testify as to his object in writing the "True Story."

The most important discussion of the day took place over a motion of the plaintiff to introduce a part of Mr. Tilton's "Statement" containing Mrs. Tilton's alleged confession. When Judge Neilson allowed Mr. Tilton to testify, he ruled out confidential communications between the witness and his wife. This excluded the "confession," and Mr. Tilton's lawyers watched closely for some way to get it in, in some shape. When the defense, in the cross-examination of the plaintiff, asked a question referring to "Mrs. Tilton's confession," the plaintiff's lawyers thought they saw a chance, and so asked what confession was referred to. The defense having in a question during the cross-examination referred to a confession, Mr. Fullerton contended that the plaintiff might find out what that confession was, and so the Judge ruled after a long debate. But this was only one point gained. The next purpose was to read Mr. Tilton's sworn statement before the Committee, which would let in Mrs. Tilton's confession. Mr. Evarts was very persistent, and brought every argument to bear out his point, but the Judge decided that Mr. Beach might continue to read.

At this point the witness, Mrs. Carey, was introduced. After her testimony had been taken, Mr. Fullerton attempted to find out what it was that Mrs. Tilton maintained when, as was brought out in the cross-examination, the witness had said: "She maintained before her mother that she had done no wrong." Mr. Evarts objected to Mr. Tilton's testifying what his wife had "maintained" to her mother. Forty minutes of hot debate followed the protest, and Messrs. Beach and Fullerton gained their point.

An unexpected episode took place to-day—the introduction of a new and hitherto unheard-of witness—a servant in the family of Mr. Tilton in 1869. In the midst of Mr. Tilton's examination, in the afternoon, Mr. Fullerton stopped and asked Judge Neilson if he might, at that point, introduce a witness whom they had summoned from New-York, supposing that they would finish the examination that day. The witness was a lady in delicate health, and it was absolutely necessary that she should return to New-York that night. Mr. Pearsall entered the court-room at this moment

with a woman of middle age, who took the witness chair, Mr. Tilton slipping down and seating himself with his counsel. Being sworn, the new witness gave her name as Mrs. Catharine Carey. She was evidently suffering under severe illness, being very pale and thin. During her entire examination she held a handkerchief before her mouth, and occasionally seemed in pain. She gave her testimony in a clear voice, and is apparently an intelligent though uneducated woman. She became confused only once or twice in trying to understand some of Mr. Evarts's long and intricate questions. Mrs. Carey was the wet nurse in Mr. Tilton's family after the birth of the boy Ralph in June, 1869. She testified that she was in the house two weeks before Mrs. Tilton went to Monticello, and that during this time Mr. Beecher called four or five times. On one of these visits Mr. Beecher, the witness said, went into Mrs. Tilton's bedroom, and Mrs. Tilton closed the folding doors which divided the bedroom from the room in which the witness was. After Mrs. Tilton returned from Monticello, the witness stated that one day about dusk, while going into the dining-room to get a drink of water, she saw Mrs. Tilton sitting upon Mr. Beecher's lap with her arm upon his shoulder. She heard Mr. Beecher say, "How do you feel, Elizabeth, dear?" To which Mrs. Tilton replied, "Dear father, I feel so-so."

Mrs. Carey testified that she left the Tilton family in consequence of a "fuss" with Bessie Turner. The direct examination lasted less than 15 minutes, and Mr. Evarts then began to cross-examine the witness. He followed her career after she left the Tilton's up to the present time, she being now in Bellevue Hospital, suffering with lung disease. About Mr. Beecher, she said that she had never seen him before he came to call on Mrs. Tilton, but she had "heard tell of him." The cross-examination developed that at the time Mrs. Carey was in Mr. Tilton's house Mr. Beecher sent Mrs. Tilton baskets of flowers which stood about her bed. The arrangement of the rooms at Mr. Tilton's house were described to the best of the ability of the witness, but she did not make it very clear.

THE PROCEEDINGS—VERBATIM.

MR. TILTON BELIEVES IN THE IMMORTALITY OF THE SOUL.

The Court met at 11 a. m. pursuant to adjournment, and Mr. Theodore Tilton was recalled and his re-direct examination resumed

Mr. Fullerton—At the close of yesterday's proceedings, Mr. Tilton, we were dealing with your religious faith. I believe there is one other question I desire to ask you on that subject. Do you believe in the immortality of the soul? A. I do, Sir.

Q. And in a future accountability? A. I do, Sir.

THE CORRESPONDENCE PRINTED BY COUNSEL'S ADVICE.

Q. I pass from that then to the publication of the letters in *The Chicago Tribune*. You stated in your cross-examination that you had been greatly misrepresented, and that your counsel thought that justice required that those letters should be published. In what respect had you been misrepresented, and in what respect would the publication of those letters, or any part of them, do you justice?

Mr. Evarts—What is that? [To THE TRIBUNE stenographer.] Won't you read the question before it is answered?

[THE TRIBUNE stenographer read the question.]

Mr. Evarts—You mean the publication of the wife's and his?

Mr. Fullerton—Yes; the correspondence in *The Chicago Tribune*.

The Witness—Do you wish me to answer, Sir?

Mr. Fullerton—Yes, Sir. A. Well, Sir, during the early part of the Summer, when this case was began to be talked of in the newspapers, charges were brought against me in various journals to the effect that I had been for years a very brutal man in my family, that I had ill-used my wife, that I was given to drunkenness and orgies, that I was in every respect a savage, and my friend and counsel, Judge Morris, said that that popular impression was working me great injury and detriment, and after he read the correspondence which during all those many years had passed between my wife and myself, he suggested the propriety of publishing it, or extracts from it, in order to do away with that popular impression, which was certainly unjust and very injurious.

A MISQUOTATION IN THE SWORN STATEMENT ACCIDENTAL.

Q. Your attention was called to an extract from a letter, on your cross-examination, dated February 3, 1883, in which appears the extract, "To love is praiseworthy, but to abuse the gift is sin," &c. From what did you make the copy of that letter to insert in your statement—from the letter itself or from the publication in *The Chicago Tribune*? A. I do not think, Sir, the publication in *The Chicago Tribune* was made at that time. I think I made it from the letter itself.

Q. Well, it is said that a part of the quotation is left out—a part of the letter. I want to ask you whether you did it purposely or was it accidental? A. No, Sir; I was not aware that any part had been omitted until my attention was called to it. It was pure accident.

#### A SECTION OF THE SWORN STATEMENT ADMITTED.

Mr. Fullerton—I now offer in evidence Section VI. of that statement, in which that extract from the letter appears.

Judge Neilson—A part of that has been read, I think.

Mr. Fullerton—Yes, Sir.

Mr. Everts—I object to that, if your Honor please.

Judge Neilson—It is on the ground that a part of that document has been read.

Mr. Everts—I have not read any part of that document.

Mr. Fullerton—Yes, the gentleman has read a part of the document.

Mr. Everts—I think not. I have cross-examined the witness in regard to his former publication of this letter now produced here, which differed from that letter, and that fact and that single fact is all that I have proved. I have read no line of that statement whatever.

Judge Neilson—I think you are right—

Mr. Everts—I put that in his hands and called his attention to it, and thereupon asked him if that was a publication of the letter authorized by him. He said something, that he could not answer for the correctness of the printing. I then produced him the writing which he recognized as that of his amanuensis, and then I confined myself entirely to that letter and to the publication of that letter.

Judge Neilson—I think you are right, Mr. Everts, and still, if your examination tended to show a mispublication of the letter, I think he may explain that if he can, and this calls for that explanation, and for that end it is proper that the clause should be read.

Mr. Everts—If your Honor please, he has already explained it, and said he didn't know until it was produced here that there was a difference.

Judge Neilson—I think he may read it. It has been sufficiently referred to.

Mr. Everts—Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton [Reading]:

VI. That previous to the aforesaid criminal intimacy, one of the reasons which Mrs. Tilton alleged for her encouragement of such exceptional attentions from the Rev. Henry Ward Beecher, was the fact that she had been much distressed with rumors against his moral purity, and wished to convince him that she could receive his kindness, and yet resist his solicitations; and that she could inspire in him, by her purity and fidelity, an increased respect for the chaste dignity of womanhood. Previous to the Autumn of 1868, she maintained with Christian firmness towards her pastor this position of resistance, always refusing his amorous pleas, which were strong and oft-repeated; and in a letter to her husband, dated February 3, 1868, she wrote as follows: "To love is praiseworthy, but to abuse the gift is sin. Here I am strong.

No demonstrations or fascinations could cause me to yield my womanhood."

Q. Now, Mr. Tilton, I understand you to say that you did not purposely misquote that letter? A. No, Sir; I think that must be very evident from looking at it. The object of the quotation was the very last sentence, namely: "No demonstrations or fascinations could cause me to yield my womanhood."

Mr. Beach—As written at the date of that letter? A. Yes, Sir. The whole object of the quotation was to adduce her own testimony to her own integrity of character at that time, not to misrepresent her, but to compliment her.

#### MR. TILTON'S SHORT-HAND NOTES OF CONVERSATIONS.

Mr. Fullerton—Your attention has been called to the so-called "True Story," and to the fact that Mr. Moulton called on Mr. Beecher, and, after an interview with him, returned to you, and immediately gave to you an account of the interview, which you took down from his lips in phonographic notes. Did you take down the narration that Mr. Moulton gave to you of that interview? A. I did, Sir, on the spot.

Q. Have you got those phonographic notes? A. I have got all that are left of them. There seem to have been some pages lost.

Q. Where are the original notes—have you them with you? A. I saw them two or three days ago.

Mr. Fullerton—[To Mr. Morris]—Have you got them?

Mr. Morris—No.

Mr. Fullerton—[To the witness]—Where are they? A. They must be there, I think, in that bundle.

Q. Look at the paper which I now show you, and say whether it is a correct translation of them? [Handing witness papers.] A. I don't know about this, Sir. I can look at the notes themselves.

Mr. Morris—I don't know anything about them. I haven't them, that I am aware of.

The Witness—I saw those notes only a day or two ago.

Mr. Fullerton—I supposed they were here. In whose handwriting is that paper? A. Mr. Eddy's.

Q. Do you recollect translating the notes to him and having him write them out? A. I recollect making a copy of the notes. I don't know how this came to be made. I could not certify that this is a correct copy, but I can read the notes themselves.

Mr. Fullerton—I will see if they are here; I will pass it for a moment.

Mr. Everts—Well, when the notes are produced it will be time for us to make our objection.

#### MR. TILTON'S OBJECT IN SHOWING THE TRUE STORY.

Mr. Fullerton—Now, Mr. Tilton, this "True Story" has been the subject of a good deal of inquiry. You have testified that you showed that "True Story" to several persons? A. Yes, Sir.

Q. With what object did you show it to them?

Mr. Evarts—What is this question to show?

Mr. Fullerton—To show the "True Story."

Mr. Evarts—I don't know what we have to do with that.

Judge Neilson—It is like asking, how came you to do so—what occasion had you to do so? I think those inquiries are proper.

Mr. Evarts—People are to be judged by their actions, if your Honor please.

Judge Neilson—Undoubtedly.

Mr. Evarts—I suppose his object in showing it was that the people he showed it to might see it. [Laughter.]

Judge Neilson—That is one object.

Mr. Evarts—And that is a consequence or a purpose that the law imputes to the act.

Judge Neilson—There are very few acts that may not be characterized and explained—very few.

Mr. Evarts—Yes; but there are very many that the law does not allow the actor to characterize and explain.

Judge Neilson—I think this witness can tell how he came to show this paper, as you referred to it—how he came to do it—what led to it.

Mr. Evarts—Yes; but that is not exactly the point of my friend's inquiry. You might prove a fact or an act of somebody else, as asking him to see the paper, or something of that kind.

Judge Neilson—Then there would be no question.

Mr. Evarts—That might be, of course, an inducement to the act; but my learned friend's question is, What was his object in showing this paper to the people that he did show it to?

Judge Neilson—I think that comes to the same thing. It doesn't affect the paper. It leaves the principal fact standing where it stood before.

Mr. Evarts—Of course.

Judge Neilson—I think it has some bearing on the *quo animo* of the witness.

Mr. Evarts—Yes; and we raise the very question, whether the *quo animo* can be shown by the witness to distinguish the act from the character that the law imputes to the act, to wit: he showed it that it might be seen; that is all.

Judge Neilson—I think he may answer.

Mr. Evarts—Your Honor will be so good as to note my exception.

Mr. Fullerton—Seeing it would not accomplish his object. [To the witness.] Now, Mr. Tilton, you will state your object in showing the so-called "True Story" to the persons to whom you exhibited it. A. Well, Sir, I think, in order to state that with absolute correctness, I should first state why I wrote it—my object in writing it.

Mr. Evarts—That I object to in answer to this question, and if any such question as that is put—

Mr. Fullerton—[To the Witness.] Well, answer the question I have put already.

Mr. Beach—[To Mr. Fullerton.] Put both together.

The Witness—I showed it there after it was written.

Mr. Evarts—Am I to understand, if your Honor please, that the witness is confined in his answer to one question?

Judge Neilson—He is confined to one question.

Mr. Evarts—His object in showing it.

Judge Neilson—[To Mr. Evarts.] Apply your objection to that.

The Witness—My object in showing the paper to a select number of intelligent people was in order that I might get from them a judgment such as the great public at large would have rendered in case it had been published. I didn't know how it might affect the public, and I thought that if I gave it to one and to another, and to a dozen or fifteen or twenty intelligent persons, they generally would make up a judgment which would be to me like the judgment of a jury, or the judgment of the public.

#### THE EXPECTED RESULT OF PUBLISHING THE TRUE STORY.

Q. Now you may state what object you expected to accomplish if that was published, or by its publication.

Mr. Evarts—Wait a moment.

Judge Neilson—There is no objection to that; I think he may answer that.

Mr. Evarts—If your Honor please, counsel asks him what object he expected to accomplish if it was published. Now, it never was published, and therefore there is not any act of his that needs explanation.

Judge Neilson—The limited way you called it out on cross-examination.

Mr. Fullerton—I will alter the question. What object did you expect to accomplish by writing that paper?

Mr. Evarts—That matter has been introduced by them on their direct examination, and the witness has stated that it was written and proposed as a form of publication, and that it was read to Mr. Beecher, and that an interview took place concerning it. In regard to that I have asked no question, and the new matter of my cross-examination is only in respect to the exhibition of this paper.

Judge Neilson—Yes, if that is so, you (Mr. Fullerton) are not at liberty to put this question.

Mr. Fullerton—Why, Sir, he has inquired in regard to the "True Story;" he has read many parts of it to the witness, and then asked him whether they were correct, and he has received his answers. Now, it is proper for us to show what object he had in writing that paper—what was the condition of things at that time which in his judgment made it necessary. I could not ask that question until the contents of "The True Story" were made known by the other side. Now, they have been made known in part, and it is certainly desirable that this jury should know what object this gentleman expected to accomplish by the preparation of such a paper as that.

Judge Neilson—I think he may answer the question.

Mr. Evarts—That does not displace the fact that it was a part of their original inquiry—what the object of "The True Story" was.

Judge Neilson—The use you made of it.

Mr. Evarts—I made no use of it but to show what it was. I could not affect in the least his knowledge of what it was, nor his knowledge of the time it was prepared, concerning which he

has testified and regarding which I have asked him no question whatever.

Judge Neilson—You brought the contents to his knowledge and recollection as they had not been brought before.

Mr. Evarts—I don't know that. I don't know that it was in his recollection.

Judge Neilson—That it was brought to his recollection here is what I speak of.

Mr. Evarts—But that adds nothing to the author of the story that had composed it, and told why he composed it, and for what purpose, concerning which I have asked no single question, and now—

Judge Neilson—I think he may answer the question, Sir.

Mr. Evarts—Your Honor will be so good as to note my exception to the ruling.

Mr. Fullerton—Now, proceed to state, Mr. Tilton.

Judge Neilson—Gentlemen, you will please refrain from expressing any opinion on this point; it is not called for at all. Retain that in your mind until you get home.

Mr. Fullerton—Go on.

The Witness—My object in the preparation of that narrative was this: Mrs. Woodhull's tale, blasting my family, had been six weeks before the public; the policy of silence which we had originally agreed to meet it with was proving every day more and more disastrous, and carrying my house down to ruin in the public estimation. I undertook the preparation of a narrative which on being published would create in the public mind an impression like this, namely: "We never believed that the Woodhull story was true because it was so extravagant, but we always believed there was some foundation for it. Now, at last, we have the 'True Story,' and it is not as bad as originally reported, and it exonerates Mrs. Tilton." My only object was to pluck up by the roots Mrs. Woodhull's poisonous tale, and to plant in its place a story less deleterious, and which would not criminate my wife.

#### ARGUMENT ON THE ADMISSION OF DR. STORRS'S ADVICE.

Q. What did you say to those gentlemen to whom you showed it at the time of exhibiting it?

Mr. Evarts—That I object to.

Judge Neilson—We will take that.

Mr. Evarts—Conversations with third persons.

Judge Neilson—Yes, Sir; the act of showing it, you having proved that act.

Mr. Evarts—Your Honor will be so good as to note my exception.

The Witness—Well, Sir; I said to Dr. Storrs, for instance, by whose advice I prepared it—

Mr. Evarts—What I object to, if your Honor please, is what passed between him and Dr. Storrs.

Mr. Fullerton—Go on; omitting that.

Mr. Evarts—No; I object to any narrative of what passed between him and Dr. Storrs as having been already introduced on direct examination.

Judge Neilson—Well, pass him; I think that is so.

Mr. Evarts—I have not asked a single question concerning him.

Judge Neilson—I think so; I think we will leave the interview with Dr. Storrs where you (Mr. Fullerton) left it.

Mr. Fullerton—If your Honor please, I have not left it at all yet. I want to show he took that paper to Dr. Storrs.

Judge Neilson—That paper?

Mr. Fullerton—I want to show what he said to Dr. Storrs at the time he left it. They proved he showed it to Dr. Storrs, and I have a right to prove what he said at the time of exhibiting the paper—the act. They took that proof *cum onere*, and they opened the door and they must take the consequence.

Judge Neilson—They proved it was exhibited to Dr. Storrs.

Mr. Fullerton—Certainly.

Judge Neilson—Then you may ask the question.

Mr. Evarts—This witness had been introduced to this inquiry, and what passed between him and Dr. Storrs, so far as it was lawful. Now, this paper was shown to Dr. Storrs. I asked him for a list of the people he showed it to, and he names Dr. Storrs among them. What right does that give them to go into the further inquiry concerning an interview between him and Dr. Storrs, which interview they have introduced and followed, and concerning which I took up no inquiry.

Judge Neilson—[To Mr. Evarts.] This interview you referred to in your cross-examination, and had him state the fact.

Mr. Evarts—I referred to that interview! Now, we will see the fact. It is on page 427 of the pamphlet.

Judge Neilson—[To Mr. Evarts.] Can you recall my attention to what took place in regard to the meeting with Dr. Storrs on the direct and then on the cross? I suppose I can take your recollection for it; I don't like to trust my own.

Mr. Evarts—The difficulty is I cannot take mine, and I therefore have the text here before me, at page 427 of the pamphlet.

Judge Neilson—If the interview with Dr. Storrs is there, you ought not to go further.

Mr. Evarts—I read from the direct. The witness is now narrating a conversation with Mr. Beecher:

I told him that his suggestion of publishing a portion of that covenant had inspired me to the preparation of a document, in which the entire covenant should be included, together with other papers. I told him, furthermore, I had consulted on that subject with Rev. Dr. Storrs, of this city; that I had gone to him as a good man, a calm man, and a wise man, and had asked him what, in his judgment, the public sentiment of Brooklyn required at my hands in this business, and that Dr. Storrs had advised me to act calmly; to put together the facts and papers and documents in the shape in which they could be proved, and then submit them to him, and after I had given him the facts in that accurate shape, he would give me the best judgment that he could form. I told Mr. Beecher that, in pursuance of that suggestion, I had once or twice seen Dr. Storrs, and that on one occasion I had requested Mrs. Tilton to go with me, but she had preferred not to do so, but had written a statement or letter which I had shown to Dr. Storrs; that I had included that letter thus written by Mrs. Tilton to Dr. Storrs; that I had included it in the proposed statement which I meant for the public.

Judge Neilson—That is on the direct?

Mr. Evarts—Yes, Sir; and there I left it.

Judge Neilson—[To Mr. Fullerton.] I think you had better pass that.



Mr. Fullerton—If your Honor please, I wish you would hear me. This is what Mr. Tilton narrated to Mr. Beecher; it is not the interview between him and Dr. Storrs, except as it passed through that gentleman. Your Honor will perceive there is a very great difference between this evidence and what I now propose to give. Following that up, on the cross-examination, my learned friend on the other side put the question to Mr. Tilton: "Did you show that paper to Dr. Storrs?" He had already testified that he had told Mr. Beecher he had done so, and my learned friend on the other side proved that he had done so. I had not proved it. I could not prove it. Now, having proved that he had this conversation with Dr. Storrs, in fact, and having proved that he presented this document, the so-called "True Story," to Dr. Storrs, I propose to follow it up and avail myself of that rule which is known to all men, that the act of a man may be qualified by his words spoken at the time.

Judge Neilson—Well, Mr. Evarts, that last consideration, I think, deserves an answer; what is it?

Mr. Evarts—Very well, Sir.

Judge Neilson—First you had the narration to Mr. Beecher of an interview with Dr. Storrs; then we have, on your examination, the fact that that paper was presented to Dr. Storrs, and then we have invoked the rule that when an act takes place the conversation that forms part of the act must be given, and that is the rule he invokes.

Mr. Evarts—I have a narrative from this witness, which he is not to impugn, of his statement concerning an interview with Dr. Storrs, in which, as my learned friend now concedes, he stated that he had shown Dr. Storrs this paper, and he has given in his narrative, which he cannot impugn (although it does not bind me, it does bind him), to what occurred when he so showed it; and I, in my cross-examination, have not touched what occurred when he so showed it.

Judge Neilson—Except that he showed it.

Mr. Evarts—I, having had a draft and a copied manuscript, undertook to find out the circle of people that he showed it to, and Dr. Storrs is introduced into my inquiries, and into his answers only as one of the persons that he showed it to. He might have left it indistinct whether it was the draft or the copy; whether it was an incomplete or a completed statement that was shown to Dr. Storrs, and I have identified the paper that he has spoken of as having been shown to Dr. Storrs, and nothing else. And now, because I have identified the paper that he has spoken of as having been shown, and being attended with conversation, and have confined myself rigidly to the identification of the paper, my learned friend says that he is at liberty to give conversations that attended the exhibition of the paper; that is the proposition. I apprehend that there is no foundation for that proposition in this case, because he himself has put in evidence in a shape that binds him, and has introduced to my cross-examination this conversation, which I abstained from cross-examining him upon. Then I only identified the paper as having been shown to Dr. Storrs.

Mr. Fullerton—Your Honor can now see the force of the

learned gentleman's observation, that he could not trust to his own memory as to what took place.

Mr. Beach—[To Mr. Fullerton.] Will you permit me, Mr. Fullerton, before you go on with this examination, to read a portion of the testimony? Mr. Evarts put this question [reading]:

Q. Now, how early did you begin the writing or drafting of the original? A. I should think somewhere about the 20th of December, perhaps.

Q. How are you able to fix that date, and with what assurance? A. I fix that date by the date of a visit which I made to Dr. Storrs, to which I carried Mrs. Tilton's letter of December 16th.

Q. Yes; well, you mean that the 20th of December was the date of the visit to Dr. Storrs? A. No, Sir; I think the date of that letter, namely, December 16th.

\* \* \* \* \*  
Q. And you then had an interview with Dr. Storrs, had you? A. I had two or three interviews.

Q. Well, you had one, then, on the 16th of December? A. Yes, Sir.

Q. And at that time you had not commenced the draft, had you? A. I don't remember whether I had commenced it, or not.

Q. You cannot say that you had any part of the draft with you when you went to Dr. Storrs? A. No, Sir; I don't recollect.

Q. Now, when next did you see Dr. Storrs? A. I don't remember the date.

Q. Be as clear as may be? A. I saw Dr. Storrs three or four times; I don't remember the dates of these interviews. One was in November, one was in the early part of December, and another was, perhaps, towards the middle or towards the close; I cannot recollect.

Q. My only point at present is to know what state this "True Story," in draft or completed copy, was when you showed it to Dr. Storrs? A. I read to Dr. Storrs the loose sheets of the substance of the whole paper; I don't remember on what day I did it.

Q. Did you read then from this physical paper that has been called the draft? A. Physical paper called the draft?

Q. Yes, Sir. A. Certainly; yes, Sir.

Q. You did? A. I read to him the paper which was afterwards copied in a more cleanly way—

Mr. Evarts—Well!

Mr. Fullerton—One moment.

The Witness—And which were stitched together and constitute what you call the pamphlet.

Mr. Fullerton—Now, if your Honor please—

Mr. Evarts—Wait one moment.

Mr. Fullerton—No, when it comes your turn.

Mr. Evarts—No, I will ask him (Mr. Beach) to read.

Mr. Fullerton—I will consent to that, because it will be part of my speech and not part of yours.

Mr. Beach—I will read anything the gentlemen wishes me to read [reading]:

Q. Called the completed copy? A. Yes, Sir.

Q. Then this draft was the paper which you had when you showed Dr. Storrs any part of it; that is, when you showed anything that was in the shape of a composition called the "True Story?" A. Well, Sir, I am not sure, but think I had two interviews with Dr. Storrs, one in reference to the documents themselves, before they were joined together in a draft.

Q. That might be, but that I am not inquiring about. A. What is it you are asking me about. Mr. Evarts?

Q. I want you to fix the date of the interview with Dr. Storrs in which you had physically present the draft, or any part of the draft of the "True Story?" A. Well, Sir, I cannot fix the date.

Q. You cannot? A. No, Sir.

Q. But it was subsequent to the 16th of December? A. To the best of my recollection.

Mr. Evarts—That is exactly what I want.

Mr. Beach—The previous question had been in regard to the time.

Mr. Fullerton—Now, your Honor can plainly and distinctly see the attitude which they occupy in reference to this question. It did transpire on the direct examination that a paper was prepared called the "True Story," but its contents were unknown. It was at one time supposed to have been destroyed—the whole of it—and I so announced it. Afterwards, your Honor will bear in mind, having discovered that a few loose leaves of the draft were in existence, I stated that fact to the Court.

Mr. Evarts—Not draft.

Mr. Fullerton—Yes, Sir. On the cross-examination the learned counsel upon the other side read to the witness what purported to be a copy or the original, I don't know which, of the "True Story," and the witness was interrogated from time to time as to whether the parts thus read were correct, and whether they constituted a part of that "True Story," and your Honor recollects his answer. Then the learned counsel called for those few leaves of the original which had been preserved, and which were in our possession, and being furnished to him he read them in evidence. He didn't stop there. He went on to question the witness as to whom he had exhibited that "True Story" when it was in existence as a whole, and among others he mentioned the name of Dr. Storrs. Now, your Honor will perceive that when I left the matter upon the direct examination, the contents of the paper not having been made known, it didn't operate either one way or the other as against the cause of the plaintiff. But when the counsel makes known the contents of the paper, and the witness is to be judged by what he has written, then, if he shows that that paper has been exhibited to A, B and C, it certainly is my province to show what he said at the time of the exhibition of that paper. This question arises upon what the counsel on the other side has elicited from the witness. Why, Sir, I never heard it disputed before but that a man could prove what he said at the time of doing an act. The words qualify the act.

Judge Neilson—That will be admitted. The learned counsel on the prior discussion spoke of it as a verbal act, that is, being part of the act itself.

Mr. Fullerton—When this paper was taken by the witness to Dr. Storrs and it was read to him. That they proved; that I didn't prove.

Mr. Evarts—That you proved.

Mr. Fullerton—No, Sir; I did not prove it. The contents of that paper were made known to Dr. Storrs by the witness, and that fact has been proved by the other side, and not by us at all. Now, when he read that paper we have a right to show what he said in regard to it. It is his words qualifying his act.

#### DR. STORRS'S ADVICE ADMITTED.

Judge Neilson—Well, I think I will allow the question, Mr. Evarts.

Mr. Evarts—On the basis of this last statement, that they

never proved the paper was shown to Dr. Storrs. The basis is suggesting this was the day, and that all I undertook by a cross-examination was to find out whether it was a completed paper or a draft, and what the date was, and that I limited my inquiry to that.

Judge Neilson—I think we will take the answer, Sir.

Mr. Evarts—Your Honor will be so good as to note my exception.

Mr. Fullerton—Now, go on and answer. What did you state to Dr. Storrs at the time of reading that paper to him?

Mr. Evarts—I understand your Honor confines the right of the inquiry and the answer of the witness to the spoken act that accompanied the delivery of the paper to Dr. Storrs.

Judge Neilson—In that very connection.

Mr. Evarts—In that very connection, and not to include what passed in conversation between him and Dr. Storrs?

Mr. Beach—Yes; it includes part of the conversation at the time.

Judge Neilson—As part of the act.

Mr. Beach—Yes, Sir.

Mr. Evarts—Well, if your Honor please, there is a vast difference between a witness saying "I have brought you this story to read, Dr. Storrs"—being an accompanying verbal act, and then a conversation between him and Dr. Storrs concerning the contents of the paper, and this, that and the other.

Judge Neilson—He don't inquire as to what Dr. Storrs said.

Mr. Evarts—No, so I understood.

Mr. Fullerton—Go on and state—

Judge Neilson—What you said to Dr. Storrs in the act of presenting the paper.

Mr. Fullerton—Go on and answer my question.

Judge Neilson—Read the question; sometimes the witness don't remember the question.

Mr. Fullerton—The question is a very simple one, has been put two or three times, and is well understood.

Mr. Evarts—And the Judge's instruction to the witness was very definite also, and I understood you to countermand it.

Mr. Fullerton—The Judge has not instructed the witness. All the Judge said, that was not a part of the present question, but will be a part of the next one.

Judge Neilson—Read the question to the witness.

THE TRIBUNE stenographer [reading]: "Now, go on and answer—what did you state to Dr. Storrs at the time of reading that paper to him? A. As soon as I had read the paper there was a sudden pause—a silence."

Mr. Evarts—Now, if your Honor please, I object to his going any further. It does not appear that anything was said, except reading the paper, and whatever afterward occurred must have been a discussion about it.

Judge Neilson—Go on.

Mr. Evarts—Note my exception if it is allowed.

The Witness—Dr. Storrs turned to me and said, "Mr. Tilton, before I speak"—

Mr. Evarts—I object to what Dr. Storrs said.

Judge Neilson—It is only taken with a view to elicit what else was said. Go on.

The Witness—Dr. Storrs turned to me and said, "Mr. Tilton,

before I can consult with you on this subject or give you any advice worth anything you must answer me one question." I said, "What is it?" He then said, "I want you to tell me whether this narrative which you have read is the plain and honest truth—what is called in a court the truth, the whole truth and nothing but the truth." I said "I will answer that question if you will promise not to ask me any further questions on the subject." "Well," said he, "I will not catechize you against your will or wish." I then said, "It is not the whole truth, it is only a part of the truth; it is an under statement, but it is all I am willing to give to the public." "Then," he said, "I advise you not to publish it."

Mr. Evarts—Well, now, I move to strike that out, Sir, as not being any verbal act of the witness accompanying the reading of the paper.

Judge Neilson—I think I will allow it and note your exception.

Mr. Evarts—Note my exception.

Q. Do you now recollect any other person to whom you showed the True Story than those you named in your cross-examination? A. Well, Sir, I don't recall at this moment the persons named in my cross-examination.

Q. Well, there was Mr. De Witt, and Mr. Clarke, Mr. Dunkley, Mr. Bell, Mr. Tracy, Mr. Woodruff, Mr. Harman? A. I don't think at this moment of any others. There were others though. I showed it to quite a large circle of persons—perhaps twenty or twenty-five—with a view of getting from them a judgment such as I supposed the public would render if it were published—

Mr. Evarts—I suppose that is not admissible, if your Honor please.

Mr. Beach—That has been already admitted, and under your objection. I don't see why the objection should be renewed.

Mr. Evarts—I should be permitted to repeat it. It is either admissible or not admissible.

Mr. Beach—Well, it was admitted under your objection.

The Witness—You remember, Mr. Fullerton, that I showed it to Mr. Beecher and he replied that it would kill him.

Mr. Evarts—Now, I ask to have that struck out.

Judge Neilson—Yes, because we have it before.

Mr. Evarts—And because it was not responsive to any question.

Mr. Fullerton—It was responsive to a question.

Judge Neilson—Well, you have it on the minutes before.

Mr. Evarts—Well, I ask to have it struck out now as illegal.

Judge Neilson—Yes; it need not be repeated; it is on the minutes already.

Mr. Evarts—I object to this here as an improper statement.

Mr. Fullerton—It is not an improper statement, because in reading the names of the persons to whom he read this paper, I omitted Mr. Beecher, and he reminded me of it, and it was proper for him to do so.

Mr. Beach—Then the answer was proper, or else it would appear that the witness had omitted in his enumeration of the witnesses Mr. Beecher.

Judge Neilson—Well, that is proper to mention Mr. Beecher.

Mr. Evarts—Well, does this stand or not?

Judge Neilson—It stands so far as in answer to the question—it stands so far as to show that he mentioned those names; that is all.

Mr. Evarts—The rest is struck out?

Judge Neilson—Yes, it is struck out, because it was mentioned before.

Mr. Evarts—It is struck out.

# OBJECT OF MR. TILTON'S INTERVIEW WITH MR. HALLIDAY.

Mr. Fullerton—It is struck out of this place, but it is in another one. [To the witness.] You were asked in reference to the conversation that you had with the Rev. Mr. Halliday, and you were asked whether you did not state to him that you called to see him, at the request of Mr. Moulton, to speak to him concerning the Woodhull scandal. Do you recollect that conversation with Mr. Halliday? A. I recollect the substance of it.

Q. What was the substance of it? A. The substance of it on my part was the denial of the Woodhull story and the vindication of Mrs. Tilton, but I dropped some words in reference to Mr. Beecher which troubled Mr. Halliday somewhat. I don't know what they were; cannot recollect them very distinctly.

Q. Do you recollect a letter in evidence in which Mr. Beecher says that your interview with Mr. Halliday was disturbing? A. Yes, Sir.

Q. How long prior, if prior, to the date of that letter was this conversation? A. My impression is that the conversation immediately preceded the letter; the letter grew out of the conversation. Mr. Halliday went to Mr. Beecher, and Mr. Beecher went to Mr. Moulton, and Mr. Moulton came scolding me.

Q. And what was your object in having that conversation with Mr. Halliday?

Mr. Evarts—That I object to.

Judge Neilson—We will take it, Sir.

The Witness—Am I at—

Judge Neilson—Yes, Sir.

Mr. Evarts—Your Honor will note my exception.

The Witness—The object was this, Sir: It was to blot out from his mind, as the second officer of Plymouth Church, the idea that there could be any possible truth in Mrs. Woodhull's story against my wife. I said to Mr. Halliday what I said in substance to other parties. I denied it.

Mr. Evarts—That I object to, if your Honor please, and ask to have it struck out—"I said to Mr. Halliday what I said in substance to other persons." The inquiry is concerning what he said to Mr. Halliday and does not admit of generalization or what he said to other persons.

Judge Neilson—I think the question did not call for it. Strike it out.

# MRS. TILTON'S CONFESSION AS STATED BY MR. TILTON OBJECTED TO.

Mr. Fullerton—Well, Sir, it is quite immaterial. [To the witness.] On your cross-examination this occurred, Mr. Tilton. [Reading]:

Q. Upon the occasion of your attendance and

hearing and answering questions before the Committee of the Church, please say if this occurred: Did you, upon being asked this question, "You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession she insisted to you that she had not violated her marriage vow?"—In answer to that did you say, "Yes; Elizabeth was in a sort of vaporous-like cloud; she was between light and dark; she could not see that it was wrong. She maintained to her mother in my presence that she had not done wrong. She cannot bear to do wrong; a sense of having done wrong is enough to crush her; she naturally seeks for her own peace a conscientious verdict; she never would have had these relations if she had supposed at the time that they were wrong; Elizabeth never does anything that at the time seems wrong; for such a large moral nature there is a lack of a certain balance and equipoise; she has not a will that guides and restrains, but Elizabeth never does at any time that which does not have the stamp of her conscience at the time upon it"—did you say that in answer to the question that has been read to you? A. I said something like that; I don't know how accurately it is reported.

Now, I want to ask you this question: What confession was it that you referred to giving that answer?

Mr. Evarts—Confession?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Well, wait a moment.

Mr. Fullerton—You can have the paper.

Mr. Evarts—Now, you ask what that confession was?

Mr. Fullerton—Yes, which was the subject of conversation there.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Now, if your Honor please, the question arises in this way: I asked the witness whether he, in answer to a certain question, made a certain answer—it being my right to inquire concerning what he had said at other times, and the whole point of the inquiry being whether he had or had not said so and so. That question, as in the examination before the Church Committee, is this: "You say, Mr. Tilton"—calling his attention to something he had said—"You say, Mr. Tilton, for a year after what you state as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow;" and then he goes on and makes the long answer. Now, under cover of that inquiry, which elicits from him the fact that in answer to that question he had made this answer, my learned friend asks him what that confession was, being a direct offer to prove a confidential communication between his wife and himself.

Judge Neilson—[To Mr. Fullerton.] Let me hear you on that.

Mr. Evarts—Merely because I have asked a question whether on being asked a certain question he made a certain answer. He could have said yes or no, and that would have been the end of it.

#### ARGUMENT OF MR. FULLERTON.

Mr. Fullerton—Well, it would seem extraordinary, Sir, if they can talk about confessions, and ask questions in regard to confessions, and after getting answers that suit them, that I cannot go on and pursue the same line of inquiries.

Judge Neilson—No; the Church Committee asked him questions and his answer is recorded here, and then the learned counsel interrogates him to see whether that question was put and that answer made, and he does so remember, and beyond that the confession is referred to.

Mr. Fullerton—Why, Sir, it is precisely the same as if he put

the question to the witness whether he had not stated such a thing the day before, or the same day that he was examined and received that answer.

Judge Neilson—Yes, the form is not material, of course.

Mr. Fullerton—Certainly. Now, he has asked him a question about a certain confession. I want to know what confession he alludes to—what was embodied in it. It is certainly very plain that I have a right to pursue this upon the re-direct examination to know what he meant by what he stated on the cross. They are very sensitive now about confidential communications. They were not so a short time ago when they pursued inquiries in regard to them.

Mr. Evarts—I never asked anything about a confidential communication.

[Last question read by THE TRIBUNE stenographer.]

Mr. Fullerton—I don't ask what the confession was, I ask what confession he referred to. I am pursuing the re-direct examination with reference to a subject opened upon the cross. It is not now for them to say that it is a confidential communication and that it cannot be exposed.

Judge Neilson—Isn't it the same precisely as if you in your interrogatory referred to a conversation of the day before, and asked him: "Didn't A. B. meet you and put you a question, and didn't you to him make this answer, and in that answer didn't you refer to a confession?" Then, may he not ask what the confession was, and if—

Mr. Evarts—If the inquiry is confined. Here is a question asked him, he then is asked a question concerning something that he had said—"You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession she insisted to you that she had not violated her marriage vow?" Now, that is the only question that is put to him, whether—the point of the inquiry is, "for a year after what you have stated as a confession, did she or not—have you or not—did you not say that, for a year after what you state as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow;" and the answer is read to him, and he says substantially: "I gave that answer to that question." Now, of course it makes no difference whether it was yesterday or a month before, or anything of that kind; but the present inquiry, as I understand it, undertakes to show by this witness, as a matter of fact, a confession.

Mr. Beach—Oh! no, Sir.

Mr. Evarts—Well, if it is limited to inquire as to the date of the supposed confession to which he referred, that is another matter.

Judge Neilson—It refers to the character of the confession evidently. This question refers to the character and nature of the confession. I think we may take it.

Mr. Evarts—That is what I say he has no right to inquire about. I am only fixing the date of this witness insisting upon his wife's not having violated her marriage vows—a period of a year after an alleged statement by him.

Mr. Fullerton—It was more than the date the counsel was after.

Mr. Evarts—It was the year's occurrence of this witness, insisting that his wife had not violated her marriage vows, not

withstanding his statement that she had made some confession.

Mr. Fullerton—After reading the question that was put to the witness before the Committee, and his long answer, he then put this interrogatory: "Did you say that in answer to the question that has been read to you?" and he answered that he did. Now, the counsel on the other side expects hereafter to hold Mr. Tilton responsible for what he said there in answer to that question, and he means to argue that the wife of the plaintiff had not been guilty of adultery; that she had committed no crime; that she had not violated her marriage vow. Well, Sir, in order to get at the full meaning of this question and properly to interpret the language then employed, we must know what had taken place theretofore with regard to the confession; we must learn the nature and the extent and the scope of the confession, or else how are we to understand the meaning of these words? The gentlemen certainly cannot eliminate from a long examination a single question and a single answer and hold us to sentiments therein expressed, without giving us an opportunity of laying before this jury the context to show what preceded it. Why, your Honor will perceive that this question breaks right into *medias res*; that something has gone before it, which we do not understand and which we cannot understand unless I am permitted to interrogate this witness. The word confession here is introduced, and it is introduced in this way—"Did you upon being asked this question"—"You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession, she insisted to you, etc., etc., etc." Now, Mr. Tilton is made there to have stated something in regard to the confession. I want to get what he did state in regard to that confession before that inquiry was put to him, in order that we may properly interpret this language here employed. The counsel upon the other side, if he sees fit to walk upon dangerous ground, must take the consequences of it. He did put these inquiries; he got that answer, and he means to make use of it hereafter, and there is no way for us to turn his weapon aside, except it is to put in evidence, here, all that occurred upon that subject, in order that the jury may have a clear and comprehensive understanding of the whole matter that took place there.

GENERAL DISCUSSION.

Judge Neilson—I think I must disallow the question, Mr. Fullerton. I overrule it. It may seem hard to you, but I think I will have to do it.

Mr. Fullerton—I think it is harder upon the law than it is upon me. Still, I submit.

Judge Neilson—Well, I admit it is a nice question that is worthy of consideration, but I think I should overrule it.

Mr. Beach—They accede to the question, Sir, so far as it calls for the date or the time of the confession.

Judge Neilson—Well, that is not the scope of his inquiry; it goes beyond that.

Mr. Beach—Well, it may go beyond that. You may restrict the answer, but you certainly will allow us the answer, so far as it is conceded by the defense.

Judge Neilson—Within such limits as he consents to, of course I will.

Mr. Fullerton—What does your Honor understand my question is?

Judge Neilson—I understand your question calls for the character of that confession. Your argument maintains that at any rate.

[Last question read by TARBURN Stenographer.]

Mr. Fullerton—Does your Honor rule that out?

Judge Neilson—Yes; on the assumption that it would call for the terms, contents or substance of the confession; that is its character.

Mr. Beach—We except, Sir.

Mr. Fullerton—Well, Mr. Tilton, what else took place—

Mr. Beach—[To Mr. Fullerton.] Don't abandon it.

Mr. Fullerton—No; I won't abandon it. I am going at it again. [To the witness.] What else took place at the time that question and answer was put and made before that Committee?

Mr. Evarts—That I object to.

Judge Neilson—That is proper.

Mr. Evarts—What else took place?

Judge Neilson—Certainly. You refer to a certain occasion, before a Committee or not—call his attention to a question and answer. He has a right to state anything else that occurred on that occasion.

Mr. Evarts—On the whole occasion?

Judge Neilson—In that connection.

Mr. Evarts—Ah! If there was any qualifying question and answer to my point or inquiry, which was solely to this point—"Did you or not state that for a year after an alleged confession to you, you said that your wife did not think she had violated her marriage vow?" If there was any following question or attending question that bears on that, that is proper.

Judge Neilson—The question stands as if you had taken a part of a conversation, leaving them at liberty to call for the residue of it that is germane to the matter.

Mr. Evarts—On that point.

Judge Neilson—Yes; connected with that point.

Mr. Evarts—Yes; but my learned friend doesn't confine himself to that. Your Honor understands the point of these inquiries that are made to a witness situated as this gentleman is. It is that he has made statements with deliberation, or casually, as may be, in conversations or in more deliberate examinations, that are inconsistent with the view that he presents now presently on the stand. What he says here in court is the basis of what his actual testimony is, and the basis of the inquiries in regard to contradictory views. Now, the point is, that he has made contradictory views, and the question is wholly whether he has or has not made them. Not whether he has made, in other circumstances, on other occasions, in reference to other matters, confirmatory declarations; that he is not allowed to give, but the point also of the contradiction is not permitted to be varied, by proving which is the true and which the false. The question is not which is the true or which the false, so far as it is raised by these inquiries concerning contradictory statements. The fact of the contradictory statements is an imputation upon the integrity of the story one way or the other.

## MR. TILTON'S STATEMENT OF THE CONFESSION RECEIVED.

Judge Neilson—Well, now, you having taken part of what he said on a certain occasion in the form of answer to a question, may he not interrogate as to what else took place on that occasion in reference to that subject matter?

Mr. Evarts—To that question and answer, that I agree—whatever qualifies and makes appear correctly; whatever this witness said concerning his wife's persisting that she had not violated her marriage vows, that comes in within the colloquium in which this question and answer occurred. But my learned friend has asked him what else occurred on that occasion, to wit, the occasion of his appearance before this Church Committee.

Judge Neilson—I think I will allow the question, Sir. Go on.

Mr. Fullerton—Go on, Mr. Tilton.

Mr. Evarts—If your Honor please, the case of *Rouse v. Whitehead*, as I am told, in the Court of Appeals, is decisive upon this point, unless your Honor intends to confine it to a qualification of this question and answer.

Judge Neilson—It is so confined, no doubt; but yet this question might call for a more extended answer, as, for example, being asked what else took place upon that occasion, or what took place, he might answer some general matter tending to characterize the occasion or the situation.

Mr. Evarts—Well, if your Honor please, I am not asking him what took place before that Committee; I am asking him whether he has not stated to somebody somewhere—it makes no difference where it is—so and so. Now, it is undoubtedly fair and just that whatever be said in that colloquium on that subject, qualifying his statement there given, and a part of the statement concerning which I am inquiring, may be brought in.

Judge Neilson—This very question might reach an instance where a man, on being interrogated, makes such an answer as you drew out, and where he was then forcibly or otherwise interrupted and prevented from saying anything more; and the subsequent revelations are sufficient to show me that I cannot rule out this testimony. The general proposition is correctly put by you, but it does not relate to this.

Mr. Evarts—But, if your Honor please, is not the rule the other way—that this question might include everything that occurred during the examination, and that the question must be pointed, therefore, to what occurred in reference to this particular point of inquiry, or otherwise it is inadmissible.

Judge Neilson—Of course it must relate to this subject matter.

Mr. Evarts—Well, I object to the question as not limited in its terms to the inquiry concerning this question and answer. The case of *Rouse v. Whitehead*, 25th of New-York, 170, reversing 25th Barbour, 279, is to the point that the question is confined to those parts which qualify or explain the statement already proved; and this question I understand to be a general one, and therefore exceptionable.

Mr. Fullerton—No; my question is in harmony with that decision. All that I wish to know is what else was said at that time, in that examination, with regard to the subject matter embodied in the question and inquiry.

Judge Neilson—It is a natural, elementary principle of law, not needing any decision from the Court of Appeals; a business man might recognize it. Now, confine yourself within that.

Mr. Evarts—The trouble is the question is not confined. Your Honor gives directions.

Mr. Fullerton—I will put a question. [To the witness.] Mr. Tilton, having heard the question and answer embodied in the question put by Mr. Evarts upon the cross-examination, I ask you what further was said by you before that Committee with reference to the subject matter of that question and answer? A. Well, in the first place, Mr. Fullerton, it seems to be forgotten that when Mr. Evarts the other day put to me the question whether or not I had said that to the Committee—whether, or not, I had said to the Committee that Mrs. Tilton had insisted that she had not violated her marriage vow—it seems to me, with all respect, both you gentlemen have forgotten that I said the substance of my remark to the Committee was that, during that time she thought she had not violated her marriage vow; it did not appear to her that she was violating her oath—that it seemed to her as if her mind were in a maze. I made that qualification.

Mr. Fullerton—No, I had not forgotten it, at all.

Mr. Evarts—That appears in the answer.

The Witness—Yes, then as to what further transpired in the committee, the main point which does not appear in the examination as reported, was the statement of my charge against Mr. Beecher, before that committee, of criminal relationship with Mrs. Tilton; the confession of the same, made by Mrs. Tilton in July, 1870, and made by Mr. Beecher, half a year afterward to myself, to Mr. Moulton, to others. I do not know that I apprehend your inquiry.

Q. It is to be inferred from the question which, it is alleged, was put to you before the Committee, to wit: "You say, Mr. Tilton, for a year after what you stated as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow?" Had you stated anything before that Committee, with regard to Mrs. Tilton's confession, which led to that question, and if so, what had you stated?

Mr. Evarts—I do not object to an inquiry whether he had made a statement concerning her confession which was alluded to, but then the statement of what she had stated I object to.

Mr. Fullerton—That is to say, he does not object to the question that is put, but would object to it if it was put in another way. I do not see the propriety of the observation.

Mr. Evarts—Well, if it is limited; that is the point. I won't object to what is legal, but if you make it larger than the law allows, then I do object.

Mr. Fullerton—Well, the counsel must judge of its size by what it appears to be. I have put the question, and he knows exactly what it is. If it is objectionable, let us have the objection; and if not, let us have the answer.

Judge Neilson—Well, it amounts to a suggestion that the witness will keep within the limited interpretation of your question.

Mr. Fullerton—Well, then it is not an objection to the question, but an objection to the answer that has not been given.

Judge Neilson—It is a suggestion.

Mr. Evarts—I think, if the question is read, your Honor will see that it is objectionable.

Judge Neilson—Like most questions it might be abused, no doubt.

Mr. Evarts—We will have it read, if your Honor please.

Mr. Fullerton—That is no reflection on the question.

Judge Neilson—But it justifies the counsel in making a suggestion on the subject. [Question read.]

Mr. Evarts—"And if so, what had you stated?"—that is the objectionable part.

The Witness—May I not answer that?

Mr. Fullerton—I ask him if he stated anything, and if so, what he stated?

Judge Neilson—Anything that led to that.

Mr. Fullerton—Yes, Sir.

Judge Neilson—Go on.

Mr. Evarts—Your Honor will note my exception to the question.

The Witness—I had stated to the Committee in writing, with my oath appended, the substance of the confession made by Mrs. Tilton to me in July, 1870, and made by Mr. Beecher to me in December and January following, made to Mr. Moulton and to other persons.

#### DISCUSSION OVER MR. TILTON'S ANSWERS TO THE COMMITTEE.

Q. What was that confession? A. It was a confession—

Mr. Evarts—What is this? I object.

Judge Neilson—What did you state there before the Committee?

Mr. Evarts—No; I object to that, if your Honor please.

Judge Neilson—He may state that; that is a part of the subject matter. What did you state there in that connection?

Mr. Evarts—Concerning her confession?

Judge Neilson—Yes.

Mr. Evarts—There your Honor has directly the point. All my inquiry was, "Did you answer this question?" [giving it]—and the question has nothing to do with any inquiry about the truth or falsehood of the confession or its terms, but only whether for a year after that occurrence, whatever it was, she insisted she had not violated her marriage vow.

Judge Neilson—What did he state to the Committee on that subject, which led to that inquiry?

Mr. Evarts—Not exactly that, if your Honor please; I don't think your Honor allows that. But, whether he stated something, and if so what, which led to that inquiry. His answer to that was, "I had stated a confession." That is in the question we start with, from the Committee's transactions. It is in reference to the fact that he had said something about a confession; that is the witness's course—the witness's statement in regard to his wife's declaration, after the confession is brought in. Now, if your Honor please, the witness, under cover of a narrative conveyed to Mr. Beecher, has been allowed to state what he delivered to Mr. Beecher as being a confession, but has not been allowed to state what did

occur between Mrs. Tilton and himself. Now, if your Honor please, what right has this witness to answer interrogatories in his own behalf that are simply reproductions of what he has stated elsewhere?

Judge Neilson—Simply because on the occasion respecting which you make the inquiry, and on the same subject, he may have made a further or other statement which led to that inquiry. That is all.

Mr. Evarts—But, my inquiry was, to show before the Committee whether in reference to what he has already said he has not also said so and so. And he answered that he had.

Judge Neilson—And then they ask what else he said.

Mr. Evarts—No, not exactly that, if your Honor please.

Judge Neilson—It seems so to me.

Mr. Evarts—Not in connection with that point, which was his statement concerning his wife's declaration that she had not violated her marriage vow. Anything in qualification of that is one thing. All that we start with is whether, after supposed confession, "which you have referred to, you have not said that for a year she denied that she had violated her marriage vow." Now, if your Honor please, when the witness answered as he did, "I did say so," does that allow the counsel to ask what he had formerly said?

Judge Neilson—No; on that occasion.

Mr. Evarts—Well, on the one occasion—what he had said concerning her violating her marriage vow.

Judge Neilson—When you inquire as to a part, they may inquire as to the rest of the statement on that subject—the subject being material.

Mr. Evarts—On the same occasion, and as a part of the same conversation.

Judge Neilson—Yes.

Mr. Evarts—Now, this affair lasted several days; it must appear that they are limited in the inquiry as to what was said on that occasion when this answer was made. I understand that your Honor does not intend to hold a different rule of law from what we are insisting upon. I can see that a qualification then and there made to this Committee, explaining to them what he meant by saying that his wife insisted for a year that she had not violated her marriage vow, would be within the purview of the law.

Judge Neilson—Suppose he makes a statement on Monday evening, and, growing out of that, an interrogatory is put on Tuesday noon, all on the same subject, except as affecting the convenience of the Committee in adjourning.

Mr. Evarts—But, if your Honor will be good enough to notice, anything that qualifies this witness's statement, that his wife had insisted for a year that she had not violated her marriage vow would be apposite to my inquiry, and a qualification of his answer. But this inquiry does not touch that at all. The very inquiry concerning which I now ask your attention, assumes that he had alleged a confession to the contrary; and the only point of inquiry is "Did you or not say that for a year after the alleged confession she insisted that she had not violated her marriage vow;" and he answers, he did. Now, anything that qualifies that is admissible, but any reproduction of the

confession, as then stated or not then stated, has no appositeness to my inquiry; and I ask your Honor's attention to the case of *Downs vs. N. Y. C. R. R.* (47 N. Y., p. 83), which holds that the declaration must be simultaneous and connected. You must never overlook that point, if your Honor please, that the inquiry is introduced to show an inconsistent statement of the witness.

#### SOME OF MR. TILTON'S WORDS TO THE COMMITTEE RECEIVED.

Judge Neilson—You had better call his attention to the question, as some time has elapsed since the question was put.

Mr. Fullerton—On the cross-examination Mr. Evarts called your attention to this question which it is alleged was put to you before the Committee: "You say, Mr. Tilton, that for a year after what you stated as Mrs. Tilton's confession, she insisted to you that she had not violated her marriage vow." I ask you what took place before the Committee, at the time, with reference to any alleged confession, which led to that question?

Mr. Evarts—I object.

Mr. Fullerton—That we understand by this time.

Judge Neilson—He may answer that.

Mr. Evarts—I except to its admission.

The Witness—If I understand the question, it is, What accusation or charge had been made to the Committee which led to their asking me that question.

Mr. Fullerton—Yes.

The Witness—Is that your question?

Mr. Fullerton—Yes. What took place before the Committee which led to the asking of that question on that occasion?

The Witness—I had laid before the Committee a sworn statement, in which I had charged Rev. Henry Ward Beecher with relations of sexual intimacy with Mrs. Elizabeth R. Tilton, from the Fall of 1868 to the Spring of 1870.

#### MR. TILTON'S SWORN STATEMENT OFFERED IN EVIDENCE.

Q. Can you turn to it there? [Showing a paper.]

A. It was in the form of a sworn statement, and I have it in my hand here. These are the exact words in which the narrative was given.

Q. And this paper which you now furnish is what had been laid before the Committee prior to the examination of you? A. Yes, Sir.

Mr. Fullerton—Now, I propose to read this.

Mr. Evarts—That we object to. Now, if your Honor please, you see the point to which this comes. They propose to prove the entire inquiry before the Committee, based on a single question which I put to the witness.

Judge Neilson—I think, Mr. Fullerton, you have gone far enough. I don't think this is proper.

Mr. Beach—It will make it clearer if this is read.

Judge Neilson—It may; but I don't think it is proper.

Mr. Fullerton—Your Honor sees that some member of the

Committee, in their presence, referred to the confession which had been stated to have been made by Mrs. Tilton and embodied a question based upon that fact. Now, is it not proper for us to know what was before the Committee at that time with reference to that confession?

Judge Neilson—He has stated that.

Mr. Beach—But so long as it was a sworn statement, ought it not to be given before the jury, in order that they may see what it was, and how made, and in what terms. It seems to me entirely proper; because the examination of the witness before the Committee had reference to that allegation; it was an indictment, it contained a charge against Mr. Beecher. He was questioned and interrogated with reference to that charge. Now, I think the jury ought to see exactly the length, and breadth, and height, and depth of the charge as it was there put in writing, sworn to before the Committee.

Judge Neilson—Well, the question now is as to the reading of a portion of that statement.

Mr. Evarts—Now he proposes to put in evidence the whole statement. Now, it is just as if the witness on the stand at a trial has given evidence in a case on a particular point, and is examined as to whether he did or did not in answer to a question, make a certain answer, and he admits that he did, and then that being in a case in which there was a sworn bill in equity put in by him, you get up and ask to put in his bill in equity. That is precisely the situation. Everybody knows that Mr. Tilton had made an accusation against his wife, and that this Committee was considering it, and because I have asked him as to a question and answer that he made, now they say, "We can read his sworn accusation against his wife and against Mr. Beecher."

Judge Neilson—That is the question, whether when you interrogate a witness as to a question and answer contained in an examination which has been reduced to writing, the other side can in virtue of that put in that examination. That is the point.

Mr. Evarts—This is a sworn accusation. This is not a part of an examination. What have we to do with that?

M. Beach—It is a part referred to by the question.

Mr. Evarts—I don't see that it is.

Mr. Beach—Well, we propose to show it.

Mr. Fullerton—They need not have anything to do with it if they had kept their hands off of it.

Mr. Evarts—We have not had anything to do with it, nothing whatever.

Mr. Fullerton—Yes you did.

Mr. Evarts—We have pursued the right of our inquiry, to wit, a contradictory statement on a particular point, under the rules of law; and the decisions are well defined. This is no new inquiry, and it is not a subject of new consideration. Our Court of Appeals has passed upon it in strict limitation within the last few years. Now, this is precisely the point, that when a contradictory statement, at variance with the views that the witness now presents, is answered by him admitting it, then they seek to show that he has made other statements that were confirmatory of his



present views, and not contradictory; and you cannot make anything more out of it than that.

Judge Neilson—We have allowed that as far as the occasion—the very occasion, as a part of the evidence.

Mr. Evarts—Now, the law has said, as I understand—and I have asked your Honor's attention to the authorities—that the occasion is the qualifying limitation, if anything occurred in the very conversation concerning the question and answer; and they seek to bring here this witness's bill of accusation or indictment against his wife.

Judge Neilson—Oh, no, not against his wife.

Mr. Evarts—That is the whole point of it.

Judge Neilson—That is not material, but it is not against his wife.

Mr. Evarts—It is in this connection.

Judge Neilson—That is mere talk.

Mr. Evarts—Your Honor, I am right, I think, in that proposition.

Judge Neilson—No. It is not a moral argument here, and it was not a moral argument there, as I understand it, to show that there was an accusation against his wife. I do not regard it so at all, but that is not material.

Mr. Evarts—We will look at the point. The point is that when I have undertaken to prove that he had made statements exculpatory of his wife, they seek to meet them by proving sworn statements to the contrary in respect of his wife.

Judge Neilson—The wife was not on trial there, and she is not on trial here.

Mr. Evarts—Well, that is as it may be, in some views and connections. I say that the only pertinency on which they introduce it here is to break the force of his statements that his wife had insisted she had not violated her marriage vow, by proving a sworn statement or accusation on his part that she had.

Judge Neilson—I understand you, I think. [To defendant's counsel.] Gentlemen, let me hear you further on the subject.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—If your Honor please, I think the point under discussion has two aspects, which arise from the character of the question and answer which was called out on the part of the defense. Your Honor has said that the examination of Mr. Tilton before that Committee, upon the subject matter which was pending before that Committee, however long it may have continued, is to be regarded as a unit.

Judge Neilson—Well, is that correct?

Mr. Beach—Undoubtedly correct, Sir. If the witness is under examination before your Honor here, as has been the case for eight days, and, upon an occasion hereafter, his testimony in an action in which he is interested is in part given in evidence against him, the rule of law applies that whatever he may have said upon the same subject during the whole of the examination is admissible. It must be so, Sir.

Judge Neilson—That was my impression.

Mr. Beach—That is law, and it is justice.

Judge Neilson—That was my impression, but it was suggested that the Court of Appeals thought otherwise.

Mr. Beach—The Court of Appeals, Sir, have simply decided

this, and nothing more, that where a part of the declaration of a party, whether it is an unsanctioned or a sworn declaration, is given in evidence against him, all the part of that declaration which is kindred to the subject, to the part which is given against him, is admissible, and it is not a new rule of law, Sir; it is a mere affirmation of the ancient doctrine of the law of evidence. Now, they give in evidence a portion of the testimony of Mr. Tilton before this Investigating Committee. What is our position, Sir? Not that we may give the whole complaint, the whole indictment, or the whole evidence which may relate to matters not essentially and intimately connected with the particular part given by the defense, not necessary to qualify or explain every subject matter which they have given in evidence, but simply that part of the proceeding before the Committee on the part of Mr. Tilton which reflects light upon the portion which they have proven. Our object is, Sir, to get the whole truth, to get all that Mr. Tilton said upon the particular point as to which they have extracted a single question and answer of that examination. And who will dispute the propriety of that, Sir? Who will attribute to the law any principle which shall prevent Mr. Tilton from giving all that he said before that Committee upon the subject on which they have introduced but a part of his declarations? That examination, Sir, was conducted by query and answer. The examining counsel had a perfect right to change the subject at any time and at any point in the examination. Very often the same subject matter is inquired of again and again, as your Honor has occasion to know by experience upon this trial. Now, is it to be said that a single question and answer upon any given subject shall be selected by an adversary and the witness concluded, when, in the same examination and under the sanction of the same oath, before the same Court, he has qualified that answer, or explained it; and is that the principle upon which the law of evidence is founded, to exclude truth instead of reaching the whole of it? If you receive a portion of Mr. Tilton's evidence before that Examining Committee, you may convict him of inconsistency. If you receive the whole, the explanation which he gives of this question and answer, the kindred portions of his examination, intimating what he intended to express by the answer which has been given in evidence, you place him in an entirely false position, and do gross injustice to the administration of the law, I say, with great respect, Sir. Now, allow me to refer to this question: "Did you, upon being asked this question: 'You say, Mr. Tilton, for a year after what you stated was Mrs. Tilton's confession?'" This refers, Sir, to the statement previously made by Mr. Tilton. It was upon that statement that this query was addressed to him by the Committee. Does not the question refer to and adopt that statement Sir? "You say a certain thing, and upon that statement which you have made, I ask you this question." I submit, Sir, that the statement which had been previously made, inducing the particular question which was here put and given in evidence, is by adoption and reference part of the question itself, becomes a part of the interrogatory, and for the purpose

of understanding what that statement was, what is the foundation of this interrogatory, we ask the witness what was the statement which is referred to in this question. Does your Honor see any impropriety in it, any possibility of wrong? If, in connection with that statement, Mr. Tilton had made qualifying expressions or statements, do they not become a part of this question, and necessary to a perfect understanding of the question? But, Sir, they get this answer—and this question and answer, and the significance of this discussion, has a far broader import than has been given to it—they get an answer from Mr. Tilton, that for a year after a given period his wife had persistently said to him that she had not violated her marriage vow. “Did you say that, Mr. Tilton?” A. Yes, Sir, I said that. We ask Mr. Tilton, “What else did you say upon that subject of the adultery of your wife? What else did you say explanatory of this answer? What else did she say to you upon that subject which you have testified to in this examination.” Is not the subject kindred, Sir? If Mr. Tilton, in answer to a question immediately preceding this interrogatory, had said: “My wife conceded to me that she had had sexual intercourse with Mr. Beecher, but in consequence of certain relations which she bore to him, pious or religious or what not, in consequence of the deep reverence which I entertain for him, in consequence of my conviction that my intercourse with him was a rest to him, healthful to him, inspired and animated him in the pursuit of his holy profession; under the seductions and impressions that a yielding to him would be an aid to the cause of Christianity and religion, I submitted myself without an impression of wrong or sin to his solicitations,” would not that be evidence, Sir, evidence explanatory of this answer that “my wife during that year insisted that she had committed no sin?” Cannot the answers of the witness given in the same examination, explanatory of the sense not only in which he gave that answer, but explanatory of the meaning under which Mrs. Tilton insisted that she had been guilty or no wrong, be permissible in a Court of Justice? Now, the rule is, Sir, as everybody concedes, that where a portion of a declaration is given in evidence all the remaining part, tending to qualify or explain that portion which is given in evidence, is admissible. The question here is the assertion of Mr. Tilton that his wife insisted she had been guilty of no corruption: Mr. Tilton, in another portion of his examination, explains the circumstances, the theory, the impressions, the doctrines upon which that assertion was made by him, and the principle or the theory upon which Mrs. Tilton made this assertion in regard to her own moral purity. Now, under the rule strictly, Sir, announced in the Court of Appeals, I submit to your Honor that the whole of Mr. Tilton's testimony upon that subject is admissible; and you will see, Sir, that it is necessary for the ascertainment of the truth. The charge to be made against Mr. Tilton is, in the argument to this jury: “You have said that your wife for a year insisted upon her purity. Under what circumstances did you make this assertion? Why did you concede your wife to be a pure woman? What was the influence under which she was acting

which led you to that conclusion; and why do you exonerate her from the horror and shame which womanhood naturally and instinctively would consider the deepest crime against her nature?” May not Mr. Tilton explain it, Sir? Is he to be carried falsely to this jury with the assertion that he considered his wife pure who had sold her body to the adulterer, and no explanation, no qualification given of the act? Why, my friend says: “That is the purpose of our evidence; it is our design to argue that question to this Court and jury; that notwithstanding Mr. Tilton accused his wife of this adultery he nevertheless held her as pure and unstained.” And can he not say why? “What were the communications between you and your wife upon that subject, from which you derived that impression? Upon what principle of morals or of virtue is it that you made the declaration that your wife was sinless and pure?” It seems to me your Honor, that upon a technical view of this question, and upon a consideration of the principle which is involved in the objection made by my learned friend, the attitude in which they present Mr. Tilton, by this question and answer, we are entitled to this evidence. Now, Sir, in this statement, which was the statement referred to by this question, Mr. Tilton does state in writing some of the circumstances and impressions that led him to this answer. I will not read them, Sir, but I offer them, and they are contained in Articles III. and IV. of this statement, relating to the very subject of this question, and to a degree explaining the motives which led Mr. Tilton to give the answer, the answer adopting this statement to that extent as the foundation upon which it is addressed to the witness. It is essentially a part of the question by the very phraseology of the inquiry, and it is a part of the answer, the substance of the answer to the question, upon the same subject, expressing the same idea, not as my friend says, contradictory of the answer, by any means, or a statement of a foreign fact, which will conflict with the answer, but a deliberate, prepared, written statement, explaining to a certain degree the views which are contained in that answer. I submit to your Honor it is admissible.

Mr. EVARTS—I propose now to close the argument, if my learned friends have said all they wished to say.

Mr. BEACH—Well, I hope that will be a practice that will continue during the trial, that the objector shall close the argument. It has not heretofore.

#### ARGUMENT OF MR. EVARTS.

Mr. EVARTS—My learned friend who has last addressed your Honor, has wandered very far from the inquiry. It is not an inquiry at all what Mr. Tilton thought of his wife's innocence or of his wife's purity; what theory he had of an adultery that left an adulteress pure; not a word of that kind. The question had nothing even to do with any theory or scheme or reasoning of Mrs. Tilton, if she had any, by which an adulteress was nevertheless pure, from the holy character of an adulterer. The question is this, and a plain and simple one, and has to do with the direct test, not of these vaporous

and cloudy schemes of innocence and guilt, but whether as matter of fact, after an imputed confession on the part of this husband alleged, the wife had not insisted on—purity? No. On exculpation because of the circumstances of guilt? No. But on the simple straightforward question. "You say, Mrs. Tilton, for a year after what you stated as Mr. Tilton's confession, she insisted to you that she had not violated her marriage vow." Now that is a question of fact, whether a woman has violated her marriage vow. An intelligent woman knows whether she has violated her marriage vow. It is not metaphysical, it is not mystical, it is not in Heaven's high Court of Chancery whether the temptations or the overshadowing influence shall excuse or pardon. It is the fact of the adultery of the body, as known and understood of all men and all women. And he answers that he did say so, that she did say so; that he did say that she did say she had not violated her marriage vow; and that is a contradiction of an assertion that she had violated it.

Judge Nellson—Where is that assertion—in the statement that they propose to read?

Mr. Everts—That she had violated her marriage vow, that she had committed adultery. That is the very point of the inquiry, and now they seek, not as they profess, in obedience to the requirements of the rules of evidence, some statement then and there made, in the sense that the law considers it then and there made, in qualification of this husband's assertion that his wife had insisted that she had not violated her marriage vow—they do not seek to say, to explain by that that he did not mean that she had not violated the marriage vow, for that has nothing to do with the question; but the question is, whether he made a qualifying statement reducing, impairing, affecting his recognition of his wife's statement for a year, that she had not violated her marriage vow. And what do they propose in reduction of that? Why, his accusations; that is all. Does that qualify his statement that his wife insisted she had not violated her marriage vow?

Mr. Beach—Permit me to interrupt you, Mr. Everts, by saying that this answer goes far beyond that simple question whether or not the wife had violated her marriage vow, as your Honor will see by reading or hearing read the question; "In answer, did you say 'yes, Elizabeth was in a sort of vaporous, like cloud; she was between light and dark; she could not see that it was wrong; she maintained to her mother in my presence that she had done no wrong;'"—and going on with a much longer answer to the question, and all presenting the real question by this answer in the mind of Mrs. Tilton as to whether the accepted act of the violation of her person was a moral wrong, or adultery, in the sense in which the gentleman says all the world understands it.

Mr. Everts—Now, that does not touch the point. He finds the qualifying circumstances in the answer itself.

Mr. Beach—Some of them.

Mr. Everts—Let him find other qualifying circumstances.

Mr. Beach—That is just what I propose to do.

Mr. Everts—Oh! but you do not. You do not propose to show that this witness, in answering that question, and in con-

nection with that question, of whether his wife had not insisted that she had not violated her marriage vow, had made qualifications of that in so insisting. Now that the husband charged his wife, that he charged her before the Committee, that he charged her in the publication—that is not a matter of dispute. We start on the basis that there is an accusation and an inquiry; and then one point of evidence comes out on that inquiry, and now the distinct proposition to your Honor is, that this witness's—present witness's bill of indictment, his *liber* of accusation, in the phrase of the civil law, is to be put in evidence as bearing upon the questions of whether or no he did not make that answer to that particular point of inquiry. Now, that is all. Now, the paper by itself can be no evidence at all. It is his own act of accusation. How can it be a form of secondary evidence concerning any principal fact that is alleged within it, especially when that principal fact, if it relate to any communication between husband and wife, of the nature your Honor rules, and under the requirements of the law, be made the subject of inquiry? Your Honor sees the hardship upon this wife and upon this defendant, if when the law professes to seal from inspection, in the pursuit of justice, confidential communications between husband and wife, there is this avenue open of secondary and irresponsible, not traversable and not searchable presentations of what so happened, by these second hand narratives. Now, in regard to what has been narrated to Mr. Beecher by this witness under the ruling of your Honor, that of course came in view, not as having occurred between him and his wife, but as being a narrative that he had conveyed to Mr. Beecher. Now, when testimony cannot be taken from this witness on the question of what did actually occur, they seek to put in evidence a form of accusation that he has presented before some tribunal; and I think your Honor will see that if it were a Divorce Court, an equity suit, a proceeding concerning divorce between these parties, that the introduction of the complainant would not be permitted, under cover of a refutation or qualification of an inconsistent answer that had been made by a witness. Now, I have before me the two cases from the Court of Appeals, one of *Downs vs. The N. Y. Central R. R. Co.*, in which the answer was excluded, the only pretense of introducing it being that it formed a part of a conversation that had been introduced on the other side; and the Courts say:

The question was objected to as leading, and that it was incompetent to prove the plaintiff's declarations. The evidence was not inconsistent with the declarations proved by the defendant, but it tended to corroborate the testimony of the plaintiff by the fact that his statements had been consistent. This was not allowable. The conversation was not proved to have been a part of the same given in evidence by the defendant.

Judge Nellson—That would have been fatal proof, of course.

Mr. Everts—[Reading]:

Had it been so the evidence would have been competent. The plaintiff could have proved the whole of a conversation, a part of which the defendant had given in evidence if it was connected, and all related to the same subject.

Judge Neilson—That is found in every text book we have on evidence for half a century.

Mr. Everts—Nevertheless, Courts are used, your Honor, in order to apply them to particular circumstances.

Judge Neilson—Yes, Sir.

Mr. Everts—And it is not, I take it, to be imputed to me as inconsiderate to ask attention to the last consideration of the subject by the higher Courts of the State.

Judge Neilson—Oh, no.

Mr. Everts—In the case of *Rouse vs. Whited*:

The plaintiff showed that his property had been applied to the defendant's use in payment of a note made by the defendant and indorsed by the plaintiff. Proved that the defendant pointed out the property to the Sheriff and declared that it was the plaintiff's. Held, that the defendant was entitled to prove his statement in the same conversation, that the note was the plaintiff's debt and he was to pay it.

And it is put expressly upon the ground that the law rests upon the rule that when the plaintiff avails himself of a statement or admission of the defendant to charge him, the defendant may avail himself of any other statement made by him, at the same time tending to destroy or modify the use which the plaintiff might otherwise make of the admission or statement first called out by him, but it is only whatever is such qualification and modification arising as a part of that statement. Now, whenever a libel in a divorce suit, a bill in equity, can be put in as evidence *per se* in favor of the party who signs and makes it to qualify a statement that he has specifically made on an examination, whenever an authority to that extent can be produced, then, perhaps, the present proposition of my learned friend, which is to introduce the bill of accusation in qualification of a specific answer, may find some strength.

Mr. Beach—Let me correct that, Mr. Everts. This is not a bill of indictment, Sir, or an equity bill. It was a sworn statement of facts, of evidence submitted to this Examining Committee upon their call upon this witness as a witness before them. It was a part of his evidence submitted to that Committee.

Judge Neilson—I still think that I cannot allow you to read that paper. It was a paper previously prepared. It is not a part of the conversation in respect to which they inquired, but an independent, deliberate act of the witness, a presentation upon which inquiry and examination was to be made, and afterwards, as has been proved, was made. I think you cannot read that paper.

Mr. Beach—Nor any portion of it, Sir?

Judge Neilson—Besides, I think this supposed discrepancy has been clearly explained. We have his theory.

Mr. Beach—That may be, Sir. We shall want to offer—

Judge Neilson—You have a right to offer specific points in order to point an exception, being reasonable in that respect, of course.

The Court here took a recess until 2 p. m.

## ANOTHER EFFORT TO GET THE SWORN STATEMENT BEFORE THE JURY.

Mr. Fullerton—Your Honor having rejected the third and fourth paragraphs of the sworn statement of Mr. Tilton, with reference to the question I put to him, I make an offer of them.

Mr. Everts—I submit to your Honor that you have ruled upon the question of the written paper, and it is not necessary that any part of it should be read to your Honor. Your ruling was made upon grounds quite irrespective of anything that is in it, and I must object to its being read.

Mr. Beach—Your Honor has passed upon that question twice, and it has been the habit of the counsel on both sides to do this.

Mr. Everts—No; not where the Court passes upon it irrespective of anything that is in the paper. There is no possible ground for reading anything, when the question is passed upon on grounds irrespective of the contents; and it is not pertinent to the point of inquiry.

Mr. Beach—How shall we see that it is not pertinent, without making an offer of the paper?

Mr. Everts—Whenever you make your bill of exceptions, then you can introduce it.

Mr. Fullerton—The bill of exceptions will be made by you, I apprehend. [Laughter.]

Mr. Everts—I was only advising you when you will have an opportunity of introducing it, if you want to do so; when you make your bill of exceptions you can then use it.

Mr. Beach—This is no new question, Sir; it has been passed upon at different times.

Judge Neilson—The objection is that the ruling is not based on anything contained in the paper, but is independent of its contents, and therefore it is not necessary to read it.

Mr. Beach—Can we not make an offer of proof, Sir?

Mr. Everts—You are under the direction of the Court.

Mr. Beach—Therefore I ask the Court if it prohibits us from making an offer of proof.

Judge Neilson—In the other instances where papers were excluded, certain clauses in the papers were referred to to point the exception.

Mr. Beach—I would like to know, if your Honor please, whether it is to be ruled that we cannot make an offer of proof.

Judge Neilson—I think you can.

Mr. Everts—I object to counsel reading any part of this paper which your Honor has excluded.

Mr. Beach—I am not reading anything; I am going to make an offer of proof.

Mr. Everts—Let us see. Counsel must be held to their own proposition. The counsel has said that, your Honor having excluded the third and fourth paragraphs of the sworn statement, he now proposes to read them.

Judge Neilson—He now proposes to make a certain offer.

Mr. Beach—Your Honor will please to recollect that you permitted them, in regard to the "True Statement," to read the whole of it in sections and offers to prove it. You did the

same thing in regard to the Woodhull story. You have done it—

Judge Neilson—In regard to the Woodhull scandal?

Mr. Beach—Yes; and also in regard to the Biography of Mrs. Woodhull by Mr. Tilton.

Mr. Fullerton—And, although it was then ruled out, it was embraced in the form of offers by the learned counsel.

Mr. Evarts—I am prepared to discuss these propositions. In the first place, what might have seemed an evasion of the rule was introduced by my learned friends when they were going on with their case. When it was proposed to read from the Woodhull Life the Court ruled it out on the ground that the plaintiff could not be held responsible for opinions expressed in a biography any more than a historian. Therefore, upon my cross-examination I introduced no parts of it but those which purported to express the individual opinions of this witness of Mrs. Woodhull and her tenets; and I asked him the distinct proposition whether these were his sentiments; and in that light, and in that light alone, the passages were introduced. With reference to the Woodhull scandal, I had a right to prove, after it had been offered on the direct examination—they having said that the Woodhull scandal and the Woodhull story was made a subject of discussion between Moulton and Beecher and Tilton. I had what I thought was a clear right thereby to prove the Woodhull story; and your Honor limited me to that part of it that I could produce as being the subject of consideration before them, and I adhered to that. Now, Sir, the last case is that of my proving by this witness a destroyed paper. Having proved its destruction, and that no copy was preserved, I then read to him and asked him if that was not a part of the paper. It was direct proof; it was a mode of proof which was allowable by the law in respect to a destroyed paper. And that case has nothing to do with this.

Mr. Fullerton—How about the Clarke letter?

Mr. Evarts—That has been ruled out.

Mr. Fullerton—But you read part of it.

Mr. Evarts—I asked him whether that was submitted to him as a matter of treaty and negotiation by Mr. Clarke.

Mr. Beach—You asked him if he did not make certain statements which you read from the Clarke letter.

Mr. Evarts—I asked him a two-fold question, and I had a two-fold object. I asked whether he had seen the Clarke letter, and he said that he could not say if he had not, and he could not say if he had. I then asked him concerning the Clarke letter, and things that were, as matter of fact, in the Clarke letter, and only such—whether those propositions were made to him by Clarke, and were the subject of negotiation, as a matter of fact, as to the abandonment of *The Golden Age* or giving it up, or this, that, and the other. So that has nothing to do with this question. Now, here is a document, known and understood, which they claim a right to put in evidence, and which your Honor has excluded, and now they propose to read, as a part of their offer to your Honor, parts of that statement. It is like reading a deposition, or any other document which the Court has ruled out as *inter alios*, and not to be read. Now, there is no point to any exception to be

gained by the particular contents of this paper. The proposition has been made to your Honor, and you have disposed of the question, that it does not come within the rule of reduction or qualification of the particular statement concerning which the witness has been examined; that all the qualifying circumstances are perhaps contained in the paper itself. At all events, that this document, this accusation or indictment, whatever it is, is not admissible. Now, what rule of evidence is there that admits the reading of any part of that paper which your Honor says shall not be read. It is not because of anything in the paper—it is the paper itself that your Honor has ruled is not to be evidence.

Mr. Beach—I offer to prove, Sir, that upon the same examination, before this Committee, when he gave the answer to the question which has been given in evidence by the defendant, he also made this statement, and I propose to make the statement to your Honor, if you allow me to do so.

#### THE SWORN STATEMENT RULED OUT.

Judge Neilson—I propose to allow you, in order to fix and have the benefit of the exception, to make an offer, although that offer may (I don't know that it will) involve the reading of some part of the paper before you. The paper itself is ruled out; and if, in making your offer, you use the expressions of the paper it will be again ruled out, probably. But I allow you to make your offer in such terms as you propose.

Mr. Beach—Then I make the offer under the statement that we propose to prove that Mr. Tilton, upon the occasion which I have stated, made this statement orally to the Committee:

That about nine years ago the Rev. Henry Ward Beecher began, and thereafter continued, a friendship with Mrs. Elizabeth R. Tilton, for whose native delicacy and extreme religious sensibility he often expressed to her husband a high admiration; visiting her from time to time for years, until the year 1870, when, for reasons hereinafter stated, he ceased such visits; during which period, by many tokens and attentions, he won the affectionate love of Mrs. Tilton, whereby, after long moral resistance by her, and after repeated assaults by him upon her mind, with overmastering arguments, accomplished the possession of her person; maintaining with her thenceforward during the period hereinafter stated the relation called criminal intercourse; this relation being regarded by her during that period as not criminal or morally wrong—such had been the power of his arguments as a clergyman to satisfy her religious scruples against such violation of virtue and honor.

Mr. Evarts—Now, if your Honor please, I object to the evidence thus offered, as ruled out by your Honor already, and therefore, needing no argument upon its merits; and I object to any further reading from the paper, as a necessary means, or an appropriate, or admissible means of bringing to your Honor's notice the point of evidence concerning which you ruled.

Judge Neilson—This offer I overrule.

Mr. Beach—And we except.

#### THE VEXED QUESTION AGAIN DEBATED.

Mr. Evarts—If the paper needs to be identified by your Honor it may be so marked; but as for this right, when there is the exclusion of a paper, independent of its contents, to read it—

Mr. Beach [interrupting]—It seems to me, if your Honor please, that the counsel should not be permitted to reargue the question upon which your Honor has ruled.

Judge Neilson—It may be beneficial to me, perhaps.

Mr. Beach—Is he asking you to review the decision which you have made?

Judge Neilson—No; I do not so understand it.

Mr. Beach—Then there is no question before your Honor.

Mr. Evarts—I do not know that. This is, in a certain sense, within the discretionary control of your Honor, (perhaps not governed by any rule of law to that extent); but when the procedure of the learned counsel has indicated that it is the reading of a paper which has been excluded, I then submit that it is within the rule which excludes a paper, and its reading cannot be permitted.

Mr. Beach—In the first place, I deny that it is within your Honor's discretionary power to forbid my making an offer of proof; and, in the next place, when I make such an offer, I have a right to derive my information from any source, and it is not for the counsel or the Court to decide whether I shall hear it from my learned associates, or read it from a written offer prepared, or draw it from the evidence actually given before the body to which the question relates.

Mr. Evarts—There I think my learned friend is wrong. [Laughter.] The Court has a restraint over all such proceedings. The general proposition, no doubt, is this, that in restraint of counsel and their zeal in a cause, the better rule is to confine them to questions, without offers. Offers, however are admitted in the discretion of the Court, whenever it appears to the Court's observation that an offer is apparently necessary, or useful, to raising the point to be decided by the Court better than by a mere question. Now, when after the decision of the Court, that the paper shall not be offered in evidence, nor received in the cause, counsel thereupon undertake to read the paper as a renewed offer to prove, the Court sees that it is but a substitution, in a form that introduces the excluded matter, for the same ruling that has been given to exclude the matter.

Judge Neilson—Allow me to remind you, Mr. Evarts, that that is the precise position in regard to the Bessie Turner letters.

Mr. Beach—Your Honor means the Clarke letter.

Judge Neilson—No, the Bessie Turner letters. They were offered in evidence and excluded, and then, if my recollection serves me, they were read in this precise manner. Mr. Beach made the objection first, and then in your offer, Mr. Evarts, you stated the contents, and Mr. Beach withdrew his objection to the first letter, and then, in like manner, to the second.

Mr. Evarts—In that case, if your Honor please, after you had ruled out the letters, had I not the right to ask this witness whether these reasons were the reasons for Bessie Turner going away?

Judge Neilson—And in doing that you read the letters.

Mr. Evarts—It does not follow that I could not read a paper as the basis of a proper inquiry to the witness, because it had been ruled out as evidence. I never have contended for that doctrine.

Judge Neilson—The letter had been rejected?

Mr. Evarts—It had, as evidence *per se*; but it did not follow that I could not make it the basis of an inquiry to the witness. It might be made evidence by the witness's statements concerning it. But my proposition to your Honor is that this is nothing but the reproduction of a proposition of evidence in a form that produces the matter of a paper that has been excluded, which paper your Honor has excluded, whatever its matter was.

Mr. Beach—Your Honor has permitted me to present a part of my offer, and the counsel then interrupts me, in the course of my proposition, with the objection that there is some sort of professional impropriety in the course which I am taking, as it introduces the immediate subject matter, in the shape of an offer, proposition or question which had been excluded by the Court. Your Honor excluded the Victoria Woodhull biography; your Honor excluded the Victoria Woodhull statement of this scandal; your Honor excluded the Clarke letter; and yet, in each and every of these particulars, introducing the very subject matter which you did exclude, and for the purpose of getting it before the Court upon the record, the counsel read the very matter which had thus been excluded, and now he appears with the objection to my imitation of that example.

Judge Neilson—Am I right in my recollection about the two Bessie Turner letters.

Mr. Beach—Yes, Sir.

Judge Neilson—I ruled them out.

Mr. Beach—Yes, Sir.

Judge Neilson—On your objection Mr. Beach?

Mr. Beach—Yes, Sir.

Judge Neilson—Then the point is, that in the form of an offer they stated the contents, and you withdrew your objection to the first letter, and in like manner to the second.

Mr. Beach—Yes, Sir.

Judge Neilson—Now you have a right to make your offer to the Court.

Mr. Evarts—I have, I believe, the right to close the objection.

Mr. Beach—I do not know whether it follows that the gentleman has the right to close the objection when I make an offer.

Mr. Evarts—I object to your offer, and I have the affirmative of the proposition.

Mr. Beach—No, Sir; I have the affirmative of the proposition, in making the offer.

Judge Neilson—I think so. But still I would like to hear Mr. Evarts.

Mr. Beach—If your Honor thinks me right, I hope you will give me the benefit of being right occasionally.

Judge Neilson—Hereafter, yes, Sir. [Laughter.]

Mr. Evarts—Now, if your Honor please, here is a paper written and signed by the witness, it is said, which has been offered in evidence. The Bessie Turner letters were letters written by a third person, and as so written, equally with the Clarke letter until they were brought into some connection with the witness, with the party, the plaintiff—they could not be given in evidence. I thought they could be

read under the degree of evidence that had affected them. Your Honor thought not, and they were excluded therefor, being the acts of third persons and so *inter alias* until such evidence was given connecting the party with them. Now, I, having information that the Bessie Turner letters conveyed to me, and that the Clarke letter conveyed to me underlook to extract from the witness his testimony that the statements therein contained had been brought to his notice and to inquire concerning them, and there was my examination, and only there, I submit to your Honor. Now, this point that I have submitted to your Honor, that the Court will exclude a reproduction in an oral form of a document that is excluded, when all that is served is to get a ruling of the Court upon an oral presentation in place of that already given upon a written one, is carried so far in some of the Courts of the neighboring States that they will not permit it to be made a subject of oral examination in Court when a basis is proposed to be raised—desired to be raised—for introducing the instrument. Now, in our Courts we have not gone so far as that on the ground, as I am advised, that that rule of the sister States' Courts, which requires a basis to be made by affidavit to be laid before the Judge, would be, if enforced with us, contrary to our notions of the right of cross-examination, concerning any matter that came to be the subject of evidence. But of the general proposition that offers are not to take the place of excluded testimony, and that when the Court has before it definitely the proposition that the document excluded is so excluded irrespective of anything that is in it, and that the renewed form of offer is nothing but an oral production of the document, I apprehend there is no diversity and no lack of distinctness in the rulings of our Courts upon that subject.

#### THE FINAL DECISION ON THE SWORN STATEMENT.

Judge Neilson—I do not rule that the counsel shall be allowed to make an offer for the sake of reproducing part of the document ruled out. I simply allow him to make such offer as being professional, if he feels called upon to make it with a view of an exception which he may wish to take, supposing that to be material to his rights.

Mr. Beach—Will your Honor please remark, in making that ruling, that our previous offer was to read from the statement?

Judge Neilson—I will note it.

Mr. Beach—I have proposed now to prove that this witness orally made the statement which I am about to submit in my proposition, to the same tribunal, when he answered the question which has been given in evidence by the counsel on the other side and in regard to the same subject matter that he so stated before the Committee.

Mr. Evarts—Well, do you mean that he read his statement to the Committee?

Mr. Beach—I mean just what I say.

Mr. Evarts—Well, I think I am entitled to an understanding of it.

Mr. Beach—Well, that depends upon whether I consider your understanding pertinent to my purposes. [Laughter.]

Mr. Evarts—I think it is.

Mr. Beach—Well, I do not.

Mr. Evarts—The purpose for which we are here.

Judge Neilson—Well, I have been waiting for some time for your offer.

Mr. Evarts—I except to your Honor's ruling that the offer may be repeated in the form that is now allowed.

Mr. Beach—And under the same conditions as the offer just rejected, Sir, I offer to prove that upon the occasion referred to Mr. Tilton stated to the Committee that on the evening of October 10th, 1888, or thereabouts Mrs. Elizabeth R. Tilton held an interview with the Rev. Henry Ward Beecher at his residence, she being then in a tender state of mind owing to the recent death and burial of a young child, and during this interview the act of criminal commerce took place between the pastor and this parishioner. The motive on her part being, as before stated, not regarded by her at the time as criminal or wrong, which act was followed by a similar act of criminality between these same parties at Mr. Tilton's residence, during a pastoral visit paid by Mr. Beecher to her on the subsequent Saturday evening, followed also by other similar acts on various occasions from the Autumn of 1868 to the Spring of 1870, the places being the two residences aforesaid, and occasionally other places to which her pastor would invite and accompany her, or at which he would meet her by previous appointment, these acts of wrong being on her part from first to last not wanton or consciously wicked, but arising through a blinding of her moral perceptions occasioned by the powerful influence exerted on her mind at that time to this end by the Rev. Henry Ward Beecher, as her trusted preceptor and guide.

Judge Neilson—That is ruled out; the offer is denied.

Mr. Beach—And we except, Sir.

#### MR. TILTON'S EXAMINATION TEMPORARILY SUSPENDED.

Mr. Fullerton—If your Honor please, at the close of yesterday's proceedings we supposed that the re-direct examination and the re-cross of Mr. Tilton would occupy but a small part of to-day, consequently we provided ourselves with a witness from the City of New-York who is now present waiting to be examined. She is in very bad health; has been for a long time under medical treatment, and is still under medical treatment, and it is absolutely necessary, I think, for her health, that she should return to the city to-day. I therefore ask your Honor's permission to suspend the further examination of this witness, to examine the witness to whom I refer.

Judge Neilson—What do your opponents say to that? I have no objection to it.

Mr. Fullerton—It is very short and will not occupy more than a few minutes.

Judge Neilson—Is that agreeable, Sir. Is that arrangement satisfactory, Sir?

Mr. Evarts—We ought to be entirely certain, if your Honor

please, that the witness will be able to attend if the cross-examination should be prolonged.

Mr. Fullerton—Oh, yes, Sir.

Mr. Beach—Yes, Sir; certainly; that is our hazard by law.

Mr. Evarts—Well, you say that she could not be able to come to-morrow.

Mr. Fullerton—I say that she is under medical treatment and desires to return to the City of New-York to-night, and must do so, and I have no doubt but what her direct and cross-examination will be completed before the hour of adjournment.

Judge Neilson—Then the anxiety is about the cross; whether she could attend to-morrow.

Mr. Fullerton—Well, Sir, she will have to attend to-morrow if they do not get through, however inconvenient it may be; but I apprehend the necessity for her return will not exist at the close of the day.

Mr. Beach—Why, it is very well understood, Sir, that we lose the benefit of her examination if we do not produce her.

Mr. Evarts—Oh! I know—your examination—I know his Honor don't think so entirely about those results.

Judge Neilson—I assent to this cheerfully if the counsel will agree to it. You may leave the stand, Mr. Tilton.

Mr. Fullerton—It is all within the province of the Court, Sir.

Judge Neilson—I don't understand there is any objection, if you agree to produce the witness for cross-examination.

Mr. Fullerton—Of course we must, Sir, or lose her testimony.

Mr. Evarts—It is within your Honor's control, no doubt.

The witness referred to here stepped to the stand and the oath was administered by the clerk. When he had recited the formula she repeated after him: "I solemnly swear the truth I will tell and nothing else."

Judge Neilson—Kiss the book.

The Officer—What is your name?

The Witness—Kate Carey, Kate Smith and Carey—I went by Mrs. Smith.

#### TESTIMONY OF MRS. KATE CAREY.

Mr. Fullerton—Where do you reside? A. I am from the hospital, Sir—Bellevue; I have come now—

Q. From Bellevue Hospital? A. Bellevue Hospital.

Q. In New-York? A. Yes, Sir; I have been there eleven weeks sick—severe cold.

Q. Severe cold? A. Yes, Sir.

Q. Do you recollect the time that you went there; the day of the month? A. The day I went; no, Sir, I don't.

Q. In what ward were you? A. Twenty-first, Sir.

Q. Under whose immediate care? A. Dr. Shafer and Dr. Luck.

Q. Where did you reside before you went there? A. In Irving-place.

Q. In the City of New-York? A. Yes, Sir.

Q. With whom? A. Well, the name really I can't pronounce, but they were English Jews; it was near Seventeenth-st—55.

Q. How long did you live there? A. One month; I was sick there.

Q. You were sick there? A. Yes, Sir.

#### MRS. CAREY A SERVANT IN THE TILTON FAMILY.

Q. Did you ever reside with the family of Theodore Tilton? A. Yes, Sir.

Q. When? A. I was the first wet nurse that wet nursed the baby.

Q. Which baby was that? A. Ralph.

Q. The baby Ralph? A. I believe that is the name.

Q. Do you recollect the year that you went there? A. I do not, Sir.

Q. How many years ago was it? A. It is, I believe, six years, Sir.

Q. And what season of the year was it when you went? A. In the Summer, Sir; June.

Q. How long did you remain with Mrs. Tilton? A. Four months, Sir.

Q. As wet nurse? A. As wet nurse.

Q. And during that time, did Mrs. Tilton go away from home anywhere? A. To Monticello, Sir.

Q. How long did she remain there? A. Very short, Sir; I think it was three weeks or a month; I am not sure, Sir.

Q. In the Summer season? A. Yes, Sir.

Q. Did you go with her? A. Yes, Sir.

Q. And did you remain there as long as she did? A. Yes, Sir.

Q. And then did you return with Mrs. Tilton to Brooklyn? A. Yes, Sir.

Q. And how long did you remain with her after you returned? A. I remained until the cold weather came—to make the fire.

#### A VISIT OF MR. BEECHER DESCRIBED.

Q. During the time that you lived with Mrs. Tilton, did you see Henry Ward Beecher? A. I did, Sir.

Q. Where did you see him? A. I saw him going into Mrs. Tilton's room several times before we went to the country, shutting the door after him, but I did not notice or hear any talk.

Q. What room was it he went in and shut the door after him? A. In her own bed-room.

Q. Where was that situated? A. Right over the hall as you come in; there are four rooms on one floor.

Q. It is a double house, is it? A. No, Sir; it is a small frame cottage house.

Q. And where were you when you saw him go into her bed-room? A. I was in the next room, Sir; there is folding doors between.

Q. And you saw him go in there? A. Yes, Sir.

Q. Do you say the door was locked? A. No, Sir; the doors was open. She got up and shut the folding doors to.

Q. Who shut the doors? A. Her own self, Sir.

Q. Where was your room with reference to theirs, do you say? A. My room at the present time, when I went there was next to Mrs. Tilton's; I had a lounge to sleep on.

Q. Now, was this, that you now speak of, before she went to Monticello or after her return? A. Before, Sir.



Q. Now, did you see anything else before they went—before the family went to Monticello? A. No, Sir, I did not.

Q. Now, did you see anything after their return from Monticello? A. I did, Sir.

Q. What did you see then? A. I see her in the back parlor sitting on Mr. Beecher's knee.

Q. Where were you then? A. I went into the dining-room for a glass of water.

Q. Where did you go from when you went into the dining-room? A. From my nursery, upstairs, after nursing the baby; put it to sleep.

Q. And in what part of the back parlor were they sitting? A. In the corner off the dining-room.

Q. In the corner of the parlor off the dining room? A. Yes, Sir.

Q. What time of the day was this? A. It was getting on for dusk—evening.

Q. And where were you when you saw them thus sitting? A. I was going towards the dining room table to get to the ice-pitcher to get a glass of water.

Q. Did you see them distinctly? A. I did, Sir.

Q. What kind of doors were there between you and them? A. Folding doors.

Q. Were they open? A. Yes, Sir; they was very little apart; that I could see.

Q. Well, did you see anything else after their return? A. I saw—I saw her arm—her hand on his shoulder; and he says: "How do you feel, Elizabeth?" "Dear father," she says, "I feel so so."

Q. "Dear father," she says? A. "I feel so so."

Q. Where was she when she made use of that language? A. Sitting on his lap.

Q. Sitting on his lap? A. Yes, Sir.

Q. And did you hear distinctly the words, "Dear father?" I did; I did, Sir.

Q. Did you see anything else? A. No, Sir; I did not; I went with my glass of water upstairs to my nursery; I said nothing to nobody.

Q. How long was this after the return from Monticello? A. Well, to my recollection, I think it was about three weeks.

Q. How often, if at all, beyond the time that you speak of did Mr. Beecher call at the house while you were there? A. Well, he called several times before—

Q. Well, give us some idea, if you can remember, of the times that he called? A. He called, I think, four or five times before she got out of her bed to go to Monticello; she was poorly.

Q. And after her return from Monticello how frequently did he call? A. I don't know, Sir, that now.

Q. How? A. I can't say. The notes and letters come up to the waiter girl to bring the message down, but she would always go down in the parlor and retain him.

Q. Did you ever carry any notes for Mrs. Tilton? A. No, Sir.

Q. What time did you leave her employ, as near as you can recollect? A. It was some part in the Fall.

Mr. Beach—In the Fall, she stated before, when he commenced making these calls.

Q. Have you anything by which you can determine the time when you left their employ? A. I can't recollect what time I left, but the difficulty I had by leaving her was through Beale Turner, we had a few words.

Q. You don't recollect the season of the year? A. No, Sir; but the fires; it was cold weather; sometime in cold weather;

Q. The fires were being built in the house? A. Yes, Sir, and the furnace going.

Q. Do you recollect whether it was before or after election? A. That I can't say; I don't know, Sir, about that.

Mr. Fullerton—That is all.

# CROSS-EXAMINATION OF MRS. CAREY.

The witness was cross-examined by Mr. Evarts.

Mr. Evarts—Where did you go to live after you left Mr Tilton's? A. I went to—

Q. Where did you go to live when you left Mr. Tilton's? A. I went to live in Montague-st.

Q. Where? A. In Montague-st., right facing the drug store; Gilkison, I believe, is the gentleman's name.

Q. Gilkison? A. Yes, Sir.

Q. As— A. As a cook, washer and ironer, Sir.

Q. How long did you live there? A. I lived there one month. The milk went through my system; I put my milk away too quick—my breast milk; I had to give that up.

Q. Well, your health failed? A. Yes, Sir.

Q. And where did you go after that? A. I went over to New-York, Sir, and boarded until I got thoroughly well.

Q. Where did you board? A. I boarded in Thirteenth-st., 415.

Q. A boarding-house? A. No, Sir; neighbor woman.

Q. What was the name of the woman? A. Mrs. Dyer.

Q. How long did you stay there? A. I stayed there four weeks.

Q. Then where did you go? A. I came back to Brooklyn again, and I really don't know whether I went—I think I went to Mr. Hunter's in Pierrepont-st.

Q. What is the name? A. Mr. Hunter.

Q. And how long did you remain there? A. Four months, Sir.

Q. And in what service? A. Cook, washer and ironer, Sir.

Q. Well, you left there in four months. Where did you go next? A. Clinton-st., near Second-place.

Q. What? A. I went to Clinton-st., near Second-place, but I really cannot think of the name. It is near Second-place.

Q. You cannot remember your employer's name? A. No.

Q. Can you give us the number? A. Duray—that is the name; Duray.

Q. Duray? A. Yes, Sir.

Q. Do you know the number of the street? A. No; it is in Clinton-st., near Second-place.

Q. Yes, but the number? A. The number I don't know. It is about the second house from the corner.

Q. Very well, how long did you stay there. A. Two months.

Q. And in what service? A. Cook, washer and ironer, Sir.

Q. And you left there? A. Yes, Sir.

Q. Where did you go next? A. Oh! I went to Pacific-st.

Q. In what service and with whom? A. With Mr. Morse; keeps a grocery store, the corner of Smith-st.

Q. Well, what was your service there? A. Cook, wash and iron.

Q. How long did you stay there? A. Four months; until they broke up housekeeping.

Q. Where did you go next? A. I went to New-York.

Q. And in what employment, if any? A. No; nothing in New-York.

Q. No employment? A. No; only the place in Irving-place; I have not been well since.

Q. Well, where did you go to live in New-York after you left this grocer? A. I didn't go anywhere, Sir.

Q. Well, but you lived somewhere? A. I boarded in Fourteenth-st. a while.

Q. This place that you have— A. In Thirteenth-st. I boarded when I left Mrs. Tilton.

Q. Well, you went to Fourteenth-st.? A. Fourteenth-st., to board.

Q. Where was that? A. In Mrs. McCafferty's.

Q. What part of Fourteenth-st.? A. Between First-ave. and Avenue A.

Q. Do you remember the number? A. 327.

Q. And how long did you stay at Mrs. McCafferty's? A. Three weeks, Sir.

Q. Three weeks? A. Three weeks I stayed there.

Q. Where did you go next? A. I went to a place in Second-ave.

Q. What number? A. I don't know the number, Sir.

Q. Well, whose house? A. Brown—Mrs. Brown.

Q. Well, do you remember the number of the street? A. I don't; no, Sir; it is in Second-ave.

Q. Near what street? A. Between Twelfth and Thirteenth-sts.

Q. And were you at service there? A. Yes, Sir.

Q. In what way? A. Cook, wash, and iron.

Q. How long did you stay there? A. I stayed there four months; I believe it is four months.

Q. Yes. Where did you go next? A. That was the last place.

Q. Last service? A. Last service.

Q. Now, how long ago did you leave this Mrs. Brown? A. Mrs. Brown.

Q. Brown, wasn't it? A. Browning.

Q. Yes, Browning? A. Let me see, I think it is something like a year ago.

Q. What? A. I think it is over a year ago.

Q. Over a year ago? A. I think it is.

Q. And you haven't lived out since? Have you been in ill health ever since? A. Yes, Sir; bronchitis on the lungs.

Q. Well, I am very sorry for that. And how long have you been at Bellevue Hospital? A. I have been at Bellevue Hospital going on ten weeks, Sir.

Q. Who obtained you the place at Mr. Tilton's? A. Mr. Han-son, from the Nursery, Fifth-st., off the Bowery.

Q. He sent you over with a recommendation? A. Yes, Sir.

Q. And whom did you see? A. I saw Mrs. Tilton in bed, poorly, and her aunt came and took me over.

Q. And her what? A. Her aunt came for me to New-York and took me over.

Q. Well, was Mr. Tilton there? A. I didn't see him; he might have come over.

Q. At the birth of the child? A. Oh, yes, Sir; I saw Mr. Tilton in the evening.

Q. What? A. I saw Mr. Tilton in the evening.

Q. That is the evening of the day that you got there? A. Yes, Sir.

Q. Were you there before the child was born? A. No, Sir.

Q. But immediately after, or very soon after? A. About two weeks.

Q. About two weeks? A. About two weeks. The child was two weeks old when I went there. I was the first nurse.

Q. I thought you said you were the first person that saw— A. The first wet nurse, Sir.

Q. I thought you said "witness." I beg your pardon. I thought you were there at that time. Well, about a fortnight after the birth you were there, and what time of the year was that? A. Well, to my recollection, it was about in June, Sir; some part in June.

Q. Now, of whom did the family consist when you were there? A. There was four children and Mr. Tilton and Mrs. Tilton; that is all I seen.

Q. Any other servants? A. Five servants there was in the house.

Q. Five servants in the house? A. Yes, Sir.

Q. Including yourself? A. Yes, Sir.

Q. Four besides yourself? A. Four: six with Bessie Turner.

Q. Six with Bessie Turner? A. Yes, Sir.

Q. Now, Mr. Tilton was there at what times of day? A. Well, some days he would be home about four o'clock; some days late, and some days early.

Q. Did he stay there during the day any times that you were there? A. No, Sir; not as I know of.

Q. All day I mean? A. No, Sir.

Q. Had you known Mr. Beecher before? A. Never seen the gentleman in my life, Sir; I often heard tell of him.

Q. And when did you know that it was Mr. Beecher that made a call and how? A. The upstairs girl named Teresa Burke, told me.

Q. Told you it was Mr. Beecher? A. Told me it was Mr. Beecher.

Q. Now, as I understand it, when Mrs. Tilton was in what you call her bed room, you, with the child, were occupying the room that communicated by folding doors? A. Yes, Sir.

Q. And you there slept? A. Yes, Sir.

Q. Having the care of the child also? A. Yes, Sir.

Q. And did you pass back and forth? A. Yes, Sir.

Q. Through the folding doors? A. No, Sir.

Q. Well, I don't mean when they were shut, you know? A. Well, when they were open I didn't, Sir; very seldom went into her room.

Q. Very seldom went into her room? A. Very seldom went into Mrs. Tilton's room.

Q. Well, were not the doors usually open? A. Yes, Sir; they were open every day to air the room; windows, too.

Q. Well, were not they generally kept open? A. No, Sir; they were shut a great many times in the evening; they would be shut when she would be in her room.

Q. But through the day, and as a usual arrangement, were not those folding doors between those two rooms open? A. Through the day; yes, Sir.

Q. Yes? A. Only this time, when Mr. Beecher sent word up that he was down stairs, and would like to see her.

Q. Well, now, I am not asking about that; they were usually open? A. They were usually opened every day.

Q. Very well, now. Sometimes you say they were closed? A. Yes, Sir.

Q. Was there always some reason for closing them? A. That I do not know, Sir.

Q. Well, I mean how did it occur. Was there a habit of shutting them at any particular hour of the day, or were they closed if there was somebody there, or this or that reason? A. Well, when she would be dressing she would close them.

Q. Close them? A. Yes, Sir.

Q. But there was no habit of closing them at any particular hour of the day? A. No, Sir.

Q. Or evening? A. No, Sir.

Q. So that when they were open, as they were usually through the day, they would remain open in the evening until something occurred as a reason for closing them? A. When she would go to bed she would close them.

Q. Yes; close them when she went to bed? A. Yes, Sir.

Q. Very well, when you occupied the other room with the child through the night, when you were composed for the night, the doors were usually closed? A. No, Sir, open.

Q. They were open? A. Open while I was in that room, and they changed me to the other room, next to Mr. Tilton's room.

Q. Yes. Then, as I understand it, while you occupied this communicating room, where the folding doors were between, were the doors always open? A. In day time, Sir.

Q. Yes; in day time? A. Yes, Sir.

Q. But at night, when you were both arranged for the night, both Mrs. Tilton and you, were the doors thus open? A. The doors were shut, Sir.

Mr. Everts—Well, that is what I understand you; they were shut.

Q. Now, at what stage of your service there did you leave this communicating room—this folding-door room, and were lodged in some other room? A. They had not a room—a bed in the first room I went to, and the baby and me could not get along on the lounge, and when they had the room next to Mr. Tilton vacant they gave me that room?

Q. When that was vacant? Yes, Sir.

Q. Who vacated that room to accommodate you? A. I don't know, Sir.

Q. You don't know who had occupied it before? A. No, Sir.

Q. How long after you went there was that change made? A. About three weeks.

MR. BEECHER'S CALLS AGAIN DESCRIBED.

Q. Now, how long after you went into service there did you first see Mr. Beecher at the house? A. Two weeks, Sir.

Q. Two weeks? A. Yes, Sir.

Q. And was that the time when he went into her bedroom? A. Yes, Sir.

Q. And you were in the folding-door room? A. Yes, Sir.

Q. And saw him go in, didn't you? A. Yes, Sir.

Q. Who showed him up? A. The upstairs girl went to the door.

Q. Who was she? A. Teresa Burke.

Q. She showed him up? A. She showed him up.

Q. And showed him into this room, didn't she? A. I didn't see Teresa coming upstairs with him. He knew where the room was.

Q. Well, I am only asking you what you know, and nothing else. A. Yes, Sir.

Q. How do you know that Teresa had anything to do with it, if you didn't see her? A. I didn't see her on the stairs coming up, only she told me she opened the door. She was the waiter girl.

Q. Afterward she told you? A. Yes, Sir.

Q. Then she either showed him up or sent him up, I suppose, or let him up? A. She came up with a message to know if Mrs. Tilton was ready to receive Mr. Beecher.

Q. She came up and asked that question first? A. Yes, Sir.

Q. And you heard that? A. Yes, Sir.

Q. And then she went down. What was Mrs. Tilton's answer to that to her? A. She said in a few minutes when she could get herself fixed.

Q. And then Teresa Burke went off with that message, I suppose? A. Yes, Sir.

Q. And in a few minutes Mr. Beecher came up? A. Yes Sir.

Q. Did he come first into the room in which you were? A. No, Sir.

Q. Now, who closed the folding doors? A. Mrs. Tilton.

Q. She was then sitting up, was she? A. She was able to get up and put the blanket around her.

Q. She was sitting up? A. No, Sir; she was in bed—poorly.

Q. When? A. When the message came up to her.

Q. I understand that, or at least I don't know how that was but she closed the folding-doors? A. Yes, Sir.

Q. Now, did you ever see Mr. Beecher there again, except while you were occupying this folding-door room? A. No, Sir.

Q. Can you fix the time of this visit that you have described as the first time you saw him in reference to the length of time it was after you went into the service—how long after you first went there was this visit of Mr. Beecher's? A. Two weeks.

Q. Two weeks? A. Two weeks.

Q. About four weeks, then, after the confinement of Mrs. Tilton? A. She was up; she was going on three weeks confined.

Q. When you went there? A. She was two weeks confined when I went there.

Q. And two weeks afterward you saw him go there? A. Two weeks afterwards I saw him go in there.

Q. About four weeks after her confinement? A. Yes, Sir.

Q. Now, when did they go to Monticello; that is, when did the family go to Monticello? A. It was after July.

Q. After July? A. Yes, sir; some time after July.

Q. And who went—who were they that went? A. Mrs. Tilton, me and the baby, and the oldest daughter, Miss Florry, and Caddy and Alice.

Q. The children? A. Yes, Sir, the children.

Q. And any other servant? A. No, sir.

Q. And did Mr. Tilton go? A. No, sir.

Q. How long were you at Monticello? A. Not more than three weeks, sir—three or four weeks.

Q. In a boarding house? A. No, Sir; in Dr. McCabe's, a private family.

Q. Was Mr. Tilton there during that time? A. No, Sir.

Q. You didn't see him there at all? A. No, Sir.

Q. Now, after your return, about how long were you living at Mrs. Tilton's before you finally left? How many weeks after your return from Monticello did you continue in that service? A. Well, I can say it was the Fall; the fires were lit; I cannot say what time it was.

Q. Was it more than four weeks or so? A. I was four months in their employment.

Q. From the time you went there? A. Four months altogether; I received \$100.

Q. Four months' wages you received? A. Yes, Sir.

Q. So that, from the end of June, that would be July, August, September and October? A. Something about that.

Q. Something like that. Did you leave before your month was up, or exactly when it was up, or how? A. Well, I could not say, Sir.

Q. Now, you say that you saw Mrs. Tilton and Mr. Beecher together in a room down stairs afterwards? A. Yes, Sir.

Q. Was that after their return from Monticello? A. Yes, Sir.

Q. And how long after the return from Monticello, or how long before you left the service? A. It was about three weeks after we came from Monticello—three or four weeks.

Q. Where were you when Mr. Beecher came into the house, or didn't you know of his coming into the house? A. I was upstairs in the nursery when Teresa Burke brought the news up to Mrs. Tilton that Mr. Beecher would like to see her. I heard the words.

Q. And that he was in the parlor? A. That he was in the parlor waiting for her.

Q. Did Mrs. Beecher go down? A. Mrs. Tilton went down.

Q. I beg your pardon; Mrs. Tilton went down? A. Yes, Sir.

Q. And then you had occasion to go down? A. I wanted to go down before that, but I could not.

Q. What was the occasion for your going down that you had? A. I wanted a drink of ice-water.

Q. And you had been delayed? A. Yes, Sir,

Q. By your duties with the child, or something? A. I was nursing the baby at the time.

Q. Now, you went down. How are these rooms arranged down stairs? Are they communicating by folding doors? A. Yes, Sir; the dining-room has folding doors; it goes to the back parlor.

Q. Is the house three rooms deep, or only two? A. There are two back parlors, and a dining-room, and a small room on the side going in.

Q. There is a front room, I suppose, along the hall? A. Yes, Sir; a little small room like a receiving room.

Q. A reception room? A. Yes, Sir.

Q. And then there is a parlor? A. Yes, Sir.

Q. Into which you go, I suppose? A. Yes, Sir.

Q. From the hall at the end? A. Yes, Sir.

Q. Then is the dining room another room? A. Yes, Sir; it goes from the back parlor, and the folding doors go into the parlors to cut off the back parlor from the dining room.

Q. Then I imagine, from your description, that the back parlor and the dining room together go the whole width of the house? A. Yes, Sir.

Q. That is so, is it? A. Yes, Sir.

Q. And the hall, therefore, does not run through the house? A. The hall is a very small hall.

Q. And does not run through the house? A. And does not run through the house; no, Sir.

Q. Now, which is the largest room, the dining room or the back parlor? A. The back parlor.

Q. And are the folding-doors usually open? A. Yes, Sir.

Q. Between those two rooms? A. Yes, Sir.

Q. Did you go to take your drink of water to the sideboard? A. Yes, Sir.

Q. Then the sideboard was in —? A. The ice-pitcher was on the dining-room table by the window.

Q. And there is where you went? A. Yes, Sir.

Q. And got your drink of water? A. Yes, Sir.

Q. This time you think was about three weeks after you came back from Monticello? A. From Monticello; I think it is about that.

Q. That would be about the month of August, would it not? A. I don't know, Sir; it was about three weeks.

Q. Or the end of August, or some such time. You cannot fix the time? A. No, Sir, I cannot.

Q. How soon after your return from Monticello have you stated this was? A. We didn't stay more than three or four weeks in Monticello.

Q. After you got back, how soon was this visit of Mr. Beecher in which you said you saw him? A. About three weeks, Sir.

Q. About three weeks? A. Yes, Sir.

Q. And that was the first time you had seen him after the return? A. Yes, Sir.

Q. From Monticello, was it? A. Yes, Sir.

Q. Now, you were familiar, I suppose, with these parlors and the furniture in them, were you not? A. Yes, Sir; I was often in the parlors.

Q. What chair— A. It was a large arm chair, with a soft bottom.

Q. And where was it seated? A. In the corner.

Q. Where was it placed? A. In the corner.

Q. In the room? A. Facing the windows—by the window.

Q. Which corner? A. *This* corner (indicating), and there was a window just as you turn in from the dining-room.

Q. Was it a chair that was usually there? A. That I don't know.

Q. Now, how many windows are there in the back parlor? A. Two windows.

Q. And one in the dining-room? A. Yes, Sir.

Q. Which of these windows was this chair near? A. It was nearer to the dining-room window. It was not near the window at all. It was in the corner coming out from the dining-room.

Q. It was not near the window? A. It was not near the window. The folding doors from the front parlor and the dining-room door, there was a corner there, and the chair was in that corner.

Q. I thought you said something about a window? A. The window was on the other side. The chair was not near the window; it was facing the window, you understand.

Q. It faced the window? A. Yes, Sir, in that corner.

Q. Which window did it face, the one nearest the dining-room or the one farthest from it? A. The one nearest the dining-room.

Q. How near was that dining-room window to the wall of the dining-room, between it and the dining-room? A. There was not much space between.

Q. It was very close, was it not? A. Yes, Sir.

Q. Then this chair that you speak of was near the wall, between the dining-room and back parlor? A. Yes, Sir.

Q. How close to the wall was it? A. As close as it could go.

Q. As close as it could be? A. Yes, Sir.

Q. To that wall? A. Yes, Sir.

Q. The wall that separated the dining-room and the parlor? A. And the parlor.

Q. Close to it? A. Yes, Sir.

Q. Now, where did you stand in the dining-room when you saw— A. I was getting the glass of water at the ice pitcher when I heard whispering, and I looked in, and I saw Mr. Beecher sitting down, and Mrs. Tilton sitting on his knee.

Q. Yes; that you have stated. A. That is what I was doing, getting the water, standing by the table.

Q. Now, did you see this without an effort to see it? A. I saw it.

Q. Did you put your head into the back parlor? A. No, Sir; the folding doors were open.

Q. Wide open? A. Yes, Sir.

Q. Catharine, are you a married woman? A. Yes, Sir.

Q. And your husband is living? A. No, Sir; he is dead.

Q. Now, I think you have said—well, after you had seen what you did see where did you go to? A. I went up to my nursery.

Q. Did you say that at this time that you saw Mrs. Tilton sitting on Mr. Beecher's knee—that she had her hand on his shoulder? A. Yes, Sir.

Q. And was it at that time that you heard the conversation that you have given? A. Yes, Sir.

Q. And that was loud enough for you to hear, was it not? A. I heard them whisper, but all the words I heard said was, "How do you feel, Elizabeth, dear?" "Father," she said, "I feel so so." That is all I heard. [Laughter.]

Q. That is all you heard? A. Yes, Sir.

Q. Could you hear that without an effort, or did you put your ear into the room to hear? A. When I went into the dining-room I heard the words.

Q. And you heard them? A. I heard them.

Q. Was the door that you went into the dining-room by opened by you to go in? A. Yes, Sir.

Q. And closed by you after you? A. It don't be closed; it is always left open—the dining-room door.

Q. I asked you just now if you opened it? A. I did not open it. It was open, and I left it so.

Q. Now, you saw Mr. Beecher, or you knew of his calling at the house at other times? A. Yes, Sir.

Q. Did you not? A. Yes, Sir.

#### MR. BEECHER'S PRESENTS OF FLOWERS.

Q. Do you know how many times, or do you think you know, of his having called? A. He came three or four times before we went into the country, and sent her baskets of elegant flowers to keep around her bed. She had them on large dishes.

Q. And they were there, were they not? A. Yes, Sir.

Q. And everybody saw them? A. Yes, Sir; she told—

Q. And everybody knew where they came from? A. Yes, Sir.

Q. And was Mr. Tilton there? A. No, Sir.

Q. Where was Mr. Tilton? A. That I don't know, Sir.

Q. All the time that you were there? A. Oh, he was there; but he was not there when Mr. Beecher was there.

Q. Oh, I am asking you about those flowers? A. Mr. Tilton was there, and he saw the flowers.

Q. He saw the flowers? A. Yes, Sir.

Q. And he knew where they came from? A. I don't know anything about that.

Q. But every one else did? A. The servants in the house all knew it.

Q. They all knew it? A. Yes, Sir.

Q. And Mr. Tilton knew, I suppose, whether he had sent the flowers or not, didn't he? A. Mr. Tilton did not send them, for her own lips told me Mr. Beecher sent them.

Q. Now, did you never see Mr. Tilton looking at the flowers? A. Mr. Tilton?

Q. Yes. A. No, Sir.

Q. Never? A. No, Sir.

Q. Did you never see him in his wife's bedroom during her confinement? A. Yes, Sir.

Q. You say he called four or five times before you went into the country, you think? A. Yes, Sir; about that, I guess.

HOW MRS. CAREY CAME TO BE A WITNESS.

Q. Now, when did you first mention to anybody that you had observed anything of the matters that you have now testified to? A. Last Friday, Sir.

Q. For the first time? A. For the first time.

Q. And to whom? A. To Mrs. Lines, who visited Bellevue Hospital to see the sick.

Q. A charitable lady who visits there for that purpose? A. Yes, Sir.

Q. And did you volunteer—did you of your own accord mention this to the lady? A. No, Sir; she told me that after I got well she would get me an elegant place in Brooklyn. I told her I had lived in Brooklyn. She said: "Who did you live with?" I told her who I lived with, naming the parties, and I said I lived with Mr. Tilton and Mrs. Elizabeth Tilton, and wet-nursed a baby for her. She sat down and asked me more questions, and, of course, I answered her. She asked me what I thought of such a thing, and I said I didn't know. She asked me what I seen and what I heard, and of course I told her.

Q. And that is the way you came to be a witness here? A. Yes, Sir.

Q. Much to the discomfiture of your health, I suppose. Do you remember the first time that Mrs. Tilton went out to church after her confinement? A. I do not. She went before we went in the country.

Q. And do you remember whether she continued in feeble health up to the time of going into the country—whether she remained in feeble health? A. Her health was very poor. She had milk legs.

Q. She suffered from her malady attending upon her confinement? A. Yes, Sir.

Q. And was a great sufferer, was she not? A. Yes, Sir.

Q. And so continued until she went into the country? A. Yes, Sir.

Q. Now, did you have any quarrel or difficulty at that house while you were there as a nurse? A. No, Sir; only what I had with Bessie Turner.

Q. That was between you and her, I suppose? A. Yes, Sir; when she took Bessie's part, I broke her chain—Mrs. Tilton's chain. I was making a chain for Bessie Turner, and she struck me with a hair brush.

Q. Who—Bessie? A. Yes, Sir.

Q. Oh! I don't care about those quarrels. Mrs. Tilton had nothing to do with that; at any rate I don't care if she had. but did you have any difficulty in the house between yourself and your employers, Mr. and Mrs. Tilton? A. Not a word, Sir.

Q. No trouble about your neglect of the child? A. Not a word, Sir.

Mr. Evarts—[To Judge Neilson.] That is all, I think, Sir.

Judge Neilson—[To the witness.] That is all.

#### MR. TILTON RECALLED.

Theodore Tilton was recalled, and his re-direct examination continued.

Mr. Fullerton—Well, Mr. Tilton, after this episode I will ask you something more with reference to that answer that you

gave to the question before the Committee. You say there: "She maintained to her mother in my presence that she had not done wrong." Was that so?

#### CONVERSATIONS BETWEEN THIRD PARTIES OBJECTED TO.

Mr. Evarts—I object to that, if your Honor please. It is an inquiry as to some matter of fact that occurred on the part of his wife towards her mother. I only asked him whether he made a certain answer, and he says that he did.

Judge Neilson—We cannot take that.

Mr. Fullerton—How, Sir?

Judge Neilson—We cannot take that.

Mr. Fullerton—Well, Sir, that proves that this witness made use of a certain expression before the Committee.

Judge Neilson—Yes. Now, you wish to go back of that to a conversation between Mrs. Tilton and her mother.

Mr. Fullerton—I ask him if he didn't say so and so—if he didn't say a certain thing.

Judge Neilson—He says he did.

Mr. Fullerton—Now, I have a right to show why he said that.

Judge Neilson—Not if it involves a conversation with Mrs. Tilton.

Mr. Beach—Didn't they bring out that conversation?

Judge Neilson—In that form to which the witness made the answer.

Mr. Fullerton—It is no matter in what form they made it; they brought it out, as a declaration of his.

Judge Neilson—That he made that answer?

Mr. Fullerton—Yes Sir.

Judge Neilson—I don't think that justifies you to go beyond that and prove a conversation.

Mr. Fullerton—May I not ask him how Elizabeth maintained her innocence to her mother?

Judge Neilson—I think not.

Mr. Beach—Why not? I showed your Honor the other day that that is not a confidential communication made in the presence of a third person.

Judge Neilson—I think it is, when it is between the wife and the mother.

Mr. Beach—There is no authority for that.

Mr. Fullerton—A wife cannot make a confidential communication to her mother.

Judge Neilson—That is the way it is stated in the answer?

Mr. Fullerton—Yes, Sir; she wanted to vindicate herself to her mother from the accusation that she did anything wrong. I want to know how she did that—by what mode of argumentation.

Judge Neilson—Mr. Evarts suggests that they stand precisely the same as if Mrs. Tilton had been talking with a third person, not her mother.

Mr. Evarts—If your Honor please, the point is this. I am not disposed to think that communications between husband and wife are not confidential, when the subject matter is confidential, because the mother happens to be present; I don't believe that the law treats them otherwise than as confidential, but the difficulty is deeper than that. I have asked this witness

whether he made certain statements or not, and he is to say whether he made them or not, and if he made them, and then said anything that qualified them, that is another matter. But the fact that a witness is thus called upon to say whether he has made statements, whether the result is contradictory of himself, and whether he denies them or not, and they are proved afterward against him, has nothing to do with the question approving what the facts were in reality, the whole point being what he said, and you don't prove what he said by either proving or disproving the truth of what he said. Now, my learned friend, because, in an answer to a question of whether he did not make a certain answer, which answer includes in it this passage: "She maintained to her mother in my presence that she had not done wrong"—admitting that he made the answer, undertakes to prove here, as new matter of evidence, what occurred between her and her mother.

Judge Neilson—That is how she maintained.

Mr. Evarts—Yea. What occurred between her and her mother—that hasn't anything to do with the question of what this witness said before the Committee, not the least. Either she did or did not say or do,—say or act in reference to her mother as the witness said. Either way, that she did or did not, is not a matter of proof here. It has nothing to do with the question of whether he said so.

Judge Neilson—Well, the fact being that the witness said so, and the fact being that she, in a certain manner and form which we have not got now, maintained her innocence to her mother, the question is whether they can inquire how she maintained her innocence—that is, in what form or terms.

Mr. Evarts—That is the very point, Sir. Now, it does not tend in the least to affect or vary his statement before the Committee what the terms were. He did not state the terms to the Committee. Whatever he said to the Committees in qualification or reduction or explanation of the part of the statement that I have given, comes within the colloquium which explain the statement. But nothing is better settled than that when the whole point of evidence is what a man said, that it does not license the other party to prove the truth of what he said by the facts concerning which he spoke, because whether it was true or not, had nothing to do with it. It was what he said to the Committee. Now, this is not a novel point of evidence. It arises, and has been often decided, until I supposed that it was well settled, that it is not admissible in corroboration of a view of what a man said, to prove the truth, and therefore argue that he probably said so; or a falsehood, and therefore argue that he did not say so.

Judge Neilson—That is not the question here. The question is here in view of his stating that Mrs. Tilton maintained a certain thing to her mother "in my presence" whether the witness can state in what terms or manner she so maintained it, assuming that this answer is strictly true.

Mr. Evarts—Whether under the license of my inquiry concerning what he said before the Committee it is admissible for them to prove the truth of what he said before the Committee.

Judge Neilson—No, the manner.

Mr. Evarts—Well, the fact concerning which he spoke, when all my evidence was what he said, not anything about the fact at all, but simply his statement. Now, it comes down, as I think your Honor will see, to the inquiry whether you can prove the fact as it did occur, whether it is in mode or form as your Honor intimates, or whether it is the truth of it. The fact cannot be inquired of, when the only inquiry on the other side has been what he stated. It is hearsay evidence about what is not made evidence by any inquiry of mine.

Mr. Beach—The fact they attempt to prove, Sir, by this line of inquiry is that Mrs. Tilton made statements in the presence of her husband to her mother, in which she maintained her innocence. The inquiry of the counsel, and the answer of the witness, does not give the expressions—the language which was used by Mrs. Tilton. It contains the conclusion, the judgment of the witness, derived from what Mrs. Tilton stated to her mother. When the witness says she always maintained, in the presence of her mother that she was innocent, why that is a mere conclusion. It is not giving the details of what passed between herself and her mother leading to that conclusion. Now, the question which we propose to this witness is ask this witness to explain what he meant by the term "maintain;" and how it was that Mrs. Tilton, under these circumstances, maintained her innocence to her mother. The fact that we are getting at the fact that will be used against Mr. Tilton as the evidence now stands will be that he declared that Mrs. Tilton did maintain her innocence. Now, in answer to that, Sir, we have a right to know the particular manner and form of language and expression which Mrs. Tilton used in conveying that impression and conclusion to the mind of this witness which he expressed to the Committee that she thus maintained her innocence. Now, it must be proper, I think, where the counsel by a question calls out a conclusion which must be founded upon the declaration of a party, that we may get the precise declaration from which that conclusion is derived; and that is the precise mode of examination which we propose to pursue, and the precise object which we wish to reach. Their object, and the effect of this evidence, is to show that Mr. Tilton declared that his wife did a certain thing, and we ask to show the manner in which she did it, and that is the whole of this question, if your Honor please, and I know no rule of law which should exclude it; and I know no principle of evidence which leads to the investigation, and the establishment of truth, which should exclude it.

Mr. Evarts—I have offered no evidence whatever as to anything that passed between Mrs. Tilton and her mother, or Mrs. Tilton and this witness. There is my learned friend's mistake. If I had drawn from this witness a piece of evidence that his wife did maintain to her mother, in his presence, her innocence, then my learned friend would be within a rule that could show the particular facts that occurred, I having drawn out the fact of this maintenance by the wife to her mother.

Mr. Beach—That is the very fact you did draw out.

Mr. Evarts—I did not draw it out; I haven't said a word about it. I have asked this witness whether he said so, and nothing else.

Judge Neilson—Perhaps the counsel considers it drawing the facts out.

Mr. Beach—It is proving the fact by the declaration of the party.

Mr. Evarts—I do not prove the fact in the least. It may have been an entire falsehood, just as consistently with any question I have asked, or any answer I have got, or any use to be made of any answer I have got. If I were appealed to for my belief whether it were true or not—

Judge Neilson—You would not say.

Mr. Evarts—I should not say under your Honor's admonition that I should not. [Laughter.]

Mr. Beach—I understand Mr. Evarts's proposition to be that when he proves by the declaration of a party a certain fact that he does not produce it in evidence.

Judge Neilson—Does not draw it out.

Mr. Beach—Yes, Sir.

Mr. Evarts—My learned friend cannot misunderstand me, it would seem to me. Certainly he is able to understand the difference between my asking this witness "did your wife maintain to her mother her innocence?" and his answer that she did, giving a right then to pursue the tenor of the conversation on a re-direct that I had drawn out. When I have asked any such question, when I have sought any such evidence, when I have any such evidence, it will be time then to apply the proposition that, having drawn out the tenor of a conversation by my inquiry concerning the conversation, they can draw out the particulars to correct the tenor.

Judge Neilson—But is there a substantial difference between the case before us, where you draw it out in this form—

Mr. Evarts—I did not draw it out.

Judge Neilson—You have it in the answer.

Mr. Evarts—I haven't it in the answer.

Judge Neilson—But the answer says so.

Mr. Evarts—I haven't it in the answer.

Judge Neilson—Read the answer, please.

Mr. Evarts—I have nothing but his statement that he said so. It is not drawing it out at all, if your Honor please. The only thing that I draw out is that this witness has made a statement concerning his wife's innocence.

Judge Neilson—The statement; not a statement, but the statement which you read to him.

Mr. Evarts—Well, a statement. I asked him if he did not make that statement.

Judge Neilson—That statement.

Mr. Evarts—He has made it. Included in that statement is a recital of his own, that his wife had done so and so. That don't prove that she had done so and so by anything that I had asked.

Judge Neilson—The question is whether you did not draw it out in that form.

Mr. Evarts—Am I not at perfect liberty to contend that there is not a word of truth in what he said—not a word of truth.

Judge Neilson—Undoubtedly.

Mr. Evarts—May that not be the whole point of my inquiry, that he told something that was untrue.

Judge Neilson—When you make an inquiry that calls out the fact that he did state before the Committee, or did state to anybody else, that his wife had always, in her mother's presence, maintained her innocence, is not that the same thing, substantially, as if you had asked him in another form, and getting substantially the same answer.

Mr. Evarts—I think not, if your Honor please, in the least, and I think the cases do distinguish, as I think the necessary sense of the matter is. I do not undertake to examine this witness as to what passed between his wife's mother and her, nor do I undertake to prove the truthfulness of anything that is contained in that answer of his. He has given a certain line of testimony here, bearing upon the question of whether his wife is, or is not, guilty of adultery. I say: "Have you not said so and so?" Now, he denies it, or he admits it, as the case may be. In this case he admits it, as I understand. If he had denied it, why, then, my only point would be to prove, not that his wife had said so and so to her mother—I would not have been allowed to do that, to contradict him, and all I would be permitted to prove was what he had said on the subject, and then I could not confirm, or emphasize, the weight of that proof concerning what he had said, by proving the truthfulness of what he had said. That I understand, if your Honor please, to be an entire distinction—to be the clear distinction between undertaking to give evidence concerning a fact and undertaking to give evidence that a witness has said so and so. Now, I believe nothing is better settled in the law of evidence than that this inquiry into the truth or the fact of a statement concerning which statement alone the witness has been called to give testimony is well settled.

Judge Neilson—I think that is settled.

Mr. Evarts—Now, the counsel hands me a case in Massachusetts. [Reading:]

A witness having testified to negotiations for exchange of horses, another witness was called to prove that the former witness had previously given a very different account of what was said at the time referred to. The former witness was then recalled, and explained that the circumstances testified to by the second witness were those of another exchange on a different occasion. Held, that it was not competent to corroborate him by proof that the other exchange thus referred to actually took place.

Well, you could not confirm it by himself, any more than by any other witness.

Where a witness denies that he stated a fact as another witness has testified that he did, and testifies that he stated a different fact, evidence that the fact existed which he testifies that he stated is inadmissible to corroborate him.

And all turning upon the point that the only inquiry being, not what was true, not what did take place, but what did you say, that that is the end of the inquiry, and that neither on one side nor the other, can the fact be inquired into.

Judge Neilson—The cases are remote, not only geographically, but remote from the very question in issue here. The question is this: You have before you, in the printed book, the question which was put to the witness, and his answer, before the Committee. You cannot be taken by surprise. Having words



before you, you interrogate him: "Was this question put to you, and did you answer as here stated?" reading the answer; and he admits he did, and in that answer is this statement: "That she always maintained her innocence, in my presence, to her mother." And now the simple question is whether the witness—you having introduced the subject in that form—whether the witness can state how or in what manner she maintained her innocence to her mother, not proving that what he did say was true, or contradicting what he said, but simply following out the line further as to the manner in which he stated what you have proved was stated.

Mr. Evarts—But is not the whole point, if your Honor please, the line, as your Honor indicates, the whole line, as to what he said to the Committee, and nothing else. If he went on and explained to the Committee how it was that she maintained before her mother, and if we reduced or qualified what he had stated, then it would be admitted, as a part of the qualification that he gave, but as he did not give it to the Committee it forms no proper qualification of his statement to the Committee.

Judge Neilson—It does not come in as a part of the conversation.

Mr. Evarts—No, not at all; and therefore it comes within the rule that an inquiry into what a witness has said does not admit evidence *pro* or *con* as to the truth of what he said.

Mr. Fullerton—The inquiry is as to what a party has said.

Mr. Beach—The counsel overlooks entirely the distinction which is to be taken between a disinterested witness, sworn in a cause and a party produced in the cause. The effect of this declaration, which they have drawn from Mr. Tilton, is to prove the fact declared that his wife maintained her innocence. That is the ultimate fact, object and effect of this evidence coming from the party which is said to be proved, and is proved, and unless it is contradicted by superior evidence that declaration of the party, that his wife uniformly maintained her innocence, is an established fact in this case, and upon which counsel can argue, and upon which this jury in their judgment can rely. Now, these cases, which are produced by the counsel, relate entirely to a witness who is sought to be contradicted by proof of inconsistent statements made out of court, and there it is ruled that where the witness answering the impeaching witness, referred his testimony to a different occasion than that to which the impeaching witness testified, that it was not competent to prove, as a matter of fact, that this other occasion really existed. It has no relation whatever to the point that is in dispute before your Honor.

Judge Neilson—Nobody can doubt that the witness or the party might say that the transaction related to a different exchange of horses.

Mr. Beach—Yes, undoubtedly.

Judge Neilson—The question was whether he could call some other person to swear to the fact that there was such an exchange.

Mr. Beach—Exactly. Now, they proved that Mr. Tilton, in his examination before the Committee, declared that his wife maintained her innocence under certain given circumstances. I repeat, Sir, that that is not a rehearsal of what passed

between Mrs. Tilton and her mother. It is not giving the evidence, the facts upon which he drew the conclusion that she maintained her innocence. It is a mere expression of the judgment of the witness upon the language which Mrs. Tilton used. Now, we are not seeking to contradict that; we are not denying that; there is no question of impeachment or contradiction. We simply ask the witness to explain what he means by the term "maintained," in what way his wife maintained her innocence, so that he declared that as his conclusion from what he heard her declare. Now, it is said, Sir, in an authority handed me, that "in the re-examination of a witness it will be allowed to ask him any questions necessary to explain matters elicited from him in his cross-examination." Well, what is a very familiar rule, Sir. It is not announcing any new doctrine. Isn't it necessary, Sir, when they can go to your Honor and this Jury with the declaration of Mr. Tilton, that Mrs. Tilton maintained her innocence, in explanation of that declaration of Mr. Tilton to that effect? Isn't it proper to ask this witness how, by what language, by what form of expression Mrs. Tilton thus maintained her innocence? If the declaration of Mr. Tilton to that effect upon a solemn occasion establishes the fact in the absence of all other evidence, that is, that his wife did so assert her purity, isn't it proper for him, in explanation of that declaration, to show in what manner she made that assertion? The fact is, Sir, the proven fact by this evidence is, that she did so in some way, either express or modified, more or less emphatic; and that is arrayed, Sir, as a fact contrary to the charge which is made by Mr. Tilton in this action. Mr. Tilton says Mr. Beecher was guilty of improper connection with his wife. Why, they say, "No; Mr. Tilton, your wife constantly denied this; you acquiesced in it; you promulgated that denial upon an occasion when this very subject was under examination." Now, isn't it proper for us to show, Sir, what were the circumstances which induced him to make this declaration, and how it was that the declaration happened to be made; how the circumstances and surroundings, as well as the character of the language used, modified the force and effect of the declaration which he made in proof of the fact which they seek to establish, that Mrs. Tilton thus asserted her innocence? And is it possible that a party upon the stand can be placed in that position of making a naked declaration which, uncontradicted, is conclusive against him of a fact asserted, without having from him any explanation of the circumstances out of which that declaration arose; and what was the meaning and the purpose of the declaration as qualified by these circumstances? It seems to me, your Honor, to be admissible.

Mr. Evarts—If your Honor please—

Mr. Fullerton—Just wait one moment, if you please.

Mr. Evarts—I want the closing.

[Mr. Fullerton consults with Mr. Beach.]

Mr. Beach—The suggestion of my learned friend is that this brings the question to a very simple and present test. Suppose, instead of putting this question—the effect would be the same precisely, as your Honor will perceive—they had asked—

this witness now upon the stand, "Have you ever said that your wife always maintained her innocence?" and he answered "Yea." That is just the result of this evidence. It is a mere change of circumstance; it is not altering the substance or the tenor, or the legal effect of the question. Now, if that question had been thus put, and thus answered by this witness, might we not ask him how she maintained her innocence?

Judge Neilson—The suggestion is that it does not depend upon a matter of form.

Mr. Beach—No, Sir.

Mr. Evarts—My learned friend has suggested now, for the first time, that the rules of evidence are different in respect to a party who is a witness and one not a party, but nothing is more familiar since the introduction of parties, than that they are to be judged in regard to their capacity to give evidence precisely upon the rules that apply to other witnesses.

Mr. Beach—I have not asserted that the rules of examination are different, Sir. I have maintained no such proposition.

Mr. Evarts—Why was the distinction referred to?

Mr. Beach—The distinction was referred to because when you get a declaration from a witness as to what he has said, in an attempt to impeach him by contradictory statements, it is no evidence of the fact which is embodied in the language which he may have used; but when you get that declaration from a party, Sir, it is evidence against him, it proves the fact unless it is overborne by other witnesses or explained.

Mr. Evarts—Well, but if it don't affect the rule of evidence why is it referred to.

Mr. Beach—It does affect the law of evidence, but not the rules of examination, as the gentlemen said.

Mr. Evarts—There is some difference, I suppose, or else it could not be insisted upon.

Mr. Beach—Yes, I should think there was.

Mr. Evarts—Well, I am insisting that you say that there is a difference, and then I understood you to disclaim it. Now, if your Honor please, nothing is truer than that when a party is offered as a witness he stands upon the rules of evidence for his examination and his cross-examination that attend the examination of every other witness, and this is wholly a question of the course of examination, whether our course of cross-examination lets in a certain line of proof for re-examination, and that being a question of the production of the evidence of a party, like the production of the evidence of any other witness, this rule of the consequence of his own line of examination leading to a right of this or that extent is the same for a party as for a witness. Now, there are other rules of evidence that are different in respect to a party, from what they are to a witness; that is to say, to contradict a witness by counterstatements he has made out of Court, it may be necessary to lay the foundation, by inquiries of him, but to contradict a party by statements that he has made out of Court, whether he is a witness or not, you do not need to lay any such foundation. But that is aside from this inquiry. Now, my learned friend insists upon putting it, that the subject-matter of my cross-examination has been what took place between Mrs. Tilton and her mother and Mr. Tilton, or some two of them. There is the

complete mistake. I have not asked a single question concerning any such transaction. I have only asked him, "Did you on a certain occasion, in answer to a certain question, make a certain answer?" and then all that re-direct-examination can do for that situation is to introduce any explanatory observations that he made as a part of that conversation, or within any such range of conversation as the law shall tolerate as forming a part of it; but that is all he stated in qualification, and not any recurrence to the facts of the case concerning which his statement was made.

Judge Neilson—Will you allow me to look at the book, Mr. Evarts?

Mr. Evarts—At the question and answer? The pamphlet—your Honor asks for the pamphlet?

Judge Neilson—Whatever you read from.

Mr. Evarts [To Mr. Shearman]—The yellow pamphlet.

Mr. Fullerton—We have got the yellow pamphlet.

Mr. Evarts—Well we have got plenty of them.

Mr. Fullerton—There is a copy. [Handing a book to the Court.] It is marked, Sir.

Mr. Evarts—Your Honor will observe that the fact, whether the wife admitted or denied her guilt, cannot be evidence for or against either party.

Mr. Beach—That is quite a mistake, Sir.

Mr. Evarts—Well, his Honor has said so.

Mr. Beach—His opinion will be changed upon reference to the authorities, then.

Mr. Evarts—I understand it to be that.

Mr. Beach—I understand it not to be that.

Mr. Evarts—We will see.

Mr. Beach—We shall see.

Mr. Evarts—That ultimate fact is not a matter introduced in evidence on either side.

Judge Neilson—Where do I find this question? Is it marked here?

Mr. Fullerton—It is encircled; it is surrounded with a red line.

Judge Neilson—You extorted from the plaintiff the admission that "she maintained to her mother, in my presence, that she had not done wrong." When you put the question, you had this in print before you, and saw what it was.

Mr. Fullerton—And read it, Sir.

Mr. Evarts—No doubt I read it.

Mr. Fullerton—Not only saw it, but read the whole of it.

Judge Neilson—Did it advisedly?

Mr. Fullerton—Yes, Sir.

Judge Neilson—It was no ground of surprise. No matter whether it was advisedly or not. "She maintained to her mother in my presence that she had not done wrong." The inquiry now is, how did she thus maintain to her mother—isn't it?

Mr. Evarts—Yes. Now, if I had extracted from him, or extorted, as your Honor's phrase is, that fact, that she maintained her innocence to her mother, if I had inquired concerning any conversation between her and her mother on that subject, they could have gone into the conversation; but I did not.

Judge Neilson—The question is whether you virtually and substantially do not do so here.

Mr. Evarts—Then it comes to this, if your Honor please, whether, when I ask a man if he said so and so, that is equivalent to asking him whether the fact is so and so.

Mr. Fullerton—But the fact is proved against him if he is a party.

Mr. Beach—It is proving by the declarations of a party, a fact.

Judge Neilson—That is the distinction between examining a witness and a party.

Mr. Evarts—There is not any difference between the examination and the cross-examination.

#### VAGUE RULES OF EVIDENCE DEFINED

Judge Neilson—I think I will allow him to answer the question.

Mr. Evarts—Your Honor will be so good as to note our exception. It is the usual hour of adjournment, if your Honor please, and after. [To plaintiff's counsel.] Well, is it long or short?

Mr. Beach—It is short, I suppose. We may as well take the answer.

Mr. Fullerton—Well, it is pretty broad at any rate.

Mr. Beach—Suppose it is. Please oblige me.

Q. Mr. Fullerton—Well, go on and answer the question, Mr. Tilton. I am willing to go on. In what way did she maintain her innocence in the presence of her mother? A. She always used to say, Sir, that she was not to be judged either by her mother or by me, but by God. She believed that God would judge her tenderly. She said she loved God, and she did not believe that God would have permitted her to enter into those relations if they had been sinful, and she said particularly that neither her mother nor I had made it the business of our lives to understand what was right and wrong as Mr. Beecher did; that Mr. Beecher was a clergyman; that he was a great and holy man; that he had repeatedly assured her that their relationship was not sinful, and she did not see how it could be sinful; that he had told her that love justified all things; that love had various expressions; that one expression was the shake of the hand; another expression was the kiss of the lips; another expression was sexual intercourse, and it made very little difference what the expression was; if that love was right, the love itself made rightful or justified all the various expressions of it, and that she believed before God that her love for Mr. Beecher was right and his for her was right; and therefore she did not see how any of the various expressions of it could be sinful. She said she rested on Mr. Beecher's authority for that; that he had told her so over and over again.

Mr. Evarts—Now, your Honor, I move to strike out all this answer.

Judge Neilson—We will take this up in the morning and see.

Mr. Evarts—My motion will be entered.

The Court then adjourned until to-day, at 11 o'clock.

## TWENTY-EIGHTH DAY'S PROCEEDINGS.

### MR. TILTON'S TESTIMONY FINISHED.

THE PLAINTIFF'S LAWYERS TRY UNSUCCESSFULLY TO INTRODUCE IN ANOTHER FORM ADMISSIONS FROM MRS. TILTON—LONG ARGUMENT OVER AND FINAL ADMISSION OF ONE OF THE MONTICELLO LETTERS—SHARP RE-CROSS-EXAMINATION—MR. BOWEN'S \$7,000 CHECK PUT IN EVIDENCE—A JURYMEN FAINTS IN COURT.

WEDNESDAY, Feb. 17, 1875.

In opening the court to-day Judge Neilson delivered a severe reprimand to the audience for expressing opinions and interrupting the proceedings with remarks to each other, and with grimaces signifying satisfaction or dissatisfaction. He reminded the spectators of what Hamlet said about silent protest. Mr. Fullerton resumed his re-direct examination of Mr. Tilton by reading for identification portions of the cross-examination of that witness in the Plymouth investigation which contained references in a complimentary form to Mrs. Tilton. The alert Mr. Evarts sprang to his feet at the next question asked by Mr. Fullerton, which was put to discover the nature of the interview between Mrs. Tilton, her husband, and Bessie Turner, at which Mr. Tilton says that the truth of the scandal was stated. This was another effort to get in evidence what would practically be a confession of Mrs. Tilton, and after a long discussion over Mr. Evarts's objection, Judge Neilson allowed the witness to say when the interview occurred. What was said during it was ruled out. Mr. Tilton was asked to remove, if possible, the apparent inconsistency in his testimony in the matter of the interview with Mr. Beecher of Dec. 30, 1870. The "True Story" states that he told Mr. Beecher to go and see Mrs. Tilton, while in his direct testimony he asserted that Mr. Beecher asked if he might go. The Judge allowed the explanation of the witness, despite objection, saying that he saw no inconsistency. The defense having drawn out that Mr. Tilton told Mrs. Morse of his wife's alleged sin, knowing his mother-in-law's infirmity for tale bearing, Mr. Fullerton asked the witness if he thought at the time that Mrs. Morse would repeat what he told her. Mr. Evarts quickly objected, and even after Judge Neilson decided that the witness might reply, he continued to argue tenaciously. The next topic was concerning the Catherine Gaunt letter, the examiner asking the witness if Mrs. Tilton might not have communicated its contents to anybody. A sharp

legal skirmish followed this, and Mr. Evarts met with partial success. Mr. Tilton's views regarding the Commune were asked for, and he answered that the French Communists were those people in Paris who believed in governing that city just as Brooklyn is governed. In other words, said he, the aim of Communism is for local self-government as established in every American city. Rossel was again highly eulogized. The "Winsted affair" was briefly touched on, the witness testifying that his companion at Winsted, whose presence with him there caused the scandal, was a school girl about 16 or 17 years of age.

An interesting discussion, lasting nearly an hour and a quarter, followed on the heels of the attempted introduction by Mr. Fullerton of two letters of Mrs. Tilton to her husband, written from Monticello, New-York. With the rather scanty collection of law books before the lawyers they began to search for law decisions authorizing the rejection or admittance of such letters under the circumstances. Clerks were immediately dispatched to the offices of the counsel near by for more authorities, while Mr. Beach and Mr. Fullerton made addresses covering all the points which suggested themselves in the absence of law authorities. They finished speaking a few moments after 1 o'clock, and notwithstanding it was the hour of recess, Mr. Evarts began his argument. He paused at 1:10, however, and at the suggestion of Mr. Beach the court adjourned to 2:15. After the interval Mr. Beach again took up the line of argument, quoting various law decisions, etc., to show that the letters might be read. Mr. Evarts followed him, and Judge Neilson decided to admit one of the letters, because he thought that the letter affected the question of damages. The letter admitted was written by Mrs. Tilton to her husband, and was dated July 4, 1871. Mr. Fullerton read it with decided effect, giving peculiar emphasis to the words, "Oh, my dear husband, may you not need the further discipline of being misled by a good woman, as I have been by a good man."

Soon after this Mr. Fullerton announced that he was through, and then Mr. Evarts began the re-cross-examination. His questions with Mr. Tilton's answers lasted through the remainder of the afternoon session, and they were carried on sharply and with rapidity, Mr. Evarts pressing inquiries apparently with the intention of concluding with the day. The most important development was the fixing of the day on which Mr. Tilton received the \$7,000

from Mr. Bowen. The witness had said that the money was paid two or three days before the signing of the tripartite agreement, which took place on April 2, according to that document. The check for \$7,000 was produced and bore date of April 4. If Mr. Tilton signed the tripartite agreement on the day it was dated, the check indicates that he received the money two days after signing it, instead of two or three days before.

With a few questions regarding the knowledge of the witness of Mr. Beecher's gifts to Mrs. Tilton, the volume of testimony of Mr. Tilton was shut, and he stepped from the chair.

Just as Judge Neilson's gavel, adjourning the court, dropped at the close of the afternoon session, William H. Davis, one of the jurymen, was observed to close his eyes and suddenly grow pale. Judge Neilson noticed his condition before any one else, and immediately ordered one of the large windows to be opened, the man being evidently about to faint. Mr. Davis partially recovered, and expressed his ability to care for himself, but as he arose to go, he fell helpless into the arms of his fellow-jurymen. He was carried behind the jury seats, and the strong breeze from the open window was allowed to blow over him; cold water was dashed upon him, and a physician sent for. Judge Neilson directed Officer Spaulding to accompany the sick juror to his home.

Mr. Tilton was declared competent to testify on Monday, Feb. 1, and took the witness-chair on that day. His direct examination continued two days and a half. The cross-examination occupied eight days, and the re-direct and re-cross-examination one day and a half more.

## THE PROCEEDINGS—VERBATIM.

### DEMONSTRATIONS BY THE LOOKERS-ON REBUKED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—The experience of yesterday makes it necessary I should ask the audience to be more quiet hereafter. I think a witness ought to be called here and examined without any gentleman present testifying what they think of it, without gentlemen turning to those who sit near them and making remarks about it and making faces, either by way of approbation or disapprobation. And the significance of this you might understand well, if you remember what Hamlet says about silent protest, or silent expressions of opinion, or recall the effect of pantomime, as a very eloquent mode of expressing opinions. As a matter of decency and respect to the Court, and respect to the oath taken by the witness, I must ask that it be discon-

tinued; and I shall make direct personal appeal to any gentleman that I see hereafter offending against this rule.

Theodore Tilton was then recalled, and the re-direct examination resumed.

MR. TILTON'S PRAISE OF HIS WIFE'S GOODNESS.

Mr. Fullerton—Mr. Tilton, when you were before that Committee, did you say anything else in reference to the purity of your wife, in answer to questions put to you at that time? You may look at that and see if it refreshes your recollection. [Handing witness a book.]

Mr. Evarts—Before answering, let us know what it is.

Mr. Fullerton—Yes, certainly.

The Witness—Which part do you desire me to look at?

Mr. Fullerton—The part marked in red there—in rubric. A. Well, Sir, the part to which you call my attention, marked in red, is very badly bungled in its expression. Some of it makes very little sense.

Mr. Evarts—Mr. Fullerton, I asked you to show it to me before he answered.

Mr. Fullerton—Well, I shall not call attention to what it is.

Mr. Evarts—Before any answer is given by the witness let us see it.

Mr. Fullerton—Certainly. [To the witness.] Was the substance of that testimony given before the Committee by you? A. Yes, Sir.

Mr. Evarts—Now, before any answer is given I ask to see it.

Mr. Fullerton—Well, if he said the substance was not given I should not ask him. [Handing the book to Mr. Evarts.]

Q. On your direct examination, Mr. Tilton, you were asked this question: "Have you not frequently asserted the purity of your wife?" To which you answered: "No; I have always had a strange technical use of words; I have always used words that conveyed that impression; I have taken pains to say that she was a devoted Christian woman; that necessarily carried the other; it was like the statement that I carried to Dr. Storrs; I do not think he caught the idea of the statement; as he took it I do not think that it covered the whole; I have said that Elizabeth was a tender, delicate, kindly, Christian woman, which I think she is." Did you answer in substance that?

Mr. Evarts—Now, if your Honor please, I asked the question whether—[taking the book]—I asked him this—if I can find the cross-examination—I remember asking him whether he had not said in answer to a question, "Have you not frequently asserted the purity of your wife?" "No; I have always had a strange technical use of words; I have always used words that conveyed that impression." That, I think, was the point to which I asked my question, and I understood the witness to answer that he did not. I do not mean that he flatly said that he did not, but that he did not recognize—that he made some comment about the phraseology.

Judge Neilson—Well, that was a verbal criticism.

Mr. Evarts—Well, I would like to find if we can, if your Honor please, my cross-examination, because I don't know exactly what my learned friends propose in that connection. It is at the 700th page, it is said

Mr. Shearman—No; it is February the 8th.

Mr. Evarts [referring to testimony]—This is the matter that I introduced—February 8th. [Reading:]

Q. On this same examination, in answer to this question, "Have you not frequently asserted the purity of your wife?" did you make this answer: "No, I have always had a strange technical use of words; I have always used words that conveyed that impression?" A. I cannot see any sense in that word "strange," Sir; I think there must be some misprint; what I meant was that I had always tried—

Q. Well, I ask whether you made that answer or not? A. Well, I did not make use of any such words as "strange technical use;" it is evidently a misprint; you can see it yourself.

Q. I don't know anything about it. You say you did not make that answer? A. Why, I say, Sir, that of course I did not make any such answer: "A strange technical use of word!" There is some other—it is wrong—bad English—it is not right. I will tell you what I said—

Q. Well, did you say, "I have always used words that conveyed that impression?" A. I did, Sir, and I always used such words on purpose, to convey to everybody the impression that she was a pure and good woman, and if any word of mine will carry the impression about the earth to-day, I should like to utter it from this stand.

Q. Well, then, you did use words that were intended to convey the impression of the purity of your wife? A. I did, Sir. But I did not use it in that form. I did not use the word "purity." I used other words. I think she is a pure woman.

Q. You used words that conveyed that impression? A. Yes Sir.

Q. But used other words to do it, with the intention to convey? A. Yes, Sir.

Q. And with the effect of conveying? A. Yes, Sir; with that deliberate design, for I hold, with Mr. Beecher, that she is guiltless.

Q. And with that constant effect? A. Yes, Sir.

Mr. Evarts—Now, that is the cross-examination.

Mr. Fullerton—Now, my proposition is to prove what else he said at that time, and what words he used.

Judge Neilson—You can do that. Go on.

Mr. Evarts—You mean in answer to that question?

Mr. Fullerton—I mean at first in answer to that question, and by and bye I shall mean differently.

Mr. Evarts—I suppose it is allowable to prove what he has said in answer to that question.

Mr. Fullerton—Now, at the same time of using the language that has been recited in your presence, in answer to the question put to you by Mr. Evarts, did you also say: "I have taken pains to say that she was a devoted Christian woman. That necessarily carried the other. It was like the statement that I carried to Dr. Storrs. I do not think he caught the idea of the statement; as he took it, I do not think that it covered the whole. I have said that Elizabeth was a tender, delicate, kindly, Christian woman, which I think she is." Did you say that also in reply to the question, or that in substance? A. I did not say that about Dr. Storrs, but I said that about Mrs. Tilton. That allusion to Dr. Storrs is very blind and incorrect, bungled; but that allusion to Mrs. Tilton I am inclined to think is correct, because I did say that she is a good woman.

Q. In reply to the question at the same time: "Have you not stated that she was as pure as an angel?"—did you say: "No; Mr. Halliday says I said that; he asked me in Mrs. Bradshaw's presence whether or not I had not said that my wife was as pure

as gold." "No," I said, "Mr. Halliday, because the conversation to which you allude was this: I said, 'Go and ask Mr. Beecher himself and he will say that she is as pure as gold;' it is an expression which he used; I have sought to give Elizabeth a good character; I have always wanted to do so; I think she deserves a good character; I think she is better than most of us—better than I am; I do not believe in point of actual moral goodness, barring some drawbacks, that there is in this company so white a soul as Elizabeth Tilton." Did you say that? A. I think I did, Sir; if I did not say it I said something like it.

Q. In answer to the question: "Did you not state that in substance to one or more of the gentlemen with whom you were luncheoning?"—did you answer: "In substance, yes; and I state it now, but I did not use the phrase that she had never violated her chastity." Was that the substance of the testimony? A. Yes, Sir.

Mr. Evarts—There is something more.

Mr. Beach—If there is anything there that they want read, read it.

Mr. Evarts—Oh, well, we don't care.

Mr. Fullerton—There is a great deal more there.

#### CONVERSATIONS BEFORE BESSIE TURNER OBJECTED TO.

Q. In your cross-examination, Mr. Tilton, this occurred: Speaking of the persons to whom you had communicated the story—the scandal—after naming some of them, you mentioned: "And then perhaps I ought to mention that there was a chance interview in my house, between Mrs. Tilton and myself, at which Bessie Turner heard the whole story." Do you recollect when that took place? A. I cannot fix the precise day, but it was the day on which Mrs. Tilton returned from Marietta.

Mr. Evarts—Where is the passage?

The Witness—Either in November or December, 1870.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Wait a moment, Mr. Tilton. [Passage shown to Mr. Evarts in book.] Well, I think, if your Honor please, I was asking him in regard to, or commenced with, an inquiry about whether the sum and substance was not that he had stated that Mr. Beecher had made unhandsome proposals, with the exception of three persons. [Reading]:

Q. Now, when you were communicating the whole story, that is another matter; but, with the exception of those three persons (which he had named, I suppose,) the sum and substance of what you communicated yourself to other people was the unhandsome proposals or the impure advances? A. Yes, Sir.

Then the witness went on:

Then, perhaps, I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

Q. I have not asked you that. I ask you, a voluntary communication which you made to outside people? A. I don't remember any other voluntary communications to outside people.

Now, what he said about Bessie Turner was not in answer to any question of mine, nor is it a part of anything drawn out. I objected to it at the time, and I called his attention to what

my inquiry was: that it was his own communications. Now, whatever he said there about Bessie Turner should not be made the basis of an inquiry now by reason of my having introduced it in any cross-examination of mine.

Judge Neilson—I see.

Mr. Fullerton—Your Honor will perceive that the learned counsel did not object to that part of the testimony at all.

Judge Neilson—He disclaimed it.

Mr. Fullerton—He disclaimed it only in a measure. The disclaimer was in these words, if it be a disclaimer at all: "I have not asked you that." That is no intimation that he did not take it. It is testimony in this case; it was called out by a question put by the counsel on the other side.

Mr. Evarts—No.

Mr. Fullerton—There was no motion to strike out; and, beside that, Sir, it was a proper answer for the witness to make to the question that was put. Now, I call your Honor's attention to the question and to the answer, and you will perceive that the witness could not discharge his whole duty unless he mentioned that fact, because it was a communication to Bessie Turner. He says that she was present at an interview between himself and his wife when she learned the whole story; she was permitted to be there; it was a communication to her, within the proper signification of the term, and a communication, too, by this witness; and when he was asked to whom he had communicated the story, he was under the strongest possible obligations to mention Bessie Turner with the rest, and he did mention her name as one to whom that story had been revealed. Now, your Honor will bear with me whilst I read this again, and see if I am not correct. After mentioning these names, Mr. Evarts says [reading]:

Q. Well, with those exceptions, was the sum and substance of all that you had ever said to the persons to whom you spoke, that Mr. Beecher had made unhandsome approaches to your wife? A. Yes, Sir; impure proposals; that is the sum and the substance. I did not wish to incriminate Mrs. Tilton.

Q. No matter what you wished; the fact was that that is all that you said? A. That is all I said.

Q. With the exception of these three persons? A. Well, understand me, Mr. Evarts, the three persons to whom I allude are persons to whom I told the story—there were other persons to whom I talked, to whom Mrs. Tilton told the story, and Mrs. Morse told the story.

Mr. Evarts—That you don't know anything about?

The Witness—I do know all about it.

Q. I am talking about persons to whom you communicated information. A. Yes, Sir, but I volunteered the whole story to those three persons, with the addition, perhaps, of Judge Morse.

Q. About him you do not remember? A. I don't remember the exact extent of that conversation with him.

Q. Now, when you were communicating the whole story, that is another matter—but with the exception of those three persons, the sum and substance of what you communicated yourself to other people, was the unhandsome proposals, or the impure advances? A. Yes, Sir; and then perhaps I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

Judge Neilson—Now, you ask—

Mr. Fullerton—Now, I ask him when that took place.

Judge Neilson—Well, I think he can state when, merely the date, Sir; that is all. The date of an event refers—

Mr. Fullerton—Well, I do not propose to limit myself to the date.

Judge Neilson—Well, that is the question now.

Mr. Everts—Well, that I suppose. I started this inquiry with this. [Reading]:

Q. Now, Sir, did you not say on that occasion (that is, before the Committee), in answer to this question: "I ask what evidence you stated against Mr. Beecher to Mr. Bowen"—in answer to that question, did you not make this answer: "I must answer your questions in my own way. I came to tell you the whole truth, and not fragments of the truth. Mr. Bowen wanted me to speak more in the paper of Plymouth Church." Mr. Johnson said: "Perhaps Mr. Tilton has a reason for not going to Plymouth Church," and thereupon Mr. Bowen was curious to know the reason. I, in a solitary phrase, said that there was a personal, domestic reason why I could not go there consistently with my self-respect; that Mr. Beecher had been unhandsome in his approaches to my wife. That is the sum and substance of all I have ever said on this subject, to the very few people to whom I have spoken of it?"

Now, that was my question; that is, taking a question and an answer from his examination before the Church Committee I, in the ordinary form, asked him: "In answer to that question did you not make this answer?" The witness then says, when I have propounded to him that question [reading]:

A. What is your question?

Q. Did't you in answer to the question read to you, make that answer? A. I didn't make the last part of that answer, Sir, and I repudiated in a public card that report of my interview. I distinctly, before the Committee, charged Mr. Beecher with adultery, and they did not put it in the report.

Q. Well, now, I am not asking you about that. It has nothing to do with it. I have asked you a simple question, whether in answer to the question I read to you, you did not make the answer that I read to you? A. I did not, Sir.

Q. Very well; what you did afterwards I have nothing to do with.

The Witness—I did not, Sir; in other words, that Committee were informed by me—

Mr. Everts—No matter.

The Witness—It is the last clause.

Mr. Everts—I have not asked you anything about it.

Mr. Beach—Well, he has a right to answer that he made a part of that reply and part he did not. That is just what he was saying when you interrupted him.

Mr. Everts—No, he was not.

Mr. Beach—Well, I say that he—

"has," I suppose it should be: it is "was" here, and I again say that he has not, and Mr. Beach says "the minutes will show."

Mr. Everts—He was talking about the repudiation of the report.

Mr. Beach—He was not, Sir, when the counsel last interrupted him.

Mr. Everts—Well, I say he was.

The Witness—That was the substance of what I said to Mr. Bowen.

The witness goes on:

I didn't tell him the whole story, but I had told others the whole story, but very few.

Mr. Everts—Now, I have not asked you. You say that you did not make that last part of the answer? A. No, Sir; I say that the answer is imperfect; part of it is omitted; that is the answer that I generally made. There were a few exceptions to

that answer, namely, Mr. Johnson, Mr. Moulton and Mrs. Bradshaw.

Now, I have gone on with the inquiry:

Q. Well, with those exceptions, was the sum and substance of all that you had ever said to the persons to whom you spoke that Mr. Beecher had made unhandsome approaches to your wife? A. Yes, Sir; impure proposals; that is the sum and the substance.

And then my learned friend has read on from that, and it ends in this question:

Q. Now, when you were communicating the whole story, that is another matter (that is, I excluded all talk when he was communicating the whole story); but, with the exception of those three persons, the sum and substance of what you communicated yourself to other people was the unhandsome proposals or the impure advances? A. Yes, Sir.

Then the witness volunteers—

Then perhaps I ought to mention that there was a chance interview in my house between Mrs. Tilton and myself, at which Bessie Turner heard the whole story.

I certainly had not introduced or inquired about any interview with Mrs. Tilton, or a part. I say then: "I have not asked you that. I ask you, a voluntary communication which you made to outside people"—meaning, outside of his wife.

Judge Neilson—Well, you remarked to the witness—

Mr. Everts [reading]:

A. I don't remember any other voluntary communication to outside people.

Then I ask him about what he had said to Mr. Moulton, which is on this very subject. Now, my learned friend says that I have made no motion to strike out. Well, if your Honor please, I don't understand that when I repudiate the answer as not being to the question, when it is not to the question, that it is in my introduction for the omission of a motion to strike out.

Judge Neilson—Well, it would not have been in but for your interrogatory, and being in, you would be at liberty to use it in your address to the jury.

Mr. Everts—Well, but I repudiate it; I don't want it; it is the very thing that I was not inquiring for.

Judge Neilson—You have made an intimation to the witness which would be a suggestion to be acted upon hereafter, to confine himself to the question. But still his answer, that part of it, stands as well as the other part.

Mr. Everts—Well, Sir, I now move to strike it out, as not called out by any cross-examination of mine. I certainly had no idea that it was in the testimony.

Judge Neilson—Well, were you not aware that it was a part of the testimony, and that you could use it.

Mr. Everts—I have never read this testimony since.

Mr. Beach—Will you allow me to make a suggestion?

Mr. Fullerton—Well, he heard it delivered.

Mr. Everts—I heard it when it was delivered, but I immediately objected to it.

Mr. Fullerton—No.

Mr. Everts—Well, I say that I did.

Mr. Beach—Will you allow me to make a suggestion?

Mr. Everts—Yes, Sir.

ARGUMENT OF MR. BEACH.

Mr. Beach—In the first place Mr. Everts called for the persons

to whom this witness had communicated the whole story, or put questions properly to lead to the naming of the three persons to whom the whole story had been told by this witness. He then goes on to inquire whether, with the exception of these three persons, he had not uniformly told those with whom he conversed that the extent of the offense was impure proposals on the part of Mr. Beecher. In the course of that inquiry it occurs to the witness that in the first branch of the inquiry he had omitted Bessie Turner. He then says to Mr. Evarts, "Now, I ought to say, Mr. Evarts (the sense is 'for the purpose of correcting my previous answer naming only three persons') that there was another person to whom I had communicated the whole story, making four instead of three." Now, isn't that perfectly proper, and isn't it evidence to be taken as a part of the answers to the first branch of the inquiry as to the persons to whom he had communicated the whole story? Mr. Evarts says, "Now, that is not my inquiry now." But yet it was a proper answer to the interrogatory which Mr. Evarts had previously put, and must stand as testimony. How would the witness stand under this examination if the motion is now made to strike out that answer?

Judge Neilson—Yes, Sir, I think it stands as part of the testimony. Mr. Fullerton, put your question; I think you can put that question and get an answer

#### GENERAL DISCUSSION.

Mr. Evarts—Now, if your Honor please, let us understand. When a witness volunteers a statement not in answer to a question, and counsel then rejects it, is it to be understood if counsel on the other side does not insist upon it that it remains in.

Judge Neilson—I think it does; I think you are at liberty to use it.

Mr. Evarts—It is not anything I had asked. I had drawn a line of examination as distinct as possible about this statement that he had made before the Committee.

Judge Neilson—He named three exceptions.

Mr. Evarts—He made then certain exceptions which he had a right to name.

Judge Neilson—Now, he named the fourth exception.

Mr. Evarts—But I did not inquire what he had said to other people at all. As he gave me exceptions, I set them all aside.

Mr. Fullerton—You inquired of the persons to whom he had communicated the whole story, and that is what he said.

Mr. Evarts—I set them all aside, and now say: "With those exceptions that you have made—"

Judge Neilson—I understand that.

Mr. Evarts—Now, I have not inquired at all what he said to other people.

Judge Neilson—That is very plain; I understand that.

Mr. Evarts—This Bessie Turner matter they say comes in now as a part of what he said to other people. Now, I haven't asked a word of what he said to other people including Bessie Turner.

Mr. Beach—You asked for the names of the persons to whom he communicated the whole story; that is calling for what he said, I take it.

Mr. Evarts—I asked whether the sum and substance of what

he said to other people, was not this point that it was only unhandsome proposals, and he said: "With the exception of three persons to whom I told (what he calls the whole story) that was the sum and substance." Now, I don't ask a word of what he said to anybody except the persons to whom he told what was the sum and substance, and now, they say that Bessie Turner comes in as a fourth person, but I understand her to be rejected as not a person to whom voluntary communications were made, because I asked him—I say: "I have nothing to do with that; I am asking you as to persons to whom you made any voluntary communications."

Judge Neilson—I understand perfectly. You did not interrogate him as to what he said to Bessie Turner or to those other three persons, although it is quite apparent upon the face of the examination that he stated the matter to those persons differently from the statement to the persons about whom you particularly inquired.

Mr. Evarts—Now, I have not made an inquiry concerning any statement that he made to any person so as to give them a right to bring that out. But this matter of Bessie Turner stands upon the testimony; it must stand (I supposed it was excluded entirely), not in the position of a voluntary communication by him to her; he speaks of it as a chance interview between himself and his wife, in which we may assume there was a conversation, and Bessie Turner thereby, as he says—

Judge Neilson—It is implied that she became possessed of it in some form. This inquiry is as to the date of that occasion. When was it?

Mr. Evarts—Of the whole story. Now, on the face of that, it is a confidential communication overheard by somebody, which is not permitted to be given in evidence by a party to the communication. Bessie Turner is under no such obligation as would preclude her from stating what she overheard, if she did overhear it.

Judge Neilson—I think, if it is to be excluded, it is to be excluded on the ground that you did not inquire into the conversation.

Mr. Evarts—That is my point, and I think it is a very clear one.

Mr. Fullerton—It is not inquiring into the conversation to have the witness say that he told the whole story to the party?

Mr. Evarts—I did not ask that.

Mr. Beach—That you took as evidence, or allowed as evidence, in this case.

Judge Neilson—Is it not enough that he told the whole story differing as to those three or four persons, from what he said to the others?

Mr. Beach—In what respect did it differ? What was the whole story?

Judge Neilson—It differed in this, that it was the whole story.

Mr. Beach—But we do not understand what the whole story is, and they are at liberty to argue that that was not a charge of adultery—at perfect liberty to argue from that. If a witness is asked whether he told the whole story upon a given subject to a party, certainly, upon re-examination, it is admissible to ask what he told.

Mr. Evarts—I did not ask that question.



Mr. Beach—You got it out, Sir; you got it in the evidence, and you have a right to use it, as the Court decides, and if it be upon the records as evidence, then we have a right to know what it was that he said, constituting, as he says, the whole story.

Mr. Fullerton—I call your Honor's attention again to the question which called out this answer, and I repeat what I have already observed, that the witness was bound under his oath to say what he did in regard to Bessie Turner: "The sum and substance of what you communicated yourself to other people, was the unhandsome proposals, or the impure advances? A. Yes, Sir." Now, if he had stopped there would it have been true? Was he not bound to say, "I communicated something else to Bessie Turner, beyond impure proposals or solicitations?" The counsel upon the other side undertook to limit these communications, to every person, to impure advances or unhandsome proposals; and the witness having stated in the presence of Bessie Turner the whole story, was bound to say: "Sir, I did more than that; I communicated the whole story to Bessie Turner." Now, the gentleman says he did not call it out; I say that he did call it out.

Judge Neilson—You say that, in substance and effect, it is there.

Mr. Fullerton—It is there, and it is because the learned counsel called it out by his question. He put it there; he is bound by it. A lawyer is very apt to take a good thing whether he asks for it or not, if he can get it, and sometimes he has to take something that he don't like because he can't help himself, and this is just one of those instances. And when he undertook to limit the communications of this witness to all persons, to impure proposals, he said: "No; I went beyond that on one occasion; I communicated the whole story to Bessie Turner." I say it is a proper reply, it is a legitimate reply. It was a reply that he was bound to make, and it stands here as evidence in this case. And when the learned counsel comes to sum up this cause to the jury, he has a right to use that as an instrument against us, that that communication was made to Bessie Turner. And, in one view of this case, the learned counsel desired to show, and he will claim that he succeeded in showing, that this witness communicated this scandal to various persons, to attain some object, and among the rest, he will claim that Bessie Turner is to be enumerated. It is certainly very clear, Sir, that this is evidence in this cause, and that we have a right to follow it up on this re-direct, not only to ascertain when it was said, but what was said.

Mr. Evarts—Well, now, my learned friend puts it distinctly upon the proposition that when I am inquiring of this witness, in the line of cross-examination, whether or no the sum and substance of what he said to persons was not—whether he had not stated that the sum and substance of what he had said to other persons concerning this matter, was unhandsome advances, or impure proposals, and the witness answers, "No; to certain persons I had said something else;" then I say, "excepting those persons, wasn't it all that you said," and he says, "Yes," and then he says, "Perhaps I ought to say," [having named the three persons,]—"Perhaps I ought to say that in a chance interview, in my house, between Mrs. Tilton

and myself, Bessie Turner heard the whole story;" I say, "I don't refer to anything but voluntary communications that you made to outside persons," (treating this as a matter between himself and his wife, as it certainly was); then he says, "I don't remember any other voluntary communications to outside people"—now it is claimed that, because I, not asking anything concerning any interview at which he has said anything, but the sum of the interview being that it was impure proposals, that, therefore, because he said there were some other people to whom he made other statements, that they have a right to inquire what those statements were. Now that is what it comes to, and Bessie Turner cannot stand any better than the rest. I suppose she will stand very differently, whenever the matter is approached and disclosed in regard to the circumstances of its being a statement to her. But that does not alter the proposition that I am not responsible for its introduction, whether in course of this inquiry in which I have not asked one word about any interview with anybody with whom he said that he didn't limit his interview to the impure proposals. That was my whole inquiry. I wanted only an answer to whether he had said so before the Church Committee. It ended in a discrimination as to what he had said, and what he had not said, which was all well enough; and then came in these inquiries in which I did nothing but exclude all conversations, with anybody and everybody, which had had for their subject anything but the impure proposals, and, having set them aside, I abstained entirely from any inquiry as to what passed between them and those persons. And now my learned friend says they have a right to introduce it.

#### THE FACT OF THE BESSIE TURNER CONVERSATION ADMITTED.

Judge Neilson—I understand that. [To Mr. Fullerton.] Is this statement of the Bessie Turner matter very material?

Mr. Fullerton—Very material.

Judge Neilson—Let us have it.

Mr. Fullerton—When was the conversation that Bessie Turner was present at?

Mr. Evarts—Your Honor will note my exception to any inquiry, as not based upon any cross-examination of mine, and not lawful in itself to them.

The Witness—I remember, Sir, very distinctly that it was on the day of Mrs. Tilton's return from Marietta, Ohio. I had gone in the morning in a carriage to meet her at the depot; this conversation took place in the afternoon of the same day, but I don't remember the exact day; I can't give the day of the month; it was either toward the close of November or in the beginning of December, 1870; that is as closely as I can state it.

#### THE CONVERSATION RULED OUT.

Q. Well, you say Bessie Turner heard the whole story; what was the whole story that she heard?

Mr. Evarts—Now, I object to that.

Judge Neilson—Well, I must rule that out, and it is quite ap-

parent now that as to Bessie Turner and three other persons he made a statement of this matter quite different and quite beyond the statement which he had made to the other persons—the statements about which Mr. Evarts inquired. I do not think he has opened the door to bring in the conversation, either with Bessie Turner or with the other three persons, and I have no doubt that the jury understand the attitude of the witness on that subject. Certainly I do.

Mr. Fullerton—Well, Sir, I haven't any doubt that they understand it, but I think they would understand it a good deal better if they knew what the Bessie Turner story was. Your Honor will perceive—

Judge Neilson—This is clear, very clear, from the whole testimony that some of these persons, about whom the learned counsel inquired particularly, heard the statement limited to impure advances; equally as clear that as to three or four persons they heard much more—a very different charge. That is very clear upon the testimony as it stands, but I do not think he has inquired as to the conversation with those other persons sufficiently to justify us in receiving it.

Mr. Fullerton—Now, your Honor will perceive at a glance the object which the other side had in view in giving this evidence to show that in the various conversations between the witness and third persons that he limited the charge against Mr. Beecher to impure advances.

Judge Neilson—Now, I understand the motive of the witness: it has been revealed to us clearly and distinctly—the purpose and motive of the witness and also the exception as to those four persons.

Mr. Fullerton—That is very true, Sir; but I say again, their object was to limit these charges made by the plaintiff in this suit against Henry Ward Beecher, to impure proposals. We know just exactly what communications were made to these other persons named, communications that were impure proposals, and nothing beyond that.

Judge Neilson—Now, as he was an eye-witness, his versions of it to them, whatever his motive might have been—we understand his motive don't touch the principal fact at all.

Mr. Fullerton—But, Sir, they have laid the whole foundation for the argument that no adultery was committed, because the plaintiff in this case did not charge adultery in these conversations.

Judge Neilson—If that act was committed it would equally exist whether the plaintiff charged it or did not. He might gloss it over, qualify it, seek to get rid of it, try to protect his wife, be as sentimental as he pleased about it, but still the fact would remain.

Mr. Fullerton—The fact would remain undoubtedly, but if he glossed it over in nine cases, may we not show that in the tenth case he stripped everything from it and showed it in all its hideous deformity?

Judge Neilson—You might if he had inquired into the conversation; I think he did not.

Mr. Fullerton—They did inquire whether he had not limited himself to the charges of impure advances, and whether he had made any other charges to any other person, and he says, "I made the whole story known to Bessie Turner in the conversa-

tion between me and my wife when she was present." Now, we ought to know what that whole story was; we ought to be able to meet the other side by saying that although he limited that charge to impure advances in several instances, yet in one instance he told the whole truth. We are entitled to that; we are entitled to it in consequence of the course pursued by the other side. Shall they prove that a communication was made to Bessie Turner, and we not be able to prove what that communication was? I am aware that the counsel upon the other side do not wish it, and I am equally aware that his inquiry called it out. The answer was the legitimate result of that inquiry, and when we learn now that in several instances he qualified this charge and subdued it, may we not show that in another instance he told it just exactly as it was?

Judge Neilson—You could if it was a conversation they inquired into. I think it don't come within that rule.

Mr. Fullerton—Suppose, Sir, they put Bessie Turner upon the stand, to prove Mr. Tilton did not communicate the whole story to her.

Judge Neilson—Then you could recall him to meet that; that is plain enough.

Mr. Fullerton—I think it is equally plain that we might meet it now.

Mr. Evarts—Then I should have gone into the conversation.

Mr. Fullerton—You might go into it a little more fully.

Mr. Evarts—I have not gone into it at all.

Judge Neilson—That is my present view of it.

#### WHO SUGGESTED MR. BEECHER'S CALL ON MRS TILTON.

Mr. Fullerton—We must adopt it, then. [To the witness.] Mr. Tilton, I call your attention to what occurred between you and Mr. Beecher at the time of the interview on the night of the 30th of January, 1870? A. That date must be wrong.

Q. The 30th of December I should have said; I was wrong by one or two days. Who suggested that Mr. Beecher should go and see Elizabeth? A. Mr. Beecher asked permission to go.

Q. And you have already given us, I believe, your reply? A. Yes, Sir.

Q. I understand you in your cross-examination to say, also, that you told Mr. Beecher to go and ask your wife whether she had not written you the letter? A. No, Sir; I did not. My wife asked me if I said such and such a thing.

Mr. Evarts—The record will show what I asked him.

Mr. Fullerton—But I want him to explain it.

Mr. Evarts—You are not entitled to ask him to explain it.

Judge Neilson—He may let him say what it was.

Mr. Evarts—I think, if your Honor please, that my cross-examination of the witness does not give them the right to explain that.

Judge Neilson—Suppose there was an inadvertence, a blunder.

Mr. Evarts—Then I agree that that be brought out in the proper form.

Judge Neilson—Let him explain that.

Mr. Fullerton—I shall not bring it out in any other form than I have now got it in, because I am correct about it.

Mr. Evarts—Your Honor understands, and I think you intend to apply the rule to protect the rights of both parties in regard to this matter, and we mean that the adherence shall be maintained to that rule throughout. Now, the direct examination was this—

Judge Neilson—I recollect it, including a very solemn injunction which he gave the defendant on the occasion of his going.

Mr. Evarts—I did not interpose any new matter in cross-examining him about it.

Judge Neilson—You examined him in regard to it?

Mr. Evarts—I cross-examined him.

Judge Neilson—Now, if you got a new answer or a statement that differs from the other, he can call his attention to that.

Mr. Fullerton—The question put on cross-examination was: "I then said to him, 'It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote the letter.'" A. Ah! that was my suggestion, not his.

Q. I ask whether you did not say that to him? And you answered, "I do not remember any such expression as that. Do you take it from my cross-examination before the Committee?" etc.

Mr. Evarts—Well,

Mr. Fullerton—And then afterwards—

The Witness—That was one of the softening passages from the True Story, as it is called.

Mr. Evarts—Well, no matter. I ask to have that answer of the witness stricken out if it is taken.

Judge Neilson—Yes.

Mr. Evarts—No matter; I ask to have that stricken out, if it is taken.

Mr. Neilson—Yes.

Mr. Fullerton—Here he was asked:

I am not asking about that; I am trying to get the facts. Did you say it is but a few squares to my house, go and ask Mrs. Tilton for yourself, whether or not she wrote the letter? A. Well, I may, perhaps, have used some such expression; I do not remember; but it was not in reference to any doubt.

Mr. Evarts—Well, what next?

Mr. Fullerton—"No matter, you used the expression? A. That was only as to his surprise," &c.

Mr. Evarts—That is all I introduced.

Mr. Fullerton—My question now is whether the suggestion originated with you or Mr. Beecher, that Mr. Beecher should go and see Mrs. Tilton.

Judge Neilson—He can answer that. What is it?

The Witness—The suggestion originated with Mr. Beecher.

#### AN INCONSISTENCY EXPLAINED.

Mr. Beach—There is, Sir, an apparent inconsistency between these two answers, and I ask that the witness may be permitted to explain what he means by the answer he gave on the cross-examination, that he told Mr. Beecher to go and see his wife, to see whether she wrote the letter, whereas now he answers differently on the direct examination—that the visit came as a suggestion from Mr. Beecher.

Judge Neilson—My recollection of it is that Mr. Beecher, having spoken of going, himself introduced the idea, and the witness consented; that is the way that it looks to me.

Mr. Beach—Very well. I want it so to appear on the record. Your Honor's ingenuity would, of course, see the correct explanation, but it should stand on the record.

Mr. Evarts—We are not commenting upon evidence, but the question is upon getting it, and getting it legally. This witness, who is also the party, had a very free utterance of this interview, without interruption, and in his own way. I cross-examined him as to a particular point and in that cross-examination he has given the answers that have been read to your Honor, which come to this, that Mr. Beecher indicating surprise that his wife should have said any such thing, he (the witness) said, "It is but a few squares to my house, go and inquire for yourself;" or something of that kind.

Judge Neilson—I don't remember any inconsistency myself. But if there be any, or any inadvertence or mistake, it should be explained; because it is our duty to take care of this witness as well as any other witness.

Mr. Evarts—Yes; if your Honor please, and of the truth also.

Judge Neilson—Undoubtedly, and that is the very object. We do not take care of the truth by getting an answer in an improper form and then holding the witness to it.

Mr. Evarts—And we do not take care of the truth by allowing a witness to modify his answer as many times as he pleases. The object, no doubt, is to get the truth, and the laws of evidence are so framed as to secure the best means of obtaining it, and they do not look to the protection of the witness, except so far as to protect the truth as it comes from him.

Judge Neilson—No doubt.

Mr. Evarts—No doubt that is your Honor's intention, that he should have an opportunity to state the matter truly. He has had that opportunity in his narrative, as given by him, without interruption. I take up a single proposition, to prove by him that on the indication of surprise from Mr. Beecher at the contents of what he had communicated to somebody as from his wife, he says: "It is but a few squares to my house," etc. Now, if that is a contradiction of his first statement, there it stands; and I think the learned counsel has been allowed to go as far as is permissible when he has asked a certain question which has been asked and answered, whether it originated with him or Mr. Beecher, and he has answered that it originated with Mr. Beecher. Now, that does not give them the right to reproduce the original examination at all.

Judge Neilson—It gives them the right to correct any apparent discrepancy if there be any.

Mr. Fullerton—I will put this question. [To the witness.] Whatever you may have said to Mr. Beecher in regard to going to your house to see Mrs. Tilton, was it before or after he asked permission to go? A. It was after he asked permission to go; and the phrase about a "few steps" is part of the narrative called "The True Story"—the softening—

Mr. Evarts—Stop! I object to that.

Mr. Beach—Confine yourself to the question.

Mr. Evarts—I wish to have that struck out.

Judge Neilson—Yes, this last remark. It is sufficiently distinct. Now, proceed, Mr. Fullerton.

Mr. Evarts—That was not an answer to any inquiry.

#### MRS. MORSE'S KNOWLEDGE OF PRIVATE INTER-VIEWS.

Mr. Fullerton—Now, Mr. Tilton, in your cross-examination, in speaking of Mrs. Morse, the question was put, "But how did she find out what had passed confidentially or privately between Mr. Moulton, Mr. Beecher and yourself?" and I understood you to answer, "Because I told her and she told all the world." Did you mean to be so understood? A. No, Sir; that was an inadvertence. I never talked with Mrs. Morse later than October or November, 1870; that was before Mr. Moulton came into the case. I have had no conversation with Mrs. Morse for four or five years.

Q. What you told Mrs. Morse was prior to Mr. Moulton's having anything to do with the matter? A. Yes, Sir.

Mr. Evarts—That the witness was about to correct next morning on his cross-examination.

Mr. Fullerton—I want him to correct it a little more fully.

The Witness—All the conversation I had with Mrs. Morse was with reference to facts that had been previously communicated by Mrs. Tilton, and not first by me.

Q. Now, did you suppose that Mrs. Morse was going to communicate what you told her to any one?

Mr. Evarts—I object to that question.

Judge Neilson—That is immaterial.

Mr. Beach—If your Honor please, Mr. Evarts made a significant remark after getting out the answer—"You did this, knowing of her infirmity."

Judge Neilson—Yes.

Mr. Beach—Now, may we not, in reply to that, get from the witness whether he told it expecting that she would repeat it?

Judge Neilson—Thus reminded, I think the question is proper.

Mr. Evarts—Your Honor will please to note our exception.

Judge Neilson—Yes. The witness may answer that question.

Mr. Fullerton—Whatever you communicated to Mrs. Morse, did you suppose that she would repeat it to any person? A. No, Sir; I never told anything to her; she was nearly wild when she heard the story from Elizabeth, and I tried to keep life in her body for a while.

Mr. Evarts—I object to the answer. He was asked only in reference to what he communicated to Mrs. Morse, whether, or no, he believed that she would communicate it, and now he tells us something that his wife told her.

Judge Neilson—He explains; I think the explanation may stand.

Mr. Evarts—Not an explanation of what he said.

Judge Neilson—Yes; the whole thing may stand.

Mr. Evarts—Are we not at the mercy of the witness?

Judge Neilson—Parties are always at the mercy of witnesses; I think the answer may stand.

Mr. Evarts—The answer to a question which is limited, "Did you suppose that Mrs. Morse would communicate what you told her to any one else," would be yes or no. His entire answer, if

your Honor please, would be, "I never communicated anything to her"—if that is a part of it; but is he then to be allowed to go on and say what his wife communicated to her?

Judge Neilson—I think it is a proper answer taken as it stands altogether.

Mr. Evarts—He certainly would not be allowed to interpose as an answer to the question what his wife communicated to Mrs. Morse. Certainly the inquiry did not embrace anything that his wife communicated to Mrs. Morse, and did not have the least reference to anything except what he himself communicated to Mrs. Morse; and yet under the line of cross-examination and of direct examination the witness made a voluntary statement concerning what his wife told Mrs. Morse, and that he had some opinion or other.

Judge Neilson—The question assumed that he had communicated something to Mrs. Morse. He had a right to qualify the statement and he has done so.

Mr. Evarts—He has a right to say that he did not communicate anything to Mrs. Morse; he has not a right to say that his wife did communicate it.

Judge Neilson—He has a right to indicate the fact somehow. It would not do to say that he did not communicate it, and let it stay there. I think the answer must stand.

Mr. Evarts—I move to strike out all parts beyond the answer to whether he supposed that she would repeat it—all in regard to what he said, and all that has reference to his wife.

Judge Neilson—Yes.

Mr. Evarts—And I except to your Honor's ruling admitting it, of course.

#### MR. BOWEN'S FORFEIT JUST.

Mr. Fullerton—Now, Mr. Tilton, the next question. Did you regard these \$7,000, which you claimed from Mr. Bowen as your due under the contracts—as your just due? A. Yes, Sir; every cent of it.

Q. You supposed you were entitled to that sum by the terms of your contracts, the contracts having been ended? A. I knew that I was; no question about it.

Judge Neilson—You had no question in your mind? A. Nor in Judge Reynolds's mind.

Judge Neilson—Well, the arbitrators settled that; it was due to you, no doubt.

Mr. Evarts—I ask that what he said about Judge Reynolds's mind be stricken out.

Judge Neilson—Yes; strike that out.

#### MRS. WOODHULL'S BUSINESS.

Mr. Fullerton—One word now with regard to Mrs. Woodhull. Was she a broker in Broad-st.; did she keep an office there? A. Yes, Sir.

Q. A public office? A. Yes, Sir.

Q. Like other brokers? A. Yes, Sir.

Q. Advertised herself as a broker? A. Yes, Sir.

#### HOW THE CATHERINE GAUNT STORY CAME OUT.

Q. I understood you to answer with reference to the Catherine Gaunt letter that anything which any one

knew from that letter must have come from you, because that letter was written to you. Do you know that your wife did not communicate to some one the contents of the Catherine Gaunt letter? A. She very frequently spoke about Catherine Gaunt.

Mr. Everts—I object to that.

Judge Neilson—Let the stenographer repeat the question.

[Question read by TAYLOR stenographer.]

Mr. Fullerton—Did you, or not, know that she had not communicated the contents of the Catherine Gaunt letter to any one?

Mr. Everts—I object to any answer beyond yes or no.

Judge Neilson—And he can say yes or no; that is the way to answer.

Mr. Everts—I object.

Mr. Fullerton—Then I will alter it.

The Witness—Either yes or no would not be a conscientious answer.

Judge Neilson—Did you know that she did not communicate it to any one? A. I don't know, Sir.

Mr. Beach—You do know.

Mr. Fullerton—He does know.

Judge Neilson—Or the other way.

Mr. Fullerton—Do you know the fact that your wife communicated the contents—

Mr. Everts—Wait; I object.

Mr. Fullerton—I am putting another question. Do you know that the contents of the Catherine Gaunt letter were communicated by any person other than yourself? A. Yes, Sir.

Mr. Everts—I ask that that answer be stricken out. It was known that I was to object to the question; I rose to object, and Mr. Fullerton said to wait until the question was put.

Mr. Fullerton—It may be considered as unanswered, for the

Mr. Everts—Very well; then it is out. Now, I object to that, so far as any answer embraces anything said or done by his wife.

Judge Neilson—He can answer without referring to her.

Mr. Fullerton—He did answer the question without referring to her. He did not embrace Mrs. Tilton.

Judge Neilson—Let the stenographer read the answer. [Answer read.] That may stand.

Mr. Everts—Understand me as objecting and excepting to its admission.

#### THE CELEBRATION OF ROSSEL'S DEATH.

Mr. Fullerton—I come now to the subject of the Commune.

The Witness—What subject?

Q. The Commune of France. What do you understand by the Commune of France? A. May I explain, Sir?

Q. Briefly. A. After the fall of the Empire, France was agitated with the question, what should be the new government? Those of our citizens who love America and American liberty said, "Let us have a government such as they have in the United States, a government of representation;" and the Communists, so-called, are those people in France who believe in governing Paris by precisely the same system of government

under which we live in Brooklyn. For instance, what would be thought if the Mayor of this city should insist upon appointing all the Aldermen of all the wards, and denying to the people of the wards the right to elect their Aldermen? It would be a revolutionary proceeding. We hold to the opposite view. Every ward in this city elects its Aldermen; and the Mayor has no right to interfere. Now, the Communists in Paris insisted that, in the formation of the new government, every ward of the city—in other words, every Commune—should elect its representative, and that the Mayor should not appoint its representatives. In other words, "Communism" in Paris is local self-government as we practice it in every American city. On the other hand, that which is called "Republicanism" in France is that which, if it were brought into this country, would be denominated despotism, and would not be permitted for an hour. That is Communism. Every democratic citizen of Brooklyn, if he lived in Paris, would, by virtue of his American antecedents, and the principles of Thomas Jefferson, be a Communist, and nothing else.

Q. Whilst you approved, then, of the general principles of Communism, you did not approve of the excesses to which they went? A. No, Sir; neither did the leading Communists; neither Rossel.

Q. Now, I come to Rossel. What did you understand Rossel was put to death for? A. For a purely military offense.

Q. Did you understand that he was the murderer of the Archbishop of Paris and the Chief Justice? A. No, Sir; there was no man who protested more eagerly against it; there was no man who had a greater respect for religion than Rossel, either Catholic or Protestant, and the very last hours of his life he spent with pen and ink, writing a brief, beautiful and pathetic address to his fellow Communists of France, and the substance of which was: "My Brethren, if you ever rise to power in this country, never commit any atrocity: it will be unworthy of Liberty and of us who are dead."

Q. Did you understand that he was arrested by the Communists? A. Yes, Sir; and the head of the Commune, or the head of the party that was associated with the Communists, has written violently against Rossel—denounced him. Rossel was a Christian man, the son of a Scotch woman, brought up in the old Calvinistic faith, and he died like a hero and a martyr.

Mr. Everts [Interrupting]—If your Honor please, we don't want the history of Rossel.

Mr. Beach—I don't know; they have attempted to stigmatize us because we took part in a procession in his honor.

Mr. Everts—I object to it.

Judge Neilson—Let it stand as it is; I think the explanation proper in view of what was called out.

Q. Now, what was this procession in New-York which you joined? A. I will tell you exactly what it was. It was not a procession in which the great mass of men joined in, because it was for or against the Communists, for there were Communists in it and anti-Communists in it; a man who walked near me during part of the procession, an old man, was a Roman Catholic. The object of that procession was this: Rossel had been put to death, as I described it the other day, by a judicial murder; there was a procession to celebrate his death by a public

funeral in New-York. A certain officer of the police (I have forgotten his name; perhaps the Superintendent) issued an edict saying that such a celebration should not be held. That edict immediately elicited on the part of the press such an outbreak, and on the part of all good citizens who love Liberty and Free Speech in every country, such indignation that many thousands joined in the procession for the purpose of testifying their regard for American Liberty. And, if it had been a procession for any other purpose, if it had been to any other end, the simple fact that the right of procession was denied would have brought me in it, and so would it thousands of other men who were there; it was not a procession of Communists more than of good citizens.

#### THE WINSTED SCANDAL.

Q. That brings me to the Winsted story. Who suggested that you should take this little sick girl to Winsted?  
A. My wife suggested it; after I got ready to go on the journey she begged me to take this little girl with me.

Q. Where was this school girl staying? A. At my house.

Q. State why it was that she wanted to hear your lecture and why it was Mrs. Tilton's wish that you should take her? A. She was a friend of ours and a *protegé* of my wife's, and a member of a family all of whose members had interchanged visits at my house; she was a school girl at Connecticut and had had a severe illness, and had come to our house to be nursed; and when I was going to Winsted to lecture, as on a previous year I had gone with Mrs. Tilton, and we had such pleasant hospitality shown to us by a certain family there, I asked Mrs. Tilton if she would not come again. She said no, but asked me to take—(I won't name the name;) so, after I had got ready to start, and my bag was packed, I waited to take her; expecting when we got to Winsted to be entertained at the house where I was previously entertained; but the family were away, and we had to go to a hotel. There never was a better girl in the world than she; and it is an outrage to introduce her name with any reference to the case.

Q. What was the young girl's age? A. I don't know. This was when she was a school-girl. I never asked her age.

Mr. Beach—Well, about, from her appearance? A. I should think sixteen or seventeen; I don't know.

#### DIRECTION OF MR. TILTON'S SPENDTHRIFT TENDENCIES.

Mr. Fullerton—Now, in one of your letters you have spoken of your spendthrift tendencies, and asked your wife to check you. What had you reference to—what was the character of the expenditure referred to?  
A. Well, Sir; I was always buying costly things to beautify my house—pictures, books, furniture, and the other luxurious frivolities which many rich men can indulge in and which men who are not very rich cannot. That is all. I don't exactly understand the character of the question.

Q. That is a sufficient answer. I didn't know but what it might have been in riotous living. I wanted to show it was not in riotous living, that you expended your money. A. No, Sir; I never indulged in riotous living.

Mr. Fullerton—I supposed not.

Mr. Evarts—There is no inquiry of that kind. I ask that that be struck out.

Mr. Fullerton—The riotous living?

Mr. Evarts—Yes; the riotous living.

Mr. Beach—Well, it is very proper.

Mr. Evarts—It is in answer to no question.

#### MR. SCHULTZ'S ADVICE ABOUT THE GOLDEN AGE.

Mr. Fullerton—Do you recollect the conversation with Jackson S. Schultz in regard to your matters? A. Yes, Sir.

Q. State what you said to him?

Mr. Evarts—You mean the conversation I inquired about?

Mr. Beach—Yes, Sir.

Mr. Fullerton—Yes, of course.

The Witness—I went with Mr. Franklin Woodruff, in the month of either January or February, 1871, shortly before the founding of *The Golden Age*—I went with Franklin Woodruff to see Jackson S. Schultz. We went over to his store. We were told by his partner that Mr. Schultz was home. We went to Mr. Schultz's house. He was then sick with the gout, and gave us some good advice about what you call riotous living, and Mr. Woodruff laid before Mr. Schultz the project for establishing *The Golden Age*, and asked Mr. Schultz to contribute to the capital and become one of the stockholders. Quite a long conversation ensued between Mr. W. Woodruff and Mr. Schultz, I taking a very subordinate part. Toward the end of that conversation Mr. Schultz said that the enterprise is one of a character which ought to have the endorsement, he thought, of Mr. Beecher. He said that if Mr. Beecher would take part in the paper, or would approve of it, that it would be likely to succeed. Mr. Schultz asked me if Mr. Beecher was interested in it. I told him that Mr. Beecher had expressed a willingness to be interested in it—to do something for it, and then followed some conversation between Mr. Schultz and myself. I cannot report the phraseology of it, but the pith of it was this, that I could not put myself under any obligation to Mr. Beecher, but I did not tell Mr. Schultz the reason why.

Q. That was the substance of the conversation? A. That was the substance of the conversation; Mr. Woodruff was present throughout the conversation.

#### THE PERSON MEANT BY "MR. B."

Q. In many of these letters which have been introduced in evidence, written by your wife she speaks of "Mr. B.," but who was the Mr. B. of whom she spoke? A. The Rev. Henry Ward Beecher.

Q. And was Bessie Turner known by any other name in the family; was she mentioned in any other way than as Bessie, or Bessie Turner in the family, or in the letters which Mrs. Tilton wrote? A. She was sometimes called Libby.

Q. And whenever Libby occurs in the correspondence in evidence reference is made to Bessie Turner? A. Yes, Sir.

NO CONNECTION BETWEEN MR. BOWEN'S PAYMENT  
AND THE COVENANT.

Q. Was there any connection between the payment of the \$7,000 by Mr. Bowen, and the execution of the tripartite agreement which has been put in evidence? A. Not the slightest, Sir.

Q. I understand you to say the \$7,000 was paid in advance of the execution of that paper? A. Yes, Sir.

Q. It was not the condition precedent that the paper should be executed before the money was paid? A. No, Sir.

Q. No connection between the two things as I understand it? A. Not a shadow of connection.

MR. TILTON'S STORY TO MRS. BRADSHAW.

Q. You have been asked whether you didn't tell the story to Mr. Johnson and some others, and Mr. Richards, I believe, and Mrs. Bradshaw. What did you tell Mrs. Bradshaw?

Mr. Evarts—I have not asked that.

Mr. Fullerton—Yes, Sir, you did.

Mr. Evarts—Not in the least. There is something in the direct examination about that. I have not asked any question concerning anything he told Mrs. Bradshaw; I have not asked any question concerning it.

Mr. Fullerton—The gentleman forgets.

Judge Neilson—There were so many questions that I cannot assume to remember it.

Mr. Fullerton—It seemed the learned counsel has put so many that he has forgotten some of them himself. He asked the question, whether he told this story and to whom, and mentioned Mr. Johnson, Mr. Richards, Mrs. Richards and Mrs. Bradshaw.

Mr. Evarts—This is the same subject we have been just over, and which your Honor excluded.

Mr. Fullerton—No; not the same subject.

Judge Neilson—That is one of the persons classed.

Mr. Evarts—No, Sir; she is one of the three persons. I have not asked anything more.

Mr. Fullerton—No, Sir; it is at another time and on another inquiry, and as to another subject altogether. The other inquiry was as to showing "The True Story," which was to Mr. De Witt, Mr. Dunklee, Mr. Clarke, and so on.

Judge Neilson [To Mr. Beach]: Can you find that, if you please.

Mr. Beach—I will try, Sir.

Judge Neilson [To Mr. Beach]: Are you looking for a needle in a hay stack?

Mr. Beach—I am hunting for a diamond on the sea shore.

Mr. Fullerton—It is there; if you look you will find it. That is certain. [To Judge Neilson]: Whilst Mr. Beach is looking for it, I will go on with something else, if it meets your Honor's approval.

Judge Neilson—Well.

MRS. WOODHULL'S DEemeanor BEFORE MR. TILTON.

Q. You have spoken of several visits which you made to Mrs. Woodhull at her residence in the City of New-York. I wish to ask you whether at the time these visits

were respectively made her husband was at home? A. Yes, Sir.

Q. In every instance? A. I think he was; in every one. I don't think I was ever at the house when he was not there.

Q. You have spoken of going to the house and into every room of the house. At whose request was that? A. Mrs. Woodhull's request.

Q. And what object did she expect to accomplish by taking you through the house, as she said at the time? A. She asked me if I heard her house was a house of ill repute. I told her I had heard it. She asked if I would do her the favor to see what answer she could make to it. I said I would listen. Said she, "I don't want you to listen; I want to show you something; I want to show you the house." She took me through the house, and it was, as I stated, perfectly empty, like a new house.

Q. What was Mrs. Woodhull's demeanor, in your presence, whilst you were at her house? A. She always acted like a perfect lady.

Q. In her conduct and conversation? A. Yes, Sir.

Q. Did you ever see anything amiss in her whilst you were at her house? A. No, Sir; and her husband always acted like a perfect gentleman.

Q. Did they, by word or deed, try to impress upon you that their life—that their words and conversation were correct. A. Yes, Sir.

Mr. Evarts—That I object to, what they by word or deed attempted to do.

Judge Neilson—I think the other answer covers the whole ground.

Mr. Fullerton—I have been over the whole ground, and an imputation is cast upon the witness because he went to this place. I would like to show what the place was when he got there, and what the demeanor of the persons was when he got there.

Judge Neilson—That you have a right to ask.

Mr. Evarts—That he has asked. That I didn't object to.

Judge Neilson—Well.

A LETTER OF MR. BEECHER'S TO MRS. TILTON.

Mr. Fullerton—Mr. Tilton, a letter has been introduced in evidence written by Mr. Beecher to Mrs. Tilton subsequent to the publication of the Woodhull slander, and it has no date. Do you remember when that letter was written? A. Yes, Sir; it was written a long while after the slander.

Q. How long? A. Well, I was going to say six months; perhaps that is an over statement. Certainly four or five months.

Q. Do you remember how it happened that it was written so long after the slander? A. Yes, Sir.

Q. State.

Mr. Evarts—If he knows about it being written from what occurred between him and Mr. Beecher, that is evidence, and nothing short of that.

Judge Neilson—What is that, Mr. Evarts?

Mr. Evarts—I say if the witness knows from what occurred between him and Mr. Beecher, then that is an interview which, if not already included in the gentleman's inquiry, can be gone into. There is no other mode of knowledge that affects us.

Judge Neilson [to Mr. Fullerton]—It took place some months afterwards. Don't that cover it?

Mr. Fullerton—Not at all. There was a reason for writing to her; I want to know that reason.

Judge Neilson—Let the witness answer that question in the most general form, what the reason was, without specifying the conversation.

Mr. Evarts—He must be confined to what passed between him and Mr. Beecher. Nothing else binds us.

Judge Neilson—On such a point as that there might be a reason stated, although not in the presence of Mr. Beecher. I will allow the question.

Mr. Evarts—I object to the question, and to any answer short of what passed between Mr. Beecher and the witness.

Judge Neilson—[To the witness.] Answer it very shortly.

The Witness—During the first four or five months after the Woodhull scandal a great many people asked Elizabeth what Mr. Beecher had done about it.

Mr. Evarts—I object to that.

Mr. Fullerton—That is a fact I have a right to show.

Mr. Evarts—I move to strike that out.

Judge Neilson—I will let that stand. It is by way of getting at his reason for his theory.

Mr. Evarts—I think it is objectionable.

Judge Neilson—I will let it stand.

Mr. Evarts—Because the reason can be given, it does not allow under that the introduction of hearsay evidence.

Judge Neilson—He will undertake to relate the reasons, and the first may be the suggestions of other people.

Mr. Evarts—Yes, Sir; and that might relate, on this examination, to something that occurred in conversation between himself and his wife.

Judge Neilson—They don't propose to take that.

Mr. Fullerton—It is a part of the *res gestæ*.

Mr. Evarts—I don't understand that it is. He says a great many people spoke to Elizabeth. That I propose to strike out.

The Witness—He wanted to know how Mr. Beecher wrote this to her, whether he had ever made any expression of sympathy.

Judge Neilson—[To Witness.] That is one reason; don't give her answer.

Mr. Evarts—I move to strike that out.

Judge Neilson—No; I will let that stand.

Mr. Evarts—I except.

Q. How long after those inquiries was this letter of Mr. Beecher's written to her? A. This letter was written to her when those inquiries were being made, and the letter was written for the purpose—

Mr. Evarts—I object to that.

The Witness—of putting into her hands something that she could show to her friends, and that is what Mr. Beecher said.

Mr. Evarts—I object to what the letter was written for, unless it proceeds from Mr. Beecher, as a reason why it was written, and I wish the witness would stop when I object.

Judge Neilson—Bring it within that rule.

Mr. Evarts—I think that's struck out?

Judge Neilson—I understand that has been referred to as a statement of Mr. Beecher's.

Mr. Evarts—He has not said. I move that it be struck out.

Judge Neilson [To THE TRIBUNE stenographer.] Read the last answer of the witness.

THE TRIBUNE stenographer read the answer.

Q. When did he say that? A. He didn't say it to me; he said it to Mr. Moulton. I had nothing to do with that letter.

Mr. Evarts [To THE TRIBUNE stenographer]—When was this last part of the answer given? It must have been after my objection.

THE TRIBUNE stenographer—It was.

Mr. Evarts—I move to strike that out.

Judge Neilson—I deny the motion.

Mr. Evarts—Your Honor will be so good as to note my exception.

Mr. Fullerton—Did you carry the letter? A. Yes, Sir.

Q. From Mr. Moulton's house? A. Yes, Sir.

Q. Did Mr. Moulton give it to you? A. Yes, Sir.

Q. There was one question I omitted to ask you in reference to the tripartite agreement. Were you willing to sign the tripartite agreement after you read and became acquainted with the article which referred particularly to you—the original tripartite agreement you had prepared? A. No, Sir, the original draft of the tripartite covenant I refused to sign.

#### MRS. TILTON'S TRIP TO MONTICELLO.

Q. Do you recollect when your wife was at Monticello? A. She was there in the Summer of 1869. I think she was there more Summers than one.

Q. How is that? A. I was just thinking that she was there more Summers than one. I was there with her one Summer; I think she was there two or three years in succession; I know she was there in the Summer of 1869.

Q. Do you recollect what time she was there in 1869? A. She went shortly after the baby was born.

Q. Do you recollect her return, what time it was? A. Yes, Sir; I recollect her return, because I went after her, and she came away, and we crossed each other on the road.

Q. You did start to go for her? A. Yes, Sir; I started to go and make a surprise visit to her, and when I got there I found she had gone.

Q. Did you see this Catherine Carey that was on the stand yesterday? A. I was here yesterday.

Q. And you saw the witness? A. Yes, Sir.

Q. Did you recognize her as a family servant of yourself? A. Yes, Sir.

Q. As a servant that went to Monticello with your wife? A. I have not said that; I don't remember enough about the servants, but I remember that she was a nurse.

Q. In the family? A. Yes, Sir.

Q. Now, Mr. Tilton, in one of your letters that has been put in evidence—I call your attention to "Exhibit D, 93," dated Brooklyn, August 28, 1869:

MY DEAR WIFE—I find myself alone, but hardly lonesome; weary, but not sleepy; restless, but not without peace of soul



to-night, and so I turn my thoughts to you and the children in your mountain nest.

Where was the mountain nest? I suppose it to be Monticello, and that is why I ask the question. A. Yes, Sir; this was a letter which I wrote from home in Brooklyn to Mrs. Tilton at Monticello. The phrase "mountain nest" refers to the mountainous character of the country. Monticello is a village up among the mountains in Sullivan County in this State.

Q. On a very large eminence, is it not? A. Yes, Sir, and very pure air.

Q. [Handing paper to witness.] Look at the paper I now show you and say whose handwriting it is? A. Henry Ward Beecher's.

Q. Say if there is any handwriting upon it in the hand of any other person—you need not state in whose handwriting it is if there is such handwriting? A. Yes, Sir; there is another person's handwriting; the description on the back.

Q. That is on the out side of the last leaf in lead pencil, is it not—page three? A. The words written on the back of page three are not in Mr. Beecher's handwriting.

Q. The words written in lead pencil on the back of page three are not in Mr. Beecher's handwriting? A. Yes, Sir; are not in Mr. Beecher's handwriting.

[Marked for identification. "Exhibit No. 103."]

#### SOME OF MRS. TILTON'S LATER LETTERS PROPOSED.

Q. [Handing paper to witness.] In whose handwriting is the paper I now show you? A. Mrs. Tilton's.

[Marked for identification, "Exhibit No. 104."]

Q. [Handing paper to witness]. Again, in whose handwriting is the paper I show you? A. Mrs. Tilton's all except the lead pencil mark at the back.

[Marked for identification, "Exhibit No. 105."]

Mr. Fullerton—If the Court please, I owe an apology or an explanation to the other side in offering these two letters; I promised to do it before the close of the cross-examination, but the cross-examination was so long that I forgot it.

Mr. Evarts—These last two?

Mr. Fullerton—Yes, Sir; and when we find them, there are some other letters from Monticello which I desire to introduce, to fix more distinctly the time when Mrs. Tilton was there in 1869.

Judge Neilson—[To Mr. Beach.] Mr. Beach, to what date does your book come down to?

Mr. Beach—It comes down to the commencement of the re-direct examination.

Judge Neilson—I cannot help you, then; my book only comes down to 1875; that is as far as my book goes.

Mr. Evarts—Mine goes down to the end of the cross-examination, and the commencement of the re-direct.

Mr. Fullerton—It is in the 19th century yet!

Mr. Beach—I think that satire of *The Herald* is very likely to become a fulfilled prophecy from the present appearance of things.

Mr. Fullerton—[Handing paper to witness.] Look at the paper I now show you and say whether it enables you to state

how late in August your wife was at Monticello in 1869? A. This letter is dated, "Monticello, August 31st."

Q. I didn't ask you the date of it, I asked you if it enables you to state how late in August she was there? A. She must have been there the very last day?

Mr. Evarts—We have asked for that letter of 1874.

Mr. Morris—I cannot find it.

Judge Neilson—Mr. Beach, it seems to me that occurred quite late in the cross-examination, whatever it is.

Mr. Beach—Well, Sir, I will look.

#### A HARD TECHNICAL QUESTION DISCUSSED.

Mr. Evarts—These letters that are now proposed to us, being letters from Mrs. Tilton to her husband, are not letters referring to any letters that have been introduced upon our part, and they are not letters that have been communicated to Mr. Beecher, or in regard to which he has any relation. That is not proposed. And they are of date, one in July, 1871, and the other may be assumed late in 1872, though there is only a memorandum of that date. I suppose that it is considered to be correct. And they are after the alleged cause of complaint on the part of this husband against Mr. Beecher, made the subject of this action, and are not admissible under any rules of evidence, being entirely passages between himself and his wife, and not admissible in the light in which the other passages have been introduced, to wit, of the condition of their family relations before the occurrence.

Judge Neilson—The rule, as I understand, is that in an action of this kind, to show the relation of a family, the domestic happiness or unhappiness, the plaintiff may put in evidence correspondence prior to the alleged event.

Mr. Evarts—Yes, Sir.

Judge Neilson—Or to the knowledge of it.

Mr. Evarts—Or to the knowledge of it.

Judge Neilson—And the other side may put in letters also that would combat the suggestion of a peaceful household. I think the limit is there, as stated in the books—prior to the knowledge of the offense.

Mr. Evarts—It is very well settled, I believe.

Judge Neilson—Isn't it, Mr. Fullerton?

Mr. Fullerton—I think not, Sir; that is subject to some exceptions. They have introduced some letters, I believe, since the event.

Mr. Evarts—Yes, not objected to. That is another matter.

Mr. Fullerton—That forecloses the other side.

Mr. Beach—They did not object to the same character of evidence.

Judge Neilson—You have had subsequent correspondence?

Mr. Fullerton—Certainly. They have introduced a part of it.

Mr. Evarts—That don't foreclose, in the least, our objecting to letters, if they don't object to letters. There never was any rule of evidence of that kind. They may find an advantage by having them in.

Mr. Beach—Certainly.

Mr. Fullerton—Now, this rule, as your Honor has stated it, you will perceive does not apply to the question now before the Court, because the defense in this case have introduced a part

of the correspondence since the alleged cause of complaint. They have done that, and they have exposed themselves to the balance of the correspondence between the parties during that period. It is very plain, Sir, that we are entitled to this correspondence.

Judge Neilson—In view of that, I am inclined to receive the letters, Mr. Evarts.

Mr. Evarts—Why, your Honor, they cannot give the letters in evidence any way. We can give in evidence anything that affects this plaintiff; they cannot. Their right to introduce in evidence letters between husband and wife grows out of their right to show relations between them before the invasion or knowledge of the invasion of the domestic purity. That is the only way. On the face of the matter they have no right to give in evidence letters from one to the other, but on the face of the matter we have a right to give in evidence anything that affects this opposite party to us. That is the difficulty. They overlook that fact. General rules of evidence allow us to affect him with letters, as the general rules of evidence allow them to affect Mr. Beecher; but the special rule, on special motive, permits the interchange, between husband and wife, of observed demeanor, or of letters, to be brought in as a part of the domestic, conjugal relation, which may be thus proved. Now, these letters are not within that rule; that seems to be conceded. Then how are they brought in under any general proposition of the law of evidence that enables them to put in evidence letters between their party and a third person? Now, there is nothing in the proposition that because we have given some letters between the year 1870 and 1874, or whenever we have given them. [To Mr. Shearman.] What have we given?

Mr. Shearman—One in 1871.

Mr. Fullerton—Several.

Mr. Morris—1869.

Mr. Evarts—1869 is prior.

Mr. Pryor—The law is not as to knowledge; it is as to the event. There is no authority for it in any book anywhere.

Mr. Evarts—Oh, yes.

Mr. Pryor—Give me an authority.

Judge Neilson—My impression has been that way.

Mr. Pryor—No, Sir, it is not. It is the date of the event.

Mr. Fullerton—Subsequent to the event.

Judge Neilson—The event as it becomes known to the party.

Mr. Pryor—No, Sir.

#### REMARKS OF MR. EVARTS.

Mr. Evarts—Now, let us see if we cannot find an authority. Lord Kenyon says: [Reading from *Edwards vs. Crock*, 4 Esp. 39]:

"In an action of *crim. con.*, letters between the plaintiff and his wife, passing while they were necessarily separated, in the pursuit of their vocations as servants, and written before there was any suspicion of adultery, are admissible to show mutual affection and happiness."

That is the point. The point is how they are going on in their domestic life before the interruption, *per quod consortium amittit*. It is the losing of the companionship that is the action.

Judge Neilson—It is on the question of damages.

Mr. Evarts—That is as it may be.

Judge Neilson—It professes to be as to the principal fact.

Mr. Evarts—I agree, it don't prove the fact. It is the state of their domestic happiness until the discovery of the fact, producing a new situation.

Judge Neilson—Yes, Sir.

Mr. Evarts—That is the *rationale* of it.

Judge Neilson—Now, Mr. Fullerton, let us see why it is admissible.

Mr. Evarts—I was going to say, with certain qualifications. If we had put in a letter to which either of these was an answer, why, that of course would bring it within another rule of evidence, and if my learned friend points that out we will consider it.

#### ARGUMENT OF MR. FULLERTON.

Mr. Fullerton—The rule, as your Honor has stated it, is no doubt correct, that we would have no right then to introduce a correspondence between the husband and the wife, which occurred subsequent to the alleged offense; but the other side had a right to do it, and they have availed themselves of that right, and have given in evidence in this case several letters which passed between Mr. and Mrs. Tilton, subsequently to December, 1870, when this alleged offense was made known to Mr. Beecher, letters of Mrs. Tilton to her husband. Now, what was the object of introducing those letters? Let us look for a moment. It was not to show that husband and wife lived together harmoniously; that was not their object, that was one of the objects which we had in view in introducing the correspondence. They had another, and a further and a deeper object. They wanted to show letters written subsequently to December, 1870, when this offense was made known to Mr. Beecher by Mr. Tilton, for the purpose of convincing this Jury that no woman who had submitted herself to the embraces of a paramour would ever have written such a letter to her husband. That is their object, and when my learned friend on the other side comes to sum up this case to the jury, if this case stands as it does now, he will flout those letters in our faces and say, "There is the evidence that this charge is false, because those are the letters of an innocent woman." Now, Sir, they have tried the experiment and they must reap the fruit of it. Whenever they go into correspondence subsequent to December, 1870, they open the door, and they cannot shut it at their will. We can read correspondence between the parties during that same period for the purpose of combating the position which they intend to take, predicated of the evidence as it stands on their part. Now, Sir, that is the doctrine of this case. Any letter, now, written by Mrs. Tilton to her husband subsequent to December, 1870, we can introduce in evidence in this case, for the purpose of doing away with any inference which they seek to draw from the correspondence given by them which occurred during the same period.

Judge Neilson—Well, that is the point, the very point involved, whether, they having put in some letter which might

possibly admit of a certain interpretation, you have a right to put in other letters to qualify that interpretation.

Mr. Fullerton—They have entered upon a line of investigation here. We can pursue that line of investigation. We can give evidence of the same character and of the same purport, to explain away and get rid of the testimony which they have given of that character. Nothing can be clearer than that. And whenever they try the experiment of coming down since December, 1870, for the purpose of introducing letters between husband and wife, they have opened the door for the whole correspondence between those parties at that time. That is our position.

#### ARGUMENT OF MR BEACH.

Mr. Beach—May I refer you to an authority, Sir, upon that subject, which falls under my eye in Court. If opportunity were given, I have no idea, Sir, but cumulative decisions to the same effect could be given with great readiness. I understand the rule to be that where a party enters upon a line of immaterial or irrelevant evidence, or incompetent evidence, that the opposite party has a right to follow the lead thus given, and to enter upon the same class of evidence. I am not sufficiently familiar, at this moment, with the rule to say whether it is an absolute right upon the part of the opposite party to give that proof—answering proof. Your Honor will perceive that it might lead, under certain circumstances, to a great waste of time if the Court should allow irrelevant evidence to be produced by one party because the other had been permitted to present it, and we may, therefore, qualify the rule to this extent, I think, with propriety, that it is a subject which depends upon the discretion of the Court, to be exercised reasonably and justly, with reference to the subject-matter, and the particular circumstances which are upon the occasion brought to the attention of the Court, and that seems to be the result, Sir, of the expression to be found in *Phillips on Evidence*, where it is said :

The cases do not agree upon the question whether irrelevant testimony, being given on one side for the assumed purpose of proving a fact, will warrant other testimony in reply to that so given, either to repel it directly or touching the fact upon which it professes to bear. The result would seem to be that it is discretionary with the Court to hear or reject the evidence in reply. In many cases, and indeed all, the expense of time must be useless, and may, by consent of parties, be made endless, if the Court have no power to interfere.

Judge Nellson—Is that from the text, or a note ?

Mr. Beach—It is from the note.

Judge Nellson—Is it Edwards's notes, or Cowan's ?

Mr. Beach—It is Cowan's, Sir—Cowan and Hill's. I think it is Edwards's edition. Yes, Sir, it is the additional notes of Mr. Edwards. Now, your Honor will perceive that in the evidence which we offer, which consists only of a letter or two—two or three letters which were inadvertently omitted upon our direct examination—there can be no great waste of the time of the Court. The examination is not likely to proceed to an extent which will be tedious or unfortunate. If this is a question—which is the concession I am disposed to make—dependent upon the discretion of your Honor, it seems to me that the appeal which we make to that discretion must be invincible.

My associate has stated the object of the evidence which they introduced. We, in the freedom of inquiry which we chose to permit upon the other side in regard to the relations existing between this husband and wife, made no objection to this evidence which they offered, assuming it to be irrelevant. We permitted them to give letters from Mrs. Tilton to Mr. Tilton, and the reverse, without objection, the object being that which has been expressed so forcibly by my associate to your Honor. Now, in the exercise of a just discretion, Sir, they having availed themselves of that character of proof, for the purpose, either avowed or obvious, it seems to me it would be harsh and unjust to deny the introduction of the letters from Mrs. Tilton, to a very limited extent, bearing directly upon that question, possessing none of the uncertainties of parol evidence, leading to no injurious waste of the time of this Court, and necessary, Sir, for a proper explanation of the relations between the parties, that being the subject to which their evidence referred. And we appeal to your Honor's discretion, anxious to do justice between these parties, solicitous to ascertain the real truth in regard to these relations, to exercise it in a spirit, Sir, and with an authority which will lead to those results; and I—without enlarging, Sir, pressing motives upon your Honor—I submit that it would be a harsh and extremely unjust exercise of that discretion to permit the gentlemen upon the other side to avail themselves of this character of evidence, and permit us to a very brief extent to answer it by the evidence which we propose.

Mr. Evarts—The question has nothing to do with discretion or irrelevancy. Those topics are as remote from any consideration here, which is the legal right, and the perfectly well established rules of evidence. Now, my learned friends have so often pleased themselves with stating what I am going to say in my summing up, that I am afraid when I come to sum up I shall be anticipated in every point. The question here is whether the evidence now proposed is legal or not. I object to it. It is said that we have put in evidence a letter subsequent in date to the point of discovery alleged by the complaining husband. The Catherine Gaunt letter, as it is called, is the only letter of that kind and of that date that we have put in evidence.

Mr. Beach—You are mistaken, Mr. Evarts.

Mr. Evarts—Show us some others. We have endeavored to find all of them. It is not from want of pains on our part to find out whether there was any other that I make the statement. If you can point us to anything else, correct it. Well, I will assume the Catherine Gaunt letter is the only one.

Mr. Morris—Well, that is a mistake.

Mr. Evarts—What ?

Mr. Morris—I am quite certain that is a mistake.

Mr. Evarts—Well, we will get it after recess. It is ten minutes past one, if your Honor please.

Mr. Beach—You mean the only letter subsequent to the discovery ?

Mr. Evarts—Subsequent to the discovery. We shall lose our whole recess if we go on in this way.

Judge Neilson—Get ready to retire, gentlemen. The officers will please pass around there and keep the audience quiet.

Mr. Beach—Give us until a quarter after two, please.

Judge Neilson—Yes, Sir. Gentlemen you will return at a quarter past two o'clock.

The Court here took a recess until 2:15.

#### PRINCIPAL ARGUMENT OF MR. BEACH.

The Court met, pursuant to adjournment, at 2:15 p. m.

Mr. Beach—May I be permitted, Sir, to introduce an authority or two upon the question under discussion, before adjournment. It was contended, on the part of the defendant, that evidence of the correspondence between Mr. and Mrs. Tilton, as relating to their domestic intercourse, its character was admissible only after the discovery of the offense charged.

Mr. Pryor—Before.

Mr. Beach—Before the discovery of the offense.

Judge Neilson—Only up to the discovery.

Mr. Beach—Only before the discovery of the offense charged; that is, that the discovery, or, as they say, well-grounded suspicion of the offense, is the point at which the limit of inquiry is fixed. My associate, Mr. Pryor, upon the authority of Mr. Greenleaf, took the position that the evidence was limited to the time of the act of commission, and there are, I think, many reasons to support that proposition. He hands me, Sir, the second of Greenleaf, Section 57 of Part 4. [Reading:]

"The letters of the wife, in order to be admitted in favor of the husband, must have been written before any attempt at adulterous intercourse had been made by the defendant." [Referring, Sir, to the case of *Wilton vs. Webster*, in the 7th of *Carrington and Paine*, at page 198.] "And whenever her letters are introduced as expressive of her feelings they must have been of a period anterior to the existence of any facts tending to raise a suspicion of her misconduct, and when there existed no ground to impute collusion"—

Antecedent, Sir, to the existence of facts not of suspicions, but of facts tending to raise any suspicion of the adulterous intercourse; and your Honor will perceive how fugitive and uncertain would be the limit which should be founded upon the question of the existence of suspicions of adultery, because those suspicions would be varied according to the character of the different persons who might be placed in that situation. Therefore the limit is the fact of adulterous intercourse, or such congenital facts as would lead, tend, to a suspicion of its existence. I think, therefore, it is clear that the proposition of my learned associate is correct. But I do not consider it, Sir, as particularly important upon the question of the admissibility of the proof we now offer, for the reason that they have given evidence on the other side, subsequent to their own established limit, and the precise question before your Honor is whether, as a matter of right, or a matter of discretion, they having given that evidence without objection on our part, which, under the rule which they established, would be inadmissible as irrelevant and incompetent, they can properly object to the introduction of similar evidence, upon our part, in answer to the proof which

they have given. Now, Sir, I refer to the 5th Barbour, at page 516, the case of *Moss vs. Stone*. The syllabus is: "After evidence has been given by the plaintiff in regard to a mortgage without objection" (it is parol evidence, Sir) "and several inquiries in regard to its contents have been made by the defendant, both parties will be considered as having acquiesced in receiving parol evidence of the mortgage, and the defendant cannot then object to the plaintiff's proving at what time the mortgage fell through."

The Court says: "I think the learned justice before whom this cause was tried, at the Circuit, decided correctly in receiving parol evidence to show when the mortgage held by the plaintiff on Dutcher's house became due. The defendant's counsel had previously given some evidence in regard to that mortgage, and this objection was not made until the plaintiff's counsel had also made several inquiries in regard to its contents. The defendant's counsel could not then object to proving the single fact when the mortgage fell due, without also objecting to all the previous evidence of its contents. I think that it must be held that both parties had acquiesced in receiving parol evidence of the mortgage."

Now, that would have been consistent, Sir, under the exception which was taken, only upon the ground that the production of this answer in evidence was either a matter of legal right, or was properly the subject of the exercise of judicial discretion, and in either sense the Court held that it was a proper exercise of power upon the part of the trying Court to admit the proof. And again, Sir, in *Phillips's Evidence*, speaking of this question of answering irrelevant testimony:

"In *assumpsit* against several partners, one of them introduced a letter of his copartner to the plaintiff which, it was insisted, made against him. In consequence of this the plaintiff offered to show that the same copartner, in answer to certain interrogatories, had contradicted what he said in his letter"—a parallel case in principle. "This was objected to by the defendant who produced the letter, and it was received. *Held*, no error, as the defendant himself had laid the foundation of it."

Now, see, Sir, this was a case where the one party had asked the other in regard to a declaration made. The Court then received declarations, not at the same time, but upon other occasions, which contradicted the declaration which had been improperly received in evidence without objection. And that is precisely, Sir, the attitude of this question. They have given in evidence a letter, subsequent to December, 1870, for some purpose. The manifest object of the introduction of the letter is to show certain expressions of sympathy and regard upon the part of this witness towards her husband. The letter was offered to show certain relations after the event, and after the revelation of the event, inconsistent entirely with the truth of the alleged event. We are not anticipating the argument of the counsel, Sir; we suppose it will be founded upon the evidence, and that no question which can be raised upon that proof, in favor of his client, will escape the ingenuity and the ability of our learned friend. It would be very difficult, Sir, for any of us upon the part of the plaintiff, or all of us, combined, to anticipate all that the counsel might be able to say upon that subject. We do not pretend to that ability, but we reason, Sir, that from the nature of the evidence, its legitimate and real import is to prove that after the fact of this

adultery was supposed to be ascertained, believed to be ascertained between these parties, that then the relations in their domestic intercourse contradicted the possibility of any such event. Well, now, Sir, that does not depend upon a single isolated and independent declaration which may have been made under influences and sympathies which controlled the expression of the wife upon that particular occasion. But the fact whether or not the intercourse of these parties was inconsistent with the charged adultery is to be traced by the whole course and history of their connection subsequent to that period, incompetent and inadmissible, it is true, Sir, but yet opened by the other side a course of interrogation, pursued on their part, which leads to the one or the other result. Now, Sir, their evidence is substantially in effect a declaration upon the part of Mrs. Tilton, expressions of fondness and affection, if you please, and it is precisely the same as if Mrs. Tilton, being a competent witness, had been placed upon this stand and asked whether, after December, 1870, she had been in the habit, or had, upon that particular occasion, indulged in fondness of expression towards her husband. Suppose she was upon the stand, Sir, making this very declaration contained in this letter, and we had asked her, in pursuit of the real object, what were the truthful relations continuous in your subsequent connection to this event with the plaintiff—what were the continuous relations that existed between you? Have you not at other times been unkind and unsympathetic? Have there not been occurrences between you in your habitual intercourse which were consistent with the alleged adultery with the defendant? Why, most obviously, Sir, that could be shown. It is a cross-examination of the witness whom they produce upon that subject. They produce her by her written declaration; we ask to contradict her by her written declaration made at another time—inconsistent with the exceptional one which they have introduced. Upon what principle would your Honor exclude it, and how else is this letter to be judged except as being a declaration made upon the part of Mrs. Tilton towards the fact which they seek to establish of friendly and affectionate relations between herself and her husband after this event. It is not enough, Sir, to prove that upon a single occasion she made these expressions of affection and manifested continued love for Mr. Tilton, and that they were met upon that particular occasion with responding expressions. The question reaches continuously and further than a single point of observation. We are to view their whole relations subsequent to the charged adultery; we are to see whether in their consistent and habitual intercourse there was no alienation, no cessation of these attentions and these expressions of love and reverence which should have been maintained in the family, the fact of the adultery being absent. But, Sir, if this question, as I said to your Honor, is to be considered as a mere question of discretion, not as a matter of legal right, I submit to you, then, that in the exercise of a proper discretion with a view to the truth and the justice of this inquiry, with reference to the ascertainment of the fact whether the relations between these parties were of a character indicated by this single letter which they introduced, we offer

to prove near the same time another letter from this lady containing a declaration of a certain character which will have its proper effect, either sustaining or modifying that contained in the letter which they have introduced. I did not pursue, Sir, perhaps, sufficiently far the quotations from Mr. Phillips:

"So, though character be not in issue, if the party introduce evidence to support his character, held that for that reason the other party might give evidence in reply."

It was incompetent evidence, yet the one party had introduced it, and the Court held that evidence in reply was therefore admissible; and it would be a strange doctrine, Sir, whether it is done by consent or under objection, if one party can give evidence of a particular character tending to establish a prominent and important issue in the case, that the other party might not give evidence of the same kind. Whether it be legal evidence or not is immaterial, Sir. The fact which they seek to establish by this letter is an important and controlling fact in the consideration of this case, one which tends to reflect considerable light I admit, upon the question of the charged adultery, and evidence is given upon it. I say, without endeavoring to anticipate the counsel, they will reason to the jury that this letter of Mrs. Tilton, this act, this expressed conduct upon her part, is utterly inconsistent with the idea that she could have been a criminal or a debased woman. And you allow that, if this evidence is excluded, to stand upon the single proof of a single event without giving to us the privilege of exposing the fallacy of that argument, or producing other declarations from the same lady in regard to the same subject matter, and which may, to a greater or less extent, modify the effect of the proof they have offered.

"Where the plaintiffs offer any evidence of the credibility of one of their witnesses, the defendants were allowed to ask another, if the plaintiff's witness had not been guilty of larceny—"

Not upon precisely the same subject, Sir.

"The testimony," say the Court, "on both sides was illegal, and as the plaintiff resorted to that mode in support of credibility, held, that they could not complain that it was rebutted in the same way."

I could read you some of the numerous examples of the same character, from this authority, and I submit therefore, if your Honor please, that as a matter of right this evidence is admissible, but at least that as a matter of discretion it is a duty of this Court, as affirmed by these repeated authorities, to permit the evidence which is now offered; and I add, Sir, simply that the objection to the exercise of the discretion in that direction made from the inconvenience of allowing extended, prolonged examinations by parole upon irrelevant questions as tending to the disturbance of the order and the interruptions of the business of the Court, cannot apply here. We ask for no parole evidence on the subject. We simply produce a couple of letters written by the same hand, originated in the same mind and heart, expressive of feelings and thoughts upon the same subject. And upon what principle of justice these should be excluded, while the other is permitted to stand in evidence as against this plaintiff, I am at a loss to conceive.

## ANSWERING ARGUMENT OF MR. EVARTS.

Mr. Evarts—I cannot think, if your Honor please, that every simple question in the law of evidence proposed for your solution demands very long inquiry. Whatever should induce length or variety of proposition concerning it must be to withdraw from the rule of decision, and not to aid your Honor in it. The primary rule of evidence allows us, as it has allowed the plaintiff in the progress of this case, to introduce written acts proceeding from either party as the opposite party had occasion. They also permitted either party to show the reception by the other party of communications through third persons, and thereby to impute, either by affirmative connected evidence or by such conclusions as the law would draw from the reception without response, such consequences as came to the opposite party from thus receiving letters from third persons. The rule about husband and wife's intercourse anterior to the point of suspicion or discovery, is wholly aside from that question. It terminates undoubtedly as by a very well considered opinion, in the Courts of Kings Bench, the full bench, is settled, as upon the common sense of the matter, it would terminate, upon the occasion of interruption, not by a concealed adultery—that had not interrupted but by the suspicion or disclosure as the case may be of an actual or a suspected, though not an actual adultery.

Mr. Beach Well, you give me the reference, Sir.

Mr. Evarts—The case of *Trelawney vs. Coleman*, in the first of Barnwell and Adolphus, by Lord Ellenborough and Justices Abbott, Bayle and Holroyd :

"*Held*, that since what the husband and wife say to each other and how they conduct themselves toward each other when together, is admissible in the action of *crim. con.*, it follows that letters written to each other during absence are also admissible to show their manner of conducting themselves toward each other, if all suspicions of collusion are removed, and it is sufficient on this point if the letters are proved to have been written at the time they bore date, and before any suspicion was entertained of the wife's misconduct."

Mr. Beach—That case is cited Sir, in Greenleaf in the paragraph which I read in support of my position.

Mr. Evarts—Now, the English case referred to by my learned friend upon this point was a case at *Nisi Prius* before Justice Coleridge and has not the authority of this that I have cited. And now this letter which we have given in evidence subsequent to this date of suspicion disclosed or excited, is the Catherine Gaunt letter, as it is called. The plaintiff put in evidence a letter dated December 6, 1866, referring to this novel of "*Griffith Gaunt*" and another letter, I think, having the same reference of December 7, 1866. Perhaps both are not in, the first one is. Now, we undertake to examine in reference to this matter of the Griffith Gaunt letter, first, in connection with a disclosure concerning that letter which was contained in Mrs. Woodhull's publication in her newspaper, it being a part of that line of inquiry followed by me and not yet exhausted, by which the responsibility for these disclosures was sought to be charged upon the plaintiff and Mr. Moulton, and they deprived of the credit of having endeavored to suppress

then. In that connection the Catherine Gaunt letter plays this part. [Reading] :

Q. Now, Sir, do you know how Mrs. Woodhull got her reference, in her article, to the Catherine Gaunt letter, as it is called, which your wife wrote you? A. I don't know what reference you allude to.

Q. If there is such a reference do you know where she got it? Then he goes on and finally is asked :

Then, as far as you know, if there is a reference in the Woodhull publication to the Catherine Gaunt letter of your wife, you don't know how she became possessed of the fact that there was such a letter? A. Why, except that she became possessed of it as she got possessed of the other particulars, through circumstances floating to her ear through other persons ; did not get them from me.

Q. And thus floating, they must have originally started from your references to the Catherine Gaunt letter? A. Anything that anybody knew of the Catherine Gaunt letter must have come originally from me, because that letter was written to me; Yes, Sir.

Q. That is exactly what I want to know—my question: then his answer,

But I did not state it to Mrs. Woodhull.

Then this witness, having published the Catherine Gaunt letter, published it not in a complete form. I then introduce it as a part of positive proof in that connection, and with that intent. "Please look at that letter and say if that is the Catherine Gaunt letter, so-called?"—it being a printed page. "What is that?" Mr. Fullerton says, I offered it in connection with his publication of it in an imperfect form, and I put it in evidence to prove that fact of its imperfect condition as compared with his publication of it. And having gone into that inquiry, which your Honor will remember, with what effect or what result in that connection it is not important for me now to consider (that will be reserved for my comments upon the evidence when the evidence is properly completed), then I put in, on the 9th of February, the Catherine Gaunt letter, calling attention in putting it into the differences between it as produced, in its actual condition, and that in which it had been published by the witness. I examined him concerning that, and they put in afterwards, I think, the section of his sworn statement. [Some suggestion to Mr. Evarts by Mr. Abbott.] Oh, yes; they did not take up the Gaunt letter. It was the other letter. They did not put that in: they put in a certain section referring to the 3d of February letters. Now, that letter having been thus introduced, upon the strictest and directest rules of evidence on our part of showing a letter received by him from his wife, and dealt with by him in a certain manner of dealing with a publication or argument or defense of his case, it is claimed that there is opened to them a right to put in evidence letters between the wife and and himself irrespective of any connection with or allusion to the Catherine Gaunt letter, or in connection with it, on the ground that, as one letter has been put in by me, which I had a right, if you please—having a right, if you please, to put in all that I connect with him by his dealing with them—that that gives them a right to put in letters of his received by him from his wife with which the defendant, whom I represent, has no relation of notice or information concerning the letter; and thus the imputation

upon this party whom I represent, falling to give any credit to it as evidence against us. Now, if that is not as profound a contempt of the distinction between the laws of evidence that do not permit people to introduce transactions of their own and on their side, although the other side can do so, and although the other side has done so, I cannot understand the propositions that are submitted in the text-books, or in the authorities, or that are argued in a court! Now, the only point by which connected letters come in is thus—Where letters and correspondence between the plaintiff and defendant were offered in evidence by the former, it was held that the latter might read his answer to the plaintiff's last letter, dated the day previous. And where one party produces the letter of another, purporting to be in reply to a previous letter from himself, he is bound to call for and put in the letter to which it was an answer as part of his own evidence.

That is, that, there being brought in one letter, then the letter which it alludes to, as a letter to which it replies and thus makes it a part of itself, may be required then to be put in as a part of the evidence of the party offering the first letter. But, aside from that, there is a right on the part of the opposite party to put in a letter that is a reply to a letter that has been put in. That is, it follows that. Now, if your Honor please, no argument and no restatement could make that plainer as it seems to me, and as I can only follow my own instructions in any views that I present to your Honor, I despair of making that plain if it does not so strike your experienced attention. Now, my friend, departing from any proposition of right, (for I need not say that all sorts of conversations might be given in evidence) confidential communications between these parties might be given in evidence if this can be given in evidence. Now, my friend departs from that and undertakes to appeal to what he considers a discretion of your Honor. Well, if your Honor please, what discretion is there to invade a rule of evidence to a small extent and not to a large one. That is not the proposition. He must then lay it down as a proposition of law that a party has a right to give in evidence correspondence between himself and a third party with which the opposing party to the suit is not connected in any way, either by writing, or receiving, or hearing, or knowing of, if the Judge thinks best in the interests of justice. Now, my learned friend can find no such proposition of law as that. But I apprehend there is the least possible basis for an appeal in the interest of fairness or justice and of right, when it is proposed to your Honor in the trial of a case, where this lady's mouth is closed by the law, and no word of explanation, no word of suggestion of facts, no word of suggestion of the modes and occasion and circumstances in which a letter was written (a privilege so largely availed of by this witness in explanation of his letters) when no, no such word can be heard from this woman, but before her shearers she must be dumb to allow her husband and his counsel to pick out such letters as they like to read and omit the rest.

Judge Neilson—Mr. Fullerton, do you find the subsequent letter as well as the Griffith Gaunt letter?

Mr. Fullerton—How, Sir?

Judge Neilson—Do you find any letter of later date, besides the Griffith Gaunt letter?

Mr. Fullerton—No later than the Griffith Gaunt, Sir, June 29, 1871; but there are eleven written since.

Judge Neilson—Since the alleged event?

Mr. Fullerton—Since the alleged event.

Mr. Evarts—Not introduced by us?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Oh! Since the event?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Oh! well, we have disposed of that question.

Mr. Morris—No; that question has not been disposed of.

Mr. Evarts—Well, I suppose it is disposed of.

Mr. Fullerton—Well, don't scold about it.

Mr. Evarts—Why not.

Mr. Fullerton—Because there is no necessity for it.

Mr. Evarts—Well, now, let me know what you are saying. Do you find any letter put in by us subsequent to the discovery of the adultery?

Judge Neilson—That is the question I put to counsel.

Mr. Fullerton—That is the question I answered before the gentleman put his question in that extraordinary manner.

Judge Neilson—I know; you answered it according to your general recollection.

Mr. Fullerton—I answered it according to my specific recollection.

Mr. Morris—They put in two subsequent to the discovery.

Mr. Fullerton—Yes, March 18, 1871, and there is one June 26, 1871, and the other nine or ten letters are of an anterior date, but subsequent to the discovery of the event, the cause of complaint.

Mr. Evarts—Well, let us see them.

Mr. Fullerton—I have drawn off a list of them.

Mr. Shearman—It is a mere mistake in the book, if your Honor please, a mere misprint in the pamphlet. The original letter is dated March, 1867. The counsel is taking advantage of a misprint in this pamphlet.

Mr. Morris—I have not taken advantage of any misprint in any pamphlet. I have taken it from the Exhibit; that is what I have taken it from.

Judge Neilson—The remark, Mr. Shearman, applies to one letter only.

Mr. Fullerton—I take it it is a misprint, myself, but to say that we took advantage of it is to say a very unkind and uncalled for thing. The Catherine Gaunt letter is June 29, 1871. There is no dispute about that.

Mr. Morris—It is printed here in the Exhibit as March, 1871.

Mr. Fullerton—Well, it is wrong; it is March, 1868; that is so, and the letter which we offer in evidence only differs three days in the date from the Griffith Gaunt letter, written from the same place.

Judge Neilson—Written from the same place?

Mr. Fullerton—Written from the same place, three days intervening between the two.

Judge Neilson—How about the second letter? That is, the first letter.

Mr. Fullerton—No, Sir, there is but one. There is a misprint in the book.

Judge Neilson—No, but the letter that you offered?

Mr. Evarts—You offered two.

Mr. Fullerton—We offered two; yes, Sir.

Judge Neilson—How remote are those dates?

Mr. Fullerton—The other has no date, Sir, which is a part of the letter. There is a date put upon it in lead pencil. We suppose it was written in December, 1872, and shall be able to prove that it was thus written. The other is July 4, 1871, and the Griffith Gaunt letter is June 29, 1871.

Judge Neilson—A difference of a few days.

Mr. Fullerton—Only a few days.

#### THE COURT ADMITS THE LETTERS.

Judge Neilson—These letters are not, in my judgment, as important as counsel seem to consider them. They do not go to the actual question before us, but it has to do with the question of damages simply, in this sense, as revealing the condition of the relations between the husband and wife in their peaceful abode, happy abode, or otherwise. Correspondence of this kind is admitted for that purpose. If the plaintiff has a blissful home, the law supposes that he suffers more damages by an event of this kind, if it occurs, than he would suffer if he had a disturbed home, broken up by want of affection and love, independently of the offense charged. As to Mrs. Tilton herself, she has no interest in this matter. It is no hardship that she is not heard to explain the letters, and I never have been able to see the force of any suggestion of that character. The question is between this plaintiff and this defendant. This comes in, if at all, on a collateral branch simply—the condition of the household; and all things considered, I am disposed to receive the letters in evidence.

Mr. Evarts—I think your Honor will allow me to say that we do not introduce the Catherine Gaunt letter on that view, in the least, nor does it bear on that question in the least, but it does bear upon the very material issues in connection with which we introduced it.

Judge Neilson—It performs an office in that relation, however.

Mr. Evarts—And in regard to what I have suggested about the hardships. I understood your Honor to hold very liberally in the right of the witness to explain his letters, and that it would not be right to exclude him.

Judge Neilson—So I should hold with another witness.

Mr. Evarts—I say so, and therefore the reason.

Judge Neilson—The import of that rule does not at all depend upon what some other witness might do if that witness should be called.

Mr. Beach—Are we to open another discussion on that subject, Sir?

Mr. Evarts—No; not by me; not by me, it won't be opened.

Mr. Beach—It seems to me that is what you are endeavoring to do.

Mr. Evarts—Does your Honor admit both of these letters?

Judge Neilson—Yes, Sir.

Mr. Evarts—Does the ruling cover the entire space of time?

Judge Neilson—What space does it cover, Sir?

Mr. Evarts—This is up to the end of 1872.

Mr. Fullerton—I will reserve that one. I offer the other one.

Judge Neilson—Then the ruling applies to the one letter.

Mr. Evarts—Your Honor will be good enough to note my exception.

Judge Neilson—Yes, Sir.

Mr. Fullerton [reading]:

#### MRS. TILTON'S LETTER OF CONTRITION.

JULY 4, 1871.

MY DEAR THEODORE: I had expected you all day yesterday and to-day, but now your letter was put into my hand instead. I feel the bitterest disappointment, but we are both in God's hands, and while I now hear him say, by my heart's intense yearnings, "Return to the love of your youth," oh, my dear husband, may you not need the further discipline by being misled by a good woman as I have been by a good man. I rejoice in your happy face and peaceful mind, though I am not in any wise the cause. It will be God's gift alone if ever your face illumines or heart throbs with thoughts of me. As for me, I will wait on the Lord. I thank you for the sufferings of the past year. You have been my deliverer.

Destroy my letters, nor show them to our mutual friend. The fear of this will prevent my writing my inmost self.

I am your dear wife,

ELIZABETH.

[Marked "Exhibit, 106."]

Mr. Fullerton—I now offer the other letter.

Judge Neilson—What is the date of that?

Mr. Fullerton—I shall have to prove it.

Judge Neilson—Very well, prove it.

Mr. Fullerton—Look at the paper now shown you, and which is marked for identification, and tell me when it was written and from where it was written. [Handing witness the letter.]

Judge Neilson—The last letter was written from the same place as the Griffith Gaunt letter?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Well, go on.

Mr. Evarts—The inquiry is only of the date, I suppose.

Judge Neilson—The date.

Mr. Fullerton—When was the letter written, and from where was it written? A. It was written, I presume, at my own house, December 28, 1872. At all events it was written on the morning after, or the day after, the publication of the letter to the Complaining Friend in *The Brooklyn Eagle*.

Q. Where were you when you received it? A. I was at my house. It was laid on my desk.

Mr. Fullerton—[Reading:] "My dear Theodore——"

Mr. Evarts—Wait one moment.

Judge Neilson—Now, that letter takes a different relation altogether. It is not a letter intended to reveal the actual condition of the household or the relations existing between the husband and the wife——

Mr. Beach—Oh, well, we will withdraw that; it is of no particular consequence.

Judge Neilson—[Continuing:] But is moved by a single special circumstance, to wit: the letter itself.

Mr. Fullerton—We will withdraw it.

Judge Neilson—Go on.

Mr. Fullerton—We are through, Mr. Evarts.



RE-CROSS-EXAMINATION OF MR. TILTON.

Mr. Evarts—Mr. Tilton, you were to have brought me a letter from Mr. Johnson to you upon your giving him a gold watch? A. Well, Sir; I have forgotten that circumstance. I will be happy to oblige you.

Q. You were also to get for me the date of your Northfield lecture engagement, in Minnesota. A. Well, Sir, I applied to my lecture agent and he informed me that it took place so long ago that it was before his association with me. Therefore I have no means of ascertaining it.

Q. When did his association with you begin? A. I think, Sir, in the season of 1868-'9.

Q. Then it was prior to 1868-'9? A. It must have been, according to that statement; yes, Sir.

MR. TILTON ON THE LAWS OF DIVORCE.

Q. Mr. Tilton, you have given us your views of legal reform in regard to divorce. Were you aware that the State of New-York had provisions of law for a limited divorce, for a variety of causes, for uncomfortable or improper relations between husband and wife? A. Not actual divorce, Sir.

Q. I said limited divorce? A. I don't know of any such thing as limited divorce. There is separation. Articles of separation can be had.

Q. Very well. Were you aware of the regulations of our laws for desertion, cruelty, &c., in separating the parties, except from the obligation of their vow, so that they could not marry again? A. I am quite well aware, Sir, that here parties can be separated for various reasons, but they cannot be divorced, except for one reason.

Q. Well, do you know the difference between a limited and a divorce *a vinculo*? A. Yes, Sir.

Q. Very well. Now were you aware of the conditions of our laws which limited a divorce *a vinculo* to a case of adultery, and gave a divorce, separation, limited, protecting the wife in other cases? A. Yes, Sir.

Q. Very well. Now, Sir, was the State of Indiana one of those parts of the country where you thought light and liberality on the subject of divorce needed to be promulgated? A. Will you be kind enough to ask that question again, Sir?

Q. It will be read to you.

[THE TRIBUNE stenographer read the question.]

A. Well, I have not got that yet into my mind, Mr. Evarts.

Q. Well, Sir, we will wait for you to turn it over in your mind.

Mr. Fullerton—Well, Mr. Evarts better get it out of his first, properly, because I don't understand what it means.

The Witness—I desire to answer your questions in good faith, Mr. Evarts.

Mr. Fullerton—I don't understand the point of the question. It may be my fault.

The Witness—But I am under oath, and I cannot answer unless I understand the inquiry.

Mr. Evarts—Well, I think it is very intelligible.

The Witness—It may be my fault, Sir.

Mr. Evarts—The question has been read, I think, to the witness. I think it is very intelligible.

The Witness—[To the stenographer.] Will you be kind enough to read the question, Sir.

[THE TRIBUNE stenographer read the question.]

The Witness—Well, Sir, I cannot say that I understand your question. I suppose that there is no State in the Union nor is there any part of the world where a public discussion affecting the interests of society is not pertinent and in order.

Q. I thought I understood you to say that it was the differences between the law of New-York and that of the New-England States, and of the West, that constituted your interest and your doctrines on the subject of divorce. A. That was exactly it, Sir.

Q. Did you think, then, that the State of Indiana was one of the places where the presentation of your complaints against the laws of New-York, and preference of the laws of the West, were required as a matter of public reform? A. Well, Sir; I cannot speak for the State of Indiana. I still do not understand your question, Sir.

Q. Very well. That is a difficulty we cannot correct. A. Yes, Sir.

Q. Did you write and deliver a lecture on the subject of divorce and marriage, and promulgate it during a Western tour? A. No, Sir; I made the notes of a discourse on that subject, which I gave in this State, and as it attracted a number of comments, I was requested at various points during my Western tour to express my views. Where I was requested to do, I did it. I did not thrust my lecture upon anybody.

Q. What places in New-York State did you deliver that lecture? A. Cornell University, by the invitation of the authorities.

Q. Anywhere else? A. Well, I should have to look at a list. Yes, I think a number of places.

Q. Well, just tell us where. A. I cannot say.

Q. You cannot remember any place but that? A. Not at this moment. I remember that I opened the lecture course there by invitation of the college students, and as I had been very much traduced for supposed laxity of views, chose that subject.

Q. I didn't ask you that. I only asked you where did you deliver it? nothing else. Now, Sir, did you deliver that at Bloomington in Indiana? A. I did, Sir; that is to say, I delivered a discourse there.

Q. Before a seminary there—university? A. Before the university; yes, Sir.

Q. Did you in that lecture announce this proposition: "If any two among them promised each other enduring love, they were in fact as much man and wife in the eye of Heaven as if the sanction of the law and the benediction of the priest had pronounced them so?" A. I did not, Sir.

Q. Did you in your lecture tell your hearers—it is at Bloomington, I am now speaking of—"to follow nature, and obey her instincts?" A. There is no such phrase in my lecture, Sir.

Q. No sentiment of that kind? A. Nothing of the kind, Sir; no Sir.

Q. Did you in that lecture denounce the interference of either Church or State with marriage? A. I did not, Sir. I criticised

certain relations on the part of Church and State to divorce, not to marriage.

Q. Did you in that lecture say, and in this connection of the subject of your lecture, divorce and marriage, that if you had your way you would crush the Church and crush the State? A. I did not, Sir.

Q. Did you, as a part of this lecture, say that in this free and unrestrained commerce between the sexes, there might be a good many babies born into the world that would have to be taken care of by the State? A. I did not, Sir.

Q. And that it would be the duty of the State to regulate prostitution? A. No, Sir.

#### MR. TILTON'S DOCTRINES OF MORALITY AND THEOLOGY.

Q. Now, you have stated, Mr. Tilton, in reference to some expressions of your correspondence, classified in the questions put to you, that your early religious education produced a resonance and echo in your mind that would account for these expressions of self-depreciation or of gloom. You remember that inquiry? A. Yes, Sir.

Q. Now, Sir, have you not also, as a part of this early education, been taught a strict morality? A. Yes, Sir.

Q. As well as these severe doctrines of theology? A. I had, Sir.

Q. You gave as one instance that you would rather have cut off your hand than have written a letter on Sunday, something of that kind? A. In the early days; yes, Sir.

Q. Now, before the dates of these letters you had very thoroughly got over that feeling regarding the sanctity of the Sabbath, had you not? A. Yes, Sir; no, not the sanctity of the Sabbath; the severe rigidity of moral duty.

Q. Well, those feelings regarding the sanctity of the Sabbath that you referred to, was my question? A. Well, I joined Plymouth Church in 1853, and an entirely new system of religious thought was there taught to me.

Q. Now, I only asked you a single question, whether you had got over these notions that you then referred to, and gave an instance of—if you had got over those views at the time you wrote the letter that you were inquired of. A. Mr. Evarts, I have not entirely got over those views yet, and when I spoke the other day of some words which you have appeared just now to have quoted, namely, the resonance and reverberation of the old views in my mind, they are the signs and tokens that they still linger with me. I have never been able to throw them off entirely.

Q. Now, Sir, what effect upon your feelings and their expression in the phrases of degradation and reproach which you use in these letters, would be produced by a reverberation of your early teachings, if your conduct had not changed on those subjects? A. I don't know that my conduct has changed on those subjects; it was the spontaneous impulse of a man brought up, as I was brought up in the early years, to confess myself before God abjectly and wretchedly a sinner, though I departed afterwards, under the teachings of Plymouth Church, from that view of human nature, as under the rod and discipline of the Divine; still, in all hours of weakness and weariness,

the early views came back, and the dreadful standard came down, and I am beaten with a rod, and crushed again into the earth.

Q. You think, then, that on the other occasions to which these letters that are in evidence here refer to, that these expressions connect themselves only with these early doctrines of original sin, and the five points of Calvinism, do you, and not your own conduct, referred to in these letters? A. No, Mr. Evarts, every one of these letters refer to my own conduct as falling short of the standard of conduct which God reveals to a man, and which all men should follow, namely unselfishness, kindness, diligence to the wants of others, tender-heartedness, freedom from malice; whenever I compared myself with this standard, and remembered my early education, and the scourge which old Dr. Alexander used to put upon us to do our best, I was always ashamed of myself; I think every honest man is.

Q. Then you think that the recurrence of this religious education, operating upon your mind, was applied by you in your letters to your actual conduct, as it was presented to your recollection? A. Yes, Sir. For instance, Mr. Evarts, if you will allow me to give you an illustration.

#### MR. BOWEN'S PAYMENT TO MR. TILTON.

Mr. Evarts—No matter about an instance; I don't want any illustration. You have stated, in answer to a direct question, that the payment of the \$7,000 had nothing to do with the tripartite agreement? A. Nothing at all.

Q. And that was paid you, I think you said, before you signed? A. Yes, Sir.

Q. What day did you sign? A. I don't remember the day, but it was two or three days afterwards—two or three days after the payment. The \$7,000 was paid to me in the form of a check by Mr. Bowen on the very night of the arbitration.

Q. The 2d of April? A. If it was the 2d of April—I don't know the date of that arbitration other than as it has been generally accepted to be such; yet, I have no means of identifying that day. It has been said in Court to be April, 1872; whether it is so or not, I cannot say.

Q. [Handling check to witness.] Now, Sir, will you look at that and see whether it is the check you received? A. That is the check, Sir.

Q. What is the date of it? A. April 4th. I carried it to Franklin Woodruff, and he scolded me for not being earlier. He said I never would be a rich man because I allowed the pennies to go to waste. He said I had lost a day's interest on a large check.

Q. If it was deposited on the 5th you didn't lose much time, if it was dated on the evening of the 4th? A. I did not say it was dated on the evening of the 4th—dated on the evening of the 2d.

Q. The check speaks for itself as to its date? A. It was deposited with Woodruff & Robinson on the 4th of April, as you see by the account.

Mr. Evarts—That I understand.

The Witness—Mr. Woodruff made a remark to me about my losing a day's interest—about my being careless.

[Check marked "Exhibit D, 108."]

Mr. Evarts—Now, I read the check. [Reading]:

New-York, April 4th, 1872.

Pay to the order of Theodore Tilton seven thousand dollars. (\$7,000).

HENRY C. BOWEN.

(Indorsed:) Pay to the order of Woodruff and Robinson. THEODORE TILTON. WOODRUFF AND ROBINSON.

Q. Now, you say you entertained no doubt that Mr. Bowen owed you \$7,000? A. I have said that over and over again. Mr. Bowen owed me the \$7,000, and paid me because he owed me, and for no other reason.

Mr. Evarts—I ask to have all the answer struck out that is not responsive to my question.

Judge Neilson—Well.

Q. Now, Sir, did you think that you were entitled to these damages if Mr. Bowen had a justifiable cause for dismissing you from his employment? A. Mr. Bowen had no justifiable cause.

Q. Just answer my question. A. What is your question?

Mr. Evarts—I ask to strike out that answer. [To the witness.] My question is a very simple one. Did you think that Mr. Bowen owed you these damages if he had a justifiable cause for dismissing you from his employment?

Mr. Beach—Wait one moment. That calls for what he thought at that time.

Mr. Evarts—Yes, Sir.

Mr. Beach—The witness said he had no justifiable cause.

Mr. Evarts—That has nothing to do with it.

Mr. Beach—Yes, it has, because he could not think it if he had not.

Judge Neilson—He might have thought he was mistaken. I think he may answer the question.

Mr. Beach—Then he is asked for his judgment.

Mr. Evarts—I have asked for his judgment, whether Mr. Bowen owed him the money.

Judge Neilson—I think he can answer it.

Q. Did you think that Mr. Bowen owed you these damages, if he had a justifiable cause for dismissing you from his employment? A. No such thought ever arose in my mind, there being no basis to found it on. I never heard such an idea suggested until just now by your own lips.

Q. You never heard, then, from Mr. Bowen a discussion concerning the stories that he had heard to your prejudice anterior to the breaking up of the contracts? A. I never had a word with Mr. Bowen on the subject except in the interview of December 26, 1870. I never saw Mr. Bowen after that time until April 2d or 3d, whatever may be the date, of 1872.

Mr. Evarts—That I understand.

The Witness—And I have never seen him since, except in the most casual way on the ferry-boat.

Q. You did see him on the 26th? A. Four years ago; yes, Sir.

Q. And that interview has been detailed? A. Yes, Sir.

Q. Now, Sir, have you not stated that the subject of stories against you was present and discussed between you and Mr. Bowen? A. Yes, Sir; I have stated that most distinctly.

Q. Very well, that is enough of that. A. Yes, Sir.

Q. And that you held that interview upon the suggestion of your friend Johnson, that it would be useful to you to do so?

A. No, Sir. I stated that I held it at my own impulse. I heard Mr. Bowen had received some stories from some one; Mr. Johnson brought me that information, and I said I would see Mr. Bowen at once.

#### THE COMMUNE AGAIN.

Q. Now, Sir, when did the Commune of France come to an end? A. That is a point of history which I would not like to pluck out of my memory and hand it over to you. I should have to refer to the contemporaneous history of the times. It went down in blood.

Q. It was sometime antecedent to this procession of yours in which you took part? A. Why, it went down a long while ago. The Commune, considered as a mere political organization, a mere shell, lasted only a little while.

Q. It had come to an end before this procession in which you took a part? A. Why, I think it was a long while before; yes, Sir.

Q. It didn't last very long any way, did it? A. No, Sir, the mere exterior organization. The principles which animated it, and the theory, they will live as long as Thomas Jefferson's system of American Republicanism will live.

Mr. Evarts—Very likely; and the principles you announced here to-day had an origin before Thomas Jefferson.

The Witness—I think they had.

#### MR. TILTON'S COMPANION AT WINSTED.

Mr. Evarts—And will last a great while, I dare say. [To the witness.] Now, Sir, you have been asked in regard to this young person that went to Winsted. Do you know how old that young lady was? A. No, Sir; I stated this morning that she was a school girl, at that time I should say 16 or 17 years old.

Q. You spoke of her in your letter that was read as a mere child? A. Well, that was years ago—that was 1868.

Q. I have nothing to say about it, and only call your attention to it. A. I don't know how old she was. She was a friend and companion of my daughter Florence. I don't know whether they were of equal age, or not. I think she was older, perhaps several years older.

Q. Don't you know, or can you not say, upon consideration that she was as much as 19 years old? A. I don't know, Sir, at all.

Q. Was she not a large person? A. Not very large.

Q. She was not diminutive? A. No, Sir.

Q. She was a fair-sized girl, neither large nor small.

#### MRS. WOODHULL'S HUSBAND.

Q. You have said on your visits to Mrs. Woodhull's her husband was present. Do you mean by that a gentleman called Col. Blood in the evidence? A. Yes, Sir.

#### MRS. TILTON'S PHOTOGRAPHS.

Q. Now, Mr. Tilton, you have spoken about the closet you found in your house with a variety of things in it. Do you know how many portraits there were of other persons

what were in that closet? A. There was no portrait of anybody else.

Q. In the way of photographs? A. No portraits of anybody else at all.

Q. Do you know how many there were in the bureau drawer of that room of other persons? A. There were not any.

Q. Did you send away from your house a quantity of portraits in photographs of other persons? A. No, Sir.

Q. Afterwards? A. No, Sir.

Q. Did you send them to your wife? A. I did not.

Q. Well, were they sent from that house, do you know? A. Not that I know of. I never heard of any such thing.

Q. Don't you know there were altogether some seventy or eighty photographs of persons—I don't say of so many different persons, but of persons other than Mr. Beecher—that were in your wife's possession there? A. No, Sir; I never heard of any such thing. I have got a little recollection of my own of photographic cards of distinguished people, perhaps a hundred and fifty. They didn't belong to her; they belonged to me; but so far as I know they are still in the house.

Q. Didn't Mrs. Tilton have seven or eight photographs of the Rev. Dr. Taylor, in New-York? A. I never saw them if she had.

Q. Hadn't she several of Mr. Greeley? A. I never saw them.

Q. Had she not quite a number of Rev. Dr. Storrs? A. I never saw them.

Q. Now, Sir, did you give her any of these photographs of Mr. Beecher? A. No, Sir; never one.

Q. Did you never give her a photograph of Mr. Beecher? A. No, not that I remember.

Q. Are you quite sure that you never did? A. I don't remember that I ever had one. Mr. Beecher once gave me a large photograph of himself that hung on the wall, eight or ten years ago. I don't remember any other photograph.

Q. And in the whole course of your friendship with Mr. Beecher you never had a photograph of his own except this one you now refer to? A. I don't remember about the early years; I think quite likely I may have had photographs in those days.

Q. Do you remember whether during those years of friendship you gave any photograph of Mr. Beecher to your wife? A. No, Sir, I do not.

Q. You may have done so? A. Oh! I gave her everything I got. If I had it, quite likely I gave it to her.

Q. Did you have any considerable number of Mr. Beecher's photographs yourself? A. No, Sir.

Q. From which you gave to other persons? A. No, Sir; not that I remember.

Q. Not that you remember. Then I want to know whether you will say that you never had them? A. I think I never had.

Q. And never gave photographs of Mr. Beecher to other friends of yours? A. Well, Sir, I don't remember; I may have done so years and years ago.

Q. Nothing more is within your memory? A. No, Sir.

Q. Now, Sir, there is a little picture here that is made an Exhibit. Do you know to whom that belonged? A. I never saw it until it was passed over to the jury. I didn't know that it

was in the box; I didn't myself detect it in the box. I have not yet seen it.

Q. Do you know of its belonging to one of your younger children, having been picked up in the street? A. I know nothing about it other than that I found it in the box, or that it was found in the box which I brought here. I think it was found by Mr. Fullerton since he came into Court.

#### THE CLOSET WITH THE BEECHER GIFTS.

Q. Now, Sir, in this closet that you spoke of, do you know when the things that you found there were put there? A. I know nothing about it, Sir. I only know that I examined them, that is all.

Q. That is all you know? A. Yes, Sir.

Q. Now, was there anything in the way of gifts to Mrs. Tilton, that you found in that closet, which you were not aware of before? A. I was not aware of any of those that I found.

Q. You were not aware of any presents of books to Mrs. Tilton? A. No, Sir, other than this; I remember once that he gave her a copy of "Life Thoughts," and I think he gave her a copy of "Norwood," and he gave me one; but I was not aware of this great collection of books that I found in the closet, which were inscribed by him to her; those I had never seen.

Q. You speak of it as a great collection? A. Yes, Sir, it would fill a shelf about that length. [Illustrating with his hands.]

Q. What were these books? A. They were his writings—his various publications.

Q. Many copies of the same book? A. No, Sir; no copies of the same book.

Q. Separate books? A. Yes, Sir.

Q. Of his own works? A. Mainly his own works.

Q. And his gifts to your wife, as appeared by the title page and from his inscriptions, or something? A. Yes, Sir; the only way that I knew that they were gifts by him to Mrs. Tilton was from the fact that the books, on being opened, contained on the white leaf: "Presented to Mrs. Elizabeth R. Tilton, by her Friend Henry Ward Beecher," or something of that kind—inscriptions in various ways.

Q. What size books were they? A. What sized books?

Q. Yes, Sir; what sized books? A. Octavo books generally, if you know that size.

Q. Yes, I know it; I know all sizes. [Laughter.]

Q. They were octavo size? A. Yes, Sir.

Q. Consisting in the main of a series of his publications, which had been made from time to time? A. They were not so big as law books.

Q. "Octavos" is near enough for my purpose. Now, did you happen to be aware, among your acquaintances in Brooklyn, that Mr. Beecher had made presents of his books to others of his parishioners? A. No, Sir; I have been told on the contrary, that Mr. Beecher very seldom shows any courtesy to any of his parishioners—very seldom visits them, or makes them presents, or attends their funerals, or anything of that kind. [Laughter in Court.]

Mr. EVARTS—Now, I ask to strike all that out.

Mr. BEACH—Why did you not stop it?

Mr. Everts—How could I? My question did not call for it.

Judge Neilson [To the audience]: I must again speak to the gentlemen in the room to keep order. I have had to appeal to them before, and I stated that I would not sit here and administer justice in the midst of such interruptions. Now, Mr. Everts, you may repeat your question, and that answer will be stricken out. The short answer you are entitled to.

Mr. Everts—That will answer. The rest is stricken out.

Q. Now, Sir, had you sufficient acquaintance with the interior of this house, and the objects, pictures and books, etc., to know that all these gifts of Mr. Beecher were openly about in different rooms of the house, until your wife had occasion to take boarders, and in making arrangements for their accommodation, they had been packed into this closet? A. I knew nothing about it, Sir. I never saw these gifts until I saw them after her desertion. They were never scattered around the house that I know of.

Q. When was this period at which your wife resorted to keep boarders?

Mr. Beach—That is new matter.

Judge Neilson—It may be new matter, but I will take it.

Mr. Everts—It bears upon this subject. It is not new matter in this sense.

The Witness—I don't know how long ago, but she came to me one day—

Q. No, matter; you don't know how long ago? A. No, Sir. I don't know the date. I think after the publication of the Woodhull scandal she wanted to live alone.

Q. And she began to take boarders after the publication of the Woodhull scandal? A. I think she did, but still I will not be positive as to the time.

Q. These presents you have no recollection of seeing about the house up to that time, and of their being displaced in reference to the arrangement for boarders? A. No, Sir; I never saw them; there was a gift of a picture—one or two pictures made years ago, which I knew about. I never knew anything about these books.

Q. Do you remember receiving the key of this closet from your wife?

A. No, Sir; I have not seen my wife since she left my house in July, except at a distance in the court room.

Q. That I understand; but it might be sent to you and received by you at your house? A. I know nothing of that.

Q. The key never was received at your house? A. I don't know that the key was ever taken away. When I made a search through the house I asked my housekeeper for the keys, and she gave me the keys of the various closets, and this one among them. I don't know how she got it.

Q. That is your recollection of how you came by it? A. Yes, Sir.

Q. And you opened the closet with the key? A. Yes, Sir.

Q. And you know nothing of the key being sent by your wife? A. No, Sir.

Q. Now, at the time of your wife's last confinement, you were about the house, were you not? A. Yes, Sir.

MR. BEECHER'S PRESENTS OF FLOWERS.

Q. Did you know of these presents of flowers made to your wife in her illness? A. We always had flowers in the house. Sometimes I ordered them and sometimes she did. I knew that occasionally Mr. Beecher had sent her flowers.

Q. Did you know of any flowers being brought from Mr. Beecher's house to your house a few days after the child was born? A. I don't know, Sir.

Q. Do you know of Captain Duncan bringing them there? A. No, Sir; that is the first I ever heard of that.

Q. Do you remember being at the house when Mr. Beecher called upon your wife during her confinement, and there seeing him sitting? A. No, Sir; I have no recollection of that.

Q. Do you remember other gentlemen friends calling upon your wife during her confinement, and your seeing them there? A. I don't recall it, Sir; it is fully five years ago.

Q. Do you know of Mr. Bates being there and in her room. In the same room that the witness has testified about seeing Mr. Beecher in? A. I don't know any such thing; I never heard of it.

Q. Do you know Mrs. Mitchell, the monthly nurse, was there during all this time? A. I know that she was the nurse.

Q. Do you know that she was in the room with your wife while Mr. Beecher was there in the room? A. I didn't know anything about Mr. Beecher being in the room until I heard it from this stand yesterday from the person of that nurse.

Q. Do you remember that you were in the house at the time that Mr. Beecher called, the September visit which the nurse has testified about? A. No, Sir; I never heard of it until I heard it yesterday.

Q. You mean to say that you never heard of this occurrence before you heard of it yesterday? A. No, Sir.

Q. But do you remember being there on the day when the Equal Rights Committee met there and Mr. Beecher called upon that day? A. The Equal Rights Committee, under Mrs. Tilton's invitation, met at my house, I suppose, every week or so. I don't remember any special occasion when they were there.

Q. Do you remember that on this day in September there was a meeting of the Committee there and you were in the house. I don't say that you were a member of the Committee, because I presume they were all ladies, though I don't know; but do you remember of the meeting? A. Of that meeting.

Q. Of this Equal Rights Committee meeting on that day in September when Mr. Beecher called. A. I cannot single out any particular meeting of this Equal Rights Committee at my house. They met there once a week or once a fortnight. I was not always present. Mrs. Tilton conducted the exercises. I say "exercises." I mean the arrangements.

Q. Do you remember Mr. Bates calling there immediately after your wife's confinement, and seeing her in her room in the end of June more than once? A. I have no recollection of it at all, Sir.

Q. Have you a recollection of his being there on Sunday, the 27th of June? A. No, Sir.

Q. And you and he going off to Coney Island together? A. No, Sir.

Q. No recollection of that? A. No, Sir; I cannot fix the date for any such event so long ago; Mr. Bates was my near neighbor, living around the corner.

Q. An intimate friend? A. A very near friend; he ran in occasionally.

Mr. Evarts—Your Honor will remember that Article Six of what is called the sworn statement was allowed to be put in evidence on the part of the plaintiff. I want to inquire as to it.

Q. Now, was this Article Six, as put in evidence, written by you? A. Was it written by me, Sir?

Q. Yes, Sir; composed by you? A. The entire statement was composed by me.

Q. That I am not asking about; I am not asking about anything but this. Was this written by you? A. It certainly was.

Q. From beginning to end? A. Except so far as the quotation in it from Mrs. Tilton's letter.

Q. That was written by your pen also? A. No, Sir.

Q. That quotation was made a part of the article by you as composer? A. Yes, Sir.

#### MORE OF MRS. TILTON'S LETTERS.

Mr. Shearman—If your Honor please, I will now read two letters from Mrs. Tilton to her husband, dated Aug. 16th, 1869, and Sept. 4th.

Mr. Beach—Let us see them.

[Mr. Shearman handed the letters to Mr. Beach and Mr. Fullerton.]

Mr. Beach—This raises the question, whether your Honor's decision excluding the letters of 1872 that we offered, does not apply to these written in August and September, 1869.

Mr. Evarts—Why, there is no trouble about that, I take it; there is no rule upon the subject; it is quite anterior to the suspicion, whatever it was.

Judge Neilson—What is the date?

Mr. Evarts—1869.

Mr. Beach—But not anterior to the event, however.

Mr. Evarts—They are brought in in consequence of the evidence given yesterday, and my friends have introduced two letters. [To Mr. Beach.] You have introduced other letters in connection with this.

Mr. Beach—What letters?

Mr. Evarts—Unimportant letters, not discussed.

Mr. Beach—We didn't introduce them; we showed them to the witness to refresh his recollection.

Judge Neilson—Are they isolated letters or parts of the same correspondence?

Mr. Evarts—They are two letters. We asked for a third one of the 4th of September. Ah! we have got that; that is here.

Judge Neilson—In the same year?

Mr. Evarts—Yes, Sir.

Judge Neilson—Then read them.

Mr. Evarts—They are from Monticello; there are several letters in evidence.

[Mr. Shearman read the following letter, which was marked "Exhibit D, 109":]

MONTICELLO, Aug. 15, 1869, }  
Sunday. }

MY DEAR HUSBAND: These days are full of memories of the sickness and sufferings of little Paul a year ago! Our other darling is full of promise in the *future*—but the present—while he grows finely, all waking hours as well as sleeping, restless and crying with colic! I feel sure that he will be healthy; his lungs are strong enough for a public speaker already.

When I settled my board bill I had a long talk with the Dr. of my discontent and disappointment, and as I had said to Sally that I would use my fascinations and Christian charity to work a change for our mutual good, and so it proved; I drew out his *best* and there appeared the *gentle* man! Since when we have good roast beef; been urged to take another piece, and a bountiful supply generally. In this you will rejoice with me. No reply yet from my Cornwall letter. Of course I shall now remain here. The scales say I have gained four lbs. notwithstanding poor food, and care of baby and children. I think with longing of our seventy-five easy-chairs, when my poor back rises half upright. Then I look up to the *hills* from whence cometh my rest. I rejoice that at last you feel "The pleasantest place I know of is this house." So may it ever be! I missed my newspapers this week. Mr. Beecher wrote me a very summary characteristic letter, which I would inclose, save for the fear you would lose it.

I very much desire you would bring from Mr. Paige the plaster cast of little Paul and lay it in the bureau drawer among my treasures.

Did you have a visit from Sallie Lovejoy, and did she enjoy our pretty house? Tell me about it. To-day is our first—

Mr. Shearman—The letter breaks off here. I now read the other letter, marked, "Monticello, December 4th, Monday Evening." This has no date, but it is, no doubt, also 1869. It is so marked.

[Mr. Shearman read the letter, which was marked "Exhibit D, 110."]

MONTICELLO, Sept. 4th, }  
Monday Evening. }

MY DEAR HUSBAND: Bella is sitting with me, the children asleep, and I have just finished reading your letter describing Mrs. T—'s funeral exercises. I feel very deeply for that young widow. Poor woman! I cannot bear to think of her dreadful loss. It unnerved me. Oh, my darling, may we not once more have a home of our own, where we may live our short lives together? You speak of coming up for next Sunday meeting; if so do prepare to spend the remaining two weeks with me, that we may return together. You can write your editorials here, and the rest you need after this last week's excitement.

Mr. Davison wished me to ask you if you could procure for him the large color'd picture used for illustrations in the Infant Class of Plymouth S. S., also any other apparatus that you think would be useful for that department. Mr. Huntington would help you, darling, in selecting them.

Bella leaves by to-morrow's coach. I was very glad to see her. We had a ride this afternoon and yesterday we strolled in the fields, but I could not say, as the Sabbath before I did, I was perfectly happy or as happy as any one could be in this world, for you were absent on so melancholy a mission.

Darling, do not forget to bring plenty of money that we may get through with our visit here safely.

I have felt my first home-sickness this week—that is, a desire to be back among the dear old places. I have gained only 1 lb. the last week—we sat for our pictures to-day, but I fear with poor success. The children are well and happy. Excuse this wretchedly hurried letter, as I want to send it by the early mail. We look for Emma to-morrow—Tuesday. Clarence is well, and has been well.

Love to dear mother and Joe.

Yours always,

WATSON.

Q. Can you say who Bella is? A. Miss Isabella Oakly, formerly a teacher of our children.

Q. Do you know how soon after this letter of September 4th, in Monticello, Mrs. Tilton returned to New-York—to Brooklyn? A. I cannot say, Sir, out of my memory; I have nothing to identify it.

Mr. Beach—She speaks in the letter of remaining two weeks, and of Mr. Tilton coming there.

Mr. Evarts—That may be, and still it may not have been done.

Mr. Fullerton—Very often ladies write things which are not accomplished.

Mr. Evarts—You do not recall, Mr. Tilton, whether you went up there and spent two weeks? A. I do not recall that particular occasion. I have been at Monticello and made an address there.

Q. Can you tell how soon after the 4th of September she returned, or whether she returned any sooner than she expected? A. No, Sir, there is nothing in my memory that I would like to fix the date by.

#### END OF MR. TILTON'S EXAMINATION.

Mr. Evarts here inquired for another paper, and Mr. Morris produced the paper.

Mr. Evarts—We have called for a memorandum—something that is called in the evidence "Heads of difficulties;" it is a matter between Mr. Bowen and Mr. Beecher and I have not in my mind at all the evidence concerning it; but it seems the paper could not be found or produced at the time; it is now produced. It arose on my cross-examination, and I think was marked "Exhibit D 107." [Referring to Mr. Sherman]: Oh! I remember, it was not found until my friends had commenced their re-direct. I now offer that paper in evidence.

Mr. Beach—We object to it.

Mr. Evarts—For what reason.

Mr. Beach—As entirely immaterial, as a matter between Mr. Beecher and Mr. Bowen. We have nothing to do with that.

Mr. Fullerton—You might as well put in the multiplication table.

Mr. Beach—There is no evidence which lays any foundation for it.

Mr. Evarts—Well, we will have it marked for identification and look further at it in the morning. It is not anything that requires the witness's presence.

Judge Neilson—Are you through with the witness?

Mr. Evarts—Yes, Sir.

Judge Neilson—You close your re-direct examination?

Mr. Evarts—Our re-cross-examination, if your Honor please.

Judge Neilson—Yes; have you anything to ask on the other side?

Mr. Fullerton—This letter may call for a little examination. If they do not put it in evidence we may offer it ourselves.

Mr. Beach [Showing letter to witness]: Is this a letter that you wrote to your wife? A. Yes, Sir.

Q. And at the time of its date. A. Yes, Sir.

Mr. Beach [To the stenographer]: Just mark that for identification.

[THE TRIBUNE stenographer marked the letter "Exhibit 107" for identification.]

Mr. Evarts—Do you put it in?

Mr. Beach—I do not know yet.

Mr. Evarts—If you do not determine whether you put it in we will not determine finally as to whether we may ask anything about it

#### A JUROR FAINTS.

At this point Mr. Davis, one of the jurors, was observed to be ill, and there was some confusion in court.

Judge Neilson—[To the audience.] Wait a moment, gentlemen. Officer, open a window. I wish that the audience would remain quiet and let the jurors retire.

The juror partially revived and attempted to leave the Court, but fell back in a faint.

Judge Neilson—[To the audience.] It is better that the audience should re-ire now, and leave the jurors at liberty to retire afterwards.

Judge Neilson then asked the officers to take charge of the juror and see him safely to his home.

Mr. Morris—If your Honor please, the air has been quite impure. It helps the air very much to have the gas lit in the center of the building, but that was not done to-day.

The court then adjourned until Thursday at 11 o'clock.

#### TWENTY-NINTH DAY'S PROCEEDINGS.

##### MRS. TILTON'S BROTHER AND THREE OTHER WITNESSES.

MR. TILTON RECALLED FOR A FEW MOMENTS—

GEORGE A. BELL GIVES EVIDENCE REGARDING THE INTERVIEW BETWEEN HIMSELF, MR. HALLIDAY, AND MR. TILTON—REMARKABLE TESTIMONY OF MRS. TILTON'S BROTHER—MR. BEECHER'S FRIENDSHIP FOR MR. MOULTON LAST JULY—WHAT A NEIGHBOR OF THE PLAINTIFF SAW.

THURSDAY, Feb. 18, 1875.

At 11:05 o'clock to-day Mr. Fullerton arose from his chair, glanced over the audience, and called out the name of George A. Bell, the next witness. It was observed at this moment that Mr. Evarts had not arrived, and Mr. Shearman asked first to be allowed to put a few questions to Mr. Tilton. By instruction of Judge Neilson, Mr. Tilton arose and remained standing in front of his chair, surrounded by his counsel, and did not resume the witness stand. Mr. Shearman then produced ten photographs of the Rev. Dr. Storrs, seven of the Rev. Dr. Wm. M. Taylor, two or three of the Rev. Mr. Talmage, and single ones of other prominent men. These pictures, which Mr. Shearman suggested were among the articles sent by Mr. Tilton to his wife after she left him last year, were intended

as an offset to the production by the plaintiff of eight photographs of Mr. Beecher found in a closet in the house of the witness. Mr. Tilton said that he never saw the photographs. Examination by Mr. Fullerton called out the fact that the photographs of Dr. Storrs were alike, as were also those of Dr. Taylor, and the examiner closed his questioning by saying inquiringly to the witness, "You don't know but that they might have been bought in Fulton-st. yesterday?" Mr. Tilton replied that he did not. Mr. Evarts, who had been delayed in crossing the river from New-York, arrived at this time, and Mr. Bell, being again called, pushed his way through the crowd and ascended to the witness chair.

Mr. Bell has been a member of Plymouth Church since 1847, and is a prominent friend and benefactor of the Sunday-schools of Brooklyn. He reared up the Bethel Mission of Plymouth Church from a small school to one of the most flourishing institutions of the kind in the city. He also organized the Mayflower Mission, and is now Superintendent of the Bethel Mission. He is a fine-looking gentleman, of mild manners, and extremely polite and dignified. His testimony, which was intelligently given, was almost entirely in regard to the interview between himself, the Rev. Mr. Halliday, and Mr. Tilton, but it was not admitted without protest from Mr. Evarts. The witness corroborated in the main the statements already made regarding that meeting, but stated differently Mr. Tilton's figure of speech about flags on the tree in front of Mr. Halliday's house. He said that when urged to deny the scandal, Mr. Tilton said: "It would be as though I were to go over to New-York and say, 'Before Mr. Halliday's house there is a tree covered with a thousand flags of all nations.' That would be a false statement, and yet there is a tree." Mr. Shearman conducted the cross-examination which did not distinctly tend to offset the testimony already given.

A very important line of the defense not before called up since the beginning of the trial—though it is familiar to those who have read Mr. Beecher's Statement—was broached to-day, Mr. Evarts making an eloquent appeal for the admittance of testimony showing that Mr. Beecher had been called to advise in the troubles between Mr. and Mrs. Tilton, and that the witness had an interview with Mr. and Mrs. Beecher in relation to that subject. But Judge Neilson would not allow the witness to testify to an interview which the plaintiff had not introduced in the direct examination. This question

was asked in various forms, and ruled out in each case, exceptions being taken by Mr. Evarts every time. After recess, Mr. Bell resumed the witness chair, saying, as he did so, that he had recollected something that he had not stated about the interview at Mr. Halliday's house. He remembered that Mr. Tilton said that Mr. Beecher had committed an offense against his family, and protested that Mrs. Tilton was a pure woman.

The calling of the next witness, Joseph H. Richards, caused a stir in the audience, for it was generally known that that gentleman was Mrs. Tilton's brother. Mr. Richards is apparently about 40 years old. He wears closely-trimmed black whiskers, and his eyes resemble those of Mrs. Tilton. He seemed to give his testimony unwillingly, and at one time turned to the Judge and asked a just appreciation of his painful position. He said that during the past ten years he had been a resident of Montclair, N. J., his business being that of an advertising agent in Broadway. He knew little about the scandal, but what he did have to say caused a profound sensation among the auditors. Mr. Richards stated that, on one occasion, while at Mr. Tilton's house, he unexpectedly opened the parlor door, which was closed, and saw Mr. Beecher seated in the front room, and Mrs. Tilton, with a highly flushed face, making a hasty movement away from the position which Mr. Beecher occupied. It was, the witness said, such a sight as left an indelible impression on his mind in relation with other matters. Mr. Evarts, in his cross-examination, brought out that Mr. Richards had not related this occurrence to the plaintiff or his lawyers until last Tuesday, though he had received a subpoena several weeks ago.

Jeremiah P. Robinson of the firm of Woodruff & Robinson testified concerning the meeting between himself, Mr. Beecher, and Mr. Moulton on July 4, 1874, when the defendant said, placing his hand upon Mr. Moulton's shoulder, "Moulton is as good a friend as God ever raised up for man. If it was not for him I do not know that I should be alive now." Through the cross-examination it was discovered that Mr. Moulton's partnership with the firm of Woodruff & Robinson is to end on March 1.

William M. Marston Brasher was the next witness. He is a large dealer in oilcloths in this city, and is part owner of the yacht Undine of the Brooklyn Yacht Club. He lives near Mr. Tilton, and testified that he had seen Mr. Beecher going into or coming out of Mr. Tilton's house five or six times, and



that he had seen the Plymouth pastor in the vicinity of the house perhaps fifty times, between 1866 and 1870. He once saw Mr. Beecher standing on Mr. Tilton's stoop about breakfast time, between 6 and 7 o'clock, he thought.

Mr. Beach now threw down the gauntlet in regard to the reserve question as to whether the remainder of the interview between Mr. and Mrs. Tilton regarding the appearance of the latter before the Plymouth Investigating Committee was to be admitted, or that part of the interview already given stricken out. An exceedingly warm debate followed, Mr. Evarts objecting in pronounced terms, and Mr. Beach clinging to his claim with tenacity. Mr. Beach was finally defeated in his effort, and it being after 4 o'clock, the court adjourned.

### THE PROCEEDINGS—VERBATIM.

#### MRS. TILTON'S STORY TO THE COMMITTEE.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Fullerton—George A. Bell.

Judge Neilson—Mr. Fullerton, there was a question reserved, which perhaps you thought was not worth looking at, or may have overlooked, in reference to an instance in which Mr. Tilton answered a question at some length, at any rate at the length that his wife said she had been before the Committee and denied everything. At that point the objection came in.

Mr. Fullerton—Yes, Sir.

Judge Neilson—And it was then claimed that the rest of that conversation must be given, because it had been permitted up to that point. Mr. Beach spoke about looking at some authorities. The question was, whether the rest of that conversation should be given, or whether what had been given should be stricken out.

Mr. Fullerton—Yes, Sir.

Judge Neilson—Are you satisfied with it stand as it is?

Mr. Fullerton—No, Sir, we desire bringing the same question up at some future time, on giving some other evidence in regard to it.

Judge Neilson—Very well.

#### MR. TILTON AGAIN UNDER EXAMINATION.

Mr. Shearman—If your Honor please, if we are going on before Mr. Evarts comes—

Judge Neilson—I thought he was here.

Mr. Shearman—Mr. Evarts is not here.

Judge Neilson—Then we will wait.

Mr. Shearman—We don't desire to have the witness called until he comes.

Judge Neilson—No, Sir.

Mr. Shearman—If your Honor will permit Mr. Tilton to take the stand a moment that we may supplement one question which was asked

Judge Neilson—Well. [To Mr. Tilton.] You might stand up there and answer it.

[Mr. Tilton stood up by the chair in which he had been sitting.]

Mr. Shearman—Do you know Katie McDonald? A. Yes, Sir; I have known her for twenty years.

Q. Who is she? A. An old servant of my father's house, and from time to time an inmate of my own, and my house-keeper last Summer.

Q. Did you direct her to send to Mrs. Tilton her things, some things, from your house? A. I told Katie whenever Mrs. Tilton sent for anything, to give her everything she asked for.

Q. Do you not know, Mr. Tilton, that Katie McDonald, by your directions, sent to Mrs. Tilton a trunk full of things? A. Yes; two or three trunks, I think.

#### A SMALL PICTURE GALLERY PUT IN EVIDENCE.

Q. Please look at these photographs and say whether these photographs were not among the things belonging to Mrs. Tilton. I hand you ten photographs of the Rev. Dr. Storrs. [Handing witness photographs.] A. I don't know anything about these, Sir.

Q. There are ten, are there not? A. One, two, three, four, five, six, seven, eight, nine, ten, &c. One of Dr. Leavitt.

Mr. Fullerton—One moment.

Judge Neilson—Well, the witness says he don't know anything about them.

Q. Please state what those are that I now hand to you? [Handing witness photographs.] A. Photographs of somebody; I don't recognize the face.

Q. Are they not photographs of Rev. William M. Taylor, D.D., of New-York? A. I have never seen Dr. Taylor except in the pulpit; they may perhaps be, though.

Q. You have seen him in the pulpit? A. I have heard him preach once or twice; once, I think.

Q. Do you believe that those are photographs of Dr. Taylor? A. Well, I couldn't swear that they are.

Q. How many of them are there, seven are there not? A. I will count. One, two, three, four—there are seven here.

Q. Please look at the photograph that I now hand you and state whether those are photographs of the Rev. Dr. Talmage? [Handing witness photographs.] A. Yes, Sir.

Q. Two of those, are there not? A. Yes, Sir.

Q. Please look at that picture and say who that is a picture of? [Handing witness a photograph.] A. That is Mr. James H. Bates.

Q. A personal friend of yours, is he not? A. Yes, Sir, for many years.

Q. A gentleman who was bail on a bond for you, is he not? A. Yes, Sir.

Q. Were you aware that Mrs. Tilton had that photograph in her possession? A. I never saw it before, Sir, to my knowledge.

Q. Please look at that picture and state what that is? [Handing witness a photograph.] A. That is Horace Greeley.

Q. Were you aware that Mrs. Tilton had that in her possession? A. No.

Q. Don't you know that you gave her that yourself, Mr. Tilton? A. I do not, Sir.

Q. Will you swear that you never did? A. No.

Q. Please look at that picture and say what that is? [Handing witness a photograph.] A. Henry Ward Beecher.

Q. Did you not give that photograph to Mrs. Tilton yourself? A. I don't know, Sir.

Q. You will not swear that you did not? A. No, Sir.

Q. That is a photograph of whom? [Handing witness a photograph.] A. A photograph of my old associate in *The Independent*, Mr. Joshua Leavitt, now dead.

Q. He was a clergyman, was he not? A. Yes, Sir.

Q. A very intimate friend of the family? A. Whose family?

Q. Your family? A. No, Sir; I don't know that he ever was at my house; I think not. Yes, Sir, I think he was on the occasion of the funeral.

Q. You can only remember of his being there once? A. That is the only occasion which I now recall.

Q. Were you not aware that he was in the habit of frequently calling at your house? A. I am aware that he was in no such habit at all.

Q. That is, you are not aware of it? A. I am aware that he was not in the habit of frequently calling at my house.

Q. Then if he called frequently it must have been in your absence? A. Yes, Sir; when I didn't know it, like Mr. Beecher's visits.

Q. Dr. Leavitt was an old clergyman, and you didn't know of his visits, if he did visit? A. No, Sir; not frequently.

Q. Did you never see any of Dr. Storrs's pictures in your house, Mr. Tilton? A. I don't think I ever possessed a picture of Dr. Storrs.

Q. I didn't ask you that; I asked you whether you ever saw pictures of Dr. Storrs in your house? A. Not that I remember, Sir.

Q. Then all these pictures, these photographs, which are now shown to you, are photographs which you never saw, and were not aware of their existence? A. I don't know anything about them.

Judge Neilson—He has answered that in detail.

Mr. Shearman—There are a few more, your Honor. [To the witness.] You do not remember ever seeing any of these pictures? A. [Referring to another photograph.] That is Frederick Douglass. I have got one or two little photographs of Frederick Douglass. I don't think I ever saw that one. That is Judge Morse. [Referring to another photograph.]

Q. Did you ever see those? A. I have seen very many photographs of Judge Morse. He is a relation of ours. I could not say that I have ever seen them.

Q. Judge Morse is your wife's stepfather, is he not? A. Yes, Sir.

Q. Mr. Bates was a frequent visitor at your house, was he not, in 1893? A. I could not answer as to that, Sir. Mr. Bates has been for many years a friend of our family, and a very near neighbor. I think he has always been in the habit of calling more or less frequently. I could not answer for any particular time.

Judge Neilson—That is all.

Mr. Shearman—We offer these photographs.

[Photographs marked "Ex's D 11," for identification.]

#### RE-RE-DIRECT EXAMINATION OF MR. TILTON.

Mr. Beach—[To the witness.] This portrait of Mr. Beecher that was handed to you—this photograph—does it represent him as a young man? A. Yes, a much younger man than he now is. I should think 15 or 20 years younger.

Mr. Fullerton—These photographs of Dr. Storrs you never saw before, I understand you, that you know of? A. Not to my knowledge.

#### THE PRINTS OF EACH SET OF PHOTOGRAPHS IDENTICAL.

Q. Those are four of Dr. Storrs, are they not? [Showing witness four photographs, cabinet size.] A. Yes, Sir.

Q. Taken from the same plate, apparently, are they not? A. Yes, Sir; copies of the same.

Q. Apparently fresh? A. Yes, Sir.

Q. New? A. Yes, Sir; they look so.

Q. Unsold? A. Yes, Sir.

Q. You don't know but what they were bought yesterday in Fulton-st., do you? A. I should not like to swear that they were. I don't know anything about them.

Q. You did not find them in the closet, any way, did you? A. No, Sir; I never saw them to my knowledge.

Q. Now, take those and tell me whether they are not struck from the same plate. [Handing witness six smaller photographs of Dr. Storrs.] A. Yes, Sir; they are all the same.

Q. The same pictures? A. Yes, Sir.

Q. Fresh? A. They look pretty fresh.

Q. Clean? A. Yes, Sir.

Q. They were not in the closet, that you know of? A. No, Sir; they were not in that closet.

#### MRS. TILTON FREE TO TAKE WHAT SHE PLEASED FROM THE HOUSE.

Q. You instructed this servant, I understand, to send to Mrs. Tilton whatever she sent for? A. I told Katie McDonald, the old housekeeper, that whenever Mrs. Tilton wanted anything to let her have it, to send her everything that she asked for—any articles in the house, any article of furniture—and I remember adding that "if she wants the carpets take them out and send them to her."

Q. Who packed the trunks which were sent? A. Katie McDonald packed them.

Q. Had you anything to do with it? A. Nothing at all, Sir.

#### ANOTHER CROSS-EXAMINATION.

Mr. Shearman—Did you examine your wife's bureau drawers yourself? A. I went through the house after she deserted it, and went through the closets and through the bureau myself.

Q. And you mean to say that you went through all the bureau drawers and did not see these pictures? A. I mean to say exactly that, here, that never to my knowledge have I seen them until this morning.

Q. We understand that, but did you make a careful search all through the house? A. Yes, Sir, careful as I could.

Q. Did you open all your wife's desks? A. All my wife's desks?

Q. Yes? A. She didn't have but one.

Q. Did you open that one? A. Yes, Sir; I did.

Q. Did you unlock it? A. It was not locked.

Q. How about this closet door; you say you have no recollection of the key coming to you? A. I have a recollection of asking Katie McDonald for the key and she handed me the key.

Q. Do you remember getting a cast of your child's face out of that closet? A. No, Sir; I remember Mrs. Tilton sent, through Katie McDonald, to me for the little box of souvenirs of the dead child, some rosebuds, some letters and a little plaster cast of the dead face. They were all in a little box; I sent all these enclosures to her address.

Q. Where was that box? A. That box was in this closet.

Q. Did you open that box? A. Yes, Sir; I did.

Q. What did you find in that box? A. I found in that box the little plaster cast; I simply opened the box to make sure the cast was there; I did not examine into the things at all. She wanted, particularly, the plaster cast of the dead child, and I sent not only that but all the other little souvenirs which were attached to it.

Q. Can you recollect what day that was? A. No, Sir.

#### WHERE THE PUBLISHED CORRESPONDENCE WAS FOUND.

Q. Wasn't it the same day on which *The Brooklyn Eagle* republished from *The Chicago Tribune* these copies, or copies of letters between yourself and your wife? A. I don't remember that, Sir; don't associate the two events together.

Q. Well, had you not, a considerable time before, opened that closet and taken out these letters and had them published—and sent them on for publication? A. The letters which were published in *The Chicago Tribune*, from my wife, were not in that closet.

Q. I simply desire to identify the dates that they were not in the closet. Now, where were these letters? A. These letters were in a closet on another floor of the house up-stairs. The little closet where Mr. Beecher's presents were kept was on the second floor. The closet in which my wife's correspondence and mine was found was on the third floor.

Q. How many rooms did your wife have for her own use, at the time that she left the house? A. She hadn't any—left them all behind her.

Q. I mean at the time just before she left the house? A. Well, Sir—

Q. One minute before Mrs. Tilton left the house, how many rooms did she have for her own use, one or more? A. Why, she had two or three.

Q. For her own personal use? A. Yes, Sir.

Q. Were not one or two rooms or more, taken up by boarders? A. Yes, Sir; these little things were locked in a closet to which no member of the family had had access, I think, for a year or more.

Q. How do you know that? A. Because they were in a room, which room was occupied by one of the boarders; I know I had not been in it for a year.

Q. They were put away in a closet because the room was occupied by the boarders? A. No, Sir; I think they were put away in the closet to be concealed from me.

Q. That is your opinion about it?

Mr. Fullerton—That is what you asked.

Mr. Shearman—I understand that.

Mr. Fullerton—Yes, Sir; am I to understand you have got it, too?

The Witness—They were locked in the closet of a room to which I had no access, and had not had for a year.

Q. How was it that you had no access to it? A. Simply because it was occupied by Mr. and Mrs. Taylor, and I never intruded upon it.

Q. And was not that a pretty good reason for keeping that closet locked?

Mr. Beach—Oh, well; we don't want any reasons of that kind here.

Mr. Shearman—I am satisfied with that, Sir.

Mr. Beach—I am glad you are.

Judge Neilson—Mr. Fullerton, proceed; Mr. Evarts is here.

Mr. Evarts—If your Honor please, I was not delayed only by some ordinary interruptions in the ferry boats, by passing tows and difficulties of getting teams aboard; no especial interruption of ice.

#### TESTIMONY OF GEORGE A. BELL.

George A. Bell was then called on behalf of the plaintiff, and sworn.

Mr. Fullerton—Where do you reside? A. On Columbia Heights—178.

Q. In this city? A. In this city.

Q. How long have you been a resident of Brooklyn? A. For twenty-eight years, nearly.

Q. And what connection, if any, have you had with Plymouth Church during that time, or any part of that time? A. I have been a member of Plymouth Church since the beginning of November, 1847.

Q. I take it for granted that you know Mr. Henry Ward Beecher? A. Yes, Sir.

Q. And do you also know the Rev. Mr. Halliday? A. Yes, Sir.

Q. The assistant minister of Plymouth Church? A. Yes, Sir.

#### THE TILTON-HALLIDAY INTERVIEW DESCRIBED.

Q. Do you recollect of being at Mr. Halliday's house at any time when Mr. Tilton came there? A. I remember being at Mr. Halliday's house when Mr. Tilton was there.

Q. I take it, then, that he was there when you arrived? A. Yes, Sir.

Q. State whether, at that time, a paper was exhibited by Mr. Tilton? A. No, Sir.

Q. Was there any other person present than yourself, Mr.

Halliday and Mr. Tilton at this meeting? A. No, Sir; no one else.

Q. Can you tell us when it was? A. It was either on the day or the day before the fire at Woodruff & Robinson's stores; it was on a Monday morning; if the fire was on Monday night, then it was on the day of the fire; if the fire was on Tuesday night, I cannot remember how that was; I know it was on Monday morning.

Q. You can fix it by that event? A. I can fix it by that event.

Q. Only in that way. Was this so-called scandal the subject of conversation on that occasion? A. Yes, Sir.

Q. Who participated in that conversation? A. Mr. Tilton did the greater part of the talking; Mr. Halliday did to some extent; and I did, somewhat more than Mr. Halliday.

Q. In that conversation did Mr. Tilton endeavor to illustrate the innocence of Mrs. Tilton by any figure of speech that he used referring to flags?

#### THE TESTIMONY OBJECTED TO.

Mr. Evarts—Don't answer, Mr. Bell. I don't understand it is competent for the plaintiff to give this conversation in evidence.

Judge Neilson—The same interview has been inquired into.

Mr. Evarts—No doubt, under our examination from Mr. Tilton.

Judge Neilson—I think we will take it, Sir.

Mr. Evarts—But if your Honor please, it was competent for us, Mr. Tilton being a party, to contradict his statements that are material and pertinent as part of the issue and others if we choose. It is also competent for us to examine him concerning matters that are pertinent, and then competent for us to contradict him. When we do so, then will arise, if at all, the question whether they can confirm his statements by other witnesses. But they cannot anticipate our contradiction by calling witnesses to prove an interview, which is what they are now, I suppose, doing.

Judge Neilson—Well, at most that presents a question as to the order of proof. We will take this evidence.

Mr. Evarts—Supposing we rest with Mr. Tilton's statement, and bring in no contradiction, then what rules of evidence are there that allow them to prove a conversation between Mr. Tilton and third persons, to which Mr. Beecher is not a party?

#### THE COURT ADMITS THE TESTIMONY.

Judge Neilson—If you rested there they could not. I think we will take this evidence now, and you take an exception. Go on.

Mr. Evarts—Will your Honor be so good as to note my exception?

Mr. Fullerton—Your Honor will also remember that we offer this evidence because Mr. Tilton was asked in reference to this conversation, and he is a party to the action. They may not undertake to contradict him, but to hold him responsible for what was then and there said as a party; that fact the counsel ignores in the presentation of this question.

Judge Neilson—Yes, Sir.

Mr. Fullerton—My question was whether Mr. Tilton at that interview illustrated the attitude of his wife with reference to this scandal by any figure of speech referring to flags or a tree; I want to identify the time of the conversation? A. I think the figure of the tree was used in a slightly different connection to what appears by your question.

Q. Well, Sir, I only wanted to identify the conversation to which Mr. Tilton referred, or to which his attention was called; he did use the figure of a tree? A. Yes, Sir.

Q. Now, state what occurred at that time? A. Do you mean at the interview or—

Q. At the interview; at that interview; at that interview at Mr. Halliday's, when you were present and Mr. Tilton was present.

Mr. Evarts—That I object to.

Judge Neilson—Yes.

Mr. Evarts—I inquired as to certain statements of the witness, who was then on the stand.

Judge Neilson—We allow this question Sir.

Mr. Evarts—Please to note my exception.

The Witness—The interview continued for over four hours, so that if I were to give you what took place in the interview it would take a very long time; I could not do it besides.

Q. Well, condense it as well as you can, Mr. Bell, and give us the substance of it; the material parts are all that we wish.

Mr. Beach—Don't be deterred by the time it will take; let us have it substantially.

#### THE CONVERSATION DETAILED.

A. The interview began, so far as I was concerned, by Mr. Tilton urging me to continue in the parlor into which I had been introduced by the servant girl, she, I suppose, not knowing that Mr. Halliday had been engaged; Mr. Halliday joined in the request of Mr. Tilton that I should remain; I demurred, but as they both—Mr. Tilton appeared to be anxious and Mr. Halliday was willing I should remain—I did remain. Mr. Tilton commenced then, after we were seated, by stating his reasons for calling on Mr. Halliday. Shall I give them?

Q. Yes, Sir. A. He said he had called there at the request of Mr. Moulton, who had told him that Mr. Beecher had been to see him the previous night, after service, informing him that there was to be action taken by the deacons of the church or by the Examining Committee; that Mr. Beecher had suggested to Mr. Moulton that he should see Mr. Tilton, and tell him to come down and see Mr. Halliday, and make some explanation to him which would make it unnecessary for the deacons to have their meeting. He then went into a long history of the scandal prior to the Woodhull and Claflin publication, which had then taken place but about a fortnight, or three weeks, or four weeks, commencing with the affairs of the publisher of *The Independent*, and what the publisher had stated to him; he said to us that these matters he gave to us in the strictest confidence, not to be mentioned by us to any one; after he had done that I think he paused, and I said to him: "Mr. Tilton, if that is all there is of this matter, your duty to your wife, to Mr. Beecher, who is your pastor, to the church, and your duty to yourself, all demand that you should

come out and make a denial of this scandal." He said in answer to that that he could not do it; I said very pointedly and emphatically, "That is absurd." Of course I am not repeating the exact words; I am merely giving my memory of a very long conversation. I said to him, "That is absurd. Who is suffering by this thing? Mr. Beecher, your own wife, yourself, all your friends, and the church—they are all suffering, and there is no reason whatever that should prevent your coming out and denying this thing." Then I made some remarks about the gentleman who had told him these stories against Mr. Beecher.

**Mr. Evarts**—The publisher of *The Independent*?

The Witness—Yes, Sir. I then insisted further that he should make a denial. He said, "Mr. Bell, I cannot make that denial." I said, "Why not?" "Because," he said, "there is something in this thing which prevents me." I said, "What is it?" At this point of the interview I think I remember that I took almost the control of the conversation. He then narrated circumstances or impression, opinions of his in regard to Mr. Beecher's conduct towards Mrs. Tilton, and when he was through with that I said: "Why, even then—even now I cannot see why you should not come out and contradict this matter." He said: "I cannot do so; it would be—there is an underlying truth in this story told by these women, which would make it worse for Mr. Beecher, if I were to come out and contradict it, than if it were let alone; it would be as though I were to go over to New-York and say, 'before Mr. Halliday's house there is a tree, covered with a thousand flags of all nations.' That would be a false statement; and yet there is a tree—there is a grain of truth—there is an underlying truth in this matter which prevents my coming out and contradicting it." It was in that connection that the figure of the tree was used. Then I think I remember saying to him: "What proof is there? We have this thing merely upon your word. You cannot expect us to believe such a story as this without proof." He said: "The proof exists in writing above the signature of Mr. Beecher." "Well," I said, "let us see the writing," bringing down my hand emphatically. I think he said: "I cannot do so; it is not in my possession; I have no objection that you should see it." Then he informed us that Mr. Moulton possessed the writing, and that if we would go—No, I then said: "Will Mr. Moulton let us see the writing?" because I felt if we could see that, it would either explode the whole story, or put us in a position to take intelligent action about it. He said, "I have no idea—" Oh! he said, "I have no objection to your going in your official capacity to Mr. Moulton, and that he should show you the paper." "Well," I said, "I am not an officer of the church; I cannot go in my official capacity; but I am a member of the church, and as such I demand that I shall see the paper." He said: "I will object to Mr. Moulton showing you the paper unless you are an officer of the Church and go to him in your official capacity." Said he: "Mr. Halliday can go; he is assistant minister." I said: "I will object to Mr. Halliday going in his official capacity to see the paper; Mr. Halliday can go as a member of the church as we would go together as members of the church to see it; but I would object to Mr. Halliday going as assistant pastor, be-

cause in that way it would be as it were—it would commit the church as it were to his action.

**Mr. Evarts**—You are now giving us what you said.

**Mr. Beach**—The substance of it.

The Witness—What Mr. Tilton said to me and what I replied—the substance of it; of course I cannot repeat the words, because it is two and a half years ago.

**Mr. Fullerton**—Please go on with the narration. A. I was hesitating, thinking.

**Q.** Take your time. A. Well, Sir; I think I have given you the gist of the long conversation; it was very long, and we went over and over the same matter quite frequently. The latter part—I think for the last two hours of the interview—it consisted in my driving Mr. Tilton to let us see the papers in some way or other.

**Q.** Well, Sir; if you recollect anything else that occurred there, you may state the substance of it. A. Mr. Tilton went at length into his conduct towards Mrs. Woodhull, in regard to the time previous to the publication of the statement.

**Q.** Well, what did he say on the subject? A. I think the bulk of it was trying to show that his whole effort through that time—shorter or longer—the time he knew her—was in regard to repressing her in regard to the publication of the scandal.

**Q.** As she had threatened to do? A. I cannot remember that.

**Q.** Well, do you remember, on reflection, anything else that occurred at that interview which you have not stated; or have you given us the substance of the whole thing? A. I think I have given you the substance of the whole conversation; I may have omitted something.

**Q.** Were you ever present at any time when the church, in its official capacity, took action with reference to this scandal? A. I cannot remember distinctly that I was; I have an indistinct remembrance, but not sufficient to be sure.

#### MR. BEECHER ANXIOUS TO PUT OFF THE DEACONS' MEETING.

**Q.** Do you remember being present at any time when Mr. Beecher was present, when the subject of the scandal was up for discussion? A. Do you mean by "discussion" discussion with other people, or in meeting?

**Q.** Well, in meeting, or among yourselves? Was anything ever said in your presence with reference to church action as to this scandal when Mr. Beecher was present? A. Yes, Sir.

**Q.** State when it was first. A. I think the only time that is distinctly in my memory is on the very morning of this interview at Mr. Halliday's house.

**Q.** Where did it take place. A. In Mr. Beecher's house.

**Q.** In Mr. Beecher's house? Who were present? A. Mr. Beecher and myself.

**Q.** At what time in the day was it—or the morning? A. I think it was before 8 o'clock in the morning.

**Mr. Beach**—[To Mr. Fullerton.] Inquire whether it was before or after the interview at Halliday's.

**Q.** Was it before or after the interview at Mr. Halliday's? A. It was before that interview, Sir.

**Q.** What occurred at the interview between yourself and Mr.

Beecher? A. Mr. Beecher said he had sent for me, because he understood—he had heard, I think, the day before—that there was to be a meeting of the deacons, in regard to this matter; that he was very anxious that no meeting should take place, and he wished me to go and see Mr. Halliday, and arrange with him that the meeting should not take place.

Q. Give us the conversation in detail as near as you can recollect, Mr. Bell? A. It is impossible for me ever to give the words of a conversation.

Q. That is certainly so, Sir; but give us the substance of the interview? A. Mr. Beecher said he had sent for me; I think I have given you about the substance; Mr. Beecher said he had sent for me because he had heard, the day before, that there was to be a meeting of the deacons that night—on that Monday night; that he was very anxious that the meeting should not take place; that he was going away to Boston, and he could not do anything about it, but wanted I should go round to Mr. Halliday's house and arrange with Mr. Halliday that the meeting should be put off, or not take place, I think.

Q. Did you go from there to Mr. Halliday's? A. Yes, Sir.

Q. And was it then you met Mr. Tilton there? A. Yes, Sir.

Q. Did Mr. Tilton suggest to you any mode of reasoning with the deacons, by which you should prevent the meeting? A. No, Sir.

Q. Did he give any other reason for it than you have stated? A. No, Sir.

#### THE ALARM A FALSE ONE.

Q. Who were the deacons of the church at that time? A. I cannot remember the names; the Manual will give the names.

Q. How many were there? A. It would be the Examining Committee; we sometimes use the word "deacons" when we are really meaning the Examining Committee; at that time the deacons were members *ex officio* of the Examining Committee.

Q. Well, how many deacons were there? A. I think there were nine deacons and six members of the Examining Committee.

Mr. Evarts—Six besides?

Mr. Fullerton—Yes.

Q. Can you name any of the deacons at that time? A. The only one I know positively—well, I think I am positive about that—was Mr. Hawkins; I know Mr. Hawkins; I think he was Chairman of the Board of Deacons.

Q. Was Mr. Halliday, *ex officio*, a member of the Examining Committee? A. I think he is a member of the Board of Deacons.

Q. Of the Examining Committee? A. He was a member *ex officio*—the same as the pastor of the church—of the Board of Deacons; not a deacon, but a member of the Board of Deacons.

Q. Before you left Mr. Beecher, did you say anything in opposition to his suggestion, and if so, what? A. I did not say anything.

Q. You did not. Did you go to see the deacons as you were requested? A. No, Sir.

Q. You went to see Mr. Halliday, however, in pursuance of that request? A. Yes, Sir.

Q. Did you say anything to Mr. Halliday on that subject? A. I told him why I had gone there—after Mr. Tilton had left.

Q. You stated then the request Mr. Beecher had made of you to Mr. Halliday that morning? A. Yes, Sir.

Q. Did the deacons meet? A. No, Sir; it was a mistake on the part of Mr. Beecher; I understood from Mr. Halliday that there was to be no meeting of the Board of Deacons.

Q. It was an error? A. Yes, Sir.

Q. And they did not meet? A. I don't know that; I was not a deacon and so I could not know anything about that.

Q. Did you have any other or further conversation with Mr. Beecher upon that subject? A. Not at that time, Sir.

Q. At any other time? A. I had another conversation with Mr. Beecher, but I can scarcely say that it was upon that subject; I had not got into the subject.

Q. Was the subject alluded to? A. The subject of his troubles was alluded to; that was all.

Q. When was that interview? A. That was about a fortnight before I went to England; I went to England on the 10th of May, 1878; this was about a fortnight before.

Q. Then it was subsequent to the interview at Mr. Halliday's? A. Oh! yes; about six months.

Q. About six months? A. Five or six months after; one was in November, the other in the last of April or the beginning of May.

Q. Do you still retain your membership in Plymouth Church? A. Yes, Sir.

Q. Were you ever an officer of that church? A. Yes, Sir; frequently.

Q. How long a service have you rendered as an officer in that body? A. I never counted up the number of years, Sir; I have been a member of the Examining Committee of Deacons frequently.

Mr. Fullerton—[To Mr. Evarts.] You can ask, gentlemen.

#### MOTION TO STRIKE OUT PART OF MR. BELL'S TESTIMONY.

Mr. Evarts—I now move, if your Honor please, to strike out all the evidence given by this gentleman other than that of his interview with Mr. Beecher. All the rest of his testimony which is of any importance is, of course, his interview with Mr. Tilton, which he has testified concerning. I had not in Court any authority that occurred to me would be useful, but I ask your Honor's attention to the case of *Dudley vs. Bolles*, in our old Supreme Court, in the 24th of Wendell, p. 471. The Court says [Reading]:

The reception of Bartle's statements in confirmation of his testimony was erroneous. We have recently, in *Robb vs. Hackley*, 23 Wendell, 80, *et seq.*, reconsidered the *dictum* to the contrary in *The People vs. Vane*, 12 Wendell, 78, and agreed that consistent statements cannot in general be received in reply to the contradictions of a witness; *a fortiori*, are they inadmissible in answer to direct and positive contradiction by other witnesses.

Judge Neilson—Your motion is denied, Sir.

Mr. Evarts—In the case of Robb vs. Hackley, the same Court say [Reading] :

As a general and almost universal rule, evidence of what the witness has said out of Court cannot be received to fortify his testimony. It violates a first principle in person or his property, by the declarations of a witness made without oath. And, besides, it can be no confirmation of what the witness has said on oath, to show that he has made similar declarations when under no such solemn obligation to speak the truth. It is no answer to say that such evidence will not be likely to gain credit, and consequently will do no harm. Evidence should never be given to a jury which they are not at liberty to believe.

Judge Neilson—I think there is a distinction between those cases and the case before us, and your motion is therefore denied.

Mr. Evarts—In this particular, no doubt, the distinction arises that such evidence is not offered in anticipation of contradiction. This objection that I now read from the authorities would apply, if, even after the contradiction of Mr. Tilton, peremptory statements of his were produced.

Mr. Fullerton—We have given the balance of the conversation that has been introduced; that is all, Sir.

Judge Neilson—[To Mr. Evarts.] The motion is denied.

Mr. Fullerton—This question will come up in another form.

Mr. Evarts—Oh! your Honor understands me as excepting; I except to your refusal to strike out.

Judge Neilson—[To Mr. Evarts]: Do you cross-examine, Sir.

Mr. Shearman—Yes, Sir.

#### CROSS-EXAMINATION OF MR. BELL.

The witness was then cross-examined by Mr. Shearman.

Q. At the time of this Deacons' meeting, or meeting of the Examining Committee, was supposed to be about to take place, do you know whether or not any one in the Church had any idea of making an attack upon Mr. Beecher? A. So far as I know, Sir, it was the very opposite.

Q. So far as was within your knowledge there was not the remotest idea on the part of any deacon or member of the Examining Committee of making an attack upon Mr. Beecher, was there? A. So far as I know, no, Sir.

Q. You were very familiar with those gentlemen, were you not? A. Yes, Sir; very.

Q. You were very familiar with the sentiment of the Church, at that time, were you not, Mr. Bell? A. I was.

Q. I think no man more so. We will excuse your modesty, but is it not the fact? A. I was very well acquainted with the sentiment of the gentleman.

Q. Now, Sir, was it not the universal feeling in that church before one word had been said by Mr. Beecher, in church or out of church, on that point, that no action should be taken upon the subject of the Woodhull scandal, but that it should be treated with silent contempt?

Mr. Beach—That is objected to.

Judge Neilson—I think we will take it, Sir.

#### SENTIMENT IN PLYMOUTH CHURCH ABOUT THE WOODHULL SCANDAL.

Mr. Shearman—I am talking now about the early part of November, 1872? A. Yes, Sir. My answer to that probably would be given in the fact that the rumor of the Deacons' meeting, which had come to Mr. Beecher's ears, probably arose from a conversation that was held in the lecture room on the Friday night previous, the persons conversing then being Mr. Hawkins, the Chairman of the Board of Deacons, I think, Mr. Shearman and myself. Mr. Shearman and myself both urged upon Mr. Hawkins that, as a fortnight or three weeks had gone by without Mr. Tilton coming out and denying the scandal, it was the duty of Mr. Beecher and the Church to do so.

Q. One moment; I ask you about the early part of November, 1872; now was this not the first sentence of that conversation in the early part of November, 1872? A. If the interview at Mr. Halliday's was on the 18th that would be on the 15th of November; did you ask previous?

Q. That is the middle of the month. I was coming down to that, Mr. Bell. Now, the first point I want to get at is, whether in the early part of November—the first week of November, 1872—it was not the universal sentiment that no notice should be taken in the Church of that publication? A. Immediately on the publication that was the sentiment of the gentlemen who were in the Church.

Q. Since you have referred to a conversation with Mr. Shearman, you perhaps remember that you saw Mr. Shearman at the meeting on the Friday night following that publication, do you not? A. I don't remember; very likely I did; Mr. Shearman was always there when I was.

Q. Don't you remember coming to Mr. Shearman, in the presence of quite a number of the officers and members of the Church on that Friday night, and saying that it was universally agreed that not one word of allusion should be made to that subject in the Church meeting? A. I cannot remember that, Sir.

Q. Can you not remember something like that? A. I cannot remember anything like it. That is, I cannot remember coming to Mr. Shearman then with any statement at all; but that I met Mr. Shearman several times in the first fortnight after the publication of the Woodhull and Claflin scandal I have not the slightest doubt, and that at this meeting that was the course of the conversation.

Q. And that was the general understanding among the gentlemen? A. During the first fortnight it was almost universal.

Q. Then, after that period, and before the other conversation to which you have alluded, it began to be understood, did it not, that Mr. Tilton, or to be rumored that Mr. Tilton was in some way responsible for this publication? Was there not such a rumor? A. It never came to my ears, Sir.

Q. Was there not a rumor that he was responsible for the scandal itself in some way, or for the story or publication? A. Many of us thought very likely he was, but I don't think that we had anything more to base it upon than that.

Q. It was a subject of talk, was it not? A. He was.

Q. The fact—that supposed circumstance was a subject of conversation, was it not? A. No, Sir.

Q. How did you know that many of us thought so, then? A. I think I was present at nearly every meeting of the members of the church and congregation, and there were several took place after the publication of the Woodhull and Claflin scandal, and the concurrent sentiment of the gentlemen of the church at the first was, that the thing must be a lie, that Mr. or Mrs. Tilton would come out and contradict it, and that it was our duty to wait until they did so. After a fortnight or three weeks had passed, and they did not come out and contradict it, then I think it was the sentiment of many in the church, concurred in by yourself, certainly by me, that it was the duty then of the church and of Mr. Beecher to take hold of the matter.

Q. Are you quite sure about Mr. Beecher's name being brought in in conversation with me, Mr. Bell—about Mr. Beecher doing anything? A. Not about Mr. Beecher doing anything, excepting as through the church.

Q. Was it confined to the church? A. I could not say it was; I think not.

#### WHAT MR. SHEARMAN THOUGHT SHOULD BE DONE.

Q. Now, Mr. Bell, just pause a moment, and think whether in every conversation (since you bring me in every conversation) which I had with you, I did not universally take the ground that Mr. Beecher ought, under no circumstances, to do anything, although I thought that the church ought to do something, and was not that sentiment concurred in by those who talked with you and me? A. Undoubtedly it was, during the first two or three weeks.

Q. No, Sir; and later than that? A. I am not arguing with you, Mr. Shearman. I will answer your questions to the best of my ability.

Q. I ask you to pause, and I will take your recollection? A. I am clearly of the opinion—I am clear in my recollection that the sentiment in the church changed after the first fortnight or three weeks—

Mr. Shearman—Undoubtedly.

Mr. Beach—Wait, wait. Let him express himself. Let him finish his answer.

Mr. Shearman—I don't know about that.

The Witness—Against silence to action, and I cannot clearly remember in regard to your position; but I remember distinctly in regard to myself, that I could not see how any action could be taken by the church, except with the concurrence of Mr. Beecher.

Q. Now, Mr. Bell, you had (I regret to be obliged to make this at all personal to myself)—but you had frequent conversations with me running down to the time of your departure for Europe, had you not, on this subject—had occasional conversations down to May, 1873? A. I cannot recall any; probably I had. I talked with so many members of the church I cannot recall any conversation.

Q. Can you not recall one that I had in the house of Mr. Fitzgerald with you a couple of nights, or one night before you went to Europe? A. If you say I had I have no doubt but it was so,

Sir; I cannot now remember it. If you will give me some point to hang my recollection upon, perhaps it will bring it to me.

Q. You say it was on Saturday? A. Yes, Sir.

Q. And we had prayer meeting on the Friday night before? A. Yes, Sir.

Q. Which you attended? A. Yes, Sir.

Q. And you went around to the house of Mr. Fitzgerald? A. I was staying there, being taken in by kind friends.

Q. You stayed there after giving up your house? A. I stayed there after renting my house.

Q. Don't you recollect my calling on you that evening, and talking with you in the front parlor? A. I suppose I had fifty or sixty friends call on me that evening. I should like to say I did remember your calling, but I really do not. No doubt you did, if you say you did.

Q. The point of it is this: I want to know whether there was ever a conversation between you and me, from first to last, in which I took any other ground than this, that Mr. Beecher ought not to do anything about this case himself; that he ought not to have anything to do with it, although I did change my ground after a while, and say that the church or its officers ought to do something with reference to Mr. Tilton? That is the point. A. It is possible you did, Sir.

Q. Now, Sir—

The Witness—If you will allow me to make a little explanation. The conversation with Mr. Hawkins was with this object: to get the Board of Deacons, of which he was Chairman, to take action.

Q. Yes? A. We thought—I thought, and I think that in that conversation you agreed with me, that the deacons did not understand the sentiment of the church in regard to the matter, that by their then delay and fear they were really doing damage to Mr. Beecher and to the church, and I wished to give him courage to bring the matter into the Board of Deacons, so that the deacons would take action and free the church from the stain that was on it.

Q. That is, to give Mr. Hawkins courage? A. To give Mr. Hawkins the courage to inspire the Board of Deacons with the courage to take up the matter and free the church from the stain—that they didn't understand the sentiment of the church.

#### MR. TILTON TO BE CALLED TO ACCOUNT, NOT MR. BEECHER.

Q. Now, Sir, was not the idea that was entertained and expressed at that time simply the idea of bringing Mr. Tilton to account, or Mr. Tilton and Mr. Bowen? A. None of us had the shadow of a thought in our mind that Mr. Beecher was guilty at that time. We could not bring anybody else to account, except somebody else beside him.

Q. This is what I want to come at. Was not this idea that there was to be a Deacons' meeting to be held, necessarily accompanied with the belief that it was intended to be an attack on Mr. Tilton, and not on Mr. Beecher? A. No, Sir; I think that the idea in our minds as to the necessity of having a Deacons' meeting was in regard to the whole scandal, and freeing the church from the stain.



Q. What was the stain? Was it not the presence of Mr. Tilton in the church that was talked of as the stain? A. No, Sir; it was the charges made in the Woodhull and Claflin paper.

Q. Was it not the thought that a member was supposed to be in the church—that a person was supposed to be a member of the church who was responsible for the stories that was regarded as the stain? A. No, Sir; that we had felt for a year before—or 12 months—18 months before, that Mr. Tilton ought not to be a member of the church, and we felt aggrieved about that; but the special feeling that we had at the time of that conversation on Friday night was consequent upon the publication in the Woodhull and Claflin paper.

Q. Was it not on account of the failure of Mr. Tilton to deny that publication? A. Certainly, because we had been looking for Mr. and Mrs. Tilton to deny it, and they did not.

Q. Was there any one in that church that cared what was said in the Woodhull and Claflin paper independent of Mr. Tilton? A. Certainly, there were a great many—hundreds.

Q. You and I were not among that number, were we? A. Yes, Sir, we were, both of us.

Q. Do you mean to say that any of us attached any importance to what was in that paper, except on account of the failure of Mr. Tilton to deny it? A. I attached importance to that, as I would to any slander, no matter how false it might be, published in a paper of wide circulation, as it goes to a great many people who will not take the pains to investigate it, who will never hear the denial of what their opinions were formed by, and never will uniform them again. I attach importance to every slander that is—

Q. At the time that you and I and the other gentleman agreed that no notice should be taken of this paper, was it not generally understood and talked of between us that over fifty thousand copies of that paper had been sold? A. Yes, Sir.

Q. And yet, notwithstanding that, did not we all agree that it was to be treated with contempt? A. Because we understood certainly—at least we expected certainly—that Mr. and Mrs. Tilton would come out and deny it.

Q. And if Mr. and Mrs. Tilton had denied it no one in the church would have attached any importance to it?

Mr. Fullerton—That we object to.

Judge Neilson—That is a mere opinion.

Mr. Fullerton—It is less than an opinion.

Mr. Shearman—This is all matter of opinion.

Judge Neilson—I thought it proper the examination should be very free, but, as it is objected to, I think this question calls for a general estimate, which is not in keeping with the ordinary rules of evidence. I don't think the question is proper.

Mr. Beach—I do not understand upon what principle the sentiment of the Church or the declarations of members of the Church, at a particular period of progress of this scandal, becomes admissible in evidence as against us.

Mr. Shearman—You introduced them.

Mr. Beach—No, Sir, we did not introduce them. We introduced the official action of the Church, but the lay understanding and the understanding of the congregation have not been at all referred to on our examination. Still, the subject has been

opened by your Honor, and I have submitted to the ruling; but to call from this gentleman for an opinion or judgment in reference to a particular stated case, to a simple supposition of fact—hypothesis—it seems to me is entirely inadmissible, although, from his intelligence upon the stand, I don't know that we make any objection; we are perfectly willing to take it.

Judge Neilson—I thought it was well to learn the general sentiment as far as we have gone, but I don't think that any witness can say upon a certain day the members and the Church would have a certain frame of mind in regard to it. I don't think he can answer that.

Mr. Evarts—If your Honor please, it is only in the nature of an examination, that proposition we are seeking to prove by him, which may be true or untrue.

Judge Neilson—How can any gentleman say what impression people would have in a certain event?

Mr. Shearman—We can change the form of the question, and see whether the objection will be made to it then. It is not material, in regard to the other matter I am going to suggest, whether objection be made. [To the witness:] I ask you then, Mr. Bell, in place of that question, do I not understand you to say that importance was attached to this paper by the members of the Church only because of the failure of Mr. and Mrs. Tilton to come out and deny it.

Mr. Beach—He answered that question several times.

Judge Neilson—Let him answer it.

The Witness—Importance was attached to the paper at the first on its publication. We had waited from day to day for the expected denials from Mr. and Mrs. Tilton. After a sufficient length of time, in our opinion, had gone by for these denials, then that feeling began to change. The importance of the paper still was not taken away.

Q. Mr. Bell, were you not present at a meeting of prominent members and officers of the Church on the Tuesday evening before this Woodhull scandal became public, when the subject was brought up to notice, and some consideration was had as to what action should be taken? A. Before it was published?

Q. Yes, Sir. A. What do you mean by "before." I didn't know it was going to be published.

Q. Before the paper was actually placed on sale? A. The first I knew of it was—I don't know whether it was on Tuesday, the day on which a gentleman called at my house and asked me to meet others at the Church that evening in regard to this publication. I attended that meeting, if that is the meeting you alluded to. I thought it was Thursday night, but if it was Tuesday—

Q. Mr. Beecher was not present at that meeting, was he? A. No, Sir.

Q. Was it not uniformly agreed at that meeting that the true policy of the Church, in meeting and out of it, was not to allude to this scandal at all, and that it would be considered a degradation on our part to do so? A. I don't know about the degradation. I can speak about the policy. It was considered the policy of the Church to take no notice whatever of it.

Q. Was it not put upon the ground that the source from which it came was such as to make it unworthy of attention?

A. That was a part of the ground. There was another reason, however.

Q. The only method that ever was seriously proposed, so far as you know, in the Church, of meeting this scandal when it was proposed to be met, was by some mode of calling Mr. Tilton to account, was it not, or Mr. Tilton and Mr. Bowen? A. I cannot speak in regard to official action, because I was not a member of the Examining Committee.

Q. But in these talks which were held between officers and members of the Church, such as between Mr. Hawkins, yourself and myself? A. Well, Sir, very soon after that I seemed to fall out of the channels of communication.

Q. I am asking what happened when you were in the channels? A. Well, but I got out of it very soon after that time, so soon that I really cannot tell you in regard to what took place after the first of January.

Q. I was not talking about that; I was talking in reference to this particular time when you say I was not present; that is in November. I am talking specially with reference to this supposed deacon's meeting in November, 1872, which did not take place, and was not going to take place, but was supposed to be about to take place. Now, at that time, my question is, was not all the proposition for action that ever was on foot a proposition adverse to Mr. Tilton? A. I know of no proposition for action whatever at that time.

Q. Then we didn't make any. You know of no proposition or action—that we could not have made any on our part? A. We called upon the Board of Deacons to bring the matter into the Board so that action should be taken upon it.

Q. That would be action? A. You speak of after that time.

Q. No; I speak of this very time. A. I understood you to mean after that time.

Q. I mean at this time? A. I say that after that time I seemed to slide out.

Q. I don't care about after that time, Mr. Bell, whether you slid out; I don't know about that? A. I would not call that a proposition for action, Mr. Shearman. It was telling the Chairman of the Board of Deacons the feeling in the Church—the demand that there was in the Church for action, and trying to give him backbone to bring it into the Board of Deacons, and to give them backbone to carry it through.

Q. None of us had any idea that anything would be done otherwise than by making an attack upon Mr. Tilton, had we? A. I cannot say in regard to that; it was not clear in my own mind how it could be done.

Q. Now, did you not understand Mr. Beecher, in dissuading the holding of this Deacons' meeting, simply to oppose a measure of attack on Mr. Tilton? A. No, Sir; I don't think he indicated that in the conversation, and I didn't understand it from any other source.

Q. The point is whether there was anything on foot in the church at that time which Mr. Beecher could have dissuaded you or others from doing, except something that would have been hostile to Mr. Tilton? A. I suppose any action whatever would have been considered hostile to Mr. Tilton.

Q. Precisely? A. Any action.

Q. Precisely? A. Even against Mr. Beecher personally.

Q. Well, you put in those words "against Mr. Beecher personally," and it obliges me to ask you once again whether it is not a fact that at that time no one of the church, so far as you knew, dreamed of any action against Mr. Beecher personally? A. I do not think they did, Sir.

#### MR. BEECHER'S COUNSELS BEFORE ADVISING SEPARATION.

Q. Now, Mr. Bell, I want to ask you whether you had an interview with Mr. Beecher in November or December, 1870? A. I had frequent interviews with Mr. Beecher, Mr. Shearman.

Q. Did you have an interview in which the subject of Mr. Tilton's family was brought up?

Mr. Fullerton—I object to that, Sir.

Judge Neilson—Is it one that has been inquired into?

Mr. Fullerton—Oh, no, Sir.

#### ARGUMENT OF MR. SHEARMAN.

Mr. Shearman—May it please your Honor, I offer this evidence in this point of view. A great deal of evidence has been put in on the other side to show that Mr. Beecher had—well, I was going to say a great deal of evidence had been put in to show that Mr. Beecher had a kind of clandestine relation with Mrs. Tilton, but in reality I can only say truthfully that so little evidence has been put in that there is barely enough to justify me in offering to rebut it; but still something of that kind has been put in. We have also had the question raised—two witnesses have been asked, Mr. Tilton and Mr. Moulton—whether they knew anything about Mr. Beecher's advising a separation, or whether Mr. Beecher ever acknowledged that he had advised a separation between Mr. and Mrs. Tilton. Now, I propose by this witness to show, if I can, that in December, 1870, at the very time when, according to the theory of this prosecution, Mr. Beecher had been maintaining guilty relations with this lady six months, according to the testimony of Mr. Moulton, after he had prayed for help to discontinue those relations, at the very time that Mrs. Tilton was absenting herself from her husband's home—we propose to show that Mr. Beecher was called in to advise upon that question of separation between the husband and wife. Now, one of the very first things that Mr. Beecher did when he was called in to advise—her supposed paramour—as to whether she should separate from her husband, was to call for the advice of his own wife and one of the foremost officers and most respected members of his church. He called upon them to advise upon that question; he called upon them, the very persons who, of all persons on the earth, would have been the last that a guilty man would have asked to advise upon that question. Have I not a right to prove that this witness—as I believe I can prove both of these facts—to prove that Mrs. Beecher was called in to advise upon that question with Mr. Bell, then the Superintendent of the Bethel Sunday-school, then a deacon, then one of the most trusted and honored members of the church, one of the most incorruptible men, who would have struck down Mr. Beecher in a moment if he had known him to be guilty—that he was called in to ad

rise upon this very question, as to what part Mr. Beecher should take in a quarrel between Mr. and Mrs. Tilton? Why, may it please your Honor, is not that a thousand times stronger indirect proof than any proof that has been offered here short of the alleged confessions? Is not that the testimony of a man's acts. Is not the fact that he goes to one of the foremost members of his church, to a man whose firmness and whose courage and whose independence and truthfulness are known to us all, and known to the whole of Brooklyn—that he went to him for advice on such a question, and took his own wife into counsel with this gentleman upon that question—is not that material to be proved? I submit that it is, and I submit that it goes a long way towards breaking down the foundation of the case which the plaintiff has put forward. They have introduced this question of Mr. Beecher's advice about a separation of husband and wife. They have undertaken to prove that he gave no such advice. They have undertaken to prove by his admissions, either express or tacit, that he never did anything of the sort. Now, I want to show that he did, and this is one of the links in the chain to show that; and what is more, it shows emphatically the persons whom he took into that counsel, and shows the absurdity of supposing that if he had been a guilty man he would have selected those two persons of all there were on the face of the earth.

Judge Neilson—The embarrassment is that you inquire as to interviews and conversation.

Mr. Evarts—I will limit the conversation.

Judge Neilson—A conversation that has not been inquired into by the other side, and of course I am subject to control by the rule. You cannot introduce conversations, except such as have been inquired into by the other side.

Mr. Shearman—Why, may it please your Honor, this is an act of Mr. Beecher's; it is an act, and his words are only to be called in so far as they explain. I concede we cannot call for the whole conversation with Mr. Beecher. I propose to prove simply this, that Mr. Beecher called in this gentleman to consult with his wife and himself, that is, with Mrs. Beecher and himself, with regard to the trouble that there was in Mr. Tilton's family, and to show that the question that was then under consideration was Mrs. Tilton's supposed desire, or half desire, or rather her application for advice concerning the question of separation from her husband.

Judge Neilson—I think I am controlled by the rule that you cannot inquire into an interview or conversation, in respect to which they have not asked any question in their absence. I do not see how I can get over that rule. If it was not for that rule, I should be very happy to hear you, of course.

Mr. Shearman—If your Honor please, you have allowed on other occasions—you have allowed them to prove conversations with Mr. Tilton in the absence of Mr. Beecher, so far as was necessary to show the meaning of an act, to give color to the act. There is a great deal of testimony already in with which Mr. Beecher is in no way connected—a great deal—and it has been admitted in order to give color and form to a specific act.

Mr. Fullerton—Yes, after you proved the act.

Mr. Shearman—No, not at all.

Mr. Fullerton—Yes, Sir; in all cases.

Mr. Shearman—It was all proved on the other side. I am talking of the direct examination.

Judge Neilson—Unless the counsel withdraw the objection, as I recommend them to do, I think I am controlled by the rule that prevents you going into an independent conversation in respect to which they have given no evidence.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Now, if your Honor please, this is the general rule of evidence—and we have insisted upon it ourselves in this trial—that though the opposite party may show conversations of his opposing party, yet, that the party himself cannot introduce his own acts or conversations. That is the general proposition; but when the other side has introduced a situation and a course of action bearing upon, pertinent to, this question, which is the main question, of course, the intercourse between Mr. Beecher and Mrs. Tilton, which is under inquiry here, and when you have that particular state of facts, that it is alleged that in July there came to the knowledge of this husband, plaintiff, an occurrence of infidelity on the part of his wife to her marriage vows, and that Mr. Beecher was her paramour, and that the first notice that we find him bringing of this matter to Mr. Beecher was on this 30th of December, and in the connections there disclosed of his pecuniary and business troubles, following after his demand on Mr. Beecher, on the 26th of December, to retire from the pulpit and from Brooklyn, that comes in as taking place early in that month of December, a separation of this alleged guilty wife from this husband, and a determination to keep separate from him, and a resort to this alleged paramour of hers, her pastor, her friend, the guilty betrayer of her husband's honor, and debaucher of her person; and yet she is the actor in leaving a husband who had such a fact against her, and she resorts to this guilty pastor for advice concerning a question very suitable to present to a pastor, but very unsuitable to present to a paramour; that then that pastor takes it up, and deals with it as a responsible and solicitous matter of advice concerning the relations between a husband and wife in his parish, and makes it, as a pastor should, having a wife, a matter rather to be submitted to her judgment, her solicitude and her affection, towards a woman of the church, and an important, upright, intelligent, clear-headed leader in the church, to meet this unhappy situation, in which a woman needed this delicate and responsible advice. Now, that it is competent for us to show, in the course of Mr. Beecher's relations with this woman, which he will be permitted to disclose from beginning to end, this little occurrence early in December, before the business and pecuniary troubles of Mr. Tilton had raised movement on his part, of a hostile movement of the wife to separate herself from such a husband, and of the counsels that then were resorted to to determine that matter; as Mr. Beecher can testify to that, so any witness that can testify to his action in the face of, and as a part of that situation, can give evidence, as we submit, concerning it.

## GENERAL DISCUSSION.

Judge Neilson—You can prove Mr. Beecher's acts in that regard, no doubt.

Mr. Evarts—Well, we will try to limit it to that.

Judge Neilson—But it don't relieve me from the embarrassment arising from the rule. You propose to inquire into a conversation in respect to which the other side have made no inquiry.

Mr. Beach—We are embarrassed by the suggestion, Sir, which your Honor makes to us, of the propriety on our part of withdrawing this objection. I do not exactly understand the feeling, Sir, or motive which prompts that advice. I do not know any reason why we should waive a legal and substantial objection to evidence of declarations upon the part of Mr. Beecher, of which we had no knowledge, and in regard to which we can give no proof; and acting, Sir, on behalf of the interests of our client, and judging of the propriety of this evidence as well as we can, with the utmost respect for your Honor's intimation, we do not feel at liberty to withdraw this objection.

Judge Neilson—Well, Mr. Shearman, the question is disallowed.

Mr. Evarts—We will prove the acts, then, of Mr. Beecher.

Mr. Fullerton—That is not within the ruling of the Court, by any means.

Mr. Shearman—Were you called in by Mr. Beecher in the last of 1870, to a consultation with his wife in reference to the affairs of the Tilton family?

Mr. Fullerton—I object to it.

Judge Neilson—I think we will take that, Sir, the mere fact that he was called in.

Mr. Beach—What, Sir, upon the subject—upon a certain subject?

Mr. Shearman—Certainly, Sir.

Mr. Beach—Certainly, Sir! I trust your Honor will permit no evasion of the rule.

Mr. Fullerton—It is not pretended, it cannot be pretended that we have instituted any inquiry upon our part as to anything that took place in December, 1870, prior to the 26th day of that month. They are not calling out, therefore, from this witness anything in connection with the testimony that we have given, at all. It is a new subject entirely. It points to another and a different occasion, prior in time to any that we have examined about. Now, even if they had a right to give that interview in evidence, which took place early in December, 1870, to which the witness on the stand was a party, they could only do it in giving their defense to this action, after our case is closed. That rule is familiar with your Honor, and ought to be enforced in this case. But your Honor will perceive that the question in this case is a leading one, as has been suggested by my associate.

Judge Neilson—And embodies the subject matter of the interview.

Mr. Fullerton—It embodies the subject matter of the interview, in the question.

Mr. Beach—Yes, Sir; they get the whole effect of the interview, Sir.

Mr. Shearman—I don't ask what was said.

Mr. Fullerton—Oh, no; you only characterize the interview.

Mr. Beach—Yes, Sir; they ask what Mr. Beecher said about calling him into the conference, and they can get that in no other way, except by getting the declarations of Mr. Beecher.

Judge Neilson—I will overrule the question. I see nothing else to do except that. Go on, Mr. Shearman.

Mr. Evarts—Do you overrule the question?

Judge Neilson—Yes, Sir.

Mr. Evarts—I understood your Honor to say—

Judge Neilson—I was inclined to, but on the objection being persisted in, I think I am bound to sustain the objection.

Mr. Evarts—I understood your Honor to hold that while the rules of evidence may not entitle us in the present stage of the matter to conversations that occurred, we may prove Mr. Beecher's acts in reference to this matter of the wife's resort for advice on the subject of separation.

Judge Neilson—When that subject comes up, you will be at liberty to recall this witness if you wish to.

Mr. Evarts—The subject has come up, if your Honor please, and in their direct examination.

Mr. Fullerton—There the counsel is mistaken.

Mr. Evarts—Well, the interruption might have been spared if you had heard me. It formed a part of the conversations between Mr. Beecher and Mr. Moulton that were given in evidence by the plaintiffs, to wit, the advice, intervention, that Mr. Beecher had made in these matters of the wife's concern. That was the situation on which Mr. Beecher was approached in the end of December, in relation to Mr. Bowen's affairs with Mr. Tilton, and his relations to this controversy between Mr. Tilton's wife and her husband that had resulted in the separation and the resort for advice; and I think one of the letters in evidence, and put in evidence by the other side, speaks of a conspiracy between Mrs. Beecher and Mrs. Morse to procure a separation between Mrs. Tilton and her husband—two letters produced by them, letters of Mrs. Tilton, I think, brought by her husband as a part, not narrative letters, but letters that were parts of the acts of this drama that was going on, the conspiracy of Mrs. Beecher and Mrs. Morse to get a separation; and it had been made the topic of conversation as to what Mr. Beecher had done, Mr. Beecher's regrets, his fears, his troubles, was all his intervention. It is in evidence, somewhere, that Mr. Beecher said, in one of these conversations with Moulton which they gave evidence of, and with Tilton, which Tilton gives evidence of, that he had done mischief in that regard, if you please, in the view that he then had of the matter, but not so much as some others, meaning Mrs. Beecher. Now, all that being in evidence, we are not to be permitted to prove what the action was in this situation, produced by this wife's separation from her husband and resort to her pastor, and his dealing through a leader of the church, and his own wife, in that question.

Judge Neilson—Or rather, you are not permitted to give an independent conversation had with this witness.

Mr. Evarts—I have not asked the conversation.

Judge Neilson [Continuing]—In respect to which no inquiry has been made.

Mr. Evarts—We have, at last, under your Honor's direction, limited it to the action that was taken by Mr. Beecher, in calling this gentleman into the counsels sought for by this wife.

Judge Neilson—You could not call him in except by word of mouth, or by letter.

Mr. Morris—Will your Honor allow me to inquire what question is before the Court?

Mr. Evarts—Your Honor has abundantly in the course of this trial allowed the question on the precise ground that you could not show how the man was called in, except by showing the word of mouth.

Judge Neilson—This question is overruled, Mr. Evarts.

Mr. Shearman—Your Honor will note our exception. [To the witness.] Did you become aware, in the early part of December, 1870, of a difficulty between Mr. and Mrs. Tilton, in respect to which Mr. Beecher had been in any way consulted?

Mr. Fullerton—That is objected to.

Mr. Beach—We object to that question.

Judge Neilson—I think we will take it.

Mr. Beach—Sir?

Judge Neilson—General knowledge. I think we will take it.

Mr. Beach—General knowledge?

Judge Neilson—Yes, Sir.

Mr. Beach—Knowledge derived from hearsay?

Judge Neilson—Yes, it may be. I think we will take that.

Mr. Beach—Will your Honor please consider upon what rule you permit a witness to give hearsay?

Judge Neilson—He has been giving it ever since he has been on the stand.

Mr. Beach—Sir?

Judge Neilson—He has been giving it ever since he has been on the stand.

Mr. Beach—Yes, but he has been giving it because the action of the church was so directly connected with very much of the examination that we gave. We went into the proceedings of the church, and in some degree into the history of the actions and intentions of the church authorities, and of the congregation, in regard to that matter. But this presents altogether a different question, may it please your Honor. It asks this gentleman whether he became aware by hearsay and the gossip of this neighborhood, or by the declaration of Mr. Beecher, or Mrs. Beecher, or Mrs. Morse, that there were difficulties existing in the family of Mr. Tilton. Now, your Honor, that is an important question in this case whether or not those difficulties did exist. It is a question of fact to be settled by the ordinary evidence applicable to all issues in a court of justice. Mr. Tilton is not to be condemned for brutality and unkindness in his family; for neglecting the interest of his household circle upon the gossip of the street or the hearsay of Mr. Bell or any other gentleman, however respectable and intelligent. It is a fact, I submit to your Honor, to be established in the ordinary way, and this question in its general form allows this witness to answer as to the basis of his knowledge of a particular circumstance

connected with Mr. Tilton which may have been derived from Mr. Beecher or any other person in the highways.

Judge Neilson—And without any personal knowledge.

Mr. Beach—And without the slightest personal knowledge.

Judge Neilson—Mr. Shearman, let me hear you in support of your question.

Mr. Evarts—Why, if your Honor please, it does not prove the truth of there having been a difficulty. How often have we had this distinction brought out? In order to get the proof that you are entitled to, you need to show a situation in the mind of a party, not proving that that was a true circumstance but as the precedent inducement to reach the allowable evidence that can be given. I do not say that rumor there was trouble between Mr. and Mrs. Tilton shows there was any trouble; I have never been guilty of such folly as that in this Court or in any other Court. But when I have a right to the actual transaction that occurred, and when as an inducement of that it is that a witness knew there was a story or a rumor that there was a difficulty, and then we lead to the proof; that is the first step, and if it has been done once it has been done a hundred times in this case before your Honor, and on the same rule that your Honor suggested that this was allowable.

Judge Neilson—This witness took no action in the matter, I suppose.

Mr. Evarts—I don't know that.

Judge Neilson—It is not suggested that he did.

Mr. Evarts—I cannot suggest what was done. Your Honor was disposed to allow this question. Similar questions have been allowed a hundred times in the trial of this cause. We all understand they do not prove there was difficulty between Mr. and Mrs. Tilton, but that it proved the fact that he was aware of a situation of alleged difficulty, and thereupon certain action took place. There is no doubt of the fact that she separated from him; there is not any doubt of it, on Mr. Tilton's own testimony, that she was gone three days. Whether her mother procured it, whether Mrs. Beecher procured it, that is not the question; of the fact there is no doubt. He sent for the child in the absence of the mother, and the mother never came back until the child had been gone. Now, those are facts of the matter. Now, I ask if this witness was aware of that situation as an inducement and a basis of showing what action he was called upon to take and did take in the matter.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—I don't know anything that counsel has said that is at all pertinent to the question before your Honor. How did this question arise? "Why," they say, "you proved by Moulton and by Tilton that they never heard from Mr. Beecher of any advice given to him by Mrs. Beecher on the subject of difficulties or separation from her husband, and because you have given that evidence," they say, "we are entitled to prove the action of Mr. Beecher in that direction, showing that he did give such advice; that he called in his wife and this gentleman in consultation as to the character of the advice he should give to Mrs. Tilton. Well, Sir, that was an act which could only have been pertinent, if the evidence was

competent, for the purpose of proving the fact of the intervention of this defendant between this plaintiff and his wife, as an explanation of the letters, the apologies and the contrition which Mr. Beecher manifested toward Mr. Tilton. It was to give an occasion and a plea and foundation for those letters, which, we say, impute a certain offense, and which they attempt to modify by showing a relation between them and this intervention of Mr. Beecher. Now, the gentleman is driven from his position. He says: "I don't offer this evidence for the purpose of proving the fact; I don't offer it to establish before this Court and jury that there were these fundamental difficulties between those parties which led their pastor to interfere with advice to the wife hostile to the husband." Now, I don't pretend that they prove that fact. What is the materiality then, Sir? Of what importance to us is it upon this issue whether or not this gentleman understood publicly, by rumor or otherwise, the fact of the existence of these difficulties if the evidence is not to establish the fact itself? In receding from his position the gentleman falls upon the other difficulty of utter immateriality in this case. Now, the gentleman says that this sort of evidence has been given in a hundred instances. Never in one, Sir, in this case. Never has your Honor received this hearsay evidence; never has your Honor permitted proof of unfounded rumor in this case for the purpose of establishing any important and material issue like this, upon this trial. It is of some consequence to us, Sir, whether we are to be scandalized by these rumors which were floating in this community originating from sources of which we know nothing, and whether the rights of this plaintiff in this case are to be sacrificed by the gossip of this community. We asked to be tried here, Sir, upon legitimate evidence admitted by your Honor under the acknowledged principles of law, and we ask your Honor to hold the proof upon both sides in this case to the rigor of those regulations.

Mr. Evarts—My learned friend says—

Mr. Beach—I believe I have the close of the argument.

Judge Neilson—He has a right to make a correction if he desires.

Mr. Evarts—Yes; he says I have receded from something. I have receded from nothing.

Mr. Beach—Well, you are about succeeding to something. Now, the gentleman enforced upon me the rule, Sir, that he had the right to close.

Mr. Evarts—Yes, Sir, and you shall have the right after me.

Mr. Beach—Well, I don't ask anything from the concession or indulgence of the counsel in that respect.

Mr. Evarts—Very well; you will take it from your right.

Mr. Beach—What?

Mr. Evarts—You will take it from your right. I am not giving a concession.

Judge Neilson—[To Mr. Beach.] You have a right to close. Mr. Evarts has a right to make an explanation.

Mr. Beach—Well, it will take him considerable time to make those corrections.

Mr. Evarts—Your right to close don't mean a right to close my mouth.

Mr. Beach—No; that would be an undertaking I would hardly venture upon.

Mr. Evarts—Well, we will go on. I say the present question does not undertake to prove the truth of the fact. I do not say that I do not undertake to prove the truth of the fact; I do not undertake to prove it by this question. And when I say a hundred times I mean exactly what I say—not but that it might be a hundred and one, possibly. I mean exactly what I said: that your Honor knows and enforces the rule to be that it is not an objection, that it is hearsay evidence that you are proving a fact by; that you introduce a hearing to a witness of something that had happened, which is proving the fact that he heard it, and then, that fact having been introduced, of its having got into his ears, is the inducement to what follows.

Mr. Beach—Now, your Honor, you have ruled in this case that this interview between Mr. Beecher and this gentleman is not admissible evidence. You have ruled that the declarations of Mr. Beecher made upon an occasion at which we were not present and to which we have not alluded in our evidence are not admissible proof. And yet, you are asked to permit a question which shall allow this witness to found an answer upon the hearsay conversation in the streets between third persons. While you shut out the declarations of Mr. Beecher, all interviews and conversations with Mr. Beecher upon this subject, to which we have made no allusion in our evidence, yet you allow this witness in his testimony to rove with the whole public, and from whatever source he may have received information in regard to a given fact, to detail it in this Court as evidence.

Judge Neilson—Or state the substance or conclusion.

Mr. Beach—Yes, Sir. Now, I trust your Honor will be consistent in the application of principles. They are founded, Sir, upon reason.

Judge Neilson—That may be difficult.

Mr. Beach—I don't think it is difficult.

#### THE OBJECTION SUSTAINED.

Judge Neilson—But I must not allow this question, I think on the whole. I would like to see the evidence taken without much technical objection, but this is substantial. I think I cannot allow it. Proceed, Mr. Shearman.

Mr. Evarts—Note an exception, if your Honor please.

Mr. Shearman—I ask this question. Mr. Bell, were you called in by Mr. Beecher in the early part of December, 1870, to a consultation between him and Mrs. Beecher, concerning a meditated separation between Mr. and Mrs. Tilton?

Mr. Fullerton—Objection, Sir.

Mr. Beach—That is the same question.

Mr. Fullerton—Same thing as has been ruled out.

Judge Neilson—The question is disallowed.

Mr. Shearman—Your Honor will note us our exception. I ask this question. [To the witness.] Did you not, in the early part of December, 1870, take any part in a consultation with Mr. and Mrs. Beecher, either with or without Mrs. Tilton, concerning a meditated separation of Mrs. Tilton from her husband?

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—Ruled out.

Mr. Shearman—Note exception.

Mr. Fullerton—Our objection is two-fold, your Honor will remember.

#### INDEPENDENT CONVERSATIONS MAKE MORE TROUBLE.

Mr. Shearman—Mr. Bell, did you have an interview with Mr. Beecher in the last week of the year 1870 or thereabouts, in which Mr. Beecher told you that Mr. Bowen was going to dismiss Mr. Tilton from *The Independent* and *Union* on account of certain stories concerning Mr. Tilton unfavorable to his moral character, the substance of which Mr. Beecher then stated to you?

Mr. Fullerton—Objected to.

Judge Neilson—Ruled out.

Mr. Shearman—If your Honor please—

Judge Neilson—Well, independent conversations which have not been inquired into, mere conversations, cannot be received.

Mr. Shearman—One moment, if your Honor please; we offer this for this purpose—the plaintiff has put in evidence certain letters of Mr. Beecher; he has put in evidence a paper to which Mr. Beecher's name appears, though it is not signed by him, and which the plaintiff calls a letter of contrition sometimes—sometimes an apology. Now, that paper and the other similar papers are put in for the purpose of showing that Mr. Beecher was deeply penitent for something. Have we not a right to shew for what Mr. Beecher was penitent?

Judge Neilson—Oh, you will before you get through.

Mr. Shearman—For what he did apologize?

Judge Neilson—Of course.

Mr. Shearman—Have we not a right to show, on cross examination, by their witnesses?

Judge Neilson—No one doubts that you can show that and give it its full weight; but, equally, no one can doubt that you cannot inquire into an independent conversation of this witness on that subject, or any other subject.

Mr. Shearman—How are we to do it?

Mr. Beach—You have got Mr. Beecher to do it with.

Mr. Evarts—Mr. Beecher gives, of course, on his consciousness and knowledge. But for the frame and situation, concerning which he spoke, that is one thing. Whatever may be proved may be proved by two witnesses, if it may be proved at all, if there are two who can prove it. Now, the substantive fact that Mr. Beecher had in this early part of the last week in December said these things injurious to Mr. Tilton, and prejudicial to his interests, is a fact—it is a fact and act of Mr. Beecher's. It don't prove that Mr. Tilton was guilty of this, that, or the other, but it proves that Mr. Beecher had said to this responsible and important person in the circles in which they both moved, these things, and we are not obliged to depend entirely upon Mr. Beecher's testimony for the proof of these facts. Whether anything will come of the fact is dependent upon subsequent testimony, and we cannot prove everything at once, nor everything by the same witness. Let it be, that nothing comes of this isolated act of Mr.

Beecher. It is an act of his in saying these things to the injury of Mr. Tilton, whether they were true or false, to the prejudice of him to this witness; and that fact stands proved, then, if we are allowed to prove it; and then the rest of our course of proof takes hold of that fact. And it becomes a subject of regret, when Mr. Moulton has removed an impression from Mr. Beecher's mind, that there was any truth in these stories, that he should have done these rash, inconsiderate and injurious acts in respect to his disciple, Mr. Tilton.

Judge Neilson—If the conversation proposed is an act or a fact, then every conversation may be inquired into as an act or a fact, and we overlook a rule which restrains the Court and controls, and cannot be changed except by legislative act, to wit: that you cannot give in evidence a conversation had by your client with a witness in the absence of your adversary, unless they have inquired into that interview.

Mr. Evarts—If your Honor please, if a man's general letter of remorse is to convict him of a crime of arson, shall he not be at liberty to prove that he had committed a crime of burglary, and that was what he was talking about.

Judge Neilson—That is a very different matter.

Mr. Evarts—That is the very thing.

Mr. Beach—It is not as to proving the fact: it is the mode of proving it.

Mr. Evarts—The fault was, saying these injurious things; and it was concerning that that he was speaking—if that is an element in the matter. I am not now arguing the case. It is not to be attributed to me that I say that that is all there was in it. I am to prove my case in the parts of which it consists. Now, that presents it precisely; there is not any difference that one crime is burglary, when they are trying to convict him of setting fire to the dwelling house by general feelings of remorse. This is a fault that a person of a sensitive conscience and a kind heart, no doubt would feel. Your Honor would feel it; every gentleman would feel it, if he, under the provocation of such a missile hurled at him as that message of the 26th of December, under Mr. Tilton's name—had then given body and force to rumors and reproaches against Mr. Tilton, and had advised that they should be executed in stripping him of his employments and then, afterwards, somebody had come and said to him that all those stories were false, and that he should not have given any such advice, and trusted to them. He may have this or that degree of feeling on the subject. It is not for your Honor or for me to measure the course of feeling that a man is led into by finding his course open to self-reproach and contrition. The question is whether I can prove the fact that I wish to interpose as the basis of part of our case. Now, if he had not committed the crime of burglary then it would be impossible to impute generalities of confession to another crime and not to one that he was not guilty of. And here if there had been no such act and fact as this decisive and oppressive forcing against Mr. Tilton of conclusions, or rumors, if you please, then there would not be the opportunity of applying generality of anguish to this or that form of inquiry and not another. And, in order that that may not be imputed as the defect or fault of our case in that regard, and its argument,

we propose the existing fact of his having dealt with this witness in this way.

Judge Neilson—Counsel, I think, may appreciate the restraint I feel under in reference to what I understand to be a settled rule of evidence, and in respect to which I have no power or authority, regarding, as I must, this interview with the witness as involving a conversation that has not been inquired into; and the question is therefore overruled.

[To the Jury]: Gentlemen of the Jury, I wish to say that we have been thoughtful enough to send down to Parker's and have the room where you dine warmed, to be comfortable. Persons who ordinarily desire to stay in this room will find it uncomfortable during the recess, because the windows will be all opened; and it will be as near remaining out of doors as possible to stay here.

Mr. Evarts—Your Honor will note my exception. [Laughter.]

The Court then took a recess until a quarter past two o'clock.

#### THE WITNESS MAKES AN EXPLANATION.

The Court met at 2:15 p. m. pursuant to adjournment.

The Witness, George A. Bell, on taking the stand addressed the Court: If your Honor please, I have remembered other parts of the interview on which I was examined.

Judge Neilson—You have a right to answer.

The Witness—At what point, Sir?

Judge Neilson—At any time.

Mr. Shearman—We are through on the cross-examination.

Judge Neilson—The witness recollects some parts of the interview which he wants to add.

Mr. Fullerton—Certainly, Sir.

Judge Neilson—In your own way, Mr. Bell.

Mr. Evarts—It does not come out on our cross-examination.

Judge Neilson—No. It comes out in the way of explanation by the witness.

The Witness—There are one or two points that have come to me during the recess, and they are these.

Mr. Evarts—Your Honor will understand us as objecting to this on the same ground that we have before stated.

Judge Neilson—Certainly.

The Witness—Mr. Tilton said, in the interview when I drove him up, in regard to the publication which I insisted he ought to make—he said that Mr. Beecher had committed an offense against his family. These words come to me very distinctly—that Mr. Beecher had committed an offense against his family which he declined to specify or characterize, or some such words as that. He stated also that Mrs. Tilton was pure—using some very strong language in regard to that. I am merely now giving you the things which I remember that I had omitted. He said besides, alluding to the anticipated meeting of the deacons, "If the deacons, or if the Church, want to investigate this thing I am ready, but you had better go to Mr. Beecher, and if he says he is willing that the Church should go on, then go on." That is about the substance of what he said.

#### RE-DIRECT EXAMINATION OF MR. BELL.

Mr. Fullerton—Mr. Bell, you spoke on your cross-examination of having fallen out of the channels of communication after a certain period. What did you mean by that expression? A. Did I not say channels of information, Sir?

Q. Perhaps so. A. That is just what I meant.

Q. Well, perhaps so. Was that in consequence of your absence from the city? A. No, Sir; because I did not go away from the city until May following.

Q. You were not consulted in regard to it? A. I was not consulted.

Q. What position did you take in regard to the matter prior to the time of your having fallen out of the channels of information?

Mr. Evarts—That we object to—the question of the position that this gentleman had taken. It is of no consequence what attitude he took in the fight, if there was one.

Mr. Fullerton—They have proved public sentiment in Plymouth Church in regard to this matter. They have enjoyed the widest liberty of examination in that respect. Now, if this gentleman fell out of the channels of information after that, I propose to show why it was.

Judge Neilson—Suppose that he had expressed an opinion upon the subject; that would not be material.

Mr. Fullerton—It would, if your Honor please, in my estimation, in regard to this fight in the Church.

Judge Neilson—No; I think not.

Mr. Fullerton—If he advised a certain course should be taken, and others in the Church advised that another course should be taken, that would show the reason why he was not consulted afterwards in regard to the affairs.

Judge Neilson—That may be so as to the reason; but it is not important.

Mr. Fullerton—Well, I do not regard it as very important. [To the witness]: You were going on to state, Mr. Bell, that there was another reason for the meeting at Mr. Halliday's house, other than the one disclosed. Am I right in that? A. Another reason for meeting at Mr. Halliday's house?

Q. Yes. I understood you to say upon cross-examination that there was another reason for meeting at Mr. Halliday's house other than the one stated by you?

Mr. Beach—No, I understand him to say. Mr. Fullerton, that there was another reason for the lethargy of the Church, or the refusal of the Church to move during the first two weeks.

Mr. Fullerton—Well, perhaps I was mistaken. Then I have nothing more to ask, because that has been already explained.

Judge Neilson—Is that all from this witness?

Mr. Fullerton—That is all we have to ask.

Mr. Evarts—That is all, Sir.

#### TESTIMONY OF JOSEPH H. RICHARDS.

Mr. Fullerton then called Joseph H. Richards, who was duly sworn, and was examined as follows:

Mr. Fullerton—Where do you reside, Mr. Richards? A. At Montclair, New-Jersey.



Q. Did you ever reside in this city? A. Yes, Sir.

Q. During what period of time? A. About ten years ago.

Q. How are you, if at all, connected with the family of Mr. Tilton? A. Mrs. Tilton is my sister.

Q. Have you spent more or less of your time in Brooklyn, since you moved to Montclair? A. Rather less than more, Sir; I have been here seldom.

Q. Were you in the habit of visiting Mr. Tilton's house when you were here in Brooklyn? A. Yes, Sir.

Q. How frequently? A. Possibly, during the whole time, not to average more than once a month.

Q. During what period? A. The ten years.

#### THE TILTON HOME A MODEL ONE.

Q. Whilst you were there, Mr. Richards, did you notice, and if you did you will please state to us, what degree of affection existed between the husband and the wife in that family? A. Well, Sir, I always considered that the home of Mr. Tilton was a model home in that respect as in other respects.

Q. Did you ever see anything to the contrary during your visits there? A. Not certainly until the last two or three years.

Mr. Evarts—I understand the rule, if your Honor please, is that it must be limited to the period antecedent to the alleged cause of the estrangement

Judge Neilson—Yes.

Mr. Fullerton—Prior to July, 1870—

Mr. Beach—Put it December, 1870.

Mr. Fullerton—Well, prior to December, 1870.

Mr. Evarts—July, 1870, it was alleged.

Mr. Fullerton—Well, it was not made known until December, 1870.

Mr. Evarts—It was alleged to be known to the husband in July, 1870.

Mr. Fullerton—Well, prior to July, 1870. [To the witness]: Prior to July, 1870, was that the condition of things in the family according to your observation?

The Witness—Well, Sir, as to my recollection of dates, the precise time I cannot say; but I should think that would be about the time.

Q. Now, as to the treatment of his family by Mr. Tilton, as to providing for them, what can you say as to that, from your observation? A. I should say it was generous. Sir.

Q. And in his daily intercourse in the family, state whether it was kind, affectionate and agreeable? A. So I should state—loving, kind.

Q. How was he for cheerfulness in the family? A. Well, for the most part, I should say he was rather too cheerful, Sir, if anything—fond of joking and punning, sometimes at the expense of others—my own expense sometimes.

Q. All in good nature? A. Yes, Sir.

#### THE WITNESS'S ACQUAINTANCE WITH MR. BEECHER.

Q. How long have you known Henry Ward Beecher? A. I should think about eighteen years, Sir.

Q. Did you see him frequently during your residence in

Brooklyn? A. Yes, Sir; but more often in New-York City on business matters.

Q. What business matters in New-York city brought you in connection with him, if any? A. I was publisher of *The Independent* for eight years, and there I saw him frequently.

Q. During what eight years? A. You puzzle me, Sir, about dates.

Q. As near as you can get at it—I am not particular? A. I should think probably fifteen years ago my connection with *The Independent* ceased, and prior to that time I saw him, probably, during the eight years prior to that date.

Q. And since you moved to Montclair have you seen him frequently? A. Not frequently. No, Sir.

Q. Where have you been in the habit of seeing him during your residence in New-Jersey? A. I have met him in the street often, and seen him occasionally at my sister's house.

Q. Mrs. Tilton's? A. Mrs. Tilton's; I should think that would confuse them all, Sir.

Q. How often did you see him at your sister's house? A. I cannot say, Sir.

Q. Give us an estimate, as near as you can, of the number of times? A. Well, it would be difficult to state; I should think probably five or six times in the course of those years.

Q. And when did that occur—during what years? A. Well, I probably met him first when the family lived in Oxford-st. If you can give me that date, Sir, it will recall the time when I met him in Brooklyn at their house.

Mr. Fullerton—That is already in evidence.

Mr. Beach—1862, or about 1862, I think.

Mr. Fullerton—And when again? A. More often in Livingston-st., probably.

Q. Where they resided up to the time that she left her husband's house? A. Yes, Sir.

Q. Were you there when you saw him visiting your sister or calling upon her? A. Was I calling upon her?

Q. Yes. A. Yes, Sir.

Q. What times in the day have you seen Mr. Beecher there? A. I recollect of seeing him there in the forenoon of the day; I don't know how often at that time.

Q. How early in the forenoon? A. Probably as early as eleven o'clock.

Q. And how often as early as eleven o'clock have you seen him there? A. I do not recall but one time, Sir, I think.

Q. And when you saw him there at other times, what time of the day was it, if you remember? A. In the afternoon, probably.

Q. And where did you see him—in what part of the house? A. In the parlor of the house, I think, Sir.

Q. In every instance? A. I don't recall any other locality; possibly it might have been.

Q. State whether Mr. Beecher was in the house when you went there, or whether he arrived after you arrived? A. I cannot state so in every instance; I can state I went there on one occasion and found him there; as to the others I cannot remember.

Q. What was the condition of Mrs. Tilton's health at the

time of these respective calls of Mr. Beecher? A. I don't remember any other condition but that of good health.

Q. Was any other person in the parlor with them when you saw Mr. Beecher, and, if so, whom?

Mr. Evarts—When?

Mr. Beach—On any occasion.

Mr. Evarts—On all the occasions.

Mr. Fullerton—Yes, I embrace the whole.

The Witness—I don't remember; possibly there might have been other persons present.

Q. But you do not remember? A. I do not remember; no, Sir.

#### THE WITNESS DEPLORES HIS POSITION.

Q. Now, at any time when you saw Mr. Beecher at the house of Mr. Tilton in company with Mrs. Tilton, did you see anything exceptional in their conduct or intercourse, and, if so, state what it was?

The Witness [turning to the Court]—Will you allow me to say, your Honor, that in some way, by the exigencies of this case, I am brought to appear in a cruel position. I did not seek this position. I am here from dire necessity, and very reluctantly testifying. This lady is my only sister, and I esteem her as we all esteem our sisters.

Judge Neilson—I recognize that, Sir; the position may be hard; but still you must yield to the requirements of the case, and state what you know.

The Witness—What is the question, Sir?

[THE TRIBUNE stenographer repeated the question.]

The Witness—In answering this question I don't think I can answer it in justice to myself, unless I should put what I saw in connection with other things, with other things that I had heard about Mr. Beecher in my long knowledge of him. What I saw might not be of any special moment, aside from these other things, and it may not be of any moment at all, in any view.

Mr. Evarts—Now, if your Honor please—

Judge Neilson—The counsel will instruct him.

Mr. Evarts—Here is a witness asked what he saw, and he proceeds to give instructions as to what he saw not being of much importance, unless he is allowed to connect it with other thing he had heard.

Judge Neilson—The counsel does not ask for that.

Mr. Evarts—No; but I certainly never have heard anything like that from a witness.

Mr. Fullerton—Probably you never saw a witness placed in such a position before.

The Witness—Precisely so; but if you will place yourself in my position—

Mr. Evarts—Oh, I will be able to show what your position is by and bye.

#### SUSPICIOUS POSITION OF MR. BEECHER AND MRS. TILTON.

Mr. Fullerton—I will give you that chance very soon. [To the Witness.] Now, Mr. Richards, please to state what you saw there in the house of Mr. Tilton, that was excep-

tional in the character or conduct of Mr. Beecher and your sister? A. Well, Sir, on this occasion I spoke of seeing them in the morning—this one occasion. I called at the house, and was in the upper story—the second story, I think. I descended to the parlor floor and opened the door of the parlor, which was closed, and I saw Mr. Beecher seated in the front room, and Mrs. Tilton making a very hasty motion, and with highly flushed face, away from the position that Mr. Beecher occupied. It was such a situation as left an indelible impression on my mind—that is all, Sir—in relation to other matters.

Q. What season of the year was that in? A. I cannot recall the season, Sir.

Q. Have you no way of letting us know whether it was in the Winter or Summer season? A. I do not see how I can be able to—no, Sir.

Q. Can you tell the year when you saw this? A. No, Sir.

Q. With reference to the ages of the children of Mr. and Mrs. Tilton, would you be able to fix approximately the time when you saw this? A. No, Sir; I cannot recall the ages of my own children except from a memorandum I carry in my pocket.

Q. Was it as early as 1868? A. I don't think you can aid me, Sir, in that matter, in the recollection of dates.

Q. Well, was it a number of years ago? A. Yes, Sir.

Q. Could you tell me whether it was between 1868 and 1870? A. It probably was prior to 1870.

Q. And where did Mr. Tilton live at the time—where was his residence? A. In Livingston-st. ; I think 174 is the number.

Q. Will you state whether it was an unusual thing, so far as you observed, that the parlor doors should be shut as they were shut on that occasion? A. I cannot state, Sir; I do not know what the habits of the house were in that regard.

Q. How long had you been in the upper part of the house before you came down and witnessed this? A. I don't remember these side facts about it. I simply called there in the morning, as I had to, living out of the city ; I usually called in the day-time.

Q. Can you tell us whether Mr. Beecher came to the house before or after you did? A. I cannot say, as I was up-stairs.

Q. You don't remember of having seen him on your way up-stairs? A. No, Sir.

Q. In what part of the parlor was Mr. Beecher sitting when you first opened the door? A. About opposite the entrance—the front room ; about opposite the front entrance.

Q. And how far was Mrs. Tilton from Mr. Beecher when your eye rested upon them? A. Well, she was not far, Sir ; in the act of moving ; as I opened the door there was a moving away from the position.

Q. Moving away from Mr. Beecher? A. From Mr. Beecher—yes, Sir.

Q. And in what direction was she moving? A. Towards the front window.

Q. Did you remain in the parlor any time? A. Not long, Sir. Mr. Fullerton—I believe that is all, Sir.

CROSS-EXAMINATION OF MR. RICHARDS.

Mr. Evarts—Mr. Richards, were you subpoenaed here? A. Yes, Sir.

Q. And when? A. [Looking at subpoena]. This is dated the 18th day of February.

Q. My question was, when you were subpoenaed—when it was served upon you? A. On that day, I presume, Sir.

Q. What is your business now? A. I am an advertising agent.

Q. Where do you carry on your business? A. No. 245 Broadway.

Q. When did you speak of this occurrence, and to whom? A. I think I spoke of it first to my wife.

Q. And when did you speak of it to any of the parties to this case? A. I think the day before yesterday.

Q. Now, Sir, what did you say to Mr. Beecher, or Mrs. Tilton when you went into the room? A. I greeted them, Sir, as was my custom; I shook hands with Mr. Beecher, I think, who remained seated.

Q. Had you seen your sister before that morning? A. No, Sir.

Q. Had you come into the house in the usual way, without being announced or introduced to the family at all? A. I used to have free range of the house, Sir, as far as that is concerned.

Q. I asked you exactly that question—whether you came in that morning in the usual way? A. That is exactly as I replied, Sir; I came in in that way.

Q. The usual way? A. Yes, Sir.

Q. And you went up-stairs to your own room, was it? A. I had no room there, Sir.

Q. Well, what room? A. Probably the second story front room.

Q. With what object? A. To see any one who was to be seen.

Q. Was that the usual and ordinary place that you would expect to find your sister? A. Yes, Sir.

Q. Was it this room that had folding doors between it and the bedroom that you went to, expecting to find her? A. Yes, Sir.

Q. That was the ordinary place? A. The sitting room.

Q. The sitting room where you would expect to find your sister, or any family visitor would expect to find your sister? A. I presume so.

Q. Have you said what time of day this was? A. I think about 11 o'clock.

Q. And had you any particular business there, or only a call? A. Simply a call.

Q. Simply a call. And immediately on finding your sister was not up-stairs, did you come down to the parlor? A. It may not have been so; I may have found some of the children there, and talked to them a little; I do not remember as to that.

Q. And did Mr. Beecher leave before you left the parlor? A. No, Sir; I left before he did.

Q. And did your sister leave with you, or did she remain? A. My impression is she remained; I think I did not leave the house at once; I went up-stairs again.

Q. When you left the parlor? A. The parlor; Yes, Sir.

Q. Leaving your sister there? A. Yes, Sir.

Q. And then you went up-stairs? A. I am not sure as to that; probably I did; I do not remember.

Q. I don't know anything about "probably;" did you or not? A. I cannot tell you, Sir.

Q. Did you immediately leave the house, or go somewhere in the house where you had some detention or occupation of some kind? A. I have replied that I do not remember.

Q. You do not know, but you immediately left the house when you left the parlor? A. Yes, Sir; I may have done so.

Q. But your impression is to the contrary? A. No; I have no distinct impression; it is vague; I may or may not.

Q. Do you remember seeing your sister again on that day? A. No, Sir.

Q. Then, as I understand you, so far as you have any knowledge, you retired from that room leaving your sister and Mr. Beecher there? A. Yes, Sir.

Q. And left the house? A. I don't know as to that.

Mr. Evarts—That is all.

Mr. Fullerton—Wait a moment; I want to ask one or two questions—one moment.

RE-DIRECT EXAMINATION OF MR. RICHARDS.

Mr. Fullerton—Have you been subpoenaed more than once in this case, Mr. Richards? A. Yes, Sir.

Q. How frequently have subpoenas been served upon you? A. Four times, I think.

Q. When was the first? A. I think the first must have been three or four weeks ago.

Q. And, since that time, up to the 18th—if that is the date of your present subpoena—? A. [Interrupting]. Yes; I think this was the last one.

Mr. Fullerton [resuming]—Subpoenas were served upon you from time to time? A. Yes, Sir.

Q. You have been asked when you first spoke of this occurrence which you have related. Did you speak to any one in consequence of what you saw there, without relating the occurrence?

Mr. Evarts—I object. I have not introduced that; I have not introduced any new inquiry. My question was, when he first spoke of this occurrence, and to whom; as I have said to his wife.

Mr. Fullerton—I have a right to show whether he spoke to any one else.

Mr. Beach—The counsel put a question, when he first spoke to any one of this occurrence.

Mr. Evarts—I asked him when he first spoke of it, and to whom; and he said to his wife; and I then asked him when he spoke to any parties in this case, and he said the day before yesterday. Now, there is nothing in that to permit of this inquiry on the re-direct.

Judge Nelson—It is only on the idea that there may be some correction.

Mr. Fullerton—We want it to appear when he first spoke to any one in regard to this matter which he has stated.

Mr. Evarts—That is proper; but the question is not that; the

question is whether he spoke to any one in consequence of that occurrence. That is not called out by my inquiry.

Mr. Fullerton—Does the gentleman mean to say that I am concluded by what he drew out on the cross-examination, as to the first person to whom he spoke of this occurrence? I take it not.

Mr. Evarts—Unless he spoke to Mr. Beecher it is no part of their right of direct examination.

Judge Neilson—Yes, that is so. Now, then, there is no right on your part, unless it is by way of correcting something that has been brought out on a wrong interpretation.

Mr. Fullerton—Well, it is just that.

Judge Neilson—Well, then, ask the question.

Mr. Fullerton—I have asked the question.

Mr. Evarts—No, you asked if it was not in consequence of this occurrence that he spoke to somebody.

Mr. Fullerton—Yes, and did you speak to that somebody before you spoke to—whoever it was, day before yesterday? A. I am a little mixed, Sir, as to the question.

Mr. Evarts—Why, the witness has stated that he spoke to his wife.

Judge Neilson—Yes, Sir.

Mr. Fullerton—When did you speak to your wife about it? A. The day it occurred, I think, Sir.

Q. Where was she on that day? A. She was at my home in Montclair.

Q. You went home that day, did you? A. Yes, Sir.

Q. Did you tell her what you had seen? A. I think I did; yes, Sir.

Q. Now, did you speak to any one else in regard to it after that?

Mr. Evarts—That we object to, if your Honor please.

Judge Neilson—I think we will take that.

A. Yes, Sir, I think I did.

Q. To whom? A. To my brother-in-law.

Q. Who was he? A. A Mr. Baker.

Q. When did you speak to him about it? A. During the progress of this trial.

Q. How long ago? A. Probably a month ago.

Q. Well, did you say anything to Mr. Tilton in regard to it? A. No, Sir.

Q. Did you say anything in consequence of what you had seen, even if you did not tell what you had seen? A. I don't remember, Sir, having any such.

Judge Neilson—That is all, Mr. Richards.

Mr. Fullerton—Now, Mr. Robinson, will you take the stand, please?

#### TESTIMONY OF JEREMIAH P. ROBINSON.

Jeremiah P. Robinson sworn on behalf of the plaintiff.

Mr. Fullerton—Mr. Robinson, do you reside in Brooklyn? A. Yes, Sir.

Q. A member of the firm of Woodruff & Robinson? A. Yes, Sir.

Q. And a partner of Francis D. Moulton? A. Yes, Sir.

Q. Do you know Mr. Henry Ward Beecher? A. Yes, Sir.

Q. How long have you been acquainted with him; how long have you known him? A. I do not think I have been acquainted with him, to speak with him—speaking acquaintance—more than a couple of years.

Q. How long? A. Two years, probably.

Q. Well, that would carry it back to 1873. Do you recollect whether it was in that year that your speaking acquaintance commenced? A. I think it was about that time, Sir.

#### MR. BEECHER'S INTERCOURSE WITH MR. MOULTON DESCRIBED.

Q. Under what circumstances did you become acquainted with him? A. I think that I met him at Mr. Moulton's house first.

Q. Do you recollect the season of the year? A. I do not, Sir.

Q. Who else was there when you met him there? A. I do not remember that, Sir.

Q. Did you meet him there more than once? A. Yes, Sir.

Q. How frequently? A. Well, I saw him—I have seen him there before I was acquainted with him. I have seen him come in and go out.

Q. How frequently? A. Well, I cannot say. A number of times when I happened to be at Mr. Moulton's.

Q. What was the condition of Mr. Moulton at the time that you met Mr. Beecher there—as to health I mean? A. I saw Mr. Beecher there once when Mr. Moulton was sick.

Q. Now, do you refer to his sickness in the early part of the year 1871? A. Yes, Sir; I think it was in January, 1871.

Q. How frequently did you see Mr. Beecher there during that sickness? A. I do not remember, Sir, but I do not think I saw him many times.

Q. Had you seen him there prior to that sickness? A. I do not think I had, Sir. I do not remember. I did not know Mr. Beecher then very well; I only saw him. I knew him by sight.

Q. Mr. Moulton went, in the early part of 1871, South, did he not—or some time? A. After that sickness, I think he went South.

Q. And after his return from the South, did you meet him there. A. Mr. Beecher?

Q. Mr. Beecher. A. I saw him there afterwards, but I do not know how soon. I have seen him there since then, though.

Q. How frequently, after the sickness, did you see Mr. Beecher there? A. In July, 1871, I left the country, and was absent a year and a half. I do not remember whether I saw Mr. Beecher there many times, or hardly at all after Mr. Moulton's sickness. I do not remember that.

Q. And before you left? A. No, Sir. I did see him there during that sickness.

Q. In Mr. Moulton's sick room? A. I think I saw him once there in the sick room, as I passed in or out.

Q. Did you ever meet Mr. Moulton and Mr. Beecher in the street, at any time? A. Yes, Sir.

Q. When was that? A. I think it was the last 4th of July, Sir; on Sunday, at any rate.

Q. In 1874? A. Yes, Sir.

Q. And where in the street did you meet them? A. I met them on Montague-terrace, where I live.

Q. Walking together, or standing together? A. They were walking together. They stopped when I met them.

Q. You met them; they were going in one direction, and yourself in another? A. I started to go from my house to visit a friend. As I went from my steps—the stoop of the house—they came around the corner of Remsen-st. to Montague terrace, together.

Q. When you met, they stopped, you say? A. They crossed over to meet me, as I supposed—they did, at any rate, near the sidewalk of the next house to mine.

Q. Now, Mr. Robinson, relate what occurred after you met, and before you separated? A. I exchanged salutations—

MR. BEECHER'S REGARD FOR MR. MOULTON.

Q. A little louder, please. A. I exchanged salutations with Mr. Beecher and Mr. Moulton, and as near as I can remember, Mr. Moulton said to me that he had not seen me for some time. I had returned from the country the day before, and I think that he had been away before that, but that I do not remember definitely. At any rate, he said that he had not seen me for some time. I said, "No, but I have been visible; you could have seen me if you had wanted to." It was in a joke; and said he: "Do you think I didn't want to see you." Said I, "You said that, I didn't." Mr. Beecher says: "Don't be too hard on my friend Moulton."

Q. A little louder. A. Mr. Beecher replied, "Don't be too hard on my friend Moulton." Says I, "No, Moulton is a good fellow." Said he, "Moulton is as good a friend as God ever raised up for a man," I think that was the expression; and that "If it were not for him, I don't know that I would be a live man." That is all, except a good-bye, and I went along, and they went along. They went their way, and I went another.

Q. That was on the 4th of July, 1874? A. That was on the 4th of last July, I think—on Sunday. The 4th of July was on Sunday, wasn't it?

Q. And at what time of the day? A. It was, I should think, between one and three o'clock. It was after I had my dinner, and was going out to visit a friend.

Q. What was the attitude of Mr. Beecher when he made use of the expression which you have given to us? A. I think he laid his hand upon Mr. Moulton's shoulder.

Q. Now, at what particular moment did he lay his hand upon his shoulder, with reference to what he said? A. The expression in regard to his being his friend.

Q. When he made use of that expression? A. Yes, Sir; he put up his hand on Mr. Moulton's shoulder.

Q. Was it only upon his shoulder? A. I think that is all Sir.

Mr. Fullerton—That is all.

CROSS-EXAMINATION OF MR. ROBINSON.

Mr. Evarts—Mr. Robinson, how many days have you attended as a witness in this Court? A. How many days have I been here?

Q. Now, Sir, as a witness. A. I was here yesterday after-

noon, day before yesterday morning, and about an hour and a half the day before that.

Q. Yes; and last week and the week before? A. I have not been here before, Sir.

Q. Oh!

Mr. Fullerton—Well, do you deny that, Mr. Evarts?

Mr. Evarts—Oh! no; Mr. Robinson has been here a good many times.

Mr. Fullerton—Just exactly as many times as he has stated.

Mr. Evarts—I have no doubt he stated it correctly.

Mr. Beach—You seemed to express a doubt.

The Witness—I would not have come at all if I could avoid it.

Mr. Evarts—No; I suppose not. Now, Sir, is Mr. Moulton or Mrs. Moulton any connection or relative of yours? A. Mrs. Moulton is.

Q. What connection? A. She is a niece of mine, Sir.

Q. Has your partnership with Mr. Moulton been lately dissolved? A. It is not dissolved yet, Sir—the partnership of the firm. The warehouse business has been withdrawn from the firm. The leases terminated on the first of January, and I owning the property and Mr. Woodruff owning others, we withdrew—the leases terminated, and we have withdrawn that part of the business from the firm.

Q. Dissolved, then, as of the first of January?

Mr. Beach—No, Sir.

Mr. Fullerton—Oh, no!

Mr. Beach—He tells you it was not dissolved.

Mr. Evarts—In respect to that part of the business? A. Yes, Sir; the warehouse business.

Q. Now, Sir, in what business does any connection still continue, and of what durability is any present connection? A. The merchandise business is still continued.

Q. With a term fixed for the termination of that also? A. Yes, Sir.

Q. When does that terminate? A. The first of March next.

Q. Wasn't it originally fixed to terminate on the first of February? A. The first of this last February?

Q. This present February. A. Originally fixed?

Q. Yes, Sir, originally; when you dissolved as to part wasn't the connection that was retained originally fixed to dissolve on the first of February? A. Not originally. The first dissolution that was fixed upon was fixed upon a year ago last February, to take place, if we could arrange our business so that it could terminate then, on the first of May or June last.

Q. Of last year? A. Yes, Sir.

Q. Well, I am not talking about that. That is all right. A. No; but the answer to the original—

Q. Now, you did have a present termination of some part of your connection on the first of January; that you have stated. Now, wasn't it a part of that arrangement which terminated a part of your business relations on the first of January, that the whole of your business relations were to terminate on the first of February—the present February? A. It was to terminate on last February.

Q. This February? A. There had been an arrangement that it should terminate then.

Q. This present February? A. Yes, Sir; but there had been an arrangement at January, too, and last August and September, but that was with reference to arranging our business.

Q. And now the arrangement is, that it is to terminate wholly on the 1st of March? A. The 1st of March, unless there is some reason for postponing it again.

Q. Yes, Sir; unless it is changed? A. Yes, Sir; there is a definite understanding that it shall terminate then.

Q. Now, was it at Mr. Moulton's request that the full termination of your connection was postponed from the 1st of February to the 1st of March?

Mr. Beach—I don't see the importance or propriety of this.

Judge Neilson—I think we will take it.

The Witnesses—The question again, Mr. Evarts, if you please.

Q. Was it at Mr. Moulton's request that the full termination of your connection as partners should be postponed from the 1st of February to the 1st of March? A. Yes, Sir.

Q. Was it at his request that the full termination of your connection was not completed on the 1st of January, but in part it was postponed to the 1st of February? A. Yes, Sir; I think it was.

Mr. Evarts—That is all, Sir.

Mr. Fullerton—That is all, Mr. Robinson. Mr. William Brasher.

#### TESTIMONY OF MR. WILLIAM M. BRASHER.

William Marston Brasher, sworn on behalf of the plaintiff.

Mr. Fullerton—Where do you reside? A. 198 Livingston street.

Q. In this city? A. Yes, Sir.

Q. And how long have you resided there? A. 40 years.

Q. Do you know the parties to this action? A. I do, Sir.

Q. How long have you known Mr. Henry Ward Beecher? A. Ever since he came to Brooklyn, Sir.

Q. Have been on speaking terms with him during that period? A. No, Sir.

Q. But familiar with him? A. I have been introduced to the gentleman.

Q. Met him often? A. No, Sir; but once.

Q. I mean in the street? A. Oh yes, Sir.

Q. So that you recognized him when you saw him, easy? A. Always.

Q. And you were acquainted also with Mr. Tilton, I understand you? A. Yes, Sir.

Q. You knew where his residence was in Livingston street, did you? A. I passed it six times a day.

Q. And you knew where his residence was in Oxford street, before he removed to Livingston street? A. No, Sir.

Q. Did not? A. No, Sir.

Q. I want to ask you whether you ever saw Mr. Beecher at Mr. Tilton's house in Livingston street? A. I never was in Mr. Tilton's house, Sir.

Q. Very likely. That would prevent you from answer-

ing my question, Mr. Brasher? A. I thought you meant whether I met him there, Sir.

Q. No, Sir; if you ever saw him there? A. Yes, Sir, I have seen him on the stoop.

Q. How frequently? A. I have seen him enter and go out several times.

Q. Give us some idea of the number of times, if you please? A. I cannot be definite on that subject.

Q. Be as definite as you can? A. Say, four or five times.

Q. And when did you see him go in and come out? A. At different hours of the day.

Q. How early and how late in the day? A. I never recollect but once that ever made an impression on me, and that was early in the morning.

Q. How early in the morning? Q. Well, it is so long ago, Sir, that I cannot fix the time.

Q. Give it, as near as you can, Mr. Brasher? A. I can only tell you I was going a fishing and it struck me to be an unusual time for a gentleman to be visiting.

Q. Well, give us some idea of the earliness of the hour. A. I cannot recollect the time, Sir.

Mr. Beach—Give it as near as you can.

Mr. Fullerton—As near as you can get at it? A. Well, it was after breakfast, or about breakfast time.

Q. And what season of the year was it? A. It was in the Fall.

Q. Do you think it was after breakfast? A. I cannot be positive about that.

Q. Can you say that it was not before breakfast? A. I cannot.

Q. In which direction were you going? A. Towards Court street.

Q. You were going fishing, you say? A. Yes, Sir.

Q. With your yacht? A. I was going toward my yacht.

Q. Well, you were going fishing with your yacht? A. I was going aboard of my yacht.

Q. Well, after you got aboard, you were going a fishing with your yacht? A. Yes, Sir.

Q. What time did you usually start to go fishing? A. I went all times of day and night.

Q. Well, when you started early in the morning, what time did you start? A. Two o'clock in the morning, sometimes.

Q. Now, Mr. Brasher, I want you to tell this jury as near as you can, at what hour in the morning you saw Mr. Beecher there? A. I would do so with pleasure, Sir, if I knew the hour, if I could fix it.

Q. As near as you can, is my question? A. It was about breakfast time, I think, that morning, because the sun was bright and clear, and looking toward me it dazzled him; it fell in his eyes so that he turned away; he turned his head.

Q. And where was he at the time you saw him? A. He was standing on the stoop.

Q. What do you mean by breakfast time? A. I take breakfast at six o'clock, Sir, in the Summer.

Q. What time did you take breakfast at the time that you saw Mr. Beecher? A. I could not state, Sir.

Q. Well, as near as you can recollect? A. I cannot recollect, for many reasons.

Q. You are sure you had your breakfast that morning? A. I am not sure, Sir.

Q. Well, then, it may have been before breakfast? A. I sometimes take my breakfast aboard the yacht.

Mr. Beach—What is his best recollection?

Mr. Fullerton—I am putting that very question, my dear Sir. Give us the best impression now, Mr. Brasher, as to the time when you saw Mr. Beecher there on the stoop? A. Well, I would not like to state a time, for I cannot recollect. I have tried my best to fix that date, and I cannot do it.

Q. I know, Mr. Brasher, you cannot do it; I understand that, because you told me so, and I take it for granted, of course, that it is so. A. I am under oath, Sir.

Q. Certainly, Sir; I have great respect for your candor, but tell me, according to your best impression, what was the hour? A. I should think it was between seven and eight o'clock. That is the best recollection I have.

Q. Very well, that is satisfactory. A. It was early.

Q. And can you give us now your best impression as to the season of the year when it was? A. In the Fall, Sir.

Q. Well, there are three months in the Fall season; can you tell which month it was in, Sir? A. I met Mr. Beecher so frequently in that location that it is beyond any man's memory to place it.

Q. Very well. Now, how frequently did you meet him in that location? A. I could not tell you, Sir.

Q. Give us some idea of it? A. Fifty times.

Q. During what period of time? A. All the time that I lived there.

Q. That was in Livingston-st.? A. Somewhere in that neighborhood; he was either coming or going from there.

Q. And where did he reside during that period? A. I think on the Heights, or somewhere near there.

Q. How far from Livingston-st., where you saw him? A. It is three-quarters of a mile.

Q. Was he in the act of going in the house or coming out of the house? A. He was standing on the stoop, Sir.

Q. And did you pass by leaving him on the stoop? A. Yes, I passed him while he was on the stoop.

Q. How near was he to the door? A. I should think he was about half way between the door and the edge of the stoop.

Q. Looking out toward you? A. He appeared to turn just as I came up to him. The sun was in the East and I was going to the West.

Q. And did he stand there until you passed by? A. I think he did.

Q. Did you speak with him? A. I did not, Sir.

Q. Did you salute each other? A. No, Sir.

Q. You had a speaking acquaintance with him at that time? A. No, Sir; I never spoke to him but once; then I was introduced to him on a Fulton ferry-boat.

Q. Since that time, was it? A. No, Sir; but once.

Q. Well, but was it since that time? A. Oh! my, yes; years afterward.

Q. Did you, before you got out of sight, see where Mr. Beecher went? A. No, Sir.

Q. Did you look around after you passed by? A. I did not, Sir.

Q. Did you ever see Mr. Beecher there at any other time in the morning? A. Yes, Sir.

Q. How long before or after the occasion which you have testified to? A. Well, I have seen him there at different times through the day. That was the only day that I ever took any notice of it.

Q. That is, you mean special notice, I suppose? A. Special notice; yes, Sir.

Q. Where did you see him at other times—on the stoop or in the house? A. I have seen him talking with Mr. Tilton at the gate.

Q. Where else have you seen him? A. In that neighborhood.

Q. Going in or coming out? A. Yes, I have seen him several times, going in and out, but mostly in the street.

Q. How, Sir? A. Most frequently in the street.

Q. Near the house? A. Yes, Sir.

Q. Did you ever see him upon the stoop at any other time than that you have named? A. I have said four or five times.

Q. On the stoop? A. Either going in or coming out.

Q. How many times did you see Mr. Tilton with him. A. Only once, Sir.

Q. That was at the gate? A. That was at the gate.

Q. At what hour of the day did you see him going in or coming out? I do not speak now of the occasion when you have fixed the time. A. I cannot recollect, Sir; different times.

Q. When you were going fishing? A. It might have been on some other occasions.

Q. Do you recollect seeing him at any other time in the fore part of the day? A. No, Sir.

Q. Did you ever see anything peculiar in his demeanor whilst he was there? A. Not in the least, Sir.

Q. When you saw Mr. Beecher there early in the morning, do you know whether Mr. Tilton was there or not? A. I do not.

Q. And you have no means of ascertaining that fact? A. No, Sir.

Mr. Fullerton—[To Mr. Evarts.] You can ask.

#### CROSS-EXAMINATION OF MR. BRASHER.

Mr. Evarts—How many days have you attended as a witness in this case? A. I have been here three days to-day. I have been very much annoyed in my business. I was detained from going to Washington and kept here.

Q. To give this evidence? A. Yes, Sir.

Q. Now, Mr. Brasher, during how many years is it that the four times have happened in which you saw Mr. Beecher going into or coming out of this house? A. Several years, Sir—four or five years probably.

Q. All the while you lived there in Livingston street? A. Yes Sir.

Q. What was this year he lived in Livingston street? A. From 1864 to the present time.

Q. From 1864 to the present time? A. Yes, Sir.

Q. And in that period of time you have seen Mr. Beecher go in or out of that house four times? A. Four or five times.

Q. And the only noticeable hour of those visits was between seven and eight o'clock in the morning, was it not? A. as near as I can recollect.

Q. As near as you can fix it. Now, Sir, I think you have been unable to define the part of the Fall—the month, or any nearer time? A. Yes, Sir.

Q. And the year, have you been able to give that? It may have been in the years between 1865 and 1871, we will say, may it not? A. I don't think Mr. Tilton lived there when I first went there in 1864.

Q. Ah! 1866 he went there. Any time between 1866 and 1870, it might have been? A. Yes, Sir.

Q. And you cannot give it any nearer than that? A. No, Sir.

Q. Now, Sir, when were you first introduced to Mr. Beecher? A. I cannot recollect that; it was on board the ferry-boat, and I forget even who introduced me.

Q. Within how many years back? A. It must have been twelve or fifteen years ago.

Q. Then you had not been introduced to him before that? A. No, Sir.

Q. And had no other acquaintance with him? A. No, Sir.

Q. Now, do you know whether Mrs. Tilton was at home that morning? A. I do not.

Q. Do you know whether she was in town that morning? A. No, Sir.

Q. Do you know whether Mr. Beecher went to see Mr. Tilton or Mrs. Tilton? A. No, Sir.

Q. You don't know anything about it? A. No, Sir.

Q. Except that it was between seven and eight o'clock in the morning that you saw him on the stoop? A. I cannot mention the time. I think they asked me.

Q. And it occurred to you it was an early hour for a call? A. Yes, Sir.

Q. Did you know whether Mr. Beecher had come from Washington that morning? A. No, Sir.

Q. And had called to see Mr. Tilton on that errand? A. No, Sir.

Q. You didn't know that? A. No, Sir.

Mr. Evarts—That is all, Mr. Brasher.

Mr. Beach—Did you state the year in which this occurred? A. No, Sir.

Q. And did you say that you could not? A. I could not do it.

Mr. Evarts—He says it might have been any year between 1836 and 1870.

The Witness.—The time I lived there.

#### LEGAL HOLIDAYS DISCUSSED.

Judge Neilson—I wish to inquire of the counsel, in view of the health of the juror, whether we are to sit on Monday—what is the rule—Washington's birthday?

Mr. Evarts—I suppose we have no right to.

Mr. Beach—I suppose we have, but if it is at all for the convenience of the jurors, or anybody else, we shall make no objection.

Judge Neilson—I would like to inquire for information.

Mr. Evarts—Is not the 22d of February a legal holiday?

Judge Neilson—Made so as to commercial paper and the like. That is a matter in which we have no interest.

Mr. Fullerton—I think we had better send for the statute.

Mr. Evarts—I had an idea it was a legal holiday.

Judge Neilson—Send for the statute.

Mr. Beach—The statute making it a holiday confines it entirely to commercial paper, as your Honor sees; but I had a recollection that there was a general statute which forbade the holding of court on that day.

Judge Neilson—There is a provision inserted in the statute that the clerk's office must be closed on that day; I would like to learn how that is.

Mr. Evarts—I don't think the counsel have any wish not to sit on that day, or any special wish to sit.

Judge Neilson—Then we can determine to-morrow, from the way the juror feels.

Mr. Evarts—Yes, Sir.

Judge Neilson—Well.

Mr. Evarts—And we will look at the statute in the meantime.

Judge Neilson—Well.

#### A RESERVED QUESTION IN THE EXAMINATION OF MR. TILTON.

Mr. Beach—I now bring up the question which your Honor suggested a while ago—a reserved question in regard to the omission of the balance of the interview which was drawn out by the counsel for the defense from Mr. Tilton, between himself and his wife, in regard to her appearance before the Committee. I submitted to your Honor that either we were entitled to call from Mr. Tilton for the balance of that interview, or that the part which was taken should be struck out.

Judge Neilson—That was the question which was reserved; yes, Sir.

Mr. Beach—If your Honor, upon reflection, has formed any opinion upon the subject, why, we, of course, will be governed by it.

Judge Neilson—I think the part taken should be struck out. Let the stenographer's attention be called to the precise matter.

Mr. Beach—We don't move to strike it out. We move to give the balance, and we rely upon the rule that, they having given a part of the interview, we are entitled to the whole of it.

Judge Neilson—I think it was upon your interrogatory, and the objection that the counsel interposed was that it did not intervene soon enough, but allowed to proceed to a certain year.

Mr. Evarts—Yes, Sir.

Judge Neilson—That might occur from an inadvertency.

Mr. Beach—That is not averred by the counsel. It would be hardly consistent with the portion of the interview that was given.

Mr. Evarts—It was as short as possible; there were not over a dozen words.



Mr. Beach—Oh! that is a mistake.

Mr. Evarts—Well, I now know for the first time what you are talking about.

Mr. Beach—Your Honor does not strike out the evidence upon your own motion?

Judge Neilson—No; I had it before me in that alternative, either to retain it or strike it out.

Mr. Beach—Yes, Sir; this is an alternative submitted to your Honor's discretion, but I don't understand them to make a motion to strike out. We do not. We insist upon giving the balance of the interview.

Judge Neilson—If you had changed your mind from what it was before I will hear you.

Mr. Beach—If your Honor please, in the argument I insisted upon two propositions, first, that having permitted us to give a portion of the interview we were entitled to the whole of it.

Judge Neilson—Yes.

Mr. Beach—And, second, that they must relieve themselves from the dilemma from which their tacit concurrence in the evidence placed them, by a motion to strike out, not that we are called upon to move to strike out, and they sit silent; they don't move to strike out, and, therefore, I submit that we can go on with the witness and finish his examination upon that point.

#### ANOTHER EFFORT FOR THE HOLIDAY.

Judge Neilson—[To an officer]: Hand the statute to the counsel.

Mr. Beach—The statute is [Reading]:

"The following days, viz., the first day of January, commonly called New Year's, &c.," enumerating the 22d of February with others, "shall for all purposes whatsoever, as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, made after the passage of this Act, be treated and considered as is the first day of the week, commonly called Sunday; and when either of those days shall occur on Sunday, the following Monday shall be deemed a public holiday, and any bill of exchange, bank check or promissory note made after the passage of this Act, which, but for this Act, would fall due and payable on such Sunday or Monday, shall become due and payable on the day following such Sunday or Monday."

Mr. Evarts—Does that make it a public holiday?

Judge Neilson—This latter statute, I think, does.

Mr. Evarts—Yes, Sir; but that is only the commercial part of it.

Judge Neilson—The statute of 1873 provides that

"The office of Sheriff of the County, clerk, register, and the office of the clerk of the City Court of Brooklyn shall be closed on Saturdays at three o'clock P. M."—well, ours is four—"shall be kept open every other day in the year, from nine in the forenoon to four o'clock in the afternoon except Sundays, the 1st day of January, commonly called New Year's day, the 22d day of February, the 30th day of May, known as Decoration Day, the 4th day of July, and the 25th day of December, and any other appointed day recommended by the Governor of this State or the President of the United States as a day of fast or thanksgiving, shall be deemed and considered a public holiday for all or any service,"

—so that the clerk's office is closed on that day.

Mr. Evarts—I should think that makes it a holiday, if your Honor please.

Mr. Fullerton—Yes, Sir.

Mr. Evarts—It strikes me that makes what we call a *dies non*, though I have no desire it should be so treated.

Mr. Beach—I suppose it is so.

Mr. Evarts—We might as well know it before we adjourn.

#### THE RESERVED QUESTION ARGUED.

Mr. Beach—Now, Sir, the question before your Honor arises in this way. Speaking of a report—

Mr. Evarts—Do you say there is any motion reserved?

Mr. Beach—Yes, Sir.

Mr. Evarts—Where is that? Oh, yes, I see; 2d column of page 442.

Mr. Beach—I find that I made a motion to strike out; I made a motion to strike out after your Honor ruled that the balance of the conversation could not be given. [Reading]:

Mr. Fullerton—Why, it is my suggestion that if they deprive us of the benefit of the whole of the conversation, that the part of it already given in evidence should go out with it.

Mr. Evarts—Do you make a motion to strike it out?

Mr. Fullerton—I made that suggestion to the Court.

Mr. Evarts—Until you make the motion I won't discuss it.

Mr. Beach—Well, we do make the motion, Sir. Your Honor ruling that we can go no further with the conversation we now move to strike out that which has been given.

Mr. Evarts—To strike out the whole?

Mr. Beach—Yes, Sir.

And then followed some discussion at the close of which your Honor said: "Well, we will proceed, Mr. Fullerton reserving this until I can hear the counsel further on the subject; I would be happy to hear him of course." I think your Honor was right.

Mr. Evarts—The ruling, if he did not go any further, was that the conversation was disposed of, and then my friends made their motion to strike out, and, on that motion to strike out, Mr. Beach says: "I do not wish to detain the Court, Sir; but I will present it to your Honor hereafter." (That is, authority.) "If your Honor will permit me for a moment I think I can refer to authorities upon the subject." Then your Honor says: "Well, we will proceed, Mr. Fullerton, reserving this until I can hear the counsel further on the subject." That is the point in which the matter comes up now.

Mr. Beach—No, Sir; your Honor will perceive that in the address to the Court when I use the language which Mr. Evarts has quoted, the whole subject as to the admissibility of the remainder of the interview between Mr. Tilton and his wife, as well as the question of striking out, was opened.

Judge Neilson—That was the branch of it on which you wished to furnish authorities.

Mr. Beach—The first branch was that as to the admissibility of the whole conversation under the circumstances, and that was the argument which your Honor in kindness permitted me to present to you in review of the conclusion at which you had previously arrived, and you reserved that question for consideration at a future day.

Judge Neilson—The mere request to strike out I need not

have reserved; that was the same matter. I think the simplest way would be now to dispose of it.

Mr. Evarts—Well, I will call attention to what I consider the matter when it comes to my turn.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Well, it is your turn now. The last that I said to your Honor was:

The issue between us, Sir, cannot be avoided by the gentleman. I say that he sat still while this witness detailed a very considerable part of a conversation between himself and his wife, and that it was the duty of the gentleman, if he intended to object to any part of that interview, to interpose the objection when the narrative on the part of the witness commenced, and that it is unjust and illegal to permit the half of that conversation to be given until it reaches the point so far satisfactory to the counsel upon the other side, and when they apprehend that the remaining portion of it will be unfavorable to their interest, then to shut the mouth of the witness by an objection.

—and a few additional remarks. Now, your Honor suggested that it was possibly an inadvertence on the part of counsel, and inattention to the progress of examination. But if your Honor will direct attention to the history of the transaction, you will perceive that no such excuse as that could be given, and I submit no such excuse has been suggested by the counsel up to this time. Speaking of two reports which were prepared by Mr. Tilton—proposed reports—for the Committee, the inquiry was by Mr. Fullerton:

Q. I limit my question to the proposed report before the Committee, in evidence. Is that the short one or the long one? A. It is the short one.

Q. It is the short one. I want you to state under what circumstances the short report was prepared? A. The circumstances were these. Mrs. Tilton came home one evening, and informed me that she had been down—I beg pardon for not addressing the jury—Mrs. Tilton came home one evening about 10 o'clock and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church and I asked what Committee. She said a Committee to inquire into my letter to Dr. Bacon, to do away with the scandal, and she said that she had denied everything—blotted it all out.

It seems to me impossible that the gentleman could have been so far inattentive as not to have noticed before Mr. Tilton had arrived at that point that he was detailing an interview between himself and his wife. Then Mr. Evarts says:

If your Honor please, the occasion of his preparing this report may, perhaps, justify an allusion to what passed between him and his wife, as the basis of that, but that occasion does not give the right to detail conversation between himself and his wife.

—and so the discussion went on, Sir, until we reached the point where your Honor reserved the question, and the whole question, in all of its branches for future consideration. Now, I insist, Sir, that we have a right to give the balance of that conversation.

#### ARGUMENT OF MR. EVARTS

Mr. Evarts—I do not think there can be any doubt that they have not the right to give the conversation in evidence, *per se*; that they admit, I suppose; that they do not deny. I do

not understand them as claiming to give in evidence, the conversation between Mr. Tilton and his wife. But they have a right to ask as an inducement, no doubt, whether something did not happen in the same sense in which I endeavored to show by inducement, this morning, that this witness, Mr. Bell, had heard something. Your Honor ruled against me there, but here I think that was a right ruling, that they could show an inducement. The question is this, "I want you to state under what circumstances the short report was prepared." Now, that was not a question that I could object to.

A. The circumstances were these: Mrs. Tilton came home one evening, and informed me that she had been down; Mrs. Tilton came home one evening about 10 o'clock, and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church; and I asked what committee. She said a Committee to inquire into my letter to Dr. Bacon to do away with the scandal, and she said that she had denied everything—blotted it all out.

Then I said:

If your Honor please, the occasion of his preparing this report may, perhaps, justify an allusion to what passed between him and his wife as the basis of that, but that occasion does not give the right to detail conversations between himself and his wife.

Your Honor said: "So I think, Sir." Then they claimed that the interruption should have come a little earlier, and took the position that, "if any of it is stricken out, what has been taken in regard wholly to that interview should be stricken out." Judge Neilson says: "Well, it fixes the occasion, that is the effect of it," and my learned friends go on discussing. "The report was based upon that fact," Mr. Fullerton says. I say: "That is all in evidence. That I have not objected to. That is an occasion I do not know, of course, what did pass between this gentleman and his wife afterwards, only it is not a matter that, by fixing an occasion by an introduction to the report, gives an opportunity to go on and give a conversation between them." Your Honor says: "I think not, Sir." I say: "I think it should go no further—that is, no further in respect to the conversation." Your Honor says: "I think he can say, after giving the conversation, that, in consequence of what was said, he was led—if that was one of the circumstances that led him—to make the report." And your Honor again says: "I think he can say that, in consequence of what was communicated to him, he was led to the idea of making this report without giving the conversation; then you have it." And your Honor finally says: "Yes, Sir," in reply to Mr. Fullerton, "but we cannot take the conversation between them in my judgment." I say: "The substantive fact that she told him that she had been before the Committee, and denied all the charges, is already in. That is sufficient foundation, it seems to me." Judge Neilson said: "You will agree with the counsel in that, I think," to Mr. Fullerton, at which he expressed his surprise—"Now, Sir?" "Judge Neilson, the counsel says that the substantive fact, that she had been before the Committee and denied the charges, is already in. That covers the fact." Then Mr. Fullerton raises the question: "We either want the whole or none. They cannot wait until a part of it is out, and then object to the balance." Then your Honor decides the point, "You cannot take the con-

versation, and further, Sir." Then Mr. Fullerton says: "Then I suppose it all goes out." "Oh! no, I think it stands where it is." Your Honor says, "It appears now that she communicated the fact that she had been before the Committee and denied all the charges." Mr. Fullerton says "Yes, but I want what further she said." Then they argued about it, and about the interruption occurring at this point, that it should have occurred either earlier or later. Your Honor says: "It may be hard, Sir, but I think the objection must be sustained at the point where it was made." Then Mr. Fullerton says: "It is not a question of whether the objection should be sustained. The question is whether the whole conversation is to go out, inasmuch as the balance of it— Judge Neilson—There has been no motion to strike out as yet. Mr. Fullerton—Why, it is my suggestion." Then the motion is made.

Judge Neilson—Now, what are the words in the evidence?

## GENERAL DEBATE.

Mr. Evarts—Now, your Honor has decided that the further conversation shall not be given, and if any time was to be made to give the further conversation from the witness, it should have been made before the witness left the stand.

Judge Neilson—What are the words after the "Bacon letter," in that answer? Just close it.

Mr. Evarts—I will read it in a moment—so that the only question now is, whether some part of this answer shall be struck out.

Mr. Beach—I prefer to make my motion in my own form, and not let the gentleman make it.

Mr. Evarts—The difficulty is that the motion has been made, has been partly argued, and the further argument reserved by your Honor's permission. That is the difficulty. We have got a record—motion to strike out. The other question was not reserved and was not decided—that they should not give any further communication.

Mr. Beach—I beg your Honor to hear me upon that proposition before you decide it.

Judge Neilson—What are the words in that answer after "The Bacon letter," towards the close of it?

Mr. Evarts [Reading]:

"She informed me she had been down to a Committee of Plymouth Church; and I asked her what Committee; she said a Committee of inquiry into my letter to Dr. Bacon."

Judge Neilson—Now, Mr. Beach, I think—my impression is—the words after "Dr. Bacon" are to be stricken out.

Mr. Evarts—I will read these words, Sir:

"To do away with the scandal; and she said that she had denied everything—blotted it all out."

Judge Neilson—If that stood, they ought to have more.

Mr. Evarts—Your Honor decided that question, that it should stand as it was, and that the objection was rightly made at that point, and then entertained a motion to strike out the whole.

Judge Neilson—I am very clear now that if anything is stricken out, it is simply what occurred after the word "Bacon."

Mr. Evarts—Well, it is not for me, of course, to say how your

Honor might conclude on the subject, but the motion is to strike out.

Mr. Beach—I do not make any such motion.

Mr. Evarts—Very well, there is no question reserved. My learned friend says he does not make the motion to strike out, and there certainly is no other question reserved for them. Your Honor's ruling upon the evidence is complete, with that exception, and if the motion is not insisted upon it is wasting the time of the Court to go on with the matter.

Mr. Beach—I may, perhaps, say that I am very gratified to learn that the gentleman is getting a little careful about the time of the Court. You did, at one time, Sir, in the course of that discussion, decide that question. Afterwards you indulged me so far as to permit me to submit a short argument to your Honor, in substance asking you to review that decision.

Mr. Evarts—I do not so understand.

Mr. Beach—Well, let us see.

Judge Neilson—Also gave you permission—it is very clear in my mind also—also gave you permission to bring in authorities upon that particular question, to wit, your right to continue the part of the conversation given.

Mr. Beach—I hope the gentleman does not suppose that your Honor gave me a permission to look up authorities upon a motion to strike out.

Judge Neilson—No, it was not that.

Mr. Beach—No, I think not.

Mr. Evarts—I don't know why he should not. It was the only motion pending and the only thing you were asking.

Mr. Beach—Well, the gentleman can make that assertion as repeatedly as he pleases; the record is there, and the last words that were said to your Honor before you granted me the opportunity of presenting authorities were said by myself, and they express themselves, however awkwardly. I read a portion, Sir; I will read the balance of what I said:

I say it is untimely and inadmissible, but if under the ruling of your Honor the objection is to be sustained that the whole conversation should be given; that it cannot thus be mangled and misrepresented in its true scope and effect to place the party who offers it in a disadvantageous position. If your Honor will permit me, Sir, a moment, I think I can refer to authorities upon the subject.

—that is, upon that subject of interrupting the conversation at that stage of its development.

Judge Neilson—Certainly.

Mr. Evarts—On the motion to strike out?

Mr. Beach—No, Sir; it is not on the motion to strike out.

Judge Neilson—The instance is where a Judge, if I understand him right, acts on a first impression—announces that impression and yet is willing to be corrected and hear authorities, if the counsel wish to introduce them.

Mr. Beach—I suppose so, Sir. Perhaps it was impertinent in me to ask your Honor to reconsider the decision which you had made, but your Honor indulged me in doing it, and permitted the question to be reconsidered.

Judge Neilson—I think it is the duty of the counsel to correct me when I fall into an error; that is what they are here for.

Mr. Evarts—The difference between us is as to what the record shows, as to what your Honor did and what was reserved.

Now, I understand the matter to be finally disposed of, unless they move to strike out that. So far as the question of introducing further evidence was concerned it was ended. We drove them to a necessity then of an alternative to get it out if they could. They were arguing that question and proposed to give authorities on the striking of it out.

Judge Neilson—I did not so understand it.

Mr. Everts—And as a part of that argument that it ought to be all in or all out; that I agree.

Judge Neilson—Well, they claim it ought to be all in—the whole conversation.

Mr. Everts—That your Honor had disposed of finally.

Judge Neilson—Well, I was willing to hear it further.

Mr. Everts—And when your Honor said it ought to go out, then your Honor said there was no motion to strike out. Then they made the motion to strike out, and that was reserved.

Mr. Beach—And the counsel insists in chopping in two the course of ruling upon the part of your Honor on this subject just as he does in chopping in two this conversation. He does not consider the last portion of the proceedings upon that topic in which your Honor reserved this primary and first question. And to show your Honor that you had certainly a different view of the question which was pending before you when Mr. Tilton's examination was closed apparently, and he was about leaving the stand, you then suggested that here was a question reserved and to be decided in regard to the evidence of Mr. Tilton. If it was a mere motion to strike out we did not want Mr. Tilton any further on the stand. But the motion was as is apparent from the suggestion which your Honor then made as you understood it—the motion was as to the propriety of our proceeding to give this evidence.

Judge Neilson—So I have understood it. Look at the words in the answer which come after "Bacon."

Mr. Everts—Does your Honor understand there was a reservation of a right to examine Mr. Tilton further?

Mr. Beach—Why, yes, Sir; when your Honor made that suggestion, why, then, we said we would call Mr. Tilton at a subsequent time upon that point.

Mr. Everts—At that time.

Judge Neilson—Look at that after the word "Bacon" and see what you think of those words.

Mr. Beach—There are so many talking in my ears that I cannot hear your Honor.

Judge Neilson—At the close of that answer read the last line or two and see what it is.

Mr. Beach—At the close of Mr. Tilton's answer?

Judge Neilson—Yes, Sir; after the word "Bacon," I think, if the answer stands down to that point and the rest is struck out.

Mr. Beach [reading]: "She said a committee to inquire into my letter to Dr. Bacon."

Judge Neilson—Now, stopping at that point, I think the rest could be stricken out; that qualified it somewhat.

Mr. Beach—Well, but I don't move to strike out; especially I don't move to strike out a part of it; I am not moving to strike out, your Honor; I am asking you to permit me to give the balance of this conversation.

Judge Neilson—I understand that.

Mr. Everts—That question has not been reserved. It was finally postponed, and the witness is off the stand.

Mr. Beach—Well, your Honor has three or four times overruled the gentleman on that point, and said your understanding was otherwise, and that is enough for me.

Judge Neilson—Well, that settles that point. Now, I think that those last words are struck out.

Mr. Beach—Do you strike it out on your own motion?

Judge Neilson—No, I had a motion before me the other day, which I held.

Mr. Beach—But I moved to strike out the whole. I did not move to strike out that part.

Judge Neilson—If you move to strike out the whole, I can strike out a part.

Mr. Beach—I hope your Honor will not do that, because if any part of it stands we may want the whole.

Judge Neilson—Suppose you read it now.

Mr. Beach—It is the short one:

"I want you to state under what circumstances the short report was prepared? A. The circumstances were these: Mrs. Tilton came home one evening, and informed me that she had been down—I beg pardon for not addressing the jury—Mrs. Tilton came home one evening about 10 o'clock, and informed me—this was the 6th or 8th of July—informed me that she had been down to a Committee of Plymouth Church, and I asked what Committee. She said a Committee to inquire into my letter to Dr. Bacon."

Judge Neilson—Now, they are stopped at that point, that being retained. What follows becomes sensible, because inquiry is made whether that is the first time he learned there had been a Committee at all. Strike that out, and it would leave what remains from their interrogatories uncertain, I think, and confused.

Mr. Beach—Yes, Sir; but still the question comes up, whether these gentlemen can interfere in an examination at a point where so much of the conversation had been given by their tacit admission.

Judge Neilson—Yes; my trouble is, that I cannot persuade myself that a conversation with Mrs. Tilton ought to be received; but a part of it has been received.

Mr. Beach—Then the whole of it ought to go out, or the whole of it come in.

Judge Neilson—See how the effect is upon the subsequent evidence. The effect is bad upon the subsequent evidence. It would introduce confusion.

Mr. Beach—No, I think not.

Judge Neilson—If part of that is retained, the rest is unintelligible.

Mr. Beach—There is no subsequent evidence that has a relation to this, because we immediately go on with another subject.

Judge Neilson—Yes; the subject of when he learned there was a Committee; and he says that is the first time he learned it. You go on with your interrogatories as to when he first learned there was a Committee, and he explains that is the time he learned it—that evening.

Mr. Beach—Why, we did not. Your Honor is mistaken in

that. That is another breach of the examination, and not connected with this at all. The precise point presented to your Honor is, whether these gentlemen having permitted us to give so much of a conversation, without objection, can interrupt it at the point which they desire and shut out the balance.

THE RESERVED QUESTION RULED OUT.

Judge Neilson—Now, if it were not a conversation between husband and wife I should adopt your rule; but here is this additional restraint, which is very serious, and which in ordinary cases does not follow.

Mr. Beach—Why, Sir, the conversations between Mr. Tilton and his wife have been given over and over again, on their examination.

Mr. Evarts—Well, that is not—

Mr. Beach—Certainly so.

Judge Neilson—At your leisure, strike out the entire answer, or that part of it which follows the words "Dr. Bacon."

Mr. Beach—If your Honor please, I hope you will not assume to strike out evidence which we have given, when we do not make a motion to strike it out, and when the other party does not make a motion to strike it out.

Mr. Evarts—There is nothing pending; certainly there is no motion to strike out.

Mr. Beach—Well, I am pending.

Judge Neilson—I don't like those last words. If you think they are not serious let them stand.

Mr. Beach—Well, I would rather let the answer stand as it is than have any portion stricken out.

Judge Neilson—Well, let it stand as it is.

Mr. Beach—Well, does your Honor rule that we are not at liberty to give the balance of this conversation?

Judge Neilson—Yes, I think I am obliged to. I have thought of it a good deal.

The Court then adjourned until 11 o'clock on Friday morning.

THIRTIETH DAY'S PROCEEDINGS.

MRS. MOULTON SWEARS TO CONFESSIONS BY MR. BEECHER.

THE DEFENDANT SAID TO HAVE DETERMINED TO COMMIT SUICIDE—MRS. MOULTON'S EFFORTS TO DISUADE HIM—HER CONFIDENCE IN HIM LOST WHEN HE TURNED AGAINST HER HUSBAND—MRS. TILTON'S ALLEGED ADMISSIONS,

FRIDAY, Feb. 19, 1875.

As was expected the day before, Mrs. Francis D. Moulton was the first witness called to-day, but unexpectedly she was the only witness of the day. The lady gave her name as Emma C. Moulton, and said that she had been connected with Plymouth Church since 1858. She had known Mr. Beecher personally since 1871, and during four years he had called at her house frequently at all hours of the day, and sometimes late at night. Mrs. Moulton's

testimony related mainly to interviews between herself and Mr. Beecher, and between herself and Mrs. Tilton. The first one of importance that she recalled was in 1871, when, as the witness described the incidents, Mr. Beecher came into her parlor and took her hand, saying, "Do you know anything of this great sorrow of my life?" She replied that she did, and a very brief conversation followed. The next interview of importance that the witness related took place on June 2, 1873, and was three or four hours in duration. Mrs. Moulton gave her account of the details of this interview without hesitation and without being once assisted or interrupted by the counsel. The substance of it was that Mrs. Moulton informed Mr. Beecher that Mr. Tilton had threatened to publish the so-called letter of apology, whereupon Mr. Beecher said that if Mr. Tilton did that, it would be useless for him (Mr. Beecher) longer to live the thing down. Mrs. Moulton advised the Plymouth pastor to confess, but he said that he could not; he would die first. Then, according to Mrs. Moulton, Mr. Beecher said: "I have resolved to take my life. I have prepared a powder which I have at home on my library-table, which I shall take and sink quietly out of life."

The witness testified that at another time she said to Mr. Beecher, "I don't see how you can stand in your pulpit and preach to young men against the sin of adultery when you are implicated in it yourself." To this Mr. Beecher replied: "Having suffered what I have, and passed through the experience I have, I feel more fit for it than ever before." Mrs. Moulton's next important interview with Mr. Beecher was on July 13, 1874, after the call for the Plymouth Investigating Committee, when, according to the witness, Mr. Beecher denied having called the Committee. She states that she told Mr. Beecher that Mr. Tilton proposed to take his case into court, whereupon the preacher told her that Mr. Tilton had no case to take into court; he had condoned his wife's offense, and lived five years with her. Mr. Beecher said, according to Mrs. Moulton, "Let them do their worst, they can't convict me."

The witness also related conversations with Mrs. Tilton, at which the latter said that if she were called before the church, she would sacrifice her husband and deny everything. She excused Mr. Beecher, and assumed the blame herself, while Mr. Beecher insisted that it was all his fault.

It was nearly noon when Mr. Evarts began his cross-examination. The main portion of the testi-

mony elicited by him was a repetition of the interviews already given, every detail being entered into with extreme minuteness. Among other things called out were the facts that the counsel for the plaintiff take their meals at the house of Mr. Moulton, and that the witness has known since last July that her testimony would be wanted in this case. Among other questions, Mr. Evarts asked whether Mrs. Moulton ever told Mr. Beecher that Mr. Tilton was treacherous and hated him (Mr. Beecher). She did not recall those words, but thought she might have said that Mr. Tilton hated Mr. Beecher. She admitted that she told Mr. Tilton that if he turned upon her husband he should never enter her house again. Mrs. Woodhull's visits at Mr. Moulton's house were made a topic for examination upon both sides; Mrs. Moulton testifying that she allowed Mrs. Woodhull to come to the house to keep her still, while Mr. Evarts endeavored to show that there was a friendship towards Mrs. Woodhull and sympathy with her views. The cross-examination was not ended at the hour of adjournment, and Mrs. Moulton will take the witness-chair on Tuesday morning.

### THE PROCEEDINGS—VERBATIM.

#### TESTIMONY OF MRS. EMMA C. MOULTON.

The Court met at 11 a. m., pursuant to adjournment. Mrs. Emma C. Moulton was sworn on behalf of the plaintiff.

Mr. Evarts—If your Honor please, we have not quite as much room as we need for the convenience of the counsel on our side.

Judge Neilson—Gentlemen will endeavor to make more room there.

Mr. Fullerton—Mrs. Moulton, where do you reside? A. 49 Remsen-st.

Q. You are the wife of Francis D. Moulton, I believe? A. Yes, Sir.

Q. And how long have you resided at 49 Remsen-st.? A. Since May, 1871.

Judge Neilson—I am requested by a note from the reporters to ask that counsel will consent that the answers be repeated, so that they will get the evidence. See if it is agreeable.

Mr. Beach—I think Mrs. Moulton's voice will be audible, Sir, when she gets a little accustomed to the strangeness of the place.

Mr. Fullerton—The house will be quiet in a moment, Sir. I think she will be able to be heard.

Judge Neilson—Well.

Mr. Fullerton—What connection, if any, have you had with Plymouth Church? A. I have been connected with Plymouth Church since 1858.

Q. As a communicant? A. Yes, Sir.

#### MR. BEECHER'S INTIMACY WITH THE MOULTONS.

Q. How long have you known Mr. Henry Ward Beecher? A. I have only known him personally since 1871.

Q. Under what circumstances did you make his acquaintance? A. He came to the house to see Mr. Moulton.

Q. A little louder. A. He came to the house to see Mr. Moulton in reference to this case.

Q. When was it that he first came to the house in 1871, or the first time that you saw him there? A. I don't remember the first time that I saw him, but it was early in 1871.

Q. Were you absent any part of 1871, the early part of the year? A. I was in Narragansett.

Q. At what time did you go to Narragansett? A. I went down to spend the holidays; before Christmas I left home, and remained until the 2d of January.

Q. And did you return to Brooklyn on the 2d of January, 1871? A. Yes, Sir.

Q. And how soon after that was it that you saw Mr. Beecher at your house, 49 Remsen-st.? A. During that week, I think.

Q. During the first week? A. During the first week; yes, Sir.

Q. Now, from that time on, Mrs. Moulton, state whether Mr. Beecher visited at your house, and how often, as near as you can recollect? A. Sometimes twice a day, two or three times a week; sometimes every day in the week, when he has been in town.

Q. And at what hours of the day? A. At all hours; before Mr. Moulton was up in the morning; after he had retired at night; before the Friday night prayer meeting; after his Sunday evening service; after his morning service on Sunday, and at all hours of the day. I have known him to come to the house as late as 11 o'clock at night.

Q. With whom did he confer? A. With Mr. Moulton.

Q. Was that so in all cases, or did he sometimes confer with you? A. Sometimes with me.

Q. How early did he talk with you when calling there? A. With reference to this case?

Q. With reference to anything? A. I saw Mr. Beecher when he first came to the house, but the first time that he spoke to me of this case was, I think, in the Spring of 1871.

Q. Were you absent at any time after you returned from Narragansett in the Spring of 1871? A. I don't remember that I was.

Q. I will call your attention to Mr. Moulton's sickness. A. We were South for six weeks.

Q. Do you recollect what time you went and what time you returned from the South? A. I think we went in the latter part of March, some time in March, and returned in April some time. I have forgotten the date.

Q. How soon after you returned from the South did Mr. Beecher call at your house? A. I think the same day or the day following, as nearly as I can remember; very soon after.

Q. Did you have any conversation with Mr. Beecher soon after your return from the South? A. I don't remember that I had any very soon after.

Q. Well, when did you have the first conversation with Mr. Beecher in regard to any difficulty that he spoke of? A. I

don't remember whether it was before or after I returned from the South, but it was in the Spring of 1871, I think, late in the Spring.

MR. BEECHER DESCRIBED AS AT THE CONFESSIONAL.

Q. Please state, Mrs. Moulton, what he said to you upon the first occasion when his troubles were the subject of conversation?

Mr. Evarts—Well, the conversation we want, as it was given.

Mr. Fullerton—That is what I shall give.

The Witness—He was waiting in the parlor for Mr. Moulton, and I went into the room. He took my hand and said: "Do you know anything of this great sorrow of my life?" and I said: "Yea." He said: "Then Frank has told you the facts, has he?" I said: "Yes." He said: "I am very glad that he has; I am very glad that there is one woman in this world to whom I can go and talk of my troubles without reserve." As nearly as I can remember, that was all of the conversation at that time.

Q. You were in the parlor then? A. Yes, Sir.

Q. And where was Mr. Moulton then? A. He was engaged with some one in the front room, up-stairs.

Q. And where did Mr. Beecher go to after this conversation? A. He went up to see Mr. Moulton.

Q. Did you see him again that day? A. I don't remember that I did.

Q. Did you see him after that? A. Yes, Sir, frequently.

Q. Where? A. In our house.

Q. Do you recollect of having any further conversation with him? A. Yes, he need often to speak to me about it.

Q. What would he say when he came to the house to see Mr. Moulton, when he addressed you?

Mr. Evarts—Well, your Honor, I object to a general question—"what would he say."

Mr. Fullerton—I have not asked what would he say. What did he say at any time when he came to your house to visit Mr. Moulton?

Mr. Evarts—Well, some particular time.

Mr. Fullerton—Well, it will be some particular time when she relates it. A. He would ask me if Mr. Moulton was still hopeful that this story might be kept quiet. He would ask me also the condition of Mr. Tilton's mind towards him—if he was friendly, or if he was angry or annoyed, or—that generally was his questions.

Q. Do you recollect anything that occurred on the first of June, 1871? No, I beg pardon; not that date, but about that date; any conversation that you had with Mr. Beecher? A. Not in 1871.

Q. Well, the next conversation, then, that you can recall with Mr. Beecher. State, if you please, when it was and what was said between you? A. The next conversation that I remember of any length was, I thought, in 1873.

Q. 1873. Very well. Then I will come down to 1873. You may state what occurred at that conversation to which you now allude. Fix the date as near as you can, Mrs. Moulton? A. I

think it was on the 2d of June, 1873. Mr. Tilton felt that he must publish—

Mr. Evarts—No matter about Mr. Tilton's feelings.

Mr. Fullerton—What did you say to Mr. Beecher or what did he say to you? A. Mr. Beecher said to me that if Mr. Tilton published his letter of apology he felt that it was useless trying any longer to live this down. He came in Monday morning. Mr. Moulton was still at the house, and after conversing with him for a few moments, he said, "I came to see your wife, not you, this morning."

MR. BEECHER HOPELESS AND DESPERATE.

Q. Whom did he address when he said that? A. He addressed Mr. Moulton; and they conversed for a short time together, and Mr. Moulton left the house and went to the office. Mr. Beecher lay down on the lounge, and I gave him a cover; and he said: "This is probably my last conversation with you. I feel that if Mr. Tilton publishes my letter of apology, it is useless for me try any longer to live this down. I have never felt that I had much to hope for from Theodore; he has been faithless, he is a faithless man; he seems to lose sight of the fact that in striking at me, or in stating the truth concerning me, he sacrifices his wife, and if that letter of apology is published I might as well go out of life; it is useless trying to live it down." And I said: "Mr. Beecher, there is something better for you to do than that. I think that would be a very cowardly thing for you to do. Go down to your church and confess your crime; they will forgive you." He said: "No, I cannot do that; for the sake of the woman who has given me her love, for her children, for my family, for my church, for my influence throughout the whole world, that I can never do. I will die before I will confess it." And I said: "Sooner or later the truth in this case will come out. It is much better that you should take your case in your own hands, and state to your church—give to them a confession such as you could make to them, and I am sure they would forgive you." He said: "No; that I cannot do; I should be—my children would despise me. I could not go back to my home, and my church would not forgive me, they would not deal with me as you have done. There would be nothing left for me to do. My work would be finished. It would be better that I should go out of life than to remain any longer in it." And I said: "You could write for your paper. You could go to your farm and write." He said: "No; if they would not listen to hear me preach, they certainly would not read anything that I should write. Besides, my position in life is that of a spiritual and moral teacher. If I can no longer hold that position, then there is nothing left for me, and I am resolved to take my life. I have a powder at home on my library table which I have prepared, which I shall take, and shall sink quietly off as if going to sleep, without a struggle. I haven't any desire to live; I have nothing to live for; in fact, I pray for death as a happy release from all my trials and trouble; and I feel that if I publish now a card in *The Eagle* it will only be a temporary relief; that Mr. Tilton is likely to break out again at any other

time, and I feel that physically and mentally I am unable any longer to bear this strain, and I probably shall never come to see you again." And I felt very much grieved at it and begged him to go down to the church. I said, "Mr. Moulton will still stand by you; and, no matter what comes to you, I will always be your friend; and I am convinced that the only way out of this trouble, for you, is by telling the truth." He said that he would come to see me on the day following; that he had some gifts that he wished to dispose of—some little mementoes for different people, something which he wanted me to bear to Elizabeth, and something for different friends, with messages which he wanted me to bear for him; and he would come on the day following to see me. It was a long interview; Mr. Beecher was very much excited; he told me, with tears streaming down his face, what he had suffered; that he had suffered the tortures of the damned; that he was obliged to go home and wear a cheerful smile; that when he appeared in his church, he must appear at his best; that the slightest indication of weakness was a confession on his part, so that really I was the only person to whom he could come and act his natural self; to whom he could unburden his whole heart's trouble.

Q. How long did that interview last, Mrs. Moulton? A. I think for three or four hours.

Q. If you can recall anything else that was said during that interview, you will please state it? A. I don't remember of anything that occurred—.

Q. What time in the day did he leave? A. It was near the hour for lunch.

Q. Did you see him soon after that, Mrs. Moulton? A. Yes, Sir; I saw him the day, or day following.

Q. What took place when you next saw him? A. He said that he was very much depressed on that day, but that he felt more hopeful.

Q. Did he say anything about the card in *The Eagle*? A. I don't remember that he did.

Q. What, if anything, did he say in regard to the publication of the "Letter of Apology," so-called, in either of these interviews; if he said anything that you have not related, you will please state it?

Mr. Evarts—You mean either of these interviews in June?

Mr. Fullerton—Yes, Sir.

The Witness—I don't remember, at that time, that he spoke to me of the "letter of apology."

Q. Well, recurring again to this interview that took place a few days after this long conversation, can you repeat anything else that he said at that time? A. I don't remember just at that time.

Q. Did he ever speak to you in regard to Mrs. Tilton? A. Yes, Sir.

Q. State, please, what he said in regard to her?

Mr. Evarts—At either of these interviews?

Mr. Fullerton—At any time.

Mr. Evarts—The time should be fixed.

The Witness—He nearly always spoke—

Mr. Fullerton—Well, I will get the time, Mr. Evarts.

The Witness—He nearly always spoke to me of Elizabeth, of his great love for her; wanted me to respect her, and to have regard for her; go and see her; try and comfort her and console her; see if there was anything that he could do for her; if she was in need of anything; that I, a woman, knew what women needed and wanted most.

Q. Did you ever carry any messages from him to her? A. Yes, Sir.

MRS. TILTON TAKES ALL THE BLAME ON HERSELF.

Q. And from her to him—if so, state what those messages were? A. I repeated to Mr. Beecher a conversation which I had with Mrs. Tilton. She said that she felt very sorry for me; even more sympathy for me than for herself, because that I had lost faith in Mr. Beecher; because I was unable any longer to attend the Church; she begged me to go back to the Church and believe in Mr. Beecher; and I said, "Elizabeth, how can you ask me to go back to the Church? How can you ask me to take the communion from his hands knowing what I do of his life?" And she said: "I want you to believe in him; he is a good man; it was not his fault; he is not responsible for the crime; I am the one that is to blame; I invited it." And I said: "I think that I might hear Mr. Beecher preach, and perhaps derive some benefit from his sermon; but I can never go back to the Church with the same faith that I had in him years ago."

Q. Did you report this conversation to Mr. Beecher? A. I did.

Q. How soon after the conversation occurred? A. Perhaps a day or two after; I don't exactly remember how soon.

Q. Now, had you any further conversation with Elizabeth that you reported to Mr. Beecher? A. I had.

Q. State, if you please, what it was. A. I think it was at the time that Mr. Beecher was—Mr. Tilton appeared down at the Church—that I called to see Elizabeth and I said: "If you are called before the Church, what are you going to do to save Mr. Beecher?" She said: "I shall sacrifice my husband and deny everything." I said: "Will you allow your husband to go down with the truth?" She said: "I think I should be justified in stating falsely under the circumstances; I think, for the sake of Mr. Beecher, for the sake of the influence on the world, for my own position, for my children, I think it is my duty to deny it."

Q. And did you report this to Mr. Beecher? A. I did.

Q. What reply, if any, did he make? A. He said, "Poor child, she is trying to repair the wrong she has done in confessing it—in confessing her sin. But it is too late."

MRS. TILTON REPROACHED FOR CONFESSING.

Q. Did he say anything to you in respect of the length of time that Elizabeth had permitted him to be in ignorance of the fact that she had confessed? A. He did.

Q. What did he say upon that subject? A. In talking with me one day, he said that it was very cruel that Elizabeth should have confessed at all; it was very unjust to him; he could not understand it; he didn't know



why she should have done it. But that she should have allowed him to visit her for six months after she had confessed to her husband, was even a greater mystery to him—subjecting him to unpleasant greetings and meetings with Mr. Tilton; that he could not understand why she allowed him to visit her house without having told him that she had confessed to her husband.

#### MR. BEECHER BEGS MRS. MOULTON TO RETURN TO PLYMOUTH CHURCH.

Q. Did you ever say anything to Mr. Beecher about returning to the Church? A. I did.

Q. What did you say to him upon that subject? A. I told him how much I missed the Church, the influence of his sermons; I had been a member of his Church for a great many years, and I had believed in him, and it was very hard to be deprived of hearing him; but knowing what I did of him I could not go back to the Church with the same feeling. He used to beg me to come to church; he said if I knew what a comfort it was to him to see my face in the congregation, that I would certainly come; that he felt that he had repented of his sin and been forgiven; that he was better fitted now than ever before in his whole life to do great good. I once said to Mr. Beecher: "I don't see how you can stand in your pulpit and preach to young men against the sin of adultery, when you are implicated in it so deeply yourself," and he said: "Having suffered what I have; having passed through the experiences that I have, I feel that I am better fitted than ever before to preach!"

#### MRS. MOULTON'S MEDIATION.

Q. Did he ever, in any conversation with you, say anything in respect to Elizabeth's tendency to talk about this thing? A. He did.

Q. State what he said upon that subject? A. He said that Elizabeth was continually making mistakes; that she meant well, but that she had not the judgment or the discretion—she allowed everybody to talk to her about it; that if she could only go away, or if some plan could be adopted by which Elizabeth could be kept quiet—that she would not be allowed to talk with anybody about it; he thought that it was better that she should never speak to anybody, and he often said to me, "When you see Elizabeth tell her never to speak with anybody concerning this case; to refuse to talk with anybody about it."

Q. Did he ever send any message to her by you as to her demeanor in her household, and what she should do there? A. Yes, Sir.

Q. State, if you please, what that message was? A. I once repeated to Mr. Beecher a conversation that I had had with Mrs. Tilton when she felt that she could no longer remain with Mr. Tilton; that he was continually referring to this sin which she had committed; that he would not let it die out; that he would not give her an opportunity—

Mr. Evans—Mrs. Moulton, is this what you said to Mr. Beecher?

Mr. Fullerton—So she states.

Mr. Evans—I ask her that.

The Witness—Yes, Sir.

Mr. Fullerton—I will ask her.

The Witness—And that she felt that she could not live with him any longer; that she was going home to live with her mother. Mr. Beecher said: "Tell Elizabeth for me that for my sake she must continue to live with Theodore, to be to him a good wife, to make his home happy and as attractive as possible. I know it is hard, I know she has much to endure, but she must do it for my sake, for her own, and for the children. I have a family; she has nothing to hope for with me, and the only way in which she can ever see me is by living with Theodore, and being to him a true and good wife."

Q. State, if you please, again, what reasons she gave for wishing to leave her husband? A. Because Mr. Tilton was referring to this sin which she had committed.

Q. And would not permit her to do what? A. He would not permit her to live a better life with him.

#### LETTERS INTRODUCED.

Q. Now, Mrs. Moulton, look at the paper I show to you and say whether you ever saw it before? A. Yes, Sir.

Q. From whom did you receive it? A. Mr. Beecher.

Q. When, as near as you recollect? A. I think in June.

Q. Of what year? A. 1873.

Mr. Fullerton—I propose to read that in evidence. [Paper handed to defendant's counsel.]

Mr. Fullerton [Reading]:

MY DEAR MRS. MOULTON: Don't wake Frank up to give him the inclosed, but as soon as he is awake and ready, please hand it to him. What a glorious morning! The earth is not far from Heaven to-day. I am tranquil and hopeful, but not of men, but of God.

Truly yours, with great respect and affection,

H. W. BEECHER.

Mr. Beach—The jury don't hear you—that last sentence.

Mr. Fullerton read the letter again, beginning, "What a glorious morning!"

[Letter marked "Exhibit 106."]

Q. Now, Mrs. Moulton, please look at the paper that I show you, which is Exhibit 23, and say whether the inclosure spoken of in the letter to you was that letter? A. Yes, Sir.

Mr. Fullerton—That has already been read in evidence; it is a letter of June 1st, 1873, and is marked Exhibit 22.

Q. Now, Mrs. Moulton, what I wish to ask you is, whether this letter which I have shown you was received before or after the long conversation in the parlor which you have already related? A. The long conversation was held up-stairs.

Q. Well, was it before or after the receipt of this letter? A. It was the Monday after.

Q. Now, if in any conversation with Mr. Beecher respecting this trouble he took blame upon himself in any way, I wish you would relate it? A. When I repeated to him my conversation with Mrs. Tilton, when she said it was not Mr. Beecher's fault, it was hers, he said: "It is not her fault—it is my fault; I am to blame; Elizabeth was not to blame; she is a good woman and I want you always to love her and to respect her."

Q. Whatever he may have said in any conversation with re-

gard to his affection for her, or hers for him, if there is anything on that subject which you have not stated, please to state it now? A. I don't remember any particular conversation; Mr. Beecher always spoke to me of his love for Elizabeth.

#### MRS. MOULTON AVERSE TO KNOWING MRS. WOODHULL.

Q. Then I call your attention to Mrs. Woodhull. What occurred between you and Mr. Beecher, if anything, in respect to that woman? A. I was very much opposed to have Mrs. Woodhull at my house, but Mr. Tilton and Mr. Moulton both deemed it best and necessary for the interest of all concerned that she should come, and I one morning spoke to Mr. Beecher, and said: "I am very much annoyed because Mrs. Woodhull is coming to the house, but Frank and Mr. Tilton, both of them, think it necessary and best." I said: "What do you think about it, Mr. Beecher?" He said: "I don't see how it can possibly do you any harm; I think it is a duty you owe to Frank to coöperate with him in trying to keep the story quiet."

Q. How soon after that conversation did she come? A. I do not remember how soon after.

Q. How frequently did she come to your house? A. I cannot tell how many times she has been to the house.

Q. State your object in permitting her to come, and in entertaining her?

Mr. Evarts—That I object to. It does not appear that she had any control of the matter; it was her husband's house and his directions. In the second place, it does not appear that she did permit her. What her object is has nothing to do with the matter in any way.

Mr. Fullerton—I think it is a proper question, Sir.

Judge Neilson—I think she may answer the question.

Mr. Fullerton—Now, you may answer.

The Witness—Please to put your question again.

#### THE OBJECT IN TOLERATING FAMILIARITY WITH MRS. WOODHULL.

Mr. Fullerton—What was your object in consenting or allowing Mrs. Woodhull to visit your house, and in entertaining her? A. Because she knew all the facts in this case. Mr. Moulton was doing his utmost to keep it quiet. He thought I knew nothing against her—which I certainly did not know anything personally against her; I knew only of her as I had heard from the public—the public opinion with regard to her; and he thought that I ought to allow her to come to the house; that they were treating her in a friendly way in order to hush up the story, if possible.

Q. At that time, had she threatened to publish the story? A. Yes, Sir.

Q. Do you recollect the publication in *The New-York World*, of Mrs. Woodhull, threatening to make the expose? A. Yes, Sir, I have a faint recollection of it.

Q. And this conversation was after that, was it? A. Yes, Sir.

Q. Now, did you do anything else to exert a kindly influence

with Mrs. Woodhull besides receiving her at your house? A. Do you refer to visiting her?

Q. Yes. A. Yes, Sir; I went to Mrs. Woodhull's house, and brought her to my house three or four times.

Mr. Evarts—Went to Mrs. Woodhull's house does she say?

Mr. Fullerton—Yes, and brought her to her house three or four times. [To the witness.] Now, Mrs. Moulton, was that with the same object? A. With the same object.

Q. And at whose request did you do it? A. Sometimes—always, I think, at Mr. Moulton's.

Q. Did you take any one with you to her house? A. Yes, Sir.

Q. Whom did you take? A. The first time I visited her I went with Mr. Tilton; Mr. Moulton was sick and unable to go, and he asked me to go; the next time I took Mr. Moulton's mother; the third time I took my son Frank.

Q. And what was the demeanor of Mrs. Woodhull when she visited your house, and when you visited her house? A. So far as I knew, she always behaved in a ladylike manner.

Q. So far as you observed? A. So far as I observed.

Q. And your visits to her house, I understood you, were with the same object—to exercise an influence over her, to prevent this publication that she had threatened? A. Yes, Sir.

#### THE FIRST COLDNESS BETWEEN MR. BEECHER AND MR. MOULTON.

Q. Do you recollect an occurrence some time early in July, when the statement was talked of, in 1872—1874? A. 1874?

Q. Yes? A. Yes, Sir.

Q. What occurred then? A. This last July do you refer to?

Q. I refer to the 13th of July, when the contemplated statement was under discussion? A. May I be allowed to state the particulars?

Q. Yes, state the particulars.

Mr. Evarts—Well, what occurred with Mr. Beecher?

Mr. Fullerton—What occurred between yourself and Mr. Beecher upon that subject? A. Mr. Beecher came to our house on the 13th of July, I think; it was soon after the Bacon letter; Mr. Tilton had published a card in *The Eagle*, saying that before ten days from that time he would make a statement of the case to the public. Mr. Beecher came to the house, and I met him and took him to the study, and I said: "Mr. Beecher, what have you done that has offended Frank? He is very angry with you." He said: "I don't know." I said: "I am very sorry. Is he not angry because you have called the Committee?" He said: "I did not call the Committee; my people called the Committee; I certainly could not object to an investigation." I said: "I don't know what has happened, but Frank is very angry with you, and I am very sorry for it." He said: "I am very sorry, and I have intrusted myself wholly to Frank throughout the case; I have been willing to be led by him, sometimes against my better judgment; but with relation to the Church, I do not consider that he has anything to do with my non-agreement of the Church affairs. Besides, I could not possibly object to have an investigation

when my people wanted it." Soon after Frank came into the room, and I went down-stairs. He went up to Frank, who read to Mr. Beecher a letter that he proposed to read to the Committee. When I went up-stairs I asked Mr. Beecher into the front room, and Mr. Moulton said to Mr. Beecher, in my presence: "Then you think my statement for the Committee an honorable one?" Mr. Beecher said: "I do; perfectly so."

#### MR. BEECHER HOPEFUL AND DESPERATE.

Mr. Moulton left and went down stairs, and I said to Mr. Beecher: "Do you know what Mr. Tilton proposes to do—what he proposes in *The Eagle*, to-night." He said: "No." I said: "He proposes to give a statement of the facts to the public in ten days; and if so, it will ruin you." He said: "How so?" I said: "He proposes to publish your written confession." He said: "I have never put any confession in writing." I said: "But your letter to Frank." He said: "If that letter is published, it will be a breach of confidence." I said: "I don't know anything about that, but I think if the statement is published, as Mr. Tilton proposes, it certainly will ruin you; and if he fails in this he will take the case into Court." He said: "He cannot take the case into Court; he has forgiven his wife's offense, and has lived with her four years; he cannot convict me." I said: "He will—he can convict you." And I said: "I don't think it is even now too late for you to go down and confess to the church; there is no other way out for you; and if you had done it when I first advised it, it would have been better." He said: "I don't consider it so; I think your advice from first to last has been bad; the public are not prepared for a confession such as I would have to make." I said: "If you had confessed it then, you would have been better off. Now you have the original crime and four years of perjury and lying to an awer for." He said: "I never will confess it; I will die before I confess it."

Q. Do you recollect anything else that occurred at that interview? A. He was very angry; he said that he had always regarded Theodore as a faithless man; that he had never felt he had much to hope from him; but he said: "Now I have made up my mind to let them come on and do their worst; they cannot convict me."

Q. Did he ever speak of his brothers and sisters in any way; and if so, how? A. After a conversation with Mr. Moulton in the front room, and after saying good-bye to us, he came to me and took my hand in his and said: "You are the best friend I have in this world; you are dearer to me than any sister I have, for you, knowing all the truth, knowing that I am guilty, still stand by me, while they believe me innocent."

Q. Do you recollect when that conversation was? A. I cannot recollect the date.

Q. Did he give any reason why he would rather talk to you than to them? A. Because I knew the truth—because I knew all the truth.

Q. Did you ever make an observation to Mr. Beecher to this effect, that you always supposed a woman was just as much to blame as a man, and if so, what reply did he make to that?

Mr. Evarts—I object to a leading question of that kind to his own witness.

Judge Neilson—Perhaps the inquiry should be whether any observation was made on that subject, and if so, give the words.

Q. Was there any conversation had between you and Mr. Beecher as to the relative or comparative guilt attached to persons who had committed this offense of adultery? A. Yes; once Mr. Beecher was at our house and suffering great remorse at what he had done.

Mr. Evarts—Let us have what was said.

Mr. Fullerton—What did Mr. Beecher say as evidence of his remorse? A. That he had brought so much trouble and sorrow to himself and Elizabeth and the household. I said: "I think a woman is as much to blame as a man; she was the mother of five or six children, and it does not seem to me possible that she could have done what she had done without knowing what she was doing, and she is certainly as much to blame as you are." He said: "No, she is not to blame; it is my fault; I take all the responsibility and all the blame on myself."

Q. Do you recollect when that conversation was? A. I don't recollect the date.

#### MR. GEORGE C. ROBINSON SEEKING FOR THE TRUTH.

Q. Did you ever have any conversation with Mr. George C. Robinson which you repeated to Mr. Beecher? A. Yes, Sir.

Q. What was the conversation which you thus repeated?

Mr. Evarts—You mean what was said to Mr. Beecher.

Mr. Fullerton—The conversation which she repeated to Mr. Beecher.

Mr. Evarts—What she repeated to Mr. Beecher in the conversation should be the question, and not what the conversation was with Mr. Robinson.

Mr. Fullerton—I will frame my question in my own way. [To the witness]: What was the conversation with Mr. Robinson which you afterwards repeated to Mr. Beecher?

Mr. Evarts—I object to that. The question should be, "Did you have a conversation with Mr. Robinson," as an inducement; then, "Did you repeat it to Mr. Beecher, and if you did, state what you told him."

Judge Neilson—It leads to the same result, Mr. Fullerton.

Mr. Fullerton—If it leads to the same result exactly, I claim my own way.

Judge Neilson—I think I would accept the suggestion. It is just as well—first the fact that she had a conversation, and then what she stated to Mr. Beecher.

Mr. Beach—The witness was going to say what she told Mr. Beecher.

Mr. Fullerton—She will answer the question properly.

The Witness—I told Mr. Beecher that Mr. George C. Robinson had spoken to me of his frequent visits at the office to see Mr. Moulton, and that he thought it very strange that he should select Mr. Moulton, who was not a church man; that Mr. Beecher, the first man in the city, having a host of friends at his back, it was very strange that

he should go to the office to see Mr. Moulton; that he did not understand the reason; that he thought there must be some great trouble, but he did not understand what it was; that he, realized that, his brother, Jeremiah Robinson, knew the facts, and Mr. Moulton and Mr. Woodruff, and he felt that I ought to tell him what the trouble was; that he was a leading man in Plymouth Church, and had been a deacon, and was still attending Mr. Beecher's church, and meeting him constantly, and it was rather embarrassing for him, and he felt that, perhaps, it might be embarrassing for Mr. Beecher, and he would like to know the truth. He said that sometimes he thought that Mr. Beecher had appropriated the Church money or had been guilty of theft or something of that kind; that he realized it was some great crime which he had committed. I said: "No, it is not that; he has been guilty of adultery with Mrs. Tilton." He said: "Well, that I can hardly believe; it does not seem possible. A man that I have believed in for years, under whose preaching I have sat for so many years, who has preached against that one particular sin—I cannot believe that it is possible that he is guilty." I said: "I am very sorry to have to tell you that he is." He said: "How do you know it?" I said: "From confessions from both parties—both Mrs. Tilton and Mr. Beecher told me. I told Mr. Beecher that I had told Mr. Robinson, feeling that Mr. Beecher might be embarrassed, and that it might be easier for him to talk to Mr. Robinson now that Mr. Robinson knew the truth, as he frequently met him in the office and at our house.

Q. What reply did Mr. Beecher make, if any, when you told him that? A. He said he was very glad I had told him; that he was willing to abide by anything I considered best.

#### WHEN MRS. MOULTON LEFT PLYMOUTH CHURCH.

Q. Now, Mrs. Moulton, up to what time did you continue to take the communion at Plymouth Church? A. I have never taken communion at the Church since I knew the truth of this case.

Q. Did you take the communion up to the time of your learning the facts in this case? A. Yes; I was not always there on Communion Sundays, but I never have attended any other Church.

Q. And since that time have you attended Plymouth Church? A. I have.

Q. How frequently? A. I don't know how many times.

Q. Under what circumstances did you go? A. When there have been friends staying at our house who knew that I belonged to Mr. Beecher's Church, and had been always an admirer of Mr. Beecher, and they would express a desire to go, and I went with them, and Mr. Beecher has asked me repeatedly to continue coming to the Church.

Mr. Fullerton—[Turning to Mr. Evarts.] Now you may ask.

#### CROSS-EXAMINATION OF MRS. MOULTON.

Mr. Evarts—Mrs. Moulton, how long have you been married? A. I was married in 1860, the 22d of November.

Q. What family have you? A. I have one son

Q. How old is he? A. Thirteen years old.

Q. Has Mr. Moulton at any time been an attendant at your church? A. Not a regular attendant.

Q. Has he at any time been a frequent attendant? J. No, Sir.

Q. Where has he gone to church? A. He has not attended church anywhere.

Q. Not since your marriage? A. Not regularly; no, Sir.

Q. Has he with any frequency attended Church since your marriage? A. No, Sir; I don't know that I could say he has frequently.

#### THE WITNESS'S ACQUAINTANCE WITH MRS. WOODHULL.

Q. When did you first make the acquaintance of Mrs. Woodhull? A. I cannot tell you the date.

Q. As near as you can? A. It was about the time she proposed to publish this story.

Q. Do you mean about May, 1871? A. If that was the time that she threatened to publish the story, it is; yes, Sir.

Q. Was it before or after her threat? A. It was before.

Q. Before her threat? A. Or about the time.

Q. Which was it, before or after? A. It must have been about the time.

Q. Can you say whether it was before or after her threat? A. I don't remember about the date.

Q. Was it before? A. It might possibly have been.

Q. Don't you know that it was before? A. I don't remember.

Q. On your best recollection, Mrs. Moulton, was it not before? A. I cannot state positively. I know it was with reference to this case that I made her acquaintance.

Q. Well, now, upon your best recollection, was it not before she published her threat? A. I can't say, Sir.

Q. How did you make her acquaintance, and by whose introduction? A. Mr. Moulton's and Mr. Tilton's.

Q. Where? A. Brought her to our house.

Q. And how was she introduced to you by those gentlemen? A. As Mrs. Woodhull.

Q. Were you aware of her public repute at that time? A. I knew only in a general way of her reputation.

Q. You did know of her public repute, didn't you? A. I knew something about it; yes, Sir.

Q. You do know as much as other people about her public repute, don't you?

Mr. Fullerton—That is scarcely proper.

Mr. Evarts—I don't know that it is not proper. I would not have asked it if it was not proper.

Mr. Fullerton—It don't follow that you would not have asked it if it was not proper.

Q. What did you know about her public repute? Q. Well, I had heard that she held peculiar views with relation to marriage, &c. I only knew in a general way that she was not considered—I don't know exactly what to say, not that she was an immoral woman, but she was a woman who held loose views in regard to divorce and marriage, was all that I knew and all that I heard. I had heard that that was her reputation

Q. Were you informed beforehand that she was to be brought to your house? A. It was spoken of; yes, Sir.

Q. And did you know of the appointed time before she came? A. They spoke to me about it on Saturday; I knew she was to come on the next day.

Q. But that was the night of her coming there? A. They wanted to see her with reference to this story which she had proposed to publish, or which she knew about.

Q. You considered your house selected as the proper place of conference between these two gentlemen and this lady, did you? A. I considered it Mr. Moulton's house.

Q. I know it is Mr. Moulton's house. That you understood to be the reason, the only reason of her coming to that house, did you? A. Yes, Sir.

Q. Had you given your consent to it? A. I did not give my consent that I know of.

Q. Then when she came you had not given your consent? A. I don't think that I had given my consent by word; no, Sir.

Q. Now, madam, how frequently was this lady at your house? A. I cannot state how many times she was there.

Q. Was she there a dozen times? A. It is possible that she was; I don't know.

MRS. MOULTON'S CALLS ON MRS. WOODHULL.

Q. How frequently were you at her house? A. I have stated three times that I remember.

Q. Were you not there more times than that? A. I don't remember that I was; no, Sir.

Q. Now, when you went with Mr. Tilton to this lady's house, what was the occasion of this visit? A. Mr. Moulton wanted me to go, and Mr. Tilton wanted to see Mrs. Woodhull in reference to something in the case, I don't know what.

Q. What was the need of your going? A. Mr. Tilton wanted Mr. Moulton to go, but he was sick, and Mr. Moulton asked me to go in his stead, and I went. I presume I went because Mr. Moulton asked me to go.

Q. You did not go with any alacrity? A. I don't remember that I did.

Q. Don't you know that you went because Mr. Moulton required you to go? A. I don't think that Mr. Moulton required me to go; he made the request that I should go.

Q. Had you an aversion to going? A. I don't know that I had.

Q. You know one way or the other, don't you, whether you had an aversion to going or not? A. I don't know that I had any aversion to going.

Q. Didn't you require more urging on the part of your husband before you were willing to go? A. I don't remember that I was urged.

Q. Have you no impression on that subject? A. I don't remember that I was urged to go.

Q. Have you no impression as to whether you were urged or not, or whether you went very unwillingly? A. I don't remember that I went very unwillingly.

Q. Do you remember that you went very willingly? A. I don't remember that, Sir.

Q. When you got to the house of Mrs. Woodhull what oc-

curred as to your introduction or reception by that lady? A. We were shown into the parlor by the servant; Mrs. Woodhull came in; there were other people in the parlor; I don't remember their names. Mr. Tilton held a few moments' conversation with Mrs. Woodhull, and I did the same, on general topics. We then left.

Q. Do you mean you both talked on general terms with her? A. I don't know what Mr. Tilton talked about.

Q. You didn't hear that interview? A. We were all present in the room together, but I don't know what Mr. Tilton talked about.

Q. And then you came away? A. Yes, Sir.

Q. Did Mr. Tilton return with you to your own house? A. I think he did.

Q. When was this? A. I cannot remember the day or time.

Q. About when was it? A. I could not tell you; I don't remember it.

Q. What year was it? A. It was the year I first met Mrs. Woodhull.

Q. Was it not soon after you first met her? A. I don't remember how soon.

Q. Was this the first visit you made to her house? A. Yes, Sir.

Q. Now, when was the next one made? A. I don't remember.

Q. Who went with you the next time? A. Mr. Moulton's mother.

Q. How did that visit come about? A. They wanted to see Mrs. Woodhull.

Q. Who wanted to see her? A. Mr. Moulton and Mr. Tilton, and they asked me to take a carriage and go over for her. Mrs. Moulton, my mother, was staying at the house, and I asked her to go with me.

Q. And you went over there and fetched Mrs. Woodhull? A. Yes, Sir.

Q. At your husband's request? A. Yes, Sir.

Q. Did you go then unwillingly or willingly? A. I don't remember that I was either willing or unwilling. I simply went because Mr. Moulton asked me.

Q. Because Mr. Moulton desired you. Did you fetch her? A. I did.

Q. And did you take her back? A. I don't remember. I think we sent her back in a carriage, alone, if I remember right.

Q. And you don't remember whether you went or not with her? A. I don't remember, positively, but I don't think I went with her.

Q. Is not that a matter which would fix itself in your mind a little, if it had happened? A. I don't know that it should.

Q. When was this? A. I don't remember the date.

Q. Now the year? A. No, Sir; I think it must have been in the year I first met her.

Q. Now, do you know whether Mr. Tilton and your husband could not go and see her instead of sending for her? A. I don't know why they could not.

Q. There was not any reason that you know of, was there?  
A. If there was any reason given I forget what it was.

Q. Was Mr. Tilton at the house when you started on this errand? A. I don't remember, but I think he must have been at the house.

Q. And they were both there, your husband and Mr. Tilton, when you returned with Mrs. Woodhull, were they not? A. I think so.

Q. Was this interview between Mrs. Woodhull, Mr. Tilton and your husband on this visit to which you brought her a private one, or did you take any part in it? A. I took no part in it.

Q. It was private, then, was it not? A. Yes, Sir.

Q. How long did it continue? A. That I don't remember.

Q. Several hours? A. It might have been.

Q. And in what room was it held? A. I don't remember that.

Q. Now, you made another visit to this lady? A. Yes, Sir.

Q. And then you took your son. How old was he then? A. He must have been eleven or twelve years old. I don't remember the year it was that I went for Mrs. Woodhull.

Q. This third visit? A. I think all my visits were made in that same year.

Q. Then, how old would he have been? A. He is thirteen years old now.

Q. That would make him about nine, by my reckoning. Was that about his age? Don't you remember how old the boy was? A. I cannot tell you just how old he was.

Q. Do you remember what sized boy he was when you made this visit to Mrs. Woodhull? A. Yes, Sir; I remember he was a boy with short jackets.

Q. How came you to make that visit? A. At the request of Mr. Moulton and Mr. Tilton.

Q. Both of them? A. Yes, Sir.

Q. Were they both at the house? A. I think so.

Q. And how was the subject introduced to you by those gentlemen? A. They wanted to see Mrs. Woodhull with reference to something in the case, and would like me to go there and bring her to the house.

Q. Was there anything to prevent their going to see her that you know of? A. Not that I know of.

Q. Did you go in a carriage then? A. Yes, Sir.

Q. Your own carriage? A. No, Sir.

Q. What time of day was this? A. I have forgotten the time of day.

Q. Do you remember whether it was the forenoon, or afternoon or evening? A. I don't think it was in the forenoon; I think it was probably in the afternoon or evening.

Q. Don't you remember whether it was afternoon or evening? A. No, Sir.

Q. Then, it might have been evening that you went? A. I don't remember whether it was afternoon or evening.

Q. Was the carriage sent for to take you? A. Yes, Sir.

Q. Whence was it procured? A. From the livery stable; I don't know what stable, now.

Q. From your usual livery stable? A. Yes, Sir; I presume so.

Q. What livery stable was that? A. I don't remember whether it was from Washburn's in Pacific street; I forget the man who then supplied us with carriages.

Q. It was either from Washburn, in Pacific street, or from where else? A. Either from Washburn's or Robertson's in State street; I think there was a stable in State street at that time.

Q. Can you not remember when you got to Mrs. Woodhull's, whether it was afternoon or evening? A. No, Sir; I don't remember.

Q. Did you find her and bring her? A. Yes, Sir.

Q. How long an interview did she have with Mr. Tilton and your husband at that time? A. I don't remember how long.

Q. Was it several hours? A. It might have been.

Q. Did you take her back? A. I think not.

Q. Are you not sure whether you took her back or not? A. I would not like to say positively; I do not remember.

Q. Do you remember either of those visits distinctly, that it was in the day-time? A. No, Sir; I do not remember.

Q. Any one of the three visits? A. No, Sir.

Q. When Mrs. Woodhull came to your house at other times than these visits that you have named, was she there as a guest with other company, or was she there upon an interview of a private nature? A. I remember that she once took supper at our house with Mr. Beecher, Mr. Tilton, and I forget if there were any other strangers at the table.

Q. When was that? A. I think it must have been in the Summer of 1871.

Q. Was it by free invitation on your part that she came there? A. I don't remember that I invited her.

Q. Was it a set invitation, or was it a casual presence of hers? A. I don't remember.

Q. Do you remember whether Mr. Beecher was invited by you or not? A. I don't remember that.

Q. Or whether his presence there was casual? A. I don't remember.

Q. Don't you remember that your husband brought him in without your having expected him or knowing that he was coming? A. I don't remember.

Q. You don't remember anything about it? A. I remember Mr. Beecher was there, but how he came there, whether by special invitation or casually, I don't remember.

Q. You have no recollection whether, when Mr. Beecher came there, he came brought by your husband without your expecting him or not? A. I don't remember; no, Sir.

#### MRS. WOODHULL'S WAY OF SALUTATION.

Q. Now, Mrs. Moulton, do you remember an occasion when Mrs. Woodhull came to your house and Mr. Moulton was there, and Mr. Tilton was there, and you were there, and in your husband's room, I suppose—do you remember Mrs. Woodhull coming there? A. Remember her coming in the room?

Q. Yes. A. Yes, Sir.

Q. Do you remember how she saluted you and your husband and Mr. Tilton on that occasion? A. I do not understand your question.

Q. How she saluted you three persons? A. I know she always saluted me in a ladylike way—in the usual way.

Q. Do you remember that she saluted Mr. Tilton, Mr. Moulton and yourself, with a kiss? A. I remember that she has kissed me.

Q. Do you remember that she saluted each of you, on that occasion, with a kiss? A. I do not remember that.

MRS. MOULTON'S MEMORY OF THE INTERVIEWS  
WITH MR. BEECHER.

Q. Now, Mrs. Moulton, how early did you learn that it was desired that you should be a witness in this case?

A. Since Mr. Beecher made his statement.

Q. That was the first, was it? A. I think so.

Q. Do you mean his public published statement of last year? A. Yes, Sir.

Q. From whom did you learn that you were desired to be a witness? A. I think from Mr. Moulton.

Q. And from that time to this has the subject of your being a witness in this case been a frequent one between your husband and yourself? A. No, Sir, not a very frequent one.

Q. Has it been repeatedly a subject of conversation? A. I have spoken of it to him a number of times.

Q. And he to you? A. Yes, Sir.

Q. Have you since this time ever been requested to write out in any way what your recollection or your statement would be?

A. Mr. Frank Woodruff thought that I owed it to Mr. Moulton, after Mr. Beecher made his statement, that I should publish a card stating what I knew concerning this case.

Q. I asked you if you had been requested to write it out in any way? A. I said Mr. Woodruff once made that request.

Q. Did Mr. Moulton ever make that request? A. No, Sir.

Q. I do not mean the request of publishing a card, but the request of writing out what you might know or say? A. No, Sir; he never made such a request.

Q. Have you at any time written out what you proposed to say? A. No, Sir.

Q. So that the conversations that you have given here to-day, you have given by your unassisted memory, have you? A. Yes, Sir.

Q. And these are conversations that occurred something like four years ago, or the nearest, I think, spoken of, two years ago, with the exception of one of last Summer? A. Yes, Sir.

Q. And you have given these conversations as conversations of some considerable duration between you and Mr. Beecher. Are you at all confident that you repeat the very words at either of these conversations? A. I know that some of the words are Mr. Beecher's. I have given you the substance of his interview with me, as near as possible.

Q. Are you at all confident that you used, in giving this narrative, the words as used either by Mr. Beecher or yourself? A. I have endeavored to give you Mr. Beecher's words.

Q. Still, my question remains unanswered. Are you at all confident that, in giving these conversations, you have given

the words used either by yourself or Mr. Beecher? A. I have, in some instances, given you Mr. Beecher's exact words.

Q. And you have no record, other than your memory, of them? A. No, Sir.

Q. And have never had? A. No, Sir.

Q. And never had any idea of being called upon to repeat them to any person, had you? A. No, Sir.

Q. When they occurred? A. No, Sir.

Q. Did you understand that any of these considerations between yourself and Mr. Beecher were given on either hand with the right or the liberty to either of you to repeat them at your will? A. I understood that I was not to repeat them, except in a case of this kind, where I am to state the truth.

Q. Of course there are exceptions. That was your understanding of the conversations, therefore you didn't treasure them in your memory with a view of repeating them ever? A. I didn't seek to treasure them, but I could never forget my interviews with Mr. Beecher.

Q. Do you mean that all your interviews with Mr. Beecher you never shall forget them? A. I don't think I shall ever forget them.

Q. Mrs. Moulton, how frequently did you have interviews with Mr. Beecher at your house without the presence of your husband or Mr. Tilton, either while he had called upon them and was waiting, or before he left, after such calls? A. I don't remember but three or four interviews with Mr. Beecher alone. I would often meet him on the stairs or in the hall.

Q. Casually, as he came, or as he went? A. Yes, Sir.

Q. In reference to these interviews with Mr. Moulton. So that the three or four interviews that you have spoken of are, you think, the only interviews of this kind that you had with Mr. Beecher, the only interviews separate from your husband or Mr. Tilton? A. The only interviews of any length; yes, Sir.

Q. Well, the only interviews that are impressed upon your mind?

Mr. Beach—Oh, no.

Mr. Evarts—I am asking.

Mr. Beach—Very well. She has told you.

Mr. Evarts—She has not yet.

The Witness—I remember of meeting Mr. Beecher very frequently, but not, as I said before, of any length; the interviews were not long.

Q. Anything that made any impression on your mind at any other interviews? A. I remember of his coming to the house on Sunday evening before his lecture—before his Friday night meeting, and asking me if Mr. Moulton was at home, and said that he must see the boy if it was only for five minutes, to enable him to face his congregation.

Q. Who did he mean by the boy—your husband? A. My husband.

Mr. Beach—To enable him to do what? A. To enable him to face his congregation once more.

Mr. Evarts—Well, that he said, and did he wait for Mr. Moulton? A. He did on one or two occasions.

Q. Well, I mean on this occasion; or, was Mr. Moulton in? A. Mr. Moulton was not in.

Q. Did he go off or did he wait? A. I think at this particular interview he waited.

Q. When he said he wanted to see the boy for five minutes, he did wait? A. I think he did.

Q. And saw him. Now, do you know when that was? A. No, Sir; I don't remember.

Q. Nor what part of the year it was? A. I don't remember.

Q. Nor what year? A. No, Sir.

Q. Have you any recollection in reference to what occasion or occurrence it was that he had this desire, thus expressed? A. I don't remember what was the occasion of his depression at that time.

#### MRS. MOULTON'S SYMPATHY WITH MR. BEECHER'S WOE.

Q. What was your habit, Mrs. Moulton, in these frequent visits of Mr. Moulton—

Mr. Beach—Who?

Mr. Everts—Of Mr. Beecher to your house, when Mr. Moulton was there, and in your husband's presence; what was your habit as to saluting Mr. Beecher? A. I always saluted Mr. Beecher in a friendly way.

Q. Did you usually salute him with a kiss? A. No, Sir.

Q. Did you never salute him with a kiss? A. I never remember to have kissed Mr. Beecher but with one exception. On the morning when he told me that he was about to commit suicide, while he was sitting in the chair with the tears streaming down his face, I was standing behind him and leaned over and kissed him on his forehead, the only time that I ever kissed him.

Q. You remember that occasion? A. I do, Sir.

Q. When you did kiss him on the forehead? A. Yes, Sir.

Q. Putting your arm around him? A. No, Sir.

Mr. Fullerton—No; she did not say that.

Mr. Everts—Well?

The Witness—I put my hand on his shoulder.

Mr. Everts—One hand? A. My hand on his shoulder. He was sitting in the chair, and the tears streaming down his face, when he had spoken to me of his great suffering and of my—

Q. Well, the occasion that you have given?

Mr. Fullerton—Well?

Mr. Everts—The occasion she has given.

Mr. Fullerton—Yes.

Mr. Everts—Now, I don't ask her to repeat it.

Judge Neilson—There is no occasion to repeat it.

Mr. Fullerton—Well, I agree to that.

Mr. Everts—Now, do you remember saying to him at the time when you thus kissed him on the forehead, whenever that may have been, that if there ever was a good man you believed he was one? A. I said that I had believed he was a good man; I had believed in him more thoroughly than in any other man, and that having known what I had of him, it destroyed my faith in human nature.

Q. Now, did you or not, at the time you kissed him on the forehead, whenever that was—did you say to him that if there ever was a good man you believed he was one? A. I think I might—I said to him that I had believed that he was a good

man, and I at that time thought there was still a great deal of good in Mr. Beecher.

Q. Have you altered your mind on that particular? A. I haven't any faith in Mr. Beecher.

Q. When did you lose it? A. My faith as a moral teacher in Mr. Beecher was destroyed when I knew what I did of his life.

Q. But this remnant that you had at that time—when did you lose that remnant, that there was a good deal of good in him? A. In the way he has—the course he has pursued for the last year.

Q. Toward your husband? A. Yes.

Q. Now, I ask you, madam, again, if, when you put your hand upon him and kissed him upon the forehead, you did not *then* say to him that if there ever was a good man you believed he was one, then? A. I think I said to Mr. Beecher I believed that there was a good deal of good in him still.

Q. You think that is what you said? A. I think that is what I said.

Q. And do you remember that you did not say, "If there ever was a good man I believe you are one?" A. I don't remember that I said it in that way; I think I do remember of saying that I believed there was a good deal of good in him still.

Q. And you think that was said on the occasion when you thus kissed him on the forehead? A. I think so; yea.

Q. I think you say that you never kissed Mr. Beecher in the presence of your husband, during his visits? A. No, Sir; I was not in the habit of kissing Mr. Beecher.

Q. Well, I want your recollection distinctly, if you have any on that subject. Do you mean—? A. I recollect that I did not kiss him.

Q. Do you mean to say positively, Mrs. Moulton, that during the periods of these visits of Mr. Beecher, when he called to see your husband, and did see your husband, that then in the presence of the two you did not kiss Mr. Beecher? A. I did not.

Q. Never? A. Never.

Q. And you are very distinct in that recollection, are you? A. Yes, Sir.

Q. Do you remember occasions of his visits, and, in the presence of your husband, putting your hands upon his shoulder or his neck and appealing to your husband to take care of this good man? A. Yes, I remember one occasion particularly.

Q. One; you remember that? A. Yes, Sir.

Q. When was that? A. It was on Friday night, just before—

Q. What Friday night? A. I remember it as a Friday night, because Mr. Beecher was on his way then to his Plymouth—to his prayer meeting.

Q. Well, you remember it as a Friday night? A. Yes, Sir.

Q. Can you give us the year and part of the year? A. No, Sir.

Q. You cannot say at all at what stage of things that occurred? A. No, Sir.



Q. Do you remember in what room it was? A. Yes, Sir; it was in our front room; second story front room.

Q. And was that the usual place of your meeting, that is, of Mr. Beecher meeting your husband? A. There was not any usual place; they met in every room in the house.

Q. Well, that was a common place, as common as any other, wasn't it? A. Yes, Sir.

#### WHAT MRS. MOULTON SAID TO MR. HALLIDAY.

Q. Do you remember, Mrs. Moulton, seeing Mr. Halliday on some occasion? A. Yes, Sir.

Q. And having a conversation with him in relation to this matter of Mr. Beecher's? A. No, Sir; I don't remember any conversation I have had with Mr. Halliday bearing on this case.

Q. Do you remember that, after the Woodhull publication, Mr. Halliday came to see you? A. Yes, Sir.

Q. On the subject of that publication? A. Yes, Sir.

Q. Do you remember answering the bell as he rang, and introducing him into the house? A. I think I do; yes, Sir.

Q. You remember that? A. Yes, Sir.

Q. Now, do you remember his saying to you, "Mrs. Moulton, what does this Woodhull business mean? How is it that your name is connected with it?" A. I remember that he referred to the Woodhull story.

Q. Did you answer to that, "I don't know what right Mrs. Woodhull had to use my name; I had nothing to do with it?" A. I think I might have made that reply.

Q. And in further conversation between him and you on that subject did you say to Mr. Halliday, "Mr. Halliday, Mr. Beecher is my pastor, and has been from my childhood, and I believe in him, and they can say nothing that will lessen my confidence in him or my affection for him one particle?" A. Well, I don't remember that conversation; I don't remember that I said that; I remember distinctly that I did not say to Mr. Halliday that I believed Mrs. Woodhull's charges against Mr. Beecher.

Q. That you did not say you believed them? A. No.

Q. Don't you remember distinctly that you said that you did not believe them, and that there was not a particle of truth in them? A. I don't remember that; no, Sir.

Q. Well, now, do you or not remember that you said to Mr. Halliday the words that I now repeat, or words to this effect: "Mr. Halliday, Mr. Beecher is my pastor, and has been from my childhood, and I believe in him, and they can say nothing that will lessen my confidence in him or my affection for him one particle?" A. I don't remember the last part of that, Sir; the first part I remember.

Q. The first part you remember? A. I remember that I said Mr. Beecher had been my pastor since I was 16 years old. That I had told to every one, because that was the truth.

Q. Didn't Mr. Halliday know that? A. I don't know how he should have known it. It was Mr. Halliday's first visit to the house. As nearly as I can remember it was his first visit.

Q. Not his first connection with the Church, though? A. No, Sir; but he didn't know me personally.

Q. Do you think your conversation with Mr. Halliday on this subject ended with telling him that you had been a parishioner 16 years, or whatever it was—"from my childhood?" A. As

nearly as I can remember that was all that was said. I remember distinctly trying to avoid discussing it with Mr. Halliday.

Q. Yes; but I am not asking you what you avoided, but what you said? A. I don't remember anything but the first part of your question.

Q. Do you mean to say that you do distinctly remember the first part? A. I remember distinctly telling Mr. Halliday that Mr. Beecher had been my pastor since I was 16 years old.

Q. And friend, too? A. I don't remember that, because he had not been my personal friend until this case came up.

Q. Well, it is not "friend" here; it is only "pastor." You do remember, then, saying to him that he had been your pastor from your childhood? A. Yes, Sir.

Q. Now, what else do you remember saying to him? A. As nearly as I can remember, I said to Mr. Halliday that I did not care to discuss the case.

Q. Do you remember that you did say that? A. As nearly as I can remember that was what I said.

Q. Well, do you remember that you did say anything of that kind? A. I do not remember positively, but I think I said that to Mr. Halliday.

Q. Now, in regard to the last part: "And they can say nothing that will lessen my confidence in him, or my affection for him, one particle"—do you remember distinctly that you did not say anything of that kind? A. I do not think I could possibly have said that, because my faith had been destroyed in him at that time.

Q. That is the reason you have for thinking that you did not say it? A. I don't think I said it; no, Sir. I don't remember to have said it.

Q. Do you remember that you did not say anything of that kind? A. I say that I don't remember having said it.

Q. That is all that you can say, is it? A. Yes, Sir.

#### MRS. MOULTON'S HABIT AS TO CHURCH-GOING.

Q. Now, Mrs. Moulton, up to what time did you retain your sittings, or pew, if it was an entire pew, in Mr. Beecher's Church? A. I don't remember the year when we last had a pew there. I had sittings with Mr. George Robinson; the last time that we had sittings there was with him.

Q. Do you mean sittings that you hired, or that you occupied only a part of his pew, as a friend or relative? A. We occupied a part of his pew as his friend.

Q. Not as hiring it from the Church? A. No, Sir. I have never hired any portion of Mr. Robinson's pew.

Q. Now, up to what time did you frequent that church and occupy this seat, or any other seat there? A. Do you mean when I last attended the church?

Q. Yes, when you last— A. I think the last time that I was in Mr. Beecher's church was in last June.

Q. Up to that time had you continued to frequent that church? A. I had attended there occasionally. I had not been a regular member of the church—attendant of the church.

Q. Had you attended church anywhere else? A. No, Sir.

Q. So that whenever you went to church, up to June last, you went to Mr. Beecher's church? A. Yes, Sir.

Q. You say that you did not receive the communion after

some date. When did you last receive the communion there? A. I have not taken communion since 1871. Previous to that I don't remember the date.

Q. Did you during the year 1871 take the communion there? A. No, Sir.

Q. Now, Madam, anterior to 1871, when did you last receive the communion there? A. I cannot tell you the date.

Q. Can you give the year? A. Well, I presume—of course I suppose I took communion in the church the year previous.

Q. You suppose so; have you any recollection? A. I have not any recollection as to the time.

Q. Nor the year? A. I think I last took communion in 1870.

Q. Might it not have been in 1869? A. I never allowed a year to pass without going to the communion.

Q. Was it your habit to partake of communion there as often as once a year? A. Yes, Sir, oftener.

Q. About how often? A. I cannot tell you how often.

Q. But not every time it was administered? A. No, Sir.

#### THE INTERVIEWS REHEARSED.

Q. Now, Mrs. Moulton, I think you say that the first time you knew of Mr. Beecher coming to your house was the 2d of January, 1871? A. I don't remember that I said he was there on that day. I don't remember the day; I think it was probably some time during that week.

Q. Well, you returned from the country on the 2d? A. I did; yes, Sir.

Q. He had never been in your house before, I think? A. Not in that house, to my knowledge.

Q. Now, when did you move into this house in Remsen-st.? A. May, 1871.

Q. And where was this house to which he came? A. Clinton-st.

Q. Thus early in January, in Clinton-st.? A. It was in Clinton-st.

Q. What number? A. I forget the number; between Livingston and Schermerhorn.

Q. Now, did you ever see him there at that house again. A. What did you say, Sir?

Q. At this house in Clinton-st., did you ever see him again after this call of his the first week in January? A. Oh, yes, Sir; I saw him there.

Q. Before you went South? A. Yes, Sir.

Q. How many times? A. I cannot remember.

Q. Cannot you give us any memory at all about it? A. He came very frequently, quite frequently, to see Mr. Moulton while he was sick.

Q. While he was sick? A. Yes; sometimes twice a day.

Q. Was your husband very sick? A. Very sick indeed; yes, Sir.

Q. Did Mr. Beecher come by your desire? A. No, Sir.

Q. Or your husband's desire? A. No, Sir.

Q. Not at all; not during that whole period, did you say? A. What do you say, Sir?

Q. Not during that whole period? A. Not on my invitation; no, Sir.

Q. Do you remember during this period of his visit to your

husband, saying to Mr. Beecher: "Well, Mr. Beecher, when are you coming to see me?" A. Yes, Sir.

Q. You treated these visits as visits to your husband, in that inquiry? A. Yes, Sir.

Q. Did you frequently say to him: "Mr. Beecher, when are you coming to see me?" A. I don't remember that I said so frequently. I remember having said that to Mr. Beecher.

Q. Do you remember having said it several times? A. I possibly might have said it several times.

Q. Didn't you regard that as an invitation to call upon you? A. No, a special invitation.

Q. Wasn't it a suggestion that he ought to make calls upon you and not confine them to your husband? A. Yes; it might have been a suggestion.

Q. Very well; didn't you intend it in the way that it was expressed? A. I suppose I did, Sir.

Q. Did Mr. Beecher ever make any calls upon you as separate from these calls that he made at the house in reference to Mr. Moulton? A. I remember of only one instance when he said that he came to see me; it was on the Monday which I have stated.

Q. The Monday that you have given a — A. Then he said to Mr. Moulton distinctly that he did not come to see him, but came to see me.

Q. Mr. Moulton was there? A. Yes, Sir.

Q. Now, when was this occasion? A. On the 2d of June, 1873.

Q. And what time of day was this? A. In the morning.

Q. And where was your husband when Mr. Beecher accosted you and him? A. We were in the front room in the second story.

Q. Together? A. Yes, Sir.

Q. And on entering, did he say this that you have mentioned? A. After having wished us good morning he said it.

Q. How did he express himself in saying that—whom did he address? A. He said: "Well, Frank, I did not come to see you this morning; I came to see your wife."

Q. What did your husband say to that? A. I don't remember his answer.

Q. Did you and Mr. Beecher then leave the room and go to some other room? A. No, Sir.

Q. Did your husband leave and leave you and Mr. Beecher together? A. Yes, Sir.

Q. And your interview was in this room then? A. Yes, Sir.

Q. Continued. Now, that was the occasion in which Mr. Beecher was exhibiting and expressing great grief and depression, was it not? A. Yes, Sir.

Q. You have given the details of that. Now, Mrs. Moulton, in reference to what suggestion of any kind made by you to Mr. Beecher during this interview, were any parts of what Mr. Beecher said answered by him? A. I don't understand your question.

Mr. Beach—Nor I either.

Q. You have given a considerable statement of what Mr. Beecher said to you. Were you saying nothing to him during the progress of that statement by him? A. I said a great deal to him.

Q. During the progress of the statement? A. Yes.

Q. Now, won't you be so good as to give us how that statement went on, who spoke first and what was said, and then what by way of answer, and so on? A. Mr. Beecher spoke first. He said that he had had a sleepless night, that he was very much depressed, that he was utterly without hope, and he felt that he must have the sympathy or consolation of some friend, and as I was the only person who knew the truth in this case he came to me.

Q. Very well. What did you say to that—if he stopped there? A. As nearly as I can remember. I expressed my sympathy for him.

Q. How did you express that sympathy, and in what language? A. I said: "Mr. Beecher, I am very sorry for you in this great trouble, and there is only one way out for you, and that is by a confession and telling the truth. You cannot continue in this life of deception and hypocrisy. The truth will come out sooner or later."

#### MR. BEECHER REFUSES TO CONFESS BEFORE THE CHURCH.

Q. Well, did you stop then? A. Perhaps I did; I don't remember anything else just then that I said.

Q. Now, if you stopped, then what did he say? A. He said he could not confess it because his work would be at an end; that if he could not continue in his position as a moral and spiritual teacher there was nothing left for him to do; for the sake of his children—he would be a disgrace to them if he were to confess this crime; that he would have no home and that his people would not forgive him,

Q. Well, he stopped then; did you say something? A. I said that I thought they would forgive him; that he had done a great deal of good in the world, and that his Church were bound to him like, as one man almost, and I thought they would stand by him. He said: "No; that is a crime that they won't forgive; they won't treat me as generously and as kindly as you have done."

Q. Well, did that conclude that remark, and did you then say something? A. I don't remember that it concluded it; we were talking for a long time, three or four hours; I can't—On his part it was one long account of what he had suffered and how he was unwilling to try to go on and endure it any longer; that he felt on that morning that the truth would come out, and that he could not live to meet it; that he hadn't the strength, either physically or mentally.

Q. Well, do you remember anything further that you said by way of encouragement to him or admonition? A. I remember that I did endeavor to encourage him; I told him I thought it was a very cowardly thing to do.

Q. To do what? To take his life.

Q. Then he had said something about taking his life, had he?

A. Yes, Sir.

#### THE POISON MR. BEECHER WAS TO TAKE.

Q. Well, what did he say at this stage of the matter? A. He said that he had made up his mind if Mr. Tilton published his letter of apology to take his life; that he had a

powder on his library table which he should take, and that he would pass quietly away without a struggle; that he had made up his mind that he would not try any longer to live it down.

Q. Did he further describe the powder? A. No further than that it was a powder which would give no pain, but cause almost—well, not instant death, but a very easy death.

Q. Yes, but he did not give any name to it? A. No, Sir.

Q. Did he state in what receptacle he had it on his library table? A. No, Sir.

Q. Or what quantity was there? A. No, Sir.

Q. Did he state whether it was labeled "Poison," or not, on his library table? A. No, Sir.

Q. Did he tell you how long he had had it there? A. No, Sir; I don't remember that he did.

Q. Or where he bought it? A. No, Sir.

Q. Well, how did the interview come to an end? A. He said that it was near his dinner hour, and I invited him to stay to lunch, but he said that mother would expect him home; that he could not stay.

Q. Whom did he mean by "mother?" A. His wife, I presume.

Q. Was that his general mode of referring to his wife? A. Yes, Sir.

Q. Well, did he leave in the same gloomy state that he came? A. Yes, Sir.

Q. Did you understand that he was going away to take that powder then? A. No; because he had said that he should come to see me again.

Q. Yes; did he name the time when he was coming to see you again? A. He said he thought he would come on the next day or the day following.

Q. Yes; to see you and not Mr. Moulton? A. To see me.

Q. Well, where is that note? [Note handed to Mr. Evarts.] Take that, if you please, madam. Was it the next time that Mr. Beecher called, after this gloomy interview, that he gave you that note? A. He sent this note on the Sunday previous.

Q. That was the Sunday previous? A. Yes, Sir; it was on Monday that he came to see me.

Q. Oh! that is the day before he sent you that? A. Yes, Sir.

Q. And did he come to see you the next day after this gloomy Monday? A. I don't remember that he came on the next day.

Q. Or the day after—was it very near? A. I don't remember how soon after.

Q. Well, was it a considerable space of time between? A. I don't remember how soon after he came.

Q. How soon after this gloomy Monday interview do you remember to have seen him? A. I don't remember how soon after.

Q. Well, a month? A. Oh! it was not a month.

Q. A week? A. I think I must have seen him during the next week.

Q. In the course of the week? A. Yes, Sir.

Q. Well, do you mean that week, of which Monday was the beginning? A. Yes, Sir.

Mr. Evarts—If your Honor please, it is the hour of recess. The Court here took a recess until 2 o'clock.

## THE INTERCOURSE BETWEEN THE MOULTONS AND THE TILTONS.

The Court met again at 2:20. Mrs. Moulton was recalled, and the cross-examination was continued.

Q. Mrs. Moulton, when did you first make the acquaintance of Mr. Theodore Tilton? A. I forgot the year.

Q. How far back does your memory run in respect to your acquaintance with him? A. I think it is at least six or seven years since I first knew Mr. Tilton.

Q. Didn't you know him in the earlier years of your married life? A. No, Sir; not until I moved to the Clinton-st. house.

Q. When was that? A. I cannot tell you the year.

Q. How many years did you live in Clinton-st.? A. I think four years.

Q. That would make it, then, about 1866? A. It is barely possible that that was the year, but I don't remember.

Q. Did you become intimately acquainted with him? A. He has been a frequent visitor at our house.

Q. Were you an intimate friend of his, and he of yours? A. Yes, Sir; I consider Mr. Tilton a friend of mine.

Q. And you of him? A. Yes, Sir.

Q. When did you make the acquaintance of Mrs. Tilton? A. I think in 1868 or 1869.

Q. And in what way? A. I forget how I first met her; I remember her coming to see me in the Clinton-st. house.

Q. Was she brought there by her husband? A. I think not, Sir.

Q. Were you intimate and friendly with her? A. I think always friendly, but not intimate.

Q. Had you a regard for her, and affection? A. I don't know that I had any affection for her until after this case came up; then I had a sympathy for her.

Q. Yes, but up to this time, you had no particular feeling of regard or affection for her? A. I had a regard for her, not any affection.

Q. Well, was she in the circle of your family friends and acquaintances that you looked upon with regard or affection? A. She didn't visit me frequently, nor I her; but I regarded her as a friend.

Q. Were you aware of the intimacy between Mr. Tilton and your husband at a period earlier than your own acquaintance with him commenced? A. I knew that they were in school together.

Q. And their continued intimacy as men in Brooklyn? A. That intimacy was not continued from the time they left school. When we were living in Tompkins-place Mr. Moulton never saw Mr. Tilton, that I remember. It was only when we moved to Clinton-st. that I knew of the intimacy between Mr. Tilton and Mr. Moulton.

Q. Did Mr. Tilton ever form a habit of frequently being at your house at meals? A. Yes, Sir.

Q. And for days at a time, one after another? A. Yes, Sir.

Q. When was that? A. He was a good deal at our house when he was organizing the paper—when he was about to start his paper, *The Golden Age*.

Q. When was that? A. I forgot the year.

Q. You mean *The Golden Age*? A. Yes, Sir.

Q. Don't you remember that was the same season of this interview you have been talking about? A. I don't remember; I only remember that he came to our house and arranged for the paper?

Q. Was he then, at that season, in the habit of being in your house at meals a good deal? A. Yes, Sir.

Q. Did he frequently spend the night there? A. Not frequently.

Q. Did he sometimes spend the night there? A. I don't remember that he has ever spent more than one or two nights in our house.

Q. But you do remember he spent one or two nights there? A. I am quite sure that he spent one; I don't remember any more.

Q. And he may have spent more? A. He may have spent one or two more, but I don't remember of but one.

Q. Now, through what period of years, beginning in this season of 1871, when *The Golden Age* was established, in 1870-71—through how long a period did his habit of taking his meals at your house continue? A. Well, Sir, I don't know for how long. During the paper—his arranging the paper, he was at our house quite a good deal, perhaps every day, for two or three weeks.

Q. Was that the only period he was in the habit of taking his meals there days in succession? A. No, Sir; he has taken his meals at our house very frequently for the last four years.

## WHERE THE PLAINTIFF'S COUNSEL TAKE THEIR LUNCHEON.

Q. Now, during this trial, has your house furnished the hospitalities of the gentlemen that are conducting the cause of the plaintiff? A. Yes, Sir.

Q. Every day? A. With one or two exceptions.

Q. That has been their place of meeting and of lunching, has it not? A. They have lunched with us; yes, Sir.

Q. Habitually? A. Yes, Sir.

Q. And have you been present on these occasions? A. Yes, Sir.

Q. At the table? A. Yes, Sir.

Q. With them? A. Yes, Sir.

## MRS. MOULTON MAKES REFLECTIONS ON MR. TILTON.

Q. Do you remember an interview that you had with Mr. Tilton at your house during some of these years; in January, 1873, do you remember having an interview with Mr. Tilton at your house, in which you told him that he was a villain, and would betray your husband as he had Mr. Beecher? A. I think I remember an interview with Mr. Tilton something like that.

Q. Do you remember when that was? A. Yes, Sir; it was last July.

Q. Last July? A. Yes, Sir.

Q. Do you remember, on his making some remark in answer to this statement of yours, that you threatened to send for a policeman and have him put out of the house? A. No, Sir; I

never remember the policeman, nor any reference to any policeman.

Q. What did you further tell him? A. I said if he was unkind to Frank, my husband—if he turned on him in any way, inasmuch as by a look, that he must never come into our house again.

Q. Did you, on the occasion of any interview that you had with Mr. Beecher, say to him this, or words equivalent to it, that "at heart, Theodore Tilton is treacherous, and hates you?" A. I think I might have said to Mr. Beecher that Mr. Tilton hated him; I think he had good reason to.

Mr. Everts—I didn't ask you that, madam. I ask that that be struck out.

Judge Neilson—Yes; the last clause will be struck out.

Q. Be good enough to confine your answers to my questions. Do you think that you did say to Mr. Beecher: "At heart Theodore Tilton is treacherous and hates you?" A. I remember repeatedly saying to Mr. Beecher that I thought it was impossible for Mr. Tilton to keep this quiet. I might, in that way, have said that I thought he was treacherous.

Q. Treacherous in regard to keeping it quiet? A. Yes, Sir. While he meant to keep it quiet I think he was often forced to an answer which told you the whole truth.

Q. I didn't ask you your opinion—what you told Mr. Beecher? A. That is what I told Mr. Beecher.

Q. What did you tell him? A. I told him that I thought Mr. Tilton was filled with revenge and anger against him, and that often when questions were put to him, he made a reply such as told the whole truth.

Q. You think you put that in, about the questions being put to him? A. I think I did.

Q. Well, now, madam, will you tell me whether you ever told Mr. Beecher, in terms, that Theodore Tilton at heart was treacherous and hated him? A. I don't recollect those exact words, yet I think I might have said so.

Q. Do you remember at what stage or season of this controversy you said that to Mr. Beecher? A. No, Sir; I cannot remember any particular time; there have been so many times when Mr. Tilton has had reason to feel angry.

Q. That I am not asking you about his reasons? A. I cannot tell you the times. It may have been a number of times.

Q. You think you may have said that a number of times to Mr. Beecher? A. I think I may have said it a number of times to Mr. Beecher.

Q. A number of times? A. Yes, Sir; I think so.

Q. Mrs. Moulton, did you first make a profession of religion in Mr. Beecher's Church? A. Yes, Sir.

Q. And in what year? A. I think in 1858.

Q. That was two years before your marriage, about? A. Yes, Sir.

Q. Do you remember your habit of less frequent reception of the communion dating from your marriage? A. The first two years after my marriage I lived in New-York.

Q. And didn't attend the church? A. No, Sir.

Q. And then resumed connection with the congregation? A. Yes, Sir.

Q. In this place of worship? A. Yes, Sir.

Q. Now, do you remember that from that time onward your habit of receiving the communion was infrequent? A. I remember so; yes, Sir.

#### MRS. MOULTON NO SYMPATHIZER WITH WOMAN'S RIGHTS.

Q. Had you become connected with the Woman's Suffrage movement? A. Never; no, Sir.

Q. Or anything of that kind? A. No, Sir: never in any way connected with it.

Q. Your husband, you think, was? A. Yes, Sir.

Q. And that you were aware of? A. Yes, Sir.

Q. Was your house a place of meeting for the ladies and gentlemen who were active in that movement? A. Quite a number of them visited our house. I don't know that it was a place of meeting.

Q. Frequently? A. Not very frequently; no, Sir.

Q. And during what period—what year? A. I cannot remember the year.

Q. Was Mrs. Woodhull included in their number? A. I don't remember that Mrs. Woodhull was ever there with any of the Woman's Suffrage Party.

Q. You do not remember? A. No, Sir.

Q. Who do you remember as having been there? A. With Mrs. Woodhull?

Q. No; these Woman Suffrage people. A. Mrs. Stanton, Miss Anthony—I don't remember the names of any of the others.

Q. There were quite a number of others, were there not? A. Well, I don't remember at present the names of any of the others.

Q. Did you used to take part in their meetings or their conversations? A. No, Sir.

Q. Did you avoid it? A. I had not any particular interest in it; I don't know that I avoided it.

#### THE INTERVIEW BETWEEN MRS. MOULTON AND MRS. TILTON.

Q. You have said something, Mrs. Moulton, of an interview that you had with Mrs. Tilton? A. Yes, Sir.

Q. When was that, in point of time—what year, and what part of the year? A. I don't remember the year or the time. I remember it was after my interview with Mr. Beecher.

Q. After which interview with Mr. Beecher? A. The first interview, when he confessed to me the truth of the charges made against him.

Q. The first interview? A. Yes, Sir.

Q. It was after the first interview? A. Yes, Sir.

Q. And it was near that, was it not? A. I don't remember how near, or that it was very near to it.

Q. What? A. I don't remember that it was very near.

Q. You do not. Well, then, it was after some other interview that you had with him was it not, if it was not very near? A. I don't remember.

Q. You cannot give us any idea of the time that this interview with Mrs. Tilton took place? A. No, Sir.

Q. You don't know whether it was in 1873 or 1872? A. It must have been early in 1873.

Q. Do you think it was in 1872? A. It might possibly have been in 1871—in the Fall of 1871; but I don't remember positively when it was.

Q. You have no recollection—you cannot fix it at all? A. I cannot; no, Sir.

Q. Does it connect itself with anything that you can give a date to? A. I know it was after my interview with Mr. Beecher, because she asked me from whom I had learned the truth. I said from Mr. Beecher himself.

Q. That is your only mode of fixing the date? A. That is the reason I know it was after my first interview with Mr. Beecher.

Q. And that is the only mode by which you know it was after that? A. That is the best reason I can give you.

Q. But this interview with Mr. Beecher was in the first week of January, 1871, was it not? A. No, Sir; I didn't say that my first interview with him was in the first week of January. I saw him—he was coming to the house frequently before he spoke to me.

Q. Well, when was this first interview? A. I cannot remember whether it was in the Spring of 1871—

Q. Or— A. Or later; I don't remember the time—the season of the year; I only remember it was in 1871.

Q. And it might have been either Spring or Fall, so far as you know? A. Yes, Sir.

Q. And you have at present in your memory no circumstance that enables you to know whether it was Spring or Fall? A. No, Sir.

Q. Either in the weather, or anything that remains in your mind of what occurred, or anything else? A. No, Sir.

Q. And you have no way of telling me how soon after that you saw Mrs. Tilton? A. No, Sir.

Q. Did not Mr. Beecher at all times—at the times of which you have spoken of talking with him, always show great solicitude that Mrs. Tilton should be properly considered and treated by everybody? A. Yes, Sir; he always expressed the greatest kindness and consideration for Elizabeth.

Q. For her, and always desired, did he not, that you would treat her well? A. Yes, Sir.

Q. And visit her? A. Yes, Sir.

Q. And console her? A. Yes, Sir.

Q. Now, you went to see her? A. Yes, Sir.

Q. Where did you see her? A. I saw her in her house in Livingston-st.

Q. In which room? A. I have seen her in two or three rooms of the house. I don't remember where I first saw her.

Q. This visit that I speak of? A. I don't remember which room.

Q. You don't remember which room? A. No, Sir.

Q. Do you remember how long you saw her? A. No, Sir; I don't remember how long.

Q. Do you remember at any time visiting Mrs. Tilton when you supposed that there might be some public controversy or

accusation that might bring this matter into contest? A. Yes, Sir.

Q. And asking her if there would be a contest between her husband and Mr. Beecher, what her views would be? A. Yes, Sir.

Q. You do? A. Yes, Sir.

Q. Is that either of the occasions to which you have referred in your direct examination? A. I don't remember; I remember the conversation to which you refer, and the occasion of it. I think it was the time Mr. Tilton went down to the Church.

Q. Went down to the Church? A. I don't know when.

Q. Well, we have that date. You think it was after that, was it? A. I think it was at that time.

Q. Was it after that occurrence, or before? A. I don't remember whether it was after, or not.

Q. Now, what led you to make that visit, and what was your object in making it? A. I wanted to know from Elizabeth what course she meant to adopt in case she was called before the Church.

Q. You mean this last year? A. No, Sir.

Q. You don't mean this last year's inquiries? A. No, Sir.

Q. You mean when the talk was about investigating Mr. Tilton? A. When he was dropped from the Church; I think that was the time; I cannot say positively. As near as I remember that was the time.

Q. Did you go of your own accord, or were you desired to go? A. I went of my own accord.

Q. You didn't go on your husband's desire, or in any interest, or at his request? A. No, Sir.

Q. And your object was to learn what her view would be if that contest came on? A. Yes, Sir; what position she proposed to take.

#### MRS. TILTON'S UNFALTERING DEVOTION TO MR. BEECHER AGAIN DESCRIBED.

Q. Do you remember asking her whether she should support her husband in a charge against Mr. Beecher, or whether she should not, and her answer being made to you that if there ever came a controversy she should speak the truth? A. No, Sir; I never remember that.

Q. You don't remember that? A. No, Sir.

Q. Now, did you urge her in that interview as to what she should do, one way or the other? A. I cannot remember that I urged her; I can tell what I said to her.

Q. Did you speak to her on the question of which side she should take? A. Yes, Sir.

Q. And did you express an opinion as to which side she ought to take? A. I don't remember that I did.

Q. Were you at that interview very much excited and distressed? A. I think I was; yes, Sir.

Q. Did you show in your manner great distress? A. Yes, Sir; I think I did.

Q. And weep? A. Very likely, Sir.

Q. Now, did you in that interview express to her great distress lest Mr. Beecher should be betrayed by Mr. Tilton and your husband? A. Not that he would be betrayed by them, but that the truth would be known—made public.

Q. And by them? A. Oh! yes, by them.

Q. By them. Now, did you in that interview, in expressing this opinion of what Mr. Tilton and Mr. Moulton would do, beg her to stand by Mr. Beecher? A. So long as she could without sacrificing herself and the truth.

Q. Did you beg her to stand by Mr. Beecher? A. So long as she could without sacrificing the truth.

Q. You did beg her? A. Very likely, Sir—very likely.

Q. And did she not then tell you that, whenever the inquiry came, she should tell the truth? A. No, Sir.

Q. Did she tell you that she should not tell the truth? A. She told me distinctly that she should sacrifice her husband and deny everything for Mr. Beecher; that she believed under the circumstances that she would be justified in telling a lie. [Applause.]

Judge Neilson—The audience will please keep quiet.

Q. Now, madam, are you quite sure that in addition to saying she would sacrifice her husband and defend Mr. Beecher (is that the phrase?)— A. Yes, Sir.

Mr. Evarts (continuing).—That she added that she would tell a lie? A. Yes, Sir, I am; I cannot say as to the words that she used the word "lie," but she said that she would deny everything.

Q. But did she add that she should lie about it? A. If she didn't use the word "lie" she said falsehood.

Q. Did she say that she would tell a falsehood? A. Yes, Sir.

Q. One or the other—did she flatly tell you that she would tell a lie or a falsehood? A. Yes, Sir.

Q. Did you go to your house satisfied then that your errand had succeeded? A. I have never felt that any errand of mine has ever been successful.

Q. In this business? A. No, Sir.

[At this period there was some commotion in Court, and loud conversation.]

Judge Neilson—Gentlemen, you will please, unless your business requires you to confer, please omit it; and either listen, or if you have anything to do in the way of reporting, attend to that.

#### THE MOULTONS' PORTRAIT OF MR. BEECHER.

Q. Do you remember about this portrait of Mr. Beecher being brought to your house? A. I remember it was brought there.

Q. Do you remember when that was? A. I don't remember the year—whether we had it in Clinton-st. or not; I don't remember.

Q. You have no recollection? A. Not as to the year; no, Sir.

Q. But still you can recollect as to its being in your house a number of years? A. We have lived in our house for three or four years; I think it has been in our house since we have lived in Remsen-st.; I am quite sure of that.

Q. Ever since? A. I think so.

Q. Now, where was it hung? A. In the front parlor.

Q. And at one time was it removed from that place? A. It was removed—yes, Sir.

Q. When? A. This last Autumn.

Q. And another portrait put in the room? A. Yes, Sir.

Q. And where was Mr. Beecher's portrait put? A. Mr. Beecher's portrait still stands on the mantel-piece in our front room on the second story.

Q. I beg pardon, I didn't hear your answer. A. It stands on the mantel-piece in the front room in our second story.

Q. Your own room? A. It is a sitting-room.

Q. Not a bedroom? A. At present it is not used as a bedroom.

Q. Was it a bedroom when the portrait was put there? A. No, Sir; for the reason that we have not occupied that room often.

Q. But it is a sitting-room? A. Yes, Sir.

Q. It is the room up-stairs, where interviews took place? A. Yes, Sir.

Q. And there it has remained? A. Yes, Sir.

Q. Now, that was this last year? A. This last Autumn.

Q. And, of course, after Mr. Beecher's published statement? A. Yes, Sir.

Q. Do you remember, while Mr. Beecher's portrait was in the parlor, that Mr. Moulton had gas lights arranged specially to display it? A. Not specially to show his picture; we have several of Mr. Paige's pictures.

Q. Yes? A. He had them arranged to show the different pictures in the room.

Q. Including this of Mr. Beecher? A. Including that; yes, Sir.

#### MRS. MOULTON'S REMARKS ABOUT THE PORTRAIT.

Q. Do you know Mr. Andrew McLean? A. Of *The Eagle*?

Mr. Fullerton—No.

Mr. Shearman—Yes, of *The Eagle*.

The Witness—I have met him; yes, Sir.

Q. You know Mr. Andrew McLean? A. Yes, Sir.

Q. He is a Brooklyn gentleman? A. Yes, Sir.

Q. Do you remember a conversation with him about Mr. Beecher, when looking at that portrait, showing it? A. I don't understand your question.

Q. Do you remember a conversation with that gentleman, while you were exhibiting to him Mr. Beecher's portrait? A. I never remember exhibiting Mr. Beecher's portrait to him particularly.

Q. Do you remember, in November or December, 1872, in your parlors, expressing to Mr. Andrew McLean (in view of, and in reference to the portrait of Mr. Beecher) your own confidence and admiration for him? A. I think I expressed my admiration for Mr. Beecher; I don't remember now the exact conversation; but, I think I expressed, perhaps, my admiration for Mr. Beecher, but certainly not my confidence in him.

Q. You are quite sure you did not express your confidence in him? A. I am quite sure.

Q. And nothing equivalent? A. I don't know exactly the conversation; I know I have always spoken to every one of my admiration of Mr. Beecher.

Q. Did you say to Mr. McLean that he was a "pure man?"  
A. I don't remember saying that?

Q. And, a "good man?" A. I don't remember having said that.

Q. And "entirely innocent of the Woodhull charges?" A. No, Sir. I never said that to anybody.

Q. Nothing of the kind? A. No, Sir; never to anybody.

Q. Do you now remember having had a conversation with Mr. McLean? A. I remember Mr. McLean waiting in our parlor for Mr. Moulton, and I remember his calling attention to Mr. Beecher's portrait, and I think it quite likely that I expressed my admiration for Mr. Beecher, which I have never failed to do.

Q. Never what? A. I have always expressed my admiration of him.

Q. Now, are you quite sure that you did not say to Mr. McLean, as a part of your admiration, that he was a "pure man?" A. I certainly have never said that to anybody.

Q. Can you give us the language you did use to Mr. McLean, in expressing your admiration for Mr. Beecher? A. No, Sir; I cannot.

Q. Do you remember the occasion of Miss Emily Faithfull, who, I think, was an English philanthropist, being here? A. Yes, Sir.

Q. And, your giving her a reception at your house? A. I don't think we gave her a reception; she spent six weeks with us; but, during that time, I don't remember that we ever had any reception particularly.

Q. Did you not have a social reception, a levee, or a meeting of invited guests, on the occasion of Miss Faithfull's being at your house? A. We invited a number of friends to meet her, but never any reception, or levee, or large entertainment.

Q. Not a large entertainment? A. Not that I remember.

Q. Well, did you take part in any public reception elsewhere than at your house for Miss Faithfull? A. I went with Miss Faithfull to Steinway Hall once, when she delivered a lecture there; and I attended a reception given to Miss Faithfull by Mrs. Bullard of Thirty-ninth street.

Q. Mrs. Bullard of Thirty-ninth street in New-York? A. Yes, Sir.

Q. Do you remember calling on Mr. Beecher and inviting him to preside at that? A. Preside at the reception at Mrs. Bullard's?

Q. Yes. A. No, Sir; I don't remember that I invited him.

Q. Or at the Steinway Hall meeting? A. I, perhaps, asked him to go; I don't remember that I asked him to preside.

Q. Do you remember when that was? A. Well, I think it must have been in 1863.

Q. 1873, you mean? A. 1873.

Q. Now, don't you remember that you called especially at Mr. Beecher's house to give that invitation, and that you saw him, and gave it? A. I remember distinctly calling at Mr. Beecher's house and seeing him.

Q. [Interrupting]—And seeing Mr. Beecher and inviting him? A. But, I don't remember that I called to see him on that business.

Q. Do you remember now, Mrs. Moulton, at any interview with Mr. Beecher saying, to him this, or to this effect: "I am afraid that my husband and Mr. Tilton have overreached you?"  
A. I don't remember using those words.

Q. You don't remember anything of that kind? A. Not these words; nor I don't remember of conveying any such message as that to Mr. Beecher. I remember often expressing great fear that the truth would come out in spite of my husband's endeavor to keep it quiet.

Q. And Mr. Tilton's? A. Yes; and Mr. Tilton's.

Q. You remember that, but you do not remember giving it the form or effect of an expression that your husband and Mr. Tilton had overreached him? A. I do not remember that—no, Sir.

Q. Do you remember asking Mr. Beecher if he was not fearful that your husband and Mr. Tilton had overreached him? A. No, Sir.

Q. Nothing of that kind? A. I do not remember that expression at all—no, Sir.

Q. Do you remember, Mrs. Moulton, having said to any person that your husband and Mr. Tilton had overreached the old man, meaning Mr. Beecher? A. I do not remember, at all, that sentence "overreaching Mr. Beecher," or "The old man."

Q. Well, do you put it upon the word "overreaching?" You know what that means. Was it any equivalent word? A. No; I have always had a very great fear that my husband would never be able to keep it quiet, while he has tried very hard to do it; he has tried to serve both Mr. Beecher and Mr. Tilton faithfully, yet I have always feared that Mr. Tilton, when he has been forced to answer, that he would tell the whole story; that has been my only fear.

Q. You think, so far as you observed, that the getting out of the matter came from Mr. Tilton? A. I think it was the force of circumstances.

Q. Operating upon him—don't you? A. Perhaps so.

#### THE FREQUENCY OF MR. BEECHER'S CALLS.

Q. Now, Mrs. Moulton, you have spoken of Mr. Beecher coming to your house almost every day, or twice a day, &c. At what period of time, and through how long a period of time do you speak of any such frequency of visits? A. During the last four years, up to last July.

Q. Do you mean the whole four years he came there every day? A. I do not say so—no, Sir.

Q. Through the whole four years there were times when he came every day? A. Yes, Sir; when he had been in Brooklyn.

Q. Now, what periods of time were those at which his visits were thus frequent, and how long did any such frequency continue at any one time? A. I cannot state how long, nor at the particular times in which he came so frequently.

Q. Well, was one of those times in the Winter of 1871, before you went South? A. We went South in the Spring of 1871.

Q. Well, in the Winter of 1871, before you went South, was there a period of those frequent visits or not? A. Yes, he



visited our house very frequently at that time, and during Mr. Moulton's illness he was at the house twice a day.

Q. That was the same season? A. That was in 1871.

Q. That was before you went South? A. Yes, Sir.

Q. Now, when again did there come up any frequency of his visits? A. The time of the Woodhull publication.

Q. You mean of the card? A. I mean of the publication in her paper.

Q. The final paper? A. Yes, Sir.

Q. That was the end of 1872? A. I do not know, Sir, what year.

Q. You cannot remember any period of frequent visits from him between those two times? A. Yes, I remember he has been at our house very frequently for the last four years; I cannot tell the dates, the time of year, or the circumstances connected with it.

Q. You certainly do not mean to be understood that Mr. Beecher has been at your house every day during the last four years? A. No, Sir.

Q. Or parts of the days during the last four years? A. I do not know how many days in the year; I know that there have been a great many days when he has been there twice a day.

Q. Do you not know that there were certain periods at which he made frequent visits? A. Yes, Sir.

Q. And don't you know that the rest of the time he did not make frequent visits? A. I know when he had been in Brooklyn he visited our house frequently.

Q. Well, but every day visits? A. Of course there have been times in the last four years, when he has visited our house more frequently than at others, but I can not remember the date or time.

Q. Do you not know that there were but few occasions in which the frequency of those visits occurred, and that they all had something to do with some question of publicity, or publication, or expected publication connected with this affair? A. No; I know Mr. Beecher has come very often to see Frank, as we said, to get a little hope and strength and courage from him.

Q. That may be. A. Not with reference to any publication.

Q. Did he come through a series of weeks, every day, for that purpose? A. I do not know that he did.

Q. Can't you distinguish in your mind at all that there were occasions of frequent visits, and then there was an interval when only ordinary visits were made? A. I do not remember of any time when the visits were ordinary.

Q. You do not remember any ordinary visits. A. Yes; for the last four years he has been so much at our house that I can hardly describe between the two.

Q. Now, do you remember there being visits there of ordinary calls in which you participated, and in which there was no connection with this business? A. I do not know that I remember hardly an instance when I was present.

Q. You do not remember any. Was Mr. Beecher, during this time, frequently there as a guest, by invitation at a meal, a dinner, or a tea? A. I remember on two or three occasions he was invited. On one occasion Mr. Tilton was to make a political speech in Brooklyn during the Greeley campaign, and Mr. Beecher was invited with others to take supper at our house.

Q. Is that the only occasion that you remember? A. No, Sir—I have a recollection of perhaps one or two other occasions; but I don't remember who were present, or who were invited—

Q. Do you mean to say that during the whole four years you think he was not invited to your house more than once or twice? A. Yes, but I do not remember.

Q. You do not remember? A. I don't remember how many times Mr. Moulton may have invited him.

Q. Well, how many times he came there to meals. A. I remember his taking breakfast with us one morning; I remember his taking tea with us once, or two or three times.

Q. But to your best recollection the occasions were very few and infrequent? A. I don't remember any occasion when he did so.

#### THE INTERVIEW AGAIN MINUTELY DETAILED.

Q. Now, you have mentioned one occasion in which Mr. Beecher was waiting in the parlor and took you by the hand, &c. Now, when was that occasion? A. It was either late in the Spring of 1871 or in the Fall; I don't remember whether it was Spring or Fall.

Q. That was not the first time, was it, that you saw him? A. No, Sir; it was not the first. I had frequently seen him at our house before.

Q. In reference to having any conversation with him—was this the first conversation you had with him? A. In reference to this case?

Q. This was the first one? A. Yes, Sir.

Q. And you cannot say whether this was in the Spring or Fall of 1871? A. No, Sir.

Q. And you are quite sure that up to that time you had no conversation with him? A. None whatever; no, Sir.

Q. Now, as I understand you, he did not then come to see you? A. No, Sir; he did not come to see me.

Q. He did not come to see you; and how came you to have any interview with him on that occasion? A. I presume I went into the parlor to speak with him, as I often did, when he was waiting for Mr. Moulton.

Q. And what did he say? A. He had been walking up and down the floor and seemed very much excited, and after a few moments' conversation he took my hand and asked me if I knew anything of this sorrow of his life.

Q. Of this sorrow of his life? A. Yes, Sir.

Q. Well, what did you reply? A. I said I did.

Q. What, then, did he say? A. He said: "Then Frank has told you the facts, has he, in the case?" I said: "He has."

Q. And then you parted? A. I don't remember of anything more; I expressed great sorrow at having known what I had concerning Mr. Beecher; I told him I had been a member of his church for so many years and believed in him.

Q. At this interview? A. I expressed great sympathy for him; some feeling of regret at my own condition of mind in having known what I did concerning him.

Q. At this interview? A. Yes, I think so.

Q. Are you certain you said anything more then? A. I know I expressed sympathy for him on that occasion—yes, Sir.

Q. And then you parted? A. Yes, Sir.

Q. You say that you had an interview with Mr. Beecher about the first of June, 1871? A. I don't remember that I had.

Q. That has reference to some date; we fix it?

The Witness—Was it 1873?

Mr. Everts—No; that is another matter.

Q. Well, was the interview that you have just now been speaking about that about the first of June, 1871? A. I do not know at what time in 1871.

Q. Well, at all events, between this interview until Mr. Beecher took your hand, etc., whenever that occurred, was the first interview that you remember when anything passed between you and him concerning this business—that of June 2, 1873? A. I don't think I understand your question.

Q. You have given us an interview that took place some time in 1871? A. Yes.

Q. Is the next interview with Mr. Beecher in which anything passed between you and him on the subject, the interview that took place in June, 1873? A. I had a number of interviews between that time with Mr. Beecher with reference to this case.

Q. Well, the next that you have spoken of in your direct examination, was that the one of June 2, 1873, that lasted three or four hours, you say? A. That is the next of any importance.

Q. The next of any importance—on this occasion, which I think was in the morning, was it not? A. 1873?

Q. Yes. A. Yes, Sir.

Q. Mr. Beecher found you and Mr. Moulton together? A. Yes, Sir.

Q. In this room up-stairs? A. Yes, Sir.

Q. Was that then a bedroom? A. It was.

Q. Used as a bedroom? A. Yes, Sir.

Q. And still it was the place where you had—where Mr. Beecher often had these interviews. Now, what passed between you and Mr. Beecher—and between Mr. Beecher and Mr. Moulton, while your husband was there? A. Oh! most ordinary conversation; I forget what it was; nothing of any importance, however.

Q. The ordinary salutations, and anything in his manner which was peculiar, while Mr. Moulton remained there, I mean? A. Yes, Sir; Mr. Beecher said that he had not slept any all night; that he was very much depressed; that he was utterly worn out.

Q. He said that while Mr. Moulton was there? A. Yes, Sir.

Q. Well, was that all that he said while Mr. Moulton was there? A. No; I asked him if he would lie down on the lounge. I gave him a pillow; covered him up with the Afghan or whatever was lying there, blanket; he laid down on the lounge.

Q. Put a blanket on him? A. I covered him with the ordinary blanket of the lounge. Yes, Sir; Afghan.

Q. The Afghan?—yes. Well, you suggested that to him? A. I did; yes, Sir.

Q. What led you to make that suggestion that he should lie down, and that you should cover him with the Afghan? A. Because he said he was very tired; that he was heart-broken; he was utterly without any hope; that he had not res ed any;

that he came around for some comfort, and consolation, and sympathy, &c.

Q. And that he came to see you, and not Mr. Moulton? A. Yes, Sir.

Q. Well, all this was done, then, while Mr. Moulton was there? A. Yes; and he laid down on the lounge while Mr. Moulton was there.

Q. And was covered with the Afghan? A. Yes, Sir.

Q. And then Mr. Moulton went off? A. Yes, Sir.

Q. Now, as he lay there, he talked to you, didn't he? A. Yes.

Q. And where were you seated? A. I was sitting on the chair opposite to him.

Q. Now, won't you tell us what Mr. Beecher said; the language that he used, as you remember it, and go through the whole interview in that form, of what he said and of what you said, if you know what it is? A. Well, he began by saying that he was depressed and discouraged—

Q. Was this after your husband went away?

Mr. Fullerton—No; she commenced the narrative.

Mr. Everts—I want you to begin after your husband went away.

The Witness—I have so commenced.

Q. Very well; that is all that I have asked you? A. He expressed great sorrow for the misery that he had brought upon himself and Mrs. Tilton, upon every body connected with the case, but said that he felt that he had thoroughly repented, and that he had been forgiven, and that he was better fitted now to preach than ever before. He expressed to me his love for Elizabeth, and his great remorse and sorrow that she should have ever confessed to her husband that it had brought nothing but—it would bring only ruin in the end to all. After lying on the sofa a little while he got up and walked up and down the room in a very excited manner, with the tears streaming down his cheeks, and said that he thought it was very hard, after a life of usefulness, that he should be brought to this fearful end, and I said that I thought it was—it was very hard, and there was only one way out of it for him; there was only one chance for him left, and that was by confessing it. After walking up and down for some time he sat down in the chair. I stood behind him and put my hand on his shoulder, and I said: "Mr. Beecher, if you will only go down to the church, Frank will go with you; he will stand by you through everything; it does not matter what comes to you, he will always be your friend, and, no matter what comes, I will always be your friend if you will only go down to the Church and confess, because that is the only way out for you; I am convinced of that; you can never cover such a crime as this and continue in the pulpit, except through a confession on your own part. You have been guilty of crime and you have got to take the responsibility upon yourself, and suffer the penalty. And he said: "Well, I never gather much comfort from you; you are always to me like a section of the day of judgment." And I said: "Well, I feel great sympathy for you, but I don't see how you can continue in this sort of life; living a lie; going into your

pulpit and preaching Sunday after Sunday." I said: "I have never heard you preach since I knew the truth that I haven't felt that I was standing by an open grave; I cannot express to you the anguish and the sorrow that it has caused me to know what I have of your life. I believed in you since I was a girl; believed you were the only good man in this world. Now, it has destroyed my faith in human nature. I don't believe in anybody; I don't go to church—all my interest in the Church and in you is gone, and I am sure I cannot respect you unless you manifest to me that you are sincerely repentant by going down to the Church and confessing your crime. It is very hard for Mr. Tilton to be abused by your friends, and to be charged with treating his family ill—his unkindness to his wife while he feels that you are principally the cause of all his trouble. It is very hard for him; it is very hard for all concerned. If you are only amind to take this case into your own hands you can settle it by confession. Your people will stand by you; they believe in you; they will forgive this one crime that you say you have committed and which you have—which you say you have—sincerely repented for, and you believe you have been forgiven, and you feel that you are better able now than ever before to do great good in this world if you can only be allowed to go on to the end of your life without all the particulars of this case being made known; that is all that you ask, and if the facts are to come out, you want to go out of life; that you cannot live; that you cannot endure it any longer; physically and mentally you are worn out; and it is only with the greatest care that you have been able to preach Sunday after Sunday." His whole conversation was one—

#### WHAT THE CONFESSION SHOULD BE, NOT SUGGESTED.

Q. Well, that is what you said to him, this last ?  
A. Yes.

Q. Is that what you advised him to say to his people ? A. I don't—

Mr. Fullerton—I think she ought to be permitted to finish the narrative.

Mr. Evarts—Well, I will go on with it; I will take care of my own inquiry.

Mr. Fullerton—Well, I will take care of you if you violate any rule.

Mr. Evarts—I do not violate any rule.

Mr. Fullerton—I think the witness ought to go on with the narration until she is through.

Mr. Evarts—I am finding out what she is saying now, before I go any further.

Mr. Beach—Yes, your Honor; but it is necessarily breaking up a continued narrative which the witness is called upon to give, and must necessarily embarrass her in her relation by diverting her.

Mr. Evarts—I don't wish to do so.

Mr. Beach—I don't know what you wish to do, Sir; I know what the effect is, and I know it would embarrass any one when they are asked to give a narrative about a transaction—conver-

sation, which took place and continued for a very long time, to interrupt them with questions that do not look to a continued statement of the conversation.

Judge Nellson—Well, let the witness proceed.

Mr. Evarts—My inquiry, if your Honor please, was whether this last was what she said to Mr. Beecher, and was in the form of what she advised him to say to his people.

The Witness—I don't know that I ever stated to him what the confession should be to the Church. I simply left—I left that to him. He knew what his confession to the Church could be better than I could—how much he was to confess.

Q. I understand your form of expression in this latter part to have been of what you told him he should tell his people. A. This was my conversation with him; I simply said to him that I thought he should make a confession to his people.

Q. Yes—and should tell them these things, did you? A. I don't think I ever said what he should tell them.

Q. Very well; you can go on now. A. Mr. Beecher then spoke to me of coming some time, either the next day—to bring me some mementoes which he wished to give to his friends—something to Mrs. Tilton—asked me always to respect her and care for her, and be kind to her; that she was not a bad woman at heart; that she had sinned through her affections.

Q. Well? A. I only remember that Mr. Beecher was in a very excited condition of mind on that day; that he told me very positively that he should take his life, and I believed him when he said so.

Q. You did believe him? A. I believed him at that time.

Q. Yes, well? A. And I rebuked him and told him of how much I regretted that he had committed this sin, because I had believed in him; how it had destroyed all my faith in human nature; his only reply was that he had repented and he believed that he had been forgiven; still he suffered greatly, fearing it would come to light; that the truth would all be made known; that he suffered first for the sake of the woman who had given her love to him, for the sake of his children; he said that he would—that his children, of course, would despise him; that he could never go back to his house, and then I said: "You could go up to your farm and write"; but he said, "No; if the people won't listen to hear me preach, they certainly won't read anything that I may write; if I cannot continue as a moral and spiritual teacher, why there is nothing left for me to do, and I had better go out of life than remain a burden to my children and my family, and the Church. All my past record will be wiped out." He said he hadn't any fear of death; he rather longed for it as a release from all the trouble, and all the anxiety, and all the anguish of mind, and remorse that he had suffered and was suffering daily; expressed to me his great gratitude for my sympathy; said that our house was the only place where he could act naturally and without reserve; that when he went home he must be cheerful and happy, and wear a smile; that when he went into the pulpit he must be at his best—the least indication of weakness on his part was a confession;

that is the only thing of any importance at the interview that I know.

Q. That is all you remember that you have given us? A. Of any importance.

Q. All that is impressed upon your mind? A. That is all that I can remember at present.

Q. Did he come back and see you again? A. On that day?

Q. No, the day he said he was coming and going to bring some mementoes? A. He never brought me any mementoes, and I don't remember positively that he came on the next day.

Q. Well, did he come anywhere near that time and have a further talk with you on the subject? A. He came soon after; referred to his depression on that day, but said that he felt more hopeful; that he thought that his card in *The Eagle* was only temporary relief; he was living in a fear of—a constant fear and anxiety, not knowing at what time Mr. Tilton might break out with the truth.

Q. Now, Mrs. Moulton, at what time of the day did Mr. Beecher come to your house on the occasion of this long interview? A. To which I have just referred?

Q. Yes. A. He came early in the morning; about—

Q. How early? A. Perhaps nine o'clock; perhaps later.

Q. And at what time did he leave your house? A. About lunch time, I think.

Q. You asked him to stay to lunch, did you not? A. Yes, Sir.

Q. And he said he would be expected at his dinner by—  
A. Yes, Sir.

Q. Mrs. Beecher. Now, was that about one o'clock? A. I think it was about two o'clock; I don't remember exactly.

Q. Was it your usual lunch time? A. Yes, Sir.

Q. There was no delay of your lunch in consequence of this, you think? A. Not that I remember; no, Sir.

Q. There was none. Now, Mrs. Moulton, you say that Mr. Beecher sent some messages by you to Mrs. Tilton? A. Yes, Sir.

Q. When did the interviews at which that occurred take place? A. I cannot state the times.

Q. What? A. I cannot; I don't remember the time—nearly always when he would come in, he would ask me if I had seen Elizabeth.

Q. Yes; he always expressed interest in regard to her condition, did he? Yes, Sir.

#### MR. BEECHER'S MESSAGES TO MRS. TILTON.

Q. And when—you cannot tell us when it was he sent any messages? A. I cannot tell you of any particular time.

Q. That he always sent messages. A. He sent messages a number of times.

Q. Well, when was the first time that you can tell us, that he sent a message? A. I cannot tell the first time.

Q. Was it after this long interview that you talk about, or before? A. Well, it must have been before.

Q. Before that—but you cannot say whether it was in 1871 or 1872? A. No, Sir.

Q. Or the early part of 1873. Now, where did any interview

occur in which he sent any messages by you to Mrs. Tilton, and how did it come about? A. He always asked me to bear his love to her.

Q. He what? A. To take his love to her.

Q. Do you say always? A. I think, nearly always sent his love to her.

Q. Well? A. Wanted me to find out if there was anything she was in need of, any luxury, any little comforts she needed; if so to let him know, and after I had repeated to him a conversation I had had with Mrs. Tilton, when she felt that she could not live with Mr. Tilton any longer, and was going to live with her mother, he told me expressly to see her and say to her from him, that for his sake, if not for her own, she must remain with Mr. Tilton; she must be to him a good and true wife; to make his home as happy as she could.

Q. When was this? A. I don't know when it was. It was when I repeated to him a conversation which I had with Mrs. Tilton.

Q. Cannot you give us any idea when this was? A. I cannot, no, Sir.

Q. What year? A. No, Sir.

Q. Well, that is what you mean by the messages that were sent to her? A. Yes, Sir.

Q. And any other messages that you remember, except of this nature or its equivalent? A. Well, he always told me to say to her that she must refuse to talk with everybody of anything bearing on this case. While she was trying very hard to restore the damage she had done by a confession, she was all the time making it worse.

Q. Anything more? A. No. Mr. Beecher's messages to Mrs. Tilton were always kind—kind and affectionate, that is all.

Q. That is all? A. And an interest for—that she should have everything that she needed; she should be comfortable; that she must keep up a good heart and be hopeful and courageous, and good to Mr. Tilton.

Q. Are you unable to give us any clue to this time when Mrs. Tilton, as you say, was thinking about leaving her husband and living with her mother? A. I don't remember the time.

Q. Now, after receiving this note which I have shown you, which is dated June 1st, 1873—isn't it Mr. Fullerton?

Mr. Fullerton—I think it has no date, only that it was delivered at the same time with the note to Mr. Moulton.

Q. Yes, fixed at that time. Have you said that you had a conversation with him the Monday after that? A. Yes, Sir.

Q. What day of the week was this, June 1st? A. The 2d of June, I think it was; on Monday.

Q. You say it was the Monday after that you had a conversation. How are you able to fix the day and the date? A. I remember the letter distinctly. Mr. Moulton read the letter to me on Sunday.

Q. Well, was the 1st of June Sunday—you mean the next day? A. Yes, Sir.

Q. Well, the next day—now Mr. Beecher called the next day, did he? A. Yes, Sir.

Q. Did he call to see Mr. Moulton or you? A. He called to see me.

Q. And Mr. Moulton not there? A. Mr. Moulton was in when he called; when he first came to the house.

Q. Yes, and what passed between Mr. Beecher and Mr. Moulton and you, while your husband was—

Mr. Beach—That is the same thing you have just gone over. Mr. Evarts—Is this the one?

Mr. Beach—Why, certainly.

Q. Now, this, I think, is the last conversation then, that you have given, with Mr. Beecher? A. 1873.

Q. Yes? A. No, Sir, it was not the last that I had with him.

Q. Which later one have you given? A. The last conversation that I had with Mr. Beecher was on the 18th of July—last July.

Q. 1874? A. Yes, Sir.

Q. Between this 2d of June, 1873, and this 18th of July, 1874, there was no interview between you and Mr. Beecher, of any information, was there? A. On one occasion when he met me in the hall, and told me—thanked me for my sympathy, and said that I was the best friend that he had, that I was dearer to him than any sister that he had.

Q. That you have spoken of in your direct examination, also? A. Yes, Sir.

Q. This visit on the 18th of July was not made to you, was it, by Mr. Beecher? A. No, Sir.

Q. It was made to your husband? A. Yes, Sir.

Q. Were you present at the whole of the interview between your husband and Mr. Beecher? A. I left the room when my husband entered. I don't know anything at all about the interview.

Q. Then your conversation was with Mr. Beecher before your husband came? A. Yes, Sir.

Q. Now, where was your conversation with Mr. Beecher on that occasion—held in what room? A. In the study at the top of the house, the upper floor of our house.

Q. Was Mr. Moulton in the house? A. Yes, Sir.

Q. And what delayed his coming? A. He was preparing to go before the Committee on that evening.

Q. Then this was in the evening, was it? A. It was towards evening. It was not dark. It was in June—or in July.

Q. Well, did you go up to the study to see Mr. Beecher? A. I asked Mr. Beecher to come up with me in the study.

Q. Was Mr. Moulton there? A. No, Sir.

Q. How long a time passed before Mr. Moulton came up? A. Perhaps ten or fifteen minutes.

Q. And whatever conversation you had with Mr. Beecher, was in that ten or fifteen minutes? A. Yes, Sir.

Q. On that occasion, I mean? A. I had another conversation with him when he came down stairs, but the conversation lasted fifteen minutes in that room.

Q. Now, how did that conversation come about? A. Mr. Moulton came—

Q. I am talking about what occurred only between you and Mr. Beecher. What occurred there?

Mr. Beach—You asked how the conversation came about.

Mr. Evarts—Well, how did it pass along? A. I think my first word to Mr. Beecher was: "Frank is very angry with you.

What have you done?" He said: "Nothing that I know of. What is he angry about?" I said: "He is angry because you called your Committee." He said: "I didn't call the Committee. My people called the Committee. I could not object to an investigation." I said: "Why did you do it without consulting Frank?" And he said: "I don't consider that Frank has anything whatever to do with my church affairs. I have intrusted myself to Frank wholly and entirely throughout this whole case, and I have oftentimes been governed by him when it was against my better judgment to do so, and while I have trusted implicitly in Frank, in this case I think he has nothing whatever to do."

Q. Did you say anything further? A. Frank, I think, then came into the room, and I went down-stairs.

Q. And that was all that happened before? A. As near as I can remember that was all.

Q. Then, after your husband and Mr. Beecher had an interview, in which you were not present, did anything further pass between you and Mr. Beecher, and where, and how? A. As Mr. Beecher came down the stairs, I called to him in the front room, second story, and said that I would like to speak to him. He came into the room, and Mr. Moulton came in with him, and as they entered the room Mr. Moulton says: "Well, then, Mr. Beecher, you think my statement before the Committee an honorable one." He said: "Perfectly so." After a few words more of conversation, which I don't remember—not any of importance—Mr. Moulton left the room and went down stairs, and was then going down to the Committee at Plymouth Church. After he had left the room I said: "Mr. Beecher, do you know what Mr. Tilton has promised in *The Eagle* of to-night?" He said: "No, I do not." I said: "He has promised to give to the public a statement of the facts in this case in ten days. If he publishes that statement it will ruin you." He said: "I think not;" but I said: "He will publish your letter of confession." He said: "I have never made any confession in writing." I said: "That letter given to Mr. Moulton in confidence." "Well," he said, "if that letter is published it is a breach of confidence on the part of Frank, if he publishes that letter." I said: "I don't know anything about that. I only know that if that statement is published, you will be ruined." He said: "Very well, let them come on, and do their worst; they cannot convict me." I said: "But, if Mr. Tilton fails in this, he is going to take his case into the courts." Says he: "He hasn't any case to take into the court. He has condoned his wife's offense, and lived with her for four years; he hasn't any case." And I said: "Well, I don't know anything about that; I only know what he proposes to do. He says he can no longer endure what he has been suffering; that he is losing—he has lost—he is suffering, and his paper is suffering, and he cannot endure it any longer, and he is determined to publish the facts, to tell the truth." And then I said: "Now, you see, Mr. Beecher, how much better it would have been for you if you had taken my advice in the beginning, and made a confession to your church, and then you would have only the original sin to answer for, and now you have four years' of lying and per-

jury to answer for." He said: "I will never confess it. I will die before I will make a confession."

Q. By your original advice did you mean the advice that you had given him on the 2d of June, 1873? A. Yes, Sir; my advice from the first to the last was that he should make a confession, and if not—

Q. Well, I have asked you a question, if you mean the advice you gave him? A. Yes, Sir, I do.

Q. Not as to any additional advice. Now, all this that you stated to Mr. Beecher on that occasion of Mr. Tilton's intentions—how did you come to know anything about them? A. Why, I had read the card in *The Eagle*.

#### WHEN THE PRESENT SUIT WAS PROPOSED.

Q. Was there anything in the card in *The Eagle* about Mr. Tilton bringing a suit at law? A. No, Sir.

Q. How then had you learned all the things that you told Mr. Beecher then? A. Because I had heard Mr. Tilton say that he would take his case into the courts of justice, where he would be fairly dealt with.

Q. You had heard that? A. I had heard him make that remark in general conversation.

Q. At that time? A. It must have been about that time.

Q. It must have been before this, if you said this to Mr. Beecher. A. Well, perhaps it was the day, or a few days before; I don't remember how long before.

Q. Can't you give us any information as to how long before this you had heard from Mr. Tilton that he was going to have a suit at law with Mr. Beecher? A. It was not very long before.

Q. Well, was it six weeks before? A. I think the first that I heard was about the time of the Bacon letter.

Q. Then as early as the Bacon letter you had heard— A. I am not sure it was as early as that.

Q. That is your best impression? A. I don't remember how soon it was, but I remember that Mr. Tilton made that remark.

Q. And you had that opinion, that he intended to have a suit at law? A. I knew that he proposed to state the truth.

Q. Well, I have asked you about the suit at law. You told Mr. Beecher— A. I certainly did.

Q. About the suit at law. Now, you think you heard that from Mr. Tilton as early as the Bacon letter? A. I am not sure that I did.

Q. Isn't it your best recollection that you did? A. I cannot say that it is; I don't know when he first spoke of it.

Q. Why did you refer to the Bacon letter as a period, if you had no recollection connecting it with that period? A. Well, because at the time of the Bacon letter Mr. Tilton was very much wrought up by the criticisms of the newspapers and of Mr. Beecher's friends. I think it was quite likely at that time, still I cannot say positively when it was.

Q. Well, if it was not at that time do you remember any other time that it was? A. No, Sir.

Q. Now, this communication, Mrs. Moulton, that you made to Mr. Beecher on this last occasion concerning which you have

spoken—did you do that by the request of any one? A. No, Sir.

Q. Did your husband know that you were going to do it? A. No, Sir.

#### THE TRACY INTERVIEW AT MR. MOULTON'S.

Q. Mrs. Moulton, can you give us any information as to the days—the Sundays in December, when Mr. Tilton or Mr. Tracy were at your house—December, 1872, when Mr. Tilton or Mr. Tracy were at your house? A. I don't remember meeting Mr. Tracy—of knowing him personally at that time?

Q. In December, 1872? A. I don't remember that I met him.

Q. You don't remember seeing him there then? A. I think he was at the house.

Q. You cannot tell us, then, on what Sunday in December Mr. Tracy was there? A. I don't remember in 1872.

Q. Now, have you any means of telling us on what Sundays in December, 1872, Mr. Tilton was at your house? A. I know he was there so much of the time that I do not remember—

Q. How? A. I do not remember any particular time.

Q. You cannot fix that date. Mrs. Moulton, perhaps you will remember a Sunday when Mr. Tilton, Mr. Tracy, Mr. Woodruff, and your husband were at tea at your house together. Do you remember that occasion? A. As early as 1872?

Q. December, 1872. A. I remember that Mr. Tracy, and Mr. Woodruff, and Mr. Moulton were in consultation, but I do not remember of meeting him at tea.

Q. Well, you remember an occasion when they were all there? A. I do not remember about the tea; I don't think I was present.

Q. You do remember the occasion on which they were all there? A. I remember they were there.

Q. Yes, together. Now, can you tell us what Sunday in December that was? A. No, Sir.

Q. Now, Mrs. Moulton, when did you first understand that you were to be a witness in this case? A. I think in July, 1874.

Q. Of last year? A. Yes, Sir.

Q. And ever since that time have intended to be a witness? A. If I was called—yes, Sir.

Q. If you were called; and you date that period and time of being a witness from the publication of Mr. Beecher's defense, or whatever it is called—his statement? A. I do not know that it dates particularly from that statement of Mr. Beecher's.

Q. I thought you said heretofore that that was so? A. Well, I can only say that since July, I learned that I was to be a witness.

Q. What? A. Since July I learned that I was to be a witness in the case.

Q. Do you mean before the Church? A. No, Sir, I have never been spoken to in regard to the Church.

Q. Before the Church Committee? A. No, Sir.

Q. Well, what suit was there in July that you could be a witness in? A. Should the case come to trial, I should be a witness.

Q. Were you expecting to be a witness before the Church

## THIRTY-FIRST DAY'S PROCEEDINGS.

## THE PLAINTIFF'S COUNSEL REST THEIR CASE.

MRS. MOULTON EXPLAINS WHY SHE KISSED MR. BEECHER—HER EXAMINATION CONCLUDED—CATHARINE CAREY'S LIFE AS A SERVANT—SHE ADMITS HAVING BEEN INTOXICATED—THE PLAINTIFF TO INTRODUCE A LARGE AMOUNT OF REBUTTAL TESTIMONY.

TUESDAY, Feb. 23, 1875.

Mr. Evarts, to-day, resumed his cross-examination of Mrs. Moulton. After a few scattered queries regarding Mrs. Woodhull's visits to Mrs. Moulton and the interviews described by the witness, the cross-examination ended. The redirect examination was more interesting, Mrs. Moulton being called upon to say why she kissed Mr. Beecher at the memorable interview of June, 1873. She said that Mr. Beecher was crying and she was crying, and she never expected to see him again. Mr. Evarts interrupted here, and objected to hearing anything further regarding this act, and Mr. Fullerton desisted. The exact language of Mrs. Moulton in advising her husband, in 1874, to make a short statement to the Plymouth Investigating Committee, as stated by her, was, "Give the old man another chance;" the irrepressible audience greeted these words with laughter, calling forth a severe reprimand from Judge Neilson. Soon afterward Mrs. Moulton was excused, and stepped from the witness chair.

Mr. Evarts and Mr. Fullerton now both arose to their feet to address the Court, and considerable amusement was caused by the two men, who for a moment stood smiling and bowing each other to proceed. Mr. Fullerton gracefully withdrew at last, and his opponent went on to say that the defense would call the witness, Catharine Carey, for further cross-examination. Mr. Fullerton was upon his feet in an instant in a very different attitude, and in one voice he and Mr. Beach cried, "We rest our case! We rest! She can't be called on our side." The minor issue regarding Mrs. Carey was forgotten in the murmurs of astonishment that followed the words of the plaintiff's lawyers. There was an excited look on the face of every spectator, and the counsel for Mr. Beecher did not disguise their surprise.

Mr. Evarts went on, however, as if there had been no interruption, and the result was that Mrs. Carey again took the witness-chair, paler

Committee, or only in a law suit, if there should be one? A. I didn't expect to be a witness before the Committee.

Q. Where were you in July of last year? A. The only time I was absent from the city I spent in Narragansett.

Q. Well, was not that in July? A. I forget the time that I went to the country.

Q. Were not you absent in July at Narragansett? A. I think a portion of July, yes, Sir.

Q. What part of July? A. It must have been after the 13th. I don't know how soon after. I think I went to the country about the 26th of July, I am not sure.

Q. Was it before you went to Narragansett, or after, that you understood that you were to be a witness? A. I presume it was before.

Mr. Evarts—It has reached the usual hour, Sir, and I shall not be able to conclude to-day.

## AN ADJOURNMENT TILL TUESDAY.

Mr. Fullerton—If your Honor please, what conclusion did your Honor arrive at, in respect to Monday, whether there is to be a Court or not?

Judge Neilson—I wish to learn of the counsel what the law is on that subject. They are generally advising us about the law.

Mr. Evarts.—The conclusion I have come to, is that the statute makes it a legal holiday, a *dies non*.

Judge Neilson—My impression is that way, arising mainly from the fact that the statute provides that the sheriff's office shall be closed, and the clerk's office shall be closed. It is difficult to conceive how you can have a court without a clerk's office.

Mr. Fullerton—Well, we shall take no exception to your Honor's ruling on that point.

Judge Neilson—Then we adjourn until Tuesday morning at eleven o'clock. Is that the understanding?

Mr. Evarts—Yes, Sir. Mr. Beach, do you agree to that?

Mr. Beach—I agree to that.

Judge Neilson—It may be a benefit to the jurors. I hope I may have the pleasure of seeing them here Tuesday morning, improved by the air and exercise in the meantime. Get ready to retire, gentlemen. Meet us here on Tuesday at 11 o'clock.

The Court then adjourned until Tuesday, February 23, at 11 a. m.

and more emaciated than before, but as self-possessed and clear in her answers as at her former appearance. Her life for years back was examined after she gave her testimony last week, and it was discovered that her real name is Smith. She insisted to-day that on her first examination she gave that name, which belonged to her husband, who deserted her several years ago. It was also ferreted out that the woman had been fond of liquor, but if the counsel expected that she would give a denial of that fact they were disappointed, for when asked if she knew why she was discharged from a certain family in Brooklyn, she quickly answered, "Yes, Sir; intoxicated." Evidently appreciating her inferiority in point of education, the witness apologized to Mr. Evarts on one occasion, after having given a curious jumble of words, saying that she did not know how to pronounce like "high-flown people."

The plaintiff's lawyers had no questions to ask the witness, and she left the stand. An earnest whispered consultation between five of Mr. Beecher's counsel followed, and at its close Mr. Evarts walked up to the bench and privately informed Judge Neilson that he found that Mr. Tracy, who had been selected to open for the defense, was not ready to proceed, but if possible the opening would be made in the afternoon. It being within a few minutes of one o'clock, the court adjourned for recess. Immediately after the interval, Mr. Evarts announced that counsel for the defense had not supposed that the plaintiff's case would rest until night, and that Mr. Tracy was therefore not ready, and could not begin. He asked an adjournment to Feb. 24. Mr. Beach responded that to allow the adjournment under the circumstances was only a proper courtesy, and he therefore concurred in Mr. Evarts's request. The audience was then dismissed.

## THE PROCEEDINGS—VERBATIM.

### MRS. MOULTON'S MEMORY ASSAILED.

The Court met at 11 a.m., pursuant to adjournment. Mrs. Emma C. Moulton was recalled and the cross-examination resumed.

Mr. Evarts—Mrs. Moulton, you said on your direct examination that you went to Mrs. Woodhull's and "brought her to my house three or four times?" A. Yes, Sir.

Q. Can you give any particulars of a fourth visit to your house? A. I don't remember; no, Sir.

Q. Did you bring her four times to your house? A. I remember distinctly three times; I don't remember any more.

Q. You remember three times that you brought her? A. Yes, Sir.

Q. Now, I understood you to say that those three visits that you remember were once with Mr. Tilton, once with your mother-in-law, and once with your son? A. Yes, Sir.

Q. And I understand you to say that when you went with Mr. Tilton you did not bring her to your house? A. I don't remember that I said that I did not—that I did or did not bring her.

Q. Did you bring her to your house? A. I think not.

Q. You think not? A. I think not.

Q. I understood you so before? A. Yes, Sir; I think I did not bring her.

Q. Now, there are but two visits, then, that you brought her to your house? A. Two that I remember. Yes, Sir.

Q. Were you then mistaken in thinking that you had brought her three or four times to your house? A. I remember distinctly twice that I brought her to the house. I remember visiting her once with Mr. Tilton at her house.

Q. And not bringing her to your house on that occasion? A. I think I did not bring her.

Q. Can't you remember whether you did or did not? A. I don't remember positively.

Q. What? A. I don't remember, but I remember twice distinctly that I brought her.

Q. The time that you went with Mr. Tilton, do you or do you not remember whether you brought her to your house? A. I think not.

Q. Is that all you can say; have you no recollection definitely about it? A. I don't remember positively whether I brought her or not.

Q. What time in the evening did you start on that errand with Mr. Tilton? A. I don't remember the time.

Q. Do you remember nothing about the time? A. I don't remember the time; no, Sir.

Q. What? A. I don't remember positively the time.

Q. Can you give us nothing about the hour of the day that you started? A. I don't remember.

Q. Do you remember the hour of the day that you got back? A. No, Sir.

Q. Have you no recollection about the hour of the day that you returned? A. No, Sir.

Q. How many hours were you absent from your house? A. I remember that we made only a short call on Mrs. Woodhull. I don't know how long it takes to go to her house and return.

Q. You have been several times; don't you know about how long it takes to go and return? A. No, Sir; I could not tell you the exact time.

Q. All these visits were made in a carriage, were they not? A. Yes, Sir.

Q. Now, Madam, how happened you to say on your examination, that your boy was eleven or twelve years old when he went with you? A. I did not remember exactly how long it was since I went with him.

Q. Then perhaps it was last year, wasn't it? A. Oh! no, Sir, it was not last year.

Q. He was twelve a year ago, wasn't he? A. Yes, Sir.



Q. And eleven two years ago? A. Yes, Sir.

Q. Now, did you go last year? A. No, Sir.

Q. Did you go the year before? A. I went the year of the publication of her story; I don't know what year that was.

Q. Did you go in the year 1873? A. I can only tell you that I went the year that she published her story in the paper; I don't know what year.

Q. Can you tell me, Madam, whether you went with Mr. —whether you went to that house in the year 1873? A. I cannot answer the question, what year it was.

Q. Do you mean you cannot remember whether you were there in the year 1873? A. I mean that I do not remember the year that I was there.

Q. And do not remember that you were not there in the year 1873? A. I don't remember.

Q. Well, now, were you there in the year 1872? A. I don't know the year.

Q. Were all your visits in the same year? A. I think so.

Q. That you don't remember? A. I think they were.

Q. Do you mean by that that they were in the same year by the calendar, or within a space of a year? A. I don't remember positively, but I think they were within a year; I don't remember.

Q. Have you a pretty good memory? A. Yes, Sir, I think so.

Q. Have you given us the best of your recollection about these visits to Mrs. Woodhull? A. I have; yes, Sir.

Q. And you can give us nothing more? A. No, Sir.

Q. Have you an impression that you went there a fourth time? A. I don't remember only of the three visits that I have told you.

Q. And you cannot give the hour of the day or evening that you went, or the hour of the day or evening that you returned either visit? A. I don't remember; no, Sir.

Q. What? A. I don't remember the hour; no, Sir.

Q. Nor anywhere near the hour? A. No, Sir; I can't tell you.

Q. Would not a trip in a hackney coach in the night time and back impress itself on your mind, if it had taken place? A. I don't know whether it would.

Q. Are you quite sure that both of the other times than that in which Mr. Tilton accompanied you you did bring this lady to your house? A. Yes, Sir; I am quite sure. My little boy remembers coming back with me.

Q. I don't ask you about what your boy remembers? A. Well, I have stated to you what I knew about it.

Q. Well, you are quite sure? A. I am quite sure.

Q. That you brought her both the other times? A. Yes, Sir.

Q. Now, are you sure whether you took her back both of those times? A. I am not sure; I don't remember of taking her back.

Q. You don't remember whether you did or not, do you? A. I don't remember positively; no, Sir.

Q. Whether you took her back or not? A. I think I did not.

Q. And you can give us no idea of the hours of the evening that you started or got back? A. No, Sir.

## MRS. MOULTON'S SERVICES AS MESSENGER.

Q. Did you go on any other errands in connection with this business? A. To Mrs. Woodhull?

Q. No; to anybody. A. I don't remember.

Q. What? A. I don't remember of any at present.

Q. Did you go by your husband's or Mr. Tilton's request, or with either of them, anywhere else on any errands connected with this matter? A. I don't remember any.

Q. Are you quite sure that you did not? A. I don't remember any other.

## THE STORY TOLD GEORGE C. ROBINSON.

Q. Mr. George C. Robinson, of whom you have spoken as the party to a conversation with you—he is your uncle, is he not? A. Yes, Sir.

Q. One of the firm of Woodruff & Robinson? A. Yes, Sir.

Q. And not the gentleman who has been examined as a witness here? A. No, Sir; a brother.

Q. His name is Jeremiah P.? A. Yes, Sir.

Q. They are brothers, are they not? A. Yes, Sir.

Q. And they are both your uncles? A. Yes, Sir.

Q. Are they the heads of this mercantile house with which your husband has been connected? A. Yes, Sir, Mr. Jeremiah Robinson is the senior partner.

Q. And Mr. George C. is next to him, is he not? A. I really don't know.

Q. The other partners are younger men, are they not, whoever they may be? A. Yes, Sir.

Q. When was that conversation with Mr. George C. Robinson? A. I cannot state the exact date. I cannot give you the date, or perhaps the year, but it was in the beginning of this trouble.

Q. The beginning of the trouble? A. Yes, Sir.

Q. Then it was in the year 1871, was it not? A. I don't know, Sir.

Q. Don't you know when this trouble, as you call it, began? A. Yes, Sir.

Q. What? A. Yes, Sir.

Q. Well, when did it begin? A. In 1871.

Q. Well, was your conversation with Mr. Robinson in 1871? A. It might have been some time during that year.

Q. It might have been; when was it? A. I cannot state; I cannot give you the date.

Q. Don't you know that it was in the Spring of that year; before the Summer? A. I don't know, Sir, when it was.

Q. Don't you know that it was in the Fall; after Summer? A. I do not; no.

Q. Don't you know whether it was in 1871 or 1872? A. I think it was in 1871; but I cannot say positively.

Q. And not later than the Fall, you think, of 1871? A. I don't know, Sir, what time it was.

## THE INTERVIEW WITH MRS. TILTON.

Q. You have described an interview you had with Mrs. Tilton, in which you were a good deal affected and wept; you have stated that you did not have that interview by the request of Mr. Tilton or your husband? A. Yes, Sir; I stated so.

**Q.** That is so; did you report to them that conversation after you had it? **A.** I think I reported it to Mr. Moulton.

**Q.** Have you any assurance in your memory that you did that? **A.** I do not remember—

**Q.** Don't remember? **A.** —at present, positively; but I think I did.

**Q.** It is not impressed upon your mind, then, what you did upon that point; do I so understand you? **A.** I think I reported it, but I cannot say positively.

#### WHAT PROVOKED MRS. MOULTON'S REBUKE TO MR. TILTON.

**Q.** Can't say positively. Now, Madame, in this conversation with Mr. Tilton in which you called him a villain, and told him if he turned on your husband, even by a look, you would—

**Judge Neilson**—I don't think she adopted the word "villain."

**Mr. Beach**—No, Sir.

**Mr. Evarts**—I so understand it.

**Mr. Fullerton**—Well, it is a mistake.

**Mr. Evarts**—I think not; I will read the record.

**Judge Neilson**—She answers something of that kind; I did not understand she adopted that very word.

**Mr. Evarts**—I do not wish to hold any witness to anything that has not been said.

**Judge Neilson**—Of course not.

**Mr. Evarts**—I wish to understand this lady.

**Judge Neilson**—Yes, Sir.

**Mr. Evarts**—[Reading]:

Do you remember an interview that you had with Mr. Tilton, at your house, during some of these years; in January, 1873, do you remember having an interview with Mr. Tilton, at your house, in which you told him that he was a villain and would betray your husband as he had Mr. Beecher? **A.** I think I remember an interview with Mr. Tilton something like that.

**The Witness**—In seventy—last Summer.

**Q.** When? **A.** I stated last Summer, that I had such an interview.

**Mr. Evarts**—Perhaps it is.

**Judge Neilson**—That is as I recollect it, Sir.

**Mr. Evarts**—I will read on, your Honor. [Reading]:

Do you remember when that was? **A.** Yes, Sir; it was last July.

**Q.** Do you remember, on his making some remark in answer to this statement of yours, that you threatened to send for a policeman and have him put out of the house? **A.** No, Sir; I never remember the policeman nor any reference to any policeman.

**Q.** What did you further tell him? **A.** I said if he was unkind to Frank, my husband, if he turned on him in any way, even so much as by a look, that he must never come into our house again.

**Judge Neilson**—Well, it is not material; your question pointed to the interview.

**Mr. Evarts**—It did, and pointed to the language, and she discarded from it nothing but the policeman.

**Mr. Beach**—That is a mistake.

**Mr. Evarts**—I have read the record.

**Mr. Beach**—Well, you misconstrue it.

**Mr. Evarts**—It may be, but you do—one or the other.

**Mr. Fullerton**—And it is not us.

**Mr. Beach**—Then it is for the Court to settle it.

**Mr. Evarts**—It is not for the Court to settle. It is for the jury to settle, when we sum up.

**Judge Neilson**—Put your question, Sir.

**Mr. Evarts**—You had a conversation with him, a part of which was, that if he turned upon your husband even by a look—what led you to think of his turning upon your husband? **A.** I remember, it was in August this conversation took place; it was with reference to Mr. Moulton having failed to make his statement before the Committee as he had promised. At my earnest solicitation a short statement was prepared for Mr. Moulton and given to the Committee in place of the long statement, as I said, to give Mr. Beecher another chance to state his case fairly. **Mr. Tilton** did not know of that; he had been out of town. When he came home in the evening he came into our house with **Judge Morris**, and said: "Frank, you have broken your faith with the public; your reputation will suffer; you have promised faithfully to give to-day to the Committee your statement; you have failed to do it." I listened to him for some time; I was sitting in the back room, and I did not like the manner or the way in which he reproved Frank for having failed to make his statement, and I went in and spoke to him. My exact language I do not remember; I know that I was very angry, and reproved him very severely for speaking to Mr. Moulton in the way in which he did.

**Q.** Well, did you call him a villain? **A.** I may have called him a villain.

#### MRS. MOULTON'S TRIP TO NARRAGANSETT.

**Q.** Mrs. Moulton, can you give me more accurately when you went to Narragansett in last July? **A.** I forget the day of the month, but some time in July; I think it must have been the latter part of July.

**Q.** Do you remember any part of the month that you were at Narragansett and how long you were there? **A.** I think, in all, during the entire Summer, I was there about six weeks, for I went the latter part of July.

**Q.** Didn't you go as early as the 17th of July? **A.** I do not think that I did; I do not remember the day of the month.

**Q.** Do you remember whether or no while you were there you were sick? **A.** Yes, Sir.

**Q.** Do you remember what part of the month of July, if in the month of July, that was? **A.** I was sick nearly all the time.

**Q.** Well, do you remember your husband coming there, after you had been there some time; that is a week or more, or some period of time, and that that was in July that he came? **A.** I remember his coming there while I was there; yes, Sir.

**Q.** Well, do you remember whether that was the 24th day of July that he came? **A.** I do not remember the day of the month?

**Q.** Do you remember how long you had been there when he came, whenever that was? **A.** I cannot tell you; no, Sir.

**Q.** Don't know? **A.** I do not know how long I had been there; no, Sir.

MR. BEECHER NEVER PRONOUNCED INNOCENT BY  
MRS. MOULTON.

Q. Do you remember meeting a Mrs. Dennis at Newport? A. Yes, Sir.

Q. In the years 1873 and '74; was she an acquaintance of yours? A. Yes, Sir, she is a relative of mine.

Q. Is she a Brooklyn lady? A. No, Sir; she lives in Newport.

Q. Lives in Newport—an acquaintance of yours there? A. Yes, Sir.

Q. Did you see her in both years—1873 and '74? A. I think I did; yes, Sir.

Q. Now, do you remember telling her that Mr. Beecher was an innocent and good man? A. No, Sir; I never told her that.

Q. Quite sure of that? A. Sure that I never told her any such thing.

Q. Do you remember to have told other persons that? A. I have never told anybody Mr. Beecher was an innocent man.

Q. You have never told Mrs. Dennis that Mr. Beecher was an innocent and good man? A. I never told her that he was an innocent man.

Q. Well, nothing to that effect, that he was an innocent and good man? A. I never said to anybody that he was an innocent man.

Mr. Evarts [after consultation]—If your Honor please, that is all I have to ask.

## RE-DIRECT EXAMINATION OF MRS. MOULTON.

The re-direct examination was then begun by Mr. Fullerton, as follows:

Q. Can you state more particularly when you made known to Mr. George C. Robinson what you told him? A. I cannot; I do not understand your question, Sir.

Q. You have told us what you communicated to Mr. George C. Robinson? A. Yes, Sir.

Q. In respect to Mr. Beecher when he questioned you as to what was the difficulty? A. Yes, Sir.

Q. What led Mr. Beecher to visit your husband so often—can you give us more particularly when that conversation took place between yourself and Mr. Robinson?

Mr. Evarts—That is just what I have been asking.

The Witness—It was. I do not remember whether it was in the first year, but I think it must have been. Mr. Robinson was very much exercised about the stories that were—

Mr. Evarts—No matter about Mr. Robinson.

Mr. Fullerton—Was it after your husband received these frequent visits from Mr. Beecher? A. Certainly.

Q. And how long had that been going on, as near as you can remember? A. I cannot tell you how long. I only know that Mr. Beecher had been frequently to the office, and had excited the suspicion of Mr. Robinson.

Q. Then, whenever it was, it was after that? A. Yes, Sir.

Q. Now, was Mr. George C. Robinson a member of Plymouth Church? A. Yes, Sir.

Q. How long had he been a member? A. I forget the year, but before I joined the church.

Q. And had he held an office in the church? A. He had been deacon; yes, Sir.

## MRS. WOODHULL'S LAST CALL AT THE MOULTONS.

Q. Mrs. Moulton, you have stated in your cross-examination, speaking of your visit to Mrs. Woodhull's house, that Mr. Moulton wanted you to go, and Mr. Tilton wanted you to go and see Mrs. Woodhull in reference to something in the case, I don't know what. A. It was in reference to the publication of the —of her story.

Q. Of her story? A. Yes, Sir.

Q. Now, were those visits after this threat of Mrs. Woodhull, which appeared in one of the New York papers, to publish the story? A. Yes, Sir.

Q. You never had any intercourse with Mrs. Woodhull after that? A. No, Sir; not at all.

Q. And was it after the threat and before the publication of the story itself? A. Yes, Sir.

Q. Did you ever see Mrs. Woodhull after the publication of the story? A. The last time that I saw Mrs. Woodhull she came to our house to ask Mr. Moulton if he could assist her in raising some money; she said she had a library or a set of books which she could give as security. Mr. Moulton was sick at the time, and told her that he could not assist her in any way; she left the house very angry—the last time that I saw her.

Q. That is the last time that you saw her? A. That is the last time that I saw her.

Q. When was that? A. I don't remember the time when it was. I only remember it was the last visit.

Q. Was it after the publication of the story? A. Yes, Sir.

Q. That visit you did not anticipate? A. No, Sir.

Q. And how long was she at your house? A. Only for a short time; perhaps half an hour.

THE BEECHER-TILTON-WOODHULL DINNER AT THE  
MOULTONS.

A. You have mentioned an occasion when Mr. Beecher was at your house to dinner; can you tell us when that was? A. I think it must have been in the year 1871, for the reason—I have only one way of knowing—when we were dining in our basement, and I think it was in 1871, but I cannot give you the exact date.

Q. You cannot be positive? A. No, Sir.

Q. Now, was Mrs. Woodhull there at dinner? A. Yes, Sir.

Q. Was it before or after Mrs. Woodhull had threatened to publish her story? A. It was after.

Q. It was after? A. Yes, Sir.

Q. Then, if that threat was published in 1872, the dinner was after that? A. Yes, Sir.

Q. Do you recollect at what hour the dinner was served? A. In the evening; at evening.

Q. Do you recollect who arrived first, Mr. Beecher or Mrs. Woodhull? A. I don't—no, Sir.

Q. Do you recollect where they first met? A. I don't remember.

Q. Or do you recollect how long they arrived at the house before the dinner was served? A. No, Sir; I cannot tell you anything about the particulars.

Q. You were asked how early you learned you were to be a witness in this case. Can you fix the time any more definitely when you did learn that? A. I think it was in July.

Q. Why do you think it was in July?

Judge Neilson—[To Mr. Fullerton.] It was not exactly "a witness in this case," but "a witness."

#### THE COUNSEL'S WIT IN PLAY.

Mr. Fullerton—Well, Sir, the language of the counsel upon the other side in framing the question is as follows—

Judge Neilson—I think it was in an anticipated case—some case.

Mr. Evarts—Not the case before the Court.

Mr. Fullerton—I don't know that it was an anticipated suit. That is what I am trying to get at.

Judge Neilson—You have an impression it was an individual suit he brought.

Mr. Fullerton—I asked her if she could fix the time, but she could not, and, therefore, I wish to pursue the inquiry.

Mr. Evarts—I don't know.

Mr. Fullerton—That is the reason I am trying to inform you

Mr. Evarts—She has been very certain in regard to it.

Mr. Fullerton—She has not been very certain in regard to it.

Mr. Evarts—We won't dispute with one another.

Mr. Fullerton—I won't dispute if you don't.

Mr. Evarts—Then I won't dispute if you do.

Mr. Fullerton—That is very judicious, but I am going to find out, notwithstanding that, when it was that this took place.

Judge Neilson—Go on.

#### WHO FIRST SUGGESTED THAT MRS. MOULTON SHOULD BE A WITNESS.

Q. Do you know whether it was before or after this suit that we are now trying was actually commenced? A. I don't think the case had commenced.

Q. Was it talked of? A. I heard Mr. Tilton one day, in conversation, say something with reference to the suit being brought into the Court.

Q. Who was it spoke to you first about being a witness? A. I don't remember who; I think Mr. Moulton.

Q. And what did he say? A. He said that with my knowledge of the case, and of the facts from Mr. Beecher himself, I should have to go before the Court, of course—would be called as a witness.

Q. Was that all there was of it? A. Yes, Sir.

#### HOW MRS. MOULTON CAME TO KISS MR. BEECHER.

Q. You have been asked, Mrs. Moulton, a question in reference to the kissing of Mr. Beecher, and you stated that you leaned over and kissed him on his forehead, and that was the only time you ever kissed him. I want you to state under what circumstances that was done?

Mr. Evarts—She has already stated that before.

Mr. Fullerton—Well, we will have it restated.

The Witness—As I have told you, Mr. Beecher came to the house suffering greatly, very despondent and gloomy at his knowledge, or at least his fear, that Mr. Tilton was about to publish that letter of apology; if so, he felt the truth would come out and he felt that he could not any longer try to live up—try to bear up under it, and he came to see me to have a long talk with me. He was lying on the sofa—

Q. You need not repeat the whole conversation, Mrs. Moulton. I only want to know what the condition of his mind was at that time, in general terms? A. I can only tell you the evening that Mr. Moulton came home, I said to him—

Mr. Evarts—No matter what you told Mr. Moulton.

Mr. Fullerton—You may state, in the first place, what was the condition of Mr. Beecher in respect to mental anguish and suffering at that time, and your own condition? A. His condition was such that I said to Mr. Moulton I felt as if I had been in the presence of death.

Mr. Evarts—I must object to that.

Judge Neilson—[To the witness.] It is not evidence what you said to your husband.

Mr. Evarts—That is struck out, I suppose, your Honor.

Judge Neilson—Yes, Sir.

Mr. Fullerton—How did you feel in regard to what you told your husband? A. I felt as if I had been in the presence of death, and, as I expressed it to a friend, I felt as if I had been to a funeral.

Mr. Evarts—No matter about that.

Mr. Fullerton—Leave out about your friend. You can tell your own feelings without telling you expressed them. I want to know the circumstances under which you kissed him on the forehead. A. He was crying and I was crying at the time I kissed him on the forehead. I never expected to see Mr. Beecher again, or at least only a few moments, as he told me he would come on the next day. We had a long interview. Mr. Beecher was suffering greatly. I cannot describe to you any more accurately than I have done the interview.

Mr. Evarts—We don't want an argument.

Mr. Fullerton—No, I don't suppose you do want an argument, nevertheless we want the evidence. If that is an argument we cannot help it.

Q. Did you expect at that time that he would take his life? A. I certainly did.

Q. You have been asked whether you did not say to him, at that time, that if there ever was a good man you believed he was one. You did not state what you did say to him at that time. Do you recollect what you did say to him? A. I tried to dissuade him from committing suicide, and I said to him: "You have committed this sin, but you say you have repented, and you believe you have been forgiven. I still think there is much good in you, and I think it is your duty to confess your crime and try and do some good in the world yet."

Q. What was your object that day in what you said and in what you did to Mr. Beecher?

Mr. Evarts—I object to that.

Judge Neilson—I think that is fair.

Mr. Evarts—We have three times had what she said and did.

If she had another object than that indicated, why, she can state it, perhaps.

Mr. Fullerton—It is apparent, but there is no objection to making it more so and emphasizing it.

Mr. Evarts—We will judge.

Mr. Fullerton—And we will judge by her motives also.

Mr. Evarts—Not in the least.

Mr. Fullerton—We shall. You may do what you like about it. It is proper for this lady to state what her object and motives were on that day, during that long and painful interview with her pastor.

Judge Neilson—I think the object and motives are quite apparent on the face of the testimony given, and although that would be a proper question on the cross-examination, yet this is your witness.

Mr. Fullerton—Yes, Sir; but she has been turned over to us for a re-direct examination. They attempted to place this lady in a false attitude, although they have failed very signally in their attempt, I think; yet it is proper for me to follow that object up and show not only the circumstances under which this act was committed, but the object she had in view in committing it.

Judge Neilson—That is quite apparent.

Mr. Fullerton—Does your Honor hold it is improper?

Judge Neilson—I think we have it sufficiently, but it may not be improper. Nobody could mistake the spirit or the motive of this lady at that time on the statement she has made.

Mr. Fullerton—I am satisfied with that. [To the witness.] You have been asked also, Mrs. Moulton, whether you did not on one occasion, in the presence of your husband, put your hand upon his shoulder and neck and say to him, "Take care of this good man," speaking with reference to Mr. Beecher. Do you recollect having such an interview, and, if so, state what occurred? A. I remember on one Friday evening Mr. Beecher came into our house, and he was very much depressed and suffering greatly, and Frank called me into the room with reference to some matter—I forget what it was—but I remember putting my hand on Mr. Beecher's shoulder and saying to Frank, "Take care of this man," or "this good man."

Q. You believed at that time, did you not, that Mr. Beecher had repented? A. I believed so; yes, Sir.

Q. You thought he truly repented? A. Yes, Sir.

Mr. Evarts—That he had what?

Mr. Fullerton—That he had repented.

Q. One other question I omitted, Mrs. Moulton. Did you repeat to your husband the interview you had with Mr. Beecher—the long interview I refer to, of three or four hours? A. I did; yes, Sir.

Q. And did you state to him that you had kissed Mr. Beecher on the forehead? A. I did; yes, Sir.

Q. And when did you make that statement to your husband? A. It was the evening when he returned—the evening when he came back.

#### MR. HALLIDAY'S CALL AT THE MOULTONS.

Q. Your attention has been called to an interview with Mr. Halliday. Do you recollect when that took place? A.

I don't remember; I remember the conversation with Mr. Halliday.

Q. Do you recollect what that conversation was? A. I think I said to Mr. Halliday, "I wonder why Mrs. Woodhull should have used my name;" but I said nothing to Mr. Halliday about Mr. Beecher's guilt or innocence.

Q. Was the conversation after the publication of the Woodhull story? A. Yes, Sir.

Q. What questions did Mr. Halliday put to you at that time? A. I don't remember what his questions were; I only remember that I avoided having any conversation with Mr. Halliday with reference to Mr. Beecher.

Q. Did you feel at liberty to tell him what you knew in regard to the matter? A. No, Sir; I did not.

#### MR. TILTON'S REFUGE FROM HIS TROUBLES.

Q. When did Mr. Tilton commence taking his meals at your house? A. He used to visit us frequently in Clinton-st.

Q. When did he take his meals there with any degree of regularity, with reference to December, 1870; was it before or after? A. It was before. It was in 1869, I think.

Q. 1869? A. I think so—1869 and 1870. He has been so much at our house, I don't remember the last time when he began to come.

Q. Did he commence to take his meals there until after the domestic difficulty? A. No, Sir.

Q. Can you state whether it was before or after July, 1870? A. It was afterwards.

Q. Now, did he give any reason to you why he took his meals there?

Mr. Evarts—That I object to. I don't see what this conversation has to do with it.

Judge Neilson—I think not.

Mr. Fullerton—Why, Sir, it is a declaration accompanying the act. Is that not a very familiar principle of law?

Judge Neilson—It would be if you had a specific act in hand.

Mr. Fullerton—The act is very specific; it is taking his meals at the house.

Judge Neilson—Taking meals is a very general thing, and over many months.

Mr. Fullerton—Yes, Sir.

Judge Neilson—If you can single any one occasion, and a declaration forming part of that occasion, doubtless you can give it.

Mr. Fullerton—Your Honor will remember that this habit of his grew up after the domestic difficulty. The date of that was July 3, 1870. They have given that in evidence for a purpose, and they will use it hereafter before this case is closed. Now, it ought to be competent for us to show what Mr. Tilton said at the time as characterizing the act.

Judge Neilson—What he said on any specific occasion I think might be given, but not general occasions.

Mr. Evarts—Your Honor will remember your ruling against us in regard to Mr. Bell. We offered to show an act of Mr. Beecher in calling Mr. Bell into conversation, and what he said

to Mr. Beecher, and what Mr. Beecher said to Mr. Bell, and you excluded it.

Mr. Fullerton—The objection was twofold as to that. First, it was a part of the defense which they had no right to interject into our case.

Mr. Evarts—That was not the ground.

Mr. Fullerton—It was one of the grounds distinctly stated by myself.

Judge Neilson—I think we cannot take this.

Mr. Fullerton—Do you recollect when Mr. Tilton first came to your house to take his meals after this domestic difficulty? Did he give any reason for not taking them there before?

Mr. Evarts—The same objection.

Judge Neilson—The same ruling.

Mr. Fullerton—I thought that was in harmony with your Honor's suggestion. I am willing to accommodate, of course. [To the witness.] In one of the gentleman's questions put to you on Friday last he used the word "treachery," in asking you what you said with reference to Mr. Tilton. Did you ever, in any conversation with your husband, speak of Mr. Tilton as treacherous, or as likely to be treacherous towards your husband? A. No, Sir; I do not remember that I used the word "treacherous" to him.

#### MRS. TILTON AS A WOMAN'S RIGHTS ZEALOT.

Q. Now, as to these woman's suffrage meetings at your house, to which your attention has been called, do you recollect to what extent, if any, Mrs. Tilton participated in that Woman's Rights movement? A. I remember her inviting me to take some office in the association, to become a member of it. I remember that she has a number of times been invited to our house to meet them, on one or two occasions, when Mrs. Stanton and Miss Anthony were there; those are all that I remember.

Q. Did she meet the ladies you mention at your house? —Mrs. Stanton and Miss Anthony? A. I do not remember that she did.

Q. How? A. I think not.

#### MRS. MOULTON'S TALK WITH MR. McLEAN.

Q. Do you recollect the conversation with Mr. McLean, to which your attention was called? A. Yes, Sir.

Q. When was that conversation? A. I do not remember the time. He was waiting in our parlor for Mr. Moulton.

Q. Were you acquainted with Mr. McLean at the time? A. I think I had been introduced to him; I do not remember positively, but I think Mr. Moulton had introduced me to him on one occasion.

Q. How long had he been there before Mr. Moulton came in? A. Perhaps fifteen or twenty minutes.

Q. Did he not interrogate you in regard to what you knew about the case? A. No, Sir; I do not remember that there was anything said about the case; he spoke of Mr. Beecher's portrait.

Q. Was there anything said about the domestic difficulty? A. No, Sir.

Q. Or about Mr. Beecher, other than the conversation about his portrait? A. No, Sir.

Q. When did you make Miss Emily Faithful's acquaintance? A. I think in 1873 she was here; I forget just how long ago.

Q. How long did she spend at your house? A. She was at our house six weeks.

Q. Do you know where she is now? A. She is in London.

Q. Did you converse with her in regard to this case? A. Only in a general way.

#### MR. MOULTON'S FIRST STATEMENT.

Q. Now, give us the date, if you please, when this short statement of your husband was the subject of conversation between him and Mr. Beecher? A. In 1873.

Q. In July, was it not? A. In 1873.

Q. Yes. A. Yes, Sir.

Q. 1874, I should say. A. 1874? Do you mean last Summer?

Q. The last statement—the first statement that your husband prepared to make. A. It was in July.

Q. Repeat again, if you please, what it was that Mr. Beecher said in reply to the questions put by your husband? A. Mr. Moulton said to Mr. Beecher, "Then, Mr. Beecher, you consider my statement an honorable one to make before the Committee?" He said, "Yes, Frank, I consider it so, perfectly."

Q. Did you see that statement? A. No, Sir; I do not remember that I saw it.

Q. Did they have it with them at the time of the conversation? A. Mr. Moulton had it. He had read it to Mr. Beecher in the study.

#### MR. TILTON WITHOUT FAITH IN THE COMMITTEE.

Q. You have stated on your cross-examination that Mr. Tilton said he would take his case into Court. What else did he say on that occasion? A. I do not know.

Q. Do you recollect what else he said on that subject? A. He said he would take his case into Court, where he could be vindicated and have justice.

Q. What was he complaining of, if anything, at the time? Mr. Evarts—She has not said he complained of anything.

Mr. Fullerton—That is the reason I ask the question.

The Witness—Of the unfairness of the Committee.

Q. What did he say, if anything, on that subject?

Judge Neilson—In that connection?

Mr. Fullerton—Yes, Sir.

The Witness—Of the unjustness of the Committee.

Q. Of what Committee? A. Of the Church Committee.

Q. Did he say in what respect they had done him injustice? A. That it was a packed Committee, and that he had not any chance of stating his case at all.

#### WHY MRS. MOULTON ADVISED A SHORT STATEMENT.

Q. Mrs. Moulton, you say that you advised a short statement on one occasion? A. Yes, Sir.

Q. When was that? A. It was at the time Mr. Moulton had proposed his statement to the church. There were a number of gentlemen invited to meet General Butler at our house—Mr. Kingsley, Frank Woodruff, Mr. Moulton's father, and a number

of other gentlemen were present. I was also present in the room, and I asked General Butler if there was to be a statement prepared—

Q. You need not state the conversation; but why did you advise the short statement? A. Because I asked—

Mr. Evarts—I object.

The Witness—him to give Mr. Beecher another chance.

Mr. Evarts—One moment; I object.

Judge Neilson—It appeared on your cross-examination that she advised the short statement.

Mr. Fullerton [To Mr. Evarts]: Yes, that was at the close of your cross-examination that morning. It came out on your examination.

Judge Neilson [To Mr. Fullerton]: Your question seeks to account for that—how she came to do that.

Mr. Fullerton—Yes, Sir.

Judge Neilson—If you are certain of the fact that he called it out.

Mr. Fullerton—I made a memorandum of it at the time.

Mr. Evarts—I don't know what she said, nor it didn't impress itself on my mind. I didn't ask for it.

Mr. Fullerton—The gentleman got it, however.

Mr. Evarts—What did I get? Let it be read.

Mr. Fullerton—I am willing you should do that. I don't know that it was in answer to a question that necessarily called for it, but it was in answer to a question, and whether there is anything in the answer here that contains that, they have a right to it.

Judge Neilson—Let us see what the statement is.

[THE TRIBUNE stenographer, who reported the testimony referred to, being absent from Court writing out his notes for publication, an unofficial stenographer read from his long-hand manuscript the part called for.]

Mr. Fullerton—She stated she suggested they should make a short statement.

Judge Neilson—Now put your question.

Q. Why did you make that suggestion, or give that advice?

Mr. Evarts—It is not any inquiry I made. It is only about fixing a time. She had reference, I am told by my associate, to about the time of the statement. If she referred to the month of July that would not give her a right to tell all that happened in the month of June.

Mr. Fullerton—No; I don't claim that at all, but I do claim that inasmuch as whatever language she did use upon that subject was in reply to questions put by counsel upon the other side, that I have a right to follow it up and show what purpose she had in view in making that suggestion.

Mr. Evarts—I think your Honor sees that it is clearly inadmissible, whatever was the statement. I asked the witness the date of something that she had testified to, and she undertakes to fix the date by its being the time when some statement was made by somebody or other, it being one of the facts, I suppose, understood to exist in this case. It did not answer my purpose; my purpose was to ascertain the time.

Judge Neilson—I thought the object was to get at the time.

Mr. Evarts—But the witness saying that it was the time when

a certain statement was made does not entitle counsel to show what the conversation was.

Mr. Beach—It is distinctly in evidence now from this lady that she counseled that a short statement should be made for the purpose of giving Mr. Beecher an opportunity to clear or relieve himself. That is now expressly in evidence.

Judge Neilson—Then we have the object.

Mr. Fullerton—But not in full.

Judge Neilson—Then ask her what further she said.

Mr. Evarts—I object to that. This answer of the witness was made in answer to a question of mine, to give us the date of something that she had testified to. Now your Honor is asked to allow the conversation which took place at that time.

Judge Neilson—Let the question and answer be read.

The stenographer read as follows:

Q. You had a conversation with him, a part of which was, that if he turned upon your husband, even by a look—what led you to think of his turning upon your husband? A. I remember that it was in August that this conversation took place. It was in reference to Mr. Moulton having failed to make his statement before the Committee as he had promised. At my earnest solicitation a short statement was prepared for Mr. Moulton to give to the Committee in place of the long statement—as I understood to give to Mr. Beecher another chance to state his case fairly.

Mr. Fullerton—Now, your Honor knows perfectly well that when my learned friend upon the other side puts a question to the witness, and gets an answer that is not responsive, or does not suit him, he moves forthwith to strike it out, and does not rest until it is stricken out. But, on the other hand, if he puts a question to a witness and gets an answer which is not responsive, but which he deems of some advantage to himself, he then fails to make such a motion and lets it stand, perhaps, until some future time in the case when we, by a question, seek to take advantage of the answer, and then the argument is that it is irresponsible, and that we have no right to follow up the answer. Now, when counsel puts a question and gets an answer, and does not move to strike it out, but permits that answer to stand as evidence, then it is evidence, and we have a right to explain it if it needs any explanation. The question we now put is—why she advised or suggested this short statement.

Judge Neilson—She may answer that.

Mr. Evarts—Note my exception to the question. Why she did it is inadmissible.

Mr. Fullerton—The question is, why did you advise or suggest that a short statement be made at that time by your husband? A. In order to give Mr. Beecher another chance to set before his Church and the Committee the truth.

Q. And what did you state at the time that you gave the advice as to the short statement?

Mr. Evarts—She does not state that she stated anything.

Mr. Fullerton—That is the reason I ask the question.

The Witness—I did not want Frank to state the facts wanted Mr. Beecher to do it.

Mr. Evarts—I object to that answer.

Mr. Fullerton—What words did you employ at that in as nearly as you can recollect? A. I said, "Give the another chance." [Laughter.]

Judge Neilson—You had better wait until to-morrow, and then you may have something more exciting.

MRS. MOULTON'S CONVERSATION WITH MRS. DENNIS.

Mr. Fullerton—Where did you make the acquaintance of Mrs. Dennis? A. I have known her all my life.

Q. Does she reside in Brooklyn? A. No, Sir; she lives at Newport, Rhode Island.

Q. When was this conversation that you had with her? A. I do not know whether in 1872 or 1873. I have seen her nearly every year. I visit Newport every Summer.

Q. Was this case talked about? A. Yea, Sir; discussed in a general way.

Q. Did you go into any particulars as to what you knew in regard to it? A. No, Sir.

Q. Did you feel at liberty to communicate to Mrs. Dennis or to any one else the facts that you knew? A. No, Sir.

Mr. Fullerton—That is all.

RE-CROSS-EXAMINATION OF MRS. MOULTON.

Mr. Everts—Mrs. Moulton, are you quite sure that you told your husband of this interview with Mr. Beecher on the evening of the day on which it occurred? A. Do you mean when I kissed Mr. Beecher on the forehead?

Mr. Everts—Yes.

The Witness—Yes, Sir.

Q. What impressed it on your mind that you told him on the evening of the day that it occurred? A. Because it caused me great sorrow. The interview through which I had passed with Mr. Beecher made a very great impression upon my mind, as I then really thought that he was going to take his life.

Mr. Everts—No matter what you thought.

Mr. Fullerton—That is the very reason. She is perfectly right in her answer.

Mr. Everts—My suggestion is, what makes you sure that you told him that night? A. Because it made such an impression upon my mind.

Q. You cannot be mistaken about that? A. No, Sir.

Q. You remember the evening, and you remember your husband returning that evening, do you? A. Yea, Sir.

KATE CAREY RECALLED BY THE DEFENSE.

Mr. Everts—That is all Mrs. Moulton. If your Honor please, we have brought Mrs. Kate Carey here for further cross-examination.

Judge Neilson—Mrs. Moulton can retire, can she?

Mr. Fullerton—Yea.

Judge Neilson—Mr. Everts, is your witness in attendance?

Mr. Everts—Yea, Sir.

Mr. Beach—Is the control of this case to be taken out of our hands?

Judge Neilson—The counsel has a right to reserve, until you get through, the further cross-examination of the witness.

PLAINTIFF'S COUNSEL REST THEIR CASE.

Mr. Beach—Certainly Sir. We rest now.

Mr. Everts—I called this witness for cross-examination, as a part of your case.

Mr. Beach—No, Sir; not as a part of our case. We have rested our case.

Mr. Everts—I gave you notice that I was going to cross-examine the woman.

Judge Neilson—Bring the woman here and then we will see what rights you have.

Mr. Beach—There is no necessity for any point of this kind, for we shall take no objection to their further cross-examination of this lady, for the purposes, I suppose, of contradiction, or for any other purpose.

Mr. Everts—That we understand; and we understand that we have a right to do it now.

Mr. Beach—I submit that you have not a right to do it now, still we make no particular point. We have rested our case, but if the gentlemen wish to call the witness they may do it; but the gentleman had no right to interfere with our case, while we were conducting it for the purpose of examining or cross-examining any witness except the witness on the stand, and we had a right to rest when we were through.

Judge Neilson—And I am very glad you did so. Bring the witness.

Mr. Everts—I have a right so to do, and gave notice since this witness was on the stand that I should call her here for further cross-examination.

MRS. CAREY AGAIN CROSS-EXAMINED.

Mrs. Kate Carey then took the witness chair.

Judge Neilson—You remember, madam, that you were sworn the other day?

The Witness—Yes, Sir.

Judge Neilson—You will consider the binding force of that oath as still continuing. They propose to ask you a few more questions.

Mr. Everts—I think you said, madam, that you were married or had been married? A. I am a widow lady, Sir.

Q. What was your husband's name? A. John Smith, Sir.

Q. When did he die? A. That I cannot say, Sir.

Q. When did you last see him? A. About three months before my babe was born.

Q. Where were you married? A. I was married in Manchester, England.

Q. When? A. That I cannot say.

Q. How long before your babe was born were you married? A. I am in this country for some years, and I was married coming to this country.

Q. How many years had you been married to this John Smith? A. I was married nine months before I came to this country.

Q. When did you come to this country? A. I came to this country at the time of the Burdell murder at Mrs. Cunningham's.

Q. When was this baby born—this babe of yours? I understand you to mean the babe with the milk for whom you went



to Mrs. Tilton's. A. I cannot say what time it was born. It was born in the Summer, but I cannot tell exactly the day or date.

Q. You mean the birth of the child with the breast of whose milk you went to Mrs. Tilton's, do you? A. Yes, Sir.

Q. Very well; was that your first child? A. It was not, Sir.

Q. How happens it that you do not know when your husband, John Smith, died? A. I do not know. I heard that he had died with yellow fever. He was not a very good help to me. He went away before the babe was born.

Q. When you have lived in these places of which you have spoken have you lived by the name of Kate Carey? A. Kate Carey and Kate Smith—both names. I went always as a widow woman.

Q. By "both names" do you mean the two names at the same time? A. I went for Kate Smith in most of the places, but I told the servant girls that my name was Carey.

Q. You went sometimes by the name of Kate Smith, and sometimes by the name of Kate Carey? A. I always went as Smith.

Q. Always went by the name of Smith? A. Yes, Sir.

Q. And did you go to Mrs. Tilton by the name of Smith. A. Yes, Sir.

Q. Why did you give your name as Kate Carey in this cause, when you were called as a witness? A. I gave both names.

Mr. Morris—She gave it as Kate Carey Smith.

Mr. Evarts—I did not hear anything about it.

Mr. Morris—That is the way she gave it.

Mr. Evarts—Is it so down?

Mr. Morris—I do not know, but that is the way she gave her name when she was sworn, and the officer so gave the name when the oath was administered.

Mr. Evarts—Did you live with Mr. Robert T. Moore, at 110 Smith-st., in this city? A. Yes, Sir.

Q. How long did you live there? A. I lived there until they broke up housekeeping.

Q. How long was that? A. I do not know whether it was two months or going on to three. I cannot say.

Q. But about that time? A. Yes, Sir.

Q. Do you remember the cause for which you were discharged from that place? A. From Mr. Moore's?

Q. Yes. A. They gave up housekeeping and went to boarding.

Q. Then you were not discharged for any cause or conduct of your own? A. No, Sir.

Q. Were you not discharged from that place for intemperance? A. No, Sir.

Q. That is your recollection, is it? A. That is my recollection, Sir.

Q. Do you remember telling Mr. Moore, while there, that you never saw anything wrong between Mr. Beecher and Mrs. Tilton? A. The name never was mentioned at Moore's.

Q. You are quite sure of that? A. I am sure of it, Sir.

Q. You did not say anything of that kind? A. I did not, Sir.

Q. You have spoken of having lived in Clinton-st. with a family by the name of Duryea or Duryee? A. Dera, Sir.

Q. Do you know how the name is spelled? A. I do not, Sir; I do not know the number on the door.

Q. While you lived at this house of Dera, did you know a man by the name of Webster, who lived in the neighborhood? A. I did not.

Q. A painter, or a mechanic of some kind? A. No, Sir.

Q. Nor talk with him? A. I did not, Sir.

Q. Did you live at Mrs. Gilchison's in Brooklyn? A. I did, Sir.

Q. In what street? A. Right across from the doctor's at the corner of Montague-st.

Q. How long did you live there? A. That was a little while after I left Mrs. Tilton.

Q. How long did you live there? A. A month, Sir; about a month.

Mr. Fullerton—That is all in evidence already.

Mr. Evarts—Were you discharged from that place? A. There was sickness in the house. They lost a little girl named Annie; she had a fever and I took sick there and the milk went through my system, and I was not able for all the work.

Q. Were you discharged from that house for intemperance? A. No, Sir.

Q. Nor for any cause except your sickness? A. Nothing as I know, Sir.

Q. Did you ever live at Mr. H. L. Rider's—a lawyer in Willow-st., Brooklyn? A. Not as I know it, Sir; I do not remember.

Q. Don't you know whether you lived there or not? A. No, Sir; I do not remember living in Willow-st.

Q. Did you never live in Willow-st.? A. No, Sir; not as I know of.

Q. And never lived with Mr. Rider? A. No, Sir.

Q. Don't you remember bringing to Mrs. Rider some certificates of character, from somebody on Staten Island? A. No, Sir.

Q. You don't remember that? A. No, Sir; I had no certificates from Staten Island.

Q. Did you present any? A. No, Sir.

Q. You do not remember, then, being discharged from Mr. Rider's? A. No, Sir.

Q. Do you remember saying, at this house of Mr. Rider's, that you had nursed Mrs. Tilton—Mrs. Theodore Tilton—and that you spoke of her as a lovely woman, and a perfect lady? A. I do not remember living at such a name in Willow street.

Q. Nor anywhere else? A. No, Sir.

Q. You do not remember saying that at Mrs. Rider's house? A. No, Sir.

Q. Did you live with a Mrs. Heinrichs or Heinrichs in Clinton street? A. Heinrichs in Clinton street? I do not remember living with anybody but the DeBucks in Clinton street; not De Bucks, but the family you spoke of near Second place.

Q. I asked you if you lived with Mrs. Heinrichs in Clinton street. A. I do not know; I do not remember.

Q. Did you live with a German family? A. Oh, yes; I did. Their business was the fancy business; I believe it was over in Maiden lane, New-York.

Q. Was their name Heinrichs? A. I believe it was. I am not positive.

Q. How long did you live there? A. I think it was a month.

Q. Do you remember why you were discharged from there?

A. Yes, sir; intoxicated. [Laughter.]

Q. Did you live or lodge at a house kept by a Mrs. Keys or Kays, at No. 261 Pacific street? A. No, Sir.

Q. That is a servants' boarding house, is it not, or don't you know? A. I know nothing of the person; I never visited there.

Q. And never boarded there? A. No, Sir.

Q. Don't you remember lodging at the house of Mrs. Keys, or of boarding with Mrs. Keys? A. Oh! yes, Sir; I did—facing Mr. Moore's grocery store.

Q. I don't know what it faces. You did live there? A. Yes, I did; I remember.

Q. You do remember it now? A. Yes, Sir; I do remember.

Q. Where is that? A. That is facing Mr. Moore's grocery store.

Q. Where is Mr. Moore's grocery store? A. At the corner of Pacific and Smith streets.

Q. You do remember that? A. Yes, I do remember.

Q. How long were you at that lodging house? A. I was not there more than a week at a time; the quicker I got to service the better.

Q. Do you remember of being sent away from that lodging house for drunkenness? A. Not at all, Sir; never. She was able to drink as much as I was. [Laughter.]

Q. Perhaps not when you were there? A. Well—she drank her share—if I would pay for it—like all the lodging women.

#### THE WITNESS'S CHARACTER.

Q. Now, madam, I understand you to have said before that you have not lived out for a year—something of that kind? A. Not steady.

Q. What? A. Not to say steady in a place. I have been poorly about that length of time.

Q. What—boarding? A. Poorly; I haven't been very well.

Q. Well, I understood you to say that you had not lived out as servant for a year; is that so? A. It is about this time twelve months that I left Brooklyn to go over, and I haven't done anything much since.

Q. Now, do you remember living with a Mr. Motley at Harlem? A. I do, Sir.

Q. How many months did you live there? A. Going on my second month, Sir.

Q. How? A. Going on the second month.

Q. And when was that? A. I was about a month and, I think, two weeks or three weeks. I didn't put in the two months.

Q. Well, when? A. In the Summer; last.

Q. Last Summer? A. I think so.

Q. Wasn't it within four months from now that you lived there? A. It was about there, I guess; about that time; it was in warm weather.

Q. Do you think you lived there about four months, do you mean? A. No, Sir; I did not.

Q. Was it four months ago that you left there? A. I could not say, Sir.

Q. Where did you go to from there? A. I went to the office, and I got a place in two miles past Harlem, in a family named Simpson.

Q. After leaving Motley's? A. After leaving Motley's.

Q. How long did you live at Simpson's? A. I lived at Simpson's about a week, when I was taken with a sore throat.

Q. How long ago did you leave Simpson? A. That is the length of time that I left Simpson's to go to Bellevue Hospital, sick.

Q. And you have been there ever since? A. Yes, Sir.

Q. Now, can you give us again, if you gave it before, the date that you went to the hospital? A. Well, all I can say, Sir, is I was there eight weeks before Christmas, and a week before Christmas I went out and got a situation. I lived one month, and got a severe cold and came back to the hospital, and I am there going on three weeks.

Q. Since? A. Since, Sir.

Q. Where was this place that you got after Simpson's? A. In Irving-place; the English Jew family.

Q. That is the one you spoke of before? A. Yes, Sir.

Q. Now, about Motley's; do you remember being discharged from Motley's? A. I do, Sir.

Q. What was that for? A. 'Toxicated.

Q. Anything else? A. Nothing else as I know it, Sir.

Q. Wasn't it in regard to lying also that you were sent off from there? A. No, Sir.

Q. Nothing of the kind? A. Nothing of the kind.

Q. Nothing but intoxication? A. Nothing but 'toxicated. I told her I wasn't "tight," and I was "tight." [Laughter.]

Q. Oh, well! And you were sent off, any how? A. Yes, Sir.

Q. Now, who is your doctor, that treats you at this hospital? A. Drs. Schaefer and Knox.

Q. And they have treated you, have they, from the beginning? A. Yes, Sir; very good, indeed.

Q. Yes; no doubt of that. Now, do you say that these doctors have told you that you have bronchitis? A. Yes, Sir; a severe cold.

Q. And bronchitis? A. Yes, Sir.

Q. And you think that is the disorder for which you have been treated there, do you? A. Yes, Sir.

Q. And the doctors have told you so, have they? A. Well, I heard it from other doctors; some years ago I had brownkeetoas.

Q. Oh! I dare say. The question is, what you have got now. Have these doctors at Bellevue Hospital told you that they were treating you for bronchitis or "brownkeetoas," as you call it? A. No, Sir; they didn't say it, but I heard it from other doctors. I asked doctors, and they said it was a severe cold.

Q. Some years ago? A. Some years ago; and I heard it from other doctors that I had brownkeetoas.

Q. But you have not heard it from these doctors at Bellevue? A. I have not, Sir.

Q. Now, have you heard from these doctors at Bellevue what disease you were being treated for? A. No, Sir.

Q. Not at all? A. No, Sir.

Q. And you don't know, unless it is bronchitis? A. No.

Q. What? A. I do not, Sir; but my throat got sore, and I have often had it so before, but not as bad as it has been this time, and I thought of course it was brownkeatoes, but they have gave me medicine for severe cold.

Q. Now, madam, do you know a person named George Wilson? A. I do not, Sir.

Q. A barkeeper, or something of that kind, in a hotel in New-York? A. No, Sir.

Q. You don't know him? A. No, Sir.

Q. Don't you remember meeting him at the Pacify Hotel, or Pacific Hotel in the Bowery? A. I don't recollect any such name, or such a man. I don't visit such places, hotels or restaurants, or any place else.

Q. You don't remember, then, going there with him or being there with him? A. No, Sir.

Q. Do I understand you that you do not remember being at this hotel in the Bowery with this Mr. George Wilson? A. Never, Sir. I don't know the person, and I never was in a hotel.

Q. I don't mean to live in the hotel. A. I never was in a hotel in my life, Sir; not in the city.

Q. Now, won't you tell us who this charitable lady was that spoke to you at Bellevue Hospital. A. Mrs. Lyons.

Q. Lyons? A. Yes, Sir.

Q. And where does she live? A. That I don't know, Sir. I know nothing about her, only she visits the poor.

Q. Had you known her before? A. I never seen her in my life, Sir, or spoken to her.

Q. Did she profess to be from Brooklyn? A. She didn't say, Sir, where she was from.

Q. Now, what did she say to you about getting a place for you? A. She told me, "Kate, if you were ready I would get you a fine place in Brooklyn." Well, says I, "When I am ready, I think I can get a place myself." She said: "Did you ever live in Brooklyn?" Says I: "Yes." Says she: "Who did you live with?" and I up and told her that I lived with Mr. Theodore Tilton as a wet nurse. She asked me what to make of this trouble, and I told her I didn't know, nor neither I didn't.

Q. To make of what? A. To make of this trouble—this talking; I don't know.

Q. Then did you tell her what you repeated here the other day? A. I believe I did, Sir.

Q. As near as may be in the same way you told it to her? A. Yes, Sir.

Q. And then what did she say to you? A. She says: "Well, if any person comes to you, Kate, would you be timid in telling the truth?" Says I: "Of course I will not be."

Q. Would what? A. Would I be timid in telling the truth, and I says: "No, madame, I won't."

Q. Do you see that lady in her visits there now? A. No, Sir.

Q. She does not come now? A. I have not seen her.

Q. Has she been there since she had this talk with you? A. I don't know, Sir.

Q. Had she been there before? A. Several times, Sir.

Q. Before? A. Oh! I have not spoken to her before.

Q. You never spoke to her before? A. No, Sir.

Q. Had you ever seen her there before making charitable visits? A. I have, Sir.

Q. How did you know they were charitable visits if she didn't speak to you? A. She had parcels under her arm, such as underclothes and stockings, giving to the poor.

Q. Can you give us any information by which we can find this woman? A. I cannot, Sir; I don't know anything about her.

Mr. Fullerton—I will give you her letter in a moment.

Q. She has not been there since? A. Not as I can say.

Q. Do you know John Rooney? A. Yes, Sir.

Q. Is he in the hospital? A. I believe he is, Sir.

Q. How long have you known him? A. A very short time, Sir.

Q. Did he remove your trunk for you from one place to another? A. Yes, Sir.

Q. From where to where? A. He removed it from Mrs. Dwyer's to Mr. Lawler's.

Q. Do you know now whether this Mr. George Wilson was an acquaintance of Mr. Rooney's or not? A. I don't know anything about it, Sir; I don't know the person.

Q. Or John Wilson? A. I don't know such a person.

Q. Neither of them. Now, do you remember saying to a Mr. George Wilson or a Mr. John Wilson while you were in his company, that you never saw anything wrong between Mr. Beecher and Mrs. Tilton? A. I don't know the persons. I have never spoke to the person about anything.

Q. But that you could come and say that you saw something, and could secure a good place for yourself? A. I have never pronounced them words, Sir.

Q. Never said anything of that kind? A. I have not, Sir.

Q. To George or John Wilson? A. I have not, Sir.

Q. Or to any man at the Pacify Hotel, or Pacific Hotel? A. No, Sir.

Q. Did you ever go with Mr. Rooney to, or meet Mr. Rooney at No. 15 Bowery? A. No, Sir.

Q. Never been there in his company? A. Never, Sir.

Q. You have spoken of boarding at Mrs. McCaffrey's, haven't you? A. Yes, Sir.

Q. In Fourteenth-st.? A. Yes, Sir.

Q. How long did you board there? A. I have known her about fourteen years, Sir, and I boarded there every once in a while when I would leave a situation, may be a week, two weeks.

Q. Well, do you remember being sent away from that boarding house by this keeper of it, Mrs. McCaffrey? A. No; never, Sir.

Q. You don't remember being sent away? A. Never was sent out of any place where I boarded yet, Sir.

Q. You don't remember being sent away from there for drunkenness? A. I was not, Sir, sent away.

Q. Do you remember that you were not? A. I remember I was not.

Q. What sort of a looking person was this Mrs. Lyons? A. Low sized and white haired, middle aged lady; she was a middle aged lady, low sized.

Q. Do you mean light hair or gray hair? A. Gray hair, Sir.

Q. White from ———? A. From age, I suppose.

Q. Middle sized? A. Yes, Sir.

Q. Now, who did she come to visit at that hospital; who did you see her talking with? A. To all the patients in the ward, Sir.

Q. All in your ward? A. Yes, Sir.

Q. And not to you except this one time? A. She came to me the second time.

Q. The second time? A. Yes, Sir.

Q. Do you mean you saw her the first time talking to everybody but you? A. Yes, Sir.

Q. And the second time she talked to you? A. I called her over, Sir.

Q. Yes; very well. Didn't your husband come with you from England? A. He did, Sir.

Q. And lived with you how many years here? A. He lived with me until the last child was born; three months before that he went down South to some place, but where he went I cannot say; I have not seen tale or tidings of him since. I have not seen him since; that is what I mean to say; I have not seen anything of him since. Of course I am—I can't pronounce my words as these high-frown people.

Q. Well, that is about twenty years since you came over, according to the Burdell murder, I believe. How long ago was it that this Mrs. Lyons came to you at the hospital? A. About a week, I think, before I come over here.

Q. Yes; recently; just before you come over? A. Yes, Sir.

Q. So I understood you before—do you know a woman named Eliza that lives near Lexington-ave. and has her face marked with small-pox? A. No, Sir.

Q. Is she an acquaintance of yours? A. No, Sir.

Q. Not at all? A. I don't know such a person.

Q. Then you have had no conversation with her? A. No, Sir.

Q. On this matter? A. No, Sir.

Q. Can you give us any information about this English Jew family more than you have? A. No, Sir.

Q. You gave that in Irving-place, between what streets? A. I think it is between 16th and 17th streets—about there.

Q. But you cannot give the number? A. It is either 55 or 53, I am not positive—the name I cannot pronounce.

Q. Do you know anything of a Dr. Fullgraf that lives in that neighborhood? A. No, Sir.

Q. Haven't seen him or his sign, or know of his name or—  
A. No, Sir.

Q. Among the doctors who have treated you at the hospital,

is Dr. Bryan one of them? A. No, Sir.

Mr. Evarts—That is all.

Mr. Fullerton—I have nothing to ask, Sir.

Some consultation here took place between counsel, and between Mr. Evarts and Judge Neilson, after which the Court took a recess until two o'clock.

#### GEN. TRACY TO MAKE THE OPENING ADDRESS FOR THE DEFENSE.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Evarts—If your Honor please, it was in the arrangement of the conduct of this case that the opening should be made by our learned associate, Gen. Tracy, and the calculation in regard to the termination of our adversaries' case, which we had endeavored to make as reasonable as we could, had led us to anticipate the consumption of time by witnesses up to to-morrow night, as probable. Nevertheless, it was in the calculation of Gen. Tracy, that he might be called upon to-morrow. I have endeavored to ascertain, I have ascertained, whether it would be possible for him suitably to his presentation of the case, and for the proper consideration of the Jury and the Court, to proceed in this fragment of the day, this afternoon; and he informs me that it will be quite out of his calculation, and, he thinks, of his ability properly to do so. As I mentioned to your Honor before the recess, I should endeavor to find it possible that we should go on this afternoon; and, as I expressed to your Honor a doubt whether it would be possible, and I now find myself in that position. My learned friend, Mr. Beach, recognizes the situation of the case, and is not disposed to consider it other than reasonable that we should have until to-morrow morning.

Mr. Beach—I can well conceive that it will be an inconvenience to Mr. Tracy to proceed this afternoon, having been somewhat surprised by the suddenness, to him, of the close of our case, and I think it is but a proper indulgence and courtesy to be granted to him to comply with his request.

Judge Neilson [To the Jury]—Prepare to retire, gentlemen.

Mr. Mallison [The Clerk]—Will the audience please remain silent until the adjournment of the Court?

Judge Neilson—[To the Jury.] Please to attend at 11 o'clock to-morrow morning, gentlemen.

Mr. Mallison—The Court stands adjourned until to-morrow morning at 11 o'clock.

The Court thereupon adjourned until Wednesday at 11 o'clock.

THEODORE TILTON

VS.

HENRY WARD BEECHER,

ACTION FOR CRIM. CON.

TRIED IN THE CITY COURT OF BROOKLYN,

CHIEF JUSTICE JOSEPH NEILSON, PRESIDING.

Verbatim Report by the Official Stenographer.

VOL. II.

75774  
WITH PORTRAITS OF

Rev. HENRY WARD BEECHER, Ex-Judge JOHN K. POLFER,  
Gen. BENJAMIN F. TRACY, THOMAS G. SHEARMAN,  
JOHN W. STERLING, Miss ELIZABETH A. TURNER.

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CHAMBERS, THE CITY COURT OF BROOKLYN.

BROOKLYN, February 22d, 1875.

"TILTON vs. BEECHER."

The numbers of your report have been of great use to me  
The testimony is given, as in the N. Y. Tribune, with substantial  
correctness. In thanking you for your courtesy, I beg to express my  
respect for your enterprise.

Very truly yours,

J. NEILSON, Ch. J.

To McDIVITT, CAMPBELL & Co., Nassau St., N. Y.



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*P. F. Huey*



# THEODORE TILTON

against

## HENRY WARD BEECHER.

### THIRTY-SECOND DAY'S PROCEEDINGS.

#### THE DEFENSE OPENED BY MR. TRACY.

MR. BEECHER EULOGIZED AND MR. TILTON DENOUNCED—A TRIBUTE PAID TO MRS. TILTON—MR. TILTON'S JEALOUSY OF MR. BEECHER ALLEGED AS THE ORIGINAL CAUSE OF THE ACCUSATION OF ADULTERY — MR. BOWEN'S CONNECTION WITH THE CASE—MR. BEECHER'S ADVICE OF SEPARATION EXPLAINED.

WEDNESDAY, Feb. 24, 1875.

The Court waited to-day for Mr. Tracy. He began by tracing Mr. Beecher's life and labors from the pastorate in the West to the culmination of his popularity in Brooklyn. Then he took up the career of Theodore Tilton, speaking of him as one who had fallen from an eminence seldom attained by men of his age to the very bottom of an abyss. With stinging emphasis the speaker referred to the plaintiff as one who, "if he could realize the sad truth that he was morally dead, would still rejoice in this post-mortem investigation of his character." "But we propose," added Mr. Tracy, "to dissect him first in the interest of truth, and bury him afterward in the interest of decency."

With this preliminary sketch of the plaintiff and defendant, the speaker proceeded to review what he called the most remarkable conspiracy of modern times. He was soon obliged to use the name of Mrs. Tilton, who, he said, was the true defendant in the case. He drew a touching picture of her affection for her husband, "giving her whole life to him without murmur as to her own self-sacrifice." Mr. Tracy then read the letter of Mr. Tilton to Mr. Beecher of Nov. 30, 1865.

Then followed the story of Mr. Tilton's connection with *The Independent*, his alleged acts of hostility to Mr. Beecher, his change of religious views, and final dismissal from the journal. Mr. Tracy also described his views of Mr. Bowen's feelings toward Mr. Beecher, drawing conclusions from the fact that Mr. Beecher joined *The Christian Union* in 1870, and that *The Advance* was started in Chicago, with the aid of the Rev. Edward Beecher, in the same year,

both papers being formidable rivals of *The Independent*. Mr. Tracy announced his inability to say how true were the statements about Mr. Bowen's telling scandals regarding Mr. Beecher, but in the opinion of the speaker Mr. Tilton was the author of these scandals.

Mr. Tracy laid great stress upon the alleged garbling of Mrs. Tilton's letter containing the sentence: "To love is praiseworthy; to abuse your gift is sin," saying that it was an example of the malice of the husband. The "Winsted scandal" was also referred to, and Mr. Tracy said that he knew nothing about its truth or falsity, but he knew that the person besides Mr. Tilton, who was referred to in it, was no mere child, as the plaintiff had said (turning as he uttered the words in scornful tones, upon Mr. Tilton, who sat behind him, calmly facing the speaker), but a fully-developed woman twice as large as Mrs. Tilton. The speaker afterward commented upon the plaintiff's views of marriage and divorce, and alleged that while Mr. Tilton was the editor of a religious newspaper he was an advocate of free lust. Mr. Tracy said that he would convict Mr. Tilton of falsifying, and then read portions of the correspondence between Mr. Greeley and Mr. Tilton on the subject of marriage; also the testimony of the plaintiff regarding the same subject, comparing before the jury the statements in each. After ridiculing the idea that Mr. Tilton's views were limited to the mere desire for more liberal laws, Mr. Tracy asked impressively, "Does he think religion, in a free country, should be regulated by law?" "Yes," said Mr. Tilton in a voice distinctly heard by those immediately about him, but not loud enough to reach the ears of either the speaker or the jury.

The next topic discussed was the alleged trouble in Mr. Tilton's family, on account of which Mr. Beecher is said to have advised separation. At 3:45 o'clock, the leaves of Mr. Tracy's address having become disarranged, Mr. Beach, who was sitting nearest him, asked Judge Nelson to excuse the speaker. This was done, and the court was adjourned.

## THE PROCEEDINGS—VERBATIM.

## OPENING ADDRESS OF GEN. TRACY.

Mr. Tracy, of counsel for defendant, selected to open the defense, reached the court-room a few minutes after the jury had been called, and at once began his address.

## THE MAGNITUDE OF THE ISSUE.

**MR. TRACY—MAY IT PLEASE THE COURT, GENTLEMEN OF THE JURY:** The time having arrived when the defendant is permitted to be heard in his own behalf, my associates have assigned to me the duty of stating his case to this Honorable Court and to you. I am sure, gentlemen, when you consider for whom and in whose presence I speak, you will believe that it is for me an occasion of great personal embarrassment. When I think of the interests involved in this trial and the effects which may follow it, when I contemplate the deep and painful anxiety which it everywhere excites, I am oppressed by the burden of responsibility which the over-kindness of my associates has laid upon me, and would gladly surrender it to other and abler hands. Nothing indeed prevents me from sinking beneath the task I have undertaken, but a clear conviction of the absolute innocence of my client, and the assurance of my eminent associates that his case is too strong to be injured by my unskillful advocacy. And moreover I am assured by the knowledge that comes to me from every quarter, that in my effort to make his innocence as plain to you and to the world as it has long been to his counsel and his people, I have the universal sympathy of mankind.

The magnitude and importance of the questions here involved cannot be overestimated, for they go down to the very foundations of our social, moral and religious life. If the effect of your decision in this case could be limited to determining whether the plaintiff has suffered a wrong at the hands of the defendant, for which he is entitled to be compensated in money, this trial would not excite the widespread interest which has attached to it from the beginning, and which must follow it to the end. But, gentlemen, I need not remind you how utterly impossible it is to circumscribe the effect of this trial within such narrow limits. Either this defendant is to go forth from this court-room vindicated by your verdict, or you and I and all who take part in this day's work are actors in one of the greatest moral tragedies which has ever occupied the stage of human life. Look at it as we may, it is impossible to separate the defendant from his representative character.

## THE CHRISTIAN RELIGION NOWISE INVOLVED.

Not that I would indorse the remarkable statement of the plaintiff's counsel in his opening, "that upon the result of your verdict, to a very large extent, will depend the integrity of the Christian religion." God forbid that the integrity of the Christian religion should depend upon the character or the fortunes of any man, however learned, eloquent or devout. The Christian religion is founded upon the eternal

rock of God's nature and God's decree. It is from everlasting to everlasting, and will abide when the remotest records of future history shall have faded from the annals of time, and the heavens "shall have been rolled together as a scroll." My client expects no other support from the Christian religion than such as may be found in its promises. He takes his stand here alone upon his own integrity, sustained only by God and the justice of his cause. And yet, gentlemen, I repeat, you cannot consider him altogether without reference to that sacred faith of which he has been for a long time one of the most honored ministers, which would acquire luster in his vindication, and which could not but be deeply wounded in his fall.

## THE DEFENDANT'S PAST.

The son of one of the most eminent clergymen of the last generation, a member of a large family of which all the men are clergymen and all the women authors of repute—a family, let me say, gentlemen, on whose fair fame the shadow of reproach has never rested hitherto—the defendant early devoted himself to the self-denying pursuit of a minister of the Gospel. For it was no bed of roses in a luxurious abode that he spread for himself—he made no use of a dominant family influence to secure the refinement and privileges of a wealthy city parish. He struck boldly out into the wilds and hardships of the far West. He rode the rough circuit of a home missionary life. With his own hands he made the fires, and swept the floors and rang the bell in his forest church; with his own hands, assisted only by the faithful wife who stood by him then, and who—to the honor of womanhood—stands by him to-day, he ministered to the necessities of his forest home. When the thunders of his manly eloquence had reached even this distant coast and the imperative demand of the church had summoned him to a wider sphere of action, he left neither his simplicity nor his independence behind. He has been the same genuine, true-hearted, unaffected man here that he was in the West. In the midst of all the refinements and luxuries of city life, his motto has been that of the great apostle he so much resembles, "I know how to be abased, and I know how to abound." To some who, in the early days when he was less known than now, undertook to control his utterances by threatening loss of place, he made this memorable reply: "You may unseat me, but you cannot control me. I came from the woods, and I can go back to the woods again."

This man so introduced to us has wrought and taught for now thirty years in our midst. He is no longer a stranger, and no longer a new acquaintance. Genial and unassuming in his manners, inspiring in his speech as new wine, accessible to all, from the gravest citizen to the humblest child, the life he has lived before us has been as warm and fruitful as God's Summer—as open and beneficent as His day.

## MR. BEECHER'S LIFE AS A PREACHER.

No truth struggling with error has ever failed to find in him a champion; no phase of human sorrow has sought him in vain for sympathy and relief. Nay, even as we have too much reason to know, the very excess of his sensibility has as



times become to him an element of weakness, and he is for the moment at the mercy of colder and harder men.

And, if this is a fair picture of his private and domestic life, what shall be said of his life and influence as a preacher of the Gospel? Let the immense assemblies that for nearly thirty years—without abatement, without fluctuation—have thronged his chapel, more numerous and enthusiastic to-day than ever before, bear testimony. To this great congregation, presenting an unusual proportion of able and thoughtful men, he has ministered all these years untiringly. That his ministrations have been marked with a rare spirituality, and a wonderful mastery over the various motives of human character and moods of human experience, is universally acknowledged. He has been emphatically a preacher of the people; living himself in constant communion with the unseen, he has interpreted the mysteries of the soul and given voice to those dim intuitions, those immortal yearnings which spring in every human breast, but which so few can ever utter. A clergyman of the Congregational Church, he has labored for the aggrandizement of no sect, for the building up of no denomination. His creed is as broad as humanity itself, and his deep, warm heart, instinctively responding to the feeling of all, has enabled him to summon the race to a higher, nobler and purer life. Though a Protestant, he has ever been able to discern the common Christian faith in all churches bearing the Christian name. Moral integrity, sincere devotion, and an honest consecration to the common Lord, have always been recognized by him without reference to the question of his own recognition by those to whom his charity has extended. Every honest soul that labored for the salvation and elevation of mankind, whether minister, priest or monk, or only self-sacrificing layman, has been to him a Christian brother, a minister of God. It is then no wonder, that besides the power of his personal teaching, the demand for his printed sermons should be beyond all precedent; their weekly issue is read in every town and hamlet throughout this broad land; they are met with in the cabin of the backwoodsman, in the hut of the miner, in the fore-castle at sea. Not only this, but they have been translated into every European language. In England alone, as I am informed, their circulation is thrice as large as that in all this country.

#### THE SECRET OF MR. BEECHER'S SUCCESS.

Thus has he—alone—almost fulfilled the divine command, "Go ye into all the world and preach the Gospel to every creature." I estimate the full force of my words when I affirm that no man ever exerted in his own lifetime so widespread and beneficent an influence. The far-reaching and abiding power of this Christian minister has long been a marvel to the people of two continents, and theories both friendly and hostile have been advanced to explain it. Gentlemen, shall I solve the problem for you? The reason of the power of this man's preaching is, that behind his sermons there is a life, and behind the life, a man. It is because they have come from the heart, that they have gone to the heart. It is because his preaching is known by those who know him best to be illustrated by his daily living, that he is, in this supreme

emergency of his life, girded by millions of faithful hearts and walled to heaven by the unfaltering love and confidence of his people.

#### MR. BEECHER'S RIGHT TO THE NATION'S GRATITUDE.

But if there are those who are not interested in the minister of the Gospel, I invite them to contemplate the patriot and philanthropist. Espousing the cause of the oppressed, he labored for the emancipation of a race. When the agitation resulted in a conflict of arms, imperiling the Union of the States, his clarion voice was heard everywhere arousing the nation to the holy strife; when danger threatened from abroad he was prompt to plead the cause of American union on the basis of American liberty in the face of infuriated thousands set on by a foreign aristocracy to revile him and to strike him down. Mr. Beecher's hand to hand fight with the English masses on English soil is a thrilling page in history, known and read of all men. His courage, his devotion, his eloquence in that memorable contest won the admiration of all Europe and can never be forgotten by the American people. In that struggle Henry Ward Beecher won the nation's gratitude and the nation's love. When the fury of the storm had spent its force, when the war was over, and the nation was saved, then the voice which had rung like a trumpet in the strife was the first to plead for forbearance to the vanquished, for a generous condonation of the past, and a permanent peace resting upon universal amnesty. This, gentlemen, is a true and unflattering portrait of the defendant in this case—as a husband, a father, a citizen, a patriot, a philanthropist, a minister, and a man. If it were a statement to be established by testimony, thousands upon thousands of witnesses might crowd this Court to confirm its truth, for the name of Henry Ward Beecher has long been the treasure of the nation, as it has been the special pride and glory of this city, famous throughout the world as the scene of his life and labors.

#### MR. BEECHER'S LABORS FOR YOUNG MEN.

One of the most striking characteristics of the man I have been describing was a profound and ever-active interest in young men. The first work he ever published, a work which won him an enviable reputation, while he was himself yet a young man, and which is still disseminated by thousands in this and other lands, was his "Lectures to Young Men." When, therefore, in his earlier Brooklyn ministry, he encountered a young man of unusual promise, it was like him to receive the youth into his heart of hearts and to lavish upon him that affection, that expenditure of time, and that wealth of intimate intercourse, which not a few men of the highest culture had desired in vain. For that privileged intimacy, and for that affectionate devotion, this prosecution is the grateful reward. The heart in which that generous sowing brought forth only the deadly nightshade of envy and hate was the heart of the plaintiff in this suit.

## MR. TILTON PICTURED IN DEEP COLORS.

It now becomes my unpleasant duty to invite you, gentlemen, to consider for a moment who and what is Theodore Tilton. The plaintiff in this case presents the most impressive instance that has ever come within my observation of the remorseless power and the destructive effect of a single absorbing master passion. An all-dominating, selfish egotism is the basis of his character. As a boy he was bright and ambitious, and his quickness of apprehension and felicity of statement brought him early recognitions and praise. Everybody flattered and encouraged him, regarding his self-conceit as something which mature years and the hard experiences of life would modify into a reasonable self-reliance and an honorable pride. Beginning life as a reporter on the public press, he was brought into contact with great orators and public men, and he early resolved to devote himself to a public career. All his studies were turned upon this point—to make himself a graceful and powerful speaker and writer. The art of appearing well and sounding well was the art he sought—a dangerous pursuit for one already strongly predisposed by constitutional vanity to consider life a drama and himself its hero. He began with unbounded confidence and cool, calculating pertinacity to work his way upward. Possessed of a fine address, a lively imagination, fertile fancy and flowing speech, he lacked the powers of deep and original thought, and more than these, sound sense, discriminating judgment and the unselfish aims which are the prime elements of a noble manhood. Anxious above all things to shine, he seized every opportunity and advocated every cause which would give him prominence. He adopted the ideas of leading men of the country—Sumner, Phillips, Garrison, and, more than any other, of Mr. Beecher, who, as we have seen, was lavish of friendship and aid—and reproduced them in sensational editorials and lectures. The extremists in politics and religion to whom he joined himself were ready to reward the facility with which he yielded himself to their uses by fostering his conceit, representing him as the successful antagonist of Mr. Beecher—the young David who had overthrown the great Goliath in debate, and the brilliant occupant of the editorial chair of *The Independent*, who had eclipsed the light of his predecessor.

## THE BEGINNING OF MR. TILTON'S DECLINE.

He fell in with gay, fascinating people, who considered themselves free from the conventional restraints of society, and little by little he slid into their ways of thinking. His unbalanced vanity was not proof against the wine of dangerous theories when presented by the hand of the flatterer. Surrounded only by those who burned incense to his vanity, he became inflated with success, and fancied himself a monumental genius, a prolific source of wit and wisdom—in a word, the foremost man of his time. Conspicuously destitute alike of logical power and the poise of a nice moral sense, he embraced the wildest views and rushed forward, believing that the world would follow where he led. Some persons of cool heads can speculate on social, political or religious questions without losing their balance, but with Theodore

Tilton, to calculate the depths of an abyss was to plunge headlong into it. A believer in the Christian faith and a member of an orthodox church, he speculated on the origin of matter and the attributes of God until he became a deist, denying the divinity of Christ and rejecting the Scriptures as a Divine revelation of God's will to man. The husband of a gifted, pure, and loving wife—the father of an interesting family, having, as he describes it, an "ideal home," he speculated on social problems, and was led by the malign influence under which he fell, to denounce the marriage relation as a remnant of effete civilization; a clog and hindrance to the development of the race. His remedy for the evils of marriage was easy divorce, leaving parties as free to dissolve the relation as they were to enter into it. He denies that he is a free lover, but Victoria Woodhull, the apostle of free love, asks for no greater social freedom than this. A leader of men must know how to construct and to preserve, but Theodore Tilton knew only how to unsettle and destroy. The moment he assumed a position of such prominence that he could be studied and criticised, the glaring defects of his character discovered themselves to those who had hitherto been his dupes. Opposition sprang up in every quarter, and at last he was forced to realize that the foundation which had been reared for him, and on which he had been placed by others more than by himself, was crumbling beneath his feet. The end was near. Theodore Tilton fell—fell from an eminence seldom attained by men of his age—to the very bottom of the abyss, the depths of which he had attempted to sound.

## A MONUMENT OF BASE INGRATITUDE.

From that abyss he beheld afar off the man who had been his early friend and patron, but whom he had long regarded as his inferior and rival, standing firm and erect, his influence widening and deepening, and his hold on public favor becoming more and more permanent and secure. A man fed by inordinate vanity can never awake to a sane, reasonable estimate of himself. Failure and disappointment never lead such a man to self-examination, but excite within him only bitterness, rage and malice. With him it is never his own folly and impotence that have impeded his advance, but some malevolent power has interfered. In the blindness of his rage, Theodore Tilton persuaded himself that the sole and efficient cause of his overthrow was Beecher, that the one man who had prevented him from reaching the topmost summit of fame was Beecher. But one resource was left to him. If he had not power to rebuild, he still had the power to destroy, and Beecher should feel that power. To be eclipsed and neglected was gall and wormwood to his soul. If he could not be famous, he could at least be infamous, and he preferred infamy to oblivion. Mr. Beecher had long been his friend and the intimate friend of his wife. That friendship he could pervert, and make himself the author, and at the same time the central figure, of the most famous scandal of modern times. If he could not supplant Beecher in the affection of the people, he could scandalize him. If he had made it impossible for any honorable pen to write his own biography, then was it worth any cost to have a line devoted to him in the biography



of Henry Ward Beecher. His natural bent towards plots and conspiracies now fully revealed itself, and Beecher was the object of his schemes. His grand genius for attitudinizing—for Tilton is nothing if not dramatic—began to be displayed. As in a play, everything was arranged with a view to effect. Facts were nothing to him except as they could be adroitly used to serve the purpose of his pageant. Friends, wife, children, and all that other men hold sacred and dear, must be trampled down and walked over to reach the notice and applause for which he has shown himself willing to barter his immortal soul. Pure women might abhor and shun him, but one pure woman at least should go to her grave bearing witness to his power in a blasted life and a broken heart. Here, gentlemen, here speaks the "master passion" of this perverted man. At this very moment, if he could realize the sad truth that he is morally dead, he would still rejoice in this post-mortem investigation of his character. The decaying corpse would rather be dissected than buried; but we propose, gentlemen, to dissect him first in the interest of truth, and to bury him afterwards in the interest of decency; such, gentlemen, is the plaintiff in this cause. A staunch new vessel, launched upon an honorable voyage, sailing with prosperous winds over unruffled seas, has been transformed into a pirate by the wickedness of her commander, and wrecked by his folly, and now lies a stranded and battered hulk, the object at once of the curiosity and abhorrence of mankind.

#### MR. BEECHER'S EARLY INTEREST IN MR. TILTON.

And now, gentlemen, with this imperfect preliminary sketch of the two leading characters in what we shall show you is the most remarkable conspiracy of modern times, perhaps you will be better prepared to comprehend the "strange, eventful history" which I proceed to lay before you. In 1847 Mr. Beecher removed from Indianapolis and settled in Brooklyn. His success as a preacher was already established, and he immediately took rank among the foremost orators of America. His church was at once crowded, and soon came to be the largest and among the wealthiest of the two cities. Removing to Brooklyn in 1851 or 1852, the plaintiff—then a boy just from school—took his place among the young men of Plymouth Church. He was speedily taken into favor by some of the leading members and by the pastor. Being employed to report some of Mr. Beecher's sermons, the two men came into frequent contact and formed a warm friendship. The favor in this friendship was all on one side. Mr. Beecher was a man of mature years, and, even then, almost at the height of his fame. He had multitudes of friends, men of wealth, of learning, of high reputation, and could derive nothing from the mere lad, whom he thus took into the circle of his friends, except the pleasure which a great and generous nature feels in imparting knowledge to an opening mind, and in helping forward a struggling aspirant. The pastor was led to take an additional interest in this young man by the fact of his marriage to a young girl whom Mr. Beecher had known and loved from her childhood. In the following year, Tilton, through Mr. Beecher's friendly interest, was taken upon the editorial staff of *The Independent*, a paper mainly owned by

one of Mr. Beecher's congregation, and to which Mr. Beecher was himself a regular and valued contributor. From this time the relations of the two grew more and more intimate. Tilton visited frequently at Mr. Beecher's house and took an active part in the work of the church; and when, in 1861, Mr. Beecher was invited to the editorial chair of *The Independent*, his affection for Mr. Tilton was so well known that one of the chief inducements held out to him to accept that position was that Mr. Tilton should be associated with him as assistant editor. It is true that there had been some indications of envy and conscious rivalry on the part of young Tilton, even at this early day; and some of Mr. Beecher's oldest friends suspected and criticised the motives of the young man; but Mr. Beecher himself was entirely free from suspicion, and put the most innocent interpretation upon every act of his new friend.

#### MR. TILTON SOLICITS MR. BEECHER'S COMPANY.

At this time, gentlemen, Mr. Beecher had a Summer residence in the country, to which it was the habit of his family to repair, along the last of May or the first of June, and to return again in October, and sometimes as late as November. But Mr. Beecher spent a portion of the time, while his family were thus residing in the country, and prior to the beginning of his Summer vacation, in the city, working at his own house, but taking his meals at some of the families of his church during the time that he was in the city. This habit of Mr. Beecher's, thus living for portions of his time with the families or members of his church, was well known to Mr. Tilton, and he, early in 1861 or 1862, urged Mr. Beecher to make his house also a place of frequent resort. He spoke often to Mr. Beecher of his wife's great affection for him, and requested him to call and make himself at home in the family. Mr. Beecher had known Mrs. Tilton prior to his acquaintance with Mr. Tilton, but he had known her as a young girl, a member of the church, and the acquaintance had practically ceased after her marriage, until it was renewed at the request of Mr. Tilton, as I have stated—ceased, I mean, so far as his visits at their house; for in the early years of their marriage they were boarding, and when they began to keep house they commenced in Oxford-st., so far from the place of Mr. Beecher's residence that it was quite impracticable for him to visit the house often. Still, at the earnest solicitation of Mr. Tilton, as we have said, he began his visits at the house of Mr. Tilton in Oxford-st.; but, as the plaintiff tells you, his visits were quite infrequent. But visiting that house, he made the acquaintance of Mrs. Tilton as a wife and mother—a relation which was first disclosed to him on these visits, thus made at the earnest solicitation of the plaintiff.

#### MRS. TILTON'S PAINFUL POSITION.

And now, gentlemen, I ask you to consider for a moment that Mrs. Tilton is the true defendant in this cause—she whose lips are sealed and whose hands are tied while the battle is waging over her body. She can make no outcry and strike no blow in her own defense. She can only weep and pray, as she has done so often already, looking for her deliverance to

Almighty God and to the spirit of justice which He inspires in the hearts of men!

#### THE FINE ATTRIBUTES OF MRS. TILTON'S CHARACTER.

Small in stature, and of a childlike disposition, she is of a nature deeply reverential and filled with an exalted religious enthusiasm. The plaintiff himself declares that, had she lived in former days and belonged to the Roman Catholic Church, she would have been recognized as one of those illustrious women whose names shine with the halo of saintliness. She was devoted to her home, entertained views of the sacredness of motherhood almost romantic (if that were possible), and gave her whole life, under God, absolutely to her husband and children, without a murmur as to her own self-sacrifice. Gifted, sensitive, pure, self-deprecating, idolizing her home, and worshipping with all the intensity of her nature the husband of her early love, her very existence was so blended with his, that their union fulfilled Lord Coke's definition of marriage, "two souls united in one person." From the time Theodore Tilton placed the wedding ring upon the finger of Elizabeth, until that hour when, driven by his persecution, she was compelled to tear herself from her home and from him forever, there had been but one person who in all things dominated that household, and that one was Theodore Tilton. His wish was to her a command; whatever he willed, she did. Relieving him from every household care incident to the rearing of a young and numerous family, she was content to toil and suffer that he might win the distinction he coveted so much.

#### MRS. TILTON'S UNHAPPY LOT.

In a married life which would have made most women wretched, for ten long years of absolute self-sacrifice, Elizabeth Tilton fancied herself happy. Month by month she watched the gradual unfolding of her husband, under the guidance and companionship of his friend and pastor. She saw him rising step by step to that proud eminence which had been the ruling ambition of his life, and she was happy. But she at last came to realize that every new success brought to him new dangers. She saw with pain the character of the associates with whom, in the recklessness of vanity and the intoxication of first success, he surrounded himself. And with unspeakable anguish she witnessed the change that, day by day, was going on in his religious convictions. Slowly but certainly he was sliding away from the views of marriage and of social duty which he once adopted, and becoming the advocate of theories which seemed to her to have been propounded only by those who were unwilling that the principles they professed should be better than the lives they lived. The spell of the flatterer was upon him. To rescue him from all that she deemed false in religion and pernicious in morals was, as it seemed to her, the one great duty of life. To accomplish this, no sacrifice was too great. She would patiently if not willingly accept humiliation, reproach, accusation, nay, the most sacred feelings of wife and mother might be outraged and

trampled upon, still she would hide her suffering and conceal her wounds, if only the object of her solicitude and prayers might be saved.

#### MRS. TILTON'S REFUGE IN HER SORROW.

There was but one person on earth to whom she could make known her sorrow, and that one was their friend and pastor. Boundless was her faith in God and in the efficacy of prayer, but she was not a mere enthusiast; she believed in a wise and faithful application of appropriate means. How natural then that she should appeal in this emergency to him who had been the friend of his youth, the counselor and guide of his maturer manhood. He sympathized with her suffering and promised help. How faithfully and how tenderly he counseled the plaintiff we have seen by the beautiful letter, as wise as it is beautiful, which the defendant wrote to the plaintiff in 1867. If Tilton could have but heeded that advice how different the scene from what we this day witness. There would have been no bleeding heart, no deserted hearthstone, no wife with a broken heart and a blasted life, no children with a blight resting upon their young and innocent lives, but a home happy and united, a family bound together by the ties of love and respect, a household altar undeseccated, as in those early days of simple piety, of which he is now so much ashamed.

#### INCONSISTENCY IN THE CHARGE.

But blinded by his egotism and drunk with the intoxication of flattery, he refused to break away from his evil associates. Neither the voice of friendship nor the appeals of affection had power to save him. And now, gentlemen, they ask us to believe that at this time, when all of a wife's faith, a woman's devotion and a mother's love, was being exerted to save Theodore Tilton from the companionship and corrupting influence of those "whose feet take hold on hell"—this pure-minded and saintly woman, in her very effort to save her husband, fell herself! Fell into the very sins against which, for so many anxious years, she had been warning her husband "with strong crying and with tears!" Nay, more, that the very religion—the religion which she had cherished all her life, and which was confessedly so conspicuous in that life, furnished the motives for her fall! Still more, that so infatuated and unintelligent was her hold upon that faith, that having sinned, she solemnly denied this conscientious crime and invented a tissue of lies to support that denial; that, still further moved by an inspiration she believed Divine, she abandoned all the responsibilities and loves of life, and gave to a spiritual guide, himself all leprous and loathsome with adultery and perjury—and, anti-climax of abominations, that she is "a pure and white-souled woman" still! Gentlemen, you are men full grown; you have the wisdom that comes from the experience of life, the observation of human nature, the knowledge of affairs. Is there one among you that can so discredit all that experience and observation as to entertain for a moment a suggestion so unutterably absurd, so absolutely monstrous?

## MR. TILTON'S TRIUMPH ON THE INDEPENDENT.

In June, 1863, Mr. Beecher, feeling exhausted by his labors, visited Europe for a few months, leaving Mr. Tilton in charge of *The Independent* during his absence, and on his return, finding from experience that the burden was too great for him, he privately relinquished the entire charge of the paper to Mr. Tilton, consenting, however, that his own name should remain as ostensible editor for a year longer, at the end of which time Mr. Tilton assumed the open charge of the paper. The prize Tilton had so earnestly struggled for was now won, and at the age of thirty years he found himself the successor of Henry Ward Beecher, the occupant of one of the proudest editorial chairs in America. For this position he was indebted to the friendship of Henry Ward Beecher.

## MR. TILTON'S OWN TESTIMONY TO MR. BEECHER'S HELPFULNESS.

The nature of that friendship, which I have thus briefly described, and its value to Mr. Tilton, can be portrayed in no language of mine more effectively than he has done himself in a letter which he wrote under the impulse of conscience the very year that he became editor, and a few days after he had over his wine made direct and wicked insinuations against his loving pastor and best friend. In this letter he tells, under the impulse of a gratitude which was all too brief, something of the obligations which he was under to the man whom he had just begun covertly to slander, and whom he now seeks to destroy:

MIDNIGHT, {  
BROOKLYN, NOV. 30, '65. }

Rev. HENRY WARD BEECHER :

MY DEAR FRIEND : Returning home late to-night, I cannot go to bed without writing you a letter.

Twice I have been forced to appear as your antagonist before the public—the occasions five years apart. After the first, I am sure our friendship, instead of being maimed, was strengthened. After this last, if I may guess your heart by knowing mine, I am sure the old love waxes instead of wanes. \* \* \* My friend, from my boyhood up, you have been to me what no other man has been—what no other man can be. While I was a student, the influence of your mind on mine was greater than all books and all teachers. The intimacy with which you honored me for twelve years has been (next to my wife and family) the chief affection of my life. By you I was baptized—by you married. You are my minister, teacher, father, brother, friend, companion. The debt I owe you I can never pay. My religious life; my intellectual development; my open door of opportunity for labor; my public reputation; all these, my dear friend, I owe in so great a degree to your own kindness that my gratitude cannot be written in words, but must be expressed only in love.

Then, what hours we have had together! What arm in arm wanderings about the streets! What hunts for pictures and books! What mutual revelations and communings! What interchangings of mirth, of tears, of prayers!

The more I think back upon this friendship, the more am I convinced that, not your public position, not your fame, not your genius, but just your affection has been the secret of the bond between us; for whether you had been high or low, great or common, I believe that my heart, knowing its mate, would have loved you exactly the same!

Now, therefore, I want to say that if, either long ago or lately, any word of mine, whether spoken or printed, whether public or private, has given you pain, I beg you to blot it from your memory, and to write your forgiveness in its place.

Moreover, if I should die, leaving you alive, I ask you to love my children for their father's sake, who has taught them to reverence you, and to regard you as the man of men.

One thing more. My religious experiences have never been more refreshing than during the last year. [This was in 1865.] Never before have I had such fair and winning thoughts of the other life. With these thoughts you stand connected in a strange and beautiful way. I believe human friendship outlasts human life. Our friendship is yet of the earth, earthly, but it shall one day stand uplifted above mortality, safe, without scar or flaw, without a breath to blot or a suspicion to endanger it. Meanwhile, O my friend! may our Father in Heaven bless you on the earth, guide you, strengthen you, illumine you, and at last crown you with the everlasting crown!

And now good night, and sweet be your dreams of  
Your unworthy but eternal friend,

THEODORE TILTON.

## THE INTOXICATION PRODUCED BY RAPID SUCCESSES.

We have seen, gentlemen, that in this year 1865

Mr. Tilton assumed the absolute and open control of *The Independent*. He was no longer, he could be no longer supposed to be under the influence of Mr. Beecher. Mr. Beecher had retired from the paper, and, although a correspondent of it, and the paper published his sermons weekly, still Mr. Tilton was the sole responsible editor of that paper. The first thing his egotism prompted him to do on assuming control of the paper was to satisfy the world that he had emancipated himself from Mr. Beecher's influence, and was no longer guided by him. He had, in his estimation, become the equal of Henry Ward Beecher, if not his superior, and he must take the first opportunity to satisfy the world of that fact. Early in 1865 he makes a political difference the occasion for denouncing Mr. Beecher in *The Independent*. And the year following that opposition, the opposition of *The Independent* became so pronounced against Mr. Beecher, and its attacks so virulent upon him, that he was compelled in self-respect to sever all connection with the paper, and to refuse it permission longer to print his sermons. The pretended occasion of this attack in 1866 was Mr. Beecher's Cleveland letter, which has been introduced in evidence before you and which you have heard read. You will remember, gentlemen, that that was a period just succeeding the close of the war, and the question before the country was what should be the policy of the North towards the conquered States of the South, and that question depended upon what should be the policy of the Administration, because whatever policy the Administration—having a majority in Congress and the control of the executive power—should adopt, must become, of course, the policy of the nation. There was a long and angry controversy, as you may remember, within the ranks of the Republican party, which was at that time the party responsible for the control of the Government as to what should be the policy of the country, many Republicans adhering to what they regarded the policy which Mr. Lincoln had adopted prior to his death, and others seeking to depart from that policy and adopt a new and more aggressive policy against the South. While the policy of the Republican party was being formed and settled, and debate and argument were going on within the ranks of that party, Mr. Beecher was among those

who adhered to what he seemed to be the policy which Mr. Lincoln would have inaugurated and carried out had he lived. That policy was expressed in what is known as the Cleveland letter, a letter, gentlemen, which, permit me to say, read at this time nine years after it was written, shows that Mr. Beecher was no less an eminent statesman than he was a minister of the Gospel; but that letter, which was only an argument intending to influence the policy of the Administration and of the Republican party, was made the pretext with Theodore Tilton for a bitter and outrageous attack upon Henry Ward Beecher, and in that contest, as we know, the policy which was advocated by the extreme men of the party came to prevail, and Mr. Tilton, as he tells you upon the witness stand, found himself with the majority of the party. This controversy which sprang from this letter severed the public connection between Mr. Beecher and Mr. Tilton. The latter could no longer be suspected of being influenced or controlled in his public relations by the influence of Mr. Beecher. Other influences came in to replace the great influence which had departed. The character of that influence, gentlemen, you may judge by the subsequent career of Mr. Tilton. The extreme men of every faction, of every view, flocked around Mr. Tilton. They found how easily they could use him. To use him successfully it was only necessary to flatter him. They found he possessed a mind which naturally brought him to accept the most radical view of every question, and they surrounded him; they obtained possession of him and they controlled him, so long as he remained editor of that paper. But at this time, in 1866, the second year after he had assumed control of *The Independent*, it was observed that his religious views began to undergo a marked change. For the extremists who had surrounded him were not confined to politics or to social theories exclusively, they extended to religious views also, and Mr. Tilton began to show that he was accepting their views on the subject of religion. As early as March, 1866, he writes his wife: "I don't care greatly for sermons, but I am a believer in hymns." February 1, 1867, he writes: \* \* \* "I am conscious of departing more and more from the peculiar religious and theological views which you regard as sacred. Perhaps this statement may give you trouble, but certainly this fact has given me peace." Twelve days afterwards he again writes: \* \* \* "The old religious teachings, the orthodox view, the dread of punishment, the atonement, have less and less power over my mind. Of course you will mourn over this. But I must be an honest man. I don't believe in orthodoxy, and therefore I will not pretend to do so."

#### MRS. TILTON'S GRIEF AT HER HUSBAND'S LAXITY.

This change in his religious sentiments was a source of great unhappiness to his wife. This is testified to, not only by Mr. Tilton, but by the witness whom the plaintiff has introduced in your presence, Mrs. Bradshaw. She tells you that Mrs. Tilton mourned greatly over the change of religious sentiments that came over her husband in these early years. On his cross-examination before the Committee, Tilton declared that he thoroughly hates and despises religious creeds. Says he: "I do not believe in one of the thirty-nine articles, nor in

either of the catechisms, nor in the divine injunction of the Scriptures, or in the divinity of Christ." He further says: "I despise the church and generally despise ministers." He further says: "I thank God I do not belong to the priesthood or the church." Tilton further testifies to the sorrow and anguish which this change in his religious sentiment caused his wife. He says: "She was always in sorrow that I was not a minister, which," says he, "was the only virtue that I possess." On that examination there was put to him the following question: "Well, it was that lack of reverence for the church and its ordinances, and your lack of belief in the divinity of Christ, as she held it, that she missed in you?" To that he answered: "Yes;" and the following question was put to him: Q. "And she grieved over it? A. "Oh! yes, indeed; grieved over it with tears." And to a further question: "Q. Do you know whether the change in your religious convictions was a source of great grief and sorrow to your wife?" To this question he answered: "It was a great source of tears and anguish to her; she said to me once that denying the divinity of Christ, in her view, nullified our marriage almost; and I think next to the sorrow of this scandal it has caused that woman to sorrow more than anything else she has ever suffered, because I cannot look upon the Lord Jesus Christ as the Lord God. I think her breast has been wrenched with it; she is almost an enthusiast on the subject of the divinity of her Savior. Q. You think her a Christian, do you? A. Yes; she is the best Christian I know of, barring her faults; better than any minister. Q. The change of your religious views has been the subject of a great deal of conversation and anguish, and labor on her part, has it not? A. Oh, yes—of letters, and prayers, and tears, and entreaties, many a time and oft."

#### BEECHER'S ADVICE TO TILTON ABOUT RELIGIOUS MATTERS.

In this hour of her great sorrow, Mrs. Tilton applied to her pastor for advice and sympathy. Mr. Beecher saw Tilton frequently, and talked with him upon matters of religious belief. On June 3, 1867, he wrote Tilton the wise and beautiful letter which has been given in evidence, and from which I now desire to quote.

Mr. Beecher writes Mr. Tilton:

JUNE 3, 1867.

MY DEAR THEODORE: In thinking over our conversation respecting your position on religious matters, it occurs to me that you are liable to do yourself an unnecessary injustice by supposing or affirming that you have wandered from received opinions, whereas it seems to me that you have simply entered that stage of development in which every active mind explores the grounds and reasons of belief for himself. Now, it is impossible for one, unless cautious even to coldness, to pursue such investigations without great oscillations of belief, without seeming at one time averse to one view, and then again seeking it with greater avidity than ever. It is a question so wide, so grave, that one ought not to commit himself upon the hasty result of a year or several years' reading. You seem to me to follow your sympathies largely in investigation. This has its advantages, and is one way of study; but it requires *far more time* and caution, inasmuch as it will surely lead you to accept things from poetic or emotive reasons, which are but *half true*, which need and will get by longer experience much modification. The formation of opinions upon religious questions in such a

nature as yours is a matter of *growth* more than of logic. Under such a state of facts, therefore, I would submit whether you can wisely or even truly say you stand on this or on that ground, and whether you do not, in justice to your own final self, require all the privileges accorded to those who are *investigating*. In part I write from experience. I look back upon periods when, if I had expressed the then results of thought and reading, I should have committed myself to views which I have outgrown or left behind. I find myself, slowly but surely, going toward those views of human nature and of divine government which have underlain for a thousand years the Evangelical churches. It seems to me that I discern, arising from studies in natural science, a surer foothold of these views than they have ever had, in so far as theology is concerned. If I have one purpose or aim, it is to secure for the truths now developing in the spheres of natural science a religious spirit and a harmonization with all the great cardinal truths of religion which have thus far characterized the Christian system. I turn with more and more chill and dread from that bleak and fruitless desert of naturalism which so many are hailing as a second paradise.

[Further on he says:]

Believe me, Theodore, that I have great sympathy in your developments, and affection for you, and should be glad to help and sorry to hinder.

Now comes a paragraph, the significance of which will be more apparent as we get further on in our opening, gentlemen, but which I wish to call your attention to here now, lest I may not recur to it at that time. Mr. Beecher, in order to disarm all ground of hostility, and to prevent his advice which he had given Mr. Tilton on religious subjects being repelled by hostile personal feelings, says to him:

I have given up the idea of starting a newspaper. I am sure that I could not bear the strain and yet carry on my church.

I am truly yours,

H. W. BEECHER.

This, gentlemen, was in 1867. The significance of that reference to a new newspaper in the relations of these two men, as I have said, will become more apparent as we get further on in this matter. But the change in his religious convictions was not the only departure made by Mr. Tilton from opinions theretofore accepted by him.

#### MR. TILTON'S GROWTH IN RADICALISM.

There followed soon after a very marked change in his social views respecting the relation of the sexes, and particularly that of marriage and divorce. Mr. Tilton espoused with zeal the cause of woman's suffrage. He reports himself in *The Golden Age* as having said during the war that after the abolition of slavery, the next great question which would agitate the public mind would be that of woman's suffrage. And undoubtedly believing that a great social revolution was impending, he aspired to make himself the leader of the movement. But its members differed widely among themselves in their views of the marriage relation. Many, perhaps a majority, coincided with all Christian people upon this subject, while others held that marriage was a mere matter of civil contract, and that the parties thereunto should be as free to dissolve the relation as they were to enter into it. As was his custom, Tilton accepted the most radical views upon this, as upon other subjects. He soon began to talk with friends visiting at his house upon

this matter. He did not hesitate to declare before his wife that he had now come to regard the marriage relation very differently from what he once did. To him it was no longer a sacred institution to be regulated by the Church or State. His most intimate friends of both sexes came to be those who agreed with him upon the subject of marriage. They used to converse much upon the relation of the sexes, the great value of mutual friendships between married men and unmarried women, or between married men and other men's wives; of the extent to which such intimacies could be carried and still be innocent, and finally that there could be nothing criminal in any relation which love had sanctified. This, I say, gentlemen, we shall show you was a frequent subject of conversation between Mr. Tilton and his associates visiting at his house. It was these sentiments, so offensive to this pure and devoted wife and mother, that she was compelled to listen to day after day, and week after week. This change in his sentiment was, if possible, more repugnant to her than his change in religion. The one she strove against with anguish, with entreaty and with tears; the other she resisted and fought against. She despised the doctrine and its adherents; she forbade her home to the women who advocated it; she remonstrated with her husband against the principles he held and the people with whom he associated, and particularly she suspected his numerous friendships with women, which he characterized as "sacred weddings which knew no sex."

#### MR. TILTON'S ALIEN LOVES.

She rejected his sophistry that they were helps to him in his labors, or pillars against which he could lean for support. She perceived with a woman's instinct the end to which such relations would bring him. Still Tilton persisted in the necessity of such friendships and humiliated his wife by the publicity he gave them. In 1866, during a lecturing tour in the West, he there made the acquaintance of a family and fell desperately in love with one of the daughters. To pave the way for her to visit him at his own house he immediately sent on for his wife, introduced her to this family, and insisted upon her inviting the young lady to their home in Brooklyn. Tilton himself has testified that his wife wept bitter tears of sorrow upon being introduced to this young lady, and on seeing the extreme cordiality and friendship with which he was received by her. Mrs. Tilton yielded, however, to her husband's request and invited her to make the visit. The lady accepted and came. It was this friendship and visit which drove the mother-in-law almost to insanity on account of the attentions paid by Tilton to this lady, then dwelling under his own roof. That he was desperately in love with her there is no doubt; he has left the fact on record in the correspondence which he himself has published, and which is introduced here in evidence before you; but the lady, soon learning the true character of Tilton and the dangers which association with him threatened to her fair name, suddenly put an end to the acquaintance to the great sorrow and disappointment of Mr. Tilton. The freedom with which he used to write to his wife on the subject of his relations with other women—his friendships, as he called it, for women—is illustrated in the correspondence

which has been introduced. It is a remarkable correspondence, gentlemen, to pass between a husband and wife. It develops a trait in Mr. Tilton's character that is most unusual and almost unaccountable—that he could presume to humiliate his wife and destroy her peace of mind by disclosing to her in correspondence the friendships which he had for other ladies, and describe them as going to the extreme lengths which he did. On February 12, 1867, he wrote:

MY DARLING: I wrote to you a hurried sheet this morning from the Sherman House, while waiting for [blank] to breakfast with me. He did not come; I ate my breakfast alone. Once again on the cars, and once again confronting a lecture appointment, I feel that I am once again at work, after my two days of pleasant rest.

And I confess that rest is sweet. I do not mean rest for wearied limbs, though that too, is sweet; but rest for one's spirit; rest in the midst of a circle of kind and loving friends; rest to one's own vagrant, untamed and unconquerable homesickness; rest in the tranquillity of spiritual peace.

I have been enjoying two days of such rest. The spell is still on me this morning. I rode five hours to [blank] yesterday afternoon, and five hours back, after midnight, on purpose to spend a long and delicious evening with the [blank] family [which had no father or male head of the house]. This family and its influences have helped to make me a better man. The very roof seems to spread over me a benediction. I am grateful for the Providence that ordered my steps last December to the threshold of this cottage. Tarrying with these dear people has been a new experience in friendship—a new delight of life.

The whole subject of friendship has been much in my mind this Winter.

I am satisfied that whoso makes no intimate or confidential friends, both among men and among women—friends with whom he girdles himself round about as with a halo—friends who are props to keep him lifted perpetually toward his highest life—friends whose friendship is a kind of sacred wedding that knows no sex—such a man neglects one of the greatest of human opportunities for intellectual, moral and spiritual growth.

Again, he says:

The number of people who mate each other—who fit one another exactly—who are (to use your word) "counterparts," is very small.

Again, he says:

And this fact reveals the one prolonged mistake of my past life—my association with your mother. I can now plainly see what I might have been if, for instance, I could have lived under such a roof as sheltered me in [blank], instead of breathing, during all these years, the atmosphere of Livingston-st.

Mr. Beach—Wont you read the next sentence?

Mr. Tracy—I will, Sir, I presume. This is the next sentence: If my mother-in-law had been such a woman as [blank], believe that I might have grown by this time —

Mr. Beach—No; "and the influences of Brooklyn had been like the influences of" [blank]—

Mr. Tracy—Ah, excuse me if I skipped. No.

Mr. Beach—Yes.

Mr. Tracy—I will repeat the sentence that I read.

Mr. Porter—This is as Mr. Tilton published it, not as given in evidence.

Mr. Tracy—I read it as it is here published and given in evidence.

Mr. Beach—Well, I correct you as it is given in evidence.

Mr. Tracy—The parts were given in evidence at different times, and possibly I have not got them together. I have taken

it from the official report, and the only chance of confusion is that in bringing the different parts together from the record, I have not given them—

Mr. Everts—Go on, Mr. Tracy. Go on with your statement.

Mr. Tracy—I will repeat the sentence as I read it, gentlemen, and read the next following:

And this fact reveals the one prolonged mistake of my past life—my association with your mother. I can now plainly see what I might have been, if, for instance, I could have lived under such a roof as sheltered me in [blank], instead of breathing during all these years the atmosphere of Livingston-st.

If my mother-in-law had been such a woman as [blank], and the influences of Brooklyn had been like the influences of [blank], I believe that I might have grown by this time as unselfish as a good woman. How much more I would then have been to yourself and the children! How many pangs you might have been saved! How many unknown joys you might have experienced! I have not been a wise man or I would not have consented, eleven years ago, to pitch my tent in a bank of fog.

Again he says:

I have never seen so plainly as I have seen this Winter what Livingston-street midwife I have been carrying on my garments for eleven years. Six months ago I was accustomed to say to myself, in my secret hours, "Theodore Tilton, it is time for you to die; your soul grows not whiter but darker; die soon and save yourself from total destruction." But, I believe that if I shall return to Brooklyn at all, I shall return a different man. God grant it! I know that I have tried to wash myself clean at the fountain of a better life.

Which was this family in the West, presided over by a mother with several daughters, one of which was the young lady I have referred to, who paid a visit at this house about this time in Brooklyn. If you can imagine a cruelty which a husband can inflict upon a wife greater than the writing of such a letter as I have just read to you, gentlemen, followed by such an association as existed between Theodore Tilton and this Western family, then I confess my inability to appreciate cruelty or the intense sorrow which a man may be capable of inflicting upon a woman. But in January, 1868, Mr. Tilton's social relations had reached a point where concealment could no longer be endured, where there must be an explanation with promise of reformation, or else a break. That explanation was had on Sunday, Jan. 26, 1868. The whole subject of his relations with other women, his temptations, his sins, the manner of treatment by his wife on account of them, his concealment and deceit, were brought up in this interview. Elizabeth Tilton was in one of her most exalted moods. She spoke with frankness, earnestness and sorrow to her husband, who, conscious-stricken, fell groveling at her feet. He confessed that his "sacred weddings" were stained with sin, and that he could no longer look his wife and children in the face and listen to their words of confidence and affection without feeling himself "a hypocrite, a deceiver, a whited sepulchre full of dead men's bones."

#### MRS. TILTON'S CHARITY.

I will not stop to consider too closely whether he confessed adultery of the body, or what he calls adultery of the soul. Certain it is from the remarkable correspondence which followed, continuing through the year 1868, that this evening was made memorable by confessions of some degree

of sin on his part concerning his sexual relations, and by an angelic forgiveness, pity and victorious faith in the future on the part of his wife. Not one word of reproach was uttered by this pure and injured woman. She hastened to lift him from the moral prostration into which he had fallen, to comfort him by the assurance of her unshaken hope and confidence in his future life, and broke him down afresh by her beautiful tenderness. She forgave him even before he pledged himself to a new career, but he gave these pledges with the utmost earnestness and solemnity. They bowed their knees together, renewing before God their early vows, forsaking all the world beside to cleave to each other alone. Nor did this content the noble wife. Her wonderful magnanimity and divinely-inspired sympathy could not let her rest till she had taken upon herself the blame of her husband's fall, and found in some supposed harshness and indifference on her own part an excuse for his many sins. For this imaginary fault she lashed herself both then and afterward with fanatical severity. She applied to herself the epithets which his conscience had suggested concerning his own real transgressions. Her language, seen in the correspondence immediately following, is more extravagant than at any previous or subsequent period, in its expression of devotion to and admiration for her husband. In it she strives in every way to restore his self-respect, to replace him on his pedestal of pride, to convince him that she worshiped him more, and not less, than she had done before his humiliating confessions. The effect of this magnificent exhibition of a woman's devotion, of her utterly unselfish, purifying love upon the mind of her husband, cannot be better described than in the language of that husband himself, from which I shall now read to you a few passages. This interview, gentlemen, took place, as I have said, on Sunday night, January 26, 1868. Mr Tilton was to leave home that night for a lecture tour in the West. He left his house that evening to go to the railroad station in New York, and once in the car he wrote his wife this memorable letter:

HUDSON RIVER R. R., 31st-ST. DEPOT, }  
Jan. 26, 1868. }

MY DARLING:

[After a few words he says:]

You have never seemed so noble to me as during last evening and this day. You are not only all, but more than all, that any man can need or ever can desire. Life never seemed to me to be more full of objects and ends worth living for, than since our recent long interview and mutual confessions. I am by nature so frank that the attempt to hide my feelings, to cloak my shortcomings, to deny utterance to my inward sorrows, had lately driven me almost to despair.

The secret of all my long-continued moodiness has been—dissatisfaction, not with you, but with myself. I was once well enough content to be esteemed as something better than my merit, but of late all such estimates of me have been horribly repulsive to my mind. They have revealed me to myself in the character of a hypocrite, a deceiver, a whitened sepulchre filled with dead men's bones. Above all things it has been dreadful for me to hear praises of myself from you and Florence. I could not rest content under the idea that either of you felt that my gloom was occasioned by anything lacking in yourselves, but only in my own self.

She answers this letter on the 31st of January, and in it you will see, gentlemen, how, notwithstanding his admissions and

confessions of his numerous temptations, she attributed to her own harshness, her uncharitableness, her rebukes of him, thus compelling him to keep secret his affairs somewhat from her—how she attributed his fall or his shortcomings to herself, and took all the sin upon herself.

FRIDAY, Jan. 31st, 1868—11 o'clock p. m.

Oh, Theodore, darling, I am haunted night and day by the remorse of knowing that, because of my harshness and indifference to you, you were driven to despair, perhaps sin, and these last years of unhappiness. I sometimes feel it to be the unpardonable sin. God cannot forgive me. But if you only may be restored to your former loveliness, I shall be content to live my life in penance, yea, in disgrace. I am the chief of sinners! I understand perfectly how you have felt. I carry in my soul this burden, black of sin, yet appear to my children and friends calm and happy. "Woe unto you, whitened sepulchre," I hear perpetually. I will carry these agonies gladly, for I know a life of happiness awaits you.

This you remember, gentlemen of the jury, was on the 31st of January, 1868. The language which I am about to read will show you what was the subject of their conversation, what the danger is which, at the time, threatened him, and from which she was striving with all the devotion and the faith of a woman to save him:

Darling, we must both cultivate our self-respect by being what we seem—then will be fulfilled my ideal marriage—to you and you only a wife—but contact of a body with no other—while then, a pure friendship with many may be enjoyed, ennobling us. Let us have not even a shadow of doubt of each other—tho' all the world are weak yet will we be strong.

God accept and bless us both.

Now are we one.

By bye,

Faithfully yours.

Now, gentlemen, this letter was written long before the breath of suspicion had been breathed against this lady, even by the malice of her husband. It was written when his own relations with women had destroyed his self-respect and broken him down, and he sought to palliate it by the harshness, and the indifference, and the jealousy which his conduct had inspired in his wife. To save him and restore him she made her forgiveness as bountiful as woman can make forgiveness to man. She accepted everything upon herself, and, as you see, refers to her harshness here, and her indifference, as perhaps the cause of his temptations. But to show you further, and to leave no doubt as to the subject of that interview, and what was discussed there, I read you now the letter of February 3, 1868, a letter which has become somewhat famous in this remarkable controversy:

MONDAY, February 3d, 1868, }  
9 o'clock (I think it is) a. m. }

What may I bring to my beloved this bright morning? [Then she says:] Most truly do I love, and am resolved nevermore to repress the expression of it. I have lived under the fatal mistake that I would make you selfish, but oh! what it has cost me to learn that a large, generous love cannot, in its very nature, minister but to our best and holy states! The picture of your dear face, most constant with me, is one glowing with love, but always bearing the look of one that has suffered. Can I, who am the cause thereof, ever again be indifferent? Nay, the little life which remaineth is consecrated to restore, if possible, the beautiful image I have marred. There is no sacrifice too great that I would not enthusiastically make to this end. If God will only consider me worthy to work with him. I have been thinking, my darling, that knowing as you do your immense power

over an audience to move them at your will, that same power you have with all public men over any woman whom you may love. To love is praiseworthy, but to abuse your gift of influence is a sin.

This is the letter, gentlemen, which was so marvelously garbled by this plaintiff in the early part of this controversy before the church, which he so garbled as to put upon the wife an imputation that she herself was tempted, and was likely to fall, and was resisting her own temptation. He made it read, as you remember, speaking of herself: "To love is praiseworthy, but to abuse the gift is sin. Here I am strong. No temptation could induce me," &c. But when you get at this letter and read the whole of it, you see that she is speaking of him, and the abuse of his influence over women, and she is remonstrating with him against that abuse: "To love is praiseworthy, but to abuse your gift of influence is a sin. Therefore I would fain help restore to you that which I broke down—~~SELF-RESPECT~~. Your manhood and its purity and dignity if you feel it is stronger than even love itself. I know this because here I am strong. No demonstrations or fascinations could cause me to yield my womanhood." He had represented to her and made her believe that her chiding him, her jealousy, her harshness had compelled him to be a hypocrite to her, and to conceal from her his relations and his affections with other women. He told her that that course of life which her conduct in this respect had enforced upon him, had broken down his self-respect, and that she alludes to in this passage. She will aid him now to restore that self-respect which she had helped him to break down.

Mr. Everts—Mr. Tracy, the hour of adjournment has arrived. The Court here took a recess until 3 p. m.

#### THE AFTERNOON SESSION.

The Court met at 2:15 o'clock, pursuant to adjournment, and Mr. Tracy resumed his argument.

#### MRS. TILTON'S DEVOTION AND PIETY.

GENTLEMEN OF THE JURY: At the recess I was reading to you the remarkable correspondence that followed the interview between the husband and the wife on Sunday evening, January 26th, at the time Mr. Tilton was to take his departure for a lecturing tour out West. I had read to you one letter from Mr. Tilton written on the cars that night, and I had read you two from his wife. I now read the second letter from Mr. Tilton, dated February 9th, 1868, and you will see by this letter, gentlemen, the high estimate in which he held his wife at this time:

CRAWFORDSVILLE, IND. }  
SUNDAY MORNING, Feb. 9, 1868. }

MY DEAR ANGEL: I dreamed of you last night, and awoke thinking of you this morning. How much I want to see you! How I yearn after you! How my soul blesses you day by day! I can never describe how precious your love of your husband has appeared to him during these few weeks past. Your stangeness, your fervor, your purity, your devotion—they fill my mind and heart with reverence, adoration and humility.

I regard my last evening spent with you at home as the most memorable point in my whole life. You opened for me, that night, the gate of Heaven, which had so long seemed shut.

Ever since, I have had nothing but glory, thanksgiving, and

praise. If ever a man was made a new creature, that man was I: no more despondency—no more repining—no more vain regrets—no more loss of self-respect—no more groveling in the dust. On the contrary, I am once again a man among men, and a Christian among Christians. Now, this transformation I owe to yourself, to your irrepressible love and devotion, to your ceaseless prayers, and to your victorious faith.

• • • • •  
Your letters, since I have been from home this last time, have been the dearest you have ever penned. They are royal in their tone. Each one fills me with renewed pride and joy in my wife. O, my darling, in comparison with such love as you express, how poor is the friendship of all other friends! I have never seen any one who loves as you do.

[Well may he have said that.] You have the richest of all human hearts. I am pledged to you forever. My vows I shall keep and not break. With God's help and with yours I shall be the faithfulest man in the world. Blessings on your soul this Sabbath day. Ever yours, THOMAS.

During this Western trip he had, previous to February 18, written his wife in regard to a visit he had paid this same Western family to which I have referred. He had stated to her that, in order to make that visit, he had given up one or two of his engagements at lecturing; and yet, this wife having promised him no more chidings, no more harshness, no more jealousy, when she received this letter from him informing her of this fact, answers him in the manner I shall now read. On Thursday afternoon, February 18, 1868, Mrs. Tilton wrote her husband, then in the West, as follows:

TUESDAY AFTERNOON, Feb. 18th, 1868.

MY DARLING HUSBAND: You have made me rich to-day; your letter from Lincoln came this morning, and this night Eliza brought me the full epistle from Chicago. I read every word eagerly; drop instantly whatever I am doing when the postman comes, and give myself up utterly, body and soul, locking the doors to prevent intruders, just as we are wont to do after an absence. I am heartily glad you are with the dear good friends in Chicago. How I wish I could have been with you! I hope you have impressed upon — my profound respect and love for her. How grateful it was to your poor tired head to rest there in the bosom of those dear ones; I am so glad, so thankful, the opportunity was given you, even tho' it cost the Des Moines appointment and two letters of mine awaiting you. I never realized, as now I do, your arduous labors, and the great hinderance and drag I have been to your young, beautiful life.

I yearn to caress and tenderly care for you, read, sing, and gladden those dear eyes once again. I feel, as never before, how dreadful a thing it is to wound or stab any human heart by sharp, stinging words. Perhaps the dear Father has given me another lease of life, that I may learn this lesson. I praise him for his goodness. Then again, darling, I have felt so heart-sick that there are so few great men and women. The idea of a faithful, true marriage will be lost out of the world—certainly out of the literary and refined world—unless we revive it.

• • • • •  
Believe in me,

Yours always,

ELIZABETH, WIFE.

At that same journey West, on the 30th of February, he writes her again, referring to this same Western influence, and he, having made vows of faithfulness, assures her that the spell with him is broken. He says: "The picture Madonna had arrived in good condition, and was hanging on the wall"—the wall of the residence of this lady.

It is very neatly framed, and looks pure and royal. — was



pleased, but the old fragrance has gone out of the "prairie rose." The flower is still comely, interesting and agreeable, but I marvel at myself for once thinking it so fragrant above all the rest of the garden. It is gone forever! It can never be to me henceforth anything but a common plant. This figure of speech is a mystery which I think you will understand. I intimate no names.

#### MR. TILTON BREAKS HIS VOWS OF REFORM.

Thus much, gentlemen, for the letters while he was West, and for the assurances of fidelity to his marriage vow which he gave her after that conversation of January 26th. In the Summer, however, he has returned to his home in the City of New-York. Old associates have come around him and new temptations have overtaken him, and he finds that the resolutions of January cannot hold out through the frosts of November. He is stricken again with humility, with a feeling of worthlessness, with inability to resist these temptations, and, moved by a letter which he received from his wife, written in the studio in New-York, at his office, on the 3d day of November, he replies to her in the following manner. I shall not dwell upon this letter, gentlemen—I shall not stop to comment upon it at present. The duty of that will be reserved until the final summing up of this case. I only allude to it now as the closing letter of this remarkable correspondence in the year 1868:

AT THE OFFICE, Nov. 3, 1868.

MY DEAR: Your kind and loving note falls so pleasantly on my spirits that I would immediately go home this afternoon were it not that I have engaged to go out this evening.

There is so much sunshine pouring into my little office at this moment that I think I never knew a brighter day in my life; [The sunshine he there refers to, I suppose, is the sunshine which came from the note of his wife in the morning.] and I hope that some of the light and warmth will steal into and remain within my cold and cruel heart.

It is the greatest regret of my life that I do not seem constituted so as to make you as happy as you deserve to be; but I have the best of intentions—and the worst of success.

The cause of so much trouble at home is my general anxiety about everything. Lately I worry more or less concerning every matter which I touch. I have hardly ten minutes a day of uninterrupted free from care. This may seem an exaggerated statement; but it is the painful truth. I feel as if I were growing old before my time. Lights that used to burn within me have been quenched. Hopes are faded; ambition is killed; life seems a failure.

As I cannot bear to see any expression of pain, or sorrow, or regret, on your face, I cannot bring myself to speak to you familiarly on any subject connected with any of our sorrows—not even Paul, our chief. I am literally *tormented* at having no grave for his crumbling clay. Every allusion to the subject has been a pang through my heart.

Then, too, all my religious doubts and difficulties have been, and are, and I fear must be, shut within myself, because I cannot open my mouth to you concerning them without giving you a wound. You are the finest fibered soul that ever was put into a body; you jar at my touch, and I am apt to touch you too readily.

As for my own character, I saw, at the time of Paul's death, what it was to be a man, and how far short of it I am myself; and I have ever since been utterly overwhelmed with my own worthlessness, selfishness, degradation, and wickedness. At some time I expect to recover from this slough of despond, but not now; I must remain longer in suffering before I can emerge into peace. I have been overthrown, and, before I rise, I must

be made to feel, like Anteus, that strength comes from touching the ground.

But the chief of all my miseries is this: that I impart them to others. Let me say, with the utmost fervor of protestation, that neither you, nor the children, nor the house, nor the servant, nor anything that is within our gates—not one alone—nor all combined—no, none of these persons or things *has the slightest originating share in my troubles*. Those troubles (such as they are) are of my own making. Would to God they were also of my own enduring! But they have to be inflicted upon others—upon yourself and the children. It is this fact that doubles my affliction.

But your kind and tender words, penciled in the studio this morning, were very precious to me—sweeter than honey in the honeycomb. I write this letter on purpose to thank you for them. God bless you evermore.

Lovingly yours,

THEODORE.

I now read, gentlemen, another letter in this correspondence written by the wife, February 30, 1868, in which she betrays her fears of renewed difficulty and dissatisfaction, on his return home:

THURSDAY EVENING, February 30, 1868.

MY BELOVED: I am so lonesome and heartsick for your companionship to-night that I hesitate to write lest my mood may depress you. Yet I cannot wish you home, for I am persuaded you are happier where you are. While I long to be with you, I am haunted continually with fears that your cheery face will soon be shadowed and the dear head droop. This thought is agony to me, and I have spent many hours since your absence weeping because of it.

I would fain make the path smooth for your feet, or, in other words, direct the children and the household that they minister harmony only, but *I know* I cannot, and *I am afraid*!

Again she says to him, on March 8th, 1868:

NURSERY, Sunday eve, March 8, 1868.

MY BELOVED: All alone, save Eliza in the kitchen, and the children all asleep about me, while I have been trying to imagine my state when I shall again live with you and behold your precious form. *This*, I think, I have decided—no more chidings, scoldings! An inexpressible tenderness has grown up in my soul towards you. I never saw my path as clear as now—that whatever you may do, say or be, it becometh me to be the Christian wife and mother! The full meaning of those words, when developed from a nature impotent as mine, I most thoroughly understand. If I may lead my children *now* to an intimate love and trust in God, He manifesting Himself to babes, as He has promised, then to this great source of happiness strong bodies be added, I will risk intellectual training and knowledge.

Notwithstanding the promises made January 26, 1868, and the promises of complete reformation which were often repeated in the correspondence following that interview, it is clear from that correspondence, and particularly from the letter of Nov. 3, 1868, that upon his return to New-York, and falling again under the influence of old associates and subjected anew to temptations, he felt himself unable to keep the vows he had made the January previous. This is made evident from the correspondence of the parties during the years 1869 and 1870. Difficulties were thickening around him, rumors of his dissolute life filled the air—it was impossible for Tilton to conceal any longer from the world the life he lived. In December, 1870, the storm which had been so long gathering, burst upon him. It struck him in every quarter. He found his business relations imperiled and his home shattered. As early as 1866 Tilton began to shadow forth in *The Indepen-*

dent his religious and social views. They bred discontent everywhere, particularly in the North-West.

#### MR. TILTON JEALOUS OF RIVALRY.

In 1867 there was an open revolt among the Congregational ministers of the North-West, which resulted in starting, at Chicago, a new paper, called *The Advance*, intended to supersede *The Independent* in that quarter. The correspondence and the negotiations which led to the starting of that paper began soon after Mr. Tilton commenced developing his views in *The Independent* on religion and social matters. Several meetings were had between Mr. Bowen and the proprietors of that paper, and representative clergymen of the North-West. Mr. Bowen promised reform, promised repeatedly to muzzle Tilton, and to prevent the obnoxious utterances in his paper; but after one or two promises and failures in that direction, the Congregational clergyman of the North-West started a new and independent paper in Chicago. Mr. Edward Beecher, the brother of the defendant, then residing in Illinois, was active in this opposition to his paper and to him. At this point, gentlemen, I desire again to refer you to the remark of the defendant in his letter in 1867, addressed to Mr. Tilton on the subject of religion, where he says: "I have given up the idea of starting a new paper." You will perceive, therefore, gentlemen, that from the time of this political difference between Mr. Tilton and Mr. Beecher, resulting out of the Cleveland letter, the subject of a new paper in place of *The Independent*, and in opposition to Tilton and his views, had been the subject of conversation. It is evident from the remark of Mr. Beecher to Tilton, that Mr. Tilton under these facts suspected Mr. Beecher of encouraging an opposition to him here, and of becoming the editor of an independent paper. He therefore had for some time regarded Mr. Beecher as a rival and was jealous of his fame. He feared his power, as did also Mr. Bowen, the owner of the paper; and this opposition and this jealousy increased on the part of Mr. Tilton against Mr. Beecher. While they were personal friends outwardly, the public reputation of Mr. Beecher was continually being disparaged by Mr. Tilton, and he represented him as having reached the zenith of his power. Henceforward Mr. Beecher was to decline in mind and public position, and there was only one man who could take his place, and that man, in the estimation of Theodore Tilton, was himself.

In 1868 another opposition paper, *The Church Union*, was started in New-York. In 1869 it was taken possession of by Ford & Co., Mr. Beecher's publishers; its name changed to *The Christian Union*, and in January, 1870, Mr. Beecher became its editor. Tilton now regarded Beecher as his rival and was jealous of his fame. You see, therefore, gentlemen, that by this time the rivalry between those two men had become sharp and well defined, at least so far as Tilton was concerned. The rapid increase of *The Christian Union* (for the name of the paper had changed when Mr. Beecher took hold of it) in circulation and its growing popularity alarmed both Tilton and Bowen. Nevertheless Tilton grew bolder and more outspoken in the advocacy of his peculiar views than ever.

#### THE STORIES THAT REACHED MR. BOWEN.

In 1869 and 1870 rumors affecting Tilton's moral purity began to reach Bowen; also rumors of Tilton's domestic difficulties reached Bowen's ears. You have heard some of those rumors referred to, gentlemen. It is in evidence that Mr. Bowen heard of the Winsted affair. I do not stop to comment upon that transaction at this time, gentlemen. I do not stop to say whether Mr. Tilton was guilty or not—guilty of what was imputed to him by the people of Winsted on that occasion. I only say that his conduct there with a young lady, who was no mere child (as he represents her to be in his letter from Tidioute to a Mr. Hastings in Winsted)—no mere child, but a young lady, fully developed, twice the size of his wife, was the person there referred to. And I only say, without imputing the slightest blame to the young lady, that Mr. Tilton's conduct on that occasion was characterized by that degree of indiscretion that it provoked a horrible scandal concerning himself at Winsted, Connecticut, in 1869; and the rumor of that difficulty had reached Mr. Bowen; and Mr. Tilton tells you himself from the witness stand that in 1870, about the time this storm-cloud burst upon him, an evening paper in New York published the fact that he was about to elope with a woman, whom it named. Now, gentlemen, evening papers in New York, or morning papers in New York, are not apt to allude to scandals by name, particularly when the names of such prominent persons as Theodore Tilton are connected with them, without those scandals have been of long standing, and have become a matter of news to the editorial profession. This scandal filled the air in regard to Mr. Tilton, and they had reached Mr. Bowen. Mr. Bowen saw that Mr. Tilton must be gotten rid of. How to do it was the problem, which he was not prepared at this time to solve. But, fortunately for him, Tilton, with his genius for blundering, gave adequate cause for dismissal, in an editorial which he published in *The Independent* on the 1st of December, 1870, committing the paper to the doctrine of Free Love. That editorial has been produced in your presence, gentlemen, and has been read to you. It will be the subject of further comment during the course of this trial. I shall refer to it here, and to other publications of Mr. Tilton about this time, for the purpose of showing that, when he was editor of what was understood to be a religious newspaper, he was still, at heart, the advocate of social freedom, or what might be more correctly characterized as Free Love.

#### MR. TILTON ON FREE LOVE.

But, before reading this article from *The Independent*, which led to Mr. Tilton's immediate retirement from it as its editor, I beg, gentlemen, to read to you a letter from Theodore Tilton to his wife, written Jan. 9, 1865, upon this same subject. It was written just about the time he assumed control of that paper. It was written at a time when he was still under the influence and guiding force of this great mind, which had led him from boyhood up to his present position. I want to show you, just on the eve of his emancipating himself from that influence, how he regarded the sanctity of the marriage relation, and what views he held upon that

subject. January 9, 1866, in a letter written to his wife, he says:

I have lately been much more than ever impressed with the wonderful simplicity of God's plan for binding together human society, namely, by creating in each breast some strong and dominating love for one human being. Were it not for the love of mother to child, or husband to wife, our society, civilization, the peace and order of the world—all would fall asunder in a day. Whatever rends apart two lives which have been bound into one is a cruelty to all mankind, a blow at the unity of civil society. I begin to see as never before that the center of the world to an honorable man, is his own family, his wife's sitting room, children's play-places, his home. I hope hereafter, if God should spare my life, to be more careful how my face is made to cast a shadow upon my home. I have been too often negligent of your requests that I should give more time to your dear self and the children as my heart now feels. I am ready to promise never to seek my old selfish seclusions again, but to spend my home life in your sweetest of all company.

Such were Tilton's views at the time that he emancipated himself from the friendly influence which had so long guided and directed him.

#### THE CHANGE OF FIVE YEARS WROUGHT IN MR. TILTON.

But I now, gentlemen, invite your attention to the change which five years had wrought in the principles and character of Theodore Tilton. For five years he had been editor of *The Independent*, one of the leading and most influential of the religious journals of the country. He had denounced Mr. Beecher politically in 1866 and had parted from him on all public and social questions. Personally friendly, he had by this attack cut himself off from that friendly, guiding mind which had hitherto been his stay and support. His position rendered him serviceable to the advocates of new doctrines. To use him it was only necessary to fawn upon and court him. For five years he had been the victim of the flatterer. For five years he had been the associate and boon companion of people of easy virtue, who gild their lives with plausible but corrupting theories. How continually those who surrounded him burned incense to him and how remorselessly they used him, the history of those five years and his disastrous fall at the end, bear sad and painful evidence. On the 1st of December, 1870, the same man who in 1865 saw with such clearness that the marriage relation was ordained of God, the cement of society, had so fallen that he could publish in the paper of which he was the editor, as the leading editorial, the following. After asking what is love and quoting from the poets, he says:

To answer what breaks we must inquire what makes the marriage bond. Marriage without love is a sin against God—a sin which, like other sins, is to be repented of, ceased from, and put away. No matter with what solemn ceremony the twain may have been made one, yet when love departs, then marriage ceases and divorce begins. This is the essence of Christ's idea. To say that he granted divorce only for a gross and fleshly crime, is to forget that he called the eye a paramour and the heart a wanton's bed. This idea (and this idea cannot but be true) carries with it, as its logical sequence (and this, too, cannot be true), the irresistible conclusion that marriage if broken, and whether broken by

the body or the soul, is divorce. Infidelity of the body is not so great a sin against marriage as infidelity of the soul.

This was his utterance in December, 1870, as the responsible editor of that great newspaper, *The Independent*. Of course it roused a flame of indignation throughout this land from one end of it to the other. No Christian community would support a paper that advocated such doctrines, and Mr. Bowen, who can appreciate the standard of value, if he cannot the standard of morals, soon discovered that it was important for him to be rid of this editor. That this was the cautious utterance of one who at the time accepted the doctrine of social freedom as broadly as Victoria Woodhull herself.

#### DISCREPANCIES IN MR. TILTON'S UTTERANCES.

You have heard the evidence, gentlemen, of Mr. Tilton from the witness stand as to the subject of his views upon this question. After the article which I am about to read to you had been put in evidence, you saw how the learned counsel opposed, sought to break the force of that evidence by introducing Theodore Tilton to swear, on his re-direct examination, that he held the marriage relation in great sacredness; that with him it was only the question of divorce, and he opposed the strict rule adopted and adhered to in this State upon that subject, and desired to liberalize our legislation, and make it compare with that of New England or the Western States. And you heard him testify on the witness stand, gentlemen, in answer to the counsel, and they felt it important to make him say, I have no doubt, that he did not hold, and never held, that the marriage relation was above the law, but it was a matter which should be regulated by the law, and the only fault he found with the divorce laws of this State was, that they were not sufficiently liberal and they ought to be liberalized, but still it was a matter to be regulated by law. That was a material matter, gentlemen, of evidence, and I propose to convict Theodore Tilton right here, from his own writing, of having falsified before you when he gave that evidence. And I propose to show from his own published writings, writings that he has never repudiated, writings that he adheres to to this day, that when he said from the witness stand that he held as other men held, that the laws of this State touching divorce should be more liberal, but still that divorce should be a matter to be regulated by law, and not by the parties themselves, he testified to what is untrue. And I ask, gentlemen, your careful attention now to this correspondence, which is among the most celebrated correspondence that Mr. Theodore Tilton ever had in his life; I ask your careful attention to his utterances upon that subject. He is answering Horace Greeley's objections to free love, and that you may clearly understand the meaning of his language, I shall read to you Mr. Greeley's position, so that you may have before your mind a clear conception of what Mr. Tilton was uttering. Mr. Greeley says:

I. You ask me what I mean by "Free Love." Let me illustrate:

Here are a husband and wife, each fifty years old, who have lived in wedlock a quarter of a century, and had six or eight children, of whom half survive. The pains and cares of maternity have nearly worn out the wife, while the husband is still in the prime of manly vigor and strength. He has filled a

wider sphere and enjoyed better opportunities for mental culture than she has, and feels himself her intellectual superior. Among his acquaintances is a younger, fairer, fresher woman, not so richly dowered with worldly wealth, who admires and is admired by him—who, in fact, is willing, if invited, to be his 'affinity,' and he is more than willing that she shall. If they "take up" with each other, ["take up" is quoted; seems to be an understood phrase with the free lovers;] "their arrangement, or whatever you please to call it, is just what I execrate as 'Free Love.' You know that such alliances exist. I feel that they are abhorred of God and a chief cause of human degradation, family disruption and general wretchedness. In short, I hold the man who has sworn to love and cherish his one woman till death *not free* to love another while that woman lives and strives to fulfill toward him the duties of a loving wife. Hence, I intensely hate 'Free Love,' and I hate all inculcation that a marriage may rightfully be dissolved, except for flagrant, deliberate adultery, while husband and wife both live."

That was Mr. Greeley's denunciation of free love, and that was the free love that he execrated. Now, let us see what Mr. Tilton's reply to that is. I now read the third paragraph of Mr. Tilton's reply, which is as follows:

III. A just inference from your letter is that I advocate Free Love. On the contrary, I stiffly oppose it. The latest bulletin of Mr. Stephen Pearl Andrews castigates me because I hold that the heart's ideal is monogamic marriage—the supreme love of one man for one woman through life, and, I hope, beyond death. But this is only my own view; I do not judge for others. Furthermore, I hold that love, and love only, constitutes marriage; that marriage makes the bond, not the bond marriage; and that as the contract is to "love and honor," so when the love and honor end, the contract dissolves, and the marriage ceases. \* \* \* I would no more permit the law of the land to enchain me to a woman whom I did not love, or who did not love me, than I would permit the same law to handcuff me as a slave to a master on a plantation. There are higher laws than civil statutes, and I am a rebel against the State's too impertinent interference between man and wife. Love should be like religion—free from mandate by the civil law.

Does that correspond with Mr. Tilton's oath that he has given you on the witness stand, that he thinks divorce should be regulated by law? Does he think religion, in a free country, should be regulated by law?

Mr. Tilton—Yes.

Mr. Beach—Never mind; don't interrupt.

Mr. Tracy—Does he think that whether you are a member of this church or that church should be a subject regulated by law? Does he think if you desire to withdraw your relations with one church and join another, that the law should prohibit you from doing that; does he think the law should undertake to regulate in a free country a man's relations to the church and to regulate his religion? No, but he places divorce on the same footing as religion, and he says that "love should be like religion, free from the mandate of the civil law." And it is important, gentlemen, that you heed the discrepancy between this publication of Mr. Tilton made in this correspondence with Mr. Greeley, and his statement of his own views upon the witness stand, because, as I shall show you further on in this opening, gentlemen, that if you are satisfied that Mr. Tilton or any other witness who may be introduced in this case has deliberately falsified upon any material matter concerning evidence here, his whole evidence

is to be rejected; in other words, you cannot rely upon any part of the evidence of a witness who has deliberately falsified his evidence upon any material point. And, therefore, if you are convinced that the plaintiff in this case feeling the pressure from his own counsel of the necessity of placing a different view upon his convictions touching marriage and divorce than he had placed in his own publications, came in here to state them as he does not believe them, that of itself would justify you in discarding everything that he has testified to from the witness stand; indeed it would be your duty to do so.

#### THE CALM THAT CAME BEFORE THE STORM.

We have now, gentlemen, traced the rise and progress of Theodore Tilton from the time when, a boy, he was a reporter upon the newspaper press, to one of the proudest editorial chairs in the country, a station for which he was educated and fitted by this defendant and by him elevated to that lofty position of power and influence. But his star has culminated; and henceforward it will be our painful duty to trace the disastrous fall of this man, whose early life was so full of promise. Previous to the publication of the editorial in *The Independent*, so far as Mr. Beecher knew, and so far as the world knew, no trouble had occurred between Tilton and his wife. They were apparently living in perfect peace. Moulton, the intimate friend of the family, had seen nothing and suspected nothing. Mrs. Bradshaw, the intimate friend of both husband and wife, and who passed much of her time at their house, had discovered no unhappiness between them, and, I may add, did not until after the Woodhull publication, known as the Woodhull Scandal. But in the early days of December, and before Mr. Tilton had published his valedictory as editor of *The Independent*, there came to this defendant a message from Mrs. Tilton, borne to him by the young girl, Beesie Turner, which message greatly surprised the defendant. He was informed that Mrs. Tilton had left her home and her husband, and desired to consult him on the subject of separation. The nature of the wrongs of which she complained was made known to him by the girl who bore him the message, who, with downcast eyes, informed Mr. Beecher that Mr. Tilton had twice attempted her virtue, the details of which she then proceeded to give him.

#### MR. TILTON ASKING MR. BEECHER'S COMPANY TO THE LAST.

Although Mr. Tilton and Mr. Beecher had long been separated on public and social questions, yet personally they had always been friends, and Tilton encouraged Beecher's visits to his family. In 1867, by a letter which has been given in evidence, Mr. Tilton, then West, answering a letter of his wife which informed him of Mr. Beecher's visits to her during that absence, says:

MY DARLING: \* \* \* I am sorry to hear that Mr. Beecher had a poor house in Brooklyn. In view of his kind attentions to you this Winter, all my old love for him has revived, and my heart would once more greet him as of old. I sometimes quarrel with my friends on the surface, but never at the bottom. With yourself, O friend above all friends! I am in perpetual love.

Yours, THEODORE.

And on Mr. Tilton's examination before the Investigating Committee of the church he testified at length on the subject of Mr. Beecher's relations to his family, how they originated, and how they were continued from time to time. On that investigation there was put to him the following question:

Q. At the beginning of the acquaintance of Mr. Beecher with your family—not with you or your wife, but with your family—did not you invite him frequently to your house? A. Yes, Sir, and I was always very proud when he came.

Q. Did you not say to him that you desired him to visit your house frequently? A. I did, and always scolded him because he did not come oftener. During the first part of our life we were in Oxford-st., so far away that he very rarely came; the frequency of his visits took place after I purchased the house in Livingston-st. [which, gentlemen, you will remember, was in October, 1866, so the frequency of Mr. Beecher's visits to Mr. Tilton's family, according to Mr. Tilton, did not begin until 1866. He visited occasionally at the earnest solicitation of Mr. Tilton, but not as often as Mr. Tilton would desire him to, but when he came to reside nearer his house he acceded to Mr. Tilton's request and visited him at his house more frequently.]

Q. Did you not say that there was a little woman at your house that loved him dearly? A. I did, many a time; I always wanted him to come oftener.

Q. You frequently spoke to him of the high esteem and affection that your wife bore to him, did you not? A. I did; he knew it and I knew it.

Q. You always knew it? A. I cannot say that I always did, because at first, during the early years of my married life, I felt that Mr. Beecher rather slighted my family; he was intimate with me, and I think loved me; but he did not use to come very often to my house, and it did not please me; I wanted him to come oftener.

Q. And it wounded you, did it not? A. I cannot say that I was wounded; I was a mere boy; it was a matter of pride to have him there. Elizabeth at first was modest and frightened. She did not know how to talk with him, or how to entertain him, and it was a slow process by which he obtained her confidence so that she could talk with him. It was the same with Mr. Greeley. He had great reverence for her, and had an exalted opinion of her. I do not think there was a woman that he had a higher regard for than for Mrs. Tilton.

Q. And did she not have a high regard for him also? A. Yes.

Q. And that was known to you too? A. That was known to me, and I was very glad of it.

Q. Did you urge him to come when you were off lecturing? A. I did.

Q. Did not you impress upon Mr. Beecher the necessity and desire that you had that he would call upon your family and see your wife frequently during your absence? A. I did.

#### MR. TILTON ALONE RESPONSIBLE FOR MR. BEECHER'S VISITS.

So, gentlemen, if there is any person responsible for the visits which Mr. Beecher has paid to the family of Theodore Tilton, that person is Theodore Tilton himself. From the beginning to the end of their acquaintance it was always a matter of solicitation on his part and urgency on his part that Mr. Beecher should make his visits at his house and to his family more frequent than he did, not only when Mr. Tilton was present, but when he was absent also. The breath of suspicion never crossed the mind of Theodore Tilton, either in regard to the purity of his wife or to the integrity of Henry Ward Beecher. He knew the motive that led to those visits on the

part of Mr. Beecher, and that the visits were desired on the part of his wife. He knew that it was her reverence for him as a religious teacher, as her pastor, as her comfort and consolation in the hour of her deep affliction and sorrow on account of the change in his own religious sentiments and social views; he knew it, understood it all, and the fact that Mr. Beecher visited at his house was never a subject of comment or thought upon his part, and never excited in his breast anything but pleasure, as he himself tells you from the witness stand, and told the Committee in the examination from which I am now reading. As proof of that, gentlemen, I only need refer to one fact given in evidence by Theodore Tilton as late as 1869, when he tells you that he expended \$300 for the portrait of Henry Ward Beecher, that he might hang it in his parlor, as evidence to all who came within his walls of the esteem, love and affection that he bore towards the one who had been to him more than friend or elder brother. Mr. Beecher, therefore, maintaining always this relation of personal friendship with Mr. Tilton and his family, received in the early days of December, 1870, this message from Mrs. Tilton. It shocked him, but he obeyed the summons. He went to the house of her mother and saw her. From her own lips he learned the sorrows of her life, of which she had told him something, although she had concealed the most of her troubles and difficulties from him. He found that she had quit her home, and concurring with her mother, she did not intend to return to that home. Mr. Beecher, as is his custom in such cases, preferred that his wife should see and confer with Mrs. Tilton, because she could learn from her many things which modesty, perhaps, would restrain her from disclosing to a man. He asked permission to bring Mrs. Beecher to visit Mrs. Tilton, and Mrs. Tilton consenting, Mr. Beecher turned the case of Elizabeth Tilton separated from her home, and threatening to leave her husband, over to his wife. She went there and heard the story of her sorrow and her affliction, and she came back and reported it to her husband. Mrs. Beecher had no hesitation in advising a separation at once. She declared that she never would live with a man an hour who had heaped upon her one-quarter the indignities that Theodore Tilton had heaped upon his wife for years. But Mr. Beecher hesitated, as became the cautious pastor and the sincere friend, to advise so radical a measure as the separation of husband and wife. It was a matter of consultation between him and his wife; and before he would determine it, gentlemen, he called into his counsel, George A. Bell, one of the most prominent men of his church, whom the plaintiff has put upon the witness stand, for advice upon that subject, and a consultation was had, and after much reluctance Mr. Beecher concurred in the opinion of his wife and advised a separation.

#### FALSE INTERPRETATIONS CORRECTED.

And, right here, gentlemen of the Jury, I ask you to consider for one moment whether this conduct which we shall lay before you, which has already been proved, and on which we shall give further evidence, furnishes you evidence of the guilt or innocence of these parties? Remember, now, that the theory of the plaintiff's case is, that he had had a

knowledge of the wrongs which Mr. Beecher had inflicted upon him since the July previous, and here is the wife separating from her husband in the following December, and going to her alleged paramour for advice as to whether she should separate from him or not. More, that alleged paramour advises separation. Do you believe for a moment, gentlemen, that if either of these parties had been conscious of guilt, they would have been betrayed into such an indiscreet action as this? Is it possible that a woman guilty herself, and yet determined to separate from her husband, goes to her paramour for advice upon that subject? Is he the friend she seeks for counsel, and do you believe that the paramour would have advised a separation, if the thought of guilt had been in his mind? Why, would he not have seen in it at once his own destruction? More than that, gentlemen, it is confessed in this case, testified to by the plaintiff, stands undisputed, that at this time, notwithstanding these repeated interviews that occurred between Mrs. Tilton and Mr. Beecher at this time, she never communicated to him the fact that she had made any confession to her husband, or revealed to him anything touching their relations? Is it possible, if they had been guilty, that she would not have told Mr. Beecher that she had disclosed their relations to her husband? Do you think that a woman maintaining this life of sin, and confessing it to her husband, would not make haste to lay before her paramour the fact of that confession? Would she not warn him of the danger he was in? Would she not tell him, "I have confessed to my husband, and if he cuts you, or is hostile to you, you will understand the cause of it? Beware, for you are in danger?" And yet, I say, it stands conceded here that Mr. Beecher was entirely ignorant of the fact of any pretended disclosure by the wife to the husband until it was communicated to him by the plaintiff himself in that interview on the 30th of December, at Mr. Moulton's house. But now, gentlemen, don't you think if Mr. Beecher had been conscious of guilt when he was sent for by this lady, and was informed by her that she had separated from her husband, don't you think the first word he would have said to her would have been, "My dear woman, do you know what you are doing? Are you conscious of the danger to which you are exposing me and exposing yourself? If you separate from your husband, covered all over as you know you are with guilt, do you not suppose that in this investigation, this litigation, this difficulty that will arise out of this separation, your guilt will be discovered." Can it be possible that a man of the ability and mature years of Henry Ward Beecher would have gone into this house and given this advice and never made such a suggestion to this woman? And yet he gives the advice that she should separate. I read you, gentlemen, a note that he handed his wife on the last visit that she was to make to Mrs. Tilton on this occasion. It had been, as I have said, a subject of consultation. She was about leaving. There were visitors in the back parlor, so they could not talk, and Mr. Beecher wrote to his wife and gave her this note: "I incline to think that your view is right, that a separation and settlement of support will be wisest, and that in his present desperate state her

presence near him is far more likely to produce hatred than her absence." That was the note which he gave to his wife when she left his house to pay the last visit to Mrs. Tilton.

Now, gentlemen, upon the subject of what advice Mr. Beecher would have been likely to give, I want to call your attention to the words which they have put into the mouth of the witness, Mrs. Moulton, when she makes Mr. Beecher send advice to Elizabeth Tilton. After this difficulty had progressed for a year or two, Mrs. Moulton says that Mr. Beecher sent a message of advice from her to Mrs. Tilton. What was it? "Tell Elizabeth that she must live with her husband. I know how much she suffers. I know how hard it is, but for my sake, for her sake, and for the children's sake, she must bear with her husband and be to him as a faithful and true wife." When skillful men are manufacturing evidence they know the strong way to put it, and they understand thoroughly what advice would be natural under certain circumstances, and they knew that if they sent any message by Mrs. Moulton to Mrs. Tilton from Mr. Beecher, it must be the message which urged her to live with her husband and not separate from him. It was that thing that would conceal guilt if guilt existed. It was the advice that every guilty man would have given under the circumstances, beyond a question. Now, gentlemen, you have got the advice that Henry Ward Beecher gave this woman in December, 1870. Do you think that if he had been a guilty man then he would have given such very different advice on that occasion as what the plaintiff and his mutual friend, through the witness, Mrs. Moulton, makes her give the woman in 1872 or 1873? What was the change? Was not the danger of separation as great in 1870 as in 1872? Was not the likelihood of exposure as great then as at the later period? The same circumstances existed. Of course, gentlemen, if Henry Ward Beecher had been guilty he never could have been guilty of the folly of advising a separation of this woman from her husband. No, no.

But events thickened. That was along about the 15th or 16th of December. He had published this offensive article in *The Independent* on the 1st, and he had been deposed. But to patch up a peace with Bowen he had entered into two contracts with him by which he was to serve as editor of *The Brooklyn Union* for five years, and as chief editor of *The Independent* for two years at \$5,000 a year for each. Those contracts were signed on the 20th. His valedictory was published on the 23d of December, the contracts to take effect on the 1st of January following. On the 23d of December, gentlemen, the very day that this valedictory was published in *The Independent*, Theodore Tilton seized his child, in the absence of his wife by force, took it home, sick, suffering, and this compelled the return of his wife to his house. She returns on the 23d, I think it is. On the night of the 24th she suffers a miscarriage, and goes upon her sick bed, from which she does not rise until after Jan. 1, when the most of those eventful scenes have transpired.

THE RUPTURE BETWEEN MR. BOWEN AND MR.  
TILTON.

While these scenes were transpiring in the domestic affairs of Tilton, Bowen was not idle. The article of Dec. 1 had satisfied him that he must be rid of Tilton as editor of *The Independent*. Yet he was afraid of Beecher and *The Christian Union*. I have said to you, gentlemen, that Mr. Beecher became editor of *The Christian Union* in April, 1870, and the circulation of that paper sprang up as if by magic, and it was a menace both to Mr. Tilton and Mr. Bowen. To withdraw Tilton absolutely, who had so long been the ruling spirit of the paper, was a dangerous experiment. If discharged, Tilton, for aught Bowen knew, might be employed by *The Christian Union*, and Tilton knew too much about Bowen to become an ally of Beecher. At this time Bowen saw no alternative but to depose him from power and yet retain him in his employment. Hence the two contracts executed about Dec. 20, by which he was to be editor of *The Union* for five years, at \$5,000 per year, and chief contributor of *The Independent*. His valedictory as editor was published Dec. 22d. So soon as people saw that Bowen had broken with Tilton so far as to depose him as editor, the stories affecting Tilton's character came down upon Bowen, as Tilton himself testifies, like an avalanche. Bowen was alarmed—he doubted whether it was possible to retain Tilton in any capacity upon either paper. He talked with Oliver Johnson, their mutual friend, who solicited for Tilton an opportunity for an explanation. This was granted, and this led to the now celebrated meeting at Bowen's house on December 23, 1870, —Oliver Johnson, Tilton and Bowen present. That interview, gentlemen, has been described to you. The object and purpose of that interview were to enable Tilton to explain the stories which had been planted in Bowen's ears against him. The interview began, as we shall show you, gentlemen, rather in high spirit. Tilton mounted his high horse at first and demanded an investigation, and to be confronted with his accusers, but Bowen met him boldly. He told him that he knew his life, and in a very short time he satisfied Tilton that the last thing that he desired was an investigation. Tilton saw that the game of bluff didn't play with Bowen, and he tried a new line of tactics. Knowing Bowen's fear and hatred of Beecher, he suggested the danger *The Independent* was in from *The Christian Union*, and the importance of dethroning Beecher, and nothing could have been suggested to Bowen so agreeable as that. Stories affecting the moral characters of his editors was a matter of light consequence to the suggestion of the displacing of Beecher from *The Christian Union*, and the crippling of that paper as a business rival. Of course, he listened with eager ear to any suggestion that Tilton had upon that subject. Tilton was familiar with Bowen's scandals against Beecher, because they had often been the subject of conversations between them. He referred to them, to the injury that Bowen had suffered at the hands of Beecher in business relations in times gone by, and all that, and finally he suggested that he, too,

had a personal grievance against Beecher. That was news to Bowen; he never had heard of it before, no intimation of it, and he eagerly besought Tilton to tell him what it was, and Tilton finally told him that Mr. Beecher had been guilty of unhandsome proposals to his wife. Bowen was quick to discover the situation.

THE BOWEN SCANDALS ATTRIBUTED TO MR.  
TILTON.

He had no scandals against Beecher that he dare undertake the responsibility of establishing. I do not know, gentlemen, how far the stories or the reports which attribute authorship of scandals against Mr. Beecher to Mr. Bowen are true. I have my own opinions that they are very much exaggerated. I have my opinion and belief that when this thing is carefully investigated it will be found that Theodore Tilton is the true source of the most of the scandals that have been put in circulation against Henry Ward Beecher. He is the man whose ability at scheming, whose facility at insinuation, whose ability to produce results in a roundabout way, by which he covers his tracks and prevents the ability to trace him, lead me to suspect that he is largely the author of these scandals, and the scandals which Henry C. Bowen has repeated to others. Thus, scandals which perhaps Henry C. Bowen would come to believe after having heard them repeated year after year, have their true origin in the fertile brain of the plaintiff. However that may be, I do not know; it is not necessary for us to inquire in this proceeding. Suffice it to say, gentlemen, that Henry C. Bowen had no scandal against Mr. Beecher, which he ever dare to bring to the test of an investigation; but when Tilton told him that Henry Ward Beecher had been guilty of unhandsome proposals to his wife, that furnished to him the first tangible bit of evidence which had ever come to him that warranted him in the belief that Mr. Beecher could be attacked, and attacked with evidence against him; and he suggested the letter which Mr. Tilton wrote on that occasion directed to Mr. Beecher, in which he says: "For reasons which you explicitly understand, I demand that you quit Plymouth Church and leave Brooklyn as a residence." That letter, Tilton says, was an open letter when he wrote it and left it with Mr. Bowen. He says Henry C. Bowen not only agreed to bear that open letter to Beecher, but to support it with evidence, and to assume the fight and to carry it on. Tilton was perfectly willing to send a firebrand into the camp, if Bowen would take care of the conflict after it. To save his contracts with Bowen, to save his salary of from ten to twelve thousand dollars a year, he was willing to make a union between himself and Bowen to attack Beecher; so he consented to write that letter, and Bowen was to bear it to Beecher, and he did, as has been disclosed by this evidence, and further evidence will be given you on that subject.

### THE PURPOSE UNDERLYING MR. BOWEN'S TREACHERY.

I now, gentlemen, propose to make clear to you what has hitherto been one of the great mysteries involved in this controversy. I refer to what Moulton calls the treachery of Henry C. Bowen in not only refusing to sustain the demand made in the letter which he bore to Beecher, but also in promising Beecher his friendship in the threatened contest with Tilton. I have already indicated Bowen's desire to be rid of Tilton, but the prosperity of *The Independent* was menaced by *The Christian Union* and by Beecher, and he hesitated to dismiss Tilton absolutely from his service lest he might join Beecher against Bowen and *The Independent*. Tilton, anxious to save his contracts, was willing to join in a war upon Beecher, and thereby cement himself to Bowen. Such a suggestion kindled the embers long smoldering in Bowen's bosom, into a flame. Tilton, in his zeal to fan the flame; which he himself had started into life, declared that he too had a personal grievance against Beecher, and Beecher, he said, had made unhandsome proposals to his wife.

Mr. Beach—An accident, Sir, has happened to the points from which Mr. Tracy is speaking, and he feels greatly fatigued. It would be a gratification to us, Sir, if you will oblige him with an adjournment at this moment.

The Court then adjourned until Thursday at 11 o'clock.

## THIRTY-THIRD DAY'S PROCEEDINGS.

### THE PLAINTIFF AND MR. MOULTON ACCUSED OF CONSPIRACY AND PERJURY.

CONTINUATION OF MR. TRACY'S OPENING FOR THE DEFENSE—CATHERINE CAREY SMITH SAID TO BE A WOMAN OF BAD CHARACTER—JOSEPH H. RICHARDS'S TESTIMONY CRITICISED—AUTHORITIES READ ON ORAL CONFESSIONS AND ON CONSPIRACIES—FRANCIS D. MOULTON'S INTEREST IN THE CASE—WHY THE LETTER OF CONFESSION HAS NOT BEEN PRODUCED.

THURSDAY, Feb. 25, 1875.

This morning, Mr. Tracy proceeded with his speech in behalf of the defense. He dashed vigorously into his subject, and for some time kept the complete and interested attention of his auditors. But finally he struck a vein of argument—the citing of law authorities—which was of the utmost importance to the deliberation of the jury, but was exceedingly dry in the opinion of spectators. The first topic considered was the testimony of Mrs. Kate Carey Smith and that of Joseph H. Richards. The story of the former the speaker characterized as coined in the brain of the

woman. He thought that the fact of her putting the words "dear father" into the mouth of Mrs. Tilton was proof of the falsity of the statement, as those were the words, he argued, that the witness would use in her devotions before her priest. Mr. Richards was sharply criticised for giving testimony which, it was asserted, he himself thought of no value except when taken into connection with other scandals. Then the non-appearance of Francis B. Carpenter was commented upon by the speaker, who made a promise to show that Mr. Carpenter was not called because Mr. Tilton's lawyers knew that if Mr. Carpenter were placed on the witness stand, a cross-examination would have hurt the plaintiff's case.

Mr. Tracy now asked his colleague, ex-Judge Porter, to read from a number of law authorities on oral confessions, for the purpose of showing the jury that testimony such as that of Mrs. Moulton was dangerous and should be received with great caution. After Mr. Porter finished reading, Judge Neilson suggested a later authority than any cited by the counselor, which, however, concurred with those read. Mr. Beach begged leave to read an authority, and was allowed to do so. The interruptions of Judge Neilson and of Mr. Beach were incidents not usual to openings, and they served to buoy up the interest of the audience. The theory of the defense in regard to the writing and sending of the letter demanding Mr. Beecher's retirement from the pulpit and from Brooklyn was explained, and it was suggested that the letter was a trap set by Mr. Bowen to make a breach between Mr. Beecher and Mr. Tilton, so that the latter could not form any alliance with *The Christian Union*, while at the same time he (Mr. Bowen) could discharge Mr. Tilton without fear of the consequences. The speaker then boldly charged that a conspiracy against Mr. Beecher's reputation had been carried on since December 26, 1870, by Theodore Tilton. Turning upon Mr. Tilton and shaking his forefinger at him, Mr. Tracy declared that it was a matter of business—an affair of dollars and cents. Ex-Judge Porter then, at the request of Mr. Tracy, quoted a number of authorities regarding conspiracies, after which the speaker resumed his line of argument, appealing to the "True Story" to contradict the testimony of Messrs. Tilton and Moulton.

The character of Francis D. Moulton was next pictured by Mr. Tracy, and the coloring given was anything but complimentary. The "mutual friend"



was described as a person used by Woodruff & Robinson to do a certain class of business for them in Washington and Albany, the nature of which demanded that he should have some influence with some lever of public opinion, and for that reason he in 1870 sought Theodore Tilton, who was an editor of *The Independent* and of *The Union*, and a trusted friend of Mr. Greeley. Mr. Tracy's next effort—a comparison of Mr. Moulton to Judas Iscariot—brought out an attempt to applaud by the audience. Judge Neilson threatened to adjourn the Court, and Mr. Tracy continued. He stated that the acts of Mr. Moulton, Mr. Tilton, Mr. Beecher, and others, from July, 1870, to the time when charges of adultery were made, were inconsistent with that crime. He would make it as clear as the noonday sun in the heavens, he said, that the charge of adultery was not made at the interview on Dec. 30, 1870, between Mr. Beecher and Mr. Tilton. It had been shown, he declared, that four days before that interview Mr. Tilton told Mr. Bowen that the charges were "unhandsome proposals;" it would be further shown that Mr. Tilton had told five persons that the charges alleged at that interview were also "unhandsome proposals." Mr. Tracy's next branch of argument—and the most important of the day—was concerning the "so-called letter of confession" of Mrs. Tilton, which, he said, might still be in existence for aught he knew, and the non-production of which he characterized as a great breach of faith. "Why don't they produce the letter?" thundered Mr. Tracy, turning about and looking down upon Mr. Beach, who was calmly taking notes, and then glancing at Judge Neilson. He then said that that missing letter would prove that the "confession" was one of "improper advances," and not of adultery. The startling statement next made was that the defense would produce an unimpeachable witness to prove that Mr. Tilton, after the Woodhull publication, read to the witness what he (Mr. Tilton) said was a copy of the alleged confession of Mrs. Tilton, and that that copy did not contain a charge of adultery; also that Mr. Tilton told that person that the original confession was in the hands of Francis D. Moulton; all this, notwithstanding Mr. Tilton and Mr. Moulton have sworn that the "confession" was destroyed at the time of the signing of the "tripartite agreement," months before.

## THE PROCEEDINGS—VERBATIM.

### CONTINUATION OF GEN. TRACY'S OPENING.

Gen. Tracy returned to his subject at the opening of the session, and explained the laws bearing on the case. In this he was assisted by his associate, ex-Judge Porter, who read citations from commentators and reports.

### THE LAWS BEARING ON THE CASE.

**MR. TRACY—*Gentlemen of the Jury:*** We now approach the stage of the case where it is important for us to consider the nature of this action, the rules which judicial experience has found it necessary to establish in the trial of this class of cases that the truth may prevail, and collusion, deceit and falsehood be defeated. First the charge of adultery is to be tried by the rules applicable to crimes. That is the first important rule of law, gentlemen, to which I desire to call your attention. The charge involved here is in the nature of a crime, the burden of proof is upon the prosecution, and they are bound to make out their case beyond a reasonable doubt. It is not for this defendant to prove that he is not guilty of this offense; it is for the prosecution to prove that he is. As you perceive, gentlemen, from the very nature of the case, it is one where affirmative evidence of innocence is impossible except from the testimony of the party implicated. No man, whoever he may be, charged with such an offense as this can introduce affirmative evidence upon the witness stand that he is not guilty of the offense, for it is impossible for any witness save himself to testify that he did not commit it. Wherever such an accusation is made against any man or woman residing in the same city, running over a long period of time, you see how utterly impossible it is that any witness could come upon the witness stand and say: "Of my own knowledge I know that this accusation is untrue." Select the most estimable man within your knowledge, gentlemen, and bring a charge against him; let any character, however worthless, charge him with having visited houses of ill fame, for instance, in the city of New-York during a period of sixteen months. If he has resided in the city of New-York during that time, what can he do in answer to such a charge as that but to say it was untrue, and rely upon the insufficiency of the evidence to establish his guilt. It is utterly impossible for him to call witnesses upon the witness stand who can say that this man did not visit these houses; he cannot do that from the very nature of the case. It is an attempt to prove a negative, which it is very difficult under any circumstances to establish. From the very nature of this case, therefore, all this defendant, when he is accused of this crime committed with a lady who was his acquaintance, whom it is admitted he frequently visited at her house, visited at the solicitation of her husband—when he is accused of that offense, all he can do is to interpose his word of denial and rest upon his established character, which he has made during the last thirty years in your midst, and say to you: "Gentlemen, the evidence which is introduced before you to establish my guilt is unworthy of your belief." And it must be removed from all suspicion; it must be evidence free from doubt; it must be evidence that carries home to you,

consciences conviction of the truth of the offense charged, or you are bound by the oaths you have taken to render a verdict here for this defendant.

The charge of adultery is not a new one in our courts of justice. It is a matter of frequent occurrence, and the rules of law which judicial experience has established in order to ascertain the truth in this class of cases are well defined and well understood by the lawyers. This charge may be established first by direct evidence of witnesses who saw the act. I need not say to you, gentlemen, that there is no such evidence pretended in this case. Second, it may be established by circumstantial evidence leading irresistibly to the conclusion that the act has been committed. There is no evidence worthy of the name which falls under that head in the case now on trial. These parties have been acquainted, gentlemen, for twenty years; twenty years now, nearly, this lady has been the wife of Theodore Tilton. During all that time she has been a member of the church of which this defendant is the pastor. During all that time they have been acquaintances and friends; during all that time, up to within the last four years at least, the pastor and the husband were the most intimate personal friends; he visited that house at the solicitation of the husband; became the acquaintance and friend of that family at his solicitation; and, beyond that fact, the fact that he came to the house of the plaintiff at his request, there is not a fact or circumstance worthy of credit here which tends to show in the slightest degree improper familiarity between these parties, much less a criminal act.

#### THE PLAINTIFF'S EVIDENCE WEIGHED AND DECLARED WANTING.

The plaintiff accuses his wife now, and seeks to blast her character; but during all these years he is unable to lay his hand upon a single well authenticated fact which convicts this white-souled woman of the slightest impropriety of conduct in connection with her pastor. Will it be said that I forget the evidence? Will it be said that I do not remember Kate Carney, the woman brought from the lazar house of New-York city, reeking with prostitution and disease, twice its inmate within three months; discharged everywhere she has been employed for intoxication or some improper conduct, who testifies to the fact that on some occasion she saw this plaintiff's wife sitting upon the knee of the defendant? Gentlemen, I shall not insult your good sense to suppose that twelve honest-minded men would blast a reputation such as Henry Ward Beecher's and that of a woman of the character that this plaintiff gives his wife for twenty years, upon the word of such a woman as Kate Carney—Carey; Carey is the name, I believe, or Smith; which is it?

Mr. Shearman—Smith; Carey alias Smith.

Mr. Beach—She gave her name as Kate Carey Smith on the stand.

Mr. Tracy—She gave her name, I believe, as Kate Carey; on the second time we found the alias.

Mr. Beach—The minutes show it.

Mr. Tracy—Very well; we won't quarrel over so small a circumstance as that

Mr. Beach—Then it is not worth while to misstate it.

Mr. Tracy—Then, gentlemen, what does that circumstance amount to if it is true? What were the facts connected with her testimony which shows the improbability of the story that she tells herself? Why, she says to you, gentlemen, that she came down into the dining-room one day for a drink of water, with the doors of the house all open (as you will remember she made them closed or partly closed, but afterwards she said the folding doors between the dining-room and the parlor were standing wide open), and as she walked in she saw the plaintiff's wife sitting upon the knee of the defendant, and she heard him say to her: "Elizabeth, how do you feel?" and she said: "Dear father, so, so." [Laughter.] Well, now, gentlemen, you only needed that last expression to show that this was a matter that was coined from the brain of this simple-minded woman. It was natural for her to have addressed her priest by the name of "Father," and therefore when she comes to make this plaintiff's wife address her minister she uses the same word that she would have used if she had been addressing her own. It is that slight circumstance that is enough to show the improbability of the story which this woman tells, upon her own showing. But I shall not dwell upon that, gentlemen. It is unworthy, I repeat, of the serious consideration of twelve honest men.

There is another circumstance which I am not permitted to forget, not on account of its importance as evidence, gentlemen, in this case, for, as such, it amounts to nothing, but on account of the exhibition which was made by the witness on the witness stand who came to testify to it. I refer to the brother of this plaintiff's wife, who said she was his only sister, and how highly he regarded her, came into Court in company with this plaintiff, knowing and realising and telling you from the stand that he knew nothing of his own knowledge that could affect the reputation of these parties, unless he should be permitted to make a speech to you from the witness stand and connect with what he saw what he had heard from such women as Kate Carey and other people—prostitutes, male and female alike. If he could connect these rumors and these stories that he had heard, then perhaps his evidence would have some significance; but he knew perfectly well, and realized it, that if he was permitted to testify only to what he had seen, it amounted to nothing against his sister. And yet why did he come here? Why? He was under no obligation to come here. If he had told the plaintiff what he told you, that he never had seen anything that could testify against his sister, or rather, permit me to say, that if he had told the senior counsel of the plaintiff, instead of the plaintiff, that what he had seen would amount to nothing, he would have been excused; but if he could come here and be permitted to make a speech against his sister, then he might possibly influence or prejudice your minds against her. Now, what is the story he told? He says that on one occasion—when, he don't know and cannot tell—he went into the parlor of his sister one morning, and on opening the door, saw Mr. Beecher sitting in a chair, and saw his sister moving away from his direction—moving rapidly, he says, with her face apparently flushed, and that is all he saw—everything. They were in the parlors of this house, gentlemen,

where a virtuous woman receives an honorable guest. They were in no bedroom, and Mr. Beecher was sitting quietly; no movement on his part, gentlemen, no surprise could this man testify to at all, and he practically testified to none against his sister. How long had his sister been in that room? He don't know. Where did she come from, and what had she been doing before he went in? He don't know—don't pretend to know, and he saw her moving away. How far she was from him he don't know; and is there any evidence of guilt in that, gentlemen? Is that not a thing that is likely to happen to anybody a thousand times? Is that any evidence of guilt?

Why, let me refer you to the evidence of a virtuous woman, given from this witness stand herself, her own confession of the interview that she had with this defendant without provoking the suspicion on the part of her husband of impropriety, or without a thought of impropriety on her part. I refer to Mrs. Moulton. She says that she spent four hours with this defendant in a bedroom, left there by her husband. Aye! more. She testifies to a fact that they have not yet fastened on Elizabeth Tilton. She tells you that while alone in that bedroom with this defendant she kissed him. Now, gentlemen, supposing that they had got a servant who could have testified to such facts as that against Mrs. Tilton and Mr. Beecher. Supposing they had found him tucked up on a sofa with an Afghan, having an interview in a bedroom with this plaintiff's wife and she kissing him, testified to by a servant. That the counsel of the plaintiff would argue was evidence of guilt. Yet you see that when that fact is testified to by Mrs. Moulton from the witness stand herself, against herself, it excited in the mind of no honorable man even a suspicion against that woman's virtue. And you see, therefore, what familiarities and what liberties virtuous women can take, and properly take, with virtuous men, without exciting their suspicion. But there is no such fact as this against Elizabeth Tilton. I say, and I repeat to you, that this case stands entirely destitute of either class of evidence usually relied upon in cases of this description to convict this defendant. It is confined entirely to the confessions of the defendant, written and oral, mainly oral, for they have despaired of convicting him upon his letters, and, therefore, they have endeavored to supplant them by oral confessions. The effect of that class of evidence I shall have occasion to consider in a moment. But that class of evidence, gentlemen, you will bear in mind comes from a single family, if I may count Tilton as a member of the family of Moulton, as I think I can safely from the evidence of both himself and Mr. Moulton and Mrs. Moulton. It comes from two conspirators against this defendant; the plaintiff, his mutual friend, and the mutual friend's wife. No other witness appears to testify to oral confessions except her.

#### REASONS ASSIGNED FOR MR. CARPENTER'S ABSENCE.

And right here in this connection, gentlemen, I desire to call your attention to a remarkable omission in this case, quite as remarkable as anything that has been produced

in it. You were notified upon the opening of this case by the plaintiff's counsel, that the confessions of this defendant would not be confined to a single family, nor to a single instance; that they would call a witness who would claim to be outside of this case, this single and disinterested witness, as they said, who would testify to the confessions of Mr. Beecher, and they named their witness Frank Carpenter. But, is he here? Has he been produced upon the witness stand? Before I close, gentlemen, and before this case closes, we will show you why Frank Carpenter was not produced upon the witness stand in this case. In the first place, he could not testify to any confessions of Henry Ward Beecher, and in the second place, we will show that, if they had produced him, we would have blasted their case with this man's evidence, and the evidence that we had brought against him. The reasons why they have omitted him are cogent and powerful, as you will see. He is a link in the conspiracy that they have been drawing around this defendant for five years, and with him we would have established it. Without him they hope that they have broken the chain of circumstantial evidence, but we will show them that they are disappointed in their expectations.

#### THE LAW ON ORAL CONFESSIONS.

The plaintiff in this case relying, therefore, exclusively on the oral confessions, or mainly on the oral confessions, of this defendant, it becomes important, gentlemen, for you to consider, and for the Court to consider, the legal effect of this class of evidence, and it is to that question that I desire to invite your attention before I proceed with a further history of this case—before I begin to unravel the network that this plaintiff with his fertile brain, stimulated and aided by his mutual friend, has for four years been weaving around the feet of my unfortunate client. We concede, gentlemen, that, in connection with direct evidence or circumstantial evidence, the oral admissions of the accused are pertinent evidence. Wherever circumstantial evidence is relied upon, the circumstances, taken together, must establish the following three facts: First, the criminal disposition of the parties charged. Second, a like disposition on the part of the paramour. Third, an opportunity to commit the act. As to the first and second, gentlemen, I have shown you that there is no proof in this case that either of the parties, either the defendant or the plaintiff's wife, had any disposition to commit the act of adultery. They have not given you any evidence of that at all. All their associations, all their intercourse is apparently innocent, as innocent as any association can possibly be. All of it was carried on under the eye of the plaintiff, with his concurrence and approval. There is nothing in it, from the beginning to the end, to suggest to you the thought of criminality on the part of either. Third, the opportunity to commit the act. These three facts must be reasonably approximate in point of time, and the opportunity must be one characterized by circumstances pointing to guilt. In other words, guilt cannot be inferred from the opportunity to commit adultery, unless there is also evidence that at about the same time there were acts of each party

specifically indicating a disposition to commit it. It is this class of evidence, gentlemen, which is usually relied upon in courts of justice to establish the fact of adultery. In fact, this class of circumstantial evidence, that is, the relations of the parties, the frequency with which they have been seen together, the improper places at which they have been seen, the stealthy meetings of the parties—all of this class of acts tending to show a disposition to commit adultery—is the class of evidence usually relied upon, and is seldom or never wanting in any case of adultery charged in good faith. This is almost the only important case on record where there is no proof of the facts and circumstances calculated to excite suspicion and produce a conviction of guilt. This case is made to rest entirely upon the supposed confessions of the defendant, so far as their case depends upon alleged confessions, it is to be observed that there are two classes, the letters of the defendant and the reports given by witnesses of his oral confessions. The letters are in evidence, and will speak for themselves. The alleged oral confessions are an entirely different kind of evidence, as such evidence is always tested by the law with the most careful scrutiny. My associate, Judge Porter, now, gentlemen, will relieve me by reading the rules of law applicable to this class of evidence—oral confessions.

Mr. Porter—Our first citation in this connection, your Honor, is from 4 Burrill's Reports, the case of *Morris vs. Miller*. The action was *crim. con.* Lord Mansfield, in delivering the opinion of the Court, says:

"This is a sort of criminal action—"

Mr. Beach—What page do you read from?

Mr. Porter—Page 3,049. [Resuming.]

"This is a sort of criminal action. There is no way of punishing the crime at common law. It should not depend upon the mere reputation of a marriage which arises from the conduct or declarations of the plaintiff himself. In prosecutions for bigamy, a marriage in fact must be proved. No inconvenience can happen by this determination; but inconvenience might arise by a contrary determination, which might render persons liable to actions founded upon evidence made by the persons themselves who should bring the action."

The next citation of Mr. Tracy is from the 1st Vol. of the *Notes of Cases in the Ecclesiastical and Maritime Courts*, page 448, in the case of *Dillon vs. Dillon*. This was a suit for divorce. Dr. Lushington, in delivering the opinion, says:

"This, as concerns the wife, is not a civil, but in effect a criminal proceeding. If there is any doubt, she is entitled to the benefit of it. The evidence as to the fact, on the part of the husband, may, perhaps, preponderate; but I cannot say that the proof is free from reasonable doubt."

The next citation is from the 17th New-Jersey Equity Reports, pages 454, 455 and 456. This was a proceeding for divorce on the ground of adultery. Under the laws of New-Jersey the parties charged were admissible as witnesses to deny the charge. The alleged paramour of the wife was sworn, and denied the adultery. The adultery was supported by the direct evidence of a lady who professed to have detected the parties in the act; and this, supported by corroborating evidence of opportunity, circumstance, and suspicion of adulterous disposition. The Court, in delivering the opinion, say:

"The testimony of Mrs. Berckman, the witness for the plaintiff, is seriously affected by two considerations. First, her testimony is in favor of the complainant; and it stands, so far as these scenes are concerned, alone and uncorroborated, while she is seriously and positively contradicted with regard to them by two witnesses, Sarah Berckman and Dr. Titworth. These two witnesses may be untruthful as to what they say, but they cannot be mistaken about it. They certainly do know whether the scenes described were true or not. Mrs. Berckman, the elder, may be untruthful, and she may also be mistaken. If the evidence of the three be entitled to an equal amount of credit and confidence, then the evidence of the defense has entirely overthrown, by its positiveness and preponderance, that of the complainant. It is true that these witnesses on the part of the defense have a strong inducement to swear as they do; but is not this also true with regard to Mrs. Berckman? We have no rule by which to determine what notice or consideration will most certainly induce a person to perjure himself or herself. One might be tempted to do it for a mere money consideration; another, who could not be purchased by money, might do it to save his name and reputation from the charge of dishonor and disgrace. Another, who might care but little for either of these, might do it to gratify a most malignant and insatiable feeling of revenge or of implacable and unrelenting hate; and I do not see but what either of these motives might be as effectual in inducing a witness to depart from the truth as any of the others; and, judging from the developments and manifestations to be found in the evidence in the case, I hardly feel at liberty to say that the defendant and Dr. Titworth had stronger inducements to depart from the truth than Mrs. Berckman herself. And, entirely aside from this controversy, and everything connected with it, I do not know but what their characters for truth and veracity are as good as her's. Nor can I admit that the mere charge of crime is so far to destroy the credit and character of a person as that he is not entitled to credit when speaking under oath. Such a principle might ruin the most exemplary people. Surely, if the charge is not true, it ought not to discredit the party; and, to permit it to do so, is to assume that the charge is true; which we cannot do, for that is the very thing to be proved."

The next of the authorities cited by Gen. Tracy will be found in 3 Sand., S. C. R., and has relation to the force of evidence that is required on the part of a plaintiff before such an accusation can receive the sanction either of a court or of a jury. It is the case of *Ferguson vs. Ferguson*, 3 Sand., S. C. R., page 300. In delivering the opinion of the Court, Judge Mason cites and gives the sanction of the Court to the proposition laid down by Judge Stowell in the case of *Loveden vs. Loveden*, 2 Hagg. Constat. R., p. 1. It is in the following words:

"It is a fundamental rule that it is not necessary to prove the direct fact of adultery, because, if it were otherwise, there is not one case in a hundred in which that proof would be obtainable. It is very rarely, indeed, that the parties are surprised in the direct fact of adultery. In every case almost the fact is inferred from the circumstances that lead to it, by fair inference, as a necessary conclusion; and unless this were the case, and unless this was so held, no protection whatever could be given to marital rights. What are the circumstances which lead to such a conclusion cannot be laid down universally, though many of them, of an obvious nature and of more frequent occurrence, are to be found in the ancient books. The only general rule that can be laid down on the subject is that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion; for it is not to lead a harsh and intemperate judgment, moving upon

appearances that are equally capable of two interpretations; neither is it to be a matter of artificial reasoning, judging upon such things differently from what would strike the careful and sagacious consideration of a discreet mind."

The Court proceeds:

"This rule, so simply and loosely stated, commends itself to the approbation of every mind, and its application to the present case will lead us to a correct decision."

The Judge then examined the evidence, and came to the conclusion that it was equally capable of two interpretations and therefore did not prove the fact which was there in issue.

The next citation is from 17 Abbott, Fr. R., page 58. In that case Judge Hoffman, who delivered the opinion, states the doctrine thus:

"The general rule that applies to the degree and nature of the evidence demanded is too well known to justify a statement in detail. While direct proof of the actual commission of the crime is not required, yet the approximate facts must lead by a fair inference to a necessary conclusion. This is not a necessary conclusion in a strict mathematical or logical sense; the subject and conditions of the evidence do not admit of this; but it must be a conclusion so far inevitable as that the supposition of innocence cannot by any just course of reasoning be reconciled."

On the subject of oral confessions the authorities cited are, first, the case of *Law vs. Merrill*, a leading case on the subject in the Court of Errors, where Chancellor Walworth, in delivering the opinion of the Court, has occasion to say—

Mr. Beach—Where do you read from?

Mr. Porter—6th Wendell, 377. [Reading]:

"Again, evidence to establish a fact by the confessions of the party should always be scrutinized and received with caution, as it is the most dangerous evidence that can be admitted in a Court of Justice, and the most liable to abuse. Although the witness is perfectly honest, it is impossible in most cases for him to give the exact words in which an admission was made, and sometimes even the transposition of the words of a party may give a meaning entirely different from that which was intended to be conveyed to the witness."

The next citation is from the 24 Com. Law Reports, 698, *Earle and Wife vs. Picken*:

"In the course of this circuit Mr. Justice Parke several times observes that too great weight ought not to attach to evidence of what a party has been supposed to have said, as it very frequently happens not only that the witness has misunderstood what the party has said, but that, by unintentionally altering a few of the expressions really used, he gives an effect to the statement completely at variance with what the party really did say."

The next citation is from *Harden's Reports*, at page 549, in the case *Meyers vs. Baker et al.*, where the Court states the rule thus:

"Proof of confessions of a party, in the presence of the witnesses only, are of him, and the adverse party, although certainly competent testimony, ought to be weighed with great caution, because it is impossible for the party to counteract it by other testimony, because the expressions used are easily misunderstood or perverted, either through mistake or design, and because not the whole conversation, but only parts of it, are generally detailed by the witness. It is the most dangerous species of testimony held competent by the law, and unless the story told is probable in its nature, or is corroborated by circumstances, very little weight is due to it."

The 24th volume of Law Library contains the treatise of Joy on the admissibility of confessions, at page 106.

Mr. Beach—What series is that?

Mr. Porter—Littell's Edition, 1843. In Joy on Confessions it is page 106. In this case the learned writer has embodied what perhaps is the best statement to be found in the English law upon this subject, and singularly enough it first appeared in *The Edinburgh Review*, being from the hand of the most accomplished master of jurisprudence, not even excepting the name of Jeffreys.

"A modern writer remarks on this subject, that 'the imagination need not be taxed for extreme cases, in which silence, equivocation, or even falsehood, the ordinary badges of guilt, would naturally be found in company with innocence. There are many instances in which the truth, properly brought to light, would set free the accused, but his very situation disqualifies him from doing justice to his own statement. Conscious of his rectitude, and proud of his character, he is abashed, humiliated and confounded by the charge. The untoward chances that have loaded him with suspicion, may go on to his utter ruin; the false witness, who have now established a 'prima facie' case, may ultimately convince his judges. That he should ever become an object of accusation would have struck him yesterday as more impossible, than that accusation should now lead to conviction. The last step seems far less violent than the first, and the commencement of his progress is a fatal surgery, which teaches him to despair of its issue.'"

Mr. Beach—Allow me, Sir.

[Mr. Porter hands the volume to Mr. Beach.]

Mr. Porter—The last citation that Gen. Tracy has marked for evidence is, 1st Greenleaf on evidence, Section 200. The language of Chief Justice Redfield in this portion of the text is as follows:

"In a somewhat extended experience of jury trials we have been compelled to the conclusion that the most unreliable of all evidence is that of the oral admissions of the party. And especially where they purport to have been made during the pendency of the action, or after the parties were in a state of controversy. It is not uncommon for different witnesses of the same conversations to give precisely opposite accounts of them, and in some instances it will appear that the witness deposes to the statement of one party as coming from the other. It is not very encouraging to find a witness of the best intention repeating the declarations of the party in his own favor as the fullest admissions of the utter falsity of his claims."

#### JUDGE NEILSON HELPS IN THE CITATIONS.

Judge Neilson—Judge Porter, when you and I were boys, we found that general principle cited in all the text-books, very much after the form that you have put it.

Mr. Porter—In the form in which the judges have put it. I have not been using my own language.

Judge Neilson—I mean have read it; and perhaps the best statement of that has been found in *Starkey on Evidence*; and my general recollection of what he says is to the effect that this kind of evidence is dangerous; first, because it may be misapprehended by the person who hears it; in the second place, it may not be well remembered; and third, it may not be correctly stated. And I have a general recollection of a very early case mentioned in a note, where he said that on the trial of a party for forgery, a witness,

a doctor, was examined, and the judge had it down on his notes that the witness said: "I am the drawer, the acceptor and indorser of the bill;" under three different names the witness himself stating himself to be guilty of forgery; and while the judge was so stating to the jury from his notes, the counsel interrupted him; but, like the judge in the *Pickwick* case, he persisted in adhering to his notes, and the witness was recalled, when on inquiry of the judge himself the witness said that his testimony was, "I know the drawer, the acceptor and indorser of the bill."

Mr. Porter—Your Honor's reference is very striking, and reminds me of a passage which has been previously read, and which will be borne in your Honor's recollection, and as very pertinent to another proposition of Gen. Tracy, that, so far as the evidence is to depend upon circumstances, "wherever there is an imputation of a criminal nature, the circumstances must all be such as to exclude the possibility of innocence, for otherwise the law will presume against guilt," and I think that comes in connection with the very observation to which your Honor has referred.

Mr. Beach—Will my friend permit me to read an additional sentence from Joy on Confessions, from which he has quoted. After considering the subject to which my friend, Judge Porter, has drawn the attention of the Court and jury, this author says:

"Whilst such anomalous cases ought to render courts and juries at all times extremely watchful of every fact attendant on confessions of guilt, these cases should never be invoked, or so urged as to invalidate indiscriminately all confessions put to the jury, thus repudiating those salutary distinctions which the Court, in the judicial exercise of its duty, shall be enabled to make. Such a use of these anomalies, which should be regarded as mere exceptions, and which should speak only in the voice of warning, is unprofessional and impolitic, and should be regarded as offensive to the intelligence both of the Court and jury."

Judge Nelson—The rule being that admissions are to be taken with caution and scrutiny.

#### COMMENTS ON THE LAW; OR, ORAL CONFESSIONS.

Mr. Tracy—Yes, if your Honor please; and we do not argue, gentlemen, that all confessions are to be invalidated. We only ask you to scrutinize the reason by which the pretended confessions of this defendant are proved or pretended to be proved, the probability that he made them under the circumstances, and the motives of the witnesses who testified to them to misrepresent or to forget. We shall introduce some confessions by witnesses whose character you will not doubt, whose interests are not involved in this litigation beyond those of every good citizen, to see justice properly administered, and we shall ask you, gentlemen, to believe the confessions which we shall prove, provided you are satisfied with the witnesses, their character, their means of knowing what they testify to, and their ability to repeat accurately what they have heard, and that they are influenced in giving their evidence, by no motives except to state the truth, and the whole truth, and nothing but the truth. As you have just heard from the

authorities which my associate has read in your hearing, gentlemen, the testimony of witnesses as to oral confessions is always notoriously unreliable; but in this case it is particularly so. The testimony of this kind comes exclusively from three witnesses, the plaintiff, the "mutual friend," and the "mutual friend's" wife. Admissions of this character always require corroboration; and the corroboration must be of facts pointing to guilt, which have been adduced by other witnesses. Before a jury can give effect to oral confessions they must be satisfied, first, that the party who is alleged to have confessed was correctly understood by the witness, a rule which his Honor has just given you, one of the most forcible illustrations of showing how easy it is for a man listening attentively and desiring to recall accurately what is said, to be misunderstood. You have yourselves been witnesses to the numerous contests which have arisen during this trial between counsel experienced in remembering what witnesses say and in repeating it accurately, as to what a particular witness has said, or has not said on this trial; so with a witness who assumes to repeat what another party has said, his liability to have misunderstood the party is very great, and you must be careful and cautious in scrutinizing the evidence, to be satisfied that the party has correctly understood. Second, that he is correctly reported. Now, there is such a uniformity in human language, that an intelligent man, desiring to report accurately, is very liable to misreport, for we seldom remember the precise language of a party who is conversing with us; we catch the idea and reproduce it in our own language, and in doing that we are always liable to convey an impression which the party whom we are reporting did not intend to convey. The third rule is, that the language in which the confession was made was unambiguous: because if the language used by the party may as well apply to one set of facts as to another, you cannot tell by the pretended confession what fact the party intended to admit. If there are two views of a case, or two situations, the party speaking having reference to one, and the witness listening having reference to another, the witness is quite liable to impute to the speaker a reference to a transaction, or give to his language an entirely different meaning from what the speaker intended. All of these rules are to be carefully observed.

Again, if the witnesses relied upon to prove oral admissions are justly tainted with interest in the case, if it is established that they have been guilty of misconduct or falsehood in the case in which they testify, for instance, if they have been guilty of the destruction of important documents in the case, a fact to which I shall call your attention further on, gentlemen, as bearing on the witnesses who testify to oral confessions against this defendant; or if the witnesses testifying to oral admissions are members of the same family, or are moved by a common interest in the result of the action, and particularly if they admit that they have been guilty of repeated falsification of the facts, to which they now testify, this, added to the inherent infirmity of the evidence itself, would compel a Jury to disregard evidence of this nature. I shall not stop here, gentlemen; I only desire to recall your attention to it in passing; I shall not stop here to remind you that every witness in this case is tainted by the infirmities

which are otherwise pointed out and which you have heard read. They come from the same family. I shall show you they have been guilty of the destruction of the most important documents in this case; I shall show you that they are under the strongest motives possible to fasten guilt upon this defendant; and I shall show you—no, they have themselves testified to you—that they have been guilty of repeated falsification of the facts to which they now testify.

#### MR. BOWEN'S SHREWD MANAGEMENT DETAILED.

Having considered thus briefly the rules of law which must govern you in your disposition of this case, I now invite your attention to the charge made by the plaintiff against this defendant, and to the circumstances under which this charge was made. I now resume my narrative at the point where Tilton had said to Bowen that Beecher had made an unhandsome proposal to his wife. This was news to Bowen; the announcement of it caused his very soul to thrill with delight. He at once discovered his opportunity; if he could lead Tilton to make a personal attack upon Beecher, this would give him the choice of two alternatives. If Tilton succeeded in his attack this would so damage *The Christian Union* that the accruing benefit to *The Independent* would be many times Tilton's salary, and the danger from retaining Tilton would be compensated for by the injury inflicted upon a dangerous rival. Besides, such a contest would make it impossible for Beecher and Tilton ever to unite against Bowen and *The Independent*. On the other hand, if Tilton failed in his attack on Beecher, this would furnish an excellent reason for getting rid of him. In either event, therefore, Bowen was to win. After a few moments reflection upon the situation as now presented by Tilton, Bowen turned to him and said, with a seriousness of countenance that would have done honor to Aminadab Sleeke, "you and I, Mr. Tilton, owe a duty to society. This man is the editor of *The Christian Union*. Its circulation has run up in one year from 2,000 to 45,000. Such a man is a dangerous visitor in the families of his congregation. He is a wolf in the fold. We should unite to extirpate him." "Agreed," says Tilton, "save my two contracts, and we will smite him before the world." "Then," said Bowen, "since my hands are tied by the result of a settlement that I have recently made with Beecher, do you write him a letter, demanding that, 'for reasons which he explicitly understands,' he should immediately cease from the ministry of Plymouth Church, that he quit Brooklyn as a residence, and that he cease to write for *The Christian Union*. I will bear the letter to him and support the demand." Tilton, thinking only of saving his contracts with Bowen, and without seeing the trap, caught at the bait, and forthwith did the act for the doing of which his friend Moulton an hour afterwards called him a fool. This was a master stroke of strategy on the part of Bowen. At one move he had made a union between Tilton and *The Christian Union* impossible, and left himself free to discharge Tilton without any danger thereby of strengthening a business rival. For Bowen had no objection to joining in an attack upon Beecher, provided he could do so safely to himself

and disastrously to Beecher; but, distrustful of Tilton, and feeling that he was a broken reed on which it was unsafe to lean too heavily, he proceeded to move cautiously, to feel his way carefully, always keeping open a safe road by which he could retreat. If Tilton's charges were true, the mere reading of the letter would disclose the consciousness of guilt to the keen and argus-eyed Bowen.

This letter, Tilton says, was an open one, and if this should be presented open by Bowen, Beecher would at once perceive that he had been a party to it. To prevent this the cautious owner of *The Independent* said, as he went along bearing the letter to Beecher's house, "I think it would be well for me to seal this letter; then I can deny to Beecher all knowledge of its contents. I will hurl this secret missile at him, and, carefully watching the effect, I will await events before determining whether I will make myself a party to the controversy or not."

Nowhere has Bowen's consummate cunning been more conspicuous than his suggestion which led to the introduction of the clause in the letter "for reasons which you explicitly understand." In the light of Tilton's present accusation, few could understand how this clause came to be inserted in the letter at the instance of Bowen. With this clause in, the letter would point so directly to some cause of offense against the writer which would be understood by the reader, that Bowen could bear the letter without provoking the slightest suspicion of having been its instigator. He would have the advantage of watching, of seeing the effect produced upon Mr. Beecher by the reading of the letter, and a personal interview immediately following thereupon, and thus be able to judge of the probability of Mr. Beecher's guilt. He could thus gain time and await developments. But he was not long in doubt. Mr. Beecher's reply to that letter was quick, bold and impassioned: "Bowen, what does this mean? This is insanity; the man is mad!" And he attacked Tilton to Bowen with a violence that struck him dead in five minutes. He told Bowen Tilton's true life, as he had learned it from his wife and his intimate associates within the last two or three years, and he did what was worse; he then turned Bowen over to Mrs. Beecher, who finished Tilton very summarily in Bowen's estimation.

Having discovered the courage of innocence where he had fondly hoped to see disclosed the cowardice of guilt, Bowen, always quick to discern his interests, at once began a masterly retreat. "I don't know," he said, "I am surprised at the contents of the letter! If Mr. Tilton is your enemy, I will be your friend, Mr. Beecher." "Codlin is your friend, not Short." And he who had just before entered Mr. Beecher's house, having pledged his friendship to Tilton, now left it, pledging that friendship to Beecher. But he was the friend of neither—the implacable enemy of both. Having made certain that Tilton and Beecher could not and would not unite against him, he at once determined to discharge Tilton from his employ. This is proved by Tilton himself, who says: "The next morning, after Bowen had instituted this demand for the retirement of Mr. Beecher, and after saying that he would fortify it with facts, he came to *The Union* office and said to me: 'Sir, if you ever reveal to Mr. Beecher the things I

told you and Mr. Johnson I will cashier you, and," adds Tilton, "hardly had his violent words ceased ringing in my ears, when I received his summary notice breaking my contracts with *The Independent* and *The Brooklyn Union*." And thus Tilton's first attack upon Mr. Beecher had miscarried.

#### MR. TILTON AND MR. BOWEN CO-CONSPIRATORS.

Let us now, gentlemen, consider for a moment the position in which the interview of Dec. 26 had placed Tilton and Bowen in the eye of the law. We charge here, gentlemen, that Theodore Tilton is a conspirator against the reputation of Henry Ward Beecher, and has been since the 26th day of December, 1870. We say he has formed that conspiracy with Henry C. Bowen, but Henry C. Bowen backed out, and then the place had to be supplied, and it was supplied by Francis D. Moulton; but that Theodore Tilton has held the position of a conspirator against the reputation of Henry Ward Beecher since the 26th day of December, 1870, I shall leave no doubt in the mind of any honest man, after I recount the evidence of that conspiracy and of the schemes which Bowen and Tilton then formed against Beecher, Tilton himself being the witness. Beyond all question, therefore, I say they had become conspirators against Beecher, and having entered into a plot to bring a charge of crime against him, not for the purpose of securing his legal punishment, but solely with the view to get him out of their own way. It was business, gentlemen. So much fraud, so much conspiracy, so much lying, for so much money return in dollars and cents through *The Independent* by dwarfing *The Christian Union*. Bowen had slipped out of this conspiracy, and immediately on learning this, Tilton, who was too deeply committed to withdraw, sought another man to join him, who, taking Bowen's place, necessarily became a conspirator in his stead.

The nature of that conspiracy between Tilton and Bowen, gentlemen, Mr. Tilton has proved from his evidence. He has shown you that in that conversation between Mr. Bowen and himself, charges against Mr. Beecher were made, charges of crime, charges that would disgrace him before the community, if they were true, and that this missile was hurled at him on that day for the purpose of compelling him to resign his position as pastor of Plymouth Church, and to cease writing for *The Christian Union*. That was a crime, that made them in the eyes of the law, conspirators.

#### THE LAW ON CONSPIRACY.

I will ask my associate now to furnish us the authorities on the subject of conspiracy, at this point.

Mr. Porter—The first citation, if your Honor please, is from 2d Greenleaf on Evidence, Section 89:

"A conspiracy may be described in general terms as a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. It is not essential that the act intended to be done should be punishable by indictment, for if it be designed to destroy a man's reputation by verbal slander, or to seduce a female to elope from her parents' house for the purpose of prostitution, is a criminal offense, though the act itself be not indictable."

12th Conn., 112. *The State vs. Rowley*:

"Now, that many acts which, if done by an individual, are not indictable, are punished criminally when done in pursuance of the conspiracy among numbers, is too well settled to admit of controversy. Thus, a conspiracy to slander a man by charging him with a crime, or with being the father of a bastard child, is an indictable offense."

3 Mass., 534. *The Commonwealth vs. Tibbetts*:

"A conspiracy to charge any person with a crime, and in pursuance of a conspiracy falsely to affirm that he is guilty, is an indictable offense, without procuring any legal process."

8 Penn. State Rep., 280. *The case is that of Hood vs. Pollin*, your Honor, in which the action was substantially on the civil side of the Court, for damages occasioned by the conspiracy. In imputing to a party whose property had been burned a design to defraud the insurance company, Chief-Justice Gibson, in delivering the opinion of the Court, uses this language:

"To put another in jeopardy or terror, is of itself a damage to him; and it is on this ground that it is actionable to charge maliciously an innocent person with a crime. It is said that the plaintiff in this case was not in jeopardy. Of prosecution by indictment, he certainly was not; but of being ruined in his reputation and business, he certainly was. The libel which jeopardized him would give him an action against a single publisher of it, and why not against a number who publish it in concert? It is not to be maintained that a libel charging what would not be actionable independent of the publication of it, is not actionable without proof of special damages from it; or that it is not an injury from which constructive damage results by implication of law. From every tort the law implies damage; and when substantial damage is not shown, it implies the smallest amount of it; but still an amount sufficient to sustain an action for it. An action of slander could seldom be maintained on any other basis; and, if the libel be actionable when published by one, it is actionable when published by a plurality. But I do not rest the case entirely on the fact that the defendants conspired to publish a libel. A conspiracy to defame by spoken words, not actionable, would be equally a subject of prosecution by indictment; and, if so, then equally a subject of prosecution by action, by reason of the presumption that injury and damage would be produced by the combination of numbers. The overt acts laid in this declaration were scandalous words written, and scandalous words spoken; and backed, as they were, by a confederacy to give them circulation and credit, they raised a legal presumption of damage to a greater or lesser extent. Defamation by the outcry of numbers is as resistless as defamation by the written act of the individual. The mode of publication is different, but the effect of it is the same; and it is for this reason that an action lies at the suit of one who has been the subject of a conspiracy, whenever an indictment would lie for it. But an indictment lies for any conspiracy to vex or annoy another—for instance, to hiss a play or an actor, right or wrong."

The next case cited is from 4th Wendell, the case of *The People vs. Mather*, at page 261, where the Court, in delivering the opinion, says:

"If parties concur in doing the act, although they were not previously acquainted with each other, it is a conspiracy. Lord Kenyon says, in *King vs. Hammond & Webb*: If a general conspiracy exists, you may go into general evidence of its nature, and the conduct of its members, so as to implicate men who stand charged with acting upon the terms of it, years after those terms have been established, and who reside at a great distance from the place where the general plan is carried on. These cases show that all who adhere to a conspiracy after its formation and while it is being executed, become conspirators."



Mr. Tracy—That by the rules of the common law, gentlemen, this plaintiff in this case, if he is to be believed in his testimony, was a conspirator with Henry C. Bowen against the character of this defendant, under the rules of law which you have just heard read, there can be no doubt whatever. I want to put in here, gentlemen, again, the qualification which I stated yesterday. I desire to do it always, for I do not desire to impute even against Mr. Bowen the charge of conspiracy resting entirely upon the evidence of Theodore Tilton. I make the charge on the theory that he states the truth, and that what transpired between him and Mr. Bowen on the 26th of December is what he states in his evidence. If Mr. Bowen should come here and say that that is false; if Mr. Bowen should appear upon the witness stand or elsewhere and say that "Theodore Tilton falsifies when he charges me with conspiring with him on the 26th day of December to drive Henry Ward Beecher out of Brooklyn by the charge of a scandal against him, and under fear of provoking a scandal in the community to induce him or to frighten him to abandon the pulpit," I say that if Henry C. Bowen should deny that, and should assert his ignorance of the contents of that letter, I should not be prepared to ask you to believe Theodore Tilton even against himself. But upon his statement of the case, as he stated it, that he was a deliberate conspirator on the 26th day of December, 1870, against Henry Ward Beecher, the object of that conspiracy being to drive him out of Brooklyn by means of a threat, of an outrageous scandal which he and Bowen afterwards, both, you remember, in the tripartite agreement, signed a statement; Bowen on his part acknowledging the falsehood of those stories, and Tilton agreeing in that to give circulation to them again—but by means of those scandals which were there talked between these two parties on the 26th of December, they deliberately formed a plan to drive Mr. Beecher out of Brooklyn, there can be no doubt, if you are to believe Theodore Tilton. But as we have shown, Mr. Bowen backed out early. He did not want to travel long in that direction; he found it unsafe to go on. But the plaintiff had committed himself, so that he was compelled to go on, and he was therefore compelled to seek another friend to aid him.

#### MR. BEECHER'S CONDUCT CONSISTENT WITH INNOCENCE.

The letter which Mr. Tilton had sent to Mr. Beecher by Bowen was delivered on the evening of the 26th or 27th day of December. I have repeated to you, gentlemen, the indignant manner in which this defendant received it. I have shown you that his conduct there, in the presence of Henry C. Bowen, satisfied Mr. Bowen of his innocence, and he retraced his steps at once. But there is another fact to which now I desire to call your attention in this connection. You will observe that that letter says, "For reasons which you explicitly understand, you are required," etc. Now, gentlemen of the jury, if Mr. Beecher had been conscious of guilt—if he had committed adultery with Mrs. Tilton, and had received, on the 26th day of December, such a letter from Mr. Tilton—don't you think he

would have divined the object of it? Would not he have understood what it meant? At least would not it have suggested to him that "Mr. Tilton has discovered my crime?" And wouldn't he have been desirous of understanding how far that crime had been discovered and precisely what Mr. Tilton knew about it? And yet, gentlemen of the jury, this alleged guilty man, who had been carrying on adulterous intercourse for sixteen months, thus having his guilt suddenly disclosed to him, and the knowledge of it possessed by the husband, never moves a step to ascertain what the husband knew or to communicate with this woman to ascertain the situation at all. There he rested on the 26th, 27th, 28th, 29th and 30th days of December, without making the first movement to ascertain what Mr. Tilton knew about it, and how far he had discovered the truth as it existed between himself and Mrs. Tilton. Would a guilty man have done that, gentlemen? Do you think if an injured and outraged husband had gone to a man who was really guilty and written him such a letter as that, he would not have put himself in communication with that wife, to ascertain just what the husband knew and what this letter meant? And yet, he made no effort to communicate with Mrs. Tilton; did not communicate with her, and, as the plaintiff himself tells you, was in profound ignorance that the plaintiff had any accusation to make against him in connection with his wife, until they met on that stormy night at Moulton's house, about eight o'clock in the evening. I submit to you, gentlemen, that that is proof conclusive that this defendant knew nothing about the object of that letter; at least he did not understand that it referred at all to his relations with Mrs. Tilton. And the fact that he did not so understand, proves conclusively that guilt did not exist.

#### MR. TILTON'S UNWISE DESTRUCTION OF THE BRIDGE BEHIND HIM.

The sending of this letter by Mr. Tilton to Mr. Beecher provoked a contest from which Mr. Tilton could not retire easily, and when he was deserted by Mr. Bowen, he found himself in a very awkward situation. He had sent this challenge to the most prominent clergyman in Brooklyn, and had nothing on which to support it; Bowen had failed him; he had nothing from his wife in writing—nothing whatever on which to support this charge at all. But he had crossed the Rubicon. To advance might be dangerous, to retreat was impossible. If before this his ruin was imminent, with Beecher and Bowen united against him it was not only sure, but to avail ourselves of the fine criticism of the plaintiff upon the witness stand, we may say it was certain. To sever that union and pacify Beecher was with him the necessity of the hour. Unless he could do this, he was not only the fool that Moulton had called him, but he was a ruined man. How this could be done was the subject that occupied his thoughts during the 27th, 28th, 29th and 30th days of December.

#### THE HOUR WHEN MR. MOULTON STALKED UPON THE SCENE.

And now, gentlemen, we come to the period of time when we say the conspiracy, which had been begun on the

26th of December at Mr. Bowen's house by Mr. Tilton, was continued between himself and Mr. Moulton, against Mr. Beecher, had its inception. We have seen that Mr. Moulton was somehow (by accident as they say, but by pre-arrangement as we think) at Mr. Tilton's house awaiting Mr. Tilton's return from the interview at Mr. Bowen's house, December 26th. He was then informed of the result of that interview and of the writing of that letter to Mr. Beecher. He regarded that as so important an event, that he made a memorandum noting the precise hour and minute at which this communication had been handed to him!

And here, gentlemen, at the very beginning of the association of these two men in relation to this case, you are called upon to discredit the first fact they testify to, or to accept a statement which is not only extremely improbable, but which is contradicted by the written evidence of one of them. They both testify that Moulton was not consulted again until the evening of the 30th. I ask you, gentlemen, to consider the improbability of that statement. On the 26th, as they tell you, Francis D. Moulton found that his most intimate friend had committed what he called the foolish act of sending this letter to Henry Ward Beecher. He was informed that that letter was to be borne to Mr. Beecher by Mr. Bowen, and he predicted the result. Says he: "You have signed the letter alone; supposing Mr. Bowen leaves you to support it alone, where are you?" The result of the interview between Mr. Bowen and Mr. Beecher was known by Mr. Tilton the next morning, for I have just read in your hearing that he says "The next morning Mr. Bowen came into my presence and told me if I dared repeat what he had told me he would cashier me at once." Do you believe, gentlemen of the jury, that the result of that interview between Mr. Bowen and Mr. Beecher was never communicated to Francis D. Moulton until the evening of the 30th of December? Do you believe that, all these days, he was in ignorance of the response that letter had met at the hands of Henry Ward Beecher? This fact, so important to his friend that he marked not only the hour but the precise minute at which he had received it, denouncing his friend as a fool for what he had done? And yet they tell you—although they admit that they had seen each other in the meantime—they tell you that no word had ever passed between them as to the manner in which Mr. Beecher had received that letter. You would not believe it, gentlemen; you would not believe it if it stood uncontradicted, and rested upon the oath of both these witnesses, with no other infirmity except the improbability of the statement itself.

#### MR. TILTON'S TRUE STORY ARRAYED AGAINST HIM.

But we are not left to that. We are not left to that. Fortunately for us in this respect and in many others, Theodore Tilton reduced the history of these scenes transpiring at that time to writing, in 1873; and while he thought he had destroyed it, and gotten rid of it, providentially for us, he showed it to too many men; and some of them were shrewd enough and cautious enough to

preserve a copy of it; and a paper which he supposed was destroyed, and would not confront him during this litigation was resurrected to his great surprise, and confronted him upon the witness stand. Now, I appeal to that "True Story," as written by Theodore Tilton himself, to contradict the evidence of Mr. Tilton and Francis D. Moulton right at the inception of this conspiracy between them. The "True Story," as Mr. Tilton entitled it, says distinctly that Mr. Moulton was consulted at least twice after the 26th and before the 30th of December, thus giving the lie in the plainest terms to the testimony of these two witnesses. After referring to the interview of Dec. 26th, the "True Story" says:

"A day or two afterwards" [which would be the 27th or 28th], "prompted by my wife's wish and Mr. Moulton's advice, I resolved that I would send for Mr. Beecher to meet me at a personal interview, either in their presence or with me alone."

Then, giving the account of the scene in which Bowen threatened to discharge Tilton from *The Independent* and *The Union*, and to call the police to cast him into the streets, the "True Story" proceeds:

"I informed my wife and Mr. Moulton, and afterwards Mr. Johnson, of this incident," (i. e., the incident of the quarrel between him and Mr. Bowen), "concerning which Mr. Moulton remarked that it did not surprise him in the least, and then with the joint advice of all"—

I take it, gentlemen, that that word "all" is never applied to any act concerning this conspiracy that does not include Francis D. Moulton from this time forward.—

"I determined to summon Mr. Beecher to the contemplated interview. To this end Mrs. Tilton wrote a brief note, addressed to Mr. Beecher through me."

Thus it is clear that, upon the statement in Mr. Tilton's own handwriting, prepared in December, 1873, and shown by him to numerous friends, as the very truth of the matter, that Mr. Moulton was consulted on two separate days after the 26th and before the 30th, and that it was by Moulton's advice that Mr. Tilton determined to send for Mr. Beecher. Yet they tell you, gentlemen, that the first that Mr. Moulton knew of that was when Mr. Tilton came to him on the 30th of December with this letter from Mrs. Tilton, this advice being given before Mrs. Tilton wrote her brief note, which Mr. Tilton has sworn was written on December 29th.

The Court here took a recess until two o'clock.

#### THE "TRUE STORY" THE BEST AUTHORITY.

The Court resumed its session at 2:15 o'clock.

Mr. Tracy.—Thus it is clear that upon the statement in Tilton's own handwriting, prepared in December, 1873, and shown by him to numerous friends as the very truth of the matter, that Mr. Moulton was consulted on two separate days after the 26th, and before the 30th, and that it was by Moulton's advice that Tilton determined to send for Beecher, this advice being given before Mrs. Tilton wrote her brief note, which Tilton has sworn was written on December 29th. What motive did Mr. Tilton have for falsifying in this respect when he drew up the "True Story?" He has a motive for falsifying now, because he has been advised by his counsel that these facts made out a clear case of conspiracy against Moulton and himself, and it is

by their shrewd suggestion (but I do not intimate that it is by their advice) that both he and the mutual friend now disclaim any consultation prior to the signing by Mrs. Tilton of the abominable charge drawn up by her husband. But Tilton consulted no lawyer when he prepared the "True Story," and only inserted such falsehoods as seemed to him then to be useful. This statement was not one which could have done him any good, and it may therefore be safely assumed to be true.

#### MR. TILTON FORCED TO MAKE PEACE.

But whether Moulton was consulted or not, the situation was plain—Tilton could get nothing from Bowen upon which to support his threatening letter, and he had nothing from his wife which would confirm the charge which he had made to Bowen against Beecher. He had, therefore, given a rash challenge to one of the foremost men in Brooklyn without the slightest support, save his own word, backed by his own tainted reputation. There was but one thing to be done. He must make peace with Mr. Beecher. But how should he accomplish that? He had written a most insulting letter. Should he say, frankly, "Mr. Beecher, I have been mistaken. I sent you that letter under a misapprehension of facts?" Not to mention that the idea of an apology would be utterly repugnant to Tilton's self-conceit and vanity, Mr. Beecher's natural answer would have been, "How did you dare to send so insulting a letter without making inquiry as to the facts?" Moreover, what misapprehension of facts could he have alleged? If he had said, "Mr. Bowen told me such and such tales," Bowen would have denied it, and Tilton's position would have been worse than ever. If he should say, "My wife has told an evil tale about you," he well knew that his wife would deny it, unless some writing were extracted from her. It was essential that he should have an interview with Mr. Beecher, in which he should instantly satisfy the latter that he had had some reasonable pretext for writing his insolent demand, and yet should at the same moment withdraw that demand in such manner as to convince Mr. Beecher that if he should further resent this withdrawn insult there would be danger of an explosion, in which Mr. Beecher's reputation must inevitably suffer, no matter how innocent he might be. Furthermore, Tilton must so shape his case as to satisfy Mr. Beecher that the stories which the latter had circulated to some extent against Tilton were false and slanderous, and thus at one blow convince Mr. Beecher that Tilton was pure in his own morals and under an honest apprehension as to Mr. Beecher's conduct.

#### MR. MOULTON THE ARCH-PLOTTER.

The infernal sagacity which devised a scheme meeting all these requirements did not emanate from the excited brain of Tilton, but from the cool and calculating villainy of his friend. Mrs. Tilton was sick, having had a narrow escape from death, and greatly weakened by a severe and protracted hemorrhage. The Mephistopheles at her husband's elbow suggested to him that now was the time to get her signature to any paper which would answer the purpose. He disclosed to his wife so much of his own difficulties as sufficed to convince her

of his imminent ruin. He turned out the nurse and companion; he locked the door, and kept himself for hours alone with the poor prostrate woman, and by a mixture of threats and coaxing, procured her consent to sign a letter which he proposed to write, soliciting Mr. Beecher to an interview with her husband, and pleading for peace and reconciliation. For him to substitute for such a letter a few words, and charging her pastor with having made improper solicitations to her, without describing their precise purport, was easy enough: and his poor wife, having once raised herself from the bed to sign the letter which he originally proposed, had no power to refuse to put her name below such a charge, the purport of which she but dimly comprehended, if indeed she understood it at all. All that she really knew was that she was doing something which her husband, to whom she had always rendered a slavish obedience, commanded her to do. Probably she had some indistinct idea that the natural effect of her signature was to do Mr. Beecher a wrong; but she was assured by her husband, as he tells you himself, that its real effect would be to do Mr. Beecher good, and to put an end to the conflict which had begun between her husband and her pastor. Such a letter was obtained on the 29th of December, and carried by Tilton to Moulton, who now certainly becomes one of the most important actors in this unhappy controversy.

#### THE CHARACTER OF THE MUTUAL FRIEND.

It is hardly necessary, gentlemen, that I should occupy much time in describing the character of Francis D. Moulton, or in explaining the motives which have actuated him throughout this controversy. He has been in your presence for ten days; you have seen and heard him. No man in this Court-room could fail to be satisfied that Moulton was a person well chosen by the plaintiff to play the desperate part required of the mutual friend. Cool, fearless, plausible, of cultured tastes, not destitute of literary ability, gifted with a quick perception of human character, of tremendous energy, and totally destitute of any belief in conscience, in immortality or in God, this man was well qualified, like his great archetype, to deceive the very elect. He has told you, under the solemnity of an oath, that he was a heathen; and by that you know what he means. Not a heathen like Socrates or Plato, not a heathen like those men of old, who walked in darkness, seeking after the light, and to whom the great poet of the Catholic Church has assigned a place in the other world, free from pain, though far from Heaven—but such a heathen as can only be found in the midst of Christian civilization; a man who despises the idea of personal responsibility; who scoffs at the idea of future accountability, who laughs in his sleeve at the credulity of those who read the solemn words of Scripture, or who listen to the instructions of the Church, and whose only idea of a God is, as a convenient name for rounding an oath or enforcing an execration. Yet it was not in this guise that he presented himself to the defendant, and he took great care not to impress you with this conception of himself in Court. Even here, when facing hundreds of men in whose eyes he read that they knew him to be an unscrupulous and hardened villain, he wore a veil of decent respectability. How much

more, when he approached the most distinguished clergyman of the age, to whom he was almost a stranger, did he clothe himself as an angel of light, and, while humbly acknowledging his unconverted state, yet strive to show that he was aiming to practice the highest Christian virtues.

What was this man? What was his position in society? Upon what indorsement was he received? He was the junior member of one of the largest and most respected commercial houses in this city. They were not only the largest warehousing firm at this port, but also the principal importers of certain staple articles of commerce. The high favor in which they stood with the officers of the quarantine and of the port was a matter of public notoriety and the maintenance of friendly relations with all these officers, and with the officers of the Custom House, was a matter of the utmost concern to the firm. A slight change in the tariff would, at any time, gain or lose hundreds of thousands of dollars for them. It was, therefore, a matter of vital importance that they should be represented, as occasion arose, at Washington, at Albany, and among the local officers of both the national and State Governments, by some confidential agent, who could undertake the management of such affairs involving the most delicate and weighty considerations. You must be aware, gentlemen, that in every large concern of this kind there is invariably a junior partner, or a highly-paid confidential clerk, who undertakes the management of these interests, and concerning whose transactions no questions are ever asked. To no partnership in either of the two cities was such an agent more valuable than to the firm of which Mr. Moulton is a member. These considerations will explain some things at a glance, which otherwise might seem to you mysterious. But the confidential partner in such cases cannot do all his work with his own hands. He must be able to put his hand on some lever of public opinion. He cannot afford to go down to Washington and urge or oppose legislation without any support from the public press. To him it is a matter of life and death to be able to guide some current of public sentiment. Failing to do this, his power ceases, his usefulness is at an end, and his share in the partnership would quickly come to an end also, as Mr. Moulton's partnership in this concern did quickly come to an end when his usefulness had been destroyed.

Francis D. Moulton and Theodore Tilton had been intimate friends from boyhood; but they had been separated by circumstances for some years. The period at which Mr. Moulton was placed in charge of all these great interests of his firm appears to have been also the period when he renewed, with all or more than all its original warmth, his devoted friendship for Theodore Tilton. From this time there was no interruption and no breach. Mr. Tilton had, meanwhile, become the editor of *The Independent*, a paper which before his accession, was religious, but which, he has taken pains to assure you, he made secular. It was a powerful political engine. He has told you that it was one of the principal organs of the Republican party, which, during the whole period of this renewed friendship, has had exclusive control of the National Government, and for most of the time has controlled the legislation of this State. When this controversy began, Mr.

Tilton was the editor, not only of *The Independent*, but of another newspaper of large influence in this city, and the acknowledged local organ of the Republican party. He was also the intimate and trusted friend of Horace Greeley, the chief editorial writer of that party. No man could obtain more readily access to Mr. Greeley's ear, or introduce a friend with greater assurance of welcome, than Theodore Tilton. Through the whole term of this close union between Mr. Tilton and Mr. Moulton, which reminds us of Damon and Pythias in the olden time, Mr. Moulton had, therefore, easy and confidential access to the principal organs of the Republican party.

#### WHY MR. MOULTON MADE MR. TILTON'S CASE HIS OWN.

This was the situation of the two friends at the beginning of December, 1870. We may well believe that when Mr. Moulton found his friend suddenly dethroned, and no longer a power in the land, he felt that his own fortunes were seriously imperiled. Whether Mr. Moulton was generous enough to be sincerely grateful for past favors from his friend, or whether he was among those who define gratitude as "a lively sense of favors to come," could make but little difference in the earnestness with which he naturally seeks to reinstate so powerful an ally. It is easy to see that he made the case of Mr. Tilton his own. He attacked Mr. Bowen as bitterly and even ferociously as he could have attacked his own worst personal enemy. This he states himself, and describes the scene with dramatic force.

#### MR. MOULTON'S GOOD FAITH WITH MR. BEECHER.

But we are asked to believe that when he was informed by Mr. Tilton that not Mr. Bowen, but Mr. Beecher, had been his worst enemy—his enemy in business, his enemy in the church, his enemy in the household—Mr. Moulton approached Mr. Beecher in a genuine spirit of friendship, and with a sincere desire to act the fair and honorable part of a strictly mutual friend. He tells us that he learned that Mr. Beecher had been guilty of one of the basest and foulest acts which any man can commit; he tells you, under the solemn oath of a man who believes in neither God nor devil, that his friendship for Mr. Beecher commenced on that stormy night when he learned for the first time, that this new friend had debauched his old friend's wife. This horrible crime, the deliberate and long-planned seduction of a trusting and reverential woman by the pastor who had given her hand to her husband in marriage, and invoked the blessing of God on their union, was the one fact which awoke in the generous breast of Mr. Moulton a new fountain of sympathy with the alleged treacherous seducer. He hastened to pledge to this man, whom he now describes as an abandoned hypocrite and libertine, "the strictest and firmest friendship." He assured him that no one among the thousands of friends who stood around this pastor with devoted affection would ever equal him in fidelity.

## HOW THE FRIENDS WORKED TOGETHER.

He did all this with the knowledge and full approval of the man who claims to have been the injured husband, whose happiness had been destroyed by the new friend whom Mr. Moulton thus enthusiastically took to his bosom. And notwithstanding this pretended friendship for Mr. Beecher, which seemed gradually to ripen into an ardent affection; notwithstanding his repeated pledges and offers of support; notwithstanding his earnest assurances that Mr. Beecher should in all events be protected by him; notwithstanding the absolute confidence and high esteem, which, by his plausibility, he gained from his new-found friend, all of which was well known to Tilton as the case progressed, Mr. Tilton himself tells you, from the witness stand, that this conduct never once excited a doubt or suspicion in his mind of Mr. Moulton's unqualified fidelity to his cause, or made him for a moment think otherwise of Mr. Moulton than as his own most chivalrous and devoted ally. There never was an act of Mr. Moulton's to which Mr. Tilton did not give his assent. There never was a paper of the least importance (save one) written by Mr. Moulton which was not either dictated or approved by Tilton; and there never was a secret confided by Beecher to Moulton which he did not instantly betray to Tilton. On this point the testimony is clear and most significant. While Moulton affected to deny that Tilton had seen Mr. Beecher's letters or that he was aware of Tilton's copying them, the evidence of Tilton shows that in every case he took down shorthand notes in Moulton's presence of just so much as he thought desirable, and that in some cases these confidential communications were left in his hands by Moulton for a period long enough to have made printed copies, if Tilton had wished to do so.

And another piece of evidence to which I desire to invite your attention here, gentlemen, which Mr. Moulton had evidently forgotten in this connection, was his own letter signed by him but written by Tilton on August the 5th, you will remember, where he refuses to Mr. Beecher access to these papers, and says that he shall consult Mr. Tilton and obtain his consent to lay these papers before the Committee at his first opportunity, when Mr. Tilton was present and wrote the letter himself. That letter you will remember, gentlemen—a statement in it Mr. Moulton had evidently forgotten, for in that very letter he states that Mr. Tilton took shorthand notes from these letters as he read them to him—and yet he comes upon the stand here and swears to you deliberately that he never permitted Mr. Tilton to have a copy of this confidential correspondence, and never with his assent allowed him to have a copy; never saw him take a copy; tells you under oath that he could not have taken a copy in shorthand without his knowledge, as we all know he could not; and yet, in that very letter of August 5th, sent by Moulton to Beecher, Mr. Moulton himself says that Mr. Tilton took shorthand notes of these letters, as he read them to him. I shall have occasion to call your attention specifically to that letter. Moulton affected to give advice to both parties in the interest of both. He tells you himself that Tilton almost uniformly disregarded any advice in

Beecher's interest; Beecher uniformly, even against his own judgment, followed the advice of the mutual friend. Tilton never yielded, except when it was plain to both these conspirators that his refusal would precipitate the crisis and kill the goose that laid the golden egg; and even when he did nominally yield, it was always upon condition that he should dictate the precise terms of compromise, and, if anything was to be written, that he should write it, word by word, in his own language. Then the papers thus written or dictated were carried to Beecher, without an intimation of their real authorship, and submitted to him as the production of a sincere and devoted friend. It is impossible to conceive that a professed friendship thus carried on with the approval and under the direct guidance of Mr. Beecher's most bitter and relentless enemy could have been otherwise, from beginning to end, than utterly hollow and false. It is not necessary to suppose that when this plot was originally hatched the two conspirators laid out their plans upon the gigantic scale which they afterwards assumed. They doubtless supposed, at the beginning, that the restoration of Theodore Tilton would be speedily accomplished; and it was not until his repeated failures, owing to his own amazing follies and wickedness—that extended over a period of nearly four years—that the original scheme gradually developed into the most gigantic and hideous conspiracy of modern times.

It can need no argument to satisfy you that a man who has been for years carrying on so diabolical a conspiracy as this, his movements being known at every step to the man whose cause he was really serving, could not fall himself to be involved in such a network of crime as would make it impossible for him ever to retrace his steps or to abandon his partner in guilt—no matter what might be the cost to himself of pursuing the original scheme. The descent into crime is easy, but the return from such tortuous paths of darkness is well nigh impossible. Neither of these men could for one moment afford to betray the other, even if they had no secrets apart from this case; for either to drive the other to desperation would be an act of suicidal madness.

## ANOTHER BOND OF ALLIANCE BETWEEN MR. TILTON AND MR. MOULTON.

But this is not the only tie, nor even the chief tie, which binds together these two men. They have had a most significant alliance in the prosecution of new social theories. They have had most significant relations with women whose very names stain the lips that utter them. They have both held their voices in humiliating bondage, and compelled the women whom they vowed to love and to cherish to become the mere ministers to their lust. It was not Theodore Tilton who sent his wife to bring home in a carriage the most notorious preacher and practitioner of free love that the world has ever seen. This degradation was reserved for the wife of Francis D. Moulton. And it was her lips, and not the lips of Elizabeth Tilton, so far as we have yet learned, that were kissed by Victoria Woodhull. It was this woman, whose published utterances are so foul, that the learned Judge now presiding was unwilling to allow them to be read in your

hearing, even as a part of the evidence in this case, who was selected by Francis D. Moulton as the honored guest of his wife, and as a fit person to be brought home in a carriage by his wife and only child. And this alliance was maintained for a year. It was maintained, if you believe Mr. Moulton, for the sake of Mr. Beecher, whom Mr. Tilton hated with all his soul; or else it was maintained, if you believe Mr. Tilton, for the sake of Mrs. Tilton, whom Moulton despised with all his heart!

#### MR. MOULTON COMPARED WITH JUDAS.

But no mere words can do justice to this man; none but an artist, who should paint the man as he is, can bring out his real character before mankind; and, thank heaven, gentlemen, that portrait has been painted, and by one of the greatest artists the world has ever known. If any of you ever visit the beautiful city of Milan, you will find that, next to its magnificent cathedral on which thousands of saints and angels stand carved in heavenly white, in the attitude of silent prayer, the pride and glory of that city is in the humble refectory of an ancient monastery, upon the wall of which, four hundred years ago, the illustrious Leonardo da Vinci painted his almost inspired picture of the "Last Supper"—a picture, the colors of which are too rapidly fading, but the fame of which will never die. And, gentlemen, in the most striking portrait of that group of disciples, you will recognize the startling likeness between the red matted hair, the sharp and angular face, the cold and remorseless eyes of Judas Iscariot, and the same features in his legitimate successor, the "mutual friend." [Laughter and applause.] There, on that consecrated wall, the portrait of Francis D. Moulton has stood waiting for his birth 400 years—

The noise still continuing, Judge Nelson said: "Mr. Tracy, please stop." [To the audience.] "I will adjourn this court if there is any more demonstration of that kind."

Mr. Tracy [resuming].—And will stand for twice four hundred years after this resurrected Judas shall have sunk into eternal infamy.

It was such a man that Tilton requested to become his friend in this emergency, and it was this man into whose hands he placed the letter of his wife and bade him go and invite Mr. Beecher to an interview on the night of the 30th of December.

#### THE SHREWD POLICY OF THE PLOTTERS.

Before he returns, gentlemen, let us inquire into the motives which impelled Tilton to seek this interview, and the object which he sought to accomplish by it. This is made clear from Tilton's own statement. On his cross-examination before the Church Committee he declares that the object of this interview was to make peace between himself and Mr. Beecher. He says: "Elizabeth saw that Mr. Bowen and I were in collision; she was afraid that the collision would extend to Mr. Beecher and she wished me, if possible, to make peace with him, therefore, she wrote a womanly, kindly letter to him. I do not," says Tilton "remember the phraseology. I remember only one phrase which was peculiarly hers. She said she loved her husband with 'her maiden flame.' She begged, as the best mode of avoiding trouble that a reconciliation might be had

between Mr. Beecher and himself—that Mr. Beecher and her husband might instantly unite to prevent Mr. Bowen from doing the damage which he had threatened in instigating Mr. Beecher's retirement from the church. Mr. Tilton further said that he "resolved to accede to his wife's request, and for her sake would prevent the threatened exposure by Bowen, and for this purpose he sought the interview with Beecher." His object was peace, and peace was to be secured by his withdrawing the letter he had written to Mr. Beecher and inducing the latter to withdraw the charges which he had made against Tilton to Bowen, and through Beecher's silence not only Mrs. Beecher and Mrs. Morse but his own wife from circulating the scandalous stories against himself. You will remember, gentlemen, that this wife had separated from her husband and was under the influence of her mother, where Mrs. Beecher visited her. You will remember that her child was taken from her and she thus forced to return to Mr. Tilton's house. You will remember that the next night after that return she was suddenly taken ill by a miscarriage, and was on her sick-bed at this time. The question which agitated Tilton's mind was, "What will this woman do when she recovers?" He had no strong hold upon her, and her future course was uncertain when she was again restored to health. He was bound to work while opportunity was given him, and you will see the position in which he had his wife, and how skillfully, under the advice of this mutual friend, he used it.

#### A NEW PURPOSE ASCRIBED TO THE PLOTTERS.

Tilton knew Beecher well, and we shall show you, gentlemen, that he has often declared that the surest way of securing Mr. Beecher's aid was to accuse him of having wronged you. Once convince him that he has done you an injury, and there is nothing you can ask that he will not do to repair the wrong.

They determined to approach him in this manner, and to convince him that the stories he had heard, as well as those he had circulated, against Tilton were false and slanderous. They knew that if they could convict him in his own conscience of having slandered Tilton, he would make haste to atone for the injustice. To do this they must destroy his confidence in Mr. Tilton's accuser. That accuser was Tilton's own wife. They knew Mr. Beecher's confidence in her truthfulness and to impair that confidence was a difficult task. There was only one way in which this could be done beyond a possibility of a doubt. To obtain from her a mere retraction of her charges against her husband would not suffice, for Mr. Beecher would easily suspect that she had done this either from affection or from fear. But if she could be by any means brought to make an accusation against Beecher himself, then he and Tilton would stand on the same ground, both accused by the same woman; and Beecher, knowing the accusation against himself to be false, could no longer place the slightest confidence in the charges which she had made against her husband. They knew, moreover, how reluctant he would be to attack, even in his own defense, a woman who had long been in relations of friendship and sympathy with him, and who was now lying upon her sick bed. They

knew that he would rather be sacrificed himself than save his own reputation by making war upon her. This suggestion was the suggestion of the Devil; and it was now being carried out with a skill, an audacity and a heartlessness worthy of its author.

We have seen how Mrs. Tilton had been controlled and entrapped into signing an accusation ingeniously framed so as to be especially disastrous to the reputation of her pastor. Thus far the scheme had been successful, and it only remained to carry it through in such a manner as to convince Beecher that Mrs. Tilton had voluntarily made this accusation, and the success of the plan would be complete. Thus, with these ideas seething in his mind, Tilton sat awaiting Beecher's arrival, conscious that unless this desperate plan of himself and his friend succeeded he was a ruined man. Meanwhile Moulton had gone down to Beecher's house, and with an air of politeness but of great earnestness, had requested Mr. Beecher to come to his house to hold an interview with Theodore Tilton. Mr. Beecher naturally guessed that this proposed interview had some bearing upon the letter which he had recently received from Tilton, and the motive of which was an utter mystery to him. Sending for Mr. Bell to take charge of his meeting, he went with Moulton, and on the way inquired what was the object of the interview, to which Moulton replied that he had better let Tilton tell it himself.

#### MR. MOULTON'S CONDUCT TOWARDS MR. BEECHER.

While they were on the road an incident occurred, according to Moulton's account of the affair, which will justify a short digression from the main subject. He tells you that having learned that very evening for the first time that Beecher, the pastor of his own wife, had most infamously debauched the wife of Moulton's most intimate friend, that circumstance impelled him, for the first time in his life, to proffer to Beecher a lifelong friendship of his own accord. Without a hint from Beecher of his own desire for such services, Moulton said to him, "I am not a Christian, I am a heathen; but, if you wish, I will show you how well a heathen can serve you." And from that moment there sprang up the strictest and firmest friendship (so he says) between himself and the man whom he now describes, and whom he must then have known as a libertine. He assures you that for four years after that time he strove day and night to serve and save the man whom he now denounces with such intense bitterness, and who, according to his own account, has added not one whit to his sins since that time, except that there came a time when he refused any longer to follow Moulton's lead in this matter. That is the only crime which has changed the friend, for whom Moulton would sacrifice so much to save, into the enemy he now hates and would do so much to destroy. Mr. Moulton has been at some pains to explain to the public his motives in offering and maintaining this friendship. It seems that it was the peace of families, the interests of Plymouth Church, the cause of Christianity, which moved this heathen to undertake the task

of maintaining in the first pulpit of America the man who, if what Moulton now says of him be true, deserves to have his name a by-word and a hissing among men. To preserve the peace of families Mr. Moulton was willing to introduce a man, whom he now says was a practiced seducer, into his own household, to recommend him to the confidence of his own wife, to place his own child under his teachings, to invite him to his own table, to leave him in a bedroom with his own wife for four hours, listening with complicity to her narrative of the manner in which she had affectionately tucked him up on the sofa, and kissed him on the forehead, the tears of sympathy streaming down her cheeks! To protect the interests of Plymouth Church, an institution which he now hates with a bitter hatred, because it still believes what he originally said of its pastor! He was anxious to deceive that church into accepting the ministrations of a man whom he now characterizes as a wolf in the fold, and rejoiced in seeing this man continue to preach the doctrines of Christianity from that pulpit! To promote the interests of that Christianity in which he did not believe, and to honor that God, whose name he never used except as a by-word, he tells you now, that he told hundreds of lies, that he invented all manner of schemes, that he belied some men, that he coaxed others, that he made his own wife the associate and companion of prostitutes, and divided her lips between his own kiss and the kiss of Victoria Woodhull—all this and more he was willing to do in behalf of these great interests, which, if his story be true, could only have been truly served from the first moment by casting out the alleged criminal from his place of trust and protecting innocent families from the wiles and intrigues of a seducer.

But when the time came that Mr. Moulton's interests were touched, when he thought that his good name, such as it was, was to be injured, a name which he had not hesitated to defile by contact with sinks of infamy, his regard for the peace of families, for the interests of Plymouth Church and for the cause of Christianity suddenly vanished, and he devoted himself with blind fury and with a single aim to the gratification of revenge.

#### A BITTER SATIRE ON MR. MOULTON'S CONDUCT.

But, gentlemen, you must not allow yourselves, for a moment, to imagine that Mr. Moulton, who told hundreds of lies for the sake of the Christianity in which he did not believe, will now tell a single falsehood for the sake of himself! You must not imagine that the man who would gladly associate with prostitutes, and take pleasure in seeing them kiss his wife, all for the sake of the honor of the Church and the good of society, would dream of associating with prostitutes for his own pleasure. Oh, no! When Francis D. Moulton steps upon this witness stand, and seeing the man for whom he acknowledges a deadly hate sitting before him, takes an oath upon the Gospels which he never reads, and in the name of a God whose existence is to him a jest, he suddenly becomes absolutely truthful, and demands of you with unhesitating confidence that you shall not doubt a single word that he utters!

## THE INTERVIEW OF DECEMBER 30.

But to return now to the interview to which Mr. Moulton introduces Mr. Beecher on this stormy Winter's night. I desire to call your attention in this connection, gentlemen, to a fact which Mr. Moulton states in his evidence; and I desire to refer you to the unconscious testimony which the action of both of these parties, according to the evidence of Mr. Tilton, furnishes of the innocence of Mr. Beecher. Mr. Moulton tells you that, on his way to his own house, he told Mr. Beecher of the stories and slanders which Bowen had reported against him in the interview of the 26th of December. You will remember the language that he makes Mr. Beecher use on that occasion. He says: "Did he? I am surprised at that; for Bowen said nothing to me of that kind." It was evidently, according to Mr. Moulton's testimony, the first that Mr. Beecher had heard that Mr. Bowen had been guilty of slandering him at that interview. When he is introduced into the presence of Mr. Tilton, I desire to call your attention to Mr. Tilton's evidence of what occurred. Mr. Tilton says the first thing he said to Mr. Beecher was: "You received a letter from me, I suppose." Mr. Beecher says: "I did. I wish you to consider that letter withdrawn, as if it was never written." "Then," says Mr. Tilton, "I introduced the name of Elizabeth, and began to state to him what I had learned from Elizabeth. At that instant," says Mr. Tilton, "Mr. Beecher interrupted me and said:" "But what about the stories that Mr. Bowen told you concerning me on the 26th?" And Mr. Tilton says: "Since you ask it, I will tell you," and stopped his narrative and went on to repeat to Mr. Beecher the accusations which Mr. Bowen had made against him. Now, gentlemen, I desire you to consider, if Mr. Beecher was conscious up to that moment that he was confronting an injured husband who was about to accuse him of having seduced his wife, do you think he would have interrupted the husband in that accusation by a reference to the mere slanders of Bowen, saying, "Tell me first about what Bowen said about me?" Do you think that if this great clergyman was conscious that he was to be assailed on that evening with such a charge as that, that that would not have been the one thing that would have absorbed all his attention, and that the questions of the mere slanders that Bowen had uttered against him a week before would not have made any impression on his mind? The very fact that he interrupted Mr. Tilton at this stage of the case as soon as he had introduced the name of Elizabeth shows you, gentlemen, that Mr. Beecher was thinking of nothing at that time except the information which he had just, for the first time, received from Mr. Moulton on the way to his house, to wit, that Bowen had been uttering slanders against him in this interview on the 26th. It is an unconscious piece of testimony that in my judgment outweighs the mere assertions of any number of men who are interested here in producing upon your minds a particular impression. It is the act of the parties. It shows how they felt and how they acted on this occasion.

## NOTHING CONSISTENT WITH THE CRIME CHARGED.

And right here, gentlemen, in approaching the discussion of the question, permit me to say that this case is peculiar in this respect: all the acts of all these parties, from the time that this charge was first intimated down to the time that Theodore Tilton made his charge of adultery before the Church Committee, have been inconsistent with the crime of adultery. From the beginning to the end of it, strike it where you will, where you find one of these parties performing an act, that act is utterly inconsistent with the existence of adultery. Their whole evidence against Mr. Beecher here consists of words, of language which they say he has uttered from time to time. But the acts of Mr. Tilton on the night of the 30th of December; his whole conduct from July up to that time, the conduct of Mr. Beecher, the conduct of Mr. Moulton, the conduct of all of them combined, the acts of them, wherever you strike an act, are inconsistent with the charge of adultery. This accusation, I repeat, rests entirely upon words and upon nothing else.

## THE CHARGE MADE ON DECEMBER 30.

Now, what was the charge which Tilton made against Mr. Beecher on that night? This is the most important question in this inquiry, gentlemen, and to it I now invite your serious attention; because if we satisfy you that on that night Mr. Tilton did not charge Mr. Beecher with the crime of adultery, you will consider this case disposed of. You will not listen to any charge subsequently invented of a graver offense than that which was brought to Mr. Beecher's attention on that night. They are bound by that act; they cannot charge that interview as one of their devices by which they have been induced to lie to conceal this crime. They brought Mr. Beecher into their presence to make the accusation, and by the accusation there made they must stand or fall. You will not permit them to charge it. I intend to hold them there, and I intend to demonstrate to your understandings as clear as the noonday sun in Heaven, that that charge was not adultery.

In the first place, gentlemen, Tilton's conduct from July to December had been utterly inconsistent with the existence of this pretended knowledge. He says, and asks you to believe now, that all he knew on that night he had known for six months, and yet it had not even ruffled the temper of Theodore Tilton. There was not even a domestic jar in the family arising on account of this information. Theodore Tilton was then editor of *The Independent* and of *The Brooklyn Union*. He was a prosperous man, doing well, and you never hear Hissed a word from Theodore Tilton in regard to the existence of this charge until December, when, as he himself says, he fell into business troubles with Henry C. Bowen, which, to use the language of his sworn statement, were augmented by the Rev. Henry Ward Beecher and his wife; wherefore, says Mr. Tilton in his sworn statement: "At the instance of my wife, Elizabeth, who wrote a letter to Mr. Beecher, I sought an interview with him." Until business troubles came upon Mr. Tilton there was no sug-



gestion of offense against him by Henry Ward Beecher. It was only when he found that his wife had left him, that Mrs. Morse, as he says, was insisting she should not return to him, that Mrs. Beecher was engaged in consultation with Mrs. Morse, that Henry Ward Beecher was also engaged in consultation with that wife and giving her advice, when he found also that Mr. Beecher was crediting the stories that were in circulation against him, and when he found himself liable to be dismissed from the employ of Henry C. Bowen, his position of influence and his means of support taken away from him, then it was that he conceived the idea, on the 27th day of December, of entering into this conspiracy with Henry C. Bowen to make a scandalous charge against Henry Ward Beecher, and thus drive him from Brooklyn. I start there with Mr. Tilton. I say that, from his own showing, if he is to be believed, if what he says transpired at the interview between himself and Henry C. Bowen, if they did there concoct these scandalous matters and sent that letter to Henry Ward Beecher for the purpose of intimidating him and driving him out of Brooklyn at the peril of undergoing a grave investigation for scandal, then he is tainted as a conspirator against Beecher, and stands as a conspirator from that day to this. That conspiracy is formed, and the only question there is about it is, when did Mr. Moulton enter that conspiracy. Now, we say that charge was not the charge of adultery. We say it is not possible that if Theodore Tilton is made of the flesh and blood that other men are made of—it is not possible he carried that terrible secret in his breast for six months. If he had known what he professes to have known, there would have been nothing left of Theodore Tilton but his skeleton to have confronted Henry Ward Beecher on that terrible night in December. I do not believe that any man can carry locked within his bosom any such terrible secret as that and remain undisturbed. But it had not disturbed Tilton. On that night he stood six feet two in his stockings, fat, sleek and happy, meeting Mr. Beecher and negotiating with him on a business matter, and bringing before him accusations which Beecher had made affecting the business of Tilton, and winding up with an accusation that his wife had confessed an undue affection for him, and had charged him with having attempted her virtue. That the charge was not adultery, gentlemen, is proved from the fact that on the 26th he had stated his accusation against Beecher to Bowen, and it was not a charge of adultery, but it was a charge of improper advances, or unhandsome advances. He tells you that he had made that same accusation against Beecher to Moulton on the same day.

Now, these are the two first occasions in the history of this case where we find that Tilton is giving public utterance to these accusations, and those utterances consist of a charge of improper proposals and not of adultery. Would he have dared, after having said to Henry C. Bowen that Mr. Beecher was guilty of improper advances on the 26th, and to Moulton at the same time, to turn around and charge Henry Ward Beecher with the crime of adultery on the 30th? Here he had got three witnesses to confront him and prove the falsehood of that charge if he made it—Bowen, Oliver Johnson, who was pres-

ent, and Francis D. Moulton. In the presence of three men he had said four days before that that charge was a charge of improper advances. Would he have dared to have done that in the face of that evidence—turn suddenly about, and but four days afterwards, I repeat, charge adultery upon Henry Ward Beecher? But we shall not stop there, gentlemen, with this case. We shall show you that Mr. Tilton has stated to not less than five different people of the highest respectability of any persons in this city, men whose reputation stands unquestioned, in narrating that interview which took place between himself and Henry Ward Beecher that night—we shall show you that he said that he charged Henry Ward Beecher with improper proposals, and nothing else. We shall show you that to one of these persons he made that declaration within a week after the interview occurred. It is a man of the highest character, whom most of you will know, when he is presented on the witness stand. It was a man who had been one of the intimate friends of Theodore Tilton, and Theodore Tilton, in relating to him his difficulties between himself and Mr. Beecher, charged Mr. Beecher in that interview with being the cause of his overthrow with Bowen. He said that he had got him turned out there; he and his wife and Mrs. Morse were responsible for the loss of place and position, which he had suffered; and then he told him that Henry Ward Beecher had been guilty of improper proposals to his wife, and that he had sent for him on this evening of the 30th, at Moulton's house, and charged him with it face to face. And we shall show you further, gentlemen, that he told this person that Henry Ward Beecher denied it, and when he denied it he told him: "If you don't believe that Elizabeth has made this charge, go and see her for yourself," and Beecher went.

We shall show you that, I say, by not less than five different persons, to whom Mr. Tilton has given that narration. But we shall show you more, gentlemen; we have shown you more. We have shown you that that is the truth from the written testimony of Theodore Tilton himself.

#### THE TRUE STORY A GODSEND TO MR. BEECHER.

I refer now again to the "True Story," and here let me say again that the resurrection of this part of that "True Story" is almost a providential occurrence in favor of this defendant. Last August, when he was compelled by this attack to make a public statement before his Committee, when every paper connected with this transaction he had deposited in the hands of this mutual friend, who had refused to allow him access to one of them, and he was compelled to draw simply upon his own memory for this occurrence, without being able to corroborate it by a single written paper, he gave the interview that occurred between himself and Theodore Tilton on that occasion, and he stated it substantially as Theodore Tilton had written it down in this "True Story" in 1872. Mr. Beecher says: "In that interview, as Tilton went on with his accusation, I grew indignant, and was about to interrupt him, and he, seeing that I was about to interrupt him, stopped me and said: 'Wait until I get through;' and when he finished he said to me: 'If you have any doubt that Elizabeth has said this, go and see for yourself.'" "

The precise story that he told these individuals. Now, Mr. Tilton tells you that Mr. Beecher humbly asked his permission to go and see Mrs. Tilton at the conclusion of this accusation, and that he granted him permission under certain injunctions. We shall show you that Mr. Beecher rejected his allegation that Mrs. Tilton ever made such an accusation, and he had not the paper with him, and, gentlemen, he durst not show it if he had. He never showed this paper to Henry Ward Beecher, and he was obliged therefore to send him to Mrs. Tilton—another fact that will strike you as remarkable, gentlemen.

**MRS. TILTON'S LETTER OF CHARGES NEVER SEEN  
BY MR. BEECHER.**

The basis of this interview was a letter obtained from Mrs. Tilton, mark you. That was the pretext under which it was obtained from Mrs. Tilton, but it was never used for that purpose. Never forget that fact, gentlemen, in your consideration of this case, that when such a letter was needed to bring about an interview with Henry Ward Beecher, the pretense was made to this sick and almost dying woman that it was to rescue her husband from difficulty, from business troubles and business embarrassments, but that letter was never shown to Henry Ward Beecher; never to this day has he seen it. It was only a pretext by which they imposed upon this feeble woman. But beyond that, gentlemen, what was in that letter?

**THE LETTER OF CHARGES THE KEYSTONE OF THE  
PLAINTIFF'S CASE.**

Was that letter a confession of adultery as they now say it was, or was it what she says it was in that letter that they induced her to sign to Dr. Storrs, a charge of improper proposals? That is the vital question in this case. It is the most important question that you have to consider. Upon it very much of this case hinges. Certainly, so far as the plaintiff's case is concerned it turns entirely upon this question. If I can satisfy you, gentlemen, that that letter did not contain a charge of adultery, then, of course, the plaintiff's case ends. Why don't they produce that letter. If they would produce it it would end the question of fact involved in this issue on this point, wouldn't it? There would be no room for discussion, no room for argument. It would settle this question one way or the other, and it would tell you who was falsifying here and who was telling the truth. They only need to produce that letter to determine this whole question. Where is it? Why don't they produce it. They had it. They promised to keep it, secretly, on the evening when Francis D. Moulton obtained that retraction from Henry Ward Beecher. Their failure to produce it now is the most outrageous breach of faith I ever knew to characterize a litigant in a court of justice.

Henry Ward Beecher had gone from this interview at Moulton's house to this sick wife, and he there confronted her with the accusations which he had received from her husband. She hardly knew what she had made. She knew that she had given a letter to her husband, but whether she had a faint, glimmering conception of the charge, or whether she took it for granted

that she had charged Mr. Beecher as her husband had told Mr. Beecher she had charged him, we do not know. We only know that now she has no knowledge or conception of what was in that letter, but when confronted with the friend that she had injured, when she found the use that was being made of it, when she found it was being perverted, she gave a retraction of that charge to her friend and pastor that night in the following language:

DECEMBER 30, 1870.

Wearied by importunity and weakened by sickness, I gave a letter inculcating my friend Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it—almost forced—when I was in a weakened state of mind. I regret it, and recall all its statements.

(Signed)

E. R. TILTON.

I desire to say explicitly, Mr. Beecher has never offered any improper solicitations, but has always treated me in a manner becoming a Christian and a gentleman.

(Signed)

ELIZABETH R. TILTON.

Now, gentlemen, that retraction itself furnishes conclusive evidence of the nature of the charge which Mr. Tilton made to Mr. Beecher. You see that he does not retract a charge of adultery. There is no allusion to the offense of adultery in this retraction at all. It is a retraction of improper solicitations. Do you believe, gentlemen, that if the charge had been one of adultery against Henry Ward Beecher that night, he would have gone down to the sick woman and contented himself with a charge simply of improper solicitations? Don't you think that the retraction would have been as broad as the charge? Would he have been satisfied with anything less? But how happens it, gentlemen, if the charge was adultery, and nothing had been said about improper solicitations—how happens it that you find those words, "improper solicitations" in the language of one of these parties on that very evening? But there is more than that in this retraction which indicates the nature of the charge. You will see that the first letter, written and signed by Mrs. Tilton, makes no reference at all to the nature of the charge. When that is discovered she immediately adds a postscript to it, covering the charge which she understood to be made by her husband. Can you have more conclusive evidence furnished you of the nature of the charge which Theodore Tilton then made than this furnishes? I apprehend not.

**OTHER CONTRADICTIONS IN MR. TILTON'S STATEMENTS.**

Mr. Beecher takes this retraction, returns to Moulton's house, and does not see him again that night; and here, gentlemen, is a slight contradiction of Mr. Tilton, to which I desire to call your attention, to show you that even he, with all his effort to be accurate, is unable to state this transaction twice alike. It is now conceded that he did not see Mr. Beecher on that night after Beecher left him at Moulton's house. That is agreed by both Tilton and Moulton; and yet, gentlemen, in the statement before the Committee he says: "Beecher returned, expressed remorse and shame, and declared his life and works seemed brought to a sudden end." And he swore to that statement before the Committee. Now he concedes that that is false; that he did not see Beecher

at all that night after he left him at Moulton's house to go to his own house to see his wife. How are you to trust Mr. Tilton's evidence in the midst of so many contradictions? And that was not a hasty statement, gentlemen. It is in evidence here before you, that Theodore Tilton took ten days to prepare that statement. He had all that time, therefore, to make himself entirely accurate. He had access to all the papers. He had no difficulty in fortifying his memory and speaking correctly upon these subjects, yet in that statement he deliberately says that Mr. Beecher returned to his house and used language which implied a confession of guilt, and he put it in that statement for that purpose, so that when it was read by the great public as it was published in the newspapers, they would see that Beecher returned to Tilton that night and used language which virtually amounted to a confession of the offense. Yet Tilton is now bound to tell you, and Moulton tells you, that he did not see Tilton at all; and therefore this statement is entirely untrue. Nor did he say anything of the kind to Moulton; that is not pretended. Now, on this trial, as the evidence stands, it is not claimed that any such expression was made by Beecher to either Moulton or Tilton on that night. Now, gentlemen, after Mr. Tilton goes home that night, thinking probably there was something strange that Mr. Beecher had not called on him again, he wants to know what had transpired between himself and wife.

And I come now to another contradiction of Mr. Tilton in his sworn statement. He says in that statement that he found his wife weeping and almost distracted at the situation in which she had involved herself by the charge and by its retraction. We shall show you, gentlemen, that he found his wife sound asleep that night, on his return, enjoying the only moment of happiness that she knew for several long years, when she was wrapped in sleep. She was in bed with her nurse, and Theodore Tilton entered that room, awoke his wife, entered into a conversation with her and that conversation awoke the nurse, she finding Mrs. Tilton sitting up in bed, and terribly agitated. And then Mr. Tilton drove the nurse out of the room, locked the door, and the nurse went into an adjoining room with a blanket wrapped around her shoulders, and sat there for a long time, while she listened to Tilton's loud and angry conversation with his wife. Finally he came out into the room and got pen and ink and paper, and went back, and produced the next day this explanation of his wife of the retraction which she had given to Mr. Beecher. But you see, gentlemen, the situation in which this retraction had involved Mr. Tilton. He had made the charge, in the first instance, supposing that Mr. Bowen was to back it; so he says. Failing in that, he had obtained from his wife in some manner a letter which he said inculpated Mr. Beecher; and, backed by that, he confronted Mr. Beecher and made the accusation; but he sends Mr. Beecher to his wife for the verification, and she retracts. Not only that, gentlemen; she does more: she makes a statement which, in effect, charges her husband with having extorted that paper from her, and Mr. Tilton, therefore, found himself, on his return that night, robbed of his evidence against Mr. Beecher, but he found that Mr. Beecher had in his possession the written statement of his wife which

virtually accused him of having extorted that charge from her. What was his situation then? He was in the absolute power of Henry Ward Beecher. All Mr. Beecher had to do to crush him from existence was to publish the fact, first, of the letter of the 30th, and, then, how he extorted from his wife this charge against him on the 30th, and then publish the wife's own handwriting, saying that that charge was false and was extorted from her, when upon a sick bed, by her husband. Mr. Beecher, I repeat, had him absolutely in his power. He had nothing to do but to establish the facts to absolutely crush him. Theodore Tilton and his wise friend saw this situation. We shall show you that Mr. Tilton fully appreciated it on his return to that house that night. They must get that retraction; they must get it out of the hands of Henry Ward Beecher. And how were they to do it? They got the explanation that night, which is a mere explanation, as I shall have reason to show you in a moment. But that was not sufficient. When he came to consult his adviser the next morning he told him that Mr. Beecher probably would not surrender that retraction at his request; that they had got to have the request of Elizabeth Tilton, the one who gave it to Mr. Beecher to induce him to surrender it. And so they go to this sick woman again and get from her another paper, which is addressed to Moulton, the "Mutual Friend," and which I will read in this connection:

MY DEAR FRANK :

[This is "Saturday morning," without other date.]

I want you to do me the greatest possible favor. My letter which you have, and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed. Please bring both to me and I will burn them.

Show this to Theodore and Mr. Beecher. They will see the propriety of this request.  
E. R. TILTON.

That was the paper which they saw that they must get from Mrs. Tilton to procure this retraction, and they obtained it, and on the next night Moulton goes to Beecher armed with this paper and asks for this retraction. He shows him that letter, and Mr. Beecher objects to surrendering it. He says: "If I shall die, what shall my family have to protect their name and mine after I am gone? Supposing this charge is renewed, if I surrender this paper what is to protect my fame hereafter?" Moulton says: "You give it to me, and I pledge to you my word of honor I will do one of two things; I will either destroy both the accusation and this retraction, here, in your presence, or I will keep both together, so that one never shall appear without the other." He gave Mr. Beecher his choice, and Mr. Beecher says: "I don't want the retraction destroyed; keep them both." That was the promise on which he obtained from Mr. Beecher this retraction.

I repeat now, gentlemen, with more significance, I trust, than I did when I first alluded to the subject, where is that letter? Why has it been destroyed? Why have these parties broken the solemn pledge under which they obtained from the hands of Henry Ward Beecher this evidence of his innocence? If that letter could be produced to-day, we say it would satisfy you that the charge there made was not a charge of adultery, but a charge of improper proposals, just as the retraction says

It was. We say, put the letter and the retraction together and they both fit each other and cover the case.

#### SIGNIFICANCE OF THE DESTRUCTION OF THE PAPER.

Why have they destroyed it? Why is this, the most important paper in the case, missing, when every other paper that sheds a particle of light upon the case has been carefully preserved by this painstaking and laborious "mutual friend?" There is not a scrap of paper or writing from Mr. Beecher, which could throw the slightest light upon this case, but that they have preserved and garnered up with a care that indicates that they consider it worth many times its weight in gold, more precious to them than diamonds. Every one of these letters can be construed by their oral statement into an accusation or confession of guilt. Why is the one paper the one thing that would have settled this case, missing here? Do they pretend that they destroyed it with the knowledge and consent of Henry Ward Beecher? No! Was he consulted about it? No. Did he assent to it? No. They say they destroyed it. They tell you they destroyed it after the "tripartite agreement." Where is the logic, gentlemen, of taking out this one single paper and destroying that, and preserving all the others? If the "tripartite agreement" had been intended to be executed by them in the good faith in which it professed to have been made, and to be a final settlement of all this difficulty, then I concede to you that there would have been logic and reason and propriety in the destruction of all the papers that bore upon this case. But why the destruction of this one single paper? Why the picking out of this scrap from Moulton's archives and consigning this to the flames, when they husbanded all the others. I will tell you why, gentlemen. We will show you that this paper could not have been destroyed, if it has been destroyed at all, until the conspiracy was hatched between Theodore Tilton and Victoria Woodhull to charge Henry Ward Beecher with adultery, and then the destruction of this paper became absolutely necessary to the scheme. They could not live a moment with that paper in existence. It would blast every man and woman that would have connected himself or herself with the scheme. He only had to produce it to convince every man in the community of the conspiracy. No, destruction, therefore, became imperative, an absolute necessity, and it was never destroyed, if it has been destroyed to this day (which we do not believe, and which you have no evidence of but Theodore Tilton's), until after they had perfected that conspiracy.

#### A QUICK END OF THE CASE PROMISED.

Now, gentlemen, we shall show you by a witness as who has no superior for integrity in the city, a man whose word will stand unquestioned by you, a man who was one of Theodore Tilton's most intimate friends when his course entitled him to the friendship of honorable men; we shall show you that after the publication of the Woodhull scandal Mr. Tilton showed to this man the identical paper that he said he had presented to

Henry Ward Beecher on the night of the 31st of December. They say it was destroyed immediately after the "tripartite agreement." We will show you, I repeat, that he produced it to a man, and read it, and said: "This is the paper that I presented to Henry Ward Beecher on that night;" and when that man, looking at the paper, says: "Is that in Mrs. Tilton's handwriting," he says: "No, it is a copy, but the original is with Frank Moulton." And that was after the Woodhull publication. Now, gentlemen, if we show you that fact, I think that will end this case, and reveal this conspiracy in a light so plain that even "He who runs may read."

#### A REMARKABLE INSTANCE OF BAD MEMORY.

But to show you, gentlemen, how unworthy of credit are the witnesses on the part of the plaintiff, I need call to your attention but a single instance in the testimony of Francis D. Moulton. It is concerning the letter which they obtained from Mrs. Tilton on Saturday morning, the 31st of December, and on which they sought the return of this retraction from Mr. Beecher. Now, gentlemen, if there is any one fact in this case which must have made its impression upon the minds of these two witnesses, it is that night of the 30th of December and the ensuing day. No event in the life of Theodore Tilton ever compared with it in importance. The bringing of any accusation against a man so eminent as Henry Ward Beecher, possessing the confidence of the public as he did, whose name and fame had encircled the earth—the bringing of any accusation which involved moral turpitude against him—was a most important act. Mr. Tilton must have appreciated the consequences of it, as did his friend Francis D. Moulton from the start, because you see he began to make memoranda at once. Now, they found themselves completely flanked by Mr. Beecher obtaining this letter of retraction from the wife on the night of the 30th of December. Never was disorganization and dismay sent into the camp of an army more perfect and absolute than the dismay and disorganization which struck Francis D. Moulton and Theodore Tilton on the night of obtaining this retraction from Mrs. Tilton. They went to get a letter from Mrs. Tilton; they obtained it; and yet when we ask Mr. Moulton how this letter was obtained, he is utterly unable to tell you. It is the most remarkable instance of want of memory that I have ever seen in my experience in the trial of causes. He says in the first place, as you remember, gentlemen, that he thinks he went to the house and asked Mrs. Tilton for it, and he thinks he went into the sick room and saw her; but he doesn't know. He thinks she wrote it there, but he doesn't know. He doesn't know whether her husband accompanied him to the house or not. He doesn't know whether the husband accompanied him into the sick room or not. Finally, he doesn't know whether he was in the house at all, or in the sick room at all. He has no recollection of seeing her writing the letter at all; and finally, he doesn't know but he got the letter from the hands of Theodore Tilton himself. Now, I will read you the evidence on this subject. Upon his direct examination he says to Mr. Fullerton:

Q. How did you receive that note—from whom? A. I think from Elizabeth Tilton direct.

Mr. Porter—From her? A. From her directly.

Mr. Swarts—Not personally—at her house? A. Yes, Sir. Q. Did you see Mrs. Tilton? A. I think I did; yes, Sir. My recollection is that I went to the house and saw Mrs. Tilton.

Q. Where did you see her? A. In her room, I think, Sir.

Q. In her room? A. Yes, Sir.

Q. Sick room? A. Yes, Sir; I don't know whether it was a sick room or not, I saw her.

Mr. Shearman here suggested to Mr. Tracy that he was reading from the cross-examination of the witness.

Mr. Tracy—Yes, I thank you for the correction. Gentlemen, I am now reading from the cross-examination. The first question I read was on the direct, but I am now reading from the cross-examination. He had not any difficulty on the direct examination in answering where he got the letter, but on the cross-examination you see how his memory fails him. The last three questions that I read to you were on the cross-examination.

[Reading]: Q. Was she in bed or not? A. I do not remember.

Now, gentlemen, perhaps you will believe that a man who went to a house to see a lady to obtain so important a paper as that, and went into her room and got the letter from her in that room, would not remember whether she was in bed or not when he went in. You may believe that, but I do not think you will.

Q. Was her husband with you? A. I do not remember that he was.

Q. Do you remember that he was not? A. I don't remember that he was not.

Q. Did he go to the house with you? A. I don't remember that.

Q. Do you know how you went to that house? A. If I went to the house I rode.

Q. Did Mr. Tilton ride with you? A. I don't think he did.

Q. Do you remember that he did not? A. To the best—the best of my recollection is that he did not.

Q. Was he in the house when you went there? A. I don't recollect.

Q. Whether he was or not? A. No.

Q. From the time you went in until the time you came away, you don't recollect of seeing Mr. Tilton there? A. I do not.

Q. And don't know that he was there? A. Don't recollect that he was.

Q. Or that he was not? A. Don't recollect that he was there.

Q. Well, do you recollect that he was not? A. I don't recollect that he was there.

Q. Was that letter written in your presence? A. Don't recollect whether it was or not.

Now, gentlemen, we have shown you that Mrs. Tilton was sick that night and that day. This explanation, which I will read to you in a moment, shows that she was sick in bed, and we shall show you she was sick in bed on that occasion. She had been attended by her physician every day, from the 24th until the 30th. And yet this man, who went there to obtain this letter, don't know whether she was in bed or not when he went into her room; and he don't remember the fact of whether that letter was written in his presence. Now, it is not so important, gentlemen, where Mr. Moulton obtained this letter; it is not very important, except as it char-

acterizes his conduct, whether he got it at the house by Theodore Tilton going up into the room and getting the wife to write it and bring it to him, or whether he went into the room and waited for her to write the letter. But it is important for you to know whether this witness is telling the truth, the whole truth, and nothing but the truth; or whether he is equivocating, whether he is saying he don't remember when you know he does remember; and, if you believe that he says he does not remember a fact when he does remember it, that discredits his testimony utterly and thoroughly, and you are not permitted to give any credit to it.

Q. From whose hand did you receive the letter? A. I think I received it from the hand of Elizabeth Tilton.

Now, gentlemen, there is a scrap torn off here from my notes; but the next answer he makes is—he is asked:

Can you say you did not receive it from the hand of Theodore Tilton?

And he says:

I cannot say but I did receive it from the hand of Theodore Tilton.

#### MR. MOULTON EQUALLY A CONSPIRATOR WITH MR. TILTON.

Now, gentlemen, there is another fact in this connection to which I desire to call your attention, which goes to show the good faith or the honest purpose of Francis D. Moulton. You remember that he told you he is the friend, and has been the intimate friend, of Theodore Tilton from boyhood. He says he learned on this night that his friend's wife had been debauched by Mr. Beecher, and he had consulted him in regard to that matter as a friend. The question we are now considering is whether Moulton is a conspirator with Tilton against Henry Ward Beecher. Having been consulted by his most intimate friend, and having pledged him his friendship in this transaction, he goes down to Henry Ward Beecher and invites Mr. Beecher up to this interview; and he tells you, gentlemen, that before Mr. Beecher reached his house he pledged his friendship and fidelity to Henry Ward Beecher in this same matter. Now, that he was the sincere friend of Mr. Tilton you know, nobody will doubt that. Was he the friend of Henry Ward Beecher, and was he actuated by good faith when he made that promise? That is the only question for you to consider here in order to determine the character in which Mr. Moulton stands in this case. If you believe that assurance to Mr. Beecher was made in bad faith for the purpose of getting his confidence, the better to enable him to perpetrate the scheme and get this paper from him, that makes him a conspirator with Theodore Tilton in this transaction. But, further, gentlemen, he goes back to Henry Ward Beecher on the morning of the 31st, and requests the return to the retraction. Presenting a letter of Mrs. Tilton, he obtains the retraction and goes away. Now, he knew at that time that he obtained this retraction by presenting this letter of Mrs. Tilton. Yet, when the matter is first published by the Woodhulls, it is published by them in this way: Mr. Tilton is represented as saying: "My friend took a pistol, went to Mr. Beecher, and demanded the letter of Mrs. T., under the pain

of instant death." That was one of the most severe charges against Mr. Beecher in the article. In Mr. Tilton's statement, and in all of Mr. Moulton's statements, they had conveyed the idea, in one form of language and another, that Mr. Beecher was compelled in some way to surrender that retraction to them; that is, that they demanded it of him, and that he surrendered it; and the question which has influenced the public against Mr. Beecher more than any other fact, is the question of how he came to surrender this retraction upon the demand of Moulton that night. They have always concealed the fact that they had Mrs. Tilton's letter, who had a right to demand its return; and that they presented that letter to Mr. Beecher, and upon that induced him to surrender the retraction. That is a fact always concealed by these men, never made public until forced out of them in this judicial investigation.

Has that concealment been made in good faith? or has it been one of the tricks of these parties, like the garbling of Mrs. Tilton's letter, for the purpose of creating public opinion against Henry Ward Beecher. Why did they not publish, when they published anything, the simple fact that they took this letter of Mrs. Tilton to Mr. Beecher, requesting the return of this retraction, and upon that he surrendered it? That would have been the simple truth, would have told the story truthfully; but they would not have accomplished the object they had in view.

Now, another thing, the reason of that was asked Mr. Moulton upon the witness stand. He was asked to explain that, and what does he say? He says he had absolutely forgotten the existence of this paper. Forgotten the existence of such an important paper as this! In the face of the Woodhull scandal, even the existence of this paper had not occurred to him! "But you learned it somewhere, Mr. Moulton?" "Yes, Sir." "You published it in one of your statements, Mr. Moulton?" "Yes, Sir." "Did you there publish it in connection with the surrender of the retraction of the accusation, or the surrender of the retraction?" No; he did not, and he is compelled to say he did not. Now, every publication which he makes in which he puts this letter, carries the idea that this retraction was surrendered to him upon a demand, and he publishes this letter in an entirely different connection. Twenty pages away from the statement he publishes this identical letter, and he publishes it for the purpose of telling a lie—does tell a lie in connection with it. He publishes the letter and says, "I could not comply with Mrs. Tilton's request to return these letters to her that she might destroy them, because I had previously given my word to Henry Ward Beecher that I would carefully preserve them both." Yet, gentlemen, he had this letter in the morning, and he obtained that retraction in the evening, and he obtained it upon the credit of this letter itself and nothing else. He says that he had—[Mr. Shearman here suggested that Mr. Tracy had quoted the last statement incorrectly].

Mr. Tracy—I thought I had repeated it correctly. He says he had previously pledged his word to Henry Ward Beecher that he would preserve both papers together and not destroy them. Previously? Why he had not seen Mr. Beecher concerning this retraction, until he had the letter of Mrs. Tilton in

his pocket. The retraction was obtained on the night of the 30th and he did not see Mr. Beecher again until the night of the 31st. He had this letter in his pocket on the morning of the 31st, and took it with him to Mr. Beecher, and read it to him; and yet he conceals this fact; but when he is compelled to publish every paper he had in his possession on the subject, he publishes the paper, and then tells a lie about it, by saying, "I could not comply with Mrs. Tilton's request, because before I had received this letter from her, I had given to Henry Ward Beecher my word of honor that I would preserve both papers."

Mr. Tracy temporarily rested in his argument at this point and the Court was adjourned until 11 o'clock on Friday morning.

## THIRTY-FOURTH DAY'S PROCEEDINGS.

### A GENERAL ATTACK UPON THE PLAINTIFF AND HIS ALLIES.

MR. TRACY'S OPENING ADDRESS CONTINUED—CIRCUMSTANCES UNDER WHICH THE LETTER OF CONTRITION WAS WRITTEN—AN INTERVIEW ALLEGED TO HAVE BEEN INVENTED BY MR. MOULTON—THE SETTLEMENT WITH MR. BOWEN AND THE TRIPARTITE AGREEMENT—MR. TRACY EXPLAINS HIS CONNECTION WITH THE SCANDAL.

FRIDAY, Feb. 26, 1875.

A vigorous attack on the so-called "letter of contrition" was made by Mr. Tracy during the first hour of to-day's session. The circumstances connected with its writing, from the beginning of the interview at which it was composed to the penning of the memoranda at the end of the paper, were explained with remarkable minuteness. Not a pen-scratch was disregarded; not a point lost to view which might have weight for the defendant. The original document was placed in the hands of the jurymen, who examined its contents while Mr. Tracy was engaged in its explanation. Mr. Beecher, at the time of its writing, said Mr. Tracy, stood convicted in his morbid imagination as a slanderer of the meanest type, and as a pastor and friend whose heedless folly had introduced discord in the holiest of relations. The speaker insisted that the letter was a hasty report of hasty expressions, made at the conclusion of the interview, and not from dictation as sworn to by Mr. Moulton.

Mr. Moulton said in his testimony that he had four interviews with Mr. Beecher on as many successive days, beginning with Jan. 1, 1871, on which day the letter of contrition was written. Mr. Tracy announced to-day that the interview of Jan. 2

(which day was celebrated as New Year's Day, Jan. 1 falling on Sunday), sworn to by Mr. Moulton, would be proved to be an invention of the witness. Mr. Beecher was receiving calls, said the speaker, at the time that Mr. Moulton says the interview took place. Mr. Tracy then referred to the interview alleged by Mr. Tilton to have taken place in regard to the paternity of the boy Ralph, speaking of the assertion as a monstrous story, and saying that he would prove that the alleged interview was about another subject. After recess Mr. Tracy delved into the Woodhull corruption, letting in the light of the defense upon Mr. Tilton's intimacy with the woman. The speaker asserted that the plaintiff, instead of attempting to prevent the publication of the scandal, stimulated Mrs. Woodhull. A fragment of Mr. Tilton's poem, "Sir Marmaduke's Musings," was read by Mr. Tracy, who contended strongly that the reference in it to a false woman was intended to stir up again the scandal, and he added that it was a significant fact that at that time Mr. Tilton had just overdrawn his account with Woodruff & Robinson. The money transactions between Mr. Tilton and Mr. Bowen were fully entered into, the speaker alleging that in the Spring of 1872 Mr. Tilton returned from the West, and one day called on Samuel Wilkeson with a proof of a letter explaining why his contracts with Mr. Bowen had been broken, and threatened that he would publish it if Mr. Beecher did not do him justice. Mr. Tracy inquired why Mr. Tilton should threaten the publication of a letter affecting Mr. Bowen if Mr. Beecher did not do Mr. Tilton justice, and explained that Mr. Wilkeson promised to do what he could for Mr. Tilton, believing that Mr. Bowen did rightfully owe him \$7,000. This was on March 29, and on April 3 Mr. Tilton, according to Mr. Tracy, received the money from Mr. Bowen. The lawyer promised to prove that the tripartite agreement was the first step in the settlement with Bowen, and that the agreement was considered before the arbitrators. Mr. Tilton testified that the two transactions were separate, but Mr. Tracy says he will prove to the contrary by the arbitrators themselves. From the fact that during the Summer and early Autumn of 1872 Mr. Tilton was actively engaged in the great political campaign of that year, Mr. Tracy drew the conclusion that for that reason nothing was heard of the scandal, and insinuated that perhaps Mr. Tilton intentionally

absented himself at the time of the publication by Mrs. Woodhull in November.

Mr. Tracy now came to a stage in the proceedings in which he felt himself personally interested. He said that his name had been dragged into the affair in a manner affecting his professional conduct, and he desired to make a personal explanation.

"Are you going to be a witness, Mr. Tracy?" queried Mr. Beach, interrupting the speaker. "I shall, if it be necessary," replied Mr. Tracy.

Mr. Beach arose and expressed to Judge Neilson his protest against Mr. Tracy's entering into any personal explanation of matters which he did not promise to prove. Mr. Evarts addressed a few words to the Court, after which Mr. Porter spoke, saying that his side would not be dictated to as to whom they would prove matters by. Mr. Porter became considerably excited before he finished, and Mr. Beach quietly rebuked his warmth, saying that he had no objection to Mr. Tracy's explaining his conduct if he would say that whatever he alleged would be proved, and not considered a personal explanation merely. Mr. Beach said that Mr. Tracy had already gravely and grossly departed from the office of an opening. Mr. Porter said that all Mr. Tracy alleged was susceptible of proof. Mr. Tracy then continued his speech, occupying the ensuing 45 minutes, and concluding at a quarter after 4 o'clock, with the history of his connection with the case.

### THE PROCEEDINGS—VERBATIM.

#### THE OPENING FOR THE DEFENDANT CONTINUED.

The Court met at 11 a. m., pursuant to adjournment, and the opening for the defendant was continued, as follows:

#### MR. BEECHER'S SYMPATHY USED TO A PURPOSE.

MR. TRACY—*May it please the Court, gentlemen of the Jury:*—When I closed last night I had finished all I had proposed to say to you on the subject of the interviews of the 30th and 31st of December, except that, in another connection, I shall have occasion to refer to what Mr. Moulton says were the confessions of the defendant on the evening of the 31st. That interview, as you remember, gentlemen, closed by Mr. Moulton having obtained from Mr. Beecher the surrender of Mrs. Tilton's retraction of the charge which she had made against him in her letter dated Dec. 29. It had been surrendered on the express promise of Mr. Moulton that that retraction and the accusation should be preserved and kept together. He had taken that retraction to Mr. Tilton, and the difficulty in which they seemed to be involved the day before by Mr. Beecher's holding in his possession such a piece of terrible evidence against Mr.

Tilton, was removed. They had discovered also that the shock which Mr. Beecher had received in consequence of the accusation of Mrs. Tilton, of beholding her on her sick bed, not only shattered in body but as he feared in mind, had produced a profound impression upon Mr. Beecher. The quick and accurate eye of Moulton had not failed to discover that his heart had been disturbed and moved to the very foundations.

#### THE HARD MEASURES BY WHICH THE LETTER OF CONTRITION WAS OBTAINED.

Having obtained from his hands the evidence which he held against them, on a promise that the accusation and the retraction should never again be used, the next thing that seems to have occurred to these parties was to pursue this interview, and to see if they could not obtain from Mr. Beecher something authenticated by him which would give a pretext to the accusation which Mr. Tilton had made against him. Because Mr. Tilton did not care to rest, if he could help it, under the imputation—although the retraction had been surrendered—he did not care to rest under the imputation which that retraction cast upon him; and he sought, if possible, to get something from the defendant which should justify or palliate the charge which he had made. Therefore Mr. Moulton returns to the interview on Jan. 1. I shall not stop to dwell here, gentlemen, upon the want of memory of Mr. Moulton as to the time when that interview began and when it ended, as to whether the gas was lighted or whether it was not; all that will be distinct in your mind. I come now to the interview, as he relates it, and to what did in fact occur at that interview, and to discover, if we can, how much credit his testimony is entitled to, when he says that the paper which he took away from that interview was a paper dictated by Mr. Beecher, sentence by sentence, and written down by him as thus dictated.

On the evening of January 1, Moulton again visited the house of Mr. Beecher. But he came to make peace, not war. He drew a picture of Tilton's sorrows, of the utter wreck of his fortunes, of the destruction of his family peace; and all in terms so vivid and touching as to excite the feelings of his hearer to the highest pitch. He vindicated his friend from the calumnious stories which had been brought to Mr. Beecher and had been believed by him. He convinced Mr. Beecher that the charges which the latter, believing them to be true, had repeated to Mr. Bowen, were utterly without foundation. Then he dwelt on the alienation which had arisen between this husband and wife, and on the utter misery which had fallen upon the whole family in consequence. All this in terms calculated to wring tears of blood from a compassionate heart, but without a word of direct accusation against Mr. Beecher. And yet, under everything ran the implication that in some way Mr. Beecher was responsible for all this suffering. Responsible for Tilton's business misfortunes, because he and Bowen had united to turn him out of *The Independent* and *The Brooklyn Union*. Responsible for the domestic misery, because the alienation of the wife, which Mr. Beecher had previously supposed to have arisen from the misconduct of the husband, was now assumed to have been caused by an undue affection for her pastor and a violent and protracted

struggle between her passion and her sense of duty, which had destroyed her health and unsettled her reason.

Now, gentlemen, neither of these statements fairly describes anything which Mr. Beecher had actually done. They are only what he was made by Moulton to believe he had done. It is very easy to imagine the effect of such a process upon a nature proverbially kind and ingenuous. The measure of undeserved misery then predicated of this plaintiff having been piled very high with careful ingenuity, it needed but a slight push of suggestion to roll the whole over upon the defendant. It needed no special argument or persuasion to fix the responsibility; the man for whose shoulders it had been prepared hastened himself to assume it. Henry Ward Beecher stood convicted in his own morbid imagination, as a slanderer of the meanest type, and as a pastor and friend whose heedless folly had introduced discord into the holiest of relations, and had plunged into sorrow one of the happiest families of his flock.

Gentlemen, can you picture to yourself the agony of his self-reproach under this new and astounding revelation? Can you imagine with what fanatical remorse he would pierce himself again and again with the thorn thus furnished to his hand? "What species of slander," he would say, "is so base as to charge a friend falsely with marital unfaithfulness, seeing that the charges must involve not him alone, but also some innocent woman in inevitable obloquy?" It is true he might palliate to himself the fault by pleading the honesty of his intentions and his belief in the truth of those reports. But neither in law nor in morals is the mere belief in a slander any justification for its utterance in the absence of a preliminary inquiry, with care proportioned to the magnitude of the case. Why had he not made more careful inquiry into the sources of his information? Why had he not instituted a more searching investigation into the facts before assuming the responsibility of action so injurious? Why so prompt to receive with credit calumnious reports against a friend? Such were the questions which the aroused conscience of the defendant, under the skillful manipulation of the plaintiff's serviceable friend, pushed home with stinging force and agonizing effect.

#### WHY MR. BEECHER WAS READY TO APOLOGIZE.

But if on this first charge Mr. Beecher, following the delicate instincts of an honorable man, felt himself to be absolutely without excuse, how must his self-reproach have been intensified by the additional thought now presented to him, that he had been the means of beguiling Mrs. Tilton into an undue affection for himself, and thus alienating her from her husband and destroying the home where that husband might otherwise have found refuge with his ruined fortunes? If this were so, and the evidence of what he had himself seen led him in his then excited state to accept Moulton's statement as true, there was absolutely but one excuse or palliation which he could offer to his own accusing conscience for the offense, namely: That he had not intentionally done wrong, that though he might have been culpably careless, he had not been consciously guilty of any conduct tending to encourage the alleged affection. But such a defense involved the implication that the lady had conceived this passion entirely without suggestion from



him, or any encouragement on his part, and he was debarred from any such plea by all the instincts of a gentleman as well as by his genuine respect and affection for the lady herself. Nor would this plea, even if he could have induced himself to make it, have been a full defense. It is the solemn duty of a clergyman to prevent such a disaster from arising out of his associations with his flock. He is gravely in fault if he fails to see and to repress the first symptoms of a dangerous affection for him on the part of a married woman. This, gentlemen, is the simple and obvious meaning of that language in Mr. Beecher's statement which has been so maliciously and so dishonestly perverted for the ends of this great conspiracy. "The case, as it then appeared in my eyes," says Mr. Beecher, speaking of this interview, "was strongly against me. My old fellow-worker had been dispossessed of his eminent place and influence, and I had counseled it. His family had been well nigh broken up, and I had advised it; his wife had become sick and broken in body and mind, and I, as I fully believed, had been the cause of all this wreck by continuing, with blind heedlessness, that friendship which had beguiled her heart, and roused her husband into a fury of jealousy, although not caused by any intentional act of mine. And should I coldly defend myself? Should I hold her up to contempt as having thrust her affections upon me unsought? Should I tread upon this man and his household in their great adversity?" All this, for purposes sufficiently obvious, has been industriously misrepresented as a contemptible resort on the part of Mr. Beecher, to the very line of defense which in this language he expressly repudiates. Though this was his only possible defense, yet he forebore to use it. It was either this or silence, or what was but one degree better than silence, an acceptance of all the blame, together with an earnest disclaimer of any intentional wrong. He says: "I disclaimed with the greatest earnestness all intent to harm Theodore in his home or business." Think for a moment of his situation, gentlemen. A charge, the most terrible that could possibly confront a man in his position, (for it would be easy to show that, under the circumstances, a charge of impure proposals would seem to be more difficult to meet than one of actual adultery,) such a charge has been suddenly sprung upon him like a thunder clap from a clear sky, not from the gasconading harlequin who orders him out of Brooklyn at the muzzle of a sheet of "commercial note," but in a paper signed by a lady, his friend, his child almost, one whom he knows to be, when in her normal condition, pure and good and truthful. How stunning the surprise! how horrible the complication! Is it possible that she can have consented to such an accusation? If so, what diabolical machination has led to it? And what must be the final result? He has received from her, indeed, a frank retraction, with tearful expressions of regret, and a touching account of the means by which she was driven to such an act; but hardly are these consoling accounts cold before he is informed of a re-retraction! Then is she indeed broken in health and distracted in mind; and all these troubles have been brought upon a family for many years, and still so dear to him; and he a minister of the gospel, who has been to these people as a father, the man by whose agency

all this ruin had been brought about! When we consider the swift succession of images presented to the man who, in addition to his remorse for the past, had reason to apprehend a plunge into public conflict with a jealous husband, and with no other defense than his own simple word of honor, can we wonder that Mr. Beecher was a deeply-agitated and excited man!

But this is not all. The pastor of Plymouth Church, surrounded by troops of friends, might have risked even this terrible conflict, if he were absolutely free from blameworthiness. And it has been freely asked, how could he apologize to a husband who brought a false charge against him? But this contingency had been foreseen. The emissary of Tilton entirely dropped the charge of improper advances, and neither then nor ever afterwards alluded to it. But using the language and manner of a gentleman, and pledging his word of honor to the truth of what he said, he found no difficulty in convincing Mr. Beecher that the unhappy little woman, who, as he well knew, and as her husband knew, had always loved Mr. Beecher with a reverential affection, had been misled by his flattering attentions and sympathetic interest into an actual passion for him, which had destroyed her domestic peace, and the struggle between which and her sense of duty had shattered her mind. That this was the fact, we have already shown that Mr. Beecher was made fully to believe. And did not this afford a more satisfactory explanation of her mysterious charge than his previous supposition that it was extorted from her by her cruel husband? Nothing was more natural than that a woman, whose mind was shaken by this cause, should imagine that the object of her love had solicited her affection. Nothing more natural than that in an hour of remorse and of mental prostration, she should confess her own passion and assert that she not only loved but had been loved. For where is the woman living who will freely confess that she has loved without encouragement and without solicitation? This supposed state of facts cleared up the whole mystery, explained the whole disaster to the family, and relieved the husband from all suspicion of a conspiracy against his pastor.

But where did it leave the pastor himself? It made his defense impossible, so long as the accusation brought against him was not coarse and vulgar in its terms. He was not free from fault. His own conscience condemned him. Although he well knew that he had never said an impure word, nor offered an impure caress, yet he could not deny the charge of having beguiled the woman's affections, without imputing to her the indelicacy of "thrusting her affection upon him unsought." This is what he said he would die before he would do. This is what he said in his statement last August that he had always found it impossible to do. Nay, more, with such instinctive horror did he shrink from such a defense, that he would not use it to justify himself before his own conscience, but assumed at once that in some way he must have been to blame, he must have enticed the affections of this wife from her husband. And to this charge, which was the only one intimated by Moulton, he pleaded guilty before his own conscience and before his God. I refer now, gentlemen, to the interview of January 1st, when I say, "as intimated by Moulton —"

### MRS. TILTON NEVER UNFAITHFUL IN DEED OR THOUGHT.

Here, gentlemen, I must break the thread of my narrative to prevent a fresh injustice to my client. It must be distinctly understood that he does not now believe, and that he did not when making his statement last August, believe one word of this story concerning Mrs. Tilton's passion for him, to which he was induced to give evidence in January, 1871. He believes that Mrs. Tilton has never been unfaithful to her husband in word, look or thought. He believes that she has lavished upon her unworthy husband all the treasures of her royal nature, and that all the fountains of her love—a love to whose depth and tenderness no justice can be done by language of mine—have been wasted exclusively upon that barren sand which the plaintiff has himself described as the "cold and cruel heart of Theodore Tilton."

### MR. MOULTON ACCOMPLISHES THE COMMISSION.

But, Mr. Beecher had no such relief on the night of January 1, 1871. Full of the conviction that he was responsible for the shattered mental condition and the domestic misery of the woman whom he loved with as pure an affection as any of you, gentlemen, have for your own daughters, for upwards of an hour Henry Ward Beecher walked that floor giving utterance to emotions so intense, in language so extravagant, that the self-possessed, keen-eyed gentleman watching him there, almost forgot the delight of triumph in the pleasure of surprise. He had come to this interview, commissioned to obtain at all hazards, something from Beecher, something to supply the place of deserting auxiliaries and lost ammunition. Bowen had slipped from under and could no longer be relied on for the promised reinforcements. The charge of improper proposals had failed or had been neutralized by the retraction; the locker is absolutely empty, and the whole campaign must be begun anew. To get in Mr. Beecher's hand or with his signature something in the nature of a confession of improper advances to fit the vague accusation which had already been propounded with such imperfect success—this was the problem. A tolerably difficult game to play, one would be apt to think, with the wily and accomplished villain whom you had already heard so vigorously described by the senior counsel for the plaintiff. But lo, this man, represented to you as a shrewd and gifted scoundrel, a consummate villain, an unparalleled dissembler, who had practiced wholesale lewdness for more than thirty years under the concentrated gaze of the whole world, and up to this time succeeded in covering his tracks—now advances voluntarily to this friend of a day, opens at once every joint in his harness, and invites him to insert his javelin at his own sweet will. Why, gentlemen, never did a three-year old baby, quivering with contrition for its first conscious fault, more swiftly run to bury its bowed and tearful face in its tender mother's lap, than did this suffering man advance to cast himself on the breast of that guileless and gushing creature, Francis D. Moulton.

### MR. BEECHER'S PROFOUND SORROW AND APOLOGY.

With the volubility of one half crazed, he pours out the most poignant self-reproaches without limit. For, gen-

tlemen, you know that men express themselves about their sins generally in inverse ratio to their desert of blame. Their estimate of sin is according to their standard of holiness. There was once before, in good old Scripture days, a man who was given over for a time to the manipulations of the devil. I refer to Job, the patriarch of Uz, who is spoken of as a man "perfect and upright, one that feared God and eschewed evil." And yet in the days of his affliction this good man could say: "I abhor myself and repent in dust and ashes." It was because he had been permitted to see in a vision the divine standard of holiness. The greatest of prophets cried: "Woe is me, for I am unclean, for mine eyes have seen the Lord." And from those times down pure and spiritual-minded men—men conspicuous in the world for personal holiness—have been wont to puzzle and astonish worldly natures by the unmeasured terms in which they have denounced their own faults and imperfections. So this defendant on this occasion, excited almost to frenzy by pity and remorse, gave way to his mighty sorrow in a vocabulary whose somber richness and fullness we may well imagine. How embarrassed by the very copiousness of the resources thus gushing forth before him, must have been this "cool hand" who there with hard, cold eyes, sat watching this curious development. "Something to commit Beecher" had been his quest, and here was Mr. Beecher himself furnishing terms in torrents, intense enough, comprehensive enough to cover all sins forbidden in the decalogue! Oh, to get a thousandth part of this rich material on paper, for here it is running all to waste, and every sentence is gold and "there's millions in it." But the copious talker is in no mood for writing, and our shrewd operator in vivisection, watching then his opportunity, sees the supreme moment arrived for dropping the scalpel and taking up the pen.

### THE REAL WAY THE LETTER OF CONTRITION WAS WRITTEN.

And now, gentlemen, having brought you up to the situation as it exists in our conception, let us leave it thus for a moment. Mr. Beecher, pouring forth an unceasing torrent of morbid self-accusation and sorrow, and Moulton, with unpracticed pen in the gathering darkness at his wit's ends to make rapid selection and arrangement from the multitude of significant expressions such as should best answer the end in view, namely, to get Mr. Beecher on paper in the attitude of a penitent criminal—let us, I say, turn from this interesting situation, and institute a somewhat careful inquiry into the genesis and nature of the remarkable paper which was the product of that rapid incubation. There is no doubt, gentlemen, that the paper originally called the "Letter of Apology," but more recently the "Letter of Contrition," was written by the mutual friend at this interview of January 1, 1871; but in regard to every other fact concerning its preparation the defendant and Mr. Moulton will be in conflict.

The interview of January 1 is described by Moulton as follows. On his direct examination he says [reading from *THE TRIBUNE'S* report]:

Q. State, if you please, what that interview was? A. I told Mr. Beecher that I had taken the retraction to Mr. Tilton, and that I had told Mr. Tilton that it would have been very foolish for him to have carried his threat of the morning into execution. I told him that Mr. Tilton was pleased with my having procured the retraction, and that I told Mr. Beecher that Mr. Tilton seemed to me to be—

[Then he was interrupted. Then he proceeds again]:

I told him that I thought that—I told him that Tilton told me that he had made up his mind that, no matter what came to himself, he would undertake to protect the reputation of his wife at all hazards. Then Mr. Beecher said to me that he was in misery on account of the crime that he had committed against Theodore Tilton and his wife and family; he said that he would be willing to make any reparation that was within his power; he said that Mr. Tilton, he thought, would have been a better man under the circumstances in which he had been placed than he had been; that he felt that he had done a great wrong, because he was Theodore Tilton's friend, he was his pastor, he was his wife's friend and pastor, and he wept bitterly; and I said to him, "Mr. Beecher, why don't you say that to Mr. Tilton?" [Observe, gentlemen, that the suggestion of writing comes from Moulton in this interview.] I said to him, "Mr. Beecher, why don't you say that to Mr. Tilton, why don't you express to him the grief you feel, and the contrition for it. You can do no more than that, and I think I know Theodore Tilton well enough to know that he would be satisfied with that, for I know he loves his wife." Mr. Beecher told me to take pen and paper and to write at his dictation, and I did write at his dictation the letter of January 1, 1871.

Q. What was done after you wrote that letter? A. I read the letter to him, and he read it, and then he signed—

Q. Never mind; we will show that in a moment. You say you read it to him? A. Yes, Sir.

Q. Did you read it as it was? A. Yes, Sir, and as it is.

Q. Did he take it and read it? A. Yes, Sir.

Q. Do you mean to be understood that you read it to him, and that he read it afterward for himself? A. Yes, certainly.

So remarkable a fact, you observe, gentlemen, had attracted the attention of the counsel, and he wanted to make sure if the witness meant to be understood that after he had read this letter aloud carefully to Mr. Beecher, Mr. Beecher then took it and read it over for himself. "A very remarkable fact, if it be true," as the newspapers say.

On cross-examination he was asked:

Q. Well, what subjects did you and Mr. Beecher converse about on that day; just name the topics of conversation, so far as you can remember? A. The effect of the recantation upon Theodore Tilton; Mr. Beecher's expression of contrition for the crime that he had committed against Elizabeth Tilton and Theodore Tilton, and his expression of regret that he had mentioned Mrs. Bullard's name to Mr. Bowen; those are the three distinct subjects that I now recollect.

Q. And the only three that you recollect? A. Those are the three, Sir.

You will remember, gentlemen, that he described that interview as lasting from one to two hours, and yet he names but three subjects that were conversed about at that interview, and all he relates of the interview would not have occupied more than ten minutes. Indeed, he states but little of importance occurring on that day, except the fact of the writing of this letter. He admits that the preparation of the paper was suggested by a remark that Mr. Beecher made during that conversation. But in another part of his testimony he says that the paper was prepared at the beginning of the conversation. He

says it was dictated by Mr. Beecher deliberately, sentence by sentence, and that he wrote it down as dictated, and that the paper is not only in Mr. Beecher's words, but the very sentences are of his construction, while Mr. Beecher will tell you, gentlemen, that this paper was prepared toward the close of a long and excited conversation, embracing many more topics than those referred to by Moulton; that it was suggested by Moulton, who remarked that Tilton was under the impression that Beecher was inimical to him and desirous of his overthrow, and that if Tilton could but know how kindly Mr. Beecher had expressed himself toward him in this conversation, it would remove all harshness from his mind. Mr. Beecher declined to write, but said: "You can tell him what I say." To which Moulton replied: "It would have more effect if it came from you in some authentic form." "Well," said Beecher, "you can make a memorandum of what I say." And thereupon Moulton took a pen and began to write what Beecher had said during the conversation. Substantially, gentlemen, the only dictation which Mr. Beecher did in the matter, was on two or three occasions, when Moulton asked him: "What word or phrase did you use at this point?" And Mr. Beecher supplied the word or phrase as the case might be. The preparation of the paper was the last thing done at the interview. It was completed after Mr. Beecher's tea-bell had rung, which on Sundays always rings at five o'clock. The sun had set. The room was growing dark, and the gas was not lit. It was written in great haste, it was not read over by Moulton, nor was it read by Beecher. It would hardly have been possible for either to read it. When asked by Moulton to sign it, Mr. Beecher refused, on the ground that it was not his paper; but, being pressed, he finally took a pen and wrote on the extreme lower edge of the last page: "I have trusted this to Moulton in confidence. Henry Ward Beecher."

#### THE LETTER OF CONTRITION ANALYZED.

The question at issue between Moulton and this defendant is this—Was the paper prepared at the beginning of the conversation, deliberately dictated sentence by sentence, written down exactly as delivered and present with the parties during the remainder of the interview, or, on the other hand, was it hastily prepared, at the end of the conversation, by one who endeavored to gather up and record the more salient points of what had been previously uttered? To settle this question of veracity, gentlemen, I appeal to the paper itself. Is it credible that Henry Ward Beecher ever dictated and deliberately signed such sentences as are here recorded? We say that the paper bears on its face conclusive evidence of desperate haste, leading to inaccuracies of composition, which neither Mr. Beecher nor Moulton could ever have committed, had they written deliberately and at their leisure. In the first place, it lacks all the indications which would distinguish a letter either written or dictated by a man of culture habituated to the production of thoughtful methodical papers. The slightest glance must convince any intelligent man that no man of letters could ever have literally dictated this incoherent production, no matter what his mental condition, if it were

short of absolute insanity. Even if he had been insane, it is doubtful whether the habits of a literary man would not have led him to prepare a letter having at least the external symbols of logic, sense, and order. But the paper now under consideration, as the most uneducated man may see, is absolutely without logical sequence, and violates the most familiar rules of composition. If Mr. Beecher had really dictated a letter to Mr. Moulton, sentence by sentence, his literary instincts would inevitably have prompted a production having such a natural beginning, middle, and end as is common to all letters written by educated men.

This paper has none of these things. It opens with an abrupt, extravagant, expression which, if literally construed, is profane, and which shows upon its face that it is a distortion of a proper, though excited expression. But note, also, the entire disconnection of the latter part of the sentence from the first. I desire, gentlemen, during my comments on this letter to hand it to you. You will have to take it, half of you at a time, and then pass it to the others. First, if you please, hand it to Mr. Halsey on the back seat. [The original paper was handed to Mr. Halsey.] The first sentence of this letter, gentlemen, is as follows:

MY DEAR FRIEND MOULTON: I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God, he would have been a better man, in my circumstances than I have been—

Now, I ask you to note that the last clause of that sentence has no sort of relation to the first; and, yet, Mr. Moulton coolly swore in your presence, that Mr. Beecher deliberately dictated as one single connected sentence, without any intervening stop, these extraordinary words: "I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God, he would have been a better man in my circumstances than I have been." No one but a maniac could have deliberately uttered such a sentence; and neither Mr. Moulton nor Mr. Tilton has ever ventured to print that sentence in type as it was originally written. But all the sentences are disjointed; they do not follow each other in any natural order. Their confusion is perfectly comprehensible if we believe that they are hasty reports of hasty expressions, spread over a long conversation, at intervals, and eagerly grasped at by a man who was anxious to record the worst language which he could possibly select from the excited utterances of a man under deep feeling; but utterly incomprehensible, if we accept Mr. Moulton's oath that the paper was deliberately dictated and deliberately written.

But it is necessary that I should call your attention to still stronger evidence of the desperate haste with which this paper was prepared by other internal evidence of a still more unmistakable nature. In the first place, if you observe the paper, you will see that the first four or five lines are more distinctly written than the subsequent portion. Down to the word "God" every letter is complete in itself, but after this word a comma is inserted where there should be a period, and the next word begins with a small, instead of a capital "H" in the first sentence, after the word "God." You can hardly read that sentence, gentle-

men, without making a period at the word "God," and commencing the new sentence of course with a capital; and yet you will observe that it is commenced with a small "H" and separated only by a comma. Now, Henry Ward Beecher would never have dictated such a sentence as that; it is not possible, nor is it possible that Francis D. Moulton would have ever written such a sentence as that, except in the greatest haste, and I am now referring you to the internal evidence from the paper itself, that Mr. Beecher's version of the conversation must be true, and Mr. Moulton's must be untrue. It will be further observed that the writer inserts a comma after the word "man," where there should be none, and a dash after the word "been," where should be a period. He next writes, "I can't ask nothing"—clearly showing that he did not write this from dictation. For he would not have written "can't," where Mr. Beecher had just dictated "can." But starting to frame the sentence "I can't ask," he discovered as the remainder was formed in his mind, that he must change "can't" to "can," and so canceled the "t," as you see in the manuscript—a clear evidence, as we submit to you, gentlemen, that that word was not written from dictation, but it bears internal evidence that it was written by a man who was starting to frame a sentence in his own mind, writes three words of the sentence, and then sees as the balance of it is formed in his mind, that he must change the word, and so he changes "can't" to "can." And so the word "other" is imperfectly written, the necessary letters being undiscoverable, as is seen by an inspection of the paper, showing further evidence of the haste with which the writer went on with the composition. You see as he began, he began leisurely, writing the first few lines—every word perfect; but as he goes on in his composition, his haste increasing, darkness perhaps coming on in the room, there are letters left out of the words and characters that cannot be said to represent any letters. The word "would" is very imperfect; no one could say that the last character was intended for a "D." After the word "ache" he makes a dash, instead of a period as there should be. The first period occurring in the paper is found after the word "myself," away down in the composition. The words "for myself" were interlined, which would not have been the case, had he written them down from Mr. Beecher's dictation. The second period occurs after the word "suffer." The next period occurs after the word "inculcated." The sentence succeeding begins with a small "A" after the period he has marked.

#### THE ORIGINAL PUNCTUATION OF THIS LETTER.

You observe he has marked a period there; and then, in haste, has begun the sentence with a small letter instead of a capital; and I want to impress upon you the fact, gentlemen, here, that although this letter was published by Mr. Moulton, it has never been published as written; that is, he changes the whole form and style of the letter by the form of its punctuation—the manner in which he punctuates it and publishes it. The punctuation I now give is in accordance with the manner the letter was punctuated when written by Moulton

himself; I am reading you his own punctuation of it. The word "towards" is imperfectly written, there being nothing to indicate the letters "d s" except a single dash of the pen resembling "d s" in no wise either singly or together. There is no comma after the word "friends" as there should be. The next "toward" is printed "towards" in the statement. You will see that, gentlemen, in the sentence "lying there and praying, with her folded hands." After the word "hands" there is a semi-colon instead of a period, but the next word begins with a capital, "She is guiltless"—the word "she" beginning with a capital. The "s" in "sinned against" has been altered evidently from an "I." He started to write "I," then he changed it to "s" and wrote the word "sinned." There is no period mark after the word "another," although the next word begins with a capital, as it should do—the sentence beginning "Her forgiveness I have." You see the "I" looks as if originally written an "s" changed to an "i;" on the contrary, all the way through, gentlemen, this letter bears internal evidence on its face, that it was hastily prepared, prepared in great haste; confirming precisely in itself the statement which Mr. Beecher will give you of this interview, and of the manner in which this paper was prepared. Now, he asks you to believe, gentlemen, that he not only read this letter himself, but that Henry Ward Beecher took the letter afterwards and deliberately read it himself, without discovering or correcting these errors of punctuation. Now, is it possible to believe that Henry Ward Beecher would ever sign and send out over his own signature such a composition as that?

#### THE WRITING EVIDENTLY DISJOINTED.

But now, gentlemen, we come to the conclusive evidence that the writing of this letter was suddenly terminated by an abrupt interruption. You will observe that the paper begins in the form of a letter, addressed to "My Dear Friend Moulton." Had the writer recognized the fact that he had concluded his letter with the sentence, "I humbly pray to God that he may put it into the heart of her husband to forgive me," it is impossible to understand why he did not prepare it for Mr. Beecher's signature by adding some usual concluding clause, as "Yours Truly," or the like. You, observe, gentlemen, that letter begins, "My Dear Friend Moulton." Now, I say, that if Mr. Moulton had supposed that letter was to stop when he wrote the last word of the letter, that that word was the conclusion, he would have prepared it for Mr. Beecher's signature by adding, "Yours truly," or "Yours faithfully," for Mr. Beecher to sign. But there is no such clause in the letter. On the contrary, you observe that after the last word of that letter there is a dash instead of a period, showing that the writer intended to continue writing at the time he wrote the last word of the letter—that he had not finished the letter; he expected to keep on gathering up these gems that were falling with such abundance from the lips of this excited man. But at the time he had written his last word and made his dash, expecting to continue, Mr. Beecher's tea-bell rang and interrupted the writing and stopped it. Then came the question of signing. Mr. Beecher said: "I cannot sign that, because it is not my composition." Then he asked him to authenticate it in some

form, so that he could show Mr. Tilton that he had something from Mr. Beecher. It was a trick, gentlemen; a plan deliberately devised to commit this man, in his excited condition, to some note or memorandum that could afterwards be used against him as a power to convince him that he was under their control—that they had him committed. That was the purpose and the object of that letter, and that is the way it was that Moulton pressed so hard for Mr. Beecher's signature in some form to the letter itself. Now, gentlemen, Mr. Moulton tells you another fact—that he put at the end of that letter the clause, "In trust with Francis D. Moulton." He says Mr. Beecher did not dictate that. He says it, I think, for the purpose of explaining the absurdity of Mr. Beecher's dictating that clause at the head of the letter, and then adding it at the foot of the letter, having it twice upon the letter. Mr. Beecher would not have been likely to have done that. If he had dictated at the head of the letter "In trust with Francis D. Moulton," he would not have added the same thing at the foot. Nor would he have added that, if it had been written as a letter to Francis D. Moulton. But Moulton said: "Trust this to me; I will preserve it; I will see that no harm comes to you by your giving me this document, that I may show Tilton in writing how kindly you feel towards him. Leave that to me; trust it to me;" and by these forms of expression, repeated by Moulton when inducing Beecher to authenticate this paper in some form, he got from Mr. Beecher the phrase: "I have trusted this to Moulton in confidence." That is the phrase. "H. W. Beecher."

Again, gentlemen, if Mr. Beecher had commenced this letter dictating "To my Friend Moulton," and that letter had been written by Mr. Moulton in the course of five or ten minutes, what must he have thought of Mr. Beecher, or Mr. Beecher have thought of himself when he refused to sign the letter which he had commenced by dictating? Is not that a remarkable statement—that Mr. Beecher should begin the dictation of a letter, "My Dear Friend Moulton,"—a letter that only contains about one hundred and thirty or one hundred and forty words, and at the close of it should say, "I won't sign it?" You see it begins in the form of a letter. Now, if Mr. Beecher had deliberately commenced that in the form of a letter why would he not have finished it? What operated in his mind in these five or ten or perhaps twenty minutes during which this letter was preparing?—what operated upon his mind to make him change and refuse to sign the letter which he had begun by addressing it "My Dear Friend Moulton?" Why, the proposition, it seems to me, gentlemen, carries the evidence of absurdity upon its face; and it shows that Mr. Beecher did not dictate that phrase, "My Dear Friend Moulton." It is evidenced by another fact: in all these four years' correspondence, the number of letters which Mr. Beecher has written to Mr. Moulton since then, no letter of his has ever been addressed in that form, "My Dear Friend Moulton." There is no such letter from the beginning to the end of this correspondence. Therefore we submit to you, gentlemen, that this paper itself so corroborates the statement that Mr. Beecher will make to you upon the stand, and so contradicts the evidence that Mr. Moulton gives you, that when you come

to hear Mr. Beecher's statement you will believe that he states the truth, and that Mr. Moulton does not.

#### MR. BEECHER'S ALLEGED ORAL CONFESSIONS.

Now, gentlemen of the jury, I come to another branch of this case; and that is the branch which is now mainly relied upon, to wit, the pretended oral confessions which this defendant is alleged to have made to Francis D. Moulton and to his wife, and to the plaintiff, Theodore Tilton. In the beginning, gentlemen, we shall show you that these parties relied expressly upon the writing that they had, and upon nothing else. As late as July 10, 1874, after the appointment of the Church Committee, and on Mr. Tilton's first appearing before the Committee, we shall show you, I apprehend, by evidence which you will not doubt, that Mr. Tilton there said that his case against Henry Ward Beecher was in writing. He said that he knew that his reputation was impaired in this community, and that the guilt or innocence of Henry Ward Beecher did not at all depend upon his word—he had it in writing. I think that the evidence will show you that after Mr. Tilton had repeated that once or twice over, he was interrupted by one who thought, at least at that time, that he had seen the written case against Henry Ward Beecher, who said to him: "Mr. Tilton, if your case against Henry Ward Beecher is in writing, then it is wholly a question of what these writings prove; that is a fact that other people can judge of as well as you can; it is the construction of the papers;" and he was told then and there, I think, by one who supposed he had seen these papers and studied them carefully, that they did not warrant the insinuations which Theodore Tilton was then making, and they would not prove the case that he was then insinuating. I think it will transpire before you, gentlemen, that up to that time neither Tilton nor Moulton had ever talked about oral confessions of Henry Ward Beecher. I think it will transpire that this part of their case has arisen since that date. At least I have no doubt that it will appear to you that on that occasion Mr. Tilton did not pretend that he had any oral confessions from Mr. Beecher tending to establish his case, but that he said distinctly that his case against Mr. Beecher was in writing, and was locked in his safe, or in Moulton's safe.

In Moulton's statement, published August 2, some time after this, and after this controversy had gone on, Mr. Moulton alleges then, in general language, that Mr. Beecher had confessed orally to him, but his language was entirely general; he gave no specific words; he made no statement which was legal evidence of that fact. His paper was challenged on that account, and it was said: "If Mr. Henry Ward Beecher ever confessed to you, why haven't you stated the confession, so other people can see whether his language amounted to a confession of guilt or not?" But it was not until after he had been thus challenged and made his second statement that he descends at all, or undertakes to give the words in which Mr. Beecher confessed. But on the trial here, gentlemen, he clothes Mr. Beecher's confessions in entirely different language from what he did in his second statement; but you will not forget the remarkable language which he so continuously puts in the mouth of Henry Ward Beecher; "sexual relations," "sex-

ual intercourse," "sexual expression," "adultery," not once—not once, gentlemen, I beg you to observe, but continuously, at every interview, and he never has Mr. Beecher refer to "their relations," but always precedes it with the word "sexual." Do you believe that, gentlemen of the jury? Upon the basis and the theory that Henry Ward Beecher did intend to convey to Francis D. Moulton the idea that he had had criminal relations with the wife of the plaintiff, do you believe at every interview that occurred between them afterwards Mr. Beecher expressly referred to the confession, and used the precise language that he did on the first occasion? Having used it once, would not a mere reference to it afterwards have been sufficient? Was it necessary for him to repeat always the words "sexual relations" to have Mr. Moulton understand what he meant? Why, it is most improbable, I submit. If Mr. Beecher had been confessing he never could have been guilty of such weakness, and displayed such love of nasty expressions as to be continually rolling these from his lips, as Moulton says he did. It is impossible to believe it; it is incredible. They are words that are manufactured and put into the mouth of Henry Ward Beecher on occasion after occasion. He never made any such expression; he never made any such confession. And you will remember, gentlemen, if you have read his statement—

Mr. Beach—Whose statement?

Mr. Tracy—Moulton's—or if you recall his expression upon the witness stand, when he has attempted to repeat this phraseology, the remarkable slip he made, not once, but twice, when he undertook to say, "Mr. Beecher said his relations—his sexual relations." Not once, but twice, he did that in repeating it, and that is the precise manner he repeats it in his statement. In his statement he says: "Mr. Beecher said his relations with this woman," without adding the word "sexual" relations; and when he comes to repeat it from the witness stand he says: "Mr. Beecher said his relations—his sexual relations;" and when he told it again on his cross-examination he made the same slip, and, recalling himself, added the word "sexual."

#### SOME OF THE DESCRIBED INTERVIEWS FICTITIOUS.

But, gentlemen, I shall not dwell longer upon those interviews. They are remarkable, if they ever occurred, most remarkable. It is a most remarkable fact that Henry Ward Beecher, if he had been guilty, could have been guilty of the indiscretion of throwing open his heart to a friend of a day; for you will bear in mind that Francis D. Moulton was a stranger to Henry Ward Beecher on the night of the 30th of December. He tells you that he was a stranger to him; that is, he knew him as everybody knew Mr. Beecher; he had a speaking acquaintance with him; he had been introduced to him before, but there were no relations between them of friends or acquaintances; and yet he goes to him on the 30th of December in a hostile attitude, as a friend of the man who was accusing him, and he comes to him again on the 31st of December, the next night, and he says, without word of caution or preliminary suggestion, Mr. Beecher opened to him and confessed his adultery with this woman. The absurdity of the statement itself

is sufficient to challenge the closest scrutiny on the part of the jury, and to excite the gravest doubts, even if it fell from the lips of an unquestioned witness, whether it could be possible that any man in his senses could be guilty of such an indiscretion as that. But farther, gentlemen, you will remember the great struggle we had when Mr. Moulton was on the witness stand, to get him to testify that the subject of these stories which Bowen had circulated against Tilton to Beecher, and Beecher had circulated against Tilton to Bowen, were the subjects of conversation between Mr. Beecher and Moulton on the night of the 31st of December, or on the night of the 1st of January. But we could not get him to do it; we could not get him to say that Mr. Beecher agreed to apologize to Bowen, and to write a letter to Bowen taking back what he said in regard to Tilton and Mrs. Bullard. He would not acknowledge that it was done on either the 31st of December or the 1st of January; and it was very important for him, and he understood the importance of it, because that would give a clew, you see, to the contrition and the sorrow and the regret which Mr. Beecher was expressing on the night of the 1st of January. If the subject of his reports concerning Laura Curtis Bullard had been the subject of conversation, and he had agreed to take it back, and had agreed to write a letter upon that subject, if these stories that he had circulated in regard to Tilton to Bowen had been the subject of conversation, and he had been expressing his regrets concerning them, why, that would have furnished an explanation of what his excitement was, what caused it. But they keep that all out of view. They ask you to believe, gentlemen, that there was nothing talked of on either of these nights except his relation to Mrs. Tilton, substantially, and that that was what he was expressing his sorrow and regret for; and so they say that this letter to Bowen was not the subject of conversation, but it was written so soon after, you see, gentlemen, that they could not postpone it very long. It must be the subject of conversation right away. If it was not on the night of the 31st of December, or the 1st of January, it must be immediately following. They saw that necessity, and they must make it. Now, how did they do it? Moulton does it by inventing an interview between himself and Mr. Beecher on the 2d of January, where he makes these stories the subject of conversation, and this letter to Bowen their matter of talk and agreement. I say he invents it, and I shall leave you no doubt upon that subject, gentlemen. The 1st of January that year came on Sunday. This letter called the "Apology" was written Sunday afternoon, in Beecher's house. Moulton tells you that he called the next day in the afternoon, towards evening, somewhere from 3 to 5 o'clock, I think, that evening, and had another long interview with Mr. Beecher, on the 2d of January, and he tells you in great detail what occurred. He tells you expressly, in answer to a question put to him on cross-examination, that he had four separate interviews with Mr. Beecher on four successive days. That is the question put to him and that is the question he answered. Now, gentlemen, we shall show you that Francis D. Moulton had no interview with Henry Ward Beecher on the 2d of January. The 2d of January was the day celebrated as New Year's, and Mr. Beecher, as was his custom, received New

Year's calls that day, and was engaged all day long in receiving New Year's calls. He had over 400 callers at his house on the 2d of January, 1871.

Mr. Shearman—Twice that.

Mr. Tracy—Nearly 800, I am informed; busy all day, from 9 o'clock in the morning until late in the evening, no opportunity for such an interview, and no such interview ever occurred. I say it has been invented, and invented for a purpose, in order to enable this witness to carry an interview, on very important and vital questions, one day beyond the writing of this letter of contrition. He tells you further that Mr. Beecher consulted him on that day as to whether the pew renting should go off that year. Why, gentlemen, if that interview was on the 2d day of January, the pew renting was to take place the next day, and had been advertised everywhere, and everybody knew it was to go on. The talk of stopping it from going on would have been worse than a printed confession. There was no such talk, no such thought. The renting of the pews, I say, had been advertised, and it took place the next day, and there never was such a suggestion as to whether it should go off or not, or be postponed.

#### THE FIRST OBJECT IN THE PLOTTING.

The object of the efforts of Moulton and Tilton in the early days of January, 1871, was to restore Mr. Tilton, if possible, to *The Independent* and *The Union*. You see, gentlemen, that this dismissal was disastrous to Mr. Tilton. He has stated to you from the witness stand why it was disastrous. It was peculiarly disastrous for this reason. He had just made a new arrangement with *The Independent* by which he ceased to be editor and became chief contributor, and was to be editor of *The Union*; and that arrangement had been announced in *The Independent* on the 22d, and yet, eight days afterwards, he is displaced from both papers; and everybody said, "Why this remarkable change?" It was disastrous to Mr. Tilton; it was something more than a mere business change that could be explained on its face without discredit to other parties, and hence their great desire to restore Mr. Tilton in some way to *The Union* and *Independent*, or to get some explanation of that dismissal which would not be ruinous to him. Now, their plan was to get everybody who had told stories concerning Mr. Tilton to retract. Mr. Beecher was to retract, Mrs. Tilton was to retract, and you see they did get a letter from Mrs. Tilton which denied that she had ever desired a separation from her husband, and attributed it to the action of her poor mother; they even force this weak and sick woman in her weakened state to attribute her action, in the letter which she gave them, to her mother. They got Bessie Turner to retract the stories which she had told to Mr. Beecher concerning Mr. Tilton.

#### BESSIE TURNER'S RETRACTIONS.

And now, gentlemen, there is more significance to the retraction of Bessie Turner than to most of the retractions in this case, because there is another fact connected with it, Bessie Turner had circulated the story, had told to Mr. Beecher, and had told to other people that Mr. Tilton had twice attempted

her virtue, once by taking her from her own bed and carrying her to his, and on another occasion, I believe, in coming to her bedroom and attempting to lie in bed with her. These stories were told, and the evidence of Moulton and Tilton shows you that they knew that she had circulated these stories, and, taken with the flood-tide that was coming in against Mr. Tilton, they were extremely damaging—very damaging. And they say that she was a girl that was given to talk, and she was somewhat under the influence of the mother-in-law, and, if we are to believe Mr. Tilton, the mother-in-law was sometimes given to talk, and it was important not only, therefore, to get Bessie Turner to retract these statements, but to get her out of the way—get her out of Brooklyn where she would not talk—get her into a distant country, where no Brooklyn people could hear her, where she would not be tempted to retail these scandals concerning Mr. Tilton.

Now, gentlemen, they tell you that Bessie Turner was sent West because she had overheard a quarrel between Mr. Tilton and his wife, in which Mr. Beecher's name had been mentioned, and that was the reason she was sent away, and not because of these stories. And the question is, which is true? They attempt now to put the responsibility of her absence upon Mr. Beecher and upon the rumors concerning Beecher and Mrs. Tilton. But they were careful to get from Bessie Turner her written retractions of these stories against Mr. Tilton, and they treasured them up. What for? For the very use that they are putting them to now; for the very use that they are making of them now. They bring them into Court to confront this young girl, and to say that here are statements that your stories concerning Mr. Tilton are false. They got them for that purpose, and they went into these general archives of Moulton, of all papers relating to this scandal, and have been carefully preserved ever since. Was that to protect Mr. Beecher? Did they get these retractions from Bessie Turner that Theodore Tilton had never tempted her virtue, or never had carried her, screaming, from her bed to his own, in order to protect Henry Ward Beecher? I think, gentlemen, you will agree with me, that the same reason that induced parties to get the retraction, influenced them in sending her away. They are connected; there is a vital connection between the obtaining of this retraction, and the sending Bessie Turner out of Brooklyn. Now, here are her letters; January 12th is the first one. [Reading]:

The story that Mr. Tilton once lifted me from my bed, and carried me, screaming, into his own, and attempted to violate my person, is a wicked lie.

Yours truly,

BEECHER.

The other letter was dated January 10th, 1871. [Reading]:

MY DEAR MRS. TILTON: I want to tell you something. Your mother, Mrs. Morse, has repeatedly attempted to hire me, by offering me dresses and presents, to go to certain persons and tell them stories injurious to the character of your husband. I have been persuaded that the kind attentions shown me by Mr. Tilton for years were dishonorable demonstrations. I never at the time thought that Mr. Tilton's caresses were for such a purpose. I do not want to be made use of by Mrs. Morse, or by any one else, to bring trouble on my two best friends, you and your husband. By-by.

BEECHER.

Now, that is a remarkable letter, gentlemen, to be obtained

by Mr. Tilton and placed in the hands of his most intimate friend to be kept and preserved. It is a very remarkable letter.

Mr. Beach—Do you say it was obtained by Mr. Tilton?

Mr. Tracy—I say it was obtained by Mr. Tilton. I say it was obtained at his suggestion and influence by his wife, and with his knowledge taken by her, and placed in the hands of his most intimate friend, Francis D. Moulton, and by him preserved until this hour, ready to be produced against this girl if she should ever appear in Court and give a different version of this transaction. "I have been persuaded that the kind attentions shown me by Mr. Tilton for years were dishonorable demonstrations. I never at the time thought that Mr. Tilton's caresses were for such a purpose." Caresses—a very remarkable phrase, gentlemen, if there never was anything between Tilton and Bessie Turner. Then, that was not sufficient, so two days afterwards they get another letter from her. "The story that Mr. Tilton once lifted me from my bed and carried me screaming to his own and attempted to violate my person is a wicked lie." Well, now, gentlemen, Bessie Turner never said he did. If there was any such story it was a lie. Particularly it was a lie if the intent to be carried by it was that she was carried screaming to his bed and that he attempted to violate her person. I am not aware that Bessie Turner ever charged any such thing against Mr. Tilton. I understand that her story simply was that she was taken from her bed in his arms and carried to his bed, and he attempted to persuade her to remain there. I have never understood that the charge was one of attempted violence. So that letter of Bessie Turner is no retraction of what she has really told against Theodore Tilton, and what she had told against Theodore Tilton, as I understand it. So it does not convict her of falsehood; if any such stories had got in circulation, why she could properly deny them. And now, gentlemen, isn't it remarkable that the man who, they say, sent her away, had no inducement to get any retraction from her? She had never circulated any stories about Mr. Beecher and Mrs. Tilton; she never had anything to retract concerning them, and nobody ever suspected her of a disposition to talk concerning them. That is a pretense. But we have the fact that she talked about Theodore Tilton. We have the fact that it was well known to Moulton and Tilton that she was talking about him at this very time. Moulton tells you so. We have the fact that those two retractions were obtained and she was sent away; and we shall show you, gentlemen, that she was sent away as an inducement to her giving these retractions.

#### THE REAL OBJECT OF SENDING BESSIE TURNER WEST.

But more, we have it from the unconscious language of Francis D. Moulton himself, when he says that he told Mr. Beecher—mind you, Francis D. Moulton is the man that suggested the sending away of Miss Turner, not Henry Ward Beecher. Francis D. Moulton is the man who makes the suggestion, and he tells Mr. Beecher that Mr. Tilton cannot afford to pay the expenses. Ah, indeed! If it was Mr. Beecher's business to send her away, why would Tilton have ever thought



of saying whether he was able or not able to pay Mr. Beecher's bills? Do you say that you are not able to pay your neighbor's hack bill? Does that question ever occur to you? Do you ever use any such language about paying your neighbor's hack bill? If this was Mr. Beecher's affair—if she was to go away for his protection, and not Mr. Tilton's—why did Mr. Moulton use the remarkable language that “she ought to be got out of town, but Mr. Tilton cannot afford to pay the expenses?”

You cannot have a more explicit acknowledgment, gentlemen, that it was understood by all the parties, that it was an affair which Mr. Tilton was to pay, but an expense which he could not afford to incur, because of his reduced condition in consequence of his dismissal. And therefore, in the interest of peace, when they are getting everybody to retract and are seeking to repair Mr. Tilton's character—everybody is to retract that has ever said anything against him—they say it is indispensable to his salvation from this girl that she be got out of Brooklyn, but he could not afford to pay the expenses. Then Mr. Beecher says: “If it will be doing a favor to Mr. Tilton, I will pay the expenses of sending her to school; I will meet these expenses; Mr. Tilton is in reduced circumstances; Mr. Tilton's income has been cut off; if it is really necessary to his restoration that this girl should be got away where she cannot talk, why send her to school and I will pay the expenses.” And now these men come in, gentlemen, and attempt by their oath to turn upon Mr. Beecher a transaction that was instituted and carried forward, as the written documents which we have already introduced, as the evidence which we shall further introduce will show you, for Tilton's benefit. Yet, that has been made a badge of crime against Mr. Beecher. But, gentlemen, they soon found that reinstatement was impossible; Bowen could not or would not take Mr. Tilton back. Therefore, the scheme of *The Golden Age* was started. That history, gentlemen, you know; I shall not dwell upon it. Sufficient to say that it was started under auspices that were favorable and that Mr. Tilton believed he was going to have a great success in that paper, and he probably would have had a success in it but for a misfortune which he was led to commit in the Summer following, in writing Mrs. Woodhull's life—if we can call a man's follies misfortunes, then we will call that Mr. Tilton's misfortune.

#### INCONSISTENT UTTERANCES COMMENTED ON.

There is another fact, gentlemen, that transpired at the interview on January 3d or 4th, to which I desire to call your attention. It is the interview where Mr. Beecher meets Mr. Tilton, at Mr. Moulton's house, early in January, when Mr. Tilton cut him, you will remember; did not receive him cordially. I call your attention to it briefly in support of the theory that we are now attempting to bring before you, that the action of all of these parties has been inconsistent with adultery. Mr. Moulton says that Mr. Tilton did not recognize Mr. Beecher cordially at their first meeting, after January, and he upbraided him for it. He says: “Why, Mr. Beecher has done all he could; he has apologized. You ought to accept it; you ought to recognize him, and I don't like to have you treat a guest in my house in this way.”

Well, now, gentlemen, are you prepared to believe that Francis D. Moulton used such language as that to an injured husband who was meeting the seducer of his wife? And he talked to Mr. Tilton so severely that Mr. Tilton did recognize Mr. Beecher. I do not dwell on it; I only call it to your mind for the purpose of showing simply that their actions are entirely inconsistent with the theory which they now seek to advance. It is impossible that a man can upbraid another for not shaking hands with one who has done him such a great wrong as that, the first time meeting him after such a disclosure. It would be an insult and an outrage which I do not think even Moulton could be guilty of perpetrating upon his most admired friend.

Then comes the correspondence of February 7, where three letters, gentlemen, were written on the same day, written, as Mr. Tilton tells you, at Mr. Moulton's suggestion. All these writings are done at their suggestion. Mr. Beecher is told, “You had better write; there is some object that you can accomplish by a letter; now write.” And the three letters are written, two by Mr. Beecher—one to Mrs. Tilton and the other to Mr. Moulton—and a letter by Tilton to Moulton. Now, the object of those letters, gentlemen, is very obvious: it is to make more complete the reconciliation which these parties had attempted to inaugurate. The men were reconciled after this interview at Mr. Moulton's house to which I have just alluded, but the woman was sulky; the woman was resentful at her treatment; she was not entirely reconciled. She was recovering in health; they were not entirely sure that when she got out from under that roof again she would not go to talking. She did not admire the manner in which she had been treated by her husband, and they wanted to make doubly sure of that fact; so they got Mr. Beecher to write this woman a letter, using all the influence that he had upon her, urging her to live with her husband, to submit to the wrongs that she was called upon to endure, and to build up and restore the peace and unity of her family. That was on the 7th of February. But there is a remark in the letter which Mr. Beecher writes Moulton to which I desire to call your attention, gentlemen. It is in the line of the thought which I am now advancing, that the conduct of these parties shows conclusively that they were not dealing in regard to an admitted adultery, for in that letter of Mr. Beecher to Mr. Moulton, speaking of Mr. Tilton, he says: “My earnest longing is to see her in the full sympathy of her nature at rest in him, and to see him once more trusting her and loving her with even a better than the old love.” Is not that a remarkable sentence for a man to write to the most intimate friend of a husband who has been outraged by his wife being debauched by her pastor, for that pastor to say to his friend: “I hope to see that husband loving the wife with more even than the old love”—love her better than he ever did because of this act and after it? Is it possible that if this was an admitted adultery, and this man had forgiven his wife, that Henry Ward Beecher could be urging upon this mutual friend, this dearest friend of this husband, that this husband should love the wife better than he ever did before? Wouldn't a man be quite contented if he could see the husband love her as well as he ever did before? Gentlemen, that Henry

Ward Beecher was writing of his supposed affection which this woman had for him, and had assured Mr. Tilton that he had never intended any wrong to him, that if his wife's affections had become alienated it had been by his unconscious act, and he was suggesting undoubtedly that if Mr. Tilton would be more attentive at home, show his wife more attention, he could win back her affections, and he trusted to see that family which had thus been alienated and shattered restored and built up, and the affection existing between husband and wife greater than it had ever been before—that is consistent; that is honorable; that is reasonable. But the suggestion that the husband should love a wife who had been debauched better than he ever loved her before, is a suggestion, I am sure, that never could have emanated from the pen of Henry Ward Beecher.

#### MR. BEECHER NOT VISITED BY MRS. TILTON.

Then there are other correspondence passing along from that 7th of February during that Winter, to which I shall not call your attention, except one, gentlemen. They have introduced a letter here from Mr. Beecher, which they say was an invitation to Mrs. Tilton to visit him at his house during the absence of his wife, and while his sister kept house for him. Now, we shall end all that, gentlemen, by showing that if that was such an invitation, or was understood to be such an invitation, that Mrs. Tilton never, as matter of fact, did visit Henry Ward Beecher at his house. I shall not stop to discuss, and it is not my purpose to discuss, the effect of the construction to be put upon that letter, but I simply announce to you the fact that no such visit ever did take place. She did not call upon Henry Ward Beecher at his house during that Winter. The sister was keeping house, and the sister will be introduced on the stand and will so tell you. So will all the other letters, upon which I cannot dwell at present—I mean the later letters that passed in that Winter.

#### THE INQUEST AS TO THE PATERNITY OF MR. TILTON'S SON, A FABRICATION.

Nor will I stop to consider the monstrous story which this plaintiff has told you concerning a remarkable interview which he says occurred between him and Mr. Beecher when they held an inquest over the paternity of the last child of Mr. Tilton. The monstrosity of such a story is sufficient to shock the moral sense of any man who is compelled to listen to it. You will not believe, gentlemen, that any such interview ever occurred. We shall show you what did occur there by the witness who was present and who took part in it. That was a friendly interview, and it was one in which Mr. Tilton expressed a wish that the past be buried, and that the old relations of Mr. Beecher to that family be restored, and he resume his visits—a fact which is quite inconsistent with adultery. But, for reasons which are obvious to you, while Mr. Beecher had the deepest sympathy for this woman, and while he had the highest regard for her, he, of course, under the circumstances, would not renew his visits to that family, and never did.

The next important fact in this history to which I wish to call your attention now, gentlemen, is the acquaintance of this plaintiff and his relations with Mrs. Woodhull. [To Judge

Neillson.] I see, your Honor, it is five minutes to one o'clock. Perhaps, before I enter upon that subject, as it will take some time, we had better take our recess.

Judge Neillson [To the Jury]—Please return punctually at 3 o'clock, gentlemen.

The Court then took a recess until two o'clock.

#### MR. TILTON'S RELATIONS WITH MRS. WOODHULL.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Tracy—Gentlemen, we have now approached the period of time in this case when the plaintiff says he first made the acquaintance of Victoria Woodhull. Something of the history of that acquaintance, gentlemen, has already been detailed to you from the witness stand. You know something of the character and public position of Mrs. Woodhull, of her principles and the manner in which she advocated them, and the fact of this acquaintance of Theodore Tilton with her has also been brought to your attention. It is conceded that in September, 1871, he wrote and published a biography of Mrs. Woodhull. That has not been introduced in evidence to you, the whole of it, at least, but enough has been introduced to show you something of the character of the work, and the fact that he published it is admitted. He tells you, gentlemen, that that acquaintance of his with Mrs. Woodhull was a misfortune to him, and he has stated in various ways that it was a great misfortune, a great calamity to him. That that was the secret of Mr. Tilton's failure in his newspaper enterprise, *The Golden Age*, I have no doubt, at least that that was sufficient to prevent success, if success had otherwise been possible. But the most remarkable feature of his evidence in this connection, and the one which I desire briefly to call your attention, is that he attempts to charge the existence of that acquaintance, and his association with Mrs. Woodhull to the defendant in this suit; even the writing of that *Life*, even his falling in love and becoming infatuated with this woman, is all on account of the defendant, and for his sake, and on account of his wife's sake. The period which he assigns for the beginning of this acquaintance, is a very remarkable one. He fixes it about May 23, 1871, and he tells you that before that time he had not known Mrs. Woodhull. He represents to you, gentlemen, as he is bound to do on his theory of his case, that his acquaintance with her being for the purpose of preventing her from publishing this scandal, was entirely pure on his part, that he never saw Victoria Woodhull guilty of any impropriety, and his relations with her have been always entirely proper. Because, you perceive, as he perceives, that if he was compelled to admit that improper relations existed between himself and Mrs. Woodhull, even he could hardly have the presumption to say that that was for the sake of Henry Ward Beecher, or for the sake of his wife. Therefore he makes his acquaintance with her merely casual, having been brought into relations with her on account of her knowledge of this scandal, and never pursuing that acquaintance beyond what was necessary, or what he deemed to be necessary to induce her to suppress it, and not to publish it. Now, if it should transpire, gentlemen, that this is

a misrepresentation on the part of Mr. Tilton, you will at once perceive how fatal it is to his case. If he has presumed, under the solemnity of an oath, to account to you and to this community for the remarkable relation which existed between himself and Victoria Woodhull—to account for it on account of this scandal and its existence, and his apprehension that she might give publicity to it, when that statement is untrue—why, of course I need not say to you that no man would give credence to anything he has said here from the witness stand.

#### THE PUBLICATION OF THE WOODHULL SCANDAL SOUGHT BY MR. TILTON.

If we satisfy you, gentlemen, that his acquaintance with that woman, whether it originated at the time he says it did or before, whether it was as chaste and exceptionable as he pretends it was or not—if we succeed in satisfying you that that acquaintance did not originate and was not continued by him for the purpose of inducing her to suppress this scandal, then we contradict him on a vital point of this case. I shall not detain you, gentlemen, by a detailed statement of what we shall show in this particular; but if it should happen to transpire that Mr. Tilton's acquaintance with this woman did not begin when he says it did; if it went to a degree that he says it did not; if it was carried on for the purpose of inducing this publication instead of suppressing it, then his attempted explanation of his acquaintance with Mrs. Woodhull will prove to him the most fatal part of this case.

That he went down to Coney Island with her in a carriage is admitted by him. He denies that he went bathing with her. We shall satisfy you, gentlemen, that he is mistaken in that particular; at least, we shall prove to you by evidence that will satisfy you, that when they arrived at Coney Island on that occasion, they deposited their watches in the custody of the coachman, and they went to the sea shore, as if to bathe, all, of course, for the sake of Mr. Beecher, and to preserve him from this scandalous publication! And we shall show you that when they returned the golden locks of Mr. Tilton were damp, with the mists of the ocean, at least, or, perhaps, he will say that they were dampened by the perspiration that he suffered on account of the agony that he was enduring for the sake of Henry Ward Beecher, in his associations with Mrs. Woodhull down on the sea coast at that time. We shall show you that they returned to the carriage with all the evidences that they had been bathing together. We shall show you, gentlemen, what is not in fact disputed here, that when he drove them back to this city, they stopped at the house, I think, of Moulton, and late in the evening they ordered a covered carriage and he went home with Mrs. Woodhull. We shall show you that he discharged the carriage at that house, and the coachman left him there, where, we suppose, he remained all night, all for the sake of Mrs. Tilton, and to save her from the apprehended scandal that Mrs. Woodhull was threatening to publish! We probably shall leave little doubt on your minds, gentlemen, before this evidence closes, that Mr. Tilton used that acquaintance with Victoria Woodhull to stimulate this woman to the publication

of this scandal rather than to its suppression. Unless I am very much mistaken, we shall show these two parties colluding together upon this subject. Unless I am misinformed, or misapprehend the force of our evidence, we shall show these parties in consultation together. We probably shall show you that the slip, substantially as published afterwards, was in circulation in the newspaper offices long before that publication, and I think we shall leave no doubt in your minds that Theodore Tilton knew it and understood it. If we do this, and we bring you to the conclusion that Theodore Tilton was using the acquaintance of this woman to induce her to make this publication instead of suppressing it, what becomes of his oath upon this point, and his credibility as a witness upon any other point in the case?

I need not dwell, gentlemen, to you, on the fact that Mr. Moulton and Mr. Tilton induced Mrs. Moulton to go over for this woman and bring her to the house of Moulton in this city, not once, but twice, thrice, I think even more than that, as I remember her evidence. I need not dwell upon the fact that this biography of his was published September 14, in *The New-York Sun*, as we shall show you. It has already transpired about what time it was published. It was published about the same time that he published the free-love article in *The Golden Age*. The two publications were almost simultaneous, and his publication of his principles of free love in *The Golden Age* is published, as we shall show you, almost in the precise language in which Mrs. Woodhull announced her views upon the same question about the same time. This publication, gentlemen, was fatal, as I have said, to Mr. Tilton's prospects as a journalist. The indignation which that publication brought upon him from one end of the country to the other was evidence to him that his fate was sealed as the editor of a great newspaper in this country, unless he could devise some plan for relieving himself from that burden. But not only did he publish that *Life*, but we have shown you that he presided at the Steinway Hall meeting, and introduced her there. We have had the evidence of Mr. Moulton as to his speech. We shall present probably a more authentic report of it than has yet been presented, and show you that he introduced her as the advocate of social freedom; and what that meant in his mind, and in hers, there will be no room for doubt.

#### MR. TILTON'S PURPOSE IN TRYING TO MAKE MR. BEECHER AND MRS. WOODHULL INTIMATES.

But Theodore Tilton was not content with associating with Mrs. Woodhull himself, but he attempted to involve Mr. Beecher in that association; and what was the motive, gentlemen? Having involved himself in difficulty by this indiscreet publication, his effort was to compel Mr. Beecher to relieve him, or to come to his relief; in other words, having found that he had taken upon his shoulders a load greater than he could bear, he undertook to "unload," in the language of "the street," on Mr. Beecher, and he wanted Mr. Beecher to come forward before the public to indorse this woman in some way, so that to everybody who assailed him for publishing her life he could point to the pastor of Plymouth

Church and say: "Truly, I published her biography, but Henry Ward Beecher indorsed the woman and her sentiments at Steinway Hall. If you have got any quarrel with me you have the same quarrel with Henry Ward Beecher. This woman is a good woman. This woman is a pure woman. An enthusiast she may be, but the fact that Henry Ward Beecher has indorsed her is evidence of her purity, and does not enable any man to condemn me for having published her biography." That was his effort. It was the scheme of himself and Moulton, and it is the explanation of their efforts to induce Mr. Beecher to preside at that Steinway Hall meeting. I have no doubt if we could penetrate the inner recesses of the thoughts of these three persons, it would transpire that the Steinway Hall meeting was devised for no other purpose than to induce Mr. Beecher to preside at it, and thus indorse this woman, and thus to that extent relieve Theodore Tilton from the scandal and the obloquy that he had brought upon himself by publishing that *Life*. That *Life*, as I say, was published in September.

#### MRS. WOODHULL THE CAUSE OF MR. TILTON'S RUIN.

On the 1st of November he published the poem that has been given in evidence here, known as "Sir Marmaduke's Musings," and the object of that, although it is denied by Mr. Tilton, is perfectly obvious. There had been comparative peace from the 7th of February, in this matter, until November 1st. There had been no outbreak; there had been no scandal; there had been nothing but such a circulation as was given to it by the whisperings of Tilton and one or two others who were quietly circulating stories injurious to Mr. Beecher. What their nature or what their character was we do not know, but there had been to a certain extent circulations injurious to his character in this connection; but there had been no outbreak, and no outbreak had been threatened. None would have been made, gentlemen, if Theodore Tilton had remained prosperous. If he had not made this blunder of writing the *Life* of this woman, if he had not become so infatuated with her as to have lost his head and made a fool of himself, if he had gone on prosperously in *The Golden Age*, having a fair future before him, I have no idea that any publication would ever have been made, or any allusion made to his troubles. The history of this case shows to you, gentlemen, that whenever Theodore Tilton was prosperous, or whenever he had a future before him, he was as silent as the grave concerning this scandal. It was only when in adversity, only when he was down and was requiring help to be lifted, only when he was involved in difficulty and was demanding that Mr. Beecher should put his hand beneath him and raise him up, that he ever bruited this scandal at all. Then in September, I say, at the time of this publication, all was prosperous, but he had involved himself in difficulty; Mr. Beecher did not come forward to indorse Mrs. Woodhull, or to relieve him from that difficulty. It is well known, and will be shown to you, that Mr. Beecher always repudiated that relation of Tilton with Mrs. Woodhull. From the beginning to the end he told him it was disastrous to him. From the beginning to the end he always told him: "There is no power on earth can lift you into the respect of the people of this country without you repudiate

absolutely your relations with this woman." That was the position that Henry Ward Beecher always held to Mr. Tilton. It is the language he always used from beginning to end. "You must repudiate your relation there; you must cast her off; you must say to the people that in some way or other you have made a mistake, and you repent of it; henceforward your conduct will be entirely free from just cause of complaint in this particular."

#### THE SIR MARMADUKE POEM A MENACE TO MR. BEECHER.

But Mr. Beecher not moving, Mr. Tilton must give him a menace, he must give him a threat, he must do something to alarm him, something to stir him up, to make him go forward to aid him out of the difficulty into which he had fallen with the Woodhulls. So on the 1st of November he published what is known as "Sir Marmaduke's Musings." The first verse of it is:

"I won a noble fame,  
But, with a sudden frown,  
The people snatched my crown,  
And in the mire trod down  
My lofty name."

What had happened to have the people with a sudden frown snatch the crown of Theodore Tilton on the first of November, 1873? What but his relations with Victoria Woodhull and his doctrine of Free Love, which he had before published in *The Independent* and *The Golden Age*. There was nothing known to the public that could have justified that first verse in this poem except his known relations with that woman. It was that and that only to which he alluded. But the poem was an excuse merely to publish the following verse:

"I clasped a woman's breast,  
As if her heart I knew,  
Or fancied would be true,  
But proved—alas, she too,  
False like the rest."

And yet he tells you, gentlemen, that although the story of the scandal had been circulated among a large number of people, although it was known to the Woodhulls, as he says, the May previous, who had threatened to make it public, and who had published a card which called attention to the fact that some prominent minister in Brooklyn was living a life of adultery with the wife of another prominent teacher in Brooklyn, although it had circulated among his handful of friends, and how far it had gone he did not know, yet he tells you that when he published that verse he had no idea that anybody would think that he referred to his own wife. Do you believe it?

According to his own showing the story had been in circulation for nearly a year. How extensive it was he could not know, but he did know that rumor of a domestic infidelity in his own family had been given a considerable circulation in this community. Could he be so dull as not to understand that the publication of that poem over his own signature would be a confession, to every person who had heard it, of that rumor, that the rumor was true, in whatever form they may have heard it? Whether it was of adultery, or of improper proposals, or an undue affection; no matter, I repeat, in what form they had heard the rumor, every person who heard the rumor of a

domestic difficulty in the family of Theodore Tilton would have taken that poem as a confirmation of its truth. Didn't he know it would be so received? Can it be possible he did not know it? And yet, he tells you from the witness stand that if he supposed any person could have imagined that that had reference to his own domestic troubles, he would have suffered his right hand to be cut off before he would have published it. I say that that was a menace; it was to send alarm to Mr. Beecher; it was to say to him: "Sir, you must come up to my rescue and my relief, or you will be scandalized by this report." And, immediately following that publication, on the 1st of November, was started the Steinway Hall meeting, where they attempted to induce—not only induce, but by threats, to compel Mr. Beecher to preside. And it is a remarkable fact in this scandal, gentlemen—it has been once stated and proved, and probably will be again, that in his relations with the Woodhull women, he was much more solicitous on account of his wife and Mr. Beecher than they were for themselves. For it is true that Mrs. Tilton, notwithstanding the threats and arguments by which he attempted to persuade her to acquiesce in his relations with this woman, always scouted her and always defied her. She never feared the slanders of Mrs. Woodhull, and she never accepted the arguments of her husband that it was necessary to placate this woman and prevent her circulating stories derogatory to her character. She would not have the Woodhull women in her house; and you see when Mr. Beecher was attempted to be induced to preside at this meeting and to indorse this woman, he faced everything rather than consent to it. He said: "Let her do her worst; you, Theodore Tilton, do your worst; no power on God's earth shall induce me to indorse the principles that this woman advocates."

#### NOTHING BUT HOSTILITY AFTER THE STEINWAY HALL MEETING.

In confirmation of the fact which I have just stated, that Mr. Tilton's pecuniary wants were always the standard by which you could determine what his course was to be about these slanders, I am just reminded by my learned advocate that, at the very time of the publication of this "Sir Marmaduke's Musings," and this effort to compel Mr. Beecher to preside at the Steinway Hall meeting, Mr. Tilton had just overdrawn his account at Woodruff & Robinson's—had no money—out of money. The importance of that will be made apparent as we go along to another point of this case. But I refer to another fact, gentlemen, in evidence, in support of my view that the Steinway Hall meeting was designed for the purpose of compelling Mr. Beecher to relieve Mr. Tilton from the load of obloquy which rested upon him; and that his refusal to do so was regarded as an act of hostility by Mr. Tilton, and was so treated by Mr. Moulton; and that, from that time forward, they have never been anything but pretended friends, certainly; that whatever they may have pretended to Mr. Beecher, their course has been one of secret hostility, which has never ceased for a single moment. And, in support of that, I refer you to a letter of February 5, 1872. That is the long

letter, written to Moulton on the 5th of February, 1872, which is known on this trial as the "Ragged Edge Letter." It is one in which Mr. Beecher, you remember, refers to his having upon his hands his church, his book, and his newspaper, and his being so absorbed in these labors and his course of lecturing abroad; he was necessarily taken away from the society of Moulton; saw but little of him, while he had Tilton constantly under his presence; and, therefore, was continuously impressed with Tilton's needs and necessities, which he could not necessarily be with the situation of Mr. Beecher. You will remember the letter. I only desire to call your attention to a single phase of this letter in this connection for the purpose of illustrating the point that I am now making. Mr. Beecher says:

For all this Fall and Winter I have felt that you did not feel satisfied with me, and that I seemed both to you and Tilton as contenting myself with a cautious or sluggish policy, willing to save myself but not to risk anything for Tilton.

"All this Fall and Winter;" that is going back to his refusal to preside at the Steinway Hall meeting, which was the preceding November. That is the beginning of the coldness of Moulton towards Beecher; or, in other words, it is the commencement of a feeling on his part that he could not induce Beecher to come forward and indorse this woman for the purpose of saving Theodore Tilton. That was on the 5th of February, 1872. About that time, you remember, gentlemen, that Tilton went West on a lecturing tour. He had had his compensation with Bowen, or rather his controversy with Bowen, for his compensation had been pending under the charge of Moulton from January 1st, 1871. It was now February, 1872, and he had not been paid. No money had been received on account of it. He goes West in 1872, and returns discouraged. He finds the public hostility against him so great that he cannot withstand it. They did not understand how it was that his relations with *The Independent* and *The Union* were so suddenly and mysteriously severed. Bowen still held out and refused to pay. *The Golden Age* was failing, and was not paying expenses, and Tilton's money was again exhausted. Something must be done to replenish his treasury, and that claim against Bowen must be pushed to a successful issue, and that amount received, or *The Golden Age* and all its prospects must collapse.

#### DOUBLE PURPOSE OF THE BOWEN LETTER.

And you remember, gentlemen, the letter which he wrote to Bowen on the 2d of January, 1871, immediately after his dismissal by that gentleman, in which he recounts, item by item, the different slanders which he said Bowen repeated against Henry Ward Beecher at the interview on the 30th of December. He wrote that letter. What was his motive? We say it was twofold: First, to show Beecher that if he did not sever the union between himself and Bowen, and make peace with Tilton, he would have to subject himself to the publication of this letter, and to this open scandal which would arise from its publication, because Tilton would publish to the world the accusations which Bowen had made against Beecher—the fact that he had instigated Tilton to write that letter, and that that had led to

his dismissal. He pretends to say that he deemed the publication of that letter necessary to a proper explanation of his dismissal. At all events, its preparation and its threatened use showed Beecher that if he persisted in the hostility to Tilton, and continued his relations with Bowen, and so took Bowen's side of the fight, that letter would be published, and he would have to confront the public scandal which would arise from it. It was used as a menace to Bowen by saying, "Sir, I publish this letter to the world; I inform the world over my own signature that in that interview you repeated those horrible scandals against Henry Ward Beecher. You instigated me to write that letter. You promised to support it. You promised to bear it to Mr. Beecher yourself. You have borne it to him as my friend, and you basely deserted me and joined him, and that is the explanation of my dismissal."

#### MR. BOWEN A VICTIM OF A BLACKMAILING SCHEME.

It was a missile, therefore, that was prepared to be hurled against both of these men; but it had another object. He knew that Henry C. Bowen would never dare to face those accusations against Henry Ward Beecher. He knew that Bowen would compromise or adjust those difficulties in some manner, because he would never take the responsibility of fathering such a scandal as that. He hoped, probably, in its first preparation, to induce Bowen to compromise and patch up a peace by which he would be taken back; but, when that failed, he knew it could be used for extorting the money. Moulton himself tells you, gentlemen—and it is a most significant sentence, one which I hope was so impressed upon your minds when it fell from the lips of that witness that it has not left your minds, and will not leave them until this case is finally decided—he told you that that letter was prepared to be used to negotiate with Bowen. Ah! it was a business letter. Tilton had an eye to business in everything that he did in this transaction. It was business from beginning to end. Whether his wife's virtue, or his own character was involved, it was all brought to the standard of business—business; and this letter reciting those horrible stories and accusations was prepared that it might be used to negotiate with Bowen, says Moulton, and it was used, as I will show you, gentlemen, as few documents have ever been used in a Christian community, for the purpose of extorting money from a man who denied his liability. A suit had been instituted, but that didn't bring Bowen to terms. Bowen is not frightened at law suits. But accusations against prominent clergymen are quite a different matter with him. The law suit had not compelled him to pay. An intimation that that paper might possibly be used had not induced him to pay. But when Tilton returned from the West, what does he do? He makes what he calls, or heads, "A Personal Statement," and he goes and sets it up in type in *The Golden Age*, as if he was to publish it—an explanation of the reasons why he was dismissed from *The Union and Independent* by Bowen, in which article you remember he incorporates that letter of Jan. 1st, 1871. He takes proof slips of that article—press copies, as they are technically known—and what does he do with them?

Now, gentlemen of the jury, Tilton tells you that he felt impelled to make a publication of the reasons which had led to his dismissal in order to satisfy the public. He took press copies, and he took pains to have it shown to Bowen, as if he was going to publish it, and he takes one of these press copies himself to Samuel Wilkeson, as we shall show you, an owner in *The Christian Union*, largely interested in the publishing house of Ford & Co., who were Mr. Beecher's publishers, and he told him that he should publish that article unless Henry Ward Beecher did him justice. Not unless Henry C. Bowen did him justice. That would have produced no effect at all upon Samuel Wilkeson, but he took it to Wilkeson, a friend of Beecher, a man deeply interested in the reputation and prosperity of Mr. Beecher as a writer and a newspaper editor; a man who was to suffer a large pecuniary loss if anything happened to Mr. Beecher which should injure his usefulness in this respect. His house had invested a large sum of money in the book which Mr. Beecher was then preparing—"The Life of Christ." It was then uncompleted. Wilkeson saw at a glance that if that article was published it would produce a public scandal, which he told Tilton, then and there, would shake Christendom, and he says: "Tilton, you must not think of making this publication. What has Mr. Beecher done to you?" Says Tilton: "He did nothing to save me when Bowen dismissed me. He could by the lifting of his little finger have saved me, but when I lay upon the sidewalks in Brooklyn, deprived of my position, deprived of my opportunity for pecuniary profit and fame; when he saw me lying helpless upon the sidewalk he passed by on the other side; he did nothing; he refused to aid me, and now he must do me justice." Bear in mind, gentlemen, that Henry Ward Beecher owed Theodore Tilton nothing. Theodore Tilton apparently was not seeking to extort money from Henry Ward Beecher, but he was seeking to obtain what he claimed was due him from Bowen. If he was prosecuting an honest claim, why did he go to the friend of Henry Ward Beecher about it at all? Why didn't he go to Mr. Bowen? We shall show you he did cause the letter to be communicated to Bowen by another hand—a threatened publication. Did he ever intend to publish, gentlemen? Was that letter prepared by Theodore Tilton with an honest intention to publish it, for the purpose of making this explanation to the public, which he pretends to have thought necessary; or, was it prepared for the sole and single purpose of being exhibited to the friends of Mr. Beecher and the friends of Bowen, to compel Bowen to settle this account, and to compel Beecher's friends to insist to Bowen that he should settle that account? On this important point, I will cite no other witness against Theodore Tilton but Theodore Tilton himself. If I satisfy you, gentlemen, that his pretense that he prepared that article with a view to publication was untrue, but that his whole object was to extort the payment of his claim, which he said Bowen owed him, and to induce Mr. Beecher and his friends to insist to Bowen that he should pay him—I say if I satisfy you that was his only object, then I show Theodore Tilton engaged in a transaction that can be truly called by no other name than that of blackmail, for no man is at liberty to resort to threatening a publication, or creat-

ing a scandal against a man in order to compel the settlement of a disputed claim.

You see, gentlemen, that if the allegation upon which Henry C. Bowen discharged Tilton, to wit, his immoralities, which rendered it unsafe and improper for him to continue his relations upon the paper, had been true, he could have successfully defended any action that Theodore Tilton might bring against him. He had brought his action, and Bowen had not paid. That this article was prepared for the purpose of extorting this money, as I have said, I cite no other witness against Tilton than Tilton himself. Now, what does he tell you? He says that this article was prepared and set up, and two or three copies of it struck off; that the type was then "locked up," the proof corrected, in which Oliver Johnson assisted him, and one or two copies struck off—not over two he says—and he accounts for every copy, you remember, or attempts to, and then, says he, the type was immediately distributed. I want to know how he could publish it in *The Golden Age*. If he set up this article, and struck off only three or four copies to be used for private circulation, to be exhibited to Bowen and to Beecher and their friends, and then immediately distributed the type, how could he have made the publication? The fact that that type was distributed immediately upon the striking off of these one or two extra copies, gentlemen, is conclusive evidence that he never intended to make the publication, never expected to make the publication. He got his copies so that he could show the people that he was about to make the publication; so that he could say to them he would make the publication, but he never intended to make it. He intended to use it simply for the purpose of compelling the payment of this money, and when he got his press copies he said he immediately caused the type to be distributed.

#### MR. WILKESON'S DISINTERESTED MEDIATION.

But, having got his press copies, then he proceeds to use them, and, as I say, he called upon Mr. Wilkeson, Mr. Beecher's friend, and Mr. Wilkeson was horrified at the suggestion of such a publication as that. He saw at once the fire that it would kindle. He knew the scandal that it would create. He knew the shock it would produce to this entire community, and he said: "It will never do to make this publication, Mr. Tilton. If Mr. Bowen owes you money he must pay it, and I will see Mr. Beecher, and Mr. Beecher has friends in Brooklyn that can induce Henry C. Bowen to pay that money if he owes it to you; and I will undertake to see that you get your money from Mr. Bowen; at least I will aid you;" and Mr. Tilton said: "What a fortunate thing it was that I called on you this afternoon. I was walking along Fifth-ave., thinking how disastrous had been all my undertakings, how failure after failure had met me, and as I came along past this building, it occurred to me that my old friend Samuel Wilkeson was here, and I thought I would step in and see him. What a fortunate thing it was that I did. Some kind angel must have directed my steps hither." That was on the 29th day of March, 1872, and on the 3d day of April Theodore Tilton had a check in his pocket from Henry C. Bowen for \$7,000.

Mr. Evarts—The 4th of April.

Mr. Tracy—I think the fact will turn out that the check was actually delivered on the evening of the 3d, Mr. Evarts, but dated the following day. The check that bears date on the 4th of April, I think it will transpire in the evidence, was actually given and written on the evening of the 3d. However, the time I don't know, but it was either on the evening of the 3d or on the 4th day of April, after this remarkable conversation between Tilton and Wilkeson on Fifth-ave. After the good angel had directed Tilton's steps to the residence of his old acquaintance, he had his \$7,000 in his pocket.

#### THE BREACH OF FAITH MADE UNDER THE TRIPARTITE AGREEMENT.

I don't say that Henry C. Bowen was blackmailed, gentlemen. Oh! no. I don't say but what he owed Theodore Tilton honestly that money under his contracts. I presume he did. It is very clear that Tilton satisfied Wilkeson that he did; and the probability is that Bowen did owe him and ought to have paid him. I don't say how that is; I don't know how it is; I don't care how it is; I only know that the claim had been in existence for 15 months, and a suit had been brought and Mr. Bowen had not paid, and I know that when Theodore Tilton came home from the West and made his personal statement, and took three or four press copies of it, and had distributed the type, and then went to circulating the copies around among the friends of Beecher and Henry C. Bowen—I know the money came. It came as the result of an arbitration, which produced what is known to you as the "Tripartite Agreement," where all these difficulties were settled and adjusted, and where I shall show you, gentlemen, comes in another one of those marvelous breaches of faith that have characterized this plaintiff and his "mutual friend" from the beginning of this unhappy controversy to the present time. I shall show you now a fact which will leave no doubt, I take it, in your minds, if it be true—and we shall make it clear by evidence that even the plaintiff, I think, will hardly dare dispute—that it was distinctly understood and agreed, not only that all the difficulties between Henry C. Bowen and Henry Ward Beecher, but all the difficulties between Theodore Tilton and Henry C. Bowen and all the difficulties between Theodore Tilton and Henry Ward Beecher were all to be compromised and adjusted in that arbitration and settlement. And further, gentlemen, that when that arbitration was concluded and the tripartite agreement settled upon, it was distinctly understood and agreed that every one of the papers connected with this scandal should be destroyed. That was a part of the arbitration; it was a part of the agreement; that peace was to be final, and no party to that contract was to be at liberty, or to have the means hereafter of reviving any of the scandals settled or adjusted there. This was in 1872, you will remember, and the paper then known as the apology, which had been obtained from Mr. Beecher on the first of January, the retraction, and the accusation then existed in this scandal, and were in the hands of Francis D. Moulton, Mr. Tilton had from Mr. Bowen, what Mr.

Bowen very much desired to recover, a letter known as the Woodstock letter. That was to be surrendered, and all the other papers were to be destroyed.

Now, we shall prove that, gentlemen. But how did this gentleman and his "Mutual Friend" carry out the agreement? I say the same breach of good faith which has characterized every act of theirs was found in this. They agreed to destroy, but they never did destroy. The only paper connected with this scandal that has disappeared from the archives of Mr. Moulton is that most important paper of all, that I alluded to before you, the paper on which Theodore Tilton accused Henry Ward Beecher on the night of the 30th of December. That paper has disappeared. That paper, they say, was destroyed after the tripartite agreement, and in consequence of the tripartite agreement. Don't forget that, gentlemen. They tell you their excuse, and their only excuse for destroying that paper, for picking it out from among the mass of papers held by Moulton, and destroying it, was that the destruction of that followed in consequence of the "tripartite agreement." They do not admit, of course, that it was a part of the "tripartite agreement" that it should be destroyed; but they destroyed it afterwards, and in consequence of it. Why didn't they destroy all the papers then? They had agreed to. Why did they select this one paper, which, if it existed to-day, this case could not stir one single step? Why did they pick that out from among the mass and get rid of that paper, and yet hold Mr. Beecher's papers in their possession, which afterwards, by means of oral confessions and oral testimony, they could make to mean whatever they chose to make them mean? And the question I am putting to you, gentlemen, all through this case is, whether these parties have been acting in good faith—have been fulfilling their agreements and their arrangements which they have entered into from time to time. I say they have not. I say they have been conspirators all this time against Henry Ward Beecher; and if I show you that, in any important point of this case, they have been guilty of breach of faith, that they have violated their contracts, and have obtained advantages by fraud which they have afterwards retained and used against him, that is evidence sufficient to show that they are conspirators, and have been manipulating this defendant from the beginning to the end, with the view of holding this man in their power so long as they could use him, and when they could do that no longer to destroy him if they could.

#### THE AWARD CONSEQUENT ON THE COVENANT.

One word more upon the "tripartite agreement." Tilton tells you on his cross-examination, gentlemen, that the signing of the "tripartite agreement" had nothing whatever to do with the award of the money that was awarded; that the money had been paid, and it had been actually received by him some time before there was anything at all said about this "tripartite agreement;" that it was a subsequent suggestion, brought up and signed by mutual consent, in no manner resting upon this arbitration. There, gentlemen, we shall show you he is not truthful. On the contrary, we shall show you that the very first step in this arbitration was the

"tripartite agreement," and the award followed the agreement to sign, and not the agreement to sign followed the award. We shall show you that, two days before this check was prepared and before this award was made, that the tripartite agreement was drafted, and was presented to this plaintiff, and he objected to a clause of it, and all his objections were fixed and arranged, and that the paper as agreed to by him finally to be signed, and as it was finally signed by him, was presented on the night of the arbitration, and was assented to in the presence of the arbitrators before they made any award at all, or considered the question of award; and that after this "tripartite agreement" had been fixed upon, and all its terms settled satisfactory to Tilton, then the arbitrators withdrew into another room, heard his statement and Moulton's statement and Bowen's statement, and then made the award. Then the "tripartite agreement" was taken by Mr. Wilkeson and engrossed—it having been in detached pieces and erased and interlined—engrossed by Mr. Wilkeson, just as it was agreed upon by the parties that night, and then it was signed; but the agreement to sign it and the terms of the agreement were all fixed before the arbitration commenced at all, and was a matter that preceded the arbitration. Now, we shall show you that, unless I am misinformed by all the arbitrators who took part in the controversy. Well, gentlemen, Mr. Tilton got his \$7,000 from Bowen, and was then in a prosperous condition. It is a remarkable fact, however, that just as he got the \$7,000, his dear friend, Mr. Woodruff, took advantage of that \$7,000 to get relieved from his subscription to *The Golden Age*, and all the parties got relieved from their subscriptions. If it should be necessary to go into that question further (it is not very important and we may not do so), but if it is necessary, we shall have no difficulty in showing you that Mr. Woodruff urged the other parties to accept these terms, on the distinct ground that the paper was to fail; that he had no confidence in it himself, and said it never could succeed, owing to Mr. Tilton's fatal connection with the Woodhull woman—that he himself was entirely disgusted with the whole crowd, and wanted to get out of it, and that he urged the other subscribers to get out of it in the same way, and it was upon his argument and his suggestion that they did it. This was on the 4th or 5th of April.

#### MR. TILTON'S PART IN THE CAMPAIGN OF 1873.

You will remember that the Cincinnati Convention followed soon after, in the beginning of May. Mr. Tilton went to the Cincinnati Convention. He claims, in an article subsequently published in *The Golden Age*, that he suggested the nomination of Horace Greeley to that Convention. Whether he got it patented or not I do not know. But at all events he took a very prominent part in that campaign. He looked to the success of Horace Greeley as the opening of a new avenue to his own success; and it is fair to say that in the beginning of that campaign the prospect did not look unreasonable. He went into the campaign heartily, and all through the Summer of 1873 you observe there is no outbreak in regard to the scandal. The money had been got from Bowen; he had a future hope of success to be won



in the election of Greeley; and he had every ambition to have no scandal that would injure him or his family, or injure any one; no inducement to promulgate the scandal; and he says he separated from the Woodhulls about that time. If he did, it is clear he separated from them on account of political reasons, and in the hope of having political promotion, because you have seen, gentlemen, by the correspondence we have introduced between himself and Horace Greeley, early in the previous year, how little sympathy Mr. Greeley had with the Woodhull woman or her doctrines; and it was very clear to the apprehension of Mr. Tilton, I think, that he could have no hope of success with Mr. Greeley if he continued his relations with Victoria C. Woodhull. He, once in his life, therefore, sacrificed his love to his political ambition. He entered into the campaign, as I say, with high hopes of success, and nothing occurred until the North Carolina election, which was calculated to quench those hopes. But soon after the Maine and Pennsylvania elections settled the fate of the Presidential campaign.

#### MR. TILTON AWARE THAT THE WOODHULL STORY WAS COMING.

He still, however, adhered to the fortunes of his leader, and was engaged in New-Hampshire, just before the election, at the time of this Woodhull publication. We may or we may not show, gentlemen, whether he was absent by accident or design at that time; but that he knew that this publication was to be made, and had known it for some time, I have no reasonable doubt. But the publication was made; and Mr. Greeley was defeated, and died soon after. Mr. Tilton's hopes of political success were gone in that direction.

That avenue to prosperity had been closed. He must now seek other and different avenues. For all remember, gentlemen, the sensation which that publication created, and the general expectation that some of the parties at least mentioned in that publication—not as principals, but as persons who had been the sources of information—would deny that they had thus given the information to Mrs. Woodhull. There were various parties named as the sources of information. Mrs. H. B. Stanton was one, who denied promptly, as you will remember. Mrs. Pauline Wright Davis was another, who at the time of its publication was in Europe, but who denied instantly, on its reaching her, that she had been the source of information to the extent imputed to her, or to any extent whatever. Francis D. Moulton was another person named in the publication as one of the sources of information; Theodore Tilton was another, and the publication rested entirely upon what was represented to be the information of these parties to the woman Woodhull. As I have said, Mrs. Stanton and Pauline Wright Davis denied it. It only remained for Moulton and Tilton to deny, and the Woodhull scandal would have been dead—dead absolutely, beyond the hope of a resurrection, without either of the principals, Henry Ward Beecher or Mrs. Tilton, touching it at all. But we have shown you that Tilton refused to deny, and there was a long delay. Nothing was heard from either Moulton or Tilton on the subject.

#### GEN. TRACY OFFERS A PERSONAL EXPLANATION.

Now, gentlemen, we have reached a stage of this case where, for reasons obvious, I suppose to you, and entirely so to me, my name has been dragged into this investigation, and it has been introduced in a way, by the plaintiff and his counsel, and his main witness, that leads me to make to you a personal statement of my relations to this investigation and to this scandal, from the beginning to the end of it, so far as they have connected me with it. I shall not follow necessarily the order of time, but I shall begin at the most recent date and go back—

#### GEN. TRACY'S EXPLANATION OBJECTED TO.

Mr. Beach—Mr. Tracy, do you propose to be a witness to what you are about to state?

Mr. Tracy—If necessary I do, Sir.

Mr. Beach—I submit to your Honor, that the gentleman has no right to make a long written personal statement in his opening to the jury, which he does not propose to verify as a witness. It is not the office of an opening.

Judge Neilson—I presume that the counsel proposes to be a witness to what he states in his opening.

Mr. Beach—I don't think, your Honor, that that is a reasonable presumption, when he states that he is making a personal explanation. I do not understand that there is any proposition that he is to be a witness to it.

Judge Neilson—No; we understand, however, that when counsel makes a statement he does so with the expectation of proving it in some way.

Mr. Beach—It would be so, ordinarily, Sir, if the counsel had not prefaced what he now professes to be a personal explanation, by his assurance that it was such, and thus withdrawing it from the ordinary statement that is made by counsel before a jury. Now, I, of course, Sir, speak with some little hesitation on this subject, because I am unwilling to deny to any professional gentlemen, whose conduct has been arraigned in the course of the trial, full opportunity to make a proper explanation to the Court; and if this was addressed to the Court in some other form than an opening to the jury, I should take no possible exception to it. But I do not perceive, Sir, that it falls within the scope and province of an opening, the rules of which have been very greatly exceeded already by the counsel to tender personal explanations to the jury.

Judge Neilson—It is proper only on the assumption that he proposes to prove, in some form, what he is about to state.

Mr. Beach—And, therefore, I asked the counsel whether he intended to become a witness to the explanation he now offers to the jury, and whether the statements in explanation were to be verified by him as a witness, or whether it was a mere personal exculpation of himself, not intended to be proved by witnesses.

Judge Neilson—In the latter event it would not be proper.

Mr. Beach—In that view, I addressed the inquiry to counsel, and I did not understand the learned counsel to avow that he was to be a witness.

Mr. Evans—If your Honor please, General Tracy's statement concerning the matters he now approaches shall be governed,

and will be governed, by the same rules that guide counsel in opening matters in which they are not parties and are not witnesses; and in answer to the question put by my learned friend, General Tracy promptly answered that, if it was necessary, he should be a witness himself to prove it.

Judge Neilson—At the same time he would be at liberty to prove it otherwise.

Mr. Beach—That does not answer the point, if your Honor please. If the counsel had not prefaced his approach to this portion of his address to the jury, by saying that he was about making a personal explanation, I should have made no suggestion whatever, either to the counsel or to the Court. If he had merely announced as facts whatever might be contained in the statement of personal explanation, without prefacing or characterizing it in the manner he did, I should not have troubled him or your Honor. My protest is against this counsel, because his name, in other stages of this case, has been brought in question, in his opening to this jury, of what should be the mere facts he intended to prove upon the defense, making a personal explanation to the jury; and I protest against it, Sir.

Judge Neilson—The personal explanation does not seem to be called for. Any statement that the learned counsel thinks forms properly a part of the defense which he expects to prove, it is our duty to hear, of course.

Mr. Porter—We claim, Sir, in behalf of the counsel for the defense who has been personally arraigned, with a view of weakening his influence in speaking on the defendant's behalf, the right to announce the facts we propose to offer in order to meet that arraignment. It is a right.

Mr. Beach—Nobody objects to that.

Mr. Porter—We propose to prove it, Sir, as we choose, and by what evidence we will. The counsel cannot call upon us to specify the particular witness by which we propose to prove it; nor can he interrogate the counsel who is engaged in the opening of this case as to whether he is the party by whom the proof is to be made. That will depend upon subsequent developments in the case.

Mr. Beach—My point, Sir, cannot be evaded or changed. I have made no objection to the counsel stating any fact which they propose to prove in this case, whether that fact, when proved, will go to his exculpation from the grave imputation which has been cast upon him in the course of this trial, or not; if it is announced as a fact that he expects to prove upon the trial, I have no more to say. But, when the counsel enters upon a separate and distinct portion of his opening, and announces that it is a personal explanation that he seeks to make to the jury, thus withdrawing it from the ordinary statement of facts, I protest against that.

Judge Neilson—I think Judge Porter will agree with you in that statement.

Mr. Porter—I do not know that I understand the learned gentleman. If he meant to be understood that when counsel, opening a case, referring to testimony he means to introduce, uses the word explain, that that limits his right to speak, I must take issue upon that.

Judge Neilson—He does not do that.

Mr. Porter—General Tracy has made no avowal that he is commenting upon facts which we do not propose to introduce in evidence, or which have not been introduced on the other side. He was arraigned first by the opening counsel, afterwards by the plaintiff and his witnesses—an arraignment we propose to meet. We do not propose to permit the plaintiff to elect, by what counsel Henry Ward Beecher shall defend himself, nor to permit counsel of his election, by foul aspersion, to be driven to the position to which he has been assigned. But, Sir, in the exercise of his right as a counselor of this court, can there be a question that he may comment upon the arraignment of any witness, or that he may state how that arraignment is to be met, in order that the jury may justly judge between the party accusing and the party accused? That is a right we claim. It cannot be restricted by counsel, and I submit, Sir, that it cannot be restricted by your Honor.

Mr. Beach—All that, if your Honor please, we have not disputed, and this excited appeal made by my friend Mr. Porter to this Court is altogether unjustified by the attitude I have assumed. I have stated, and I restate it, Sir, for the purpose of perspicuity, that I do not object to Mr. Tracy stating any fact which he professes to prove in the course of this trial. I have not attempted to dictate to Henry Ward Beecher what counsel he shall employ, nor have I attempted to exclude any gentleman who chooses to appear from the conduct of this defense, but I still insist, Sir, whatever counsel may act upon the part of this defendant shall be governed by those ordinary rules which govern counsel in the conduct of cases before a court of justice. I say that this gentleman has gravely and grossly exceeded the limits allowed to counsel in the opening of a case, but I have not chosen to object. I will not now say, in answer to the appeal which has been made by my learned friend, what my idea is of the manner or the subject of that counsel in opening this case to the jury; time for that will come in the course of this case. What I do say is, Sir, that when this gentleman, thus situated in this case, departs from the ordinary course of an opening and commences a part of his address with a preface that he will now make a personal explanation to this jury, that is not in any sense or in any purpose a statement of facts which he expects to prove, it is the assumption of a right separate from the character of counsel to make a personal explanation and appeal to the jury, which, I submit to your Honor, is improper. That is all I object to, Sir; and if this counsel, or any other counsel, will avow that Mr. Tracy or this defendant intends to prove the facts or the circumstances which he now proposes to state, of course my voice is silenced, Sir; I have no objection to make, and we will see hereafter how closely and honorably the pledge will be redeemed.

#### THE EXPLANATION ADMITTED.

Judge Neilson—The learned counsel on both sides will agree, of course, that it is the office of an opening, and the duty of counsel in stating an opening, whether for the plaintiff or the defendant, to limit himself to facts and circumstances which are expected and intended to be proved, and if that be

the purpose of counsel in the case, it is proper. If it is a personal explanation, not to be followed up by proof—perhaps not in its nature susceptible of proof—then it should be omitted. I think the rule is very clear.

Mr. Porter—The suggestion of your Honor we accept as correct, with a qualification which I know is in your Honor's mind, and therefore I will mention, that in stating the facts which we propose to prove, we are at liberty to present them in connection with the facts to which they are applicable in evidence. I did not understand, until my learned friend made his last observation, the precise point of difference between us. I understood him to challenge the right of my friend, Gen. Tracy, to open on this subject, unless he would stipulate to be a witness.

Mr. Beach—Oh, no!

#### THE PERSONAL EXPLANATION TO BE PROVED.

Mr. Porter—I evidently misunderstood my friend from his last explanation. I unhesitatingly avow that the facts which Gen. Tracy proposes to present are facts which we do propose to prove, and on a future occasion we will be perfectly prepared to meet any arraignment the counsel may make.

Mr. Beach—And I commend the gentleman to his best resources when that time comes. [Laughter.]

Judge Neilson—Gentlemen will please to keep order. Mr. Tracy, proceed.

#### GEN. TRACY'S PERSONAL EXPLANATION.

Mr. Tracy—I shall endeavor, gentlemen, to state no fact in what I am about to say which will not be made plain to you by evidence which we shall introduce, or which, with the comments that I make upon the facts already proved, will not be sufficiently plain to you without further evidence. If some of the facts to which I am about to refer are material to this case, then, of course, we shall prove them by witnesses; but if the plaintiff in this case has dragged in matters that are not material, for the purpose of connecting my name with this investigation, I take it that I have a right to make a personal explanation of those facts, although when we offer the evidence in the case, he might probably object to it on the ground that it is not material. We may differ on that question.

#### MRS. TILTON NOT INFLUENCED AS TO HER TESTIMONY.

I certainly confess myself surprised to learn that what transpired, or is said to have transpired, between myself and the plaintiff's wife at a time prior to her appearance before the Investigating Committee, is a matter at all material to the issue in this case, and yet that has been introduced by the plaintiff for the purpose of casting an imputation upon me and connecting my name with this investigation as controlling the plaintiff's wife in her action before the Investigating Committee. If I heard correctly the evidence of the plaintiff touching that matter, he says that I told him that I prepared every question and answer before she appeared before that Committee. Now, gentlemen, we shall show you, in answer to

that allegation, that I saw the plaintiff's wife for the first time in my life to speak with her or to hear her speak—possibly I had seen her in the street before—but I saw her for the first time in my life about thirty or forty minutes before she was in the presence of that Committee, making her statement. I was introduced to her by her stepfather, Judge Morse, one of the most reputable men in this city, about thirty or forty minutes before she was before the Committee. I had no conversation with that woman, except in his presence and the presence of two or three other witnesses. There never was a word passed between us as to what she should say before that Committee or what she should not say. There was no question suggested and no answer suggested at all, and I never so told the plaintiff, the fact being, gentlemen, that on the sixth, I think it was, of July, knowledge came to me, quite late in the evening, that Mrs. Tilton was at the house of a mutual friend of herself and her husband, in Henry-st., desiring to communicate with some of the Church authorities of Plymouth Church, and I was requested to see her and have an interview with her to see whether she desired to go before the Committee. I called at that house, and I was informed that she had gone to consult her stepfather as to her duty. I did not see her then, but it was thought she would be back in an hour, or half an hour, or something like that, and I called again at the time that I supposed she was to come; and she came in with her stepfather, Judge Morse, and he introduced Mrs. Tilton to myself in the presence of two other parties.

It was then, I think, so dark that I could not see her face in the room where we were. We talked a few moments as to whether she wanted to go before the Committee or not, and before determining the question she went and had a private consultation with her stepfather, and returned and said to me she desired to see the Committee, or said to this person—her stepfather left immediately, and I left to see the Committee to see if they would come to where she was to hear her statement. I went to the Committee, and was gone perhaps ten or fifteen minutes, and the Committee returned. Mrs. Tilton had stepped down to the dining room for a cup of tea, and I stepped down then to inform her that the Committee were ready in the parlor above to hear her. The lady of the house was present.

#### NO REHEARSAL AND NO SET FORM OF QUESTION AND ANSWER FOLLOWED.

The only words that passed between Mrs. Tilton and myself on that occasion were substantially as follows. In the presence of this lady, I said: "Mrs. Tilton, if any questions are asked you this evening which under other circumstances you might consider indelicate or improper, I beg you to believe that they are not so intended. The Committee will undoubtedly question you, and they may inquire into something that under ordinary circumstances you might consider indelicate." And she made an answer that she should not be offended by any questions they saw fit to ask her, and she went immediately into the presence of the Committee and proceeded

to make her statement. I was not gone two minutes from the parlor until Mrs. Tilton was seated in the presence of that Committee making her statement before them, and she proceeded at once without questions, and there were but very few questions asked Mrs. Tilton by the Committee or myself that evening. Her statement generally was a narrative of her relations with her husband and family affairs. Now, I never told the plaintiff that I prepared every question and answer for this lady, for the very obvious reason that I never had any opportunity to do it, if I had been so disposed. It was an unnecessary reflection, it seems to me, for him to have cast upon his wife. No such thing ever occurred.

#### GEN. TRACY'S PURPOSE IN HAVING THE INTERVIEW AT MOULTON'S.

And another effort has been made, gentlemen, to show you that I have been guilty of unprofessional conduct in some way in connection with this case in my relations to this plaintiff, and it is necessary for me to refer to the evidence already given upon this subject and then to state to you the facts as I understand them.

It is true that sometime after the Woodhull publication, how long I don't know, but I should fix the time either the last of November or the first of December, Mr. Woodruff inquired of me if I would consent to hear a statement of the facts concerning that publication, to see what answer could be made to it. He said many people were saying that Mr. Moulton, his partner, ought to make some statement. I say here that at this time it was well known to Mr. Woodruff, and to everybody who knew my sentiments on that subject, that I was the friend of Mr. Beecher in this affair, not his counsel, for he had employed none, and I held no relations to Mr. Beecher at that time which would have led him to have selected me. Although a member of his congregation attending church there for a few years previous, I had never taken any prominent part at all in the affairs of the society and was not a member of the Church nor was any member of my family, and I knew but very few people in the Church, and knew Mr. Beecher only as hundreds and thousands of others of his congregation know him, I think never having spoken with him over three or four times in my life prior to the publication of the Woodhull scandal. But I had been very outspoken in regard to this publication after it was made and particularly in regard to Mr. Moulton's position in it to Mr. Woodruff. Mr. Moulton was a stranger to me; Mr. Woodruff was well known to me. The understanding was distinctly and so stated that the employment was not professional but a friendly consultation as a friend of Mr. Beecher, and as a friend of their firm, if I would consent to be consulted and look into the facts to see what answer, if any, could be made to that publication. It was distinctly understood that there was to be no compensation for that service. I said, certainly I would if I could be of service to Mr. Beecher, or to them, in the matter, I should willingly give my time to do so. The next morning, or a few mornings after that, possibly the next morning, he came around with Mr. Moulton and introduced Mr. Moulton to me; it was

the first time I had ever seen him. Of course, gentlemen, it was in the hurry of business, in the morning hours of the day, and the conversation that occurred there was entirely general. The Woodhull publication was not there. I had learned from Mr. Woodruff before, or I had heard in the street—it was well understood any way that Mr. Moulton had certain papers in his possession that it would be necessary to see and consult before any one could determine what answer could be made to the Woodhull publication. The conversation I state was entirely general at that interview. There was no descending into particulars for the obvious reason that the Woodhull publication itself was not present and none of these papers were present and therefore it would be idle to spend the time to consider the question of what could or could not be done. Well, my recollection is not specific as to that conversation in the morning, as it would not be to any conversation occurring in the ordinary way in the morning hours at my office. I knew generally that the object and purpose of that interview was to introduce Mr. Moulton to myself, and to appoint an interview where the papers should be present, and the whole question could be considered.

#### THE TRACY-MOULTON-TILTON INTERVIEWS.

Such an interview was appointed, and it took place at Mr. Moulton's study. There were present, as I recollect it, Mr. Moulton, Mr. Tilton, Mr. Woodruff and myself. Two conversations have been alluded to by the plaintiff in his evidence. I remember but one. As I recollect the conversation, I went down to the house of Mr. Moulton on Sunday, right after my Sunday dinner, which brought me there not far from three o'clock. I do not remember Mr. Tilton's being present when we entered the house, or went into the study; I know he didn't go into the study with us on that occasion. We went into Mr. Moulton's study, and the papers were produced. The first paper presented to me was the important paper in the case, and that is what was then known as the apology, which is now called the letter of contrition.

Mr. Shearman—Of January 1st, 1871.

Mr. Tracy—Yes; I mean the paper of January 1st, 1871. The Woodhull's publication was present, and of course I had a general knowledge of the main features of that publication. That letter was examined by myself. I remember reading it and I remember what I said about it. Then the retraction was produced, or the explanation of the retraction was produced. Those were the only three papers which Moulton exhibited to me on that occasion that have been introduced in evidence here. Another paper which was of very little importance, but connected with the case, was shown me at a later period of the conversation. Well, now, gentlemen, there occurred at that interview just what men familiar with business would expect to have occurred in this respect. The object of the interview being to see what answer he made to the Woodhull scandal, the Woodhull scandal was taken up with reference to these papers and gone over paragraph by paragraph.

The first thing that I asked Moulton about, of course, was

the pistol scene as described in the Woodhull publication. That has been read to you once or twice. It represents Mr. Moulton as going with a pistol and obtaining this retraction from Henry Ward Beecher under the threat of death. I asked him if that was true and he told me no, as he has told you here it was not true. Then the only other place in which his name was connected with it was where he is represented as going into the presence of Henry Ward Beecher and with Mrs. Woodhull and Mrs. Tilton urged Mr. Beecher to preside at the Steinway Hall meeting, and where Mr. Tilton is represented as having made a particular speech to Mr. Beecher on that occasion, setting forth reasons why he should preside at that meeting. I asked Mr. Moulton if that was true, and he said it was not; no such thing ever occurred, as he has sworn to you that no such thing ever occurred. He said that he had not given Mrs. Woodhull the information, or any part of the information there published; he denied having communicated to her the facts; he denied having been an actor in the scenes where he was represented as being an actor. Now, my recollection is that after the paper had been looked over, a question was asked as to what Mr. Tilton had to say about this, and what the foundation of the story was, if there was any, and my recollection of it is that Moulton said he preferred that I should hear that from Mr. Tilton. At all events, I remember that Mr. Tilton was not in the room at the time. I know he came into the room soon after. Whether he was in the house when I went there and was waiting to be summoned to the study I do not remember. He may have been sent for after I went there, or he may have been notified that there was to be a meeting and came around late, and Mr. Moulton, expecting him had gone down, and found him in the lower rooms and brought him up. I remember he came into the room after the papers had been shown to me, and after Moulton and I had had a considerable talk on the subject of the Woodhull scandal. I didn't know when the interview was appointed that Mr. Tilton was to be present. His presence there was a surprise to me. Of course, when I was asked if I had any objection to seeing him or hearing a statement from him, I had none at all, and I said I hadn't. He was brought up into the room, and I remember that he brought with him a manuscript, a considerable of a manuscript, rolled, as I remember, in black leather. He sat down, and before he began to read that manuscript, or said anything, he turned to me and said in substance, "Mr. Tracy, I don't know what the etiquette of your profession permits; if I give you a statement of my case against Henry Ward Beecher, and he and I should afterwards come into collision, in that case would the etiquette of your profession permit you to be counsel for Henry Ward Beecher?" I did say to Mr. Tilton, as I remember it, without discussing what the etiquette of my profession would or would not permit, that if I consented to receive a statement from a man who had a controversy with another and they should come into collision on that case afterward, I should not feel at liberty to become counsel for the other party.

## THE CHARGE MADE BEFORE GEN. TRACY.

And thereupon he proceeded to read to me a statement or manuscript which, as I remember it, was substantially the "True Story," so far as it has been produced here. It was not a clean copy, as he says, of the "True Story," for I well remember, as he read it to me, it was interlined and erased and supplemented in various ways. It looked like a draft upon which he had been bestowing much labor. The only fact, the only paper which was communicated to me, as I remember it, which I had not before heard and received from Mr. Moulton, was a letter or paper purporting to be from his wife, similar in language and statement to that now introduced here as her letter to Dr. Storrs, although that paper did not purport to be a letter to Dr. Storrs. It contained the charge against Henry Ward Beecher of improper proposals. That is the only fact that was communicated to me, touching his relations with Henry Ward Beecher, that I had not known before, and learned from Moulton, as I remember it. That document then proceeded after this statement to quote what is now called "the letter of contrition," but until recently called the "apology," the paper of January 1st, in that same paper as proof of the truth of the allegation which Mrs. Tilton made against Mr. Beecher. Now, it is quite true, gentlemen, undoubtedly, as Mr. Tilton says, that after he had made his statement to me, or talked with me, I did take this "apology," or "letter of contrition," and examined it. I undoubtedly did that, because I had looked at in the first instance with reference to the Woodhull scandal, which charged a life of adultery between these parties as of ten years duration; that was the charge of the Woodhull scandal, and I had examined it with reference to that charge. But when Mr. Tilton presented the case of improper proposals and not of adultery. I did, I have no doubt, take up that paper, and look at it again very carefully to see how it compared and supported or contradicted the charge which he made of improper proposals. Therefore it is quite likely true what Mr. Tilton states, that I did have in my hands and did go over this letter of apology after he came into the room, and that may account for Mr. Woodruff's remembering that we had that letter there after Mr. Tilton came into the room. We undoubtedly did.

## THE DISCUSSION AT THE INTERVIEW.

The statement of improper proposals, or the statement of the "True Story," or so much of it as Mr. Tilton read to me, having been read, the discussion between us commenced. Now, Mr. Tilton states to you that he read me that "True Story" as finally, completed, as I understand him to say, late in December, or the 1st of January. Now, gentlemen, I am very confident that that paper, as presented here as a final paper, was never shown to me in the world; that is to say, I never saw or heard of the letter of Mrs. Tilton, dated December 29, denying this charge, and the letter of Mr. Beecher, dated December 29, denying this charge.

Mr. Evans—1872.

Mr. Tracy—1872, I mean. I never saw either of these papers in the Winter of 1872 and 1873; I never saw Mr. Beecher's

when the investigation was going on, and he turned over to me some of his papers, and among them was this one, as I remember it; that is the first I ever saw of that letter. I never saw Mrs. Tilton's letter until I read it in the publication of Mr. Moulton or Mr. Tilton himself. I think it was Mr. Moulton. So I know that the "True Story" as a completed paper was never shown to me at all.

#### ONE INSTEAD OF FOUR CONSULTATIONS AT THE MOULTONS.

I have ransacked the chambers of my memory since this thing has been up, and I can recall no two conversations at Moulton's house where the subject of this scandal was conversed about between Tilton, Moulton and myself, three of us together, and another where Woodruff was present, making four. Of course, I cannot affirm that no such conversation took place, but I do affirm—do say that, to the best of my recollection, there was but one conversation. I am certain that the first time I ever saw Mr. Tilton on this subject, what I have repeated in regard to his questioning me and my answer, and his proceeding to state the charge against Mr. Beecher as I have detailed it now, took place at the first interview.

#### THE WOODHULL CHARGES AS THERE DISCUSSED.

Well, then the question came up as to what denial could be made of the Woodhull charge. We went over it item by item, and Mr. Tilton denied, substantially, the truth of the Woodhull publication in every important particular; that is to say, taking up one view, one scene after another—"Mr. Tilton, did you give this information to Mrs. Woodhull?" "No." In substance he denied having been the author of that information or any of that information to Mrs. Woodhull as he denies it here. So he denied scene after scene. "Did such a scene occur, or such a scene occur?" "No." "Then," I said, "I don't see why you cannot deny this, and I don't see why you and Mr. Moulton cannot deny it. Mr. Moulton admitted that he could deny it so far as the Woodhull publication represented him as an actor in the scene. There was no doubt but what he could deny it. He has sworn to you on the stand that he could deny it. Why could not Tilton deny it? He could not as he argued then, as he subsequently signed in his letter to a "Complaining Friend," which has been introduced here—he could not deny the Woodhull scandal, because while that story itself was false, there was a true story that it did not tell, and he insisted that he could not deny the Woodhull scandal as such without at the same time telling the true story. In other words, if he denied the false story he could only do it by telling the true one, and he went into that sort of reasoning which he sets out in the letter to the "Complaining Friend;" and referred to *The Police Gazette* as an illustration, just as he does in that letter to show that where there is any truth lying at the bottom of the story, a man could not deny the story without telling the other story that was true. I argued against that; I said: "The story, as you now tell it, of improper proposals, is not alluded to at all in this Woodhull publication. The story that they tell, you say, is false, and inasmuch as they don't allude

to the story that you now tell, you are at liberty, it seems to me, to deny the Woodhull publication without saying anything about the "True Story." Now, if there was anything said about lying at that interview, it was on the question whether it would be a lie—the discussion of the question whether it would be a lie for a man to say that a story which is told as a single story, which is substantially untrue—whether for him to say that that story was a lie, would be asserting the truth, provided there was another transaction not alluded to in it, but connected with it, as between the same parties, that was true. He said, "No, I cannot contradict the false story, unless I at the same time tell the true one;" and the discussion was a long one, and even became warm at times; and it continued until late in the evening—ten or eleven o'clock in the evening—but that was the result.

#### WHY GEN. TRACY ADVISED SILENCE.

Now, they say that I said silence was the one thing to do. Well, now, gentlemen, it must be manifest to you from their own statements that I did not say that silence was the only thing to do in this matter, except upon the theory that Tilton put forward, that he could not deny the Woodhull scandal without publishing what he called the "True Story," or the truth, in which he proceeded, while exonerating his wife, to put Mr. Beecher in the position of having solicited the act. Now, after arguing and failing to convince Tilton that he could not do that thing—failing to convince him that he could deny truthfully the Woodhull story without telling the other, and he making it a condition that he would make no answer to the Woodhull story except the one that exonerated his wife and charged Mr. Beecher with soliciting it, I undoubtedly did say, as a choice between that and silence, that silence was the only thing to be done. Because I regarded, as every man must regard, the charge against a minister of soliciting a woman, as great a crime as the actual accomplishment of the act. And I did not suppose that it would mitigate Mr. Beecher's offense at all to deny the fact of adultery, and to, at the same time, publish the fact that he had attempted to consummate it. Now, so far as that was concerned, I undoubtedly did say that, as between the two things, silence was the only thing to do. But in no other event than that, because both of these parties conceded the statement of facts which, I argued, enabled them both truthfully to deny the Woodhull publication as such. They could deny it without lying in fact. I argued, as far as Moulton was concerned, I remember, that to omit to deny it was to lie, because a man who sat silent under a falsehood, and did not deny it when it was his duty to deny it, was morally guilty of a falsehood.

#### WHEN GEN. TRACY STEPPED OUT OF THE CASE.

Now, we failed to agree; and it was very evident, I think, to all of the parties there, that Tilton and Moulton and I could not get on together with this scandal business; we differed so widely, that my recollection is that we never met again. Certainly we never met except incidentally, or pos

sibly to talk over some question connected with it; but if we ever did I do not remember it. My recollection is that that is the first and last meeting that ever occurred between us. I know our differences were very radical; and I had no expectation when I left that house that I should ever be consulted again by those parties on that subject, and I never was, to my recollection. I stepped down and out of the case after December, 1872.

I saw Mr. Beecher at Mr. Moulton's request once after that meeting, and but once, I think; and I—the only way I can fix the date definitely is that I know I saw him at his house once on the subject, and had an incidental conversation with him on the letting of the pew at his church on January, 1873. We talked five minutes, perhaps, in which we alluded to this subject incidentally, and it is the last time that I ever alluded to this matter with Mr. Beecher until a long time after; and never after, in fact, except incidentally, when we met on other matters and other affairs.

#### WHEN GEN. TRACY RE-ENTERED THE CASE.

I considered myself out of the case, and was out of it from that time, December, 1872, until after the publication of the Bacon letter. On the night of that publication I was sent for by Mr. Moulton to come to his house, and I went to his house, and I found Mr. Tilton and Frank Carpenter in the dining-room when I went there. Mr. Moulton took me to an upper room, and then introduced to me the subject of this Bacon letter, and said to me—after reading it to me—that he wanted me again to come into the case. I was very much excited and outraged at that publication. It took me altogether by surprise, for I had been so entirely out of it that I had not even known or read of Dr. Bacon's letters in *The Independent*, or his letters to young men, at New-Haven, and I did not know, or had not heard, that any such publication was contemplated. I remember that the conversation between Mr. Moulton and myself regarding Mr. Tilton's conduct was pretty excited that night; but he insisted that that letter did not foreclose the possibility of a settlement and adjustment, and he had a written abstract of the letter already prepared, which he proceeded to read to me, but I was in no condition to be convinced that night. and went away, he requesting to see me again. Mr. Moulton said to me that if anything was to be done about it he was determined that Mr. Shearman should be kept out of the case; that he thought that Mr. Beecher would do anything in a settlement that he and I concurred in advising, and he had sent for me for that purpose. I had been since 1872—although not connected with this case, gentlemen—I had been much with Mr. Moulton the year previous, because I had been the counsel of that firm in their difficulty with the Government, and it had brought me in connection with Mr. Moulton very much; I had seen much of him. I assume that he inferred that he could talk with me more confidentially than he cared to talk with Mr. Shearman, because their relations were unpleasant, and he said he must have some one with whom he could converse confidentially, and, therefore, he wanted me to come into the case. My introduction into the case, therefore, was as

the friend of Henry Ward Beecher, in June, 1874, at the instance of Mr. Moulton, on the theory that I could aid him as the friend of Mr. Beecher, and one whom Mr. Beecher would trust in bringing about an adjustment of this difficulty, which he said he desired very much to accomplish.

I saw him afterwards, when he talked to me about this card that it was proposed that Mr. Beecher should sign, the one stating that he had committed an offense against Mr. Tilton, but no crime; and, I suppose I am the counsel alluded to in the opening as the one who said it would not do for Mr. Beecher to sign that card, or I would not approve of it. I certainly did tell Mr. Moulton when we got into consultation that I could not recommend Mr. Beecher to sign that card, and should not; but he thought I was mistaken and attempted to convince me that I was; but he and I always differed on that subject, and we parted company on that card.

Now, that is the history of my connection, in short, gentlemen, with this scandal and with these parties. Now, after the publication of the Bacon letter, and after my interview with Mr. Moulton, I published an interview in *The Brooklyn Union*, given as my understanding of this case, in which I stated the case as I had received it from Mr. Tilton in '72, as a charge of improper proposals. Mr. Tilton called to see me the next day after that publication, and we had a long conversation on the subject of my publication in *The Union*, and the way I stated the case, the details of which, perhaps, it is not necessary to go into here.

It went on until this Committee was appointed. When the time was approaching that I saw, or thought I saw, a tendency in Mr. Tilton to change his ground against Mr. Beecher, and instead of charging an improper proposal, to make a charge of adultery—as soon as I saw that I sought Mr. Tilton and said to him, "Mr. Tilton, when you presented me your case with Mr. Beecher at Mr. Moulton's house in 1872, you asked me a certain question, and I made the answer that I should not be Mr. Beecher's counsel if you came in collision with him in the case—in that case that you stated to me. Now," I said, "as long as you adhere to the case, Mr. Tilton, as there presented, I shall adhere to my promise; but if you ever change your cause of action against Mr. Beecher, and say to me that the story you told me on that occasion is not true, and that your cause of action against Mr. Beecher is an entirely different one from what you then presented, I give you notice that I shall consider myself at liberty—I shall not consider myself bound by the promise I then made you." Now, on that question, gentlemen, which involves my professional standing—and it is the only one I care anything about in this case, and it is strange to me that it is here, but it is here—the only question that I care anything about, I say, is one that imputes to me an impropriety professionally in this case; but so far as that is concerned there is no dispute of facts between Mr. Tilton and myself. The only question is a question of judgment and discretion on that question of whether he, having stated to me one case against Henry Ward Beecher, and obtained from me a promise not to be his counsel, binds me not to be the counsel of Henry Ward Beecher when he brings a different

case against him—one of an entirely different nature. Now, on that question, I say, there is no dispute of facts.

Mr. Beach—Do I understand you to say that Mr. Tilton agrees to this statement?

Mr. Tracy—Yes, Sir; I do.

Mr. Beach—I tell you that he does not agree to it.

Mr. Tracy—Well, I shall prove it.

Mr. Beach—Very well, prove it. If you say that you will prove it, that is very well.

Mr. Tracy—I was about to say, I do not undertake to say what Theodore Tilton will say about it now.

Mr. Beach—Oh. I misunderstood you.

Mr. Tracy—But I undertake to say that what he did say about it in the Summer of 1874, when the question was up between us, because in the presence of a half dozen men he brought this allegation against me, as he does now, and said "You agreed at a certain time that if I ever came into collision with Henry Ward Beecher you would not be his counsel," my reply to him was precisely what I have made to you to-day, and his reply to me was, "That does not release you from your promise." I said, "Mr. Tilton, that is a question of judgment. I hold that it does. You are at liberty to think that it does not, but I gave you notice beforehand that I should consider myself absolved, and I do consider myself absolved from all obligation from that promise." Now, gentlemen, on that question, as I say, I have taken careful pains to be right. I have submitted this question to some half-dozen of the most eminent lawyers in this city and New-York, before I consented to appear in the case at all, and they agreed with me on the state of the facts that there was not any doubt about it. As I infer, the counsel would agree, on my statement of the facts, that there is not any doubt about it. And before I appeared in this case I caused the same question to be submitted to my eminent associates, Mr. Everts and Judge Porter, and they agreed that there was no doubt about the question, as I understand, of my right to appear here without any question as to professional propriety.

Now, I say that Mr. Tilton stated that and admitted the fact last Summer. There is no doubt about it; but the position he took was, that "conceding that, it don't absolve you from your promise." I said it did. Now, that is the question, and the issue, as I understand it, between Mr. Tilton and myself.

#### ADULTERY NOT THE CHARGE MADE IN MR. TRACY'S PRESENCE.

Now, gentlemen, I undertake to say that I never understood from Theodore Tilton, anywhere, to cast any imputation against his wife as having been guilty of adultery at any time, prior to the institution of the Investigating Committee in 1874. I wrote my interview in *The Union* and published it in the Summer of 1874, immediately after the publication of the Bacon letter, giving my understanding of this case precisely as I had derived it from Mr. Tilton. I had an interview with Mr. Tilton the day after its publication, and he did not question the accuracy of that interview, or the statement of it. The

only criticism he made on it was, he said this: "You make me merely a martinet of jealousy. You say that the charge was improper proposals, and then you say that Mr. Beecher and my wife both concur in denying that there is any truth in that. That don't leave me any case at all against Mr. Beecher," and he said: "You array my wife against me, thereby saying that she denies the truth of that allegation." And he criticised my taste and judgment in publishing that interview without seeing and conferring with him, and arraying his wife against him by saying that she denied the truth of the charge of improper proposals. Now, gentlemen, that is the history, in brief, of my connection with this scandal, as I understand it. I think that professionally I shall be entirely justified by every lawyer, certainly, who agrees with me on the facts, and as to that, I have Mr. Tilton's admission, distinctly made; or, in other words, when I stated the case to him he made the admission by saying—not denying my statement, but by saying, "That does not release you from the promise which you made," and I said to him what I have repeated, that that was a question of judgment.

Judge Neilson—Gentlemen, please keep quiet. [To Mr. Tracy.] Does this close your opening?

Mr. Tracy—Oh! no, your Honor.

Mr. Everts—No, Sir; we will proceed on Monday.

#### SYMPATHY WITH THE TRIALS OF THE JURY.

Judge Neilson—If the gentlemen of the jury will call at the office of the County Treasurer below on Monday morning, before coming in here, they can receive their pay, the formal pay, as jurors, up to that point of time, being all that we have the power now to do. The suggestion that the jury may eventually suffer great sacrifice, and ought to have additional compensation, is one that cannot be presented until we have seen the extent of your labors, and then it may be presented to the Board of Supervisors, who alone have power to act in the matter, and that I will endeavor to see is done properly. You will prepare now to retire, and return Monday morning at 11 o'clock.

The Court then adjourned until Monday, at 11 a. m.

### THIRTY-FIFTH DAY'S PROCEEDINGS.

#### GENERAL TRACY'S ADDRESS ENDED.

THE POLICY OF SILENCE PLACED UPON MR. TILTON'S SHOULDERS—COINCIDENCES BETWEEN THE PRINTING OF CERTAIN ARTICLES AND LETTERS AND THE CONDITION OF MR. TILTON'S FINANCES—MR. TILTON CHARGED WITH BLACKMAILING—WHY MR. BEECHER THOUGHT OF RESIGNING—ALLEGED INCONSISTENCIES IN MRS. MOULTON'S TESTIMONY.

MONDAY, March 1, 1875.

Mr. Tracy's argument began by an attempt to lift the responsibility of the policy of silence from the shoulders of Mr. Beecher, Mr. Tracy saying that this policy was pushed to involve Mr.



Beecher and extricate Mr. Tilton. It is still fresh in the minds of those who have read Mr. Tilton's testimony that he was closely questioned regarding a scheme to start a new daily paper in New-York with himself at its head, and that he denied all knowledge of such an enterprise. Mr. Tracy now says that in December, 1873, Mr. Tilton's friends proposed to the friends of Mr. Beecher that *The Evening Express* should be purchased and turned into a morning paper, Mr. Beecher leaving the pulpit and becoming its editor-in-chief. According to this plan, Mr. Tilton was to go abroad for three or four years as the chief of the foreign bureau of the new paper, and was finally to return and become an editor in the establishment. But, according to Mr. Tracy, notwithstanding the friends of Mr. Tilton threatened to shake all Christendom and ruin Mr. Beecher unless something was done for Mr. Tilton, the friends of Mr. Beecher denounced the scheme as a blackmailing one, and refused to give any money. Prefacing his assertion with the remark that Mr. Tilton was more remarkable than Sam Weller for coincidences, Mr. Tracy referred to the "Letter to a Complaining Friend," and called attention to the fact that on the very day that it was written, Mr. Tilton's account with Woodruff & Robinson had been closed; and further that *The Golden Age* letter was published the day after Mr. Tilton's next deposit with that firm had been exhausted.

Mr. Tracy, in referring to this *Golden Age* letter, insisted that Mr. Tilton tried to secure its publication in *The Eagle* through a certain Brooklyn reporter, but did not succeed, as Mr. Tilton declined to take the responsibility of its contents. Mr. Tracy boldly dashed into a ringing denunciation of Mr. Tilton as a blackmailer. He affirmed that the \$5,000 got from Mr. Beecher by Mr. Moulton was obtained with the knowledge of Mr. Tilton, and then he scornfully read the note written by the plaintiff to Mr. Beecher on the Sunday after the payment of the money: "Grace, mercy and peace." Mr. Tracy further insisted that \$10,000, and afterward \$5,000, were demanded to prevent the publication of the Bacon letter, and he made a general charge that whenever Mr. Tilton was out of money there was there an outbreak from him which continued until his bank account was replenished.

Mr. Tracy expressed the opinion that Mr. Moulton had the most remarkable memory of any witness of whom he had ever heard. By actual count Mr.

Moulton had said "I don't recollect" in answer to questions material to the case, 305 times.

One of the notable phases of the defense is the explanation offered by Mr. Tracy of Mr. Beecher's once expressed intention of resignation. Mr. Tracy says that when, in 1873, Mr. Tilton threatened to publish the scandal, Mr. Beecher—determined to stand—defied both Mr. Tilton and Mr. Moulton; but announced his intention of resigning from Plymouth Church, and not dragging its members into the contest. Said Mr. Beecher, according to Mr. Tracy, "You publish, I resign! I welcome the contest. Come on! But I take not Plymouth Church into the contest."

During the afternoon the subject overshadowing all others was the treatment of Mrs. Moulton's testimony by the counsel for the defense. Mr. Tracy said that he felt deeply her horrible position, and admired while he condemned her devotion to her husband. In illustration he called attention to Adelaide Proctor's poem, "Millie's Expiation," the story of a poor, high-minded girl, who, to save her husband from condemnation for murder, committed perjury. Mr. Tracy pointed out several alleged inaccuracies in Mrs. Moulton's testimony, and reached the climax when he affirmed that the defense would show conclusively and beyond the shadow of a doubt that on the day that Mrs. Moulton says that Mr. Beecher was at her house four hours, and lay upon the sofa there—Monday, June 2, 1873—he was traveling in the cars with Mrs. Beecher on the way to Peekskill. Mr. Tracy said also that Mr. Beecher returned the next day to marry a young couple on Tuesday, and left the city on the following day, and was absent two weeks in New-England.

Mr. Tracy concluded his opening for the defense with a long and affecting tribute to the Plymouth pastor, and a promise to the jury of evidence that would prove his client guiltless.

## THE PROCEEDINGS—VERBATIM.

### GEN. TRACY'S ADDRESS CONTINUED.

The Court met at 11 a. m., pursuant to adjournment. Mr. Tracy resumed his opening.

### THE PROPOSER OF THE POLICY OF SILENCE.

MR. TRACY—*May it please the Court, Gentlemen of the Jury:* When we closed on Friday night last, gentlemen, we had reached what is now known in this case as the period of the publication of the Woodhull Scandal. We have shown

you that after that publication, Mr. Beecher following the advice and judgment—the honest judgment, as he then supposed—of the "Mutual Friend," Francis D. Moulton, accepted the policy of silence, and that policy was accepted by all, on the supposition and belief, on the part of my client, that it was to be executed by all in good faith.

The defendant has been widely criticised for the policy of silence which was adopted and long pursued in reference to this scandal. The fact that the defendant assented to this policy and adhered to it for several years, has been and now is the very corner-stone of this prosecution. The most of your time has been occupied with evidence tending to prove this fact—a fact never denied, but always admitted. But this policy did not originate with Mr. Beecher. If we are to believe the plaintiff, the policy of silence and suppression had been adopted by himself long before Moulton bore to Mr. Beecher the message which brought about the memorable interview on the night of December 30. Tilton now asserts that he then knew, and had known since the preceding July, everything he now knows. Yet he had maintained a silence and effected a suppression so complete that the knowledge which he professes to have had of the facts had never come to the ears of Mr. Beecher. For it is conceded by all the parties that, down to the evening of that interview, Mr. Beecher did not know that he was in any wise involved in Tilton's domestic difficulties, except that he had concurred with his wife in advising Mrs. Tilton to separate from her husband, and had repeated to Mr. Bowen stories affecting Mr. Tilton's character in respect to marital fidelity. The object of that interview was to inform Mr. Beecher of a fact which Tilton says had hitherto been kept from him. Not only from Mr. Beecher had the knowledge of that fact been kept, but also from the friends of the family. Moulton, who visited the house frequently, had never observed the slightest alienation; Mrs. Bradshaw, the most intimate friend of both husband and wife, had seen nothing. So, if this fact, which Tilton now pretends, ever existed, he had suppressed it most absolutely. Surely thus far the policy had been a success.

#### WHEN THE POLICY OF SILENCE WAS FIRST LEFT.

But in December, 1870, as we have seen, business difficulties arose between Tilton and Bowen, which, to again repeat Mr. Tilton's own words, "were augmented by Mr. and Mrs. Beecher." At the interview in Bowen's house on Dec. 26th, Tilton for the first time departed from his policy of silence and charged Beecher with having made a dishonorable proposal to his wife, but did it under "a special pledge mutually given, that nothing should ever be said concerning Mr. Beecher's demonstration towards Mrs. Tilton." Here the charge was made, but on the express condition that it should be suppressed, and should not enter into the conflict which he and Bowen were about to inaugurate. Gentlemen, that fact is susceptible to the clearest proof by the plaintiff's own testimony.

#### MR. BOWEN'S TREACHERY TO MR. TILTON.

Set on by Bowen, Tilton wrote and sent that insolent demand that Mr. Beecher should quit the pulpit and

leave Brooklyn. Tilton says Bowen assigned as a reason why he could not sign the letter with him, that he had just settled all his difficulties with Mr. Beecher—but promised, if Tilton would make the attack, he would assume and carry on the fight. He bore the letter to Mr. Beecher; and then in the twinkling of an eye Bowen slipped through Tilton's fingers like an eel. Two days after signing the letter Tilton found him an enemy instead of a friend. I repeat again, gentlemen, that what I say concerning the intercourse between these two men I base exclusively on the statement of the plaintiff in this court as a witness. I repeat again that I unwillingly condemn any man on the statement of this plaintiff concerning any fact; but this is a fact that has been published for years, and I believe has never yet been denied by Mr. Bowen. Thus deserted by Bowen, liable himself to be assailed by Mr. Beecher, and threatened with dismissal from both his papers, Tilton's ruin seemed inevitable unless he could suppress the publication of his letter and repress the indignation of Beecher which that letter had aroused.

#### THE MEASURE FOR COUNTERACTING MR. BOWEN'S TREACHERY.

For this purpose we have seen how like a coward he attempted to interpose the body of a sick and suffering wife between himself and the man he had so grossly outraged, and how this attempt only plunged him into new disasters, rendering further efforts at suppression imperative, since it ended in Mr. Beecher's obtaining from Mrs. Tilton her written declaration that the charges made against him by her husband not only were false, but had been coerced from her while on a bed of sickness. How anxious Mr. Tilton and his friend Mr. Moulton were to suppress the wife's retraction we have already seen. If Mr. Beecher would only consent to its suppression they would destroy both the retraction and the accusation, or they would keep both together, so that one should never appear without the other.

Thus far the policy of silence and suppression had been the policy of the plaintiff. The retraction was surrendered upon the distinct assurance of both Mr. and Mrs. Tilton, that the whole matter from which it had arisen should be suppressed, and suppressed forever.

#### THE POLICY OF SILENCE NOT MADE, BUT ACCEPTED, BY MR. BEECHER.

Mr. Beecher did not make, but he accepted, the proposition. When the accuser offered to suppress the charges, the accused had no alternative but either to consent, or else to publish, himself, the fact that he had been falsely accused by a woman and her husband. Such an act is expected of no man; such an act Mr. Beecher could not commit without destroying her who had been his friend, and who, on a bed of sickness, with uplifted hands had called on God to witness that she was not morally responsible for the contents of that paper. Here the policy of silence and suppression was united in by all the parties; but it was assented to on the part of the defendant, and not suggested by him.

The next day Moulton comes again as a messenger of peace

and reconciliation, and carries away with him the paper which they now call the letter of contrition; this he took from the defendant to the plaintiff not as a weapon of war, but as an emblem of peace and fraternal feeling. And on February 7th, Moulton finding that Mrs. Tilton was not so completely reconciled as he desired she should be, he, and not the defendant, suggested the correspondence bearing date on that day in order to establish a more perfect peace, and to make the suppression of this difficulty doubly sure. The only criticism to which the defendant is liable in this respect is, that having assented to the policy of silence at the instance of the plaintiff, he accepted it in good faith and honestly endeavored to carry it out.

This policy was thus inaugurated on the night of December 31st to save the plaintiff from a ruin which the defendant could have certainly effected had he been disposed to press the advantage he then possessed.

#### MR. TILTON'S DOUBLE MOTIVE IN URGING SILENCE.

But the difficulty between him and Mr. Beecher was not the only one that Tilton and his friend Moulton desired to bury at this time. Tilton was covered all over with foul scandals, which demanded suppression. There were the stories which had reached Bowen's ears, which Tilton needed to have stifled, and to stifle which had been the object of the meeting at Bowen's house on the 26th of December. That meeting, at first apparently successful, had afterwards resulted in signal failure. Then there were the ugly scandals, which had come to Mr. Beecher, which he, giving credit to them, had repeated to Bowen on December 27th, when the latter bore to him Tilton's audacious demand. There was the hideous story which Bessie Turner had communicated to Mr. Beecher, Mrs. Morse and others, of the manner in which Tilton had lifted her from her bed at night and carried her to his own, and how, upon another occasion, he had again attempted the virtue of this poor child, who had been adopted and cared for by his large-hearted and benevolent wife. And more than all, there was need to keep from public knowledge the fact that his wife had separated from him and had threatened to leave him forever because of his infidelities and the many cruelties that she had suffered at his hands. If Theodore Tilton was to be resurrected from the sepulcher of infamy and again set upon his feet, all these scandals must be suppressed and kept from the knowledge of the world.

#### MR. MOULTON'S QUALIFICATIONS FOR HIS TASK.

You will see, gentlemen, that this was a task requiring for its performance a man possessing every characteristic which Tilton tells us guided him in the selection of his friend. To accomplish the part, it was necessary to possess "loyalty to his employer, a genius of administration and great courage of thought and action." I quote Tilton's description of Moulton's, given from the witness stand. All these, Tilton says, Moulton possessed in an eminent degree. Undismayed by the extent and variety of the evil stories that had gathered over Tilton, the administrative genius commenced at once with wonderful subtlety and patience the work of suppressing them.

First, Mrs. Tilton was persuaded, not only to deny the story that she had desired to separate from her husband, but to pronounce it a falsehood, coined by the brain of her poor mother. So this story was for the time being suppressed, and so thoroughly congenial to the new master-operator was the business of suppression, that even this denial was withheld from the knowledge of Mr. Beecher. Then Mr. Beecher was assured by the "Mutual Friend" that a story he had repeated to Bowen concerning Tilton's relations with a lady not his wife was unfounded; and he was induced to retract it. So that this story was silenced. Then Bessie Turner was made to sign a retraction of her story, and this was delivered into Moulton's hands as a means of suppression, after which the girl was sent away to prevent her prattling—and so she was for the time being suppressed.

#### THE HARD WORK OF BRINGING MR. BOWEN TO TERMS.

The last and hardest task remained to get a retraction from Bowen. From him they sought to obtain not only an indorsement of Tilton's character, but also the payment of money—a hard thing to get from Bowen. Success was achieved only by fifteen months of persistent and laborious endeavor. A law suit was begun; but a law suit could not frighten Bowen. It induced him neither to pay nor to retract. When every legitimate effort had failed, another method was resorted to. Tilton prepared a personal statement, giving what purported to be the history of his dismissal by Bowen, and containing the letter written by himself to Bowen, and dated January 1, 1871, in which he repeated the slanders which he says Bowen uttered against Mr. Beecher. This statement was put in type at *The Golden Age* office as if intended for publication, and printed slips of it were shown to Bowen and to Wilkeson, Mr. Beecher's friend.

They say, gentlemen, that Bowen was not blackmailed. I make no comment. You have seen that a law suit did not bring the money, but the threat to publish this article brought both the money and a certificate of character to Tilton published in *The Independent*.

#### MR. MOULTON'S SHREWDNESS IN HANDLING MR. TILTON'S ENEMIES.

The skill of Moulton was strikingly shown in his choice of means to obtain indorsements of character for his friend from the two men whom he had the most reason to fear. Mr. Beecher he controlled by gaining his confidence, and by convincing him that the stories against Tilton were false. Mr. Bowen he controlled by arguments of a different character. But Mrs. Tilton's complaint of the treatment to which she was subjected must also be suppressed. To this end she was made to feel that she was the only obstacle in the way of that reconstruction of her household life for which she longed. In the letter of February 7, every argument that could move her was brought to bear upon her, and at last Mr. Moulton succeeded in obtaining from her a pledge that she would never remember herself to Theodore's harm—a pledge she too faithfully kept, gentlemen, until by his open and shameless attack upon Mr.

Beecher, the plaintiff drove her forth, a despairing, frightened fugitive, flying as for her life from the jaws of hell. Once before her brethren of the church she has had liberty to speak, but prior to that time she was forbidden; and now, in the crisis of this horrible struggle, while the conflict wages over her good name, she is again silenced. Yes, gentlemen, when the plaintiff found that the lips of his innocent wife were unsealed before the tribunal which he had accepted, and that she was resolved on throwing off the incubus of her life, to speak freely the whole truth, he made haste to choose a tribunal where the law would keep her dumb. And so she is suppressed. Thus the administrative genius of the "Mutual Friend," inventing and executing a policy of suppression, had accomplished what Tilton would never have been able to do. Tilton's way would have been to talk and make "statements," each of which would have added to his difficulties. Moulton's way was to suppress talk and get other people to make statements which he could store away in his repository of material. If he had only been able to maintain over Tilton's malice and folly the same command which he acquired over Beecher's generosity and Bowen's self-interest, the first and primary object of this conspiracy, namely, the reinstatement of Theodore Tilton in business and society, might perhaps have been accomplished, and Moulton might have had two powerful and ready allies in the men he had reconciled.

But Tilton whispered to as many as he chose his malignant slanders against Mr. Beecher—the creations of his own obscene imagination. So long as Mr. Beecher kept the secret, Tilton had an excellent chance to retell his own versions as to what the secret was. These versions varied according to his moods; they agreed in one thing only, hatred of Mr. Beecher. While he was in immediate danger, Moulton was able to keep him comparatively quiet; but when he had procured his money from Bowen, and suppressed, as he thought, the stories assailing his own character, he did not see why the policy of suppression should be rigidly adhered to merely on his wife's account.

Particularly after the Woodhull publication, and the substantial failure of *The Golden Age*, Tilton took a new course towards Mr. Beecher. What he had hitherto circulated in the dark, he now began to use as a direct menace. With Mr. Beecher silence had been a sacred duty under the circumstances, as he understood them. To Tilton and his "Mutual Friend" it was not a duty, but a policy, and they pursued it just as long and just as far as their objects required. Tilton's passion and folly, left to themselves, would soon have overthrown the whole of their plan; but, under Moulton's skillful management, the scandal was merely kept alive, so as to torment Mr. Beecher without provoking an open rupture, or arousing his suspicions that the conspirators were playing him false. Mrs. Morse, a lady whose energetic tongue they were powerless to suppress, was perpetually and falsely put forward as the malicious source of the vile rumors which thickened around their unconscious victim.

This, gentlemen, is the history of the policy of suppression in this case, a policy devised and inaugurated by the plaintiff and his devoted friend, and pursued by them with treachery for

wicked ends, while it was accepted by the defendant in pursuance of a chivalric impulse, and maintained by him with loyalty and fidelity through every trial and danger to the end.

#### HOW THE POLICY OF SILENCE WAS VIOLATED.

Having shown you, gentlemen, how the defendant was induced to enter into this policy of silence, and how he has pursued it for years, in good faith, I now come to show you how this plaintiff and this "Mutual Friend" treacherously and continuously violated it. We have seen how the failure of the political campaign of 1872, and the immediate death of Mr. Greeley following upon the substantial failure of *The Golden Age*, blasted the future hopes of Tilton in that direction, and compelled him to look for new avenues of success. Up to this time, gentlemen, the policy which I have no doubt moved Moulton and Tilton was mainly the restoration of Tilton on this new newspaper enterprise which he had entered into in the attempted establishment of *The Golden Age*, but this had failed. The money which he had received from Bowen in 1873 was nearly expended; indeed, I believe in December, all the money had been drawn from Woodruff & Robinson.

Mr. Shearman—The last dollar was drawn on December 27th.

Mr. Tracy—December 27th, I am informed by the accounts, the last money of Tilton had been drawn from Woodruff & Robinson. The \$7,000 was exhausted, and he had no means of future supply.

#### NEW FACTS ABOUT THE NEWSPAPER VENTURE PROPOSED IN 1872.

It was necessary, therefore, that they should look around to find some new avenue for the benefit of Tilton, and, gentlemen, the counsel for the plaintiff in opening this case called your attention to a newspaper scheme that was started and talked of in December, 1872. He represents it that it was the suggestion of some one to Mr. Beecher that now was the great time for a newspaper enterprise in New-York, and he was the man to head it. Three out of five editors controlling the great daily morning press of New-York had recently died. Raymond, the youngest, and the man perhaps having the best conception of the true sphere of journalism of any man who has ever been on the American press, was the first to depart; Bennett, the ablest newspaper publisher and editor that we have ever seen in this country, had also gone, and now came Greeley, by far the strongest writer that ever wrote upon the American morning press. He, too, had died in the early days of December. There remained, then, only Dana, of the *Star*, and Marble, of the *World*, left among the men of established reputations upon the morning press of New-York City. This scheming gentlemen, looking out to provide an avenue for Tilton, suggested that this was an occasion for the starting of a new newspaper in the City of New-York; that now there was no great and overshadowing name upon the morning press in the City of New-York; there was a vacancy, and Mr. Beecher was the man to fill that vacancy, and it would be wise and judicious, under the circumstances, for him and Tilton to unite in that enterprise.

I thank the counsel for the plaintiff for calling your attention to this scheme, gentlemen, so I will not be charged with having forced it to your attention here. We shall show you that the friends of Theodore Tilton approached the friends of Henry Ward Beecher, in December, 1872, with this proposition: "Let us buy *The New-York Express*," which was for sale; "let us turn it into a morning journal; let Henry Ward Beecher assume the editorship of it, and retire from Plymouth Church, and let Theodore Tilton go abroad for three or four years and be the head of the foreign bureau of that paper, and by that time the Woodhull scandal will have died away and will have been forgotten, and he can come back and take a position upon the editorial staff of that newspaper." We shall show you, gentlemen, that meetings were held between the friends of Theodore Tilton and the friends of Henry Ward Beecher to consummate this scheme. We shall show you that the men who represented Theodore Tilton said to the friends of Henry Ward Beecher, "Unless that newspaper scheme is started, or unless something is done for Theodore Tilton, there will be an explosion here which will shake Christendom." There were several meetings. Not only were Mr. Beecher's friends approached in the City of Brooklyn by the friends of Theodore Tilton, but they were also approached in the City of New-York. There was not one meeting at the Union League Club, but there were two, where this scheme was fully canvassed.

#### THE NEWSPAPER SCHEME A BLACKMAILING PLOT.

But Mr. Beecher's friends, gentlemen, did not bite at the bait. Although every inducement was brought to bear, and although they were threatened with exposure and menaced by a scandal, they refused to enter into the scheme. More than that, gentlemen, they denounced the scheme in 1872 as blackmailing; they so denounced it to Theodore Tilton to his face, in the City of New-York, at the Union League Club. They told him, then and there, that this newspaper scheme which he was proposing was no more nor less than an effort to blackmail Henry Ward Beecher and his friends by threatening the world and Christendom with a scandal, unless it was accepted. We shall show you, gentlemen, by witnesses whom you will not doubt—we shall show it by a man almost as well known in this country as the defendant himself, standing a prince among New-York merchants, whose word has never yet been questioned, who told Theodore Tilton to his face: "You ask me to subscribe to a fund to buy that paper as the condition of Henry Ward Beecher retiring from the pulpit and the suppression of this scandal, you to be interested in it; I tell you it is blackmailing." And it did not succeed.

Another thing, gentlemen, now, I desire to call your attention to in this connection. These interviews were held the last days of December. Horace B. Claflin, of the City of Brooklyn, was one of the men that was approached on this subject by the friends of Mr. Tilton, and he did not assent to the scheme. He held back; he refused. The man in New-York held back. This was early in December. Remember that Mr. Tilton and all these parties had just entered upon a policy of silence, that

this scandal was to remain a secret and to be kept a secret. But the friends of Henry Ward Beecher did not come up; they did not move to the establishment of this newspaper.

#### THE DEFENSE'S THEORY OF THE COMPLAINING FRIEND LETTER.

And, now, I want to call your attention to this "Letter to a Complaining Friend," and ask you why it was that this policy of silence was broken within a very few days after it was made. Here is a letter to a "Complaining Friend," which is confessedly a fiction. Theodore Tilton tells you from the witness stand that he never received a letter from a "Complaining Friend;" he tells you that he never wrote a letter to a "Complaining Friend;" he tells you it was a fiction invented by him, to be published by him, concerning this scandal. Now, why was it? I will read the letter, gentlemen. [Reading]:

MY COMPLAINING FRIEND: Thanks for your good letter of bad advice. You say, "How easy it is to give the lie to the wicked story, and thus end it forever!"

I have read enough to call your attention to the letter, gentlemen. Now I go to the foot of the letter and show you the threat that is in it. [Reading]:

Moreover, after all, the chief victim of the public displeasure is myself alone, and, so long as this is happily the case, I shall try with patience to keep my answer within my own breast, lest it shoot forth like a thunderbolt through other hearts.

He has told you in the letter before you, remember, that this Woodhull scandal cannot be answered except by publishing the "True Story," thereby intimating that he has got a true story to publish—to tell the world; he has got a true story to publish referring to the scandal, in December, and not denying it, and closing the letter with a threat that if he should speak it would send a thunderbolt through other hearts. I ask you why was this lie, this confessed lie, this lie of a letter to a "Complaining Friend," when he never had received any such letter, and never answered any such letter? Why was it invented and published at this moment except as a menace to the friends of Mr. Beecher? For, I want to tell you, in this connection, gentlemen, that we shall show you that at the Union League Club, when this friend of Mr. Tilton approached the friends of Mr. Beecher on this newspaper enterprise, and said that that was the only means of suppressing the scandal, a friend of Mr. Beecher said to him: "If Mr. Beecher cannot stay in his pulpit in the face of this scandal, why it will be still worse for him as a journalist. He will expose himself to attack from every quarter; and how is it going to benefit Mr. Beecher by getting out of the pulpit and getting into a newspaper?" Says the friend: "We can take care of that. We have got possession of the documents." And, of course, if Henry Ward Beecher headed a great business enterprise, in which the friends of Theodore Tilton and Theodore Tilton himself were interested, they would not kill it by publishing the documents against Mr. Beecher, and thus creating a scandal. And the very suggestion that they had the documents which they would not publish, was a suggestion that if the scheme did not go on they might publish. And I desire to impress upon you, gentle-

men, right here, that those are the identical documents which this friend of Mr. Tilton was talking about in the City of New-York in December, 1873, which Moulton and Tilton had solemnly agreed as the condition of the tripartite agreement, in April, 1873, to burn and destroy. They had not burned them; they had preserved them, in violation of their covenant, treacherously, and now they were using them, and boasting of their possession, as a means of menace and of intimidation to Henry Ward Beecher.

I am desired by my associate to call your attention, gentlemen, to the fact that the very day on which this letter to the "Complaining Friend" is dated is the very day that Mr. Tilton had drawn out his last dollar at Woodruff & Robinson's; a strange coincidence. This case, as I progress in it, you will see is full of the most remarkable coincidences of any case that has ever been brought before a court of justice. But that game did not succeed, and Mr. Beecher did not go into a newspaper enterprise, but he stayed in the pulpit.

#### THE TRICKERY USED WITH THE GOLDEN AGE ARTICLE.

The Winter went on; Theodore Tilton had no employment. I now come, gentlemen, to another fact which, unless I mistake myself, will throw a greater flood of light into the hidden secrets of this case, and respecting the character of this defendant, and the manner in which this scandal has been worked up from month to month and from year to year, than any other fact that has yet been commented upon during this opening. You remember the history of what is known here as "*The Golden Age* article" that Tilton put in type after his return from his discouraging efforts to lecture in the West, in the Winter of 1871 and 1872, the paper with which he menaced Bowen and Beecher, and which brought the \$7,000. Now, gentlemen, that paper was preserved by Theodore Tilton until the following Fall, and until the publication of the Woodhull scandal. And right at this time, during the excitement of the Woodhull scandal, and when Mr. Moulton was recommending silence to Beecher, when these parties were agreeing upon silence and suppression, I will show you that Theodore Tilton artfully, cunningly, as has marked every step in his course in this transaction, made an effort to get that article secretly published without assuming the responsibility of it himself—wanted to have it mysteriously published. And so he had a conversation with a man that he denominates from the witness stand, "That man over there," whom we have since seen, Mr. McKelway of *The Brooklyn Eagle*.

And it transpires, gentlemen, that on the 18th day of November, 1872, Mr. McKelway of *The Brooklyn Eagle*, in pursuance of his profession as a journalist, of course, having read this Woodhull scandal, was sent by his principal, Mr. Kinsella, to have an interview with Mr. Tilton, an appointment having been brought about and made by their mutual friend—I will not use that term in regard to John W. Harman—their friend, Mr. Harman, had appointed an interview between Mr. Tilton and Mr. McKelway at Tilton's house, and that interview occurred on the 18th of November, I

think—18th or 19th. We shall show you at that interview, gentlemen, not only that Tilton gave the history of this scandal, and of his difficulty, to McKelway on that occasion; we shall show you that he not only stated to McKelway that the charge he made against Mr. Beecher on that night of the 30th of December was not adultery, but improper proposals; we shall show you that he told Mr. McKelway that his wife resisted the proposals of Mr. Beecher; and we shall show you that when McKelway applied to him for that article—"The *Golden Age* article"—for publication, he said that he had agreed himself not to publish; therefore he could not make any publication for which he could be held responsible to the public; that would be in violation of his word. But he had no objection to the publication, if it could be arranged, you know! Well, how could it be arranged? So they canvassed various schemes by which this article could be got before the public without Theodore Tilton's being held personally responsible for the publication; and McKelway suggested that he might give it to somebody else, and that somebody else should show it to him, or that he might have a hypothetical interview with a man; suppose a case, and thus get the fact. And they canvassed various schemes, and finally Tilton says, "I will tell you: we will go up to my and our dear friend John W. Harman; I will take this article along, and I will give it over to him, and then, if he has a mind to give it to you, why that is all right. I do not care what Mr. Harman does."

And so they went up to John W. Harman's, and John W. Harman was not at home. They walked into the parlor. There a new difficulty met them. But Mr. Tilton is equal to any emergency—any suggestions. And so he said to Mr. McKelway, "See here, I will write a note to Mr. Harman, and I will leave this paper in a big envelope right here, on Harman's table and then you and I will go away, and, of course, if you get this paper, why it is none of my business." And so he put the article in the envelope and he wrote the note to Harman, and they went away, and, of course, Mr. McKelway turned right around and went back into the parlor and took the paper and had it in his possession, as Mr. Tilton of course knew he would. But so strong a desire had Tilton manifested to have this letter got before the public that when Mr. McKelway came to communicate the facts to his principal they dared not publish it. They suspected a trick and dared not publish it, and so they dictated it to a shorthand writer, and then returned the copy to Mr. Harman and kept the shorthand notes in their possession, and it was not until the following April that another enterprising newspaper got hold of those notes and published them in *The Sunday Press*.

Now, gentlemen, that is the history of the publication of that *Golden Age* article. It would have been published on the 19th day of November, 1872, following the publication of this Woodhull scandal, by the act of Theodore Tilton as I have stated it to you, but for the fact that his zeal and anxiety to have it published, and yet to avoid the personal responsibility of its publication, was so marked that it frightened the newspaper men, and they durst not do it. But in April, 1873, this newspaper article came before the public

in a surreptitious way, proceeding from the identical copy that Mr. Tilton got into the hands of Mr. McKelway in the manner which I have stated. Of course, it created a great commotion. It was one of the emergencies of the case. It was published, I think, on Sunday, the 30th day of April.

#### THE ALLEGED BLACKMAILING OF MR. BEECHER IN ANOTHER WAY.

Now I come to another remarkable coincidence. (Samuel Weller is nothing to Tilton in producing remarkable coincidences)—I come to another remarkable coincidence. At the time of this publication, on the 19th of April, the day before Tilton's account had been written up at Woodruff & Robinson's, I said in the December previous he had drawn his last dollar; he had drawn his account, but there was an interest account which had not been cast up, and between December, 1873, and April, 1874, he had deposited about \$100 more, I believe. But on the 19th of April this account was written up, or was ready to be written up. This paper was published on the 30th, and on the 21st of April Mr. Tilton drew his last dollar from the firm of Woodruff & Robinson—his last cent; down to a cent; the books were closed. Now, gentlemen, this brings us within a few days of a very important event in the history of this matter.

I have shown you that in the beginning they sought the restoration of Mr. Tilton; I have shown you that in the middle of this controversy they wanted what afforded bread and butter to him, a position also on the newspaper enterprise of 1873. But as he had gone on, and one disappointment after another had come upon him, no success had attended his efforts; it degenerated, as such things always do degenerate, into a mere question of money. You have heard from Mr. Moulton how, on an occasion, he took pains to display to this defendant the liberal offer of another person to contribute to the support of *The Golden Age*, with the remarkable statement, gentlemen, which I want to impress upon you, accompanying that exhibition, that they did not intend to use that money. Now, if they did not, pray why did Moulton exhibit it to Mr. Beecher at all? If this was money which had been rejected and was to be returned, why was Mr. Beecher's attention called to it? Do not suspect, gentlemen, that Francis D. Moulton or Theodore Tilton are bungling operators here. No more skillful men ever undertook the conducting of such a transaction as this. Mr. Moulton did not go to Henry Ward Beecher and say, "Your money or your life." He did not go to him and say: "Mr. Tilton is bankrupt; he is on the verge of starvation; give me \$5,000 or I cannot keep him quiet." That is the way the bungler would have done. That is the way the unskillful operator would have performed. But do not suspect Francis D. Moulton of such indiscretion as that. He exhibits these papers and says: "My God, isn't that friendship! isn't that friendship!" Well, Mr. Beecher was dull; he did not actually take until he got away from Moulton, and, as he went away reflecting upon what he had seen, he said to himself, "What does this mean?" And, all at once, it occurred to him what it meant, and in a day or

two afterwards he saw Moulton, and when he suggested his theory about it, why, he found that he was exactly right; that money was what Moulton wanted. Mr. Beecher had taken the hint, and Mr. Beecher says: "Why, I am willing to contribute; I will contribute;" and Mr. Moulton says: "It will be the best investment you ever made." But, says Mr. Beecher, "I shall have to raise the money on a mortgage."

Now, gentlemen, I think I do not mistake Mr. Moulton's evidence. Although he intended, attempted, to cast an aspersion upon Mr. Beecher's character in this respect in his public statement, when he comes upon the witness stand, if I did not mistake his evidence, he says that Mr. Beecher told him he would have to raise it on a mortgage, and as soon as he could get the money on a mortgage he would contribute. So Moulton knew that he was not taking the loose money of Henry Ward Beecher. He knew that he was requiring him to mortgage his property to raise it. And yet he would have you believe that this was a mere incident, a matter that attracted no attention, no thought. And Mr. Beecher went home and mortgaged the roof that sheltered him and his aged wife and children, to satisfy the demand of these two conspirators, and he went to the bank and drew the money and took it and placed it in the hands of Moulton. And then there came a message from Tilton—"Grace, mercy and peace!" That money was put into the hands of Francis D. Moulton, gentlemen, and the day he received it he knew that Tilton was wanting money. That is evident from the fact that a friend had offered to contribute which had been returned. He knew that Mr. Tilton was wanting money, and he lost no time to send him money. But he sent it with a note saying: "I send you a thousand dollars and a memorandum note. Please sign and return." And what was Tilton's answer? "I cannot borrow money, for I see no way to returning it,"—and he sent back the note and the check. And then Moulton sent him the check without the note, and Tilton kept the money. And then he went on from time to time drawing from Moulton every time he said he was short, for one whole year, gentlemen; for one entire year we have shown you that Theodore Tilton had no other income except the \$5,000 that Mr. Beecher had deposited for him with Moulton, and he lived on it and consumed it, and but for the unfortunate publication of the tripartite agreement in May—in the last of the same month—there would have been peace all that year in regard to that scandal. Remember, gentlemen, that Moulton had never been in the habit of loaning Tilton money. He tells you that he never loaned him at any time exceeding \$500, and that Tilton only owed him at this time about \$1,000. And yet he went on advancing him for a year until he had advanced him the \$5,000. But in the Spring of 1874 the fund was running low. This man who knew nothing about it, this man who was in blissful ignorance of the source of the revenue that was feeding and supporting him, somehow or other had an intuitive knowledge of the fact that the pile was becoming exhausted. Because, we shall show you, gentlemen, that in May, 1874, when this money was running out, this same serviceable friend of Tilton's who had attempted to organize for his benefit this newspaper scheme

of 1873, this same friend goes again to the friend of Mr. Beecher and demands \$5,000 more for Theodore Tilton, in the Spring of 1874. I am reminded of what I should have remembered, that the first demand was for \$10,000. Failing in that, they offered to compromise for \$5,000. Of course, gentlemen, it was not demanded for Theodore Tilton in the express language of blackmail. Oh, no. This is a case of indirection from the beginning to the end of it; indirection has marked every step of it, and so you meet it here again; but the veil is so thin that the mind of no intelligent man will fail to penetrate it. *The Golden Age* was still on Tilton's hands. It was worthless, it was bankrupt. Tilton was seeking to give it away, absolutely begging for some one to take it; and this friend went to the friends of Beecher and said—

[At this point the foreman notified to the Court that one of the jurors wished to retire.]

On resuming his argument Mr. Tracy said:

Before proceeding, gentlemen, to the point that I was on before the interruption I desire here to say that I ought to call your attention to the treachery of this publication, or attempted publication, by Tilton of that letter of his directed to Mr. Bowen, dated January 1, 1871; I ought to call your attention to the treachery of that attempted publication against Henry C. Bowen himself. You will remember, gentlemen, that Mr. Tilton had got the money from Mr. Bowen on the promise never to repeat these scandals, and never, therefore, to publish that letter, and he had obtained it on the distinct understanding that all the papers, which included the one addressed to him by Tilton on January 1st, should have been destroyed; and yet you see, in violation of that agreement, in violation of the agreement by which he had obtained from Mr. Bowen \$7,000, in 1873, six months after he had so obtained that money, he was colluding with a journalist to get that letter published, without being compelled to take the personal responsibility of publishing it. And it was this tripartite agreement to which he had reference when he said to Mr. McKelway: "Why, I have agreed not to publish this paper, therefore I cannot publish it on my own responsibility, but if it can get before the public without my being responsible for it, all right."

#### THE SECOND APPLICATION FOR \$5,000 UNSUCCESSFUL.

I was saying, gentlemen, that in 1874 there came to the friends of Mr. Beecher a suggestion from this same friend of Mr. Tilton, who had attempted to negotiate this newspaper enterprise of 1873, suggesting a scheme by which Tilton should go to Europe, and be gone some time; but the difficulty was to raise the money; he had no means to go to Europe, and it was finally said, "Why, Mr. Beecher's friends can put into Mr. Tilton's hands \$5,000 of money, under the pretense of a transfer of *The Golden Age*. We can buy *The Golden Age* of Tilton, and pay him \$5,000, and then give it to somebody, whoever will take it, and make the transfer of *The Golden Age* the cover of putting into Mr. Tilton's hands \$5,000 in money. Now, as I say to you,

gentlemen, this *Golden Age*, as has already appeared in the evidence satisfactorily, and will be made further to appear in evidence, this *Golden Age* was perfectly bankrupt. Mr. Tilton had long been seeking to get rid of it, to give it away; and it was stated distinctly between this friend of Tilton and this friend of Beecher, that it was only used as a cover to transfer this money from the hands of Mr. Beecher's friends to the hands of Theodore Tilton. Now, in all these cases that I am talking about newspapers, gentlemen, I want you to bear in mind, that Theodore Tilton was informed of the enterprise, and knew what had transpired between his friend and the friends of Mr. Beecher. For instance, he was informed in 1873 who this friend was, what he had said, and what he had done, fully; and two years afterwards we find this same friend—not another, but the same man—coming again to the friends of Beecher with a new suggestion for \$5,000 more—made \$10,000 in the start, and finally reduced to \$5,000.

Now we will show you, gentlemen, that Mr. Tilton was seen and talked with on the subject, and knew of the negotiation that was going on. We shall show you that this was about the time of the preparation of the Bacon letter, which caused this explosion. We shall show you, unless I am mistaken, that the Bacon letter was in preparation at the very time this negotiation for \$5,000 was going on. It was well understood by the friends of Mr. Beecher and the friend of Mr. Tilton that it was in preparation. If it is permitted, gentlemen, we shall show you that this scheme, when mentioned to one or two others of Mr. Beecher's friends—this second scheme—was denounced as a blackmailing operation, and they refused to submit to it, or to have anything to do with it. Their answer was, "If we begin now, we don't know where we shall stop. Pay not one cent." And this friend of Mr. Tilton was informed that this money could not be raised, and the negotiation need not longer be presented, or the proposition need not longer be presented. And we shall show you, gentlemen, that that friend then said: "Well, the letter to Bacon, or the Bacon letter, will be published, and Mr. Beecher will be ruined." The \$5,000 was not paid. True to the prediction of that friend, the Bacon letter was published, and I think nobody will dispute that it has been followed by a persistent and malignant effort to ruin Henry Ward Beecher, and thus make the prophecy of that friend to come true. But the money was not raised. Theodore Tilton did not get his \$5,000. *The Golden Age* passed into other hands about this time, and this controversy began.

#### THE PUBLICATION OF THE TRIPARTITE COVENANT.

Now, gentlemen, I go back to the publication of the tripartite agreement and to the scenes that followed about the first of June, 1873. That tripartite agreement, as you have heard, was published without the knowledge or consent of Mr. Beecher, by one of his friends, who had preserved a copy of it—the only copy, I believe, gentlemen, so far as I am informed, that Mr. Beecher or any of his friends ever had of any paper connected with this controversy; for I recall at this time no other paper of the multitude that was ever left in their hands or kept by Mr. Beecher or any of his friends. But this friend publishes a copy of the tripartite agreement, and



that caused an explosion. That was published on Friday, May 30th. Mr. Tilton then threatened that he would make a publication unless Mr. Beecher in some way vindicated him from the imputation which he said that tripartite agreement cast upon him by this publication. Well, now, gentlemen, you have heard from the witness stand how much pains Theodore Tilton took in changing his clause of that tripartite agreement before signing it. He has told you, Moulton has told you, and other witnesses will tell you all about it. He took it home with him, and he rewrote it himself every word of it, as I believe, and he made that clause of the tripartite agreement just to suit him; it was just what he wanted it, and he refused to sign anything else, he said, except just such a statement of his case as he desired. Then one would have thought, having drawn his own paper, that the publication of that paper would not have been a very great offense to Theodore Tilton. We could understand how Mr. Bowen might have complained of the publication and justly complained of it; but it is difficult to understand how Theodore Tilton could complain of it. But he did, and he insisted that that publication put him in the position of one having been forgiven by Mr. Beecher, and therefore he said that Mr. Beecher should do something to right that wrong.

Well, now, Mr. Beecher was not responsible for that publication. But that is no matter. That is a peculiarity of this case, gentlemen, which has marked it from the beginning to the end, that Mr. Beecher has been held responsible by Mr. Tilton for everything that everybody did in connection with this scandal. If a member of Plymouth Church uttered a word concerning Theodore Tilton, Beecher was responsible. If my friend Shearman said anything that was offensive to Tilton or Moulton, the man who was to be held responsible was Beecher, not Shearman. If the Clerk or Assistant Pastor or anybody else down at Plymouth Church did what Tilton did not want them to do, or refused to do what he did want them to do, the man who was to blame for it was Beecher, and Beecher should be held responsible. So this publication of this tripartite agreement, which was an accident which none of the parties to it directly were responsible for, was to be charged home upon Mr. Beecher, and he must redress the wrong; nay, more, he must do something which would be equivalent to relieving Mr. Tilton from the imputation that he said his own article put upon him. Well, now, what was that imputation? It is difficult for us to say, gentlemen.

#### MR. BEECHER MADE DESPERATE.

Mr. Beecher sought to convince this man that the publication of the tripartite agreement did him no wrong; but he insisted that it did, and so he threatened to publish, and on Saturday morning, May 31, Mr. Beecher was sent for to come to that celebrated study in Remsen-st., where he had an interview with Moulton and Tilton, and Mr. Tilton threatened to make a publication, and Mr. Beecher went home that morning to consider and determine his course. He had thought of it through the day, and he had fixed upon the policy that he should pursue.

He had entered into this policy of silence which they had instituted for their own protection, which they had instituted for the purpose of suppressing the scandals which were floating in the community against Tilton—he had followed that policy with the same good faith that characterizes every act of Henry Ward Beecher's life. He had stood their persecution, their annoyance, their torments, their threats, their indignities, for four long years; but now at last, by the indiscreet act of a friend, Mr. Tilton claimed to be so offended that this policy of silence should no longer be adhered to. "Well," said Mr. Beecher, "let it come. I am prepared to meet it. I face your publication, and I defy you! But there is Plymouth Church, dearer to me than the apple of my eye; there are these thousand trusting souls, young men and women, who have been reared up by me, and under my instruction; there is an organization which has within it three thousand children in its Sunday-School; there is a power that is doing good in the land, foremost in every good work, carrying on every enterprise of charity, benevolence, with a power and an effective force that characterizes no other church in this city or this State. That church is mine. Under God, I have been permitted to raise it, to build it up and to hold it together. Now, shall I shatter it? Shall any personal controversy of mine be made the thunderbolt that shall shiver Plymouth Church to atoms? Shall I divide it? No; that society shall be united; I will fight my own fight against Theodore Tilton, but I will not drag it into the church. I will step outside of it; then I will welcome the conflict, if the conflict must come." And so, on Saturday night he went down again, this brave-hearted, true man, to meet the men who had been persecuting him for years; and there he said: "You publish; I resign; I welcome the conflict; come on. But I take not Plymouth Church into this conflict; at least, I will give these noble men and women who have stood by me the opportunity to say whether they accept my resignation before this contest is inaugurated." And he met them, and how did they receive it? When he showed to Moulton this resignation, why, he said: "Good God!" It took his breath away; he read it, and he ran down quicker than lightning to convey to Tilton the news of this man's design: "The time has come when persecution will be no longer submitted to; the hour has now come when it is liberty or it is conflict, and this is liberty." "You publish; I fight." And they were amazed at the temerity of this man; they were astounded to find that the man that they thought they had sure hold on and would lead forever under their yoke, at last had come to the point of saying: "Gentlemen, thus far but no farther." He went home, and on the next morning he indited the letter of June 1st, expecting that that was to be the last Sabbath that he would spend as minister of Plymouth Church. He supposed, in the language of that letter, that he was "preaching his last sermon;" he supposed that he went from that pulpit forth, on that Sunday night, to conflict and to battle with these two men who had been hounding him for the last four years. But, when he sent that letter—he tells Moulton in the letter: "I, too, shall make a statement; you publish; I publish too; and I will make a statement that will stand the test of the

Judgment Day"—and he sends that letter down to Moulton. He receives back this answer:

MY DEAR FRIEND: Your letter makes this first Sabbath of Summer dark and cold like a vault.

Ah, gentlemen, you will remember the history of this letter. Mr. Moulton first starts to write, and he writes the following:

MY DEAR FRIEND: You know I have never been in sympathy with the mood out of which you have often spoken as you have written this morning. I know you can stand if the whole case was published to-morrow; and, in my opinion, it shows a selfish faith in God, who—

And there he stops; erases what he has written; and commences his letter anew; but he says to Mr. Beecher there:

I know that you can stand if the whole case was published to-morrow.

And so did Mr. Beecher know it; it conveyed no information to Mr. Beecher; but it is a confession passing between these two men, at this time, showing that they both knew that when the truth of this case came out Mr. Beecher could stand; and stand successfully. Having written that, he goes back and writes again:

MY DEAR FRIEND: Your letter makes this first Sabbath of Summer dark and cold like a vault. You have never inspired me with courage or hope; and if I had listened to you alone my hands would have been dropped helpless long ago. You don't begin to be in the danger to-day that has faced you many times before. If you now look it square in the eyes, it will cower and slink away again.

And so it did cower and slink away!

You know that I have never been in sympathy with, but that I absolutely abhor, the unmanly mood out of which your letter of this morning came. This mood is a reservoir of mill-dew. You can stand if the whole case were published to-morrow. In my opinion it shows only a selfish faith in God to go whining into heaven, if you could, with a truth that you are not courageous enough, with God's help and faith in God, to try to live on earth. You know that I love you; and because I do, I shall try and try and try, as in the past.

You are mistaken when you say that Theodore Tilton charges you with making him appear as one graciously pardoned by you. He said the form in which it was published in some of the papers made it so appear; and it was from this that he asked relief. I don't think it impossible to frame a letter which will cover the case. May God bless you; I know He will protect you.

A prophet was Francis D. Moulton, as well as a "Mutual Friend."

#### MR. MOULTON'S OWN TESTIMONY TO THE STRENGTH OF MR. BEECHER'S CASE.

But what sort of a God is Moulton's if he thinks, when he asserts, "I know that God will protect you, Mr. Beecher," if Mr. Beecher was then the man that he now pretends to say he is? "God will protect you." Will God protect the guilty? Does Moulton think that his God protects the guilty? Does he think that He covers him with His protection who has been a cold-blooded and heartless seducer of innocence for years? I affirm, gentlemen, that both of those expressions in that letter show that Francis D. Moulton knew that when this whole scandal was out there was nothing affecting the honor of Henry Ward Beecher as a Christian minister. Indiscretions it might prove; complications arising out of family

difficulties, that are hard of explanation and difficult to be explained to outsiders, it might establish; but he tells him and he tells you, "There is no guilt there which, the world knowing of you could not still stand as the pastor of Plymouth Church." I had hoped, gentlemen, to have in court an authority on the subject bearing upon this letter. I will refer to it, and state the law. It is this, as established by the Supreme Court of this State, that when a jury is called upon to consider the credibility of a witness and his writing, which he made at the time of a transaction, is in conflict with his testimony that he gives on the trial, and that testimony is also in conflict with the other party to the case, the jury are bound to take the writing and not the oath of the witness as delivered from the stand. I read, if your Honor please, from the 30th of Howard's Supreme Court Reports, *Boyd vs. Colt*:

Where, on a question of fact, the plaintiff swears one way—

Judge Neilson—What page do you read from?

Mr. Tracy—384, if your Honor please. The 30th of Howard's Practice Reports, 384.

Where, on a question of fact, the plaintiff swears one way, and the defendant directly adverse, and the defendant introduces a letter of the plaintiff in evidence, written before the commencement of the action, flatly contradicting his oath, the jury are bound to disregard his oath.

This is a decision at the New-York General Term, Sutherland, Judge, delivering the opinion:

The question in this case was whether the services performed by the plaintiff for the defendant in London were performed under a special agreement to be paid for at the rate of \$1,000 per year, or whether they were performed without any special agreement as to the rate of compensation, and with a view of the plaintiff receiving therefor what they were really worth. On this question of fact the plaintiff swore one way and Sargeant, the agent of the defendant, another. The jury had a right to credit the plaintiff and not Sargeant. We ought not to grant a new trial, because they did so.

But I do not see how the jury could disregard the plaintiff's letter produced and read in evidence by the defendant on the trial. In that letter the plaintiff expressly admits that he had been in the defendant's employ for two years at \$1,000, meaning evidently at the rate of, or salary of \$1,000 per year, and these two years must include the period of his services in London up to the date of his letter on or about the 1st of January, 1854.

It appears to me that this letter, unexplained, was conclusive against the plaintiff, and that the jury were bound to disregard his oath when flatly contradicted by his own letter, written long before the action was commenced.

I think the judgment should be reversed and a new trial ordered, with costs to abide the event.

Now, gentlemen, we have shown you the letter of Francis D. Moulton written in June, 1873, to Henry Ward Beecher, who knew certainly quite as well as Mr. Moulton knew what were the real facts of this case, and in that letter we see Francis D. Moulton saying to Mr. Beecher: "You can stand if the whole case was published to-morrow." But now he comes into Court and under the solemnity of an oath proceeds to tell you that this man for two years before, for three years nearly, had been confessing his adultery with the plaintiff's wife. He tells you a story, which, in fact, makes him one of the worst seducers and libertines the country has ever seen, and yet he pretends to us that such a man could stand in

the foremost pulpit of America and be received and sustained by its people, although he should confess his crime and confess the falsehoods and lies that he had told to cover it up! Gentlemen of the jury, you will not believe in the face of this letter, in the face of the numerous contradictions of Mr. Moulton, in the face of the fact that the witness has been himself lying about this case, as he would now have you believe, for four years—when you have heard the evidence of Henry Ward Beecher on this subject, I say you will not believe the testimony of Francis D. Moulton, but will accept his letter written on that Sunday morning of June 1st, 1873, as stating the truth and the whole truth in this unfortunate controversy.

#### HOW MANY TIMES MR. MOULTON SAID, "I DON'T REMEMBER."

While I am on this subject, gentlemen, I desire to call your attention briefly to one or two of the marked features that characterize Mr. Moulton's testimony as a witness. I have had occasion, once or twice, as I have passed along, to call your attention to special facts where he forgets or don't remember. His cross-examination, in that respect, was one of the most remarkable that I have ever seen in a court of justice. I doubt whether it is not the most remarkable that has ever been exhibited before any judicial tribunal. I have taken pains, gentlemen, to have counted the number of times in which Mr. Moulton, in answer to questions on cross-examination touching material points in this case, has said, "I don't remember," or "I don't recollect," the number of matters which have been called to his attention, important and material in this case, where he has refused to give an answer, and cloaked himself under the pretense that he don't remember or cannot recollect, and that number, gentlemen, is 305 times. And this is a specimen. Speaking of Mrs. Woodhull after her Free Love speech at Steinway Hall, where he heard her, and was present with Mr. Tilton where he presided, I asked him if he had Mrs. Woodhull at his house after that. [Reading]:

Q. Did you have her at your house after that speech? A. I don't recollect.

Q. You don't recollect? A. No.

Q. When Mrs. Woodhull was at your house talking about her Steinway Hall speech, did Mr. Tilton come with her? A. I don't remember whether he was with her, or not, Sir.

Q. Do you know whether he went away with her? A. I don't recollect, Sir.

Speaking of this gift that was proposed to be given to *The Golden Age* at the time he exhibited the papers to Mr. Beecher, saying that was evidence of friendship, I asked him:

Do you remember whether the amount offered was as high as \$5,000? A. I don't recollect, Sir.

Q. Do you remember whether it was as high as \$3,000? A. I don't recollect.

Then speaking of the Woodhull speech again:

What was the subject of that speech? A. I don't recollect, Sir, what the subject was.

Q. Well, you heard it? A. Yes, Sir.

Q. Was it on the marriage relation? A. I really don't recollect, Sir, whether that was the title or not.

Q. I did not ask you about the title? A. You asked me what the speech was on, whether it was on the marriage relation.

Q. Yes; I asked you whether the subject was not the marriage relation? A. That, I say, I cannot tell you.

Q. You cannot tell that? A. No, Sir.

Present at the speech—a speech that had created great excitement—had a serious interruption—and he could not tell what the subject of the speech was about; and you will remember, gentlemen, that after he got out of our hands, on cross-examination, and was taken by the plaintiff, he was able to repeat, almost word for word, Theodore Tilton's speech introducing Victoria Woodhull on that occasion, made in 1871, and swore that he had never read it since that time. He repeated it, I say, almost word for word, a fact in human memory that I have never before seen equaled, if it was true. He repeated it, only leaving out of it, gentlemen, the remarkable feature of it, and that was that Theodore Tilton introduced Victoria Woodhull on that occasion as the advocate of social freedom. With that exception it was word for word. With that single exception, gentlemen, which occurs at the last end of the speech, his repetition of that speech was word for word with the shorthand report published in the newspaper the next morning, and yet he tells you he had never read it since, and yet when I had him on cross-examination he could not tell us what the subject even of Victoria Woodhull's speech was.

Gentlemen of the jury, would you give credit to the testimony of such a witness? Will you hang the most important issues that were ever submitted to the judgment of twelve men for eighteen centuries, on the testimony of such a witness as that? I'll read no further. I say to you that I have had them counted, and the report is 305 such answers as that from Francis D. Moulton on cross-examination.

It is one o'clock now, your Honor.

The Court here took a recess until 3 p. m.

#### MR. BEECHER'S CARD IN THE EAGLE.

The Court convened at 2:15 p. m., and Mr. Tracy continued his argument.

Mr. Tracy—We had finished at recess, gentlemen of the jury, June 1st, 1873, which you will remember occurred on Sunday. The emergency which the publication of the tripartite agreement had created was after Mr. Beecher's threat of resignation, a threat to face these men, and himself to meet statement with statement, satisfied, as you will see, by a very slight affair. Moulton proved a prophet, and this new danger did slink away and hide itself when Mr. Beecher threatened to meet it firmly and to bid them do their worst, and Mr. Tilton was contented with this little card, which he says he wrote, and which was published in *The Brooklyn Eagle*, June 2:

To the Editor of *The Brooklyn Eagle*.

JUNE 2, 1873.

DEAR SIR: I have maintained silence respecting the slanders which have for some time past followed me. I should not speak now but for the sake of relieving another of unjust imputation. The document that was recently published, and bearing my name with others, was published without consultation either with me or with Mr. Tilton, nor with any authorization from us. If that document should lead the public to regard Theodore Tilton as the author of the calumnies to which it alludes, it would do him great injustice. I am unwilling that

he should even seem to be responsible for the injurious statements, whose force was derived wholly from others.

HENRY WARD BEECHER.

Now, you will see, gentlemen, that that card contented Mr. Tilton, but the document which was published, the tripartite agreement, did not assert or profess to assert that Theodore Tilton was the author of the scandals which it recited, and the publication of it created no such imputation, and yet you see that this great emergency was satisfied when Mr. Beecher threatened to meet their threats by publication of that mild and harmless card. But there is another fact, gentlemen of the jury, connected with this 2d day of June, 1872, to which it now becomes my duty to call your attention.

#### COMMENTS ON MRS. MOULTON'S TESTIMONY.

We now, gentlemen, approach one of the most delicate subjects which my duty calls upon me to discuss. I refer to the connection of Mrs. Emma Moulton with this case. Apart from her relations to this matter, I shall not speak of this lady otherwise than in terms of respect. I feel most deeply her extraordinary position—the terrible emergency which she had to meet, and the overwhelming power of the temptation before which she has fallen. The truth of this case makes it impossible for me to abstain from speaking with apparent severity of this lady's testimony; but I do so with sorrow for her, reserving all my indignation for those who have forced her upon the witness stand to confirm the accusations which they have invented. The experience of ages has shown, gentlemen, that among the best, the purest and the loveliest of women, the instinct of devotion to their husbands and their children is so strong, and rises to such a sublime height of unselfishness, that not only will they, in the majority of cases, sacrifice all their own temporal interests, but that in many instances they will consciously imperil their immortal souls, for the sake of saving the unworthy men to whom they are bound by sacred ties. This truth has always been recognized by our law, which until eight years ago would not permit wives to be called upon to testify for or against their husbands, and by that other principle of the law, still in force, which absolves a woman from responsibility for any crime, less than murder, committed by her in the immediate presence of her husband. This truth is perfectly familiar to every one frequenting our courts, for not a week passes in which some poor, broken-hearted, cruelly-abused woman, in the lower walks of life, does not appear in some court and swear that the injuries which she had received from her brutal husband were not really inflicted by him, but proceeded from some other cause. It is recognized by society at large, which expects, as a matter of course, that women, otherwise excellent and truthful, are, just in proportion to the loveliness and magnanimity of their natures, likely to deceive their friends in their accounts of their husbands' conduct. And this feminine weakness, which it is impossible not to admire, even while we must strongly condemn, has been immortalized by more than one poet as a fit subject for pathetic verse. One of the most touching poems of Adelaide Proctor is illustrative of this very point. It is called "Milly's Expiation," and is the story of a poor, high-minded girl, who, in order to

save her lover from conviction for murder, committed deliberate perjury, and having saved him, devotes the rest of her life to one long expiation for her sin.

#### MRS. MOULTON'S UNHAPPY POSITION AS A WITNESS.

What is the relation of Mrs. Moulton to this case?

This lady is the wife of the only man who has anything to lose by a verdict for the defendant. Animated by his thirst for revenge, Francis D. Moulton has periled all on the issue of this suit. The plaintiff himself might find some persons to excuse him, on the supposition of an insane jealousy, but no such excuse can be made for his friend. He will be held to a strict and stern responsibility, and the plaintiff's failure in this suit, as every man can see, involves Mr. Moulton in utter and hopeless ruin. Yet his guilt and his ruin will not release his unhappy wife from her allegiance, nor make him any the less the father of her only child. What a terrible alternative for her! If she so testifies as to save Mr. Beecher, she necessarily ruins her own husband, destroys her home, and leaves her only child to a blight. If, on the other hand, she can give such testimony as will convict Mr. Beecher, she saves her husband's fame, at least so far as to prevent the exposure of his perjury. And a woman's confidence may lead her to hope that she can thus reinstate him in social position, and maintain him in the business world.

There is much to be said in palliation of Mrs. Moulton's course. Her husband has doubtless assured her with the utmost solemnity that he knows Mr. Beecher to be guilty; and this she may have been well made to believe, since it is hard indeed for a wife to disbelieve the earnest assurances of her husband. The struggle then presents itself to her mind as one between her husband, asserting the substantial truth, and her husband's enemies asserting substantial falsehood. "What matter is it," she may say to herself, "which side presents the truth as to details? The side which has the substantial truth ought to gain the victory; and if that victory can only be gained by misrepresenting some of the minor circumstances, is it not better that the truth should be sacrificed in respect to these details, than that it should be sacrificed upon the main issue? Mr. Beecher" she may say, "has certainly been guilty of adultery. Is it not less wicked that I should say that he has confessed it to me, than that he should sacrifice my husband, by falsely asserting that he has not confessed to him? Since he has confessed to somebody, of course, when talking on the same subject, he must have meant to confess to me. He expressed himself sorrowfully, and for what else could he have felt sorrow? He acknowledged that he had been in fault, and to what fault could he have referred, except the crime of adultery? If, then, I put that very word into his mouth, I shall only be expressing his real meaning, and be serving the cause of substantial truth." Such, gentlemen, it is easy to imagine was the process by which Mrs. Moulton convinced herself that she ought to testify to these explicit confessions; and having quieted her conscience to this extent, it was not hard to go further, and attribute language to herself which no lady could

possibly use under such circumstances, and language to Mr. Beecher which none but a fool could utter.

#### MRS. MOULTON'S MANNER ON THE WITNESS STAND.

The first interview which Mrs. Moulton relates, obviously does not suffice to convict Mr. Beecher, while it plainly shows that her husband had previously given her his version of the case. Mr. Beecher, she says, asked her if Frank had told her the facts about his great sorrow, and she said he had. Nothing else that is pretended to be a confession follows, until June 22d, 1873, when Mrs. Moulton says she advised Mr. Beecher to confess his crime before the Church. This is extraordinary language for a lady to use, when conversing with her pastor in his great sorrow. The word "crime" is offensive and coarse, and no lady of the refinement of Mrs. Moulton could possibly have used it on such an occasion. This, it will be remembered, was the time when Mrs. Moulton says she kissed Mr. Beecher on the forehead in sympathy for his distress. You will remember Mrs. Moulton's singular manner in giving her testimony. Her face was flushed, her eyes were steadily fixed upon the floor, and she could not look even her husband's own counsel in the face. During the whole of the cross-examination in the morning session she never once looked Mr. Evans in the eye. Twice she made the effort to do so, but her eyes instantly wandered and made the circuit of the court-room and the ceiling, without resting upon her questioner. In the afternoon, by a desperate effort, she succeeded in doing better. But these are minor matters. Her manner strongly indicated that she was repeating a lesson. By another of those extraordinary coincidences which mark her husband's testimony, she, too, was obliged to stop and correct her account of Mr. Beecher's language, by changing it from a natural to an unnatural form of expression. In her direct examination she made Mr. Beecher say, "Tilton, in striking at me, sacrifices his wife," and immediately changed the words into this strange form, "Tilton, in stating the truth concerning me, sacrifices his wife;" an awkward and utterly unnatural mode of speech, reminding us of her husband's saying that Mr. Beecher spoke of his relations—and then stopping—and changing it into sexual relations with Mrs. Tilton. It is perfectly clear that these changes were made for the purpose of inserting something unnatural, with a view to the conviction of Mr. Beecher.

#### ABSURDITIES IN MRS. MOULTON'S STORY INSTANCED.

I will not dwell on other points of the story which show its inherent improbability; the language about the tortures of the damned, which is plainly copied from his letter of February, 1873; the continued advice to go to the church immediately and tell all the truth, given the day after Moulton had so strongly dissuaded him from publishing anything, and two days after Tilton had threatened to shoot Beecher if he did tell the truth; the allusion to the card in *The Eagle*, as a thing which he was considering, but thought useless, when in fact the card was

already in type in *The Eagle* office, as Moulton himself has shown; the unutterable absurdity of Mr. Beecher's announcement that he should never see her again, and should poison himself forthwith, followed by his conclusion to postpone his death for one day, for the sake of collecting some mementoes to send through her to his friends—these inherent absurdities are enough to condemn this story. But I shall have something even more decisive to say upon the subject of this interview presently.

Before coming to that, however, I desire you to observe that Mrs. Moulton's account of the interview of July 13th, 1874, bears similar internal evidence of its untruth. I will only call attention to one point. Mrs. Moulton accuses herself of having used this unladylike expression: "If you had confessed it then, you would have been better off. Now, you have the original crime and four years of perjury and lying to answer for." Gentlemen, you have seen for yourselves that Mrs. Moulton is naturally a lady; you know and I know that she has the manners of a lady. She could no more have made that coarse and vulgar speech to her pastor, at that time, than she could have cut off her hand. Nor could she have had even the idea of "perjury" in her mind, for Mr. Beecher had never taken an oath, nor said a word in public, except in his brief card of June 30, 1873. That date is not right.

Mr. Shearman—June 13, 1874.

Mr. Tracy—June 13, 1874. That is right. But the climax is reached when she represents Mr. Beecher as responding to that insult, "You are dearer to me than any sister I have." That is the reply she makes Mr. Beecher make to her charge of perjury.

Again, the account which Mr. Moulton gives of her interview with Mrs. Tilton in October, 1873, is preposterous upon its face. In her direct examination she told you that she then called on Mrs. Tilton, to ask if she would allow her husband to go down with the truth. On her cross-examination, she admitted that on this occasion she implored Mrs. Tilton to stand by Mr. Beecher, and urged her with agony and tears, not to allow Mr. Tilton to destroy him. That is the interview which she states occurred between herself and Mrs. Tilton, you will remember gentlemen, in Oct, 1873, at the time Mr. Tilton had gone down to the church, at the church meeting. But feeling the difficulty of her position before you, Mrs. Moulton sought to qualify this statement, by claiming that she only begged Mrs. Tilton to stand by Mr. Beecher, so long as she could without sacrificing the truth. Yet if Mrs. Moulton is to be believed, it was impossible for Mrs. Tilton to stand by Mr. Beecher at all, without sacrificing the truth.

#### THE INTERVIEW OF JUNE 2, 1873, A FICTION.

But, gentlemen, there remains a graver fact than any to which I have yet referred. You will observe that Mrs. Moulton fixes the principal interview with Mr. Beecher upon Monday, the 2d of June, 1873. She has identified that day with great particularity, and left no room for misapprehension as to date. She has also fixed the length of that interview

at four hours, by reference to circumstances which cannot now be explained away. The motive for naming this day is obvious. There were but two days on which, even according to the plaintiff's theory, the idea of suicide could possibly have been talked about, namely: May 31 and June 2, 1873. And Mrs. Moulton was required to confirm her husband's story of Mr. Beecher's contemplated suicide on May 31st, which was Saturday. The testimony of Mr. Moulton has left no room for a four hours' interview between his wife and Mr. Beecher. The next Monday was therefore chosen as the only available day, and it has been specified, I repeat, with the utmost particularity. The subject of this pretended conversation, and the circumstances under which it was had, are such as to make it certain that it either took place on June 2, 1873, or never took place at all.

Gentlemen, in all this the interposition of Divine Providence is most singularly manifest. For upon that very morning of June 2, 1873, Mr. Beecher was detained at his own house in consultation with a gentleman well known to you all; and at the very time at which, according to Mrs. Moulton, she was tucking him up on her sofa, and encouraging him to confess, he was seated by the side of his own wife, and speeding his way to Peekskill! This we shall prove to you so conclusively, gentlemen, that I venture with confidence to predict that you will see Mrs. Moulton again on the witness stand, testifying that by June 2, she meant May 31, that by Monday she meant Saturday, that by four hours she meant half an hour, that there was no sofa and no Afghan, that nine o'clock in the morning was seven o'clock in the evening, and that Mr. Beecher's card in *The Eagle* was not spoken of or thought of! Perhaps you will believe this story, gentlemen, when thus amended, as amended *it will surely be*; but if you do, your capacity for belief will exceed that of any other twelve gentlemen in my acquaintance. For Mr. Beecher will give you the most explicit assurance that no such conversation as that which Mrs. Moulton has related ever occurred, either on June 2 or at any other time, that he never spoke of suicide, and she never spoke of crime, and that the only interview between himself and this lady at or about this period took place on the evening of Saturday, May 31, lasting only from fifteen minutes to half an hour, while Mr. Moulton stepped down stairs to repeat Mr. Beecher's proposed resignation to Mr. Tilton. We shall leave no doubt on that subject, gentlemen. The proof which we shall introduce to you will show conclusively that Mr. Beecher spent no time at Mr. Moulton's house on Monday, June 2. We shall show you where he was in the morning when he went away; the time he went to Peekskill; who took him from the depot to his house, and that he returned next day and attended a wedding, marrying a young man, a member of his church, on Tuesday night, and on Wednesday morning, bright and early, went to New-England, where he remained for nearly two weeks, and was not back in Brooklyn until about two weeks from that time. We shall leave no doubt, I say, on that question. The evidence which we shall introduce to you will be perfectly satisfactory on that subject. It was necessary for Mr. Beecher to go to his farm in Peekskill on this Monday because of his contemplated visit to New-England, where he

was going to be gone about two weeks, and as this was seed-time it was necessary for him to go up and confer with his farmer and mark out the work of the next two weeks, and, as I repeat, he went there on Monday, returned here on Tuesday late, attended that wedding Tuesday evening, and early the next morning went with his wife to New-England, spending his time with Ex-Governor Claflin of Massachusetts.

Mr. Shearman—And Mrs. Moulton swore Mr. Beecher returned again that week to that house.

Mr. Tracy—I am reminded by my associate that Mrs. Moulton swore Mr. Beecher returned to that house again that week, but we shall show you how utterly mistaken this lady is.

Gentlemen, this portion of my task has been a peculiarly unwelcome one to me. I have personally known and esteemed Mrs. Moulton. I had hoped that at the last she might be saved from the terrible calamity which has befallen her. I beseech you to judge charitably of this hapless lady, dragged down to ruin by two men who have slaughtered their own wives and children, in their desperate attempt at an impossible revenge. She will yet repent of her grievous error. She will realise that by truth, and truth only, can she serve to any purpose those whom she loves; and she will live to ask and to receive the forgiveness of the man whom she has vainly tried to destroy. I shall not stop, gentlemen of the jury, to dwell on the scenes that have transpired in this scandal from June, 1873, on to the present time. Its history is not so important as many other parts of this case, and I have already too long occupied your time in this opening address.

#### MR. BEECHER'S REFUSAL TO ACKNOWLEDGE AN OFFENSE AGAINST MR. TILTON.

I go now briefly, for a moment, to the publication of the Bacon letter, and to the effort that was made to induce Mr. Beecher to sign a card acknowledging that he had committed an offense against Theodore Tilton, but no crime, which offense he had apologized for, and that apology had been accepted and the difficulty settled, and he should not be a party to the opening of that controversy. That card was proposed, as you remember gentlemen, by Moulton, who thought, or pretended to think, that the Bacon letter still left open a way of compromise and settlement by which this public scandal, this great public calamity, which has been inflicted upon the world, could be avoided. His plan was that Mr. Tilton, having charged Mr. Beecher with an offense in the Bacon letter, and not having characterized that offense, Mr. Moulton's plan was that Mr. Beecher should acknowledge that he had committed an offense, but had apologized for it, that that apology had been accepted and the case settled.

It was in regard to this card, gentlemen, as I stated to you on Friday evening, that I was called into this case as the adviser of Mr. Moulton and Mr. Beecher on that subject. I differed with Mr. Moulton, as I there stated. I could not see how any friend of Mr. Beecher could advise him to sign this card. I sought to convince Moulton that he could not sign it, but Moulton persisted, and, after I had declined, still urged this upon Mr. Beecher. You will remember, in the evidence given, it has been stated to you by Mr. Moulton

himself, that he told Beecher that if he would sign this card, acknowledging an offense without stating what the offense was, Mr. Theodore Tilton would accept it as satisfactory, and if Mr. Beecher would sign it, he, Moulton, would burn every paper connected with this case, and would stand by Beecher if Tilton sought to wage a conflict with him after that. Now, gentlemen of the jury, if Mr. Beecher had known what they say he knew; if he had been conscious of guilt with this woman for sixteen months; if he had confessed it over and over again to all these parties; if it be true that his writing referred to adultery, and not to a complicated domestic family difficulty—if that be true, I say, how can you explain the fact that Mr. Beecher refused the offer of Mr. Moulton? He had not distrusted Mr. Moulton at this time. Moulton still had his confidence. He still believed Moulton his friend, and he relied upon Moulton fulfilling the promise if he had made it.

Now, gentlemen of the jury, do you believe that if Henry Ward Beecher had been conscious of his guilt, if he had known that his guilt could be proved by this cloud of witnesses, that he would have refused the offer to sign a card which simply acknowledged an offense, without naming the offense, and thus had the paper destroyed and made an ally of Moulton, which Tilton could not have detached. They would have disarmed themselves with the destruction of that paper. They would have had nothing to go into court with a case against Mr. Beecher. How is it possible, I say, to account for this refusal upon any known motive which actuates or controls human nature? Why, if Mr. Beecher had not been conscious of his own innocence—if he had not felt confident of the power, however thick the storm might beat upon him—ultimately to vindicate himself from this charge, he would have made haste to sign that card, attach Moulton to him, and had him destroy the papers and the evidence against him. But he refused, steadfastly refused, to do any such thing. He said: "I will sign no card, and for this reason." Mr. Tilton had charged, it is true, in the Bacon letter, simply an offense, but he had charged it in such a way that most people, reading the Bacon letter, thought that it intended to charge a marital offense and if Mr. Beecher had signed this card acknowledging an offense, persons who wanted to believe him guilty would say that that meant adultery, and he would not sign unless the card should specify what the offense was. That was the point, and the point of dispute in that adjustment.

#### MR. TILTON'S PROPOSED REPORT FOR THE COMMITTEE.

And that brings me to consider for a single moment the card which has been given in evidence, which Tilton tells you he prepared after consultation with his wife, after his wife had been before the Committee. It is possible that if the card had specified what Mr. Beecher said the offense was, he would have signed a card admitting an offense, and specifying what it was so clearly that nobody could mistake it, but if there was to be left that ambiguity

about it which would leave it open to misconstruction, he refused absolutely to sign it. Now, gentlemen, this card has been introduced, and Mr. Tilton tells you that he prepared it in consultation with his wife. It is a proposed report for the Committee to make. I will read but a single clause of it:

The Committee further find that Mr. Tilton, in his relations with the pastor, had a just cause of offense and had received a voluntary apology. Mr. Tilton declined to characterize the offense for the following reasons:

First, because the necessary evidence which should accompany any statement would include the names of persons who had happily escaped thus far the tongue of public gossip.

Next, that the apology was designed to cover a complicated transaction, including details difficult of exact or just statement.

#### MR. TILTON'S PROPOSED REPORT TRUTHFUL.

Now, gentlemen, that is precisely what Henry Ward Beecher has always said this controversy between himself and Theodore Tilton was. He has always said that that is what his correspondence pointed to, and to nothing else. He has always said that that is what the letter of contrition referred to and nothing else, and his letters. It was an offense, in the language of this report, "designed to cover a complicated transaction, including details difficult of exact and just statement." Now, you have Mr. Tilton going home, and in consultation with his wife, after she has been before the Committee, agreeing with her that a certain report shall be made by this Committee, and they will go before the Committee and make a statement which shall justify that report; and he there writes in his own handwriting the exact statement that Mr. Beecher has always given to this affair.

#### THE AMBIGUITIES AND BROAD GENERALITIES IN THE CASE.

I have now, gentlemen, I believe, gone over all the facts of this case so far as I design to call them to your attention in this address. You will observe, gentlemen, that I have spent no time in commenting upon or explaining the letters of the defendant. I have confined myself to stating a case, which we shall prove, which explains the letters, and I prefer that the case should explain the letters than to explain them by mere word of mouth. When we have presented to you our case, when we have proven the facts which I have laid before you, you will see that the case explains the letters. The letters explain themselves. They are entirely consistent with the case as we shall make it. Everything here turns upon a single question. When these people were talking about generalities, when Mr. Beecher was using general language which might cover one thing or cover another thing, the question is to what were the parties referring, what did they have in their minds. Did they have this complicated transaction, the details of which were difficult of exact statement, involving this business trouble, involving the stories which Mr. Beecher had told and circulated against Mr. Tilton, involving the angry remarks which he had made to Bowen when that letter had been presented to him, involving the domestic difficulty between Tilton and his wife, in which Mr. and Mrs. Beecher had both taken part; was it this

complicated affair which had ended in Tilton's dismissal and injury, and for which Mr. Beecher had been convinced that he had been in the wrong, and had done Tilton injustice—was it this, or was it a case of adultery? That is the only question here for you. And, as I say, the case that we have made, the facts that already stand proved in this case, when they are put alongside of other facts which we shall prove, will show you beyond all question what it was these parties were talking about, and what it is that this general language in this correspondence refers to. You will see, gentlemen, how utterly unsafe it is to ascribe to any particular offense as being covered by general language that designates nothing. In all this correspondence you will observe that but very few facts are stated at all. This correspondence consists entirely in general expressions of sorrow, and regret and anguish; but wherever there is a fact stated in one of these letters, when you come to consider it, as you will when the case comes to be summed up—wherever there is a fact stated in one of these letters, you will see that that fact is against adultery; it tends to establish innocence and prove innocence, and not guilt. But to show you how utterly unsafe it is, I say, to say that general language points to any particular sin or crime, I desire to read to you briefly now a letter from Mrs. Tilton dated the 31st of January, 1868. It is conceded on all hands that at this time this lady was perfectly pure. This language had no relation to adultery, as the plaintiff and we both concede. It is nine months before the pretended allegation, and two years and a half before even a suspicion had been excited. All agree that at this time this lady had no suspicion or thought that she had been accused of crime, and certainly that she had never committed it. She is referring to the ordinary sins, the ordinary difficulties between husband and wife, and now I want you to see how she described it:

*My Dear Husband:* I have just returned from Mattie's. Have the bust. Love it, &c. Oh, Theodore, darling! I am haunted night and day by the remorse of knowing that because of my harshness and indifference to you, you were driven to despair, and perhaps sin, and these last years of unhappiness.

There is the word "remorse," used in connection with harshness, merely, harsh words, harsh language, and yet they say that the word "remorse," in Mr. Beecher's letter, means adultery, cannot mean anything else than adultery, for what could a man have remorse for except for the crime of adultery?

I sometimes feel it to be the unpardonable sin.

Suppose this letter had been written by Mrs. Tilton after the alleged act—crime—how the changes would be rung on that phrase. How my eloquent friend would expatiate on that sentence, and he would ask you what is the unpardonable sin of the wife, What is it but adultery; what can it be but adultery. And yet the sin of which she is here speaking is the sin of harshness to her husband, uncharitableness, and ill temper.

And God cannot forgive me, but you only may be restored to your former loveliness. I shall be content to live my life in penance, yea, in disgrace. I am the chief of sinners. I under-

stand perfectly how you have felt. I carry in my soul this burden black of sin.

Is there any such language in Mr. Beecher's letters, notwithstanding his sorrow, notwithstanding the woe and wretchedness that these men inflicted on him for four years, notwithstanding the fact that he did walk on the rough and ragged edge of life for four long years, is there any such general language in his letters as this woman has used to describe the mere, most menial offenses in household life. And I could turn you, gentlemen, and my associates will, to letters of Theodore Tilton himself written during this very period, that fall but very little below the exaggerated language which I have read from his wife. He, too, uses the word "remorse." With him life has been a failure and blight, I am quoting the language of his letters, long before any charge of this description is mooted, in 1867 and '8. His language, I repeat, is as strong as Mr. Beecher's, as strong as the plaintiff's wife, nearly, and you see, gentlemen, the necessity that they felt, the pressure that they were under of attempting to explain their own letters.

#### THE RESPONSIBLE CAUSES OF MR. TILTON'S SINS.

Theodore Tilton was put upon the witness stand to explain away his own letters, and attributed them all to John Calvin. [Laughter.] Calvin was responsible for his letters, his sins and omissions prior to 1870, and Beecher has been responsible for all that have been committed since that time. [Laughter.] So, between Calvin and Beecher, Tilton walks out as white a souled man in his estimation as he describes his wife to be a woman.

In weighing, therefore, the testimony in the case, we say you are to consider, gentlemen, the relative probabilities and improbabilities involved, of innocence and guilt respectively. It is impossible, if the letters of the defendant are confessions of guilt, that the guilty man should write such letters, most of them voluntarily, and covering a long period of time. We say, gentlemen of the jury, that if Henry Ward Beecher had been conscious of guilt, if he had supposed at the time of writing these letters that they could be construed into confessions of adultery, it is not possible that any man should have ever written them.

#### THE GENERAL LANGUAGE PROOF OF AN INNOCENT MIND.

Instead of these letters being evidence of guilt, the fact that he has used this general language is evidence that at the time of writing the thought that it could be perverted to cover such a charge never occurred to him. It is improbable that a guilty man should volunteer to surrender to the plaintiff or his friend the alleged clandestine letters of the existence of which they had no knowledge and no means of knowledge.

Now, gentlemen, they have introduced before you some evidence of the secret correspondence, as they choose to call it, between Mrs. Tilton and Mr. Beecher. It was very secret indeed. Where are the letters produced from; where are they brought from into this Court to testify against



Henry Ward Beecher? Why, from the archives of Francis D. Moulton. And how did they come there? Why, Henry Ward Beecher delivered them to him. Do you think, gentlemen, that if he had thought this a guilty correspondence, and they did not know of it, would not he have kept those letters to himself, or silently destroyed them and placed them beyond existence? Would he have gone and deposited them with them, where they could be produced against him? The very fact that he did it, I submit, is evidence conclusive that the thought of guilt was not in his mind. It is impossible that a guilty man should communicate his guilt to a woman, to ask her how to conceal it, and that he should express his gratification at her having communicated his guilt to other persons.

There is another remarkable feature of this case. Here was Mr. Beecher, they say, possessed of a secret which was crushing him, a secret which he knew if it was ever exposed would be his ruin, a secret which they say he was continually moving Heaven and earth to conceal, and yet, it is a remarkable fact, gentlemen, that whenever one of these parties has told another of that secret and that fact has been communicated to Mr. Beecher he has always expressed the highest pleasure and gratification because it has been thus communicated. He had told Moulton the secret, they say, and in 1871 Moulton told his wife, and when she spoke to him and said, "Frank has told me about it," why, Beecher was glad Frank had told her about it. He had been struggling for a year and over to keep his secret and to keep it safe, and when he found that a woman had got it how glad he was. [Laughter.] It would certainly be kept now. If men could not keep it, she could; and so he was gratified to learn that at least one woman knew his secret. They say he was glad of it, because he wanted so much to have some woman to whom he could converse on the subject, and yet, learning it in 1871, the first conversation she refers to between him and her on the subject was in 1873, two years afterward. But to help Beecher keep his secret she went and told the Robinson family of it, a pretty numerous family in this city, and when she communicated the fact to Beecher that she had told the Robinson family of it, why, Beecher was so glad that Robinson knew it. [Laughter.] It would enable him to meet Robinson so much better—so much better understanding. He had been going down to Robinson's office day after day, and having long interviews with Moulton and Robinson didn't know what it meant, and Beecher knew he didn't know what it meant, and therefore, he felt sort of guilty going and having an interview with a man's partner when all the firm didn't know what he was talking about, and he was so glad when he learned, that the next time that he went down to Robinson's office the whole firm would know that he had come there to talk about his adultery with Mrs. Tilton.

You may believe all these improbabilities, gentlemen, but I don't believe you will.

My associate suggests to me another fact that is

one of the remarkable facts of this case. After Mr. Beecher knew that Mrs. Moulton knew his secret and knew that he had been guilty of adultery he was so anxious for Mrs. Moulton to come to church. It would be such a gratification for him to see in his congregation at least one woman who knew when he was preaching he was a libertine and seducer. You may believe, gentlemen, that Henry Ward Beecher, knowing that a woman knew that he was guilty of adultery, invited her to come to his church that she might hear him preach, but I think you will believe that if any such thing was true, Henry Ward Beecher would go a thousand miles to get around preaching, looking such a woman as that in the face.

Then also, they introduce letters, showing that Beecher was anxious to see Mrs. Tilton at church, too; it would be such a satisfaction for him to see his poor victim, whom he had ruined, and whose family he had shattered, in his presence on Sunday, when he was invoking the blessings of God upon himself and his congregation. There is another fact in regard to Mrs. Moulton to which I desire also to call your attention, one of the improbabilities in this case, and that is, she says she urged upon him to go down to his church and confess, and his church would forgive him and stand by him, and Frank would stand by him and she would be his friend also, and yet, in the same breath she tells you that she used to say to Henry Ward Beecher: "How can I receive communion at your hands, knowing of your guilt? I can't; but you go down and tell those 3,000 men and women at Plymouth Church that you are covered all over with the leprosy of adultery and falsehood, and they will forgive you, and they will stand by you, and they will receive communion at your hands, and I and Frank will be your friends."

#### OTHER INCONSISTENCIES MENTIONED.

Again, gentlemen, I have shown you that in the correspondence of the 7th of February, 1871, Mr. Beecher commended to Mr. Tilton his wife, and expressed the hope that Tilton would love her with even more than the old love. Is it probable, I repeat to you, that a man who had seduced another man's wife would write a letter to the dearest friend of that man and express such a monstrous wish as that the fact that he had debauched a woman should be a reason why the husband should love her better than ever before.

All this shows you, gentlemen, that these parties were not talking about adultery, but were talking about these complicated family transactions—this supposed alienation of Mrs. Tilton's affections, this leaving her husband; the threatening to separate from him, and this business difficulty, which had become so complicated that it could hardly be unraveled. Again, we say that it is improbable that a guilty man should demand investigation, when it was resisted by his accusers. And yet we have the word of Mrs. Moulton, given in evidence here, that her husband was outraged and offended at Mr. Beecher because he had demanded an investigation; and you see how boldly even this woman makes this man meet this charge. He tells her: "They cannot convict me."

He tells her: "They may do their worst; I am going to be free." Is it probable, if he had been guilty, he would have been the man insisting upon an investigation while his accusers were struggling to prevent it?

It is improbable that the husband, having reason, in good faith, to believe his wife guilty, should continue, without interruption, to cohabit with her? Yet it is conceded he did—not for six months, gentlemen, but for two years. It is improbable that the wife should put in writing, or that the husband should consent to her doing so, a confession and charge against the paramour, and that the husband should use it for the purpose of aiding in his extrication from another difficulty. And yet it is conceded that this statement of what they claim was her confession, or her statement, or her accusation, whatever it is called, was obtained from the husband and used touching a business difficulty.

I am reminded that I said that he lived with his wife two years, gentlemen, when I should have said four years.

It is improbable that the husband should communicate his wife's guilt to third persons, for the purpose of securing its concealment? It is improbable that the husband should forgive the paramour and meet with him socially at dinner tables and receptions, and receive affectionate salutations from him. It is said somewhere, gentlemen, that I, in some conversation, told Mr. Tilton that the world would never forgive him for having taken back his wife. All that I have to say about that is, Mr. Tilton is mistaken. What I said to Mr. Tilton in the Summer of 1874, and not in '73 or '73, but in the Summer of '74, when he was about to bring a charge of adultery against Mr. Beecher, I said, "Mr. Tilton, the world will never forgive you for having been the friend of the man you claim to be the seducer of your wife. It was for taking back to friendship the man and not the woman." It is improbable that the husband should destroy the original charge. And yet they come here saying, gentlemen, confessing that they have destroyed the original charge on which they accused Henry Ward Beecher on the night of the 30th of December. They do not produce it; they pretend it is destroyed. We say that it is improbable that the most important document of all these should have been destroyed, if it ever existed, and if it would do anything but damn their present case if presented. It is improbable that the husband should make successive threats of disclosure, and constantly advise the paramour to remain silent. It is improbable that the husband, if he believed his wife's guilt, should declare her to be pure. It is improbable that he should delay to sue for over four years upon what he now alleges as the true and original charge, while he has been confessedly in the interim manipulating a false or garbled charge against the defendant.

#### WEAKER POINTS IN THE PLAINTIFF'S EVIDENCE.

Now as to the *infirmities* of the plaintiff's evidence. The defendant's own writings adduced against him, none of them expressly indicate guilt, and, as read in the light of the circumstances which will be proved by the defendant, they

point to innocence. All the other evidence adduced by the plaintiff is infected by every infirmity known to the law. The testimony is of oral admissions, which are of themselves notoriously unreliable. Such alleged admissions require corroboration, and the corroboration must be of facts pointing to guilt. No such facts have been thus far adduced. The willful destruction of documents impairs the credibility of the story. The witnesses have given contradictory accounts. They admit that, gentlemen. Moulton and Tilton both tell you upon the witness stand that they have been lying about this case for four years, three years—four years, and you will remember the reply of my associate to Moulton. "We have your word for that when you say you have been lying." Certain it is that they have been asserting the innocence of Mr. Beecher for four years. Now they assert his guilt. The reason they give for it—that Moulton gives for that—is, that at the time he was asserting Mr. Beecher's innocence, he regarded himself as a friend of Beecher. Now that he is the enemy of Beecher, the party more involved in this case, and having more to lose in it than any other but Mr. Beecher, he now asserts Beecher's guilt; and the only question you have got to determine is whether a man who has lied for four years for a friend, by his own confession, will lie one year for himself. The witnesses, Tilton and Moulton, have both repeated their own falsifications. The witnesses, Tilton and Moulton, have shown themselves to have been in constant confederacy throughout their dealings with the defendant. I call your attention to this fact, gentlemen, that it is proved from the witness stand that while Moulton had secured, and gained, and held the confidence of Beecher as no other man ever held the confidence of another, while he was professing to be a friend, acting for him, protecting him in this matter, you have it from his own mouth that, with but a single exception, all the papers and documents that he ever presented to Beecher in this connection for four years, were written by Tilton himself, or prepared in Tilton's presence, save one, and that was the letter I read to you this morning—the letter of June 1st, 1873, gentlemen. That letter Moulton says he wrote in Tilton's absence; Tilton was not present; and you see what sort of a letter he does write when away from Tilton. Do you believe that if Tilton had been present when that letter was prepared any such careless phrase as "I know you can stand if the whole case were published to-morrow"—do you believe that if Tilton had been present dictating the letter, such a clause as that would have crept into it? Oh! no. Mr. Tilton knew the force of words too much to commit such an indiscretion as that. But the letter was written in Tilton's absence, by Moulton, and it is the only important one in this case for four years that Moulton presented to Beecher that Tilton had not himself composed, or been present taking part in the composition of.

The witness, Mrs. Moulton, has shown that she was a party to their design to bring an action at the time when they were still pretending to be the friends of the defendant, and when Moulton was still claiming to hold the defendant's letters in

trust for the protection of each party against the other. Do you remember the important evidence, gentlemen, that fell from the lips of Mr. Moulton's wife upon the stand, that on the 18th day of January, while Mr. Moulton says he was professing to be the friend of Henry Ward Beecher, while he was claiming to hold these letters in trust for him, for the benefit of both parties, no break, no breach at that time, she tells you she told Beecher they were going to sue him in a court of law? How came this woman to be possessed of that fact, gentlemen? She tells you that she knew as early as that time that she was to be a witness against Henry Ward Beecher, and she was not to be a witness before the Investigating Committee. How came she in the possession of that information? This "Mutual Friend," this man protecting Beecher from Tilton and yet refusing to give Mr. Beecher his documents, this man who had betrayed every one of Beecher's secrets to his most deadly enemy, the moment they came to his possession for four years—this man's wife knew days and weeks before there was any pretended breach between Moulton and Tilton, when Moulton was still soliciting and still receiving the confidence of this defendant—his wife knew that he was to be sued at law and she was to be a witness. No conspiracy here, gentlemen! No confederacy between these men! Nothing but sincere and honest friendship from Moulton to Beecher! There has no little piece of evidence accidentally dropped from the witness stand during this long trial that has the significance, to wit, that that accidental and unthought-of remark which that woman let fall in your presence has. It stamps the conduct of these parties, and discloses the malice and the organized plotting which had been going on between them for months, for the final overthrow and ruin of this defendant.

#### HISTORIC PARALLELS TO THIS CASE.

And yet this charge, gentlemen, the charge of incontinence, which is brought against this defendant, is not a new or unfamiliar charge against clergymen. It is the common method of warfare. There is no accusation to which a clergyman is so much exposed; and if he has an enemy that desires to do him a deadly injury, there is no point from which he can strike with such deadly effect as the charge of infidelity in his marital rights. That charge, whether there is guilt or not, is almost sufficient to blast the usefulness of any clergyman, however respected and however beloved. But Mr. Beecher is not the first eminent clergyman that has been called upon to face such a persecution as this. It was by means of such an accusation that the enemies of St. Athanasius sought to destroy the great champion of the orthodox faith. It was by such means that the name of St. Francis de Sales was kept under a cloud for four years, during which he maintained the same silence for which my client is so sharply criticised. It was upon such a charge that the ruin of the illustrious Fenelon, Archbishop of Cambrai, was attempted. It was under such an imputation that the "judicious Hooker," one of the brightest

lights in the English Church, remained "dumb as the dead," though innocent as a babe, for six years of bitter anguish. It was such a charge, spread broadcast over England, that John Wesley, the man who of all Protestants most nearly approached to the spirit and labors of the Apostle Paul, suffered to pass without any public reply for twenty years. And, by a yet more remarkable coincidence, it was by means of an insinuation that he had made improper advances that a persecution was kindled against him in Georgia, which resulted in driving him out of this country under the ban of an indictment. Who envies the memory of the jury which found that indictment? Where is John Causton, the magistrate who inspired the prosecution? He is pilloried forever in a few lines of Wesley's biography, and escapes oblivion only because the unsullied and venerated name of the man whom he thought he had crushed makes it impossible for him to escape from infamy.

#### THE VALUE OF ESTABLISHED CHARACTER.

On the discharge of my duty, I have laid before you, gentlemen, so much of this case as, to the best of my ability, I could put into words. But the deepest truth that underlies it is beyond adequate expression by feeble words of mine; nor I think could any single tongue set forth the nature and the power of that influence, which radiates throughout the world and time, and beyond the grave, from the glowing center of a good man's life. There are facts which are not spoken from lip to ear, but from heart to heart. There is a treasure at stake, in comparison with which even the good name of one innocent man and one innocent woman, however sacred and precious this may be, is of trivial worth; I mean the principle of the value of established character. What is the use of an honorable life if it is no barrier against false accusation; if, in the face of foul conspiracy, its prayers and labors, generousities and heroisms are to be counted as worse than nothing—merely the disguises of a rotten hypocrisy? Against this most dangerous infidelity of our time, one grand protest has been made. Three thousand men and women of Plymouth Church have presented to this community a spectacle unparalleled of faith in goodness and in God.

These people are your fellow-citizens, gentlemen; virtuous, industrious, practical, sensible as yourselves. They love their wives and daughters; they cherish the purity of their households. Foremost among you in every work of charity; earnest, sincere, good friends, good neighbors, good citizens, they stand and have stood through many months unshaken in their confidence around the pastor whom they love. And this they do because they know him—because for thirty years they have looked through his clear eyes into his transparent soul—because his influence upon them and their children has been pure and wholesome—because he has taught them from lips that repeated the words of the Master and by a life that reflected the example of the Master to fear God and to abhor evil.

This multitude of witnesses bear testimony to the value of a good man's character, as read in a good man's life. And it is the lesson of the value of character which you, gentlemen, are called upon to impress upon the world. It will be seen, that although this city contained men vile enough to assail with perjured lips the spotless reputation of our noblest citizen, there were also found in it those whose firm faith in him could not be shaken by ingenious lies, and a jury of honest, just and fearless men to stand like a rock against the tide of slander.

#### THE CLOSING PERORATION.

You will save Brooklyn, already too much disgraced by the existence of such a scandal, from the far greater disgrace of permitting such a man to be destroyed by such instrumentality—

"An eagle towering in his pride of place,  
Hawked at and killed by mousing owls!"

You will tell the American people that when innocence is assailed by unscrupulous and cunning malice, however successful for a time the assault may seem, it must find its barrier when it reaches an American jury. And you will say to this heartless and ungodly persecution, "Thus far shalt thou come, but no farther—here all the midnight plottings of cruel craft must cease forever."

I ask of you for this defendant nothing but that justice which you would mete out to the humblest citizen; yet you cannot but feel, as I do, an overwhelming sense of the solemn importance of this trial. It will loom larger in history than any which has taken place for eighteen centuries. No man of this defendant's fame has ever been called upon to answer such a charge in a court of justice. What a spectacle has been presented in this city of churches! Every day for eight weeks this aged man, who has been a large and various contributor to the literature of the English tongue, and who never wrote a word that was not inspired by the love of God, of nature, and of his fellow-men, who has swayed with sublimest eloquence greater multitudes than any living orator, and who never spoke save for justice, truth and virtue, who has convinced, rescued, instructed and comforted unnumbered thousands of erring, struggling, suffering souls, counting his own life, fortune and reputation as nothing, if by their risk or sacrifice he could serve the humble and the weak; this man, whose fame encircles the earth, and whose name is honored and beloved wherever Christianity bears sway, has been dragged by malignant conspirators into this Court to answer the vile and odious charge, which all the evidence of a long lifetime outside of these walls, no less than the evidence produced within them, brands indelibly as a lie. Day by day he has passed along our streets with his brave and true wife, to meet the unmerited indignity of this arraignment. Strong men have been touched with mingled pity and wrath at the sight, and women have turned aside to weep. It is an outrage which posterity will avenge. This fair city will yet boast among her proudest monuments the statue of him who conferred upon her such glory,

and received within her gates such torture. All who had part in this crowning drama of his life will be remembered with exaltation or praise. Those who falsely accused, those who weakly doubted, those who cowardly forsook him, those who were swift to believe evil on the one side and on the other, those who steadfastly trusted, and those, gentlemen of the jury, who justly adjudged.

Yes, gentlemen, by the judgment which you here pronounce, you will yourselves be judged at the tribunal of after ages. What you do here will never die. When these scenes shall have passed away, when he who presides over this trial shall rest in the silent chambers of the dead; when the seats you occupy shall be filled by your children, or your children's children, strangers from distant climes will come to view the place from which was given back to the world, freed from cloud or passing shadow, the name of Henry Ward Beecher. Even when centuries shall have rolled away, when these marble walls shall have crumbled and decayed, this trial will be remembered with all-absorbing interest. More eloquent than the words of this defendant, more inspiring than his deeds of magnanimity, more powerful among men than the story of all his life of usefulness and virtue, will be the recital of his serene faith and patience under dire affliction and deadly assault. Heroes are admired; it is the martyrs who are beloved. Not the triumphal procession and the loud hosanna, but the cup, the thorn-crown, the cross, the sepulcher conquered the world, and since the hour of the Divine Sufferer no follower of Christ has borne the cross in vain.

Gentlemen, do you believe in God! Then you will recognise to-day what the generations to come will so clearly see; what the Day of Revelation will blaze forth in letters of immortal light, the mark of God's approval upon this, his faithful, upright suffering servant, whom He hath hitherto guided, sustained and blessed—whom in the hour of tribulation He hath not forsaken; and whom by all the truth of his eternal promise and all the resources of His Almighty power, He will surely rescue and reward; for "Though hand join in hand, the wicked shall not be unpunished, but the seed of the righteous shall be delivered." [Applause.]

The Court here adjourned until eleven o'clock on Tuesday morning.

**THIRTY-SIXTH DAY'S PROCEEDINGS.****THREE WITNESSES FOR THE DEFENSE.**

**EDWARD J. OVINGTON TESTIFIES TO IMPORTANT DECLARATIONS BY THE PLAINTIFF—MR. TILTON TELLS THE WITNESS THAT HIS WIFE WOULD SAY ANYTHING FOR HER HUSBAND—MR. FULLERTON CONFUSES THE WITNESS—HOW MRS. TILTON HAS SPENT HER TIME SINCE SHE LEFT HER HUSBAND—A WITNESS TESTIFIES TO THE CIRCUMSTANCES OF THE WINSTED AFFAIR—MRS. OVINGTON IN THE WITNESS CHAIR.**

**TUESDAY, March 2, 1875.**

The proceedings to-day were ushered in with a fever of expectancy on the part of the spectators, but this gradually subsided as the day passed. The interest was revived about three-quarters of an hour before the closing by the testimony of a witness to the conduct of Mr. Tilton at Winsted, Conn., some years ago. Mr. Shearman announced that necessity would oblige the defense to produce their witnesses a little out of order. The name of Edward J. Ovington was then called, and that gentleman arose from a seat beside his wife and Mrs. Shearman, and took the witness chair. He is a tall, erect, well-knit man with a very light sandy beard and hair, and is apparently bashful and retiring in disposition. His direct examination ran smoothly. Mr. John L. Hill, who, since last Summer, has done considerable under-surface work for the defense, conducted the questioning. The testimony was chiefly in regard to events which followed the publication of the Bacon letter. Mr. Ovington testified that Mr. Tilton boasted that he (Mr. Tilton) could make his wife tell what he pleased, and that if she saw him commit the Nathan murder she would swear that he did not do it. Mr. Ovington said positively that Mr. Tracy only saw Mrs. Tilton about two minutes before she appeared before the Plymouth Investigating Committee.

The cross-examination by Mr. Fullerton was most remarkable, and showed how completely a witness may become confused and embarrassed in the hands of a skillful lawyer. Not that Mr. Fullerton was harsh or severe, for he was just the opposite—smooth and polite—but he so tangled the story of the witness that the latter lost his self-possession, and beclouded his testimony with mistakes and contradictions. The cross-examination disclosed that Mr. Ovington had received \$375 from Augustus Storrs, which had been expended to fit out Mrs. Tilton's children for school, and for the support of Mrs. Tilton. Mr. Tilton has paid the school bills of the children at

Washington, Conn. It was also brought out that Messrs. Evarts, Porter and the other lawyers for Mr. Beecher, have visited at Mr. Ovington's house, where Mrs. Tilton has been staying since last July. Also that Mr. Beecher called once soon after Mrs. Tilton appeared before the Investigating Committee, and that Mr. Ovington last Summer declined to tell Florence Tilton where her mother was when Mrs. Tilton was visiting in Fairfield, Conn. Mr. Ovington is going to Europe on Saturday. Mrs. Tilton will remain with his family in Brooklyn.

Another witness who is going away was called to-day out of the regular order—Rufus E. Holmes of Winsted, Conn. When Mr. Tilton lectured in that town he was the Vice-President of the Young Men's Christian Association there. He thought that the lady who was with Mr. Tilton at that time was 27 or 28 years of age; and he testified that he went to Mr. Tilton's room in the hotel at Winsted, and knocked twice. As he was going away a lady opened the door, and Mr. Tilton's voice from within asked Mr. Holmes to wait, and they would go out together. Mr. Holmes declared that Mr. Tilton was on the bed with only pantaloons, shirt, and stockings on. The lady's hair and dress were disheveled. Mr. Fullerton, in cross-questioning the witness, brought out that Mr. Holmes went to Mr. Tilton's room by appointment, that no effort was made to conceal anything after the door was opened, and that Mr. Holmes afterward introduced the plaintiff to his wife, sisters, and others.

That the jurymen are alert was made evident by the question of Mr. Carpenter, the foreman, who, before the witness stepped down, asked him if there was a fire in the room where Mr. Tilton and the lady were found. This was put in view of the plaintiff's statement that there was no fire in her own room, and that she therefore went to his room, where there was one. Mr. Holmes corroborated Mr. Tilton's statement in regard to the presence of a fire in the room where Mr. Tilton was found by the witness.

Mrs. Maria N. Ovington, wife of Edward J. Ovington, was placed in the witness chair about 15 minutes before the closing. The lady is an invalid, and she testified that until to-day she has not been out of the house since last October. Little progress was made in her examination before the hour of adjournment arrived, and nothing of importance was developed. Mr. Hill is conducting Mrs. Ovington's examination.

## THE PROCEEDINGS—VERBATIM.

## TESTIMONY OF MR. EDWARD J. OVINGTON.

The Court opened as usual at eleven o'clock, and the jurors being promptly in attendance, Judge Neilson requested the counsel for the defendant to proceed.

Mr. Shearman—The first witness will be called a little out of order, if your Honor please.

Edward J. Ovington was then called on behalf of the defendant, sworn and examined by Mr. John L. Hill.

Q. Mr. Ovington, are you acquainted with the parties to this action? A. I am.

Q. How long have you known them? A. Mr. Beecher about twenty-five years.

Q. And Mr. Tilton? A. Twelve years.

Q. Have you been a neighbor of Mr. Tilton's? A. Yes, Sir.

Q. When were you living near him, and please state where his residence was, in relation to yours? A. His residence was the block above mine.

Q. What was your number? A. 135.

Q. Livingston-st. ? A. Livingston-st., or 95 at that time—the old number.

Q. And his? A. His is now 174; I don't remember the old number.

Q. But it was within a block, you say? A. Within a block; yes, Sir.

Q. Please state how intimate your acquaintance was with Mr. and Mrs. Tilton? A. Well we were on calling acquaintance.

Q. Frequent, or otherwise? A. Well, rather frequent for a time; for the most part rather infrequent.

Q. Any especial friendship between Mrs. Tilton and Mrs. Ovington? A. Yes, Sir.

Q. How long had that continued, and when did it begin? A. Well, we began in the year 1868, I think, and continued from that time.

Q. Continued from that time on? Are you certain of dates, Sir? A. '67 or '68, I think it was.

## MR. TILTON INDIFFERENT ABOUT HIS WIFE'S HEALTH.

Q. I will call your attention to the publication of the Bacon letter in June last; do you recollect having an interview with Mr. Tilton soon after the publication of that letter? A. Yes, Sir.

Q. When, with reference to its publication? A. Three or four days after.

Q. Well, where? A. At his house; I called upon him.

Q. Please state the circumstances and what was said between you—the circumstances of the call? A. I called at his invitation; he mentioned to my wife that he would like to see me, and I called upon him.

Q. Well, go on and state what occurred? A. I told him that I was sorry to find him in this trouble; I told him it was a very serious matter to bring this charge against Mr. Beecher; it would be a very great injury to the cause of religion. Mr. Tilton said that it was not his own bringing, that if Mr. Beecher

would do his duty and do justice to him he was willing to do no more, to stop just there.

Q. Well, what else was said? A. Then I had considerable to say about his wife's appearance; remarked that she was looking in very bad condition of health, and he answered: "Oh! I think she is looking about as usual;" some indifferent remark, I don't remember what.

Q. Well, what was his manner upon that occasion? A. Well, he was very hard on Mr. Beecher; said that he was not going to be called a fool and knave while Mr. Beecher knew that he was the magnanimous man.

Q. He, Tilton? A. He, Tilton.

Q. Yes; did he make any statement of what he proposed to do; if so, state it? A. Well, he said it was now his time for action, and he proposed to fight it out from that moment; various expressions of that kind.

Q. Of what kind? A. Figures of battle-axes and swords; and the sword was—he would not sheath his sword until Mr. Beecher was down, &c.

Q. Now, I would like you to state the day of the week when this occurred, if you can? A. It must have been Tuesday; it was Tuesday.

Q. On a Tuesday? A. Yes, Sir.

Q. Had you seen him before that after the Bacon letter was published? A. Yes; I saw him a few moments on the previous Sunday.

Q. Yes; at his house or where? A. At his house or in front of his house; I called at his house in a carriage, driving out, and he came out and spoke to me a few words.

Q. Now, that was the very latter part of June or the early part of July; when did you next see him to have an interview with him?

Mr. Fullerton—He has not stated that I think.

Mr. Hill—What?

Mr. Fullerton—He has not stated, I think, that it was in the latter part of June.

Mr. Hill—He said it was two or three days after the publication of the Bacon letter.

Mr. Fullerton—Well, let it stand at that.

## MR. TILTON PRAISES HIS WIFE'S APPEARANCE BEFORE THE COMMITTEE.

Mr. Hill—When did you next see him, Mr. Ovington? A. The next interview was at my house, I think.

Q. Can you recollect the time? A. It was about a week after that; I don't recall the day.

Q. Can you recall the day of the week? A. Friday, I think.

Q. What is it? A. Friday, it appears to me, but I cannot recall the day.

Q. You think it was a Friday, but you cannot recall the day. Where was this conversation which you now refer to held? A. In my house, or on the piazza of the house.

Q. Who was present at it? A. My wife, and Mr. Tilton and myself.

Q. Please begin now and give the conversation which there occurred between yourself and your wife and Mr. Tilton, as nearly as you can? A. Well, Mr. Tilton opened the conversa-

Gon, saying: "Elizabeth made a fine impression before the Committee. Elizabeth is a tramp, isn't she? But it was all fiction. I could come before the Committee and weave fiction; speak of Mr. Beecher and Elizabeth; but she only done what any true wife would do." My wife remarked that she didn't look and talk as though she was telling an untruth, and she didn't believe that she did. Mr. Tilton replied: "Oh, Libbie will tell any number of lies for me." Then my wife said something about Mrs. Tilton's appearance, that she was looking in a very bad condition of health, and remarked that I had, when I came home from my interview, said that she looked death struck. Mr. Tilton said: "Oh, not as bad as that." My wife then said that she was pleased to get a very pleasant letter from Mrs. Tilton the day previous, I think it was, and contrasted it with a letter that she had previously received, when she said that—a letter that was opposite in character, a distressful letter.

Q. Yes; well, what then occurred? A. And Mr. Tilton was—

Q. Speak a little louder? A. Mr. Tilton was inquisitive to know the contents of the letter. Mrs. Ovington—

Q. You say he was inquisitive—did he ask? A. Well, he said: "How is that? Elizabeth has been writing you?" My wife said, "Yes." "And what did she say?" My wife told him.

Q. Well, what did your wife say? Can you recall? A. Of the letter?

Q. Yes. A. Well, she repeated the letter in substance.

Q. Did she have the letter present? A. No, Sir, but I had heard it read and she repeated it.

Q. Repeated the contents? A. The contents of the letter; yes, Sir.

Q. To Mr. Tilton? A. To Mr. Tilton.

Q. Of which letter—the first one, or the second one? A. Well, both.

Q. Both of them? A. Yes, Sir; virtually.

Q. Now, can you recall what was said—in stating the contents of that letter, I mean? A. Oh! I could not recall; no, Sir.

Q. Can you give the substance of it? A. Well, no, except the first was a sad letter and the second a cheerful one. I could not give the substance of it.

Q. That is your memory; can you state the contents of the communications if you were to look at the letters, Mr. Ovington? A. Yes, Sir.

Judge Neilson—Rather, can you state what was said on that occasion in respect to the contents?

Mr. Hill—I have asked him; he says he cannot state.

Judge Neilson—Well, that is still the question.

Mr. Hill—Certainly.

Mr. Fullerton—No; the question now is whether he could state the contents if he saw them.

Judge Neilson—Of course he could read the letter, [Papers handed to witness.] See if those papers refresh your recollection so that you can repeat what was said on that occasion.

Mr. Hill—Now, Sir, you can give what your wife said to Mr. Tilton in giving the contents of the first letter.

Mr. Beach—[To the witness.] Please close the letter.

The Witness—Which is the first letter—this?

Mr. Fullerton—Well, that is what you are to find out.

Mr. Hill—Well, you can look, Mr. Ovington, if you can recall—

Mr. Beach—It is the sad letter.

The Witness—[Looking at the letter.] Yes; that is about what was said.

Q. Well, go on and state what was said.

Mr. Beach—Wait one moment. I move that that be stricken out.

Judge Neilson—Yes, that is stricken out. Mr. Ovington, after having examined those papers, close them, and then the question is whether you can recollect and state the substance of what was stated to Mr. Tilton at that time in respect to the letters.

Mr. Beach—I submit that the rule is, if your Honor please, that after refreshing his recollection by the memorandum the witness must be able to state from his recollection, independently of the memorandum, what the conversation was.

Mr. Hill—Well, I desire simply to obtain the state of this recollection with reference to that subject.

Judge Neilson—No, Sir.

Mr. Hill—If he can state the contents of the letter without the letter, I suppose that it is proper that he should do it. If he cannot, I suppose that he may refer to the letter, or that the letter and the statement may go in together, if he cannot recollect the contents.

Mr. Beach—Well, we dispute that proposition.

Judge Neilson—There is no occasion, gentlemen, for any argument about it.

Mr. Morris—And how long is the witness to have to commit it to memory?

Judge Neilson—The simple direction to this witness is this, to examine those papers and see if they refresh his recollection; then to close the letters, and then state from his recollection as thus refreshed, so far as he can, what was said to Mr. Tilton on that occasion as to the contents of the letters.

The Witness—Well, I cannot commit these to memory, your Honor, and then repeat them.

Q. Well, give the substance of what your wife said now, in giving the contents of the first letter?

Mr. Beach—I submit that the witness cannot testify with his eyes resting upon the table.

Judge Neilson—No; my suggestion was that he could examine the paper.

Mr. Hill—Mr. Ovington, his Honor has just suggested that you close the letter.

Judge Neilson—After having examined it.

Mr. Hill—After having examined it a sufficient time to refresh your recollection. Now, if you can state the contents of the first letter.

Mr. Fullerton—I object to that.

Judge Neilson—No; that is not it at all.

Mr. Hill—Or state what your wife said in regard to the contents of the letter.

Judge Neilson—Yes; that is better. A. I cannot recollect it.

Q. You cannot recollect it? A. No, Sir.

Mr. Hill—Then I offer the letter, together with his statement, in evidence.

Mr. Beach—[To the witness.] Oh! please don't be reading those letters.

Judge Neilson—I do not see, at present, how the letter can be received.

Mr. Hill—Very well, I will ask one other question, then. Mr. Ovington, did your wife state to Mr. Tilton the contents of this letter?

Mr. Fullerton—I object to that, Sir. In the first place, it is leading; and, in the second place, he don't know whether she did or not.

Judge Neilson—He cannot recollect what was said about the contents of the letter, and therefore he cannot answer the question.

Mr. Hill—I am asking him, with the letter before him if his wife stated the contents of this letter to Mr. Tilton?

The Witness—She did.

Judge Neilson—You can ask him what his wife said.

Mr. Hill—Well, Sir, what did your wife say in regard to the contents of this letter. Did she say anything, and if so, what? A. She repeated the contents of them; I had just heard them read, and I knew that what she was saying was the contents of them.

Q. You cannot recall what she then said? A. What she then said, I cannot recollect.

Mr. Beach—I object to the answer, and move to strike it out.

Mr. Hill—I submit that it is proper.

Judge Neilson—The statement that she has read them and that he remembers the contents is stricken out; I suppose it was not called for by your question.

Mr. Hill—I don't understand what your Honor strikes out.

Judge Neilson—The statement that he had heard the letters read, and that his wife on that occasion repeated them correctly, is stricken out, because it was not called for by your question.

Mr. Hill—Well, Sir, I asked if the witness stated the contents of these letters to Mr. Tilton.

Mr. Beach—That was objected to and ruled out. Then you asked the witness what his wife did state, and he made this irresponsible and improper answer.

Mr. Hill—I understand your Honor's ruling to be the striking out of that part of the answer which he made as not responsive to my question. I now put a question to which it shall be responsive.

Judge Neilson—What is your question?

Mr. Hill—Now, I ask if his wife did state the contents of this letter as he had previously heard it read?

Mr. Beach—That is objected to.

Judge Neilson—That involves a comparison between what he heard before and what was stated then. Your inquiry should be, what was stated then.

Mr. Hill—Well, Sir, I desire to prove by the witness that she stated the contents of the letter. He says that he cannot recol-

lect what the contents were now, even after looking at the letter.

Judge Neilson—He cannot remember what was stated as the contents. That seems to embrace the examination. If the witness cannot remember, why, then, you should pass on to something else.

Mr. Hill—Well, Sir, I desire to offer the letter in evidence in connection with this testimony.

Mr. Beach—It is objected to.

Judge Neilson—It cannot be received.

Mr. Hill—[To THE TILTON stenographer.] Mark it for identification.

Mr. Everts—Your Honor will note our exception.

[Letter marked "Exhibit D, 111," for identification.]

Mr. Hill—Can you recall what she said in regard to the contents of the second letter? A. She said something about her being as happy as a bird on that day.

Mr. Hill—[To Judge Neilson.] Inasmuch as this letter is now marked, I will except to your Honor's ruling. [To the witness.] Now go on, Mr. Ovington. A. I cannot recall the phraseology; simply that she was happy, and everything was going on smoothly, and the letter closed by, "Bless the Lord, oh, my soul!" I remember that.

Q. Now, Mr. Ovington, go on with the conversation which occurred there after the statement about the letters? A. He said: "Mr. Beecher never loved any other woman as he loves Elizabeth. Mrs. Beecher he never loved; Mrs. Beecher made his home a hell, and as long as he loves Elizabeth so why does he not treat her like a man? Why don't he come forward and help her? He is a coward and poltroon. I would not treat a woman so who had given me all a woman can give. Why does he let her let her only cool rooms in the house to boarders."

Q. Anything else, in that connection I mean? A. Nothing further. He continued to call Mr. Beecher a coward.

Q. What else did he say on any other topic? A. He then said: "Mrs. Tilton has only done the duty of a wife in coming forward and lying for me." He then said: "If I had committed the Nathan murder, and Mrs. Tilton was a witness of it, do you suppose she would testify to the truth?" He said, "No, indeed," and appealed to my wife if she would not do the same thing.

Q. If she would not do what? A. If she would not testify—if she would testify to the truth if her husband was up for the Nathan murder, charged with the Nathan murder, and she a witness of it. My wife replied that she would not to convict an innocent man—she would sacrifice her husband rather than an innocent man should suffer—some such reply as that.

Q. Well, go on; anything further? A. I don't know that I can recall anything further.

Q. At that time. Was anything said about the conversation being confidential? A. Yes, Sir; as he left he said: "This conversation is confidential, but you can repeat it all to Elizabeth."

Q. Speaking to your wife? A. Speaking to my wife, yes, Sir.

Q. When did you see Mr. Tilton after that? A. The second day, I think.



GEN. TRACY'S INTERVIEWS AT THE OVINGTONS.

Q. Mr. Ovington, let me call your attention, or ask you if you saw Mr. Tilton within a day or two prior to the conversation which you have now referred to upon the piazza, a conversation when Gen. Tracy was present? A. Yes, Sir.

Q. Well, please state what occurred then. Who was present at the conversation when Gen. Tracy and Mrs. Tilton were also present, and where did it take place? A. Judge Morse and myself, if that is the interview that you refer to.

Q. When was that, with reference to this last conversation which you have now given? A. The second day previous, I think.

Q. That would be on Wednesday, as near as you can locate it? A. Yes, Sir.

Q. Very well. Do you recollect the day, Mr. Ovington, when Mrs. Tilton appeared before the Committee of Plymouth Church? A. On the 6th of June.

Q. On the 6th of June? A. On the 6th of July.

Q. On the 6th of July. Where were you on that day? A. That evening I was present.

Q. You were present when she was before the Committee, do you mean? A. Yes, Sir.

Q. Where were you during the afternoon of that day? A. I was in the house.

Q. Did you see Gen. Tracy that day? A. Yes, Sir.

Q. About what time did you see him? A. In the evening, about half-past six, I should judge.

Q. Well, who did he see when he came to your house? A. He saw my wife and myself.

Q. Who else? A. No one, I think, when he first came to the house.

Q. Then he went away, you say? A. Yes, Sir.

Q. Did he call again? A. He then returned in a half hour, I should think.

Q. Who was present then, and whom did he see? A. Only my wife and myself.

Q. At your house was this? A. Yes, Sir.

Q. Was he introduced to Mrs. Tilton at any time there, and if so, by whom? A. Not up to that time. Afterwards he was introduced by Judge Morse.

Q. And the interview between Mrs. Tilton and Gen. Tracy occurred in Judge Morse's presence? A. Yes, Sir.

Q. Did you see the General again that day? A. Well, he remained there through the evening while Mrs. Tilton was giving her evidence before the Committee.

Q. The Committee then came to your house, as I understand it? A. Yes, Sir.

Q. Now, had Gen. Tracy any interview with Mrs. Tilton, or conversation with her which was not in the presence of either you or your wife, or the Committee? A. No, Sir.

Mr. Beach—How can he speak when he was not present?

Mr. Hill—I don't know.

Mr. Beach—Well, he can say. The question called upon him to speak in reference to matters when he was absent; it so assumes by the question.

Q. Well, I will ask you, Mr. Ovington, were you present all

the while that Mr. Tracy was in the house on that occasion, upon each of these interviews? A. Except one, Sir.

Q. Well, where was that, and when was it? A. Gen. Tracy called down stairs, where my wife and Mrs. Tilton were taking supper, to tell her that the Committee had come.

Q. Never mind what he said there. How long were they down there?

Mr. Beach—How long were they down there?

Mr. Hill—Gen. Tracy and Mrs. Ovington and Mrs. Tilton, together, I mean. A. Oh! just long enough to go and return.

Q. A very few minutes? A. About two minutes, I should say.

Q. And then the General came up stairs and remained in your presence until he went away?

Mr. Fullerton—One moment. Don't tell him the story. Ask him the question.

A. Yes, Sir: the General came up and remained with the Committee, and with us, all through the evening.

Q. Mr. Ovington, please state to his Honor and the jury your business. A. A merchant in Brooklyn.

Q. How long have you been engaged in business here? A. 26 years—29 years.

Q. Where do you carry it on, Sir? A. On Fulton-st., near Clinton.

Q. State the place. A. 260 Fulton, near Clinton-st.

Q. Just state the line of your business in a general way. A. Importer of fancy goods, china and bronzes.

Q. Are you about to go away from the city now? A. Yes, Sir.

Q. When do you expect to go? A. On Saturday.

Q. Going where? A. To Europe.

CROSS-EXAMINATION OF MR. OVINGTON.

Mr. Fullerton—Mr. Ovington, where has Mrs. Tilton made her home for the last four months? A. At my house.

Q. When did she go there first to make it her home? A. The early part of July.

Q. Do you recollect the day? A. I do not, the day of the week; it must have been July 8th.

Q. 1874? A. Yes, Sir.

Q. What time in the day did she come there? A. Early in the morning.

Q. How early? A. I should think about half-past seven.

WHERE MRS. TILTON HAS LIVED SINCE LEAVING HER HUSBAND.

Q. And she has made it her home there ever since? A. Yes, Sir; except that she has been out of town for a short time visiting with my wife.

Q. Where did she visit? A. At Fairfield, Connecticut.

Q. In whose families, or in what families did she visit? A. I cannot recall the names; I am not acquainted with them—boarding-houses.

Q. Does your wife know the families with whom she visited? A. She did not until she went there; no, Sir.

Q. Did she go to visit strangers? A. She went, as she is in the habit of doing, out of town in the Summer months.

Q. Then she did not go visiting? A. No; not visiting; no, Sir.

Q. She went to spend the Summer, did she? A. To spend a short time; yes, Sir.

Q. Did you visit her while she was there? A. I did not.

Q. Can you not give me the name of the family or the house in which she remained during her absence? A. I cannot recall the name.

Q. How long was she absent during the Summer. A. I should think about four or five weeks altogether.

Q. And where were you during those four or five weeks? A. In the city.

Q. And did not visit her during that time? A. No, Sir.

Q. Was she absent from Brooklyn at any other place since the time she went to live at your house up to the present time? A. She spent a short time in Washington, Connecticut.

Q. When was that? A. It must have been the early days of August.

Q. With your wife? A. Yes, Sir.

Q. Where did they spend the time then? A. With Mr. Gunn.

Q. Mr. Gunn? A. Yes, Sir.

Q. What place in Connecticut? A. Washington.

Q. What is his first name? A. I don't remember.

Q. Was it a boarding-house? A. Yes, Sir; a school, not a boarding-house.

Q. Do you know the name of the school? A. It is called "The Gunnery."

Q. The Gunnery? A. Yes, Sir.

Q. Who is the proprietor of it—Mr. Gunn? A. Mr. Gunn; yes, Sir.

Q. A large school? A. I think it is.

Q. A ladies' school—girls' school? A. Yes, Sir; men's principally, but there are some young ladies there.

Q. Did you visit her whilst she was there? A. No, Sir.

Q. How long did your wife and Mrs. Tilton remain there? A. I should say about a week; I don't remember the exact time.

Q. Now, was your wife absent at any other time during the Summer at any other place except the two that you have named? A. She stopped a few days at another place.

Q. Where was that? A. I cannot remember where now.

Q. Did you visit her at the Gunnery? A. No, Sir.

Q. Did you visit her at this other place that you cannot recollect? A. No, Sir.

Q. Now, you have named three places at which your wife was absent during the Summer with Mrs. Tilton. Is there any other place where they spent any portion of the time? A. I think not.

Q. Where did they spend the balance of their time intermediate to the time she came to your house up to the present day? A. At my house.

Q. Altogether? A. Yes, Sir.

Q. In all of your wife's absences, then, during the Summer, Mrs. Tilton went with her, if I understand you? A. Yes, Sir.

Q. And during the remaining period she has been in your

family? A. Except occasional visits of a day or two to friends in New-Jersey.

Q. Where had she visited in New-Jersey?

Mr. Hill—If he knows.

Mr. Fullerton—I don't suppose he will tell if he don't know.

You must not distrust your own witness.

The Witness—She visited Montclair.

Q. How long? A. Only a day or two.

Q. Did your wife go with her? A. No, Sir.

Q. How long was she absent? A. Not more than two days, I think.

Q. Do you know how she went? A. How she went?

Q. Yes, Sir; how did she get to Montclair? A. She went to the ferry and crossed the ferry and crossed the city and took the cars, I presume.

Q. Then she went by rail, did she? A. Yes, Sir.

Q. Did you put her on board the cars? A. No, Sir.

Q. Do you know who did? A. I do not know.

Q. Did your wife go with her? A. No, Sir.

Q. Did any one go with her? A. Yes, Sir.

Q. Who did? A. I presume Mr. Tubbs went with her.

Q. Mr. who? A. Mr. Tubbs.

Q. Who is Mr. Tubbs? A. He is an old resident here in Brooklyn.

Q. Friend of your family? A. Not until recently.

Q. How recently? A. Two or three months.

Q. Where does Mr. Tubbs reside? A. At Montclair.

Q. He came over after her, did he? A. Yes, Sir.

Q. Did you correspond with Mr. Tubbs? A. No, Sir.

Q. Do you know whether any one corresponded with him, in reference to that visit? A. He was in the habit of calling at the house; I think there was no correspondence.

Q. And he went away from your house in company with her, did he? A. I presume so; I don't know that.

Q. Do you know who returned with her? A. Mr. Tubbs.

Q. Mr. Tubbs returned with her—brought her to your house? A. Yes, Sir.

Q. After two or three days' absence? A. Yes, Sir.

Q. Has she been absent any other time than those you have named? A. Yes, Sir; she went up to "the Gunnery," if I remember right.

Q. The second time? A. Yes, Sir; the second time.

Q. When was that? A. I should think in January; I won't be sure.

Q. Of the present year? A. Yes, Sir.

Q. Who went with her there? A. I don't know.

Q. Did any one? A. I think so; yes, Sir.

Q. And don't you know who it was? A. No, Sir.

Q. Didn't your wife go with her? A. No, Sir.

Q. Any member of your family go with her? A. No, Sir.

Q. Were you present when she left the house? A. No, Sir.

Q. How? A. No, Sir, I was not.

Q. And you cannot tell us who went with her? A. I don't remember now; no, Sir.

Q. Can you tell whether any one went with her? A. Yes, Sir; I know that some one went with her.

Q. How do you know that fact? A. From the fact of her inquiring who could go with her.

Q. Of whom did she make the inquiry? A. She talked with us in regard to it.

Q. Who do you mean by "us"? A. My wife and myself.

Q. She consulted you then as to who should go with her; did you suggest? A. No, Sir; I did not.

Q. Did your wife suggest in your presence? A. She may have done so.

Q. Don't you recollect that she did so? A. Yes, Sir; I do remember that she did suggest; but I don't know who she suggested.

Q. Don't you remember now who she suggested? A. No, Sir.

Q. It was thought to be a matter of importance that some proper person should go with her, was it not? A. Yes, Sir.

Q. And don't you remember that some proper person was suggested? A. I remember that Mrs. Morse was suggested; whether she went or not, I don't know.

Q. Mrs. Morse was suggested. Now, who suggested Mrs. Morse? A. I think likely Mrs. Tilton did.

Q. That is Mrs. Tilton's mother, is it not? A. Yes, Sir.

Q. Now, was there any other absence than those you have named? A. I think not, Sir; I don't recall any.

#### MRS. TILTON'S VISITORS.

Q. Will you state, if you please, during the period that Mrs. Tilton has been at your house, whether she has had many or few persons to call upon her? A. Rather few, I should say; or, at least, she has seen few; many have called, and—

Q. Many have called, and few were chosen, I suppose? A. Yes, Sir.

Q. You have mentioned a call by Mr. Tracy? A. Yes, Sir.

Q. When was that call made? A. On the 6th of July.

Q. How? A. On the 6th of July.

Q. Are you sure of the day? A. Well, presuming that that was the date that she went before the Committee, that was the first call—the first time that he saw her.

Q. That you knew of? A. Yes, Sir; that I knew of.

Q. What time in the day was it that Mr. Tracy called first? A. That he called first at our house?

Q. Yes, Sir; that you know of; on that day—whatever day it was that he did call? A. Towards evening; I should think, six o'clock, or so.

Q. Were you home when he called? A. Yes, Sir.

Q. Did you know, at that time, of the appointment of this Committee of the Church? A. No, Sir.

Q. You were in ignorance of that fact, were you? A. Entirely so; yes, Sir.

Q. From whom did you learn the fact that the Committee was appointed? A. From my wife.

Q. When did you first learn it? A. That same evening; or, perhaps, at that very interview; I don't remember.

Q. Who met Mr. Tracy at the door when he came; do you recollect? A. No, Sir; I do not.

Q. Where did you first see Mr. Tracy in the house after his arrival? A. In the upper room.

Q. What upper room? A. The front bedroom, over the parlor; I was sick—detained home.

Q. How did it happen that you were up there? A. I was detained home by sickness.

Q. And you were in the upper front room? A. Yes, Sir.

Q. In bed? A. No, Sir.

Q. Who brought Mr. Tracy up there? A. I think he was shown up by the servant.

Q. Do you know, of your own knowledge, how long Mr. Tracy had been in the house before he was ushered into your presence? A. Oh, I know that he came—

Q. Of your own knowledge? A. Yes, Sir.

Q. You saw him come in the house, then? A. I heard the bell ring.

Q. Did the bell ring more than once that day? Yes, Sir.

Q. Were you at the door when persons visiting the house were admitted? A. No, Sir.

Q. Could you distinguish, then, being up stairs in your sick room, between the advent of Mr. Tracy and any other person who might have rung the bell? A. No, Sir.

Q. Then I put the question to you again. Do you know, of your own knowledge, when Mr. Tracy arrived at the house? A. Yes, Sir.

Q. You saw him come in, did you? A. No, Sir; I know he was not down stairs.

Q. How long had you been up-stairs before he was ushered into your room? A. Oh, I think I had been there some time.

Q. How long? A. Two or three hours.

Q. Is it impossible for a person to get into your house without ringing the bell? A. Yes, Sir.

Q. It is; quite impossible? A. Except with a right key.

Q. They could not be let in by any other person without ringing the bell, could they? Not very well; no, Sir.

Q. It might happen? A. Yes, Sir; they might come in with the servant, perhaps.

Q. Now, will you explain to this jury as an intelligent man, Mr. Ovington, how you are enabled to say that you know when Mr. Tracy came into your house when you acknowledged that you didn't see him come in, but was in an upper room of the house? A. It is a very small house—

Q. Well? A. And when the bell rings, I can hear just what is going on down in the hall, and I generally ascertain who rings at the bell.

Q. Well, if you generally ascertained who rung the bell, did that enable you to tell who rung the bell that day? A. Who entered the house; yes, Sir.

Q. You could tell, then, who entered the house that day, because you generally inquired who rung the bell; is that your answer? A. Yes, Sir.

Q. That is your answer. Now, Mr. Ovington, do you know how long Gen. Tracy was in that house before he came to your room, of your own knowledge? A. I knew it only in that way.

Q. That you heard a bell ring, and supposed that somebody was admitted? A. Yes, Sir.

Q. And that that somebody you conjectured was Mr. Tracy? A. Yes, Sir.

Q. Is not that all you know about it? Is that all you know about it? A. I don't understand the question.

Q. Then you should not have answered it? A. Is that all I know about it?

Q. I understand you to conjecture that Gen. Tracy came in the house when you heard a certain bell ring, but you don't know it of your own knowledge? A. Why, yes; I knew that it was he. I do know it of my own knowledge; I did know it.

Q. I want you to tell how you knew when you were up stairs in the room and did not see him enter? A. If any one enters the house I hear their voice from my room; the house is small.

Q. You don't hear the voice unless they speak, do you? A. They generally speak.

Q. Generally speak? A. Always speak.

Q. Always? A. They ask the servant if Mr. Ovington is in. That I hear.

Q. Did you hear that, that day? A. I presume I did.

Q. Did you hear that, that day? A. I cannot recall it.

Q. You cannot recall it? A. No, Sir.

Q. Then how can you state positively that you knew when Gen. Tracy came in, if you didn't hear his voice? A. Well, I have stated as near as I can.

Q. I think you have too? A. Yes.

Q. But I must ask you a little further about it? A. I am sure that he was not in the house a moment, Sir, before he came up to the room.

Q. You are sure of it? A. Absolutely sure.

Q. You swear to it positively? A. Yes, Sir.

Q. That he was not in the house a moment before he came up to your room? A. It could not be possible. No.

Q. It could not have been possible. Very well, I am glad to get that. You know it was not I who rung that bell and came in the house? A. Yes.

Q. Positive? A. Yes, Sir.

Q. The door of your room shut or open? A. Open in the summer always.

Q. Can you see from your room where you were sitting, down stairs to the front door? A. No, Sir, I could not see to the front door.

Q. How? A. No.

Q. Can't see at all. Did you get up that day to go to the head of the stairs to see who had entered? A. No, Sir; I don't think I did.

Q. Do you remember exactly how long it was after you heard a bell ring before Mr. Tracy came to your room? A. About half a minute.

Q. I ask you if you recollect positively how long it was? A. I remember that he came right up; yes, Sir.

Q. You have a distinct recollection of that, have you? A. Well, no; I can not say that I have a very distinct recollection.

Q. If you have not a distinct recollection, how are you enabled to say that you know that he came right up? A. His calls were very unusual, you know, and I remarked it.

Q. His calls were unusual, and you remarked it; now, pray

tell us how many calls he had made before that. A. I think that was the first call.

Q. Then his calls were not unusual, were they? He had made none? A. No.

Q. And do you think that because he had never called before that, therefore he came right up? A. No, Sir; that I should remember it—be more apt to.

Q. How? A. I should be more apt to remember it.

Q. You would be more apt to remember that he came right up stairs after ringing the bell, because he had never called before? A. Being a stranger.

Q. Was he a stranger to you? A. Yes, Sir.

Q. You had never met him before? A. Yes, Sir; I had met him once or twice.

Q. Where had you met him? A. Met him at the church.

Q. A speaking acquaintance? A. I had spoken with him. I think I had had but one interview with him; one or two.

Q. Then he was not a stranger, was he? A. Comparatively a stranger.

Q. Did you know that Gen. Tracy was coming? A. No, Sir.

Q. Had not you heard that he was coming? A. No, Sir.

Q. Hadn't it been suggested or intimated to you that he was coming? A. I think not.

Q. Now, Mr. Ovington, just reflect a moment. Before Gen. Tracy visited you that day had it not been intimated to you that he would come, or some one else would come to your house on behalf of Mr. Beecher? A. I think not, Sir.

Q. You are not sure? A. I am almost sure.

Q. Almost, not quite. Why do you hesitate in regard to it if you are not sure? [To Mr. Hill.] You are talking a little too loud for the jury.

Mr. Hill—How?

Mr. Beach—We say that you are talking a little too loud, and your remarks can be heard by the jury.

Mr. Hill—Can you hear us?

Mr. Fullerton—I do.

Mr. Hill—I am speaking to Mr. Everts.

Mr. Fullerton—I cannot help that, Sir.

Mr. Beach—There is no necessity of speaking quite so loud.

The Witness—I am prepared to say that I did not know that Mr. Tracy was coming in.

Q. Well, I am prepared to say that I did not ask you that question. A. I thought you did. I beg pardon.

Q. No, I didn't. I will repeat it. Before Mr. Tracy arrived at your house, had you no intimation that he, or some one else, on behalf of Mr. Beecher, would call?

Mr. Everts—By that question, does Mr. Fullerton assume that Mr. Tracy called on behalf of Mr. Beecher?

Judge Neilson—No. Mr. Tracy or somebody else on behalf of Mr. Beecher.

Mr. Everts—Exactly.

Judge Neilson—It don't imply that Mr. Tracy called on behalf of Mr. Beecher; somebody else.

Mr. Beach—Strike out the "else" or "some one on behalf of Mr. Beecher."

Mr. Fullerton—Yes, Sir.

Mr. Evans—I had heard no evidence that Gen. Tracy had called on behalf of Mr. Beecher.

Mr. Fullerton—Not yet.

Mr. Evans—Well, the past is secure.

Mr. Fullerton—The future is not, for you.

Q. Now, Sir, will you be kind enough to answer the question?

A. Ask it again, please.

Q. I will ask the reporter to read it for fear I might not do it distinctly enough.

[Question repeated by THE TRIBUNE stenographer.]

A. I had not.

Q. No intimation? A. No, Sir.

Q. Had you no intimation that some one would call at your house that day before the call was made? A. No, Sir.

Q. Who was in your room when Mr. Tracy entered? A. My wife.

Q. Any one else? A. No, Sir.

Q. How long did he remain in your room in your company, and in your wife's company? A. I should say five minutes—five or ten minutes, perhaps.

Q. And during that five or ten minutes, where was Mrs. Tilton? A. I think she was up stairs.

Q. Are you sure? A. If she was in the house, she was up stairs; yes, Sir.

Q. Why does that follow? She did not always stay up stairs when she was in the house, did she? A. Because she had requested me to give her a Bible to go up stairs to be alone?

Q. Do you recollect that distinctly? A. Yes, Sir.

Q. She wanted a Bible to go up stairs to be alone? A. Yes, Sir.

Q. She said all that, did she? A. Yes, sir.

Q. And how long before Gen. Tracy arrived did she say that? A. I should think a half hour or so.

Q. How? A. Half an hour, perhaps; it might have been longer; I cannot recall.

Q. Then how do you know that she remained up stairs during that half hour? A. I do not know; I presume she was up stairs.

Q. Yes: it was a presumption of yours? A. Yes, Sir.

Q. You did not see her go up, did you? A. I saw her leave the room, and heard her go up; yes, Sir. I do swear that she was up there.

Q. When did you next see her after she left your room that day, under those circumstances? A. I think at the interview with Mr. Morse—with her father.

Q. How long after she left your room was it that you saw her in the presence of Judge Morse? A. I should say about an hour.

Q. Where did Gen. Tracy go after he left your room after being there as you have stated? A. He left the house.

Q. Did you see him leave the house? A. He left the room, rather.

Q. Yes. Did your wife leave the room at the same time? A. I think not.

Q. She remained with you? A. I think so.

Q. How long did she remain in your company after Mr. Tracy left? A. I don't remember.

Q. About how long? A. I really could not say, Mr. Fullerton.

Q. Did Mr. Tracy go down stairs after he left your room? A. Yes, Sir.

Q. Do you know how long he remained in the lower part of the house before leaving, of your own knowledge? A. I knew that he went right out in the street; I heard the door shut.

Q. And therefore you knew that he went out because you heard the door shut? A. Yes, Sir.

Q. You swear positively that it was he that went out? A. Yes, Sir.

Q. Although you did not see him? A. I do not remember to have seen him; I may have seen him from the window.

Q. Well, did you or did you not see him to enable you to swear positively that it was he who went out? A. I did not see him; no, Sir.

Q. You did not see him? A. Not that I remember.

Q. Well, I put the question to you again, without having seen him go out are you enabled to swear positively that he did go out? A. Yes, Sir; I will swear that he went out.

Q. Yes. Well, that is got along to. Do you know of your own knowledge that he did not remain in the lower part of the house a half an hour before he left? A. Yes, Sir.

Q. And do you know of your own knowledge that Mrs. Tilton was not down there with him? A. Yes, Sir.

Q. Positively? A. Positively.

Q. How long after he left the house, as you say he did, before you saw him again? A. I should say 15 or 20 minutes.

Q. Where did you see him then? A. In the parlor, down stairs, I think.

Q. Was he in the parlor when you entered it? A. I think not, Sir.

Q. Where were you when he entered the house the second time? A. I think I was in the parlor.

Q. And where was he if you did not see him in the parlor? A. He entered the house from the street.

Q. And came to the parlor? A. Yes, Sir.

Q. And you were there when he entered? A. I think so.

Q. Or were you up stairs in your room? A. No; I think I was down stairs at that interview.

Q. Who was in the parlor when he entered beside yourself? A. I think only my wife.

Q. No one else. Where was Mrs. Tilton at that time? A. In the mean time she had gone out to get her father, and I think—

Q. What time did she go out? A. Well, I can't remember.

Q. What did she want of her father? A. Wanted to consult with her.

Q. Wanted to consult? A. To consult with him.

Q. How? A. She wished to consult with him.

Q. Do you know about what? A. In regard to the step that she proposed taking to consult with some of the members of the church—some of the brethren of the church—as she termed it.

Q. About what? A. About this scandal matter.

Q. About this scandal matter; what was going on about this scandal matter? A. Well, the Tilton-Bacon letter had been

Published, and she had determined to take some step in the matter.

Q. Anything said about the Committee? A. No, Sir; I think she was not aware of the appointment of the Committee.

Q. Now, what brethren of the church was she going to consult? A. She did not designate, did not say.

Q. Did you designate? A. No, Sir.

Q. Where was the consultation to be held? A. That was not mentioned at all.

Q. How long had the Tilton-Bacon letter been published then? A. A week or ten days, I think.

Q. And this was the first that the conclusion was arrived at that something was to be done in regard to it, was it? A. That was the first day?

Q. Yes. A. No, Sir.

Q. The first day that any consultation was proposed? A. Not the first.

Mr. Hill—What persons are you speaking of?

Mr. Fullerton—The very persons that the witness is speaking of.

Mr. Hill—Pardon me, I am asking the question.

Mr. Fullerton—I don't know anything more about it than what he has stated. I don't keep my memory up for you. I attend to my own branch of the case as well as I can, and I know no more about it than what he has stated. [To the witness.] Was there any consultation at your house? A. No, Sir; there was not.

Q. Did Judge Morse come back with Mrs. Tilton? A. Yes, Sir.

Q. Where did they sit—in the parlor? A. Yes, Sir.

Q. Did they talk in your presence? A. Yes, Sir.

Q. And in the presence of your wife? A. Yes, Sir.

Q. Did you see Mrs. Tilton leave the house to go after her father, Judge Morse? A. I don't recollect.

Q. Do you recollect when she left? A. No, Sir; that I cannot recall.

Q. Was it before or after Mr. Tracy left? A. Oh, it was before.

Q. Before Mr. Tracy left? A. She said she had to go to prepare supper for her boarders.

Q. Now, Mr. Ovington, perhaps you will explain one thing then. If Mrs. Tilton left before Gen. Tracy left, how were you enabled to state a moment ago that Mrs. Tilton was up-stairs with her Bible when Mr. Tracy left? A. Yes; I think I was mistaken there.

Q. Yes. Now you have an opportunity of correcting it? A. I think that must have been earlier in the afternoon that she came in and said to me that she would like to be alone, and asked for a Bible.

Q. Earlier in the afternoon? A. Yes, Sir.

Q. Earlier than what? A. Earlier than six o'clock.

Q. What has six o'clock got to do with our examination at the present moment? It has not been mentioned before. A. Well, it was earlier in the afternoon; perhaps it was three or four o'clock.

Q. Well, we will commence anew? A. Well, Sir.

Q. Now, when did Mrs. Tilton go up-stairs; was it before or after Mr. Tracy came there? A. It was before.

Q. Now, you say she came down and left the house before Mr. Tracy did? A. Yes, Sir, because I remember her saying that she had to prepare supper for her boarders.

Q. Where was Mr. Tracy when she said that? A. I don't think I heard her say that, though.

Q. Well, you are mistaken again, then? A. Yes, Sir.

Q. You don't think you heard her say that. Where was she when Mr. Tracy left the house? A. I heard that she did say so through my wife.

Q. No, never mind that. A. Well.

Q. Where was she when Mr. Tracy left the house? A. I suppose she must have been home.

Q. Home? A. Yes, Sir.

Q. Then when she went down-stairs and to leave the house, Mr. Tracy was in your room, was he? A. That I cannot recall.

Q. If Mr. Tracy was in your room after he entered the house and remained there until he left and Mrs. Tilton went down-stairs before Mr. Tracy did, doesn't it follow then that he was in the room when she left? A. I cannot remember as to that really.

Q. How long after she left the house was it before Mr. Tracy left? A. That I don't remember.

Q. About how long was it? A. Because I don't know exactly when she went out of the house; I did not know at the time.

#### THE WITNESS'S MEMORY BAD.

Q. You say she went out before Mr. Tracy did? A. She might have gone before Mr. Tracy came. I don't remember.

Q. Oh. How could she go before Mr. Tracy came when you said she was up-stairs when Mr. Tracy was in your room? A. Well, I think I must have been mistaken there.

Q. Mistaken again; very well. Now, Mr. Ovington, I will give you the fairest opportunity to set this matter straight if you have any recollection on the subject. A. Well, I should like to do it if I could.

Q. Well, I should like to see you. A. My recollection is, that Mrs. Tilton came in, perhaps, in the middle of the afternoon, and came up to my room—if I remember right, my wife was not at home then—and said to me, "I would like to be alone for a moment, if you will allow me to go up stairs," and asked for a Bible. She left the room, and I supposed she went up stairs.

Q. Well, now go on? A. Then my recollection is, that Mr. Tracy came in towards evening, and after stopping for a few moments went out, as I believed, to Mr. Beecher's, and in a few—

Q. Beecher's? A. And in a few moments again returned.

Q. Yes; well? A. Well, then I think Mrs. Tilton came in with Judge Morse, and had that interview in the back parlor, but the time that elapsed between these interviews I cannot recall.

Q. Well, Mr. Tracy, then, and Mrs. Tilton were absent from

your house at the same time? A. Yes, Sir; Mr. Tracy for a few moments; Mrs. Tilton for an hour or two.

Q. About half an hour you told me Mr. Tracy was absent? A. Yes, Sir; perhaps as long as that.

Q. Do you know of your own knowledge that they did not meet outside of your house? A. I was not in the street to see.

Q. Well, you don't know then, do you? A. No.

Q. Now, what makes you think Mr. Tracy left to go to see Mr. Beecher? A. I think he made a remark to that effect.

Q. To whom did he make that observation? A. To my wife and myself.

Q. Any one else present? A. No, Sir.

Q. Now, up to the time of Mr. Tracy's return after he left your house, had he seen or met Mrs. Tilton? A. Not that I know of.

Q. On his return the second time to your house, what room did he occupy or sit in? A. The second time I think it was up-stairs; I won't be sure.

Q. And who was with him up-stairs the second time? A. I think only my wife.

Q. Where were you? A. I was present.

Q. Well, then, you were there? A. Yes, Sir; my wife and myself.

Q. And it was not in the parlor that the second call was made? A. I think not; I won't be sure. It might have been down-stairs.

Q. Then you are wrong there again, are you? A. Yes.

Q. You told us a moment ago that it was in the parlor, I think? A. Well, it might have been in the parlor.

Mr. Beach—Stop a moment.

Mr. Beach—What are you hollering to us for?

Mr. Hill—I didn't.

Mr. Beach—You are making a great noise there about something.

The Witness—I gave very little attention to the matter, and it is all indistinct, you know.

Mr. Fullerton—I think my adventures are excusable for being nervous, Sir. I don't complain. [To the witness.] It is all indistinct, is it? A. Rather so; yes, Sir.

Q. Well, do you know anything about it? A. Oh! I know a good deal about it; yes, Sir. Lapses of time and all that—

Q. Then will you tell us now whether you know whether the second interview with Gen. Tracy was in the parlor or in the room up-stairs? A. You refer now to the second interview with Mr. Tracy alone, not when Judge Morse was present.

Q. I refer to just what is embraced in my question?

Mr. Everts—That is what he has asked you—what was embraced in your question.

Mr. Fullerton—That is what he ought to know without asking.

Mr. Everts—Oh, I don't know that.

Mr. Fullerton—Well, I don't know that you do.

The Witness—I think the chances are that it was up-stairs.

Q. The chances are it was up-stairs. How long did that interview last? A. I cannot say, really. It might have been ten

minutes, and it might have been half an hour, and it might have been five minutes.

Q. Where was Mrs. Tilton during that second interview up-stairs, which might have been half an hour? Do you know whether she had returned to the house or not? A. No, Sir; she had not; she must have been at home, I think.

Q. Where did Mr. Tracy go after he left your room, that second interview being ended up there? A. I cannot be sure whether he left the house—whether he didn't stay until Judge Morse came in the evening.

Q. Then you don't know whether he staid until Judge Morse came or not, do you? A. I cannot be sure.

Q. Did he come back after leaving—after that interview? A. With Judge Morse?

Q. After leaving your house the second time, the interview being closed, did he return? A. I just remarked that I don't remember whether he went away.

Q. Well, if he did not go away, why did he stay? A. He staid with us until Judge Morse came.

Q. Are you sure of that now? A. That is my impression.

Q. You are not sure, however, are you? A. I cannot be sure; no, Sir.

Q. Did Judge Morse come while you and Mr. Tracy were sitting in your upper room during that interview? A. No, Sir; that was in the back parlor.

Q. No; you don't understand my question, Mr. Ovington. During that interview up-stairs—the second interview up-stairs, did Judge Morse come to the house? A. No, Sir; not up-stairs. Judge Morse came to the house when we were in the parlor.

Q. And was Mr. Tracy in the parlor? A. Yes, Sir.

Q. Then he went from your room up-stairs into the parlor, didn't he? A. I cannot remember, Sir.

Q. How? A. I cannot recall.

Q. Can you recall the length of time that elapsed after your interview up-stairs was ended before you saw Gen. Tracy in the parlor? A. No, Sir; I cannot.

Q. May it have been an hour? A. It might have been, perhaps.

Q. It might have been an hour? A. It might not have been.

Q. Do you know what time Mr. Morse came and Mrs. Tilton; was it before or after your interview up-stairs in the room was ended? A. Oh! it was after.

Q. How long after? A. When Judge Morse came it must have been pretty nearly 8 o'clock.

Q. In the evening? A. I think so.

Q. In the evening, was it? A. Yes, Sir.

Q. And how long after your interview up-stairs—the second interview up-stairs in your room—ended? A. I don't remember.

Q. About how long was it? A. I cannot recall it now.

Q. Two hours? A. I cannot tell.

Q. You cannot tell whether it was two or three hours, can you? A. No, Sir.

Q. How? A. No, Sir.

Q. Now, you say you don't know whether Gen. Tracy went away after the second interview was closed and before Judge

Morse arrived. I understand you to say so? A. I presume he must have gone away, but I cannot recall.

Q. You don't know whether he went away or not? A. No, Sir.

Q. Well, if he did not go away, he was in the house, wasn't he? A. Yes, Sir.

Q. Can you tell me where he was in your house during that two or three hours? A. He was not there two or three hours.

Q. You have told us that you did not know whether it was two or three hours after the interview up-stairs closed before Judge Morse came? A. Yes, Sir.

Q. Whatever interval it was, whether it was one hour or three, can you tell where Gen. Tracy was in the house, if he were there during that period? A. I cannot.

Q. Then you don't know whether he was with Mrs. Tilton or not, do you? A. Yes, I know he was not with her.

Q. Will you tell the jury then, how you know that? A. Because I know she was not in the house.

Q. Not in the house? She was in the house after she arrived there, wasn't she? A. Yes, Sir.

Q. Very well. Can you state that Gen. Tracy and she were not together after she arrived in your house when you were not present? A. Yes, Sir; I know they were not.

Q. Now, we will see how you know it. Where were you when Judge Morse arrived? A. I was in the parlor.

Q. You told me a moment ago that you did not know whether you were in the parlor up-stairs in your room when he arrived, I think? A. Oh, no; not when Judge Morse arrived.

Q. You are sure you were in the parlor? A. Yes, Sir.

Q. And did Mrs. Tilton come with him? A. Yes, Sir.

Q. You are sure of that? A. Yes, Sir; I think so.

#### THE COMMITTEE'S MEETING AT THE OVINGTONS.

Q. Mrs. Tilton did not arrive before Judge Morse did, then? A. I think she went after her father; he came with her.

Q. Now, answer my question. Do you say that Mrs. Tilton did not arrive there that evening with her father—before her father? A. I think so; yes, Sir.

Q. You think; you say so. Is that the answer? A. I think it was so.

Q. Understand my question, Mr. Ovington. A. Yes; I think it was so.

Q. That she arrived before her father? A. I think she did not arrive before her father; I think she came with her father.

Q. You think she came with her father? A. Yes, Sir.

Q. And it was about eight o'clock, you think, in the evening? A. Somewhere along there; yes, Sir.

Q. And you were in the parlor when he arrived? A. Yes, Sir.

Q. Who else was in the parlor? A. Gen. Tracy and my wife.

Q. Gen. Tracy. What time did he arrive there? A. He must have arrived just a short time previous to Judge Morse coming in, I think.

Q. Were you up-stairs when he arrived that time? A. I cannot remember the fact of him coming in, you know.

Q. Then you were not there when he came in, were you? A. I think I must have been there.

Q. Were you up-stairs in your room when he arrived at the time? A. I think not, Sir.

Q. Where do you think you were? A. I think I was in the parlor.

Q. Did you see Gen. Tracy arrive? A. I think I saw him coming in, but I cannot remember now.

Q. How long had you been down in the parlor when he came in? A. That I cannot remember.

Q. Are you sure you saw him come in while you were in the parlor? A. I cannot swear I saw Gen. Tracy passing through the hall and entering the parlor—that I saw him.

Q. Was he in the parlor when you went down stairs? A. I don't remember any such occurrence as that.

Q. How long did they remain in the parlor after they got together? A. I should think about—a short time.

Q. Then what was done? A. During the interview?

Q. No, Sir; what was done after the interview was over—what became of the persons assembled there? A. Mr. Tracy went out, and returned in a few moments with the Committee.

Q. Ah! well, what time did the Committee leave? A. Well, it had got on in the evening pretty well.

Q. About what time? A. Perhaps half-past eight or nine.

Q. How long was he gone before he returned with the Committee? A. A very few minutes.

Q. Did you know the Committee were coming there before they arrived? A. Yes, Sir.

Q. When did you first learn that fact? A. Just a few moments before they did arrive, or before Gen. Tracy left.

Q. Before Gen. Tracy left it was? A. Yes, Sir; before Gen. Tracy left to get them.

Q. You learned it, did you? A. Yes, Sir.

Q. You said something or other about Mrs. Tilton going down-stairs and Gen. Tracy going down-stairs, on your direct examination? A. Yes, Sir.

Q. What did you mean by that? A. The Committee came in, and I showed them into the parlor, and Gen. Tracy said: "Where is Mrs. Ovington and Mrs. Tilton?"

Q. I don't ask you what Gen. Tracy said. A. Ah.

Q. I ask you to explain what you meant on your direct examination by saying Mrs. Tilton went down-stairs and Gen. Tracy went down-stairs? A. He asked me the question where they were, and I told him where they were, and he went down-stairs.

Q. Where who were? A. Where Mrs. Ovington and Mrs. Tilton were. I said they were down at supper, and he went down-stairs to them.

Q. Where was the supper? A. In the basement parlor.

Q. Where were you when you said it? A. I was in the parlor, I suppose—I think—or in the hall.

Q. Were the Committee there then? A. Yes, Sir.

Q. The Committee were assembled then? A. Yes, Sir.

Judge Neilson—[To Mr. Fullerton.] Will you allow me, Mr. Fullerton?

Mr. Fullerton—Yes, Sir.

Judge Neilson—There is a gentleman who is wanted in the next room as a witness.

The Clerk (Mr. Mallison)—David Corbett, please step into the



court-room opposite; you are wanted immediately as a witness.

Mr. Tracy—[To the witness.] Was it tea they were at, or dinner? A. Tea.

Q. Did he take tea that night? A. No, Sir; not that I know of.

Q. How? A. He didn't take tea at our house.

Q. Were they taking tea as late as eight o'clock? A. No, Sir; we took tea much earlier.

Q. How happens it, then, that Mrs. Ovington and Mrs. Tilton were down stairs after eight o'clock, as you say, taking tea? A. I understood that Mrs. Tilton wanted a cup of tea, and my wife took her down there.

Q. When did you understand that? A. I don't know when I understood it.

Q. Are you sure you understood it? A. Yes, Sir.

Q. Sure of that? A. Yes, Sir.

Q. That was how much past eight o'clock? A. It must have been nearly nine o'clock, I should think; some remark was made about the late hour, or something of that kind.

Q. Mr. Tracy was a comparative stranger in your house, as I understand you? A. Yes, Sir.

Q. He had never been there before that day? A. I believe not.

Q. Had he ever been presented to Mrs. Ovington until that day? A. I think not.

Q. Could not Mr. Tracy wait until Mrs. Tilton drank her cup of tea and came up-stairs? A. He didn't tell me whether he could or not.

Q. How does it happen that this stranger should go down-stairs after Mrs. Ovington and Mrs. Tilton in your house, into the basement? A. I don't know.

Q. Why didn't you go down after the ladies, if they were wanted? A. I was entertaining the Committee.

Q. Entertaining the Committee? A. Yes, Sir.

Q. Could not Mr. Tracy entertain the Committee as well as you? A. Much better, Sir.

Q. Could you not have gone after your wife and the other lady as well as he? A. I presume I could.

Q. Now, do you know how long Mr. Tracy was down-stairs when he went down after Mrs. Ovington and Mrs. Tilton, as you say? A. Yes, Sir.

Q. Have you a distinct recollection of the length of time? A. Yes, Sir.

Q. A distinct recollection? A. Oh, yes, Sir.

Q. Well, tell us exactly how long it was? A. I remember that he just went down and came up-stairs again, without occupying more than two or three minutes.

Q. Sure of that? A. Yes, Sir.

Q. Indelibly impressed upon your recollection as to what was the length of time? A. Oh, not indelible, perhaps.

Q. You are very positive as to the length of time, are you? A. That is my recollection.

Q. May it not have been ten minutes? A. No, Sir; I should have remarked it if it had been.

Q. Well, when he came up-stairs, did you see any papers in Mr. Tracy's hands? A. I don't remember, Sir; I don't remember having seen any.

Q. Did Mrs. Tilton give her statement there that night? A. Yes, Sir.

Q. Now, who were present when that statement was given? A. Mr. Sage, Mr. White, and Mr. Olafin; I think the Committee were all present.

Q. I don't limit the question to the Committee; I want every person who was present named. A. Mr. Winalow and General Tracy, I think that was all, and my wife and myself.

Q. Have you now named all the persons who were present? A. I think so, Sir.

Q. How long did the Committee sit? A. I should judge about half an hour.

Q. Now, Mr. Ovington, how long was this session of the Committee before Mrs. Tilton came to your house to live permanently? A. Mr. Storrs was present; I beg your pardon. I beg your pardon, what was your question?

Q. How long after the meeting of this Committee, which you have now named, was it that Mrs. Tilton came to your house to reside permanently? A. The second day, I think; the second day following, or the third.

Q. Do you know the day of the month when she did come? A. I don't remember.

Q. Can you state whether or not it was the 11th of July? A. I think it was, Sir, the 11th.

Q. On the 11th of July. Then are you enabled by that to state, with some degree of certainty, the day of the meeting of the Committee at your house? A. The day of the month?

Q. The day of the month; yes, Sir? A. I don't remember the date.

Q. Well, whenever it was that Mrs. Tilton came to your house to stay permanently, I want to ask you if you knew before she came that she was coming? A. No, Sir.

Q. In the morning, then, when she arrived early, was it an entire surprise to you? A. It was a surprise to us; yes, Sir; it was a surprise.

Q. You had no intimation of her coming at all? A. Not that she was coming to reside; no, Sir.

Q. Well, had you an intimation that she was coming that morning? A. My wife—no, Sir; not at all, we had not, that she was coming.

Q. How? A. We did not know that she was coming.

Q. You did not know that she was coming at all? A. No, Sir.

Q. Do you recollect when the publication first appeared of the appointment of the Committee? A. No, Sir; I do not.

Q. Do you recollect whether it was not on the day on which Mrs. Tilton arrived at your house? A. I don't remember that.

Q. Do you recollect when you first saw it in print? A. No, Sir.

Q. No recollection on that subject?

Mr. Evans—You mean the arrival to stay.

Mr. Fullerton—Yes, Sir, certainly. [To the witness.] Have you no means of recollecting when you first saw that publication? A. I don't remember the day.

Mr. Hill—The publication of what?

Mr. Fullerton—The publication of the appointment of the Committee.

The Witness—No, Sir, I don't remember the day.

Q. You cannot state, with reference to the day when you first saw that publication, when it was that Mrs. Tilton came to your house? A. No, Sir.

#### DEFENDANT'S COUNSEL VISITORS OF MRS. TILTON'S

Q. Now, you have spoken of some visits that were made to Mrs. Tilton whilst at your house. Will you state whether Mr. Tracy has called to see her? A. At my house?

Q. Yes, Sir. A. Yes, Sir; Mr. Tracy has called to see her.

Q. How frequently? A. I suppose he has made a dozen or fifteen calls there.

Q. And at what time of day generally? A. Usually in the evening, perhaps.

Q. Had interviews alone? A. Yes, Sir, usually alone.

Q. How long did they last? A. Some were very short, and others longer.

Q. Well, state how long some of them would last? A. Half an hour; an hour, perhaps, some of them.

Q. Did any other of the counsel for the defendant call to see Mrs. Tilton? A. Yes, Sir.

Q. Name them, please? A. Mr. Shearman.

Q. How frequently has Mr. Shearman called? A. About as frequent as Mr. Tracy.

Q. And how long were his interviews with her? A. About the same, I should think, some of them.

Q. Were those interviews with Mrs. Tilton alone? A. Most of them; yes, Sir.

Q. Now, did any other of the counsel call to see her? A. Mr. Hill has called.

Q. How frequently? A. His calls were more upon Mrs. Ovington, I think, though—

Q. I didn't ask you about his calls? A—than upon Mrs. Tilton. Not very frequent.

Q. He had interviews with Mrs. Tilton, did he? A. Yes, Sir.

Q. And alone? A. I think very rarely alone.

Q. Well, some of them were alone? A. I don't remember how that is.

Q. You are not at home in the daytime, I take it, Mr. Ovington? A. No, Sir.

Q. And you don't know what calls are made in your absence? A. No, Sir; I would only hear about them.

Q. Did any other of the counsel for the defendant call than those you have named? A. Upon Mrs. Tilton, I think not.

Q. Do you know? A. I think Mr. Everts and Mr. Porter called once; I heard about it; I don't know.

Q. You were not at home? A. No, Sir.

#### MR. BEECHER'S RECENT CALLS ON MRS. TILTON.

Q. Has Mr. Beecher called since she came to your house? A. He made one call.

Q. When was that? A. I think it was a day or two after her appearing before the Committee.

Q. How many days, as near as you can recollect? A. Perhaps five days.

Q. Were you present? A. No, Sir.

Q. Were you at home when he called? A. No, Sir, I was not.

Q. Have you not been at home at any time when he called since she has been at your house? A. There has been only one call that I ever heard of.

Q. You don't know of any other call? A. No, Sir.

Q. Has he made any calls at your house since Mrs. Tilton was there? A. No, Sir.

Q. None that you know of? A. Except that one that I just referred to.

Q. Do you know on what day of the week that was? A. No, Sir.

Q. What? A. I don't.

Q. Don't you know that he called before Mrs. Tilton went before the Committee? A. I don't know that he did; no, Sir.

Q. Have you no knowledge upon that subject? A. No, Sir.

Q. How? A. I never heard that he called, and I certainly should have known it if he had; my recollection is that his call was after Mrs. Tilton's being before the Committee.

Q. I am talking about the call before Mrs. Tilton went before the Committee; don't you know that he called at your house and had an interview with Mrs. Tilton before she went before the Committee? A. Oh! I know that he didn't.

Q. You know that he did? A. I know that he didn't.

Q. Even when you were absent you know it? A. Yes, Sir.

Q. That is, when you were down at your store during the day, you know that Mr. Beecher did not call at your house? A. I know that my wife would have told me if he had.

Q. Well, in that state of things are you willing to swear positively that he did not call during the day? A. Yes, Sir.

#### THE WHEREABOUTS OF MRS. TILTON'S CHILDREN.

Q. Now, Mr. Ovington, where have Mrs. Tilton's children been since she came to your house? A. Two of them—Alice and Carroll—for the most part, at "The Gunnery."

Q. Where? A. At "The Gunnery," at Washington, Connecticut.

Q. They went off to "The Gunnery;" very well, when did they go? A. I should think in September.

Q. September last? A. Yes, Sir.

Q. Now, the other children, where have they been? A. The youngest one, Ralph, has been with us; with his mother—with us.

Q. During the whole time? A. Yes, Sir.

Q. Well, that does not embrace the whole of the children? A. Florence, I can't say where she has been.

Q. Well, you can say that she has not been at your house? A. Not been at our house; no, Sir.

Q. How old is she? A. 17, I believe.

Q. Hasn't she been at your house since Mrs. Tilton came there? A. Been to call upon her mother; yes, Sir.

Q. How frequently? A. Average about once a fortnight, I should say.

Q. How? A. Average of about once a fortnight, or once in ten days.

Q. Up to within what time? A. Up to within about three weeks.

Q. Do you recollect of her calling on one occasion and asking for her mother when she was absent from your house? A. I don't remember it; no, Sir.

Q. Do you recollect that you refused to tell her where her mother was when she called? A. No, Sir.

Q. You know nothing of such a circumstance? A. No, Sir.

Q. Now, don't you know that the oldest child, Florence, is with her father? A. I have heard so; yes, Sir.

Q. Have you been at Mr. Tilton's house since Mrs. Tilton came to your house? A. No, Sir.

Q. Are you quite sure that you did not refuse to tell Florence where her mother was? A. I am, Sir.

Q. Well, do you recollect her coming to your house upon any occasion and inquiring particularly for her mother when her mother was absent? A. I don't recollect it now—might have done so.

Q. And didn't you afterwards apologize for it, for not telling her? A. I don't remember that I did.

Q. Do you recollect of anything taking place between you and Florence in reference to the whereabouts of her mother at any time? A. Yes; I think that Florence sent a messenger to me, requesting me to say where her mother was. I think I wrote her a letter, which I sent by the messenger, advising her not to go to her mother at present.

Q. Yes. Well, where was her mother then? A. I believe at Fairfield, or at this other place that I cannot recall the name of it.

Q. What reason had you for advising the child not to go to her mother? A. Her mother was anxious that her whereabouts should not be known, that she might be quiet.

Q. You didn't want even her child to see her? A. I had no preference in the matter; I knew her mother's feelings.

Q. Well, you didn't tell Florence where her mother was, did you? A. I sent this note by the messenger, advising her not to go to her mother at present.

Q. Well, you didn't inform her? A. No, Sir; no.

Q. You would recognise that note if you saw it? A. Oh! yes. That is my recollection of it.

#### THE WITNESS'S CONNECTION WITH PLYMOUTH CHURCH.

Q. Now, Mr. Ovington, what connection have you had, if any, with Plymouth Church? A. I have been a member for ten or eleven years.

Q. Ever held any office in the church? A. Never, until recently, except in the Sabbath-School.

Q. How recently have you filled office? A. Since the first of January.

Q. Of the present year? A. Yes, Sir.

Q. And to what office were you elected then? A. A deacon.

Q. Of the church? A. Yes, Sir.

Q. Is your wife a member of the church? A. Yes, Sir.

Q. Both regular attendants and communicants? A. Yes, Sir.

Q. And how long have you been communicants? A. For ten years; ten or eleven years, I think it is.

Q. How? A. Ten or eleven years.

#### THE INTERVIEWS WITH MR. TILTON.

Q. You have spoken of some interviews which you had with Mr. Tilton; will you state when the first interview was, as near as you can recollect? A. It was on Sunday—the first Sunday after the publication of the Tilton-Bacon letter.

Q. And where was that interview? A. In front of his house.

Q. In the street? A. Yes, Sir.

Q. Anyone with you and him? A. No, Sir.

Q. You two were together? A. Yes, Sir.

Q. And how long did that interview last? A. I should say ten minutes.

Q. You were passing by? A. No, Sir; I was driving—driving out.

Q. And stopped? A. Stopped; yes, Sir.

Q. Where was Mr. Tilton when you stopped? A. Mr. Tilton came out of his house, and came down to the carriage to speak to me.

Q. After you stopped? A. Yes, Sir.

Q. You stopped then and saw him? A. Yes, Sir.

Q. This was on Sunday? A. Yes, Sir.

Q. This meeting then was purely accidental? A. No, Sir; it was not accidental.

Q. Well, then, you will explain how it happened? A. We were in the habit of driving on pleasant Sundays for my wife's health; and my wife had desired to see Mrs. Tilton, and requested me to stop there. She got out and spoke to her; went in the house; and while she was in, Mr. Tilton came out and spoke to me.

Q. Well, then, was not your meeting with Mr. Tilton accidental? A. Well, yes, it was in that sense; yes, Sir.

Mr. Everts—He has described it.

Mr. Fullerton—He has described it as not accidental, too.

Mr. Everts—Well, he has described it.

Mr. Fullerton—Yes, and then characterized it wrong. [To the witness]: How long did you say that interview lasted? A. I should think ten or fifteen minutes.

Q. The Tilton-Bacon letter, then, was the subject of conversation during that interview, was it? A. Yes, Sir.

Q. Did Mr. Tilton send for you on that day to come and see him? A. No, Sir.

Q. Didn't you so state on your direct examination? A. No Sir, I think not; that was at the subsequent interview of Tuesday.

Q. Well, did Mr. Tilton make any complaints on that day as to the manner in which he had been treated with reference to Plymouth Church? A. Yes, Sir.

Q. Did he say he had been badly treated? A. Yes, Sir.

Q. Did he say he had been made to appear in a false light?

Mr. Hill—A single moment; which interview are you speaking of?

Mr. Fullerton—On a Sunday, when he was riding out for his wife's health.

The Witness—He said he was badly treated by Mr. Beecher and Plymouth Church; put them together in that way,

Q. Did he say that he was made to appear in a false light? A. Yes, Sir.

Q. Did he say that he had been called a dog and a fool? A. I think he did use that expression.

Q. Did he say that he had been shown up as a knave falsely? A. Yes, Sir.

Q. And in what way did he say all this had been done? A. He didn't explain how, I think.

Q. Didn't he say that Mr. Beecher was responsible for it? A. Yes, Sir, I think he did.

Q. Didn't he say that Mr. Beecher could have prevented it if he had tried? A. I don't remember that expression.

Q. Didn't he say that in substance? A. I think he did.

Q. Didn't he say that Mr. Beecher should have controlled his own congregation, his own people, and not permitted them to slander him in that kind of way? A. I believe so; yes, Sir.

Q. Didn't he say that inasmuch as Mr. Beecher didn't protect him as he might have done, that he should protect himself? A. That he should slay Mr. Beecher I think was his expression.

Q. Didn't he say that he would protect himself? A. I do not remember that; very likely he did though.

Q. Didn't he say that he should take care of himself? A. Yes, Sir.

Q. And didn't he say that in doing so he should tell the truth? A. I do not remember that expression.

Q. Didn't he say that in substance? A. No, Sir.

Q. Didn't he say that he should tell what had occurred—lay the whole thing bare? A. I do not remember that; no, Sir.

Q. Didn't he say that, Sir, and then add: "If I do, it will slay Mr. Beecher?" A. Don't remember that.

Q. How? A. I don't remember it; he might have said so.

Q. In what connection did he say that he should slay Mr. Beecher? A. He said if Mr. Beecher didn't do his duty—Plymouth Church didn't stop throwing mud at him, or some such expression, "I will slay him—slay Mr. Beecher."

Q. Now, didn't he add how he was going to do it, by publishing the truth? A. He said if he published the rest of that letter it would be fatal to Mr. Beecher—something of that kind.

Q. The rest of what letter? A. Of the portion of the letter which he copied in the Tilton-Bacon communication.

Q. The letter written through Moulton? A. Yes, Sir.

Q. January first, 1870? A. Yes, Sir.

Q. 1871? A. Yes, Sir; that—

Q. Then he was going to slay him, was he, by publishing the whole of Mr. Beecher's letter? A. He said that would have that effect upon him.

Mr. Fullerton—Yes, Sir; that gives me an appetite, Sir. I propose that we adjourn.

The Court then took a recess until 3 o'clock.

#### MR. TILTON DEMANDS PEACE OF PLYMOUTH CHURCH.

The Court met at 2 p.m., pursuant to adjournment, and the cross-examination of Mr. Ovington was resumed by Mr. Fullerton.

Q. I will continue to direct your attention to the first inter-

view, Mr. Ovington, between yourself and Mr. Tilton in front of his house. In your direct examination you stated that Mr. Tilton observed to you that Mr. Beecher knew that he was a magnanimous man, instead of being a knave and a dog. In what respect did he say that he was magnanimous? A. I do not remember that he explained that.

Q. Do you recollect anything that he said upon that subject? A. No, Sir.

Q. Didn't he say that he hadn't charged Mr. Beecher with the whole truth, or something to that effect? A. I do not remember that.

Q. Well, what did you reply when he made use of that observation? A. I said that he owed it to his wife, and Mr. Beecher, and himself to publish the whole of that letter.

Q. And what did he reply to that? A. He said if he did, Mr. Beecher would have to leave Brooklyn.

Q. Yes, Sir. Had you read the part of the letter which had been published up to that time? A. Yes, Sir.

Q. In the Bacon letter? A. Yes, Sir.

Q. And you knew what it was so far as published? A. Yes, Sir.

In your direct examination you state that Mr. Tilton made use of some words implying a threat if Mr. Beecher did not do what was right. What did Mr. Tilton say that Mr. Beecher ought to do that would be right? A. I cannot recall it; I do not know that he explained what he ought to do.

Q. Did he not say in substance that Beecher should protect him from such accusations as Dr. Bacon had made against him, and that Plymouth Church was making against him? A. I do not remember, Sir.

Q. Was there nothing upon that subject said by him? A. I think he simply said that Mr. Beecher and Plymouth Church should do him justice.

Q. He didn't say in what respect? A. I think not, Sir.

Q. He observed that Elizabeth had made a fine impression upon the Committee, I understood you to say? A. Yes, Sir.

Q. Now, will you state again how long after the Committee met, and Mrs. Tilton was before them, that he made this observation? A. I think it was the second day after Mrs. Tilton made the statement.

Q. Yes. But what did you reply to him when he made the observation? A. I do not remember of replying, but my wife may have said something; I do not recollect.

Q. Well, I ask what you said? A. I said nothing.

Q. Was anything said by Mr. Tilton to this effect, that he was pleased that his wife had vindicated herself? A. I do not remember that.

Q. Well, you say that he spoke of his wife telling untruths? A. Yes, Sir.

Q. In what respect did he say she had told untruths? A. He simply said that it was a fiction—that it was untrue—that it was a lie.

Q. Well, did you understand in that conversation what Mrs. Tilton had testified to, or had said, before the Committee? A. I understood what she had said before the Committee; yes, Sir.

Q. Well, it was to the effect that Mr. Beecher was innocent, was it? A. Yes, Sir.

Q. And it was that that Mr. Tilton characterized as false, was it? A. I presume so; yes, Sir.

Q. Well, did not you so understand it? A. Yes, Sir; I think I did.

Q. When was that second interview which you have spoken of; how long after the first? A. About a week, I should think.

Q. And where did that take place? A. That is this interview that you speak of on the piazza.

Q. The second interview that you have spoken of in your direct examination. A. Oh, no, Sir; the second one was at Mr. Tilton's house.

Q. And how long after the first interview. A. Two days.

MR. OVINGTON CALLS ON THE TILTONS FROM CURIOSITY.

Q. And how did it happen that you were at Mr. Tilton's house? A. Oh, I called there to see them—curiosity, perhaps.

Q. Curiosity. Did your wife go with you for curiosity? A. My wife did not go with me.

Q. Did not. What was your curiosity? A. I had a question to ask Mrs. Tilton in regard to a woman—a *protégée* of hers—that she had placed in a vacant house of mine, and wanted to question her about that somewhat.

Q. You made that as an excuse for going, didn't you? A. Well perhaps, so.

Q. What was your real object? A. I had no real object, further than that I thought I would like to speak with her on that subject; in regard to this woman that was in my house.

Q. Well, was that your real object in going; had you no other object in going? A. No, Sir; I think not.

Q. None at all? A. Except merely that I wanted to see Mr. Tilton and Mrs. Tilton.

Q. On a business matter? Well, then, why did you tell me, a moment ago, you went from curiosity? A. Well, that in addition to this business matter.

Q. Well, what was the curiosity in addition to the business matter? A. Just to see Mr. and Mrs. Tilton.

Q. You had seen Mrs. Tilton before, hadn't you? A. I think not, Sir.

Q. Never had seen her before? A. Oh, never before; I had just returned from Europe, and hadn't seen her for four or five months at least.

Q. How? A. I had just returned from Europe, and hadn't seen her for some time.

Q. Well, how would seeing her satisfy your curiosity; did you think she had changed since your absence in Europe? A. I thought likely she might have.

Q. And you went to see how much she had changed? A. Yes, perhaps so.

Q. How? A. I went to see her.

Q. Well, was it to see what changes had taken place during your absence? A. I could not tell you; I am not sure.

Q. Mr. Ovington, won't you be kind enough to tell me what you did go there for? A. I cannot tell you more distinctly than I have told you.

Q. Then you went there on business and out of curiosity? A. On business, and out of a desire to see Mrs. Tilton.

Q. And to see Mr. Tilton? A. Yes, Sir.

Q. Wanted to see them both? A. Yes, Sir.

Q. When did that desire seize you first; how soon after your return from Europe? A. I had not thought of it until the publication of the letter.

Q. What letter? A. The Tilton-Bacon letter.

Q. Yes; did any one ask you to go? A. No, Sir.

Q. Did any one suggest that you should go? A. No, Sir.

Q. Quite sure? A. Yes, Sir.

Q. You went of your own motion? A. Entirely so.

Q. Well, didn't you want to find out something about the Tilton-Bacon letter? A. Oh, I wanted to talk with Mr. and Mrs. Tilton.

Q. Didn't you want to find out something about that letter? A. I wanted to find out how Mrs. Tilton felt in regard to it, perhaps; yes, I had—

Q. How Mrs. Tilton felt in regard to the Bacon letter? A. Yes, Sir.

Q. That's it, was it? A. Yes, Sir.

Q. Why didn't you tell me so a moment ago? A. Because that was not the sole object of my going.

Q. But it was a part, wasn't it? A. It was a part; yes, Sir.

Q. That was the curious part, wasn't it? A. Well, perhaps so.

Q. Didn't you interrogate Mrs. Tilton about the Bacon letter? A. No, Sir.

Q. Why? A. She didn't seem to be in a mood to speak at all—very much depressed, evidently.

Q. Her husband was present, wasn't he? A. Yes, Sir.

Q. Was that the reason you didn't ask her about it? A. Perhaps so; I don't know.

Q. Well, really, wasn't it so? A. I was talking—he was talking with me.

Q. How? A. He was talking with me in regard to these matters.

Q. Yes, I am aware of that; is that the reason you didn't talk to her? A. Oh, I presume if she had been alone I might have talked with her about it.

Q. Now, Mr. Ovington, haven't you told us already that you went there on that occasion at the request of Mr. Tilton? A. I may have said that; I have a recollection that my wife told me that Mr. Tilton wanted to see me; but whether it was previous to that, I cannot recall; some message that she brought.

Q. No; but didn't you tell us, on your direct examination, that you went to see Mr. Tilton on the occasion to which I am now calling your attention, because Mr. Tilton sent for you? A. I think I did; yes, Sir.

Q. Well, now, is that true; that you went because he sent for you? A. I cannot remember—cannot recall, now.

Q. If you cannot remember it, why did you say so? A. Well, that was the impression on my mind at the time.

Q. Well, is it your impression now? A. I don't remember when this message came from my wife—

Q. Is it your impression now? A. Well, I cannot answer the question in that way.

Q. You don't know now whether it is even your impression or not? A. Yes, Sir; it is my impression.

Q. Well, if it is your impression then you are able to state that that was because of that invitation? A. Partly because of that, if that invitation was given; but I cannot recollect whether it was or not.

Q. Well, then you don't know anything about it, do you? A. Oh! yes, Sir.

Q. Well, now, tell us. Did you go to see Mr. Tilton on that day because Mr. Tilton sent for you, or because you went out of curiosity, or because you went on business, or was it all three mixed together? A. Well, probably it was all three mixed together.

Q. When Mr. Tilton sent for you then you thought you would go out of curiosity and on business, how is that? A. Well, I don't understand the question.

Q. Well, I don't think I should understand your answer if you gave it, so I will pass it by. A. Well, then, you had better not ask me.

Q. Are you quite sure that you went there at all, Mr. Ovington? A. Yes, I am.

Q. Are you quite sure that you held a conversation with him on that occasion? A. That I held a conversation with him?

Q. With Mr. Tilton or Mrs. Tilton? A. I am.

Q. Now, will you tell us what that conversation was? A. I first asked Mr. Tilton in regard to this woman that was in my house. He said he was ignorant of it, but would speak with Elizabeth, as he said. So he called Mrs. Tilton. Mrs. Tilton came down, and I asked her a few questions in regard to that, and then I made some remark to Mr. Tilton about regretting that he was in this trouble, and the other conversation was—

Mr. Hill—Speak louder, please.

The Witness—He then went on to say that Mr. Beecher—it was Mr. Beecher's own doing, and he was willing to stop right there if Plymouth Church and Mr. Beecher would desist from any further movements in the matter. That was the substance of it; I can't recall the words.

Q. Yes; he wanted to quit then if they would; is that it? A. Yes, Sir.

Q. He didn't want to stay then unless they went on? A. Well, if they did go on he would stay; that is the idea.

Q. Well, if they went on then he would stay? A. Yes, Sir.

Q. It was a conditional promise, then; he didn't promise to do anything unless Plymouth Church did something first; wasn't that it? A. Well, that is, I think, in—something like that.

#### MRS. TILTON'S DESERTION OF HER HUSBAND ANTICIPATED BY THE OVINGTONS.

Q. Very well. Now, Mr. Ovington, let us go back a little to a topic already presented to you. Do you remember whether you took Mrs. Tilton out riding the day be-

fore she came to your house to stay permanently? A. I did not.

Q. Didn't you within three days after Mrs. Tilton went before the Committee take Mrs. Tilton out riding? A. No, Sir.

Q. Do you recollect what occurred on the 9th of July? A. I cannot recollect.

Q. Don't you know that your wife took Mrs. Tilton out riding on the 9th of July, and on the 10th of July also? A. I don't remember the date. What day of the week was it?

Mr. Fullerton—I don't know.

The Witness—Well, I don't know. So we are both ignorant on that point.

Mr. Fullerton—Yes; it is not my business to know when your wife went riding. Do you recollect the day before Mrs. Tilton came to your house to stay permanently that your wife took her to Coney Island, or somewhere near that place, riding? A. I think she did. She took her out riding. I don't know where she went to.

Q. Don't you know that she was gone the most of the day? A. That I don't remember.

Q. You were not along, were you? A. No, Sir.

Q. Do you know where they went? A. I don't.

Q. Do you know whom they saw while they were absent? A. No, Sir; I don't.

Q. And do you now say that you didn't know Mrs. Tilton was coming to your house, or have any intimation to that effect before she arrived there on the morning after that ride? A. I didn't know that she was coming to the house to stay.

Q. Did you know she was coming to the house? A. I don't remember whether I knew it or not.

Q. Did you have an intimation that she was coming to the house? A. No, Sir; I know that I was surprised when she came there.

Q. Why did you say a moment ago that you didn't know that she was coming to stay? A. My wife had invited her to come at any time; to come in at any time and to come and stay at any time.

Q. How long? A. To stay how long?

Q. Yes, permanently? A. If it was necessary, yes.

Q. If it was necessary? A. If she wished to.

Q. Yes; did you hear your wife give her that invitation? A. I don't remember that I did.

Q. Did you join in any such invitation to Mrs. Tilton to come and stay permanently, if it was necessary? A. I may have done so; I agreed with my—

Q. Well, don't you recollect that something of that kind was said by you or your wife in your presence? A. No, I don't think that I said so to Mrs. Tilton.

Q. Well, as near as you can recollect, what was it that you said on that subject? A. I don't think I said anything to Mrs. Tilton.

Q. What was it that your wife said to Mrs. Tilton in your presence? A. In my presence?

Q. Yes, Sir. A. I don't know of any conversation.

Q. All you know about Mrs. Tilton's being invited to your house was learned from your wife? A. Yes Sir.

Q. Well, how long did you hear anything upon that subject before Mrs. Tilton did actually come? A. Oh, I think a day or two, perhaps.

Q. Any one present when that information was given to you? A. I believe not, Sir.

Q. Well, you rather suspected that Mrs. Tilton would come to your house to stay before she did actually come, did you not? A. Well, I thought it possible that she might; yes, Sir.

Q. And stay permanently? A. I thought it possible; yes, Sir.

Q. And when did you first make up your mind that that was possible? A. When she told us the morning that she did come.

Q. When she told you the morning that she did come that it was possible she might come to stay permanently? A. That she had come to stay.

Q. Well, that was not a possibility, it was a reality, wasn't it? A. Yes, Sir; you are right.

Q. I ask how long before she did come had you thought it was possible that she might come; how long before? A. Oh, two or three days before.

Q. Two or three days before? A. Yes, Sir.

Q. And what enabled you to come to that conclusion, or to think that that might be possible? A. From what my wife told me.

Q. Yes; any one else tell you anything? A. No, Sir.

Q. Had Mrs. Tilton been to your house frequently just before going before the Committee? A. I think once or twice; I cannot recall now.

Q. Do you recollect whom she came there with? A. With my wife.

Q. She came to your house with your wife? A. Yes, Sir; I think she did not come alone.

Q. Do you know where your wife found her to bring her to your house? A. My wife called upon her to take her and drive.

Mr. Shearman—We object to asking this gentleman what his wife told him.

Mr. Fullerton—Well, that objection is ready whenever I put such a question. I haven't asked any such thing as that.

Mr. Everts—The point would be gained by instructions to the witness that he is to speak of what he saw and knows himself, not of other matters.

Judge Neilson—Yes, unless you wish to prove notice of something; that you can do.

[Last question read by THE TRIBUNE stenographer.]

A. I don't know, no, Sir. I suppose at her own house.

By Mr. Fullerton—I don't want you to suppose, but do you know of your own knowledge? A. No, Sir, I don't.

Q. How many times had you and your wife, or either of you to your own knowledge, been at Mr. Tilton's prior to the publication of the Bacon letter, within one year prior to that time? A. I think but once myself, but once.

Q. When was that? A. That was the Tuesday, excepting the call in front of the house in the carriage.

Q. That was after the publishing of the Bacon letter, wasn't it? A. Oh, prior to the publication.

Q. Prior—for a year prior? A. Oh, I think I had not been there at all; I was in Europe.

Q. It was an unusual thing then for you to go to Mr. Tilton's house? A. No, Sir; I think I called on New Year's Day prior.

Q. Yes; well, with that exception, it was an unusual thing for you to go to his house? A. Yes, Sir.

Q. Now, was your wife in the habit of going there, that you know of? A. Not during that year, I think.

Q. What? A. Not during that year. My wife was an invalid, confined to the house a good deal.

Q. Now, I will ask you this question—whether some person or other, other than your wife, did not speak to you upon the subject of Mrs. Tilton's coming to your house before she did come there to stay permanently? A. No, Sir; no one.

Q. Not a word passed between you and any one upon that subject? A. No, Sir.

Q. Now, are you sure you called there on the New Year's prior to that call? A. No, Sir; I am not sure that it was the New Year's prior; I called upon a New Year's Day.

Q. What year? A. That I cannot say.

Q. Well, was it three or four years before that? A. No, Sir, I should think not.

Q. You recollect the arrival of Mrs. Tilton at your house on the morning that she left home? A. Yes, Sir.

Q. Don't you recollect that Mr. Tilton followed soon after? A. Yes, Sir.

Q. Don't you recollect that he then and there read to you the appointment of the Committee? A. No, Sir.

Q. Don't you recollect that he purchased a newspaper on his way to your house and read to you the appointment of the Plymouth Church Committee to investigate that scandal and said: "Now there will be war."

Mr. Everts—How could he recollect that Mr. Tilton bought a newspaper on the way to him?

Mr. Morris—Well, that he had it there.

The Witness—I don't recollect that, Sir.

Mr. Fullerton—Don't you recollect that he had a newspaper that he bought on his way, or said that he did? A. No, Sir.

Q. Don't you recollect of learning that the Committee was appointed that morning, and that Mr. Tilton stated it to you, or read it to you from a paper? A. No, Sir.

Q. No recollection upon that subject? A. No, Sir.

Q. Will you swear positively that Mr. Tilton did not read to you the appointment of that Committee from a paper that morning? A. The morning that Mrs. Tilton came to our house?

Q. The morning that he came there after Mrs. Tilton came? A. Yes, Sir, I can swear positively to that, I think.

Q. That he did not do so? A. Yes, Sir.

Q. Well, how soon after Mrs. Tilton arrived at your house did you read of the appointment of that Committee? A. I don't remember reading of it at all.

Q. How soon was it made public after her arrival there? A. I think it was prior to that.

Q. That it was made public—why you have told us that you didn't know anything about it until toward night, and the night she went before the Committee?

Mr. Shearman—That was the Monday before.

Mr. Fullerton—Never mind.

The Witness—That was not—I learned of the appointment of a Committee for the first time at the first interview of Mr. Tracy; I think I learned it from my wife at the time of the first interview with Mr. Tracy, if I remember right.

Q. And that was the day the Committee met at your house, wasn't it? A. Yes, Sir.

Q. Now, Mrs. Tilton went before the Committee that night? A. Yes, Sir.

Q. And a few days after she came to your house to stay permanently, did she not? A. Yes, Sir.

Q. Now, I ask you when it was that this appointment of the Committee was published in the newspapers with reference to the day of her coming to your house? A. That I don't remember.

Q. It had not been published when Mr. Tracy told you of it, had it? A. That I don't remember either. I presume not; no, Sir. I had not seen the publication of it.

Q. And it was published soon afterwards, was it not, and became a notorious thing? A. Yes, Sir.

Q. How soon after? A. That I don't know.

Q. Two or three days? A. I don't know, Sir.

Q. How? A. I could not state.

#### MRS. TILTON'S WHEREABOUTS KEPT FROM HER FAMILY.

Q. [Handing letter to witness.]—State if that is the letter you wrote to Florence? A. Yes, Sir.

Q. Now, after looking at that, can you state whether Mrs. Tilton's whereabouts was designedly kept from Florence? A. Whether her whereabouts was designedly kept from Florence?

Q. Yes, Sir.

Mr. Beach—[To the Witness.] You had better read it through.

Mr. Fullerton—[To the witness.] Your answer is "yes, Sir"? A. Yes, Sir.

Q. Well, you state, do you not, that it is by the advice of her friends that her whereabouts is to be kept secret? A. Yes, Sir; I have stated so there.

Q. Will you state who the friends were who gave that advice? A. I was not advised by any friends; it was my own decision in the matter.

Q. Didn't you advise that Mr. Tilton should not see her? A. Mrs. Tilton had so requested me.

Mr. Fullerton—One moment, Sir; if you please, I move to strike that out.

Judge Neilson—Yes, Sir.

Mr. Fullerton—That being out, now put your answer in its place.

Judge Neilson—Repeat the question.

Q. Didn't you advise that Mr. Tilton should not see Mrs. Tilton? A. Yes, Sir.

Q. Did you not say to some person that you were afraid if Mr. Tilton saw his wife that she would go back home again? A. I may have made that remark.

Q. Don't you remember having made it? A. I think very likely.

Q. Don't you remember it, that you did make it, in substance?

A. Yes, Sir.

Q. And you didn't want her to go back, did you? A. No, Sir.

Q. No? A. Not by any means.

#### NO PREARRANGEMENT OF QUESTIONS FOR MRS. TILTON.

Q. Now, Sir, were you not aware when Mr. Tracy went before that Committee with Mrs. Tilton what questions he was going to put to her? A. No, Sir.

Q. Had you not been told? A. No, Sir.

Mr. Beach—Of any questions.

Mr. Fullerton—Of any questions that were to be put to her? A. No, Sir.

Q. Was she not told in your presence? A. No, Sir.

Q. Did you hear nothing upon that subject? A. Not a word.

Q. How is that? A. Not a word.

Q. Well, I understand you to say that it was your advice only, and not the advice of any of Mrs. Tilton's friends, that her whereabouts should be kept secret? A. I think so, yes, Sir; I don't remember any others.

Q. Why didn't you say so in this letter? A. I don't remember of any one advising me; they may have done so.

Q. Why did you write so in the letter if it were not true?

Mr. Hill—Objected to as assuming that it is written.

Mr. Fullerton—It ought to be objected to before it is written.

Judge Neilson—I think he may answer.

Q. Why did you so write if it were not true in point of fact that her friends advised that her whereabouts should be kept secret?

Mr. Evans—It must appear that he did so write.

Mr. Morris—He says he did.

Mr. Fullerton—Read and see if it don't so appear.

Mr. Evans—We have not heard of it. If you are going to use it (the letter) you must show it to us.

Mr. Fullerton—He (the witness) is using it now. He will inform himself on the subject.

The Witness—Yes, Sir; I have so written here.

Q. Why did you so write it if it were not true? A. I suppose my wife may have advised me in regard to it. I cannot recall being advised by any one else.

Q. Well, can you recall that, that your wife advised it? A. Yes, Sir; my wife rather recommended it.

Q. Is that what you meant in your letter when you said "her friends"? Did you mean you and your wife? A. I don't remember what my meaning was.

Q. Was it true, as therein expressed, that her Brooklyn friends had advised her whereabouts be kept secret? A. No, Sir; I don't think that was true.

Q. It was not true. Then it was false, was it? A. Except that my wife—

Q. Was it false? A. No, Sir; it was not false either.

Q. But it was not true? A. Well, my wife is my friend.

Q. Eh? A. My wife is a pretty good friend of mine.

Q. Then you did mean by that that it was you and your wife had so advised? A. Perhaps so.



Q. No perhaps about it. What did you mean?

Mr. Beach—He meant by the term "Brooklyn friends" his wife.

Mr. Fullerton—Did you mean so? A. I don't remember.

Q. You don't remember what you meant? A. No, Sir.

Mr. Everts—We are entitled, if your Honor please, to know what was written.

Mr. Beach—Oh! certainly. There is no objection to that.

Mr. Fullerton—Not the slightest objection.

Q. Do you know Teresa Burke? A. No, Sir.

Q. Did you ever hear of her before? A. I have heard her name mentioned.

Q. Do you know where she is? A. I do not know, Sir.

Q. Any knowledge on that subject? A. I have heard of her as being—

Mr. Hill—Is it material where she is, or whether he has any knowledge on that subject?

Mr. Fullerton—It is quite material. [To the witness.] Finish your answer. A. I cannot recall now.

Q. Has it escaped from you since the objection was made? A. Living at some light-house, or something like that; I don't remember where.

Q. Where was the light-house? A. That I don't recall.

Q. Don't you know that she was staying part of the time within the last three months at the Pierrepont House? A. No, Sir.

Q. Did you ever see her there? A. No, Sir.

Q. At any time? A. No, Sir.

Q. Never heard she was there at all? A. No, Sir.

Q. At any time? A. No, Sir.

Q. You have no knowledge, then, as to where she is now, excepting what you told me? A. That is all.

Q. Do you know whether she goes by the name of Teresa Burke now? A. That I don't know.

Q. Do you know whether she goes by the name of Teresa Hedges? A. I don't know.

Mr. Beach—By what name did you hear her spoken of? A. Teresa Burke. I heard the name mentioned only.

Mr. Fullerton—Is your family going to Europe with you? A. No, Sir.

Q. You are going alone? A. Yes, Sir.

#### BY WHOM MRS. TILTON IS SUPPORTED.

Q. Is Mrs. Tilton going to remain with Mrs. Ovington during your absence? A. That is the understanding; we presume so. I don't know anything to the contrary.

Q. You have not made any other or different arrangement in regard to her? A. No, Sir.

Q. Has any provision been made for her support? A. No, Sir, not that I know of.

Q. Have you held any conversation with any person upon that subject? A. Oh! there has been various talks, yes, Sir.

Q. And with whom were those talks? A. With some of the members of the church.

Q. That is too indefinite for me? A. Mr. Halliday.

Q. What did Mr. Halliday say upon that subject?

Mr. Hill—We object.

Mr. Everts—The question is, if your Honor please, what Mr. Halliday said. That is not good evidence.

Mr. Fullerton—Well, it was good evidence until it was objected to. I didn't know that anything that Brother Halliday said would be objected to.

Mr. Everts—That is for your cross-examination, and not for our examination.

Mr. Beach—You ought to have begun a little earlier.

Mr. Everts—Perhaps so. We are very indifferent about the whole matter.

Mr. Beach—You seem to be.

Mr. Fullerton—I have no doubt.

Q. Has any arrangement been made with you about Mrs. Tilton's support? A. No, Sir; and none with Mr. Halliday in regard to her future support.

Mr. Everts—I object.

The Witness—He simply said he would assist.

Mr. Everts—Wait.

Mr. Beach—[To the witness.] They object.

Mr. Fullerton—[To the witness.] You must not state anything they object to. Be careful about that. [To defendant's counsel.] I stopped him as quick as I could.

Q. You don't mean to support her, then, without some assistance? A. Oh! no, Sir.

Q. And from whom do you expect that assistance? A. I have no idea.

Q. Have you not any idea from whom you expect it? A. Some of my friends in the Church, probably.

Q. What church? A. Plymouth Church.

Q. Yes; and is that expectation founded upon anything that has been said to you?

Mr. Hill—I object to that.

Mr. Beach—We don't ask for it.

The Witness—Yes, Sir.

Q. And was anything to that effect said to you before Mrs. Tilton went to your house? A. No, Sir.

Q. How soon after she came there was it said? A. Three or four months, I should think.

Q. Have you received anything towards her support? A. No, Sir.

Q. Are you sure? A. Not for her support; no, Sir.

Q. For the support of the children? A. Fitting out the children for school.

Q. And from whom did you receive it? A. Mr. Storrs handed me some money.

Q. What Mr. Storrs—Charles? A. Mr. Augustus Storrs.

Q. From any one else? A. No, Sir.

Q. Did you receive it in money? A. In a check.

Q. What kind of a check? A. I received one check of—two checks of \$400.

Q. Each, or together? A. \$300 each.

Q. Did you receive more than two checks? A. And another check of \$475.

Q. That is \$875? A. Yes, Sir.

Q. Now, what other check did you receive? A. That is all.

Q. Any in money? A. No, Sir.

Q. Have you received anything beyond the three checks—\$875? A. That is all.

Q. Now, were they payable to your order? A. Yes, Sir.

Q. And what did you do with the checks? A. Deposited them.

Q. To your own credit? A. Yes, Sir.

Q. And how did you disburse the money? A. In payment of the bills for the fitting out of the children.

Q. Bills for fitting out the children. Anything else? A. Some went towards some private matters of Mrs. Tilton's.

Q. Exactly; and what were the private matters of Mrs. Tilton? A. I do not know.

Q. Didn't you hear? A. No, Sir.

Q. To whom did you give the money? A. To Mrs. Tilton.

Q. And how much of the \$875 did you give to Mrs. Tilton? A. I should think one or two hundred dollars.

Q. Any balance on hand? A. I have not kept an account of it in that way. I think there is a little balance on hand.

Q. Now, to whom did you pay the money other than Mrs. Tilton? A. I do not remember to any one except to these store-keepers.

Q. Why not mention them? A. Balch & Price.

Q. Now, name the amount. A. Somewhere about \$35 or \$30; I cannot remember.

Q. How much? A. \$35 or \$30, I think.

Q. I want you to name every person to whom you paid a dollar of that money other than Mrs. Tilton. A. Rawson, the photographer.

Q. Well? A. I cannot recall those names.

Q. Have you not got any account of it? A. Yes, Sir.

Q. May you not produce it? A. Yes, Sir.

Q. Will you produce it to-morrow morning? A. I will.

Q. Very well. Then will you be able to tell us what money you have got on hand? A. Yes, Sir.

Q. Very well. Now, you did not pay any school bills, did you? A. No, Sir.

#### THE CHILDREN'S SCHOOL BILLS PAID BY MR. TILTON.

Q. Mr. Tilton paid the school bills, did he not? A. I should say so.

Q. Where was the school? A. At Washington, Connecticut.

Q. All that you have paid out, then, is to Mrs. Tilton, and for the fitting out of the children, in the way of clothes, I suppose? A. Yes, Sir; I think so. Some little moneys have been sent to the children—small amounts have been sent to the children.

Q. Through you? A. Mrs. Tilton has sent them.

A. Mrs. Tilton has sent them? A. Yes Sir.

Q. How much of that money did you place at Mrs. Tilton's disposal at any one time? A. I only served her money as she asked for it.

Q. And did you keep an account of what you handed to her? A. No, Sir.

Q. Would you be able to tell to-morrow how much you had given to her personally? A. No, Sir, I think not.

Q. Now, have you received money from no other source excepting Mr. Augustus Storrs? A. That is all.

Q. Have you had the promise of any from any other source? A. No, Sir, not a penny.

Q. Have you not asked for money from other persons? A. No, Sir.

Q. Or suggested to some other person or persons, that he or they should give you money on that account? A. No, Sir.

Q. Have you not complained that you were left to take charge of this family with no contribution towards it except what Augustus Storrs gave you? A. No, Sir.

Q. Nothing of that kind? A. No, Sir.

Judge Neilson—Will you permit the clerk to make an announcement, Mr. Fullerton?

Mr. Fullerton—Certainly, Sir.

The Clerk (Mr. Mallison)—Is Dr. Kretz in the room? [No response.]

Mr. Fullerton—This Augustus Storrs that you speak of was one of the Plymouth Church Committee of Investigation? A. Yes, Sir.

Q. Now, one word with regard to Mrs. Tilton's habit of going out whilst at your house. Did she go out to your knowledge, at times alone?

Mr. Beach—In the city.

Mr. Fullerton—In the City of Brooklyn. A. I think she came around to the store alone; generally with one of the children, or one of the servants, perhaps.

Q. But she has come to your store alone? A. She may have done so, but I cannot recollect.

Q. But you just told me she did do so? A. I think she may have done so; I do not recollect that she did.

Q. What do you say about it now. Did she or not come to your store alone? A. I do not recall any instance.

Q. Did you ever see her in the street alone ever since she came to your house? A. I never saw her in the street alone; no, Sir.

Q. Were you ever home at any time when she left your house alone? A. No, Sir; not that I remember of.

Q. Did you ever take her out riding? A. No, Sir; never.

Q. Not since she has been at your house? A. No, Sir.

Q. Did you ever call for her at any place and bring her to your house? A. No, Sir.

Q. Did you ever leave the city with her? A. No, Sir.

Q. And go to any place? A. No, Sir.

Mr. Fullerton—That is all, Mr. Hill.

#### RE-DIRECT EXAMINATION OF MR. OVINGTON.

Mr. Hill—Do you know, Mr. Ovington, whether the children were sent to the school at Washington with Mr. Tilton's approval? A. Yes, Sir.

Q. Well, how was that? Was it with his approval? A. With his approval; yes, Sir.

Q. Can you recollect what day of the week it was when Mrs. Tilton went before the Committee? A. I am exceedingly bad on days and dates; I cannot remember.

Q. I simply desire to have you to fix either the day of the month or the day of the week, if you can? A. The 6th, I think.

Q. The 6th. Now, can you fix the day of the week? A. I cannot; no, Sir.

Q. Was it Monday? A. I don't remember, Sir.

Q. Can you now fix the day when Mrs. Tilton came to your house early in the morning, when she came, as you say, to stay permanently—the day of the week or the day of the month? A. It strikes me it was the 11th.

Q. Saturday? A. Saturday morning.

Q. Saturday morning, the 11th. Now, from that, can you determine the day of the week upon which she came?

Mr. Beach—We can very easily do that.

Mr. Evans—We can all fix that.

Mr. Beach—There is no trouble about that.

Mr. Fullerton—Well, may be he could not.

Q. Now, Mr. Ovington, do you know yourself anything about the invitation to Mrs. Tilton to come to your house to stay permanently or otherwise? A. No, Sir.

Q. From anything that occurred in your presence? A. No, Sir.

Q. You were asked, Mr. Ovington, why it was that you thought it possible that she might come to stay permanently at your house. Why was that, if any other reason remains to be given? A. My wife had told me that she had extended the invitation to Mrs. Tilton.

Q. Any reason for extending the invitation? If so, give it.

Mr. Beach—We object to it.

Judge Neilson—We cannot take it.

Mr. Hill—Well, I don't care particularly at present.

Q. You were asked when you had called to Mrs. Tilton's, prior to the time that you called there, immediately after the publication of the Bacon letter, and I think you stated you had been to Europe. Now, when did you return from Europe, with reference to the publication of the Bacon letter? A. The 2d of June.

Q. How long had you been absent? A. About four months. Left in January, or early in February.

Q. Mr. Ovington, you have been asked with reference to Mrs. Tilton going away during the Summer. Can you recollect when she went away—I mean when she went out of the city to stay any length of time? A. No, Sir, except I imagine it was the latter part of July, or the 1st of August—in August probably.

Q. In August. Now, can you state whether or not there were a great many applications by people to your house for interviews with Mrs. Tilton, or with members of the family, about that time? A. Yes, Sir, there were.

Q. Now, state the reason why Mrs. Tilton went away from the city?

Mr. Beach—That is objected to.

The Witness—She said she wanted to be quiet.

Mr. Beach—Wait a moment. That is objected to.

Judge Neilson—We cannot take the reason.

Mr. Hill—Very well.

Mr. Evans—The idea seems to have been, if there was any force in the cross-examination, that this lady had been sent away in a private way, and with the purpose of concealment from her husband, or from her daughter or somebody. The

point is, that she had gone away to avoid the persecution of publicity that the newspapers had brought on her.

Judge Neilson—The last question indicates that somebody did call. There were a great many calls.

Q. Do you know whether Florence came to see her mother after her return? A. Oh! yes, Sir.

Q. And did Mr. Tilton see her also? A. Did Mr. Tilton see his wife?

Q. Yes, Sir. A. No, Sir.

Q. I mean after her return from the country, or don't you remember about that? A. I don't remember.

Q. You don't remember how that was? A. I think not.

Q. Now, was there ever any effort to prevent Florence from seeing her mother at your house, so far as you know? A. No, Sir.

Q. None at all? Now, Sir, do you know from Mr. Tilton, or otherwise, whether Miss Florence visited her mother at Washington?

Mr. Fullerton—If he knows of his own knowledge, he can state it.

Mr. Hill—I am following your illustrious example.

Mr. Beach—We object to the question.

Mr. Fullerton—Mine was a cross-examination.

Q. Do you know from Mr. Tilton or otherwise whether Miss Florence visited her mother at Washington?

Mr. Fullerton—I object to it; I object to the words "or otherwise" as a phrase.

Judge Neilson—[To Mr. Hill.] Amend your question.

Q. Do you know it from Mr. Tilton—did you ever converse with him about it? A. No, Sir.

Mr. Hill—That settles it. [To the Witness.] Mr. Ovington, do you know whether or not Miss Florence went with her mother to Fairfield? A. She did not go with her.

Q. Did you have any conversation with Florence about her mother being at Fairfield?

Mr. Fullerton—That is objected to.

Mr. Shearman—That is proper, because all this talk has been about that.

Mr. Fullerton—Well, the objection is, that it is unreasonable. That is the only thing your Honor has to consider.

Judge Neilson—I think he may answer that question.

Mr. Hill—What is it?

Judge Neilson—[To THE TRIBUNE stenographer]: Read the question.

THE TRIBUNE stenographer read the question as follows: "Did you have any conversation with Florence about her mother being at Fairfield?"

Mr. Fullerton—I think your Honor didn't mean to admit that question.

Judge Neilson—No; if he gave her notice she was in Fairfield that might qualify it.

Q. Fairfield or Washington I will make it?

Judge Neilson—If it was after writing a letter it is pertinent, I think, to show he changed his mind.

Mr. Evans [To the witness]—If you know, Mr. Ovington, please tell us, and if you don't know please say so, or go on.

Mr. Fullerton—That is good advice, undoubtedly.

The Witness—What is the question?

Mr. Shearman—The question is, did you speak to Miss Florence about her mother being at Fairfield or Washington after this? A. Yes, Sir; I gave Miss Florence her direction in Fairfield, and she started off to join her mother. I gave her the direction where she was, and how to reach her.

Mr. Hill—Now, do you know whether Miss Florence went with her mother to Washington? A. Yes, Sir; she did.

Mr. Hill—She did.

Judge Neilson—Well, is that all?

Mr. Hill—That is all.

#### RE-CROSS-EXAMINATION OF MR. OVINGTON.

Mr. Fullerton—You say there was no effort made to prevent Miss Florence visiting her mother at any time? A. At my house the question was?

Q. Yes, Sir. A. No, Sir, none at all.

Q. Has there been no such effort? A. No, Sir.

Q. Has she not been denied your house within the last six weeks? A. No, Sir.

Q. Has she not been forbidden to come to your house within the last six or eight weeks? A. That I forbade her, or my wife?

Q. I don't ask that. A. I understand that Mrs. Tilton has advised her not to come.

Q. Advised her not to come? A. Yes, Sir.

Q. And she has not come since that advice was given, has she? A. No, Sir.

Q. When did you give the direction of her mother to Florence? A. While she was at Fairfield.

Q. Don't you know that you gave her the wrong direction? A. I did, but not knowingly. Meantime she had left there and gone to another place.

Q. You gave her a direction which was not a correct one, was it? A. It was the correct one if she had not meantime left there.

Q. If Mrs. Tilton was there it was correct, was it? A. Yes, Sir.

Q. And if she was not there it was not correct? A. It was correct, but she had left without my knowledge.

Q. And Florence didn't see her? A. Not at that time; no, Sir.

Q. Who kept you informed as to where Mrs. Tilton was? A. My wife wrote me after she had left that place.

Q. So that Miss Florence took that journey for nothing, did she? A. Yes, Sir.

Mr. Beach—[To Mr. Fullerton.] When was that letter written?

Mr. Fullerton—[Handing letter to witness.] This letter that I have shown you I now hand you again, and ask you when it was written? A. I could not give you the date of it.

Q. Can you give me the month when it was written? A. No, Sir; I presume it was in August, but I could not say positively.

Q. Was Mrs. Tilton at Fairfield when that letter was written? A. I think she was; I am not positive.

Mr. Fullerton—That is all.

#### TESTIMONY OF MR. RUFUS E. HOLMES,

Rufus E. Holmes sworn on behalf of the defendant.

Mr. Hill—Mr. Holmes, where do you reside? A. Winsted, Connecticut.

Q. What is your business? A. Banker; I am Vice-President of the Hurlbut National Bank.

Q. How long have you resided at Winsted? A. Twenty-four or five years.

Q. How long have you been a banker and a vice-president of a bank? A. I have been connected with the bank—with one or the other of the banks there for twenty years or over.

Q. Were you connected with the Young Men's Christian Association of Winsted during the lecture season of 1869 and '70? A. I was; yes, Sir.

Q. What relation did you sustain to it? A. I was President of it, Sir.

#### THE WINSTED SCANDAL DETAILED.

Q. Do you know Theodore Tilton? A. I do, Sir, by sight.

Q. Do you recollect his lecturing there in 1869, in the month of December? A. I do, Sir.

Q. Who met him when he came there? A. Do you mean at the depot?

Q. Yes, Sir. A. I did.

Q. Did you escort him to a hotel? A. I did; I went there with a carriage and rode with him to the hotel.

Q. Do you recollect whether or not a lady came with him? A. There did, Sir.

Q. About how old a person, and how large; was she a grown person? A. She was a grown person, Sir; I should judge twenty-seven or eight years old. [Laughter.]

Q. What did you do in entertaining Mr. Tilton while he was there?

Judge Neilson—Will the audience keep quiet?

A. Well, Sir, I had made arrangements at the Beardslee House.

Mr. Beach—I object to what arrangements he had made.

Q. Did you take him to the Beardslee House? A. I did.

Q. Did you see him register? A. No, Sir.

Q. Where were you when he registered? A. I was in the hotel, or at the front door of it.

Q. Well, you was in his company? A. I was in his company; I was at the hotel.

Mr. Fullerton—I don't think, Sir, we ought to go into these side issues. This case is going to be long enough without that. This is irrelevant matter which they have inquired about, and they cannot contradict.

Mr. Evans—Let them hear what we are going to prove. There will be time to raise the question, no doubt.

Mr. Fullerton—Well, I beg leave to take my own time to do that, because this is just the time. I say it is immaterial.

Judge Neilson—If this relates to anything imputing bad conduct to the plaintiff I should not regard it as collateral to allow the evidence. Anything that has been inquired about as if with a view to contradict would

be collateral simply, but I suppose anything affecting the plaintiff in his conduct and moral condition, cannot be deemed as collateral; but it simply goes to the question of damages, nothing else.

Mr. Fullerton—Very well, Sir.

Q. Did you call upon Mr. Tilton that afternoon? A. I did, Sir.

Q. By an arrangement with him? A. Yes, Sir.

Q. Please just state what you did when you called upon him; give the transaction just as it occurred? A. Well, Sir; I went to the door of his room and knocked upon it, and there was no reply, and I knocked again and there was no reply; I don't know whether I knocked a third time, I think not, but turned to go away, and after a step or two I heard something inside as if some one was moving, and I stopped, and the door opened a short distance, and a lady appeared there.

Q. Had you seen her before? A. I had; it was the same lady that came with Mr. Tilton.

Q. Proceed. A. I said to her, "Mr. Tilton said he would like to see the church where he was going to speak, and I called for that purpose." She said, "He has lain down to rest." I said, "I will come again." Mr. Tilton spoke from the inside, and said, "Hold on, Mr. Holmes, and I will go with you now." Upon that the lady opened the door wide.

Q. Well, did you go into the room? A. I did not, Sir; I stood at the door.

Q. Could you see into the room? A. Yes, Sir.

Q. Now, what was Mr. Tilton's condition as to dress? A. Well, Sir, Mr. Tilton lay on the bed; the clothes were turned down over the foot of the bed, all but the undersheet. He lay upon the back side of the bed.

Q. How was he dressed? A. He had nothing on that was visible but his shirt, pants and stockings.

Q. What was the appearance of the lady as to her dress? A. Her hair had the appearance of being dishevelled, and her dress somewhat so, so much so that I noticed it.

Q. Now, Sir, was there anything said, any explanation made while you were inside of the room—while you were at the door rather? A. About what do you mean?

Q. As to their resting? A. Oh, yes, Sir.

Q. Well, give it. A. Mr. Tilton said that the lady had been reading him to sleep.

Q. Did he state what they had been reading? A. I think "Paradise Lost." [Laughter.]

Q. Well, what happened next? A. Mr. Tilton got up and proceeded to dress himself, and then accompanied me down to the church, which was across—almost across the road from the hotel, and we went into the church and spent a few moments there, and then went out, and I think from there we went to the furniture store of one S. B. Forbes, whom I introduced to Mr. Tilton.

Q. Well, you showed him about the village? A. I don't think further than that. I left him at Mr. Forbes, I think.

Q. Now, I want to ask you, Mr. Holmes, if there was any-

thing of the appearance of a little girl or school girl about this lady that was there? A. Not at all, Sir.

Q. A full grown person? A. A full grown person.

#### CROSS-EXAMINATION OF MR. RUFUS E. HOLMES.

Mr. Fullerton—Were you the President of the Christian Association at that time? A. Yes, Sir.

Q. How long had you filled that position? A. I don't know exactly; I should think for two years perhaps; a year or two.

Q. And after that how long did you fill that position? A. As long as it was in existence, Sir.

Q. Did it go out of existence? A. So far as having any organization, any continued organisation, by the election of officers every year, it is out of existence; it still maintains a reading room, or one is maintained by those who were members of it.

Q. But not as a body or association? A. It has no regular meeting, Sir, annual or otherwise.

Q. It has no President now? A. No, Sir.

Q. How long did it continue its existence after this affair that you have spoken of? A. I could not tell you positively, but I should think another year.

A. Yes. Well, you went to the room door? A. Yes, Sir.

Q. And I understand you knocked? A. I did.

Q. You didn't try the door? A. No, Sir.

Q. You knocked twice, I understand you? A. Yes, Sir.

Q. And heard no noise? A. I heard no noise until after.

Q. I understand that; how far had you gone from the door before you did hear a noise inside? A. Possibly a step or two; I had just turned away from it.

Q. A step or two? A. Possibly a step.

Q. And what was the nature of the noise that you heard first—a human voice? A. No, Sir.

Q. Well, a chair move? A. A rustling, moving.

Q. Moving? A. I could not say that it was a chair, or what.

Q. You don't know what it was? A. No, Sir.

Q. Well, if it had not been for that noise you would have gone your way? A. Yes, Sir.

Q. And been none the wiser? A. Yes, Sir; I presume so.

Q. How? A. I presume so.

Q. And after you heard the noise what did you do? A. I stopped, waited.

Q. And what occurred then? A. The door opened.

Q. Voluntarily? A. Yes, Sir.

Q. You did not knock again? A. No, Sir.

Q. And this lady showed herself? A. Yes, Sir.

Q. At the door? A. Yes, Sir.

Q. In full view? A. No, Sir.

Q. Well, so that you could see her? A. So that I could see that it was a lady.

Q. And what did she say, or what did you say? A. I said to her that Mr. Tilton had requested him to accompany me to the church, or had said that he wanted to see the church where he was going to lecture that night.

Q. He expected you, then, did he? A. Yes, Sir; he did.

Q. Made an appointment with him? A. Yes, Sir.

Q. To call? A. Yes, Sir.

Q. Was the hour named that you were to call? A. I said to him when the appointment was made, "I will come in the course of an hour or two."

Q. Did you go in the course of an hour or two? A. I did; yes, Sir.

Q. At the time appointed? A. Yes, Sir; about that.

Q. When you said this to the lady, did she make any reply? A. Not that I remember.

Q. What season of the year was this? A. Oh! she said that he had lain down to rest; she said that.

Q. You would not have known that unless she had told you, would you? A. No, Sir.

Q. What season of the year was this? A. It was in the Winter, Sir.

Q. What month? A. I think in December.

Q. And then when she said that what next occurred? A. I said "I will come again," and then Mr. Tilton spoke from the inside and said: "Wait a little, Mr. Holmes," or, "Wait a moment, and I will go with you now."

Q. He then prevented you from going away? A. He did.

Q. You would have gone only for that? A. I suppose so.

Q. What did he say about your coming in—anything? A. I don't remember that he said anything; I don't think I went in.

Q. He simply said, "Wait?" A. Yes, Sir.

Q. Where was the bed with reference to the door? A. Well, Sir, it was back of it.

Q. Back of it? A. Yes, Sir.

Q. You could not see the bed when she spoke to you? A. No, Sir.

Q. Nor when he spoke to you? A. No, Sir.

Q. You could not see it? A. No, Sir.

Q. Well, you did see it, didn't you? A. Yes, Sir.

Q. And the lady threw the door open so that you could see it? A. Yes, Sir.

Q. And you would not have seen Tilton where he was except that she did throw the door open? A. I should not.

Q. All this then was exposed to your view by Tilton and by the lady? A. Yes, Sir.

Q. When she threw the door open so that you could see the bed and see Mr. Tilton, what was said? A. I don't remember anything being said.

Q. Did you say anything? A. Well, he said that he would—please ask the question again, Sir.

Q. After the door was thrown open, and the bed and Tilton were exposed to your view, what was said by any one? A. I don't remember anything being said until he spoke of her reading him to sleep.

Q. And where were you standing then? A. At the door, Sir.

Q. Now, Sir; the clothes were turned over the foot of the bed? A. Yes, Sir.

Q. Was he not in the act of getting up then? A. No, Sir.

Q. He was not in the act of getting up? A. No, Sir.

Q. Lying still? A. Lying still.

Q. Uncovered? A. Uncovered.

Q. There was no effort at concealment, was there? A. No, Sir; not after the door was opened.

Q. Well, was there any effort at concealment before the door was opened? A. Well, that is a matter of impression, Sir. The door was opened very narrowly indeed.

Q. Narrow enough for you to see the lady? A. Well, that was very narrow, Sir.

Q. Did you want to see anything else? [Laughter.] A. I didn't want to see her.

Q. Then what you did see was exposed to your view by her? A. Yes, Sir.

Q. What did you think she was concealing? A. I don't know; I didn't know then.

Q. Do you know now? A. I don't know that she was concealing anything, positively.

Q. Very well; nor I neither. Now Mr. Holmes, Mr. Tilton dressed himself and went with you, did he? A. He did.

Q. She said something about reading to him, or he said something about reading? A. He said something about it.

Q. What did he say? A. As near as I remember, that she had been reading him to sleep.

By Mr. Beach—What position was he in? A. When he said that?

Mr. Fullerton—Yes.

A. I could not tell whether he was in the act of getting up, and was putting on his gaiters.

Q. You don't recollect which? A. No, Sir; I think it was after he had got up.

Q. And what did he say she had been reading him to sleep with? A. I think "Paradise Lost."

Q. Don't you think that would put a man to sleep about as quick as anything? [Laughter.] A. Well, it is some time since I have read it, Sir.

Q. How long did it take him to dress before he went with the President of the Christian Association down to the Church? A. I should think five or ten minutes. He was pretty slow about it.

Q. Didn't hurry? A. No, Sir.

Q. He was not in a hurry to get out? A. Not particularly; no, Sir.

Q. Didn't you go in the room? A. I don't think I did; no, I have no recollection of it.

Q. Are you sure you did not go in the room? A. Yes, Sir.

Q. Stood at the door? A. Yes, Sir.

Q. Where was the lady all this time? A. I think she was sitting in the room.

Q. Full view? A. I don't remember whether sitting or standing, positively. She was in the room. I have no doubt she was in full view.

Q. You did not take any particular notice of her while she was standing there? A. I don't think I did after—I don't think that I did the latter part of the time.

Q. Well, then you did not? A. I don't think that I did the latter part of the time.

Q. You took particular notice of her when you say there was nothing else to be seen when she opened the door, I suppose? A. Well, right after that.

Q. Well, the Christian Association was lectured to that night by Mr. Tilton? A. It was; yes, Sir.

Q. And you were one of the audience? A. Yes, Sir.

Q. And you introduced him to Mr. Forbes? A. I introduced him to Mr. Forbes in the afternoon.

Q. Any one else? A. I don't remember that I did until after the lecture.

Q. Then you did? A. Yes, Sir.

Q. To whom? A. To my wife, and my wife's sister, and my wife's mother.

Q. And who else? A. I don't remember positively.

Q. A number? A. To one or two; I have no positive remembrance of it.

Q. When did you arrive in this city? A. Yesterday.

Q. Been here before? A. Do you mean in Brooklyn? Yes, Sir, I have.

Q. During this trial? A. No, Sir.

Q. When were you informed that you were to be wanted? A. I think it was on Thursday of last week.

Q. That is the first you knew that you were to be a witness? A. Yes, Sir.

Q. You came out of the State of Connecticut here voluntarily to be a witness? A. Yes, Sir.

Q. And to tell what you have told? A. By request; yes, Sir.

Q. At the request of whom? A. At the request of Mr. Hill, one of the attorneys.

# RE-DIRECT EXAMINATION OF MR. HOLMES.

Mr. Hill—The counsel have suggested a question, Sir, which I omitted by inadvertency. [To the witness.] Now, please state whether or not that transaction to which you have referred created a scandal at Winsted.

Mr. Fullerton—I object to that, Sir.

Judge Neilson—One moment. That is ruled out, Sir.

Mr. Fullerton—I take it that anything makes a scandal at Winsted.

Mr. Evarts—Your Honor will notice that this Winsted scandal constituted one of the elements in the relations between Mr. Tilton and Mr. Bowen which led to his displacement from his employments and which furnishes the justification, so far, against Mr. Bowen's recognising his obligations to pay him his damages. Now, the occurrence and that it was a scandal here, so reported, and affecting the minds of these two men, Mr. Tilton and Mr. Bowen, already appears, and Mr. Tilton has given his explanation of it in a letter, and we now show the dimensions of the affair itself. Now, it seems to us to be competent to show that this transaction, this occurrence at Winsted, did come to be the subject of scandalous remark there. That is our inquiry.

Judge Neilson—I think not, Sir.

Mr. Evarts—Your Honor will be so good as to note our exception.

Judge Neilson—Yes, Sir.

Mr. Carpenter—[Foreman of the jury.] Was there a fire in that room? A. I think there was, Sir.

Mr. Evarts—Mr. Holmes, was there a stove there, or how was it? A. There was a stove there; yes, Sir.

Mr. Shearman—I desire to say, if your Honor please, and the jury, that we called this gentleman out of order to accommodate him.

Mr. Fullerton—It was out of order.

Judge Neilson—It was quite proper to call him.

Mr. Evarts—He is going West.

Mr. Fullerton—Go West, young man. [Laughter.]

## TESTIMONY OF MARIA N. OVINGTON.

Mrs. Maria N. Ovington sworn on behalf of the defendant.

Mr. Hill—Are you the wife of the witness, Edward J. Ovington, who has just been examined? A. I am.

Q. Where do you reside? A. 148 Hicks-st.

Q. How long have you resided there? A. Since May last.

Q. How long have you known the parties to this action? A. My first acquaintance was the tin wedding in 1865.

Mr. Evarts—[To the jury.] Perhaps you cannot hear, gentlemen.

A Juror—No, Sir.

Mr. Evarts—[To the witness.] Madam, you will have to exert yourself a little. You are not in good health, we know, and your voice is perhaps affected also. We must try to either repeat the answers or to—

Judge Neilson—Counsel might repeat the answers.

Mr. Hill—We will try it a little while. If the room can be quiet, I think she can be heard. She has said that she had known them since their tin wedding in 1865. [To the witness.] My question related to the parties, and by that I mean Mr. Beecher and Mr. Tilton. You have now stated how long you had been acquainted with Mr. Tilton. Please state how long you had been acquainted with Mr. Beecher? A. I think a year or two previous to my uniting with the church.

Q. When was that? A. In 1865.

Q. So that you have known both of them about the same length of time? A. Yes, Sir.

Q. How long have you been acquainted with Mrs. Tilton? A. Since 1865.

Q. You met her upon the same occasion with her husband? A. Yes, Sir, by invitation at the tin wedding.

Q. Please state to his Honor and the jury how intimate you have been with the family? A. I was not intimate until the Fall of 1867, when my husband was very ill indeed, and Mrs. Tilton being a member of the church came to call upon me, to offer her services in any way that she could serve me. From that time I have known her intimately. I have been absent from the city very frequently for a long time together, but whenever I have been in the city I have always been on terms of intimate acquaintance with her.

Q. Where did you live in 1865, with reference to Mr. Tilton's residence?

Mr. Evarts—That answer has not been repeated.

The Witness—I will speak a little louder.

[THE TRIBUNE stenographer read the last answer.]

Q. Please state how frequent her calls were during the affliction of your husband's sickness? A. Almost daily.

Judge Neilson—The stenographer can repeat each answer.

Q. Did she aid you in taking care of your husband?

Mr. Evans—The stenographer will have to speak much louder than the witness, because he is further off.

Mr. Fullerton—You can repeat what the stenographer says. A. She did; also the care of my youngest child, which was ill at the same time.

Q. How long did your husband's sickness continue? A. Until the Summer of 1868.

Q. I asked you before where you were living at that time with reference to—

Mr. Evans—It is important that the jury should hear the answer.

The Witness—I will undertake to speak louder.

Q. Where was your husband at that time—that is, at the time of the sickness, and your acquaintance with Mrs. Tilton's with reference to hers? A. The old number of 95 Livingston-st., the present number 135.

Q. That was your residence? A. Yes, Sir; Mrs. Tilton was then, I think, 130 Livingston-st., since changed to 174 Livingston-st.

#### MRS. OVINGTON'S FIRST OFFER OF KINDNESS TO MRS. TILTON.

Q. Mrs. Ovington, do you recollect the publication of the Woodhull scandal in Nov., 1872? A. Perfectly well.

Q. Do you recollect, then, whether there was any offer of friendship or kindness between you and Mrs. Tilton? A. I was confined to my bed at that time, but sent word by my nurse to Mrs. Tilton—

Mr. Beach—We object to that; I don't care what word you sent; but state whether or not you offered your sympathies and assistance to her? A. I did.

Q. Now, please state whether or not you have, in times of affliction, been accustomed mutually to offer your services one to the other? A. We have.

Q. Now, Mrs. Ovington, won't you please state what Mrs. Tilton's manner and habit was in her own home, as to religious services; her religious character and her observances?

Mr. Beach—That is objected to, Sir.

Judge Neilson—I think it will answer your purpose to have her describe the home in her own way.

Mr. Hill—Very well, describe the home, then.

#### MRS. TILTON IN HER HOME.

The Witness—A deeply religious woman; a very affectionate mother; and, as I supposed at that time, a very much beloved wife.

Q. Yes? A. And a very loving wife.

Q. Yes; how about her observance of religious duties in her family, herself? A. She was strictly religious; I thought, a very beautiful example of Christianity.

Q. Now, when did you first observe that as the character of Mrs. Tilton and her home? A. In 1867 and '8; '68 more particularly; I think.

Q. You may state, Mrs. Ovington, whether her calls upon you, in affliction, were of a religious character at all;

or whether she ministered—endeavored to minister to the spiritual wants of the sick there?

Mr. Beach—That is objected to.

Judge Neilson—You might ask, I think, more properly, what was the character of her calls.

Mr. Beach—Well, of what materiality is it, what the character of those visits was between these ladies? It has nothing to do with any issue with which we are concerned.

Judge Neilson—All the counsel wants, or is seeking to get, is the character of the lady and her mode of life, and condition.

Mr. Beach—It is not the character of the lady, Sir; it is the character of the home that is in issue.

Judge Neilson—The character of the lady in respect to her home and daily habits.

Mr. Shearman—If your Honor please, there is a great deal more than the character of the home. It is a polite suggestion from the counsel on the other side, that there is nothing of any importance in this case, except to prove their half of it. We happen to think our half is worth proving.

Judge Neilson—Well, we intend to hear you.

Mr. Shearman—That is more for counsel than your Honor. But the point is this—that we have the right to show the whole nature and character of this lady, with a view to other evidence, which we will gradually introduce, which will show how and why her husband came to think of inventing this charge against her, the pretexts which he had, the difficulties which he found in his own character and in his own relations to his wife; we want to show what was her nature, and what was the incompatibility, as he might afterwards claim, between him and her, and gradually to show how this difficulty arose in the family.

Judge Neilson—We have no question really. The counsel has a right to examine this lady and get at the condition of the household, whether peaceful, kind, in harmony or not; that is the extent of it.

Mr. Hill—I am uncertain if the question which I am now about to ask falls within the ruling; however, I will present it. [To the witness.] Mrs. Ovington, please state whether Mrs. Tilton was engaged at all in benevolent enterprises in the city, and works of charity and mercy.

Mr. Beach—That is objected to.

Judge Neilson—I think she may answer that.

The Witness—I should judge she was.

Mr. Beach—I object to the answer.

Mr. Hill—Do you know?

Mr. Beach—I object to the answer, and move to strike it out.

Judge Neilson—The answer is, she thinks she knows.

Mr. Beach—No, Sir: "I should judge she was." I move to strike it out.

The Witness—I know—I might explain myself—I know that she was interested in the Bethel; whether at that time or not, I don't recall.

Q. You may state to his Honor and the Jury how much of her time within your own knowledge of course, was devoted to charitable employments? A. I think she gave—I think she made it a point of duty to give all the time that she rightfully



could, that her family did not demand; it seemed her duty and her pleasure.

Mr. Beach—Well, now, Sir; that is all a very beautiful tribute to a lady's friend, but it is obvious to your Honor that she does not speak from knowledge. The answer shows that it is a mere conclusion, or judgment, or opinion, formed by this lady.

Judge Neilson—It may be an estimate, still I think we will let it stand.

Mr. Beach—Well, Sir, I have no particular objection to it; of course it is a very fine saying.

Mr. Hill—Mrs. Ovington, do you recollect a trip you made to Havana, departing in the Fall of 1873? A. November 12th, 1873, I left for Havana.

Q. When did you return? A. September 23d, 1873, to the city; I was absent in the Summer, not in Havana all the time.

Q. Yes, but you were away from the city? A. Yes, Sir.

Q. Now, how much were you in the city from your return in September, 1873, down to the publication of the Bacon letter? A. I did not leave the city from 1873 until last August of 1874.

Q. It is suggested that I ask you when you were in Havana was it because of your health? A. Yes, Sir.

Q. Well, what has been your state of health from the time of your return in 1873 down to the present time? A. I have not left the house until to-day since last October—the 18th. The previous Winter I think it was four or five months that I was not out of the house but once.

Q. Now, I will call your attention to the time of the beginning with the Bacon letter; do you recollect reading or hearing that paper read? A. I did, on Friday, I think, the 26th of June, that my husband brought it home and read it to me.

Q. Are you certain of the day of the month, or of the week? A. It was Thursday, I think, the 26th; I am not certain the day of the month; it was on Thursday or Friday he brought it; he spoke of it to me on Thursday; on Friday he brought the paper and read it aloud to me.

Q. Now, please state Mrs. Ovington, whether or not you then determined at once to see Mrs. Tilton.

Mr. Beach—That is objected to.

Judge Neilson—Ask what she did thereupon.

Mr. Hill—Well, what did you do upon hearing of this new trouble of Mrs. Tilton? A. I immediately arose from the lounge where I was lying—said that "I must go to Mrs. Tilton; she is in trouble."

Mr. Beach—You don't need to say what you said then.

Judge Neilson—You rose from your lounge; did you go to Mrs. Tilton? A. Not that day; I was not well enough.

Mr. Hill—You were not well enough to go then? A. I was not well enough to go on Friday.

Q. Well, when did you go? A. On the Sabbath following.

Q. What time? A. In the afternoon.

Q. Now, who took you to the house? how did you go? A. My husband; in the morning, before attending church, I asked him if he would take me to ride. He said he would do so, and I asked him if he would leave me to call upon Mrs. Tilton in the afternoon. He said he would. In the afternoon we started from the house, two or three o'clock, I think, in the afternoon; went to Mrs. Tilton's house then.

Q. And whom did you see, and what occurred? A. Carroll opened the door for me; my husband remained in the phaeton, and there Mr. Tilton saw him in front of the house. I entered the hall, Carroll inviting me into the parlor, but I did not accept then. In a few moments Mrs. Tilton came down the stairs.

# FIRST ARGUMENT OVER THE DEFENDANT'S EVIDENCE.

Q. Wait a moment—go on? A. In a few moments Mrs. Tilton came down the stairs looking—

Mr. Fullerton—Never mind how she looked.

Mr. Hill—I submit that we may have it.

Mr. Fullerton—Oh, I think not, Sir.

The Witness—It will explain perhaps what I said to her afterwards.

Judge Neilson—This lady had not seen Mrs. Tilton in a long time, as it appears now. She might, I think, mention any marked appearance.

Mr. Hill—That is all I want.

Judge Neilson—But as to any minute or general description, or an opinion as to her health, or an opinion as to her trouble, that would not do.

Mr. Hill—Oh, no. I simply want Mrs. Tilton's general appearance as she came in, that is all; if there was anything marked special about it.

Mr. Beach—Suppose there was; what materiality is there here?

Judge Neilson—Suppose she were in tears, she might not have been in tears the day before. I do not think you can do anything with that, Mr. Hill.

Mr. Evans—Your Honor will undoubtedly recognize the proposition that, so far as the general competency of evidence goes, this witness can speak as to what she saw in Mrs. Tilton that day. Now, until it is disclosed what it was that she saw, it may not be apparent whether it is material or not. It is evidence that we have a right to bring, because it is what passed under the eyes of this witness herself.

Mr. Beach—What passed in the actions, conduct, or appearance of Mrs. Tilton under the eye of this witness is not presumptively evidence. On the contrary, it is presumptively immaterial and incompetent, and therefore, if the learned gentleman proposes to make it in any way material, by additional matter, he should state what he expects or proposes to prove. It is utterly immaterial to any issue in this case, I submit to your Honor, whether Mrs. Tilton was then appearing well and cheerful and happy or ill and despondent and depressed. I submit, therefore, that it should be rejected.

Mr. Evans—I think, if your Honor please, that when you ask for what is said, presumptively it is not evidence. But when you ask what the witness saw, it presumptively is evidence.

Judge Neilson—State what you expect or wish to prove.

Mr. Hill—I simply propose to show that the general appearance and her state of health was the subject of conversation very soon afterwards between this witness and Mr. Tilton.

Judge Neilson—What do you purpose to show that this lady observed?

Mr. Hill—I propose to show that she observed a sorrowful condition on the part of Mrs. Tilton, and that her health seemed very greatly impaired—seemed weak.

Judge Neilson—In other words, that she was weak and not in good health, and you ask her that. It seems to me she may answer that.

Mr. Fullerton—That raises another issue, Sir, which we are to follow up. Suppose they prove that she was in ill health. Shall we be permitted to go on and show the cause of that ill health?

Judge Neilson—No. It stands if there may have been a thousand causes.

Mr. Fullerton—Exactly so. Therefore it is not proper evidence.

Judge Neilson—It seems to me a general fact.

Mr. Fullerton—It is a general fact, it is true. It is too general; that is the difficulty with it. What have we to do with the condition of the lady's health? Nothing at all. It proves nothing. If there is any pertinency to the evidence, then we have a right to disprove the fact, or to account for the condition of the lady, and then we will have side issues innumerable.

Judge Neilson—If she states the general fact of bad health, then you won't have occasion to account for it.

Mr. Beach—Why not, Sir. It is not mere bad health, it is bad, appearance; it is despondency and distress they seek to show, and it is pretty evident, Sir, that the object is for the purpose of drawing the conclusion that all this disturbance and depression of Mrs. Tilton arose from the recent publication of the Bacon letter. Now, can we be placed in that attitude, Sir, by this general, and, as we say, improper evidence, without having the opportunity of explaining what was the real cause of the difficulty, which, of course, your Honor will not permit.

Judge Neilson—I think, simply, that he may ask and ascertain whether this lady, on being met by the witness, appeared in good health or not, as a general simple fact. That is admissible in respect to any person.

Mr. Beach—Well, that is not of any very great importance.

Mr. Hill—State, Mrs. Ovington, how that was.

Judge Neilson—Whether she appeared to be in good health or not.

Mr. Everts—Our question, if your Honor please, we think should be: "State what you observed in the appearance of Mrs. Tilton?" It is primarily good evidence.

Judge Neilson—It is too broad. I will allow you to put the question, "What appeared to be the condition of her health." That you have put. Now, what is the answer to that? A. She looked very pale, very white, as I told my husband. Death struck—

Mr. Beach—That is objected to.

Mr. Hill—Never mind what you told him, just go on and give the fact as you observed.

Mr. Beach—Ought not this lady to answer the question, Sir, as to her state of health—apparent state of health?

Judge Neilson—Yes, simply.

Mr. Beach—She is wandering into an answer to the other question—giving a general description.

Judge Neilson—What was her apparent state of health? A. Very feeble.

Judge Neilson—Very well; that answers the question.

Mr. Hill—Now, what occurred between you?

Mr. Fullerton—That is objected to.

Mr. Hill—Go on; state what occurred there.

Mr. Fullerton—I think not.

Mr. Morris—That is objected to.

Judge Neilson—Who was present?

Mr. Hill—Very well, I will go back to that. [To the witness.] Now, who was present at this interview between you and Mrs. Tilton? A. No one but Mrs. Tilton and myself.

Q. That is at the hall? A. In the hall.

Q. Now, where was Mr. Tilton? A. He at first was in the parlor; I did not see him; he passed out through the front window to the side of the carriage talking with my husband.

Q. Yes; and then you and Mrs. Tilton went into the parlor? A. I went into the parlor at her invitation.

Q. Now, Mrs. Ovington, was the subject of conversation which you and Mrs. Tilton had in the parlor a subject of conversation between you and Mr. Tilton afterwards?

Mr. Fullerton—One moment; that won't do, Sir.

Mr. Everts—Why not?

Mr. Fullerton—Because it is wrong.

Mr. Everts—Why, it is a simple question of whether the conversation that she had with this lady was afterwards a subject of conversation with Mrs. Tilton.

Mr. Fullerton—I didn't object to it because I didn't understand it, so that the gentleman needn't repeat it.

Mr. Everts—She answers yes or no.

Mr. Fullerton—I know she does, and therefore it is a leading question.

Mr. Everts—No; it is not.

Judge Neilson—If this lady had a conversation with Mrs. Tilton, he can pass to that in due time and give it, of course. You cannot state anything that occurred between this lady and Mrs. Tilton in the parlor.

Mr. Everts—Unless it was a subject of conversation with Mrs. Tilton, and then what occurred between her and Mrs. Tilton will be evidence.

Mr. Beach—As your Honor recollects the counsel fought against that mode of proof.

Mr. Everts—I said expressly that what occurred between the witness and Mrs. Tilton would be evidence.

Judge Neilson—Well, when you get to that point you can examine and take the evidence.

Mr. Everts—Well, we do examine. She had a conversation with Mrs. Tilton. Now, we don't ask what the conversation was; our present question is did you speak to Mrs. Tilton concerning it?

Mr. Beach—That is not the question.

Mr. Everts—It is.

Mr. Beach—It is not.

Judge Neilson—You can give the conversation she had with Mr. Tilton, of course.

Mr. Everts—What is the question?

Mr. Beach—You had better find out before you discuss it. [The last question read by THE TRIBUNE stenographer.]

Mr. Everts—That is my question.

Judge Neilson—That is ruled out, with the permission to give my conversation that this witness had with Mr. Tilton.

Mr. Everts—That I understand; but this is but a preliminary question, and I say it is precisely the same with what my learned friends do not object to—"You had a conversation with Mrs. Tilton? Yes. Did you speak of that conversation to Mr. Tilton?"

Judge Neilson—Well, I don't know; I have ruled you can do that of course.

The Witness—I did.

Judge Neilson—I think you had better finish with this witness.

Mr. Hill—Why, I can't finish the examination in an hour.

Judge Neilson—Yes, you can. Well, let us go on half an hour then. We lose a great deal of time. We lost a quarter of an hour this morning; we lost another quarter at noon. Now, proceed with this witness. It is too bad to bring this witness again.

Mr. Hill—She certainly will have to come again.

Judge Neilson—Very well; she will come with a lighter burden.

Mr. Beach—How would you prefer, witness?

The Witness—Whichever you decide.

Judge Neilson—Well, the majority is against me, I suppose. Gentlemen, get ready.

The Court thereupon adjourned until 11 o'clock Wednesday morning.

## THIRTY-SEVENTH DAY'S PROCEEDINGS.

### MRS. OVINGTON'S TESTIMONY.

SHE REVIEWS CONVERSATIONS HAD WITH MR. TILTON

—MRS. TILTON'S DENIAL THAT MR. BEECHER OFFERED HER ANY IMPROPRIETY—INCIDENTS OF MRS. TILTON'S SEPARATION FROM HER HUSBAND —A MRS. PUTNAM OF MARIETTA, OHIO, CALLED TO THE STAND—A JURYMAN BECOMES FAINT AND THE COURT ADJOURNS.

WEDNESDAY, March 8, 1876.

The defense is now fairly under way, and its machinery is running smoothly. In accordance with the request of Mr. Fullerton, Mr. Ovington was present early this morning with a statement of the money received and disbursed for Mrs. Tilton and her children. In examining the accounts Mr. Ovington had found that he had received \$1,945 from Mr. Storrs, instead of \$875, as he had testified on the previous day. Mr. Ovington stepped from the stand after five minutes of questioning,

and his wife took the witness chair. Mrs. Ovington made an admirable impression upon all who heard her testimony. She is a gentle, refined lady, and whatever she knew she told with apparent candor and impartiality. Much of her story, touching as it did the incidents connected with Mrs. Tilton's departure from her husband, was told with pathetic feeling. The witness related the circumstances of Mrs. Tilton's coming to Mr. Ovington's house on the morning when she left her husband. Mr. Tilton followed, and all breakfasted together. Before sitting down Mr. Tilton and Mrs. Ovington talked together about the matter, the former saying to the lady, "Tell me what to do and I will do it." Mrs. Ovington says that she replied, "Do what you think in the sight of God is right." After breakfast Mr. Ovington said to Mr. Tilton, "Why do you push this matter?" Mr. Tilton replied, "I shall be the Samson who will destroy the temple; I will pull down the pillars of the temple, and although Mr. Beecher and my family are crushed, I shall be crushed with them."

When Mr. Tilton was going away he drew his wife and Mrs. Ovington together, placing his hands upon their shoulders saying, "Take care of Elizabeth. Any kindness done to her is more than done to me." He then went away, and after he had gone Mrs. Tilton told Mrs. Ovington for the first time that she had left her husband forever.

Mrs. Ovington testified that, in order to confirm her belief in Mr. Beecher's innocence, she asked Mrs. Tilton whether Mr. Beecher had ever by word or deed offered any impropriety to her. Mrs. Tilton answered "Never."

The details of Gen. Tracy's visit to Mrs. Ovington, and his interview with Mrs. Tilton before the latter was examined by the Investigation Committee, were the subject of inquiry. When it was decided that Mrs. Tilton should go before the Committee she went with Mrs. Ovington to an upper room to hold prayer before giving her testimony. A day or two after Mrs. Tilton had told her story to the Committee, Mrs. Ovington saw Mr. Tilton on the piazza of his house, where he said to her: "Lib's a tramp. I am told that she made a fine impression before the Committee. But her story was all fiction." Then followed a long conversation, which was concluded by Mr. Tilton telling Mrs. Ovington that she might tell Mrs. Tilton what he had said. A sharp discussion—the only one of importance during the day—followed the proposition of the defense to introduce Mrs. Tilton's reply

when Mrs. Ovington told her what her husband had thus said. Mr. Evarts and Mr. Beach took an active part, and Judge Neilson finally decided that the defense could not give the proffered testimony.

A few moments before the recess Mr. Hill announced that he was through with the witness, and Mr. Fullerton immediately began the cross-examination. He had not proceeded far before the luncheon hour arrived. After the interval Mrs. Ovington was questioned in regard to an interview she had with Mr. Beecher before Mrs. Tilton made her statement to the Investigating Committee; Mrs. Ovington told Mr. Beecher that Mrs. Tilton wished to state the truth, and that she had said, "It may end in a separation from my husband; I may lose every child I have; I may lose every friend I have in the world, but, Mrs. Ovington, that will not deter me." Mrs. Ovington exhibited an anxiety to tell all she knew of the affair, and frequently volunteered testimony that legally could not be admitted, but only once did Mr. Fullerton lose his temper. That was when he was trying to make the witness tell how it was that on the morning when Mr. and Mrs. Tilton breakfasted at Mrs. Ovington's house she (Mrs. Ovington) did not make any inquiries whether Mrs. Tilton had left her home.

Mrs. Ovington repeatedly replied that she could not explain without giving that interview with Mrs. Tilton which had been ruled out, and finally Mr. Fullerton protested with severity against her answer. At another time, when the examiner asked Mrs. Ovington if she had not been told that a report prepared for presentation to the Committee, shown to her by Mr. Tilton, was in Mrs. Tilton's handwriting, the witness leaned forward and enthusiastically replied, "No, Sir; I was not told anything of the kind." "Do not waste strength, Mrs. Ovington," said Mr. Fullerton, and the lady replied, laughingly, "Excuse me, Sir; I am very much interested." "So am I—slightly," responded the lawyer with a smile.

A few questions about Bessie Turner and in regard to the number of times that the counsel for the defense had called upon Mrs. Tilton and upon the witness were answered, and then Mrs. Ovington was excused.

After a short pause—it being then half-past three o'clock—Mrs. Sarah C. D. Putnam of Marietta, Ohio, was called. Mrs. Putnam is an elderly lady, who has been in attendance in the court-room for several days past. She was a resident of Brooklyn or New-

York nearly all the time from her first marriage in 1839 till 1867, the time of her second marriage. She was well acquainted with the Tilton family, and of Mrs. Tilton she said that she never knew a woman so devoted to her husband, her only fault being a blind idolatry of Mr. Tilton.

## THE PROCEEDINGS—VERBATIM.

### RE-EXAMINATION OF MR. OVINGTON.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Hill—A question was asked Mr. Ovington, yesterday, in regard to receipts of money and disbursements, which he is prepared to explain this morning.

Judge Neilson—Mr. Ovington, come forward, please.

Edward J. Ovington recalled.

Mr. Hill—Mr. Ovington, since your examination yesterday, have you looked at your accounts and memoranda with a view of making up the statement referred to by Judge Fullerton? A. Yes, Sir.

Mr. Fullerton—Wait one moment; I don't understand this, Sir.

Judge Neilson—You interrogated him as to disbursements of money.

Mr. Fullerton—Yes, Sir.

Judge Neilson—He said in answer to you that he would furnish a statement this morning.

Mr. Fullerton—I will do my own part of the business, although my brother Hill is about to do it.

Mr. Hill—"My brother Hill" proposes to do a little on his own part.

Mr. Fullerton—If my brother Hill will wait until the opportunity comes, when he can do so.

Judge Neilson—[To plaintiff's counsel.] I think the witness is with you on that subject.

Mr. Hill—Yes, Sir, but I have a right to recall the witness.

The Witness—I wish to correct a statement that I made yesterday.

Judge Neilson—You have a right to do that.

Mr. Fullerton—I asked Mr. Ovington if he would furnish me this morning with those items. He said he would. Now, you propose to take it out of my hands and have him do it on your examination.

Mr. Hill—I don't suppose it makes very much difference so long as the Court and jury get it.

Mr. Fullerton—Then you had better let me do it.

Mr. Hill—I propose to do a certain part of it.

Mr. Fullerton—I propose to object to that.

### THE MONEYS RECEIVED FOR MRS. TILTON'S SUPPORT.

Judge Neilson—[To the witness.] Now, the personal explanation.

The Witness—I wish to make a statement to correct a misstatement that I made yesterday in regard to the amounts of

money that were handed to me by Mr. Storrs. I wish to say that my mind has been very much occupied the past two or three months—

Mr. Hill—A little louder, Mr. Ovington.

The Witness—My mind has been very much occupied the past two or three months, and particularly in making preparations for a long business trip in Europe—a purchasing trip—and also the fact that I had not, I think, to my recollection, seen those entries that I made in the book at the time of receiving the money, nor had any one questioned me regarding them; and they had escaped my memory; and in referring to them this morning I found I had made a great mistake in the amounts.

Mr. Hill—What is the mistake?

Mr. Fullerton—One moment, if you please, Mr. Hill.

The Witness—I wrote a statement and brought it with me.

Mr. Fullerton—Where is the statement, Sir? A. Mr. Hill has it.

Q. Will you furnish it to me? A. I will.

Mr. Hill—Here it is. [Handing a paper to Mr. Fullerton.] It is a statement of the receipts.

Mr. Fullerton—Is that a statement of the funds you have received? [Handing witness the paper.] A. Yes, Sir.

Q. It is more than you stated yesterday? A. Considerable.

Q. You received, then, September 4th, 1874, two checks of \$500 each, was it? A. No, Sir.

Q. Two checks making up \$500? A. Two checks of \$350 each, instead of \$500 as I said yesterday.

Q. Then January 4th, 1875, you received \$745? A. Yes, Sir.

Q. Making an aggregate of \$1,345 in all that you received on that account? A. Yes, Sir.

Q. Now, Mr. Ovington, you were to furnish me with a list of disbursements? A. Yes, Sir; I have done so.

Q. Is that it? [Handing witness a paper.] A. Yes, Sir.

Mr. Fullerton—I propose to have this marked as an exhibit. [Referring to the first paper produced.] That is the paper showing the money received.

[Marked "Exhibit 109."]

Mr. Fullerton—The paper showing how the money was disbursed will be marked 110.

[Marked "Exhibit 110."]

Q. Is there any other paper connected with these accounts that you have? A. I have a paper of little memorandums, which Mr. Hill has.

Q. Little memorandums of what? A. Small disbursements.

Q. Will you furnish it? A. Yes, Sir.

Mr. Hill—Here it is. [Handing Mr. Fullerton a paper.] It represents the last item, or next to the last; the details of the last item.

Mr. Fullerton—That paper now shown you represents the details of the item of \$297 56 on "Exhibit 110," does it? [Handing witness the paper.] A. Yes, Sir.

Mr. Fullerton—That will be marked 111 then.

[Marked "Exhibit 111."]

Q. Do these papers represent all the money that you have received and disbursed, from any source whatever? A. Yes, Sir.

Q. Look at "Exhibit No. 110," and say whether the respective

charges upon it, with the exception of the \$350 for traveling expenses and board, and the \$397 56 under the head of "Sundry Disbursements"—

Mr. Hill—Please speak a little louder, Mr. Fullerton; we can't hear.

Q. Look at "Exhibit No. 110," and say whether the items upon it, except the \$350 for traveling expenses and board, etc., and the charges of \$397 56 under the head of "Sundry Disbursements," were for merchandise for Mrs. Tilton and the children?

A. With the exception of the bill of John Gallagher, carriage hire—that is not merchandise; James Donnelly, also carriage hire; Dr. Mirick, dentist bill; E. Hobart, a board bill when she was absent in the country; another bill of \$4, carriage hire; physician's charges. With those exceptions—

Q. The bill is for merchandise for Mrs. Tilton? A. Yes, Sir; and the children.

#### MR. OVINGTON AGAIN QUESTIONED BY MR. HILL.

Mr. Hill—The total amount, then, which you received was \$1,345? A. Yes, Sir.

Q. Now, the total amount which you have paid out is how much? A. I don't remember. [Looking at the account.] \$1,349 98.

Q. Please state if "Exhibit 111" represents the items upon "Exhibit 110" marked as "Sundry Disbursements, \$397 56?" A. Yes, Sir.

Mr. Fullerton—That we proved by him.

Mr. Hill—I didn't understand you.

Mr. Fullerton—Oh, yes.

Mr. Hill—Have you at any time made any charge for Mrs. Tilton's board in your family? A. No, Sir.

Q. None at all? I will ask you, Mr. Ovington, whether the charge of \$350 upon "Exhibit 110" includes any of Miss Florence's expenses while she was at the country? A. Yes, Sir; her traveling expenses and board, excepting perhaps her traveling expenses from New-York to the —, while she was there and returning.

Mr. Hill—Now, may it please your Honor, I offer in evidence the statement of receipts.

Mr. Morris—Why, it is in evidence; we have put it in evidence.

Mr. Hill—I didn't understand you to put it in evidence.

Mr. Beach—Well, it is in evidence and marked.

Mr. Hill—I am satisfied.

Mr. Morris—They are marked as exhibits.

Mr. Hill—I am satisfied. I supposed they were marked for identification. That is all, Mr. Ovington.

#### MRS. OVINGTON RECALLED.

Maria N. Ovington was then recalled, and her direct examination resumed.

Mr. Hill—I will be pardoned for interrupting the line of my examination yesterday for a single moment. [To the witness.] Mrs. Ovington, have you examined any of the items of these two—these three exhibits which are present here? I will call your attention particularly to the two relating to disbursements

by your husband. A. I have seen the bills, but the papers that he has brought this morning I have not seen.

Q. The papers themselves? A. No, Sir.

Q. Just look at the papers and see if you recognize any of the items, and if you are familiar with the transactions to which they refer? [Handing witness the papers.]

Judge Neilson—Mr. Hill, I think that we can assume that those moneys were received and disbursed.

Mr. Hill—That is not all of it, Sir. My friends have chosen to go into this subject.

The Witness—I think I know them much better than my husband does, as I have had the money transactions in many instances with Mrs. Tilton myself, to avoid unpleasant feelings in regard to money matters, as it was a delicate subject.

Q. State whether or not Miss Florence was with her mother at all during her absence in the Summer? A. She was at Fairfield. We arrived in Fairfield on Monday, I think; the following Wednesday, I think it was—the day I am not quite certain—Mrs. Tilton received a letter from Florence saying—

Mr. Fullerton—Never mind!

Mr. Hill—I don't care what the letter said. Did Florence come? A. It was in regard to the mistake of her direction to Litchfield. She came to Fairfield, remained with us there until we left for "The Guntery," accompanied us to "The Guntery," then to Lake Warramang, where Mr. Gunn was camping; returned to Brooklyn with us; returned to my house, intending to spend the Fall with her mother at my house, until her father forbade her.

Mr. Beach—Wait a moment; we ask to strike that out, Sir.

Judge Neilson—I think I will leave it for your cross-examination; she may have been present when her father forbade her.

Mr. Beach—Well, if she assumes to state it upon her own knowledge, I don't object.

Mr. Fullerton—When I come to cross-examine in regard to it, though, I don't want them to say that it was not responsive, and therefore not in the case.

Mr. Hill—Now, Mrs. Ovington, did you yourself aid Mrs. Tilton in making any of the purchases represented by these items? A. Many of the purchases I made without Mrs. Tilton being with me; that is, in fitting out the children she was not with me; she made a few herself in New-York one day when I wasn't with her. After that I think that I made most of them myself, with the children; with Alice and Carroll.

Q. Now, will you please state the condition of Mrs. Tilton's wardrobe and that of the children when they came—as to the necessity for these disbursements being made—these purchases being made?

Judge Neilson—Now, I think, we shall certainly assume that they were necessary; I think that is enough. I don't think the learned counsel proposes—he cannot question but what they were necessary; and I don't think it is well to put the details on the record.

Mr. Hill—I don't want to go into details; but I want to show this, if your Honor please—I want to show just this: that these children were almost in a destitute condition when they came there, as was Mrs. Tilton also.

Judge Neilson—Well, these supplies were necessary, of

course; that is to be assumed. People are not wont to buy things for others unless there is some occasion for it. I think, Mr. Hill, you might ask her if these supplies were necessary, and get her answer.

Mr. Fullerton—Why, it is not disputed that they were necessary.

Judge Neilson—No, it could not be disputed very well.

Mr. Hill—Nor is it yet proved, either. [To the Witness.] State whether these purchases for Mrs. Tilton and these children were necessary, in your judgment? A. I considered them necessary; she would have done with less.

Judge Neilson—That answers the question; that is all we need.

Mr. Fullerton—One moment; let us get along pleasantly. Please answer the question simply.

The Witness—I am not used to the witness stand, Mr. Fullerton; you can correct me when I am out of order.

Mr. Fullerton—Oh, well, Madam; I don't wish to do that, only answer, please.

#### MR. TILTON THANKFUL FOR FAVORS SHOWN HIS WIFE.

Mr. Hill—We left your examination yesterday at Mr. Tilton's residence in Livingston-st., on Sunday afternoon. Please state if you had any conversation with Mr. Tilton at all, before you left that day? A. I spoke a few words to him, after I had gone to the carriage, in the presence of my husband.

Q. What did you say to him? A. I said that I had seen his wife. He said: "Did she come down-stairs?" I replied she did. I think that was the most that I said. I held no lengthy conversation; I remember nothing else.

Q. Did you state what acts had been done between his wife and yourself when she came down-stairs? A. I don't remember that I did.

Q. Was anything said about your taking her to ride? A. Yes, Sir.

Q. What was that? A. I said that she looked miserably, and I would like to take her to drive with me, as I was in the habit of driving out. He said he would be gratified to have me do so; he thought it would benefit her, and spoke kindly of her.

Q. Now, when did you next see Mrs. Tilton and Mr. Tilton? A. A week from that day.

Q. This was Sunday; did you go the next day to drive? A. Oh, the next day, Monday! Excuse me. The next morning, as I had said to Mrs. Tilton that I would call for her if I rode out, I did so; I took her to the Park—drove there. Do you wish me to say anything—

Q. Well, you took her out to drive that day? A. Yes, Sir.

Q. And then brought her home again? A. Yes, Sir; after calling upon Mrs. Bradshaw.

Q. Now, when did you see her again? A. A week from that day; the 6th of July.

Q. Under what circumstances? A. I went to take her to ride in the afternoon.

Q. Before going to that, let me ask you if you had any conversation with Mr. Tilton in regard to a call by your husband upon him? A. Yes, Sir.

Q. When was that? A. That was while Mrs. Tilton was preparing to drive, when she was putting on her hat, etc.; I was in the parlor.

Q. That was on Monday morning—the first drive? A. Monday morning; yea, Sir.

Q. Now, what did he say? A. He asked me if I would ask my husband to call upon him; that he would like to converse with him upon his affairs.

Q. What affairs? A. His affairs, and then—

Q. Did he specify? A. This matter; I do not know as he made use of any expression then; I do not recollect it; he might have done so.

Q. Well, proceed. A. "Will you ask your husband to call upon me; I will be pleased to see him; he is a just man; I will open my heart to him as to a brother; ask him if he will call here?" I told him I would do so, and did not doubt but that Mr. Ovington would call.

Q. Now, did you tell your husband what Mr. Tilton had said to you? A. I did.

Q. When did you so tell him? A. I probably did on my return from my ride; but I do not remember the exact time.

Q. Now, go to the second drive on the following Monday. State, if you can, the date of that drive?

Mr. Fullerton—The following Monday?

Mr. Hill—The first time she called on Sunday, and then she took her to drive on Monday.

Mr. Fullerton—The following Monday was July 6th, was it?

The Witness—July 6th.

Mr. Hill—Now, on the 6th of July you took Mrs. Tilton to drive? A. Without any previous appointment I called to her house and asked her if she would go to drive with me that afternoon. She replied she would like to—

Mr. Fullerton—Mrs. Ovington, there is no use in giving that conversation; you took her to drive, that is enough. Do not give the conversation between you and Mrs. Tilton.

Mr. Hill—Proceed with the story, Mrs. Ovington.

Mr. Fullerton—I object.

Judge Neilson—What was done, not what was said.

Mr. Hill—Well, the witness has received instructions from the counsel that he don't want the conversation. I simply say proceed; I think she understands it.

Judge Neilson—When you say proceed, you mean in reference to the drive?

Mr. Hill—Yea, certainly.

Mr. Fullerton—If you will go on a drive, I have no objections.

Mr. Hill—Well, go on, Mrs. Ovington.

The Witness—There is one remark that I think would be necessary, to say why I took the drive I did.

Mr. Fullerton—Well, Mrs. Ovington, don't give us what you think is necessary.

Mr. Hill—Where did you go, Mrs. Ovington; simply tell us that? A. I went to the Park first; took a short drive there; at Mrs. Tilton's request I returned to the city; she asked me—

Mr. Fullerton—One moment.

Mr. Hill—Not what she asked you, not what she said, you know; just what did you do? Where did you go when you re-

turned to the city from the Park? A. From the Park I returned to my house in Hicks-st.; there left Mrs. Tilton, then went to my husband's store. My son drove me to Mr. Beecher's house.

Q. Now you may state whether, or not, Mrs. Tilton was taken to your house by her request? A. She was.

Q. Had you invited her to come there upon that occasion? A. I had not.

Q. Well, you went to Mr. Beecher's house? A. He was not at home; I called at Mr.—

Q. Never mind. What did you do then after you left Mr. Beecher's? A. I called at Mr. Beach's to see if Mr. Beecher was there. He was not; I then went to Mr. J. T. Howard's to see if he was there; he was not. I returned to my home, went upstairs, and Mrs. Tilton then came down in the carriage, and I left her at her residence in Livingston-st.

Q. Now, kindly specify about the hour that you returned to your house from the Park? A. I didn't notice, but I left my home, I should think, about half-past two or three. I should judge so.

Q. Left your home to go where? A. To go to call for Mrs. Tilton; I should judge it might have been four o'clock, but I am not certain as to the moment. It was about that time.

Q. That is when you returned from the Park to your house? A. When I left Mrs. Tilton at her home in Livingston-st. I think it was about four o'clock.

Q. But you did not quite tell me yet when you returned from the Park to your house? A. I came directly from the Park to my house.

Q. Yea; and had been gone on your ride about how long? A. I don't know; only long enough to go to the Park.

Q. And take a short drive and return? A. Yea, Sir.

Q. Very well. Now, you have left Mrs. Tilton at her house. What did you do next? A. What did I do, or she? I say—what any one else did, I hardly know how to—

Q. You drove home, did you, from Mrs. Tilton's house? A. I did.

Q. Very well. Now, when did Mrs. Tilton return to your house that day? A. There is something before that, Mr. Hill.

Mr. Hill—I don't care what it was. When did she come back?

Mr. Fullerton—Answer the question.

The Witness—At six o'clock.

Q. She came back about six o'clock? A. At six o'clock.

#### GEN. TRACY'S CALLS AT THE OVINGTONS.

Now, do you recollect of seeing Gen. Tracy that day? A. Yea, Sir.

Q. Where? A. At my house.

Q. State about the time that he called? A. Between five and six, I should think.

Q. Do you know whether Mrs. Tilton was present on that occasion? A. She was not present. I had left her at her house in Livingston street.

Q. How long was General Tracy's call? A. I should think not over five minutes.

Q. Where was he received? A. In the second story front room.

Q. Who was present? A. My husband.

Q. Besides yourself? A. I was present; Mr. Ovington, Gen. Tracy and myself.

Q. Now, when did you next see General Tracy? A. I think it was between half-past six and seven or six o'clock; I think that was—no, it was later than that; it was seven, I think.

Mr. Fullerton—Well, that night? A. That same evening.

Mr. Hill—Was Mrs. Tilton present when he called? A. No, Sir.

Q. Well, how long was that call of Gen. Tracy's? A. The second call?

Q. Yes. A. I should think ten minutes perhaps; I don't know exactly.

Q. Can you state whether or not Mrs. Tilton was present at any time during that call? A. She was not.

Q. Where did you receive Gen. Tracy upon the occasion of this second call? A. I think that I was in the parlor; I went to the parlor and saw him there; I think my husband met him there.

Q. You have stated, I think, how long that was? A. I think it was ten or fifteen minutes; I don't know exactly.

Q. Very well; now when did Mrs. Tilton come, with reference to the second call of Gen. Tracy's? A. Upon her— Please say that again, Mr. Hill.

Q. When did Mrs. Tilton call, with reference to the second call of Gen. Tracy's; was it after or before? I mean when she returned to your house. You say you had taken her to her house in the carriage—she came back as I understand it; when was that, with reference to Gen. Tracy's second call? She came back at 6 o'clock, but she knew nothing about Gen. Tracy then.

Q. Very well; was any one with her? A. She came alone at six o'clock.

Q. Now, go on and state the narrative with reference to the calls, and what Mrs. Tilton did, and what Gen. Tracy did that evening? A. Can I state as I went and returned; would that be proper?

Q. No; limit yourself to Gen. Tracy's call and Mrs. Tilton's; give the narrative; just that part of it. A. Gen. Tracy called and saw my husband and myself, I should think five minutes, and left the house; very shortly afterward, Mrs. Tilton came, which was at six o'clock; that hour, I think, I am quite positive about. Mrs. Tilton called at six; she left quite soon after, and returned again about half-past seven with Judge Morse, and remained then until, I suppose, about ten o'clock.

Q. Now, was Gen. Tracy present when she returned with Judge Morse? A. He was.

Q. What occurred when they came in, do you recollect? A. I think that I opened the door myself for Mrs. Tilton and Judge Morse. They entered the parlor, Judge Morse introducing Mrs. Tilton to Gen. Tracy. My husband was present.

Q. Was any one else present at that moment? A. No, Sir.

Q. You may state, Mrs. Ovington, whether there was any consultation there with respect to Mrs. Tilton's appearance before the Committee that evening.

Mr. Fullerton—I object to that, Sir.

Judge Neilson—I think she ought to be allowed to answer it.

Q. What occurred upon that subject, Mrs. Ovington?

Judge Neilson—Not what was said—whether anything was said.

The Witness—There was.

Mr. Hill—There was what?

A. There was something said in regard to the subject of her meeting the Committee that evening.

Q. Now, by whom was the arrangement made? Tell the story to his Honor and the jury without giving conversation or detail. A. I had been to Mr. Beecher's house between the call of Gen. Tracy and Mrs. Tilton's return with Judge Morse. That is what I spoke of referring to, which will explain some matters.

Q. Yes; but give the story with regard to the arrangement in pursuance of which Mrs. Tilton appeared before the Committee; what was done by each: whether the consultations were private, or in the presence of all. A. Shall I speak of my interview with Mr. Beecher?

Judge Neilson—No, except that you had an interview.

The Witness—I had an interview in regard to this subject.

Mr. Shearman—We have not the right to ask that.

Mr. Hill—I am speaking of the consultation after Mrs. Tilton came with Judge Morse to your house that evening? A. They consulted with regard to seeing the Committee that evening.

Q. Who consulted; was it Gen. Tracy or Judge Morse? A. Mrs. Tilton expressed the desire—

Mr. Beach—Wait one moment, Madam.

Judge Neilson—Omit that.

Mr. Hill—I submit it is proper to show that she expressed a desire to see the Committee.

Mr. Beach—I submit that it is not, Sir.

Judge Neilson—Your principal question seems to remain unanswered, to wit, whether the consultations were private or not?

#### MRS. TILTON'S APPEARANCE BEFORE THE COMMITTEE VOLUNTARY.

Mr. Hill—I will pursue that a single moment further. [To the witness.] State to his Honor and the jury whether these consultations about Mrs. Tilton appearing before the Committee were private; how were they held, and where? A. In the parlor, in the presence of Mr. Ovington, Judge Morse, Gen. Tracy and myself.

Q. Was there any private consultation between Judge Morse and Mrs. Tilton about it, or any private consultation between them? A. Before—

Judge Neilson—In your presence.

Mr. Shearman—The point is to inquire whether Judge Morse and Mrs. Tilton stepped aside.

The Witness—Mrs. Tilton requested to speak to Judge Morse alone. They went up-stairs and consulted, Mrs. Tilton returning and saying she would like to see the Committee.

Mr. Beach—Wait one moment.

Judge Neilson—State what she said. Mrs. Tilton returned?

The Witness—Yes, Sir; Mrs. Tilton returned.



Mr. Beach—With Judge Morse? A. With Judge Morse.

Q. Please state whether or not Mrs. Tilton requested to see the Committee? A. She did.

Mr. Beach—Wait; we object to that.

Judge Neilson—We cannot take that; if we take that we must take everything else that occurred in the conversation.

Mr. Hill—I understand we may show that the appearance of Mrs. Tilton before the Committee was voluntary, without solicitation.

Judge Neilson—You will get at the fact that it was voluntary.

Mr. Hill—That is all I care for, your Honor. [To the witness.] Did she appear before the Committee that night? A. She did.

Q. State whether or not that was upon her solicitation or upon the solicitation of some other person?

Mr. Beach—It is objected to.

Mr. Evarts—Why?

Judge Neilson—Do you know whether it was voluntary or not?

The Witness—It was entirely so.

Mr. Hill—I think that you stated that the Committee was not then present? A. With Judge Morse?

Q. Yes? A. They were not.

Q. Did Gen. Tracy remain until they came, or did he go after them? Go on with the narrative in that particular. A. Gen. Tracy left the house, went out for the Committee, and returned with the Committee.

Q. Where were you when he returned? A. I was in the dining-room, with Mrs. Tilton, giving her her tea.

Q. Well, go on with the story. A. Mr. Ovington came down and said Gen. Tracy would like to speak to Mrs. Tilton a moment before she saw the Committee. He went up and told him to come down in the dining-room. He came; as he entered, said I: "I presume you don't wish me, Gen. Tracy—excuse me." He said: "Mrs. Ovington, I prefer that you should remain." He took a seat beside Mrs. Tilton. Shall I give the conversation?

Q. I have no objection to it.

Mr. Beach—Objected to.

Judge Neilson—He took a seat beside Mrs. Tilton and had a conversation.

The Witness—I should say of three minutes duration.

Judge Neilson—Well, a conversation of three minutes duration; that will do.

Mr. Hill—Were you present all the time? A. I was. He then left us and went up to the gentlemen in the parlor.

Q. And how soon did you and Mrs. Tilton go? A. When she finished her tea; I should think about five minutes, perhaps. We did not go directly to the Committee, however.

Q. Where did you go, and Mrs. Tilton? A. Mrs. Tilton and myself, Mr. Hill, went in the second story front room for her to hold prayer before she made her appearance before that Committee.

Q. How long, then, before you appeared before the Committee, or how long before Mrs. Tilton appeared before the Committee? A. Directly after that we came to the parlor, Mr.

Ovington introduced—or Gen. Tracy, I don't know which—introduced Mrs. Tilton to the Committee.

Q. And then Mrs. Tilton made her statement before the Committee? A. She did.

Q. And they left about what time? A. I do not know the exact time. I should think about ten o'clock.

Q. Now, Mrs. Ovington, did Gen. Tracy give any instructions whatever, or make any suggestions whatever, to Mrs. Tilton in regard to her answers, or the form of the answers, before the Committee at all? A. The form of the questions he did.

Q. Did he as to the form of the answer, Mrs. Ovington, at all? A. No, Sir. Shall I say what he said?

Q. State what he said, what he suggested in regard to the question?

Mr. Beach—Objected to.

Judge Neilson—I think we will have to stop there.

Mr. Shearman—They brought this in.

Mr. Beach—Who brought it in?

Mr. Shearman—The gentlemen on the other side brought this in, representing Gen. Tracy as having certain conversations, and of course that conversation becomes a fact in the case.

Mr. Fullerton—Brought it in how?

Mr. Shearman—On the direct examination of Mr. Tilton, Mr. Tilton stated that Gen. Tracy related to him that he had given instructions to Mrs. Tilton as to the form of the answers that she was to make to the questions put.

Mr. Fullerton—Do you want to prove Gen. Tracy didn't tell the truth?

Mr. Shearman—No; but we want to prove that he never said anything of the kind.

Mr. Fullerton—How does this witness know that fact?

Judge Neilson—We will proceed. That thing might occur in twenty places, as well as in Mr. Ovington's house.

Mr. Shearman—We want to account for the whole time that Gen. Tracy was there at the house, the statement he has made, to wit, that no such thing took place.

Judge Neilson—Go on; we cannot take the conversations.

Q. Mrs. Ovington, will you explain what you mean by saying that Gen. Tracy instructed her as to the form of the questions; was it as to the form of question or the subject matter of the examinations?

Mr. Beach—We are objecting to this, Sir.

Judge Neilson—I think we have had that sufficiently, Mr. Hill.

The Witness—It was more the matter than the questions.

Judge Neilson—Now, you have made a different answer.

Mr. Shearman—They allowed this question to go in without any objection.

Judge Neilson—This last answer covers the ground. She said it was more the subject matter than the form of the question.

Mr. Hill—Very well.

Mr. Hill—When and where was it that Gen. Tracy made the suggestion as to the subject matter of the examination? A. In the dining-room, at the tea table, in the presence of Mrs. Tilton and myself.

Q. What did he state was the subject matter upon which she was to be examined?

Judge Neilson—I think we have had that.

Mr. Fullerton—I object to this, Sir.

Judge Neilson—We cannot go any further with it.

Mr. Evarts—Your Honor will be so good as to note our exception.

Mr. Hill—You were present at the whole interview between Mrs. Tilton and the Committee? A. I was?

#### MR. TILTON'S TALK WITH THE OVINGTONS ABOUT HIS TROUBLES.

Q. Now, be kind enough to state when you next saw Mr. Tilton? A. Thursday morning, the 9th of July, he called at my house.

Q. Where did you receive him? A. On the back piazza.

Q. Now, please begin with that conversation and state it just as it occurred, as nearly as you can? A. It was a three hours' conversation; I don't think I could repeat all of it, Mr. Hill.

Q. Give us so much of it as you recollect, stating who was present? A. Mr. Ovington was the only one present besides Mr. Tilton and myself. When he greeted us on the piazza, he spoke of Mrs. Tilton, and said: "Lib is a trump, isn't she? I hear she spoke well before the Committee, that she made a favorable impression upon them, but it is fiction—all fiction. I, too, could come before the Committee and weave fiction."

Q. Well? A. I asked after her health. He said: "She is well; happy as a bird this morning." Says I: "I am glad to hear it. I have received a note, saying that she was in much better spirits than the first note that I received from her." I cannot remember word for word this conversation, Mr. Hill. This is the substance merely, as well as I can recollect it.

Q. Give the substance of it. A. I think then Mr. Tilton said to me: "So you have heard from her?" I said that I had received two letters from her, and expressed my pleasure that she was feeling better than when I received the first letter. He said: "You should see her this morning; she is happy, happy as a bird." I think then it was that I repeated some of the contents of her letters to me; I don't think I repeated all; I cannot remember.

Q. State what you repeated as nearly as you can; take the first one? A. "Upon my return home last evening"—it was written Tuesday morning. I think—"upon my return home Tuesday evening I found Mr. Tilton in bed reading. I told him of the interview I had had. He immediately arose, dressed himself, and left me, saying we were parted forever." He called—no, that I didn't say to Mr. Tilton. "I am indeed alone as never before." I think that was all I repeated of that note to him.

Q. You now refer to the first note? A. That was the first note.

Q. Now, please state when you had received that first note? A. It was Tuesday morning, I think—I think Tuesday morning. It was the morning following her coming before the Committee.

Q. You may state also if you had read it to your husband.

A. I think I handed the note to him or read it to him, I don't remember which. He knew the contents of the note.

Q. State what you said in regard to it or in giving the contents of the second note? A. I spoke of her health, my pleasure at her being better, and the contrast of the two notes. I think that was it. Do you wish me to state—

Q. I want you to state, Mrs. Ovington, what you have already stated, that you told him what the two notes contained, or the substance of them.

Mr. Beach—No, she has not stated that.

Mr. Hill—I beg pardon. [To the witness.] Now, you have given the one, or what you said in giving the contents of the one. Now, I would like you to give what you said in giving the contents of the other? A. It was after Mr. Tilton's return home. "I sang a new song this morning. Theo. returned at 12 o'clock last night: said that he had seen Gen. Tracy; that I carried the Committee, not only with me but for him. 'Bless the Lord, O my soul!' He again has restored confidence in me. I cannot—" Then spoke of riding—that she could not go to ride with me that day, as I had invited her to go to the beach.

Mr. Beach—Is that what you stated to Mr. Tilton? A. Yes, Sir, as near as I can remember it—"As when her heart was light she wished to be home."

Mr. Hill—Did you state that to him as part of the contents of the letter? A. I think I did. I stated part of the contents of the letter, and I think I stated that I have given it as near as I can.

Q. Was anything said, in stating the contents of the letter, with respect to the opportunity which the Church had? A. I said that was in reference to Gen. Tracy. She wrote that Gen. Tracy had told him that she had carried the Committee, not only with her, but for him; she wished the church might realize how great their opportunity was to throw their arms around her dear husband. And, turning to him, I said, "Your wife loves you, Mr. Tilton."

Q. Now, Mrs. Ovington, go on with the conversation which occurred between yourself and your husband and Mr. Tilton after stating the contents of the letters? A. In speaking of her health my husband referred to her poor looks the day he called there, and I remarked that he had felt as I did, that she looked death struck. Said he: "No, not so bad as that," but then he again spoke and said: "You should see her to-day." Then he referred to this scandal.

#### MR. TILTON THINKS MR. BEECHER UNGENEROUS TOWARDS MRS. TILTON.

Q. Well, what did he say about that? A. He spoke of Mr. Beecher.

Q. State what he said? A. He said that Mr. Beecher had forced this thing upon him much against his will; that he had been called a knave and a fool, that he could not rest under that imputation, and that he felt Mr. Beecher could have come forward in regard to the Council that was called in the Spring, but he had not done so. There was so much said that I can hardly give it all.

Q. Well, was there anything further in regard to Mr.

Beecher? A. Yes, Sir, there was a great deal said, but I have forgotten much of it. I may recall it.

Q. Was anything said, Mrs. Ovington. in regard to what Mr. Beecher ought to have done for Mrs. Tilton? A. That was in speaking of Mrs. Tilton's position.

Q. Very well; state what was said upon that subject? A. He said, "Mr. Beecher is a coward." After Elizabeth had given all that a woman can give, or the best, I don't remember the exact expression, "how did he treat her? He should have come forward like a man and helped her, but he allowed her to rent the only two cool rooms in the house to boarders. I could never treat a lady in like manner that had served me as Elizabeth has Mr. Beecher, or has given herself to Mr. Beecher."

Q. Do you recollect where Mr. Tilton was then living, Mrs. Ovington, whether he was living with his wife at that time? A. He was—he had returned to her; he had left her on Tuesday.

Q. If you recollect any more—anything further that he stated upon that subject, please give it now? A. I think there was some little more, but I don't recall it; there was something in the same strain, but I cannot recall it.

Q. Anything said about Mr. Beecher's own home? A. Yes, Sir.

Q. What was said on that subject? A. I told Mr. Tilton my feelings in regard to Mr. and Mrs. Beecher; that it seemed impossible to me to believe—

Q. Wait a single moment. Go on now. You could scarcely be heard. A. That it seemed impossible to me that this story should be true; that I had known Mrs. Beecher for years intimately; I had known Mr. Beecher well; that I could not believe these things of him, neither could I believe it of his wife; that I felt he was laboring under a mistake; that he was mistaken, and I believed so at the time.

Q. Well, did you mention— A. And in speaking of Mrs. Beecher, he said that she had made her home a hell, that Mr. Beecher had never loved her; he never had loved any woman as he loved Elizabeth. It was in that connection that he spoke of her having given herself to him; it was at that time, in that connection.

#### MRS. TILTON EXONERATES MR. BEECHER TO MRS. OVINGTON.

Q. Did you say anything to Mr. Tilton upon that occasion with respect to any conversation which you had had with Mrs. Tilton in regard to the matter about her denial of the story? A. I said to him the remark that she made to me in giving the previous Monday.

Q. Now, state what you said in giving that to him? A. I told him that I had asked Mrs. Tilton: "Mrs. Tilton, I wish to ask you a question, not for my own satisfaction, but to give me the power to deny this thing. Has Mr. Beecher ever, by word, action, or conduct, done anything that was the least improper to you—has been the least improper; any impropriety, by either word, action or manner?"

Q. Yes? A. She looked in my face and said, "Never." I said I believed her.

Q. You told Mr. Tilton that? A. Yes, Sir.

#### MR. TILTON'S REFLECTIONS ON THE COMMITTEE.

Q. Let me ask you, Mrs. Ovington, was there anything said with reference to the character of the Committee men and the object of the investigation? A. Yes, Sir; he spoke quite at length; that was more particularly with my husband.

Q. But in your presence? A. I was present; yes, Sir.

Q. State what was said between them on that subject? A. He asked who the gentlemen of the Committee were, what kind of men, what the object of the Committee was. Mr. Ovington said that they had been called together, as he understood it, to investigate this matter, and had been called since the publishing of the Bacon letter, I think; then I said to Mr. Tilton: "Why did you publish the letter, Mr. Tilton?" Said he, "I did it for my own defense."

Q. Do you recollect anything further upon that subject? A. Yes, Sir; I will in a moment.

Q. Something else was said, do you say? A. Yes, Sir; there was. Oh, he asked as to the character of the gentlemen of the Committee; he asked my husband. Said he: "Do you know what are their views—their religious views? Is Mr. Sage, the Chairman, anything of a moralist?" Then I turned to Mr. Tilton, or when he was speaking the name, said I, "Mr. Tilton, if you suppose these gentlemen have been called together to try and clear Mr. Beecher, whether guilty or innocent, you are mistaken. Could you have sat in the parlor, as I did on Monday evening, looking in the face of each one of the Committee, you could believe that they were searching for the truth, and nothing but the truth, and although I love Mr. Beecher, and I love his wife, I could never, for one moment, stand by him if I considered him guilty."

Q. Well, have you now finished what was said upon that subject? If you recall anything farther, please give it, in this connection? A. Not at present, to me.

Q. You cannot recall anything more of that. Now, was anything said with respect to Mrs. Tilton making efforts to protect or screen her husband before the Committee? A. I said to Mr. Tilton, "She spoke beautifully for you, Mr. Tilton." Said I, "I believe no woman ever loved her husband more devotedly than she loves you."

Q. Well? A. I don't remember—I cannot, at present, recall anything more.

Q. Was anything said with reference to her lying for him? A. Yes, Sir; Mr. Tilton said—that was in the early part of the conversation.

Q. State what he said upon that subject? A. When he spoke of the fiction, I think it was, he said: "Elizabeth will lie for me. She would tell any number of lies to clear me. She loves me." He said, "Even if I were on trial for the Nathan murder, and she had seen me commit the act, do you think that she, if called upon to testify, do you think that she would tell the truth, and have me convicted?" He said, "No, she would not." Said he "Would you?" Said I, "I can hardly imagine such a case, but, Mr. Tilton, they are not parallel cases. If my husband was guilty of the murder, and an innocent man was on trial for his life, and about to be

convicted, and I were called upon to testify, I believe that I should have to tell the truth, even though it convicted my husband, rather than that the innocent should suffer.

Q. What did he say to that? A. Said he, "No, you wouldn't—no, you wouldn't."

Q. Now, I will ask you, Mrs. Ovington, was there anything said about this conversation being confidential? A. As Mr. Tilton was leaving the piazza, said he, "This conversation is confidential, but," turning to me, "you may tell Elizabeth the whole of it."

Q. Now, can you recall anything further that was stated during this conversation; if not, I will pass to the next point? A. Not definitely, I cannot. There was of course three hours' conversation, and I cannot recall all of it.

Q. Now when did you next see Mrs. Tilton? A. The following morning.

Q. Now, state the circumstances; did you call upon her? A. I called for Mrs. Tilton at her house, and took her to Coney Island.

Q. Now, on the way to Coney Island was anything said between you and Mrs. Tilton with respect to the conversation which had occurred between her husband and yourself and Mr. Ovington on the piazza? A. I repeated it as nearly as I could, word for word.

Q. Mrs. Ovington, do you recollect any replies that Mrs. Tilton made as you were giving that conversation? A. She said—

Mr. Beach—Wait a moment.

Mr. Fullerton—No. "Do you recollect," that is the question?

By Mr. Hill—Do you recollect whether she did or not? A. She did.

Q. Now, please state them?

Mr. Fullerton—It is objected to, Sir.

Judge Neilson—Mr. Hill, how do you think that can be received?

Mr. Hill—I suppose if Mr. Tilton refers this lady to his wife, to give a conversation, that it must certainly be implied that what she said in reply is to be received as part of it.

Judge Neilson—No, he gives his consent, as it were; or, if you please, instructions that she will or may repeat this to Mrs. Tilton. That is all. No, Sir, I cannot take it.

Mr. Evarts—The plaintiff, if your Honor please, makes a charge in regard to his wife, implicating this defendant. That is the gist of this action. All this evidence that we are giving here, as well as much that has been given in behalf of the plaintiff, has its bearing as showing the conduct and statements of the parties, as the rules of evidence permit them to be shown, or may permit them to be shown, bearing upon the truthfulness of one or the other view of this case. Now, Mr. Tilton, being a party to this conversation which this lady has given to the Court, says to her: "This is a conversation that is confidential, excepting you can tell Elizabeth all of it." and this lady goes to Elizabeth—goes to Mrs. Tilton, or, in her interview with Mrs. Tilton on the following day, narrates it, she says, as near as she could, it then being a recent con-

versation, word for word to her. Now, the manner in which Mrs. Tilton received this communication and the statement either of admission or silence or denial is a part of the very action of this witness, under the instruction of this plaintiff and toward his wife, and gives his license and his authority to the consequences of that communication. The communication, in this effect, as a fact and as a truth to influence the mind of this jury, seeking the truth, is incomplete, if the response of the wife to this communication, thus coming from the husband through the witness, is not made.

Judge Neilson—Notwithstanding Mr. Tilton's consent or authority to repeat this conversation to Mrs. Tilton, it is utterly immaterial, in my view, whether she availed herself of that permission and did repeat it to Mrs. Tilton or not. Of course it is immaterial to what Mr. Tilton said. I think I shall not receive it.

Mr. Evarts—Your Honor will be so good as to note our exception.

Mr. Hill—I will ask you, Mrs. Ovington, what Mrs. Tilton's manner was when you stated to—

Mr. Fullerton—That is objected to.

Judge Neilson—No.

Mr. Hill—Let us take an exception then.

Judge Neilson—Yes, Sir.

Mr. Hill—We also offer to show that at this time she said this statement, that it was all fiction.

Judge Neilson—That is ruled out also.

#### MRS. TILTON'S LAST DESERTION OF HER HUSBAND.

Q. When did you next see Mrs. Tilton, Mrs. Ovington, after that day when you took her to ride? A. The following morning at about half-past seven or seven o'clock.

Q. Now, be kind enough to begin with your first interview.

Mr. Fullerton—[To Mr. Hill.] Excuse me, I didn't hear the answer.

Mr. Hill—It was about half-past seven the next morning that she had her next interview with Mrs. Tilton. [To the witness.] Just begin with the interview and state all that occurred, giving, as near as you can recollect, the time, circumstance and place? A. Mrs. Tilton arrived at our house, I should say, at seven, perhaps half-past seven o'clock; I had not then finished dressing, and invited her to take a seat in an adjoining room, and spoke to her. She asked me if I had slept any.

Mr. Fullerton—One moment.

Mr. Hill—In asking you to give all that occurred, I didn't want you to give all the conversation.

Mr. Shearman—Until Mr. Tilton was present.

Mr. Hill—Until Mr. Tilton arrived; then you may give all that occurred.

The Witness—Very shortly after her arrival, Mr. Tilton came and was shown into the parlor. Mr. Ovington went down and spoke a few words. I followed shortly after. He said that he had come to speak about Elizabeth. I told him that early in the morning I felt unfit for any conversation until I had taken a cup of coffee, and the breakfast bell had rung or was about to ring, and I asked him to breakfast with us. He declined at first, but afterward accepted. We went to the table. On

he way to the breakfast table, Mr. Tilton and myself remained in the hall, and I there spoke to him in regard to his position in this matter. I said: "Mr. Tilton, why do you do this thing? Why did you publish this letter?" And, of course, at that time I was somewhat excited. I cannot remember definitely all that I said, but I plead with him to try and stop any trouble that was arising, and he made the remark—and I thought that he was sincere at the time. Says he: "Mrs. Ovington, tell me what to do and I will do it." He said: "Tell me, what shall I do?" Says I: "Mr. Tilton, I am not sufficiently acquainted with the circumstances of this case to say anything about it. But," says I, "do what you know in the sight of God is right. That is all you need to do." I think he felt very deeply.

Mr. Fullerton—Never mind that.

Mr. Hill—Never mind that. What did he do? How did he appear under your suggestion and advice?

The Witness—He appeared to me as though he were deciding the question in his mind.

Q. Well? A. We then went down to the breakfast table, he taking his seat beside his wife; I think directly beside her at the table. We breakfasted—ordinary conversation. My two children were present, and my husband, of course. After breakfast we went up-stairs into the parlor, Mrs. Tilton, Mr. Tilton, Mr. Ovington and myself. He said: "I wish to make some remarks; I wish to speak to you in the presence of Elizabeth. I think there is some misunderstanding or misapprehension in regard to the conversation held here on Thursday. Yesterday, upon her returning from her trip, I supposed that she had had a day of unmitigated pleasure. I thought her trouble—this subject had been scarcely referred to, as she said nothing to me on the subject, or very little. I supposed she had had a day of unmitigated pleasure. Much to my astonishment this morning, she came to my bedside and told me that she should leave me, and, Mrs. Ovington, I think it was something in the conversation you repeated to her yesterday that I think she is under a misapprehension." Said I: "Mr. Tilton, please remember upon your leaving yesterday you told me that I might tell Elizabeth the whole of your conversation; I have done so as nearly as I could, word for word." That seemed to settle the question. I think nothing more was said then.

Q. Do you recollect whether you then told Mr. Tilton what Mrs. Tilton had said in response to the statement which you made to her, when you repeated the conversation of the day before? A. I don't think I did; I don't remember that I did. Mr. Tilton spoke of her coming before the Committee. Said he: "For what Elizabeth has done, Mr. Beecher should kiss the hem of her garment." Upon the mention of Mr. Beecher's name, Mrs. Tilton got up and left the room and went up stairs. Then I think it was that Mr. Tilton spoke of Mrs. Tilton, and Mr. Ovington spoke of his position. Mr. Ovington asked him why he should go forward in this thing and drag in himself and his family, and Mr. Beecher, a man of his position and standing and goodness—how he could do it. Mr. Tilton then said: "I shall be the Samson which will destroy the temple. I will pull down the pillars of the temple, and

although Mr. Beecher and my family are crushed, he shall be crushed with it."

Q. Well? A. Then he again remarked: "For what Elizabeth has said to that Committee, Mr. Beecher should kiss her hand." Said I: "Mr. Tilton, I hardly think that would look proper just now." Said he: "Metaphorically speaking." Then he said—he started to leave and called Elizabeth. She was up stairs. She did not come. I asked him if he wished to see her again. He said he did. She came down the stairs, standing at the foot of the stairs beside myself, Mr. Tilton facing us, and saying to me, "Mrs. Ovington, Elizabeth I think, has misunderstood me, but I wish you to understand that any kindness shown to Elizabeth is more than shown me, and come what may, do all you can for Elizabeth; whatever you do for her it is more than done for myself." Said I, "Mr. Tilton, I shall be to your wife as true a friend as I can." He left us, placing first one hand on Elizabeth's shoulder, the other on mine, drawing us together while he was conversing in this manner. He directly, I think, then left the house. Then Mrs. Tilton told us of her having left her husband for the first time.

Q. Did you know that Mrs. Tilton had left her husband for good, until she made that statement to you, after the conversation, after he left? A. I did not.

Q. Mrs. Ovington, I will ask you this question: Did—

The Witness—Shall I qualify that Mr. Hill?

Mr. Hill—State the fact, whatever it was. A. I did not know that she had left him for good; I only knew that she had the offer of coming to me at any time that she chose to.

Q. Yes? A. I had made the offer to her.

#### MRS. TILTON UNINFLUENCED BY THE OVINGTONS IN THE DESERTION.

Q. Now, I will ask you this, had you at any time or under any circumstances solicited Mrs. Tilton to come to you and leave her husband and her home? A. I never did.

Q. Do you know whether any of your family did, or not? A. Not that I know of.

Q. Do you know whether your husband opposed it? A. Not strictly opposed her coming to me.

Q. Oh, I don't think it necessary to go into that inquiry between Mrs. Ovington and her husband.

Mr. Hill—What occurred on that subject?

Mr. Beach—We object to it.

Judge Neilson—It sufficiently appears. It does not appear that she was solicited by either of them to do so.

Mr. Everts—All we can do, if your Honor please, is to offer to prove that this family had no action in it.

Judge Neilson—Well, that is enough.

Mr. Everts—And, if we offer the point blank question and it is ruled out, why then—

Judge Neilson—It has been proved sufficiently.

Mr. Beach—Of course we must object to what passed between Mr. and Mrs. Ovington on this subject. It is entirely incompetent evidence.

Judge Neilson—I think we have had sufficient evidence.

Mr. Fullerton—They may offer incompetent evidence until doomsday, but it proves nothing.

Judge Neilson—Well, proceed Mr. Hill.

#### MRS. OVINGTON'S AND MRS. TILTON'S SUMMER TRIP.

Mr. Hill—Mrs. Ovington, how soon after this interview, which you have just given at your house, was it that you left the city for the Summer? A. I think I left the first Monday in August. I think that was the first or second day, was it not?

Q. Did Mrs. Tilton go with you? A. She did,

Q. Now, just state to his Honor and the jury, about how many newspaper men were to visit you before you went away? A. It would be impossible, I think.

Q. Were they very numerous? A. Very many; I think there was not a half hour in the day but there was some call—persons to see—asking for Mrs. Tilton; sending messengers to her as reporters from different parts of the country, and from Brooklyn, to her very great annoyance.

Q. You then left the city? Where did you go with Mrs. Tilton, or she with you? A. I went to Ridgefield, Connecticut.

Q. And from there where? How long did you stay at Ridgefield by the way? A. I think it was eight days; I am not certain. It was one or two weeks. Mr. Caldwell will know.

Q. That, at all events, was your first stopping place? A. It was.

Q. Where did you go from there? A. To Fairfield.

Q. How long did you stay there? A. I think it was two weeks, or nearly two.

Q. And from there you went where? A. From there to Washington, Connecticut, and finding Mr. Gunn encamped at Lake Waramang, a few miles from his house, we went to the hotel and stayed the remainder of the trip there.

Q. How long was that—about how long—I don't ask for the exact time? A. From Tuesday of one week to the following Monday; I think that is correct.

Q. You mentioned Ridgefield, I think, in your examination this morning before, as the place to which Florence went by mistake? A. Yes, Sir.

Q. Whose mistake was that that you referred to? A. It was a misunderstanding. Mr. Ovington supposed that Mrs. Tilton and myself were still—

Mr. Fullerton—One moment. I think Mr. Ovington can tell what he supposed better than his wife.

Judge Neilson—Yes.

Mr. Hill—She went to Ridgefield, by Mr. Ovington's suggestion, and she was then gone to Fairfield.

Mr. Fullerton—That she does not know. How could she know that?

Mr. Hill—She probably knows it as well as you do.

Mr. Fullerton—And no better; that is the difficulty. We don't either of us know it.

Q. She did go to Ridgefield, and from Ridgefield to Fairfield? A. No, Sir; she came from Ridgefield to New-York or Elizabeth, and then receiving the telegram from her mother, on Thursday, I think, to come to Fairfield, she came to Fairfield, and remained with us the rest of the trip.

Q. And who paid her expenses? A. I did; she offered to pay them, Mr. Hill, herself—offered to pay her own and her mother's expenses, but I paid them; I told her I would rather pay them myself; she allowed me to do so.

#### DEBATE ON A DULL TECHNICAL QUESTION.

Mr. Evarts—If your Honor please, if you will allow me to recall, what we consider a matter of some importance, the recent ruling of your Honor excluding the answer of Mrs. Tilton to the communication made to her by this witness under the authority of the plaintiff. We had given in evidence the showing of the letter to Mr. Tilton, and the counsel undertook—this was in Mr. Moulton's examination—and the counsel undertook to show Mr. Tilton's statements made to the witness when the letter was so shown to him, and the question came up whether what Mr. Tilton said should be allowed. We objected to it. Your Honor said: "On what ground is it evidence?" Mr. Fullerton, said: "It is a part of the *res gestæ*. They prove that the letter was exhibited to Mrs. Tilton, and they mean to draw an inference from it." "Mr. Beach—They seek to conclude him by the contents of the letter—his seeing it. Now, what answer did he make?" "Mr. Fullerton—They mean to argue that he acquiesced in the sentiments expressed in that letter. Now they cannot foreclose Mr. Tilton in that way." I argued as I best might against that proposition—that rule of evidence, holding that it did not come within the *res gestæ*. Then Mr. Beach says to me, after one of my arguments: "Counsel will observe that we ask no questions as to the declarations of Mr. Tilton, in regard to the letter which he drafted and sent to Mr. Beecher; the question is as to the letter from Mr. Beecher, which was presented to him." Your Honor then observes: "I understand that. What did he say when he saw that letter? I think he can give that, Sir," speaking to myself. "Mr. Evarts—Doesn't it transcend any rule as yet considered, whereby everything that passed between this witness and third person, including Mr. Tilton, in order to affect Mr. Beecher, has been brought home to him. Now, that has not been done." Your Honor says: "This is a part of the act of receiving the letter. I admit it with that view." "Mr. Fullerton—It was a letter that they put in evidence." I say: "If your Honor please, Mr. Moulton receives a letter from Mr. Beecher, and goes and shows it to Tilton, and the conversation between them is to be given in evidence." Your Honor says: "As a part of the act; yes, Sir." Mr. Beach says: "That is what they prove—showing the letter to Mr. Tilton—for without that they could not introduce it at all, and upon the theories that he approved it when it was brought to his attention. Mr. Evarts—The theory is of proving that he made the answer which we have given in evidence. Judge Neilson—We will receive what was said in immediate connection of receiving the letter. Mr. Evarts—Between Mr. Tilton and Mr. Moulton"—what was said between them. Your Honor says, "Yes." I then closed the matter: "Your Honor will be so kind as to note our exception."

Now, to show how far this went in the actual answer,

Mr. Moulton goes on to state that when this letter of Mr. Beecher to him, Moulton, complaining of his retaining or publishing private letters—the point was what Mr. Tilton said upon having that letter shown, and then Mr. Moulton went on to narrate a considerable statement, and your Honor recognized it as coming within the rule that you had established. The witness says:

He said to me, "Don't you remember in that connection that Mr. Beecher wanted me to go and see Mrs. Hooker, and that I did go to see Mrs. Hooker and that I did for the purpose of quieting her as against the making of the charge of adultery against him, charging her with adultery; and don't you remember upon the same authority, I mean that she proposed to charge Mr. Beecher and Mrs. Tilton with adultery, and I came back and told Mr. Beecher that, and he seemed to be satisfied with it, and was delighted with it; don't you remember that? He said to me, and he recalled it, and I did remember it."

That is the situation which we suppose that Mrs. Tilton is placed in, with this further point; that this communication made through this witness to Mrs. Tilton of the conversation that had occurred between Mr. Tilton and herself, the witness, was made by the permissive authority, or the instruction, as it may be construed, one way or the other, of this plaintiff. Now it becomes, as I imperfectly argued to your Honor when the question first came up, a part of the communication, so as that what your Honor has characterized as a part of the act of receiving the communication, what the party to whom the communication was made said in the act of receiving the communication. Now, that it was in writing instead of a conversation, cannot, as we apprehend, make any difference, and your Honor's ruling seems to us to cover the proposition which we have now occasion to make, as it did against the objection to the situation then produced.

Mr. Beach—The proposition is, Sir, to prove what was said by a third person, not a party to this controversy, upon hearing the narrative of a conversation on the part of Mr. Tilton, which he authorized to be communicated to her. On the first ruling upon this proposition, your Honor was of the opinion that the license given by Mr. Tilton to Mrs. Ovington to repeat what he had said in the interview with Mrs. Ovington to Mrs. Tilton was by no means an authority to receive any declarations which Mrs. Tilton might make upon the repetition of that interview; and that would seem to be very obvious. Mr. Tilton pronounces the conversation confidential, with a single exception, leaving it entirely to the option of Mrs. Ovington whether or not she should make the communication to Mrs. Tilton, conferring upon her no authority, delegating to her no agency, but qualifying the restriction which he placed upon her in regard to a possible communication of that conversation to third parties. Now, the counsel suppose that the ruling which your Honor made upon the proposition that where a statement by the authority of one party to a litigation is made to the other party to the litigation, that the manner in which that communication is received by the party to the litigation to whom it is made is admissible, and for the reason, Sir, that the action and the conduct of the party to whom that communication is made serves to

give character and significance to the communication itself. To make the cases entirely parallel, the license of Mr. Tilton should have been to Mrs. Ovington to communicate the interview he had with her to Mr. Beecher.

Mr. Evarts—Mr. Beach, you are mistaken in supposing that there was any such relation as that. The letter then in question was a letter written by Mr. Beecher to Mr. Moulton, and which Mr. Moulton of his own motion had shown to Mr. Tilton. It was no part of Mr. Beecher's letter to Mr. Moulton that it should be shown.

Judge Neilson—Which party proved in that case that the letter was shown to Mr. Tilton, do you remember?

Mr. Beach—They proved it.

Judge Neilson—So I understand. Well, is not that the distinction?

Mr. Beach—That is just the distinction which I am endeavoring to present to your Honor.

Mr. Evarts—But it was not by any authority of Mr. Beecher that Mr. Moulton has shown it to Mr. Tilton.

Judge Neilson—You prove that the letter was shown to Mr. Tilton and then they interrogate as to the manner in which Mr. Tilton received it.

Mr. Beach—Precisely, Sir.

Judge Neilson—That distinguishes the case from the present.

Mr. Beach—And that would have made the illustration which I give perfect; that is, a communication by Mrs. Ovington of this conversation with Tilton to Mr. Beecher with Tilton's consent and approbation, authorizing her to make that repetition. If that had been the state of this case, why, it would have been parallel with the ruling which your Honor made upon the previous question to which the counsel has referred.

Judge Neilson—In the previous instance, if I remember right, one party proves a presentation of a letter to Mr. Tilton.

Mr. Beach—Yes, Sir.

Judge Neilson—The party does that by his own election, and with his own view, and then the other party, as I concede, with a right, did call for what was said in that immediate conversation.

Mr. Beach—Yes, Sir.

Judge Neilson—And in that instance the rule of law was recognized and illustrated. I think you illustrated it by a supposed assault and battery.

Mr. Beach—Yes; that was the precise ruling which your Honor made.

Judge Neilson—Yes, Sir.

Mr. Beach—And you made it because the action and conduct of the party to the litigation to whom the communication was made was material and essential to the issue, but the conduct of Mrs. Tilton at the time Mrs. Ovington made this communication to her is entirely unimportant.

Judge Neilson—Especially as they had their own election showing that the communication was made, and they also wanted to follow it up.

Mr. Evarts—We will look at the record a little further.

Judge Neilson—That distinguishes the case. I still think that the disposition made of it a moment ago was correct. I am

satisfied about this, gentlemen. Proceed, Mr. Hill. Mr. Hill, will you proceed with your examination?

Mr. Hill—There is only a single question.

Judge Neilson—I have spent time enough on it.

Mr. Morris—The Court has decided the question.

Mr. Hill—Well, the Court is able to speak for itself, Mr. Morris.

Mr. Fullerton—You don't seem to be able to hear what he says.

Mr. Everts—I told your Honor I would look at the record.

Judge Neilson—I think we have the record.

Mr. Everts—Your Honor is correct, I think, in the view that on the cross-examination we proved that the letter addressed to Mr. Moulton by Mr. Beecher had been shown to Mr. Tilton. Your Honor was right about it.

Judge Neilson—Then the other side claims the right to show—

Mr. Everts—To show this conversation, what he said upon its being shown to him in that regard. Now, the difficulty there was this, that his being a party to this action made a difference in his favor, because then it would be, as it were, making testimony for himself. It was on that general proposition that our objection arose, that what the party said himself could not be given in evidence for himself. Here we have the element which was entirely wanting in that case, and that is, that the communication then up as the occasion for the testimony which was sought to be introduced and objected to—the communication was made, not by authority of the party, the opposite party, not by Mr. Beecher's authority. It was a communication that so far as Mr. Beecher and Mr. Moulton were concerned began and ended between them. Mr. Moulton then takes the letter, and by means of taking that letter to Mr. Tilton brings into evidence the manner in which Mr. Tilton received the letter. Now, your Honor says that because we show on our side that the letter came to Mr. Tilton's knowledge and notice, that that makes the difference, and gives them the right; but we show in this situation that the communication was made by the authority of Mr. Tilton to his wife, and that the reception is a part of the *res gestæ*, just as much in this case as it was in that. It does not depend, nor is it varied or affected by any diversity of circumstances; nor, we submit, does the question of whether or no it is justly a part of the *res gestæ* depending upon the question which party in the litigation introduces this or that branch of the evidence. We have the conversation with Tilton that binds him. We have the communication by his permissive authority to his wife, and under that authority we have proved it, and now the question whether of this *res* the wife's reception forms a part which leaves the truth incomplete without its statement, is precisely the same question as whether the communication of the letter to Tilton—the communication of the letter to Moulton, made by himself to Tilton—leaves the truth incomplete unless, as a part of its *res*, its reception is proved.

Judge Neilson—In the former instance the defendant's counsel proved, as they had a right to, that the letter was presented to Mr. Tilton by the witness, Moulton. The defendant's

counsel elected to put that evidence in. That, as the Court at that time understood it, gave the plaintiff's counsel the right to interrogate as to the act of presentation and of reception; what constituted part of the act, the act of delivering the letter and the act of receiving it. And that is strikingly distinguished from the present case, where the defendant's counsel elects to show that this conversation was communicated to Mr. Tilton, and wishes to follow it up by showing what transpired in that connection to the extent of giving her declarations. I think this disposition, made a moment ago, of this question is correct.

Mr. Hill—Your Honor will be so good as to note my exception. Permit me, your Honor; counsel have suggested that I present another question, with the view of presenting this exception more pointedly. [To the witness.] When you told Mrs. Tilton, on the way to Coney Island, in repeating the conversation to her which had occurred upon the piazza at your house, between yourself and Mr. Tilton—when you told her that her husband had stated, as his charges against herself and Mr. Beecher, did she say anything in respect to those charges, admitting or denying them?

Mr. Fullerton—Objected to.

Mr. Hill—If so, what did she say in that respect? That presents it.

Judge Neilson—That is ruled out.

Mr. Hill—That is objected to; overruled; and exception.

Judge Neilson—Are you through with your examination, Mr. Hill?

Mr. Hill—Yes, Sir.

Judge Neilson—[To the plaintiff's counsel]—Gentlemen, will you proceed?

#### CROSS-EXAMINATION OF MRS. OVINGTON.

By Mr. Fullerton—Mrs. Ovington, you have spoken of several interviews with Mr. Tilton in the Summer of 1874; have you named all of the interviews that you had with him? A. No, Sir.

Q. After Mrs. Tilton came to your house? A. No, Sir.

Q. You had other interviews with him? A. Yes, Sir.

Q. How many? A. Two or three, I think.

Q. Where did they take place? A. In the parlor; front parlor, I think.

Q. Of your house? A. Of our house; yes, Sir.

Q. And in whose presence? A. The first one?

#### OTHER INTERVIEWS BETWEEN MR. TILTON AND THE OVINGTONS.

Q. I refer now to the interviews of which you have not spoken in your direct examination? A. Yes, Sir; I think the first interview I had was when Mr. Charles Storrs was there, when Mr. Tilton arrived, on a Sabbath in July; my husband was also present. The second interview—there may have been another; I think not until September—I don't know whether it was the first of September or July; but there was a second interview a Sabbath afternoon, when I saw him alone, with the exception, I think, of about fifteen minutes before he left. My husband came home and entered the parlor.



Q. Those two interviews, then, and those to which your attention was called on your direct examination, are all that you had with Mr. Tilton, were they? A. It is all that I can recall.

Q. Now? A. Yes, Sir—it is possible—that is all, I think.

Q. Well, if any other occurs to you hereafter, you can name it? A. Thank you.

MISS FLORENCE'S VISITS TO HER MOTHER.

Q. You spoke of Florence's visits to your house until her father forbade her, did you not? A. Of her remaining at our house until her father forbade her.

Q. How long did she remain at your house? A. One night.

Q. And when was that? A. On the night of our return from Washington, Conn.

Q. Were you present when her father forbade her? A. I was not.

Q. Then you don't know that he did forbid her, of your own knowledge? A. I have only her word for it.

Q. You don't know of your own knowledge, that he did forbid her; do you? A. Do you mean that I didn't hear it from Mr. Tilton? Is that what you mean?

Mr. Fullerton—Yes, ma'm.

The Witness—I did not.

Mr. Beach—Well, you don't know from him? A. No, Sir; I don't.

Mr. Fullerton—Did she visit your house after that? A. Yes, Sir.

Q. Up to what period? A. I should think about three weeks ago; I am not positively certain; I think it is about that time, perhaps—

Q. Was she told not to come again, at that time? A. I understood she was.

Q. Were you present when she was so told? A. No, Sir.

Q. But she has not been there since? A. She has not been there since.

MISS FLORENCE WISHES TO ATTEND HER MOTHER IN COURT.

Q. Were you present at any time when any request was made of Florence to attend her mother on this trial from day to day? A. No, Sir; I was not.

Q. Did you hear anything said to her upon that subject? A. I did not.

Q. Were you not aware of the fact that she was requested to attend with her mother at this trial?

Mr. Hill—We object.

The Witness—No, Sir; I was aware of the fact that she wished to attend her mother on this trial, and plead with her mother, or requested two or three times over that she might accompany her mother here, saying that it would be a favor to her if her mother would allow her to come into the court room with her, if she was to enter the court room.

Mr. Fullerton—When did that take place? A. It was shortly before the trial; I think the Sabbath before.

Q. At your house? A. Yes, Sir.

Q. You heard this request made by Florence? A. No, Sir; I did not.

Q. Did not hear it? A. I say she made the request.

Q. I say, did you hear the request made? A. I did not.

Q. Then you don't know that it was made of your own knowledge? A. I don't.

Q. No; it is all hearsay, then? A. Mrs. Tilton's word for it.

Q. I don't ask who told you; it was all hearsay that that was so? A. Yes, Sir; I was not present.

Mr. Shearman—You asked the lady if she was aware of it.

Mr. Beach—No, Sir; we did not ask if she was aware of it. You objected to that question when we put it to the other point.

Mr. Shearman—We objected to it and allowed it to pass.

Mr. Beach—No, Sir; we asked this lady whether she was aware that Miss Florence had been forbidden to call on her mother at the house. That the counsel objected to. We put another question, Sir, and she goes on and states hearsay.

Mr. Evarts—Well, if your Honor please, they asked her whether she was aware that Florence had been forbidden, and she answers no, that she was aware that she had desired to attend.

Mr. Fullerton—And was not aware of it at all when she said so, except by hearsay.

Mr. Evarts—Just as much as she was what she was aware of, as what your question called upon her to be aware of what you asked her.

Mr. Fullerton—Well, I am not aware of what that means, and cannot answer it.

The Witness—Mr. Fullerton, if you will allow me, I am not accustomed to the witness stand; I wish to answer you directly.

Mr. Fullerton—I have not any doubt about that, Mrs. Ovington, at all, and I did not mean to censure you in the slightest degree by anything that I said.

Judge Neilson—I think the witness was perfectly fair about it.

Mr. Fullerton—I understood you as relating what you knew of your own knowledge, and it turned out that you did not, and that is all there is of it.

Mr. Beach—[To Mr. Fullerton]: Now, move to strike it out.

Mr. Fullerton—Yes, Sir; I am going to that. Now, Sir, I move to strike out what is said upon that subject.

Judge Neilson—Yes, Sir. Proceed now.

Mr. Beach—I think Mrs. Ovington should be cautioned, if your Honor please, in answer to our questions, not to give hearsay testimony any further. We cannot tell whether she is speaking from knowledge, or from what she may have heard from others.

Mr. Hill—I submit that when she attempted to say what she was aware of, the gentleman ought not to make that suggestion.

Judge Neilson—The question "Were you aware of a certain thing?" would, in the estimation of a lawyer, or of counsel putting it, call for personal knowledge; in the estimation of a witness not accustomed to those proceedings, it would call for general information.

Mr. Fullerton—But I did not ask her for general information. I did not ask her if she was aware of the fact at all.

Judge Neilson—It is right enough now.

The Witness—I do not understand it.

Mr. Everts—If we were to criticise the question in the lawyer's intelligence of it, we should apprehend that it was framed so that he might possibly draw out information not within her own knowledge that would be favorable to them, or it would not have been objected to.

Judge Neilson—Well, if that had been the case on your motion, I should have stricken it out as being hearsay.

Mr. Everts—That may be, but she answers in the same sense, "I was aware of that state of things."

Mr. Beach—We may as well understand this. Our question put to this lady was: "Were you not aware that Miss Florence was requested to attend her mother?" She answered that question, Sir, and then goes on, irresponsively, to state the contrary fact from hearsay—utterly inadmissible.

Judge Neilson—Well, I think that is understood now.

Mr. Fullerton—Then that is out. [Some suggestion being made that it was about time to adjourn, Mr. Fullerton looked up at the clock.]

Judge Neilson—I will watch the clock, Mr. Fullerton; you go on. [Laughter.]

#### THE INTERCOURSE BETWEEN THE TILTONS AND OVINGTONS AGAIN DESCRIBED.

Mr. Fullerton—I was afraid your Honor might omit it. [To the witness.] Now, Mrs. Ovington, I want to call your attention to this first interview in your house, when your husband was at the gate. A. What did you say?

Q. Your interview with Mr. Tilton—with Mrs. Tilton—in your house, when your husband was at the gate?

Judge Neilson—That was in Mr. Tilton's house, I think.

Mr. Fullerton—In Mr. Tilton's house, I should have said.

The Witness—I do not understand you.

Mr. Fullerton—You say that Mr. Tilton returned after conversing with your husband, and came into the house? A. No, Sir.

Q. Did you not? A. No, Sir.

Mr. Fullerton—I misunderstood you.

Mr. Beach—No, she didn't say that.

Mr. Fullerton—Did you have any conversation with Mr. Tilton on that day? A. None but the remarks that I made, that I gave; after I had gone into the carriage that day—that afternoon.

Q. And it was the next day, was it, that you came? A. The following morning.

Q. The following morning you came there? A. The following morning, Monday.

Q. And then it was that you had the conversation with Mr. Tilton? A. In Mr. Tilton's parlor.

Q. Have you related all which took place, that you remember, at that time? A. I think I have; there might have been more said; probably was.

Q. Is that the conversation when your husband—when Mr.

Tilton requested you to inform your husband that he wished him to call upon him? A. It was.

Q. And that he would open his heart as a brother? A. Yes, Sir.

Q. What else did Mr. Tilton say at that time? A. He said he thought my husband to be a just man, that he would like to see him, to talk over this matter.

Q. Did he say anything about this difficulty at that time, in which he was involved? A. He did not particularize; I think he may have referred to it; I think he did; I do not remember in what words.

Q. Didn't he say in that conversation that his defense, which he had made, and was to make, was forced upon him? A. Yes, Sir.

Q. Didn't he say that he would be destroyed, unless he defended himself, by those imputations that were cast upon him? A. Not at that interview he didn't.

Q. Did he speak of Dr. Bacon's letter, and of his articles in *The Independent* at that time? A. I do not know whether it was that morning or the morning on the piazza at our house; he spoke of it at one interview.

Q. You are not able to distinguish between the two later views, probably? A. No, Sir, but he did make those remarks.

Q. Well, if you can recollect anything else that he said on the Monday morning that you have spoken of, I wish you now to relate it. A. I do not recollect anything except that he was glad to have Elizabeth go out, that he thought it would benefit her, he was glad that she should divert her mind; some such remark as that is all I remember.

Q. He spoke kindly of her, did he? A. Very kindly: yes, Sir.

Q. Well, the following morning, I understand, you called there—July 6th? A. Yes, Sir.

Q. And took her out to drive? A. Yes, Sir; in the morning.

Q. Well, the following day? A. The following day was not July the 6th.

Q. I so noted it; perhaps I am wrong. Then it was July 6th, at all events, that you took her out to ride? A. The second ride; yes, Sir.

Q. And you went to the Park? A. Yes, Sir.

Q. Did you go to the Park first? A. Yes, Sir.

Q. Then you returned to the city, as I understand you? A. Yes, Sir.

Q. And you left Mrs. Tilton at your house? A. Yes, Sir.

Q. At her request? A. Yes, Sir.

Q. Did you go anywhere else that day, except to the Park? A. I did.

Q. Where did you go? A. With Mrs. Tilton, do you mean?

Q. Yes? A. I didn't go anywhere with Mrs. Tilton but to the Park and to my own house.

Q. And after you arrived at your house where did you go—anywhere? A. Yes, Sir.

Q. Where? A. To Mr. Beecher's house.

Q. What time in the day was that? A. I should judge about four o'clock, as well as I could remember.

Q. How long did you stay at Mr. Beecher's house? A. I did not enter; Mr. Beecher wasn't at home.

Q. How did you learn that fact? A. The servant told me so.  
 Q. At the door? A. At the door; I didn't enter.  
 Q. Was Mr. Beecher whom you wished to see? A. I wished to see Mr. Beecher.  
 Q. And not Mrs. Beecher, or any other member of the family? A. Mr. Beecher.  
 Q. Well, did you inquire where Mr. Beecher was? A. I did.  
 Q. Did you learn? A. No, Sir.  
 Q. Did you make any further effort to find him that day? A. I did.  
 Q. What effort did you make? A. I called at Mr. Moses Beach's house, thinking he might be there; I called at Mr. J. T. Howard's house; then, returning, to my own house.  
 Q. You didn't find him at either of those places? A. No, Sir.  
 Q. Did you leave any message for him at either of those places? A. At his own house I did.  
 Q. What message did you leave? A. I asked the servant to please say to Mr. Beecher that Mrs. Ovington had called and wished to see him particularly.  
 Q. Is that all the message that you left; as near as you can recollect? A. I asked at what hour he would be at home. She said she thought at six o'clock, for his tea. I said to say to him that if I were able I would try to call around and see him; that I was very anxious to see him.  
 Q. Yes: did you know at that time that the Committee was called? A. I did not.  
 Q. Didn't know anything about it? A. No, Sir.  
 The Court here took a recess until two o'clock.

MRS. OVINGTON'S CALL ON MR. BEECHER.

The Court met at 2 p. m., pursuant to adjournment.

Maria N. Ovington was recalled, and the cross-examination resumed.

Mr. Fullerton—At the time that you left the message for Mr. Beecher, Mrs. Ovington, did you request that he should call to see you? A. No, Sir.

Q. Did you appoint a time when you would call again to see him? A. I said if he would be in at six o'clock, if I were able I would call around to see him.

Q. Did you call at that hour? A. No, Sir.

Q. Did you go to Mr. Beecher's house again that day? A. Yes, Sir.

Q. At what time? A. A little past six, I think it was; between six and seven o'clock.

Q. That evening? A. That evening.

Q. Did you desire to see him in regard to any matter of your own? A. No, Sir.

Mr. Hill—We object.

Judge Neilson—We will take that, I think. Go on, Sir.

Mr. Hill—What she desired—without expressing it.

Judge Neilson—Did she desire to see him on any matter of hers?

Mr. Fullerton—She would not express the desire if she hadn't any.

Judge Neilson—It is a very harmless thing, and may be preliminary to something else.

Mr. Fullerton—That is the reason why they object.

Judge Neilson—Go on.

Mr. Fullerton—You found Mr. Beecher at home then? A. Yes, Sir.

Q. Did you have an interview with him? A. I did.

Q. How long in duration? A. I could not say; I should think twenty minutes; perhaps a little longer.

Q. Any third person present? A. Yes, Sir.

Q. Who was present? A. Gen. Tracy.

Q. Did you meet Gen. Tracy there? A. I did.

Q. By appointment? A. No, Sir.

Q. Did you know that he was going before you went? A. I knew he was to see Mr. Beecher before I came there.

Q. How did you learn that fact? A. He called at my house.

Q. That afternoon? A. About five o'clock; yes, Sir.

Q. Then, we will return to your house. Was that Gen. Tracy's first call at your house? A. It was.

Q. Were you acquainted with Mr. Tracy up to that time? A. I had never seen him to know him before.

Q. He was a stranger to you, then? A. A stranger; yes, Sir.

Q. Did he come at your request? A. No, Sir; he did not.

Q. Did you know that he was coming before he came? A. No, Sir; I did not.

Q. It took you by surprise, then, somewhat, that he called, did it? A. Yes, Sir; I did not know he was coming; yes, Sir, it did.

Q. Who presented you to him, or he to you? A. He presented himself.

Q. Introduced himself? A. Yes, Sir.

Q. And stated his business? A. Yes, Sir.

Q. Was that before or after you first went to Mr. Beecher's house? A. After my first call at Mr. Beecher's house.

Q. Was it agreed between you and Mr. Tracy that you should go to Mr. Beecher's house? A. Providing Mr. Beecher would see me I was to go to Mr. Beecher's house.

Q. Did you learn before you did go the second time whether he would see you or not? A. I did.

Q. From whom? A. From Mr. Shearman.

Q. The gentleman upon the other side? A. Yes, Sir.

Q. And what time, pray, did you see Mr. Shearman? A. I did not see Mr. Shearman; I received a note from him soon after six o'clock.

Q. Have you that note? A. I have not; I think not; I have not found it.

Q. You think it is destroyed? A. I think it is.

Q. Do you know how Mr. Shearman learned that you wanted to see Mr. Beecher? A. I presume—I don't know.

Q. Did you see Mr. Shearman at Mr. Beecher's house when you first called? A. I did not.

Q. Were you informed that Mr. Shearman would give you information as to whether Mr. Beecher would, or would not see you? A. I was not.

Q. What time did you get Mr. Shearman's note? A. Shortly after six o'clock.

Q. Shortly after six o'clock? A. Yes, Sir.

Q. And you went then directly to Mr. Beecher's house, did you? A. I did.

Q. Did you expect to see Mr. Tracy there? A. No, Sir; I did not.

Q. Now, Mr. Tracy came to your house after you met him at Mr. Beecher's? A. The second time he did.

Q. And how long after you saw him at Mr. Beecher's did he go to your house the second time? A. I should think half an hour, perhaps; I am not exact.

Q. Did he return with you? A. He did not.

Q. Did he return to your house before or after you did? A. After I did.

Q. After you did? A. Yes, Sir.

#### THE CONVERSATION AT THE INTERVIEW WITH MR. BEECHER.

Q. Now, Mrs. Ovington, please state what took place between you and Mr. Beecher? A. I told Mr. Beecher I had called in the afternoon with a message from Mrs. Tilton to him, saying that she wished to say to him that she wished to meet some of the brethren of the church, and if he could arrange that she might, or if she could see some of them, it would be a very great privilege.

Q. Well, that is not all, I presume, is it? A. No, Sir; I asked Mr. Beecher what he thought of it. I asked him if he could see Mrs. Tilton. He said he could not, but he would give the message to me, saying that if Mrs. Tilton had anything to say in the cause of truth, he would be very glad, indeed, for her to say it. I then said to him the second time: "It is by her request that she should see some of the brethren of the church; she wishes to speak with them." Mr. Beecher—in the first place when I went in, he read from a paper that he held, this same remark. He said that as I had called in the afternoon, Gen. Tracy he had sent to me to know what I wished of him, and when Gen. Tracy returned to Mr. Beecher he told him that I had a message from Mrs. Tilton. "I," he says, "have written this on the paper, but I will read it to you," and he read it aloud, and that was the substance that he said to me afterward: "If Mrs. Tilton has anything to say in truth—truthfully in regard to this subject, I shall be very glad to have her." I said to him: "Mr. Beecher, could you have seen Elizabeth Tilton as I have this afternoon, you could not doubt her desire to come forward and take her stand, and what she considers to be the right. She says she utterly denies the fact that she has said anything in regard to this matter lately. The Bacon letter was published without her knowledge. When that letter was published, but a very short time afterwards, she went to her brother's office, in New-York—Mr. Joseph Richards—and told him she wished Mr. Oliver Johnson sent for to confer with them. Mr. Johnson came to the office. Mrs. Tilton said that she would like to publish a card, taking, saying, or writing the truth of this matter." That was the amount that she said about Mr. Richards and Mr. Johnson. I may not have worded it correctly. Mr. Richards advised her taking no step in the matter. He thought it best for her not to do so. Mr. Johnson told her he thought it best to consider that; he would think it over, but not to do it immediately.

Said I, "Mr. Beecher, she has also gone to her father, Judge Morse, and he told her he thought the time had not yet come; he thought a way would be opened to her. She told me this afternoon, 'When I woke this morning I felt the way was opened, and I believe the Lord has sent you to me this afternoon to help me in this way.'" I told Mr. Beecher my remark to Mrs. Tilton at that time. Said I, "Anything that I can do to help or aid you I shall very cheerfully do." And again I told Mr. Beecher her position, that had she weighed this matter carefully—said I, "When Mrs. Tilton made these remarks to me, that she wished to see some of the brethren of the church, I said to her, 'Mrs. Tilton, have you weighed this matter well? Do you consider what it will lead to?' She hesitated an instant and then replied: 'Yes, I have well considered and prayed over it. It may end in a separation from my husband.'" Says I, "I asked her, 'Is that all?' Says she, 'I may lose every child I have; I may lose every friend in the world, but, Mrs. Ovington, that will not deter me.' Says I, 'Thank God for that.' I then made up my mind"—

Q. No, no, not your mind. Tell us what you told Mr. Beecher? A. I told Mr. Beecher, I then and there made up my mind—

Q. Ah, well, that will do. A. That anything I could in any way serve Mrs. Beecher—Mrs. Tilton, as a true, firm friend, I intended to do it, and I then said to her when she made this remark, as I said to Mr. Beecher—said I, "I said that I would be her friend so long as I lived, and, Mr. Beecher, I intend to be that." Then I said to him again: "Mr. Beecher, she is anxious to see some of the brethren of the church. How can it be arranged?" He turned to Gen. Tracy, and said he, "Will the gentlemen meet to-night." Then, turning to me, "There is a committee from the church appointed to investigate this matter, and if Mrs. Tilton wishes to see them at any time, I think they can meet her." Says I, "When?" Says he, "When she wishes." Says I, "The sooner the better." "Why?" "Because she has said to me that she has made up her mind to request me to attend to it as soon as possible." Mr. Beecher then said to Gen. Tracy, "Could the gentlemen be got together?" or, "Will they be got together?" I don't remember which phrase he used. Gen. Tracy said he thought they could. Says I, "Mr. Beecher, I cannot answer for Mrs. Tilton. She is waiting at our house for your answer. I will go back and give it to her, and if you will send around, I will give you her answer." I then went home and gave it. Is that all you wish?

Q. Yes, that is all. This paper that Mr. Beecher read from was prepared, as I understand you, before you got there? A. Yes, Sir.

Q. Please repeat again what it contained. A. He said the paper—I don't think it was headed or signed; I don't remember that. It was but a piece of paper, and as he entered the room he was evidently shaking it, or was shaking it to dry the ink, as I supposed. He held the paper and read from it two or three lines.

Q. Please repeat as near you can recollect what was in that paper? A. I think he referred to my having asked to see him, with a message from Mrs. Tilton; I think so.

The wording I don't remember; I felt—I must not speak my own feelings.

Q. Please not, ma'm? A. I am unused to the stand, you will see."

Q. Was the paper addressed to you? A. I do not think it was. I did not see the paper.

Q. Now, proceed. A. "Anything that Mrs. Tilton can say truthfully in regard to this matter I should be very glad to have her say."

Q. Well, you were requested by Mrs. Tilton to go down and see Mr. Beecher, were you? A. I was.

Q. And say to him that she wished to see some of the brethren? A. I was.

Q. Well, did it occur to you that Mrs. Tilton could see the brethren without asking Mr. Beecher to assist her or help her in any way? A. I proffered my friendship.

Q. No; I understand that. Did that occur to you at the time? A. No, Sir.

Q. That there was no use in seeing the brethren through Mr. Beecher? A. No, Sir.

Q. Your husband was one of the brethren, wasn't he? A. He is a member of the church; yes, Sir.

Q. And these gentlemen he did meet at your house lived in the neighborhood, did they not, some of them? A. I think most of them did.

Q. You were not requested to go and see any of the brethren and ask them to confer with her, were you? A. No, Sir.

Q. Did anything else occur at Mr. Beecher's before you left? A. I do not remember anything else.

Q. Are you quite sure that Mr. Beecher asked whether the Committee would meet? A. He asked Gen. Tracy if the Committee were to meet that evening.

Q. When was it?

Mr. Beach—What did Gen. Tracy say?

Mr. Fullerton—What did he reply? A. He expected they would.

Q. Wasn't this a special meeting? A. I do not know, Sir.

Q. Didn't you learn that at the interview at Mr. Beecher's? A. No, Sir.

Q. You did not? A. No, Sir.

Q. Well, you didn't know that a meeting was appointed at your house, did you? A. The meeting was not then appointed at my house.

Q. Did you know at that time that the Committee had met? A. I had not known it until I—until Mr. Beecher told me so at that time.

Q. You didn't know that the Committee had been appointed, did you? A. I did not know it, Sir.

Q. Although it was appointed by Mr. Beecher? A. I did not know it.

Q. When was it that Mrs. Tilton told you that it might lead to a separation from her husband? A. On the drive to the island.

Q. Coney Island? A. No; on the drive to the Park, on the 6th, after I left her house.

Q. That is the same day that you went to Mr. Beecher's house in the evening? A. Yes, Sir.

Q. What did she think might separate her from her husband? A. Taking this stand, as she said to me.

Q. Conferring with the brethren? A. She said she wished to speak to some of the brethren of the church in regard to this matter, the publication of the Bacon letter, as Mr. Tilton had published it unawares to her.

Q. Well, what she had to say to the brethren I suppose was said that night to the Committee in your presence? A. It was; I suppose so.

Q. When she said that did you extend any invitation to her to come to your house? A. Said I: "As long as I live I will be your friend." When she said, as she afterwards did, "I may not have a roof to shelter me," said I: "You will; as long as I have one I will be your friend."

Q. What did you say to her about coming to your house? A. Said I, "Come; whenever you wish to come to my house you can come."

Q. And that was on the 6th, on the road to the Park? A. It was on the 6th of July when she said that she might not have a roof to shelter her.

Q. You went to Coney Island, too, did you? A. Not that afternoon.

Q. How soon after was it you went to Coney Island? A. The Friday following.

Q. Before we come to that we will ask a few questions more about the meeting. Gen. Tracy came back the second time to your house? A. Yes, Sir.

Q. Was Mrs. Tilton there then? A. She was in the house, but up-stairs.

Q. How long had she been there when Gen. Tracy arrived? A. From six o'clock. She said that she would return at half-past six; she returned at six.

Q. When did she say she would return at half-past six? A. When I took her home in the afternoon.

Q. There was an appointment, then, that she should be at your house at six o'clock—half-past six? A. Half-past six; yes, Sir.

Q. And were you then to convey to her whatever information you got by your visit to Mr. Beecher? A. I was.

Q. That was the understanding between you? A. That was the understanding; yes, Sir.

Q. And she came at 6? A. She came at 6.

Q. Did you have an interview with her in the presence of Mr. Tracy? A. I did not then.

#### MRS. TILTON'S MEETING WITH GEN. TRACY AND THE COMMITTEE.

Q. Where was Mr. Tracy—where did she and Mr. Tracy first meet? A. In the back parlor, in the presence of Judge Morse.

Q. The Judge had arrived then? A. She had gone for her father and returned with him. I think I opened the door myself, and ushered them into the back parlor. Judge Morse introduced Gen. Tracy to Mrs. Tilton.

Q. Was Judge Morse a member of Plymouth Church? A. I do not know, Sir.

Q. You don't know that he is not? A. I do not; I know nothing about it.

Q. What time was it when you and Mrs. Tilton went down to tea? A. I think it was half-past—no, it was about 8 o'clock, I think; I am not positive, but it was from half-past 7 to 8, I think; about 8 o'clock.

Q. Mrs. Tilton had been there then an hour and a half or two hours? A. No, Sir.

Q. She came at 8, did she not? A. Yes, Sir.

Q. Well, you went down at half-past seven or eight o'clock? A. In the meantime she had left the house to go for her father, Judge Morse.

Q. Then she came to the house at 8 o'clock, you say? A. She did.

Q. She did not bring her father then? A. No, Sir.

Q. Was Gen. Tracy there then? A. He was not; he had left.

Q. When he came back did he inquire for Mrs. Tilton? A. He did not.

Q. Did you convey a message from Tracy to Mrs. Tilton? A. I did not.

Q. Now, where did they stay after their return, Tracy and Mrs. Tilton, until Mrs. Tilton went down to tea? A. Mrs. Tilton left our house to go for Judge Morse. Gen. Tracy soon after that left to take his dinner. He then returned after his dinner to the house. A very few moments afterwards Mrs. Tilton and Judge Morse rang the bell. I opened the door and ushered them into the back parlor, as I said before.

Q. Now, my question is from that time up to the period when you and Mrs. Tilton went down-stairs to tea, where did those people remain? A. Gen. Tracy left the house to call the Committee together. He returned with the Committee, and remained in the back parlor until she was nearly through her tea. Then he came down into the dining-room, and was there, as I say.

Q. When was it that he said he wanted to see Mrs. Tilton before she went before the Committee? A. When he returned with the Committee, he said to my husband he would like to see Mrs. Tilton for a moment before she came up-stairs.

Q. Did he give any reasons? A. He did not.

Q. Where were you then? A. I was in the dining-room.

Q. When he said this? A. No, Sir. I was in the dining-room when he said it. He said it to my husband in the parlor, where the gentlemen of the Committee were. I was down-stairs in the dining-room, with Mrs. Tilton.

Q. And you heard it? A. I did not hear it.

Q. I asked you if you heard it. A. I didn't understand you.

Q. Gen. Tracy came down then into the dining-room? A. He did; yes, Sir.

Q. He had then been presented to Mrs. Tilton? A. He had, by Judge Morse, previously.

Q. Was Mrs. Tilton then taking her tea? A. She was.

Q. Did Mr. Tracy give any excuse for coming down there? A. I don't know that it was an excuse. I can tell you what he said, if you wish that.

Q. You have already testified to what he said.

Mr. Beach—No.

The Witness—I have not. Excuse me.

Mr. Fullerton—You have said some things that had taken place down there? A. I think—

Q. No, don't think; I only want to know the facts. How long did Mr. Tracy stay down there with you and Mrs. Tilton? A. I should think three minutes. I didn't notice; I should think that time.

Q. Did he converse with her whilst he was there? A. He did.

Q. In your presence? A. In my presence.

Q. And then? A. Went up stairs to the gentlemen in the parlor.

Q. And how long after he went up stairs before Mrs. Tilton made her statement to the Committee? A. She finished her tea; she was nearly through, I think, when Gen. Tracy came down; she finished it, then, as I said before, she went to the second story for prayer, and returned to the back parlor, and met the gentlemen of the Committee.

Q. How long after she entered the parlor before she made her statement? A. Almost immediately.

Q. Was she sworn? A. No, Sir.

Q. No oath was administered to her? A. No, Sir; not that I heard.

Q. Now, Mrs. Ovington, be kind enough to tell us who were present that night when that statement was made? A. I will, as near as I can remember. Mr. Sage, Mr. Claflin, Mr. Winslow, Mr. Cleveland, Mr. Storrs, Gen. Tracy; I think that was all.

Q. Was there a shorthand writer there? A. Yes, Sir, Mr. Ellinwood.

Q. Mr. Ellinwood was present? A. Yes, Sir.

Q. He took down her statement, did he not? A. I presume he did.

Q. Well, he appeared to be taking it down? A. He was writing.

Q. Did you ever see it after it was written out? A. I have not.

Q. You didn't know anything about it then, to this day? A. No, Sir.

Q. You have never seen it published, have you? A. I have not read it since it was published; I have the book.

Q. No; have you seen it published? A. I think not.

Q. What time did the Committee break up that night? A. I should judge about 10 o'clock; I am not certain.

Q. You have spoken of an interview with Mr. Tilton on the 9th of July, Thursday morning? A. Yes, Sir.

Q. When you had an interview of about three hours in duration? A. About that time.

Q. Your husband was present? A. I believe he was.

Q. In that interview did Mr. Tilton say that he had had an account of what Mrs. Tilton stated to that Committee? A. He said he had had an interview with Gen. Tracy, and that he informed him that the Committee were with her, and that she had influenced them in his favor.

Q. What else did he say that Gen. Tracy informed him? A. I don't remember anything else.

Q. Didn't he say that Gen. Tracy had informed him that Elizabeth spoke exceedingly well of him? A. Yes, Sir.

Q. And of ~~his~~ <sup>his</sup> ~~well~~ <sup>well</sup>? A. I don't remember whether she said that she ~~was~~ <sup>was</sup> exceedingly well of him; he did say, "exceedingly well."

Q. Didn't he particularize in what respect she had spoken well of him? A. I don't remember that he did.

Q. Don't you remember? A. I don't remember; no, Sir.

Q. Well, that seemed to please Mr. Tilton, did it not? A. Her interview with the Committee?

Q. What Gen. Tracy had told him? A. I suppose it had.

Q. Well, didn't you judge so from what he said to you on that morning, of the 9th of July? A. I had received her letter previously telling me it had.

Q. I don't care about that; I am not speaking of her letter; I am speaking of what Mr. Tilton told you on the 9th of July during that long interview? A. I think that I had that impression from him.

Q. Did he not say that he was delighted and pleased? A. Yes, Sir.

Q. With what his wife had said to the Committee? A. Yes, Sir; since you have said "delighted," he did express that word.

Q. He expressed himself in the warmest terms, did he not? A. In high terms; yes, Sir, of his wife.

Q. And he said Elizabeth was as happy as a bird, did he not? A. Yes, Sir; he said: "You should see Elizabeth this morning. She is as happy as a bird."

Q. You did not discover, then, that her interview with the brethren tended to separate husband and wife, but rather to knit them together; is not that it? A. I had understood that they had separated.

Q. No, I am not asking you that. I am asking you if you did not discover at that interview with Mr. Tilton on the 9th of July, judging from what he said, that Mrs. Tilton's narration to the "brethren," which she quoted so much, had tended to knit husband and wife together rather than to separate them, didn't you? A. Well, I cannot say that it was that alone: the two together, her letter and Mr. Tilton's remarks together, made me suppose so.

Q. Did you learn anything from that letter that Mr. Tilton had not learned from Gen. Tracy, as you understood it? A. No, Sir.

Q. Well, you thought then that the interview with the brethren tended to peace between husband and wife, did you not? A. I supposed from what Gen. Tracy had said to Mr. Tilton that he was pleased with Mrs. Tilton's interview at the Committee; but as Mr. Tilton told me that it was all fiction, I did not think he had much faith in his wife.

Q. But he was pleased with the fiction, was he not? A. He seemed to be.

Q. Exactly; and he said that she did not tell the truth, didn't he? A. He said she had lied throughout.

Q. Exactly; and that Mr. Beecher was guilty? A. Yes, Sir.

Q. Notwithstanding she said he was innocent? A. He did say so.

Q. He wanted to cover up and smother the scandal, did he not; didn't he say so? A. No, Sir.

Q. He did not? A. No, Sir, he did not.

# THE REPORT PREPARED BY MR. TILTON FOR THE COMMITTEE.

Q. Did he want Mrs. Tilton to tell the truth, did he say, before the Committee? A. He said if Mr. Beecher would lay down his weapons, let the matter rest where it was; if the Committee would bring in a report satisfactory to himself that then he would be quiet. He read the report that he had prepared to give himself before the Committee.

Q. That is just what I was coming to. Now then, that report. [To defendant's counsel.] Let me have it. [To the witness.] Now, Madame, can you tell me in whose handwriting that report was? A. I did not take it in my hands, or see it.

Q. Didn't you see the handwriting? A. No, Sir; I didn't notice it.

Q. Were not you told that night that this report was in the handwriting of Elizabeth? A. No, Sir; I was not told anything of the kind.

Q. Oh, well, don't let us waste our strength. A. I am very much interested, Mr. Fullerton. You must excuse me if I am carried out of myself.

Q. Well, and I am slightly so. [Laughter.] Who read the report to you? A. Mr. Tilton.

Q. Did he read more than one? A. Only one.

Q. Only one report? A. Only one.

Q. Was it a long or a short one? A. Not very long.

Q. What was the sum and substance of the report?

Mr. Beach—Oh, I would read it to her.

Mr. Fullerton—Mrs. Ovington has a good memory.

Mr. Beach—I see she is very intelligent.

Mr. Fullerton—We have the original here.

Mr. Morris—Exhibit D 45.

Mr. Fullerton—Exhibit D 45, I believe, Mr. Shearman. Is it possible Mr. Shearman is absent. [Laughter.] [To the witness:] While they are looking for the paper, Mrs. Ovington, I will ask you whether Mr. Tilton stated his object in drawing up such a report? A. It was to present it to the Committee, he said.

Q. Did he state what effect he wanted to produce upon the minds of the Committee? A. He said here was a statement he had written, which, if the Committee would accept, he would lay down his weapons.

Q. That report vindicated Mr. Tilton, did it not, and his family? A. It vindicated Mr. Tilton; not entirely, I should judge, Mrs. Tilton.

Q. Well, it did not impute to her the principal crime, did it? A. I think not.

Q. Well, didn't he regard it as vindictory of Elizabeth and his family and himself? A. I thought he supposed so, but I did not take it so.

Q. Well, you thought he supposed so? A. I thought he supposed so.

Q. Well, wasn't it in harmony to a very great extent with the statement of Mrs. Tilton before the Committee? A. No, Sir.

Q. Not to a very great extent? A. Not in the most particular—in which I—in which was the most particular point, it did not agree.

Q. Well, it did not assert adultery, did it—the report? A. No, Sir; I think not.

Q. Did you call his attention to the harmony between that report and Elizabeth's statement to any effect? A. No, Sir; I said to him, "Mr. Tilton, I don't believe the Committee will receive that report." In taking it to read he held the statement in his hand, and says he, "Here is a statement that I have prepared; I have read it to Elizabeth." I think he said to Gen. Tracy, also. Said he: "Please consider that this statement is dated two weeks in advance of the present time. I will read it to you, but please remember that it is fiction, fiction throughout."

Q. Yes; he resorted to fiction, then, to vindicate himself and his family, did he? A. No, Sir; I didn't look upon it in that light entirely.

Q. Didn't he look upon it in that light, or didn't he say so? A. He said that.

Mr. Everts—The opinions of the witness are not to be called for. She has said what she said; whether he resorted to that entirely or not.

Mr. Fullerton—I ask the question.

Mr. Everts—Well, she is not to reply.

Mr. Fullerton—Repeat the last question, Mr. Stenographer.

[The question was repeated by THE TRIBUNE stenographer.]

A. He said it was to quiet the scandal, if it was accepted; if that report was accepted.

Q. And then he said he would lay down his weapons; didn't he? A. If the Committee would receive that report, and Mr. Beecher would keep quiet.

Q. He was particular to emphasize the fact that Mr. Beecher should keep quiet, didn't he? A. I think so.

Q. Didn't he complain that Mr. Beecher hadn't done what lay in his power to defend him? A. Yes, Sir.

Q. Didn't he complain, too, of Plymouth Church that they had been starting this thing up to his, Tilton's, detriment? A. Yes, Sir; and I replied, "How could it be else, after your publication of the Bacon letter; you should not throw this blame upon Mr. Beecher; it rests with yourself; after that partial letter of contrition, there was nothing else left for Plymouth Church and Mr. Beecher to do."

Q. But, my good woman, didn't he say that Mr. Beecher had failed in his duty, and therefore he had to write the Bacon letter? A. He didn't say "failed in his duty."

Q. Well, whatever he did say, didn't he do; and, therefore, he was compelled to write the Bacon letter? A. I don't remember his saying "he was compelled;" he might have said so; I don't remember it.

Q. Well, didn't he give an excuse, or an apology, or an explanation rather, for his writing the Bacon letter? A. Because at the Congregational Council he was called "a knave and a fool," and he would not rest under that imputation.

Q. Well, didn't he hold Plymouth Church responsible for that, and Mr. Beecher also? A. He spoke of Plymouth Church in connection with Mr. Beecher.

Q. Didn't he say that it was Mr. Beecher, or his friends, that had brought about the necessity for writing the Bacon letter? A. He said it was the action of the Council, as I remember.

Q. Speaking of Dr. Bacon? A. The Congregational Council that was held in the Spring; I don't remember the date; I think it was March.

Q. Mrs. Ovington—

Mr. Hill—Is that the one that is in Mrs. Tilton's handwriting?

Mr. Fullerton—I didn't say this was in Mrs. Tilton's handwriting. I ask her if the one read to her was not in Mrs. Tilton's handwriting; you said, I suppose, pretty close attention to the reading of that report? A. I paid attention to it.

Q. So that you would be able to recognise the language used? A. I could partially; but I could not swear to it.

Q. Well, you can give us your best judgment, without being positive; I will read, and see if you recognise it:

"I the undersigned, constituting the Committee of Plymouth Church, to whom were referred certain recent publications of Dr. Leonard Bacon and Mr. Theodore Tilton, hereby present their unanimous report."

Does that sound like the document you have heard read?

"The Committee sought and obtained a personal interview with each of the three following named persons, to wit: Mr. Tilton, Mrs. Tilton and the pastor, all of whom responded to the searching questions of the Committee with freedom and candor. Documents, letters and papers pertaining to the case were carefully considered. A multiplicity of details, needing to be duly weighed, occasioned a somewhat protracted investigation."

Do you recollect the language? A. I do not recall that part of it. Very likely it was that.

Q. "The Committee hope"—I will read further:

"The Committee hope that the apparent tardiness of their report will be compensated to the parties by rectifying an erroneous public sentiment, under which they have all suffered misrepresentation."

Perhaps you recall that? A. I do not; but it is some time since I heard it, Mr. Fullerton.

Mr. Fullerton—I am aware of that; yes.

Q. [Reading:] "The Committee's first interview was with Mrs. Elizabeth R. Tilton, whose testimony was given with a modesty and touching sincerity that deeply moved those who listened to it."

A. That I remember.

Q. You recollect it. "The Committee's first interview," I have read that:

"Her straightforward narrative was an unconscious vindication of her innocence and purity of character, and confirmed by evidence in the documents. She repelled with warm feeling the idea that her husband was the author of calumnious statements against her, or had ever treated her with other than chivalrous consideration and attention. She paid a high tribute to his character, and also to the fortitude with which he had borne prolonged injustice."

A. I think that was so; I cannot recall the wording.

Q. [Reading:] "The Committee further find that Mr. Tilton, in his relations with the pastor, had a just cause of offense, and had received a voluntary apology."

A. I think that was so.

Q. [Reading:] "Mr. Tilton declined to characterize the offense, for the following reasons: first, because the necessary evidence which should accompany any statement would include the names of persons who had happily escaped thus far the tongue of public gossip; and next, that the apology was designed to cover a complicated transaction, its details difficult of exact or just;



statement; and last, that no possible good could arise from satisfying the public curiosity on this point."

A. The last clause I remember, the former—

Q. [Reading:] "Mr. Tilton, after concluding his testimony, respectfully called the attention of the Committee to the fact that the Clerk of the Church had spoken calumniously of Mr. Tilton during the late Council—"

Mr. Morris—"Mrs. Tilton."

Mr. Fullerton—"Mr." here; well it's a mistake; a misprint:

—"during the late Council, and had since unqualifiedly contradicted and retracted his statement as untrue and unjust; and he, [Mr. T.] requested the Committee to ratify and confirm that apology, making honorable record of the same in their report, which is hereby cheerfully done. The Committee further find that the Rev. Henry Ward Beecher's evidence corroborated the statements of Mr. and Mrs. Tilton. He also said the Church action of which Mr. Tilton had complained had not been inspired by the pastor, but had been taken independently by the Church; that the popular impression that Mr. Tilton had been in the habit of speaking against him was unjust to Mr. T. and was owing mainly to the unwelcome introduction into the Church of the charges against Mr. T. by a mere handful of persons, who, in so doing, had received no countenance from the great mass of the congregation, or from the pastor. He said that the apology had been invested by the public press with an undue mystery; that after having been led by his own precipitancy and folly into wrong, he saw no singularity of behavior in a Christian man (particularly a clergyman) in acknowledging his offense. He had always preached this doctrine to others, and would not shrink from applying it to himself. The Committee, after hearing the three witnesses already referred to, felt unanimously that any regrets previously entertained concerning the publication of Mr. Tilton's letter to Dr. Bacon should give way to grateful acknowledgments of the providential opportunity which this publication has unexpectedly afforded to draw forth the testimony which the Committee have thus reported in brief, but in sufficient fullness, as they believe, to explain and put at rest forever a vexatious scandal. The Committee are likewise of opinion, based on the testimony submitted to them, that no unprejudiced Court of Inquiry could have reviewed this case, as thus presented in person by its principal figures, without being strikingly impressed with the moral integrity and elevation of character of the parties; and, accordingly, the Committee cannot forbear to state that the Rev. Henry Ward Beecher, Mr. Theodore Tilton, and Mrs. Tilton (and, in an especial manner, the latter) must and should receive the increased sympathy and respect of Plymouth Church."

A. As I recall it, I think there is a little more in that statement than the one he read to me; still, I cannot remember well enough to swear to it.

Q. But I understood you to say that you do remember that when he read it to you, he said: "Imagine yourself two weeks ahead of this time?" A. "Two weeks in advance of the date of this;" or, "Imagine this to be dated two weeks in advance of the present time."

Q. You did not understand that Mr. Tilton's testimony had been taken at that time; did you? A. No, Sir.

Q. Nor Mr. Beecher's? A. No, Sir.

Q. And you did understand that the report was anticipating the testimony which they would give? A. Yes, Sir.

# THE TRIP TO CONEY ISLAND.

Q. When did you say the ride to Coney Island was? A. The 10th day of July; the Friday following Mrs. Tilton's going before the Committee.

Q. The day after this long interview? A. The day following this interview.

Q. Did you meet any of Mr. Beecher's particular friends on that first ride to Coney Island? A. I did.

Q. Where did you meet them? A. On the piazza of the hotel, unexpectedly.

Q. At Coney Island—who were they, pray? A. Mr. Charles Storrs, Mrs. Charles Storrs; Mrs. Valentine, I think is the name, Mrs. Storrs's daughter; the nurse, child, Miss Proctor.

Q. Did you propose to go to Coney Island, or did Mrs. Tilton propose it? A. I proposed to go to salt water, and I think I mentioned Coney Island, as I was in the habit of going there.

Q. Did you stop between Brooklyn and Coney Island? A. I did not.

Q. Did you take another ride to Coney Island about that date? A. I cannot say how soon after. I went a number of times last Summer with Mrs. Tilton.

Q. Didn't you go again on the 10th—on the 11th? A. No, Sir.

Q. On the 10th? A. No, Sir; the 10th I went—Friday.

Q. Well, on the 11th; didn't you go again on the 11th? A. No, Sir; I went to the Park, I think, in the afternoon, to drive with Mrs. Tilton.

Q. Do you recollect of meeting some other friend of Mr. Beecher on your ride, or some ride, to Coney Island? A. I think not.

Q. Did you stop at Mr. Snediker's at any time? A. Yes, Sir; several times; was in the habit of going there for our dinner. I did once see Mr. Joseph Howard on the piazza of the hotel, but he didn't speak to us.

Q. Any one else did you see there? A. I have an indistinct idea of friends—bowing acquaintances—but I think those were the only friends that we had any conversation with that I can recall.

## MRS. TILTON'S LOVE OF MR. BEECHER.

Q. Yes. Now, in one of these interviews with Mr. Tilton, I understand you to say that you observed that you could not stand by Mr. Beecher if he were guilty? A. That was on the piazza; yes, Sir.

Q. What did Mr. Tilton reply to that observation? A. He said he thought many in Plymouth Church would stand by Mr. Beecher, both from love—some from love to him, some from other motives, whether he were guilty or innocent. Said I, "I think you mistake, Mr. Tilton; the feeling of Plymouth Church towards Mr. Beecher—if he is proved guilty, I don't think they will stand by him, but they believe him to be innocent."

Q. When Mr. Tilton observed in substance that Elizabeth would be for him if it were necessary, did he not also add that he would—that she would do the same thing for Mr. Beecher? A. No, Sir.

Q. Did he not say that in effect? A. No, Sir.

Q. What did he say upon that subject, namely, what Mrs. Tilton would be willing to do to save Mr. Beecher? A. I don't think he said anything.

Q. What Mr. Tilton said that Elizabeth would be willing to do to save Mr. Beecher? A. I don't recall anything.

Q. Don't you recollect anything at all? A. No, Sir, I do not. If you can help me, I will gladly do it.

Q. What did he say about her love for Mr. Beecher? A. He said that Mr. Beecher loved Elizabeth as he had never loved any woman, and that Elizabeth loved Mr. Beecher. Said I, "But she loves you, Mr. Tilton, more than any one else on this earth." Said he, "I believe that Elizabeth loves me." Then he made the remark: "She is the best of the three. Whatever becomes of Mr. Beecher or myself, remember Elizabeth is the best of the three; I shall always say that."

Q. Now, when he said that Elizabeth loved Mr. Beecher better than any woman on earth, did he not also add what she would be willing to do for him? A. He said that Mr. Beecher loved Elizabeth better than any woman on earth.

Q. Well, did he not add in that conversation what Elizabeth—? A. He said Elizabeth loved Mr. Beecher—

Q. Hear my question, please. In that connection, didn't he say to you what he thought Elizabeth would do for Mr. Beecher, if it were necessary? A. I don't think he did; no, Sir.

#### MR. TILTON READY TO MAKE PEACE ON CONDITIONS.

Q. I call your attention now to the morning when Mrs. Tilton came to your house, on the morning of the 11th of July, I believe it was? A. Yes, Sir.

Q. You think she came in pursuance of what you said to her the day before, in riding to the Park, do you not, that she was at liberty to come to your house? A. I think that night—

Q. Not the day before, but the week before? A. She told me afterwards that that had influenced her.

Q. I ask you if you do not think she came to your house at that time, on the morning of the 11th, whether you don't think she came there in pursuance or in consequence of what you said to her on the morning when you rode to the Park? A. I think she did.

Q. Did she bring her children with her? A. She did not—Ralph followed the next day.

Q. And when did the other children come, if at all? A. Alice came to see her from the house, I think, twice or three times before she left for Elizabeth; Carroll came to her, I do not remember the day; it was shortly after—on his way to Montclair—Alice, before she went to Montclair, I mean, and Carroll on his way to Montclair, called to speak with his mother.

Q. Now, there was some conversation between you and Mr. Tilton in the hall on your way down to breakfast, was there? A. Yes, Sir.

Q. Will you say again what you said to Mr. Tilton at that time? A. I spoke to him then—asked him why he wished to bring this trouble upon his wife and family. Mr. Tilton said "What shall I do? Tell me what to do, and I will do it." Said I: "I am not sufficiently acquainted with the circumstances of

the case to advise you, but do what you know to be right in the sight of God."

Q. Did Mr. Tilton say anything else at that time? A. He may; I do not recall it.

Q. Did he not say, "What would you do under the circumstances?" A. I do not remember it.

Q. Did he tell you what the circumstances were? A. No, Sir, I think not; it was but a moment's conversation en our way to the breakfast table.

Q. You did not tell him, then, what he should do in reply to his suggestion? A. I did not—I do not know.

Q. You could not suggest any way out of the difficulty? A. No, Sir; I did not, that I remember; I think I should have remembered it.

Q. I understood you to say that Mr. Tilton told you that if you would suggest what he should do, he would do it? A. Says he, "Tell me what to do, and I will do it."

Q. But you did not tell him what to do? A. Only what he knew to be right in the sight of God.

Q. Yes; well, what was going on then in regard to that matter, as you understood it?

Mr. Beach—What was Mr. Tilton doing? A. I knew—I do not know what you refer to.

Q. Well, you put a question to him, or made an observation to him, what he wanted to stir this thing up for? A. Because he had published the Bacon letter.

Q. Well, that was stirred up, wasn't it; he was not going to do anything then, was he? A. He had said on the piazza that if this Committee did not report favorably, he would take it into a court of justice.

Q. And that is what led to your observation, was it? A. I knew there was trouble from that, I suppose; yes, Sir.

Q. And if the Committee do report favorably he would not take it into a court of justice. A. He would lay down his weapons.

Q. Be satisfied? A. And Beecher keep quiet.

Q. Well, you went down to breakfast, did you? A. I did.

Q. And at what stage of the breakfast was it that Mrs. Tilton left? A. She did not leave the breakfast table until we all left, as I remember it. We left and went together in the parlor.

Q. I understood you to say that at some observation of Mr. Tilton Mrs. Tilton left. A. That was in the back parlor, after breakfast.

Q. After breakfast? A. Yes, Sir.

Q. Very well; then we will go to the back parlor. What was said in the back parlor by Mrs. Tilton or Mr. Tilton in your presence?

Q. Mr. Tilton said he wished to speak a few—wished to speak in the presence of Mr. Orington and myself and Elizabeth; he thought she was laboring under some misapprehension in regard to his conversation on the previous day; that when she returned from her ride she spoke of having enjoyed the day, he supposed she had had a day of unmitigated pleasure, and much to his surprise, at about seven o'clock that morning, she had dressed herself and left him to come to our house.

Q. Did he speak of the conversation which you had had with Elizabeth? A. He said he thought that there had been some

misapprehension in regard to the conversation on the previous day.

Q. Did you understand that she had left Mr. Tilton in consequence of the repetition of that conversation by you? A. I did not understand that she had left him permanently then; I did not know it until he left the house.

Q. Well, did you not understand that he was laboring under the impression that the repetition of the conversation between you and Mr. Tilton to Mrs. Tilton had caused her to leave that morning? A. I did.

Q. Well, did he not insist upon it that it was not sufficient cause for her to leave? A. After I repeated the conversation I think he made no reference to it.

Q. Did you repeat the conversation there? A. I mean after I repeated to him what he said to me as he left the piazza—says I, "Please remember, Mr. Tilton, that you told me that I might tell the whole of this to Elizabeth, and I have done so as near as I can remember, word for word."

Q. Now, did not Mr. Tilton add that he thought that that was an insufficient cause for her to leave him? A. I don't remember his saying anything of the kind.

Q. Didn't he say something to that effect? A. I think not Sir.

Q. Well, what reply did Mrs. Tilton make when Mr. Tilton made that observation? A. I don't think she spoke in his presence.

#### THE FINAL PARTING BETWEEN HUSBAND AND WIFE.

Q. She did not speak, then, of the cause of her leaving, in his presence? A. She said nothing to me of leaving her husband until after Mr. Tilton had left the house.

Q. Well, I ask you this question: Did she or not allege any cause for leaving him that morning, in his presence? A. She did not.

Q. The only cause, then, that was suggested was the repetition of this conversation which had been had between you and Mr. Tilton prior to that day? A. The repetition of the conversation implicating her guilt with Mr. Beecher.

Q. The repetition of the conversation? A. That I had had with Mr. Tilton on the piazza implicating her—

Q. Never mind, don't characterize it; you have told us what the conversation was; whether it implicated or not, we will judge. You understood that morning that that was the only cause for the separation, did you not? A. I understood that that was the cause that she had left him then for.

Q. And she gave no other cause at all in his presence? A. Not in his presence; no, Sir. If I could give you her conversation with me riding you would understand this matter better.

Q. Then the difficulty is that you cannot? A. I see it is, but I mean that you would be better informed.

Q. Yes, I want to be informed in a legal way. [Laughter.] Now, did Mr. Tilton, on that morning, say anything about his wife's returning? A. I do not remember anything being said about it, for I did not know that she had left permanently until after he left the house.

Q. Well, you knew that she was at your house? A. I knew she was there.

Q. I ask if anything was said about her returning to her own house? A. I think not that morning.

Q. What did Mr. Tilton say, if anything, upon that subject? A. I don't think he said anything after I told him.

Q. Did Mr. Tilton say what he came there for? A. He said he wished to hold some conversation in the presence of my husband and myself in regard to Elizabeth.

Q. Then he spoke about this conversation? A. He spoke about the conversation.

Q. Which had been repeated by you to her? A. The conversation that I had repeated to her.

Q. And said that there was some misapprehension about it? A. He said he thought Elizabeth labored under some misapprehension.

Q. Now, was there nothing said about her returning home? A. I think not, Sir.

Q. Why, you would remember it, wouldn't you? A. I think I should; but I do not think there was, Mr. Fullerton.

Q. And Mr. Tilton went away without saying a word about it, did he? A. I think so.

Q. Did not propose that Elizabeth should go back with him? A. No, Sir; because he left us in the hall, leaving her in my charge.

Q. Yes. Before that had she not refused to go back? A. No, Sir, not that I remember at all; there was nothing of the kind; as I can recall that conversation, there was nothing of the kind said.

Q. Then he appeared to regard it as a separation, didn't he, when he left her in your charge? A. I suppose so.

Q. Didn't you say anything then in regard to that? A. No, Sir.

Q. Not a word? A. No, Sir.

Q. Well, you thought it was a separation, then, didn't you? A. I didn't know.

Q. Well, what did you think about it? A. I did not know.

Q. He put one hand on your shoulder, and another hand on hers, didn't he? A. Yes, Sir.

Q. Brought you together? A. Yes, Sir.

Q. And said, "Take care of Elizabeth?" A. Yes, Sir.

Q. "Any kindness you show to her is a kindness shown to me?" A. Yes, Sir.

Q. Well, didn't you regard that as indicating a separation? A. I thought it was a temporary separation at any rate; whether it would be permanent, or not, I did not know.

Q. But yet you said nothing about her going back? A. I said nothing about it.

Q. You did not inquire as to whether there was any other cause for separation other than this conversation that you have repeated? A. I did not; no, Sir.

Q. Did you take any interest in it? A. My whole heart was in it.

Q. Well, why didn't you try to find out, when this lady was put in your charge, under those affecting circumstances, what was the cause of all this commotion? A. As I said before, if I

give you the conversation in my ride you would under-

stand; I want to know what took place that morning? A. I have given you what took place that morning.

Q. Well, I am trying to get something else? A. I am giving you all I know.

Q. Had you any reason for not inquiring that morning? A. No, Sir.

Q. Why it was that this ceremony of putting her in your charge in that kind of way was gone through with? A. I did not know why it was gone through with; I knew nothing about it.

Q. And you made no inquiry? A. I made no inquiry.

Mr. Evarts—Now, I submit, if your Honor please, that when counsel, in pursuing the proper privilege of cross-examination, undertakes to reason with the witness why it was that she did not then presently press some inquiries, her answer is a proper one: "I remembered the conversation I had had with Mrs. Tilton in my carriage drive; if I tell you that you will understand why I did not."

Mr. Beach—Well, who has objected to that?

Mr. Fullerton—Well, the gentlemen will understand that that does not become proper evidence either under the circumstances.

Judge Neilson—No, Sir; not by any means.

Mr. Evarts—It does become proper evidence if you press the witness as to the reasons operating on her mind why she did not press inquiries then between husband and wife, because she saw the action of the husband and she knew what had passed between her and the wife.

Mr. Fullerton—I am pressing for the reasons, Sir, that had their origin there that morning.

Mr. Evarts—Well, then confine it.

Mr. Beach—No, Sir, but the whole answer to this speech of the gentleman is that the lady says that she does not understand it.

Mr. Fullerton—With all the light shed upon it she don't understand it.

Mr. Evarts—She has said three times, "If you will allow me to tell you the conversation between Mrs. Tilton and myself you will understand this business better." Now, he is not obliged to have that conversation, but then he must forbear to press into the witness's mind to find out what governed her and made her conduct explicable or inexplicable.

Mr. Beach—I don't understand what all this speechifying is about.

Mr. Fullerton—Nor my friend upon the other side either; we are all even on that score.

Mr. Evarts—I have made myself understood, I think.

Mr. Beach—Yes, I suppose you have accomplished your object in a speech there when there was no objection made to the question.

Mr. Fullerton—Not the slightest. [To the witness.] Mr. Tilton went away then? A. He went away.

Q. Mrs. Tilton remained with you? A. She did.

Q. When was it that he said he would pull down the pillars of the temple? A. It was after, I think—it was after Mrs.

Tilton had left the room and gone up-stairs, and Mr. Ovington and myself remained in the parlor with him.

Q. In what connection did he say that? A. I think Mr. Ovington said to him, "Mr. Tilton, why continue this? Why do you drag down Mr. Beecher and your family in this ruin? Why follow this up?" Mr. Tilton then spoke of Samson, as I already repeated.

Q. Well, didn't he complain then of the position that he had been put in? A. I think not. But very little was said that morning—very little conversation.

Q. Did he regard the Bacon letter, as you understood him to say, the pulling down of the temple? A. He did not speak of the Bacon letter then, I think. There was very little conversation that morning.

Q. Well, did you understand from him that he contemplated any other step than the publication of the Bacon letter which had been taken then? A. Again I will have to say that my conversation with Mrs. Tilton led me to understand—

Q. Never mind, Mrs. Ovington, you cannot get out your conversation with Mrs. Tilton, and you may as well lock it up in your own mind first as last; I am talking about what took place. A. Then I cannot tell you the motives that led me to interpret Mr. Tilton's language.

Q. I ask you whether he said anything to the effect that the publication of the Bacon letter was the pulling down of the temple? A. No, Sir.

Q. You can tell me that without telling me what Mrs. Tilton said the day before? A. No, Sir.

Mr. Evarts—Well, I submit—

Mr. Fullerton—Well, you don't submit, you are scolding all the while. [To the witness.] Where was that observation made? A. What observation?

Q. About pulling down the temple? A. In the back parlor after Mrs. Tilton left the parlor and went up-stairs.

Q. And it was made to you and your husband? A. To myself and my husband.

Q. And any other or further conversation at that time? A. I remember no more; there might have been, but I don't recall anything more.

Q. Be kind enough to tell us, if you please, what observation it was in regard to Mr. Beecher that led Mr. Tilton to leave the room—Mr. Beecher—that led Mrs. Tilton to leave the room? A. Mr. Tilton said: "For what Elizabeth has done Mr. Beecher should kiss the hem of her garment;" she immediately arose and left the room.

Mr. Beach—Said nothing? A. Said nothing.

Mr. Fullerton—Did Mr. Tilton see her after that except up in the parlor, as you have stated? A. She left the parlor—

Q. I mean did he see her after that before he left the house? A. He saw her in the hall, as I told you.

#### THE TRIP IN CONNECTICUT MADE UNDER ASSUMED NAMES.

Q. Now, you went up to Richfield or Ridgefield, I believe? A. Ridgefield; yes, Sir.

Q. Connecticut. You remained eight days there. I think?

A. I think it was about that time, I am not quite certain as to days.

Q. Why didn't you remain there longer? A. I was not well there, I thought it best to leave; I also heard that a reporter of a newspaper was there.

Q. Well, they are all over. [Laughter.] A. So I find.

Q. So you left. Were you there under your own name? A. No, Sir, I was not.

Q. Mrs. Tilton under her own name there? A. She was not.

Q. Under fictitious names were you? A. She was.

Q. What name did you pass by there? A. My maiden name of Lewis.

Q. And by what name was Mrs. Tilton known there? A. Her maiden name of Richards.

Q. And from there you went to Fairfield? A. Yes, Sir.

Q. Anything pass in the house about your going under assumed names? A. Yes, Sir.

Q. Some fault found in regard to it? A. No, Sir.

Q. Nothing of the kind? A. Nothing of the kind.

Q. Well, did you go under your assumed name again at Fairfield? A. Yes, Sir; but Mr. Wheeler, in introducing me, made a mistake and introduced me as Mrs. Ovington. [Laughter.]

Q. And did you correct that mistake? A. I said nothing at all, but was called Mrs. Lewis until two or three days, I think—two days, perhaps. I went to the lady and explained. At Ridgefield I explained the first night of our arrival to the lady of the house. Mr. Caldwell did to the gentleman of the house.

Q. Well, at Washington you were then about six days there? A. I think from Tuesday to the following Monday.

Q. Well, were you there as Mrs. Lewis or as Mrs. Ovington?

A. As Mrs. Ovington.

Q. Then you took your proper name? A. Yes, Sir.

Q. And did Mrs. Tilton also? A. She did; Florence was called Florence Tilton, also.

Q. Who went with you up to Ridgefield? A. Mr. and Mrs. Caldwell.

Q. Well, did they go under their proper names? A. They did, I think; I think they did, yes, Sir.

Q. Well, have you any doubt upon your mind in regard to that? A. I don't know whether Mrs. Caldwell at first proposed changing her name or not. I don't recollect that; she did not go under an assumed name then, I think.

Q. Well, what Mr. Caldwell was it? A. Wallace E. Caldwell.

Q. Residing in Brooklyn? A. Plymouth Church.

Q. A member of Plymouth Church? A. A member of Plymouth Church.

Q. Did he stay with you all the while that you were there? A. No, Sir.

Q. Did he go with you from Ridgefield to Fairfield? A. He did not.

Q. Who was your escort there? A. Mr. Wheeler; Mr. Caldwell came to the city with his wife and myself, leaving Mrs. Tilton in Mr. Seymour's family at Ridgefield; I was absent one or two days, and then returned to Ridgefield.

# WHERE BESSIE TURNER HAS BEEN LIVING.

Q. Do you know Bessie Turner? A. I do.

Q. When have you seen her last? A. I think it was last week Tuesday she called to see Ralph.

Q. How many times has she been at your house within the last two months? A. I could not say—frequently.

Q. Well, about how many times? A. I could not say—frequently.

Q. Once a week? A. I should think oftener than that; many times she called when I did not see her, or know that she was there.

Q. Did she spend any part of her time there? A. Not this Fall. She did when she came before the Committee; she remained one or two nights with us.

Q. At your house? A. At our house.

Q. Do you know where she came from when she went before the Committee? A. I think from Pittsburgh.

Q. Do you know where she has been staying since she was before the Committee? A. Yes, Sir; part of the time had been with her mother; I don't remember the date; she returned in the Fall to Brooklyn, and has been at 74 Hicks street, until, I think, one or two months ago, or a few days ago, she went to Mr. Manchester's; I believe it was Mr. Manchester's.

Q. Where did Mr. Manchester reside? A. I don't know.

Q. Do you know the gentleman? A. No, Sir.

Q. No acquaintance with him whatever? A. None whatever.

Q. Did you visit Bessie Turner while she was in Brooklyn? A. I have not been out of the house since October.

## MRS. TILTON'S VISITORS.

Q. Very well, now I will ask you some questions in regard to the visitors at your house, Mrs. Ovington, since Mrs. Tilton came there to live. How many interviews, or about how many, as near as you can tell me, have counsel for Mr. Beecher had with Mrs. Tilton at your house? A. It would be impossible for me to tell you.

Q. So numerous? A. Yes, Sir; and not noticed as to time, the number of times.

Q. Where did the interviews generally take place? A. In the parlor.

Q. Any of them in your presence? A. Frequently.

Q. Not all of them? A. No, Sir; many times alone with them.

Q. How many times has Mr. Tracy been there? A. I could not say—a number of times; he has come of his own accord; he has come by invitation of Mrs. Tilton; by my invitation.

Q. Very frequently? A. Sometimes frequently, sometimes not as—

Q. Sometimes in the daytime? A. Yes, Sir; sometimes.

Q. When the Committee were sitting did he visit Mrs. Tilton frequently? A. He was there several times, I think.

Q. Had interviews with her? A. Yes, Sir.

Q. When you were not present? A. I think he did; yes, Sir.

Q. And up to what period did that continue—up to the present time? A. Yes, Sir.

Q. Now, Mr. Beecher, has he ever called? A. Once.

Q. Have an interview with Mrs. Tilton? A. He did.

Q. What time in the day was it? A. Eleven o'clock in the morning.

Q. How long ago? A. In July; I don't know the date; before I left for the country.

Q. Well, what day did you leave, Mrs. Ovington? A. I think it was the second day of August; the first Monday in August.

Q. And how long before you left was it that Mr. Beecher called? A. I don't know; I don't think it was many days.

Q. Probably the last week in July, then? A. I don't remember; it was in July.

Q. In July? A. In July.

Q. How long was that interview? A. It might have been twenty minutes; I should think about that time.

Q. Were you present? A. I was.

Q. Any one else present? A. No, Sir.

Q. Hasn't he been there since that time? A. Never.

Q. Only one call? A. Only one call.

#### A SEARCH FOR THE OLD SERVANTS OF THE TILTONS.

Q. Do you know anything of the servants that Mr. Tilton used to have in his employ—any of them? A. Yes, Sir.

Q. Do you know where they are? A. I don't know what you mean.

Q. Where the servants that Mrs. Tilton formerly had in her employ are, or any of them? A. No, Sir; but I could find them for you.

Mr. Fullerton—Well, if you will be kind enough to do so I will be obliged to you.

The Witness—I will; yes, Sir.

Mr. Fullerton—We have had a great look for them. You don't know where any of them are now? A. There was one in Hoboken—Kate Burke her maiden name was—I know is in Hoboken; I know of no others I think; I can't recall any others at present. I have had the directions, as two of them that were in her employ came to me in the Fall; I employed them for some time.

Q. Yes, that is what I wanted to inquire about—how long did you have them in your employ? A. The cook came, I think, in September and remained, I think, until November. I don't remember the dates, as I was ill when she left.

Q. Yes; now the other one, when did she come? A. She came the 1st of October, and left after the holidays.

Q. What did you say last? A. She left after the holidays, the second one.

Q. Now, what is the name of the cook? A. Marcella Murray, I think.

Q. Do you know where she went when she left you? A. She went to Mr. Sheldon's in Clark street, I think, where she now is.

Q. And what is the name of the other one? A. Lizzie Lowery.

Q. And how long did she remain with you? A. From the 1st of October until after the holidays, I think in January some date; it may have been a little later, but I think it was in January.

Q. And where did she go when she left? A. I don't know.

Q. Don't know where she is now? A. No, Sir.

Mr. Beach—There was a third one that you did not name.

The Witness—A third one that came to me?

Mr. Fullerton—A third one that was in your employ? A. But she had not lived with Mrs. Tilton; she has lived with me since the 8th of May, Lizzie Winne.

Q. Is Mrs. Tilton in the habit of going out in the carriage frequently? A. In the carriage with me she was.

O. Didn't she go alone in the carriage? A. Never.

Q. Did you ride out with her when she ordered a carriage? A. I don't know that she ever ordered the carriage.

Q. Well, I observe on this bill that your husband presented this morning, there are several charges for carriages; I supposed Mrs. Tilton had them? A. She went in the carriage a number of times—several times I went in the carriage with Alice and Carol, preparing their outfit for school.

Q. Well, did Mrs. Tilton ever ride out in the carriage when you did not go with her? A. I don't remember that she did.

Mr. Fullerton—That is all.

#### RE-DIRECT EXAMINATION OF MRS. OVINGTON.

Mr. Hill—You stated, I think, that you were at Ridgefield and Fairfield under your name of Lewis—your maiden name—and Mrs. Tilton under hers, and that your true names were given at Washington? A. Yes, Sir.

Q. Were you among acquaintances and friends at Washington? A. I have never been acquainted with Mr. or Mrs. Gunn. I went there to show the school to Mrs. Tilton for her son. There I met at the camp, on the camp-ground, unexpectedly, Mr. and Mrs. Howard, Mr. and Mrs. Horatio King. I don't know but there were one or two others that I met there.

Q. Plymouth Church people? A. Yes, Sir.

Q. And was that the reason why your true names were used there? A. It was; I felt protected there.

Q. You mentioned meeting Mr. Storrs and some other people at Coney Island? A. Yes, Sir.

Q. Upon a drive which you took there? A. The 10th of July.

Q. Did you know that Mr. Storrs, or any of the persons whom you found there, were to be there? A. I knew nothing of it at all.

Q. No prearrangement of that meeting at all? A. It was an entirely accidental meeting.

Q. Mr. Charles Storrs is not a member of Plymouth Church, I believe, at all? A. I think not; I am not sure.

Q. Don't you know that he is a member of Dr. Storrs's church? A. I believe he is, yet I could not swear to it.

Q. I think you stated, Mrs. Ovington, that during the—that there was an understanding between you and Mrs. Tilton, while you were taking a ride, that you were to meet at your house. Did you so state to Judge Fullerton? I may have misunderstood you. A. I don't think I understand what you say.

Q. On one of the rides which you took to Coney Island with Mrs. Tilton, either upon July 6th or the following Monday—on one of those two rides you stated that there was an understanding in pursuance of which Mrs. Tilton was to come to your house?

Mr. Beach—Well, that is a mistake.

The Witness—The 6th of July?

Mr. Hill—I am inquiring to see if I am mistaken.

The Witness—The 6th of July.

Q. Now, will you give what occurred between you and Mrs. Tilton on that occasion?

Mr. Beach—I do not understand, Sir, that the witness has given any such testimony, that there was any understanding upon the drive that they should meet at this witness's house when this witness took her right back to her house.

Mr. Hill—She stated she took her back to her house, and there was an understanding they were to meet again.

Mr. Beach—Yes, certainly; come to her house at half-past six.

The Witness—At six she was to come—at half-past six. You are correct. She came at six.

Mr. Hill—[To plaintiff's counsel.] Well, if you don't care to have that conversation given, I don't care to press it. [To the witness.] Now, you stated that on the 11th she came in consequence of what had been said to you—of what you had said to her on the ride of the 10th? A. I did.

Q. Now, what did you say to her or she to you which leads you to suppose that it was in consequence of that conversation that she came?

Mr. Beach—That is objected to.

Judge Neilson—Ruled out.

Mr. Hill—Why, it seems to me, Sir, that if it is competent—

Judge Neilson—Don't discuss it.

Mr. Hill—Doesn't your Honor propose to hear the suggestion which we—

Judge Neilson—No, Sir; it is too simple and plain for there to be any argument about it.

Mr. Hill—Well, I desire to know what this witness said, or what was said from which she drew that inference. I want to show what her conclusion was based upon.

Judge Neilson—In other words, you desire to give the conversation between this witness and Mrs. Tilton.

Mr. Hill—Ah! but my learned friend has asked this witness if Mrs. Tilton did not come in consequence of something that was there said.

Mr. Fullerton—No, Sir.

Mr. Hill—Now, that is a conclusion, and I want to ascertain upon what that conclusion was based. It seems to me to be proper.

Judge Neilson—Well, I rule the conversation out.

Mr. Hill—Very well; we except.

Q. Mrs. Ovington, I understood you to state, in response to Judge Fullerton, that you were under the impression from what Mr. Tilton said, that Mrs. Tilton had left him on the morning of the 11th because of the repetition of the piazza conversation to her. Now, did he tell you that his wife had told him that she

had had a conversation with you in regard to that, in which the piazza conversation was restated? A. He didn't say that the whole of it had been given to him.

Q. Did he say that any part of it had been given to him by his wife? A. He said that she was under a misapprehension in regard to the conversation.

Q. How did he know that fact—did he state? A. I don't remember that he did; I think not.

Mr. Hill—That is all.

Judge Neilson—[To the witness.] That is all, Mrs. Ovington. [To Mr. Shearman.] Now, your next witness, Mr. Shearman.

#### TESTIMONY OF SARAH C. D. PUTNAM.

Mr. Shearman—Mrs. Putnam.

[Sarah C. D. Putnam, sworn on behalf of defendant, and examined.]

Mr. Shearman—Mrs. Putnam, where do you reside? A. I reside in Marietta, Ohio.

Q. What is the name of your husband? A. Douglas Putnam.

Q. You have been married twice, I believe? A. I have.

Q. What was the name of your first husband? A. Isaac M. Diamond.

Q. When were you married to your first husband? A. In April, 1839.

Q. When did he die? A. He died in December, 1833.

Q. Was he in poor health for some time previous? A. He was.

Q. When did you marry your second husband? A. January, 1837.

Q. Was he living at Marietta then? A. He was.

Q. Did you remove from Brooklyn to Marietta? A. I did.

Q. How long had you lived in Brooklyn previously to that? A. I had lived in Brooklyn at various times; I lived in New-York and Brooklyn—I had lived in New-York and Brooklyn since my first marriage, with the exception of some years that I lived in Michigan. I came back and forth. I was not in one place all the time. I had called Brooklyn my home for fifteen or sixteen years before I left.

Q. Are you acquainted with Mr. and Mrs. Tilton? A. I am.

Q. When did you form their acquaintance? A. I formed their acquaintance about two or three months after their marriage in 1835; the late Fall or the early Winter of the year they were married.

Q. They were married in October, 1835? A. They were married in October, 1835. I had known about Mrs. Tilton ever since she was a little girl; she was the daughter of a friend.

Q. You were acquainted with her mother before that time? A. Yes, Sir; my husband's family had been always acquainted with her since she was very young.

Q. Were you an intimate acquaintance of Mr. and Mrs. Tilton? A. I became quite intimate in the family and was there a great deal, and after a few years very intimate. Mrs. Tilton made a motherly friend of me. I saw a great deal of them.

Q. Did you exchange visits with them—did you visit their house, and did they visit yours? A. Yes, Sir; on my first acquaintance with them I was boarding in South Brooklyn; and the first Winter I knew them, the Winter after their marriage,

I was in very poor health, and anxious to attend Mr. Beecher's church; and the cars did not run then; and I was in the habit for many months of going down to Mrs. Richards's, Mrs. Tilton's mother, then Mrs. Richards, now Mrs. Morse, on Saturday, stopping until Monday, so that I might avail myself of the riding without the expense of hiring a carriage.

Q. You have maintained the acquaintance of Mrs. Tilton down to the present time? A. I have.

Q. How long did you maintain friendship with Mr. Tilton?

Mr. Beach—That is objected to.

Q. How long have you maintained acquaintance with Mr. Tilton? A. I have maintained acquaintance with Mr. Tilton—I have not spoken to Mr. Tilton for between four and five years. I have written and received one or two letters from him in that time.

Q. That is what I refer to. When did you have the last correspondence with Mr. Tilton? A. The last letter I wrote Mr. Tilton was in 1872, from California; I was journeying there.

#### MRS. TILTON'S HOME LIFE.

Q. Will you please describe what you saw of Mrs. Tilton with respect to her attachment to her husband and her children during the entire period of your acquaintance with her? A. I never saw any wife or mother so unselfishly and utterly devoted to a family as Mrs. Tilton was to hers. I used to feel that Mrs. Tilton's greatest fault was a blind idolatry of her husband.

Q. Did that continue down to a period later than 1868? A. I never have seen her when she has not manifested the same.

Q. When she manifested it? A. She always manifested it.

Mr. Everts—When she has not manifested the same.

Q. Have you noticed anything with regard to Mrs. Tilton's treatment of Mr. Tilton's parents and his brother? A. She has always been a very devoted, faithful friend, always ministering to them in all ways. I have often been there when she has put me aside for the time being because she felt that she must minister to them, and asked me to excuse her.

Q. Mr. Tilton had a brother who died finally of some infirmities. Do you recollect anything of Mrs. Tilton's treatment of him, and conduct towards him? A. I have often seen her in her ministrations to him, and her care for his comfort, and have been very much impressed by it.

Q. At what time was that? A. I don't remember when he died.

Q. No; but the time at which you observed this conduct of hers toward him? A. Often, when I have been there, when I have been visiting in the city, and spending a day there, I have seen him there. I spent nearly a week there once when the brother was in the house.

Q. About what year was that? A. I think that was since I was married.

Q. Since you went to Marietta? A. Yes, Sir.

Q. Since 1867? A. Yes, Sir; and I have frequently seen him as a caller when I dropped in the house.

Q. What was the family habit of Mrs. Tilton's family with respect to receiving friends? What was the manner in which Mr. and Mrs. Tilton received intimate friends? A. They were very

cordial, and adopted often the Quaker mode—the Friends mode of saying: "I am glad to see thee;" Mrs. Tilton did in particular, and they used generally not only give the hand, but salute with a kiss; that is their particular friends. It was the custom of the family to kiss their friends when they met them.

Q. It was the custom, therefore, of Mrs. Tilton to kiss the gentlemen friends of the family? A. Yes, Sir, kiss all.

Q. And Mr. Tilton's to kiss the lady friends? A. Yes, Sir.

#### ANOTHER JUROR FAINTS.

At this point in the examination of the witness one of the jurors, Mr. Jeffreys, became faint, and had to be taken to a window for fresh air.

Judge Neilson—[To one of the officers.] Mr. Spaulding, come here. Ask that juror whether he wishes to adjourn. Tell him I wish to consult his own views about it.

Mr. Beach—[To Mr. Jeffreys.] Mr. Jeffreys, if you prefer to adjourn now, I think the Court will do so.

Judge Neilson—[To Officer Spaulding.] What does he say now?

Mr. Spaulding—He prefers to adjourn now.

Mr. Everts—As it is so near the hour of adjournment, we might as well adjourn now; of course on the juror's account entirely. A repetition of the injury might be more serious.

Mr. Beach—[To the juror.] I think it is safer for you to get out in the air.

Judge Neilson—Well, we will adjourn now. [To the jurors.] Please be in your seats to-morrow morning, gentlemen, at eleven o'clock.

The Court thereupon adjourned until eleven o'clock. Thursday.

#### THIRTY-EIGHTH DAY'S PROCEEDINGS.

##### A SICK JUROR AND AN ADJOURNMENT.

A SESSION ONLY FORTY MINUTES LONG—MR. JEFFREYS, THE SEVENTH JUROR, UNABLE TO REMAIN IN COURT—THE TESTIMONY OF MRS. PUTNAM IN REGARD TO MR. TILTON'S HOME LIFE—THE PLAINTIFF'S VIEWS IN REGARD TO THEATERS AND CHURCHES TWELVE YEARS AGO.

THURSDAY, March 4, 1876.

There was a vacant chair in the jury-box this morning, and Mr. Jeffreys, the absentee, was in Judge Neilson's private room in consultation as to whether it would be wise for him to take his place with his fellow-jurors. Mr. Jeffreys finally concluded to make the attempt, and entered the trial-room, looking—as every one present observed—pale and ill. The examination of Mrs. Putnam was immediately resumed. The lady was questioned closely in regard to the home life of Mr. and Mrs. Tilton, but her testimony was interrupted by frequent objections on the part of Mr. Beach and Mr. Fullerton. Mrs. Putnam testi-



fied that the Tiltons were in the habit of greeting their friends by a kiss, Mrs. Tilton kissing the gentlemen; Mr. Tilton, the ladies. The characteristics and virtues of Mrs. Tilton, and the peculiar views, religious and otherwise, of Mr. Tilton, were introduced to some extent, notwithstanding the protest on the part of Mr. Beach that an essay on Mrs. Tilton's disposition and character was not admissible. At this point ex-Judge Porter announced that Mr. Shearman, who was examining the witness, was ill. Judge Porter asked that Mr. Shearman be allowed to sit while conducting the examination. The favor was granted, and Mr. Shearman took a seat exactly between and in close proximity to Mr. Beach and Mr. Fullerton.

Mrs. Putnam testified that she considered Mrs. Tilton truthful in ordinary affairs, but the witness had known of Mrs. Tilton telling what was not true in endeavoring to hide her husband's faults. Mr. Tilton's views with respect to theater-going received a good deal of attention. Mrs. Putnam says that in 1862, (while she was visiting the house of Mrs. Richards, now Mrs. Morse,) Mr. Tilton asked her many times to go to the theater, but, as her husband's death was recent, she declined the invitation. The witness and Mr. Tilton had a long discussion in regard to the matter, during which Mr. Tilton said that he would like his wife to go to the theater soon after he was dead, if it would entertain her. He expressed the opinion that seeing a good play would benefit Mrs. Putnam more than hearing the Rev. Dr. Storrs preach, Mrs. Putnam being then an attendant at Dr. Storrs's church. While the witness was giving the details of a visit of Mr. and Mrs. Tilton at her house at Southport, Conn., Mr. Jeffreys sent word to Judge Neilson that he could not remain in Court any longer. The examination came to a sudden pause, and the Court was adjourned to 2 o'clock. Mr. Case, the second jurymen, went home with the sick juror, and returning at 2 o'clock, brought the news that Mr. Jeffreys was still too ill to take his place. By an agreement of the counsel on both sides, the Court adjourned to the morning of March 8.

#### THE PROCEEDINGS—VERBATIM.

##### DIRECT EXAMINATION OF MRS. PUTNAM CONTINUED.

The Court met at eleven o'clock, pursuant to adjournment. Sarah C. D. Putnam was recalled, and her direct examination continued as follows:

Mr. Shearman—I was asking you yesterday afternoon, Mrs. Putnam, with regard to the family habit of treating their friends. I will ask a little more on this subject; do you remember a visit—any visit—at Washington which you made in company with Mr. Tilton's family? A. I do; I went to Washington, and they came afterward, and we were together.

Q. Who were there together at that time? A. I went with a party of my own friends, and Mr. and Mrs. Tilton and Mrs. Morse and Florence Tilton met us, and came to the same house where we were—private boarding-house.

Q. Was your husband with you? A. I was a widow at the time.

Q. You were a widow at that time—at what time was that? A. That was just before Lincoln's second inauguration; we were present at the inauguration; left the next day.

Q. That was March, 1865? A. I think so; yes, Sir, it was.

#### MR. TILTON'S SCRIPTURAL ETIQUETTE.

Q. Well, on that occasion, what was the habit of all that circle of friends with regard to greeting in the morning?

Mr. Beach—That is objected to; wait one moment.

Judge Neilson—I think we will take it, Sir.

Mr. Beach—What, of all the circle of friends?

Judge Neilson—Yes, Sir.

Mr. Shearman—including Mr. Tilton, Mrs. Tilton, and Mrs. Putnam? A. It was—they always were very cordial and warm, and always greeting with a kiss and very—always calling each other by their first names, after the style of the Friends.

Q. Did you ever have any conversation on the subject of this mode of greeting friends with Mrs. Tilton? A. I did once.

Q. Will you state what that conversation was? A. He apologized to me for his habit of kissing people; said that he considered it Scriptural; that the Bible said: "Greet one another with an holy kiss," and he thought he liked the Oriental style of kissing; he liked to see gentlemen kiss, and he should be very sorry to see his wife with the fastidious notions that some ladies had on the subject of kissing. He referred to his brother-in-law, Mr. Richards, and says—

Q. Joseph H. Richards? A. Joseph H. Richards—he says: "Joseph doesn't approve of our free style of—our cordial, free style of intercourse, but he says I think it is the true style; I don't like to just greet my friends with a shake of the hand; I like to give them a kiss, and I like to have my wife do it."

#### MRS. TILTON'S RELIGIOUS CHARACTER.

Q. Will you state what was Mrs. Tilton's religious character? A. She had a very exalted religious character, a highly spiritualized religious character, and the chief element of her religious character was love. I used often to think that she manifested the most of the love of Christ, the love that could overlook sin and fault and personal wrong to herself, of any person that I ever knew; she lived in a spiritual atmosphere; it was so—

Q. You say that she overlooked faults easily against herself; but, did she overlook faults in herself? A. No, Sir; she was very severe, very rigid, in her judgment of herself; morbidly so, I always thought; and I labored with her many times to

convince her that she did herself wrong. If she had committed the slightest offense against a friend, or had neglected a friend in any way, or had dropped an incautious word, that she thought might possibly wound, she gave herself great sorrow over it; has often written me long letters about some little thing that I had utterly forgotten, and was not conscious that she had committed an error, often calling herself very severe names—

Mr. Beach—I don't think you can speak of the letters, Madam, without producing them.

Mr. Shearman—[To the witness.] Are those letters in existence? A. Well, I don't know, Sir.

Judge Neilson—You could not use them, Mr. Shearman, if they were.

Mr. Shearman—Well, the counsel objected to giving the contents of letters.

Judge Neilson—Well, you are not giving them; you are giving the general fact.

Mr. Beach—That was sufficient, I think. If the letters were here I might object to them.

#### MRS. TILTON'S INTELLECTUAL GIFTS.

Mr. Shearman—What was Mrs. Tilton's intellectual character? A. She had a very fine mind, indeed; it was somewhat peculiar; she was a very fine critic; her husband told me once that he valued Elizabeth's criticisms more than those of any other friend.

Mr. Beach—I beg you not to state what others have said.

Mr. Shearman—Excuse me; this is what the plaintiff said, her husband said so.

Mr. Beach—I did not understand it.

Mr. Fullerton—It was not responsive, at any rate.

Mr. Pryor—Nor was it relevant.

Mr. Shearman—Very well; these are very fine criticisms. [To the witness.] What did Mr. Tilton say to you on the subject of his wife's intellectual character? A. He has often told me that Elizabeth was undervalued in her intellectual character, she was so domestic and so quiet; but that she was the finest critic he had ever had; when she pronounced a poem or a composition of his perfect, he said it would do; he felt sure that he had done as well as he could; he always felt satisfied with her criticism, and he said that—he said to me once, in his reading the proof of a poem of his—he spoke of a little criticism Elizabeth had made upon it; and he says: "If Elizabeth was not cumbered with the cares of a family—had her leisure for writing, for intellectual effort, she would make one of the finest writers, most interesting writers.

Mr. Shearman—Do the jury hear?

The Witness—I can speak louder if I try to.

Q. Did you consider Mrs. Tilton a strong or a weak woman? A. I considered her, in most respects, a remarkably strong woman; very strong in her moral character, strong in her powers of loving and in enduring; she had a wonderful endurance; I think I never saw any one that could endure so patiently and so quietly as she could; she had wonderful strength.

#### METAPHYSICAL CRITICISMS OBJECTED TO.

Mr. Fullerton—I think that is enough, Madam.

Mr. Shearman—Excuse me, I don't think it is; it is but half an answer to my question. I ask whether Mrs. Tilton was a strong or a weak woman.

Mr. Fullerton—She said she was a strong woman.

Mr. Shearman—I will let you know when I am satisfied with the answer.

Mr. Fullerton—And I will let you know when I am not satisfied with it.

Mr. Shearman—Well, let that come on the cross-examination.

Mr. Fullerton—You needn't make it cross now unless you please, but I will object to this wonderful illustration after giving an answer to the question as to her powers of endurance.

Judge Neilson—I think we have sufficient; we have the strength of mind and the power of endurance, and her severe estimate of herself, and her forbearance as to others; I think that gives a pretty full picture of the woman's mind.

Mr. Shearman—With all deference to your Honor's judgment, it does not answer my question, and I, therefore, shall renew the latter half of it. [To the witness.] Was there any point of weakness in Mrs. Tilton's character, Mrs. Putnam; if so, state it?

Mr. Beach—I don't precisely understand, Sir, upon what theory of evidence this lady is called upon to give a judgment or opinion in regard to the mental or moral characteristics of this lady. She might have given incidents illustrating her peculiarities, but I imagine we are not to have an essay from this lady upon the peculiarities of Mrs. Tilton's disposition.

Judge Neilson—This evidence is the extreme of what you could ask from an expert.

Mr. Beach—I suppose so, Sir.

Judge Neilson—And even an expert might be mistaken.

Mr. Beach—To a reasonable extent we make no objections to it, but it seems to me it is getting altogether too refined and particular, and I repeat that I don't know of any principle of evidence that allows evidence of this character. It is admissible to give the state of the family relations and the general characteristics of that family, I suppose, as they are made apparent by their actions in the presence of witnesses. But the highest and most perfect evidence would be the actions themselves.

Mr. Evans—I am afraid, if your Honor please, if we undertake to give—

Judge Neilson—I propose to allow the counsel to put this one question, and that may satisfy him, perhaps. Repeat your last question, please.

Mr. Shearman—I ask if there was any point of weakness in Mrs. Tilton's character, in your observation? A. Yes, Sir; there was one point of weakness.

#### MRS. TILTON THE SUBMISSIVE CREATURE OF HER HUSBAND'S WILL.

Q. What was that? A. She never seemed to have the power of living out her own life in opposition to her husband's wishes; she was perfectly dominated, apparently, by his will.

Mr. Fullerton—Just one moment. I move, Sir, to strike that out; that is not proper evidence in this case. Under the form of a question as to whether this lady had any weakness, they seek to get in evidence that this woman was dominated by her husband's will.

Mr. Beach—Apparently dominated.

Mr. Fullerton—Apparently dominated by her husband's will.

Mr. Beach—And that is a matter to be proved by facts.

Mr. Fullerton—That is not to be proved by the opinion of any witness, however intimate she may have been with the parties. If that were susceptible of proof at all, which we deny, it would have to be established by instances of some kind, and not permitted to rest on the opinion of any person.

Judge Neilson—Mr. Shearman, let me hear you on that subject; I am inclined to think so.

Mr. Everts—The question was allowed and allowable. The answer is responsive to the question; it is this lady's declaration upon an intimate and continued observation of the character and life of this lady in her relations to her family and her husband; that though she had a clear intellect, an intelligent judgment, and strength of will and purpose in other regards, yet in this very relation, which is the subject of all others, concerning which testimony from competent observers may be given, she was unable, in the language, I think, of this witness, to act out her own life when it came in competition with the will and power of her husband. Now, that is good evidence; it is of an important fact; it is in the very marrow of the relation between the husband and wife in respect to this matter in controversy here, and the forms and modes in which it has been produced to public attention, and made the method of this plaintiff's testimony in producing it to the jury, to wit: what his wife had said or done. Now, my learned friends have no power, nor does the law undertake any such absurdity or injustice as to control, or frame, or mold a witness's answer to a proper question. It is the witness's mode of saying as the result of an observation making her competent to say it, that in this regard this lady's character exhibited weakness, to wit: in the submission to the will of her husband to an inordinate and faulty degree. It is then responsive; it produces not instances, but results of observation. And I am afraid, if we were disposed to introduce all the instances of conduct, that we should find a much more decisive objection made by our learned friends, and certainly the disposition of your Honor as I suppose, the inclination of the law is not to take all detailed instances of domestic conduct, but to take from observers the general disposition, attitude, and conduct, and relation of the parties to one another, as exhibited. Such was the course on the testimony for the plaintiff; such we understand to be the proper course.

Judge Neilson—I think I will let the answer stand, gentlemen. Let the answer stand.

Mr. Porter—Will your Honor permit me to suggest that my friend, Mr. Shearman, is quite ill to-day, and I would ask the favor that he be permitted to examine the witness, retaining his seat.

Judge Neilson—Yes, Sir.

#### MRS. TILTON'S TRUTHFULNESS.

Q. Mrs. Putnam, will you state what was Mrs. Tilton's character for truthfulness? A. I never had the slightest hesitation in relying upon Mrs. Tilton's word in anything but one direction.

Q. What direction was that? A. I don't think she was always truthful with reference to her husband's faults.

Judge Neilson—That answers the question.

The Witness—She sometimes made statements that I think were not truthful in reference to her husband's faults, endeavoring to cover up her husband's faults.

Judge Neilson—That will do, Madam; you have answered the question.

Mr. Fullerton—That will do.

Q. And that was the only exception you are aware of? A. I relied on Mrs. Tilton's word implicitly in any of the ordinary affairs of life.

Q. Did you ever know of any case in which she represented her husband to be in fault when he was not?

Mr. Fullerton—I object to that.

Judge Neilson—I think it has gone far enough, Mr. Shearman.

Q. To what church did you belong when you lived in Brooklyn? A. Rev. Dr. Storrs's—Richard S. Storrs.

#### MR. TILTON'S EARLY ENTHUSIASM OVER MR. BEECHER.

Q. You mentioned you went in 1856 or 1857 to hear Mr. Beecher; will you tell us by whose invitation you went, or suggestion? A. I had just returned from several years' absence from the city; I had been in Michigan, and renewed my acquaintance with Mrs. Richards, now Mrs. Morse, and her daughter, who had recently been married, was living with her, and in that acquaintance heard Mr. Tilton and Mrs. Tilton and Mrs. Richards speak very highly of Mr. Beecher, and was urged by them and invited by them to hear Mr. Beecher.

Q. Can you remember anything which Mr. Tilton said of Mr. Beecher in that early period—1856 or 1857? A. He was very enthusiastic about Mr. Beecher; I don't know that I can give his precise language, but he used to speak of him as one of the great men of the world, and one of the most inspiring men; he used to tell me a great deal about his family and himself.

Q. At that time did Mr. Tilton appear to be a religious man? A. He did.

Mr. Fullerton—I object to that.

Mr. Shearman—This is in the direct line of the inquiry upon that subject.

Judge Neilson—She has answered that he did. I think I will let it stand.

Mr. Fullerton—He has stated that upon his cross-examination.

Mr. Shearman—Yes.

Mr. Fullerton—I should think, to the entire satisfaction of the other side.

Mr. Shearman—Do you object to Mr. Tilton being proved to be a religious man?

Mr. Fullerton—By you, yes, I would rather take it from himself.

Mr. Shearman—We have got the answer, so we will let it stand. We can have better evidence.

Mr. Fullerton—Not better than we have got.

Q. When did you first notice, if ever, any change in Mr. Tilton's views on the subject of religion and churches? A. I think the first time I was ever impressed with a fear that Mr. Tilton was departing from his old religious faith was on the occasion of a tea-taking at his house in Oxford-st; I think it was in 1862, but I am not confident. It was in Oxford-st.

Mr. Beach—I object to this lady giving her opinion as to the religious views of Mr. Tilton. If those views were expressed by word or act, she can give them.

Judge Neilson—The counsel ought to protect the witness somewhat. You asked: "When?" You observed she was making a general statement, and you ought to have apprised her that all you wanted was the date. If she stated the year that would have been a perfect answer.

Mr. Shearman—Well, we will take the answer—in 1862.

The Witness—I think it was in 1862. It was when they lived in Oxford-st.

Mr. Morris—The question goes beyond the mere time. The objection goes to her stating her impressions.

Judge Neilson—I know.

Q. State what conversation, if any, you then had with Mr. Tilton on the subject of religion and churches about that time? A. He told me he didn't go to church as often as he used to do; that he was throwing off the trammels of church, and that he hoped that his children would never be so trammelled by an education that required them to go to church, and they never would have the religious teaching that he had; he thought it was unwholesome, it was not good for the soul; that our religious views were largely the result of education, and that he had suffered from his education.

Q. You have mentioned that in December, 1862, your husband died. Is that the correct date? A. Mr. Diamond died in 1862.

#### THE RELATIVE MERITS OF CHURCHES AND THEATERS.

Q. Did you have any conversation with Mr. Tilton shortly after that occurrence on the subject of churches and theaters? A. I did.

Q. Will you state what that was, and how it arose? A. Mr. Tilton sent me—

Q. A little louder. A. Mr. Tilton sent me an invitation two or three times to go to the theater with him.

Q. How long after your husband's death? A. A very few weeks after my husband's death. He said he wanted to do something for me to comfort me, and minister to me in some way, and he didn't know of any other way, and I declined. One afternoon his mother-in-law, Mrs. Morse, came around with a special invitation for that evening, saying that if I would—

Mr. Fullerton—No, don't tell us what Mrs. Morse said.

The Witness—She came around with a special invitation from Mr. Tilton. I declined the invitation, saying—

Mr. Shearman—Never mind, if it was not in the presence of Mr. Tilton.

Judge Neilson—You declined the invitation? A. I declined the invitation.

Judge Neilson—Well.

Mr. Shearman—Tell what conversation you had with Mr. Tilton on the subject, if any? A. I thought my reply was rather curt, and I went around, as soon as I thought he came from his office, to explain myself to him, and said I thanked him for his kindness, but as I had never been to a theater in my life I didn't like to make my debut in widow's weeds, and he said that was just the time to go, if I was in affliction; that he invited me for the sake of entertaining me; and with that we got into a discussion with regard to the relative merits of theaters and churches. He said that if he should die—I asked him if he would like to think his wife went to a theater to console herself a few weeks after his death, and he said most certainly he should; if she got any entertainment from it, or any relief from sorrow, he would be glad to have her go. He thought those religious narrow notions were exploded, and that they were not worthy of regard. He told me I was narrow, and that it was the result of education, and that I could get more benefit if I would go and see a certain play with him; he felt assured that I would derive more benefit than I would from hearing Dr. Storrs preach—far.

Q. Did you have another conversation with him on that subject in the year 1865, when you were at Washington? A. I did.

Q. Will you state that conversation? A. He asked me if I would go to the theater with him, and repeated the same thoughts he had expressed before, and said that—I told him I never had been to a theater, and he said for that reason I was no judge of a theater, and of the influence of a theater upon me. He said the power of the pulpit over his mind was inferior to the power of the theater; that he derived more inspiration from a certain play he had heard within a short time than he had ever derived from hearing Mr. Beecher, or Dr. Storrs, or any of the great preachers of the day.

Q. Did Mrs. Tilton say anything to you with regard to that conversation on the subject of theaters?

Mr. Fullerton—I object to that.

Mr. Shearman—We offer this for the purpose of showing that this conversation troubled Mrs. Tilton's mind, and that this was part of the line of—

Judge Neilson—It is ruled out, Sir.

Q. Did Mrs. Tilton speak of the subject in the presence of Mr. Tilton? A. She did.

Q. What did she say? A. She commenced—she thanked me for what I had said to him. There was quite a long conversation.

Q. Who was present? A. She began to explain her views, and her husband told her that he was talking to me now, and he didn't want her to interrupt.

Q. Then Mrs. Tilton was present at this conversation? A. She heard the conversation.

Q. What did Mrs. Tilton do when she was told to keep silent? A. She kept silence.

Q. Did Mrs. Tilton manifest any feeling in the presence of her husband at that time? A. She did; she manifested a good deal of feeling. She seemed to be very anxious to watch the

argument. We had quite an argument, and there was—I don't know that she gave any expression of feeling, only thanking me. She took hold of my hand and said, "I thank you for speaking this way; I wish Theodore had more friends that took this stand with him."

Q. I understand that you opposed Mr. Tilton's views on that subject? A. I did.

#### MR. TILTON'S MOODINESS.

Q. Now, Mrs. Putnam, did you not spend some time in Southport, Connecticut, in 1866? A. I spent the Summer there.

Q. Did Mrs. Tilton and her children spend any time with you there? A. They were with me a good deal that Summer.

Q. Did Mr. Tilton pay some visits there? A. He came up several times and made short visits.

Q. Mrs. Putnam, there has been something said in Mr. Tilton's letters, put in evidence, about his moodiness. Do you recollect anything which occurred at Southport which tends to explain what is meant by his moodiness?

Mr. Fullerton—We object to that.

Mr. Shearman—Why?

Mr. Fullerton—I don't think Mrs. Putnam can tell what tends to explain Mr. Tilton's letters better than anybody else.

Judge Neilson—You can ask her what she observed at that place.

Q. Will you repeat what occurred at one of Mr. Tilton's visits at Southport, when he showed, if he did show, some moodiness? A. He had been in Washington, I think, and had come up there—

Mr. Fullerton—No, what occurred there; that is the question.

Mr. Shearman—This is a very natural introduction.

Mr. Fullerton—I don't want any introduction.

The Witness—Mr. Tilton told me also he came from Washington.

Mr. Shearman—He was there on a visit? A. He was there on a visit, and he was my guest; he seemed very unhappy and uncomfortable for two or three days, and I, of course, felt very uncomfortable, supposing I was not entertaining him in a way that was agreeable to him, and his moodiness and low spirits increased from day to day, until we were all very uncomfortable.

Q. Well, will you tell how he acted—how did he act at the table? A. Well he didn't seem—he seemed disgusted at everything at the table, and gave us all short answers; he walked up and down the verandah of the house, and threw a general atmosphere of gloom and discomfort over the whole house. I cannot exactly describe his manner.

Judge Neilson—That is sufficiently described, Ma'am.

Q. You say that lasted two or three days? A. I think so. One day it was very much worse than any other day.

Q. What happened on that day? A. Mrs. Tilton declined to come down to her meals. She said—

Mr. Fullerton—No, not what she said.

The Witness—She declined coming down to her meals.

Mr. Shearman—Mr. Tilton came down? A. He did.

Q. How long did Mrs. Tilton remain in her room? She remained a good part of the day, perhaps all the day.

Q. Then, did you have any interview with Mr. and Mrs. Tilton? Did Mrs. Tilton write Mr. Tilton a letter that day? A. She did.

Q. Did you deliver it? A. I did.

Q. Were you aware of the contents of it? A. I was.

Q. Will you state the contents?

Mr. Fullerton—We object to it.

Mr. Shearman—We call for that letter. [To plaintiff's counsel.] We gave you notice to produce it, a letter written from Mrs. Tilton to her husband in 1866, while at Southport, Connecticut.

Mr. Morris—We cannot find it just now.

Q. Did you have any conversation with Mr. and Mrs. Tilton that day? A. I did that evening, just before retiring.

Q. Will you state what that conversation was, as fully as you can? A. Mrs. Tilton came to my room and asked me to come in and hear Theodore apologize for the way he had appeared for the last two or three days. I declined going, as I was ready for bed, but she urged it very much, and I went into their room. He said: "I suppose I have made you very uncomfortable to-day—the past two or three days, and especially to-day, by my moodiness, and my wife and I are both very sorry for it, because you have been so hospitable and courteous to us, but," he says, "I couldn't help it, it was utterly impossible for me to help it."

#### THE JUROR JEFFREYS STILL INDISPOSED.

Judge Neilson—Gentlemen, the jurymen (Mr. Jeffreys) feels that he cannot remain with us just at present, and I purpose, therefore, sympathizing with him, as we all do, to adjourn until two o'clock, and see whether then he will be better. Will gentlemen keep their seats a few minutes. The jury will retire until two o'clock.

The Court here, at 11:30, took a recess until two o'clock.

#### AN ADJOURNMENT TILL MONDAY.

At the expiration of the recess, Judge Neilson announced the continued illness of Mr. Jeffreys as follows: I regret to state that the jurymen who is ill is not able to attend this afternoon. Mr. Case, one of the jurymen, called upon him, and came directly from him, and advises us that he is not able to come out, and the doctor advised certain remedies, and it was thought, on the whole, the counsel agreeing, that we should adjourn until Monday morning, to give the jurymen some opportunity of recovering or improving. With that view, we now adjourn to Monday morning at eleven o'clock.

## THIRTY-NINTH DAY'S PROCEEDINGS.

## TWO WITNESSES FOR THE DEFENSE.

CONCLUSION OF THE TESTIMONY AND CROSS-EXAMINATION OF MRS. PUTNAM—MR. TILTON'S MOODINESS AS EXPLAINED BY HIM—HIS OPINION OF CHURCHES AND OF MR. BEECHER'S POWERS—TESTIMONY OF MISS MOORE—THE PLAINTIFF'S TREATMENT OF HIS WIFE—A WITNESS HARD TO CROSS-QUESTION.

MONDAY, March 8, 1875.

There was no delay in beginning the day's work, as there has been on previous mornings. All the lawyers for both plaintiff and defendant, except Mr. Hill, were in court early; so also were the principals in the suit. All appeared to be the better for the extra day of rest which the sickness of the sixth juror, Mr. Jeffreys, occasioned. Mr. Jeffreys was present, seeming improved in health, and received the congratulations of counsel and his fellow-jurors on his recovery. Promptly at 11 o'clock Judge Neilson asked Mr. Shearman if he would begin. Mr. Shearman replied by calling the name of Mrs. Sarah C. D. Putnam again. The lady was escorted to the witness chair by her husband, a tall gentleman about 65 years old, vigorous for his age. He took a chair at his wife's feet, gazed up approvingly in her face as she uttered her testimony, and occasionally handed to her a glass of water, from which she moistened her throat. The witness said, in reply to Mr. Shearman's questions, that she only knew Mr. Beecher as the world knew him. She had been introduced to him at the house of Mr. Tilton, but had never met him socially elsewhere. Mr. Beecher fondled the Tilton children, and his manner was always that of a familiar pastor. She had seen several photographs of Mr. Beecher, with others of public men, on the card-table in Mr. Tilton's parlor, and had received one of them as a gift from the master of the house. Mr. Tilton had procured for her an autograph volume of one of Mr. Beecher's literary works. Mrs. Putnam represented Mr. Tilton as describing his moodiness at Southport and on other occasions as "one of the moods of genius"—a "penalty of being a poet and a man of genius"—and as illustrating his meaning by mentioning the idiosyncrasies of Burns, Coleridge, and Byron. Mr. Tilton's strictures on the church, and his waning faith in Mr. Beecher's powers, were minutely described by the witness. Mr. Tilton looked amused when the witness re-

peated a conversation with him in which he called Dr. Storrs "a glittering iceberg."

Mrs. Putnam's direct examination was concluded at half-past twelve o'clock. Judge Neilson remarked to Mr. Fullerton, who was proceeding to cross-examine, that he thought the bearing of the testimony of the witness on the case was such that it would not be worth while to occupy much time with her cross-examination. Mr. Fullerton replied that he would be as brief as possible. His questions in the main were about Mr. Tilton's conduct in his family and Mrs. Tilton's affection for her husband. During the course of the questioning, Mr. Fullerton elicited the fact that Mr. Tilton had kissed the witness in the presence of Mrs. Tilton, and that no exception was taken to the act. The witness said that Mr. Tilton had treated Bessie Turner as he treated his children. Mrs. Putnam stated that Mrs. Tilton had the fault that she would not always speak the truth where her affection for her husband urged her to speak falsely. Mrs. Putnam denied that she had ever expressed herself as angry with Dr. Storrs, but when she was shown a letter in which she had said she was angry with Dr. Storrs's church, she modified her original statement somewhat by saying that she had never felt anger for Dr. Storrs. There was an animated discussion between Mr. Fullerton and Mr. Evarts over this part of Mrs. Putnam's testimony. Mr. Evarts at one time refused to let Mr. Fullerton take a letter which the latter proposed to read in evidence, and Mr. Fullerton retaliated a few moments later when Mr. Evarts wanted to take the letter again to find out to whom it was addressed. The cross-examination of Mrs. Putnam closed a few minutes after the opening of the afternoon session, having lasted about three-quarters of an hour. Her re-direct and re-cross-examinations occupied hardly five minutes and elicited nothing new.

The next witness was Miss Hannah Augusta Moore. She gave her testimony on her affirmation, and was examined by Gen. Tracy. Her evidence was in the main about the domestic affairs of the Tilton family, with whom she once boarded while they were residing in Livingston-st. Miss Moore gave her testimony in a very straight-forward and emphatic manner, and did not appear in the least embarrassed. She told of the changes which had taken place in Mr. Tilton's religious views, and described her efforts and those of Mrs. Tilton to induce him to think as they did on religious matters. She testified that Mr. Tilton was

often neglectful of his wife, and that Mrs. Tilton felt that this neglect was because she was not worthy of him. Miss Moore testified, among other things, that on one occasion Mrs. Tilton had said to her, "I wish you had had him," and that she (the witness) had replied, "I am glad that I am spared such a curse." Miss Moore's vigorous manner of giving this bit of testimony created some amusement in the court, which was afterward increased when the witness described a visit of Stephen Pearl Andrews with a lady to the Tilton family. On this occasion Miss Moore said that Mr. Tilton and the lady visitor sat on a sofa together, and the talk was about "spheres" and "affinities." The lady arranged Mr. Tilton's hair and rubbed his face, and peering up into his countenance, said, "What a lovely sphere you have." This testimony, and the gestures of the witness in giving it, caused a laugh in which all in court, including Judge Neilson and the plaintiff and defendant, heartily joined.

The witness was compelled on her cross-examination to modify and correct many of her former statements, but she preserved an entire self-possession during the ordeal. She persisted in answering the questions put, in her own way, and it was noticed that before her cross-examination was concluded the usual suave demeanor of Mr. Fullerton was somewhat ruffled by his efforts to induce the witness to answer directly. Once when Mr. Fullerton chided the witness for not answering directly, she broke out into a hearty, good-natured laugh and said, "You ought to want to find out the spirit of things." Miss Moore's cross-examination and re-direct examination were concluded at a quarter before 4 o'clock. Mr. Fullerton openly confessed that it was utterly impossible to cross-examine the witness.

Mr. Shearman then called the name of Miss Oakley, but Mr. Beach hastily rose and informed the Court that Mr. Jeffreys had not yet recovered from his recent illness and was then feeling unwell. The court was adjourned accordingly until this morning, when Miss Isabella H. Oakley will be the first witness.

## THE PROCEEDINGS—VERBATIM.

### DIRECT EXAMINATION OF MRS. PUTNAM CONTINUED.

At 11 o'clock the list of jurors was called, and all being present Judge Neilson said: "Will you please proceed, Mr. Shearman."

Sarah C. D. Putnam was then recalled by counsel for the defense, and her direct examination continued as follows.

### MR. BEECHER DESCRIBED AS THE TILTONS' FAMILIAR PASTOR.

Mr. Shearman—We were so unfortunately interrupted in the examination of Mrs. Putnam that it would be best to begin a little back and not continue precisely where I left off. [To the witness.] You said that you were a member of Dr. Storrs's church? A. I was.

Q. For how long were you a member? A. I don't remember exactly how long I was a member; several years.

Q. You remained such until you moved to the West? A. Until I went to Marietta to live, after I united with his church.

Q. Excuse me. A. I remained so from the time I united with his church until I was married and went to Marietta.

Q. You never were a member of Plymouth Church, were you? A. Never.

Q. You never were a regular attendant, were you? A. No, Sir; excepting that Winter that I spoke of—the Winter of 1855 and 1856, I attended church there most of the Winter, when I was able to attend to it.

Q. After that did you attend Dr. Storrs's with regularity? A. Yes, Sir; when I was in the city—no, Sir; excuse me; I didn't answer correctly. I did not attend Dr. Storrs's church; I was living in South Brooklyn and I attended Rev. Mr. Carpenter's church until I moved down to the Heights; then I attended Dr. Storrs's church.

Q. Rev. Hugh H. Carpenter? A. Hugh H. Carpenter.

Q. Westminster Presbyterian Church? A. Yes, Sir.

Q. How much acquaintance have you had with the defendant in this case, Mr. Beecher? A. I have had very little excepting as all the world know him as a public man; I have no—a very slight personal acquaintance.

Q. Did you ever see Mr. Beecher visit at the house of Mr. Tilton? A. Yes, Sir; I have seen him there perhaps two or three times; almost the only place I ever have met Mr. Beecher socially, there.

Q. Will you describe briefly what occurred on those occasions when Mr. Beecher visited; how he treated the family and Mrs. Tilton, and who was there? Take the first that you remember; who was in the house at the time Mr. Beecher called—the first time? A. Mr. Beecher came in very informally, and Mr. Tilton called upon his wife, and I think she was below, and he said Mr. Beecher was here. She said she could not come up then, and Mr. Beecher went up to the familiar sitting-room and Mr. Tilton went up with him where the children were.

Q. Mr. Tilton? A. Mr. Tilton, and either Mr. or Mrs. Tilton asked me to go up and see Mr. Beecher—knew I would like to be acquainted with him—introduced to him, and I went up, but Mr. Beecher was so absorbed in the children he did not pay much attention to me; he frolicked with the children, and when he got through frolicking with the children he went away; he said very little to any one else.

Q. Well, describe the next visit that you saw? A. Well, I can't remember them in their order; three or four times he

happened in there very informally; I remember once he happened in, and Mrs. Tilton and he were going to visit some sick person; I don't know that Mr. Beecher spoke to me, or saw me; I was in the back parlor, and he was in the front; he sat there while Mrs. Tilton put on her things, and she asked me to excuse her, they were going to see some sick person.

Q. Can't you recollect who it was? A. Well, I think it was Mr. Ovington; I am not quite sure, but I think it was Mr. Ovington; and I was there one other time when he came in, and I was just coming out of the hall, and he went up-stairs to the sitting-room; asked where the children were, and I didn't go up—just two or three informal calls of that kind; he seemed to be coming to see the children principally.

Mr. Fullerton—No, not that; I beg your pardon, Madam.

Mr. Shearman—About what years were these visits, Madam? It may help you—were they after Mr. Tilton moved into his present house? A. Yes, Sir; they were after he moved into his present house.

Q. That was in October, 1866? A. Yes, Sir; the time that I most distinctly remember; when Mr. Tilton introduced me to Mr. Beecher was the first visit I made in Brooklyn after I had gone to Marietta, or left Brooklyn—the time that he frolicked so long with the children.

Q. You were married in 1867? A. Yes, Sir; January.

Q. And this was—first visit you made afterward? A. I think it was the next Fall; yes, Sir.

Q. In the Fall of 1867? A. It was the first time I ever was at Mr. Tilton's house visiting after I left Brooklyn to live.

Q. Well, was there anything in the demeanor of Mr. Beecher toward Mrs. Tilton, or Mrs. Tilton toward Mr. Beecher, that attracted your attention—made any especial impression? A. No, Sir, not at all; only that he was their familiar pastor, coming in informally to see them.

Q. Well, were his visits made specially to Mrs. Tilton, or the family?

Mr. Fullerton—One moment; that cannot be determined—

Judge Neilson—We have what is described; that is sufficient.

Q. What hour of the day were those visits? A. This visit that I particularly remember was in the morning—he went up-stairs with him, and he received the visit himself.

Q. What is your best recollection of the time of the other visits—daytime or evening? A. They were always in the daytime, the calls that I saw.

Q. Always in the daytime? A. Yes, Sir; my impression is that they were Monday mornings—I know that this was a Monday morning that he made this call.

#### THE TILTONS' PHOTOGRAPHS OF MR. BEECHER.

Q. Did you ever see any photographs of Mr. Beecher in Mr. Tilton's house in your visits? A. I have.

Q. Where did you see them? A. I saw them on his—seen them standing on his mantel, and I seen one hanging in his house, a framed one; and I have seen various photographs in the card receiver that stood on the table in his parlor.

Q. Various photographs of whom? A. Of Mr. Beecher and others—of other distinguished men.

Q. Who pointed out—did anybody point out those photographs to you in that card receiver, or show them to you? A. Mr. Tilton once showed me photographs of—a variety of photographs that he thought were particularly fine.

Q. Of Mr. Beecher? A. Of Mr. Beecher and other distinguished men.

Q. And other eminent men? A. Yes, Sir.

Q. Did Mr. Tilton ever give you a photograph of Mr. Beecher? A. He did give me one at that time.

Q. From where did he take it? A. He took it from—I do not know whether it was from a little box of—something that stood on his table; took it from a variety of cards that were there.

Q. Did the family have a collection of such photographs? A. They had a large collection of photographs.

Q. And Mr. Beecher's was among those? A. Yes, Sir.

#### ALL OF MR. BEECHER'S BOOKS IN MR. TILTON'S LIBRARY.

Q. Now, did you see any books written by Mr. Beecher, or presented by Mr. Beecher, lying around the house in any of your visits? A. Yes, Sir.

Q. About what time was it that you saw those—after your marriage, or before, or both? A. I do not think I could remember; I have been in the habit of seeing Mr. Beecher's—I do not remember exactly. I have always been in the habit of seeing those—whatever Mr. Beecher had written—there. I recollect going to the library once—Mr. Tilton gave me permission to take anything from the library that I chose, and I selected one of Mr. Beecher's books in the library.

Q. Did Mr. Tilton ever say anything to you about getting for you a book with Mr. Beecher's autograph, or getting his autograph in any way? A. I told Mr. Tilton once that I had a good many books that had the autographs of the authors in, and that I valued them, and he said—frequently said—he could aid me in adding to the collection if I wished, and gave me one of his own with his autograph in, and asked me if I would not like to have one of Mr. Beecher's, and I said I would, but it would be an impertinence in me to ask Mr. Beecher—he was somewhat of a stranger to me—and he said he could get me one if I wanted.

#### MR. TILTON'S MOODS ONE OF THE PENALTIES OF GENIUS.

Q. Now, Mrs. Putnam, we will resume that Southport conversation; there has been such a long interruption that you might as well begin. It will be only a few words more; and tell us just how Mr. Tilton acted on that occasion, and what led—

Judge Neilson—We have that down, and I remember it. He was there, and was very moody, three days, and one day Mrs. Tilton did not come down; she wrote a note down. Thereupon Mr. Tilton apologized to her and explained.

Mr. Everts—We have got to the point of explanation.

Judge Neilson—Yes, Sir; begin at that point.

Mr. Shearman—Well, I want to bring in that letter. I have given these gentlemen notice to produce this letter written by Mrs. Tilton to Mr. Tilton, and delivered by Mrs. Putnam to





Thos G. Shearman





him, on that occasion, and I called for the letter. I didn't suppose it was in existence. [To the witness.] Mrs. Putnam, you read that letter which Mrs. Tilton sent to her husband through you, did you not? A. Yes, Sir; it was rather a note than a letter.

Q. A little note? A. Yes, Sir.

Q. You read it at her request? A. I did.

Q. Now, can you state the substance of that letter, that note?

Mr. Evarts—[To Mr. Shearman.] Can they produce the letter?

Mr. Shearman—I suppose not; I see Mr. Morris shakes his head.

Mr. Morris—No, we haven't it.

The Witness—It was a protest against his—

Mr. Fullerton—No, don't characterize it.

Judge Neilson—Do you recollect what was in it? A. I could not remember the language, Sir.

Mr. Shearman—The substance of the language.

Mr. Beach—It is the substance of the language, Sir, and not a characterization of the paper.

The Witness—The substance of it was that she could not endure his moods, and she was not coming down until he had changed.

Mr. Shearman—Well, then, you went up-stairs and had a conversation with Mr. Tilton and Mrs. Tilton? A. Yes, Sir.

Q. On that subject. Now will you be kind enough to give us that conversation as nearly as you can recollect it?

Mr. Fullerton—What conversation is that?

Mr. Shearman—The conversation in regard to Mr. Tilton's exhibitions of moodiness—and what explanation did he make of it?

A. He said he could not help his moods, that they were irresistible.

Judge Neilson—We had that the other day, and you said he expressed his regret, didn't you? A. Yes, Sir.

Mr. Morris—That was all explained the other day.

Mr. Evarts—[To the witness.] Will you endeavor to speak a little louder? We have to make more effort—

The Witness—Yes, Sir.

Mr. Shearman—The conversation was broken at the beginning. It is useless to give a conversation in fragments with an interval of three days.

Judge Neilson—We had it the other day.

Mr. Shearman—There are only a few words of it; it is necessary to begin at the beginning.

Judge Neilson—Well.

Mr. Shearman—Just go on, Mrs. Putnam, state what he said. A. As near as I can remember he said that his moods—these moods—were beyond his control; that he knew he made his wife and every one unhappy about him when they were upon him, but he could not resist them; he could not help himself. We had some talk about it, and I asked him why he could not help himself; why he could not overcome what he thought was a fault. He said he didn't know, but he could not; he supposed they were the moods of genius; that other men, poets, had the same moods, and spoke of—

Q. Did he mention any poets? A. Spoke of other poets—he said that Burns and Byron and Coleridge, and mentioned some of the English poets, were subject to the same moods, or to similar moods, and they were uncontrollable; it was the penalty that genius had to pay.

Q. He said this was the penalty that genius had to pay? A. One of the penalties of genius; I remember that expression, that he supposed it was the moods of genius; I remember those two expressions; the language of the rest perhaps I have not given exactly, but that was the idea.

Q. Did he say anything about a pall coming over him? A. Yes, Sir; he said that sometimes when he was from home he was—that his heart was heavy with homesickness; he yearned to get home; but as soon as he would get home and get settled down quietly, these moods would come over him; there would be a dark pall settle down upon everything; he said it was no one's fault; it was not because his home was not happy, but it was something he could not resist; those that were connected with him must suffer; he seemed to regret them very much.

#### HOW MR. TILTON'S MOODINESS WAS CURED.

Q. Did he say anything about the effect of a quiet life? A. Yes, Sir; he said that when he was in such a quiet place where he was then he could not resist it; he had just come from Washington, where there was excitement; he said if he had an audience, something to do, he could rise above it; if he could speak to a thousand Sunday-School children that evening or speak to a large audience next day, he would be all over it; but no amount of reasoning with him would raise him above them.

Q. Well, did he suggest anything practical about an audience? A. I don't know whether he suggested it, or whether I thought of it; but I went—

Mr. Fullerton—Well, one moment; there is quite a difference, and we won't have it unless you can find it out.

The Witness—I could not tell you certainly whether I suggested it, or whether he suggested it.

Q. He did tell you, however, that if he could speak to an audience it would help him out of this mood? A. Yes, Sir.

Mr. Evarts—The reporters don't hear very well; and they have sent me a request; but, of course, you must control the matter according to your own strength and voice. If you bear in mind—

The Witness—Yes, Sir; I am suffering a little from a cold; but I will speak as loud as I can.

Q. Was anything done about an audience? A. There was.

Q. Tell what it was. A. I saw some of the leading men of Southport, and it was near the 4th of July, either the day before or the day but one before, and asked them—

Mr. Fullerton—I think this is unnecessary.

Mr. Shearman—Well, I don't think it is.

Mr. Beach—Well, we object to what she told the leading men.

Judge Neilson—Of course. Go on to what was done.

The Witness—We got up a 4th of July audience in the Southport Congregational Church, where Mr. Tilton spoke with great acceptance.

Q. And after that how did Mr. Tilton act and become? A. He seemed like himself, and in good spirits.

Q. After that did he get entirely out of this mood?

Mr. Fullerton—I suppose you don't propose to show what the speech was in connection with that?

Mr. Shearman—I will if you desire it.

Mr. Fullerton—If you wait until the 4th of July we will have it again.

#### MR. TILTON'S PRIDE IN HIS POSITION ON THE INDEPENDENT.

Mr. Shearman—Did you have any conversation with Mr. and Mrs. Tilton at about this time with regard to his position on *The Independent*, and the degree to which he valued it? A. I did.

Q. State what that conversation was? A. He told me that he would rather be the editor of *The New-York Independent* than to have any other position in the country. He had previously told me that in Washington.

Q. What was said between you on this occasion about that? A. I don't remember what was said on that occasion; I remember better what was said on some other occasion.

Q. I perhaps mingled two or three occasions. State what was said on the other occasions, so as to close this subject of *The Independent*? A. Shall I tell you what he said at other times?

Q. Yes; give us what he said, and anything that Mrs. Tilton said in his presence, and what you said to him? A. He told me when he was in Washington, where he received a great deal of attention, that he would rather be editor of *The New-York Independent* than to have any position that any one had at Washington—than the great men who had shown him attentions had, the members of the Cabinet; and he told me once in his house in Livingston-st., when I asked him if he was going to be a political candidate, "No, indeed," he preferred his position as editor of *The Independent* to anything that the people could give him; there was no office in the gift of the people that he would accept in exchange for his position on *The Independent*. I told him that I was surprised—I turned to Mrs. Tilton and said, "I am surprised Theodore values the position as much as that." Oh, she said, he did; that it would break Theodore's heart to lose his position on *The Independent*, and that he thought more of that—

Mr. Fullerton—Was Mrs. Tilton present then? A. She was; yes, Sir.

Q. Mr. Tilton? A. Yes, Sir; he was present. We were all talking, and he said at another time that he would rather be editor of *The New-York Independent* than to fill the most popular pulpit in the country.

#### BESSIE TURNER TREATED AS A MEMBER OF THE FAMILY.

Q. Did you have some conversation with Mr. Tilton while he was at Southport with regard to Miss Turner—Bessie, as you called her at that time? A. I did, Sir.

Q. State what that was. A. We had several conversations.

Q. Give the substance, briefly. What did he say about her qualities and his intentions in regard to her? A. He said at one time—he asked my advice at one time about sending her to Nyack to school, where my nieces and his sisters were. He said that Bessie was a girl of rare qualities, and if she only had an education she would make a lady, and meant she should have education; he meant she should have as good an education as his sister Annie, whom he was educating at that time. He said often a good deal—we talked a long time about it. He said that he thought Elizabeth kept Bessie confined to the care of the children too much; that Elizabeth had trouble with her disposition sometimes; that he never had any trouble, and he thought Bessie had rare qualities.

Q. Did he say nothing about her musical qualities? A. Yes, Sir; he said her perceptions of musical harmonies were wonderful, they were almost intuitions. He said she was very sensitive, and she was out of her sphere, and was unhappy because she was out of her sphere; she was not educated where she wanted to be.

Q. In what manner did he treat Bessie Turner? Did he treat her as a servant, or as one of the family? A. She always came to the table while they were at our house, and he always greeted her with a kiss, as he did his own children, when he arrived and when he left; he treated her just about as he did his own children; I didn't see any difference, except she was confined at times more to the children's care. She took care of the children herself.

Q. Do you remember his ever reading to her? A. Yes, Sir.

Q. State when that occurred, and what you observed? A. I remember his sitting under an elm tree one day and reading to her from a book, and I afterwards learned it was a book of poems.

Mr. Fullerton—No; one moment.

Mr. Shearman—It is no harm to read from a book of poetry.

Judge Neilson—It is utterly immaterial.

Mr. Fullerton—And it is a waste of time.

Judge Neilson—[To the witness.] When was this? A. It was the Summer when she was in Southport.

Mr. Shearman—The Summer of 1866.

The Witness—He frequently walked with her up and down under the shade trees, and conversed with her, and seemed interested in her, and treated her as he would a daughter that was of the same age; he always treated her in a perfectly proper and kindly way.

#### WHEN MR. TILTON OUTGREW MR. BEECHER.

Q. Now, in the Fall of this year, 1866, did you have any further conversation with Mr. Tilton on the subject of his attendance at church? A. I did, Sir.

Q. Did he tell you what his habits were at that time with regard to attendance at church, and how often he had been at church? A. He told me he had nearly given up church-going; he very seldom went; that when he went, he went more to hear good music, or to accompany some friend, and occasionally he went with Elizabeth, but church, as an institution, he had given up, and priestcraft he had given up.

Q. Did he compare the drama with the Gospel in any way?

Judge Nelson—We had that the other day.

Mr. Shearman—This is something different.

The Witness—Yes, Sir. He repeated pretty much what I said before. He said he preferred the platform to the pulpit, and the drama to what I would call preaching the Gospel.

Q. In this conversation did he speak about ministers? A. He did.

Q. What ministers did he mention? A. We had a long conversation. We discussed a good many of the Brooklyn ministers and New York ministers. He said the most about Mr. Beecher and Dr. Storrs.

Q. What I want to know really is, whether he talked of them in conjunction with Mr. Beecher, and made any comparison? A. Yes, Sir, he did.

Q. Just tell us what he said with regard to Mr. Beecher and the other ministers whom he mentioned in connection with Mr. Beecher? A. He said that— Do you wish me to say what he said of Mr. Beecher?

Q. Yes, and of others also? A. I asked him if his leaving church-going was because he didn't like Mr. Beecher, and he said no; he liked Mr. Beecher as a man, but he had outgrown Mr. Beecher. When I asked him if he didn't think Mr. Beecher was still the great preacher of the day, he said yes, Mr. Beecher was the great moral preacher of the day, but he had outgrown him, that people got tired of a man when they had heard him so many years, and he considered that it fettered a man to sit always under one line of thought. He spoke a good deal of Mr. Beecher's moral qualities, and the characteristics of his teachings, and compared them with other ministers.

Q. Can you tell us, in substance, what he said on that subject? A. I cannot give Mr. Tilton's language, but I can give you the substance of it.

#### MR. TILTON'S ESTIMATE OF MR. BEECHER'S GIFTS.

Q. That is all we require; the substance of the language? A. He said Mr. Beecher's genius was very much overrated; that Mr. Beecher's power over people was through his moral qualities, his magnanimity and his great-heartedness. He said that he was such a believer in his fellow-man, and he said that people were tired of the old Calvinistic doctrines, they were tired of decrees and so forth, characterizing the Calvinistic doctrines, and they went to hear Mr. Beecher because they got something fresh, something new, and something that was varied. He said that Mr. Beecher was the most magnanimous man that he ever saw; he said he often was imposed upon, but if people knew him as well as he did, they could impose upon him a great deal more than they did. He said that magnanimity was Mr. Beecher's quality, was his moral characteristic; and I told him that I thought courage—moral courage was, and he said there was where myself and other people were very much mistaken; Mr. Beecher was a very courageous man before a multitude, but he was almost a coward before an individual sinner who saw him.

Q. Before an individual sinner? A. Before an individual sinner; he could not rebuke one private individual, but could stand up and face a mob.

Q. And this was with reference to Mr. Beecher's power to rebuke sin, do I understand it?

Mr. Fullerton—No, she has stated what was said upon that subject.

Mr. Shearman—This is a very fair question.

Mr. Fullerton—It was not a question at all. You said that you understood it.

Mr. Shearman—I repeat it. In what connection was this reference to courage made? A. It was in connection with my saying that his courage was—his moral courage was his great characteristic, and he said it was not. We were discussing Mr. Beecher and his peculiarities.

Q. You were not talking about physical courage at all? A. No, Sir; talking about moral courage.

#### MR. BEECHER AND DR. STORRS COMPARED.

Q. Now, was any comparison made between Mr. Beecher and other ministers at that time; if so, state what it was? A. Yes, Sir.

Q. State what it was? A. He said Dr. Storrs had more logic, was a better theologian than Mr. Beecher—a theologian in the common acceptance of the term; and he said they were utterly unlike. He spoke of Dr. Storrs as cold and logical, and of Mr. Beecher as warm-hearted and impulsive, never stopped to think what the influence of what he said was—how it would affect him. I don't remember his language; I remember one expression; after we had discussed the matter some time he said: "Dr. Storrs is a man to go to to help you keep out of trouble. Mr. Beecher is a man to go to if you are in trouble, to help you out of it."

Q. Any other expression about Dr. Storrs, that you remember? A. I don't think of any other expression than that.

#### MR. TILTON ON THE CLEVELAND LETTER.

Q. Now, Mrs. Putnam, after the publication of the Cleveland letter, in 1836, do you remember visiting Mr. Tilton when that matter was made the subject of conversation? A. Yes, Sir.

Q. Well, do you remember seeing a bust or plaster cast of Mr. Beecher at that time? A. Yes, Sir.

Q. Something about it which formed the subject of conversation? A. The first time I went into their house after they had—

Q. Just wait a moment. Now go on and tell what happened on that occasion, and speak a little louder, if you can. A. The first time I visited their home after they were settled in their new house in Livingston-st., Mrs. Tilton showed me a little plaster bust of Mr. Tilton that she had put on a little bracket right at her sitting-room door on the second story. We had some conversation about it, and the next time I went there the face of the bust was turned towards the wall, and Mr. and Mrs. Tilton and myself came up-stairs and were just passing into the sitting room. I was making an informal call. I said: "Why, Mr. Beecher's face is to the wall." Mr. Tilton said: "That is Elizabeth's doing." I said: "How is that, Elizabeth; why have you turned your pastor's face to the wall?" She says: "Theodore says that our pastor has proved himself a traitor to the Republican party."

Q. Mr. Evarts thinks you said this was a bust of Mr. Tilton. If you did say so, you meant Mr. Beecher? A. I meant a bust of Mr. Beecher. It is a little, small, plaster cast.

Q. I didn't catch it. Well, was there any more conversation? A. Yes, Sir; we went into the sitting room and had a long talk.

Q. So far as Mr. Beecher was made the subject of that conversation, please relate the conversation whether his qualities of mind were discussed with reference to his conduct and writing the Cleveland letter? A. I asked Mr. Tilton if writing the Cleveland letter and the editorial that he wrote on the Cleveland letter—

Q. The editorial that Mr. Tilton had written? A. Yes, Sir; if the letter that Mr. Tilton had written in *The Independent*, and the editorial on it, was the occasion of any alienation between himself and Mr. Beecher, and he said he thought not; he said Mr. Beecher was too magnanimous a man to lay up anything against one who had expressed their honest sentiments. I asked him if he didn't think his editorial had hurt Mr. Beecher, and he said he presumed it had, but that Mr. Beecher would never show it.

Q. Did you say you thought it would hurt him, or hurt his feelings? A. I asked him if he didn't think it would hurt Mr. Beecher's feelings—I meant his feelings. He said he presumed it did hurt his feelings, and upon that we sat down and had a long talk about Mr. Beecher, very much a repetition of our talk in Southport, with a few additional remarks that Mr. Tilton made.

#### MR. BEECHER'S FORGIVING DISPOSITION.

Q. Did Mr. Tilton say anything with regard to Mr. Beecher's inability to understand how any one should punish? A. He analyzed Mr. Beecher's character again; he spoke again of Mr. Beecher's great magnanimity, and his love and forgiveness; he said that Mr. Beecher's power lay there; he said people thought it was his genius, but it was not his genius; Mr. Beecher was overestimated in his genius very much; there were a great many men in the world who had more genius than Mr. Beecher; but he said Mr. Beecher never could lay up anything against any one; it was utterly impossible; he never could be willing to see any one punished for anything they had done.

Q. Did he say anything about the effect upon Mr. Beecher's mind of doing him a wrong? A. Yes, Sir.

Q. What was it? A. He said Mr. Beecher had a very peculiarly constituted mind, and if one wanted to enlist him in their behalf the best way to do it was to abuse Mr. Beecher.

Q. What did he say Mr. Beecher would do then? A. He said he would exert his best powers to deliver them from any difficulty they had gotten into from him.

Q. What did he say about Mr. Beecher's course in case he (Mr. Beecher) had injured anybody—what he would do if he were made to believe that he had injured anybody? A. I remember the impression he left on my mind; I don't know as I can remember the language.

Q. We only require the substance of the language; of course you cannot remember the exact words? A. He said that Mr. Beecher was—the substance of it was that Mr. Beecher—it was impossible to do anything to Mr. Beecher that he would not

forgive and overlook—commit any offense against him; that he was very sensitive himself to anything he had done to others, but it was one of his peculiar characteristics; his mind was peculiarly constructed in that respect; that if he thought he had ever injured a person he would leave no effort—he would put forth every effort he possibly could to comfort them and help them, and to do away with what might have been an injury to them. He said he was a very tender man of people's feelings—exceedingly so—and that his peculiar constitution of mind subjected him to great imposition from those who were designing.

#### DR. STORRS CALLED A GLITTERING ICEBERG.

Q. Now, do you remember—do you recollect making a visit to Mr. Tilton on a Sunday in 1866, just before he went lecturing—in November, 1866? A. I do, Sir; it was my last visit there.

Q. Well, what did you do yourself that Sunday morning; did you go to church or what? A. I went to church; yes, Sir.

Q. What church? A. Dr. Storrs's.

Q. Did you hear Dr. Storrs preach? A. I did.

Q. After that where did you go? A. I returned to Mr. Tilton's house. I was spending the Sabbath there.

Q. What did you find Mr. Tilton doing? A. I found him hanging pictures.

Q. What conversation passed between you on that? A. I expressed a little surprise that he was hanging pictures on the Sabbath. He had a man assisting him—he said it was his worship.

Q. Then did you have any discussion about the observance of Sunday? A. No, Sir; we had no particular discussion about the observance of the Sabbath. He asked me where I had been to church—where I had been, and I said I had been to church. He asked me where I had been to church, and I said I had been to my own church, to Dr. Storrs's. He said: "I thought you was one of those good women who didn't need to go to church;" and I said I was not; and he says: "Why do you go to hear that—do you go to hear Dr. Storrs always?" and I said, "Yes, when I am in the city;" and he says: "Why, do you go to hear that glittering iceberg?" and I said yes, but I didn't like the way he spoke of my pastor, and turned and left the room. He called out to me—he was on the step-ladder—and he says: "Wait until I finish hanging this picture, and I will talk that over with you."

Q. Did you resume the conversation at dinner? A. I did, when I came down to the dinner-table.

Q. Was Mrs. Tilton present then? A. She was.

Q. Did he make any comparison between you and Mrs. Tilton in regard to this matter? A. Why, he said—I don't know whether he said it then—he said it in the course of the conversation—that Elizabeth and I were very much alike about some things—in our ideas.

Q. In what respect? A. He said that we were narrow and hampered by our old religious notions.

Q. In that conversation did he say anything again in regard to church going, his intentions or habits, if so, what? A. He apologized to me for—I don't know as he exactly apologized,

but he says—alluded to his speaking of my pastor as he did, calling him a glittering iceberg; and he says "I didn't mean to be—to speak disrespectfully of Dr. Storrs, or of your pastor. I would speak in the same way of my own pastor," said he, "or rather of Elizabeth's pastor; I have no pastor." I said, "You would not call Mr. Beecher a glittering iceberg, would you?" He said: "No, he would not call Mr. Beecher a glittering iceberg," but he made some other comparison, I don't remember what, that was more appropriate to Mr. Beecher, and then we commenced another long conversation about—a repetition of what we had gone over before, about church-going and the trammels of the church, etc.

#### HOW MR. TILTON WISHED HIS CHILDREN REARED.

Q. Was anything said about the mode of bringing up his children in regard to church-going? A. Yes, Sir.

Q. What was that? A. He used the word "priestcraft" two or three times, and said that his children should not—if he had his own way his children should not be brought up to feel as he had felt about the ordinances and church-going, &c. He said he would not have them now; he would take them out of Sabbath-School and forbid them going to church, but Elizabeth—he said Elizabeth would always have her own way about the children; they were not his notions at all. He had thrown off those trammels himself, and he repeated again that he should never go to church again to hear the Gospel; he might go to hear good music; he might go as he would go to hear a lecture; he might go to take a guest that was staying with him to church, but he said: "It may be years before I step inside of a church again, and I shall not go to church ever again, excepting for some such reason as that." He said when his children were old enough to judge for themselves, he should insist that they should throw off these trammels, if they wished to.

Q. Did Mrs. Tilton say anything to him on the subject of the children's training at that time? A. He said that Elizabeth always had her own way about those things, and she replied that as long as she took all the care of the children and gave them all their training, she must train them according to her own conscience; and he then said: "Well, when they are old enough to judge for themselves, they shall throw off these trammels if they wish;" and he said: "I hope they will never suffer what I have suffered from the trammels of religious education."

Q. After you were married did not different members of Mr. Tilton's family make you several visits in Marietta? A. Yes, Sir, they did.

Q. Can you mention those visits, some of them? A. Mr. Tilton made me a very short call when he was lecturing, only part of a day; and Mrs. Morse and Alice visited me the first Summer I was there—Mrs. Morse and Alice Tilton.

Q. Did they spend some time with you? A. They spent a month with me, I think.

Q. Did Florence visit you in 1868? A. I do not know what year. Florence came out with some family friends of mine and spent a large part of the Summer.

Q. Was it the same year that little Paul died? A. Yes, Sir; she was there when Paul died.

Q. That was 1868. A. And Mrs. Tilton and Carroll visited me in 1870.

Q. Did Beattie Turner come to you in 1870? A. She did, in February of 1870; the last of January or the first of February.

Q. How long did she stay with you? A. She stayed with me until Mrs. Tilton left in the Fall of 1870.

Q. That was November, 1870? A. Yes, November, 1870.

Q. You say Mrs. Tilton and Carroll visited you in 1870? A. They did.

Q. Was that in the middle of October or thereabouts? A. I think about the 12th or 13th of October; somewhere near that that they arrived.

Q. When did she return to New York? A. She returned to New-York, I should think, about—somewhere from the 8th to the 12th of November. I don't remember the precise day.

#### SOME SECONDARY EVIDENCE EXCLUDED.

Mr. Shearman—We now call for letters under a former notice to produce—all letters received by Mr. Tilton from his wife during the Fall of 1870, during her absence at Marietta, and letters received from Mr. Tilton by his wife, if any are preserved, during that same period.

Mr. Morris—I shall not be able to furnish you with all that you call for now, with readiness.

Mr. Shearman—I have accepted, I believe, a notice to produce—gave instruction to accept that particular letter—a double letter. I do not call for that; it is the other two letters.

Mr. Fullerton—What do you mean by the double letter?

Mr. Shearman—That I don't want; any other letters during October or November.

Mr. Fullerton—Mr. Shearman, there are none; I am so informed.

Mr. Shearman—While Mrs. Tilton was at Marietta—

Mr. Everts—The answer is they have no letters such as we call for.

Mr. Morris—Except one.

Mr. Shearman—While Mrs. Tilton was at Marietta did she read to you, or allow you to read any part of the correspondence between herself and her husband? A. She did, some parts of it.

Q. Do you recollect a letter written by Mr. Tilton in that period in which he referred to the possibility of his dismissal from *The Brooklyn Union* and *The Independent*?

Mr. Fullerton—Wait one moment. What is that?

Mr. Shearman—I ask if Mrs. Putnam recollects a letter from Mr. Tilton, received by his wife, during that period in which he referred to the possibility of his dismissal from *The Brooklyn Union* and *The New-York Independent*.

Mr. Fullerton—That we object to.

Judge Neilson—Where is the letter, Mr. Shearman?

Mr. Everts—We have asked for the letter, and they say they haven't it.

Mr. Beach—We would not have it.

Judge Neilson—How would they have it?

Mr. Everts—They would have it.

Judge Neilson—A letter written by Mr. Tilton to his wife?

Mr. Evarts—Yes; but all the contents of that house was in Mr. Tilton's hands.

Mr. Morris—No, no; not by a long shot.

Judge Neilson—We cannot assume that he has got that letter.

Mr. Evarts—Your Honor, let us see for a moment.

Judge Neilson—One moment! I do not wish any argument about it.

Mr. Evarts—No; but if your Honor please—

Judge Neilson—I don't wish any argument.

Mr. Evarts—Does your Honor require me not to state my proposition?

Judge Neilson—You may state your proposition, but I do not wish any argument.

Mr. Evarts—If your Honor does not wish me to, I certainly shall not force myself upon you and the jury.

Judge Neilson—That remark is unnecessary; I have generally heard you with pleasure and satisfaction.

Mr. Evarts—Not at this time.

Judge Neilson—Well, at this time. Here is a letter written by another person, seen by this witness.

Mr. Evarts—If your Honor will observe, these letters of Mrs. Tilton to himself, and of himself to Mrs. Tilton, have all been produced by this plaintiff as being equally in his possession, and from those same treasures we are to expect any other letters passing either way between those parties.

Judge Neilson—Well, Sir, when you call for a letter, assuming, as perhaps you have a right to do, that they, having produced some, also have this, and you receive from respectable counsel the answer that they haven't got it, that ought to be satisfactory.

Mr. Evarts—I agree to that, that they haven't got it; that is the only ground upon which I offer this evidence of the witness.

Mr. Morris—And we further say that there are a great many written that we have not also.

Judge Neilson—There is no foundation laid.

Mr. Beach—Mr. Tilton has given an account as to the manner in which these letters written to his wife were obtained by him.

Judge Neilson—Now, the answer of counsel that he has not got it, and cannot produce it, is satisfactory.

Mr. Evarts—We do not quarrel with that, if your Honor please; we accept that, and have thereby laid the foundation for disclosing the contents by those who know.

Judge Neilson—I do not think so; no, Sir.

Mr. Evarts—Well, not certainly upon the ground that they are not supposed to have the letter?

Mr. Fullerton—Upon that ground alone.

Mr. Evarts—If there was such a letter; if there never was such a letter, then it won't be proved; but if there was such a letter, and the witness saw it and read it, then that is good legal proof, provided—

Judge Neilson—If there was such a letter, and the witness saw it and read it, and it appeared to the satisfaction of the Court that that letter has been lost, or estranged, then you can prove it.

Mr. Evarts—And the basis of that satisfaction is our call for the letter, and its non production.

Judge Neilson—And the answer of counsel that he has it not and cannot produce it.

Mr. Evarts—That is the very answer that permits us to give this secondary evidence.

Judge Neilson—Proceed to something else; I rule this out.

Mr. Evarts—It is the only answer upon which we can give the secondary evidence.

Mr. Beach—Our answer is that we haven't it, and never had it.

Mr. Evarts—Ah! that we never heard.

Mr. Beach—Yes, you have.

Mr. Evarts—No.

Mr. Beach—You hear it now.

Mr. Evarts—That you never had the letter?

Mr. Beach—Never had it after it was sent.

Mr. Evarts—Nobody has answered that.

Mr. Beach—It is answered now.

Mr. Evarts—We have given notice to produce it; we have proved that all the contents of that house, including all papers of every kind that were in existence, were left there.

Judge Neilson—But not including this letter.

Mr. Morris—By what witness have you proven that fact; who has ever proved that there was such a letter?

Mr. Evarts—This witness is the person to do it.

Judge Neilson—I understand you perfectly, and understand your theory; I think the proper foundation has not been laid for showing the contents of this letter.

Mr. Evarts—Is it, if your Honor please, upon the ground that Mr. Tilton is not presumably in possession of that letter?

Judge Neilson—The counsel has answered.

Mr. Evarts—I don't mean that he is not now in possession; as I say, I proceed upon the ground that it is not in existence; if it were in existence we should have it.

Judge Neilson—Yes.

Mr. Evarts—It not being in existence, we are entitled to prove its contents by competent evidence.

Judge Neilson—A letter received by a third person in another State, perhaps brought back and perhaps not.

Mr. Evarts—It is a letter received by the plaintiff's wife.

Judge Neilson—Yes, in another State.

Mr. Evarts—And presumably in her possession in her house; he succeeded to that possession, on his own statement, of everything that was there.

Mr. Beach—That is a mistake.

Mr. Morris—He has not made any such statement.

Judge Neilson—I see no trouble about this.

Mr. Evarts—He said that his wife left, taking nothing but his love and good will. Now, if that don't leave him in possession of everything that she presumably was in possession of, I don't know of language that would convey it.

Mr. Fullerton—There is no such presumption, Sir.

Judge Neilson—It is immaterial whether there is or not. I have ruled on this, and would like to have the ruling accepted.

Mr. Fullerton—There is no evidence that the letter ever left Marietta.



Judge Neilson—I think we ought to proceed. It is very informal and of secondary importance. Go on, Mr. Shearman.

Mr. Evarts—That might depend upon what the contents of the letter was. Well, your Honor, we offer to prove the contents of a letter from Mr. Tilton to his wife during the month of October or the early part of November, 1870, and received by her while an inmate in the family of Mrs. Putnam, shown to Mrs. Putnam by Mrs. Tilton and called for by us and not produced.

Mr. Fullerton—Because we haven't got it.

Mr. Evarts—Well, of course I assume you haven't got it; that is the very basis.

Judge Neilson—Well, your offer is overruled.

Mr. Evarts—And we claim that we have laid the foundation for secondary evidence, and this is a competent witness to that secondary evidence.

Judge Neilson—I don't see it in that light, Sir. Mr. Shearman you will proceed.

Mr. Evarts—Your Honor will be so good as to note our exception.

Q. Do you know what became of that letter? A. I do not.

Q. Did Mrs. Tilton prepare a letter to her husband which she showed you about that time? A. She showed me several letters that she wrote her husband while there.

Q. Do you remember one of which she made a copy, and which you and she compared together—the original and the copy? A. I do.

Q. Do you remember Mrs. Tilton's general appearance and manner after sending that letter?

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—Ruled out, Sir.

Mr. Shearman—I simply propose to show, if your Honor please, that Mrs. Tilton was cheerful after sending that letter; not to show a word that she said.

Judge Neilson—Go on.

Mr. Shearman—Your Honor will please note our exception. [To the witness.] Do you remember the arrival of the answer to that letter? A. I do.

Q. Did Mrs. Tilton invite you to read that answer? A. She invited me to go up-stairs and read it with her.

Q. Did you go up-stairs? A. I went up after I had sent the letter up to her.

Q. Tell just what happened. A. I sent the letter up to her, and about, perhaps, half an hour—20 minutes or half an hour went up-stairs to see how she felt about it.

Mr. Morris—We object to that, your Honor.

Judge Neilson—She said she went up-stairs; that is right enough. Go on.

Q. Did you find Mrs. Tilton; and, if so, state the result?

Mr. Fullerton—I object.

A. I found her.

Judge Neilson—You found her; that is the answer. "I found Mrs. Tilton there."

Mr. Shearman—We want to know how you found Mrs. Tilton.

Mr. Fullerton—That is what we object to.

Judge Neilson—She can state that she found her when she went up-stairs; she cannot go any further.

Mr. Shearman—Well, we will go as far as we are permitted.

Mr. Fallerton—You have got there now.

Mr. Shearman—Did you find Mrs. Tilton up-stairs? A. I did.

Q. In what condition?

Mr. Fullerton—I object.

Judge Neilson—That is ruled out.

Mr. Shearman—Well, we propose to show a simple fact about it.

Mr. Fullerton—It is so simple that the Court will not let it in.

#### THE JUDGE REBUKES PLAINTIFF'S COUNSEL.

Mr. Shearman—We except. [To the witness.]

Did you speak to Mrs. Tilton? A. She was not—

Mr. Beach—Wait one moment. Please answer the question, and not smuggle in evidence in that way.

Mr. Shearman—Mr. Beach! If your Honor please—

Judge Neilson—One moment, Mr. Shearman. Mr. Beach, you committed a grave error in using the word "smuggle."

Mr. Beach—Well, I don't think I did, Sir. I of course submit to your Honor's rebuke, but this lady should not be allowed—she was simply asked whether she spoke to Mrs. Tilton. She had understood the previous discussion, and our objections, and your Honor's ruling that she was not at liberty to state the condition in which she found Mrs. Tilton, and in answer to that simple question she undertook to state the condition in which she found Mrs. Tilton, and I say, Sir, it is smuggling in testimony.

Mr. Morris—She didn't answer the question—was not proceeding to.

Judge Neilson—It might be a mere inadvertence.

#### COUNSEL INTERCHANGE SHARP WORDS.

Mr. Evarts—[To Mr. Beach.] You repeat it?

Mr. Beach—Yes, Sir; I repeat it.

Mr. Evarts—You repeat the offense in the face of the Court?

Mr. Beach—No, Sir; in explanation to the Court.

Mr. Shearman—If your Honor please, I consider that an outrage, no matter who it comes from.

Judge Neilson—One moment, please.

Mr. Beach—It will probably annihilate me, Sir, that he does consider it an outrage.

Judge Neilson—Mr. Shearman was not called upon to administer any rebuke to Mr. Beach after the remark I made.

Mr. Beach—I submit to it.

Mr. Shearman—He renews the same remark.

Mr. Beach—Under your Honor's view I withdraw the expression.

Judge Neilson—I don't think counsel will use those expressions. It is improper. I have signified my view of it.

Mr. Beach—In obedience, Sir, to your Honor's idea of propriety, I very respectfully withdraw the remark.

Judge Neilson—Now, Mr. Shearman.

Mr. Shearman—If he withdraws his I will withdraw mine.

Mr. Morris—I think his Honor would survive without your withdrawal.

Mr. Beach—I didn't desire a withdrawal from you.

Mr. Shearman—Let it stand. [To the witness.] Now, Mrs. Putnam, will you please answer my question: Did you speak to Mrs. Tilton when you went up-stairs?

Judge Neilson—You may say yes or no to that question. A. I did not.

Judge Neilson—That will do now.

Q. Why did you not?

Judge Neilson—That is ruled out.

Mr. Shearman—We except, if your Honor please.

Judge Neilson—Yes.

Mr. Everts—Now, if your Honor please, we offer to prove by this lady—

Judge Neilson—I understand it perfectly; I understand this question, and I rule it out.

Mr. Everts—Your Honor does not understand what we propose to prove.

Judge Neilson—If you offer something additional, of course I will hear you.

Mr. Everts—We propose to show by this lady that when she went into Mrs. Tilton's room she found that that lady—

Mr. Morris—Now, if your Honor please, we object. The question is ruled out, and counsel now is seeking to get in, by a statement to the Court, that which your Honor has ruled out; and I submit that it is improper that the counsel should make his offer. There is nothing before the Court. The counsel now is proceeding to state what they offer to prove by a question that your Honor has ruled out. We submit that it is improper that counsel should go on and state what they propose to prove by the identical question, after it has been ruled out by the Court.

Mr. Everts—You think you know what it is, by the seal which you show.

Mr. Morris—I know what you propose.

Mr. Everts—Yes, I thought you did; I thought you knew what I proposed.

Mr. Morris—I know you propose to get in evidence that has been ruled out.

Mr. Everts—Yes; I thought you knew.

Judge Neilson—One moment! Now, I understand you to make an offer of some kind, which I wish to listen to.

Mr. Everts—I do; I propose to prove by this witness, that when she entered the room she found this lady upon the floor, fainted away, with her husband's letter in her hand.

Judge Neilson—That is ruled out.

Mr. Morris—Now, Sir, is it proper that counsel should make such an offer as that when they had asked the question calling for the precise fact, and it had been ruled out by the Court? Is it proper for counsel to get up then and make such an offer? Isn't that smuggling in testimony?

Judge Neilson—There is something due to the seal of the counsel, of course. I have found that out.

Mr. Everts—There is no zeal on our side.

Judge Neilson—Mr. Shearman, will you proceed with your examination.

Mr. Everts—And then we should proceed to show the contents of that letter.

Judge Neilson—It is ruled out.

Mr. Everts—We except to your Honor's decision.

Judge Neilson—Yes.

Mr. Shearman—Did you find Mr. Tilton's letter in Mrs. Tilton's hand? A. I did.

Q. Did you take it out of her hand?

Mr. Beach—I object to this as immaterial.

Judge Neilson—It is immaterial and ruled out.

Mr. Shearman—We except. [To the witness.] Did you read that letter? A. I did.

Q. Was that letter afterwards destroyed? A. I suppose it was.

Mr. Beach—I object to this.

The Witness—Mrs. Tilton told me it was.

Judge Neilson—You don't know whether it was? A. No.

Mr. Shearman—Very well. This letter comes under our former call; we now ask for the contents of that letter.

Mr. Beach—We object.

Judge Neilson—It is ruled out, Sir.

Mr. Shearman—We except to that; and, if your Honor please, I propose to make an offer of proof.

Judge Neilson—Yes, Sir.

Mr. Shearman—I offer to prove that this letter contained a statement to the following effect:—

Mr. Pryor—If your Honor please, we object.

Mr. Shearman—[Continuing:] "I shall have just such women visit my house as I please."

Mr. Fullerton—If your Honor please, this is objected to.

Mr. Pryor—If your Honor please, they propose now to give the contents of the letter, pure and simple. Your Honor sees that this is not proof—is not competent evidence without reference to what the contents may be; absolutely incompetent. They then propose to repeat, in the hearing of the jury, the contents of the letter, well aware from your Honor's peremptory ruling that it is not evidence, and that you won't admit it; and we object to it.

Judge Neilson—They are well aware that I will not admit it, but they propose to make an offer to point the exception.

Mr. Pryor—But, the exception goes to the whole letter. Under no circumstances can the contents of the letter be evidence in this case, if your Honor please.

Mr. Shearman—That was precisely the ruling—

Judge Neilson—I hardly think Mr. Shearman would, for the sake of mere form, or for the sake of getting the letter before the jury—

Mr. Beach—Well, I don't imagine for one moment that this jury can be affected by the statements which counsel makes under such circumstances.

Judge Neilson—I hardly think Mr. Shearman would make an offer simply with that view.

Mr. Beach—Well, I think otherwise. It is perfectly obvious that it is made with that view; but I have no apprehensions.

Mr. Morris—It is the contents of the letter that your Honor has ruled out as utterly incompetent for them to prove; very well, then, it is improper for them to make the offer to prove the contents of that ruled-out letter.

Mr. Fullerton—There is another subject, which may as well

be stated. They have not laid the foundation for such contents.

Mr. Pryor—That is the ground I take.

Mr. Fullerton—That letter may be in existence, in this city, in this room.

Judge Neilson—I don't think he has laid any foundation.

Mr. Fullerton—No, Sir; and, therefore, they cannot undertake to prove the contents of it for that reason.

Mr. Evarts—We have laid the same foundation that we did in the other case.

Judge Neilson—You laid all the foundation you could, no doubt.

Mr. Evarts—It is the same foundation; that your Honor understands.

Judge Neilson—That is disposed of.

Mr. Evarts—Your Honor no doubt disposed of this question in regard to this letter when you did the other.

Judge Neilson—Mr. Shearman, will you proceed with something else?

Mr. Evarts—Your Honor will note our exception to the refusal of the right to prove the contents of the letter.

Judge Neilson—Yes, Sir.

Q. Mrs. Putnam, have you not been for a long time well acquainted with Mrs. Morse? A. I have.

Q. Were you not intimately acquainted with her during all this period from 1855 or 1856, down to the present time? A. I have been.

Q. Was Mrs. Morse in the habit of talking to you freely and fully about her family affairs and the affairs of her daughter?

Mr. Fullerton—Objected to, Sir.

Mr. Shearman—I don't propose to prove what Mrs. Morse said.

Judge Neilson—You can say yes or no to that, Madam, I think. A. She was.

#### EVIDENCE AS TO MRS. TILTON'S HEALTH EXCLUDED.

Q. What was the condition of Mrs. Tilton's health during her visit at Marietta? A. She was very feeble.

Q. How did her feebleness manifest itself; did she have any attacks?

Mr. Fullerton—I don't think that has anything to do with it, if your Honor please.

Judge Neilson—That she was very feeble, I think, answers it sufficiently. This lady is not a physician.

Mr. Evarts—What was her malady?

Judge Neilson—The very fact that she was very feeble is sufficient, I think.

Mr. Evarts—We wish to ask this question: What was her malady, and how did it exhibit itself?

Judge Neilson—Ruled out as immaterial.

Mr. Evarts—Perhaps that might depend upon what the malady was.

Mr. Morris—How is it of any importance whether she was sick or well?

Judge Neilson—This lady is not a physician. I don't think we will go any further on that subject.

Mr. Evarts—An observer could tell whether a woman lay in a trance as well as a physician could.

Judge Neilson—We are not in a transition state now; I don't think we will take it. [Laughter.]

Mr. Evarts—Well, if your Honor please, we regard it as important.

Judge Neilson—I don't think I will take it.

Mr. Evarts—I think your Honor will agree with us that whether it was important will depend upon the character of the malady and the manifestations of it.

Judge Neilson—No; it opens the door to speculation, and it might lead to some error were it of any moment at all.

Mr. Evarts—If it were not significant and determinative, if your Honor please, if it was significant and determinative, it would be proper evidence.

Judge Neilson—Ruled out.

Mr. Shearman—Your Honor will note our exception. May it please your Honor, in order to give point to our exception, we will offer to prove that at this occasion Mrs. Tilton was subject to a malady which caused her frequently to fall into a trance, and to faints of long duration, lasting an hour or more at a time, during which—the events which occurred during which time she remained entirely unconscious of.

Judge Neilson—Ruled out as immaterial.

Mr. Evarts—Your Honor will note our exception. This extends, if your Honor will notice, through the month of October and half or the early part of November, immediately preceding the December of 1870, in which certain action of this lady is supposed to be important.

Mr. Shearman—It is for the very purpose of characterizing that action and showing how it originated and what importance should be attached to it that we offer this evidence.

Judge Neilson—[To plaintiff's counsel.] Now, you can cross-examine. [To Mr. Shearman.] Have you got through, Mr. Shearman?

Mr. Shearman—We are through, Sir.

Judge Neilson—I would like to say to counsel, before he proceeds with the cross-examination, that while he knows as well as I do the character and effect of this evidence, I think it proper to submit to him whether it is important to go into an extended cross-examination. You must judge for yourself, I suppose.

Mr. Fullerton—I shall be as brief as possible, Sir. The other side attach importance to this evidence or they would not put it in.

#### CROSS-EXAMINATION OF MRS. PUTNAM.

Mr. Fullerton—When did you first become intimately acquainted with Mrs. Tilton? A. My intimate acquaintance commenced in 1855-56.

Q. Where were you then residing? A. I was residing in South Brooklyn.

Q. How long did that intimate acquaintance continue before it was interrupted? A. It has never been interrupted, Sir, that I know of.

Q. Well, I mean a continuous acquaintance—an intercourse?

A. When we have not been in the same place we have always corresponded.

Q. When did you leave Brooklyn? A. I used frequently to go to Brooklyn and stay a few months at a time and return.

Q. When did you lose your residence in Brooklyn? A. I lost my residence in Brooklyn when I married Mr. Putnam, in 1867.

Q. Did your intimate acquaintance continue up to that time with Mrs. Tilton? A. It did.

Q. In 1867 where did you go to live? A. I went to Marietta, Ohio.

Q. Have you resided out of Brooklyn ever since that time? A. I have resided in Marietta since that time.

Q. How often have you seen Mrs. Tilton since your marriage up to the Fall of 1874? A. I have visited Brooklyn two, three, and once, I think, four times in the course of a year; always saw her when I came to Brooklyn.

Q. Did you stay at her house any time? A. Sometimes; it was not my stopping place.

Q. When did you stop at her house any length of time? A. I don't remember of spending more than a day at a time at her house, excepting once after my marriage I spent a week with her; I think it was about a week.

Q. Where? A. In Livingston-st.

Q. Do you recollect the year of that visit that you spent a week at her house? A. I don't recollect positively. It was either my first or my second visit. My first visit was made in the Fall after I was married.

Q. Name the year, please? A. I went to Marietta in 1867, and I came back and made quite a long visit in the Fall of that year, and the next Spring I made another visit.

Q. In which year was it that you spent the week at her house? A. I could not tell you certainly which it was.

Q. How? A. I could not tell you positively.

Q. When was she married? A. Mrs. Tilton?

Q. Yes. A. In 1855.

#### MR. TILTON'S ORIENTAL ETIQUETTE.

Q. You have spoken, Mrs. Putnam, of Mr. Tilton's habit in receiving his friends. How frequently have you seen him salute his friends with a kiss? A. It was a very customary thing indeed.

Q. Well, how frequently? A. I could not tell you how frequently, because I don't remember how often I went to the house or saw guests come in and go out.

Q. Was not that occasional, when guests arrived at their house when you were there? A. I don't exactly understand your question, Sir.

Q. Did you on every occasion when you were at his house see guests arrive? A. No, Sir; not on every occasion.

Q. Then the arrival of guests when you were there was occasional only? A. Yes, Sir.

Q. Did you ever see him kiss a gentleman? A. I don't think I ever did.

Q. Ladies—you saw him kiss ladies? A. Yes, Sir.

Q. How frequently? A. When his friends called—his familiar friends.

Q. How frequently; on how many occasions do you think you can recall? A. I couldn't tell you, Sir, how many occasions.

Q. You can't tell the number? A. Because I have been scores of times to his house; no, Sir; I could not tell you the number.

Q. Could not designate. Did you have any dispute with Mrs. Tilton about the propriety of that? A. No, Sir; never had any dispute.

Q. Any controversy. A. Yes, Sir. I had a conversation with him once about it.

Q. A controversy? A. No controversy.

Q. No discussion of the propriety of the custom, did you? A. We had a chit-chat on the subject.

Q. Well, a chit-chat may or may not be a discussion. A. No, Sir; I don't think it was a discussion.

Q. You didn't think it was wrong? A. No, Sir.

Mr. Shearman—Mr. Fullerton, excuse me; did you think we offered that evidence for the purpose—

Mr. Fullerton—I can't think what your object is; it is past finding out, as far as I can understand. [To the witness]: Did Mr. Tilton ever salute you with a kiss? A. He has.

Q. Frequently? A. Not very frequently; when we have parted and when I have been away and haven't seen him for some time; occasions when I stepped in—

Q. You were a friend of the family? A. A friend of the family; when I stepped in he kissed the rest of the family and saluted me in that way.

Q. The others that he kissed—were they friends of the family like yourself? A. Friends of the family; yes, Sir.

Q. Now, you have stated that Mr. Tilton observed on one occasion that he wanted his wife to kiss her friends also? A. Yes, Sir.

Q. Did he state whether they were male or female friends whom he wished her to kiss, or was the observation general? A. The observation—I think we were discussing the question of ladies and gentlemen kissing each other, or we were talking.

Q. Well, you think so; were you discussing; are you quite sure upon that point? A. I can tell you how the conversation occurred, if you will allow me.

Q. You have already stated, I think, how the conversation occurred, Mrs. Putnam; I only wanted to know what was the purport of it. A. He said he should be very sorry to have Mrs. Tilton so prudish and fastidious as to attach anything to a kiss more than she would to the shaking of the hand.

Q. That was the observation? A. That was the observation.

Q. And that is all that he said upon the subject, is it? A. Not all, for we had quite a little conversation upon that subject.

Q. What else did he say upon the subject? A. He spoke of other people differing from him; he said that his brother-in-law, Joseph Richards—

Q. That we have got already. Did he say anything else that you have not related upon your direct or

upon your cross-examination, that you now think of? A. He said he thought it was an indication of indelicacy rather than purity for a lady to object to salute a familiar friend with a kiss.

Q. Now, have you related all upon that subject that you remember? A. I don't think of anything else. I might be reminded of something else.

Q. Mrs. Tilton was a woman of strong affections, I think you stated? A. Yes, Sir.

Q. Her prominent characteristic was love, was it? A. Yes, Sir.

Q. She loved her husband, you thought? A. Very much.

Q. Very much indeed—devotedly? A. Devotedly.

Q. And hence she would tell stories, you say, to cover up his faults? A. I used to think she did.

Q. You used to think so? A. Yes, Sir.

Q. By stories did you mean falsehoods? A. She would deny accusations that were made against him to me.

Q. That were true? A. I had evidence sufficient to my own mind that they were true.

Mr. Beach—Oh, well!

Mr. Evarts—That is proper enough.

Mr. Beach—No, that is not proper enough; it is not an answer.

Mr. Evarts—If she thought these accusations were true, and Mrs. Tilton denied them, that was enough for this lady to think that Mrs. Tilton covered her husband's fault.

Mr. Beach—The question is whether she knew whether the accusations were true or not.

Mr. Evarts—She might have known all that was necessary.

Mr. Beach—It may be all that is necessary for you; it is not all that is necessary for us.

#### MRS. TILTON AN ABJECT SLAVE TO HER AFFECTIONS.

Mr. Fullerton—Well, you thought at the time that they were falsehoods, did you not? A. Yes, Sir; I did.

Q. And that she did this at the time on account of her husband? A. Yes, Sir; she seemed to be very anxious to have me think well of him.

Q. And so you think it was on account of her affection? A. Yes, Sir.

Q. Her affections, then, controlled her, didn't they? A. Her devotion to her husband.

Q. Her affections—didn't they control her in your judgment? A. Yes, Sir.

Q. Her affections then were stronger than her love of truth? A. As far as he was concerned, they were.

Q. How? A. As far as he was concerned they were; that is as far as I could judge.

Q. Well, do you know that they did not control her so far as any one else was concerned whom she might love? A. I don't know.

Q. Don't know? A. No, Sir.

Q. Very well, that is an answer—did you ever chide her for her falsehood? A. I have.

Q. You have? A. Yes, Sir.

Q. Often? A. Often.

Q. Well, didn't you think that that was rather a blemish upon her character? A. I did.

Q. When you speak, then, of her lofty spiritual nature, you don't mean to be understood that she was without fault? A. No, Sir.

Q. And her fault was untruthfulness? A. Not general untruthfulness.

Q. Untruthfulness; I don't speak of general or special.

Mr. Evarts—Well, she has a right to answer.

Mr. Fullerton—Yes, Sir; she has a right to answer my question.

Mr. Evarts—Well, her answer is, "Not general untruthfulness."

Mr. Fullerton—But particular untruthfulness? A. As far as her husband was concerned—his faults.

Q. You have also remarked that you think she was dominated by her husband's will? A. Yes, Sir.

Q. An incident of that kind occurred, I believe, at Southport, when you were there, when she wanted to participate in the discussion between yourself and Mr. Tilton, when he told her that he was speaking and did not wish to be interrupted? A. That was at Washington, not Southport.

Q. At Washington; I beg pardon, at Washington—that was an instance of it, was it? A. That was a slight instance; it was very slight.

Q. Well, an instance, however slight? A. Well, I hardly thought of it in that light.

Q. Well, how do you think of it now; she remained silent, didn't she? A. Yes, Sir.

Q. And her husband wished her to do so? A. He wanted to convince me.

A. I didn't ask that. A. Of something—yes, Sir, perhaps it was a slight instance, though I didn't think of it particularly in that light.

Q. Well, she did subject herself to his wishes? A. Yes, Sir, she did.

Q. By not talking at the same time that he did? A. Yes, Sir.

Q. Is that it? A. Yes, Sir.

Q. How long did that discussion last. A. At Washington.

Q. Yes. A. Well, it lasted all through our dinner hour and some time after; I don't remember.

Q. Pretty warm discussion? A. No, Sir, very pleasant discussion.

Q. Well, I didn't mean to say it was unpleasant because I thought it was warm; it was an animated discussion, wasn't it? A. Yes, Sir; quite an animated discussion.

Q. And you replied to his arguments, and then he to yours? A. Yes, Sir.

Q. And when you were not speaking he was speaking, I suppose? A. Well, there was quite a circle of us; some others joined in the conversation.

Q. But you two were the principal disputants? A. Yes, Sir.

Q. You have spoken of invitations upon his part to you to go to the theater; did you think at the time that he did that in a kindly spirit? A. Certainly I did.

Q. For the purpose of doing you a favor? A. Of entertaining me.

Q. From the best of motives? A. Kindly motive to me.

Q. You did not go, I think? A. I did not.

Q. Well, the apology that he made at Southport, was it made in a kind and gentlemanly spirit? A. It was.

Q. He said he could not help what had occurred? A. He could not help making his—he could not help being unhappy, and making others unhappy.

Q. And was that done immediately after receiving his wife's note? A. No, Sir; this was in the evening, just as I was retiring.

Q. Well, didn't she write him a note that very day? A. She had written him a good many notes that day.

Q. Now, if you please, Mrs. Putnam, you have spoken of his wife's writing him a note. A. She wrote that in the morning.

Q. In the morning of the same day when he apologized? A. Yes, Sir.

Q. And he apologized in the evening? A. Yes, Sir.

Q. And wanted you to be present and hear it? A. Yes, Sir.

Q. Everything went on pleasantly after that, didn't it? A. Yes, Sir.

Q. Any more moodiness after that at Southport at that time? A. He did not entirely recover his spirits until after he had spoken on the 4th of July.

Q. And then he did? A. Yes, Sir.

Q. Was pleasant after that? A. Yes, Sir.

#### MR. TILTON'S TREATMENT OF BESSIE TURNER.

Q. Now, what was the age of Bessie Turner at the time when you say that he read to her under a tree and saluted her with a kiss the same as he did his children? A. I don't know, Sir; I have never known her age.

Q. Well, what would you judge was her age from her appearance? A. Well, I am not very good at judging, but I should think she was seventeen—somewhere from fifteen to eighteen years old; it is a mere guess of mine.

Q. Didn't you know her age? A. I did not—she don't know it herself.

Q. Was she a child in her habits and mode of conversation at that time? A. Yes, Sir; she was simple and childlike.

Q. You didn't think it was amiable whatever he did in his salutation of her? A. Oh, no, Sir; he saluted her just as he did his children.

Q. In the presence of Mrs. Tilton? A. Yes, Sir.

Q. And no exceptions taken to it? A. No exception at all—he seemed to regard her as he did his children almost.

Q. Well, how long did Bessie Turner stay with you at Marietta? A. She came to me—I think we arrived there the first of February—first day of February, 1870, and she returned with Mrs. Tilton in November, in the Fall.

Q. Was she with you any time when Mrs. Tilton was not there? A. All the time until October—from February until Mrs. Tilton arrived in October.

Q. Mrs. Tilton came in October? A. In October.

Q. And during the Summer and part of the Autumn she was with you? A. Yes, Sir.

Q. And where did she go when she left—did she return to Brooklyn with Mrs. Tilton? A. She came to help Mrs. Tilton home.

Q. And did you see her after that? A. Yes, Sir; I saw her after that.

Q. Where did you see her next after that? A. She visited me again.

Q. Where? A. At Marietta.

Q. And how long did she remain at that time? A. I think she remained about eight weeks—seven or eight weeks.

Q. And from there where did she go? A. She returned to school at Steubenville, where she was attending school.

Q. At Steubenville, Ohio? A. Yes, Sir.

Q. Do you know how long she remained there? A. I do not.

#### THE WITNESS'S INTIMACY WITH THE FRIENDS OF THE DEFENDANT.

Q. Mrs. Putnam, where are you staying now? A. I am staying at 815 Greene-ave.

Q. Have you seen Mrs. Morse since you came here this time? A. I have.

Q. And when did you arrive in Brooklyn? A. I arrived—it will be eight weeks on Wednesday since I arrived—seven or eight.

Q. Did you come on for the purpose of being a witness in this case? A. I did.

Q. At whose request? A. At the request of—I think it was Mr. Shearman's request; Mr. Shearman telegraphed me or sent me the request.

Q. Have you seen Bessie Turner since you came here? A. I have.

Q. Staying in the same house with you? A. No, Sir.

Q. Have they, either of them, stayed in the same house with you since you came here? A. No, Sir.

Q. How often have you seen them? A. Possibly I have seen Bessie Turner half a dozen times for a few moments; I don't know as I have seen her—

Q. Where did you see her? A. I saw her when I called on Mrs. Morse.

Q. Where did you see Mrs. Morse? A. At her boarding-house in Hicks-st.; I don't remember the number; I think it is 74.

Q. She was there, was she? A. I think she was, when I first came here.

Q. Have some conversation with Bessie? A. Yes, Sir; I had some conversation with her.

Q. Any one present during those conversations? A. Mrs. Morse has been present.

Q. On all occasions? A. I don't remember; my sister has been present on one or two occasions.

Q. Did you ever converse with her alone upon the subject of this trial? A. I cannot remember, Sir, whether I have or not.

Q. Did you converse with her upon the subject of this trial? A. I have.

Q. And as to the evidence that she should give? A. I don't quite understand you.

Q. Did you converse with her as to any evidence that she might be called upon to give at this trial? A. I asked her—

Q. No; I beg your pardon.

Mr. Evarts—Well, say yes or no; it is all right.

Mr. Fullerton—Well, your interference is out of order, I think.

The Witness—No, Sir; I have not conversed with her about any evidence she should give.

Q. Did you tell her what you were going to swear to? A. No, Sir; I didn't tell her what I was going to swear to; I asked her some questions.

Q. I don't want you to tell me what you asked her. Did you converse with Mrs. Morse about this trial? A. I have.

Q. Often? A. No, Sir.

Q. At any great length? A. No, Sir.

Q. Any one present when you conversed with Mrs. Morse? A. My sister was present once.

Q. Conversed with Mrs. Morse how many times? A. Well, very few times about this.

Q. About how many times? A. Well, perhaps—possibly—three or four times; perhaps not as often.

Q. How often have you seen Mrs. Tilton since you arrived in Brooklyn? A. I have seen her frequently.

Q. About how frequently? A. Sometimes I have seen her every day, for a few moments; sometimes I have not seen her for a week.

Q. Did you call upon her? A. I have.

Q. And she upon you? A. No, Sir.

Q. She has not called upon you? A. Never has called upon me.

Q. Well, have you seen Mr. Beecher since you were here with us, except in this room? A. I have seen him in his lecture room.

Q. Anywhere else? A. I think he passed through the room, once I called upon Mrs. Beecher; I think Mr. Beecher passed through the room and simply greeted me good morning.

Q. You called upon Mrs. Beecher? A. I called upon Mrs. Beecher.

Q. When was that? A. I called two or three days ago.

Q. Did you ever call upon Mrs. Beecher before? A. Yes, called on her once before.

Q. When? A. Soon after I came to town.

Q. This time? A. Yes, Sir.

Q. You have called on Mrs. Beecher twice, then? A. I have called on Mrs. Beecher twice.

Q. Now, did you ever call on her before at any time? A. I have been to the house two or three times on benevolent errands.

Q. Now, Mrs. Putnam, please, did you ever call on Mrs. Beecher before your present visit in Brooklyn? A. No, Sir; not to make a formal call on her.

Q. Well, that is an answer. You have spoken to Mr. Beecher when he passed through the room, I suppose? A. I think he said good morning.

Q. You have spoken of a letter which you compared at Mari-

etta, which Mrs. Tilton wrote; please look at the paper I show you and say whether that is the letter which you compared, commencing there—. A. Do you mean whether I compared it with a duplicate?

Q. Yes, Ma'am. [Paper handed to the witness.] A. Do you wish me to read the letter through?

Q. Yes, Madam, so as to be able to determine whether it is the one that you compared. A. I could not tell you certainly, Sir, whether that is the letter or not.

Q. What is your best judgment? A. My judgment is that the letter that I saw at—

Q. What is your best judgment as to the identity of the paper I now show you with the letter which you compared in Marietta, Ohio? A. I don't know how to answer you exactly, Sir, because—there are some things in it that were in the letter that I saw.

Q. Well, upon those "some things" you probably may base a judgment about it, whatever those things are, without naming them? A. But there are some things in here that were not in that letter.

Q. Well, you have not read the whole of it, have you? A. I have read it in print; I know what it is.

Q. Have you read the whole of the letter which I hand you? A. No, Sir, I have not.

Q. Well, how can you speak of some things in that letter? A. Well, Sir, I can read it; I supposed it was the letter I had seen—you must excuse me, Sir, I am so unaccustomed to the witness stand, if I violate the courtesies of the—

Mr. Fullerton—Oh, not at all; you haven't violated any of the—I don't mean to find any fault.

Q. Are you now enabled to answer the question? A. I cannot answer you positively.

Q. What is your best judgment about it? A. I know Mrs.—

Q. Please, Mrs. Putnam, what is your best judgment about it?

Mr. Evarts—Let her express it in her own way; that is the better way, I suppose.

Mr. Fullerton—No; it does not follow that she may express it in her own way.

Mr. Evarts—I don't know how you are to put words in the witness's mouth.

Mr. Fullerton—I don't know how you shall get them out when they are not proper.

Mr. Evarts—I don't propose to get them out.

Mr. Fullerton—Well, I ask the witness whether, according to her best judgment, that letter is identical with the one she compared in Marietta, Ohio, and she can answer yes or no to that question.

Mr. Evarts—Your question was, "What is your best judgment?" She was beginning to tell you what her best judgment was when you stopped her.

Mr. Fullerton—Well, my best judgment is, that you don't know what she was beginning to tell. I know she was not answering my question.

Judge Nelson—[To the witness.] Do you think whether that is the letter, or not? A. Well, I am at a great loss to say.

Mr. Fullerton—Therefore I ask you for your best judgment on the subject? A. I don't know that I have any best judgment about it.

Q. What your judgment is as to whether that is the letter? A. There are some things in it that make me think it is, and there are some things lacking that make me think it is not the letter.

Q. What is your judgment on the whole? A. I could not answer.

Q. [Handing paper to witness] Is the paper I show you in Mrs. Tilton's handwriting? A. It is.

Q. Tell me whether you ever saw it before, or not? A. Yes, Sir; I have seen that letter before.

Q. This manuscript? A. I have seen this manuscript before.

Q. Where did you see it? A. I saw it in Marietta.

Q. Saw that? A. Yes, Sir; I saw a good many others.

Q. I didn't ask you that. Please confine yourself to the subject I am inquiring about. A. I have seen that letter before.

Q. You saw that in Marietta? A. I did.

Q. In whose hands? A. In Mrs. Tilton's.

Q. Did she read it to you? A. She did, or handed it to me to read; I forget which.

Q. One or the other? A. Yes, Sir.

Mr. Fullerton—Now, we will have that marked for identification.

[Letter marked Exhibit No. 112 for identification.]

Q. Now, Mrs. Putnam, do you know that this letter which I have just shown you, which is now marked Exhibit No. 112, was sent by mail? A. I do not.

Mr. Evarts—What is that?

Mr. Fullerton—She does not.

The Witness—I do not, Mr. Fullerton, unless it is that duplicate letter, and I cannot tell you whether it is that or not.

#### WHEN THE WITNESS FIRST HEARD OF THE SCANDAL.

Q. When did you first hear of what is termed this scandal? A. Do you mean when I first heard the public rumors?

Q. Yes, ma'am. A. I heard it the time the Victoria Woodhull scandal was published.

Mr. Evarts—I cannot hear your question, Mr. Fullerton, over here.

Mr. Fullerton—When did she first hear of this scandal, was the question, and her answer was she heard it first at the time of the Woodhull scandal.

The Witness—[To Mr. Fullerton.] Do you mean is that the first time I ever heard anything about it?

Q. When did you first hear of it publicly? A. I heard it after the Victoria Woodhull scandal was published.

Q. Privately had you heard it before that? A. I heard rumors of it.

Q. How long before that? A. I had heard rumors of—not exactly that scandal, but I had heard rumors of difficulty; I had heard it, I could not—

Q. When did you first hear rumors of difficulty? A. I first

heard of the difficulty when Mrs. Tilton visited me in 1870, in October.

Q. In October, 1870, then, was it? A. Yes, Sir.

Q. Well, Madam, had you much feeling upon the subject?

Mr. Evarts—You ask her if she had much feeling on the subject?

Mr. Fullerton—Yes.

The Witness—What was your question?

Q. Did you have much feeling on the subject? A. I felt it was a great outrage.

#### THE WITNESS ANGRY AT DR. STORRS'S ATTITUDE TOWARDS THE SCANDAL.

Q. Dr. Storrs was your pastor, you say, when you were here? A. Yes, Sir.

Q. Have you called upon him since you have been here this time? A. I have not.

Q. Been here eight weeks? A. I have.

Q. Did you ever find any fault with Dr. Storrs for anything he did in connection with this matter? A. I don't know exactly what you mean by finding fault.

Q. Well, Madam, you are an intelligent, educated lady, and understand the use of the term, I presume, as well as I do? A. I have conversed with my family and friends.

Q. I don't want you to give your conversations with your family and friends. Have you felt angry with Dr. Storrs? A. No, Sir; I have not felt angry with Dr. Storrs.

Q. Never felt angry with him? A. I never felt angry with Dr. Storrs.

Q. Didn't you express anger at the time this Council was called? A. No Sir; I never expressed anger.

Q. You had considerable feeling, did you, about it? A. Yes, Sir; I did.

Q. Against Dr. Storrs? A. No, Sir; I had no feeling against Dr. Storrs, but I had a good deal of feeling about the matter.

Q. I am not asking you about that. Didn't you think Dr. Storrs was wrong in participating in whatever resulted in calling the Council? A. I thought Dr. Storrs was mistaken and unwise.

Q. No, I am not talking about his unwisdom; I am talking about your anger? A. I never was angry with Dr. Storrs in my life.

Q. Never expressed anger with Dr. Storrs? A. Never expressed anger with Dr. Storrs.

[Handing letter to witness.] Perhaps that letter will refresh your recollection, Mrs. Putnam? A. I see that I say here I was angry with the two churches.

Mr. Evarts—No matter, unless he asks you what you see.

The Witness—But I don't remember.

Mr. Fullerton—Do you say you were angry with the two churches? A. I suppose it was an extravagant woman's expression. I was never conscious of any error.

Q. However extravagant it may be, I ask you if you say in that letter you were angry with the two churches? A. It seems I said so, but I—

Q. Did you say that? A. I should not think I said it if I didn't see it here.



COUNSEL, AGAIN GIVING AND TAKING.

Mr. Evarts—Well.

Mr. Fullerton—Well.

Mr. Evarts—We have a right to look at the paper concerning which you are asking the witness, and to read it.

Mr. Fullerton—And you may have time to read it after I put it into the case.

Mr. Evarts—You can put it into the case after I get through with it.

Mr. Fullerton—You have the physical power to keep it.

Mr. Evarts—I have a right to read it first.

Mr. Fullerton—No, you have not. It is a violation of etiquette and propriety, and I don't hesitate to say so.

Mr. Evarts—You can now proceed.

Mr. Fullerton—And I proceed not because your permission is given. [To the witness.] Look at that letter again and see whether you express anger at the two churches.

Mr. Evarts—Wait a moment. Do you wish to offer the letter in evidence?

Mr. Fullerton—When I do I will make it known without being interrogated, but I wish an answer to the question.

Mr. Evarts—The contents of the letter you cannot give without reading the letter.

Mr. Beach—The question is whether she expressed anger.

Mr. Evarts—We have a right, after showing her this letter, now to ask her what her recollection is as to her having felt or expressed anger towards Dr. Storrs, which was your question before. You never asked her whether she was angry at the two churches.

Mr. Fullerton—No, because I know she never expressed anger at the two churches. I asked her if she expressed anger at Dr. Storrs, and her reply was, "I expressed anger at the two churches," and I ask her to look at the letter to see whether she is mistaken or not.

Mr. Evarts—The counsel has a right, after exhibiting the letter or memorandum, to ask the witness, thus refreshed, what her present statement now is as to having expressed so and so.

Mr. Fullerton—Is that letter in your handwriting? A. Yes, Sir, it is.

Mr. Fullerton—Then I will read the letter; I propose it shall speak for itself.

Mr. Evarts—Now, how is the letter evidence?

Mr. Fullerton—After having read it you ought to know as well as I do.

Mr. Evarts—I was in a hurry.

Mr. Fullerton—No, you took your time, and handed it back to me whenever it pleased you.

Mr. Evarts—I wish to understand what the evidence is on which it is offered.

Judge Neilson—[To Mr. Fullerton.] How is the letter material?

Mr. Fullerton—In contradiction of her, Sir.

Judge Neilson—Well.

Mr. Evarts—Well, I don't see that it is necessarily contradic-

tory; it is not a contradiction that I know of. Who was the letter to?

Mr. Fullerton—[To Judge Neilson.] What does your Honor decide as to the admissibility of the letter?

Judge Neilson—The learned counsel has asked you whom it is addressed to.

Mr. Fullerton—He has read the letter, and ought to know as well as I.

Mr. Evarts—No, I ought not.

Judge Neilson—If you use it to contradict the witness, I think you can use it for that purpose.

Mr. Fullerton—Yes, Sir, I think so.

Mr. Evarts—If your Honor please, it depends upon what the witness has now stated. A memorandum may be handed to a witness, whether in the form of a letter or anything else, in his or her handwriting, and after that the witness may be asked whether or not she has expressed the sentiments concerning which she had previously been inquired of, and about which she had made a certain answer.

Judge Neilson—Yes, Sir.

THE WITNESS ANGRY WITH TWO CHURCHES.

Mr. Evarts—Now, that is all. I have not understood this witness, after this statement, after the exhibition of this memorandum, to have made any answer that this memorandum will contradict.

Judge Neilson—I don't know what the memorandum will do.

Mr. Fullerton—If it don't contradict, it don't do any harm.

Mr. Evarts—Well, I object to the reading of letters to third persons. It is not evidence in itself, and there is no basis for it as evidence-in-chief, and if it is admitted, it must be admitted under our exception.

Mr. Fullerton—[Reading]:

HARMON, OHIO, April 7, 1874.

MY DEAR ELIZABETH: Many thanks for *The Golden Age* paper. I do not know whether I am to thank you or Theodore for it. Inclosed find \$10, with which pay for the papers, and spend the rest for the children in some way for me, or use all that way if the paper is not to be paid for. How are you? How the children? How your mother? I wrote the latter a long letter in February, to which I have never had a reply. I am strong this Spring. I have, as usual, a large family. I have received all the papers, both secular and religious, in this county—

Mr. Fullerton—Is it "county," Mrs. Putnam? It is a word I don't make out very well.

The Witness—"Council"—on this council.

Mr. Fullerton—[Reading:]

On this council I have been much excited, and my sympathies have been warmly enlisted for Mr. Beecher. How his great heart must ache. I wish I knew what makes Theodore take the ground he does. Is he B.'s enemy? Does he feel that Mr. B. has not been slandered in the accusations made against him? Oh! how I do wish this thing could slip. It makes me sick, and I have felt really angry with those two churches—Dr. S. and Dr. B.—for stirring it up. I do wish Dory would either come out and say he thinks B. a bad man, or else say he never said what he is accused of saying, or else not keep saying he never slandered B.

Mr. Beach—Is "slandered" underscored?

Mr. Fullerton—"Slandered" is underscored.

How is your poor little heart now-a-days? I love you, and think of you much. April 7, 1874. —

Mr. Fullerton—Unless you can help me, Mrs. Putnam, I cannot make that out. The closing line there; I would like to read the whole of it. It is at the bottom of the page.

The Witness—[Reading:] "We all read with great interest the story."

Mr. Fullerton—It is almost as bad as my handwriting.

The Witness—[Reading:] "But it is not a bit like Theodore."

Mr. Fullerton—"We all read with great interest the story, but it is not a bit like Theodore, or what I thought it was to be." [To the witness.] Is this referring to his book—"Tempest Tossed?" A. Referring to "Tempest Tossed," that was coming out in the paper.

Mr. Fullerton—Well, I don't care about that. [To Judge Neilson.] I suppose it is time to adjourn, your Honor. It is after one o'clock.

Judge Neilson—Madam, that letter seems to be written under the conception that the proceedings of the two churches were directed against Mr. Beecher; was that your feeling at the time? A. Yes, Sir, that was my feeling at the time. I cannot remember what expressions I had used in the warmth of the controversy, but I can truly say, under oath, that I never felt angry at Dr. Storrs in my life.

Judge Neilson—Well, I never understood the proceedings of the two churches to be directed against Mr. Beecher at all.

Mr. Fullerton—But the language was explicit, because the two churches were stirring it up.

Mr. Evarts—That is hardly a debatable matter, your Honor.

Mr. Fullerton—It is not debatable, because it is here in black and white.

Mr. Evarts—I mean the Judge's opinion.

Judge Neilson—[To the jurors.] Gentlemen, be here at ten minutes after two o'clock, please.

The Court then took a recess until ten minutes past two o'clock.

The Court resumed its session at 2:10, p. m., pursuant to adjournment, and Mrs. Putnam was recalled.

Mr. Fullerton—Look at the letter which I show you, and say whether it is in your handwriting, Mrs. Putnam? A. Yes, Sir.

Q. It is? A. Yes, Sir.

Mr. Fullerton—That is all with the witness.

#### RE-DIRECT EXAMINATION OF MRS. PUTNAM.

Mr. Shearman—You asked her something about a letter.

Mr. Fullerton—Yes; I asked her if that letter was in her handwriting.

Mr. Shearman—Will you now be kind enough to give us the letter which you did put in evidence, a part, as we propose to read the whole?

Mr. Fullerton—The whole of it has been read. It is mislaid for the moment, Mr. Shearman; we can find it in a second.

[Letter produced.]

Mr. Shearman—Mrs. Putnam, perhaps you would read the rest of this letter yourself; it would be easier. Will you read it as distinctly as may be, beginning from that part after the slander.

The Witness—[Reading:]

I love you and think of you much. We all read with great interest the story, but it is not a bit like Theo., or what I thought it would be. I thought he was going to make the Tempest Tossed his own religious life; but, oh, how I do wish that man would let me love him as I used to; my heart yearns after him, with his great undeveloped powers for blessing the world.

Shall I read it all?

Q. Yes. A. [Reading again:]

Ever so much love to the children. Do write me when you can; I will always destroy your letters when you wish it, and let no one see them.

Q. Did you receive an answer to that letter? A. I did.

Q. Mr. Shearman—We have the original of this letter; and I ask the indulgence of counsel to let us put it in, in the morning. That is not assuming the letter is to be received—I will just identify the copy at present. [To the witness:] Will you see if that is a copy of the letter which you received?

Mr. Fullerton—Well, we object to that.

Mr. Shearman—You received a letter May 1st, 1874—did you receive a letter dated "174 Livingston-st., May 1st, 1874," as an answer to the letter which you received? I wish to offer this letter in evidence as a reply to the letter to Mrs. Putnam.

Mr. Fullerton—Well, I shall object, on two grounds: first, it has not been identified as an answer.

Mr. Shearman—Well, do you put the—I offer the letter in evidence, and propose to read from it at present.

Mr. Evarts—This is a copy in case the original should be lost.

Mr. Shearman—[To the witness:] You have read this? A. I have.

Q. And this is a correct copy of your letter? A. Yes, Sir.

Q. Of the letter which you received? A. Yes, Sir.

Mr. Evarts—Let it be marked for identification.

Mr. Fullerton—This is objected to, Sir.

Judge Neilson—Let it be marked for identification.

Letter marked for identification "D, 112."

Mr. Shearman—Well, we offered to read this letter. We should like to know on what ground the objection is made.

Mr. Fullerton—Well, let me see the letter. [Mr. Shearman showed the letter to Mr. Fullerton.]

Mr. Fullerton—No; that is not the letter—

Mr. Shearman—The ground is that the original is not produced.

Mr. Fullerton—I want to see the original.

Mr. Beach—The substitute may do just as well.

Mr. Fullerton—I want to examine the witness about the identity.

Judge Neilson—Well, I understand Mr. Shearman cannot produce the letter till morning.

Mr. Evarts—He supposed it was in the books—we have looked for it, and find it is not.

Mr. Beach—Well, we can use the copy just as well, Sir.

[Looking over the copy with Mr. Fullerton.] We don't think, Sir, that this letter is admissible, but we make no objection to it.

Mr. Shearman—[Reading] :

No. 174 LIVINGSTON-STREET, }  
May 1st, 1874. }

*My own dear Friend:* I am most unwilling to confess the receipt of your two letters thus tardily; the last, of inquiry concerning the first, came to-day. That I failed to acknowledge your exceeding kindness and delicate present, was because I waited for time to write fully my love, my state, my appreciation of your sweet self—all of which I daily and hourly long to do; but the opportunity has not yet come, for I am my own up-stairs maid and mistress, and amanuensis for Theodore, etc., etc.; for I am still without help, and my little miserable body is so tired, so tired, dear, that I cannot even love. You will understand this. Oh, how much you are to me, and have been, these years of severe trial. I am not sick, as you fear; but so tired. My heart is strong in the Lord; never stronger or nearer to him than in these latter days. I thank you and bless you.

My regards to your husband and children. Do forgive, and believe, as ever, in your dear

ELIZABETH.

How beautiful your growing love for Theodore. God bless you, sweet woman.

E—.

Mother is well.

Mr. Evans—That is all of this witness, if your Honor please; except that we may need to recall her, if we succeed in showing the destruction of the letters concerning which we offered in parole evidence.

Mr. Fullerton—Mrs. Putnam, you are quite sure, are you, that the copy letter just read is in reply to your letter, read before the recess, of April 7th, 1874? A. I think it is, Sir, from acknowledging the present.

Q. And the letter of Mrs. Tilton to you, just read, is the only letter received at that time, was it? A. That I remember of, Sir.

Q. Yes; she made at that time no other or further reply to the inquiries in your letter with regard to this slander, did she? A. No, Sir; not at that time.

Mr. Fullerton—That is all.

Judge Neilson—That is all with this witness.

#### TESTIMONY OF HANNAH AUGUSTA MOORE.

Hannah Augusta Moore was then called on behalf of the defendant, affirmed, and was examined by Gen. Tracy.

Clerk Mallison administered the following oath :

"You solemnly affirm and declare that the evidence that you shall give in this issue joined between Theodore Tilton, plaintiff, and Henry Ward Beecher, defendant, shall be the truth, the whole truth and nothing but the truth."

Gen. Tracy—Where do you reside, Miss Moore? A. Brooklyn I call my home.

Q. Do you know Mr. and Mrs. Tilton? A. I do.

Q. How long have you known them? A. About sixteen years, I think.

Mr. Tracy—You will have to speak a little louder, so that the jury can hear you.

The Witness—[Resuming]: I have known them since Florence was a year old.

Q. Where were they living at the time you knew them? A. 48 Livingston-st.

Q. 48 Livingston-st.? A. Yes, Sir.

Q. Were they keeping house or boarding? A. They were boarding with Mrs. Richards.

Q. Mrs. Tilton's mother? A. Yes, Sir.

Q. Do you know the—did you reside with them at any time in the family of Mrs. Richards? A. I boarded that Winter with Mrs. Richards in the family.

Q. Mrs. Richards? So you were members of the same family? A. Yes, Sir.

Q. Can you tell us the year that was? A. I think it was 1860.

Q. You saw much of them, I suppose, that Winter? A. Yes, Sir.

Q. What were their relations as husband and wife at that time, happy or unhappy? A. They appeared happy when together, evidently, must have—

Q. When did they move to Oxford-st., do you know? A. They moved from 48 Livingston-st. to 102 State-st.

Q. Before moving to Oxford-st.? A. Yes, Sir.

Q. Do you know when in State-st. they went to reside? A. It was in 1862, I think; 1862 or 1863; I am not good at dates; that is my recollection.

Q. Do you know how long they resided there? A. They resided there three or four years.

Q. In State-st.? A. Oh, in Oxford-st.—In State-st. they only resided a part of one year.

Q. Well, do I understand you that they went to State-st. to reside in 1862? A. They—if it was 1860, when I first went with them—

Q. In 1860, you mean? A. In 1860; I was two Winters with them in that house, 48 Livingston-st.; they then went from there to 102 State-st.

Q. That would make it 1860 or 1861? A. That was 1860 or 1861.

Q. Now, how long did they reside in State-st.? A. I cannot tell exactly; but they returned from State-st. to their mother's house, at 48 Livingston-st., and resided for some months.

Q. Well, were you with them in State-st.? A. I was with them in State-st.

Q. Where did they go after returning to Oxford-st. and remaining a few months. A. Returned to Livingston-st.

Q. Returning to Livingston-st., where did they next reside after that? A. Then they went to Oxford-st., and took a lease.

Q. Whereabouts in Oxford-st.? A. 27 Oxford, I think it was.

Q. North Oxford-st.? A. North Oxford-st.

Q. Did they keep house there? A. Yes, Sir.

Q. Was that the first of their keeping house? A. No, Sir; they kept house the second Winter in 48 Livingston-st.; I boarded with them.

Q. Ah! A. The second Winter.

Q. What was the practice in these early days of having family worship in Mr. Tilton's family, do you know? A. They

would have it sometimes a few days at a time, but it was never continuous.

Q. Well, were you with them in Oxford-st. also? A. I was there one Summer; part of one Summer, and all one Winter.

Q. How long did you reside in Oxford-st., do you know? A. I cannot swear; they took a house for three years; I think they stayed their lease out.

#### MR. TILTON'S DECLINE FROM THE ORTHODOX FAITH.

Q. Now, Miss Moore, did you observe at any time a change in the religious opinions of Mr. Tilton? A. I never thought he had very confirmed religious opinions at any time that I knew him.

Q. Well, what did you know of his changing his religious opinions, or what his wife termed a change of religious sentiment in Mr. Tilton? A. He gradually—he gradually went off from what we considered evangelical ideas, but she did not—she didn't notice it so much as I did, but she finally came to notice it very much, and was troubled about it.

Q. When did you observe that change—that he began to go off? A. The first I ever noticed particularly about it was when we were in State-st., the first of his expressing disbelief in Bible truth. The third year, I think, I knew him.

Q. The third year you knew him? A. Yes, Sir.

Q. Well, what did he say? A. He said he didn't believe the statements as they were given in the Bible.

Q. Well? A. And then when he moved to Oxford-st., the first of my knowing them there, he said he didn't believe in the atonement at all.

Q. Well? A. His expression was: "I do not believe one word of it."

Q. Did not believe one word of it—What did he—did he say that in the presence of his wife? A. Yes, Sir.

Q. What effect did this expression of his religious sentiments have upon his wife? A. She felt very badly. Shall I tell you what she said?

Q. Yes, if she said it in his presence. A. She said, "Oh. Dory, you don't mean what you say?" He says, "I do; I do not believe it as she does at least," he says.

Q. What further did you observe in her conduct in regard to it? A. Well, I do not remember anything else.

Q. Well, do you remember whether or not it was frequently the subject of conversation between himself and his wife? A. Yes, Sir.

Q. Do you remember whether or not it caused great sorrow to Mrs. Tilton, this? A. It caused great sorrow to her—it did, certainly, and she would cry to me sometimes—

Q. Repeat that. A. It made her weep and cry and feel very sorry.

Q. Do you know whether there came a time when family prayers were discontinued entirely by Mr. Tilton? A. Yes, Sir; while I was there they were discontinued.

Q. Well, when was that—when did you first observe that he had entirely discontinued family worship? A. He discontinued it—I had not been there a fortnight when I went to

board in his family, when he discontinued it for all that year.

Q. Well, when was that? A. That was the second year I knew him.

Q. That was when he was residing at what? A. When he was keeping house at 48 Livingston-st. Then, when we moved, we moved right from there to 102 State-st., and he started it again at his wife's request, and he kept it up for two days; that was the last that ever I knew of his doing it.

Q. Well, was it continued by any one in the family after he discontinued it? A. His wife did.

Q. She used to conduct family worship herself? A. Yes, Sir.

Q. Asked the blessing at the table, did she? A. Yes, Sir.

Q. Was that always her habit so long as you knew the family? A. It was, I think; I did not board in the family very much more, so that I would not be there mornings very much, but when I was I would see her do it.

Q. Well, do you remember on any occasion his wife taking the Bible to him—carrying it to him and requesting him to read? A. I do, Sir.

Q. What occurred; do you remember what occurred on that occasion? A. He made some little joke—some pleasant joke, I do not know what, and snapped his fingers so, and turned it off, and she took the Bible away, and I never saw her after that ask him, not while she was keeping house then.

Q. Do you remember whether or not at any stage of his history—your acquaintance with him—he discontinued going to church? A. He didn't entirely discontinue at all while I knew him, but he was very irregular always.

Q. Well, at what time did you observe that first—his irregularity?

Mr. Morris—"Always," she said.

The Witness—Always observed it.

Q. Always irregular? A. Yes, Sir.

Q. Well, was that the subject of conversation between himself and his wife? A. Yes, Sir. Oh! I cannot swear to that; I do not remember particularly to that; it was between him and me.

Q. It was between you and him—in the presence of his wife? A. I do not know—I do not remember that.

Q. Well, what transpired between you and him on the subject of his attending church? A. I told him he ought to go to church, instead of staying home and writing his articles for the week.

Q. Well. A. He said "No, he felt"—his inspiration—I do not know what his words were, but that he could write better, and that he stayed at home to do so, and thought that I ought to do so too.

Q. Well, state—was it his habit of working on Sunday? A. It was; so far as I know, it was.

Q. Do you know whether he was in the habit, also, of going away from home Sundays, and being absent from home Sundays? A. I think he was; I know he was for short times, and when he would come in he said on one occasion, I think—I think two occasions, that he had been rolling balls in some billiard room, I think, and I spoke to him about that. I told him I didn't think that was right for a Sunday-School—he was engaged in he said

day-School then—he was not gambling, you know, but throwing them for exercise.

Q. Said he had been playing billiards on Sunday? A. No; rolling balls in the—

Q. Well, what kind of balls? A. I don't know; exercising in a billiard-room, the idea that I took was.

Q. Well, did he mention the billiard-room in connection with the exercise that he had been taking? A. He did.

Q. Rolling balls; you understood that it was a billiard-table, didn't you—a billiard-room? A. I understood it was a billiard-room; that is all I thought about it.

Q. Well, what did you say to him about that? A. I told him I didn't think it was right, and asked him what he thought they would say if they knew it down at the Sunday-School.

Q. What did he say to that? A. He joked about it; I cannot remember what he did say; he didn't think—

Q. Was he engaged in the Sunday-School at this time—Plymouth Church? A. Yes sir.

Q. For how many years after you knew him was he connected with the Sunday-School? A. Four or five years; five years, I think.

Q. When did he cease his connection with the Sunday-School? A. I don't know when he ceased it.

Q. Well, did he, do you know the fact that he did? A. Yes, Sir, he did.

Q. When did you first learn that he had sundered his relations with the Sunday-School? A. It was in 1869 that I first knew it, I think; certainly.

Q. Well, what time did they remove from Oxford-st., do you know? A. I cannot tell the year they moved from Oxford-st.; they went back to Livingston-st., but I don't know whether they went straight into their own house or not—I think not. I think they were awhile at Judre Moree's.

Q. Were you with them all the time that they were in Oxford-st., more or less? A. I was for<sup>2</sup>—I was all the time—was there one Summer and the whole of one Winter, and after that I was there occasionally as a visitor.

Q. How long did you remain on those occasions? A. I would stay a day and a night; never stayed more than two days, I think.

Q. Mr. Tilton at home at the time? A. Sometimes, and sometimes not.

Q. You observed Mr. Tilton and his wife together on these occasions? A. Yes, Sir.

#### MR. TILTON'S UNKIND WORDS TO HIS WIFE.

Q. Then after they moved into their house, what is now called 174 Livingston-st., were you then with them at any time? A. Only as visitor: never was there long.

Q. How much have you visited there? A. I don't know how much; I always visited them when I was in the city; I would be there a day and a night at a time.

Q. How frequently should you say? A. But he very seldom was at home when I was there then.

Q. At any time, Miss Moore, did you hear Mr. Tilton make any remark concerning his wife's ability, or her use of the English language? A. I cannot tell you distinctly any remark

of that sort, but I have an impression that he treated her disrespectfully in these regards; I know he did that; I can tell you of particular things he said.

Q. Do you remember his making a remark at any time in regard to or about his looking down upon her mother? A. That I cannot tell, whether I heard or not; I know that—

Mr. Fullerton—You cannot tell, Miss Moore; that is enough.

The Witness—But I know that in consequence of—

Mr. Fullerton—One moment, Miss Moore.

Q. Now, at any time during your acquaintance, did you notice a change in Mr. Tilton's treatment of his wife or his conduct towards her? A. His treatment of his wife was always very changeable; sometimes he would be very affectionate and kind in his language, and in his manner toward her, and perhaps in a few hours he would be very gruff and unpleasant, and say things that were very disagreeable before her. I myself have heard him say these kind of things; tell her that such and such a woman was a wife worth having—speak in that way; I have heard him say that.

Q. How often have you heard him make a remark of that kind? A. I cannot tell you how often, but I have heard it two or three times—enough so that I remember it distinctly.

Q. Did he name the person at the time, do you remember? A. I remember he did once.

Q. Where was this said? A. This was said in Oxford-st.

Q. I mean whereabouts, at what time of the day, meal-time or —. A. It was just after dinner—lunch—in the middle of the day.

Q. In the presence of the family? A. In the presence of himself and wife—me and wife.

Q. How did Mrs. Tilton receive that remark? A. Pleasantly; she turned right to me and she said: "If I was only worthy of him, he would be a good man;" she said, moreover; "Gussie, I wish you had had him; you would know how to manage him." Said I: "What do you want to wish such a curse as that on me for?"

#### MR. TILTON'S LOOSE IDEAS ABOUT THE MARRIAGE RELATION.

Q. Well, did you at any time observe any expression of Mr. Tilton concerning the marriage relation? A. Yes, Sir, I did.

Q. When did you first begin to observe that—when did he first make that a subject of conversation? A. He said that in Livingston-st.—not in his own house; before he bought his house; he said he didn't think a man and wife should live together a month after they had ceased to take pleasure in each other.

Q. Where was that? A. That was in 48 Livingston-st., I think it was now; I don't know certainly whether that was in 48 Livingston-st. or in Oxford-st., but it was in the middle room of one of these houses.

Q. Was it said at meal time or —. A. No, Sir.

Q. Who was present when it was said? A. Only his wife and myself—in the room where the piano was.

Q. Well, at other times have you heard him make similar remarks, remarks upon that subject—the subject of the marriage

relation? A. I have heard him talk in that way, but I cannot tell any other special thing that I have heard him say about it.

Q. How often was that a subject of conversation, when you were present—the marriage relation? A. Not very often.

#### MR. TILTON'S BAD COMPANY.

Q. Did you, at any time, notice a change in the friends and associates of Mr. Tilton, that he brought with him at his house? A. Yes, Sir; I did—a change in the sense that they were more—

Q. When did you first begin to notice that change? A. The year that I boarded there, the first year, in 1886, I think it was, he brought people there to the house; he brought Stephen Pearl Andrews and women that he had with him there to the house. The second year I boarded with them—the first year I boarded with them—the second year I was in the house at 48 Livingston-st.; these were the only ones I remember that Winter. Afterwards more of that kind came.

Q. Well, where, more of that kind? A. In Oxford-st.—Oxford and Livingston.

Q. What was the subject of their conversation when Stephen Pearl Andrews was there? A. I could not understand a word they said; I don't know; they were talking all the time; they talked to midnight.

Q. Well, didn't you hear anything that was said? A. I can't remember; it was all about "congenial spirits," and "spheres," and, I don't know—that kind of talk. I don't remember what it was at all.

Q. Well, what else was said besides "congenial spirits" and "spheres?" A. I couldn't tell you, Mr. Tracy, at all.

Q. Anything about "affinities;" did you hear that? A. Yes, about affinities—and a woman that was with Mr. Andrews sat on the sofa beside Mr. Tilton and fixed his hair, and she rubbed over his face, and she would turn around and peek up at him and tell him what a lovely sphere he had—something of that kind—[laughter]—atmosphere, I guess it was. [Renewed laughter.]

Q. Well, where were they sitting when she was rubbing her hand over his face? A. Sitting beside of each other on the sofa.

Q. How long did that continue? A. From seven or eight o'clock until twelve.

Q. Do you know who that woman was? A. I don't; I don't even remember her name.

Q. Who was present at this time—do you remember? A. Mrs. Morse and Mrs. Freeland, and Mrs. Tilton and myself; I don't know but Belle Oakley was—Miss Oakley; I don't know certain.

Q. Whether she was there or not? A. No, Sir.

Q. Do you remember when that was? A. It was in the Winter, the second Winter that I knew them. I can't give you dates with any certainty.

Q. Well, after that, did you hear more of a similar conversation? A. I did, somewhat; nothing that attracted my attention, or remained on my mind as that has.

Q. As that did? A. No, Sir.

Q. Well. A. I was afraid for him then, and I told his wife so.

Mr. Fullerton—No; never mind; never mind, please.

Mr. Tracy—That is what you told his wife in his presence? A. Well, I told—well, I don't know as I did in his presence.

Q. Well, did you have a talk with Mr. Tilton about it yourself afterwards? A. Oh! I have talked to him a good many times.

Q. What did you say to him about it? A. Told him he would go to ruin if he kept such company, and I didn't want him for his wife's sake, and for his own, too.

Q. You remonstrated with him, did you? A. Yes, Sir.

Mr. Beach—Well, you had better let her tell.

Q. What did he say to your remonstrance? A. He would laugh at me, make fun; never could get him serious.

Q. How long did that continue? A. Always; as long as I knew him.

Q. As long as you knew him—well, afterwards did you notice a continuation of this same class of people visiting his house? A. I didn't; not so much myself. Can't I tell what I told Mrs. Tilton about it?

Q. Not in his absence, not when he is absent. A. Can I tell what she did?

Q. Yes, you can tell what she did.

Mr. Fullerton—Not exactly; not unless you are very anxious. The Witness—Well, I am.

Mr. Tracy—Anything that Mrs. Tilton did, I submit, in consequence of Mr. Tilton's associates or his conduct there is admissible.

Judge Neilson—I hardly think it, Sir.

Mr. Tracy—Q. Do you know whether she talked to her husband about it? A. I don't know that, but she went to the door—

Mr. Beach—Wait a moment.

Mr. Tracy—In his presence? A. I don't know.

#### MR. TILTON'S BAD COMPANY ORDERED AWAY BY MRS. TILTON.

Q. Do you know of Mrs. Tilton's refusing the house to people of this class? A. That is what I wish to say; that she followed them to the door and told them—

Mr. Fullerton—One moment.

The Witness [continuing]—she wished they would not come.

Mr. Fullerton—No; one moment.

Mr. Tracy—We offer to show that Mrs. Tilton forbade her house to those people, and told them that she wished they would not visit her house any more.

Judge Neilson—That was in Mr. Tilton's absence?

The Witness—In his absence—well, I am not sure it was in his absence.

Judge Neilson—Well, the main point is, are you sure he was present.

The Witness—No; I am not sure he was present.

Mr. Tracy—I submit it is part of the domestic relations, part of the history of the family.

Mr. Everts—The action of the wife towards a certain class of

people, the husband's action towards which has been given in evidence.

Judge Neilson—Her action in this particular instance may have been precisely what he would have done there for aught we know.

The Witness—He liked their acquaintance.

Mr. Tracy—It proves her view and her feelings towards this class of visitors who were accustomed to—

Judge Neilson—You may show it if it relates to this same woman who has been described as being there on a certain occasion.

Mr. Tracy—I don't know how that is.

Mr. Everts—Just inquire.

Mr. Tracy—Do you know who came to the door on the occasion you refer to? A. It was after they had been in the house and were going out.

Q. After they had been in the house and were going out? A. She followed them to the door, and spoke to the woman.

Judge Neilson—That is giving the conversation.

Q. Do you know who they were? A. Only that it was Stephen Pearl Andrews's friend; that is all I know.

Q. Was it this same woman you have been speaking of? A. I do not know certainly whether it was this same woman; there were two; I do not know certainly that it was the same woman.

Q. Well, did you see Stephen Pearl Andrews there again with another lady? A. No, Sir; I did not see him.

Q. Well, you were present on an occasion you told about and heard what Mrs. Tilton said to those parties? A. I only heard what she said.

Q. Had you seen these parties in the house before that? A. No, Sir; the time I spoke of I had seen them all the evening.

Q. All the evening? A. Yes, Sir.

Q. Had Mr. Tilton been in the house that evening? A. The first—which do you mean?

Q. I mean the evening when Mrs. Tilton went to the door with some parties and said something to them which the Court has not—? A. Well, that I can't remember; I can't tell you distinctly about that—whether he was in the house or anything; the only thing I remember about it is that.

Q. And do you remember distinctly whether it was the same evening that this lady placed her hand upon Mr. Tilton's face? A. I remember distinctly that it was not; that it was not that same evening.

Q. It was not that same evening? A. No, it was not that same evening.

Q. Well, do you know who had been in the house that evening—do you know who they were that were there? A. No, Sir; I don't.

Q. Had you ever seen these parties at the house before associating with Mr. Tilton? A. No, Sir; I had not seen them, and I don't think they ever had come before that first night that I speak of.

Q. Where was this; in Oxford-st. or Livingston? A. That was in 48 Oxford-st—48 Livingston-st.

Q. 48 Livingston-st? A. Yes, Sir; first night they came.

Q. Were they males or females—I mean men or women? A. Why, Mr. Andrews and a woman.

Q. It was Mr. Andrews and a woman? A. Yes, Sir.

Mr. Fullerton—No, not the second time.

Mr. Tracy—Now, I submit, your Honor, that having identified Mr. Andrews, who was one of the parties on that evening, referred to there, with a lady—

The Witness—Oh! no, Sir, it is all a mistake; I only can swear to Mr. Andrews being there one night—the night that they were there all the evening, and I watched them, and all I knew about—I do not know only that she told me—

Mr. Tracy—The question I desire to put—

The Witness—All I know is what Mrs. Tilton told me. I told Mrs. Tilton that she should not have such people in the house, and she told me—

Mr. Beach—Wait one moment, madam; will you? When you are requested, please stop.

Mr. Tracy—I am not seeking to get what Mrs. Tilton told her.

Mr. Morris—Well, she says she has made a grand mistake; what she has been saying she heard from Mrs. Tilton.

The Witness—I did not say that I had, did I?

Mr. Fullerton—Yes.

The Witness—Well, I mean there was a grand mistake going on; I do not mean that I made the mistake at all. I had only seen them one evening. You understood that I saw Mr. Andrews a second time, but I did not.

Q. I understand you were at Mr. Tilton's house one evening when Mrs. Tilton accompanied some persons to the door, and requested them not to come again? A. No, Sir; I did not mean to be so understood.

Mr. Tracy—Well, you were so understood by me.

Mr. Everts—It appears, now, that her knowledge was derived from what Mrs. Tilton communicated to her afterwards, and that, of course, we don't offer.

The Witness—What I was intending to say was her answer to me when I told her.

Mr. Tracy—Well, that we don't ask for; that is not admissible. [To the witness]: Now, coming back to Mr. Tilton's religious views: do you know what precise form he finally settled upon in regard to his religious doctrines? A. I don't know; it did not seem to me to be any form.

Mr. Fullerton—One moment—you don't know, and that is enough.

Mr. Tracy—Do you know whether or not he came to deny the divinity of Christ? A. I don't know of my own knowledge that; never heard him say that to me.

Q. Miss Moore, did you observe in the association of Mr. and Mrs. Tilton what Mrs. Tilton's manner was towards her husband? A. Kind and good always.

Q. And whether she was self-depreciating or self-asserting? A. She was.

Q. What? A. She was self-depreciating; too much so always.

Q. What evidence did she present in regard to her affection for her husband? A. Every possible evidence that a woman could give, always.

## MR. TILTON'S MOODINESS.

Q. Did you observe whether or not Mr. Tilton was a man of moods? A. Dreadfully moody.

Q. Well, describe them. How did his moods vary from time to time? A. Well, one time he would be down on his knees, and his arms around her, and say she was lovely and beautiful, and "Isn't she beautiful, Augusta?"; and another time he would not be willing to even order a load of coal, or to do anything, the most necessary thing about the house, when she was sick and could not do it, perhaps, and even not talk to her, and if he did talk, he would speak crossly, and then he would go off, and she would not know where he was, and he would be gone to midnight or morning, and it seems to me he was all night repeatedly, when she would not know where he was at all, and she would worry and cry about it.

Q. Well, how frequently did that happen? A. That used to happen very frequently. That happened even that very first Winter that I boarded with them at all, when they boarded with Mrs. Richards, the mother-in-law, and it used to fret her most unspeakably. She would wake up in the night to know when he came in. I knew that myself, because I slept with her.

Q. Well, did that continue as long as you knew them? A. It did so far—yes, as long as I had opportunity to know about it.

Q. Do you remember what excuse he used to give her for his absence? A. I don't remember.

Q. That is all—one word—down to how late a period did your acquaintance with the family continue? A. Down to 1868; I have always been acquainted with them, but that is—

Q. You continued to see them more or less in their house down to 1868? A. Yes, Sir.

Q. Since then? A. Since then I have seen them, too, in their house when I have been in the city, but not frequently; I would not be in the city more than every year, perhaps, or year-and-a-half, and I would not see him, then, always.

Q. Now, what continued to be the conduct of Mrs. Tilton towards her husband all the time you knew them?

Mr. Beach—Well, I object to that question.

The Witness—Always kind and good.

Mr. Beach—The question should be what the conduct was.

The Witness—Well, her conduct was always perfectly exemplary; the only fault you could find with it was that she made a fool of her husband with her affection and idolatry; that is all the fault I ever saw in her conduct towards him; I think it was bad for him; it would have been better for her to have been different.

Mr. Everts—That is all.

## CROSS-EXAMINATION OF MISS MOORE.

Mr. Fullerton—When was this conversation which you have related, where Mrs. Tilton, or when Mrs. Tilton wished that you had been Mr. Tilton's wife? A. That was in the dining-room, in Oxford-st.

Q. In what year? A. I cannot tell you; I am not certain about years; I very seldom am. It may have been 1863 or 1864; not later than 1863.

Q. Did she say it in a joke or was she in earnest? A. Well, a joke, of course; but she was in earnest this far, that she thought it must be all her own fault if he did anything wrong, and she wished somebody that had known how to be a worthy wife to him could have had him. She was in earnest so far.

Q. Do you think she meant to express a regret that she had ever married him? A. No, not on her own account.

Q. You meant it was on his account? A. Yes, Sir.

Q. Were you in earnest in the reply that you made? A. Indeed I was. [Laughter.]

Q. You didn't like him then? A. I did like him in this way: he was her husband, and I wished him well, and tried as hard as I knew how to have him go in the right way always.

Q. And your reply was: "Why do you want to put such a curse on me?" A. Yes, Sir.

Q. And you were in earnest in that? A. I was in earnest so far as he was—I considered—

Q. Did you speak earnestly? A. I suppose I did.

Q. Emphatically? A. Probably.

Q. How? A. Probably I did.

Q. Did you call out any reply from Mr. Tilton? A. I don't remember; I don't remember that he said anything.

Q. Are you quite sure? A. I cannot think of anything that he said.

Q. Now, wasn't it all a joke, Miss Moore, and didn't you indulge in a hearty laugh at its close? A. No, Sir; I did not. Of course I didn't really mean that the man was a curse, but I considered it a dreadful thing for any one to have a husband that was so unreliable and impossible to do anything with.

Q. Yes? A. Yes, that was what I meant.

Q. Can you tell us when the instance was that he would not order a load of coal when she was sick? A. The instance was the first year he kept house in 48 Livingston-st., what day of the month or the year I cannot tell.

Q. You heard him refuse to order a load of coal, did you? A. I merely heard him go out of the house without saying he would.

Q. Did you hear him refuse to order a load of coal? A. No, I didn't hear him refuse.

Q. You know he did not go— A. I know he didn't do it

Q. One moment. A. Because the fire went out, and we were cold.

Q. And therefore he could not have ordered it? A. He didn't say he did when he came back.

Q. I am not asking what he said. Now, do you know of your own knowledge that he did not order the coal? A. I can't say that I followed him and saw whether he did or not, of course.

Q. Then can you say that he did not order it? A. When he came back—

Q. One moment. A. She asked him if he had ordered it and he didn't say he did, and he said he did not, I think, but I cannot swear certainly about it.

Q. Then if you cannot swear certainly what do you swear anything about it for? Did you hear him say that he did not order the coal? A. I did not hear him say so, and I haven't said that I heard him say so.



Q. That is the reason I asked you, because you haven't said it. You didn't hear him say it, did you? A. Why, no, of course I didn't hear him say so.

Q. And you don't know but that he did order the coal, do you? A. I know he didn't; when he came home she asked him why he didn't, and he gave some reason why he didn't; I don't know what—he didn't go to the right place, or couldn't take the trouble, or something.

Q. Which was it? A. I could not tell sure.

Q. Did he go to the wrong place to order it? A. He didn't say, "I am sorry I didn't order it; I meant to;" but he just turned her off.

Q. You have told us what he didn't say; I want you to tell me what he did say. A. Well, I cannot.

Q. You cannot remember what he did say? A. No, Sir.

Q. Do you remember anything that he said? A. I cannot remember anything about it.

Q. Then he didn't refuse to order the coal, did he? A. Neglect, perhaps I ought to say instead of refuse. Did I say refuse to order it?

Q. You did, Madam. A. Well, then, I suppose I ought to have said neglected.

Q. Very well, then, we will take that. He neglected to order coal? A. He neglected to, and didn't do it.

#### THE WITNESS HELPS THE COUNSEL.

Q. Did he say he went to the wrong place? A. No, Sir; he didn't; and he didn't regret it in any way or shape.

Q. One moment; I am not asking about his emotions. A. You want to find out just how he acted and felt, don't you? [Laughter.]

Q. I want you to tell just what he said. Didn't you say he went to the wrong place? A. No, Sir.

Q. Didn't you say so a moment ago? A. I say I don't know whether he said so; I don't know, of course.

Q. Do you know now that he did not say so, that he went to the wrong place? A. I could not tell you certainly. I don't think he told me that, Sir. I know that he didn't say anything that looked like an excuse—

Q. One moment. A. A legitimate excuse.

Q. No, no! You can't get that in, now, at all. A. Well, that is the fact any way.

Q. It is a fact. You might as well put up with it first as last. You will answer my question, and you won't interject anything else. Can you say that he did not, when he came back, say that he had made a mistake and gone to the wrong place? A. He did not.

Q. Didn't you say— A. I can say that I don't remember.

Q. What did you use the term for a moment ago when you said that he went to the wrong place or something of that kind? A. No, I didn't say so; I said this—

Q. That is an answer? A. Let me tell you what he did say.

Q. That is an answer? A. I say I don't know whether he said he forgot it or went to the wrong place, or what he said. That is what I say.

Q. Can you say that he did not say that he went to the wrong place? A. He did not.

Q. He didn't say anything like that? A. No.

Q. If he didn't say anything like that, why did you use that phrase? A. Perhaps I ought not to have used it. I was trying to think just what he did say.

Q. In trying to state just what he did say you said something else? A. I didn't say so; I said I didn't know whether he said so and so or not. That is not saying that he did say it.

Q. You don't remember what he said, then? A. No, Sir; I do not. I remember this—

Q. You cannot recall anything, can you, that you did say? A. No, Sir.

Q. On his return? A. No, Sir.

Q. Very well. That is the way we will leave it. A. Well, only don't try to make me say what I didn't say.

Q. No; I am only trying to make you say what is right, if I can. What other instance do you recollect where he refused to do something he was asked to do? A. I don't suppose I can give you chapter and verse of any of those things, if that is what you want.

Q. Can you give us a volume of it? A. It was constant, his disobliging spirit.

Q. Give us an instance now if you can of this constant disobliging. A. Well, when she would want him to take her to places of amusement.

Q. One moment! Tell us the instance, where it was and when it was? A. I cannot tell you where it was, but I know I was there with her repeatedly.

Q. I don't want "repeatedly;" I want the instance. A. Well, then you can't get it, because I can't give it to you. [Laughter.]

Q. Very well; I think I cannot get it because you haven't got it. A. I know I have brought her home quite late, at midnight, from places where he would not bring her home.

Q. Places of amusement? A. Lectures.

Q. You were with her then? A. I happened to find her and bring her home, and he was there.

Q. Didn't you go with her? A. I don't remember.

Q. Can't you remember whether you went with her or not? A. I remember going with her once.

Q. He did not go? A. He did not go.

Q. Did he go with you? A. No, Sir, he did not go with me.

Q. Did you go with Mrs. Tilton? A. I only remember going with Mrs. Tilton once.

Q. That once I am talking about. On one occasion you went with Mrs. Tilton, and Mr. Tilton did not go with you? A. I don't know whether he went or not.

Q. Didn't you tell us a moment ago that he refused to go to places of amusement, and give that as an illustration? A. You didn't let me tell what I was going to about it.

Q. No, no; time is too precious for that. Did you not a moment ago say that he refused to go to places of amusement, and give that as an instance? A. I was going to say that he refused to see her home from places of amusement; neglected to, and left her to get along the best way—I didn't mean amusements, either; I meant lectures, public entertainments; but I was go-

ing to give you two instances where I myself found her and brought her home. Once, I believe, I went with her, but I don't remember about it.

Q. Tell us about that one before you go to the other; where was it you went? A. That was to hear a lecture.

Q. Where? A. I think it was to hear Wendell Phillips, but I can't be certain about it.

Q. You went with Mrs. Tilton? A. I went with her once, on one occasion.

Q. That one occasion I am talking about. Where was Mr. Tilton when you started? A. I don't know where he was; I know he never used to go with her hardly.

Q. Was he at home at that time? A. I don't know.

Q. If he was not at home, then why do you blame him for not going with her? A. Because he was there, and could have been home.

Q. If he was not home when you and Mrs. Tilton started, how do you hold him responsible for not going with her? A. Because he was around home and could have been home.

Q. What do you mean by around home? A. Near; and because he was there at the lecture, and didn't go home with her—went with somebody else.

Q. I am talking about going to the lecture? A. He always knew when she was going.

Q. Did he know that you and Mrs. Tilton were going to the lecture? A. He knew that Mrs. Tilton was going.

Q. How did he know it? A. Because they had planned it before.

Q. Was he home? A. He had been home that day.

Q. Planned it? A. She had planned it; she always told him where she was going.

Q. Did she tell him that day? A. Well, I don't know. You want to find out the spirit of things.

Q. Yes, I know. You can't say that you knew that she wanted to go to the lecture, can you? A. I know that she did.

Q. Please stop right there, and tell us how you know? A. That is just what I can't tell you certainly how; I know he did know she used to want to go.

Q. Used to want to go to that one lecture? A. Always.

#### TESTIMONY FORCED ON THE COUNSEL.

Q. I am talking about that one instance; you generalize too much. That is all you know about it, is it? A. I know that she would be there, and if—

Q. No, no! A. And he would not go home with her; and didn't go home with her.

Q. That won't do. I can talk as loud as you can; you can't force testimony on me in that way. A. You asked me what I knew about it.

Q. I asked you if you knew anything more about that single instance of a lecture which you had spoken of, than you have told? A. I know that he was there on the platform.

Q. I am talking about going to the lecture? A. Well, that is the lecture I am telling you about.

Q. Going to. You were speaking of his being there, and I am

asking you about going to the lecture. A. I don't remember about going there; but I remember being there.

Q. Well, that is enough now; did any one go with you? A. I don't know certain; I can't tell you certainly.

Q. Did it occur to you that he didn't want to go with her because you were along? A. No, Sir; it didn't occur to me, anything of the sort; because I never depended on him in any way or shape.

Q. You didn't want to be a curse to him? A. No, Sir.

Q. Now, wasn't he on the platform at that lecture? A. Yes, Sir; he was.

Q. And didn't Wendell Phillips lecture? A. I didn't swear certain that it was Wendell Phillips's lecture. I said that I didn't know but it might have been; but it was some public lecture, and he was there on the platform, and he saw his wife.

Q. On the platform, wasn't he? A. Yes, Sir, he was on the platform, and so were we.

Q. You were on the platform? A. Yes, Sir.

Q. Was there some occasion for his remaining after the lecture was over? A. He wanted to; there were people there that he wanted to see, and he run right by her and never asked her if she had got anybody to go home with her.

Q. She had you, didn't she? A. He didn't know I was going home with her.

Q. Didn't he know you went with her? A. I don't think he did; I don't know how he could.

Q. How do you find out that fact? A. I don't find that out certain.

Q. You went from the house with her, didn't you? A. I don't know; I suppose I did; it was not very near.

Q. How far were you from home? A. A good ways.

Q. How far was the lecture-room from home? A. I think it was down here at the Music Hall.

Q. Where is that? A. At the Academy of Music.

Q. Here on Montague-st? A. Yes, Sir.

Q. How many minutes' walk is that to Mrs. Tilton's? A. It was not very far.

Q. How many minutes' walk? A. It was not very far, but it was night and she was lame and sick.

Q. How many minutes' walk? A. I never counted it. [Laughter.] What's the odds of that?

Q. How many minutes' walk is it, do you think? A. I don't know; ten or fifteen, aint it?

Q. Is it as much as that? A. I don't know; I never counted it.

Q. Is it five minutes' walk? A. Why, I should think so, certainly.

Q. Very well; if you think so, you ought to say so. A. It was late at night, and a little lame woman, and he ran right by her and almost upset her that night to get to some women that were on the stage, that were public speakers. I don't know one of them.

Q. To get to some women on the stage? A. Yes, Sir; and he shook hands with them, and he left her and didn't know more than the deed whether she was going to have any one to go home with her or not.

Q. You saw all that? A. Yes, Sir, I saw it myself.  
Q. Do you know who lectured that night? A. I don't know whether it was Wendell Phillips or Anna Dickinson; Anna Dickinson, I think.

Q. Cannot you recall who delivered that lecture? A. No, Sir.

Q. Cannot even tell the sex of the lecturer? A. I cannot; I used to go to a great many lectures in those times.

Q. Yes, but you remember some things very particularly? A. Certainly, but I can't remember that.

Q. Cannot you remember what the subject of the lecture was? A. No, Sir.

Q. Or who the lecturer was? A. I think instead of being Wendell Phillips it was Anna Dickinson, but I am not sure.

Q. You cannot tell anything more about it? A. No, Sir; not about that lecture; but what I have told you I can tell.

Q. Well, that is enough now. Were you there when the lecture commenced? A. I suppose so; all through.

Q. Did not Mr. Tilton introduce that lecturer? A. I don't remember that he did.

Q. Can you say that he did not? A. I cannot say that he did not.

Q. Do you know whether he was on the Committee of Arrangements? A. I don't know anything about it.

#### STEPHEN PEARL ANDREWS'S CALL AT THE TILTONS.

Q. I come now to that meeting at Mr. Tilton's house when Stephen Pearl Andrews was there. What time did he come there? A. He came there between seven and eight o'clock, I think; I am not certain.

Q. What time did he leave? A. But I know—

Q. What time did he leave, madam? A. He didn't leave until after the clock struck 12, for I remember that distinctly.

Q. Of course you do, or you wouldn't say so. A. But I don't remember distinctly just the time he came.

Q. Who came with him? A. A woman.

Q. Anybody else? A. No, Sir.

Q. Sure? A. I am sure.

Q. Didn't Deacon Freeland come with him? A. I didn't see Deacon Freeland when he came in with him; he may have come with him.

Q. You don't know but what he did come with him? A. I didn't see them when they were let in the front door. It may be possible that he came with them.

Q. Didn't Deacon Freeland's son come with him? A. No, Sir.

Q. Wasn't he there that night? Q. I never saw his son to my knowledge.

Q. Well, Deacon Freeland was there that night? A. Yes, Sir; Deacon Freeland was there; I don't think he was there all the time.

Q. Was Stephen Pearl Andrews there in the parlor when you came down? A. That I can't tell.

Q. Wasn't Mr. Andrews and Mr. Freeland in the parlor together when you came down? A. I can't tell you.

Q. You don't know but what they were, do you? A. I don't know but what they were; I can't tell certain.

Q. That is enough; this woman, as you style her, was she there when you came down? A. Yes, Sir; they were all—

Q. Was she there when you came down? A. I don't know; I don't know whether I came first and whether they came in while I was sitting there.

Q. You can't tell? A. No, Sir; I know I was there.

Q. Will you name all of the people that were present in the parlor? A. Stephen Pearl Andrews, a woman whose name I don't remember, Mrs. Morse, Mr. Freeland, Theodore Tilton and myself.

Q. You have named all, have you? A. It may be that Miss Oakley was there, but I don't know certain.

Q. You can't tell us the subject of the conversation that night? A. The subject of the conversation I can tell you was spheres, spiritual influences, and things of that sort, but the talk I can't repeat, for it was beyond me altogether, or beneath me, somehow.

Q. Or above you? A. I said beyond me or beneath me, some way.

Q. Somewhere around. Did they talk about spiritualism? A. They didn't use the word "spiritualism." They talked about spheres and atmospheres, and then a great many things; I don't know what they talked about; they talked steadily and just talked right along.

Q. Who did? A. Stephen Pearl Andrews, hour after hour, and I can't remember a solitary sentence the creature said, not one.

Q. Did he do all the talking? A. He talked all the time and when others talked they had to talk right along with him. Nobody else said much.

Q. Wasn't you mistaken—wasn't it Mrs. Andrews? A. No, Sir; it wasn't, it was Mister.

Q. Any reply made to anything he said? A. I don't remember.

Q. Did you talk any that night? A. I did not.

Q. Not a word? A. No, Sir; I don't remember speaking hardly at all that evening. Mr. Tilton himself hardly spoke.

Q. How? A. Mr. Tilton hardly spoke; he sat very still.

Q. Very quiet, did he? A. Yes, Sir.

Q. Do you know whether he invited those people there that night or not, of your own knowledge? A. I don't know.

Q. You don't know? A. No, Sir.

Q. Do you know whether or not they were intruders in that house that night? A. There was no appearance—not the slightest of their being intruders.

Q. I ask you if you know, of your own knowledge, whether they were intruders or not? A. Now, can I tell you what I do really know in my heart?

Q. I ask you what you know of your own knowledge. A. I know they were not intruders; I never heard anybody complain of it.

Q. You found it out in some spiritual way, I suppose? A. I could not tell you; I know Mr. Tilton was very cordial and very kind and pleasant to them, and seemed very much pleased with their being there.

Q. Mrs. Tilton was not unpleasant, was she, to them? A. Let me tell you how she was; may I?

Q. Was she unpleasant? A. You can judge yourself when I tell you how she was.

Q. Well, tell us how she was? A. She sat down between the doors and sat there like a dumb child, and looked up right at them all the time in perfect amazement, and there was hardly a smile on her face, and she would look from one to another, just as if she didn't know what kind of creatures they were.

Q. Yes? A. Yes.

Q. Did you do the same? A. I did, I suppose, but I felt different from what she felt; I felt angry.

Q. You felt angry? A. Yes, Sir.

Q. Were you angry because Andrews talked all the while and didn't give you a chance? A. I was angry because he stood there and talked in that kind of a way, and suppose we had sense enough to think it was reasonable.

#### DEACON FREELAND PLEASED WITH MR. ANDREWS'S SPEECH.

Q. Did you know that Mr. Stephen Pearl Andrews lectured at the house of Henry Ward Beecher? A. I didn't know anything about it.

Q. Didn't you ever hear that? A. I never heard anything about it.

Q. You never heard that? A. No, Sir, not to my knowledge; I do not remember it.

Q. Don't you know that this woman, as you term her, that was there, was Stephen Pearl Andrews's wife? A. I do not know anything about it.

Q. You never heard that? A. I do not remember that I did.

Q. Pray tell us how Deacon Freeland looked all that time. A. He sat so I could not see much of him; he was back there; he looked pleasant as he always does. [Laughter.]

Q. He didn't take any offense at Andrews talking all the while, did he? A. I never heard him say.

Q. He was a deacon of Plymouth Church, wasn't he? A. I don't know; I believe he has been sometime.

Q. He is a member of Plymouth Church, isn't he? A. I believe he is.

Q. Do you know how Deacon Freeland came there that night? A. I do not; I suppose he was invited there, like the rest of them.

Q. He stayed? A. He stayed, I think, until they went.

Q. Was this talk offensive to you? A. No, not so offensive; the way she acted with Mr. Tilton was offensive.

Q. If it was offensive why didn't you get up and go up stairs? A. Because I wanted to see it out. [Laughter.]

Q. Oh! you did? A. Yes, Sir.

Q. Mrs. Tilton didn't get offended and go up stairs. She stayed there, she wanted to see it out? A. We all stayed there.

Q. And wanted to see it out? A. Yes, Sir.

Q. Well, did you see it out? A. Yes, Sir.

Q. Now, I want to know whether that woman said: "What a sphere you have got," or "What an atmosphere you have

got;" what was it; what kind of a sphere was it? A. What a lovely, pleasant sphere—atmosphere, or something, I can't tell certainly what it was, but something of that sort; as if it was very pleasant indeed to her.

Q. Was the atmosphere pleasant that night? A. I didn't seem to feel—you know she sat there—

Q. No; I want to know if the atmosphere was pleasant? A. It didn't seem so to me.

Q. What was there wrong about the atmosphere? A. I didn't like the way she was doing.

Q. Wasn't the room well ventilated? A. I do not know; it ought to be, both doors were open.

Q. Both doors were open? A. Yes, Sir.

#### MR. TILTON AWAY FROM HOME NIGHTS.

Q. You have told us that he would stay out all night some nights? A. Yes, Sir.

Q. And you know it because you slept with her? A. I said I thought he would be out all night, and I knew that he would be out until after midnight, and until after two in the morning, because I slept with Mrs. Morse, who was on the floor just above where he came in, and we could hear his night-key when it rattled, and always hear him come in.

#### THE MOTHER-IN-LAW'S WATCHFULNESS.

Q. Did you always hear him come in? A. I didn't always, but Mrs. Morse did, for she was awake listening for him.

Q. You was also awake, wasn't you? A. I did not lie awake, but she would wake me up.

Q. Always? A. Sometimes.

Q. Did you get up and see what time it was? A. We didn't have to, the clock was there. She would say, "Look at that; it is two o'clock in the morning;" and she would sit on the side of the bed, and she would write him a note.

Q. That was mother Morse? A. Yes, Sir.

Q. She is an amiable lady? A. Yes; she tried to be.

Q. How does she make out? A. Very well, sometimes.

Q. Not always? A. She feels tried sometimes, and has good reason to.

Q. No doubt; you think so? A. She has; any one would that saw it.

Q. Didn't you tell us that you slept with Mrs. Tilton? A. No, Sir; with Mrs. Morse.

Q. How far was Mrs. Tilton's room? A. Mrs. Tilton's room was down stairs, I think; I don't know exactly how far. A part of the time she slept down stairs, and a part of the time she slept on the same floor; but Mrs. Morse's room was right at the head of the stairs—was about midway of the house, and where we could always hear when the doors opened and shut.

Q. Always hear? A. Always hear when we were awake, and she was awake when he was not at home at night.

Q. Mrs. Morse? A. Yes, Sir.

Q. She wanted to know what time he got home? A. She wanted to know what time he got home; she could not sleep, I suppose.

Q. She was very anxious about him? A. She was anxious for her daughter's sake, for her daughter would cry and be unhappy.

Q. Did you see her daughter cry? A. I have seen her cry repeatedly; yes, I have.

Q. At twelve o'clock at night, when Mr. Tilton came home? A. No, I didn't see her cry at twelve o'clock at night, but I have seen her cry about his irregular ways.

Q. When was this? A. This was the second year I was with them in 48 Livingston-st., I think is the number; may be I have got the number wrong all the time, but 48 Livingston-st. is the number, I think.

Q. That is before they moved? A. Before they ever moved to Oxford-st. at all.

Q. Now, tell us the year, please? A. It was 1859 or '60; it might possibly have been 1861, but not later.

Q. And all this took place, then, before 1861—at the close of 1861, at all events, did it? A. All what—about Stephen Pearl Andrews, and his coming there late?

Q. No; all this staying out late at night? A. Yes, Sir.

Q. Was Theodore Tilton engaged out at night? A. He was on *The Independent*, I think.

Q. The editor of *The Independent*? A. He was an under editor then; one of the editors of *The Independent*.

Q. Anything else? A. No; not that I know of; I don't know that he had any other employment.

#### MRS. TILTON'S GREATEST FAULT.

Q. Well, you think her great fault was this idolatry to her husband, do you? A. I do, indeed.

Q. A woman of strong affections, is she not? A. Yes, Sir.

Q. Governed by them a good deal? A. Well, she was as regarded him, too much altogether.

Q. Too much? A. Too much, I thought.

Q. You don't believe in a woman thinking so much of her husband? A. I do believe in a woman thinking a great deal of her husband, but not trying to excuse and cover his faults where it is only going to increase those faults.

Q. You asserted the faults, did you, and she excused them? A. Sometimes I would.

Q. What had you to do with asserting his faults? A. Because I wanted her to do different from what she did, because I thought she was injuring him.

Q. You didn't want her to excuse him, did you? A. I didn't want her to say that wrong was right, even for the sake of her husband, and I told her that that was no way to help him, or to get God to answer her prayers for him.

Q. What did you want her to do? A. That she ought to stand on what she knew was the best always, and right.

Q. Take him to task? A. No, Sir.

Q. That is not what you wanted? A. No.

Q. Call him to account? A. When he wanted her to let her children play on the Sabbath day that she should be firm about that.

Q. And not let them play? A. And not let them play.

Q. What did she want the children to do on the Sabbath day? A. She wanted them to know that the Sabbath was different

from some other days—make a difference—and he didn't wish her to.

Q. What kind of play was prohibited? A. I cannot tell you specially; she wanted they should have a regard for the Sabbath day.

Q. What kind of play did he want them to indulge in? A. He told them to get out their playthings, and not have any difference made between days; he didn't wish them to have any difference made between days.

Q. How old were these children at the time? A. Well, after his children came—first, when I first knew him, he only had one, and then I knew them, you know, after the others were born. He began that talk about the Sabbath the very second year that I knew them.

Q. When was that? A. It was in 1860 or 1861, I told you.

Q. What children had they then? A. I said about the Sabbath—talking about the Sabbath, not to make any difference.

Q. What children had they then? A. He had Florence first.

Q. How old was she? A. She was only a year old when I first knew her.

Q. And she didn't want Florence to have out her playthings? A. She began right away, as soon as Florence knew anything at all, to try and teach her to remember the Sabbath.

Q. Now, if you please, I want to know what children they had, and their respective ages, when this controversy was got up about playthings? A. They had two.

Q. Two children? A. Alice and Florence.

Q. How old was Alice? A. Alice was a little bit of a thing; I don't know.

Q. How old was she? A. Old enough to have some idea—

Q. I want you to tell me how old she was? A. I cannot tell you how old she was.

Q. About how old? A. About running around, I guess; big enough to have playthings.

Q. Two years? A. Perhaps two years, or two and a half.

Q. How old was Florence? A. I don't know. She was a year older than Alice, or a year and a half older, I suppose.

Q. Then there was a child three years old, and one two years old, was there? A. I don't know their ages exactly, but about that perhaps.

Q. And the controversy was whether these two little children should have out their playthings on Sunday? A. The controversy was had in a general way—

Q. I am talking about this controversy there that time. Was that the subject of the controversy—whether one child two years and one two and a half or three years should have out their playthings? A. I suppose so.

Q. Very well. Are you a member of Plymouth Church? A. Yes, Sir.

Q. How long have you been such member? A. Sixteen years, I guess; about the time I first knew them.

Q. You have taken a strong interest in this controversy? A. I should if I had not been tormented to death with my own affairs.

Q. That is the only thing that prevented you, is it? A. Yes, Sir.

Q. You haven't taken any interest then in the controversy?

A. Yes, Sir; I have taken an interest.

Q. A strong interest? A. As strong as I could.

Q. You did your best, did you? A. Yes, I did.

Q. And have kept it up to the present time? When did you see Mrs. Tilton last? A. I saw her Monday night, I think—last night—Saturday night.

Q. How often have you seen her in the last three months? A. I have seen her once a week, perhaps; once in two weeks, certainly.

Q. At Mr. Ovington's? A. Yes, Sir; at Mrs. Ovington's.

Q. Have you stayed there all night since she has been there? A. No, Sir; only just a few minutes at a time.

Q. How often have you seen Mrs. Morse? A. Often.

Q. How often? A. Oh, often; I was there in the house with her for some time.

Q. How long? A. Six weeks, I guess.

Q. When? A. This Winter. From December till about a month ago, off and on, I was there; I boarded there. I boarded when I was in the city. I have been away in the country a good deal.

Q. How often, if at all, have you seen Beattie Turner? A. I used to see her there every day when I was there; nearly every day; I would not see her every day.

Q. Where was she when you saw her? A. She was there in the same house.

Q. Did you talk with her about this case? A. Not much. I had one conversation with her when she and I happened to meet in the same room.

Q. And you talked about it? A. Yes, Sir.

Q. Did you have a talk with Mrs. Morse about it? A. Oh, dozens of times!

Q. A long conversation? A. Not very long, because she could not—I would not have very long conversations with her.

Q. You did talk to Mrs. Tilton about it, I suppose? A. Some; not much.

Q. And you have talked to other people about it? A. Not much.

Q. Talk to any of the lawyers about it? A. Not a word, I believe, to any one.

Q. How? A. I think I have not talked a word to anybody, except to say—I talked with Mr. Hill a little about it; that is, I didn't talk with him.

Q. But he talked to you? A. He talked to me some.

Q. Well, that was a good thing to do. Have you seen Mr. Beecher about it? A. No, not a time.

Q. And did not talk with him about it? A. Not a word.

Mr. Fullerton—I believe that is all.

Mr. Tracy—One word.

#### RE-DIRECT EXAMINATION OF MISS MOORE

Mr. Tracy—You say that one morning Mrs. Tilton requested Mr. Tilton to order a load of coal? A. She said to him this. She said, "The coal is all out, and you have forgotten it," two or three times, or have not got it when we wanted it; I cannot give the exact words, but "if you don't

order it to-day, the fires will be all out." That is all I remember about it. It was not ordered.

Q. What was said?

Mr. Fullerton—That has been all gone over.

Judge Nelson—Let her answer. A. He would not say that he would do it. He would be busy, and went off and then it was not ordered.

Q. Did the fires go out? A. I think they went out that night. They were very low, and we were cold, and that is the way I remember it.

Q. When he returned that night, what was said between himself and his wife about the coal? A. I cannot remember distinctly now. He gave no satisfaction, and didn't seem to care; that is all I can remember about it.

Q. Now, you spoke of your finding Mrs. Tilton at places of amusement and going home with her? A. Lectures they would be; we didn't go to places of amusement much.

#### THE WITNESS INTRACTABLE.

Q. There is another instance you didn't name. You said there were two instances, and you named one of them. When was the other instance? A. I cannot remember distinctly.

Mr. Fullerton—One moment.

The Witness—But it was—

Mr. Fullerton—One moment. Can you not stop, possibly?

The Witness—I wanted to finish that sentence.

Mr. Fullerton—I know you wanted to, and that is the reason you should not do it. I object to their going back over this ground again, if your Honor please.

Mr. Tracy—It is new matter.

Mr. Fullerton—It is not new matter. I cross-examined in regard to what the witness testified on the direct, and I confined her attention, as well as any human effort could confine her, to one particular occasion when they went to a lecture. I did my best, as your Honor knows, and with what success you witnessed; but, at all events, although she broke out at every pore with regard to the other occasions, yet I inquired as to but one, and that one was spoken of on the direct. Now, they ought not to be permitted to go over it again.

Mr. Tracy—There was nothing called out on the direct examination in regard to neglect to attend her (Mrs. Tilton), either to or from places of amusement. That is entirely new matter, called out on the cross-examination. He (Mr. Fullerton) referred to some instances, and I propose to pursue the inquiry into other instances, not only as to the instance he inquired of, but as to others.

Mr. Fullerton—On the direct they called out the fact that she requested him to order coal, and he refused to do it, and refused to do other things.

Mr. Tracy—I am now speaking of places of amusement.

Judge Nelson—Counsel has interrogated her in regard to one occasion, and only one.

Mr. Tracy—He has interrogated her as to his neglect to attend her to and from places of amusement, and she said she remembered two instances. He inquired particularly as to one. Now, I propose to inquire not only as to that one, but as to the other.

Judge Neilson—That would be new matter. He interrogated her particularly as to one. Did he by a question call out a reference to the other?

Mr. Tracy—He did. That is my recollection. Certainly I did not. There was not a word said on the direct examination about places of amusement. Everything that has been said on the subject has been called out on cross-examination, and he asked for instances, and she said there were two.

#### OTHER INSTANCES WHERE MR. TILTON SLIGHTED HIS WIFE.

Judge Neilson—You may interrogate her as to the other one, but do not go beyond that.

Q. What other instance do you remember of finding Mrs. Tilton at a lecture, and going home with her? A. I remember distinctly finding her twice, and bringing her home myself, and one instance I remember distinctly of his neglecting her and running by her in a very marked manner, so that others besides myself noticed it.

Q. That was at the Academy of Music? A. Yes, Sir; and I think there were more than two occasions, but I could not swear to them.

Q. Where was the other case? A. One was over in New-York, away up at Steinway Hall, I think, but I am at fault there again; I cannot swear as to the places; only circumstances I remember.

Q. It was in New-York? A. Yes, Sir.

Q. What were the circumstances of that case? A. Only that we were there, and he saw her, and knew she was there, and he didn't come for her or to see her home, or provide any one else to see her home, and I brought her home.

Q. Did you go for her? A. I went with her home.

Q. Did you go to the lecture with her? A. No, Sir.

Q. You found her there? A. Yes, Sir.

Q. And he not having provided any way to bring her home you took her and brought her home? A. Yes, Sir; this is my best recollection, the best of my knowledge and belief.

Q. Do you know when that was? A. No, Sir, I don't; but it was as much as ten years ago.

Q. Where did they live? A. They lived in Livingston-st., I think, in the house where they live now.

Q. In their present house? A. I think so.

Q. You think they were living in their present house at that time? A. I think so, but I cannot be sure.

Q. At the time in the Academy of Music you say Miss Anna Dickinson was the lecturer there? A. Here in Brooklyn she was present, and it seems to me as if she was the lecturer, but I could not be certain about it.

Q. And you say Mr. Tilton rushed by very rapidly to speak to Miss Dickinson? A. To speak to Miss Dickinson, or to some ladies, and she was among them.

Q. She was among the ladies that he was going to speak to? A. Yes, Sir.

Q. Did he speak to his wife? A. He didn't speak to her; he ran right by her, and almost upset her.

Q. Now, at the time that Stephen Pearl Andrews was at the house with this woman, and you said this woman looked up

into Mr. Tilton's face and said, "What a beautiful sphere or atmosphere you have," what was the woman doing at the time she said that?

Mr. Fullerton—That is objected to.

Judge Neilson—That general subject you have been over.

Mr. Tracy—I have been over the subject generally, but not that particular phase of it.

Mr. Beach—You have been over the subject fully, and the witness said "sphere" or "atmosphere."

Mr. Fullerton—The counsel got it out as an atmosphere, and not in general terms.

Mr. Tracy—You have forgotten.

Mr. Beach—I have not forgotten.

Mr. Tracy—You went into that. I only ask what she was doing at that particular time, when they say she said "sphere" or "atmosphere."

Mr. Fullerton—No; you called that out on the direct examination.

Mr. Tracy—I did not.

Mr. Fullerton—And I only asked what kind of a sphere it was.

Judge Neilson—I think we have got all the witness can give us.

Mr. Tracy—I don't know about that. I will pass that subject. [To the witness.] Don't you know Florence Tilton was born in 1856? A. I don't know.

Q. You don't know when she was born? A. No, Sir.

Q. If Florence Tilton was born in 1856, then she was three or four years old when you went there? A. She was—

Mr. Fullerton—She could not have been.

The Witness—She—

Mr. Fullerton—One moment, if you please. There is no more swearing to the arithmetic.

Judge Neilson—[To Mr. Tracy.] You have the age and the date of the occasion, and that gives you the answer.

Mr. Tracy—Now, you were familiar with the family in Oxford-st. Where were they living at the time you remember this dispute or discussion between Mr. Tilton and his wife in regard to his children playing on Sunday?

Mr. Fullerton—That they have been all over.

Mr. Tracy—We have not brought that out at all. There is nothing on the direct examination on that subject.

Judge Neilson—[To the witness.] You may answer it.

The Witness—I think that was before they moved into Oxford-st. I think it was after Alice's birth, before they had any other children but that first one.

Q. Did you ever hear any discussion between them more than once? A. I never heard any more discussion about it, but I noticed that Mrs. Tilton—

Mr. Fullerton—Never mind.

The Witness—gave way.

Mr. Fullerton—One moment.

Q. Did you notice that after that, as long as you knew the family, the children were permitted to play on Sunday as on any other day of the week?

Mr. Fullerton—Does your Honor permit that?

Judge Neilson—No. [To Mr. Tracy.] Besides, that is not the way to examine your witness.

Mr. Tracy—What is the objection to the question—that it is leading?

Mr. Fullerton—Yes.

Judge Neilson—It is something more than leading; it is very suggestive, and takes her judgment as to a lapse of time, which is very vague and very general.

Mr. Tracy—She has fixed a particular day when she remembers it.

Judge Neilson—As to that you examined her.

Mr. Morris—And she has answered.

Mr. Tracy—I want to ask the witness whether after that she observed the conduct of the children on Sundays.

Judge Neilson—That is not a re-direct; that is new matter.

Mr. Tracy—All there is on the subject of the children playing on the Sabbath was called out by the plaintiff.

Judge Neilson—On one particular occasion.

Mr. Tracy—At any time.

Mr. Beach—We didn't ask about their playing on the Sabbath. We asked only as to the discussion between Mr. Tilton and his wife.

Mr. Tracy—All I have to say is that all there is in this examination touching the Sabbath was called out by the plaintiff.

Judge Neilson—It related to a particular occasion.

Mr. Tracy—Yes, Sir; and now I desire to ask the witness whether it was confined to that one occasion, or whether it was continued after.

Judge Neilson—That is not a re-direct. That is going to a subject upon which he didn't ask.

Mr. Tracy—I am only asking a question concerning the same subject. He has gone into the subject.

Judge Neilson—Therefore it is a new matter.

Mr. Tracy—It is new matter brought out by them, and not by us.

Mr. Fullerton—It is new matter touching this issue.

Mr. Beach—The matter we brought out was in regard to the discussion between Mr. and Mrs. Tilton as to the propriety of the children playing upon Sundays upon a particular occasion, and now they ask the question whether, subsequent to that, the children were in the habit of playing on Sundays altogether—a new and distinct subject.

Judge Neilson—So I understand. I think we have all the witness can tell us about it.

The Witness—You have not, by a good deal.

Q. I ask you whether you ever heard this question of the children playing on the Sabbath discussed or referred to between Mr. and Mrs. Tilton after they removed to Oxford-st.

Mr. Beach—She answered that that she did not, except upon this one occasion.

Mr. Tracy—I ask this question.

Mr. Fullerton—That is objected to, as being a mere repetition.

Judge Neilson—I will let them ask that question.

The Witness—I never heard them discussing it together any more.

Q. And that, you think, was before they moved to Oxford-st.?

A. Yes, Sir; I think so.

Mr. Morris—And one was a year and a half old, and the other two years and a half old?

The Witness—She would not discuss much with him.

Mr. Beach—Wait one moment.

The Witness—She gave way to him.

Mr. Beach—Wait one moment, madam?

Mr. Beach—That is all.

Judge Neilson [To Mr. Shearman]: Mr. Shearman, call your next witness.

Mr. Shearman—If your Honor please, we will consume the time by reading a couple of papers that were put in as Exhibits, but have not been read. They were marked, but not read. Those were the Exhibits put in by Mr. Ovington as to the receipt and expenditure of the money received by him.

Judge Neilson—It is not necessary to read those papers.

Mr. Shearman—Then how are they evidence? Then I move that they be struck out.

Judge Neilson—They are in the case the same as if read. They relate to items of dollars and cents.

Mr. Shearman—How are the jury to know they are in evidence?

Mr. Evarts—Have they been marked as Exhibits?

Mr. Morris—Yes, Sir; they are our Exhibits.

Mr. Fullerton—Either party can read them on the summing up.

Judge Neilson—Yes, Sir. Call your witness, Mr. Shearman.

Mr. Shearman—Miss Oakley.

#### THE JUROR JEFFREYS STILL SICK.

Mr. Beach—If your Honor please, Mr. Jeffrey sends me word that he is not feeling very well.

Judge Neilson—We will omit calling the witness, then, until the morning.

Mr. Evarts—Let the witness be sworn.

Judge Neilson—Yes.

Mr. Morris—One moment, before this witness is sworn. We would like to have Mrs. Ovington here to-morrow, to cross-examine her a little further. [To Mr. Evarts]: Will you have her here in the morning?

Mr. Evarts—Yes, Sir.

Judge Neilson—We will now adjourn until to-morrow morning at 11 o'clock.

The Court then adjourned until Tuesday at 11 o'clock.



## FORTIETH DAY'S PROCEEDINGS.

## VARIED EVIDENCE FROM FOUR WITNESSES.

THE CIRCUMSTANCES OF THE WINSTED SCANDAL  
 SIFTED—TESTIMONY OF THE HOTEL-KEEPER AND  
 A GUEST AT THE HOUSE—SAMUEL E. BELCHER  
 EXAMINED AND CROSS-EXAMINED—MR. TILTON'S  
 STATEMENTS TO HIM CONCERNING THE CHARGE  
 AGAINST MR. BEECHER—THE EXAMINATION OF ST.  
 CLAIR M'KELWAY BEGUN.

TUESDAY, March 9, 1875.

The trial was resumed promptly at 11 o'clock this morning. All the persons directly interested in the case were present with the exception of Mr. and Mrs. Beecher and Mr. Porter, and they came into the court-room a few minutes after the beginning of the day's work. Two witnesses were examined and cross-examined during the first half hour. They both testified in regard to the Winsted scandal. The first was George W. Lincoln, who was the proprietor of the Beardsley House in Winsted, where Mr. Tilton, accompanied by a lady, was a guest in 1869. Mr. Lincoln's testimony substantially agreed with that already given on this subject. The next witness, Albert F. Norton, appeared to find some difficulty in taking the usual oath, and it required several minutes to induce him to kiss the book. In reply to Judge Neilson's question, the witness said that he considered the oath binding, and the questioning proceeded. Mr. Norton testified that he had boarded at the Beardsley House at Winsted in 1869, and had seen a lady partly dressed in Mr. Tilton's room at an early hour one morning. The cross-examination of this witness elicited nothing new.

Samuel E. Belcher, a former deacon and member of the Examining Committee of Plymouth Church, was next called by the defense. He appeared to be a grave, dignified gentleman, with an intelligent, strongly marked face. He gave his evidence, in reply to Mr. Hill's questions, in a positive and almost business-like manner. Mr. Belcher testified to meeting and conversing with Mr. Tilton—with whom he was well acquainted—a short time after the publication of the Woodhull scandal. Mr. Tilton, the witness said, at first told him that "there was nothing in it," but immediately afterward said that there might be "a modicum of truth in the scandal, as a grain of wheat in a bushel of chaff." The witness then asked Mr. Tilton for that grain of truth, and Mr. Tilton took Mr. Belcher to his house and read to him extracts from a large roll

of manuscript and showed him some printed papers. These papers, Mr. Tilton said, would be forwarded to Mr. Bowen, and would compel the latter to settle the contract with Mr. Tilton. Mr. Tilton read to the witness what purported to be a copy of a letter from Mrs. Tilton, in which she said that Mr. Beecher had asked her to be a wife to him in all that the name implied. Mr. Tilton told Mr. Belcher that Mr. Moulton had the original of the letter. Mr. Belcher also testified that Mr. Tilton had told him that Mr. Beecher had denied the charge mentioned, and had said that the woman must be crazy, but had afterwards confessed and apologized. Mr. Tilton asserted that the apology was in the keeping of Mr. Moulton. The witness stated that at the close of this conversation he had asked Mr. Tilton whether Mr. Beecher had committed adultery with Mrs. Tilton, and that Mr. Tilton had replied, raising his hand above his head, "No, my wife is as pure as an angel in Heaven."

The cross-examination of Mr. Belcher by Mr. Fullerton was long as compared with the duration of the direct examination, and the questions were very searching. In the main Mr. Fullerton's inquiries were about the testimony of Mr. Belcher before the Church Investigating Committee, about his knowledge of the West charges, and other matters of Plymouth Church history, with which, as a deacon and prominent member of the church, the witness might be acquainted. Mr. Belcher admitted that in his testimony before the Investigating Committee he had omitted to state that he had heard read Mrs. Tilton's letter to her husband, in which she said that Mr. Beecher had asked her to become a wife to him. The witness said that he had not volunteered testimony, as he did not think his pastor needed any vindication from him. To many of Mr. Fullerton's questions Mr. Belcher answered that he did not remember. This reply was made to a great variety of interrogatories as to statements made before the Investigating Committee, as to the conversations Mr. Belcher had had in reference to Mr. Tilton's statement to him, and as to the events of the evening when the report of the Investigating Committee was adopted by Plymouth Church. At the opening of the afternoon session Mr. Belcher stated in regard to some questions which he had answered just previous to the recess at noon, that he did not remember what he had then said.

At the conclusion of Mr. Belcher's testimony, at

8½ o'clock, Mr. Tracy called upon the next witness, St. Clair McKelway, who testified that he had called upon Mr. Tilton soon after the publication of the Woodhull scandal. Mr. Tilton had told the witness that he could not talk to him as a journalist, but that he would tell him in the form of an allegory a story, which would place matters in a different light from that of the Woodhull publication. The witness then gave in his own language the story that Mr. Tilton had told him. In substance it was like other statements alleged to have been made by Mr. Tilton concerning improper advances made by Mr. Beecher to Mrs. Tilton, except that no names were mentioned. The witness told the story in full, deliberate tones, and was listened to with unusual attention by all in the court-room. Mr. McKelway had not concluded his testimony at the adjournment of the Court.

### THE PROCEEDINGS—VERBATIM.

#### TESTIMONY OF GEORGE W. LINCOLN.

The Court met at 11 a. m., pursuant to adjournment. George W. Lincoln, called on behalf of the defendant, was duly sworn, and testified as follows:

#### ANOTHER HISTORY OF THE WINSTED SCANDAL.

Mr. Hill—Where do you reside? A. Fulton, New-York, Sir.

Q. Where did you reside in the month of December, 1899? A. Winsted, Connecticut.

Q. What was your business there? A. Hotel keeper.

Q. Keeper of what hotel? A. The Beardsley House.

Q. Do you recollect when Theodore Tilton came there to lecture in December, 1899? A. I do, Sir.

Q. Who received him at that hotel? A. I received him, Sir.

Q. Have to speak a little louder. A. I received him myself, Sir.

Q. About what hour of the day? A. About half-past 1 in the afternoon.

Q. Please state what occurred when he came in? A. First, he went to dinner, Sir.

Q. Well, did he register? A. He did; yes, Sir.

Q. Very well; any one with him? A. Yes, Sir.

Q. Who? A. A lady.

Q. How did he register?

Mr. Beach—Objected to.

Mr. Fullerton—One moment.

Mr. Beach—The register should be produced.

Judge Neilson—Do you mean how did he write it in the book?

That is the meaning of the word "register," I suppose.

Mr. Hill—Yes, Sir; it refers to the hotel register.

Judge Neilson—Have you got it there?

Mr. Hill—No, Sir; the register is lost.

Judge Neilson—Prove that.

Mr. Hill—Do you know where that hotel register is? A. I do not Sir.

Q. How long since you have seen it? A. I left there the 1st of April, 1871; not seen it since.

Q. Haven't seen it since? A. Not seen it since.

Q. Now, please state how he registered?

Mr. Morris—No, no; they haven't proved it yet.

Mr. Beach—Did you leave it in the house? A. I did; yes, Sir.

Q. Continued as the register of the house? A. I could not say as to that, Sir.

Q. Who succeeded you? A. A gentleman by the name of Reid, Sir.

Q. You left it with him? A. I did, Sir.

Mr. Beach—That is all, Sir.

Mr. Hill—Well, you say he registered—he entered his name upon the register, at all events? A. He did, Sir.

Q. Now, what occurred just there at the time of registering? Give the conversation between you and Mr. Tilton. A. He called for two rooms adjoining.

Q. Yes. What else? A. With a fire in his room.

Q. Did he ask to have a fire in the other room? A. No, Sir; he said one fire would be sufficient.

Q. Now, did you furnish him rooms adjoining one another—opening into one another? A. No, Sir; I did not.

Q. Why not? A. I looked over my—

Mr. Beach—That is objected to.

Mr. Hill—Well, I don't care for it. [To the witness.] What did you tell him? Go on. A. I told him I could give him a front room and the lady a room just across the hall, opposite, or nearly opposite.

Q. Now, did you do that? A. I did, Sir.

Q. On what floor? A. On the third floor, Sir.

Q. Now, please state, Mr. Lincoln, if there was a public parlor in your hotel? A. There was, Sir.

Q. A commodious and comfortable place? A. Yes, Sir.

Q. For ladies? A. Yes, Sir.

Q. As well as gentlemen? A. Yes, Sir.

Q. That comfortably furnished with sofas, and fire, and chairs? A. Yes, Sir, always during cold weather.

Q. Now, please tell if you had occasion to go to that room, in the afternoon, of Mr. Tilton—I mean this front room which you assigned to him? A. I did, Sir.

Q. How did you come to go there?

Mr. Beach—That is objected to.

Judge Neilson—Well, he went; that is sufficient.

Mr. Hill—Very well; you went to the door; what did you do? A. I rapped at the door.

Q. Well, go on; tell what else—you rapped at the door? A. I heard no response, and turned to go back to the office again, and got a few steps away from the door, and the door opened and I returned.

Q. You returned to the door? A. Returned to the door.

Q. Did you see Mr. Tilton? A. I did, Sir.

Q. What was his condition as to dress? A. His coat and jacket—his coat and vest were off, and in his stocking feet.

Q. Well, did you see the lady? A. I did, Sir.

Q. Where was she? A. She was lying upon the bed.  
 Q. Which side? A. The front side of the bed.  
 Q. Did you rap twice or only once, Mr. Lincoln, at the door?  
 A. I could not answer, Sir, positively about that.  
 Q. How long did you wait before the door was opened? A. Oh, a moment or so, Sir.  
 Q. Had you started to go away, do you recollect? A. Yes, Sir; I started to go away.  
 Q. All quiet at first, and then a man came to the door as you turned to go away? A. Yes, Sir.  
 Q. Now, how old a person was this lady?  
 Mr. Morris—We object.  
 Mr. Hill—Well, in appearance?  
 Mr. Fullerton—Well, we object to that.  
 Judge Neilson—We will take the answer; about how old.  
 Mr. Hill—About how old, Mr. Lincoln? A. I should judge her to be about twenty-five years, Sir.  
 Q. How large a person? A. She was above the average of ladies in size.  
 Q. Weigh about how much?  
 Judge Neilson—I hardly think he can answer that. [Laughter.]  
 Mr. Hill—Perhaps not; it may be important to ascertain how large and how old this child was that we have been talking about.  
 Mr. Morris—We can tell you; she is twenty-three now, and that is six years ago.  
 Mr. Hill—Did you observe their conduct while they were at the table, Mr. Lincoln, dining, or at breakfast? A. I did, Sir.  
 Q. Well, what was it towards each other? A. Very courteous, Sir; familiar.  
 Q. Anything more than ordinary?  
 Mr. Beach—That is objected to, Sir.  
 Judge Neilson—The question is what he observed. [To the witness.] Describe it in your own way.  
 The Witness—Well, they were very familiar, very courteous towards each other.  
 Mr. Hill—Now, what time did they leave the hotel? A. A few minutes before seven o'clock in the morning, Sir.  
 Q. Do you know what depot they went to? A. To the Nautuck depot; there was but one road then running into town, Sir.  
 Q. Do you recollect whether they called for cider or not at the dining-table? A. They did, Sir.  
 Q. Had you anything of that kind? A. No, Sir.  
 Q. Why not?  
 Mr. Beach—Objected to.  
 Mr. Hill—Well, I will ask you this, Sir: Was yours a temperance hotel? A. It was, Sir.  
 Mr. Hill—That is all.

CROSS-EXAMINATION OF MR. LINCOLN.

Mr. Fullerton—What time did you go to the door, Mr. Lincoln? A. Not long after dinner, Sir.  
 Q. Well, now, if you will tell me what time you had dinner, then I will make the calculation? A. Well, I—it was very soon

after they arrived; between half-past one and two o'clock, probably; in the neighborhood of two o'clock.  
 Q. That you had dinner? A. I had dinner for them, Sir.  
 Q. For them? A. Yes, Sir.  
 Q. Your regular dinner over? A. Yes, Sir.  
 Q. Well, about how long after dinner was it that you went to the room? A. Well, I could not recollect, Sir; perhaps an hour or so; could not swear positively with regard to that, Sir.  
 Q. What season of the year was it? A. It was in the Winter season, Sir.  
 Q. What month? A. In the month of December.  
 Q. The month of December? A. Yes, Sir.  
 Q. You are sure of that? A. I am quite sure, Sir.  
 Q. What year? A. 1869.  
 Q. In the year 1869, and in the month of December? A. Yes, Sir.  
 Q. Did Mr. Tilton lecture in that place that night? A. He did, Sir.  
 Q. At what hour? A. I could not swear, Sir; about—  
 Q. Mr. Tilton and the lady there at tea? A. No, Sir.  
 Q. Took tea out, did they? A. I believe; yes, Sir.  
 Q. Did he return to the house again? A. I think he did, Sir; I am not sure about that.  
 Q. What time did he return? A. I could not tell you about that, Sir.  
 Q. Remain all night? A. Yes, Sir.  
 Q. What time did he leave the next day? A. He left in the morning, on the seven o'clock train.  
 Q. At seven o'clock, next morning? A. The train went at, I think, seven in the morning.  
 Q. How? A. The train left about seven in the morning. He left the house in season to get the train.  
 Q. When you knocked at the door you heard no noise? A. No, Sir.  
 Q. You turned to go away? A. Yes, Sir.  
 Q. What arrested your steps? A. The door being opened.  
 Q. Opened by whom? A. I returned; Mr. Tilton was at the door, Sir.  
 Q. At the door? A. Yes, Sir.  
 Q. You would not have known who were inside if you hadn't had the door opened for you? A. No, Sir.  
 Q. Was it wide open? A. Yes, Sir; thrown open as you usually throw doors open.  
 Q. It had to be thrown wide open so that you could see the bed, hadn't it? A. Yes, Sir; the door was within, perhaps three feet of the partition that divided it from the next room.  
 Q. Was the bed in the next room? A. No, Sir; in the same room.  
 Q. In the same room? A. Yes, Sir.  
 Q. The door, then, was thrown wide open so that the bed was in full view? A. Yes, Sir.  
 Q. It was not concealed from you at all? A. No, Sir.  
 Q. No effort at concealment? A. No, Sir.  
 Q. Not the slightest? A. No, Sir; not that I noticed.  
 Q. What? A. Not that I noticed.  
 Q. Did you go to the lecture? A. I did; yes, Sir.

Q. Take your family? A. Some of them were there, Sir; I could not say how many of them.

Q. Well, about how many? A. I could not say, Sir, how many of them went.

Q. Males or females? A. Both, I think, Sir.

Q. Your wife? A. I think she went; yes, Sir.

Q. Your daughters? A. No, Sir; my daughters were quite young.

Q. How? A. My daughters were quite young then.

Q. You are sure none of them went? A. I am very sure they did not.

Q. But Mrs. Lincoln went? A. I think she did, Sir.

Q. Take any friends with her? A. I do not remember about that, Sir.

Q. Who purchased the tickets for them? A. I could not tell you, Sir.

Q. You don't remember of doing it? A. No, Sir.

Mr. Fullerton—That is all, Mr. Lincoln.

#### RE-DIRECT EXAMINATION OF MR. LINCOLN.

Mr. Hill—Do you recollect the subject of that lecture? A. I do, Sir.

Q. What was it?

Mr. Fullerton—One moment, just one moment; I haven't asked anything about the lecture, except the fact of the lecture.

Judge Neilson—True; you are not strictly entitled to it, Mr. Hill. Why do you ask for it at all?

Mr. Hill—Because I forgot it. Mr. Shearman has just suggested it.

Judge Neilson—If it was a mere inadvertence, you may ask it.

Mr. Fullerton—It may be necessary for us to produce the lecture probably, and refresh his recollection.

Judge Neilson—He can state the general subject.

Mr. Hill—I wish you would.

Mr. Morrie—We object to it as immaterial.

Mr. Pryor—What has that to do with this issue?

Mr. Evarts—The question has been allowed.

Mr. Morris—What materiality has it? What does it tend to prove?

Judge Neilson—None at all, of course.

Mr. Beach—It leads, of course, into a further examination on our part into an immaterial matter.

Mr. Hill—Does your Honor rule it out?

Judge Neilson—Yes, Sir; on the general ground.

Mr. Hill—We except. [To the witness.] Now, did you see any books lying around in that room?

Mr. Fullerton—I object to that, Sir; there must be an end to some things.

Mr. Hill—That is all. Wait; a juror wants to ask you.

A Juror—I would like to know whether that scene in the bedroom was before dinner, or after dinner?

Judge Neilson—Was that before dinner, or after?

Mr. Beach—That you went to the room?

The Witness—After dinner.

Judge Neilson—About how long did you say? A. I think about an hour, Sir.

Judge Neilson—He thinks about an hour after.

The Witness—I, of course, can't swear positively, but that is my impression.

#### TESTIMONY OF ALBERT F. NORTON.

Albert F. Norton was next called, and sworn on behalf of the defendant.

The Officer—Give us the book.

The Witness—What?

The Clerk—Give us the name.

The Witness—I don't understand the Court.

The Officer—Give us the book, Sir. [Taking the book.] That is all. Now, tell me your full name? A. Albert F. Norton.

Judge Neilson—This oath that you have just taken—do you consider it binding on your conscience?

The Witness—I do, Sir.

Judge Neilson—Well, take a seat, Sir.

#### WHAT ANOTHER MAN SAW AT THE WINSTED HOTEL.

Mr. Hill—Where do you reside? A. New-Britain, Connecticut.

Q. What is your business? A. I am a mechanic, in the employ of the Stanley Rule and Level Co.

Q. Of New-Britain? A. Of New-Britain.

Q. Where did you reside in December, 1869? A. Winsted.

Q. What was your business then? A. I was contractor for the Winsted Hoe Company.

Q. Did you board at the Beardsley House at the time that Theodore Tilton came there and delivered his lecture upon the subject of "The True Woman?" A. I did.

Q. Do you know what room he occupied in the hotel? A. I know what room it was; I don't recollect the number.

Q. Did you occupy that room yourself at any time? A. I did before he came there, and afterwards.

Q. State whether or not it was on the same floor with yourself? A. It was on the same floor.

Q. As you came down from your room in the morning, did you have to pass by Mr. Tilton's room? A. I did.

Q. State what you saw upon that morning while Tilton was in the hotel, in passing that room? A. That morning, as I came down, his room—the door was about half open, and there was a lady partially dressed in the room. I saw them—I saw her standing there as I came down.

Q. Can you state what time in the morning this was? A. Oh, it was a little after six; may-be about half-past six.

Q. State whether or not she was so far dressed as to have concealed her skirts—whether she was in white, or not? A. She was in white, Sir.

Q. That is all. Wait a single moment. It is suggested—did you attend the lecture that night? A. I did.

Q. Do you know whether this lady whom you saw in the room was the same one who was in company with Mr. Tilton at the lecture? A. She was.

Q. Were you at the breakfast table where they were in the morning? A. I was.

Q. Was the same person there? A. She was.  
Q. Did you see any book, "Paradise Lost," or anything, lying about the room? A. I did not.

CROSS-EXAMINATION OF MR. NORTON.

Mr. Fullerton—Were you a guest of the hotel at that time? A. I was a regular boarder there.

Q. A regular boarder. What business were you engaged in at that time? A. I was a contractor for the Winsted Hoe Co.—was running a contract at that time.

Q. How? A. I was running a contract at that time of one of their shops.

Q. A contract for what? A. In manufacturing wrenches.

Q. Wrenches? A. Wrenches.

Q. Were you ever in the employ of the proprietor of the hotel? A. No, Sir.

Q. Not in his employ at all? A. No, Sir.

Q. Do you recollect who the proprietor was at that time? A. Mr. Lincoln.

Q. And who managed that manufactory that you speak of? A. T. M. Clark.

Q. You were in his employ? A. I were; he was agent of the Company.

Q. How long did you remain in his employ? A. A little over two years.

Q. Then where did you go? A. I went to New-Britain.

Q. And where is that? A. In Connecticut.

Q. Engaged in business there? A. In the employ of the Stanley Rule and Level Co.

Q. There still? A. There still.

Q. Before you went into the employment of Mr. Clark what were you engaged in? A. I was superintendent of the Clifton Mill Co.

Q. Where was that? A. That was in Winsted. The wrench shop was a portion of the property of the Clifton Mill Co., which was bought by Mr. Clark.

Q. Whilst you were in the employ of Mr. Clark were you engaged in any legal controversy? A. Not any, Sir.

Q. Ever charged with any offense? A. Not any, Sir.

Q. Didn't you compromise a litigation at one time? A. No, Sir.

Q. In no legal trouble at all? A. Not any, Sir.

Q. Charged with no violation of law? A. Not that I know of.

Q. No controversy, no suit of any kind? A. No law suit of any kind.

Q. And did not compromise any legal difficulty? A. No, Sir.

Q. No claim that was made upon you? A. No, Sir.

Q. By any person? A. No, Sir.

Q. Or persons? A. No, Sir.

Q. Whomsoever? A. No, Sir.

Mr. Fullerton—That is all.

Judge Neilson—That is all, Sir.

TESTIMONY OF SAMUEL E. BELCHER.

Mr. Hill—Mr. Belcher, will you take the stand?

Samuel E. Belcher was called and affirmed on behalf of the defendant.

THE WITNESS'S INTIMACY WITH THE TILTONS.

Mr. Hill—Mr. Belcher, where do you reside? A. I reside at 113 North Oxford-st.

Q. And how long have you lived there? A. I have lived there, I think, since 1866.

Q. How long have you been a resident of Brooklyn? A. About twenty-three years.

Q. And in what business are you engaged? A. Insurance business.

Q. In what capacity? A. I am President of a company.

Q. What company is it? A. Jefferson Insurance Company.

Q. Of New-York or Brooklyn? A. Of New-York.

Q. Where is your office? A. 111 Broadway.

Q. How long have you been President of that Company? A. I have been President six or seven years.

Q. And what were you engaged in prior to that? A. I was Secretary of the same Company.

Q. For how long? A. About ten years.

Judge Neilson—The reporters request that you speak a little louder, if you can. A. I will do that, Sir.

Mr. Hill—Are you a member of Plymouth Church? A. I am.

Q. How long have you been a member? A. Since 1853.

Q. Have you been an officer of that church? A. I have.

Q. What offices have you filled—have you occupied? A. I have been a member of the Examining Committee, and a member of the Music Committee, a deacon of the church.

Q. Held any other office? A. I think that is all, Sir.

Q. Now, Sir, do you know Mr. Tilton, this plaintiff? A. I do.

Q. How long have you been acquainted with him? A. I think twenty years or more.

Q. Were you associated with him at all in any official capacity in Plymouth Church; if so, state what it was? A. I was a teacher in the Sabbath-School at the same time that he was. I was a member of the Music Committee at the same time that he was.

Q. For how long were you members of the Music Committee together? A. I cannot say, Sir. The members of the Music Committee are elected for three years; I may not have been elected at the same time that Mr. Tilton was; I cannot say.

Q. How long were you in the Sunday-School together? A. But a very short time, Sir. I was but a very short time in the Sunday-School myself.

Q. Now, how intimate have you been with Theodore Tilton? A. We have been intimate friends.

Q. Lived near each other? A. Lived neighbors.

Q. How near? A. Adjoining; adjoining buildings.

Q. Adjoining houses? A. Adjoining houses.

Q. Please state whether, and to what extent, your families were friendly or intimate with one another whilst you were living in adjoining houses? A. They were very intimate; so much so as to visit each other daily—members of the family.

Q. How long were you living together in adjoining houses?

A. I don't remember positively; I think two or three years.

Q. And how near have you lived to Mr. Tilton during the balance of your acquaintance with him? A. Well, our intimacy has not continued, but we have always been friendly when we have met, and we have interchanged visits.

Q. You don't quite answer my question, Mr. Belcher. How near have you lived to him at other times than the few years when you were living in adjoining houses? A. I don't know that I get your question exactly.

Q. Well, you lived in adjoining houses for two or three years? A. Yes, Sir.

Q. Now, where did he live? A. Since that he has lived in Livingston-st., as I understand, and I have remained at the—across the street from where I lived when he lived in that street.

Q. You moved across the street? A. I moved across the street.

Q. And he moved to Livingston-st.? A. And he moved down to Livingston-st., as I understand.

Q. I think you stated that you had been friends, although your intimacy had not continued? A. That is so.

Q. After you separated from Oxford-st.? A. That is so.

#### HOW MR. BELCHER BECAME AN ARBITRATOR.

Q. Do you recollect whether Mr. Tilton invited you to become one of his arbitrators in the Bowen difficulty? A. He did.

Q. State what occurred then. A. I met Mr. Tilton on Broadway near Cedar-st., and he stated that his difficulty with Mr. Bowen would probably be left to arbitrators, and asked if I would act as one of his arbitrators on that occasion, in case he wanted me.

Q. Well, what was the conclusion? A. I declined, or rather stated that I did not wish to act as an arbitrator, and would prefer that he would select somebody else, and suggested that he should do so.

Q. What else was there of that conversation? A. I don't remember anything else.

Q. Was there anything said about what should be done in case he did not find another man? A. Oh! I stated in case he could not find a suitable person—any one else that would answer his purpose—I would act for him.

#### MR. TILTON'S WORDS ABOUT THE WOODHULL SCANDAL.

Q. Now, Mr. Belcher, do you remember the occasion of the Woodhull—the publication of what is known as the Woodhull scandal in *Woodhull & Claflin's Weekly*? A. I do.

Q. Did you meet, and have a conversation with, Mr. Tilton soon after that? A. I did.

Q. Please state where you met him? A. I met Mr. Tilton while passing on the ferry-boat at Wall-st. Ferry.

Q. About what time of day? A. In the evening, between five and six o'clock.

Q. Give me the time in the month, if you can? A. Well, it was a short time; I should think two or three weeks after the Woodhull scandal.

Q. In the month of November? A. In the month of November; possibly it might have been as late as the first of December.

Q. Well, what is your recollection about it? A. My recollection is that it was in the month of November, a few weeks after the Woodhull scandal was first published. It was the first interview that I had had with Mr. Tilton since the election.

Q. You met him at the ferry-boat as he was going on, and you were going on. Please state what occurred? A. I met Mr. Tilton, and we passed on towards the ladies' cabin of the boat, when he said to me, "Don't go in there; come out here; I want to talk with you."

Q. Well, where did you go? A. We walked through the carriage passage-way of the ferry-boat to the front part of the boat, under the overhanging place.

Q. What occurred there? A. I said to Mr. Tilton, "This terrible story of the Woodhulls oppresses me, and I am glad that I met you," hoping that he might have something to say to set my mind at rest on that subject.

Q. Well, what did he say in reply? Give us the conversation that occurred there, as nearly as you can. A. I am not stating the exact language, of course, that was used. I am giving my best recollection of it. Mr. Tilton said, at first—the first thing that was said after the remark that I made was that there was nothing in it. I replied: "There must be something in it, Theodore, or these women, shameless as they are, would not dare to publish a thing of that kind without having some authority to fall back upon."

Q. Well, what did he say then? A. He said that—well, he said there might be a modicum of truth, a base, so much as a grain of wheat to a bushel of chaff. Well, I recollect. "Give me the grain of wheat about the matter; I don't want anything else but that; give me the grain of wheat."

Q. Speak a little louder. Well, Sir, what next occurred? A. Mr. Tilton spoke generally of his opinion of the propriety of silence, not saying anything about it, and of letting it pass. The conversation was general; I don't remember any specific conversation. We crossed the ferry together. We talked on that and on general topics.

Q. Do you remember if he stated anything there with reference to the newspapers—what they were saying about it? A. He said that the newspapers were calling upon him to come out, and he thought it was very strange that they did not call upon Mr. Bowen or Mr. Beecher to come out; why they should pitch into him so strongly.

Q. Did you make any reply to that; if so, state it? A. No, Sir; I don't remember any reply.

Q. You cannot. Now, after leaving the ferry-boat, where did you go? Just describe your trip as nearly as you can without waiting for questions? A. We walked up to the foot of the stairway at the arch at the foot of Montague-st., and at the foot of the stairway he said, "Come up this way." We went up the stairway to Montague-terrace, and there he said, "Come round to Remsen-st., I want to see Frank Moulton a moment." We walked around to Remsen-st. to Mr. Moulton's house; I didn't know where Moulton's house was, but Tilton left me on the

sidewalk, and ran up the step and rang the bell, and some one then came to the door, I don't know who; but Mr. Tilton returned to me and we went on. I didn't hear what the question and answer was at the door.

Q. Well, Sir? A. We walked through Remsen-st. and crossed Court-st. into the City Hall Park, and through the City Hall Park to the other side of the park, on Fulton-st., and then I said to Mr. Tilton, "You go up Fulton-ave., and I go up Myrtle-ave. We will have to separate here." He said, "It is not much out of your way to walk up to my corner. Suppose you walk up to my corner." I walked up with him to his corner.

Q. Did you have any conversation by the way? A. Of course, there was some conversation. I don't know that I remember what it was, but there was general conversation on the way. I recollect we talked something about the election that had passed—that had previously taken place.

Q. A friendly and cordial conversation? A. The whole interview with Mr. Tilton was friendly on both sides.

Q. Now, you came up to the corner of Gallatin-place and Fulton-ave., his corner, as he called it. Please state what occurred there? A. I was about to leave Mr. Tilton; I said to him, "Before leaving, I think, Mr. Tilton, you should know what your oldest and best friends say of you in this matter. I hope you will not think ill or hardly of me for saying it." Mr. Tilton said no; that nothing I may say would destroy our friendship. I then said to him that his friends say that if he had a spark of manhood—if Theodore Tilton had a spark of manhood left in him, he would not allow his wife to remain under the charges in that paper twenty-four hours without denying them if they were untrue.

Q. Well, Sir, proceed. What did Mr. Tilton say to that? A. Mr. Tilton said: "Now, Sam Belcher, you shall go home with me. I have something to show you." I said that I could not well go, because I was expected at home; my family would not know where I was. But he urged me to go. He said: "I insist upon it; you shall go home with me." I then went from the corner of Fulton-ave., through Gallatin-place to Mr. Tilton's house.

#### MR. BOWEN'S CHARGES RETRACTED.

Q. Well, Sir, what occurred there? Give the narrative as fully as you can. A. I went to Mr. Tilton's house with him, and we took a light tea there. After that tea was over he invited me to the back parlor, gave me a comfortable seat before a pleasant fire, drew the folding doors from both the rooms—from the dining-room, or the supper-room, and the front parlor—closed both these doors, and then brought forward a roll of papers.

Q. How large a roll? A. I should think six or eight inches in diameter.

Q. Then what occurred, Mr. Belcher? You mean as they were rolled up? A. I mean as they were rolled up. Mr. Tilton commenced reading the papers and commenting upon them; but he did not read all of the papers.

Q. Well, just— A. He turned them over, and part he read, and part he did not read; he stated that— When I saw the roll of papers, and when they were being unrolled, I noticed

that part of the matter was printed, and I asked Mr. Tilton why this matter was in type, or what this matter was that was in type. He said that it had been printed and was forwarded to Mr. Bowen with an intimation that unless a settlement was made for his broken contracts that this would be published.

Q. Well, Sir, what occurred after that? Do you recollect what this printed matter was, Mr. Belcher? Did you read any part of it? A. I didn't read any of the papers, Sir.

Q. Did he read it to you? A. He read a portion of it to me; I am not sure but that he may have read the whole of it; but it had reference to a letter said to have been written by Mr. Bowen to Mr. Tilton from Woodstock, Conn.

Q. Do you recollect whether any part of it consisted of a letter from Mr. Tilton to Mr. Bowen? A. I think it did, Sir.

Q. Do you recollect what letter it was—what the date of it was? A. No, Sir; I don't recollect the date; I have—

Q. A single moment, Mr. Belcher. [Handing a paper to witness.] Just look at the printed part of this paper, Exhibit D, &c. A. That appears to be the paper that I recollect, or a part of it.

Q. He didn't read you the whole of it, do you say? A. I don't remember that he read me the whole of it; I only recollect portions of it now.

Mr. Hill—This is the printed paper which is appended to the "Tripartite Covenant." A copy of it.

Mr. Shearman—Already given in evidence.

Mr. Hill—Already given in evidence.

Mr. Shearman—And known as *The Golden Age* article.

Mr. Hill—And known as the *The Golden Age* article.

Mr. Shearman—The article containing the letter from Mr. Tilton to Mr. Bowen, dated January 1st.

Mr. Hill—Headed, "The Personal Statement."

Q. Do you remember, Mr. Belcher, whether the printed matter which you saw was a proof, or printer's proof, or galley proof? A. Mr. Tilton told me it was a galley proof, I think.

Q. He told you that when he said it had been sent to Mr. Bowen with an intimation that unless—

Mr. Fullerton—One moment. That is not a repetition in the very words of the witness. We understand what has been said.

Mr. Hill—Well, Sir, in what connection did he tell you it was a galley proof? A. I noticed in the bundle of papers, as they were turned over, this printed matter. I asked him why this was in type; he stated that it had been put in type and was forwarded to Mr. Bowen, with an intimation that unless a settlement was made for the broken contract that it would be published.

Q. Now, Mr. Belcher, was anything said, either by you or Mr. Tilton, with reference to this letter which Mr. Tilton had written to Mr. Bowen, and which he showed you in type? A. I said to Mr. Tilton that I did not think that the world would accept those charges—the charges contained in that letter as against Mr. Beecher—coming from Mr. Bowen. Mr. Tilton's reply was: "I don't see how you could very well believe them, as Mr. Bowen has retracted those charges;" and I then asked him to—. I asked him to see the retraction.

Q. What did he say or do then? A. He then read me what purported to be a retraction from Mr. Bowen.

Q. Reading it from among this roll of papers? A. Yes, Sir; reading it from among the roll of papers.

Q. Very well; what was then said between you after he read or stated to you that Mr. Bowen had retracted it? Do you recollect the language he used in reading the retraction of Mr. Beecher? A. I do not.

Q. Well, can you recollect the substance of it? A. I don't remember it now, Sir.

Q. Do you remember whether anything was said with reference to his Christian—to extending to him Christian fellowship? A. I recollect that Mr.—that the article—the retraction of Mr. Bowen stated that Mr.—[The witness evidently meant Mr. Bowen.]—retracted the statements that he had made against Mr. Beecher, and that he knew of nothing which would interfere with his accepting him, or interfere with Mr. Beecher's Christian character, or something to that effect.

Q. That is, that was the contents of the retraction as he read it to you? A. That was the contents of the retraction as he read it to me; or like that.

Q. You mean, Mr. Belcher, that you recollect that as a part of the paper which he read? A. I recollect that as part of the paper which he read—as Mr. Bowen's retraction of his charges against Mr. Beecher.

#### MR. TILTON'S STORY TO MR. BELCHER.

Q. Well, Sir, what next occurred between you and Mr. Tilton that you recollect of? A. Mr. Tilton came to a—read me what purported to be a note from his wife—a letter from his wife to him, in which he stated that Mr. Beecher had made a proposition to her during Mr. Tilton's absence, to become a wife to him, and all that that implied.

Q. Well, Sir? A. And I said to Mr. Tilton when he read the paper, "Is that paper in Mrs. Tilton's handwriting," and he says, "No, it is a copy." I asked where the original was, and he said that Frank Moulton had it.

Q. Proceed with the narrative, Mr. Belcher, and state what occurred then, after he stated that the original was in Frank Moulton's hands. Do you recollect whether he stated whether he had read that paper or not to Mr. Beecher? A. I asked him, when he read that letter coming from Mrs. Tilton—said I, "How did Mrs. Tilton receive the propositions from Mr. Beecher?" Mr. Tilton said she indignantly repelled them. I then asked what he did when he received that letter from Mrs. Tilton; he stated that he had seen Frank Moulton the next morning, and arranged an interview with Mr. Beecher; that he had an interview with Mr. Beecher at Mr. Moulton's house, and that at that interview he charged Mr. Beecher with the act, and read him this letter—Mrs. Tilton's letter. I then asked him how Mr. Beecher acted on the occasion; he said he was confounded,—astonished and confounded, and said that it was false, and that the woman must be crazy.

Q. You will have to speak a little louder, Mr. Belcher, please; we cannot very well hear. Repeat what you just said when you asked Mr. Tilton how Mr. Beecher acted? A. I asked Mr. Til-

ton how Mr. Beecher acted when he charged him with this act, and read him Mrs. Tilton's letter.

Q. Yes. A. He said that Mr. Beecher appeared astonished and confounded, and said that it was false, and that the woman must be crazy.

Q. Do you recollect what next occurred between you and Mr. Tilton; if so, proceed without further questioning? A. He said—I understood him to say—that Mr. Beecher slipped out of the house, and went down, and when Mr. Tilton got home that night, Mrs. Tilton informed him that Mr. Beecher had been there, and that she had given him a retraction of the letter.

#### MR. BELCHER MYSTIFIED BY THE CHARGES AND RETRACTIONS.

Q. Well, the next thing, Mr. Belcher? A. I remarked—I remarked that I thought it was a very strange thing that Mr. Bowen should make a charge against Mr. Beecher and retract it—that Mrs. Tilton should make a charge against Mr. Beecher, and then take that back, and said I, "Theodore, I don't see any evidence here; where is that grain of wheat?"

Q. Well, Sir, was the paper shown to you which Mrs. Tilton had given her husband? A. The paper was not shown to me; none of these papers was shown to me. Mr. Tilton sat a distance of several feet—four or five feet—from me while he was reading the papers. The papers were never in my hands. The papers were in Mr. Tilton's hands. I didn't see the papers to scrutinize them; I can only identify them as I remember them being read.

Q. Mr. Belcher, you said that Mr. Tilton said that Mr. Beecher had slipped out of the house and gone to his, and when he came home Mrs. Tilton informed him that Mr. Beecher had been there and got a paper. Did he read to you the paper which Mrs. Tilton had given to Mr. Beecher, or a copy of it? A. He read to me what purported to be a retraction from Mrs. Tilton.

Q. Very well; now, can you remember the contents of that paper? A. I cannot, Sir; I cannot recollect the words—the language; I can recollect the general—

[Exhibit No. 5 from the printed records was shown to the witness.] A. I recollect that, Sir.

Q. Is that the paper which he read to you as Mrs. Tilton's retraction given to Mr. Beecher? A. Yes, Sir.

Mr. Fullerton—That is the paper.

Mr. Hill—Yes, Sir; that is the paper. It is on page 15.

Q. Now, Mr. Belcher, what next occurred after the reading of this letter, after this retraction, if you remember saying anything about Mrs. Tilton having withdrawn the paper which she had given to Mr. Beecher? A. He stated that notwithstanding the retraction of Mrs. Tilton, that Mrs. Tilton had withdrawn—had retracted the retraction, and that Mr. Beecher had confessed and apologized.

Q. Very well; now, did you ask him to see Mrs. Tilton's retraction of the recantation, or retraction of the retraction? A. I don't remember.

Q. Well, now, the next thing that occurred in the order of the story, as near as you recollect it? A. I asked him where Mr.



Beecher's confession and retraction was—the confession and apology was.

Q. Apology; yes. A. He stated that the confession was a verbal one, made to him, Mr. Tilton, and the apology was in writing, and in the hands of Frank Moulton.

Q. Well, how did he say that it got there? A. He stated that Mr. Beecher had given to Mr. Moulton the apology, to be kept by Mr. Moulton in connection with Mrs. Tilton's letter making the charge, as Mr. Beecher's protection in case anything should arise from it in future.

Q. Was anything stated, Mr. Belcher, by Mr. Tilton as to the circumstances under which Mr. Moulton obtained the retraction from Mr. Beecher—the paper I mean? A. I asked him in relation to the "pistol scene," so called, and he stated that there was no foundation, in fact, for the pistol scene, as stated by the Woodhulls; that Mr. Moulton might possibly have had a pistol with him, as he was in the habit of carrying one, but that he didn't make any demonstration with it.

Q. Do you mean to be understood, Mr. Belcher, as stating that Mr. Moulton was to keep the paper making the charge, and the apology?

#### TIME WASTED IN TRYING TO SAVE IT.

Mr. Fullerton—We object to that.

Mr. Hill—As Mr. Beecher's protection.

Mr. Fullerton—I object to that.

Mr. Hill—If you will wait until the question is put you will probably understand the question.

Mr. Fullerton—You have got one question out, and that is enough at a time.

Mr. Hill—I had not finished it when you began to object.

Mr. Fullerton—It is time enough to object when I have heard half of it.

Mr. Hill—That may be your method of doing it, but it is not mine.

Mr. Fullerton—No, yours is worse than mine.

Mr. Hill—You asked him whether he meant something different from what the language imparted, that is the objection. [To the witness.] I desire to call your attention to the statement which you made about the apology. Was the apology and the letter of Mrs. Tilton making the charge to be kept, or was the retraction and the letter making the charge to be kept?

Mr. Fullerton—I object to it as a leading question.

Judge Neilson—The practical way would be to ask the witness if anything was said upon that subject.

Mr. Beach—The witness has expressly stated that Mr. Tilton stated to him that this apology of Mr. Beecher was to be kept by Frank Moulton, in connection with the charge or the confession of Mrs. Tilton, as the protection of Mr. Beecher.

Judge Neilson—Yes, he said that.

Mr. Beach—Yes, he said that in distinct language.

Mr. Spearman—He did not.

Mr. Beach—Yes, he did say precisely what I represent.

Mr. Everts—If your Honor please, let us see about that. It was the apology he spoke of; I think he spoke of it as being read in connection with the retraction.

Mr. Fullerton—Well, we will see.

Judge Neilson—[To THE TRIBUNE stenographer.] Refer to that; turn back to it, and read it.

THE TRIBUNE stenographer then read the answer as follows: "He stated that Mr. Beecher had given to Mr. Moulton the apology, to be kept by Mr. Moulton, in connection with Mrs. Tilton's letter making the charge, as Mr. Beecher's protection, in case anything should arise from it in future."

Mr. Hill—Now, I ask you if it was the apology that was given to be kept in connection with the letter, or was it the retraction that she gave to be kept in connection with the letter?

Mr. Fullerton—I object to that.

Mr. Hill—Well, which two papers were to be kept for Mr. Beecher's protection?

Mr. Fullerton—He has stated.

Mr. Hill—I propose to ask him again.

Judge Neilson—You can ask him what further, if anything, was said about the paper.

Mr. Hill—I don't want to ask the witness what was meant; I want to ask him what was done in regard to that.

Judge Neilson—[To the witness.] Repeat what was said.

Mr. Hill—What was said in regard to the two papers that were to be kept together as Mr. Beecher's protection? A. Whatever I may have said before, my answer is this.

Judge Neilson—No, your recollection. A. My recollection—the best of my recollection is that it was the retraction of Mrs. Tilton and the apology of Mr. Beecher that were to be retained by Mr. Moulton for Mr. Beecher's protection in case any question should arise.

#### MR. TILTON AND MR. MOULTON REPROACH MR. BEECHER.

Q. Was anything said in regard to Mr. Moulton's and Mr. Tilton's estimate of the character and the act of Mr. Beecher in going to get this retraction? A. Mr. Tilton said to me that Mr. Moulton himself considered that Mr. Beecher had acted very meanly and with great duplicity in getting a retraction from Mrs. Tilton.

Q. Did he state any reason why that was so? A. That it made him appear—made the husband appear as in antagonism with his wife, and made Mr. Tilton appear as though he had been making a false charge.

Q. Can you recollect every occurrence—every statement by Mr. Tilton during the conversation; if so, state them, such as you recollect, and speak a little louder. There is so much noise in the court-room that the jury cannot hear you.

Mr. Everts—Wait until the clock stops striking.

The Witness—There was something said in relation to—

Judge Neilson—That noise is outside of the court-room.

Mr. Hill—I suggest that your Honor make an order to stop it.

Judge Neilson—That has been done in a nuisance case, you recollect. The Court issued an injunction enjoining the use of the bell.

Mr. Hill—I should be glad that such an order could be made for a little while.

Judge Neilson—Now, we will hear you.

Mr. Hill—Proceed with what you were going to say.

The Witness—There was some conversation in relation to Mr.

Beecher's portrait. He said the story of the Woodhulls was not true, that the portrait had been lent by him to Frank Moulton to grace Frank Moulton's walls, as there was to be some reception at his house. I think he stated Mr. Moulton had got into his new house, and he let him have it in order to grace his walls.

Q. On some reception? A. On some reception.

#### MR. TILTON DENIES BEING THE AUTHOR OF THE WOODHULL STORY.

Q. Anything said about the Woodhull and Claflin women? A. Yes, Sir, there was.

Q. Please state it? A. I asked Mr. Tilton in relation to the Woodhull & Claflin women, what sort of women they were. He spoke of them in good terms, spoke of their character and capacity, and spoke of them well—said nothing against them. I don't remember the exact language he used.

Q. Spoke of them in praise rather than in condemnation.

Mr. Beach—Wait a moment.

Judge Nelson—He has answered. He spoke of them well—spoke nothing against them.

Mr. Fullerton—He (Mr. Hill) was not satisfied with the answer.

Q. Now, Mr. Belcher, please state whether or not anything was said as to the opinion of people about Mr. Tilton being responsible for the publication? A. I asked—I said to Mr. Tilton that a great many people believed that he was the real author of the Woodhull story. Mr. Tilton's reply was: "You see," he says, "that could not be, because Mrs. Woodhull herself in the paper states that she gave me the first information of the fact."

Q. Did he say anything there about that, if you recollect? A. Not that I remember now.

Q. Made no other answer to it than that? A. No other.

Q. How long an interview was this, Mr. Belcher? A. Well, from the time I got on the ferry-boat, between 5 and 6 o'clock, probably in the neighborhood of half-past 5 or 6 o'clock; it must have been midnight nearly before I left Mr. Tilton's house. It was quite midnight before I got home.

#### MRS. TILTON PURE AS AN ANGEL.

Q. Now, let me ask you this. Did you ask Mr. Tilton, during that conversation, whether or not his wife had been guilty of adultery or sexual intercourse with Mr. Beecher? A. I did.

Q. What did he say in reply to that question? A. If you will allow me I will state.

Q. Just give me what occurred in response to the question?

Judge Nelson—[To the witness.] What question you put, and what answer he made to you.

Mr. Hill—Well, state it any way you please. A. I asked Mr. Tilton whether Mr. Beecher had committed adultery, or, rather, had had sexual intercourse with Mrs. Tilton. We were shaking hands at that time, about to part, when Mr. Tilton dropped my hand and lifted his over his head in this manner [illustrating] and said: "No, my wife is as pure as an angel in Heaven."

#### DR. STORRS SUGGESTED AS AN ADVISER.

Q. Mr. Belcher, was anything said relative to persons with whom Mr. Tilton should advise in regard to the course to be pursued in view of the publication? A. There was.

Q. What was said upon that subject? A. Mr. Tilton asked me if I could not name some person to advise with him in that matter, and I suggested to him the name of Dr. Storrs.

Q. Well, what did he say to that? A. He said he thought well of it; he did not say that he would do it; he said he thought well of it.

Q. Did you suggest any other name? A. I mentioned at the time that Dr. Storrs was a prominent gentleman of the clergymen of the city, and well acquainted with Mr. Beecher, and had recently taken part in the 25th anniversary of the church, and suggested Dr. Storrs's name to him.

Mr. Hill—[To the juror, Mr. Jeffreys.] Mr. Jeffreys, are you feeling well?

Mr. Jeffreys—Very well.

Mr. Hill—Shall we proceed?

Mr. Jeffreys—Yes, Sir.

Mr. Hill—Mr. Belcher, I want to call your attention again to the statement which you made to Mr. Tilton during the conversation, in substance to this effect, that "Mrs. Tilton writes a letter and retracts it. Mr. Bowen wrote a letter and retracted it. I see no evidence here. Where is that grain of wheat?" What did Mr. Tilton say in reply to that, do you recollect? A. I don't recollect.

Q. Do you recollect whether he made any reply, or not, at all? A. I do not.

Q. The interview continued, as you have given it? A. The interview continued.

Q. Mr. Belcher, let me ask you this question: What have been your relations with Mr. Tilton from the time of that conversation on to the present time? A. They have been friendly. We have not had many interviews since that time.

Q. But your friendly relations have continued since that time? A. They have never ceased, Sir.

Mr. Hill—That is all.

#### CROSS-EXAMINATION OF SAMUEL E. BELCHER.

Mr. Fullerton—Mr. Belcher, I want you to fix the date of that interview, as near as you can. A. I cannot fix it any nearer than I have already, Sir. It was two or three weeks—possibly at the close of November or the first of December; I cannot fix the time.

Q. Or it may have been a little later in December than the first, may it not? A. I think not. My impression is it was two or three weeks after the Woodhull scandal was first published.

Q. Have you any circumstances in your mind by which you can fix it within two or three weeks after the publication of the Woodhull scandal? A. No, Sir; I have not.

Q. Now, was there any talk between you and Mr. Tilton at that interview about getting Christmas presents for the children? A. Not that I remember, Sir. No, Sir; I don't remember it.

Q. Don't you recollect, now that I call your attention to it,

that it was just before the Christmas holiday? A. No, Sir; I do not; I have no recollection of it being just before the holidays.

Q. Can you say it was not just before the Christmas holiday? A. I cannot say anything about it, Sir, other than what I have stated here, that it was, in my opinion—

Q. Not your opinion. A. My recollection is that it was two or three weeks after the Woodhull scandal.

Q. It may have been more? A. It might possibly have been as late as the first of December, but I think not later than that; I don't think it was as late as that, but it might possibly have been as late as the first of December.

Q. You are depending entirely upon your recollection? A. Entirely.

Q. In that regard? A. Entirely.

Q. There is no event that occurred at that time that enables you to fix it at all, is there? A. No, Sir, only in a general way, that it was the first interview that I had with Mr. Tilton after the election, shortly after the Woodhull scandal.

Q. And you recollect no conversation about Christmas presents at that time? A. No, Sir.

Q. Now, this roll of paper which he had, and from which he read, was it tied together? A. I don't think it was. My recollection of that paper is that it was brought into the room by Mr. Tilton just before closing the folding doors, that he brought it in, rather.

Q. In loose sheets? A. Not in loose sheets, but rolls, but not tied; I don't think it was tied.

Q. When he opened it, the sheets were loose, not tied together? A. No, Sir; I think not; I cannot say whether they were tied or not.

Q. It was quite a long story, was it not—very lengthy? A. The roll of paper, I should think, was about six or eight inches in diameter.

Q. Did he read it all to you, or nearly all? A. I should think not, Sir.

Q. How long was he occupied in reading what he did read? A. Pretty much the whole evening in reading portions. He would turn over some—would read some, and turn over some, and pass parts apparently.

Q. Was anything said about the title of the article? A. No, Sir.

Q. Was it not called "The True Story?" A. No, Sir; not that I recollect.

Q. May it not have been termed "The True Story" and you not now recollect it? A. I don't know how to answer that question. I don't recollect anything of that kind. I don't recollect it being called "The True Story."

#### PURPOSE OF THE INTERVIEW AT MR. TILTON'S.

Q. I will ask in another form. Do you pretend to recollect all that was said that evening? A. I do not.

Q. Some may have escaped your recollection? A. Certainly.

Q. The title of the paper would not probably impress itself upon your mind? It was the paper itself, and its contents, that you were looking at, was it not? A. If you allow me to explain. I went with Mr. Tilton, at his request, to hear some-

thing that would satisfy me personally in relation to the charge that had been made against Mr. Beecher, and it was simply and only for that that I went.

Q. Can you repeat any part of that paper that was read to you? How did it commence? A. The first paper, I think, as far as my memory will serve me, was the printed matter, because my attention was called to that first. On unrolling the papers I noticed they were partly written and partly printed. I said to Mr. Tilton: "Why is this in type?"

Mr. Evans—The witness might stop while the windows are being opened.

The Witness—My attention was first called to the printed matter, and the printed matter was the first that was read, or portions of it.

Q. Then he didn't read the commencement of the article which he had folded up? A. I don't know that there was any commencement to it. They were promiscuous papers, and Mr. Tilton read what he chose to read to me.

Q. Was there a great deal of manuscript there with the printed papers? A. Yes, Sir, there was a large bundle of papers, six or eight inches in diameter.

Q. Didn't the manuscript precede the printed papers? A. I cannot tell that.

Q. You didn't notice? A. I didn't notice. I will state that I sat some little distance from Mr. Tilton.

Q. Yes; I understand that. A. I didn't have any of the papers in my hands.

Q. Didn't he read a part of the manuscript? A. I don't know.

Q. Was there enough printed matter there to occupy the time he spent in reading? A. Mr. Tilton must have read some from the manuscript, or I understood it to have been read from the manuscript certainly.

Q. Was there not a connection between the manuscript and the printed matter, making up a narration of some kind? A. I think not, Sir; I think it was more like detached matter that was read to me.

Q. But when he brought it all out it was in a roll? A. Yes, Sir.

Q. Printed matter? A. Yes, Sir, printed matter, and when he unrolled it I noticed the printed matter; I noticed that first, and asked why it was in type.

#### THE MANUSCRIPT WHICH WAS READ FROM.

Q. What did he read from the manuscript, as near as you can recollect it? A. Well, he read what purported to be a letter from Mrs. Tilton to him in the house; as I understood it, the letter had passed to him in the house.

Q. How? A. I understood the letter was written by Mrs. Tilton to Mr. Tilton, and handed to him in the house.

Q. [Handing a paper to the witness.] Look at "Exhibit No. 57" and say whether that is the one he read to you? A. No, Sir, I think not.

Q. "Exhibit No. 57" is not the one he read to you? A. No, Sir; I think not. My impression is that the one he read to me was very short; it would not occupy more than four or five, or half a dozen lines.

Q. A letter written by Mrs. Tilton to her husband. [Referring to the letter.] Now, look at the first paragraph of that letter and say whether it is what he read to you?

Mr. Hill—Which one are you showing him?

Mr. Fullerton—"Exhibit No. 57."

Mr. Hill—The same one you have just shown him?

Mr. Fullerton—Yes.

Mr. Shearman—Which one is this?

Mr. Hill—Mr. Storra.

The Witness—My recollection is that a part of that—"Mr. Beecher had solicited me to be a wife to him, together with all this implies;" I recollect that portion, and that is all I do recollect.

Q. Can you say that the first sentence in "Exhibit 57" was not what he read to you on that occasion? A. I don't think it was what he read to me.

Mr. Beach—Can you swear that it was not?

Mr. Fullerton—That is the question.

A. I can swear to the best of my knowledge and belief it was not.

Mr. Beach—Very well; that is all.

Mr. Fullerton—Did he read any other letter that evening to you? A. He read Mrs. Tilton's letter, and he read Mrs. Tilton's retraction of that letter.

Q. Any other letter did he read? A. I say Mrs. Tilton's retraction.

Q. Any other than this? A. I think no other.

Q. Did he read a letter from Mrs. Stanton? A. No, Sir.

Q. Nor from Mrs. Davis? A. No, Sir.

Q. Nothing said about those letters? A. No, Sir; not that I recollect; not a word said about them.

Q. Did you hear him read that night the letter addressed to Mr. Beecher by Mr. Tilton, dated the 26th of December, 1870: "I demand that, for reasons which you explicitly understand, you immediately cease from the ministry of Plymouth Church, and that you quit the City of Brooklyn as a residence?" A. No, Sir; I do not; I don't remember that.

Q. Did you hear anything like this read: "One day last month, when I was in the north of New-Hampshire, a scandalous publication burst like a cloud over my house in Brooklyn, and shed a sudden shadow on my wife's good name?" A. No, Sir; I don't recollect it.

Q. Anything like this: "About ten or eleven years ago, Henry C. Bowen, for whom I was then working as a subordinate in *The Independent* office, told me one evening, while crossing the Fulton ferry, that Henry Ward Beecher was guilty of adultery, a practice begun in Indianapolis and continued in Brooklyn?" A. I think I heard something like that.

Q. You heard something like that? A. I think I did.

Mr. Morris—Mr. Shearman, will you let us have the manuscript from which Mr. Evarts read in cross-examining Mr. Tilton?

Mr. Shearman—I have not got it. It was only a copy.

Mr. Morris—Well, the copy. I would like to have that.

Q. Now, did you hear anything like this read that night: "Between the years 1860 and 1870, Mr. Bowen repeated the accusation not less than a hundred times, frequently exhibiting

the deep sense of a personal injury, and sometimes saying that if he were so minded he could drive Mr. Beecher from his pulpit?" A. No, Sir, I do not.

Q. Anything like this did you hear: "As a further statement still more unwillingly opened, yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the Summer of 1870, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*, Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher, which, to use her own words, lest I should wrong him by using mine she afterwards noted down in a memorandum as follows: Mr. H. W. Beecher, my friend and pastor, solicited me to be a wife to him, together with all that that implies?" A. I do not remember anything except the words that I have before quoted.

Q. Don't you recollect those words which you say you do remember? A. I don't recollect anything.

Q. One moment. A. Well, go on.

Q. Don't you remember those words, which you say you can recall, were used in connection with the language I have just read? A. I do not.

Q. Was it read in connection with anything? A. I do not know that it was.

Q. Was anything said about a memorandum in connection with it? A. No, Sir; the letter purported to be a letter written by Mrs. Tilton to Mr. Beecher. It was on a piece of paper like a sheet of note paper, and it was interleaved with the larger paper.

Mr. Hill—"By Mrs. Tilton?"

Mr. Fullerton—Wait one moment.

The Witness—"By Mrs. Tilton"—by Mr. Beecher, I meant to say.

Mr. Beach—It is rather unfortunate, if your Honor please, that the gentlemen will not allow us to prove it without interruption in this examination.

Judge Neilson—There should be no interruption.

Mr. Beach—They are frequently giving monitions to the witness as he proceeds.

Judge Neilson—There should be no interruption whatever, of course.

Mr. Fullerton—Did you make any memorandum of this conversation? A. No, Sir.

Q. It all rests, then, in memory only? A. Yes, Sir.

#### WHAT MR. TILTON DID READ.

Q. Now, will you proceed and tell this jury, as well as you can, and as consecutively as you can, all that Mr. Tilton read to you that night, either from manuscript or printed matter? A. All that he read to me at that house that night? I wish to state, before doing so, that the whole time was not occupied with reading. There was conversation on the part of Mr. Tilton and myself, and explanation, but Mr. Tilton read to me what purported to be—

Mr. Beach—No, no; that is not the question put to you; what it purported.

Q. What did he read? A. He read to me a letter; he read t

me a part of the printed matter; that, I think, was the first that was read. That printed matter had reference—

Mr. Beach—No.

The Witness—Well, will you be good enough to state how I shall state it?

Mr. Fullerton—If I were under oath and in your place, I would try.

The Witness—I am trying, but the gentleman says "No," and stops me, and shakes his head, and wants me to state it in his words, I suppose.

Q. If you state what was read to you that night there will be no difficulty. A. I have stated that part of the printed matter was read to me that night; I have stated that on my direct examination and I have stated that part of the printed matter consisted of what I understood to be the Woodstock letter.

Q. It is not what you understood. What did he read? I don't want to know what you understood. A. He read a portion of the printed matter, referring to a letter which he was stated to have received from Mr. Bowen from Woodstock, detailing some charges against Mr. Beecher.

Q. Well? A. He read that portion, to the best of my recollection; he read also a letter from Mrs. Tilton to himself.

Mr. Beach—Now, will you be good enough to repeat all that you remember that he read of that paper? A. All that I can remember is this: "During your absence Mr. Beecher proposed to me to become as a wife to him, with all that that implies;" that is all that I can recollect of that letter. I recollect thinking it strange that the—

Mr. Beach—Never mind.

Mr. Fullerton—Never mind what you thought. Did you see the letter? A. I saw the paper.

Q. Did you have it in your hand? A. No, Sir; I had no paper in my hand.

Q. You did not read it? A. I did not read it.

Q. Do you recollect the date of it? A. I do not know that there was any date.

Q. Do you know how it was addressed? A. No, Sir, I don't remember that there was any date.

Q. You don't remember anything about it? A. I don't remember anything about it, except that Mr. Tilton read to me.

Q. Go on, and state what else he read? A. He read to me a letter of Mrs. Tilton, or a copy of the letter of Mrs. Tilton, given to Mr. Beecher retracting that charge.

Q. What was that? Repeat it? A. I cannot repeat it for I don't know.

Q. Well, do the best you can? A. Well, I can do nothing, except my recollection is that it was a retraction of the charge.

Q. Can you not repeat that as well as the other? A. I cannot.

Q. Why not? A. I cannot tell you why.

Q. Can you give any part of that letter—any of the language used? A. I cannot.

Q. Not a word of it? A. I cannot.

Q. Not a single word of it? A. Not a single word of it; not now: I do not recall it.

Q. Can you account for the fact that you are able to give

what you say is a part of the language of the other, and fall entirely to give any word of this? A. I suppose I can account for it, because I can remember that, and don't this.

Q. Ah! that is it. Well, we will go a step farther. Can you account for remembering one, and not remembering the other? A. Yes, Sir; I suppose I could account for that.

Q. Well, try. A. I would account for that, because one was a specific charge of improper proposals on the part of Mr. Beecher, and the other was a retraction, and I recollect the charge, and I simply recollect the fact that it was retracted, and that is all.

Q. Without recollecting the terms of the retraction? A. Without recollecting the terms.

Q. One made more of an impression than the other upon your mind? A. One made more of an impression on my mind; that is the only way I can account for recollecting it.

Q. Was there a letter read to you that night from Mrs. Tilton to Mr. Moulton? A. No, Sir; not that I recollect.

Q. Let me read; see if you recollect it? [Reading]:

MR. MOULTON.—*My Dear Friend:* For my husband's sake and my children's, I hereby testify with all my woman's soul, that I am innocent of the crime of impure conduct alleged against me.

A. I don't recollect.

Q. Nothing of that kind? A. No, Sir.

Q. Do you recollect a letter of Mr. Beecher being read that night to Mr. Moulton? [Reading]:

I promptly comply with your suggestion of giving an explicit denial of the stories which connect my name criminally with Mrs. Tilton.

A. No, Sir; I don't recollect it.

Q. Now, Mr. Belcher, did you understand from Mr. Tilton that this whole article that he had there was to be published? A. No, Sir; no, Sir; I did not.

Q. Did you understand the manuscript that he read to you was to be published? A. No, Sir; I did not. The only matter I understood to be published was the printed matter in case—under certain circumstances.

Q. Yes; did you have that printed matter in your hand? A. Didn't have any papers in my hand, Sir.

Q. You have stated something that took place at the time that you parted with Mr. Tilton; where did you part with him? A. At the time that this conversation took place it was in the back parlor, in the same room.

Q. No; but where did you part with him? A. I left him at his house.

Q. Where did you part with him, in the house or out upon the sidewalk? A. Well, I think Mr. Tilton went with me to the door, because I think the family had all retired, although I don't know positively.

Q. Where did this scene take place at parting? A. This scene that I have related?

Q. Yes. A. Took place in the parlor; in the back—

Q. When he said that his wife was as pure as an angel in Heaven? A. Yes, Sir; in the back parlor.

## MR. TILTON'S WORDS VINDICATORY OF HIS WIFE.

Q. And what question did you put to him that called out that reply? A. I asked him whether Mr. Beecher had committed—had had sexual intercourse with Mrs. Tilton.

Q. Yes. A. He says: "No; my wife is as pure as an angel in Heaven."

Q. Well, did you put that question to him more than once that evening? A. I think not, Sir.

Q. And that was at the close of the conversation? A. That was at the close of the conversation.

Q. Were you prompted to put that question by what had taken place between you and Mr. Tilton that evening? A. Nothing more than the general fact that I went there at Mr. Tilton's request, and wanted to know the facts of the case; that is all.

Q. Yes, well, he hadn't charged Mr. Beecher with adultery that night, did he? A. No, he did not.

Q. He did not—hadn't he spoken highly of his wife that night before this parting scene? A. I don't know that he had any reference; I don't remember any reference to his wife specially.

Q. No reference to his wife specially that whole evening? A. No, Sir, I think not.

Q. Didn't he say in plain terms that she was not guilty of adultery that evening? A. No; he didn't say it in plain terms; he said: "My wife is as pure as an angel in Heaven."

Q. No, before that, during the evening? A. No, Sir.

Q. Didn't he read something from a paper which implied that she was guiltless of the charge? A. I don't recollect it, Sir.

Q. Didn't it appear to be his object to impress upon you that evening that Mrs. Tilton was guiltless of the charge? A. I don't recollect, Sir.

Q. Well, didn't he impress upon you by what he said and did that she was guiltless before you stated that question? A. No, Sir.

Q. You got no impression, then, one way or the other? A. The only impression with regard to Mrs. Tilton—

Q. A little louder. A. The only impression that I got was in relation to the charge of improper proposals, when I asked Mr. Tilton how Mrs. Tilton received the proposition of Mr. Beecher.

Q. Yes. A. Mr. Tilton replied that she indignantly repelled it so far as that charge went.

Q. That was vindictory of her? A. That was vindictory of her at that time.

Q. And didn't he say, during the course of a long conversation, other things of the same import? A. I don't remember anything else.

Q. Well, now, Mr. Belcher, why should you put a question to him of that character at the close of that long interview, unless you got the impression from what was said that night that there might have been adultery committed? A. I said it because he—I should put that question and would—I should have put that question because the papers, the public papers, were charging that fact, and I wanted to get the information from Mr. Tilton direct.

## MR. TILTON'S CHARGE NOT ADULTERY.

Q. Well, hadn't Mr. Tilton already told you that the charge was less than adultery, and that it was indignantly rejected? A. He told me at first that there was nothing in the charge whatever.

Q. I am talking about that evening when you were in his house. A. Well, that was that evening.

Q. Very well; he told you there was nothing in it? A. He told me there was nothing in it.

Q. Then he told you the charge was less than adultery? A. Then he told me there was a modicum of truth in it, a base, as much as a grain of wheat to a bushel of chaff; and I asked him for the grain of wheat, and then he came up with the charge of impure proposals, which was retracted. Then, the last thing before my leaving him, or about the last thing, I asked him that question direct, in order to satisfy myself as to the truth of the charge made against Mr. Beecher and his wife.

Q. Well, weren't you satisfied when he told you that the charge was less than adultery, and that it was indignantly rejected; didn't that satisfy you? A. It satisfied me of the truth of that charge.

Q. How? A. It satisfied me as to that charge.

Q. But you thought there might be another? A. No; I didn't.

Q. Then, why did you ask the question? A. I never thought Mr. Beecher was guilty of adultery with Mrs. —

Q. No; why did you ask the question? A. I asked the question in order to answer the Woodhull charges.

## THE WITNESS NOT A BLIND FRIEND OF MR. BEECHER.

Q. Mr. Belcher, have you ever said that you would stand by Mr. Beecher whether he was guilty or not guilty? A. I have not. I have said to the contrary.

Q. Didn't you say this: "If Mr. Beecher is guilty of anything, I don't want to know it?" Did you say that? A. I don't remember saying that.

Q. And did you add, "If he is, I shall stand by him at all hazards?" A. I did not, to the best of my knowledge.

Q. You never told Mr. Tilton so? A. I never did.

## HOW MR. BELCHER TREATED THE CONFIDENCE.

Q. Mr. Belcher, to whom did you tell this story first? A. I don't remember.

Q. Well, how soon after this interview with Mr. Tilton did you tell it? A. I don't know that I have ever told it before in full, as I have told it here.

Q. Well, whether it was in full or in part, to whom did you communicate it first? A. Well, I have communicated—I communicated the fact of Mr. Tilton's general denial of the adultery of his wife, or the sexual intercourse between Mr. Beecher and Mrs. Tilton; I have communicated that to a number of different persons.

Q. A little louder? A. To a number of different persons.

Q. Now, my question is to whom you first communicated it? A. I can't tell you that, Sir; I don't remember.

Q. How? A. I can't tell you; I don't remember.

Q. Did you see Mr. Beecher about it? A. I have never seen Mr. Beecher about it.

Q. You didn't go to Mr. Beecher and tell him? A. I never did go to Mr. Beecher, at any time, about it.

Q. Were you an officer of the church at that time? A. I was.

Q. What office did you hold? A. At that time?

Q. Yes, Sir. A. I wasn't an officer at that time; excuse me.

Q. How soon after did you become an officer? A. I became an officer in the following month—December.

Q. At what time in December? A. At the annual meeting; I cannot give you the date.

Q. About what time was it? A. I should judge the latter part of December.

Q. Between the holidays? A. I cannot remember, Sir.

Q. Have you held office ever since? A. I have.

Q. During all the excitement? A. I am holding office now, Sir.

Q. During all the excitement of this scandal and of the investigation, you have held office in the church? A. Yes, Sir.

Q. A deacon? A. Yes, Sir.

Q. A deacon of the church? A. Yes, Sir.

Q. And that is one of the principal offices, isn't it? A. Yes, Sir.

Q. Now, will you go back again to the question already put: Can you tell me to whom you communicated this story first, that you have related here to-day? A. I don't think I have communicated this story to anybody until to-day.

Q. Until to-day? A. No, Sir.

Q. Kept it locked up in your own mind? A. Not fully.

Q. Now, when did you first attempt a narrative of what occurred there? A. I never have attempted any narrative.

Q. Well, do you mean to say that you have kept this as a secret within your own breast? A. No, Sir; I mean to say that I have talked about it in different parts and sections with different people, as I have met them; I never have undertaken to tell a continuous or direct story in this case at all, that I remember.

Q. You haven't talked, then, with any counsel upon the other side about it? A. Oh, I have.

Q. And communicated the story? A. Well, parts of it.

Q. Did you communicate substantially the whole of it? A. Well, probably, substantially the whole of it.

Q. Then why did you tell me that you never had communicated it to any one? A. Because I haven't communicated it to any one.

Q. Well, that passes my comprehension: you have communicated it to the counsel, and you have not communicated it to any one! A. Well, it does not pass my comprehension; I doubt very much whether a person could repeat the story twice exactly alike.

Q. "Substantially," I said. Have you repeated this story substantially to any one since that conversation with Theodore Tilton? A. I have.

Q. When first? A. The first—the first that I ever stated this story substantially as I have stated it here was to Mr. Hill, the attorney in this case.

Q. When? A. About—I can't tell.

Q. About how long ago? A. About a week ago, I think.

Q. How? A. About a week ago, I think.

Q. Not more than a week ago? A. I don't think it is more than a week ago.

Q. Now, that is the first person, then, to whom you substantially related what Mr. Tilton told you on the night of the interview, is it? A. The whole story. I have told parts of this to a great many different people.

Q. Well, when did you tell the first part of it that you did tell? A. I told it within a few days afterward, I think.

Q. To whom? A. Well, I cannot—I cannot call—I cannot remember.

Q. Well, when did you tell any other part of it? A. I have told it at different times.

Q. And to whom? A. To different people that I have met, that—to different people that I have met.

Q. Never told the whole of it? A. I don't think I have ever told the whole of it until I have told it here.

Q. Can you tell me to whom you have told the story, or any part of it, at any time, excepting Mr. Hill a week ago? A. Yes, Sir; I think I told it to Deacon Hawkins; part of it.

Q. And when did you tell him? A. I do not remember.

Q. What part of it did you tell him? A. I told him that Mr. Tilton told me there was nothing in it, and told me that his wife had not been guilty of adultery, and that there was—told him that part of it, and that I had Mr. Tilton's assurance of that fact.

Q. That is what you told him? A. Yes; I remember that.

#### MR. BELCHER BEFORE THE COMMITTEE.

Q. Now, Mr. Belcher, where were you when the Committee was appointed to investigate this scandal? A. Where was I when the Committee was appointed—what Committee do you have reference to?

Q. The Plymouth Church Committee? A. Do you mean last Summer's Committee?

Q. Well, there wasn't but one. A. Well, I do not know what you have reference to.

Q. I have reference to the appointment of the Plymouth Church Committee to investigate this scandal. The thing is as notorious as this City Hall, or Court-house, whatever it is. A. I do not know whether I was in town, or not, when that Committee was appointed; I think I was here in Brooklyn.

Q. You think you were here in Brooklyn? A. Yes, Sir; I think I was here in Brooklyn.

Q. Were you here in Brooklyn during the sittings of that Committee? A. Not all the time.

Q. Where were you? A. I was up in the country.

Q. Where? A. Up in the village of Sing Sing, about two miles back.

Q. And how much of your time did you spend there? A. I was there—I think I spent two nights in the week at home; the balance was in New-York and in the country.

Q. Then you were accessible at all times? A. Yes, Sir.  
Q. You didn't go before that Committee, did you? A. I did.

Q. And give your evidence? A. I didn't; I gave evidence before that Committee.

Q. You gave evidence before that Committee? A. Yes; I did.

Q. Do you recollect on what night you gave evidence before that Committee? A. I do not.

Q. Who were present when you gave the evidence? A. The Committee were present.

Q. The whole of them? A. I think so.

Q. Was your testimony taken down? A. I don't know.

Q. Was there a short-hand writer there? A. I think there was.

Q. Well, didn't he appear to be taking it down? A. I didn't notice; I know he was there.

Q. Wasn't he at work? A. I only noticed that he was there; I don't know that he took anything down.

Q. You can't tell what evening you gave testimony before the Committee? A. No, Sir; I cannot.

Q. How long did it take you to give it? A. Well, I suppose five minutes.

Q. Five minutes? A. Not very—a very short time; I can't remember the exact time.

Q. And who examined you? A. I think Mr. Hill examined me; I won't be positive.

Q. Did you see Mr. Hill before you went before the Committee? A. I won't be positive about it; Mr. Hill, I did see him before I went before the Committee.

Q. Where? A. He came to my house for me.

Q. By appointment? A. No, Sir; he came there on a search to find me.

Q. Did you tell him what you knew? A. No, Sir.

Q. Have any conversation with him about your testimony? A. I think I had some conversation with him before I testified at the house.

Q. At your house? A. No; at the house of—where the Committee met.

Q. That same evening that you gave your testimony? A. Just a moment or two; yes, Sir; that same evening.

Q. Where did the conversation take place? A. In the parlors of that house.

Q. Did you state to him substantially what you could testify to? A. No; I don't think I did; I may have stated a part, a portion of it.

Q. Did you state a part? A. I did state a part; yes, Sir.

Q. Of what you could testify to? A. Yes, Sir.

Q. Well, was it substantially this story that you have told here that you stated to Mr. Hill? A. Parts of it were.

Q. Parts of it were? A. Yes, Sir; I don't remember any testimony in relation to the—

Q. I don't ask for your testimony, I am asking what you stated to Mr. Hill. A. Well, that is—I stated to—

Q. Didn't you remember a moment ago, when I asked you to whom you communicated this story, or any part of it, that you told Mr. Hill last Summer? A. I didn't think of it at all.

Q. Didn't think of it; it didn't occur to you? A. It didn't occur to me, because I looked upon Mr. Hill as a counsel in the case.

Q. Not as a person? A. Not as a person entirely.

Q. Well, I am sorry he loses that character because he becomes a counsel; I thought he was a little more than a person.

Q. Now, Mr. Belcher you did not state, when I asked you to whom you had communicated this story substantially, in whole or in part, that you stated it before the Committee, last Summer, did you? A. I didn't state the whole of the interview as I have stated it here.

Q. A little louder, please? A. I did not state the whole of the interview as I have stated it here.

Q. Before the Committee, you did not? A. I did not.

Q. You stated a part of it, didn't you? A. I don't know that I did as I have stated it here.

Q. No, and it was for that reason that you did not name the Committee as a body to whom you had communicated this story in reply to my question asking you to whom you had communicated it. Is that the reason? A. No, Sir; I did not state—you asked me if I had made this statement in full.

Q. No, no, substantially—in whole or in part, was my question? A. Well, I stated that I had, and cited one gentleman to whom I had told it in part.

Q. Well, I asked you to name any other person or persons to whom you had communicated it? A. Well, I communicated it to the Committee in part.

Q. Well, you didn't answer my question, by naming the Committee; did you forget that? A. It didn't occur to me.

Q. You forgot that? A. No, I didn't forget it; it didn't occur to me.

Q. It did not occur to you at the time. Now, did you state before the Committee substantially what you have stated here to-day? A. In whole?

Mr. Beach—Yes.

The Witness—No, Sir.

Q. You did not? A. No, Sir, not in whole.

Q. What did you omit in this statement when you made the statement to the Committee? A. I omitted any reference to any printed matter; I omitted any reference to Mrs. Tilton's letter to Mr. Tilton, stating improper solicitations. I stated that Mr. Tilton had denied the fact of his wife's adultery. That part of it, to the best of my recollection, I stated.

Q. I am asking you what you omitted? A. Well, I cannot recollect anything more than I have stated.

Q. How? A. I cannot recollect now what I have omitted, any further than—

#### THE COMMITTEE'S WAY OF EXAMINATION.

Q. Were you sworn before the Committee? A. No, Sir.

Q. Not sworn? A. No, Sir.

Q. What were you requested to do when you went before the Committee? A. I was requested to state my interview with Mr. Tilton in brief, and I did so.

Q. Now, did they request you to state what you knew in re-



gard to this scandal, and what Mr. Tilton had told you? A. Well, I don't recollect.

Q. Didn't you know the Committee wanted you to state all that you had within your knowledge in regard to the scandal, and anything that would throw light on the subject? A. I don't know how I could know that.

Q. How? A. I don't know how I could know what the Committee wanted.

Q. Didn't you suppose they wanted it? You can suppose? A. Well, I suppose I can suppose.

Q. Well, please suppose, and tell me what you did suppose. When you went before that Committee, didn't you suppose that they wanted to know all that you could tell them in respect to that Committee, as you learned it from Theodore Tilton?

Mr. Beach—In respect to that scandal.

Mr. Fullerton—Yes, in respect to the scandal.

The Witnesses—I don't know how I can answer that question.

Q. Why can't you answer it? A. Because I don't recollect that I recollect now that I supposed anything then.

Q. Were you not under the impression when you went before that Committee that they desired you to tell everything within your knowledge? A. I believe they expected me to tell all—to tell nothing but what was true at that Committee.

Q. That is not what I asked you? A. I don't know that they expected me to tell all that I knew about it, because I was there but a very short time—in the Committee room.

Q. The length of time that you were there won't determine the impression that you had when you went there. Now, answer me this question, did you not go before that Committee under the impression that they wanted to know from you everything that you knew that would throw any light upon the scandal, that was then the subject of investigation? A. I went there with this distinct impression, that I was to tell all that I knew in the matter, if called upon.

Q. If called upon? A. Yes, Sir; that I was not to keep anything back at any rate.

Q. And unless you were called upon, you didn't expect to tell anything? A. I didn't propose to volunteer anything at all.

#### MR. BEECHER NOT IN NEED OF VINDICATION.

Q. Well, why not? It was your pastor, was it, who was on trial in a measure? A. I didn't think he was.

Q. You didn't think he was? A. No, Sir.

Q. Didn't you know the Committee was appointed by him? A. Yes, I knew it by—the same as the public knew it. I didn't know it personally.

Q. And didn't you know that it was for the purpose of vindicating him? A. I knew that in a general way that it was, I suppose.

Q. Then why didn't you give all the evidence within your knowledge that would tend to vindicate him? A. I gave such as I was called—

Q. Why didn't you do that? I am asking you a question. A. Because, as I said before, I didn't volunteer any testimony. I answered the questions—the talk that was put to me.

Q. You would not even volunteer to give information which you had received from Theodore Tilton to exculpate or vindi-

cate your pastor unless it was asked of you? A. My pastor did not need any vindication from me.

Q. You didn't think it was necessary to appoint the Committee, did you? A. I didn't think he needed—well, I didn't care whether he did or not, so far as I was concerned.

Q. Didn't you think it was unnecessary to appoint the Committee? A. I don't know that I had any thought about it.

Q. If you thought he didn't need any vindication from you, what did you go there for that night? A. I went there at the request of the Committee through Mr. Hill.

Q. For what purpose? A. To state what I knew, if I knew anything.

Q. Why didn't you state what you knew? A. I answered every question that was put to me.

Q. Now, Mr. Belcher, were you not asked substantially this question that night: "Did you have an interview with Theodore Tilton in the Autumn or Winter of 1872?" A. I can't recollect now, Sir, what questions were put to me.

Q. Was not a question put to you calling your attention to the interview which you had with Theodore Tilton in 1872? A. I don't remember, Sir.

Q. Can you state that that question was not put to you? A. No, Sir; I cannot state that it was not; I don't remember.

Q. Now, then, will you tell me what questions were put to you? A. No, Sir; I cannot.

Q. Can you tell any one question that was put to you? A. No, Sir.

Q. Not a single one? A. Not a single one.

Q. Can you testify positively that any questions were put to you? A. No, Sir; I cannot.

Q. Then if you only answered questions that were put to you and can't state whether any questions were put to you—A. I am giving the best of my recollection; I believe questions were put to me, but I cannot remember what they were.

Q. The purport of them—you can't give that? A. I can't remember; no, Sir.

Q. They did not impress themselves upon your mind? A. No, Sir; it did not impress itself on my mind at all, because I was there but a very few minutes.

Q. Was any question put to you which led you to give any part of this interview? A. I don't recollect it if it were.

Q. Can you tell us, then, how you happened to give any part of the interview between you and Mr. Tilton? A. I cannot.

Q. Haven't you stated, Sir, since you have been on the stand, that you were requested to give that interview between you and Mr. Tilton? A. Well, the record will show whether I have or not.

Q. Well, I want you to show; you are the record that I am after? A. What—state what?

Q. Haven't you stated since you were upon that stand that you were requested before the Committee to give the interview between yourself and Theodore Tilton? A. Haven't I so stated?

Q. Yes. A. I don't recollect.

Q. Whether you have so stated? A. No; I do not.

Q. Even forgotten that? A. I don't even recollect whether I have so stated.

Q. Now, will you tell this jury how you happened to give any of that interview? A. I don't know that I understand your question, Sir.

Q. How did it happen that you gave any part of the interview before the Committee between you and Tilton? A. I don't know that I understand how I came to do it.

#### MR. BELCHER A VOLUNTARY WITNESS.

Q. You went down there voluntarily, didn't you?

A. No, Sir, I did not; Mr. Hill came for me in a carriage, and took me down there, and I went before the Committee.

Q. Was not that voluntary? A. You might call it voluntary if you choose.

Q. What do you call it? A. I did not volunteer to go before the Committee.

Q. He didn't compel you to go, did he? A. No, Sir; I didn't volunteer to go.

Q. But you went voluntarily? A. The gentleman came for me and I went with him.

Q. Because he requested it? A. Because he requested it.

Q. And to give testimony? A. I did not go under duress; I was not carried there by force of arms.

A. You went there to give evidence before the Committee? A. I went there to go before the Committee; yes, Sir; I did.

Q. Now, Mr. Belcher, you have told us that you did not volunteer any testimony before the Committee; that is so, is it? A. If I said so, it is so.

Q. Well, didn't you say so? A. I think I did.

Q. Then you answered questions that were put to you, didn't you? A. I think I did; yes, Sir; to the best of my recollection I did.

Q. And in answer to one or more of those questions you told a part of the interview which occurred between you and Mr. Tilton at his house? A. I did.

Q. Then it was in answer to a question relating to that interview, was it? A. Possibly.

Q. Possibly; well, isn't it a little more than possibly? A. I don't undertake to recollect, or give only from recollection what the interview was. The Committee were there, and the conversation was going on in relation to this matter. I was not questioned there as I have been here, Sir, at all; not in that style.

Q. Weren't you deeply interested in the question that was involved before that Committee? A. Well; I had a general interest of course, the same as any one would have.

Q. How? A. I had a general interest, of course.

Q. You regretted that this story had gone abroad in regard to Mr. Beecher, did you not? A. I did, of course.

Q. You felt indignant, did you not? A. At first; yes, Sir.

Q. When did you get over your indignation? A. I got over my indignation when Mr. Tilton informed me that Mr. Beecher had not seduced his wife—had not sexual intercourse with his wife.

Q. Didn't you encounter a great many people who did believe the truth of this charge? A. Yes, Sir; and I stated to them as I state to you, different people, that Mr. Tilton had denied the matter entirely.

Q. Didn't you suppose that there were a great many people whom you had not met who believed in the scandal? A. Oh! I suppose so; yes, Sir; there are a great many, no doubt.

Q. Didn't you think, then, it was proper to have that investigation, and clear it all up, and remove this cloud from Mr. Beecher's name? A. Will you allow me to state?

Q. I will allow you to answer. Didn't you think that was necessary? A. I thought that was a matter for Mr. Beecher more than for me. I was satisfied with Mr. Beecher.

Q. One moment. A matter for Mr. Beecher? A. Yes, Sir.

Q. To vindicate himself? A. And personal to him.

Q. To vindicate himself; was that it? A. That was my idea of it.

Q. How would he do that except through the intervention of his friends who were in possession of facts which would tend to accomplish that end? A. Sometimes silence is the best indication.

Q. Did you think he had better be silent? A. I thought I would leave that to him.

Q. And inasmuch as he had determined not to be silent, and appointed a Committee of Investigation, then why didn't you fall in and state what you knew about it? A. I answered all the requirements as I understood them. I had no disposition to conceal anything, or to tell anything wrong.

Q. But you had a disposition not to state all that you knew? A. No, I don't know that I had.

Q. Well, you did not state all that you knew, you say? A. Very well; I don't always do that.

Q. Have you done it now? A. I don't know that I have.

Q. State what else you know, then, upon this subject? A. I don't know now that I do remember anything.

Q. Very well.

Mr. Morris—It is one o'clock.

Judge Neilson—Will you suspend now?

Mr. Fullerton—Yes, Sir.

Judge Neilson—The Jury will get ready to retire. Gentlemen will keep their seats a moment. Return at two o'clock, gentlemen.

The Court then took a recess until two o'clock.

#### THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Judge Neilson—Mr. Fullerton, if you had delayed coming until five minutes ago, I should have found fault with you; but now it is too late to find fault. Mr. Hill, will you go on, please?

Mr. Fullerton—I was looking after Mr. Everts, Sir. [Laughter.]

Mr. Everts—And I, if your Honor please, came after Mr. Fullerton. [Laughter.]

Samuel E. Belcher was re-called and his cross-examination resumed.

THE WITNESS SUFFERS FROM A BAD MEMORY.

Mr. Fullerton—Mr. Belcher, when you were before that Committee did you state to them that Mr. Tilton read to you a letter written by Mrs. Tilton, or a paper written by Mrs. Tilton, in which she charged improper solicitations? A. I don't recollect, Sir.

Q. You don't recollect whether you stated it before the Committee or not? A. I don't recollect; no, Sir.

Q. Didn't you, just before the adjournment, state most distinctly, that that was one of the parts that you omitted? A. I don't recollect.

Q. Well, if you so stated before adjournment that that was one of the parts that you omitted, was it true? A. I don't recollect whether it was true or not.

Q. You cannot now recollect what you have testified to on the stand? A. I cannot now recollect whether I made that statement.

Q. I will ask you the question again: Will you now repeat to the Jury what you omitted, in your testimony before the Committee, of the statement which Theodore Tilton made to you at his house? A. I don't know what I omitted to state.

Q. Can you name anything that you omitted? A. No; if you ask me that, what I omitted; I can recollect what I stated; some of it.

Q. You cannot recollect anything that you omitted? A. No; I can recollect what I stated.

Q. It would be well enough for you to recollect that when I ask you what you stated. I am asking you now what you omitted to state. You cannot recollect? A. I cannot recollect.

Q. Can you recollect any one thing that you omitted to state, before the Committee of that conversation? A. I cannot.

Q. Didn't you, before the adjournment, state distinctly the different heads that you omitted to state before the Committee? A. I don't recollect.

Q. You don't recollect whether you so testified or not? A. I do not.

Q. Well, don't you now recollect that you omitted to state before the Committee anything about this improper solicitation to be a wife and all that it implies, as a charge made by Mrs. Tilton against Mr. Beecher? A. I don't now recollect.

Q. Do you recollect of talking to Mr. Hill, before you went before the Committee, about that charge of improper solicitations? A. No, Sir.

Q. Didn't you state to Mr. Hill that that was the charge contained in the papers that you saw of Mr. Tilton? A. I don't recollect any conversation with Mr. Hill before going into that Committee.

Q. Don't you recollect of seeing him at all, before you went in before the Committee? A. He came for me in his carriage.

Q. Didn't he tell you what he wanted? A. Simply to go before the Committee.

Q. Didn't he tell you the purpose for which he wished you to go before the Committee? A. Not at all; no, Sir.

Q. He didn't tell you that he wanted you to give a statement?

Q. Or evidence? A. No, Sir.

Q. And did you know what he wanted? A. Yes; I knew what he wanted as soon as he stated that he came for me to take me before that Committee.

Q. Did you suppose that he wanted you to go before the Committee? A. Yes, Sir, I presumed so.

Q. Did you suppose he wanted you to say anything when you got there? A. I don't know what he wanted.

Q. What did you think at the time? A. I supposed that I should go before the Committee.

Q. Yes; I have got past that. What did you suppose that you would be required to do, or asked to do, when you got before the Committee? A. I could not tell until I was asked.

Q. Had you any impression about it? A. I had no impression, except that I was there to state what I knew of the matter; that is all.

Q. Oh, then, you had an impression that you were to state what you knew about the matter? A. Certainly.

Q. But you did not state what you knew about the matter, I understand you—the whole of it? A. I didn't state all I knew about it; I hadn't time to have done that.

Q. You hadn't time? A. I hadn't the time; no, Sir.

Q. Was that the reason you didn't state it? A. Not necessarily so; I wasn't there long enough.

Q. You were not turned out, were you? A. No.

Q. You staid as long as you chose, didn't you? A. Not as long as I chose.

Q. You wanted to stay longer and couldn't? A. No; I don't mean that.

Q. What do you mean? A. I mean that I staid there—that the time of examination was short; that is all I mean.

Q. And did you go away as soon as you were examined? A. I did.

Q. Left the room and went home? A. Left the room and went home; yes, Sir.

Q. You were not prohibited from stating anything that you wanted to state, were you? A. No, Sir.

MR. BELCHER'S TALK WITH THE COUNSEL OF THE COMMITTEE.

Q. Before you went in before the Committee did you have any talk with anybody about the matter? A. Before I went to the house, do you mean?

Q. After you got to the house where the Committee were sitting, and before you went before the Committee, did you have any conversation with any one in regard to the matter? A. I had a conversation with Mr. Hill.

Q. What was that conversation; did you state to him then what you knew? A. I had a general conversation with him.

Q. Well, in that general conversation, did you state what you knew about the matter? A. I must have stated some things that I knew about it, but not, probably, all that I have stated here.

Q. Did you state anything that you knew? A. I must have stated it; I don't remember what I stated.

Q. You don't remember whether you stated it or not? A. No, Sir.

Q. Whether you stated anything to him or not? A. I simply remember that there was a conversation with Mr. Hill before I went before the Committee, but what the nature of that conversation was, or what the particulars were, I cannot give.

Q. You don't know whether it was about the weather, or whether it was about the scandal? A. I don't know that it was about the weather; I think it was about the matter that the Committee was called to investigate.

Q. Now, do you remember what the subject of that conversation was? A. I do not.

Q. Didn't Mr. Hill ask you what you could testify to? A. He may have done so.

Q. Don't you remember? A. I don't remember; no, Sir.

Q. Don't you remember that he asked you what facts were within your knowledge? A. I do not remember, Sir.

Q. You can't give us any idea, then, of the conversation between yourself and Mr. Hill? A. I have no recollection of the conversation that took place, except that there was a conversation, and that I went before the Committee, and—and—

Q. And what? I thought you hadn't finished the sentence. A. I don't know how you would like to have me finish that sentence. If you would like to have me finish it in my own way, I will say—

Q. Well, have you been interfered with in finishing it in your own way? A. No.

Q. Then why don't you finish it in your own way, without regard to me? A. Because I had it finished and you asked me to go on.

Q. Oh you had! A. Yes, Sir.

Q. You finished it with "and," and, therefore, I supposed there was something to follow. A. Well, I don't choose to.

#### MR. BEECHER'S OMISSIONS WHILE WITH THE COMMITTEE.

Q. Very well, you don't choose; therefore let it stand. Now, didn't you purposely omit to state before that Committee that a charge was made by Mrs. Tilton, as you learned from Mr. Tilton, against Mr. Beecher, of improper solicitations? A. I did not.

Q. You did not purposely? A. I did not purposely omit anything; no, Sir.

Q. Then how came you to omit that important part of it? A. I can't tell you how I came to omit any part of it.

Q. How? A. I can't tell you how I came to omit any part of it.

Q. You only stated then what Theodore Tilton said in vindication of his wife and Mr. Beecher, but did not state the charge? A. I didn't state that I had stated anything before the Committee.

Q. How? A. I didn't state that; I didn't say anything of that kind, that I know of, before the Committee.

Q. Well, I say, you only stated before them what was vindictory of Mr. Beecher and Mrs. Tilton, without stating the charge, as you understood it, that had been made against Mr. Beecher? A. I don't remember what I stated before the Committee; I haven't the remotest idea.

Q. You haven't the remotest idea? A. None.

Q. Of what you said before the Committee. Didn't you tell me a moment ago that you could say what you stated before the Committee? A. In relation to the vindication of Mr. Beecher.

Q. What you said before the Committee? A. I want to answer your question correctly, Sir, and I don't want to state anything that is not true.

Q. Haven't you stated since recess— A. I have stated here that I remembered stating to the Committee something in relation to the printed matter.

Q. Didn't you state now here, within the last five minutes, when I asked you what you omitted to state before the Committee, that you couldn't tell me that— A. I—

Q. One moment. But that you could tell me what you did state? A. Yes.

Q. Now you tell me that you have not the remotest idea what you did state, do you? A. In that respect that you asked me.

Q. In what respect? A. In the respect that you asked me as to the vindication of Mr. Beecher, and that that did not sustain Mr. Tilton, as I understood your question.

Q. I ask you this question, then, remembering what you did state, whether it was not all in vindication of Mr. Beecher and Mrs. Tilton, and nothing implying a charge against them? A. Against them?

Q. Yes; or either of them. A. That is my understanding, for I knew of nothing against Mr. Beecher.

Q. You knew that Mrs. Tilton had made a charge against him, didn't you? A. I knew that Mr. Tilton—which charge do you mean?

Q. That Mr. Tilton told you of; the charge that Mr. Tilton told you of? A. I knew that, certainly.

Q. You knew that that was a charge against Mr. Beecher of improper solicitations? A. Yes, Sir; which Mr. Tilton had retracted.

Q. And why didn't you state that charge before the Committee? A. I cannot tell you; I don't know that I did state it; I don't know what I stated fully.

Q. Now, didn't you know that Mrs. Tilton had reaffirmed that charge? A. No, I did not.

Q. Didn't you know that Mrs. Tilton, or hadn't you been informed that Mrs. Tilton wrote to her husband the same night of the retraction that it had been gotten from her by Mr. Beecher for a purpose of his own? A. No, Sir.

Q. And not for— A. No, Sir; I had simply had the information from Mr. Tilton that his wife had retracted the retraction, but he did not read it to me, that I know of. I don't remember his reading it to me.

Q. Retracted the retraction; that you heard? A. That I stated.

Q. Then didn't you understand that the original charge would stand, in a measure? A. No, I did not.

Q. How? A. I did not understand so.

Q. Not if the retraction was recalled and retracted; didn't you think that that would give some force to the original charge? A. It didn't strike me that way, Sir.

Q. No. Very well. Now, did you see any one else before you that went before that Committee that night? A. No, Sir.

Q. Had no conversation with any one else? A. No, Sir; I was alone in my house.

Q. Well, you were not alone in your house when you were before the Committee after you got to the building? A. No, Sir.

Q. Well, I am asking about the time that intervened between the time that you left your house and the time that you went into the Committee-room; did you see and talk with any other persons than Mr. Hill? A. I saw other persons; but I don't remember talking with any other person.

Q. Whom did you see before you went in before the Committee? A. I saw—the gentlemen of the Committee were there when I arrived there.

Q. Whom else did you see? A. I don't recollect of anybody else.

Q. Did you see Mr. Tracy? A. Mr. Tracy, I think, was there; I saw him, I think.

Q. Did you have any conversation with him? A. I don't remember any conversation with him.

Q. Well, if you had a conversation with him, wouldn't you remember it? A. I don't think it possible for a man to control altogether his memory, Sir. I don't remember having any conversation with Mr. Tracy.

Q. Can you say positively that you did not have a conversation with Mr. Tracy, and that you told him what you could testify to? I cannot say positively that I had any conversation with Mr. Tracy. I have stated to the best of my recollection that I had no conversation with Mr. Tracy. I don't recollect any conversation.

Q. Can you say positively that you had no conversation with him? A. No, Sir; I cannot say positively.

#### WHAT MR. BELCHER DID TELL THE COMMITTEE.

Q. Now, did you testify in substance as follows, before that Committee? [Referring to printed book.] "Mr. Tilton was at first mysterious and non-committal." Did you state that? A. I don't remember, Sir.

Q. "But on their way home in Brooklyn Tilton invited him into his house?" A. I might have said that, for that is true.

Q. "Where the 'True Story' was exhibited to him?" A. I have no recollection of any such testimony.

Q. You don't recollect of testifying that? A. No, Sir.

Q. Will you swear that you did not state to the Committee that the "True Story" was exhibited to you at that conversation? A. I will swear that I don't recollect it; that is the best I can say.

Q. Will you swear that it is not so? A. I will swear that I don't recollect it, Sir.

Q. Is that all you swear to? A. That is all I will swear to.

Q. Then you will not swear that it did not take place? A. I will swear that I do not recollect that it took place.

Mr. Everts—What page are you reading from, Mr. Fullerton?

Mr. Fullerton—Page 202 in this.

Mr. Everts—Of the Committee's Report?

Mr. Fullerton—Yes, Sir.

Mr. Hill—They don't report Belcher.

Mr. Fullerton—They do report Belcher.

Mr. Morris—They do report him.

Mr. Everts—It is the Committee's Report which we have before us.

Mr. Beach—What of that, we are asking him a question.

Mr. Everts—I agree that you have a perfect right to.

Mr. Beach—It is not necessary for you to explain to the witness.

Mr. Fullerton—The assertion on the other side is that the Committee did not say anything about Mr. Belcher. [To the witness.] Will you swear positively that you did not state before the Committee that "the True Story" was exhibited to you? A. I cannot swear positively. To the best of my recollection, I did not so swear that "the True Story" —

Q. Well, that you have said before. Did you say that a prolonged conversation was had, which lasted until midnight? A. Very likely I did, for that is true.

Q. Do you recollect whether you stated it or not? A. I don't recollect what I stated; I think very likely I did.

Q. Did you state that he asserted his confidence in his wife's purity, and complained only of improper solicitations? A. I don't recollect.

Q. Don't recollect anything about it, do you? A. I don't recollect whether I answered such a—whether I made such a statement before that Committee or not.

#### THE COMMITTEE'S REPORT TO THE CHURCH.

Q. Were you present when the report of the Committee was read in the church? A. I was.

Q. Did you hear it read? A. The report of the Committee read in the church?

Q. Yes? A. Can you tell me when that was?

Q. Oh, I don't belong to Plymouth Church; you do. You can tell me, if you were there, when it was, better than I can. A. I think I was present.

Q. Then you heard the report read, didn't you? A. I think very likely I did.

Q. Didn't you hear the report read that "Mr. Belcher testifies that he met Tilton on the ferry-boat about two weeks after the publication of the Woodhull scandal, and they talked the matter over;" did you hear that? A. I don't recollect hearing it.

Q. Did you hear this read: "He says that Tilton was at first mysterious and non-committal, but on their way home in Brooklyn, Tilton invited him into his house, where the 'True Story' was exhibited to Mr. Belcher." Did you hear that read? A. I don't remember hearing it.

Q. Didn't you hear the whole of the report read that night? A. I don't remember whether I did or not hear the whole of it.

Q. Were you there when it was read? A. I don't remember whether I was there; I don't remember the report; I think I was present at the meeting, if I recollect the right meeting.

Q. And you don't remember the reading of the report, do you? A. I don't remember what the report contained at all.

Q. Do you remember the reading of it? A. I don't recall it now; no, Sir.

Q. Do you remember who read it? A. No, I do not. I was trying to recall who read it.

Q. Do you remember what took place after it was read? A. I am trying to remember the night.

Q. Never mind the night; the event is what you are swearing to. Did not Mr. Raymond read the report? A. I don't remember who read the report.

Q. Do you remember what occurred after the report was read? A. I remember some things that took place that night, if that is the night that I have reference to—the evening.

Q. Do you remember when the thing was put to vote—the question upon the acceptance of the report and its adoption? A. My recollection of that meeting is very indistinct, Sir.

Q. Do you remember that there was one vote in the negative? A. No, unless it was Mr. Moulton's.

Q. Well? A. I think Mr. Moulton voted no.

Q. Then you were present, were you, when he voted no? A. I think I was present.

Q. Don't you know whether you were present? A. I said I thought I was present at that meeting.

Q. I know you said that you thought you were, but I want to know whether you don't know that you were there? A. I only want to be sure of the meeting; that is all. I only want to be sure of the time. If that was the night that Mr. Moulton—

Q. I don't care about the time. Were you there when Francis D. Moulton voted no upon the question of the adoption of that report? A. I was present at the time Francis D. Moulton voted no on something.

Q. But you don't recollect what it was? A. I don't recollect what it was.

Q. You don't recollect what the subject of the note was? A. I do not.

Q. And when was this? A. I don't remember the time.

Q. Can you tell what year it was in? A. My impression is that it was last year.

Q. In 1874, was it not? A. I think it was in 1874.

Q. What time in 1874? A. I cannot remember the time.

Q. Was it not late in the season? A. I don't remember the time, Sir, at all.

Q. And not remembering it, you are enabled to remember what took place between you and Mr. Tilton in 1873? A. Yes, Sir.

Q. So as to retail the whole conversation? A. Yes, Sir, all that I have retailed.

Q. Your memory, then, of old events is better a good deal than of new events?

Mr. Evarts—You ought not to argue with the witness.

Mr. Fullerton—I ask him if that is not so.

The Witness—Did you want an answer to that? You asked me if my memory of old events is better than my memory of new ones; you asked that question.

Q. Well, I did. A. Well, I was going to say that a man is not responsible for his memory. He can remember certain things that impress him, on his memory, while he may forget other things that did not so impress him, whether they were new or old.

Q. Then the report of the Committee vindicating your pastor from a terrible charge, was not an event that made an impres-

sion upon you? A. It did not make any impression materially upon me. I did not require it.

Q. How? A. I did not require that report to vindicate him.

Q. No. Did you vote on the report? A. I don't remember.

#### SEVERE STRICTURES ON THE WITNESS'S MEMORY.

Q. Do you remember whether anybody else was there besides yourself? [Laughter.] A. Yes, Sir.

Q. You are sure of that? A. Yes, Sir; I think I would be positively willing to swear that some gentleman was there besides me.

Q. Well, I am happy to hear that you are positive about one thing. Have you ever read that report since it was read that night? A. Not that I recollect; no, Sir.

Q. Have you ever had a book in which it was printed? A. Not that I know of; no, Sir.

Q. Did you read it in the newspapers after it was published? A. I may have; I don't remember.

Q. You don't remember that? A. I don't remember that I have; no, Sir.

Q. Now, at that meeting, do you recollect who presided? A. I think Mr. Freeland presided.

Q. Wasn't it Deacon Freeland? A. I think Mr. Freeland; yes, Sir.

Q. Sure of it, are you not? A. Well, I am as sure of that as I can be of anything.

Q. Were you not, in 1874, a member of the Examining Committee of Plymouth Church? A. Yes, Sir; no, Sir.

Q. Well, now, which was it? A. No, Sir; not 1874.

Q. Not last year? A. No, Sir; I think that my term of office as a member of the Examining Committee expired on the first of January, 1874, I think.

Q. Well, don't you know? A. No, I don't know positively, Sir. If I was a member of the Examining Committee at all that year it was by virtue of my holding the office of deacon.

Q. You are *ex officio*, are you not, a member of the Examining Committee? A. That is the point I am trying to get at, Sir. There has been a change in the rule; when that change was made I don't recollect—separating the Examining Committee from the—separating the Deacons from the Examining Committee.

Q. Now, wasn't the report of this Investigating Committee submitted to the Examining Committee of the church of which you were one— A. I think it was.

Q. One moment. A. I think it was; yes, Sir.

Q. Well. A. And I think I was there when that was submitted.

Q. And didn't you pass upon it? A. I think so; yes, Sir.

Q. And approve of it? A. I think so.

Q. Wasn't it read? A. I think it was.

Q. In your hearing? A. I think so.

Q. Well, did you hear that part of the report read which purports to give your testimony before the Committee? A. I think it must have, although I don't recollect it.

Q. Don't you now recollect having heard that read, the part of it in which you are made to state that the "True Story" was exhibited to you? A. I don't recollect it; no, Sir.

Q. Well, then the Committee's report must have been read to you twice, or in your hearing twice, was it not, once before the Examining Committee, and once before the body of the church? A. I think so.

Q. How? A. Very likely.

Q. Well, as a member of the Examining Committee, you approved of the report, whatever it was, didn't you? A. I voted in favor of it; yes, Sir.

#### THE WEST CHARGES.

Q. Now, Mr. Belcher, as a member of the Examining Committee, didn't the West charges come before you? A. Yes, Sir.

Q. Who presented them before the Committee? A. The West charges?

Q. Yes, Sir. A. I think West presented them—Deacon West.

Q. Where was the meeting of the Examining Committee when those charges were presented? A. The meeting that I attended—the first meeting that I heard anything of the charges was, I think, at Mr. Halliday's house.

Q. Didn't you attend more than one meeting of the Examining Committee when the West charges were presented? A. They were never presented, I think, but to one meeting, at which I was present.

Q. And Mr. West presented them himself? A. He did.

Q. Were they discussed? A. There was some discussion.

Q. Were they read? A. I think they were.

Q. Who read them? A. I think Mr. West read them himself.

Q. You remember of the charge there against Mr. Tilton for slandering Mr. Beecher, in saying that he had had criminal intercourse with his wife, Mrs. Tilton? A. Criminal intimacy, wasn't it?

Q. Well, whatever the charge was you remember it? A. I remember it; yes, Sir.

Q. I will call your attention to them. You may state now, if you please, who else was present when the West charges were made? A. I don't recollect now, Sir, who was there.

Q. Was any member of the Committee present besides yourself? A. There must have been; I can give you my best recollection of who were present if you wish.

Q. Now, I will read from Exhibit No. 29, and we will see whether the word that you suggested was used instead of the word incorporated in my question. [Reading]: "At an interview with Mrs. Andrew Bradshaw, in Thompson's dining-rooms, in Clinton-st., on or about the 3d of August, 1870, Theodore Tilton said that he had discovered that a criminal intimacy"—you are right—"existed between his wife and Mr. Beecher. Afterwards, in November, 1872, in referring to the above remark, Mr. Tilton said to Mrs. Bradshaw that he retracted none of the accusations which he had formerly made against Mr. Beecher." That was the language of the charge, was it? A. I think so.

Q. You thought that that charge embraced something more than improper solicitations, did you not? A. I did not.

Q. You didn't? A. No, Sir; I did not.

#### THE BASIS OF THE WEST CHARGE INTERPRETED.

Q. You thought a criminal intimacy was the same as improper solicitations? A. I did think so at that time.

Q. How? A. I did think so.

Q. Do you think so still? A. Well, I think so—I thought so then.

Q. Well, do you think so now? A. I thought that the words criminal intimacy were words used to convey about the same idea as—

Q. About the same idea? A. As improper proposals.

Q. Do you think so now? A. Well, I am somewhat in doubt now, because I have heard persons say that "criminal" meant different from what I supposed it did.

Q. Well, what do you think intimacy meant? A. Well, I thought that any person that was more intimate with another person than they should be was criminally intimate.

Q. Well, suppose that other person repelled them with indignation, would you call that an intimacy? A. It would depend upon circumstances whether I believed the repelling.

Q. You think that when two persons are together, one of them can be intimate with the other and not the first? A. No, I don't know that I could take that definition.

Q. Well, didn't you understand criminal intimacy as implying a criminality—a mutual criminality of the two persons? A. Yes, Sir; I suppose so.

Q. Very well. Then if the intimacy was criminal, didn't you understand that it was something more than an improper solicitation upon the one hand, which was rejected by the other person? A. If there had been any criminal intimacy I should have so thought.

Q. I am talking about the charge of criminal intimacy. Do you now, Mr. Belcher, think that where a criminal intimacy was charged between two persons named, that that charge could be satisfied if one person made an improper proposal and the other rejected it? A. I didn't believe there had been any criminal intimacy.

Q. I am not talking about the fact; I am talking about the charge, Mr. Belcher. Now, you are an intelligent gentleman; you can distinguish between the two? A. Will you please state your question again?

THE TRIBUNE stenographer repeated the question.

The Witness—No.

Q. It would not meet the charge? A. No; I should not think so.

Q. A criminal intimacy, then, in your judgment, would have been something more than an improper solicitation by one person which was rejected by the other? A. Yes, Sir.

Q. Well, now, you understood very distinctly, as I understand you, you understood that they proposed Mrs. Bradshaw as a witness, did you not, to prove that Theodore Tilton said that there was a criminal intimacy existing between Mr. Beecher and his wife? A. Yes, Sir.

Q. How? A. I understood that.

Q. And didn't you understand that that was intended to charge criminality upon both? A. No, Sir; Mr. Tilton had told me that there had been no difficulty between them.

Q. No, never mind; I am talking about the West charge, please? A. I understand you are asking me what I believe, and I am telling what—I did not believe it.

Q. I am talking about the West charge that was made and read in your presence. A. I did not accept the West charge at all, because Mr. Tilton had told me himself there had been no crime committed between him and Mrs. Tilton.

Q. Did that alter the character of the charge? A. It didn't alter my belief.

Q. Did it alter the character of the charge. A. Not that I know.

Q. I am talking about the character of the charge, whether it was true or untrue; didn't you regard the charge made as implicating both parties in criminality? A. Probably; yes, Sir.

Q. And that charge was made in 1872, was it not? A. 1873.

Q. The West charge, you understood, was made in 1873?

A. Yes, Sir; I understand; yes, Sir.

Q. Now, then, we may go a step further. Did you not understand the charge that he made, however true or however false it was of the criminal intimacy, as involving a charge of adultery? A. I did not.

Q. Well, what did you understand by criminal intimacy. Didn't you understand that it was a delicate way of charging adultery. A. I did not.

Q. Well, give us, if you please, your definition of criminal intimacy as you understood it? A. I understood criminal intimacy, for instance, a gentleman visiting the wife of another gentleman, at unsuitable hours, when the other gentleman was not aware of it, and a surreptitious acquaintance of that kind, kept up, would be criminal in my estimation. That was the opinion that I had formed of it, and that was the view I held of it as criminal intimacy.

Q. And you did not regard, then, the West charges as involving adultery at all? A. I did not; no, Sir.

Q. Well, was that discussed before the Committee? A. I am not aware that it was. It was discussed between Mr. West and myself, I think.

Q. Well, what was said between you and Mr. West about it? A. Well, very much the same as you and I have discussed it, Sir.

Mr. Beach—What was he saying?

Mr. Fullerton—"Very much as you and I have discussed it—"

The Witness—I expressed the opinion that—

Q. Did Mr. West put questions to you that you could not answer; is that what you mean? A. Oh! no.

Q. Well, then, explain it? A. I expressed the opinion to Mr. West the same as I have expressed it here. That I did not consider his—the fact that Mr. Tilton had stated to Mrs. Bradshaw that he might prove criminal intimacy between Mr. Beecher and his wife as necessarily meaning adultery.

Q. Now, what did Mr. West say? A. Mr. West took the contrary view.

Q. Yes, that it was a charge of adultery? A. Yes, Sir.

Q. He made the charge, didn't he? A. He made the charge

of criminal intimacy—he made the charge of slander against Mr. Tilton.

Q. Exactly, with charging criminal intimacy? A. Yes, Sir.

Q. Which he construed to be adultery? A. I don't know that he did construe it in that way.

Q. Didn't he tell you so? A. He differed with me from my statement.

#### MR. WEST THINKS THE TILTON CHARGE THAT OF ADULTERY.

Q. Didn't he tell you so—didn't he tell you he considered it as a charge of adultery? A. I don't know that he used those words.

Q. Well, didn't you just tell me that he so considered it? A. He considered it differently from what I did, Sir.

Q. In what respect was it different in his judgment? A. Well, I think he considered it more—more in the light of adultery than I should.

Q. More in the light of adultery? A. More in the light of—a different kind of an intimacy from what I would.

Q. Well, what kind of a different kind of intimacy? A. Yes, Sir; a kind of a different kind of an intimacy.

Q. Well, what did you say upon the subject of the kind or character of the intimacy; didn't he say he thought it was adultery? A. It was a simple passing remark upon—I stated to Mr. West that I didn't consider the words "criminal intimacy" necessarily meant adultery; and he said he thought they did; and that's all there is about it.

Q. Very well; that is what I have been trying to get out of you for the last fifteen minutes. A. Well, I am trying to get it out for the last fifteen minutes.

Q. It is hard work. A. It is hard work.

Q. He said he considered it did then—you understood, at last, that in the opinion of Deacon West the charge was adultery; did you not? A. Very likely; but I didn't consider it so.

Q. I understand that. A. Yes.

Q. You didn't mean to consider it so, did you? A. No, I did not; not after what Mr. Tilton told me himself.

Q. No; not at all. Did you hear this part of the report read: Without now considering the weight of credit to which the respective parties are entitled where there is a conflict between them, we believe and propose to show from the evidence that the original charge was improper advances, and that, as time passed, and as the conspiracy deepened, it was changed into adultery.

Did you hear that read? A. I don't remember; I can't remember that report at all, Sir.

Q. Have you any doubt that you heard that part of it read? A. Well, I can't remember any part of that report,

Q. Have you any doubt that that part of it was read in your hearing? A. I don't recollect it, Sir.

Q. Have you any doubt about it; that it was read in your hearing? A. Well, as long as I can recollect it, I must say I have a doubt; I suppose that is a proper way to answer that question.



MILD MEASURES ADOPTED.

Q. What was done with the West charges when they were brought before the Examining Committee? A. Well, they were—I think they were accepted at first; and I asked Deacon West myself (I think I was chairman of that meeting), I asked Deacon West myself if he had called on Mr. Tilton personally, as a member of the church, and expostulated with him in relation to the charges, before he brought his charges before the Committee; that is, if he had exhausted the remedy that is laid down in the New Testament before bringing charges against a brother in the Church, to go and see him and talk with him; and if he won't pay any attention to him, take another brother and go—

Mr. Evarts—Speak a little louder.

The Witness—I say that I asked Brother West, when he presented his charges—after the charges had been presented to the Committee—whether he had exhausted the remedy laid down in the New Testament for a person having sught against another brother, a member of the Church. He stated that he had not. Then I proposed that there should be a committee of three to wait upon Mr. Tilton, and before the formal charges should be sent to him; that is my best recollection now.

Q. Was that Committee appointed? A. It was.

Q. Were you one of it? A. I was.

Q. Did you go to him? A. I did.

Q. To Mr. Tilton? A. I did.

Q. When did you go? A. I don't remember the day, Sir.

Q. Did you receive a letter from Mr. Tilton? A. Not at that time, Sir.

Q. Well, very soon after? A. Well, that was—must have been months afterwards; must have been months afterwards.

Q. Look at that, page 77, Exhibit 72, and say whether that is the letter you received from him? A. I think it is, Sir.

Q. That is it? A. I think it is, Sir.

Q. Now, you went to see Mr. Tilton, did you? A. I did.

Q. Who went with you? A. Captain Duncan and Deacon Garbutt.

Q. You had a conversation with him? A. We did.

Q. Now, when was that? A. Well, I don't remember; it was prior to the serving the written charges upon Mr. Tilton.

Q. Where did you see him? A. Saw him at the office of *The Golden Age*.

Q. Yes; now, what took place? A. I think the conversation with Mr. Tilton was carried on through Captain Duncan, as near as my memory serves me—the main conversation—Captain Duncan stated that he had called upon Mr. — that the Committee had called upon Mr. Tilton in relation to charges that had been presented, before those charges had been formally served upon him—before the written charges should be served on him.

Mr. Evarts—Served upon Mr. Tilton? A. Served upon Mr. Tilton—Mr. Tilton said that he was not a member of the Church; hadn't been for some three or four years; that he was not amenable to its discipline, and that he should not come before the Committee; and he used an expression, that I

remember, like this: "that forty yoke of oxen could not draw him before that Committee."

Q. What Committee? A. Before this Examining Committee.

Q. Yes; well, is that what you went there for, to get him to go before the Examining Committee? A. No; we went there—the Committee went there—to converse with him in relation to these charges before, and I stated the fact that charges had been preferred against him, and to ask him what he had to say in the matter, and what course he proposed to take.

Q. Well, did you expostulate with him? A. I don't know what you mean by "expostulate."

Q. Well, you used the word a little while ago; what do you mean by it? I mean the same as you do. A. Well, I don't know in what sense I used it; I don't remember.

Q. Well, I don't know in what sense you used it, except by its context. A. We went there to converse with Mr. Tilton, and in advance to report to the Committee Mr. Tilton's views and state of mind before the formal charges were forwarded.

Q. Well, what did he say about the charge that he had made against Mr. Beecher? A. He didn't say anything about the charge, only that he was not a member of the church, and would not go before this tribunal; he was not amenable to its jurisdiction.

Q. Well, did you ask him to go before the tribunal? A. No, we did not, but we told him that charges had been preferred against him.

Q. Did you ask him whether the charge was true or false? A. No, I did not.

Q. Did you take him to task in any way, in a Christian spirit, for having made this charge? A. I did not, because Mr. —

Q. Did anybody? A. I don't know; not in my presence.

Q. How? A. Not in my presence.

Q. Well, this Committee, as I understand you, was appointed and sent there to do what Mr. West, you think, according to Scripture, should have done? A. That was the ostensible reason.

Q. Well, then, why didn't the Committee perform their service; perform their work? A. Well, the Committee—Mr. Tilton met the Committee with—

Q. Or did you think it was unscriptural because there were three?

Mr. Evarts—Oh, let him answer.

Q. Let us have the answer. A. What is the question?

Mr. Evarts—The question is, Why didn't you proceed to talk with him as a member of the church?

Mr. Fullerton—No; I haven't asked you that

Mr. Evarts—You asked him if he did according to the rules of the New Testament.

Mr. Fullerton—That is different from the rules of Plymouth Church, I take it.

The Witness—The Committee was appointed on motion of mine.

Q. I understand it; you have got the Committee appointed; have got down to Mr. Tilton; now, I want to know why you didn't expostulate with him? A. The Committee went there for the purpose of talking to Mr. Tilton, and hearing any expla-

nation that he had to make before the formal charges were served upon Mr. Tilton.

Q. Why didn't you do it when you went there? A. I think we did it.

Q. Now, tell us how you did it? A. Well, I say that Captain Duncan was the spokesman, the principal spokesman; that he stated to Mr. Tilton that these charges were presented, and that they were presented in writing before the Committee; and that before the church would take any action—before the Committee would take any action—any further action on it, they had appointed a Committee of three to wait upon him. That is as near as I can remember.

Q. Yes, to wait upon him? A. Yes, Sir; to wait upon him.

#### MR. TILTON'S POSITION TOWARDS THE WEST CHARGES.

Q. What for? A. To hear what he had to say in relation to these charges before they were presented to him in writing.

Q. Yes, Sir; and then what was his reply? A. Well, his reply was that he was not a member of the Church, nor had not been for three or four years; that he was not amenable to the Church discipline jurisdiction, and that he should not appear before the Committee.

Q. Well, you didn't agree with that, did you? A. What do you mean—agree?

Q. You didn't agree with him in his opinion? A. I don't know that I agreed or disagreed in his opinion.

Q. What was your opinion about it at the time? A. I don't know that I had any.

Q. Any opinion expressed? A. I don't know that I expressed any at that time.

Q. Was there any opinion expressed either at that time by any member of that Committee as to his amenability to the discipline of the Church? A. I think not.

Q. How? A. I think not.

Q. Well, he was held amenable, wasn't he, afterwards, was he not? A. I considered him amenable to the jurisdiction of the Church myself.

Q. Then, why didn't you, if you considered him amenable, say something to him — A. I did say something to him myself.

Q. What did you say upon that subject? A. But not at that time.

Q. But at some other time? A. After this Committee had retired, and on the way home.

Q. Then it was you said something to him? A. Yes, Sir, it was; I said something to him.

Q. Why were not the West charges then prosecuted? A. I do not understand you; they were forwarded to Mr. Tilton, I think; as far as my memory serves me they were forwarded to him afterwards.

Q. Do you call that prosecuting them? A. That is the commencement of prosecution, I suppose.

Q. Well, was there anything else done towards prosecuting the charges? A. Yes, Sir; Mr. Tilton

was cited to appear before the Committee, and he wrote a letter, I think—he wrote a letter declining to come before the Committee, I think.

Q. Well, that didn't prevent them trying him, did it? A. No.

Q. Well, go on. A. Well, do you want to know—now, do I understand that you want my view of the matter—my individual view?

Q. I want to know why the West charges were not prosecuted.

Mr. Evarts—Any more than they were?

The Witness—Well, my action in that matter was in order to help Mr. Tilton as much as anybody else.

Q. Oh! you wanted to help Mr. Tilton, did you? A. I did in that matter just as much as possible.

Q. How were you going to help Mr. Tilton? A. I—my idea was this, I stated it to Mr. Tilton on the way over that night, Mr. Tilton, after the Committee had left *The Golden Age* office.

Q. Now, see, here, won't you be kind enough to tell me why the West charges were not prosecuted?

Mr. Shearman—He is trying to give it to you.

Mr. Fullerton—Well, he has not made it out.

Mr. Shearman—Because you interrupted him with another question.

Mr. Fullerton—No, he has gone off on the tangent.

Mr. Shearman—You don't know where he has gone, until he has given you the answer; he is proceeding to give the answer.

Mr. Beach—On the contrary, he is proceeding to give a subsequent conversation with Mr. Tilton.

Mr. Evarts—It was his mode of stating his reason.

Mr. Beach—It is not a mode that we shall submit to, then.

Mr. Evarts—Counsel ask witnesses to state reasons why this or that thing was done, but do not want to take the reasons that the witness's mind furnishes.

Mr. Fullerton—The witness's mind was not furnishing any reason at all.

Mr. Evarts—That is to be adjudged of after he has given it.

Mr. Fullerton—Well, that is to be adjudged now.

Judge Neilson—Repeat that question.

Mr. Fullerton—Why were not the West charges prosecuted to the conclusion? A. Well, I cannot tell you why.

Q. You know of no reason, do you? A. I know of no reason.

Q. Did you have any interview — A. I know of no reason other than the fact that Mr. Tilton had put in a plea of not being responsible to the church.

Q. Now, let me read the letter to you, "Ex. No. 17."

MR. SAMUEL E. BEECHER:

*My Dear Sir:* As you are a mutual friend of Mr. Beecher and myself, and as you are likewise a member of the Examining Committee of Plymouth Church, now occupied with an unhappy scandal, I desire to put into your hands, to be used publicly or privately at your discretion, the following statement, namely: I wrote a few days ago to your Committee stating that I had not for four years held any communication whatever with Plymouth Church, and therefore could not with propriety act the part of a member in any proceedings; but since writing that note I learn from the public papers that because

my name still appears on the church books, I am, therefore, still considered a member, sufficiently so, at least, to be indicted by one of the members for slandering the pastor. A hint is also thrown out that I am thus refusing to submit myself to the Church tribunal in order to escape the responsibility of my slanderous words. I therefore say, first, I have never spoken against Mr. Beecher falsely, and, second, if either he or the Church Committee shall request me to waive my non-membership, to take my position once again, I will do so as a member long enough to appear this evening at the meeting to answer, before the assembled congregation or the Committee, the following question, either from Mr. Beecher or the Committee, namely: "Have you, Theodore Tilton, ever spoken against Henry Ward Beecher falsely?" I request you to show this letter to Mr. Beecher before the action of the Committee to-night. Let me add that my explicitness in this matter is solely to protect myself against any unjust suspicion in the future that I have ever sought to evade any just responsibility of mine to Plymouth Church. I retain a copy of this letter, to be used hereafter as I shall see fit.

Fraternally yours, THEODORE TILTON.

Now, after that letter, why didn't you prosecute the West charges? A. They had already been prosecuted and ended before the letter was written.

Q. Prosecuted? A. They had already been terminated, and the action of the Committee taken before I received that letter.

Q. What was the action of the Committee? A. The action of the Committee was to accept Mr. Tilton's statement, that he was not a member of the church, and his name dropped from the roll.

Q. Wasn't there some action taken by the church, as a body, after that? A. That night?

Q. What? A. The same night that letter was written?

Q. Same night that letter was written? A. I think so.

Q. Well, do you recollect what took place at the church that night? A. I probably recollect something of what took place there; I don't know that I recollect all.

Q. Do you recollect that there was a resolution offered "that the name of Theodore Tilton be dropped from the roll of membership of this church?" A. I don't remember; possibly that was so.

Q. Wasn't that the very resolution that was offered that night? A. I presume it was; I don't remember; you ask me if I recollect.

Q. And do you recollect that Mr. Tilton was there and made a speech? A. I do.

Q. Wasn't Mr. Beecher present? A. I think he was; yes, Sir, he was present, I believe.

Q. Didn't Mr. Tilton wind up his speech by saying: "If, therefore, the minister of this church has anything whereof to accuse me, let him now speak, and I shall answer as God is my judge?" A. I think he did.

Q. And what did Mr. Beecher reply? A. Mr. Beecher replied that he had no charges to make against Mr. Tilton.

Q. And you didn't prosecute the West charges? A. I think we did; yes, Sir.

Q. How? A. I understand that we took up the West charges and settled them.

Q. Settled them? A. Yes, Sir.

Q. By throwing them out, as it were, because he was not amenable to your jurisdiction; is that it? A. No, Sir; there were two views to be taken in that matter, as I told Mr. Tilton that night, after the meeting at *The Golden Age* office.

Q. Never mind; tell us the two views? A. I am going to say that I stated those views to Mr. Tilton.

Q. I didn't ask you to say that you stated them to Mr. Tilton; I want you to tell what two views you took? A. Well, I can't tell you what two views were taken—I don't know what came up in the Committee at all. I will state it to you as I told Mr. Tilton, if you wish me.

Q. Well, I don't see that I can help it. Go on. A. I will stop here if you say so; I am entirely at your service. Mr. Tilton asked me this question, if you would like to hear—Mr. Tilton asked me what the action of the Committee would be on the report of this sub-committee of three.

Q. I don't ask you for it; I would like to get an answer to my question, if I can? A. I am willing to answer your question, if you will state what it is.

Q. Let me ask you another question; let me read you something here, and I want you to tell me whether it was the report of the Committee that night. [Reading]:

*Whereas*, Charges were preferred to this Committee by William F. West against Theodore Tilton; and

*Whereas*, A Special Committee having been appointed by this Committee to wait upon said Tilton in reference to said charges, said Tilton on the evening of the 6th of October, instant, made answer to that Special Committee in these words: "I have not, for nearly four years past, been an attendant of Plymouth Church, nor have I considered myself a member of it, and I do not now, nor does the pastor of the church consider me a member, and I do not hold myself amenable to its jurisdiction in any manner whatever;" and

*Whereas*, Theodore Tilton, in a reply to a communication addressed to him by the Clerk of this Committee, and which communication, with a copy of the charges preferred against him by William F. West, were put into the hands of said Tilton on the 17th day of October inst., and a request made of him that he should answer the same by the 23d day of October inst., says in a letter addressed to the Clerk of this Committee, under date of October 22d, 1878: "It is about four years since I terminated all connection with the church, and am not now a member thereof; therefore, the document addressed to me in that capacity I cannot receive;" and

*Whereas*, It thus appears that Theodore Tilton, a member of this church, has abandoned his connection with the church by prolonged absence from all its services and ordinances; therefore

*Resolved*, That this Committee recommend to the church that the name of Theodore Tilton be dropped from the roll of membership of the church as provided by Rule No. 7.

Brother White moved to amend the resolution, so as to recommend to the church to excommunicate Mr. Tilton, in place of dropping from the roll. The amendment was lost.

Do you remember that as having taken place that night? A. What night is that, Sir?

Q. The night that you speak of, when the report of the Committee was made? A. No, Sir; I don't understand that to be at that night.

## THE CHURCH'S ACTION ON THE CHARGES.

Q. When was it? A. It must have been a previous meeting.

Q. Were you present at a previous meeting when that was offered? A. I was present at a number of meetings previous to that.

Q. Now, Mr. Belcher, will you tell me whether you were present at a previous meeting when that resolution was offered? A. I think so; I think so; but not the night of the action taken in the Church.

Q. What resolution was offered that night? A. That report or a similar one to that; a report similar to that that you have just read.

Q. Well, similar to it, or that report? A. I don't know whether it is that report or not.

Q. But one you think very similar? A. A report had been adopted by the Examining Committee and was read at the Church that night.

Q. What? A. There had been a report previously adopted by the Examining Committee, and which had been read to the Church that night, and that report, as nearly as my memory serves, is about the same as you have it there.

Q. Now, this report was adopted by the Examining Committee before the meeting of the Church, wasn't it? A. Yes, Sir.

Q. And how long before; how many days? A. Well, I don't remember; it might not have been more than a day or two, but I don't remember.

Q. Now, on what day did you receive this letter addressed to you by Theodore Tilton? A. I received it from Mr. Tilton's hands on the morning of the—morning that the Church took action on it.

Q. Then, before the Church took action, and before they adopted this resolution, Mr. Tilton submitted himself to the jurisdiction of the Church, didn't he, by that letter? A. No, Sir; I don't think he did by that letter.

Q. You don't think he did? A. No, Sir; the action had already been taken so far as the Examining Committee was concerned.

Q. So far as the Examining Committee was concerned, but not so far as the Church was concerned; is that it? A. That is it.

Q. And before the Church, as a body, took that action, Mr. Tilton wrote that letter to you? A. He did.

Q. Did you show it to Mr. Beecher as he requested you? A. I did.

Q. When did you show it to him? A. Same night.

Q. Did you show it to the Committee? A. No, I did not.

Q. You did not think this was submitting himself to the jurisdiction of the Church? A. I did not.

Q. "If either he or the Church Committee shall request me to waive my non-membership and take my position once again I will do so, as a member, long enough to appear this evening at the meeting to answer before the assembled congregation or the Committee the following question, etc., etc." You thought that was a willingness on his part to appear, didn't

you? A. Yes, Sir, it may have been a willingness, but the conversation—

Q. But, didn't you consider it as being a willingness on his part? A. The conversation—

Q. One moment. A. I want to be right.

Q. You have a very wrong way of doing it then? A. That may be, but I want to be right.

Q. Answer my question: did you not consider that as a willingness on his part? A. I did not.

Q. You didn't? A. I did not.

Q. You considered that language as an unwillingness on his part? A. I considered that language as a sort of waiving the position—according to the conversation and talk that I had had with Mr. Tilton previously, was postponing, or getting rid of the emergency that had then arose.

Q. Well, he did appear at the Church, did he? A. He did appear at the Church; yes.

Q. And no charges were made against him? A. How is that? There were no charges that I know of; I did not hear of any.

Q. He offered to meet the charges that night, didn't he? A. There were no charges presented that night.

Q. He offered to meet any charges that might be presented. A. He offered to meet any charges that might be presented by the pastor of that Church, and no charges had ever been presented by the pastor of that Church, as I understood it.

Q. Now, did you give a copy of this letter, addressed to you by Mr. Tilton, to Mr. Talmadge? A. I did not.

Q. Do you know whether he had a copy of it? A. Well, I don't know how I could know that positively; I presume he had a copy.

Q. You didn't give it to him? A. I didn't give it to him; no.

Q. Wasn't the letter of Mr. Tilton read before the Committee—Tilton to you? A. I think it was—no, not my letter; not the letter that was to me; not the copy that I had was not read.

Q. Well, a copy of that letter? A. A copy of that letter was read.

Q. To the Committee? A. I think, Sir.

Q. Do you recollect who read it? A. I think Mr. Talmadge read it.

Q. That is the clerk? A. The clerk.

Q. He was the clerk of the church, wasn't he? A. No, Sir; clerk of the Examining Committee. Mr. Tilton informed me that he had sent a letter to the clerk of the church, but instead of that he meant the clerk of the Examining Committee, I suppose.

Q. Now, I understand you on the evening when you had this long talk with Mr. Tilton, that you advised him to go and consult Dr. Storrs? A. No; I won't put it that way, Sir, not that I advised him to go—he asked me what course he should take, and speaking of consulting with some persons, I suggested the name of Dr. Storrs as being a good man for him to consult; not that I advised him to go and consult with Dr. Storrs.

Q. Very well; you supposed that he would consult Dr. Storrs in consequence of that suggestion? A. I didn't know whether he would or not.

Q. Well, you thought it more than probable, didn't you? A. I didn't have any thought about it.

Q. Well, you thought Dr. Storrs was a good man to consult? A. I did.

Q. Do you know whether or not he went to see Dr. Storrs in regard to it, soon after? A. I don't know; no, Sir.

RE-DIRECT EXAMINATION OF MR. BELCHER.

Mr. Hill—Mr. Belcher, you began to state an interview, or state what occurred at an interview between yourself and Mr. Tilton as you were coming away from *The Golden Age* office, on the day when the Committee went to see him about the West charges, and you were interrupted by the counsel. Please take up that interview and state it to his Honor and the jury? A. When the Committee left *The Golden Age* office, between there and the ferry—Mr. Tilton walked with me, and Captain Duncan and Mr. Garbutt walked together.

Mr. Evarts—A little louder.

The Witness—Captain Duncan and Deacon Garbutt walked together, and Mr. Tilton and myself. At or near the ferry—at the ferry Mr. Tilton says: "I want to talk to you, and here will be a good place to lose these gentlemen."

Q. Here would be a good place to what? A. Here would be a good place to lose these other gentlemen. We crossed the ferry, and we did lose them; we didn't see them again; I didn't see them again not until evening. After we had got across the ferry we walked up Fulton-st. to Myrtle-ave., and I think we walked down Myrtle-ave. to the corner of Lawrence-st., and there the interview—there we separated. During that interview Mr. Tilton asked me what I thought would be the action of the Examining Committee upon the report of this Committee of Three. I told him I could not say what the action of the Examining Committee would be, but that so far as I was concerned, as one of the members of that Committee, I could see but one of two courses for the Committee to take; one of those courses was to expel him as a contumacious member of the church, and the other was to accept his view, that he was not a member of the church by reason of his long absence, and to recommend the church to drop his name from the roll.

Q. Well, what did he say to that? A. Mr. Tilton was not—expressed himself as not satisfied altogether with that view; he wanted to have the Church simply recognize the fact of his non-membership, and pass some resolution in Committee, or by the Church, to have the roll corrected; he did not like the idea of having his name dropped from the roll.

Q. The roll corrected by omitting his name? A. By omitting his name.

Q. Well, that was in substance what you said was one of the two causes? A. No; that was not—

Q. Very well; now, Mr. Belcher, a letter has been referred to as having been received by you from Mr. Tilton upon the day when the meeting was held, or the day before the meeting was held at the church; in the evening, at which the resolution was finally adopted, dropping his name from the roll? A. The morning of that day.

Q. Very well; the morning of that day; now please state

whether or not the action of the Committee had then been taken in accordance with the suggestion of Mr. Tilton? A. It had, to the best of my recollection.

Q. Not of the sub-committee—the action of the Committee, I mean, had then been taken? A. It had, to the best of my recollection.

Q. So that the Committee were then fully committed to the dropping of the name, at the time that letter was received?

Mr. Beach—Well, I object to that.

Mr. Fullerton—That is all in evidence, Sir.

Mr. Hill—If the fact is conceded I don't want to go any further with it.

Mr. Fullerton—The fact is conceded that the Committee had taken their action, whatever it was, and that is in evidence.

Mr. Beach—I don't know that; it has not appeared certainly that they had taken their action on the day before.

Mr. Fullerton—Yes, but the Church had not taken its action.

Mr. Beach—No.

Q. State, Mr. Belcher, whether this sub-committee of three made a report to the Examining Committee, of their interview with Mr. Tilton? A. I don't recollect; I don't recollect their report.

Q. Did they state what had occurred, either formally or informally? A. I have no doubt they did, but I don't—I don't remember.

Q. Were you present? A. I don't remember; these meetings were held, a great many of them, during the Summer time, and I was away a great deal that Summer.

Mr. Hill—That is all, Mr. Belcher.

TESTIMONY OF MR. ST. CLAIR McKELWAY.

St. Clair McKelway was next called by the defendant, and having made affirmation, was examined as follows:

General Tracy—Mr. McKelway, you reside in Brooklyn? A. Yes, Sir.

Q. How long have you resided in Brooklyn? A. Since the 15th of April, 1865.

Q. What is your business? A. A journalist.

A. Where are you now employed? A. In *The Brooklyn Eagle*.

Q. What capacity? A. Associate editor.

Q. How long have you been employed on *The Brooklyn Eagle*? A. From the first until the present time, I think it is about five years; there is a period of eight months—eight months or nine, in which I was away from the paper, and at the expiration of which I returned to it.

Q. Were you employed on *The Brooklyn Eagle* in November, 1872—October and November, 1872? A. I was.

Q. In what capacity? A. In the same capacity I have already stated.

Q. Do you know Theodore Tilton? A. I have that pleasure, Sir.

Q. How long have you known him? A. Personally, I think I have known Mr. Tilton since before he took—either just before he took hold of *The Brooklyn Union*, or some time not long thereafter.

Q. That was in 1870? A. Yes, Sir.

Q. Do you remember the occasion of the publication of what is known as the Woodhull scandal? A. Very distinctly.

Q. Did you at any time, soon after that, have an interview with Mr. Tilton on the subject of that scandal? A. Yes, Sir.

Q. Do you also know John W. Harman, of this city? A. I have known him for some years; yes, Sir.

Q. And you knew him in 1872? A. I did; I think I had not long known him then.

Q. Had the subject of this scandal—had this publication of this scandal been a subject of conversation between yourself and Harman prior to your interview with Mrs. Tilton? I don't ask you what was said now. A. I understand; it had.

Q. Was it in consequence of your conversation with Harman that you had an interview with Mr. Tilton? A. So far as I was concerned, it was in consequence of that.

Q. Where did that interview between yourself and Mr. Tilton occur? A. In Mr. Tilton's residence—present residence.

Q. In Livingston-st.? A. Yes, Sir; at the head of Gallatin place on Livingston-st.

Q. When was it? A. Well, fixing it by an event, I cannot give the date of the month, Sir; but it was the day after the fire in the stores of Woodruff & Robinson, the stores situated near South Ferry.

Q. Well? A. I think it was in November, 18th or 19th —

Q. That your interview occurred? A. Yes, Sir; more likely the 19th.

Q. 1872? A. Yes, Sir.

Q. The Woodhull scandal had been published about how long? A. Well, I am not able to be certain about that. It had been published since the 28th day of October preceding.

Q. About three weeks, then? A. Well, the thing makes itself.

#### A FRIENDLY TALK WITH MR. TILTON.

Q. Well, did you call, at Mr. Tilton's house in pursuance of an appointment which he had made with you, through Mr. Harman? A. I called there, so far as my own mind was concerned, in pursuance of an appointment, or as a means of access to Mr. Tilton on this subject, which Mr. Harman had engaged to make for me.

Q. Now, what did you say to Mr. Tilton at the beginning of that interview? Who was present at the interview at the beginning of it? A. When I first went to Mr. Tilton's house the servant came to the door and took me into the front parlor, announced me, and then the folding-doors between the two rooms, if I remember correctly, were pushed aside, and Mr. Tilton coming forward took me into that room. There were two ladies present at the time, Mr. Tilton and myself.

Q. Well, what became of the ladies? A. I was introduced to one of them; the lady remained for a very short period and departed from the room. She had on her things as if she was going out—as if she called. The other lady, Mrs. Tilton, I think I had previously met, but I think I was introduced to her, and at the suggestion of Mr. Tilton, that we might desire to talk alone, I think Mrs. Tilton went up stairs.

Q. Then what occurred? A. I said to Mr. Tilton that I had called in pursuance of a conversation which I had had with Mr. Harman on the day previous, and that I had also, before calling, spoken to the editor of *The Eagle*, the Hon. Thomas W. Kinsella, upon the subject, and had come with his consent, and that I had come in the capacity of a journalist to speak with him upon that subject.

Q. Well? A. Mr. Tilton was very cordial, but at once informed me that in my capacity as a journalist I could hardly be at liberty to talk with him upon that subject, but as gentlemen and friends we could converse together on the matter.

Q. What matter was that? A. Well, the Woodhull publication matter; I think that was the first definition of it.

Q. Well, go right on. A. And then, if I remember correctly, Sir, I spoke to Mr. Tilton in a general way upon the subject, in such a way as induced him to ask me what my knowledge at that time on the subject was. I told him of a conversation that I had previously had with Mr. Beecher upon the matter; the fact of the conversation I told him, whether I told him the details of it or not I cannot swear; my impression is that I did; I am not certain that I did, and then we spoke, I should say, about Mr. Harman; I think I told him how Mr. Harman and I came to talk about it, and what facts Mr. Harman told me—the words I said with reference to what Mr. Harman said. We talked in a general way in reference to Mr. Harman speaking to me upon the subject.

Q. Repeat what you said to him—to Mr. Tilton? A. I think I told Mr. Tilton that I met Mr. Harman down at the fire at Woodruff & Robinson's; that we saw the fire partially—partly saw it—and that when we came upon the street together it was getting on towards dark, and we walked slowly. We came up Atlantic-ave. My house was then on Pacific-st., between Bond and Hoyt, and that our walk from the ferry to the corner of Bond-st. made a long distance, and made a long conversation possible. I told Mr. Tilton that I told Mr. Harman that I had seen Mr. Beecher, and what had been said upon that subject.

Q. What did you tell him had passed between you and Mr. Beecher on the subject? A. I think I told him this: that on the morning of the 28th of October, at twelve o'clock at noon, about twelve o'clock, in *The Eagle* office, there were received papers—the Woodhull papers—with the article now known as the Woodhull publication, marked in blue pencil, in editor's style, all round and round and round, so as to attract my attention. I got one of those papers and took them out of the box; and if it had not been for the blue mark I don't think my attention would have been attracted to the thing at all, for it was his paper, and it had no news in it, only discussions and theories.

Mr. Beach—This was what you told Mr. Tilton? A. I was telling Mr. Tilton what I said to Mr. Harman, and what I said to Mr. Harman, part of that was an occurrence between Mr. Beecher and myself on the 28th of October.

Mr. Tracy—Go on. A. I then told Mr. Harman that I went to see Mr. Beecher upon the subject; that we conversed upon the matter during that day, and that I had imbibed from Mr. Beecher certain impressions on the subject, and had received from him certain statements.

MR. BEECHER DENIES THE WOODHULL STORY.

Q. What statements did you say to him you had received from Mr. Beecher? A. I don't think I went into them with very great detail. I think the substance of what I said was that Mr. Beecher denied the story.

Q. The Woodhull story? A. Yes, Sir; and the other part of it was that he had nothing to say of it in public. He denied the story; he was quiet about it; he was silent about it, and thought the thing would die out by silence.

Q. Did you tell him that Mr. Beecher stated he would not enter into any public discussion with the author?

Mr. Beach—That is entirely inadmissible, a question of that kind.

Q. Did you say anything to him upon that subject? A. He said to Mr. Harman—Whether I said these words to Mr. Tilton I cannot remember.

Judge Neilson—This inquiry is expressly what you said to Mr. Tilton. It is only admissible in that point of view.

The Witness—Well, Sir, I know that I spoke more of results at this time to Mr. Harman than of the details. I also know that my conversation with Mr. Tilton upon what I said to Mr. Harman was much shorter than it had been with Mr. Harman upon what I had said to Mr. Beecher. It was a mere introductory.

Q. If you remember what you stated to Mr. Tilton about what Mr. Beecher said in regard to a public discussion with the authority of this story, you may state it; if not, you may pass on? A. I think you had better pass on, for I am not certain I went into it with such particularity.

PUBLIC OPINION ABOUT THE WOODHULL STORY.

Q. Go on with your conversation with Mr. Tilton?

A. Mr. Tilton, as I remember—I am giving the substance, and not the words—asked me what was the general impression with regard to the Woodhull story. I told him the general impression, so far as I received it, was that it was a plan between him and the Woodhull woman to destroy his wife, and pull down Mr. Beecher, and he said that was a very unjust conclusion to come to, and that such was not in any case the fact. I then said to him, that the public had very little to go on any way upon which to form a conclusion; that there were so few facts known in the case, and that all parties seemed indisposed to say anything upon the subject at all, and that I didn't think that inferences of anybody, founded upon such meagre information, would be very correct, but that nevertheless, such were the impressions; something like that.

Q. Well? A. Mr. Tilton further disclaimed any such thing being the case, and he said that there was a story that could be told in this matter which would put a new face upon it, and which would materially change that public impression of which I had spoken. I asked him what that story was, and he said that he did not think that he was at liberty to tell me what it was. He said that he would like to be able to, that he felt some freedom in conversing with me as a friend, but as a journalist he could not converse with me upon the subject;

and then he asked me, with some abruptness, if I remembered the occasion of his leaving *The Brooklyn Union*, and I said that I remembered the fact that he left; I remembered the time when it was announced that he left, and he asked me what were the opinions upon that fact, what people thought of his leaving, why it was he left. I think he said, "What did the boys in *The Eagle* office think?" And I said that having nothing to go on, we didn't think intelligently in the matter at all—didn't think very much about it.

THE STORY TOLD IN ALLEGORY.

Q. Well? A. Well, he then said that he thought he would tell me some things in this matter, and that he would tell me in confidence, particularly not for publication; he wished that understood; he said that he would state the matter in the form of an allegory, and that that form would be essential to convey the purposes he had in view. He said that he chose that form for two reasons. It named no names. It allowed him to imagine scenes and personages, and that it would be a form which would make upon my mind that impression which he desired to be made upon it.

Q. Well, how did he proceed in the form of an allegory to repeat the story? A. He then proceeded, in the form of an allegory, to tell me a very interesting story, and it was—it preserved the story form all the way through.

Q. Will you repeat it? A. I don't think I can repeat it with anything like justice to the original, or with very much detail. I should think that my repetition would be more the form without the substance.

Q. The substance without the form, you mean? A. Yes, Sir; well, no, Sir; I think I would have the story formed, but I could not inform the form with that vividness with which the gentleman spoke.

Q. Well, repeat it as near as you can. A. I think it was something like this: That once upon a time there was a man, and that there was another man, and that the first man spoken of was young and rising and hopeful, and that he had largely had for an example, and a friend and a guide, the other second man spoken of, who was the older. He said that the young man was pleasantly situated in his domestic relations, and that he was engaged in such duties as took him away for a considerable part of his time from his home, and that once upon his return he was surprised by a statement from his wife that the other man of whom he had previously spoken had made to that wife improper proposals. He said that those were two in their number; that the first time it was between a word and a demonstration which the lady supposed she might have either understood or misunderstood, but that fearing she had misunderstood it she simply became a little more cautious in her demeanor and said nothing, and let it pass. That on the other occasion the meaning was unmistakable, and she repelled it with indignation and scorn, and withdrawing from the room went up stairs towards the top of the—went up stairs for the purpose of calling a servant; that while she was on the stairs the gentleman himself came out from the parlor, went to the hat-rack, and, taking his hat, opened the door. Meantime the servant had come up upon the

Upper landing, and the gentleman below spoke to the lady, who was midway of the stairs at that time, and made a casual remark, as if to give the servant no cause for suspicion, and went away. That the lady pointed the man out to the servant as he was departing, and told the servant not to admit that man any more unless he came in company with her husband. That some time after, taking a walk with her children and returning in the afternoon, this lady found this gentleman sitting in the parlor; that he had come in in spite of what she had said to the servant; and that he then renewed those proposals, and was repelled with a great deal of energy and scorn. That after that the lady thought it became incumbent upon her to tell her husband, and that she did tell him. That her husband appointed with a friend an interview, to be held between himself and this person who had made improper proposals, at the house of that friend. That at that interview he charged him with this crime of improper proposals. That the friend—that the man to whom the accusation was made broke out with saying: "You are all crazy," or words to that effect, I remember; I remember more the adjective "crazy" than anything else, and went away. That this young man and his friend, in whose house he was, talked the matter over until late at night, and that when the young man returned to his home he found that in his absence this person whom he had accused had been there, and had coerced out of his wife, who was then sick, a retraction of the statement which she had made to her husband. That upon that this young man consulted with the friend, and that the friend went to the man who had secured this retraction and told him to return it; that he compelled him, by argument only; and that receiving this retraction he returned with it to the husband of this lady from whom it had been coerced. I think that at about this part of the story the allegorical form was dropped. I think it was dropped at my suggestion, because I discerned, from what I had read in the Woodhull story, the drift of the allegory, and that we fell to talking, without this allegorical form intervening between us, upon the story itself.

#### THE PISTOL SCENE DECLARED FICTION.

Q. Now, go right on? A. I remember, I think, at this point, and with reference to the getting of the retraction from the gentleman spoken of, asking Mr. Tilton what truth there was in the pistol scene as reported in this publication. He told me that there was no substantial truth in it; that the gentleman referred to carried a pistol, and generally carried it in the outside of a loose overcoat; that his reason for carrying it at that time was this: he had many calls in business along the shore; that strikes were prevalent, and disturbances sometimes either occurred, or were threatened, and that for his own protection he took it, more than for any other reason, and that when he was arguing for the return of the retraction his hand went to his pocket, and that he almost, as if with a gesture, pledged protection if the retraction was returned, and said that he would protect him with his pistol, or even to that extent of something like that.

Q. Protect what with his pistol? A. Would protect the gentlemen whom he induced to give up the retraction.

Q. Well, was there anything at this point said about the promise to preserve the retraction? A. No, Sir; I recall nothing of that sort. I wish to remark here that I have been in court almost every day during the trial; it has been my duty to listen to the evidence, and to transcribe it in some respects; I am trying very hard not to get what I have heard mixed up with what I remember, but it is not a very easy thing.

#### THE AFFAIRS BETWEEN MR. BOWEN AND MR. TILTON.

Q. Well, go on. A. I think that at this point in the narrative Mr. Tilton said to me that now would appear the reasons why he asked me with regard to *The Brooklyn Union*, and he said that he had certain data which all the public had—a part of which all the public had—and that some of them would throw some light on the case, and would show why he had asked me about *The Union*. He then asked me if I remembered his retirement from *The Independent* as editor and his engagement as an outside contributor—that is, a contributor on the first page. I told him I remembered it distinctly, and he showed me an *Independent* of December 22d, 1870, if I remember the date correctly. It contained a notice very flattering to Mr. Tilton. He then said that there were other things that bore upon this, and there were shown to me two letters, (I do not know whether they were originals, or whether they were copied because I am not familiar with the handwriting of the gentleman) of Mr. Bowen's. Both of them were complimentary to Mr. Tilton, and one was stronger than the other. I think the strongest one was the one written last. He then showed me a letter on a galley proof of *The Golden Age*.

Q. [Handing paper to witness.] I hand you now what is known as the "tripartite agreement." A. I never saw that before.

Q. Look at that printed matter and say if that is the printed galley proof he showed you on that occasion.

Mr. Shearman—"Exhibit D, No. 45."

A. I remember, Mr. Tracy, at the time recognizing *The Golden Age* proof sheet, and I see that this is a proof sheet of the same paper.

Q. Yes. A. I have no doubt —

Q. You afterwards became acquainted with the substance of what is shown you there, did you not? A. I afterwards became acquainted with the whole thing, more or less.

Q. Go on. A. I said—

Q. Is this a duplicate of it? A. That is a *Golden Age* proof sheet. I didn't keep it long enough to look at the substance of it.

Q. [Handing paper to witness.] Look at the substance of it, and say if that is the same thing he showed you on that occasion. Read enough of it to satisfy yourself on that subject. See if that is not another proof of the same article that he then at that time exhibited to you. Is that not the imprint of the same article that he showed you? A. All that is in my memory at the present time about this is down to there—the signature.



I remember the preface to it, but I don't remember the appendix. That is, when I say the signature, I mean to say all between the preface and the signature of Theodore Tilton, I don't remember the appendix to it, commencing "in consequence of the above," &c.

Q. You mean that you recognize the letter which is included in this article, dated January 21st, 1871, and what precedes it? A. Yes, Sir; and much more distinctly the letter than what precedes it. I would not be absolutely certain I saw what precedes it. I have a strong impression that I did.

Q. Well, go on. What was said about it? A. I took and read the letter, if I remember correctly, without speaking on the subject, until I had got through. I think I said that this was a *Golden Age* proof-sheet. Mr. Tilton said "yes," and then we fell to talking about *The Golden Age*. He asked me how I liked it. I told him that I thought it did look too much like *The New-York Churchman*; he said it did look like it, but it was not like it. He talked about the headings of the paper, the headings of the departments, and the editorial caption, title, and so on, and said he selected them with a great deal of care and deliberation; he made them home, and he thought they were like, and he had studied the matter out in his own house to a considerable extent. I said to Mr. Tilton: "Mr. Tilton, why don't you let me have this *Golden Age* letter, this letter of Mr. Bowen, and the article in *The Independent* to publish? It would put a new face upon this scandal." He said that he knew that. I said that it would put a new face upon it; that it would show that, instead of his being the author of it, others were the authors of it; and he said that he knew that, but that he was obligated, honorably bound not to publish it—not to have it published of his own action or procuring—not to have his name appear in connection with it.

#### HOW MR. McKELWAY GOT MR. TILTON'S PAPERS.

Q. Did he state how he was bound? A. No, Sir. I told him that I thought the matter ought to be published, that it was due to what was true and right that it should be published. He said no—he said perhaps it was, but that he could not move in the matter, that he could not honorably do so, he was honorably bound not to do so, and then I said, "What are you going to do with these things?" Well, he said, I think, that Mr. Harman had seen them, but that he wanted to see them again; that there was a person for whom he had requested them, but that he would probably leave them with Mr. Harman. He intimated to me that among his very particular friends he had not been loth to show these things among them, but only among them had it been circulated or seen, and, said I: "If you leave that with Mr. Harman I think Mr. Harman would give it to me, if he thought it was right." I said that we were friends, that we had conversed about this matter, and he was very warm on the subject in his views, and I thought this thing should be published, and, says I, "When

are you going to Mr. Harman's?" He said he didn't know. Said I, "Let us go up now."

Q. How was Mr. Harman—warm? Did you tell him? A. No, Sir; I didn't tell him, if I remember, in detail.

Q. Warm in his views about the publication? A. No, Sir; he was warm in his conviction that Mr. Tilton had been greatly wronged in this whole case.

Q. Well, go on. A. Said I: "Let us go up to Mr. Harman's now." Well, we did go up to Mr. Harman's house. Mr. Harman lived in Cumberland-st., between DeKalb-ave. and Myrtle-ave., opposite Fort Greene. We got up there in the dark, about half-past six o'clock. We called for Mr. Harman and he was not home. We went into Mr. Harman's back room. Mr. Tilton left these things for Mr. Harman. I wanted him to give them to me. He said no, he promised to give them to Mr. Harman, and he should give them to him, and he wrote a note to Mr. Harman there, and left it, and read me the note, and the note, as near as I can remember it, is: "Mr. Harman, here are the things which you requested"—the substance is just this: "I wish you to keep them in safe custody and return them to me;" and then when he had written this note we came away; and we left the statement with Miss Harman, who opened the door for us on our departure, that Mr. Tilton and Mr. McKelway had called upon her father. That ends my interview with Mr. Tilton upon that subject, except this, as I sit here and think, I remember that a part of a prolonged conversation we had that afternoon related to the Woodhull matter, to the Woodhull women, to the efforts taken to keep them on their good behavior, and to Mr. Tilton for dealing with them, his explanation of those dealings, of the motives which influenced him, of the success and final failure that marked them. We talked very much upon that Woodhull matter as Mr. Tilton has talked upon it from the stand, and as I have been here in court and have heard what he said, it would be very nearly a repetition if I were to go over it myself.

Q. As to his relations with the Woodhulls, you mean? A. Yes, Sir.

Q. Now, I understand you to say that you told Mr. Tilton that Mr. Harman, you thought, would give you those papers for publication? A. Yes, Sir, I said I thought he would give them to me for publication, because he was so warm. He said the matter was in Mr. Harman's discretion, that he was in the hands of his friends on that subject, but that he himself could not move honorably, and would not, and if they were given for publication, on no account should that publication proceed from him, or be with his consent.

Q. Now, did those papers afterwards come into your hands? A. Yes, Sir.

Q. From whom? A. From Mr. Harman.

Q. How soon after this interview with Mr. Tilton? A. I went to Mr. Harman's house later in the evening. In consequence of a conversation I had with him he lent me the papers to hold for a certain period, and to return, either to him or to Mr. Tilton.

Q. So you got the papers into your possession the same even-

ing that you and Mr. Tilton were at Mr. Harman's? A. Yes, Sir, I think I did.

Mr. Tracy—[To Judge Neilson.] It is now after 4 o'clock, if your Honor please.

Mr. Morris—[To Mr. Tracy.] Can you not finish the direct examination to-night?

Mr. Tracy—No, Sir.

Judge Neilson—[To the jurors.] Get ready to retire, gentlemen. Please be in your seats to-morrow morning at 11 o'clock.

The Court thereupon adjourned until 11 o'clock on Wednesday.

## FORTY-FIRST DAY'S PROCEEDINGS.

### THREE WITNESSES FOR THE DEFENSE.

MORE TESTIMONY RELATIVE TO MR. TILTON'S UNHAPPY FAMILY RELATIONS—HIS ALLEGED INDELICATE CONDUCT WITH VARIOUS LADIES—THE HEROINE OF THE WINSTED EPISODE NAMED FOR THE FIRST TIME—THE NAME ALLOWED TO STAND ON THE RECORD.

WEDNESDAY, March 10, 1875.

The trial began promptly at 11 o'clock to-day, all the counsel and persons interested in the case being in their places rather earlier than usual. The juror Mr. Jeffreys was still looking ill, but on being called by Judge Neilson to a seat with the Judge on the bench said, in response to the questions of the Judge, that he thought he would be able to continue with the case without further interruption. St. Clair McKelway then took the stand and concluded his testimony, adding an important part to the allegory told by Mr. Tilton. The cross-examination of the witness occupied only a few minutes and developed nothing new. Gen. Tracy then called Oliver Johnson. Mr. Johnson gave his evidence on his affirmation. After some account of his journalistic relations with Mr. Tilton and Mr. Bowen, the witness testified that in an interview with the plaintiff in the suit he had told Mr. Tilton of a letter which Mr. Bowen had shown to him. In this letter Mr. Tilton was charged with making an improper assault upon a young lady whom Mr. Johnson knew. The witness stated that he had mentioned to Mr. Tilton other scandalous stories that were in circulation concerning him. Mr. Tilton replied that the stories were essentially false, but admitted that he knew who was the young lady who had made the charge of an assault, and that he had been very intimate with her at his own house. Mr. Johnson denied that he had ever had criminal relations with the young woman.

Mr. Johnson declared that Mr. Tilton told him

that the Winsted story was susceptible of an explanation; that the young lady who went to Winsted went at the request of Mrs. Tilton in order to hear Mr. Tilton lecture. Here Mr. Johnson mentioned the name of the young lady referred to, and a stir was excited among the counsel. Both sides attempted to stop Mr. Johnson, but too late, and then fell to quarreling as to which side was responsible for dragging in the name. The plaintiff's counsel finally insisted that the name should stand. Mr. Johnson testified that he had expostulated with Mr. Tilton for writing his *Life of Victoria Woodhull*, and that Mr. Tilton had answered, "Oliver, that is one of the best pieces of literary work I ever did," and had eulogized Victoria Woodhull highly; that Mr. Tilton gave his high opinion of Victoria Woodhull and his pride in his work as the motives for writing the life. But at another interview in 1872 Mr. Johnson testified that Mr. Tilton had assigned a different motive for his preparation of that biography.

The defense afterward questioned Mr. Johnson as to Mr. Beecher's directions to the editors of *The Christian Union* in regard to the attitude of that journal toward *The Golden Age*. Mr. Evarts tried to get the evidence admitted as an action of Mr. Beecher, after it had been ruled out on other grounds, and the efforts of Mr. Morris to stop the discussion produced a spirited argument among the counsel. Mr. Beach insisted that the continuation of the argument was according to the pleasure of the Court. Mr. Evarts replied that the argument had ceased to be a pleasure, and the dispute was amicably settled by Mr. Beach's reply, that it was always a pleasure to listen to Mr. Evarts.

The cross-examination of Mr. Johnson by Mr. Fullerton was directed almost exclusively to the past life of the witness and to his views on religious topics. Mr. Evarts objected to the question whether the religious belief of Mr. Johnson conformed to that of *The Christian Union*. Judge Neilson inquired if there would be any objection to asking the witness if his religious views agreed with those of *Woodhull and Claflin's Weekly*. Mr. Evarts replied that the Court must be speaking sarcastically when it alluded to the religious views of that sheet. The inquiry into Mr. Johnson's religious opinions was allowed to proceed. The witness admitted that he now believed in the doctrine of universal salvation, although *The Christian Union* did not support that doctrine. Mr. Johnson also stated that he had once

edited a paper called *The Christian Soldier*, which was devoted to fighting Universalism. The examination developed the fact that the witness had been a member of various religious societies at different times, and that he had once been expelled from a church in Middlebury, Vt.; "but," interposed Mr. Johnson, hastily, "I left first. In response to the question, "Are you a Spiritualist?" the witness caused some amusement by replying energetically, "I must make the answer of a friend of mine. I am a Spiritualist, but I am not a d—d fool." Further questioning brought out the fact that the witness had visited "mediums," and believed that he had received communications from dear friends in the other world.

Mr. Johnson's testimony was concluded at 2:45 p. m., and the defense called Miss Isabella G. Oakley. She had been an inmate of the Tilton family while they were living at No. 48 Livingston-st., and she testified to Mr. Tilton's relations with his wife. Miss Oakley stated that these relations were generally pleasant; but after the family went to live at No. 136 Livingston-st. Mr. Tilton became more moody; was critical of his wife and often neglectful of her. The witness had observed, too, a change in Mr. Tilton's friends. Miss Oakley testified that Mr. Beecher had made friendly calls while she was visiting the Tilton family. On such occasions Mr. Beecher played with the children and appeared very friendly to the family. On her cross-examination, Miss Oakley admitted that she had written to Florence Tilton, when she had heard that Florence might be called as a witness for her father, and had advised her to be quiet and support her mother. Mr. Fullerton here tried to get the witness to admit that she did not know of her own knowledge anything about Mr. Tilton's change of his acquaintance, and this occasioned a discussion which had not ended at 4:10 p. m. Judge Neilson wished the examination to continue so that it could be concluded then, but the jury united in requesting an adjournment, and the further cross-examination was accordingly postponed to the next day.

### THE PROCEEDINGS—VERBATIM.

#### MR. ST. CLAIR McKELWAY RECALLED.

The Court met at 11 a. m., pursuant to adjournment, and the proceedings were continued, as follows:

Judge Neilson—Mr. Tracy, will you proceed?

St. Clair McKelway was recalled, and the direct examination continued.

#### HOW MR. BOWEN WAS BROUGHT TO TERMS.

Mr. Tracy—Mr. McKelway, while you and Mr. Tilton were speaking of this *Golden Age* article, the press copy, and the letter which it contained, his letter to Bowen of January 1, 1871, recounting the slanders which he said Bowen had uttered against Mr. Beecher, was there anything said by Mr. Tilton in regard to that letter's having been efficacious in securing a settlement with Mr. Bowen? A. He said that when Mr. Bowen came to see the exhibit in that letter of what he had said about Mr. Beecher, that he was willing and disposed to agree to Mr. Tilton's claims upon him, the claims which were founded upon contracts, and that, after a period, those claims were paid and a truce or a peace was made between the persons and that part of that truce or peace was the—were letters complimentary to Mr. Bowen, and Mr. Tilton, I think, exchanged between them, and there was also something said about the statements which had been published in *The Christian Union* and *The Independent*, showing that peace had been made up between Mr. Tilton and Mr. Bowen. He said that one of the—the first letter of an exculpatory kind which Mr. Bowen gave to Mr. Tilton was not, in Mr. Tilton's opinion, strong enough, and that he insisted upon and procured from Mr. Bowen a second letter, and I think those are the two letters of which I spoke last night, and of which I said that one was stronger than the other, and that the latter was the stronger.

Q. Did he say in speaking of this letter that when it was shown to Mr. Bowen it was accompanied by a threat to publish in case—, or by a statement that it would be published—

Mr. Morris—That is objected to.

Mr. Beach—These questions are entirely inadmissible.

Judge Neilson—Mr. Tracy, you ought to ask him what further was said, and exhaust his recollection.

Mr. Beach—It has been a constant series of leading questions to this witness, putting language in his mouth.

Mr. Tracy—This is the third or fourth question I have put to this witness in his examination. I have gone through the rule, and now I am calling his attention to specific subjects, asking him what was said of them, if anything.

Judge Neilson—You should not do that until you have exhausted his general recollection; then ask him.

Mr. Tracy—Your Honor, I have, and finished his general recollection last night; went through and closed this subject.

Judge Neilson—I do not understand him to say now that he recalls nothing more. When he does, then you can ask whether anything was said on this subject or that.

Mr. Tracy—I will exhaust his recollection. [To the witness.] I will ask you if there is anything further of this narrative, that you can relate, that you have not related? A. There is.

#### ANOTHER CHAPTER FROM THE ALLEGORICAL STORY.

Q. Very well; proceed. A. Last night, in speaking of the part of the statement which Mr. Tilton made to me in an allegorical form, I forgot to mention a

part in which he referred to Mr. Henry C. Bowen and to Mr. Bowen's employment of him; I ought to have stated it, at the time, but it passed my mind. It came in at about this part of the allegorical story, as I remember—after he had said that the lady, to whom improper proposals had been made, felt it incumbent on her to tell her husband, he added: "And this young man was, at the time, in the employment of another man, in whose service he had been for a long period; and he had received from that man, in whose service he was, from time to time, intimations against the person who was accused of making the improper proposals." He said that, at a certain period, the relations of service between the young man and his employer changed; and that, in a conversation between them, the employer suggested to this young man that he should pay more attention to the older friend, the person who was accused of making improper proposals, and that he had told him that he could not do so, that he was not so situated to do so, with proper sensibility to himself; and then his employer pressed him for the reasons; and he said that he gave him the reasons—the young man gave his employer the reasons in outline, whereupon the employer himself developed an extraordinary amount of animosity towards the same person and made many direct charges against him, and that these charges made a strong impression upon the young man, and that it was agreed between him and his employer that a letter should be written to this man demanding his retirement from service, and that the letter was written; that it was borne to the man by the employer of this young man, and that, suddenly, the employer instead of remaining adverse to the man to whom the letter was written, turned, as it were, upon his employé, and warned him not on any account to tell to any person any of the charges which had been made. He answered with spirit that he should hold himself at liberty to tell what he pleased, and to whom he pleased; at least, that he would not suffer or submit to dictation in that matter from his employer, or from anybody else, and that, thereupon, suddenly to him, his contracts of new services with that employer were abrogated by the employer, and that that was the reason why his retirement from *The Brooklyn Union* was significant, and why he had spoken to me upon the subject. I intended to have brought this in last night, Sir, but it went out of my mind because my mind ran from the moment when Mrs.—when the lady made her statement to her husband—to the next moment in order of logic, when that statement was brought home against the man upon whom it reflected.

Q. Now, is there anything further that you can relate in the order of the narrative? A. I don't know that I can, Sir; but I think that with questions my mind would be brought to matters, and I could tell, by those questions, whether I had exhausted or had left unfinished the statement between us.

Q. Well, was there anything said in the course of that conversation with regard to his being under an obligation not to publish his grievances against Mr. Beecher or Mr. Bowen? A. The object of my call was at first in a general way to get out all I could with reference to the scandal itself; that object changed upon the presentation of the proof-sheet letter to a

desire to secure that; our conversation from that point related almost exclusively to that letter. Mr. Tilton's statement that he was inhibited honorably from publishing this matter, or from appearing as at all publishing it, related, as I remember, entirely to the proof-sheet letter. I do not think that the statement of his grievances against Mr. Beecher, from the moment that this *Golden Age* letter developed to my mind, became a very particular subject of conversation between us.

Q. State whether or not, in the course of that conversation, you said to him there were ways enough—

Mr. Pryor—That is objected to; he is going to ask him if he said so.

Q. State whether or not, during that conversation, there was anything said by you to him in regard to there being ways enough in which that letter could be published without directly implicating him in its publication? A. My mind at once recurred to the ways in which such things are done in journalism, and I said to him that I could either interview Mr. Harman, if Mr. Harman was willing, over his own name; or could interview him, if he was willing—Mr. Harman—as a friend of Mr. Tilton's; or could interview a hypothetical person. Mr. Tilton did not oppose or approve of any of those propositions. He simply insisted that he could not appear or be a party, directly or indirectly, to the publication of the proof-sheet letter and the other matters which I was seeking.

Q. Now, after you got the papers, what was done with them? A. After I got the papers I took them to *The Eagle* office; I read them off to a gentleman, who took down as I read what I read, in short-hand; that is all—

Q. Well, who was he? A. McLean, then and now on *The Eagle*.

Q. An employé of *The Eagle*? A. Yes, Sir.

Q. In what capacity? A. He was then attached to the city department; he is now managing editor of the paper.

Q. Then, after you had taken short-hand copies of the papers, what was done with them? A. I know nothing beyond that.

Q. The papers themselves, I mean? A. Oh, the originals?

Q. The originals, yes? A. I took them and wrapped them up very carefully, and returned them, as I remember, to Mr. Harman, to whom I had promised to return them, and left them with the cashier of *The Eagle* office, subject to Mr. Harman's call.

Q. Do you know the fact, Mr. McKelway, whether this paper that you thus obtained from Mr. Harman was subsequently published in a Brooklyn paper? A. I know the fact that a letter from Mr. Tilton to Mr. Bowen, of the date of January first, 1871, being the letter to which I testified yesterday, was published in a Sunday paper in this city, I think, in the month of April, in the year 1878.

Q. Well, was it also accompanied by what is known now as the "Personal Statement," or "*The Golden Age* article," which included that letter? A. I don't remember that.

Q. Was it subsequently republished—was the publication made in the Sunday paper afterwards republished in *The Eagle*? A. From memory, I can testify that the letter, the epistle itself, was published in *The Eagle* from reprint taken

in the Sunday paper—as reprint taken from that Sunday paper.

Q. Well, do you remember whether the balance of the article, what is known as “*The Golden Age*” article,” which preceded that letter was published with it? A. No, Sir; I don’t.

Q. Or what followed it? A. I do not.

Q. You mean to say you do not remember whether it was or not? A. Yes, Sir; that is what I mean to say.

CROSS-EXAMINATION OF MR. McKELWAY.

Mr. Fullerton—Mr. McKelway, I understood you to say yesterday that you called upon Mr. Beecher soon after the publication of the Woodhull scandal? A. I did.

Q. Do you recollect the day of the call? A. I recollect, Sir, that the Woodhull paper bore date of November 2 on the title page of the paper. I recollect that, according to the habit of weekly papers, that date was not correct, that the thing was dated ahead, and that it was really, as I have reason to believe, on the 28th of October.

Q. Was it on that day that you went to see Mr. Beecher, the 28th of October? A. It was.

Q. And where did you find him? A. I found him at his residence.

Q. Did you take the article with you? A. I did not.

Q. Did you state to him that the article had been published? A. I did. I can state what occurred between Mr. Beecher and myself, if you wish it.

Q. No. Where did you and Mr. Beecher go then, if anywhere? A. We went from his residence to the office of *The Eagle*.

Q. And how long did you and Mr. Beecher remain at the office of *The Eagle*? A. Well, I should think from fifteen minutes to twenty-five minutes.

Q. With whom did Mr. Beecher confer, whilst at that office, besides yourself? A. With Mr. Kinsella.

Q. The editor of the paper? A. Yes, Sir.

Q. Privately or in your presence? A. Right in my presence.

Q. During the whole period? A. Yes, Sir; during that whole period.

Q. During that day did he have any private conference with Mr. Kinsella, that you know of? A. No, Sir; and I think I know we had not.

Q. How? A. I know that he had not, by other things that I could state.

Q. Where did Mr. Beecher go, if you know, when he left the office of *The Brooklyn Eagle* on that day? A. He went with me to New-York, to the office of Mr. Moulton.

Q. How long was he at the office of Mr. Moulton? A. Well, we arrived there, I think, about a quarter to three o’clock, and left at five minutes before or after four o’clock.

Q. With whom did Mr. Beecher converse during that stay at Mr. Moulton’s office? A. With Mr. Moulton.

Q. Privately or in your presence? A. Privately and in my presence; because the room was large, and they were talking remote from me, and I sat over in the part of the office nearer to the door than they were; and I neither heard nor desired to

hear what they were saying. It was both privately and in my presence.

Q. But you could not overhear what was said? A. No, Sir.

Q. Mr. Beecher called Mr. Moulton to one side? A. Mr. Moulton, as I remember, was sitting at a desk in a corner of the office, and the desk was fenced around with a little iron fence, about waist high to a man. He rose at Mr. Beecher’s approach, and they talked together for some time, I, in a chair at the other part of the office, sitting.

Q. How far distant from them? A. I think as far as I am from Mr. Beecher at the present moment; perhaps not quite as much.

Q. Twenty or twenty-five feet? A. Well, I really don’t recollect the size of the room, Mr. Fullerton, but whatever the size of the room is, Mr. Beecher and Mr. Moulton were at one extreme and I was at the other. It is an ordinary office in Coenties Slip.

Q. Did you and Mr. Beecher leave Mr. Moulton’s office together? A. Mr. Beecher, Mr. Moulton and myself left the office together.

Q. And where did you go? A. I went over Fulton Ferry, and they went off with the expressed intention of going over Wall-st. Ferry.

Q. No matter. They went in another direction? A. Yes, Sir.

Q. Separate from you? A. Yes, Sir. They went together, and I went over Fulton Ferry and went home.

Mr. Evans—He said he went over Fulton Ferry, and they went off with the expressed intention of going over Wall-st. Ferry.

The Witness—I said: “I am going over Fulton Ferry,” and they said they would go over Wall-st. Ferry; it was in their way, and Fulton Ferry was in mine.

Q. You were waiting to get something to publish in *The Eagle* that day? A. No, Sir; I was not waiting to get something to publish in *The Eagle* that day.

Q. Well, some other day? A. Well, I was waiting for whatever turned up. [Laughter.]

Q. And nothing turned up that you could publish, I believe?

A. Well, nothing turned up that was published, or ever was published by my procurement.

Q. How? A. Nothing was ever published by any act of mine.

Q. I understand that. Do you know of Mr. Beecher’s visiting Mr. Kinsella at any other time than what you have stated? A. I do not.

Q. Have you never seen him at the office except on this 28th of October, if that was the date? A. I never have.

Q. What paper was this letter of Mr. Bowen’s, of January 1st, 1871, published in first? A. It was published in a paper which has since gone the way of a majority of papers, and is dead, called *The Sunday Press*.

Q. Published in *The Sunday Press*? A. Yes, Sir.

Q. A paper known then as *The Sunday Press*? A. Yes, Sir.

Q. Had you any connection with that paper? A. Not the slightest.

Q. And this publication in that paper was not through your

connivance in any way? A. Not in the slightest degree. I was as much surprised at it as any gentleman could be.

Q. And you published it in the paper that you were connected with after this publication in the other paper, and in consequence of that? A. No, Sir, some one else did. The paper published it, and I did not. It was not in my department.

Q. At all events it was published in the paper with which you were connected? A. Yes, Sir, it was published in *The Eagle* to the extent I have testified to.

Q. And after the publication in *The Sunday Press*? A. Yes, Sir.

Q. It had become public then? A. Yes, Sir.

Q. Public property? A. Yes, Sir.

Q. How long was that after the interview which you had with Mr. Tilton, and after you procured a copy, through Mr. Harman, of that letter? A. Well, since I have been here in Court, I have become aware, by the evidence, that the date of *The Sunday Press* publication was about the 20th of April, in 1873; and I stated yesterday that the date of my communication with Mr. Tilton was the day after Woodruff & Robinson's fire, which would make it November 19th, 1872, so it must have been from November to April, a little over half a year.

Q. Little over six months? A. Yes, Sir.

Mr. Beach—A little less than six months.

Mr. Evarts—A little less than six months.

Mr. Fullerton—November, December, January, February, March, April—it is a little more. It is a matter of arithmetic.

The Witness—Yes, Sir; it is a matter of arithmetic. The almanac will show.

Mr. Tracy—Just five months.

Mr. Beach—Well, a very simple arithmetic will show it.

Mr. Evarts—Of course.

Q. You don't know how it came to be published in this *Sunday Press*, I understand you? A. I do not know how it became published in *The Sunday Press*.

Q. The publication of that *Sunday Press* was what day in April? A. I heard it said while I was sitting in the Court-room it was the 20th of April? It was a Sunday in April, if that came on the 20th.

Mr. Fullerton—It lacks eight days, that is all.

#### RE-DIRECT EXAMINATION OF MR. MCKELWAY.

Mr. Tracy—Who was the editor of *The Sunday Press* at the time of this publication? A. Mr. James McDermott.

Q. Was he also an employé of *The Eagle* at the same time? A. I think not.

Q. Had he not been? A. I do not remember that he ever had been at that period.

Q. Is he now? A. Not in my judgment. I think that when Mr. McDermott—

Q. Has he never been connected with *The Eagle*?

Mr. Morris—We object. What has that to do with it?

The Witness—I think—

Mr. Morris—One moment. We object.

The Witness—I beg your pardon, Mr. Morris.

Mr. Tracy—We desire to follow it up by showing he had been connected with *The Eagle*.

Mr. Fullerton—Objected to as immaterial.

Judge Neilson—I don't see how it is material.

Mr. Tracy—It is for the purpose of showing how this publication came to be made; it is a fact.

Mr. Morris—The witness says at that time he had not been connected with *The Eagle*.

Mr. Tracy—We may refresh his memory if we are permitted to ask a question or two.

Mr. Beach—Of what consequence is it?

Judge Neilson—Not the slightest.

Mr. Evarts—Will my learned friends admit he was connected with *The Eagle*? Then we will determine whether it is material or not. If my learned friends admit he was connected with *The Eagle*, very well.

Mr. Fullerton—We don't admit it, when the evidence is to the contrary.

Mr. Evarts—Then we will go on and prove it, if it is a subject of proof.

Mr. Beach—Of course you will, but we object.

Mr. Evarts—The fact that the witness says that he was not connected with *The Eagle* at a certain time does not prevent us from offering to prove the fact, and through this same witness, that he was—

Judge Neilson—Of what avail will it be? You won't be able to prove what McDermott did. It is with a third person.

Mr. Tracy—Suppose we could show McDermott got his copy from this copy that was taken in short-hand by McKelway?

Mr. Morris—Well, what of that.

Judge Neilson—I don't see how that is material; I don't see how you could show that.

Mr. Evarts—We might show it by Mr. McDermott.

Judge Neilson—If you could show that, you could show anything else Mr. McDermott ever did in his life. I don't think it is material.

The Witness—It would be a very large volume, that would.

Mr. Evarts—Well, we will take our exception. [To Mr. Tracy.] Has he ever been connected with *The Eagle* at any time between November 18th, 1872, and the present time?

Mr. Tracy—Between November, 1872, and the present time, has Mr. McDermott been connected with *The Eagle*?

Judge Neilson—The present time?

Mr. Evarts—Yes, Sir; that is our question.

Mr. Fullerton—Objected to.

Mr. Beach—That falls within your Honor's ruling, bringing it up to the present time. We object to it as immaterial.

Judge Neilson—You may ask him whether he was connected with *The Eagle* between the time Mr. McKelway got this paper and the time it was published in *The Sunday Press*.

Mr. Tracy—That is the question I did ask originally.

Mr. Beach—That he answered.

Judge Neilson—[To the witness.] Had he during that lapse of time been connected with *The Eagle*? A. To my judgment he had not. As a seller of news he might at one time or another have brought articles to *The Eagle*, and those articles

may have been purchased and published. He was not on the city staff.

Mr. Morris—We don't want any speculation.

Mr. Tracy—Was he a newspaper reporter? A. I knew him at that period as editor of *The Sunday Press*.

Q. Was he a newspaper reporter? A. I didn't know him in that capacity at all. He had been previously editor of a newspaper in New-York, and his was an editorial character, and in his editorial character I was acquainted with him or knew of him.

Q. Was he a regular reporter of *The Eagle* or a communicator of news to *The Eagle*, at that time? A. No, Sir; not to my knowledge.

Q. Was he at that time, to your knowledge, acquainted with Mr. McLean, who took the short-hand notes?

Mr. Morris—We object to the question.

Judge Neilson—I think you have gone far enough.

Mr. Tracy—That is all.

Judge Neilson—No doubt all these newspaper gentlemen know each other.

#### TESTIMONY OF MR. OLIVER JOHNSON.

Oliver Johnson was then called, and affirmed on behalf of the defendant.

Mr. Tracy—Mr. Johnson, where do you reside? A. In New-York—in the City of New-York.

Q. What is your business? A. I am a journalist by profession.

Q. How long have you been so engaged? A. About forty years.

Q. Do you know Theodore Tilton? A. I do, Sir, or I formerly did.

Q. How long have you known him? A. I think it will be twenty-one years in April next since I first knew him.

Q. You know Henry C. Bowen? A. I do, Sir.

Q. How long have you known him? A. I have known him by sight and by chance acquaintance nearly the same length of time.

Q. As you have Mr. Tilton? A. Yes, Sir.

Q. And do you know Henry Ward Beecher? A. I do, Sir.

Q. How long have you known him? A. I have known him since his first—since he first settled in Brooklyn, whenever that was; I don't remember exactly the date.

Q. Where have you been employed, Mr. Johnson, as journalist, since your acquaintance with Mr. Tilton? A. I was employed, when I first made his acquaintance, upon *The National Anti-Slavery Standard*.

Q. How long did you continue to be there employed? A. I was there about eleven years; perhaps longer; I am not sure as to the time.

Q. Where were you next employed? A. On *The Independent* from—

Q. When did you go on *The Independent*? A. In June, 1865.

Q. How long did you remain on *The Independent*? A. I remained there until the end of December, 1870—about five years and a half.

Q. And where did you go then? A. I went to *THE TRIBUNE*; became the editor of *THE WEEKLY TRIBUNE*.

Q. And how long were you thus employed? A. Two years, within a few days.

Q. And where did you go then? A. On *The Christian Union*.

Q. And are you still on *The Christian Union*? A. I am, Sir.

Q. In what capacity? A. I am usually called managing editor; I don't know whether that is the precise designation or not.

Q. During the time you were on *The Independent*, was Mr. Tilton also employed on that paper? A. Mr. Tilton was editor-in-chief, and I was managing editor during that time.

Q. During all that time? A. Yes, Sir; perhaps I should not say precisely all that time, because he left a week or ten days before I did.

Q. With that exception, you held those respective relations to each other? A. Yes, Sir.

Q. And who was publisher of that paper during all that time? A. Henry C. Bowen.

Q. Do you know who caused you to be employed on *The Independent*? A. Yes, Sir; it was Mr. Tilton.

Q. Tilton? A. I went on to *The Independent* by his very earnest solicitation, and with some hesitancy and regret.

Q. You had known him then some five or six years? A. Oh, I had known him longer, Sir.

Q. Ah, longer than that? A. I had known him from 1855 or 1854, I am not this moment certain which, until 1865, when I went in—about ten years.

Q. Were you on terms of intimate friendship with him at the time you went on *The Independent*? A. I was, Sir.

Q. And had been for what number of years previous? A. Well, from the time of my first acquaintance with him.

Q. You became intimate friends on becoming acquainted—soon after, did you? A. Yes, Sir.

Q. And how long did that intimacy continue between you and Mr. Tilton? A. It continued until—the intimacy continued, I should say, until perhaps some time in 1873; from that time afterwards I saw less of him.

Q. Did there at any time come to be a break in your acquaintance; and, if so, when did that occur? A. I don't remember the last time that I saw Mr. Tilton, but I think it was about—it was about a year ago. I mean the last time that I met him to hold any conversation with him, I think, was at the house of Deacon Jeremiah Curtis in New-York, and I believe it was about the time, perhaps at about the close of the Council; I may possibly, however, have met him by chance somewhere else; afterwards, I am not quite sure about that.

#### HOW MR. JOHNSON BECAME AN EDITOR OF MR. BEECHER'S PAPER.

Q. Now, Mr. Johnson, will you give us the history of your employment on *The Christian Union*? A. Yes, Sir.

Mr. Beach—We object to that, Sir, as immaterial.

Mr. Evans—It is a part of your testimony that Mr. Tilton got him a place on *The Christian Union*.

Mr. Beach—Well, that is not important, Sir, at any rate.

Mr. Tracy—You gave it great importance.

Mr. Evarts—You thought it was important.

Judge Neilson—I think we will have to take it, inasmuch as the subject has been opened by the plaintiff in a very general form.

Mr. Evarts—We will be very short.

Judge Neilson—Don't be very minute.

The Witness—I am not quite sure whether it was in the Autumn of 1871 or the Spring of 1872, but at one or the other of those times, walking down Broadway, near the Park, one morning, I met my friend, Mr. Samuel Wilkeson, whom I knew as a stockholder in *The Christian Union*. We stopped to greet each other for a moment, and he said—

Mr. Beach—This is objected to.

The Witness—"I am very glad"—

Mr. Beach—Wait a moment.

The Witness—Oh!

Judge Neilson—You cannot give a conversation with a third person.

Mr. Evarts—That, if your Honor please, is the very point, that it is Mr. Wilkeson that got him on *The Christian Union*.

Judge Neilson—You need not inquire into this conversation.

Mr. Evarts—We don't want to go into detail.

Judge Neilson—Then ask him the general fact.

The Witness—Mr. Wilkeson asked me at that time if I was open—

Mr. Beach—[To the witness.] No, you are asked to stop, Sir.

The Witness—Excuse me; I beg pardon.

Judge Neilson—The rule is not to take a conversation of a third person. You may ask the general fact of how he came to be—

Mr. Evarts—And then the statement that Wilkeson, being a stockholder in *The Christian Union*, proposed the matter.

Mr. Tracy—I propose to show that Mr. Wilkeson proposed the matter to Mr. Johnson, and that that led to a negotiation between Mr. Johnson and Mr. Beecher by which Mr. Johnson was employed on *The Christian Union*.

Judge Neilson—Now, the fact that you spoke to Mr. Wilkeson, and then saw Mr. Beecher, and afterwards the arrangement was made, is that the way?

The Witness—That is the fact.

Mr. Tracy—We will make it as brief as we can.

Judge Neilson—You can make it very brief that way.

Mr. Tracy—Was your employment on *The Christian Union* the subject of conversation between yourself and Mr. Wilkeson? A. It was.

Q. At that time? A. Yes, Sir.

Q. In consequence of what he said to you, did you subsequently see, and have an interview with, Mr. Beecher? A. No, Sir.

Q. Well, how came you to have an interview with Mr. Beecher? A. I heard no more of the subject from Mr. Wilkeson, or from any proprietor or any one connected with *The Christian Union*, until in—I think it must have been the last of November, 1872, when I received from Mr. Beecher himself

a request for an interview with me, stating that his object was

Mr. Beach—Wait one moment.

Judge Neilson—Don't state what he said; he requested an interview?

The Witness—Yes; he stated the purpose for which he wanted an interview.

Judge Neilson—Thereupon you did have an interview with him? A. Yes, Sir; I did.

Q. Did you have an interview with Mr. Beecher? A. I did.

Q. What was the result of that interview?

Judge Neilson—Not the conversation, but the result. A. The result of the interview was my engagement; that is, the result of that and subsequent interviews; there were several between us.

Q. Well, what was the result of it? A. The result of it was my engagement on *The Christian Union*.

Q. As what? A. As editor—as managing editor.

Q. And you have continued on it from that time until the present? A. Yes, Sir.

Q. Is that the whole source of your employment on *The Christian Union*, so far as you know of? A. So far as I know, it is.

#### THE INTIMACY OF MR. TILTON AND MR. JOHNSON.

Q. Now, during your acquaintance with Mr. Tilton, Mr. Johnson, do you know whether or not he regarded you as among his most intimate friends? A. He has said to me a great many times that he regarded me as his most intimate and best friend.

Q. Your intimacy was great, was it? A. Yes, Sir; we were very close friends indeed.

#### MR. BOWEN'S WARNING TO MR. TILTON.

Q. In December, 1870, Mr. Johnson, did Mr. Tilton come to you at any time with a letter which he had received from Bowen in regard to his editorship of *The Independent*—in December, 1870? A. I don't quite understand the question.

Q. Did Mr. Tilton come to you at any time and state that he had received a letter from Mr. Bowen concerning his editorship of *The Independent*, or the continuance of his editorship?

Mr. Pryor—We object to that.

Mr. Beach—It is very obviously a leading question.

Mr. Evarts—It is only introductory.

Mr. Beach—Oh! introductory.

The Witness—Yes, Sir, he did.

Q. What was said at that interview between yourself and Mr. Tilton? A. He showed me a letter from Mr. Bowen, giving him notice that at the end of six months their contract—Mr. Bowen's contract with him as editor-in-chief of *The Independent*, would terminate.

Q. When was that? A. I think it must have been about the 1st of December; it may possibly have been one of the latter days of November, but I am not sure as to the date; at any rate, it was towards the end of the year.



## MR. TILTON MAKES USE OF THE POSITION.

Q. Now, thereupon, did you and Mr. Tilton enter into a conversation; and if so, repeat it? A. Mr. Tilton said to me at that time that he would have out of Mr. Bowen a better contract than the one which he then held. He said, furthermore, that he knew that Mr. Bowen wished to make his new departure for his paper with a new editor, on the first of January, at the beginning of the new volume; that it would be a very disagreeable position for him to be editing the paper with that six months' notice over him, and therefore he proposed to resign at once. If Mr. Bowen would do the right thing by him, and he had no doubt that he would; he said he would probably be able to make a better contract with him than the one which he then held. That is about the substance of it as near as I can recollect.

Q. Afterwards did you learn from Mr. Tilton whether he had made contracts with Mr. Bowen? A. I did.

Q. What were they, as you learned from Mr. Tilton? A. He informed me that Mr. Bowen had engaged him as a special contributor to *The Independent*, for \$100 a week or \$100 an article, I am not sure which, which he regarded as better than his—on the whole for him, as he was situated—better for him than to be the editor of it.

Q. At the same time did he say anything about a contract that he had made with him in regard to *The Union*? A. Yes, Sir.

Q. What? A. He said that he had made a contract with *The Union*, but I do not remember its terms any further than he regarded it as a very eligible contract.

## THE SCANDALS ABOUT MR. TILTON.

Q. Now, soon after that conversation with Mr. Tilton, in which he stated to you the making of these contracts, did you have a conversation with Mr. Bowen in regard to Mr. Tilton? A. Yes, Sir.

Q. How many days after the conversation that you had had with Mr. Tilton, do you think? A. Well, it may have been a week; I am not quite sure of the number of days, but it may have been a little more than a week, or a little less.

Q. In consequence of that conversation that you had with Mr. Bowen, did you see Mr. Tilton? A. I did.

Q. When did you see him? A. I saw him, I think, at his house on Sunday, the 25th of December.

Q. What did you say to him? A. I told him that Mr. Bowen wanted to have an interview with him, in my presence, in regard to certain stories that had come to him in regard to Mr. Tilton's character—injurious reports.

Q. Well, what further was said? A. I informed him that Mr. Bowen had fixed upon the next day, Monday—Monday forenoon, I think, as a time for such a meeting between himself and me. Mr. Tilton inquired of me pretty closely what Mr. Bowen's stories were. I told him that Mr. Bowen had communicated the stories to me in confidence—that I was not at liberty, therefore, to talk with him freely about it.

Q. Well? A. I did feel at liberty, however, to give him

some hints, without mentioning names; I gave him some hints of the character of the stories, and of their source.

Q. What did you say? A. What did I say?

Q. Yes. A. I told him that Mr. Bowen had shown me a letter which he had received from a lady, whose name I did not mention, and whom I identified only by saying generally that she was a lady whom I knew well, charging him with an assault upon her chastity.

Q. Well? A. I told him also, I think, that Mr. Bowen had shown me a letter from Winsted, Conn., and that charged him with some improprieties at the hotel there, where he had been lecturing at some time before; I told him also that Mr. Bowen said these were not by any means all that he had heard; that his stories were awful; that they were coming in to him; that a great many had come to him; indeed, Mr. Bowen had himself told me that; but Mr. Tilton said that all these stories were essentially false, that they could be readily explained. He said he knew who the lady was to whom Mr. Bowen had referred, who was the writer of that letter; he knew who she was, and mentioned her name to me.

Q. Was it the same person to which Mr. Bowen had referred? A. Yes, Sir.

Q. Go on; what did Mr. Tilton say in regard to the story concerning this lady? A. Mr. Tilton admitted to me that he had had very familiar relations with that woman, but denied that he had had any criminal conversation with her.

Q. You mean sexual intercourse? A. Sexual intercourse; yes, Sir.

Q. How far did he state that his familiarities had gone? A. He said that he had been in bed with her in his own house.

Q. Well, in regard to the Winsted matter, what did he say, if anything, about how he and the person—the lady to whom he referred in the Winsted matter—went to Winsted when they left and where they stayed, if they stayed anywhere, overnight on their way to Winsted? A. I am a little embarrassed as to just how to answer your question, because—

## MR. TILTON'S COMPANION AT WINSTED.

Mr. Tracy—Wait a moment until the clock stops striking. What did Mr. Tilton say to you, if anything, in regard to the person who accompanied him to Winsted, when they left home and where they stayed overnight? A. Oh, he told me—he told me, as he had told me before—he told me on that occasion as he had told me before—that the Winsted story was susceptible of an explanation; that Miss Lovejoy had accompanied him.

Mr. Tracy—You need not mention her name.

The Witness—I beg your pardon.

Mr. Pryor—Let it stand.

Mr. Morris—Oh, they have brought it out before.

Mr. Beach—Oh, it has been out before.

Mr. Morris—They have brought it out before.

Mr. Evans—We did not.

Mr. Beach—Oh, yes; you have.

Mr. Morris—I say you have.

Mr. Tracy—It is very well to say so; there are a great many things that are not true.

Mr. Morris—You can deny a great many things that are true.

Mr. Tracy—I say it is not true that we have introduced this lady's name before.

Mr. Morris—I say her name has been brought out on your examination.

Mr. Tracy—It is a mistake.

Judge Neilson—You have it now; go on, Mr. Tracy.

The Witness—He said she had accompanied him to Winsted, when he went there to lecture, by the particular desire of his wife; that his wife had at first intended to go with him, but that she was unable to do so; and the lady had greatly desired to hear him lecture; had never heard him lecture; and so it was agreed that she should go with him; and so to avoid the liability of being detained by fog or any other obstruction on the river between here and New-York, they went over the night beforehand and took lodgings at the St. Denis Hotel.

Q. Did he state further how they went on to Winsted? If so, repeat it. A. No; I know nothing about that.

#### THE BREAKING OF THE CONTRACTS.

Q. Now, after the 26th of December, 1870, did you have a further conversation with Mr. Tilton, in which he informed you touching his discharge from the employment of Mr. Bowen? A. Yes, Sir.

Q. When was it? A. I can't fix the date absolutely, but it was some time within—it must have been within two or three days after. Let me see; the 26th of December was on Monday. It may possibly have been a week—I can't be certain of the precise day when he informed me that Mr. Bowen had very peremptorily and indignantly ended his contracts.

Q. Well, do you know whether or not it was before the first of January that he so informed you? Remember, the 1st of January was on Sunday, that year? A. Yes, Sir; I am not quite sure about that.

Q. Well? A. I am not quite certain.

#### THE WOODHULL BIOGRAPHY.

Q. Now, Mr. Johnson, did you ever have any talk with Mr. Tilton on the subject of his acquaintance with the Woodhull women or woman? A. Yes, Sir.

Q. And touching the writing of her biography by him? A. Yes, Sir.

Q. Can you tell us when and where that conversation was? A. I think it was in the office of *The Golden Age*.

Q. About when was it? A. Well, it was very shortly after the appearance of the memoir, whenever that was; I am not sure of the date.

Q. Well? A. I saw him very soon after that—as soon as I could.

Mr. Tracy—It is proved here to have been in September, 1871? A. Yes, Sir; well, I saw him very shortly after that.

Q. Well, did you have a talk with him about it? A. I did.

Q. State the conversation that occurred between you? A.

Well, I talked very sharply to him, with something of a tone of rebuke for being acquainted with such a woman, and above all writing such a biography of her as he had written. He said to me: "Oliver, that is one of the best pieces of literary work that I ever did, and I am proud of it, and I shall not permit you in my presence to say anything against that woman; I regard her as one of the best and purest women that I ever knew—a great woman; a woman bound to be the leader in a great reform."

Q. Did he at that time say anything to you that he had written this life of Woodhull in order to keep her quiet?

Mr. Fullerton—Now, one moment.

Mr. Tracy—Touching any scandal?

Mr. Fullerton—One moment; this is all out of order, Sir. They insist upon putting absolutely leading questions.

Mr. Tracy—Well, I will change the form of the question, if that is the objection to it.

Q. Did he say anything to you touching his motives for writing that work?

Judge Neilson—That is the same thing. I should think you should ask this witness to give the whole conversation as he remembers it, what was said, and what further was said. When you exhaust him, then ask him whether anything was said on such a subject, without pointing to a motive.

Mr. Everts—The difficulty, if your Honor please, with that method of inquiry, may be a conversation, may include matters that have no connection with the topics in consideration; but if it is understood that only what relates to the matter in hand is to be repeated, on this particular occasion, I have no doubt the whole conversation would probably come in.

Judge Neilson—That should be understood. [To the witness]: You hear that suggestion, Mr. Johnson.

Q. Was anything further said between you and him touching this work, the writing of this book—at that conversation? A. He assigned no motive to me whatever, except the motive of his very high opinion of her, his pride in her, and his pride in his work. He suggested to me neither then, nor at any other time, any other motive. I beg pardon, I made a wrong expression; I said, "nor at any other time."

Mr. Beach—I noticed it, Sir.

The Witness—I was wrong in saying that.

Mr. Beach—You were.

The Witness—At other times he did.

Judge Neilson—You were only interrogated as to that occasion.

The Witness—Nothing was said on that occasion except what I have stated.

#### MR. TILTON ANXIOUS TO HOLD TRIBUNE SHARES.

Q. Now, Mr. Johnson, did you ever have any talk with Mr. Tilton about *THE TRIBUNE* stock that stood in his name? A. Yes, Sir.

Q. What conversation did you have with him on that subject? A. I have had a great many conversations with him about that.

Q. Well, at the time of the purchase of the stock I allude to, or just previous? A. Well, it was through my agency, in a certain sense, that Mr. Tilton got his stock on *THE TRIBUNE*, or

rather got his father's stock on THE TRIBUNE. Mr. Tilton expressed to me more than once, as I was a stockholder in THE TRIBUNE—expressed to me a strong desire to be a stockholder, but said he had no money to invest, and could not, therefore, purchase a share for himself; repeatedly that had passed between us, when one day—I don't remember just when it was, I cannot fix dates in regard to this transaction, I suppose the stock books of THE TRIBUNE office would show when he made the purchase and all that; I don't know anything about that.

Mr. Fullerton—Oh! don't bring in the stock book.

The Witness—I merely say that Mr. Tilton came to me and informed me that his father had a certain sum of money, enough to purchase a share of THE TRIBUNE at the then market price, and he wanted me, if possible, to so—to engineer his way, so that he might go into THE TRIBUNE Board and represent that share, while it should really belong to his father. I accordingly saw Mr. Greeley about it, though I confess I did not tell Mr. Greeley all the circumstances.

Judge Neilson—They don't ask you about that.

The Witness—No. Well, I only want to—this is my second appearance in court as a witness, and if I don't understand the ways, you must pardon me.

Mr. Tracy—Go on and state what transpired between your self and Tilton in regard to the purchase of that stock? A. His father purchased the stock through Mr. Tilton—through his son, the stock standing in Mr. Tilton's name, the father furnishing the money.

Q. Do you know who had the dividends on that stock? A. I know Mr. Tilton told me that the dividends were all to his father, that he should never—and afterwards he told me that he had never taken any portion of them. I once wished myself to purchase—

Mr. Morris—Never mind what you wished.

Mr. Fullerton—Is there a question before you, Mr. Johnson?

The Witness—I beg your pardon.

Mr. Fullerton—I will forgive you if you won't repeat it.

The Witness—You don't need to rebuke me. You only need to tell me what is proper, and I will obey it.

Mr. Fullerton—Well, answer questions.

#### ANOTHER PURPOSE ASSIGNED FOR THE WOODHULL BIOGRAPHY.

Mr. Tracy—Now, you stated that at this conversation which you referred to, in which he spoke of writing the life of Mrs. Woodhull, he assigned no other motive than that you have stated. Did he afterwards assign to you a different motive? A. He did.

Q. How long after? I don't ask you what it was; I only want to fix the date. How long after was it—that conversation that he assigned another motive? A. You have fixed the date of the Woodhull memoir in September, 1871, I take it?

Q. 1871? A. After or about the time of the Presidential election of 1872.

Q. Well, can you fix it? A. I cannot fix the day, Sir.

Q. During the Presidential campaign? A. But it was after the time when their acquaintance, as I understood it, ceased.

Q. As you understood from Tilton? A. Yes.

Q. How long after that? A. Well, it was shortly after the publication of the Woodhull paper.

Q. Of the Woodhull scandal? A. Yes, Sir.

Q. It was not then until after the publication of the Woodhull scandal? A. I think not.

#### MR. BEECHER'S PAPER AND THE GOLDEN AGE.

Q. Now, Mr. Johnson, state whether or not, at any time after you went on to *The Christian Union*, you received any instructions from Mr. Beecher touching the manner in which you should treat *The Golden Age* in *The Christian Union*?

#### WARM DISCUSSION OVER THE TESTIMONY.

Mr. Beach—That is objected to, Sir.

Judge Neilson—How is that material? You can't take charge of all these publications.

Mr. Tracy—It is made material by the evidence of the plaintiff in the case, your Honor.

Mr. Evarts—Mr. Tilton testified in this way. I read from page 417 of this pamphlet book:

"I told him I thought he was allowing"—[that is, "I told Mr. Beecher I thought he was allowing"]—"one danger to grow up that he might suppress, and I mentioned to him that his newspaper, *The Christian Union*, had shown certain signs of unfriendliness to me. I said, 'I don't care for the criticism of your paper, but I don't think it will conduce to the public regard of our harmony to have your paper criticize me.' 'Well,' said he, 'Theodore, the people in my office are rather inimical to you, and I wish I might get some one here to whom I might intrust our secret, so that that paper might assume a more friendly face to the public.' "

Then he goes on and says that he introduced Mr. Johnson.

Judge Neilson—Well, go on, Mr. Tracy.

Mr. Beach—That does not authorize the instructions given by Mr. Beecher to the attachés of that press. The question would be whether the articles in *The Christian Union* were indeed hostile to Mr. Tilton. Proving a conversation between Mr. Tilton and Mr. Beecher, in which Mr. Tilton imputed hostility in those articles, and the want of proper exertion on the part of Mr. Beecher to change their character, by no means authorizes private instructions given by Mr. Beecher to the managers of that press. We have given nothing in evidence which authorizes those instructions to be given. We say we made a certain declaration to Mr. Beecher, that Mr. Beecher admitted the imputation which we made against him of a want of proper exertion to control the character of the articles in *The Christian Union* with regard to *The Golden Age*. Now, how does that bring in, Sir, in any way, the exertions which Mr. Beecher may have made with the officers or attachés of that publication, to change its character, or to give it a different character? The simple question is whether this conversation occurred between Mr. Tilton and Mr. Beecher. Suppose Mr. Beecher admitted upon that occasion a false fact, or a false imputation, it does not authorize him, because we give in evidence that conversation, to prove that the admission he made was inaccurate upon that occasion—to prove his own acts, at which we were not present, or his own instructions given to others, of which we knew nothing.

ng. Our conversation with Mr. Beecher was founded upon the character of the articles which appeared in his paper, *The Christian Union*. We alleged them to be hostile and unfriendly, and we asserted to Mr. Beecher that he did not make proper exertions to control the character of those publications. Now, I submit to your Honor, in what way does that authorize Mr. Beecher to prove conversations between himself and others, or directions given by him to others, at which we were not present. I object to it, Sir, as incompetent.

Mr. Evans—My learned friend, with great respect, seems to me to miss the point. It is not in regard to anything that occurred between Mr. Tilton and Mr. Beecher in the way of contradicting Mr. Tilton's statements that we offer this evidence. We offer it in the same line of operations in which they offered that evidence. They undertake to say that Mr. Tilton attracted Mr. Beecher's attention to the danger that might arise from hostility created by the tone and manner in which *The Golden Age* was treated by his newspaper, and that Mr. Beecher said: "Why, the people there are rather hostile to you, and I wish that I could get somebody that I could intrust the secret to, and that could manage the matter prudently and safely." That is the object of that testimony. He said he suggested Oliver Johnson, and got him there, as a part of this machinery which Mr. Beecher was working, under his admonition—Tilton's admonition; and we meet that point by showing that Oliver Johnson got there otherwise. Now, we propose to show by this witness what his instructions were from Mr. Beecher as matter of fact concerning his treatment of *The Golden Age*, discrediting, contradicting any such action, at least, as is made the basis, and the only basis, and the useful basis for them to introduce this as a part of the machinery of confession and suppression to which Mr. Beecher resorted, and in which he concurred with Mr. Tilton's suggestion. Our object is to show by this witness that no instructions of any such kind, or intimation, ever proceeded from Mr. Beecher at all, but that the instructions were of the character that he will state.

Judge Neilson—Now, Mr. Stenographer, read that question, please.

THE TRIBUNE stenographer read the last question, as follows:

Now, Mr. Johnson, state whether or not at any time after you went on to *The Christian Union* you received instructions from Mr. Beecher touching the manner in which you should treat *The Golden Age* in *The Christian Union*?

Judge Neilson—Ruled out, Sir. Go on, Mr. Tracy.

Q. At the time of your employment on *The Christian Union*, and as a part of that transaction, were any instructions given to you by Mr. Beecher as to the manner in which you should treat *The Golden Age* in that paper?

Mr. Beach—That comes within the ruling.

Judge Neilson—The same ruling.

Mr. Tracy—Or Mr. Tilton—

Judge Neilson—The same ruling.

Mr. Evans—To both of these rulings, your Honor, we except, of course, and I now state our views. We offer to prove by this witness that there were no instructions ever given by Mr. Beecher, either in the employment of Mr. Johnson, in the

negotiations that preceded it, or in the conduct of that newspaper after Mr. Johnson's employment, that limited him or controlled him or the newspaper, in regard to the public treatment by that newspaper of Mr. Tilton or of *The Golden Age*, in any way, in respect to any private relations between Mr. Beecher and Mr. Tilton, but that affirmative instructions were given to deal with *The Golden Age*, in the conduct of this *Christian Union* newspaper, as with any other paper that was published.

Mr. Beach—Objected to, Sir.

Mr. Evans—Your Honor sees the point of view in which we present it. Our learned friends have introduced a line of insinuating evidence carrying imports or—

Mr. Morris—One moment. I object to the counsel arguing a question now which your Honor has decided. He has made his offer, and your Honor has ruled upon it.

Mr. Evans—I don't understand so.

Mr. Morris—And now this is an irregular way of arguing an appeal from your Honor's decision. They asked a question; your Honor ruled upon it; he has made his proposition and his Honor has ruled upon that.

Judge Neilson—The counsel don't understand that I have ruled upon this last offer.

Mr. Evans—No.

Mr. Morris—You have ruled upon it.

Mr. Evans—I have not heard a word from his Honor, but only from Mr. Morris.

Judge Neilson—Mr. Morris's view is, of course, that the question involved the same thing.

Mr. Evans—That may be.

Mr. Morris—I say, after making the proposition, he has no right, your Honor, having ruled upon the matter—he has no right to proceed and argue it again. He put the question; your Honor has ruled upon it; he makes his proposition; your Honor has ruled upon that. Now, I say it is out of order to proceed and argue the question further.

Mr. Beach—Permit me to say, Sir, that for the purpose of presenting this question, the counsel addressed to the witness two questions involving this very proposition. Your Honor ruled upon them excluding the evidence. The gentleman now submits the same matter in the form of a proposition, and seeks that as an occasion upon which to make a new argument upon the same question to your Honor. I do not perceive, Sir, that we have any special right to make an objection. If your Honor is pleased to hear the counsel, why of course, although it is irregular thus to debate a question over and over again, we must submit to the exercise of your Honor's discretion and to the disposition of the counsel.

Mr. Evans—If your Honor please, it is a matter of pleasure that has been long ago outlived on the part of all concerned in this trial.

Mr. Beach—Never, Sir, of listening to the counsel; it is always a delight.

Mr. Evans—But it is a matter of serious duty, and I do not propose to insist or enlarge in abuse of your Honor's patience and kindness on this proposition, but I am strictly regular in it I submit. The questions having been ruled upon, I now

make the offer which is proper, and that offer discloses not the question, but the nature of the proof sought to be evoked, and in that connection I say—and I was proceeding to say when interrupted, not by your Honor, but by Mr. Morris—to say that the plaintiff's counsel introduced a line of insinuating evidence to which they expected to give import and weight by argument, and then when we are in possession of counter proof that puts the action imputed to Mr. Beecher upon an entirely opposite footing, with an entirely different character from that which their mode of stating it has sought to envelope him in, we submit that it is within the line of countervailing proof to remove that position that they think they have planted in the cause, and we stand there, either upon our possession of the proof and its introduction, or our possession of the proof and the law's exclusion of it, one or the other. That is all we can do, and your Honor will dispose of this, if it is the same question that you have disposed of, we shall hear it from your Honor's mouth and not from the counsel's.

Mr. Morris—I shall take occasion to object whenever I see fit.

Mr. Evarts—I have not the slightest objection to your objecting, but you must not substitute your objection for his Honor's statement.

Mr. Morris—I have substituted no objection of mine for his Honor's statement. I say your Honor distinctly ruled upon the question, and then the counsel simply puts the question in the shape of a proposition, and I say that your Honor's ruling covers that, and it presents no new question for the consideration of the Court at all; and the counsel makes a speech in the form of a proposition, and then proceeds to argue the speech, and claims the right to make an argument upon the speech, because he has made a speech in the shape of a proposition. Now, I say again, and repeat, that the proceeding of the counsel was out of order; it was not a regular proceeding. Your Honor had ruled upon the question, and putting it in the form of a proposition did not give the counsel a right to pursue the argument. It was, in effect, decided by your Honor, and the counsel was proceeding out of order, and I shall take occasion whenever I see proper to object to the counsel in that way, and I will not be catechized by the counsel for doing it.

Judge Neilson—The testimony we had, as given on the part of the plaintiff, was as to the conversation between him and the defendant, simply in reference to *The Union* and its treatment of himself, and of *The Golden Age*, his newspaper. That has been produced on the part of the plaintiff; that is all. That was admissible because it was a conversation between the parties to this action. The proposition now is of a very different character, to wit, to give in evidence instructions or conversation had by Mr. Beecher with his employes or coöperatives in the paper—co-editors—touching the manner in which *The Union* should treat *The Golden Age*, or treat the plaintiff; and, unfortunately, there is no rule of law existing, to be found anywhere, that would enable the Court, if the Court were disposed to do it, to receive evidence of *ex parte* conversation between Mr. Beecher and the persons

employed on *The Union*, or intrusted with its editing, and I have no power on the subject. It is not a question of discretion or of inclination. There is no rule of evidence that would justify me in receiving this conversation, which took place in the absence of the plaintiff, in respect to which the plaintiff's counsel have made no inquiry; and therefore it is necessarily ruled out.

Mr. Evarts—Your Honor will please allow me to observe that we do not propose it as a conversation, but as an action of Mr. Beecher. For instance, supposing it had been imputed to Mr. Beecher that he had said he would suppress a publication.

Judge Neilson—Well, even then.

Mr. Evarts—And we prove that he went off and published.

Judge Neilson—Did the contrary, yes, even then—suppose a party to the action says "I will do thus and so." He has changed his mind and does the contrary.

Mr. Evarts—Well, it is so stated by the witness, that he said that he would suppress, and the point is that suppression is confession. Now, is it to be said that we could not prove that he promulgated?

Mr. Morris—Is the counsel in order now, I will inquire of the Court?

Judge Neilson—Yes, I will hear him. I mean to say that there is no rule of evidence known that would justify me in receiving this evidence, either evidence of conversations or of what took place in the absence of the plaintiff between the defendant and other persons, even if the defendant had promised to shape the tone and temper of *The Union* favorably to *The Golden Age*, and had changed his mind or failed to do it or given contrary instructions, that *ex parte* action or conversation could not be given in evidence.

Mr. Evarts—The action I submit, if your Honor please, could be given in evidence—to show what his action was. Because he had said his action would be otherwise it would not preclude anybody from showing what the action was—if the action itself was a proper subject of evidence I mean. Your Honor does not bring this within that rule.

Judge Neilson—Well, I have decided the point.

Mr. Evarts—We except to the exclusion of our offer.

Judge Neilson—Mr. Tracy, you will proceed.

Mr. Tracy—You have stated when you went upon *The Union*, and that you are still there as managing editor; now I ask you whether the course of *The Union* was in fact conducted with reference to any difficulty between Mr. Beecher and Mr. Tilton, or otherwise?

Mr. Beach—That is objected to, Sir, upon two grounds: first, your Honor has ruled that that action was not admissible; and in the second place, the evidence calls for the judgment or opinion of the witness in regard to the manner in which it was conducted. No matter if he was the manager, we ain't to take his judgment.

Judge Neilson—Can't receive it.

Mr. Tracy—Does your Honor overrule it?

Judge Neilson—Yes.

Mr. Tracy—Your Honor will note our exception.

Judge Neilson—Yes.

Mr. Tracy—Now, I ask you, Mr. Johnson, how *The Union*

has in fact treated *The Golden Age* during your management of it?

Mr. Beach—That is objected to.

Judge Neilson—Same ruling.

Mr. Tracy—Your Honor will please note our exception.

Judge Neilson—Yes.

Q. I ask you now to state whether or not *The Union* has treated *The Golden Age* in any different manner from what it has treated all other newspapers or exchanges?

Mr. Morris—Same objection.

Judge Neilson—We have no interest in that.

Mr. Tracy—Your Honor excludes that?

Judge Neilson—Yes.

Mr. Tracy—And we except. That is all.

#### CROSS-EXAMINATION OF MR. JOHNSON.

Mr. Fullerton—How long have you resided in Brooklyn or New-York? A. In New-York, Sir, 25 years.

Q. Have you ever resided in this city? A. Never.

Q. Previous to your acquiring a residence in New-York where did you reside? A. I came from Philadelphia here.

Q. And what was your occupation in Philadelphia? A. My occupation in Philadelphia was as a journalist.

Q. How long did you reside in Philadelphia? A. Two years.

Q. What journal were you connected with? A. *The Pennsylvania Freeman*.

Q. A religious or a secular paper? A. An Anti-Slavery paper.

Mr. Tracy—We can't hear, Mr. Johnson, you will have to speak a little louder; there is so much noise in the court-room.  
A. An Anti-Slavery paper.

Mr. Fullerton—Was it a religious or secular paper? A. I have answered truly—I hold Anti-Slavery to be religious; it was Anti-Slavery; it was the organ of the Pennsylvania Anti-Slavery Society.

Q. And before you went to Philadelphia where did you reside? A. I went from Columbiana County, Ohio, to Philadelphia, or with a little interregnum in New-York City, between the two places.

Q. How long did you live in that County in Ohio? A. I lived there two years.

Q. What was your occupation there? A. A journalist.

Q. What journal were you connected with? A. *The Anti-Slavery Bugle*.

Q. And how long did that bugle blow—how many years? A. I am unable to answer you, Sir.

Q. And before you went to Ohio, where did you reside? A. I resided the last before then in Massachusetts.

Q. In what part of Massachusetts? A. In Worcester County.

Q. And when was that? A. That was in 1848 and 1849.

Q. Were you connected with any journal there? A. Yes, Sir.

Q. What journal? A. *Blackstone Chronicle*.

Q. How long had you a connection with that paper? A. Six months.

Q. And prior to that where did you reside? A. In New-York City.

Q. How long? A. Four years, continuously.

Q. And what was your occupation during those four years? A. Assistant editor of *THE TRIBUNE*.

Q. In what, the weekly, or the— A. No; the daily.

Q. The daily? A. And weekly.

Q. During what year? A. From 1844 until 1848.

Q. And prior to that connection with *THE TRIBUNE* where was your residence, and what was your occupation? A. I came from Boston to *THE TRIBUNE*.

Q. How long had you resided in Boston? A. I am not quite sure how long; it was several years.

Q. About how long? A. Several years.

Q. Were you a journalist there? A. Only part of the time.

Q. What journal were you connected with? A. I was connected a portion of the time with *The Liberator*, Mr. Garrison's *Liberator*.

Q. About how long were you connected with that paper there at that time? A. I can't tell you without consulting documents that I have not present.

Q. Well, give us some idea of the— A. Well, my connection with *The Liberator* was mainly during times when Mr. Garrison was absent; I conducted *The Liberator* on two occasions while he was absent in Europe—gone perhaps several months at a time.

Q. Well, Sir, prior to that, where did you reside? A. Prior to that I was in Providence, Rhode Island, as General Agent and Corresponding Secretary of the Rhode Island Anti-Slavery Society.

Q. And how long did you reside there and fill that position? A. About two years, I think.

Q. And previous to that where did you reside? A. Previous to that, I was traveling agent, for about a year, of the American Anti-Slavery Society, and lecturing agent.

Q. Through what district of country did you travel to lecture? A. Well, in Pennsylvania, and in Rhode Island, and in Massachusetts.

Q. Well, prior to becoming a traveling lecturer, where did you reside? A. I lived two years at Middlebury, Vermont.

Q. And what was your occupation there? A. Printer and editor.

Q. Of what paper? A. *Middlebury Free Press*.

Q. How long were you connected with that paper? A. I was connected with the office, not exactly with the paper, during the whole of the time, as I say, about two years; I lived there about two years.

Q. What place in Vermont was that? A. Middlebury.

Q. Did you reside at any other place in Vermont? A. I was born in Vermont, Sir, and lived there until I was sixteen years old—until I was twenty-one, in fact.

Q. I didn't hear your answer. A. I say I was born in Vermont, and lived there until I was about—until I was twenty years of age.

Q. Were you ever connected with any other paper in Vermont than the one that you have named? A. Not as editor.

Q. Did you reside at any time at Montpelier? A. I served my apprenticeship as printer at Montpelier.

Q. During what year? A. Well, from 1826, I think, to 1829;

or 1829 to 1839, I think; I am not quite sure of dates; I could verify them, if I had time.

Q. And you are now connected with *The Christian Union*?

A. I am, Sir.

MR. JOHNSON'S RELIGIOUS VIEWS.

Q. Are your religious sentiments in harmony with those promulgated by that paper?

MR. JOHNSON'S RELIGIOUS VIEWS OBJECTED TO.

Mr. Evarts—We object to that, if your Honor please.

Judge Neilson—They have a right to inquire as to his religious sentiments. Whether that is the proper standard, or not, I don't know.

Mr. Evarts—In what respect have they a right to inquire?

Judge Neilson—In respect to credibility.

Mr. Evarts—He calls for his religious sentiments.

Judge Neilson—Yes; to see if he has got any religion, and what kind it is.

Mr. Evarts—They have a right within a certain range, to inquire whether he believes in a God, and whether he believes in a system of rewards and punishments, with a view to impeachment.

Mr. Beach—No, Sir; that is with a view to competency. The other inquiry is with a view to credibility.

Mr. Evarts—That is to competency; it must be before he is sworn.

Judge Neilson—The only objection is to the standard of comparison; that is the only objection.

Mr. Evarts—It is not, as I understand it, a subject of inquiry about a man's religion except as bearing upon that question, obligation of an oath.

Judge Neilson—I don't know what view they offer it in. It seems to be admissible in some form.

Mr. Evarts—But that is not the form of it. He says: "Do you agree in religious opinion with *The Christian Union*?"

Judge Neilson—The only objection is as to the form of the question, I think.

Mr. Evarts—Now, if religious opinions are to be inquired into as matter of personal impeachment, except as bearing on the question of the credibility of an oath, why, we shall have all sorts of sectarian prejudices aroused.

Judge Neilson—Well, now, without assuming that it won't be offensive to the witness, suppose that it were *Clapin's Weekly*, would not you permit the question whether your religious sentiments accorded with the views of that paper?

Mr. Evarts—Whether his religious sentiments accorded with the religious sentiments of that paper.

Judge Neilson—With the views of that paper.

Mr. Evarts—Well, your Honor has put—

Judge Neilson—Put an extreme illustration, I submit. [Laughter.]

Mr. Evarts—Put an illustration where the allusion could only be sarcastic.

Judge Neilson—No; I don't think that.

Mr. Evarts—If your Honor please, I am serious about the

question. I don't think they have a right to the general proposition; I should dislike very much to have it recognized as a proposition that you can ask witnesses about religious opinions.

Mr. Beach—If the gentleman has that dislike to it, it is very unfortunate that it did not prevail when they were examining Mr. Moulton.

Mr. Evarts—That is in regard to the very matter.

Mr. Beach—It was in regard to his religious sentiments.

Mr. Evarts—Being an actor in the transaction.

Mr. Beach—Mr. Johnson is an actor.

Mr. Evarts—He is not an actor in the—

Mr. Fullerton—Yes, Sir; he is an actor in the transaction.

Judge Neilson—You had better modify your question.

Mr. Fullerton—I beg your Honor's pardon; I don't mean to modify it unless you think it is wrong; I don't mean to do it to please the other side.

Judge Neilson—I think this question of comparison is too comprehensive.

Mr. Evarts—Your Honor will see it opens all avenues to sectarian prejudices on the jury. There is nothing about this gentleman that I know of, but, as a general proposition, when witnesses are examined their religious opinions not bearing on credibility are not the subject of inquiry.

Mr. Fullerton—Isn't it bearing on the subject of credibility?

Judge Neilson—I don't know whether it does or not.

Mr. Fullerton—The gentleman takes that for granted, and argues upon the views; he thinks that is my object. Have not I a right to show that this gentleman is editing a paper and promulgating doctrines that he don't believe in.

Judge Neilson—Well, if he writes the articles himself, yes.

Mr. Fullerton—I am approaching it in a proper way.

Judge Neilson—If he has written something that affects his moral character, it will involve the same question that was up when Mr. Tilton was under examination.

Mr. Fullerton—Precisely the same question, and no other.

Judge Neilson—In respect to his articles in *The Golden Age*. But then you must call his attention to the specific article.

MR. JOHNSON'S RELIGIOUS VIEWS RECEIVED.

Mr. Fullerton—I am going to do so if it becomes necessary. Now will you answer the question, Mr. Johnson?

Judge Neilson—I don't think you can put the question in that comprehensive form.

Mr. Fullerton—What are your religious views?

Mr. Evarts—That we object to.

Judge Neilson—We will take that, go on.

Mr. Evarts—Note our exception.

The Witness—I call myself a Christian.

Mr. Fullerton—As distinguished from a Jew; is that it?

A. No, Sir; I call myself a Christian according to the New Testament.

Q. Yes; do you advocate the doctrine of the Universalists?

A. Well, I don't—I do perhaps, Sir, in some respects.

Q. Don't you in all respects? A. I am not very well acquainted with the Universalist denomination; know very little about them. I believe that all human beings will be eventually saved.

Q. Isn't that the very essence of the doctrine of Universalism?

A. Well, I only know that a good many people who—

Judge Neilson—That is Dr. Chapin's theory.

Mr. Fullerton—Well, Dr. Chapin is not on the stand; if he were I would ask him. [Laughter.]

Judge Neilson—Will the audience be quiet please?

Mr. Fullerton—Don't you understand that to be the essence of the belief of the Universalists? A. No, I don't. From what I know of the creeds of the Universalists I should say that that was only one item in their creed. I differ from them in various respects.

Q. One moment; that is only one item in their creed? A. Yes, Sir.

Q. But that is an item in their creed? A. Yes, Sir; I understand it so.

Q. And so far as that item is concerned you subscribe to it, and believe in it? A. Well, I have already stated that I believe that every child of God will be finally made happy.

Judge Neilson—Do you apply that to every child of Adam? A. Yes, Sir; every child of Adam.

Judge Neilson—The other proposition is very plain.

Mr. Fullerton—How long have you entertained that opinion, Mr. Johnson? A. Well, really, I can't say, Sir.

Q. About how long? A. Well, I can't tell you even that.

Q. Oh! give us some approximate estimate of the time. A. Because not expecting to be asked any such question I have not even thought of it, and I should have to stop to make a calculation, and perhaps it would take me half an hour to answer the question.

Q. Well, I don't ask you to tell me exactly the day or the hour, whether you were inspired— A. Well, I will say that I have believed it for a number of years.

Q. About how many years? A. Well, perhaps I have believed it for ten or a dozen years.

Q. Not more than that? A. I can't say whether I have or not, until I have further time for reflection.

Q. When did your religious convictions undergo a change? A. My religious convictions have been undergoing a change from the time I was a boy.

Q. Gradually? A. Yes, Sir.

Q. Up to the present moment? A. Yes, Sir.

Q. And still undergoing a change? A. Yes, Sir; I hope so.

Q. In what direction? A. In the direction of truth.

Q. Oh! in the direction of truth.

Mr. Everts—And there you stop.

Mr. Fullerton—Did you once edit *The Christian Soldier*? A. I had forgotten that when you were questioning me a little while ago about my life—entirely forgotten it.

Q. Well, can you tell me what the religious views of *The Christian Soldier* were? A. *The Christian Soldier* was a paper established for the purpose of fighting Universalism.

Q. And did you through that paper fight Universalism? A. I did with all my heart.

Q. And you believed, then, in the justice of your cause did you? A. I did with all my heart.

Q. And since that you have become in some respects like the

Universalists in your belief? A. Yes; I have changed my views entirely; I have—

Q. Well, did you convince yourself that you were wrong while editing that paper? A. No; long afterwards.

Q. Now, have you ever edited a paper that promulgated Universalist doctrines? A. No; I have not.

Q. Have you ever written any articles of that import for any newspaper? A. Well, I am not quite sure about that; I may possibly have written an article somewhere, but I don't—I am not able to tell you at this moment whether I ever have or not.

Q. Have you taken any paper that advocated Universalist doctrines? A. I have taken no Universalist paper in my life.

Q. Now, answer my question. A. Well, I don't—I really hesitate to answer one, because I want to answer truthfully.

Q. Well, I ask if you have ever taken any paper that advocated the Universalist doctrine? A. Well, I don't think I have.

Q. Do you know of any such paper? A. Oh yes! a great many; see them every week.

Q. Have you not been a subscriber for any one of them? A. No, Sir.

Q. Have you ever written communications for any one of them? A. Not that I recollect.

Q. Did you read these papers every week? A. They came in exchange at *The Christian Union* office.

Q. With *The Christian Union*? A. Yes, Sir.

Q. You exchanged with papers of a Universalist character? A. We did, and with Catholic and all kinds of papers.

Q. And you have never written any communication for any of these Universalist papers? A. No, Sir; not that I recollect.

Q. Did you ever express your views in regard to the universal salvation of mankind through any organ? A. I am not sure whether I did or not. Now, really, I don't think I could tell you.

Q. Don't you recollect whether you did or not? A. No, Sir; I do not.

Q. You are a writer for a journal? A. I am, but I have not been a writer upon such topics.

Q. Do you write for *The Christian Union*? A. I do.

Q. Religious articles? A. Sometimes a religious article.

Q. Contrary to your own faith? A. Never.

Q. In harmony with your own faith? A. In harmony with my own faith.

Q. Have you ever written articles for *The Christian Union* vindicating the Universalist doctrine? A. I have not, because *The Christian Union* does not proclaim that doctrine. The editorial pages of it are revised by Mr. Beecher.

Q. What do you do in connection with that paper—what are your duties? A. My duties are as general manager of it.

Q. General manager? A. General manager; that is to say, I correspond with our contributors. I write, for instance, to A, B, C and D, asking them to send us articles.

Q. On what subject? A. On religious subjects, and on other subjects—on any subject that I may wish to have discussed.

Q. And you write yourself, do you? A. I do occasionally.

Q. Well, *The Christian Union* is not a believer in universal



salvation, I believe, is it? A. I believe not; I never have understood that it was.

Q. Then your religious notions are not in harmony with the paper you are connected with? A. Mainly they are in harmony with it.

Q. Altogether they are not? A. No, Sir.

Q. But, on the vital question of Universalist salvation, you are in variance with it?

Mr. Evarts—He does not say that is a vital question.

Mr. Beach—I call it a vital question.

Mr. Evarts—[To Mr. Fullerton]: You called it a vital question in your question.

Mr. Fullerton—[To Mr. Evarts]: I don't know of any more vital question for you or for me.

Mr. Evarts—That depends upon a variety of opinions upon what is vital and what is not vital.

Mr. Beach—We have a right to characterize it as we please, I suppose.

Q. Do you not regard the salvation of men after death as a vital question to be discussed and entertained in this world? A. Yes, Sir.

Q. Then, upon that vital question you are at variance with the doctrines of *The Christian Union*, I understand you? A. I am.

Q. Did you ever express your religious convictions in that respect to Mr. Beecher? A. Yes, Sir, often.

Q. He knows what they are? A. He knows what they are.

Q. And he still retains you in connection with his paper? A. Yes, Sir.

Q. Were you ever connected as a member with any church? A. Oh! yes.

Q. What churches? A. I first united with the Congregational church, in Montpelier, Vermont, when I was a young man; afterwards I was for some years connected with the Bowdoin-st church, of Boston, of which the Rev. Lyman Beecher was pastor, and after that, I was for a time connected with the Congregational church in Middlebury, Vermont.

Q. Ever been connected with any other religious denominations since that time? A. Yes, Sir.

Q. Where? A. I have been connected with the Society of Progressive Friends.

Q. Where was that? A. That was in Chester County, Pennsylvania.

Q. And what were their religious tenets? A. Their society was not founded on religious tenets at all. It had no creed whatever.

Q. It had no creed? A. No, Sir.

Q. Was it a religious society? A. Yes, Sir.

Q. And had no creed. They believed in something, didn't they? A. Yes, Sir; they didn't put their belief as the basis of their organization. They left belief free to every individual. I didn't make any inquiry as to the belief of the persons composing the body whatever. Orthodox and heterodox people, Unitarians and Presbyterians formed part of it, on equal terms.

Q. What was the object of the society? A. Practically, the object of it was reformatory; that is, to promote temperance,

to promote the Anti-Slavery question, and to help people to be better and purer without going into theological questions.

Q. Did you ever connect yourself with any other religious organization? A. I think not. I was, though. Let me see; I was for a little while a member of the Society of Friends.

Q. Then you were a Quaker at one time, were you? When was that? A. Well, that was in 1849-'50.

Q. And where was that? A. In Ohio.

Q. How long did you remain a member of that organization? A. While I remained in the place.

Q. And how long was that? A. About two years.

Q. Now, did you ever connect yourself with any other organization of a religious character? A. No, Sir.

Q. How? A. No, Sir.

Q. Was that the last one? A. No; the Progressive Friends was the last. That is a Society I helped make.

Q. You founded it, did you not? A. It is the one I believed in peculiarly.

Q. A kind of omnibus church, was it not? A. [Excitedly.] Well, Sir, you may characterize it as you please.

Q. I should think it was. A. I don't call it that.

Q. It was a church which admitted all classes and kinds of people? A. It invited all persons who desired to do good to their fellow-men, and to elevate himself and make himself morally pure. It invited all such persons, without reference to their theological sentiments, to unite with it.

Q. What is the last organization you were connected with? A. I am connected with it now.

Mr. Evarts—The witness has not said it was a church. You put it in your question—"church."

Mr. Fullerton—Well, I beg pardon of the church, and call it an organization.

Q. You are connected with it now? A. I am.

Q. Were you ever connected with Plymouth Church? A. Never.

Q. Ever attended service there? A. Yes, Sir, I attended service there five years in succession.

Q. Constantly? A. Yes, Sir.

Q. Without becoming a member? A. Without becoming a member.

Q. Did you ever take the communion there? A. Yes, Sir, frequently.

Q. How frequently? A. Well, probably ten or a dozen times in the course of my life.

Q. When? A. The last time was about six months ago, I believe.

Q. And the first time when? A. I cannot say.

Q. About when? A. I cannot tell you.

Q. About what time? A. I cannot tell you about the time.

Q. As near as you can? A. I cannot.

Q. You will have to? A. I say it is impossible for me to tell you what time.

Q. Give us some idea of the time you commenced? A. I began to go to Plymouth Church, as near as I can recollect, somewhere about 1853, and attended Plymouth Church pretty constantly until 1859.

Q. How long after you commenced going to Plymouth

Church did you commence to take the communion there? A. Well, I cannot tell you.

Q. About how long? A. I cannot tell you about how long.

Q. Within one year? A. I am not sure whether it was within one, two, three or four years.

Q. Was it within four years after you commenced? A. I cannot tell you, Sir.

Q. Was it within five? A. I cannot tell you, Sir.

Q. Was it within six? A. I cannot tell you, Sir.

Q. Was it within seven? A. I presume it was, but I cannot tell you; I don't know anything about it.

Q. Was it within eight? A. It must have been within the time I went there, but I cannot specify the time any more definitely than I have done. I would gladly give you the day, but I cannot.

Q. What was your occupation at the time you commenced taking communion in that church? A. I was editor of *The Anti-Slavery Standard*.

Q. Published where? A. Published in New-York.

Q. And while editor of that paper you commenced taking the communion in Plymouth Church, did you? A. I think it must have been during my connection with it.

Q. When did you cease to be the editor of that paper? A. In 1865, immediately before Mr. Tilton invited me into *The Independent*.

Q. Never mind Mr. Tilton now. You ceased to be editor in 1865, did you? A. Yes, Sir; about 1865.

Q. And it was prior to that you commenced taking communion from the church? A. I didn't in any proper sense of the word commence taking communion; I don't wish to be understood as using any such phrase as that.

Q. Was there not a first time when you did it? A. There was, but I don't recollect the precise time. I would gladly tell you every single time if I could recall it, but I cannot.

Q. When did you become connected with *The Independent*? A. In the Spring of 1865—in June, 1865, the first of the Summer.

Q. When did you cease that connection? A. At the end of 1870.

Q. When did you become connected with *The Christian Union*? A. At the beginning, or rather at the end of 1872.

Q. Now, did you ever take the communion at Plymouth Church until you became connected, or thought of becoming connected, with *The Christian Union*? A. Yes, Sir; long before—long before; half a dozen times at least.

Q. Your memory is getting better as to the times, is it not? A. No, Sir; but I cannot give you the precise times. I tell you I was in the habit of—Mr. Beecher's invitation was so broad as to include me, and whenever I was there I united with him in communion with all my heart, and shall do it again if I have an opportunity to do so.

The Court here took a recess until 3 o'clock.

#### THE AFTERNOON SESSION.

After recess, Mr. Johnson was recalled, and his cross-examination continued, as follows:

#### MR. JOHNSON ON THE DEITY OF CHRIST.

Mr. Fullerton—I understand you to say, Mr. Johnson, that you became a communicant in Plymouth Church in consequence of some invitation that was given by Mr. Beecher? A. Yes. I object, however, to the phrase "became a communicant." I am not what would technically be called a communicant in Mr. Beecher's church.

Judge Neilson—Well, you mean that you did commune? A. I mean that I did commune; yes, Sir.

Mr. Fullerton—Well, with that amendment, then—did you commune in Plymouth Church in consequence of an invitation of Mr. Beecher? A. Not a private invitation; a public invitation.

Q. A public invitation? A. Which he made to every one.

Q. From the pulpit? A. From the pulpit.

Q. Well, what was the nature of the invitation? A. That all those—as near as I can recollect it, his usual method is, "All those who love Christ, and who wish to fulfil his commands, are invited to commune with us."

Q. Well, are you a believer in the Divinity of Christ? A. Yes, in my own sense of the Divinity of Christ.

Q. What is your sense? A. I don't believe in the Deity of Christ, Sir; I believe in his Divinity, but not in his—

Q. Not in his Deity? A. No, Sir.

Q. You don't believe in the Trinity, then? A. No, Sir.

Q. In what respect do you consider him as Divine? A. In that he was specially commissioned of God to do a great work for the world, a Divine teacher, a Divine messenger from God.

Q. In the sense, then, only that he performed a Divine commission? A. That is all; yes.

Q. You regard him, then, as no more Divine than you do the Apostles, do you? A. Yes, Sir.

Q. Well, they performed a Divine consummation, didn't they? A. Well, I don't think they did, in the same sense.

Q. Very well. A. That is my opinion.

Q. Now, then, as to the early prophets; do you regard Christ as any more Divine than the early prophets who performed a Divine mission? A. Well, Sir, I know so little about the early prophets that I could not undertake to say.

Mr. Fullerton—Ah, well, then, I won't question you. Do you believe in the inspiration of the Old Testament? A. That depends, Sir, upon what you mean by the word "inspiration." I want your definition of that first, and then I will tell you.

Q. Do you believe in the inspiration of the Old Testament, according to your own definition of it? A. Yes, I do.

Q. And what is your definition of inspiration? A. My definition of inspiration is, men writing honestly under serious and earnest conviction that what they are saying is true.

Q. Yes, but not infallible? A. No, not infallible.

Q. Not under the Divine guidance so as to prevent error? A. No.

Q. In that respect only you regard it as inspired, is that so? A. I regard some parts of it as inspired in the highest sense, but others I have doubts about, whether they are so or not.

Q. Well, in the highest sense of inspiration according to your definition of it, you mean? A. Yes, Sir.

Q. And other parts of it you have doubts about? A. Yes, Sir.

# THE OLD ANTI-MASONIC STRUGGLE.

Q. Now, Mr. Johnson, didn't you omit to state that you were once the editor of an Anti-Mason paper? A. No, Sir; I didn't.

Q. Well, were you the editor of an Anti-Mason paper? A. Never.

Q. Never? A. Never; the Anti-Mason conflict was settled before I became an editor.

Q. Well, I believe you prepared something like a biography of yourself, have you not? A. Yes, I did.

Q. [Paper handed to witness.] Will you be kind enough to look there and see whether you were ever the editor of an Anti-Masonic paper? A. Well, I find that in memoranda—

Q. Now, I don't care what you find; I want to ask you now, whether that refreshes your recollection as to whether you were ever the editor of an Anti-Masonic paper? A. No. It was a mistake to have written so.

Q. Yes, one moment? A. It don't refresh my recollection in the least.

Q. You never were an Anti-Mason? A. No; the Anti-Mason question was settled before I became the editor of that paper; that paper was started—

Q. Don't talk about it. A. Well, all right.

Q. Now, did you ever write anything like this [reading] "Then went to Middlebury, Vermont, where he remained two years, during part of which time he was editor of the *Free Press*, an Anti-Masonic paper"—referring to yourself? A. Yes, Sir, I wrote it.

Q. You did write it? A. Yes, Sir.

Q. Was it true or false? A. Well, it was not precisely accurate.

Q. Well, was it true or false?

Mr. Tracy—He answers.

The Witness—Well, I answer that it is not accurate—that I did not state so accurately as I have here to-day under oath. That is all.

Q. Well, in what does the inaccuracy consist? A. It consists in this, that the paper, *The Middlebury Free Press*, was started as an Anti-Masonic paper, and that at the time when I had charge of it the question of Masonry was no longer before the country, and it was therefore a question between other parties; that is all.

Q. Why, it was in 1833, wasn't it? A. Yes—in '34.

Q. '34? A. '34.

Q. Well, Sir, was the Anti-Masonic question then obsolete? A. Certainly it was, if my recollection serves me.

Q. Entirely so? A. Yes, Sir. It was there at any rate.

Q. Didn't it enter to a greater or less extent into politics? A. Yes, Sir; before that time it had.

Q. At that time, didn't it enter into politics? A. I think not, Sir.

Q. Were not men held responsible for their sentiments on

that subject at that time in political controversies? A. I am not aware of it.

Q. You cannot tell us? A. I cannot give you the precise dates. I was with *The Middlebury Free Press*.

Q. I know that you said that; we are saying something also. Now, were not there Mason and Anti-Masonic candidates for office at that time? A. I think not.

Q. Are you sure? A. My impression is that there were not, but I may be wrong—I don't know.

Mr. Evarts—We raise the objection that this is immaterial. Judge Nelson—I think he has exhausted it.

Mr. Evarts—The witness on his examination said for two years he edited this paper in Middlebury. Now they ask him if it was not an Anti-Masonic paper.

Mr. Fullerton—Well, he says now it was not; then he altered the first statement and said it was. [To the witness.] Well, did you ever belong to the Hopedale Community? A. Yes—no, not properly speaking to the Hopedale Community; I never did—I resided a Winter, or part of a Winter at Hopedale, but I didn't belong to the Community.

Q. What was the Hopedale Community? A. Well, the Hopedale Community was an association formed by the Rev. Adrian Ballou, a Unitarian clergyman, or, perhaps, more strictly speaking, a Restorationist clergyman.

Q. A Restorationist? A. A Restorationist clergyman—an association for—well, I don't know as I can characterize it exactly, because I don't recollect distinctly enough what its characteristics were; it was a socialistic community—that is, a religiously socialistic community—it was a religious community.

Q. Had they any service? A. Oh, yes, Sir!

Q. Didn't you participate in them that Winter? A. I did at times.

Q. The Winter that you spent there? A. The Winter that I spent there, Sir, I often spoke on Sunday in their chapel.

Q. Practically united with them, didn't you? A. No, Sir; no, Sir; I belonged to what was called the Practical Christian Ministry that was connected with the Association, or that grew out of it, but had no official relations with the Association itself.

Q. You say it was connected with it and grew out of it, but had no official connection with it? A. I mean to say that a part of the persons who constituted that Community—some of the persons in it—formed what they called the Practical Christian Ministry, and that I belonged to that; not to the Community, but to that.

Q. This is an offshoot of it? A. Yes, Sir.

Q. Well, how long did you belong to the Practical Christian Ministry? A. Well, I was there, as I said, a Winter.

Q. And did you belong to the Practical Christian Ministry after you left there that Winter? A. No, no—of course it was a local affair; it was a local affair entirely.

Q. That is, a local Christianity, is it? A. No, Sir; I didn't say it was a local Christianity; I said the society was local; the Practical Christian Ministry as an association was local.

Q. Well, how did you make your livelihood there that Winter? A. I made it by editing *The Practical Christian*, as it was called.

Q. There? A. Yes, Sir.

Q. Your connection with it commenced when? A. Well, it was during the Winter that I was there; that is to say, it must have been begun some time in January, probably 1849, and continued along on until the next April some time.

Q. Well, I believe you didn't mention your editorship of *The Practical Christian*? A. I did not; I had entirely forgotten it.

Q. You had forgotten that? A. Not expecting to be interrogated I had forgotten it at the moment.

Q. A man should be always prepared in regard to his religion. Now, will you be kind enough to tell me what were the particular tenets of this Practical Christian Society and this Practical Christian Ministry? A. Well, I could not know at this distance of time how to formulate their creed. If you will give me opportunity and time I will find the documents and show them to you.

Q. When do you think you would get this in readiness to answer the question as to the religious tenets of a society to which you belonged? A. Well, I think its name suggested it, "Practical Christian"—practical Christianity, that was the idea.

Q. Now, you have spoken of your connection with a paper or with a Church in Montpelier. What Church was that? A. The Congregational Church, as I said before. That was in the evidence.

Q. Were you ever excommunicated from that Church? A. No, Sir.

Q. You were not? A. I was not.

Q. Did you write anything like this: "The Church subsequently enacted the farce of excommunicating me?" A. I did not; not the Church at Montpelier.

Q. Where was that? A. Middlebury, Vermont.

Q. Well, I believe I was mistaken? A. Yes, Sir.

Q. Then that Church did excommunicate you? A. After I had withdrawn from it it did.

Q. After you had withdrawn from it you were excommunicated? A. After I had withdrawn from it it did go through the farce of excommunicating me, as I say there.

#### MR. JOHNSON A SPIRITUALIST.

Q. Now, Mr. Johnson, have you ever been a Spiritualist? A. Well, Sir, I will answer that question—I could not answer that question honestly by yes or no.

Q. Then answer it in your own way. A. Well, Sir, I will answer it in the way that a friend of mine answered it. I asked my friend once if he was a Spiritualist. He said "Yes," but he "was not a damned fool." [Laughter.] I am in a sense a spiritualist; that is to say, I believe there have been such occurrences as communications from the other world.

Q. But in your judgment you don't think you are the other thing? A. I don't think I am the other thing. [Laughter.]

Q. Do you believe in spiritualism? A. I don't know what you mean by it. You will have to explain the question.

Q. Do you believe in spiritualism, as you understand it, and not as I understand it? A. Yes, Sir; I do as I understand it.

Q. Have you been in the habit of attending what they call

the seances? A. No, Sir; I have not, not as a habit; I have been, say several times in the course of my life.

Q. How many times? A. Perhaps a dozen or twenty in the course of the last twenty or twenty-five years.

Q. Very frequently? A. No; not very frequently.

Q. Do you profess to have communicated with the spirits in the other world? A. I believe sincerely I have received communications from dear friends in the other world.

Q. How recently have you received any such communication? A. Well, I don't remember; it may be eight months perhaps, or a year possibly, I don't remember; since I attended—saw a spiritual medium.

Q. You spoke of the other world. Will you tell me what other world it was from. A. I don't know what other world it was from. That was not for me to say.

Q. The spirits didn't communicate that night to you? A. What is that?

Q. The spirits didn't communicate that fact to you? A. I merely said I believed I had had communications from spirits in the spiritual world—the other world. I supposed you understood what was meant.

Q. You said the other world? A. I did say the other world; that is the common phrase for designating the spiritual world.

Q. Have you been in the habit of visiting spiritualists in the City of New-York? No, Sir.

Q. Did you form the habit of communicating with spirits in the other world? A. No, Sir; I never formed that habit.

Q. Have you done it more or less often? A. I have occasionally gone to a spiritual mediums.

Q. Have you not written articles upon spiritualism? A. Possibly I may have done so.

Q. Don't you know? A. I cannot tell you whether I did or not at this moment; very likely I may have done so.

Q. Can you not recall the fact whether you have written articles on spiritualism, and had them published? A. I think very likely I may have done so, but I cannot recall any particular instance.

Q. I don't want you to do that; I ask you the general fact if you have not written such articles? A. I cannot say positively whether I did or not.

Q. What is your best judgment or recollection on that subject? A. I should think, very likely, if I was to examine closely I should find I had at some time or other written something in favor of spiritualism.

Q. Do you know where it is published? A. No, Sir; I don't.

Q. No idea at all? A. No, Sir; I have not any recollection whatever.

Q. Have you ever been connected with Mr. Frothingham's church in New-York? A. I have. I am connected with it now.

Q. Hold an office there now? A. No, Sir.

Q. Did you ever hold an office there? A. Yes, Sir.

Q. When? A. Well, two years ago.

Q. What office did you hold? A. Trustee.

Q. Are you an attendant upon that church now? A. Yes, Sir. Very constantly.

Q. Well, how did it happen that you came over to Brooklyn

so often to partake of the communion in Plymouth Church? A. I didn't come over to partake of the communion. I don't say that.

Q. How did it happen that you partook of the communion in Plymouth Church? A. Because I was, for six years, a very constant attendant, from 1853 to 1859, of Mr. Beecher's church, going generally twice a day. I was there on communion days, and very often under the general invitation, which was broad enough, as I thought, to include me; as a Christian I communed in Mr. Beecher's Church; have been in the habit of doing so occasionally when I have been there, from the first of my acquaintance with the church.

Q. Do your religious views correspond with the Rev. Mr. Frothingham's views? A. Not entirely; I differ very materially from Mr. Frothingham on some subjects, as I do with Mr. Beecher, and did with Mr. Beecher when I went to his church.

#### MR. JOHNSON NOT A TEACHER OF INFIDELITY.

Q. That is bad for Mr. Beecher. We won't stop to inquire about it now. Were you ever taken to task by any one for indoctrinating Mr. Tilton with infidel notions? A. Oh, yes; I don't know that I should say that I have been taken to task for it, I think that is rather a strong expression.

Q. Well, called to account; would that do better?

Mr. Beach—Expostulated.

Q. Were you ever called to account? A. No, I don't think I was ever called to an account.

Q. Were you ever expostulated with? A. No, Sir; I don't think I was.

Q. Were you ever spoken to on the subject? A. Yes, Sir; but I think I was the first to speak of it.

Q. You spoke to yourself? A. Shall I tell you the whole truth about it?

Q. Answer my question, and if I don't get the whole truth out it will be my loss. A. Very well. What is your question?

Q. My question is whether Mrs. Tilton ever accused you, or expostulated with you in any way, for having indoctrinated her husband with infidel notions? A. No, never in the world; never said anything of the kind to me.

Q. Never said a word to you upon that subject? A. Not until I introduced it.

Q. I didn't ask you who introduced it. A. I mean to say, in answer to your question, that Mrs. Tilton never volunteered a word to me on that subject in any shape, and she never charged me with leading her husband into infidelity, never; and never intimated to me in any way that she was uneasy in that regard—in regard to my influence over Mr. Tilton.

Q. Now, Mr. Johnson, do you recollect who drew up your contract for your employment with *The Christian Union*? A. I drew it myself.

Q. Wholly? A. It is possible that a paper written by Mr. Tilton and before me, at the time when I drew it, may have suggested some of its phrases.

Q. Didn't Mr. Tilton prepare the draft of your contract? A. No, Sir, he did not.

Q. And didn't Mr. Tilton and Mr. Moulton fix upon your

salary? A. No, Sir; not that I know of. I never heard of it if they did. I never heard that they had any agency in it.

Q. Didn't Mr. Tilton prepare a draft of that contract? A. Mr. Tilton did volunteer—volunteered without any request of mine—to prepare a contract saying he professed to be friendly with me; glad that I had got a place on *The Christian Union*, and he said: "Now, you ought to go in under a contract." I said to him that I had never had a contract with anybody whom I had served. "Well," he said, "you ought to have a contract with Mr. Beecher, and I will draw you one," and he sat down to his desk and drew one, and I took it and put it into my pocket, and some days afterwards when I had occasion to draw the contract, which was afterwards signed by Mr. Beecher and myself, I took it out of my pocket and looked at it, and, perhaps, some of its phrases may have gone into the real document.

Q. He first suggested the contract? A. He suggested that I ought to go in under a contract.

Q. He suggested the contract, did he not? A. Yes, Sir.

Q. And you adopted that suggestion, did you not? A. I had previously thought I should have it before.

Q. You had never had one before? A. No.

Q. With anybody? A. No, Sir.

Q. And when he suggested it you told him you never had one before? A. Yes, Sir; I did.

Q. Then didn't he suggest the idea to you? A. Yes, Sir; he did.

Q. Do you know whether, or not, Mr. Tilton had not an agency in securing you that place before you obtained it? A. I can only say I have no knowledge—

Mr. Beach—Wait one moment.

Mr. Evans—Why should he not answer it in the way he was going to answer it?

Mr. Fullerton—Because it is wrong.

Judge Nelson—He asked him if he knew.

Mr. Fullerton—Of his own knowledge.

Mr. Evans—You didn't put that in.

The Witness—I do not know.

Mr. Fullerton—That settles it.

Mr. Fullerton—You don't know, of your own knowledge, that he didn't have an agency in it? A. No, Sir.

Mr. Fullerton—That is all.

#### RE-DIRECT EXAMINATION OF OLIVER JOHNSON.

Mr. Tracy—I desire to call your attention, Mr. Johnson, to the conversation that I omitted in the first of my direct examination. Did you have a conversation with Mr. Tilton soon after the Steinway Hall meeting—Mrs. Woodhull's Steinway Hall meeting—about his presiding there and his relations to the Woodhull woman? A. I did, Sir.

Q. What transpired between you and him upon that occasion? A. It was a few days—it may have been the next day, or a little longer; I don't remember precisely when, but I asked Mr. Tilton to take a lunch with me in a restaurant near *The Express* office, on Park-row, with the purpose in my own mind—

Mr. Fullerton—Never mind your purpose.

The Witness—I beg your pardon, I want to—

Mr. Fullerton—I know you want to; I don't want you to.

Mr. Tracy—What did you do when you were lunching, when you came to conversation? A. I remonstrated very seriously with Mr. Tilton for presiding at the meeting of such a woman, whom I regarded as a very bad one; and he said to me that he belonged in reality with her; that she represented a cause in which he had the deepest interest; that to preside at her meeting was simply to have the courage of his opinions.

Q. Referring again to this lady who was spoken of in your direct examination, I want to ask you if that lady was a member of Mr. Tilton's household at any time? A. I am not sure that she was; I don't think she ever was. No, Sir, I am not aware that she ever was.

Q. Not a member of his family? A. No, Sir.

Q. Now, Mr. Johnson, I understood you to say, in answer to the counsel, that you didn't know but Mr. Tilton had an agency in procuring your employment on *The Christian Union*. Do you know that he did? A. No, Sir, I do not; I have no reason to suppose—

Mr. Beach—Wait, Sir.

Q. From any information you ever received from him, have you any reason to suppose that he had?

Mr. Beach—That is objectionable, Sir.

Judge Neilson—He has answered that question, that he does not know that he ever did.

Mr. Everts—The question is, if you ever heard from Mr. Tilton that Mr. Tilton had any agency in it.

Mr. Beach—Put that question.

Q. Did you ever hear from Tilton that he had any agency in procuring your employment? A. No, Sir; I never did.

Q. Now, you have referred to a suggestion of Mr. Tilton's that your contract with *The Christian Union* should be in writing; was that after your contract with Mr. Beecher had been made—your engagement with Mr. Beecher had been made? A. Yes, Sir.

Q. Did you actually enter upon your employment at that time? A. No, Sir.

Q. But the engagement had been made? A. The engagement had been made; yes, Sir.

Q. Did you request Mr. Tilton to draw the contract for you? A. No, Sir.

Q. It was a thing he volunteered to do? A. Yes, Sir; he volunteered to do it; I assented, however, to his doing it.

Q. Did Mr. Tilton give you any reason why you should have a written contract with Mr. Beecher? A. Yes, Sir.

Q. What reason did he say—what reason did he give? A. He said he would cheat me, if I didn't.

Q. Who would cheat you? A. Mr. Beecher.

Q. Well; Mr. Beecher would cheat you? A. Yes, Sir.

Mr. Tracy—That is all, Mr. Johnson.

Mr. Morris—Wait a moment, Mr. Johnson.

Mr. Beach—There is no question, Sir; you can go.

Mr. Everts—That is all, Mr. Johnson.

Mr. Tracy—Wait a moment.

Mr. Fullerton—Oh! I beg your pardon.

#### MR. JOHNSON MAKES A CORRECTION.

The Witness—I wish, on recollection, to correct my testimony in one respect; in regard to the Middlebury paper. It was not in 1834 that I was connected with it; it was in 1835 or 1836. I remember now distinctly, since I spoke the last time; I can fix it absolutely, it was in 1836. It was at the time of the presidential election of 1836—the time preceding that election.

#### RE CROSS-EXAMINATION OF MR. JOHNSON.

Mr. Fullerton—When do you say, this conversation was with Mr. Tilton in respect to his presiding at Steinway Hall? A. I say, after he had done it; after that meeting.

Q. Yes; probably it was? A. Yes, Sir.

Q. But how long after? A. It may have been the next day, or it may not have been until two or three days afterwards; I am not quite sure.

Q. Are you sure it was within two or three days? A. Yes, Sir.

Q. Positive? A. Yes, Sir.

Q. How do you fix the time? A. Well, I could not fix it beyond the possibility of mistake.

Q. Well, then, when might it have been? A. I think it must have been within a very few days of the time.

Q. How are you enabled to fix it within a few days after that meeting? A. Well, it connects itself with the act itself, and I recall my statement of disappointment and regret at his having done it, and my desire to see him as soon as I could.

Q. Never mind your desire. A. I am answering your question, Sir.

Q. That is the way you fix the time? A. Yes, Sir.

Q. Now, are you aware that Theodore Tilton left on the seven o'clock train on the morning following the Steinway Hall meeting, on a lecturing tour, and was gone for a long time out of New-York? A. No, I do not; it is barely possible it may be so; I would not undertake to fix positively the time, I only know it was a time not a great while afterwards; whether it was well—if it were a fortnight or even three weeks, it would not surprise me very much; I don't remember.

Q. It may have been longer than that? A. It is hardly likely to have been longer than that I think.

Mr. Fullerton—That is all.

Mr. Everts—That is all, Mr. Johnson.

#### TESTIMONY OF ISABELLA G. OAKLEY.

Miss Isabella G. Oakley was next called and sworn on behalf of the defendant.

By Mr. Tracy—You reside in Brooklyn, I believe, Miss Oakley? A. I do.

Q. And are engaged in teaching? A. I am.

Q. Do you know Mr. and Mrs. Tilton? A. I know them.

Q. How long have you known Mr. and Mrs. Tilton? A. Since before their marriage.

Q. Since before their marriage. How long before? A. I should think a year, perhaps.

Q. Can you speak conveniently a little louder, so that the further juryman can hear you? A. I will try.

Q. Were you at any time an inmate of the same house with them? A. I was. Shall I state when?

Q. How soon after their marriage? A. When Florence was eighteen months old during several months.

Q. Since Florence was about eighteen months old? Shall I repeat the answer, or the stenographer?

Judge Neilson—You had better repeat it; it will save time.

Mr. Tracy—You became an inmate of the same house with them when Florence was about eighteen months old. Can you tell us about when that was, Miss Oakley? A. It was about sixteen or seventeen years ago.

Q. Sixteen or seventeen years ago. Where were they residing at that time? A. At 48 Livingston-st.

Q. With whom? A. With Mrs. Richards.

Q. The mother of Mrs. Tilton? A. I was Mrs. Richards's guest.

Q. How long did you reside there with Mrs. Richards when they were boarding with Mrs. Richards on that occasion? A. If they were then boarding, it was perhaps four or five months that I was with them.

Q. You were with them four or five months. Then when were you with them again at any time? A. I spent a part of the summer vacation several years subsequent to that, once at Keyport, once at Cornwall up the Hudson, and at various times, for a week or two, perhaps, in their home in Brooklyn.

Q. Can you state when it was that you spent the summer with them at Keyport? A. I was with them twice at Keyport.

Q. Well? A. Once very early in their married life, and once several years after that; I don't know whether I could recall the year; I fear not.

Q. How many years afterwards, should you say? A. It was at the time Carroll was a baby; it was during Carroll's infancy.

Q. The last time you spent at Keyport was during Carroll's infancy? A. He was then two years old; perhaps the second Summer.

Q. When did you spend the Summer with them at Cornwall? A. That, I think, must have been the Summer before that; Carroll was then a little baby.

Q. At any other place? A. Perhaps they both occurred that Summer; I cannot say.

Q. At any other place have you spent the Summer vacation together? A. We were together at Mr. Moses Beach's, at Poughkeepsie, for a week or two one Summer.

Q. When was that? A. I could not say exactly; it was previous to 1866.

Q. Well, have you spent any time with them in any other place in Brooklyn than 48 Livingston-st.? A. I don't think that I have spent more than to or three days at a time in their other house, but I have been a visitor there.

Q. How frequently were you a visitor at their house while they were residing in Oxford-st.? A. No, Sir; I was not in Brooklyn at that time.

Q. You left Brooklyn? A. I was away from Brooklyn.

Q. When did you leave Brooklyn and return? A. I came and went repeatedly, as a teacher, but I was not out of town

all the time. I never saw them at their home in Oxford-st.

Q. Well, where did you see them next after they moved from Oxford-st. in their home? A. I suppose at 48 Livingston-st. again before they moved down.

Q. Have you seen them in their present home in Livingston-st.? A. In their former home?

Q. 174 Livingston-st.? A. I have.

Q. How much time have you spent in their family during their residence at 174 Livingston-st.? A. Not a great deal; I was at one time, when Mr. and Mrs. Tilton were absent with their children for a few days—a week perhaps; I don't remember.

Q. Well? A. I have not spent much time under that roof; very little.

Q. Well, how often have you visited there? A. During the first year and a half of their residence there quite frequently I was—

Q. Spending about how much time at a visit? A. Oh, not very long; an hour or two; they were calls chiefly; I was very busy with school; I could not be there very much.

Q. Well? A. In the year 1867 I discontinued my visits there very largely.

Q. After 1867? A. Excepting during Mr. Tilton's absence from home.

#### THE TILTONS' EARLY MARRIED LIFE.

Q. Now, Miss Oakley, will you tell us how Mr. and Mrs. Tilton lived together during the first years of their married life, whether pleasantly or otherwise? A. In general their relations were pleasant.

Q. Did you at any time, on visiting their house or being with them, observe a change in his treatment of Mrs. Tilton? A. I did.

Q. What was it? A. After their removal to their home at 176 Livingston-st.—or 186.

Mr. Shearman—Then 186.

The Witness—Mr. Tilton was less agreeable in his family less at home, probably, and when there he was more moody than formerly. He was sometimes openly critical of his wife in my presence; was negligent of her frequently.

Q. Have you heard him reproach his wife for anything at any time in your presence? A. I have heard him disparage her for using the English language incorrectly.

Q. Well, what did he say? A. I heard him at table one time say openly to his children that he hoped they would never use such English as their mother did.

Q. In her presence? A. In her presence at the table.

Q. What else did he say on that subject? A. I don't remember anything else in that connection.

Q. Did you observe at any time—I will put another question. In your early acquaintance with them, were you acquainted also with the friends and associates of Mr. Tilton? A. Yes, Sir, to a degree.

Q. You knew with whom he associated, who visited him at his house, did you? A. To a certain degree, I did.

Q. Did you at any time, observe a change in those friends and associates?

Mr. Beach—Well, one moment, I object to his calling for a judgment or opinion of the witness. They can ask who the persons were, could ask her judgment as to whether they were a different class of people.

Mr. Tracy—I didn't ask whether they were a different class of people; I asked whether she had observed a change in his friends and associates.

Mr. Morris—We object to the question.

Mr. Evarts—She can say yes or no.

Mr. Morris—I know she can say yes or no.

Mr. Tracy—Then we will find out what the change was, if she did observe a change. If she says she did not, that will be an end of the inquiry.

Judge Neilson—I think she may answer yes or no.

The Witness—I did observe a change.

Q. When did you first observe that change, Miss Oakley? A. I cannot say when; I suppose it was gradual; my observation of it was gradual, probably.

Q. When do you recollect of observing it—during what years, if you can state? A. Why, I would say after the year 1866, when I came to live in Brooklyn; I knew of various visitors at the house whom I would rather not meet—

Mr. Beach—That is objected to.

Judge Neilson—Strike that out.

Mr. Beach—I move to strike that out.

Judge Neilson—Strike that out; yes Sir. [To Mr. Tracy]. Here is an appeal that you repeat the answers.

Mr. Tracy—I will try and observe that, your Honor.

Q. Did you observe friends and associates visiting the house who had not visited during your prior acquaintance with the family? A. Certainly.

Mr. Tracy—She says certainly, she didn't observe that change.

Mr. Beach—No, she didn't say that; she said certainly.

Mr. Tracy—That answers the question.

Mr. Beach—I beg you not to add it to the question.

Q. Who were these friends and associates that visited the house in 1866 or 1867?

Mr. Beach—She has not said they were associates, Sir.

Mr. Tracy—The first question included friends and associates—the first question did and the second one, and she answered—

Judge Neilson—Ask her simply who they were.

Mr. Tracy—Who were they? A. Those persons who were acquainted with him.

Mr. Beach—That calls for names.

Mr. Fullerton—And personal knowledge, also.

Judge Neilson—The question is, Who were they. If you know, say so; and if you don't, say so.

The witness—I can recollect Miss Anthony and Mrs. Stanton.

Q. You can recollect Miss Anthony and Mrs. Stanton. Who else do you recollect? A. I know of Mr. Stephen Andrews being there.

Q. Stephen Pearl Andrews? A. Yes, Sir.

Q. Any one else that you remember? A. I don't recall any other names now.

Q. You don't recall any other names now. Did you observe, at or about this time, a change in Mr. Tilton's views on the subject of the marriage relation? A. I heard him openly express views upon that subject.

Q. What views did you hear him express upon that subject? A. I would perhaps better modify what I said last. I heard him openly say that he no longer held such views as he formerly held on that subject.

Q. You heard him say he no longer held such views as he formerly held on the subject of the married relation. When did you hear him say that? A. I heard him say that at the table.

Q. At the table. Who was present at the table? I think Miss Anthony and Mrs. Stanton were there on that occasion.

Q. You think Miss Anthony and Mrs. Stanton were there on that occasion. Was Mrs. Tilton present? A. She was.

Q. Mrs. Tilton was also present. Were the other members of the family present? A. The children.

Q. The children were also present. Did he say anything more on that occasion than that? A. I have forgotten any further conversation than that. It left an impression on me.

Q. You have forgotten any further conversation at that time? A. At that time.

Q. Did you observe what effect, if any, that produced upon Mrs. Tilton? A. I did.

Q. What effect did it produce? A. It grieved her and brought tears to her eyes.

Q. Her eyes filled with tears?

Mr. Fullerton—No, Sir.

Q. Brought tears to her eyes? A. Yes, Sir.

Q. What did she do? A. I don't recollect that she did anything.

Q. You don't recollect that she did anything? A. I have part of an impression that she left the table, but I could not say that she did.

Q. You have a recollection that she left the table, but could not say she did?

Mr. Morris—She did not say so. She said "part of an impression."

Mr. Tracy—You have a part of an impression that she left the table, but cannot say certainly? A. No, Sir.

Q. At any other time, did you hear him discuss the marriage relation? A. No time that I can definitely recall, but I have heard him talk a great deal, and had a great deal of conversation with him on many topics.

Q. On the subject of the marriage relation? A. I cannot say precisely.

#### MR. TILTON'S SHIFTING RELIGIOUS VIEWS.

Q. Now, did you at any time observe a change in his religious sentiments also? A. I did.

Q. You did. At what time did you observe this change in his religious views? A. That change was very gradual, run-



ning along through all the years, perhaps, from 1860 to 1870, during which I saw him more or less.

Q. That change was gradual from the year 1860 to 1870? A. To 1867 or 1868.

THE TRIBUNE stenographer—She said 1870.

The Witness—I did say so, a general statement, but I saw very little of Mr. Tilton after 1867. I doubt if I had much conversation with him on any subject during 1868 and 1867. On the contrary, I can say certainly I did not in 1870.

Q. You saw but little of him after 1867? A. Very little; I hardly ever saw him.

Q. So you fix the time—the period of this change within your knowledge from 1860 to 1870? A. Ten years previous to that; about that.

Q. What was that change? A. A change from what were considered the orthodox views.

Mr. Beach—I beg pardon.

Judge Neilson—The question is what he said. The question is what did Mr. Tilton say on that subject?

The Witness—I understand, I am recalling it; I heard Mr. Tilton declare that his belief in the atonement was no longer what it had been, for one thing.

Q. You heard him declare that his belief in the atonement was no longer what it had been, for one thing? A. It was no longer the accepted view of the atonement—the orthodox view.

Q. What else? A. I cannot recollect any definite statement of his. Having had many conversations, I am confident that they included all sorts of subjects.

Mr. Beach—Wait one moment.

Q. Did you hear him say anything on the subject of his belief in the divinity of the Scriptures? A. The inspiration of the Scriptures? I have; I am sure we talked of it.

Q. What were his views of the inspiration of the Scriptures? Judge Neilson—What did he say? A. I cannot say; I cannot recall the conversation.

Q. Can you recall the substance of it? A. Yes, Sir; I can swear Mr. Tilton no longer held our old fashioned belief in the inspiration of the Scriptures.

Mr. Morris—[To Judge Neilson]—Is that proper testimony?

Judge Neilson—No.

Mr. Morris—I move to strike it out.

Judge Neilson—It is struck out. It is an inference or deduction of the witness.

Q. What did he say on that subject? A. I could not possibly recall our conversations; I have talked a great deal with him on these topics, and I have talked on the orthodox side, and he on the opposing side; that is all I can say.

Q. Can you say whether or not, in substance, he said he believed in the inspiration of the Scriptures?

Mr. Beach—Wait one moment.

Judge Neilson—That is answering for the witness.

Q. Now, can you say, Miss Oakley, whether he, in substance, said he did not believe in the inspiration of the Scriptures?

Mr. Beach—Objected to.

Judge Neilson—That is leading and improper, and ruled out

It calls for the opinion of the witness. What did he say, in substance, on the subject of his belief in the inspirations of the Scriptures?

Mr. Beach—What he said.

Mr. Tracy—In substance.

The Witness—I understand.

Q. Well, what is your answer? A. That he did not believe in their inspiration.

Q. He said that he did not believe in the inspiration of the Scriptures?

Mr. Beach—Does she say so?

The Witness—I answered so.

# MRS. TILTON'S GRIEF AT HER HUSBAND'S UNBELIEF.

Q. Now, did you observe, Miss Oakley, the effect that this change in his religious sentiments had upon Mrs. Tilton? A. I did.

Q. What effect did it have? A. It was a constant source of trouble to her; she often solicited me to talk with her husband—Mr. Beach—That is not proper, madam.

Q. Did you talk with him in pursuance of the suggestion or request of Mrs. Tilton? A. It is those conversations I tried to give the result of, but the facts of the conversation I could not recall, with the one exception I swore to.

Q. Those conversations you say you had with him at the request of Mrs. Tilton?

Mr. Beach—That is not proper.

Mr. Tracy—Why not?

Mr. Beach—Simply because it is not. I have no particular objection to it.

Mr. Tracy—I was repeating the substance of her answer.

Mr. Beach—I objected to it at the time.

Mr. Tracy—I did not understand it.

Mr. Beach—It is not of any importance.

Q. State whether or not this request of Mrs. Tilton upon you to talk with Mr. Tilton on the subject of his religious opinions was frequent? A. It was frequent.

Q. Did you frequently talk with him on that subject? A. We often had talks on that subject.

Q. At the request of his wife? A. Yes, Sir; and with her—mutual conversations: they were not lectures.

Q. To what degree did this change in his religious sentiments affect Mrs. Tilton? A. It depressed her constantly.

Q. How did she manifest that depression? A. By telling me—

Mr. Beach—I don't think it is proper.

Q. How did she manifest it in his presence, or to you; not by what she said, but by her acts and conduct? A. I don't think I inferred from that—

Mr. Morris—One moment.

The Witness—But from things she said—from her words.

Q. I will ask you this question: Did you or not ever see her weeping when the subject of his religious opinions was the subject of conversation?

Mr. Beach—Between whom?

Mr. Tracy—[To the witness.] Between yourself, Mrs. Tilton and her husband? A. I cannot recollect that she ever wept.

#### MRS. TILTON AS A WIFE AND MOTHER.

Q. You cannot recollect that. Now, Miss Oakley, did you observe the character of Mrs. Tilton as a wife and mother? A. I did.

Q. What was it? A. As a mother, tender and wise; as a wife, passionately devoted to her husband.

Q. As a mother, tender and wise; as a wife, passionately devoted to her husband. How long did this continue? A. Since I knew her; since I knew them together up till now.

Q. Since you knew them together? A. Yes, Sir.

Q. Now, how long has your acquaintance continued with Mrs. Tilton? A. Up to the present time.

Q. Up to the present time. Were you at the house in Livingston-st. in the Winter of 1869—in the Winter of 1869-70? A. I think I was there the February of that Winter once, for a short call on Mrs. Tilton.

Q. How long did you remain? A. Oh! not half an hour. I think I can identify it as that Winter. It was after her trouble.

Q. How often did you visit Mrs. Tilton after 1867? From that until the year 1872, when I left the city, not very frequently; during the absence of her husband, perhaps once a week or once in two weeks.

Q. You continued your visits once a week, or once in two weeks, down to what time? A. Down to 1872.

Mr. Morris—She says during the absence of her husband.

Mr. Tracy—Yes, during the absence of her husband.

The Witness—Down to 1872.

Q. Did this devotion of Mrs. Tilton to her husband continue as long as you knew her? A. Yes, Sir.

Mr. Beach—I object to that. She has not shown any capacity to judge between the husband and the wife after 1867.

Mr. Tracy—She has shown that she has known the wife continuously, visiting her house once a week, or once in two weeks, down to 1872.

Mr. Morris—During the absence of the husband, she says.

Mr. Tracy—I don't see that that makes any difference. She has a right to judge of the conduct of the two in the home and family, what she said and did on the subject. The correspondence has been introduced as a mere statement of the wife and the husband towards each other.

Judge Neilson—You may ask what she observed, if anything.

Mr. Tracy—That is what I do ask.

Judge Neilson—No. Did she observe anything?

Mr. Morris—Those were communications between themselves.

Judge Neilson—One moment, gentlemen. This is too plain to be the subject of any trouble. Did you notice anything in their intercourse bearing on her regard for her husband, and if so, what, I think might be the question.

Q. Did you introduce anything in her intercourse at the time you visited her?

Mr. Beach—After 1867.

Mr. Tracy—After 1867, bearing upon her affection for her husband? A. She read me his letters during the Autumn.

Judge Neilson—Say yes or no, Madam.

The Witness—Yes.

Judge Neilson—She did observe something.

Mr. Tracy—What did you observe? A. I have heard extracts from the letters that were written when he was away. He was always spoken of—

Mr. Beach—Wait one moment. I object to what she said.

Mr. Tracy—Well, we insist upon what she said as legal evidence and competent evidence. What she said concerning her affection and devotion to her husband is competent evidence.

Judge Neilson—Well, let her answer.

Mr. Beach—Note our exception.

The Witness—I have heard her speak of him—

Mr. Tracy—Go on, Miss Oakley.

The Witness—And always in the same tone.

Mr. Beach—No, Madam, please say what she said. A. I don't remember it.

Mr. Tracy—Can you not remember the substance of what she said? A. Why, yes, in substance she spoke of him always as before that with the same admiration and devotion, never in any other way. We didn't talk of him as much, though, as we used to; I don't think so. That was the reason.

Q. You observed no change in her feelings towards her husband?

Mr. Beach—That is objected to.

Judge Neilson—I think she has answered all she can on that subject. She has virtually said she saw no change.

#### MR. BEECHER'S CALLS ON THE TILTONS.

Q. While acquainted with the family, did you see Mr. Beecher at Mr. Tilton's house? A. I have.

Q. Making calls upon the family? A. Making calls.

Q. How often have you seen him there? A. Not more than half a dozen times; I should think that was all; perhaps not so often.

Q. Did you see him in the presence of the family and Mrs. Tilton? A. Yes, Sir, I have seen him with the children on one occasion—up stairs with the children, and my call was up stairs also. In Livingston-st. I recollect one social call when I was there—I mean at 48, and I can recollect two or three times at 176 Livingston-st. meeting Mr. Beecher either in the house or coming from there, and I think once I met him at the gate; in all, I should say half a dozen times, and once I recollect on stated occasions, when he was invited there in the evening—

Q. You mean to say you have seen him half a dozen times calling on Mrs. Tilton and the children—seen them together at the two houses.

Mr. Beach—She does not say she saw them together half a dozen times.

Mr. Tracy—That is what I asked her. [To the witness.] What do you say to that, Miss Oakley? A. I recollect once meeting Mr. Beecher at the gate.

Q. I know. A. He had just come from the house. I would include that in the half dozen times. On the other occasions I

saw him with the family; I don't remember exactly who was there. It would be impossible to remember.

Q. What did you observe in his intercourse with Mrs. Tilton?  
A. I observed only that he was friendly with the children, and acting as a friend; nothing more.

Q. Did you observe anything that indicated an unusual affection between Mr. Beecher and Mrs. Tilton?

Mr. Beach—It is objected to.

Mr. Morris—That calls for an objection.

Mr. Beach—She can state what she observed.

Judge Neilson—Yes, Sir.

Mr. Tracy—That is a question upon which we have a right to the opinion of the witness.

Mr. Fullerton—Is she an expert?

Mr. Tracy—I don't call her an expert. That is a question where a witness who has seen them together is entitled to give an opinion under all the rules of evidence.

Mr. Beach—We object to it.

Judge Neilson—[To Mr. Tracy.] You can ask her what she observed.

Mr. Tracy—I understand.

Judge Neilson—I don't know whether you do or not.

Mr. Tracy—I asked her if she saw anything which indicated an unusual affection between Mr. Beecher and Mrs. Tilton.

Judge Neilson—It is not for you to frame your question so as to indicate the answer you want. Ask her if she observed anything as to their intercourse.

Mr. Tracy—I will take your Honor's ruling on my question as I put it.

Judge Neilson—It is ruled out as you put it. It is easily modified.

Mr. Tracy—Now, what did you observe upon those calls of Mr. Beecher touching his intercourse with Mrs. Tilton? A. I observed friendliness and good nature on his part, and friendliness on hers.

Q. Anything more? A. No, Sir; no more; what I observed in Mr. Beecher in other houses, friendly calls simply, when we were all together.

Q. Did you observe anything more than a mere friendly call? A. Nothing more.

Q. At the time of these calls, did or did not Mr. Beecher spend his time with the children, more or less? A. On two such occasions I recollect that the children were the chief objects of attention. They are the only two occasions of which I have a very distinct recollection; the others were informal.

Q. Describe how he spent the time with the children, Miss Oakley? A. I don't believe I can.

Q. What his intercourse with the children was? A. I don't believe I can. I recollect his playing with Carroll when he was a baby on one of those occasions; on the other I could not describe anything. I know we were together in the second story front room, which was the sitting and reception room for intimate friends, and I recollect the picture of Mr. Beecher sitting there, and the children playing about; nothing further.

Q. Do you recollect the children being on his lap? A. I don't know that I do.

Q. What time of day were these visits usually made, so far as you observed? A. I could not possibly tell. It was during daylight.

#### CROSS-EXAMINATION OF MISS OAKLEY.

Mr. Fullerton—Miss Oakley, I did not understand you to tell us how often you visited the house after 1867? A. Do I understand you to ask me a question?

Q. Yes. Please state. A. How often I visited the house after 1867?

Q. Yes. A. From that until 1872; not as frequently as before, and yet perhaps as often as once a fortnight.

Q. Since the Autumn of 1870, how often have you visited the house—up to the time that Mrs. Tilton left? A. I was away from Brooklyn from the Autumn of 1872 until within a few months; I have been living in Connecticut, and from 1870 to 1872 I was there—well, I suppose perhaps once a month; may be a little oftener; perhaps not as often. I don't think less than once a month.

Q. Well, you heard of this scandal, did you not? A. I have heard of it from the publications. When do you refer to?

Q. When did you first hear of it? A. You mean the public scandal, as it now exists, as it stands before the public?

Q. Well, not with all its accumulations, but when it first started did you not hear of it? A. When it first became public here?

Q. Yes. A. I heard of it in New Haven.

Q. When first? A. In the Fall of 1872, I think it was; after the Woodhull publication.

Q. Have you been excited, somewhat, upon the subject from that time to this? A. I have taken a deep interest; I could not be said to have been excited.

Q. You took sides, did you not? A. Oh, decidedly!

#### MISS OAKLEY'S INFLUENCE ON FLORENCE TILTON.

Q. Did you ever make an effort to have any other person take the same side that you did in regard to it? A. Not of my own pushing of the case before others, but when it has been put to me I have always expressed my opinion.

Q. Connections? A. My connections.

Q. Did you ever undertake to influence the eldest daughter of Mr. Tilton upon that subject? A. No, I never had a word with her upon the subject that I can remember, if I can except having written her once this Winter some words—a few words in respect to her own course; never before that, that I can remember.

Q. Then you communicated with her in writing? A. This Winter I have written her once.

Q. In that letter did you attempt to influence her upon the one side or the other of this controversy?

Mr. Evarts—We object to that.

Mr. Shearman—You need not answer that.

Judge Neilson—Well, the letter will prove.

Mr. Fullerton—I believe it will.

The Witness—I should be willing it should be read if it all may be read.

Mr. Beach—Can't we ask her whether she wrote upon her

tain occasion, a certain sentiment, without producing the letter, on cross-examination?

Judge Neilson—If she wrote upon a certain subject.

Mr. Beach—It is the constant course pursued here, and I submit is admissible in law, to ask her whether she did not say, either by words or writing, upon a certain occasion, to a certain person, a certain thing.

Mr. Tracy—That is not the question that counsel put. The question was whether she did not attempt to influence her.

Mr. Beach—That we can ask her on cross-examination.

Judge Neilson—I think you can, on cross-examination.

Mr. Shearman—If your Honor please, that question was settled fifty years ago in the House of Lords, in the Queen's case.

Mr. Fullerton—That is too long ago.

Mr. Shearman—It is older than most of us here. It was there settled that before they could even ask whether a person had made representations on a certain subject, and that on cross-examination that they were bound to show whether it was in writing or verbal, and if it was in writing to show the letter.

Mr. Beach—And our Court of Appeals have settled that when we ask the witness the question whether or not a certain declaration was made, if it appears to be in writing we can hand the writing to the witness, but we still can insist upon an answer to the question which is put.

Mr. Fullerton—That is better than the House of Lords, a good deal.

Mr. Beach—Yes; and it is a little more recent.

Mr. Tracy—It is exactly the same thing, if your Honor please; they have not shown the letter.

Mr. Beach—That is not the question. We have not insisted upon that at all, and we are perfectly willing the lady should see the letter.

Mr. Everts—There is no doubt you may show a letter or any other paper to a witness, and take the answer after seeing the paper.

Mr. Beach—That ain't the decision in Queen Caroline's case, as Shearman reports it.

Judge Neilson—Now, then, Mr. Fullerton, you have got the letter there?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Go on.

Mr. Fullerton—How did you send that letter, Miss Oakley? A. I have forgotten; I think I sent it to the school at which the young lady was teaching.

Q. Where was she teaching at the time? A. I think in the public school No. 4.

Q. And where were you when you wrote the letter? A. I was on Grand-ave.

Q. In this city? A. In this city.

Q. Did any one suggest to you to write that letter? A. I don't recollect it.

Q. Task your recollection as well as you can, Miss Oakley; didn't somebody suggest to you to write that letter? A. As to the letter in question I think I can say no; as to the subject of having some conversation with Florence, I think it was spoken of between me and others of her friends.

Q. Ah! about having a communication with Florence. Did

you write that letter until you heard that Florence might be a witness for her father on the trial of this case? A. I think it was with reference to that that the letter was written.

Q. Yes; that is a candid answer. And who suggested to you, pray, that Florence might be a witness for her father? A. That was a matter that I probably heard from several.

Q. Please name them? A. It was a matter of conversation between me and several of those who knew the course of the trial.

Q. Name them, please? A. I think Miss Moore may have spoken of it to me. I think Mrs. Morse may have.

Q. Miss Augusta Moore, the witness who testified yesterday? A. Yes, Sir. Mrs. Morse, I think, spoke of it.

Q. That is the mother of Mrs. Tilton, I believe? A. That is Mrs. Tilton's mother.

Q. Please name a third, if you can? A. I don't think—unless Mrs. Ovington may have mentioned it to me.

Q. Did Mr. Ovington? A. Mrs. Ovington.

Q. Mrs. Ovington? A. I cannot say; I know it was spoken of as between me and those interested in the trial as a possibility, and deprecated as such.

Mr. Beach—We don't ask for that.

Mr. Fullerton—Yes.

Mr. Beach—Oh, no!

Mr. Fullerton—Yes; they deprecated it. [To the witness.] Do you think, according to your best recollection, that Mrs. Ovington was one of the persons who spoke to you upon the subject? A. Oh, I don't know. I have had a good many—not a good many, but several communications with her in respect to the trial.

Q. Well, your best recollection upon that subject please give me, Miss Oakley. A. I couldn't say truly; perhaps not.

Q. I don't quite understand what you mean by your answer. "Perhaps not" is not an answer to my question. A. I think, perhaps, Mrs. Ovington was not one; yet she may have been.

Q. Well, have you any recollection upon the subject that will enable you to state whether she was or was not one of the persons? A. I couldn't say distinctly who mentioned to me that Florence—that Mr. Tilton's eldest daughter—might be called to the witness stand; but that I knew that it was anticipated, I can say; and it was the result of conversations with several of those who were interested in the trial.

#### CLOSE QUESTIONING.

Q. Now, my question is whether Mrs. Ovington was one of those several persons who thus talked to you on the subject? A. I felt that she may have been. I cannot say, certain.

Q. What is your best recollection upon the subject? A. Why, I don't know that I can improve it.

Q. Well, give it to me without being improved, then. A. Then you have had my best recollection.

Q. No; I beg your pardon. You have not given me your best recollection. You say she might have been one of them. Now, I want to know whether, according to your best recollection, she actually was one of them? A. Well, I feel that I gave you my best recollection when I first answered you.

Q. When you said she might have been one? A. Yes, Sir.

Q. Well, I know she might be one, and so any other person might be one who was not one? A. I included her with the several with whom I have talked who were interested in the subject, and it is possible that she was one of them; it is possible that she was not. I am not sure that Miss Moore was; I think she was. I think it has been spoken of between several of us.

Q. Well, do you think that Mrs. Ovington talked with you about the possibility of Florence becoming a witness for her father? That I understand you to say. A. I feel that it is possible that I have talked with her, but I have not had many conversations with her—but two or three times.

Q. Now, can you name any other person than those you have named? A. I think it was spoken of between me and Mrs. Tilton.

Q. Yes, Ma'am. How often? A. I don't think often. I have not seen Mrs. Tilton often; probably once.

Q. Do you recollect more than one occasion when Mrs. Tilton spoke to you about it? A. No; I do not positively recollect an occasion, but I know it has been spoken of by some of those of us who have talked together about it.

Q. Now, can you name any one else who spoke to you upon that subject—with whom you have conversed upon the subject of the possibility or probability of Florence becoming a witness in this case? A. I cannot think of any one else.

Q. Well, what was the purport of the talk as to how you should communicate with her? A. I don't know. I don't understand that I was requested to communicate with her. Do you wish me to say that?

Q. You told me that you were not requested to write to her, and I inferred, probably, from that that you were requested to communicate with her in some other way? A. No, I have not been acting as any one's agent in the matter. I wrote the outflow of my own feelings towards the child; I am sure of that.

Q. Was not the suggestion made that it better be done by some one, and that it ought to be done? A. I could not certainly say.

Q. Was not the suggestion that it better be done, or ought to be done, without requesting or intimating that there was any desire that you should do it? A. I could not tell you that. I don't fairly remember what I wrote, but I recollect writing.

Q. It is not in reference to what you wrote, Miss Oakley; it is in reference to what was the subject of the conversation with you before you wrote. Now, was it suggested that Florence ought to be communicated with in some way, without suggesting that you should do it? A. It may be so. I could not deny that nor assert it.

Q. Is it your recollection that it was so? A. Why, I suppose it was, although I cannot fairly recollect the occasion, nor the statement.

Q. By whom did you send that letter? A. That I forget; but I know I did not send it by post, because I did not know precisely where the school was. Oh, yes, I did, too. I don't know fairly now. I recollect not knowing where the school was, and I think I asked somebody to ascertain where the

school was and post it for me—my niece, who did many errands for me in the Winter.

Q. You think she carried the letter? A. No; I think she found the address of the school and posted it for me.

Q. Now, before writing that letter, Miss Oakley, had it come to your ears in any way what Florence would probably testify to if she were put upon the stand as a witness? A. No.

Q. Did not a rumor reach your ears as to what she might testify to? A. No, it was a matter of speculation as between me and those who talked about it, but as to there being any rumor as to what she would testify to, I cannot say that there was.

Q. What was the extent of the speculation upon that subject? Mr. Tracy—We object to that, your Honor.

Mr. Evarts—Any action of this witness-bearing upon her attitude towards the cause or towards the parties is legitimate evidence, of course.

Mr. Fullerton—That is the reason I put the question.

Mr. Evarts—The speculations of other people are not.

Judge Neilson—I think you have it sufficiently, Mr. Fullerton.

Mr. Fullerton—Well, if your Honor will permit me to try in another way.

Judge Neilson—Well.

Mr. Fullerton—At the time of writing that letter, had you a fear, however faint, that Florence might testify to something against her mother? A. I think I can fairly say that in writing that letter—I can barely recall what is in it now.

Q. Well, I didn't ask you about writing the letter, any further than— A. I want to make my own statement.

Judge Neilson—The word "no" answered the question.

The Witness—All right; no, then.

Mr. Fullerton—You had no apprehension, however faint, that her testimony might mitigate against her mother in any degree? A. I had no apprehension on any ground of my own knowledge.

Q. That is not what I asked you, Miss Oakley. [To the Stenographer.] Please read the question.

THE TRIBUNE stenographer read the last question.

Mr. Evarts—Is not that within our last objection?

Mr. Fullerton—No, Sir; that is personal to the witness. I changed my question so as to avoid your objection.

Mr. Evarts—Ah!

Judge Neilson—I think it goes to the quality of the witness's mind.

Mr. Evarts—The question is whether when she wrote the letter she had apprehensions.

Mr. Fullerton—In answer to that question, I want to know what was the prevailing or guiding influence of apprehension at the time.

Judge Neilson—I think it goes to the mind of the witness.

Mr. Evarts—Very well.

Mr. Fullerton—What is your answer, Miss Oakley? A. I have answered, I believe. I had no apprehension from any reasons of my own.

Q. Now, Miss Oakley, pardon me, I did not ask you if you had any apprehension from any reason of your own; I asked you whether you had any apprehensions, whatever they may

have grown out of, that Florence might give evidence that would militate in some degree against her mother, when you wrote that letter? A. Can I be said to have had apprehensions which were—when I may have had thoughts that were the result of the communications of other people? If it had been—

Q. I refer to apprehensions in your own mind, whatever may have been the origin of them.

Mr. Beach—Or any expectations? A. I am puzzled to know how to answer it. I do not feel that I can say that I had apprehensions that Florence would give testimony against her mother.

Q. Not in the slightest degree? A. Yes; I think I can say—I had no reasonable grounds for such apprehensions.

Q. That is not the question, Miss Oakley? A. I do not believe I can be said to have had apprehensions.

Q. Whether reasonable or unreasonable, did you have any apprehensions, however slight, that Florence might go upon the stand as a witness in this case, and give evidence that possibly might militate against her mother? A. I feared that she might be called to the witness stand. I knew that it was a matter of deprecation among all of us as towards her; beyond that I cannot say that I had apprehensions as to what would be the result of any testimony she would give.

Q. Didn't it enter into your consideration at all—the result of her testimony? A. I don't think it did, not as far as the evidence she could give was concerned, but her presence as a witness—I think I felt that.

Q. Would militate against her mother? A. It would be unfortunate. I think I had that feeling.

Q. Did you think it would militate? A. Oh, as to anything she would say; I don't think I had any feeling of that sort.

Q. Had no rumor reached you at all as to what she might say? A. No, I don't think that I felt that any apprehension—

Q. No, no. Had no rumor reached your ears as to what she might say? A. That I cannot say.

Q. I want you to reflect a moment. A. Well, then, I cannot say that none had reached my ears; I cannot remember to have heard anything—

Q. How? A. I cannot remember to have heard anything that she would or would not say, but that she might be called to the stand.

Q. Was not there a rumor afloat that she might be called and might say something? A. There was a rumor afloat that she might be called on the side of the plaintiff, and we presumed that she would be asked to say things on that side, and that, I suppose, was the animus of my writing that letter.

Q. That she might say things on that side? A. If she was called on that side, it would be presumed that she was expected to. I know nothing further.

Q. You say that was the animus? A. That, I suppose—I suppose that was the reason. I should like to know what I wrote; I have forgotten.

Q. Well, I will show you in a moment. We want to get at the motives first. A. I should remember my motive better if I could see what I wrote. Can I not see it?

Q. Not now. Let me ask you one more question. If I understand you correctly then, you say that you heard that Florence might be called as a witness for her father, and that she might say things that would be in aid of his cause? A. No, I didn't say that.

Mr. Evarts—No, she has not said that.

Mr. Fullerton—Now, Mr. Reporter, will you repeat what she has said.

The Witness—I said it was presumable—I said it was to be presumed, as being called by that side, that she might.

Mr. Fullerton—Yes, and that was your animus in writing the letter.

Mr. Evarts—The present question is whether she had not heard that she would say something.

Mr. Fullerton—No, no.

Mr. Evarts—It is exactly the distinction that the witness has drawn, that what she knew was that she was to be called, and presumably a witness would not be called unless she could say something.

Mr. Fullerton—I ask to have the reporter read what she said upon that subject.

The Witness—I was unfortunate in using the word “animus,” I suppose.

Mr. Fullerton—Perhaps it was unfortunate.

The Witness—I do not feel that it was the result of reflection or perhaps the proper word to use.

Mr. Fullerton—[To the stenographer.] Well, if you don't find it I will go on. [To the witness.] You had an object in writing Miss Florence a letter, had you not? A. I had.

#### THE OBJECT OF THE LETTER TO KEEP MISS FLORENCE FROM THE STAND.

Q. What was that object? A. Well, I will have to think a moment. It was undoubtedly to influence her to determine to be called by neither side. I have the impression that in the letter I begged her, as far as it was in her power, to keep quiet and not to allow herself to be called forward as a witness in the case.

Q. Miss Oakley, did you apprehend— A. I think that my feeling in writing that letter was a feeling of pity for the poor girl. I was sorry that she was in any way to be called.

Mr. Beach—[To Mr. Fullerton.] Now, don't let her run on.

Mr. Fullerton—Did you apprehend that Miss Florence would be called as a witness for her mother? A. I don't know whether that had been mentioned. The apprehension—

Q. Or for Mr. Beecher, rather, I should say.

Mr. Evarts—Let us hear what the apprehension was. She began to tell you what the apprehension was.

Mr. Fullerton—Well, she will finish it in her own way. [To the witness.] Did you fear, after your talk with Mrs. Tilton, that Florence would be called as a witness for the defense in this case? A. I cannot say positively that I did. I deprecated her being called.

Q. Now, that is the answer to the question? A. Very well, you have my answer; I cannot remember.

Q. You cannot remember whether you did or not? A. Very

well, Mr. Fullerton; I think I can say that I felt it would be a very cruel thing to call the young lady.

Q. No, that is not the question. No, no; that is not the question. You make me do a cruel thing to interrupt you so often.

A. You want to know why I wrote the letter, do you?

Q. I want to know this— A. I can say why.

Q. Whether when you wrote your letter you apprehended that Florence might be called as a witness for the defense in this case? A. I cannot say that I did.

Q. Now, then, I will put another question to you. Didn't you apprehend that she might be called as a witness on the part of the plaintiff? A. I think it was a matter of public advertisement, that had been mentioned in the letters or somewhere, in the newspapers. It was not a mere apprehension; it was an expectation.

Q. Then was it not to prevent that that you wrote the letter?

A. I suppose it was.

MISS OAKLEY'S LETTERS.

Q. [Paper handed to witness]. Now, is that the letter which you wrote to Florence? A. It is my handwriting.

Q. Very well; Madam won't you please answer the question?

A. It is my handwriting.

Q. It is the letter; isn't it? A. It is.

Q. And is that the envelope which contained it? A. It is.

Mr. Fullerton—Well, I fulfilled my promise to show it to you. [Paper handed to defendant's counsel]. I will ask you this question while they are looking at it. Did you show this letter to any one after you wrote it and before sending it? A. No; I did not.

Q. Did you write more than one letter to Florence? A. I believe not.

Q. Did you have any conversation with her? A. No.

Q. Before or after writing this letter? A. No; I have not seen her; have not seen her since October.

Mr. Fullerton—[Reading]:

426 GRAND-ST., Jan. 4. 1875.

MY DEAR FLORENCE: All the Autumn and Winter, so full of new cares and trials to you, I have been moved many times to come to see you, and offer my sympathy and counsel, if there were need of counsel, for I know the trials of a young life struggling with the irksome daily toll of the schoolroom, and facing all the necessities of life with unaided hands. No doubt there are sweet uses of sweet adversity, but the hardness of the yoke borne by the young merits more of pity and regret than of congratulation. But you have had sorrows to bear that I never knew, for you have been called to judge between your parents, and to mourn over a broken home. I was very glad you had been able to slip along quietly at Mrs. Bradshaw's, where, under the shelter of a friendly roof, you were protected from the public gaze; and I fear you will regret leaving her. You know Mattie and I both loved you in infancy, and through many years when your mother was my dearest and ideal friend, the most devoted wife, the most tender, wise, and sacrificing mother I have seen and known—"I have seen—wise and sacrificing mother"—perhaps that is a period—"I have seen and known a great many women, seen a great many mothers; as a teacher of children I have been intimate with mothers, but I have known few like yours. Her soul is bound up in her children now more than ever, even though if she had been widowed, and all

the happiness life can bring her will come through them. Do my dear Flora, consider well her claims on your fidelity and love, and in this extremity hold up her heart and hands. None knows better than I that it is she, and not your father, who now deserves loyalty and service, if any is able to serve her alone, after the fullness of a mother's life with every tie rent, she stands bleeding at all her life's arteries, and for no fault, but too weak a fondness for her husband. Your mother has been true to every one but herself, but her blind sacrifice of self to save him has led only to disaster. Do you not, dear Flora, take up that wretched role. Do not persuade yourself that you can help him. He it is who, in the vigor of his years and with the accumulated experience of a life, should protect and advance your woman's hands. If you have service to render and if you care to keep the best blessing of your future, cherish your mother. I hoped most earnestly that you would be spared any open avowal of your feelings and position towards your parents. I hope so still. May it not be forced on you by the selfish hand that has robbed every one to maintain his wretched case. But let no one persuade you to act in any way that will compromise your mother, before that shortsighted and hasty public, whom he studies to deceive. I do not want to say to you what I think of your father; but I cannot say anything without admitting my horror of his conduct, both towards his family and the public, debauched by his publications. I only want to plead with you for your loving suffering, mute and patient mother.

Lovingly, your friend,

ISABELLA G. OAKLEY.

[Marked Exhibit 112.]

Q. After writing that letter, did you tell any one that you had written it? A. I cannot tell you.

Q. Did you not tell Mrs. Tilton that you wrote it? A. Yes; I think I did; I recollect mentioning that I had written it—

Q. Did you tell Mrs. Ovington that you had written it? A. I don't know—no; I suppose not.

Q. Did you tell Mrs. Morse that you had written it? A. I presume I did.

Q. Does it rest only in presumption? A. No; I am sure that I did—I think I recollect mentioning to Mrs. Tilton that I had written to Florence; I had received no answer; and that is why I spoke of it to her.

MR. TILTON'S DISGUST WITH HIS WIFE'S ENGLISH.

Q. Well, I didn't ask for the conversation between you at all. Now, Miss Oakley, you were present once when Mr. Tilton called your attention, or the attention of the family, to the fact that his wife had spoken bad English? A. Yes; I remember.

Q. And observed to the children that he hoped they would not speak such English; was that all that was said upon the subject at that time. A. I cannot remember anything further.

Q. Well, did you hear what Mrs. Tilton said? A. Oh, she probably said nothing.

Q. Well? A. She usually did not reply—

Q. Well, one moment.

The Witness—To sarcastic observations.

Mr. Fullerton—Oh, Miss Oakley!

Mr. Evans—That is proper testimony.

Mr. Fullerton—It is not proper testimony, and yours was not a proper observation either. I didn't ask you that at all.

The Witness—She said nothing that I remember.

Mr. Fullerton—Now, I beg of you, don't make any occasion for bad blood here. I ask if you heard what Mrs. Tilton said when Mr. Tilton accused her of speaking bad English?

Mr. Evarts—That assumes that she said something. Does not that answer you?

Mr. Beach—She must have said something, if she spoke bad English.

The Witness—Oh! she said something—she made no reply.

Mr. Fullerton—I didn't ask what reply she made.

The Witness—I did not understand your question.

Q. Very well. A. No, I don't recollect what she said.

Q. Do you recollect whether bad English had been used? A. Her error in English would not have made any impression upon me, but her husband's rebuke made an impression upon me.

Q. You don't remember what the bad English was, if there was any? A. No; I suppose there was some to merit such a rebuke; I remember the rebuke very well.

Q. The rebuke was in saying to the children, "I hope you won't use such English as your mother does?" A. As well as the manner of saying it; the words and the manner together made the rebuke.

#### MR. TILTON'S SOCIALISTIC FRIENDS.

Q. Now, you have spoken of the acquaintances of Mr. Tilton; how early did you know of Miss Anthony's call there? A. I can't tell you.

Q. A little louder. A. I said I could not tell you—I recollect seeing both Miss Anthony—I recollect seeing Miss Anthony there more than once after I returned to live in Brooklyn. Previous to that, my coming and going from Brooklyn was merely as a matter of Summer vacation; in 1866 I came to live in Brooklyn.

Q. When did you come to live here in Brooklyn? A. In 1866; was here in 1872.

Q. When did you see Miss Anthony before that at Mr. Tilton's? A. I don't remember.

Q. Did you see her after that? A. I did, I suppose, after that; I can't place when.

Q. Well, can you state positively that it was not before 1866 that you saw her there first? A. Well, I should say positively that my recollection of her and Mrs. Stanton and other visitors whom I did not like to meet, was after 1866.

Mr. Fullerton—I am not speaking of anybody but Miss Anthony; don't drag in an army of other people; I am going to the others in due time.

The Witness—You mentioned all the visitors—

Q. No, I beg your pardon, I asked you when you first saw Miss Anthony there? A. I can't tell you when first.

Q. Well, I repeat my question: Can you say that it was not prior to 1866 that you saw her there first? A. I should say probably not; that is the best I could tell you.

Q. But you are not certain upon the subject? A. Not very certain—pretty certain that it was between that and 1872 that I saw her there.

Q. How soon after you moved to Brooklyn in 1866 did you see her there? A. I presume, if during that year, it was between

1866 and 1867, between the dates—in which I was there repeatedly.

Q. In what house did you first see her? A. My first recollection of her is at 170—180 it was then—I recollect seeing her there more than once.

Q. More than once? A. It was certainly subsequent to 1866, because they didn't move there until 1866.

Q. She was an equal rights woman, wasn't she? A. I don't know that; I can't say.

Q. How? A. I can't say of my own—her public attitude is understood; I understand her to be as others have understood her—I believe she is a woman suffragist.

Q. Well, was that the objection you had to her, because she was a woman suffragist? A. I objected to all that party.

Q. To all that party? A. Yes, Sir.

Q. Well, were you aware that Mrs. Tilton was one of that party, and the Chairman of the Executive Committee for some years? A. I can't say that I was.

Q. Were you ever present at the house when there were gatherings of people there? A. No, never; I always stood on the other side, but I don't recollect her—don't recollect Mrs. Tilton as President; I think I did know that she was dragged in to some extent.

Q. You knew that she was dragged in? A. I believe that was my feeling about it at the time.

Q. You don't think she went in voluntarily. Why, don't you know that in the absence of her husband on lecturing tours, that she presided at the meetings of the Executive Committee, and that the account was given in all the newspapers in Brooklyn? A. I can't say that I—I could not tell you directly that I knew that—I did know that she was in some way mixed up in it as a result of it—

Q. Did you ever inquire to know whether she was dragged in, or whether she went in?

Mr. Evarts—Inquire from whom?

Mr. Fullerton—Of anybody. How is that, Miss Oakley? A. Why, I have assumed as—

Q. No, I don't ask you to assume. A. Well, then, I never inquired about—

Q. Then what information have you got to enable you to say that she was dragged in, as you understood, or as you thought? A. Information I cannot point to; inference from my knowledge of her.

Q. I am not talking about inferences. A. I want to justify myself in saying what I did.

Q. I know you do, and I think there is some need of it after using the word "dragged;" but will you tell me why you used the word "dragged."

The Witness—Some what? did I understand you, "some" "in some" did you say.

Mr. Fullerton—Some, what?

The Witness—Your last remark I didn't understand about the word "drag."

Mr. Fullerton—You used the word "dragged" in speaking of the manner in which Mrs. Tilton got into the suffrage movement? A. Yes, Sir.

Q. Now, I ask you if you had any information from any



quarter which led you to think that she went in by being dragged, as distinguished from going into it voluntarily and from principle? A. Information?

Q. Yes. A. No.

Q. Very well, then; we will stop there. Now, don't you know that Mrs. Tilton claimed the credit of having brought Mr. Tilton into that movement? A. I don't know that.

Q. Now, when did you see Mrs. Stanton there first? A. O, first and last, probably not over twice, I think; I can recollect seeing her there twice; I know I was there at breakfast once, but when, I can't tell you.

Q. I beg your pardon. Do you remember the question I put to you? A. When I saw Mrs. Stanton?

Q. No, I beg your pardon. A. When I first saw her?

Q. Yes. Now, if you will keep in mind the question—when did you first see Mrs. Stanton at Mr. Tilton's house? A. I could not tell you any more than that probably when I saw Miss Anthony there.

Q. Did you see her there prior to 1866? A. Don't recollect ever seeing either of them in any other house than at 136, and I know they moved there in 1866.

Q. In 1866? A. Yes, Sir.

Q. Very well. Now, what was the matter with Mrs. Stanton; was she a suffragist too? A. Why, I believe so—Woman's Rights leader and the head and front of the general movement.

Q. Was that the objection you had to her; was that the reason you didn't like to meet her? A. Yes, Sir.

Q. That was the reason; very well. Now, then, as to Stephen Pearl Andrews, when did you see him there? A. I don't recollect.

Q. How? A. I couldn't tell you.

Q. Did you ever see him there? A. I can't tell you positively that I ever did.

Q. Well, if you did, it didn't make any impression on you? A. I have met a great many of Mr. Tilton's guests from time to time.

Q. I know. I am talking about Mr. Andrews's visits. Now, have you any recollection now of ever having seen Stephen Pearl Andrews at the house of Mr. Tilton? A. I can't fix any point. I have a general impression that I have seen him there.

Q. How? A. I have a general impression that I have seen him there. I could not say anything more.

Q. Is that all you can say? A. That is all I can say.

Q. Do you recollect no circumstance connected with his visit, if he made one? A. Simply in regard to this—

Q. Nothing that was said? A. No.

Q. And nothing that was done when he was there, if he was there? A. I can't recall any particulars.

Q. Was it in the day time or night time when you think you have an impression that he was there? A. I have an impression I saw him there one evening.

Q. And that is all you can say about it? A. That is all I can say; yes, Sir.

Q. And can you tell me when you think that was? A. No; I can't tell anything more definite about that.

Q. Now, those are the only persons, then, whom you can name in connection with this change in the associates or the

visitors of Mr. Tilton, are they? A. I suppose I could name others if I think a good while; I have a very imperfect memory.

Q. Well, if you can name any more I wish you would do it? A. I knew that Mrs. Woodhull went to the house.

Q. How? A. After I had ceased to go there—I knew that Mrs. Woodhull went and came from the house after I had ceased to go there.

Q. Did you see her there? A. No, I never went—

Q. Did you ever see her there? A. No.

Mr. Fullerton—I move to strike that out.

Judge Neilson—Yes.

Mr. Fullerton—We are speaking of your knowledge.

The Witness—And I say that I know that she went there. Can't I know a thing that I have not seen?

Mr. Fullerton—Not of your own knowledge; that is hearsay?

Mr. Evarts—If she heard it from Mr. Tilton, that is her knowledge?

Mr. Fullerton—She has not seen Mr. Tilton, fortunately or unfortunately.

Mr. Evarts—Since 1867?

#### HARD LABOR TO GET ANSWERS.

Mr. Fullerton—No, Sir [To the Witness]; Now can you name anybody whom you have seen at Mr. Tilton's while he was undergoing a change of companions or associates, or visitors? A. No, I cannot name any others for I avoided going to the house.

Q. Cannot name any others? A. Not that I have seen there.

Q. And when did this change take place that you have spoken of? A. Oh! It was gradual; I believe I testified before that it was a gradual change of associates.

Q. Well, one moment. If these three persons, if you saw three there, and you cannot tell when they were there, how can you say that change of associates was gradual? A. But then I knew many things that I didn't see. I knew from conversations with Mrs. Tilton, and from other friends.

Q. Well, one moment. I don't ask for these conversations; then you don't know of your own knowledge that there was any change? A. Oh! yes, I still say I know of my own knowledge, but not by my seeing it.

Q. Do you know that these three persons—Miss Anthony, Mrs. Stanton and Stephen Pearl Andrews—did not call there before 1866? A. Did I know that they did not?

Q. Yes? A. No; I don't know that they did not.

Q. Then, how can you say that there was a change in his associates, of your own knowledge? A. I knew a great deal—

Q. No. A. Well, you want to know how I can say?—

Q. You say you knew a great deal, but I don't want you to tell it all. This is my question now, Miss Oakley—you don't know, as I understand you, but what these three persons, Miss Anthony, Mrs. Stanton and Mr. Andrews, called to see Mr. Tilton, prior to 1866, when you saw them there, if that were the date, do you? A. But that they came prior?

Q. Yes? A. No, I don't know but that they came prior.

Q. Very well. If you don't know that, then how do you know that there was a change in respect to his visitors, because there three persons called in 1866? A. I know because I knew the affairs of the household through Mrs. Tilton.

Q. I speak of your own knowledge? A. I assume that to be my own knowledge. Don't I know anything but what I see in respect to the domestic relations of other friends?

Q. You don't know anything about that, except what you saw? A. I think that what friends told me was as good as what I saw.

Q. Miss Oakley, that question was settled before you and I were born, and let it be settled. Now, of your own knowledge and of your own observation, do you know that any change took place in the visitors of that house before or after 1866—now, laying aside what you have heard? A. Further than what I have mentioned; I cannot now recollect individuals.

Q. That is not my question. It is not an answer to it. I shall not be able to get through with you to-day, Miss Oakley, unless you answer my questions. Of your own knowledge, or what you have seen, and not what you have heard—not judging by what you have heard, can you state that there was a change in his associates before or after 1866. It is a very simple question? A. Further than what I have said—if my own knowledge is to be only of what I saw, I cannot recollect other individuals.

Q. That is not my question whether you could recollect other individuals if your knowledge was to be confined to what you saw. A. You limit my knowledge to what I saw. I base my knowledge upon various other things I have to testify.

Q. Basing your knowledge upon what you saw, and not upon what you heard, do you know that there was any change in the visitors of that house? A. I answered that point; I answered that.

Q. What is your answer, yes or no? A. Further than what I have stated?

Q. Yes; but it is just what you have stated that I am overturning by the cross-examination, if possible.

Mr. Tracy—I submit that is not a proper remark.

Mr. Fullerton—Your opinion is not worth much upon that subject.

Q. Now, will you tell me, judging from what you know, what you have observed yourself; and not taking into account what you have heard, can you state that the visitors to Mr. Tilton's house before or after 1866 were not about the same? A. I recollect a long visit there during the Summer of a young lady whom I didn't care to meet there.

Q. Well, is that an answer to my question? A. That is after 1866; it is included; it is one other observation of my own knowledge.

Q. Do you know that that lady didn't go there before 1866, of your knowledge? A. Oh, yes, Sir.

Q. Of your own knowledge? A. Well, I think I do.

Q. You think you do—were you at Mr. Tilton's prior to 1866 all the time? A. No.

Q. How? A. Oh, no.

Q. Then you don't know who called there before 1866, do you? A. I know that this lady came from a farm—

Mr. Evarts—There is some limit to this reasoning with the witness.

Judge Neilson—The witness ought to answer.

Mr. Evarts—That may be.

Judge Neilson—Well, she does not do it. She does not answer the question.

The Witness—Haven't you the examples I have mentioned?

Mr. Evarts—But it does not give the counsel a right to reason with the witness, or your Honor a right to criticize her demeanor.

Judge Neilson—I am not criticising the witness's demeanor at all. I am simply saying that I do not understand the witness to have answered the question—perhaps it is the inexperience of the witness. I think she ought to answer.

Mr. Evarts—That does not give him a right to say that he is overturning her testimony by his cross-examination.

Mr. Morris—He said that he was trying to do that.

Judge Neilson—I think that was improper; I would like to have this lady answer the question; perhaps that would close the examination.

The Witness—I have recalled another instance.

Mr. Fullerton—I am not talking about instances; there is a question before you to answer.

The Witness—Well, put the question again, please—the last question.

Q. Do you know from your own knowledge—what you have seen as distinguished from what you have heard—whether the visitors at Mr. Tilton's house were not about the same before and after 1866? A. I know that they were not.

Q. You know that they were not? A. Putting 1866 as a—yes.

Q. How? A. Yes.

Q. Can you say that Miss Anthony did not visit there before 1866? A. It is the first I recollect meeting her there.

Q. That is not my question. A. Well, I can't say that certainly.

Mr. Tracy—That is the only answer the lady can give.

Mr. Morris—No; it is not.

Mr. Tracy—I submit it is.

Mr. Evarts—The counsel has instructed her that she only knows what she saw.

Mr. Fullerton—That is good instruction.

Mr. Tracy—Now, the witness says: "I didn't see her before."

Mr. Evarts—That is a good answer.

Mr. Fullerton—Do you know that she was not a constant visitor there before 1866? I can tell the gentlemen that she was, if they want to know the object of my question.

Mr. Evarts—You are not on the stand, and that is an improper observation.

Judge Neilson—Both observations are improper.

Mr. Evarts—Now, if your Honor please, it cannot be both right to instruct this witness that she knows nothing but what she saw, and then, when he has asked whether she don't know whether Miss Anthony was there, and she says she never saw her there, then to press the inquiry whether she don't know she was there, otherwise.

Mr. Fullerton—Well, I shall press the inquiry until I explode this whole thing.

Mr. Everts—You cannot have it both ways.

Mr. Fullerton—Well, I will have it one way, any way.

Mr. Everts—Now, I suppose people do know things that they do not see.

Judge Neilson—Well, I do not.

Mr. Fullerton—Nobody but the counsel for the defense knows that.

Mr. Everts—There are many things known that are not seen.

Mr. Fullerton—Not to be sworn to on the stand.

Mr. Everts—Yes; to be sworn to.

Judge Neilson—The counsel put the question with great care, unusual care, to get the answer of this witness, as far as she has personal knowledge from what she saw apart from what she had heard, and it struck me the witness might answer yes or no.

Mr. Everts—She has answered that she never saw her there. Then he pressed her, didn't she know.

Mr. Fullerton—I propose to press it to-morrow morning now.

Judge Neilson—He has the right to ask whether she can say she did not see her there.

Mr. Everts—She has answered that she did not see her there.

#### THE JURORS ASK INDULGENCE.

Judge Neilson—Mr. Fullerton, go on. If the jury will signify that they want to be relieved we will adjourn, but if they will have the kindness and patience to stay if they can until this witness's examination is closed, I think it is important to finish it.

Mr. Carpenter [Foreman of the Jury]: The jurors are very feeble; they say they would like to adjourn.

Judge Neilson—Very well. [To the witness]: You will have to be here in the morning, Miss Oakley. [To the Jury]: Gentlemen, please be in your seats to-morrow morning at 11 o'clock.

The Court here adjourned until 11 o'clock on Thursday.

### FORTY-SECOND DAY'S PROCEEDINGS.

#### THE PLAINTIFF'S RELATIONS WITH MRS. WOODHULL.

##### CONCLUSION OF THE TESTIMONY OF MISS OAKLEY—

A LOWELL LAWYER ON BEHALF OF THE DEFENDANT—FAMILIAR AND LOVING CONDUCT OF MR. TILTON AND MRS. WOODHULL DESCRIBED—SPECIMEN CONVERSATIONS AT THE LADY'S HOUSE—THE WOODHULL SCANDAL DISCUSSED IN MR. TILTON'S PRESENCE BEFORE ITS PUBLICATION.

THURSDAY, March 11, 1875.

The evidence submitted to-day was devoted mainly to the point of showing that Mr. Tilton was responsible for the publication of the Woodhull

scandal. Other matters were, of course, included, but the evident object of the defense was to show that Mr. Tilton knew what Mrs. Woodhull meant to publish, and that when it was talked of in his presence he did not deny its truth.

The main witness who testified to this was Charles Cowley of Lowell, Mass., but he was preceded for a few minutes by Oliver Johnson in an explanation and by Miss Oakley in completion of her cross-examination.

Miss Oakley admitted that since testifying the day before, she had talked about her evidence with Mr. Shearman, Mr. Hill, Mr. Porter and Mrs. Tilton. Mr. Beach then went back to the disputed point of the day before. The witness had testified to a change in the associates of Mr. Tilton after 1866, and mentioned Miss Anthony and Mrs. H. B. Stanton as visitors at his house after that year. Mr. Fullerton at the adjournment on Wednesday was trying to get the witness to admit that she did not know of her own knowledge that these ladies had not visited at Mr. Tilton's previous to that time, and consequently did not know of her own knowledge of the change of Mr. Tilton's associates. The witness finally admitted her lack of personal knowledge on these points, but the admission was only obtained after repeated questions from Mr. Beach and the admonition of Judge Neilson.

Mr. Cowley's testimony was very curious, and as a lawyer he gave it in a straightforward manner. He stated that he met Mr. Tilton at Victoria Woodhull's house in New-York, where he passed an evening in company with Victoria Woodhull, Col. Blood, Miss Claflin, and others. The conversation during the evening adverted to the subject, among other matters, of Spiritualism, and Mr. Tilton told the remarkable story that on one occasion when a long distance from home, and about to cut loose from civilization, he had heard a voice saying to him, "Theodore, go home." He had done so to find one of his children at the point of death. The conversation then turned to what Mrs. Woodhull called the "new revolution in respect to the marriage relation," of which she declared Mr. Beecher to be the champion. She stated, when Mr. Cowley expressed doubts that Mr. Beecher would be forced to come forward in that character, that his practices made it necessary for him to do this or be a hypocrite. She added that "there were a dozen of Mr. Beecher's mistresses among his congregation," and when the incredulous

Mr. Cowley again shook his head doubtfully, she appealed to Mr. Tilton, who confirmed her by placing the number at the liberal figure of 40. Mrs. Woodhull, the witness said, mentioned some of the names of these mistresses, among them that of Miss Edna Dean Proctor. Mr. Cowley in reply advanced the unique theory that this could not be true because it was illogical, inasmuch as if Mr. Beecher had more than one mistress, there would be contention among them, and each would expose the others.

Mrs. Woodhull had also stated that Mrs. Tilton was in favor of free love, and that she had confessed that Mr. Beecher had been intimate with her; that Mr. Beecher had obtained a retraction of this confession, and that Mr. Moulton had got this from Mr. Beecher "at the point of a pistol," and that the confession had been destroyed. Whereupon Mr. Cowley suggested that this was improbable, because Mrs. Tilton was still alive and could write other confessions and retractions to protect Mr. Beecher.

Mr. Cowley further said that there had been conversation about the marriage relation during the evening, and quoted Mr. Tilton as remarking that "all laws on that subject were infringements of reserved rights." During the evening Mr. Tilton and Mrs. Woodhull appeared to the witness like persons enamored of each other. Mr. Tilton had called her "Victoria," and she had addressed him as "Theodore." There was some talk about the proposed public meeting at which Mrs. Woodhull was to speak, and Mr. Tilton said that Mr. Beecher would introduce Mrs. Woodhull. Again Mr. Cowley doubted, when Mr. Tilton added that Mr. Beecher was to make a few remarks declaring he thought her topic was one for public discussion, but without approving her views.

Mr. Beach conducted the cross-examination of Mr. Cowley, and in reply to his questions the witness repeated very much of his evidence relative to the conversation held during the evening spent at Mrs. Woodhull's. The witness recalled several discussions which he had forgotten to mention on the direct examination, and occupied the greater part of the afternoon session in giving an account of what was said by Mrs. Woodhull and himself. During this recital, which was considered rather monotonous, his questioner, Mr. Beach, seated himself on his table and listened patiently, but with the air of a man who had to endure a tedious narrative in order to reach something more

interesting. The witness was next questioned rather closely as to the bearing of Mr. Tilton and Mrs. Woodhull toward each other. The witness said that he noticed "no love in their words, but he detected amorous glances." The question then was, what were amorous glances? The witness could not give a description of them, except that they were not sheepish. In answer to another question, the witness replied that he had himself indulged in amorous glances. "Then can you not give us one now?" asked Mr. Beach. "No, I could not," answered the witness, amid general laughter. The questions about Mrs. Woodhull's attitude toward Mr. Tilton brought out that she had once said to Mr. Cowley, "Theodore Tilton is the nearest approach to my ideal of a man that I have ever met." Mr. Beach's questions were then turned to the past life of the witness, and elicited the fact that he had twice had the misfortune to be an unsuccessful candidate for the Attorney-Generalship of Massachusetts. "Why were you not elected?" asked Mr. Beach. "Because," replied the witness, "in Massachusetts they don't elect the man having the lowest number of votes." Mr. Cowley frankly admitted that he had had legal difficulties, and had been under an indictment for obtaining money under false pretenses. The indictment, however, had not been prosecuted, but was dismissed by the District-Attorney. In answer to another question he replied, "I was never arrested except for libel, and that was by Lawrence McLaughlin, the man who sent you that paper," alluding to a document in Mr. Beach's hand, which was understood to be a copy of the indictment for false pretenses. In answer to other questions of a like nature, the witness returned negative answers, and on his re-direct examination by Mr. Evarts was allowed to give full explanations of the charge of false pretenses. Mr. Cowley's testimony was concluded just as the time for adjournment arrived.

## THE PROCEEDINGS—VERBATIM.

### MR. FULLERTON SICK AT HOME.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Beach—If your Honor please, Mr. Fullerton is disabled from attending Court this morning in consequence of sickness. His difficulty appears to be a determination of blood to the head, resulting in dizziness and vertigo. I hope it will be but temporary, Sir, and with your Honor's permission, I will endeavor to supply his place.

Judge Neilson—Yes; I regret very much to hear of his illness, Sir.

Mr. Beach—I think it will not be serious, Sir. I would be glad to put a question or two to Miss Oakley.

Mr. Tracy—Is Miss Oakley in Court? She appears not to have come in, Sir.

Mr. Beach—I do not consider her further cross-examination, Sir, as very essential or important, and am perfectly willing any other witness should take the stand, and I can put the few questions I desire to her at any time when she comes in.

Mr. Tracy—She probably will be in, Mr. Beach, in a moment or two.

Mr. Beach—Well, Sir.

Mr. Evans—She will not delay long, if your Honor please, and it will probably be a convenience to her to be relieved as soon as possible.

#### MR. OLIVER JOHNSON MAKES SOME CORRECTIONS.

Mr. Tracy—Mr. Johnson desires to make one or two corrections in his testimony of yesterday.

Judge Neilson—Come forward.

Oliver Johnson recalled.

Mr. Tracy—Mr. Johnson, do you desire to make any correction of your testimony in regard to when you last saw or conversed with Mr. Tilton? A. Yes, Sir; I had forgotten yesterday. I stated yesterday that I believed the last interview with Mr. Tilton was at Deacon Curtis's house. I had forgotten at the moment that he had called at my own house, in company with a friend, later than that, and that he had also dined with me, upon my own invitation, at a later time.

Q. And is there any other correction of your reported evidence that you desire to make? A. Yes, Sir; I find by the report in THE TRIBUNE this morning that I was asked on cross-examination yesterday whether I were an Anti-Mason. I did not so understand the question at the time. I thought the question related solely to whether I had edited an Anti-Slavery paper—or Anti-Mason paper.

Q. And answered with reference to that? A. Yes, Sir. If I had understood the question whether I were an Anti-Mason, I should have answered differently.

Mr. Evans—Well, was he asked that?

Mr. Tracy—Well, he thinks not; I don't know whether he was or not. He is so reported in THE TRIBUNE.

Mr. Beach—He was not asked if he was an Anti-Mason.

Mr. Tracy—I thought that he was not. I understood it as he did. It referred to his editing an Anti-Mason paper.

The Witness—There is still one more point, if it is of any consequence. I was asked yesterday when was the last time that I had attended a spiritual seance; I can answer now that it was in September last, in Boston.

Mr. Tracy—One further question I want to ask, as you are on the stand. The lady that you mentioned yesterday in your testimony, and whom Mr. Tilton referred to as having been with in his own house—I ask you whether that was Beale Turner—that lady? A. No, Sir.

Q. It was a different lady? A. A different lady; yes, Sir.

#### RE-CROSS-EXAMINATION OF MR. OLIVER JOHNSON.

Mr. Beach—When was it, Sir, that Mr. Tilton dined with you? A. I think it was in May, some time in May, probably towards the latter part; I am not sure of the date.

Q. Of what year? A. This past year, Sir; 1874.

Q. Where was it that he dined with you? A. At 344 East 18th-st., New-York.

Q. Had you other friends with you? A. Yes, Sir.

Q. It was at your house, I understand? A. Yes, Sir; it was.

Q. Who were present? A. Prof. Tyler, now of Michigan University, and his wife, and I am not quite sure who else; I don't remember if there was anybody.

Q. Did you have wine upon your table? A. I am not sure; it is possible that I might have had wine on the table; I am not sure that I did or did not.

Q. Well, you are accustomed to present your guests with wine, are you? A. No, Sir; I am not.

Q. What? A. No, Sir; it is not my custom.

Q. Have you not very often done so when Mr. Tilton was your guest heretofore? A. No, Sir; I don't think—I think if I did on that occasion it was the first time and only time that I ever did, and my impression now is that I did not then, but still I cannot say, I have no recollection about it.

Q. I understand you to say, then, if you did it upon this occasion in May it was the first time you had done it? A. I think so; I am not confident; I am not in the habit of offering wine to guests, Sir.

Q. You do occasionally? A. Once in a while, Sir; yes, Sir.

Q. You are not a total prohibitionist, then? A. No, Sir; I am not.

Q. You don't advocate that in your temperance lectures or sermons? A. I have not delivered any temperance lectures of late, or sermons either. My views are well known, Sir, by all my friends.

Q. How recently? A. Well, it must be a dozen years at least.

Q. I understood that one of the doctrines, tenets or teachings of this society which you founded, or to which you was attached, of Progressive Friends, I think, was temperance? A. Yes, Sir; but it embraced all views of the temperance question.

Q. You did not advocate total prohibition, then? A. The society itself has again and again advocated total prohibition, but I have differed from it in that particular.

Q. You have differed from it? A. Yes, Sir.

Q. Although an ardent adherent of the society— A. Yes, Sir; an ardent adherent; but I have differed with the society on that question.

Q. You believe in the temperate use of it, then? A. Yes, Sir; I do.

#### REFLECTIONS ON THE WITNESS.

Q. Did you attend, during the Greeley campaign, as it is called, a speech made—hear a speech made at the Academy of Music by Mr. Tilton, in New-York? A. No, Sir.

Q. In Brooklyn? A. In Brooklyn, I did; yes, Sir.

Q. When was that? A. I cannot tell you, Sir. It was just before the Presidential election; I think a very short time before, but I could not fix the date.

Q. Who did you accompany to that address? A. I don't at this time remember, Sir, who it was, but I think it was the lady with whom I boarded, Mrs. Sabine.

Q. Mrs. who? A. Mrs. Sabine of New-York, the lady with whom I have lived for 15 years. I think it was her, and yet I am not sure; it may have been some one else. I have no recollection now, while I am here, as to whom it was.

Q. Do you recollect of meeting Mr. Wilcox there? A. No, Sir; I do not.

Q. Do you know him? A. I don't know; I know more than one Mr. Wilcox, Sir. You will have to identify him.

Q. Residing here in Brooklyn? A. How?

Q. Do you know more than one residing here in the city? A. In the City of Brooklyn?

Q. Yes, Sir. A. I don't know of any one residing here in Brooklyn, Sir.

Q. Do you know Stillman Wilcox? A. No, Sir; I do not.

Q. Do you know Mr. Stillman, of New York? A. I don't remember any man of that name, Sir.

Q. And you don't remember of meeting Mr. Stillman after that lecture in New-York? A. No, Sir; I do not. I do not at all identify, from your question, any person whatever.

Q. Did you leave that lecture, or the place where it was delivered, in company with any one? A. I am not quite sure, Sir, whether I did or not.

Q. Is there no recollection in your mind upon that subject? A. No, Sir, I have not.

Q. How? A. No, Sir, I have not at this moment any recollection.

Q. By tasking your recollection could you not recall any circumstance which occurred after the delivery of that speech? A. I do not know that I could, Sir; it was to me so ordinary an affair; there was nothing very marked about it.

Q. The speech was ordinary, you mean? A. No, Sir, I don't mean that; it was a very able speech. I mean that my going to a political meeting was a very ordinary affair.

Q. Yes, but there might be an extraordinary circumstance connected with it? A. Yes, Sir; but I don't remember any.

Q. And you cannot recall now any person in whose company you left the place where that speech was delivered? A. I cannot. I remember meeting Mrs. Tilton there and speaking with her, in the Academy.

Q. That I am not asking about, Sir. Well, do you recollect now where you went from that place? A. My impression is that I went directly home to New-York, but still I may have gone somewhere for a little while. I may have made a call; I cannot tell you.

Q. And you have no recollection of any person whom you met after you left the place where the speech was delivered? A. I have not, at this moment; no, Sir. My recollection might be refreshed, perhaps, if names were mentioned.

Q. Well, perhaps it will refresh your recollection if I ask you if you recollect going to Canal-st. on that evening after the speech? A. No, Sir.

Mr. Evans—In New-York?

Mr. Beach—Yes, Sir.

The Witness—I do not.

Q. You don't recollect it? A. No, Sir; I must have passed Canal-st. on the way home, I presume.

Q. Crossed, you mean? A. Crossed it; yes, Sir.

Q. Well, are you able to say whether or not you went to any place in Canal-st. on that evening? A. Yes, Sir, I am able to say that I did not.

Q. Are you able to say that you did not go to Mercer-st. on that evening, after the speech? A. Yes, Sir, I am able to say so.

Q. And you have no recollection now of meeting any person, whom you can name, that evening after that speech? A. No, Sir, I have not.

#### ISABELLA G. OAKLEY RECALLED.

Isabella G. Oakley was then recalled, and her cross-examination continued.

#### WITNESS'S CONVERSATIONS ABOUT HER TESTIMONY.

Mr. Beach—Since the adjournment of the Court last evening, Miss Oakley, have you conversed with any persons in regard to your testimony? A. I have.

Q. Who? A. With Mr. Shearman.

Q. With Mr. Shearman; who else? A. With Mr. HILL.

Q. Who? A. With Mr. HILL.

Q. Who else? A. With Mrs. Tilton.

Q. With Mrs. Tilton; who else? A. A gentleman with Mr. Shearman, whose name I do not recollect.

Q. Was it a gentleman whom you have seen before? A. Don't recollect ever seeing him before.

Q. Was it Mr. Porter; do you recognize him? A. Yes, Sir.

Q. It is singular you should forget him? A. I never saw him before, Sir; I never heard his name before, to my knowledge.

Q. With anybody else? A. With no one else.

Q. Did you converse with those parties together, all of them? A. No.

Q. Well, did you converse with each of them separately? A. No; some were together.

Q. Please name who were together at the time of the conversation? A. I saw Mr. Hill for a moment alone.

Q. Where? A. At his office.

Q. At his office—when? A. This morning.

Q. This morning; well? A. I saw Mrs. Tilton a few moments, and while I was there Mr. Shearman came in, and I walked up from Mrs. Tilton's house with Mr. Shearman and with that other gentleman, Mr. Porter; that was the extent of my communing.

Q. Oh! there was Mr. Porter? A. I say, with the other gentleman.

#### ANOTHER HARD STRUGGLE FOR PERSONAL KNOWLEDGE.

Q. Oh! with the other gentleman. Miss Oakley, you will permit me to pursue, for a moment, the line of exam-

ination which was addressed to you last evening by Mr. Fullerton. Are you able, from your own knowledge and observation, without regard to what you have heard from others, to say whether or not the persons whom you observed as visitors at Mr. Tilton's after the year 1866, were or were not visitors at his house prior to that date? A. I am able to say—

Q. Please answer my question, Madam; I don't want you to answer any other. A. I will answer you directly.

Q. I ask you whether you are able to say, from your personal knowledge and observation, independently of what you have heard from others, whether the visitors you saw at the house of Mr. Tilton or associating with him after 1866, were or were not, prior to that year, visitors at his house or associates of his? A. I am able to say they were not, of my knowledge.

Q. Of your knowledge; now, name the persons whom you saw, either as visitors at his house or associating with him after 1866, whom you say you know were not visitors or associates prior to that year? A. Whom I had not seen there before?

Mr. Beach—I did not ask you that, Madam.

Mr. Evarts—That is answered.

Mr. Beach—It is not what she answered.

Mr. Evarts—Well, the answer is down.

The Witness—Mrs. Stanton and Miss Anthony were the ones I recollect.

Q. Do you recollect any others? A. I cannot mention any others.

Q. Are you able to swear from your personal knowledge, independently of what you have heard, that Miss Anthony and Mrs. Stanton were not visitors at Mr. Tilton's house prior to 1866? A. Does that mean did I ever see them there before?

Q. You know what personal knowledge is—independent of what you have heard—do you not? A. If that is the question, I would like to answer that.

Q. Well, you understand that, do you not, Madam? A. As I have been instructed here—

Q. What? A. As I have been instructed here.

Q. Very well; then I ask you if from your personal knowledge, independently of what you have heard from others, you are able to swear that Mrs. Stanton and Miss Anthony were not visitors at Mr. Tilton's house prior to the year 1866? A. I have never seen them there before; can't recollect ever seeing them there before 1866.

Q. Then you have no knowledge whether they were there prior to that time or not; have you personal knowledge? A. Not by seeing them.

Q. Have you any personal knowledge upon that subject, independently of what you have heard? A. Then I have not.

Q. Then are you able to say from personal knowledge, independently of what you have heard, that there was any change in the visitors at Mr. Tilton's house as between—before the year 1866, and subsequent to that year? A. I am.

Q. From your personal knowledge? A. From my personal knowledge.

Q. What personal knowledge had you upon that subject? A. That before that period I had not seen these persons, and after that I had.

Q. Then you swear that they were not there prior to 1866 be-

cause you had not seen them there? A. That is all the personal knowledge you will admit.

Q. What? A. That is all the personal knowledge you will admit.

Q. Do you mean to swear that they were not visitors to his house prior to 1866? A. From my personal knowledge?

Q. Yes. A. I do.

Q. What? A. I do.

Q. You mean to swear from your personal knowledge that they were not visitors prior to 1866? A. As you limit me.

Q. What? A. As you limit me, I understand you.

Q. You mean to swear that from personal knowledge? A. As I recollect—from my recollection—I did not see them there before.

Mr. Evarts—What do you mean by her personal knowledge?

Mr. Beach—As I limit—I limit her personal knowledge to what she knows independently of what she has heard.

The Witness—To having seen them—do you limit me to having seen them there?

Mr. Beach—No, I don't.

The Witness—I thought you did.

Mr. Beach—No.

The Witness—What other personal knowledge may I have?

Mr. Beach—I don't know; it is for you to say.

The Witness—I thought I had been limited.

Mr. Beach—I limit you to personal knowledge; I have not said anything about seeing.

The Witness—I told you. I asked you if I could answer as I had been instructed.

Mr. Evarts—Mr. Fullerton instructed her.

Mr. Beach—Well, these gentlemen keep interrupting me.

Judge Neilson—I think they ought to keep quiet, and I think the witness ought to pay more attention to the question—a very intelligent lady, who could answer this question.

The Witness—I am doing my best, if your Honor please, to answer it.

Mr. Evarts—I submit she has answered a great many times.

Judge Neilson—No; she has not answered.

Mr. Evarts—What?

Judge Neilson—No, Sir; I understand this lady to indicate that there was a change in the visitors and society there.

Mr. Evarts—And she has given the whole basis of it that she did not see them before, but did see them after.

The Witness—I think that is all I can say.

Judge Neilson—But then her answer that there was a change stands unqualified.

Mr. Evarts—No doubt of it.

Judge Neilson—The counsel has a right to that portion of it.

Mr. Evarts—How far; how many times is he to ask the same question and receive an answer?

Judge Neilson—He has a right to receive an answer.

Mr. Evarts—How many times after he has received an answer?

Judge Neilson—He has not had an answer yet.

Mr. Beach—I answer the gentleman, as many times as I think necessary to exhibit the disposition and character of this witness.

Judge Neilson—You have a right to an answer, Sir; you will proceed.

The Witness—I thought I had answered you directly, as you asked me; I designed to do so.

Mr. Beach—Can you state to me what years Mr. Tilton resided in Oxford-st.? A. No; I never saw him at his house in Oxford-st.

Q. I don't ask you that; I shall presently. A. I could not tell the years.

Q. Cannot you tell me about what time he resided in Oxford-st.? A. Excepting that it was previous to 1866.

Q. How long previous to 1866? A. I could not tell you.

Q. Well, about how long, Madam? A. Well, within three or four years; probably previous to that.

Q. Then, between 1860 and 1866 he had resided in Oxford-st.? A. I think so; could not say certainly.

Q. And had you ever visited him there? A. No.

Q. Do you know from personal knowledge whether or not Mrs. Stanton and Miss Anthony had visited Mr. and Mrs. Tilton at Oxford-st.? A. No.

Q. You don't; then you cannot say from personal knowledge that they were not visitors of Mr. and Mrs. Tilton prior to 1866, can you? A. Between 1860 and 1866?

Q. Yes? A. I cannot in those limits.

#### MR. TILTON'S TALKS ABOUT RELIGION.

Q. Now, Madam, you spoke of some change in the religious sentiments of Mr. Tilton, yesterday, and I understood it was gradual; how early did you first notice any departure of that kind from his previous opinions? A. Well, I think as early as 1860—in that neighborhood—in that neighborhood of time.

Q. Somewhere in the neighborhood of 1860? A. There were three—there were two years in which I was entirely away from the city between 1860 and 1866, but I don't know what two they were. Previous to that I recollect having some conversation with Mr. Tilton.

Q. Well, I understood you to say that you had frequent discussions upon that character of topic with him? A. I have had, from time to time.

Q. In which you maintained one set of views and he an adverse set of opinions? A. I did.

Q. Well, they were somewhat animated discussions? A. Oh, I don't know, I cannot recollect that.

Q. Well, you maintained as well as you could in argument, your views, I suppose? A. Yes, Sir.

Mr. Evarts—If your Honor please, we have had all this before.

Mr. Beach—No, Sir, we haven't had all this before.

Mr. Evarts—I think so.

Mr. Beach—Well, I think differently.

Mr. Evarts—I submit it to the recollection of his Honor, the Judge.

Mr. Beach—Certainly; I recollect very well the questions which were put by Mr. Fullerton on this subject, Sir, and I desire to put another range of inquiry.

Judge Neilson—Well, I think we will have to take it.

Mr. Beach—You answered, I think, that you maintained, as well as you were able, the views you entertained upon those topics? A. I did.

Q. And were those discussions of some length sometimes? A. Yes, Sir; probably.

Q. Now, upon the doctrine of atonement, can you state to me, either in words or in substance, anything which Mr. Beecher said upon that subject—not the impressions which you received, but anything that he said? A. In substance I think I can; it is a long time ago.

Mr. Beach—I know that.

The Witness—I have forgotten the particulars, but in substance; in substance I think I can.

Mr. Evarts—A little louder, please.

Mr. Beach—She said it was a long time ago, but in substance she could.

The Witness—That Mr. Tilton no longer believed in the atoning sacrifice of Christ—in the sacrifice as being an atonement for the sins of humanity.

Q. Well, he said, then, in substance, that he no longer believed that the death of Christ was an atoning sacrifice? A. An atonement for human sin.

Q. Was an atonement for human sins. Well, is that all he said upon that subject that you now recollect? A. It was not.

Q. What? A. That was doubtless the substance of it, inasmuch as his was the pressing—

Q. Never mind; I am asking what he said, not for any reasoning? A. That, as far as I can remember, is the substance.

Q. What? A. That is the substance as far as I can remember.

Q. Well, your view of it was opposite to that, I understand? A. It was.

Q. And you maintained that that sacrifice was a complete and absolute atonement? A. I did.

Q. You did? A. Yes, Sir.

Q. And that, of itself, it worked a remission of sin? A. By faith in the—

Q. Oh! by faith. Well, now, what did Mr. Tilton say about that faith? A. I don't remember.

Q. What? A. I don't remember.

Q. Now, do you positively recollect that he used the word "believe"—that he did not believe? Can you now remember that he used that precise word? A. Oh, no; I couldn't possibly remember a word.

Q. Well, you don't remember that he used that precise word; can you remember any language which he used in those discussions which will enable us to judge whether he was maintaining opposite views to you for the purpose of argument and discussion, or whether he was expressing his own convictions? Can you give me any language which he used? A. I cannot remember a phrase of mine or his conversation, but the conversation and its subject I recollect.

Q. You can only remember the impression produced on you? A. I remember the conversation and the subject.

Q. You have given me the substance? A. The drift of the answer.



Q. The point to which I wished to address your mind was, whether you can give me any form of expression, either in words or substance, which he used, by which you can judge whether or not he was arguing with you for the sake of argument, or whether he was expressing his real convictions? It is sometimes pleasant to conduct an argument, you know. A. I suppose I could not satisfy you with any recollected statement of the case.

Q. No; you can only give me the impression which the conversation produced upon your mind, I suppose? A. There was more than one conversation, however.

Q. Yes, there were several? A. In relation to these topics.

Q. The point is whether you are speaking from the impression which you received, or whether you are giving the language by which we can judge? A. I understand you. I cannot put into any form the discussion so that it would satisfy you, I presume.

#### MR. TILTON ON MARRIAGE AND DIVORCE.

Q. Now, you also had some conversation with him upon the subject of marriage and divorce? A. I cannot remember having had any conversation on that subject. I believe I didn't testify to that.

Q. What? A. I don't think I testified to that, did I?

Q. You testified to an expression which he used. A. I recollect hearing him make some remarks.

Q. Do you recollect hearing him make remarks upon that subject upon more than one occasion? A. I only recollect one occasion.

Q. Now, will you please state to me all that you recollect of that occasion and what occurred? A. I recollect that it was at table—breakfast, I think; I believe there were guests; the children were at table, and Mrs. Tilton was at table.

Q. And who were the guests? A. Miss Anthony and Mrs. Stanton were there, I believe. That is the best of my recollection.

Q. Well, was the remark to which you refer uttered by Mr. Tilton in the course of a discussion with his guest, or conversation with his guests? A. That I— I don't recollect any further words, any further conversation.

Q. There must have been something said on the subject? A. So there must; I don't recollect any reply.

Q. There was a conversation upon the subject? A. Probably—

Q. Which you don't recollect? A. Probably; I could not swear that there was.

Q. Do you recollect what immediately preceded this remark of Mr. Tilton? A. No, I do not; it stands alone as an impression of that breakfast—

Q. Now, will you as near as you can— A. As a recollection, I should say I recollect it distinctly.

Q. Very well, if you recollect it distinctly, then give it to us. A. I recollect Mr. Tilton said: "I no longer believe—think of the marriage relation as I once did."

Q. "I no longer believe—think of the marriage relation"— A. No. "I no longer think of the marriage relation."

Q. "As I once did?" A. Yes, Sir.

Q. Is that all you recollect that he said? A. That is all I recollect distinctly enough to quote.

Q. Had you ever had any conversation or heard any remarks of his upon that subject previously? A. I have no doubt but I had.

Q. No; that you recollect? A. I cannot identify any conversation, but I knew his sentiments, from conversations with him.

Q. What? A. I knew his sentiments from various conversations, but I cannot identify any distinct conversation.

Q. No; but can you state anything he had previously said upon the subject of marriage? A. No; I cannot state anything he said now. His opinions were before the public, and well known to us all at that time.

Q. You mean in his public writings? A. I knew as a matter—I have had conversations with him on those topics, but I cannot identify them.

Q. I want to know whether you recollect anything of what was said in those previous conversations with him? A. I cannot recollect a single sentence.

Q. Can you recollect the substance of anything that was said in those conversations? A. No, not enough—I could not frame it in a few words.

Q. What? A. I don't think I could frame an answer; I suppose I do not recollect the substance of them.

Q. If you say you don't recollect the substance then, I will be satisfied. A. All right.

Q. You do not recollect the substance; then all the knowledge which, according to your present recollection, you had of his previous opinions upon the subject of marriage is derived from his public writings? A. I should think—

Q. Is it so or not, Madam? A. Yes, Sir; all the knowledge that I now recall.

Q. Yes, all the knowledge that you now recall, of course; and you are not able, then, to state what were his opinions upon the subject of marriage prior to this remark which he made, excepting from his public productions? A. I am not able to state; I cannot recollect.

Q. Well, you are not able to state from anything that was said at that time what his opinions upon the subject of marriage were at that time? A. No; I don't recollect the conversation being pursued into an expression of his opinion.

Q. Well, you are not able to say; that is enough. Do you recollect of his, at any time, or at that time rather, or previously, saying anything in regard to the law of divorce? A. I cannot recollect anything that he said to me.

Q. Although not specially addressed to you, but in your hearing, do you recollect of his at any time saying anything at or prior to that time upon the subject of the law of divorce? A. No, I have no recollection.

Q. You have no recollection? A. No, Sir, of any words used.

Q. Do you not recall when you first noticed anything that was published by Mr. Tilton upon the subject of marriage? A. Oh, I could not possibly say when.

Q. Cannot you locate the period with reference to some event? A. No.

Q. What? A. No; I read the articles in *The Independent* as they were published, and I have since—I have re-read them—I read *The Independent* during the years in which he was the editor of it.

Q. Well, can you name any year in which anything appeared in *The Independent* upon that subject? A. No; it is impossible.

Q. Cannot you with reference to some fact, either private or public? A. No, I cannot recollect any particular event. I cannot recollect what I read even.

Q. Well, do you recollect of any publication of Mr. Tilton's opinion, or of his strictures upon that subject, prior to the marriage of Mr. Richardson to Mrs. McFarland by Mr. Beecher? A. I don't know. I could not connect Mr. Tilton's publications with any special event, more than to say that it was probably within ten years.

Q. Are you a professor of religion? A. I have been throughout my life. I have withdrawn my letter from the Plymouth Church within the past two years, and have not presented it to any other.

Q. You were, then, a member of Plymouth Church? A. For many years.

Q. And in the habit of attending the ministrations of that Church while here? A. I was, while in Brooklyn.

Q. And of communing there? A. Yes, Sir.

Q. And two years ago you withdrew your letter? A. Yes, Sir; two and a half years ago.

Q. Soon afterward—what was the occasion of that? A. I left the city.

Q. There was no other motive than that? A. No other.

Mr. Beach—That is all, Madam.

#### RE-DIRECT EXAMINATION OF MISS OAKLEY.

Mr. Tracy—Was Florence Tilton ever a pupil of yours? A. Florence was two years in school when I was teaching school in Clinton-st.

Q. Where? A. On Clinton-st.

Q. On Clinton-st. Was it a private school? A. It was.

Q. How large a school? A. Well, Florence was with me—the school was from thirty to forty in number perhaps; she was with me during the first of my opening, and probably it was a little less than that—from twenty-five to forty.

Q. From your intimacy with Mr. Tilton's family and your visits there, you came to know generally who their friends were that were in the habit of visiting at their house, did you not?

Mr. Beach—Wait one moment.

Judge Neilson—You have been over that.

Mr. Tracy—This is a re-examination, your Honor.

Mr. Beach—That is a matter of argument, whether her intimacy was sufficient to enable her to know; she can state what her intimacy was, and we can then judge.

Mr. Everts—We submit the question is a proper one, and would like an answer.

Mr. Beach—We object to the question, and ask your Honor to disallow it.

The TRIBUNE stenographer read the question as follows:

“Q. From your intimacy with Mr. Tilton's family, and your visits there, you came to know generally who their friends were that were in the habit of visiting at their house, did you not?”

Mr. Beach—I submit that that calls for the opinion or judgment of the witness.

Judge Neilson—Simply ruled out, Sir.

Mr. Everts—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Tracy—Did you know more or less people who were in the habit of visiting them at their house? A. Yes, Sir.

Q. Did you know of Miss Anthony and Mrs. Stanton visiting them at their house prior to 1866? A. I did not see them there; I don't recollect ever seeing them there.

Q. Did you know of their visiting there—

Mr. Beach—Well!

Mr. Tracy—In any way.

Mr. Beach—I object to that.

Judge Neilson—She didn't say that.

Mr. Everts—If your Honor please, if she had been in the next room and heard them talk it, that would be a mode of knowing.

Judge Neilson—That is so.

Mr. Tracy—We ask her if, in any way, she knows.

Judge Neilson—No, that involves hearsay.

Mr. Everts—We suppose the question is proper and would like an answer.

Judge Neilson—Well, the question that way clearly admits of hearsay. It is excluded.

Mr. Everts—So that, we think, we have a right to except. The question is as to knowledge.

Judge Neilson—Examine her as to her knowledge.

Mr. Everts—The question is solely the knowledge in any view. The law imports knowledge as excluding hearsay. The question, therefore, excludes hearsay. The question is put and we suppose we are entitled to an answer.

Mr. Beach—Will your Honor instruct the witness that she must not speak from hearsay in answering the question.

Mr. Everts—Is the question allowed?

Judge Neilson—Yes, with that instruction.

The Witness—[To THE TRIBUNE stenographer.] Won't you read the question?

The question was then read by THE TRIBUNE stenographer.

The Witness—I have no recollection of their visiting there previous to that.

Q. Did you ever hear Mr. and Mrs. Tilton speak of the friends who were in the habit of visiting them in their house?

Mr. Beach—So far as the question calls for any remarks of Mrs. Tilton in the absence of Mr. Tilton, we object to it, Sir.

Mr. Tracy—Did you frequently hear Mr. and Mrs. Tilton speak of the friends who were in the habit of visiting them at their house? A. I cannot recollect that very much was said about it.

Q. Did you ever hear from Mr. Tilton in any way that Mrs. Stanton and Miss Anthony were friends who visited him at his house prior to 1866? A. No, Sir; I cannot say that I recollect that.

Judge Neilson—Well, that is all, Miss Oakley.

Mr. Tracy—One word, Miss Oakley.

MISS OAKLEY MAKES AN EXPLANATION.

The Witness—Can I not state to you what my opportunities of observation of the family were previous to 1866, and during the two years, from 1866 to 1868, which may put what I have said in a better light as regards myself?

Mr. Tracy—Yes.

The Witness—I came and went as a visitor, in the Summer vacations, for ten years previous to 1866, and my friendship for the family and intercourse with them in that relation, and during two or three of those years was absent from the city, but by correspondence and by always visiting when I did come, I knew them, and knew them well. In the Fall of 1866 I came to Brooklyn to live, and lived near them. During the first month of that time I was with Mrs. Morse, at her house, and I think before they moved to 176; and during the eighteen months subsequent to that I saw much more of the family and its relations and friends than I had seen before for ten years.

Mr. Tracy—That is all.

Judge Neilson—That is all, Miss Oakley.

MRS. PUTNAM'S LETTER PRODUCED.

Mr. Shearman—I desire to say I have the original of that letter, of which, by courtesy, we put in a copy—from Mrs. Tilton to Mrs. Putnam. It was substituted; and there was a single mistake in the copy. It reads in the copy: "How beautiful your growing love for Theodore!" and in the original it is: "How beautiful your yearning love for Theodore!" I don't know whether it is of any importance.

Judge Neilson—It is well enough to correct it.

Mr. Shearman—We will have it marked. [Marked Exhibit D, 112.]

TESTIMONY OF MR. CHARLES COWLEY.

Charles Cowley was here called and sworn on behalf of the defendant, and examined, as follows:

MR. TILTON AND MRS. WOODHULL ON THE EQUALITY OF THE SEXES.

Mr. Evarts—Where do you reside? A. Lowell, Mass.

Q. How long have you lived there? A. Since 1848; since I was a boy ten years old.

Q. What is your profession? A. I am a lawyer by profession.

Q. Where have you practiced it, and how long? A. I have practiced in Lowell and Boston nineteen years, counting out two years that I was in the South, in the navy, during the war.

Q. In the volunteer force? A. In the volunteer force; yes, Sir.

Q. Were you, in the year 1871, acting in or connected with a political movement in Massachusetts? A. Yes, Sir.

Q. Were you a candidate of a political party there? A. I was, two years previous, but not in 1871.

Q. Not in 1871? A. I didn't accept the candidature that year.

Q. What had been the office for which you were a candidate? A. I was a candidate for the office of Attorney-General of Massachusetts.

Q. Now, Sir, in connection with any political movement with which you were interested, did you come to the City of New-York in the Fall of 1871? A. Yes, Sir; I did.

Q. Did you come for the purpose of seeing any particular persons? A. Not for that purpose; but, being here, I did see certain persons.

Q. Very well; you were here in connection with a political movement; and, being here, you saw certain persons? A. Yes, Sir.

Q. Among these persons was Mr. Theodore Tilton? A. Yes, Sir.

Q. Where?

Mr. Evarts—We will wait until the clock stops striking.

Judge Neilson—Now, you may take your order to have the bell stop.

Mr. Beach—It don't obey.

Mr. Evarts—It is over now.

Q. Where and by whom were you introduced to him? A. I was introduced to him in the—at the residence of Mrs. Woodhull, by Mrs. Woodhull.

Q. Where was this residence? A. I am unable to state positively; I think it was in Thirty-eighth-st.

Q. It was up town? A. Yes; up town.

Q. In this city? A. In New-York.

Q. I mean in New-York; excuse me.

Mr. Beach—Does he say he was introduced by Mrs. Woodhull?

Mr. Evarts—Introduced to Mr. Tilton by Mrs. Woodhull, at her residence up town.

Q. There was a considerable number of persons there? A. Yes, Sir.

Q. Of both sexes? A. Yes, Sir.

Q. What was the first occurrence in Mr. Tilton's presence and Mrs. Woodhull's that attracted your attention? A. The first that I now remember was some conversation between Mrs. Woodhull and Mr. Tilton and myself in relation to Lowell and its institutions, and its industries, and certain regulations there in relation to the factory girls of the city.

Q. With reference to their morality? A. Yes, Sir.

Q. Well, Sir, will you state that conversation? A. Well, it is impossible for me to give the conversation in detail; I can only give a general recollection of it.

Q. The substance of it, as you recollect it? A. I remember it arose in this way: Mrs. Woodhull had presented me that morning—I saw her the morning before—with a volume of her speeches, and I presented to her that evening—I called by invitation to meet Mr. Tilton—with a copy of a book published by me, a history of Lowell, and that introduced the subject of Lowell. There was some general remark, which passed from my mind; and I remember Mrs. Woodhull spoke of something she had seen shortly before that in relation to the regulations.

Q. Of the factory girls? A. Of the factory girls, requiring them to reside in certain boarding-houses and to keep certain

hours; were not to be out after nine o'clock evenings, except by permission; and she spoke of it as being tyrannical; and Mr. Tilton, in connection with that, made some remark about those regulations being a part of the general system of the treatment of women.

Q. Yes. A. As dependent and subordinate; and Mrs. Woodhull said she rejoiced that that was the way women were treated, as having no capacity to take care of themselves. I said that those regulations were intended to preserve them from temptations, and I supposed that the virtue of the majority of people was depending largely upon their being exempt from temptations. Mrs. Woodhull said that the only true course was to train people, or let people become accustomed to take care of themselves; they would have some troubles, but would learn self-reliance, self-dependence and self-respect.

Q. Was this in connection with the factory girl regulations? A. Yes, Sir; this bore on the subject.

Q. And what did Mr. Tilton say on that subject, if anything? A. I don't recollect anything beyond the general remark that this was part of the general system of treating women and holding them in subjection as incapable of taking care of themselves.

Q. Did he use any expression of approval or disapproval of that general system?

Mr. Beach—Let the witness state what he said.

The Witness—I could not recall the language he used beyond what I have stated.

#### A "MEDIUM'S" DISCOURSE ON THE OTHER WORLD.

Q. What was the next thing that occurred there that attracted your attention? A. The next thing that occurred was this: there was a gentleman, whose name I cannot recall—I think it was Doctor something; he put himself into the mediumistic state, as he said, whatever that may be.

Q. How did he get himself into that state? A. I don't know that either.

Q. You saw him— A. I saw that he stood up and commenced giving an address.

Q. Well. A. Purporting to come from the spirit of some deceased literary character, the precise person—the name I do not now recall, and Mr. Tilton took out some paper and made some minutes of it phonographically.

Q. Made a phonographic report you mean? A. He phonographically reported it. When he used up the paper which he had, Mrs. Woodhull brought a bunch of paper, and he went on for some little time, noting down phonographically the address of this gentleman; and I remember, on its being completed, that he made the remark that he had not done so much phonographic reporting before for ten years.

Q. Was that speech made the subject of discussion? A. After it was finished it was. Several of those persons present spoke of it. I do not now recall a great deal of what was said. I remember Mr. Tilton made this remark: "If this was published as a discourse, or an essay, it would attract very great admiration;" and Mrs. Woodhull asked me for my opinion; I smiled in reply, and she said, "you needn't hesitate; the

Doctor," or whatever his name was, "does not know what he has been saying; he is perfectly unconscious of what he has been delivering;" and thereupon I expressed my opinion that I didn't see anything in it beyond a jingle of musical words and poor turned thoughts; there was no body of thought; there was no argument carried on; a dreamy speculation on the condition of those in the future state, or in the spirit state, whatever that may be.

Q. Did you observe how the medium took your criticism? A. I thought he took it a little unpleasantly, and I didn't carry my criticism any further. [Laughter.]

#### MR. TILTON IN COMMUNICATION WITH THE SPIRITS.

Q. Now, was there a further conversation on any subject in which you and Mr. Tilton and Mrs. Woodhull were the parties? A. The next to that that I now recall—there is much that I cannot recall—the next was a conversation on the subject of the possibility and actuality of communication between the spirits of deceased persons and those living; I can remember but very little that was said on that subject except an anecdote that Mr. Tilton related, that some time before that he was gone away from home, and had got to some place where he was about to be detached from all means of communication with his family, and that he there heard a voice, inaudible except to himself, as he supposed, saying: "Theodore, go home." And he said that it impressed him so much that he did go home, and arrived home just in time to find his oldest daughter, I think that it was the oldest daughter, lying almost at the point of death. That is the only thing in that discussion on that subject that I remember.

#### MR. BEECHER TALKED ABOUT.

Q. Then, subsequently, did you have another conversation? A. Yes, Sir; there was a good deal. The next that I remember was a conversation which was started by Mr. Brisbane—Albert Brisbane, who was present, on the project of a pneumatic tube between Washington and New-York.

Q. Well, we will pass that. A. And that led to a conversation between Mr. Tilton and myself on its effect on journalism if it should be introduced.

Q. Now, later on, was there a conversation? A. There was a conversation later on in relation to Mr. Beecher.

Q. Very well. A. That conversation, there was but very little of it between Mr. Tilton and myself, but between Mr. Tilton and myself and Mrs. Woodhull, and Mrs. Woodhull proceeded to— She introduced this by some general remark on the great revolution that was impending, and she didn't know whether I realized it or not, but we were, she said, right on the eve of one of the greatest revolutions that ever happened in the social system, and that was in reference to the marriage relation; and, right in connection with that, she said that Mr. Beecher was coming out as the champion of this social revolution, and I told her that I thought not, and she said that he certainly was, that he had entertained those theories himself privately, and he had practiced them, and he would come out publicly as the advocate of them. I told her I didn't believe anything of the kind; that I didn't

believe that he would, and she said that he would have to; that his own habits and the habits of others in his congregation were such that he would have to or be exposed; his hypocrisy would be exposed if he continued to profess or hold himself out as professing and maintaining one theory while practicing and believing another.

Q. Well, did she give you any instance or expression about it? A. She talked rapidly and in a very animated manner on that subject; I could not undertake to give but only a very small part of what she did say. I remember she said—I followed up the thought, and she said it had been said that there were a dozen of Mr. Beecher's mistresses in his congregation. I said to Mrs. Woodhull, "If you put your logic to work on that you will see that that could not be; that no ordinary woman of that stamp would be likely to have a liaison with a man of the eminence of Mr. Beecher, without being proud of it, and letting it be known in some way, and if there were two such, one would find out the other and expose her." I said: "The thing is utterly impossible." Thereupon she made some appeal to Mr. Tilton, and called Mr. Tilton's attention to it, and either Mr. Tilton or Mrs. Woodhull then stated the number as forty, that there were forty mistresses of his in his congregation. I am not able to swear whether it was Mr. Tilton or Mrs. Woodhull stated that number. The best of my recollection is that it was Mr. Tilton stated that number.

Q. Who put the number at forty? A. At forty.

Q. Well, how did the conversation proceed further? A. She gave some names, but I don't recall any name except one of the ladies.

Q. Is that a name that has been mentioned here? A. It has been mentioned here; I have seen it in the reports.

Q. What name was that? A. The name of Miss Proctor. That is the only one that I recall, but I remember the fact that she did mention others.

Q. Now, how were the parties seated at this time, yourself, Mrs. Woodhull and Mr. Tilton, as regards proximity? A. Mrs. Tilton sat beside me, separated from me by a small table—

Q. Mrs. Woodhull, you mean? A. Mrs. Woodhull; I beg your pardon for using her name. Separated from me by a little stand, such as ladies have to put their work-basket on, a very thin, narrow, light stand. Mr. Tilton sat opposite me upon a lounge or sofa; I have forgotten which.

Q. How many feet, about? A. Five or six feet; about as far as he is now from me, I should think.

Q. Was the tone of conversation such as to be heard? A. Yes, Sir; a great deal of it he could not help but hear, because Mrs. Woodhull oftentimes spoke with great animation; she could be heard throughout the parlor, and her voice changed from time to time. I think there were some remarks she made which he didn't hear, that she didn't intend him to hear—some remark that related personally to himself.

**MRS. TILTON'S NAME ASSOCIATED WITH MR. BEECHER'S.**

Q. As a part of that conversation, did Mrs. Tilton's name come in? A. Yes, Sir; she mentioned Mrs. Tilton

as one with whom Mr. Beecher had been very much enamored for a long time.

Q. What was said on that subject, and in what connection? A. Well, she stated to me that Mrs. Tilton—

Mr. Pryor—Is that one of the remarks heard by Mr. Tilton? A. I think so.

Q. You said some of the remarks were heard by him and some not? A. Yes, Sir; I know she made one or two remarks in a lower tone of voice in relation to him.

Q. The remark you are now going to relate—is that one of those that were heard by Mr. Tilton? A. I could not swear about his hearing it, but I think he might have heard it.

Mr. Everts—It was said in a tone in which he could hear it? A. There was but one or two remarks she made in a tone which, apparently, she didn't intend for his ears.

Q. What was that about—himself? A. Yes, Sir.

Q. She dropped her voice at that point, and you suppose he didn't hear that? A. I don't know but he might have heard that, but I suppose not.

Q. What did Mrs. Woodhull say in regard to Mrs. Tilton and Mr. Beecher? A. Well, I remember her general statement, that Mr. Beecher had been enamored of Mrs. Tilton, and she of him, for some time, and there were a number of remarks made, but I could not begin to recall them all. One I recall is, that there was some doubt whether Mr. Beecher or Mr. Tilton was the father of one of the children; I don't know whether she gave any name, or not, of the child.

Q. Now, was there anything said about a letter? A. She spoke—she said that Mrs. Tilton had those views, also of the marriage relation and free love, and that Mrs. Tilton had regretted the deception which she had practiced upon her husband, and had written a letter stating what her relations with Mr. Beecher had been; and that Mr. Beecher had got hold of that letter, and that a friend of Mr. Tilton's had made him give it up—had extorted it at the point of the pistol. I remember she used that expression, and I think she mentioned the name of Mr. Moulton in that connection, but I am not positive in my recollection about that. I pool-pooched that; I said: "That don't seem credible," and said: "I think Mr. Cummings told me"—Mr. Cummings was a gentleman who had introduced me to her, and he had related to me very much the same story—

Mr. Beach—Wait one moment.

Mr. Everts—About the pistol.

Mr. Beach—Wait one moment.

Mr. Everts—I have waited a moment.

Mr. Beach—Unless it was in Mr. Tilton's presence.

The Witness—I never saw Mr. Cummings in Mr. Tilton's presence.

Mr. Beach—Very well; don't state the conversation.

The Witness—I mentioned Mrs. Woodhull—

Mr. Beach—If that was in the hearing of Mr. Tilton you can state it.

Mr. Everts—It is of no importance.

The Witness—I remember making this remark. I said Mrs. Tilton is living; if she wrote one confession she can write another; there would not be any occasion for anything of that kind, and thereupon I remember Mrs. Woodhull said—this was

one of the remarks that lodged in my memory—that probably, or perhaps, or probably, Mrs. Tilton would not give another; that this letter was written at the time that Mr. Tilton was involved in some business dispute.

#### THE IMAGINED SOCIAL REVOLUTION.

Q. In that conversation was there anything further said that you recall as connected with this doctrine? A. I don't recall anything in relation to Mrs. Tilton now at this moment.

Q. Now, in regard to this revolution; did the conversation proceed in comparing it with the Reformation, or freedom of thought, or anything of that kind? A. Yes, Sir; on that subject there was something further said which I remember. I remember Mr. Tilton spoke of the great revolution effected by the Reformation, in respect to freedom of thought, freedom for the thinking faculties.

Q. You mean the Luther Reformation? A. The Protestant Reformation; the name of Luther was mentioned, and that this reformation in the world was one which would free the sentiments from the tyranny of either Church or State; I remember he made that remark, and Mrs. Woodhull followed that up with some remark of hers, then one which I now recall, which was, that the oppression incident to any law repressing freedom of thought was of very small weight—was a very small weight compared with the oppression of those laws which regulated and repressed the sentiments, the affections and the emotions; that one's life, home and happiness depended ten times more on the healthy action of the sentiments and the emotions, the natural affections, than upon the action of the will, or the logic upon any dogmas.

Q. In this connection, was anything said about wives and children and marriage? A. Yes, Sir; in connection with that Mr. Tilton made a remark that all laws on this subject were an invasion of the reserved rights of the individual; I remember he used that expression, the invasion of the reserved rights of the individual, and were—I followed up on that, making some observations, that I had known of a great deal of hardship in connection with these laws, but I stated I thought, on the whole, that there was a preponderance of advantage in their favor, that they protected the weak. I knew that they did furnish the occasion for a great deal of oppression, and a great deal of suffering, and a great many frauds, and I remember there relating an occurrence which the late Chief-Justice Chapman had told me a short time before, that when in practice in Springfield he was employed by a lady to look up a divorce which had been obtained from her without her knowledge in Albany, New-York, and he stated that he there found, on looking up the record, twenty-six cases in succession, running on the same docket, entered by the same lawyer, referred to the same Referee, supported by two depositions of the same deponent, all on the ground of adultery, sustaining the allegation, all entered on the same day by the same Judge, and that he supposed probably two-thirds of those were frauds—gross frauds upon faded and worn out wives whom the husbands wished to repudiate, and the rest

were collusive. Thereupon Mrs. Tilton remarked in a—

Q. Mrs. Tilton? A. Mrs. Woodhull I mean; Mrs. Tilton was not present. I never met Mrs. Tilton at all. Mrs. Woodhull remarked—she said: "I don't think that I ever heard an argument so strong as that against the whole accursed system." "Well," said I, "yet, after all, there are probably thousands and hundreds of thousands of wives who are now supported by their husbands, and their husbands contented to support them in consequence of that law and the public opinion which maintains it, who might be abandoned within a year if there was nothing of that kind to sustain them, and she differed from me there; she demurred entirely, and Mr. Tilton also.

Q. He differed from you? A. Yes, Sir; he said there was no right—there was no proper social theory on which such laws could be supported; that the marriage relation should be regulated, like all others, by contract; whether in its commencement or in its dissolution, it should be by contract.

Q. Did you say anything about that to Mr. Tilton? A. I did; I said I thought that if that were the case—if that were made the rule, the stronger party in every case would dictate the terms of the contract, and the weaker party would be at the mercy of the stronger, and divorce would be at the option of either party, and that that would expose women, who were the defendant party, to all the evils of the system, from which they are now protected, and that Mrs. Tilton rejected—

Q. Mrs. Woodhull? A. Mrs. Woodhull rejected that. She said, "The whole system comes of this false theory, that women are inferior to men, that they cannot take care of themselves," and stated that they must be taught to take care of themselves; "they must be trained to support themselves and look after themselves, and then they will be equals and make their contracts on equal terms with men."

Q. Was anything said in regard to the care of families under the two systems? A. Yes, Sir. I spoke of that; that I thought the advantages of the present system were altogether in favor of the weaker party, and talked about what would be the effect of divorce upon the children; and she said that she would have the State take care of the children; and they would take care of the children, and that the whole system, which now obtains, of segregated families, the wife doing the washing and cooking in a separate establishment, involved a great waste of labor and a great waste of time, and a great waste of power, all of which could be saved if they were brought up on the system of the Communists.

Q. If the children were? A. Yes, Sir.

Q. If the children were all brought up by the State? A. In institutions supported by the State. I made the remark that at one time that had been tried in Sparta, and society had existed under it, and I supposed could exist again, but while certain very noble traits were developed in the Spartan character, other traits, of ferocity and savageness, had been developed, from which society was now exempt.

Q. Did Mr. Tilton say anything on this particular point of the case of the children and the families? A. I am unable to recall

any particular remark that Mr. Tilton made on that subject.

Q. Now, did you observe the manner of Mrs. Woodhull and Mr. Tilton towards each other during that interview? A. Yes, Sir; I did.

Q. What was it? A. The manner of a lady and gentleman who were enamored of each other; there was no mistaking that.

Q. How did they address each other? A. He addressed her always as "Victoria," and she addressed him always as "Theodore."

Q. Did you observe anything in Mr. Tilton's manner while his wife was the subject of the conversation? A. I do not recall anything.

Q. Now, at what hour did you leave? A. I did not leave there until a good deal past 10 o'clock, towards 11 o'clock.

Q. Had Mr. Tilton left before you did, or did you leave him there? A. He had not left, to my knowledge. He was there in the house—I feel very confident that Mr. Tilton was there when I left. I remember there were some others that had left; I think Mr. Tilton was there at the time I left.

Q. Now, when was this; what part of the year? A. It was, as near as I can fix it, in the month of September, 1871. The only means I have of fixing the event is this, that the Convention—a Convention was held at Framingham, on the 12th of September, I think.

Q. Where? A. Framingham, Mass. I was not at the Convention, but I remember the fact, and Mrs. Woodhull introduced to me a gentleman on this occasion who was at the Convention, and introduced a resolution in favor of Woman's Suffrage. That is the only fact by which I fix it.

Q. That is, you fix it as being after the 12th of September? A. And recently after that.

Q. After the 12th of September? A. After that Convention. That Convention may have been on the 6th, but I think it was on the 12th. It was either the 6th or the 12th, and I think it was the 12th.

Q. Can you fix that it was not after a certain date in that year by any subsequent occurrence? A. Well, I know that it was—oh, it could not have been later than September, because I was there again at the house once after that, in October, and there was an interval of several weeks between the two visits.

Q. Between the two visits? A. Yes, Sir.

Q. And then, in October, were you going on to Washington? A. Yes, Sir; I was going on to Washington.

Q. To argue a case in the Supreme Court? A. Yes, Sir; there was a matter there.

Q. You can fix the date of that argument; what was the case? A. That was the case of the United States—the case of the steamer Siren, in prize.

Q. Prize cause? A. Yes, Sir.

Q. And that you argued for the— A. Argued for the claimants, on appeal from the District Court of the District of Massachusetts.

THE AUTHOR'S OPINION OF THE WOODHULL BIOGRAPHY.

Q. On this interview, or this visit, did you receive a copy of Mr. Tilton's Life of Mrs. Woodhull? A. That was spoken of there, but I think I did not receive it there. I think I obtained that afterwards from Mrs. Woodhull. I am not absolutely certain about that, but that is my impression.

Q. Was there any conversation in which Mrs. Woodhull and Mr. Tilton and yourself took part respecting that life? A. That was spoken of, but what was said about it I don't now recall; that is, anything said by the three in concert. I remember Mrs. Woodhull making a remark—

Q. Well, no matter. A. —which Mr. Tilton may or may not have heard.

Q. Well, if it was within the range of his hearing? A. Yes, Sir.

Mr. Beach—He does not say that it was.

Mr. Evarts—I say if it was within the range.

Mr. Beach—He says he may, or may not, have heard it.

Mr. Evarts—If it was within the range.

The Witness—Well, this conversation occurred, that I have spoken of—occurred when we were in the same positions that I described. Of course I could not state whether Mr. Tilton heard a particular remark.

Q. Well, that we understand. Now, what was the observation? A. She made the observation that Mr. Tilton regarded it as one of his—one of the best things that he had ever written.

Q. Now, after this did you ever see Mr. Tilton and Mrs. Woodhull together, and where? A. I saw them together at the same place, but only for a very short time on that occasion.

Q. When was that, and how came you to go to the place? A. That was on the Sunday evening, as near as I now remember—the Sunday evening that I passed through New-York on my way to Washington to argue the case that I have just spoken of; that is as near as I can fix it. I remember calling there early in the evening, and leaving early in the evening, and I think the object of my leaving was to go to the ferry to take the 9 o'clock train to Washington, but I am—I have been thinking that matter over since I spoke to you yesterday, and it may have been that visit was earlier than that a little. I was in New-York here two or three times before that. That is the best recollection I can give on the subject.

Q. And you say that call was a casual one? A. Well, Mrs. Tilton had written a note to me.

Q. Mrs. Woodhull. A. Mrs. Woodhull, I beg your pardon for the continued—

Q. It was not a call in consequence with Mr. Tilton? A. Not at all, Sir.

Q. You called there in consequence of a note from Mrs. Woodhull? A. I afterwards became counsel for Mrs. Woodhull in several matters that she had in Boston.

Q. You went there to see Mrs. Woodhull? A. Yes, Sir.

Q. And not on any appointment with Mr. Tilton? A. No, Sir.

Q. Did you find Mr. Tilton there? A. Mr. Tilton — I am not certain whether he was there when I called or came in there while I was in the house. I remember that Col.

Mood took me into a rear chamber to show some materializations, and my present impression is that while I was gone in the chamber Mr. Tilton came in, so that when I came out back into the parlor he was there.

Q. With Mrs. Woodhull? A. With Mrs. Woodhull; yes, Sir, and Miss Claflin.

#### ARRANGING FOR THE STEINWAY HALL MEETING.

Q. Well, at this interview was there conversation—this interview or any interview between that one in September and this interview—was there a conversation between Mrs. Woodhull, Mr. Tilton and yourself in regard to Mr. Beecher's presiding at some meeting? A. I think that it was at this second meeting; I think that was the time, yet it is impossible for me to say with certainty.

Q. Well, at one or the other? A. At one or the other Mrs. Woodhull said that Mr. Beecher was going to preside at a meeting at which she was to deliver an address on this subject; and she had the address—I received a copy of the address, I remember, in advance—whether it was given to me at the time, or sent to me by mail, I don't remember—on what printers call galley proofs.

Q. Well, what was said, if anything, further? A. I said that I didn't believe Mr. Beecher would do that, and she said he would do it, that Mr. Tilton was arranging that, and I told her, says I: "I don't believe Mr. Beecher will preside at a meeting where you are to attack one of the established institutions of society, and which is so mixed up with the religion of the country." And Mr. Tilton made the remark there, that Mr. Beecher would not say anything to indorse her theory; that he had not the courage for that, but that he would introduce her with some remarks indicating that he held this to be a legitimate subject of public discussion, and that she had the right to discuss it in the exercise of her free speech.

Q. When you expressed this doubt, whether Mr. Beecher would so appear, was anything said as to the means or influences by which he would be brought? A. Nothing, except that Mr. Tilton was in negotiation with him on that subject, that Mr. Tilton would bring him there, and I cannot recollect the words in which that was used, but that was the substance of the remark.

Q. Are you otherwise acquainted with the parties to this suit than as you have mentioned the acquaintance you formed with Mr. Tilton? A. I met Mr. Tilton in Charleston, South Carolina the day after Mr. Beecher delivered his Fort Sumter oration at the African Presbyterian Church.

Q. You were in that party, then? A. I was stationed there; I was attached to the staff of Admiral Dahlgren.

Q. You were in the navy at that time? A. I was in the navy at that time, and Mr. Tilton came down, and he made a speech in that church, and I met him there; but I don't remember any conversation with him there.

Q. And since have you continued your acquaintance? A. I never met him except on these two occasions at Mrs. Beecher's—Mrs. Woodhull's.

Q. And with Mr. Beecher have you any acquaintance? A. I never met Mr. Beecher but once in my life, and that was the same day that I met Mr. Tilton at Charleston; the day after he delivered his oration I met him in Charleston, and had five or ten minutes conversation with him.

Q. And you never have seen Mrs. Tilton? A. I have never seen her at all, until she was pointed out to me in Court yesterday.

#### CROSS-EXAMINATION OF MR. COWLEY.

Mr. Beach—I understand, Sir, your first acquaintance with Mr. Tilton was through an introduction by Mrs. Woodhull? A. Except that I met him in this casual way at Charleston, South Carolina.

Q. Did you have any conversation with him there? A. At Charleston; no, Sir; none that I recall.

Q. Was you introduced to him there? A. I think I was, and some mere remark—

Q. Well, do you recollect it; do you recollect being introduced to him? A. Oh! I remember we were there together, and he made a speech at the meeting, and I made a few remarks.

Q. I understand that. I ask you if you was introduced to him at Charleston? A. I think I was.

Q. How? A. I think I was.

Q. Do you remember who introduced you? A. I think it was Major Delaney; Major Delaney presided at the meeting.

Q. When was it? A. That was the day after Mr. —

Q. Well, when; the day—the year? A. It was in April, 1865, the 14th or 15th.

Q. In April, 1865? A. Yes, Sir.

Q. What was the occasion of that assembly? A. It was a meeting of colored people to hear the gentlemen who had come down—the Beecher party from the North. Mr. Beecher came down with a party, and delivered an oration at the raising of the flag over Fort Sumter, and Mr. Tilton was with him, or with the party, and Mr. Garrison, Judge Kelley, if I remember right, and some others were there, and made addresses at that meeting.

Q. You did not recognize Mr. Tilton, then, until the introduction of Mrs. Woodhull, when you met him at her house in 1871? A. Well, our meeting in Charleston was so casual I didn't —

Q. Well, you were introduced? A. I think so.

Q. And had a conversation? A. Nothing of any consequence.

Q. You were fellow-spokesmen upon that occasion? A. Well, my remarks were very short, because I was there for some time, and they were only there for that day, and I excused myself.

Q. You were introduced to him and know him? A. I would not swear positively that I was introduced to him, but my impression is that Major Delaney did introduce me to Mr. Tilton, and to Judge Kelley and to Mr. Garrison. I know he introduced me to quite a number of them, and I —

Q. I don't want all this. A. I state it because I am not certain. There was quite a number of introductions.



Q. What is your recollection whether you was or not? A. I am not certain whether I was or not.

Q. What? A. I am not certain whether I was or not.

Q. Do you still think you was? A. I think I was; yes, Sir.

Q. You think you was; then it is true that although you think you was introduced to him at Charleston, in 1865, you did not recognize him upon that introduction when you met him at Mrs. Woodhull's? A. Recognise him? Yes, Sir; I recognised him, and I referred to having met him in Charleston, in conversation with him. I didn't understand you—your use of the word "recognition" there—at first.

Q. Sir! A. I didn't at first understand your use of the word "recognition;" the moment I saw him I recognised him as Mr. Tilton.

#### THE GATHERING AT THE WOODHULLS'.

Q. Whereabouts in the house were you introduced to Mr. Tilton? A. In the parlor.

Q. Were there other persons there? A. Yes, Sir.

Q. When you arrived? A. Yes, Sir; a large number, or a considerable number.

Q. A considerable number; about what number? A. I should think a dozen.

Q. Any lady guests among them? A. Yes, Sir; quite a number.

Q. Who were they? A. Mrs. Anna Middlebrook—she has a middle name, but I have forgotten it—of Connecticut, I think Bridgeport, was the only lady whose name I can now recall. I recall her because I had a conversation with her.

Q. You were introduced to other ladies? A. Introduced to quite a number of them; yes, Sir; but there is not one whose name I can recall; and to quite a number of the gentlemen also.

Q. Can you give me the names of any of the gentlemen who were there? A. Yes, Sir; Albert Brisbane, Stephen Pearl Andrews and Mr. Bacon—I think his name was Bacon, of Worcester; I am not certain about his name, but I remember he was the one that Mrs. Woodhull introduced me to as being the gentleman who had introduced the Woman's Suffrage resolution at the Framingham Convention. There were others there whose names have passed from my mind. They were from different parts of the country.

Q. What time did you reach the house of Mrs. Woodhull on that occasion? A. Between eight and nine o'clock; nearer eight than nine, I should think.

Q. And you left shortly after ten? A. Some time between ten and eleven; it was later than I was aware of when I—

Q. And you had been there in the morning preceding that evening? A. No; I met Mrs. Woodhull first at her office, then in Broadway. It was there that I was introduced to her by Mr. Cummings.

Q. You never had been at her house before this evening? A. No, Sir.

Q. And had never been introduced to her until that evening? A. Never met her before at all.

Q. Had you noticed anything of her public career at that time? A. Not much.

Q. Anything, I said. A. Oh, yes; yes, Sir; something.

Q. You knew her position upon the question of woman's suffrage? A. I knew that she was a woman's suffragist; yes, Sir, and the head of the New-York—or, as I understood, the head of the New-York party, as distinguished—

Q. The New-York party? A. The New-York party, as distinguished from the Boston party.

Q. Of suffragists? A. Of suffragists; yes, Sir.

Q. Had you read any of her publications prior to that? A. I don't think I had. She gave me a volume of her speeches, and I have it now, but—

Q. I didn't ask you for that, Sir. Had you heard any of her addresses prior to that? A. No, nor since.

Q. And then you knew nothing of her special tenets prior to that upon these subjects? A. Oh, yes, from what I had seen in the papers about her I had an idea.

Q. I didn't ask you that.

Mr. Evarts—Well, I think you did.

Mr. Beach—No, I did not.

The Witness—I understood your question to cover that. Very well.

Q. I asked you if you knew anything in regard to the particular tenets prior to that? A. Nothing of my own knowledge—nothing except by hearsay and through the prints.

#### MR. COWLEY'S MISSION IN THE CITY.

Q. What was the occasion of your coming to New-York at that time? A. My impression is that—well, I was here several times during the Summer.

Q. I didn't ask you about that. A. It is too vague—

Q. Now, my dear Sir, please answer me as a lawyer; what was the occasion of your coming to New-York at that time? A. I could not tell you with absolute certainty.

Q. I understood you to answer Mr. Evarts that it was in connection with some political movement. A. No; but having occasion to come here—

Q. No, no! Didn't I understand you to say that? A. You did not; you may have misunderstood me if you did.

Q. I don't think I did. That we will determine.

Mr. Evarts—He said "having occasion to come here."

Mr. Beach—Wait one moment, Mr. Evarts. [To the witness.] You did not say then to Mr. Evarts—in answer to Mr. Evarts that you came here in connection with any political movement? A. No, Sir, I said that—

Q. Well, wait. I didn't ask you what you said. You did not say so? A. I did not say that I came here—

Q. Then you did not come here in connection with any political movement? A. I did come in connection with it, but not special in connection with it, not expressly for it.

Q. Well, you came in connection with what political movement? A. Well, what was called the Labor Reform Movement, in Massachusetts.

Q. How did you come here in connection with it; for what purpose? A. I will tell you. Before the Convention was held I had told Mr. Cummings, who was Chairman of the State Committee, and some others, that I did not propose to take any active part further in the movement, as I had done during the preceding years. After the Convention was held, Mr. Cum-

advice proposed to me and Mr. Phillips—Mr. Wendell Phillips, who was the candidate for Governor the previous year on that ticket—proposed to bring on Mrs. Woodhull and Mr. Tilton to make public addresses in Massachusetts in behalf of the movement. He thought that he could get them on and that they would produce—

Q. In behalf of the labor movement? A. The labor movement. He thought they would produce a very great effect if they came to Massachusetts. Mr. Phillips demurred to that and the matter was left, as the result of that conversation, for me, as I was coming from New-York—I had forgotten the particular occasion—I was coming to New-York pretty soon, and Mr. Cummings was to be here, and says I: "I will call in and see Mrs. Tilton—Mrs. Woodhull, and perhaps see Mr. Tilton, too, and see what the result of a personal interview with them may be."

Q. Then a portion of your design in coming to New-York was to see Mrs. Woodhull and Mr. Tilton in regard to their advocacy in Massachusetts of this labor movement? A. Yes, Sir.

Q. How came you to be introduced by Mr. Cummings to Mrs. Woodhull? A. Because Mr. Cummings— He was the Chairman of the Committee, and it was with him that I made this appointment.

Q. Then you met him here by appointment? A. Well, we were both here on other matters. He was connected—

Q. I don't ask that. A. Being here, we met there by appointment.

Q. And you went with him to Mrs. Woodhull upon this subject? A. Yes, Sir.

Q. For the purpose of an introduction to her? A. Yes, Sir.

Q. And she invited you to visit her house the following evening, when she said she would have Mr. Tilton there? A. She said that Mr. Tilton would be there, and she would like to introduce him to me. She said that there was to be— There was a gathering there in her office of some Directors or Trustees or Managing Committee of the American Association of Spiritualists, of which she was President, and they were to be there at the house.

Q. Of which who was President? A. Mrs. Woodhull was President; I may have given the name of the Association wrong, but it was some Association that either had held, or was about to hold a Convention in Chicago, and these ladies and gentlemen were there.

Q. I haven't asked anything about that, Sir; I am perfectly willing to take it. While you were that evening at the house of Mrs. Woodhull did you have conversation with others besides her and Mr. Tilton? A. Yes, Sir.

Q. With whom? A. Mr. Brisbane.

Q. What was the topic of that conversation? A. Finance.

Q. What? A. Finance. Mr. Brisbane had—I elicited his views on finance and gave him mine, Sir.

Q. Well, what were his views? A. Well, it is more difficult to answer that question than it is the other one.

Q. I suppose so. A. He gave his views at very considerable—

Q. I don't ask that—I ask what they were? A. I could not

remember what they were; I know they struck me as being very fanciful at the time.

Q. I don't ask that.

Mr. Everts—He is entitled to make that answer, I submit.

Mr. Beach—No, Sir, he is not entitled to make that answer. [To the witness]: Can you give me anything that he said on that subject? A. Oh, yes, I remember.

Q. Very well, let us have it? A. He was for having a general system of loans upon the public credit; that is about the only idea left—the only recollection left on my memory of that conversation.

Q. Can you give me some of the forms of his expression in making that, communicating that idea? A. No; I cannot.

Q. How long did you have a conversation with him? A. Oh, that occupied perhaps ten minutes or perhaps fifteen.

Q. Yes, and in fifteen minutes you received his views upon that subject and communicated yours? A. So far as they bore upon his views.

Q. That you think occupied fifteen minutes? A. Well, might have done, or might not so much.

Q. Well, did you converse with any other gentleman? A. Yes.

Q. Who? A. I conversed with this Worcester gentleman whose name, I think, was Bacon, in regard to Massachusetts politics.

Q. Well, what was the substance of that conversation? A. The Woman Suffrage movement; he had introduced the Woman Suffrage resolution at Framingham.

Q. You have told me that several times; I asked you what the conversation was? A. It was on that subject.

Q. I ask you what it was? A. I am giving it to you as fast as I can; the first and principal point was that, by introducing that, he thought the vote would be run up many thousands; and I told him, I thought it very doubtful whether the vote would run up or run down.

Q. Yes; what else passed between you and him on that subject? A. Well, we had some conversation in regard to candidates.

Q. Well, what was it? A. Mr. Chamberlin, who had been nominated for Governor; the question of his candidature; whether he would draw. I told him that I thought the very fact that Chamberlin run once two years before and got 1,400 votes, would be a drawback on the ticket this time—that he would not get as many this time.

Q. What else? A. I don't recollect anything particular, except I know that there were other things said.

Q. Well, did you converse with any one else? A. Miss Claflin, I remember—I had some conversation with her.

Q. What was that? A. I don't remember anything, any talk, except the subject of the regiment or which she was then colonel, or had been colonel, or was about to be colonel; she was in the military movement, I know that.

Q. Well, what was said, I am asking? A. I don't recollect much of that except I remember referring to one or two historical precedents for women.

Q. Well, who? A. I referred to Ellenora.

Q. To whom? A. Queen Ellenora; says I: "She went to

Palestine with a band of troops called Queen Elenora's Guards;" I indulged in some jocular remarks on that.

Q. Well, I want the benefit of them, if I can get them? A. I can't recall them all; I give you that.

Q. Is that all you recollect of that conversation with Miss Cladin? A. Yes; I don't recollect anything else.

Q. Well, do you recollect any conversation with any one else except Mrs. Woodhull and Mr. Tilton upon that evening? A. I had some conversation with Col. Blood.

Q. Well, what was that? A. I don't remember.

Q. Don't remember? A. Don't remember a thing that passed between us.

Q. Well, any conversation with any one else? A. I had very little conversation with Col. Blood.

Q. Did you have any conversation with any one else, I ask you? A. No one but Mrs. Woodhull, that I recollect. Yes; I did have some conversation with Mrs. Middlebrook.

Q. What was that? A. I spoke of a lecture which I had seen of hers; that was all.

Q. Well, what was said about it? A. That I don't recall, some complimentary allusion to the lecture.

Q. I ask what was said? A. I don't recollect.

#### A BIRD'S-EYE VIEW OF THE GATHERING.

Q. Well, let that answer suffice. Now, will you give me again, the position occupied by yourself, Mrs. Woodhull, and Mr. Tilton, at the time of the conversation which you have related on your direct examination? A. Mr. Tilton sat upon a lounge or sofa, directly opposite to where I sat, and where Mrs. Woodhull sat, directly opposite to us in the parlor.

Q. Did you sit in a chair or upon a lounge? A. I sat in a chair.

Q. Mrs. Woodhull in a chair? A. In a chair; yes, Sir.

Q. With a small lady's table between you? A. Yes, Sir; one or two books on it.

Q. What? A. One or two books on the table, I remember.

Q. One or two books on it—was Mrs. Woodhull nearer to you than to Mr. Tilton, or about equi-distant? A. She was—we were—she and I were separated only by the table; we were not a foot apart.

Q. Well, was Mr. Tilton further from her than you? A. Just about the same distance, or might be, perhaps—

Q. Well, that could scarcely be. A. Well, Sir, if anything, perhaps she might be slightly further from him than from me, but it would not differ a foot.

Q. It wouldn't? A. No.

Q. She was a foot from you? A. From me, yes, we were both—

Q. Wait a minute. I understood you to say that Mr. Tilton was about the same distance from you that he is now, during the conversation? A. Not more than that, I should think not—

Q. And Mrs. Woodhull being within a foot of you, she was as near to Mr. Tilton as to you? A. Yes, Sir, we were both—she was on the side of me.

Mr. Beach—Mr. Evarts suggests that you misunderstand me, and he repeats that you do.

The Witness—What is the question?

Mr. Evarts—The question, as I understand it, that you were asking him whether Mr. Tilton was nearer to you or to Mrs. Woodhull?

The Witness—Nearer to me—

Mr. Beach—No; you understood me to ask you whether Mrs. Woodhull was as near to Mr. Tilton as to you, did you not? A. That is what I understood. Yes, I think she was; I think she was just about; there could not be but very trifling difference in the distance between—

Q. That is Mr. Tilton.

Mr. Evarts—Listen to the answer.

The Witness—There was but very slight difference, if any, in the distance between Mrs. Woodhull and Mr. Tilton on one hand, and the distance between Mr. Tilton and myself on the other.

Mr. Beach—You understood me to ask you the question whether Mrs. Woodhull was nearer to you than she was to Mr. Tilton, didn't you? A. That was a question some distance back; you asked me that question I know.

Q. Well, that is the question, and the only question that I have asked you. A. Oh! no; I understood you.

Q. Well, now, how is it, Sir, was Mrs. Woodhull sitting nearer to you than to Mr. Tilton? A. Very much nearer to me.

Q. Very much nearer to you? A. Yes, that is what I understood you before.

Mr. Beach—No you didn't.

Mr. Evarts—Well, it was a misunderstanding.

Mr. Beach—Well, it is all very well; we can see it without your aid, Mr. Evarts. [To the witness.] Was any one sitting with Mr. Tilton upon the lounge where he sat? A. I think that at the first part of the conversation Mrs. Middlebrook sat in a chair near the end of the lounge—not on the lounge, but near the end of the lounge, very near Mr. Tilton.

Q. Was Mr. Tilton near the end of the lounge? A. Near one end of it; yes, Sir.

Q. Now, did any one else, if you will please answer my question, sit on the lounge occupied by Mr. Tilton? A. Not that I remember.

Q. Well, is your memory so accurate that you can say there was none? A. I would not swear to that.

Q. What? A. I could not—that is, that there was no one there at no time during the conversation; I could not say that.

Q. Yes; and did Mr. Tilton, yourself and Mrs. Woodhull occupy your relative positions during your conversation which you have related on your direct examination? A. During the conversation to which Mr. Evarts interrogated me?

Q. During the conversation you related on direct examination? A. Yes, Sir, but not during the whole evening, by any means.

Q. Well, during the whole of the conversations which you have given? A. Yes, Sir.

Q. On your direct examination? A. Well, I gave parts of—I gave parts of different conversations there; the company divided repeatedly into small groups, for instance.

Q. I suppose so, Sir. The point I want to know is whether, during the conversations which you gave between yourself, Mrs. Woodhull and Mr. Tilton, which you suppose were heard by Mr. Tilton, those parties occupied the respective positions you have now given? A. Well, during the conversations that related to Mrs. Tilton or Mr. Beecher we did.

Q. You did? A. Yes, Sir.

Q. Well, did you— A. The other part, the first conversation that I spoke of, that in relation to Lowell and its institutions, that was at an earlier part of the evening, and I am pretty certain that between that and the other that followed later in the evening, there were one or two separations and mixing up into—breaking up into smaller coteries.

Q. Well, what were the relative positions of the three parties I have mentioned during the conversation in regard to Lowell? A. Mr. Tilton—take them one at a time—Mr. Tilton occupied very much of the evening in the same position; Mrs. Woodhull moved about a good deal; she was at this table a good deal, and then going away a good deal, and then coming back.

Q. Did you understand me to ask you that, Sir? A. I am coming at it.

Q. I wish you would get at it a little more directly. I am asking what was the position of yourself, Mrs. Woodhull and Mr. Tilton at the time of this conversation concerning Lowell? A. Mrs. Woodhull then sat in a chair, a little away from the table, that is—a little distant from the position which I have described—that is, as having been occupied by her later in the evening, but still nearer than in another chair on the other side, in very much the position that I occupied during the conversation that related to Mr. Beecher.

Q. Where were you? A. And I was at the end of the table. I think I stood there when that conversation first began and then took a seat.

#### THE CONVERSATIONS AGAIN REPEATED.

Q. Now, relate that conversation, all the conversation; all the conversation that occurred between you there while you occupied that position, so far as you are able. A. I could not do that.

Q. Can't do it as far as you are able? A. Oh, I can do it as far as I am able, but then I can't tell—

Q. I don't want you to declaim, but answer my question? A. I will, Sir.

Q. Very well; proceed? A. I remember handing her the book.

Q. What book? A. The History of Lowell.

Q. Well? A. And she said that she was very much interested in Lowell, and she expected to go there to lecture—she would like to come there and lecture; and she said that she had seen, a few days before that, a paragraph in the newspaper in relation to the regulations in the mills of Lowell, in relation to the factory girls; and she wondered that any girls of spirit would submit to such regulations as required them to be in their house at a given hour, and depriving them of the control of their own movements outside of the mills; I remember that was the way it began.

Q. Well, I want you to tell me how it progressed and ended? A. Well, I can only give you fragments of it.

Q. Very well; if that is the best we can get we will take that. A. Well, that is the best I can give; I remember inquiring in that connection of Mr. Tilton whether he had ever lectured in Lowell, and he answered that he had not, according to my recollection of it; and there—about that time—I made some remark about Mr. Tilton which led Mrs.—I don't remember what it was; the exact language—but it led Mrs.—

Q. No; the substance of it? A. Well, I can't give you that either: but all I remember about it, is, that it was some remark which I made that led Mrs. Woodhull to correct the misapprehension that the remark led her to infer that Mr. Tilton had ever been a clergyman. I had been under the impression up to that time—

Mr. Beach—Never mind.

The Witness—continuing—that Mr. Tilton was or had been a clergyman.

Q. Never mind; when I ask you not to state a fact, don't persist in it. Go on. A. Then the next after that that I recall was my remark that those regulations really were very useful; that they had been devised when the factory system first started in Waltham, and had been transferred from Waltham to Lowell, and from Lowell to Lawrence, and most of the other places except Fall River; and that the result was that the standard of morality was generally considered higher in those cities where this system of factory police existed than in Fall River where there was no such system, and thereupon she said: "Well," says she, "this is all a part of the same system of treating women as inferiors—as inferior to men;" and I remarked that morality—the morality—the virtue of the mass of the people depended more upon exemption from temptation than upon any innate virtue of their own, and that those regulations did protect them, protected their morality, inasmuch as it exempted them in a great measure from temptations; and she said that really the only true way was to treat women and men just alike; to let them learn habits of self-dependence and self-reliance—to take care of themselves; they would tumble sometimes, so would men; but they would learn by experience to take care of themselves; and Mr. Tilton joined in that and made the remark—

Q. No; what did he say? A. He said—that is all he said, "It is all a part—it is all a part of the same system; women are treated as inferiors."

Q. Was that all the conversation in regard to Lowell? A. I don't recollect at this moment any more of it. I think that Gen. Butler was mentioned in that conversation—a resident of Lowell—and his identification with the corporations of Lowell.

Q. Well, anything further you recollect, in regard to the conversation concerning Lowell or its factories or regulations please state it now. A. I don't recollect at this moment except I know there was more.

Q. Yes; but you don't recollect it. A. I don't recollect it.

Q. And you have given all that you recollect in regard to it? upon this cross-examination. A. I think I have; I don't know that—I may have omitted—

Q. Do you recollect of a remark being made by Mr. Tilton in the course of that conversation, that those same regulations ought to be equally applied to boys as to female children? A. No; I do not.

Q. What? A. I do not.

Q. You say a remark was made by Mrs. Woodhull that the male children should receive the same treatment as the female children? A. She wasn't speaking of children, but of adults; these regulations applied to adults.

Q. You say she didn't make the remark in connection with those factory regulations? A. Yes; but the remark had relation to adult operatives, but not children.

Q. The regulations had? A. The regulations had.

Q. Well, was the remark made that those same regulations ought to be applied equally to males and females, that no distinction should be made? A. I don't remember that it was—still—so many things have—

Q. Didn't you state, a moment ago, that Mrs. Woodhull advanced that opinion? A. No; not that the regulations should apply.

Q. You didn't? A. Not that the regulations should apply; but that males and females should all be treated alike; there should be one uniform rule: they should be all taught habits of—

Q. Wasn't that while you were discussing these regulations? A. It was in connection with the regulations.

Mr. Beach—Yes; very well; that is all upon this subject. I can proceed if you wish.

The Court here took a recess until a quarter past two o'clock.

#### THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment, and the cross-examination of Charles Cowley was resumed.

#### THE LOWELL REGULATIONS DISCUSSED.

Mr. Beach—Mr. Cowley, what was the regulation of the factories in Lowell, about which this conversation took place? A. The principal regulation was that relating to the hours—the hours, at least, in the evening, after which boarding-houses were closed, and prior to which the boarders in the houses must be in their homes.

Q. Well, what was the hour? A. Nine o'clock; the boarders—the houses to be locked, the doors closed, and no one admitted after ten.

Q. All persons were to be in at nine o'clock? A. The regulation required them to be there, and required the boarding-house keeper to lock the doors at ten. That is what I understood the regulation was.

Q. Did you understand that regulation to apply to males as well as females? A. They don't have males in the boarding-houses.

Q. Then there were only females—the factory employes in these boarding-houses? A. What?

Q. It was a restriction upon females? A. Yes, Sir.

Q. And was there any qualification to this regulation? A. I don't know that there was.

Q. Don't know that there was. Was there any penalty attached to a violation of the regulation? A. No, except this, that if the—if such an occurrence was repeated several times they would be discharged from the corporation and from the boarding-houses.

Q. A violation of the regulation, then, was attended with a loss of service? A. A single violation was attended with no other consequence, as far as I am aware, than that they had to find other quarters for that night, and if the violations were repeated—

Q. It resulted in a discharge? A. It resulted in a discharge; yes, Sir.

Q. Do you not recollect that, in the course of that conversation, the injustice of such a regulation as applied to female and not applied to male operatives was spoken of? A. I don't remember anything—I think that that was the subject of the criticism, but I do not remember any particular remark bearing upon that.

Q. Oh! I don't suppose that language was used, Sir; but was not that an object of remark and censure? A. That was the grievance; certainly.

Q. What was the next topic of conversation in which Mr. Tilton participated, that you now recollect? A. The next that I now recollect was the discourse which the gentleman gave there, and which Mr. Tilton reported phonographically. I would not say that there were no others, but I do not now recall anything between those two.

Q. At that portion of the conversation did you yourself, Mrs. Woodhull and Tilton occupy the same positions you have given them in the preceding remarks? A. Well, I have given two positions.

Q. Well? A. Which one do you refer to? I can tell the positions.

Q. Either of them. Well, tell me what the positions were. A. The first one, the same that we occupied when we were discussing Lowell and its institutions. As near as I can remember, that was the position.

#### THE MEDIUM AND HIS WORDS.

Q. You do not recollect the gentleman who acted as medium on that occasion? A. I do not remember his name now; no, Sir.

Q. Do you recollect anything that he said? A. Anything in his discourse?

Q. Yes, Sir. A. No; there was nothing definite.

Q. Well, how long was the revelation? A. He must have occupied fifteen minutes or more in the mediumistic address.

Q. And can't you give me the phrase which he used in any part of it? A. I don't think I could give you a single one. I remember some of the comments that were made on it afterwards, and the subject of it.

Q. Well, I will get at those. Well, what was the subject of it? A. The subject of it was—it was a rhapsodical—

Q. Oh, I don't ask that; I ask you what the subject of it was? A. It was the condition of disembodied spirits.

Q. The subject of it was the condition of disembodied spirits? A. Yes, Sir, and the communications—

Q. Well, I will get at that in a moment. A. Well, this is a part of the answer to the question.

Q. Well. A. The communication between disembodied and embodied souls.

Q. Can you relate to me the substance of anything this medium said? A. I could not; it was very much wanting in substance.

Q. I didn't ask you that, and don't you know that that is not responsive to my question? A. I did answer more than your question asked, I see.

Q. Yes. Well, be good enough not to repeat it. Well, there was an idea about it, wasn't there? A. I don't remember whether there was or not.

Q. You don't remember whether there was or not? A. No, Sir; there was a very great mist about it.

Q. What? A. There was a very great mist about it.

Q. Well, that I don't ask you for; I asked you if there was any idea in it? A. There may have been, for aught I know, but I don't recollect anything that took hold of my mind or memory at the time, or now.

Q. Well, you didn't recollect that there was any thought expressed by the revelation? A. No, Sir.

Q. Well, I understood you to say that there was some poetical or flowery language? A. Yes, Sir; there was.

Q. And I understood you to say some well-turned sentence? A. Some very handsomely turned sentences.

Q. Handsomely turned sentences. Well, then, it was not a mere jumble of words? A. Jingle, I said.

Q. Well, was it a mere jingle of words? A. That is all that it occurred to me as being.

Q. What? A. That is all that I considered it as being.

Q. You did not consider that any idea, or thought, or sentiment, during that address, was communicated by the language which the speaker used, did you? A. Well, I don't know as I would go so far as that.

Q. You don't go so far as that? A. No.

Q. Well, then, do you think that there was some idea, or thought, or principle, expressed? A. Well, I don't know that I am prepared to say that either. My recollection of it—

Q. You have answered my question? A. Yes, Sir.

Q. Are you willing to say as a witness that that flowery and poetical language, of which you speak, and those well turned sentences, did not communicate any idea or thought or principle? A. I don't mean that there was a vacuity—perfect vacuity—but there was no argument developed.

Q. I didn't ask you about argument; I asked you if there was a thought, an idea. A. Well, there was no body of thought in it.

Q. Well, I didn't ask you about a body of thought.

Mr. Evans—He is answering you.

The Witness—It was a sentimental—

Q. I didn't ask you that. A. Well, I can't better answer your question than I do.

Q. But you don't recollect a single idea that was contained in it. A. I do not—not a single one.

Q. Nor a single expression? A. No. I do not, that I could identify as being used there.

Q. Well, Sir, you may relate the conversation which occurred at this period of the intercourse? A. I will relate such fragments as my memory retains of it. I remember that after he got through and sat down, that Mr. Tilton noticed some parts of it—turned back over the pages and read from his phonographic notes some passages, and what those were I could not recall, any more than I could the rest of the discourse, now; and he made the remark that if this had been published as a discourse or an essay, that it would attract great admiration. He made some remarks in addition to that, but they have gone from my memory; and others made some remarks, and Mrs. Woodhall turned to me and asked me what I thought of it, and some expression of my countenance led her to make the remark—

Q. Oh, you don't know about that? A. Yes; it is a matter of observation.

Q. No. A. Well, she made the remark—

Q. I didn't want to get the expression of your countenance; I wanted to get what was said? A. Well, she made the remark that I might speak with perfect freedom; she said, "for he does not know—he is entirely unconscious of anything that he has been saying while he was in this state;" and then I made the remark that I mentioned this morning.

Q. Well, you may mention it again. A. I will—that I didn't see anything particular in it, beyond some very finely rounded periods, and a combination of mellow and musical words, which made some very jingling sentences, but that there was no argument conveyed; that there was no body of thought presented; there was nothing new contributed; and I remember I made this remark. Said I: "What advantage is it in having intercourse with a disembodied spirit unless we get something that an embodied spirit does not present; if we get nothing new, if there is no new contribution to our stock of ideas?" And I had not gone any further than that when I observed, as I thought, that my criticisms were not altogether palatable to the medium, and I desisted.

Q. What did you observe? A. Simply an expression of his countenance, which I thought indicated that my words were not flattering.

Q. Can't you give us a description of that expression? A. No, I could not, any more than I could describe a dew drop.

Q. Well, we can give some little description of that. A. Well, I can't; all dew drops are alike to me.

Q. Well, what else was said? A. I don't now recall anything said in that connection.

Q. What was the next topic of conversation? A. There may have been other remarks made, but I don't recollect anything. Well, that is more than I can tell you, what the next topic was that was talked of. There were various topics introduced and discussed and dropped, and the conversation passed to other things.

#### AN IMAGINED REVOLUTION IN JOURNALISM.

Q. The next that you recollect? A. The next that I recollect is the one that I mentioned this morning, the relation to the pneumatic tube, in which Mr. Brisbane led off

and he mentioned that he had presented a paper, or prepared a paper, sometime, which demonstrated the entire practicability of a pneumatic tube between Washington and New York for the transmission of letters, packages and persons. I could not relate all that he said. I remember that, and he made some other remarks on that subject.

Q. Well, all that you remember I want to get. A. Well, that led—whether I was the first one that introduced the question of its effect on journalism, or Mr. Tilton, I do not now remember, but Mr. Tilton and I together spoke of the effect which the introduction of such a contrivance would have upon journalism, and Mr. Tilton made the remark that it would substantially destroy all the press, except the metropolitan press. If THE NEW YORK TRIBUNE could be packed in a bundle and sent to Worcester or to Boston, it would interfere seriously, and probably ultimately change the entire character of Boston journalism and of local journalism everywhere outside of the metropolis. There were some further remarks in that line, and that is about the whole of what is lodged in my memory.

#### MR. BEECHER AND THE "SOCIAL REVOLUTION."

Q. Well, during that portion of the conversation were the three parties, yourself, Mr. Tilton and Mrs. Woodhull, occupying the same positions that you have described? A. No, I was sitting very near to Mr. Tilton then, and Mrs. Woodhull—I don't remember where she was. She was moving about and changing her position from time to time. I was sitting very near to Mr. Tilton at that time, and my—

Q. Well, that is all that is important, Sir. Now, what was the next topic of conversation you recollect? A. I do not remember now, at this moment, any other except—until it came to the question of—the matter of the social revolution which she said was impending.

Q. Now, what was the position of these three parties at that time? A. At that time Mr. Tilton sat on the lounge or sofa.

Q. The lounge at the same point? A. Yes, Sir, and Mrs. Woodhull sat on one side of the little stand that I spoke of and I sat upon the other.

Q. Pretty much in the order of the first conversation? A. No, I was on a different—I was at the end of the table when the first conversation took place, and she was on the side where I sat when this conversation about the social revolution took place.

Q. Did she sit between you at the time of the social revolution discussion—did she sit between you and Mr. Tilton? A. No, neither was between.

Q. You were at opposite ends of the table? A. On opposite sides of the table, and both fronting towards Mr. Tilton.

Q. And both fronting towards Mr. Tilton: and about how far distant from him? A. It could not have been more than five or six feet at the outside.

Q. Was any one at that time sitting with him upon the sofa? A. I think not.

Q. Well, is your recollection so accurate that you can swear that there was not? A. No, Sir; I would not. I think that Mrs. Middlebrook sat in a chair at about the end.

Q. At the end occupied by Mr. Tilton? A. No; the other end.

Q. And where were the other guests? A. In different parts of the room. Some had gone. A good many did not stay but a few minutes, paying their respects to Mrs. Woodhull, and leaving.

Q. Was there conversation among the other guests while this discussion about the social revolution was going on? A. I think there was. I think that Mr. Brisbane and another gentleman were there, pretty near to where Mrs. Middlebrook sat; that is my impression. Mr. Andrews was there in the course of the evening, but whether he was there at the time or not—

Q. Well, at this particular point, if you please. A. Well, I am coming to that. I don't remember where Mr. Andrews was at that time.

Q. Do you remember what other conversation was going on among the other guests at the time of this one to which you allude? A. I do not.

Q. Do you remember whether Mr. Tilton participated in any conversation with any of the others? A. Occasionally; as he was appealed to or referred to.

Q. That is, during this conversation as to the social revolution? A. Yes, Sir, and references were made to Mrs. Woodhull also.

Q. Now, will you repeat that conversation? A. The first that I remember was the remark from Mrs. Woodhull that she did not know whether I realized it or not, but we were on the eve of one of the greatest revolutions that society had ever experienced. This whole subject, she said, of the marriage relation—that was where she struck to start with—the whole subject of the marriage relation was to undergo a complete revolution. She used the word "evolution" a part of the time, and part of the time "revolution." And she said that some of the best minds in this country were enlisted in it. She spoke in that connection of—I don't think I mentioned this this morning, of Woman's Suffrage, and of Gen. Butler's labors for it, or of being friendly to it, and of Mr. Sumner's being friendly to it. I think that did not occur to me this morning. I remember that she spoke of that, and also especially of Mr. Beecher. She said that Mr. Beecher was coming out, and going to be the champion of this movement. I told her that I did not think that was so; that I thought that, in the present condition of society, that a man of eloquence and genius like Mr. Beecher might found a new sect and reconstitute the institution of marriage as it had been done by others. I don't think I mentioned that this morning; I remember that I alluded to that, and to the great disparity between the number of women and the number of males in the United States, caused by the war and other causes. I think that I referred also at that time, in my conversation with her, to the great readiness with which the women of Eastern countries received Mohammedanism in lieu of Christianity. She said this was coming; she could see it; she could realize it, and she mentioned Mr. Tilton as being a great acquisition to the cause, and Mr. Beecher was coming in, she said, to champion it.

Q. Proceed, Sir. A. Shall I go right along, there?

Q. Upon the subject of this social revolution. A. Well, that led to my expressing the views which I reported this morning, that I had a general idea of what her system was, and said I—I remember putting this question—says I: "What do you propose to do when marriage is broken—make it dissoluble, make marriage a matter of contract, made by contract, to be dissolved by contract, at the will of the individuals—how do you propose to take care of the children?" Why, she said, have public institutions, have them provided for, as the Communists of Paris do, perhaps, and save women from the degradation and the domestic slavery in which they were now involved, each woman having a house to take care of, all this drudgery to do; having labor saved, time saved, and the children brought up in public institutions. I told her that that had been tried and society had lived under it and developed some very fine traits. "But," said I, "we have generally the opinion that Spartan society was characterized by such ferocity and savageness that it is not worth while to go back to it, and that our superiority is due largely to these domestic institutions that we have." And she said society would be a great deal better off if these relations were left to be shaped—to be regulated by the individuals themselves; and she again—she continually referred to Mr. Tilton in that connection.

Q. Oh! I don't want that. I want you to state the order of the conversation as near as you can recollect it, and what was said? A. I give you the fragments as they occur to me.

Q. Very well, I want you to give me the fragments, and not give a general statement? A. I wish to state distinctly that I cannot undertake to detail the conversation just as it occurred.

Q. Well, you have stated that a number of times, and I understand it. I only want you to give me your recollection of the conversation as near as you can give it? A. Well, I will go on and do that. The next part that occurs to my memory now was where she spoke of Mr. Beecher's position. She referred to that continually.

Q. I don't want that declaration, that she referred to that or to anything continually. I am asking you, Sir, as a lawyer, and a witness, to give me the best of your recollection of what was said. A. Well, it is so exceedingly difficult to do that in that precise way, to even detach my own recollections from my impressions and the comments.

Q. What? A. I say it is so extremely difficult to detach my recollections of particular things said from the impression—the general impression which the conversation produced upon my mind.

Q. Yes, well I don't want the general impression produced upon your mind? A. Well, I know you don't, and that is the very great embarrassment of giving the fragments of the conversation.

Q. No, it is not very difficult to give what you recollect? A. Well, it is somewhat so.

Q. I don't see it. A. I do.

Q. Very well; I am sorry for you. A. Well, I will go on, and give you the best I can.

#### MR. BEECHER AND MRS. TILTON DECLARED FREE-LOVERS.

Q. That is all I ask you? A. I told her I didn't believe that Mr. Beecher would do anything of the kind, and she said he would have to; says she, "He will have to do it, he will have to do this; he accepts our principles; it is known, and he privately acknowledges himself as a believer in the great principle of social freedom, and it is only a matter of cowardice—it is only a matter of cowardice, and the fear of public opinion." "Well," says I, "I don't believe you will ever find him doing that. A man at his time of life ain't likely to take a new departure," I said, "of that kind." And she said, "Well, Mr. Beecher has adopted our principles, and has proclaimed them in private circles, and has practiced upon them, and he has got to come out and champion the movement, or his hypocrisy has got to be exposed, and he cannot maintain himself;" and then she spoke of her relations with Tilton—Mrs. Tilton; she said that for a long time Mr. Beecher and Mrs. Tilton had been—had adopted this doctrine of free love.

Q. Had what? A. Had adopted the doctrine of free love, or "the principles of social freedom," I think was the expression she mostly used, but frequently used the other.

Q. Which expression did she use in speaking of Mr. and Mrs. Tilton? A. She used the expression mostly, "The principles of social freedom;" that was her general mode of characterizing her principles, but sometimes "the doctrines of free love."

Q. I don't ask you now "sometimes;" I want you to go on and complete the conversation? A. I answered your question directly.

Q. Well, you was going beyond the question, therefore I stopped you. A. Well, I will stop.

Q. Proceed with the conversation. A. Well, I thought I had answered.

Q. Sir? A. I thought you said I had gone beyond the question.

Q. Well, that particular question. I asked you the question, what particular phrase she used when speaking of Mr. and Mrs. Tilton? A. Yes, Sir; you want me to go on with the general narrative.

Q. Yes, Sir; the general narrative. A. Well, she said that Mrs. Tilton and Mr. Beecher had been living in the relation of husband and wife, to all practical purposes, for a long time; and that Mrs. Tilton, since she had embraced these principles of social freedom had expressed—had confessed her practice, and her regret at the hypocrisy of concealment from Mr. Tilton.

Q. Now, then, will you allow me to interrupt you here, Sir? A. Certainly.

Q. To ask you the question why, upon your direct examination, you said that the remark of Mrs. Woodhull was that Mr. Beecher and Mrs. Tilton had been long enamored of each other?

A. She used that expression.



Q. Now, you say that her remark was that they had lived as husband and wife? A. She used that expression.

Q. Well, why didn't you give the expression, on your direct examination, of husband and wife? A. I could not tell you.

Q. Could not tell me? Well, go on. A. I suppose that it did not occur to me. Matters occur to me at one time that do not at every other time.

Q. Therefore your testimony is uncertain? A. No, Sir, it is not. I state distinctly that I do not exhaust the conversation. I cannot; I am unable to.

Q. Now, will you begin again with the portion of the conversation which related to Mr. Beecher and Mrs. Tilton, and repeat it. A. She said that Mr. Beecher had accepted these principles. That she said first independent of Mrs. Tilton, and then afterwards in speaking of Mrs. Tilton she mentioned Mr. Beecher again in connection with her as one who accepted the principles of social freedom, and who had practiced upon them; and she said that Mrs. Tilton, being unwilling to practice the hypocrisy upon her husband which she had been practicing, had written a letter confessing that she loved Mr. Beecher more than any other man that she ever knew, and more than Mr. Tilton; and she said that Mr. Beecher had got that letter, and that a friend of Mr. Tilton had got it from him; and there I made the remark, says I, "Mrs. Tilton is still living, isn't she?" I have skipped one matter. She spoke of its being got at the point of a pistol. That is what led to my remark; says I: "Mrs. Tilton is still living. That don't look probable at all. If you put your logic to work on it you will see that that story cannot be true." She said that that was what she understood from Mr. Tilton, and I said: "If Mrs. Tilton is living she could write another letter, and she could refer to the fact that the first letter had been cabbaged from Mr. Beecher and put out of the way," and she said that perhaps—either perhaps or probably—I don't recollect the precise word—perhaps Mrs. Tilton would not write another letter; that at the time that this was written it had some connection with some business dispute in which Mr. Tilton was involved.

Q. Now, Sir, so far, in the last repetition of this conversation which you have given, you have not repeated the remark which you had previously made, that Mrs. Woodhull said that Mr. Beecher and Mrs. Tilton were living as husband and wife. A. She said that.

Q. Now, will you please begin the portion of the conversation which related to Mr. Beecher and Mrs. Tilton, and give it to me as near as you can as it occurred. A. It was right in connection.

Q. I don't want that now, Sir. I ask you to begin again and let us have it? A. I could not swear to the remark that first preceded that, nor to the remark last but one preceding that, nor to the remark next but one following that.

Q. No? A. I cannot do that; my memory does not serve me in that way.

Q. That is, you cannot give the narrative in substantially the same form twice following? A. I don't know that I could.

Q. You don't know that you could? Well, go on. A. You

can see whether I can or not. I give such fragments as occur to me—such parts of it.

Q. Go on now and gather up the fragments. A. Well, I don't remember at this moment anything more in connection with Mr. Beecher that was said.

Q. Well, do you recollect anything more of this discussion in regard—or conversation in regard to this social revolution? A. Oh! yes; I remember she went on—

Q. Well, let us get it all. A. She said that the whole system of treating women, and of dealing with women, was false, that it started on the fundamental error that woman was inferior to man, and she has such a training at school, from childhood to girlhood, and from girlhood to womanhood, that by her training she becomes inferior, and, says she: "We shall never get to the true plane until she is treated from the beginning to the end as man's equal, and made to take the responsibility, run the risks, and take her share of the burdens, and take care of herself." I remember I made this remark right in that connection; said I: "How much of this after all is only a matter of education. Look at the Hindoos. There are eighty millions of very enlightened people, who are living under the domination of the British Crown, and their great grievance—the greatest grievance that they have, is that women are treated as equals, that they are recognized as proper subjects to be made parties to actions, or witnesses in Court; and," says I, "I understand that all their popular literature, so far as it bears on their grievance, of Great Britain, relates to the wrong that Great Britain does in treating women as proper subjects for judicial jurisdiction, and for punishment for crime, or to be brought in as witnesses in court." Says I, "That is the way with both sexes." Says I, "It is, after all, a matter of pure education." I don't think that that occurred to me this morning, when I was going over that, but I remember I made those remarks in connection with the discussion. I don't know of anything at this moment; nothing strikes my memory at this moment.

Q. Upon the subject of this social revolution? A. No, I do not; nothing but what I think—

Q. Or its connected topics? A. At this moment nothing occurs to me.

#### MR. TILTON'S OBSERVATIONS ON DIVORCE.

Q. Now, Sir, you have not stated a word about Mr. Tilton, or anything that he said during the whole discussion? A. Yes, Sir, I have.

Q. No, Sir, not one word. A. Certainly I have said that Mr. Tilton said that the whole system was false and indorsed Mrs. Woodhull.

Q. Oh, Sir, wait one moment, wait one moment. I want you to tell me what he said? A. I will tell you what he said.

Q. Very well. Let us hear it? A. I think I have told you already.

Q. You have not in this last narration of the conversation; you have not mentioned his name. Perhaps it is, the record will show. Now, then, you may supply the defect if you want. A. Mr. Tilton said distinctly this, I remember, that the whole system of treating women as man's inferior, having such regulations for her was false, was erroneous from

the beginning; that the only way to do it was to treat the sexes exactly alike, as equals, coequals in all respects as to the law, as to legal rights and legal liabilities; that their relations, their sexual relations, should be determined by contract; the Legislature had no right to create any other relation than the parties created for themselves by contract; they should make it by contract and dissolve it by contract and that any other regulation, any deprivation of the power to change their contracts, to make new ones or dissolve them, was an invasion of the reserved rights of the individual; that last expression he used repeatedly.

Q. Do you remember anything else that he said? A. I have related so much already that I think I have related all that occurs to me—all that occurs to me at this moment I have related.

Q. About how long was this topic of social relations under discussion? A. Oh, they must have been under discussion as much as half an hour.

Q. As much as half an hour? A. Yes, Sir; Mrs. Woodhull talked very rapidly and with animation.

Q. Do you think you could use the language of any expression made by Mr. Tilton during that discussion? A. Some detached expressions. I could not any more than that.

Q. Well, give me the detached expressions? Well, I remember this expression, that any laws on the subject of marriage, or divorce which took away from the individual the power to regulate it by their own will by contract was an invasion of their reserved rights—he used that expression.

Q. Was the question discussed in that part of the conversation of the law of the State, or of any State? A. Oh, yes, Sir, the law of divorce.

Q. The law of divorce was discussed? A. Yes, Sir; I don't know whether you intended to include that in your question or not?

Q. Yes, Sir, it is well enough. I was going to ask you about it. A. Yes, Sir, I remember he spoke of a lecture

Q. Was this feature of the law of the State of New-York spoken of which regards marriage as a civil contract, was that talked of? A. I think it was; I think that was spoken of; there was one matter that your question recalls to my mind: whether he mentioned it first or whether I mentioned it if I don't remember; I remember the comment he made on it—that New-York had followed the English system—adultery in the husband was no crime; it was not treated as a crime here as in the New-England States.

Q. Well, do you recollect that the subject of divorce as connected with the law of the different States upon that subject, was spoken of? A. Yes, Sir, that was mentioned. He said that he had—he was to lecture that Winter in Boston, and was going to give a lecture on divorce, I think that was—he was going to give a lecture on divorce, and I think he said he was going to give it in Boston, or expected to give it in Boston, in which that subject was treated, and I remember that he mentioned that he had made an examination of the laws of the different States, and of the difference between the laws of the different States on the subject of divorce. I remember he mentioned this

fact, that some of the smaller—some of the smaller German States—I think he mentioned the names, but I have forgotten them—there was a law to this effect, and he thought a monstrously absurd one, that no divorce should be granted for any cause during the first year following the marriage, nor after the expiration of the tenth year, and I remember I remarked that I thought I could see a reason for that law; that the reason for the first limitation was to require them when they had made a marriage to try to accommodate themselves to each other during one year, and after they had lived together ten years the other limitation was based upon the presumption that if they had lived together ten, they could live together twenty and thirty or a lifetime. I think he made a note of the occurrence, which I related this morning in that connection, of Chief Justice Chapman's experience. I think—I knew he had a paper—he was writing—and I think he made a note of it.

Q. Now, do you recollect whether or not, in the course of that conversation he spoke of the contrast between the law of New-York upon the subject of divorce and the New-England and Western States? A. Yes, Sir—I cannot give the remarks that he made, but I remember he did make some remarks on those—

Q. Well, do you recollect that he maintained in that conversation that the laws of New-England and the Western States upon that subject were more rational and natural and just than the law of New-York? A. I think he did, yes, Sir, that they were a nearer approximation to right, but he did not approve of them, he did not speak of them as approving them absolutely, only as being comparatively—

Q. Well, you are giving now your conclusions; I would rather you would give what he said? A. That is very difficult to do. I know I can answer your question; that he did contrast the laws of New-England and of some of the Western States with the laws of New-York, and expressed a preference for them rather than for the laws of New-York.

Q. Are you quite sure, Sir, that in relating these conversations you have not confounded your opinions, or impressions derived from the conversation, with the conversation? A. Well, I remarked before that that is a very difficult thing to do—not to in some instances.

Q. Well, you are not certain but you have mingled them? A. Of course, that is the embarrassment I feel, that there is a danger; I have endeavored to avoid it as much as possible.

Q. But whether you have fallen into it or not, you cannot say certain? A. If I had fallen into it I should correct it, if I was sure I had fallen into it.

Q. Are you certain whether you have or not? A. On the points I have said; I have stated I was positive I have not.

Q. What? A. On the points where I have undertaken to give Mr. Tilton's language—where I have said Mr. Tilton said this, or Mr. Tilton said that; I know that I have not confounded an impression of my own mind with the remarks that he made.

Q. Well, have you given more than one expression that you

remember to have been used by Mr. Tilton? A. It is very difficult—

Q. Well, have you given more than one? A. Well, I don't know that—I have given but very few—

Q. No, no; but have you given more than one? A. I don't remember anything now except what he spoke about—he spoke about—that which I repeated; I have repeatedly stated.

Q. Well, you can answer the question. A. I think I have given you two.

Q. What were they? A. One was that this was—all these laws on this subject, which treated otherwise than as a contract were an invasion of the reserved rights of the individual, and another was, when I made the—when I related the experience that Chief Justice Chapman had related to me, I remember he made an exclamation there, that the whole system was infamous; says he—"Well, how can any man"—I remember he put this question; says he, "How can any man justify a system which promotes and fosters such perjuries and frauds as those;" and he said also, right in that connection, "How much," said he, "how much better it would be to leave that with those parties to settle it for themselves rather than to require them to go through that farce of a legal proceeding, and fortifying it by the perjury which you have related."

Q. Well, was anything said upon this feature of the subject, that if marriage was a contract, was to be regulated by the contract of the parties, that either party could insist upon a performance of the contract, or if it was broken that either party could insist upon the breach of it? A. Yes, Sir; there was something said on that subject.

Q. And that was about the sentiment, I suppose? A. That was one of the opinions which Mr. Tilton expressed, leaving it to be settled by contract.

Q. Leaving it to be settled by contract? A. Yes, Sir; yes, Sir.

Q. And, in the view in which I have just expressed it to you, by the law as applicable to ordinary contracts? A. Yes, Sir; I remember—I remember he put it in that form, that that would be very much preferable; I also—

Q. Yes; now you have answered my question, unless you want to argue this point? A. No; I don't want to argue it.

Q. Very well, then; content yourself with answering my question.

Mr. Evans—He also said what he had a right to state.

The Witness—I was going to add what Mr. Tilton added.

Q. Well, I didn't ask you to add what Mr. Tilton said. A. Well, I won't do it.

Q. Well, as you are so anxious to do it, you may. A. No; I am not.

Q. Well, you may state it. A. I don't wish to have it put in as a matter of anxiety on my part.

Q. Well, I think you manifested some. A. No; you have been quite sharp in stepping me sometimes when I was overstepping the bounds; and I don't want to overstep them; I don't mean to overstep them.

Q. Now, did it occur to you in the course of that argument or discussion that after parties entered into a contract of mar-

riage, if either party insisted upon the maintenance of the contract, so long as it was unbroken it could not be set aside? A. I don't remember that—in that form; I don't remember.

Q. What? A. I don't remember it in that form.

Q. It did not occur to you in that light? A. No; it didn't. Mr. Tilton didn't present it in that light.

Q. No; I ask if it occurred to you in that light? A. No, Sir.

Q. If marriage was a civil contract—matter of contract—that the contract must be maintained so long as it was fulfilled and either party insisted upon its being maintained? A. Did not—

Q. That didn't occur to you? A. Occur to my mind? How do you mean, did that occur to my mind, or did Mr. Tilton state that?

Q. No, Sir; I ask if that occurred to your mind as one of the results of the proposition that marriage was a civil contract? A. No, Sir; it occurs to my mind that that would not be the result.

Q. What? A. It occurs to my mind that that would not be the result.

Q. That is, if a contract of marriage were entered into by parties and recognized by the law of the locality as a matter of contract, that that contract would not be upheld by the law so long as it was fulfilled, and the party or either party insisted upon its maintenance? A. Yes, Sir; that is just what we have now, as I understand it; the result is that a man can run away or a woman can run away; the law don't enforce the contract; there is no specific performance; the only remedy is divorce.

Q. There is no specific performance, do you mean to say that? A. The law provides for no specific performance of a marriage contract.

Q. The law don't provide any means for enforcing the duties arising out of the marriage contract? A. I know of none; there is a remedy, there is a penalty, that is divorce.

Q. You don't know any law, then, which enforces the duty of a husband to take care of his family? A. We have one in Massachusetts, and I think—since you put the question, I think there was one—I heard of one being enacted in New-York some time ago; we got one last Winter in Massachusetts.

Q. Yes; well, did you ever hear that it was a principle of the English law that the duties of the marriage relation in that respect could be enforced? A. No, Sir; I don't understand it to be the principle of English law.

Q. Don't? A. Or even to have been. What I do understand, if you will allow me, is that where the marriage contract is entered into and is not fulfilled that there is a punishment for the breach of the contract, but nothing in the nature of a remedy enforcing specific performance.

Q. But, I am not talking about specific performance? A. I thought you were.

Q. You cannot lay a bill in equity, force a man or woman to love? A. Or to live together.

Q. What? A. Or to live together if they won't do it.

Q. Doesn't the law afford a remedy? A. Yes, a penalty.

Q. No; doesn't it afford other remedies besides penalties?

A. It is a penalty, Sir; I understand it so; I understand the whole theory of the law of divorce—

Q. I am not talking about the law of divorces? A. Yes; you are.

Q. No; I am not. A. Well, then, we don't understand each other.

Q. It is very likely. A. I am talking about the law of divorce.

Q. Well, I am not; I am talking about the law of marriage.

A. I am talking about the law of divorces.

Q. Now, do you not understand, Sir, that there are legal means by which the marital duty of the husband to support his wife and family can be enforced? A. Oh, yes; that is another thing; I understand that part can be enforced.

#### EMINENT ADVOCATES OF WOMAN'S EMANCIPATION.

Q. Very well; did you in that conversation notice any reference which was made to an essay of John Stuart Mill upon the subject of the subjection of women? A. Yes, Sir; that was referred to.

Q. Was it talked of? A. Yes, Sir.

Q. And was it in that conversation a matter of conversation that Mr. John Stuart Mill advocated social freedom in that respect, or condemned the subjugation of women? A. Well, I know that that is the—that was John Stuart Mill's position in the book, and that was referred to in this conversation by Mrs. Woodhull and Mr. Tilton as—

Q. You regarded John Stuart Mill as a very eminent authority and philanthropist? A. Yes, Sir; I don't agree with him in everything.

Q. No. It is unfortunate for him, I think— A. Yes, Sir. very unfortunate for him. Yes, Sir. [Laughter.]

Q. Now, do you recollect, Sir, that in that conversation the opinions of Chief-Justice Chase upon that subject were talked of? A. I could not say; I remember Chief-Justice Chase's name was mentioned once or twice by Mr. Tilton, and very likely in that connection, but I don't recollect it. I won't say that it was not, but I don't recollect that it was.

Q. Well, did you at that time understand that Chief-Justice Chase was an advocate of woman suffrage? A. Woman suffrage; I did; yes, Sir.

Q. Yes— Well, in that conversation did you also understand that Mr. Greeley had been in early days—1868, 1867 or 1869—had also been in favor of that movement? A. No, Sir; I did not.

Q. Woman suffrage—1848, I mean? A. I never heard of that; it may be so.

Q. Well, various distinguished men, represented and known by you as favoring that idea, were alluded to and spoken of upon that occasion? A. Woman suffrage?

Q. Yes? A. Oh, yes, Sir, quite a number.

Q. Perhaps you were in favor of it? A. I was.

Q. Did you ever lecture on that subject? A. Never.

Q. Or upon the subject of social freedom? A. Never.

Q. Did you ever deliver a lecture in New-York? A. Yes, Sir; never on that subject.

Q. What was the subject? A. I delivered a lecture on Trades' and Labor the same Summer.

Q. Third-ave? A. No.

Q. Where? A. Up at Wood's Grove—it was an outdoor lecture.

Q. Yes, I have heard of such a place. A. I don't know that I can give you the name; there was an entertainment, and I was—

Q. In the course of that lecture, did you have occasion to commend Mrs. Woodhull? A. No, Sir.

Q. Did you mention her? A. Never mentioned her at all in public.

Q. Never mentioned her in that lecture? A. Never.

Q. You don't mean to say that you never mentioned her in public? A. Never mentioned her in any public assembly whatever. I never had occasion to, even while I was counsel for her.

Q. Counsel for her? A. Yes.

Q. When did you become counsel for her? A. About a year after this conversation.

Q. Well, we are getting a little off from the subject.

Mr. Everts—He has mentioned that.

Mr. Beach—I am aware of it—I will ask him by and by. Now, will you proceed with any further conversation which you had that evening with Mr. Tilton and Mrs. Woodhull? A. I think I have gone over everything.

Q. Well, I didn't know whether you had or not, Sir— A. I mentioned several this morning. I think I have mentioned some this afternoon.

Q. Well, I differ from you very greatly, Sir; it is not necessary for you to make a statement of that kind, it only imposes upon me the duty of dissenting from it? A. That is unfortunate.

Q. Yes; probably for me—you had a subsequent meeting with Mr. Tilton at Mrs. Woodhull's? A. Yes, Sir; a very brief one.

Q. Yes, Sir; how long after this first occasion? A. Several weeks, but I could not state nearer than that.

Q. Well, about how many weeks, Sir; give it as near as you can? A. Well, I think it was on the Sunday evening prior to the argument in the case of the Siren, but I am not sure about that.

Q. Pardon me. A. I think it was on the Sunday evening prior to the delivery of the argument in the case of the Siren, in the Supreme Court, at Washington.

Q. Oh! I don't know anything about that; I care nothing about that. A. Well, I fix it by that event.

Q. Well, fix it in your own mind; but give me about the length of time this second interview was after the first. A. Well, not less than three weeks, and it could not have been more than five weeks, I think— I should think—

Q. That is near enough, Sir. A. But I am giving you only a vague recollection.

#### THE BEHAVIOR OF MR. TILTON AND MRS. WOODHULL.

Q. I understand that, Sir; I accept that—I believe I have omitted one subject—do you remember of any occasion that evening when Mr. Tilton and Mrs. Woodhull conversed apart? A. There were occasions when they did con-

verse apart, but I do not recollect anything that was said—there was nothing that was apparently private.

Q. No, nothing apparently private; there may have been remarks made as between themselves? A. Yes, Sir, as between any other two in the company.

Q. Yes, Sir; but nothing that attracted your attention? A. Nothing that I remember of, no, Sir, at all.

Q. Did you see them sitting together that evening? A. Not—There was nothing specially noticeable about them.

Q. Just answer my question. A. Simply sitting together?

Q. Yes, sitting together. Don't you know what sitting together means? A. If you mean close by each other's side I should say no, but they were very near to each other repeatedly.

Q. How near? A. Well, she sat on the lounge with him a short time, I remember.

Q. Well, how near? A. Within a foot of him.

Q. Within a foot of him, and where was you? A. I was in the—I was in the chair very near them; that is, a few feet distant from them.

Q. Conversing with them? A. Not particularly with them any more than with others, but with them as much as with others.

Q. Well, did you notice any caresses between them that evening? A. None at all.

Q. And you noticed no more than ordinary salutations between them, did you? A. There was nothing in the language

Q. Just answer my question. A. No, Sir, nothing at all.

#### AMOROUS GLANCES BETWEEN MR. TILTON AND MRS. WOODHULL.

Q. Well, did you notice any amorous glances? A. I thought I did, Sir.

Q. Thought you did? A. Yes, Sir.

Q. Well, please tell me their position when you thought you noticed that? A. Well, that was repeatedly during the—

Q. Well, now answer me. A. Well, Sir; I will answer you in various positions.

Q. Well, give them to me. A. In the position in which we conversed on Lowell and its institutions; in the position in which she related the Tilton-Beecher liason, and in other positions where they were; that was all that attracted my attention to that subject.

Q. The amorous glances? A. The glances and the tones of their voice in which they addressed each other more than anything that was said.

#### AN ILLUSTRATION OF THE AMOROUS GLANCES DECLINED.

Q. Now, can you give me some description or illustration of an amorous glance? A. No, Sir; I could not. [Laughter.]

Q. Did you ever practice one in your life? A. I have made them, Sir—

Q. Now, cannot you put one on for the occasion? A. I don't know that I could.

Q. You can't give any other description of it than that it was an amorous glance? A. No, Sir; I cannot describe to you.

Q. Well, was it a sheepish kind of look? A. No, Sir; there was nothing sheepish about it.

Q. Were the eyes half closed? A. No, Sir.

Q. Well, what was the peculiar expression about the eye? A. I cannot—I cannot describe the physiognomy.

Q. No, now answer my question.

Mr. Evans—You have asked him a question, and he is answering it.

The Witness—I will answer you—I am answering you by telling you.

Q. Well, I am putting a question to you upon a specific subject? A. Well, I am giving you a specific answer, trying to.

Q. Well, I am sorry that you cannot be more fortunate in your effort? A. I regret it.

Q. I was limiting myself not to the general physiognomy of the countenance but to the expression of the eye? A. Well, Sir, I cannot describe to you what you mean—

Q. I don't ask what you can describe. Can you give to me the expression of the eye, or describe that? A. No, Sir; I cannot do that.

Q. No, I cannot do that—well, can you tell me whether the eyes were fully open or partly closed? A. I didn't observe that it was fully open at all or partially closed, nor that it was wholly closed.

Q. Then did you notice any change in any other feature of the countenance than the eye from its natural expression—ordinary expression; answer me that? A. I can't answer that.

A. You can't answer that? A. No, Sir.

Q. Well, then, you can't say that you did notice it, if you can't answer it? A. I can say this—

Q. No, I don't want what you can say; we have had enough of that.

Mr. Evans—Why don't you want it?

Mr. Beach—Simply because it is not an answer to my question.

Mr. Evans—The witness is answering.

Mr. Beach—Well, it is not an answer to my question.

Mr. Evans—That don't answer the question.

Mr. Beach—I know what I am asking, and I know when I get an answer to my question. [To the witness.] Now, Sir, can you give me any description or any illustration of what you call an amorous glance, you having now confined it to the expression of the eye? A. I don't confine it to the eye.

Q. Don't think you can? A. No.

Q. And then you undertake to say, without any change of feature other than the eye— A. You misunderstood my answer to the last question.

Q. One moment; did I? A. Yes, Sir.

Q. Very well, what is your answer? A. I said I did not limit it to the eye.

Q. Didn't limit what? A. I did not limit the expression to the eye.

Q. Well, upon what other feature was there any peculiar expression? A. I can't answer you beyond this—

Q. No, I don't ask you that; my question to you was— A.

The expression of the eye is only a part of the expression of the whole face, the whole man.

Q. Now, I don't want a lecture on that subject, I want an answer to my question. A. I don't propose to give you a lecture; I am trying to give you an answer.

Q. Now, can't we avoid these discussions by you understanding the question as a lawyer, and answering it as a lawyer; do try to do it now. A. There are certain questions—

Q. Now, we have got all we can get of the eye; now, was there any other feature of the countenance in which you noticed any change different from the ordinary expression of Mr. Tilton? A. Nothing which I could describe; it is too evanescent to be described by my powers of description.

Q. Nothing that you can describe—well, didn't he have a gentle and loving smile on his lip? A. I didn't observe any special—any special smile.

Q. You didn't observe any? A. No special smile.

Q. No, no smile, and yet you thought the glance was amorous? A. I say—

Q. No, no. A. Yes, Sir; I will put it in your words, if you choose; I would rather put it in my own, but if you want it in your words I will give it.

Q. I don't want it in my words, Sir, if they are not true in their expression. A. They are true, Sir; but still they don't express the whole truth as I would like to express it.

Mr. Beach here asked permission to read a note from Mr. Fullerton's office, after which he continued the examination.

Q. I understand you that this was a fleeting and evanescent expression of Mr. Tilton's face? A. No, Sir; I didn't say that.

Q. What? A. I said that the expression of the countenance is too evanescent a thing for me to describe by my powers of description; that is what I said. I can tell you, Sir, what was meant by the countenance.

Q. Well, now, don't. A. But I cannot analyse it.

Q. Very well. How long did this expression continue on Mr. Tilton's countenance? A. This expression?

Q. Yes; this amorous glance. A. A glance was a glance, and was done with; that is the work of a moment.

Q. Yes. A. But what I said was this, in answer to the question this morning, what I say now—

Q. Oh, I don't ask you what you said this morning. A. Well.

Q. Well, what? A. Well, what is it? You stopped me; you started me to answer your question as to what I saw and as to what I understood.

Q. Oh, no; I didn't ask any such question as that. A. Then there is no question before the Court; all right.

Q. I think not either. A. If I have answered you, I am satisfied.

#### OTHER PLEASANTNESSES BETWEEN MR. TILTON AND MRS. WOODHULL.

Q. Now, was there anything else except this amorous glance that led you on your direct examination to say that those parties acted as if they were enamored of each other? A. Yes, Sir.

Q. What was it? A. The tones of their voices as well as the glance of the eye—the expression of the eye towards each other.

Q. Well, now, what was the character of the tones of Mr. Tilton's voice when they became enamored? A. When they became enamored?

Q. Yes; or enamoring? A. During the whole evening—

Mr. Everts—He don't say they became enamored.

The Witness—During the whole evening when they addressed each other, when either one addressed the other, I observed that there was a tenderness.

Q. Oh, a tenderness? A. Yes, Sir.

Q. A tenderness in the tone? A. Yes, Sir.

Q. Not in the subject upon which they were talking? A. Oh, there was no love-making there by anybody.

Q. That is, there was a softness and gentleness in the tone? A. Yes, Sir; that was not exhibited when they addressed other people; I observed that, Sir.

Q. Well, from those two indications you undertake to express the judgment that Mr. Tilton and Mrs. Woodhull were enamored of each other, do you? A. Not from those alone; I should though; I had other things besides that.

Q. Let us have them—anything that occurred that you know. A. The language which Mrs. Woodhull used to me about Mr. Tilton corroborated what I should have inferred without that language.

Q. Well, what language did she use to you about Mr. Tilton? A. She told me that Mr. Tilton was the nearest approach to her ideal of a man that she had ever met.

Q. Yes. A. And I answered, and said I, "He seems"—says I, "I think that your estimate is reciprocated; I think he reciprocates your estimate of him;" that was the remark I made, and she says, "Indeed he does."

Q. Yes; now, anything else? A. I don't recall anything else now beyond that. Yes—the enthusiasm with which he spoke—which he mentioned as his having over writing her life; that was an additional circumstance.

Q. Yes, Sir. Well, Sir, now we will pass from that topic to the consequent conversation some two or three weeks afterwards.

Mr. Morris—[To the defendant's counsel.] Gentlemen, I wish you would not talk quite so loud back there; it is quite annoying; it is not quite the thing.

#### THE SECOND CALL AT MRS. WOODHULL'S.

Mr. Beach—Some few weeks afterwards, upon a Sunday evening, you called upon Mrs. Woodhull and met Mr. Tilton there? A. Yes, Sir.

Q. Now, what was that conversation? A. I am unable to give anything more than the fragment which I gave this morning; we did not have much conversation, for my visit was a very short one.

Q. Well, as I don't recollect that scattered fragment in the morning, suppose you repeat it. A. I will repeat it.

Q. Well? A. Shall I state the circumstances under which it was introduced, or go right to the subject itself?

Q. I ask you for the conversation; I don't know— A.

Well, Mrs. Woodhull first adverted to Mr. Beecher's connection with her—w<sup>th</sup> the impending revolution, and she said that she was going to give a lecture in New-York soon—whether she gave me the galley proof then and there of it, or sent it to me subsequently, I do not remember.

Q. I was asking for a conversation? A. Well, I am coming to it.

Q. I wish you would get at it a little more directly. A. She said that Mr. Beecher was going to preside at the meeting, and I told her I did not believe—I doubted whether Mr. Beecher would go in and preside at the meeting where a lecture in favor of the principles of social freedom was to be delivered, and she said yes, he would.

Q. Proceed, Sir. A. She said that Mr. Tilton had spoken with him about it, and that Mr. Tilton would bring it about. The only thing that Mr. Tilton said that I recall is this: in reply to my doubts that Mr. Beecher probably would not make any speech indorsing Free Love, but he would make a few introductory remarks, and indorse this question as a legitimate question for public discussion, and indorse her so far as concerned the exercise by her of the right of free speech on that question; that was the way Mr. Tilton limited it.

Q. Well, have you given it all? A. I don't remember anything more—oh, said by him? Mrs. Woodhull said that if Mr. Beecher did not come out—I don't mean to say that she said that if he did not introduce her at the lecture, but that if he did not come out on the side of the great revolution that was impending, that he would have to; that he could not maintain himself—he could not sustain himself without doing so, as he was known as a believer in these principles, as privately expressing his adoption of them, as practicing upon them, and he must have the courage of his opinions, or he must—she did not use that expression that I know of, but he must either come out and identify himself with them, with the friends of the cause, or he could not maintain himself.

Q. Now, Mr. Cowley, when did you first repeat these conversations after their occurrence? A. Very shortly after their occurrence I had a talk with Mr. Cummings, who introduced me to Mrs. Woodhull, and I gave him the general substance; I did not undertake to give a detailed narrative, but he was the first—

Q. And when was that? A. That was very shortly afterwards; I think it was within a week afterwards.

Q. Whom next did you communicate it to? A. I don't remember that I spoke to any one else for some time afterwards; I remember being with Mr. Sumner one afternoon, and he made some allusion to it, and I mentioned that I had heard this story.

Q. Well, never mind, what was said; I wanted to know to whom you mentioned the fact of this conversation? A. Mr. Sumner.

Mr. Evarts—You mean Charles Sumner? A. Mr. Charles Sumner—Senator Sumner.

Mr. Beach—Did you detail to him the subject of this conversation? A. No; only gave him a general idea of it, and he said—

Q. Never mind, I don't ask you what he said; next, who

else? A. I don't remember now any one—yes, Charles Levi Woodbury; he was with me in the Siren case; I remember mentioning it to him.

Q. Who? A. Charles Levi Woodbury.

Q. When was that? A. That was the time I went to Washington; it was within two or three days; that was within two or three days I think of the second interview.

Q. Well, did you detail to him? A. No, not all the particulars, but generally the fact.

Q. Simply the general fact—well, who else? A. Mr. Redpath.

Q. When was that? A. That was a long time afterwards; I don't remember that I spoke of it to Mr. Redpath until about the time of some Congregational council or church court.

Q. Here? A. Yes, Sir; here in New-York, where the matter was talked about in the newspapers.

Q. Well, did you rehearse to him the details of the conversation? A. Not the details; no, Sir; not at that time; in the cars—while the Ecclesiastical trial, while the Ecclesiastical Court was sitting—the Ecclesiastical Committee.

Q. Do you mean the Church Committee? A. The Ohnrrch Committee this last Summer, July or August; it may have been September; at any rate, while the papers were full of paragraphs about the doings of the Church Committee. Gen. Butler and Mr. Redpath were going to Lowell together, and I mentioned it to Mr. Redpath.

Q. Who is Mr. Redpath? A. He is a journalist and lyceum—he is manager of a lyceum bureau.

Q. Where does he reside? A. Resides in Malden, and has a place of business in Boston; just now in Washington, clerk of some committee, I think.

Q. Did you repeat to him the conversation? A. A portion of it only.

Q. A portion of it? A. Only the general outline of it.

Q. Only the general outline of it? A. Only the general fact.

Q. Well, I want to get at some time, Sir, if there is any period when you undertook to relate to any one the particulars of this conversation first? A. Where I related the particulars?

Q. Yes? A. Let us see; I must reflect upon that.

Q. Do, Sir. A. I have mentioned it since the investigations generally, to quite a number of people—

Q. I was not asking you about general mention? A. Yes, Sir; I don't remember that I ever gave any one a detailed report of that conversation—I don't think I ever did until July last.

Q. Well, to whom did you then communicate it? A. I then gave it to two gentlemen, by the name of Hunt Brothers, publishers of *The Lowell Times*, a paper I have taken some interest in, and I wrote an article at that time on the subject, which they published, and I there related—I think that is the first time I ever gave a detailed—ever undertook to give a full detailed report of the conversation.

Q. Well, in that article did you undertake to give the details of the conversation? A. No; I gave some of the incidents.

Q. Merely some incidents? A. Yes; I will send you a copy, of the article, if you would like it.

Mr. Beach—Oh, well, I have no particular curiosity about it, though I would be very much indebted to you for a courtesy of that kind.

The Witness—I will send it to you. I really could not tell what particulars I did put in; I put in some, and made an article about as long as a newspaper would care to use, and then dropped the matter.

#### HOW MR. COWLEY BECAME A WITNESS.

Q. How did you first come to know that you would be wanted as a witness in this case? A. Well, in this way; my law partner in Lowell, David O. Allen, is a nephew of Oliver Johnson. Last Summer, when the statement of Mr. Tilton, and later, when the statement of Mr. Moulton were published containing something—

Q. Never mind what they contained. A. Well, they contained certain matters, and I called Mr. Allen's attention one night to them.

Q. I am not asking for any communication which passed. A. You will pardon me. I related then, to him—

Q. Well, it is through him then, you suppose? A. Yes, Sir; later than that, after Mr. Tilton's testimony and after Mr. Moulton's testimony, in this trial came in *THE TRIBUNE* I called his attention again to it, made some comments on it and the result of it was, that he said—

Q. No, no. A. It was through that, I presume.

Mr. Evarts—You asked him how he came to know that he was to be a witness.

The Witness—Through the communication from Mr. Johnson, I presume.

Q. When did you first receive any notice that you would be wanted as a witness? A. I have forgotten the date. I have a notice from Mr. Shearman referring to a note—

Q. I don't ask anything about referring; when did you first receive notice that you would be wanted as a witness? A. I guess it is about a month ago; it may have been a little less.

Q. That is the first intimation that you had that you would be required as a witness? A. Yes, Sir; a letter from Mr. Shearman.

Q. Did you reply to the letter? A. I did.

Q. And when did you come on? A. Night before last.

Q. With whom have you had interviews upon the subject of your conversation? A. Here?

Q. Yes. A. Mr. Evarts, Mr. Tracy, Mr. Hill, and Mr. Shearman; Mr. Shearman first.

Q. You made no memoranda of this conversation? A. No, not the slightest, except on the tablet of my brain.

Q. Except where? A. On the tablet of the brain.

Q. Yes, on the tablet of your brain; that is difficult of transcription; I can't get at that. A. Yes, Sir.

Q. You made more anywhere else? A. Never made any.

Q. Then your relation of these conversations is founded entirely upon your general recollection of them? A. Well, some things were so striking that I could not forget them.

Q. I didn't ask you that; I asked you if they were founded upon your— A. I think I am answering your question.

Q. I think you ain't; my question is, Sir, whether your narrative of these conversations is founded upon your recollection?

A. Of course it is on recollection, but not general recollection.

Q. Not general recollection? A. No; you qualified your question.

#### THE WITNESS'S PERSONAL HISTORY.

Q. You mentioned, I think, Sir, to Mr. Evarts, that you were a candidate for the office of Attorney-General of Massachusetts? A. I have twice had that misfortune.

Q. Well, did you ever encounter the greater misfortune of holding the office? A. No, Sir; I never expected to.

Q. What? A. Never a possibility of it—running on a third party.

Q. What third party was it? A. That was the Reform party—Labor Reform party in Massachusetts.

Q. Yes, Labor Reform party? A. Yes, Sir.

Q. That is you led a foghorn hope? A. Yes, Sir, took it, repudiating the movement.

Q. What? A. Took it, partially repudiating it; I accepted the nomination, but expressed in my letter, which was published, doubts about the expediency of moving in that line, but I concurred in the general objects which they sought, all of which have been accomplished in legislation.

Q. Well, it is happy for Massachusetts. A. Yes, Sir.

Q. Perhaps you remember the number of votes you received? A. Yes, Sir.

Q. How many? A. Got more than anybody else on the ticket.

Q. Well, how many? A. 14,000.

Q. How happened it that you failed then? A. Because there were two regular parties running in opposition, each of which polled about—well, several times more than our—the smallest—several times more than our party.

Q. Well, what is the law of Massachusetts in regard to the question? A. They don't elect the lowest candidates there. [Laughter.]

Q. Well, as it happens that you were the highest candidate why didn't they elect you? A. I say I was the highest on that ticket.

Q. And that is just the ticket that I was inquiring about. A. But there were two others that were ahead of me for the office—the other tickets—a scattering vote of about a hundred thousand.

Q. Oh, you were the highest candidate upon the ticket upon which you ran? A. Yes, Sir.

Q. But not the highest as between the competitors for that office? A. No, Sir.

Q. Oh! I misunderstood you and gave you occasion for a happy joke; now, when was it that you ran for that office? A. 1869 and 1870.

Q. In both years? A. Yes, Sir.

Q. You have been a practicing lawyer for about nineteen years, I understand you? A. Yes, Sir.

Q. And where has your practice been conducted? A. Lowell chiefly; Lowell, more than anywhere else; I have had an office in Boston since I came home from the navy at the close of the war.



Q. Did you ever have any personal legal difficulties? A. Yes, Sir; several of them.

Q. Several of them. Well, were they connected in any degree with charges of criminal offense? A. One was what purported to be a charge of criminal offense; I never could get it tried; it accomplished its purpose when it was started and appeared in the newspapers.

Q. Ahem! Are you the guardian of a lady who is confined in an insane asylum, or were you ever? A. No, Sir, never of one confined in an insane asylum; I am guardian of a lady who is living in Lowell, but who is not living in any insane asylum.

Q. Never was? A. Never was; I have been guardian of several insane persons; there is only one now that I remember of; never one that was in any asylum during my guardianship.

Q. You say that no person over whom you were guardian—no woman over whom you were guardian, was confined in an insane asylum? A. No, Sir.

Q. Were you ever arrested for the charged offense of perjury? A. No, Sir; I was never charged with perjury by anybody.

Q. Were you upon a charge of false pretenses, connected with a woman? A. Never; I never was arrested upon any charge, except a charge of libel in accusing a man of forgery; the man who sent you those papers, I presume.

Q. Who was he? A. Lawrence McLaughlin.

Q. Sent me what paper? A. You hold in your hand a paper which was spread out before me, and if I read its title, it is a paper I understood was to be sent here by McLaughlin. I heard of it two weeks ago.

Q. What paper? A. A copy of the matter you refer to—a charge of fraud.

Q. A copy of what? A. A copy of the record of a charge of fraud.

Q. A copy of that indictment? A. Yes, Sir; the one I refer to. I say I could never get it tried.

Q. Was that not a charge of false pretenses practiced upon a woman? A. No, Sir. You said "an insane woman."

Mr. Morris—No.

Q. No, I didn't. A. You said where I was guardian.

Q. No, I didn't. A. There was a charge of false pretenses.

Q. Practiced upon a woman, I said? A. There was a woman and a man—an abortionist, and the nurse of one of his patients. That was the allegation, but it was false. I could not get it tried. It was found and published in the newspapers and *nolle prosequit*.

Q. The indictment was found? A. Yes, Sir.

Q. Is Farrington the name—Laura A. Farrington? A. Yes, Sir, she is the one; she was the nurse of the patients of Dr. James Harmon and Isaac F. Morse, who were the moving parties in that. I don't mean to say she was the nurse of Morse's patients.

Q. You say it got into the papers? A. Yes, Sir, and was *nolle prosequit*. I had a quarrel with Isaac F. Morse, the District Attorney, and he formed a conspiracy with Dr. James Harmon, the abortionist, and Laura A. Farrington, the nurse of the abortionist's patients.

Q. Were you present when that was formed? A. No, Sir; but I know it.

Q. How do you know it? A. I know it by their confessions, and asking my forgiveness since.

Q. Who? A. Laura A. Farrington, her husband. Dr. Harmon and his son.

Q. Did you ever proceed against them for malicious prosecution? A. No, Sir; I dropped it where they dropped it.

Q. They confessed that they had sworn falsely against you in obtaining the indictment? A. They apologised to me for having been "roped in" by this Morse into this conspiracy.

Q. That explanation involved the fact that they had sworn falsely before the jury? A. Yes, Sir, it did.

Q. And you didn't proceed against them? A. I did not.

Q. Nor against this District Attorney? A. I proceeded against him in another way; I followed him up last year.

Q. How did you follow him up? A. I followed him up in the newspapers, exposing his perjury, and had a legislative investigation and had him exposed.

Q. Was this accusation of keeping a woman in an asylum, or in some insane institution, discussed in the newspapers at all? A. No; no such accusation was ever made against me. No such accusation was ever made by anybody, so far as I ever knew.

Q. Did you have any difficulty in Washington at any time? A. Never.

Q. None as connected with pension or soldiers' claims? A. Never. I had difficulty in getting some cases where I was counsel.

Q. I don't want to go more than is necessary into this. What was your position in the navy? A. I was on the staff of Admiral Dahlgren as Judge Advocate.

Mr. Beach—I believe that is all, Sir.

# RE-DIRECT EXAMINATION OF MR. CHARLES COWLEY

Mr. Evarts—Who is this McLaughlin that you speak of? A. He was a man who, on the confession of his accomplice, committed a murder on one occasion.

Mr. Beach—Is that proper to be stated?

Q. What is his position now? A. He is now under indictment on four indictments for forgery.

Q. Now pending? A. Now pending.

Mr. Morris—What have we to do with McLaughlin?

Mr. Evarts—Well, we will go on.

Mr. Morris—I guess we won't go on until we understand it.

Mr. Evarts—You understand now who McLaughlin is.

Mr. Morris—I guess we won't have anything to do with him. What has he got to do with this case?

Q. Did you—He sent the information.

Mr. Morris—No, he did not send the information. We have the letter here, and it was no such person; we know no such person.

The Witness—I heard of it from him two weeks ago.

Q. How long ago was this alleged difficulty in your conduct that was made the subject of indictment? A. That was in 1857.

Q. Eighteen years ago? A. Yes, Sir.

Q. You were then a young lawyer? A. Yes, Sir.

Q. In Lowell? A. The first year after I was admitted to practice. If I had not been young I should not have been involved; I should not have had anything to do with such people.

Q. What was the accusation against you? A. I never could make out, except it was a general allegation that I had gotten \$100 for services for which I ought not to have got anything. That was the accusation.

Q. In regard to your receipt of a lawyer's fee? A. Yes, Sir.

Q. Of \$100 from this man and woman, was it not? A. Yes, Sir, where I had been concerned in preventing—seeking to prevent—a prosecution against them for perjury and conspiracy against the Judge of the Lowell Police Court.

Q. Now, for that you were subjected to an indictment, were you not? A. Yes, Sir; I don't remember that I was ever called to answer to it, but I heard of it in the newspapers and went up and saw it, and I presume that is a copy of it.

Q. What happened to that indictment? A. It was *nolle prosequi*.

Q. Did you demand a trial, or to have it *nolle prosequi*? A. Gen. Butler did for me.

Q. As your counsel? A. Yes, Sir; and the District Attorney would not bring it to trial, and when he found Gen. Butler was going to the Court with it he *nolle prosequi* it. He dropped it, but I would not drop him until I got him exposed.

Q. You thought that Mr. Morse was at the bottom of that? A. Yes, Sir.

Q. What has happened to him? A. He has been exposed as the leading defaulter and peesulator in the county frauds in Massachusetts in a legislative report.

Q. In a legislative inquiry? A. Yes, Sir.

Mr. Beach—Who is this?

Mr. Everts—Morse.

The Witness—The man that got that indictment.

Mr. Beach—I object to this indictment.

Mr. Everts—I am satisfied; that is enough for Morse. Now, we will go on with the case.

Mr. Beach—If you will go on with the case I will be content.

Mr. Everts—You introduced the subject of the charge against this gentleman.

Mr. Beach—I have not the slightest objection to this gentleman making an explanation with great liberality as to any circumstance to which we have alluded, but I do not think it is proper to have these loud denunciations against persons who are not involved in this controversy, and who are not here to answer for themselves.

Judge Neilson—I don't think it is quite proper that he should pronounce judgment upon several persons.

Mr. Everts—It depends upon what evidence he has, and what part he has in it.

Judge Neilson—No; it depends on whether it was involved in the cross-examination of the learned counsel.

Mr. Everts—It depends on whether I can reinstate this witness.

Judge Neilson—You are at liberty to reinstate him.

Mr. Everts—By showing who his accusers are, and what they are, and what his position is.

Mr. Beach—Not founded upon his judgment and opinion, but founded in hostility.

Judge Neilson—There is no need of discussion about it. This gentleman has a right to reinstate himself, and you have a right to a liberal examination to that end.

Mr. Everts—Have I exceeded that?

Judge Neilson—I have not said you had; but it is improper for the witness to pronounce judgment upon A, B, C or D and say they are guilty of frauds, when perhaps they are not at all.

Mr. Everts—Well, Sir.

Judge Neilson—Proceed with your examination.

#### THE CHARGE AGAINST THE WITNESS EXPLAINED.

Q. Now, you may explain, as my learned friend, Mr. Beach, has suggested, in the most liberal manner, this accusation and the parties who were concerned in it. A. The parties concerned in that accusation against me were, first and principally, Dr. James M. Harmon, whose business for many years has been that of an abortionist. The next was Laura A. Farrington, who was a nurse of his patients. The next was Isaac L. Morse, the District Attorney, with whom, prior to this, I had another difficulty, growing out of his not paying over—

Mr. Beach—I object to this.

Mr. Everts—That is his accuser. His accuser was a person whom he had a prior difficulty with about not paying over money.

Mr. Beach—I object to it.

Mr. Everts—That is not within the line of liberality.

Mr. Beach—No; it is beyond the line of liberality.

Mr. Everts—Go on.

The Witness—They commenced this persecution, and brought the suit. When my counsel insisted on having it tried, or he would go to the court, then the District Attorney *nolle prosequi* it. I never could get it tried, and I never understood, either from my own knowledge or from the advice of Gen. Butler, that there was any offense charged there known to the law. There was a general accusation of fraudulent dealing in and connection with—

Mr. Beach—I have a great respect for Gen. Butler's opinion, and for this witness, but—

Mr. Everts—You said he might explain.

Mr. Beach—I think he is getting beyond the bounds of all reasonable or liberality of explanation.

Q. Was this the same District Attorney that found the indictment? A. Yes, Sir.

Q. That *nolle prosequi* it? A. Yes, Sir, the same one.

Q. When did that matter come to an end? A. Very shortly after it was found.

Q. In the year 1856-'57?

Mr. Beach—No, Sir; in 1858, I think. Mr. Cowley is mistaken in the year.

The Witness—I think it was 1857; it may have been 1858.

Q. And it has slumbered ever since, has it? A. I never could get it tried. It was *nolle prosequi*, and then he ended.

Q. It was *nolle prosequi* at that time? A. Yes, Sir, and that

ended it. It is the last accusation I ever heard against me, and the first.

#### THE WITNESS COUNSEL FOR MRS. WOODHULL.

Q. You have stated that at some time you became counsel for Mrs. Woodhull, in some matter. When was it? A. That was the year following these conversations that she came to Boston to lecture, and she had difficulties; she was refused the hall.

Mr. Beach—We object.

Q. You became her counsel in reference to some matters then that arose in Boston? A. Yes, Sir; and got them settled.

#### MR. TILTON'S OPINION ON THE LAWS OF MARRIAGE.

Q. Now, Sir, did Mr. Tilton, in conversation with you, comparing the laws of the different States on the subject of divorce, express to you any approval of any of those laws as suitable to what he regarded the marriage relation and its government?

Mr. Beach—I object to that question as leading.

Mr. Everts—This is in reference to your cross-examination.

Mr. Beach—I cannot help that.

Judge Neilson—I think he may answer that.

The Witness—I didn't understand him to express an absolute—

Mr. Beach—Is this witness to give his understanding on the subject?

Judge Neilson—He may state if he recollects, and, if he does, he may state his recollection.

The Witness—I will state Mr. Tilton did say that the laws of New-England, certain of the New-England States that were specified, Connecticut in particular, were preferable to those of New-York; that the laws of Indiana and Illinois were also preferable to those of New-York; and he also said that this whole matter was a matter—that any legislation on this subject was an invasion of the reserved rights of the individual; it was a matter that should be left with the individuals; they should make their contracts and terminate them at their will.

Q. Did you discuss with Mr. Tilton any of these questions of law respecting the restitution of conjugal rights, or the remedy against a husband for the support of his wife? A. Well, these things were spoken of; yes, Sir.

Q. In what way were they spoken of? A. I spoke of the great difficulty—I said what seemed to me to be the worst feature of divorce, was the effect upon the children, where there were children, leaving them without paternal care; that I didn't know that I should care much where people had no children, where there was no one but themselves, and they were able and had means to take care of themselves, if it was left for them to decide; but when there were dependent children, or when there was a dependent woman or wife who might be deserted by a vigorous husband, and left without any support, that I could not conceive that any right-minded man would want to have the laws changed which would deprive them of this protection.

Q. What did he say to that? A. He said the only way was for

them to learn habits of self-reliance and self-dependence; they should learn to rely upon and depend upon themselves.

Mr. Everts—That is all.

Mr. Beach—That is, educated to rely upon themselves in regard to the making and dissolution of contracts? A. That was not the way he put it. That if they were educated and taught to rely upon themselves—learn to rely upon themselves, and take care of themselves—then any contract which might be made should be left to be enforced by the—

Q. Carrying out the idea that they should be competent to make and dissolve contracts? A. Yes, Sir.

Mr. Everts—Didn't it carry the idea that they must learn to submit to their fate if their husbands deserted them? A. Yes, Sir; it carried that idea too.

Mr. Beach—Carried the idea that they must learn to submit to their fate if their husbands deserted them? A. Yes, Sir; marriage being the subject of a contract, being dissoluble by contract as well as made by contract.

Q. Exactly? A. If the elements—if the love, which was the essence of marriage, ceased, it was the misfortune of the one who had ceased to be loved, and that was one of the inevitable misfortunes of life.

Q. That is if parties were rendered competent to make a contract, and competent to dissolve it, you understood that one party could dissolve it? A. I stated so; that makes it dissoluble.

Q. Did you understand that that being made a matter of contract, to be entered into and dissolved at will, that one party could dissolve a contract? A. I did; yes, Sir. I do, too, now—a contract of that kind.

Mr. Everts—You understand the remedy to be by damages for its dissolution? A. Precisely, and no other.

Q. Was, or was not, the proposition of Mr. Tilton that the marriage relation should be of that kind? A. Yes, Sir.

Q. That it might be commenced and dissolved when the parties did not agree to keep it longer? A. That was the way he put it.

Mr. Beach—And I understand you to say that if they did dissolve this contract the same as any other contract, there would be an action for damages for a breach of it? A. To be left for the law to provide a remedy, just as any other contract.

Q. Just as any other contracts. Then you understood that if a husband should break the marriage contract and assume to dissolve it (if that term can be applied to it), that it should be left to the law to afford a remedy in damages? A. I could not conceive how there could be any remedy where a party has nothing.

Q. Did you understand that? A. I understood that to be his position; and I combated that position on the ground that it left—

Q. Never mind; wait a moment; I didn't ask you about your combating of it. Now, if a contract of marriage could be made and could be broken and dissolved at will, don't you say that you didn't understand that if it was put upon the footing of any other contract, that there would not be an action for damages for the breach of it? A. I understood there would be; there might be penalties for the breach of it.

Q. Well, now, let us take the case of a marriage formed by contract of a graceless husband deserting what you call a worn-out wife in his service; you understand the doctrine of Mr. Tilton to be that that wife, she having fulfilled the obligations of the contract, and the husband breaking it, could maintain an action against the husband for the breach of it? A. I don't know as I quite get your question; what I understood was this—

Q. Didn't you understand that if the husband broke the contract against the will of the wife, that she could maintain an action for damages? A. That there would be some remedy provided—some penalty?

Q. Yes? A. I did, but still the contract would be broken, and the marriage at an end.

Q. Yes, Sir; and, so, if a husband or wife does an act which, according to the law of New-England would justify a divorce you understand that would be a breach of the contract? A. Certainly.

Q. Which either could break at their will? A. Yes, Sir.

Q. And that the law of divorce affords the only remedy which is given? A. Yes, Sir.

Mr. Beach—That is all.

Judge Neilson—That is all, Sir.

The Court then adjourned until Friday morning at eleven o'clock.

## FORTY-THIRD DAY'S PROCEEDINGS.

### THE TRIPARTITE COVENANT EXPLAINED BY SAMUEL WILKESON.

THE SUGGESTION FOR THE DOCUMENT—INTERVIEWS CONCERNING IT DETAILED—MR. BOWEN'S PAYMENT TO MR. TILTON ASSERTED TO HAVE BEEN CONNECTED WITH THE COVENANT—WHAT MR. TILTON SAID TO MR. WILKESON IN REGARD TO THE SCANDAL—ALLEGED CONFESSIONS BY MRS. TILTON TO MRS. H. B. STANTON AND MISS ANTHONY—TESTIMONY ABOUT MR. TILTON'S ATTENTIONS TO A LADY NOT NAMED.

FRIDAY, March 12, 1875.

The trial was a few minutes late in opening to-day on account of the tardiness of a juror. During the time of waiting, Judge Neilson inquired concerning the health of Mr. Fullerton, and was told by Mr. Beach that Mr. Fullerton was too weak to attend the Court, but expected to be able to resume his duties on Monday. Clerk Mallison then announced, "jury present," and the defense entered upon their part of the day's work by calling Samuel Wilkeson. Mr. Wilkeson began to testify concerning a conversation which took place in 1861 at Washington between Mr. Tilton and himself in reference to a service done by the latter for a son of Mr. Beecher. Mr. Beach promptly

objected, and the Judge ruled out the evidence, notwithstanding the strenuous efforts of the senior counsel for Mr. Beecher to have it included. Mr. Evarts complained that the ruling was cruel to his client, but Judge Neilson answered, almost sorrowfully: "The hardship is that I should learn from the counsel that it is unjust and cruel to the defendant to rule out this evidence, which is utterly immaterial, and could not be of service to him." The witness then proceeded with his testimony, which, in the main, was a minute account of the circumstances of the celebrated tripartite agreement, the first suggestion of which was made by the witness, who also drew up the original document. Mr. Wilkeson testified on this point that Mr. Tilton called upon him at his office on March 20, 1872, and showed him the original draft of the paper known as the personal statement, which Mr. Tilton said he should publish in the next number of *The Golden Age* unless Mr. Beecher did him justice. The only thing of which Mr. Tilton then complained was that Mr. Beecher did not help him in his troubles with Mr. Bowen, and, according to Mr. Wilkeson, Mr. Tilton declared that he "would pursue Mr. Beecher to the grave." On the day following Mr. Moulton called upon Mr. Wilkeson, and the latter then said that he thought it would be well to bring the three, Henry Ward Beecher, Henry C. Bowen, and Theodore Tilton, to unite in a covenant in writing which should prevent at least two of them from circulating scandals. Mr. Moulton agreed to this, and Mr. Tilton afterward assented. At a subsequent interview between the witness, Mr. Moulton, H. B. Clafin, and Mr. Tilton, it was decided that Mr. Bowen should be induced to pay Mr. Tilton whatever amount of money was due to him, and should use *The Independent* to restore Mr. Tilton to the position which he had lost. It was also determined that the scandal papers in the hands of Mr. Tilton and Mr. Moulton should be destroyed, after the tripartite agreement should have been signed and the money paid. It was also stated by Mr. Wilkeson that at another interview between the four persons mentioned, Mr. Clafin reported that Mr. Bowen had consented to pay the money, provided that arbitrators were appointed. Mr. Tilton, on hearing the draft of the tripartite agreement read, declared that he "would sign it twelve times over if Mr. Bowen would sign it once."

The remainder of Mr. Wilkeson's testimony was in relation to Mr. Tilton's early statements of the

cause of his troubles with Mr. Beecher. After the tripartite covenant had been agreed upon, Mr. Wilkeson asked Mr. Tilton if there was any truth in the scandalous stories about Mr. Beecher and Mrs. Tilton. Mr. Tilton replied, "The charges are wholly unfounded," adding that the utmost that Mr. Beecher had done was to address improper language to Mrs. Tilton, and that ample apology in writing had been made by Mr. Beecher. Toward the close of his testimony Mr. Wilkeson asserted that, when Mr. Tilton, on April 8, 1872, refused to sign the tripartite covenant as it then stood, he (Mr. Tilton) declared, "I will never sign that or any other paper that will prevent me from pursuing Henry Ward Beecher."

During the first part of the cross-examination of Mr. Wilkeson, Mr. Beach put a series of questions about the precise language used by Mr. Tilton on occasions referred to by the witness. The course of inquiry then turned to what Mr. Tilton had said concerning the stories about his wife and Mr. Beecher. The witness said that he had made a memorandum of these conversations, because he "thought the whole matter would end in a great legal controversy." "When did you think that?" asked Mr. Beach. "When," answered the witness, "I heard the movement that Theodore Tilton had organized against Henry Ward Beecher." Mr. Beach caused a laugh in his expostulation with the witness for this answer by addressing him as "Mr. Frothingham." The rebukes of the senior counsel for the plaintiff produced little effect on the witness, who, in reply to the question, "How did you think a charge of improper language could get up a great legal controversy?" answered very emphatically, "I thought the time would come when Henry Ward Beecher and his friends would become tired of paying money to *The Golden Age* to stop a scandal against the greatest preacher and the greatest man of the age." This expression of opinion was greeted with laughter and some applause. Mr. Wilkeson denied that he had uttered the expression attributed to him, that "the publication of these scandals would knock the 'Life of Christ' higher than a kite," and seemed very anxious to tell what he did say on this point, but Mr. Beach did not care to hear it. The witness was very unwilling to mention the names of ladies in his testimony, and appealed to the Judge to be excused from so doing. Judge Neilson refused this request, and in answer to Mr. Beach's questions Mr. Wilkeson stated that Mrs.

H. B. Stanton had told him that Mr. Tilton had declared to her that Mrs. Tilton had committed adultery with Mr. Beecher. The witness added that Mrs. H. B. Stanton had also told him that Miss Susan B. Anthony had informed her that Mrs. Tilton had confessed the offense to Miss Anthony. Mr. Wilkeson informed Mr. Tilton of this, and he, among other uncomplimentary remarks, declared that "Susan B. Anthony was a morbid old maid."

The conclusion of Mr. Wilkeson's examination was more pleasant than its beginning. The witness declared that he only desired to tell the truth. "And I," said Mr. Beach, "wish to help you." "I like your help, Mr. Beach," replied Mr. Wilkeson. "Well, I would be glad to coöperate with you in all your little schemes—especially in that of the Northern Pacific Railway," said the lawyer. "Well, that will come out all right," rejoined the witness. Mr. Wilkeson was asked about his relation with Mrs. H. B. Stanton. "That was the accident of marriage," answered the witness. "Marriage isn't an accident," retorted Mr. Beach. "Bless the accident," exclaimed the witness. In regard to Miss Anthony, the witness said with a patient smile, "She has for years crossed my orbit of life."

On his redirect examination, Mr. Wilkeson was allowed to tell what he did say about the "Life of Christ." The words which he used were these: "If these stories are true their publication will knock the 'Life of Christ' higher than a kite." Mr. Wilkeson left the witness stand with a triumphant expression, and made the remark—which was emphasized with a vigorous slap on his knee—that the whole matter ought to have been brought into court at the start.

At 3½ p. m. Mr. Shearman called the Rev. Edward Eggleston as the next witness. His testimony was very brief, and related mainly to attentions paid by Mr. Tilton to a lady whose name was not mentioned in the evidence. The cross-examination was short. In the course of it Mr. Eggleston described himself as "a Methodist clergyman preaching in a Congregational Church and lying around loose generally."

#### THE PROCEEDINGS—VERBATIM.

MR. FULLERTON STILL ABSENT.

The Court met at 11 o'clock, pursuant to adjournment.

Judge Neilson—Mr. Beach, did you learn this morning how Mr. Fullerton is?

Mr. Beach—Mr. Fullerton is very much improved, Sir, but he is still in such a weak condition that it is not safe for him to ap-

pear in Court. I have no doubt that he will be entirely restored by Monday.

Judge Neilson—Proceed, Mr. Hill.

Mr. Hill—Mr. Wilkeson, will you take the stand?

TESTIMONY OF MR. SAMUEL WILKESON.

Samuel Wilkeson was sworn and testified as follows:

Mr. Hill—Mr. Wilkeson, where do you reside? A. In 40th-st., New-York City.

Q. Please state your business. A. I am helping to build the Northern Pacific Railroad.

Q. Are you an officer of that Company? A. I am the Secretary of the corporation.

Q. How long have you been Secretary of that Company? A. Five years.

Q. What was your business before entering in the railroad scheme? A. I was a journalist.

Q. How long have you been a journalist? A. Professionally and as a contributor thirty years, Sir.

Q. Were you engaged upon any of the New-York papers; if so, name them? A. Yes, Sir. on THE TRIBUNE.

Q. What period on THE TRIBUNE, Mr. Wilkeson? A. I think altogether about seven years.

Q. Name the time again; give the two dates. A. I think for three years before the war, and I think about four years during the war.

Q. Now, Mr. Wilkeson, did your business as a journalist or otherwise, call you to Washington, Sir? A. I had charge of THE TRIBUNE newspaper in Washington, Sir, from 1861 to 1863, I think.

Q. Please state, Mr. Wilkeson, if you have any interest in the publishing house of J. B. Ford & Co., and in *The Christian Union*? A. I am one of the copartners of Ford & Co., and Ford & Co. are stockholders in *The Christian Union*.

Q. And your interest in *The Christian Union* newspaper is through your ownership of stock? A. In Ford & Co.

Q. At least your membership of the firm of J. B. Ford & Co., who own stock? A. Yes, Sir.

Q. Or own some of the stock. Mr. Wilkeson, do you know Theodore Tilton? A. Yes, Sir.

Q. How long have you known him? A. Fifteen or sixteen years.

Q. And are you acquainted with Mr. Beecher? A. Yes, Sir.

Q. How long have you known him? A. About twelve, or thirteen, or fourteen years.

Q. Do you recollect an occasion when Theodore Tilton visited Washington and had an interview with respect to Mr. Beecher? A. Yes, Sir.

THE TESTIMONY OBJECTED TO.

Q. Please state what occurred. A. It was in the Fall of 1861. Mr. Tilton came to me early in the morning one day, I think it was at my hotel, Willard's, and brought me a letter from Mr. Beecher, in which Mr. Beecher said that—

Mr. Beach—Wait one minute, witness.

Q. Do you know what has become of that letter?

Mr. Beach—What do you propose to prove?

Mr. Hill—I propose to prove a conversation with Theodore Tilton respecting Mr. Beecher at that time. Proceed.

Mr. Beach—When was that, do you say? A. In the Fall of 1861.

Mr. Hill—Proceed, Mr. Wilkeson; you may omit the statement of the letter at this time.

Mr. Beach—It seems to me, your Honor, that is going very far back in the intercourse of these parties—1861.

Mr. Evarts—It was introduced by Mr. Tilton, as a transaction of his in Mr. Beecher's interest.

Judge Neilson—Was that the time he went on about the son?

Mr. Evarts—Yes; about the son.

CONFLICTING DEFINITIONS OF COLLATERAL MATTER.

Mr. Morris—They cannot contradict that; it is collateral.

Judge Neilson—In that view, we will see what it is.

Mr. Beach—I don't know. I submit, your Honor, that it is totally immaterial. How does it become material to this issue, any conversation with Mr. Wilkeson in regard to that matter, or any action of Mr. Tilton in regard to any service he may have performed to the son of Mr. Beecher?

Judge Neilson—As to the latter, it may be of no moment; and Mr. Tilton himself rather ignored the extent of the service.

Mr. Beach—Certainly, Sir.

Judge Neilson—But yet I can suppose a conversation might be held that might be material; we had better see what it is.

Mr. Beach—I submit to your Honor, that if it is upon that subject, it is an entirely collateral matter; and it is not the subject of an examination upon their part.

Judge Neilson—So far as reinstating the son is concerned, yes, Sir; that is so.

Mr. Beach—That is as far as I object to it.

Mr. Hill—Proceed, Mr. Wilkeson.

Mr. Morris—No; the Court has not said so yet.

Judge Neilson—I have said that there may be a conversation that we ought to take.

Mr. Morris—But I understand your Honor to intimate that the conversation with reference to that matter is collateral.

Judge Neilson—The service as to the reinstating the son, if that were so—

Mr. Hill—I propose to go to nothing else.

Mr. Morris—Well, I understand your Honor has held that to be collateral.

Mr. Evarts—I don't so understand it; his Honor says he may give the conversation and see what it is.

Mr. Beach—Now, it appears in the evidence that Mr. Tilton rendered a favor of a greater or less degree to Mr. Beecher in some action which he took concerning some difficulty which encompassed a son of Mr. Beecher. Mr. Tilton has disclaimed any particular merit on account of that service; has said that Mr. Beecher expressed more gratitude to him than the service deserved. Now, is not that purely a collateral matter, and are we to examine in regard to that issue as to whether the service was greater or less on the part of Mr. Tilton?

Judge Nelson—Certainly not.

Mr. Beach—And as the counsel avows that this examination to this point is only with reference to that service, I submit to your Honor that it is incompetent.

Mr. Evans—It is difficult for me, if your Honor please, to understand the appropriateness of the phrase "collateral," as applied to inquiry into relations between Mr. Tilton and Mr. Beecher. It is not collateral; it may be unimportant or subsidiary or secondary, but it is not collateral. Collateral inquiries are when a witness, who is only a witness, is inquired of respecting what is in the nature of impeaching imputations, and in regard to them you take his answer as collateral and do not pursue it. That is because you cannot try causes between other people. But all that reasoning and all the authority and the doctrines of the law have no application to the question whether or not this passage in the life of Mr. Tilton and Mr. Beecher, as towards each other, is or is not the proper subject of inquiry. Now, it being a matter in the cause, and between the parties, the question whether or no we are at liberty to show by this witness what the transaction was, is the same question as whether it is competent to show it by any witness; and we are not concluded by Mr. Tilton's version of the transaction. There is nothing in Mr. Tilton's testimony that imports absolute verity, or closes our mouths against the production of witnesses concerning any matter that is the proper subject of proof in the cause. Now, this incident furnishes a particular and important portion of the sentiments and relations of Mr. Beecher towards Mr. Tilton—whether rightfully or wrongfully has nothing to do with the question. It was a matter in which, as has been shown by the testimony, Mr. Beecher regarded himself as under great obligations to Mr. Tilton, and Mr. Tilton has disclaimed the magnitude of the obligation, though he has not shared the service with anybody else that I have understood.

Judge Nelson—He was not inquired of as to that.

Mr. Evans—I am not imputing any error to him, or fault. I am only stating his testimony as it is. Now, this gentleman is asked to give that transaction as conducted by Mr. Tilton there, and it is to serve also as a part of subsequent evidence between Mr. Tilton and this gentleman in regard to those nearer matters of this affair which are proper evidence. We have said that the present inquiry is limited to what passed between Mr. Tilton and this witness concerning this affair of Mr. Beecher's. It is not a loose and general conversation concerning other matters; it is a very brief affair, and it is an element, a link, in our testimony. We regard it as important. It is not collateral; it is direct and it is competent evidence. My learned associate, Mr. Abbott, refers me to the case of Carpenter and Wall, 30th of New-York, as recognizing the rule that matter brought out by a statement of plaintiff's witness on direct may be contradicted whether material or not. That is an additional bearing of the inquiry.

Mr. Beach—It is the first time I have understood, Sir, that the law confined the definition of collateral issues to those subjects which were inquired of on the impeachment or attempted impeachment of a witness. There is a main issue, and perhaps more, in every case—whatever is, in the language of the gentle-

man, unimportant or subsidiary to that, is, in the sense of the law, collateral. Whatever does not bear essentially upon the true issue to be determined by the jury is collateral. This action involves, as the principal issue, the question of the seduction by the defendant of the plaintiff's wife. It is competent as a part, perhaps, of that issue, to inquire into the relations which existed between the contending parties and, possibly, their families. That may be regarded as a material portion of the main inquiry in the action. Now, so far as any incident of the kind to which the attention of this gentleman is directed reflects upon the relation of the parties, the terms of confidence, respect and intercourse, why it may very well be regarded as competent upon the main issue of the case, although this transaction is so remote in period, so far from the occurrences connected with the main issue, that it might well be doubted whether it has any relevancy to that issue in consequence of that remoteness. But, Sir, suppose it had been proved either upon the direct or cross-examination that Mr. Tilton and Mr. Beecher, in the year 1867, had a business transaction, an exchange of property, or any other of the ordinary affairs of business intercourse, would not that, I submit to your Honor, be collateral to the main issue so far as the details of that transaction are concerned, and would it be competent, in a trial of this character, to enter into an examination of all the minutiae of a business affair between those parties at that remote period of time? I don't recollect, Sir, whether the attention of Mr. Tilton was first directed to this subject upon the direct or the cross-examination, and should prefer to refer to the minutes of the stenographer upon that point, unless some of my associates recollect. I had the idea, Sir, that it was disclosed in the first instance—

Mr. Morris—It was referred to incidentally on the direct, too.

Mr. Beach—Referred to incidentally on the direct by the introduction of a letter of Mr. Beecher expressing gratitude to Mr. Tilton for the service he rendered in that matter.

Judge Nelson—Sending him a present of an inkstand.

Mr. Beach—Yes, Sir; sending a present of an inkstand, and that was for the purpose of introducing the kindly relations which then existed between these parties. I am corrected, Sir, by my associates as to the fact of the introduction of that letter; it was introduced upon the part of the defense, I understand.

Mr. Morris—And they went into particulars, you recollect, as to the—

Mr. Beach—If there was any reference in the direct examination of Mr. Tilton to that transaction, it was very indistinct and remote. None of the details were inquired of on the part of the plaintiff, and all that was said material upon that subject was upon the cross-examination. Now, I submit to your Honor that this is an entirely collateral and a very remote transaction, which can reflect no light upon the main and material issue in the case, and they, having made Mr. Tilton a principal witness upon that subject, it is not competent to contradict him, and I therefore submit, Sir, that the proposed evidence is incompetent.

Judge Nelson—Mr. Hill, will you state distinctly what you expect to prove?

Mr. Hill—Yes, Sir.

Mr. Beach—I understood Mr. Hill to avow that it was entirely with reference to that event.

Mr. Hill—I expect to show this transaction, which has been referred to, which we have been talking about here, the service which Mr. Tilton rendered at that time as it actually occurred, by the parties who were concerned in it; I mean actually upon the ground.

Mr. Beach—Then, Sir, it will resolve—

Mr. Shearman—Wait, Sir; we have not finished.

Mr. Hill—And I propose, also, to show, Sir, how that transaction was represented to Mr. Beecher, and thus show—thus lay a foundation for showing the state of Mr. Beecher's feeling at a later period with reference to Mr. Tilton, and with reference to his correspondence which they put in evidence.

Mr. Beach—Then the question resolves itself into this, Sir, that they introduce a letter from Mr. Beecher expressing gratitude to Mr. Tilton for this supposed service, and they now propose to show that that service was not rendered, or that the extent of it was misrepresented to Mr. Beecher as calling—as an inducement to the expressions which he used in that letter. They proved the letter themselves, and now propose to show that the foundation upon which the letter was written was inaccurate.

Judge Neilson—Mr. Tilton did not in his testimony state what he did in Washington, or give any details about it, or refer to this gentleman as having met him, or give any other indication in regard to it, except that he went on in reference to that subject, and it is very plain to me that it is not the proper subject of inquiry, that it is not material. Suppose this gentleman at Washington rendered the service, it would be immaterial to offer such an inquiry. I must rule out that much of his evidence. If you can prove anything else you can take the advantage of it.

Mr. Evarts—If your Honor please, how are we to judge of the materiality of evidence until we know what it is?

Judge Neilson—That would let in everything; there would be no limit then.

Mr. Evarts—I don't know that. The object of an inquiry is to get at pertinent truth, and when it is introduced, the first question is whether you have a competent witness. The second question is, whether the subject is a proper one of inquiry, and then, you must take the evidence and see how important it is. Now, our proposition is precisely this: To say that Mr. Tilton is made our witness for anything that he has testified to, is as unsuitable to any rule of a party examined on an issue in a cause as any observation can be. My learned friend says this is collateral, but he makes a new definition of collateral, and that is, subordinate. Subordinate is not collateral. And important items of testimony are not made collateral by their unimportance. They are often made important by other items of testimony which give them that significance; and if every item of evidence adduced was to be excluded because it did not decide the issue what progress should we make in the trial of a cause. Now, if your Honor please, this subject was introduced by the plaintiff on direct evidence of the plaintiff himself. It was made the subject of further inquiry on cross-examination

on our part, and now we propose to show what the actual dimensions, and the order of occurrences, and their significance in this transaction were, at different stages of it, to wit: in what occurred at Washington and what afterwards occurred on the return of Mr. Tilton, and to what subsequently occurred at a later stage, which I do not now further indicate. Mr. Tilton, you remember, speaks of this in his testimony as being the date of Mrs. Beecher's resentment against him, to wit: the favor he had done to her son. Your Honor shakes his head.

Judge Neilson—You got that impression. I did not get that impression.

Mr. Evarts—He stated so. Whether it made an impression or not as to its truthfulness or its weight, I do not know. Now, it certainly is a very grave matter if we are not permitted by our witnesses to give the actual character of transactions that have been imperfectly introduced in the testimony of the plaintiff, either to correct or contradict, either to correct in the sense of imperfect testimony given against us by the party, or to correct—contradict in the sense of false testimony given. And it is that view of our right to show by a competent witness, under the laws of evidence, the actual occurrences that have been introduced from the plaintiff's mouth.

Judge Neilson—My own judgment is that we cannot investigate these remote matters of service, if they were of service; that they are remote and immaterial here—utterly immaterial—and that if we are to investigate every such transaction it would expand the cause beyond the proper boundary that belongs to it. There would be no end to it. With that view, I rule out this testimony offered by this witness.

Mr. Evarts—Your Honor will note our exception.

Judge Neilson—The reference made to the service, if it were one, by the plaintiff, was very slight indeed. I did not understand him to take to himself any particular merit in regard to it. He did not say whether on going to Washington he committed this subject to this witness or to anybody else, and let them do the work, or that he did any work at Washington, or did anything requiring discretion, or requiring influence. It is utterly immaterial.

Mr. Evarts—Because he has not shown the actual character of the transaction, is that the reason that we are precluded from showing it? It is a part of our case to show it.

Judge Neilson—It is too remote and too immaterial, I think.

#### DEFENDANT'S COUNSEL COMPLAIN OF HARDSHIP.

Mr. Evarts—Well, your Honor will see the hardship upon us.

Judge Neilson—No, I don't see any hardship.

Mr. Evarts—Your Honor will see the hardship upon us of shutting out evidence in advance of its statement, by a pre-judgment that it is immaterial.

Judge Neilson—The hardship that I see, if I must say so, is this, that when I think a transaction so remote and so utterly immaterial should be ruled out, the hardship is, that I should learn from counsel that it is cruel and unjust to this defendant, when it can do the defendant no good any way, and has done him no harm—utterly immaterial—and when I am bound simply to exercise my judgment in regard to it, and do nothing



more. I think, upon every consideration, this evidence should be ruled out as immaterial.

Mr. Evarts—Well, but if your Honor please, I have stated the general proposition of excluding evidence in advance of knowledge of what it is upon a prejudgment that it will turn out immaterial. Now, that shuts out the truth without any knowledge of what the statement is to be.

Mr. Beach—Will your Honor permit me to say—

Judge Neilson—One moment.

#### COUNSEL FOR PLAINTIFF RESENT THE REFLECTION.

Mr. Beach—Allow me to say one word, if your Honor please. This is a reflection upon the intelligence and justice of the Court. It may be well enough to recall the circumstance under which your Honor rules. I objected to this evidence, knowing its general character in advance. Your Honor called upon the counsel for the defense to state what they proposed to prove. They made that statement of the substance which they proposed to give, and your Honor, in the exercise of your judicial judgment upon that statement by the counsel upon their own knowledge of their proof, pronounced it immaterial and incompetent, and it is said by the counsel upon the foot of that decision that it is a hardship to prejudge the materiality of the proof before it is given, when the counsel themselves give to your Honor the basis upon which your decision is founded; and it is the only way, Sir, in which we can exclude immaterial evidence where the question itself is general like this, as to what occurred in that interview, and does not point to the particular substance of the evidence proposed to be given. It is the way established by the law, Sir; and permit me to say that the decision of your Honor is in accordance with the practice and the principles of law.

Judge Neilson—To avoid the possibility of prejudging or passing upon evidence without knowing what it was or might be, I availed myself of the right to ask the counsel what he expected to prove on this subject, and he very frankly stated what he expected to prove.

Mr. Evarts—But let me ask your Honor's attention to the terms in which it was stated, that we propose to prove that transaction at Washington as it existed.

Judge Neilson—Well, it is ruled out, Sir. Proceed to something else.

Mr. Hill—Note our exception, if your Honor please.

#### THE USE MADE OF THE PERSONAL STATEMENT.

Mr. Hill—Do you recollect an interview with Theodore Tilton, in the month of March, 1873? A. Yes, Sir.

Q. At your office? A. Yes, Sir.

Q. Where was your office then? A. In the Equitable Life Insurance Company's building, in Broadway.

Q. Who was present when the conversation occurred? A. Only Mr. Tilton and myself.

Q. Please state now when it was. Give me the date, if you please? A. On the forenoon of the 29th of March, 1873.

Q. Do you recollect what day of the week it was? A. Friday.

Q. Please begin now and detail that conversation as fully as

you can to his Honor and the jury? A. Mr. Tilton came into my room, greeted me, and took out of his pocket a well worn press-proof of a newspaper article and laid it on my table, and told me that he wanted me to read it; he said that he brought it to me because I was the common friend of Henry Ward Beecher and himself, and that I was a copartner in the house of Ford & Company, who were the publishers of Henry Ward Beecher's books, and because I was interested with him in the ownership of *The Christian Union* newspaper. He said that he intended to publish that article in the next number of *The Golden Age* unless Mr. Beecher did him justice. I read the article; it is what has been called—

Q. One moment; just look at this printed matter attached to the "tripartite covenant," that is to say, "Exhibit D, No. 25."

A. It is what has been designated in this trial as the personal statement, including the letter of Henry C. Bowen of January 1st, 1871.

Mr. Evarts—Well, what precedes and follows it? A. I read it through. I asked him if he really purposed to publish that article.

Mr. Beach—What was the last remark, Mr. Wilkeson? A. I asked him if he really purposed to publish that article.

Mr. Hill—Let me ask before going to that—you stated that this whole article was present at that time, produced by Mr. Tilton. A. The personal statement?

Q. The personal statement. A. The printed article?

Q. Yes. A. Yes, Sir.

Q. And read through? A. I read it.

Q. As well what follows the letter as what precedes it? A. Yes, Sir; I read it.

#### A THREAT TO PURSUE MR. BEECHER INTO THE GRAVE.

Q. Now, you were going on to state if he really intended to publish. A. I asked him if he really intended to publish that article. He said he did, unless justice was done him by Mr. Beecher. I remonstrated with him against the publication of that article. I told him that it would be enormously mischievous; that it would produce a scandal which would extend throughout Christendom; I told him it would do infinite wrong and work infinite mischief. He said that it was his purpose to publish it unless justice was done him. Then he went on to speak of Mr. Bowen; he said that Mr. Bowen had dismissed him from his employment on *The Independent* and on *The Christian*—and on *The Brooklyn Union*, and that he had violated his contracts with him to render editorial services for certain salaries on each paper; that he had—that Mr. Bowen had deprived him of his income; that his dismissal from those papers had ruined his reputation, and had destroyed him; and he went on growing in excitement, and he said that Mr. Beecher had not come to his help; that he was a man of such power that he could with his little finger have lifted him up in his troubles; but that as he laid on the sidewalk in Brooklyn, crushed and ruined by Bowen's treatment of him, and by the consequences of his loss of employment on those two papers, and the injury done to his reputation, that Mr. Beecher, who with his little finger had the power to lift him up

and reinstate him, had passed him by indifferent and had not helped him, had left him lying there; and moving across the room back and forth, in great excitement, he said he would pursue Mr. Beecher into the grave.

Mr. Beach—Into what? A. Into the grave.

#### THE SURMISED PURPOSE OF MR. TILTON'S CALL.

Mr. Hill—What else occurred Mr. Wilkeson? A. I thought that Mr. Tilton's immediate want was money.

Mr. Morris—Oh! oh! never mind what you thought, Mr. Wilkeson.

Mr. Beach—I move to strike that out.

Judge Neilson—Well, it was not inquired of.

Q. Did you say anything about that? A. I told him that he was going the wrong way to work to restore himself; that what he wanted was help, and that warfare would not give him that which he desired. I told him that his interest lay in— Before this, however, he said to me that he had been compelled to bring a suit to collect the amount of money that Mr. Bowen owed him on his contracts, and that that suit was pending, and he did not know when it would be ended; and he also said that he was in pressing need of the money that Mr. Bowen owed him. I told him that his true way was to take such steps as would terminate that suit and get his money; and then that he ought to secure and control the influence that would enable him to restore his relations with Mr. Bowen, and to restore his reputation to the world at large, and I shadowed to him how that could be done. I told him that Mr. Beecher was sincerely attached to him; that he was his friend; and that Mr. Beecher was surrounded with people who had strength and influence, and that that could be brought to bear in his behalf; and that Mr. Bowen could undoubtedly be influenced to do him justice; and that it was not, it seemed to me, an impossible or difficult thing to bring Mr. Bowen to feel, that if he really owed the money to Mr. Tilton, which Mr. Tilton told me that he did, and which I believed that he did, on his statement of the contract that he had with Bowen, that Mr. Bowen could be induced to pay that money and terminate the suit; and I promised him the aid of *The Christian Union* to help him in his *Golden Age* enterprise—I thought that I could do that; and I told him that undoubtedly Mr. Bowen could be induced to help him with *The Independent*; and this thing could all be arranged, he could be effectually helped, and that the necessity for the publication of scandals of the character such as he had shown to me in press, and the initiation of a warfare which that foreshadowed, could all be avoided, and the whole thing amicably adjusted.

Q. Proceed with what else occurred there? A. Mr. Tilton grew happy, calmed down, looked pleasant and sweet, and he told me that he was very glad that he had come to my office, that it was a fortunate thing for him that he had done so; that he had been walking down Broadway with his troubles, aimlessly thinking over his affairs, and when he got to the Equitable Life Insurance building, sudden inspiration came to him to go up and see his old friend Samuel Wilkeson, and that he had come there with no object in view whatsoever, and didn't know how he happened to lay that paper down before me to read; he

thought that a good angel must have sent him there; the spirits must have sent him there.

Q. The what? A. The spirits must have sent him there. He congratulated himself heartily upon having come there, and upon the result of his interview with me; and I told him that I would take hold of the affair heartily and immediately, and address myself to the accomplishment of everything that I had told him I thought ought to be done; and he went away.

Q. Did Mr. Tilton say anything with reference to his desire that you should aid him in that particular? A. He only expressed satisfaction that I was going to do it, I think, Sir.

Q. Do you recollect, Mr. Wilkeson, whether anything was said of Mrs. Tilton in that interview? A. Of whom?

Q. Mrs. Tilton? A. Not a word, Sir.

Q. Now, did he speak of any injury which Mr. Beecher had done to him, or of any damage which Mr. Beecher had inflicted upon him, other than neglecting to help him when, as he stated, he lay crushed upon the sidewalk in Brooklyn? A. Not one word, Sir.

#### RESULTS OF THE TILTON-WILKESON INTERVIEW.

Q. Now, Mr. Wilkeson, did you, soon after that, see Mr. Beecher? A. I saw him that night, I think.

Q. It is suggested that I ask you now, did you retain that press proof that you spoke of? A. I surrendered it.

Q. At a later period? A. That day.

Q. You surrendered it to whom that day? A. Tilton.

Q. And he carried it away with him? A. Yes, Sir.

Q. Now, you think you saw Mr. Beecher that day? A. That night.

Q. Whereabouts? A. At his house.

Q. And— A. Told him this interview.

Q. Exactly?

Mr. Beach—That is objected to.

Judge Neilson—I think he can state that—"told him this interview."

Q. Stated this interview. Now, Sir, did you call upon Mr. Francis Moulton in consequence of anything that occurred at that interview? A. Yes, Sir.

Q. Or did he call upon you? A. No, Sir, he called upon me.

Q. When was that, Mr. Wilkeson? A. The next morning—Saturday.

Mr. Beach—Do I understand Mr. Wilkeson to say that Mr. Moulton called upon him in consequence of this interview?

The Witness—Yes, Sir, with Mr. Beecher; in consequence of the interview with Mr. Beecher.

Mr. Hill—Mr. Wilkeson, state what occurred at that interview?

The Witness—Which interview?

Mr. Evarts—Between Mr. Moulton and yourself.

Mr. Beach—What foundation have you laid for that?

Mr. Hill—Do you object to that?

Mr. Beach—Why, of course we do.

Mr. Evarts—Why, we have proved, if your Honor please, directly by Mr. Tilton and Mr. Moulton, that Mr. Moulton was

the representative of Mr. Tilton in every matter relating to this money collection. We proved as early as the second day, I think, the second day of January, 1874, a written authority to him, and now it is said that Mr. Tilton is not affected, concerning the transaction of the collection of this money, by what Mr. Moulton said or did.

Mr. Beach—They have proved authority, and we have proved authority from Mr. Tilton to Mr. Moulton to collect this claim as against Mr. Bowen. It does not authorize, Sir, the proof of the declarations of Mr. Moulton, or conversations with Mr. Moulton with a third party, Mr. Wilkeson.

Judge Neilson—I think we will take it, Sir; I think we will take it.

Mr. Hill—Proceed, Mr. Wilkeson—

Mr. Beach—Your Honor will note our exception.

Mr. Hill—With the interview that occurred between you and Mr. Moulton that you have just referred to. A. On Saturday forenoon Mr. Moulton brought me a letter of introduction from Mr. Beecher. I had never seen Francis D. Moulton, although I knew him by reputation.

Mr. Beach—Now, Sir, it appears that that interview between Mr. Moulton and Mr. Wilkeson was on the part of Mr. Moulton as the representative of Mr. Beecher.

Mr. Evarts—Let us see.

Judge Neilson—A note of introduction.

Mr. Beach—Sir?

Judge Neilson—A note of introduction.

Mr. Beach—Certainly, Sir; but he came as the emissary of Mr. Beecher, and as his representative, and not acting within the agency which had been conferred upon him by Mr. Tilton.

Judge Neilson—The witness had given assurance to Mr. Tilton that he could act in a certain line to promote his interests in reference to Mr. Bowen and otherwise. That the witness should take a letter of introduction from Mr. Beecher, or from anybody else, would be necessary, because he didn't know Mr. Moulton.

Mr. Beach—Surely, Sir, if your Honor please, because Mr. Tilton may have been gratified by the assurance of Mr. Wilkeson that he would act in aid of his supposed restoration, does not authorize the conversation which Mr. Wilkeson may have had with third parties, to be given in evidence against him. There was no such conferment of agency, Sir, as would bring in the acts and declarations of Mr. Wilkeson as against Mr. Tilton, arising from that conversation. That, surely, Sir, would be an extravagant and overstrained construction of that interview. There was no authority conferred upon Mr. Wilkeson by Mr. Tilton. Mr. Wilkeson gave the friendly assurance that he would exert himself to promote his interests, but there was no constitution of an agency which would authorize proof of the acts or declarations of Mr. Wilkeson.

Judge Neilson—He left Mr. Wilkeson under some sense of obligation to act if he could.

Mr. Beach—Certainly, Sir; but the point is, that there was no such relation established between Mr. Tilton and Mr. Wilkeson upon that occasion as concluded Mr. Tilton or affected Mr. Tilton by anything which Mr. Wilkeson could say or do. Those declarations and those acts were voluntary upon the part of Mr.

Wilkeson, in the exercise of a friendship which he felt, perhaps, for both of these parties. If Mr. Wilkeson had undertaken to conclude any arrangement with reference to those matters, if he had assumed to act on behalf of Mr. Tilton by compromising or arranging any difference as between Tilton and Bowen, or Tilton and Beecher, or Mr. Beecher, why, surely, Sir, it would not be covered by any agency which had been conferred by Tilton upon him. Your Honor has admitted declarations and conversations between third parties to affect and conclude Mr. Tilton, and there must be some relation, such relation established between Mr. Tilton and those third parties as the law recognizes as an agency before that evidence can be given. I submit to your Honor it is a subject of serious consideration whether conversations between Mr. Wilkeson and others—

Mr. Evarts—And Moulton.

Mr. Beach—Mr. Moulton or anybody else, Sir, should be given. Surely there must be some evidence to show that Mr. Wilkeson acted as the authorized agent of Mr. Tilton or Mr. Moulton in that particular conversation before it can be given in evidence; and there is no proof, Sir, I submit, of any such authority.

Judge Neilson—I admit the question is not free from doubt, but still I think, on the whole, the testimony should be received. Go on.

Mr. Hill—Proceed with the interview, which you were about to give, with Mr. Moulton at your office.

Mr. Beach—We will except, Sir.

The Witness—After reading the letter of introduction which Mr. Moulton brought I outlined to him the arrangement that I thought that ought to be made.

Q. Give the conversation.

Mr. Beach—Perhaps I ought, Sir, to specify the further objection, that if this evidence is offered in anywise as a contradiction to Mr. Moulton, that his attention has not been drawn to the subject.

Judge Neilson—It has not been offered with that view.

Mr. Beach—It is not collateral.

Mr. Beach—No matter whether it is collateral or direct.

Mr. Evarts—Does my learned friend say that when they proved what is not collateral that I must ask the witness before I prove by another witness the contrary?

Mr. Beach—I didn't say any such thing.

Mr. Evarts—Well, Sir, that is the proposition.

Mr. Beach—No it ain't. This is the proposition: that when it is attempted to contradict a witness by showing a conversation or declaration which he has had with third parties, his attention must first be drawn to the subject. It is a proposition, I think, that will not be denied.

Mr. Evarts—That we agree to.

Mr. Beach—Well, Sir.

Judge Neilson—Proceed, Mr. Hill.

#### THE FIRST SUGGESTION OF A COVENANT.

Mr. Hill—Give the conversation, Mr. Wilkeson.

A. I told Mr. Moulton that my plan of suppressing the scandalous publication which had been threatened in my office, and avoiding the warfare which it foreshadowed, was to have Mr.

Bowen persuaded, as an act of justice to Mr. Tilton, to pay him the money which he justly owed him, and to stop the litigation, and to not make Mr. Tilton have to drag along that suit through a court of justice indefinitely. I told him also that I thought Mr. Tilton should be helped in his *Golden Age* enterprise, to make it profitable. I told him that I was not only willing, but desirous that *The Christian Union* newspaper should be used to that end, and I hoped that influences should be found to persuade Mr. Bowen to use *The Independent* to that end; and then I told him that for the purpose of harmonizing difficulties which seemed to exist between Mr. Bowen, Mr. Beecher and Mr. Tilton, that I thought that it would be wise to bring the three into a covenant, to be executed in writing, which should at least stop two of them from the repetition of any of these scandals which were floating through the community. Mr. Moulton accepted my plan as being judicious; he complimented it, and I think that he asked me if I purposed to act in this matter beyond the line that I had indicated. I thought that that betrayed a desire that he should handle it exclusively himself.

Mr. Beach—One moment, Sir.

Mr. Hill—Not what you thought, but what you said.

Mr. Evarts—Not what you thought.

Mr. Hill—The substance of the conversation? A. I told him I should limit my agency in this whole business to the preparation of that agreement, and to the use of my influence to give the aid of *The Christian Union* newspaper to the restoration of Mr. Tilton's standing in the community not only, but to the up-building of his newspaper enterprise, and he expressed himself satisfied with that, and then he appointed with me an interview at his house on Sunday night, the next evening, and then he went away.

#### PLANNING FOR PEACE.

Q. Now, did you meet him at his house on Sunday evening? A. Yes, Sir.

Q. About what time? A. I think it was about eight o'clock in the evening.

Q. Where was the interview held? A. In his studio, in the third story of the house.

Q. Who was present? A. Theodore Tilton, Frank Moulton, and I think before the close of the interview, Horace B. Claflin.

Q. Now, state what occurred there? A. The subject matter of the harmonization of the troubles between the three men, Bowen, Tilton and Beecher, was generally talked over. My plan of managing the trouble was generally talked over. I think that I produced the draft of an agreement to be signed by the three men, and read it.

Q. A single moment. Just look at that paper and see if it is the draft which you so produced? [Handing witness a paper.] A. This is not the draft. This was the—this was the—this was the final result of the draft, and the amendments of the draft.

Q. What has become of the original draft, the one that you just referred to? A. I cannot tell you, Sir.

Q. Is it in existence, do you know? A. I am not aware that it is, Sir.

Q. Have you looked for it? A. I have diligently searched for it.

Q. And cannot find it? A. I cannot find it.

Q. Proceed, now, with the interview. A. It was arranged at that interview that Mr. Bowen should be induced, if possible, to pay the money to Tilton that he owed to Tilton, or that Tilton had claimed in the suits which were pending, and that he should be induced to use *The Independent* newspaper editorially to help Tilton, to restore him in his influence and good name, as also to speak kindly and favorably of *The Golden Age* enterprise. It was also understood that I should use *The Christian Union* newspaper to the same end; and it was also understood—

Mr. Beach—I object, Sir, to this mode of relating that conversation.

Judge Nelson—Mr. Wilkeson, the inquiry is as to what was said on that occasion.

The Witness—And it was said on that occasion, I think, all round, that a paper should be drawn substantially like that, the draft of which I had taken there and which I read, that should be signed by Mr. Bowen and Mr. Beecher and Mr. Tilton. It was also said at that interview that the papers in the possession of either Mr. Moulton or Mr. Tilton connected with the scandal in circulation against Mr. Beecher should be destroyed after the money was paid to Mr. Tilton by Mr. Bowen, and after the agreement, which we then called the "Tripartite Covenant" among ourselves, was executed.

Q. If anything else occurred at that interview, please state it. A. I recollect only that Horace B. Claflin said that he had no doubt that Mr. Bowen would readily agree to perform anything that had been indicated there, and that he should see him without delay, and would be ready to report, I think, the next day, or the day after.

#### THE PLANS AGAIN DISCUSSED.

Q. Now, when did you see either Mr. Tilton or Mr. Moulton again? A. On the night of the 2d of April.

Q. At what place? A. The same place.

Q. That is, in the study? A. In the study.

Q. Who were present then? A. Mr. Moulton, Mr. Tilton Horace B. Claflin and myself.

Q. Was that meeting by appointment? A. Yes, Sir.

Q. Before proceeding with that interview, I desire to ask you if any amendments or changes were made in the rough draft of the "Tripartite Covenant," which you had at the first meeting in the study? A. Yes, Sir.

Q. There were some made? A. Yes.

Mr. Evarts—At that time.

Mr. Hill—At that time.

Mr. Evarts—And at the first interview.

Mr. Hill—Yes; at that first interview on Sunday evening, were they made at that time? A. I do not know whether—I think they were made at that time.

Q. Well, Sir; now, prior to that second interview, had you prepared a draft of the "Tripartite Covenant"? A. Yes, Sir.

Q. A fresh draft? A. A fresh draft from the original.

Q. That is containing — A. From the amended—the altered—the changed original.

Q. A copy of the original, with the amendments? A. Yes, Sir.

Q. [Handing a paper to witness.] See if this paper is the one which you so —

[To the TRIBUNE stenographer: I show the witness Exhibit D, 25. No; I beg your pardon; it is not Exhibit D, 25.]

Q. The Witness—That is the paper which was taken at the interview on the night of the 2d of April, 1872.

Q. Please state what occurred at that interview, narrating it in your own way, without waiting for questions? A. Or, rather — what did you say, Sir.

Mr. Hill—Go on; I was speaking to counsel.

Judge Neilson—[To the Witness.] He asked you to state what took place at the second interview.

The Witness—Mr. Horace B. Claflin reported that Mr. Bowen had agreed to pay the money that Mr. Tilton claimed from him in case, I think he said, that arbitrators should determine the amount; and he said that it was but fair that the form of arbitration should be gone through with, in order to satisfy Mr. Bowen that he was justly bound to pay that amount of money; and then the subject of the "Tripartite Agreement" was introduced. I read what I had finally prepared, and what had been agreed upon at the previous meeting, with certain amendments and certain changes.

Q. Read this paper? A. I read that paper.

Q. [Handing a paper to witness.] Let me ask you if the yellow paper there was then attached to one of these sheets? A. No, Sir.

Q. Examine this paper, and see if you discover certain lead pencil amendments and changes in it? A. I do.

Q. Were these upon it at that time? A. They were not.

Mr. Hill—Now, Sir; I desire to have these papers marked for identification.

Mr. Evans—No.

Mr. Hill—[To THE TRIBUNE stenographer.] Mark them as read in evidence; I shall read them presently.

Mr. Evans—Mark them as Exhibits.

Mr. Shearman—Exhibit D, 11a.

[The three sheets of paper composing the "Tripartite Agreement" were marked Exhibit D, 113.]

Mr. Morris—[To Mr. Hill]: I suppose we have a right to see these papers before you read them in evidence?

Mr. Hill—Yes; if you like to.

Mr. Morris—We should like to.

[Mr. Hill handed the "Tripartite Agreement" to Mr. Morris for inspection.]

#### THE COVENANT AS ORIGINALLY DRAWN.

Mr. Hill—[To the Witness.] Will you be good enough to read that paper to his Honor and the jury, as you read it at that interview?

1. I, Henry C. Bowen, having given credit, perhaps without due consideration, to tales and innuendoes affecting Henry Ward Beecher, and being influenced by them, as was natural to a man who receives impressions suddenly, to the extent of repeating them (guardedly, however, and within limitations, and not for the purpose of injuring him, but strictly in the confidence of consultation), now feel

that therein I did him wrong. Therefore I disavow all the charges and imputations that have been attributed to me, as having been by me made against Henry Ward Beecher, and I declare fully and without reserve that I know nothing derogatory to his reputation as a clergyman or a man.

And I expressly disavow the charges, imputations and innuendoes, imputed as having been made and uttered by me, and set forth in a letter written to me by Theodore Tilton on the day of January, 1871 (a copy of which letter is hereto annexed); and I declare that those charges, imputations and innuendoes are without any foundation in fact, to the best of my knowledge and belief. And I covenant, that for all future time, I will never, by word or deed, recur to, repeat, or allude to, any or either of said charges, imputations and innuendoes.

2. I, Theodore Tilton, returning of my free will to a man whom I have revered and loved as a father, thus renew and confirm my faith in Henry Ward Beecher as a grandly good and generous man. I, too, disavow each and all the imputations and charges in the said annexed letter repeated and contained. And any and all other imputations upon his character and conduct which have been said to come from me, if I have made them, I covenant never to repeat or to renew.

3. I, Henry Ward Beecher, put the past forever out of sight and out of memory. I deeply regret the causes of suspicion, jealousy and estrangement which have come between us. It is a joy to me to have my old regard for Henry C. Bowen and Theodore Tilton restored, and a happiness to me to resume the old relations of love, respect and reliance to each and both of them. If I have said anything injurious to the reputation of either, or have detracted from their standing and fame as Christian gentlemen and members of my Church, I revoke it all, and heartily covenant to repair and restate them to the extent of my power.

Brooklyn, April 2d, 1872."

#### MR. BOWEN DISTRICTED.

Q. Proceed now with the statement of that interview. What occurred when you produced this paper? A. I produced and read that paper at that interview on the night of April 2d, 1872. When the reading of it was finished, Mr. Tilton said that he was ready to sign that document twelve times over, if Henry C. Bowen would sign it once; Mr. Claflin expressed himself satisfied with it, and said he had not any doubt but that Mr. Bowen would accept it and execute it quickly. Mr. Moulton was satisfied with it.

Q. Did he say so? A. Mr. Moulton said he was satisfied with it; Mr. Tilton repeated his declaration that he would sign that twelve times over, if he could thereby induce Mr. Bowen to sign it once, but he expressed a doubt whether Mr. Bowen could be got to sign it, and Mr. Tilton reached forwards to the inkstand and to the pen in it, and took the pen out of the inkstand and drew the paper to him to sign it, and Horace B. Claflin put his hand forward and pushed his pen back, and said, "I would not have you sign that before Mr. Bowen signs it. It may be necessary for me to say to Mr. Bowen, that his signature may be necessary in order to get yours, and I would rather that you would not sign that before he signs it;" and Mr. Tilton put the pen down and did not sign the paper, although he had expressly agreed to sign it; and then Horace B. Claflin took the paper and put it into his pocket to go to Mr. Bowen's to get his signature to it.

Q. Do you remember whether Mr. Claflin returned that

evening or not? A. Mr. Claflin returned that evening and reported that he had read the paper to Mr. Bowen, and he said that Mr. Bowen said that the paper was perfectly acceptable to him, that he could cheerfully and conscientiously sign it, and he desired to sign it as the termination of these misunderstandings and all these troubles. I asked Mr. Claflin if he had signed it, and if he had got the paper with him signed. He said no, that Mr. Bowen had said that he would like to look it over just once more, and that he had come away leaving the paper in his possession.

Q. Did you make any reply to that? A. I told him that when he got hold of that paper again it would either be altered, or else it would never be signed. I told him he committed a mistake in not bringing the paper away from Mr. Bowen executed.

Q. What did Mr. Tilton say to that? A. Mr. Tilton expressed regret that Mr. Bowen had not signed it.

Q. On the spot? A. On the spot.

Q. Now, did anything further occur at that time in the presence of Mr. Tilton and Mr. Moulton with reference to this "Tripartite Agreement"—this paper—anything further that you now recall? A. I do not recollect, Sir, that anything did, except that I made the point that all the papers in the possession of either Mr. Moulton or Mr. Tilton should be destroyed. I again pressed that they should be destroyed.

Q. What was said then about that? A. There was not much said about that—not much said. I only pressed the point.

Q. It had been spoken of before and assented to? A. It had been, and they agreed to sign it. That was a part of the general understanding, that the papers in the possession of those two men concerning those scandals should be destroyed.

#### MR. TILTON DISCREDITS THE CHARGE OF ADULTERY.

Q. Had you an interview with Mr. Tilton apart from Mr. Moulton or Mr. Claflin that evening? A. Mr. Claflin went away. Pretty soon a servant came to the door and told Mr. Moulton that one of his copartners, whose name I don't remember, was down stairs, and desired to see him, and Mr. Moulton went down stairs. That left Mr. Tilton and I alone, and I turned to Mr. Tilton and said: "Now, that this discord is composed, and these troubles are all arranged, I would like, for my own satisfaction, to know if there is any truth whatsoever, and if so what it is, in those slanders that have been aimed at Mr. Beecher's reputation in connection with Mrs. Tilton." I particularly mentioned to him what had been told me by one lady representing to me that Mr. Tilton made the statement to her about Mr. Beecher and Mrs. Tilton; I specifically stated to him what the same lady told to me, that another lady had mentioned to her—

Q. As coming from Mr. Tilton? A. As coming from somebody else. I called his attention specifically to the point of adultery.

Q. Adultery with whom? A. Mrs. Tilton.

Q. Now proceed. A. He said that there was not a particle of

truth in the charge—not a particle—that it was wholly unfounded, that Mr. Beecher had done him no wrong in that direction whatsoever. He said that the utmost that he had ever done was to address improper language to his wife, and that for that he had in his possession Mr. Beecher's written apology, and he repeated it over to me that Mr. Beecher had never done him any wrong whatsoever, except in the way of addressing improper language to his wife, and stated again that the stories to the effect that he had committed adultery with his wife were false and scandalous.

#### MR. TILTON PRAISES MR. BEECHER.

Q. Proceed with any further conversation that you had with him, Mr. Wilkeson? A. I told him that I was very happy to hear him say that, because I had always supposed Mr. Beecher to be absolutely innocent of the wrongs charged; I had always felt it, always believed it, and I told him that I was very happy to get this denial from him, and then I recurred to the future provided for by the arrangement that had been made that evening—consummated that evening. I told him that Mr. Beecher loved him, and that Mr. Beecher was disposed to serve him greatly. Well, he said that Mr. Beecher had great qualities, and that he loved Mr. Beecher, notwithstanding all that had happened; that he was a man of grand qualities with great weaknesses, and that he did believe that Mr. Beecher loved him, and was disposed to serve him, and "he will serve me," he said, "because I have rendered him in my day a great service." Said he: "Did I ever tell you what I did for his son Harry?" He said: "Did I ever tell you that story?" Said I: "No; you never told me that story." Then he went on.

#### MR. TILTON'S INTERCESSION FOR MR. BEECHER'S SON.

Q. Give what he said? A. He told me that in the first year of the war, Harry had fallen into a deep trouble by some misconduct which he would not characterize, but which he subsequently did characterize—had fallen into deep trouble in a Brooklyn regiment in which he was an officer, and that it became necessary to transfer him from the volunteer service into the regular army to save him from ruin, and that the father had come to him in tears and had told him of the trouble in which his son was and his own grief and anxiety, and the sorrow and anxiety of the whole family about the boy, and he said: "I wish you to go on to Washington immediately and get him into the regular army," "and he gave me \$50," says Mr. Tilton. "and without waiting for a change of clothing, I crossed the ferry and took the first train to Washington. On my way over," said he, "I read in a newspaper that there was to be a meeting of the Governors of several of the loyal States, and some leading members of Congress and some Generals, at the house of the Secretary of War the next morning, to have a conference about the condition of the country, and the idea occurred to me that I would go to that meeting, and that before I left that meeting I would get that commission for Mr. Beecher's son. I got to Washington early in the morning," he said, "washed myself up, brushed my hair, and at the proper hour I went to Simon

Cameron's house, whom"—by the way he said—"I had never seen and didn't know," and he said it was not difficult, with strangers entering the house for the purpose of that reunion, that conference, for him to get in; the servant let him in without obstruction, and he went in, and he asked which was the Secretary of War, and Mr. Cameron was pointed out to him, and he went up and introduced himself to Mr. Cameron as connected with *The Independent* newspaper, I think he said, and Mr. Cameron was polite to him and invited him to breakfast, which had been appointed, and he he said went and took his place at the breakfast table with the Governors of the States and the leading members of Congress, and some generals in the army; he participated in the conversation, took his share, and bore his part, and had devoted himself directly to winning Mr. Cameron, and that he got out of himself everything there was of the best of judgment, everything there was of the best of anecdote; the wittiest things he could think of he said, and he fascinated the Secretary of War; he won him, he thought, completely, so that when the breakfast was over, and the party broke up, it was an easy thing for him to take him one side and state to him Mr. Beecher's extreme need of the salvation of his son from some disgrace in a Brooklyn regiment, by his being immediately transferred into the regular army, and, said he, "I asked him to give me that forenoon a commission for Harry in the regular service," and he told me he would do anything for me whatsoever, and asked me to take his arm and go with him up to the War Department, and he said he took his arm and he went up to the War Department with him and he handed him a commission for his [Mr. Beecher's] son in the regular army; and Mr. Tilton said he took the next train for New-York and put into Mr. Beecher's hand the commission for his son, and that Mr. Beecher drew him to his bosom, and, with tears in his eyes, kissed him on both cheeks and said, "As long as I lived, if I ever wanted anything from him I should get it from him for that supreme service of his life that I had rendered him." I told him that that was a very great service to render a father, and soon thereafter I went out of the house.

Q. Where did you go then? A. I went to Mr. Bowen's.

Q. Did you communicate to Mr. Bowen the interview which you had with Mr. Tilton? A. Yes, Sir; Mr. Bowen was in the hall—

Mr. Beach—We object to that, if your Honor please.

Judge Neilson—[To Mr. Hill]: Will you read that question to me?

Mr. Evarts—It is not material.

Mr. Hill—I don't care to press it. [To the witness]; Now, Mr. Wilkeson, do you know who performed that service for Mr. Beecher, and how it was performed? A. I do.

Mr. Beach—Objected to, Sir.

Judge Neilson—[To Mr. Hill]: It is immaterial, Sir. I will rule it out.

Mr. Evarts—We offer to prove, Sir, the actual transaction was—

Judge Neilson—I understand it perfectly.

Mr. Evarts—Performed by Mr. Wilkeson.

Judge Neilson—Yes, Sir.

Mr. Beach—In obtaining from Secretary Cameron this favor to Mr. Beecher and his son.

Judge Neilson—Yes, Sir.

Mr. Evarts—And that there was not a word of truth in this statement of Mr. Tilton's.

Judge Neilson—In other words, you call out a conversation with Mr. Tilton upon a service performed at Washington which has been incidentally referred to, and which is very remote from my present inquiry, and, having called that conversation out, you propose to contradict him. It is utterly immaterial. I rule that out, Mr. Evarts.

Mr. Evarts—Well, if your Honor please, upon the question as to immateriality we may differ upon the matter. That is our offer, and your Honor will note our exception.

Judge Neilson—I rule it out. I would like to say that this transaction, as we had it originally from Mr. Tilton, was very slight; was referred to but incidentally, without his taking to himself any credit at all in the matter, and it is given a new face now upon your examination, and yet it is still immaterial, and if Mr. Tilton did unduly boast about it, it is equally immaterial even then. I feel constrained to rule it out. I must rule it out.

Mr. Evarts—Comments on the evidence we shall have occasion to make when we come to sum up.

Judge Neilson—You will have no comments to make on evidence that I exclude, and I am making this remark by way of excusing myself from the apparent duty of excluding it. I am weak enough to do that at this moment. Proceed, Mr. Hill.

Mr. Evarts—All we ask is to have the facts of this case disclosed.

Judge Neilson—Yes, Sir; I am not excluding the facts of this case in any sense, directly or indirectly.

Mr. Evarts—We fail to see that we are concluded by the opposite side's views of any facts that are introduced by them.

Judge Neilson—I don't see the importance of that remark. Go on, Mr. Hill.

Q. Mr. Wilkeson, when did you next see this paper which I have shown you—when did you next see this paper after that long conversation about the important service which he had rendered his son at Washington? A. About five o'clock on the afternoon of April 3d, 1872.

Q. Who brought it to you? A. Mr. Horace B. Claflin.

Q. Where? A. At my office.

Q. Please state whether the interlineations in pencil, and the yellow paper, which now appears upon it, were then attached to it as it now appears? A. They were.

Mr. Hill—I ask to have this yellow paper marked. [The yellow paper attached to the "tripartite agreement" was marked "Exhibit D 114."]

Mr. Morris [to Mr. Hill]—Let us see that last paper.

Mr. Hill—It is the same one I showed you before Judge Morris.

Judge Neilson—The yellow cover.

Q. Please state if the manuscript of that "tripartite covenant" is in your handwriting, with the exception of the signatures? A. It is, Sir; that is my handwriting.

Q. Prepared after Mr. Claflin had delivered you this draft?  
A. Yes, Sir.

Q. Engrossed from it? A. Yes, Sir.

#### MR. TILTON DISPLEASED WITH THE COVENANT.

Q. Let me ask you, Sir, whether you had had an interview with Theodore Tilton prior to the receipt of this paper from Mr. Claflin upon the morning of the 3d of April, after your interview of the night of the 2d? A. I had, Sir.

Q. Where did it occur? A. In my office.

Q. State what occurred there? A. Mr. Tilton came in about 11 o'clock in the forenoon of the next day after the "tripartite agreement" had been accepted by him, and he had promised to execute it in Frank Moulton's study.

Mr. Beach—Well, that repetition, Sir, of past agreements and promises, when they are not referred to by the question, I think should be omitted by the witness, because we have a right to call for the conversations and the language.

The Witness—I will omit them hereafter, Mr. Beach; that was an error, Mr. Beach; I ask your forgiveness; I shall not do that again.

Judge Neilson—[To Mr. Hill]: Keep your witness upon the line of examination. Go on.

The Witness—It was eleven o'clock in the forenoon of April 3, and he came into my office. He was angry. He said: "I want a copy of my portion of the 'tripartite agreement.' I am not going to sign it. It has got to be altered before I sign it." I asked him what happened. Well, he said enough had happened to induce him to come to that determination, that he should not execute it. I asked him what happened to change his purpose. He said Mr. Bowen had been well taken care of by Mr. Claflin in this affair, and that Mr. Beecher had been well taken care of by me in this affair, but no one had taken care of him, and he was to be left out in the cold, and his money unpaid, and he said: "I won't sign that agreement." He said: "Let me have my portion of it to alter." I took the agreement out of my safe, and I made a copy of his portion of it and handed it to him. He sat down at a table in my room and commenced to scratch it and alter it. I remonstrated with him for going back on his agreement.

Mr. Beach—Please tell what you said, Mr. Wilkeson.

The Witness—I said that he ought not to change the arrangement that had been made; that he ought to adhere to it like a man. He said that he would never sign that agreement nor never sign any other agreement that prohibited him from pursuing Henry Ward Beecher, and he kept at his work of scratching and erasing the manuscript copy that I gave him of his share of the "tripartite agreement," but without concluding it he grabbed the work up in his hand, put it in his pocket, and stalked out of the room, and went away.

Q. Now, Sir, when the "tripartite agreement," as it now appears in evidence, came to be executed—came to be submitted to you for draft—for engrossing, were Mr. Tilton's amendments attached or submitted to you, so that you engrossed them altogether? A. Yes, Sir.

Q. And this paper which you have in evidence as the "tripartite covenant" was drawn—was engrossed by you from that paper, and from amendments which Mr. Tilton had thus made? A. Yes, Sir; that is, as I understand that he had made them, because Mr. Horace B. Claflin brought them to me.

Q. Do you know whether they were in his handwriting, any portion of them? A. I don't recollect.

Q. I mean his part of the tripartite covenant? A. I don't recollect that, Sir.

Mr. Hill—Let me ask you, Mr. Wilkeson, if anything was said upon the evening of the 2d of April, at the study in Mr. Moulton's house, in characterization of any of the informants whom you named? A. Yes, Sir.

#### MR. TILTON DEPRECIATES HIS WIFE.

Q. Mr. Wilkeson, do you recollect a conversation which you had with Theodore Tilton at Washington prior to 1870, a conversation at dinner in regard to Mr. Tilton's wife? A. Yes, Sir.

Q. When was that? A. I think it was in 1864 or 1865.

Q. Please state it to his Honor and the jury. A. I was in the dining-room of the Ebbitt House, and he came to my chair, occupied a seat next my own after dinner, talked with me—after his own dinner—talked with me while I was eating mine. I think that he took out of his pocket and gave me a photograph of his children with their mother. He asked me if I knew his wife. I told him that I had never seen her. He told me that I would be disappointed in her; that she was a small woman, without presence, without port, not a woman of society, not a woman of culture.

Q. What? A. Not a woman of culture. He said that he had married her young, and that he had grown and developed, and that she had not, and that there was a disparity between them which would probably astonish me if I knew her. And he said that he mentioned that so that I could appreciate it if I should ever become acquainted with Mrs. Tilton.

Q. Appreciate what? A. Appreciate the difference between them understandingly, or appreciate the character of the choice that he had made in a partner for life; I suppose that is what he meant.

Mr. Beach—Oh, I would a little rather be spared your suppositions, Mr. Wilkeson.

Mr. Hill—State anything further that was said by him. A. No, Sir; that was not a subject which invited lengthy conversation.

#### MR. OLIVER JOHNSON AND THE CHRISTIAN UNION.

Q. Mr. Wilkeson, do you know Oliver Johnson? A. I know him well.

Q. Do you know how Oliver Johnson came to be employed upon *The Christian Union*? A. Yes, Sir.

Q. Please state to his Honor and the jury how it happened. A. Well, in effect, I persuaded Mr. Beecher to hire him.

Mr. Beach—I submit to your Honor that that is wholly immaterial.

Judge Neilson—I think we will have to take it, although he must speak to facts and not conversations.



Mr. Hill—How did it happen? A. I persuaded Mr. Beecher to employ him.

Q. And who spoke to Mr. Johnson first about it, so far as you know? A. I did.

Q. Where did you meet him and when? A. On Broadway, in the Winter of 1871 and '72.

Q. That is prior to the time that you had the conversation with Theodore Tilton about the tripartite and about this personal statement? A. Let me see—I think that that was in 1872.

Q. What time—the “tripartite” was in 1872. A. Yes, I know; I think that was in the Winter of 1872 and '73; I am not certain about it.

Q. Do you recollect when Mr. Johnson entered upon the service? A. I do not, Sir.

Judge Neilson—Do you recollect the occasion of his going on, the fact that he did go on? A. Oh, yes; yes, Sir; that I know.

Mr. Hill—How long before he actually entered the service was it that you had this conversation with him? A. Oh, months.

Q. Months before that? A. Yes, Sir, months.

Q. Had you then, at the time of first speaking to Mr. Johnson upon the subject, spoken to or done anything—had you spoken to Mr. Beecher upon the subject of having Mr. Johnson employed upon the paper, or of having *The Christian Union* favor Tilton in any way? A. Oh, no, Sir.

Mr. Morris—One moment. We object to that question.

Judge Neilson—I think we will take the answer. [To the witness.] Do you say you had or had not? A. I had not, Sir.

Judge Neilson—You had not? A. Not a word, Sir.

Mr. Hill—Now, Mr. Wilkeson, was it in consequence of anything that Mr. Tilton ever said to you, or anything that you ever said to Mr. Tilton, that Mr. Johnson was applied to by you to go upon *The Christian Union*? A. Oh, no, Sir; not at all. I simply wanted to get a good managing editor for the paper; that is all.

Q. Well, Sir, please state what you did with Mr. Beecher in connection with employing or persuading him to have Mr. Johnson employed upon *The Christian Union*?

Mr. Beach—That is objected to, Sir.

Mr. Everts—Mr. Tilton has made the subject of his employment on *The Christian Union* a part of the direct transaction of suppression and confession argumentatively of Mr. Beecher. We propose to show, as we have shown in part by another witness, so by this witness, the actual facts concerning the employment of Mr. Johnson, which consists of this witness's (this witness being a partner and part owner of *The Christian Union*) speaking to Mr. Johnson about it with a view of getting a good editor for it, as he says, and then speaking to Mr. Beecher, and then of the consummation of the transaction, which, if the testimony is given, and is credited, excludes the idea that it forms any part of Mr. Beecher's transaction through Mr. Tilton, and with Mr. Tilton, as testified to by Mr. Tilton.

Judge Neilson—I understand that, and therefore this witness can state whether that editor was employed at his intervention; the general fact is what we want.

Mr. Beach—He has stated that he first spoke to Mr. Johnson about it, and then that he persuaded Mr. Beecher to employ him; it is pretty broad. It is in evidence; we will see what it amounts to by and by.

Mr. Hill—Now, Mr. Wilkeson, please state if the mode which you have given was the only mode, so far as you know, or the only means by which Mr. Johnson and Mr. Beecher were brought together, and he finally brought into the employ of *The Christian Union*?

Mr. Beach—I object to that, Sir, as immaterial.

Judge Neilson—I think we will take it.

Mr. Hill—What is the answer?

Judge Neilson—So far as you know.

[Question read by THE TRIBUNE stenographer.]

The Witness—It was the only mode.

Judge Neilson—Well, what he wants is the general fact, of course.

#### MR. BEECHER'S PART OF THE AGREEMENT KEPT.

Mr. Hill—Have you “Exhibit No. 78,” Judge Morris—Plaintiff's “Exhibit No. 78?”

Mr. Morris—Yes, Sir.

Mr. Hill—I will use this copy of it; it is just as well. [Handing witness a paper.] Mr. Wilkeson, please look at the paper now shown you, “Exhibit 73,” by copy; state whether you recognize that as an article which you prepared and wrote? A. Yes, Sir, I wrote that article.

Q. And it was published in *The Christian Union*? A. Yes, Sir.

Q. By your solicitation? A. No, Sir; I gave it to Mr. Beecher.

Q. Prepared it yourself for publication? A. I prepared it myself; I didn't want him to do any writing like that.

Mr. Beach—I move to strike out the balance—the latter paragraph.

Judge Neilson—That is stricken out. “I prepared it myself” is the end of the answer.

Q. Mr. Hill—Well, Sir, did Mr. Beecher have anything to do with the publication of it? A. No, Sir.

Q. Did he request or suggest that it be prepared by you?

Mr. Beach—That is objected to.

The Witness [answering]—No, Sir.

Judge Neilson—It is considered by the prior answer.

The Witness—That was in carrying out, if you please; just carrying out the “tripartite” understanding; that is all.

Mr. Beach—Wait a moment, Mr. Wilkeson, please.

Mr. Hill—Why did you write this article, “Exhibit 73?”

Mr. Beach—Objected to, Sir.

Judge Neilson—You can ask him whether he can suggest any circumstance that led him to write it.

Mr. Hill—Yes, state any circumstance. A. The arrangement made between us all when the “tripartite covenant” was executed—I complied with my part of the bargain; I used the paper for it.

THE COVENANT GIVEN TO THE PUBLIC BY MR. WILKESON.

Q. Mr. Wilkeson, did you know of the circumstance of the publication of the "tripartite covenant" at the time it occurred? A. To the extent to which it was published?

Q. Yes. A. Yes, Sir.

Q. Do you know who caused the publication of that document? A. Yes, Sir.

Q. So far as it was published? A. Yes, Sir.

Q. Now, please state who did it. A. I did it.

Q. Had any other person anything to do with the publication of it, or with the furnishing of that document, or the contents of it, to the press for publication? A. One of my co-partners, of the house of Ford & Co., was associated with me in the publication of it; to that extent only did any other person have anything to do with it.

Q. Was that Mr. Beecher? A. No, Sir; Mr. Beecher is not in the house of Ford & Co.

Q. Now, Sir, so far as you know, did Mr. Beecher know anything about the publication of the "Tripartite Agreement?"

A. I am not aware that he knew anything about it, Sir.

Mr. Hill—That is all.

CROSS-EXAMINATION OF MR. WILKESON.

Mr. Beach—Mr. Wilkeson, in the narrative of the conversation at which Mr. Tilton was present, how far have you assumed to give the language used by him, or by the other parties to the conversation, except yourself? A. As closely as I can recollect.

Q. Well, is your recollection so accurate that you have, in your judgment, succeeded in giving the precise language used? A. The precise language in part and the precise language in effect; because I have turned this over in my memory, Mr. Beach, ten thousand times; I am very familiar with it.

Q. How do you say that it is the precise language in effect, if you do not recollect the precise language? A. I may use a word—

Q. Please answer that question.

Mr. Everts—He is going to.

The Witness—Repeat that again.

Mr. Beach—[To Mr. Everts] I know as much about that as you do, whether he is going to.

Mr. Everts—He has opened his mouth; that is all I know.

The Witness—Repeat your question, please, Mr. Beach.

Mr. Beach—I asked you how you can say, where you do not use the precise language, that you give the precise language in effect, when you do not recollect what the precise language was?

Mr. Everts—Has he said he did not recollect what the precise language was?

The Witness—I recollect both; I recollect, combined, the precise language and the language in effect, as I have given it; I recollect it distinctly.

Mr. Beach—The question is put behind me, whether you have said that you did not recollect the precise language; do you recollect the precise language of all the conversation? A. About all, Sir.

Q. About all? A. Yes, Sir.

Q. Well, can you discriminate between the parts which you have given, which represents the precise language and those which do not? A. Well, Sir, I—I can't say about that.

Q. Can't say? A. No, Sir.

Q. Then you are not able to tell me what portions of those conversations are given by you in the precise language used by Mr. Tilton and what portions are not? A. I think, Sir, that the—

Q. Well, can you do that? A. Yes, Sir.

Q. You can? A. Yes, Sir.

Q. Well, now, will you give me—

The Witness—[Continuing.] Pretty much entirely.

Q. What? A. Pretty much entirely.

Q. Well, then, you mean to say that pretty much the entire part of your narrative of these conversations is given in the precise language used by the parties? A. Yes, Sir; as accurately as conversation can ever be reported, Mr. Beach.

Q. Well, that is a very important qualification. I was not asking you with reference to any such qualification, but for the simple fact whether you undertake to give the precise language used by Mr. Tilton in the conversations you had with him? A. Precise in parts, and the whole of it in effect.

Q. Yes; that is, in parts you give the precise language, and in other parts what you understand to be the substance of what he said? A. Yes, Sir; the substance and effect of what he said.

Q. Now, I ask you whether you can discriminate between the parts of your narrative which employ the precise language used by Mr. Tilton and those which are merely given in substance? A. Well, Sir, I don't divide it; I don't disconnect it.

Q. What? A. I don't divide it.

Q. I don't think that is responsive to my question; at least it does not meet the question entirely. I understand you to say that portions of your narrative employ the precise language used by Mr. Tilton, and portions are only expressive of the substance and effect of what he said, and now I ask you whether you can, from recollection, now discriminate between those two classes of the narrative? A. Well, Sir, I don't think that I can do that.

Q. Don't think you can do it? A. No.

FEATS IN MEMORY.

Q. Then you are not able to point out to me, now, what portions of these conversations you have given in the precise language of Mr. Tilton, if you cannot discriminate between them? A. I could give you portions of those.

Q. Well, do so, if you please, Sir. A. I recollect the precise words that he used in the interview with me on the morning after he had agreed to sign the "tripartite covenant" as it was originally prepared.

Q. Well? A. The precise words that he used in a portion of that interview were, "I will never sign any agreement which will prohibit me from pursuing Mr. Beecher"—"from pursuing Henry Ward Beecher." Those were his precise words. [Applause.]

Q. And when was that interview? A. On the morning of April 8, 1872.

Q. And at this distance of time your memory is so accurate that you can swear positively that those were the precise words he used? A. Positively.

Q. Can you give any other parts of his language in that conversation? A. Yes, Sir.

Q. Well, give it? A. "Mr. Bowen has been well taken care of by Mr. Claflin; Mr. Beecher has been well taken care of by you, but nobody has taken care of me, and I have been left out in the cold, and my money is not to be paid."

Q. Any other? A. Of the precise language I think that is all that I am qualified to—that I am qualified now—

Q. And you, of course, are a gentleman who understands the force and effect of the phrase "precise language?" A. Yes, Sir.

Q. The very words you mean? A. Yes, Sir.

Q. Now, in any other part of these conversations which you have given, can you detail the precise language used by Mr. Tilton? A. I can.

Q. Well, give it? A. An evening before, in Frank Moulton's study, he says: "I am willing to sign that agreement twelve times over, if that will induce Henry C. Bowen to sign it once."

Q. Well. A. He also said: "I can conscientiously and cheerfully sign that agreement."

Q. Yes. A. That was his precise language.

Q. Anything else, any more of that conversation can you give in his precise language? A. He said in precise words that there was not—

Q. Oh! no, he didn't say it in that way. A. He said, to use his words precisely—he said that there was not a particle of truth in any of the statements that had been made about Mr. Beecher's adulterous connection with his wife—not a particle of truth in them; that the utmost that Mr. Beecher had ever done was to address improper language to Mrs. Tilton, and for that an ample, a written, apology was in his keeping; those were his precise words.

Q. Had a written apology in his keeping? A. An ample written apology in his keeping I think he said; I think he used the word "keeping."

Q. Well, are you sure of that? A. Yes, Sir.

Q. Can you give any further of his precise language? A. Well, that is with the exception of what I have already testified to, Sir—

Q. Oh! no; I ask you now, Sir; now. Can you give anything further of his precise language in any of these conversations? A. [After reflection.] Well, I don't—I can't say, Sir, that I can give precisely his language in the other interviews between them, and shall limit myself to the language in effect.

Mr. Beach—It is suggested, Sir, that the hour of recess has arrived.

The Court here took a recess until two o'clock.

#### THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment. Samuel Wilkeson was recalled and the cross-examination resumed.

#### A MEMORANDUM OF THE CONVERSATIONS.

Mr. Beach—Mr. Wilkeson, upon your direct examination, did you assume to give, so far as you then recollected, the precise language of Mr. Tilton? A. Yes, Sir; the precise language, and the language in effect.

Q. No, but the precise language, so far as you recollected the precise language, is my question? A. Yes, Sir.

Q. Are you aware upon your cross-examination, in giving the precise language as you recollected, that you varied in any particulars from the narration which you gave on your direct examination? A. I am not aware, Sir, that I did; I may have done so.

Q. How can that be, Sir, if you gave the precise language at both times?

Mr. Everts—Don't reason with the witness.

The Witness—Well, Sir, it is exceedingly difficult, for me at least, to repeat a conversation twice in precisely the same terms.

Q. I suppose so; it is for anybody. A. It is for anybody, Mr. Beach.

Q. But to some extent you have undertaken to give the precise language positively, haven't you? A. Yes, Sir.

Q. And you have assumed to do it both upon the direct and cross-examination, you said? A. Yes, Sir.

Q. How do you account for variations, if there are any, in relation to the same particular expression? A. The inherent infirmity of human memory.

Q. Then, from the inherent infirmity of human memory, you may have varied from the precise language, even when you undertake to give it? A. In words, but not in effect.

Q. Ah, yes, in words, but not in effect; that is, in effect as you understand it? A. In effect as all men understand it.

Q. Oh, no; all men don't understand what you have been saying here. A. All men who have heard me do.

Q. How? A. All who have heard me do, Mr. Beach.

Q. No, they don't understand it to be the effect of the precise language you heard; that is, where you have given the effect of the language you have given it according to the best of your recollection? A. According to the best of my honest belief Sir, under oath.

Q. Yes, and yet, by reason of the infirmity of recollection, you may possibly be mistaken? A. In immaterial words I may be mistaken. I may change words, but the ideas—the ideas I do not change.

Q. The ideas that were impressed upon your mind, you mean? A. Yes, Sir.

Q. But not recollecting the precise words, it is not impossible that you may have derived an imperfect idea, is it? A. No, Sir.

Q. Did you make any memorandum of these conversations? A. I did make a memorandum of his conversation of the morning of April 2.

Q. Of the morning of April 3? A. Yes, Sir.

Q. Where is that memorandum? A. It is at my office, at No. 23 Fifth-ave.

Q. Well, it would be a great gratification to us if you could produce it. A. I can't produce it now.

Q. No, of course not. Will you produce it on the next meeting of the Court? A. I will, if I can find it; I suppose I can find it.

Q. Is it in ink or pencil? A. Ink.

Q. Do you now recollect any of the phrases of that memorandum? A. A general statement—

Q. No, no; I asked you if you now recollected any of the phrases of that memorandum? A. That he said that he never would—

Q. Well, won't you— A. Yes, Sir; I do; I do recollect; yes, Sir.

Q. Very well. I don't ask what is in it; it is not proper for me to ask what is in it? A. Yes.

Q. You recollect some of the phrases. Do you recollect the concluding phrase of the memorandum? A. The concluding phrase? I do not recollect the concluding phrase.

Q. Or any part of the concluding words? A. The concluding words? I cannot say that I do recollect any part of the concluding words. The vital part of the memorandum in my mind, I can give you, if you want it.

Q. I would rather have the memorandum, with your pardon. That is made upon an ordinary sheet of paper? A. Upon a half sheet of foolscap paper, made within ten minutes after he left the office.

Q. About what length was it—is it? A. A page of foolscap.

Q. Covering the whole page? A. Pretty much the whole page.

Q. Well, quite to the bottom of the page? A. Well, we will give up two lines at the bottom, if you please, Mr. Beach.

Q. Why didn't you bring it with you? A. It didn't occur to me. I am inexperienced somewhat in giving testimony in Court. It is the second time in my life that I have ever been on the witness stand. It did not occur to me that it was necessary to do it.

Q. Why did you make it? A. I felt that the occasion—I felt that this—I felt that this thing was going to drift into a great judicial contest, Sir, and I felt the importance of making that memorandum.

Q. When did that feeling supervene—when did it occur? A. It occurred within fifteen minutes after he laid down on my table the proof slip of the article called the "Personal Statement," which he threatened to publish in the next number of *The Golden Age*, if Mr. Beecher did not do him justice.

Q. Well, that was on March 29? A. That was March 29.

Q. Did you make any memorandum of the conversation of March 29? A. No, Sir, I only treasured it in my memory.

Q. Yes. Well, if you had this apprehensive feeling upon that occasion, why did you make any distinction between the importance of these conversations in making a memorandum? A. Because that last—his conversation with me in that interview of the morning of the 3d of April I felt to be critical.

Q. Critical. Now, will you please give me that conversation? A. He told me that he wanted a copy of his portion of the "Tripartite Agreement." He said that he was not going to sign it. He said that Mr. Bowen had been well taken care of by Mr. Claflin, and Mr. Beecher had been well taken care of by me, but that he had not been taken care of by anybody, but was left

out in the cold, and the money that was due to him from Bowen was not to be paid to him.

Q. Is that all of it? A. And he would not sign any agreement whatsoever that should prohibit him from pursuing Henry Ward Beecher.

Q. Is that all of it? A. That is all of it, until I handed him a copy of his portion of the "Tripartite Agreement."

Q. Well, anything that was said at that interview, please state it. A. He stated at that interview that Mr. Bowen was not going to pay him the money that was due to him, and that the suit would have to go on.

Q. Yes, well; anything else said at that interview? A. That was about all, Sir.

Q. Are you aware that at that time arbitrators had been agreed upon? A. No, Sir; wait a moment.

Q. This is April 3d, at 11 o'clock a. m.? A. Yes, Sir; I knew the arbitrators had been agreed upon; yes, Sir; I knew that they had been agreed upon.

Q. How did you understand the suit was to go on if arbitrators had been appointed? A. I didn't understand that—that the suit was to go on.

Q. You say that he told you that the suit would have to go on? A. That is all; he told me that; I had no other knowledge of it than that.

Q. Well, you understand it from him then? A. Only from him.

Q. And yet you knew at the time that arbitrators had been appointed? A. I had heard that they were appointed.

Q. Do you happen to have heard that on the night of April 2d the arbitrators had not only been appointed, but had made an award? A. No, Sir; I had not.

Q. Had not heard that? A. No, Sir.

Q. And you had not heard that on the night of April 2d not only had the award been made but Mr. Bowen had given his check for the money? A. No, Sir; I had not heard that.

Q. And yet you are positive that on the morning of April 3d Tilton said that Bowen was not to pay him the money, and that the suit would have to go on? A. I am perfectly positive on that point.

Q. Perfectly positive? A. Yes, Sir.

Mr. Evarts—Mr. Beach, you forget that the check is dated April 4th.

Mr. Beach—I know it is dated April 4th, but it was given April 2d, as we have shown, and as we will show more completely. [To the witness]: The precise expression, as I understand you, which was used by Mr. Tilton in the interview on the 3d of April, was that Mr. Bowen was not to pay him his money and that the suit would have to go? A. Yes, Sir.

#### MR. WILKESON ANXIOUS FOR OPEN WAR.

Q. Then you say you made this memorandum because you feared or apprehended that this matter was to drift into a judicial controversy? A. I did not apprehend it, Sir, nor fear it; I desired it, but I knew—

Q. Wait. Well, go on. A. I felt that this—I felt that his refusal—

Q. Oh, I don't want to ask you what you felt. I understood you to say in an answer or two back that you made this memorandum because you feared or apprehended—I don't use the precise words— A. Felt.

Q. Oh! because you felt? A. Yes, Sir.

Q. Felt that the matter would drift into a judicial inquiry? A. I felt that the proceeding would go on.

Q. Did you state in a previous answer that you made this memorandum because you felt that the matter would drift into a judicial contest? A. Yes, Sir,

Q. And you say you did not fear that contest, but desired it? A. I did not, Sir; I desired it; indeed, and I—if you care to know that I will tell you. Do you desire that, Mr. Beach?

Q. No, I do not, Sir. A. I had tried—

Q. I don't desire it. A. I ask your pardon, Sir.

Q. There is no necessity for that. What matter was it that you feared would drift into a judicial contest? A. I did not fear that any matter would—

Q. That you felt, felt, felt. Excuse me. A. Yes, felt.

Q. What matter was it that you felt would drift into a judicial contest? A. The movement that Tilton had organized against Henry Ward Beecher.

Q. Well, now please excuse me, Mr. Frothingham. [Laughter.] I must have an answer to my question. I ask you what matter it was you felt would drift into a judicial contest.

Mr. Everts—Is not that an answer?

Mr. Beach—No, Sir.

Mr. Everts—Why, I don't know any better answer than that. Will the stenographer read the answer?

THE TRIBUNE stenographer read the question and answer referred to, as follows: "Q. What matter was it that you felt would drift into a judicial contest? A. The movement that Tilton had organized against Henry Ward Beecher."

Mr. Everts—Now, that is an answer.

Mr. Beach—I want to know, Sir, what matter it was you feared, or felt would drift into a judicial contest? A. His charges against Henry Ward Beecher for conduct unbecoming a clergyman, having in view the purpose of driving him from his pulpit.

Q. Well, that is not the question. A. And from the editorship of *The Christian Union* newspaper.

Q. Will you wait? I must insist that when I object to your answer you must stop, at any rate until the Court overrules me. A. You will pardon my inexperience under cross-examination, Mr. Beach, if you please. [Laughter.]

Q. I am inclined to think, Sir, that does not result entirely from inexperience. A. Wholly from inexperience, Sir; it is the first time in my life I have been under cross-examination.

Q. Now, the matter that you felt would drift into a judicial conflict was the charges that were made by Mr. Tilton against Mr. Beecher? A. The charges made by Tilton and Bowen against Mr. Beecher.

Q. By Tilton and Bowen against Mr. Beecher; and how did you apprehend that the charge made by Mr. Tilton of improper language used by Mr. Beecher towards Mrs. Tilton would assume the form of a judicial contest? A. Repeat that again, if you please.

AGGRESSIVE WORDS FROM THE WITNESS.

Q. How did you apprehend or understand that the charge which you now represent as made by Mr. Tilton against Mr. Beecher, being simply an accusation of improper language used to his wife, would drift into a judicial contest? A. I thought the time would come when Henry Ward Beecher and Henry Ward Beecher's friends would get tired of paying money to Tilton's *Golden Age* newspaper for the purpose of suppressing a scandal against the reputation of the greatest preacher and the greatest man in this world. [Sensation.]

Q. Yes. Well, you have been a lawyer, haven't you, Mr. Wilkeson? A. Well, nominally. I was educated to the bar; yes, Sir.

Q. Well, you was admitted to the bar, wasn't you? A. Yes, Sir; admitted, and practiced for a very short time.

Q. How long? A. Oh, three or four years when I was young.

Q. Now, I ask you how you supposed that charge, of which I have spoken, against Mr. Beecher, made by Mr. Tilton, could become the subject of judicial investigation? A. Because I knew that it would grow in its pertinacity.

Q. I asked you how you, as an educated lawyer, could understand that that subject-matter could become the subject of a judicial contest? A. Oh, simply from the instincts of an intelligent man that knew that plaintiff [pointing to Mr. Tilton]. [Sensation.]

Q. How did you suppose it could be done? A. How did I suppose it could be done?

Q. Yes, Sir; did you suppose that was actionable, that Mr. Beecher addressed improper language to his wife? A. No, Sir.

Q. You did not suppose it was? A. No, Sir; I knew that that cause of action, which is no cause of action—I knew that it would grow.

Q. Grow? A. Grow.

Q. Oh, grow? A. Grow. [Laughter.]

Q. Now, you spoke about the tribulations of Mr. Beecher and his friends to the support of *The Golden Age*. Had you any personal knowledge of any such contributions? A. His visit to me on—

Q. Oh, answer me, if you had any personal knowledge of any such contributions? A. I had, Sir. On April 3d I had personal knowledge of it. He came to me for money.

Q. Who? A. Tilton.

Q. You have not said so in your relation— A. I have said so, and you tried to exclude it. I think you had it struck out of the evidence, that I knew that his object in coming to me was to get money from Bowen.

Q. Have you related in any narrative of the conversation of April 3d, any application or solicitation for money on the part of Mr. Tilton? A. No application and no solicitation at all, except that it was involved in the very visit, and the handing to me of the article which he threatened to publish in the next number of *The Golden Age*. That put the screws to me.

Q. That put the screws to you? A. That put the screws to me [Laughter,] and he got out of me what he wanted; he got money out of me.

Q. What money did he get out of you? A. He got the money that Bowen owed to him.

Q. Got it out of you? A. Yes, Sir; he got it out of me because I initiated the influence that brought it about.

Q. I don't want your reason. Had you any knowledge that at the time of either of these interviews, either Mr. Beecher or any friend of Mr. Beecher had contributed any money to the support of *The Golden Age*? A. No, Sir.

Q. And at either of these interviews was there any suggestion or solicitation on the part of Mr. Tilton toward any such contributions? A. No, Sir.

Q. Was that the paper which he showed you on March 24th? [Handing witness a paper.] A. I cannot tell if that is the particular paper, but it is a paper just like that; I think so.

Mr. Morris—Look at the bottom.

Mr. Beach—Would you recollect that slip in Johnson's handwriting being at the bottom? A. No, Sir; I do not; I have no recollection.

Q. A paper just like this? A. I don't say with that attachment at the bottom. It was a personal statement—the personal statement. I recollect now distinctly that there was no writing appended to the bottom of it, none at all; that I recollect distinctly. It was simply a press proof, and very well worn, showing industrious circulation and use and exhibition to other people. [Laughter.]

Q. Oh! very well, Sir; I don't care. I am perfectly willing to indulge those expressions upon your part, although I consider them entirely inappropriate and unjustifiable. A. You will pardon them all, Mr. Beach, if you please, to my inexperience.

Q. I cannot pardon them, Sir; they are so often repeated, and evince a feeling which I cannot pardon. A. I think the feeling is justifiable.

Q. I know you think so, Sir; I do not. This extract from the "Tripartite Covenant" you have identified as a transcript at least of the paper which was shown you? A. I think that is the personal—a personal statement like that. I think that is it.

Q. Well, it is that part of the "Tripartite Covenant" which follows the title, "A Personal Statement"? A. Yes, Sir.

Q. And only that part? A. I think that that was what he showed me; not that particular paper. I cannot identify a proof slip taken off an ordinary proof press in a printing office, Sir; I can't do that.

Q. Do you recollect whether or not that paper contained any reference to any supposed relations as between Mr. Beecher and Mrs. Tilton? A. I cannot recall, Sir, that—the statement—the allegations in that personal statement; I cannot recall them, Sir. I never read that from that day to this.

Q. Well, Sir, the point I ask your recollection to is whether you remember that the paper shown to you contained any allusion whatever to the supposed relations or alleged relations between Mr. Beecher and Mrs. Tilton? A. I think it did not, Sir; I think it did not.

Q. It was composed, so far as any accusation against Henry Ward Beecher was concerned—it was composed entirely of the allegations made or supposed to have been made by Mr. Bowen?

A. That is my present recollection, Sir, but I won't be positive about it; I never have seen that paper from that day to this; never have read it.

Q. Well, you are correct, Sir, in your recollection of it. Had Mr. Tilton ever shown you that paper before? A. Never, Sir.

Q. Had you before that ever had any conversation with him in regard to that paper? A. Never, Sir.

Q. Or any in regard to the publication of any other paper? A. Never, Sir.

Q. Prior to that time there had never been any conversation between you and Mr. Tilton in regard to these charges against Mr. Beecher of any kind? A. Never, Sir.

Q. Of no kind? A. Never, Sir; of no kind.

Q. And never any communication between you in any form in regard to the publication of any paper? A. No, Sir, to the best of my knowledge and belief—recollection and belief.

#### MR. WILKESON ENCOURAGES MR. TILTON.

Q. Well, I see that you are very confident in your memory. Is that a letter of yours [handing witness a letter]? A. "January 11, 1871."

Q. Wait a moment. Read it to yourself. A. That is my letter, Sir.

Mr. Beach—I introduce it in evidence.

Mr. Evans—Let us look at it. [Taking the letter.]

Mr. Beach—[Reading]:

JANUARY 11, 1871.

DEAR TILTON: You are in trouble. I come to you with a letter just mailed to Jay Cooke, advising him to secure your services as a platform speaker, to turn New-England, Old England and the great West upside down about our Northern Pacific. Pluck up heart. You shan't be trampled down. Keep quiet. Don't talk. "DON'T PUBLISH" [underscored with three lines]. "Bide your time, and it will be a very good time, take my word for it."

[Marked "Exhibit 114"]

Q. In using the term, "Don't publish," what did you refer to? A. I referred to rumors that I heard that he was going to attack Henry Ward Beecher.

Q. Yes; and you underscored the words "Don't publish" with reference to parol attacks? A. Parol attacks? No; written attacks.

Q. Well, what did you expect he was going to publish? A. Charges against him that embodied the slanders that I had heard circulating through the community.

Q. And that was on the 11th of January, 1871? Is that the date of the letter?

Q. Yes. A. Yes, Sir; I wrote that letter.

Q. I know you did.

Mr. Evans—He says so.

Mr. Beach—Yes, I know he says so. [To the witness.] And when did you hear that he was going to publish those charges against Mr. Beecher? A. I don't know.

Q. Whom did you hear them from? A. I cannot tell that.

Q. Quite certain you heard them? A. I must have heard them to have written—

Q. Oh, now, you are reasoning. A. Yes, Sir, I reason.

Q. I ask your recollection? A. You cannot draw on that now, because it will fail me.

Q. I shall draw on it. A. You may draw all that there is, you know, but I can't recollect now. [Laughter.]

Q. Well, I am going to try. Have you now any recollection that prior to January 11, 1871, you had heard any rumor that Mr. Tilton was going to publish these charges against Mr. Beecher; have you now any recollection? A. Yes, Sir, I think I must have heard that.

Q. Oh, that is reasoning; I am asking you for your recollection? A. Well, Sir, I cannot recollect.

Q. You don't recollect it? A. No, Sir; yet I must have heard that.

Q. Well, do you recollect of having had any interview on the subject of these charges, with Mr. Tilton, prior to Jan. 11, 1871? A. I never did, Sir.

Q. Quite sure you never did? A. I am certain of that, Sir; at least I think I am. Human memory is very imperfect. I simply try to be absolutely honest as I go through life. My memory may be defective; my integrity is not defective. [Laughter.]

Q. You are a member of the firm of Ford & Co., publishers, I understand? A. I am a member of it; yes, Sir.

Q. And how long have you been? A. Since its organization; five years.

Q. Is that firm publishing *The Life of Christ*? A. Yes, Sir.

Q. The first volume published? A. Yes, Sir.

Q. Is the second volume published? A. Not published, Sir.

Mr. Everts—Do you speak of this date?

Mr. Beach—Oh! no, Sir, the question did not refer to this date. [To the witness.] You married the sister of Mrs. Stanton, who has been spoken of in this investigation? A. Yes, Sir.

Q. Mrs. Stanton is a lady of refinement and position, is she not? A. Yes, Sir; high position and refinement, and great intelligence.

Q. Very unusual intelligence for a lady? A. Unusual intelligence for a woman, Sir.

Q. Did you say to her that these scandals would "knock *The Life of Christ* higher than a kite?" A. No, Sir.

Q. Did you say it in her presence, in words or substance? A. I did not.

Q. What? A. I said in her presence not that, Sir.

Q. In substance? A. No, Sir. Do you desire to know what I said?

Q. No, not just now, unless you desire to do it. A. I will tell you, if you wish to know, precisely what I said.

Q. No. I will listen to it if you desire; I do not ask for it. A. Mrs. Stanton and two others of her sisters were in the room; we were talking; one of them had introduced this subject—

Q. I really don't want to open that whole conversation, A. It won't be large, Sir; very short, very short.

Q. Well, I don't know but it may relate to matters which would not be very interesting. A. Well, I will make it perfectly safe for you by telling you a question that one of the sisters put to me; in case that these charges and imputations against Henry Ward Beecher should prove upon investigation to be true—

Mr. Beach—I don't take this as a part of my examination, Sir.

Judge Neilson—You had better stop it then.

Mr. Everts—Stop it if you wish to.

Mr. Beach—I was perfectly willing to receive it as an explanation on the part of the witness, but not drawn out on my examination.

Mr. Everts—Well, but it comes in answer to the question—very likely the counsel is not obliged to take it—it comes in answer to the question whether he said that, or that in substance, and then the witness said: "I will tell you what I did say, if you wish." It is not an improper statement of the witness at all.

Mr. Beach—Oh, no; there is nothing improper on the part of the witness.

Q. Now, you had a brief private conversation, I think, on the 3d of April, with Mr. Tilton, Mr. Moulton and others having left the room. Will you please repeat that conversation, Mr. Wilkeson? A. I said to Mr. Tilton, now that the trouble between him and Mr. Bowen and Mr. Beecher had been happily concluded and arranged for, that I would like to get from him the truth of the statements that I heard that Mr. Beecher had committed adultery with his wife. I spoke of a statement that had been made to me by a particular lady whom I named.

Q. Well, I want you to give me what you said about that statement? A. To the effect that—

Q. No; I want you to begin and give the narrative of what you said to him upon that subject? A. That lady told me—

Q. Give me the name, and all? A. That Mrs. Elizabeth—I thought the names of women were not to be brought into this controversy.

Mr. Morris—They brought them in on the other side.

Mr. Everts—[To Mr. Morris.] The ladies on your side are not to be brought in, but those on our side are.

The Witness—I will bring them in only on compulsion. I don't think gentlemen ought to bring in the names of ladies—of reputable women into this case.

Mr. Beach—We have had several very reputable and distinguished ladies whose names have been introduced in this case.

The Witness—[To Judge Neilson.] Have I got to mention the name of this lady?

Judge Neilson—Not absolutely, Sir.

Mr. Beach—Not got to! I asked him what he said in connection with the names to Mr. Tilton.

#### MR. TILTON DENOUNCES MISS ANTHONY.

Judge Neilson—[To the witness.] Go on and answer it. A. I told him that Mrs. H. B. Stanton had told me that Mr. Tilton had told her that Henry Ward Beecher had committed adultery with his wife. I told him that Mrs. H. B. Stanton had told me that Susan B. Anthony had told her that Mrs. Tilton had confessed to her that she had committed adultery with Mr. Beecher. I asked Mr. Tilton if there was any truth in either of those allegations—those statements. He told me, in reply to my inquiry about Susan B. Anthony, that she was a morbid old maid. [Laughter.] That she was an old maid in whom the suppression of the sexual

instinct had bred morbid disease of the imagination [Laughter]; that she had morbidly imagined what she said; that there was not a word of truth in it; that it was only a fabrication and imagination, wholly so; and he said, as for Mrs. Stanton, he was astonished that a woman of her intelligence and truthfulness, and of her general character throughout the United States, should ever have said such a thing; he said that she must have been wholly mistaken. Any way, he said that he had never told her any such thing—never—and he repeated it over.

#### MR. BEECHER'S OFFENSE THE USE OF "IMPROPER LANGUAGE."

Q. Well, what else? A. Then he said—this is drawn out of me on the cross-examination; I did not testify to this on the direct, you know—then he said that Mrs. Tilton—Mr. Beecher had never committed any offense against him, except to address improper language to his wife, and that for that he had an ample, written apology in his keeping.

Q. Now, you are sure the term he used was "improper language"? A. I am perfectly sure of it, Sir; because I weighed these words well, as I imagined what they might be, and I have subsequently been called to account in about fifty newspapers in the United States for telling the story.

Q. This was on the 2d of April? A. The night of the 2d of April, 1872.

Q. The night of the 2d of April? A. Yes, Sir.

Q. [Handing a letter to the witness.] Is that another letter of yours? A. That is my letter. In writing that letter I evidently mistook the date; that letter is wrongly dated; it should be dated April 3d.

Q. Why do you say it should be dated April 3d? A. Because I recollect distinctly writing it the morning after the interview of April 2d, after the whole thing was concluded, and the "Tripartite Agreement" was settled.

Mr. Beach [Reading]:

NEW-YORK, April 2d, 1872.

Mr. Evarts—[To Mr. Beach.] Do you propose to read it?

[Mr. Beach here handed the letter to Mr. Evarts for inspection, and he and Mr. Morris held a whispered consultation.]

Mr. Beach—While the gentlemen are looking at this letter, I will ask another question.

Q. What time, on April 2d, did you write this letter? A. The first thing in the morning after I got to the office.

Q. How early was that? A. What, Sir?

Q. How early was that? A. My habit was to get to the office at nine o'clock in the morning.

Q. You wrote this letter before your interview of April 2d with Mr. Beecher? A. Yes, Sir.

Mr. Beach [Reading]:

—, April 2d, 1872.

MY DEAR MOULTON: Now for the closing act of justice and duty.

Let Theodore pass into your hands the written apology which he holds for the "improper advances"—[quoting]—and do you pass it into the flames of the friendly fire in your room of Reconciliation.

Then let Theodore talk to Oliver Johnson.

I hear that he and Carpenter, the artist, have made this whole affair the subject of conversation in the clubs.

Sincerely yours,

SAMUEL WILKESON.

[Letter marked "Exhibit No. 115."]

Q. Why did you attach to these words, "improper advances," quotation marks? A. Repeat that.

Q. Why did you attach to these words, "improper advances," in this letter, quotation marks? A. I don't know.

Q. [Handing the letter to the witness.] Look at the letter. A. I cannot tell you; it is so long since.

Q. You can recollect the precise language, "improper language," that was the term used before that, on the 29th of March? A. Well, they are convertible terms, any way. What is the use of making a distinction between them?

Q. I do not think they are exactly convertible terms. You understand them to be so, then. In the testimony you give, you understand them to be convertible terms, do you? A. "Improper language"—"improper advances."

Q. Yes. A. Well, no; they are not precisely convertible terms, when I come to think upon it.

Q. No? A. I cannot tell, Sir, why I used quotation marks on these words; I cannot tell that.

Q. Have you any idea where you got that expression from—"improper advances"? A. No, Sir.

Q. Had you talked with anybody else prior to that, except with Mr. Tilton, in regard to the nature of the language or advances which had been made by Mr. Beecher to Mrs. Tilton? A. No, Sir.

#### THE INFORMATION AGAINST MR. TILTON.

Q. Is there any source now within your recollection from which you could have derived that term except Mr. Tilton? A. The women's rights women, in the midst of whom I happened to live by the accident of marriage.

Q. It aint an accident, then? A. Bless the accident! [Laughter.]

Q. Where had you become acquainted with Mrs. Anthony?

Mr. Evarts—Miss Anthony.

Mr. Beach—Miss Anthony?

The Witness—She had for years crossed my orbit of domestic life through Mrs. Stanton—my connection with Mrs. Stanton.

Q. Is she a lady of intelligence? A. Yes, Sir; a woman of strong common sense.

Q. And quite an intimate associate with your sister-in-law, Mrs. Stanton? A. Yes, Sir.

Q. And co-editors of *The Revolution*, have they not been? A. I understand so; yes, Sir.

Q. A lady of high respectability, is she not? A. I think she is, Sir.

Q. You have been thrown considerably into the circle of these ladies of advanced notions upon the subject of Woman Suffrage and the Rights of Women? A. Only on the outer edges of the circle.

Q. You didn't get into the whirlpool? A. No, Sir; that was never my unfortunate privilege.

Q. Did you ever have any conversation with Miss Anthony in regard to these scandals? A. Never, Sir; not a word.



Q. Mrs. Stanton in her communication with you had not used the term "improper advances?" A. No, Sir.

THE OBJECT IN PUBLISHING THE COVENANT.

Q. Now, you say you published this "Tripartite Covenant" in connection, or upon consultation, or in conversation in some way, with a partner of yours? A. Yes, Sir.

Q. What partner was that? A. Edward L. Ford?

Q. Who? A. Edward L. Ford.

Q. From whom did you obtain the copy which you had? A. Out of my safe I took it.

Q. Had you conferred with Mr. Tilton or Mr. Moulton in regard to its publication? A. Not with a human being except Mr. Ford.

Q. Not with a human being except Mr. Ford? A. No, Sir.

Q. Had anything been said by you to Mr. Cleveland, or between you, in regard to the publication? A. I think not between me and Mr. Cleveland; no, Sir.

Q. Are you quite sure of that? A. Yes, Sir; I think so, up to the time of the publication.

Q. I mean at any time before the publication? A. That is my impression, Sir.

Q. Well? A. What I mean to say is—

Mr. Beach—No, no, wait a moment.

The Witness—I simply want to be true about this thing; I want to be perfectly truthful.

Mr. Beach—I will get at it, I think, Mr. Wilkeson.

The Witness—I would like your help.

Mr. Beach—I would like to coöperate with you in all your schemes, especially the Northern Pacific.

The Witness—That will come out right soon, to the satisfaction of both of us.

Mr. Beach—I hope so.

Q. Now, is your recollection so accurate upon that subject that you can say positively that before the publication of the "Tripartite Agreement"—covenant, there had been no communication between you and Mr. Cleveland upon the subject? A. It is so accurate that I can say there had been no communication between him and me or any other person when I had resolved to do it, and put the thing in motion. It was an act of my own personal responsibility—

Mr. Beach—Wait.

The Witness—exclusively and solely.

Mr. Beach—I don't think that is responsive to my question, Sir; but let it stand.

Q. Now, will you please answer my question, whether your recollection is so accurate that you are able to say there had been no communication between you and Mr. Cleveland upon the subject of the publication of that instrument before it was published? A. There was no communication between him and me after I prepared it and gave it out for publication.

Q. That does not answer my question. A. I cannot tell how much time intervened between the issuing of the prepared matter and putting it into type, and publishing it. In that time he may have seen it.

Q. You are reasoning, and, besides that, without intending to be offensive, you are evading my question. My question asks

you whether your recollection is so accurate that you are willing to state that Mr. Cleveland and yourself had no communication upon the subject of the publication of that instrument before it was published? A. Before it was actually published? I cannot answer that question, Sir. I know he had nothing to do with its publication.

Q. Wait one moment. I understood you to say that you do not recollect what time elapsed between the period when you delivered the prepared article for publication and its actual publication; have you any recollection upon that subject? A. I think the matter was prepared in the afternoon of the day preceding the morning of the publication.

Q. Yes, preceding the morning of the publication. Now, are you quite sure that you had the possession of the paper for any time previous to its publication? A. Possession of the paper?

Q. Had you had possession of the paper from which you prepared the publication for any length of time prior to the publication? A. Why, yes, Sir; it was for months in my safe; took it out of my safe; the material out of which that publication was made was taken out of my safe.

Q. And it had been there for months? A. For months; yes, Sir; for a long while.

Q. What paper was that you took it from—the "Tripartite Covenant" itself—the original? A. I didn't have possession of the original.

Q. Sir? A. I did not have the original in my keeping.

Q. What was it you had in your safe? A. Either a draft or a copy; I don't know which.

Q. Can't you by reflection inform me which? A. I cannot, Sir.

Q. Did the publication which you made embrace the whole of the tripartite paper—covenant? A. I think not; I think it only covered Mr. Bowen and Mr. Tilton; I am not even certain about that, because I have never seen it from that day to this.

Q. No. Can you by referring to the instrument itself indicate to me what portions of it you published? A. I published Mr. Bowen's portion of it, certainly; I think I also published Mr. Tilton's, but I am not certain.

Q. That is, you published Mr. Bowen's covenant, or promise, or undertaking contained in it? A. Yes, Sir.

Q. Not the heading? A. I cannot answer that question. I never saw that paper from that day to this, since it was published.

Q. You are certain you published Mr. Bowen's portion of the covenant? A. Indeed I did, Sir.

Q. And you think you did— A. I think I did—

Q. Mrs. Tilton's? A. My specific object was to publish—

Q. Oh, wait now. But you didn't publish Mr. Beecher's portion? A. No; that was—

Q. Never mind; you didn't publish it? A. I think I did not publish it. My recollection of that is indistinct.

Q. And you didn't publish the personal statement which follows the covenant? A. No, Sir.

Q. I wish you could, by taxing your recollection, state to me what the paper was that you had in your safe, whether it was a perfect transcript or duplicate of the "Tripartite Covenant," or fragmentary? A. I cannot do it, Mr. Beach.

Q. At the time when this personal statement was first submitted to you by Mr. Tilton, did you read it? A. Yes, Sir.

Q. And you, of course, noticed the opprobrious, severe character of the imputations made in it against Mr. Beecher by Mr. Bowen? A. Yes, Sir.

Q. Was the character of those accusations discussed as between you and Mr. Tilton at all at that interview? A. Only the shockingness of the publication; that is all, Sir.

Q. What you said upon that subject? A. Yes, Sir, what I said in controverting it; the mischievousness—

Q. Yes, we have that? A. Yes, Sir.

Q. Did you say anything to Mr. Tilton in that connection to the substance or effect that Mr. Beecher should be protected from him? A. Only to the—yes, Sir, I did, but I want to qualify that.

Q. Anything, Sir, that you please to say. A. Protected against the publication that I believed to be absolutely false and incapable of proof before any tribunal.

Q. Yes. A. Outrageous slanders.

#### THE WITNESS A FIRM BELIEVER IN MR. BEECHER.

Q. Now, Mr. Wilkeson, you are a firm believer in the innocence of Mr. Beecher? A. An absolute believer in his innocence.

Q. And have been from the first? A. From the first, Sir.

Q. And you have been, whenever occasion required, a firm and ardent defender of his character, have you not? A. A great defender of his character, Sir.

Q. Have you had occasion to talk somewhat frequently upon the subject? A. The matter has been pushed on me very frequently; yes, Sir.

Q. Had a considerable many discussions upon the matter? A. Yes, Sir.

Q. And whenever those occurred, you have taken the opportunity, to the best of your ability, and in the firmness of your belief, to vindicate him, have you not? A. I have vindicated him, either fully or briefly, according as I had patience with the theme; it is a theme I have not got much patience with.

#### THE EXECUTION OF THE COVENANT.

Q. Were you present at the execution of the "Tripartite Agreement"? A. No, Sir.

Q. After you had prepared it in the form in which it appears, to whom did you deliver it? A. Horace B. Claflin.

Q. Did you ever see it afterwards until this trial? A. No, Sir; never saw it until to-day.

Q. Did you make more than one copy of it? A. I made only one copy at that time from the material in my hands. I subsequently made another copy—of that? No, Sir; I never made another copy of that; I think not. That is, to the best of my knowledge and belief, I think I did not.

Q. I understand that you made this copy or original, as it is executed, from this Exhibit marked 118 from the yellow paper attached to it, and from a copy of Mr. Tilton's undertaking furnished you? A. Which Mr. Claflin brought to me when he brought that back?

Q. Yes, Sir. A. Yes, Sir; I so understand it.

Q. What became of that slip, or copy, or original of Mr. Tilton's part of the covenant which was given to you by Mr. Claflin? A. I do not know.

Q. Did you keep it? A. No, Sir; I think not.

Q. Did you make any copy of that except what was in this original executed? A. I think I did not.

Q. You think you did not? A. I think I did not.

Q. Well, now, not having made a copy of this original, and not having made any other copy of Mr. Tilton's part of this— A. I may have made a copy; I may have kept Mr. Tilton's—

Q. I don't ask you what you may have done? A. You ask me what has become of it. I don't know where it is now.

Q. You answered me that you didn't keep it—that you thought you didn't make a copy of it? A. I didn't copy it, that is, to keep—put it in a safe and preserve it. I have not got it now. I may have made a copy of it after Mr. Claflin went away with these papers.

Q. I don't ask what you may have done. You answered me you thought you didn't keep a copy of it? A. I may have taken a copy after Mr. Claflin went away; I may have made a copy of it.

Q. Have you any recollection of it? A. No, Sir; my recollection is very vague about that. Indeed, Sir, when the original agreement was modified my interest in it got to be very feeble.

Q. When you answered me that you thought you did not keep a copy of Mr. Tilton's portion of this agreement, you answered me as you then believed, I suppose? A. Well, Sir, my recollection is imperfect about it.

Q. Did you answer me as you then believed? A. Well, Sir, that was a hasty answer, I think.

Q. Well? A. That was a hasty answer.

Q. You believed it at the time you answered it? A. Yes, Sir; but it was a hasty belief.

Q. Have you any recollection now from which you had reformed that belief? A. I think that I kept—

Q. Are you speaking now from recollection? A. Yes, Sir; now I speak from recollection; I think that I kept for a short time the paper that Mr. Claflin brought me back from Mr. Tilton in my possession. What I did with it I don't know; I don't know but that I used that for the publication in the "Tripartite Agreement;" whether I copied it I don't know; I only know that I have not got it; I must have copied it, or must have used it. These newspaper men have got pretty much out of me all the papers I ever had in the case; I have not got any others.

Q. What papers have they got of you? A. Oh, copies and drafts.

Q. Drafts of what? What drafts have they got out of you? A. After the meeting of the Church Committee there was an immense curiosity—

Q. I didn't ask you about the public curiosity. I asked simply what drafts they got out of you. A. They got out of me pretty much all the papers that I had in this case.

Q. I asked you what drafts. Drafts of what did they get out of you? A. I don't know; but that is the use I made of this paper. I have not got it. That is all I know. I am trying to account for the use of this paper.

Q. Will you answer me what draft you recollect of any paper



John K. Porter,



they may have got out of you? A. I cannot specify at all, Sir. I only know that all these papers in this case are out of my possession.

Mr. Beach—A single further question, Mr. Wilkeson, which you will pardon me; was you present at the examination of Mr. Beecher before the Church Committee? A. I was, Sir.

Q. What? A. I was, Sir.

Q. Was you present at any examination of him before that Committee prior to his submission of a written statement? A. No, Sir.

Q. Was you present upon more than one occasion when Mr. Beecher appeared before the Committee and made a statement? A. I was not.

Mr. Beach—That is all, Sir.

#### RE-DIRECT EXAMINATION OF MR. WILKESON.

Mr. Evarts—I wish to ask Mr. Wilkeson a question. Mr. Wilkeson, you have spoken of a memorandum on a foolscap page which you made immediately after the conversation of the 3d of April; how lately have you seen or looked at that memorandum, as you recollect? A. Within a month.

Q. Now, Sir, you have been asked in respect to a conversation with Mrs. Stanton as to whether you then said that the publication of these charges, or charges against Mr. Beecher, would "knock the Life of Christ higher than a kite," or anything to that effect, and you have answered that you did not to that effect. Now, what was that conversation?

#### A DRY TECHNICAL ARGUMENT.

Mr. Beach—I object to that.

Judge Neilson—I think when he answered the question to that effect, that was all the question called for.

Mr. Evarts—I should think not, if your Honor please; I am entitled to show by the witness what the conversation was.

Mr. Beach—No, Sir.

Judge Neilson—You would be if he took any part in it.

Mr. Evarts—What?

Judge Neilson—You would be if he took any part of that conversation.

Mr. Evarts—But I understand it was with him.

Mr. Beach—I am quite willing that the witness should be asked to state what he said upon that subject in that conversation, but I am not willing that he should give the conversation of the other parties to the interview.

Judge Neilson—Will that be content, Sir?

Mr. Evarts—I dare say that will do to begin with, and then we will raise the question as to the rest hereafter.

Q. Now, Mr. Wilkeson, what did occur in connection with the question of the publication of those slanders, those scandals or charges, in this interview between Mrs. Stanton and yourself, and who were present?

Mr. Beach—I object, Sir, to that question.

Judge Neilson—The question is broad enough to qualify what the others said, as well as what he said.

Mr. Evarts—Well, as a part of the conversation in which he said it.

Judge Neilson—I thought you proposed to take what he said, and that perhaps would suffice.

Mr. Evarts—In reference to what others, to which what he said was applicable? Can't very well have — until you know what was said, whether you know what the witness said is by itself alone a complete exposition of the subject.

Judge Neilson—Well, where your opponent calls the witness' attention to a certain conversation, and asks him whether in that conversation he did not make the expression mentioned or something to that effect, and the witness says he did not, is not that an end of it?

Mr. Evarts—No.

Judge Neilson—He has not opened the conversation.

Mr. Evarts—No, Sir; and they call a witness to contradict him. I have a right in defense of that contradiction to show what he did say by a cross-examination by a re-direct examination.

Mr. Beach—I asked the witness, Sir, whether upon a certain occasion he made a particular expression in words or substance as it is presented to him, and he says he did not.

Judge Neilson—Yes, Sir.

Mr. Beach—I give no part of the conversation, and now it is contended by the gentleman that upon the footing of that inquiry, upon my part, which extracted no conversation, no declaration of the witness whatever, that they are permitted to give a conversation which occurred between these gentlemen and a third person, that being a conversation to which he supposes I referred in my question. That is the proposition, and I submit, Sir, that there is no principle of law upon which it is to be allowed.

The Witness—There is a something of untruthfulness, Judge, in my answer to that question which I do not like to sit under here.

Judge Neilson—I did not—

The Witness—I would like to tell the—

Judge Neilson—I didn't recognise it.

Mr. Evarts—The evidence is allowable certainly—

Mr. Beach—Well, Sir, it was from favor to the gentleman upon the stand, that I was willing to concede that he might give what he said in that conversation, without drawing in the declaration of the other parties to it. I think it was a concession, Sir, which was not required by the law of evidence.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—Now, if your Honor please, I will briefly state what I suppose to be the law. The witness is asked by the cross-examining counsel whether he did not in a conversation with Mrs. Stanton, when the subject of the publication of these scandals or charges against Mr. Beecher was moved between them, say that the publication would "knock 'The Life of Christ' higher than a kite," or something to that effect. Now, the witness answers that he did not say that the publication of the scandals would "knock 'The Life of Christ' higher than a kite," or to that effect. Now, they may call a witness to prove what he did say in impeachment—this is collateral impeachment. Now, it never was heard that as the law requires them to lay the foundation of taking the witness's

statement before they are allowed to call a witness to impeach or contradict—that the witness was not allowed to say what he did say in that conversation, and they must impeach him, if they impeach him at all, by the contradiction being made between what he did in fact say and—that is, according to his own statement and what they prove contradictorily against him. Now, if the witness had used the qualifying words that the publication of these slanders, if they were true, would “knock ‘The Life of Christ’ higher than”—these charges—if they were proved true, would “knock ‘The Life of Christ’ higher than a kite;” why, that is a qualification that he is entitled to make and say if you call that a statement, that the publication of these charges would “knock ‘The Life of Christ’ higher than a kite.” “I did say all these words, and some other words, if they were proved to be true.”

Judge Nelson—You could then call for the other words—no doubt of that.

Mr. Evarts—Now, they cannot call a witness, if your Honor please, to contradict a witness who has spoken himself concerning a conversation until the witness has had his say about the conversation; and the whole rule is based upon the substantive proposition of fairness and justice that the witness is to be called upon and permitted to say what he did say at the imputed conversation before they can raise the question of contradicting him. To say otherwise would permit, merely, a trap for a witness. The proposition is, and it is fundamental and familiar, that the witness is to say what he did say, and then if you find occasion and power to contradict him, you have done him no injustice.

#### ARGUMENT OF MR. BEACH.

Q. Mr. Beach—I submit to your Honor that there can be no precedent, no declaration of any elementary authors produced to your Honor to sustain the assertion of the counsel in regard to the practice, to wit: that where a witness is asked as to a declaration out of court as a foundation for an impeachment, and he denies having uttered the declaration imputed to him that it is competent for a witness before the attempt at a contradiction, to declare what he did say, and it must follow, Sir. I have asked this gentleman if he made this declaration so often repeated to his sister-in-law, Mrs. Stanton; he says he did not. There is no trap with reference to the witness into which he can fall. There is no necessity for his making an explanation or giving a qualified relation of the conversation, because if I call a witness for the purpose of contradiction I must confine the testimony precisely to the words—the language which I have called the attention of the impeached, or attempted impeached witness to. I must prove, for the purpose of impeaching this gentleman, that he made, in language or in effect, the precise words which I put into his mouth by the question, and then, Sir, the witness is at full liberty, after that evidence is given, to appear with his qualified or explanatory statement. Suppose it should happen, Sir, that I give no evidence upon that subject at all. I have not proved

any part of that conversation; I have not made any portion of it evidence, and yet if the proposition of the gentleman is sustained he may give in evidence against us, the declaration made by this gentleman upon that occasion unfriendly, unfortunately, towards us perhaps, and upon what rule of law, Sir, shall they be made evidence. Another answer, Sir, to it—this is a matter which is entirely collateral—suppose the gentleman had made the declaration that these publications would have the effect upon the “Life of Christ” which is supposed by the inquiry, it only affects his recollection, perhaps it bears upon the question of his interest in the subject-matter of this litigation, but it is not a vital and important question to this issue, and it is quite questionable, I submit to your Honor, whether you would allow contradictory evidence upon that point, and whether we are not concluded by the answer of the witness upon that subject. But until we take some step for the purpose of attacking his interest upon this question of contrary declaration, it is not competent for them to give in evidence any part of that conversation, or any other declaration of the witness, than that to which we have asked his attention.

#### ONE OF THE JUDGE'S OWN DECISIONS CITED.

Mr. Evarts—I ask your Honor's attention to your own ruling in this case. I read from page 299 of the book, Mr. Beach on re-direct—this was of Mr. Tilton, I suppose—“Then he was asked, ‘when that card was presented or shown to Mr. Beecher’”—it may have been Mr. Moulton—yes, it is Moulton—“did you not say thus and thus,” Mr. Beach proceeds. “Suppose the witness answers that he did say that, on re-examination, are we not permitted, his memory having been refreshed by that specific question, he having added to the conversation—may we not ask him, ‘What else did you say in that conversation.’” Your Honor replies, “yes, Sir.”

“Mr. Evarts—in that connection.”

Mr. Beach—Yes, Sir.

Mr. Evarts—We have not objected to that.

“Mr. Beach—If he says he did not answer thus and thus, as inquired of, ‘But I will tell you what I did say,’ are we not permitted to ask him what it was?”

Judge Nelson—You are.

Mr. Beach—That is the course we are pursuing.”

Mr. Beach—Well, Sir, so far I have conceded that they may ask what this witness did say.

Mr. Evarts—Very well; now that is the—

Mr. Beach—I object to the conversation otherwise or beyond that.

Mr. Evarts—I require no other conversation than to show what he did say, and of course what he said it to, otherwise it is not what he said.

Judge Nelson—Well, allow me to say that the peculiarity of the argument, one peculiarity, seems to be that it is addressed very largely to a contingency that may occur, to wit, an attempt to contradict this witness. In the second place the argument proceeds upon the assumption that this witness has given part of a conversation, and that therefore, upon your re-direct you have a right to call for the residue of that conversation, where-

as I do not understand that this witness did give any part of the conversation whatever. On the contrary—

Mr. Everts—Your Honor has omitted the last part of your ruling.

#### THE CONVERSATION ADMITTED.

Judge Neilson—On the contrary—one moment, one moment—on the contrary, he was asked if he didn't make a specific statement, or words to that effect, and he says no. That, in my judgment, is not taking any part of the conversation. But still within the rules of justice, you may ask him what he did say on that occasion, leaving out the conversation of the other persons, if you elect to do so.

Mr. Everts—Your Honor will remember that both forms were presented to your Honor, and received your decision. Mr. Beach put first the case of part being given, whether they could not bring out the rest.

Judge Neilson—Well, Sir, now one moment; a part was given. Here no part has been given. There is a distinction.

Mr. Everts—Very well, and then he puts this case to your Honor, and the one then pending. "Mr. Beach—If he don't answer thus and thus as inquired of; but I will tell you what I did say, are we not permitted to ask him what it was?"

Mr. Beach—I concede that.

Mr. Everts—Your Honor's answer is, "Yes, Sir." Now, that is all we want to ask.

Judge Neilson—He gave some part of what was said.

Mr. Everts—He did not, if your Honor please, on this portion of the proposition that was put to your Honor, the proposition was supposing he said he did not, "but I will tell you what I did say." Now, that is our situation here. Your Honor answered him that that was right. I supposed it was, and I acquiesced. There was no exception taken to your Honor's ruling. Now, Mr. Wilkeson—

Judge Neilson—It must have been a very remarkable circumstance. Now, if you will interrogate this witness as to what he said in that connection, you are at liberty to do so.

Mr. Everts—Mr. Wilkeson, your attention has been called to a conversation in which something is supposed or suggested as having been said in regard to the effect of the publication of the charges against Mr. Beecher on the "Life of Christ." Now, Sir, was there a conversation in which that subject was mentioned? A. Yes, Sir.

Q. What was said by you and to whom, and in answer to what?

Mr. Morris—No.

Judge Neilson—That calls for the whole conversation.

Mr. Morris—That is the objection.

Mr. Everts—Well, I will take what you said, and to whom, and who were present? A. Three sisters in the room, one of whom was Mrs. Stanton.

Q. Who were the others? A. Well, I guess that you— Just release me from bringing my sisters into this case.

Q. Very well, Mrs. Stanton was one of them? A. Mrs. Stan-

ton one; two others being present, and in reply to an inquiry addressed to me by the younger of the two—

Q. Not Mrs. Stanton? A. Not Mrs. Stanton, she being an auditor. I said in reply to her inquiry, if these imputations and charges against Mr. Beecher are true, and if they become public, the "Life of Christ," of course, is knocked higher than a kite. [Snapping his fingers.] [Laughter.]

The Witness—Mrs. Stanton utilized a part of that.

Judge Neilson—Well, no matter.

Q. Did you suit the words with the gesture that you have just made? A. I think I did. [Laughter.]

Mr. Morris—Have the gesture in as an exhibit. [Laughter.]

Judge Neilson—Gentlemen, I think you will have to be more quiet.

Mr. Everts—Well, let me have that letter, the last letter. Do you know whether you received any answer to that letter from Mr. Moulton? A. Not a word.

Q. And that letter of—that first letter; you remember that letter of the 11th of January, 1871; did you receive any answer from Mr. Tilton—I will show you that? A. No, Sir, that was simply filed against me.

Q. You received no answer to either of these letters? A. No answer.

#### THE WITNESS'S INTERPRETATION OF "IMPROPER LANGUAGE."

Q. Now, Mr. Wilkeson, you were asked as to the phrase, "improper advances," which is there in quotations, from what source—you have been asked from what source that phrase that you thus quoted had come to you. Can you, saw now from what source it had come? A. No, Sir; no, Sir I cannot.

Q. You have spoken of the phrase used by Mr. Tilton in his interview with you, referred to as improper language? A. Yes, Sir.

Q. To his wife? A. Yes, Sir.

Q. "Used improper language to his wife?" A. Yes, Sir.

Q. Was that the phrase? A. Yes, Sir.

Q. Now, as used by him, that phrase, "improper language to his wife," as used by him in his statement to you, did you understand it as equivalent to improper advances, as used there?

Mr. Beach—Wait one moment.

The Witness—I did, Sir—I ask your pardon, Sir; I ask your pardon; and take that back.

Q. Well, it is a proper question, I suppose—well, you answer that you did? A. Yes, Sir.

Q. Well, it is a fair question.

Mr. Beach—No; I think not.

#### MR. WILKESON FORCES THE HOSTILITIES.

Mr. Everts—Well, that is my view of it. Now, Mr. Wilkeson, with whom did the purpose that you carried out, of making a publication of some part of the "Tripartite Agreement," originate? A. With me, Sir.

Q. In what paper was it published by your procurement? A. I think the four great morning papers.

Q. By your procurement? A. Yes, Sir; I gave my personal

indorsement to the statement, in writing in notes communicating the thing to each of those papers.

Q. Do you remember whether, after you had formed the purpose of making this publication, and had set at work to procure it, Mr. Cleveland saw you, or talked with you on the subject, with a view of preventing the publication?

Mr. Beach—Well, that—that would necessarily call, Sir, for a portion of the conversation between—

Mr. Evarts—Well, you have talked about Mr. Cleveland.

Mr. Beach—What if I have talked about him? That don't authorize you to give any part of the conversation.

Mr. Evarts—I have a right to call his attention to those interviews, and then when I offer the conversation it is for you to object to it.

Judge Neilson—The objection is that you characterize Mr. Cleveland's purpose.

Mr. Evarts—In relation to the subject.

Judge Neilson—In relation to the subject.

Mr. Beach—Oh, no, Sir.

The Witness—I recollect that Mr. Cleveland objected to the publication.

Mr. Beach—Objected to.

Judge Neilson—Do you recollect that Mr. Cleveland saw you on that subject? A. Yes, Sir.

Q. Between the time of your planning the publication? A. Yes, Sir; and the publication.

Q. And the publication? A. Yes, Sir.

Q. Saw you on the subject? A. Yes, Sir.

Q. Do you remember what time of day, or night, it was? A. I think about between four and five o'clock in the afternoon.

Q. That he saw you? A. Yes, Sir.

Q. May it not have been later than that in the evening, or night; take your best recollection upon the subject? A. I think he saw me twice about it; saw me between four and five o'clock in the afternoon; and I think he came to my house in the evening; he saw me in the evening somewhere. I know he was quite persistent about it.

Mr. Beach—Oh, don't; don't; don't! [Laughter.]

Mr. Evarts—Now, Sir, did anything pass between you and Mr. Cleveland, wherein he suggested or aided the publication, or the contrary?

Mr. Beach—I object to that.

Mr. Evarts—We will take his Honor's decision upon that. I understand the object of the inquiry of our learned friends was to show that Mr. Cleveland had something to do with this publication.

Judge Neilson—I think he may answer that.

Mr. Beach—Why, your Honor, please consider we have given no evidence of any declaration of Mr. Cleveland's.

Judge Neilson—No; but you inquired, Sir, as to his action—

Mr. Beach—No, Sir; I inquired simply whether he saw this gentleman—I did not ask for anything he said or did, except simply whether they were seen. Now, does your Honor rule that that gives them the right to prove what transpired as between Mr. Wilkeson and Mr. Cleveland? It seems to me a most astonishing proposition, if your Honor please.

Judge Neilson—Well, Mr. Evarts, that being so, how is it receivable? I don't think it is.

Mr. Evarts—The nearest ruling we have in this case is handed to me by my associate, Mr. Abbott:

Defendant, on cross-examination of plaintiff's witness, Moulton, having put in evidence Mrs. Tilton's letter of denial, but no conversation in regard to it: Held, that this entitled plaintiff, on re-direct, to prove what was said to defendant about the letter.

Judge Neilson—Oh, yes; a part of the act of delivery.

Mr. Beach—That is quite another thing.

Mr. Evarts—Well, that was what was said about the letter.

Judge Neilson—That was on the occasion when you happily illustrated the rule, showing us that such an act is double in its character, first, the manual act of handing the paper; and second, the verbal act of the delivery—the one as much the act as the other.

Mr. Evarts—Now, I offer to prove by this witness—

Judge Neilson—Well, well, I think we cannot take this.

Mr. Evarts—Your Honor will give me the ruling upon it, no doubt. I offer to prove by this witness that the visits of Mr. Cleveland to him in the interval of inaction—between the action of the planned publication and the actual publication, was to prevent the publication, if possible.

Judge Neilson—Well, I rule it out as immaterial.

Mr. Evarts—We except to that ruling.

Judge Neilson—The ground not opened by the other side.

Mr. Evarts—Now, Mr. Wilkeson, what was your object in making that publication?

Mr. Beach—That I object to, Sir.

Judge Neilson—I think I will take that, Sir, with a view to the witness—it is going a good ways.

Q. What was your object in making that publication.

Mr. Beach—Well, Sir, we will except to your Honor's ruling.

The Witness—I was sick and tired of seeing that great and good man dragged under the harrow of imputation, and I determined to force this fight. That is why I published it.

Mr. Evarts—That is all, Mr. Wilkeson.

The Witness—I wanted this case to be brought either into a court of criminal or civil law, where it ought to have been brought right from the start.

Judge Neilson—Well, that is all Mr. Wilkeson; that is all, Sir.

#### TESTIMONY OF MR. EDWARD EGGLESTON.

Q. Edward Eggleston was next called on behalf of defendant and sworn.

Mr. Shearman—Where do you reside? A. Brooklyn, Sir.

Q. What is your occupation? A. Well, Sir, I am a clergyman, author and lecturer; I don't know which to set down.

Q. Have you ever been employed on *The Independent-New York Independent*? A. I was, Sir.

Q. At what time, and in what capacity? A. I was on *The Independent* from about the 1st of May, 1880, until the retirement of Mr. Tilton—I don't know which would be my proper designation; I was an associate editor, and also called literary editor; after Mr. Tilton's retirement I, in part, succeeded him, Mr. Bowen being nominal editor, and I being called superintending



editor, but discharging the function of chief editor, limited only by Mr. Bowen's overruling occasionally.

Q. Are you acquainted with Mr. Tilton? A. Excuse me, Sir. I did not complete my answer to you; I retired from the paper in July, 1871.

Q. Have you been acquainted with Mr. Tilton, and, if so, when did that acquaintance commence? A. I am acquainted with him, Sir; became acquainted with him by sight; I had corresponded before I became acquainted with him by sight; I am pretty sure, Sir, that it was in 1867; it is a little difficult for me to fix the exact time.

Q. When did you become at all intimately acquainted with him? A. Well, Sir, I at that time lived at the West, and was Western correspondent of *The Independent*; on my occasional trips to New-York I several times stayed over night at his house, or dined with him, some such courtesy as that; he took tea at my house one evening when he was West; after I came East, I was, of course, more intimately associated with him as his associate editor.

Q. How long have you been acquainted with Mr. Beecher? A. I met Mr. Beecher, Sir, on the same Sunday morning that I met Mr. Tilton, in 1867; it didn't—it scarcely amounted to an acquaintance; I brought him a note of introduction; I have known him, to say acquainted with him, along in the last three or four years, I believe, Sir—four or five, perhaps.

Q. Do you recollect calling at Mr. Tilton's house one morning in the Winter of 1868 and 1869 when Mrs. Tilton was about going out; when she was about going to Mr. Paige's studio? A. I did not call there, Sir; I am hesitating to fix—be sure of the date, Sir; it was, I should say, judging by my trips to the East, as nearly as I can recall them, in the Fall of 1868, or the Spring of 1869, that is March, 1869; I was at the East at that time; I was at the house; I think, Sir, I had either remained over night, or had taken dinner; I was there as a guest. If you wish me to tell the circumstance—

#### JEALOUSY SHOWN BY MR. TILTON.

Q. Well, I will interrogate you; you recollect Mrs. Tilton preparing to start for Mr. Paige's studio? A. I think she was not going that day, Sir, but talking of going the next day.

Q. Well, did any conversation take place between you and Mr. Tilton and Mrs. Tilton with reference to Mr. Beecher and your introduction to him at that time? A. Yes, Sir, I was talking with Mr. Tilton and Mrs. Tilton; we were speaking admiringly of Mr. Beecher—at least I was, and I think the other two also, and Mrs. Tilton asked me if I was acquainted with him. I said I had presented a note of introduction and shaken hands with him at the close of the service, and had been accustomed to go up and ask the stranger's privilege of shaking hands when I went to Plymouth Church, rarely, on my trips East, but that I did not know him otherwise. She said: "Wouldn't you like to know him better?" I said I would, and she then extended an invitation for me to go with her to Mr. Paige's studio on the next day, as I remember now, on which occasion she said she was to go with Mr. Beecher to have a sitting for a portrait, and that Mr. Beecher

would be very glad to converse with me during the sitting, and I would have an opportunity of acquaintance. Mr. Tilton objected—said that Mr. Beecher didn't like to be annoyed with conversation, and thought that Elizabeth had better go alone—some such remark as that, upon which I, of course, withdrew and declined to go.

Q. Do you recollect an occasion in the early Summer of 1870, on which a reception was given at Mr. Tilton's house when you and your wife were present? A. Soon after I went on *The Independent*, Sir, there was a reception, or gathering of some kind, I forget the title of it, of the Brooklyn Women's Club, to which I received an invitation, and at which I was present with my wife.

Q. Wasn't this about June, 1870? A. It seems to me, Sir, that it was in the first week of June; I will not attempt to be positive; I remember Mrs. Tilton was talking of going to the country to Newburgh, or near Newburgh at that time, and it must have been almost immediately before her leaving her home at that time.

Q. Do you remember a certain lady being present, whose name I will show you, but I do not desire to bring out her name? [Showing witness a paper.] A. Yes, Sir, the lady in question was present.

Mr. Beach—Well, I want to look at it. [Paper shown to Mr. Beach.]

Mr. Shearman—It is a lady whose name—a lady that has been referred to, but whose name has never been mentioned.

Judge Neilson—Go on.

Mr. Beach—Well, I don't know, Sir; it may be necessary for us to know the lady for the purpose of using her with reference to any evidence which this gentleman may give.

Judge Neilson—Well, if in your judgment it becomes so you must require it.

Mr. Everts—Well, if your Honor please, this is the same name, and the same lady, that was excluded by your Honor's direction against our objection on the inquiries that we made earlier in the case.

Judge Neilson—I think you acquiesced in this.

Mr. Beach—Under quite different circumstances.

Mr. Everts—I did, and we now acquiesce.

Mr. Beach—It was under quite different circumstances.

Judge Neilson—You can presently see whether this becomes material.

Mr. Beach—Well, what is the question?

Judge Neilson—If this lady was present?

Mr. Beach—What lady?

Judge Neilson—A certain lady not yet named.

Mr. Beach—Well, let us have the question; I want the question on record.

Judge Neilson—He has not put it yet.

Mr. Beach—Your Honor is mistaken; he has put a part of the question.

Mr. Shearman—Whether the lady whose name I have shown him was present on that occasion.

Judge Neilson—And he said she was present.

Mr. Morris—He has exhibited the name of the lady to the witness and in a manner to cast a reflection on the lady.

Mr. Shearman—I am not going to throw any reflection on the lady at all.

Judge Neilson—Go on, Mr. Shearman.

Mr. Beach—Well, I can get at it.

#### MR. TILTON SLIGHTS HIS WIFE.

Mr. Shearman—I ask whether Mr. Tilton showed any such attentions to that lady on that evening as excited comment on that occasion?

Mr. Beach—Now, your Honor, to that we object.

Judge Neilson—Go on; she can be named hereafter.

The Witness—He did, Sir.

Judge Neilson—Mr. Shearman, that last question and answer does involve a reflection upon the lady, and it will rest with you, I think, to reveal the name if they require it.

Mr. Beach—I desire that that question should be read.

[Question read by THE TRIBUNE Stenographer.]

The Witness—I beg pardon. I perhaps ought to correct the answer, for Mr. Shearman said “excited comment on that occasion.” I cannot say that I heard comment on the occasion, during the evening while we were actually in the company.

Mr. Shearman—Well, it was the wrong shape of my question.

Mr. Beach—Well, then, strike it out. Let us have it right.

Mr. Shearman—You may strike it out.

Mr. Beach—Strike out the question and answer, then, and let us get it in proper form.

Judge Neilson—Now, the better way would be to let him state what he observed.

Mr. Beach—Oh! well, I don't insist upon that if the gentleman can put a question that will be satisfactory to me without it; I certainly have no objection to it.

Mr. Shearman—I will put the same question in a correct form. Did Mr. Tilton show such attentions to that lady on that occasion as excited comment by others?

Mr. Beach—No; not comment afterwards, Sir.

Mr. Shearman—Well, I mean immediately afterwards.

Mr. Beach—No—excited observation, if you please, then.

Mr. Shearman—Well, I am not particular—as excited observation.

The Witness—He did, Sir.

Judge Neilson—On that occasion?

Mr. Shearman—On that occasion.

The Witness—He did, Sir.

Q. Now, I ask whether those attentions were afterwards the subject of conversation by other persons with you?

Mr. Beach—That is objected to.

Mr. Shearman—I do not propose to go any further.

Judge Neilson—That is ruled out.

Mr. Shearman—I simply offer to show these attentions without attempting to throw any imputation upon the lady, for the simple purpose of showing that this was one of a series of events, some of which were small, some of which were of more importance, which help to bring about that state of public scandal which Mr. Tilton afterwards imputed to other causes, and for which he blamed Mr. and Mrs. Beecher and others,

and to show such a state—and this is part of the chain of evidence which shows that there was such a state of public scandal against Mr. Tilton as to make it necessary for him to do something; and that this was the motive—the public scandal thus excited by his own acts—this was the motive which led him afterwards to bring this charge against other people in order to cover up himself. In that light, I offer this question.

Judge Neilson—Well, you ask him as to the comment by the other people in the absence of Mr. Tilton.

Mr. Shearman—Simply for the purpose of—

Judge Neilson—And subsequently. That is ruled out.

Mr. Shearman—Simply for the purpose of showing the public scandal. Your Honor excludes it?

Judge Neilson—Yes.

Mr. Shearman—Note our exception.

Judge Neilson—I do not exclude anything that occurred on that occasion, or any like occasion.

Mr. Shearman—Well, do you recollect making a subsequent call in the evening upon Mr. Tilton, when you waited for him some time—I mean that same Summer? A. Yes, Sir.

Q. Was Mrs. Tilton at home at that time? A. Mrs. Tilton was absent, Sir, as I remember. I say she was absent, not of personal knowledge, but of the common understanding between Mr. Tilton and myself, in my inquiry about his family, etc.; of course I could not swear that she was not in the house, but she was understood to be absent in the country at the time, of course.

Q. You didn't see her? A. I did not see her at all; no, Sir.

Mr. Beach—Well, I move to strike out that answer, that she was understood to be absent.

Judge Neilson—I think it was proper.

The Witness—I could not investigate the house and see whether she was in.

Mr. Beach—I don't know how important this is; but if this gentleman understood it from Mr. Tilton, it is competent evidence; if he understood it otherwise, as it stands now, it is not of the slightest importance, but I don't know what is going to be proved hereafter.

Judge Neilson—Oh! it is a mere incident in the call at a house where I think any witness could say, having called, he understood the lady was absent; it was a mere incident.

Mr. Beach—Well, must he not say, Sir, that he understood it from some person at the house, or give what was said in answer to his call or inquiry. Is it for him to give not only hearsay but his understanding of what the hearsay was.

Judge Neilson—I think a person calling at a house, and learning from any person that the lady is absent, could very well, as a mere incident of the call, say that she was absent.

Mr. Beach—Certainly, Sir.

Judge Neilson—That is all there is of it.

Mr. Beach—I beg your Honor's pardon, it is not all there is of it. This gentleman does not pretend to say that any person informed him at the time of that call that Mrs. Tilton was absent. If so, he can say it. We submit to it, but for him to say that he understood she was absent, I submit is only giving his conclusion from something which may have been said.

Judge Neilson—Yes.

The Witness—I think, Sir, that Mr. Tilton may be said to be the author of it.

Mr. Beach—Well, will you wait a moment?

Judge Neilson—Go on, Mr. Shearman.

Mr. Shearman—What were you going to say? A. I was going to say, Sir, that it was my common custom to ask Mr. Tilton about his family, and that I understood from him habitually the periods of Mrs. Tilton's absence during that Summer, owing to the ordinary courtesies passing between us; it was a matter of—

Judge Neilson—Well, the inquiry as to this occasion do you remember?

The Witness—This occasion was during (as I should say in any ordinary conversation, and certainly say now, on my conviction)—during Mrs. Tilton's absence in the country.

Judge Neilson—The inquiry is whether you learned from Theodore Tilton on this occasion that she was absent.

The Witness—I did not, Sir.

Mr. Shearman—At what—

Mr. Beach—Wait a moment. I move to strike out his answer, that he understood.

Judge Neilson—Very well; the word "understood" is objectionable in that respect. Go on, Mr. Shearman.

Mr. Shearman—At what hour in the evening did you make your first call that time? A. About eight o'clock, Sir.

Q. Did you find Mr. Tilton in? A. He was absent, Sir.

Q. Who did you see at that time. A. I saw the housekeeper.

Q. You need not mention names; describe persons. A. I saw a middle aged woman—I am afraid I shall have to use that word "understood," for I can't swear who told me; she was housekeeper, Sir, who told me that Mr. Tilton was absent. I also saw a gentleman at the door inquiring—

Q. You did not go inside? A. I did not go inside.

Q. That is all about that; at what time did you return? A. I came back once or twice, Sir, before nine o'clock, I think, and finally at—came back at nine and went in.

Q. How long did you stay at that time? A. I stayed until ten, Sir.

Q. Did Mr. Tilton come in? A. Mr. Tilton came in at ten.

Q. Now, did he come in with the same lady whom I have referred to before? A. The same lady.

Q. Was there any relative of that lady there at that time? A. There was a young lady who told me that she was a relative of that lady and that she was waiting for her.

Mr. Beach—Well, Sir, we object to that.

Mr. Shearman—Wait a minute and see.

Mr. Beach—Well, Sir, I move to strike it out.

Mr. Shearman—Wait and see if I don't connect it.

Judge Neilson—The counsel says wait and see.

Mr. Beach—I only want to get my motion in time.

Mr. Shearman—Did that young lady go home with the other lady afterwards? A. She did, Sir.

Q. And did they appear to be on intimate terms? A. She did, Sir.

Mr. Beach—Now, I move to strike out the declaration of "that other lady" that she was a relative of "that other lady."

Mr. Shearman—It seems to me it is pretty fair evidence, but I care so little about it.

Mr. Morris—Well then, I wouldn't offer it.

Mr. Shearman—Perhaps you wouldn't.

Mr. Beach—Well, Sir, it is manifestly improper evidence.

Judge Neilson—Yes; strike it out. I think you will have to give us the name before you get through.

Mr. Shearman—The gentleman can ask the name if he chooses; we are not going to have it said afterwards—

Judge Neilson—Well, they are not obliged to ask; you can't give a conversation of this kind and throw upon them the burden of exacting the name; you will have to give the name, if required.

Mr. Beach—Oh! there is no objection to another lady being there, who told them that this other lady was a relative. We only object to what was said.

Mr. Shearman—Now, what did Mr. Tilton say, or what did this lady say in his presence? A. The lady with whom Mr. Tilton had been walking apologized to the other lady for her—for the lateness of their remaining out, by saying that both their watches had stopped, the other lady having remonstrated that they had kept her waiting until that late hour for them.

Q. Was anything said as to where they had been? A. Not at the time, Sir.

Q. Oh! I omitted to ask whether on the occasion of that reception in June—which you supposed to have been in June—if Mrs. Tilton was present? A. She was, Sir.

Q. Did you, at a later period in the Summer of 1870, have any conversation with Mr. Tilton on the subject of marriage and divorce, or of partners in life—anything in respect to the marriage relation? A. I recollect, Sir, a certain day when we crossed the ferry together—stood upon the front end of the ferry.

Judge Neilson—The ferry boat you mean? A. The ferry boat, yes, Sir.

Mr. Shearman—On which you did have such a conversation? A. On which we did have such a conversation.

Q. Now state what that conversation was? A. Well, Sir, Mr. Tilton, who seemed to be in some agitation—

Mr. Beach—Wait one moment.

The Witness—It is proper for me to say that.

Judge Neilson—The question is what the conversation was.

Mr. Shearman—I think Mr. Tilton's manner is very proper.

Judge Neilson—Your question was what the conversation was, and the witness must attend to your question.

Mr. Shearman—What was Mr. Tilton's manner at the commencement of that conversation? A. Mr. Tilton seemed a good deal agitated on that afternoon, Sir, in the office, and after we left the office, and on the ferry boat.

Mr. Morris—When was this? A. The latter part of the Summer of 1870.

Mr. Shearman—Now, state what the conversation was? A. Mr. Tilton asked me after conversation on other subjects—he turned to me and asked me earnestly what I thought on the subject of marriage. I replied that I had never had occasion to think on the subject of marriage—some such evasive reply. He then asked me—let me get the order of conversation as

nearly as I can, Sir—he asked me whether I thought there might be more than one human love, and I confess the expression puzzled me. I replied that I didn't know what he meant by more than one human love. Said he: "What do you think in the case of people who find themselves uncongenially married?" I said: "Mr. Tilton, I think where men are conscientious—where people endeavor to do their best under such circumstances they grow together." If I may describe his manner he said very suddenly and impulsively: "It seems to me that they grow more and more apart." The conversation made a — did not go any further with that. He then asked me what I thought of John Stuart Mill, if I did revere him a great deal as a philosopher. I said I did. He told me that John Stuart Mill was never married to his wife, that he had it from an intimate friend of Mr. Mill that he never was married to his wife, legally or any other way, I believe I replied, "A man who lived with his wife faithfully as long as she lived, and lived over her grave after she was dead, is not the man you can quote on your side of this marriage controversy," and that is all I remember, I believe, at this moment, Sir, of the conversation.

Mr. Shearman—That will do.

Mr. Evans—It is after four.

Mr. Beach—Well, it will take me but a moment to dispose of this gentleman. My own inclination was not to ask him anything.

#### CROSS-EXAMINATION OF MR. EGGLESTON.

Mr. Beach—I understand you to say that the first interview of which you have spoken was in the Fall of 1868 or March, 1869? A. That is my recollection, Sir.

Q. Well, at which date was it, according to your best recollection? A. It is impossible for me, Sir, to give you the date accurately of that conversation.

Q. Then in June, 1870, were you at the house upon an occasion of the meeting of some society or committee of some society? A. Yes, Sir; it was not a committee, it was a reception, I think it was called a reception of the Brooklyn Woman's Club—a social gathering.

Q. The Brooklyn Woman's Club? A. That is my recollection, Sir. I was not a member of the Club, but I was invited.

Q. What was the object of the Club? A. I think it was a Woman's Suffrage Club, if I remember; I am not sure about the Club—the only occasion I was ever present.

Q. How many persons did you meet there? A. I don't know, Sir; quite a company.

Q. Quite a company of ladies? A. Ladies and gentlemen, Sir.

Q. Mr. Beecher there? A. He was, Sir, a short time during the evening.

Q. Well, these attentions on the part of Mr. Tilton to this unmentionable lady were in the presence of the company? A. In the presence of that portion of the company that was in the back parlor, Sir, where he sat.

The Witness [continuing]: A small room at the rear.

Mr. Beach—How many were there? A. I was trying to finish my first answer, Sir.

Q. You had finished it. A. I did not; I beg your pardon.

Q. So far as my question called for any answer. A. How many were in that room, is your question?

Q. Yea, Sir. A. I don't know, Sir.

Q. As near as you can state. A. There were—well it is a small room, Sir; there were a good many people in it; however, it is impossible for me to estimate them.

Q. Well, who was in that parlor? A. How do you mean—of the company?

Q. In that back parlor at the time of these attentions which attracted your attention? A. I don't remember but the two figures, Sir, Mr. Tilton and the lady distinctly; during the evening there were others coming and going.

Q. No, no; at the time you noticed these attentions of which you speak, who were in that back parlor? A. Why, Sir, the attention went on nearly the whole evening.

Q. I didn't ask you that. A. Well, Sir, I gave you that as a reason why I can't possibly reply definitely to your question.

Q. Were there several persons in the back parlor? A. There were, Sir.

Q. Can you state whether or not Mrs. Tilton was there in the back parlor? A. I did not see her in the back parlor during that evening; I saw her in the dining room.

Q. Wait one moment: can you tell whether or not Mr. Beecher was in the back parlor? A. He was not that I remember, though I ought to qualify that answer, because I must say that Mr. Beecher was in the dining room, which opened into the back parlor, which was somewhat the same as being in the back parlor.

Q. Well, did you make any remark in regard to those attentions that evening while at the house? A. Not while in the company, Sir.

Q. Did any person in the company while there make any remark to you, or that you overheard? A. They did not, Sir.

Q. Then there was no observation in words made upon these attentions at that time? A. Not at that time.

Q. Then do you know whether or not they were observed by any person but yourself? A. I do know at least one other person who observed them, Sir.

Q. Who was that? A. My own wife, Sir.

Q. Oh! your own wife. Do you know whether any other person except yourself and your wife observed them? A. I do.

Q. Wait one moment; you answered my question. Now, you speak of another meeting, Sir, in the same Summer, a third meeting; when do you say that was? A. I don't know to what you refer, Sir.

Q. You gave this last meeting of which I have spoken at Mr. Tilton's house; I understand you gave the date of the last meeting of which I have spoken at Mr. Tilton's house as June, 1870, when the society met there? A. That is to the best of my recollection.

Q. I understood you to speak then of a call you made subsequently the same Summer? A. Yes, Sir.

Q. When was that—how long after this June call? A. It was not very long after, Sir.

Q. Well, about how long, as near as you recollect? A. I should say, Sir, that it was toward the latter part of June, while the other was probably in the early part; that is only to the best of my recollection, however.

Q. Well, then, did you not speak of a subsequent call there? A. I think I was not asked as to a subsequent call, except these calls—those several calls on that evening.

Q. Three calls—you named three. A. Did I name three calls, Sir?

Q. Yes, Sir; there was one in March, 1869, or the Fall of 1868; another, June, 1870, the early part, and a third the latter part of June, 1870. A. Yes, Sir.

Q. And what occurred at the time of this latter call—June—latter part of June, 1870? A. This occurred that I called about—

Q. The two ladies. A. Oh, at the time when they came in do you mean, Sir?

Q. Yes. A. Or do you mean the whole evening?

Q. No; I mean whether that was the—. A. That was the occurrence.

Q. Latter part of June, 1870. A. That is my recollection; I don't want to be definite to those dates because my memory of dates is not very good.

Q. I want to get you as close as I can. A. Yes, Sir.

Q. Then you had a subsequent interview with him, I understand, on the ferry-boat later in that Summer? A. Yes, Sir.

Q. How late was that, Sir; how long after this call of the latter part of June, 1870? A. That is less definite than any other in my mind, Sir.

Q. Well, give me, as near you can, Sir, the length of time it was after the call you have mentioned of the latter part of June, 1870? A. I have stated my supposition to be August, 1870, but I am not at all confident of the date.

Q. Then you think it was in August, 1870? A. I think so, Sir.

Q. And you say Mr. Tilton was very much agitated? A. Seemed so, Sir.

Q. Seemed very much agitated; was his conversation somewhat abrupt? A. It was during this portion of it.

Q. During this portion of it. Well, do you recollect any other subject upon which you talked? A. We talked a little after we left the office; I tried to engage him in conversation; he seemed abstracted.

Q. He seemed abstracted? A. Yes, Sir.

Q. Seemed moody? A. Somewhat so; I remember one subject we discussed. He said he wished there was some sensation going on, something to give the papers a little more interest than there was; it was a dull occasion.

Q. Very brief, that was? A. Yes, Sir.

Q. Do you recollect any conversation that occurred on the ferry-boat before he introduced this subject of the marital relation? A. I do not, Sir.

Q. So far as you recollect, was that the first topic that he mentioned after you entered the ferry-boat? A. That is the only topic I recollect, Sir, on the ferry-boat.

Mr. Beach—[To the counsel.] He says that was in August, 1870.

The Witness—Probably.

Q. That is probably in August of 1870; had you noticed this abstraction, or moodiness, on the part of Mr. Tilton for any length of time preceding that interview? A. Only that after noon as we left the office, Sir; only that afternoon.

Q. And how do you recollect that conversation opened on the ferry-boat? A. It opened, I recollect distinctly, by Mr. Tilton's asking me what I thought—I cannot give the exact words—what I thought on the subject of marriage; that is my recollection now, or of the question of marriage; I can't give the phrase precisely of the question.

Q. Will you please proceed with that conversation, Sir? A. I responded that I had never had occasion to think of the question of marriage; I am now giving only the substance, for I don't remember conversations literally; I remember some phrases.

Q. Were you married at that time, Sir? A. I was, Sir—that I had never had occasion to think on the question of marriage; I don't know but that I added, "being very well satisfied myself with my condition."

Q. I didn't ask you that; I was asking about a conversation. A. Your question suggested that, Sir. I think I said that on the occasion.

Q. Please spare me your suggestions. A. Then Mr. Tilton responded that—Mr. Tilton asked again the question what I thought; I cannot give his words, but the substance of his question was what I thought of those cases in which men and women found themselves uncongenially mated; that was the idea, I quite distinctly remember; and I replied that if they acted conscientiously and faithfully toward one another they would grow together; I think I used the expression "grow together"—I am pretty sure of that phrase—when Mr. Tilton replied in a phrase that I remember pretty distinctly: "It seems to me they grow more and more apart," with an abrupt and exceedingly strong expression when he said it.

Q. Anything else? A. That is all, excepting the remark about John Stuart Mill. He asked me if I did not revere Mr. Mill as a philosopher, and I said I did. I remember now a sentence or two which I did not remember in the opening. He said that Mill had—he understood from an intimate friend of Mill's that Mill had not been married; or he did not say that at this moment. He said that Mill was not married to his wife. I said: "I understand you mean G. H. Lewes," but he said, "No." I understood from him the fact that Mr. Mill was not married to his wife. I answered, "Well, Mr. Tilton," or "Well, Theodore"—I don't know which I called him—"Mr. Mill, a man who lived with his wife faithfully until her death, and who lived over her grave after her death, is not the man to be quoted on your side of the marriage question." I don't remember anything further said.

Q. And you did revere Mr. Mill, I suppose? A. I did.

Q. You stated that you was a clergyman? A. I am a Methodist preacher to a Congregational Church, lying around loose generally in that regard.

Q. Well, Sir, that is sometimes the best way of doing good. But, did you understand that Mr. Mill was anti-Christian in his sentiments and publications? A. At that time, Sir, I do not

remember that Mr. Mill had published anything distinctly anti-Christian. He has now, but I still revere Mr. Mill, if that is a part of your question.

Q. Yes. Well, what did you understand the sentiments upon the subject of Christianity of Mr. Mill to be, as indicated by his publications? A. I thought it very likely that he was not a believer in Christianity. I revered him because he was sincere and noble.

Q. You revered him because he was sincere? A. Yes, Sir.

Q. If you find a man sincere and noble in his disbelief of Christianity you revere him? A. Profoundly, if he is sincere and noble; always.

#### A PROPOSITION TO HOLD COURT TO-DAY REJECTED.

Judge Neilson—Will the audience please be quiet? [To counsel.] Gentlemen, can we attend and work to-morrow? It is very desirous to get this testimony closed before you go to Washington, Mr. Everts.

Mr. Everts—Yes, Sir, that is so; and we will accomplish that better by adhering to our rules.

Judge Neilson—[To the jurors.] Gentlemen, get ready. We separate now until Monday morning at eleven o'clock.

Mr. Beach—[To Judge Neilson.] Did your Honor conclude to sit to-morrow?

Judge Neilson—No, Sir. [To the jurors.] Eleven o'clock on Monday morning, gentlemen.

Mr. Mallison (Clerk)—The Court stands adjourned until Monday morning, at eleven o'clock.

The Court then adjourned until Monday morning, at eleven o'clock.

### FORTY-FOURTH DAY'S PROCEEDINGS.

#### FOUR WITNESSES AND A DEPOSITION.

TESTIMONY OF JOHN W. HARMAN IN REGARD TO THE TRUE STORY AND MR. TILTON'S COMMENTS THEREON—TESTIMONY OF JACKSON S. SCHULTZ IN REGARD TO THE NEWSPAPER PROJECT AND THE CHARGES OF BLACKMAIL—TESTIMONY OF CHARLES G. JUDSON—MR. MOULTON'S CONVERSATIONS WITH ARCHIBALD RAXTER—DEPOSITION OF J. HAYNES DRAKE.

MONDAY, March 15, 1875.

The great trial entered upon its eleventh week to-day. John W. Harman was called as the first witness and examined by Mr. Hill. His testimony related in the main to statements made to him from time to time by Mr. Tilton regarding his relations with Mr. Bowen and Mr. Beecher. Mr. Tilton had told the witness that he had received notice to give up his position as editor of *The Brooklyn Union*, and that Mr. Bowen had deserted him and joined Mr. Beecher against him. In a conversation in 1873 Mr. Tilton had told him that he wanted to collect the \$7,000

which Mr. Bowen owed him, but an old matter would be revived were he to do so. The witness asked what that old matter was, and Mr. Tilton then told him that Mr. Bowen had slandered one of the best of men. He added that Mr. Bowen had written a letter from Woodstock charging Mr. Beecher with adultery. Mr. Tilton also said that Mr. Bowen declared that Mr. Beecher ought not to preach, and that if he (Mr. Tilton) would write an open letter to him telling him to resign, he (Mr. Bowen) would deliver it. Mr. Tilton did write such a letter, but Mr. Bowen sealed it up and gave it to Mr. Beecher as the work of Mr. Tilton alone, and then joined Mr. Beecher. Among other communications which Mr. Tilton made to the witness was one to the effect that Mrs. Tilton had confessed to her husband that Mr. Beecher had made improper proposals to her, and that when he had charged Mr. Beecher with having used such language to Mrs. Tilton, he had been overwhelmed with shame, had wept, and said: "Theodore, Theodore, how could I do this thing? You are my children. I married you." Mr. Beecher had apologized. Soon after the Woodhull publication the witness asked Mr. Tilton his reason for not denying the scandal, and Mr. Tilton had replied: "Suppose I can't deny it."

On cross-examination Mr. Harman testified that Mr. Tilton had always spoken in the highest terms of his wife, and had never charged her with any fault. The witness explained the way in which Mr. McKelway got possession of the MS. of the "True Story." Mr. McKelway called upon him and told him that they had employed eminent counsel to sift the matter and see whether the story would hold water, and the witness then gave the papers to Mr. McKelway without a written order from Mr. Tilton. Mr. Harman further testified that he had offered Mr. Tilton \$5,000 for the "True Story;" he did not mean necessarily to publish it, but wished to do what he pleased with it; but Mr. Tilton had refused the offer. He afterward told Mr. Tilton that "the whole world wanted to know about that scandal, and 1,000,000 copies of the 'True Story' could be sold at 25 cents a copy."

Gen. Tracy next called and examined Jackson S. Schultz. His testimony was also in the main a recital of conversations with Mr. Tilton. The first hint that the witness had had that Mr. Tilton was not on friendly terms with Mr. Beecher was derived from a statement of Mr. Tilton that if Mr. Beecher were asked to subscribe to *The Golden Age* he would

do so, and that he would contribute also to that paper if he were permitted. Mr. Schultz in one of his conversations with Mr. Tilton had reproached him for the publication of the "Life of Victoria Woodhull," and Mr. Tilton had justified his course on the ground that he always stood by the weak and down-trodden. At a dinner party he had heard Mr. Tilton speak very warmly in praise of Mrs. Woodhull. Mr. Tilton came to him on one occasion in 1873, and told him that Francis B. Carpenter had informed him that Mr. Schultz had said that he (Mr. Tilton) was a blackmailer. The witness then repeated that part of the conversation which he had had with Francis B. Carpenter, but which he could only give in evidence as he had told it to Mr. Tilton. The substance of it was that Mr. Carpenter came to him with a plan for starting a new paper, of which Mr. Beecher was to be the editor-in-chief and Mr. Tilton a foreign correspondent, and Mr. Carpenter and Mr. Johnson were to be engaged in the business department. A part of the plan was that the scandals were to be suppressed. It was on the ground that Mr. Tilton was trying to make use of certain scandalous stories to secure for himself a position, that the witness had called him a blackmailer. Mr. Schultz also told of an interview between Mr. Tilton, Mr. Moulton and himself, during which the charge of blackmail was discussed. During this part of the testimony, Francis D. Moulton, who had entered the court-room a few minutes after 12 o'clock, sat at the table occupied by the plaintiff and his counsel, within a few feet of the witness, upon whom he fastened his eyes, stretching his head forward. Mr. Schultz leaned forward in his chair and emphasized his testimony by striking his hands together.

Mr. Beach's cross-examination of Mr. Schultz was very brief. The witness admitted that he had conversed during the recess with his partner and Mr. Tracy in relation to his testimony.

Mr. Shearman then called Charles G. Judson and questioned him in reference to a conversation between Mr. Tilton and himself in 1865, in which Mr. Tilton had said, "I have lost my faith in man." Mr. Beach objected to the questions on the ground that the matter was remote and immaterial. A discussion followed which drew forth a stern rebuke from Judge Neilson, who declared that too much time was wasted over unimportant matters. When the witness had finished, Mr. Beach moved to strike out all his testimony. "Let it stand," said Judge

Neilson. "It will be as harmless as a lamp-post in the street. It is perfectly idle and trivial to occupy time with such evidence."

The defense next called Archibald Baxter for the purpose of contradicting Mr. Moulton's testimony. Mr. Baxter testified in regard to various conversations with Mr. Moulton, in which the latter had declared Mr. Beecher was innocent. On cross-examination, Mr. Baxter testified in regard to a conversation with Mr. Beecher in which the latter had said, "Moulton is a noble fellow;" and had eulogized him highly. The proceedings were closed with the deposition of J. Haynes Drake, which was read by Mr. Shearman.

### THE PROCEEDINGS—VERBATIM.

#### TESTIMONY OF MR. JOHN W. HARMAN.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Mr. Shearman, can we proceed now?

Mr. Shearman—Mr. Everts has not arrived. He will be here soon.

Mr. Tracy—I presume he is delayed by fog.

Judge Neilson—Mr. Everts don't wish you to wait where you have a general class of witnesses.

Mr. Shearman—We will decide in a moment.

Mr. Hill—[After consultation.] John W. Harman.

John W. Harman called and affirmed on behalf of the defendant.

Mr. Hill—Mr. Harman, where do you reside? A. I reside in Brooklyn.

Q. How long have you lived here? A. About ten years.

Q. Have you held office in Brooklyn? A. I have.

Q. What office? A. Supervisor.

Q. Or offices? A. Supervisor of the 20th Ward.

Q. Have been Supervisor how long? A. Four years. I am not Supervisor now.

Q. What is your business? A. I am in the dry goods business.

Q. And have been in the dry goods business how long? A. Since 1862.

Q. How long have you resided in Brooklyn? A. Since 1865.

Q. Are you acquainted with Theodore Tilton? A. Yes, Sir.

Q. When did you form his acquaintance? A. In 1870; I think in the Fall.

Q. Are you at all acquainted with Mr. Beecher? A. I am not, only by repute and sight.

Q. You say you formed Mr. Tilton's acquaintance in December, 1870—in 1870? A. In 1870.

Q. State under what circumstances, Mr. Harman, about the time Mr. Tilton became editor of *The B* I was crossing the ferry on my way—return from the evening, and Gen. Woodford and Mr. Tilton were on the ferry boat; and just as we were coming out o

house on this side, Gen. Woodford called me up and introduced me to Mr. Tilton as the future editor of *The Brooklyn Union*.

Q. From that time were you quite intimately associated with Mr. Tilton? A. Yes, for some considerable time after that, during the campaign that was just about—I think this was, perhaps, in October, perhaps a little earlier, that I became acquainted with him. The Fall campaign—the Congressional election was just coming on, and at that election I became very intimately acquainted with him.

Q. And how long did your intimacy with Mr. Tilton continue? A. Well, after the campaign was over I did not see him so frequently as I had before, but we were always intimate when I met him. He was very—he was kind in his disposition, and I had—there was nothing to interrupt our friendship, although we did not meet so frequently as before.

#### MR. TILTON DISCUSSES HIS TROUBLES.

Q. Do you recollect an occasion near the end of 1870, when Mr. Tilton mentioned to you his troubles with Mr. Bowen in regard to *The Union*, and his editorship of it? A. In 1870, do you say?

Q. Well, near the end of 1870; whether it was the beginning of 1871 or the end of 1870 I do not know? A. I remember the circumstance, though I cannot speak positively as to the date.

Q. Yes. Please state now what occurred between you at that time upon that subject? A. It is very difficult to recollect and give the language, because I—

Q. But the substance of the interview? A. I think it was after Mr. Tilton's discharge; he told me about the notice he had received to quit the editorship of *The Brooklyn Union*, and recited the circumstances that brought it about. I asked him why it was or what the cause was, why Mr. Bowen had discharged him. I said to him: "I hope it has not been brought about by taking my advice." Mr. Tilton knew what I referred to—in regard to the Webster campaign. He said: "That, perhaps, among other things." And he said something about this open letter that he bore to Mr. Beecher—or that Mr. Bowen bore to Mr. Beecher, and that Mr. Bowen had deserted him, and joined Mr. Beecher against him, and he was made to appear as being the offending party, and stated that Mr. Bowen had dismissed him without the six months' notice, which was part of the agreement. There was a clause in his agreement that Mr. Bowen should give him six months' notice, or either party, indeed, should give six months' notice if they wanted to terminate the relations. Mr. Bowen had not done that, but had summarily dismissed him four days after he had renewed his contract.

Q. Now, Mr. Harman, do you recollect meeting Mr. Tilton after that upon an occasion when you went to lunch with him? A. Oh, yes; I remember that circumstance very well, although I cannot give the exact date.

Q. Where did you meet him? Just begin and give that narrative in your own way? A. In my former testimony I said it was April; I think it must have been before that; I cannot fix the date; it may have been as early as February.

Q. Very well? A. I met him, as I frequently did—Mr. Tilton, going the ferry, going back and forth, and I met him on

a certain day, and he said to me, I think: "What time do you go to lunch?" I said, "About one o'clock." He said, "Come down to-morrow"—I think it was—"come down to-morrow, and we will go to lunch together." I did; I met him by appointment.

Q. At what place? A. We went to Bang's restaurant, down town—a down-town place, up-stairs.

Q. On Broadway, near the new Post-Office? A. On Broadway, right about opposite the new Post-Office, I guess, or nearly so.

Q. Then you went into a public saloon and had lunch with Mr. Tilton? A. We went into a saloon up-stairs, or rather a private place, and sat down, and he ordered the lunch, whatever it was.

Q. Were you in a private room? A. No, Sir; no, it was up-stairs; it was not down in the saloon. There is an eating place down-stairs, and another up-stairs more private, but still it was not private. We had a private table to ourselves.

Q. There were some persons there? A. There were some persons in the room, but none in our immediate vicinity.

Q. Now please state what occurred between you and Mr. Tilton there? A. The old matter came up of his being dismissed from *The Union*.

Q. Go on. Give what he said and what you said, or the substance of it, as nearly as you can? A. Mr. Tilton told me that he was going to collect the \$7,000—I think he claimed—he thought of collecting it, or, indeed, had determined to, but there was one obstacle, or one thing that he regretted—one obstacle in the way, or one thing that he regretted, it would revive an old matter—I am not sure whether he designated it as a scandal, but I think he did—that had been settled.

Q. Did he say anything about Bowen's having slandered him? A. I was going to tell you.

Mr. Morris—Ask what he said.

Mr. Hill—I am simply calling his attention.

The Witness—I was going to tell you just what occurred, as nearly as I can remember it.

Q. Very well. A. He said it would revive an old scandal, or old matter, whatever it was. I didn't expect then I should be called upon to testify, and I cannot remember the language. I said: "What is it?" Well, he said, Mr. Bowen had been slandering, I think he said, one of the best men in Brooklyn, or a good man, something to that effect, and it would necessarily bring those to the surface. I said, "What is it?" He then recited the story about Bowen's writing a letter in 1863, from Woodstock, Conn., in which he had charged the Rev. Henry Ward Beecher with being a bad man and an adulterer. I expressed my surprise at any such charge as that, and he went on then and said that it was not only in one instance, but Bowen had charged him with numerous ones, and cited some, although he did not name anybody; that is, he named no ladies, I am glad to say, but he instanced two or three cases where Mr. Bowen had charged Mr. Beecher with having committed this offense against good morals, &c.

Q. Well, what next? A. And he then said that Mr. Bowen declared that Mr. Beecher ought not to preach, and that if he (Mr. Tilton) would bear an open letter to him, making a demand



of him—I mean if he (Mr. Tilton) would write a letter demanding Mr. Beecher—a demand of Mr. Beecher to vacate his pulpit, and quit Brooklyn, he, Mr. Bowen, would bear an open letter to him. He said he wrote the letter and Bowen took it, but when he came to Mr. Beecher, instead—I think he said instead of delivering it as an open letter he sealed it and professed ignorance of its contents, and then joined with Mr. Beecher against him, and he was put out of his place, and said he was badly treated; but now he was determined to recover his money, but in doing so he would revive this old scandal, which he regretted. He said Mr. Beecher had also committed an offense against him and his family.

Q. State what he said about that. A. He told me that at one time Mrs. Tilton came to him and stated that she had something very serious to tell him, and he asked her what it was; and she said that her pastor, in his pastoral visits to their house, in her husband's absence, had taken advantage of his position and made dishonorable proposals to her repeatedly, and she felt it her duty to tell her husband, which she had done, to his surprise.

Q. Anything further said upon that subject? A. I expressed, of course, my surprise at such a thing, because it was new to me—

Mr. Hill—A little louder, Mr. Harman.

The Witness—He said, I understood, immediately—in that I may be in error, but he said he went to Frank Moulton and laid the matter before Frank, and Mr. Beecher was summoned to Frank's house. They went into a private room, the three; I think it possible he said Frank left after they got in there, and he remained and looked the door and put the key in his pocket, and accused Mr. Beecher of this grave offense.

Q. What grave offense? A. Of making these dishonorable proposals, as I understood it, violating the—making dishonorable proposals to his wife in his absence, thus taking advantage of him—

#### MR. TILTON FORGIVES MR. BEECHER.

Q. Position? A. —position as pastor.

Q. Well? A. He said Mr. Beecher confessed that he had done wrong, and said, "Theodore, Theodore, how could I do this thing! Why, you are my children; I married you;" and, he said, "By the grace of God I hope to live a purer life hereafter." He said he wept like a child, and he said he had forgiven him. He said, "I forgave Mr. Beecher; I believe he is trying to live a truer life."

Q. Did he say anything about an apology? A. A written apology?

Q. Yes. A. Not at that time, I think; he spoke of the verbal apology.

Q. Was anything said by Mr. Tilton to the effect that his wife had exacted a promise from him— A. Yes, Sir.

Q. —not to injure Mr. Beecher? A. Yes, Sir; before she laid—before she introduced the subject at all, she exacted from him a promise that he should not offer personal violence to the party that it involved. I think she said it was a personal friend, or a friend of the family, or something to that effect.

Mr. Beach—Please repeat that; my attention was called away for a moment.

The Witness—She exacted a promise from her husband that he would not offer personal violence to the gentleman, or to the party, that this involved, when she should tell him the story, which he readily gave—he told me.

Q. Anything further at that interview, Mr. Harman? A. Oh, there was a good deal said; but it was all to that effect. I cannot pretend to recite any of the language exactly, or very little of it, at least, that occurred. We sat there, perhaps, two hours or more.

Q. Anything said about his wife being annoyed at those proposals, so that she was compelled to go to her husband about it? A. Yes, Sir; he said it was annoying to Mrs. Tilton; and she, finally, in the simplicity of her heart, proposed to tell him—her husband—all about it, first exacting this promise, that he would not offer personal violence—

Q. To the party that it involved? A. To the party that it involved, because she had not named anybody up to that time?

Q. Now, what was Mr. Tilton's manner during the interview? A. He seemed to be very cool and self-possessed.

Q. Let me ask you, Mr. Harman, although you have not been acquainted with Mr. Beecher, had you been a supporter and friend of his up to that time? A. I went to church there very frequently, from 1832 to 1835—from 1832 to 1835 frequently; when my family came to Brooklyn I went less frequently because we went to another church.

Q. The point of my inquiry is, were you up to that time an admirer of Mr. Beecher?

Mr. Beach—A what?

Mr. Hill—An admirer of Mr. Beecher, a special friend of his; that is, although not being acquainted with him personally—

Mr. Beach—Well, I don't know that that is a competent line of inquiry; we have had several enthusiastic admirers of Mr. Beecher here, and we don't want any more.

Mr. Hill—What does your Honor say about it?

Judge Neilson—I think he may answer it.

Mr. Hill—What do you say? A. Had I been an admirer of Mr. Beecher?

Q. Yes; as a public man? A. I certainly was.

Q. Do you know whether Mr. Tilton knew that fact from anything you said? A. I do not; the question of Mr. Beecher never came up before.

#### MR. TILTON HINTS THAT THE WOODHULL STORY CANNOT BE CONTRADICTED.

Q. Now, Mr. Harman, let me ask you if you had any conversation with Mr. Tilton at any subsequent time when the subject of a written apology was spoken of for this offense of improper proposals or advances? A. Yes, Sir; when the—after Mr. Tilton wrote what was termed the "True Story," he read it to me; and in that was incorporated, I think, this apology of Mr. Beecher, which he read with the balance of the "True Story," as part of it.

Q. Before we come to that, let me ask you this question: Do you remember the occasion when the Woodhull and Claflin

scandal was published? A. I don't remember the date; but I remember the occasion very well.

Q. Very well. Now, had you an interview with Mr. Beecher soon after that? A. Yes, Sir; I had; I met him—Mr. Tilton, if I remember correctly, was in New Hampshire at the time this thing made its appearance, and I was very anxious to see him.

Q. Well? A. I was coming down Fulton-st., New York, one afternoon or one evening, and I met him on the corner of Fulton and, perhaps, Cliff—

Mr. Beach—Wait a moment.

The Witness—Fulton and Cliff, I think.

Mr. Hill—Proceed, Mr. Harman.

The Witness—I said to him: "I am very glad to meet you, because I have been wanting to see you for several days," and I said: "Have you seen this monstrous story of the Woodhulls?" I think he said to me that he had just returned to the city; I don't know whether he said he saw it or not. I told him what it recited, and said: "Now, Theodore, for God's sake and your family's, contradict it, give it a broad denial, because I take it you can." He stood there, and he says: "But suppose I can't?" "Well," I said, "I assume that you can; you have never charged any such offense against your wife as that, and your first duty is to your wife and children, and I think that you ought to lose no time in coming out to contradict the monstrous story." "Well," he said, "I don't know; suppose I can't?" I think he repeated that again; and he said Elizabeth—he always called her Elizabeth—was opposed to saying anything about it; she was willing to suffer herself if she could only save the church; her theory seemed to be—he said she was fanatical; either on that or some other occasion, he said that she was fanatical, and she seemed to think her duty was to save the church, although she might suffer herself and might go down; and the policy, her policy, seemed to be to say nothing about it; I said: "If I were you I should contradict the story, as I believe you can—as I think you can," or "understand you can;" something to that effect. We had but a short interview, and we left.

Q. Did you refer to a former conversation that you had with him? A. Only by implication, I think; I do not remember. I simply said: "I think you can do it from what you told me before," or something to that effect—words to that effect.

#### ADULTERY NOT CHARGED.

Q. Did he in the former conversation make any charge whatever of guilt on the part of his wife?

Mr. Morris—He has stated what he said.

Mr. Beach—Yes; he stated what he said.

Judge Neilson—Counsel asked him very clearly what he said.

Mr. Beach—I think he went over it very fully.

Mr. Tracy—I suppose we have a right to ask in this connection what he did not say.

Mr. Beach—[To Mr. Tracy.] You can ask whether he said anything further or anything different, but you can not ask him to draw a conclusion as to what he said, whether it amounted to one thing or another.

Mr. Hill—I don't ask him whether it amounted to anything.

I asked him if he said anything on that occasion—if he mentioned or intimated guilt on the part of his wife.

Mr. Beach—The question counsel put was whether on that occasion Mr. Tilton made any charge of guilt against his wife. Now, we have had a narrative of what was said according to the best recollection of the witness.

Judge Neilson—It has been very substantially answered in the very full recital the witness has given, but I think the counsel can ask if anything was said on a given subject.

Mr. Beach—Undoubtedly.

Judge Neilson—Now, ask him what he knows.

Mr. Hill—Now, after having heard his Honor's views on the subject state whether anything was said on the subject of guilt on the part of his wife? A. He did not accuse her with any criminal offense.

Q. Speak louder. A. He did not accuse her with any criminal offense, as far as I remember.

Mr. Beach—That is the conversation at the lunch-room you inquire about?

Mr. Hill—Yes.

Q. You say he did not charge her with any criminal offense? A. No, Sir.

Q. Did he charge her with adultery at all? A. No, Sir, he did not.

Q. Let me ask you if, in the first conversation, he produced a paper—a printed paper—the conversation I mean at Bang's restaurant? A. He gave me a paper at my request; he read it to me in the first place—

Q. Well? A. I do not remember whether it was at our first interview; I have been trying to refresh my memory on the subject, but for the life of me I cannot remember where I got it. After reading it to me I got it from him, or rather, after reading it, I asked him for it, as I wanted to show it to Dwight Johnson. It was a monstrous charge, and I wanted to show it to Dwight Johnson.

#### SILENCE ENJOINED.

Q. Let me ask you if anything was said either at that interview at Bang's restaurant, or at any subsequent interview, with reference to your omitting to tell anybody of that communication? A. At the first interview Mr. Tilton did not enjoin secrecy at all; he did not say that I should say nothing, or whether I should, but I met him perhaps in two weeks after—as I frequently met him on the street or crossing the ferry—and he said to me, "John, I guess you had better not say anything about what I said to you the other day," so I carried this secret from that time until the time I met him on Fulton-st.

Q. After the publication of the scandal? A. After the publication of the scandal. Then he said to me: "Now, I would prefer you should tell your friends what I told you last year, or last Spring; I would prefer you should tell your friends, or a few of your friends," and I think he indicated some by name.

Q. Do you remember who they were? A. I am quite sure he named Dr. Storrs, and I said I had not the honor of knowing Dr. Storrs. I didn't know him personally, and I should not care to tell him. I said I should like to see Dwight Johnson—I think I probably named Dwight Johnson; at all events, I think I said

to him Dwight Johnson would like to see this whole story as it appeared.

Q. Please state who Dwight Johnson was—whether he was a friend of yours? A. He was a colleague of mine in the Board of Supervisors, and we met very often.

Q. A prominent member of Dr. Storrs's church? A. Yes, Sir.

Q. And a prominent citizen of Brooklyn? A. Yes, Sir. And we were often together, as I was anxious to show that to him. It was, I think, after the first interview that I borrowed this proof slip of *The Golden Age* to show it to Dwight Johnson, and perhaps one or two others. I don't remember whether I showed it to a living soul, but I think perhaps I did, for I got it for that purpose.

Q. Please look at the printed slip which is attached to this paper [Exhibit D 85, shown witness] and state, if you can, whether or not the printed paper you borrowed from Mr. Tilton was the same, or the same in substance, as that?

Mr. Morris—No use spending time about that; we concede it is.

Mr. Hill—Well, it is conceded it was the same paper.

The Witness—Yes, the same paper.

Mr. Hill—And the witness now recollects it.

The Witness—The same paper.

Q. Now, Mr. Harman, did you show that paper to various individuals? A. I just stated that I had no personal recollection of showing it to any one individual; and yet I think I did show it to two or three, because I got it for that purpose. I asked Mr. Tilton to let me have it.

Q. For that very purpose? A. He didn't volunteer to give it to me. I said, "Let me take that paper; I would like to show that;" I think I said, to Dwight Johnson. He consented, and I had the paper at my house and carried it for perhaps two weeks before I met Mr. Johnson. I expected to meet him in the Board of Supervisors, without going to his house on purpose, and I presume I had shown it to him; and I think I still had it in my possession when Mr. McKelway and Mr. Tilton came to my house; that is all my recollection of it.

#### THE TRUE STORY SHOWN.

Q. Now, Mr. Harman, do you recollect whether you ever saw, or read, or heard read what has been called the "True Story," during the progress of this trial? A. Yes, Sir; I heard Mr. Tilton read it.

Q. Please state when that was, and under what circumstances it was? A. It was in December, 1872; I think it was the Sabbath evening preceding Christmas—the Sabbath evening preceding Christmas, I think, at my house; Mr. Tilton came there.

Q. State what occurred; state all the circumstances? A. Came in and had a large portfolio under his arm, and said: "I have got something here I would like to read you; I think you would like to hear it."

Q. What did he say it was? A. I don't know that he told me then what it was; I said to him that there was some friends at my house; we would adjourn to a neighbor's, which we did. Then he told me that it was a history of the case from 1863 to the present time; named all the persons connected with it; all

the letters; every incident, so far as he could remember, he had incorporated in that "True Story," and he would like to read it to me. I said I would like to hear it, and he read it to myself and friend, which occupied at least an hour and a half in reading.

Q. Well, let me ask you this, Mr. Harman; was that friend's house to whom you went an acquaintance of Mr. Tilton? A. He was an acquaintance of mine, but I had introduced him, at the gentleman's request to Mr. Tilton some weeks before that. I think it was at the church Mr. Tilton and Mrs. Tilton and his mother—

Q. They had only been introduced to each other? A. They had been introduced, but under circumstances that might—that is, the gentleman said, "I would like to know Mr. Tilton; I am a subscriber of *The Golden Age*."

Q. I don't care about that. I want to know if they were intimate friends? A. No; not in that sense, because they had not met each other before, except this one time, so far as I know.

Q. Comparatively recent acquaintances? A. Yes, Sir.

Q. Now, have you read the statement of the "True Story" as published in *THE NEW YORK TRIBUNE*? A. Yes, Sir; I read that.

Q. Please state, Sir, whether you recognize that as the substance of the "True Story" which he read to you, so far as it goes? A. I think it is, so far as it goes, as near as I can remember.

Mr. Beach—I object to that, Sir.

Judge Neilson—Both papers are in, are they not? I think we will let it stand, Sir.

Mr. Hill—Let me ask you this question.

Mr. Beach—Well, wait one moment, Sir. What was this last question and answer?

Judge Neilson—It calls for a comparison of the two papers.

Mr. Beach—That I object to.

Judge Neilson—One the "True Story" as read, and the other as published in *THE TRIBUNE*.

Mr. Shearman—If your Honor please, we lent a copy to Judge Fullerton, and he carried it off with him, and I find the gentlemen have not got it here. I have sent down to my house for another copy. I suppose there will be no objection to identifying that through this witness.

Judge Neilson—No; of course there is a difficulty in asking a witness at this lapse of time to form a judgment about the comparison of the two papers. That is the only objection made, and perhaps you had better recur to it when you get the paper.

Mr. Shearman—Better produce the paper.

Mr. Beach—I do not wish that question and answer to stand.

The Witness—I would like to correct my answer, if it is in order.

Judge Neilson—In what respect?

The Witness—I would not pretend to swear that it is entirely a verbatim copy by any means.

Mr. Beach—I suppose not.

Judge Neilson—I think we will strike out the last answer.

The Witness—[Continuing.] Cannot do that possibly.

Mr. Hill—I submit that my friend waited until the answer was

fully given before he stated any objection to the question.

Mr. Morris—That don't prevent the motion to strike out.

Mr. Hill—I submit that it does, because there is no foundation for the motion. But the question was the thing objectionable—the question went directly for the point which he now makes against it.

Judge Neilson—It has this qualification, that the witness on second thought cannot be certain about the similitude of the two papers, and it has this materiality, that you propose to bring in by and by the printed paper. It may as well be struck out for the present.

Mr. Hill—We except, may it please your Honor.

Mr. Everts—If your Honor please, it is quite competent for the witness to qualify any answer.

Judge Neilson—Yes; perhaps so.

Mr. Everts—And if he does that we may perhaps be better able to judge whether to strike out the whole, or not. We have not at present the qualification in, your Honor.

Judge Neilson—I think it had better be struck out, and you can refer to it when the paper comes.

Mr. Everts—We, as your Honor knows, do not recognize the right to strike out evidence that is once properly in.

Judge Neilson—The motion to strike out cannot be entertained unless it is in.

Mr. Everts—Yes; but if it is properly in, not on the ground that it is not good—or anything of that kind, your Honor. Evidence that has improperly forced its way in, why, of course, it can be properly struck out. But that seems hardly to be the case with this evidence. The question was not objected to; the answer is responsive to the question, and now if it is less determinate than it might be, or less important than it might be, that is not ground for striking it out, because a good deal of evidence would go out if its weight was to be criticised too closely after the production of it. If your Honor thinks this should be struck out—

Judge Neilson—I think it should, Sir.

Mr. Everts—We will be obliged to except to your Honor's ruling.

Judge Neilson—Go on, Mr. Hill.

#### THE MEETING WITH MR. MCKELWAY.

Mr. Hill—Do you know Mr. McKelway of *The Brooklyn Eagle*? A. Yes, Sir.

Q. Do you remember meeting him soon after the publication of the Woodhull scandal, when you had a conversation respecting that publication? A. Very distinctly.

Q. State whether or not you made an arrangement for Mr. McKelway to meet Mr. Tilton? A. I met Mr. McKelway at the Woodruff & Robinson fire. The Board of Supervisors had just adjourned, and we went from there to see the fire, and I met Mr. McKelway there.

Q. I don't care for the conversation; I merely want to know if you made an arrangement? A. I made one—I made a suggestion; I made no arrangement of—on Mr. Tilton's part; that is to say, I had made no arrangement with Mr. Tilton. I simply said to Mr. McKelway, "You go and see Mr. Tilton; he has

shown me some"—then he had shown me this 1871—this letter of January, 1871—of January 1st, 1871, I mean.

Q. The proof slip, you mean? A. Yes, Sir; the proof slip. I said, "You go and see Mr. Tilton; I think he will show you something that will astonish you." I used, perhaps, pretty strong language—

Q. I don't care for the—

Mr. Hill—That is all at present, reserving, with your Honor's permission, the privilege of producing the printed copy of the "True Story."

The Witness—Mr. Hill, I would like to explain how that letter—as it involves my honor to some extent—the publication of that letter—I would like to have a chance to explain how McKelway got that letter.

Mr. Hill—Presently.

The Witness—If you please.

Mr. Hill—There is something else I have to ask you.

Mr. Beach—I will give you an opportunity, Sir.

#### CROSS-EXAMINATION OF MR. HARMAN.

Mr. Beach—In the first place, Mr. Harman, I would like to get as near as you can at the date of this interview at Bang's restaurant. A. Well, I have tried to refresh my memory; I cannot possibly; there is no date by which I can fix it except that it was in the Spring of 1872; I did at one time think it was in April, but I think now it must have been considerably before that, because in April I am very busy generally at the store, and that is the only circumstance; I don't think that I should have been absent from the store three hours in the busy season, so I think it must have been as early as March, or the last of February. That is the way it seems to me now.

Q. February, 1872? A. In 1872.

Q. Well, was it at that interview that he first exhibited to you any document? A. As I said in my examination-in-chief, I don't remember whether he there showed me this proof slip, or whether it was at a subsequent time; I am inclined to think it was at a subsequent time; I am not sure, and yet it might have been at that time.

Q. Well, I understand that the first paper he showed you was what is called a personal statement, embodying the letter to Mr. Bowen? A. Yes, Sir, it was; yes, Sir, the letter of Jan. 1st, 1871.

Q. And then in December of that year of 1872, he exhibited to you what is called the "True Story"? A. At my house; yes, Sir.

Q. Well, now, can you get at the date in December? A. Yes, Sir; that I can fix from a circumstance; it was the Sabbath evening preceding Christmas.

Q. What, Sir? A. It was the Sabbath evening preceding Christmas; that would make it the 18th of December, I guess. I will tell you why if—

Q. Well, you are positive about that date? A. Positive of it, because my wife—I called in a physician—my wife had a severe attack of neuralgia, that is the way I fix the date, and was sick for six months that she didn't leave her room, and I date it from that evening.

Q. Well, that fixes that date. And was it at that time, according to your present impression, that you obtained the "True Story" from Mr. Tilton? A. It was that evening; he came there and read it to me.

Q. And it was that evening that you asked him permission to take it and show it to Dwight Johnson? A. I never asked him for the "True Story."

Q. Oh, it was the other paper? A. It was the letter of January 1st, 1871, that I got long before that.

Q. Well, there is a little confusion in my mind now; pardon me, Mr. Harman, I understand you, you are uncertain whether he exhibited to you the Bowen letter of January, 1871, at Bang's restaurant, or subsequently? A. I will state what my impressions are, Mr. Beach, if you please. I think at the first interview he showed me the letter that he wrote to Mr. Bowen embodying these charges—

Q. Well, by the first interview, what do you mean? A. That at Bang's Hotel.

Q. Yes. A. I think so. He also showed a letter that Mr. Bowen wrote him from Woodstock, Conn., covering four pages, referring to the political campaign—the Webster campaign, as we call it. He also exhibited one or two copies of *The Independent*, in which the complimentary—hold up—complimentary notices were passed, I guess all in a body, I think it was at that interview, and yet I would not swear positively, because I did not charge my memory with dates, for I did not expect ever to be called upon again to testify—nothing of that kind. But I know he exhibited them all at one time—the Bowen letter, the letter of Mr. Bowen from Woodstock referring to politics, where Mr. Bowen commanded him, or almost commanded him, to support Mr. Webster, and I was on the other side, and so he knew I was interested, and he showed me that, with other things.

Q. Now, you made an expression in your direct evidence referring to your former testimony; what testimony was that? A. Before the Committee—the Church Committee.

Q. Oh, before the Church Committee? A. Yes, Sir.

Q. Have you seen that testimony of yours published? A. No, Sir; I see in *THE TRIBUNE* an interview—what purported to be—but I never saw it published; I saw the comments on it in the report.

#### MR. TILTON PRAISES MRS. TILTON.

Q. Well, you have seen this book, issued by *The Graphic Company*, I think? A. I think not, Sir; I have read very little on the subject.

Q. Seen the report of the Committee referring to it. Now, did any paper as connected with Mr. Bowen, the letter to Mr. Bowen or the "True Story," or any paper submitted to you at any time, contain any imputation on the part of Mr. Tilton against his wife? A. He never charged her with—

Q. Never at any time made any imputation upon her at all? A. Not upon her honor as a wife, charging her with any adultery—nothing of that kind.

Q. The offense which he charged was wholly on the part of M<sup>r</sup>. Beecher? A. Yes, Sir.

Q. Didn't he always speak in the highest and most complimentary and affectionate terms of his wife? A. Always.

Q. And he represented her as entirely pure and innocent? A. Well, he never said that, because I never questioned him; it is a subject that I would not question—

Q. Well, whenever he spoke of his wife— A. He spoke kindly of her.

Q. He spoke of her as a pure and innocent woman? A. He spoke kindly of her; he said she was intensely religious, even to fanaticism, and thought it was her duty to save the church, even though she went down herself.

Q. Now, the "True Story," when it was read to you upon the occasion of which you speak at your friend's—what became of it? A. That I am not able to tell you. I don't know.

Q. You never saw it after that? A. Not after that, until—not in manuscript; I know I never saw it after that.

Q. Well, this letter of Mr. Tilton to Mr. Bowen, which you think you exhibited to Dwight Johnson, how long was that in your possession? A. Oh, I must have had it several weeks. I think I must have carried it in my pocket two or three weeks, that with the letter of Bowen's on the Webster campaign; I wanted to show that to some political friends, to show them what a battle we fought, and what the odds were against us, etc., and so I showed them I think to two or three friends; I cannot swear positively, but I think—I had a letter, and right here, if it is in order, I would like to state how it got out of my hands.

Q. Well, state it? A. I think the day, perhaps, after the Woodruff & Robinson fire, when I told Mac that he should go to Mr. Tilton; that I thought Mr. Tilton would show him something that would interest him; I think the very next day, in the evening, when I returned from my business, a member of my family said, "Mr. Tilton and Mr. McKelway have been here to see you." I said, "What did they want?" The answer was, "That I don't know, but there is a note for you." Mr. Tilton left a very short note, and I opened it and read it; saw that it was not of much importance, and before I got through with my dinner, or about the time, McKelway returned; he said "I want these papers." I think the papers that they brought up were two copies of *The Independent*, that contained those complimentary letters that passed between Mr. Bowen and Mr. Tilton, but my impression is that I had the January letter in my possession at the time Mac and I differed as to that, honestly, undoubtedly—he may be right, or I may be right; I don't know which is right; but at all events, in this large envelope were these two *Independents*—copies of *The Independent*, with a short note from Mr. Tilton, saying that they should be returned to him, all the papers, when I got through with them. Mac says, "I come for those papers." I said, "Why, I have just got a note from Mr. Tilton saying that they are to be delivered to him." "Oh!" he says, "That is all right." He says, "We have decided to submit those papers to counsel—eminent counsel." "We," I said; "who?" "Well, *The Eagle, The Eagle*," he says; "we have employed eminent counsel, and we are going to submit those papers, the story, the whole story, and see what is in it." Said I, "Who is your counsel?" He said, "Gen. Tracy." "Well," I said, "Mr. Tilton, I have no authority to give you up—"

Q. Mr. McKelway? A. Mr. McKelway, "I have no authority to give you these papers without an order from Mr. Tilton." He says, "That is all right, that is all right. We have decided upon that; we want to see whether that story will hold water"—he used that word, I recollect very distinctly—"we are going to see if the story will hold water, and if it does," he intimated that they were going to publish, and I was as curious as he was to know whether it would hold water, so I said: "If you will pledge me your word of honor—you have got to go to Mr. Tilton's house, or very near his house, in going to yours—if you will go to Mr. Tilton's house and tell him you have got these papers I will deliver them to you without an order." He says, "I will." I delivered up the papers to him and he went away with that understanding, that he was to go—to pass Mr. Tilton's house—and tell him that he had got them from me, and they were to be submitted, as he said, to Mr. Tracy, to see whether the story would hold water, etc.

#### \$5,000 OFFERED FOR THE TRUE STORY.

Q. Did you repeatedly urge Mr. Tilton to publish that paper? A. I did on that occasion; I said this: "Mr. Tilton, if that is the 'True Story,' as you have stated it there, your wife is certainly innocent, and your first duty is to your wife and children; you ought to publish that story and let the world know exactly what the extent of her offending is; you would save your wife and children, because he did not charge any adultery there," and I told him, besides, that I thought he could make money out of it, if that was his object.

Mr. Hill—Was that at this same interview? A. Yes, Sir; at the same interview.

Mr. Beach—Did he assent or refuse? A. He said he would not publish it under any circumstances.

Q. Would not publish it under any circumstances—well, did you at any time make him a liberal pecuniary offer for the liberty of publishing it? A. I did.

Mr. Hill—One moment.

Judge Nelson—Counsel can ask what further was said between them.

Mr. Hill—The objection is, they don't, Sir.

The Witness—I said at that interview at my friend's house, after hearing the whole story, and what decided me more than any one thing, I think—I think there was a letter of Mr. Beecher's sister, Mrs. Isabella Hooker-Beecher, or Beecher-Hooker, whatever it is, in which she emphatically charged the crime upon her brother; I think that that decided me, perhaps, as much as anything else. I said, "If these things are true—you know whether they are true or not—I should publish them." I will confess right here that Mr. Tilton was an enigma to me, and I did want to see what there was of it, or what there was in it, and I said to him, "I will give you a check for \$5,000 for that 'True Story,' if you will"—I think I made no conditions other than that he should part with it; that is, should make over the ownership to me, and swear to it. Said I, "I will give you \$5,000 for it."

Q. Well, did he accept or decline? A. He declined it.

Q. Now, I want to ask your attention to the interview of which you have spoken in Fulton-st. immediately after Mr.

Tilton's return from New-Hampshire. Will you please repeat that again, Mr. Harman? A. I met him and said to him: "Mr. Tilton, I am glad to meet you. I have been wanting to see you." I said: "Have you seen this monstrous story of the Woodhulls?" He said he had just returned. I think he said he had seen it, but had not seen it until he returned to the city. "Why," I said, "what do you think of it?" "Well," he said, "it was an exaggeration, of course; it was a lie, so far as the charge of adultery; I understood him to say it was a lie out and out. Then I appealed to him in as strong language as I could command to contradict it, and save his wife and children. He remarked, says he: 'But suppose I can't?'" "Well," I said, "I assume you can, because you have charged no adultery against your wife. I should contradict the story, write a broad denial and contradict it; and there was something more said, I have forgot to what effect exactly, except that he said he could not—would not contradict it, that his wife was opposed to that policy—that she thought—she was willing to suffer if she could thereby save the church. There wasn't much more said. I think I went to his house very soon after that and spent an evening at his house for the same purpose—begged him to contradict the story.

Q. Well, I am requested to ask you whether at these interviews at the time that you offered \$5,000 for the control of this "True Story," whether you at the same time told Mr. Tilton in substance, that he could make \$5,000 out of the publication of it? A. I don't think I said so; at the same time my object was to get, as I said to you—

Mr. Hill—One moment; we don't want your object.

Mr. Beach—Well, I don't know; perhaps I do whether you do or not.

Mr. Hill—No doubt you would like it.

The Witness—I don't want it understood that I offered him the \$5,000 because I wanted to publish it; that was not it; I wanted control—to get it out of the way; I don't know what I should have done with it, but I wanted to understand Mr. Tilton; I wanted to know—I wanted to see whether he would sell it or not; I did, at a future time, say to him that the whole world wanted to know about this scandal, and I thought a man could sell a million copies of it at 25 cents a piece; that is what I said; he said he knew it.

Q. At the time that Mr. Tilton was rehearsing to you the causes of his discharge by Mr. Bowen, did he say anything in regard to his wife that connected his discharge in any way with imputations upon his wife in any shape? A. No, Sir; I think not.

Q. He confined it entirely to the charges which had been made by Bowen against him? A. I think so.

Q. And did you understand from him, in that conversation, that the demand upon Mr. Beecher to vacate his pulpit was grounded upon the accusation which had been made by Mr. Bowen against Mr. Beecher? A. I understood so from Mr. Tilton; yes.

Mr. Evans—Understood from what?

Mr. Beach—Understood so from Mr. Tilton. That is all.

RE-DIRECT EXAMINATION OF MR. HARMAN.

Mr. Hill—I don't know that I quite correctly understood the last answer which you gave, except one; did you say that the charges which Mr. Tilton made were confined entirely to those which Mr. Bowen had stated at the first interview? A. As against—the charges as against Mr. Beecher?

Q. Yes. A. No, Sir; I was not questioned as to that at all; he made charges—he made charges against Mr. Beecher—

Q. Well, you stated, then, that the procedure of Mr. Bowen was based entirely upon the charges which Mr. Bowen had made? A. I understood from Mr. Tilton that when this—

Q. I am striving simply to get at the answer which you gave Mr. Beach.

Mr. Beach—The statement he made in answer to my question was, that the demand upon Mr. Beecher to retire from his pulpit, he understood from Mr. Tilton, was based entirely upon the charges brought by Mr. Bowen against Mr. Beecher.

Mr. Hill—Oh!

The Witness—Mr. Bowen proposed it, as he told me, and he acceded to it.

Q. Let me be clear about another fact; when was it, if you are clear, that the proof slip was handed to you by Mr. Tilton? A. At what date?

Q. Yes; I don't mean the precise date, but I mean the time with reference to the Woodhull publication. A. My impression was that the proof slip was handed me at the first interview, as I stated before; that is my impression.

Q. The first one after the publication? A. No, no; the first at Bang's Hotel; I am not sure as to that, but that is my impression.

Q. Now, you had an interview with him very soon after the publication; was that before or after the interview with Mr. McKelway? A. It was before, unquestionably; it was on the street.

Q. Now, when did you get the papers, the proof slip, *The Independent* article, and the documents of that description? A. I think I had had—

Mr. Beach—There is no proof sheet he had got then.

The Witness—I think I had had those long before; I won't undertake to swear positively, because I cannot reconcile the dates.

Mr. Morris—He said he thought he had had them about two weeks.

Mr. Evans—Not them; he thought he had the proof slips.

The Witness—I may have returned it to Mr. Tilton again, and he sent it up there; yet I don't know, I cannot say positively how that is.

Q. Well, was it after the Woodhull publication, and before you saw Mr. McKelway? A. Oh! my impression is that I had seen the proof slip, *The Golden Age* proof slip, embodying the "Personal Statement," and the letter of January 1st, 1871, to Mr. Bowen before the Woodhull publication; that is my impression, yet I am not sure.

Q. But when did you get it to show it to Dwight Johnson, that is the point of the inquiry? A. Well, that I can't tell you; I can't tell you; it is very— In some of my going ferths on

the ferry-boat I think I met Mr. Tilton and asked him for it but I cannot for my life tell you the date.

Mr. Beach—He fixed it before April or March, 1872.

The Witness—That is when he read it to me first, I think.

Mr. Hill—Was that the first time you had it—March or April, I mean? A. My impression is that Mr. Tilton at the first interview at Bang's Hotel read me this letter, but I don't think I took it from him then; I think at some subsequent time during the Summer I asked him to loan it to me, as I wanted to show it to Dwight Johnson.

Q. Now, can you say whether that delivery to you to show it to Mr. Johnson was before the Woodhull publication or after it? A. Whether the delivery to me?

Q. Yes. A. Of the January first letter?

Q. Of the proof slip, as you call it. A. My impression is that I had it before the Woodhull publication; that is my impression; I won't be positive.

Q. Now, when you got it to show Mr. Johnson, was that the first time that you had it in your possession? A. The first time I had it in my possession; yes, Sir.

Q. Did you keep it from that time until you gave it to Mr. McKelway? A. Well, my impression is I did, and yet I am not sure; Mac and I differ as to that; I don't know which is right.

Q. You might have given it back? A. I might have given it back, and they may have delivered *The Independents* and the Bowen letter and all up there that day; I am not clear as to that.

Q. You have mentioned a statement to Mr. Tilton, in which you offered \$5,000; was that in reference to these proof slips and that set of papers, or did it relate wholly to the "True Story?" A. When he read me the "True Story," embodying all the correspondence, I think, so far as I remember—

Q. Well, did the offer relate to that or the other set; that is all I wanted to know? A. The offer related to the "True Story."

Q. Wholly? A. Yes, Sir; and all that it comprised.

Q. Now, when and where did you make him that offer of \$5,000? A. After he got through reading; I never had thought of it a moment, and after he got through reading; as stated before, Mr. Tilton was an enigma to me; I said right then and there: "Mr. Tilton, I will give you \$2,500 for that manuscript." I think the only condition I made, possibly, was that he should swear to it, and make the ownership of it over to me. He declined it. I went to *The Golden Age* office next day, and increased the offer to \$5,000. I said to my friend: "I am going to see whether this man wants money," or something to that effect. I went over to *The Golden Age* office, and says: "Mr. Tilton, I will give you a check for \$5,000 for that." He asked me what I wanted to do with it. I told him I didn't know what I would do with it; I wanted control of the story; he declined it.

Q. Well, did you bid higher for it? A. No, Sir, it ended right there; it was a kind of a sudden matter, a thing that I had never thought of before, but it came upon me like an inspiration, and I made him the offer.

Q. What was done with the "True Story," Mr. Harman, after Mr. Tilton had finished reading it at the friend's house? A. I never saw it after that in my life.

Q. He took it away? A. Oh! he took it, undoubtedly.

Q. Now, will you state what friend that was?

The Witness—If your Honor please, must I name the gentleman at whose house we were?

Judge Nellson—Oh, I think so; yes.

The Witness—Mr. Dinsmore; he is in Europe now.

Mr. Evarts—It is of no consequence.

The Witness—Curran Dinsmore.

Judge Nellson—Oh, it is perfectly safe, if he is in Europe.

The Witness—Yes. [Laughter.]

Q. Just look at this publication of the "True Story," in the triple sheet of the *New York Daily Tribune*, of March 6th, 1876. A. I have read that, Mr. Hill; I think it is the same story in substance; I would not pretend to say that is a verbatim copy, but I think it embodies, so far as it goes—I don't think it is so full as the one he read me, because I judge so from the length of time that Mr. Tilton occupied in reading it.

Q. Well, do you remember the statement of facts contained in it? A. Oh, yes, Sir; I think, so far as the main statement of facts, it is the same thing.

[*Tribune* copy of the "True Story," marked "D, 114."]

Mr. Hill—That is all.

#### RE-CROSS-EXAMINATION OF MR. HARMAN.

Mr. Beach—Mr. Harman, have you read this [D, 114] with sufficient attention to be able to say whether all the statements contained in this publication were in the "True Story," as it was read to you by Mr. Tilton? A. Well, that would be impossible; of course—two and a half years have elapsed since, or thereabouts—it would be impossible for me to remember distinctly; I remember the beginning of it to be the same; I think there were some things in the "True Story" that were not in that, if that is of any account.

[Messrs. Morris and Beach here consulted for a time over the paper.]

Q. Do you recollect whether in the "True Story," as read by Mr. Tilton, there was an extract from a statement made by his wife to be submitted to Rev. Dr. Storrs, in which she said that Mr. Beecher had solicited her to become a wife to him with all that that term implied, or in substance that? A. I don't remember whether that occurred or not; my impression—I have scarcely any impression on the subject; I could not say.

Mr. Beach—It is very singular it is not here; I had supposed that that was here; I understood it to have been read to Mr. Belcher.

Mr. Evarts—Nothing about Dr. Storrs in that?

Mr. Beach—No; nothing about Dr. Storrs in that, but I don't find that part that was read to Mr. Belcher on his examination.

Mr. Morris—That first paragraph, that first extract was in it.

Mr. Beach—Now, see if you can find it.

Mr. Morris—Well, it ought to be there.

Mr. Beach—[To the witness]: Do you recollect that in the "True Story," was this statement—

[Reading]: "In July, 1870, prompted by my duty, I informed my husband that H. W. Beecher, my friend and pastor, had

solicited me to be a wife to him, together with all that this implied?"

A. I think something of that kind was in the "True Story."

Q. And, that this followed—[Reading]:

"Six months afterward my husband felt impelled by the circumstances of a conspiracy against him, in which Mrs. Beecher had taken a part, to have an interview with Mr. Beecher?"

A. I don't remember that part of it; I remember that Mrs. Beecher was introduced in the "True Story," but in what connection I cannot remember at this minute.

Q. In what shape was the manuscript from which Mr. Tilton read on this occasion? A. I think it was in loose sheets.

Q. Loose sheets? A. That he would turn over or pull out and lay over, rather.

Q. Did you notice whether it was apparently a draft, altered, with interlineations or not? A. I did not; I was opposite him, on one side of the room, and he was at the table, I think; I could not identify a single sheet.

Q. Did he say anything at the time, as to how recently he had drawn the paper? A. I understood him to say that he had done it since his return from—

Q. New-Hampshire? A. New-Hampshire, at the instance of Dr. Storrs, if I remember correctly.

Q. Yes. A. That Dr. Storrs had asked him to collate the facts, suggested that he do so, in case—for future use. Now, I think I am correct in saying that he said that it was at Dr. Storrs's suggestion.

Mr. Beach—Well, Sir, that is probably correct; that appears to be so now by the evidence; that is all, Sir.

#### TESTIMONY OF JACKSON S. SCHULTZ.

Jackson S. Schultz was then called and sworn.

Mr. Tracy—Where do you reside? A. City of New-York, 308 Madison-ave.

Q. What is your business? A. Leather.

Q. Leather merchant? A. Yes, Sir.

Q. How long have you been engaged in business in the City of New York? A. Since 1837 on my own account.

Q. Do you know Theodore Tilton? A. I do.

Q. How long have you known him? A. Since 1864 or 1865.

Q. What was his position when you first knew him? A. I can't say, Sir, what—he was on *The Independent* after I knew him; I don't know whether he was engaged as early as that on *The Independent*.

Q. What were your relations with him from the time of making his acquaintance in 1868 or 1864, down to 1873? A. Very pleasant.

Q. And friendly? A. Friendly.

Q. And intimate? A. Moderately so.

Q. Were you in the habit of seeing him frequently, and conversing with him on topics of the day? A. I think I was; Sir.

Q. And your relations were cordial, were they? A. Yes, Sir.

#### THE CAPITAL OF THE GOLDEN AGE.

Q. After January 1st, 1871, state whether or not you were applied to by him to become a subscriber to the capital to found *The Golden Age*? A. I cannot speak as to dates



very specifically; a few weeks or months previous to the issuing of *The Golden Age*, whenever that was, I was applied to by him to assist him in that enterprise.

Q. Did any one come with him to see you? A. Mr. Moulton came with him.

Q. Mr. who? A. Mr. Moulton—Franklin—Mr. Woodruff, Franklin Woodruff.

Q. Where was the interview? A. At my house.

Q. Will you state what occurred? A. Mr. Woodruff and Mr. Tilton came up to my room, where I was temporarily confined by illness. The subject of this enterprise was generally spoken of. Mr. Woodruff left, leaving Mr. Tilton in the same room with me alone. He remained there, I should think, an hour to an hour and a half, and we talked over very fully this enterprise, and its general nature.

Q. Was this the first time that it had been brought to your notice? A. No, Sir, I had heard of the enterprise, and I had heard from friends that I was to be applied to to help.

Q. Yes, but this was the first interview you had had with Mr. Tilton or Mr. Woodruff on the subject? A. Yes, Sir.

Q. Well, what was said generally about the enterprise and about your aiding it? A. I remember having discussed the probabilities of the success of the enterprise, and I asked him whether Mr. Beecher would subscribe. He said he would if he asked him. I asked him then whether Mr. Beecher would contribute afterwards for it, and he said if he would permit him—if he permitted him; those were the remarks which attracted my attention most, because I had up to that time supposed that they were very friendly—intimate and friendly.

Q. Well, what further occurred there? A. Well, we talked over the subject of newspapers and the economy of conducting them, etc.

Q. Well, did you conclude then to aid him? A. I did not.

Q. It was left for a further interview? A. Left that for a further interview.

Q. Did you have further interviews with him? A. I did.

Q. Where? A. I think at my office, and I think at other places; I met him frequently at the Club.

Q. What Club? A. Union League Club.

Q. Did you frequently see him at the Union League Club? A. Yes, Sir.

Q. In company with any one? A. Generally Mr. Moulton.

Q. Francis D. Moulton? A. Yes, Sir.

Q. Well, how frequently should you say you conversed with him on the subject of this paper before you agreed to aid him? A. Well, I think I agreed to aid him the very next interview after—

Q. Next interview? A. Yes, Sir.

Q. To what extent did you agree to aid him? A. I agreed to discount his notes, or contribute to the extent of \$1,500 to the enterprise; on condition it succeeded he was to pay me.

Q. Was your partner, also, to contribute a like amount? A. He was.

Q. Who was that partner? A. Mr. Southwick—John C. Southwick.

Q. If it did not succeed, what then? A. We were to lose the money.

Q. How soon after your agreement to aid him, according to your recollection, was the first number of the paper issued? A. Well, it was a few weeks, I should judge—it might have been—it may possibly have been a month, or six weeks.

Q. From that time on, did you have frequent interviews with Mr. Tilton? A. Well, I had interviews; I don't know how frequently—several interviews.

Q. Well, did your relations and his become more intimate after that than they had been before? A. I think we met more frequently; they were no more friendly than I know of.

#### A NEGATIVE OFFENSE CHARGED ON MR. BEECHER.

Q. Did you afterwards talk with him in regard to his relations with Mr. Beecher? A. Very frequently; whenever we met almost.

Q. What was said about his cause of grievance against Mr. Beecher, and in connection with Mr. Bowen, if anything? A. His statements then were that Bowen had committed a great wrong to him, and that Mr. Beecher had failed to reach out his hand and save him, as he could have done; that he failed to manifest that interest in him which he had a right to expect; that was about the substance of the statement.

Q. Well, when did he say he failed to manifest this interest in him, on what occasion? A. On the occasion of Mr. Bowen's having a difficulty with him and turning him out of the paper, as I understood it.

Q. Was that referred to more than once? A. Yes, Sir; several times.

Q. Several times, you say? A. Yes, Sir.

Q. And was his statement of his cause of grievance against Mr. Beecher substantially the same; did he repeat that more than once, that cause of grievance? A. I think he did several times, but knowing as I did at this later time, of this difference between Mr. Beecher and Mr. Tilton, I constantly made inquiries to find out what that trouble was.

Q. Yes? A. More than I did the other.

Q. When did you come to hear that there was a difference between Mr. Beecher and Mr. Tilton? A. I cannot name the time, Sir. It was after—after my subscription to the paper, along some months afterwards, weeks certainly.

#### MR. TILTON DEFENDS MRS. WOODHULL.

Q. Soon after the starting of *The Golden Age*, were you present at a dinner given by Isaac H. Bailey before his leaving for Europe? A. I was present at a dinner given to Isaac H. Bailey.

Q. Yes, given to Isaac H. Bailey. How many gentlemen were present on that occasion? A. Fifteen or twenty, I should think.

Q. Was Mr. Tilton of the party? A. He was.

Q. Did you hear any conversation between Mr. Tilton and other gentlemen at the table that night in regard to Mrs. Woodhull? A. I did.

Q. What did you hear? A. As near as I can remember the question of these ladies, Woodhull and Claflin, came up, and Mr. Bailey, I think, suggested that there was a gentleman

present could tell him something about these ladies. The gentleman of Wall-st. was appealed to, and he made some statements in regard to them, and Mr. Tilton defended them with a great deal of zeal and warmth, and the conversation became so animated and so personal that I interfered to modify the statements as much as I could, as did one or two others present.

Q. How did he speak of Mrs. Woodhull? A. In a most exalted manner.

Mr. Beach—I think it would be better for us to have what he said.

Mr. Evarts—The substance of what he said.

Mr. Tracy—The substance of what he said? A. I am giving the language.

Q. Well. A. The substance was, that they were high-toned and honorable ladies, had undertaken an honorable business, and that he meant to stand by them, and that every good man ought to stand by them; and that the insinuations, &c., against them were unbecoming the persons who made them—words to that effect.

Q. Do you know when this was? A. It was one or two evenings previous to the sailing of Mr. Bailey, and I believe it was in the early part of June; I think so, but I won't be sure on that point.

Q. 1871. Wasn't it the 3d of June, 1871, that he said? A. I think it was, but I prefer not to be particular about that.

Q. Well, you know it was early in June? A. Yes, Sir; it was in the early Summer.

Q. Was it the same season after *The Golden Age* was started? A. I think it was.

Q. Now, Mr. Schultz, do you remember the occasion of the publication of the Life of Victoria Woodhull by Mr. Tilton? A. I do.

Q. Did you see Mr. Tilton soon after that publication and converse with him about it? A. I did.

Q. What did you say to him and what did he say to you? A. I expressed my disgust at the proceeding, and substantially told him that he had ruined himself and the enterprise—the paper.

Q. What enterprise did you refer to? A. *The Golden Age*.

Q. State fully what you said to him? A. I cannot pretend to give the language, except that I expressed myself very strongly as against the judgment which he had manifested in doing that thing.

Q. What did he say? A. He justified himself on the ground that he had always, through his life, stood by the weak and the down-trodden, and that he would stand by those two women, and did it as a matter of principle.

Q. Did he say anything further in regard to their character, indorsing them? A. I think he spoke of them as pure women, high-toned persons in every respect, that he was thoroughly satisfied in regard to that.

Q. Do you remember when that was? A. I do not.

Q. Do you remember when the Life was published? A. I don't recollect, Sir.

Q. Was it then a recent fact—was the publication a recent fact at the time of that conversation? A. It was within a few days, or a week or two anyhow.

#### MRS. TILTON PURE AS AN ANGEL.

Q. Now, during this time, did your acquaintance with Mr. Tilton continue, after this publication of the Woodhull Life? A. Yes, Sir.

Q. And did you continue to have conversations with him in regard to his affairs, and he with you? A. I did.

Q. At any time was the subject of Mr. Beecher's relations with—was the relations of Mr. Beecher with Mrs. Tilton the subject of conversation between yourself and Mr. Tilton? A. Yes, Sir.

Q. Can you state when it was? A. During all these meetings that we had I was constantly, as I remarked before, at tempting to draw from him what the specific difficulty—

Mr. Beach—Wait one moment, Sir; I object to that.

Judge Neilson—Go on, Mr. Evarts. We have that statement down already.

Mr. Tracy—Well, my attention was attracted in another way, and I did not hear what the witness said—what was objected to.

Mr. Evarts—No matter.

Mr. Tracy—Go on, Mr. Schultz, I repeat my question, whether the relations of Mr. Tilton—Mrs. Tilton and Mr. Beecher were ever the subject of conversation between yourself and Mr. Tilton? A. There was such conversation in my private office with Mr. Tilton, in which I attempted to draw—

Mr. Beach—Wait a moment! I object.

Q. What did you say to him? A. I said to him: "Mr. Tilton, do you mean to say to me that Mr. Beecher has had improper or criminal relations with your wife?" His answer was: "My wife is as pure as an angel," or words to that effect.

Q. What was the manner in which he said that? A. Very theatrical. [Laughter.] He rose from his seat (and made a declaration— and swung his hand [indicating]—that she was as pure as an angel.

Q. Can you state when that conversation was? A. I cannot.

Q. Do you know whether it was before or after the Woodhull Life? A. I think it was after.

Q. You think it was after? A. I think it was after.

Q. Can you state whether it was before or after the Woodhull publication—the scandal? A. No, I cannot.

Q. You cannot say whether it was before or after that? A. No; my recollection as to dates is very poor.

#### THE NEW JOURNALISTIC ENTERPRISE.

Q. Now, do you recollect the Woodhull publication—the Woodhull scandal? A. I do; but I don't recollect the date.

Q. After that did you have a conversation with Frank B. Carpenter? A. I did.

Q. [After consultation with counsel.] Did you have a conversation, do you say, with Frank Carpenter at that time—after the Woodhull publication? A. Oh! yes, Sir; it was in December, 1872, that I had this conversation with Carpenter.

Q. How long had you known Carpenter? A. By sight, several years.

Q. And personal intercourse with him how long? A. Not much; not to have—more speaking acquaintance, that is all.

Q. Had you seen him at the club frequently? A. I had.  
 Q. Did you know him as a friend of Tilton's? A. I did.  
 Q. Before that? A. Yes, Sir.  
 Q. How long had you known him as a friend of Tilton's?  
 Judge Neilson—He answered, some months.  
 The Witness—Well, it was before the Presidential election.  
 Judge Neilson—He answers your question.  
 The Witness—It was before the Presidential election of the Fall before.

Q. Did you state whether or not you had a conversation with Carpenter on the subject of a newspaper enterprise in December, 1872, in which Mr. Tilton and Mr. Beecher were to be interested?

Mr. Beach—Objected to.

#### A BRIEF DISCUSSION.

Mr. Evarts—We only ask the question, yes or no; we don't ask what the conversation was.

Judge Neilson—Well, answer yes or no.

Mr. Beach—No; wait one moment, Sir. I beg your Honor to consider the question.

Judge Neilson—We cannot take the interview between them.

Mr. Beach—Well, but he is stating it in answer to the question: "Did you have a conversation with Carpenter in regard to starting a newspaper in which Tilton and Beecher were to be interested?" That is a part of the conversation, Sir.

Mr. Tracy—That is calling his attention to the subject of the conversation?

Mr. Beach—The starting of a newspaper will be sufficient to call his attention to the conversation, without asking him to modify it.

Judge Neilson—Modify your question.

Mr. Tracy—I will change my question. [To the witness]: Did you have a conversation with Carpenter in December, 1872, in regard to a newspaper enterprise in the City of New York?

Mr. Pryor—What have we got to do with that conversation?

Mr. Evarts—That is to be shown by subsequent proof.

Mr. Tracy—Oh! to the gentlemen say—

Mr. Evarts—Say? Of course we will produce it.

The Witness—I had such a conversation.

Q. Did you have more than one such conversation? A. I did have two.

Q. Did you afterwards see Theodore Tilton and have a conversation with him in reference to the conversation that you had with Carpenter? A. I had.

Q. On that subject? A. Yes, Sir.

Q. Did you repeat to Tilton the conversation that you had had with Carpenter touching the newspaper enterprise? A. I think I did, about.

Q. Now, will you tell us what the conversation between yourself and Carpenter was?

Mr. Beach—Your Honor has ruled repeatedly during this trial that it should be what was said by the witness to the party.

Judge Neilson—We have taken it both ways. That has been the usual way.

Mr. Beach—You have repeatedly so against us, Sir, and con-

sistently ruled that—have never permitted us to give the conversation, if I recollect aright, had between the witness and a third person.

Judge Neilson—Except in one instance; except in one instance.

Mr. Beach—And that has escaped my recollection.

Judge Neilson—[To defendant's counsel]: I think it will do as well, won't it, to go right to the conversation?

Mr. Tracy—I think there are several instances.

Judge Neilson—Only one, Sir; but won't it save time to go directly to your conversation? At any rate, this is a subordinate matter, and therefore you take the conversation between this witness and Mr. Tilton—

Mr. Tracy—Do I understand your Honor to rule that we have a right to go on?

Judge Neilson—Yes; and give the conversation with Mr. Tilton.

Mr. Tracy—Now, we offer to give it with Mr. Carpenter.

Judge Neilson—I direct you to take the other course, because it is a secondary and immaterial matter.

Mr. Tracy—Well, the ruling has been entirely different, against us, in one or two instances where your Honor has permitted them, on the witness stating that he had repeated the conversation to the party—you have permitted them to give the evidence of the conversation between the witness and the party.

Judge Neilson—I recollect perfectly well what my ruling has been, and I stated a moment ago, in answer to Mr. Beach, that there was an exception, that exception relating to the interview when you and Mr. Woodruff were present.

Mr. Tracy—Will your Honor permit me to call your attention to another ruling—that is, in regard to the West charges, where Mr. Moulton said that he had stated the substance of the charges to Mr. Beecher, but had not produced them. There was no evidence that the charges were ever produced to Mr. Beecher, and yet your Honor permitted them to state what the charges were, and put them all in.

Judge Neilson—The paper being in court. That don't apply. I am perfectly willing to be convicted on my own rulings, as I was on Saturday, under a grave mistake, but I think in this instance, as this is a collateral matter, of secondary importance, that you ought to accept the suggestion of the Court, and give the conversation between this witness and Mr. Tilton.

#### MR. TILTON CALLED A BLACKMAILER.

Mr. Tracy—[To the witness]: Mr. Schultz, then, you will proceed to the conversation that occurred between yourself and Mr. Tilton.

Judge Neilson—In respect to what had passed between you and Mr. Carpenter.

Mr. Tracy—In respect to what had transpired between yourself and Mr. Carpenter. State when it was, and what occurred? A. About the first of January, within five or eight days, I think, 1872, Mr. Tilton—

Q. 187—

Mr. Beach—Wait one moment! Let him go on.

The Witness—It was after the Presidential election in 1872.

That would be in 1873. It was after the Presidential election. Mr. Tilton came into my private office and says to me, "Schultz, I understand you charge me publicly with being a blackmailer." Says I to him, "Who says so?" "Frank Carpenter tells me so." "What else did he tell you?" "He told me that he had an interview with you and other gentlemen at the Club, in regard to a matter in which you made those charges against me." After some further conversation I became satisfied that he knew—

Mr. Beach—Wait one moment.

Mr. Morris—Never mind.

Judge Neilson—Only give the conversation, Mr. Schultz.

The Witness—I admitted to him that I had made that charge and then repeated to him with some particularity—

Mr. Beach—Wait one moment; wait one moment; tell what you said.

The Witness—I am going to, Sir.

Mr. Tracy—He is doing so.

Mr. Beach—No, he is not.

The Witness—I repeated to him with as much particularity as I could recollect, what had occurred with these gentlemen which induced me to make that—

Mr. Morris—Now, we object to that.

Mr. Evarts—He has a right to state what he stated to him as well as he could, the conversation that he had had.

Judge Neilson—That is preliminary matter merely. Now go on.

The Witness—Do you want me to state the conversation we had—that I had with Tilton, or—

Q. With Tilton. What did you repeat to Mr. Tilton as having transpired at this interview with you and other gentlemen, and Mr. Carpenter? A. I told Mr. Tilton that Mr. Carpenter met me at the Union League Club, and said to me that the friends of Mr. Beecher and Mr. Tilton in Brooklyn were about to take some action in regard to their matter, which was somewhat of a public character, and desired me to meet two gentlemen, naming them, on the following evening at the Club, representing on our behalf the friends of those gentlemen in New York, to consult in regard to this matter. I told him that we did so meet, and we had a very long conversation—do you wish me to tell that?

Q. Yes, go right on and repeat everything you said to him?

Mr. Beach—Everything you said to Mr. Tilton.

Mr. Tracy—Yes, Sir.

The Witness—I told this to Mr. Tilton in justification of my course—

Judge Neilson—Yes.

Mr. Beach—Yes.

The Witness—I said to Mr. Tilton that Mr. Moulton opened the question at the Club somewhat in this way: "You understand, gentlemen, I suppose, that there is a scandal in Brooklyn in regard to Mr. Beecher"—

Q. Do you mean Mr. Moulton? You said Moulton.

The Witness—Did I say Mr. Moulton—Mr. Carpenter—I beg your pardon.

Mr. Moulton—(Who was present.) I thank you.

The Witness—He says: "There is a scandal in Brooklyn in

regard to Mr. Beecher which, probably, will take him out of the pulpit. His friends, and the friends of the parties"—that was the word I think he said—"the friends of the parties have concluded that the best way to get over this difficulty is to start a morning paper in New York for the purpose of settling this whole trouble." He then stated what the plan was, that Mr. Beecher was to be editor—

Q. Mr. Beecher, you stated?

The Witness—I was stating to Mr. Tilton what I said to Mr. Moulton—Mr. Carpenter—I beg your pardon again.

Mr. Moulton—I grant it.

Mr. Beach—I think Mr. Moulton had better get out of sight.

Mr. Moulton—Out of mind, I think.

The Witness—I cannot pretend to state that I repeat everything that was said at this conversation, but I tried to explain to Mr. Tilton, by way of apology for what I stated to him, the circumstances under which I stated it, and I stated it very fully to him, and I don't think it is hardly necessary for me to go over it again.

Mr. Tracy—Oh, yes; we have not had it yet.

Judge Neilson—Now, you said to Mr. Tilton what? A. I said to Mr. Tilton: "Those gentlemen, claiming to represent you, said that you were to go abroad to be the foreign correspondent, and that you and Mr. Bowen had certain documents in your keeping—in the keeping of those gentlemen, which would, if exposed, do him great damage, and that they were disposed to suppress the whole thing if this arrangement could be carried into effect." I said to him: "Now, that being true, of course I could come to no other conclusion than that you were a blackmailer, because you had in your keeping a paper which in itself you could destroy, but failing to do that you wanted a situation." He then said to me, during that interview, that Mr. Carpenter had no right to send him to Europe.

Q. Well, go on. A. We had a very lengthy discussion on the question whether I was justified, under the circumstances, in calling him a blackmailer. Mr. Isaac H. Bailey was called in by his suggestion to hear the argument, and to decide between us whether I was justified or not. Mr. Bailey was called in, and we repeated the whole thing over again—repeated as much as I could the conversation, and somewhat argued it, and Mr. Bailey decided that I was right; that there could be no other conclusion, from the facts stated, than that it was a blackmailing job.

Q. What reasons were stated why it was a blackmailing job? A. Why, that these two gentlemen had in their keeping a secret which they proposed to get—as I understood them—to get this paper afloat; and when it was afloat, one of them, at least, was to be employed upon it, in some indirect way.

Q. Anything said about Mr. Carpenter having an interest in that paper, or being connected with it? A. Mr. Carpenter told me—

Q. No; any conversation with Mr. Tilton?

Mr. Evarts—Give the whole conversation.

The Witness—The whole conversation had relation to Mr. Tilton.

Mr. Beach—Tell what you said to Mr. Tilton? A. In the

conversation I repeated the whole circumstances. Mr. Carpenter placed himself as—

Mr. Beach—I don't think this is correct.

Mr. Tracy—That is the way he told it to Mr. Tilton.

Mr. Beach—He said he told the whole circumstances, and then proceeded to state what he told Mr. Tilton Mr. Carpenter said to him.

Mr. Evarts—What circumstances did he repeat?

The Witness—I stated all these circumstances to Mr. Tilton; I stated the occasion—

Mr. Beach—I object to this general statement of the witness that he stated everything to Mr. Tilton.

Q. What did you state to Mr. Tilton about Mr. Carpenter in connection with the paper? A. I stated to Mr. Tilton that Mr. Carpenter had provided himself with a place on the business department, and also Mr. Johnson—

Mr. Evarts—What Johnson?

Mr. Beach—Oliver Johnson.

The Witness—Mr. Oliver Johnson. He mentioned Mr. Oliver Johnson as a gentleman he thought could be induced to go into the enterprise.

Q. In what enterprise? A. He was to be connected with the business department.

Q. Oliver Johnson was to be connected with the business department? A. That was as I understood it.

Q. And Mr. Beecher the editor? A. The editor-in-chief.

Q. And Mr. Tilton foreign correspondent? A. Foreign correspondent.

Q. Was there anything said about how long Mr. Tilton was to remain abroad? A. I think it was placed at several years; I cannot recollect how many years; it was several years he was to be abroad. This was to be one of the considerations, that it was to change the scenes and relieve his mind.

Q. Whose mind? A. Mr. Tilton's.

#### AN AVALANCHE OF QUESTIONS.

Q. Now, what did you say to Mr. Tilton, if anything—what did you repeat to Mr. Tilton that Mr. Carpenter had said about their ability to destroy these papers and suppress the scandal if the newspaper enterprise was carried out? I will waive that question and put another, Mr. Schultz. Did you say to Mr. Tilton, as to the question you had asked Mr. Carpenter in that conversation upon this subject, that if Mr. Beecher could not stay in the pulpit, how it would help him to leave the pulpit and go in a newspaper? Did you say nothing to Mr. Tilton on that subject? A. I think I did, Sir.

Q. Repeat what Mr. Carpenter had said to you, and that you repeated to Mr. Tilton, on that subject, and what you said to Mr. Carpenter. A. I think I said to this effect, that it would be a sorry experience to come down out of the pulpit and take an editor's place, where he would be more subject to an attack than he would be in the pulpit.

Q. You said that to Mr. Carpenter? A. Yes, Sir.

Q. Is that Mr. Carpenter's reply that you repeated to Mr. Tilton?

Judge Neilson—You said that to Mr. Tilton? A. Yes, Sir.

Judge Neilson—Go on.

Mr. Beach—What is the question now?

Mr. Evarts—What he repeated to Mr. Tilton as Mr. Carpenter's reply.

The Witness—I don't recollect his reply to that; not particularly.

Mr. Tracy—Did you repeat to Mr. Tilton anything that passed between you and Mr. Carpenter about the destruction of these papers in any contingency? A. I don't know that I did at that interview.

Q. Was there anything said upon the subject that Mr. Moulton and Mr. Tilton held these papers which they could publish, or which they could destroy, just as they choose? A. That was a subject—

Mr. Beach—[To Mr. Tracy.] It is quite offensively leading, Sir.

The Witness—That subject was frequently mentioned, and always conceded as a fact that that was the situation in all our conversations between Mr. Tilton, Mr. Moulton, myself and Mr. Carpenter, that the few papers—the few documents—

Mr. Beach—Well, now, we object to this.

Judge Neilson—Go on, Mr. Tracy.

Q. What was said about the case of Mr. Beecher being reduced to a few papers, if anything?

Mr. Beach—By whom?

Mr. Tracy—By Mr. Carpenter, which you (the witness) repeated to Mr. Tilton.

Mr. Beach—He says he didn't repeat it to Mr. Tilton.

Mr. Tracy—I understood him to say so. A. I repeated that to Mr. Tilton—I repeated everything that was said to Mr. Tilton—everything stated by Mr. Carpenter in response to every question I put to him, and, as near as I can remember, at the time. I remember distinctly asking Mr. Carpenter—

Mr. Beach—Objected to.

Judge Neilson—The question is what you said to Mr. Tilton. A. I related to Mr. Tilton the whole of the conversation as near as I could, and whatever I stated was stated by me to Mr. Carpenter, or by Mr. Carpenter, was repeated, as far as I could do it, faithfully to Mr. Tilton.

Judge Neilson—[To the witness.] What did you say to Mr. Tilton on that subject, if anything? A. I stated to Mr. Carpenter—

Mr. Beach—The subject of it.

Q. What did you state to Mr. Tilton that you had said to Mr. Carpenter?

Judge Neilson—On that subject.

A. I don't know whether I could say I stated it to him in that form, because it being conceded—

Mr. Beach—I move to strike that out—about it being conceded.

Judge Neilson—Yes, strike that out.

Mr. Beach—I move to strike that out about it being conceded.

Judge Neilson—Yes, Sir, that is struck out.

Q. State, as near as you can, the substance of what you said to Mr. Tilton—had passed between you and Mr. Tilton—

Judge Neilson—Mr. Carpenter.

Mr. Tracy—And Mr. Carpenter; I mean on the subject of the papers which they held against Mr. Beecher? A. I have a very

Indistinct recollection what I said to Mr. Carpenter on the subject; my recollection is, of course, that I repeated the same thing to Mr. Tilton, but when you ask me to specify whether I did at this interview repeat that, I cannot say.

Q. I will go on to another interview. Did you subsequently have another interview with Mr. Tilton on this subject? A. Yes, Sir, several.

Q. Where was one? A. One, I say, not several. At the Union League Club, where Mr. Moulton was present, and we substantially—

Mr. Beach—Wait one moment.

Q. Well, what occurred between you and Mr. Tilton and Mr. Moulton on that occasion? A. Mr. Tilton and Mr. Moulton were sitting in the room about half-past ten to eleven o'clock in the evening. I was passing the door, and was attracted by their presence, and, I think, was invited in, or, at all events, I did go in and sat down by the table with them, and Mr. Moulton says: "Mr. Schultz, it is too hard that you should have made this statement against Mr. Tilton, and I think, on reflection, you ought to apologize for it; you ought to take it back." We then rehearsed this whole thing, restated, as near as we could, part in the way of statement and part in the way of argument, all that occurred between this man and—

Q. Mr. Carpenter? A. Mr. Carpenter and myself.

Mr. Beach—I object to a general statement.

Mr. Tracy—We are coming to that.

Mr. Beach—I submit this is not competent evidence. State what was said.

Mr. Tracy—I am going to have him do so. That will be my next question. [To the witness.] Now, what was stated between yourself and Mr. Tilton then in the presence of Mr. Moulton? What was talked over and what was said? A. As I said before, we restated—

Q. Repeat here what you said there. A. You remember that this was all for the purpose of justifying—

Mr. Beach—Wait one moment.

Judge Neilson—We understand that.

Mr. Tracy—We understand that.

The Witness—Do you want me to repeat—

Mr. Tracy—Yes, to repeat what was said between Mr. Moulton and yourself in Mr. Tilton's presence.

Judge Neilson—On that occasion.

The Witness—I stated that the logic of the statement brought me to that conclusion. I said that Mr. Carpenter had invited me to an interview in the Club on the subject of this paper enterprise, and I said that we had discussed the thing thoroughly, fully, as they knew, because we had talked that thing over.

Mr. Beach—Never mind that.

The Witness—Do you want me to repeat the exact statement again?

#### THE APOLOGY FOR THE CHARGE OF BLACK-MAILING.

Mr. Tracy—Yes, Sir; the substance of what you said there.

The Witness—Well, I will go right over it back again. I met

Mr. Carpenter in the Club the evening before, and he said that Frank—

Mr. Morris—No; never mind what Mr. Carpenter said before.

The Witness—That is what I told these gentlemen.

Mr. Tracy—Go right on.

Mr. Beach—You are confounding the interviews.

Mr. Tracy—No, he is not; he was right and you were wrong. He was telling what he said to these persons.

Mr. Beach—He didn't say it in that way.

Judge Neilson—[To the witness.] You were there on this occasion, and you were all three seated at the table? A. Yes, Sir.

Mr. Evans—We have an introductory question as to what Moulton said on that occasion to the witness about his statement against Mr. Tilton, and that he (the witness) ought to apologize.

Judge Neilson—Yes, continue on from there.

A. I said: "Before you decide, Mr. Moulton, do you know about this case?" He said, "I think I do." I said, "Have you heard my side of it—my belief about it?" He said, "I don't know that I have," and I then went on and stated it as I have stated it here.

Mr. Beach—One moment.

Mr. Tracy—Go on and repeat what you said to Mr. Moulton.

Mr. Beach—I move to strike out that: "And then went on and stated as I have stated here."

Judge Neilson—Yes, Sir.

The Witness—Then I must go over the whole thing again.

Mr. Beach—Perhaps you didn't go over it all then.

The Witness—I don't suppose I did.

Mr. Beach—Therefore I want you to state what you said to them.

The Witness—I cannot give the language.

Judge Neilson—No; you cannot, perhaps. What did you state there? A. I said this interview between Mr. Carpenter and myself, at the Club, had developed such a state of facts as justified me, I thought, and I asked him if he knew what the facts were, and he said he did not; he supposed he might know them generally, but not particularly. Then I insisted on relating them, and I did relate them.

Mr. Beach—I object to that, and move to strike that out.

Judge Neilson—Yes, Sir.

Q. What did you repeat? State what you recollect, just as if you were telling it the first time. A. If you want me positively to relate it as it took place, in the language I am going to state now, I cannot do it.

Q. No; in substance? A. That Mr. Carpenter had invited William Orton and Henry Clews and myself to meet him to consider a matter of public interest to the friends of Mr. Beecher and Mr. Tilton, that he had proposed to purchase *The New York Evening Express*; to place at the head of that paper Henry Ward Beecher; to place Mr. Tilton as foreign correspondent, and himself and Oliver Johnson, as I remember, the business managers; and that this was to be done, as I understood him, upon the strength of some secret or some information which Mr. Tilton, Mr. Moulton and Mr. Johnson

held, to compel this course. That being true, I said to Mr. Moulton I saw no other way out of it, except to denunciate it a blackmailing job, and he then said: "You have not heard the whole of the story."

Mr. Everts—Mr. Moulton said?

The Witness—Mr. Moulton said, "You have not heard the whole of the story." We said much more to the same effect, and talked the whole thing over fully; we had a little lunch together, and we separated. I said to him then, "Now, if—" I think Mr. Moulton said for Mr. Tilton, in his presence, "He had no right," Frank's partner had not, "to send Tilton abroad at all." I said, "If that is so, if he is wrong in regard to Mr. Tilton, he is perhaps wrong in regard to the whole thing; and if all is false, why, then, what I have said goes for nothing, of course, and in that sense, and to that extent, I apologise."

Judge Nelson—I think you are right, Sir. Now, we will take a recess. [To the jurors.] Return at 3 o'clock, gentlemen.

Mr. Beach—A little after 3 o'clock, if your Honor please, it is now ten minutes after 1 o'clock.

Judge Nelson—[To the jurors.] Return at ten minutes past 3 o'clock, gentlemen.

The Court then took a recess until 3:10 o'clock.

#### THE AFTERNOON SESSION.

The Court met at 2:15 o'clock, pursuant to adjournment.

Judge Nelson—[To the jury.] Gentlemen, after you had retired, on suggestion, a change was made, adjourning to ten minutes after two o'clock, but you were too late to be notified; that is, you had retired and could not be notified. Call your witness, Mr. Tracy.

Jackson S. Schultz was recalled, and the direct examination resumed.

#### MORE OF THE CARPENTER INTERVIEW.

Mr. Tracy—Mr. Schultz, when you asked Mr. Carpenter how Mr. Beecher's changing from the pulpit to the press would help him, did Mr. Carpenter make any reply?

Mr. Morris—We object to that.

Judge Nelson—It depends upon whether he communicated that to Mr. Tilton.

Mr. Tracy—Certainly. I don't ask him what the reply was. I want to get the fact first, whether he made any reply.

Judge Nelson—Did he make any reply?

The Witness—He did make a reply.

Q. Did you tell Mr. Tilton what reply Mr. Carpenter made to that question? A. I did, Sir.

Q. What was it? A. It was to the effect—he stated this, that the complaint in this case was all reduced to a few documents, and that they were held in escrow by Mr. Moulton, and could be destroyed at any time; and that the public scandal would cease after a very little while, and that no legal proceedings could ever come by reason of these papers.

Q. State whether or not Mr. Carpenter said that Mr. Moulton had been consulted about this enterprise?

Mr. Beach—It is objected to.

Mr. Tracy—I don't ask what he said. [To the witness.] Did he say anything on the subject of Mr. Moulton being consulted— A. He did, Sir.

Q. Did you repeat that to Tilton? A. I think I did, Sir.

Q. What did you tell Tilton Carpenter had said to Moulton? A. That Moulton occupied this medium position that he did between the two parties.

Q. Well? A. Was trying to act a friendly part to save both of them from the scandal.

Q. What was he doing?

Mr. Beach—Oh, now, these questions are very objectionable as leading.

Q. Anything further said?

Judge Nelson—What further did you say to Mr. Tilton, if anything?

The Witness—Well, I cannot recollect, Sir, the exact language. I talked with him for an hour at a time. I reviewed all these facts.

Mr. Beach—Oh! wait one moment, Mr. Schultz.

Judge Nelson—Now, interrogate him. Did you say anything to Mr. Tilton on this subject?

Mr. Tracy—Did you say anything to Tilton on the subject of Moulton having been consulted about the newspaper enterprise? A. I think I did, Sir.

Q. What did you say to him? A. That he was one of the Brooklyn parties who represented the Brooklyn people—the Brooklyn interest.

Q. Did you say anything to Tilton on the subject of Carpenter's claiming to represent—having authority to represent himself, Tilton, and Beecher to the New York friends whom he desired to consult? A. I stated to him distinctly that Mr. Carpenter so represented himself.

Q. Yes. Well, what did you say to him on that subject—to Mr. Tilton? A. I said to him that Mr. Carpenter claimed to represent the Brooklyn friends, mentioning him and Mr. Moulton, and I think he mentioned another gentleman.

Q. Well, what did Tilton say to that? A. He didn't make any reply to that, that I remember, except at one of these interviews at the club; he said, or Mr. Moulton said for him, that he had no right to place him in Europe, or send him as foreign correspondent.

Q. Was that all that he said on that subject of his authority? A. So far as I can recollect; yes, Sir.

Q. Did you at any time ever receive a letter from Mr. Beecher on the subject of this newspaper enterprise? A. I never did.

Q. Or on the subject of your having called Mr. Tilton a black-maller? A. Never.

Q. Who were present at these interviews between yourself and Mr. Carpenter? A. Mr. William Orton and Mr. Henry Clevs.

Q. Did you have more than one interview with Mr. Carpenter? A. Two.

Q. Did you state that fact to Mr. Tilton, that you had had these two interviews with Mr. Carpenter? A. I did.

Q. And that these persons were both present? A. Yes, Sir.

MR. TILTON CHEERFUL OVER THE SETTLEMENT.

Q. Now, I want to call your attention, Mr. Schultz, to a conversation in the Spring of 1873, at the time when Mr. Tilton showed you a check—did he ever show you any check from Mr. Bowen? A. He did.

Q. State what occurred on that occasion? A. He came in my private office and says: "I have settled all my Brooklyn difficulties; I have made them come down on their marrow bones," I think, was the words, and took from his pocket a check, which purported to be drawn by Henry C. Bowen, I think, for \$7,000, and exhibited it to me as the result of the settlement which he had effected. He also pulled out of his pocket a manuscript article, which he proposed to publish in his paper as a sort of statement of the settlement. He told me, and I think he read to me—I won't be sure about that—but he told me the substance of an article that Mr. Bowen was to print in his paper to the same effect. But he read me the article which he was to publish.

Q. What did he say that \$7,000 check had settled? A. His Brooklyn difficulties.

Q. What did he say about going to work on his newspaper then? A. He said, "Now I can take off my coat and go to work with a good will, cheerfully."

MR. TILTON MAKES BIG THREATS.

Q. Did he at any time have a conversation with you when he spoke about blowing the roof off Plymouth Church? A. He did; or that he had the power to do so.

Q. Well, what did he say about that? A. That was at the interview in which I asked him distinctly about whether he charged any criminal relations with his wife; he told me then—he spoke of the Plymouth crew, and he said he could blow the roof off of that concern.

Q. Was your question to him whether he intended—whether he charged any criminal relations between Mr. Beecher and his wife—did it follow that remark of his? A. Yes, Sir; it was in that same interview.

Q. It was what lead to it, was it? A. I asked him very distinctly whether he meant to say to me that there was any such relation, and he then said that his wife was as pure as an angel.

Q. Now, did he ever say anything of this to you in substance? [To the Court.] This is to contradict Mr. Tilton as I understand; the question was asked Mr. Tilton. [To the witness.] Did Tilton say to you in that conversation in substance that he could and would blow their roof off unless they came to his terms and settle with him on his terms? A. Well, I don't say those exact words, but the substance.

Mr. Beach—Oh! wait.

Q. Did he say that in substance? A. He said that in substance; yes, Sir.

Q. And you say your question to him about the criminal relation with his wife followed that remark of his? A. Yes, Sir.

Q. And then what did he say in reply to that—in reply to your question whether he intended to charge that any criminal relation had existed? A. He said that his wife was as pure as an angel.

CROSS-EXAMINATION OF MR. SCHULTZ.

By Mr. Beach—Now, Mr. Schultz, for the purpose of availing myself of your freshest recollection, I ask you to repeat the whole of the last interview to which you have alluded with Mr. Tilton, in which he said he had the power to blow off the roof of Plymouth church. Where was it, in the first place? A. It was in my private office; in my room—in my store.

Q. And when was it? A. I cannot recall the time.

Q. Tell me the year? A. I think it was about a month, perhaps, before he exhibited to me the check which he—

Q. The Bowen check? A. The Bowen check; perhaps a month or six weeks before that, I should think.

Q. Did you look at that check? A. Not particularly; I didn't take it in my hands; I saw it.

Q. You saw it. A. Yes, Sir.

Q. Well, when was it that you saw it? A. Well, I cannot give you the date, Sir.

Q. Give me the year? A. He represented to me—

Q. No, no! Stop now!

Mr. Everts—Well, we are entitled to an answer.

Mr. Beach—You are? You are not entitled to an answer that is irresponsive to my question.

Mr. Everts—It is responsive.

Mr. Beach—It is not.

Mr. Everts—You asked him when it was, and he has a right to answer the best way he can when it was.

Mr. Beach—He was going on to state something that Mr. Tilton told him.

Mr. Tracy—Not a bit of it. He was going to state when it was.

Mr. Beach—Let us see. [To the Stenographer:] Mr. Stenographer, will you give me the question and the answer, as far as it was given.

[THE TRIBUNE stenographer read the question and answer.]

Mr. Beach—Now, Sir, I stopped him there, and the counsel denied that I was right, and he is in the habit of reading me lectures.

Judge Neilson—Your question was, "Give me the year."

Mr. Beach—Yes, Sir.

Judge Neilson—Now strike out answer that the witness commenced. Did he give you the year? He can say whether he can or cannot. [To Mr. Everts:] Is that right.

Mr. Everts—Oh, I didn't rise to object, Sir.

Judge Neilson—The question is, "Give me the year."

The Witness—I cannot recollect Sir; it was on that occasion, within a few weeks of the—

Q. I don't ask what occasion it was. A. I cannot recollect the year.

Q. You cannot recollect the year? A. No, Sir, I cannot at this moment; I presume I could by going to my office.

Q. During the interval—during the intermission of the Court, has your recollection been refreshed upon any subject? A. Not that I am aware of.

Q. Have not conversed with anyone about any fact connected with your testimony? A. I think I have, Sir.



Q. Who? A. My partner and Mr. —

Q. Tracy? A. — and Mr. Tracy.

Q. Yes; I suppose so. Can you tell me the month in which that check was exhibited to you? A. No, Sir, I cannot; I made no memorandum of it.

Q. Did you make any memorandum of any of these conversations? A. I recollect certain transactions from certain events.

Q. Did you make any memorandum of either of the conversations you have spoken of? A. No, Sir; not at all.

Q. Now, Mr. Tilton came into your office and showed you a check? A. Yes, Sir.

Q. Now, give me the conversation, and all of it, that occurred between you and him at that time? A. He came in, and he says, "I have settled with those Brooklyn fellows my whole controversy; and I have brought them down to their marrow-bones;" and he pulled from his pocket this check, which he exhibited to me as the result of what he claimed to be that settlement, and then read to me an article which he had prepared for his paper, in manuscript; and I think he read me also a copy of what Mr. Bowen was to publish in his paper, but I am not sure on that; he told me the substance of that; it was to be a match to this one, at all events; it was to be in the same spirit.

Q. Well, did anything else occur at that interview? A. Yes, Sir; we had a long talk, and a very cheerful one.

Q. Tell me what was said, all that you recollect. A. He then remarked that he should now work more cheerfully, and I congratulated him for his relief from all these troubles, and I said, "Now I hope you will devote yourself to business more than you have and have less occasion to be troubled than you have heretofore." We had a long—not very long—perhaps half an hour—a very pleasant conversation.

Q. Well, have you stated to me all that you recollect of it? A. I think I have.

Q. Now, Mr. Schultz, I drew your recollection to the last conversation you alluded to on your direct examination for the purpose of getting your freshest memory upon the subject. Hadn't you better tax your memory a little and see if you cannot remember anything else that was said at that time? A. If you will call my attention to it I will try to recollect; I don't recollect now anything else.

Q. Was not there something said about blowing the roof off Plymouth Church? A. No, sir; not at that interview.

Q. It was not at that interview? A. No, sir; it was the previous.

Q. Wait one moment. It was not at the interview when the check was shown to you that he said that? A. No, sir.

Q. When was it? A. It was previous to that, Sir; perhaps four or six weeks, I should think.

Q. Well, do you remember when that was? A. No; I cannot; I could only recollect by the check: if you will show me that check, the date of it, I will then tell the time.

Q. Yes. Well, where was this interview that you are speaking of now? A. In the same place, Sir.

Q. In the same place? A. Yes.

Q. Was any one present at that, but yourself and Mr. Tilton? A. Not in that office; there was in the outer office, I think.

Q. Who? A. I suppose the usual clerks, &c., there.

Q. What? A. The usual clerks and employes were there.

Q. You don't remember anybody else? A. No, Sir.

Q. How long was he there on that occasion? A. The interview when he showed me the check, do you mean?

Q. I am not speaking of that interview, Sir. A. The one previous?

Q. I am speaking of the interview that you spoke of last, in my cross-examination? A. At the time he said he would blow the roof off, or could blow the roof off?

Q. You must straighten that all out to suit yourself. A. Well, Sir, if you will ask me any question, I will try to answer; I don't know what you are alluding to now.

Q. Well, Sir, you spoke of an interview at which he showed you a check? A. Yes, Sir.

Q. You then spoke of an interview from four to six weeks prior to that? A. Yes, Sir.

Q. Now, that is the interview I am speaking of. A. Well, now, I will answer any question about that.

Q. And that, you say, was at your office? A. Yes, Sir.

Q. You recollect that distinctly? A. Yes, Sir.

Q. What time of day was it? A. I think it was in the afternoon, Sir; I think it was in the afternoon; I would not be sure about that.

Q. Pretty sure about that? A. I think I am sure about that; I am not positive.

Q. You said by seeing the check you could fix upon the date; do you recollect that you saw the check about the time of its date? A. My impression was, and my thought was, that he had come right from Brooklyn with the check; that was my impression; that is the impression he gave me in regard to it; that he had just settled it, that he came over and told me; I don't know, but it might have been the same day; I don't know; that was my impression that I had got, that he just settled it, and the check was a fresh check that he showed me.

Q. Yes, you are quite sure that this interview of which we are now speaking was some four or six weeks prior to that date? A. I think so, Sir; I would not be sure about that.

Q. I want you to fix the year? A. I made no memorandum, and I cannot be particular as to dates; but it was previous to that, because up to that time—

Q. I don't want any reasoning on the subject. A. All right.

Q. Are you still pretty confident it was four to six weeks before that? A. Yes, Sir; I think so.

Q. Perhaps you could remember whether it was in the Summer or Winter season that you had this conversation? A. No; I could not.

Q. Well, the check bears date April 2d, 1872.

Mr. Tracy—April 4th.

Mr. Beach—April 4th—I mean—1872. A. Then it was probably from four to six weeks previous to that; I say probably, because I am all the time assuming that I saw the check while it was fresh.

## WRANGLING OVER THE TESTIMONY.

Q. Oh, I don't want you to assume anything, now; I want you to speak from your recollection, because this is somewhat of an important point, and I wish you to recollect if you can? A. I cannot recollect, Sir, anything more than I have told you.

Q. Well, if it should happen, Mr. Schultz, that up to the very last days of March that Mr. Tilton had been West, and had not been in this neighborhood for some months, how could that affect your recollection? A. It would not affect my recollection at all, Sir; I should—

Q. You would still say it was from four to six weeks? A. I should think from four to six weeks; yes, Sir.

Q. Before the date of that check? A. Yes, Sir.

Q. Even if he was not in this part of the country? A. Well, if that was established to my satisfaction, why I certainly should think I was mistaken.

Q. Well, now, we will go to this conversation which was four to six weeks before the check was exhibited to you; will you please relate that conversation? A. Well, Sir, he came in with his usual temper and disposition—

Q. Oh, I don't ask about that. A. Well, do you want me to state the language?

Q. Why, I want you to state the substance of that conversation, I didn't ask anything for his appearance or his temper? A. Well I don't know, Sir, that I can recollect the exact language, except what I have repeated.

Q. Well, cannot you surround the occasion with any of the circumstances; can't you tell how it happened—how the conversation opened? A. I don't know that I can, Sir. I remember distinctly—

Q. Well, wait a moment.

Mr. Evarts—Well.

Mr. Beach—Well, what?

Mr. Evarts—He began to say: "I remember distinctly." You have asked this witness if he could not surround this conversation with any circumstances, and he begins to tell you—"I remember distinctly."

Mr. Beach—Well, you are just a question behind as usual.

Mr. Evarts—I am not a question behind.

Mr. Beach—Yes, you are. I asked him if he could recollect how the conversation began. That was the question.

Mr. Evarts—Now, he tells you that he recollects distinctly.

Mr. Beach—Well, he told me he didn't recollect, and then proceeded to say something else and I stopped him.

Mr. Evarts—How are you to know what a witness recollects unless you let him state?

Mr. Beach—I don't know how I should know, and I don't want to know.

Mr. Evarts—If you ask a question that draws it from the witness, it is not to be imputed to him afterwards that he is a dumb witness.

Mr. Beach—The gentleman is reasoning an abstract proposition which I do not care to discuss with him.

Judge Neilson—Then your question is repeated.

Mr. Beach—There was no question; he answered the question

and was proceeding to state something else.

Judge Neilson—Put something else to him.

Mr. Beach—You cannot tell me how the conversation began? A. No, Sir.

Q. Or upon what subject it opened? A. No, Sir; the substance—

Mr. Beach—Wait one moment.

Mr. Tracy—He was going on to tell the substance.

Mr. Beach—No, he was not; he said he could not tell the substance. Now, will you tell me the first thing that was said that you recollect? A. I cannot speak—I cannot give you the exact language of anything that he said.

Q. Mr. Schultz, I am perfectly well aware of that; I do not ask you for that. You give me now the substance of the first remark that you recollect, which was made by either of you on that occasion? A. I cannot recollect only the substance.

Q. That is, you cannot give the substance of the remark that you recollect? A. Why, I can recollect that he said to me—

Q. Allow me to interrupt you, because I am trying to get, if I can, now, the first remark, the opening remark, so far as your recollection goes. Give me the substance of the first thing that was said between you so far as you recollect? A. I cannot recollect the first remark at all; I can recollect the general conversation and the conclusions to which we came, but I cannot tell you the conversation in detail, nor can I recollect the first words that were used.

Q. I did not ask that? A. You asked me to state the first one that I recollect.

Judge Neilson—The first remark.

The Witness—That I cannot give you.

By Mr. Beach—If you say you cannot give it, that is enough. Now, give me anything that was said. A. But you want the words, and that I cannot give you. If you ask me to give the substance of that conversation, I will do it, but I cannot give you the words.

Q. Well, start on it as early as you can. A. Mr. Tilton came in and opened the usual topic, which was his Brooklyn difficulty, and being very—

Q. Well, stop there. What was it he said? "Opened the usual topic"—what did he say? A. That he was being greatly wronged and broken down in his domestic and business relations by this delay in getting this matter settled.

Q. Then you do remember that he came in and opened the subject in that way? A. I remember the subject; I do not remember the language at all, no portion of it; I could not give you any word that he used; after carrying on that conversation for a while I became—

Q. I asked what was said? A. I asked him, "Do you charge Mr. Beecher with having criminal relations with your wife?" He says, "My wife is as pure as an angel."

Q. I understood you to say that in using that expression I thought you gave an illustration. A. I say he rose up and swung his hand around and said, "She is as pure as an angel."

Q. It was his theatrical manner? A. Yes, Sir, that was the theatrical part of it.

Q. Anything else—anything more said, then, that you recollect? A. Yes, Sir; there was a good deal.

Q. Well, that you recollect, I asked you? A. No, Sir, not that I recollect.

Q. You have given now all of that conversation that you recollect? Yes, Sir.

Q. Hadn't you better tax your memory now a little again and see if you have not omitted anything? A. Well, if you will suggest anything I will try and recollect it. If you will remind me of any idea—

Q. During the intermission, was anything suggested to you in regard to Mr. Tilton stating that he could blow the roof off. A. That was previous to that.

Q. No, no! During the intermission was any suggestion made to you on that subject? Didn't you talk about that with somebody? A. With somebody?

Q. With somebody, or somebody to you? A. No, Sir.

Q. Not during the intermission? A. No, Sir; you mean the intermission here?

Q. Yes, Sir. A. Oh, no, Sir; no.

Q. Didn't talk to Gen. Tracy about that? A. Not about that; No, Sir.

Q. Suppose you do put into that conversation somewhere that remark about blowing the roof off of Plymouth Church. It was in this conversation, wasn't it? A. Yes, Sir.

Q. Well, now get it in somewhere, so that we can see its connection. A. I don't feel that I am able to give the connection.

Q. Can't give the connection? A. No, Sir; he was speaking of his difficulty.

Q. Wait a minute. Well, will you commence with that conversation and relate all that you now remember of it? A. I don't remember anything but these two—

Q. Now, I don't ask you what you don't remember; will you commence with the conversation and give me all you remember of it? A. If you insist upon my giving the words I cannot do it.

Q. Well, do the best you can. A. As I said before—

Q. I don't want what you said before, I want you to say something now. A. Well, I cannot say anything more about it than that.

#### COURTESIES BETWEEN COUNSEL AND WITNESS.

Q. Can't you state it to us now? A. Why, I have.

Q. I want you to state it again. I want you to give me now all of that conversation you can recollect? A. I cannot relate the conversation, as I told you before. Mr. Tilton, I say, came in my office in his usual way—

Q. Well, I don't want that; I am asking for the conversation? A. I can't give you the conversation.

Q. There were certain—

Q. Wait one moment. We will get at it, Mr. Schultz. A. Yes. I hope so.

Q. Will you now give me what you recollect of the conversation between you and Mr. Tilton upon that occasion? A. I can't give you anything but what I have given you.

Q. But that is no answer to my question; I ask you to give

me now— A. I am so unfortunate as not to be able to give you anything.

Q. What? A. I am so unfortunate as not to be able to give you anything.

Q. Oh, I guess we will get an answer. A. Perhaps so.

Q. You can tell me, Sir, what you now recollect was said between you and Mr. Tilton upon that occasion? A. I cannot, Sir.

Q. Can't tell me what you recollect? A. Yes, Sir, I can tell you. I told you what I recollected.

Q. I don't ask what you have done; I ask you now. A. I can't tell you anything more.

Q. Repeat now what you do recollect?

Mr. Evarts—Now, if your Honor please, has counsel a right to do that?

Judge Neilson—I think he has, on cross-examination.

Mr. Evarts—It is the second time that it has been repeated.

Judge Neilson—Without success.

Mr. Evarts—I have nothing to say about that; that is for the witness. The witness has answered, and there is an end of the right of inquiry when the witness has fully answered. He has told him the conversation as he recollected it—told him he could not recollect any more, and is now asked to recollect it again and repeat it again. Now, that I submit is beyond the authority of cross-examination.

Judge Neilson—The counsel, I think, is perfectly regular in his cross-examination.

Mr. Beach—I am aware of that, your Honor, but you will permit me to say that the witness having attempted to relate this conversation, and having given it in different forms, it is out of a spirit of entire fairness to this gentleman, whom I greatly and personally respect, to see if I cannot make it consistent in some way. [To the witness.] Now, Mr. Schultz, it is with no intentional disrespect at all, Sir, but I would be glad if you would state to me now—repeat to me now all of the interview between you and Mr. Tilton upon this occasion, so far as you recollect it? A. Well, Mr. Beach, the difficulty between you and me is this: you want me to state the language.

Q. Oh, no I don't; I have disclaimed that ever and over again? A. Well, but every time I undertake to tell you the substance of it you stop me.

Q. You are mistaken now. [Laughter.] A. Well, I think so.

Q. You are mistaken; altogether mistaken.

Judge Neilson—The officer will, please see that order is kept. There is no occasion for all this.

The Witness—[To Mr. Beach.] That is where we differ.

Mr. Beach—Well, Sir, you are entirely mistaken. I have not stopped you at all when you attempted to give the substance of the conversation; on the contrary, I have asked for it again and again, and I am waiting for your narrative, whenever you choose to give it? A. I have given you all the answer that I can think of, Sir.

Q. Very well; then we will pass that, Sir, if I cannot get anything more. Did you not state, on your direct examination, that when you talked with Mr. Tilton on the subject of what Carpenter had said to you concerning this newspaper project, that Mr. Tilton told you that Carpenter had no right to repre-

sent him? A. No—to represent him as a foreign correspondent.

Q. No, Sir; didn't you testify on your direct examination that Mr. Tilton told you that Carpenter had no right or power to represent him? A. I think I said that Mr. Carpenter told me—he told me that Mr. Carpenter had no right to represent him as a foreign correspondent.

Q. I understand you said that, Sir. I am asking you whether you did not testify to the other also? A. I think not.

Q. You think not? A. I think not, in that connection. I don't recollect it, Sir.

Q. Did not Mr. Tilton tell you that Carpenter had no power or right to represent him? A. I don't think he said that, Sir.

Q. Will you swear that he did not say it to you? A. No, Sir.

Q. No. Did not Mr. Moulton, in the presence of Mr. Tilton at the interview at the Union League Club, of which you speak, distinctly say to you that Carpenter had no right or power to represent Tilton? A. I think—he may have said that; he may have said that, Sir. He said that, or words to that effect.

Q. Now, did not Mr. Tilton in the first interview which you had with him on the subject, say the same thing in substance to you? A. Yes, Sir, after the—he said what I stated.

Q. No; but did not he say the same thing in substance to you, that Mr. Carpenter had no power or right to represent him? A. I don't recollect it in that form, Sir.

Q. Didn't you get that impression, Sir? A. Well, I got the impression that he—

Q. Didn't you get that impression? A. No, Sir.

Mr. Tracy—I submit that the witness ought to be permitted to answer.

Mr. Beach—Well, he has answered “no.”

Mr. Tracy—You stopped him.

Mr. Beach—I say that he has answered. [To the witness.] You did not get the impression that Mr. Tilton disclaimed the authority of Carpenter to act for him? A. To place him in the position that he was placed in. He said nothing about the newspaper enterprise.

Q. But he did at the Union League Club? A. He may have said it. I don't recollect what he said.

Q. Who were present at that conversation at the Union League Club? A. I thought no one, but I understand there was a gentleman present.

Q. Yes, fortunately. Who was it? A. Mr. Butler.

Q. What is his first name? A. Charles. Mr. Butler and Mr. Watrous; Mr. Watrous, I think.

Q. Yes; what is his first name? A. Charles.

Q. Now, did not Mr. Tilton and Moulton both, in the presence of Mr. Watrous, at that conversation at the Union League Club, distinctly tell you, and emphatically tell you, that Mr. Carpenter had no power or authority to represent Mr. Tilton in regard to that newspaper matter? A. No, Sir; I don't recollect that they did, Sir; not with the emphasis that you speak, certainly.

Q. He told you that, you say? A. I say that Mr. Moulton may have mentioned that Mr. Carpenter transcended his authority.

Q. No, no; didn't you say a moment ago that Mr. Moulton

may have told you that Carpenter had no power to represent Tilton? A. I say he may have said so; I have no distinct recollection on that subject.

Q. Will you swear that both Moulton and Tilton did not say that to you, and as emphatically as I before expressed myself in the question, in the presence of Watrous? A. Yes, Sir; I will say, not so emphatically as you have expressed it.

Q. Not so emphatic? A. No, Sir; distinctly not.

Q. Didn't they both say it to you in the presence of Watrous? A. That I won't say; not so emphatically; it made no impression on my mind and therefore I know it was not so emphatic as you are.

Q. Oh! you mean the tone of voice? A. Yes, Sir; I mean the manner and tone of voice.

Q. I don't mean the tone of voice or the manner, I mean the language. A. My impression is as I have said to you, that Mr. Moulton disavowed—

Q. I don't ask for that; we have had that repeatedly; I don't ask for that. Which Watrous is that? A. My recollection is indistinct in regard to it. He was there some portion of the time.

Q. Oh! he was the man; he was there, Sir; we understand that. Do you remember his first name? A. Charles.

Mr. Evarts—It was not Butler?

Mr. Beach—Butler is a mistake.

The Witness—Butler was there, too; I didn't know it, though, at the time; he was sitting off in the corner.

#### WHAT WAS NOT SAID AT THE INTERVIEW

Q. Now, at that occasion at the Union League Club, did not Mr. Tilton expressly decline to have any connection with such a newspaper enterprise? A. I don't think the conversation—

Q. Just answer that question? A. I have no recollection of it.

Q. Will you swear that he did not? A. No, Sir; I won't.

Q. Did not Mr. Tilton say that he would have no connection with any paper with which Mr. Beecher was associated? A. I don't think he said that, or at least I don't recollect that he said that. The conversation was not of that character.

Q. Is your recollection so accurate that you would be willing to swear that he did not? A. No, Sir.

Q. It is not. Now, in the conversation that you had privately with Mr. Tilton, didn't he tell you that he could not be connected with any newspaper with which Mr. Beecher was associated? A. I don't think he ever said—

Q. Now, didn't he tell you that in the presence of Franklin Woodruff? A. No, Sir.

Q. You swear to that positively? A. Yes, Sir; I will swear to that positively.

Q. And reflectingly swear to it positively? A. Yes, Sir.

Q. That he did not tell you that in substance, in the presence of Franklin Woodruff? A. I will, Sir. At my house, you mean? That is the only interview we ever had.

Q. Yes? A. I say positively, no.

Q. Now, did not Mr. Tilton, at that interview at your house, in the presence of Franklin Woodruff, in words or in substance

say to you that he could not accept any aid from Mr. Beecher ?  
A. No, Sir.

Q. That you swear to positively ? A. I do swear to it positively.

Q. And in no part of that conversation did he say that to you ?  
A. No, Sir.

Q. Well, or did he put it in the form, either in words or in substance, that he could not put himself under any obligation to Mr. Beecher ? A. He did not put it in that form, exactly, but it might be construed into that form, for when I asked him the question whether Mr. Beecher would take an interest in the paper he said: "He will if I ask him." "And will he write for the paper?" "He will if I will permit him." Those were the words that he used, and you might infer that he didn't want to be connected with Mr. Beecher. To that extent he did say so, and to that extent only.

Q. Didn't he, in addition to what you have just told—didn't he say that he could not be put under any obligation, or put himself under any obligation ? A. No, sir, I think not.

Q. Or in words or substance that ? A. The only language used in connection with Mr. Beecher in that interview is what I have stated; I remember it very distinctly.

Q. Now, who was present at the conversation which you say you had with Carpenter ? A. Mr. William Orton and Henry Clews.

Q. That was at the Union League Club, was it not ? A. Yes, Sir.

Q. Do you know whether that was a meeting by appointment as between Mr. Carpenter and Clews and Orton ? A. I understood Mr.—

Q. Well, I ask you if you know ? A. I understand that there was an agreement all around that they had been all invited, and that they all came.

Q. Was you invited ? A. I was, Sir.

Q. Who invited you to come ? A. Mr. Carpenter.

Q. Are you quite sure that it was Mr. Carpenter ? A. I am positive.

Q. When was that meeting ? A. It was between the 20th, I think, the 20th of January—the 20th of December and the first of January, 1872.

Q. Yes. A. I think the 24th, 25th, 26th; somewhere along there; that is my impression.

Q. It was the 26th, Sir ? A. Well, I have not got the exact date.

Q. Yes, very near it ? A. I remember that from the discussion—some subjects that came up—

Q. Well, never mind; we have got it. How long after that was it before you saw Mr. Tilton ? A. I think a few days; I cannot say how long.

Q. And where was it that you saw him ? A. In my office.

Q. And that was when you conversed with him about the subject that you had seen Carpenter upon a few nights before ? A. Yes, Sir.

Q. Was any one present at that interview ? A. The first half hour was spent alone; afterwards Mr. Bailey was called in.

Q. Well, that was to decide the question ? A. Yes, Sir.

Q. Now, will you please commence and relate as near as you

can all that was said between yourself and Mr. Tilton at that time ? A. Mr. Tilton opened the conversation by saying, "You charged me in public with being a blackmailer;" and I said to him in reply, "Who says so?" He says, "Frank Carpenter." Says I, "Under what circumstances—did he tell you the circumstances?" Says he, "I suppose he has." I then drew out from him—I don't recollect what he said in reply. He satisfied me—

Q. Oh, I don't want that. I want you to state all that you can recollect of that conversation. A. He stated to me enough of the conversation to satisfy me that he knew—

Q. I want to know what he stated to you. A. Well, he said that Frank Carpenter had told him that we had had a meeting at the Union League Club, and mentioned the names of gentlemen present, and in which they had had up a project for starting a newspaper, and in the course of that conversation I had charged him with being a blackmailer, and he wanted to know if I thought that was just towards him; and I then told him that if he would hear my side of the question that I would then submit it to him whether I was right or wrong, and we discussed the question.

Q. No, no; wait one moment. State what was said ? A. We reviewed the whole subject.

Q. Wait one moment. I don't want any answer of that kind to a specific question that I put to you, asking you to relate the conversation. A. I think—I will state to you again what I stated to Mr. Carpenter, and I stated the same things—

Q. Wait one moment. I don't wish any general declarations of that kind. A. Well, Sir, repeat your question, I will try and answer it.

Q. I have asked you, Sir, to relate, as near as you can recollect, the conversation between you and Mr. Tilton on that occasion ? A. I told him that Frank Carpenter had called us three gentlemen together to take into consideration the establishment of this newspaper, that he had represented to us that the friends of Mr. Beecher and Mr. Tilton had agreed upon it, that Mr. Beecher was to be the editor-in-chief, that Mr. Tilton was to go abroad as the corresponding—correspondent of the paper, that there were certain papers which were held in escrow by Mr. Moulton, which, under those circumstances, could be destroyed, and this whole matter could be settled; and I said, under those circumstances, I felt justified in saying what I did, and he differed with me in opinion on that subject, and we discussed it.

Q. No. State, as far as you can, what was said ? A. Well that was about the substance of what was said, only it took longer to say it, and it was more in detail.

Q. Well, do you now recall anything else that was said at that time ? A. Yes, Sir, I do recall a good deal else that was said.

Q. Well, state it. A. He stated to me, and I stated to Mr. Tilton, that these papers had been before Dr. Storrs, and that Dr. Storrs had given an opinion on them; that they were damaging, and if published would stop—drive Mr. Beecher out of the pulpit. That is one of the facts that he stated to me, and he stated many others.

Q. State all that you recollect ? A. That is all I care to state now.

Q. What, Sir? A. That is all I care to state.

Q. All you care to state? A. If you will ask me any question—

Q. I asked you to state anything further that you recollected to have passed between you and Mr. Tilton upon that occasion. A. I don't recollect of anything now, Sir.

Q. You have now given on your cross-examination all you recollect of that conversation? A. Yes, Sir, I may recollect other things in five minutes.

Q. Well, if you do now, state them. A. I don't recollect them now, but I may. I don't wish to be charged with any inconsistency if I recollect them five minutes from this time. I have only recollected this Storrs business now.

Q. What? A. I say I only recollect this circumstance that these papers were submitted to Dr. Storrs, as a reason why the thing was conclusive.

Q. Never mind; we have got that. Well, it was after this conversation that you had, the one at the Union League Club, when Moulton and Tilton and Watrous were present? A. Which one?

Q. It was after this last conversation that you have related that you had the interview at the Union Club? A. Yes, Sir; that was the last conversation I ever had with him.

Q. Can you tell about when that was; can you give me the year when that was? A. I cannot, Sir. It was the last time I ever met Mr. Tilton, I know.

Q. At any of these interviews was the subject of Bowen's charges against Beecher talked over? A. Yes, Sir; very fully.

Q. Which one; the one that you have been giving? A. At which interview?

Q. I don't know; I am trying to find out. A. Well, at every interview, almost.

Q. Now, please, Mr. Schultz, don't answer me in that way. I ask you if at either of these interviews you have been relating the subject of the charges made by Bowen against Beecher was discussed? A. I think they were fully mentioned at my house.

Q. In Mr. Woodruff's presence? A. No, Sir; Mr. Woodruff did not remain there ten minutes; he went away and left Mr. Tilton with me.

Q. You are quite sure that he did not remain over ten minutes? A. I am; perhaps twelve or fifteen; only a few minutes.

Q. Did you have any interview at your house with Tilton and Woodruff upon any other occasion? A. No, Sir.

Q. Only that one occasion? A. Only one occasion.

Q. Was there anything said about those charges of Bowen's in the discussion at the Union League Club at which Mr. Watrous was present? A. None that I can repeat.

Q. Was there any? A. I cannot recollect, Sir.

Q. Well, is your recollection so accurate that you could say there was not? A. No, I could not say there was not.

Q. Well, you spoke of a dinner given to Mr. Bailey. Was Mr. Pierrepont present at that dinner? A. I do not recollect, Sir.

Q. Did you mention the person with whom the discussion was about the Woodhulls at that dinner? A. The discussion—I will do so if you wish.

Q. I don't care; I asked you if you did mention it? A. I don't know whether I did or not, Sir. I will if you wish.

Q. Well, that is not the name about which you hesitated to speak, I believe, was it? A. No, Sir.

Q. Well, who was it? A. Henry Clews.

Q. You don't recollect whether Mr. Pierrepont was there? A. No, I do not; Mr. Orton was there; I remember him.

Q. Who? A. Mr. Orton—William Orton.

Q. Do you remember whether anything was said in regard to that publication by other gentlemen than Mr. Tilton and Mr. Clews? A. I don't understand that question.

Q. Do you know whether anything was said upon that occasion in regard to Mrs. Woodhull besides Mr. Tilton and Mr. Clews? A. They had the conversation pretty much to themselves on that topic; as I remarked before on the direct, I tried to stop the severity of the—

Q. Yes, that we got before. Do you now recollect anything more of that discussion than you have stated on your direct examination? No, I don't know that I do, Sir. I could give the substance of it, but I cannot give you the language.

Q. I don't ask for that. A. I know you don't, and therefore I don't give it to you.

Q. I am satisfied with what you gave on your direct examination. You mentioned having had some conversation with Mr. Moulton in regard to the establishment of *The Golden Age*, did you not? A. No, Sir, I think not.

Q. You did not? A. No, Sir; I think not.

Q. Did you have any conversation with Moulton upon that subject prior to its establishment? A. I think not, Sir; I don't recollect any.

Q. I misunderstood you, then.

Mr. Evarts—He corrected himself; it was Woodruff.

Mr. Beach—Oh, no; I don't refer to that.

The Witness—I think I had no conversation with Mr. Moulton on the subject.

Mr. Evarts—He corrected himself; it was Franklin Woodruff; he began "Frank Moulton."

Mr. Beach—That was relating a conversation; it was not upon this point. That is all, Sir.

#### RE-DIRECT EXAMINATION OF MR. SCHULTZ.

Mr. Tracy—I present "Exhibit D 108" to the witness. [Handing witness a paper.] Mr. Schultz, is that the check that Mr. Tilton showed you on the occasion when he exhibited to you Bowen's check? A. Well, Sir, I could not—I never saw Mr. Bowen's signature before, and I don't know anything about it, Sir. He exhibited me a check like that, but I could not say that that is the one, Sir. He simply took it out of his pocket, and held it in that way, and I saw it was Mr. Bowen's, and I saw it was a check of \$7,000, but I could not identify it.

Q. As the precise check? A. No, Sir.

Q. Now the conversation which you had with him in which he said that he threatened to blow the roof off of Plymouth Church, you recollect was before the time that he exhibited this check to you? A. Yes, Sir.

Q. But precisely how long before you cannot undertake to say? A. No, Sir; I cannot tell.

Q. Did you tell Tilton, in the interview at your house, when he asked you to subscribe, or at any time when talking with him about subscribing for *The Golden Age*, did you tell him that you thought the enterprise a good one, and would therefore subscribe? A. No, Sir.

Mr. Beach—This is a re-examination, Sir.

Mr. Tracy—It is, your Honor, but it is a subject which I omitted.

Mr. Beach—It is very objectionable, as leading—the question which is put.

Mr. Tracy—I do it to contradict Mr. Tilton, because Mr. Tilton was examined on that question.

Judge Neilson—Counsel suggests that it is not re-direct examination.

Mr. Beach—I don't insist upon the objection; if counsel omitted, through inadvertency, a question, I don't object.

Judge Neilson—Go on, Sir.

Mr. Tracy—What did you tell him on that subject? A. I didn't go into the enterprise willingly, or not cheerfully. I deferred the giving of an answer that day, and when I subsequently consented, it was in view not of a business transaction.

Mr. Beach—Oh! well, I object to that.

Q. Did you tell him at any of those interviews before subscribing that you thought the enterprise a good business transaction and would therefore go into it? A. Never; I never said so and never thought so.

Q. Now, in the conversation at the Union League Club, where Tilton and Moulton were present, and the subject of Carpenter's conversation was talked of—or the conversation you had had with Carpenter was talked of, you say that Moulton may have said that Carpenter had no authority. Now, do you recollect in what language Mr. Moulton spoke upon that subject? A. No, I do not.

Q. Do you remember whether he said that Carpenter had no authority, or whether Carpenter had exceeded his authority? A. I don't recollect, Sir; if I was asked—

Mr. Beach—Oh, wait. You don't recollect?

The Witness—I don't recollect, Sir.

Judge Neilson—The first point is, whether you have got any recollection? A. No, Sir; I have no recollection distinctly on that question. I could not say distinctly—use the language that he used.

Q. What is your best recollection on that subject?

Mr. Pryor—If he says he has got none, there cannot be any comparison.

The Witness—I have no recollection as to the language at all. I recollect the substance of the conversation, but I don't recollect the language.

Q. What is your best recollection as to the substance of what Mr. Tilton said on that subject?

Mr. Beach—If he has any recollection on that subject.

The Witness—Well, on the topic—the general topic, I have.

Mr. Moulton disavowed for Mr.—Mr.—

Mr. Pryor—Tilton?

The Witness—Tilton, any right that he had to send him to

Europe, or connect him with this transaction, as I understood him.

Q. Now, was it to send him to Europe or to connect him with the transaction? A. I think the conversation between Tilton and myself was to the extent that he had no right to send him to Europe—never used any other language than that; but Mr. Moulton may have said that to me; I am not sure about it.

Q. This conversation with Moulton was after the conversation with Tilton at your office? A. Yes, Sir.

Q. How long after? A. Well, a month or six weeks.

Q. A month or six weeks? A. Yes, Sir.

Q. Do you know whether in the meanwhile the fact that you had charged Tilton with being a blackmailer had acquired a good deal of circulation around the Club? A. I think it had.

Q. And created a great deal of talk?

Mr. Beach—Objected to, Sir.

Judge Neilson—You have got that.

Q. The conversation to which you have referred as between yourself and Tilton and Woodruff about a newspaper related to *The Golden Age* entirely? A. Entirely.

Q. And was at your house? A. Yes, Sir.

Q. And that was, you say, early in 1871—the conversation about *The Golden Age* at your house? A. It was about two or three weeks before *The Golden Age* started. I don't recollect.

Q. And the conversation with Carpenter about the newspaper enterprise was after the election in 1872, and from the 20th of December to the 1st of January, 1873? A. Yes, Sir; I remember that distinctly.

Q. And you think along about the 24th and 25th days of December? A. Between the 20th and the 1st; I think nearer the 23d, 24th or 25th, somewhere along there. I have a very distinct recollection about that from a circumstance which I could narrate.

Q. Now, in your conversation with Mr. Tilton, at the time you submitted to Mr. Bailey, did Mr. Tilton in that conversation limit Mr. Carpenter's authority in any way except to say that he had no right to send him to Europe as correspondent?

Mr. Beach—That is calling for the judgment or opinion of the witness.

Judge Neilson—Do you think it proper, Mr. Tracy, to put such a question in that form to your own witness?

Mr. Evarts—We except.

Judge Neilson—I asked the counsel if he thought it proper to put such a question in that form to his own witness.

Mr. Tracy—I may be wrong, but—

Judge Neilson—It is not in proper form.

Mr. Evarts—On what grounds is it not proper?

Judge Neilson—On any ground. It should have been asked on the direct, if asked at all.

Mr. Tracy—I am following their cross-examination. They have examined him as to what Mr. Tilton said in regard to Mr. Carpenter's want of authority, and I am pursuing that line of inquiry on my re-direct examination.

Mr. Beach—That is, the counsel examines the witness as to a conversation, I cross-examine him as to the conversation, and he is following my lead.

Judge Neilson—Yes, that is not the office of a re-direct examination.

Mr. Tracy—I am asking a new question.

Judge Neilson—There need be no discussion, because if you put your question in the common form, you can ask it.

Q. I will ask you this question, Mr. Schultz. Was there anything else said at that conversation in regard to Mr. Carpenter's want of authority, except what you have already stated? A. I have no recollection of anything else.

Judge Neilson—Very well. That is all, Mr. Schultz.

Mr. Beach—I want to ask a single question.

#### RE-CROSS-EXAMINATION OF MR. SCHULTZ.

Mr. Beach—You say that your charge against Mr. Tilton of being a blackmailer acquired some celebrity at the Club? A. I didn't say "celebrity."

Q. Well, circulation? A. Circulation.

Q. Did the apology which you subsequently made for that charge acquire circulation also at the Club? A. Did what?

Q. Did the apology which you made for the charge—for the accusation—acquire circulation also at the Club? A. I stated the apology to—

Q. No; just answer my question? A. I judge it did.

Mr. Evarts—He was going on to state he stated the apology.

Mr. Beach—What if he did, I stopped him.

Mr. Evarts—That is an answer to your question.

Mr. Beach—No it ain't. [Laughter.]

Judge Neilson—Call your next witness.

Mr. Shearman—Charles G. Judson.

#### TESTIMONY OF CHARLES G. JUDSON.

Charles G. Judson, called and sworn in behalf of defendant.

Mr. Shearman—Where do you reside? A. In New-York.

Q. How long have you resided in or near New-York? A. Twenty or twenty-five years.

Q. Are you, or have you been, acquainted with the parties to this suit? A. I have.

Q. How long have you known each of them? A. I have known Mr. Beecher, I should think, about twenty years, and Mr. Tilton, perhaps, fifteen or eighteen years—a little less than Mr. Beecher.

Q. What is your occupation? A. A merchant.

Q. Where do you carry on business? A. In Worth street, New York.

Q. What line of business? A. India rubber goods.

Q. Do you recollect a conversation you had with Mr. Tilton in November, 1865; I ask simply if you recollect such a conversation in or about November, 1865? A. I cannot state the time so definite as November. I recollect a conversation with him in 1865.

Q. Cannot you recollect whether or not it was prior to the very end of November—prior to November 30th, 1865? A. I cannot positively. My impression is that it was in the latter part of 1865.

Q. Where did that conversation take place? A. At Delmonico's, in Chambers-st.

Q. State how you came to meet Mr. Tilton there? A. I cannot. I met him frequently there. I cannot state the special reason at that time. He dined with me very frequently—quite frequently.

Q. And did you dine then at Delmonico's? A. We did, Sir; yes, Sir.

Q. Now, did you have any conversation on the subject of Mr. Beecher, concerning members of Plymouth Church, on that occasion? A. We did.

Q. Please state what that conversation was, the substance of it?

Mr. Beach—I object to that as wholly immaterial.

Mr. Shearman—It is perfectly material, but the gentleman expects me to put a leading question for aught I see.

Mr. Beach—I don't expect such a thing from so accurate a gentleman as you are.

Judge Neilson—I think we will take it.

Mr. Shearman—You can answer what conversation you had with Mr. Tilton on the subject of Mr. Beecher, and other members of Plymouth Church.

Mr. Pryor—Other members of Plymouth Church! Has that anything to do with it?

Mr. Shearman—It is all introductory to matter in connection with Mr. Beecher, and is inadmissible unless connected with him.

Mr. Pryor—That may be, but that don't make it material. We don't object to the conversation with a member of Plymouth Church.

The Witness—I cannot state the conversation.

Mr. Shearman—The substance.

The Witness—I can only state one—

Q. A little louder. A. I cannot state any conversation in detail, except that we were discussing Plymouth Church, talking about it and its members, as I had formerly been an attendant upon that church.

Q. What was said upon that subject?

Mr. Pryor—If your Honor please, I object to what was said about the members of the church.

Judge Neilson—True; I infer it is drawing in Mr. Beecher in some form.

Mr. Shearman—It is all connected with Mr. Beecher.

Mr. Pryor—What had the members of Plymouth Church ten years ago to do with this case?

Mr. Shearman—I take it Mrs. Tilton was a member of the church.

Mr. Pryor—She may be one member. You used the plural number.

Mr. Shearman—I am not going to confine it to Mrs. Tilton.

Mr. Pryor—What has that got to do with this case? Where will we end if we wander off into infinite space, if your Honor please?

Judge Neilson—I would answer that question with a great deal of pleasure if I could.

Mr. Pryor—It is in your Honor's power to determine the end of this case. It certainly won't end within the lifetime of any of us if this line of examination is to be followed.



Judge Neilson—Well, let him answer that question.

Mr. Shearman—[To the witness.] Go on and state.

#### MR. TILTON WITHOUT FAITH IN MAN.

The Witness—I cannot state anything that was said of any member of the church, but can state a brief conversation in regard to Mr. Beecher.

Q. Well, state that? A. That conversation grew out of comment on the church and its members. I made this remark to Mr. Tilton, that I was glad that Mr. Beecher during his long connection there, had escaped all charges of anything improper, so far as women are concerned; I think that was the general remark I made, and Mr. Tilton answered by saying: "Mr. Judson, I have lost faith in man." I said to him: "Do you mean to intimate by that, that you believe Mr. Beecher has been guilty—criminally guilty with women?" He answered me again in the same way.

Q. State the words, please? A. He said: "I have lost faith in man." Well, it startled me a little.

Mr. Beach—Never mind what effect it had upon you.

Q. What did you say? A. I said, again, to him: "This remark, coming from you—his most intimate friend—means something. Now, I want to know whether you believe him to be guilty of criminality with women." He said, again—

#### JUDGE NEILSON ADVISES ECONOMY OF TIME.

Mr. Beach—Now, Sir—

Mr. Shearman—This is—

Mr. Beach—What? I suppose I have a right to make an objection. I submit to your Honor that this is not admissible in any view of the case, and I raise the objection for the purpose of getting from your Honor an intimation whether, if it should be proved that any remark or accusation was made by Mr. Tilton imputing any moral wrong to Mr. Beecher as early as 1865, it is not such a fact proven by the defense pertinent and material to this case as will enable us to sustain it by proof—authorize us to sustain it by proof, if we can. If it is not, it is not admissible. They cannot prove a declaration here for the purpose of establishing a given fact, and close our mouths to proof of the existence of that fact, I submit to your Honor. If it comes in the form of an accusation against Mr. Beecher we must be permitted to sustain that accusation. We cannot, I submit to your Honor, be put in an attitude where we are accused of making a charge without having the liberty of maintaining that charge. Now, I doubt whether your Honor would permit that sort of proof in answer to evidence of this character, and, therefore, I submit that it is not pertinent and material to the issue, having such a relation to the question between these parties as makes it a relevant and substantial part of this trial. What relation has it, Sir, to this case? Supposing Mr. Tilton upon this occasion said, one way or the other, that Mr. Beecher was pure, or that Mr. Beecher was polluted? What sort of relevancy has it to this trial? The charge of improper conduct against Mr. Beecher originated three years after this, nearly; two years and a half and more. It was not discovered until four or five years after-

wards, and now we are traveling back into this remote period to ascertain the declarations which may have been made by Mr. Tilton, where no circumstance relating to himself may have called for any exhibition of feeling for the purpose of influencing the result of this trial. I cannot perceive, your Honor, how it bears upon the issue; and if your Honor shall rule that it is so far connected with the relations of these parties as to be admissible evidence, I hope your Honor will concede the idea that we suggested, that we should be at liberty, by proof, to sustain any allegations which have been made by proof.

Judge Neilson—[To Mr. Shearman.] You can ask the question, Mr. Shearman. I don't see how it is material.

Mr. Evarts—Subsequent proof will satisfy your Honor that it is very material.

Judge Neilson—Probably.

Mr. Evarts—How can you foresee, if your Honor please, what our evidence is.

Judge Neilson—I do not assume to do so.

Mr. Evarts—I say, as counsel, we shall offer evidence to make it very material.

Mr. Beach—That is not sufficient where the admissibility of evidence depends upon its being connected with other facts; then if counsel aver that they will connect it with such facts so as to make it material, it is usual for the Court to accept the declaration of counsel.

Mr. Evarts—I shall connect it with other evidence on this very subject of this conversation.

Mr. Beach—Ahem!

Mr. Evarts—And you will find it out before you stop.

Mr. Beach—We are waiting for some marvelous revelations all the time. We take things as they come, without any great terror.

Mr. Evarts—I have not said "marvelous." I said it was pertinent and material, and it will be so considered by my learned friend, as well as by your Honor, I can answer for that.

Judge Neilson—And, at the same time, I think it is quite natural the learned counsel should call attention to what appears to him to be a valid objection, and what on the face of it appears to me to be a valid objection; and I think, and have said all along, that the learned counsel on both sides are taking the liberty of making this evidence extend to and include many matters entirely foreign to the issue we are trying, and that we might dispose of it without so much evidence extending so remotely to the rights of these parties. However, Mr. Shearman, proceed; and, when we do proceed, we proceed so deliberately in the ordinary terms of this Court, that we take twice as much testimony in a day as we take here. The simplest piece of evidence requires consultation of counsel, and deliberation, and delay. We don't spend half the time with a witness that is spent here. I think you might proceed more rapidly.

By Mr. Tracy—State, now, what followed after the last remark of Mr. Tilton, when, for the second time, he had said he had lost faith in man? A. I repeated; I said again to him that this remark, coming from him, meant to me a good deal, although I would place but little credence in it if it came from

outsiders; from him, it meant a good deal to me; it was a serious charge for him to make, and I asked him again whether he meant to charge directly that Mr. Beecher was criminally guilty with women. And he said again to me: "Mr. Judson, I have lost faith in man;" that substantially ended the conversation, as far as I remember.

MR. BEECHER WARNED AGAINST MR. TILTON.

Q. Did you see Mr. Tilton again within a few days after that conversation? A. I did.

Q. Did he call on you, or you upon him? A. He called upon me.

Q. State what occurred between you at that interview? A. He came two or three days after that, if I recollect right, to my office and asked me if I had seen Mr. Beecher since we last met. I said to him that I had. He asked me what I said to him. I told him I had said to Mr. Beecher substantially what he said to me. He asked me why I went to Mr. Beecher. I said because I was his friend, and I went to him to put him on his guard against Mr. Tilton, whom I thought was not his friend. He said to me, "I am disappointed in you; I always thought you one of my best and most reliable friends." "This proves otherwise," I said to him; "I have been your friend always, and I should have done the same thing for you that I have done for Mr. Beecher under the same circumstances." He said, "I am mistaken in you; I have heretofore trusted you, but I find I am mistaken, and now we will part." I said that would suit me, and we did part.

Q. Was anything further said at that conversation? A. He left my office at that time, and we have never spoken since that time.

Q. Did Mr. Tilton at that interview in any way controvert or question the correctness of the statement which you had made of Mr. Beecher?

Mr. Beach—That we object to.

Judge Neilson—That won't do; you examined him as to that. [To the witness]: That is all.

#### ACRIMONY BETWEEN COUNSEL AND JUDGE.

Mr. Beach—I move to strike out this evidence, if your Honor please.

Judge Neilson—No, I think I will let it stand. It is as harmless as a lamp-post in the street.

Mr. Everts—It is proper I should say to your Honor, after that observation from the Bench, that we intend to give other evidence that will not leave it harmless.

Judge Neilson—It is perfectly idle and trivial to occupy our time with such evidence.

Mr. Everts—I suppose we must submit to your Honor's ruling before our case is completed, but we do not intend to leave it trivial or unimportant.

Judge Neilson—Will the counsel call the next witness?

Mr. Shearman—Archibald Baxter.

#### TESTIMONY OF MR. ARCHIBALD BAXTER.

Archibald Baxter was then called on behalf of defendant, and being duly sworn, testified as follows:

Mr. Shearman—Mr. Baxter, where do you reside? A. Reside in the City of Brooklyn.

Q. And what is your occupation? A. Merchant in New-York.

Q. In what line of business? A. The export business.

Q. Are you a member of the church of the Rev. Dr. Storrs? A. I am.

Q. How long have you been a member of that church? A. About twelve years.

Q. Do you recollect the period of the publication of what is commonly called the Woodhull scandal, in 1873? A. I do.

Q. Did you, shortly after that publication, have an interview with Mr. Francis D. Moulton on the subject of that scandal? A. I had several interviews with him on the subject.

Q. Will you state the first interview, as it occurred, stating where it occurred? A. The first three interviews that I had with him occurred on the floor of the Produce Exchange. Mr. Moulton came to me, within a few days after the publication in question, and asked me on 'Change if I had a few minutes to spare for a conversation. I replied that I had. He took me aside, and said he wished to say a word to me about this publication; that he had learned that I had expressed an opinion as to Mr. Beecher's course, as to the course he ought to pursue; and he found that opinion, according to his judgment, was a right one, and wished to have a little conversation on the subject. Shall I tell you what that course was?

#### MR. MOULTON THINKS MR. BEECHER'S LIFE A GOOD VINDICATION.

Q. Yes; tell the conversation. A. He said he understood that I supposed Mr. Beecher ought to be silent under this charge, ought not to take any notice of it, and that that was precisely his own opinion and the opinion of many friends of Mr. Beecher, and that, on the other hand, there were a great many who were running after him, clamoring for a denial of the charge, and his answer to all such was that if Mr. Beecher's life of twenty-five years in Brooklyn was not a sufficient vindication of him from that charge, he did not believe that any denial that could be made by him would be of any value, and he supposed that that was my view, too. I replied that it was, with some—some modification. I said, "My view is that as long as the story in question is confined to the channel in which it now appears, which I understand to be a very disreputable one, Mr. Beecher's course, in my judgment, is to take no notice of it. But," I said, "if it should be otherwise later on; if respectable parties should take it up and discuss it, and appear to demand an explanation or a denial, then, of course, I should suppose Mr. Beecher would be called upon, either by himself or his friends, to make such denial." In the mean time I had no doubt myself that the charges were entirely foundationless; and I, as a friend and admirer of Mr. Beecher as a public man, I had no uneasiness on the subject. Well, he further said that he wanted to say that he knew all about those things; that he was acquainted with the whole matter; and that

"It would be utterly impossible for him to write a letter to the newspapers denying the truth of the story unless he could deny it as a whole. Said he: "You know very well that if I undertake to write a letter, and do not cover every point that is embraced in that long story, then some sharp lawyer will pick out from the letter what I have not met, and will say very sharply, 'Ah, he has not denied this, he has not met that,' and so on. Therefore," said he, "I think it is better to take no notice of it." Said I, "Then, from that I infer that you are not in a position to say the whole story is a fabrication?" "Oh, no," he said, "people don't usually get up stories of any sort without there being some little truth in them; and, of course, there is some little truth in this; but," said he, "I want you—I know you have Mr. Beecher's reputation at heart, and I want you to be perfectly easy on the subject; all you have got to do is to wait patiently and when everything comes to light, you will find, then, that you will think as much of Mr. Beecher as you do now." I said, "That is very satisfactory to hear it from you." But he further said (and here I wish to say that I use his exact words, for I remember them very distinctly)—he said, "What I say with reference to this story is, that if the story is true, it is infamous to publish it; and if it is false it is diabolical to publish it." Well I was a little staggered by that statement of his; it was the only, the first thing that unsettled me at all. I did not want his assurance on the subject of Mr. Beecher's innocence; but, from the fact that he made a distinction between the guilt, or the error, or blunder, whatever you may call it, of publishing if it was true and publishing if it was false, rather staggered me. However, we had no—not much further conversation at that time; but I got from him that he gave me permission to make what use I should please of this conversation; and I inferred, although he did not say so, in so many words, that he was quite agreeable that I should make use of it among my friends in the Church of the Pilgrims.

#### OTHER INTERVIEWS WITH MR. MOULTON.

Q. So much for that interview. A. It was the first.

Q. Was there anything said on that occasion about Mr. Beecher's being a good man or not? A. Not further than I have stated.

Q. Now, we will pass to the second interview; state how that came about? A. The second interview came about precisely in the same way; he came to me on 'Change again and said, "By the way, you will perhaps have noticed that there had a prosecution been entered against those women by the United States authorities." I said I had. "Well," said he, "that makes it more awkward than ever for any denial to be given, or for any letters bearing on the subject; at least," said he, "we are so advised." Said I, "How is that?" "Well," said he, "if we write anything the probability is that the legal advisers of those"—he mentioned Mr. Beecher's name here—said he "if Mr. Beecher were to write anything now, the legal advisers of those ladies would probably subpoena them to appear—subpoena him to appear in

Court, and that would be a very awkward thing; that is a thing that, of course, is to be avoided for many reasons;" and he further stated that all the charges that had been made against Mr. Beecher had originated with one individual, whom he did not name, and that individual, he said he had, if I remember rightly, seen sign a retraction of those charges.

Q. Is that all that occurred at the second interview? A. I think that was about what occurred at the second interview.

Q. Now, will you pass to the next interview, tell what happened then? A. On the third interview, which was probably a week after the second, Mr. Moulton came to me again on 'Change, and was somewhat excited in his manner—asked me to step aside, and on stepping aside he said, "Is it true that the Church of the Pilgrims scratched Mr. Beecher's name out of a public notice that was read in their church yesterday?" I replied, "It is not true that the Church of the Pilgrims did anything of the sort," but, said I, "I believe I know what you refer to;" said I, "There was a public meeting called, I think, of the Bible Society in our church for last evening"—this was Monday we were talking—"for last evening, and I had seen the notice of the meeting before it went into Dr. Storrs's hands, and I observed that Mr. Beecher's name was therein printed as one of the speakers."

Mr. Beach—[Interrupting]: Your Honor, I don't understand the propriety or materiality of those conversations.

Judge Neilson—Well, this may be introductory to something else. The statement is very natural and fair, I think; it may lead to subject-matter that he wants to show.

Mr. Beach—Well, Sir, that is not the mode in which impeaching evidence is given, to have a full relation of a conversation upon general topics. The answer to it is that Mr. Moulton has not been inquired of as to these particulars. But as this gentleman appeared to be entirely intelligent and fair I had no particular objection to it. But it seems to me it is wandering into a very long examination.

Judge Neilson—He inquired of him as to his conversation with Moulton.

Mr. Shearman—You can abbreviate that; give nothing more than is necessary to give the point.

Judge Neilson—Call his attention to the point you desire to introduce.

Mr. Shearman—The point is concerning statements in regard to Mr. Beecher's personal character.

Mr. Beach—Well, as we have gone so far now, as Mr. Shearman says it is short, we may as well take the remainder.

The Witness—It is in relation to the statement which was subsequently made by Mr. Moulton.

Q. Yes, you may as well go on. A. I said to him that that was not done by the Church of the Pilgrims, but that Mr. Beecher's name had been left out, whether by Dr. Storrs's own act, or by request of the Society in whose favor the meeting was to be held, I did not know, for I had not inquired. "Well," said Mr. Moulton, "all I can say is, that it is a confounded shame that such a thing should have been done by any one, for that is prejudging the whole case." "Well,"

said I, "Mr. Moulton, you will remember that while I agreed with you that Mr. Beecher should not take any notice of this matter, as long as it was confined to a certain channel, yet I distinctly told you that I did not think so if it went over that channel. Now," said I, "it seems to me that this story is spreading all around, and yet Mr. Beecher's friends are still maintaining this silence, and you are, therefore, compelling other people to draw what deductions they please from it." Said I, "I do not know that Dr. Storrs drew any deduction at all on the subject, but," said I, "you have no right to blame him if he adopted a certain course because, in consequence of, your silence." And then I said to him, further, that I had ascertained that Dr. Storrs had addressed a note to Mr. Beecher of sympathy, and that he had not replied to that note in any way, and that, of course, was rather strange. "Well," said Mr. Moulton, at last, "I see how it affects you; I see how you are being affected, but I want to say to you what I have never said to any other body yet in this matter, and that is that while I know all these things—know all about them, I know that Mr. Beecher is a pure man." "Well," I said, "Mr. Moulton, you have made several statements to me now voluntarily, and I have not asked you any questions: I desire to know if you have any objections to answer me a question or two now, so that I may be sure that I rightly understand what you mean?" Said he, "I shall answer any questions that are reasonable and that I feel that I can answer." "Well," said I, "You say Mr. Beecher is, according to your knowledge and belief, a pure man." Said I, "Do you mean by that that Mr. Beecher has not—or is not guilty, so far as you know, of any breach of the Seventh Commandment?" and after some little hesitation he answered, "I do." "Then," I said, "I want to ask you further: you say Mr. Beecher is a pure man according to that standard; now, do you also mean that so far as you know and believe he has always been a pure man?" and he hesitated again a little, but finally said, "Yes, I mean that." I said to him, "Then, that is all I want to ask you," and we parted.

Mr. Shearman—That is all.

Judge Neilson—Mr. Beach, do you wish to cross-examine?

#### CROSS-EXAMINATION OF MR. BAXTER.

Mr. Pryor—Do you remember an excursion that you took down the river in 1871, October? A. Do you mean when Mr. Beecher—an excursion of Mr. Moulton's when—

Q. Yes, when Mr. Moulton was along? A. I do.

Q. Do you recollect the day of the month? A. Yes, I am able to fix the day of the month as the 23d of October, 1871.

Q. Did I understand you to say that Messrs. Beecher, Tilton and Moulton were along on that excursion? A. Mr. Moulton was the party who invited us to go, or rather his firm, Woodruff & Robinson; they invited a number of people from the Produce Exchange to go and inspect their Erie Basin warehouses, and in the course of his invitation he mentioned that Mr. Greeley would probably be there. Mr.

Beecher, Mr. Tilton, and sundry others; and that, after inspecting the warehouses, we would be in excellent time to go down and see the yacht race between the Sappho and the Lavonia settled.

Q. Well, Messrs. Beecher and Tilton were along? A. Messrs. Beecher and Tilton were.

Q. Well, Mr. Baxter, did you observe the demeanor and bearing on that occasion of Messrs. Tilton and Beecher, the one toward the other? A. I observed that Mr. Beecher appeared to hold himself aloof pretty much from the general party; he was not apparently in good spirits—at least I don't know that he was not in as good spirits, but he was not so enjoyable, I think; he did not enjoy himself so much as I expected he would.

Q. Did you observe any apparent estrangement of Mr. Tilton from Mr. Beecher on that occasion? A. I thought that they were not cordial, that there was no fraternal feeling between them.

Q. Did that fact, then, strike you, Sir? A. It did, and I mentioned it in my household when I got home in the evening.

Q. You returned that evening? A. Returned that evening.

Q. With whom did you ascend the hill from Wall-st. Ferry on your return? A. I ascended with Mr. Beecher.

Q. Did you have any talk with him? A. I had.

Q. About Mr. Moulton? A. I had some talk with him about Mr. Moulton.

#### COMMISERATION FOR MR. MOULTON.

Q. Will you, pray, tell the jury what that was?

A. Mr. Beecher and I had been previously speaking about the Reverend Doctor Taylor, who has since come to New-York, and who had previously been preaching in Brooklyn for some time, and I said to Mr. Beecher, "It seems to me a pity that Mr. Moulton cannot be brought under some better religious influences than he is under;" said I, "He seemed to be greatly impressed with Mr. Taylor's preaching while he was here; he heard him preach the last Sabbath that he was here, and was greatly interested—went to hear him preach morning and evening, and subsequently spoke to me very highly of him; said he hoped he would come to Brooklyn, and so on." "Yes," Mr. Beecher replied, "it is a pity, but," said he, "Mr. Moulton is young, and he is like a great many other young people affected with 'isms' of one sort and another, but he will cure of all that, and no fear of him; he is a noble fellow; it will be all right with him yet."

Q. Did he speak of him as "Moulton" or "Frank," when he said he was a noble fellow? A. I think he said "Frank is a noble fellow."

Judge Neilson—That is all with this gentleman. One more witness, gentlemen.

Mr. Shearman—One moment, Mr. Baxter. Were you present on this excursion when Mr. Moulton invited Mr. Beecher to come to his house after the excursion? A. I remember hearing such an invitation.

Q. Did you hear any intimation given to Mr. Beecher at that time that Mrs. Woodhull was to be at the house? A. I did not.

Mr. Shearman—That is all.

Judge Neilson—That is all, Mr. Baxter.

#### DEPOSITION OF MR. J. HAINES DRAKE.

Mr. Shearman—If your Honor please, if the other side will not object to our reading the deposition of Mr. Drake, without proof of his absence, which is well known—Mr. Drake has gone to Italy—I think I could fill up a few minutes this afternoon. What do you say to that? Mr. Drake has unquestionably left for Italy.

Judge Neilson—Well, I think they will accept your assurance that he is absent.

Mr. Shearman—I read, then, the examination conditionally of Mr. J. Haines Drake, who, being sworn, conditionally as a witness before trial, in answer to questions, says—

#### THE WOODHULL STORY "A MESS OF FABLES."

Q. What are your occupation and residence? A. Staten Island. Grain exporter.

Q. Are you in any way related to, or do you have any pecuniary interest in either of the parties to this action? A. None whatever.

Q. Are you now, and were you in the year 1872, personally acquainted with Mr. Francis D. Moulton? A. I am, and I was then.

Q. Did you, in or about the month of November, 1872, read or hear read a certain statement purporting to be made by Mrs. Victoria C. Woodhull in a paper called *Woodhull & Claflin's Weekly*, in which this defendant was charged with having had improper relation with the wife of the plaintiff? A. I did not read it all; I read enough of it to gather the purport.

Q. Did you afterward have any interview with Mr. F. D. Moulton in which the subject of that statement was talked of between you? A. Yes, Sir.

Q. When and where, as nearly as you can state? A. Within two or three days, I think, after the issuance of *Woodhull and Claflin's Weekly* containing that statement, and on the New York Produce Exchange, beside the desk at the north end of the corn counter.

Q. State what took place between you in reference to this subject? A. I asked Mr. Moulton in words about as follows, I think I can use the precise words: "Mr. Moulton, what about this Woodhull and Claflin scandal?" He responded in rather an incensed manner, "It is a damned mess of women's fables." (I think he said "old women's," but I am not sure) to which I responded: "It would take a deal of such testimony to convince me that Henry Ward Beecher is criminally guilty." Mr. Moulton then hurriedly said he was interrupted by some one come up at the close of the remark, "As to the criminality, it hasn't a shadow of truth, and if Mr. Beecher's career is not sufficient refutation to slander from such a source, you don't deserve to have your mind satisfied."

#### CROSS-EXAMINATION OF MR. DRAKE.

Q. Are you an intimate friend or confidant of Mr. Beecher, the defendant? A. I do not know him, Sir, except by sight.

Q. Are you the intimate friend or confidant of Mr. Moulton? A. No; I have known him, however, for a long time.

Q. For how long? A. For five or six years from now.

Q. At this time you knew him for two years? A. I had known him three to four years.

Q. Had he ever made you a confidant in any matter? A. Not in anything except business matters.

Q. Were you the intimate friend or confidant of the plaintiff? A. I don't know him, Sir.

Q. Who broached the subject of this interview, in reference to Woodhull's statement? A. I did.

Q. Was there anybody present beside you and Mr. Moulton? A. Not at the early part. We were interrupted at the close, I think, by Mr. W. B. Barber. But I am not positive.

Q. Did his interruption terminate this interview, or was it carried on afterwards? A. It terminated it.

Q. In what respect did Mr. Moulton make you a confidant? A. Only in business transactions, between each other, naming to me private rates of storage; I did not think it was any display of confidence.

Q. Is that what you refer to as being a confidant in business matter? A. That is all.

Q. Did your intimacy with Mr. Moulton extend to your visiting his family, or he visiting your family, or was it a business acquaintance? A. Merely a business acquaintance; I never visited his family, and he never visited mine.

Q. Can you say what caused Mr. Moulton's indignation, of your own knowledge? A. I cannot say, of my personal knowledge.

Q. Can you say, of your own knowledge, that this indignation was not caused by Mr. Moulton taking offense at being questioned at all? A. He did not tell me that he was incensed, nor why he was incensed.

[Signed]

JAMES HAINES DRAKE.

Sworn to before me this 4th day of January, 1875.

A. McCUE,

Judge of the City Court of Brooklyn.

Mr. Shearman—It is not worth while, I should think, your Honor, to call another witness.

The Court thereupon adjourned until 11 o'clock Tuesday morning.

## FORTY-FIFTH DAY'S PROCEEDINGS.

## EIGHT WITNESSES IN ONE DAY.

REUBEN W. ROPES, ABNER H. DAVIS, EDWARD A. BIDEN, WILLIAM B. BARBER, AND CHARLES H. CADWELL SWEAR TO MR. MOULTON'S DENIAL OF THE WOODHULL STORY ABOUT MR. BEECHER AND MRS. TILTON—THOMAS N. COOK OF DETROIT TESTIFIES TO INTERVIEWS WITH MR. TILTON AND MRS. WOODHULL IN 1871, AND TO THE LATTER'S DECLARATION THAT MR. TILTON HAD SHOWN HER ALL THE DOCUMENTS AND LETTERS IN THE CASE—THE REV. S. B. HALLIDAY DESCRIBES HIS INTERVIEWS WITH MRS. MOULTON.

TUESDAY, March 16, 1875.

The Court was opened promptly at the usual time, all the counsel being in their places before 11 o'clock. Mr. Fullerton was congratulated by Mr. Evarts and the other counsel on his recovery from his recent illness, and was cordially greeted by the jury. He appeared entirely recovered and entered upon his regular task of cross-examination with all of his usual acuteness and wit. The defendant's counsel evidently appreciated Judge Neilson's remarks of the day before concerning the slowness of the proceedings. Reckoning their morning work by the number of witnesses called, they made commendable progress, for they called no less than seven witnesses during the first hour. Of these Mr. Reuben W. Ropes, Abner H. Davis, Edward A. Biden, William B. Barber, and Charles H. Cadwell testified to declarations made to them by Francis D. Moulton, to the effect that there was no truth in *The Woodhull and Claflin's Weekly* stories concerning Mr. Beecher and Mrs. Tilton.

Mr. Shearman also called John W. Mason and questioned him in regard to like statements alleged to have been made by Mr. Moulton to him, but it appeared that Mr. Moulton had not been interrogated on this subject, and the witness was accordingly excused from testifying.

The defense then turned again to Mr. Tilton's relations with Mrs. Woodhull, and called Thomas N. Cook of Detroit, who was a journalist in this city in 1871, and who testified to several interviews which he had about that time in his journalistic capacity with Mr. Tilton and Mrs. Woodhull. On several occasions he had known of Mr. Tilton being up stairs in Mrs. Woodhull's house in the evening, and he had met him frequently at her office in Broad-st. The witness testified that Mrs. Woodhull asked him to write up the scandal story about Mr.

Beecher, and told him that Mr. Tilton had all the letters and documents on the subject. She said he had shown them to her, and would let the witness use them for the daily papers. This was soon after the Steinway Hall meeting. The witness thought that Mr. Tilton had joined in this request. They had afterward asked him to write up the matter for *Woodhull and Claflin's Weekly*. Mr. Shearman then showed the witness photographs of Mrs. Woodhull and Miss Tennie C. Claflin, which were identified. Gen. Pryor remarked that he would like to take a look. Mr. Beach suggested that perhaps the jury might like to see them, and Mr. Fullerton created some amusement by examining them long and critically through his eye-glasses and then inquiring of the witness if he knew how long Mr. Shearman had had those photographs and where he had got them.

On cross-examination the witness gave a long account of his former life and calling. It appeared that he was now engaged in "winding up" *The Detroit Union*, which had previously "wound up" several persons. Mr. Fullerton questioned the witness very closely as to what he had received for his expenses in coming from Detroit to testify. The witness regarded his journey from Detroit and his stay here as a "trip." Mr. Fullerton took a different view of it. Mr. Evarts explained: "He means the trip that he made to New-York and his stay here." "Well," retorted his opponent, "it was a 'trip' of the witness, if you had not interfered," and the inquiry on this point ended.

The next witness, Mr. John Gallagher, a livery stable-keeper, testified that in the Summer of 1871 he drove Mr. Tilton and a lady in a carriage to Coney Island, where they got out of the carriage and remained for a short time. He did not see them bathing. He had then taken them to New-York, and brought Mr. Tilton back to Brooklyn that night. There was no cross-examination of this witness.

The assistant pastor of Plymouth Church, the Rev. Samuel B. Halliday, then took the witness stand. He gave his testimony in a very deliberate and careful manner, and appeared anxious to be very accurate on every point. The questions put to him regarding the actions of the officers of Plymouth Church during the time of the Woodhull scandal were objected to, and during the argument which followed, the plaintiff's counsel insisted upon the proposition that a record was necessary to constitute a valid meeting of the

deacons and Examining Committee. Mr. Everts replied, "There is nothing in the Constitution of the Church which requires them to keep a record," to which Mr. Beach replied, "The counsel understands the Constitution of the State, and that of the United States, better than he does that of Plymouth Church." and the inquiry turned to another subject. Mr. Halliday testified to a conversation with Mrs. Francis D. Moulton, in which she had told him in answer to his question, "What does this Woodhull story mean?" "I do not know what right any one has to connect me with it," and later in the conversation she had said, "Mr. Beecher is my pastor, and has been from my childhood. I believe in him, and no one can say anything that will lessen my respect for him." Mr. Halliday had seen Mrs. Moulton at Plymouth Church several times after that conversation, and she always shook hands with Mr. Beecher when she attended. "I do not think I saw her there more than six times after that interview; it may have been not more than four times," was the cautious way in which Mr. Halliday expressed himself on this point, and it affords a very good specimen of the guarded and circumspect manner in which he gave all his testimony. Mr. Beecher's counsel then attempted again to show by Mr. Halliday other actions of the church officers tending to prove that Mr. Beecher had not suppressed investigation of the scandal. Mr. Beach argued most earnestly in opposition to this evidence, and took occasion to pay to Mr. Beecher, in his absence, the following compliment: "We do not want the doings of his underlings." Mr. Fullerton here made a gesture of remonstrance at the word. "Yes, underlings, I said" insisted Mr. Beach, turning toward Mr. Beecher's usual place, "for it is a compliment to be an underling to the greatest man on the face of the earth."

Judge Neilson finally ruled that the records of the church could be produced in court and used in evidence. But the hour for adjournment had arrived, Mr. Halliday's testimony not being completed.

## THE PROCEEDINGS—VERBATIM.

### TESTIMONY OF REUBEN W. ROPES.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Mr. Shearman, will you proceed now?

Mr. Shearman—Mr. Ropes.

Reuben W. Ropes called and sworn on behalf of the defendant.

Mr. Shearman—Where do you reside, Mr. Ropes? A. I reside in Brooklyn, 28 Remsen-st.

Q. What is your occupation? A. Merchant.

Q. What line of merchandise? A. Importing goods from South America.

Q. Where do you carry on business? A. At 73 Pearl-st., New-York.

Q. In the year 1872, were you acquainted with Francis D. Moulton? A. I was, Sir.

Q. Did you have an interview with him in the course of that year? A. I did.

Q. On the subject of this controversy? A. I did, Sir.

Q. About what time in the year? A. I think it was in the Autumn.

Q. Now, Sir, will you state where that took place, and what occurred? A. In coming over the ferry, after we had left the boat, coming up the walk over the steps, I fell in with Mr. Moulton, and I said to him, "Moulton, I want to know if there is any truth in the statement that was put forth by the Woodhull-Clafin publication, that you went to Mr. Beecher with a pistol and demanded a certain paper." He replied, "It is a damned infernal lie."

Q. What next occurred between you? A. I then said to him, "Moulton, you appear to know as much about this, and a great deal more than I do; I want to ask you another question: Is there any truth in the reports that were made in the Woodhull-Clafin publication in regard to Mr. Beecher." He replied, "They are a pack of infernal lies."

Mr. Shearman—That is all.

Mr. Fullerton—Nothing.

Judge Neilson—That is all, Mr. Ropes.

Mr. Shearman—A. H. Davis.

Judge Neilson—Will gentlemen please keep quiet.

### TESTIMONY OF ABNER H. DAVIS.

Abner H. Davis called and sworn on behalf of the defendant.

Mr. Shearman—Mr. Davis, where do you reside? A. I reside at 356 Henry-st.

Q. Brooklyn? A. Brooklyn.

Q. Where do you carry on business? A. 46 South-st., New-York.

Q. What is the nature of your business? A. A general commission business.

Q. What is the name of your firm? A. Barling & Davis.

Q. How long have you been in partnership? A. Ten years.

Q. How long have you carried on this business? A. Ten years.

Q. How long have you been in mercantile business yourself, irrespective of your partners? A. Do you mean in business for myself, or since I first embarked with other people?

Q. Well, in business for yourself? A. Ten years.

Q. And how long have you been in business for other people—altogether? A. Since 1844, but not for myself.

Q. Were you since 1844 in the City of New-York? A. No, Sir; other places; in New-Bedford, Mass., prior to my coming to New-York.

Q. How long were you in business in New-Bedford? A. From 1844 to 1863 or 1863—1863 or 1863.

Q. Do you remember the period of the publication of what is commonly called the Woodhull and Claflin scandal? A. Very near it.

Q. That was in the Fall of 1873, was it not? A. 1873—1873. I beg your pardon; the Fall of 1873, in November, I think it was.

Q. A little before the Presidential election? A. Yes, Sir; about that time, as near as I can recollect now, without referring to any minutes.

Q. Were you then acquainted with Mr. Francis D. Moulton? A. I was.

Q. Were you in the habit of meeting him in business places? A. Yes, Sir.

Q. In what connection were you accustomed to see him? A. My acquaintance was formed with him when he used to do business with William T. Coleman & Co., with whom I was clerk. He used to be in there to arrange business. There is where my first acquaintance was made, and then occasionally they had business—William T. Coleman & Co.—with his firm, and I was sent down to Woodruff & Robinson's, and I occasionally met with him there and had various conversations on my business, whatever it was.

Q. Well, did you meet Mr. Moulton and converse with him on the subject of this scandal some time after the publication? A. I did.

Q. About what time? A. In November.

Q. 1873? A. 1873.

Q. Where did that interview take place? A. At the foot of the Custom-house steps in New-York, it commenced.

Q. Now, will you state what passed between you on that occasion? A. I will. I met Mr. Moulton, and I says to him—shall I repeat my own words?

Q. Yes, Sir. A. And his?

Q. And his. A. Well, I met Mr. Moulton, and I said: "For God's sake, Mr. Moulton, what does this mean, this report that is reported in this Woodhull-Claflin paper? I understand that your name is mixed up with it. Is there a word of truth in it in relation to Mr. Beecher?" His answer was: "There is not a word of truth in it; and I think it is a pity that if Mr. Beecher has lived here as long as he has, and the people don't know any better than to believe such a mass of stuff as that." That is everything I know about the matter. That is all that was said touching the matter.

Q. What was Mr. Moulton's manner in making this statement—careless and indifferent? A. It seemed to be an indignant, a reserved indignant and sarcastic answer, that he made to me. He seemed to think—

Mr. Fullerton—No, not what he seemed to think.

Mr. Shearman—That is all.

Mr. Beach—No questions, Sir.

Mr. Fullerton—Nothing at all.

Judge Neilson—That is all.

Mr. Shearman—John W. Mason.

#### TESTIMONY OF MR. JOHN W. MASON.

John W. Mason called and affirmed on the part of the defendant.

Mr. Shearman—Mr. Mason where do you reside? A. 140 Hicks-st., Brooklyn.

Q. How long have you resided in Brooklyn? A. 30 years and more.

Q. What is your occupation? A. Shipping and general commission business.

Q. Where do you carry on that business? A. 130 Duane-st. and 43 Broadway; also in the coal business.

Q. What is the name of your firm? A. Samuel Thompson's Nephew & Co. and John W. Mason & Co.

Q. In New-York? A. In New-York.

Q. How long have you carried on this business? A. 25 or 30 years.

Q. Have you been acquainted with Mr. Francis D. Moulton for some time? A. I have.

Q. How long have you known him? A. I suppose for 10 or 15 years.

Q. Were you well acquainted with his firm, his partners, Woodruff and Robinson? Yes, Sir.

Q. How long have you known them? A. Ever since they have been in business.

Q. You remember the time of the publication of what is called the Woodhull and Claflin scandal, do you not? A. I do.

Q. Did you have any conversation with Mr. Moulton after that publication upon that subject? A. I did.

Q. When did that conversation occur, and where? A. I should think within a month of the time of its publication, on the floor of the Produce Exchange.

Q. Well, Sir, will you state what that conversation was?

Mr. Fullerton—We object to that now, Sir. Although we admit that Mr. Moulton didn't deny the truth of the Woodhull scandal—

Mr. Beach—Did deny.

Mr. Fullerton—Did deny the Woodhull scandal, yet we want to see where they called his attention to it now in the evidence. It is hardly worth while to spend time on it, any way.

Mr. Evarts—You mean upon our part.

Mr. Beach—Upon anybody's part.

Mr. Evarts—That is your judgment.

Mr. Fullerton—It is our judgment that we go by.

Mr. Beach—If your Honor please, I feel a draught of air across here rather too fresh and strong.

Judge Neilson—Officer, close the window. [To Mr. Shearman.] The index of the bound book ought to help you.

Mr. Shearman—I do not think the index amounts to much.

Mr. Fullerton—I do not think it is in the book at all, and therefore it could not be indexed.

Mr. Shearman—[After searching for it.] Well, we are not able to find that Mr. Mason's name was specially mentioned; I thought it was, but on their own direct examination we find that they took the pains to draw out the fact that Mr. Moulton made these statements to a great many persons—altogether some hundreds.



Mr. Beach—Do they propose to contradict that now?

Mr. Shearman—Not at all; perhaps to confirm it.

Mr. Morris—We admit it is true.

Mr. Fullerton—You need not confirm anything that our witnesses have said.

Mr. Morris—Oh! no.

Mr. Shearman—I thought he was named; it appears that he is not specially named. If they object—

Mr. Beach—We proved a hundred and they want to prove a hundred and one.

Judge Nellson—[To the witness.] The reason why your statement is not taken is simply because Mr. Moulton had not been interrogated in respect to it.

Mr. Shearman—We will excuse you, Mr. Mason; sorry to have troubled you.

#### TESTIMONY OF MR. EDWARD BIDEN.

Edward Biden, called on behalf of the defendant and sworn.

Mr. Shearman—Mr. Biden, where do you reside? A. 112 Willow-st., in Brooklyn.

Q. What is your occupation? A. I am engaged in the storage of grain, in Brooklyn.

Q. Where is your place of business? A. 17 South-st., New-York.

Q. How long have you been engaged in business? A. About 15 years.

Q. Do you remember the period of the publication of what is known as the Woodhull and Claflin scandal? A. I do.

Q. That was in—it was about the first of November, 1873, wasn't it? A. About that time.

Q. Were you at that time acquainted with Mr. Francis D. Moulton? A. I was, Sir.

Q. How long had you known him? A. Known him—oh! I had ten years, probably.

Q. Did you meet him after this publication and have any conversation with him on that subject? A. I did twice.

Q. When and where, as nearly as you can? A. First time was a few days after the publication; I cannot say how many days; a day or two.

Q. And where? A. On the floor of the Produce Exchange.

Q. Now, will you state what took place between you in regard to that subject at the time?

Mr. Fullerton—We object to that, Sir.

Mr. Shearman—On what ground, Mr. Fullerton?

Mr. Fullerton—On the ground that that is not the way to interrogate him as to that conversation, if any took place; he is not at liberty to state what took place between himself and Mr. Moulton.

Mr. Shearman—It seems to me that, Sir, is the proper way of asking the question, unless I make it leading, put words in his mouth.

Mr. Fullerton—Well, you don't get your knowledge from the law books.

Mr. Beach—It is one of the cases, Sir, in which a leading question is permissible and proper.

Mr. Fullerton—And necessary.

Mr. Shearman—I don't suppose we are obliged to prove literally, word for word.

Judge Nellson—No; you call his attention distinctly to the very point, and ask him what was said on that subject—

Mr. Shearman—The point is, whether anything was said by Mr. Moulton and you on that subject of the truth or falsehood of this Woodhull scandal as affecting Mr. Beecher.

Mr. Fullerton—No, Sir; that is not it—that is objected to—

Mr. Shearman—I refer it to the Court.

Judge Nellson—Yes; we will take it.

Mr. Fullerton—He must use the language incorporated in the question put to Mr. Moulton.

Judge Nellson—He must show his attention was called to a specific statement.

Mr. Fullerton—It is used on page 283; the question was put to Mr. Moulton, "Did you say to him" [referring to the witness] "it is false; there is not a word of truth in it as far as Mr. Beecher is concerned?" "A. I don't recollect that I used those words to him now, Sir."

Mr. Shearman—Well, one moment; the question next: "Did you use anything in substance like that?" Question next: "Did you say it was untrue as far as Mr. Beecher was concerned?" "Did you say that there was not a word of truth in that?" "Did you use any such language to him in substance?" Judge Nellson—Well, interrogate him in those forms, Mr. Shearman.

Mr. Shearman—Did Mr. Moulton speak to you on the subject of this scandal at that time? A. I spoke to him first, Sir.

Q. And did he answer you? A. He did.

Q. Did he speak to you at any length about it? A. No; not at any length.

Q. Did he avoid talking with you about it?

Mr. Fullerton—One moment; I object to that.

Judge Nellson—Oh, yes.

Mr. Shearman—I am taking Mr. Moulton's answers—I am proposing to take Moulton's precise answer. Mr. Moulton says that he avoided talking about it—did Mr. Moulton avoid talking with you about it? A. I asked Mr. Moulton a question—a distinct question; that was the way it was brought about.

Q. Well, what was that question? A. That question was, whether in this Woodhull and Claflin story, so far as Mr. Beecher was concerned, there was any truth in it.

Q. What was Mr. Moulton's answer? A. Mr. Moulton's answer the first time was: "Mr. Biden, I am as good a friend of Mr. Beecher as you are;" that I remember distinctly; he then went on to say that he was with Mr. Beecher a good deal, or had seen him a good deal lately, and I think he said that he was with him the night previous for an hour, and that when a proper time came—or, at a proper time, he was ready to answer that question, or ready to speak—somewhat to that purpose—and that is all I remember of that first interview.

Q. When did the second interview occur? A. The second interview occurred a week or ten days afterwards.

Q. Where was that? A. That was in the street; I met Mr. Moulton very suddenly, well, unexpectedly, I didn't meet him—I didn't seek him, and I very quickly again asked him—repeated the same question whether there was any truth in this

story, and he then emphatically—I cannot use precisely the words—said that it was false, it was all false, or somewhat to that purpose—at any rate it satisfied me. I thanked him and said I was glad to hear it, and left. I guess that is about all that passed between us.

Q. That is all that you can recollect? A. That is all that I can recollect.

Q. Didn't he say in substance, "It is false; there is not a word of truth in it so far as Mr. Beecher is concerned?" A. Well, I could not say that distinctly—he used the word "false," and was very emphatic in denying the truth of it, that was the impression left on my mind.

Q. That is all? A. I told him that I was happy to hear it, and thanked him, and left.

Mr. Shearman—That is all.

Mr. Fullerton—Did he say in substance, "If the story is true it was infamous to tell it?" A. Not a word; I don't remember that.

Mr. Fullerton—Don't remember. Well, I don't care to ask you anything.

#### TESTIMONY OF WILLIAM B. BARBER.

William B. Barber was then called on behalf of the defendant, sworn, and examined as follows:

Mr. Morris—What page, Mr. Shearman?

Mr. Shearman—Page 283.

Mr. Shearman—Mr. Barber, where do you reside? A. 233 Clermont avenue, Brooklyn.

Q. How long have you lived in Brooklyn? A. Since 1863.

Q. What is your business? A. Operator in grain mainly.

Q. Where is your office? A. I hold my office now at 19 South-st., in the office of Jesse Hoyt & Co.

Q. How long have you been in business in New-York? A. Since 1852.

Q. Do you remember the publication of the Woodhull and Claflin scandal? A. Yes, Sir.

Q. Do you remember that that was just before the 1st of November, 1872, or thereabouts? A. About the Fall of 1872; I don't remember what—

Q. Were you at that time acquainted with Mr. Francis D. Moulton? A. Yes, Sir.

Q. How long had you known him? A. I think since about the time he first went with Woodruff & Robinson; if my memory serves me right, since he was a kind of a stripling.

Q. Did you meet Mr. Moulton shortly after the publication of that paper? A. I did.

Q. Did you have a conversation with him on the subject of that scandal? A. I did.

Q. Where did that take place? A. Produce Exchange.

Q. Now, will you relate that conversation?

Mr. Fullerton—That is objected to.

Mr. Shearman—Very well; I will ask a question. [To the witness:] Did you ask Mr. Moulton whether that statement was true, or anything to that effect? A. Yes, Sir; that is. I asked him if there was any truth in the statement?

Q. Did you ask whether it was true in respect to Mr. Beecher? A. Yes, Sir.

Q. What was your answer?

Mr. Fullerton—No; I object to that.

Mr. Shearman—Very well; did he answer then? A. He did.

Q. Substantially in this form: "There is not a particle of truth in the statement as it relates to Mr. Beecher," or anything to that effect? A. His answer was in very emphatic—

Mr. Fullerton—Well, one moment; you must answer the question.

Judge Neilson—Repeat the question.

Mr. Fullerton—He will say, yes or no, to that question.

Judge Neilson—I ask Mr. Shearman to repeat the question.

Mr. Shearman—Did he answer in substance as follows: "There is not a particle of truth in that statement as against Mr. Beecher?" A. He did.

Q. Now will you give his words as nearly as you can remember them?

Mr. Fullerton—That is objected to, Sir.

Mr. Shearman—I take it, your Honor, we have a right—

Judge Neilson—I think he can do that—his words on that point.

Mr. Shearman—His words on that point.

Mr. Fullerton—If your Honor please, you will see that this would be doing injustice to the witness, Mr. Moulton. The question was this:

Did you say to him, speaking of the Woodhull publication, there is not a particle of truth in the statement as against Mr. Beecher? A. No, Sir; I did not say that to him; I recollect what I did say.

Now, they put the very words in the mouth of the witness in which he was to answer; and whilst he denied having used those words, yet he offered to say what he did—what words he did use in speaking with Mr. Barber—

Mr. Beach—That they rejected.

Mr. Fullerton—That was rejected.

Mr. Shearman—Counsel on the other side stopped him.

Mr. Fullerton—No, Sir.

Mr. Shearman—I read, now: "Mr. Fullerton—No, they don't want you to tell that." We did not say anything.

Mr. Fullerton—Well, I spoke for you, in your silence. [Laughter.] When a man is silent, somebody must speak for him.

Mr. Shearman—Well, there is a precedent for that.

Mr. Fullerton—Well, I just heard the reply. Now, if your Honor please, the question was, whether Mr. Moulton used those precise words: his answer was, "No; not those words, but I will tell you what I did say." Now, they are not at liberty to show any other words proceeding from Mr. Moulton upon that occasion.

Judge Neilson—Did they not ask him also whether he did not say Mr. Beecher was a pure man?

Mr. Fullerton—How, Sir?

Judge Neilson—Did they not ask him also whether he did not say Mr. Beecher was a pure man in that connection?

Mr. Fullerton—Yes, Sir; that is another question they may put if they choose.

Judge Neilson—Go on, Mr. Shearman; put your question with reference to what you asked him.

Mr. Shearman—First, I will ask, did Mr. Moulton then say that "Mr. Beecher is as pure a man as ever lived," or words to that effect? A. Words that would cover that; the substance of that question he stated.

Q. Well, now, I ask what he did say concerning the substance of that question?

Mr. Fullerton—I object to that.

Judge Neilson—You may say this: In saying this, what words did he use? In saying that, what words did he use?

Mr. Fullerton—When the question was put to Mr. Moulton, his answer was: "No, Sir; I did not add that—shall I tell you what I said to him? I can give you that conversation." Then my reply was: "No, they don't want you to tell that." The witness says, "Can I not tell, your Honor, what was said?" Judge Neilson—"By-and-bye you will get a chance—" That was the close of the examination on that point.

Judge Neilson—Then he was cross-examined and did not get the chance.

Mr. Fullerton—How, Sir?

Judge Neilson—Then he was cross-examined, and did not get the chance.

Mr. Fullerton—Why, your Honor supposed he would get the chance, but they didn't give it to him.

Mr. Evarts—No; I suppose your Honor supposed the plaintiff would give it; but they did not want to give him the chance.

Mr. Fullerton—Well, I suppose your supposition is wrong.

Judge Neilson—You recognize the propriety of keeping pretty close to the questions which were asked?

Mr. Evarts—No doubt. We will be as brief as possible; when he answers, covering that, we have a right to see what words he used.

Mr. Fullerton—Your Honor will perceive that in giving the conversation between the witness and Mr. Moulton, which Mr. Moulton was willing to give himself, but did not give, they will claim, "Why he is contradicted," when it is no contradiction at all.

Judge Neilson—Well, we have a general answer from Mr. Barber.

Mr. Fullerton—Certainly, covering the ground.

Judge Neilson—That he made a statement to that effect?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Now, may they not ask what words he used in making a statement to that effect?

Mr. Fullerton—No, Sir; because *non constat*, but that if Mr. Moulton had been permitted to give the conversation, he would have related it as the witness will relate it, and probably in the very words that the witness may employ in giving the substance of it; therefore, it is no contradiction.

Mr. Evarts—Well, that would be justice, though tardy justice to Mr. Moulton; I don't see any objection to that.

Mr. Fullerton—Simply because you did not permit Mr. Moulton to give the conversation, and learn from him what it was. Then you determined whether what the witness was about to say was a contradiction or not.

Judge Neilson—Well, Mr. Shearman, you have two vital things.

Mr. Evarts—But if your Honor please, the witness on this last examination has said "yes" to what would cover the substance of that question. Now, we have a right to ask on our direct examination of this witness, what the language used was.

Judge Neilson—Well, my impression is that he can give the words which he supposes cover that—that very point, Mr. Barber.

Mr. Evarts—I think so.

Mr. Shearman—Now, give those words, Mr. Barber? A. He said that Mr. Beecher was entirely innocent, and that if his life record was not an answer to such charges, nothing further that he could say to me would cover the case; that is about the words that he used.

Judge Neilson—And that is what you regard as equivalent to saying that he was a pure man? A. Yes, Sir.

Mr. Fullerton—I am sorry I objected.

Judge Neilson—That is all.

Mr. Shearman—That is all.

#### TESTIMONY OF CHARLES CADWELL.

Charles H. Cadwell was then called on behalf of the defendant.

Mr. Beach—I submit to your Honor, that upon a subject of this character it is not permissible to allow cumulative evidence. In the first place, Mr. Moulton has not denied using the language which was imputed to him by the questions put upon the other side, and the state of the case is this: that while Mr. Moulton concedes, with explanatory circumstances, that he used the language which is imputed to him, they are now producing a number of witnesses for the purpose of establishing a fact which upon our side is conceded, and which was proved by the witness they seek to contradict; and, instead of a contradiction, they are producing cumulative evidence to prove the very fact which Mr. Moulton himself asserted in his evidence. I have never known such a course pursued, Sir, and I submit to your Honor that it is improper to present additional evidence upon that point. If they wish to go to a reasonable extent in producing witnesses to confirm the statement of Mr. Moulton, why of course we make no objection;—it is a matter within the discretion of your Honor. But it is a useless waste of time, I submit to your Honor, to produce a number of witnesses upon a point of that character.

Judge Neilson—I think it must be received, assuming that the learned counsel will limit the number, if he can properly do so.

Mr. Shearman—All I will say in reply to that, if your Honor please, it is rather an unfortunate incident.

Charles H. Cadwell was then sworn, and testified as follows:

Mr. Shearman—Where do you reside? A. City of New-York.

Q. In what business are you engaged? A. Provision broker.

Q. Where do you carry on business? A. 115 Broad-st.

Q. New-York? A. New-York; yes, Sir.

Q. What is your firm? A. No firm; I am alone, Sir.

Q. How long have you been engaged in business? A. In this business about seven years.

Q. Do you remember the publication of the Woodhull and Claflin scandal? A. Yes, Sir.

Q. Do you remember about what time that was published?

A. Yes, Sir; some time either October or November, 1872.

Q. Were you at that time acquainted with Mr. Francis D. Moulton? A. Yes, Sir.

Q. Did you meet him anywhere after the publication of that scandal, and have a conversation with him on that subject? A. Yes, Sir; I met him during—on about the 25th of November, 1872, in Boston.

Q. A little louder, please? A. About the 25th of November, 1872, in Boston.

Q. Who introduced the conversation on that subject? A. I did.

Q. Did you ask him whether there was any truth in that publication, or statement? A. I did, Sir.

Q. Or anything of that kind? A. I did, Sir.

Q. State in what language you asked him?

Mr. Fullerton—Just one moment.

Q. As near as you can recollect?

Mr. Fullerton—You can answer that question.

Q. Have I covered your language? A. Yes, Sir.

Q. What answer did Mr. Moulton make?

Mr. Fullerton—That is objected to, Sir.

Mr. Shearman—We have asked the question whether the witness—the witness says he asked Mr. Moulton whether there was any truth in those remarks against Mr. Beecher. The question we put to Mr. Moulton was “Did you say to Mr. Caldwell that there was no truth in any of the rumors respecting Mr. Beecher?”

Judge Neilson—He has answered there was no truth.

Mr. Shearman—[To the witness]: What did Mr. Moulton say in reply to that question? A. In words, “There is no truth in it.”

Q. Did Mr. Moulton say to you anything like this, that if Mr. Beecher should the next day tell Plymouth Church all the facts pertaining to his life, there would not be a single person in it who could impute a single blemish to the purity of their pastor? A. No, Sir; not in that language.

Q. Well, then, state the language in which he did express himself?

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—I think he has gone far enough with that. You have covered the question put to him.

Mr. Shearman—What did he say to that effect, if anything to that effect?

Mr. Fullerton—No, Sir; they chose to put language in Mr. Moulton's mouth.

Mr. Shearman—We asked him in substance.

Mr. Fullerton—No, Sir.

Mr. Shearman—We asked Mr. Moulton whether it was said in substance.

Mr. Fullerton—No, Sir.

Judge Neilson—Put the question in the very form you have before.

Mr. Beach—He has put it, and the witness answered “No.”

Mr. Shearman—Not in those words. Now I ask in what words he spoke, if he spoke at all to that effect.

Mr. Fullerton—Now, Mr. Moulton's answer is, “I don't recollect having used that language.”

Mr. Shearman—The next question: “Did you use anything in substance like that?” A. I don't recollect any conversation with Mr. Cadwell at all on the subject.”

Judge Neilson—Very well; if he don't recollect, I think this witness can give it.

Mr. Shearman—Go on; what was said? A. We breakfasted in Boston, I think, on the morning of the 25th of November, at the American House, and either at the breakfast table or on our way to the main depot (Mr. Moulton was going to Portland), I asked Mr. Moulton: “You seem to be mixed up in this matter; is there any truth in this statement?” He said: “That is all a damned lie; Mr. Beecher's relations to Mrs. Tilton are no different from mine.”

Q. “Mr. Beecher's relation to Mrs. Tilton are” what? A. “No different to mine,”

Q. “No different to mine?” A. “No different to mine,” or language to about that effect.

Q. Is that all that was said? A. That is all, Sir.

Mr. Fullerton—One moment; that question was not put to Mr. Moulton at all, Sir—nothing like it. That is all: I have nothing to ask.

Judge Neilson—That is all, Mr. Cadwell.

#### TESTIMONY OF MR. THOMAS M. COOK.

Thomas M. Cook called, and sworn on behalf of the defendant.

Mr. Shearman—Mr. Cook, where do you reside? A. At present I reside in Detroit, Mich.

Q. What is your occupation? A. Journalist.

Q. How long have you been engaged in journalism? A. From fifteen to twenty years.

Mr. Evarts—[To the Jury.] Do you hear him?

A Juryman—Not very well.

Mr. Shearman—Speak as plainly as you can. A. From fifteen to twenty years.

Q. In the year 1871 how were you engaged? A. I was connected with *The New-York Sun*.

Q. Were you during that year acquainted with Theodore Tilton? A. I think I became acquainted with him that year—during that year.

Q. About what time in the year? A. In the Spring or early Summer; I cannot fix the time.

Q. Did you, during that year, become acquainted with Mrs. Woodhull and her sister, Miss Claflin? A. I did.

Q. About what time did you form their acquaintance? A. A very short time before I had formed Mr. Tilton's acquaintance.

Q. Will you state the circumstances briefly under which you formed the acquaintance of Mrs. Woodhull and Miss Claflin?

Mr. Beach—Well, that is objected to, Sir, unless Mr. Tilton was connected with it.

Mr. Shearman—We don't propose anything except to show the mode in which the witness became acquainted, and I think it is due to the gentleman himself to give a brief explanation.

Mr. Beach—I object to it; that is all totally disconnected with Mr. Tilton.

Judge Neilson—Well, he became acquainted; that is the vital thing; now go on.

Mr. Shearman—What acquaintance had you with them, and how was it formed?

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—I don't see the materiality of that.

Mr. Everts—The degree of the acquaintance, if your Honor please, we have a right to show as the basis of what followed as substantive testimony—how long it continued and where it was, whether it was down on Broad-st., or whether it was up in their residence.

Mr. Beach—I think we are not to be led into an issue as to the manner in which this gentleman formed an acquaintance with Mrs. Woodhull, Sir.

Judge Neilson—It is merely introductory to something else, perhaps.

Mr. Beach—Well, perhaps it may not hurt us, and perhaps it may.

Mr. Fullerton—They can ask how long he was acquainted with her without asking the circumstances connected with the acquaintance.

Mr. Shearman—We want to show the extent of this gentleman's acquaintance.

Judge Neilson—Go on.

Mr. Shearman—Answer that question.

Mr. Beach—Does your Honor allow that, Sir?

Judge Neilson—Yes, I think we will take it; see what it is.

Mr. Beach—[To the witness, who was holding a paper in his hand.] What are you referring to?

The Witness—Little memoranda that I have made of dates—of that date—of the date when I became acquainted with this—with Mrs. Moulton.

Mr. Shearman—With Mrs. Woodhull? A. Mrs. Woodhull.

Q. Now, state the date, and what your acquaintance was, and how it was formed? A. On the evening of the 8th of June I was sent to their residence in Thirty-eighth-st. to make inquiries in regard to the brother—the death of their brother-in-law, one Dr. Sparr; I then introduced myself to them.

Q. And what was the nature of your acquaintance with them; was it for business purposes? A. Professional—interviewing them, if you please.

Q. In pursuit of your business as a journalist? A. Yes, Sir; for the newspaper.

Q. And under the direction of your employers? A. Under the direction of my employers.

THE INTIMACY BETWEEN MR. TILTON AND THE WOODHULLS.

Q. Did you visit them frequently during the next few months? A. I did, Sir.

Q. Where? A. Both at their residence and at their office.

Q. Where was their office? A. Their office, I think, was 44 Broad-st.

Q. New-York City? A. New-York City.

Q. And their residence was where? A. I cannot give the number; it was in Thirty-eighth-st., in New-York City.

Q. Where did you make Mr. Tilton's acquaintance, and when? A. I never knew Mrs. Tilton.

Q. No; Mr. Tilton? A. I became acquainted with him—I was first introduced to him by Mrs. Woodhull, at their office in Broad-st.

Q. State what passed between you and Mr. Tilton on that occasion? A. On that morning an interview with the Woodhull had—with Mrs. Woodhull—had appeared in *The Sun*.

Mr. Beach—Wait a moment.

Mr. Shearman—This is a mere incident of the narration of the conversation.

Mr. Beach—Well, he can state the conversation.

Judge Neilson—What passed between you and Mr. Tilton? A. In regard—we were talking of that interview when Mr. Tilton came into the office, and Mrs. Woodhull introduced him to me, and he also expressed—made some expressions in regard to that interview.

Mr. Shearman—To the published interview? A. To the published interview of that morning.

Q. Did you then, or soon after, have a conversation with Mr. Tilton, in which he spoke of the character of Mrs. Woodhull? A. I did have such a conversation with him, but I cannot say how soon after that; it was not a long while.

Q. Well, state what Mr. Tilton said on that subject. A. He spoke very highly of Mrs. Woodhull, rather eulogistic; I don't know whether he introduced the subject or I; I was feeling my way and very possibly he was feeling his way to a mutual understanding of her, what she was. He pronounced her, in his opinion, a most remarkable woman; I think he said a very superior woman, a woman that was greatly misunderstood; I think he said she was a very spirituelle woman; I cannot recall all the expressions.

Q. Did he say anything about her purity? A. I don't think he did, I don't think that—I don't recall that at this moment.

Q. Where was this conversation? This conversation—I won't say where it was—either in the Broad-st. office or walking from there up street.

Q. During that season, did you frequently visit Mrs. Woodhull's house or office, and meet Mr. Tilton there at this place?

Mr. Fullerton—I object to that as a leading question.

Mr. Shearman—Well, we will withdraw that—not waste time.

Mr. Fullerton—Well, you are wasting it.

Mr. Shearman—Did you meet Mr. Tilton frequently during that Summer and Fall of 1871? A. Yes, Sir.

Q. Where did you meet him? A. I met him at the residence of Mrs. Woodhull, and at her office, and elsewhere.

Q. How often in a week do you think that, during that Summer, you went to Mrs. Woodhull's house in Thirty-eighth-st.?  
A. Well, from two to three times a week.

Q. Did you usually go in the day-time or in the evening? A. Usually in the evening.

Q. How often do you think you met Mr. Tilton there on these occasions? A. I did not usually meet him—not perhaps more than once in a half or a dozen times when I was there.

Q. Did you frequently take lunch with Mrs. Woodhull in Broad-st.? A. Yes, Sir.

Mr. Morris—One moment; what has that got to do with this case?

Mr. Shearman—We will see in a moment [To the witness.] Did you meet Mr. Tilton there on any of those occasions? A. Yes, Sir.

Q. Well, how often, compared with the number of occasions on which you took lunch with her, did he join?

Mr. Morris—Now, we object. What has that to do with this case, any branch of it? Does it tend to prove or disprove the charge of adultery? Or is it competent evidence upon the question of damages either? What earthly bearing has this upon the case, and all this testimony, what has it to do with the case? Mr. Tilton's opinion of this Woodhull—what has that to do with this case? What does that tend to prove? Certainly not the guilt or innocence of Mr. Beecher, nor is it of any weight whatever upon the question of damages. It is a mere waste of time, all this testimony of that character, the whole of it. Is there any evidence in this case, or any fact in this case, that makes his opinion of any more importance in reference to Mrs. Woodhull than in reference to any other lady in the land? What evidence is there in this case that makes his opinion of Mrs. Woodhull of any importance whatever? I submit there is not a particle, that it has no bearing whatever upon the question of damages, and certainly does not tend to prove or disprove the charge made against Mr. Beecher. How is it important? What earthly bearing has it upon either question in this case? I cannot see any connection. I would like to have it pointed out if there is any applicability whatever to this evidence.

Judge Neilson—I assume you will be brief, Mr. Shearman, and in that way you may go on. I am not competent, now, to pass upon the exact question presented.

Mr. Shearman—You will please answer that question as to how often you met Mr. Tilton at lunch with these ladies at their office.

Mr. Morris—Does your Honor hold that material?

Judge Neilson—Well, I cannot say; I am not competent, I say, to pass upon it now.

Mr. Shearman—Answer the question.

The Witness—I think he was quite generally there at lunch.

Q. During how long a period did this extend—these lunches?  
A. During the entire of that Summer.

Q. Now, when you visited the residence of Mrs. Woodhull, where were you in the habit of spending your time? A. In the parlor.

Q. Were you, or were you not, in the habit of going up-stairs? A. I think I never was up-stairs but once.

Mr. Morris—Does your Honor hold that a proper question, proper evidence, in this case?

Judge Neilson—Oh, I think we will take this general evidence to see what it is. I don't see, as yet, that it amounts to anything.

Q. Did you ever see or hear Mr. Tilton up-stairs in that house when you were below? A. Yes, Sir.

Q. Did that happen more than once? A. I remember, several occasions, his speaking to me from up-stairs.

Q. What did he say, on these occasions, from up-stairs? A. I recall one occasion when he called to me from above and asked me to wait; that he would go with me.

Q. About what time of the day was that? A. That was rather late in the evening, possibly nearly midnight; on another occasion, I remember his calling to me and saying, "Don't go yet, I want to see you," or some similar expression; I don't know exactly; cannot repeat the words.

Q. What time of the night was that? A. Late in the evening.

Q. Was it past midnight, or near midnight? A. In the vicinity of midnight, I should think.

Q. Did Mr. Tilton and you leave the house together on any occasions after these calls? A. I cannot say, not in reference to these particular calls; we did leave the house on several occasions together.

Q. On these occasions, when he called to you from the head of the stairs to wait and he would go with you, did he then accompany you? A. I cannot answer as to that particular occasion.

Q. Do you remember whether you waited for him or not, on these occasions? A. No, Sir; I do not.

Q. Do you remember, on any occasions, waiting for him until midnight or later, and then going over to Brooklyn together? A. I remember coming over to Brooklyn with him; and, undoubtedly, must have waited for him.

Q. Do you recollect any other occasions on which, before you were much acquainted with him, or at all, you and he went together to Brooklyn from the house, having left the house accidentally about the same time, but not recognizing him?

Mr. Fullerton—Now, I think this thing is being carried too far. They are not only leading questions, but there are half a dozen of them incorporated in one.

Mr. Shearman—I was trying to save time.

Mr. Fullerton—Well, you are very unfortunate in it.

Mr. Shearman—Well, we have not lost near as much time as the other side. [To the witness.] I ask you, then, whether you recollect any occasions on which you went with Mr. Tilton without your recognizing—that is, without your speaking to each other—from Mrs. Woodhull's house to Brooklyn? A. I remember two occasions before I was introduced to him, when we traveled to Brooklyn together; I cannot say that we traveled all the way from the house together.

Q. But he had been in the house?

Mr. Fullerton—How do you know?

The Witness—I had reason to know that he had been in the house.

Mr. Shearman—Had you both been in the house? A. It had been understood that he was in the house; I had not seen him in the house, possibly, that I can't say—

Mr. Beach—I move to strike out that answer.

Mr. Shearman—Well, how did you learn that he was in the house? A. It had been a matter of conversation that he was in the house; that is all I know of his being there.

Mr. Beach—Will you be kind enough to wait a moment; I move to strike out that answer, that it had been understood that he had been in the house.

Mr. Evarts—If it didn't come from Mr. Tilton, it is not proper evidence.

Judge Neilson—Yes; it does not yet appear that it came from him; with that view it is stricken out.

#### FAMILIARITIES BETWEEN MR. TILTON AND MRS. WOODHULL.

Q. Do you recollect seeing Mr. Tilton at the house on any occasion or occasions when you left the house at a late hour, and he did not?

Mr. Fullerton—Now, that is a leading question, and I object to it.

Judge Neilson—We will take the answer.

The Witness—Yes, Sir, I came away and left him there.

Mr. Fullerton—If your Honor, please, it seems to me, considering this witness must have communicated with the other side what he knows about it voluntarily, that they ought not to put leading questions to him.

Judge Neilson—They ought not to.

Mr. Fullerton—The gentleman comes here with a memorandum in his hand prepared to testify to what he knows.

Mr. Shearman—[To Mr. Fullerton.] I suppose there is no objection to your seeing the memorandum.

Mr. Fullerton—That is not the question, whether I have a right to see the memorandum. If your Honor will look at the question a moment, you will see what they have incorporated in it.

Judge Neilson—We will let that stand. Counsel ought not to put leading questions, and I presume he will not hereafter do so.

Mr. Morris—That is a violent presumption.

Q. How late was it when you left the house and left Mr. Tilton there? A. I cannot say how late—late in the evening.

Q. Cannot you say whether it was after nine o'clock or ten o'clock? A. Yes, Sir, it was after nine or ten, possibly eleven or twelve.

Q. Now, do you recollect any occasion on which Mr. Tilton and you had any conversation on the subject of getting up interviews for the newspapers? A. Yes, Sir, one.

Q. Where did that occur? A. At that residence.

Q. State what that conversation was? A. I had been preparing an interview for several evenings, intending to draw out from them who were supporting and sustaining—

Mr. Fullerton—No, no.

Q. Who were present when this conversation took place between you and Mr. Tilton? A. At the moment of the conversation Mr. Tilton was present; Mrs. Woodhull was present; Stephen Pearl Andrews and Mr. Blood; I don't think anybody else. Mr. Tilton had not been present during the entire preparation of this paper at this interview: he was called in.

Q. Who called him in? A. Mrs. Woodhull.

Q. Well, what passed in Mr. Tilton's presence? At least, what did Mr. Tilton say first, if anything? A. I had asked a question as to Mr. Greeley's presence in the house—

Mr. Beach—When Mr. Tilton was present there?

The Witness—And Mrs. Woodhull said—

Mr. Fullerton—One moment.

Judge Neilson—In the presence of Mr. Tilton.

Mr. Beach—I move to strike it out.

Mr. Evarts—He was stating, if your Honor please, that Mr. Tilton was sent for. That is the occasion he came in.

Mr. Beach—I move to strike out what he said in regard to his having asked a question in the absence of Mr. Tilton.

Judge Neilson—Yes.

Mr. Evarts—That was the occasion, he says, on which Mr. Tilton was sent for.

Judge Neilson—He said Mr. Tilton was sent for, and, if he was present, he can give the conversation.

Q. When he came there was there any conversation between you and Mr. Tilton with regard to the preparation of this interview with him? A. There was a general conversation among all present.

Q. I don't ask what was said? A. But I cannot indicate any words or language.

Q. I don't ask it. A. There was a general conversation.

Q. With regard to the interview which you were then preparing to publish? A. Yes, Sir.

Q. And that was an interview relating to Mrs. Woodhull?

Mr. Beach—Wait one moment; we object.

Judge Neilson—Ask him what was said.

Mr. Shearman—I want to avoid the necessity of going into this conversation.

Mr. Beach—The gentleman cannot jump to that conclusion without giving this conversation.

Judge Neilson—If it was a conversation in his presence he can give it, and you can interrogate him as to what it was.

Q. Did Mr. Tilton assist you in the preparing of that?

Mr. Beach—That is objected to. I submit, Sir, that it should be shown what was done on this occasion.

Judge Neilson—Undoubtedly.

Mr. Shearman—Well, we waive that.

Q. Now, Mr. Cook, I pass to November, 1871, and ask you if you remember an interview between yourself, Mr. Tilton and Mrs. Woodhull, in November, 1871, just before the Steinway Hall meeting? Do you remember the occurrence; that is all I ask? A. No, Sir; no conversation with Mr. Tilton before the Steinway Hall meeting.

Q. I said an interview; I didn't ask about a conversation. A. There was an interview; yes, Sir.

Q. On that occasion did you visit Mrs. Woodhull and have a conversation with her? I don't ask what it was.

Mr. Morris—An interview with who?

Mr. Shearman—An interview with Mrs. Woodhull, at her office.

The Witness—I did.

Q. You had an interview?

Mr. Morris—I object to that.

Judge Neilson—It is preliminary to something else, I suppose.

The Witness—On the day of the Steinway Hall meeting.

Q. At or soon after the close of that conversation did you see Mr. Tilton? A. I did.

Q. What did Mr. Tilton do— Where did you see Mr. Tilton? A. At Mrs. Woodhull's office.

Q. You had not left the house after the conversation with Mrs. Woodhull? A. No, Sir.

Q. What did Mr. Tilton and Mrs. Woodhull do? A. Mr. Tilton came into the office, and got out of a carriage, I think, at the office door and came in, and Mrs. Woodhull prepared herself and went out with him; they both drove away in a carriage.

Q. About what hour in the day was this? A. It was not far from one o'clock; I should say, a little after one in the afternoon.

Q. Did you, on the next day after the Steinway Hall meeting, have another interview with Mrs. Woodhull? A. I did.

Q. When? A. At the same place.

Q. At her office in Broad-st? A. At her office.

Q. Did you then have a conversation with Mrs. Woodhull? A. I did.

Q. Now, I ask simply this question, whether that conversation related to Mr. Beecher?

Mr. Beach—That is objected to.

Judge Neilson—At this occurrence was Mr. Tilton present?

Mr. Shearman—I propose to show, by means of another subsequent conversation, that Mr. Tilton was connected with it. I don't want to ask another single question as to that conversation.

Mr. Beach—It don't make any difference; they cannot give the substance of the conversation without giving what was said.

Mr. Evarts—Are we not permitted to show the occurrence of a single fact, which is in itself immaterial, unless it is afterwards connected by other evidence, and which, of course, is harmless as it stands? It does not impute injurious consequences, but the fact that there was a conversation, and that Mr. Beecher was the subject of it, becomes competent just as if it was seeing a horse in the street, or anything of that kind, which is quite immaterial until we connect the horse with some relation of the accused.

Judge Neilson—Do you think, in this instance, you could go directly to the interview with Mr. Tilton?

Mr. Evarts—This witness don't speak as to the interview with Mr. Tilton, perhaps.

Judge Neilson—I don't think you can give it unless he does.

Mr. Evarts—Your Honor sees the difficulty, in the production of evidence, that we must take from witnesses what they know about a connected chain of facts at the time that we have them under examination, and of course it is proper that no rule of evidence shall be transgressed, as by showing that conversation

under a rule which is sometimes applied to connect the defendant or the party to be implicated, but is to be shown hereafter. But we don't do that: we don't ask to know by this witness that he had an interview and the fact that the conversation between him and Mrs. Woodhull was about Beecher—that subject.

Judge Neilson—I don't think you can show it.

Mr. Evarts—Of course it is quite material if it is left there.

Judge Neilson—It might be the subject of speculation, which I think ought not to be opened.

Mr. Shearman—I understand your Honor to rule it out.

Judge Neilson—Yes, Sir.

#### THE SCANDAL DOCUMENTS SHOWN BY MR. TILTON TO MRS. WOODHULL.

Q. Did you soon after that have an interview with Mrs. Woodhull at which Mr. Tilton was present? A. Yes, Sir.

Q. And was the name of Mr. Beecher brought in at that interview? A. Yes, Sir.

Q. Did you on that occasion refer in conversation, in the presence of Mr. Tilton, to any other conversations you had with Mrs. Woodhull on that same subject.

Mr. Beach—That is objected to as leading, and as asking for a conclusion. We may as well have the conversation.

Judge Neilson—You will have to have it, doubtless.

Mr. Beach—I submit it is not admissible for them to ask those leading questions calling for the result of what was said at this interview.

Judge Neilson—I think we will take this answer as preliminary.

Mr. Shearman—That is all.

Q. In this conversation which you had in the presence of Mrs. Woodhull and Mr. Tilton were any previous conversations which you had with Mrs. Woodhull concerning Mr. Beecher referred to? A. They were continuations of—

Mr. Beach—Wait one moment.

Mr. Morris—Counsel averred a moment ago they didn't expect to make that material by this witness.

Mr. Evarts—I didn't know anything about that.

Judge Neilson—He can answer that question, yes or no.

Mr. Beach—Now, Sir, does not the hesitation of the witness demonstrate the necessity of having what was said at that time? Is he at liberty to say, as a conclusion from the conversation, that a previous subject matter or conversation was referred to.

Judge Neilson—It is merely introductory in what may follow.

Mr. Beach—Introductory, if your Honor please. They are now attempting to get a portion of the conversation. They asked this witness whether in that conversation, where they have the parties together, there was any reference made to a previous conversation. Now, I submit to your Honor, that can be ascertained only by taking what transpired at the interview where they have got them together.

Judge Neilson—That is true, and yet it is a proper question. You often ask whether an interview was had, and whether at that interview a pretended occurrence was referred to, and then ask for the conversation.



Mr. Beach—Certainly, we take it usually without objection, as we took it in this instance, and especially admonished somewhat by the hesitation of the witness in answering the question which was asked, it is not competent to take his conclusion on the subject; we should have the language by which the reference was made.

Judge Neilson—He may answer, and unless he gives the language it will be stricken out.

Mr. Shearman—The witness knows there were many conversations, and therefore his hesitation was natural.

Mr. Morris—Counsel a moment ago averred they didn't expect to make that material by this witness.

Mr. Evarts—Do you think it is right to state that again, when I apologized to you and to the Court and to the public for that Mr. Morris—I know you did, and I accepted it.

Judge Neilson—Let the stenographer repeat the question.

THE TRIBUNE stenographer read the question as follows;

In this conversation which you had in the presence of Mrs. Woodhull and Mr. Tilton were any previous conversations which you had with Mrs. Woodhull concerning Mr. Beecher referred to?

A. I cannot swear there was any direct reference to the former conversations.

Q. State the conversation which took place when Mr. Tilton was present. A. Do you want the words?

Mr. Shearman—The substance of the words.

Judge Neilson—The words as near as you can give them.

Mr. Shearman—The substance of them as near as you can recollect them.

The Witness—It would be pretty difficult for me to separate a series of conversations, and tell what occurred in each instance. They are all on one subject.

Judge Neilson—[To the witness.] The inquiry was what was said on this occasion, and you give the words as far as you can, and the substance of them when you cannot give the words.

Mr. Beach—I hope the gentleman will be instructed to discriminate between the conversations.

Judge Neilson—[To the witness.] Confine yourself to this conversation. A. Mrs. Woodhull urged me to write up the Beecher scandal. She said: "Tom, why don't you take hold of this Beecher scandal?" I think that was substantially the language. I said to her then—

Mr. Shearman—A little louder, Mr. Cook. A. I said to her that if I should attempt to write up such a story on third parties' representation, I should involve my paper in a flood of libel suits; that no newspaper man would undertake such a job. She replied that it was not necessary to take third parties' statements. She says: "Theodore has all the letters and documents in the case. I have seen them, and he will show them to you." I then replied *The Sun* didn't want such matter, and would not use it under any circumstances, and there was no use of my undertaking the job. She replied that it was the greatest sensation of the age; that it would take the roof off Plymouth Church and shake Brooklyn Heights to its foundation; it would revolutionize modern society; that it was a sensation that any paper would be glad to get hold of; that I would have no trouble in finding a market for it. I

replied that I was not in the habit of hawking my material around the streets, and I didn't care to take hold of this. I don't know that I can get more definitely at the conversation than that.

Q. I understand this to have taken place about the last of November, 1871?

Mr. Fullerton—No; he does not state yet when it took place.

The Witness—I cannot fix the date of it, excepting with reference to that Steinway Hall meeting.

Mr. Beach—What was the last answer?

Mr. Shearman—Except with reference to the Steinway Hall meeting.

The Witness—Except with reference to the Steinway Hall meeting is the only way I can fix any date. It was some days after that meeting.

Q. And near that period?

Mr. Fullerton—He does not state that.

Q. Do you not say it was some days after the Steinway Hall meeting? A. Some days; within a week after, I should say.

Q. About a week. Do you remember any more of that conversation? A. I think that is the substance.

Q. Was anything further said on this subject on any subsequent occasion in Mr. Tilton's presence? A. Yes, Sir.

Q. More than once? A. Yes, Sir; I think after that occasion it was a matter—

Mr. Beach—Wait.

The Witness—of frequent conversation.

Mr. Beach—Wait one moment.

Q. It was a matter of frequent conversation? A. Yes, Sir.

Q. Was anything said in the presence of Mr. Tilton, or by Mr. Tilton, about your writing up this story for any other paper? A. I think there was.

Q. For what paper? A. When I had refused to write it up for the general market, they wanted me to write it up for the Woodhull and Claflin paper.

Q. Who do you mean by "they." A. I say "they" in a general way, because after this conversation—

Mr. Beach—Wait a moment.

The Witness—the two usually—

Mr. Beach—Wait one moment.

Judge Neilson. [To the witness.] He does not wish you to give the reasons.

Mr. Morris—We move to have that answer struck out.

Q. Do you mean by "they" to include Mr. Tilton?

Mr. Beach—I object to that mode of inquiry.

Mr. Morris—I understood your Honor struck out that inquiry.

Judge Neilson—Yes, Sir. [To Mr. Shearman.] If you want him to give the conversation with Mr. Tilton call his attention to the fact.

Mr. Evarts—The witness used the word "they," and we have a right to his explanation of that word.

Judge Neilson—That expression is struck out. Proceed, Mr. Shearman.

Mr. Evarts—That is not struck out.

Mr. Morris—Yes, it is.

Judge Neilson—The general speculative statement is unnecessary.

Mr. Evarts—I beg your Honor's pardon, it is only a question of fact as to what the answer was. This answer is made in regard to an interview, or interviews, at which Mr. Tilton and Mrs. Woodhull and this witness were present. Now, he has made an answer that after he had refused to write it up for his paper they wanted him to write it up—that is, after he had refused to write it up for the market, they wanted him to write it up for the Woodhull and Claflin paper. That answer was taken without objection, and there it stands.

Mr. Beach—No, it was objected to, and struck out on our motion.

Mr. Evarts—I do not so understand it.

Judge Neilson—It is unnecessary.

Mr. Evarts—Then we ask him what he meant by "they." Then this question arose.

Judge Neilson—That is an indirect way of getting at it; get at it direct.

Mr. Evarts—My point is, that it was to that question the objection was made, what was meant by "they," though not so much to the question as to the manner in which he was proceeding to answer it. I have not understood that the question and the answer preceding were stricken out.

Mr. Beach—I objected to it, and Mr. Morris asked to have it struck out.

Mr. Evarts—I don't understand that that question and answer have been stricken out, or that any motion has been made to strike them out. The stenographer will correct us.

Mr. Beach—I understand Mr. Morris's motion to relate to that question.

Judge Neilson—Yes.

Mr. Beach—And I object to it. It is stating the mere conclusion of the witness, without referring to the parties named by the pronoun "they," and it is objectionable, I submit to your Honor, in every sense, for him to make a general statement of that character, which may include various persons, independent of Mr. Tilton, and especially to tell what was a conclusion which he derived from a conversation, even if Mr. Tilton was present. We are entitled to have it more formally and directly.

Judge Neilson—It will arrive at the same result.

Mr. Evarts—I am speaking simply to the question of this record. I have heard no motion to strike out that question and answer, and no decision. If it is the fault of attention, of course I will be corrected by your Honor, and if your Honor should decide that there has been a motion made to strike out, and that it has been granted, I will take an exception.

Judge Neilson—My own view, and I think it must be yours, is that the statement by Mrs. Woodhull that she wished him to write it up for another paper ought not to be received.

Mr. Evarts—In the presence of Mr. Tilton. The fact that it was an interview at which Mr. Tilton and Mrs. Woodhull were present—

Judge Neilson—Don't you think Mr. Shearman could go to such an interview, if he wanted?

Mr. Shearman—Your Honor will find it on the record.

Mr. Evarts—I am addressing myself to the question whether such a motion has been made.

Judge Neilson—I think such a motion has been made.

Mr. Evarts—Your Honor will be so good as to note my exception.

Judge Neilson—Now, Mr. Shearman, proceed directly to what you want to prove.

#### MR. COOK URGED TO WRITE UP THE SCANDAL.

Mr. Shearman—I thought I was doing so, if your Honor please. [To the witness]: Did you not say, in answer to my previous question, that this proposition that you should write up this story for *The Woodhull and Claflin Weekly* was made in the presence of Mr. Tilton?

Mr. Beach—That I object to.

Judge Neilson—The record will show.

Q. Was the proposition—

Judge Neilson—[Interrupting]: That will be leading before you get the question. Was there any interview at which Mr. Tilton was present, and then give the conversation.

Mr. Shearman—I am very sure the record shows that.

Mr. Evarts—That has been struck out.

Mr. Shearman—Then five questions must have been struck out to which no objection has been made.

Q. State what, if anything, occurred in the presence of Mr. Tilton between you and Mrs. Woodhull with reference to this subject of writing up this story.

Judge Neilson—That is proper. [To the witness]: Go on, Sir.

The Witness—After my—

Mr. Shearman—After the first conversation.

Judge Neilson—Yes, go on.

The Witness—I cannot separate particular conversations after that first interview. When the ice seemed to have been broken there were—

Mr. Beach—Wait one moment.

The Witness—Frequent interviews.

Mr. Beach—Wait one moment, I say.

Judge Neilson—[To the Witness]: He objects to the ice. The counsel wants you to give the conversation.

Q. At any of these conversations, or interviews, was Mr. Tilton present? A. Yes, Sir.

Q. How often? A. My memory of it is that it was spoken of every time we got together; I cannot—

Q. Was that at this lunch? A. Yes, Sir.

Q. Now, state what was said on this subject at any of those interviews when Mr. Tilton was present?

Mr. Beach—I submit that we cannot take, under one question, and at one time, what was said at several interviews. The attention of the witness must be confined to some one occasion.

Mr. Shearman—I do not see why that should be so.

Mr. Beach—Well, I can.

Judge Neilson—Mr. Cook, you mentioned an interview when the writing of it up for *The Sun* was spoken of? A. Yes, Sir.

Q. Do you remember any other interview, when Mr. Tilton was present, when the writing of it up for any other paper was spoken of? A. I remember there were other interviews, but I don't remember any other.

Q. Now, the counsel wishes you to state what was said on any such interview about writing it up for any other paper? A. I was asked and urged to write it up for *Woodhull and Claflin's Weekly*.

Mr. Evarts—By whom?

Mr. Shearman—By whom?

The Witness—I think I was asked by both Mrs. Woodhull and Mr. Tilton; if not by both of them, at least when they were both present.

Q. Did that occur more than once? A. Several times.

Q. Did Mr. Tilton make any proposition to you for your employment by him? A. Yes, Sir.

Q. State what was the nature of that proposition? State what occurred about it? A. Following out these our interviews—

Mr. Beach—Wait one moment.

Judge Neilson—He asks you what was said. State what was said, or the substance of what was said, by Mr. Tilton? A. Mr. Tilton proposed to me to take a position jointly on *The Golden Age* and on *The Woodhull and Claflin Weekly*.

Q. How was your salary to be paid? A. To be divided between the two.

Q. What answer did you make? A. I think I told him I would be very glad to take a position on *The Golden Age*, but that I didn't care to link my reputation with *The Woodhull and Claflin Weekly*.

Q. Was there anything said as to what you were to do—what services you were to render for the two papers? Yes, Sir; I was to write local sensations.

Mr. Shearman—That is all.

#### PICTURES OF MRS. WOODHULL IN COURT.

Q. Will you identify these photographs, if you please; say who they are portraits of? [Handing witness three photographs.] A. That is Mrs. Woodhull; and that also.

Q. Whose is this? A. That is Miss Claflin.

Q. Miss Tennie C. Claflin? A. Yes, Sir.

[The three photographs marked for identification Exhibit D 115, 116 and 117 respectively.]

Mr. Beach—Mr. Shearman, let us see those.

Mr. Shearman—Yes, Sir, [handing photographs to Mr. Beach].

Mr. Evarts—They are marked for identification, Mr. Beach.

Mr. Beach—Well, they can be seen, I suppose.

Mr. Evarts—Oh! yes, you can see them.

Mr. Beach—And the jury want to see them. I have no objection to their looking at them. They are good looking pictures.

Mr. Evarts—We have not offered them in evidence yet; they are only marked for identification.

Mr. Beach—I understand it, Sir.

Mr. Fullerton—We shall object to them on the ground that

they are parole evidence. Introduce the originals. [Laughter.]

Mr. Morris—Are they by Sarony, Mr. Shearman?

Mr. Shearman—No, Sir.

#### CROSS-EXAMINATION OF MR. COOK.

By Mr. Fullerton—Do you know how long Mr. Sherman has had these photographs, Mr. Cook? [Laughter.] A. I do not; I never seen them before, Sir.

Q. You don't know where he got them? A. I do not.

#### SOME BIOGRAPHY.

Q. Where is your present residence? A. Detroit.

Q. How long have you resided there? A. Since last May.

Q. And what is your present occupation? A. Journalist.

Q. What journal are you connected with? A. I bought a journal in Detroit last Spring and am winding it up.

Q. Well, couldn't you answer my question? A. I am winding up that newspaper.

Q. How? A. I am winding up a newspaper business.

Q. You are winding up a newspaper? [Laughter.] A. Yes, Sir.

Q. Could you tell what newspaper you are winding up? A. *The Detroit Union*.

Q. Well, when did you buy it? A. Last May—June; June, Sir.

Q. How? A. Last June.

Q. Well, was it in a condition to be wound up when you got it? A. I think it was; yes, Sir.

Q. And did you buy it for the purpose of winding it up? [Laughter.] A. No, Sir; I discovered that fact after I bought it?

Q. Well, did the newspaper wind anybody up before you got it? A. I think it wound up several.

Q. Who was connected with it before that time? A. Mr. John Atkinson was the principal proprietor.

Q. Is that a political or religious paper? A. It is a political paper.

Q. Before you went to Detroit to wind up that paper, where did you reside? A. In Brooklyn.

Mr. Evarts—He didn't say he went there to wind up, Mr. Fullerton.

Mr. Fullerton—Well, but he did go there to wind it up.

Mr. Evarts—He didn't say he went there to wind it up. That was your question; he told you simply that he did.

Mr. Fullerton—Well, that is the first point they have made on the other side, and we will acknowledge it.

Mr. Evarts—The witness must be treated fairly.

Mr. Beach—The witness did not say that he was treated unfairly.

Mr. Evarts—I do. He does not know his rights, perhaps, as well as I do.

Judge Neilson—Well, leave those words out of the question.

Mr. Fullerton—Well, I have no occasion to put it again, Sir, so I won't disturb it.

Judge Neilson—Go on.

Mr. Fullerton—When did you leave Brooklyn to go to Detroit?  
A. In the latter part of May.

Q. Last May? A. The latter part of May.

Q. Well, did you go to Detroit with any fixed object? A. Yes, Sir.

Q. What was it? A. I went to Detroit en route for Lake Superior.

Q. En route for Lake Superior? A. Yes, Sir.

Q. Then you did not contemplate stopping at Detroit permanently? A. I did not.

Q. That was accidental? A. That was accidental.

Q. And were you connected with any paper when you left Brooklyn to go to Lake Superior? A. Yes, Sir; I think I was connected with *The Sun*.

Q. At that time? A. Yes, Sir.

Q. When did you dissolve your connection with *The Sun*? A. When I left Brooklyn.

Q. Before you left Brooklyn? A. When I left Brooklyn.

Q. Well, was it before you left Brooklyn? A. Will you allow me to explain that?

Q. I will allow you to answer my question, Mr. Cook; that is your privilege. A. When I left Brooklyn I dissolved my connection with *The Sun*.

Q. And then when you started en route for Lake Superior, you had no connection with any newspaper? A. No, Sir.

Q. Under what circumstances did you dissolve your connection with *The Sun*? A. I was not under a salary with *The Sun*, Sir.

Q. I didn't ask you that. A. I was merely to withdraw and go away at any time.

Q. I didn't ask you that. What was your connection with *The Sun*? A. I was a writer.

Q. Well, how were you paid, if you had not a salary? A. I was paid for the work that I did.

Q. By the piece? A. Yes, Sir.

Q. Whenever you got up a piece of news you sold it to *The Sun*; was that it? A. Yes, Sir; precisely.

Q. Then you had no connection with *The Sun* other than a gatherer of news and a vendor of news to that paper? A. Excepting for about three months, I never had a salary on *The Sun*. One period of three months I did have a salary on it.

Q. What three months were they? A. Those were the three months immediately preceding—immediately succeeding Mr. Cummings's retirement from *The Sun*, when I was put in charge of the paper as managing editor.

Q. During those three months? A. Yes, Sir.

Q. And when were they? A. I cannot fix the date.

Q. Can you fix the year? A. No, I cannot fix the year; I think it was about two years ago. It followed immediately after Christmas. I took hold, I think, on Christmas Eve, of the paper.

Q. Well, these articles that you wrote up—were they sensational articles? A. Generally.

Q. You went about to get up news, did you? A. Well, I usually went on assignment.

Q. Did they always assign you where you should go? A. Yes, usually; sometimes I volunteered,

Q. Well, were you discharged from *The Sun*? A. No, Sir.

Q. Was not a complaint made that you wrote articles that had no foundation, and were therefore discharged? A. No, Sir; never.

Q. Wasn't the proprietor of *The Sun* prosecuted for libel in consequence of articles that you wrote, ever? A. No, Sir.

Q. Nothing of the kind? A. No, Sir.

Q. Never? A. Never.

Q. And you were not called to account or taken to task for writing such articles? A. No, Sir.

Q. Now, whilst you were connected with *The Sun*, did you write for other papers? A. Occasionally,

Q. These sensational articles? A. Not always sensational.

Q. Well, were you under any obligations to vend your articles or offer them to *The Sun* in the first instance? A. No, Sir.

Q. You were at liberty to sell them then to whomsoever you pleased, were you? A. Yes, Sir.

Q. How? A. Precisely so.

Q. And your connection with any other paper was the same as it was with *The Sun*? A. Yes, Sir; except that I kept a desk at *The Sun* office and made that my headquarters.

Q. Had the privilege of writing there? A. Yes, Sir.

Q. When did you first go to Detroit to live? A. I first went to Detroit to live in 1850.

Q. And how long did you reside there then? A. Between ten and eleven years.

Q. And what was your occupation there then? A. When I first went to Detroit I commenced keeping school.

Q. How long did you teach school? A. I taught school the better part of two years, I think.

Q. Then what did you go at? A. Then I began book-selling.

Q. How long were you engaged in that business? A. I was selling books until 1855 or 1856—1856; some time in 1858.

Q. An itinerant bookseller? A. No, Sir.

Q. Having a store there? A. Yes, Sir.

Q. In 1856 you gave up that business? A. I failed.

Q. You failed in that business. You made an assignment, did you not? A. I did.

Q. What other business did you go at? A. I then went into the newspaper business.

Q. What newspaper were you connected with there? A. With *The Detroit Free Press*.

Q. How long were you connected with *The Detroit Free Press*? A. Until the proprietors sold it and bought *The Chicago Times*.

Q. A little louder, Mr. Cook, a little louder. A. I think it was in 1861.

Q. Did you wind that up? A. Not exactly.

Q. Not exactly. How near did you come to it? A. We came so near that we sold it out.

Q. Sold it out? A. I had no personal—no proprietary interest in the paper. It was sold out and I went with the proprietor to another paper.

Q. Where? A. *The Chicago Times*.

Q. And how long were you engaged there? A. I cannot say; several months; until the war broke out.

Q. Then where did you go? A. Then I went distinctly advised  
ploy of *The New-York Herald*.

Q. In New-York? A. Yes, Sir.

Q. New-York City? A. No, Sir, not in the city; as an army  
correspondent.

Q. And how long did you fill that place? A. Throughout the  
war.

Q. And when the war was over, what did you go at? A. I  
remained in the employ of *The Herald*.

Q. How long? A. I cannot say how long; several years.

Q. Well, how long, about how long? A. Perhaps three or  
four years.

Q. And when did you quit their employment? A. I quit their  
employment at the time of the agitation of the impeachment of  
President Johnson.

Q. And where did you go then? A. Then I took employment  
under the Government.

Q. In what capacity? A. As a special agent, first of the Post-  
Office Department, and afterwards of the Treasury Department.

Q. How long were you special agent of the Post-Office Depart-  
ment? A. I was special agent of the Post-Office Department  
month.

Q. And of the Treasury Department, how long were you con-  
nected with that? A. I think very nearly a year or quite a year.

Q. What duty devolved upon you as special agent? A.  
Investigating whisky frauds and other matters of that

Q. When you ceased that business, what did you go at?

A. A short time connected with the Custom-House in  
New-York, and then went into the employ of *The Sun*.

Q. For a short time I was connected with the Custom-  
House in New-York.

Q. In what capacity? A. As an inspector.

Q. As an inspector of what? A. Of customs.

Q. How long were you engaged there? A. Not many  
months.

Q. About how long? A. I cannot say; four or five months,  
possibly, I don't think so long as that; perhaps four.

Q. Were you removed? A. I was removed.

Q. After you were removed from the Custom-House, where  
did you go? A. Then I went into the employ of *The Sun*.

Q. How? A. Then I went into the employ of *The Sun*.

Q. And you remained there until you went to— A. To De-  
troit.

Q. To Detroit, as you have spoken of? A. Yes, Sir.

Q. Now, to whom did you first communicate what you have  
testified to here? A. I cannot say.

Q. How? A. I have communicated it to various people.

#### A WITNESS'S EXPENSES.

Q. Did you correspond with anybody connected  
with this case? A. Have I corresponded?

Q. Yes, Sir. A. I have.

Q. With whom? A. With Mr. Shearman.

Q. And when did you commence that correspondence? A. I  
think it was some time last Summer.

Q. About what time? A. I cannot say.

Q. Well, with reference to the investigation that was going  
on, what time was it? A. I cannot say.

Q. Was it before or after the Plymouth Church Committee  
made their report? A. I think it was before.

Q. Before? A. I am not positive on that point.

Q. How? A. I am not positive on that point, but I think it  
was before.

Q. What induced you— What did you see, if anything, in  
print—what was it induced you to write to Mr. Shearman? A.  
The point of my letter to Mr. Shearman—

Q. No, no; what did you see in print that induced you to  
write to Mr. Shearman? A. A statement by Mr. Tilton.

Q. How? A. A statement by Mr. Tilton.

Q. You saw his statement, and then you wrote to Mr. Shear-  
man? A. I think that was the time.

Q. How many letters did you write to Mr. Shearman? A. I  
wrote one.

Q. Not more than one? A. Not more than one.

Q. Did you have a personal interview with Mr. Shearman?  
A. No, Sir.

Q. How? A. No, Sir.

Q. Never? A. No, Sir; until this trial commenced.

Q. Well? A. I did here, after this trial commenced.

Q. Did you come on from Detroit to attend this trial? A. I  
did.

Q. At whose solicitation? A. At Mr. Shearman's.

Q. And when did you come on? A. I came on in—I think  
the second week of the trial.

Q. Well, where have you been since? A. I have been in  
Detroit.

Q. In Detroit since? A. Yes, Sir.

Q. How many times have you been back and forth? A.  
Once.

Q. But once? A. But once.

Q. And how long were you gone from Brooklyn when you  
went to Detroit? A. I remained here a week and went back,  
and got here last Sunday.

Q. Last Sunday. Well, have you received any compensation?  
A. I have not. I have received remuneration for my expenses.

Q. How much have you received? A. I think my expenses  
before down here were a little over \$100. They gave me \$100.

Q. They gave you \$100? A. It didn't quite pay it.

Q. That included your fare down? A. That included my fare  
down and remaining here, and back.

Q. How long did you remain here? A. About a week.

Q. Did your expenses amount to \$100? A. Yes, Sir; a little  
more.

Q. Where did you stay during the week? A. At the Metro-  
politan Hotel.

Q. How much is it a day there? A. I think their rate was  
\$4 50 a day.

Q. That would not make \$100, would it? A. Not quite.

Q. No. Well, how much would it make? A. It would make  
a portion of the \$100.

Q. Oh, speak out, Mr. Cook, speak out. A. You want my  
hotel bill?

Q. I want you to tell me how much your bill at the hotel before you received the \$100? A. I cannot tell you.

Q. About how much? A. Probably in the neighborhood of \$30, I don't know.

Q. And your fare down here was what? A. My fare down here was—the attendant expenses of it—was about \$25.

Q. Attendant expenses; what do you mean by attendant expenses? A. I mean sleeping-car berth and meals en route.

Q. Very well, that makes a good deal less than \$100. What makes up the \$100? A. I cannot say.

Q. How? A. There were little incidental expenses around waiting here.

Q. What were they? A. I cannot tell.

Q. Cannot tell me? A. No, Sir.

Q. Well, you told me that your bill amounted to a little more than \$100? A. Yes, Sir; I mean by that, Sir, that I spent more than \$100 on that trip down here, and I got \$100—an even \$100.

Q. You spent more than \$100 on the trip down here? A. Yes, Sir.

Q. Will you tell us how you did so? A. I have told you the general items.

Q. Do you mean exclusive of board at the Metropolitan Hotel? A. I mean my general expenses here.

Q. You have stated, Mr. Cook, that you have spent \$100 on your trip down here? A. Yes, Sir.

Q. Now, I ask you whether that was exclusive of your hotel bill? A. Including that?

Q. Including that. A. Yes, Sir.

Q. That was not a part of your trip expense down here, was it? A. Certainly.

Mr. EVARTS—That depends upon what you call a trip.

Mr. Fullerton—No; it depends upon what he calls a trip.

Mr. EVARTS—Exactly; he told you—

Mr. Fullerton—I know what he told me.

Mr. EVARTS—He told you that \$100 included his coming down and staying here and going back.

Mr. Fullerton—Does the gentleman object to the evidence? That is his statement—that it was \$100.

Mr. EVARTS—That is the trip.

Mr. Fullerton—Yes; it would have been a trip of the witness, if you hadn't interfered, on the stand, instead of from Detroit down here. Now, we will see, with the aid that he has received—we will see how it will come out.

Mr. PRYOR—It is after one o'clock.

Mr. Fullerton—Before we adjourn I want to know what the \$100 was given to you for. A. It was given to me for my expenses.

Q. Without reference to what you had expended? A. It was given to me in two items. When I left Detroit I drew for \$50; they had asked me if they would send it to me, and I said that I would draw for it.

Q. Never mind what it was; you drew then \$50? A. Yes, Sir.

Q. And how long had you been here before you drew \$50 again? A. When I got ready to go back, and got excused

Q. Well, were you in Detroit?

Q. Was not went to Mr. Shearman's partner and asked for and no get home again.

Q. How long had you been here when you did that? A. Very nearly a week, or about a week.

Q. Can't you tell me exactly? A. No; I cannot.

Q. Can't tell me how long you had been here then? A. I cannot any more definitely than that; very nearly or about a week.

Q. You cannot tell when you left Detroit, can you? A. No, Sir.

Q. You cannot tell when you returned? A. No, Sir.

Q. About a week. Did the newspaper wind itself up during your absence from Detroit? [Laughter.] A. No, Sir.

Q. How? A. No, Sir.

Q. Did not? A. The newspaper had been discontinued before that—many months.

#### THE AFTERNOON SESSION.

The Court met at 2 p. m., pursuant to adjournment.

Thomas M. Cook was recalled and the cross-examination resumed.

Mr. Fullerton—Mr. Cook, have you received no more than \$100 since you were in correspondence with Mr. Shearman? A. Yes, Sir; I drew for another \$50, to come down on this trip.

Q. How? A. Yes, Sir; I drew for \$50 again, to come here, now.

Q. That makes \$150? A. Yes, Sir.

Q. I understood you to say, before the recess, that you had received but \$100. A. You misunderstood me; I said I received \$100 for that trip, that first trip; on the first trip I received \$100.

Q. That squared the account, then, up to that time, did it? A. That was all that I had asked for.

Q. Did you render a bill? A. No, Sir.

Q. And you received \$50 when you came down the second time? A. I drew for \$50.

Q. Any arrangement that you should draw? A. No, Sir; I was asked if I—

Q. Never mind. You did draw for \$50? A. I did draw for \$50.

Q. And when did you come down the last time? A. I left Detroit a week ago last Wednesday.

Q. Been here ever since? A. No, Sir; I reached here last Sunday morning. If you will allow me to explain—I was detained by an affliction, the loss of my sister.

Q. No; I don't care about an explanation. Were you not mistaken in saying that *The Sun* didn't get involved in a libel suit in consequence of anything that you wrote? A. No, Sir.

Q. Did you not write what was known as the McCue libel? A. No, Sir.

Q. Had you no connection with it? A. Yes, Sir.

Q. Did you furnish the material? A. I edited the entire matter; directed it; wrote the introduction and wrote the principal parts.

Q. You wrote the principal part of the libel? A. Yes, Sir—no, Sir.

Q. What was termed the libel? A. No, Sir; the libel, Sir, was in the heading; not in the body of the article; I didn't write

the heading—the body of the article. We were distinctly advised it was not libelous, and the Grand Jury so decided.

Q. Never mind; don't get before the Grand Jury too quick. You say that none of that article was claimed to be libelous except the heading? A. Yes, Sir; that is as I understand it, Sir; nothing beyond that; I was so advised.

Q. You never heard that any of the article itself was claimed to be libelous? A. No, Sir.

Q. Was *The Sun* indicted? A. *The Sun* was indicted.

Q. Exclusively on the heading, was it? A. That is as I understood it.

Q. You never heard that it was for anything contained in the article? A. No, Sir.

Q. Now, was not your leaving of *The Sun's* employ, or leaving the position which you occupied with reference to *The Sun*, in consequence of the writing of that article? A. No; not in any way at all.

Q. Have nothing to do with it? A. No, Sir.

Q. Now, will you tell me, Mr. Cook, when you first saw Mrs. Woodhull? A. Will you allow me to refer to a scrap of paper I have in my pocket?

Q. Oh, certainly; and when you have referred to it, you may give it to me to refer to. A. Certainly. [Referring to paper.] The first time I saw her to speak to her—I presume you mean that?

Q. Yes. A. It was on the evening of June 8th, 1871.

Q. When did you make that memorandum? A. I made this memorandum on Sunday.

Q. Had you anything to assist your memory? A. Yes, Sir; the files of the—

Q. No, no — A. Of *The New-York Sun*.

Q. [Mr. Fullerton takes the memorandum.] And where was that first interview? A. At her residence in Thirty-eighth-st., New-York.

Q. Did you know Theodore Tilton at that time? A. I did not, excepting by sight and by repute.

Q. And how many times did you visit Mrs. Woodhull's residence before you became acquainted with Theodore Tilton? A. It might have been a half a dozen times; six or eight times possibly.

Q. And, when was it that you became acquainted with him? A. I became acquainted with him immediately after the second interview that I printed, with them.

Q. Now that is just as far from what I want as you could possibly put it. I don't know anything about this second interview; I want the date as near as you can give it? A. If you will allow me that memorandum, I will tell you when that occurred. [Memorandum here handed to the witness.] I was introduced to Mr. Tilton a day or two after June 23d, 1873—1871.

Q. Where was that introduction? A. At the office of Mrs. Moulton—of Mrs. Woodhull, 44 Broad-st.

Q. And how did you get at that date? A. By a second interview that I had with them.

Q. You got at that date by a second interview that you had with them? A. Yes, Sir; the second interview that I had with Mrs. Moulton—Mrs. Woodhull; after the publication of that

second interview, I was introduced to Mr. Tilton at their office.

Q. Who introduced you? A. Mrs. Woodhull.

Q. What was your object in going to Mrs. Woodhull's the first time? A. To ascertain some particulars in regard to the death of her brother-in-law, Dr. Sparr.

Q. Did you go there more than once on that business? A. No, Sir.

Q. Well, what did you go there the other times for? A. I went there, following that, at the request of the proprietors and managers of our paper to follow up that intimacy for a purpose—that acquaintance for a purpose.

Q. Which of the proprietors requested you to go there? A. I think Mr. Dana.

Q. Are you quite sure upon that subject? A. I am quite sure that he did; and also Mr. Cummings, the managing editor.

Q. Mr. who? A. Mr. Cummings, the then managing editor.

Q. They both requested you to go there? A. I am quite sure they did; yes, Sir.

Q. Are you quite certain about it? A. I am certain that one or the other instructed me to, and that the other assented and urged it.

Q. And you went in consequence of those instructions and that urging? A. Yes, Sir; I usually received my instructions from Mr. Cummings.

Q. And you continued to visit there, as I understand you, until you were introduced to Mr. Tilton at Mrs. Woodhull's office? A. Yes, Sir.

Q. What did you go to Mrs. Woodhull's office for? A. On the same general business.

Q. Did you write any articles with reference to your visits? A. Yes.

Q. For *The Sun*? A. Yes, Sir.

Q. How many? A. Well, Sir, I wrote some five or six, as you will see on that memorandum—general articles, and other short paragraphs, that are not there.

Q. What time in the day was it when you were introduced to Mr. Tilton at Woodhull's office? A. I should say it was in the middle of the day; that was the usual time that I went there.

Q. How long was Mr. Tilton there when that introduction occurred? A. That I cannot say; half an hour, possibly, or longer; I don't remember. He came in, I know, while I was there.

Q. Now, how often, did I understand you to say, you saw Mr. Tilton at Woodhull's office? A. At Woodhull's office?

Q. Yes. A. I can't say; it was very frequent; nearly—almost daily.

Q. Almost daily? A. Almost daily.

Q. For how long a time? A. Almost daily throughout that Summer and the early Fall.

Q. You saw him there first, I think you say, on the 23d of June? A. If that is the date that I mentioned, yes, Sir. No; that is not the first time that I saw him there, excuse me.

Q. You were introduced to him? A. That is when I was introduced to him. I had seen him there before I was introduced to him.

Q. How many times had you seen him there before you were

introduced? A. That I cannot say; several times, a number of times.

#### THE LUNCHES AT THE WOODHULLS.

Q. And did those frequent visits that you speak of occur immediately after the introduction? A. Following right along, yes, Sir.

Q. For how long a period of time? A. I think away up to the time of the Steinway Hall meeting.

Q. Which was when? A. I don't know the date of it.

Q. In the Fall, was it not? A. In the Fall; yes, Sir, in the early Fall.

Q. Can you tell by referring to your memorandum? A. No, Sir, I have not a memorandum there of the Steinway Hall meeting.

Q. As near as you can recollect, when was it? A. It was some time in the Fall of that year.

Q. Just before the election, was it not? A. I cannot say as to that.

Q. Well, whenever it was? A. Well, Sir; at that time I followed it up.

Q. Whenever it was, the visits to Woodhull's office by yourself, when you met Mr. Tilton, was almost daily after the 23d of June, almost up to the time of the Steinway Hall meeting? A. Almost daily; I will not say every day.

Q. You will except Sundays, I suppose? A. It was an ordinary occurrence to meet him.

Q. You went there daily? A. Nearly so.

Q. Following out these instructions of yours? A. Yes, Sir.

Q. It was necessary that you should go, I suppose? A. I don't know that it was necessary—it was necessary in the pursuit of my profession; yes, Sir.

Q. How many times did you lunch there? A. I used to lunch quite frequently there—not every day.

Q. About how often? A. Two or three times a week.

Q. Not oftener than that? A. Sometimes I declined to lunch if I had lunched before I went there, and sometimes I was too late for lunch.

Q. If you had your lunch, or it was too late, you were generous enough to decline it? A. Yes, Sir.

Q. Are you sure you met Mr. Tilton there almost daily after the 22d of June? A. Yes, Sir.

Q. What did he seem to be doing there? A. Well, I cannot say; conversing with the ladies usually; more frequently he would go into the inner room, and the door would sometimes be closed, and they would be in private consultation; I considered him there—

Q. I beg your pardon, Mr. Cook, I didn't ask what you considered him in there for.

Mr. Evans—You asked him what he was doing.

Mr. Fullerton—Yes, that is not giving him the privilege of telling what he considered, however.

Q. In private consultation with them? A. Sometimes.

Q. In the back room? A. In the back room.

Q. Were you there? A. Not always; as a general thing I

was not in the back room when they were in private consultation.

Q. The door was closed? A. The door was closed.

Q. Do you know who else was in there? A. Mrs. Woodhull.

Q. Do you know who else was in there besides Mrs. Woodhull and Mr. Tilton? A. Miss Claflin would go out and in, and Colonel Blood sometimes went in. I don't know that I could speak of anybody else.

Q. Did you know whether there was anybody else there, or not? A. Oh, there was always a great many people there; that is, a great many, I say. There were always other people there.

Q. In the back room? A. Coming and going.

Q. In the back room? A. I don't say in the back room, I say in their general range of offices.

Q. I am talking about the back room. A. Sometimes I was in the back room.

Q. I am talking about the occasions when you were not in there? A. Of course when their door was closed I don't know who was in there.

Q. One moment. Now, referring to occasions when Mr. Tilton and Mrs. Woodhull were in the back room, and you were not there. I ask you who else was in there that you know of? A. I answered that question, that Miss Claflin would pass out and in; Colonel Blood might have passed in. I don't know who might have been in there—who was in there.

Q. You don't know who else was in there? A. No, Sir.

Q. You don't know but there may have been a dozen in there? A. Yes; I don't know—

Q. Do not? A. I do know in this way, that there was not a dozen people in the office.

Q. How? A. Only as I might know that there was not a dozen people in the office.

Q. How do you know that there was not a dozen people in the back office if you were not there? A. I might have been in the office immediately preceding the interview.

Q. I am not asking you whether they might have been. Do you know whether or not there was a dozen people? A. I cannot answer as to every interview in the back room, Sir, but waits quite frequent that I would be in the back room.

Q. You have stated that already. During these quite frequent private consultations in the back room, as you termed them, do you know that there were not a dozen people in there, beside Tilton and Mrs. Woodhull? A. I don't think there ever occurred a time when there was a dozen people in there.

Q. Do you know? A. I say that I don't think there ever occurred a time when there was a dozen people in there.

Q. I am not asking you what you think. I am asking you whether you know that there were not a dozen people in that back room? A. To my knowledge, there never was a dozen people in that back room at one time.

Q. Were you in there? A. Quite frequently.

Q. Were you in there when these private consultations were going on? A. No, Sir.

Q. Then you don't know who were in there, do you? A. Unless they come in through the windows.



Q. They might not have been in there when you went in, I suppose, and you not see them? A. If I had been in preceding the interview, I think they would not be in there without my knowing it.

Q. No, but were you in that back room preceding every interview? A. No, Sir.

Q. Then on those occasions when you were not in the back room, and had no means of knowing who were there, can you tell me that there were not a dozen people when Woodhall and Tilton were in there together? A. Of course, if I know nothing about it, I cannot tell you anything about it.

Q. Well, that is a candid acknowledgment. Now, why do you call them private consultations, therefore, in the back room, if you don't know how many people were there? A. Simply because the door was closed to admit of them.

Q. And that is the only reason? A. That is the only reason.

#### THE MEETINGS AT THE HOUSE.

Q. Now, how many times did you meet Mr. Tilton at Mrs. Woodhall's house? A. I cannot answer that.

Q. As near as you can recollect? A. I cannot give you the number of times.

Q. Well, as near as you can tell? A. I should say—I cannot swear that I have met him there over a dozen times.

Q. Very well. Now, when were those dozen times? A. During that Summer and Fall.

Q. The Summer of 1871? A. Yes, Sir.

Q. After your introduction to him at Woodhall's office? A. Yes, Sir.

Q. And before the Steinway Hall meeting? A. Yes, Sir.

Q. Very well; you would see him then perhaps in the daytime, down at Woodhall's office and at night up at her house? A. Yes, Sir.

Q. That was so, was it? A. Yes, Sir.

Q. You have been up-stairs in that house I understood you to say? A. I was up-stairs once.

Q. In what room were you? A. I cannot say—I don't know that I was in any room.

Q. You were in the hall then, I take it? A. Yes, Sir; I remember being in the hall.

Q. Don't you remember being in the room? A. I do not.

Q. Don't you remember being in Colonel Blood's library at the head of the stairs? A. I do not.

Q. Don't you know that the library is at the head of the stairs? A. I do not.

Q. Were you ever in that library? A. I don't remember that I ever was.

Q. Who did you go up-stairs with? A. That I don't remember. It is merely a vague idea that I was up-stairs in that house once.

Q. Well, you came down again, I take it? A. Yes, Sir.

Q. That you know? A. I am agreeable to say.

Q. You don't know how you got there? A. I went up stairs.

Q. You remember that, do you? A. I do.

Q. And you know nothing about the library at the head of the stairs? A. I do not remember any of the circumstances of my

going up the stairs; what I went up for. I remember distinctly that I was up stairs once, but why I went up there I can't tell you now. I can't tell who I went up with, nor the occasion.

Q. Did you ever go up more than once? A. I do not think I ever went up the stairs but that one time.

Q. Do you know whether you went up more than one flight or not? A. No, Sir; I know that I only went up one flight.

Q. That you are sure of? A. Very sure of it.

Q. Do you know how long you stayed there? A. I do not think I stayed there but a moment, and yet I am wholly uncertain about it.

Q. Now, as to the number of times that you have met Mr. Tilton up there; you think now you can say a dozen times, do you? A. I think I have met him a dozen times.

Q. Do you recollect on your direct examination of saying that you thought it was five or six times? A. No; I do not remember what I said then in regard to that.

Q. Well, is your recollection now any better than it was on your direct examination as to the number of times? A. I don't think it is any better; no better; it is very poor any time; I can't remember now.

Q. Can you say it was more than half a dozen times? A. I cannot; I could not swear that it was more than half a dozen times, but—

Q. Well, that is an answer. Well, if you cannot swear that it was more than half a dozen times, how were you enabled to swear about five minutes ago that you could say at least a dozen times? A. Because you pressed me for the number of times. I had been going there all Summer. I said that I thought I had seen him there at least a dozen times, and I think so still.

Q. I asked you how many times you could say that you had seen him there, and your answer was, "I can say I saw him there one dozen times." A. No; I think I can swear—

Q. "I can swear over a dozen of times." A. I think I can swear—

Q. Do you think so now? A. Yes, Sir, I do.

Q. You go back to the dozen now, do you? A. I think I can swear that I saw him there a dozen times.

Q. And yet you cannot swear that you did not see him there more than half a dozen times? A. I wouldn't swear positively that I had seen him there more than half a dozen times.

Q. When did you have the first conversation with him there? A. That I cannot say.

Q. Do you recollect who were present when you had the first conversation? A. No, Sir.

Q. Were you absent from the City of New-York during the Summer of 1871? A. Yes, Sir.

Q. How? A. Yes, Sir.

Q. What time did you leave? A. I cannot give you the date.

Q. As near as you can tell? A. I can with that memorandum, if you please; I think I can.

Q. Certainly. [Handing the memorandum.] A. I was absent from New-York early in September.

Q. How long a time? A. Within two weeks—less than two weeks, I think, altogether.

Q. Where did you go? A. I went to Cayuga County.

Q. How long did you remain there? A. It was less than two weeks, I cannot say how long. I went to Cayuga County and went on from there to Chemung.

Q. Where? A. To Chemung County then back to Cayuga, and then from there home.

Q. Now, were not you gone more than two weeks? A. I do not think I was; I am positive I was not.

Q. You think it was about two weeks? A. It was part of two weeks, I cannot say how I commenced—I can tell you why I know it was parts of two weeks.

Q. No. I only ask how long it was; parts of two weeks? A. Parts of two weeks. Whether it was the entire of two weeks or not, I cannot recollect.

Q. I mean weeks as measured by days; were you gone about fourteen days? A. Very nearly fourteen days, but I would not undertake to swear positively as to the time.

Q. Then I take it that during those fourteen days you did not see Mr. Tilton at Mrs. Woodhull's house? A. Certainly not.

Q. You will take out that fortnight, will you? A. I will; yes, Sir.

Q. Were you absent during any other time? A. Not that I now remember.

Q. Wouldn't you be apt to remember it if you had been absent? A. No; I wouldn't be apt to remember it, because I have a very poor memory.

Q. Now, I understand you to say that you had some conversation with Mr. Tilton soon after—a day or two after, if I understand you correctly, the Steinway Hall meeting? A. The interview I swore to was several days after.

Mr. Beach—Within a week, he said.

The Witness—Within a week.

Mr. Fullerton—Within a week? A. Yes, Sir.

Q. Are you enabled to fix that within a week of that time? A. For the reason I fix it from several conversations preceding it and the occurrence of that conversation.

Q. Were you at the Steinway Hall meeting? A. No, Sir.

Q. Where did this first conversation take place, after the Steinway Hall meeting? A. In Tilton's presence,

Q. Yes? A. At Woodhull & Claflin's office,

Q. Office? A. In Broad-st.

Q. Now, I want you to fix, as near as you can, how long that was after the Steinway Hall meeting? A. If I am forced to fix a date, I should say it was five or six days after the meeting, not to exceed six, and possibly not more than five; it may have been a little less than five; I had had two previous interviews there to that.

Q. Can you say that it was a fortnight after? A. I cannot swear it was not a fortnight.

Q. Well, now, fix the time, as near as you can swear to it? A. Well, Sir, if I am forced to swear specifically to time, I say it must have been five days.

Q. And not beyond that? A. No, Sir; I say that it might have been six, but if I am forced to swear, it might not have been but five, it might not have been but four.

Q. You think it was not more than four? A. Four days to a week, that is as near as I can swear with any positiveness.

Q. You swear, then, that it was within a week? A. Within a week.

Q. From the Steinway Hall meeting? A. Yes, Sir.

Q. Now, Sir, are you aware that Theodore Tilton left the city of New-York the day after the Steinway Hall meeting? A. I am not.

Q. On a lecturing tour? A. I am not.

Q. Not aware of that? A. I am not.

Q. Can you swear now positively that you saw him within thirty days after the Steinway Hall meeting? A. I swear to that interview there at Woodhull's office.

Mr. Beach—Let him swear positively.

Mr. Fullerton—Yes. That you are sure of now? A. Yes, Sir; very sure.

Q. How? A. Yes, Sir; very sure of it.

Q. Within a week? A. Within a week.

Mr. Beach—Let him swear positively.

Mr. Fullerton—He does.

Mr. Beach—I don't understand him to.

The Witness—I swear positively to that.

Q. It was within a week after the Steinway Hall meeting? A. Yes, Sir.

Q. Who were present at that conversation? A. Col. Blood was present; Mrs. Woodhull was present; whether Miss Claflin was present or not I don't know, but I think quite likely she was; I won't say that she was.

Q. Who else? A. I do not think of any one else.

Q. You spoke of Col. Blood, who was he? A. He is the reputed husband of Mrs. Woodhull.

Q. He is the husband of Mrs. Woodhull, is he not? A. I don't know that.

Q. You were not present at the marriage? A. No, Sir.

Q. And what is his occupation, or what was it at that time? A. He was assisting them in their affairs, whatever they were.

Q. He is a writer, is he not? A. I think he is a writer.

Q. A journalist? A. That I don't know; he may have charge of their journal—I think he has.

Q. Don't you know that he is a man of education? A. I think he is a man of education; yes, Sir.

Q. You have conversed with him, have you not? A. Yes, Sir.

Q. Frequently? A. Yes, Sir.

Q. Is he not a man of a great deal of intelligence? A. I don't think I could swear that he was a man of a great deal of intelligence.

Q. An educated man, is he not? A. I wouldn't care to swear that.

Q. How? A. I wouldn't care to swear that he was an educated man; he is a man of ability.

Q. Don't you think he is a man of education? A. It has not struck me in that sense, that he was a man of education.

Q. But a man of ability? A. A man of ability; yes, Sir.

Q. You know that he is a writer, do you not, by profession? A. Well, it has been a mystery to me what he did do.

Q. Well, my dear Sir, I am not talking about mysteries. You

will involve yourself in trouble; I don't want to know anything about mysteries. I want an answer to that question? A. I never saw anything that he had written that I knew was his writing.

Q. Didn't you understand that he was a writer? A. Col. Blood?

Q. Yes? A. No, Sir; I did not.

#### AN ESTIMATE OF MRS. WOODHULL.

Q. Didn't understand that. Well, Mrs. Woodhull—is she a lady of intelligence? A. Yes, Sir.

Q. And of education? A. No, I don't think of education,

Q. You don't think she is educated? A. Not great education.

Q. Do you think she is a woman of ability? A. Yes, Sir.

Q. A remarkable woman? A. I do.

Q. Well, that is what Mr. Tilton said she was I believe? A. That among other things; yes Sir.

Q. You agree with him in that respect? A. In that respect we agree.

Q. Is she a writer? A. She had the reputation of writing these articles; I don't know.

Q. I have not spoken about any article? A. I never saw her write an article in my life.

Q. Well, hadn't she the reputation of being a writer? A. She had the reputation.

Q. A somewhat accomplished writer, is she not? A. Well, you won't allow me to explain what I mean.

Q. I want an answer to my question. A. If that article imputed to her was hers, then she is a writer of ability.

Q. I am not talking about that article at all, Mr. Cook. Has she not the reputation of being an accomplished writer? A. You speak of her general reputation; I don't know her reputation.

Q. I am not speaking of her general reputation; I am speaking of her particular reputation, as a writer. A. Well, I don't know that.

Q. Well, answer the question as well as you can? A. I don't know her reputation.

Q. As a writer? A. As a writer.

Q. Don't you know that she has a reputation of being an accomplished writer? A. I do not.

Q. Did you ever hear her lecture? A. I cannot swear to that. My impression at the moment is that I have heard her lecture once; but I am not sure I have heard her lecture. I have heard her sister lecture once,

Q. Well, let her sister alone, if you please, now; I am talking about Mrs. Woodhull. You can't tell this jury whether you have heard her lecture or not. A. At this moment I don't know that I have ever heard her lecture.

Q. Have you ever read any of her lectures? A. Yes, Sir; I have read a good deal of them.

Q. Of her lectures? A. What have been reputed to be her lectures; yes, Sir.

Q. Now, Mr. Cook, I understood you to say that you could not distinguish between what took place at these interviews between yourself and Mrs. Woodhull when Tilton was not

present, and the interviews between yourself, Mrs. Woodhull and Tilton, when he was present, can you? A. I said something of that nature; yes, Sir.

Q. The interviews, I understand you, were frequent? A. Frequent.

Q. Between you and Mrs. Woodhull, when he was present? A. Yes, Sir.

Q. And long in duration, were they not? A. Yes, Sir.

Q. And you discussed various matters? A. Yes, Sir.

Q. During those interviews? A. Yes, Sir.

Q. A good deal interested in them, were you? A. No, Sir; I was not.

Q. Not a good deal interested; then they did not make much impression on your mind? A. Not a great deal.

Q. Perhaps that is the reason you cannot remember them? A. That may be some reason why I can't remember them.

Q. And that is a reason why you cannot distinguish between those where Tilton was not present and when he was, is it? A. The interviews that I testified to—

Q. No; answer my question.

Mr. Shearman—The witness never said so on his direct examination.

Mr. Fullerton—He has said so distinctly, and has said so on his cross-examination.

Mr. Evarts—He said he found difficulty in distinguishing, and it took time to consider.

Mr. Fullerton—Certainly, he found difficulty, and that is the reason he could not do it.

Mr. Evarts—Well, that is what he said; he didn't say he could not recollect.

Mr. Fullerton—Can you recollect now distinctly what took place between yourself and Mrs. Woodhull, when Tilton was not present, as distinguished from what took place between yourself and Woodhull and Tilton when he was present? A. Not in language, specifically; no, Sir, but in general matters, yes.

Q. One moment. Can you distinguish in subject? A. Certainly.

Q. Clearly, can you? A. I think I can, if you—

Q. One moment; you can distinguish now distinctly can you in subjects? A. In substance, I said.

Q. In substance; as to the subjects that were discussed at these various times, can you? A. On the subject of what I have testified to on my direct examination.

Q. No, I am speaking now generally. A. No, Sir; I cannot undertake to repeat all the conversation that I had with her.

Q. I didn't ask you that. A. Or with them, or to separate them.

Q. I am not talking about all the conversation. This is the question I put to you: can you now distinguish between what occurred between you and Mrs. Woodhull when Tilton was not present and what occurred between yourself and Mrs. Woodhull and Tilton when Tilton was present? A. I can testify to what did occur when Mr. Tilton and Mrs. Woodhull were present.

Q. How? A. I can speak of what occurred when Mr. Tilton and Mrs. Woodhull were present, and I can tell you what occurred when Mr. Tilton was not present.

Q. Then you have no difficulty in distinguishing, have you?  
A. I cannot distinguish all the interviews on any subject.

Q. On any subject? A. No, Sir.

Q. But you can state now exactly what took place when Mr. Tilton was present? A. No, Sir; not exactly the substance, I said.

Q. And you are not confused at all by the fact that you had an interview with Mrs. Woodhull, when he was not present, upon the same subject? A. I say I can give you the substance of what occurred; not the particulars.

Q. You are quite sure that there was a conversation in Mr. Tilton's presence about writing up the Beecher scandal? A. I am.

Q. For Woodhull & Claflin's newspaper? A. Yes, Sir.

Q. When did that conversation take place? A. It was subsequent to the conversation to which I have—

Q. Oh, tell me when it took place. A. I cannot any more directly,

Q. Tell me the year. A. During that year.

Q. What year? A. 1871.

Q. What month? A. I cannot tell you.

Q. What season of the year? A. It must have been in the Fall.

Q. How long was it before the publication of the Woodhull scandal? A. I cannot tell you.

Q. About how long? A. That I cannot tell you; I don't know when the Woodhull and Claflin paper published the scandal; I cannot fix that in my mind.

Q. Well, it was in the Autumn of 1872? A. It must have been then a year before that.

Q. A year before that? A. Yes, Sir.

Q. Did you hear anything about Mrs. Woodhull's card in *The New York World*? A. No, Sir.

Q. Never heard of that, did you? A. I might have heard of it; I don't recall it at this moment.

Q. Now, Mr. Cook, didn't you apply to Mr. Tilton for employment on *The Golden Age*? A. Never, not that I recall; I never did.

Q. You would be very apt to remember it if you did, would you not? A. I think I should.

Q. It was he that proposed that you should go upon *The Golden Age*, was it? A. Yes, Sir.

Q. And it was he that proposed that you should connect yourself with *Woodhull's & Claflin's Weekly*, was it? A. Certainly he proposed that, but whether he was the original proposer of it, I don't know.

Q. He proposed it to you? A. Certainly.

Q. That you are sure of? A. Certainly, but I won't swear that he was the first one that proposed it.

Q. I don't ask you that. Don't swear to anything more than you are asked. Mr. Cook, when you went to visit Mrs. Woodhull, did you take anybody with you? A. No, Sir.

Q. At no time? A. Oh, at no time; that I won't swear; I thought you alluded to my first visit there.

Q. Well, you say you won't swear? A. My first visit I went alone.

Q. I am not talking about your first visit; at any visit you

made there did you take any one with you? A. That I cannot answer.

Q. Why not? A. Because I don't remember. I might and I might not have done so.

Q. Yes, that is so. A. I think it quite likely I did take somebody at times, but I don't recall anybody or anything. I have an idea I have taken people down there at their office.

Q. Did you ever take a child there at any time? A. Yes, Sir.

Q. How often? A. Once.

Q. Whose child was it? A. My own.

Q. How old? A. About ten, I think; from nine to ten.

Q. How long did that child remain there? A. About an hour; I don't know; it may have been more than an hour.

Q. Did you meet anybody on that occasion at Mrs. Woodhull's? A. I cannot tell you.

Q. Now, see if you cannot recall some one else you took there? A. I do not; I cannot at this moment. It is quite likely that I did take people, but I cannot recall them.

Q. When did you see Mrs. Woodhull last? A. I saw Mrs. Woodhull last about—I saw her last two weeks ago last Sunday.

Q. Where? A. At Detroit.

Q. Detroit? A. Yes, Sir.

Q. Did she call upon you, or you upon her? A. She was stopping at the same hotel. She sent for me, I think; I went into her room.

Mr. Beach—Speak up; there don't anybody hear you.

The Witness—She sent for me, and I went into her room.

Mr. Fullerton—Where was she when you was sent for? A. She was in her room,

Q. Did you go to her room? A. I did.

Q. Did you have an interview with her? A. I did.

Q. How long an interview? A. An hour.

Q. Was that after Mr. Shearman had written to you? A. Certainly it was; Mr. Shearman had written to me last Summer.

Q. Did you see her more than once there? A. No, Sir; only that evening.

Q. How? A. Only that evening.

Q. Now, are you sure that Mr. Shearman has not written to you but once? A. No, Sir; I am not sure.

Q. Have you received letters from anybody else connected with this trial? A. Yes, Sir.

Q. From whom? A. Mr. Hill.

Q. Any one else? A. No, Sir.

Q. You are sure of that? A. No, Sir; I am quite certain of it, that I have not.

Q. When did you receive Mr. Hill's letter? A. I have had a series of letters from Mr. Hill since I was here before—since this trial has been in progress.

Q. About how many? A. Perhaps half a dozen.

Q. Did you answer them all? A. I think I did.

Q. Where were you when you received those letters? A. At Detroit?

Q. That is, after you were here. A. After I was here.

Q. And did you confer with Mr. Hill when you were here before? A. No, Sir.

Q. Only with Mr. Shearman? A. Only with Mr. Shearman. Gen. Tracy was present at one interview.

Q. How long did you confer with Gen. Tracy and Mr. Shearman? A. About an hour, possibly not so long as that.

Q. Did you receive any letters through Mrs. Woodhull? A. No, Sir.

Q. Any message through Mrs. Woodhull? A. No, Sir.

Q. How? A. No, Sir.

Q. How long did Mrs. Woodhull remain in Detroit? A. I didn't know that she was there until I got this message from her to call on her, and she left the following evening; I think she was there possibly two nights and that day.

#### RE-DIRECT EXAMINATION OF MR. COOK.

Mr. Shearman—I understood you to say that you were paid by the piece for work that you performed on *The Sun*. Will you state whether that is the usual mode of employment now among writers on the press? A. Quite common, Sir.

Q. Which is regarded as the more preferable position, a position of that kind or one upon a salary, among reporters? A. The position that I occupy and have occupied, is more preferable. I refused three salaries on *The Sun* to keep on in this style of work.

Q. That style of work is a more preferable class of business? A. Certainly.

Q. You were asked if you wrote sensational articles, and you replied that you did; will you please state what you meant by sensational? A. Articles of general interest; any article, any matter in which the public are particularly interested, I have been called upon to write.

Q. Did you mean any immoral articles? A. No, Sir, *The Sun* won't print immoral articles; we don't print them.

Q. You did not offer them any, did you? A. No, Sir.

Q. Can you give an example of the kind of articles—

Mr. Fullerton—Oh, I guess we had better not have any of his composition here.

The Witness—I have—

Mr. Fullerton—One moment.

Mr. Shearman—One instance.

Mr. Fullerton—No; one instance I object to.

Judge Neilson—We understand the witness.

Mr. Shearman—They were perfectly respectable articles.

The Witness—I wrote editorials; I have written a great many editorials for *The Sun*, on popular subjects.

Q. In stating the conversations which took place in Mr. Tilton's presence, have you avoided stating anything which took place in Mr. Tilton's absence?

Mr. Fullerton—One moment.

Judge Neilson—I think we assume that; we certainly assume that to be so.

Mr. Shearman—I am satisfied if that is conceded; I am perfectly satisfied.

Judge Neilson—Well, it is a necessary result of any examination.

Mr. Shearman—Some doubt was sought to be thrown upon that fact by the cross-examination. [To the witness]: When

you took your child to visit Mrs. Woodhull, I did not catch if you said whether it was at the office or at the house? A. At the house.

Q. What time of day was that? A. It was on Sunday, on the afternoon of Sunday; one Sunday afternoon.

Q. During daylight? A. During daylight; yes, Sir.

Q. What were you doing with your child; did you take your child out for the very purpose—for that purpose only, or for a walk, or for what purpose? A. No, Sir; I left my home to go there, and I took my child out; my wife wanted me to take the child out with me. I took the child.

Q. For a walk? A. I took it for the excursion more than anything else.

Q. When was this? A. It was during the Summer; I cannot fix the date more definitely.

Mr. Shearman—That is all.

Judge Neilson—That is all, Mr. Cook.

Mr. Fullerton—Mr. Cook, that is your property, Sir [handing the memorandum].

#### TESTIMONY OF MR. JOHN GALLAGHER.

John Gallagher was next called and sworn on behalf of the defendant.

Mr. Tracy—Where do you reside? A. I reside No. 60 Schermerhorn-st.

Q. What is your business? A. Livery-stable keeper.

Q. How long have you been engaged as livery-stable keeper? A. In or about seven years.

Q. At the same place where you now are? A. No, Sir.

Q. How long have you been in your present location? A. In or about five.

Q. About five years? A. Yes, Sir.

Q. Where were you before? A. In Boerum-st.

Q. Near by? A. Yes, Sir.

Q. Do you know Theodore Tilton? A. Yes, Sir.

Q. How long have you known him? A. During the time almost that I am in the business.

Q. You have known him since you were in business. Has he often employed you in your business? A. No, Sir, not often.

Q. But he has employed you? A. Yes, Sir.

Q. Speak a little louder, Mr. Gallagher, so that the farthest jurymen here can hear you. A. Yes, Sir.

#### MR. TILTON'S EXCURSION WITH MRS. WOODHULL.

Q. Were you employed by Mr. Tilton at any time to take him to Coney Island? A. I was.

Q. Did any one accompany him on that occasion? A. Yes, Sir.

Q. Who? A. Lady.

Q. When was that, Mr. Gallagher? A. In the Summer of 1871.

Q. What time in the Summer? A. The latter part of the Summer.

Q. The latter part of the Summer? A. Yes, Sir.

Q. From what place did Mr. Tilton take your carriage?

Mr. Beach—Well, Sir, we would like to know with what pur-

pose this is offered. I suppose it is for the purpose of contradiction.

Mr. Tracy—It is in part, and for the purpose of showing an affirmative fact for another part. It is offered for the double purpose.

Mr. Beach—Well, what affirmative fact do you propose to show?

Mr. Tracy—The acquaintance and association of Mr. Tilton with Mrs. Woodhull.

Mr. Beach—Well, this does not tend to that.

Mr. Tracy—It will if you only wait a moment.

Mr. Beach—Well, we know what it tends to. There is no occasion to wait a moment. We have had an examination upon this subject, and the gentleman is not quite as mysterious as he may think.

Mr. Tracy—I never am mysterious.

Mr. Beach—I submit that it is entirely a collateral matter, upon which, having examined Mr. Tilton, he is not open to contradiction. We had an examination, which your Honor undoubtedly fully recollects, in regard to this excursion to Coney Island, and we had it in the distinguished opening of my learned friend. We have it all displayed, I think; at any rate it has been in the course of the discussion revealed to your Honor. The question is, whether that is so far pertinent and material to this issue, as to become the subject of contradiction, if Mr. Tilton's relation of it is unsatisfactory to the gentleman. I submit not, Sir. I submit to you that it is entirely collateral matter, and that therefore, they are concluded by the answers which have been given by Mr. Tilton.

Judge Neilson—Under the assurance made by Mr. Tracy, I think we will take the evidence and see what it amounts to.

Mr. Tracy—From what place did Mr. Tilton take your carriage? A. My memory is that he took it from his own house in Livingston-st.

Q. From what point did the lady take it? A. From there.

Q. The lady accompanied him from his house to the carriage, did she? A. That is my memory.

Q. Did you state whether or not you went direct to Coney Island from their house? A. My memory is that I went direct to Coney Island.

Q. What time of day was it that they took the carriage? A. It was in the afternoon.

Q. What time? A. I cannot give the exact hour.

Q. What kind of a carriage was it? A. It was an open carriage.

Q. What was done on arriving at Coney Island? A. I don't recollect anything, only they left for to go to bathe.

Q. Where did your carriage stop? A. I stopped at the beach, the planks where folks generally get out.

Q. Where they generally get out for bathing? A. Yes, Sir.

Mr. Fullerton—Well.

Mr. Everts—For what purpose do people generally get out at that place?

Mr. Beach—Never mind. One moment.

Mr. Everts—The usual place for getting out for what?

Mr. Fullerton—For getting out.

Mr. Everts—The question is whether it is the usual place bathers get out, or the usual place to go to the hotel, or what?

Mr. Morris—There is no place there for bathers to get out.

Mr. Everts—I am informed that there is. The question is to describe the locality.

Judge Neilson—Well, ask him to describe it.

Mr. Tracy—Whereabouts was it that they got it? A. My memory is that it was opposite Green's, somewhere near those planks.

Q. Where is Green's? A. It is very convenient to the beach.

Q. How far from the beach? A. Well, I should say it was built on the beach.

Q. Well, did they—

Judge Neilson—What did they do?

#### THE FRIENDS BATHE AT CONEY ISLAND.

Mr. Tracy—What did they do on getting out?

A. They got out and went a little ways from the carriage, and turned back. Mr. Tilton said they were going to bathe, and asked me to hold his gold watch. The lady done the same thing; she gave me her gold watch to hold.

Q. Did you keep the watches? A. Yes, Sir.

Q. What direction did they go then? A. They went down on the surf.

Q. Did you see them bathe? A. No, Sir, I did not.

Q. Could you see them? A. No, Sir, I could not.

Q. They went out of your sight then. How long were they gone? A. That I could not say.

Q. Well, about how long? A. Probably an hour; it might be longer or shorter.

Q. What was done then? A. Returned—came home.

Q. They returned to the carriage? A. Yes, Sir.

Q. Did you observe anything in their appearance—the appearance of their hair, or anything, on their returning? A. I did not, Sir; I did not look.

Q. Did not look? A. No, Sir.

Q. Did they take their watches on their return? A. Yes, Sir; I believe so.

Q. What did you do then? A. I drove back to Mr. Tilton's house.

Q. What did they do? A. Mr. Tilton went into his house a few minutes, and the lady sat in the carriage.

Q. Well, what then? A. Whilst Mr. Tilton was in the house the lady asked me—

Mr. Fullerton—No, no.

Q. How long was Mr. Tilton in the house? A. But a very short time.

Q. Now, either on their way to Long Island, or in returning. Mr. Gallagher, did you notice either of them having a roll of papers in their possession? A. I noticed Mr. Tilton having some papers.

Q. You noticed— Repeat that, please. A. I noticed Mr. Tilton having some papers.

Q. What kind of papers were they? A. Well, I could not exactly describe them, more than that they looked like a couple of sheets of note paper, something of that kind, large size; probably more.

Q. Were there more than two, or was it a roll? A. There might have been more than three, but I could not say there was.

Q. You could not say? A. No, Sir.

Q. When did you first see those papers in the possession of Mr. Tilton? A. I could not identify what time I saw them first in his possession.

Q. Was it on their way to Coney Island, or return? A. My memory is it was on their way.

Q. On their way down to Coney Island. Now, after he returned to the carriage the second time, after you stopped at his house, where did you go? A. I went down to Remsen-st.

Q. What number Remsen-st. A. I don't know the number.

Q. Do you know whose residence? A. I do not, Sir.

Q. Do you know between what streets it is? A. It is between Hicks-st. and the river; that is my memory.

Q. What time of day was it that you drove to Remsen-st. between Hicks and the river? A. It was late in the evening or afternoon.

Q. Before or after dark? A. Well, it might have been dark.

Q. About dark.

Mr. Morris—He didn't say about dark.

Mr. Tracy—I understood him to say so.

Mr. Morris—No; he didn't say so.

Mr. Tracy—What did you say, Mr. Gallagher? A. I said it might have been dark.

Mr. Morris—Well, that is not about dark.

Mr. Tracy—Well, perhaps it is not.

Mr. Morris—Well, it is not.

Mr. Tracy—It occurred to me that it was.

Q. Did you know Mr. Moulton's house? A. No, Sir; I did not.

Q. What side of Remsen-st. was it you stopped on? A. On the right hand side, going towards the river.

Q. Do you know where Mr. Moulton's house is now? A. I do not.

Q. Well, what did you do then? What became of the parties when you stopped at this house in Remsen-st? A. Mr. Tilton told me I might go home and come at 12 o'clock with a close carriage.

Q. Well, what did you do? A. I done so.

Q. Where did they go? A. I went over to New-York.

Q. No; where did they go when they got out of your carriage in Remsen-st.? A. Went into the house.

Q. And you went back to your place? A. Yes, Sir.

Q. At 12 o'clock did you come with a close carriage? A. Yes, Sir.

Q. 12 o'clock midnight, was it? A. Yes, Sir.

Q. What did you do with the close carriage? A. I took them over to New-York.

Q. From what place did you receive them? A. I received them in Remsen-st.

Q. The same place you left them? A. Yes, Sir.

Q. And you took them to New-York? A. Yes, Sir.

Q. Where in New-York? A. My memory is it was Thirty-eighth-st.; I might be mistaken.

Q. What did you do then? A. I don't recollect what I

did then. I got out, and I believe Mr. Tilton came home with me in a little while after; I don't recollect clearly on that.

Q. What is that? A. My memory is not clear whether Mr. Tilton got out.

Mr. Beach—He says they got out, and he believes Mr. Tilton came home with him a little while after.

Mr. Tracy—Did Mr. Tilton get out and go in the house? A. Yes, Sir.

Q. How long did he remain in the house? A. I could not state.

Q. You think he returned home with you that night? A. That is my memory; I might be mistaken; I don't know.

Q. Do you remember whether you waited for Mr. Tilton, or whether you were discharged and came away without him? A. I cannot answer that question; I don't recollect; it is some three or four years ago.

Q. Now, had you ever seen this lady before that accompanied by Mr. Tilton? A. No, Sir; I never saw her before that time.

Q. Do you think you would recognise a photograph of her? [Showing witness a photograph of Mrs. Woodhull.] Look at that photograph which I present you. A. It seems to be the same one, but has a different appearance here; that is, the hair is differently arranged.

Q. How is the hair different? A. It seemed to me to be cut short around about the ear, or below it a little way, at the time I saw her.

Q. You think that is the same lady? A. Yes, Sir; I think so.

Mr. Tracy—A photograph of the lady. [To Mr. Fullerton.] You may examine.

Mr. Fullerton—I have nothing to ask.

Mr. Beach—[To the witness.] No question, Sir.

Mr. Shearman—[To Mr. Morris.] What Exhibit was that shown witness?

Mr. Morris—"D, 115."

Mr. Shearman—"D, 115." We offer that in evidence, as the one shown witness and identified by Mr. Cook.

[The Exhibit heretofore marked for identification, "Exhibit D, 115," was marked "in evidence."]

#### TESTIMONY OF SAMUEL B. HALLIDAY.

Samuel B. Halliday called and sworn on behalf of defendant.

Mr. Shearman—Mr. Halliday, where do you reside? A. 60 Hicks-st.

Q. Brooklyn? A. Yes, Sir.

Q. How long have you resided in Brooklyn? A. I think ten years, Sir.

Q. What is your business—what is your calling in life, not business? A. I am a clergyman.

Q. What is your present particular occupation? A. I am Mr. Beecher's assistant.

Q. How long have you assisted Mr. Beecher in his duties? A. Five years, within a month; I think a month and a half.

Q. Have you held any other office in Plymouth Church? A.

My first office in the Church was that of a member of the Examining Committee; subsequently one of the Deacons—the Board of Deacons.

Q. And after that did you hold any other? A. I have continued *ex officio* a member of both those Boards by virtue of my office as assistant pastor.

Q. Were you not also clerk of the church for a period? A. I was, for two or three years.

Q. When you were clerk of the church you were, by virtue of your office, a member of the Examining Committee? A. Yes, Sir.

Q. How long have you known Mr. Beecher? A. I cannot say that I have been acquainted with him more than twelve years. I was introduced to him some sixteen or eighteen years ago; I once attended with him some meeting years since, and he passed a day and a night, while lecturing in Providence, at my house, where I had resided some twenty years ago—possibly twenty-one, may be twenty-two years.

Q. To what extent have you been acquainted with Theodore Tilton? A. My acquaintance with Mr. Tilton is very limited. I never knew him to speak to him until within a very few years—within about five years. I think it is about four years since I was introduced to him at a meeting; at a reception of the teachers of the Sabbath-School, was the first time I had ever been introduced to him, or had ever spoken to him. That is within five years, I think.

Q. Was not that early in 1871? A. I could not state positively.

Q. That was a reception, you say, of teachers of the Sabbath-School? A. Yes, Sir.

Q. Of Plymouth Church? A. At the residence—Capt. Duncan gave the reception, who was then Superintendent of the Sabbath-School, and I was invited, and met Mr. Tilton, I think, up at Capt. Duncan's, or at the residence of Mrs. Thurlimer. There were receptions at both of those places, but at which of the two I was introduced to Mr. Tilton, I cannot say.

Q. Was Mrs. Tilton there that evening? A. She was, I think; I am confident that she was.

Q. Was Mrs. Tilton a teacher in the Sabbath-school? A. I am not able to say.

Q. Are you or not confident that it was later than January 1st, 1871? A. No, Sir, I am not.

Q. You were formerly engaged in some kind of work in New-York, were you not, at the Five Points? A. I was for about 11 years, I think, connected with the Five Points House of Industry. The first four years—three years, however, previous to that, I was engaged in connection with a similar institution, the Home for the Friendless, and I had been previous to that, previous to my going to Rhode Island, some 85 years ago, in the employment of that same society, my duties being principally as a missionary among the seamen; I came back from Rhode Island to enter the service—re-enter the service of that society; was with them three years, and was for eleven years in the employment of the trustees of the Five Points House of Industry; four years as a general agent, principally in connection with the finances of the house, I left a year for a pastorate in the country, meaning never to go into any such work again, but I was away but a very

little time and was pressed by the exigencies of the house to come back again at the earnest solicitation of the trustees, where I remained until I entered into the service of Plymouth Church, in all about ten or eleven years in the employment of that house.

Q. Simply for the purpose of identifying it, I wish to ask whether that was the institution founded by the Rev. M. L. Pease, or the other? A. The one founded by Mr. Pease, or grew out, rather, of it first—grew out of this work at the Five Points.

Q. There are two institutions, I believe? A. Yes, Sir; one is a sectarian, or, at least, a denominational institution—the Methodist Mission, ladies Methodist Mission—and the other is not in any sense sectarian, gentlemen of all religious denominations, with the exception of the Roman Catholic, being interested in its management.

Q. Now, Sir, you remember the period, I suppose, of the publication of the Woodhull and Claflin scandal in October, 1872? A. I do, Sir.

Q. Can you recollect the exact date when that paper came out? A. I never knew when it came out.

Q. Very well. A. I can tell you when I first saw it.

Q. Very well; give us the date when you first saw it? A. I saw a copy of it on the last Tuesday evening of October; I think it is the 28th day of October.

Q. Did you see Mr. Beecher on that day? A. I did.

Q. Before or after you saw that paper? A. Before I saw it, or heard of it.

Q. Did Mr. Beecher on that occasion—simply answer my question yes or no—did Mr. Beecher on that occasion consult you with reference to the course it would be proper for him to pursue with reference to that scandal?

Mr. Beach—Objected to.

Judge Neilson—I think he may say yes or no, he was consulted. The mere act of his having been consulted can be given in evidence, precisely as you meet a man in the street, or had been introduced to him.

Mr. Fullerton—Oh! no, Sir; you can meet a man without saying something; you cannot consult him without saying something.

Judge Neilson—I think we will take the fact that he consulted; that is all.

Mr. Shearman—[To the witness.] You can answer yes or no.

Judge Neilson—Modify your question—was consulted in respect to it.

Mr. Shearman—Yes. [To the witness.] Did Mr. Beecher consult you with respect to this publication?

Judge Neilson—Say yes or no, Mr. Halliday.

The Witness—I do not know how to answer the question. After a while Mr. Beecher talked with me about it—

Judge Neilson—Well, you know that you cannot give that.

The Witness—I know it; but I cannot say that he consulted me, or that he did not.



THE TESTIMONY OBJECTED TO.

Mr. Shearman—Did he speak to you about it? A. He did, definitely.

Q. Did you and Mr. Beecher have any conversation on that occasion with respect to the proper course for Mr. Beecher to pursue?

Mr. Beach—We object to the question.

Judge Neilson—That is ruled out.

Mr. Shearman—We offer this—

Judge Neilson—Yes; make your offer in any form you please.

Mr. Shearman—We offer to show that Mr. Beecher had a conversation with Mr. Halliday as one of the principal officers of the Church, for the purpose of consulting the brethren of the Church as to the proper course to be pursued in reference to this anticipated publication, and we do that for the purpose of meeting—

Mr. Fullerton—No; that won't do,

Mr. Shearman—Well, I will omit that last clause. We make that offer.

Judge Neilson—Is that objected to?

Mr. Fullerton—Yes, sir.

ARGUMENT OF MR. SHEARMAN.

Mr. Shearman—If your Honor please, the grounds of making that offer are that evidence has already been produced on the part of the plaintiff to show that a certain course was pursued by Mr. Beecher, and to show that Mr. Beecher endeavored to control his church, with reference to the course that he pursued, and as to the course which they should pursue, and a long line of evidence has been brought in on the other side which has no relevancy or materiality whatever, except it be for the purpose of showing that Mr. Beecher had the control of the church, and against its judgment, or irrespective of its judgment tried to conceal the facts in this case, and to suppress action by the church. A very large portion of the evidence which has been offered by the plaintiff is for that purpose. Now, if Mr. Beecher's declarations about the action of the church in one way are to be brought in, I fail to see any reason why the fact that his consulting the officers of the church, and neither giving them advice nor taking advice from them in regard to this matter, is not also legitimate evidence for the purpose of showing that Mr. Beecher did not undertake to control the action of the church, but from the first moment left the church entirely free to take its own action; that he consulted the leading members of the church on the question as to what was the right course for him to pursue; that he acted upon their advice rather than acting upon his advice, and that this whole course, which was decided upon almost instantly, of treating this scandal with utter contempt and absolute silence was the policy that was not so much resolved upon by Mr. Beecher for his church, as resolved upon by the church from its own instincts as to what was just and right, and that Mr. Beecher's own policy of silence was approved immediately by the brethren of the church upon consultation.

Now, I admit that I do not think that the evidence upon this subject that was offered by the plaintiff was anything very important; I do not think that it had much tendency to prove the plaintiff's case, but the plaintiff thought it had. The plaintiff's counsel brought that all in, and having brought it in I do not see why we should not be at liberty to rebut it, and to show that there is another side to this case, and that this action of the church for which Mr. Beecher is sought to be held responsible, was action which the church took upon its own responsibility and entirely independent of its pastor.

Judge Neilson—Of course, Mr. Shearman, you recognize the restraint I am under; a rule of evidence that is as binding as a statute can be, that conversations in the absence of the plaintiff cannot be received. I have no power to escape from that rule.

Mr. Evans—If your Honor please, we present this (if I may be allowed to add a word to Mr. Shearman's views), in the nature of the action of the defendant, not in the nature of hearsay evidence, or on the ground upon which that is to be excepted to and excluded, as we understand. Now, your Honor will see in the case of a criminal prosecution for some external crime like an assault—a murderous assault, or anything of that kind—if the Government should undertake to affirm imputations of guilt upon the accused person as being the author of this crime by his conduct afterward, or by showing that if he was admitted to be the author of the assault that he showed a guilty purpose or consciousness that made him amenable to the criminal law, and didn't excuse him by the course that he took after it, that would be legitimate evidence, so recognized in all our jurisprudence; and, by the same reasoning, if the Government undertook that—which it may undoubtedly on a certain plan different from that which I now appeal to—if the Government may undertake to show his conduct from the act of his carrying an impression of guilt and consciousness of guilt, why it is not so much the particular conduct that the Government thus brings in as the substantive fabric of conduct after the act, and then the criminal is entitled to rebut any such construction by showing that he presented himself and said so and so, or did so and so with parties that properly brought within the embrace of the inquiry. Now, it is in the nature of that that we present the inquiry, and I submit your Honor should dispose of the question upon that consideration and under that rule of law which we think will cover its admission. We submit it to your Honor with that view. They giving conduct after this, we say why, here is part of the conduct.

Judge Neilson—I still think I cannot receive this.

Mr. Evans—Your Honor will be so good as to note our exception.

Mr. Shearman—I now make a separate offer of proof, because I may as well do so as be asking questions. I offer to prove by this witness that at this interview Mr. Beecher informed him that this publication was to be made, and that it was an entire falsehood from beginning to end. [To Mr. Fullerton]; Do you object?

Mr. Fullerton—No, you are not serious about that.

Mr. Shearman—Yes, Sir, I am quite serious. If you object, I will state my reasons.

Mr. Beach—Why, of course we object.

Mr. Shearman—I beg to read a few words from Mr. Morris's opening.

Mr. Fullerton—Then, if that has become the law of the case let us know it.

Mr. Shearman—I don't think it ever will, but I do take the ground, your Honor, that when a charge is made in an opening that we have a right to meet not merely the evidence as it stands without the opening, but the evidence as light is thrown on it by the opening. Now, here in Mr. Morris's opening there is a distinct assertion that Mr. Beecher made no denial. He does not merely say no denial was made in the newspapers; he says emphatically Mr. Beecher made no denial. He goes on to say: why did he not deny it? Because a denial would have provoked contest on her part. It would have increased the discussion; it would have led to an investigation on the part of his church, and an investigation would have been ruin. Anything that tended to investigation was a ruinous defence to him, and that is what he means in his letter, and so he remains quiet and allows this story to go on uncontradicted month after month for six months, and at last he is compelled to deny it; and only when he is compelled to deny it, because of fear of more serious consequences does he hold his peace and say nothing concerning the publication of the truth or falsity of the story. I read from page 41 of the printed book.

Mr. Morris—And very good reading it is.

Mr. Shearman—Now, we offer to show that Mr. Beecher made his denial immediately, and he made it to the proper person, to his assistant in the pastorate of the church, to the clerk of the church, and desired him to communicate it to the officers of the church in meeting assembled, and that this meets all the evidence that has been put in under this opening of Mr. Morris; it meets that precise point, and shows that Mr. Beecher did perform his whole duty by making that denial through the proper channel, to the proper persons, and leaving it to the discretion of the officers of the church whether to make it public or not.

Mr. Beach—Of course, your Honor, we cannot control the counsel making such offers as they may choose, and if reputable counsel, for the object of any demonstration which it will affect, or what they suppose to be a good purpose, choose to present a proposition of evidence totally without support, or pretext of support, in any law of evidence with which we are acquainted, why, of course, we must treat it with becoming respect. What is this proposition, Sir? We present Mr. Beecher, and produce evidence of his declarations and acts, and other proofs to sustain our cause of action. In the course of the investigation it turns out that an infamous publication was made imputing to Mr. Beecher the very offense which we charge against him, and they propose to show to your Honor, in answer to our action, that

when that was brought to the knowledge of Mr. Beecher in our absence, and in a confidential interview between him and his pastoral assistant, he denied it, and that is seriously urged by counsel, whose opinion is entitled to respect, of course, as proper evidence before your Honor in answer to the evidence which we have produced. Now, that is a proposition, Sir, which I do not care to argue. If your Honor can find any principle or rule of evidence which justifies proof of that character, why, of course, we must submit to any ruling you make about it.

Judge Neilson—Mr. Everts I must make the same ruling.

Mr. Everts—Your Honor will be so good as to note our exception.

Judge Neilson—I must make the same ruling, Mr. Shearman.

#### GETTING TESTIMONY UNDER DIFFICULTIES.

Mr. Shearman—Mr. Halliday, did you call a meeting of the members of Plymouth Church, of a few of the members of Plymouth Church, at or about that time? A. I did, the very evening of the afternoon that the pastor called upon me.

Q. Where did they meet? A. In the parlors of the church.

Q. Who were present? A. I cannot mention the names, but from recollection, of but few. George A. Bell was one that was present; S. V. White, Abraham Hill, Deacon Hawkins; I cannot now recall. The meeting was not a large one; it was late when I saw the pastor, and I had but very limited time—

Mr. Beach—Wait one moment.

Mr. Shearman—That is sufficient. Among these were several deacons and officers of the church? A. There were, but—

Q. Was the subject of this Woodhull publication brought up for consideration in that meeting?

Mr. Beach—That is objected to.

Judge Neilson—I would like to know, Mr. Shearman, a little further.

Mr. Shearman—This is not to show Mr. Beecher's acts at all; this is for the purpose of showing what the independent action of the Church was.

Judge Neilson—I know that, and in my judgment, you have a right to show—I was going to suggest to you, I would like to see a little further, whether this action was one which it could be said was within the policy of the church in its course of action, official in any sense. I don't know how you do such things.

Mr. Shearman—Your Honor, it was not strictly an official meeting.

Judge Neilson—Well, let us see how far it approaches; because, the moment you make it an act, why the rule is different.

Mr. Beach—Why, Sir, your Honor does not intend to say that the proceedings of a gathering of the members, or the officers, of the Church, not in the course of the discipline of the Church—

Judge Neilson—Well, that is the point; I don't know about that.

Mr. Beach—[Continuing]: And not, the judicatory action is admissible here?

Judge Neilson—It was with that view that I called the counsel's attention to the exact character of this meeting.

Mr. Beach—I understand Mr. Halliday to say that it was a voluntary meeting, called by himself, of a portion of his associates in the Church, some of whom were officers and others members of the Church.

Mr. Shearman—Well, I think I can bring this out.

Judge Neilson—I don't know how far that has appeared.

Mr. Shearman—You are familiar with the rules of the church as they existed at that time, are you not? A. I think I am pretty familiar with them, Sir.

Q. Wasn't the rule of the Church, at that time, that three members of the Board of Deacons, or three members of the Examining Committee could at any time hold a meeting?

Mr. Morris—Objected to. The rules, I suppose, are in writing?

Mr. Beach—They have a manual, I believe, showing.

Judge Neilson—If there is a written rule—

Mr. Beach—I would like to see it.

Mr. Shearman—If that is all the ground of objection we can obviate it.

Judge Neilson—Have you the rules here?

Mr. Shearman—I have no copy here. [To the witness]: Well, was the meeting held—a meeting held? A. It was; yes, Sir; there was a meeting held on Tuesday evening of that week, as I said.

Q. Can you recollect whether there were as many as three deacons present; Hawkins was a deacon, wasn't he? A. Yes, Sir; and Mr. Bell.

Q. Mr. Hawkins was chairman of the Board of Deacons, wasn't he? A. And I was a member of the Board of Deacons to all intents and purposes; that is, I, *ex officio*, stood precisely in the same relations to the Board that the other members did.

Q. How about the Examining Committee; weren't there three or more members of the Examining Committee present? A. I cannot state that they were—all the members of the Board of Deacons were *ex officio* members of the Examining Committee.

Q. Yes. A. But, whether there were three—there were—whether there were three—

Q. If there were three deacons, there were three members of the Examining Committee? A. Certainly there were; but there were others beside.

Judge Neilson—Is it not true that, if the rule provides that three deacons shall be present and at least three of the Examining Committee, that that has reference to persons occupying some the one position and some the other, and not the—

Mr. Shearman—If your Honor will allow me, it is not so, I suppose, by courtesy of the counsel, I can state for the purpose of the present occasion what the rule is.

Judge Neilson—Well, give us the rule?

Mr. Shearman—That the deacons, at that time, were all members of the Examining Committee, and a meeting of the Examining Committee could be held at any time, by usage, without any notice, upon any three members, (whether they

were Deacons or whether they were elected as members of the Examining Committee) coming together and deciding to hold a meeting. That has been the usage of the church for years.

Mr. Beach—And, are not these meetings of the Examining Committee contained in any record or minutes?

Mr. Shearman—Sometimes they are, and sometimes they are not.

Mr. Morris—They are; if it is an official meeting, they have a record of it.

The Witness—A record is kept.

Mr. Morris—A record is kept of every meeting, if it is a meeting.

Mr. Everts—I am not aware that there is anything in the Constitution of the United States, or of this State, that requires the proceedings of such a body to be recorded; there is nothing in the constitution of such a committee as this that requires that there be minutes. There may be by-laws.

Mr. Morris—Better look at the manual.

Mr. Beach—The counsel understands the Constitution of the State and of the United States better than he does the Constitution of Plymouth Church.

Mr. Everts—Well, I expressly said so.

Mr. Beach—Well, we had better not reason until we get them.

Mr. Everts—There is not any requirement in the constitution of Plymouth Church.

Judge Neilson—Hadjn't you better pass to some other subject?

Mr. Shearman—I will reserve this to the morning then.

Judge Neilson—Yes, it is very desirable to proceed right in the matter.

Mr. Shearman—Mr. Halliday, are you acquainted with Mrs. Moulton, wife of Francis D. Moulton? A. Yes, Sir; not intimately.

Q. What was the nature of your acquaintance with her, and when was it formed? A. I think I never saw Mrs. Moulton to know her until I made a call at Mr. Moulton's residence. I think in the Spring of 1873, or else in the Autumn of the previous year; my impression is that it was in the Spring of 1873.

Q. For what purpose did you call on that occasion?

Mr. Beach—Wait one moment, Sir; I object to that.

Judge Neilson—Well, he called, and you can pass over the purpose.

The Witness—It was a simple pastoral call, just such as I make twenty-five hundred of every year.

Q. On that occasion do you remember seeing Mr. Beecher's portrait at the house? A. My attention was directed to it by Mrs. Moulton; while we were conversing about the interests of the church, Mr. Beecher's name was mentioned, and she directed my attention to Mr. Beecher's portrait.

Q. Did she say anything on the subject of the portrait of Mr. Beecher?

Mr. Fullerton—One moment; that is objected to,

Judge Neilson—Whatever interrogation you put to Mrs. Moulton, you will have to repeat to him.

Mr. Shearman—The interrogation we put to Mrs. Moulton

was as to the number of interviews; Mrs. Moulton was only able to recollect one.

Judge Neilson—You interrogated her beyond that in connection with the subject, I think.

Mr. Shearman—The question was about this—she could not recollect anything about the interview when Mr. Halliday saw the portrait. On that occasion, did Mrs. Moulton speak to you about Mrs. Woodhull?

Mr. Fullerton—I object to that, Sir.

Mr. Shearman—I believe I did not conduct that examination in which she was asked about it.

Judge Neilson—Was Mrs. Moulton interrogated on that subject?

Mr. Shearman—I will take the word of the counsel about that; it appears not to have been asked, so I will pass over it. I will pass meanwhile to another question. We will see if the record shows. I know that this was asked: Did you have a subsequent interview with Mrs. Moulton, and, if so, when and where? A. It was on Wednesday morning, the 29th of October.

Q. The 29th or 30th?

Mr. Fullerton—Now, one moment.

Mr. Shearman—Well, I want to know if he is sure.

Mr. Fullerton—Well, let him state his own word first—Wednesday morning, the 29th of October.

The Witness—It was the 29th or 30th. If Tuesday, I could

Mr. Shearman—I don't pretend to know myself, Mr. Halliday.

Mr. Morris—Well, then, don't state.

Mr. Shearman—Well, I want to know what he says.

The Witness—It was the last Wednesday in October, and I think it was the 29th; that is my impression.

Q. But you are sure it was a Wednesday? A. I know it was, and I can tell you how I know, if it is wished.

Q. How soon was it after this meeting? A. It was the morning after this meeting.

Q. And when was that meeting held—what day of the week?

A. On Tuesday evening; the last Tuesday evening in October.

Q. 72? A. Yes, Sir.

Q. Well, you say you called upon Mrs. Moulton at her residence? A. I did.

Q. Now, will you state what occurred between you and Mrs. Moulton on Thursday evening?

Mr. Fullerton—That is objected to.

Judge Neilson—That is the interview as to which you interrogated her.

Q. Who received you at the door? A. Mrs. Moulton herself, I think.

Q. Did you then speak to her on the subject of this Woodhull scandal? A. I did.

Q. What did you say?

Mr. Fullerton—I object to that, Sir.

Judge Neilson—Have you her examination there?

Mr. Shearman—Yes, Sir; we examined as to that.

Judge Neilson—Well.

Mr. Shearman—Did you say to her, in substance or effect, "Mrs. Moulton, what does this Woodhull business mean;

how is it that your name is connected with it?" A. I think those are almost exactly the words I used.

Q. Did Mrs. Moulton answer in substance or effect, "I don't know what right Mrs. Woodhull had to use my name; I have nothing to do with it."? A. Yes, Sir.

Q. Then did some continuous conversation follow? Don't give it, but state if there was some more talk? A. There was.

Q. After this further conversation did Mrs. Moulton say in substance or effect: "Mr. Halliday, Mr. Beecher is my pastor and has been from my childhood and I believe in him, and they can say nothing that will lessen my confidence in him or my affection for him one particle." A. I think that is her precise language, word for word.

Q. State what was the manner and demeanor of Mrs. Moulton in saying those words?

Mr. Beach—That is objected to, Sir.

Judge Neilson—It is to be understood that she was in earnest of course.

Mr. Beach—Sir?

Judge Neilson—That is understood; it was in earnest of course.

Mr. Shearman—That is all that we want to know—was it earnest or not? A. I regarded it so, emphatically.

Judge Neilson—Well, Sir, the very form of expression would indicate that, of course.

Mr. Shearman—I conclude Mrs. Moulton was not asked with sufficient precision about the first interview to give us a right to examine if there is an objection. Mr. Halliday, during that year, 1872, and at any later period, do you remember seeing Mrs. Moulton in attendance at Plymouth Church? A. Yes, Sir, several times—never before—I never knew her; I may have seen her, but did not know her if I did see her, but I never—I saw her several times at the Church subsequent to that period.

Mr. Morris—It is what she said on the stand.

Mr. Shearman—Was she in the habit of speaking to any one that you know of?

Mr. Fullerton—I object to it, Sir.

Mr. Shearman—On those occasions; if so, to whom?

Mr. Fullerton—I object to it.

Mr. Shearman—Well, I was trying to avoid a leading question, but I will put it in the leading form. Was Mrs. Moulton in the habit of speaking to Mr. Beecher and you?

Mr. Beach—Objected to.

Judge Neilson—We will take that.

The Witness—I think I may have seen Mrs. Moulton at the church six times since the period of my call and interview with her at her house. I never saw her at the church except she came around at the foot of the pulpit stairs, where I used to stand at Mr. Beecher's request at the close of the service—came around and if Mr. Beecher was not where he could shake hands and speak with her she would wait until he came and did so, and I think I invariably shook hands with her on those occasions. I don't think that the number of times exceeded six; it may not have been more than four; I think certainly, six—as many as six times.

Q. On every one of those occasions did she shake hands and speak with Mr. Beecher? A. I think invariably; I think her object was not—

Mr. Fullerton—No; never mind her object, Mr. Halliday.

Judge Neilson—You have answered.

#### THE BOARD OF DEACONS AND THE SCANDAL.

Q. Now, Mr. Halliday, did you shortly after this meeting which you have spoken of attend a regular monthly meeting of the Board of Deacons of Plymouth Church? A. I did on the following Wednesday; on the same Wednesday evening that I saw Mrs. Tilton—Mrs. Moulton.

Q. Now, at that meeting can you recollect how many deacons were present? A. I cannot, Sir; it was a very full meeting of the Board of Deacons, I think.

Q. It was a regular stated meeting, was it? A. The regular monthly meeting held the last Wednesday evening in every month at that time.

Q. Now, at that meeting was the question of the policy to be adopted by the church with regard to this Woodhull scandal brought up for consideration?

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—Mr. Halliday, at such meetings is there a record kept of the proceedings—entry made? A. Yes, Sir.

Judge Neilson—You propose to bring that in in the morning, I suppose?

Mr. Shearman—Yes, Sir, to bring in what?

Judge Neilson—The record. He says there is a record kept.

Mr. Shearman—Oh! well we can bring the record in, but that will not show. The record, of course, as in every properly kept record, only shows resolutions that were passed.

Mr. Morris—Is that all the record shows? I was not aware of it.

Mr. Shearman—Why, certainly.

The Witness—May I say to the court that at this meeting of the Board of Deacons, the regular business of the Board of Deacons was transacted and ended.

Judge Neilson—And that much of it would be on record? A. The regular meeting—the ordinary business of the Board of Deacons is recorded, and after this—

Mr. Beach—Please not state what occurred after.

Mr. Shearman—Now, Mr. Halliday, suppose we confine ourselves strictly to business, as I am afraid the gentlemen will object to something that you say.

The Witness—I was speaking to the Court, and supposed I had a right to.

Judge Neilson—Yes, you had a right to.

Mr. Evans—Yes, you had a right to speak to the Court.

Mr. Shearman—Yes, I think you did right, but I think we had better go on this way now. I understand your Honor to allow this question, whether this subject was brought up for discussion?

Judge Neilson—Well, I want to know whether he was there in such a relation to the church as to be in to any extent officially. You can show any official act freely right through.

Mr. Shearman—Well, that is one of the course of official acts.

Judge Neilson—I don't know.

#### THE ACTION OF THE DEACONS OBJECTED TO.

Mr. Beach—In what view of this case does your Honor hold that they can show any official act of Plymouth Church?

Judge Neilson—That is my present view; I may alter it when better advised.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Will your Honor permit me to suggest to you that we have given in evidence certain proceedings before the church in regard to Mr. West's charges. We have given no other proceedings. The record of those proceedings has been presented to your Honor, and there has been parol evidence of the action that was taken upon several occasions upon the charges presented by Mr. West. Mr. Bell, also, has given considerable evidence upon the same subject by parol. Now, upon what principle are the defendants permitted to give in evidence the proceedings of Plymouth Church, or any of its officers or members upon any other occasions than those to which we have directed attention.

Mr. Morris—And at those Mr. Beecher was present. Mr. Beecher participated in those.

Mr. Beach—Oh! well, I think we have given evidence, I think, of proceedings at some of the meetings of the deacons, or the examining Committee when Mr. Beecher was not present, though not to any material extent. Our evidence was confined mostly to the action which was taken, or the non-action, the action which was refused upon the West charges, and nothing else. Our examination has been confined to that, and I ask your Honor to consider under what rule of evidence the defendants, in answer to that proof, may give testimony of the general action of the church, or its judicatory, upon the subject of this scandal. If upon the subject of the West charges, that presents a different consideration, which we will attend to if it ever arises, but upon the general action of the church manifesting any general disposition upon the part of the congregation or its officers, upon the general subject of this scandal, why, I submit with great confidence to your Honor that it is inadmissible. We were not present; we have given no evidence to which that sort of proof will be a legitimate answer. True, Sir, we have by our proof attempted to make the imputation upon Mr. Beecher that he was repressing examination, but it is not by general evidence; it is by proof of specific instances, of specific acts, of specific declarations made by Mr. Beecher, all which we could give in evidence. Your Honor has already ruled that they cannot answer this class of proof by evidence of other declarations at other times to which we have not directed attention and in the absence of Mr. Tilton. And this proof now proposed comes under the same principle, and is liable to the same objection. We have given no authenticity to those acts or proceedings of

the members or the officers of that church, which they now propose to give; we have not referred to that in any mode; we have not adopted that in any form. The question as to the general subject of this scandal, and the action of the church in regard to it, has not been introduced by us in any form. It is only the West charges and the proceedings of Mr. Beecher with reference to these specific charges to which we have directed our proof, and I again repeat to your Honor that it is a subject which ought to be, I think, considered with some deliberation, whether we are to receive the general action of this church and its members with reference to these general charges. It opens a pretty wide issue.

Judge Neilson—Not the general action of the church, and its members, but the official act of the church as a corporation.

Mr. Beach—Very well, Sir; what have we to do with the official acts of the church or the corporation. We have to do with the action of Mr. Beecher, not with the action of the church, except so far as we have gone into it in connection with the action of Mr. Beecher. That is all the proof we have given, and that is all the materiality that the action of that church has to the issue in this case: they cannot give the declarations of Mr. Beecher upon any other occasion that we have referred to.

Judge Neilson—Oh! that is true of course.

Mr. Beach—Your Honor has already ruled that. Well, upon what principle, Sir, do you allow them to give the declarations of the officers of his church, or his underlings in that institution—yes, underlings, and not offensively, either, Sir; it is rather a compliment to be an underling to the greatest man on the face of the earth! [Laughter.]

The Witness—It is.

Mr. Beach—I speak it in no offensive sense, Sir.

Judge Neilson—Well, the question is whether the distinction in this regard between acts generally which might indicate the views of certain members of the church or, on the other hand, acts, any official act, which indicates the action of the church itself and would bind the church—

Mr. Beach—The church, Sir? we are not contesting this issue with the church; it is not the action of the church, or its officers, which is to give character and complexion to this trial; it is the action of Mr. Beecher and Mr. Beecher alone, and his action could neither be excused nor colored by the action of his church, we charge him with an attempt to suppress all notice of this scandal upon his own action, upon his individual declarations, upon the course of conduct which he personally pursued, and we have not attempted to charge him with the action of the church, except so far as he has directly and immediately, through the proof which we have given, exerted himself to control that action. Now, it seems to me, Sir, the most monstrous proposition, that when this is an issue between individuals, and when Mr. Beecher is to be judged by his own declarations and acts, and nothing else—a monstrous proposition that the action of his church upon the general subject of this scandal—I mean the church in its official character, by its judicatories, can be given in evidence

to bear upon the issue as between these two private individuals. And it is suggested, Sir, what limit will there be to this line of inquiry? If the gentleman can give the action of the Examining Committee, or the Board of Deacons, in any of the forms of their polity, what hinders them from proving also that there was a Committee—an Examining Committee—appointed in the course of the discipline of the church, and under the direction of the pastor, and proving what transpired before that Committee, and approving the exonerating report of the Committee? Where is to be the limit, if we are to enter upon the action of this official body in all the lines and courses of its discipline?

Judge Neilson—The Examining Committee and its report is not part of the corporate action of the church.

Mr. Morris—Yes; but they did take action upon it; the Examining Committee and the church did.

Judge Neilson—I know they reported upon it.

Mr. Morris—No; the Committee adopted it specially.

Mr. Beach—That is, this became a part—the report of this Investigating Committee became a part—of the regular and official action of the Examining Committee of the church.

Mr. Morris—Mr. Belcher swore to that positively and distinctly.

Mr. Beach—And that is but an illustration, Sir, of the impropriety of this kind of testimony. But I ask your Honor again to recur to principle and to find some doctrine, Sir, of the rule of evidence upon which Mr. Tilton is to be concluded or affected by the action of the officials of Plymouth Church. We are aware, Sir, that we are considerably affected by their unofficial action, but when it comes to proof of their official proceedings before this Court, we protest against its admission.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—If your Honor please, this matter lies in a nutshell, and your Honor's ruling seems to me as plainly right as it does to my learned opponent monstrously wrong. The plaintiff first introduced evidence to affect Mr. Beecher as the defendant in this case, towards Mr. Tilton, the plaintiff, by making his conduct in question on the principal issue determinable in some degree by his conduct during the series of years following the alleged fault or crime, and the inquiry now brought into Court. And as a part of that conduct of the defendant, there comes to be a line of proceeding which, it is said, indicates consciousness of guilt, because of continued efforts of suppression, and that it was natural and suitable and moral that this religious society, through its appropriate channels, should initiate and prosecute and develop inquiries, and that I think my learned friends have gone so far as to intimate that it is presumable that they would do so, and the suppression must be charged to the pastor, who was said to be the master of their consciences and conduct. Something of that kind, a little redundant, no doubt.

Mr. Beach—Who do you attribute that to.

Mr. Evarts—Well, I attribute that to the plaintiff's counsel.

Mr. Beach—Well, Sir, it is not attributable to me, and I do not think to any of the other counsel.

Mr. Swarts—I think I can find it in the record. Now, if your Honor please, we have, then, their selection out of certain step, of the action of the church and society, or its subordinate committees, which, we think, carries that impression, and they give properly, we may suppose, for that is their present suggestion, the occurrences that surround the West charges, which were in the Summer first, and then the Fall of 1878. And all of that had its pertinence and its efficacy such as they might be from the relation to the disclosure of the Woodhull scandal to the public, and to the treatment or non-treatment of it in a way that would be consistent with the innocence of Mr. Beecher, and as they allege, was only compatible with his guilt. Now we take up, not the step necessarily that they produced, but we take up earlier and antecedent and immediate action of the church, laying down as the initial, and as the spontaneous, and as the independent action, a proposition of the church itself, unawed by Mr. Beecher's authority, unaffected by his influence, uninspired by his suggestions, and we introduce that as the action of this body, pronouncing against and suppressing inquiry as unnecessary in the vindication of their pastor. Now, our learned friends, when they introduce a remote line of inquiry which they think bears on their side of the case must not quarrel either with the limit or the range of the opposite inquiry, by which we establish that all this that they think is chargeable to the pastor is not chargeable to him, but is the action of others. Now, that is the proposition of law concerning which I understand your Honor to have ruled that we are entitled to that line or proposition of evidence.

Mr. Beach—Your Honor has not ruled that. It is very easy, Sir, for a logician by assuming his premises to reach a desired conclusion. The counsel assumes that we have adopted what he calls "a line of inquiry," for the purpose of sustaining the imputation which we make, that Mr. Beecher has persistently and continually struggled for the suppression of all investigation of this alleged scandal. What does he mean, Sir, by "a line of inquiry?" and what is the "line of inquiry," which we have adopted? When that is discovered, Sir, the gentleman will not find me objecting to any answer or to any range or extension of that line of inquiry. But when he assumes that by pursuing a particular line of inquiry that authorizes him to introduce incompetent and immaterial evidence in consequence of that which we have given, he must permit me to dispute that proposition. Now, Sir, we have given no proof of the action of Plymouth Church in any single particular.

Judge Neilson—Except the reception of the West charges.

Mr. Beach—Not in any single particular have we given a syllable of proof in regard to the action of Plymouth Church. We proved the West charges presented. We traced them to the presence of Mr. Beecher; we traced his action and his declarations in regard to those charges; and it was the other side who brought in the action of the church and the church records for the purpose of correcting the recollection of Mr. West upon an incidental inquiry which we made. The mere fact which we proved, that Mr. West presented those charges to the Examining Committee without pursuing that in-

quiry further, involved us in no degree with the action of Plymouth Church, even upon those specific charges. But, suppose it were otherwise, Sir. Suppose we had proven the presentation of these charges and the action of the Examining Committee upon them. Does that allow them—and your Honor will remember, for the purpose of correcting my statement, that we were permitted to prove nothing which took place before the Examining Committee, unless Mr. Beecher was present—that they stopped us with an objection, as the records will show, and that we were driven from proof upon that subject, under that objection. But suppose we had proven the action which the Committee—the Examining Committee, or the Board of Deacons, or whatever the authority may have been—upon the West charges; does that authorize them to go into a different character of proof, and a different action of the officers of that church, for the purpose of showing that they acted independently of Mr. Beecher? Our object was not to prove, and we did not attempt to prove, that the action of the official body of that church was controlled at all by Mr. Beecher. We proved his action and his declaration to individual members of that congregation. It was not upon or through the official bodies that he operated in their official character. It was by his private and confidential influence, exerted upon them as individuals, through which we endeavored to trace his object, and purpose and motive, and it is the only way in which we did do so, Sir. We did not complicate ourselves by any evidence with the action of the indicators of the church. Now, Sir, without pursuing this, will your Honor please find, in deciding this question, some rule or principle of evidence which will allow them to give in testimony as against Mr. Tilton the action of the official bodies of Plymouth Church upon the general subject of this scandal, whether that action was in subordination to the influence of Mr. Beecher, or whether it was irrespective of any suggestions upon his part. And, when your Honor has ruled that it is not proper upon the part of the defense to counteract the force of evidence which we give of specific declarations and acts of Mr. Beecher, by proving declarations and acts having a different significance and a different effect upon their actions when we were not present, how it is, if Mr. Beecher's acts in our absence and declarations may not be proven, the actions of his church can be?

#### THE RECORDS OF PLYMOUTH CHURCH ADMITTED.

Judge Neilson—My own view is this, that the defendant's counsel is at liberty to bring in to-morrow morning the official records of the church, and to put in evidence any record he may have touching this subject, either considering and favoring an investigation as to the Woodhull scandal, or determining not to investigate the Woodhull scandal, proposing silence, making that the action and policy of the church. But it cannot be done by informal conversations which might occur one evening and be forgotten the next. Mr. Shearman has such records; he will bring them in to-morrow morning.

The jury will attend to-morrow morning, please, at eleven o'clock.

Mr. Beach—Will your Honor please read page 389 of the record; and what follows.

Mr. Pearsall—Page 390, also.

The Court then adjourned to eleven o'clock Wednesday morning.

## FORTY-SIXTH DAY'S PROCEEDINGS.

### MR. TILTON AT HOME AND ABROAD.

THE PLAINTIFF'S INSINUATIONS TO MR. HALLIDAY ABOUT MR. BEECHER—TESTIMONY OF MRS. LUCY W. MITCHELL, REGARDING MR. TILTON DURING MRS. TILTON'S ILLNESS—THE REV. JOHN L. GAY GIVES MR. TILTON'S UTTERANCES ABOUT MARRIAGE AND DIVORCE.

WEDNESDAY, March 17, 1875.

There was a delay of about fifteen minutes in beginning the day's work, Mr. Shearman alone of the defendant's counsel being present at the opening of the court. The Rev. Mr. Halliday again took the witness stand and continued his testimony until requested to give way for Mrs. Lucy W. Mitchell, who could not conveniently remain in Brooklyn to testify, as she was taking care of a sick lady in New-Jersey. What testimony Mr. Halliday did give was about Mr. Tilton's statements to him in reference to the Woodhull scandal. On one occasion Mr. Tilton had said to the witness, "The story is just as false as it would be for me to go over to New-York and say that the tree in front of Mr. Halliday's house is covered with the flags of all nations." But later in the same conversation Mr. Tilton had thrown out insinuations about Mr. Beecher, and had declared that Francis D. Moulton had documents which would corroborate those insinuations. He added that Mr. Beecher was a coward, and that if he (Mr. Beecher) had courage to go to Plymouth Church and tell them the truth they would excuse him. Mr. Tilton declared that his wife was pure.

Mrs. Mitchell here took the witness stand. She gave her testimony in a very quiet, unembarrassed manner and in tones scarcely audible, except to those nearest to her. She had been Mrs. Tilton's nurse on different occasions between the years 1867 and 1871. After some general testimony regarding the condition of Mrs. Tilton's health, the witness told what she had seen and heard during the latter part of the year 1870. Mr. Tilton came home one day and declared that he was a ruined man, saying that he had been discharged

from *The Brooklyn Union*, and upon hearing this Miss Bessie Turner fell down upon a lounge and appeared to the witness to be crying. The witness was here interrogated as to the effect which Mr. Tilton's excited talk produced on Mrs. Tilton. The plaintiff's counsel objected strenuously to these questions on the ground that the witness was not an expert, and obtained favorable rulings on this point. Mr. Evarts, however, kept putting cognate questions, and the discussion grew warm. When quiet was restored Mr. Evarts put another question of a like nature, and Mr. Beach rose with a flushed face to protest again, but something in Mr. Evarts's look stopped him, and the two lawyers, after eyeing each other for a few seconds, burst into a hearty laugh, and the dispute ended without further argument. The witness then related what had occurred on the evening of December 30, 1870. Mr. Beecher called and saw Mrs. Tilton in her room for about an hour, the witness going down stairs. Mr. Tilton was not at home at the time. After Mr. Beecher left, the witness went to bed, sleeping, as was her custom then, with Mrs. Tilton, who was in delicate health. Late in the night the witness was awakened by hearing Mr. Tilton talking with his wife. The witness then went into the study, on the same floor. She heard Mr. Tilton talking with Mrs. Tilton in loud and angry tones, and the latter answering with a voice of entreaty. Soon afterward Mr. Tilton came into the study, where the witness was, and got paper, ink, and pens, and went back to his wife's room.

Mrs. Mitchell was cross-examined rigorously by Mr. Fullerton. She remembered that Mrs. Tilton was very weak and low after this interview with her husband, but she did not remember noticing any change in her condition when she saw her after Mr. Beecher's call on the same evening.

The defendant's counsel then called John L. Gay, an Episcopal clergyman of Bloomington, Ind. He testified that in 1873 he was a professor in a college at that place, when Mr. Tilton delivered a lecture in the college chapel before the faculty and male and female students of the institution. The title of the lecture said the witness, was "Home, Sweet Home," but the subject was marriage and divorce. Mr. Gay then gave what he remembered of the lecture with a force and emphasis which indicated clearly what his own views of the lecturer's notions were. Mr. Tilton had inveighed against the Church and



State, and had declared that he would crush them if he had his way. On the marriage question he had expressed the view that the consent of the parties was the main thing necessary to constitute a valid marriage. "That's pretty good law," was Mr. Beach's parenthesis on this. The witness concluded with the positive and amusing statement that these views were expressed "before forty-two to forty-four female students."

Mr. Morris cross-examined Mr. Gay with a zest which, in connection with the replies of the witness, kept the court-room in a tumult of laughter during the last hour of the day. It appeared that the President of the college had presided at the lecture of Mr. Tilton, and that the latter had lectured before the same audience on the following day at the request of the students. The witness had protested against Mr. Tilton's lecture. Mr. Morris read a set of resolutions passed by the audience thanking Mr. Tilton and condemning the course of the professor. "Were these passed?" he inquired of the witness. "Yes, I believe they did pass some such indecent resolutions," was the reply. It also appeared that he was compelled to resign in consequence of his action. On the redirect examination Mr. Evarts proposed to put in the letters of the witness to Mr. Shearman. Mr. Beach objected. Judge Neilson remarked that he had looked them over, and did not think that the defense would wish to introduce them. "After that remark," said Mr. Evarts, "I am afraid the other side will wish them." "Oh, we have read them," retorted Mr. Fullerton, "and it appears that the reverend gentleman has been doing a little missionary work on the other side." The witness, who had kept his temper perfectly up to this, seemed somewhat angry, and appealed to the Court that he ought to be protected from sneers. "So you ought," said Judge Neilson. Mr. Beach, however, gave the day a pleasant ending by saying to the witness, "There was no sneer. A clergyman could not find a better field for missionary work than among the counsel for the defense," and the witness left the stand as cheerfully as he had come to it.

#### THE PROCEEDINGS—VERBATIM.

##### ASSISTANT PASTOR HALLIDAY RECALLED.

It was ten minutes past eleven when the day's work was begun. The delay was caused by the tardiness of Mr. Evarts.

Mr. Morris—Are we not ready to proceed, your Honor?

Judge Neilson—Mr. Shearman, can we proceed?

Mr. Shearman—I will proceed. Counsel will be here in a moment. Mr. Halliday.

Samuel B. Halliday was recalled, and the direct examination resumed.

Mr. Shearman—If your Honor please, I do not propose to go into the questions that were raised last evening until Mr. Evarts arrives. I will take up another subject with Mr. Halliday.

##### MR. HALLIDAY DOES JUSTICE TO MRS. MOULTON.

The Witness—If it please the Court, I would like to make an explanation, or at least an emendation, of my testimony yesterday.

Judge Neilson—Certainly.

The Witness—Thinking that I did, or I might have done an injustice to Mrs. Moulton, not by anything that I said, but what I neglected to say, or had no opportunity to say—

Judge Neilson—Yes, Sir.

The Witness—I said in my testimony that Mrs. Moulton directed me to Mr. Beecher's portrait, and that we arose and walked together to look at the portrait. While I was looking at the portrait, Mrs. Moulton turned to other pictures and to the lights near them, turning on the gas so that I could see those pictures as well as that of Mr. Beecher, directing my attention specially to those as pictures of great value. Leaving my testimony where I did, I felt that it was due to Mrs. Moulton that I should state that.

Judge Neilson—It is very proper, Sir.

##### THE TILTON-HALLIDAY-BELL INTERVIEW.

Mr. Shearman—Mr. Halliday, do you remember an interview that you had with Mr. Tilton in November, 1872? A. I do, very distinctly.

Q. Will you state on what day, and at what time of day, and where that interview was held? A. It was at my house, 87 Hicks-st., on Monday morning, the 18th of November, not earlier than a quarter-past, nor later than half-past nine o'clock.

Q. Who were present at that interview? A. For the first few moments, Mr. Tilton and myself only.

Q. After that who? A. After Mr. Moulton had been in—Mr. Tilton had been in the house perhaps five minutes, Mr. George A. Bell called to see me, and was introduced into the room where we were.

Q. Now, will you state what took place on that occasion, of course only in the presence of Mr. Tilton? A. After Mr. Bell had finished the object, or at least had spoken to me of the object upon which he had called, he turned to go. Mr. Tilton said: "George, don't go." Mr. Bell looked at me as, though not speaking, as if inquiring, by the expression of his face, if he should remain; I answered: "Certainly, if Mr. Tilton desires it." Do you desire me to state the conversation?

Q. Proceed and state the conversation. A. Before Mr. Tilton—Mr. Bell came in; Mr. Tilton had said about this, and I think scarcely more: "Mr. Halliday, I have called at the request of my friend Frank D. Moulton to speak to you"—I

can't tell certainly whether he said "speak to you," or whether he said "to contradict the Woodhull scandal." When Mr. Bell had sat down to remain at the interview, he repeated in substance to Mr. Bell, and myself again, what he had already said to me. He commenced very deliberately and continued so to speak of the scandal, saying that it was entirely untrue, without a shadow of truth, closing what he had to say—if I remember, there was but little said about this subject after he used these words: "It is just as false as it would be for me to go over to New-York and say that the tree in front of Mr. Halliday's house is covered with 500 flags, representing all the nations of the earth," pointing with his finger to the tree, as he sat upon the sofa—pointing with his finger to the tree in front of the house.

Q. Go on; what else occurred? A. I cannot repeat very much more. Those were the words that struck me so particularly—or very particularly, at least, in connection with that part of his conversation. After perhaps talking about it—there were other things said that I cannot recall. I may recall them, and shall be glad to speak of them if I can.

Q. Was anything said by you? A. I don't think I said a single word at this period of the conversation.

Q. Very good. A. After Mr. Tilton had spoken very specifically in regard to the Woodhull scandal he said—I can't be positive as to the words, but it was equivalent to saying: "This is not all my case against Mr. Beecher. My wife is as pure as the light." I think he added: "Ask Mr. Beecher; he will tell you that she is as pure as gold, as pure as an angel." I am not positive; I think he added those words to the other phrase. Then he commenced a series of insinuations against Mr. Beecher.

Mr. Morris—Well!

Mr. Shearman—Give the substance. A. I cannot.

Q. As nearly as you can? A. I cannot.

Mr. Morris—We move to strike that out.

Judge Neilson—Yes.

The Witness—I said—may I say, your Honor, I don't know whether it is proper—that I said nothing at that stage of the conversation. There were repeated efforts on my part and on Mr. Bell's part to get—

Mr. Beach—These general declarations, Sir, we object to.

Judge Neilson—I think that will do.

Mr. Morris—Better answer questions.

Mr. Shearman—Is that all that you have to say about that interview? A. I have only to say that he would not specify any charge.

Mr. Fullerton—One moment, one moment!

Mr. Shearman—Did you ask him to specify charges? A. I did.

Q. What did you say to him on that subject? A. I don't remember the language that I used.

Q. The substance? A. But repeatedly I tried to get him to specify something against Mr. Beecher.

Mr. Morris—I object to that.

Judge Neilson—The practice is—

Mr. Morris—I move to strike that out.

Judge Neilson—[Continuing.] To state the conversation in

the words, if the witness remembers, and if not, then to give the conversation in substance, as you remember it.

The Witness—Mr. Tilton said distinctly that Mr. Moulton had documents corroborative of all that he was insinuating against Mr. Beecher, and referred me to Mr. Moulton, desiring me to go and see Mr. Moulton and get sight of these. Mr. Bell spoke up and said: "Mayn't I go with Mr. Halliday and see Mr. Moulton?" Mr. Bell said, "No." Mr. Tilton said: "No; he won't want to see you, but he will show them to Mr. Halliday."

Q. You have stated all that you now recollect of this conversation? A. All that I can recall at this moment.

Q. All that you can recall without suggestion. Was anything said about the Woodhull scandal being a fabrication? A. He spoke of it as such. Now I can remember, since that question was asked, something that he said in the other part of the story, while he was making these insinuations. It was in reference to this Woodhull story, or rather in reference to the "Life of Mrs. Woodhull." He began to make an apology for writing the life, and said that he did that for the purpose of keeping Mrs. Woodhull still.

Q. Anything more said about that, or the Woodhull scandal, either? A. I don't recall anything more at the moment.

Q. Was anything said about his surprise when it appeared? A. Yes, Sir; he said that he was away campaigning in New-Hampshire when that made its appearance, and that when it came to light he was utterly astounded, and that he saw Mr. Beecher on the morning of his return from New-Hampshire, at Frank Moulton's house, and expressed to him his surprise and his sorrow at its appearance, and offering to do anything that he could to counteract the influence or the effect of the scandal; and said, in addition, that he sat down and wrote, if I remember right, three notes in Mr. Moulton's library, for publication. One not answering the purpose, another was written, and then another, and that that note was shown to counsel, and by their advice it never was published.

Q. He did not mention what counsel, perhaps? A. No, Sir. I think—I did ask him at one time, but he refused to give me the name; yes, at that interview he would not give me the name of the counsel.

Q. Did Mr. Tilton in that interview, in the course of what you have described as his insinuations, in any way allege that Mr. Beecher had committed adultery?

Mr. Fullerton—One moment; one moment.

Mr. Shearman—Well, this is to show a negative.

Judge Neilson—Ask him if he said anything on that subject.

Mr. Shearman—Did Mr. Tilton say anything on the subject of adultery; if so, what? A. The word "adultery" was not used, but he spoke of the offense that Mr. Beecher had committed as comparatively venial, for he spoke of it in this way: he said Mr. Beecher was a coward; if he would go to the church—have a little courage and go to the church and state what occurred, that the thing could be settled at once, that the church would not hold anything against him, that they would forgive him; he spoke of it in this way.

Mr. Morris—I object, if your Honor please, to the witness

characterizing the language. The word "venial" is not a proper word. I move that it be stricken out.

Mr. Shearman—It seems to me that that is perfectly proper.

Mr. Morris—It is proper that the witness should give the language, but is it proper that he should characterize it?

Judge Neilson—No; the word is not necessary.

Mr. Morris—The jury will draw the inference. I move that that be stricken out—that word.

Judge Neilson—The word is not necessary to the understanding of the statement; the statement is sufficient. Strike that word out.

Mr. Morris—The remark that I object to is that he spoke of Mr. Beecher's offense as being "comparatively venial." I move that those words be stricken out.

Judge Neilson—They are. They are not necessary to the statement of the witness.

Mr. Everts—Counsel will be so good as to let us understand what the words are.

Mr. Morris—He spoke of Mr. Beecher's offense as being comparatively venial.

Mr. Everts—Just let me see the part that is left out and know just what that part was.

Mr. Morris—Yes, Sir.

Mr. Everts—Just fix it so that we may know what it is.

THE TRIBUNE Stenographer [reading]—"The word adultery was not used, but he spoke of the offense that Mr. Beecher had committed as comparatively venial, for he spoke of it in this way."

Mr. Everts—Strike out the words "he spoke of it as comparatively venial for." The rest is good evidence.

Mr. Morris—The rest we don't object to.

Judge Neilson—"He spoke of the offense in this way," that is the way it reads.

Mr. Everts—I think it goes right, with the exception of what your Honor has very properly—I want to ask from the Court and from my learned friends permission to suspend the examination of this witness for the sake of calling Mrs. Lucy W. Mitchell, who is a nurse attending upon the sick, and leaving the sick for the purpose of being here.

Judge Neilson—I presume there is no objection; the witness can stand aside.

TESTIMONY OF MRS. LUCY W. MITCHELL.

Mrs. Lucy W. Mitchell was here sworn on behalf of defendant:

Mr. Everts—Mrs. Mitchell, where is your residence? A. 118 Prospect-place.

Q. In Brooklyn? A. Yes, Sir.

Q. How long have you been a resident of Brooklyn? A. About twenty years.

Q. Are you a widow? A. Yes, Sir.

Q. Have you—what has been your employment here in Brooklyn? A. Nurse, for the past twelve years.

Q. In what employment as a nurse? A. Monthly nurse.

Q. Monthly nurse. Have you had a considerable experience in attending women in confinement in Brooklyn? A. I have.

Q. In how many cases have you been thus employed? A. About fifty.

Q. And running through what period of years? A. Well, for about fifteen years.

Q. Fifteen years. Have you also attended ladies in confinement in other places than Brooklyn? A. I have.

Q. In New-York? A. Some in New-York, and Plainfield, and Orange.

Q. Are you now attendant upon a lady, and where? A. In Plainfield, New-Jersey.

MRS. TILTON'S HEALTH IN 1869-'70.

Q. When did you first become acquainted with Mrs. Tilton, and in what manner? A. In 1869; at the birth of Paul, in December, 1869.

Q. Did you attend her during that confinement? A. I did, Sir.

Q. And subsequently did you remain in attendance upon her during that confinement? A. I was there three months; I was there from the 17th of December to the 1st of April, at that time.

Q. From the 17th of December, 1869, to the 17th of April, 1870? A. 1869, yes, Sir; to the 1st day of April, 1870.

Q. To the first day of April, 1870. And when again did you attend upon Mrs. Tilton? A. In June, 1869, the 30th of June.

Q. Upon what birth? A. The birth of Ralph.

Q. And how long did you attend upon her then? A. I was there two weeks.

Q. From the day of the birth, two weeks onward? A. Yes, Sir.

Q. And then leaving? A. Then I had to—then I had to go to Orange to attend a lady there.

Q. Did you leave her in a comfortable condition then? A. Well, pretty comfortable; yes, Sir.

Q. Did you afterwards—were you afterwards sent for to return? A. Yes, Sir.

Q. About when was that? A. Well, that was the week after the 4th of July.

Q. And did you remain in attendance thereafter, and for how long? A. About a week.

Q. About a week? A. At that time.

Q. When next were you in attendance upon Mrs. Tilton in illness? A. In December, at a miscarriage.

Q. Yes, December, 1870? A. Yes, Sir.

Q. And were you with her? A. I was sent for on Saturday, and remained until the 2d day of January.

Q. Yes, you came on Saturday? A. Yes, Sir.

Q. The 24th day of December? A. Yes, Sir, and I was there until the 2d day of January.

Q. Yes; during the Winter of 1869-8, when you were so long an inmate of the house of Mrs. Tilton, was she an invalid all that time, or how otherwise were you retained so long? A. No, Sir, she was not an invalid all the time; I stayed and took care of the baby. The baby was brought up on a bottle, and then she had milk legs.

Q. Yes, a sickness following upon confinement? A. A confinement, yes, Sir—she was not very strong.

Q. And the child was brought up by your hand? A. Yes, Sir.

Q. And not by the breast? A. Yes, Sir.

Q. Now, Mrs. Mitchell, you stated, originally, you had known Mrs. Tilton since 1867? A. Yes, Sir.

Q. And that was at the birth of Paul? A. I think that was my first acquaintance.

Q. Yes, in December, 1867, Paul was born? A. Well, 1867—December, 1867—Paul was born the first day of December.

Q. 1867? A. Yes, Sir.

Mr. Fullerton—Well, then, the other is wrong.

Mr. Beach—She stated a different year.

Mr. Everts—Yes, she did afterwards, but originally she stated her first acquaintance was at Paul's birth, and that is the date of the acquaintance.

Mr. Fullerton—Well, then, she did not remain until April 1st, 1868.

Mr. Everts—No; you remained until April 1st, 1868? A. 1868; yes, Sir.

Q. Now, during all that period that you were with Mrs. Tilton in 1867 and 1868, were you in the house any great part yourself personally? A. Yes, Sir.

Q. What part of the time was Mr. Tilton absent? A. I think he was absent from January—I don't remember what time in January—he went away until about the middle of March, as near as I can recollect.

Q. Of 1868? A. Yes, Sir.

Q. Now, in your acquaintance with Mrs. Tilton, did you become well acquainted with her? A. I did, I think.

Q. Did you observe her disposition and conduct as a wife and a mother? A. I did.

Q. How was she in these respects? A. Why, I think she was a very superior wife and mother—very excellent.

Q. How in regard to disposition was she? A. Very good disposition; very kind and obliging; I think she was a very superior woman.

Q. And how in regard to her habit of domesticity, or being away from her home? A. She was generally at home.

Q. Did you notice in that regard? A. Yes, Sir; she always was while I was there.

Q. I mean, of course, when you were there. A. Yes, Sir.

#### MR. BEECHER NOT A FREQUENT CALLER.

Q. Now, during the period that you were in attendance, that you were living in the house after Paul's birth, during that three months, did you observe anything in regard to any calls by Mr. Beecher at the house? A. I did not.

Q. Was there any frequency in his calls at that time? A. No, Sir; there was not.

Q. Did you ever see during that period any intercourse between Mrs. Tilton and Mr. Beecher? A. No, Sir.

Q. Now, what was your habit, Mrs. Mitchell, as to being at home during the day, during the evening, and during the night, during that whole period? A. I was in the habit of being at home.

Q. All the while? A. Yes, Sir; very seldom went out.

Q. During Ralph's confinement, please say where the sick

room was and how it was arranged in respect to any other room? A. It was one of the front rooms of the house, closed with folding doors, separated with folding doors.

Q. On the second floor? A. Yes, Sir.

Q. That is up one flight of stairs? A. Up one flight of stairs.

Q. And what was the habit in regard to those folding doors? A. Generally had them open. In the Winter time we had the heat from the front room.

Q. From that room? A. Yes, Sir.

Q. Yes. A. Well, they were the same—about the same as one room, because we generally had the doors open.

Q. The fire-place or source of warmth was in the room other than that in which the bed was? A. Yes, Sir.

Q. Now, did you know anything about Kate Carey, or Kate, being there as a monthly nurse? A. I saw her there.

Q. At which of your attendances at confinements—the first or the last—did you see Kate Carey? A. The second, when Ralph was born.

Q. The second; to which you were there twice? A. Oh, the second time.

Q. The second time? A. Yes, Sir.

Q. When you came back and spent a week, was it? A. Yes, Sir; she was there then.

Q. What, anything in Mrs. Tilton's health had called you back for that week? A. She had taken cold.

Q. And was sick? A. Yes, Sir.

Q. Now, did you observe anything in regard to this nurse, this wet nurse, during this short time that you were there with her?

Mr. Fullerton—That is not evidence, Sir, I believe.

Mr. Everts—Why?

Mr. Fullerton—I can only say, because it is not. What she observed with regard to Kate Carey is not evidence in this case.

Mr. Everts—What she observed in her conduct?

Mr. Fullerton—Certainly not; you cannot impeach a witness in that way.

Mr. Everts—I am not impeaching her in any unsuitable way. It is not a matter—it is not any conversation—it is not a conversation of hers that I am attempting to bring in.

Mr. Morris—How does it impeach her?

Mr. Everts—Impeaches her by showing her conduct.

Mr. Morris—That is not the way to do it.

Mr. Everts—Not without asking her.

Mr. Beach—You cannot do it if you do ask her.

Mr. Everts—By contradicting her?

Mr. Fullerton—No.

Mr. Everts—Well, that depends on whether it is what is called collateral or whether it is part of this very business in which she was attending.

Mr. Beach—It is perfectly well settled, your Honor, that a witness cannot be attacked by showing particular acts of conduct.

Judge Neilson—You had better pass that, Mr. Everts.

Mr. Everts—Well, Sir, it is not of importance enough to—we won't insist upon it. [To the witness.]

Q. Now, at this confinement of Paul—of Ralph—and at either

of your attendances, either the first fortnight or the second time that you were there a week, did you see or know of any call or visit of Mr. Beecher? A. Yes, Sir; I knew—at least they said he called at the door; but I did not see him.

Q. You did not see him? A. No; he left a basket of flowers.

Q. You know of a basket of flowers being brought up into that sick room, do you? A. Yes, Sir.

Q. They were brought up as coming from Mr. Beecher? A. Yes, Sir.

Q. When was that—the first time you were there, or the last? A. The first.

Q. The first. How soon after the confinement—after the birth? A. I don't remember whether it was the first or second week.

Q. Now, during that attendance upon Mrs. Tilton, did you see Mr. Beecher in the house at all? A. No, Sir; I did not.

Q. Did you, in any way, know of his being in the sick room? A. No, Sir.

Q. Where were you generally, during that time, day and night? A. I was there in the sick room.

Q. No exception? A. I don't remember; I might perhaps have gone out for a few moments, but I am not in the habit of going out.

Q. It was your duty to be there? A. My duty to be always with the sick.

Q. Now, Madam, when and how did you come to attend upon Mrs. Tilton at the time of her miscarriage? A. I was sent for to come, one Saturday evening.

Q. And did you go immediately? A. I did.

Q. How far gone with child was she at this miscarriage? A. About three months.

Q. What did you find her condition of health and strength when you first commenced attending upon her at that time? A. I found her in a very weak—and seemed to be some trouble, I think, on her mind.

Mr. Fullerton—Just one moment; I move to strike out that.

Judge Neilson—Strike out the word "seemed" and what follows.

Mr. Evarts—I don't care about it; I was not pursuing that inquiry; it was her condition of health and strength—her bodily condition of health and strength.

The Witness—Well, she seemed to have trouble on her mind.

Mr. Evarts—No matter about her mind; I am now speaking about when you first went there, what was her condition—

The Witness—Well, she seemed very weak.

Q. Had she suffered at that time when you first went there? A. She had.

Q. Had she suffered from loss of blood? A. She had.

Q. And please state to what extent of effect upon her strength and appearance? A. Well, she had not—she had been ill for a week, nearly.

Q. Yes, before you came? A. Yes, Sir, and she was in a very weak, critical condition. I considered her so.

Q. At the time you first commenced? A. Yes, Sir.

Q. Now, how ill was she during the following week, say from the Saturday that you commenced until the following Satur-

day? A. Why she was very ill; more so than I had ever seen her before.

Q. Comparing her condition of strength—her weakness at this time—how did it compare with what you had seen her in her confinements? A. Well, she was much more reduced this time; her sickness was much more severe.

Q. Now, during that whole week, how did you look upon her condition of health as respects difficulty or danger?

#### THE NURSE NOT AN EXPERT.

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—She has answered that; says she was in a very critical condition.

Mr. Evarts—Well, if she continued that through the week.

Judge Neilson—Whether that continued, I think she can state.

Q. How long did you consider her as continuing in a critical condition?

Mr. Fullerton—Does your Honor think she is competent to express an opinion upon that subject?

Judge Neilson—Yes, Sir.

Mr. Fullerton—She is not an expert.

Judge Neilson—She is somewhat of an expert.

Mr. Evarts—I think the witness is competent. She is a nurse.

Mr. Fullerton—[Turning to Mr. Evarts.] I know that you think so.

Mr. Evarts—How do you know I think so?

Mr. Fullerton—Because you said so; I take your word. If you don't think so, you should not have said so. But she is not competent to express an opinion upon that subject by any means.

Judge Neilson—The point presented is very simple. She is sick, weak, and supposed to be in a critical condition one week, and the question is whether that appears to continue the next week.

Mr. Fullerton—I don't think the witness is competent to say that she was in a very critical condition; that is for a physician to say, if it were so, and the opinion of the physician is the only thing that would answer the law.

Judge Neilson—The opinion may have no great weight, but still I think it is competent.

Mr. Evarts—I think the physician would get a great part of his means of knowledge from a competent nurse attending upon the sick person.

Mr. Fullerton—It depends upon what kind of a physician he was. There are a great many of them that might be benefited by that kind of information, but the intelligent, competent physician would judge from symptoms under his own observation, not from what he heard told by the nurse.

Mr. Evarts—Well, when we have studied medicine or surgery we shall know better.

Judge Neilson—Well, you have both studied medicine somewhat.

Mr. Fullerton—How, Sir?

Judge Neilson—You have both studied medicine somewhat.

You could not fill your present positions if you had not.  
[Laughter.]

Mr. Fullerton—Well, Sir, that is the reason I make this objection. It is founded upon what knowledge I have upon that subject.

Judge Neilson—Yes; I think she can say whether, to her observation, the illness she mentioned as existing the first week appeared to continue the second; that is all.

Mr. Evarts—Did the critical condition you have spoken of continue during the week you were there?

Mr. Fullerton—That is not what your Honor has permitted.

Judge Neilson—No; I think I would drop the "critical." That is criticised by the counsel. Did the apparent illness, whatever it was, extreme or not, continue?

Mr. Evarts—Did the condition of which you have spoken, continue during the following week?

Judge Neilson—Well, she can answer that.

The Witness—Well, I was there but one week.

Mr. Evarts—Yes, but during that week did it continue? A. Yes, Sir; she was very weak and feeble.

Q. What did she require in respect to attention and nursing and quiet? A. She required to be kept quiet, that is what the doctor enjoined upon her.

Q. And how constantly did you attend upon and watch her yourself during that week? A. Oh, all the time.

Q. Did you sleep with her during all that time? A. I did.

Q. Were you in the room all the time, unless some occasion required you to be absent? A. Yes, Sir.

Q. Do you remember, during that week, an occasion when Mr. Tilton came to the house about the middle of the day? A. Yes, Sir.

Q. About what part of the week was that? A. Well, as near as I can recollect it was about the middle of the week.

Q. Now, what did you hear or see in which Mr. Tilton spoke, or was observed, at that time; that time that he came to the house? A. Well, I remember his coming home and saying he was discharged from *The Union* office—saying he was a ruined man.

Q. Yes; what was his manner and demeanor at that time? A. Very much agitated and excited.

Q. How did he show this agitation and excitement? A. By talking; and I requested him not to; the doctor had told me to keep her quiet.

Q. To keep his wife quiet? A. Yes, Sir.

Q. Did you see him with his wife? A. I did.

Q. And what was said by him—was anything said by him in the sick room when you were there, in regard to this matter that you have spoken of? A. No, Sir; don't remember that there was.

Q. Where was it that he said this, that he was ruined? A. When he came up stairs in the sick room.

Q. That was in the sick room? A. Yes, Sir; that is as near as my memory serves me.

Q. The two rooms were open, I suppose? A. Folding doors open, yes, Sir.

Q. To each other. Now, who was housekeeper or had charge of the family at this time? A. Miss Dennis, Ellen Dennis.

Q. And were the children all there? A. I think they were, yes, Sir.

Q. Do you remember whether or not, Mr. Tilton had or brought into the sick room—had in, or brought into, the sick room any papers at this time? A. Well, I don't remember whether he brought them in; he had papers there, and showing them to his wife.

Q. Yes, had them in his hands? A. Had them in his hands.

Q. Do you know what the papers were? A. No, Sir, I don't.

Q. Do you know whether they were newspapers or— A. Well, they were some kind of paper with writing on them; I could not tell you what they were, because I did not know.

Q. What effect did you observe upon Mrs. Tilton in regard to her nerves or health, produced by this visit of Mr. Tilton on this day?

#### A WRANGLE IN TRYING TO AVOID ONE.

Mr. Morris—Objected to.

Mr. Evarts—Your Honor intimates that the evidence is not proper. [To the witness]: What effect did this conversation of Mr. Tilton in the sick room produce upon Mrs. Tilton?

Mr. Morris—Objected to.

Judge Neilson—It is understood, it is objected to; I don't think it is proper.

Mr. Evarts—Why, if your Honor please, the question is upon her nerves and her—supposing she fainted away, would it not be a proper thing to prove? And I do not use that illustration as intimating that that was the fact. I am only saying to your Honor that the question is one of observation, and is a question of fact, and whether or not it is important, will depend upon the answer to it.

Mr. Morris—How is that important? Suppose she did faint away.

Mr. Evarts—Why, it shows the condition of this lady during that week as likely to become the subject of influences that, for other people's purposes, were to be operative upon her; that is what it shows. I do not understand what the force or point of the objection is.

Mr. Morris—It is wholly immaterial.

Mr. Evarts—The condition of a person who has been practiced upon is certainly a matter of evidence, and if that person is sick and in charge of a nurse, why then the nurse is competent to speak of it.

Judge Neilson—She can state anything that she saw.

Mr. Evarts—That is all I have asked her.

Judge Neilson—Oh no; you asked her a very nice question, which might possibly be put to a person of professional skill as an expert, which has to do with the ailment of the lady on her nerves, and which I do not think she is competent to speak to—it cannot be observed.

Mr. Evarts—Why, if your Honor please, physicians are not always attendant upon the sick, and if nurses could not speak of what took place in the sick room—

Judge Neilson—They can of any fact.

Mr. Evarts—That is all I have ever intended to ask her. I began by asking her what she observed of any effect upon this lady of this conversation.

Mr. Morris—We object to that question.

Judge Neilson—I think you can ask her to state anything that she observed.

Mr. Evarts—I did.

Judge Neilson—Without indicating what you wish it to be; in other words, if she observed anything, and if so, what.

Mr. Evarts—That is right, undoubtedly, and I supposed my question was of that nature.

Mr. Morris—The question was not of that nature.

Mr. Evarts—Well, I won't wrangle with you, Mr. Morris.

Mr. Morris—Well, I don't propose to do it, but I propose to make any objection that I see proper and make any—

Mr. Evarts—I haven't asked you to defend your objection. I have simply asked his Honor's judgment about a question.

Mr. Morris—Your criticism and your manner will not deter me from doing it.

Mr. Evarts—I do not wish to do it in the least, but I wish to draw the distinction between personal wrangles and disputes about rules of evidence.

Mr. Morris—But I say that is not the purport of the question.

Mr. Evarts—But you made an observation after the question had been considered and accepted.

Judge Neilson—Now, if the stenographer will read the last question which was put—the stenographer will please read the last question.

THE TRIUMPH Stenographer [Reading]: "Mr. Evarts—That is all I ever intended to ask her; I began by asking her what she observed of any effect upon this lady of this conversation."

Mr. Morris—We object to that question"—treating it as a question.

Mr. Evarts—I don't treat it as a question; I was adopting your Honor's view; I didn't intend to depart from that view. [To the witness]: Now, Mrs. Mitchell, if I understand, you are asked and may answer as to whether you observed any effect upon Mrs. Tilton of this conversation, and what it was.

Mr. Morris—I object to that question.

Mr. Evarts—In this interview with her husband.

Judge Neilson—I will take that.

Mr. Morris—That is the question your Honor has ruled upon,—it is the same question; precisely the same question.

Mr. Beach—One moment, if your Honor please. By this question the witness is called upon to determine what was the effect of a certain state of circumstances upon the physical condition of this lady. I submit she is not competent to state.

Mr. Morris—You have just ruled upon it.

Mr. Beach—It would be entirely competent, I suppose, for those gentlemen to prove what, after this conversation, was the condition of Mrs. Tilton; I suppose that is a circumstance—so far as she observed.

Mr. Evarts—That is all I have asked her.

Mr. Morris—No, you have asked her more, Mr. Evarts, I beg leave to say.

Mr. Evarts—I don't understand so.

Mr. Beach—If you do not so understand it, I do, sir.

Judge Neilson—Well, I think that is a pertinent question. "Did you observe anything; if so, what?" is the question; modify it in that way.

Mr. Morris—That we don't object to.

Judge Neilson—Well, go on.

Mr. Evarts—Did you observe any effect of this conversation, and if so, what on Mrs. Tilton?

Mr. Beach—That I object to.

Judge Neilson—Leave out the word "effect"; that calls in the witness's view of it.

Mr. Morris—The very point your Honor has ruled upon two or three times.

Judge Neilson—Mr. Evarts, state the question in its simplest form. Perhaps it will answer, but if not—

#### MR. TILTON HEEDLESS OF HIS WIFE'S HEALTH.

Mr. Evarts—Did you observe anything in Mrs. Tilton after this conversation or visit of Mr. Tilton to the sick-room? A. Yes, I observed that she was very much excited.

Q. Can't hear; what? A. Excited.

Q. How did she show this excitement? A. Seemed nervous, restless and uneasy.

Mr. Evarts—I don't know that the reporters can hear very well.

Mr. Beach—[Repeating.] She was nervous, restless, uneasy.

Q. Did you make any observation to Mr. Tilton on the subject of the effect on his wife? A. Yes, Sir; I asked him if he would not please not talk in the room; that the doctor told me to keep her very quiet.

Mr. Evarts—I understood her to say, "I asked him not to talk in the room."

The Witness—Yes, Sir.

Mr. Evarts—That the doctor had asked her to keep her very quiet?

The Witness—Yes, Sir.

Q. What did he say or do in reference to this observation of yours? A. Well, he walked out of the room, and sometimes he continued to talk.

Q. Yes, I am speaking now of this one day when he came to the house in the middle of the day; how many times during that day did you see him in the sick-room and engaged in talking? A. Well, I don't remember.

Q. Well, was it more than once? A. More than once; I think two or three times as near as I can recollect.

Q. Yes, two or three times; now during that week did you see Mr. Moulton at that—did you see Mr. Moulton there during that week? A. I did.

Q. How many times as you recollect—to the best of your recollection? A. Two or three times as near as I can recollect.

Q. In whose company and where? A. In company with Mr. Tilton in the sick room.

Q. In the front room? A. Well, they were both front rooms, but they were separated by folding doors.

Q. Yes; in this sick room or the room communicating with it? A. Yes, Sir.

Q. As you have described it—as you have described the rooms. What time of day or evening were these visits of Mr. Moulton, as you remember them? A. Generally in the day time.

Q. Generally in the day time; and was the conversation—was there conversation between Mr. Moulton and Mr. Tilton? A. Yes, Sir; usually.

Q. In this room? A. Yes, Sir.

Q. And within the hearing of Mrs. Tilton? A. Yes, Sir.

Q. Was there conversation with her? A. Part of the time.

Q. Now, did you hear the conversation between Mr. Tilton and Mr. Moulton? A. No, Sir; not to—

Q. So far as to know on what subject it was, or any farther? A. Well, I knew it was connected with *The Union*; his being discharged from *The Union*.

Q. You know that from hearing their talk? A. From hearing; yes, Sir.

Q. Did you make any objection to Mr. Moulton and Mr. Tilton together on the subject of their talking there in the sick-room? A. I think I did.

Q. And what did you say to them? A. Well, I told them what the doctor had enjoined on me—to keep her very quiet.

Q. Now, Mrs. Mitchell, were these visits and this talk a subject of attention by you as a nurse as affecting Mrs. Tilton's condition and health?

Mr. Fullerton—One moment.

The Witness—Yes, Sir.

Mr. Fullerton—I don't understand you.

The Witness—They were,

Mr. Morris—One moment. That has been objected to.

Mr. Fullerton—That is objected to.

Judge Neilson—Oh! let it stand; go on.

Mr. Everts—It is an introductory question.

Judge Neilson—Go on.

Mr. Everts—Did that affect her health or condition?

Mr. Morris—Objected to.

Judge Neilson—That she can answer.

Mr. Everts—[To the witness]: As you observed.

Mr. Morris—Objected to.

Judge Neilson—Let this lady describe, without being particularly assisted, anything that she observed in respect to her health.

Mr. Everts—I have not given the least indication of what the effect was, not the least. [To the witness]: Now, Mrs. Mitchell, what effect did these visits and conversations have upon Mrs. Tilton, as you observed?

Mr. Morris—No; that is objected to. I understand your Honor as suggesting that that is not a proper question.

Mr. Beach—That word "effect" is improper.

Mr. Morris—Certainly she is not competent to answer that question.

Mr. Everts—Because she is not an expert.

Judge Neilson—I think anyone could say whether a conversation disturbed a person or not.

Mr. Everts—I should think so.

Judge Neilson—As I could say whether two persons in any hearing conversing disturbed each other. It is very common; we don't take it in the artistic sense of skill, but a simple observation.

Mr. Morris—Yes, but the counsel has incorporated the same objectionable phrase that was ruled upon a moment ago, precisely, as to the effect.

Mr. Everts—Well, what should I ask?

Mr. Morris—Ask the proper question; the Court has ruled that that term is not proper; she is not competent.

Mr. Everts—"Effect" is not a proper English word to describe a consequence of an action?

Mr. Morris—Yes, but she is not competent to describe that.

Mr. Everts—I have given in evidence the action. I have shown a sick person to be affected and I have asked what effect she observed, if any.

Mr. Morris—Well, she can state what she observed; but what caused that, or produced that, I submit to the Court, she is not competent to speak upon. She may state what she observed, but whether it was produced by this conversation or not, I submit that that is utterly improper.

Judge Neilson—Of course that is the distinction; that is the point of trouble.

Mr. Everts—That is to say, if I prove a dagger thrust—

Mr. Morris—Oh! no.

Mr. Everts—And I ask what effect it had upon the victim, that is an improper question; that is, he may be asked whether the victim fell down, but whether it was the effect of the blow cannot be thus brought into the knowledge of a court or jury.

Mr. Morris—Yes, sir, it would require an expert then, as your Honor knows; always in regard to the effect of wounds inflicted upon the person and where death results, the question being as to whether it was caused by the wound or not, it requires the testimony of an expert.

Mr. Everts—I do not ask the question; that was not my illustration.

Mr. Morris—Now she may speak as to what she observed, as to what the condition of Mrs. Tilton was after the conversation, what she observed in her conduct, and in her manner, her actions, but as to what caused, what produced that, I submit to the Court it is not proper, and your Honor has distinctly ruled upon that element of this examination, in excluding the question before upon the precise ground that we make the objection to this question.

Mr. Beach—I suppose, your Honor, if one is seen to deliver a blow against the person of another, that a person observing could say what effect was produced, whether the person struck fell or staggered, because then the physical act is apparent and the physical consequence is observable by an ordinary witness. But where a lay witness is asked as to the consequence of an act which operates imperceptibly, through influences and organs which are not observable by the lay and ordinary mind, it is not competent to ask what effect it produced. That conclusion—that judgment is a matter of science and not of observation. But I suppose it would be very competent for the gentleman to ask what was the



condition, what were the manifestations of the excitement, anxiety or repose, or otherwise, which were exhibited by Mrs. Tilton during or immediately succeeding these conversations. There does not seem to me, Sir, to be much difficulty in avoiding this.

Judge Neilson—That covers your ground, I think.

Mr. Everts—Why, it much more than covers my ground. If I had asked any such question, I should have had a hundred objections.

Mr. Beach—That is very easy for the gentleman to say, Sir, but it is altogether inaccurate.

Judge Neilson—Go on.

Mr. Everts—What did you observe in respect to anxiety or disturbance, or condition in Mrs. Tilton, after those interviews, after those visits of Mr. Tilton alone, or Mr. Tilton and Mr. Moulton? A. Why she seemed to be very troubled, nervous, restless.

Mr. Beach—The first of that answer is objectionable, but it is not of importance enough to raise a question upon.

Judge Neilson—Let it stand; go on.

Mr. Everts—Where was the studio, as it was called, in the house; and how near this sick room? A. Across the hall—the back of the house.

Q. On the first floor across the hall? A. Yes, Sir.

Q. Did you say anything to these gentlemen, or either of them, in regard to the studio as a place of their conferences? A. Yes, Sir; I asked them if they would not go to the studio.

Q. And leave the sick room? A. Yes, Sir.

Q. What did they do? A. Sometimes they went, and sometimes they did not.

Q. Did you say anything to Mr. Moulton and Mr. Tilton in regard to the dangerous condition of Mrs. Tilton? A. Yes, Sir; I told them what the doctor said—that he requested me to keep her very quiet; that she was very sick.

Q. Did you regard her as very sick? A. I did.

Q. Did you regard a disturbance of her as dangerous to her health?

Mr. Morris—I object to that.

Judge Neilson—The word "dangerous" is too broad—as unfavorable to her health.

Mr. Everts—Then as unfavorable to her health? A. Yes, Sir.

Q. In what degree?

Mr. Fullerton—We object to that.

Judge Neilson—You have gone as far as you can go on that point. You have gone far enough, it seems to me.

Mr. Everts—I will ask this question, if your Honor please. In what degree did you consider disturbance of Mrs. Tilton as prejudicial to her health or perilous to her recovery?

Mr. Morris—We object to that question.

Judge Neilson—That is ruled out. I think that that is a question which this witness does not appear to be competent to answer.

Mr. Everts—Be so good as to note our exception. The objection proceeds upon a principle, as I understand from your Honor, and is not to the mere form of the question.

Judge Neilson—Yes.

Mr. Everts—Do you remember, Mrs. Mitchell, what you did

say to Mr. Tilton and Mr. Moulton, or to either of them, on the subject of Mrs. Tilton's condition, and as to any danger she was in? A. As near as I can remember I requested them to go into the studio, as the doctor had told me that I must keep her very quiet. The precise words I do not remember.

Mr. Morris—That has been repeated half a dozen times at least.

Mr. Everts—I think it is proper.

Mr. Fullerton—I do not think it is proper to repeat it so many times.

Mr. Everts—During the period of your attendance upon Mrs. Tilton, this week, how much was Mr. Tilton in the house, and how much was he away? A. I do not remember.

Q. You do not remember about that? A. No, Sir.

Q. Do you remember, during this week, any occasion or occasions of Mr. Tilton coming into the sick room, and reading to his wife? A. Yes, Sir.

Q. State what occurred in respect to that? A. I remember that he came in and wanted to read, or said that he would like to read.

Q. He spoke to you, did he? A. Yes, Sir. I told him that I was afraid to have him read; that the doctor told me not to allow it; but he said, "Oh! it would not do any harm;" and he did read, and closed the folding doors as he read.

Q. And you left, I suppose? A. I was in the other room.

Q. By the closing of the folding doors you were separated from them? A. Yes, Sir.

Q. And he read? A. Yes, Sir.

Q. Do you remember anything about locking the door? No, Sir; I do not.

#### MR. BEECHER'S VISIT ON THE NIGHT OF DECEMBER 30TH.

Q. Do you remember the night of that week on which Mr. Beecher visited that house? A. I do.

Q. What night was that? A. It was a Friday night, the 30th of December.

Q. Do you remember the night distinctly? A. I do; I remember the night because it was Friday night, and it was prayer meeting night.

Q. You knew that Friday night was prayer meeting night in that church? A. Yes, Sir.

Q. Do you remember about the weather that night? A. It was stormy.

Q. What kind of a storm? A. It was a snow storm.

Q. Where were you, and where and how did you first see Mr. Beecher? A. Some one knocked at the door, and I opened the door, and it was Mr. Beecher; and I invited him in; and then I went down-stairs.

Q. Where, and how disposed, was Mrs. Tilton at that time? A. She was weak, very weak.

Q. And was she sitting up, or in bed? A. She was in bed, reclining.

Q. Wholly lying upon the bed? A. She was in the bed;

Q. But was she supported in any way, or to any extent? A. Yes, Sir; partially by pillows.

Q. You left the room? A. Yes, Sir.

Q. When you went down-stairs, whom did you see down-stairs; was there any one there? A. I saw Miss Dennis.

Q. Did you sit there while Mr. Beecher was in the room upstairs? A. Yes, Sir; I did.

Q. Did you know when he left? A. Yes, Sir.

Q. Did you then return to the sick room? A. I did.

Q. How was Mrs. Tilton then, in respect to health and strength? A. She was weak.

Q. At that time? A. Yes, Sir.

#### MR. TILTON'S INTERVIEW LATER.

Q. Do you remember after that, on that same night, Mr. Tilton's return? A. I do.

Q. When had he left the house, before Mr. Beecher's visit? A. In the early part of the evening, I think; as I was then with Mrs. Tilton.

Q. And he returned to the house after Mr. Beecher left, did he? A. Yes, Sir.

Q. Did you know of his return, and how first did you know of it? A. The first I knew of it I was awakened in my sleep.

Q. Where were you sleeping? A. With Mrs. Tilton.

Q. Before you went to sleep had Mrs. Tilton gone to sleep or not? A. Yes, Sir.

Q. What excited your attention, or awakened you? A. A whispering or bustling sound. Mr. Tilton was talking to his wife; I could not tell how; he was down by the side of the bed, talking and whispering very earnestly; and it awakened me, and I said to Mr. Tilton: "Mr. Tilton, this will never do; Mrs. Tilton must not be disturbed so." She seemed to be very much agitated.

Q. Mrs. Tilton seemed to be? A. Yes.

Q. What did you observe in Mr. Tilton? A. I do not remember as I observed anything except I knew that he was talking very earnestly.

Q. Was anything said about— A. I do not remember hearing anything that was said.

Q. I was not intending to inquire as to that, but was anything said by you about Mrs. Tilton being exposed to that cold? A. Yes.

Q. How did you find her. Was she lying down, or sitting up? A. Partially up in bed, and partially sitting up.

Q. Was she exposed from her position, to take cold as you thought? A. Yes.

Q. And you spoke of it? A. Yes, Sir; I did.

Q. You spoke to Mr. Tilton as you have said. What did he reply? A. I do not remember the remark he made, but I was requested to go out of the room. Mr. Tilton went out, and I put on my wrapper and went into the study, and sat down in front of the fire, and leaned my head on my hand, and Mr. Tilton went back to the room.

Q. After you came out he returned to the room? A. Yes.

Q. What time of the night was this? A. I should think it must have been about midnight; I did not know the time.

Q. Are you sure that it was late? A. Yes, Sir, I know that it was late, because it was late when Mr. Beecher was there, and this was after he had gone.

Q. How long did Mr. Tilton remain in his wife's sick room

at this time? A. I could not tell. I think it was about an hour, as near as I can state.

Q. It was a considerable time? A. It was. He was talking loud, but I could not tell what he said.

Q. Did you hear voices, and, if so, in what tones were they? A. Yes, I heard voices, as though they were talking angrily.

Mr. Beach—Wait, wait; don't say "as though."

The Witness—They were talking angrily.

Mr. Everts—Whose voice was that? A. That was Mr. Tilton's voice.

Q. Did you hear Mrs. Tilton's voice? A. I did.

Q. In what tone was that? A. In a tone of entreaty.

Mr. Beach—I object to that answer, and move to strike it out.

Judge Nelson—I think we will let it stand.

Mr. Beach—I except.

Mr. Everts—When did Mr. Tilton come out from the sick room, and what did he do? A. He came into the study, and got a paper and pen and ink, and then returned.

Q. Did he return immediately? A. Yes, Sir; but I sat there a while longer in the study.

Q. How long after that was it before Mr. Tilton left the sick room again? A. I could not tell you.

Q. About how long? A. I should judge about half an hour, as near as I can remember.

Q. Where did he go when he came out? A. He retired to his room. He came to the study and told me that I could return.

Q. And he then went to his own room, as you supposed? A. Yes, Sir.

Q. And did you return? A. I did.

Q. In what condition did you find Mrs. Tilton when you returned? A. She appeared and seemed as though she had been weeping; she appeared to be very much agitated, and I stroked her head, and tried to pacify her, and I tried to calm her.

Q. How long did you thus treat her? A. For nearly an hour, as near as I can remember.

Q. Was her condition such as required this treatment? A. Yes, Sir; she was very nervous.

Q. Did she then go to sleep? A. She did after a time.

Q. And did you return to bed and go to sleep yourself? A. I did.

Q. Besides the voice of Mr. Tilton which you heard, did you see any movement by him while he was in the front room? A. I don't remember that I did.

Q. Do you remember whether he was sitting or walking? A. It seemed as though he was walking.

Q. You heard him walking, didn't you?

Mr. Beach—The witness commences by saying that she don't remember; and, then, the counsel leads her to say that he was walking.

Mr. Everts—Did you, or not, know by anything that your eyes informed you of, while he was in the room, whether he was seated, or standing, or walking. A. I should judge that he was walking.

Q. Why do you judge so? A. Because it sounded like that.

Q. Do you remember this occasion, when Mr. Tilton was there in the middle of the day, and he said that he was ruined—do you remember whether Bessie Turner was in the room, in the sick room, or came into the room? A. Yes, Sir; she was there.

Q. Was she there when Mr. Tilton came into it, or did she come in afterwards? A. She was there when he came in, sitting on the lounge, or near the lounge. I think she sank down on the lounge.

Q. What do you mean by "sank down"? A. She dropped down as though she had fallen.

Q. How otherwise was she affected, or what did you observe about her?

Mr. Fullerton—I object.

Judge Neilson—The witness can state anything that she saw occur.

Mr. Morris—What! about Bessie Turner?

Mr. Beach—What have we to do with the condition of Miss Turner?

Judge Neilson—We are not inquiring into her condition. The witness is asked to tell what she saw; she was not asked about her condition.

The Witness—I merely stated that she was there, and she seemed to be affected by what Mr. Tilton said.

Mr. Morris—We object to that.

Judge Neilson—You may strike that out. The witness says: 'She seemed to be affected.' I don't think that is proper. It is speculative.

Mr. Evarts—It is the witness' mode of stating what she saw. Your Honor knows that we cannot pre-arrange the minds of witnesses or their habits of speech; they are such as belong to themselves. The question is only asked the witness as to the facts—what she saw Bessie Turner do at that interview.

#### HARD TWISTING TO GET AN ANSWER.

Q. What did you see on the part of Bessie Turner at that interview?

Mr. Beach—Our objection, Sir, goes to any evidence in regard to the condition of Bessie Turner, or the manner in which she was affected.

Judge Neilson—Yes, I don't allow that, but Mr. Tilton being present, and Bessie Turner being there, he may ask what she saw?

Mr. Evarts—Certainly, when the point of inquiry is the actual occurrence in a sick room, the action of all the parties as to the result of the conduct inquired about, may be given by a witness who saw it.

Judge Neilson—We will take all this witness saw except the nice judgment as to effects and conditions.

Mr. Evarts—Well, what did you see in Bessie Turner at that time? A. Well, I said she appeared to be affected—

Mr. Morris—We object to that.

Judge Neilson—Is that all you can say, Madam?

Mr. Beach—We ask that to be struck out, Sir.

Judge Neilson—Well, it is struck out.

Mr. Evarts—How did Miss Bessie Turner show to you any

participation in this matter; did she hear what Mr. Tilton was saying? A. Yes, Sir.

Q. She did. Now, thereupon what did you observe in her?

Mr. Morris—We object.

Mr. Evarts—What did you see in her, if my friend thinks there is a difference.

Mr. Morris—Well, we object to that. There is no difference.

Mr. Evarts—Just describe to us what you saw?

Mr. Morris—We object to that. Your Honor sees the object of the question.

Judge Neilson—I think you can ask her what Bessie Turner did, so far as she noticed, in the presence of Mr. Tilton.

Mr. Evarts—Yes; that is all I am asking.

Judge Neilson—Leaving out the scientific part of it.

Q. What did you see on the part of Miss Bessie Turner while Mr. Tilton was there at that time?

Mr. Beach—The counsel avoids your Honor's indication. You said that the witness might be asked what Miss Turner did, and we have made no objection to that.

Mr. Evarts—Well, what did she do? A. Well, she fell down on the lounge, and seemed to be very much—

Mr. Beach—Wait one moment.

Judge Neilson—Don't say how she seemed.

Mr. Evarts—Well, if your Honor excludes it from the witness's mode of stating, because she has not stated it according to some cast-iron rule of statement, why very few witnesses would be enabled to make the truth known.

Mr. Beach—Your Honor, is it of the slightest importance how this matter affected Miss Bessie Turner? Are we to go into a side issue in regard to her conduct?

Judge Neilson—I think not.

Mr. Beach—And whether she was impressed or not?

Judge Neilson—I think counsel don't desire it.

Mr. Morris—That is what they do desire.

Mr. Evarts—We want to get a description of what occurred in this sick chamber, as it occurred, and we will judge of it when it is described. I suppose I have a right to describe it by a witness who saw it.

Judge Neilson—I allowed that, and you concurred with me, it seems, that we are to judge of the effect.

Mr. Evarts—Yes; that is entirely so.

Mr. Beach—But, Sir, if your Honor allows this counsel to trace the character of Mr. Tilton's conduct by its effect upon Miss Bessie Turner, why, we have naturally got to inquire in regard to her condition at the time, her condition of health, her nervous condition.

Judge Neilson—She may be a person that goes into those conditions easily.

Mr. Beach—Yes, and is it important, is it of very much consequence in this case? If there is a point in this inquiry it is as to the effect produced upon Mrs. Tilton. I do not see, Sir, except so far as that effect is indicative of the condition of Mrs. Tilton as being, as the counsel intimates, a subject for the practices of others—I do not see that the effect upon Mrs. Tilton is of any consequence; but your Honor has allowed that, and we have got all the evidence upon that point.

Mr. Everts—Well, we won't debate the importance or effect of evidence, but we are quite entitled to show this.

Mr. Beach—Well, Sir, we will debate it so far as to test the matter.

Mr. Everts—Well, I won't.

Mr. Beach—Very well, Sir. That is one case where you have refrained from debate, and I will give you my acknowledgment for it, Mr. Everts.

Mr. Everts—All the debates I will reserve to the time when they are appropriate, on the effect of evidence. I only desire to get in what the law allows.

Judge Nelson—Now, this witness can tell you anything she saw occurring there in the presence of Mr. Tilton, without giving her judgment or inference as to the effect.

Mr. Everts—How did she sink down on this couch? A. She partially fell down.

Q. Now, did you observe whether or not she was weeping? A. I don't remember that; I think she was, though.

Q. Well, the best of your recollection?

Mr. Beach—Well, wait a moment. The witness says: "I don't remember that, but I think she was."

Mr. Everts—Allow me to ask her further.

Mr. Beach—Well, Sir, I don't know how you can ask her further upon that subject, when she says she don't remember it.

Judge Nelson—She says she don't remember it. Now, unless you can revive her recollection—

Mr. Everts—She says she thinks she was. Now I am going to ask her. [To the witness.] To the best of your recollection, was she or not weeping? A. Well, to the best of my recollection she was.

Mr. Fullerton—But she don't remember.

Q. Mrs. Mitchell, during this week did Mrs. Tilton continue to suffer from loss of blood; that is, from renewed loss of blood or not? A. She did.

Q. You left the 2d of— A. January.

Q. The 2d of January; that was Monday? A. Yes, Sir; Monday morning.

Q. At the time of this visit, or return of Mr. Tilton to the house in the middle of the day, that you have spoken of, and on this Friday night—at each time. I will ask you, separately, what was Mrs. Tilton's condition in respect to strength or weakness? A. She was very weak.

Q. At both times? A. At both times; yes, Sir.

Q. And how recently, in respect to either or both times, had she suffered a loss of blood? A. Well, all the week she did.

Q. All the week? A. Yes, Sir.

Mr. Everts—That is all.

#### CROSS-EXAMINATION OF MRS. MITCHELL.

Mr. Fullerton—Mrs. Mitchell, I did not get clearly in my mind when you first went to Mr. Tilton's. A. It was in 1867.

Q. At what time? A. December, 1867.

Q. December 12th, 1867? A. Yes, Sir.

Q. And you remained until April, 1868, I understand you? A. Yes, Sir, 1868, I think it was; April the 1st.

Q. April 1st; then you went again, as I understood you, in June, 1868? A. Yes, Sir.

Q. And remained a week? A. Two weeks.

Q. About a week? A. Two weeks first.

Q. Now, are you not mistaken about that? A. Two weeks the first time.

Q. How? A. Two weeks the first time.

Q. Did you return and spend that week at Mr. Tilton's in the same year that you had left, on the 1st of April? A. Yes, Sir.

Q. Then, are you not mistaken in the year? A. I think not; June, 1868.

Q. When was Paul born? A. December the 21st.

Q. Of 186— A. 7.

Q. Well, was Ralph born the June following? A. No, Sir. Then I must be mistaken in the date.

Q. Now, if you will correct that mistake, if you please.

Mr. Everts—I don't understand that there is any mistake.

Mr. Beach—She says she was.

Mr. Everts—I don't know that she does.

Mr. Beach—I know she does.

Mr. Everts—She takes it from you, that she is mistaken.

Mr. Beach—She says so herself.

Mr. Everts—She stated the birth of Ralph correctly—in 1868—I understand.

Mr. Beach—No.

Mr. Everts—Well, we all know when it was.

Mr. Fullerton—We don't know anything about it, except as we learn it from the witness.

Mr. Everts—Well, from other witnesses.

Mr. Fullerton—Well, I am talking about the testimony of this witness. She has said that Ralph was born in June, 1868.

The Witness—June, 1869.

Q. June, 1869? A. I copied it from my book. I keep a memorandum of all my births.

Q. Very well—I took it down.

Mr. Pearsall—I have got it down, too; June, 1868.

The Witness—Well, there I made a mistake.

Mr. Fullerton—I was quite willing you should correct it, of course? A. Yes, Sir.

Q. You were there about a week then, in July, 1869? A. I was there two weeks.

Q. Two weeks in July, 1869? A. Yes, Sir.

Q. June, 1869, was it? A. June, 1869.

Q. Were you there two weeks then? A. Yes, Sir.

Q. Did you keep an account of the day when you went and also of the day when you leave? A. Yes, Sir.

Q. Now, the next time that you were in that family was in the month of December, 1870, I understand you? A. Yes, Sir.

Q. What day did you go there in that month? A. The 24th of December.

Mr. Everts—Mr. Fullerton, I only asked her when she was there at the birth. I did not ask her about any other date. I didn't know that she mentioned it. On the direct examination it was only as to her attendance on his birth.

Mr. Fullerton—Certainly. [To the witness.] On the 24th of December, 1870? A. Yes, Sir.

Q. You went there in the capacity of nurse, then, did you?  
A. I did.

Q. How long prior to that 23d of December was it that you were there, whether as nurse or on casual call? A. How long before?

Q. Yes; had you been there within the week before the 24th of December? A. No, Sir.

Q. When you stated, therefore, that she had been ill for a week, you stated what you had heard from somebody else, I suppose; you did not know it of your own knowledge? A. Mrs. Tilton—

Q. One moment. You did not know it of your own knowledge, did you? A. No, Sir; Mrs. Tilton told me.

Q. Well, I didn't ask you that. A. Well, all right.

Q. You had not been there to observe for yourself, had you, whether she was ill or not? A. No, Sir.

Q. Very well. You say you found her weak and feeble? A. I did.

Q. Was she in bed? A. Yes, Sir, she was.

Q. Who was her attending physician? A. Dr. Skiles.

Q. And how often did he come to see her? A. Every day.

Q. I understand you to say, Mrs. Mitchell, that during this illness succeeding the 24th of December, 1870, you slept with Mrs. Tilton? A. I did during the week I was there; yes, Sir.

Q. Every night? A. Yes, Sir.

Q. Without exception? A. I did every night, without exception.

Q. That you are positive of? A. Yes, Sir.

Q. Are you laboring under no mistake, now, about that? A. Well, I don't think I can be.

Q. I wish you would reflect a moment. My question is whether, during the week succeeding the 24th of December, 1870, you slept invariably with Mrs. Tilton during the night? A. I did.

Q. After reflection you repeat that answer, do you? A. Yes, Sir.

#### MR. TILTON AFTER LOSING HIS POSITIONS.

Q. Very well. Now, you speak of an occasion when Mr. Tilton came to the house about the middle of the day—have you? A. Yes, Sir.

Q. Did you make a memorandum of that? A. No, Sir; I did not.

Q. How do you recollect that it was about the middle of the day? A. Well, I said, as near as I could recollect, it was about the middle of the day.

Q. Well, how are you enabled to recollect the time of day at all when it occurred? A. I cannot tell you how I remember, but—

Mr. Evarts—A little louder, Mrs. Mitchell.

Mr. Fullerton—Repeat your answer, please. A. I say I cannot tell you how I remember, but that was my impression—that it was in the middle of the day—near the middle of the day.

Q. Did any one accompany him? A. No, Sir, he came alone.

Q. Where were you when he came? A. In the room with Mrs. Tilton.

Q. And is that the time he said he had been discharged from *The Union* and was a ruined man? A. Yes, Sir.

Q. Have you spoken in your direct examination of any visit of Mr. Tilton prior to that visit in the middle of the day when he made use of that language? A. No, Sir; I don't remember that I have.

Q. That is the first visit of Mr. Tilton to the house to which your attention has been called and in regard to which you have given evidence, is it not? A. Yes, Sir.

Q. And he then had been discharged from *The Union* at that time? A. Yes, Sir.

Q. And said he was a ruined man? A. Yes, Sir.

Q. Now, do you know what day of the month that was? A. No, Sir, I don't remember.

Q. How? A. I don't remember.

Q. Have you no means of determining? A. Only it was during that week that I was there; that is all.

Q. Well, how long was it before you left? A. I left the 2d day of January.

Q. Yes, but how long before the 2d of January was it? A. I don't remember.

Q. Well, was it soon after you went there? A. I think it was, near.

Q. How soon after you went there? A. I could not tell you.

Q. Can you tell the day of the week it was? A. No, Sir; I cannot. I did not set it down, so I could not tell.

Q. Are you enabled to fix, with any degree of certainty in your mind, during what part of the week that visit was made, and that language used by Mr. Tilton? A. Well, I think, as near as I can recollect, it was the middle of the week.

Q. The middle of the week? A. Yes, Sir.

Q. Now, what day of the week, if you recollect; do you recollect? A. The 24th.

Q. That is the day of the month? A. Oh! the day of the week; Saturday.

Q. You were there on Saturday? A. Yes, Sir.

Q. And it was about the middle of the following week? A. I think it was.

Q. Wednesday or Thursday? A. As near as I can recollect; I could not tell you what day.

Q. Is that the best of your recollection now upon that subject? A. Yes, Sir; that is the best of my recollection upon that subject.

Q. And you are sure he said he was discharged from *The Union*? A. Yes, Sir.

Q. Can you give us his exact language? A. I don't think I can any nearer than that.

Q. Did he say *The Union*, or *The Union and The Independent*? A. *The Union*.

Q. Or from "the papers"? A. From *The Union*, he said.

Q. From *The Brooklyn Union*? A. From *The Brooklyn Union*.

Q. Have you told us anything else that occurred at that time? A. I don't understand your question.

Q. Was that the time that you made some observation in regard to Mrs. Tilton being kept quiet? A. Yes, Sir.

Q. When he made that observation; what did you say to him

them? A. Why, I told him that Mrs. Tilton—the doctor had told me to keep Mrs. Tilton quiet.

Q. How long did he remain in the room at that time? A. I don't remember.

Q. About how long? A. I could not tell you.

Q. Do you know where he went when he left the room? A. He went out of the room; I could not tell you where he went.

Q. How long was he gone? A. I could not tell you.

Q. Did he return to the room that day again? A. Yes, Sir.

Q. Are you sure of that? A. I think so.

Q. Can you swear positively that he did return to the room that day? A. I could not swear positively.

Q. Could not swear positively? A. No, Sir.

Q. Now, when is the next occasion that you have spoken of in your direct examination when Mr. Tilton came to that room? A. I don't know as I can remember the next time; I know it was a number of times.

Q. No, I beg pardon. Now, Mrs. Mitchell, how long was it after this visit in the middle of the day, when he said he was discharged from *The Union*? A. How long before he came in again?

Q. Yes. A. I don't recollect.

Q. How many days after? A. Why, it might have been in the same day.

Q. No, but how long was it after that, that you recollect, when he was there? You cannot say it was on the same day, I understand you? A. I don't remember whether he came in the same day; I presume he did; I don't know.

Q. I don't want you to presume; I want you to give me the best of your recollection? A. Well, to the best of my recollection—I don't remember.

Q. Very well. Well, do you know that some days intervened between his first and second visit? A. Why, he was in the room every day, some parts of the day.

Q. Well, I am speaking of those visits that you have testified to on the direct examination? A. Well, he was in the room every day, some part of the time.

Q. I am speaking of the occasions that you have testified to on the direct examination; I am speaking of no other. When was the next occasion that he visited that room when you admonished him about noise?

Mr. Everts—That is not the question, Mr. Fullerton, is it?

Mr. Fullerton—Yes; that is the question, no doubt.

Mr. Everts—He may have done so every day. I have not called her attention to every day, only to certain visits.

Mr. Fullerton—Well, my question is proper.

Mr. Everts—Well, the witness is entitled to understand it, I suppose.

The Witness—Well, I did not note his visits; I know he came into the room, and sometimes would be in two or three times a day.

Q. There were occasions then when he came in and went out, when you did not admonish him about noise? A. Yes, Sir.

Q. Or talking loud, wasn't there? A. When he came in and went right out again, of course, I did not speak.

Q. When he came in and did not go right out again, but did not talk, you did not admonish him? A. No, Sir.

Q. There were such visits as that? A. Yes, Sir.

Q. Now, you have spoken of an occasion when Mr. Beecher was there? A. Yes, Sir.

Q. When was that? A. The 30th of June—the 30th of December.

Q. How do you recollect that it was the 30th of December? A. Because it was a prayer meeting night, Friday night.

Q. How do you know it was prayer meeting night? A. Because I know it was prayer meeting night in my own church, and that is the way I remember.

Q. Are you a member of Plymouth Church? A. No, Sir; not a member of Plymouth Church.

Q. Well, you say it was prayer meeting night in your own church? A. Yes, Sir.

Q. Where did you reside? A. Where did I reside then?

Q. Yes, at that time? A. I resided then, when I was at home, at 4 Willow-st.

Q. In Brooklyn? A. Yes.

Q. What was your own church? A. Bridge-st. Church; Baptist Church; Mr. Sarles's.

Q. You know it was prayer meeting night in Plymouth Church because it was prayer meeting night in your own church? A. Yes, Sir.

Q. That is the way you know it? A. Yes, Sir; I know Mrs. Tilton spoke about its being prayer meeting night.

Q. I did not ask you what Mrs. Tilton said. A. You asked me how I knew.

Q. Well, I asked if you knew it was prayer meeting night in Plymouth Church because it was prayer meeting night in the Bridge-st. Church? A. I don't know that it was on that account. I know prayer meeting night was always the same night.

Q. Where were you when Mr. Beecher arrived? A. I was in Mrs. Tilton's room, Sir.

Q. What were you doing, taking care of her? A. Yes, Sir.

Q. Were you engaged in any particular thing at that time? A. I don't remember as I was.

Q. You say there was a knock at the door? A. Yes, Sir.

Q. At what door was there a knock? A. A knock at the door at the head of the stairs, the room she was in.

Q. And you opened the door? A. I opened the door.

Q. And saw Mr. Beecher there, did you? A. Yes, Sir; I did.

Q. Did he address you when he opened the door? A. I don't remember whether he did or not.

Q. Did you speak to him? A. I did; I asked him to walk in.

Q. Had you heard the door-bell ring? A. I don't remember whether I had heard the door-bell ring or not, but I—

Q. Did he come in when you asked him to? A. Yes, Sir.

Q. Did any one accompany him? A. No, Sir.

Q. Did you see any one in the hall or on the stairs at that time? A. No, Sir; I did not.

Q. Well, you left, as I understand you, and went down-stairs? A. I did.

Q. Did any one request you to do so? A. I don't think there did; I think I went of my own accord.

Q. Well, one moment, you say you don't think there did? A. Well, there did not.

Q. You are sure of that? A. Yes, Sir.  
 Q. Nobody requested you to leave? A. I invited Mr. Beecher to walk in, and then I left and went down stairs.  
 Q. Without being asked to go, by any one? A. Yes, Sir.  
 Q. Did you close the door after you? A. I did.  
 Q. Did any one request you to do that? A. No, Sir.  
 Q. What time in the night was that? A. Well, it was after nine o'clock; I could not tell you the precise time.  
 Q. Had you retired yet? A. No, Sir.  
 Q. Mrs. Tilton was— A. Mrs. Tilton was in the bed.  
 Q. Was she in the bed or lying on the bed? A. She was in the bed.  
 Q. Was she bolstered up? A. Yes; partially.  
 Q. Well, in a sitting posture? A. No, Sir; not exactly in a sitting; in a reclining posture.

NO WRITING MATERIALS SEEN AFTER MR. BEECHER'S VISIT.

Q. Now, when you opened the door to let Mr. Beecher in did you see Ellen Dennis? A. No, Sir.  
 Q. She was not in view? A. I did not see any one.  
 Q. Not in sight? A. I only saw Mr. Beecher.  
 Q. How long did you remain down-stairs before you went up? A. I remained down until Mr. Beecher went away.  
 Q. Well, that don't inform me. A. I couldn't tell you how long.  
 Q. About how long? A. About an hour, I should think, as near as I could judge.  
 Q. Did you hear him go away? A. Yes, Sir.  
 Q. And when you heard him go out you went up-stairs, I suppose? A. Yes, Sir; I did.  
 Q. You remained down-stairs, then, purposely whilst Mr. Beecher was up-stairs? A. Yes, Sir.  
 Q. You did not intend to return whilst he was there, did you? A. No, Sir.  
 Q. How? A. No; I did not think anything about it. That is what I always do when company calls.  
 Q. That was what? A. Leave the room and go down.  
 Q. When he called?  
 Mr. Evarts—When company called? A. When any one comes in.  
 Mr. Fullerton—When any one comes? A. Yes, Sir.  
 Q. That was your habit, then? A. Yes, Sir.  
 Q. Of leaving the room and going down-stairs when any one came? A. Yes, Sir.  
 Q. Well, did you leave and go down-stairs when Moulton came? A. No, Sir; I did not.  
 Q. You stayed there, then? A. That was in the day time; yes, Sir.  
 Q. Then you only went down-stairs when company called in the night time; was that it? A. Well, I know I went down.  
 Q. But I must repeat my question again, Mrs. Mitchell? A. Yes, Sir.  
 Q. Did you go down-stairs when company came only when they called in the night time? A. No, Sir.  
 Q. Well, why didn't you go down-stairs when Mr. Moulton called? A. Well, I don't know why I did not.

Q. Were you requested to remain? A. No, Sir.  
 Q. How? A. No, Sir; I was not requested to remain.  
 Q. Speak a little louder, if you please, Mrs. Mitchell. You were not requested to remain? Well, were you requested to go down-stairs, or to leave the room? A. No, Sir.  
 Q. Now, Mrs. Mitchell, what did you hear just before you went up-stairs, after Mr. Beecher called, to indicate that he had left? A. I thought I heard the door shut.  
 Q. And you concluded that Mr. Beecher had left, did you? A. Yes, Sir.  
 Q. Then you went up-stairs? A. Then I went up-stairs.  
 Q. When you went up-stairs did you find any writing materials in the room? A. No, Sir.  
 Q. Did you see nothing of an inkstand, pen or paper? A. I did not, as I noticed; no, Sir, I did not notice anything of that kind.  
 Q. Wasn't there a secretary in the room? A. A secretary in the front room.  
 Q. In that room was not there a secretary, where Mrs. Tilton was? A. I think not.  
 Q. Are you quite sure of that? A. I think there was not in that room. You know the rooms are all the same as one; there is a secretary in the front room.  
 Q. Well, I am talking about the room in which Mrs. Tilton was lying at the time. A. Well, I don't think there was a secretary.  
 Q. Now, there were folding doors between that room and some other room. A. Yes, Sir.  
 Q. But they are two rooms, are they not, when the folding doors are shut, at all events? A. Yes, Sir.  
 Q. Very well. Now, I ask you the question whether or not there were not writing materials in the room occupied by Mrs. Tilton? A. Well, I don't remember.  
 Q. Don't you know that the secretary stood in that room? A. I know that the secretary stood in the front room.  
 Q. In the front room? A. I think it was.  
 Q. That is, you had to pass through the folding doors, did you? A. Yes, Sir.  
 Q. From the room occupied by Mrs. Tilton to the room where the secretary was? A. The folding doors were open.  
 Q. Well, is that true that you had to pass from the room where Mrs. Tilton was into the other room, passing through the folding doors to get to the secretary? A. Yes, Sir; the folding doors were open.  
 Q. Never mind the folding doors at present.  
 Mr. Evarts—Do you mean to transcend the hour of adjournment, Mr. Beach?  
 Mr. Beach—I don't mean to transcend anything, or anybody.  
 Mr. Fullerton—Mr. Evarts moves an adjournment, your Honor.  
 Mr. Evarts—I only asked counsel whether or not—it is as well to break here instead of any other time, and the jury have their habit of this hour.  
 Mr. Beach—I suppose you mean to break bread.  
 Judge Nelson—Prepare to retire, gentlemen.  
 The Court here took a recess until 2 p.m.

## THE AFTERNOON SESSION.

The Court met at 3 o'clock, and the cross-examination of Mrs. Mitchell was resumed.

Mr. Fullerton—Was that secretary which you say was in the adjoining room to the one Mrs. Tilton occupied, open or shut as a general thing? A. Shut as a general thing.

Q. You have seen it open, have you not? A. Yes, Sir.

Q. Frequently? A. Yes, Sir.

Q. Did you see writing materials in it? A. Yes, Sir, I have seen writing materials in it.

Q. During that week did you see writing materials in it? A. Not that I recollect of.

Q. Did you see it open during that week? A. I do not remember whether I did or not.

Q. Did you have occasion to write whilst you were there? A. I did; but I always have my own writing materials with me.

Q. Did you see anybody write at that secretary whilst you were there, in that week in December, 1870, and the first of January, 1871? A. I do not remember.

Q. Did you see any one sitting at that secretary and writing? A. I do not remember that I did.

Q. And you do not remember having seen writing materials in it during that period, as I understand you? A. No, Sir; I had no occasion to go to it.

Q. You were in the room a good deal, were you not? A. Yes, Sir.

Q. And did not the secretary stand open, during that week, some part of the time? A. I presume it did; I think it did.

Q. Then you could see the writing materials without having occasion to go to it, could you not? A. Yes, if I took particular notice, but I did not take particular notice.

Q. How soon after this call of Mr. Tilton in the day time (when he said that he was a ruined man) was it, that you saw Mr. Moulton at Mr. Tilton's house? A. I think it was the next day.

Q. Was that the first time that you saw him there? A. Yes, Sir.

Q. But you would not state what that next day was, I suppose? A. No, Sir, I cannot, because I do not remember what day of the week it was.

Q. What time in the day was it that Mr. Moulton came there first? A. I do not remember.

Q. Was it in the day time or in the night season? A. It was in the day time, I think; I am sure it was in the day time.

Q. Are you quite sure that you saw him more than once there? A. Yes, Sir; I am.

Q. Were you present in the room? A. I was.

Q. When he was there the first time? A. Yes, Sir; I think so.

Q. And all the time that he was there? A. Yes, Sir.

Q. You did not leave the room the first time that he was there? A. I do not remember. I may have gone in and out, but I do not remember that I did.

Q. What room was he in? A. He was in the room adjoining the room that Mrs. Tilton was in. The rooms were all in one.

Q. Do not repeat that, I understand how those rooms are.

They are not all in one; there are two rooms with folding doors between them? A. But they are open most of the time.

Q. Do the folding doors embrace the whole distance between the walls? A. No, Sir.

Q. He was in the adjoining room then to where Mrs. Tilton was? A. A part of the time, and a part of the time he was in the room with Mrs. Tilton.

Q. Was that the first time that he called? A. I don't remember whether it was the first or the second.

Q. I am talking about the first time? A. I do not remember.

Q. Can you say that he was in the room with Mrs. Tilton the first time that he called or not? A. No, Sir, I cannot.

Q. Can you say that he was in the room with Mrs. Tilton the second time that he called? A. I cannot say whether it was the second or the third time.

Q. Are you sure that he called more than twice? A. I think he did.

Q. Could you swear positively to it? A. I do not know that I could swear positively, but I am quite sure that he was there more than twice.

Q. Did you remain in the room during the time that he was there? A. Yes, Sir, I think that I did.

Q. Did you ever see him in the room with Mrs. Tilton more than once? A. I could not say.

Q. And you cannot say whether you remained in the room all the time when he was in that room, or not? A. No, Sir.

Q. Do you remember anything that passed whilst Mr. Moulton was in Mrs. Tilton's room? A. Only I remember—

Q. No; do you remember anything that did pass? A. I remember their talking; that is all.

Q. You remember that they talked? A. Yes, Sir.

Q. And that is all you remember? A. Yes, Sir.

Q. When was it that Mr. Tilton said that he would like to read to his wife? A. I do not remember the day.

Q. How long was it after this day when he called in the middle of the day and said that he was ruined? A. I could not tell you.

Q. Was it before or after Mr. Moulton called? A. I could not tell you; I do not remember.

Q. Was it before or after Mr. Beecher called? A. I could not tell you.

Q. You cannot say? A. No, Sir.

Q. You have no way of fixing the time? A. No, Sir.

Q. Were you requested to leave the room then? A. No, Sir.

Q. You went voluntarily, did you? A. I went voluntarily.

Q. Where did you go? A. I went down-stairs. Are you referring to the time that Mr. Beecher called?

Q. No; I am talking about the time when Mr. Tilton said that he wished to read to his wife; where did you go then? A. Into the room adjoining.

Q. Into the library or study? A. Into the front room, and closed the folding doors.

Q. What is that room called? A. The sitting-room; it is the same room.

Q. You went through the folding doors, did you? A. Yes, Sir.



Q. Were the folding doors shut? A. Mr. Tilton closed the folding doors.

Q. And you were upon the other side? A. Yes, Sir.

Q. Did you hear his voice while you were in there? A. I do not remember.

Q. Then you do not know that he read to her, do you? A. I do not know, only from what he said; I do not know that he read to her.

Q. You heard him say that he wanted to read to her? A. Yes, Sir.

Q. What did he have at that time in his hand, if anything?

A. He had a book in his hand.

Q. Do you know what book it was? A. No, Sir.

Q. A bound book? A. I could not say.

Q. Did it appear to be an ordinary bound book—a book with a cover on? A. I do not remember.

Q. Can you not remember that as well as you can remember that it was a book? A. I remember that he had a book in his hand.

Q. A book with a binding on it of some kind? A. I cannot say whether it was a book with a binding or whether it was a pamphlet; I could not say.

Q. But something of that character, was it? A. Something of that character.

Q. What did you say to Mr. Tilton when he proposed to read to his wife? A. I told him that the doctor did not wish to have any reading or conversation in the room.

Q. Are you sure that you told him so at that time? A. Yes, Sir, I think I did.

Q. Had you ever been present when Mr. Tilton read to his wife? A. No; I always left the room when he read to her. He requested me to leave.

Q. Always? A. Yes, Sir; most of the time.

Q. On these former visits of yours, did he read to her then? A. Yes, Sir.

Q. In 1837 and 1838? A. Yes, Sir.

Q. He read to her then, did he? A. Yes, Sir.

Q. And he would request you to leave the room then, when he read to her. A. Yes.

Q. Then this was a habit of his—of reading to his wife? A. I suppose it must have been; I do not know.

#### MR. TILTON'S MIDNIGHT INTERVIEW WITH HIS WIFE.

Q. You have spoken of Mr. Tilton's return, after Mr. Beecher's call; are you enabled to fix the time of the night when that return was? A. No, Sir, I am not.

Q. I must ask you again (because I want to get at the exact time) when he returned that night had you not gone to your own room? A. No, Sir, I was with Mrs. Tilton.

Q. Did you open the door, and say to Mrs. Tilton that night, that Mr. Beecher wanted to see her? A. I was in the room and he came right in—

Q. I ask you if you said that? A. No, Sir.

Q. Did you say anything like that to him? A. When the knock came to the door I opened the door and I said: "Mr. Beecher is here, Mrs. Tilton," and I asked him to walk in.

Q. And then he walked in? A. And then he walked in, and I went down-stairs.

Q. Did Mrs. Tilton make any reply when you made use of that observation? A. I do not remember that she did.

Q. You do not remember that she did? A. No, Sir.

Q. Was the room lighted at that time? A. Yes, Sir.

Q. Was the gas burning? A. Yes, Sir.

Q. You are quite sure of that? A. Yes, Sir; because I had not retired.

Q. I understand you to say that you have no way of fixing the time when Mr. Tilton returned that night? A. Yes, Sir.

Q. How was it that you were awakened? A. I was awakened by a buzzing sound, as though he was talking very earnestly to his wife. He was talking very earnestly to his wife, and I was awakened by this sound.

Q. Did you make it known that you were awake, immediately on waking? A. Yes, Sir.

Q. What did you say? A. I said: "Mr. Tilton, this will never do; it will disturb Mrs. Tilton."

Q. Did he stop then? A. I think he did. I was requested then to leave the room, and Mr. Tilton went out of the room while I put on my wrapper and went across the hall to the study.

Q. Who requested you to leave the room? A. I do not remember whether Mr. or Mrs. Tilton.

Q. Have you any recollection upon that subject? A. No, Sir.

Q. Did not Mrs. Tilton speak, and request you to leave the room? A. I do not remember.

Q. What is your best recollection upon that subject? A. I could not tell you.

Q. Have you no recollection upon the subject? A. No, Sir; it might have been Mrs. Tilton and it might have been Mr. Tilton.

Q. What were the words used? A. They asked me to leave the room.

Q. Have you given us the very words that were used? A. I do not remember.

Q. Were you told to go? A. Yes, I believe I was told to go to the study.

Q. Where was that study? A. Across the hall, in the back part of the house.

Q. Can you not remember that it was Mrs. Tilton who told you to go to the study? A. I cannot remember.

Q. Where was the study with reference to Mrs. Tilton's room, further in the rear, or nearer the front of the house? A. In the rear.

Q. You do not go directly across the hall then to it? A. No, Sir, not straight across.

Q. How long had you been in the study before Mr. Tilton came in there? A. I could not tell you; I should think for half an hour.

Q. Did you get asleep in the meantime? A. No, Sir; I don't think I did.

Q. On which side of the hall is the study? A. As you go up stairs do you mean?

Q. On the north or south side? A. I don't know how the

house is situated; I think it is on the south side; it is a sunny room and on the south side I should say.

Q. Does the hall run between the study and the other two rooms of which you have spoken, one of which was occupied by Mrs. Tilton and the other of which you came into through the folding doors—does the hall run between them? A. The hall runs between the study and Mr. Tilton's room.

Q. Mrs. Tilton's room and the room immediately communicating with it by folding doors, is on the same side of the hall, isn't it? A. The study do you mean?

Q. No; I am not talking about the study. A. In the front of the house are the two rooms.

Q. The hall does not go through those two rooms? A. No, Sir.

Q. Those two rooms are on the front of the house? A. They take the whole front.

Q. And the hall does not extend to the front? A. No, Sir.

Q. How long after you got into this study was it, before Mr. Tilton came in there, as you recollect? A. As near as I can remember, it was about half an hour, I should judge.

Q. What did he do when he came? A. He came in and took paper, pen and ink off the table, and walked off.

Q. Did you see that pen and ink afterwards? A. No, Sir; I don't remember that I did.

Q. Did you see the paper which he got, afterwards? A. No, Sir.

Q. You don't know then what became of it or what use was made of it? A. No, Sir; I don't know anything about what use was made of it.

Q. When you returned to the room where Mrs. Tilton was, was it upon the invitation and suggestion of anybody? A. I think it was; I think Mr. Tilton said that I could return; I don't remember that.

Q. Can you swear positively that while you were in the study that night you heard any sounds from Mr. Tilton's room at all? A. I can.

Q. Positively? A. Yes, Sir.

Q. And could you distinguish the voices? A. I could.

Q. You are sure of that? A. I could distinguish Mrs. Tilton's voice.

Q. Could you distinguish what was said? A. No, Sir.

Q. You could not hear the words? A. No, Sir.

Q. Nor anything like that, could you? A. No, Sir.

Q. You could only hear the sound? A. I could only hear the sound.

Q. Was there anything except the loudness of the tone of the voices which you heard, which enabled you to determine as to the character of the conversation going on there? A. That was all.

Q. I understand you to say, Mrs. Mitchell, that you heard voices talking angrily; did you mean by that you heard a loud voice? A. Yes, Sir.

Q. And that was all, was it? A. Yes, Sir; I heard Mrs. Tilton's voice, as though she were entreating her husband.

Q. Did you judge by the loudness of the tone? A. Yes, Sir, I judged by that.

Q. And by that alone? A. When I returned—

Q. I am asking what you heard while you were in the study? A. That is what I heard. I heard Mr. Tilton's voice in a loud anger, and I heard Mrs. Tilton's voice as though she were entreating.

Q. And you thought he was angry because he was loud? A. Yes, Sir.

Q. And you thought she was entreating because she was loud, didn't you? A. No, Sir.

Q. You determined then the character of the conversation by something beside the sound, didn't you? A. No, Sir; not besides the sound.

Q. Only by the sound, and by the loudness of it? A. Yes, Sir; by the character of it.

Q. I understood you to say that Mrs. Tilton was very weak when you went there? A. Yes, Sir.

Q. Feeble in strength? A. Yes, Sir.

Q. Did she continue feeble during your whole stay there? A. Yes, Sir.

Q. Did she improve at all? A. Yes; she improved some.

Q. When did she commence improving? A. She did not improve very much while I was there.

Q. When did she commence improving? A. I don't remember the day she commenced.

Q. But she did improve while you were there? A. She did improve a little.

Q. Only a little? A. Only a little; I left her in a weak state.

Q. I don't ask you how you left her; did she improve by Saturday of the week that you got there? A. I think she did, a little.

Q. Did she sit up? A. No, Sir; she did not sit up.

Q. But she improved by Friday, after you got there? A. Yes, Sir; she improved a little; but very little.

Q. Are you sure she did not sit up any while you were there? A. I don't remember her sitting up while I was there.

Q. Will you swear positively that she did not sit up in her room, in her chair, while you were there? A. I do not remember that she did.

Q. Do you remember that she did not sit up in her chair while you were there? A. I don't remember that she did.

Q. Do you remember that she did not? A. No, Sir.

Q. You went away on the 2d of January, didn't you? A. Yes, Sir; on Monday morning.

Q. What was her condition then? A. She was in a weak condition. I left her in her bed. When I left on Monday morning, I left her in her bed.

Q. Had the hemorrhage ceased? A. No, Sir; it hadn't.

Q. Had it diminished? A. Somewhat.

Q. Have you ever been at the house upon any occasions, except when you were there in service? A. Yes, Sir; I have called there.

Q. Made friendly calls? A. Yes, Sir.

Q. Frequently? A. Yes, Sir.

Q. How long have you staid, at any time when you made such friendly calls? A. I was there at the death of Paul.

Q. How long were you there then? A. I was there and watching with him the night before his death. I was there,

I think, two or three days at that time; I do not remember the exact time. I was there at one time and took care of a lady who was sick.

#### MR. TILTON KIND TO HIS WIFE.

Q. What was the general treatment by Mr. Tilton of his wife? A. He always appeared to treat her well.

Q. Why do you emphasize the word "appeared?" I ask you if he did not treat her well in your presence? A. Yes; he did in my presence always.

Q. Invariably, did he not, in your presence? A. Yes, Sir, in my presence he did.

Q. What was the condition of Mrs. Tilton, as to strength, the night that Mr. Beecher called? State particulars, if you please? A. She was very weak the night Mr. Beecher called.

Q. Was she more or less so than she had been? A. She was very weak and low.

Q. Did I understand you to say that she was weak and low? A. She was weak.

Q. Was she low? A. She was weak; I do not think I said "low."

Q. And had been during the whole day? A. Yes, Sir.

Q. Was she more or less so that night when Mr. Beecher called than she had been? A. Well, she was very weak.

Q. Will you be kind enough to state who ever called there besides Mr. Beecher, when you left the room and went away, or went down stairs? A. Who called there?

Q. Yes; mention any person who called when that happened; mention names. A. I do not remember.

Q. You had been there a good deal; can you tell who ever called there? A. Mr. Moulton called there.

Q. Did you leave and go down stairs then? A. No, Sir.

Q. Who besides Mr. Beecher ever called there at the house at any time, and you went down stairs and left them? A. I do not remember as anybody did.

Q. I understood you to say a short time before the recess, that you were in the habit of going down stairs when company called in the day time.

Mr. Beach—What she said was that when anyone called there she always left and went down stairs.

Mr. Fullerton—Now, I want you to name any person who so called, when you went down stairs, other than Mr. Beecher?

Mr. Evarts—At any time?

Mr. Fullerton—I mean at any time, and I say at any time.

The Witness—I do not remember of any one calling.

Q. Can you name another instance in which anybody called at that house when you went down stairs and left them alone? A. No, Sir; I do not know that I can; I do not know that anyone called.

Q. Then why did you say that you were in the habit of going down stairs when anyone did call, if nobody called except Mr. Beecher? A. Because you puzzled me so that I could not remember.

Q. But I do not puzzle you now, do I? A. Not now, you don't.

Q. Then answer my question. A. I did answer it.

Q. Then you were not in the habit of going down stairs when anyone called? A. No, Sir.

Q. This was an exception, then, to the general practice? A. Yes, Sir, it was.

Q. Can you state now why you went down stairs? A. No, Sir, I can not; I went of my own accord.

Q. You are sure of that? A. Yes, Sir, I am.

Q. No one requested you to go? A. No one requested me to go.

Q. Did you suggest to Mr. Beecher what the doctor had told you about visitors talking to her? A. No, Sir; I did not think of it.

Q. Can you state how you happened to walk out just at that time? A. No, Sir.

Q. When you went up-stairs, after Mr. Beecher's departure, in what condition did you find Mrs. Tilton? A. I do not remember.

Q. Was she not calm? A. I cannot remember.

Q. Have you no recollection of her condition when you returned? A. No, Sir.

Q. How is it that you cannot remember what her condition was when you returned? You were gone about an hour as I understood you? A. As near as I can recollect, I said I was.

Q. And you thought that conversation was injurious to her, did you not? A. Yes, Sir.

Q. And the doctor had forbidden it? A. Yes, Sir.

Q. Had you not some anxiety about her during this long absence? A. I could not say it was an hour.

Q. But you have said it was an hour? A. No, I did not, I said it was about an hour; I did not say any particular time, for I had no means of knowing.

Q. Had you not some anxiety during this absence of about an hour? A. I suppose I must have had.

Q. Don't you remember whether you had or not? A. No, Sir.

Q. Did not that anxiety, which you think you must have had, prompt you to observe pretty closely, when you went back into the room, the condition of Mrs. Tilton, to see what effect this conversation of about an hour had had upon her? A. I do not remember.

Q. You do not now recollect what her condition was? A. No, Sir.

Q. And you do not recollect what the result of your observation was, do you? A. No, sir,

Q. That is all a blank in your memory, is it? A. Yes, sir.

Q. You do not remember that she was crying when you went back? A. No, sir; I do not.

#### RE-DIRECT EXAMINATION OF MRS. MITCHELL.

Mr. Evarts—At other times than this week—this last week of your attendance on Mrs. Tilton, when you were there as her nurse, or in the three months visit, (a part of which you were a nurse) do you remember, while she was in her sick room, and you were her nurse, persons called upon her and saw her in her sick room? A. Yes, sir.

Q. Did persons call, or not, upon Mrs. Tilton, and see her in her sick room, when you attended her in either of her confinements?

A. Sometimes. That depended upon the length of time that she was sick.

Q. Do you remember, at either of those confinements, the names of persons, either gentlemen or ladies, who saw her in her sick room? A. I remember Miss Cary's calling there.

Q. Who is she? A. Alice Cary, I think it was; I do not know whether it was Alice or Phoebe Cary.

Q. Do you remember other ladies seeing Mrs. Tilton during that confinement, while she was in her sick room? Do you remember other ladies calling to see Mrs. Tilton in her sick room during either of her confinements? A. Yes, Sir.

Q. What ladies do you remember? A. I remember Mrs. Bradshaw calling once, and an aunt of hers; I cannot think of the name.

Q. An aunt of Mrs. Tilton's, whose name you do not remember? A. Yes, Sir, I think she called.

Q. Do you remember any other ladies? A. No, Sir, I do not.

Q. Do you remember whether any gentlemen called during Mrs. Tilton's confinement, who were admitted to her sick room, except the instance you have given, when Mr. Beecher called upon her? A. I do not remember.

Q. When you say that it was your habit, when callers came to the sick room, to leave the room, did you speak of that as a habit at Mrs. Tilton's house, or as your habit in your profession and business as a nurse? A. That I did not mean; I was mistaken then: Mr. Fullerton puzzled me so that I hardly knew what I was going to say.

Mr. Fullerton—I am very sorry for it: I did not mean to.

Mr. Evarts—That is a very natural result.

Mr. Fullerton—I apologize for that.

Mr. Evarts—Do you remember, Mrs. Mitchell, that during this week in December, in the sickness of Mrs. Tilton (you have been asked about her sitting up in her chair) do you remember what arrangements were made whenever she left her bed, and how that was managed? A. Yes, Sir.

Q. How was that? A. I used to put her in a rocking chair, and tip the chair back and then draw her into the front room, and place her on the lounge.

Q. And that was all that she did during that week, in the way of leaving her bed? A. Yes, Sir, that is all.

Q. The couch was in the room that communicated through the folding doors? A. Yes, Sir.

Q. During that week in December did you see any other gentleman in the sick room, or in the communicating room, except Mr. Moulton, Mr. Tilton and Mr. Beecher—on that call on Friday night? A. No, Sir.

Q. When Mr. Beecher called, you knew him? A. Yes, Sir.

Q. And you knew that he was the clergyman of Plymouth Church? A. Yes, Sir.

Q. And that Mrs. Tilton was a member of that Church? A. Yes, Sir.

Q. Now, when you returned after leaving the room, on Mr. Beecher's call, was there anything in Mrs. Tilton's appearance that attracted your notice? A. No, Sir.

Q. I understand you, Mrs. Mitchell—I understood you have

said on your direct examination—on your first examination by me, that this call, this return to his house by Mr. Tilton in the middle of the day, was about the middle of the week? A. As near as I can recollect, it was.

Q. Yes; well, how many days do you include in the middle days of the week? A. Well, Wednesday or Thursday, I think.

Q. Now, you know that it was not Saturday, don't you? A. I don't think it was, but I could not say.

Q. Now, you have spoken of visits to this house other than your professional visits there. Through that period of years was you in the habit of being at the house as a visitor, a caller, or a visitor, staying at any time? A. Well, through all the years.

Q. Since you have known them? A. Yes, Sir; the last two or three years I have not been there very often.

Q. That is from 1867 until within two years? A. Yes, Sir.

Q. Now, how frequently—what length of time would there be between any of those visits of yours? A. Well, sometimes—I don't remember—sometimes six months, perhaps, sometimes a year.

Q. Now, did you stay at the house over night, or over more than one night occasionally or not? A. Yes, Sir; I think I have.

Q. In that way you observed Mr. and Mrs. Tilton, both of them? A. Yes, Sir.

Q. Do you remember once going to Greenwood with them? A. I do.

Q. What was that visit? A. At the time they removed the remains of a child.

Mr. Fullerton—That is a new topic I don't think counsel ought to be permitted to go into.

Mr. Evarts—No, I did not introduce anything but calls of the precise interviews that were important in this case, and you have gone into other relations. [To the witness.] When was that, and on what occasion, and how did that come about? A. Well, I could not remember; I was there staying, I remember.

Q. Staying at their house? A. Yes, Sir.

Q. For how long a time? A. I don't recollect; a day or two.

Q. A few days? A. Yes, Sir.

Q. Very well, what was the occasion that you accompanied them to Greenwood? A. To remove the remains of their two children.

Q. From one lot to another, or from the tomb to the lot? A. From the tomb to the lot.

Q. By their invitation did you go? A. I went by the invitation of Mrs. Tilton.

Q. You went in a carriage together? A. Yes, Sir.

#### RE-CROSS-EXAMINATION OF MRS. LUCY W. MITCHELL.

Mr. Fullerton—I understand you to say, Mrs. Mitchell, that on your return to the room, after Mr. Beecher left, that there was nothing in Mrs. Tilton's condition that attracted attention? A. Yes, Sir.

Q. Do you remember now what her condition was? A. I remember it was weak.

Q. Do you remember anything else about it? A. No, Sir.

Q. That is all that you remember, that she was weak? A. Yes, Sir; she was weak.

Q. Well, I understand you to say you could not recall to your mind now what her condition was when you returned? A. Well, that I know that she was weak, because she was weak through the day.

Q. You know that because— A. She was weak through the day.

Q. What? A. Weak through the day.

Q. Oh! yes, that of course—she was weak; but I understand you, you cannot recall any other feature of her condition, except the weakness? A. No, Sir.

Q. Did you observe anything as to the effect which this long conversation had upon her? A. No, Sir.

Q. Made no observation in that regard at all, did you? A. No, Sir.

Mr. Fullerton—That is all.

Judge Neilson—That is all, Mrs. Mitchell.

Mr. Evarts—If your Honor please, there is a gentleman now visiting the city from Indiana, whom I will call as a witness; it won't be a long inquiry, and it may make a considerable difference to him; my friends assent; as Mr. Halliday is a resident here, we can call him at any time.

Judge Neilson—It seems to be proper, Sir.

Mr. Evarts—Rev. Mr. Gay.

Mr. Beach—How long will this evidence take?

Mr. Evarts—Oh! I don't think—

Judge Neilson—Do you think you will close it this afternoon, Sir?

Mr. Morris—No, Sir.

Judge Neilson—Well, go on and see.

Mr. Morris—It will not be closed this afternoon, I don't think.

Mr. Evarts—Oh! I think so—

Mr. Morris—I assure you I don't think it will be closed.

Mr. Beach—I hope, then, there won't be a long witness interposed.

Mr. Morris—I know about the witness, I will say from what knowledge I have of the witness, it will be a very long examination.

Mr. Evarts—Well, ours will be brief.

Judge Neilson—Well, Mr. Halliday is here and can be brought any day. [To Mr. Gay.] Take the stand and be sworn.

# TESTIMONY OF MR. JOHN L. GAY.

John L. Gay, then affirmed on behalf of the defendant, and testified as follows:

Mr. Evarts—Mr. Gay where is your residence? A. In the town of Bloomfield, Indiana.

Q. How long have you been a resident there? A. Something more than three years.

Q. And where had you resided before that time? A. In Vincennes, in the same State, and in Fort Wayne, in the same State.

Q. For how many years have you been a resident of Indiana? A. Some six years or seven.

Q. What State are you a native of? A. I am a native of North Carolina.

Q. Have you been a resident of this State? A. Yes, Sir.

Q. For how many years? A. For four years.

Q. Where was that? A. In the village or town of Manlius, in the County of Onondaga, and also for a short time in Genesee County.

Q. What is your profession? A. I am a clergyman.

Q. Of what denomination? A. Of the Protestant Episcopal Church.

Q. And how long have you been a clergyman? A. Thirty years.

Q. In 1872 were you connected with a University that has its seat in Bloomington, Indiana? A. I was, Sir.

Q. What is that University? A. It is a State University—State University, known as the State University—The Indiana State University; that is the corporate name.

Q. And at the time that I speak of in the year 1872—was the University open in its studies to the youth of both sexes? A. It was and is.

Q. Still? A. Still.

Q. How long had it been before that, so far as you know in general—some time? A. Some seven or eight years.

## RADICAL VIEWS OF MARRIAGE AND DIVORCE.

Q. Do you know of Mr. Tilton's lecturing there? A. I do.

Q. When was that? A. It was on the evening of the 9th day of February, 1872.

Q. Where was that lecture delivered, and before what audience? A. It was in the College Chapel; a large room twice as large as this, and before the Faculty, students and citizens generally.

Q. And did the audience include ladies and gentlemen? A. Yes, Sir.

Q. The female students of the college? A. Yes.

Q. And ladies and gentlemen of the town? A. Of the vicinity—of the town and neighborhood.

Q. Was the house full? A. The house was full.

Q. Do you know by whose invitation Mr. Tilton was there as a lecturer? A. I don't know of my own knowledge. I know generally that he was there in obedience—

Mr. Beach—Well, wait a moment.

Mr. Evarts—As far as you know?

Mr. Beach—It is totally unimportant.

Mr. Evarts—Very well. Did you hear the whole of the lecture? A. I heard the whole of it.

Q. How long was it? A. I should say it was an hour—from an hour and a half to an hour and three-quarters; perhaps fully an hour and three-quarters long.

Q. Was it an able and eloquent lecture? A. It was, speaking in a certain sense, a very—

Mr. Beach—We object to that.

Judge Neilson—Well, we will take it.

The Witness—A very able lecture; that is, delivered with great rhetorical effect.

Q. Now, at that lecture, what was the subject of that lecture?

A. "Marriage and Divorce." The title of it, however, was "Home, Sweet Home."

Q. Now, at that lecture, did you hear from Mr. Tilton a statement of the marriage relation as he laid it down? A. I did.

Q. What did he state on that subject?

Mr. Beach—We submit to your Honor that this is a collateral question in regard to what Mr. Tilton's lecture was in Indiana.

Judge Neilson—Well, I think we will take it, Sir.

Mr. Beach—Well, I supposed you would.

Mr. Everts—State Mr. —

A. He stated, or told them rather, to follow nature—follow nature in the formation of marital relations; I am clear, however, he told them to follow nature—not the laws of nature, but follow nature.

Q. Well, what did he say about Church and State? A. Well he was in very ill terms with the Church and State.

Mr. Morris—No, no.

Mr. Beach—I move to strike that out.

Judge Neilson—Yes, Sir.

The Witness—I withdraw it then.

Mr. Beach—It is not necessary you should take it back. [Laughter.]

Judge Neilson—The officers will keep order.

Mr. Everts—State what he said.

Mr. Fullerton—Mr. Tilton was not interrogated as to that.

Judge Neilson—I don't think he need be a party, you know.

Mr. Everts—Yes, Sir.

Mr. Fullerton—Church and State?

Mr. Everts—Yes, Sir.

The Witness—He was protesting against—

Mr. Morris—No, no.

Judge Neilson—No, no; you must state what he said.

The Witness—Well, he said to the audience—

Judge Neilson—Gentlemen, I think you will have to be a little more sober.

The Witness—That he would not permit the State or the Church to interfere or regulate—I am not sure which word was used—interfere with this relation—with the formation of this relation between the sexes; and if he could have his way, he would crush the Church, and he would crush the State, too, having in his hand a couple of crisp bits of paper, which he crumpled up; made a noise all over the house. It was accompanied with that gesture.

Q. The gesture accompanied the statement? A. Yes.

Q. Did he say in his lecture this, or to this effect: "If any two among them promise each other enduring love they were in effect as much man and wife in the eye of heaven as if the sanction of the law and the benediction of the priest had pronounced them so." Or what did he say in that—on that subject, if at all? A. He said something like that. I don't remember about the "enduring love;" my remembrance is, if—he said this—"if any two of you love each other and promise to be faithful to each other—vow to be faithful to each other, that vow makes you man and wife without the intervention of the priest or the State."

Mr. Beach—That is pretty good law.

Q. Now, as a part of the discourse, was anything said about

the children, and any care of them, and by whom? A. Yes, Sir; he said that as they came together without formality, without the intervention of the Church or the State, on their mere desire, so they could separate in the same way, with the same informality; that their relations lasted, was intended to last as long as affection lasted, and no longer—he said "to be sure, there may be a difficulty as to providing for the children that may be born during parties living together in that way, but it would be the duty of the State to take care of the children in that event."

Q. How many female students were there in the University at that time, Mr. Gay? A. Somewhere between 43 and 44. [Laughter.]

Q. Well, that is a number; you know the number accurately? A. Yes, there were 42 on the catalogue at that time, and there were some irregulars, who were not on the catalogue, attending.

Q. What ages were these females? A. Well—

Q. Their average? A. Of all ages, from 15, 16 to '20 and 21 and 22—between 15 and 21 and 22 I should say.

Q. Now, after the delivery of this lecture of Mr. Tilton's, what was the number of female students at that University?

Mr. Beach—We object to that.

Judge Neilson—We will not take that, Sir.

Mr. Everts—It is a fact, Sir—I have not introduced the objectionable word "effect"—

Judge Neilson—No, we got past that—

Mr. Everts—In fact.

Judge Neilson—I don't think we will take that.

Mr. Everts—Very well, we offer to show what the number was after that. I won't except to your Honor's decision.

Judge Neilson—I am much obliged to you.

Q. Oh! Mr. Gay, how long have you been in the State of New-York at present? A. I have been here two weeks to-day.

Q. What business brought you here? A. I came on private business, or properly speaking, on some church business—sent here by my bishop.

Q. And that business brought you in connection with the clergy and laity of your church? A. Yes, Sir.

Q. Did you come here in any connection with this suit? A. By no means.

Q. After your coming here, did you have any communication with any of the counsel of the plaintiff, and how—of the defendant, and how? A. Not until I received a telegram from home requesting me to come—

Mr. Beach—What is that?

Mr. Everts—We wish to show how he came here.

Mr. Beach—Well, I object to it.

Mr. Morris—How is that material how he came here?

Mr. Everts—Well, I thought you would want to know. [Laughter.]

Mr. Morris—Well, I will find it out.

Mr. Everts—I thought I could get it shorter

Mr. Morris—Oh! no, I will find that out.

CROSS-EXAMINATION OF REV. JOHN L. GAY.

Mr. Morris—Well, Mr. Gay, as counsel upon the other side seem anxious to excuse your presence here to-day, I will ask you if, before coming here, you had any correspondence with either counsel upon the other side? A. I had.

Q. When was that? A. Oh, some time ago.

Q. About when? A. I was written to by Mr. Shearman about two months ago, I guess.

Q. And with reference to this case? A. Yes, I think it was in reference to this case, but I don't—

Q. Have you any doubt upon that subject? A. I don't know whether the suit was commenced or not.

Q. About two months ago, you say? A. Two or three months ago; I don't remember.

Q. You don't remember whether any proceedings had been initiated at that time, or not? A. I know they were talked of, but what you were doing here—

Q. Well, have you any doubt as to the fact that you were written to concerning this case? A. I have no doubt in the world that I was written to—no doubt in the world.

Q. Did you reply? A. I replied as one gentleman replies to another.

Q. Yes. Well, did you receive more than one letter? A. Yes, Sir.

Q. Yes. From whom did you receive the second letter? A. Mr. Shearman.

Q. And was that concerning this case also? A. Yes, Sir.

Q. And when was it that you received that letter? A. Shortly after the first.

Q. You replied to that also? A. Yes, Sir; a few words.

Q. Received any other letter? A. I believe not.

Q. Well, were you requested to come on here and be present at the trial? A. No; I was not.

Q. Not requested to come here? A. Mr. Shearman said he did not think my presence would be necessary; he stated that in his second letter to me.

Q. Did you state to him in your reply to him what you have stated upon the stand here to-day? Did you inform him of the facts—communicate the facts to him that you have stated here to-day upon the stand? A. I gave him some points; he asked for some points.

Q. Did you state the facts to Mr. Shearman in reply to his letter as you have stated them here to-day upon the stand? A. I don't remember all that I wrote to him; I gave him the facts.

Q. Oh, no; did you state the facts or the substance of the facts that you have given here to-day to Mr. Shearman in reply to his letter? A. Not in the detail that I have now.

Q. Well, did you refer to the lecture? A. I did.

Q. Did you tell him what Mr. Tilton said at the lecture? A. Yes, in part.

Q. Did you tell him all that you could recollect? A. No, from my—

Q. Why didn't you? A. Because—

Q. Didn't he request from you all the information you had in reference to that matter?

Mr. Evans—"Because," he says.

Mr. Morris—Well, because what? A. Because I had filled my sheet and thought I had said enough. [Laughter.]

Q. Oh, you had filled your sheet and that was the only reason—is that the only reason that you did not communicate to him the balance of the facts, because you had filled the sheet? A. I did communicate to him all that was relevant as I supposed; all that I had to say.

Q. Did you communicate to him all that you have testified to here to-day in regard to Mr. Tilton's lecture there? A. Substantially that.

Q. Substantially that? A. Yes, Sir.

Q. And then he informed you that it would not be necessary for you to attend here? A. He thought not.

Q. Yes? A. And my coming, had no reference to the trial at all.

Q. Oh! well, you need not repeat that—any expenses been paid you? A. Not a dollar; I came on my own expense.

Q. Well, how did they find out that you were here in the city of New-York? A. Because Mr. Shearman's telegram reaching me, I felt it incumbent upon me to go and answer it in person.

Q. When did you receive that telegram? A. The day before yesterday.

Q. Whereabouts was it—were you then in the city of New-York? A. I was in the city of New-York.

Q. He telegraphed for you? A. Telegraphed for me.

Q. To come here? A. Yes, Sir.

Q. As a witness?

Mr. Evans—Mr. Morris, he telegraphed him out there.

Q. Did you receive a telegram in New-York? A. No, Sir; the telegram was sent to my home.

Q. Out West? A. Out West.

Q. And then you felt it your duty to come here? A. The telegram was sent to me by my wife.

Q. What was it that telegram stated? A. "Come on to Brooklyn."

Q. Oh, then you were sent for to come on to Brooklyn? A. Yes, Sir, I was sent for in that way.

Q. In that way—Mr. Shearman informed you in a letter that he didn't want you, and then sent a telegram for you to come on; is that it? A. He sent a telegram for me to come on the other day.

Q. Mr. Shearman informed you in a letter that you were not wanted and then sent a telegram for you to come on, is that it—is that correct? A. I don't know that I need put the two things together, or that you need to.

Q. Well, I do put them together. A. Suppose I don't choose to.

Q. Now, I want you to answer; is that correct that you received first a letter that you were not wanted here, and then a telegram from Mr. Shearman to come on? A. I received a telegram to come on.

Q. And that was after the letter that you were not wanted? A. Why, yes; two months afterwards; I had forgotten almost all about it.

Q. And then, when you received the telegram, you thought it incumbent upon you to come on, do I understand you cor-

rectly? A. No, Sir; the telegram went to my home and was sent to me here by my wife.

Q. Transmitted? A. In a letter.

Q. Yes, Sir, then you came over here? A. No.

Q. Were you subpoenaed? A. No.

Q. Well, you did come over here, then didn't you? A. Yes, I am here now.

Q. Well, who gave you notice to come here? A. Mr. Everts.

Q. Oh! Mr. Everts gave you notice—when? A. Night before last.

Q. Night before last. Did you send word to them or notify them in any way that you were in New-York? A. No, Sir; I went and reported to Mr. Everts.

Q. Then you notified them? A. Went in person and told Mr. Everts.

Q. Exactly. A. I consulted a friend as to my duty in the premises.

Q. Never mind that; but then when you arrived in New-York you went and notified the other side—went and saw Mr. Everts? A. Why, to be sure I did; I went and spoke to Mr. Everts.

Q. And then you were requested to come over here? A. Yes, Sir.

#### MR. TILTON COMPLIMENTED BY THE FACULTY AND STUDENTS.

Q. Well, now, let us go back to Indiana for a moment. You were present at this lecture? A. I was.

Q. You made some remarks after Mr. Tilton got through, I believe? A. Yes; I got up and protested against—

Q. Well, that answers my question. And Mr. Tilton replied to you, didn't he? A. Yee—some sort of reply.

Q. Well, yes, we will take it in that way. Who presided at that lecture? A. Our President—

Q. President of the institution? A. (continuing)—was sitting in the chair, sitting there—

Q. Well, who presided at that lecture? A. The President, I presume.

Q. The President of the University? A. Yes, Sir.

Q. And Mr. Tilton lectured there the next day, didn't he? A. Yes.

Q. And before whom did he lecture the next day? A. I did not attend the lecture the next day.

Q. I didn't ask you whether you attended the lecture or not; before whom did he lecture?

Mr. Everts—How does he know?

The Witness—Pretty much the same sort of crowd as the night before, I presume; I was not there.

Q. Well, who constituted the crowd? You designate them as a crowd; now, who constituted the crowd? A. The President, Faculty, students, and citizens.

Q. And you characterize them as the crowd? A. As making up the assembly, yes; I was not there.

Q. Well, now, he lectured then before the same audience the next morning at eleven o'clock, did not he? A. I say, I presume; I was not there.

Q. Well, you understood so, didn't you? You understood that he lectured the next day, didn't you? A. I did understand he lectured the next day.

Q. And where was that lecture the next day delivered? A. In the College chapel.

Q. In the College chapel; and don't you know that that was delivered the next day by Mr. Tilton in the College chapel at the request of the students and Faculty? A. I heard so.

Q. You heard so—yes? A. I can't say that I know it.

Q. That answers it; you heard so; it was so understood, and that the President of the University presided at that lecture, didn't he? A. I don't know who presided.

Q. You so understood, didn't you? A. I never heard who presided.

Q. Didn't you understand that the President presided at the lecture next morning? A. No; not necessarily, because I never heard; I never inquired.

Q. But he did lecture at the request of the students and Faculty next day in the College chapel? A. Yes, Sir.

Mr. Morris—Very well.

Mr. Everts—Does that go down on the record?

Mr. Morris—Yes, that goes down, it is down now, already. [To the witness:] Now, do you recollect, Mr. Gay, that the next day the students passed such a resolution as this;

"Resolved, That we the students of the Indiana State University return our most sincere thanks to Theodore Tilton for his able and eloquent address on the evening of February 9th, 1872."

A. I have heard so.

Q. You heard so? A. Yes, Sir.

Q. And that was the lecture at which you took some exception? A. It was a lecture against which I protested and denounced.

Q. Well, you were connected at that time—there is another one here too I believe—oh! yes, I beg your pardon—I will read this; see if you recollect this being passed [reading]:

"Resolved, that we disapprove the course taken by Professor Gay; that Mr. Tilton has the sympathy of the students."

Q. Do you remember that also? A. I recollect there was such an indecent resolution as that passed. (Laughter.)

Mr. Morris—I beg your pardon for overlooking it.

The Witness—Yes, Sir.

Q. And you heard also that the President, didn't you, at the adoption of these resolutions, presided, and complimented Mr. Tilton; you understood that, didn't you? A. No, I did not.

Q. Didn't understand that part of it? A. I did not attend the second lecture; I told you I did not attend the second lecture; I was so disgusted with the first I would not go to the second.

Q. Yes, very well. You understood, also, that a number of the professors the next day invited Mr. Tilton to dine with them, did you not, and you were not invited to that dinner? A. I never heard about that.

Q. Didn't hear about that? A. I never heard about it at all.

#### MR. GAY DENOUNCED FOR HIS INTERFERENCE.

Q. Well, you were a member of the institution at that time? A. I was a member of the Faculty, Sir.

Q. And how long did you continue a member after that? A.



For six or seven months—ended my connection the end of July.

Q. Now, Mr. Gay, were not you discharged from that institution in consequence of the course that you took that night? A. I resigned in consequence or—

Q. Yes; go on. A. Of an excitement and opposition, and persecution that was gotten up in consequence of it.

Q. Yes; then your leaving of the institution was in consequence of the course that you took that night at Mr. Tilton's lecture? A. I am willing you should say so, and I say so.

Q. Well, I am not on the stand now; what do you say to it? A. Well, I am not ashamed to own it.

Q. It is the fact? A. It is the fact.

Q. Well, you were requested to resign, weren't you, Mr. Gay? A. I was requested to resign.

Q. You were requested to resign in order to save expulsion for the course that you took that night, and you resigned? A. No; I don't admit that.

Q. Well, you were requested to resign? A. No; an opposition was gotten up by the students—

Mr. Morris—That will do.

The Witness—In consequence of that—

Mr. Morris—That is enough on that point.

Mr. Everts—Didn't you ask him something about that?

Mr. Morris—Oh, not now; I have got through with that question; got all through with it.

Mr. Everts—All but the answer.

Q. Did you hear Professor Warwick shortly after that, next week or a few days? A. No, Sir; I don't remember at all.

Q. Professor Warwick? A. I don't remember.

Q. Do you recollect his being present at Mr. Tilton's lecture? A. I don't know him.

Q. Don't know him? A. There might have been some person of that name.

Q. Never heard of him? A. No, Sir; I don't know him; there might have been some person there; there is always some person about of that sort.

Mr. Beach—What is that? What is this name—some person about of that sort, do you say?

Mr. Morris—The elocutionist.

Mr. Beach—Well, I want to understand what this gentleman is talking about.

The Witness—When I say, "of that sort," I mean some elocutionist; there was always a number of them around.

Q. Do you mean to say that you don't know Professor Warwick; don't you know Professor Warwick? A. I do not.

Q. Do you know of such a man? A. I have an indistinct recollection of hearing of his name.

Q. Only an indistinct recollection? A. That is all.

Q. That is all. A. That is all.

Q. And what is his business? A. I remember a gentleman—I did not attend his lecture; consequently it made no impression upon my mind.

Q. What is his business; do you know? A. I think I heard he was reading—elocutionary reading—Shakespeare, or something; I don't know what.

Q. Where? A. About the college; I don't know where.

Q. About the college? A. Yes.

Q. What do you mean by "about the college"? A. In and about it.

Q. In and about it? A. In and about it.

Q. What do you mean by about it; I want you to explain that. You say, "in and about the college;" now, what do you mean by that answer? A. If I was in and about the Court-house—

Q. What do you mean by about it? A. You would understand very well; somewhere in the neighborhood, and around the Court-house.

Q. Well, do you understand then that he did not lecture inside, in the College? A. I don't know whether he did or not; I did not hear him.

Q. You don't know? A. I did not hear him.

Q. Now, you say, at that lecture Mr. Tilton said that in the formation of matrimonial alliances parties should follow nature? A. He said so.

Q. Well, what do you think they ought to follow?

Mr. Everts—Is that material?

Mr. Morris—Yes.

The Witness—I think they ought to follow nature in obedience to the Great Law that we have given us in the Ten Commandments.

Q. Well, in the formation of matrimonial alliances, you think they ought to follow nature, don't you? A. Certainly.

Q. Well, then, you agree with Mr. Tilton upon that point, don't you? A. Why, to some extent, of course.

Q. Very well. A. I would not go against nature—should not go without nature; but, nevertheless, it should be nature held in subordination to laws.

Q. Now, as you say, this lecture was upon the subject of marriage and divorce; do you understand that in order to make a valid marriage it is necessary that there should be any ceremony either of Church or State? A. Well, as I am not a lawyer, I don't know that I—

Q. I am asking for your understanding; do you so understand it?

Mr. Beach—Does he so believe and hold?

Mr. Morris—Or do you so believe and hold; is that your idea of marriage? A. Well, I should not think that I was married by simple vow and resolution with a woman; I should not feel that it was a marriage.

Q. You think that for two parties to agree to be man and wife and live faithfully in that relation, and that relation is inspired by mutual affection for one another, that that don't constitute them man and wife? A. Well, no, I don't believe it.

Q. You don't think it does? A. I think there is something more necessary.

Q. What is your idea upon the subject of divorce?

Mr. Beach—Before you go to that, I would like to know from this gentleman whether he holds that there should be some ceremonial sanction, either by the Church or the State? A. I do.

Mr. Morris—Yes; do you hold that doctrine suggested by my— A. Yes; I hold that there should be some Divine sanction—some religious sanction.

Mr. Beach—Some religious sanction? A. Well, yes; some sanction by Church or State, one or both: we believe in both.

Q. Now, then, what do you believe should be ground of divorce? A. I hold that there is—I hold that there is no valid cause for divorce except that given in the New Testament, other—for the cause of adultery.

Q. For the cause of adultery? A. For the cause of adultery.

Q. So that if you believe that if a man abandons his wife, refuses to support his wife and family, and utterly repudiates the relation, that still they should continue to be man and wife.

Mr. Everts—What do you mean by repudiating the relation?

Mr. Morris—By his action and by his conduct.

Mr. Everts—Not by adultery.

Mr. Morris—No; that is a cause of divorce, he says. [To the witness.] Now, you believe they should continue to be man and wife.

The Witness—I have already answered that I didn't believe that man and wife should ever be divorced—

Q. Answer my question; you believe that they should continue to be man and wife under the circumstances that I have suggested? A. Till death them part.

Q. Till death them part? And if a man becomes a drunken brute, beats his wife every day, maltreats her in every form, refuses to provide food for her, or proper clothing, or shelter that she should be his wife until death parted them. Do you believe that? A. That may be cause for separation, but I hold—

Q. Don't think it is cause for divorce? A. Not from the bond of marriage, no.

#### SLANG USED AND DEFINED.

Q. Now, didn't Mr. Tilton advocate the harmonizing of the laws of the different States upon the subject of divorce, in that lecture, so that they should be uniform, and that there should be more causes for divorce than in some of the States, for instance the State of New-York, that is but one? A. I believe that he blathered a long time about that.

Q. Oh, you think he blathered a long time about that? A. Yes, Sir.

Q. Well, now then—

Mr. Beach—Look here, wait one moment. Please ask this gentleman what he means by the term "blathered."

Mr. Morris—That is just what I was going to ask; now explain what you mean. Explain to this Court and jury what you mean by the term "blathering."

Mr. Beach—"Blathered."

Q. Explain just what you mean? A. It is a plain, well understood word. When a man speaks emptily, vainly, for no purpose, without sufficient reason and—that is what I understood by the term "blathering."

Q. Now, you said a moment ago that it was a very able speech? A. It was delivered with rhetorical effect.

Q. Now, state to me—

Mr. Beach—Wait, Mr. Morris.

Mr. Everts—That is what he said before.

The Witness—That is what I said.

Q. Did you say "read"—he read the lecture? A. Oh! no, it was not read, it was delivered, because—

Mr. Beach—I understood you to say "read," did you? A. Oh! no, not "read" at all.

Mr. Beach—Well, I ask that the last answer be read.

THE TRIBUNE Stenographer [reading]: "It was delivered with rhetorical effect."

The Witness—That is what I mean to say—delivered, not read; it was not read.

#### THE SUBSTANCE OF THE LECTURE.

Mr. Morris—Then state what he said, as near as you can recollect, upon the subject of divorce? A. Well, he had a long—

Q. Oh! never mind about that; state what it was. A. Well, I can't state without I get at it.

Q. I know you can't. A. He had a great deal to say about the different laws of divorce.

Q. Well, what did he say? A. Different causes of divorce in different States; some States allowed no divorce; South Carolina he mentioned, I think, for instance, and others allowed a great many; I don't remember; it is a long time ago.

Q. Oh, go ahead. Is that all you recollect that he said upon the subject of divorce? A. Oh, no,

Q. Go on, and state now what he said upon that subject?

Mr. Beach—[To Mr. Morris.] Didn't he eulogize the laws of New-England?

The Witness—I think he ran over the various States rapidly in an oratorical way?

Q. State what he said, as near as you can? A. He did say something about harmonizing, I remember that; he did say something about harmonizing the various laws of the various States on the subject of divorce.

Q. Didn't he eulogize the laws of New-England upon the subject of divorce? A. I don't remember.

Q. And of the Western States? A. I don't remember.

Q. Do you know anything about the law of divorce in Indiana—or causes of divorce? A. I don't know the number of causes. I know that they were restricted some two years ago. The State passed laws, or the last Legislature, two years ago passed a law restricting divorces, and from an impulse, or inspiration given to the public.

Mr. Beach—Oh, well, now, please stop.

Mr. Fullerton—Don't get on the subject of inspiration, I beg of you.

The Witness—Go on.

Mr. Morris—What were the causes of divorce in Indiana at that time—at the time of the lecture? A. I don't know; I don't think he told us; I don't think he knew.

Q. Was abandonment one?

Mr. Beach—What did you say? You didn't think he knew?

Mr. Morris—Didn't think that Mr. Tilton knew? A. I am sure I didn't know; I don't know.

Q. Do you mean to say that he didn't know? Did you say that he didn't know? A. I think it possible.

Q. Do you mean to say that he didn't know? A. No; I don't mean to say that.

Q. Well, what did you say it for? What did you mean by

saying that he didn't know? A. I didn't know the various grounds of divorce—

Q. Why did you say that he didn't know? A. Well, being a stranger, I should suppose that he would not know all our laws.

Q. Oh, that is it? A. That is what I mean to say. Possibly he did; I don't know.

Q. How long had you lived in Indiana? A. Some six or seven years. I have never had occasion—

Q. And you don't know what the causes of divorce in that State were at that time yourself? A. My attention has never been called to it, I have not been—

Q. You never protested against the Indiana laws upon the subject of divorce in your capacity as teacher—moral teacher? A. No; I protested against Mr. Tilton; I didn't protest—

Q. No, no; did you ever protest against the Indiana laws concerning divorce; as a moral teacher did you ever? A. No, Sir; I never felt called upon to do that.

Q. Never felt called upon? A. Certainly not.

Q. Do you know that abandonment was one cause of divorce in Indiana? A. Possibly; I don't know it officially.

Q. Well, if that was a cause, you don't believe it was right, do you? A. I have already stated that I believe there is only one valid cause for divorce.

Q. Well, if it was not right, why didn't you protest against it, as a moral teacher, holding the convictions that you did?

Mr. Evarts—I submit, your Honor, that there is some limit to the right of counsel to reason with the witness. This is not testimony at all.

Mr. Morris—Well, was cruel treatment another cause of divorce in Indiana? A. I don't know; I told you.

Q. You don't think a person ought to be divorced for cruel treatment, do you? A. I have already answered.

Q. If it is carried to any extent? A. It may be cause for separation, but cause for divorce is another thing.

Q. And habitual drunkenness; you don't think that that should be a cause for divorce? A. I have already answered.

Q. Failure of the husband to make reasonable provision for his family; is that a cause also? A. I don't know.

Q. If a man is sent to State's prison for life you still think his wife ought to be a wife legally to him, until she dies, do you? A. I have already answered.

Q. Well, you believe that? A. I believe that there is no scriptural—

Q. Answer my question, do you believe that? A. I believe there is no ground—

A. No, no, no, no! Answer my question. I will have a direct answer to that question? A. Put your question then categorically.

Q. If a man is sent to State's Prison for life for crime, do you believe that his wife must be tied to him legally until he dies, or she dies; is that your doctrine? A. Scripturally, I do, and legally.

Q. Is that your doctrine?

Mr. Beach—Yes, scripturally and legally.

Mr. Morris—Very well; that is so much the worse for him.

The Witness—I am not on trial. I beg pardon; I am not on trial.

Q. That will do now, Mr. Guy. Do you think that a marriage celebrated before a magistrate—a Justice of the Peace—is a valid, legal marriage? A. I do, but it has not the sanctions of religion; it has not the sanctions of the Church, but it is a valid, legal marriage, nevertheless.

Q. Well, Mr. Guy— A. Gay.

Q. Mr. Gay, as we have succeeded in excusing your coming here, we will excuse you now from further attendance.

#### RE-DIRECT-EXAMINATION OF MR. GAY.

Mr. Evarts—Mr. Gay, what did you say in answer to Mr. Tilton's lecture? A. After his lecture was over, sitting down in the audience—supposing this was the platform [indicating], not quite—about half as high as this—sitting down there, I rose in my place and said—turning to the audience, I begged them to wait a moment, and I said that I could not go to my bed, nor indeed to my grave, in peace, without protesting and denouncing that lecture, that a more dangerous lecture I had never heard, a lecture more unsuited to the audience I had never heard, and with that sat down.

Q. What did Mr. Tilton do then? A. The first gesture was to run his fingers through his long hair, blushed, got up, and said he did not feel like measuring swords with the gentleman at that time and place, excused himself for delivering that lecture, on the ground that it was called for by a committee; upon which I replied that if it had been called for by a committee of the students they could not have known what was in it, and I did not still feel that he was excusable for delivering such a lecture there.

Q. Did Mr. Tilton rejoin anything to that? A. Well, by this time there was considerable confusion—considerable confusion and noise.

Q. Well, I asked if he said anything in reply? A. He said something, but exactly what it was I do not remember; I do not know that I heard distinctly.

Q. You were in the audience? A. I was in the audience down there [indicating]; he was up here on the platform.]

Q. You were a Professor in the college? A. I was a Professor—Professor of English Literature.

Q. And for that protest you lost your professorship? A. For that protest an opposition was started which threatened a rebellion and a stampede.

Mr. Beach—That is objected to, your Honor.

Mr. Evarts—Why?

The Witness—A threatened rebellion and stampede—

Mr. Beach—Will you wait a moment?

The Witness—Certainly.

Judge Nelson—I think we can take his statement; it is virtually what he gave before. It may be due to the gentleman to take it.

Mr. Beach—Well, upon that ground I withdraw any objection, of course.

The Witness—An organized opposition, violent opposition was started up right away as indicated in those—

Mr. Beach—No, no.

Mr. Evarts—Those resolutions.

The Witness—Those resolutions that Mr. Morris has brought out. I think the effect of it should be brought out too.

Judge Neilson—Go on, Sir; and what?

The Witness—Well, this opposition and this feeling of hostility on the part of the students, stirred up that night and the next morning, kept on increasing, until some six weeks afterwards I felt constrained to offer my resignation—

Mr. Everts—Resignation.

The Witness—I was not expelled; I was not threatened with expulsion; nothing of the sort.

Judge Neilson—You thought it proper to resign? A. I thought proper to resign.

Mr. Everts—And that was accepted at the next meeting of the trustees, was it? A. It was accepted.

Q. In the Summer? A. It was accepted with the understanding that if I had a quiet term, next term, I would probably be re-elected.

Q. Well, since that you have pursued your duty as a minister of the gospel, have you not? A. As a clergyman of the Church—the Protestant Episcopal Church—as a missionary.

Q. In the same place? A. In the same place, and in neighboring places. That is my calling.

Q. What was your salary as professor?

Mr. Beach—Oh, I object to that, Sir.

Mr. Everts—Well, we will see.

Mr. Beach—Well, we will see; I object to it.

Judge Neilson—I think we better take it. It is curious to see what compensation professors get.

Mr. Beach—Well, Sir, does your Honor sit here for the purpose of indulging that sort of curiosity?

Judge Neilson—No, Sir.

Mr. Beach—Well, Sir, I object to this evidence.

Judge Neilson—Well, then, it is immaterial; ruled out. I suppose you intend to show that he got less as professor than he gets now; is that it?

Mr. Everts—No, not a bit of it. I propose to show that this gentleman lost a salary of \$1,800 and has lived on \$450 ever since. That I propose to show.

Mr. Fullerton—What of that?

Judge Neilson—I think we will not take it.

Mr. Everts—That is what I propose to show.

Judge Neilson—That is one of the misfortunes of life,

Mr. Fullerton—Suppose it was to show that he was ever paid?

Mr. Everts—I don't propose to show that. The jury will judge about it.

Mr. Beach—The jury will judge about what?

Mr. Everts—About the evidence that he has given.

The Witness—Am I through?

Judge Neilson—Yes, Sir.

Mr. Shearman—Wait a moment.

Mr. Everts—Look at this, Mr. Gay, and say if that is the letter you sent to Mr. Shearman? A. Yes, Sir, that is the letter I wrote to Mr. Shearman.

Mr. Everts—We offer that in evidence, your Honor.

Mr. Beach—We object to it.

Mr. Everts—Why?

The Witness—It is dated November 2d. I see there are two sheets, I supposed there was but one.

Mr. Morris—There are four sheets.

Mr. Everts—One full sheet of letter paper.

Judge Neilson—I think we cannot take it. We have the substance, I think.

Mr. Everts—We have had a right—I beg your Honor's pardon for speaking so decidedly—but I suppose we have a right to offer it in evidence. They have called for the correspondence.

Judge Neilson—They have not called for anything that would qualify their cross-examination.

#### THE LETTERS ABOUT MR. GAY'S TESTIMONY RULED OUT.

Mr. Everts.—They have given the contents of the paper.

Mr. Beach—Oh, no, Sir.

Mr. Everts—Well, your Honor has the evidence fresh in your recollection. They explored, for their purposes, the correspondence, to make what they could out of it. That gives us a right to show the correspondence and produce it in evidence, that the correspondence may speak for itself. Otherwise witnesses have no protection whatever.

[Mr. Beach here rose as if to speak.]

Mr. Everts—I am not through.

Mr. Beach—Well, I am not troubling you, Go on. I was picking up a pen. (Laughter.)

Mr. Everts—Not picking up a quarrel? [Laughter.] Now, this whole affair is pleasant and hilarious, no doubt; but, seriously, when counsel inquire into correspondence between the witness and the opposite counsel in reference to the position of the witness in the cause, I know no safer rule than that the correspondence itself should be rightfully presented by the other side.

Judge Neilson—Mr. Morris inquired if he wrote substantially what he had stated here.

Mr. Beach—Yes, Sir.

Judge Neilson—You consider that looking at the contents of the paper?

Mr. Everts—I do.

Judge Neilson—Well, Sir, you mark it, with that view.

Mr. Beach—What, Sir?

Judge Neilson—We will receive it.

Mr. Beach—Receive the letter, Sir?

Judge Neilson—Yes, Sir.

Mr. Beach—Suppose it has something else in it?

Mr. Everts—You can read it.

Mr. Morris—We object to it.

Judge Neilson—Mr. Morris interrogated him whether he had written to Mr. Shearman substantially what he had testified to here, and as much as he had stated here.

Mr. Beach—Yes, Sir; substantially what he has stated here. How does that give them a right to introduce the declaration of this man in the form of a letter? The point of the inquiry, if your Honor remembers, was, the gentleman having disclosed that Mr. Shearman wrote to him that he was

not needed, or need not come, the point of the inquiry was to show that this gentleman had communicated to Mr. Shearman, before that notice was given, all that he had revealed upon his examination.

Judge Neilson—Yes.

Mr. Beach—Does that authorize them to go into a statement of what he revealed to Mr. Shearman? Suppose he revealed to Mr. Shearman more than he stated here, would it make it evidence?

Judge Neilson—No, Sir.

Mr. Evarts—It makes the whole letter evidence.

Mr. Beach—No, it does not make the whole letter evidence.

Judge Neilson—The letter does not prove anything that it contains.

Mr. Evarts—That we understand.

Judge Neilson—It does not prove any fact that is in it, but it may be due to the witness that it should be put in.

Mr. Beach—In what respect? He says that he communicated to Mr. Shearman substantially what he had testified to here. Where is there any necessity for any explanation on the part of the witness?

Judge Neilson—Is that not in effect inquiring into the contents of the letter?

Mr. Beach—No, Sir; it is inquiring as to the simple fact. "You have sworn to this upon this stand. Did you communicate this to Mr. Shearman?" "Yes." Now, does that authorize them to give the conversation between the witness and Mr. Shearman?

Mr. Beach—Most certainly not.

Judge Neilson—No.

Mr. Beach—Most certainly not. This is precisely the same thing, Sir. What may be in this letter I don't know. It may state a great many other facts which certainly would not be competent evidence; and we simply proving the fact that certain ascertained, declared evidence had been communicated to Mr. Shearman, does not allow, as I understand your Honor to rule, evidence of the details of that communication. It may have been a great deal more than the evidence as testified to upon the stand, and it is not in the sense which the law recognizes of giving a part of the conversation or declaration. Now, with your Honor's permission, I will look at this.

Mr. Morris—Supposing I had asked him if he had told Mr. Shearman verbally all that he had testified to here, would that authorize their giving the conversation?

Judge Neilson—No.

Mr. Morris—Why, it is the same thing.

Mr. Evarts—If your Honor please, there is a question or two I want to put to the witness.

Mr. Beach—Well, Sir; I ask your Honor to look at this and see whether under any rule of law the declarations in that letter can be received. [Handing the letter to the Court.]

Judge Neilson—[To Mr. Evarts:] Well, will you proceed?

Mr. Evarts—Yes, Sir; it is only a moment. [To the witness:] Mr. Gay, how long had you been in New-York, now— A. I have been here about—

Q. Wait a moment.

Mr. Fullerton—He can't wait.

Mr. Evarts,—How long had you been in New-York now before you received, through your wife's letter from home, the telegram that had been sent out there? A. I arrived here two weeks ago to-day. I told you that I received my wife's letter and Mr. Shearman's telegram day before yesterday.

Q. Your wife's letter enclosing the telegram reached you day before yesterday? A. Day before yesterday—nearly two weeks.

Q. Have you that telegram with you? A. I think not; I don't think I have. [Taking papers from his pocket.] I can give it almost word for word. It was to come on to Brooklyn.

Judge Neilson—Well, that is accepted as a fact, no doubt.

The Witness—I have stated that before.

Mr. Evarts—Well, I suppose so. I thought the gentleman had it, and it would show the date.

The Witness—No; I have it at my quarters, the St. Denis Hotel.

Q. That you received; and before that had you had any communication with any of the gentlemen connected with this cause? A. None whatever.

Q. I mean during your visit here? A. None whatever; I did not expect to come into this cause.

Q. When you left home it was on Mr. Shearman's letter that you need not expect to be called? A. I did not expect to be called in at all.

Q. Now, after receiving this telegram night before last— A. The morning before last.

Q. Day before yesterday? A. Day before yesterday, in the morning.

Q. What did you then do in reference to coming into connection with anybody in this cause? A. I went and consulted a friend as to my duty in the premises. Shall I say whom I consulted?

Mr. Beach—No, Sir.

Mr. Evarts—There is no objection to that.

Mr. Beach—There is.

Mr. Evarts—Objection is made.

Mr. Beach—Nobody disputes the propriety of the manner in which he appears here.

Mr. Evarts—Why, we had a very animated conversation about it.

The Witness—I can say I did not wish to come into the cause; I did not wish to appear.

Q. What did you then, after consulting with your friend? A. I went to see you.

Q. At my house? A. At your house.

Q. When was that? A. Night before last.

Q. That was the first you had ever had any connection with me? A. The first time that I had ever had any connection with you.

Q. And thereupon you told me what you knew about the matter, didn't you? A. Yes, Sir.

Q. And I brought you over here to testify? A. Yes, Sir.

Q. And you have testified? A. Yes, Sir.

Mr. Morris—That is all, Mr. Gay.

Mr. Evarts—Wait until this question of the witness' correspondence is disposed of.

Judge Neilson—I think we understand Mr. Gay without the use of this letter. He has testified the circumstance, the fact that he wrote to Mr. Shearman substantially what he has testified to here. This letter contains other matter and other suggestions. It would not be relevant, perhaps.

The Witness—I would rather keep it.

Mr. Everts—I have not read it at all.

Judge Neilson—I have no doubt he states correctly in his statement that he wrote the substance.

Mr. Everts—But, if your Honor please, my learned friend started off in the cross-examination of the witness with a view of showing that he has corresponded with the counsel, and that in that correspondence he has not told the matter as he told it here, and they thereby expose themselves to the production of the correspondence to sustain the witness and maintain exactly what he has told the counsel. Now, I suppose there is nothing in this letter that does not relate to this subject in some form, for it is correspondence between this gentleman with Mr. Shearman, and they have no relations other than that.

Mr. Fullerton—It may have been about his missionary work.

Judge Neilson—It refers to proceedings which took place the next morning. I think we do not need the letter, Sir.

Mr. Everts—Well, Sir, your Honor will be so good as to note our exception. The principle may be worth preserving, even if the letter is not, and we suppose it is a material right of the witness that we may have to insist upon again.

Judge Neilson—The witness will allow you to keep the letter. Identify it.

Mr. Everts—We will have it marked for identification. It is our letter—this witness' letter to Mr. Shearman.

The Witness—It is Mr. Shearman's. It is out of my power.

Mr. Beach—Well, Sir, is that with a view to the reconsideration of this question at all?

Judge Neilson—Oh, no.

Mr. Beach—Because I shall want this witness here.

Mr. Morris—We shall want him here.

Mr. Everts—He is here.

Mr. Morris—Well, if at a subsequent stage you introduce the letter.

Judge Neilson—I think upon consideration it will not occur to the counsel that it is important to take this correspondence.

Mr. Everts—If your Honor throws out an intimation of that kind the other side will want it in evidence. [Laughter.]

Mr. Morris—No; we have read it.

#### A NEW MISSIONARY FIELD SUGGESTED TO THE WITNESS.

Mr. Fullerton—He may have been laboring as a missionary on the other side, Sir, for all I know, and we don't want that in evidence.

The Witness—No, Sir, it is not my missionary work.

Mr. Morris—I intended no imputation at all upon the witness, as they state. It was my idea to show that he had communicated, and I believe that he had communicated all that he testi-

fied to here, and we have regarded it as utterly immaterial as it is.

The Witness—If I am here as a missionary I am entitled to protection, without sneers of that sort.

Judge Neilson—That is so, Sir.

Mr. Beach—What, Sir? There is no sneer upon our side, as I understand.

The Witness—It is from your neighbor.

Mr. Everts—It certainly was not from ours.

Mr. Beach—It certainly is no reflection upon the witness. I think he would certainly find an excellent missionary field among the counsel on the other side.

[The letter above referred to is marked "For identification, Exhibit D, 118."]

Mr. Everts—Now, Mr. Gay, about this change of law in Indiana; when did that take place? A. Two years ago; at the session of the Legislature, two years ago.

Q. Immediately following this lecture of Mr. Tilton? A. The first Legislature following.

Q. The first Legislature after that? A. Yes, Sir.

Q. They made the laws more stringent?

Mr. Fullerton—One moment; I object to that, Sir.

Mr. Everts—He said so under your examination, that they had more stringent laws about divorce in Indiana passed two years ago.

Mr. Morris—More stringent laws in the manner of administering them.

Mr. Everts—More stringent laws. All I prove is that it was the first chance that the Legislature had after Mr. Tilton's lecture. [Laughter.]

Mr. Pryor—That is good.

Judge Neilson—Gentlemen, it seems hardly worth while to resume with any other witness to-day. Will you get ready to retire? Will the audience keep their seats a moment? At 11 o'clock to-morrow, gentlemen.

The Court then adjourned to 11 o'clock Thursday morning.

## FORTY-SEVENTH DAY'S PROCEEDINGS.

### THE PLYMOUTH CHURCH RECORDS.

TESTIMONY OF CHARLES FORRESTER AND JAMES GAYLOR OF THE POST-OFFICE DEPARTMENT REGARDING THE INTERCEPTION OF THE GOLDEN AGE IN ITS TRANSMISSION THROUGH THE MAILS—THE REV. MR. HALLIDAY REPEATS MOULTON'S ASSERTIONS TO HIM THAT MR. BEECHER WAS INNOCENT—A GOOD-HUMORED SQUABBLE OVER THE POSSESSION OF THE PLYMOUTH CHURCH RECORDS.

THURSDAY, March 18, 1875.

Mr. Beecher's counsel began the day by introducing a new line of evidence, apparently unexpected by their opponents. They called Mr. Charles Forrester of the Post-Office Department. He testified that in 1873 the Post-Office officials in this city

stopped the transmission of *The Golden Age* through the mail, because copies of the Steinway Hall speech of Mrs. Woodhull were inclosed with the copies of that paper. The plaintiff's counsel appeared relieved, however, when the witness explained on cross-examination that the copies were stopped for a short time on the ground that the speech inclosed with *The Golden Age* was transient matter, and the postage should have been paid in stamps.

James Gaylor, who was a special agent of the Post-Office Department, testified that Mr. Tilton came to him at that time and claimed that the copies of the speech were supplements to *The Golden Age*, but offered in case they were held to be otherwise to pay the postage on them.

Mr. Halliday then resumed the stand, and gave some further conversations between himself and Francis D. Moulton, in which that gentleman had repeatedly asserted Mr. Beecher's innocence; saying, among other things: "Mr. Halliday, I know all about this that any one knows, and I know that Mr. Beecher is innocent;" and on another occasion: "Do you suppose if Mr. Beecher were a bad man I would allow him to sit here at my table with my wife, as a guest, as he frequently does?" Mr. Halliday also gave a conversation with Mr. Tilton, in 1873, in which Mr. Tilton had said: "My case against Mr. Beecher is wholly irrespective of my wife."

The counsel for the defense then sought to introduce evidence of the actions of the Examining Committee of Plymouth Church outside of the records of their meeting. This was ruled out. The record-book was produced, and the witness questioned as to the meetings. At this point, however, arose another great discussion, the volume becoming a sort of bone of contention between the plaintiff's and defendant's counsel, and fully an hour was taken up in the efforts of each side to retain possession of it. Mr. Shearman left it on the plaintiff's desk for a moment, and Mr. Tilton picked it up and began to turn over its pages. Mr. Abbott glanced nervously at the plaintiff, and whispered to Mr. Shearman the fact. Mr. Shearman continued his argument; Mr. Tilton went on with the record-book. Then Mr. Shearman went to the plaintiff and took the book from him. But the trouble began again immediately after the recess. Mr. Fullerton was cross-examining Mr. Halliday. Gen. Pryor and Mr. Tilton were having a quiet investigation of the book, which they had got possession of by some means. Mr. Shearman said he ob-

jected to the plaintiff's looking at the records of Plymouth Church. Mr. Fullerton replied by offering the book in evidence. Mr. Shearman protested again against the plaintiff's reading them. Mr. Fullerton handed the book to the witness with a question. Mr. Shearman objected to this use of the volume, and advanced to take possession of it. Mr. Fullerton's shoulder stopped him, and the large frame of the cross-examiner blocked the way of his opponent to the witness chair. Then the quarrel over the book ceased for a few minutes, during which Mr. Shearman declared that Mr. Fullerton had insulted the clergymen and ladies called by the defense as witnesses. This Mr. Fullerton denied, and called attention to the appearance of Mr. Halliday, who was smiling most amiably, as a refutation of the charge. Then the dispute over the records broke out in a new form. Mr. Shearman was willing the plaintiff's side should use them, but insisted that his opponents should admit that they had no right to them, but were allowed to use them by his courtesy. The Judge wearily asked Mr. Shearman to yield in courtesy to him. "If it is a courtesy to the Court, I will," replied Mr. Shearman. "Then we are tenants of the records by the courtesy," retorted Mr. Fullerton, while the laugh went round. But the dispute was not ended, and Judge Porter finally had to take part in the proceedings, for the first time in several weeks, in order to restore peace.

The cross-questioning then continued. It appeared that Mr. Halliday had advised the Examining Committee not to prosecute the West charges as first made against Mr. Tilton. The witness had recommended that Mr. Tilton's name be dropped from the roll of the church members. Capt. Duncan, Dr. White, and Mr. Manchester had desired that Mr. Tilton should be prosecuted on the charges. The witness was asked what advice he had given regarding the matter. Mr. Halliday frequently declared that he could not answer categorically or without explaining. Mr. Shearman raised objection to almost every question; Mr. Beach was always ready in support of his associate, and the last hour of the day was given up to "sparring" between the counsel. Mr. Beach declared that Mr. Shearman made a farce of the proceedings. "The farce is on the side that is always trying to entrap the witness," replied Mr. Shearman. "The farce will become a tragedy if brother Shearman doesn't cool his nerves down," was Mr. Fullerton's retort. After some fur-

ther discussion Mr. Fullerton vehemently declared that he was determined to get at the advice which Mr. Halliday had given in regard to the perfected charges against Mr. Tilton after the plaintiff had waived his non-membership of the church. This speech was received with applause by the audience, which had been rather disorderly during the afternoon. Mr. Halliday arose from the witness chair, saying, "I would like to ask the Court whether it has any impression that I have been unwilling to give my testimony?" "Not at all," answered Judge Neilson, and cut short the discussion between the counsel by adjourning the court.

### THE PROCEEDINGS—VERBATIM.

#### TESTIMONY OF CHARLES FORRESTER.

Charles Forrester was called and sworn for defendant.

By Mr. Hill—Mr. Forrester, where do you reside? A. No. 280 Henry-st., New-York.

Q. What is your present employment? A. Assistant Superintendent in the city newspaper-room of the New-York Post-Office.

Q. How long have you been so employed? A. I have been employed in the New-York Post-Office for the last 50 years.

Q. For the last—how long? A. Fifty years.

Q. Were you employed in the Post-Office, in the newspaper department, in November or December, 1871? A. Yes, Sir.

Q. Do you recollect of any occasion when there was a trouble with the passage of *The Golden Age* newspaper through the mails, in consequence of something which was circulated with it or sent to the office with it?

Mr. Morris—Objected to.

Mr. Shearman—What is the ground of the objection?

Mr. Morris—It is immaterial and improper.

Judge Neilson—What do you propose to prove, Mr. Hill?

Mr. Hill—Our purpose is this: to show by this witness that the Steinway Hall speech of Mrs. Woodhull had been printed and was about to be circulated, was sent to the office along with *The Golden Age* newspaper from Mr. Tilton's office, and that subsequently the authorities declined to pass it as a supplement to the paper, and that Mr. Tilton himself undertook to bear any expense and did bear the necessary expense of circulating the speech.

Mr. Morris—What of it?

Judge Neilson—Prove anything that Mr. Tilton did. Omit the—

Mr. Shearman—We propose to connect Mr. Tilton with all this.

Mr. Hill—It is merely a preliminary question.

Judge Neilson—One moment. It is quite obvious to every lawyer that you could not prove in this way what the authorities did in respect to the Post-Office. You may prove any action of Mr. Tilton himself, what he did or said.

Mr. Hill—I propose, with your Honor's permission, first to call his attention to the circumstance.

Mr. Fullerton—Well, that is what is objected to, and what is ruled out.

Mr. Hill—I do not so understand it.

Mr. Fullerton—Yes, it is.

Mr. Hill—My question is, if he recollects the occasion.

Mr. Morris—Well, we object to the whole matter.

Mr. Hill—And I understand his Honor to have permitted me to prove that.

Mr. Morris—In that form? Not in that form, I don't understand.

Mr. Beach—I understand it is competent for them to prove there was difficulty in carrying *The Golden Age* without stating the cause of it, and that Mr. Tilton afterward called.

Mr. Morris—We object to the characterization of it.

Judge Neilson—Do you remember any difficulty in that Post-Office in respect to *The Golden Age*?

Mr. Hill—What is your answer? A. Yes, Sir.

Q. Please state what that difficulty was?

Judge Neilson—No.

Mr. Morris—That we object to.

Mr. Hill—Why, I want to show that it was connected with this speech subject.

Judge Neilson—You can show what Mr. Tilton did or said.

Mr. Shearman—We can hardly make what Mr. Tilton, did or said intelligible until we have first shown there was a reason for Mr. Tilton's coming. There is Mr. Tilton's paper; we have shown that he was the publisher and editor of that paper. We simply want to show that there was a difficulty which called Mr. Tilton up there, and without which his conversation is not intelligible.

Judge Neilson—If Mr. Tilton came there and acted or said anything, that will sufficiently disclose the difficulty besides he says there was.

Mr. Hill—Well, Sir, do you recollect whether the Steinway Hall speech was wrapped with *The Golden Age* as it was sent from Mr. Tilton's office, to be circulated with it?

Mr. Morris—Objected to.

Mr. Shearman—That is clearly an act of the publisher of *The Golden Age*.

Judge Neilson—One moment; we will take that, it is a mere incident.

Mr. Hill—That is all I want.

The Witness—Yes, Sir.

Q. Now what did you do—

Judge Neilson—No; what did Mr. Tilton do?



Mr. Hill—I simply desire to show that this gentleman reported it to the authorities.

Judge Neilson—Well, you ought not to offer it.

Mr. Hill—That he did not forward the speech but retained it and reported it to the authorities.

Judge Neilson—You ought not to compel me to rule against you on such things; ought not to compel me to exclude the action of third persons which may be right and which may be wrong. Go at once to Mr. Tilton and let us see what he said or did.

Mr. Hill—My difficulty is, your Honor, I want to prove this transaction by two witnesses. The occasion of Mr. Tilton's call is proved by one; the action of Mr. Tilton with respect to the matter is to be proved by the other.

Judge Neilson—Prove all this witness knows and then bring the other.

Mr. Hill—No, Sir; I fancy that I may show the occasion which brought Mr. Tilton into communication with the other witness; that is my sole object—I do not propose to go any further. Do I understand your Honor to exclude that?

Judge Neilson—I think you have gone as far as you can go to indicate the action of the authorities.

Mr. Hill—Well, may I be permitted to show by this witness that the issue of *The Golden Age* was stopped in consequence of this speech being sent with it?

Judge Neilson—I have said no, because that is the action of certain authorities which may be right or may be wrong.

Mr. Morris—We will have to go into that question and try that issue.

Mr. Shearman—Your Honor and the counsel may, perhaps, be under an impression that some imputation is thrown against *The Golden Age*, or Mr. Tilton, in consequence of this stoppage; it is merely a postal regulation, and is offered to show and make intelligible the subsequent conduct of Mr. Tilton.

Judge Neilson—I think we will understand the conversation when it comes.

Q. Did you have any interview yourself with Mr. Tilton in respect to the matter? A. No, Sir; I didn't see Mr. Tilton.

Q. Now, Mr. Forrester, were the newspapers, *The Golden Age* newspapers which were sent to the office, forwarded at that time when they first came? A. No, Sir.

Q. How long were they detained? A. In the course of the day word came down from the—

Mr. Morris—No; we object.

Mr. Hill—That his honor excludes?

Judge Neilson—One moment. How long were they detained—a day or two, or how long? A. I think about soon they were forwarded.

Mr. Hill—Of the same day? A. Yes, Sir.

Q. About when was this? Fix the date as nearly as

you can. A. It was the Fall of 1871 or 1872; I am not certain which.

Q. You cannot remember the date? A. No, Sir.

Q. Can you remember whether this stoppage affected the general edition of *The Golden Age* or only the exchanges?

Mr. Morris—Objected to.

Judge Neilson—Oh, well, it was stopped; I think that is very general and affects it all.

Mr. Hill—I am satisfied, your Honor.

Mr. Shearman—That is all.

Mr. Hill—Permit us to except to the other ruling which your Honor made. That is all, Mr. Forrester.

# CROSS-EXAMINATION OF CHARLES FORRESTER.

Mr. Fullerton—One moment. What do you say was sent with *The Golden Age*—of your own knowledge now? A. A lecture of Mrs. Woodhull.

Q. Did you see it? A. Yes, Sir.

Q. Read it? A. No, Sir.

Q. Do you know where the lecture was delivered—purported to be delivered? A. I think it was at Steinway Hall.

Q. Sure? A. Yes, Sir.

Q. Now, was not this difficulty in September, 1872? A. No, Sir, I think not.

Q. When do you think it was? A. I think it was in the Fall of 1871 or 1872; I am not positive which.

Q. September is in the Fall of 1872, is it not? A. Well.

Mr. Fullerton—Eh! Well, wasn't it September, 1871? A. It might have been; I am not positive which.

Q. You don't know? A. I don't, Sir, positively, that it was either 1871 or 1872; it was one of the years.

Q. You did not read the lecture? A. No, Sir.

Q. You don't know what its import was? A. No, Sir.

Q. What was the heading to it; do you recollect? A. I recollect of Robert Hay bringing me—

Q. No, no; what was the heading of it? Did you read the heading? A. No, Sir; I did not read the heading, but I found there were two pieces.

Q. One moment—you did not read the heading? A. No, Sir.

Mr. Beach—Did he read the lecture.

Mr. Fullerton—How? A. I think I did read the heading; it was the lecture of Mrs. Woodhull at Steinway Hall.

Q. You think now you did read the heading? A. Yes, Sir, I do.

Q. What was that lecture in; what was it printed in? A. It was printed—it was in *The Golden Age*.

Q. Published in *The Golden Age*? A. No, Sir, published detached from it as a supplement.

Q. As a supplement to *The Golden Age*? A. Yes, Sir.

Q. Now you are sure of that? A. I think I am, Sir.

Q. You read it, did you, so as to know what it was? A. Yes, Sir, I think I did.

Q. You read the heading, then, and know of your own knowledge that it was the supplement to *The Golden Age*? A. Well, I cannot say whether it was the supplement, or whether it was the lecture folded in *The Golden Age*.

Q. Without any heading indicating that it was a supplement? A. Yes, Sir.

Q. And you are sure now that you read it, so as to know of your own knowledge that it was a lecture at Steinway Hall by Mrs. Woodhull? A. Yes, Sir.

Q. And that it was in the Fall of 1871 or 1872? A. Yes, Sir.

Q. But the month you don't know? A. Yes, Sir.

Q. Now, what was the objection to your sending this; was it because there were two pieces in one? A. The objection was that it was transient matter, and should be paid by stamps.

Q. Yes, that was the only objection? A. That was the objection; there was no objection—other objection to it. [Laughter.]

Mr. Fullerton—That is all.

#### TESTIMONY OF MR. JAMES GAYLER.

Mr. Hill—What is your business? A. I am General Superintendent of the City Delivery, at the New-York City Post-Office.

Q. How long have you been engaged in that employment? A. Since April, 1872.

Q. What was your business or employment about that time? A. Special Agent of the Post-Office Department.

Q. For how long? A. For about—since 1864; I was appointed in 1864.

Q. Is that a duty under the General Post-Office Department or under the New-York Post-Office? A. Under the General Post-Office Department.

Q. And you were assigned to the New-York Post-Office? A. Yes, Sir.

Q. Did you hear Mr. Forrester just now? A. I did.

Q. Do you recollect the occasion spoken of by him? A. Yes, Sir.

Q. Please explain what, if any, connection Mr. Tilton had with that transaction, and what was done between you and him with reference to the Steinway Hall speech and *The Golden Age* newspaper sent to the office, as described by Mr. Forrester?

Mr. Beach—I understand it is proposed to prove, Sir, that Mr. Tilton assumed the payment of the additional postal charge which he has thought fit to make upon that paper. I am not able to conceive, Sir, the materiality of that inquiry; and I object to it. Here was a public lecture delivered by a public lecturer, printed by the paper of which Mr. Tilton had control and proprietorship, and circulated in the ordinary way, he paying the postal duty upon it. What has that to do, Sir, with this issue? The lecture is not in evidence; its char-

acter is not under inquiry here, but it is the simple circumstance that the editor of a public newspaper publishes a public lecture and pays the postal duty upon it. Now, I submit to your Honor that it has not the remotest relevancy to any issue in this case, and is not proper as a circumstance bearing upon any legitimate question to be discussed in this case; and that it is such irrelevant matter as ought not to be introduced for the purposes of debate by counsel. It has no relation, Sir, to the merits of this action; it has no connection with the relations which may be imputed as between Mr. Tilton and Mrs. Woodhull; it is but the ordinary duty of a public printer or a publisher in the circulation of a public document about which it may be supposed the public feel some interest; and no legitimate inference or consequence, in any relation, either of persons or of subject matter, can be properly derived from such a circumstance. And I submit to your Honor that it ought not to be permitted to go in evidence.

Judge Neilson—This will, no doubt, be very brief; I think he may be permitted to answer it.

Mr. Beach—Is it to be settled, your Honor, that we are to take irrelevant and immaterial evidence, simply because it is brief?

Judge Neilson—No.

Mr. Beach—Or because the witnesses are here?

Judge Neilson—No.

Mr. Beach—Now, if your Honor cannot see a material connection between this evidence and the duty your Honor and the jury have to perform in this case, I submit that we should have a strict application of the rules of evidence. We have got immaterial and irrelevant matter, and side issues enough to be discussed in this action without unnecessarily accumulating them.

Mr. Fullerton—Besides that, Sir, I am instructed that this difficulty did not grow out of an attempt to transmit the Steinway Hall speech through the mails; it was not that lecture at all. And it involves the necessity of our going into proof upon that subject, upon that side issue consuming more time than is necessary to consume in the trial of this case. I trust your Honor won't admit it because it is brief.

Judge Neilson—No, not wholly with that view; that is not in issue. I think I will take the answer.

The Court requested THE TRIBUNE Stenographer to read the last question.

THE TRIBUNE Stenographer—[Reading:] "Please explain what, if any, connection Mr. Tilton had with that transaction, and what was done between you and him with respect to that Steinway Hall speech and *The Golden Age* newspaper, as sent to the office, as described by Mr. Forrester."

The Witness—Mr. Tilton came into my office, and we had a conversation in regard to the stoppage of the exchanges of *The Golden Age* with this so-called supplement in the same package with it, and I contended that it was not a supplement, not a *bona fide* supplement, and that, if sent through the mails, it should, under the laws and regulations, be paid at transient rates of postage. He disputed my view of the matter, but said that it would cause great inconvenience to *The Golden Age* if

those exchanges did not go out on that day; that he wanted them sent out at once, particularly, and said that if I would submit the case to the Post-Office Department in a letter, that in case the decision was adverse to him he pledged his word to pay the postage which would have been payable at the transient rates. He asked me if that would be satisfactory. I told him yes, although it was not strictly regular, as such postage should be prepaid by stamps; yet, under the circumstances, I would recommend the Postmaster to let them go forward, and would submit the case to the Department, and Mr. Tilton left me with that understanding; that is all the personal interview I had with Mr. Tilton about the matter.

Q. Now, the exchanges with this so-called supplement, were they forwarded? A. I recommended it to the Postmaster. I don't know of my own knowledge that they were forwarded.

Q. Now, please state what, if any, action was had between the New-York Post-Office and Mr. Tilton, or his office, with respect to the matter, after the decision was made—just the words?

Mr. Beach—Well, that is objected to.

Judge Neilson—Did you see Mr. Tilton in respect to it? A. No, Sir, I didn't see him again.

Judge Neilson—Very well.

Mr. Hill—I propose to show the decision was forwarded to Mr. Tilton, and that subsequently the sum of \$100 for that extra postage was sent through the Post-Office Department from Mr. Tilton's office, not through any personal interview with this gentleman, but to his knowledge as a business man. That is all.

Mr. Beach—It is objected to.

Judge Neilson—I don't think you can show anything without bringing Mr. Tilton in connection with it.

Mr. Hill—I suppose I may show this gentleman sent a message to Mr. Tilton stating the amount, and what the decision was.

Judge Neilson—Not what the decision was. [To the witness.] Did you send a message to him? A. I took a message there. I took the letter of the Department to the office.

Q. Did he pay the additional postage? A. He was not there.

Mr. Hill—You left the message in his office? A. Yes, Sir, the next day, but it was, I think, after this interview.

Q. Please state if the money was sent to the Post-Office. A. It was; it came to my hands in a check.

Q. How much was it? A. One hundred dollars.

Judge Neilson—Very well.

Q. Now, be kind enough to state, if you recollect, what this so-called supplement was? A. It was a pamphlet—an octavo pamphlet, I think, as I remember it.

Q. Can you recollect whether it was this speech that has been referred to, or not? A. I cannot recollect that directly. That has been my recollection about it all the time. At that time I had an impression it was the Steinway Hall speech. That was previous to my interview with Mr. Tilton.

Q. Now, a single question more. Can you fix the time when this occurred? A. No, Sir, I cannot fix that with any sort of certainty at all. As to the date, I am perfectly uncertain on that point.

Q. Can you say what it was? A. I can, perhaps, scarcely say that now, because after I took my present position I was sometimes called in by Gen. Jones, who was then Postmaster, to speak about matters of this sort; but I think it must have been previous to April, 1872, because I would not have gone to the Post-Office as a special agent after I had resigned that position.

Mr. Hill—That is all.

#### CROSS-EXAMINATION OF MR. JAMES GAYLER.

Mr. Fullerton—You didn't read this octavo pamphlet? A. No, Sir.

Q. Therefore you cannot speak from any recollection of what it was? A. No, Sir; only the external appearance of it. I remember seeing such a pamphlet.

Mr. Beach—Have you no recollection of the title page—any present recollection, so as to speak from memory? A. No, Sir, I have not.

Mr. Fullerton—Had it a title page? A. It was without a cover, as I remember it, with a title page.

Q. Without a cover? A. Yes, Sir, without a cover.

Mr. Beach—You are sure this was before April, 1872? A. Yes, Sir; I am sure from that circumstance that I just mentioned.

Mr. Fullerton—Was it not a *Golden Age* tract? A. No, Sir. It was claimed as a supplement to *The Golden Age*.

Q. Was it not called a *Golden Age* tract? A. That I don't remember as any part of the title.

Mr. Beach—About what was the size of that pamphlet? A. If I could have something to compare it with I could tell you.

Q. About that size? [Showing a book to witness.] A. No, Sir, it was larger than that; that is, it was not so thick, but it was longer.

Q. Larger than that? [Showing another book.] A. Yes, Sir, about that size; that is about the size.

Mr. Hill—Of the page you mean? A. Of the paper.

Mr. Shearman—[Handing book to witness.] That is what is called regular octavo size? A. That is what I take to be octavo.

Q. [Showing witness two books.] This is a small octavo, and this is a large octavo—this is full octavo, and that is small octavo. Say whether it was small octavo, or full octavo, or medium? A. I think it was about that [indicating] size, but I won't be certain.

Q. That is, small octavo? A. It had no cover on it; it was white.

Mr. Fullerton—[Answering a whisper from Mr. Shearman.] When you do, it won't be the Steinway Hall lecture.

#### MR. SAMUEL B. HALLIDAY RECALLED.

The Rev. Samuel B. Halliday, assistant pastor of Plymouth Church, again took the stand in response to a call from Mr. Shearman.

Mr. Shearman—Mr. Halliday, do you recollect any interview between yourself and Mr. Moulton in the Fall of 1872? A. I do, Sir.

Q. Will you state whether you called on Mr. Moulton; if so, when? A. My first call at Mr. Moulton's house, or upon him at

to see him, was on the evening of the interview with—on the evening of the morning of the interview that I had with Mr. Tilton. I think it was on Monday—it was on Monday, as I recollect, the 18th of November. I called at Mr. Moulton's residence, and he was not at home.

Q. Did you call again; and if so, when? A. I called the next morning about half-past eight o'clock.

Q. Did you see Mr. Moulton then? A. He was, I think, not yet up. He came down-stairs after I had been there a few minutes, and he said to me: "I know what—"

Mr. Fullerton—One moment.

Mr. Shearman—What is the objection.

Mr. Fullerton—The objection is that he has answered the question, and is going on to say something he has not been inquired of.

Mr. Shearman—Then I ask what Mr. Moulton said to him.

Mr. Fullerton—That I object to.

Judge Neilson—[To Mr. Shearman.] If it is anything Mr. Moulton was interrogated about, you can ask him.

Mr. Shearman—It happens to be something about which plaintiff's counsel interrogated Mr. Moulton quite freely.

Judge Neilson—Let us see. You can ask him in reference to the same matter they inquired into.

Mr. Shearman—That is precisely the same matter; he is going to give substantially the same words.

Judge Neilson—That I don't know. Put your question with a view to—

Mr. Shearman—It is the same occasion.

Mr. Morris—What is the point of your examination?

Mr. Shearman—If plaintiff's counsel will tell me for what purpose they introduced the conversation between Mr. Moulton and Mr. Halliday, I will tell them why I desire to follow them.

Mr. Morris—I say it is not proper to contradict unless they lay the foundation for doing so.

Judge Neilson—There is no difficulty about that. They examined Mr. Moulton about a certain matter, detailing interviews between himself and Mr. Halliday. You [Mr. Shearman] have the right to call Mr. Halliday's attention to what Mr. Moulton said, and take his answers on these points.

Mr. Shearman—I take it, if your Honor please, that I have a right to do a little more than that. If it was on cross-examination we brought this out, then we would submit, of course, to the rule that was laid down, and we would ask these precise questions; but as the plaintiff's counsel brought out the interview between Mr. Moulton and Mr. Halliday—as they brought out Mr. Moulton's version of it, we have a right to bring out Mr. Halliday's version of the whole matter, as we submit, they having what Mr. Moulton admits he said on the direct examination. This witness stands upon an entirely different footing from that of the other witnesses.

Judge Neilson—I understand that, and I said more than once you are at liberty to correct and contradict anything Mr. Moulton said on their direct examination.

Mr. Shearman—I am satisfied. Q. To the Witness.] Now, Mr. Halliday, will you state what was the conversation between you and Mr. Moulton on that occasion?

Mr. Fullerton—That embraces a variety of subjects; perhaps something more than that was alluded to by Mr. Moulton.

The Witness—Not on that occasion.

Mr. Fullerton—Now, Mr. Halliday, you had no right to say that.

Mr. Shearman—It is only in regard to the conversation now in controversy.

Judge Neilson—Go on and we will see what it is.

The Witness—There was no conversation at all, except Mr. Moulton saying: "I know what you want, but I cannot talk with you this morning. I have been up all night, and I must go to New-York as soon as I get my breakfast," and he escorted me to the door.

Q. Did he say anything at the door? A. He asked me to call again in the evening at half-past seven, or seven, I have forgotten which.

Q. Did you call again? A. I did.

Q. When? A. At the hour that he appointed on Tuesday evening.

Q. Did you see him then? A. I did not.

Q. Did you call again? A. I did the following morning.

Q. Did you see him then? A. I did not.

Q. When did you next see him, and where—when did you next see him, and where? A. Mrs. Moulton brought to me on Saturday evening—the following Saturday evening being November 23, I think; I fixed the dates from points—

Mr. Shearman—That is right, November 23.

The Witness—November 23d, about seven o'clock, I think it was; it was after dark, at all events, or in the dusk. Mrs. Moulton came to my door with a note from Mr. Moulton, saying that he would be in during that evening; that he had not had an hour during the week at his command. It was very brief. I think, in substance, that was the note, and I supposed it was an invitation for me to call down that evening.

Mr. Fullerton—Never mind that.

Mr. Shearman—Never mind that. Let us make it as short as we can.

Q. Did you see Mr. Moulton in pursuance of that note? A. I did.

#### MR. MOULTON SCORNS THE CHARGES OF THE WOODHULL.

Q. Did you see him? A. I did.

Q. Where? A. In the parlor, first.

Q. Where did you have any conversation with him about that? A. Mr. Moulton said, to prevent interruption, we would go to the library, which was on the fourth floor of the house; I think the fourth floor; it was the top floor, at all events.

Q. Now, did you there have any conversation upon this general subject with Mr. Moulton? A. I said to Mr. Moulton—

Q. Never mind. I ask you if you had it? A. I did, Sir.

Q. Now, will you state the substance of that conversation? A. I said at first to Mr. Moulton: "I am not here out of curiosity. I do not want to know anything. I do not want to see anything that you do not want me to know or to see. I was surprised by a call at my house last Monday morning from Mr. Tilton, with whom I conversed in the presence of Mr.

George A. Bell. He said he called at my house at your request, and that after denying the Woodhull scandal entirely, he then said, 'I want you now to observe confidentially everything that I say to you,' insisting upon it that it was in the most absolute confidence that he had to say what he now should say, and though he made no specifications, he made various insinuations against Mr. Beecher"—

Mr. Morris—One moment. I object to this.

Mr. Shearman—The gentleman does not understand.

Judge Neilson—This is what Mr. Halliday said to Mr. Moulton.

Mr. Shearman—That is it.

Judge Neilson—In reciting to him what had occurred between him and Mr. Tilton.

The Witness—"But while he would make no specific charges, he referred me to you for the confirmation of the insinuations which he made, saying that you had written documents in regard to it, urging me to come. I then said that Mr. Bell wanted to come with me, but he objected.

Q. Who—who do you mean by "he"? A. Mr. Tilton objected. Mr. Moulton said immediately—I think it was the first thing he said—"Did Mr. Bell hear all that was said?" I said, "Yes, he did; he came in a few moments before Mr. Tilton, but subsequently when Mr. Moulton—when Mr. Bell came in—Mr. Tilton, at least, came in before Mr. Bell, and subsequently when Mr. Bell came in, only a few minutes after, he repeated to him what he had said to me." Mr. Moulton then alluded—I cannot use very much of the language in which he denied the truth of the scandal, but among the phrases he used were such as "baseless"—that the story was utterly baseless, without foundation, and that it was a perfect shame that anybody should believe such a story from such a source, as against the life of Mr. Beecher for five and twenty years in Brooklyn, manifesting—

Mr. Beach—No, no!

Mr. Fullerton—No, no!

The Witness—Using the strongest language in condemnation of that.

Mr. Fullerton—One moment!

Mr. Shearman—I think that is proper. The witness cannot always give the precise language, nor attempt to put it into words.

Mr. Fullerton—No; I will tell you what he need not do—comment on his own testimony.

Mr. Shearman—He is not commenting upon his own testimony; he is simply saying that Mr. Halliday used the strongest language.

Judge Neilson—The witness should either give the language or the substance of it, without characterizing it.

Mr. Shearman—Give the substance of the language? A. I would characterize it in a single sentence.

Mr. Fullerton—You need not do that.

Judge Neilson—You are to give the words or the substance.

Mr. Fullerton—The substance. You cannot characterize the language.

Judge Neilson—You are to state what he said in words or

substance, according to your remembrance? A. It was only a most absolute denial.

Mr. Beach—One moment. You have been cautioned, Mr. Halliday.

Mr. Fullerton—That was absolutely wrong.

Mr. Shearman—I don't think it was.

The Witness—I am sorry if I misunderstood you. I understood you to say "in substance," and that was in substance the fact.

Q. Now, did he? A. I spoke next myself.

Q. Well, what did you say, in substance? A. I said: "You have disposed of the Woodhull scandal, Mr. Moulton, but Dr. Morrill told me that Demas Barnes had told him twice, in his parlor, that fifty men had been to see you, and that you had said invariably to them, what was equivalent to a shrug of the shoulders, that this was a dirty matter, 'you better let it alone; the more you stir it the worse it will smell.'"

Q. What did he say? A. Mr. Moulton immediately replied: "Mr. Halliday, it is false, it is no such thing; very few people come to see me; they go to my partners, and talk to them; why don't they come and see me? They are a set of damned cowards. I have seen Mr. Baxter"—No. "Very few come to me; all that do come to me I speak to precisely as I have done to you. I have seen Mr. Baxter, a member of Dr. Storrs' church, a gentleman whom I respect very much, and I have given him such an account of this affair as I have no doubt was satisfactory to him, and that his knowledge of the story, as I represented it to him, will do a great deal of good in Dr. Storrs' congregation." When he said this, I then said: "You have disposed of both the Woodhull scandal and of the Barnes story. Now, what about these insinuations of Mr."—

#### MR. TILTON MR. BEECHER'S FRIEND.

Q. Tilton? A. "Tilton?" Mr. Moulton was sitting by a table in the center of the room, nearly, on the west—on the east side of the table. I sat very much—the table was very much in that relation to my seat. [Pointing to a table.] It was a table not dissimilar, but larger—if I remember, a third, perhaps a half, wider than that. Mr. Moulton was sitting with his head resting upon his right hand in this manner [illustrating], hesitating perhaps a second, it was very brief, the hesitancy was after my question, when he raised himself gradually and said, with his hand in this position [illustrating]: "Mr. Halliday, I know all about this affair that any one does, and I know that Mr. Beecher is guiltless." Bringing down his hand with tremendous emphasis upon the table, said he: "Why, Mr. Halliday, Mr. Tilton is Mr. Beecher's friend; when he came back from his New-Hampshire campaign, on the morning of the election, he was sitting precisely where you are, on the sofa; when Mr. Beecher came in that door, Theodore rose and went to Mr. Beecher, took one of Mr. Beecher's hands in both of his, and shook it heartily, and said: 'I am intensely sorry for all this. I was as much surprised as anybody, and pained at the appearance of that; I knew nothing of it until I saw it, and now I am willing to do anything that I can to

counteract the effect of that publication.' And he sat down and wrote—I think Mr.—I won't repeat his words—pretend that they are his words exactly, but it was in substance, that two or three different cards was written denying the story, and that by advice of counsel, their publication was withheld." "Now," says he, "Mr. Halliday, what more can be done? I have denied this; Mr. Tilton has denied it; Mrs. H. B. Stanton has denied it," and I think he mentioned some other name, but I cannot recall it. "All have denied it except Paulina Davis, and she is in Europe and could not deny it." I think the last words that he said to me were: "Would you like to see Mr. Tilton in my presence?" I said: "I would like to see him in your presence." That was the whole of the story that occurs to me at this moment.

#### MR. MOULTON REFERS TO HIS WIFE'S MEMBERSHIP IN PLYMOUTH CHURCH.

Q. Do you remember anything being said about his wife being a member of the church? A. Yes, Sir.

Q. What was that? A. It was in connection with—immediately following his declaration of the guiltlessness of Mr. Beecher. He said: "Mr. Halliday, I am not a member of your church; my wife is. Do you suppose, if Mr. Beecher were a bad man, I would allow him to come and sit here at the table with my wife, as a guest, as he frequently does?"

Q. Do you remember an interview between yourself and Mrs. Tilton after the subject of charges was under consideration at *The Golden Age* office? A. Yes, Sir.

Q. Can you recollect about what time that was? A. Not definitely, Sir, only relatively.

Q. Can you tell in what year it was? A. It was in 1872, and my impression is that it was toward the latter part of September.

Q. In what year—you said 1872? A. Of 1873, rather; of 1873; it was the year—I could tell by a memorandum.

Q. You know that the Woodhull scandal was published in November, 1872? A. It was the following year—

Q. September, 1873, or about that? A. Yes, Sir.

Q. Now, will you state whether, on that occasion, you said anything to Mr. Tilton on this subject of—or rather on the subject of his having charges against Mr. Beecher, and if so, what, and what Mr. Tilton said to you in reply? A. I first said to Mr. Tilton—Must I reply immediately to that or—

Q. Well, if the previous conversation is short you can give it.

Judge Nelson—Whatever the conversation was between you and Mr. Tilton? A. I simply said to Mr. Tilton: "Are you willing to say to the Committee of the Church what you have said to individuals in reference to your membership of Plymouth Church?" Hesitating for a moment he said—I can't use the language exactly.

Mr. Shearman—The substance? A. It was to know why we didn't try Mr. Beecher. That was the substance of it, why we didn't go at Mr. Beecher instead of him.

Q. What did you say? A. I said: "Mr. Tilton"—as he would not say anything definite—I said: "Mr. Tilton, you owe it to yourself, to your family, to Mr. Beecher and to Ply-

mouth Church to do one of two things; if you have any charges against him, prefer them, or hold your tongue." He then said to me—Ah! I am anticipating perhaps.

#### THE CASE AGAINST MR. BEECHER IRRESPECTIVE OF MRS. TILTON.

Q. You can give his answer. A. Said he: "What would you say if Mr. Beecher had been guilty of adultery?"

Q. What was your answer? A. I rose partially from my seat and said: "Mr. Tilton, you told me, in the presence of George A. Bell, that your wife was as pure as the light." "Oh!" said he, "my case against Mr. Beecher is wholly irrespective of my wife." I don't remember anything else that was said on that occasion.

#### MR. TILTON'S FIRST TROUBLE WITH PLYMOUTH CHURCH.

Q. Do you remember the period in November or December—November and December, 1871, when the question of dropping Mr. Tilton arose for the first time in the Examining Committee? A. I remember very distinctly when—

Q. Just state—A. —when the question arose as to what course should be pursued in regard to Mr. Tilton, and in consequence of his non-attendance at the church, etc.

Q. Do you remember the first meeting at which that question was raised? Was it in November, 1871? A. I cannot fix the date; I can the place and the circumstances.

Q. Well, can you tell who brought forward that question on that occasion?

Mr. Beach—That is objected to, Sir.

Mr. Shearman—This is in reply to the testimony brought forward by the plaintiff through Mr. West, or rather to explain it. Mr. West undoubtedly meant to tell his story correctly.

Mr. Beach—I don't understand it to be in reply to any testimony given by Mr. West.

Mr. Shearman—What did you say? Excuse me.

Mr. Beach—I say I don't understand what portion of Mr. West's testimony this is in reply to.

Mr. Shearman—Mr. West's testimony, as introduced by the plaintiff's counsel, was to the effect that Mr. Beecher was present on certain occasions when the policy or disposition of Mr. Tilton was considered, and he said, with a great deal of positiveness, that he was present at a certain occasion in December. I propose to show that Mr. Beecher was present only on the first occasion in November.

Judge Nelson—You can do that.

Mr. Shearman—[To the witness.] Do you remember that first occasion?

Mr. Beach—On that first occasion we gave no evidence that Mr. Beecher was present. It was the meeting in December that West's testimony referred to.

Mr. Shearman—Then I omit that. I pass over that entirely. I withdraw that question. [To the witness.] Do you remember one or more meetings which took place in December, 1871 on that subject? A. I cannot fix the dates, Sir.

Q. 1871? A. I know that there were several meetings at which

I was present, but to fix the date as to a month, I cannot do it; I could only do it by referring—unless I referred to the records, I could not tell anything about dates.

Judge Neilson—[To the witness.] Well, this inquiry has some relation to the West charges. You remember that occasion, I suppose.

The Witness—[To Judge Neilson.] The West charges were a year afterwards.

Judge Neilson—Oh!

Mr. Shearman—I will read a few words from Mr. West's testimony.

Mr. Beach—Why—what for?

Mr. Shearman—Well, there seems to be an objection.

Mr. Beach—No.

Mr. Shearman—You make no objection?

Mr. Beach—I ask to see what his testimony is. [Mr. Beach takes and examines the book.] That refers to a meeting when the Examining Committee appointed Mr. Beecher a Committee of On .

Mr. Shearman—No.

Mr. Beach—Yes; it was.

Mr. Shearman—Well, there seems to be a little dispute. I will read a part of Mr. West's testimony.

Mr. Fullerton—What page?

Mr. Shearman—At page 330 [reading]:

"Mr. Fullerton—State what occurred in Mr. Beecher's presence in that regard?" "A. The action which occurred in Mr. Beecher's presence was at a subsequent meeting when Mr. Beecher made his report. Mr. Beecher reported to the Committee"—Then there is a little controversy follows. The witness continues. "Mr. Beecher reported to the Committee that he had seen Mr. Tilton, and that he was in a very critical position, and that he thought it would be better to leave Mr. Tilton to the influence of his friends, and for the church to take no action."

On his cross-examination, Mr. West described with particularity where Mr. Beecher sat, and how he looked, when he made that verbal report.

Judge Neilson—Now, if you will get the witness's attention fixed to that occasion, you can show whether Mr. Beecher was present.

Mr. Fullerton—Now, on page 337 Mr. West corrected that testimony so far as the date is concerned after looking at the record.

Judge Neilson—Well, leaving it, however, an occasion when Mr. Beecher was present.

Mr. Shearman—Exactly. As I said, Mr. West undoubtedly intended to state the truth, but he got in some confusion on that subject, and I want to have it clearly before the jury.

Judge Neilson—Well, to correctly understand it.

Mr. Fullerton—[Reading:]

"I think it was at the meeting of November 3d that the pastor made the statement with regard to Mr. Tilton in regard to his being in difficulty, and said that he had better see him."

Mr. Shearman—That is on the cross-examination, but you observe, your Honor, that Mr. West thinks so, but he is not sure whether he refers to the first or last one, and on his direct examination he referred very distinctly to the conversation in the

presence of Mr. Beecher, between the Committee and Mr. Beecher.

Judge Neilson—Now, see if the witness recollects that occasion.

Mr. Shearman—Now, Mr. Halliday, do you recollect the occasion referred to in Mr. West's testimony, in which some final action was taken with reference to Mr. Tilton, in the Fall of 1871? Do you remember the meeting at which the last action was taken concerning Mr. Tilton in 1871? A. I think I remember very distinctly the last action taken on Mr. Tilton's case but I don't recollect any such circumstances as Mr. West testified to.

Q. Never mind; I ask you if you recollect the occasion on which the last action was taken on Mr. Tilton's case in 1871? A. I think I do very distinctly.

Judge Neilson—In 1871.

Mr. Shearman—In 1871.

The Witness—Yes, Sir.

Q. Was Mr. Beecher present on that occasion? A. I didn't, see him.

Q. Well, you saw everybody that was there, did you not? A. I think I did.

Q. Now, did Mr. Beecher at any time in the year 1871 report to that Examining Committee that he had seen Mr. Tilton? A. He did, through me.

Q. Well, was he present? A. He was not.

Mr. Shearman—We know he had seen him. There is no question about his seeing him several times.

Mr. Morris—Never mind the comments.

Q. On that occasion, then, you made the report, and not Mr. Beecher—is that so or not? A. It is so; I was appointed.

Q. Never mind any explanation, Mr. Halliday. Excuse me, because the point is, that you made the report and not Mr. Beecher.

Mr. Fullerton—He made a report, and the report that he made Mr. Beecher did not make. That is all there is of it.

The Witness—If it please the Court, I do not want to seem to be brought unnecessarily into collision with the testimony of Mr. West, and a single word, which would not affect either side in regard to this matter, would make an explanation that I think would be a relief.

Judge Neilson—And be more agreeable to your feelings?

The Witness—Yes, Sir.

Judge Neilson—Well, make it.

The Witness—It is this: When this case was brought up, some of the brethren said I ought to be a committee to see—

Mr. Beach—Never mind. I object to that.

The Witness—The committee—

Mr. Shearman—Don't go on, Mr. Halliday, the counsel on the other side object, and we must not go on after the counsel object.

Judge Neilson—Well, interrogate your witness. I don't know how it is.

Mr. Shearman—I pass to another question which was raised previously with regard to the action of the Examining Committee, which was left undecided. [To the witness.] Was it the usage of the Board of Deacons, or of the Examining Com-

mittee, to record in their minutes propositions which were raised, but upon which no action was taken by any final vote? Do you say it was not? A. I think the habit—the custom invariably was not to do it, and especially in all preliminary steps of discipline never to record them, never to notice them in any way.

Q. You were Clerk of the Board of Deacons for some period, were you not? A. The Board of Deacons never took any action in regard to cases of discipline.

Q. Never mind, I ask the simple question, were you Clerk of the Board of Deacons? A. I was for several years.

Q. As such Clerk was it your habit, and was it expected of you by the Board, that you should record propositions which were discussed, but upon which no final vote was taken? A. I think in the Board of Deacons there may have been some exceptions.

Q. But what was the usage? A. The usage was not to do it.

Q. You were also Clerk of the Examining Committee for some time, were you not? A. I was.

Q. What was the usage there as to recording— A. Clerk *pro tem*.

Q. Yes. A. Not permanently.

Q. You perhaps were not Clerk at the time that I refer in November and December, 1862? A. I do not think I was; I don't think I was.

#### THE RECORDS OF PLYMOUTH CHURCH PRODUCED.

Mr. Shearman—Now, if your Honor please, under the suggestion that we should produce the records to show what was done at this meeting, I have searched the records, and I will not burden the Court to look at them; but I will say—

Mr. Fullerton—One moment. That won't do.

Judge Neilson—Well, you produce the record.

Mr. Shearman—I do not propose to offer the records.

Mr. Fullerton—You must not state what is or is not in them.

Mr. Shearman—Very good; it makes very little difference.

Judge Neilson—The purpose that you have in view is what?

Mr. Shearman—I offer now oral evidence of a discussion in this regular meeting of the Board of Deacons, upon the question of what should be done by the church, if anything, with reference to this scandal, and I offer to show by oral evidence that it was unanimously agreed, without any formal vote upon the subject, that no notice should be taken of it, and that this action was taken in the absence of Mr. Beecher, and without any recommendation from him.

Mr. Beach—What is the date of that?

Mr. Shearman—November, 1872.

Judge Neilson—Soon after the publication.

Mr. Shearman—Yes, Sir.

Mr. Beach—November, 1872?

Mr. Shearman—The last Wednesday of November, 1872.

The Witness—October.

Mr. Beach—I said to you Honor all that I cared to say upon that subject the other day—in regard to the admission of the action of these gentlemen. Upon the principal topic of discussion your Honor ruled that they might introduce

the records of the church, but not the casual discussions that took place at a meeting of this Board, but there was a preliminary question, Sir, transpired from the testimony of Mr. Halliday, that this meeting, as it is called, was not convened upon any regular call—upon a notice to the different members composing that body—regularly composing that body that it was rather accidental and casual, informal, and I submit to your Honor that it was a mere conversation between certain gentlemen—brethren of the church, who might, in case of a regular call of a meeting, have formed constituents of that body, but who were not gathered in the character of a regular Board. Your Honor undoubtedly recollects the testimony of Mr. Halliday upon that subject, and if that can be the loose manner in which the officers of that church conduct the discipline of the church, why you perceive it would be perfectly easy for three deacons to meet at any time and at any place casually, and adopt the most effectual measures for the enforcement of the discipline of that society. These gentlemen, gathered upon that occasion, might have deposed the minister or have excommunicated a member, and I think it can not be possible, Sir, under the rules of that society, that any such power could have been vested in three deacons, meeting casually without any formal notice to other parties who were entitled to participate in the discussions of the meeting.

Mr. Shearman—To save time in arguing, the proceedings which I now propose to show are of a regular stated meeting. I waive entirely the proposition to show the proceedings of the other.

Mr. Beach—I did not understand that.

Judge Neilson—I understood Mr. Halliday to say that was a business meeting.

Mr. Beach—That has not been shown yet. The question arose upon a very irregular and accidental assembly of three gentlemen, who had qualifications to be members of such a gathering.

Judge Neilson—I thought the argument was very clear on both sides, presenting both sides of the question, and I have in my mind very clearly that there was but one kind of evidence which could be introduced as against the plaintiff.

Mr. Shearman—I trust your Honor will hear me a moment.

Judge Neilson—That was the recorded evidence of the regular proceedings of a corporation entered in their books, standing then with being subject to accident or change, and that evidence I thought admissible, as distinguished from mere conversation. That is the way the question was left when we adjourned night before last. I would now suggest to Mr. Shearman to put into Mr. Halliday's hands the record of that meeting, and see who were present. The names are there, I suppose, are they not?

Mr. Shearman—Yes, Sir. We have a record of the meeting. [To the witness.] Look at that record, Mr. Halliday, and state whether on October 30th, 1872, there was a regular meeting of the Board of Deacons.

Mr. Fullerton—October 30th?

Mr. Shearman—October 30th. [To the Witness.] Have you found the place?



The Witness—Yes, Sir.

Judge Neilson—Who were present, Mr. Halliday?

The Witness—Mr. Hawkins, Mr. White, Mr. Moody, Mr. Ropes, Mr. West, Mr. Morton, Mr. Halliday, of the brethren; and of the deaconesses, Mrs. Morrill, Mrs. Pratt and Mrs. Halliday. I can only tell from the record.

Mr. Fullerton—He reads that from the record. That is putting the record in evidence, so far as that is concerned.

Mr. Shearman—I have no objection to putting the record in evidence.

Judge Neilson—Let that page be marked.

Mr. Shearman—The whole record?

Judge Neilson—[To the Witness.] It appears that certain resolutions were adopted at that meeting?

Mr. Shearman—[To the Witness.] His Honor asks you a question.

Judge Neilson—It appears that certain resolutions were adopted at that meeting?

The Witness—I don't think they were made a matter of record.

Judge Neilson—Some resolutions?

Mr. Shearman—Some resolutions were adopted.

The Witness—The record is there. I would not like to state.

Mr. Shearman—There are some votes.

The Witness—I didn't look at anything except the names. The minutes are in my own handwriting.

Mr. Shearman—Now, if your Honor will permit me, before asking the question, I will just read a very brief statement.

Judge Neilson—No. I think I understand it. What is the rule that was referred to the other day? A rule requiring three deacons and three—

Mr. Shearman—A rule requiring three members of the Board of Deacons, no matter whether they are deacons or deaconesses.

Judge Neilson—That is the point. Just read the rule and let us see. Doesn't it require three of one body and three of the other?

Mr. Shearman—It does not, your Honor.

Judge Neilson—Although each may be *ex-officio* members of the other.

Mr. Shearman—Rule 85:

"Three members of the Board of Deacons, Examining Committee, or Music Committee, respectively, shall constitute a quorum for the transaction of business."

Judge Neilson—Put your question.

Mr. Shearman—I will ask you, Mr. Halliday, whether that is not one of the rules of Plymouth Church as in force in October, 1872? A. Yes, Sir; but—

Q. Well, is it? A. There must be a notification of all the members of the Board.

Q. At a special meeting you mean? A. They must be specially notified.

Q. At a special meeting?

Mr. Morris—Certainly. That is what he says.

Mr. Shearman—We are not talking about a special meeting. This was a regular meeting, was it not, Mr. Halliday?

The Witness—Yes, Sir, all the members were notified, and if only three came, they constituted a quorum.

Mr. Shearman—It would make no difference whether they were notified or not if it was a regular meeting.

The Witness—That was the rule of the Board of Deacons that all should be notified.

Q. You mean that was the usage. You notified them? A. Yes, Sir. Oh, I don't think it is in the rule. My impression is—

Q. I know it is not in the rule. There is no such rule. A. No, I don't think there is. A stated meeting of the Board, and I always notified every member of the Board, when I was clerk, of the meeting, never an exception.

Mr. Shearman—Now, I suppose, your Honor, the only question is whether we can give oral evidence as to matters which happened at this meeting, and which are not recorded. Now, Mr. Greenleaf states the rule briefly to be that in any case, except with three exceptions, oral evidence can be given. The first is that it cannot be substituted for any instrument that the law requires to be in writing. In the second place, it cannot be substituted for any contract which the parties have put in writing; and third, that it cannot be substituted for any writing, the existence of which is disputed, and which is material to the issue between the parties, or to the credit of witnesses, and not merely a memorandum of some other fact. Now, here we propose to show that a question was raised in the meeting of the officers of a corporate body, and that there was a unanimous sentiment one way, the result of which was there was nobody present who could or would propose a resolution to the contrary and that unanimous sentiment. There could, in the nature of the things, neither by a mover or a seconder, and therefore there could be nothing which could be properly entered upon the minutes of the body. If I know anything about the rules which govern the minutes of the meetings, nothing is to be entered upon the records of the meetings except final resolutions. Jefferson lays it down in his Manual that even if a resolution is moved, yet, if it is not seconded, no notice is to be taken in the record kept by the clerk. That is the rule of Parliament, the rule of Congress, and the rule of the Legislature, and the rule of the Common Council. Now, could we not prove as a fact that a member of the Legislature offered a resolution, and that in consequence of its not being seconded it failed to appear on the record?

Judge Neilson—You could.

Mr. Shearman—Then, your Honor, I think this case is parallel with that. We propose to show that the question was raised as to whether anything should be done on this subject, but that no one was willing to offer a resolution, because there was not a single person there who was in favor of taking any action, but that the question was raised and discussed at length. Now, in the case of *Partridge v. Badger* (35 Barb., 146) it was held that it was "competent for a plaintiff to prove by witnesses who were present at an election of directors, who were elected at such election. The books of the company, although they are proper evidence if they contain a record of the election, are not the sole evidence of the fact." In *Trustees of St. Mary's v.*

Caggar (8 Barb., 576) the Court held that it might be shown "that certain resolves were adopted by the trustees of the corporation at one of their meetings, notwithstanding the adoption did not appear from their minutes." I think your Honor will see that those are cases stronger in my favor than the case which I now present. We propose to show that the subject was discussed, but that no action was taken which in its nature could possibly be entered upon the records. For the purpose of raising this discussion, I will ask this question:— [To the witness]: Was the subject—

#### ARGUMENT OF MR. BEACH.

Mr. Beach—I have looked quite cursorily, Sir, at this manual of the Church, for the purpose of finding, if I can, what the Board of Deacons had to do with this subject. I suppose their action upon this matter is not legitimate proof here unless they had some jurisdiction to act in the matter; that if it was a mere discussion among these members composing the Board of Deacons, upon a subject which could not come officially before them or was not officially before them, in the manner required by the rules of the church, that what they may have said or done was a mere private discussion, with which we have nothing to do. I see by the manual, Sir, that the Board of Deacons, under the title of "The Duties of Deacons," in Rule 26, are charged with the duty of distributing the charities of the Church to the poor; second, of a general oversight of the collections for benevolent objects; third, in the absence of, or at the request of the pastor, to provide a supply for the pulpit and lecture-room; fourth, to make all needful provision for the meetings of the Church, and to superintend all its affairs not actually in charge of other officers of the Church. Well, this I understand to have been a discussion in regard to the propriety of taking Church notice of this Woodhull scandal. That could only be done, Sir, by the presentation of a charge against some member of the church, in the enforcement of discipline of the Church; and the subject could not have been properly brought before any body of the Church, except through the form of charges made against some member. Now, any discussion, not originating in that mode, by the members of this body, although convened in a regular meeting, upon the subject of this scandal, was not official in its character in any sense, and was not obligatory upon the action of the Church in any sense. Under the head of "Discipline," at Rule 4, it is provided that "members cannot be censured by the Church except by the process herein stated. A complaint may be made, either to the Examining Committee or to the whole Church. In the former case, the clerk of the Committee, and in the latter case the clerk of the Church, must reduce the complaint to writing if it is entertained, and may use due diligence and present a copy to the accused, and give him a personal notice of the time and place of appearing; and the accused must have full opportunity, &c., to be heard in his defense." Of course, I may be instructed on this subject; because, my examination of this book, and my general knowledge of the course of action in these bodies are very imperfect; but I do not

understand, from the examination that I have made, that this subject in any form was regularly before the Board of Directors. The whole subject, as to the manner in which this scandal might have been investigated, was under the control of the Examining Committee, or in the collective body of the Church. Now there were no charges presented against anybody. If there had been, they would not properly have been preferred to this Board of Deacons, but to the Examining Committee. These gentlemen had no supervision of this subject in their official, collective character; and, whatever sentiments they may have expressed as individuals, and however proper they may have considered it to discuss the general affairs of the congregation or of the Church, or this particular matter, as affecting the interests of the Church, it was not as an official body, and can have no recognition from your Honor. And I therefore submit, in that view, that those proceedings are totally inadmissible.

Judge Neilson—Mr.—

#### ARGUMENT OF MR. FULLERTON.

Mr. Fullerton—If your Honor will allow me to add one other consideration to what has been said by my associate. Your Honor will bear in mind that, when Mr. Halliday was on the stand before, his attention was called to this meeting of the Board of Deacons; and some evidence was given to show the character of that meeting, and the proceedings before it. Now, I understood Mr. Halliday to say that what was done in respect of the Woodhull scandal was informal in its character; that it was after the adjournment of the Board of Deacons.

Judge Neilson—After the other business was through.

Mr. Fullerton—Yea, Sir, and this discussion was not by the Board of Deacons, but by the members of the Board. In turning to the book of minutes which has been produced, we find that there is a record of what was done on that occasion by the Board of Deacons as such; a full and complete—of, at least, what purports to be a full and complete record of their doings in their official capacity. Now, it seems from the testimony, so far as it has been developed, that this was a promiscuous discussion among the members of this Board; and it is proposed to show what conclusion was arrived at there—not as a Board, as I understand it, taking the form of a resolution so that that could embody the sense of the Deacons—but to show the individual opinions and conclusions of the different members of that Board. Now, certainly, that is not allowable. The only way to get at the opinion of a Board consisting of as many persons as were assembled here, is to put it into the form of a resolution, and to show how it was passed, to show that it was passed, evidencing the will of the majority, and the unanimous opinion, if it were unanimous. But there is nothing of that kind here. Are we to go into evidence to show what Mr. Moulton said, what Mr. A., B. and C. said, upon that occasion, and to get at, as best we can, what was the sense of this meeting as a whole, without being informed in the regular orderly way of conducting business before such a body, by a resolution. Now, I ask your Honor's attention for a moment to the

testimony of Mr. Halliday, hitherto given upon this subject, for the purpose of showing that this was a discussion, not of the Board of Deacons, but by the members of the Board—after the adjournment of the regular meeting, just exactly as they would discuss the weather, or any other topic that might attract their attention. The question was put [reading] :

"Mr. Halliday, at such meetings is there a record kept of the proceedings—entry made? A. Yes, Sir.

"Judge Neilson—You propose to bring that in the morning, I suppose?

"Mr. Shearman—Yes, Sir; to bring in what?

"Judge Neilson—The record. He says there is a record kept.

"Mr. Shearman—Oh! well, we can bring the record in, but that will not show. The record, of course, as in every properly kept record, only shows resolutions that were passed.

"Mr. Morris—Is that all the record shows? I was not aware of it.

"Mr. Shearman—Why, certainly."

Now, Mr. Halliday takes part in this discussion, because he wanted your Honor to understand as a reason why the record would not show what was done in regard to this Woodhull scandal was, that it was informal; that it was before the members of the Board of Deacons, and not as a Board that the discussion was had. [Reading]:

"May I say to the Court that at this meeting of the Board of Deacons, the regular business of the Board of Deacons was transacted and ended.

"Judge Neilson—And that much of it would be on record.

"The Witness—The regular meeting, the ordinary business of the Board of Deacons is recorded, and after this"—

Then he was interrupted by Mr. Beach saying, "Please not state what occurred after."

"Mr. Shearman—Now, Mr. Halliday, suppose we confine ourselves strictly to business, as I am afraid the gentlemen will object to something you say."

Now I think it is very clear, Sir, that the Board of Deacons transacted the business that was before them, the business over which they had jurisdiction, the business which as a body they intended to discuss and dispose of, and then they entered into general conversation in regard to the Woodhull scandal, and it is that general conversation which they now propose to give in evidence. And the record shows, as I am reminded by my associate, that after this business was transacted the Board adjourned. It is so recorded.

#### SOME GENERAL DISCUSSION.

Judge Neilson—Now, Mr. Fullerton, at that meeting, before the Board adjourned, some resolution might have been proposed upon this subject, might there not?

Mr. Beach—That we don't object to, Sir; that we don't object to, if there was any action of the Board, except in the light in which I have suggested to your Honor, that the Board had no sort of jurisdiction over this subject; and it is very certain that no resolution was passed upon this subject; that all they propose to show is a general discussion among the members upon a topic which I say did not fall within the legitimate business of the Board of Deacons.

Judge Neilson—Well, you think, constituted as they were,

and convened as they were, that a resolution might have been presented on this subject.

Mr. Beach—I don't think, Sir, it could have been properly presented to the Board, because I think I have shown your Honor from the Manual, that the Board had no jurisdiction of the subject; but I quite agree, Sir, that although the proceedings of any official body may require to be reduced to writing in the form of a record, yet if there should be any inadvertence or irregular omission of the recording of a resolution of an action by the Board, that it may be proved by parol. But will your Honor consider, there being no resolution or sentiment of that body, not being condensed into a form expressive of the unanimous or majority opinion of the Board, but consisting merely of discussion, conversational or otherwise, among the members of the Board, in which they may have expressed individual opinions, how is it possible that that evidence can be given? The gentleman has presented an authority where a resolution being offered and not seconded is not entered upon the minutes, because there is determinate action of the Board, of the body, according to this rule. The resolution cannot be entertained and acted upon unless seconded, and not being seconded it does not become a part of their action, properly going upon the record; but I understand the offer to be simply to show the discussions which were had among the different members of the Board at that meeting. I submit that it is irregular and incompetent for that reason, that it did not assume a determinate and official shape, and for the further reason that the subject was not within the cognizance of that body.

Judge Neilson—Mr. Shearman, you stated a moment ago the precise thing that you propose to prove, to wit, that the subject was brought up—called up, and the conclusion not to take any action in respect to it. Is that it?

Mr. Shearman—Yes, Sir.

Judge Neilson—Without going into the conversation or discussion. I ruled the other day that we could not take the conversation.

Mr. Shearman—We don't care about the conversation.

Judge Neilson—Very well. Now, you can prove just that, if you will confine yourself to that.

Mr. Beach—May I ask your Honor—

Mr. Shearman—I see Mr. Beach thinks that one of his objections is not met. If he will just allow me to state, the Deacons are practically the governing body of Plymouth Church, subject to the church itself. They have, by Rule 28, power to superintend all its affairs not actually in charge of other officers of the church. They are given that general authority. I suppose I am meeting what Brother Beach was going to say. The Examining Committee is empowered to investigate accusations, but it is not even empowered, by express terms, to institute accusations. There can be no doubt that the Board of Deacons would have power to pass a resolution instituting an accusation.

Judge Neilson—Or recommending it.

Mr. Shearman—Or recommending one, although when made it would have to be tried by the Examining Committee, and the power of the Deacons would end.

Judge Neilson—They might have taken some initiatory step.

Mr. Shearman—That is it.

Judge Neilson—And if you will confine yourself now to that precise proposition.

Mr. Beach—Will your Honor please consider for one single moment in what attitude this question would be placed by such a ruling. I understand your Honor to intimate that they may prove that the subject was suggested before this Board, and may prove the conclusion.

Judge Neilson—Prove that no action was taken.

Mr. Beach—What?

Judge Neilson—That no action was taken.

Mr. Beach—Well, that is very well, Sir, to prove that no action was taken; that is quite another thing; but they cannot prove a conclusion without necessarily involving the conversation of the different members of the Board, it being admitted that no resolution was passed; that there was no formal discussion of the opinion or conclusion of the body, as a body your Honor rules that they cannot give the conversation, the declaration of the different members, and the gentleman (witness) cannot give the conclusion unless he finds that upon those very declarations, and your Honor would then be, I think, running against the rule of law which would prohibit the witness from giving a conclusion derived from the conversation instead of the conversation itself, and I submit that that would be objectionable in a double form, Sir. If they can give that proceeding at all, it must be through the medium of the conversation, the declaration of the different members.

Judge Neilson—We have all this virtually, as far as we have had any light on the subject whatever. It reasonably well appears now that until Mr. West brought this subject up by charges, the church took no notice of it.

Mr. Shearman—And that, your Honor, has been brought forward as an argument upon the other side.

Judge Neilson—Oh! I don't know.

Mr. Shearman—And as an act, or non-action, under the influence of Mr. Beecher. Now, what we undertake to show is, that this very question of action was considered when Mr. Beecher was not present, and they were entirely free from his influence.

Judge Neilson—Well, now, you are to put three questions, if you will allow me to assist you—

Mr. Beach—We have no objection, if your Honor pleases, to their proving that this subject was suggested at that meeting of the Board, and that no action of the Board was taken.

Judge Neilson—Well, we will get at it directly, then.

Mr. Beach—But that is very far from the question whether that was influenced at all by Mr. Beecher. Mr. Beecher's influence proceeds far wider than his immediate presence.

Judge Neilson—I had not that in mind at all, of course. Mr. Shearman, if you will allow me to assist you; first ask if Mr. Beecher was present that evening.

Mr. Shearman—Was Mr. Beecher there on that evening of Nov. 30, 1872? A. He was not.

Judge Neilson—After the resolutions which have been adopted, which appear in the record, was this subject of the Woodhull scandal brought up?

Mr. Shearman—Answer that question.

The Witness—It was.

Mr. Shearman—Has your Honor any further suggestion? If not, I will go on.

Judge Neilson—Was any action taken in respect to it; yes or no, Mr. Halliday?

The Witness—Yes, Sir, there was; if you will—if the Court will—

Judge Neilson—Well, now, he says yes.

The Witness—If the Court will inform me—if you will inform me what you mean by action— What am I to understand by action?

Judge Neilson—Anything done.

The Witness—Yes, Sir.

Judge Neilson—As distinguished from what was said.

The Witness—My memory don't serve me positively; I cannot swear that there was or was not.

Judge Neilson—Well, you see the limit at which you must keep your questions. I ruled the other out—that conversations could not be given.

Mr. Shearman—Now, I ask what was the point considered at that time.

Mr. Beach—That I object to, Sir; it can only be got at by the declarations of the parties.

Judge Neilson—It was the Woodhull scandal collectively—that subject.

Mr. Everts—It is for the witness to say that.

Judge Neilson—He has said it.

Mr. Everts—Yes, he said the subject. Now, what was the point considered by the Board there?

Mr. Beach—Well, that can only be got at, Sir, by proving the declarations that were made there.

Judge Neilson—Well, those are not to be taken.

Mr. Everts—The whole matter comes to be relevant in this case, on one side or the other, solely upon the question whether Mr. Beecher originated the counsels and actions of expression, and with a view of charging him with that responsibility, evidence has been deduced on the part of the plaintiff, and there has been heretofore, as now, a suggestion that Mr. Beecher presumptively (I suppose presumptively by law) had an influence over anything and everything, and anybody and everybody; therefore, that what they did or what they did not do was to be charged to him presumptively. Now, we come to the question of a meeting held immediately after by the responsible adjudicatory or managing body of this congregation, at which, spontaneously, apparently, so far as Mr. Beecher was concerned, that body takes up the subject of this scandal against their pastor, and considers, and disposes of the question, upon their judgment, upon their responsibility, upon their conscience, as to whether it calls for action by the body that would originate action if action were to be taken. to wit, the body of deacons who should institute the charge or recommend the charge, whether it took the form of inquisition upon Mr. Tilton for a share in the scandal, or of Mr. Beecher, the pastor, as the cause—a guilty cause, or suspected cause—of the scandal. And now, when a long course of inquiry has been pursued by the plaintiff, confessedly in support of this innu-

endo, or this argument, or this impression, to the prejudice of Mr. Beecher, from the non-action of the church, we are told that it is not possible for us to show that in the spontaneous originating consideration of this body (that was the responsible body to determine whether the church should act or not) they decided, on full discussion, that no action and no notice should be taken or had of the matter.

Judge Neilson—Counsel will allow me—

Mr. Evarts—Now, one word more, if your Honor please. And *a fortiori* that, if that was their deliberate conclusion there should not be inserted in their minutes a reference to a subject concerning which their conclusion was, that the source from which it came did not require the action of anybody.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Pardon me a single word, if your Honor please. The gentleman has not touched the point in discussion before your Honor. In the first place, he is wrong in the assertion that we maintain that Mr. Beecher is presumptively responsible for the action of the official bodies conducting the disciplinary matters of his church. On the contrary, we have proven, by witnesses, direct communication with Mr. Beecher upon the subject, and positive declarations and instructions in regard to the subject of repression. We do not charge him as presumptively responsible for the action either of the members of his church, except so far as we show him personally to have participated in that action. The question is not, either, Sir, as the gentleman presents it, whether, we having given this evidence connecting Mr. Beecher with that policy, it is competent for them to repel that evidence by proving that the church took independent and uninfluenced action upon that subject. Our objection is, Sir, to the mode of proof, not to the fact to be proved. Our objection is that Mr. Beecher cannot free himself from the accusation arising from the evidence of his direct and personal interference which we have introduced, by showing the declarations of the members of his church in our absence, or of the official bodies of his church in our absence, upon this particular subject. That is what we object to. We have conceded the propriety of proving, under your Honor's ruling, respectfully submitting to that ruling, although we differ from its conclusion—of proving that this subject was presented to this Board of Deacons, and that they took no action in regard to the matter. Now, they propose to prove, and that is the question which raises this discussion, what was the point of view in which that subject of the Woodhull scandal was presented.

Mr. Evarts—I did not say "point of view."

Judge Neilson—That was Mr. Shearman's question.

Mr. Evarts—The point disposed of, the point considered.

Mr. Beach—Well, now, they ask to show what was the point considered—yes, Sir, the point considered at the meeting, in connection with this Woodhull scandal. Now, it is sufficient, Sir, to prove the point considered, to show that the subject was presented to the meeting and that they took no action upon it. That was as far as their jurisdiction extended, assuming that the counsel is right in

regard to their power of recommending charges or the initiation of disciplinary matters. All that they could do would be to recommend proceeding against some member of the church—some action of the church; and it is sufficient to prove that they took no such action. When they attempt to show what was the particular point upon which they acted, they necessarily draw in question the discussions and conversations had between the different members of that body. If they had taken action by a resolution, the resolution would prove it. They could not give in evidence the intermediate discussions, the speeches made by the different members, the views expressed, the line of policy recommended; that would not be evidence, Sir, because it would be a mere expression of the individual views of the members of the body. But no action was taken, and they can prove that, that no action was taken. But the preceding and preliminary discussion, the expression of sentiments by the different members, is not a subject which is admissible as against us; would not be admissible, Sir, under any circumstances in which the action of that body would be competent evidence. I therefore submit to your Honor that, whenever they attempt to prove any subject which must be proven by the declaration of the members composing that body, it is inadmissible, it is incompetent evidence.

#### A WRANGLE FOR THE LAST WORD.

Mr. Evarts—This matter may be brought to a head by a very—

Mr. Beach—Well, I don't see as it will be brought to a head, Sir, if the gentleman continues discussing it, when I have the right to close the discussion.

Mr. Evarts—You can follow me.

Mr. Beach—I know I have to follow you; and I will have to follow you pretty close, and a good ways.

Mr. Evarts—Yes; we won't talk about one another very much; we will attend to our case.

Mr. Beach—Very, well, Sir; I attend to my case by suggesting to your Honor that, as this question has been largely discussed, and as we being the objecting party, have a right to close the discussion, that it is not proper for the gentleman upon every occasion—upon every occasion where a discussion arises—to insist upon pursuing the discussion beyond the regular limits.

Mr. Evarts—I shall agree with him in that proposition; in that general proposition, I should agree with him.

Judge Neilson—Then you have something to say.

Mr. Beach—Well, the objection is not to be answered, Sir, by a flippant remark of that kind upon the part of the counsel. I say it is the uniform habit of the counsel, after the regular order of discussion has been pursued, and we being the objecting party have closed it, to re-open the discussion; and I suggest to your Honor that there should be some limit to the privilege which you extend to counsel on that subject.

Judge Neilson—The rule ought to be observed, of course.

Mr. Evarts—[To Mr. Beach.] Do you remember how many times you have spoken on your side on this very question?

Mr. Beach—What? I have spoken in reply always, Sir, and in exercise of the right of closing this discussion and answer

ing the suggestions which are made on the other side, and I have acted in strict pursuance of my legal and professional right, and not intruding constantly upon the courtesy and indulgence of the Court.

Mr. Evarts—Now, I will repeat my remark; we won't talk about one another.

Judge Neilson—Well, would it not be well to observe the rule?

Mr. Evarts—I intended to observe the rule; but I don't admit the accusation that has been made against me.

Judge Neilson—I wish to say nothing about that. You wish to make some suggestion?

Mr. Evarts—I desire—I propose to do so, Sir.

Judge Neilson—I don't need any more argument.

Mr. Evarts—I don't rise to make an argument. I rise to say that the point for judicial determination in this case can be very briefly settled by a statement of the offer which will be made, for it will raise the precise point. We propose to prove that at this regular meeting, while the members were present and in session, the subject of the Woodhull scandal was brought up and considered upon the single point whether the church should take any notice of it; and it was decided unanimously that the church should not. Now, that is what we offer to prove.

#### JUDGE NEILSON'S DECISION.

Judge Neilson—In the first place, when this subject was up before, the argument was very full and very clear on both sides; and then, according to my judgment of the question, I decided that those church records could be brought in as the record of the proceedings of any corporation might be brought in, and might be shown, because it was matter of record, although the plaintiff is not a party to it, but that mere conversations (using the observation, "conversations to be uttered one day and forgotten the next,") could not be given in evidence because of the rule that the party to be affected should be present when the conversation took place to be proved. I overruled Mr. Beach's objection to that point of bringing in the records. This morning, on hearing Mr. Shearman further, and understanding something more of the rules and character of the official proceedings of this church, I have thought it proper to allow Mr. Shearman to prove that at this meeting, and after the regular business had been transacted, the question of the Woodhull scandal was brought up and considered. That has been proved; need not be embraced in this offer. It has been proved, and that no action was taken, and the only difference now really involved in this discussion is whether it should stand upon the statement that no action was taken, or whether it should stand upon the statement that the conclusion was that no action should be taken. As to the point considered, we understand that it related to the Woodhull scandal, and that need not be resolved into particles or elements, but taken as a whole. Read, Mr. Stenographer, what the evidence last given was.

THE TRIBUNE Stenographer—Your Honor, there has been no evidence given here since I came in; the stenographer who took it has gone.

Judge Neilson—What did Mr. Halliday last say?

THE TRIBUNE Stenographer—It was taken before I came.

Judge Neilson—It was taken before you came in?

THE TRIBUNE Stenographer—Yes, Sir.

Judge Neilson—Have you got it, Mr. Stein? Go back to the point where Mr. Shearman put his last question—read the last part of it, Sir.

Mr. McEwen (an unofficial stenographer)—I have the last part of it.

Judge Neilson—Read the last few questions and answers.

Mr. McEwen—"Mr. Tilton objected. Mr. Moulton said immediately—I think it was the first thing he said—"

Mr. Morris—No, oh, away down.

Mr. McEwen—It is further along than that.

Mr. Morris—Yes; away down.

Mr. McEwen—I have not got it then; this is the last thing I have.

Mr. Beach—The last thing, I think that Mr. Halliday said that there was no action taken except by ourselves. Mr. Halliday probably will have a clearer recollection.

Mr. Ackerman (another unofficial stenographer) read as follows: "Judge Neilson suggested to Mr. Shearman to ask this question: 'Was Mr. Beecher present on that evening, October 30th?' Mr. Halliday replied: 'He was not.' The Court suggested the following question: 'After the resolution was taken, was this scandal—was this Woodhull scandal brought up?' Mr. Shearman said to Mr. Halliday: 'Answer that question.' Mr. Halliday replied: 'It was.' Judge Neilson says: 'Was action taken in respect to it?'"

Mr. Beach—Mr. Halliday answered that, and he answered that there was.

The Stenographer—"He answered 'There was.'"

Mr. Beach—Well, then, just go on a little further.

The Stenographer—"Then Mr. Halliday, addressing himself to the Court"—

Mr. Beach—Yes, go on.

The Stenographer—"If your Honor will permit me, I will give you a word or two that will set the matter right." Then the discussion began.

Mr. Beach—No. There is some point where Mr. Halliday said there was no action taken except by language, something of that kind.

The Stenographer—I haven't got it. That must be further on.

Mr. Beach—[To the witness.] Do you remember that? A. I think I do; something of that kind.

Mr. Munson (another stenographer) said he presumed that he had what was wished, and read as follows:

"Q. Was anything done following that? A. Yes.

"Q. As distinguished from anything said? A. My memory don't serve me; I can't swear whether there was or was not."

Mr. Beach—Oh, yes, Sir; that is it.

Judge Neilson—Well, we have the matter clear enough, gentlemen; you have it. We cannot take what was said; that you agree to. We have that sufficiently.

Mr. Evarts—The point, your Honor sees, is whether we prove no action taken is sufficient; but it does not answer our purpose,

as we think; nor our rights, as we think. We propose to show that the action of the Board was that the case called for no action; and that that was their action.

The Witness—Precisely.

Mr. Evarts—Just as much their action and decision. If you take a matter up and consider it, it is not passing it *sub silentio* that you do not do something; but that you decide not to do something, is taking a course either for an individual or a body. That is our whole point.

Mr. Shearman—Will your Honor permit me to put this question? [To the witness.] Was the question raised as to whether any notice should be taken by the church, of this scandal?

Judge Neilson—[To the witness.] Answer that.

Mr. Fullerton—One moment.

The Witness—It was.

Mr. Fullerton—Well; wait, Mr. Halliday.

The Witness—I heard the Court say, "take that question;" and I thought I was—

Mr. Fullerton—I want to know whether it was raised by resolution; whether the ordinary forms were adopted to get at the mind of a numerous body.

Judge Neilson—Well, then, I will ask him that. [To the witness.] Was that by resolution, Mr. Halliday? A. I don't think there was any written resolution offered, Sir.

Judge Neilson—Now, go on, Mr. Shearman.

Mr. Fullerton—Well, Sir, that does not satisfy the inquiry at all. I did not suppose there was any written resolution; but, was there a resolution offered?

Judge Neilson—[To the witness]: Was there a resolution of any kind offered, Sir?

The Witness—My impression is very distinct that the proceedings took this form—

Mr. Beach—Oh, that won't do, Sir.

Mr. Fullerton—That won't do. Now, will you answer the question?

Mr. Shearman—It is rather difficult to say whether there was or was not a resolution.

Mr. Fullerton—It is rather difficult—for Mr. Halliday.

Mr. Shearman—No; it is not a resolution until it is passed.

Mr. Fullerton—Yes, it is.

Judge Neilson—[To the witness]: Was there any resolution proposed to be passed in any form?

The Witness—Essentially, there was.

Judge Neilson—What form? A. In the form that it was not expedient to notice the scandal at all.

Judge Neilson—Very well, now; take that answer; and let it stop there.

Mr. Morris—That opens the door for all that was said there.

Judge Neilson—No.

Mr. Shearman—Was anything said—

Judge Neilson—Well, don't push this thing any further.

Mr. Shearman—I will just put this one question—

Mr. Evarts—The question, whether it was acceded to.

Mr. Shearman—Was there any dissent from that proposition?

A. My best recollection is that the feeling—

Judge Neilson—Say yes or no.

Mr. Shearman—Was there any dissent from that? A. That there was none, that there was a perfect unanimity of view.

Judge Neilson—Now, will you please pass this troublesome subject.

Mr. Evarts—Yes, Sir.

Mr. Shearman—Yes, Sir.

Judge Neilson—Very well, now; proceed, gentlemen. Will the audience keep quiet?

Mr. Shearman—Only one more question.

Mr. Evarts—Not in that direction, your Honor.

Judge Neilson—I understand; some other subject.

Mr. Shearman—Did Mr. Beecher have anything to do with this suggestion or conclusion?

Mr. Beach—That is objected to.

Mr. Shearman—So far as you know?

Mr. Beach—Oh, that is another thing.

Judge Neilson—Answer that; as far as you know, had Mr. Beecher anything to do with this? A. Not in this or any other—

Judge Neilson—That won't do.

The Witness—Not at all.

Mr. Beach—I move to strike that out.

Judge Neilson—Strike out that last; that won't do, Mr. Halliday; you are a very intelligent gentleman, and you can answer a question.

Mr. Shearman—That is all; you can cross-examine.

Mr. Beach—Is it worth while, your Honor, to commence a cross-examination now, we are so near the hour of recess?

The Court here took a recess until 2 o'clock.

#### CROSS-EXAMINATION OF MR. HALLIDAY.

The Court met at 2 o'clock, pursuant to adjournment, and the cross-examination of Mr. Halliday was begun.

Mr. Fullerton—Mr. Halliday, recurring to that meeting of October 28th, in regard to which you have been interrogated, can you name the persons who were present when the Woodhull scandal was the subject of consideration? A. I am confident that all the persons named in that record were present, Sir, and I think that there were others present, also; I cannot recall the name of any individual at present but that of Mr. Fitzgerald, one of the members of the Church, who had been—ah! I should not tell you anything about how he came to be there unless you ask it. There may have been others. He is the only one I can remember at present.

Q. Do you remember the fact that there were others, and that you are not able to recall their names? A. My impression is that there were others, but whether two or three, or five, I cannot say.

Q. Well, that is enough. Was Mr. Bell there? A. I don't think he was there. May I ask, Mr. Fullerton, if it was on the 28th? There were two meetings, at one of which Mr. Bell was present. but at the meeting of the Deacons, I don't think he was present.

Mr. Shearman—Let us have a fair understanding.

The Witness—Very well.

Q. My question was distinctly as to the meeting of the 28th of October, in regard to which you had been interrogated.

Mr. Shearman—You are mistaken; he has not been interrogated as to the meeting of the 28th of October.

Mr. Fullerton—The 23d of October.

Mr. Shearman—The 30th of October.

Mr. Fullerton—Whatever the date is, I thought it was the 28th.

The Witness—There were two meetings.

Q. The 30th of October? A. That is the meeting of the Deacons, and I think Mr. Bell was not present. My best recollection is, that he was not present at that meeting.

Q. These persons, or this person, Mr. Fitzgerald, I think it was, whom you named as having been present at the meeting; was this the meeting you referred to, namely, the 30th of October? A. Yes, sir, that is when Mr. Fitzgerald was present. He was present at a part of the meeting; he came in late.

Q. Was he present at the time the Woodhull scandal was the subject of consideration? A. He was.

Q. Was there a motion made or a resolution offered for adoption at that meeting in regard to the Woodhull scandal? A. I don't—If I were to answer I should say yes and no; from my stand point I mean.

Q. Well, which would be true? A. Substantially there was. In fact I cannot swear that there was.

Q. Well, What I mean, Mr. Halliday, is, did any one make the formal motion or offer for a formal resolution that it was not expedient to take any steps in regard to the Woodhull scandal, or anything embracing the subject in any way? A. I could get at it if you would let me say two or three words, Judge.

Q. I don't think you can get at anything by saying two or three words, so just answer my question that I put? A. I don't know how to give you a better answer than I have, Judge. Substantially there was a resolution, or, formally, I would say not, looking at the matter as I do.

At this point there was a private conference between Mr. Shearman and Mr. Morris in regard to the book containing a portion of the records of Plymouth Church.

Mr. Beach—What is it?

Mr. Shearman—I object to their looking at the record unless they put it in evidence.

Mr. Beach—We, perhaps, are going to produce it in evidence, and we propose to look at the whole book.

Mr. Shearman—We want to have it put in evidence,

Mr. Beach—Very well.

The Witness—[To Mr. Fullerton]: I am speaking now from my best recollection, Judge.

Mr. Fullerton—Of course, Mr. Halliday, you won't speak from your worst recollection; that is taken for granted. Did you participate in that discussion? A. I am very certain I did, Sir.

Q. Do you recollect saying anything on that occasion of this import, that Mr. Beecher did not desire the Church to take any steps in regard to it? A. I never said anything of the kind there.

Q. Did you make use of any form of expression conveying the idea that Mr. Beecher was averse to any official action on

the part of the Church, or anything representing it? A. I did not.

Q. Are you entirely positive upon that subject? A. I am.

Q. Did you express such a sentiment without saying, in effect, that Mr. Beecher requested you to? Did you say it of your own motion? A. Will you please repeat the question?

#### MR. HALLIDAY'S INFLUENCE ON THE COMMITTEE.

Q. Did you say, in substance, to that body, or to any member of that body that evening, that the Church ought not to take any action upon the subject, because you thought it would be displeasing to Mr. Beecher? A. No, Sir.

Mr. Beach—Or in substance that? A. No, Sir.

Mr. Fullerton—Did you say anything like that in substance? A. I said what possibly might be construed so. I would be very willing to say just what I did say, if I might.

Q. Well, you may say it. A. I simply stated to the meeting that Mr. Beecher, on the afternoon before the Tuesday when he came to say to me that such and such a pamphlet was to appear, after going through the whole of it and stating, "I have—

Q. Is this what you stated? A. This is exactly what I stated there.

Q. To the meeting? A. To the meeting. After Mr. Beecher got through giving me the representation of the paper that was to appear, he said, "I have made up my mind distinctly as to what course I shall pursue; I shall not notice it; I shall treat it with silent contempt."

Q. Didn't you say in effect that to the meeting? A. I repeated Mr. Beecher's remarks to me.

Q. Didn't you say it for the purpose of influencing the body whom you were addressing?

A. No, Sir.

Q. You did not? A. Mr. Beecher—

Q. One moment.

The Witness—I want to tell you a thing in connection with it, if you will allow me.

Mr. Fullerton—I have no doubt what you want to do. That is not a subject of dispute. What I want you to do is simply to answer my question.

The Witness—Yes, Sir.

Q. I understand you now to say you did not say that with a purpose of influencing the body whom you were addressing? A. Not in the least.

Q. You had some object in view in conveying to that body?—A. I had.

Q. You have not got the question yet. You had some idea in conveying to that body the information that Mr. Beecher was not going to take any steps in regard to the Woodhull scandal, had you? A. Yes, and no.

Q. Yes, and no. Well, which is true—yes, or no? A. Both.

Q. Both are true. Well, we will leave it there; I won't disturb the harmony of these answers. Now, did you have any conversation with any member of that body there that night, or with any person present during the discussion of this subject, the Woodhull scandal, which was not addressed to the



body in general? A. I did not, according to the best of my recollection, ever open my lips except at the meeting the previous evening, when some of these gentlemen were present, and then not to them personally, if I understand your question, as individuals at least.

Q. Was Captain Duncan then present? A. My impression is that he was, though I cannot tell. He was a Deacon, I think, at that time.

Q. Was Mr. West present? A. I think the records say that he was present.

Q. Do you remember that he was present? A. I do, from the record only.

Mr. Fullerton—Very well.

PLAINTIFF'S COUNSEL OFFER THE MINUTES OF PLYMOUTH CHURCH.

Mr. Beach—In this connection just prove what occurred.

Mr. Fullerton—Now, you are speaking of records. [Handing book to witness.] Look at that, and see if that is the record, or one of the records of the church; and, if so, what? A. Do you mean the whole book or this particular record?

Q. I mean the book. A. The book is the record of the—in other words, it is the minute book of the deacons of Plymouth Church.

Q. Embodying a record of their action from time to time, as they held meetings? A. Yes, Sir.

Q. Does it record all of the proceedings of that Committee or of that body? A. No, Sir.

Q. Does it record all according to the rules and regulations of the church? A. I think it does.

Mr. Fullerton—Well, I offer it in evidence.

Judge Neilson—Let it be marked.

Mr. Shearman—Well, I would like to know for what purpose.

Mr. Fullerton—Perhaps his Honor don't know as well as I do.

Mr. Shearman—I think the counsel ought to state fully the purpose for which they offer it.

Mr. Beach—We offer it for the purpose of proving the proceedings of the Board of Deacons on that subject.

Mr. Shearman—To prove all the proceedings for all time?

Mr. Beach—All the proceedings during that time.

Mr. Fullerton—Yes.

Judge Neilson—I think it may be marked.

Mr. Shearman—The only real objection I have to putting everything of the kind in evidence is that it opens all of the private affairs of the poor of the church.

Judge Neilson—That they should not do. It is marked, what they are examining.

Mr. Fullerton—I don't propose to read anything from that book in evidence which does not bear on the matter in hand.

Mr. Shearman—This book relates more to the affairs of the poor of the church than in reference to this church.

Mr. Beach—That we would not examine or consider. We only want to see what is there in regard to this matter.

Mr. Fullerton—At the meeting of which we have been speak-

ing, did you state, in substance, this, that you had called together this body at Mr. Beecher's request? A. No, Sir.

Q. In addition to that, did you state, in substance— A. Will you please let me say, Judge Fullerton, that I stated it in such a way that anybody might fairly infer that from it. I would be happy if I might say exactly what I did say.

Q. I asked you if you said that, in substance? A. I don't think I did; I am certain I did not.

Q. Well, I will put another question to you. Did you say anything from which you desired it to be inferred that you were calling them together at Mr. Beecher's request?

A FIGHT FOR THE MINUTE-BOOK OF PLYMOUTH CHURCH.

Mr. Shearman—One moment.

Mr. Fullerton—What is the objection?

Mr. Shearman—I am not objecting to your question, but to an act. I object to the plaintiff in this case looking over the entire record of this Board of Deacons.

Judge Neilson—It is not necessary.

Mr. Shearman—He is doing it.

Mr. Beach—The book of record is here in evidence, and we propose to examine it to see if—

Mr. Shearman—I object to any general examination of this book. [To Mr. Morris.] Let me have the book. [Each having a hand on the book.]

Mr. Morris—You won't take it from me in that way.

Mr. Shearman—I was not taking it from you. You were taking it from me.

Mr. Morris—No, I was not.

Judge Neilson—There is no occasion for this, gentlemen.

Mr. Shearman—I object to this course being pursued.

Judge Neilson—I think you [Mr. Shearman] are correct. I think there may be private matters in that book which counsel ought not to refer to. It is here for a special purpose, in respect to the meeting. If there are other matters there, they will have a right to—

Mr. Beach—Can we not look at the book for the purpose of ascertaining the meeting?

Mr. Fullerton—I will tell you how I can do it. I can put the book in evidence.

Mr. Shearman—I object to it. The gentleman has got it by our courtesy.

Mr. Beach—We have not got it by courtesy.

Mr. Shearman—The witness has not produced it, and we have not put it in evidence.

Mr. Morris—We have.

Mr. Shearman—You have not got it, except by courtesy.

Judge Neilson—You had better proceed with this examination, gentlemen.

Mr. Beach—We suppose we have a right to examine this book, the record of the deacons' meetings of that church.

Judge Neilson—You are examining the witness. You cannot do two things at the same time.

Mr. Beach—Counsel may do it.

Mr. Morris—There is only one party examining the witness.

Mr. Fullerton—I think a very brief statement will set this thing all right. There are certain portions of this book that I desire to give in evidence, and which I shall offer in evidence. It will be very convenient to us, and, I think, most agreeable to the other side, if some one in connection with the plaintiff's case can examine it to eliminate from this great mass of matter what we desire to put in evidence. I don't know now where it is, but I don't wish to read the whole book through, nor do I care to see any secret connected with the administration of that church—I don't mean "secret" in any offensive sense at all, if there be such in the book. I don't care to read it, or to make myself acquainted with it in any respect whatever. What I desire, and what I mean to do, so far as I shall get it under your Honor's ruling, is to offer this book as far as it has any bearing on the issue in this case.

Mr. Shearman—As to that they may interrogate the witness. I beg most respectfully to insist on my right of having the book.

Mr. Morris—Well, one moment.

Mr. Shearman—I ask as my right the possession of that book.

Mr. Morris—Not in that manner.

#### THE COUNSEL REBUKED BY THE JUDGE.

Judge Neilson—Is this quite in a spirit that becomes counsel? I don't think it is. [To plaintiff's counsel.] I think for the present, until we get through with examining the witness, you had better return the book to Mr. Shearman, and when you want it call for it.

Mr. Fullerton—Then I call for it now.

Mr. Shearman—Whom do you call it from?

Mr. Fullerton—[To the witness.] Be kind enough, Mr. Halliday, to turn to the next meeting of that church after October 30, 1871.

Mr. Shearman—Until this question of right is settled, Mr. Halliday, you will please do nothing of the sort.

Judge Neilson—The witness must answer the question.

Mr. Shearman—He is not in possession of the book; the book is not in the custody of the witness, and I object to his opening it. When the question of right is settled, I am willing to go as far as any one in courtesy; and I am willing, if I am allowed, to select one gentleman on the other side who may look over the whole book; but I do that as a matter of courtesy, and not of right. I will select one of the counsel on the other side to examine the book.

Mr. Fullerton—I am not disposed to accept as courtesy what I am entitled to as matter of law. I appreciate the gentleman's courtesy, and will reciprocate it on all proper occasions, and in a proper spirit, but that book was placed in the hands of the witness, and he read a portion of it in this case, and I called your Honor's attention to it at the time, saying that was read in evidence. There is no doubt of that. The book cannot go in and out like a shuttlecock to suit the views of the counsel on the other side.

Mr. Shearman—It was not read in evidence.

Mr. Fullerton—I say it was read in evidence to the witness on the stand, and it is so recorded.

Judge Neilson—I understand he got from it the date of the meeting, &c.

Mr. Shearman—I was refreshing his memory, and the book was not marked or put in evidence.

Mr. Beach—The gentleman said at the time of handing the book to the reporter that it could be marked if he chose.

Mr. Shearman—I said to the reporter to mark the book for identification, and he did not mark it for identification, and the record was not read, except to refresh the witness's memory.

Mr. Fullerton—It was read.

Mr. Shearman—It was no more read than Paxton's pamphlet was read when it was handed to Mr. Moulton to refresh his memory.

Mr. Fullerton—It was read by the witness, and it was so recorded in the minutes.

Mr. Shearman—I produced it for the purpose of refreshing the memory of the witness as to who were there.

Judge Neilson—The book can be brought here under a subpoena. It is now in the hands of the witness.

Mr. Beach—It has been given in evidence on our side.

Mr. Morris—It cannot be enforced by a subpoena. It is a corporation.

Judge Neilson—Counsel had better go on with the examination.

#### AN UNSATISFACTORY END TO THE FIGHT.

Mr. Fullerton—My question is: Turn to the minutes of the Deacons' meeting next after October 30th, 1871.

Judge Neilson—[To the witness]: Turn to it, witness.

Mr. Fullerton—1873.

Mr. Shearman—It is understood that book is in the hands of the witness as a matter of courtesy, and not as any matter of right.

Mr. Fullerton—And when we get through with it, as matter of courtesy we will hand it back to you.

Mr. Shearman—No, it is not in your hands except as matter of courtesy. I request your Honor that the witness be instructed to keep the book, or deliver it to me.

Judge Neilson—[To the witness]: Do you find the meeting there?

The Witness—I believe I have it, Sir.

Mr. Fullerton—I offer it in evidence.

Mr. Shearman—We object. What has that got to do with this case, unless something is stated about what that meeting relates to? Are we to have all the proceedings of the Board of Deacons put in evidence in this case?

Mr. Fullerton—It is as much an object to us to show what it does not relate to as what it does relate to.

Mr. Shearman—That is what your Honor excluded, and would not let us do.

Judge Neilson—[To Mr. Shearman]: I allowed you to show every thing you desired in regard to it. I have not suppressed anything bearing upon this case, directly or indirectly.

Mr. Tracy—If Mr. Beecher was present—

Judge Neilson—We have all the proceedings in his absence.

Mr. Fullerton—For the purpose of showing his absence.

Mr. Shearman—I don't object to the statement of anything

that is in that book relating to this matter ; I don't object to a statement of that. I do object to it if it is to be used by putting it in evidence including other matters which have no bearing on this case, and I have stated frankly why I do it. It is because of the names of the poor of the Church.

Judge Neilson—They will not be admitted here.

Mr. Shearman—Are the names of other persons to be brought in here ?

Judge Neilson—They will be respected.

Mr. Fullerton—I shall respect the names of the poor whether in that book or out of it.

Mr. Beech—No, unless the poor should include some member of Mr. Tilton's family.

Mr. Shearman—I have not the slightest objection to their getting that in if that is the object of it.

Judge Neilson—Go on.

#### ANOTHER BIT OF TESTIMONY.

The Witness [to Mr. Fullerton]: Judge Fullerton, I think there must have been one in November.

Q. November 30th, I think you will find it? A. [Referring to book.] There it is, November 27th.

Q. Now, turn to the next one after November 27th. Is this not it? A. [Referring to book.] Yes, Sir, that is it.

Mr. Fullerton—Now, Sir, without reading the proceedings of November 23, if the other side are willing to take the statement that there is nothing in there in the proceedings of that day with reference to the Beecher scandal, I shall be satisfied.

Mr. Shearman—That is an end of the matter.

Mr. Fullerton—That is an end of it as far as that is concerned.

THE TRIBUNE Stenographer—[To Mr. Fullerton]: Do you mean the Beecher scandal or the Woodhull scandal?

Mr. Fullerton—Yes, the Woodhull scandal.

THE TRIBUNE Stenographer—You said the Beecher scandal.

Mr. Fullerton—Well, it is a synonym.

Q. Now, will you turn to the next Deacons' meeting, please? I desire the like entry to be made in regard to that meeting. A. That is it, I suppose.

Judge Neilson—The next meeting is what date?

The Witness—I have not looked to see whether any other meeting intervenes. [After examining:] No, that is it.

Mr. Fullerton—December 23, 1872. No action there in regard to the scandal. The next meeting is January 30, 1873.

Q. Now, will you be kind enough to turn to the next meeting? A. The last was the 30th of December, 1872.

Q. The last one was this? A. [Referring to book]: January 30. Now, you want to know what?

Q. The next one? A. I suppose that was the next one, but I ceased to be clerk then. Where the difference in the writing occurs, then I ceased to be clerk.

Q. Is that the next meeting, February 27th? A. I suppose it is; it would be called a special meeting unless it was.

Q. Is March 27th the next? A. I presume so. There were only monthly meetings unless some special meeting was called, and if there was, there would be some memorandum of it in the book.

Q. April 24 is the next? A. Yes, Sir.

Q. Did you state anything to the Board of Deacons, or to the body there assembled, on the occasion when the Woodhull scandal was the subject of consideration, by which you intended to convey the idea that you had called them together at Mr. Beecher's request? A. If the Court will instruct me how to answer that question; I don't want to seem not to state what is exactly the truth, and I cannot, I fear, give a categorical answer—give a yes or no to it—without making myself uncomfortable lest I may have conveyed a wrong impression.

Judge Neilson—The only instruction I can give you is to answer according to your present conception and understanding of the question if you did or did not, or indirectly did or did not, or in substance did or did not.

The Witness—I can tell you what I did say exactly, and then—

Judge Neilson—Counsel does not ask you that.

The Witness—I could tell the Court, I thought, and he might instruct me how to answer.

Mr. Fullerton—No, I think you cannot get instructions from the Court how to answer a question when it involves the subject and intent which you had in making use of certain language.

The Witness—I had no such intent, Judge Fullerton, at all.

Mr. Fullerton—That is a perfect answer to the question.

The Witness—I didn't understand you as to my intent. I could have answered that very readily. Excuse me that I was so dull.

Q. Did you say in substance this, that you had called them together at Mr. Beecher's request to say that he, Mr. Beecher, thought it best that neither the Examining Committee nor the church should take any notice of Mrs. Woodhull's story? A. No, Sir.

Q. Did you say that to the body, or to any individual member or individual members—A. Never.

Q.—of that body there on that occasion? A. No, Sir. Excuse me for saying, "never." You asked simply that question. I did not, Sir; I confine my answer to that.

Q. Did you say that in substance in reference to the meeting of the Board of Deacons? A. I did not.

Q. Did you say in substance that you thought, and that Mr. Beecher thought, that: "We had better try to live it down"? A. Not at that meeting.

Q. Well, I am talking about that meeting? A. No, Sir; I don't know that I did. I am sure at that meeting I did not say anything of the kind.

Mr. Fullerton—There cannot be any misunderstanding about the meeting I am inquiring of.

Mr. Shearman—Oct. 30th.

Mr. Fullerton—Yes, Sir. [To the witness.] After saying that in substance—A. I didn't say that in substance.

Mr. Fullerton—Mr. Halliday, you are a little bit too fast; I have a right to employ that language in my question.

The Witness—Pardon me.

Q. After saying that, in substance, was it not also said, in substance, by members present, that they thought the policy thus suggested was a mistaken one.

Mr. Shearman—One moment. I object to that question, because it contains two questions together in one.

Mr. Fullerton—Do you move a division of the question?

Mr. Shearman—Yes, Sir. Suppose Mr. Halliday was obliged to answer this last branch of the question affirmatively—I don't know whether he is or not—he could not truthfully answer it affirmatively without also implying he said the other thing in substance, although he said he didn't say it in substance. If he answers no, the counsel will by and by put the last part of the question separately, and try and involve Mr. Halliday in confusion on the ground that he could have answered yes. It is a double question.

Mr. Fullerton—Mr. Halliday is evidently on the alert.

Judge Neilson—There is something in the suggestion, Mr. Fullerton.

Mr. Fullerton—Well, Sir; Mr. Halliday can answer according to the truth; he is not at all averse to telling what he knows about the subject.

Judge Neilson—[To the witness.] After saying that, did you say something else, or, if you said that, did you also say so and so?

#### MORE DISCUSSION.

Mr. Fullerton—It does not answer my question that he said that. I asked him if he said that in substance.

Mr. Shearman—He didn't say that in substance.

Mr. Fullerton—Very well. He may so repeat it, but I shall predicate my question on the belief that he did so state.

Judge Neilson—The question seems to me objectionable, and I think the counsel is correct.

Mr. Beach—We ask him if he said a portion of that question, and he denies it. We ask him didn't you say that, and didn't you say in answer thus and so? Didn't you make that remark, and didn't A. and B. make this reply?

Judge Neilson—That is a different thing.

Mr. Beach—No, Sir, it is precisely the same thing.

Judge Neilson—You ask him if, after saying that, he didn't say something that some one else said.

Mr. Fullerton—I am not asking him what some one else said; I am paving the way for what was said in opposition to his policy as made known to that body, and I must incorporate the policy in the question in order to get the answer which I hope to get from the witness, so that we can understand and appreciate it.

Judge Neilson—You had better modify your question.

Mr. Fullerton—I cannot modify it, as your Honor will perceive. I am now calling his attention to what was said in reply to his suggestion about some third person. I ask him that question: Didn't you make such a statement, and was there not a reply made to it of that character?

Judge Neilson—If you ask him was not such a reply made to some statement of his, that would answer the question.

Mr. Fullerton—No, Sir; the reply, if I prove it, amounts to nothing unless he made it to the particular statement to which I call his attention.

Judge Neilson—[To the witness.] Mr. Halliday, you perceive the character of the question and you can answer it.

Mr. Shearman—Does your Honor allow the question?

Judge Neilson—Yes, Sir.

Mr. Shearman—Then I except.

Judge Neilson—The counsel seems not to be able to modify it.

Mr. Shearman—The witness is not bound to answer yes or no.

Mr. Fullerton—Mr. Halliday understands what he is bound to do, and when he is at a loss he turns to the Court and gets instructions from the Court as often as the counsel does.

Judge Neilson—[To THE TRIBUNE Stenographer.] Read the question. THE TRIBUNE Stenographer then read the question as follows:

"After saying that, in substance, was it not also said, in substance, by members present, that they thought the policy thus suggested was a mistaken one?"

Mr. Shearman—I move that the first part of that question be stricken out.

Mr. Beach—Move that a part of the question be stricken out.

Judge Neilson—I said the question would be allowed, and Mr. Shearman can have an exception.

Mr. Fullerton—The question has been repeated by the stenographer, and I think Mr. Halliday understands it.

The Witness—I cannot answer that question, yes or no; I cannot look at it in any other light than that of a double question, pledging me or committing me to have made an answer that I have not made, or, if I did, that I did not intend to make. If I did make such an answer I wish to have it amended.

#### MR. SHERMAN EXCEPTS TO MR. FULLERTON'S WAY OF CROSS-EXAMINATION.

Mr. Fullerton—That is an improvement on Brother Shearman's argument, so we will pass on.

Q. On that occasion did you state that you had called them together at Mr. Beecher's request to say that he thought it best that neither the Examining Committee nor the church should take any notice of Mrs. Woodhull's story, that they had better try to live it down, and did some person or persons present suggest that they thought the policy thus suggested was a mistaken one?

The Witness—There seems to me to be two or three questions there.

Mr. Shearman—There seems to be three questions there.

Mr. Fullerton—You must not interrupt Mr. Halliday in his argument.

Mr. Shearman—I am very sorry, please your Honor, but the counsel on the other side have selected two classes of witnesses for their insolence—clergymen and ladies—and I propose to remonstrate in the most energetic manner against the continuing of that conduct, and to ask of this Court, as it has protected, and properly protected, witnesses of full age, who were neither clergymen nor ladies, and properly protected them against any imputations of counsel, that the Court will also protect clergymen, now that we have a clergyman on the stand, and this is the fifth time that opprobrious remarks have been made with reference to

him. The same course was pursued yesterday with reference to Prof. Gay, and I trust your Honor will see that it comes to an end. Counsel has no right to say Mr. Halliday was making an argument. Mr. Halliday was making a fair answer, and I think this course should be stopped.

Judge Neilson—I think you are correct, substantially, in your suggestion. I don't think Mr. Halliday intended to argue. Now, proceed Mr. Fullerton.

Mr. Fullerton—Well, Sir, some gentlemen argue without intending it, Sir. He did reply that he thought the question contained three or four questions.

The Witness—Two, Sir.

Mr. Fullerton—Two; very well.

Judge Neilson—Well, regarding it in that light, proceed to give your answer.

Mr. Fullerton—It was an improper observation for the gentleman to make. I am not going to insult Mr. Halliday. I have insulted no lady at all. The gentleman from the other side is a little off his balance in this case, and does not have a proper appreciation of what takes place.

Mr. Shearman—I have a very different opinion, and I cannot help it if I have not the fortune to agree with the gentleman. I say that such observations are offensive, and I say that such observations were repeatedly directed to ladies in delicate health, as the gentleman knew at the time.

Mr. Fullerton—I don't think I knew it, or the ladies knew it; I never heard of it, and Mr. Halliday never looked in better spirits in his life. So that Mr. Shearman perceives insults that were never intended, never given, and never received.

Judge Neilson [To the witness]—Now, regarding the question as being double in its character, please answer each branch of it as you understand it.

The Witness—If the stenographer will read the question.

Mr. Shearman—He will make the best answer he can.

Mr. Fullerton—Now, that is a good suggestion, Mr. Shearman. The stenographer will read it.

Mr. Shearman—I propose to have things go on properly.

Mr. Fullerton—Well, whilst he permits things to go on properly, I wish Mr. Shearman would go on properly himself.

THE TRIBUNE stenographer, reading :

After saying, that in substance, was't it also said in substance by a number present, that they thought the policy thus suggested was a mistaken one?

Mr. Fullerton—It is the next one after that, Mr. Reporter.

The question was read, as follows:

On that occasion did you state that you had called them together at Mr. Beecher's request to say that he thought it best that neither the Examining Committee nor the church should take any notice of Mrs. Woodhull's story; that they had better try to live it down.

And did some person or persons present say that they thought the policy thus suggested was a mistaken one?

The Witness—I — to the best of my recollection I never said what is indicated in the first part of that question, if it is but one, nor have I the least recollection of anything like what is inferred occurring in the second question, or the second part of the same question.

Mr. Fullerton—There is no difficulty in answering the question, you see. Was it also said by any person or persons that, as Theodore Tilton had been named by Mrs. Woodhull as her authority for many of her statements, and as he had made no denial of her assertion, it was the duty of the Examining Committee to question Mr. Tilton with regard to the matter, or anything substantially like that? A. I have no recollection of anything of the kind.

#### OTHER ACTIONS OF THE DEACONS.

Q. Now, do you recollect the next meeting of the Committee after the one to which your attention has now been called?

The Witness—The Committee or the Board of Deacons?

Mr. Fullerton—The Board.

The Witness—Oh! I do not, Sir; I cannot —

Q. Were you a member of the Examining Committee? A. I think I was, Sir, at that — O! I am sure I was.

Q. The meetings of the Examining Committee and of the Board of Deacons were separate, weren't they? A. Entirely.

Q. Disconnected? A. Yes, Sir. That is, the deacons always met as members of the Board that —

Q. Undoubtedly? A. But the meetings were distinct.

Q. Now, I want the proceedings of the Examining Committee of November 5. Do you recollect the next meeting of the Examining Committee? A. After this meeting of the Board of Deacons?

Q. Yes, after this meeting of the Board of Deacons? A. I don't recollect it, Sir; could not unless I could have something to recall.

Q. Do you recollect that a committee was appointed by the Examining Committee in reference to the Woodhull scandal? A. There was a call—not in reference to the Woodhull scandal.

Q. Well, with reference to some branch of it or some feature? A. There was a committee appointed, I think, to wait on Mr. Tilton and on another party at the same time.

Q. When was that committee appointed? A. I cannot tell you, Sir, without referring to the records.

Q. How soon after? A. I could not give you the least idea, Sir; I might give three months or four months.

Q. Just take the record, please; point it out, will you? A. I will, if it is on the records.

Q. How?

Mr. Shearman—It is not on the records.

The Witness—If it is upon the records I will; I have not the record.

Mr. Fullerton—Hand him the book and let him see.

The Witness—My impression is, Judge Fullerton, that what was said or done was informal, was merely preliminary.

Q. Well, that is your impression? A. Yes, there may be—

Q. Well; there may be an impression on the minute-book that is better than yours; that is what I want to get at. A. Yes, I simply say that to—

Mr. Shearman—I have found in such a meeting as you asked a subsequent meeting—

Mr. Fullerton—I called for that meeting when that Committee was appointed. [Book shown to witness.]

### TIME LOST OVER A NICE POINT OF COURTESY.

Mr. Shearman—You can refresh your memory by that. I want it distinctly understood, when the gentleman says he calls, that this is not produced under any notice to produce, or call, or anything of that kind.

Mr. Morris—It is here.

Mr. Shearman—Well, it is not here in any sense except this; as a matter of courtesy I hand it to refresh the witness's memory.

Mr. Fullerton—I don't call for it as a matter of courtesy.

Mr. Shearman—Then I will take it away.

Judge Neilson—Never mind, Mr. Shearman.

Mr. Shearman—I am perfectly willing if the gentlemen will accept courtesy, but if they won't accept courtesy—

Mr. Fullerton—Now, one moment; the book has been placed in the hands of the witness, and is in the custody of the law.

Mr. Shearman—No, Sir.

Judge Neilson—Mr. Shearman, I regard it as a matter of courtesy to the Court.

Mr. Shearman—If it is a matter of courtesy to the Court, I submit.

Mr. Fullerton—Then we are not indebted for the courtesy. [To the witness.] Do you find the next meeting of the Examining Committee? A. I have it, and I am reading it to refresh my memory.

Mr. Shearman—It is not the next one, if you will look to refresh your memory.

Mr. Fullerton—Well, it is the next one he is looking at.

Mr. Shearman—No, it is the next one after that.

The Witness—I am looking at "Brooklyn, Dec. 10;" what do you want of me, Judge Fullerton?

Mr. Fullerton—I want you to point out the meeting of the Examining Committee when that Committee was appointed? A. I said I was reading to find it.

Mr. Fullerton—Mr. Shearman interrupted you.

Mr. Shearman—No, the gentleman said it was the next meeting. I say that it is not the next meeting.

Mr. Fullerton—Well, we will call this the first meeting, then.

Mr. Shearman—You may call it the last if you please.

Mr. Fullerton—No, but when I get at the meeting, I don't care whether it is first or last, or next.

The Witness—Here. [Pointing to the book.]

Mr. Fullerton—I offer it in evidence.

Mr. Shearman—What is this?

Mr. Fullerton—Mr. Shearman, will you be kind enough to read it for me in evidence?

Mr. Shearman—Well, read it; I have no objection; but I do not propose to put the book in.

Mr. Fullerton—No? Then, I will read it in evidence.

Mr. Shearman—You may read it, but I will not put this in as an exhibit.

Mr. Fullerton—Well, I didn't ask you.

Mr. Shearman—Well, you don't get it as an exhibit unless you take it as courtesy.

Judge Neilson—Well, do accept it that way, Mr. Fullerton, and let us get along.

Mr. Fullerton—No, Sir, I will not accept it as courtesy. With all respect to your Honor, these objections are frivolous.

Judge Neilson—Then read it.

Mr. Fullerton—Does your Honor rule that we have not a right to give that record in evidence?

Mr. Shearman—They hav'n't got it yet.

Mr. Fullerton—I want to understand whether we have a right to give that in evidence.

Mr. Shearman—You have not subpoenaed it, or given notice to produce it.

Mr. Morris—The book is here, and it has been in the hands of the witness, and I ask your Honor if we have not a right to introduce it.

Judge Neilson—You have.

Mr. Shearman—Then I except to this ruling. One moment; I want to understand, your Honor, when I, on a courteous request of these gentlemen, produce a book as a matter of courtesy, and allow them to look at it every time that book is to be placed in evidence, and then they say that they get it as a matter of right, and give me no credit for courtesy. If that is their course, I will not produce another book, and I demand this back.

Mr. Fullerton—I give the gentleman credit for producing as a matter of courtesy what we are entitled to as a matter of right.

Mr. Shearman—No, they have not subpoenaed this book; they have given no notice to produce it.

Judge Neilson—All this is unprofitable.

Mr. Shearman—It is, but the counsel are uncourteous.

MR. PORTER ACTS AS PEACEMAKER.

Mr. Porter—I think there is a misunderstanding between my learned friends. There can be no practical difficulty about the matter. I concur with Mr. Fullerton in the entire propriety of this being read in evidence, and I am quite sure that my friend will not insist that the book should be marked, if not belonging to either of the parties, and being a part of the records, but I concede the entire propriety of this being read. My friend, Mr. Shearman, makes the objection, which is a very appropriate one, that this book being produced by courtesy, should be considered as remaining in his possession, and not placed in the custody of the law, and whatever the book contains, which my learned friends think should be introduced in evidence, can be read without being marked.

Mr. Shearman—That is entirely satisfactory.

Mr. Fullerton—Well, that having been all that I ever proposed to do, I am satisfied also. [Reading from the book]:

"BROOKLYN, December 10th, 1872.

"Meeting of the Executive Committee, held in the Trustees' Room.

"Brother White was called to the chair; also present, Brothers Halliday, Tallmadge, Roper, Manchester, Moody, West, and White, and Sisters Marrell and Pratt. The Clerk of the Church was called to make the Annual Report."

Then follows something that I don't care to read. I'll read, however, the following:

"Whereas, It is currently reported that Theodore Tilton has been guilty of conduct unbecoming a Brother of this Church:

"Resolved, That a Committee of three be appointed to investigate as to the truth of such reports, and to recommend such future action in the matter as they may deem advisable to be taken by the Executive Committee"—or "Examining Committee"—"Ex;" that is Examining Committee?

The Witness—That is the Examining Committee; yes, Sir.

"It was seconded by Brother Manchester. Mr. Beecher, Brother West and Brother Davenport was appointed as such, Brother West being appointed Chairman of the Committee—chairman of the same—Brother White mentioned the taking up of the—" that is another subject, however.

Mr. Fullerton—Were you present, now, when that resolution was offered? A. I think I was.

Q. Do you recollect whether or not you opposed it? A. I do not, Sir.

Q. Don't you recollect that you did oppose it, saying in substance that it was Mr. Beecher's desire that no such action should be had? A. I don't remember of saying anything of the kind.

Q. Do you remember you didn't say anything of the kind? A. My best recollection is that I did not.

Q. Now, that is December 10th. Will you be kind enough to turn to the next meeting of that committee? [Mr. Fullerton hands book to witness.] A. This appears to be it, on the next page, Sir—December 17th.

[Mr. Fullerton and the witness looking over the book together.]

Q. Then there is one December 27th, is there? A. Where is that?

Q. That is December 27th? A. Oh, yes.

Q. When was this? A. 17th.

Q. Oh, yes; ten days after? A. Yes, Sir.

Q. Now, then, which is the next? A. The 17th—that seems to be the 29th, Sir.

Q. That is another one— A. No; that is the same.

Q. 29th—and January 31st another one? A. Seems to be, Sir, there was a month intervening there, it seems, does it not.

Q. This is not—this is a mere— A. That is a mere blotch, from which, I suppose, I had—

Q. Now, I recall your attention, Mr. Halliday, to the meeting of October 30th, 1872. How long prior to the meeting of the Deacons on that day did you see Mr. Bell? A. The meeting on October 30th, that is the meeting of the Board of Deacons?

Q. Yes, Sir. A. I don't remember to have seen him at all; do you ask what time that day, Sir, or at any time?

Q. How long before that meeting—whether it was days or weeks that you had seen Mr. Bell? A. I don't think I had seen Mr. Bell since the meeting of the evening before, on Tuesday evening. The 30th was on Wednesday, and I had seen Mr. Bell the previous evening at a meeting to which I had alluded in the church parlor.

Q. Did you have any conversation with Mr. Bell in regard to the preceding meeting of the Deacons? A. Not a word that I remember now—I don't remember of having any personal conversation with Mr. Bell at all.

Q. Did Mr. Bell come to see you with reference to the proposed meeting of Deacons? A. No, Sir.

Q. Didn't he ask you whether there was not a meeting of Deacons appointed to be held there soon? A. No, Sir.

Q. Didn't he tell you in substance that he came directly from Mr. Beecher to inform you that he did not want a meeting of the Deacons? A. I don't remember that he told me any such thing.

Q. Can you swear that he did not tell you that in substance? A. I can swear that I feel very positive that he said nothing of the kind to me.

Q. You have no such recollection? A. Mr. Tilton was present and heard the conversation and all that—

Q. Well, that does not convey the information to me. A. That is all, Sir; excuse me.

Q. That is not the conversation? A. To the best of my recollection, he didn't say one word to me about it.

Q. Now, Mr. Halliday, did you refer to a meeting between you and Mr. Bell, when Mr. Tilton was present? I am referring to a meeting between yourself and Mr. Bell, of which Mr. Bell has testified, if you were here when he testified? A. Well, that was the meeting at my house when Mr. Tilton and Mr. Bell were there. Mr. Bell came in while Mr. Tilton was there and it is that that Mr. Bell testifies to.

Q. Well, did Mr. Bell at that, or any other meeting, convey to you what purported to be a wish of Mr. Beecher in regard to the meeting of Deacons? A. I don't think he ever said one word to me about it.

Q. You think you would remember it if he had? A. I do, Sir, decidedly.

Q. At the meeting on the 28th of October, was Mr. R. D. Benedict present—the 30th of October? A. I cannot tell, Sir, the record would show.

Mr. Shearman—Do you mean the 30th?

Mr. Fullerton—I mean the 30th. Yes, sir.

The Witness—The Deacons' meeting the record would show. I am not able to say; Mr. Benedict was there pretty generally, and from that I should infer that he was, but I don't remember.

Q. Do you recollect that Mr. Hawkins was present at that time? A. I do, simply because I saw it on the record.

Q. Do you recollect that Mr. Ropes was present? A. I think I read his name in the record, I could not tell otherwise. The Deacons consisted of so many, that it is very difficult for me to recollect, who, from time to time, were present.

Q. This was an informal meeting, was it not? A. It was a regular monthly meeting, I think.

Q. A regular monthly meeting? A. I think it was, Sir, a stated monthly meeting; the Board of Deacons had stated monthly meetings on every last Wednesday evening in each month.

Q. Did you call them together at the regular meetings by letters? A. I think I did.

Q. You didn't adjourn it to a particular day when you adjourned? A. We adjourned *sine die*, unless we had a meeting intervening, unless there was a special meeting.

#### THE INTERVIEW WITH MRS. MOULTON.

Q. Now, Mr. Halliday, you have told us that you had some meetings with Mrs. Moulton at her house—will you state when that first one was, A. I think it was in the early Spring of 1872. I cannot tell with any definiteness at all. I think it was at that period, because I feel quite confident, that the windows were open; that the weather was very beautiful.

Q. Might it not have been—you say the Spring of 1872? A. I think it was, Sir.

Q. Might it not have been the Autumn previous? A. I said so in my testimony—it seemed to me that it was longer than that, but I infer that it was in the Spring because of the character of the weather,

Q. Was that a pastoral call? A. It was, Sir.

Q. How long did you remain? A. I may have been in the house twenty minutes to half an hour, Sir—fifteen minutes to half an hour.

Q. And when was the next call? A. I never called at Mr. Moulton's again until the day on which this Deacons' meeting that you have referred to, Wednesday, the 30th of October, I think.

Q. It was on that same day that you called again? A. I think it was, Sir; about half-past nine o'clock in the morning.

Q. And it was at that time that you had a conversation with Mrs. Moulton? A. In regard to this matter; yes, Sir.

Q. Will you be kind enough now to repeat that conversation as near as you recollect it, Mr. Halliday? A. I had the impression that Mrs. Moulton's name was mixed up in the matter in some way or other from two sentences which I heard read of the story.

Q. One moment. Is that a part of the conversation with

Mrs. Moulton? A. No, Sir, but it showed what sent me there.

Q. Oh! I didn't ask you what sent you there, Mr. Halliday.

A. Well, Sir, I beg your pardon for volunteering.

Q. Well, please don't tell me what you went there for. A. The first thing that I said—Mrs. Moulton I think met me at the door herself. Her appearance was as if she—

Q. Now, one moment. I didn't ask you as to the appearance of Mrs. Moulton. A. Mrs. Moulton received me and asked me into the parlor, and I went. May I go on, Sir?

A. And tell what conversation there was, without telling the appearance of the lady? A. I said to Mrs. Moulton. "How is it that you are mixed up in this Woodhull and Claflin scandal?" She replied to me: "I don't know what right Mrs. Woodhull has to use my name, I have nothing to do with it; have had nothing to do with it;" just what I said in very few words next, I can't remember, but Mrs. Moulton, as if interrupting, impatient, she said: "Mr. Halliday, Mr. Beecher is my pastor, and has been from my childhood, and I believe in him, and there is nothing that they can say that will affect my confidence in him, and my affection for him, one particle."

Q. Now, have you repeated the very words that she said? A. I think I have, the very words she uttered.

Q. Have you repeated the same words that you repeated yesterday, as being the same words? A. I think I have; I think my words were very much what I have said now; I meant that they should have been exactly, for those words are, to the best of my recollection, the words she used.

Q. Do you remember the exact words? A. I think, I do, Sir.

Q. Did you make a memorandum of them? A. I did not, Sir. I repeated them immediately to others.

Q. Well, I did not ask you that.

Mr. Shearman—Well, that is very well.

Q. You made no memorandum of your conversation? A. Not of that conversation; I did not, Sir.

Q. Did you undertake to remember the words exactly. A. I did.

Q. Fasten them in your mind? A. I did.

Q. Well, then, do you remember them exactly? A. I think I do, Sir.

Q. Very well—did she say this: "I believe in him, and they can say nothing that will lessen my confidence in him, or my affection one particle"? A. That is my recollection of the language she used,

Q. Yes; are you aware that that is not the exact language that you used a moment ago in giving the words that she made use of? A. No, I am not.

Q. Yes—well, now, will you be kind enough then, to repeat the words that she used, so that you will get at the exact language as it exists in your own mind? A. "Mr. Halliday, Mr. Beecher is my pastor, and has been from my childhood, and I believe in him; there is not anything that they can say to me that will affect my confidence in him, or my affection for him one particle."

Q. And those are the exact words? A. I think they are, Sir, and what I meant to utter before if I did not.



Q. Who called your attention to the portrait of Mr. Beecher?  
A. Nobody at that time, Sir.

Q. Why do you answer in that way? A. Because it—that is the fact.

Q. Were you aware that I did not limit my question to that time? A. We were talking about that interview, and I supposed—

Q. No, we were not. We had got through with it, and stopped. A. Excuse me, Sir; shall I answer your question?

Q. Well, I hope so. A. Mrs. Moulton directed my attention to it.

Q. What did she say in regard to it? A. Well, I cannot remember, Sir.

Q. What did you say in regard to it? A. That I do not remember.

Q. Well, do you remember the date of the visit when you were called—your attention was thus called to that portrait? A. No more than I stated a little while ago, that I think it was in the Spring of 1872, my first visit to Mrs. Moulton.

Q. Your first visit to Mrs. Moulton? A. Yes, Sir; I never knew her before, till I called that morning.

Q. Where was the portrait when your attention was called to it? A. I think it was hanging about in this direction from me; of course I suppose the space not so great, on the side wall, on the east wall of their residence.

Q. Were you in Court when Mrs. Moulton was examined? A. I was.

Q. Did you hear her narrate in her evidence what she told you? A. I did.

Q. On the occasion when you were there in October, 1872? A. I did, I think, Sir.

Q. In what regard did your memory vary or differ from hers? A. Well, I don't remember now, Sir, what her testimony was.

Mr. Porter—That is objectionable.

Mr. Fullerton—I suppose, Sir, that is a proper question.

Mr. Porter—It is asking him to state wherein his memory differs from hers—he is not a reporter of what she testified to; he is not called to speak upon that subject—he is to state what his memory of the transaction is, not how it compares with the memory of another, or with the version of another.

Judge Neilson—Leaving us to make the comparison. I think that is so.

Mr. Fullerton—Well, Sir, it is for the witness to state in what respect his memory differs from hers as to what took place on that occasion.

Judge Neilson—Well, he does that in giving what he thinks took place.

Mr. Fullerton—Yes, Sir, I am aware of that; but at the same time it is proper for me now to ask him in what respect his memory differs from her narration; I think so, Sir.

Mr. Porter—Counsel has her testimony before him, and can refer to any point on which he wishes to compare.

Judge Neilson—It is a simple question.

Mr. Porter—It is a simple question as to the fact, I mean, she represented.

Mr. Fullerton—Well, you heard her testimony? A. Yes,

Sir, and if you will let me read it, Judge, I will answer your question.

Q. Well, I will. It is there [pointing to the place in printed book]. If you can point out any difference between her recollection and yours, on reading it, you are at liberty to do so.

Mr. Porter—What page are you asking him?

Mr. Fullerton—Page 731.

The Witness—In the first place, she did not say to me that she was sixteen years old.

Q. Well, now, Mr. Halliday? A. That is what she says she said, and I say she did not say so.

Q. No; you have got your finger on the wrong spot? A. I got it on that spot.

Q. Well, that is the spot where you should not have put it. A. I am sorry; I didn't know where to put it.

Q. Well, we will mark it, so you won't make another mistake—you knew quite well, I think— A. Oh, now, excuse me, Judge, I did not; I thought you referred me to the whole of her testimony. Judge, excuse me; if I—

Q. I am calling your attention to what she said in regard to the interview between yourself and her, which you have given in evidence here now.

Mr. Shearman—Just what he supposed.

Mr. Fullerton—He is not referring to it at all.

Mr. Shearman—I beg pardon, I have got the book before me.

Mr. Fullerton—You beg pardon very often, and very often are forgiven; but you offend right away, the same.

The Witness—The difference is in this, Judge, that she says: "I don't remember, in the first place;" and, I do. The first part she says, "I remember;" so that, in that, we agree—I did not forget part of it.

Q. Does she state that she did not state what you do? A. She says simply, "I don't remember the last part of that, Sir; the first part I remember;" now the part that she has forgotten, I remember.

Q. Is not this the same language that you used, incorporated in the question to her, precisely, word for word? A. Well, she says she don't remember the first part of it.

Q. I did not ask you what she remembered; I ask you, if the language incorporated in the question to her which she answered there, is not the same language that you gave in your answer to-day, as having proceeded from her? A. I think that is the answer, exactly as I gave it, Sir. Now, what is the question?

Q. Well, having answered it, I have no occasion to put it again—

Mr. Shearman—Now, if your Honor please, as there were comments made by the counsel on the witness's statement, it is only fair that I should make a comment, and say that the witness was exactly correct.

Mr. Fullerton—One moment.

Mr. Shearman—Well, if the gentleman will make comments as he goes along, I have a right to make a comment, and ask your Honor's attention and the Jury's attention, to the fact that what the witness said is exactly correct.

Judge Neilson—It is correct, of course.

Mr. Fullerton—He called his attention to what he had said,

and his attention was directed accidentally to some other portion. I didn't want to know what the lady said about her age, nor anything about it.

Q. Was anything else said in that conversation between you and Mrs. Moulton that you have not related? A. It was very brief, and I don't remember anything further that was said; I don't think that I was there with Mrs. Moulton more than ten minutes; I shortened my stay because I thought Mrs. Moulton was engaged.

#### THE EXAMINING COMMITTEE AND THE WOODHULL CHARGES.

Q. Now, was there any discussion before any meeting of the Examining Committee, or the Board of Deacons in regard to the Woodhull scandal, that you have not named?

A. At the meeting?—when you say before, do you mean, at the meeting?

Q. At the meeting, yes,—before the meeting,—before the body? A. Oh, I think there were repeatedly, Sir.

Q. Did this Committee make a report—which were appointed when Mr. West was the chairman? A. I cannot recollect positively in regard to it—I remember of Mr. Beecher—Mr. Beecher was once appointed a Committee and he made a report; but I cannot tell distinctly in regard to the report of which Mr. West was a—

Q. Well, now, why drag in that other report? I am asking you about the report of the Committee of which Mr. West was chairman? A. I will simply answer, then, that I cannot remember, Sir.

Q. Anything about it; did you keep the minutes at that time? A. I don't think I ever kept them, excepting a—no; I don't at that time; I was going to say something further in answer.

Q. Did you see the West charges? A. I did, Sir; they were made to the Committee when I—

Q. Well, one moment. A. I was in the Committee when they were presented, when these were reported; when they were presented I was a clerk for the time being.

Q. Well, when were they presented? A. Could not tell you, Sir, without refreshing my mind from the minutes.

Q. Please look at the minutes? A. I haven't them, Sir.

Q. Well, they are here? A. No, Sir; they are not in, in them; the minutes that I made.

Q. Can you tell what year those charges were presented? A. It was some time in the Spring, I think; some time in June, 1873.

Q. Where was the Committee? A. If my memory serves me, it was in the church parlor.

Q. Who were present at that meeting? A. That I could not say that I remember—that Captain Duncan was present; I am pretty certain that Mr. Ropes was present. I cannot remember with any definiteness any other persons, without looking at the records.

Q. Who presented the West charges? A. My impression is that Mr. West presented them himself.

Q. What action was taken by the Committee when they were presented? A. I think the action that was taken was to receive or to accept, that is to permit, Mr.—there are two phrases

used, and I cannot be confident—I mean the rules of the church; and I cannot be confident now, as to which of those two; this attaches; at all events, the action of the Committee was at first, I think, equivalent to an acceptance, or allowing him to make the charges—after reading the charges over, they were regarded as incomplete and referred back, if I remember, to Mr. West, to complete.

Q. After that, was the third specification added? A. Whether it was at that time, or subsequent, I don't know, Sir.

Q. Well, I mean subsequently, was the third specification added? A. There was an addition made, but when, I cannot tell, Sir.

Q. Well, now, I didn't ask you when; I asked you if after they were referred back? A. Oh! yes, Sir.

Q. The third specification was added? A. My impression is, that that specification was not presented, was not added at the—when Mr. West handed them back, as he said, amended, but that at some subsequent period, perhaps a month afterwards, and I don't know but a longer period than that, I think he desired to make an addition to them.

Q. And the addition was made, was it? A. That is my impression.

Q. Which is the addition of the third specification there? A. I think it was made—accepted, allowed to be made by the Board.

Q. Well, at what meeting of the Board did he present these charges as thus amended finally? A. I think it was some evening the following week; however, I am not able to say.

Q. What month was that, Mr. Halliday? A. I think it was in June.

Q. In June? A. I think it was.

Q. Who was present when that took place? A. Oh, I could not tell at all, Sir. I could not mention a single one that was present, unless—I could not say positively, and there is nothing now that recalls to my mind any individual that was present.

Q. You recollect the fact—you were there? A. I think I was.

Q. And Mr. West was there? A. I think he was.

Q. Was not Captain Duncan there? A. I think he was.

Q. Now, can't you fix some one else that was there? A. Well, I presume that the majority of the Board, but I cannot tell who.

Q. What action was taken then? A. I cannot remember.

Q. Have you no recollection? A. No, Sir; I could refresh myself from the minutes, if you desire.

Q. Well, the minutes are not here? A. No, Sir; they are not here.

Q. Well, that was an important matter in the church, was it not? A. What way?

Q. The presentation of these charges? A. They were.

Q. And you don't remember what action was taken? A. I do not, definitely.

Q. Well, have you any recollection at all upon that subject? A. No, Sir; I have not positively, as to what took place. I would rather, if you would allow me, to look at the minutes; I will bring the minutes and tell you exactly what was done.

Q. Will you bring them to-morrow morning? A. I will try to.

Q. Then I will defer it? A. I say the minutes. I mean the mere blotter from which the minutes were transcribed.

Q. Very well; was any action taken as to prosecuting those charges? A. Yes, and no—that is, there were, I think, at first a resolution adopted to prosecute them, and then it was found that they were—that there were irregularities and they were recalled, and several comings and goings, I don't know exactly what to call it, before any final and specific action was adopted by the Examining Committee.

#### IRREGULARITIES IN THE WEST CHARGES.

Q. What was the final and specific action adopted by that Committee with reference to the West charges as finally amended? A. Well, Sir, I am afraid that I should—it would be so much better for me to tell from the minutes after seeing them.

Q. Then you will bring those to-morrow morning? A. I will, Sir.

Q. Well, did you ever converse with Mr. West about his charges after they were presented as finally amended? A. Oh! I think I did have several conversations with him, Sir.

Q. Did you try to dissuade him from further prosecuting them? A. I did.

Q. How frequently? A. Will you let me qualify—I did, because I regarded him—wholly incomplete.

Q. No; one moment. A. Well, I don't want to be misunderstood; I don't want it supposed, and I am not stating that to the jury, that I was opposed to the prosecution of these parties.

Q. Well? A. I wanted that whatever was done should be properly done, and I did not think Mr. West had done it properly, and so stated to him, as I did to the Committee.

Q. Yes; did you point out to him— A. I did.

Q. What? A. In the first place—

Q. Well, you didn't hear my suggestion? A. Excuse me, Sir.

Q. Did you point out to him what you considered as irregularities? A. I did.

Q. And, therefore, you advised him not to prosecute the charges? A. I did, until his charges were properly presented.

Q. Well, look at the charges as they were finally amended, Exhibit No. 29, and point out, if you please, to the jury, in what respect they were imperfect [handing paper to witness].

A. It was not so much—

Q. No, no; answer my question, please, now.

Mr. Shearman—That was what he was going to do. He was going to say his attention was called—

Mr. Beach—Oh, now, Mr. Shearman, that is altogether irregular.

Mr. Shearman—It is not; that is what I supposed he was going to say.

Mr. Fullerton—Now, don't interrupt Mr. Halliday.

Mr. Shearman—You are interrupting him.

Mr. Fullerton—No, I am not; I ask him to point out the

irregularities in the charges and specifications of Mr. West, as finally submitted to the Committee.

Mr. Shearman—That is what I supposed he was going to answer.

The Witness—May I state what I said to Mr. West?

Mr. Fullerton—Mr. Halliday, will you be kind enough to point out what you regarded at the time as irregularities in the specifications, or imperfections in the specifications of Mr. West, as finally amended? A. Why, Sir, there is not one-half of the matter here that Mr. West presented to the Committee in his charges.

Q. Then? A. There was a long—a long page of printed matter, longer than that book connected with the specifications and the charges, and it is not here. If you will let me bring the charges as I have them, then I will explain them; I have got them at home.

Q. That is taken from your book, I believe, Mr. Halliday? A. Well, but it is not all here, I say.

Q. Then, it is no more imperfect than as if it were all there, I take it, and you will not be embarrassed in pointing out the imperfections? A. I cannot tell what I cannot see here.

Q. Well, point out the imperfections in that instrument that is before you, and tell the jury in what respect it was imperfect? A. I don't know that I am able at the moment to point out any errors or any imperfections in this.

Q. Well, you did point out some to Mr. West, I understand you? A. I did, in regard to the whole affair, which I see is not here.

Q. The imperfections, then, were in the part that is not there? A. I presume so, as I am not able to see any here, and it may be that those were not as they were when I criticised his paper.

Q. What became of the charges as finally amended which he presented to the Committee? A. I prefer to refer to the documents.

Q. Oh! but what became of them; you cannot tell by looking at them what was done with them? A. I don't know what you mean, Sir—where are they now? Where is the paper itself?

Q. No, I shall ask that question when I wish to know. A. Well, Sir, I misunderstood you.

Q. What became of the papers after they were presented to the Committee? A. Do you mean what action was taken upon them?

Q. No. A. Well, I don't understand your question.

#### ACRIMONY BETWEEN COUNSEL.

Mr. Shearman—I understand you to say—

Mr. Fullerton—Well, I am not asking you, Mr. Shearman.

Mr. Shearman—Well, we have a right to an intelligible question.

Mr. Fullerton—Well, I have a right to an intelligent witness, too.

The Witness—Excuse me for—

Mr. Shearman—Now, that statement is very uncalled for and very indecorous, and the gentleman shall not, though he is my superior in age and experience and talent—he shall not insult witnesses on the stand without my remonstrating. Brother Halliday

is a very intelligible witness, and is a very intelligent witness, if he is asked a proper question.

Mr. Beach—You do not understand his remark. You were proffering yourself as a witness, and he said he wanted an intelligible witness, and therefore he turned to the witness on the stand. [Laughter.]

Mr. Shearman—That is very ingenious, only unfortunately it is not intelligible.

Mr. Fullerton—I hope your Honor will forgive Brother Shearman; he is a little nervous, and he cannot help it.

Mr. Shearman—No; I have seen this thing practiced on two clergymen, and quite as long as I intend to see it practiced at all.

Mr. Morris—Judge Fullerton, won't you apologise to him, and let us go on?

Judge Neilson—I think I should have hesitated over the question as the witness did.

#### FINAL DISPOSITION OF THE WEST CHARGES.

Judge Neilson—What became of that paper you mean? Where did the paper go to, or what was done with it?

Mr. Fullerton—Certainly; it might mean that, and that is just what it does mean.

Mr. Shearman—That is just what Mr. Fullerton instructed the witness he did not mean, and it left the question utterly unintelligible.

Judge Neilson—The words "What became of this, then?" are understood to mean "What was done with them, and where are and where were they put and kept?"

The Witness—I cannot state positively, but I am rather inclined to think that they are in a bundle of documents at my house, though I won't be certain if I transferred them to the gentleman who was elected clerk when I ceased to act. There was no clerk, and I was made clerk *pro tem*, and when another gentleman was elected, I either handed the papers to him, I think, or else they are in my possession at home.

Q. Well, now, look at the paper which I now show you, and say what it is? A. This is, in part, at least, Sir, a copy of Mr. West's charges, I think; I am sure they are not the original; they may be an exact copy, and I suppose they are.

Q. Look at the letter accompanying them, and say what that is? A. It seems to be a notice of the clerk—of the gentleman who was then clerk of the Committee to Mr. Tilton.

Q. Serving a copy of the charges upon him; isn't it? A. Yes, Sir.

Q. And do you say that those are not the charges? A. I did not—I said it was not the original paper. I said it was a copy of them. I suppose it is an exact copy.

Q. Of the original charges? A. Yes; the charges on the original paper.

Q. Well, the original paper—

Mr. Shearman—These are not the original; that is an explanation.

The Witness—That is not, I think, the original—I think it is the clerk, Mr. Tallmadge's writing; don't think it is Mr. West's; that answers—

Q. Now, is not that in the handwriting of the clerk of Plymouth Church? A. I think it is, Sir, as I said.

Mr. Shearman—Not the clerk? A. Not the clerk of the church; the clerk of the Examining Committee; I beg your pardon, Sir.

Q. All right, the Examining Committee; and you say it is a copy of the charges as originally presented, do you? A. No, Sir; I don't, Sir. I said it was a copy of the original paper, I supposed.

Q. Well, of the original paper? A. The paper as Mr. West presented it.

Q. Very well; now we have got to the point where you can point out the imperfections in it, then? A. No, Sir; I cannot, because the paper, as Mr. West presented it, is not here; the printed matter is not here.

Q. But you tell me that that is a copy of the original paper which Mr. West presented? A. I will read it, Sir; but I think that the printed matter would take more than the space of that whole piece put in, and so it cannot be here.

Q. Now, Mr. Halliday, it is either a copy or not a copy of the original paper as presented by Mr. West. Say which it is? A. I cannot tell from reading it, Sir, whether it is or not; I can only tell by looking at the original paper whether it is a copy of it.

Mr. Shearman—If you will allow me to say one word; you are spending a great deal of time, and the witness is answering directly the question, and Judge Fullerton—if he will permit me—did not precisely see the distinction. This is not a copy of the original paper presented by Mr. West, but is of course a copy of an original paper—that is, of the original of this copy—but these are not the original charges of Mr. West, nor a copy of the original charges of Mr. West, and therefore my friend Judge Fullerton and the witness are answering at cross purposes; that is all the difficulty.

Mr. Fullerton—There is no difficulty about it at all. Your Honor will recollect that Mr. West presented charges which were thought to be insufficient, and they were referred back for emendation. He afterwards did serve or hand to the Committee, and the Committee received them, charges amended, to which was added the third specification. Those charges were served upon Mr. Tilton for the purpose of subjecting him to the jurisdiction of that tribunal, and they are presented here, put in evidence, and are an exhibit in the case.

Judge Neilson—Yes, Sir.

Mr. Fullerton—Now, they are the charges finally agreed upon, or as finally made out by Mr. West and accepted by that Committee, and served upon Mr. Tilton. Now, I do not care anything about any charges that were preferred to the Committee before that.

Mr. Shearman—Then make the witness understand that. I certainly did not understand it.

Mr. Fullerton—I have labored to make him understand it, and it is not my fault if he does not. [To the witness.] I ask you the question now, whether that is not a copy of the charges as finally made by Mr. West with the third specification added? A. I have only to answer again, Judge Fullerton, that I cannot remember, and cannot state, unless I am permitted to compare

with the document as it is on the record, or in the original paper which I hold, I think.

Q. Was not the clerk of your Committee instructed to serve a copy on Mr. Tilton? A. I think he was.

Q. Don't you know it? A. I am certain he was, and he is the only gentleman in my judgment who can swear that is an exact copy.

Q. Very well; I ask you this question now, without referring to any other paper that went before the Committee. Will you point out there what you regard as imperfections in those charges and specifications, and give to the jury a reason why he should not be tried upon that paper as it is?

Mr. Shearman—Allow me to state, that is assuming that the witness has said that there were defects in those specifications, a fact that he has never said. He said to Mr. West that there were defects in his proceedings.

Mr. Beach—Oh!

Mr. Fullerton—That is not ingenious, even.

Mr. Beach—Now, we have had quite enough instruction from Mr. Shearman.

Mr. Shearman—I don't propose to allow a trap to be laid for the witness, assuming that he has made an answer that he never made. It is a very ingenious mode of cross-examination, but it is not law.

Mr. Beach—It is not half as ingenious, Sir, as it is to instruct the witness on the stand.

Mr. Shearman—I accept the tribute of my learned friend.

Mr. Beach—Well, Sir, you deserve it. [Laughter.]

The Witness—I ought to state to the Court that I have not—I am not certain that I have conveyed in the answers that I have given the impressions, or at least the facts that I meant to state. In proceedings of this kind, there must not only be specifications, but the witnesses to each specification must be given at the same time and in connection with the same paper; that is, whatever is evidence; and then it must be certified, if there be printed matter, that it has been properly identified, that the witnesses have been seen, and that they will appear to testify in regard to the points referred to there. I meant to say that I did object to Mr. West's proceedings, because he had not done anything of that kind. He had not seen the witnesses, he had proof from printed newspaper, and he never had verified the testimony in any way. He never had gone to see the individuals, against which is one of the rules of the church; he never had gone personally to see either of the gentlemen against whom he preferred charges; and it was on these grounds that I demurred.

Mr. Fullerton—Didn't you, a moment ago, say that your objections were founded upon the fact that the charges were imperfect? A. Well, Sir, I meant the whole paper.

Q. Oh, you meant the whole paper? A. Yes, Sir, I did; certainly.

Judge Neilson—A charge would be imperfect if it did not have appended to it the name of the witness.

Mr. Fullerton—Look, if you please, to the third specification and see if the name of the witness is not there. Will you be kind enough to turn? A. Will Judge Fullerton let me say that

the paper as it came before the Committee had charges against two persons in it, and that original paper—

Q. Now, Mr. Halliday—

Judge Neilson—I think that is proper as an explanation.

Mr. Fullerton—Why, Sir, what explanation is it in regard to this paper? This eternal reference to the original paper before the Committee has nothing to do with this case. It was thrown back upon Mr. West's hands, and he amended it and put it before the Committee, and there it is as perfected. Now, he tells us that he advised Mr. West time and again not to prosecute those charges, because he thought that they were imperfect. Now, I ask him to point out the imperfections there. Well, one imperfection is, as he said, that the name of the witness was not stated. I ask him to turn to the third specification of that paper, no other paper, and tell me whether the name of the witness is not stated there?

Mr. Shearman—Now, if your Honor please, the witness has never been asked yet, whether after the presentation of those charges in this final form, he made these charges to Mr. West. He has been asked only the general question whether after Mr. West once presented charges, he opposed their prosecution, and upon what ground. He states that he did oppose, and that he told Mr. West that it was because he had proceeded irregularly, and because his charges were not in proper form.

Judge Neilson—That they were in printed matter, and he had not been to see the witnesses.

Mr. Shearman—Exactly; and that was before they were perfected; and the attempt is made to make the jury believe that it was after the charges were perfected, and when the objections had been taken so far as the form was concerned—that they had been put in proper form. Now, it is sought, by asking that general question, having no reference to that, to make the jury believe that the charges were in proper form, and that he objected to Mr. West, that they were not in proper form. I submit that won't do.

Mr. Fullerton—The question I put to Mr. Halliday was this: After these charges were finally amended, and the third specification was added, did you advise not to prosecute those charges?

Mr. Shearman—That is a fair question.

Mr. Fullerton—That is the question I did put, and it is the question that the witness has not answered.

Mr. Shearman—No.

Judge Neilson—Now, Mr. Halliday, that question.

Mr. Fullerton—Now, Mr. Halliday.

The Witness—Excuse me, you were addressing the Judge, and not me, and I didn't understand.

Judge Neilson—Repeat the question, please.

Mr. Fullerton—After the charges of Mr. West were finally amended as they appear now in your hands, did you advise Mr. West not to prosecute them? A. In reference to Mr. Tilton I think I never did anything but urge that Mr. Tilton's name should be dropped from the roll of the church, from the beginning to the end.

Q. Now, Mr. Halliday, please answer my question. Answer my question, please. A. That is the only thing that I remem-

ber ever doing in regard to the charges, so far as they pertain to Mr. Tilton.

Q. Then after these charges were made as they now appear in the paper that you hold in your hand, you did not advise Mr. West not to prosecute them against Mr. Tilton? A. I never pursued any other course than that.

Q. You did not advise Mr. West not to prosecute them, did you? A. I don't think I advised him personally at all, Sir.

Q. Did you advise him not to prosecute them? A. I don't think I did.

Q. Well, do you know whether you did? A. I am not positive. I urged the Board—the Examining Committee—

Q. Never mind the Board. I am not talking about the Board.

Mr. Shearman—You asked him what he said to Mr. West.

#### MR. HALLIDAY'S ACTION WITH REFERENCE TO THE CHARGES.

Mr. Fullerton—I beg of you—[To the witness.] After the charges were preferred by Mr. West, and the 3d specification added, did you or did you not advise Mr. West not to prosecute them? A. I don't think I ever gave him any advice in regard to it at all.

Q. Then you did not advise him not to prosecute them? A. I don't think I did.

Q. Are you sure upon that subject? A. I feel very confident.

Q. Will you swear positively? A. To the best of my recollection I did not give him any such advice.

Q. Will you swear positively? A. No, Sir, I won't.

Q. Very well. A. That is as positive as I will swear. The best of my recollection is that I gave him no such advice.

Q. Did you advise the Examining Committee that it was not best to prosecute them? A. I did.

Q. More than once? A. I did, all the way through, from the beginning to the end.

Q. Not to prosecute the West charges as finally amended? A. Not to prosecute Mr. Tilton. I advised invariably his being dropped from the roll of the church, according to its rules.

Q. One moment; did you advise after the perfection of these charges, and the adding of the 3d specification— A. I did all the way through, from the beginning to the end.

Q. Yes? A. Yes, Sir.

Q. Very well, that is an answer. Did you give that advice because of any imperfection in the charges? A. No, Sir.

Q. It was not that? A. No, Sir.

Q. The charges you thought were sufficient, if a trial was to be had at all? A. I didn't think anything about it, so far as that was concerned. Mr. Tilton declared he was not a member of the church, and for years, I think ten years, I never saw him but once in the church, and for that reason I thought he ought to be dropped from the roll of the church, according to the provisions which the church has for such an occasion. I thought it was a mean thing to prosecute him—a mean thing.

Q. When did you commence your connection with the church, Sir? A. What did you say, Sir?

Q. When did you commence your connection with the church? A. I think it is some 10 or 11 years, Sir, and in all the 10 years I was there I never saw Mr. Tilton in church but once.

Q. Well, you had not been there 10 years, then, I take it? A. I had, Sir, about.

Q. About. What year was it? A. Oh! I attended church there, Sir, before I united with the church.

Q. Now, did you have any controversy with any member of the Examining Committee about the prosecution of the West charges? A. With two or three exceptions, I differed from the whole of them in regard to the treatment of Mr. Tilton.

Q. Did you have any controversy with them? A. No controversy with any individuals; my controversy was with the course which they proposed to adopt.

Q. Some of them wanted to prosecute the charges, didn't they? A. They did, Sir.

Q. Now, who wanted to prosecute the charges? A. I can't tell you.

Q. Can't you tell one? A. Most of them were in favor of it first, but finally they did just what I wanted them to do in the beginning—drop his name from the roll of the church.

Q. Name them, please? A. I think Capt. Duncan, for one, was decidedly—

Q. Very well, now, let me ask you this question. A. Did you not in that controversy or discussion growing out of that charge, at some time or other say to Capt. Duncan in substance, in order to prevail upon him not to advocate the prosecution of the charges, that it was Mr. Beecher's request that they should not be prosecuted? A. No, Sir.

Q. Didn't you say that to him in substance? A. No, Sir.

Q. Now, name another, if you please? A. What, Sir?

Q. Another person. A. Dr. White.

Q. Did you say that in substance to Dr. White? A. What?

Q. That it was Mr. Beecher's request that the charges should not be prosecuted. A. I never said it to any one.

Q. Well, just confine it to him. A. I never said it to Dr. White, if that is the answer you want.

Q. Now, will you name another member of that Committee? A. I think Mr. Manchester; I think he had the same view.

Q. Did you say it in substance to him? A. Never.

Q. Nothing of the kind? A. No, Sir.

Q. Nor to any other member of the Committee? A. No, Sir.

Q. When was the last time that this subject was up for controversy before the Committee? A. I can't tell you.

Q. About what time? A. I can't tell you.

Q. How? A. I can't tell you. If you will ask me that question to-morrow when I have the minutes here, I can tell you by reference to them, as I kept very full minutes.

Q. Can't you give me some idea? A. I can not Sir.

Q. How late was it in the year? A. How late was what, Sir?

Q. The controversy upon the prosecution of the charges? A. The final conclusion of this whole affair of the scandal, I think, was early in October.

Q. Of what year? A. Of the same year; 1873.

Q. Did you ever ask Mr. West to withdraw his charges? A. I have no recollection of any such thing at all, Sir. I tried to

get Mr. West to perfect—to do what he did do properly—and he never did it.

Q. He never did it? A. No, Sir; he never did it.

Q. What did you try to get him to do? A. I tried to get him, in the first place, to go and see the gentlemen against whom he made complaint, as a Christian man ought to do, and as is the rule in our church, but he never did it.

Q. Do you know he did not do it? A. I do know he did not, from his own confession. I do know that he never went to see the witnesses, to see if they would come, or else he told a story. He never went to see the witnesses, to see if they would come to testify.

Q. Did he tell you that he did not see— A. He did.

Q. That he did not see Mrs. Bradshaw? A. No, Sir.

Q. Why did you say a moment ago that he never went to see the witnesses? A. There were some that he did not go to see.

Q. Some that he did not; what one didn't he see? A. He never went to see— You remember that my talk is in regard to the other part of his paper, not in regard to the paper as to Mr. Tilton, for I would not argue with him in regard to that.

Q. Why not? A. Because of the course that I wanted adopted. I had that one course that I thought was a right one, and that was to drop Mr. Tilton; and I would have no controversy about any other means with our members.

Q. But he did mention the name of Mrs. Bradshaw in connection with the charges against Mr. Tilton? A. Yes, Sir; but I am not sure now whether these witnesses, any of them that he failed to see, were the witnesses against Mr. Tilton.

Q. Did he tell you that he had not seen Mrs. Bradshaw? A. He did not.

Q. You don't know, then, but what he did? A. I can tell you what witnesses he said he did not.

Q. No, that is not the question. You don't know but what he saw Mrs. Bradshaw? A. I think it is very probable he did.

Q. Then, so far as the charge against Mrs. Tilton was concerned, to be proved by Mrs. Bradshaw, he had done all he could do, had he not? A. I don't remember definitely now.

Q. If he had seen Mrs. Bradshaw then he had done all that he could do, or all that you could require him? A. I don't know—

Q. One moment—all that you could require of him to do in respect to that charge and that witness, hadn't he? A. I suppose he had.

Q. Was there any difficulty in going on then and trying Mr. Tilton so far as that charge and that witness was concerned? A. Well, he had never taken the first step.

Q. No, if you please Mr. — A. Well, that is—

Q. Was there any difficulty in going on and prosecuting the charge against Mr. Tilton, so far as the witness, Mrs. Bradshaw, was concerned?

#### ANOTHER DEFENSE OF THE WITNESS.

Mr. Shearman—Now, one moment. Counsel interrupted the witness when he was going to make an answer and the learned gentleman is going deep into ecclesiastical law; at the same time he does not understand the law of Congregational bodies.

Mr. Fullerton—Oh, I don't want to.

Mr. Shearman—Now, the witness has a right to answer, and undoubtedly was going to make a proper answer. There is a great deal more to be done than to see a witness, before, under an ecclesiastical law, a charge can be prosecuted.

Mr. Beach—Now, Sir, I object.

Mr. Shearman—I am not going to say what it is. I am not going to say what the witness was going to say, for I don't know how he was going to answer.

Mr. Beach—But you are going to tell him what he ought to say. [Laughter.]

Mr. Shearman—No, I am not going to tell him. The gentleman is a prophet, but this time he is a false prophet. I was not going to tell him.

Judge Neilson—Let us hear your objection.

Mr. Shearman—My objection is this, that the witness was going to answer a proper question in a proper way, and immediately the gentleman, as is very much his habit, interrupts him and does not want an answer to his own question, because the witness was not going to answer it, as he thought, in a way that he wanted him to. Now, I can see that the idea in Judge Fullerton's mind is that there is only one ground of proceeding—

Mr. Beach—I object to this. It is not admissible for the counsel, when the witness is under cross-examination, to enter upon an argument of that kind and instruct the witness.

Mr. Shearman—The witness knows more about it than I do.

Mr. Beach—Not in your opinion.

Judge Neilson—The substance of it is that he thinks the witness answered the question.

Mr. Fullerton—He did not answer, and did not commence to answer it.

Judge Neilson—Well, you repeat it then. He thinks you ought to have taken the answer.

Mr. Fullerton—I am quite aware that Mr. Shearman thinks that, but if your Honor will recollect what the witness said, it was not in response to my question at all.

Judge Neilson—You had a right to stop him if it was not in response.

Mr. Fullerton—Yes, Sir.

Mr. Shearman—How can the gentleman tell when he does not hear his answer. The witness says: "I," and—

Mr. Beach—How can the gentleman tell what the witness was going to say if he had not heard him?

Mr. Shearman—I say it is a presumption that a witness on the stand, who is attending to his business and his duty, is trying to make a proper answer.

Judge Neilson—Yes, there is no doubt about that; no one denies that.

#### THE TESTIMONY RESUMED.

Mr. Fullerton—Was there any difficulty in the prosecution of the charge against Mr. Tilton, so far as Mrs. Bradshaw was the witness to sustain it? A. I cannot swear from my own knowledge that there was.

Q. Did you know of any at the time? A. I don't know that I can give you any better answer than I have.

Q. I am satisfied with it. Did you state any to Mr. West? A. I don't remember what I did state to him.

Q. Now, do you know that he had not talked to Andrew Bradshaw, so far as the second specification is concerned? A. No, Sir; I don't know that he had not.

Q. Do you know that he had not talked to the Rev. E. L. L. Taylor, D. D., as to the charge in the first specification? A. I do not.

Q. Then, these being the names of all the witnesses to all the specifications, how was it that you were enabled to say that he had not seen the witness upon the subject, as he had been directed, or as it was his duty to do? A. I think I said that in regard to the specifications against Mr. Tilton, that I could not remember that I had ever given him any advice, or that I had ever—I meant to say that I had ever urged him not to prosecute them on the ground of their imperfection, or anything of the kind. In talking with him about Mr. Tilton, I took but the one point, and was always urging that, that instead of being prosecuted, he should be dropped from the roll of the church, as he desired himself, as I understood it, and as he had declared, and as I had seen in writing—his own handwriting, that he did not regard himself as a member of the church; that he had—in language—I cannot give his very words, but that he had cut himself off from the church.

Q. And that is the only reason that you advised them— A. So far as Mr. Tilton was concerned.

Q. That this persecution should not go on? A. So far as Mr. Tilton was concerned.

Q. I am talking about Mr. Tilton, and nobody else. There is nobody named but Mr. Tilton in these charges. A. In that paper, and any paper that I have—

Q. I am talking about this paper? A. I was talking about another, as well as this.

#### A DAY OF BATTLE ENDS IN SKIRMISHING.

Mr. Shearman—One moment. I object to this mode of examination, because Judge Fullerton is again assuming and putting a question which requires Mr. Halliday to answer out of his conscience concerning all his conversations with Mr. West. He is again assuming that he had conversations with him after these specifications were finally presented and about them. Now, that Mr. Halliday has expressly stated he did not have.

Mr. Beach—Oh! you are mistaken.

Mr. Shearman—I say he did say that.

Mr. Beach—Oh! you are in error,

Mr. Fullerton—I think my brother Shearman is not in his right mind [laughter], because there is no such thing before the Court at all. My question to this witness is this, whether he advised Mr. West not to prosecute these charges which I hold in my hand, and which I put in the hands of the witness, after the charges were perfected.

Mr. Shearman—Now, the gentleman is going on to a series of questions, assuming that he did advise him about it. The witness has said that after those perfected charges were put in he did not give Mr. West any advice that he recollects.

Judge Neilson—And that he did not advise not to prosecute.

Mr. Shearman—Not after these perfected charges.

Mr. Beach—Why, certainly.

Mr. Shearman—No.

Mr. Morris—He says, the reason that he gave was that Mr. West had not done his duty in seeing the witnesses in reference to these very charges. That is what he said, that he had not seen the witnesses, and had not performed the duty enjoined upon him in the Scriptures, as he said.

Mr. Shearman—The gentleman says that is going into a farce. The farce is that the counsel is endeavoring to entrap the witness, by assuming over and over again that he has said that he has done that which he distinctly swears he never did, and who, after he has testified that he once gave advice to Mr. West, which advice, as he now distinctly says, dated prior to the perfection of these charges, is asked a question concerning the advice which he gave—and he cannot deny that he gave some—and then he is required to say—to explain that he advised with reference to these perfected charges, concerning which he has stated that he never did advise. Now, the fact is that Mr. Halliday has stated that he gave some advice with reference to the charges which preceded these.

Judge Neilson—I understand the witness perfectly.

Mr. Shearman—I see your Honor does.

Judge Neilson—The preceding charges, when first seen by him, were in print, but he had not then conformed to what the witness thought to be the Scriptural injunction, and had not seen the party to admonish him, confer with him, and had not seen the witnesses.

Mr. Shearman—And all that relates to other charges than these.

Judge Neilson—Undoubtedly.

Mr. Fullerton—Well, your Honor will bear me witness that I repeatedly and distinctly intimated and informed this witness that my questions were directed toward the charges as perfected.

Judge Neilson—Yes, Sir.

Mr. Fullerton—I have labored to produce that effect, and I have no doubt that I have succeeded.

Judge Neilson—Then I understand the witness further to say that as to these charges he gave Mr. West no advice about it.

Mr. Shearman—That is it.

Judge Neilson—But that his advice at large, from the commencement to the end, was that the charges should not be prosecuted, but his name dropped.

Mr. Shearman—Exactly.

Mr. Fullerton—Then I have proved by him that he did advise the Committee not to prosecute these charges as perfected, and I asked him the reason why he gave such advice, if it was in consequence of any imperfection in the charges.

Mr. Shearman—And he said no.

Mr. Fullerton—One moment, if you please. Why this will be a tragedy if Brother Shearman don't cool his nerves. [Laughter.] He ought to know by this time



that two men cannot talk at the same time, and be understood intelligibly by your Honor. I propose, Sir, to continue this line of examination, and I am going to know before I get through, unless your Honor restrains me, and I shall be restrained, if your Honor desires it—I am going to know what advice this gentleman gave the Examining Committee and to Mr. West in regard to the perfected charges, and Mr. Halliday can fly back with the aid of Mr. Shearman as often as he pleases to the original charges. I care nothing about them, but I am going to have a distinct and satisfactory answer, exactly what course was taken with regard to these charges where the witnesses were named, and the specifications properly drawn up and submitted, subjecting this man to trial any moment they saw fit to try him, and when he was clamoring for trial, and waiving the fact that he had not been in attendance upon that church, so as to give him the right. [Applause.]

Mr. Shearman—That clamoring—

Judge Nelson—One moment. Now, I have no doubt that it is the right of counsel to interrogate the witness; and I have no doubt that Mr. Halliday, on reflection, to-morrow can give you such an answer as will be satisfactory, especially when he brings his papers with him.

The Witness—I would like to ask the Court if the Court has any impression that I have been unwilling to state anything here this afternoon. [Laughter.]

Judge Nelson—No, not at all. To-morrow morning at 11 o'clock, gentlemen.

The Court then adjourned till 11 o'clock on Friday.

## FORTY-EIGHTH DAY'S PROCEEDINGS.

### BESSIE TURNER A WITNESS.

CONCLUSION OF THE REV. MR. HALLIDAY'S TESTIMONY—A STRONG EFFORT TO PROVE MRS. BRADSHAW'S REMARKS ABOUT THE WEST CHARGES—MR. TILTON'S UNKINDNESS TO HIS WIFE TESTIFIED TO BY MISS TURNER—THE ALLEGED ECKENTRICITIES OF THE PLAINTIFF VIGOROUSLY DEPICTED—THE ATTEMPTS UPON MISS TURNER'S VIRTUE NARRATED.

FRIDAY, March 19, 1875.

The cross-examination of Mr. Halliday was resumed at the opening of the court. The plaintiff's counsel began with a strong effort to bring out what Mrs. Bradshaw had said to the witness in reference to the prosecution of the West charges. The defense objected to this as evidence of conversations between persons not parties to the case. Mr. Beach replied that they had a right to bring out the motives under which the witness had acted, to contradict some part of his testimony. Judge Nelson ruled that they could only show as much of the conversation as was reported to the Examining Committee. Under this ruling Mr. Halliday testified that

Mrs. Bradshaw stated to him that Mrs. Tilton asked her not to be a witness against her husband, saying, "Mattie, how can you appear against me?" Mr. Halliday was then called upon for his past life and history, and gave a full account of the various societies with which he had been connected. In answer to the question, "Have you ever had any connection with the Juvenile Guardian Society?" the witness answered, "No, I hope not; it is one of the greatest humbugs that ever existed," and the witness gave his views in very decided language about the Society and its officers. This terminated his examination, the hour being 12:30 p. m.

After a few moments' pause Mr. Shearman arose and called Elizabeth A. Turner, better known as "Bessie" Turner. The silence of the court-room was broken by a murmur of expectancy on the part of the spectators, who strained forward to get a view of the witness, as she arose from her seat beside Mrs. Tilton, and made her way slowly to the witness chair. Judge Nelson rebuked the spectators, and offered the suggestion that "during this lady's testimony I think the reporters would better keep their eyes on their paper." He addressed no suggestions, however, to the occupants of the gallery, among whom there was a general resumption of the eye-glasses and spectacles laid aside during Mr. Halliday's examination. Miss Turner, on taking the witness chair, appeared at ease and free from all embarrassment. She was examined by Judge Porter, whose pleasant manner of questioning seemed well calculated to relieve her from all constraint. Her testimony began with an account of what she had seen of Mr. Tilton's treatment of his wife and of Mrs. Tilton's bearing toward her husband. This covered the period between 1864, when she first went to live with the Tilton family, and 1874, when she ceased to live with them. Mr. Tilton's "moods," as the witness termed them, were very fully described. He was often sullen and disagreeable, and at such times spoke unkindly to his wife. On one occasion, at the table, when one of the children had refused to eat meat, he had said it was "all her mother's d-d orthodoxy," and at a woman's-rights meeting held at Mr. Tilton's house Miss Turner heard him say to his wife, "Elizabeth, stand aside. Don't keep near me. I do not wish comparisons to be made." The witness also described at length Mr. Tilton's peculiarities. Among others he was in the habit of going about

the house at night dressed in his night clothes. In this garb he used to take pleasure in hanging and re-hanging the pictures on the walls. He used also to go from one bedroom to another, trying the different beds to find the softest, and on one of these occasions he appeared at her room, accompanied by Mrs. Tilton bearing a pillow, and took possession of her bed, the witness going to another room.

Thus far the examination had proceeded very smoothly, with scarcely an interruption by the objections of Mr. Tilton's counsel, though punctuated occasionally by the irrepressible laughter of the audience, the plaintiff seeming quite as much amused at the recital of his alleged eccentricities as were the other spectators. But objections were now raised to several of Mr. Porter's questions, which the plaintiff's side declared could not be answered without the witness giving her opinion. Mr. Porter was very ready in his replies, and cited authorities for many of his points. Miss Turner was finally permitted to answer, and testified that she had heard Mr. Tilton swear at his wife, and had known him to lock himself up in a room with her, and scold and swear for several hours at a time. Regarding Mr. Beecher's visits to the house, she said that he called to see the family occasionally, and was treated by Mrs. Tilton in the same manner in which she treated her other friends. Miss Turner never saw any impropriety between Mrs. Tilton and her pastor.

Miss Turner then related Mr. Tilton's alleged attempts upon her own virtue. She testified that in 1867 Mr. Tilton came into her bedroom, saying that he came to bid her good night, and then attempted some familiarities, which she resented. He at the time justified his treatment by saying that such actions were common in the best society. Mr. Tilton then lay down beside her, and inquired whether she would not like to be married, to which question she replied that she "would never marry a literary man any way." He also asked her if she knew anything about affinities, and after some further conversation on like subjects left her. Miss Turner also testified that on another occasion in 1868 she awoke suddenly one night and found herself in Mr. Tilton's room instead of her own. She was very much bewildered, and asked him what he was doing. He replied that he felt lonely and wanted some one to love him. She left the room at once. Miss

Turner then told of the dinner at Mr. Tilton's, when Miss Ellen Dennis was present, and Mrs. Tilton cried and was obliged to leave the table. Mr. Tilton said: "Bessie, don't you think my wife is crazy; don't you think Elisabeth is demented?" The witness replied, "No, I do not; but I think it is a wonder you have not driven her into an asylum long ago." Mr. Tilton then went after his wife and the witness followed him and heard him say, shaking his fist over her, "You have brought that girl to this house to use against me, and, d—n it, she shall leave!" The witness declared that she would stand by Mrs. Tilton, and thereupon Mr. Tilton struck her and knocked her across the room, and then said, innocently, "Why, Bessie, how could you trip so." Miss Turner's emphasis, and the spirited way in which she gave the conversational part of this scene, called forth repeated applause from the spectators. Judge Neilson declared that he would have order, and rebuked the court officers for not preserving it. Miss Turner next told of the charges of adultery which Mr. Tilton had made to her against his wife. She also depicted Mrs. Morse in the following conversation, which she heard: "Good morning, grandma," said Mr. Tilton on one occasion to that lady. "I'll grandma you, you miserable wretch, you infernal scoundrel. I will publish you from Dan to Beersheba," was the reply of that lady, accompanied by other remarks of a similar import.

At about 3:30 o'clock, Miss Turner complained of illness, but hearing from Mr. Porter that her examination was nearly ended, continued her testimony, telling what she heard and saw at the time of Mrs. Tilton's alleged confession and retraction. She was obliged to stop, however, before 4 o'clock, and the Court adjourned until Monday, when her direct examination will end and the cross-examination begin.

### THE PROCEEDINGS—VERBATIM.

#### MR. HALLIDAY'S CROSS-EXAMINATION RESUMED.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Shearman—[To Mr. Fullerton.] Are you ready for Mr. Halliday?

Mr. Fullerton—Yes, Sir.

Mr. Shearman—Mr. Halliday, will you take the stand.

Samuel B. Halliday recalled and cross-examination resumed.

Mr. Fullerton—Mr. Halliday, I place in your hands again the West charges as perfected, with the addition of specification 24,

and I ask you now whether, after those charges were in the shape in which you now find them, you gave any advice to the Examining Committee in reference to their prosecution? A. I never saw them in this shape, Sir.

Q. That is not the question which I ask you, and I beg you to answer the question which I put to you?

JUDGE NELSON TIRED OF THE BICKERING OF COUNSEL.

Mr. Shearman—I object again.

Judge Nelson—Well, we will proceed without this objecting.

Mr. Shearman—But it is very unfair—

Judge Nelson—Perhaps it is. Sit down, Mr. Shearman. I am inclined to think that is a fair answer, at any rate it is an answer that any layman might well make. Now, we will proceed. I don't propose to have any talks or interruptions. Modify your questions a little, Mr. Fullerton.

Mr. Fullerton—I beg your Honor's pardon; how can I modify it? I didn't ask whether he saw the charges.

Judge Nelson—I understand.

Mr. Fullerton—It is no answer to my question.

Judge Nelson—Exactly, but he might well answer as he did, I think.

THE COMMITTEE AND THE WEST CHARGES.

Mr. Fullerton—Now, I ask you again, whether, after those charges were perfected and in the shape in which you now find them, you gave any advice to the Examining Committee in reference to their prosecution?

Mr. Shearman—I object to the question. It has been once answered.

Judge Nelson—It is allowed. I will have no discussion about these little things. [To the witness.] Answer the best way you can.

The Witness—I regard it as a double question, and I cannot answer it otherwise.

Judge Nelson—Well.

Mr. Fullerton—Well, give us a double answer then.

The Witness—In the first place, I do not regard this at all as thus perfected—as perfected. I never saw it in this shape.

Judge Nelson—Well!

The Witness—But I am confident—with regard to the other part of it, what I did, whether I gave—

Judge Nelson—Whether you gave any advice.

The Witness—No, I never gave any advice about anything that I knew nothing about.

Mr. Fullerton—Did you give any advice to the Examining Committee after October 16, which appears to be the date of the letter of the Clerk serving a copy of the specifications? A. I cannot remember what I did, unless you will allow me to refer to the minutes.

Q. Certainly; any minutes you have you can refer to. A. I haven't them here to refer to of that date. I have got the minutes that I said I would bring yesterday.

Q. Were you not directed to serve a copy of these charges yourself, as now perfected? A. No, Sir.

Q. You are quite sure of that? A. I am.

Q. Did you go on to New-Haven upon any business? A. I did.

Q. With reference to these charges? A. I did.

Q. Before going to New-Haven didn't you receive instructions from the Committee to serve a copy of the charges that were then in existence? A. I did.

Q. Did you serve a copy? A. I did not before I went.

Q. Did you at all? A. I did not.

Judge Nelson—That is, you did not serve them? A. I did not.

Mr. Fullerton—Did you cause them to be served? A. I was directed not to serve them.

Q. By whom? A. By the Committee.

Q. What member of the Committee gave you those instructions? A. The Committee itself.

Q. Was it after you came back from New-Haven? A. It was.

Q. At what meeting of the Committee were those instructions given? A. I cannot answer unless you let me refer to the minutes.

Q. You may refer to any minutes. A. [Referring to the minutes.] Excuse me for not being able to turn to them immediately, for I have not had time to—it was at a meeting held, Sir, July 14th, 1873.

Q. Yes, Sir. Can you state who were present at that meeting? A. Belcher, Ropes, Brush, Duncan, White, Moody, Day, Morton, Tilney, Manchester, Hawkins, Garbut, Halliday; Deaconesses Pratt and Halliday.

Q. Did you state to any person at that meeting, or to the body assembled, that it was the wish of Mr. Beecher that the charges should not be prosecuted? A. I did not.

Q. Did you state anything in substance like that? A. I did not.

Q. Did you know that Mr. and Mrs. Bradshaw were relied upon as witnesses to prove one of the charges against Mr. Tilton? A. I cannot speak from my recollection; my impression is that I did, decidedly.

Q. Well, did you ever have a talk with Mrs. Bradshaw upon the subject of her testimony, or going before the Committee as a witness? A. I did not; she did with me.

Q. You did not talk with her, then? A. I did not.

Q. You said nothing to her upon the subject, as I understand you? A. No, Sir, I simply listened to her, and made no reply to what she said.

Q. Where did that conversation take place? A. In my parlor.

Q. Did she say anything about appearing before the Committee? A. She did.

Q. What did she tell you upon that subject? A. I don't think I can give you her language, exactly.

THE CONVERSATION WITH MRS. BRADSHAW OBJECTED TO.

Mr. Shearman—One moment.

Mr. Evans—The conversation between this gentleman and Mrs. Bradshaw, at which Mr. Beecher was not present, is not evidence.

Mr. Fullerton—I propose to follow it up by showing, if I can, what he communicated to the Committee, after it assembled, immediately succeeding that conversation.

Judge Neilson—If you have the fact that it was understood that Mr. and Mrs. Bradshaw were to be witnesses, does not that cover the ground?

Mr. Fullerton—No, Sir; it does not.

Judge Neilson—I don't see how you are helped by anything that Mrs. Bradshaw might have said, on that occasion, beyond that.

Mr. Fullerton—Well, Sir, whatever Mrs. Bradshaw said to the witness, if he communicated it to the Committee, would become evidence in this case.

Judge Neilson—Do you expect to connect the Committee with it?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Go on.

Mr. Evarts—Well, but, your Honor, haven't we had a uniform ruling, that as the principal rule of evidence has excluded conversations between third parties, that a connection should be first shown; and it is not to show, whenever they have a witness that will show it—whatever was said to the Committee, provided it comes in as a part of the transaction of the Committee that is properly in evidence, will then appear; and as the whole significance is in what was said by Mrs. Bradshaw to this gentleman, and what was said by him or any one else to the Committee, that is the subject of evidence, and not the conversation between Mrs. Bradshaw and him. And we have repeatedly had occasion to consider that point, and your Honor has ruled, certainly, in answer to our offers of any similar evidence, that it should not be given. Take Mr. Schultz's case. Your Honor remembers all that—that he was not allowed to give what passed between him and Mr. Carpenter, although he was going to connect it with what he said to Mr. Tilton. The answer was, "Very well; say what you said to Mr. Tilton; that is all there is of Carpenter's that rightly comes in."

Judge Neilson—Stating what I have ruled, I think it would be naturally in your mind that I applied that rule at your instance very frequently in the early stages of the case.

Mr. Evarts—I did not intend to be understood otherwise, if your Honor please.

Judge Neilson—You stated it as if it was a late instance. I think I won't take Mrs. Bradshaw's conversation.

Mr. Fullerton—Will your Honor hear me one moment, and see what connection it has with this case?

Judge Neilson—Well.

#### ARGUMENT OF MR. FULLERTON.

Mr. Fullerton—This witness is put upon the stand for the purpose of showing that the action of Plymouth Church, through its organized committees, was entirely independent of the pastor; that he had no connection with that action. Now, I propose to show that after those charges were made by Mr. West—perfected as they are now, as they appear before the Court here, in evidence—that Mr. Halliday, the witness on the stand, stated in substance to the Committee, as a reason why

the prosecution should not be enforced, that Mrs. Bradshaw would not appear before the Committee; and that that was in reply to a statement of an assertion between members of the Committee that there were two good witnesses to prove the truth of the charges contained in the specifications against Mr. Tilton, naming Mr. and Mrs. Bradshaw; and that the Committee were deterred, as I have observed, from prosecuting those charges from information given to them by Mr. Halliday that Mr. and Mrs. Bradshaw, or Mrs. Bradshaw, would not appear before the Committee; and I propose to show that what Mr. Halliday said and did in reference to the prosecution of those charges, was at the suggestion and instigation of Mr. Beecher himself; that he was his mouthpiece.

Judge Neilson—As to that part of it there has been no objection.

Mr. Fullerton—No, Sir; there has been no objection; but I stated that fact to show what my object is in introducing this evidence. I want to show that this witness had a conversation with a witness to be produced for the purpose of proving the charges against Mr. Tilton, and knew what that evidence was that he produced, and yet the charges were not prosecuted.

Judge Neilson—I don't think the conversation of Mrs. Bradshaw is necessary for that purpose. We cannot take her conversation.

Mr. Fullerton—Did you say to the Committee, at any time, that Mrs. Bradshaw had told you that she would not appear before the Committee?

Mr. Shearman—One moment. To that, your Honor, we object. Mr. Beecher is not yet connected with this in any way, and this relates to meetings concerning which no inquiry has been made certainly on our side. Now, the only meeting that we did make an inquiry into, was the meeting that was referred to on the other side, and with which it was attempted to connect Mr. Beecher. All that we have done has been to disconnect Mr. Beecher; and we have gone no further; and that was the meeting of October 30th, 1872. Now, these are inquiries, without relating to meetings taking place in 1873, Mr. Beecher is in no mode connected with them.

Judge Neilson—My impression is that, having let you show what occurred at a meeting, although Mr. Beecher was not there, and, what was very important, Mr. Tilton was not there, yet I allowed it as a part of the official action, determining not to proceed in the matter, he has a right to refer to any subsequent meeting of the same body, and to anything that occurs there in respect to the same matter. The objection is overruled. Go on, Sir.

Mr. Fullerton—Now, will you answer the question?

Mr. Beach—If your Honor please, this witness, I understand, has testified—

Mr. Shearman—Your Honor will note our exception.

Judge Neilson—Yes, Sir.

Mr. Beach—Oh, I thought you had decided against us.

Judge Neilson—No, Sir.

Mr. Beach—I misunderstood your Honor's ruling, Sir.

TWISTING TO GET THE CONVERSATION.

Mr. Fullerton—Will you answer the question ?

A. Was the question asked as to whether I stated to the Committee at any time that Mrs. Bradshaw said that she would not appear as a witness?

Q. Yes, Sir. A. I repeated Mrs. Bradshaw's own words to them; if I may state what they were?

Q. Well, won't you state in reply to my question, whether you said that? A. I don't remember that I did anything, except simply to repeat what Mrs. Bradshaw said to me.

Q. Well, I am not at liberty to show what Mrs. Bradshaw said to you by the ruling of the Court. Now, I ask you what you told the Committee. Did you tell the Committee in substance that Mrs. Bradshaw told you she would not appear? A. I did, I think I did; I am not positive; I stated it to individual members, and I am quite confident that I did to the Committee.

Q. Did you state to the Committee that Mrs. Tilton had been to see Mrs. Bradshaw? A. I did not, that I remember; I don't remember stating anything of the kind.

Q. Did you know at the time that Mrs. Tilton had been to see Mrs. Bradshaw? A. I don't recollect now that at the time I knew anything about it. According to my best recollection I did not know that Mrs. Tilton had been to see Mrs. Bradshaw.

Q. Didn't you know that Mrs. Tilton had been to see Mrs. Bradshaw, and said to her in substance, "How can you go before the Committee and give evidence?"

Mr. Everts—The witness has answered that he did not know that Mrs. Tilton had seen Mrs. Bradshaw. I don't think it is competent for him to introduce in the form of a question on apparent conversation between Mrs. Tilton and Mrs. Bradshaw.

Judge Neilson—Except to remind him.

Mr. Fullerton—I ask him if he did not know the fact.

Judge Neilson—By way, possibly, of reminding the witness of what he might not possibly remember.

The Witness—It is Judge Fullerton alluding to that has refreshed my memory on one point, and it is that Mrs. Bradshaw making a call on Mrs. Moulton—Mrs. Bradshaw making a call on Mrs. Tilton—

Mr. Shearman—One moment; I object, unless the witness was there—this question which the counsel asks is, did he know.

The Witness—Only by what Mrs. Bradshaw told me.

Mr. Fullerton—Now, answer my question, whether you knew at the time that Mrs. Tilton—whether you knew or had heard at the time that Mrs. Tilton had seen Mrs. Bradshaw and said to her, in substance: "How can you go before that Committee?"

Mr. Shearman—Wait a moment.

Mr. Everts—We object to that question; he has asked him if he knew, and he has stated, that to the best of his recollection, he did not know. Now, anything that repeats or calls the witness' recollection may be properly put, provided it does not transgress any rules of evidence which are that conversations with other parties are not to be introduced. These are not to be introduced in the form of a question to obtain an answer that accepts them, any more than in any other form. The get-

ting the evidence is inadmissible, in any form, of what passed between Mrs. Tilton and Mrs. Bradshaw, or between Mrs. Bradshaw and this witness. It is hearsay evidence, and has nothing to do with the subject.

Mr. Fullerton—I propose to follow it up by showing that he communicated the fact to the Committee.

Mr. Everts—Well, then, we come upon the same rule that your Honor has so often enforced.

Judge Neilson—Ask him if he communicated—

Mr. Beach—I was about suggesting to your Honor a while ago that I understand this witness to have testified that one of the reasons why he advised the non-prosecution of the West charges was, that the witnesses had not been seen, that no inquiry had been made as to what they would testify to; that the charges were not in a proper shape under the rules and custom of the proceedings before the Committee to be prosecuted; and now we propose to show that this gentleman had personal knowledge that these charges could be followed up by the presentation of the witnesses whose names were attached to the specifications.

Judge Neilson—I think the statement of the witness related to those charges at an early stage of the proceedings; and when he thought the brother in default had not been dealt with as the Scripture required, and when he thought the witnesses had not been named, and had not been seen as required—that was at an early stage of the proceedings; that matter was perfected afterwards.

Mr. Beach—Well, we propose to correct him in that particular.

Mr. Shearman—But it was in relation, if your Honor please, also to certain other charges which were joined with charges against Mr. Tilton, against some person not named, and it was in reference to those.

Judge Neilson—Yes, a particular person finally omitted in perfecting the charges.

The Witness—No, Sir.

Mr. Shearman—It was in regard to some other person not named Mr. Halliday, distinguished between charges against Mr. Tilton and charges against some other person not named, but which were all brought together in one by Mr. West originally, and that was the ground of his objection at the time. He has said that—he has always stated a different reason in regard to the charges so far as they related to Mr. Tilton, and has said that he uniformly opposed the prosecution of those charges before the Committee, but upon a different ground.

Judge Neilson—I recollect—on the ground that Mr. Tilton's name ought to be dropped in this business, and nothing more said about it.

Mr. Shearman—Yes, and that Mr. Halliday's action related to other charges, and not in regard to Mr. Tilton at all, although they were mixed up with them originally.

Judge Neilson—Go on, Mr. Fullerton; repeat your last question.

THE TRIBUNE Stenographer read the last question as follows: "Did not you know that Mrs. Tilton had been to see Mrs. Bradshaw and said to her, in substance, 'How can you go before the Committee and give evidence?'" Is that the question?

Mr. Fullerton—No, Sir; it is the same question.

Judge Neilson—Another one after that.

Mr. Everts—That is the question that we objected to.

Mr. Fullerton—Before you told the Committee that Mrs. Bradshaw would not appear as a witness, had you heard that Mrs. Tilton had seen Mrs. Bradshaw and asked her, in substance, how she could go before the Committee and give evidence?

Mr. Everts—That is the question we objected to.

Judge Neilson—Yes, Sir; I rule it out.

Mr. Fullerton—Did you state to the Committee in substance that Mrs. Tilton had seen Mrs. Bradshaw and asked her how she could go before the Committee and give evidence?

Judge Neilson—Answer that.

The Witness—I think I stated decidedly that Mrs. Bradshaw told me she had seen Mrs. Tilton and that—she didn't tell me anything about what she told Mrs. Tilton, but she told me that she could not appear before the Committee—that she would not.

Q. Well, you answered my question.

Judge Neilson—That is what you communicated to the Committee?

The Witness—Yes, Sir; what I communicated to the Committee.

Mr. Fullerton—Did she not at the same time say to you, that Mrs. Tilton had asked her: "How can you go—appear before the Committee?"

Mr. Everts—That we object to; that is conversation between Mrs. Bradshaw and the witness.

Mr. Fullerton—A part of which he has just given.

Mr. Everts—No, he did not give any conversation; he was allowed to state only what he told the Committee. Now, anything he told the Committee is within your Honor's permission.

Mr. Fullerton—Now, Mr. Reporter, will you go back and read the last answer of the witness. [To Mr. Everts.] You will see you are mistaken.

Mr. Everts—Yes, my friend's point is now, that the witness having stated to the Committee what Mrs. Bradshaw told him, that he may ask what further Mrs. Bradshaw said. That is objected to as an unfair inquiry. Your Honor excluded in terms conversations between Mrs. Bradshaw and Mrs. Tilton—conversations between Mrs. Bradshaw and this witness. Your Honor admits statements of what this witness said to the Committee. Now, what the witness said to the Committee is now invoked as evidence admitted of a part of a conversation between Mrs. Bradshaw and the witness, so as to get a right to get the rest of the conversation. How it could carry that consequence when it is their own line of examination (it is not an inquiry that we put) my learned friend can point out better than I. But the foundation falls, for a conversation between this witness and Mrs. Bradshaw is not admissible at all; it may never have occurred; it is only what he said to the Committee that has been introduced, and if he followed that by further statements, which included further conversations between Mrs. Bradshaw and himself, very well.

Judge Neilson—So I understand.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Will your Honor allow me to say a single word upon the subject, Sir; I will not protract the discussion. But this witness has testified that the only reason why he opposed the proceeding of the Committee against Mr. Tilton was, that he thought his name should be dropped from the roll of membership. Can we not show that, instead of being operated upon by that motive, with knowledge that Mrs. Tilton had been to Mrs. Bradshaw, the principal witness, and implored her not to appear, and that Mrs. Bradshaw, for that reason, refused to appear, that this witness went before the Committee and made a partial and suppressed statement in regard to that matter?

Judge Neilson—Under my ruling, you can show anything this witness communicated to the Committee.

Mr. Beach—Certainly, Sir; but when he pretends that all his motive for prosecuting Mr. Tilton was his opinion that he should be dropped from the roll of membership, can we not contradict him by showing that he had other knowledge, and was influenced by a different motive.

Judge Neilson—I understand Mr. Halliday's judgment to have been in any event, that the true course and policy was to drop Mr. Tilton's name.

Mr. Beach—Certainly, Sir; and you understand Mr. Halliday to say that that was the reason that he opposed the prosecution of Mr. Tilton.

Judge Neilson—Yes; that was his reason.

Mr. Beach—Certainly. Now, we propose to prove a different reason, Sir, to show that he had different motives, to show that he had further information, and that the reason why he did not urge the prosecution before the Committee was the knowledge which had been communicated to him through Mrs. Bradshaw, that Mrs. Tilton did not desire Mrs. Bradshaw to appear before the Committee, and that he spoke and acted before the Committee with that knowledge, and under the influence springing from that information. It goes to the credibility of the witness, Sir. It does not prove the fact that Mrs. Tilton made any such communication to Mrs. Bradshaw; it does not prove any of the facts which were in the communication made by Mrs. Bradshaw to this witness. But it does assail his motive, Sir, and his credibility as a witness. We contradict him, Sir, if we prove this—I submit we contradict him in a most important point of his evidence, as to the very point to which he was called by the defense; and it would be singular, Sir, if we cannot show a different motive influencing the action of this witness from the one which he has already given upon the stand.

Judge Neilson—I think all that can be shown, without calling in that conversation, if such be the fact, and that the counsel ought to confine himself to what was communicated by Mr. Halliday to the Committee, and, in that connection, he is at liberty to interrogate him as to his knowledge of any fact bearing on the case.

Mr. Beach—I am sure your Honor does not apprehend the course of my argument. It is not what the witness communicated to the Committee; it is what he knew and what he sup-

pressed. The question is as to what motive influenced him in his action before the Committee in opposition to this inquiry. He gives one motive; we now propose to show that he had information, authentic, from the witness, attached to the specifications in the charges against Mr. Tilton, showing altogether a different motive. It is not for the purpose of proving the fact, or any fact disclosed by that conversation; but by proving the motive, the real motive, under which this witness acted.

Judge Neilson—He has already stated that he stated to the Committee that Mrs. Bradshaw would not appear—could not appear.

Mr. Beach—Yes, Sir; but that is not the important point. Suppose Mr. Beecher had made a communication to Mrs. Bradshaw, which was communicated by her to this witness, under the influence of which he acted, why it would be competent to show that, Sir, not as proof of the fact that Mr. Beecher did make that statement to Mrs. Bradshaw, but as conveying the information, which was communicated to this witness, which led him to take the action he did take before the Examining Committee upon this subject. And it is, Sir, I repeat, it is directed entirely to the credibility of this witness upon his cross-examination, we disclaiming that the communication made to him by Mrs. Bradshaw was of the slightest evidence to prove the facts which were contained in that communication.

Judge Neilson—I think the counsel in his inquiry must confine himself to the communications made to the Committee by this witness. He may interrogate him in that connection whether he didn't know this, or that, or the other thing, which would be—

Mr. Beach—Very well.

Judge Neilson—Go on.

Mr. Fullerton—We lose sight of the fact that he has already given in evidence a part of the conversation between himself and Mrs. Bradshaw.

Judge Neilson—No, he has given in evidence what he communicated to the Committee, and you may pursue that.

Mr. Fullerton—I beg your Honor's pardon. I think, by reference to the minutes, you will see I am correct in my assertion.

Judge Neilson—He repeated his conversation with Mrs. Bradshaw in what he told the Committee.

Mr. Fullerton—He went on to state the conversation between himself and Mrs. Bradshaw, in part, and says: "That I communicated to the Committee."

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—No, because he stated it to the Committee, as I understand. Now, if your Honor will allow me to call your Honor's attention to a ruling which seems to have preserved precisely the discrimination which your Honor now does, and that I think will be apparent to my learned friends, as it is upon their objection and a decision to which we did not except. [Reading:]

Plaintiff having testified that Johnson was engaged on *The Christian Union* by Beecher in consequence of a conversation between plaintiff and Beecher; *held*, competent to prove the re-

sult of interviews between Wilkeson and Beecher leading to the engagement of Johnson, but not competent to prove the conversations.

Well, now, that is precisely the attitude, as I understand it here. If this witness can say, upon further exploration or probing by my learned friend, that the advice he gave, the course he took, was in part in consequence of conversations or interviews that he had with Mrs. Bradshaw, why that is very well. That is correcting him. That is contradicting, if you please, the influence on his mind as coming from one source and not from another, just as we did about the employment of Mr. Johnson. But under cover of that, the general rule of law which excludes conversations between third persons, is not allowed to be invaded.

Mr. Beach—That ruling of your Honor, Sir, was when we were attempting to prove declarations and statements made by Mr. Beecher. Now we are not attempting to prove any such fact. We are attempting to assail the credibility of this witness by a cross-examination as to information which he had received superinducing the motives under which he acted before the Committee, and for the purpose of contradicting his allegation that he was moved by but one purpose or consideration, or conviction, that Mr. Tilton ought to be dropped from the roll of members.

#### THE CONVERSATION EXCLUDED.

Judge Neilson—Go on, Mr. Fullerton; confine yourself to what occurred between him and the Committee.

The Witness—May I—

Mr. Fullerton—Oh! wait, Mr. Halliday; wait till next Sunday. [Laughter.]

The Witness—No, Sir; the counsel is all the time assuming that I had a conversation with Mrs. Bradshaw. I stated distinctly that I had no conversation with her. She came to my parlor and made a statement to which I made no response, nor asked any question.

Mr. Fullerton—Well, that is got along with now.

Q. How did it happen that you stated to the Committee that Mrs. Bradshaw would not appear before them? A. Because she said so to me.

Q. Well, what occasion had you to tell the Committee of it? A. Because the subject was under discussion.

Q. What subject? A. The subject of the discipline of Mr. Tilton and the appearance of Mrs. Bradshaw as a witness, or other witnesses; it was as to the difficulty of prosecuting the charges if it was attempted.

Q. Did any member of the Committee say in substance, that there were two witnesses, Mr. and Mrs. Bradshaw? A. I don't remember; they may have said it.

Q. [Continuing.] Who would prove the charges against Mr. Tilton? A. [Continuing.] But not that I remember at all.

Mr. Shearman—Mr. Halliday, wait till Mr. Fullerton has finished the question.

The Witness—Excuse me, Sir.

Mr. Fullerton—Your object in giving that information was to let them know what difficulties there were in the way of

prosecuting the charges? A. That was one object.

Q. Was not that the principal object? A. I cannot remember what was in my mind at the time.

Q. Yes. Did you say in substance, to the Committee, that Mrs. Bradshaw informed you that she had said to Mrs. Tilton in substance, as follows: "I will not add one pang to the agony that poor Elizabeth has already endured"? A. I did, I think I said that in substance, for that was in substance what Mrs. Bradshaw said to me; I can tell you exactly what I did say to the Committee.

Mr. Shearman—One moment, Mr. Halliday. Now, your Honor, in order that the counsel may not have an opportunity to say that this conversation has been brought in, I move to strike out that part of the witness' answer which says, that that was in substance what Mrs. Bradshaw said.

Judge Neilson—I think it is properly a part of the statement.

Mr. Everts—We except, if your Honor please.

Mr. Fullerton—You did tell the Committee that? A. I did and more, too.

Q. Well, let us have the "more, too." [Laughter.] A. I said to the Committee that Mrs. Bradshaw came to me, I think it was about the 22d of October, to inquire if I would attend the funeral of Mrs. Carl, and that, after she had completed what she had to say in regard to that, she then introduced this matter of appearing as a witness against Mrs. Tilton, and that she should not do it; she could not do it; that Elizabeth had said to her, "Mattie, how can you appear against me? I shall send the Committee a letter stating my reasons for not appearing."

Q. Did you say Mr. or Mrs. Tilton? A. Mrs. Tilton. I made no reply at all, nor asked any questions. I heard her statement and repeated it to the Committee.

Mr. Fullerton—Did you understand that Mrs. Bradshaw's objection to appearing before the Committee was that she could not prove the charge?

Mr. Everts—That is not the question, what he understood. He has told you exactly what he told the Committee.

Mr. Fullerton—That is my question.

Mr. Everts—Your Honor has directed them to confine themselves to what this witness said to the Committee. He has told you all that he said to the Committee.

Mr. Fullerton—I ask the further question now, Sir, if he understood from Mrs. Bradshaw that she could not prove the truth of the charge against Mr. Tilton, so far as she was concerned, if she appeared before the Committee.

Mr. Everts—I object to that. You cannot prove the conversation as between him and her, and how can you prove the result of a conversation between him and her, what he understood from a conversation between him and her.

Judge Neilson—I don't think that will do Mr. Fullerton.

Mr. Fullerton—It seems to me proper, Sir, to show his motive and the knowledge that he had at the time that he made this communication.

Judge Neilson—That appears from his statement. Upon the statement given, the motive of Mrs. Bradshaw is apparent. There is no suggestion of inability on her part to prove if she were called, but an indisposition to come.

Mr. Fullerton—Well, did Mrs. Bradshaw ever communicate to you a willingness to come after that?

Mr. Shearman—One moment. That is objected to.

Mr. Everts—The conversation between Mrs. Bradshaw and the witness cannot be given in evidence.

Judge Neilson—What further did you say to the Committee, then or afterwards, on that subject?

Mr. Fullerton—Well, it seems now that he communicated to the Committee the fact that Mrs. Bradshaw was unwilling to come.

Judge Neilson—Yes.

Mr. Fullerton—If information was conveyed to him afterwards that she was willing to come, isn't it proper to show that fact?

Judge Neilson—Not material, I think.

Mr. Beach—Or that he did not communicate it to the Committee; that he suppressed it?

Judge Neilson—I don't think it is very material.

Mr. Fullerton—Had you any correspondence with Mrs. Bradshaw upon the subject? A. I had, Sir.

Mr. Shearman—One moment; that is objected to— All right.

#### AN EXTENDED AUTOBIOGRAPHY.

Mr. Fullerton—Mr. Halliday, you stated on your direct examination that you were a clergyman; how long have you been a clergyman? A. I never was properly inducted into the ministry until about twelve years ago.

Q. Where was that? A. At Lodi, New-Jersey,

Q. Lodi? A. Yes, Sir, in Bergen County.

Q. What denomination did you become attached to at that time? A. I was already attached to the Congregational.

Q. What, the Congregational Church? A. Yes, Sir; I was ordained by a Congregational Council.

Q. How long did you live in that place? A. My residence was there, I think, about three years, Sir—two or three years; three years, I think.

Q. And prior to your residence in Lodi where did you live? A. In New-York.

Q. New-York City? A. Yes; continued my duties, labors, in New-York City; owing to the expense of living in New-York for house rent, I went to Lodi.

Q. When did you commence living in New-York? A. When do you mean, Sir—at first?

Q. Yes. A. I think in 1825, Sir.

Q. How long did you reside there then? A. I think some 15 years, Sir.

Q. In what business were you engaged then? A. Most of time in missionary labor.

Q. Well, that does not answer the question fully; it covers most of the time only. A. While I was a boy, I was a clerk on Pearl-st. At the age of 20 I attempted to study for the ministry—studied myself blind twice and quit. For a little time, perhaps a year, I was in the grocery business.

Q. Where? A. In New-York.

Q. What place? A. Corner of Spring-st. and Thompson,



Q. During what period? A. I think it was the year of the cholera, Sir—1830 and 1831.

Q. And how long were you engaged in that business? A. The first cholera. I mean—

Q. Yes? A. But a year, Sir.

Q. Were you in partnership with any one? A. I was.

Q. With whom? A. A man by the name of Ayres.

Q. Did you fall in that business? A. Yes, Sir.

Q. Make an assignment? A. Yes, Sir.

Q. Prior to your coming to New-York, where did you reside? A. Newark, New-Jersey.

Q. And how long did you reside there? A. But a year, Sir.

Q. Were you engaged in any business there? A. Yes, Sir; in going to school.

Q. Any other business? A. I was a boy only thirteen years of age then, Sir.

Q. Now, after you left Newark, where did you go? A. I went to Providence, R. I.

Q. And how long did you reside there? A. About fourteen years, Sir, if I remember—thirteen to fifteen years.

Q. And what was your occupation in Providence? A. I went from Newark to Providence, R. I., to go into the employment of the "Young Men's Tract Missionary Society," and did so.

Q. Is that the only employment you had whilst you were in Providence? A. No, Sir.

Q. My question covers the whole employment during that period? A. I did not understand you; I thought you wanted me to answer one question at a time. I continued in their employment until my health broke down, and at the advice of some of my friends I went into the coal business, and upon a farm near the city, in the suburbs of the city, now part of the City of Providence.

Q. Coal merchant? A. Yes, Sir.

Q. In partnership with any one? A. I did.

Q. With whom? A. Two persons; first, a man by the name of Israel J. Bullock, and afterward with a young man by the name of Baker.

Q. How long did Mr. Bullock remain in partnership with you? A. Some two or three years; I don't recollect positively.

Q. And how long did Mr. Baker remain in partnership with you? A. Several years; I cannot state exactly.

Q. Fall in that business? A. I did, Sir.

Q. Make an assignment? A. I did, of everything that I had, even my household chattels.

Q. Of course, of course, of course! Well? A. No, it was not; I beg your pardon.

Q. One moment; were you engaged in any other business in Providence besides what you have named? A. Not on my own account that I remember.

Q. Well, were you engaged in any business there on account of anybody else? A. I was the agent of an incorporated manufacturing company.

Q. What was that company? A. I think it was styled—it is some twenty years ago; I cannot recollect positively—I think it was styled the Narragansett Manufacturing Co.

Q. Manufacturing of what? A. It was making oil from fish, and using the residuum, preparing it for a fertiliser.

Q. Called fish guano? A. Yes, Sir.

Q. You were the agent of that company? A. I was, Sir.

Q. Advertised as the agent? A. I think I was; I am confident; I cannot say positively; it is so long ago that I cannot recollect distinctly. I state to you facts, that I was the agent, and I, of course, advertised myself as such, if I did advertise myself at all.

Q. Well, what became of that company? A. It failed after a very brief existence, Sir.

Q. Were you a stockholder in that company? A. I think I was to a very limited amount.

Q. Well, don't you know that you were? A. I cannot swear that I was or that I was not; my best recollection is that I was.

Q. How long before it failed did you discover its falling condition? A. Well, it had misfortunes from the beginning.

Q. Now— A. Building burned down, and that was the beginning of it, very early.

Q. Answer my question, when did you discover its falling condition? A. I am trying to do it, Sir.

Q. When did you first discover its falling condition? A. It was not—I did not suppose but that it would be a success until a comparatively short time previous to its failure.

Q. Well, do you recollect the day of its failure? A. I do not, Sir, nor the year.

Q. How? A. Nor the year.

Q. Nor the year? A. No, Sir.

Q. Well, do you recollect of selling your stock in that company just before the failure? A. No, Sir, I don't recollect anything of the kind.

Q. Do you recollect of trying to sell it? A. I don't.

Q. Do you recollect the night before its failure, that you tried to sell the stock of the company? A. I don't recollect anything of the kind.

Q. Will you say that you did not? A. My best recollection is that I never attempted anything of the kind.

Q. But you will not say that you did not attempt it, as I understand you? A. I cannot say that because I cannot remember, but my best recollection is that I never did anything of the kind at all—

Q. Were you engaged in any other business in Providence? A. I don't remember any other than those that I have stated—

Q. When did you fall in the coal business? A. Some three years before I came away from there, and about ten years after I went into it, as near as I can recollect.

Q. Do you know the amount of your personal debts at the time you failed in the coal business? A. I don't remember at all, Sir. Hon. Benjamin T. Eames can inform you if you desire to know.

Mr. Fullerton—I do know, without asking him.

Q. How long before you failed did you know you were in a falling condition? A. I didn't know it until about the time that an assignment was made.

Q. About how long before the assignment was made did you know it? A. I can't tell whether it was forty-eight hours or less.

days. I made an assignment immediately on knowing there was a necessity for it.

Mr. Fullerton—One moment.

Mr. Everts—That is a proper answer.

Q. Did you purchase a bill of goods the night before you made the assignment? A. I don't remember that I did.

Q. Do you know one William E. Barrett? A. I might know him, but I can't recollect him.

Q. Do you recollect him? A. I can't recall him.

Q. Do you recollect a gentleman of that name who is engaged in the hardware business? A. I can't recollect any such person.

Q. Engaged in the sale of agricultural implements? A. Yes, Sir, I do remember a man engaged in the sale of agricultural implements—a seedsman.

Q. Don't you remember making a purchase of goods of him the night before you failed? A. I do not.

Q. No recollection upon that subject? A. I have not.

Q. Don't you remember that he didn't come in under the assignment, and take his portion? A. I don't remember anything about it.

Q. You went into business after that, didn't you, in Providence? A. The business I have alluded to.

Q. What was that? A. Agent of the Narragansett Manufacturing Company.

Q. Didn't you embark in any other business? A. I don't remember that I did.

Q. Don't you recollect that this Mr. Barrett, after you re-entered into business made a purchase of goods of you, and then presented the old bill which he had against you, in payment of it, which gave rise to some difficulty? A. I don't remember anything of the kind.

Q. Nothing of the kind? A. No, Sir; I do not.

Q. Are you quite sure you have named all the business you were ever engaged in in Providence? A. I think I have; I don't remember any others. If you can help my memory, I will be very glad to answer.

Q. Before you went to Providence, where did you reside? A. I resided in the City of New-York.

Q. Have you ever resided in any place other than those you have named? A. I think not, Sir. Oh! in my childhood I resided in Morristown, New-Jersey. I was brought up on a farm.

Q. Have you named all the places? A. I think I have; I remained there till I was twelve years of age.

Q. I don't care about the early history; did you ever live in the State of Connecticut? A. I don't think I did; I don't remember of ever having lived there.

Q. Were you ever engaged in the milk business? A. Yes, Sir. The time I alluded to, in Providence, Rhode Island, when I lived on the farm; I had a dairy at the same time.

Q. At the same time as what? A. You asked what business I was in; I told you I was in the coal business, and had a farm at the same time, just in the suburbs of the city.

Q. At the same time you carried on the coal business, you carried on the farm, did you? A. I did.

Q. Did you fail in the farm business? A. I made one assign-

ment of all my property at the same time—a farm of about one hundred acres and my other business.

Q. Have you now stated all the business engagements that you ever entered into? A. I think I have, Sir; I meant to do so. As I said, if you can refresh my memory, I will be very glad to answer.

Q. Coming back to the City of New-York, what were you engaged in there, in connection with the Five Points Mission which you have alluded to? A. I didn't come back to do that, Sir.

Q. Well, I am coming back in my examination to it. A. I thought you asked me when I came back to go into it.

Q. Well, you tell me how you were connected with the Five Points Mission? A. In the first place, the first four years of my service there, I was general agent of the house. My duties were principally connected with the financial matters of the house.

Q. Did you ever have any trouble there? A. With the house, do you mean, or with the Trustees?

Q. Yes. A. No, Sir.

Q. No trouble of any kind or character? A. No, Sir, not during my first four years of service there, I never had a word of misunderstanding with either of the Trustees or with any one in connection with that house—

Q. Or with the corporation? A. No, Sir; the Trustees were the corporation.

Q. Were no charges preferred against you? A. Never.

Q. Nor a complaint made? A. Never.

Q. That was during the first four years? A. Yes, Sir.

Q. When were you connected with the institution again? A. I left for six months—I left to be gone entirely; but before I had been gone six months—

Mr. Fullerton (interrupting)—Now—

The Witness—I am going to tell you exactly what you want, Judge.

Q. You have already told that, it is on record here, that you went away and returned. I ask you when you were connected with it again? A. I am going to tell you that in six months, I was, at the urgent request of the Trustees, induced to return and take care of the house during the sickness of the Superintendent, expecting to be there only six weeks, and remained three months.

Q. Did you have any trouble there then? A. No, Sir.

Q. Not the slightest? A. No, Sir.

Q. No complaint made against you? A. No, Sir.

Q. Of no kind or character? A. No, Sir.

Q. Were you connected with that institution at any other time? A. I was.

Q. When was that? A. Three months subsequently, the superintendent died—

Q. Three months after it, you were connected with it again? A. I was.

Q. How long did your connection continue? A. Six years, I think, about.

Q. This ended when? A. Five years ago this month.

Q. Did you have any trouble there during that period? A. No, Sir; I never had any trouble at all; I came away voluntarily

from the house. I would be glad to produce every trustee here to show what my standing was.

Mr. Fullerton—We have not time to do that.

The Witness—I should like to have them here very much.

Q. Were no charges preferred against you? A. Never.

Q. Or complaint made against you? A. Never that I know of.

Q. No difficulty whatever of any kind or character? A. Yes, Sir; there was a misunderstanding as to the management of the house.

Q. What charges were made against you in that respect? A. There were no charges made against me.

Q. You got into no kind of difficulty? A. No, Sir.

Q. In connection with it? A. No, Sir.

Q. What was the misunderstanding? A. They had made me control the house in one way, for six years, including the managing of the whole concern, and there came a time when they wanted to transfer the management of the schools during school hours entirely to the Principal of the school. I objected. I said: "Gentlemen, one of two things. You sail the ship, make the rules, or let me do it. I cannot have a mixed government. If you hold me responsible for the government of this house, you must let me sail the ship as I think best. If not, make your arrangements, and I will follow whatever directions you say." The President of the institution preferred that it should not be so. I sent in my resignation three different times. They would not accept it. I finally sent it in, and they refused then; and I said: "I will go whether or not;" and I went.

Q. No trouble with the finances when you were there? A. I would rather the gentleman would let me bring in a witness to testify in regard to that.

Q. Mr. Halliday is a good witness. A. Never a word.

Q. Never a word? A. Never a word.

Q. Not the slightest difficulty. A. Not the slightest.

Q. No complaint? A. No; I challenge proof.

Mr. Fullerton—Challenges are not lawful.

The Witness—They are here. [Applause.]

Q. Had you any connection with the "Juvenile Guardian Society?" A. I had not, Sir. It is one of the biggest humbugs that ever was put afloat. I had a connection to try to put its eyes out, or the eyes of the scoundrel that was conducting it. That is what I had to do with it.

Q. Who was the scoundrel?

Mr. Evarts—That is no matter. He is a third person; he is innocent.

Mr. Fullerton—He is not innocent. Mr. Halliday says he is a scoundrel.

Q. Who was at the head of the institution? A. I cannot remember the name; I can tell you the head.

Mr. Evarts—I object to it. It is beyond the inquiry. It is not in any sense material. It is a different matter from any we inquired about.

Mr. Fullerton—I am asking who was the head of the concern.

Judge Neilson—He says he don't know.

The Witness—He is a man that wore green glasses; that is all I remember about him, except his rascalities.

Mr. Shearman—[To the witness]: Don't.

Mr. Fullerton—Let Mr. Halliday be. He is my witness.

Mr. Shearman—I am willing he should tell all.

Mr. Fullerton—Perhaps that is what has ruined him. [To the Witness]: Did you know the Rev. David F. Robertson? A. I am rather inclined to think it was a Robertson that I have alluded to, though I am not certain; you ask me if I know him, I don't know him.

Q. You don't know him? A. I don't know him; no, Sir.

Q. Did you ever hear of him before? A. I think I have.

Q. In what connection did you hear of him? A. If it is the man that I refer to—

Mr. Shearman—Now!

The Witness—I cannot tell whether it is that man or not.

Mr. Fullerton—Did you ever meet him and converse with him? A. I don't think I ever did, Sir; I cannot swear, but I don't think I ever did.

Q. This "Juvenile Guardian Society" was a kind of rival of the Five Points Mission? A. Not by any means.

Mr. Evarts—Why is this material? Their inquiry has reference to the impeachment of this witness's conduct.

Judge Neilson—I think we have had enough. He says he was not connected with that institution.

Mr. Fullerton—That question was answered. I didn't see there was any motion before the Court. [To the witness]: Did you ever visit one of the schools of this Juvenile Guardian Society? A. I think I did, Sir, one of them—two or three of them. I know I did one, and I think two.

Q. Did you visit it under an assumed name? A. No, Sir, I don't do such things.

Q. Did you give your name when you were requested to? A. I don't remember whether I did or not.

Q. Don't you know that you refused to give your name when it was asked? A. I don't; I think it is possible, but I don't remember.

Q. When asked what your object was in visiting that school, did you say that you wanted to make a donation to them? A. I never said a thing of the kind.

Q. Don't you remember now that you did refuse to give your name? A. I don't; it is a good while ago, Judge, that I visited it.

Q. Yes. A. But I cannot remember what I did, or what I did not say, except in the points that you relate—specify to.

Q. What was your object in visiting the school?

Mr. Evarts—What has that to do with the impeachment of the witness?

Judge Neilson—I think he has gone far enough; I think the object is apparent. He had doubts about the integrity of the institution, whatever it was, and may have been there to inspect it—to spy out the nakedness of the land.

Mr. Fullerton—Yes, the regard was mutual between the two institutions.

Mr. Evarts—That won't do any harm.

Mr. Fullerton—No, that is the reason I mention it.

Mr. Evans—We would have to inquire, then, which was the right one.

Judge Neilson—I think we have gone far enough.

Q. Were you ever connected with any other institution in New-York? A. As I stated on my direct examination, before I went to Providence I was in the employment of the "American Female Guardian Society" that has under their care the Home of the Friendless.

Q. How long were you connected with that? A. I cannot remember definitely; I think some two or three years; that was before I went to Providence.

Q. Who was at the head of that institution? A. It was a society of ladies, with a Board of Councilors. Dr. Tyng, I think, was the President of the Board of Councilors; Acton Smith was another; Albon S. Man, or Albon P. Man, a lawyer who used to be at 64 Wall-st. was another of the Councilors; I cannot recollect.

Q. When did your connection with that institution cease? A. When I went to Providence. Judge Fullerton, I didn't answer your question fully. You asked me what other Society, and how long. At first I was with them, I think, about three years, and came back and was with them three years subsequently at their request.

Mr. Fullerton—That is all.

#### RE-DIRECT EXAMINATION OF SAMUEL B. HALLIDAY.

Mr. Shearman—Mr. Halliday, in answer to one question on cross-examination, when you were asked how soon the West charges, as finally amended, and as Judge Fullerton showed them to you, were presented to the Committee after the first and imperfect charges were withdrawn, you answered, a week after. I want to call your attention to that, and ask you whether you meant to say that these final amended charges were presented as soon as that after the original charges were withdrawn—the charges, I mean, in the third specification? A. [Referring to a paper.] The—

Mr. Shearman—That paper won't help you. A. The third third specification was not handed in until in September, but the paper was handed back after the first commission, at a meeting of July 2d, 1873.

Q. Well, do I not understand that you did not mean to say that the charges as finally amended were handed in a week after the charges were withdrawn for amendment? A. Well, it depends on how the word "final" is construed. This was regarded final at the time.

Q. Then, explain what you meant by saying that the West charges, as amended finally, were presented a week after the others were withdrawn? A. At this meeting of Friday evening, June 27, when those charges were finally preferred, they were, after being examined, handed back to Mr. West as imperfect. Another meeting was held on July 2, at which Mr. West was present, and he was requested to present the charges which had been referred back to him at the previous meeting, and they were handed in by him as amended by him.

Q. And that is what you meant by saying that the charges, as amended, were handed back by him? A. Yes, Sir; the paper is here.

Q. Those amended charges did not include the third specification? A. No, Sir: that was not handed in until the 2d of September, I think.

Q. Now, you have been asked a number of questions with regard to your advice and action upon the West charges. Will you be kind enough to tell me whether the West charges, as originally made, were brought against any other person than Mr. Tilton?

Mr. Fullerton—I object.

Mr. Shearman—No name.

Mr. Fullerton—I object.

Judge Neilson—We will take that.

Mr. Fullerton—The charges themselves will appear.

Judge Neilson—It is a mere incident.

Mr. Shearman—We want the original charges.

The Witness—Not only the charges—

Mr. Fullerton—Now!

Mr. Shearman—The Judge said he would take that, so you answer, Mr. Halliday.

Mr. Fullerton—Will your Honor permit him to give parallel evidence of the charges?

Judge Neilson—Has he the charges before him?

Mr. Fullerton—Not the charges referred to.

Judge Neilson—He can refer to the minutes. [To Mr. Shearman.] The charges contained in the third specification.

Mr. Shearman—No, Sir; before the third specification.

The Witness—[Referring to a book]: That is the only paper that was ever presented by Mr. West to the Examining Committee with the third specification handed in on September 2d. That is the paper as handed by Mr. West after being amended by him—handed in by him at the meeting on the 2d, I think, of July.

Judge Neilson—Yes.

Mr. Evans—Has that been put in evidence?

Mr. Shearman—No, it has not been put in evidence.

The Witness—Here is the third specification.

Mr. Shearman—That has got nothing to do with it.

The Witness—A joint indictment.

Q. You were asked if you visited in New Haven about these charges, and you answered that you did. To what charges did you refer when you said you visited about these charges? A. That paper.

Q. To the paper which you have just handed me? There is no use in saying "that paper" for things have to be recorded. A. I mean the charges of Mr. West.

Q. Which charges? A. Both.

Q. What particular charges—the original charges, or the finally-amended charges? A. I cannot swear positively as to that.

Q. When did you make that visit—about what period? A. I can tell exactly the date, I think, Sir; [referring to a paper] I can now state that my visit to New Haven was after the charges were presented, amended.

Q. What date was it? A. I think it was between—

Q. What date was it, Mr. Halliday, if you please? A. I cannot tell you the date exactly; I can tell you between what days it was.

Q. Give me the month? A. It was in July, before the 14th of July, and after the 2d.

Q. It was not after the third specification was entered in the West charges, was it? A. Months—nearly two months before.

Q. It was not after the charges as finally amended were put in? A. As finally amended the third specification didn't come in.

Q. Then it was not after the charges, as finally amended, were presented by Mr. West? A. No, Sir.

Q. No? A. Not until two months afterwards.

Mr. Shearman—[To the witness]: You confuse again by saying not until two months after.

Judge Neilson—Two months before? A. Yes, Sir.

Q. Before the presentation of a third specification was contained? A. Yes, Sir.

Mr. Shearman—The visit to New Haven was before that? A. Nearly two months before. One was in the early part of July, and the other was in the early part of September, nearly two months.

Q. I call your attention to an answer which I am not sure I distinctly heard, but the impression I got is—

Mr. Beach—Wait. No matter what your impression was.

Judge Neilson—Go on, Mr. Shearman, and put your question.

Mr. Shearman—This is the same matter.

Mr. Beach—No matter what your impression was.

Mr. Shearman—If your Honor please, it is a good deal of matter, because there is no value to the question unless I state my impression of Mr. Halliday's answer. The impression I derived was that Mr. Halliday said—

Mr. Beach—Does your Honor think it is proper to state in the question the impression of the counsel?

Judge Neilson—The proper question is, did I understand you to say so and so, which, after all, amounts to the same thing.

Mr. Shearman—Did I understand you to say you reported to the Committee that Mrs. Bradshaw had said to you that Mrs. Tilton said she would not appear before the Committee, but would write the Committee a letter? A. I did not; I did not mean to say so.

Mr. Beach—You didn't say so? A. I don't think I did. I saw that in the report, and saw the incorrectness of it in this morning's paper. I didn't say so.

Q. You said, did you—

The Witness—Will you repeat that again?

Q. Was not your statement in that part of your answer, where you said that you reported to the Committee something about Mrs. Tilton's saying she would not appear, but would write the Committee a letter—was not what you intended to say that Mr. Tilton said he would not appear? A. Mrs. Bradshaw would not appear.

Mr. Shearman—Very well; it was Mrs. Bradshaw said she would not appear.

Mr. Evarts—If you will allow me, I think in the same answer to which Mr. Shearman refers, Mr. Halliday did use the words "Mrs. Tilton," when I supposed he meant Mr. Tilton.

Mr. Beach—No; he didn't

Mr. Evarts—But not in this part of it.

Mr. Beach—He didn't mean Mrs. Tilton; he meant Mrs. Bradshaw when he said Mrs. Tilton.

Mr. Evarts—That charge would not appear against Mrs. Tilton.

Judge Neilson—He meant Mr. Tilton instead of Mrs. Tilton.

Mr. Evarts—Yes, sir, I think so. I want that corrected.

Mr. Morris—He meant Mrs. Tilton, and he referred to the fact that she had suffered enough, and he would not cause her any more suffering by going before the Committee, so it was Mrs. Tilton.

Mr. Evarts—Will you allow us to have it right? It is for the witness to say which was right.

Mr. Morris—He explained it in that way.

Mr. Evarts—Can you find that question and answer?

The Witness—I did make an allusion, if the Court please, to Mrs. Tilton in one point; I don't know whether the gentlemen has any reference to that.

Mr. Beach—It was not in connection with Mrs. Bradshaw.

Mr. Evarts—No, but I think it is the same answer in which he spoke about proceeding against Mrs. Tilton.

Judge Neilson—He meant Mr. Tilton.

Mr. Evarts—Yes, Sir, I supposed so, of course. I only want to make it straight.

Mr. Morris—I take issue upon that point. It was against Mrs. Tilton, and Mrs. Bradshaw was giving that as a reason why she would not appear before the Committee. She said Mrs. Tilton had suffered enough already, and Mrs. Tilton asked her the question—the question was put, how she could appear against her—how she could appear before the Committee against her, and Mrs. Bradshaw said that she had suffered enough already, Mrs. Tilton had, and that is the reason she gave why she would not appear before the Committee; so it is Mrs. Tilton.

Mr. Evarts—It is not in qualification of anything that came out from Mrs. Bradshaw.

Judge Neilson—The question is now, whether the witness will make the correction of the point referred to?

Mr. Evarts—Yes, Sir; and I say to Mr. Morris it is not in qualification of anything he remembers was repeated by him (Halliday) as coming from Mrs. Bradshaw, but precedes it, when he said—the point was what he said about not proceeding on the charge, and he speaks of it as not proceeding against Mrs. Tilton when he meant to say against Mr. Tilton, I suppose. It was not any part of Mrs. Bradshaw's statement then, for Mr. Morris has substantially stated that, and I don't ask that to be modified.

Mr. Beach—Oh! not at all.

Mr. Evarts—It has not anything to do with her.

Mr. Beach—I think we have got the answer.

Mr. Evarts—We will find the answer when it is printed.

Judge Neilson—The right to make the correction, if needs be, is reserved.

Mr. Evarts—Yes, Sir; we will reserve that. The witness has a right, of course, to make the correction.

Judge Neilson—The right to make the correction, if need be, will be reserved.

Mr. Evans—Yes, we will look at the record, and let the witness make the correction if necessary.

Mr. Shearman—That is all, Mr. Halliday.

Judge Neilson—That is all, Mr. Halliday.

#### TESTIMONY OF MISS BESSIE TURNER.

Mr. Shearman—Miss Elizabeth A. Turner. [Sit in the audience.]

Judge Neilson—Will the gentlemen please be quiet? I think if the reporters would look down at their papers just now it will be a good deal better.

Elizabeth A. Turner called and sworn on behalf of the defendant.

#### THE EARLY EXPERIENCES WITH THE TILTONS.

Mr. Porter—Miss Turner, when did you become an inmate of the family of Mr. and Mrs. Tilton? A. In 1864; the Summer of 1864.

Q. 1864? A. Yes, Sir.

Q. About what was your age at that time? A. I think I was about 18 years, Sir.

Q. How long did you remain an inmate of the family? A. About ten years; a little more, perhaps.

Q. Where were they living at the time you first went there? A. The number then was 48 Livingston-st. They were boarding with Mrs. Morse.

Q. The mother of Mrs. Tilton? A. Yes, Sir.

Q. Were you ever there on the footing of a servant? A. No, Sir.

Q. Receiving wages? A. No, Sir.

Q. Were you in the habit of assisting Mrs. Tilton with the care of her children and her household affairs? A. Yes, Sir; I assisted her just as an older daughter would.

Q. Were you sent to school? A. Yes, Sir; I went a short time to the Packer Institute, and then I had private instructions from Miss Oakley, a little while.

Q. The Miss Oakley who has been a witness upon the stand? A. Yes, Sir, Miss Isabella G. Oakley.

Q. Where were you in the habit usually of sleeping, during the earlier years? A. In the room next to Mrs. Tilton.

Q. With the children? A. Yes, Sir, with little Carroll.

Q. Were you treated as one of the family? A. Yes, Sir; always.

Q. Did you eat at the same table with them? A. Yes, Sir.

Q. Where were you usually in the evening? A. Sometimes I remained up stairs, and sometimes I went in the parlor; sometimes I staid in my own room.

Q. And with the family? A. Yes, Sir.

Q. How did Mr. Tilton treat you during the earlier years of your being a member of his family? A. Very kindly, Sir.

Q. How as compared with the treatment of the children? A. Yes, Sir; he always treated me just as one of his children, during the early years that I lived with him.

Q. Was he in the habit of kissing the children? A. Yes, Sir.

Q. And of kissing you? A. Yes, Sir.

Q. That was his ordinary treatment of you during the period of your living there? A. Yes, Sir.

Q. Will you give some idea of the manner—of what you mean when you say you were treated as the children were; what did you do? A. Well, Sir, I used to comb his hair, and he would take me on his lap, just as he did his children.

Q. Did he read to you? A. Read to me; yes, Sir.

Q. And conversed with you? A. Yes, Sir; just as he did with the other children—with his children.

#### MRS. TILTON'S HOME LIFE.

Q. You have, I suppose, of course, the fullest means of knowing the character of Mr. and Mrs. Tilton, and their deportment towards each other? A. Yes, Sir.

Q. Will you state in general terms what was the character of Mrs. Tilton as exhibited in her home? A. I think Mrs. Tilton was a very lovely woman, in every respect. I never saw any change in her. She was very devoted to her children and to her home; was very domestic in her tastes apparently.

Q. Was she a woman of marked religious feelings? A. Yes, Sir; one of her habits with her children was, every night when they went to bed she would have them kneel down to her and say their prayers, and she would pray with them, or before praying she would read some little story. That was her custom always when she was home.

Q. Was she in the habit of giving them religious instruction? A. Yes, Sir.

Q. On week days as well as on the Sabbath? A. Yes, Sir; particularly on the Sabbath, when they did not go to Sabbath-school.

Q. How was she in her habits in reference to being domestic or otherwise? A. What, Sir?

Q. Was she a domestic lady? A. Yes, Sir.

Mr. Fullerton—Very domestic in her habits, she said.

Mr. Porter—Oh, I didn't hear. [To the witness.] How was she in reference to her disposition and mode of speech to all who were around her? A. Always gentle and kind, always.

Q. How was she in this regard in respect to Mr. Tilton, in particular? A. Very kind and loving, always, in her manner, and in her conversation with him, I never saw any change, never.

#### MR. TILTON'S SHIFTING MOODS.

Q. Mr. Tilton was somewhat different in his temperament from her, I suppose? A. Yes, Sir; he was very different, indeed.

Q. In the earlier years was he generally kind in the family? A. Yes, Sir, I think he was.

Q. Was there a marked change in that respect in the later years of your residence there? A. Yes, Sir; I noticed a change after we moved from Mrs. Morse's to Livingston-st., in their Livingston-st. house—home.

Q. That, I think, was in 1866. From that time did this change increase in his manners and deportment in the family? A. Yes, Sir.

Mr. Fullerton—These questions are somewhat leading in their character, Sir.

Mr. Porter—They are introductory. I will avoid that.





*Elizabeth A. Turner* Digitized by Google





Mr. Fullerton—Well, I don't think they are introductory in their character.

Mr. Porter—Was Mr. Tilton always alike, or quite variable in his moods? A. No, Sir; he was very variable and moody?

Q. During all these years, were there times when he exhibited the same kindness that he had in former years—times when he did? A. I don't understand your question, Sir.

Q. You spoke of his kindness in the early years; you speak of his moods afterwards becoming variable? A. Yes, Sir.

Q. Through that whole period, was he at times kindly as in the earlier years? A. He was at times kindly, and at times very unkindly.

Q. Will you give the jury an idea of the character of this change, and wherein it was that he exhibited what you have remarked? A. Well, he would be very restless, and walk about the house with his hands in his pockets, and look very sullen; and he would seem to make everybody around him feel unhappy.

Mr. Beach—Wait a moment, Madam; we object.

Mr. Evarts—I think that is proper.

Mr. Beach—No, no.

Mr. Porter—How long would these periods continue, during which these peculiarities were observable; at periods, I mean? A. Sometimes they would continue two or three days at a time.

Q. During the periods of those moods of his, what was his deportment to Mrs. Tilton? A. Unkind.

Q. And what was hers to him? A. Very gentle and loving; always trying to comfort him; and she would read to him, and she would kneel down beside the sofa and stroke his hair, and seemed to do everything she could to draw him out of his moods and make him feel happy.

Q. During those moods of his, was there anything marked in his deportment at the table? A. Yes, Sir; he was very exacting.

Mr. Beach—Now, if your Honor please, I wish to present an objection to this witness giving her conclusions formed upon her observation of the manner and conduct of Mr. Tilton. For instance, I object to her saying that Mr. Tilton was unkind. I insist that the only mode in which that proof can be given is by showing the details of his conduct, what he did and what he said.

Judge Neilson—Well, what he did and what he said. I think the gentleman will accept that suggestion.

Mr. Beach—We are not to take the general expressions in regard to her conclusions.

Judge Neilson—What he did or said, without characterizing it.

The Witness—What he did in these moods, Sir?

Judge Neilson—Counsel will interrogate you.

Mr. Porter—I submit, if your Honor please, that it was precisely that, for which I was interrogating her; and that my question was proper. Will the stenographer read it?

Mr. Beach—My objection was to her answer, not to the question.

[THE TURNER stenographer read the question and answer, as follows: "During those moods of his was there anything marked in his deportment at the table?"]

The Witness—Yes, Sir.

Mr. Porter—Will you state in what particular?

Mr. Morris—That is calling for a conclusion—that question.

#### MR. TILTON'S UNKINDNESS IN HIS MOODS.

Mr. Porter—That calls for yes or no; and she answers "Yes." I now ask precisely what the counsel insisted I should. [To the witness.] In what particular? A. On one occasion one of his children refused meat; she did not wish for any meat, and he looked very angrily at her, and said it was all her mother's damned orthodoxy. [Laughter.]

Q. Will you please give me any other instance that occurs to you? A. Yes, Sir; another occasion, when he was moody and rebuked Mrs. Tilton at the table in my presence and in the presence of her children, for the horrible grammar that she used. I won't say "horrible;" I don't know that that was the expression, but it was about the grammar that she used; and he hoped that they would never grow up to use the grammar that their mother did.

Q. How in regard to articles of food that were upon the table—food or drink? A. At one time he said to Mrs. Tilton that he didn't wish any more tea or coffee or pastry on the table—and the very next meal he said he wanted to know if he could not have a cup of strong coffee, and that there was not any pie; and Mrs. Tilton said: "Why, darling, you said not to have any; it was not good for your health." Well, he would have one ordered now—he would have a cup of coffee made now.

Q. Without going further into details, will you state whether these were a few out of a great variety of instances that you observed when he was in these moods?

#### A GENERAL QUESTION OBJECTED TO.

Mr. Beach—I object to that question, Sir.

Mr. Porter—Upon what ground?

Mr. Beach—Upon the ground, in the first place, that it is leading; and in the next place, that it calls upon her to characterize events that she does not relate.

Judge Neilson—I think the witness ought to enumerate what you wish to prove, as instances of observation.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—If your Honor please, the relations of husband and wife, when inquiries of this kind—the kind that are pending in this suit—are raised, are always a subject of inquiry, and were made by the plaintiff a subject of inquiry, and are always general evidence of the tenor of intercourse between husband and wife, and the disposition and conduct exhibited by one towards the other are permitted to be given. We do not understand the law to be so remote from the common sense of human affairs as to require specifications or deductions when the observation is a simple observation. A person by looking at people that are in contact with one another, and intercourse, can tell whether they are quarrelsome, or whether they are kindly, and the law does not require the specification of the quarrels or the instances of kindness, unless a cross-examination makes it necessary to prove that inadequate grounds or unsuitable conclusions have

been drawn by the witness; and the same rule should be applied to this witness, of course, as to other witnesses who have been called on the one side and the other, and have given the usual demeanor. Now, the witness has given—what might, perhaps, have been left to cross-examination—particular instances, and it does not seem to us suitable or necessary to explore the years of her observation for every case of unseemly conduct; and having giving her statement of the general attitude of these married people towards each other, and then these particular instances that have been exacted from her, is it not competent for her to say that these are instances, of which there were many of the same nature, that she observed? That is the inquiry now.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—If your Honor please, I deny this proposition of the counsel, entirely. Their object is to prove that there was unkindness and discontent in the family relations of this husband and wife, and the proposition upon the other side is that they can prove by this witness the general conclusion that she formed from the observation of their mutual conduct, and show in general terms that Mr. Tilton was unkind and rude, unloving in his domestic relations, and the result is, if that is permitted to be proved, that the duty of establishing the facts from which that conclusion may be properly or improperly derived is thrown upon the plaintiff in cross-examination. That is, they can ask the judgment of the witness in regard to the character of these relations, and force us into an examination of the details of transactions as between this husband and wife, from which she has formed that conclusion. Now, the same circumstances, if they are presented in detail, in the conduct from which this young lady assumes to decide that Mr. Tilton was rough, or tyrannical, or abusive in his home, might produce upon your Honor's mind, and upon the mind of the jurors, quite a different impression. In those details there may be modifying circumstances; there may be acts of provocation; there may be a thousand things in those details which, to a different mind—a more mature person, one better acquainted with the world, and the disposition of men and women—would produce an altogether different conclusion from that to which she arrives. The objection is, that this young lady, instead of telling what were the actual circumstances and condition of the family, from events which she observed, and which must constitute the foundation of her judgment, is called upon and permitted to give her conclusions, which may be accurate or inaccurate—which may be extravagant and unjust. And I know nothing, Sir, in the character of this examination, which justifies a departure from the ordinary rule of evidence, that the witness must state facts and leave the Court and jury to draw the proper deductions from those facts. It would be, I think, a very great injustice to a party, to permit this lady to pass a judgment upon the domestic character and conduct of Mr. Tilton without giving the circumstances upon which that judgment is founded; and it is imposing upon us, I think, a very onerous duty, to inquire

into the principal and primary facts which it is their duty to give as a foundation for that conclusion.

#### THE QUESTION RULED OUT.

Judge Neilson—There seems to be no real ground of difference, gentlemen. Of course, all either side wants is the knowledge and recollection of this witness bearing upon the question before us, and she is competent to state any facts and circumstances that came under her notice, and those facts and circumstances appearing before the jury, they will be competent to draw conclusions from them. I therefore think the examination should, upon question being raised, take the ordinary course, which, I think, is to state what this witness observed and knew.

Mr. Everts—Let me ask your attention to Mr. Richards's examination by my learned friends. [Reading:] Whilst you were there, Mr. Richards, did you notice, and if you did, please state what degree of affection existed between the husband and the wife in that family?

Judge Neilson—That would be competent with this witness; no doubt about it.

Mr. Everts—[Reading:]

"How was he for cheerfulness in the family? A. Well, for the most part I should say he was rather too cheerful, Sir, if anything fond of joking and punning, sometimes at the expense of others, at my own expense sometimes." Now, the rule of my learned friends would have required Mr. Richards to reproduce every joke and pun of Mr. Tilton, in order that we might know whether he joked and punned.

Mr. Beach—By no means.

Judge Neilson—We have received evidence of that same character from this witness already, and that, of course, is competent. She now, I think, should state those circumstances that came to her observation. She is at liberty to say that a party was kind or unkind in good temper or bad temper, no doubt.

Mr. Porter—Will the stenographer read the last question?

THE TRIBUNE stenographer read the question, as follows: "Without going further into details, will you state whether these were a few out of a great variety of instances that you observed when he was in these moods."

Mr. Porter—That is my question, your Honor.

Mr. Beach—It is objectionable for various reasons.

Judge Neilson—I don't think it is permissible.

Mr. Porter—I except to your Honor's decision.

Judge Neilson—Yes, Sir.

Mr. Porter—Did you observe from time to time various instances of this kind? If so, state such of them as occur to you at this moment. A. Yes, Sir; on another instance—it was at a Woman's Rights meeting that was held at Mr. Tilton's, Livingston-st., and I was standing near the folding doors, at the back part of the front parlor. The guests had assembled, and they were walking to and fro, and Mrs. Tilton was following Mr. Tilton. He came over and looked over Mrs. Tilton's shoulder and said, "Elizabeth, stand one side; don't keep near me; I don't wish any comparisons drawn; the contrast is too great." I remember that very distinctly.

Q. Did she leave as he directed? A. What, Sir?

Q. Did she leave his side as he directed? A. Yes, Sir; she stayed one side, did not go near him, I think, again that evening.

Q. When he gave directions from time to time, was she in the habit uniformly of complying with them? A. Yes, Sir.

OTHER IDIOSYNCRASIES OF MR. TILTON.

Q. Will you mention, without further detail, in this regard, some of Mr. Tilton's peculiarities within the domestic circle—within the household, by night or by day? A. Yes, Sir, I think I can state several peculiarities that he had; one in particular was—or two in particular—was hanging pictures in his night clothes; and another was—

Q. One moment. Hanging pictures? A. Yes, Sir.

Q. Do you mean pictures that had just been brought to the house? A. No, Sir; pictures that were on the walls, that were hung on the walls, taking them down and hanging them in different places.

Q. Was that a frequent occurrence with him, changing the pictures as they were hung upon the walls? A. Yes, Sir; quite frequent.

Mr. Beach—What! In his night clothes? A. In his night clothes; yes, Sir.

Q. Frequently? A. Yes, Sir.

Mr. Porter—What else was he in the habit of doing in his night clothes, ever? A. He was in the habit of going around from one bed to the other, trying all the beds in the house before he could make up his mind which one he would sleep on. [Laughter.] I remember distinctly, because on two occasions I had to get up and leave my bed and let him come in and try and see if he did not think it was the softest; and I was then on the second floor, and he came out of Mrs. Tilton's room into mine, saying: "Darling, suppose we try Bessie's bed a little while." Mrs. Tilton following him with a pillow; and I then took Carroll and went up-stairs in the third story, and I had not but just gotten in bed before he came up: "Well, suppose we try this bed a little while;" and I had to get up the second time and go down-stairs. That is the reason I recollect it so distinctly.

Q. Was he in the habit of going about the house in his night clothes when he was restless—

Mr. Fullerton—I object to that.

The Witness—Yes, Sir.

Mr. Fullerton—One moment, Madam.

Mr. Porter—You have not heard the question.

Mr. Fullerton—I heard the question and the answer.

Mr. Porter—You have not heard the question.

Mr. Fullerton—I heard the answer.

Mr. Porter—You interrupted the question.

Mr. Fullerton—I heard the answer, and the question.

Mr. Porter—You interrupted me, the witness answered, and my question is not yet put; it was a partial question.

Judge Nelson—The answer, then, is stricken out. Let us see what the question is.

Mr. Fullerton—I certainly heard a question and an answer.

Mr. Porter—My question is this: Was he in the habit of going

about in the manner you have described in his night clothes—  
A. Yes, Sir.

Mr. Fullerton—One moment.

The Witness—Excuse me.

Mr. Porter—You answer before you hear the whole question.

Mr. Beach—[To the stenographer.] Don't take that answer, Sir; please strike it out.

Mr. Porter—Was he in the habit of doing this when he was not engaged in hanging pictures, or in changing them?

Mr. Fullerton—One moment, please; one moment; that is objected to.

Mr. Porter—I have proved two instances; I now want to know if there were any others.

Mr. Beach—The gentleman asks a leading question.

Judge Nelson—There is no objection to it, except it is leading.

Mr. Porter—It is simply to avoid the repetition, Sir, of the last answer. She has stated two classes of cases in which he was in the habit of doing it; I wish to know whether there were any others.

Mr. Fullerton—Well, that is the question to ask.

Judge Nelson—Well, ask: "What further did you observe in that respect?"

Mr. Beach—Well, I suppose, if your Honor please, we are inquiring now into the relations between this husband and wife to learn whether they were cordial or otherwise.

Judge Nelson—Yes, Sir.

Mr. Beach—Will your Honor please consider what materiality there is in the truth of these habits of Mr. Tilton, which do not seem to have produced any enmity or disturbance between him and his wife?

Judge Nelson—I think they go to the general question, so that we can come at the facts properly. I think they go to the general question.

Mr. Beach—Well, is it for the purpose of impeaching the chastity of Mr. Tilton, or his credibility?

Judge Nelson—No.

Mr. Beach—Well, they don't tend to shew the relations, Sir, between these two parties.

Judge Nelson—They have to do with the habits of the person in his daily course.

Mr. Beach—They do certainly have to do with his habits, but are we inquiring into the general habits of Mr. Tilton?

Judge Nelson—Yes, Sir; so far as they have relation.

Mr. Beach—Yes, Sir; so far as they tend to shew the relations between Mr. and Mrs. Tilton.

Judge Nelson—Yes, Sir.

Mr. Beach—All this evidence, as your Honor knows, is pertinent only upon the question of damages. Your Honor has so said repeatedly during the trial. It is for the purpose of showing that the relations between this husband and wife were of such an uncordial and unhappy character that the act of the defendant in her seduction, if proven against him, has produced no damage to the plaintiff. Now, then, the fact, Sir, that Mr. Tilton was in the habit of hanging pictures in his

night clothes in the night, or in the habit of wandering about the house in his night clothes—

Mr. Fullerton—To find a soft bed.

Mr. Beach—To find a soft bed, as is suggested, does not tend in any degree to illustrate the relations which existed between the husband and wife.

Judge Neilson—I think he may prove anything in that regard that touches the daily life and conversation, and manner, but not by leading questions.

Mr. Porter—The hour of adjournment has arrived.

Judge Neilson—Then, gentlemen, will you get ready. The jury will please return at two o'clock.

The Court then took a recess until 2 p. m.

#### THE AFTERNOON SESSION.

The direct examination of Miss Bessie Turner was resumed at 2 o'clock.

Mr. Porter—I will repeat the question: Was he in the habit of doing this—that is, going around undressed—on other occasions than those in which he was engaged in rehanging the pictures, or in changing his bed? A. Yes, Sir.

Q. Was it confined to any particular room of the house when he would go about undressed?

Mr. Beach—Not “undressed”!

Mr. Porter—When he went about in his night-clothes?

The Witness—It was confined particularly to the bed rooms.

Q. You spoke of these various moods of his; how frequent were those—sullen moods, I think, you called them; how frequent in later years were those sullen moods of Mr. Tilton's that you say would last for some time? A. Sometimes they would last for two or three days.

Q. How often would he have them? A. Quite frequently.

Q. And, was that so for several years before you left? A. Yes, Sir.

Q. Did you hear Mrs. Putnam's testimony? Yes, Sir; I think I heard a part of it.

Q. Were you with Mrs. Tilton on the occasion of the visit to Southport, to which she referred? A. Yes, Sir.

Q. Was Mr. Tilton on that occasion in one of those moods described? A. Yes, Sir.

#### MR. TILTON INDIFFERENT TO HIS CHILD'S SICKNESS.

Q. On occasions of sickness in the family, will you state anything which arrested your attention, and especially in the late years of your residence in that family? A. Yes, Sir; I can state one occasion in particular. It was when little Paul was very ill; he was not expected to live; he was very sick with *cholera infantum*; and Mr. Tilton went out one night and stayed away all night long; Mrs. Tilton was very much troubled—

Mr. Beach—Wait one moment; we object to that.

Mr. Porter—Did you notice anything in her appearance? A. Yes, Sir; she was very much troubled.

Q. She appeared so? A. Yes, Sir; and said so.

Q. State anything further that followed.

Mr. Beach—We object to what she said.

Mr. Porter—I will ask if she observed anything further in regard to that; and, if so, to state it.

Mr. Beach—I am speaking of the answer which she made, and to which I object.

Judge Neilson—Her statement about what she said is to be stricken out.

Mr. Porter—I have no objection to that being stricken out; I supposed it was on the suggestion of my friend.

Q. Will you state anything that you observed in regard to this? You say she appeared to be in trouble; how did she indicate that, aside from what she said? A. She indicated it by walking up and down the room, and saying—

Mr. Beach—No, no; not saying.

By Mr. Porter—By walking up and down the room? A. Yes, Sir; and going up and down stairs and listening; whenever she would hear a carriage pass, she would go and listen, and she said—

Q. No matter what she said; for whom was she listening? A. For Mr. Tilton.

Mr. Beach—Wait, wait; we object.

By Mr. Porter—Did you know for whom she was listening? A. Yes, Sir.

Mr. Beach—I submit that she cannot know, except from what was said, or by stating circumstances; and those circumstances she should state, and not state conclusions.

Mr. Porter—That is what I am calling for; and I wish to avoid asking what was said, but simply the general fact of what she saw—that she was listening for her husband at a late hour of the night.

Judge Neilson—Instruct your witness to state the general fact, and not refer to a conversation.

Mr. Beach—It is impossible that she can know for whom Mrs. Tilton was listening, except from what Mrs. Tilton said, or from some action. She cannot state what was said, but she can detail any action.

Mr. Porter—She can detail any fact which was within her observation. She shows first, that Mrs. Tilton was restless, walking to and fro, going to the door and listening whenever she heard a carriage approach; I want to know, now, if she did know at the time, for whom she was upon the alert?

Judge Neilson—You can ask her that. [To the witness]: Do you know for whom it was she was going to the door? A. I know that it was for Mr. Tilton.

Mr. Porter—Did he come home that night? A. No, Sir; he came home in the middle of the day; the next morning.

Q. When he came home what occurred? I would ask you first, however, whether he was aware what the condition of Paul was? A. Oh! yes.

Q. Were apprehensions expressed as to his recovery? I mean, had there been, before that? A. I think that the doctor had said that he was dangerously ill.

Q. When Mr. Tilton came home what transpired between him and Mrs. Tilton? A. Mrs. Tilton said to him when he came into the room: “Oh, Theodore darling; I am so glad that you have come home; I have been so troubled about you, that every time I would hear a carriage—”

Mr. Beach—Does your Honor think this evidence is competent—what passed between Mr. and Mrs. Tilton?

Judge Neilson—I think that he can call it out if he thinks proper.

Mr. Beach—Have they any more right upon that subject than we?

Judge Neilson—No; but it is in the presence of a third person.

Mr. Porter—[To the witness]: Go on. A. Mrs. Tilton said: "Oh, Theodore, darling, I am so glad you have come home; I feared that something had happened you last night. How could you go away, darling, and stay all night, and not send me word, when you knew that little Paul was so ill?" Mrs. Tilton had sent me around the next morning to Mr. Briggs, to know what had become of Mr. Tilton.

Q. What did Mr. Tilton do when she said this to him? A. He didn't look at all pleasant, and threw himself on the lounge and said: "Oh! well, it was immaterial; it didn't make any difference, one way or the other."

Q. What did she do then? A. Mrs. Tilton knelt down beside him and stroked his hair.

Q. Little Paul died, did he not? A. He died after that.

Q. Was it shortly after? A. I think it was; I am not sure.

#### HOW HUSBAND AND WIFE TREATED EACH OTHER'S FRIENDS.

Q. Will you state any peculiarity which you may have observed between them, in regard to the pleasure which either took in the associates and admirers of the other? How was it with Mr. Tilton about her friends, and how was it with his friends? A. Do you mean how they admired each other?

Q. I will come to that presently. What I am asking now is whether Mr. Tilton seemed to be pleased with the admiration of others for his wife, and whether she was with the admiration of others for her husband.

Mr. Beach—I object to that question—whether she seemed to be pleased; I think that you should have called for the facts.

Mr. Porter—I would like to ask a question of that kind, if allowed—whether he liked her friends, and she liked his? A. I think Mrs. Tilton always liked to have Mr. Tilton admired.

Mr. Beach—One moment. I object. The witness is not giving facts.

Judge Neilson—The counsel intended to call for facts in his question.

Mr. Porter—Do I understand your Honor to say that we may call for facts and incidents?

Judge Neilson—I understood you to call for facts and circumstances; but this is asking an opinion.

Mr. Porter—I will call for incidents and illustrations of the action in that regard. [To the witness]: How did he treat her friends as compared with his own?

Mr. Beach—I object to that—calling upon the witness to make a comparison of that sort.

Judge Neilson—That is objectionable. Ask—What did she observe with respect to either?

Mr. Beach—I think that she should give examples or illustrations, and not give her own judgment.

Mr. Porter—I think that the rule is that we may not only give a particular instance, or general facts, where there is particular pertinence in them, but that we may also give the result of general observations.

Judge Neilson—In some cases you can. I think that it will be easy to examine this witness as to anything she may have observed.

Mr. Porter—That is the very point I am inquiring upon—whether she observed how he treated her friends.

Judge Neilson—And if so, state what she observed.

Mr. Porter—Yes; that is it. [To the witness]: And if so state what you observed.

The Witness—Do you mean to ask how Mrs. Tilton treated her husband's friends?

Q. How Mr. Tilton treated her friends—those who particularly admired her? A. I know one or two instances where he did not like them, and did not want them there, because they admired Mrs. Tilton so much.

Q. How was it with her in respect to his friends? A. She was always very kind to them, and did all in her power to make the friends he brought to the house comfortable, and to make it pleasant for them in every way.

#### THE BEGINNING OF THE CHANGE FOR THE WORSE.

Q. You have stated that Mr. Tilton was generally kind, especially during the earlier years, but that there was a change afterwards. I would like you to indicate how that change exhibited itself in any of the affairs of the family that occurred under your observation. Is there anything that you observed in regard to the servants, for instance? A. Yes, Sir. On one occasion when he had been away (I think that he had been away a few days, or for a week, perhaps on a lecturing trip), he came home while Kate Smith, the wet-nurse, was there, and there had been some difficulty about her, and Mr. Tilton was asked his advice about discharging her, and he answered her very abruptly.

Mr. Beach—State what he said.

Mr. Porter—That is just what I wish. A. He said that she must attend to her own affairs; that if she wished to keep Kate Smith, to keep her; and if she wished to discharge her, to discharge her; and that she must not come to him with her household affairs; that it was none of his business, and that he did not wish to have anything to do with it.

Q. What did Mrs. Tilton say in reply? A. Mrs. Tilton looked very meek, as she always did when he rebuked her, and said, "Darling, I did not mean to trouble you. I only wanted your advice about it." He said: "Very well; you can do as you please about it; I have nothing to say about the matter."

Q. Was he in the habit of expressing his mind frequently to Mrs. Tilton? A. His mind about what?

Q. On occasions when he was displeased.

Mr. Beach—That is objected to.

Q. Was he in the habit of scolding Mrs. Tilton?

Mr. Fullerton—One moment. That is objected to.

A. Yes, Sir.

Q. When he was in these moods ?

Mr. Fullerton—You cannot prove a habit in that way.

Mr. Porter—I submit that I can ; and that that is precisely what the law allows us to do.

Judge Neilson—I think that you can show facts which amount to a habit. You can show that.

Mr. Porter—I will refer your Honor to the case of *McKee v. Nelson* (4 Cowen, 355), in which it is said :

So, also, in an action for breach of promise of marriage, a witness, who has had opportunity of observation, may testify whether or not one of the parties was sincerely attached to the other. The evidence of such attachment is usually composed of minutiae which cannot be detailed to the jury.

I am seeking general results. I submit that the witness has had means of observation. If they require instances they can elicit them on cross-examination.

Judge Neilson—Go, on, Sir.

Mr. Fullerton—That is no authority in this case. There they proved a condition of things without giving the language. They proved what was the degree of affection existing between two people by their conduct, by their demeanor toward each other. No words need be expressed to show that. Affection is not always manifested by words. Now they propose to show whether Mr. Tilton was in the habit of scolding his wife. Well, scolding is not by gestures, it is by words. Therefore they propose to prove what was said upon different occasions, so frequent as to amount to a habit of scolding. Your Honor will perceive that the authority cited does not bear them out in their proposition.

Mr. Porter—Will my friend permit me, then, to add another authority, which may be more satisfactory to himself and to the Court. In a case in 2 Starkey, 191, it was held that, in an action for *crimen con.*, the judgment formed by a witness, during her acquaintance with the wife, of her affection for her husband, from the anxiety which the wife had expressed concerning her husband, and from her mode of speaking of him during his absence from her, was admissible. In the case of *Ball v. Ball*, (1 S. & T., 565) the action was for divorce: and it was there held that the general statement of the solicitor, that he did not consider it a happy marriage, was admissible evidence. So of the testimony of a servant, that the husband complained of too much company. But we need not multiply instances or authorities upon this subject, my question was put in conformity with them.

Judge Neilson—The witness can answer.

Mr. Fullerton—There is nothing in those authorities bearing upon this question at all.

Mr. Porter—Do you propose to overrule the Court ?

Mr. Fullerton—I proposed to say what I did say.

Mr. Beach—If he proposed to overrule the Court, he was only following your example.

Mr. Fullerton—If your Honor admits the testimony, I have nothing further to say; only I should not like to have it admitted upon the strength of those authorities, because they do not bear upon it at all.

Judge Neilson—I admit it.

Mr. Beach—We except.

A. Yes, Sir; I have heard him scold her frequently.

Q. Will you state the manner of doing it? not the words, but the manner. Did he do it before others and in private, or only before others? A. He did it before his children and myself.

Q. Was he ever in the habit of doing it elsewhere? A. Yes, Sir; I have heard him.

Q. Will you state his habit in that regard? A. He has had her in a room, with the door locked, several times, talking very angrily and loudly.

Q. Did you ever on those occasions hear any profane expressions used towards her? A. Yes, Sir; I have heard him swear at her.

Q. How long would she remain with him in the room, with the door locked on the inside, while he was expressing his mind? A. Sometimes for three or four hours.

Q. When she came out from one of those lectures what was her condition usually? A. She was very much troubled, and her eyes were always red, as if she had been weeping.

Q. On these occasions did she raise her voice when he raised his? A. No, Sir, I never heard her. She seemed to be—

Mr. Beach—Wait!

Judge Neilson—You have answered the question, Madam.

Mr. Porter—Was this a matter that occurred at different times? Was this locking himself up with her in a room, and lecturing her, a thing that occurred at various times? A. Yes, Sir.

Q. And through the various years of the latter portion of your residence there? A. Yes, Sir.

Q. On any of those occasions, was the bell as usual rung for meals when they did not come down? A. Yes, Sir; on two occasions that I remember.

Q. Did you observe any peculiarity in his treatment of her after gentlemen had called upon her, and if so, state it? A. I remember one instance in particular after a gentleman had been there; it was on a Sabbath evening, and they were in a room, and he was talking very angrily to her.

Q. Was that gentleman Mr. Beecher or another person? A. It was not Mr. Beecher at the time I refer to.

Q. After the visits of any of the gentlemen who were in the habit of coming there will you state whether he was accustomed to require from her a statement of what had occurred between them—of the conversations?

Mr. Beach—Does your Honor allow these leading questions?

Judge Neilson—I do not like them to be so leading.

Mr. Porter—I think the question is objectionable in that form, and I will change it. [To the witness.] Will you state whether, after gentlemen had been there, anything was said by him to her as to what had taken place, or as to what the conversation had been? A. No, Sir; not that I heard of.

#### MR. TILTON'S LECTURES ON ECONOMY.

Q. Were there occasions when the subject of economy in the affairs of the household was a matter of conversation between them? A. Yes, Sir; that was one of the instances when they were locked in the room, and he was talking to her in a very angry tone of voice. That called my attention to it, while I was in the sitting-room, where I could hear; and I heard her say: "Well, darling, I do as well as I know how. I

make every dollar go just as far as I possibly can;" and then she began crying. I heard her crying.

Q. Who had the general charge of all the household matters and of the expenditures? A. Mrs. Tilton had the entire charge.

Q. What sort of a table was she required to provide, if any?

Mr. Beach—One moment. I object to that question—as to what sort of a table she was required to provide.

Mr. Porter—"If any," I said. If the objection be that the question is leading, I will modify it. Will you state anything that was peculiar about Mr. Tilton, in regard to his requirements concerning the table, or the food upon the table? A. He was very fastidious about his food and the way in which it was cooked. He would give an order for breakfast at 8 o'clock, and on one or two occasions he came down at about 10, or perhaps later, and was very angry indeed because the beefsteak they had for breakfast that morning, or on those mornings, was dried up—it having been standing so long on the stove after it was cooked that it was dried.

Q. What did Mrs. Tilton say by way of explanation or apology if anything? A. Mrs. Tilton said that he had ordered breakfast at eight o'clock, and that she knew the steak was dried up, because it had been standing so long; that he could not think it would be any different after waiting so long, but that it would have been good if he had come down to breakfast at eight o'clock—at the time he ordered breakfast.

Q. Will you state whether she made any distinction between him and the other members of the family as to the food furnished? A. Yes, Sir; she very frequently had a little dish of something extra prepared for him—such as quails, or oysters (in the season when oysters were very dear)—any delicate dish in that way was always placed before him at the table.

Q. Was there any complaint on his part of the disposition which she proposed to make of what he had left among the children? A. Yes, Sir; he would offer it to her sometimes, and she would say: "Let the children have it if there is anything left; I do not care for it; let the children have it if you do not want it;" and on one of those occasions, when one of the children remarked that she was one of the most unselfish women that they had ever seen, he turned around and said: "Your mother is one of the most selfish women that ever lived."

Q. Do you remember, on one of those occasions, when her economy was the subject of conversation, your going to the room while they were locked up together; and, if so, state the conversation? A. That is the time that I have stated—that my attention was called to—when he was talking very loud. That is the time I have stated.

Mr. Beach—She has already given that.

#### MR. BEECHER'S VISITS IN 1870.

Q. Was Mr. Beecher in the habit of visiting at Mr. and Mrs. Tilton's? A. Yes, Sir; occasionally.

Q. Did he do so occasionally, down to the Fall of 1870 or down to 1870? A. Yes, Sir, I think he did.

Q. Was Mr. Tilton sometimes at home and sometimes absent on those occasions? A. Yes, Sir.

Q. When at home how did he treat Mr. Beecher? A. Very

pleasantly, very kindly, as he treated most of his friends that came there—very cordially.

Q. How did Mrs. Tilton treat him, whether her husband was there or not; how did she treat Mr. Beecher? A. When I saw him with her, she treated him pleasantly and kindly, as she did all of her friends. I did not notice any difference.

Q. What was the bearing and deportment of Mr. Beecher towards her? A. Very gentlemanly and pleasant.

Q. Was it the same when he visited her, and her husband was there, as when he visited her in the absence of her husband? A. Just the same; I never noticed any difference.

Q. Did you ever observe any impropriety in the conduct of either towards the other? A. Any impropriety? No, Sir; never.

Q. How did she receive him, as compared with other friends who were in the habit of visiting there? A. Very hospitably and kindly, just as she did all her friends. I never noticed any change.

Q. When Mr. Beecher was there, was he in the habit of giving his attention to the children as well as to Mr. and Mrs. Tilton? A. Yes, Sir; I remember on one occasion when he went up into the sitting-room and was talking and playing with the children.

Q. Were there a number of other gentlemen visitors who were in the habit of calling at the house upon Mr.—Mrs. Tilton? A. A number of ministers, do you say?

Q. Gentlemen? A. Yes, Sir.

Q. Will you name some gentlemen who were in the habit of calling there? A. There was Mr. Bates, and Mr. Ovington, Mr. Green, the Rev. Gilbert Haven, and the Rev. Robert Hatfield, and the Rev. Mr.—Dr. Leavitt, connected with *The Independent*; Mr. Johnson.

Q. Was Mr. Greeley in the habit of calling? A. Yes, Sir.

Q. Was her treatment of Mr. Beecher similar to the treatment of those gentlemen as they called? A. Yes, Sir, just the same. I never noticed any difference.

Q. Would you recognize these photographs, Miss Turner? A. Yes, Sir; do you want me to name them?

Q. Just look at them.

Mr. Shearman—Speak louder. Yes, Sir, I recognize these I have in my hand. This is Judge Morse's picture; this is Mr. Greeley's; that is Dr. Leavitt's; that is Mr. Beecher's; that is Frederick Douglass's, and that is Mr. Bates's.

Mr. Porter—I believe the photographs have been already marked as exhibits. [To the witness.] Were those photographs that you were familiar with in the house? A. Yes, Sir.

Q. Were there photographs of Mr. Beecher about the house? A. Yes, Sir. There were two or three, perhaps three or four different kinds.

Q. Where were they; in what portions of the house? A. I think there was a cabinet card of Mr. Beecher in the sitting-room, second story, mantelpiece, and there was photographs of him lying around the sitting-room, on the table, in a card basket, or something that they kept photographs in.

Q. Were there books which had been presented to Mr. or Mrs. Tilton, about the house? A. Books that had been presented?

Q. Yes, books presented by Mr. Beecher. A. Yes, Sir, I think I can name three. There was "Norwood," and "Notes from Plymouth Pulpit" and "Life Thoughts." I don't remember any others just now.

Q. Where were they? A. They were, I think—

Q. With the other books in the house? A. Yes, Sir; I think "Norwood" was; I saw it sometimes on the table in the parlor; sometimes it was up in the sitting-room.

Q. Do you recollect a book entitled "Bampton's Lectures on the Divinity of Christ"? A. No, Sir; I don't think I do.

Q. You don't recollect it. Do you recollect any book there entitled "Lectures on the Divinity of Christ"? A. No, Sir; I can't say that I do.

#### MR. TILTON'S OVERTURES TO MISS TURNER.

Q. You don't recollect it, Miss Turner; you have mentioned a habit of Mr. Tilton in regard to his being out of his room at night. Was there any particular occasion on which he visited your room at night where there was a conversation between you? A. Yes, Sir; there was one particular occasion, in 1867, I think it was.

Q. Do you remember what the conversation was on that occasion? A. Yes, Sir.

Q. Will you state generally? A. Yes, Sir; I had gone to bed in the second story bedroom, front room, off of the sitting-room, connected by folding doors, and I had—I had not been in bed very long before Mr. Tilton came in and said he had come to kiss me good night. I was lying on the side of the bed next the door; he went round on the other side and leaned over the bed and kissed me good-night, and he— Shall I give all the conversation?

Q. Yes, if you please. A. He stroked my forehead and my hair, and said what nice soft hair I had, and how nice and soft my flesh was—my forehead, and then he put his hand—was putting his hand in my neck, and I took his hand out; and he says, "Why, Bessie, my dear, you are painfully modest;" he says, "Why, those caresses, those are all right; people in the best society do all those things, and it is perfectly proper. Nobody but people that had impure minds think of such things as that as not being right." And I said I could not help what they did in the best class of society; that I had my own ideas of what was proper and what was modest, and I was going to carry them out; if I didn't think it was proper for him to put his hand in my neck, I was not going to let him do it; it didn't make any difference what people thought or did in the best classes of society. He then laid down, and asked me if I did not—if I would not like to be married. Why, I asked him, what in the world put that in his head? Well, he said, I was a—*an affectionate and nice girl*, and I ought to be married; I ought to have a good husband. I said that I supposed when the time came—the right man came along—perhaps I would get married. But I didn't think getting married was the chief end and aim in life. It didn't trouble me very much, and that if I was married, there was one thing very sure, I didn't think I would ever have a literary man for a husband; and he then asked me if I didn't think some people had affinities for each other; well, I asked him what he meant by that—

what he meant by "affinities;" and he said that when a man saw a woman that he loved she should be his affinity and they live together as man and wife; and that was what was meant by "affinities" for each other. And then he went on to say that if I would allow him to caress me and love me as he wanted to do, that no harm should come to me—and that a physical expression of love were just the same as a kiss or a caress. He then went on to describe again—to tell that he knew ministers that caressed girls and married women—it was all perfectly right and proper and beautiful. And he then told me that I was a very strange child. He says, "Bessie, you have some very singular ideas," and kissed me good night, and left.

Q. Was there any—you mention 1867 as the date of this— A. I think it was 1867; yes, Sir.

Q. How is that? A. I think it was 1867; yes, Sir.

Q. How, on another occasion, a year or two after that, did anything occur during the night which particularly impressed you, and, if so, state the circumstances in regard to it? A. Yes, Sir; it was in the Summer of 1868. Mr. Greeley was there—Mr. Horace Greeley, making him a visit; he was there some three or four weeks, I think; and one night I had gone to bed, and was awakened from my sleep by seeing a man of tall figure standing over me; and I jumped and said, "Who is there?" and Mr. Tilton said, "Hush! it is only Mr. Tilton," and then I think I raised myself up, and I—it seemed as if I was in a strange place, all whirled around, because I had gone to bed in the second story back room—bedroom—and his room was next to mine, and I had gone to bed in one of the rooms—in my room, and found myself in his room, and I says, "What do you—what did you bring me here for; what are you doing?" and he said that he felt lonely, and he wanted somebody to love him; and I said, "You would not have done this if Mrs. Tilton had been home; you should not take liberties when Mrs. Tilton is away that you would not take when she is at home," and I then got up and left the bed, and went to my own room and locked the door.

Q. On the following morning, did you meet him? A. Did I meet him?

Q. Yes, at the breakfast table the following morning; I left a little while after breakfast.

Q. But after that, you met him at the breakfast table? A. At the breakfast table the next morning, before I left.

Q. Did he make any allusion to what had transpired the night before? A. No, Sir.

Q. Did you? A. No, Sir.

Q. Did he say anything to you? A. No, Sir, nothing more than "Good morning." I never said a word; there was nothing said at the breakfast table at all.

Q. Had there previously been conversation about your going to Southport—Keyport? A. Keyport—yes, Sir; he said about a week before that, that I had better go down and see Kattie, meaning his sister, a little while, and help his mother Tilton, help her about the house.

Q. What did you do that morning after breakfast, when he had left? A. I left the house and went to Keyport in the—



think I took the afternoon boat; in fact, I don't think any boat does go in the morning.

Q. Well, how long did you remain at Keyport; some little time? A. Some little time; I think about two weeks, or perhaps longer.

Q. When you returned to town, did you go to Mrs. Tilton's directly? A. No, Sir; I went around to Mrs. Bates's house, where Mrs. Morse was.

Q. Why did you not return to Mr. Tilton's? A. Because I didn't wish to—

Mr. Fullerton—That is objected to. One moment.

Mr. Porter—I propose to show your Honor that she did not return there until she could ascertain that Mrs. Tilton had returned, and she did ascertain.

Judge Neilson—Show that.

Mr. Porter—It is only the general fact, Sir.

Judge Neilson—Oh! no; you asked the reason—show that, if you wish.

Mr. Porter—Why did you not return?

Judge Neilson—Oh! no.

Mr. Beach—objected to.

The Witness—Why didn't I return?

Mr. Beach—That is objected to.

Judge Neilson—You ask the witness a reason, which I don't think is correct. The purpose to prove that she did not return until Mrs. Tilton came back; that would be correct.

Mr. Porter—Did you ascertain—afterwards ascertain whether Mrs. Tilton was in town? A. Yes, Sir; I ascertained from Mrs. Morse.

Q. Did you then return to Mr. Tilton's? A. I then went right around; yes, Sir.

Q. Did you communicate what had transpired between Mr. Tilton and yourself to Mrs. Tilton? A. Not at that time, Sir.

Q. Did you at any time prior to your visit to Marietta?

Mr. Fullerton—That is objected to.

The Witness—No, Sir.

Mr. Fullerton—It is not objected to then.

The Witness—Not prior to my—

Q. Yes. A. Oh! do you mean before my return?

Q. No, I mean before you went there. A. Before I went to Marietta?

Q. Before you went to Marietta—you did not communicate this to Mrs. Tilton? A. No, Sir.

Q. When did you go to Marietta? A. I went to Marietta in the Fall of— I don't know whether it was in the Fall or Spring of 1870, I think it was.

Mr. Beach—1870, did you say? A. 1870, I think.

Mr. Porter—Was it in the Winter or Spring? A. 1870, I think it was.

Q. Do you remember the month that you went? A. I think it was in the Spring, Sir.

Q. In the Spring? A. Yes, Sir.

Q. It was at all events, as early as that? A. Yes, Sir; I think so.

Q. You remained there on a visit to Mrs. Putnam? A. Yes, Sir, I remained there about eight or nine months.

Q. Well, then, we shall be able to ascertain the time better; when did you go home? A. We came home—we left Marietta on the 9th of November, I think, 1870.

Q. Did Mrs. Tilton visit Marietta while you were there? A. Yes, Sir.

Q. When did she go there? A. When did Mrs. Tilton go there?

Q. When did Mrs. Tilton go to Marietta—when she—before your return on that visit of hers, before your return? A. We returned the 9th of November; I think she was there perhaps a month or six weeks before we returned.

Q. So that it must have been in the neighborhood of October when she went—September or October—did you return with Mrs. Tilton when she came home? A. From Marietta?

Q. From Marietta. A. Yes, Sir.

Q. What was the occasion of your going with her? A. Why, Mrs. Tilton had been very—had had a great many fainting spells—

Mr. Fullerton—That is unimportant, Sir.

Mr. Porter—No matter about that; I waive that; the Stenographer need not take it. [To the witness.] Was she feeble? A. Yes, Sir; I came with her because I did not think she was able to come alone, and I wanted to be with her.

Mr. Porter—That is the material point I want to elucidate. [To the witness.] On your return, who met you on your arrival at Jersey City? A. Mr. Tilton met me at the cars.

Q. With a carriage? A. What did you say?

Q. He met you with a carriage? A. Yes, Sir.

Q. And took Mrs. Tilton and you home? A. And Carroll; yes, Sir.

Q. And Carroll; that was the child? A. Yes, Sir.

Q. About what time did you reach home? A. We reached home, I think, between 7 and 8 in the morning, in time for breakfast.

#### MR. TILTON'S HARD WORDS TO HIS WIFE.

Q. You took breakfast with them that morning? A. Yes, Sir.

Q. Who occupied at breakfast the usual seat at table of Mrs. Tilton? A. Miss Ellen Dennis.

Q. Was she there acting as housekeeper? A. What do you say?

Q. Was she there acting as housekeeper? A. Yes, Sir, she seemed to be, in the absence of Mrs. Tilton, housekeeper and mistress both.

Q. Who else was at the table that you remember? A. That morning when we returned?

Q. Yes, anybody else outside of the family? A. Yes, Sir; there was a lady there.

Q. Who was she? A. Miss Susan B. Anthony.

Q. Will you state what occurred at the breakfast table, if you please? A. Nothing of—

Q. Special? A. Special at the breakfast table, no, Sir.

Q. At dinner who took Mrs. Tilton's place at the table? A. Miss Ellen Dennis, Sir.

Q. Was Miss Anthony there then? No, Sir.

Q. Will you state anything that occurred? A. Yes, Sir. Mrs.

Tilton took her seat at the table beside Mr. Tilton, and the moment she sat down she began crying, and Mr. Tilton was very polite, saying, "My dear, won't you have a bit of this?" or, "My dear, won't you have a bit of that?" and she was crying so she could hardly answer him, the tears were running down in her plate, and she excused herself and got up from the table and went into the front parlor and sat down and played some plaintive little air on the piano. After she had left the table Miss Ellen Dennis looked at Mr. Tilton, and said, "What a strange woman Elizabeth is! What is she crying about? Any one that has such a devoted husband, a nice home, and everything heart could wish for—I think she is a very singular woman." Mr. Tilton never made her an answer but he leaned his face on his hand, and said he: "Bessie, my dear, don't you think Elizabeth is demented? Don't you think she acts like a crazy woman?" Said I—I looked him steadily in the eyes—said I: "No, I don't; but I wonder that you haven't driven her in the lunatic asylum years ago." [Applause.]

Q. What did Mr. Tilton do then? A. He immediately rose—he looked very white and very angrily at me—he rose from the table, then went from the dining-room into the back parlor, and from there into the front parlor, the two being connected by folding doors, and he tried to shut to the folding doors, and they would not—they would not shut tight; there was a little crack in them. He seemed to be working with the key; he was working with the key, and he then went in, or I heard the two parlor doors shut or locked.

Q. The other doors? A. Yes, Sir, from the hall into the front parlor; and he then—then [he came back; I saw him at this door, trying to shut the door again, trying to lock it—seemed to be trying to lock it, working with the key, and the door would not shut, it was open on a little crack, and he was—then I heard his voice, talking very angrily—in a very angry tone of voice.

Q. One moment. I want to inquire of you what led you to follow him, if anything?

Mr. Fullerton—That is objected to, Sir.

Mr. Porter—On what ground?

Mr. Fullerton—We are not to fathom the depths of a woman's curiosity.

Mr. Porter—It was the fact that she went from curiosity; that is a proper fact.

Judge Neilson—Well, she went; if she was called, or if she went without, that is a fact you can prove, of course.

Q. I ask if there was any fact, anything that led her to follow; and if so, what it was—what that fact was?

Mr. Fullerton—Well, Sir, that is just what we object to. If she did follow, that is all the gentleman has a right to prove, and he can prove what she observed after following, but the object or motive which prompted her to follow he cannot prove.

Judge Neilson—Which led her to follow.

Mr. Fullerton—No, Sir.

Mr. Porter—Now, will you answer?

The Witness—Yes, Sir.

Mr. Fullerton—Does your Honor admit it?

Judge Neilson—I don't think she ought to express it in that way.

Mr. Fullerton—I suppose not.

Mr. Porter—I did not hear, your Honor.

Judge Neilson—The question "What led her to go?" does not seem to be proper.

Mr. Porter—That is not my question, your Honor.

Mr. Beach—Oh! yes it was.

Mr. Porter—My question is, was there any fact which led you to follow her, and if so, state what it was.

Judge Neilson—Well, now, "which led you to follow her" is what is objected to.

Mr. Porter—Certainly no one else can know what led her. She does know, and we have a right to have the jury know what she knows on that point.

Mr. Beach—The gentlemen have a right to know any facts that occurred there.

Judge Neilson—Undoubtedly.

Mr. Beach—But how they operated on the mind of the witness, or created motives upon her part, is not material, Sir.

Judge Neilson—No.

Mr. Porter—I suppose, Sir, that if a witness is called upon to know why he went out on a certain occasion at night, he may answer "Because I heard the alarm of fire."

Judge Neilson—Yes, Sir.

Mr. Porter—I suppose that if a person goes into a room and finds another prostrate on the floor, that he has a right to state what called him to the room, and he may say, "A cry of distress." I understand that if a person is found in a position of menace or violence, or of wrong to another, no right can be more clear than to show that it was preceded by a threat—whether that threat be in one form or another is immaterial. If your Honor objects that my question is not leading, I will put it in a leading form; but if your Honor assumes that I am not inquiring for a fact—

Judge Neilson—I merely suggest to you that with your faculty you could easily illustrate and make a question that was not quite right appear perfectly correct, of course. This is of very small importance. Did anything occur? She can state what occurred. If she went she can state that fact, and then what occurred afterwards; the Jury will see what led her to go.

Mr. Beach—May I say, Sir, that in regard to the illustrations of the gentleman, in the cases which he supposes, it would be perfectly proper for the witness to say: "I heard an alarm of fire, and I went out;" "I heard one man threatening another, with angry language, and I went there;" or, "I heard a fall in the neighboring room, and I went there." But it is not competent for the witness to prove the reason, except by the statement of facts, from which the Court and the Jury may infer the motive or the reason which led to the particular conduct.

Judge Neilson—In this particular instance the reason is quite apparent.

Mr. Porter—I beg to call your Honor's attention to the fact that during the examination of Mr. Moulton and of Mr. Tilton plaintiff's counsel were permitted again and again to inquire, "What led you to do such thing?" The right to it is so clear

that we never objected to it. My friend, in reply to me, admits that, in the very case I put, as to what it was that led a person to leave his bed at midnight, he might reply that it was a cry of fire.

Mr. Beach—I did not admit that, Mr. Porter.

Mr. Porter—If he did not admit it, I assert it; and, if your Honor decides otherwise, I must take an exception.

Judge Neilson—The point is of no importance whatever, not of the slightest importance. Go on, Sir.

Mr. Porter—Is my question overruled?

Judge Neilson—I recommend you to modify it.

Mr. Porter—I cannot modify it.

Judge Neilson—Well, then, I don't overrule it.

Mr. Porter—Will your Honor excuse me? Mr. Evans and I have devoted much time to the examination of this case. We think, with our information, we are more competent than your Honor at this stage of the case, to speak of the importance of the evidence which we introduce.

Judge Neilson—I have been acting upon that theory throughout; and I have been admonished—

Mr. Porter—[To the witness]: Proceed.

The Witness—What led me to—

Mr. Porter—What led you to follow them? A. What led me was Mr. Tilton's very angry look; the way he looked at me when he left the table, that I felt intuitively—

Mr. Porter—No matter what you felt.

Mr. Beach—I move to strike that out.

Mr. Porter—I have just stricken it out myself; I have rejected that part of the evidence?

Judge Neilson—Well; go on.

Mr. Porter—The look, of course that we have; and Mr. Beach's objection was to the latter part of the answer, to which I also objected.

Judge Neilson—Well!

The Witness—Shall I proceed?

#### MR. TILTON MAKES AN UNMANLY USE OF HIS FISTS.

Mr. Porter—When you went into the adjoining room, what did you do—you went into the back parlor from the dining room? A. I stood at the folding doors; they were open on a crack; and I saw Mr. Tilton right over near Mrs. Tilton with his fist going this way [with a gesture] very emphatically, and talking very angrily; and when I heard him say: "You have brought that girl on to me against me, and, damn it, she shall leave this house," I opened the door and I rushed in. Said I; "Theodore Tilton, this is not the first time I have heard you swearing at your wife; and you shall not damn her for my sake." He said: "Leave the room." Said I: "I won't leave the room." Said he: "Damn you, leave the room." Said I: "I will not leave the room, and I will stand by Mrs. Tilton if I die in the attempt." He then gave me a terrible blow that hurled me the opposite side of the room, and I fell, striking my head violently against the door. He came forward, perfectly bland—you would think nothing in the world had ever happened—so composed and so calm.

"Why," he says, "why, Beessie, my dear, you tripped and fell, didn't you?" [Laughter and applause.] I turned around to him; said I: "Theodore Tilton, are you a fool, or do you take me for one?"

Judge Neilson—[to the audience]: I must ask the gentlemen again to be more quiet; this interrupts the proceedings of the Court.

#### MR. TILTON ACCUSES HIS WIFE TO HER FACE.

Mr. Porter—What then took place? A. What, Sir?

Q. What took place then? A. He then changed the subject entirely, and he said—he said, "Oh!"—he was sitting down in the chair, and he says: "Oh, Beessie, my dear, it is no wonder my gray hairs are going down with sorrow to the grave," and took out his handkerchief and was wiping his eyes. He says "No, my dear, you are mistaken in the woman you place so much confidence in." Mrs. Tilton then got up off the piano stool and said, "Why shouldn't Beessie place confidence in me? She has no confidence in you; she has no protector in you. You have offered to ruin her." He then stood up and straightened himself very straight, and put his fingers under his coat the way [illustrating]; said he, "Beessie, my dear, did I ever attempt, in any word, shape or form to ruin you or take any improper liberties with you?" Said I, "Yes, you did. You remember that time you was talking about affinities, and the time you lifted me out of my bed and carried me into your bed?" "Oh, my dear," he says, "you are excited; you are laboring under a false—mistake. No," said he, sitting down in the chair—said he, "the fact is this: Elizabeth is so in the habit of having men fondle her bosoms and her legs that she judges me by herself." He then got—he then turned over to this side of the room and said he, "Do you see that red lounge? Time and time again have I seen Elizabeth and Henry Ward Beecher having sexual intercourse on that red lounge," and not only the red lounge but he spoke of the chair. Mrs. Tilton looked very earnestly at him and said, "Oh! Theodore, Theodore, how can you tell that child such base lies?" He then asked me if I knew what sexual intercourse meant, and if I did not, he would tell me. [Applause.]

Judge Neilson—Will the officers please keep order in this audience instead of standing there idle. Send the officers round to see that order is kept.

An Officer—The officers are stationed around the room.

Judge Neilson—I know they are; they stand there. I do not see why they are there.

#### THE MOST SWEEPING CHARGES OF ALL.

Q. When you left that room what further took place? A. When I left?

Q. Yes, after this conversation. Was there anything further said that you now recall? A. Yes, Sir.

Q. Well, what was it? A. The last words he said were that that red lounge had been consecrated to their sexual intercourse. Those were the last words that he said at that time.

Q. Will you now state what took place after that, when he said that red lounge and so on? What did Mrs. Tilton do?

A. Mrs. Tilton went up stairs, and I went up stairs with her.

Q. What was Mrs. Tilton's condition then as she left the room? A. She looked very much distressed and sad, and troubled.

Q. And she went off up stairs? A. She went up stairs; yes, Sir.

Q. Well, go along. A. She went up stairs in the bedroom and shut the door, and I went in the sitting room. Shall I go on and tell what happened?

Q. Go right on. A. Then he came to me and said he wanted to see me, Mr. Tilton did, and he took me in the second story back room, in his room, and related this story over and over again about the lounge and the chair, and added that not only with Mr. Beecher had she done so, but mentioned three gentlemen's names in connection with Mr. Beecher.

Q. What names did he mention? A. Mr. Bates, Dr. Carroll Dunham and Mr. Ovington.

Q. Did he state anything further in that conversation in regard to the paternity of his children? A. Yes, Sir; he said little Paul that was dead was Mr. Beecher's, and that he didn't claim any of his children but Florence, and that Mr. Beecher preached to forty or twenty of his mistresses every Sabbath, naming two ladies in the congregation.

Q. Who was this Mr. Bates of whom you speak? A. Mr. Bates?

Q. Yes, the first-named gentleman? A. Mr. John Bates, I think,

Q. John or James? A. Mr. James Bates.

Q. A gentleman who was in the habit of calling there? A. Yes, Sir; he used to call occasionally.

Q. The one whose photograph I handed to you a short time since? A. Yes, Sir, that is Mr. Bates.

Mr. Porter—"Ex. D. 112, for identification."

Q. When he took you into the room and held this conversation with you, what did you say or do? A. What did I say?

Q. Say or do; yes? A. I said that I didn't believe there was a word of truth in it, that it was all wicked lies.

Q. What did he then do? A. He said I would live to see the day when I was mistaken—find out I was mistaken.

Q. In what way did he speak—was there any reference to his magnanimity? A. Yes, Sir; he said that his mother had laid her hands on his head and blessed him when he had told his mother this, and she had said, "Theodore, what a magnanimous man you have been." He said that he knelt down and she put her hands on his head and blessed him, and said these words.

Q. Had you ever happened to hear the term "sexual intercourse" before the conversation that you speak of in the parlor? A. No, Sir; I never heard it before in my life.

Q. Did he use this term again in this private conversation with you? A. Yes; he repeated just what he had said in the parlor, just that way,

Q. And did he state anything on the subject of the import of that word? A. Yes, Sir,

Q. Did he explain to you? A. Yes, Sir.

Q. How long did he keep you there? A. It was dark—near dark when I left the room.

Q. When you came out of this room what occurred? A. Mrs. Tilton was coming out of the bedroom, and I had my hand over my eyes, and I said: "Oh, Mrs. Tilton, I feel as if I was all in a whirl; I feel as if I had been stunned."

Q. Well, what occurred after that? Did you tell her what he had been saying to you—did you repeat it? A. Yes, Sir.

Q. Where did you go after that, and when? A. After I had spoken to Mrs. Tilton?

Q. Yes. A. I think I went in the front sitting room; I could not say positively.

#### THE WIFE'S FLIGHT TO HER MOTHER.

Q. Where did you and Mrs. Tilton go some time after that, and when? A. Mrs. Tilton I think went in the sitting room too.

Q. Did you and Mrs. Tilton afterwards leave Mr. Tilton's house and go to Mrs. Morse's? A. Yes, Sir, we left; I don't remember whether we left that night, or the next morning.

Q. You think it was the next morning? A. I think it was the next morning; yes, Sir.

Q. Were the children taken? A. The next morning I think the children went with their mother around to Mrs. Morse's, and myself.

Q. Now, after Mrs. Tilton had gone to Mrs. Morse's did Mr. Tilton come there on any occasion? A. Yes, Sir.

Q. And if so, what transpired? When was it, and what transpired? About what time was it, first—how long after this occurrence of your coming home? A. He came that night.

Q. The night after you had left? A. Suppose we went to Mrs. Morse's this morning, and to-night he came around.

Q. What took place then? A. Mrs. Tilton went down to see him.

Q. Where were you? A. Where was I?

Q. Yes? A. I was on the stairs.

Q. He had a conversation with Mrs. Tilton? A. Yes, Sir, he was talking very earnestly.

Mr. Beach—Talking very what?

The Witness—Talking very earnestly.

Mr. Porter—It attracted your attention at the time? A. Yes, Sir.

Q. Did you go down the stairs? A. I went more than half way down the stairs; yes, Sir:

Q. Did you get to a point where you had a view of them? A. Yes, Sir, a full view.

Q. Where was Theodore Tilton? A. He was getting up; he seemed to have been on his knees; he was in the act of rising from his knees.

Q. Did Mrs. Tilton go out with him? A. Mrs. Tilton came out with him; yes, Sir.

Q. Was any remonstrance made against her going with him?

Mr. Beach—Wait a moment; I object to it.

Judge Nelson—Anything said?

Mr. Porter—I am asking as to a matter of fact.

Judge Nelson—"Was anything said," I think would be the question.

Mr. Porter—Was anything said?

Mr. Beach—Wait one moment—said by whom and in whose presence?

Mr. Porter—To her, in the presence of Mr. Tilton, was anything said?

The Witness—Was anything said to Mrs. Tilton?

Q. Yes. A. By whom, Sir?

Q. By anybody, in the presence of Mr. Tilton, about her going away? A. Yes, Sir.

Q. What was it? A. Her mother remonstrated with her and wanted to know—

Mr. Beach—Wait one moment.

Mr. Porter—Give her words.

The Witness—Give Mrs. Morse's words?

Q. Yes; that is, about her going away.

Mr. Beach—In Mr. Tilton's presence.

#### THE MOTHER-IN-LAW'S ANATHEMA.

The Witness—Yes, Sir, Mrs. Tilton and Mr. Tilton were coming out of the parlor. Mrs. Morse was coming down the stairs, and Mr. Tilton looked up and said, "Good evening, Grandma." Mrs. Morse said, "I will grandma you, you perfidious wretch, you infernal hypocrite, you most miserable scoundrel!" and he said, "Why, Grandma, you seem to be excited;" and she says, "Oh, you infernal scoundrel, I will punish you from Dan to Beersheba!"

Q. She left with Mr. Tilton? A. Yes, Sir; she left with him.

Mr. Fullerton—Don't interrupt her until she gets through.

The Witness—Yes, Sir; I am through.

Mr. Fullerton—[To Mr. Porter.] I did not interrupt you. Perhaps Mrs. Morse said something else.

#### THE WIFE'S RETURN.

Mr. Porter—After that what did you do, after you saw him? A. I went around and followed Mrs. Tilton.

Q. How is that? A. I went around to Mrs. Tilton; they were some distance ahead of me.

Q. Well, what did you do when you went around there? A. When I went around there he was sitting in the parlor with her, and telling her that she had better go to bed; she looked wearied and tired, and she had better retire. He seemed to be very anxious that she should retire.

Q. Well, she did retire, did she? A. She went up-stairs; yes, Sir.

Q. What further took place? A. He took me up-stairs in his room and related all this story over again about the lounge, and about the chair, and all about Mr. Beecher and those other gentlemen again; and after he left me I sat in the room for some little time.

Q. After that? A. After he left me—after he had told me these circumstances over again I—

Q. You went where? A. I went into the next room, where Mrs. Tilton was in bed with Alice and Carroll; I told Mrs. Tilton—

Mr. Beach—Wait one moment.

Q. Did you communicate to her the conversation. A. Yes, Sir.

Mr. Beach—I object to that.

Judge Neilson—I think she can state she communicated it to her.

#### THE WIFE SEEKS HER MOTHER AGAIN.

Q. What did Mrs. Tilton do? A. Mrs. Tilton never said a word; she rose, dressed herself, put on her waterproof cloak, went down the basement way (it was then one o'clock), and stole very softly out the basement way. She didn't put on her shoes until she got down to the basement. I wanted to go with her, and she would not let me. She went around to her mother's.

Q. Did you put on your shoes? A. No, Sir; she would not let me go with her; I wanted to go with her, and she would not let me. I locked the basement door after her.

Q. What did she tell you to do?

Mr. Beach—Objected to.

Q. What did you do? A. I went to bed with the children.

Q. Where she had been in the habit of sleeping? A. Yes, Sir; where she had been lying.

Q. The next morning what did you do? A. The next morning we went around to Mrs. Morse's; Carroll, Alice and myself went around to Mrs. Morse's.

Q. Do you remember afterwards, about the 18th of December, 1870, Mr. Tilton sending for the baby? A. The 18th of December?

Q. Or at any time? Do you recollect the occasion on which he sent for the baby? A. I don't remember the date, but I remember the occasion very well.

Q. You remember the occasion, but not the date? A. Yes, Sir.

Q. Who was it that he sent there? A. He sent Nellie, the nurse girl, with a note to Mrs. Tilton demanding the baby. Mrs. Tilton was not in then; she was at Mr. Hanley's; had gone there to take supper.

Q. Well, that was the time the child was sick? A. Yes, Sir; it had had the croup, or had the croup; I don't know which it was; however, the child was sick.

Q. What did Mrs. Tilton do when she came home and found that the child was gone.

Mr. Beach—We have not learned yet that the child was gone.

Mr. Porter—The child was taken away, wasn't it? A. First, Mr. Tilton sent a note demanding the children; Mrs. Morse read the note; Mrs. Tilton was not in when the note came; and then he sent around his sister, Miss Annie Tilton, demanding the children. I opened the door for the girl and for Miss Annie Tilton, when they came with the message from him. Mrs. Morse came down and said that he had just realized that he had children or had a child.

Mr. Porter—No matter about that.

Mr. Beach—Oh! yes.

Mr. Porter—Well, do you want it? She can tell it.

The Witness—And that they should not go.

Mr. Beach—Yes, I would like to know.

Q. Go on. A. Miss Annie Tilton went away without them; and then this Nellie came around, and Mrs. Morse wrapped the

baby up and gave it to Nellie—little Ralph—and Nellie took him home.

Q. Took Ralph? A. Yes, Sir; took Ralph.

Mr. Beach—The other children remained at Mrs. Morse's? A. I don't know whether they remained or whether they left. One of them was with Mrs. Tilton—went to Mr. Hanley's with her, or went out with her for the purpose of going there to supper.

Mr. Porter—If I understand it, one child was taken by Ellen Dennis, or by this girl, whoever it was? A. Little Ralph, the one that was sick with the croup.

Q. And Mrs. Tilton afterwards came home? A. And Mrs. Tilton afterwards came home.

Q. And she found Ralph was gone? A. Yes, Sir.

Q. Did she follow with the other children or with the other child? A. Yes, sir; she went around to Mr. Tilton's.

Q. What hour of the night was it? A. I think it was between 7 and 8 o'clock; it may have been a little later.

Q. Then Mrs. Tilton remained, did she? A. What, Sir?

Q. Mrs. Tilton remained there for some time? A. Mrs. Tilton went in the house; yes, Sir.

#### MRS. TILTON'S TRIP TO NEW-BRUNSWICK.

Q. Now, after this occurrence did Mrs. Tilton go to New-Brunswick, and when, as nearly as you remember? A. After this?

Q. Yes. A. Yes, Sir; I remember her going to New-Brunswick.

Q. How is that? A. I remember her going to New-Brunswick.

Q. Do you remember what time that was—what time in December? A. I think it was perhaps the early part of December, as near as I can recollect.

Q. This was after the children had been taken back? A. Yes, Sir.

Q. Where did Mrs. Tilton go—to New-Brunswick, did you say? A. She went to New-Brunswick to bring Flory home; I think that is what she went for.

Q. To bring Florence? Well, where were you when she returned? A. Where was I?

Q. Yes? A. I was in the second story front sitting-room.

Q. Was there anything in her appearance that night that directed your attention; if so, describe it? A. Yes, Sir; she looked very haggard and pale, and sank down on a chair as if she had not any strength at all.

Q. Well, was Mr. Tilton there? A. Mr. Tilton?

Q. Mr. Tilton? A. He was not in the sitting-room when she came in, but he came up afterwards.

Q. Well, what did he do? A. He kissed her, and asked her how she did.

Q. What? A. He kissed her and said he was glad to see her, asked her how she did.

Q. Yes, what then? A. She began crying.

Q. And what then? A. Then we went around, she and I, went around to Mrs. Morse's.

Q. Well, do you remember now how long she was gone on

this trip to New-Brunswick? A. I think perhaps three or four days, and may be a week.

Q. You went around after this to Mrs. Morse, did you not, that evening? A. I went round with Mrs. Tilton to Mrs. Morse's that same evening; yes, Sir.

Q. Did a conversation occur between her and Mrs. Morse? A. Yes, Sir.

Q. Did she afterwards return to Mr. Tilton's house? A. She returned that night; yes, Sir.

Q. What did Mrs. Tilton do—where did she go?

Mr. Fullerton—She returned that night to the house, she says.

Mr. Porter—What is that?

Mr. Fullerton—She returned to the house.

Q. Returned to the house, and where in the house did she go? A. She went to bed in the front bedroom on the second floor.

#### MISS TURNER REMONSTRATES WITH MR. TILTON.

Q. After she had gone to bed, did you see Mr. Tilton? A. Yes, Sir.

Q. Was there a conversation between you and him? A. Yes, Sir; I went and told him that I would like to see him a little while—went and asked him if I could see him a little while.

Q. You asked him if you could see him a little while? A. Yes, Sir, I asked him if I could see him a little while.

Q. Go on and give the narration? A. He came into his room in the second story back room, in his room, and I shut the door and I told him that Mrs. Tilton was very sick, and had sent around when she was around to Mrs. Morse's that she was going to die, and that her mother must not feel troubled that she was going to her home; she had only one home and that was in Heaven; she would see her little children, Paul and Mattie, and that her mother must not sorrow for her, and I asked him to please to be very kind to her, and not scold her any more and make her cry, and I then told him what the doctor in Marietta had said, that these swooning attacks that Mrs. Tilton had had he was afraid—he feared that she would die in one of them, and he didn't think she would possibly survive her confinement, and I felt very badly; I felt as if Mrs. Tilton was going to die, and I plead with him, with tears in my eyes, and I asked him if he would not be kind to her. He said there was nothing the matter with Elizabeth, that she was as well as ever she was, and that the way she was weeping was perfectly natural to her. I said I didn't think it was natural for people to cry all the time unless they had something to cry about. He said Elizabeth was as well as ever she was, and that she was not weeping because she felt so bad—because of her bodily health, but she was weeping for her sin with Mr. Beecher, that that was what made her cry.

Q. Did you mention anything in that conversation about an occurrence connected with a letter of his while you were in Marietta? A. A letter.

Q. A letter that she received from Mr. Tilton? A. Yes, Sir, I took one letter up.

Q. No, I am not asking how the fact was, but whether you mentioned it to him? A. Yes, Sir; I did.

Q. What did you tell him on that subject? A. I told him that I had taken a letter of his to Mrs. Tilton—up to Mrs. Tilton in Marietta, and she opened the letter and read it—seemed to have read it through, and she turned perfectly white and fell very heavily to the floor, with the letter grasped in her hand.

Q. Did you tell him what followed then? A. I told him that she fell to the floor and fainted, and I went and called Mrs. Putnam and she came up, and then she called Philip, the colored man, and he lifted Mrs. Tilton in bed.

Mr. Fullerton—the witness says she is quite ill, your Honor, and does not wish to remain any longer to-day. We are quite willing the Court should recognize it, and adjourn.

Mr. Caldwell, the usher of Plymouth Church—She says she will wait.

Mr. Porter—We will suspend her examination.

Mr. Shearman—We have a witness here.

Mr. Beach—She says she wishes to stay.

Mr. Porter—I would not wish her to if she be ill.

Mr. Caldwell—She has complained all day of a headache.

Mr. Porter—Well, I will go on. [To the witness.] You interrupt me any moment if you feel that you cannot continue to be examined.

Q. Do you remember what term you used in speaking to him about that letter? A. I said: "That awful letter" that he wrote.

Q. What did he say to that—about the letter? A. I don't remember what he said.

Q. What was the result of this appeal of yours in behalf of Mrs. Tilton? what did he do in the end? A. I left him in the room and went out.

Q. That is, left him in the room in which the conversation had occurred? A. Yes, Sir.

Q. His own study?

Mr. Beach—She did not say it was in the study.

By Mr. Porter—Wasn't it in the study? A. No, Sir, in his bed-room.

Q. Now, I will ask you, just at this juncture, whether he was in the habit of changing his study from room to room? A. Yes, Sir; on one occasion he changed his study twice during that week.

Q. Moving all the things? A. Having all the books and everything brought down; yes, Sir.

Q. Was the study at different times in different rooms about the house? A. Yes, Sir.

Q. About how often did he make these changes in the study? A. Well, I remember this one instance where he changed the study twice during the week, and then he used—several times he changed his study previous to this, and after.

Q. Do you remember the time when Mrs. Tilton was taken seriously ill in December? A. Yes, Sir; she was taken sick Christmas Eve, the 24th of December.

Q. On Christmas Eve? A. Yes, Sir; Saturday night. Christmas came on Saturday that year.

Q. Was the doctor brought there that night? A. Yes; I think I went after him—went with the girl after him—Dr. Skiles.

Q. And Mrs. Mitchell, the nurse? A. Mrs. Mitchell was there; yes, Sir.

#### MR. TILTON'S LOSS OF POSITION.

Q. Do you remember anything occurring on the day after Christmas, Monday? A. On Sunday?

Q. On Monday after Christmas. A. I recollect Mr. Johnson—Mr. Oliver Johnson, calling in the morning, and Mr. Moulton called in the afternoon.

Q. When Mr. Johnson called in the morning, did any one go out with him, and if so, who? A. Mr. Tilton went out with him.

Mr. Beach—Was that Monday, do you say? A. Monday; yes, Sir.

Mr. Porter—Was Mr. Tilton going in and out frequently? A. On Monday?

Q. Well, the next two or three days? A. I don't recollect his going in and out of Mrs. Tilton's room on Monday, but on Wednesday and Thursday I remember very distinctly his going in and out.

Q. Do you remember on his return on Wednesday of anything occurring of particular interest? A. Yes, Sir.

Q. What was that? A. He came in the room, and said that he was a ruined man, and said something about *The Union*. I think he said he had been discharged from *The Union*; but I could not swear to that.

Q. This was Wednesday? A. Yes Sir.

Q. What room was that; in what room was it that this occurred? A. He said it as he was coming in—going from the sitting room into Mrs. Tilton's sick room.

Q. Where was Mrs. Tilton? A. Mrs. Tilton was in bed.

Q. And where were you? A. I was in the sitting room with Mrs. Mitchell.

Q. This was said in the hearing of Mrs. Tilton? A. Mrs. Tilton was in bed; I suppose she heard it. It was in the hearing of Mrs. Mitchell.

Q. Do you remember observing afterward on that day, any papers in his hands? A. Yes, Sir; when he came in on Wednesday, he had newspapers in his hands, and also what seemed to be foolscap paper—writing paper.

Q. On that and the following days—on Wednesday, Thursday and Friday—did you notice anything marked in his appearance and action? A. In his appearance?

Q. Yes. A. He seemed to; he was very much excited in his manner, very much troubled about something.

Q. Was he engaged a good deal with his manuscripts and papers? A. He kept going in and out of the rooms with papers and pen and ink, and newspapers, and writing paper also.

Q. Did he talk a great deal, and if so, where? A. He was talking with Mrs. Tilton.

Q. Was she at that time feeble and weak? A. Oh, she was very sick indeed; yes, Sir.

Q. She had had severe hemorrhage, had she? A. Yes, Sir.

Q. Do you remember one occasion when you saw Mrs. Tilton sitting up in the bed? A. Yes, Sir.

Q. Do you remember whether that was Wednesday or Thurs-

day? A. Two days, both Wednesday and Thursday, I saw her sitting up in the bed.

Q. On one of these occasions will you state what occurred. I refer to something in connection with pen and writing material? A. State what occurred? On one occasion, when he came in with papers and writing material, with pen and ink, and took them and put them on the table, or desk, I don't know which it was—put them on some thing in Mrs. Tilton's room, and then he came to shut—was shutting the folding doors, and Mrs. Mitchell remonstrated, or rather said to him, "Mr. Tilton, Mrs. Tilton cannot stand any excitement," and then repeated what the doctor had said that Mrs. Tilton was in a very critical condition, was very ill indeed, and that she could not stand any excitement. He shut to the folding doors and they were locked.

Q. Can you remember anything that occurred on Friday? A. I remember Mr. Beecher calling Friday night.

Q. Where did you see him? A. I saw him—I saw Mr. Beecher in Mrs. Tilton's bedroom, where she was sick.

Q. You did not remain in that room? A. What, Sir?

Q. You did not remain in the room? A. I was not in the room when he called. I just happened to go into the sitting-room and saw him sitting there; the folding doors were open.

Q. About what time should you think it was when Mr. Beecher left? A. About what time, Sir?

Q. Or don't you remember? A. I was not there when he left; I was not in the room; I did not see him go out, so I could not say.

Q. Did you remain in the room on the occasion when you went in there and saw him there—saw Mr. Beecher there? A. No, Sir; I went in for something, I don't know what; I happened to walk through the room, and I walked out again.

Q. Did you know that Mr. Beecher was in the house before you saw him in the room? A. No, Sir; I did not.

Q. You had not admitted him? A. No, Sir.

Mr. Beach—[To the witness.] Do you want to wait any longer?

The Witness—Sir?

Mr. Beach—Do you prefer to leave? A. I can wait until four, I guess; I will try to.

Mr. Porter—I didn't hear.

Mr. Morris—She says she will remain until four o'clock. It is twelve minutes of it.

Mr. Porter—Can you remember what was the condition of Mrs. Tilton on these evenings you have spoken of, and on the night especially when Mr. Tilton was there? A. I remember that she was very sick—very sick indeed; she looked just as though she was dead, or dying; she was so sick that Mrs. Mitchell would not let me speak to her at all, said that I might go and look at her, but I could not speak to her, she must be kept so quiet.

Q. Did she allow you to kiss her? A. Yes, Sir, but not to talk to her at all.

Q. Had Mr. Beecher gone away before you went to bed? A. I suppose he had.

Mr. Beach—Oh! you are only supposing now, ma'am. She said before she didn't know.

The Witness—When I went to bed he was not in the room; no, Sir.

Mr. Porter—Mr. Tilton had not returned when you went to bed? A. I had not seen him in the house then.

Q. When you kissed her and went to bed yourself, where was Mrs. Mitchell? A. Mrs. Mitchell was in bed with Mrs. Tilton.

Q. And that was before Mr. Tilton's return—before he had come back?

Mr. Beach—She did not say she kissed him that night.

The Witness—I did not see him. He may have returned and been in the house, but I had not seen him.

Mr. Porter—Was it the same night you had before seen Mr. Beecher in the room? A. The night that I saw Mr. Beecher in the room, Sir, was Friday night; that same night, when I went to bid Mrs. Tilton good night, Mrs. Mitchell was in bed with Mrs. Tilton.

Mr. Porter—I think we will suspend, if your Honor please.

Mr. Beach—Are you through with the examination?

Mr. Porter—We are very nearly through the examination. We will close it in a few minutes.

Judge Neilson—Cannot you make it convenient to come to-morrow?

Mr. Evarts—I have assigned to-morrow for particular service in this cause, which will require my attention.

Judge Neilson—Will the jury get ready to retire?

Mr. Fullerton—I think that date ought to be given now, for it is an answer to a single question.

Mr. Beach—The juror wants to know what year it was when Mr. Tilton spoke to her about this occurrence on the lounge.

The Witness—What year, Sir?

Mr. Porter—He wants to know what year this was in which the accusation was made.

The Witness—1870.

Q. 1870? A. Yes, Sir.

Q. In December? A. In December.

Q. November, or December? A. Or November; I don't know which.

Mr. Evarts—After he returned from Marietta.

Judge Neilson—Gentlemen, you will return on Monday morning at 11 o'clock.

The Court then adjourned until Monday morning, March 23d, at 11 a. m.



## FORTY-NINTH DAY'S PROCEEDINGS.

CROSS-EXAMINATION OF BESSIE TURNER.  
 INCREASING INTEREST IN THE GREAT TRIAL—MR.  
 FULLERTON'S BEST EFFORTS PUT FORTH TO  
 CONFUSE THE WITNESS—LETTERS FROM MR.  
 TILTON TO MISS TURNER—THE STORY OF THE  
 PLAINTIFF'S ATTEMPTS UPON HER CHASTITY RE-  
 TOLD—AN AMUSING INCIDENT OF THE CROSS-  
 EXAMINATION.

MONDAY, March 23, 1875.

The increasing interest in the great trial was indicated to-day by the large attendance within and without the court-room. No audience of such numbers has found admission since the Judge gave directions that all must be seated, and thereafter no further admission given. Additional camp-stools seem to have been provided within the bar, and in various corners of the room were groups standing in defiance of the Judge's order to the contrary. The evidence of the increasing interest in the proceedings was unmistakable. The momentary attraction was unquestionably the second appearance of Miss Turner. The fact that her cross-examination was to begin early in the day had been widely published in the morning journals; and this had contributed to the desire to see and hear her. It was the general belief that she would break down under the cross-examination, and that an entertaining scene would follow.

A few minutes before the time for beginning the proceedings, Miss Turner came into the court-room with Mrs. Tilton and Mrs. Field, with whom she sat until called to take the witness chair and resume her testimony. She first made an important correction in her testimony of Friday, stating that the dates of Mr. Tilton's alleged attempts upon her virtue were 1868 and 1869. A feature of her examination was the reading of two letters from Mr. Tilton to Miss Turner while she was at school. The letters were full of friendly advice and home news. While Mr. Porter read them Miss Turner looked steadily at the floor, only raising her eyes when the reader made a mistake in a word, on which occasion she corrected him with a rapid sign with her lips. Miss Turner then explained her two letters denying that Mr. Tilton had made improper advances to her. One of them, she testified, was written at the dictation of Mr. Tilton; and the other was at the dictation of his wife. She had remonstrated against this last letter, saying that it would make her call

herself a liar, as she had already told five persons that Mr. Tilton had attempted to ruin her.

The cross-examination began a short time before recess, and the marked attention of the court and counsel, as well as the earnest expression of both the plaintiff and defendant, showed that all felt that one of the most important struggles of the trial was about to begin. The appearance of carelessness usually so marked in Mr. Fullerton's manner of beginning a cross-examination was entirely gone. He was thoroughly in earnest. The witness was, perhaps, the coolest person in the room. She was calm and smiling. In response to a number of questions as to the various places where she had passed parts of her life, she said "I don't recollect," with apparent indifference. She seemed especially unable to remember the length of time she had spent in places other than Mr. Tilton's house. An instance of this was in her answers regarding her stay at the Elizabeth Street Home. She had been there on three occasions, but could not say whether she had spent one month or three years in that institution at one time. "Well, do you know where you are now?" at length asked her questioner. "Oh, yes; I know I am in a court-room well enough," was the pointed reply. She seemed to resent Mr. Fullerton's rather significant questions as to whether she was ever taken to task in Mr. Dows's family for telling falsehoods, and her reply, "Never, Sir, never," was emphasized by a toss of the head, and a flush of apparent indignation.

At the request of Mr. Fullerton the witness again recounted the particulars of Mr. Tilton's first attempt upon her chastity. She gave her account of the affair in very rapid and clear tones, using almost the exact words in which she told it on Friday. During this recital Mr. Tilton sat with his eyes on his desk and busied himself with a bundle of papers. Mr. Beecher's eyes never left the witness. Mr. Fullerton read extracts from Miss Turner's testimony before the Church Committee, and pointed out among other things that in her evidence there she had testified very differently as to the times when Mr. Tilton was guilty of improprieties, and had stated the second time as the first. The witness was very deliberate in her replies here, and generally answered, "I was mistaken." She was asked by what means she had corrected these mistakes in her testimony before the Committee, and her reply that she "had it and could read it" excited

some surprise until she further explained the curious phrase by saying that she "had it in her mind, and could read it there." Miss Turner was also questioned very closely as to all she had previously said on the subjects mentioned in her evidence, and was asked what persons had spoken about her testimony to her.

There was rather a puzzling scene just before the adjournment between the witness and Mr. Fullerton. The latter handed her a yellow-covered pamphlet containing her testimony before the Church Committee, and requested her to follow him in that book while he read from another. After reading a few lines he asked her if she found that in the book before her. She replied that she did not. He pointed out the place, and resumed his reading; but on again asking her if she followed him she made a like answer. This went on for several minutes, the witness seeming very much puzzled as to what book Mr. Fullerton was reading from. Suddenly a light seemed to break on her, and she interrupted him with the exclamation, "Why, I believe you are reading my testimony of last Friday!" "I am reading precisely the same thing that you have in your hand" was the reply, which seemed to throw the witness into perplexity once more.

Miss Turner's cross-examination will be resumed Tuesday. The defendant's counsel appear delighted with the manner in which she has acquitted herself thus far, and declare that her evidence cannot be shaken. The general remark among the spectators at the adjournment yesterday was, "That is the cleverest witness that has testified since Moulton."

One of the most interesting scenes during the trial followed Mr. Fullerton's first attempt to impeach Miss Turner's recollections of dates. She had sworn on the direct examination that one of Mr. Tilton's alleged advances had been made during the Summer of 1868. She corrected it on Monday, and put the year as 1869. Mr. Fullerton by a series of questions endeavored to commit her to a statement that she was at Tarrytown and Keyport during the very time she had spoken of, and suddenly produced a letter from her to Mr. Tilton dated May 23, 1869, from Tarrytown, and asked her if she recognized the handwriting. She instantly flushed to the temples, and for some minutes was greatly confused. She looked at the letter again and again with constantly heightening color, and then answered, in a confused manner, in words which left a doubt on the more observing

among the audience whether she had blushed at the contradictory contents, or the penmanship of the letter. She insisted at first that she could not recognize the handwriting as hers—she certainly had improved very much since then—and it was not until permitted to read it that she admitted it to be her own. The interest of the scene was immediately heightened by the manner in which the counsel for the defense simultaneously came to the rescue of the imperiled witness, and insisted that one of Mr. Fullerton's questions was based upon a false assumption as to what she had previously sworn. Mr. Porter, Mr. Tracy, and Mr. Evarts were on their feet at the same moment, and their objections were uttered as by one voice. Mr. Tracy and Mr. Fullerton had a few violent words, and Mr. Shearman and Mr. Porter on the one side, and Mr. Beach and Mr. Morris on the other took part in the verbal warfare. Meantime Mr. Evarts stood in the center of the group, self-possessed and quiet, and at the right moment closed the confused debate with a few words, which at once silenced all the others, and put the point of the objection clearly before the Court. A consultation of the record followed, and it was found that Mr. Fullerton was wrong, and his line of attack on the witness had, accordingly, to be abandoned. Mr. Fullerton was evidently annoyed at this result, but made good his retreat by remarking that the correction of his error had put the witness in a worse fix than before. But in the meantime the witness had recovered the extraordinary self-possession she had displayed throughout the first day's examination, and when her interrogatories were resumed answered as promptly and precisely as before.

## THE PROCEEDINGS—VERBATIM.

### MEASURES FOR BETTER ORDER IN THE COURT.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Sergeant Rogers, you will so dispose of your men as to be able to keep the audience quiet. I don't wish to be obliged to speak to them myself, but you will please have the men observe the manner in which the crowd conduct themselves and repress any disorder.

### MISS TURNER RECALLED.

Miss Bessie Turner was then recalled and her direct examination resumed.

Mr. Shearman—We propose to put in evidence these photographs which have heretofore been only marked for identifica-

tion. They are part of those which were shown to Mr. Tilton on a previous day, and which he could not recollect ever seeing in the house, and which my friend, Judge Fullerton, suggested were bought on Fulton-st. the day before.

Mr. Morris—Oh, no, those are not the ones that Mr. Fullerton suggested were bought on Fulton-st.

Mr. Shearman—A part of the same.

Mr. Morris—You had some half a dozen from the same plate. The objection applied to them.

Mr. Shearman—Some of these are from the same plate; three of them are from the same plate.

Mr. Morris—Those are not the same that he made the objection to.

Mr. Beach—Let us understand what they are.

Judge Neilson—They were referred to by some witness, and they were marked for identification.

Mr. Beach—What photographs are they?

Mr. Shearman—These are photographs which were shown to Mr. Tilton, and which he said he had never seen in the house. They were part of a large parcel of photographs presented collectively. They were shown to Miss Turner, and she identified them as photographs that lay about the house; one of Dr. Leavitt, three of Mr. Morse, one of Mr. Beecher, one of Frederick Douglass, one of Mr. James H. Bates, and one of Horace Greeley.

Mr. Beach—I don't suppose they are admissible, Sir, but I don't care anything about them.

Judge Neilson—We will take them.

Mr. Beach—The photographs of Mr. Beecher were put in evidence.

Mr. Shearman—There are other photographs in evidence.

THE TRIBUNE stenographer—These are all marked "Exhibit 112," each one. Shall I mark them the same?

Mr. Shearman—That was an error. They were afterwards marked "111."

THE TRIBUNE stenographer—They are all "111," also; all "111" and all "112." I will mark them the same, "In evidence."

Mr. Shearman—Very well.

[The photographs were each marked, "In evidence."]

#### MISS TURNER MAKES A CORRECTION.

Mr. Porter—Miss Turner, I understand from my associate that you desire to make a correction of certain dates that you gave Friday? A. Yes, Sir; I said on Friday that Mr. Tilton's first visit was in 1867, and that Mr. Greeley's visit—

Q. First visit to your bed? A. To my room.

Q. To your room? A. Yes, Sir; 1867; and that Mr. Greeley's visit was in 1868, instead of—

Q. The visit on the occasion when Mr. Greeley was there? A. When Mr. Greeley was there; yes, Sir. Instead of that Mr. Tilton's first visit was in 1868 and Mr. Greeley's visit in 1868.

Mr. Fullerton—Just one moment. I don't get that. The first visit in 1868?

The Witness—The first in 1868, yes, Sir.

Mr. Porter—The occasion of his first visiting your room, that you referred to the other day, was in 1868? A. 1868; Yes, Sir.

Q. And the occasion when you were taken from the one room to the other was in 1869? A. Yes, Sir.

Q. The last was the occasion when Mr. Greeley was there? A. Yes, Sir.

Q. Where was Mr. Greeley sleeping? A. In the front bedroom the second story, off of the sitting-room.

Q. And where was your room? A. In the back part of the hall, on the second story.

Q. And Mr. Tilton's? A. Was right next to mine, Sir.

Q. With a door communicating between the two? A. Between Mr. Tilton's and mine.

Q. Yes? A. No, Sir; there was no folding doors.

Q. Both those rooms had outer doors? A. Had outer doors yes, Sir. You went into the rooms from the hall.

Q. Are you able to remember how long Mrs. Tilton was absent in New-Brunswick, in December, 1870? A. When she brought Florry home?

Q. Yes. You thought the other day that she was absent several days? A. Yes, Sir; but she was only absent one night—one day and one night.

#### MR. TILTON'S CHARGES KEPT SECRET BY MISS TURNER.

Q. When was it that you visited Mr. Beecher? A. December 14th, 1870.

Q. Had you before that communicated to him anything about these visits to your room?

Mr. Beach—Wait one moment. [Consulting.]

Mr. Porter—Had you before that communicated to Mr. Beecher the fact of Mr. Tilton visiting your bed—your bedroom? A. Had I before that time?

Q. Before the 14th of December? A. No, Sir; that was why I visited Mr. Beecher on the 14th of December.

Q. Did you on that occasion communicate to him anything about the charges which he had made against him? A. That he had made against her, you mean?

Q. That Mr. Tilton had made against Mr. Beecher and his wife? A. Did I communicate that to Mr. Beecher?

Q. To Mr. Beecher? A. No, Sir, not to any one.

Q. Had you, prior to your leaving for Marietta, communicated to any one other than Mrs. Tilton, the charges which Tilton made against her in respect to Mr. Beecher—to Steubenville, I should say? A. Before going?

Q. Had you ever communicated to any one other than Mrs. Tilton, before you went to Steubenville? A. Yes, Sir.

Q. The charges which had been made by Mrs. Tilton against Mr. Beecher?

Mr. Beach—Made by Mrs. Tilton?

Mr. Porter—Made by Mr. Tilton against Mr. Beecher? A. No, Sir; I never communicated that to any one.

Q. Had you communicated to other persons the fact that he had visited your bedroom? A. Yes, Sir.

Mr. Beach—What did you say?

The Witness—Yes, Sir.

## LETTERS FROM MR. TILTON TO MISS TURNER.

Q. Did you receive letters from time to time from Mr. Tilton? A. Yes, Sir; I received several letters from him.

Mr. Shearman—A little louder, Miss Turner.

The Witness—I received several letters from Mr. Tilton.

Mr. Everts—If your Honor please, the reporters have requested both the counsel and the witness to speak a little louder.

Mr. Porter—Is this a letter which you have received from him? [Handing witness a letter.] A. Yes, Sir.

Q. What is the date of it? A. This is December 20th, 1866.

Q. Is this a letter also which you received from him? [Handing witness a letter.] A. Yes, Sir; this is January 8th, 1867.

Q. Is that also a letter which you received from him? [Handing witness a letter.] A. Yes, Sir; this one I received from him while at Mrs. Putnam's, in Marietta.

Mr. Fullerton—How is that, Judge?

Mr. Porter—"This one I received from him while I was at Marietta on a visit to Mrs. Putnam."

Mr. Fullerton—That is the third one.

Mr. Porter—That is the third one.

Mr. Fullerton—The date, Judge?

Mr. Porter—October 14th, 1870.

The Witness—October 4th, Sir.

Mr. Porter.—October 4th?

The Witness—Yes, Sir, 1870.

Mr. Porter—Is this the envelope which inclosed a letter from him? [Handing witness an envelope.] A. Yes, Sir.

Q. The letter is mislaid? A. The letter mislaid.

Q. Do you know what has become of the letter? A. No, Sir; I think this is an envelope in which—

Mr. Beach—What does she say?

The Witness—In which was a letter that I received from Mr. Tilton at Steubenville, because here is, "Miss Bessie Turner, care of A. M. Reid, Female Seminary, Steubenville, Ohio," and I remember very well, because I had to pay three cents on it; it says: "Due three cents."

Q. That must be then in January, 1873? A. I haven't got the letter that was inside of that envelope. I haven't it here; I have it in my trunk, I think.

Mr. Fullerton—That is January, 1873.

Mr. Porter—This is merely the envelope of the letter.

Mr. Fullerton—January, 1873.

Mr. Porter—January 27th, 1873.

Mr. Beach—Where did she say the letter was?

Mr. Fullerton—In her trunk.

The Witness—I think I have it in my trunk; I am not sure; I don't know whether I saved it or destroyed it. I think I have it.

Mr. Porter—We will have you look for it.

The Witness—Yes, Sir.

Mr. Porter—Your Honor, they are looking at the letters.

Mr. Fullerton—We have no objection to that. [Referring to letter dated January 5th, 1867.]

MR. TILTON SOLICITOUS ABOUT HIS WARD'S HEALTH.

Mr. Porter [Reading]:

MR. VERNON, Iowa, Jan. 5th, 1867.

MY DEAR LIBBY: My wife informs me that you have been very ill, so as to need the physician; I regret, but am not surprised to hear this, for I have often noticed with pain that you are very careless and reckless of your health. By and by you will pay the penalty. You will lose your good looks, your round cheeks, and your sprightly ways. Bad health is a great enemy to young girls; it quickly turns them into old women. I should be sorry to see you gray-haired on my return to Brooklyn. Unhappiness, too, causes wrinkles, on young faces. Are you trying to live a happy life? Sometimes I know you try and succeed. At other times you do not try and of course fail. Now, you have already had a doctor for your body; let me be a doctor for your mind. "A cheerful heart," says the proverb, "doeth good like a medicine." I trust that Dr. Barker will conquer ill-health, but it is your own cheerful heart that must conquer your unhappiness. You know I love you very much, and count you as one of my children. But I wish to be the father of a happy family. Steal every day a little of the sunshine, and hide it away in your heart to make you happy.

Yours ever,

THEODORE TILTON.

[Marked "Exhibit D, 190;" also an envelope marked "D, 119."]

FATHERLY ADVICE FROM MR. TILTON TO HIS WARD.

Mr. Porter, [Reading]:

LINDELL HOTEL, St. Louis, Dec. 30, '66

MY DEAR LIBBY: I have a moment of leisure before breakfast; and I catch a pen to show you that I remember the girl who combs my hair.

I have to employ barbers for that purpose now!

I have been since early yesterday morning at the largest hotel in the United States. The inclosed is a picture of it. You never saw such a great house, except a government building. It is about as large (perhaps larger) than the County Court House in Brooklyn.

Last evening, after I returned from my lecture, the great halls were re-echoing to the sound of music. There was a ball. There is a ball here every Wednesday evening. I went in, to see the ladies and how they dressed. Some of them were in pure white, some in variegated colors. The scene reminded me of the ball at the Saratoga Hotel, which, I think, you saw.

I enjoy my travels much, except for the homesickness. It is a pleasant and useful thing to see the world. America is the noblest of countries. It is so large that one must travel many days and months to see it thoroughly. Take a map of the United States; look for the State of Missouri, and for the City of St. Louis. Then you will know exactly where I am. I have been much farther west—as far as Kansas. When in Kansas, I was nearly 2,000 miles from home; now I am 1,000. But I can't see any difference between these two distances—so far as either affects my loneliness and yearnings for home.

I trust that you are day by day striving to live a nobler life—to be more and more lovely in your disposition; more and more agreeable to your friends; more and more Christian in all your conduct.

I have always loved you very much, and wish to see you grow into a noble woman.

And now good morning, and God bless you.

Ever your friend,

THEODORE TILTON.

[Marked "Exhibit D, 121."]

MR. TILTON RESPECTS HIS WARD'S INTELLIGENCE.

Mr. Porter [reading]:

BROOKLYN, Oct. 4, 1872.

MY DEAR BESSIE: I have long been under the impression that you had so far forgotten me as to write to me no letter from Marietta, but Mrs. Tilton has asserted the contrary, and has produced a letter which you sent as long ago as May 24th;

so it is I who am in your debt, not you in mine. I owe you an apology for not answering your long-ago epistle, which, indeed, was so long ago that I had forgotten that you had ever sent it at all.

Mrs. Tilton is to start for Marietta next Monday, to make a visit of a few weeks to her dearly-beloved friend, Mrs. Putnam. I trust that you will not go to Nashville until after you have seen the face once more of your Brooklyn benefactress. And I feel compelled to say that I am sorry you are going to Nashville at all. The letter which you lately forwarded to Mrs. Tilton as coming from your Nashville friend, seemed to me to be considerably beneath the dignity of a true lady to write. I am not easy in mind at the prospect of your going among such vulgar people. This I say in strict confidence, and it is not to be repeated to any other person than Mrs. Putnam—to whom I am willing you should show this letter.

Your residence in Marietta, under Mrs. Putnam's roof, has been a matter of many pleasant thoughts with me ever since you went there. I regret that you are to leave the good influences by which I know you are there surrounded. As to the circumstances which impel you to this course, I know nothing. But I trust you will think twice before you determine to abandon, of your own accord, so kind a family. Of course, if your future movements are dictated by their desire that you should leave Marietta, I have nothing to say on the subject.

While I am writing these lines, grandma is here in the second story front room, watching the baby at his bath, which his mother is giving him to his great satisfaction; Alice and Oad have just gone up-stairs to bed, for it is about eight o'clock at night, and Florence is in the parlor entertaining Master Joe Low.

The house looks about the same as ever.

You have been absent so long that we cease to miss you, but not to remember you.

I hope, my dear Beatie, that your life may belong, prosperous and happy. You have many qualities of character which I greatly respect. Your intellectual improvement, as evinced in your letters to Mrs. Tilton, is very gratifying both to her and to me. God bless and keep you evermore.

Give my warmest regards to Mr. and Mrs. Putnam.

I send you my fatherly love.

Yours ever,

THEODORE TILTON.

[Letter marked "D, 122."]

#### THE SUGGESTION OF GOING WEST TO SCHOOL.

Mr. Porter—Miss Turner, who suggested to you your going West to school? A. Who suggested?

Q. In 1871? A. Mr. and Mrs. Tilton.

Q. What did he say about it? A. He said one Sabbath, while I was there, when I was there—that—

Q. A little louder, if you please. A. That he would like to see me up in his study, and I went up, and he asked me how I would like to go to boarding school; and I said, why, that was—I thought that was too good to be true; I thought he was joking about it; I didn't think he was in earnest; and he said that he and Elizabeth were going to do something nice for me, they were going to send me to boarding school, and how would I like it? I was delighted with the idea; and then he told all about Dr. Reid, the President of the Seminary, and he said that Dr. Reid he thought would be very kind and very much interested in me, because he had been there—he had lectured in Steubenville and was entertained at the Seminary, and they were very hospitable and very kind and thought a good deal of

him, and that as I would be his ward, they would be very kind to me.

Q. Did Mrs. Tilton afterwards speak to you about it also? A. Mrs. Tilton spoke to me about it, too; yes, Sir.

Q. Was anything said to you by anybody about your going West in connection with these stories about Mr. Beecher—was that assigned by anybody as the reason of your going West, to your knowledge? A. No, Sir; no, Sir.

#### THE FIRST VISIT TO MISS TURNER'S ROOM.

Q. I understand you desired to correct an impression made by an answer you gave the other day, as to the occasion of Mr. Tilton's visiting your room, where it is stated that he lay down—that is the first occasion of his visit to your room. Will you state precisely what you meant? A. That I stated that he laid down?

Q. That he laid down on the bed, or— A. He leaned.

Mr. Shearman—It is so reported.

Mr. Porter—It seems to be so reported. Will you state exactly how the fact was? A. I thought that I said he leaned over; came around the other side of the bed, leaned over and kissed me "Good night;" and then, he didn't lie right down on the bed, he was half reclining—in a reclining position. I didn't know that I had said he laid down.

Q. You were lying on the other side of the bed when he came in? A. Yes, Sir; nearest the door.

Q. And he went around the bed to the other side? A. Yes, Sir.

#### THE FIRST LETTER OF DENIAL DICTATED BY MR. TILTON.

Q. [Letter handed to witness.] Is that letter in your hand-writing, Miss Turner? A. Yes, Sir.

Q. Will you state the circumstances under which it was—

Mr. Morris—One moment; let us see the letter?

Mr. Porter—It is the letter of Jan. 10, 1871.

Mr. Fullerton—Marked what?

Mr. Shearman—Marked D, 11.

Mr. Porter—I think it will contribute to make the testimony intelligible to read it, even although it is a repetition. [Reading.] "JAN. 10, 1871—

Mr. Fullerton—Well, I don't know about that, while you are on direct examination; I think not.

Mr. Porter—I wish the Jury to understand what it is she is referring to.

Mr. Fullerton—The Jury can be made to understand what it is hereafter.

Judge Neilson—Well, it is short; I think he may read it.

Mr. Fullerton—I think the witness should not hear the contents of that letter before the cross-examination, unless it is put into her hands to read.

Mr. Porter—Well, it is in evidence.

Mr. Fullerton—I know it is in evidence.

Judge Neilson—I think he can read it.

Mr. Fullerton—Are they at liberty to read that letter in presence of the witness, it having been already read in evidence?

Judge Neilson—I don't see any harm.

Mr. Fullerton—If it may be read it must be read for her information and instruction.

Mr. Porter—It is read solely for the information of the jury. They of course have heard the letter, but there have been so many letters that it would be difficult to keep them all in mind.

Judge Neilson—You see what the purpose of counsel is.

Mr. Fullerton—Yes; and can't that purpose be answered just as well after she has testified in regard to it, then to read it?

Mr. Porter—I will suspend the reading a few minutes, and the gentleman will see then that it is entirely proper.

Judge Neilson—If you suspend it until your examination is closed that would answer.

Mr. Porter—No, Sir; I shall want to read it in connection with her testimony.

Judge Neilson—Well, proceed.

Mr. Porter—Miss Turner, under what circumstances was this letter of January 10, 1871, written by you? A. Under what circumstances?

Q. The circumstances, yes. A. Mr. Tilton dictated it to me, and I wrote it off.

Mr. Fullerton—Who did? A. Mr. Tilton.

Mr. Porter—Was Mrs. Tilton then in the house? A. That was January 10, I think.

Q. January 10—I don't mean in the room—was she at home? A. I think she was, Sir; yes, Sir; she was in the house, because I saw her afterwards.

Q. Will you state now, the circumstances under which Mr. Tilton dictated this letter to you, where was it and what was the— A. It was in his bedroom where there was a little gas stove, in the back room, the second story bedroom,

Q. Yes; where was he? A. He was sitting down on the sofa bedstead in his room.

Q. Was he well or ill? A. Was he ill?

Q. Was he well at the time? A. Oh! yes, Sir; perfectly well.

Q. Now, will you state how the conversation—what conversation took place between him and you? A. Why, we were talking about Mrs. Morse; he said something about—

Q. A little louder. A. He said—we were talking about Mrs. Morse—and he asked me if Mrs. Morse had ever—had bribed me to go round and tell this story about Mr. Beecher.

Q. About Mr. Beecher? A. Yes, Sir; and I said that Mrs. Morse had said to me, "Bessie, if you will go and tell Mr. Beecher, I will give you something nice," but I did not go and tell Mr. Beecher that; I could not make up my mind to go round and tell Mr. Beecher that, and I did not tell him, and that was the way the conversation began about—

Q. Yes. Now go on with the conversation. What did he say about these stories—what did he say that led to this dictating the letter? Who proposed that you should write a letter to Mrs. Tilton?

Mr. Fullerton—One moment, I object to that.

Mr. Porter—That is introductory.

Mr. Beach—It is introductory, yes, and suggestive.

Mr. Porter—Undoubtedly, quite suggestive.

Mr. Fullerton—Now, he has asked her to state that interview; she is quite at liberty to state it as she recollects.

The Witness—Well, I was stating it, to the best of my recollection.

Q. Well, go on? A. He—then after he got through about Mrs. Morse, and I had told him that Mrs. Morse had said she would give me something nice if I would go around and tell Mr. Beecher this story, he asked me if I would copy that off in my handwriting and put my name to it, and I did it.

Q. Who dictated the words as you wrote? A. Mr. Theodore Tilton.

Q. And after it was written, you signed it? A. I put my name to it, yes, Sir; just as it is there.

Q. And to whom did you hand it? A. Mr. Theodore Tilton.

Q. Was it ever in the possession of Mrs. Tilton so far as you are aware? A. Not to my knowledge.

Mr. Porter—Now [Reading]:

January 10th, 1871.

My Dear Mrs. Tilton: I want to tell you something. Your mother, Mrs. Morse, has repeatedly attempted to hire me, by offering me dresses and presents, to go to certain persons and tell them stories injurious to the character of your husband. I have been persuaded that the kind attentions shown me by Mr. Tilton for years were dishonorable demonstrations. I never at the time thought that Mr. Tilton's carcases were for such a purpose. I do not want to be made use of by Mrs. Morse or any one else to bring trouble on my two best friends, you and your husband.

Bye by,  
BESSIE TURNER.

#### THE SECOND LETTER OF DENIAL DICTATED BY MRS. TILTON.

Q. [Handing letter to witness.] Is that letter in your handwriting? A. Yes, Sir.

Mr. Porter—D. 10; the other was D. 11. [Reading]:

MY DEAR MRS. TILTON:

The story that Mr. Tilton once lifted me from my bed and carried me screaming to his room and attempted to violate my person is a wicked lie. Yours truly,  
BESSIE.

Q. At whose request was that letter or statement written? A. At Mrs. Tilton's, Sir.

Q. Will you state from what you wrote it? A. Yes, Sir; the circumstances in connection with it?

Q. Yes; state the circumstances? A. I was around in Remsen-st.—with the ladies in Remsen-st.—and I don't know whether it was Florry Tilton or one of the girls that brought the message to me, and I asked the ladies if I might go, that Mrs. Tilton said in the note she wanted to see me particularly, and I put on my shawl and went around there, and Mrs. Tilton was in this same room where Mr. Tilton dictated that first one that you read to me that I signed, and she had a pen and ink there and a sheet of letter paper, and she said: "Bessie"—

Mr. Beach—Wait a moment. We object to what Mrs. Tilton said.

Mr. Porter—Who wrote this first? A. The second one?

Q. Or wrote first the words contained there? Is this a copy of another paper? A. I wrote it from Mrs. Tilton's handwriting.

Q. Did you object to doing it at first? A. Yes, Sir.

Q. On what ground?

Mr. Beach—That is objected to.

Judge Neilson—I think we will take it.

Mr. Beach—Does your Honor admit it?

Judge Neilson—Yes; it is part of the act of writing the letter.

The Witness—I objected on the ground that that would be calling myself a liar; that I had told—

Judge Neilson—I think the answer is sufficient.

Mr. Porter—That you had not used what? Finish what you were going to say. A. Because I had told three or four persons this story, but didn't use the words "screaming from my bed;" but, however, I said that would be calling myself a liar, and I remonstrated with Mrs. Tilton about signing it.

Judge Neilson—Well, that answers the question.

Mr. Porter—What did you say finally, by way of consent? A. I signed it by way of consent.

Q. Did you ever tell any one that he carried you screaming from the one room to the other?

Mr. Fullerton—One moment.

Judge Neilson—She has already said she told others, except that. I think that answers the question.

Mr. Porter—I won't press it if your Honor thinks it is sufficiently answered.

Judge Neilson—I think it is.

#### MISS TURNER'S CHARGE AGAINST MR. TILTON.

Mr. Porter—Did you ever tell anybody that he had attempted to violate your person?

Mr. Fullerton—One moment; I object to that.

Mr. Porter—On what ground?

Mr. Fullerton—On the ground that she is not here to tell what she told other people.

Judge Neilson—I think she answered it in connection with other people. We have it very clear that the latter would not be true that it would be a contradiction of what she said before. I think she answered it.

Mr. Porter—Perhaps I didn't understand your Honor.

Judge Neilson—It seems to me the fact is in sufficiently already.

Mr. Evans—That may be a matter of opinion, but that does not touch the question of the introduction of the question, whether it is already in. This young lady has written this note, in which she says that a charge, or a statement, that any ascription to her of the story that Mr. Tilton had carried her screaming from her bed to his and attempted to violate her person is a wicked lie. Now she has narrated what did take place, as matter of fact, between Mr. Tilton and herself in her bedroom.

Mr. Fullerton—I withdraw the objection, Sir.

Q. Did you ever tell any one that Mr. Tilton had attempted to violate your person? A. Yes, Sir.

Q. How? A. I did; yes, Sir.

Q. Did you tell that to different people? A. I told it to five persons.

Q. Was Mr. Tilton aware of the fact that you had told it at the time that he got you to write that letter at his dictation? A. I think he must have been aware of the fact; yes, Sir, I can say he was aware of the fact, because—

Judge Neilson—That is sufficient; you say he was aware of it; that answers it.

Mr. Porter—When you told these people about it, did you tell it in the same way you related it here the other day?

Mr. Beach—Well, that is—

The Witness—No, Sir, I did not.

Mr. Morris—That is a matter of comparison.

Mr. Porter—Not as fully? A. No, Sir.

Mr. Porter—I believe that is all, your Honor. I am reminded by my associate that there is another question I should ask the witness. How was it that Mrs. Morse knew about her husband accusing her with Mr. Beecher? A. Accusing Mrs. Tilton?

Q. Mr. Tilton accusing her in connection with Mr. Beecher?

Mr. Beach—Wait one moment. [To Mr. Porter.] Will you repeat the question?

Mr. Porter—How was it that Mrs. Morse was aware—

[Mr. Porter and Mr. Evans here had a whispered consultation together.]

Mr. Porter—I supposed I had asked the question, and my associate argues that I did. That is all, Miss Turner.

#### CROSS-EXAMINATION OF MISS TURNER.

Mr. Fullerton—You did not state with much particularity, the time when you went to live with Mrs. Tilton, but I wish to ask you the question, if you can remember the date? A. Yes, Sir, I remember very distinctly. In the Summer of 1864. That is what I stated.

Q. Do you recollect the month? A. It was in July or August; I am not sure which.

Q. Of 1864? A. 1864; yes, Sir.

Q. And when did you leave Mr. Tilton's with the intent of staying away? A. Well, I was there off and on for ten years or more, but I left there several times and went away, and then came back again. I didn't stay on there very steadily the whole ten years.

Q. When did you leave the first time with the intent of staying away? A. The first time was, I think, as near as I can recollect, when I left there and went to Springfield, Mass., and stayed some little time.

Q. How long? A. I don't remember just how long, Sir. I went in the Winter, and I think returned the following Spring, as near as I can remember.

Q. With whom did you remain there? A. In Springfield? Shall I mention names?

Q. Well, I ask you, you know, to mention them? A. With Mrs. P. T. Vining; I think that was her name.

Q. When you left there did you return to Mrs. Tilton's? A. I think I did, Sir.

Q. You went to Mrs. Vining's to live, did you not? A. I went there to learn how to make wax flowers, or how to preserve natural flowers in wax.

Q. What year did you go there? A. I could not state that.

Q. Did you remain as long as you expected, to when you went? A. Well, I didn't expect anything about it, how long I would stay when I went, for I didn't know. I simply went there to be taught how to preserve flowers.

Q. Had you any difficulty while you were there? A. No, Sir.

Q. Of no kind? A. Of no kind.

Q. No trouble in the family? A. There was not any family except Mrs. Vining and myself.

Q. Well, that is a family. No trouble there at all? A. No, Sir, no trouble.

Q. Mrs. Vining made no complaint against you of no kind? A. No, Sir, not any; on the contrary she seemed to like me very much, and was very kind and pleasant, and we got along nicely.

Q. You returned to Mr. Tilton's. How long did you remain there before you went away again? A. Yes, Sir; I returned to Mr. Tilton's again.

Q. Where did you go when you left Mr. Vining's? A. Mrs. Vining's.

Q. Mrs. Vining's? A. I think that I went back—I don't know whether I returned to Mrs. Tilton's, or went to the Elizabeth-st. Home.

Q. Can you not recollect now where you went when you left Mrs. Vining's? A. I have just said that I am not sure whether I went back to the Home, or returned to Mr. Tilton's.

Q. If you went to the Elizabeth-st. Home when you left Mrs. Vining's, how long did you remain there? A. I remained there until I went somewhere else.

Q. Very likely; but will you tell me how long you remained there? A. Well, I cannot, Sir.

Q. About how long? A. I cannot—

Q. Well, give us the best recollection that you have upon the subject? A. I don't think I have any definite recollection.

Q. Did you remain there several months? A. I could not tell you, Sir.

Q. Several weeks? A. I have not any recollection, I said, Sir, how long I remained.

Q. Do you recollect the year? A. No, Sir.

Q. Was it not in 1886? A. I could not tell you, Sir.

Q. Can you tell us whether it was one week or twelve months that you remained at that Home? A. When I returned from Mrs. Vining's?

Q. Remained at that Home? A. I could not tell you, Sir.

Q. Well, Miss Turner, you will excuse me for pressing the question? A. Yes, Sir; certainly.

Q. Do you remember the year that you left the Home in Elizabeth-st? A. Do I remember?

Q. You hear my question very plainly. A. No, Sir; I do not remember.

Q. You can give no idea of the length of time that you were there? A. No, Sir.

Q. Whether it was a month or a year? A. No, Sir.

Q. Well, was it two years that you were there? A. I have not any recollection, Sir, how long it was.

Q. Well, you will excuse me, perhaps, if I add another year to the time. You will then recollect, perhaps. A. No, Sir; I don't think I could.

Q. Was it as much as three years? A. I could not tell; I have not any recollection.

Q. You don't know but that you are there yet. A. I know I am in the court room now. [Laughter.]

Q. When did you leave there? A. I could not tell you.

Q. Now, can you tell me when you left the Elizabeth-st. Home, where you went? A. I have stated that I didn't know whether I went to the Elizabeth-st. Home or to Mrs. Tilton's.

Q. That is quite foreign to my question. I ask you when you left the Elizabeth-st. Home, where you went? A. Well, I don't know as I was there to live, because I said I didn't know whether I went to the Elizabeth-st. Home or went to Mrs. Tilton's.

Q. Were you ever at the Elizabeth-st Home? A. Yes, Sir; I was there several times—two or three different times.

Q. Well, we will speak of the first time that you went there after having gone to Mr. Tilton's to live. Now, where did you go when you left the Elizabeth-st. Home, the first time after you went there, leaving Mrs. Tilton's or leaving Mrs. Vining's? A. I don't remember, Sir.

Q. You don't remember where you went? A. No, Sir.

Q. After leaving? A. No, Sir.

Q. Did you go to the Elizabeth-st. Home more than once? A. Yes, Sir; two or three times.

Mr. Fullerton—You didn't hear my question.

The Witness—Didn't you ask me whether I went to the Elizabeth-st Home more than once?

Mr. Fullerton—That was part of the question, as far as I had got when you answered it.

The Witness—Excuse me for interrupting you.

Q. Did you go to the Elizabeth-st. Home more than once during the time that you were living with Mrs. Tilton, or within the ten years that you lived there? A. Yes, Sir; I think I was there two or three times.

Q. Did you go to the Elizabeth-st. Home at any time before you went to live with Mrs. Tilton. A. No, Sir.

Q. Then, your visits to that Home were all within the ten years that you speak of? A. Yes, Sir.

Q. Can you tell me how long you were there the second time you went? A. How long I was at the Home?

Q. Yes? A. No, Sir; I don't think I can. There was one time when I was there that I was there some little time, but whether it was the first time, the second time, or the third time, I could not say.

Q. How long was it that you were there—some little time? A. Well, probably two or three months, as near as I can recollect.

Q. Two or three months? A. As near as I can recollect; I won't swear to it.

Q. Well, after that visit at the Home, the Home that you now speak of, where did you go when you left it? A. I think I went to live with a Mr. William Dows, in Twenty-second-st.

Q. How long did you live with Mr. William Dows? A. I think I went with them just before they went in the country to their Summer residence.

Q. Where was that? A. That was somewhere near Irvington; I have forgotten the name of the place.

Q. Tarrytown, was it not? A. Yes, Tarrytown.



Q. And it was Mr. David Dows, instead of William Dows, was it not? A. Did I say William?

Q. Yes. A. Yes, Sir; it was David Dows.

Q. You remained at the Home until you went to Mr. Dows's to live? A. I was at the Home when I went to Mr. Dows's to live—yes.

Q. And you had been there several months, as I understand you? A. At the Home?

Q. Yes? A. As near as I can recollect; I said that I could not remember exactly.

Q. Two or three months, or several. Do you recollect the year when you went to Mr. Dows's? A. No, Sir, I do not.

Q. How long did you remain with Mr. Dows? A. I went there, I think, late or early in the Spring, I don't know which it was—it was in the Spring, I think, and left there late in the Summer, or early in the Fall, I think.

Q. And when you left there where did you go? A. From Mr. Dows's?

Q. Yes. A. I think I returned to Mrs. Tilton's.

Q. What time did you return to Mrs. Tilton's after leaving Mr. Dows's? A. I think as soon as I left there, Sir; I can't tell you what time it was, except that I left there, as I have stated, in the latter part of the Summer, or early in the Fall, and then I went right over to Mrs. Tilton's.

Q. You went to Mrs. Tilton's after leaving Mr. Dows's? A. I think so; I won't swear positively.

Q. Was Mrs. Tilton at home when you left Mr. Dows's house and went to Mrs. Tilton's? A. Mrs. Tilton was home when I went to see her.

Q. She was at home? A. She was at home. She was at home, and her mother was with her.

Q. Had she been away during the preceding Summer? A. The time of my being at Mr. Dows's?

Q. Yes. A. I don't remember whether she had been away in the Summer or not.

Q. Do you know whether she had been away during that Summer? A. I don't remember, Sir.

Q. Did you visit Mrs. Tilton during the period that you were at the Home in Elizabeth-st., during your stay there, or during your stay at Mr. Dows's, until you returned in the Autumn, as you have stated? A. It seems to me that I came from Tarrytown one day to see Mrs. Tilton, to visit her, but I am not sure—I have a faint recollection of it, but I am not sure.

Q. Then you cannot state, as I understand you, with any degree of certainty—whether during the period you were at the Home, or during the period that you were at Mr. Dows's, you visited Mr. Tilton's family in Brooklyn? A. I have stated, Sir, that I have a slight recollection of leaving Mrs. Dows's in Tarrytown, and coming to visit Mrs. Tilton.

Q. I am aware that you so state that you have a slight recollection? A. Yes, Sir.

Q. Now, I ask you if you can state with any certainty that you did make such a visit to Mrs. Tilton, or is it a mere slight recollection? A. I said it was just a slight recollection—that I could not say positively.

Q. Then from the time that you went to the Home, whenever that was, up to the time when you left Mr. Dows's resi-

dence in Tarrytown and returned to Mr. Tilton's, you didn't see Mrs. Tilton or Mr. Tilton, did you, except that possibly you may have visited them during the Summer, as you have mentioned? A. Do you mean to say that, after I went to Mr. Dows's, I never saw Mr. or Mrs. Tilton—whether I can't state that positively?

Q. No, listen to my question. A. Yes, Sir, I will.

Q. From the time that you went to the Home, whenever that was, up to the time that you returned to Mrs. Tilton's house in the Autumn after leaving Mr. Dows's, did you see Mr. or Mrs. Tilton? A. I have a faint recollection of seeing Mrs. Tilton; I cannot say positively.

Q. Did you see Mr. Tilton? A. I don't remember.

Q. Can you not recall the season of the year when you went to the Home just preceding the time when you went to Mr. Dows's? A. No, Sir; I cannot recall it.

Q. Don't you recollect that you were at the Home all the Winter? A. I don't recollect.

Q. Don't you recollect that on New-Year's Day you were then in the home in Elizabeth-st.? A. No, Sir.

Q. Is there nothing by which you can fix the time when you went to the Home? A. No, Sir; I don't think there is.

Q. What time in the Spring was it that you went to Mr. Dows's, can you tell me that? A. I think it was early—I don't know whether it was early or late in the Spring; it was just before they left for their residence in Tarrytown; I cannot state positively.

Q. You were with them some time in 23d-st, I understand you? A. I was with them, I think, about a week, or it may have been longer.

Q. Was it not in 23d-st? A. Let me see—is Booth's Theater in 23d-st?

Q. That is in 23d-st? A. It was in 23d-st; they lived in 23d-st.

Q. On the north side? A. I don't know whether it was the north side or the south side.

#### THE DATES OF MR. TILTON'S OVERTURES TO MISS TURNER.

Q. I think you corrected your testimony, Miss Turner, as to the year in which Mr. Tilton visited your room, your bed; won't you please repeat what you stated this morning? A. Yes, Sir; I stated this morning that it was in 1868 and in 1869.

Q. Now, please state what season of the year it was in 1868 when he visited your room? A. I think it was in the Spring, or Summer; it was warm—I think it was warm weather.

Q. And what season of the year was it in 1869 when he visited your room? A. That was in the Summer, Sir.

Q. In the Summer? A. Yes.

Q. You stated on Friday, I think, that his first visit to your room was in 1867? A. 1867 and 1868.

Q. And that was an error? A. Yes, Sir; that was a mistake.

Q. You say now it was in 1868 and 1869, instead of 1867 and 1868? A. 1868 and 1869 instead of 1867 and 1868, as I said on Friday.

Q. You have reflected upon that since Friday, I suppose?

A. Yes, Sir.

Q. And you have fixed it in your mind so that you are quite satisfied that those are the two years, are you not? A. Yes, Sir.

Q. Where was Mrs. Tilton in 1869 when Mr. Tilton visited your room? A. Mrs. Tilton had gone to Monticello, I think, Sir, with Ralph and the wet nurse, Kate Smith.

Q. Now, Miss Turner, permit me to ask you again—

The Witness—I say I *think* she went to Monticello, but I am not sure, Sir.

Q. I am satisfied with your answer. Permit me now to call your attention to those years again. Are you not mistaken in saying it was in 1868 and 1869 that he visited your room? A. No, Sir; 1868 and 1869.

Q. Are you quite sure that you were not correct on Friday in saying 1867 and 1868? A. I am quite sure I was not correct on Friday, and that is the reason that I made the correction to-day.

Q. And you are quite sure that Mrs. Tilton was at Monticello when Mr. Tilton visited your room? A. Mrs. Tilton was away, and I think she went to Monticello. I bade her good by at the carriage door.

Q. In whose handwriting is the letter which I now show you? [Handing witness a letter.] A. [Looking at the letter] Well—why—I don't—if you will permit me to read it over perhaps I can tell you.

Q. Can't you tell in whose handwriting it is without reading it over? A. I don't think it looks like mine.

Q. Is it not a letter written by you to Mrs. Tilton? A. I wrote a number of letters to Mrs. Tilton while I was at Tarrytown.

Q. Ah! but is not that a letter which you wrote to Mrs. Tilton? A. I will tell you in a moment, Sir. The writing looks so bad, I must have improved very much since if it is mine; I don't seem to recognize it—I don't recognize that as my handwriting.

Q. You don't recognize it as your handwriting? A. No, Sir.

Q. You did write to Mrs. Tilton from Tarrytown, did you not? A. Yes, Sir; I wrote to her several times.

Q. I put the question to you directly: Is not the letter in your hands, to the best of your belief, in your own handwriting? A. No, Sir; it is not, to the best of my belief, because I don't recognize it as my handwriting.

Q. Please read it all over, from beginning to end? A. Out loud?

Q. No; not out loud; for your own satisfaction? [Witness reads the letter.] A. Yes, Sir; that is mine.

Q. Oh! it is yours? A. Yes, Sir; but the writing—I have improved so much since that I did not recognize the writing at first—at least, I must have improved.

At this point a juror retired for a few moments, and on his return the TARRYTOWN stenographer, at the request of Mr. Fullerton, read the last question and answer.

The Witness—I meant to have said that I did not recognize the writing at first.

Q. You meant to have said that you did not recognize the writing at first? A. Well, I can't really say that I recognize

the writing at last, either, except from its speaking of the beds, and the flowers, and all those little things, which brought to my mind that I had written to Mrs. Tilton about them, so, of course, it must be my handwriting.

Mr. Fullerton—I offer it in evidence.

[Letter marked "Ex. 116."]

Mr. Fullerton—[Reading:]

TARRYTOWN, May 24th, 1869.

MY DEAREST FRIEND: We arrived here on Saturday; and everything is so beautiful and pleasant that I hardly know what to tell you first. Their residence here is just as pleasant as can be—beautiful walks, all kinds of flowers, and some of the most beautiful birds I ever saw. It has been a charming day here; and myself, with the rest of the family, attended the Episcopal Church, it is a beautiful walk from the house, and so beautifully shaded with trees that you hardly need a sunshade, but I cannot say that I enjoyed the preaching as much as Mr. Beecher's.

I have the prettiest little room imaginable. It overlooks some beautiful beds of flowers, and as I sit here writing you, the air is so fragrant and delightful, that I wish with all my heart you and the children could enjoy it with me. I have thought of you every moment since I left you, and thought how little I appreciated all the long years you bore so patiently with my sullen nature; and now that I am thrown among strangers and dependant upon myself is the time that I have felt the need of such a friend as you were to me, but as you have often told me there is still a dearer friend who would be a father to the fatherless, and if I ever find Him I should be very happy.

Please write and let me know just how you are, for I feel very anxious about you. Give my love to Mr. Tilton and dear Carroll, and tell him Bessie will bring him a little bouquet of flowers when I come. If you have a picture of yourself and Carroll to spare I would like very much to have it, as I have not any of either. You were very kind and thoughtful to send me that bright new \$1, and I thank you very much indeed.

I have enclosed two shrubs to make the letter smell sweet.

And with much love to the children and a double share to yourself,

I remain, very truly, yours,

BESSIE.

Please direct care David Dows.

Q. Now, you observe that the date of that letter is May 24th, 1869? A. Yes, Sir.

Q. Will you explain then—

The Witness—I did not observe the date at all, Sir. I will observe it.

Q. Please to observe it then. It becomes quite important. [Witness examines the letter.]

Q. You were, then, at Mr. David Dows's, in Tarrytown, in 1869, during the Summer? A. Yes, Sir; I was.

Q. Mr. Tilton did not go to your bed at David Dows's, did he? A. No, Sir. He came to my bed, however, in 1869, because I left Mr. Dows's, as I have stated, in the Summer.

Q. You forget. You have stated that you left in the Autumn? A. No, Sir; I beg your pardon, Sir.

Q. It was after you left Mr. Dows's and went to Mr. Tilton's, that he came to your bed, was it? A. It was in the Summer of 1869.

Q. Well, it was after you left David Dows's, was it, or was it before you went there? A. It was after I left David Dows's.

Q. Now, reflect just as long as you choose, so as to get it right? A. Yes, Sir; I don't need to reflect.

Q. You don't need to reflect. Very well. Then it was after you left David Dows's and returned to Mr. Tilton's house that

he came to your bed, was it? A. It was 1899, in the Summer.

Q. I beg your pardon; that is not an answer to my question.

Mr. Fullerton [in reply to some whispered remarks by Mr. Beecher's counsel]—Now, gentlemen, you need not interfere, because it will do no good; it will only do harm. [To the witness.] Was it after you left David Dows's and returned to Mr. Tilton's house that Mr. Tilton came to your room? A. Yes, Sir.

Q. You are quite positive of that? A. Quite positive.

Q. There cannot be any mistake as to the year? A. No, Sir.

Q. And you recollect now that it was after you returned from David Dows's? A. When I spoke of Mr. Greeley I did not recollect anything about David Dows.

Q. That was the time that Mr. Greeley was at Mr. Tilton's house, was it? A. When I was at Mr. David Dows's?

Q. Yes. A. Mr. Greeley was at Mr. Tilton's house while I was there in the Summer of 1899. He spent some two or three weeks there, or perhaps longer.

Q. While you were there? A. While I was there—yes, Sir.

Q. Have you any recollection of what time you left David Dows's? A. I stated, Sir; that it was in the Summer.

Q. How did you come from Tarrytown to Brooklyn? A. How did I come?

Q. You hear my questions very distinctly; don't repeat them please. A. I came in the cars from Tarrytown, and took the ferry to Brooklyn and walked up to Mr. Tilton's house.

Q. Who came with you? A. Nobody came with me. The man went to the cars with me at Tarrytown—their man that used to be about the house.

Q. Did Mr. David Dows's family leave Tarrytown that Summer to go anywhere? A. I think they did go away. I think they went to California while I was there.

Q. Do you know what time they went? A. They went when I first went there. I think, perhaps, the latter part of May, but I cannot say positively.

Q. Did you remain at the house after they went to California? A. After they went to California?

Q. Yes. A. I don't remember, Sir; I guess I was there when they returned.

Q. When did they return? A. I don't remember.

Q. How long were they absent? A. I don't recollect.

Q. About how long? A. I cannot say, Sir.

Q. Who of the family went to California? A. Mr. and Mrs. Dows, I think; I don't know what other members of the family.

Q. How? A. I don't know whether any one else went with them or not; I don't recollect.

Q. Now, you say you returned to Mrs. Tilton's in the Summer of 1899? A. Yes, Sir.

Q. How long did you remain there then before you went somewhere else? A. I think I was there two or three weeks, Sir.

Mr. Beach—A little louder, Miss.

The Witness—Two or three weeks, Sir, I think.

MISS TURNER'S VISIT TO KEYPORT.

Mr. Fullerton—Where did you go when you next left Mrs. Tilton's after returning from David Dows's? A. In 1899—I went to Keyport, New-Jersey, to Mr. Tilton's parents.

Q. How long did you remain there? A. I can't remember just how long.

Q. About how long? A. I can't say.

Q. Was any other member of Mr. Tilton's family at Keyport when you went there? A. I think Miss Annie Tilton was there; I am not sure.

Q. Do you recollect any other member of the family who was there?

Mr. Evarts—Mr. Fullerton, which family do you mean?

Mr. Fullerton—The Tilton family.

Mr. Evarts—The father's family, or this Mr. Tilton's family?

Mr. Fullerton—I don't mean the elder Mr. Tilton. Was there any other member of Mr. Theodore Tilton's family at his father's, at Keyport, when you went there that Summer? A. No. I said that I thought Annie was there, but I could not be sure.

Q. What other member of the family? A. There was Kate McDonald; I think they considered her a member of the family; she had lived with them a long time.

Q. Yes; that is right. Was she there when you arrived, or did she go there with you? A. I don't remember about that.

Q. Or did she follow you to Keyport? A. Did she follow me to Keyport?

Q. Yes. A. No, Sir; she didn't.

Q. Who went with you to Keyport? A. Nobody went with me.

Q. Can you tell whether Kate McDonald was there when you arrived, or whether she arrived immediately after, or soon after? A. I cannot tell anything about that. I remember seeing her while I was there, but when she came I could not say, except that I know she did not go down with me.

Q. Do you know what time you left Keyport and returned to Brooklyn? A. No, Sir.

Q. Do you remember the season of the year? A. Well, I know that when I returned I went around to Mrs. Morse's, to see if Mrs. Tilton had gotten home; she had been away, and she had gotten home, and then I went around there. It seems to me it was in the early part of the Fall; I won't say for certain.

Q. Mrs. Tilton had been to Monticello, hadn't she? A. I said I thought so.

Q. And you did not return from Keyport until after Mrs. Tilton had returned from Monticello, whatever date that was? A. I didn't say Monticello, positively. I said she had been away, and thought it was to Monticello, but I wasn't sure.

Q. I understand what you said. Then, if it was to Monticello that Mrs. Tilton had been, you did not return to Mr. Tilton's house until after Mrs. Tilton had returned from Monticello? A. Until after she had returned from wherever she had been away. I did not return until I found Mrs. Tilton there; because I came from Keyport and went around to Mr. Bates's where Mrs. Morse was, and asked her if Mrs. Tilton had re-

turned, and she told me she had, and so I went around to see Mrs. Tilton.

Q. And you found her at the house when you first returned to the house after your return from Keyport? A. I didn't go to the house but once.

Q. Well, when you first went to Mrs. Tilton's house after your return from Keyport, you found Mrs. Tilton there, whatever date that was? A. Yes, Sir.

Q. Did Kate McDonald return with you from Keyport? A. No, Sir.

Q. Did she remain behind? A. She remained behind.

Q. At Keyport? A. At Keyport.

Q. How long after you returned did Kate McDonald return from Keyport? A. I could not tell you, Sir.

Q. You have no recollection upon that subject? A. No, Sir.

Q. Now, Miss Turner, be kind enough to tax your recollection and tell me as near as you can, how long you were at Mr. Tilton's house in the Summer of 1869, after you returned from Mr. Dows's and before you went to Keyport? A. I think about two or three weeks, as near as I can recollect.

Q. That is as near as you can get at it? A. Yes, Sir.

Q. Did you see Mr. Greeley there during that time? A. Yes, Sir.

Q. You are quite certain that Mr. Greeley arrived at the house before you left and went to Keyport, are you? A. Before I left and went to Keyport—oh! yes.

Q. You are certain about that? A. Yes, Sir.

Q. Who composed the family when Mr. Greeley was there? A. Mr. Greeley, Mr. Tilton, Katie Burke and myself.

Q. Now, is it not true that you were sent down to Keyport before Mr. Greeley's arrival? A. No, Sir.

Q. One moment. A. No, Sir.

Q. Let that stand then. Now, is it not true that, when you left, Kate McDonald was the only person remaining in the house beside Mr. Tilton? A. When I left, Mr. Greeley and Kate Burke and Mr. Tilton were in the house.

Q. It is not true, then, that Kate McDonald was the only person remaining behind, except Mr. Tilton, when you left and went to Keyport? A. I don't remember seeing Katie McDonald.

Q. How? A. I don't remember seeing Kate McDonald.

Q. Then can you say that she was there when you left and went to Keyport? A. I don't remember anything about Katie McDonald being at Mr. Tilton's when I left and went to Keyport.

Q. Were you not sent down to Keyport in advance of the arrival of Mr. Greeley, and was not Kate McDonald kept behind to fix Mr. Greeley's room for his reception? A. Please repeat your question.

Q. Were you not sent down to Keyport in advance of the arrival of Mr. Greeley, and was not Kate McDonald kept a few days at the house for the purpose of arranging the room for the reception of Mr. Greeley? A. I don't remember anything about Katie McDonald; but I was sent down to Keyport after this occurrence in 1869, when Mr. Greeley was there.

Q. You don't recollect, then, that Kate McDonald remained behind to adjust Mr. Greeley's room? A. I have said, Sir, that

I do not recollect seeing Katie McDonald there at all. I saw her down at Mr. Tilton's at Keyport after I had gone there.

Q. How long did I understand you remained at Mr. Tilton's after you returned from Keyport? A. I don't think I stated how long I remained.

Q. Well, how long did you remain? A. I don't recollect.

#### THE TRIP TO MARIETTA.

Q. Where did you go next after you returned from Keyport, when you left Mr. Tilton's house to remain away? A. Where did I go next? I think I went next to Mrs. Putnam's.

Q. When was that? A. That was in 1870.

Q. What time? A. I will tell you the month in a moment—in February, I think, 1870. I remained there about eight or nine months.

Q. And you left there to return on the 9th of November, did you? A. Left Marietta?

Q. Yes. A. On the 9th of November; yes, Sir.

Q. 1870? A. 1870.

Q. And how many days were occupied in making the journey from there to New-York or Brooklyn? A. Only one day, I think, Sir, and one night. I think we returned November 10.

Q. The 10th? A. Yes, Sir; we left there November 9, and I think we arrived on the 10th.

Q. You did not expect to return from Marietta, I believe, when you went to Marietta, did you—return to Mr. Tilton's when you went to Marietta? A. I could not say what my expectations were; I did not think anything about it, whether I would return or not.

Q. Well, you returned with Mrs. Tilton only because she was in ill health, I understand you? A. I returned with her because I did not think she was fit to travel alone; the doctor did not think she was fit to travel alone, and I wanted to return with her any way; I wanted to come back with her; I wanted to be with her.

Q. Did you expect to return? A. Oh! perhaps I would not have thought of that if she had not been so sick.

Q. Then the cause of your returning to Mrs. Tilton's was the ill health of Mrs. Tilton? A. Because I didn't think she was able to travel alone.

#### MISS TURNER NOT ACCUSED OF FALSEHOOD AT THE DOWS'S.

Q. Now, we will go back to Mr. Dows's, if you please? Q. Did you have any trouble at Mr. Dows's? A. Any trouble?

Q. Yes. A. No, Sir.

Q. Did you have any trouble in the family? A. No, Sir.

Q. Were you not taken to task for misconduct there? A. Well, I don't know whether it would be called taking to task or not. I remember one instance of cutting out a dress while Mrs. Dows was away, and I think her daughter told me that I was cutting out my dress when I ought to have been sewing for Mrs. Dows.

Q. Were you not taken to task while you were there for telling falsehoods? A. No, Sir; never, never.

Q. Never, by Mrs. Dows or Mr. Dows? A. No, Sir.

Q. Left there pleasantly, did you? A. Yes, Sir; quite pleasantly.

Q. Not discharged? A. When it came time for Mrs.—when Mrs. Dows paid me, I think I had been there one month. There may have been something said. It seems to me that I spoke first, and said that I did not think that she was—that I satisfied her exactly; and I think I was the one to speak first.

Q. Quite sure of that? A. I did not say that I was quite sure, Sir; but I think that was the way of it.

Q. Were you not taken to task there for telling falsehoods? A. No, Sir, never.

Q. Nothing of the kind occurred? A. Nothing of the kind occurred—about telling falsehoods.

Q. You were not accused of telling falsehoods? A. No, Sir.

Q. About anything, while you were there? A. No, Sir.

Q. How? A. No, Sir.

Q. Well, did Mrs. Dows say anything about being satisfied, or dissatisfied with you? A. I don't remember exactly what she said.

Q. You say when she paid you for the month? A. I think I had been there for a month. I think—I don't know whether I had been there a month, or whether it was only I had asked permission to go a day to see Mrs. Tilton, and then I wanted some money to go. I think that was the way it was, and I think then I had been there about a month.

Q. Did they give you permission to go and see Mrs. Tilton? A. Yes, Sir, Mrs. Dows gave me permission.

Q. Did you return to Mrs. Dows's after that? A. I think I did, Sir.

Q. How? A. I think I did; I don't remember exactly.

Q. How long did you remain after you returned? A. I said I did not remember whether I had returned or not; I did not know.

Q. Well, can't you tell us whether you returned to Mrs. Dows's after you had obtained permission to visit Mrs. Tilton? A. I don't remember whether I returned or not, Sir.

Q. Now, was not Mrs. Dows in California at the time? A. At what time?

Q. When you returned to see Mrs. Tilton? A. In California?

Q. Yes. A. No, Sir. I never went to see Mrs. Tilton while Mrs. Dows was in California, because she gave me the money to go, and she could not have been in California if she handed me the money.

Q. I understand you to say that Mrs. Dows went to California after you had been there about a month, and you stayed until her return?

Mr. Evarts—No.

Mr. Fullerton—Well?

The Witness—No; I don't think I said that; I said Mrs. Dows went to California after I was there, but I don't think I stated how long I was there.

Q. Didn't you say in your cross-examination that after you had been there about a month Mrs. Dows went to California?

A TEN MINUTES' WRANGLE AMONG COUNSEL.

Mr. Evarts—Well, I think—

Mr. Fullerton—I ask her if she said that.

Mr. Evarts—But I have the right—

Mr. Fullerton—No, Sir; you have not the right.

Mr. Evarts—To know what she said.

Mr. Tracy—The record shows what she said.

Mr. Fullerton—You are not the record.

Mr. Tracy—No, Sir; I am not the record.

Mr. Fullerton—You have got another record.

Mr. Tracy—Counsel has no right to ask her what she said in her cross-examination, and I object to it.

Mr. Fullerton—[To the witness.] I ask you whether you did not say, on your cross-examination, that Mrs. Dows went to California after you had been there about a month?

Mr. Tracy—If the witness has said that the record shows what she said, and I submit the counsel has no right to ask the question.

The Witness—I don't remember—

Mr. Shearman—Miss Turner, wait until the counsel makes his objection.

Judge Neilson—The right to put such a question—

Mr. Fullerton—How, Sir?

Judge Neilson—I was about to observe that the right to put such a question depends upon whether the previous statement is clear and well understood. If there is any ambiguity about it you have a right to put it. I don't recollect.

Mr. Fullerton—Well, then, there is an ambiguity there.

Judge Neilson—Oh, no! it don't follow.

Mr. Beach—Does your Honor intimate that under any circumstances, on cross-examination, we have not a right to ask the witness whether she has not previously stated a certain fact in her cross-examination?

Judge Neilson—I understand that—

Mr. Beach—As a test of recollection?

Judge Neilson—I understand that that applies to cases where the answers already given may not be full, or perfectly understood.

Mr. Beach—May it not be, Sir, for the purpose of testing the recollection of the witness in the presence of the Court and jury? I submit, Sir, that it is a right of the cross-examiner to put a question of that character, and that it is the best and surest and most certain test of recollection and strength of memory of the witness.

Mr. Fullerton—It is a right I never heard questioned before, Sir.

Mr. Beach—Nor I, Sir.

Mr. Fullerton—And one that I have exercised a thousand times.

Mr. Tracy—I know you have.

Mr. Fullerton—Well, you know one thing.

Mr. Tracy—I know a good many things.

Mr. Fullerton—Now, I say that I have a right to test the recollection of this witness and to know whether she has not already stated that Mrs. Dows went to California about a month after she got there, and I have this right, Sir, to put the question for

the purpose of having her correct her testimony, if she were in error. I shall give her the largest opportunity to make these corrections. I am not here for the purpose of entrapping the witness by getting her to state what she does not desire to state, and if she have stated that Mrs. Dows went to California about a month after she arrived there, and that was wrong, I want to call her attention to it, and have her correct it, if it be within her power to correct it.

Mr. Evarts—I suppose, if your Honor please, the right of the cross-examination is this, undoubtedly: when any point in the witness's testimony has been misunderstood by the examining counsel, or has escaped his attention, he has a right, undoubtedly, to reinform himself accurately on that subject; and that is not complained of; but there is a great difference between that right and the exercise, or assumption of the right of imputation that the witness has said something contrary, and then, when she now states it correctly, present it as if it were a correction, when it is simply a re-statement of what she has said, and by the insertion of such questions as counsel know how to frame, a witness can be brought into that situation. Well, that is not a just exercise of the right of cross-examination, and therefore the courts do not allow this constant repetition of inquiries, and much less an assumption in them that the witness has said something contrary to what she has said.

Mr. Beach—Mr. Evarts, allow me to say—

Mr. Evarts—And every witness is entitled to have an assumption put to her or him correctly, upon what she has already testified.

Mr. Beach—Mr. Evarts, allow me to say that this is not an assumption of anything. We simply put to her the direct question whether she has said this.

Mr. Evarts—You put it in this form: "Have you not already testified?" That carries an imputation that she has testified.

Judge Neilson—It carries the suggestion that some correction may be proper.

Mr. Evarts—Yes, Sir; and then when she says it was not so, it is assumed that it is a correction, when it is simply a repetition of what her correct testimony on the record will be found to be; and so the witness is held up in the light of having needed to make a correction, and having made a correction, when the error is in the assumption that is interpolated between her first and second answer by the imperfect memory of the counsel.

Mr. Beach—Then her answer will correct that imperfect memory. We ask to see if she has not so testified. If she says no, why that ends it. If she says yes, she has an opportunity to explain.

Mr. Fullerton—I now insist upon the question.

Mr. Evarts—What she has testified is recorded, and what my learned friend says is a test of the witness's memory as to whether she has said so and so. In the course of a cross-examination, the witness's memory is tested by its general reach, not upon carrying in her mind everything that she has said during her cross-examination.

Mr. Fullerton—I want to see if she can reach as far one time as she did at another.

Judge Neilson—Repeat your question.

Mr. Fullerton—Have you not stated on your cross-examination that Mrs. Dows went to California about a month after you went to live with her at Tarrytown? A. I think—I know that I stated Mrs. Dows went to California after I—after we went to Tarrytown, but I don't remember whether I said a month or how long.

Mr. Fullerton—Now, I propose to turn to the record and see, Sir. I will adopt the counsel's method of determining the question.

[THE TRIBUNE stenographer who took the portion of the testimony referred to, had left the room.]

Judge Neilson—[To other reporters.] Have you got it?

Mr. Fullerton—Has any reporter got her testimony as to the time when Mr. and Mrs. Dows went to California?

Judge Neilson—It is back some ways.

Mr. Porter—It will appear in the printed report in the morning.

Mr. Fullerton—I don't propose to adjourn for that purpose; I want it now.

Mr. Evarts—It is not a legitimate inquiry. If there is error in it, if there is confusion about it, it is to be remarked on in its proper place. We do not stop here to convict people as they run along.

Mr. Fullerton—No; or we would not have any witnesses left.

Mr. Beach—The object of this is to present that to the witness and ask her to explain it.

Judge Neilson—It may be due to the witness; I can't say; I don't remember.

Mr. Norcross, of *The Eagle*, here read the testimony referred to, as follows:

Q. Did David Dows's family leave Tarrytown that Summer to go anywhere? A. I think they did go away; I think they went to California.

Q. Do you know what time they went? A. They went when we first went there; perhaps the latter part of May, but I am not positive.

Q. Did you remain at the house after they went to California? A. I don't remember; I guess I was there when they returned.

Q. When did they return? A. I don't remember.

Q. How long were they absent? A. I don't recollect.

Q. About how long? A. I couldn't say.

Mr. Evarts—Well, that is all.

Mr. Norcross—[Still reading]:

Q. Which of the family went to California? A. Mr. and Mrs. Dows, I think—

Mr. Evarts—That is enough, Sir.

Mr. Fullerton—No, it is not enough. It may be enough for you.

Mr. Evarts—There was but one question asked her, and that was what she had stated as to the time when Mr. and Mrs. Dows went to California.

Mr. Beach—Well, let us know, Sir, what she has said upon that subject.

Judge Neilson—The question was whether she said they went after she had been there about a month.

Mr. Evarts—That has already been answered.

Mr. Beach—No.

Mr. Norcross—The answer is two questions below. [Reading]:

Q. Which of the family went to California? A. Mr. and Mrs. Dows, I think; I don't know whether any one went with them or not; I don't recollect.

Q. You returned, you say, to Mrs. Tilton's in 1889. How long did you remain there, then, before you left? A. I think I was there about two or three months, Sir.

Mr. Porter—Now, your Honor perceives that this imputation upon the witness was entirely unfounded.

Mr. Fullerton—Your Honor does not perceive any such thing.

Mr. Evarts—Well, we don't talk two at once.

Mr. Fullerton—Well, Sir.

Judge Neilson—Well, the witness does not appear to have said that they went after she had been there about a month.

The Witness—No, Sir; I did not remember.

Mr. Evarts—No, Sir; she stated exactly that they went after she got there, and she thought in the latter part of May, and they put in evidence a letter dated the 17th of May, which speaks of her having come there the day before.

Mr. Fullerton—So that she went to California before she had been there a month, which is all the better.

Mr. Evarts—No matter about "all the better;" that is arguing the case. The question is whether you correctly stated the witness's previous testimony.

Mr. Beach—We said about a month, Sir. She went there about the middle of May, and she says Mrs. Dows left the latter part of May.

Mr. Fullerton—Less than a month.

Mr. Porter—In other words, their statement was incorrect.

Mr. Evarts—And hers was correct.

Mr. Beach—Then it was not as favorable to ourselves as we might have made it; that is the error that we fell into.

#### THE TESTIMONY RESUMED.

Judge Neilson—Well, proceed now.

Mr. Fullerton—Well, Miss Turner, how strong is your impression that you were there when they returned from California? A. How strong is it?

Q. Yes. A. It is not strong at all.

Q. I understood you to say that you were under the impression that you were there when they returned. A. Yes, but I am not under a strong impression; I am not sure whether I was there or not.

Q. Well, that was an event that would fasten itself upon your mind, is it not? A. No, I don't know that it is.

Q. The absence of a family to California and their return to the house—would not that impress you so that you would recollect the fact whether you were there or not? A. No, Sir; I cannot say certainly whether I was there or not; I think perhaps I was there, but I cannot say certainly.

Q. A little louder; the jury can't hear you. A. I say I think perhaps I was there, but I can't say certainly whether I was there when they returned or not, but I was there when they left for California.

Q. Now, you stated what members of the family went to California. A. I stated Mr. and Mrs. Dows; I don't recollect whether other member went or not.

Q. You cannot tell me how long they were gone? A. No, Sir.

Q. Who composed the family during their absence? A. Their daughters—two young ladies, and they had three or four children—two oldest daughters.

Q. Married daughters? A. No, Sir; no married daughters, that I know of. Miss Annie Dows was home and Miss Lena Dows, and Miss Mary Dows, and Susie and David Dows, and several servants they kept.

Q. You recollect then who composed the family during the absence of Mr. and Mrs. Dows, do you? A. I think I do, Sir, as I was going to state. There was a lady there that was acting as housekeeper, a Miss Rogers, I think, her name was, besides the children.

Q. Then you know that you were there during Mr. and Mrs. Dows's absence? A. Oh, yes, I was there when they went to California.

Q. And remained after they had gone? A. I was there, yes, Sir, after they had gone.

Mr. Beach—She says she "was there; yes, Sir." Let her say—

Mr. Fullerton—Were you there during the absence of Mr. and Mrs. Dows to California? A. Yes, Sir.

Q. Now, who paid you your wages when you did leave finally? A. Mrs. Dows.

Q. Mrs. Dows? A. Mrs. Dows.

Q. Then Mrs. Dows had returned from California before you left, had she? A. I suppose she must have returned.

Q. Well, she paid you your wages when you left finally, I understand you? A. Yes, Sir; she did.

Q. That was after her return from California, then, wasn't it? A. Well, you know I stated that I didn't remember—was not sure whether I was there or not after she returned from California.

Q. Now, Miss Turner, if she paid you your wages when you finally left, and you were there during her absence, it must have been after her return, must it not, from California? You didn't receive your wages from Mrs. Dows in California, did you? A. No, Sir.

Q. Well, she must have got back then before she paid you, didn't she? A. She may have paid me before she went.

Q. Well, did she pay you before she went to California? A. Well, all that I can say is, that when I left there and came to see Mrs. Tilton, Mrs. Dows paid me my wages; whether she paid me in full, or gave me some money to come to see Mrs. Tilton with, I am not sure about; but, however, she gave me the money, when I was in Tarriytown, to come to see Mrs. Tilton.

Q. Now, I am not talking of the occasion when you left Tarriytown to come and see Mrs. Tilton; I am talking of the time when you left Mr. Dows's house—his house, finally, not to return. A. Well, I stated before that I did not remember whether I had returned after she had given me that money—returned to Mrs. Dows's, or returned to Mrs. Tilton's, for certain. That I stated before.

Q. Well, if you came to see Mrs. Tilton then, after you had received your wages finally from Mrs. Dows, it must have been after their return from California, was it not?

Mr. Everts—Why should that reasoning be allowed with the witness? The witness has given the extent of her recollection on all the facts. She has said that she had—in the direct examination or in the beginning of the cross, I think it was—that she had an indistinct recollection of having come down to make a visit, carrying the impression of a visit from which she returned, but only an indistinct recollection. Now, all the facts have been explored sufficiently, and the witness's memory and truthfulness and all, on the facts, are completely here. Now, why should the counsel continually reason with the witness as to whether so and so must not be so and so, if so and so was so and so.

Mr. Fullerton—Well, I didn't put that question. [Laughter.]

Mr. Everts—Well, I understood it to be in that sense.

Mr. Fullerton—No, my question was not so.

Mr. Beach—We don't use the term "so-so."

Judge Nelson—The purpose of the counsel may be, and it rather seems to me it is, to assist the witness's memory to get the best recollection he can from her. If that is his view it is proper.

Mr. Fullerton—That is my view exactly, and I am quite willing she should take all the time she requires to reflect upon it and to give no answer hastily. [To the witness.] What I wish to know, Miss Turner, is this: If you didn't return to Mrs. Dows's after she paid you your wages as you have stated? Then I ask you whether that money was not received after Mrs. Dows's return from California? A. Yes, Sir; I understand your question; she may have given me some money before she went to California; it may have been afterward.

Q. Is that the only answer you can give? A. That is the only answer I can give, Sir.

Mr. Porter—I submit that that is a perfect answer.

Mr. Fullerton—I didn't say that it wasn't. [To the witness.] I will give you until after recess to reflect upon it, Miss Turner, and see if you can give me any further or different answer.

The Court here took a recess until two o'clock.

#### THE AFTERNOON SESSION.

After recess, Miss Turner was recalled and her cross-examination continued as follows:

Mr. Fullerton—Miss Turner, can you now state upon reflection, whether you remained at Mr. Dows's until the family returned from California? A. Yes, Sir, I can. I—

Q. A little louder. A. My memory has been refreshed by Mrs. Tilton's diary, and I—then I remembered another instance; little Ralph was born in June, 1869, after I had returned from Mrs. Dows's to Mrs. Tilton's, about two or three days after I had returned.

Q. You have conversed with Mrs. Tilton since you left the stand? A. I talked with Mrs. Tilton, yes, Sir, and received my information from her diary, and then I recollect several things that occurred.

Q. I don't ask about the diary; you were there when Ralph was born, were you? A. Yes, Sir.

Q. You are sure of that? A. Yes, Sir.

Q. Were you there when Mrs. Tilton left for Monticello? A. Yes, Sir.

Q. That you are quite sure of? A. Yes, Sir.

Q. And remained at the house some time after she left, did you? A. Some time after she left, yes, Sir.

Q. And until you went to Keyport? A. Remained there until I went to Keyport; yes, Sir.

Q. Now, after you left Mr. Dows's, did you go to the "Home" in Elizabeth-st. before you went to Mr. Tilton's? A. No, Sir; I think not; I think I came directly to Mrs. Tilton.

Q. Did you not, when you came to Mr. Tilton, say that you could not remain at the "Home" without paying your board? A. Don't remember any such occurrence, Sir.

Q. What was the name of that Home? A. It is called the "Working Women's Home;" it is in Washington Place, I think, on the corner of Washington Place and Elizabeth-st.; I think that is it.

Q. In New-York? A. Yes, Sir, right opposite Washington Park.

#### 'THE FIRST INVASION OF MISS TURNER'S ROOM.

Q. On this occasion, when Mr. Tilton came to your room in '69, as you have related, was that the first or the second time that he came? A. Second time.

Q. The second time? A. Yes, Sir.

Q. And when did he come to your room the first time? A. In 1868, Sir.

Q. What season of the year? A. I think it was in warm weather, in the Spring or Summer.

Q. And where was Mrs. Tilton then? A. I could not say where she was, but I don't think she was in the house.

Q. Well, don't you remember, if she was absent, where she was? A. I don't remember that she was absent certainly, but—I can't say certainly that she was absent.

Q. Well, do you think that she was at home? A. No, Sir; I don't think she was at home.

Q. How? A. I could not say certainly that she was at home.

Q. Then you have no recollection, have you, whether she was at home or absent from home when he visited your room in 1868? A. My impression is that she was absent, but I could not say positively; however, she was not around at that time, when Mr. Tilton came to my room.

Q. Now, what room were you in, in 1868, when he came to your room? A. I was in the front story bed-room—second story front bed-room, that was connected by folding doors, off the sitting-room.

Q. Did any one sleep with you that night? A. No, Sir; I slept alone.

Q. Where did the children sleep? A. I don't recollect anything about the children at that time.

Q. Can't you tell where the children were sleeping that night? A. I don't recollect anything about the children that night, Sir.

Q. Where did Mrs. Tilton sleep that night if she were at home? A. I did not say she was home, Sir.

Q. If she were home, I said? A. If she was home?

Q. Yes. A. I could not say, because I ain't sure whether she was home or whether she was away.

Q. Where did she usually sleep at that time—in what part of



the house? A. Well, sometimes she slept in the front part, and sometimes in the back part of the house, but I recollect nothing about Mrs. Tilton's sleeping, or the children sleeping that night; I could not say anything about it, and my recollection is that Mrs. Tilton was not at home, but I could not say positively.

Q. Well, this visit of his to your room made a great impression upon you, didn't it? A. Yes, Sir; I thought a good deal about it.

Q. How? A. I thought a good deal about it.

Q. And you haven't forgotten it at all? A. Oh! no, Sir.

Q. Well, wouldn't you think—don't you think you would be apt to remember where Mrs. Tilton slept, and whether she was at home, and where the children slept that night? A. I don't recollect anything about it, Sir; about the children or Mrs. Tilton in connection with that night, except what I said first, that my impression is that she was not at home.

Q. Well, won't you tell me now what occurred on that first night in 1868 when he came to your room? A. Relate the circumstances?

Q. Yes. A. How he came to my room and what he said?

Q. Won't you relate to me what occurred on that first night when he came to your room whilst he was there? A. Yes Sir; shall I relate the conversation?

Q. You could not relate what occurred unless you did relate the conversation. A. Well, Sir, he—

Mr. Beach—Well, we want our question general without any qualification covering all that occurred.

Mr. Fullerton—I want all that took place from the time he entered until he left that room. A. Yes, Sir; I was lying in the second story front room, that is off the sitting-room, connected by folding doors, and I had not been in bed very long before Mr. Tilton came in, and came the other side of the bed, and said he had come to bid me good night. He stroked my forehead and my hair and said—what nice soft hair I had, and how nice and soft my flesh was; then offered to put his—then put his hand in my neck, and I took it out, and said he "Why, Bessie, my dear, you are painfully modest; those things are all perfectly proper, those caresses; the best people in society do those things." I said I could not help what the best people in society did, I had my own ideas about what was proper and modest, and it did not make any difference to me what people did in the best classes of society. Then he went on to state that ministers took those—such privileges with young ladies, and with married people, and asked me about—if I wouldn't like to be married. I asked him why—what put that in his head; and he said that I was a very nice affectionate young girl, and he thought I ought to have a good husband. I said that I supposed when the right time came along, the right man came along, perhaps I would be married, but I hadn't thought much about it, I didn't think it was the chief end and aim in life—didn't think getting married was the chief end and aim in life. And then he spoke of affinities; wanted to know if I didn't think people had affinities for each other, and I asked him what he meant by that; and he said what was meant by that was when a man saw a woman that he would like to fondle and caress, and loved her, that she

ought to be willing to have him fondle and caress her, and that was what was affinity—what was meant by "affinity."

Q. Well, did he then leave. I asked you to tell me all that occurred? A. No, Sir; he did not leave then; and then he asked me if I would not allow him to love me as he wanted to, and that no harm should come to me, and that physical expressions of love were the same as a kiss or a caress. Then I think something was said about—I was a strange little girl, or something, and he then kissed me, I think, and left me.

Q. Well, did he say that you were a strange little girl? A. Yes, Sir.

Q. You say you think he did? A. He did.

Q. Well, what did he say upon that subject? A. He said that I had very strange ideas—I was a strange little girl.

Q. Now, have you given the exact language made use of by Mr. Tilton on that night? A. As near as I can remember, Sir.

Q. Well, do you think you remember it pretty accurately? A. I am pretty sure; yes, Sir.

Q. How? A. I think I remember very accurately that those were the words that he used.

Q. The very words? A. That those were the words that he said.

Q. You have used the very words then that he uttered? A. I think I have; yes, Sir.

Q. And you have remembered them since 1868 to the present time? A. Yes, Sir.

Q. About seven years, or six years and over, isn't it? Mr. Everts—Don't reason about it.

Mr. Fullerton—There is no objection to reasoning, I take it.

Mr. Everts—Yes, there is to reasoning with the witness all the time.

Q. And have you given your exact replies to him? A. I gave my exact replies when he said that—when he wanted to put his hand in my neck and why I objected to it; I had my own ideas about what was proper and modest.

Q. And as to getting married—you have given your very language? A. Yes, Sir; the very language.

Q. The very words? A. Yes, Sir.

Q. Well, Miss Turner, didn't that conversation shock you? A. I thought it was very singular—very strange.

Q. How old were you then? A. Let us see; I went there in '64—'64—perhaps—about seventeen, I guess I was then.

Q. Well, you were old enough to know that that proposition was wrong, weren't you? A. About his putting his hand in my neck?

Q. Yes. A. Yes, Sir, certainly. I felt that it was wrong or I would not have replied the way I did.

Q. You thought that all his conversation was wrong, didn't you, about affinities, and loving people? A. Yes, Sir, I did.

Q. Well, didn't it shock you? A. I thought it was very strange.

Q. Is that all you can say, that you only thought it was strange? A. I cannot say truthfully that I was really shocked; but I studied over it.

Q. Well, were you frightened? A. No, Sir; I don't think I was really frightened at that time.

Q. What? A. I don't think I was really frightened; but I thought over it, and thought it was very singular.

Q. Well, were you displeased? [After a long pause.] A. Yes, Sir; I was.

Q. Angry? A. I was angry with him when he put his hand in my neck.

Q. Well, you were angry, were you? A. Yes, Sir; when he put his hand in my neck.

Q. Well, weren't you angry when he proposed that he should love you, and that it would do you no harm? A. Well, I didn't really, then, know his design, what he really meant; that is what I said; I studied over his language when he proposed that he should have—talked about affinities and proposing to love me; I didn't really understand him.

Q. You didn't understand him? A. No, Sir; what he really meant.

Q. You didn't know what the meaning of his language was? A. No, Sir, I didn't; that is why I say I studied over it; but I was angry when he put his hand in my neck.

Q. Well, being angry then, it made an impression upon your mind, didn't it? A. Yes, Sir.

Q. You had been upon friendly terms with Mrs. Tilton up to that time, had you not? A. Up to that time?

Q. Yes. A. Yes, Sir.

Q. You were attached to her, were you not? A. Oh! yes, Sir; Mrs. Tilton was a mother to me always.

Q. Very much attached to her? A. Yes, Sir.

Q. Well, you didn't tell Mrs. Tilton about it then? A. I did not tell her then; no, Sir.

Q. Didn't say anything to her about it, did you? A. I think that I told her, one day on the stairs, that I had something to tell her, or thought of telling her something—

Q. Well, you didn't tell her, did you? A. I don't think I told her; not at that time; no, Sir.

Q. Well, have you any doubt whether you told her or not at that time? A. [After a pause.] Yes, Sir; I have a little doubt as to whether I—whether I—it seems to me that I told her what I have said; that I spoke to her the way that I have said; that I said I had something to tell her, but would not tell her for fear it would trouble her; that is my impression.

Q. Well, now, the question I ask you is whether you told Mrs. Tilton at that time, or near that time, what occurred in the room when Mr. Tilton visited it? A. I don't think I told her.

Q. You don't think you did? A. No, Sir.

Q. Are you sure upon that subject? A. No, Sir; I am not sure.

Q. Don't you think if you had told her it would have impressed itself upon your mind so that you would have recollected it? A. I don't think I told her.

Q. But you cannot speak positively? A. No, Sir.

Q. You recollect now perfectly and distinctly, as I understand you, that he said: "Why, Beadie, my dear, you are painfully modest?" A. Yes, Sir; I remember that very well.

Q. And do you remember also that he said to you, "Why, those caresses are all right?" A. Yes, Sir.

Q. "People in the best society do all these things?" A. Yes, Sir.

Q. "And it is perfectly proper?" A. Yes, Sir.

Q. "Nobody but people who had impure minds would think of such things as that not being right?" A. Yes, Sir.

Q. You recollect he used all that language to you? A. Yes, Sir.

Q. And it has been in your mind ever since? A. Yes, Sir.

Q. Now, do I understand you as having related all that occurred whilst he was in the room that night, as near as you can recollect it? A. As near as I recollect, I think I have related all that occurred; yes, Sir; except that when he spoke about physical expressions of love and men caressing women, and then bringing up the ministers, I repeated the second time that I had my own ideas about what was right and proper, and whether ministers caressed ladies and young girls and married women, or whether they didn't, I had my own idea about what was right and proper, and I didn't think those things were right.

Q. Did you understand what he meant when he spoke of "physical expressions of love?" A. No, Sir, I did not. That is what I say I studied over—his "affinities" and his "physical expression of love."

Q. How long did you study over that expression before you got at its meaning? A. I didn't get at its meaning; I thought it strange those words he used about "affinities" and those "expressions of love."

#### MISS TURNER AND THE INVESTIGATING COMMITTEE.

Q. Where were you in the Summer of 1874? A. In the Summer—that was last—

Q. Last Summer? A. Last Summer?

Q. Yes, this is 1875. A. I was in Beaver.

Q. Pennsylvania? A. That is, I went to Beaver in March and remained there until June, until school closed there.

Q. Where did you go in June? A. I went to—I stayed two or three weeks in Beaver after school closed, and then I went to visit some friends in Pittsburgh.

Q. From Pittsburgh where did you go? A. While I was in Pittsburgh my father came—

Q. Where did you go? A. I was going to tell you.

Q. Yes, but you are telling me about your father. A. I was going to tell you that my father brought me on here from Pittsburgh.

Q. To Brooklyn? A. Yes, Sir.

Q. What time did you get in Brooklyn? A. I think it was some time in August.

Q. How long did you remain in Brooklyn after you arrived here in August, 1874? A. I remained perhaps two days, as near as I can recollect.

Q. Whilst you were here did you go before the Committee of Plymouth Church investigating the scandal that was prevalent then in regard to Mr. Beecher and Mrs. Tilton? A. Yes, Sir, that was the occasion of my coming on.

Q. You went before the Committee? A. Yes, Sir.

Q. Did you give evidence before that Committee? A. Yes, Sir.

Q. And did you relate to that Committee the circumstances attending Mr. Tilton's first visit to your room in 1868? A. I don't think that I went into detail.

Q. Did you relate any of the circumstances attending that visit to your room in 1868, before that Committee? A. I think I related Mr. Greeley's—

Q. How? A. I think I related about Mr. Greeley.

Q. That was in 1869? A. That was in 1869; yes, Sir.

Q. But my question is whether you related the circumstances attending his visit to your room in 1868, to that Committee? A. I spoke of the two occasions, but I don't think I went into detail about the first occasion.

Q. Yes, but you did speak of the first occasion that he came to your room to that Committee, did you? A. I spoke of two occasions, or the question was put to me: "Did Theodore Tilton ever offer to ruin you?" and I said: "Yes, on two occasions." "Did Theodore Tilton ever attempt your ruin?" and I said: "Yes," and then I named two occasions.

Q. You knew then, I suppose, when that question was asked you, what he meant by "physical expressions of love," did you? A. Yes, Sir, I knew because he had expressed to Mrs. Tilton, and Mrs. Tilton—

Mr. Beach—Oh! wait one moment.

The Witness—told me; that is the only way I knew.

Mr. Fullerton—I move to strike that out.

Judge Nelson—Yes.

Q. Do you recollect the testimony you gave before that Committee in regard to these two occasions when Mr. Tilton was said to have visited your room, the one in 1868, and the other in 1869? A. As I remember it, as I stated it before, the question was put to me: "Did Theodore Tilton ever attempt your ruin?" and I said: "Yes, on two occasions."

Q. Is that all that you said upon that subject? A. I guess I said more.

Q. Did you, before that Committee, state where Mrs. Tilton was upon any one of these occasions when Mr. Tilton visited your room? A. It seems to me I stated Mrs. Tilton was away when Horace Greeley was there, as I think I stated when—

Mr. Beach—Wait one moment; answer the question.

Mr. Shearman—She is doing this.

Mr. Beach—No; she is going beyond the question.

Mr. Shearman—He has asked for the other occasions, and she was stating them.

Mr. Beach—She is asked whether she stated a specific thing as to where Mrs. Tilton was.

Mr. Shearman—She says she did as to one occasion, and she thinks she did as to others.

Q. Did you state to that Committee where Mrs. Tilton was on either or both of those occasions when you allege he visited your room? A. I think I stated—

Q. Just answer my question yes or no first? A. I think I did.

Mr. Shearman—We object to that.

Q. On which occasion did you state that Mrs. Tilton was absent, and where did you state that she was? A. I think I

stated that she was in Monticello, but I am not sure about that.

Q. Did you not state that she was at Schoharie?

Mr. Beach—If the minutes will refresh her recollection, she can look at them.

Mr. Fullerton—Yes, Sir.

The Witness—I may have stated I thought she was at Schoharie, but I cannot say positively.

Mr. Beach—[Handing minutes.] Look and see.

Mr. Evans—They are not memorandums of her own.

Mr. Beach—It is not necessary that they should be; any memorandum will do.

Mr. Fullerton—[Handing minutes to witness.] Just look at that part of it here and see whether it refreshes your memory as to your evidence before the Committee? A. [Referring to the printed testimony.] By this I must have said Mrs. Tilton was at Schoharie.

Q. Do you recollect that you did say that Mrs. Tilton was at Schoharie? A. I ain't sure about that, Sir. I know I stated Mrs. Tilton was away.

Q. Does this refresh your recollection so as to say whether Mrs. Tilton was really at Monticello or Schoharie at the time when he visited your room in 1868 or 1869? A. Well, the testimony says it was after returning from Schoharie, so I suppose from that I must have said at Schoharie.

Q. I am asking you whether, after reading that, it refreshes your recollection upon the subject as to where she was? A. No, Sir; it don't refresh my recollection sufficiently to say I am sure I said she was at Schoharie.

Q. Does it refresh your recollection so that you are now able to state whether Mrs. Tilton was in fact at Schoharie or Monticello when these visits were made, or either of them? A. It refreshes my memory that Mrs. Tilton was at Monticello.

Q. And not at Schoharie? A. And not at Schoharie.

Q. So, if you stated she was at Schoharie, before the Committee, it was a mistake? A. Yes, Sir; because I know she was at Monticello.

Q. What year was that—1868 or 1869? A. It was in 1869, Sir.

Q. You were asked, before the Committee, whether he had ever attempted your ruin? A. Yes, Sir.

Q. Your answer was, was it not, "he did, on two occasions?" A. Yes, Sir.

Q. Did you also answer at that time; "The first time I had been sleeping and woke up and found myself in his arms?" A. I think I did, Sir, but I was mistaken?

Q. Oh! but you were mistaken? A. Yes, Sir; because it was not the first time he came to my—

Mr. Beach—Wait one moment.

The Witness—It was the second time that I woke up.

Q. You did state so, before the Committee, but you were mistaken? A. I was mistaken, because yes, Sir, when I went before the Committee—

Mr. Beach—Wait one moment.

Mr. Fullerton—I didn't ask for any reason.

Q. Did you go on to say: "I hardly realised where I was. He must have lifted me out of my bed and put me in his?" A. Yes, Sir.

Q. Did you also say before the Committee: "When I woke

up and found where I was I asked him what he was doing that for, and he said he was lonesome and wanted me to come and be with him?" A. Yes, Sir; wanted some one to love him; that is what he said.

Q. Did you say this before the Committee that I am now reading? Did you say before the Committee that when you woke up and found where you were you asked what he was doing that for, and he said he was lonesome and "wanted me to come and be with him"—did you say that before the Committee? A. I said that before the Committee.

Q. And were you mistaken? A. What he said to me was—

Q. No, were you mistaken in saying that before the Committee?

Mr. Porter—I insist upon her right to answer.

Mr. Fullerton—I insist upon her right to answer, too; I am trying to get it out of her.

Mr. Porter—You interrupted her.

Mr. Fullerton—The only interruption came from your side.

Mr. Evarts—She is not bound to say she was or was not mistaken.

The Witness—Yes, Sir, I was mistaken.

Mr. Evarts—She may state what she said, and we will judge whether she was mistaken.

Mr. Fullerton—We will get what she said, and we will judge whether she was mistaken,

The Witness—Can I not give my reasons for having been mistaken.

Mr. Fullerton—When I get through interrogating you, then you can.

[To the Witness.] Did you also make use of this language before the Committee: "I said that that was not right, and I went back to my own room?" A. Yes, Sir, I think I did.

Q. Did you also say before the Committee there was nothing said about it at the time? A. Nothing said by who—about what?

Q. Did you make use of this language before the Committee: "There was nothing said about it at the time," in connection with what else was said at the time you were before the Committee? A. I don't think I quite understand your question. Do you mean there was nothing said about his having come to my room to anybody?

Mr. Beach—That is it.

Mr. Fullerton—Yes? A. I must have said that before the Committee; yes, Sir.

Q. Were you asked before the Committee with reference to these two visits of Mr. Tilton to your room?

Mr. Beach—Will you wait one moment, Mr. Fullerton?

Mr. Fullerton—Yes, Sir.

[Mr. Beach and Mr. Fullerton held a whispered consultation together.]

Mr. Fullerton—I withdraw that question.

Q. Did you say before that Committee: "I was quite young, and used to be with him a great deal, like one of the children, and I used to comb his hair, and he used to kiss me as he did the other children, frequently?" A. Yes, Sir.

Q. Did you also say before that Committee: "I never had any impure thought in regard to the man?" A. Yes, Sir.

Q. And also this. "When he came to me a second time, and tried to get into bed with me, I got very indignant, and as he would not leave the room, I went into another and locked the door after me?" A. Yes, Sir, and so I did.

Q. Did you also say: "I had never thought of locking the door before?" A. I think I did, Sir.

Q. Now, before the Committee, in speaking of these two occasions when he visited your room, was this question put to you, and did you give this answer, namely: "Were both events near together?" A. Yes, Sir, I think pretty near together." A. Yes, Sir.

Q. You were mistaken. were you? A. Yes, Sir.

Q. Were you also asked this question before the Committee: "Was it during the absence of Mrs. Tilton?"

Mr. Beach—The same absence.

Mr. Fullerton—The same absence of Mr. Tilton. And did you answer: "Yes, Mrs. Tilton was absent this time, too?" A. As I remember it I said I thought she was.

Q. Did you say that? A. I am not sure I stated positively.

Q. Was this question put to you: "Had she come back from Schoharie?" and did you answer, "No, Sir?" A. Had she come back from Schoharie when?

Q. Did you answer the question put to you before the Committee, namely, "Had she come back from Schoharie?" "A. No, Sir?"

Mr. Beach—[To the witness.] That was when she came back from Schoharie, at the time of these two occasions he came to your room? That is what the question is.

Mr. Fullerton—Let me put the question in another way, and perhaps you will understand it better. Was this evidence given by you before the Committee in answer to the questions I shall now read: "Were both events near together? A. Yes, Sir, I think pretty near together. Q. Was it during the same absence of Mrs. Tilton? A. Yes, Sir, Mrs. Tilton was absent this time too. Q. Had she got back from Schoharie? A. No, Sir." Was that testimony given by you before the Committee? A. I think that was the testimony that I gave the Committee, but I think I said I thought; I don't think I stated positively.

Q. Now, then, do you remember when Mrs. Tilton was at Schoharie? A. When she was at Schoharie?

Q. Yes. A. She was at Schoharie one Summer, I think, while I was in Steubenville, because I think she wrote me from there. That is all I remember about it.

Q. Was she in Schoharie at any time during the time that you were at Mrs. Tilton's, before you went to Steubenville? A. Not that I remember.

Q. Then, when she was in Schoharie you were in Ohio, were you—in Steubenville? A. As I remember.

Q. You were there all that Summer, were you not? A. I stayed a little while after school left, and then I went to Pittsburgh a little while to visit my friends.

Q. Were you in Brooklyn after you left Steubenville, before you came to give your evidence before the Committee? A. No, Sir.

Q. Then, from Feb. 1871, up to the Summer of 1874, you were not in Brooklyn at all? A. No, Sir; not until last Summer. I

left for Steubenville in 1871, and the first time I returned to Brooklyn was last Summer.

Q. The only way that you knew Mrs. Tilton had been to Schoharie was your correspondence with Mrs. Tilton, was it not? A. That is all, I think, Sir; but I did not state positively that she was in Schoharie, but I thought so.

Q. I understand it. Can you account for the fact that you named this place, Schoharie, in your testimony before the Committee? A. The only way I can account for the fact is, that she used to go to Monticello, and used to go away nearly every Summer; and I just happened to think of Schoharie before the Committee; I had not had any time to think anything about my evidence, and I gave the facts just as they came to me then, as near as I could recollect them.

#### THE WAY MISS TURNER CAME TO GO BEFORE THE COMMITTEE.

Q. When did you know you were going before the Committee first? A. I didn't know it until I was there—until I was in Brooklyn here, last Summer.

Q. How long before you actually went before the Committee did you know that you were going before the Committee? A. About ten minutes.

Q. Not longer than that? A. No, Sir.

Q. Had you not talked with any one in regard to your evidence before the Committee? A. Not until these ten minutes.

Q. With whom did you talk then? A. With Gen. Tracy.

Q. Any one else? A. No, Sir; nobody else.

Q. You were brought here for the purpose of going before the Committee, were you not? A. So I learned after I got here.

Q. Where did you stay after you got here? A. When I arrived in New-York I went to the Courtlandt-st. hotel, a hotel in Courtlandt-st.—I think it is the Continental House, or some such name.

Q. You have not answered my question. A. That is where I went when I came on from Pittsburgh.

Q. How long were you in New-York or Brooklyn before you went before the Committee? A. Suppose I reached New York to-day, to-morrow night I went before the Committee.

Q. And you didn't see any one during the ten minutes before you went before that Committee in regard to your evidence? A. No, Sir.

Q. No one saw you in New-York? A. Not a living soul.

Q. You didn't see Mrs. Tilton in the meantime? A. I thought you were speaking with regard to having talked to somebody about going before the Committee.

Q. Did you see Mrs. Tilton before you went before the Committee? A. I am trying to think. I didn't see anybody to talk to about—

Q. Did you see Mrs. Tilton before you went before the Committee? A. I will tell you in a moment.

Q. Without reference to talking? A. I came over from New-York and went to Mr. Halliday's; my father left me there.

Q. The Assistant Pastor of Plymouth Church? A. The Assistant Pastor of Plymouth Church; my father left me there, and in a little while Mr. Halliday, I think, took me up to Mrs. Ovington's.

Q. At Mrs. Ovington's? A. Yes, Sir.

Q. And who was at Mrs. Ovington's? A. Mrs. Tilton and Mrs. Ovington.

Q. What time in the day did you go to Mrs. Ovington's? A. I think it was in the morning, Sir.

Q. And what time did you go before the Committee? A. It was in the evening, after supper, if I remember right.

Q. And, from the morning when you arrived here until the evening when you went before the Committee, did you remain at Mrs. Ovington's? A. I think I did.

Q. Don't you know? A. I did; I guess I did.

Q. You say you guess. Are you not sure that you remained there during all that period? A. I went up to see Mrs. Tilton.

Q. Speak a little louder, please. A. I remember distinctly going to see Mrs. Tilton with Mr. Halliday; whether I remained with Mrs. Tilton at Mrs. Ovington's or whether I went back to Mr. Halliday's, I cannot say.

Q. Can you not remember whether you went away after arriving at Mrs. Ovington's on that morning before you went before the Committee? A. Whether I went away?

Q. Yes; before you went before the Committee? A. I have said so, but I don't remember whether I remained at Mrs. Ovington's before going before the Committee, or whether I went back with Mr. Halliday, and went before the Committee from Mr. Halliday's.

Q. You cannot remember? A. I cannot remember distinctly.

Q. It was only last Summer? A. Yes, Sir.

Q. Did you ever converse with Mrs. Tilton at Mrs. Ovington's in regard to the scandal and the Committee? A. No, Sir; I did not.

Q. Not a word? A. Not a word, Sir.

Q. Was nothing said about the object of your visit to New-York or Brooklyn whilst you were at Mrs. Ovington's that afternoon or that day? A. Not until I saw Gen. Tracy.

Q. Not a word? A. Not a word, that I remember.

Q. How long were you in Mrs. Tilton's presence that day? A. I was there some little time, I think.

Q. Well, how long? A. I cannot state just how long.

Q. Hours? A. I cannot state particularly.

Q. Any one else present when you were with Mrs. Tilton? A. Mrs. Ovington.

Q. Any one else? A. Mr. Halliday was there at first a little while, I think, if I remember correctly.

Q. And when did you talk with Mr. Tracy? A. About ten minutes before I went around to Mr. Storrs's.

Q. Before the Committee? A. Yes, Sir.

Q. And where did you talk with Mr. Tracy? A. In Mrs. Ovington's parlor.

Q. Mrs. Ovington's parlor? A. Yes, Sir.

Q. Was any one present when Mr. Tracy talked with you? A. I think not, Sir.

Q. Now, do I understand you, therefore, that from the time you went into Mrs. Ovington's house until you saw Gen. Tracy in the parlor just before you went before the Committee, the

object of your visit was not spoken of by anyone? A. Was not spoken of by anyone, as I remember; no, Sir.

Q. Nothing was said about it? A. Until Gen. Tracy said it.

Q. I say until Gen. Tracy talked with you about it. I am talking about the time intervening between your arrival and your talk with Gen. Tracy? A. No, Sir; I don't think I can remember one word being said about going before the Committee until I saw Gen. Tracy.

Q. Was anything said about what occurred in your visit in regard to Mr. and Mrs. Tilton? A. No, Sir, not that I remember.

Q. You were not asked by anyone what you remembered in regard to Mr. Tilton's treatment of Mrs. Tilton? A. I was not asked anything about it, as I remember, until I saw Gen. Tracy during the ten minutes before going before the Investigating Committee.

Q. Understand I am speaking of the intervening time. A. Yes, Sir.

Q. I am not talking about the conversation with Gen. Tracy? A. Yes, Sir.

Q. Mrs. Tilton didn't mention it at all to you? A. No, Sir. I think not.

Q. Nor Mrs. Ovington? A. I think not.

Q. Nor Mr. Halliday? A. No, Sir.

Q. Nor did you talk with Mr. Halliday whilst you were at his house about it, did you? A. No, Sir.

Q. Not a word? A. No, Sir.

Q. As silent as the grave, were they, upon that subject until Gen. Tracy came there and talked about it? A. As silent as the grave upon that subject?

Q. Yes. A. Yes, Sir, not a word was said, as I remember, anything about going before the Committee.

Q. Now, what time did the Committee leave that night? A. I think it was between 7 and 8 o'clock, or about 8 o'clock, as near as I can recollect.

Q. And what time did Mr. Tracy call to see you at Mrs. Ovington's? A. He called, perhaps, between 7 and 8 o'clock. However, it was about ten minutes before I went before the Investigating Committee, and when I left I think it was between 7 and 8.

Q. Did you not talk with Mr. Tracy in Mrs. Ovington's parlor nearly two hours before the meeting of that Committee? A. No, Sir, I did not.

Q. Are you sure? A. I am quite sure about that.

Q. And who went with you to the Committee?

Mr. Beach—Mr. Martin.

The Witness—Mr. Martin?

Mr. Fullerton—Yes, Mr. Martin.

The Witness—I am trying to think who went with me.

Mr. Beach—I mentioned the name to aid you.

The Witness—I don't remember who went with me, whether it was Mr. Halliday, or whether I went with Gen. Tracy I could not say.

Q. Don't you remember going with Gen. Tracy? A. I don't remember whether I went with Gen. Tracy, or Mr. Martin, or Mr. Halliday.

Q. Did you know what you were going over to Mrs. Oving-

ton's for when you left Mr. Halliday's? A. I thought I was going over to see Mrs. Tilton.

Q. You had not been told what you were expected to do? A. I was not told anything about it. I think I saw Gen. Tracy ten minutes before going before the Committee.

Q. Mr. Halliday had not informed you anything about what you were wanted there for? A. Mr. Halliday had not said a word.

#### HOW THE MISTAKES IN DATES OCCURRED.

Q. So that that is the only opportunity that you had to reflect upon that subject before you went before the Committee? A. That ten minutes was all the opportunity I had to reflect, and that is the reason that I got dates wrong, and got those times near together. I told everything before the Committee just as near as I could recollect it then, but upon further reflection I found I was mistaken in several things.

Q. Were your reflections aided by conversation with anybody upon that subject? A. After that do you mean?

Q. Yes. A. Yes, Sir; I think that as I talked it over a great many things came into my mind.

Q. With whom did you talk it over? A. I talked it over with myself a good deal.

Q. Talked it over with yourself? A. Yes, Sir, the best part of it I talked over with myself.

Q. Did you talk it over with anybody else beside yourself? A. Yes, Sir.

Q. Whom did you talk with? A. I talked with Mrs. Mitchell.

Q. The nurse? A. Yes, Sir, the nurse; I talked with Mrs. Mitchell, and I talked with Mrs. Tilton a little.

Q. Yes. A. And I talked with Mr. Hill a little.

Q. Did either of those persons tell you—

Mr. Beach—Let us get the whole of it.

By Mr. Fullerton—Well, with whom else did you talk then? A. Mr. Hill, Mrs. Twitchell, Mr. Shearman, and Judge Porter. That is all, I guess.

Q. Did anybody tell you that you had made a mistake in your evidence before the Committee? A. Did they tell me afterwards that I made a mistake?

Q. After you were before the Committee did any one tell you that you had made a mistake in your evidence given to that Committee? A. No, Sir; my mind told me, when I came to think it over.

Q. Oh! you discovered your errors yourself? A. Yes, Sir.

Q. Discovered it without the aid of anybody, did you? A. Yes, Sir.

Q. When did you make that discovery? A. I made that discovery since the witnesses have been on the stand—that is, when they were beginning to come on the stand.

Q. During this trial? A. When I was thinking about my own—about myself.

Q. Do you recollect how long ago it was that you discovered it? A. I guess when I first came to Brooklyn.

Q. You were present in the room and heard the testimony? A. Not all of it.

Q. Well, you heard that portion of it which enabled you to determine or ascertain that you had made mistakes in the dates and in your testimony? A. Oh! no, Sir, I didn't; I did not hear any testimony in this court room that enabled me to think that I had made mistakes; it was before I came to the court room at all that I discovered that.

Q. Well, what testimony was it that you saw or heard that enabled you to determine that you had made mistakes? A. It was not any testimony.

Q. You say that after the commencement of this trial, and after the testimony commenced, you made the discovery, do you not? A. I didn't say anything about the testimony, that I recollect; I said after the witnesses began to come, and I began to think of myself.

Q. It was not what the witnesses said, then, that led you to discover that you had made mistakes? A. Oh! no, Sir.

A. Where were you staying when you discovered those mistakes of yours? A. Where was I staying?

Q. Yes. A. In Hicks-st.

Q. With whom? A. Mrs. Purdy.

Q. Who else stayed with Mrs. Purdy when you made that discovery? A. Her family, and a gentleman and lady, and a little child that were boarding there.

Q. I want to know the names. A. Mr. and Mrs. Loomis and their little baby, and Mrs. Purdy's son and her daughter, and Mrs. Morse and Bessie Turner.

Q. Oh! Mrs. Morse was there, was she? A. Yes, Sir.

Q. She was there when you made this discovery that you had made mistakes? A. Yes, Sir; but she had nothing to do with refreshing my mind about dates.

Q. You have not talked with her, have you? A. I have talked with her.

Q. Did you talk with her at Mrs. Purdy's? A. Yes, Sir.

Q. About this matter? A. About this scandal?

Q. Yes. A. Yes, Sir.

Q. Did you talk with her about your testimony? A. No, Sir.

Q. She did not suggest that you had made a mistake? A. No, Sir, she did not.

Q. But it was while you were there that you discovered that you had made a mistake? A. It was while I was thinking over this trial.

Q. What was it that enabled you to discover that you had made mistakes? A. Why, in thinking over my own testimony, I thought of things, and tried to get them straight in my mind.

Q. How did you find out that your testimony before the Committee was not right? A. Why, upon reflection.

Q. You remembered what your testimony was before the Committee? A. I had it; I could read it.

Q. Oh, you had it. In what form did you have it? A. I had it in my mind; I didn't have it in any other form.

#### HOW THE MISTAKES WERE CORRECTED.

Mr. Beach—You say you had it and could read it? A. I had it in my mind.

Mr. Beach—[To THE TRIBUNE stenographer]. What was that last answer, Mr. Stenographer?

THE TRIBUNE stenographer read the last answer as follows: "I had it in my mind; I could read it."

Mr. Fullerton—Now, in what form did you have it so that you could read it? A. I had it in my mind.

Q. Is that your answer? A. Yes, Sir.

Q. You were reading from your own mind then? A. I was going all over the testimony that I had given before the Committee, in my own mind.

Q. You mean then, by your answer "I had it; I could read it." that you could read it in your own mind? A. Well, at the time I found that I had made mistakes.

Q. Didn't you have a printed book with your testimony in it? A. Not at that time I had not—not at the time I am referring to now.

Q. Well, you were at Mrs. Purdy's? A. I had a book afterwards but not at the time I refer to now.

Q. At what time did you get a book with the printed testimony in it? A. Oh! I guess perhaps about three weeks ago.

Q. After this trial commenced or before? A. After the trial commenced.

Q. Where were you then? A. At Mrs. Purdy's.

Q. Was the book that you had a book like the one that I now show you, entitled "The Great Brooklyn Romance?" A. Yes, Sir; I think it was like this.

Q. Who gave you that book, pray? A. Mr. Shearman.

Q. What did you do with it after you got it? A. I laid it on my trunk.

Q. Is that all that you did with it? A. Yes.

Q. Nothing else? A. No, Sir.

A. Is it there yet? A. I suppose so; it may have been put upon the table or on the shelf.

Q. Do you mean to be understood that you didn't read any part of it? A. No, Sir.

Q. You didn't read any part of it? A. No, Sir.

Q. Never looked at your testimony? A. Never looked at my testimony out of that book—no, Sir.

Q. Did you look at your testimony in any book? A. Only in my mind. That is all the book I looked at.

Q. You did not examine your testimony before the Committee as it was printed in the book? A. No, Sir; the book was given to me to look into, but I didn't look into it.

Q. You didn't look? A. No, Sir.

Q. And you discovered these errors out of your own reflection, without anybody's suggesting that there were errors committed by you? A. A good many of them I discovered that way. Some of them I discovered in talking—I discovered several in talking with Mrs. Mitchell; she refreshed my mind.

Q. When was that? A. It was one evening some little time ago.

Q. How long ago? A. I don't remember exactly; I guess perhaps three weeks or a month.

Q. Where was Mrs. Mitchell at the time? A. Mrs. Mitchell was at Mr. Hill's.

A. At Mr. Hill's residence? A. Yes, Sir.

Q. And you were around there? A. Yes, Sir.

Q. With whom did you go? A. I went with nobody but myself.

Q. You went alone? A. I went alone.

Q. In the day-time or in the evening? A. In the evening.

Q. Did you know that Mrs. Mitchell was to be there when you went there? A. No, Sir.

Q. Who asked you to go there? A. I received—I think Mrs. Morse brought me the note.

Q. The note from whom? A. I don't know whether it was from Mr. Hill or from Mr. Shearman. However, the note said to go up to Mr. Hill's that evening.

Q. And you went? A. Yes, Sir; it was Saturday evening I think.

Q. Did you make a statement there? A. Make a statement?

Q. Yes; a statement of what you could testify to? A. Well, no, Sir; I didn't make a statement, exactly.

Q. Did you tell what you could testify? A. I told with regard to my being in the room.

Q. Did you tell what you could testify to before this jury, in substance? A. No, Sir; I didn't go all over it. I just told a few things in regard to—

Q. Just a few things? A. Just a few things in regard to—

Q. Who was present when you told that? A. Mr. Hill.

Q. Any one else? A. Dr. Corey.

Q. Who else? Mr. Hill, Dr. Corey, Mrs. Mitchell and myself.

Q. Anybody else? A. No, Sir.

Q. Mrs. Morse was not there? A. Mrs. Morse, no, Sir.

Q. Had you discovered your mistake at that time? A. Discovered my mistake?

Q. Had you at that time discovered the errors that you had committed in your testimony before the Committee? A. No, Sir; I discovered my mistakes before that.

Q. That is what I asked you, if you had before that time discovered your mistakes? A. I discovered them before that—not at that time.

Q. How long before? A. Some little time, but I cannot say just exactly how long.

Q. Was your attention called at that time to the mistakes that you had made? A. No, Sir.

Q. Did you speak of them yourself? A. No, Sir; I was not called there to tell about mistakes that I had made.

Q. It makes no difference whether you were called there for that purpose or not. Were your mistakes the subject of conversation there? A. No, Sir.

Q. When was it that Mrs. Mitchell corrected any mistake or error that you had made? A. Mrs. Mitchell did not correct any error or mistake that I had made.

Q. Well, were you enabled to correct any error by reason of your conversation with Mrs. Mitchell, or by reason of any suggestion she made? A. No, Sir; not to correct any error; but in talking with her, several little things came to my mind that I had not recollected before—not regarding any error, though.

Q. Were you reminded, in talking with her, of some things that had not come to your recollection before? A. Yes, Sir.

Q. When you went before the Committee, and relating what had occurred, you didn't state anything, did you, to the effect that Mr. Tilton stroked your forehead and your hair, and said

what nice soft hair you had, and how nice and soft your flesh was? A. I don't think I did, Sir.

Q. You did not then state before the Committee that he put his hand, or was putting his hand in your neck, and that you took his hand out, did you? A. Not that I remember.

Q. You did not state that he said, "Why, Beesie, my dear, you are painfully modest?" A. No, Sir; I don't think I went into those details.

Q. Did you say that he said: "Why those caresses, those are all right; people in the best society do all those things, and it is perfectly proper. Nobody but people that had impure minds think of such things as that as not being right,"—you did not state anything of that kind before the Committee, did you? A. Not that I remember, Sir.

Q. And did you state to that Committee anything like this: "and I said I could not help what they did in the best classes of society?" A. No, Sir.

Q.—"that I had my own ideas of what was proper and what was modest, and I was going to carry them out?" A. No, Sir; I don't think I did; I did not go into those details.

Q.—"if I didn't think it was proper for him to put his hand in my neck, I was not going to let him do it; it didn't make any difference what people thought or did in the best classes of society;" did you say that? A. No, Sir; I don't think I did.

Q. Did you state anything like this? "He then laid down and asked me if I did not—if I would not like to be married. Why, I asked him what in the world put that in his head?" Did anything of that kind take place? A. I think not, Sir.

Q. Before the Committee? A. I did not state it before the Committee, as I remember now.

Q. And you didn't state before the Committee that he said: "Well, I was a— an affectionate and nice girl, and I ought to be married; I ought to have a good husband;" did you state anything of that kind before the Committee? A. I think not, Sir.

Q. And you did not state before the Committee, did you, that you then said as follows: "I said that I supposed when the time came—the right man came along—perhaps I would get married?" A. I did not, Sir.

Q. Nor this? "But I didn't think getting married was the chief end and aim of life. It didn't trouble me very much, and that if I was married there was one thing very sure: I didn't think I would ever have a literary man for a husband." A. I think not, Sir.

Q. Nor did you state this: "and he then asked me if I didn't think some people had affinities for each other?" A. I think not.

Q. Nor that you answered, asking him "what he meant by 'affinities,' and he said that when a man saw a woman that he loved, she should be his affinity, and they should live together as man and wife; and that was what was meant by 'affinities' for each other?" A. I think not, Sir.

Q. And did you state to the Committee anything like the following: "And then he went on to say that if I would allow him to caress me and love me as he wanted to do, that no harm should come to me—and that a physical expression of love was just the same as a kiss or caress?"



A. No, Sir; I don't think I said any of those things, because, as I have stated, I did not go into details.

Q. Nor did you state before the Committee as follows: "He then went on to describe again—to tell that he knew ministers that caressed girls and married women—it was all perfectly right and proper and beautiful?" A. No, Sir; I didn't state that.

Q. Nor that he then said that you were a strange child, or that he said, "Bessie, you have some very singular ideas," and that he then kissed you good night and left? A. No, Sir; I don't think I told that.

# MISS TURNER'S REFLECTION ON THE CONVERSATION.

Q. All that was omitted before the Committee, was it? A. I think it was.

Q. Had you forgotten it? A. It did not come to my mind just then.

Q. Had you forgotten it? A. I had forgotten it at that time; it did not come to my mind just then.

Q. How long had it been out of your mind? A. How long had it been out of my mind?

Q. Yes. It was out of your mind when you were before the Committee—that is, you did not remember it. Now, how long before that had you remembered it? A. When I came to think about my testimony.

Mr. Beach—No; that was afterwards. That is not the question.

Mr. Fullerton—When had you last thought, before going before the Committee, of all this conversation between you and Mr. Tilton in the room that night—when had you last thought of it? A. Why, the ten minutes before I went before the Committee, that was all the time that I had anything to say.

Q. Did you remember all the conversation which you have stated here on this trial, and which, you say, occurred between you and Mr. Tilton, ten minutes before you went before the Committee? A. No, Sir, I did not.

Q. Very well. Now, listen to my question. When had you last thought of it before you went before that Committee some months or years? A. I hadn't thought about it before going before the Committee.

Mr. Beach—At all?

Mr. Fullerton—At all? A. No, Sir; I had not thought anything about that, even ten minutes before going before the Committee.

Q. When did you last think of it before that—how many years ago? When did you last recall this conversation that took place between you and Mr. Tilton? A. When did I last recall that conversation?

Q. Yes; when last before you went before the Committee? A. I did not recall the conversation before I went before the Committee.

Q. I know you didn't; but had you thought of it within a month before going before the Committee? A. I had not thought anything about it, because I did not know I was going before the Committee until ten minutes before I went.

Q. How soon after the occurrences was it that you forgot it?

Mr. Evarts—She has not said that she ever forgot it.

Mr. Fullerton—Well, I am asking her the question.

The Witness—I never forgot it.

Q. It was always in your mind? A. I cannot say it was always in mind, because I had ten thousand other things to think about.

Q. Well, do you remember any one time when you had it in your mind before you went before the Committee at that time?

A. Yes, Sir; I remember when Mrs. Tilton said, out at Mrs. Putnam's—

Q. One moment. I want a date, not what was said. A. Well, I can give you the date of that. It was in 1870, I think.

Q. In 1870? A. In 1870, I think.

Q. Then you thought it all over—this conversation? A. I thought about those two occasions at the time when Mrs. Tilton said that he had confessed to her—

Mr. Beach—No; that is not proper.

Mr. Fullerton—Did you then think over this conversation that you had with Mr. Tilton when he was in your room, this talk about getting married, having affinities, etc. A. Do you want to know when I thought about that?

Q. I want to know just exactly what my question implies. Did you then think it over so as to remember what took place between you and Mr. Tilton when he was in your room on that occasion in 1867? A. I don't understand the time you refer to when you say "then."

Q. You say you recalled it in 1870? A. Yes, Sir.

Q. When you were in Marietta? A. Yes, Sir. I then recalled the two occasions when he came to my room and described them to Mrs. Tilton.

Q. I don't want that, and I move to strike it out.

Judge Neilson—Yes, strike that out.

Mr. Evarts—It is only the part about describing it to Mrs. Tilton that is to be struck out.

Judge Neilson—Yes.

Mr. Fullerton—When you were in Marietta, and recalled the two occasions when Mr. Tilton was in your room, as you have testified before this jury, did you then recall this conversation that you have related here, about getting married and affinities and all that sort of thing? A. Yes, Sir.

Q. And it all came up to you in detail, just as you have now stated it? A. It came up to me in detail, and I told it to Mrs. Tilton.

Mr. Fullerton—I move to strike that out.

Judge Neilson—Yes.

Mr. Fullerton—Now, I can strike it out as often as you put it in, so that it is a waste of time.

The Witness—Excuse me; I won't put it in any more.

Mr. Fullerton—Very well. It then came up to you in detail, did it? A. Yes, Sir; in detail.

Q. And it was fresh in your recollection? A. Yes, Sir.

Q. And that was in 1870? A. Yes, Sir; 1870.

Q. What time in 1870? A. It was in the Fall.

Q. State as near as you can what time in the Fall? A. I don't know whether it was in October or November; it was in the Fall; I cannot say positively the time; I know it was the very

night that Mrs. Tilton came to Mrs. Putnam's; that I am sure of.

Q. This was fresh in your mind in the Fall of 1870. Now, when did you think it over again? A. When did I think it over again?

Q. Yes; this conversation between you and Mr. Tilton? A. When Mr. Tilton knocked me over, that day that we came back from Marietta.

Q. Then it occurred to you? A. Mrs. Tilton had said—

Q. One moment. You promised not to put that in again? A. Oh! excuse me.

Q. What time did you think it over again? A. That time when we had that fuss, when Mr. Tilton knocked me down.

Q. And that was in November, 1870, was it not? A. Yes, Sir; it was in November, because we returned—it was the 10th of November.

Q. Then it all occurred to you, this conversation between you and Mr. Tilton, did it? A. Yes, Sir.

Q. When next after that did you think of it? A. When I was—let me see—I thought something about it when I went to those persons and told them—told it to three or four persons.

Q. You thought it all over then, this conversation between you and Mrs. Tilton? A. I don't know that I went into all the details, but I thought about it.

Q. Well, it all occurred to you. You remembered it, did you not, and what he said about getting married, and affinities, and making love to you, and physical expressions of love? A. I don't know that I went all over it, but I thought about it—I thought something about it.

Q. It was fresh in your mind then? A. I don't say that all the details were fresh in my mind, but I remembered about it.

Q. You remembered it then? A. Yes, Sir.

Q. When was it that you told those persons? A. It was the 14th of November, I think.

Q. 1870? A. 1870.

Q. When did you next think of this conversation after that? A. Well, then, I suppose the next time must have been when I went before the Investigating Committee, and that I thought of it while I was talking with them there.

Q. Did you think of it then? A. Yes, Sir,—about the two different times that he came to my room, as I have stated.

Q. You thought of it then? A. Not in detail; the details did not come to me then.

Q. The conversation did not come to you? A. No, Sir; I related just about his coming to my room twice, and his taking me on his lap, and—

Mr. Beach—It is not what you related, it is what you remembered that you are asked.

Mr. Fullerton—Is that what you remembered? A. All the details had not come to me then.

Q. Did you relate to the Committee all that you remembered at that time? A. All that I remembered at the time.

Q. What you did not relate had escaped your recollection? A. Yes, Sir, or I should have related it just as I have related it here.

Q. Your intention was to relate to the Committee all that occurred on those two visits? A. My intention was when I went

before the Committee to tell the truth, and to tell everything just as I remembered it then, as near as I could.

Q. And the whole of it? A. And the whole of it; yes, Sir.

Q. And the only reason why you did not tell the whole of it, as you have now told it, is that it did not occur to you; you had forgotten it? A. It did not occur to me.

Q. Is there any other reason? A. No, Sir, I can give no reason; if I had thought it all over I should have given it just as I have given it now.

Q. If you had not forgotten it you would have told it? A. Yes, Sir.

Mr. Evarts—She has not said that she had forgotten it.

Mr. Fullerton—Well, I am asking her the question.

The Witness—If I had recollected all the details I should have told it there as I have told it before the Jury and the Judge.

Q. Name the different persons to whom you told this story. A. Yes, Sir. Which story?

Q. About Mr. Tilton's coming to your room? A. I have related it to Judge Morse; shall I mention names?

Q. Yes. A. To Mrs. Bradshaw, to Mr. Joseph Richards, to Miss Isabella G. Oakley, and to Mr. Henry Ward Beecher.

Q. State when you made those respective communications to those different individuals? A. On the 14th day of December.

Q. 1870? A. In 1870; yes, Sir; I think so.

Q. You stated a moment ago, that it was the 14th of November, I think, Miss Turner; if you are mistaken you can correct it. A. It was in December, I think, Sir. Did I say November?

Q. I think you did, a short time ago.

Mr. Beach—Yes, you said November.

The Witness—It was in December, I think, Sir.

Mr. Fullerton—How long was it, after you returned from Marietta? A. We returned from Marietta the 10th day of November, and I think it was the 14th day of December that I went around and told these different persons.

#### MISS TURNER'S PURPOSE IN SPEAKING OF HERSELF.

Q. It was more than a month after then—more than a month after you returned from Marietta, before you went around and told this story—these stories? A. A little over a month.

Q. A little over a month; you are quite sure, then, it was not in November? A. I won't state positively, but I think it was in December.

Q. Did any one ask you to go around and make this statement? A. With regard to myself?

Q. Yes? A. No, Sir.

Q. Did you make that statement all on the same day? A. I think I told them all on the same day. I made that a business when I went out that morning.

Q. You made it a business that day to go and tell this story. A. I didn't make it any—I didn't mean to say that I made it business to tell the story in regard to myself, but my business was to tell about Mrs. Tilton.

Mr. Beach—No, no.

The Witness—And then I—

Mr. Beach—No, no.

Mr. Fullerton—You did tell the story, however? A. Yes, Sir.

Q. And you went out to tell the story? A. So as to let them see that he was a bad man, and that he was not the one that was suffering; Mrs. Tilton was the one that was suffering; and they did not seem to pay very much attention to what I had said about Mrs. Tilton having a hard time with Mr. Tilton; and then I thought to make it more emphatic, I would tell the story about myself. That was the way.

Q. And that was the purpose you had in going around and telling this story to various individuals? A. The purpose I had in view was Mrs. Tilton's. I thought by relating this story in regard to myself, it would perhaps open their eyes, and let them see that he was not such a good man.

Q. Yes. A. And that Mrs. Tilton was the one that was abused.

Q. Where were you staying when you made this journey around among the neighbors? A. Where was I staying?

Q. Where was your house at that time? A. I think I was at Mrs. Tilton's. We were there that night, when Judge Morse was there, and the next day—yes, I think it was at Mrs. Tilton's. I won't state positively, but I think it was. I think I went from the house to tell these facts that I have related—from Mrs. Tilton's house.

Q. You went from Mrs. Tilton's house? A. I think so.

Q. And returned to Mrs. Tilton's house? A. I think so; yes, Sir.

Q. Did any one suggest that you should go and tell this story? A. No, Sir, no one at all.

Q. Did Mrs. Morse know that you were going to tell the story? A. That I was going to tell this story?

Q. Yes. A. No, Sir, Mrs. Morse did not know; Mrs. Morse had suggested before that I should tell the story about what Theodore Tilton told me in Mrs. Tilton's presence about Mr. Beecher—to tell Mr. Beecher and Mr. Morse.

Q. Yes, I understand that; but she did not want you to go and tell these different persons this story?

Mr. Evarts—The question was whether she suggested.

The Witness—No, Sir, Mrs. Morse did not suggest that, what I went around and told different ones.

Q. Did you talk with Mrs. Morse before you went around? A. Not of this story in regard to myself—no, Sir; Mrs. Morse was not there at all when I went around?

Q. Where was she? A. She was around, I think, at Mrs. Bates's.

Q. Well, you saw her frequently, didn't you? A. I had not seen her that morning; no, Sir.

Q. Had you seen her the day before? A. I think I saw her the night before.

Q. Now, didn't you, the night before, tell Mrs. Morse that you were going around to tell that story? A. No, Sir.

Q. You kept that quite secret, did you? A. I kept that to myself.

Q. You didn't want her to know about it? A. I didn't know that I wanted anything about it; I don't know that I thought anything about it at all.

Q. How? A. I didn't think anything about it, whether she would know it, or that I wanted her to know it.

Q. Now, prior to the 14th of December, if that were the date, had you told any person this story? A. I had told Mrs. Putnam the afternoon before Mrs. Tilton went out to Marietta, and I did not tell her voluntarily, though of my own accord.

Q. You did not tell her voluntarily? A. No, Sir.

Q. Did you tell any one else before telling these various persons on the 14th of December? A. I never told a single person, that I remember.

Q. Then Mrs. Putnam was the only person to whom you communicated what occurred in the room, between yourself and Mrs. Tilton, until you told these various persons on the 14th of December, 1870? A. Yes, Sir.

Q. Now, Miss Turner, will you be kind enough to tell us what you told Mrs. Bradshaw? A. I will as near as I can recollect it. I told Mrs.—

Mr. Porter—Won't you speak a little louder?

The Witness—I will, as near as I can recollect, Sir. I told Mrs. Bradshaw, I think, about his having knocked me down, and saying that I tripped and fell, and how he had acted, and that he was very unkind to Mrs. Tilton, that Mrs. Tilton was crying all the time, and then I told him about myself. That is as near as I can recollect.

Q. Tell us what you told her? A. I told her that he had offered to ruin me, and that is all I said about it, as I remember.

Q. Oh! that was all? A. Yes, Sir.

Q. You did not tell her the details, then? A. Oh! no, Sir.

Q. How? A. No, Sir; I think not.

Q. Well, you did not tell any one of these persons the details?

Mr. Evarts—She said before, Mr. Fullerton, that she did not.

Mr. Fullerton—There is no harm to repeat it.

The Witness—Did I tell anybody?

Q. Yes. A. Go into details?

Q. Yes. A. No, Sir.

Q. Did you tell any one of these persons, on the 14th of December, if that be the date, the details of what occurred in your room, between Mr. Tilton and yourself, as you have related it here, substantially? A. No, Sir; I think not; I only said that he offered to ruin me; I think that is all I said.

Q. Did you tell Mrs. Putnam the details, as you have told them here, substantially? A. No, Sir, I did not.

Q. Then you told Mrs. Putnam only that he had attempted to ruin you; is that it?

Mr. Porter—I object to the question.

The Witness—I think that is what I told her. She asked me if he had ever taken any liberties with me.

Q. I didn't ask what she asked you? A. And I didn't say anything at all at first; I didn't say a word, and then I went to her afterwards, and told her that I feared I had acted a lie; I had not said anything, but I feared I had acted a lie, and then I told her, I think, that he offered to take liberties with me.

Q. And that is all you told her? A. I think that is all I told her, yes, Sir, as near as I can remember.

## TO WHOM MISS TURNER TOLD THE DETAILS.

Q. Now, up to the time when you came upon the stand here as a witness on Friday last, did you tell any one the details of what occurred in your room between Mrs. Tilton and yourself, as you have testified to them here? A. Up to the time that I came on the stand?

Q. Yes? A. Yes, I told them in detail to—before the stenographer and Mr. Shearman.

Q. What stenographer? A. I don't know what his name was.

Q. Where did you tell him? A. At Mrs. Ovington's.

Q. At Mrs. Ovington's; when? A. I think it was last week.

Q. Last week? A. Yes, Sir; I think it was.

Q. It was taken down in shorthand, was it? A. Yes, Sir; I suppose so.

Q. And who were present when you told the story? A. Judge Porter, Mr. Shearman, the stenographer, and myself.

Q. Last week, you think it was? A. I think it was last week.

Q. Now, then, from the time of the occurrence in 1868, up to last week, had you ever told the details to anybody? A. Yes, Sir; I think I told some of the details to Mrs. Ovington.

Q. When? A. I could not say exactly when.

Q. As near as you can tell? A. Since I have been at Mrs. Purdy's.

Q. You say you think you have? A. Yes, Sir.

Q. Have you any doubt in your mind upon the subject? A. I think I can say truthfully that I did.

Q. Did you tell her all the details? A. Yes, Sir.

Q. That was before you told it in the presence of the stenographer, was it? A. Before I told it in the presence of the stenographer.

Q. Yes. A. I think it was after.

Q. Well, my question was—perhaps you misunderstood it—whether from the time of the occurrence itself in 1868, up to the time when you told it in the presence of the stenographer, whether you had told the details to anybody? A. I don't think that I went into all the details with anybody but the stenographer and Mrs. Tilton, the night that she came out to Marietta.

Q. That is all that you can state now, is it, about that? A. Yes, Sir.

## GENERAL CONVERSATIONS ON THE TWO SUBJECTS.

Q. Now, what did you tell Mrs. Bradshaw, if anything, as to the charge which Mr. Tilton had made against Mrs. Tilton and Mr. Beecher? A. I never said a word to Mrs. Bradshaw, or a living soul, about the charge Mr. Tilton had made to Mr. Beecher.

Q. Was the subject alluded to in your conversation with Mrs. Bradshaw? A. No, Sir, I never said a word about it.

Q. Do you confine that answer now to the 14th of December when you visited her, or do you mean to be understood as saying that you never at any time told Mrs. Bradshaw anything whatever in regard to the charge which Mr. Tilton brought against Mr. Beecher and Mrs. Tilton in respect to criminality? A. I mean to say that I never told Mrs. Bradshaw

or anybody else about this charge that Mr. Tilton had made about Mrs. Tilton's criminality with Mr. Beecher.

Q. You did not tell Judge Morse that? A. No, Sir, I did not.

Q. You did not tell Mr. Richards that? A. No, Sir.

Q. Nor you did not tell Mr. Beecher that? A. No, Sir.

Q. Or Miss Oakley? A. No, Sir.

Q. Well, whom did you first tell that Tilton had brought such a charge against his wife and Mr. Beecher? A. I never told anybody.

Q. Not up to the present time? A. Not until I was going over my—going over my testimony with the stenographer.

Q. That is the first that you ever disclosed that? A. And—let me see; did I say anything about it before the Committee? Perhaps I stated before the Committee.

Q. Well, do you remember what you said before the Committee upon that subject? A. I don't say that I did say this before the Committee; I don't remember whether I did or not.

Mr. Beach—What is your best recollection?

Mr. Fullerton—What is your recollection upon the subject? A. I guess I told the Committee something about it. I stated something about it to the Committee, I think.

Q. How? A. I think I stated something about it to the Committee.

Q. Well, what do you think you stated to the Committee? A. I think I stated before the Committee that Mr. Tilton had said that Mrs. Tilton had committed adultery with Mr. Beecher.

Q. How? A. I think I stated before the Committee that Mr. Tilton had told me that Mrs. Tilton had committed adultery with Mr. Beecher; I ain't sure.

Q. Did you inform the Committee that Mr. Tilton had told you that?

Mr. Beach—And at what time?

The Witness—I think I told the Committee about all this occurrence that happened the day we came back from Marietta.

Q. No, I didn't ask you about that. Did you tell the Committee in substance that Mr. Tilton had charged his wife with the commission of adultery with Mr. Beecher? A. I think I did, Sir.

Q. And you told the Committee in substance that Mr. Tilton had told you so, did you not? A. I think so.

Q. And when did you tell the Committee that Mr. Tilton had informed you of that? A. When did I tell the Committee?

Q. Yes. A. Why, the evening that I was before the Committee.

Q. No, no; when did you tell the Committee that Mr. Tilton told you that? A. I think I told the Committee that Mr. Tilton told me that the very day after we—the very day after we got back from Marietta.

Q. From Marietta? A. Yes, Sir.

Q. Very well. To whom did you tell this story first on the 14th of December, of the persons that you have named? A. Tell which story?

Q. The story which you told to these various persons, on the 14th of December? A. The story in regard to myself.

Q. Yes. A. Who did I tell first?

Q. Which of them did you tell first? A. I think I went first to Mr. Beecher in the morning.

Q. And who next did you tell? A. I think then I went over to the office of *The Evening Post*, where Mr. Richards was, and told Mr. Richards.

Q. Now, who next did you tell? A. And then I think I told Judge Morse, and then I think I told Mrs. Bradshaw.

Q. When you told Mrs. Bradshaw did she say anything about keeping silent in regard to that story to you? A. I don't remember what Mrs. Bradshaw said, Sir.

Q. Didn't you state in substance— A. Except—no, I don't think she said anything. I think that every one that I told it to remained very quiet except Mr. Richards, and what he said to me was: "Whom God hath joined together let no man or woman put asunder."

Q. Did he say that in reply to what you told him? A. What, Sir?

Q. He said that in reply to something you told him? A. He said that in reply to what I had said about Mrs. Tilton's unkindness—Mr. Tilton's unkindness to Mrs. Tilton.

Q. Did you talk to him about a divorce—to Mr. Richards? A. I don't remember, Sir.

Q. Why, don't you remember now, that you spoke to him on the subject of a divorce, and that that was his reply? A. I don't remember anything about it.

Q. Did you speak to no one of these various persons about a divorce? A. Not that I recollect, Sir.

Q. Don't you recollect of saying that Mrs. Tilton ought to get a divorce? A. No, Sir.

Q. Now, what did you tell Mr. Richards? A. What I had told the others, that Mr. Tilton was very unkind, and that she was crying all the time, and then related this—his having offered to ruin me.

Q. Well, why didn't you tell Mr. Richards that Mr. Tilton had charged Mrs. Tilton with adultery? A. Because I couldn't make up my mind to tell anybody those horrible tales that he told me; because I refused—Mrs. Morse wanted me to tell Mr. Beecher; I wouldn't tell that.

Q. Well, you were willing to tell the horrible tale about going to your room and trying to ruin you, were you not? A. Yes, Sir.

Mr. Everts—Well, that is reasoning with the witness.

The Witness—I told that because I thought it would have some weight for Mrs. Tilton; I thought that they are all thinking that Mr. Tilton was the wronged one, and I told that story in regard to myself thinking it would help Mrs. Tilton along. That is why I told that.

Q. And you did not think it would help Mrs. Tilton along to tell the other story, did you, of the adultery?

Mr. Porter—I object to that question.

The witness—I didn't think anything about it.

Mr. Porter—Her opinions upon that question are not evidence.

Mr. Morris—We are getting at her motive.

Mr. Porter—Mr. Stenographer, I would like to have that question repeated.

Judge Nelson—I think the counsel will abandon the question.

Mr. Fullerton—Yes, I abandon it because it is answered; I abandon every question as quick as it is answered.

Mr. Everts—We objected to the question.

Judge Nelson—I think her motives for not telling the other story are not to be received.

Mr. Everts—It brings no evidence into the case at all.

Mr. Fullerton—It certainly does bring evidence into the case, and evidence of great value.

Mr. Everts—Well, that is not our view.

Mr. Morris—We don't expect to take your views.

Mr. Fullerton—I was not confining myself to your view; it was according to my own view that I looked at it.

Mr. Everts—It is the judge's views that are paramount.

Mr. Fullerton—You went to *The Evening Post* office, I understand? A. Yes, Sir.

Q. To see Mr. Richards? A. Yes, Sir.

Q. Do you refer to the brother of Mrs. Tilton? A. The brother of Mrs. Tilton, yes, Sir; that is the only Mr. Richards I know.

Q. Mr. Joseph H. Richards? A. Mr. Joseph H. Richards; yes, Sir.

Q. And you told him this story there at *The Post* office? A. I told him which story?

Q. The story which you did tell him. A. Well, do you mean that I told him in regard to myself?

Q. Yes. A. And Mr. Tilton's unkindness to Mrs. Tilton.

Q. Yes. A. I did not tell him right there in the room; he took me up-stairs. I told him I wanted to see him, and he took me up-stairs, and I told him there.

Q. And there you told him the story? A. It was in the building though of *The Evening Post*.

Q. That was on the 14th of December, 1870, was it? A. I think it was, yes, Sir.

Q. How do you know it was the 14th of December? A. Because I remember that the 18th of December was the night Mr. Morse was sent for.

Q. How do you remember that? A. Because I went for him.

Q. How does that enable you to remember that it was the 18th? A. Well, I remember it.

Q. Can you state how that enables you to remember it; was it connected with any event or circumstance that enables you to remember it? A. Why, it was connected with the event that Mr. Morse was around there, and Miss Dennis, and that they were all in the parlor talking, and I thought they all seemed to be very quiet and acted as if they thought Mr. Tilton was the wronged one, and Mrs. Tilton—

Q. You recollect when you first talked to Mrs. Bradshaw that she made an entry of your conversation in her diary? A. That she made an entry?

Q. Yes, in her diary. A. Not that I know of; she did not have any then.

Q. Did you not in substance say to Mrs. Bradshaw that Mr. Tilton had accused his wife of adultery with Henry Ward Beecher? A. I said—I did not mention the subject to Mrs. Bradshaw.

Q. And after you stated that, did not Mrs. Bradshaw — A. I did not state that. Excuse me, I did not state that.

Q. Well, let me suppose you said it for the purpose of a question?

Mr. Everts—Oh! no.

Mr. Fullerton—Oh! yes.

Mr. Everts—That we object to.

Mr. Fullerton—I, notwithstanding your objection, shall put that very question.

Mr. Everts—I think that line of inquiry has been passed upon by the Courts, that the counsel must take the witness's answer as it is, and must not suppose that he has answered the other way.

Mr. Fullerton—The counsel upon the other side will see his error when I put the question, because there is no gentleman more experienced than himself. [To the witness]. After you made a statement of that kind, namely, that Mr. Tilton had accused his wife of adultery, did not Mrs. Bradshaw say to you: "You must not tell anybody of that?"

Mr. Everts—Now, don't answer. We object to that question.

Judge Neilson—I think the question is improper, Mr. Fullerton.

Mr. Fullerton—Why, certainly not, Sir.

Judge Neilson—Well, suppose you put it in this way: "After you made a statement, whatever it was, to Mrs. Bradshaw, did she say so and so?"

Mr. Fullerton—No, Sir, because I want Mrs. Bradshaw's injunction to reach that very declaration.

Judge Neilson—Well, whatever the declaration was.

Mr. Fullerton—Did you not tell Mrs. Bradshaw that Theodore Tilton had charged his wife with adultery, and did not Mrs. Bradshaw then say to you, "you must not tell anybody of it?" A. No, Sir, I don't remember any such thing about it.

Mr. Fullerton—Your Honor will perceive the two things must come together.

Judge Neilson—In that form there is no objection to their coming together.

Mr. Everts—We don't object to that question.

Mr. Beach—We have got it; it is all right.

Mr. Fullerton—It is all right. [To the Witness.] And did you not then observe: "I have already told Mr. Richards, Miss Oakley and Mr. Beecher?" A. I observed— That I told Mrs. Bradshaw, that I told Miss Oakley, and Mr. Beecher, and Judge Morse, and Mr. Richards this story in regard to myself, and Mr. Tilton's unkind treatment of his wife, but I did not observe that I told anything to any one about Mr. Tilton's accusing Mrs. Tilton of adultery with Mr. Beecher.

Mr. Beach—[To Mr. Fullerton.] Did she not say to Mrs. Bradshaw that she had told these parties the same thing that she told her?

Mr. Fullerton—Did not you tell Mrs. Bradshaw that you told these other persons the same story that you had told her, Mrs. Bradshaw? A. I did not tell Mrs. Bradshaw that I had told that story about Mrs. Tilton's criminality with Mr. Beecher.

Q. Didn't you tell Mrs. Bradshaw this, that you had told Mr. Richards, Mr. Beecher and Miss Oakley, the same story that you had told her? A. Yes, Sir; I think I did.

## THE SECOND INVASION OF MISS TURNER'S ROOM

Q. Now, when you were before the Committee, did you forget the details of the other time when Mr. Tilton came to your room? A. I mentioned two occasions, Sir, before the Committee.

Q. Well, you did not mention the details of the second occasion, did you? A. I don't think I did before the Committee; no, Sir.

Q. What did you say in regard to the second occasion before the Committee? A. All that I remember distinctly now is when the question was put to me, "Did Theodore Tilton ever attempt your ruin?" and I said, "Yes, on two occasions."

Q. Yes? A. And then I spoke about combing his hair and sitting in his lap, and—

Q. Well, how did it happen that you did not give the details of the second visit to the Committee? A. It did not happen to come to me.

Q. How? A. I did not happen to think of that.

Q. Didn't happen to think of it? A. As I said before, I told as truthfully, and as well as I could recollect then.

Q. Did you tell the Committee in regard to the second occasion that Mr. Greeley was staying in the house at the time? A. I mentioned before the Committee that Mr. Greeley was there the first occasion when he came to me—that is the first occasion.

Q. That was wrong, wasn't it? A. That was wrong; yes, Sir.

Q. Mr. Greeley was the second occasion? A. Second occasion; yes, Sir.

Q. Did you tell the Committee in regard to that occasion that you were awakened one night from your sleep by seeing a man of tall figure standing over you, that you jumped up and said, "Who is there?" and Mr. Tilton said, "Hush! it is only Mr. Tilton?" A. I don't know whether those were the exact words I used or not before the Committee.

Mr. Beach—Well, anything like that?

Mr. Fullerton—Just look and see whether you stated anything of that kind with regard to that occasion. [Book handed to witness.] A. I must have stated, as it is here.

Q. How? A. I must have stated, as it is here.

Q. Well, did you state what is embodied in that question? A. Please repeat the question.

Q. Did you state before that Committee in reference to the occasion when Mr. Greeley was at the house, as follows, or anything like it: "One night I had gone to bed, and I was awakened from my sleep by seeing a man of tall figure standing over me, and I jumped and said 'Who is there?' and Mr. Tilton said 'Hush! it is only Mr. Tilton,' and then I think I raised myself up, and I—it seemed as if I was in a strange place, all whirled around, because I had gone to bed in the second-story back room, bedroom, and his room was next to mine, and I had gone to bed in one of the rooms—in mine—and found myself in his room?" A. I think that is what I stated before the Committee.

Q. Do you find it there? A. Yes, Sir.

Q. Exactly in that shape, is it? A. Just as you have read it, I think it is here, Sir.

Q. Look at it carefully and see. Is it there? A. This is the way I stated it, I think, to the Committee.

Q. Well, just tell us how you stated it to the Committee?

Mr. Evarts—[To the witness.] Look at the book, if you please; look at the book and see what is there.

The Witness—Yes, Sir; I have looked at it.

Mr. Fullerton—Well, now, tell us what you said to the Committee? A. Why, it is here.

Q. Well, can't you? A. Shall I read it?

Mr. Fullerton—Read it. Well, let me read it then. Now, where is it? A. This is it.

Mr. Fullerton—Now, you hold that place; see if I read right [reading.] "When he came to me a second time and tried to get into bed with me, I got very indignant, and, as he would not leave the room, I went into another and locked the door after me."

The Witness—Please excuse me a minute; you have got ahead of me.

Mr. Fullerton—Well, this is the first time I guess.

The Witness—Where are you? In the beginning of this—

Mr. Fullerton—How?

The Witness—In the beginning of this paragraph?

Mr. Fullerton—About the middle of the paragraph, where you come to the second occasion.

The Witness—If you will begin at the beginning then I can tell better.

Mr. Fullerton—No; I don't propose to begin at the beginning, because that is another subject.

The Witness—Very well, then, I will—

Mr. Fullerton—Let me point it out to you. Do you see "second time" there? A. Yes, Sir; "When he came"—I will follow that.

Q. Now, I ask you if this is your testimony before the Committee with regard to the second occasion—[reading:] "When he came to me a second time and tried to get into bed with me I got very indignant, and, as he would not leave the room, I went into another and locked the door after me." A. I think that was the way I stated it to the Committee.

Q. That is the way you stated it to the Committee? A. I think so; yes, Sir.

Q. Now then, you did not state to the Committee, did you, [Reading:]

One night I had gone to bed, and was awakened from my sleep by seeing a man of tall figure standing over me; and I jumped and said, "Who is there?" and Mr. Tilton said, "Hush! it is only Mr. Tilton," and then I think I raised myself up, and I—it seemed as if I was in a strange place, all whirled around, because I had gone to bed in the second story back room—bedroom—and his room was next to mine, and I had gone to bed in one of the rooms—in my room, and found myself in his room, and I says, "What do you—what did you bring me here for; what are you doing?" and he said that he felt lonely, and he wanted somebody to love him; and I said, "You would not have done this if Mrs. Tilton had been home; you should not take liberties when Mrs. Tilton is away that you would not take when she is at home," and I then got up and left the bed, and went to my own room and locked the door.

A. That is what I stated here last Friday, that you have there.

Q. Yes; and now I want to know if you stated anything like that which you stated last Friday before the Committee? A. What I stated before the Committee was this, I think—

Q. Well, did you state anything like that before the Committee?

Mr. Porter—One moment; she has a right to answer.

Mr. Fullerton—Did you state anything like that before the Committee?

Mr. Evarts—The question whether it is like it may depend upon comparing them; she says: "That is what I said before the Committee."

The Witness—I think that is the way I stated it before the Committee, as you read it there.

Q. Will you be kind enough to state what you stated before the Committee?

Mr. Porter—We insist on her right to finish her answer "This is what I said before the Committee—"

Judge Nelson—Now, the counsel asks her to read it.

Mr. Fullerton—Yes, Sir; and I want to know what "this" is, so it can appear on the record.

Mr. Porter—Well, let her read it.

Mr. Fullerton—Well, I say read it. [To the stenographer.] What is the last answer?

THE TRIBUNE stenographer [reading]: "Q. Now, I want to know if you stated anything like that which you stated last Friday before the Committee? A. What I stated before the Committee was this, I think"—

Mr. Fullerton—By "this," do you mean as follows [reading:] "When he came to me the second time, and tried to get into bed with me, I got very indignant; and as he would not leave the room, I went into another and locked the door after me;"

Mr. Evarts—Are you reading?

Mr. Fullerton—Yes; word for word.

Mr. Evarts—Why should not she read, then?

Mr. Fullerton—Because I can read it better.

Mr. Evarts—Ah!

Mr. Fullerton—Well, then, because I choose to.

The Witness—What you are reading there, I think, is what I stated here on Friday; and as it reads here, that is what I think I told the Committee.

Mr. Fullerton—What I have just read is not what you stated on Friday at all. I am reading from the same thing you are holding in your hand.

Mr. Porter—I insist upon it that the witness shall be allowed to complete her answer, and state what she did state before the Committee.

Mr. Fullerton—That is just what I insist upon exactly, so we agree once.

The Witness—Well, now, I don't know that I understand you exactly.

Mr. Fullerton—Have you in your hands your testimony before the Committee? A. It must be, I suppose.

Q. Then will you tell us now what you stated before the Committee with regard to what took place in the room when Mr. Greeley was at Mr. Tilton's house? A. Why, this is my testimony; I must have stated what is here.

Q. Well, will you read it then? A. Yes, Sir.

Q. Please read it.

The Witness—[Reading]:

At night I hardly realized where I was; he must have lifted me out of my bed and put me in his; when I woke up and found where I was I asked what he was doing that for; he said that he was lonesome, and wanted me to come and be with him; I said that wasn't right, and I went back to my own room; there was nothing said about it at the time; I was quite young, and used to be with him a great deal, just like one of the children, and I used to comb his hair, and he used to kiss me as he did other children frequently; I never had any impure thought—

Q. That is as far as I wish; these are your reflections. That is your testimony before the Committee, is it? A. Yes, Sir.

Q. Very well. Now, wasn't that testimony given in reference to the first occasion when he came to your room? A. It was given in reference to both occasions.

Q. Same thing took place on both occasions? A. And when I referred—the—whoever put the questions to me—said: "Did Mr. Tilton ever attempt your ruin?" I said: "Yes; twice—on two occasions."

Q. Then you related the first occasion was when Mr. Greeley was there, did you not? A. Yes, Sir; I related that as the first occasion, but it was not the first; it was the second.

Q. You had forgotten which was first, had you? A. I told it then, as I have said all along, as near and as truthfully as I could recollect it then, what I thought it was then.

Mr. Fullerton [To the Court]—It is suggested, Sir, that I go no further to-day.

Mr. Everts—It is the regular hour for adjournment.

The Court thereupon adjourned until 11 o'clock on Tuesday morning.

## FIFTIETH DAY'S PROCEEDINGS.

### MISS TURNER STILL UNDER CROSS-EXAMINATION.

HER EXAMINATION BEFORE THE COMMITTEE AND ON THE TRIAL CONTRASTED—A FEW CONTRADICTIONARY STATEMENTS EXPLAINED—HER MEMORY OF DATES AND LANGUAGE SEVERELY TESTED—UNPLEASANT RELATIONS WITH MR. TILTON'S PARENTS—SHARP CONTESTS BETWEEN COUNSEL—CHARGES OF IMPROPER TUTELAGE AND INTERROGATION.

TUESDAY, March 23, 1875.

Miss Turner's cross-examination was resumed to-day. She had been ill during the previous night, and as she sat near Mrs. Tilton for a few minutes before taking the stand she looked pale and nervous, but the moment she sat down in the elevated chair reserved for witnesses the blood mounted into her cheeks, and as Mr. Fullerton began she bent forward from her previous reclining position, resolutely fortified for the work. The printed reports of Miss Turner's evidence really give a false impression of the young woman's manner. She appears by the mere

perusal of question and answer to be quick, impulsive, and voluble to an offensive degree. On the contrary, she is deliberate, and precise, and she is voluble only when some point affecting Mrs. Tilton is brought up. The most singular and noticeable personal characteristic betrayed by her evidence is her strong loyalty Mrs. Tilton.

With a less deliberate witness testifying to so many different circumstances and dates, Mr. Fullerton's line of examination might have been more successful, even though it was not elaborate. The efforts of Mr. Fullerton were directed almost wholly to attempts to disconcert the witness by comparisons of her former testimony (before the Committee) and the evidence on the present trial, and by confounding dates, and even to confuse her as to the number of beds which Mr. Tilton examined to discover which was the softest. But Miss Turner answered the first efforts by declaring that she did not know that her testimony before the Committee had been fully printed, and by saying that she had gone before the Committee at 10 minutes' notice, unprepared, whereas in this suit she had turned all the details over in her mind, knowing that she was to testify. Her recollection of dates was something marvelous, as tested several times, and yet she had the good sense or honesty (as one may choose to consider it) not to insist on too much precision as to exact days. This gave Mr. Fullerton great annoyance and increased his difficulties. Miss Turner would also insist, when Mr. Fullerton put before her documents, on deliberately reading the whole of a letter or piece of testimony before answering. Several times she snapped him up, with the slightest tinge of asperity in her voice and manner, on the misconstruction of sentences. An instance of this occurred after Judge Neilson had required Mr. Fullerton to modify his inquiry as to Mr. Tilton's advice to her on a proposal of marriage, when the cross-examiner asked if he (Mr. Tilton) had advised her relative to her marriage. Quick as thought she answered, "But I never was married." At another stage he asked her what it was she had testified to, as Mr. Tilton's observations to his wife at the Woman's Rights meeting. "I spoke of what I observed," she replied, "and what he remarked." During the suppressed laughter which followed this retort some one near the reporters' desk remarked, "The Tiltons are a family of critics," doubtless alluding to Mr. Tilton's



criticism on Mr. Everts's use of the synonyms "sure" and "certain."

Previous to the recess the examination of Miss Turner, conducted in the manner indicated, embraced inquiries as to the circumstances under which she had lived at Mr. Silas Tilton's house at Keyport, and under which she had left there. It appeared not to have been a pleasant experience, as she admitted; but when she was asked if she had not, while angry with Mr. Tilton, threatened to make herself ill by refusing food, she answered negatively, with an accompaniment of genuine laughter which could have been heard outside the court-room, and which was pleasantly reschoed from various parts of the audience. The stories of the nocturnal hanging of pictures and testing of beds were gone over again, and told with some variations which seemed to add to the zest with which the audience received them, to such a degree that Judge Neilson had to reprove the spectators. After recess attention was largely devoted to the interrogation of the witness as to the times when Mr. Tilton is alleged to have locked up his wife in a room to give her scoldings. Mr. Fullerton asked the witness whether it was not Mr. Tilton's habit to read to his wife articles and lectures that he had written and to get her criticism. Miss Turner replied in the affirmative, "But," she added, apprehending his purpose with her usual quickness whenever Mrs. Tilton is involved, "if he was reading her lectures at those times they were scolding lectures, I know." The witness preserved her composure perfectly through the afternoon, and continued to use very expressive language in her descriptions. When she was asked how Mr. Tilton looked on occasions when he had been scolding Mrs. Tilton the witness said, "His face was as red as fire." "As red as fire?" answered her questioner, with an emphasis on the last word. "Well, it was pretty red," returned the witness. "But was it as red as fire?" persisted Mr. Fullerton. "Well it is a common expression to say as red as fire, or as fury." "Yes, but which was it, fire or fury?" continued the lawyer. "Well, in this case," answered the witness, with an air of great candor, "I think his face was as red as fury." Here Mr. Tracy offered some objections, and both he and Mr. Fullerton continued arguing at the same time for several minutes until the latter fairly drowned the voice of his opponent. The witness, after repeated questions, fixed the number of times when Mr. Tilton had locked his wife in a room to scold

her at three dozen. In the morning she had said it was over a dozen. Mr. Fullerton questioned her very closely on this point. An argument between the counsel followed, and at its close Mr. Beach made some rather bitter strictures on "the tutelage which the witness had received during the recess." None of the defendant's counsel made any reply to this charge. Miss Turner was asked to repeat what occurred at the time when Mr. Tilton is alleged to have knocked her down. She gave the scene with more than her former energy of description, and her manner of mimicking the plaintiff by placing her hands under the armholes of an imaginary vest and bowing her whole form as she imitated his voice when he said to her gently, after knocking her down, "Why, Bessie, my child, how could you trip and fall so?" seemed to delight the plaintiff quite as much as it amused the jury.

The yellow books containing the witness's testimony before the Plymouth Church Committee were again brought into use just before the conclusion of the afternoon session. Mr. Fullerton was provided with a copy. The witness was handed one and Mr. Porter held one. Mr. Fullerton wanted the witness to refer to a passage. Mr. Porter seemed to think there was some trap in this book for the witness, and the two counsel for a few minutes stood by the witness telling her to read different passages. The witness, however, obeyed neither, but persisted in spite of Mr. Beach's earnest protest in reading half a dozen of her most damaging statements against the plaintiff. She did this with a composure so perfect as to make it impossible for her hearers to determine whether or not she had mistaken the passages asked for. The comparison of the testimony finally resulted in some apparent discrepancies between the witness's evidence before the Committee and that given in court on Friday. This she quietly explained by saying again, "I was mistaken," as she did in three or four similar cases on Monday.

### THE PROCEEDINGS—VERBATIM.

MISS TURNER'S CROSS-EXAMINATION RESUMED.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Fullerton—Miss Turner, yesterday, in enumerating the names of persons to whom you communicated this story on the 14th of December, you didn't mention Mrs. Morse; was her name omitted accidentally or purposely? A. Purposely? Mrs. Morse had been told this once in my presence, by Mrs. Tilton she knew them, but not from me.

Q. Not from you? A. Not from me; no, Sir.

Q. You were present when they were told? A. I was present; yes, Sir.

Q. That was the reason that you did not tell her, is it? A. Well, I didn't think it was necessary to tell her the second time, when she had heard it all.

Q. How did you know where Joseph H. Richards resided when you went, on the 14th of December, to tell him this story? A. I did not go to his residence, I went to his place of business.

Q. How did you know where his place of business was? A. I don't know whether I looked in the directory or whether I learned from somebody personally. I am not sure about that.

Q. Didn't you ask Mrs. Morse where Mr. Richards could be found? I don't remember that I did, Sir.

Q. Reflect a moment, and see if you can tell me how you ascertained his residence?

[After a long pause by witness.] Can you tell? A. No, Sir; I don't remember whether I found it in the directory or whether somebody told me, or who it was that told me.

Q. You can't remember, then, anything upon that subject now? A. No, Sir.

Q. Where was the office of *The Evening Post* when you went to it? A. I think it was in Nassau-st., Sir, as I remember.

Q. Do you recollect where? A. It was a good distance down from Fulton-st.

#### THE STORY TOLD MRS. PUTNAM.

Q. I understood you to say yesterday that you did not tell Mrs. Putnam this story voluntarily? A. No, Sir.

Q. She questioned you about it, did she? A. Yes, Sir, she questioned me with regard to Mr. Tilton; we were speaking of him.

Q. Yes; that is enough. How long had you been at Mrs. Putnam's when she thus questioned you? A. I had been there some seven months—I guess it; some seven months; yes, Sir.

Q. Did she question you before or after Mrs. Tilton's arrival at Marietta? A. The very afternoon before Mrs. Tilton's arrival.

Q. You didn't tell her at first? A. No, Sir.

Q. You did go to her and tell her afterwards, you say? A. I went to her afterwards, because I thought I had acted a lie and I wanted to make it all right, because I felt the way she looked at me she suspected.

Q. Then you went to Mrs. Putnam and told her this after Mrs. Tilton arrived, did you? A. Oh! no, Sir; before Mrs. Tilton arrived; the afternoon before Mrs. Tilton arrived.

Q. Then it was on the same day that you went back to Mrs. Putnam and told her that you knew about it; the same day that she put the question to you, was it? A. The day that Mrs. Putnam put the question to me was the afternoon before Mrs. Tilton came, and that same afternoon I told Mrs. Putnam before Mrs. Tilton came.

Q. You are quite sure it was the same afternoon, but not after Mrs. Tilton arrived? A. It was before Mrs. Tilton came.

#### WHERE THE WITNESS FIRST HEARD THE CHARGE OF ADULTERY.

Q. When did you first hear that Mr. Tilton had made the charge against Mrs. Tilton of having committed adultery with Mr. Beecher? A. I first heard it from Theodore Tilton's own lips in the parlor the day we arrived from Marietta.

Q. That is the first you ever heard of it? A. Yes, Sir.

Q. Or knew such a charge was made? A. Yes, Sir.

Q. You didn't hear it at Marietta at all? A. No, Sir.

Q. You recollect the day, I suppose, when Mr. Tilton first made that charge? A. Oh! yes, Sir; very well.

Q. You recollect also the second time that Mrs. Tilton went to her mother's after you returned from Marietta, do you not? A. The first time?

Q. The second time; she went twice, did she not, to her mother's? A. She went backwards and forwards several times.

Q. Well, you have related two occasions at least? A. Yes, Sir; when he told the story to me.

Q. When Mrs. Tilton went to her mother's from her own house, have you not? A. Yes, Sir; the first time we went was the morning after Mr. Tilton related this story; told me this story.

Q. And the second time was when? A. Then the second time was the evening that he went around and brought Mrs. Tilton from Mrs. Morse's back again; that was the time that he told me the story again; that was the third time.

Q. How many days was that after your return from Marietta? Mr. Everts—Which one?

Mr. Fullerton—The second visit.

The Witness—The second time she went to her mother's?

Q. Yes. A. The first time was the day after we returned from Marietta, and then I think it was a day or two after that the third time.

Q. Now, had the troubles with Mr. Bowen about the discharge from *The Union* commenced then? A. The first time that I heard about—

Q. No; had they commenced then? I don't want the first time.

Mr. Shearman—Well, that is not a fair question.

Mr. Fullerton—Yes, it is. Had the troubles with Mr. Bowen commenced at the time Mrs. Tilton made the second visit to her mother's after your return from Marietta?

Judge Nelson—Had they commenced to her knowledge, do you mean?

Mr. Fullerton—Certainly.

The Witness—Well, I was going on to explain, to say—

Mr. Fullerton—I am not trying to get anything but her knowledge; counsel know that very well.

The Witness—If you will allow me to explain I will tell you.

Mr. Fullerton—The question is a very simple one.

The Witness—I was going to say, Sir, in answer to your question, that the first time that I—

Q. I don't ask you about the first time, I ask you if at that time you had then heard about the troubles with Mr. Bowen, about the discharge from *The Union*?

Mr. Porter—One moment.

The Witness—No, Sir; I think not, Sir.

Mr. Morris—[To Mr. Porter]. She has answered the question.

Mr. Fullerton—Well, let us hear the objection, because I am curious to know what it could be. [To the witness]. You had not heard of the troubles with Mr. Bowen then? A. I think not, Sir; I would not swear positively, but I think not; I think the first time I heard of the troubles with Mr. Bowen was—

Mr. Beach—Wait a moment.

Mr. Fullerton—I don't ask you the first time.

The Witness—Excuse me, Sir.

Q. You are not positive upon that subject, then? A. I could not swear to it, Sir, but I think not.

Q. Were you asked anything in that regard before the Committee? A. I don't remember, Sir.

Q. Were you asked this question before the Committee at that time, referring to this second visit of Mrs. Tilton's to her mother's after your return from Marietta—

Mr. Everts—What page is that?

Mr. Fullerton—Page 314, my paging; it is the last but one of the testimony, the top of the left hand page: "At that time was he having difficulty with Mr. Bowen?" Were you asked that question? A. I cannot remember; I suppose my answer is there.

Q. And did you answer: "Yes, Sir, very great difficulties?" A. Well, I don't understand what you mean "at that time"—do you mean when we were around to Mrs. Morse's?

Q. I mean the second time that you went around to Mrs. Morse's after your return from Marietta? A. I don't think I recollect about any difficulties with Mr. Bowen then, Sir.

Q. My question is whether this evidence was given by you before that Committee, as I have read it? A. Well, if I have said "Yes, Sir," there, then I must have given that evidence; if "Yes, Sir," is in that book in answer to the Committee's question, I must have said "Yes, Sir."

Q. Well, did you remember at that time that the troubles had commenced with Mr. Bowen? A. I must have remembered, if I said "Yes."

Q. Would it refresh your recollection by looking at the book? A. No, Sir; I don't think it will. I will look at it and try.

Q. Just look at it and see if it refreshes your recollection.

Mr. Morris—Near the top of the page.

Mr. Fullerton—It is marked.

The Witness—I suppose I must have said it if this is my testimony.

Q. Well, do you now recollect that Mr. Bowen's difficulties, or Mr. Tilton's difficulties with Mr. Bowen, had commenced? A. I don't recollect—

Q. At that time? A. I don't recollect that they had, Sir, at that time that I knew of; there may have been troubles between them, but not that I knew of; that is the best of my recollection now.

#### THE VISIT TO KEYPORT AN UNHAPPY ONE.

Q. Why did you leave Keyport in the Summer of 1868, when you came to Brooklyn? A. Because Mr. Elias Til-

ton was very ugly to me and talked very unkind, as they had always been in the habit of doing, because they had hated me very much always, or disliked me very much indeed.

Q. You refer to the father and mother of Mr. Tilton? A. The father particularly—old Mrs. Tilton was generally kind, but still I didn't think she cared very much for me either; but old Mr. Tilton was very unkind and very ugly.

Q. Did he tell you to leave and never to come back into his house again? A. No, Sir, he did not; I left of my own accord; I didn't wait for him to tell me to leave.

Q. You were not, then, discharged from the house? A. No, Sir, I was not.

Q. Were you sick there that Summer? A. I was sick that night; sick the next morning from having cried all night, with the headache.

Q. You didn't get sick there from any other cause? A. Not at that time, Sir.

Q. Quite sure about that? A. Quite sure; yes, Sir.

Q. Didn't you get angry and refuse to speak to any one for two or three days while you were there that Summer? A. What Summer do you refer to?

Q. 1868. A. No, Sir; I did not.

Q. How? A. No, Sir; except that I did not speak to old Mr. Tilton after he had talked so unkind to me that morning at the breakfast table.

Q. Did he accuse you of telling falsehoods? A. I never was accused by any one of telling falsehoods but Mr. Theodore Tilton.

Q. Never? A. Never; no, Sir.

Q. Did you threaten to make yourself ill down there when you got angry? A. Threaten to make myself ill? I don't understand you, Sir.

Q. It is a very plain question? A. Threaten to make myself ill?

Q. Yes? A. I never tried to make myself ill.

Q. Did you threaten there, when you got angry there that Summer, to make yourself ill? A. I don't understand what you mean by threatening to make myself ill.

Q. Yes; didn't you refuse food for several days for the purpose of making yourself ill? A. No, Sir; I didn't. [Laughing.]

Q. And didn't, in consequence of that, Mr. Tilton tell you to leave his house and never to return? A. Mr. Tilton never told me to leave his house and never return, Sir. Shall I relate you the circumstance of my having left the house?

Mr. Fullerton—Whenever I ask you to do so.

The Witness—Excuse me, Sir.

Q. And did you not say upon your return from Mr. Tilton's that Summer, that you were ashamed to come to Mr. Tilton's house because you had been sent away from his father's? A. To return to this Mr. Tilton's house?

Q. Yes. A. No, Sir.

Q. On your return to Brooklyn? A. I could not have said that, because I had nothing to be ashamed of.

Q. Well, you didn't say it? A. No, Sir, I did not.

Q. Nothing of that character? A. Nothing of that character.

## DEATH OF THE CHILD PAUL.

Q. Do you recollect little Paul's death? A. Yes, Sir, very well.

Q. Were you at the house at the time he died? A. Yes, Sir; I think he died in July, 1868.

Q. How long had he been ill? A. Well, I think he had been ill some little time of cholera infantum.

Q. About how long? A. I could not say, Sir; it may have been a month, or it may have been more, or perhaps not as long.

Q. Did Mrs. Tilton leave home that Summer before Paul's death to go anywhere? A. I don't remember, Sir, but I think not, because Paul was very sick, and I don't think she would leave to go anywhere while he was sick.

Q. Did she leave after his death and go anywhere in that Summer? A. In 1868—I don't remember, Sir.

Q. Don't you know that she remained at home during the whole of that Summer after Paul's death? A. I don't remember, Sir.

Q. How? A. I don't remember whether she went away or whether she remained at home.

Q. Do you recollect whether Mr. Tilton's visit to your room in 1868 was before or after Paul's death? A. That I could not say, Sir, whether it was before or after; I think it was after, but I am not sure about it.

Q. What makes you think it was after Paul's death? A. What makes me think it was after it is because before little Paul died he was very sick, and Miss Cochrane was there, and I think that there were several persons around; and this time that I referred to about his having come to my room, I think the house was more quiet; that is all that makes me think so.

Q. You have no way of getting at the time, then? A. No, Sir.

## THE STORMY INTERVIEW BETWEEN HUSBAND AND WIFE.

Q. In your testimony given here before this jury, in relating the interview between Mr. and Mrs. Tilton when they were in the parlor, and just before you entered, as you have described, you said that Mr. Tilton observed to his wife: "You have brought this girl here to use against me;" do you remember that that is the exact language that he used? A. That is just the exact language. I can just see him with his fist near her face, saying: "Damn it, you have brought that girl on here to use against me!" I remember it as well as if it was yesterday.

Q. And you remember the very words? A. Those are the very words he said.

Q. Did you state those very words before the Committee? A. I cannot say whether I stated those words or not.

Q. They have always been in your mind, have they not? A. Oh! they have been in my mind when I have tried to think about it.

Q. Well, did you try to think about it when you were before the Committee? A. I didn't have time to think about it; I gave

my evidence just as it came to my mind, according to my best recollection.

Q. Well, you were thinking of it at the time you gave it? A. I suppose I was, but I did not go into details before the Committee.

Q. Did you not profess to tell before that Committee what Theodore Tilton had said to his wife at that interview? A. Yes, Sir; and I told just what I thought it was then, to the best of my recollection.

Q. Now, refer, if you please, to your testimony before the Committee upon that subject, and tell me whether you used that language then? A. If I knew what, Sir?

Q. Tell me whether you used this language before the Committee, in stating what Mr. Tilton said to his wife: "You have brought this girl here to use against me." A. I think I testified before the Committee that he said: "You have brought this girl on to testify against me."

Q. Look and see if you did? A. Yes, Sir. [Witness reading from book.]

Mr. Tilton got up at once, before I finished my breakfast, and went into the front parlor on the same floor; he locked one door, and tried to fasten the glass folding-doors; I could see him through the crack, and could hear him talk very loud to Mrs. Tilton; I was on the alert, and was going to watch him; I went to the door and listened, and I saw him with his fist in her face, and he said to her, "Damn it, this girl shall leave the house;" then I went in and said, "You shan't damn Mrs. Tilton on my account."

Q. Then you omitted before the Committee these words: "You have brought this girl here to use against me." A. I may have omitted it, or perhaps I may have given it and somebody that fixed this all up, left it out; I don't know.

Q. Do you remember whether you did or did not say that before the Committee? A. Oh! I could not tell you what I said, word for word, before the Committee; I could not recollect.

Q. Did you remember it at the time you were before the Committee? A. I remembered it just as I gave it before the Committee. What I gave before the Committee was just as it came into my mind then.

Q. Did you remember when you were before the Committee that the language of Mr. Tilton was, "you have brought this girl here to use against me?" A. No, Sir; if I had remembered it I would have used those words probably.

Q. You would have used those words? A. Yes, Sir—unless I did use them, and it was not put in, as I have said; I don't know which it is.

Q. You thought a moment ago that you said before the Committee that Mr. Tilton said to his wife on that occasion, "You have brought this girl on to testify against me?" A. Yes, Sir.

Q. Well, did Mr. Tilton say so? A. Mr. Tilton said, "You have brought this girl on to use against me."

Q. Did he say, "You have brought this girl on to testify against me?" A. No, Sir.

Q. Well, why did you think you stated that before the Committee? A. Because I have been refreshing my mind, and went into all the details of this testimony. That is the way I think it.

Q. By refreshing your mind, did you come to the conclusion

that you had testified before the Committee that he said: "You have brought this girl on to testify against me?" A. I did not think anything about what I said before the Investigating Committee. I just went all over it, and got it in my mind, the way it was—the way I was sure it was.

Q. Are you able now to say how your reflections upon that subject induced you to believe here to-day that you said before the Committee that upon that occasion Mr. Tilton said: "You have brought this girl on to testify against me?" A. I am able to say to-day that he said, "You have brought this girl on to use against me."

Q. Why did you use the word "testify" a moment ago instead of the word "use" in that connection? A. Well, because a moment ago I thought that was what I had said before the Committee.

Q. What made you think so? A. Well, it came into my mind. We think a great many things, and I could not always tell you what makes me think so.

Q. You thought a moment ago that you did use the word "testify" before the Committee? A. I did, Sir, but looking in the book, I see they have got it—

Q. Do you think so now? A. No; I know now that he said—

Q. No, no! Do you think now that he said on that occasion, "You have brought this girl on to testify against me?"

Mr. Porter—I object to that question.

The Witness—I know he said—

Mr. Porter—Stop; I object to that question.

Mr. Fullerton—Stop her if you can.

Mr. Porter—I object to the fifth repetition of that question. she has answered it every time very promptly and unequivocally.

Mr. Fullerton—This is the first time that it has been put. [To the witness.] Do you think so now.

Mr. Porter—I object to the repetition of the question.

Judge Neilson—The inquiry seems to be to test her recollection.

Mr. Porter—But the inquiry to test her recollection should not be by way of repeating an inquiry that has been exhausted. Your Honor will find that that question has been answered again and again.

Mr. Fullerton—No, Sir.

Mr. Morris—Questions have been repeated ten times on the other side.

Mr. Everts—On our side we have not repeated, Mr. Morris.

Mr. Morris—The record shows quite differently.

Mr. Everts—We will talk about the record at the end of the case.

Mr. Morris—We will talk about it incidentally before it closes.

Mr. Porter—Let us have this settled; let the stenographer read the last four or five questions.

THE TRIBUNE stenographer here read the testimony as follows:

Did you remember when you were before the Committee that the language of Mr. Tilton was, "You have brought this girl here to use against me?" A. No, Sir; if I had remembered it I would have used those words, probably.

Q. You would have used those words? A. Yes, Sir—unless I did use them, and it was not put in, as I have said; I don't know which it is.

Q. You thought a moment ago that you said before the Committee that Mr. Tilton said to his wife on that occasion, "You have brought this girl on to testify against me?" A. Yes, Sir.

Q. Well, did Mr. Tilton say so? A. Mr. Tilton said, "You have brought this girl on to use against me."

Q. Did he say, "You have brought this girl on to testify against me?" A. No, Sir.

Q. Well, why did you think that you stated that before the Committee? A. Because I have been refreshing my mind, and went into all the details of the testimony; that is the way I think it.

Q. By refreshing your mind, did you come to the conclusion that you had testified before the Committee that he said, "You have brought this girl here to testify against me?" A. I did not think anything about what I said before the Investigating Committee. I just went all over it, and got it in my mind, the way it was—the way I was sure it was.

Q. Are you able now to say how your reflections upon that subject induced you to believe here to-day that you said before the Committee, that upon that occasion Mr. Tilton said, "You have brought this girl on to testify against me?" A. I am able to say to-day that he said, "You have brought this girl on to use against me."

Q. Why did you use the word "testify" a moment ago, instead of the word "use" in that connection? A. Well, because a moment ago I thought that was what I had said before the Committee.

Q. What made you think so? A. Well, it came into my mind. We think a great many things, and I could not always tell you what makes me think so.

Q. You thought a moment ago that you did use the word "testify" before the Committee? A. I did, Sir; but looking in the book I see they have got it—

Q. Do you think so now? A. No, I know now that he said—

Q. No, no. Do you think now that he said on that occasion, "You have brought this girl on to testify against me?"

Mr. Fullerton—Now, please read the last question to the witness.

THE TRIBUNE stenographer read the question as follows: "Do you think now that he said on that occasion, 'You have brought this girl on to testify against me?'" A. No, Sir, I have answered already that I stated that he said: "You have brought this girl here to use against me."

Q. Do you think now that you stated before the Committee that Mr. Tilton said to his wife: "You have brought this girl on to testify against me?" A. I think that is what I testified before the Committee.

Q. Did you remember at that time what he did say particularly? A. I remembered at that time what I thought he said; I thought he said that Mrs. Tilton had brought me on "to testify against me."

#### MRS. TILTON'S BAD HEALTH.

Q. Yes. What doctor attended Mrs. Tilton in December, 1870, when she was ill? A. Dr. Skiles.

Q. How long did he attend her? A. Well, I think he came twice a day for a week or more.

Q. And after a week or more how often did he come? A. I cannot tell you, Sir.

Q. Did he come at all? A. I think he did; I am not sure.

Q. Do you recollect when Mrs. Mitchell, the nurse, left? A.

She left about a week or two weeks, I think, after Mrs. Tilton was taken sick.

Q. She was there a week or two weeks? A. I am not sure, Sir.

Q. Did she leave before Mrs. Tilton recovered? A. Yes, Sir; I think she did. Mrs. Tilton did not recover in two weeks; she was very ill indeed; she did not get up in two weeks, I remember.

Q. Didn't she get up in two weeks? How is your recollection upon that subject? A. My recollection is that she did not get up in two weeks.

Q. You may be mistaken upon that subject? A. I may be mistaken; I said I did not think so; I don't think she got up in two weeks.

Q. Do you recollect what her condition was when Mrs. Mitchell went away? A. I know she was out of danger, but I think she was sick.

Q. Sitting up? A. I think not, Sir.

Q. Confined to her bed, was she? A. I think she was.

Q. Miss Turner, have you looked in your trunk for the letter which was spoken of yesterday? A. No, Sir, my trunk is over in Bergen Heights, and I didn't have time to go over and get it.

Q. You have not looked for it, then? A. No, Sir; I can get it to-day; I can go over to-day after four o'clock.

Mr. Fullerton—I should like to have it very much.

The Witness—I don't know that I have it, but I think I have it.

Mr. Fullerton—How did the counsel get these two letters that were written by Mr. Tilton that were read yesterday? A. I don't know how they got them yesterday, but I gave them to a gentleman some three or four weeks ago, I think it was.

Q. To whom did you give them? A. To Mr. Rositer Raymond.

Q. Where had you kept them before giving them to him? A. I had kept them in my trunk.

Q. With this other letter that you didn't bring with you? A. With my letters. I don't know whether I have the other letter or not.

Q. Why didn't you give him the other letter? A. Because that was all I could find at the time.

Q. You looked, did you, for the other letter? A. I was just looking among my letters, and came across these three. I don't remember whether I looked for any others or not, but those are all that came to my notice just then, and I brought them.

Q. Did you look carefully for the other letter at the time you gave these two to Mr. Raymond? A. No, Sir; as I said, I was looking over my letters, and came across these three; I don't think I looked any further; I thought that would be sufficient.

#### MISS TURNER ANGRY AT MR. TILTON'S FREEDOM.

Q. Were you friendly with Mr. Tilton after his entry to your room in 1868? A. Was I friendly with him?

Q. Yes? A. Yes; I think I was.

Q. You stated yesterday that you were angry when he entered your room?

Mr. Evans—She didn't state that.

The Witness—I stated I was angry when he put his hand in my neck.

Mr. Fullerton—She did state that.

The Witness—Not when he entered the room, I didn't state I was angry.

Mr. Fullerton—I had not finished my question.

The Witness—Excuse me.

Q. I ask you whether you were angry when he entered your room and was guilty of that improper conduct? A. You asked me if I were angry when he entered my room. I was not angry when he entered my room, because he had to enter my room frequently and bid me good night.

Q. Were you angry when he entered your room and was guilty of that misconduct? A. I was angry when he put his hand in my neck.

Q. Did you remain angry with him? A. That is, my modesty impelled me to take his hand out.

Q. You told us yesterday you were angry with him. Did you remain angry with him at all any length of time? A. I remained angry for the time being; I don't know whether you would call it real angry or not, but I thought it was immodest.

Q. Did you at that time suspect that he had any improper design from what he said and did at that time? A. No, Sir, I did not.

Q. You didn't suspect? A. No, Sir.

Q. When did you suspect that his design was improper at that time, if you ever suspected it all? A. The very night that Mrs. Tilton came out to Mrs. Putnam's she told me—

Mr. Fullerton—No.

Mr. Beach—[To the witness.] Why don't you stop when you are asked to.

The Witness—Excuse me, I was finishing the sentence.

Mr. Evans—[To Mr. Beach.] You scold.

Mr. Beach—I have a right to scold.

Mr. Evans—I object to scolding the witness. My friend claims the right to scold the witness; they have no such right. Judge Neilson—He meant to stop the witness.

Mr. Evans—Stopping is not scolding.

Judge Neilson—Sometimes, perhaps—

Mr. Fullerton—I am afraid my friend will scold if he keeps on.

Mr. Evans—I never scold.

Mr. Fullerton—You must not practice it or it will become second nature.

Mr. Fullerton—You did not suspect, then, until you were in Marietta in 1870, that he had any improper design in coming to your room in 1868? A. No, Sir.

Q. You sent your love to him in 1869, did you not, in this letter which you wrote from Mr. Down's? A. Yes, Sir; but that was before Mr. Greeley was there. I had not had that last experience with him then.

Q. You had had the first experience in 1868? A. Yes, Sir.

Q. When he talked about affinities? A. Yes, Sir.

Q. And loving you? A. Yes, Sir.

Q. And all that sort of thing? A. Yes, Sir.

Q. And when he attempted to put his hand in your neck? A. Yes, Sir.

Q. That had all occurred? A. Yes, Sir.

Q. And when you wrote to Mrs. Tilton in 1869, you sent your love to Mr. Tilton? A. Yes, Sir.

Q. Now, you left, as you informed us, for Steubenville in February, 1870? A. 1871, January, the beginning of the new year.

Q. 1871? A. Yes, Sir.

Q. It was my mistake. Soon after you went to Steubenville did you write a letter to Mr. Tilton? A. I wrote a letter to him; I don't know whether it was soon after, or some time after.

Q. In that letter did you express your gratitude for all his kindness to you during the time that you had lived with him?

Mr. Shearman—We object to that question, of course, unless the letter is produced.

Judge Neilson—The letter will speak for itself.

Mr. Fullerton—You do remember writing a letter to him, however? A. Yes, Sir, I remember having written to him.

Q. Did he answer it? A. Did he answer it? No, Sir, I don't think he did.

Q. How did you answer my question? A. I don't think he did.

Q. You don't think he answered it? A. No, Sir.

Q. Did you answer the letter written to you from Brooklyn, October 4, 1870, which was read in evidence yesterday, commencing, "My dear Beadie, I have long been under the impression that you had so far forgotten me as not to write me a letter from Marietta, but Mrs. Tilton has asserted the contrary, and has produced a letter which you sent me as long ago as May 24?" A. That must have been the answer, then; I must have answered it then.

Q. You did write to him, then, as you recollect, in May, 1870? A. I wrote to him before Mrs. Tilton came in the Fall.

Q. Whilst you were at Marietta? A. Yes, Sir; I think I wrote to him while I was at Marietta.

Q. Did you write him any other letter from Marietta? A. I don't recollect writing but one, Sir.

Q. How? A. I don't remember writing but the one.

Q. Didn't you consult him—

[Mr. Pryor here whispered to Mr. Fullerton.]

Mr. Fullerton—Do you recollect of writing him any kind and affectionate letter after you went to Steubenville, Ohio? A. I remember writing him a letter, yes, Sir; I don't know how affectionate it was; I don't remember.

Q. Did you not consult him by letter in reference to an offer of marriage that you had while you were at Steubenville?

#### A DEMAND FOR THE LETTER.

Mr. Porter—I object to the question. The witness cannot be interrogated in respect to a letter unless it is produced.

Judge Neilson—That may be one way of identifying the letter, so as to produce it.

Mr. Porter—The letter can be identified when produced in evidence and the letter read. My objection is that, as a rule of

law, they cannot interrogate the witness as to the contents of a letter not produced until they prove it to be lost.

Mr. Fullerton—That is not the rule where the letter is collateral, as this is.

Judge Neilson—I don't understand this inquiry to be into the contents of the letter, rather restrictive of the letter, and I could not expect counsel to inquire into the contents of it.

Mr. Fullerton—I don't propose to put that letter in evidence unless counsel on the other side make it necessary, because it involves a third person, whose name I don't propose to mention, and which it seems inappropriate to mention, in my judgment.

Mr. Evans—It is a simple matter. We don't think this witness, no more than any other witness, should be interrogated concerning a written paper that she has written unless the paper be shown her. That is the aspect. If the aspect is presenting the contents of a letter, to wit, her written conduct toward this party, whether it was affectionate, whether it was a consultation, whether it was that of a daughter towards a father or protector, the letter must show it, or it must not be shown.

Mr. Beach—The question we put was, whether she wrote a letter on a given subject to Mr. Tilton, and it is perfectly proper.

Judge Neilson—As far as that, I think it is proper; but that is the extent to which you can go.

Mr. Beach—It is the extent to which we want to go.

Judge Neilson—I don't understand the counsel to be inquiring into the contents of the letter.

Mr. Porter—I understand the rule, in *Newcomb v. Griswold*, 24 N. Y. Reports, page 398, to be expressly the contrary; that they cannot identify anything of which the writing is evidence by examining it without producing the paper, unless they offer the contents. The rule is founded upon this principle, that human memory is not supposed to be as retentive as pen, ink and paper, and that where there is any writing of evidence which will enable witnesses to speak with certainty, they shall not be interrogated at random as to the contents of a written instrument.

Judge Neilson—Yes.

Mr. Porter—The only importance of the letter is what it contains. They are not compelled to put the letter in evidence, even if they offer it to the witness. It is at their choice to introduce or not introduce in evidence the letter. They say the letter involves the character of a third person. That may be. If they choose to introduce it the character of third persons must necessarily be involved. If they choose not to introduce it they cannot avail themselves of its contents.

Judge Neilson—Mr. Porter, within the rule, still, don't you think it is competent to ask whether a witness has written a letter upon a given subject?

Mr. Porter—No, Sir, not where the statement of the subject implies the contents of the letter. If there is any attempt to prove this young lady has written something upon the subject of an offer of marriage which she has had, the letter itself must be produced, and she be permitted to look at it, not the jury. It depends on them whether the jury shall see it; but she has a

right, as a matter of justice to herself, to see that paper in respect to which they seek to interrogate her.

Judge Neilson—She has a right to see the letter before speaking as to its contents.

Mr. Porter—Yes, Sir; either generally or in detail.

Judge Neilson—Still I think you can inquire whether the witness wrote a letter upon a given subject.

Mr. Porter.—If that is intended to sustain the question which the counsel puts, I beg to except to your Honor's decision,

Judge Neilson—[To Mr. Fullerton]. Repeat your question, Mr. Fullerton, it may be broader than that.

Mr. Fullerton—Did you consult Mr. Tilton after you went to Steubenville, Ohio, to school, by letter, on the subject of a proposition of marriage?

Judge Neilson—I think that looks into the contents of the letter pretty much.

Mr. Fullerton—It is the question I put before. It don't look into it any more now than it did then.

Mr. Evarts—We except to it.

Mr. Fullerton—[To Mr. Evarts.] I don't understand that the exception makes it improper after his Honor has ruled it to be proper.

Judge Neilson—I stated what I understood was the general rule, not with reference to the proper form of your question. I think this question is a little too broad.

Mr. Fullerton—Did you ever write to him upon the subject of your marriage? A. I never was married. [Laughter.]

Q. Did you write to him upon the subject of a proposition of marriage?

Mr. Porter—To that question I desire to object.

The Witness—I think—

Mr. Porter—One moment. I must insist upon your not answering the question when I object. [To Judge Neilson.] It is on the subject of a proposition of marriage. What constitutes a proposition of marriage? What is the nature of that proposition?

Judge Neilson—I think that question is objectionable.

Mr. Porter—Either they have or they have not such a letter.

Judge Neilson—Yes.

Mr. Porter—If they have not, they can prove it. They are then at liberty to prove its contents.

Judge Neilson—Yes.

Mr. Porter—If they have it, it is a matter of fairness and justice to the witness that she should see it before being interrogated as to its general subject or effect.

Judge Neilson—The counsel has interrogated the witness as to whether a letter was written upon the subject of her marriage. The question might well be put whether a letter was written upon the subject of her becoming married; that describes the letter, and don't give the contents of it.

Mr. Fullerton—That is the question I have put.

Judge Neilson—Not quite.

Mr. Evarts—Your Honor will note our exception to that form of question.

Judge Neilson—Yes.

Mr. Fullerton—Did you, by letter, consult Mr. Tilton while you were at Steubenville, Ohio, on the subject of marriage?

Mr. Porter—That we object to.

Judge Neilson—The word "consult" is objectionable.

Mr. Fullerton—Did you write to him upon the subject of marriage while you were at Steubenville.

Judge Neilson—That is permissible.

Mr. Evarts—That we object to, and we except to it.

The Witness—He wrote to me upon the subject of marriage.

Mrs. Putnam—

Q. No, don't bring Mrs. Putnam here; she has been here. Will you answer my question? A. I was beginning to try and answer it, Sir.

Q. Did he write to you whilst you were at Marietta upon the subject—did you write to him, I mean, whilst you were at Steubenville, Ohio, upon the subject of marriage? A. He wrote to me first—

Mr. Fullerton—Now answer my question.

Judge Neilson—[To the witness.] Did you write to him upon that subject? A. I wrote to him about this—he wrote to me first, and then I answered his letter.

Mr. Fullerton—You wrote to him, did you, upon that subject?

#### STINGING WORDS BETWEEN COUNSEL.

Mr. Porter—One moment. I object to that question. It is perfectly obvious that this is an unfair examination. If there was correspondence upon that subject, and he wrote a letter to her, that letter speaks for itself, if it can be found; if it cannot, they can prove its contents.

The Witness—I think I have it, Sir.

Mr. Porter—Her answer speaks for itself, and should be submitted to her. No excuse is given for withholding it from her, and yet she is to be interrogated at random in reference to the contents of a paper not produced, and which, so far as it appears, she has not seen for years.

Judge Neilson—I don't intend to let the contents of it be stated.

Mr. Fullerton—I am not interrogating her at random. That is a phrase my learned friend should not use. I am aware that the letter will speak for itself, and I am aware that the answer will speak for itself, and I am equally aware that her hesitation will speak for itself, and I have a right—

Mr. Evarts—Now, we have a right to object, if your Honor please.

Mr. Fullerton—I have a right to test the recollection of the witness in the form of interrogatories.

Mr. Evarts—No, you have not.

Mr. Fullerton—We have.

Mr. Evarts—Well, one moment.

Mr. Fullerton—Yes.

Judge Neilson—The question is, whether you are aware you are inquiring into the contents of the letter?

Mr. Fullerton—I am not inquiring, if your Honor please, into the contents of the letter; I am putting the question as framed by your Honor.



Judge Neilson—As to the existence of a letter, that she has answered.

Mr. Fullerton—She answered he wrote to her.

Judge Neilson—And that she wrote to him.

Mr. Fullerton—That don't answer my question. She may have written to him on the subject of the prevailing fashions at Steubenville, or about her studies. What I wish to know, and what I intend to know, if your Honor will permit me to inquire, is whether she wrote to him in reference to marriage. That is my question, and it remains unanswered.

Mr. Evarts—Now, if your Honor please, the reason the law does not allow these inquiries of witnesses without showing them papers concerning which the inquiry is made, is that there may be no basis for counsel to make charges of hesitation in answers, when hesitations are imputed to one cause, and the law says the occasion shall not arise for these imputations, for it is unfair and dishonest to ask them without showing the papers. [Applause.]

Judge Neilson—Mr. Rodgers, you must take charge of this audience. I shan't spend my time talking to them. I think gentlemen might be more exemplary here, and not interrupt the order of business; and it is not at all proper that the audience should express an opinion upon this subject. Whether the remark of counsel is pleasing to the audience or not is not very material.

Mr. Fullerton—I don't know whether the learned counsel intended, in the use of the term "dishonest," to characterize my mode of examining this witness, but if he did, I am quite willing that he should institute a comparison between my motives and his own, during the progress of this trial.

Judge Neilson—We will assume for the present that he did not

Mr. Fullerton—Well, your Honor may indulge in that assumption, but I will not at present, so far as I am concerned.

Mr. Evarts—I am quite ready to say I meant no personal offense. I spoke of the mode of inquiry, and I spoke of it as a matter that the law had foreseen and provided for, as a fair thing to the witness, that this paper should be shown before she is asked about it.

Mr. Fullerton—Then let that pass.

Judge Neilson—The witness has been asked whether she wrote upon a given subject; it does not, in my judgment, call for the contents of the paper.

Mr. Fullerton—I don't propose to give the contents of the paper.

Judge Neilson—The witness answered: "He wrote to me, and I wrote to him." I think you can inquire upon that subject.

Mr. Fullerton—That is just the inquiry that I have put, Sir; and which has given rise to this discussion.

Judge Neilson—That inquiry, if the answer was given, would cover the point.

Mr. Fullerton—Then I am strictly right in putting that inquiry. I am aware that I have a right to test the recollection of the witness. The witness can say, "I do remember," or, "I don't remember." She has her choice. If it is the fact that she wrote the letter, and the contents of the letter are not in

her mind, she can easily say so. I will put the question again [To the witness.] Did you reply to his letter upon the subject of marriage? A. I think I did, Sir.

Judge Neilson—Well, that covers the ground; that is as far as you can go, Mr. Fullerton.

The Witness—But I don't think I ever wrote a letter consulting with him with regard to getting married.

Judge Neilson—That last can stand or not as counsel elects; it was not called for by the question.

Mr. Fullerton—Is that the letter which you wrote him on that subject? [Handing witness a letter.] A. I will have to read it over before I can tell.

Mr. Porter—Yes; read it.

Mr. Fullerton—Certainly.

The Witness—[After looking at the letter.] Yes, Sir; this is the one I wrote in answer to his letter. He wrote a letter first, and that is the answer.

Q. That you have stated.

Mr. Tracy—What is the date?

#### WOMAN'S RIGHTS MEETINGS AT THE TILTONS'.

Mr. Fullerton—The date is Jan. 13, 1872. [To the witness.] Now, Miss Turner, I come to the time after you returned from Marietta—or, in the first place, I will ask you some questions about what occurred anterior to that. You recollect one instance, I understood you to say, when there was a Woman's Rights meeting at Mr. Tilton's, in Livingston-st. ? A. Yes, Sir.

Q. When was that? A. I could not give the date, Sir.

Q. Can you give the year? A. No, Sir.

Q. Was it not in 1869? A. I could not say, Sir. In 1869?

Q. Yes, or 1868? A. I could not give the year; but it was not in 1869; I know that.

Q. Who were present at that meeting? A. Mr. and Mrs. Celia Burleigh, I think, were there; Miss Anthony and Mr. Studwell; and there were a number there; I don't know.

Q. Well, can you recall any other names? A. No, Sir; I don't think I can.

Q. Was Mrs. Stanton there? A. I don't remember, Sir.

Q. You don't remember whether she was there or not? A. No, Sir.

Q. Well, how many in all were assembled? A. The parlors were quite full.

Q. Do you recollect the proceedings that evening, before that body? A. Recollect the proceedings?

Q. Yes. A. No, Sir; I don't think I do.

Q. Did they organize and have a chairman? A. I was not in the parlor when they first began their proceedings, if they had any.

Q. Well, did they have a chairman to preside over the body? A. They may have had; I don't remember.

Q. Any papers read? A. There was no papers read in my hearing.

Q. No reports of committees read? A. No, Sir; I don't recollect anything about that—about the proceedings at all.

Q. Well, you recollect of other Woman's Rights meeting,

there, do you not, at that house? A. There were a great—there were several Woman's Rights meetings there; yes, Sir.

Q. Do you know any one where Mrs. Tilton presided? A. No, Sir, I think not.

Q. Don't you know that she was Chairman of the Executive Committee of the Association? A. I knew—I thought she had something to do with it; but I don't know whether she was chairman or not.

Q. Do you recollect that those meetings were held during Mr. Tilton's absence? A. No, Sir, I don't remember about that.

Q. Do you recollect any one of those Woman's Rights meetings when Mrs. Field was there? A. Mrs. Field?

Q. Mrs. Field? A. I think I have seen Mrs. Field there.

Q. At one of those meetings, I ask you? A. I am not sure whether I saw her at the Woman's Rights meetings or other times.

Q. How? A. I am not sure whether it was at the Woman's Rights meetings, or some other time.

Q. Well, I am asking you in reference to the meetings of the Woman's Rights Convention; was she there upon any one of those occasions? A. I cannot say truthfully, Sir; I don't really remember.

Q. Do you remember whether any one of Mr. Beecher's sisters attended any one of those meetings at Mr. Tilton's house? A. Mrs. Harriet Beecher Stowe?

Q. Any one of them? A. I have a faint recollection that she was at one of the meetings, but I am not sure.

Q. But you do not remember, as I understand you, that some of those meetings were held during Mr. Tilton's absence? A. I know they were held, but whether he was home or not I could not tell, except this one occasion; I remember that time very distinctly, that he was home.

#### MR. TILTON ASHAMED OF HIS WIFE.

Q. You have given an observation made by Mr. Tilton to his wife at one of these meetings, I think? A. Given an observation?

Q. Yes. A. I gave what he said; it was my observation of what he said.

Q. Yes; well, that is an observation. A. I thought you said Mr. Tilton's observation.

Q. Well, wasn't it Mr. Tilton's observation? A. He didn't observe anything; he spoke to his wife.

Q. Well, I used the word "observation" as a synonym of "spoke." A. It was I that was observing; I had the observation.

Q. How close were you to him when he made use of the language that you have given us? A. I was right— Suppose these were the doors right here [illustrating], and there stood Mrs. Tilton, and here was Mr. Tilton, and I was right back of them, standing near the folding doors.

Q. Were they standing still? A. They were when he spoke to her.

Q. Not moving about at all? A. Well, when— I will correct that. When he spoke to her the guests were moving to and

fro in the parlor—walking around, promenading—and I think she was just moving slowly behind him.

Q. And were you promenading too? A. No, Sir; I was standing by the folding doors.

Q. How is that? A. I was standing by the folding doors.

Q. Did any one else hear this observation of his except yourself? A. Not that I know of; they may have heard it; I don't know whether they did or not.

Q. Did he speak it in a loud tone of voice? A. No, Sir, he did not; he spoke low.

Q. Spoke low? A. Yes, Sir.

Q. You heard it distinctly? A. Yes, Sir.

Q. Was it not said in jest? A. Oh! no, Sir, in dead earnest.

Q. Dead earnest? A. Yes, Sir.

Q. Now, will you repeat what he said? A. He said, "My dear, don't"—no, he didn't say "My dear;" he says, "Elizabeth, don't stand near me; I don't wish any comparison drawn; the contrast is too great."

Q. Are you giving his exact words? A. His exact words, as I remember them.

Q. Well, do you remember his exact words? A. Yes, Sir, those were his exact words.

Q. Was he standing by the side of Mrs. Tilton when he said this or was he in advance of her or behind her? A. He was a little in advance of her, and she was behind him.

Q. Did he turn around when he said it? A. He turned around; yes, Sir.

Q. And faced her? A. He turned around and leaned over her shoulder, and whispered one side in a—talked softly, one side.

Q. Did he whisper? A. He didn't really whisper; I don't suppose that I could have heard him if he whispered.

Q. Well, you just said that he whispered? A. Well, I spoke hastily.

Q. Ah! he did not whisper then? A. He did not talk real loud, nor he didn't whisper; he said what he had to say in a low tone of voice.

Q. He put his head by her ear, did he? A. He put his head near hers.

Q. Did he stoop for the purpose of saying this to her? A. Yes, Sir; she was so small that he had to stoop if he had his head near hers.

Q. He did stoop? A. He did stoop; yes, Sir.

Q. How close to her head did he put his when he said this? A. Well, not so very close.

Q. Well, did he tell her to go away? A. He told her just what I have stated, Sir.

Q. What is that? A. Said he, "Don't stand near me, Elizabeth; I don't wish any comparison drawn; the contrast is too great," and he laid off his words *that way*, [waving her hands].

Q. Didn't he say, "Stand one side?" A. "Don't stand near me"; that is what he said.

Q. Didn't he say "Stand one side?" A. No, Sir; "Don't stand near me."

Q. Did you say in your direct-examination that he used this term, "Elizabeth, stand one side?" A. I don't remember

whether I did or not; if it is there in my direct-examination, I suppose I must have said it.

Q. But that is not what he did say you say now? A. "Don't stand near me; I don't wish any comparisons drawn; the contrast is too great."

Q. Did he say, "Don't stand near me, or don't keep near me?" A. "Don't stand near me," he said.

Q. Those are his exact words? A. As I remember them; yes, Sir.

Q. He did not say, then, "Don't keep near me?" A. "Don't stand near me."

Q. What did he say about comparisons? A. "The comparison is too great;"—"The contrast is too great; I don't wish any comparison drawn."

Q. You heard it very distinctly? A. Oh, Yes, Sir, I heard it so distinctly that I lay awake all night and thought over it.

Q. Oh! you did? A. Yes, Sir.

Q. Well, then, you have never forgotten it since, have you? A. No, Sir, I have not.

Q. Did you state it before the Committee? A. No, Sir, I did not.

Q. Had you forgotten it then? A. Well, I had forgotten a good many things that I have thought of since, when I was before the Committee.

Q. I am not talking about a good many things; I am talking about one thing; had you forgotten that thing? A. If I didn't give it, I don't suppose I had thought about it.

Q. How? A. If I didn't give it—I didn't give it to the Committee, and therefore I don't suppose I thought about it.

Q. When before the Committee you intended to state all the instances of bad conduct, didn't you? A. Yes, Sir; but I could not recollect all I had to say in ten minutes. I told everything that I could think of.

Q. Were you limited to ten minutes in telling your story? A. I am referring to the time that I had to think about it; ten minutes that I saw Gen. Tracy in Mrs. Ovington's parlor.

Q. I am not referring to that. You were not limited in time when you were before the Committee, in telling your story, were you? A. Oh! no Sir; I think not.

Q. And if you didn't think of it there you had forgotten it, had you? A. I suppose I must have.

Q. Did you ever tell any one of that story? A. Did I ever tell any one?

Q. Yes. A. I have told Mr. Porter and Mr. Shearman.

Q. When did you first tell that incident? A. I first told that incident, I think, the other night, in Mrs. Ovington's parlor, with Mr. Shearman, and Mr. Porter, and the stenographer, I think.

Q. That is the first time you ever told of it— A. I am not sure whether Judge Porter was there or not.

Q. That is the first time, at all events, that you told it after it occurred, is it? A. I think that is the first; yes, Sir.

Q. Now, did that occur before or after Paul's death? A. Before or after? Paul died in July, 1883. I guess it must have been— I could not say, Sir, whether it was before or after.

Q. Was it before or after you went to Southport with Mrs. Putnam? A. Oh! I could not give any particular time any

more than I know that it was at a Woman's Rights meeting there in Mrs. Tilton's parlor, but whether it was before I went to Southport or whether— No, Sir, I don't— When we went to Southport I think we were boarding with Mrs. Morse; they had not gone to housekeeping, if I remember correctly, then.

Q. Can you tell me how soon it was after they commenced housekeeping in Livingston-st.? A. Oh! I guess it was some time after that.

Q. But you can't tell when? A. No, Sir; I cannot tell the exact time.

#### THE MIDNIGHT PICTURE HANGING.

Q. Now, you have spoken of his hanging pictures in his night-dress? A. Yes, Sir.

Q. Did you ever see that on more than one occasion? A. Yes, Sir; I saw it on two or three occasions; two occasions anyway.

Q. You won't say more than two, then? A. Two or three.

Q. Can you tell when the first occasion was? A. I could not give the date, Sir.

Q. Can you give the year? A. No, Sir; I don't think I can.

Q. In what room of the house was he hanging pictures? A. He went in several rooms and in the hall.

Q. Was it in the night or day-time? A. It was in the night.

Q. You saw him in the lower hall, or in the upper hall? A. The upper hall.

Q. You were in bed? A. I was in bed.

Q. In bed when he commenced hanging the pictures? A. When he commenced hanging the pictures; yes, Sir.

Q. And did you remain there during all the time that he was hanging the pictures? A. Yes, Sir.

Q. Do you know how old you were at the time? A. No, Sir.

Q. Were you in bed on the other occasion when he hung pictures in his night-dress? A. Yes, Sir, I think I was.

Q. On both occasions, then, you were in bed? A. I think so; yes, Sir.

Q. Do you know how long you had been in bed when he hung the pictures? A. No, Sir; I know I was awake.

Q. You were awake? A. Yes, Sir.

Q. Sleeping with the children at that time? A. I was in bed with the children, but I was not asleep at that time.

Q. Where was Mrs. Tilton? A. Mrs. Tilton was in bed. On one occasion I remember she was in bed; I won't be sure about the second.

Q. Where was she the other? A. I said I would not be sure where she was on the second occasion; I suppose she must have been in bed, though; but I remember this one time that I speak of particularly she was in bed.

Q. Then it was after the family had all retired, was it not, when he hung these pictures? A. Yes, Sir.

Q. And how late in the night was it? A. Oh! well, I could not say, any more than I heard Mrs. Tilton call out, "Dory Tilton, why don't you come to bed?" It is after 12 o'clock,

What are you running around in your night clothes for? What are you doing." [Laughter.]

Q. Oh! you remember that? A. Yes, Sir.

Q. And it was after the family had retired that he hung pictures in his night clothes? A. I spoke of the first night as the family having retired.

Q. Well, had the family all retired the second time? A. I say I couldn't tell positively whether Mrs. Tilton was in bed the second time or not, but the children were in bed, because they all went to bed at a particular hour.

Q. Did you say anything when he was hanging pictures in his night clothes? A. Did I say anything?

Q. Yes. A. No, Sir; but I wondered a good deal.

Q. You wanted to? A. I wondered.

Q. Oh! Wondered at what? A. Why, at a man's going-trotting around in his night clothes, hanging pictures. [Laughter.]

Q. After he supposed that you were asleep? A. I don't know what he supposed, Sir; whether he supposed that I was asleep or not. He may not have thought anything about it.

Q. Well, it was after 12 o'clock; one night was? A. What say?

Q. It was after 12 o'clock one night? A. That is the first night that I speak of; yes, Sir.

Q. What time did you go to bed? A. Oh, my! I couldn't say what time it was.

Q. Well, about what time did you go to bed generally? A. I couldn't tell you; sometimes I went to bed at nine, sometimes ten and sometimes eleven.

Q. Well, he didn't know that you were awake, I suppose, did he? A. I don't suppose it would have made any difference if he had known I was awake. He would have done it all the same, if he wanted to.

Q. He would have done it all the same if he wanted to? A. I suppose he would.

Q. You suppose he would? A. I don't suppose his knowing that I was awake would have made any difference if he wanted to hang pictures; still, I don't know that I have any right to say that.

Q. That is just what I was thinking, but I let you say it, if you wanted to? A. Well, Sir.

#### MR. TILTON'S HUNTS FOR A SOFT BED.

Q. Well, on one occasion I understand you to say that he went around looking for a soft bed? A. Yes, Sir.

Q. What season of the year was that? A. I guess it must—it could not have been in very cold weather.

Q. Well, do you remember when it was? A. No, Sir; I can't give any date.

Q. Was it not in the Summer season? A. I said I thought it must have been warm, but I am not sure—warm weather.

Q. Do you know the year? A. No, Sir.

Q. Was he in good health at the time, or was he ill? A. Why, he was generally in good health.

Q. Well I— A. He was in good health at that time, as I remember; yes, Sir.

Q. Do you remember it? A. Yes, Sir.

Q. Was that about the time that he remained out all night? A. I could not tell you, Sir; I cannot give you any date in regard to those occurrences.

Q. How? A. I cannot give you any dates in regard to those occurrences.

Q. Well, Mrs. Tilton accompanied him in this journey of his around the house, did she? A. She did this evening; yes, Sir.

Q. Well, did you ever know it to occur at any other time? How is that? A. No, Sir; I don't think I can truthfully say that I remember that occurrence but once.

Q. But once? A. Yes, Sir.

Q. Going to find a soft bed? A. Yes, Sir.

Q. Or going around to find another— A. Going to find a soft bed; yes, Sir.

Q. Or another bed than his own; you don't remember it but once, do you? A. Only once, I think, Sir.

Q. How? A. I only remember that once, I think.

Q. Well, now let us understand each other distinctly. Do you recollect of his going about to look for any bed other than his own, except upon one occasion? A. No, Sir; I think not, only this one occasion.

Q. You stated, I think, upon your direct-examination, that he was in the habit of going around from one bed to the other, trying all the beds in the house before he could make up his mind which one he would sleep on; did you state that? A. Well, I suppose that—He was in the habit of going around in his night clothes.

Mr. Beach—No, no.

Mr. Fullerton—Well, that will hardly do, Miss Turner.

Mr. Porter—Why not? She is answering.

Mr. Fullerton—I know she is answering.

Mr. Beach—She is not answering the question.

Mr. Porter—She is answering the question.

Mr. Fullerton—She is going off onto something else.

Mr. Porter—She is stating his habit about going around—

Mr. Morris—No; she don't say that.

Mr. Porter—Well, let the question and answer be read.

Judge Neilson—The question was as to his going around to search for a bed.

Mr. Porter—Let it be read.

[THE TRIBUNE stenographer then read the last question and answer.]

The Witness—Yes, I did state that he was in the habit of going around trying different beds; but this night in particular he was going around to different rooms, and what I meant was that he was in the habit of going around, not sleeping all the time in the same bed.

Q. Well, a little while ago, Miss Turner, I said, "Let us understand one another." A. Yes, Sir.

Q. And I put the question to you directly whether you ever knew of but one instance in which he went around the house to find a bed other than his own, and you told me, as I understood you to say, that you did not recollect of but one such instance; is that so? A. Well, I meant this one instance when he was going around with Mrs. Tilton after him, and making

me get out of my bed; but he was in the habit of going around hunting for another bed more than once.

Q. He was in the habit of doing that? A. Yes, Sir.

Q. Well, now, how many occasions, then, do you recollect of that? A. Well, I know some nights he would sleep in the front bedroom in the second story, and some nights he would sleep in the back room, and some nights he would sleep up stairs.

Q. Well, is that what you meant when you stated that he was in the habit of going around from one bed to the other, trying all the beds in the house, before he could make up his mind which one he would sleep on? Is that what you meant when you used that language? A. Yes, Sir; I suppose it was.

Q. Now, did he go around from one bed to the other, trying all the beds in the house? A. Well, I know he tried three beds.

Q. Did he try all the beds in the house? A. I will tell you, Sir, in a moment.

Q. No; tell me that.

Mr. Everts—Well, she answers.

Mr. Fullerton—I know she answers, but not my question.

The Witness—I will have to count and see how many beds there was in the house.

Q. If you please, yes; and then count and see whether he went to them all. A. Yes, Sir.

Judge Nelson—[To the audience.] Gentlemen, this is a small matter to attract your attention.

The Witness—Yes, Sir; this night, I think that he went in every bed in the house, up-stairs, on the two stories.

Q. He went in every bed in the house in the two stories? A. Yes, Sir, in the second story and the third story; because he was— They had gone to bed in the second story back bedroom, and I was sleeping in the room next to theirs, the back bedroom; and the first thing I knew, here he came— There he was saying: "Pettie, let us go in and try Beattie's bed a little while." Mrs. Tilton was behind him with a pillow, and I had to take Carroll and go up-stairs; and I went up-stairs in the third story back bedroom, and took Carroll, and I hadn't been up there five minutes—just long enough to get in bed, before he says: "Pettie, suppose we try this bed a little while; perhaps this is the softest." [Laughter.] That was three beds he had tried; and then he got up—let us see; I must get that straight. Oh! when he came into my room I had got up and took Carroll and went into the third story back room, and I hadn't but just laid down before up he came and thought he would try that bed a little while, and I took Carroll and went down to the bed that I had gotten up from first. That was three beds, and that night they slept in the front bedroom; that was four beds, and that was all the beds there was in the house.

Q. How do you know they slept in that room that you speak of now? A. Because they washed and dressed there next morning—came out of there.

Q. You remember that distinctly? A. Yes, Sir.

Q. They came out of it? A. He came out of that room next morning.

Q. How many beds were there in the third story? A. In the third story there was two bedrooms, I think, Sir, with the servants' room, and a little room that the servants slept in.

Q. That was three? A. That was three; yes, Sir.

Q. He came to the third story where you were, and you got up out of your bed and went down-stairs? A. He came to the second story.

Q. I am speaking of the third story? A. He came up, and I got up and went down to the one that I had left first.

Q. Did you remain there all night when you went down to the bed which you first left? A. Yes, Sir.

Q. You remained there? A. Yes, I remained there all night; yes, Sir.

Q. Where were Mr. and Mrs. Tilton when you went down to that bed from which you went away first? A. They were about getting into the bed that I had left.

Q. Had left? A. Yes, Sir.

Q. Did you see them again that night? A. No, Sir, I did not see them again that night.

Q. Not that night? A. No, Sir.

Q. Now, there was no bedroom up-stairs other than the one which you got out of? A. Which story do you mean?

Q. Third story. A. There was three bedrooms up there; yes, Sir.

Q. Well, there was another one besides the servants' room? A. No, Sir, only— Oh! there was a study, but it was not a bedroom—had a lounge in.

Q. You have just told me there were three beds up there. A. There were three bedrooms, yes, Sir; that is the two bedrooms that I have named, and the servants' bedroom, and then there was a little long room that he used for a study sometimes.

Q. Then there was but one bed other than in the servant's room? A. There were two beds other than the servants' room.

Q. Well, so I thought you said? A. Yes, Sir.

Q. Now, do you know that he tried that other bed up-stairs? A. I know it because I made up the bed, and I saw him come down out of the room next morning.

Q. I am speaking of the third story? A. What other bed do you refer to?

Q. The one that you refer to? A. I am not referring to the servants' room.

Q. Nor I either? A. Do you mean do I know that he slept in that bed?

Q. Yes. A. Yes, Sir, I do.

Q. He did not sleep then in the one that he drove you out of? A. No, Sir, he did not.

Q. But went into another bedroom in the third story and slept, did he? A. Went into the one that I saw him coming out of.

Q. In the morning? A. Yes, Sir.

Q. Now, how many beds were there on the second story? A. How many bedrooms?

Q. Yes; how many beds? A. There was—

Q. Or rooms with beds in? A. There was only two rooms with beds in, Sir.

Q. Only two? A. Only two or three; the two back ones and the front—front bedroom.

Q. What room did he go to bed in? A. He went to bed—went to bed in the room next to mine.

Q. And what room did you go to bed in? A. I went to bed in the room next to his. [Laughter].

Q. Very well; now, there was a front room, wasn't there? A. There was a front room?

Q. Yes, a front bedroom on that second floor? A. Yes, Sir; there was a front bedroom, but I say he did not try that, though I had not thought of it.

Q. Oh! he didn't try that? A. No, Sir, because the children were sleeping in there, Florry and Alice.

Q. He didn't try all the beds in the house then? A. Well, that is the only one he didn't try, and the servants' room.

Q. You take out only one now? A. He tried all the empty beds, and some that was not empty.

Q. He tried all the empty beds? A. Yes, Sir, and he tried mine, after I got up.

Q. Then when you say he was in the habit of going around from one bed to another, trying all the beds in the house before he could make up his mind which one he would sleep on, you were slightly mistaken, weren't you? A. Well, all I have to say about that is, I had forgotten about the front bedroom.

Q. How? A. All I have to say about that is, that I had forgotten about the front bedroom.

Q. You had forgotten about it? A. Yes, Sir; I said there were two bedrooms, and I had forgotten to say the front bedroom.

Q. Now, Miss Turner, I think you told me a moment ago that he came up-stairs in the third story, and you left your bed for him and Mrs. Tilton? A. Yes, Sir.

Q. And you went down into the second story? A. Yes, Sir.

Q. And I think you told me that you hadn't more than got into bed in the second story, before Mr. Tilton came down and you left that? A. No, Sir; oh! no, Sir. I said that he came in my room in the second story, and then said: "Let us try Beesle's bed a little while." I got up and left and went up in the third story and I had just got Carroll in bed and covered myself up before he came, there, and said, "Suppose we try this bed a little while, petty; may be it is softer than the other one." So I got up and went down to the second story bed, that I had left first; where he came to me first.

Q. Now, didn't you tell me a moment ago that you saw him come out of the room in the second story, in the morning when you got up? A. I said in the morning when he got up; I didn't say when I got up.

Q. When he got up? A. But I did not say when I got up.

Q. You went up from the second story into the third, didn't you? A. What for?

Q. I don't know. A. Well, I can tell, very accurately, that I saw him coming out of the room; I was up and dressed.

Q. Where was the room that you saw him coming out of? A. The third story.

Q. Didn't you say, a moment ago, that you saw him coming out of the room in the second story? A. No, Sir; Oh! no, Sir. Third story.

Q. Mr. Fullerton—[In an undertone in reply to a remark by Mr. Beach.] Yes, she did say it distinctly.

The Witness—When I said—I did say something about coming out of a second-story room, but I said I looked out of my

bed, and there I saw him; he was in the second story then coming with Mrs. Tilton behind him, with a pillow in her hand, and "Let us try this bed"—and then I went up in the third story, and I said next morning I saw him coming out of a third-story room.

Q. Now, was he in the habit of going about the house undressed or in his night clothes on any other occasion than when he was looking for a soft bed or hanging pictures? A. Yes, Sir.

Q. Upon what occasions? A. He used to go around frequently—generally came to bid me "good night" in his night clothes, after he got his night clothes on.

Q. Do you know when that was? A. It was several times.

Q. How? A. It was several times.

Q. Well, can you give us the year? A. I can give you the years, '88 and '89, when he was in his night clothes; that is all the years—the dates that I can give.

#### MR. TILTON'S ABSENCE DURING HIS CHILD'S SICKNESS.

Q. Yes. Now, I call your attention to the occasion when he was out all night. Do you recollect what conversation was had the next morning when he returned between himself and his wife? A. Between myself and his wife?

Q. Between himself and his wife? A. Yes, Sir.

Q. Do you recollect of his mentioning the death of William Pitt Fessenden? A. No, Sir.

Q. Didn't he state distinctly that he had been writing an obituary notice of Mr. Fessenden? A. No, Sir.

Q. Made no such observations? A. Made no statements at all.

Q. How? A. He made no statements at all.

Q. And are you able to state when that occurred? A. That occurred when little Paul was sick, Sir; little Paul was very sick, indeed.

Q. Was it that sickness which resulted in his death? A. Yes, Sir.

Q. You are sure of that? A. Oh! yes, Sir; he had *cholera infantum*.

Q. That must have been in 1868, then? A. He died in July; yes, Sir, 1868.

Q. Are you sure it was July? A. June or July.

Q. Wasn't it the 22d of August, 1868? A. I think it was in July, Sir; I am not sure.

Q. Well, now, how long before his death was it that he remained out all night? A. I can't state truthfully as to that; but I think it was not long before his death.

Q. But can't you state how long? A. I cannot state how long; no, Sir.

Q. Nor give any idea? A. It seems to me that Paul died a little while after that.

#### MR. TILTON AND THE HOUSEHOLD AFFAIRS.

Q. You have spoken of an occasion when it became necessary to discharge a servant, that he was unkind to her? A. That who—that he was unkind to her?

Q. Yes, Mrs. Tilton. A. Oh! that Mr. Tilton was unkind to Mrs. Tilton?

Q. Yes. A. Oh! I thought you said unkind to the servant.

Q. No. A. Yes, Sir; I remember that.

Q. Do you recollect when that was? A. That Mrs. Tilton was unkind to the servant?

Q. When it was that Mr. Tilton was consulted by Mrs. Tilton in regard to the discharge of a servant, when you think he was unkind to Mrs. Tilton? A. Yes, Sir; I remember the time, but I don't think I can—I remember the occurrence, but I don't think I could give the date when it was.

Q. Did Mr. Tilton do anything more than say that she had the charge of the house, and she must do as she pleased about the discharging of the servant? A. He said that she—he said to her that she must not come to him with her household matters; that it was none of his business; he attended to his business and she must attend to hers, and he didn't wish to be bothered with the servants.

Q. He did not interfere at all in the management of the house, did he? A. He had nothing to do with the management of the house, apparently.

Q. He didn't attempt to control Mrs. Tilton in regard to the management of the house, did he? A. How?

Q. He did not attempt to control Mrs. Tilton in the management of the house, did he?

Mr. Evans—Do you mean on this occasion?

Mr. Fullerton—On this or any other occasion? A. He did not on this occasion.

Q. Did he on any occasion? A. Why, I think he generally had matters his own way with regard to the house.

Q. Did he undertake to control Mrs. Tilton in the management and direction of her own household? A. Well, he didn't control her in that one instance; he simply said that he didn't want to be bothered with her—

Q. Now, Miss Turner, I don't think you can evade answering the question? A. Oh! no, Sir, I don't wish to evade it; I was thinking—I don't want to evade anything at all, Sir; I will answer everything truthfully, just as well as I can.

Q. Go on? A. What was your first question?

Q. My first question, and the question which you are to answer, is this, whether Mr. Tilton at any time undertook to control and direct household affairs? A. Yes, I think he did; I think he had things his own way.

Q. Now, what things did he have his own way? A. Why, we have often—With regard to the servants about cooking meats, and things not pleasing him on the table, he would say: "Can't she cook better than this. If not, let her be discharged."

Q. That is what you mean by having his own way? A. Yes, Sir; I call that having his own way.

Q. He did not discharge a servant on those occasions? A. He used to make Mrs. Tilton to do all those things.

Q. Used to make her do it? A. Yes, Sir.

Q. Now, give us an instance? A. Well, I can give one or two instances with regard to myself, when he didn't want me there, and he told Mrs. Tilton; he didn't tell me himself; he would be very pleasant to me himself, and told Mrs. Tilton to send me off.

Mr. Beach—Oh! you know that only from what Mrs. Tilton told you.

The Witness—She is very good authority.

Mr. Beach—Yes, she may be to you, but you will please state your own knowledge. [To Mr. Fullerton.] Now, make her give examples within her own knowledge.

Mr. Fullerton—Were you ever sent away by Mrs. Tilton? A. No, Sir.

Q. Now, give us an instance in which Mr. Tilton interfered with the management of the household? A. I don't think I can think of any just now.

Q. Can't think of any just now? A. No, Sir.

#### MRS. TILTON MADE A PRISONER.

Q. Very well; you have spoken of occasions when Mrs. Tilton was locked in her room by Mr. Tilton? A. Yes, Sir.

Q. How long have you known her to be locked up in a room? A. Three or four hours at a time.

Q. You recollect the first occasion when that occurred when she was locked up during that length of time? A. Well, it has occurred in the years 1897, 1898 and 1899.

Q. You are sure as to the years, are you? A. They went to their house in 1896, and it was about a year after they went into their house that I noticed his unkindness to Mrs. Tilton.

Mr. Beach—Oh! that is no answer.

Mr. Fullerton—Oh, I didn't ask you that; I asked you about locking her up in the room.

Mr. Porter—You asked her about the year, and it was a proper answer.

Mr. Fullerton—It was not a proper answer.

#### COUNSEL ACCUSED OF INSULTING THE WITNESS.

Mr. Porter—Well, on that point we differ, and I submit to the Court it was. The witness is not bound to submit to a rebuke on that. Will the stenographer read the question and the answer and then we will submit it to the judgment of his Honor.

Mr. Fullerton—I asked her the year—

Mr. Porter—The stenographer can easily read the question—the last question—and the answer.

Mr. Fullerton—There is no necessity for reading it, Sir; it is a waste of time.

Mr. Porter—There is a necessity for it, Sir; for I raise a question about it. I deny that the counsel has a right at this stage of the case to insult and denounce a witness on the stand.

Mr. Fullerton—Has he done so?

Judge Neilson—He should not do so, of course.

Mr. Fullerton—But has he done so?

Mr. Porter—It has been done constantly—a succession of times. I submit now that her answer to this question was at fair one, and that there was no occasion for the insult offered.

Judge Neilson—Now read the question and answer.

Mr. Beach—Now, your Honor, we have submitted about as long as is proper to their imputation, this repeated imputation upon the part of the counsel that we are treating their witnesses

unfairly. I say it has not been done in a single instance Sir; that there has been no departure from the allowed and customary and proper cross-examination of a witness; that no insulting question, or insulting or abusive remark has been addressed to this witness. But I am bound to say, Sir, that we have had occasion, again and again, to interrupt this witness. It is just and proper for us to interrupt an answer which is not responsive to the question which we put, and which is forcing evidence upon us, which we are not obliged to take. Now, the question addressed to this witness by my colleague, Sir, after she had stated the years, 1867, 1868 and 1869 was: "Are you sure that those are the years?" She answered, "I went there in 1866, and it was about a year after that that I commenced observing the unkindness of Mr. Tilton towards his wife—his unkindness."

Judge Neilson—That was not responsive.

Mr. Beach—Very well, Sir; we interrupted her, and then the counsel rises with a denunciation of us, that we are insulting and abusing this witness. And it is not the first time, Sir, that that imputation has been made, and most unjustly made.

Judge Neilson—Now, Mr. Stenographer, read that last question and answer as requested by Mr. Porter.

[Last question and answer read by THE TRIBUNE stenographer.]

Mr. Fullerton—Now, Sir, is that responsive?

Judge Neilson—Now, read the prior question and answer to get the subject a little more fully.

Mr. Porter—The question is whether the witness properly answered that. They interrupted her at that point and prohibited her from going on to complete the answer. They charge her with evasion. Both counsel find it necessary to compete with this young lady; the one is not considered a match for her, but the other is brought in. One after another lectures and rebukes her; one after the other charges her with evasion. She has answered appropriately, and, evidently, with candor, and, according to the best of her ability, every question they have put to her. She was engaged in answering this question. The counsel asks her if she is sure as to the years. She states it was about a year after they went there, which was in 1866. "Stop," says one counsel—

Mr. Beach—No, Sir.

Mr. Porter—The other says to her: "This answer is not responsive." Is that needful?

Judge Neilson—It was responsive so far as—

Mr. Porter—I submit it is responsive, though it may not be a full response.

Judge Neilson—It was responsive thus far; the last clause—

Mr. Porter—But in regard to these comments that have been interlarded in this examination, I desire to call attention to the action of the Court at an early period, so far as we were concerned, and to insist that the same rule shall be applied to them.

Judge Neilson—I shall certainly apply the same rule if I am aware of the decision.

Mr. Porter—In the cross-examination of Mr. Tilton, I had occasion to put to him this question [Reading]:

Q. Down to that time, had he ever wronged you? A. I don't think that he had, except in asking me to lie for him.

Q. Do you think that was a wrong? A. Now, I do; yes, Sir.

Q. Did you then? A. I did not; I thought I was saving a man who was repentant.

Q. Did you lie for him? A. I did.

Mr. Porter—We have your word.

Judge Neilson—One moment; counsel ought not to comment upon what the witness says.

Most certainly this young lady should be equally protected.

Judge Neilson—Undoubtedly.

Mr. Porter—From these harsh comments I observe that your Honor has endeavored to exercise great liberality on both sides, but it is because I claim the benefit of a rule of law that I must insist upon suppressing these comments or protesting against them.

Judge Neilson—Now, Mr. Stenographer, read the last two questions, and then we will understand the subject perfectly—the one prior to the question you did read.

THE TRIBUNE stenographer read as follows:

Q. You recollect the first occasion when that occurred, when she was locked up during that length of time? A. Well, it has occurred in the years 1867, '68 and '69.

Mr. Fullerton—Read the next one; I want to make a motion.

THE TRIBUNE stenographer read:

Q. You are sure as to the year, are you? A. They went to their house in 1866; and it was about a year after they went into their house that I noticed his unkindness to Mrs. Tilton.

Mr. Fullerton—Now, I move to strike that out—

Judge Neilson—Now, the word "that," and the words after it, are stricken out.

Mr. Fullerton—Because it is irresponsible.

Judge Neilson—And the other part of the answer is responsive.

Mr. Evarts—If a motion is made to strike out, I would like to be heard a moment, without reproducing any of the acerbities of the matter. The question is this: She has given evidence concerning certain conduct of Mr. Tilton towards Mrs. Tilton, to wit (what included, as a part of it), their being locked up together in a room for some length of time. Now, my learned friend wishes to get the date of those occurrences, and the witness answers, having no other unkindness in her mind, and no other instance of unkindness but the very one concerning which she is inquired about. She then says: "They went to their house in 1866, and it was in the year 1867, as I first noticed the difference," she says, "on that subject"—

Judge Neilson—About a year afterwards.

Mr. Evarts—I don't care to reproduce it, because I might not do it accurately—"that I noticed his unkindness to his wife." Now, the legitimate application in the witness's mind, and in the witness's answer, and in the jury's apprehension of it, and her apprehension of it, is: "You are asking me to fix the dates of this series or style of occurrences that you are inquiring about; and I do fix the date that these were the times that I noticed his unkindness, but not his unkindness in general, not his unkindness in other particulars; but this unkindness concerning which you are talking to me." I submit that is a perfectly natural conclusion of the witness, and it is a legitimate



answer. And, then, if the learned counsel does not necessarily include these particular unkindnesses as thus appropriated to these dates, why, that is easily supplied by a further question on his part. It is not right to strike it out, it seems to me.

Judge Neilson—I think that clause was properly stricken out, the counsel not having interrogated the witness in that connection as to any unkindness, and not having referred to the locking of the door as an act of unkindness and as an act of which he wished to ascertain the date. I ought to say in this connection that I accept cheerfully the suggestion made by Judge Porter, that all witnesses are to be treated alike, and that no counsel, even in the earnestness of the examination, ought to use words unpleasant to a witness.

Mr. Fullerton—Have I used one there?

Judge Neilson—I don't say you have. I cannot take upon myself to recall; only, it is a suggestion.

Mr. Fullerton—No, Sir; but it is implied in the observation of your Honor; and I am studiously avoiding any observation to this witness that is in the slightest degree offensive. I challenge the counsel upon the other side to produce one instance in which I have violated any rule of propriety in the examination of this or any other witness. If I asked this witness the question whether she lied and she should say, "Yes;" and I should respond, "We have your word for it," as Judge Porter did to Mr. Moulton when he was upon the stand, then, Sir, I should be the subject of a proper rebuke.

Mr. Porter—Well, Mr. Moulton had stated that he lied.

Mr. Fullerton—That did not warrant the observation.

Mr. Everts—Why, certainly.

Mr. Fullerton—No, Sir.

Mr. Everts—It was not accusing him of lying. He said he lied.

Mr. Fullerton—Yes, Sir, and he lied for your client.

Mr. Everts—I know; he said so; As said so. [Laughter.]

Mr. Fullerton—He lied for your client, and it ill becomes his counsel to rebuke him for it.

Mr. Beach—Hadn't we better get the answer to this question before we adjourn?

Judge Neilson—Perhaps you had.

Mr. Everts—Now, if your Honor please, here is a ruling that your Honor has made [Reading]:

Tilton having said, in answer to a general question, on direct examination, that defendant never denied the criminal intercourse, added, "whenever he spoke of it he always said that the criminality attached to him alone, etc.;" *And*, that the motion to strike out as not responsive, and as stating general results of conversations, instead of stating what was said and when, should be denied.

Now, the point undoubtedly is that great prejudice may come to testimony and some injury to the witness by striking out evidence that is not, upon a very clear judgment, either volunteer or spurious, when nullifications of the evidence can easily be supplied by subsequent inquiries. And it is for that reason, I suppose, that your Honor has been averse to striking out in the instances that I called your attention to, and I think it is not just to the witness to strike out an answer that, it seems to me, under fair consideration, may well be regarded by your Honor and the jury as, in the mind of the witness, re-

sponsive. Where a witness volunteers extraneous matters, why, of course, we understand that the witness exposes herself, or himself, to the rebuke of striking out evidence.

Judge Neilson—I think in the instance cited from the record, where I failed to strike out the motion, there was a connection between the answer as given and the subject matter of the inquiry; here, on the other hand, in contrast with that, is a simple inquiry as to the time when the locking of the door occurred; whether that locking of the door was an unkind act or not the learned counsel did not inquire, and may not want to take the judgment of this witness—simply the time when it occurred. Therefore, I think the last words of this answer were properly stricken out, because it characterizes the closing of the door, or locking of it, as an unkind act, an inquiry which the counsel had not presented at all.

#### THE CLOSET LECTURES AGAIN DESCRIBED.

Mr. Fullerton—It does not follow that she referred the unkind conduct to the locking of the door. [To the witness.] Are you certain now, Madam, as to the time when you first knew him to lock her up in a room? A. Those three years, Sir; 1867, '8 and '9.

Q. Well, 1867 was the first time—in the year 1867? A. Those three years; I cannot state in particular—

Q. Well, the first time was not in 1868, was it, if he locked her up in 1867?

Mr. Everts—Well, you will learn that from the calendar.

Mr. Fullerton—Well, I am trying to get the calendar into her head. [To the witness.] It was not the first time in 1868? A. I ain't saying it was the first time; I have said in those three years those occurrences were.

Q. Now, do you recollect the occasion that he locked her up in the room? A. What he locked her up for?

A. Yes, the first time? A. I don't know, unless to scold her.

Q. Well, do you know; do you know what the occasion was? A. I don't know, Sir. How should I know what he had locked her up for? Only I know whenever they were in there, and the door was locked, he was talking very angrily and she was crying.

Q. Now, how many times in all do you remember of her being locked up in the room by him? A. Oh! a number of times.

Q. How many? A. Over a dozen.

Q. Over a dozen? A. Yes, Sir.

Q. Well, how many over a dozen? A. Over a dozen, that is all the answer I can give to that question.

Q. How? A. Over a dozen times.

Q. Over a dozen? A. Yes, Sir.

Q. And two or three hours each time? A. I didn't say that.

Q. Well, that is the reason I have asked you. A. I have spoke of one time when it was three or four hours; I didn't say every time.

Q. Well, how long generally was it? A. Generally pretty long.

Q. Well, how long? A. I cannot state definitely, except on

one occasion I know it was three or four hours; sometimes it was so long that the supper bell would ring and they would not come down; they had been there then the best part of the afternoon.

Q. Yes. Were you ever with them in the room when they were locked up? A. No, Sir.

Q. Was he always in the room with her when she was locked up? A. Yes, Sir; that is—these occasions when they were together.

Q. I am speaking of the occasions when he locked her up in the room; was he, on those occasions, in the room with her? A. Yes, Sir, because I always heard his angry voice scolding her.

Q. Always? A. Yes, Sir.

Q. On every one of those occasions? A. Yes, Sir.

Q. A dozen or more? A. A dozen or more; yes, Sir.

The Court here took a recess until 3:10 p. m.

#### THE AFTERNOON SESSION.

The Court met at 3:10 p. m., pursuant to adjournment, and Miss Turner again took the witness stand.

Judge Nelson—Mr. Shearman, shall we wait for Mr. Everts, or shall we go on?

Mr. Shearman—We will go on.

The Witness—Mr. Fullerton, if you will allow me I would like to correct a mistake that I made this morning with regard to little Paul dying. I think I stated that I thought he died in July, 1868, but he died on the 25th day of August, 1868. Then I was not—I seemed to be—I was not very plain about going to Mrs. Dows's when I was at the Home. I went to the Home in the latter part of December, 1868. It was from the Home that I went to Mrs. Dows's, and I returned from Mrs. Dows's in June, 1869, about the 17th of June. Little Ralph was born on the 30th, and I know I was there two or three days before he was born.

Mr. Fullerton—How did you get at those dates? A. From Mrs. Tilton's diary.

Q. Did you look at the diary during the present recess? A. Yes, Sir.

Q. Did Mrs. Tilton show it to you? A. Mrs. Tilton gave it to me.

Q. In what room was Mrs. Tilton locked up on the first occasion when she was locked up, that you remember? A. The first occasion that I remember was in the second story front bedroom, Sir.

Q. At what time of day was it? A. I think it was in the early part of the afternoon.

Q. Do you recollect the season of the year? A. No, Sir; I don't think I do.

Q. How long was she locked up on that occasion? A. Two or three hours.

Q. Where did you remain during those two or three hours? A. I remained up-stairs; I was in the sitting-room for a little while, and then I went down-stairs and came up again, and went down in the parlor and came up again; I kept going down and coming up.

Q. You kept going down and coming up? A. I kept going down and coming up.

Q. Did you overhear anything that was said during that locking up? A. Not at the time that I am speaking of now, except that he was talking in a very loud, and angry tone of voice.

Q. When was this? A. During those three years.

Mr. Beach—No, no; that won't do.

Mr. Fullerton—Which of those three years? A. It might probably have been the first year.

Q. 1867? A. 1867.

Q. What time of the year was it? A. What time of the year was it?

Q. Yes. A. I don't recollect, Sir.

Q. Have you no recollection upon that subject? A. No, Sir; I don't think I could give the time of the year.

Q. Was it Winter or Summer?

Mr. Beach—Or Spring?

Mr. Fullerton—Or Spring? A. It may possibly have been in the Winter, I think.

Q. Is that as near as you can get at it? A. That is as near as I can get at it.

Q. Then it was the year 1867, you think? A. 1867, 1868 and 1869 are the years I know she was locked up in.

Q. No, no; I am speaking now of this one occasion; if it were in the Winter, it was in the Winter of 1867-8? A. 1867, I think.

Q. Well, there was only one month of Winter in 1867; the other two were in 1868.

Mr. Beach—She says it was in the Winter.

The Witness—I did not say that I was sure it was in the Winter.

Mr. Fullerton—Was it in the Winter in the early part of 1867, or at the end of 1867? A. I think it was—well, I cannot say positively.

Mr. Beach—Well, make her say it.

Mr. Fullerton—Can't you give us any idea of the year?

Mr. Beach—She says she thinks it was in the Winter.

Mr. Fullerton—Yes, I know. [To the witness.] In the Winter of what year was it? A. I don't know that it was in the Winter,

Mr. Beach—You said you thought so?

The Witness—I think so, but I am not positive.

Mr. Fullerton—If it were in the Spring that it occurred, tell me in the Winter of what year it was? A. 1867, 1868 and 1869—in those three years were the times that he had her locked up.

Q. I am not talking about the times when he had her locked up. I am asking about this particular occasion that you now speak of? A. You want to know what time of the year it was?

Q. Yes? A. Well, I cannot say positively, but I think it was in the Winter.

Q. Well, thinking it was in the Winter, tell me what part of the Winter it was in? A. No, Sir; I cannot tell you that.

Mr. Beach—She does not understand. [To the witness.] Was it the Winter at the commencement of 1867, or the Winter at the end of 1867? A. That I cannot tell you, Sir.

Mr. Fullerton—Was Mr. Tilton a public lecturer? A. Yes, Sir.

Q. What part of the year was he usually gone upon lecturing tours? A. I don't remember; I think sometimes in the early part of the year, and sometimes later.

MRS. TILTON HER HUSBAND'S ACCEPTED CRITIC.

Q. Don't you know that he was in the habit of reading his lectures to his wife before he went upon his lecturing tours? A. I know that he used to take a great deal of his writing to her to criticise and to read it over to her, but whether it was his lectures that he was reading to her I could not say.

Q. Well, he was in the habit of reading his writings to her? A. I know she used to criticise a great deal of his writings before they went to press.

Q. Whether those writings were lectures or editorials you cannot say? A. I cannot say whether they were lectures or not.

Q. Was he not in the habit of going into this room with writings of some kind to read them over to his wife? A. When they were locked up?

Q. Yes. A. No, Sir; I don't think it was anything of that kind, it didn't sound like reading over writings, because he was talking in a loud and angry tone.

Q. Well, if he were delivering or reading a lecture to her, it would be in a loud tone? A. It wouldn't begin that tone.

Q. You think not? A. Yes, Sir.

Q. You could judge whether it was the reading or declamation of a lecture, or a scolding? A. Oh, I am sure it was a scolding lecture; he was lecturing her; but I am pretty sure he was not reading over any lecture.

Q. You did not hear what he said? A. No, Sir.

Q. You only heard a loud voice? A. Talking loud and angry.

Q. You could tell that it was angry? A. Yes, Sir.

Q. You know that it was not the reading of a lecture? A. Well, I think I could swear to that.

Q. Well, you do swear to it, don't you? A. Yes, Sir.

Q. When do you recollect any other occasion when they were locked up together? A. Well, there was so many times that I can't give them all.

Mr. Beach—I move to strike out that answer.

Mr. Shearman—That is a very proper answer.

Mr. Beach—Well, I move to strike it out.

Mr. Shearman—Then we object to its being struck out.

Judge Neilson—it is struck out. He did not ask how many such occasions there were but what other occasion the witness recollects.

Mr. Shearman—She is stating the next occasion when Mrs. Tilton was locked up.

Mr. Beach—We did not ask whether she could recollect the next occasion; we asked when the occasion was.

Mr. Shearman—The answer was a very natural one.

Mr. Beach—Natural is not proper.

Mr. Shearman—Well, we object to the answer being struck out.

Mr. Beach—Well, the Court is against you.

Mr. Shearman—If the Court is against me the counsel has no

right to make an observation upon it after the ruling of the Court.

Mr. Beach—It was not necessary for you to say that the answer was a proper answer, after the Court had ruled that it was improper.

Mr. Shearman—I merely observed that it was a natural answer to your question.

Mr. Beach—Well, you will find your remarks answered whenever you make them.

Mr. Shearman—So will you.

Mr. Beach—I hope so.

MR. TILTON WANTS BETTER ECONOMY.

Mr. Fullerton—Now, Miss Turner, will you answer my question? A. I remember very distinctly another occasion when they were locked up in the room together, and he was talking very angrily to her, and that was the occasion when she said: "Why, darling, I make every dollar go as far as I can;" and she was crying and sobbing. I knew that, because that day I had not acted very nicely, I felt a little cross, and hearing Mrs. Tilton crying, I went to the door and knocked, and Mrs. Tilton unlocked the door, and the tears were running down her cheeks, and Mr. Tilton was standing by the bureau, and he turned around, and his face was just as red as fire, and he turned his back to me.

OTHER INSTANCES OF UNKINDNESS.

Q. When was that? A. That was another occasion; I cannot state just when it was.

Q. State as near as you can. A. It may have been in that same year, or it may have been another year; it may have been the year after that.

Q. You can give us no idea whether it was in 1887, 1888 or 1889? A. It was during those three years; I cannot give any definite time, any more than that these scoldings and lockings up in the room were during those three years.

Q. How? A. No more than that I remember these scoldings taking place in 1887, 1888 and 1889; those three years.

Q. Did he lock her up in the room on any other occasion than those two that you have spoken of, that you can now remember? A. Another occasion? I remember one evening Mr. Bates had been there, when he took her up stairs and they were locked in the room together, and he was talking very loud in a very angry tone of voice.

Q. You could hear the loud talking again, and the angry tone of voice? A. Yes, Sir.

Q. Could you hear what was said? A. No, Sir; I was not listening attentively enough. I suppose if I had put my ear to the door I might possibly have made out what they were saying.

Q. But you didn't? A. It was his angry tone of voice that caused me to be around.

Q. Yes. A. I heard it.

Q. When you knocked upon the door and it was opened, by whom was it opened? A. It was opened by Mrs. Tilton.

Q. Where was Mr. Tilton standing? A. On this one occasion he was standing by the bureau, with his face turned toward the door, and when I made my appearance he turned around.

Q. You have told me about that. He was standing by the door; now, how far was the bureau from the door? A. Not very far.

Q. How far? A. Well, suppose here was the door and over there was the bureau. [Illustrating.]

Q. Six or eight feet? A. I didn't measure it; I don't know whether it was six or eight feet or not.

Q. Give us your judgment about it? A. I could not tell you.

Q. He did not prevent her from opening the door? A. I could not tell about that; I didn't see her until the door was opened.

Q. You didn't observe that he attempted to prevent her from opening the door? A. I could not observe, Sir, because the door was shut; all that I saw was after the door was opened.

Q. And his face was as red as fire? A. Yes, Sir; very red.

Q. Well, as red as fire, wasn't it? A. Well, it was pretty red. That is a common expression. When a person is very red, you will say they are as red as fire, or as red as fury.

Q. Well, which was it, red as fire or red as fury? A. Well, I guess as red as fury.

Q. You observed that? A. Oh! yes, Sir.

Q. What did you say? A. I asked Mrs. Tilton if she would forgive me for the way I had acted.

Q. You wanted to get pardon, did you, so you knocked at the door to get admission? A. Well, I cannot state truly that that was the way. I was curious to see what the row was about, and I made my having been angry that day an excuse for going in to see, because I heard Mrs. Tilton sobbing and crying.

Q. You heard her sobbing and crying? A. Yes, Sir.

Q. Distinctly? A. I heard her, and then I saw her.

Q. You listened to hear the sobbing and crying? A. I was in the front sitting room.

Q. How far from the door entering the room where they were? A. How far was I sitting?

Q. Yes. A. I was not sitting, I was standing over by the window, I think.

Q. How long did you remain there in that attitude? A. Do you mean before I went in and spoke to her?

Q. Yes. A. I was there some little time.

Q. How long? A. I could not state; perhaps fifteen minutes, or twenty minutes.

Q. How long were they locked up in their room at that time? A. They had been there for several hours, three or four hours.

Q. What time of day was it? A. When they went in?

Q. Yes. A. It was in the afternoon, after dinner or after lunch.

Q. What time was lunch? A. They generally had lunch from twelve to one.

Q. And about two o'clock did they go into that room? A. They went directly after lunch, as I remember.

Q. Then it was about two o'clock? A. I think it was earlier than that.

Q. One o'clock? A. No, Sir; they had lunch at one o'clock. It was about half-past one, I guess.

Q. It was half-past one when they went into the room; now, what was done when Mr. Bates was there? A. What was done?

Q. Yes. A. With Mrs. Tilton?

Q. No. A. Why, Mrs. Tilton had been talking with him—she had spoken to him. He was making a friendly call, I think it was a Sabbath evening, and stayed to supper.

Q. And yet after he went away, about one o'clock in the afternoon, Mr. Tilton took Mrs. Tilton into the room and locked her up?

#### COUNSEL CHARGED WITH MAKING AN INCORRECT ASSUMPTION.

Mr. Tracy—No, Sir, there is no such evidence. I object to that question. The counsel assumes what the witness has not said.

Judge Neilson—I think he does.

Mr. Fullerton—I don't think I do, Sir.

Mr. Tracy—Well, I think you do, and therefore I object.

Judge Neilson—If the question assumes what does not appear in the testimony of course the objection is a good one.

Mr. Fullerton—I don't think I did assume what does not appear.

Mr. Tracy—The counsel stated the testimony about one o'clock, which referred to another occasion, and then he took the occasion when Mr. Bates was there and stayed for supper, as the witness thinks, and applied the one o'clock to that. The witness said—

Mr. Fullerton—Wait a moment. You need not state what the witness said. I propose to have it read. That is the better way to do it.

Mr. Tracy—I don't know what right the counsel has to interrupt me when I am addressing the Court.

Mr. Fullerton—Well, I don't know which side you are on just now.

Mr. Tracy—I am never on but one side of a case, and that is more than some other gentlemen can say.

Mr. Fullerton—Now, will your Honor have the record read?

Judge Neilson—Read the record.

THE TRIBUNE stenographer read as follows:

Mr. Fullerton—Now, Miss Turner, will you answer my question? A. I remember very distinctly another occasion when they were locked up in the room together and he was talking very angrily to her, and that was the occasion when she said, "Why, darling, I make every dollargo as far as I can," and she was crying and sobbing. I knew that because that day I had not acted very nicely—I felt a little cross—and hearing Mrs. Tilton crying, I went to the door and knocked and Mrs. Tilton unlocked the door and the tears were running down her cheeks, and Mr. Tilton was standing by the bureau, and he turned around and his face was just as red as fire and he turned his back to me.

Q. When was that? A. That was another occasion; I cannot state just when it was.

Q. State as near as you can. A. It may have been in that year, or it may have been another year; it may have been the year after that.

Q. You can give us no idea whether it was in 1867, 1868, or 1869? A. It was during those three years; I cannot give any definite time, any more than that these scoldings or lockings up in the room were during those three years.

Q. How? A. No; more than that, I remember these scoldings taking place in 1867, 1868 and 1869, those three years.

Q. Did he lock her up in the room on any other occasion than those two that you have spoken of, that you can now remem-

ber? A. Another occasion. I remember one evening—Mr. Bates had been there—when he took her up-stairs and they were locked in the room together, and he was talking very loud in a very angry tone of voice.

Q. You could hear the loud talking again, and the crying tone of voice? A. Yes, Sir.

Q. Could your hear what was said? A. No, Sir; I was not listening attentively enough. I suppose if I had put my ear to the door I might possibly have made out what they were saying.

Q. But you didn't? A. It was his angry tone of voice that caused me to be around.

Q. Yes. A. I heard it.

Q. When you knocked upon the door, and it was opened; by whom was it opened? A. It was opened by Mrs. Tilton.

Q. Where was Mr. Tilton standing? A. On this one occasion he was standing by the bureau, with his face turned to the door, and when I made my appearance he turned around.

Q. You have told me about that. He was standing by the door; now how far was the bureau from the door? A. Not very far.

Q. How far? A. Well, suppose here was the door, and over there was the bureau. [Illustrating.]

Q. Six or eight feet? A. I didn't measure it; I don't know whether it was six or eight feet or not.

Q. Give us your judgment about it? A. I could not tell you.

Q. He did not prevent her from opening the door? A. I could not tell about that; I didn't see her until the door was opened.

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Q. Well, as red as fire, wasn't it? A. Well, it was pretty red. That is a common expression. When a person is very red, you will say they are as red as fire or as red as fury.

Q. Well, which was it, red as fire or red as fury? A. Well, I guess, as red as fury.

Q. You observed that? A. Oh, yes, Sir.

Q. What did you say? A. I asked Mrs. Tilton if she would forgive me for the way I had acted.

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Q. You heard her sobbing and crying? A. Yes, Sir.

Q. Distinctly? A. I heard her, and then I saw her.

Q. You listened to hear the sobbing and crying? A. I was in the front sitting room.

Q. How far from the door entering the room where they were?

A. How far was I sitting?

Q. Yes. A. I was not sitting, I was standing over by the window. I think.

Q. How long did you remain in that attitude? A. Do you mean before I went in and spoke to her?

Q. Yes? A. I was there some little time.

Q. How long? A. I could not state; perhaps fifteen minutes or twenty minutes.

Q. How long were they locked up in their room at that time? A. They had been there for several hours, three or four hours.

Q. What time of day was it? A. When they went in?

Q. Yes? A. It was in the afternoon, after dinner or after lunch.

Q. What time was lunch? A. They generally had lunch from twelve to one.

Q. And about two o'clock did they go into that room? A. They went directly after lunch, as I remember.

Q. Then it was about two o'clock? A. I think it was earlier than that.

Q. One o'clock? A. No, Sir; they had lunch at one o'clock; it was about half-past one, I guess.

Q. It was half-past one when they went into the room; now, what was done when Mr. Bates was there? A. What was done?

Q. Yes. A. With Mrs. Tilton?

Q. No. A. Why, Mrs. Tilton had been talking with him; she had spoken to him. He was making a friendly call—I think it was a Sabbath evening—and stayed to supper.

Q. And yet after he went away, about one o'clock in the afternoon, Mr. Tilton took Mrs. Tilton into the room and locked her up?"

Mr. Tracy—My objection is that after the counsel had quit the scene which transpired after lunch and had gone back to the scene when Mr. Bates was there, and had the witness tell what occurred in Mr. Bates's presence, he then assumed that the witness had stated that Mr. and Mrs. Tilton went into the room at one o'clock in the afternoon on the occasion when Mr. Bates was there, which was a very different thing from what the witness had said.

Judge Neilson—It is very easy for you to modify your question, Mr. Fullerton.

Mr. Fullerton—Oh! Sir, I am strictly right about it. The witness may have misunderstood my question—she probably did.

Judge Neilson—It appears that the time when Mr. Bates was there was in the evening.

Mr. Fullerton—Undoubtedly it was, but that did not prevent her from saying that they went into the room at half-past one o'clock.

Mr. Tracy—It prevented the counsel from assuming that she had stated it.

#### THE TROUBLE CAUSED BY MR. BATES'S CALL.

Judge Neilson—Go on, gentlemen, give us another question, Mr. Fullerton.

Mr. Fullerton—What time in the day was it that Mr. Bates was there? A. It was not in the day time, I think. It was in the evening.

Q. What time in the evening? A. He came into supper that evening—I think it was Sunday evening.

Q. What time did he leave? A. I don't know whether he left in time for church or whether he stayed until nine o'clock. My impression is that we did not go to church, but I would not be positive.

Q. How long after he went away did they go up into the room? A. Right as soon as he left—a very few minutes.

Q. Were you present when they left the room to go to their room? A. Yes, Sir; and followed them up-stairs.

Q. You followed them up-stairs? A. Went behind them.

Q. Where did you go? A. Into the front sitting-room.

Q. Where did they go? A. They went into the bedroom off the front sitting-room, and the doors were locked.

Q. How long did they remain there? A. Some time.

Q. How long? A. Three or four hours, I think.

Q. Did you stay there till they came out? A. No, Sir, I went in and out; I stayed a little while, and came down-stairs and came back again.

Q. That is the time that you went up-stairs and came down-

stairs so very much? A. I went up-stairs and down-stairs a great many times.

Q. What time did you retire that night? A. I could not tell you that.

Q. Do you remember? A. No, sir.

Q. Who retired first, you or Mr. and Mrs. Tilton? A. I didn't know whether I retired first, or whether they retired first; however, I saw them coming out of the room.

Q. What time did they come out? A. They had been in there three or four hours.

Q. They went in about nine o'clock, did they? A. I said that I could not remember whether Mr. Bates left before church—in time for church, or whether he stayed there until nine o'clock.

Q. You say you thought he stayed there till nine? A. I said I thought so, but I could not say positively.

Q. If he stayed until nine it must have been about twelve or after when they came out? A. If it was nine, yes, Sir; it must have been, because they stayed there a long time in this room.

Q. You didn't go to bed until they came out? A. No, Sir; I saw them coming out.

Q. Do you remember any other occasion when there was any locking up in the room. A. Yes, Sir; I remember several other occasions.

Q. Name one of them. A. When he had her locked up there and was scolding her—dozens of times he had her locked up.

Q. Dozens of times? A. Yes, Sir.

Q. I thought you said it was only about a dozen times before recess. A. It was dozens.

Q. Over a dozen times it was? A. Over a dozen.

Q. You think it was dozens? A. Yes, Sir.

Q. About how many dozens of times do you think it was? A. Perhaps two or three dozen.

Q. It must have been, then, between twenty-four and thirty-six times, somewhere? A. Yes, Sir; it may have been more than thirty-six times.

Q. It may have been more than thirty-six times? A. Yes, Sir.

Q. Upon the whole, how many times do you think it was?

A. It was two or three dozen times; I am sure of that.

Q. You are sure of that? A. Yes, Sir.

Q. Are you sure that it was three dozen times? A. Yes, Sir.

Q. Three dozen times; sure of more than that, are you? A. Well, no, Sir; I won't go further than that.

Q. You won't go further than three dozen? A. No, Sir.

Q. Did I understand you to limit it to one dozen before recess? A. I did not say one dozen; I said over a dozen.

Q. Did you mean, then, two or three dozen? A. Over a dozen; now that you are pinning me down to it, as to whether it was a dozen or three dozen times, I said over a dozen.

Q. Did you mean by that more than a dozen times? A. I meant that it was more than a dozen times.

Q. Did you mean that it was as many as two or three dozen times when you said it was more than a dozen?

#### A CONTEST FOR AN ANSWER.

Mr. Porter—I object to that question. She expressed herself with great intelligence when she said over a dozen times. It is not to be presumed she meant more than three dozen. She answers one question at a time. He asks her if it was more than a dozen times, and she says she thinks it was, and he now asks her if, when she gave that answer, she meant something different from what she answered. She said it was over a dozen.

Mr. Fullerton—Yes, that is a fact; there is no doubt about that, and I want to know when this witness limited the times of locking up to more than a dozen, whether she meant then that she knew of at least three dozen.

Mr. Porter—I object to the question in its modified form, as an assumption contrary to the fact that she did limit the times to a dozen.

Judge Neilson—She didn't limit it to a dozen—over a dozen.

Mr. Fullerton—No, Sir; and I did not say she did. I quoted her language. My language was that she stated it was more than a dozen times. Let it pass.

Mr. Beach—No, I won't let it pass.

Mr. Shearman—Do two counsel cross-examine?

Mr. Beach—When we do so, it will be time for you to object.

Mr. Shearman—Mr. Beach has constantly objected to a third speech on our side when we were not the objecting party. Now, Mr. Beach is going to make a third speech, when he is not the objecting party.

Judge Neilson—I don't know about that, but it has been a constant practice of one counsel or another to interview and take part as well as counsel who has been examining.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—Your Honor will bear me out in saying that I never object to hear Brother Shearman speaking; I am always anxious to have him relieve himself, when inclined. [Laughter.] I rose for the purpose of saying, which I think it is proper to say, that this lady, before the adjournment, upon cross-examination, limited the number of times that she saw Mr. Tilton and Mrs. Tilton locked up together to over a dozen. Now, when she comes into Court, after having had a communication during the recess with persons whom she has named, she now says that it was two or three dozen, but finally testifies positively to three dozen. The question we put to her, is for the purpose of having an explanation from her, Sir, and, understanding precisely what she understood to be the effect of her answer before the recess; we asked her if she had in her mind—if she meant by "over a dozen" the two or three dozen times which she has now mentioned, and it is a question, Sir, which is very proper, contrasting the two answers before the witness and enabling her to make any explanation she chooses in regard to that difference. Now, of course, we submit with becoming modesty and deference to the frequent lectures which we receive from the other side in regard to our treatment of this witness; but if we are right, your Honor—if we are technically right in our examination of this witness, we ask your Honor to sustain us, and, if we are in error, we will submit, Sir, with

great deference to any correction which your Honor may administer to us. I submit we have a right, where this witness has made these answers, apparently at variance and contradictory, to ask her for an explanation and whether she meant by the first answer which she gave—*indefinite and uncertain in its limitations*—whether she meant the number of times which she now gives.

#### ARGUMENT OF MR. SHEARMAN.

Mr. Shearman—Now, if your Honor please, the counsel has again assumed a state of facts which does not exist. The lady did not—though it is a contradiction in terms to say that she did not limit the number to over a dozen, the statement is absurd upon its face. But, even if it were a sensible statement, the lady did not limit it to over a dozen. The question that was asked her before recess was something like this: "Did this happen often? A. Yes, Sir, very often. Did it happen several times?" says Mr. Fullerton, with that impressiveness of manner which distinguishes him when he thinks he is going to make a great point, and the witness answers, "Yes, over a dozen." Now, that was a fair answer, and it was no limitation, and it was, as far as the lady had any right to go. She had not a right to say then three dozen times, because Judge Fullerton would have objected to any answer that went a quarter of an inch beyond his question. He asked if it was not a dozen times. I wonder he didn't object that she transcended her right in saying it was over a dozen times. I am surprised he didn't say "I didn't ask you that," as he generally does in the exercise of those strict technical rights which his associate insists upon. But that is all the answer she could make; and now she is asked what was meant by that answer, when that simply was in response to a question put to her. They might as well ask what Judge Fullerton meant by his question. I submit it is an unfair question to ask the witness what she meant when she made this simple response to the question put to her.

#### GENERAL DEBATE.

Judge Neilson—[To Mr. Fullerton.] I think you had better waive that.

Mr. Fullerton—What, Sir.

Judge Neilson—I think you had better waive the question and go on.

Mr. Fullerton—I didn't ask her whether it was a dozen times, before the recess. I asked her to fix the number of times, and she said it was over a dozen.

Judge Neilson—Is that the way it came up?

Mr. Fullerton—Yes, Sir.

Mr. Shearman—It was not.

Mr. Beach—Why, clearly, it was.

Judge Neilson—Repeat the last question.

Mr. Fullerton—When before recess you said that it was over a dozen times that he had locked Mrs. Tilton up in his room, did you mean by that that it was three dozen times?

Mr. Porter—Objected to.

Judge Neilson—We will take the answer.

Mr. Porter—I except to your Honor's ruling.

The Witness—Over a dozen means more than a dozen.

Judge Neilson—Yes.

Mr. Fullerton—So Mr. Shearman says.

The Witness—I said more than a dozen times.

Mr. Shearman—I thought the counsel did not comment on the answers of the witness. This is about the thirtieth time to-day the counsel has commented on the answers of the witness.

Mr. Beach—He has commented on your remarks.

Mr. Shearman—I don't object to that; I can comment on his. I do object to comments on his part on the answers of the witness, which were never allowed when we had the giant intellects on the stand, Mr. Tilton and Mr. Moulton, and I trust it will not be allowed now.

Judge Neilson—I don't know what was allowed then; I intend to be uniform and consistent, and I think I reasonably am. Very likely when witnesses are upon the stand 8, 9, 10 or 11 days, there may be some deviation from the common course.

Mr. Shearman—Your Honor will remember that was done on the first day of Mrs. Moulton's cross-examination.

Judge Neilson—I think the witness said over a dozen times; she may have had in her mind a dozen times or not, and I think it is a simple thing for her to say what she has in her mind.

The Witness—I have in my mind three dozen times—more than a dozen times that he had her locked up.

Judge Neilson—When you said it was more than a dozen times, had you it in your mind that it was three dozen times?

Mr. Porter—I object to that question; is a witness to be subjected to that kind of criticism, whether when she said one thing she meant another? Has the witness shown such a lack of intelligence that her answers cannot be understood by the Court or the jury? When a witness states one thing, and is asked whether she has in her mind another, is it not evidently transcending the rules of the legal examinations? Is that inquiring of her of a fact? I admit she cannot fence with the counsel in the use of words, and it is because I think she is at a disadvantage in comparison with him that I insist upon it that the trial shall not be converted into a fencing match.

Mr. Fullerton—Let it be a fencing match, when my two friends on the other side are seconds to come to her aid every moment; she is now alone.

Judge Neilson—I don't know that there is any contradiction. The witness said at first, "over a dozen times." It might be quite consistent to know if, when she answered, she had in her mind three dozen times; I don't know whether she had it or not. I don't regard it as contradictory. I think this witness ought to be cross-examined as entirely as the counsel in his professional judgment feels called upon to examine her, and I think the practice heretofore has been very liberal. Questions have been put like this continually, day by day, to certain witnesses. I don't think there is any particular pressure upon this witness. Counsel may differ as to the extent to which they should test her recollection. I think she may answer this question.

Mr. Porter—We except.

Mr. Fullerton [To the witness]—Now answer.

The Witness—Whether it was one dozen times or three dozen times?

Judge Neilson [To the witness]—This is it. When you answered before recess as to these occasions of looking up that it was over a dozen times, the question simply is whether you then meant, or had in mind, three dozen. Can you tell how it is? A. I could not say whether it was three dozen, or four dozen, or five dozen, but it was over a dozen.

Q. It is not as to the number. You said before recess it was over a dozen times, and now you say three dozen. The question is whether when you said over a dozen you meant it was three dozen? A. Yes, Sir, I think I meant it was over a dozen.

Q. Yes, you said that. Then you had in your mind that it was three dozen? A. I think I had in my mind that it was a good many dozen, but I said it was over a dozen.

Mr. Fullerton—If you had it in your mind a good many dozen why didn't you state that in your answer to the question put to you?

Mr. Porter—I object to the question. No question was put to her calling for that.

Judge Neilson—I think she answered it was over a dozen. That leaves you at liberty to ask.

Mr. Fullerton—When you were asked the question why didn't you fix the larger number in your mind?

Mr. Porter—Objected. It is a repetition of the same question in another form.

Mr. Fullerton—Which has not been answered.

Mr. Porter—I submit it has, and the Court has just said it has been answered.

Judge Neilson—I don't conceive it to be admissible.

Mr. Beach—The question is whether we have a right to cross-examine the witness—

Judge Neilson—I think you have a right to cross-examine the witness. The witness's duty is to attend patiently to it; but I think every question ought not to be objected to; still counsel have a right to object to questions if they feel called upon to do so. The cross-examination was pretty thorough in regard to other witnesses. This is a small matter.

Mr. Fullerton—Shall she answer the question?

Judge Neilson—Yes, Sir.

Mr. Porter—I except.

The Witness—I thought saying over a dozen times would do as well as saying over three or four dozen.

Q. When you made use of the term "over a dozen times," and had in your mind three dozen times, or more, why didn't you mention the larger number of times?

Mr. Tracy—I object to that. The question is whether she had it in her mind that it was three dozen. The witness has not stated she had in her mind three dozen times.

Mr. Morris—She stated that she thought saying over a dozen times would do as well as saying over three or four dozen.

Mr. Tracy—The probability is that when the witness answered it was over a dozen times, she had not in her mind the precise number of times.

Judge Neilson—How easy it would be for the witness to say what she had in her mind.

Mr. Tracy—The witness cannot fence with the counsel.

Judge Neilson—It is not a question of fencing. That obser-

vation is improper. Counsel has a right to cross-examine the witness.

Mr. Tracy—Certainly he has, and he has been enjoying it.

Judge Neilson—And not make every small, simple question a subject of argument.

Mr. Tracy—The counsel has no right to say this witness had in her mind three dozen times.

Judge Neilson—No; I asked her if she had that in her mind, and I didn't learn that she had.

Mr. Tracy—That is the ground of my objection to the counsel's question.

Mr. Morris—She certainly did answer that question propounded by the Court.

Mr. Fullerton—I think I recollect the Court putting the question, and she answering it.

Mr. Morris—She did answer the question.

Judge Neilson—[To the witness.] I think I asked you, when you answered before recess over a dozen times, whether in making that answer you had in mind, or not, the fact that it was three dozen times that you thought of that at the time. Did you, or not?

The Witness—I don't know that I did particularly, that it was three or four dozen, but I meant over a dozen, and saying a dozen—over a dozen times I thought that would be all that was necessary.

Mr. Morris—[To THE TRIBUNE stenographer.] Read the answer of the witness to that question.

THE TRIBUNE stenographer [reading]: "I thought saying over a dozen times would do as well as saying over three or four dozen."

Mr. Beach—In answering what your Honor asked her, she said she thought saying over a dozen times would do as well as saying over three or four dozen.

Mr. Morris—That is what she stated; I knew she did.

Judge Neilson—Did it then occur to you that it was three dozen times, or didn't you think of that at all, or think of anything more than simply over a dozen? A. I didn't think of anything more than what I said, that it was over a dozen times.

#### OTHER CASES OF LOOKING UP.

Judge Neilson—[To Mr. Fullerton.] That answers your question.

Mr. Fullerton—That is an answer to the question. [To the witness.] Can you name, now, any other occasion when they were locked up in the room, as distinguished from the occasions which you have named? A. I think I have named three occasions in particular.

Judge Neilson—Yes. [To the witness.] The last one was when Mr. Bates was present? A. Yes, Sir. Well, there were a great many after that, but I cannot particularize any one.

Mr. Fullerton—Those three are the only ones you can particularize. Is that what you mean to say? A. There were dozens of other occasions, but those are three that I remember very distinctly.

Q. Can you particularize any other occasion than those three? A. Yes, Sir, I can, one other.

Q. Name it, please? A. When a young lady was there.



Q. When was that? A. That was during these three years.

Mr. Beach—[To Mr. Fullerton.] Can she tell which one.

Mr. Fullerton—Can you tell which year it was? A. No, Sir.

Q. What time in the day did he lock her up then? A. I think it was in the afternoon, Sir.

Q. About what time in the afternoon? A. I guess the early part of the afternoon.

Q. How long was she locked up then? A. Three or four hours.

Q. Did you hear anything then? A. I heard him talking very angry to her.

Q. Very angry? A. In a very angry tone of voice.

Q. Very loud? A. Yes, Sir.

Q. Where were you? A. In the sitting-room.

Q. You stayed there again, did you? A. Yes, Sir.

Q. Stayed until they came out? A. I was in there when they came out, but I went in and out during the time they were in there.

Q. Did you go in and out of their room, or in and out of the room you were in? A. I didn't go in and out of their room, for they were in there together with the door shut. I went in and out of the sitting room.

Q. Now, can you particularize any other occasion when they were locked up together? You have now named four. A. Yes, Sir; another occasion was when she was very sick, in December, 1870.

Q. Yes, that one you spoke of on your direct examination. A. When he came in and said he was a ruined man.

Q. Yes. A. She was taken sick the 26th, and this was on Wednesday or Thursday.

Q. Following? A. Yes, Sir.

Q. How long was he locked up in the room with her then? A. He was there for two hours, or more, I think.

Q. That was when Mrs. Mitchell was there, was it? A. When Mrs. Mitchell was there; yes, Sir.

Q. Now, can you particularize any other occasion when they were locked up together? A. Yes, Sir; on Thursday.

Q. What Thursday? A. Those two days he had the door locked up, and Mrs. Mitchell remonstrated with him about shutting the door.

Q. That was the Wednesday and Thursday following her sickness? A. Following her sickness; yes, Sir.

Q. Now, can you particularize any other day when they were locked up together? A. No, Sir; I don't think I can particularize any other day, but there were a great many times.

Mr. Fullerton—Oh! of course, there were three dozen.

The Witness—There may have been more than three dozen.

Mr. Fullerton—Now we will go back to the occasion when you rapped at the door and it was opened by Mrs. Tilton. Did you leave them there when you went away from the door? A. Yes, Sir.

Mr. Tracy—I object to that.

Judge Neilson—He has a right to go back.

Mr. Tracy—That is a question I desire to have your Honor pass on, whether the counsel has a right to take up one of these occurrences upon this witness's examination and examine fully in regard to it, apparently exhausting it, and then pass to an-

other, and to another, and to another, and then return to the same interview or the same conversation. It is a question of discretion, I concede.

Judge Neilson—Perhaps he did examine exhaustively as to the first occasion, and perhaps not; I don't know. He seems to think he didn't. As to the other, it was more of an attempt to enumerate than to describe the occasion.

Mr. Tracy—I observe the distinction.

Judge Neilson—I think he can do that.

Mr. Tracy—This is a case where he examined exhaustively, where she knocked at the door, and Mrs. Tilton opened it, and she describes Mrs. Tilton's condition, and Mr. Tilton's condition, and what he did. Then he passed to another occasion, to the occasion of Mr. Bates, and then to others which he simply asked her to enumerate. Now, my point, and one which I desire to have settled by your Honor, is whether this counsel shall be permitted to take up one of these occasions, and apparently exhaust it, and then pass to another, and then to return, and then go from one occasion to another, and from one occasion to another, until the witness, worn and wearied out, is confused in the different occasions. I submit that fairness requires that when the counsel has touched upon an occasion, and has apparently exhausted it—touched upon an interview, and gone into the details of that interview, he should be required to exhaust that interview and pass on to another, and should not be permitted to return to it without limit or qualification from time to time during the examination.

Mr. Fullerton—That is not argument; it is simple turbulence.

Mr. Tracy—It may be, your Honor. But when I am addressing the Court, and not the counsel, if I am turbulent the Court—

Judge Neilson—Would find it out, no doubt.

Mr. Tracy—I accept a reprimand from the Court always.

Judge Neilson—I think this question may be asked, because it is cross-examination.

Mr. Tracy—I was about to call your Honor's attention to an occasion where a different rule was applied by your Honor on cross-examination. It is only a question I desire to submit to the discretion of the Court.

Mr. Beach—I should like to hear the different rule.

Judge Neilson—Who was under examination?

Mr. Tracy—Mr. Meulton. I will read it. [Reading from THE TRIBUNE report:]

Mr. Beach—Your Honor will remember that Mr. Porter cross-examined this witness specially as to the interviews of the 26th and 30th of December, and with great minuteness inquiring into interviews as between those two dates, and carried the witness through the details of this very occurrence. Now, Sir, under the embarrassment in which my friends are situated, I do not care to be very particular upon that subject, and I think they are entitled to some degree of indulgence and license in that respect, but that is but a repetition of the examination of Judge Porter, I think, must occur very readily to my learned friends.

Mr. Shearman—[To Mr. Tracy:] Allow me to suggest—

Mr. Fullerton—I think you had better suggest something.

Mr. Shearman—I think I can suggest something to the point.  
[Reading:]

Mr. Morris—I object to the question, on the ground that it has been all gone over on the cross-examination minutely, and they have no right to examine the witness to-day upon the same point upon which he was minutely examined yesterday.

Judge Neilson—That is so, if your recollection is right of what took place.

Then followed the dispute.

Mr. Tracy—I only read from the wrong place, your Honor.

Mr. Fullerton—It was from the wrong place.

Mr. Shearman—One moment; let me come to the final ruling, Mr. Tracy showed the facts were not true, and Judge Neilson said, "Well, proceed, and keep within the rule; don't go over the ground—"

Judge Neilson—I understand perfectly; Mr. Porter had cross-examined the witness for a day and a half, and then Mr. Tracy took up the cross-examination on account of his (Mr. Porter's) illness. Was that not so?

Mr. Shearman—Yes, Sir.

Judge Neilson—And Mr. Tracy took his place, and the difficulty was that Mr. Tracy should not go over the same ground that had been occupied by Mr. Porter for a day and a half, the motion proposed being that Mr. Porter's examination was final so far as it had gone, and my expression was that you ought to take it up where Judge Porter left it.

Mr. Tracy—I object to that.

Mr. Beach—The objection was to your repeating what Mr. Porter had proved the day before,

Mr. Morris—It was not as to asking any additional questions.

Mr. Tracy—My objection is to Mr. Fullerton repeating a subject he has already touched upon, and apparently exhausted, having examined it in detail, and having done that he should not be allowed to recur to it.

Judge Neilson—The proposition is whether Mr. Fullerton can have this witness again go over what she was examined about.

Mr. Fullerton—Certainly not.

Judge Neilson—Or to ask something in addition. If it is something in addition, it don't come within your objection, and he can limit his question.

Mr. Tracy—It comes within my objection; I don't know whether it comes within your Honor's ruling. My point is, that when counsel undertook to investigate in regard to a particular branch of this case, to wit, one of these interviews, he is bound to exhaust his examination; he cannot ask her two or three questions on that occasion, and then go to another, and then come back again to the first interview, for the very effect of such a decision is to confuse a witness. No witness in the world could undergo such a cross-examination as that without getting into confusion, and for the protection of the witness, and for the elicitation of the truth, the counsel ought to be required to exhaust each interview as he approaches it.

Judge Neilson—In each instance in the former examination. Mr. Tracy was allowed to refer to a subject which Mr. Porter had touched, upon the ground that Mr. Porter's examination had not been exhausted; he

touched it, but had not exhausted it, evidently implying that he intended to return to it again, and I don't think there is any occasion for discussion about it.

Mr. Fullerton—I do not want to ask a question which has been already answered. They know perfectly well I do not intend to violate that rule.

Mr. Fullerton—I have not proposed to ask a question that has already been asked.

Judge Neilson—Well, go on.

Mr. Beach—Well, will—

Mr. Fullerton—They know—

Mr. Beach—I beg your pardon.

Mr. Fullerton—They know perfectly well, Sir, that I do not intend to violate the rule; they do not anticipate anything of that kind. I think Mr. Tracy has misunderstood, if he understood anything. It is very difficult for one man to communicate to another ideas of which he himself is not possessed. That is an old adage, which we all have heard.

Judge Neilson—I never heard of it before, Sir. [Laughter.]

Mr. Fullerton—Well, I think it is a very good one, and very applicable to the objection made on the other side.

Judge Neilson—Now, Mr. Beach.

Mr. Fullerton—I have recurred to the subject, not for the purpose of repeating the question, but for the purpose of developing another point. I was getting at the number of occasions when these lockings up took place, and the years through which they all ran, and then I proposed to return individually to those occasions, and elicit whatever truth there may be bearing upon the issue in this case.

Judge Neilson—Well, is your suggestion superseded, Mr. Beach?

Mr. Beach—I wish, Sir, to enter a dissent from the proposition of Mr. Tracy in regard to the mode of cross-examining a witness; it may become important in the course of this trial. His proposition, Sir, is, if I understand, that upon cross-examination when a subject of inquiry is addressed to a witness, that the counsel must conclude and exhaust his whole examination upon that subject. I have always understood, Sir, that it was admissible and that it certainly was proper practice, instead of following a rule of that character, rather to be irregular and unconservative in the examination of witnesses, for the purpose of testing their recollection, and that whenever it should happen that a witness should go upon the stand clearly tutored and educated in regard to the story which she was to tell, taking advantage of every recess in the Court to refresh her recollection by instruction, and when it appeared to the cross-examining counsel that there was such a constant and continual education of the witness practised, during a long examination, it was not only judicious and wise but admissible and proper to be somewhat irregular in the presentation of subjects to the mind of the witness, so that we might get at her real and honest recollections instead of those proceeding from the tutelage which she might have received.

Mr. Fullerton—[To the Witness:] I now recur to the occasion when you rapped at the door, and Mrs. Tilton opened it, and I ask you whether the door was again closed? A. After Mrs. Tilton had opened it?

Q. Yes. A. Yes, Sir.  
 Q. And when it was so closed, did Mr. and Mrs. Tilton remain inside? A. Remained in the room, and he began talking—  
 Q. Well, now? A. In an angry—  
 Q. Well, don't you begin talking until I ask you the question. A. Excuse me, Sir.  
 Q. They remained inside, did they? A. Yes, Sir.  
 Q. Who closed the door? A. Mrs. Tilton.  
 Q. Did you hear it locked? A. I don't remember, Sir.  
 Q. You are quite sure that she closed the door? A. Yes, Sir, she opened it, and closed it, stood there by the door—right by the door that was open.  
 Q. Did Mr. Tilton approach her before the door was closed at all, or did he stand by the bureau? A. He stood by the bureau, as I remember.  
 Q. Did he say anything at that time? A. To me?  
 Q. Whilst the door was open, did he say anything? A. He turned around, he turned his back to me.  
 Q. Did he say anything? A. He did not say a word to me.  
 Q. Did Mrs. Tilton say anything? A. She kissed me and said she forgave me  
 Q. Is that all she said? A. That is all she said; yes, Sir.  
 Q. You say that Mr. Tilton did not say a word to you. Did he say a word to anyone while the door was open? A. Not while the door was open; no, Sir; he had his back to both of us.  
 Q. Well, that did not prevent his saying anything? A. No, Sir; he did not.  
 Q. He did not say anything? A. No, Sir.

#### HARSH WORDS AT THE BREAKFAST TABLE.

Q. You have referred to an occasion when Mr. Tilton made an observation to this effect, that Mrs. Tilton was one of the most selfish women that ever lived? A. Yes, Sir.  
 Q. When did that occur? A. It occurred one morning at the breakfast table.  
 Q. And what gave rise to it? A. Florence not eating any meat; is that the one you refer to?  
 Q. I am referring to the one that you refer to; if there is any other you may name it. A. Won't you ask me the question you first asked me?  
 Q. You have referred to an occasion when Mr. Tilton observed that Mrs. Tilton was one of the most selfish women that ever lived; did that occur more than once? A. That is the only time that I recall, at that table.  
 Q. Now, what gave rise to that observation? A. Mr. Tilton had had—Mrs. Tilton had a little dish of something on the table; I don't know whether it was quails or broiled oysters, I think it was one of the two, and he helped himself very liberally, and then passed it to Mrs. Tilton, and Mrs. Tilton said: "Let the children have it if there is any left; let the children have it," and Florence Tilton looked up and said: "Mamma, I think you are one of the most unselfish women that ever lived;" Theodore Tilton looked right straight at his daughter, and he said: "Your

mother is one of the most selfish women that ever lived;" that is the way he said it.

Q. That is the way he said it? A. Yes, Sir.  
 Q. He said it with that air, did he? A. Yes, Sir; just with that air.  
 Q. Did he make any gesture at the time he said it? A. He shook his head, that way. [Illustrating.]  
 Q. Angry, was he? A. Yes, Sir; very angry.  
 Q. Angry? A. Yes, Sir.  
 Q. His face as red as fire, was it? A. His face was very red.  
 Q. Very red. Is that all that he said? A. That is all that he said on that occasion.  
 Q. What? A. All that he said on that occasion.  
 Q. Was that all that was said by any parties at the table? A. All that was said in regard to that.  
 Q. To that subject? A. Yes, Sir.  
 Q. Did he seem to be angry then because Florence said her mother was unselfish? A. Oh, I think that was what provoked him.  
 Q. When was it that he made use of the term that that arose out of Mrs. Tilton's orthodoxy? A. That was another time, at the table.  
 Q. Do you recollect when it was, what year it was? A. No, Sir; during those three years.  
 Q. What occurred then? A. Florence had had some queer notions about not eating any animal food, or anything that crawled, eggs, or anything that had been alive at all, and one morning—I think Mr. Tilton asked Florence to have some meat, and she refused, and he shook his head and said that was all her mother's damned orthodoxy.  
 Q. Well, had her mother instructed her that she should not eat anything that had had life—animal life? A. Had instructed her?  
 Q. Yes. A. No, Sir; it troubled her because she did not take meat.  
 Q. It troubled Mrs. Tilton? A. It troubled her because she did not take meat.  
 Q. Mrs. Tilton, then, as you remember, was not responsible for these notions of Florence? A. It troubled Mr. Tilton, too.  
 Q. What? A. It troubled him, too, that she did not take meat.  
 Q. And he said that her refusal all grew out of her mother's orthodoxy? A. Yes, Sir; and then he swore.  
 Q. He swore? A. Yes, Sir.  
 Q. His face red then? A. Yes, Sir.  
 Q. Red as fire? A. Well, it was pretty red; I won't say it was as red as fire.  
 Q. Very angry, was he? A. He seemed to be; yes, Sir.  
 Q. Very angry; then he is a very passionate man, is he not? A. Yes, Sir; when he is mad he is mad in earnest. [Laughter.]

#### MR. BEECHER'S CALLS AT THE TILTONS'.

Q. You have spoken of Mr. Beecher's visits at the house; how often have you known him to visit the family of Mr. Tilton? A. I have seen him there several—on several occasions.  
 Q. Well? A. I could not say just how many.

Q. Well, fix the number as well as you can. A. Well, Sir, I don't think I could fix the number.

Q. Well, were they so frequent that you could not remember them? A. No, Sir; he called occasionally just as a great many of their other friends called—as Mr. Johnson called, and Mr. Bates called, and several others.

Q. You know I am not asking you about them. Did he not call oftener than the gentlemen you have named? A. I never noticed that he did; no, Sir; not as often as a good many of them.

Q. Who let him in when he called? A. I let him in on one or two occasions.

Q. Do you recollect of an occasion when he came there and brought some flowers? A. I think I recollect his having brought some flowers. I don't—I cannot say that I saw him coming in with the flowers, but the flowers—I recollect the flowers—their having flowers that Mr. Beecher had brought—a little basket of flowers. I think Mrs. Mitchell was there at the time.

Q. Do you recollect of an occasion when he put the baby to sleep? A. When Mr. Tilton put the baby to sleep?

Q. No, Mr. Beecher. A. Put the baby to sleep? No, Sir; I don't think I do.

Q. No recollection of that? A. No, Sir. He used to play with the children occasionally.

Q. I am not asking you about that. Do you recollect of Mrs. Tilton going out with him anywhere? A. With Mr. Beecher?

Q. Yes. A. No, Sir.

Q. You recollect of no such occasion as that? A. No, Sir.

Q. Do you recollect of her ever going riding with him? A. Mr. Beecher? No, Sir.

Q. Nor going out on foot with him anywhere? A. No, Sir; I don't remember any such occasion.

Q. Do you recollect of an occasion when they went to see the bust of Mr. Tilton? A. No, Sir.

Q. That was being cut by somebody in Brooklyn? A. No, Sir.

Judge Neilson—Paige?

Mr. Fullerton—No, Sir; he was a painter, I think. Paige's studio; I don't know but it was. [To the witness]: You don't recollect that occasion? A. Do I recollect that occasion?

Q. Yes. A. No, Sir; I haven't any recollection of seeing Mrs. Tilton on the street with Mr. Beecher, or in a studio, or anything of that kind.

Q. Or leaving the house in company with him? A. No, Sir; I cannot truthfully say that I do.

#### MISS ELLEN DENNIS THE MISTRESS OF THE TILTON HOUSE.

Q. This Ellen Dennis that you spoke of, is she living or dead? A. Oh! she is dead.

Q. How long has she been dead? A. Well, she died while I was in school; I guess she has been dead a year or more.

Q. She was at the house on your return from Marietta, was she not? A. Yes, Sir.

Q. As house-keeper? A. Yes, Sir, and mistress.

Q. You add "and mistress"? A. Yes, Sir.

Q. Why do you add that? A. Because Mrs. Tilton could not go to a closet or go anywhere without her permission, without her standing looking over her shoulder and asking her what she wanted, and the girl could not get any eggs for little Ralph, the baby, to eat without going to Miss Dennis for it. That is why I said she was mistress.

Q. You were not asked whether she was mistress, were you? A. No, Sir.

Q. That was a volunteer expression? A. Yes, Sir.

Q. Was not Mrs. Tilton ill when she returned from Marietta? A. She was very tired and weary from having traveled.

Q. She was not ill, then? A. She had had fainting spells, and had been ill; she was not really very ill that day.

Q. Was she ill? A. She was not feeling very well; I could not say that she was really ill.

Q. Well, she was in such a condition when she wanted to come from Marietta to Brooklyn that you thought it improper for her to come alone, did you? A. Well, yes, she had these fainting spells, but she didn't have those fainting spells at the time I refer to; she was not ill with one of those fainting spells, but she had had them very frequently, and that is why I feared she might have one on the cars, and I wanted to come with her.

Q. Then she was only tired when she got to Brooklyn? A. She was tired. She never was very strong—very good health, but then she was not really ill.

Q. Mr. Tilton met her at the cars? A. Yes, Sir; he met us at the cars.

Q. With a carriage? A. The carriage was not at the cars. They were outside of the depot, over in Jersey City.

Q. Yes. How did he salute her when they met? A. Very kindly indeed.

Q. Well, how did he do it? A. Kissed her.

Q. And then you all got into the carriage? A. Carroll and Mrs. Tilton, Mr. Tilton and myself got into the carriage; yes, Sir.

Q. And came to Brooklyn? A. Came to Brooklyn; yes, Sir.

Q. When you got there you found Ellen Dennis at the house, did you? A. Yes, Sir.

Q. And Florence? A. Florence—I don't remember seeing Florence there, no, Sir; not at that time.

Q. Wasn't she home then? A. I think not, Sir.

Q. Was any one else there? A. Yes, Sir.

Q. Who? A. Miss Susan B. Anthony.

Q. She was there? A. Yes, Sir.

Q. How long did she remain? A. She remained there until after breakfast, and then I think she went away.

Q. Did anything occur at breakfast? A. Nothing of any account; no, Sir.

Q. Nothing of any account? A. Except that Miss Dennis seemed to act very strange, or very cool, to Mrs. Tilton.

Q. Well, there was no trouble at the table? A. Not at breakfast; no, Sir.

Q. The trouble took place at dinner? A. At the dinner table; yes, Sir.

Q. Miss Anthony had gone away then, had she? A. I think Miss Anthony was not then at dinner; no, Sir, she was not at the dinner table; no, Sir.

Q. Are you sure that the trouble which you have related on your direct examination did not take place at the breakfast table instead of the dinner table? A. No, Sir; it was the dinner table.

Q. Have you ever said it took place at the breakfast table? A. Yes, Sir; I think I stated before the Committee that it was at the breakfast table.

Q. Well, how did you happen to state that in that way? A. Because I gave it then just as it came to me, as I thought it was.

Q. Have you read your testimony over that you gave before the Committee, since you gave it? A. No, Sir; it was given to me to read but I did not read it.

Q. You have never seen it since? A. I have never seen it since.

Q. When did you recollect that you were in error as to whether the trouble occurred at the breakfast or at the dinner table? A. When I was preparing myself for this witness stand.

Q. And when was that? A. About—let's see, about two weeks ago, I guess.

Q. How long ago? A. About two or three weeks ago.

Q. Where were you staying at the time? A. At Mrs. Purdy's.

Q. And Mrs. Morse was there then? A. Yes, Sir.

Q. And you saw Mrs. Tilton from time to time? A. Yes, Sir; I saw Mrs. Tilton frequently; not at Mrs. Morse's, but Mrs. Ovington's.

Q. And you saw Mrs. Ovington from time to time? A. Yes, Sir.

Q. And you saw Miss Augusta Moore from time to time? A. A. Yes, Sir.

Q. Well, how did you remember that you had so testified before the Committee, that the occurrence was at the breakfast and not at the dinner table? A. How do I remember?

Q. Yes; how did it occur to you that you had so stated it? A. I remembered when I was thinking—going into the details, and thinking what I had said.

Q. You remembered then, without having examined the testimony, or having been told to you that you had so stated, that it took place at the breakfast table? A. Yes, Sir.

Q. Well, when did you first remember that you had so stated that fact? A. When I was thinking over my testimony that I was going to give here.

Q. Well, where were you when you were thinking it over? A. Sometimes I was at Mrs. Purdy's; and when I was thinking it over was when I was with Judge Porter, and Mr. Shearman and the stenographer.

Q. Will you state now how you happened to recall the fact that you had stated before the Committee that the difficulty was at the breakfast, and not at the dinner-table? A. Why, by thinking it over in my mind, by putting my mind on the subject.

Q. Well, Mrs. Tilton left the table, I understood you to say? A. Yes, Sir.

Q. Left the table crying? A. Left the table crying; yes, Sir.

Q. Sobbing pretty hard? A. Well, she was crying; the tears were rolling down her cheeks.

Q. Where did she go? A. She went into the front parlor.

Q. What did she do there? A. Sat down and played a little—some little plaintive air on the piano.

Q. She went and played on the piano, did she? A. Yes, Sir.

Q. And how long did she remain there? A. She remained there some little time, until after the occurrence that happened on that occasion.

Q. She did not go there until after the occurrence happened, did she? A. What, Sir?

Q. She did not go there until the occurrence had happened, did she? A. She went there a few minutes after she sat down to the table with Mr. Tilton.

Q. How long did she remain there? A. In the parlor?

Q. Yes. A. We remained there all the morning, pretty near.

Q. All the morning? A. Yes, Sir.

Q. Well, what time did you leave the parlor? A. Oh! I could not state exactly what time.

Q. How? A. It was some time in the—no, it was not in the morning; it was after dinner. No, Sir; I must not get those mixed up.

Q. No. A. I was thinking about the occurrence happening at breakfast; it was at dinner.

Q. How long did you remain there? A. After this all happened?

Q. Yes. A. We remained there some time.

#### THE STORMY INTERVIEW IN THE PARLOR.

Q. Now, what occurred whilst you were in the parlor, after you left the dinner table, if it were the dinner table? A. Shall I go right along, relating all that occurred?

Q. Yes. A. The first thing that occurred was my rushing in the parlor and telling Mr. Tilton that he should not damn Mrs. Tilton for my sake, and the next thing that occurred, he knocked me down.

Q. Is that all that you have to state? A. Oh! no, Sir, a great deal more.

Q. Why don't you state it? A. And then, the next thing that occurred after he knocked me down, "Why," he says, "Bessie, my dear, you tripped and fell, didn't you." I then turned around and asked him if he was a fool, or if he thought I was. He then sat down in a chair and said, "Oh, Bessie, my dear, my gray hairs are going down in sorrow to the grave. No, my dear, you are mistaken in the woman in whom you have put so much confidence." Mrs. Tilton spoke up and said, "Why should not Bessie have confidence in me? She has no protector in you; you offered to run her"—and then he turned around and put his hands under his arms [illustrating] and said, "Bessie, my dear, did I ever offer to ruin you in word, shape or form, or take any liberties with you?" Said I, "Yes, you did. Do you remember the time Horace Greeley was there, in 1869?" Then I referred to the other time.

Mr. Beach—Tell it all.

Mr. Fallerton—Tell it all. A. I referred—

Q. Tell us what you said? A. In 1838; those two occasions.

Q. What did you say when you referred to it? A. Why, when he came to my bed and asked me about amities, if I wouldn't like to be married.

Q. You went over that, did you? A. I said, "Do you remember that?"—those two occasions that he came to me; that is what I said to him.

Q. Go on and state all that was said. I want you to give the whole account of it? A. Yes, Sir; and then he said—then Mrs. Tilton said, "You know you offered to ruin her, and you said that she was your superior," and he says, "Why Bessie, my dear, I hope that you"—emphasizing the "you" particularly [laughter] "that you don't presume to think that you are my superior." And I said that it was true the Lord had not endowed me with his literary ability, as a writer of poetry and prose, but as far as my moral character was concerned I thought I was very much his superior; and he said that the fact of the business was—the matter was, Elizabeth was so fond of—was so accustomed to having men fondle her legs and bosoms that she judged him by herself, and that the story was a wicked—an infernal lie.

Q. Which story? A. Why, about his having confessed to Mrs. Tilton that he offered to ruin me; it was all Mrs. Tilton's getting up, all her fabrication.

Q. Is that all that was said there then? A. Then he said what I have stated in my direct examination.

Q. Well, I want you to state it again, please. A. And then he called my attention to the red lounge and said; "Do you see that red lounge? Time and time again I have seen Henry Ward Beecher and Elizabeth having sexual intercourse on that red lounge," and then drew my—called my attention to the red chair; "not only on the lounge but in the chair;" and Mrs. Tilton says, "Oh Theodore! Theodore! how can you tell that child such base lies!"

Q. Is that all? A. That was all at that time; then I think Mrs. Tilton and I left the parlor.

Q. Where did you go when you left the parlor? A. We went up stairs. Mrs. Tilton went in the bedroom, and then he came up stairs and asked to see me, and took me in his room.

Q. Now just pause there. A. Yes, Sir.

Q. Are you quite sure that Mr. Tilton said that he had seen sexual intercourse? A. Oh! quite sure; yes, Sir.

Q. There is no doubt about that? A. There is no doubt about that; no, Sir.

Q. Said he had been a witness to it, did he? A. He said he had seen; those are the words he used.

Q. Well, did you say anything in reply to that? A. No, Sir; I did not say a word.

Q. Not a word? A. No, Sir.

Q. Now, when he came up and said he wanted to see you, what did you do? A. I sat down in the chair or on the lounge.

Q. Did you go anywhere? A. I went in his room; he said that he wanted to see me. He took me in the room and shut the door, and I think we both sat down.

Q. What room was it? A. In the second-story bed-room; sometime after that he used it for his study, a little while.

Q. Shut the door? A. Shut the door; yes, Sir.

Q. Did he lock it? A. I don't remember, Sir, whether he locked it, or not.

Q. Would not you remember whether he locked the door or not? A. I don't remember, Sir, whether he locked it or not. I remember his shutting it.

Q. How? A. I remember his having shut the door, but whether he locked it or not—

Q. After he got in that door, who spoke first, you or he? A. He spoke.

Q. What did he say? A. He began by saying this—what he had seen—that he had seen Mr. and Mrs. Beecher—Mrs. Tilton.

Q. Use his own language, if you can; you did before. A. The first words he said, "Do you wonder that I am miserable and unhappy?" and then he related this, what I have stated before.

Q. One moment. He said, "Do you wonder that I am miserable and unhappy?" A. Yes, Sir.

Q. Did you reply anything? A. I never said a word, because he talked right on so fast he didn't give me a chance, and I don't think I would have said a word, anyway.

Q. It was only for the want of a chance, then. Now, will you be kind enough to tell me what he next said? A. After he got through describing about the lounge?

Q. No, no; after he said, "Do you consider that I am miserable and unhappy," I want you to continue on and use his language as near as you can recollect, and tell us all that he said? A. Well, I have spoken about what he said about the red lounge. He said the same thing over again.

Q. Now, Miss Turner, please don't say that, but tell us what he did say, and use his language as near as you can? A. He said that he had seen Henry Ward Beecher and Elizabeth having sexual intercourse on that lounge, and in that chair, time and time again, and not only with Mr.—, and then he mentioned Mr. Bates' name, and Dr. Carroll Dunham's name, and Mr. Ovington's name in conjunction with Mr. Beecher, that not only had she had sexual intercourse with Mr. Beecher, but with these three gentlemen that I have named. Then—

Q. Now—well you may go on. A. Then he said that Mr. Beecher preached to a dozen or twenty of his mistresses every Sabbath, naming two ladies in the congregation.

Q. Well, you needn't name them. A. No, Sir; I wasn't going to. I said "naming;" he named them.

Q. Well, go on. A. And that little Paul was not his child, and that he did not claim any of his children except Florence.

Q. Now, reflect and take your own time so as to give me all that you can recollect he said in that room before you left it. A. Yes, Sir; and then I think the last that he said was that even Mrs. Tilton's own mother—calling her "grandma"—he had knelt down to her, and she had put her hands on his head and said, "Theodore, what a magnanimous man you have been."

Q. Of whom was he speaking then? A. He was speaking of grandma, as he called her.

Q. And whom did he— A. Mrs. Morse, Mrs. Tilton's mother.

Q. Mrs. Morse, he said, used that language? A. He spoke of

his grandma, meaning Mrs. Tilton's mother, meaning Mrs. Morse.

Q. That was the way he usually designated her, wasn't it? A. Yes, Sir.

Q. In his familiar intercourse with her he called her "grandma;" didn't he? A. Sometimes he called her "grandma," and sometimes "Mrs. Morse."

Q. Well, you called her "grandma," didn't you? A. I called her grandma?

Q. Did you not? A. No, Sir, I called her Mrs. Morse always.

Q. Now, I want you to be a little particular, and see if you can recollect anything else that he said in this place? A. No, Sir; I don't think I can, just at this moment.

Q. You do recollect, however, that he charged that Mr. Ovington and Mr. Dunham—Dr. Dunham—and Mr. Bates had had sexual intercourse? A. Yes, Sir.

Q. Have you ever stated that he didn't charge them with sexual intercourse? A. That he didn't do so?

Q. Yes. A. No, Sir.

Q. Well, let us refer to your testimony before the Committee again—do you recollect what you said upon that subject before the Committee? A. I think that I—

Mr. Shearman—Wait a moment; wait a moment; of course the gentleman will give the witness the precise words she said to the Committee.

Judge Neilson—Yes.

Q. What did you say before the Committee upon that subject?

#### RECRIMINATIONS BETWEEN COUNSEL.

Mr. Shearman—We object to that, if your Honor please. Wait a moment. The witness's attention must be called to the precise words, the time and place; it is a well-settled rule.

Mr. Fullerton—Well, there never was a rule ever heard of to that effect before to-day. I am very sorry that the gentleman is not familiar with elementary law; I think you must refer to something in Plymouth Church; it is not in our law books, at all events.

Judge Neilson—Perhaps the witness would need to look at the book. Show the witness the book.

Mr. Fullerton—Certainly not, Sir; I am on the cross-examination, and I am asking what she said at a certain time, on a certain subject.

Mr. Shearman—Heretofore, if your Honor please, you have ruled against us, and rightly—I beg your Honor not to understand us as complaining, because your Honor was perfectly right in so ruling—

Mr. Fullerton—I am glad your Honor is indorsed.

Mr. Shearman—It has been so ruled twenty times on this trial.

Judge Neilson—I have not ruled on that point.

Mr. Fullerton—I am not contradicting any witness.

Judge Neilson—I understand. Does this witness remember, without the aid of the book, what she said on that point; if so, she can tell?

Mr. Shearman—Well, it is not intended, if your Honor please, for the purpose of contradicting; and, otherwise, it has no relevancy; otherwise it is hearsay.

Judge Neilson—The occasion is fixed, because she was only once before the Committee, and the time equally is understood.

Mr. Shearman—That is right.

Judge Neilson—And, now, what was stated on that occasion—the substance of the words must be stated.

Mr. Fullerton—Not at all.

Mr. Shearman—I say that is the rule.

Mr. Fullerton—There is no such rule.

Mr. Shearman—Oh! well, now; it is perfectly absurd for us to talk about elementary principles. It is just as well settled as anything can be, and we can produce a decision in the Court of Appeals—I am inclined to think Judge Fullerton was on the bench, certainly Judge Porter was on the bench. Although it is elementary, it was referred to even in the Court of Appeals.

Mr. Beach—I think that throws some doubt on the decision.

Mr. Fullerton—If I ever made such a decision I want to beg pardon for it and be forgiven as quickly as possible.

Mr. Shearman—There is place for repentance.

Mr. Fullerton—Well, there is no such decision on the face of the earth, in any book of the law.

Judge Neilson—Well, I think the first question is to ask whether she remembers what she said before the Committee on that subject.

Mr. Fullerton—That is just what I do ask her.

Judge Neilson—No; I don't remember.

Mr. Morris—That is the exact question.

Judge Neilson—You asked her what she said.

Mr. Fullerton—Yes; what did you say before the Committee on that subject?

Judge Neilson—Ask her "Do you remember"—if she don't remember saying so. [To the witness]: Do you remember what you said on that subject?

The Witness—The words I used in regard to Mr. and Mrs. Beecher's crime—Mr. Beecher's and Mrs. Tilton's crime was "adultery;" I think I said that he said they committed adultery.

Judge Neilson—He calls your attention more especially to what was said as to those other gentlemen. A. That is what I think I said before the Committee?

Judge Neilson—But, as to those other gentlemen. A. That she had committed adultery with those three gentlemen, and I think that is the way I stated it before the Committee.

Q. Now, I will ask you to look at the book again; look at the top of the page there, and see if that refreshes your recollection as to what you testified before the Committee?

Mr. Porter—To what part do you call her attention?

Mr. Fullerton—The top of the page there; the last page.

Mr. Porter—[Looking at the book in the witness's hands.] She had better look where it is, than where it is not.

Mr. Fullerton—Well, if she don't look where it is, it is her own fault, for I have not pointed it out to her.

Mr. Porter—Excuse me.

Mr. Fullerton—Oh! I have not pointed the place you wanted me to point out.

Mr. Porter—You have not pointed the place where she did speak on that subject.

Mr. Fullerton—Well, that is what I propose to do.

Mr. Porter—Well, do so; but not under pretense that it is the witness's statement.

Mr. Fullerton—That word "pretense" is unbecoming you, my learned friend.

Mr. Porter—Not at all; in its application.

Mr. Fullerton—I ask her to point out what she there said before the Committee; there is no pretense about it.

Mr. Porter—At that time?

Mr. Fullerton—Yes, at that time; I don't refer to any other time; I am not misleading the witness at all.

Judge Neilson—[To the witness]: Well, then, aided by the paper you have before you, thus assisted, are you able to say what you then told the Committee?

#### A REFERENCE TO CONFESSIONS AT THE INTERVIEW.

The Witness—This is the correct statement that I made before the Committee; and it says here, "he said she had confessed to him that she had been criminally intimate with Mr. Beecher;" he never said to me that Mrs. Tilton—

Q. Never mind; I am not asking you that.

Mr. Shearman—That is not the passage.

Mr. Fullerton—That is not the passage at all. "Did he state any reason for supposing"—just read from there.

The Witness—Well, what is it you are trying to get at—"did he state"—

Mr. Fullerton—Does that recall to your recollection what you stated before the Committee on that subject?

Mr. Porter—If you will let me see, Miss Turner, what he is showing you.

The Witness—This is what he drew my attention to: "Did he state any reason for supposing she had been criminally intimate with other men than those named."

Mr. Fullerton—And what did you answer to that question?

The Witness—Well, if this is my answer, it is "no."

Q. Well, did you so answer to that question? A. Well, he only named these three men and Mr. Beecher.

Q. Well, what three men were referred to there? A. Dr. Carroll Dunham, Mr. Bates and Mr. Ovington.

Q. Well, was that question put to you and did you give that answer? A. If this is all right, I suppose it must be so.

Q. Have you no recollection upon the subject? A. I cannot give in just the words that I stated this before the Committee; I could not say; I am not able to recall just the way I related it to the Committee, Sir.

Q. Well, do you think now, that you told the Committee that Mr. Tilton said that those other three gentlemen had committed adultery with Mrs. Tilton? A. I think I did, Sir.

Mr. Porter—You will find it at the bottom of that page; two pages before.

Mr. Fullerton—Well, I will find it without any assistance. I don't find but one thing at a time, Sir. [To the witness]: Now,

will you turn to the other page here—~~there~~—and see if that refreshes your recollection as to what you stated before the Committee.

The Witness [reading]: "By Mr. Winslow—Did it hurt you, when he knocked you down?"

Q. No, no, read on until you come to that subject, referring to these three men? A. Read it out loud?

Q. No. Read it to yourself until you come to it? A. Yes, Sir; I recollect saying this very well, "what a ridiculous thing that —" "Yes, Sir, it hurt me fearfully." "Beane, my dear, you hurt yourself, didn't you?"

Mr. Beach—Oh! it is not about that.

The Witness, [Reading]: "What a ridiculous thing that was, as though I had tripped and banged my own head."

Mr. Fullerton—No, not about your tripping. Read it until you come to these three persons, Mr. Bates, Dr. Dunham and Mr. Ovington.

Mr. Porter—"Mr. X, Mr. Y, and Mr. Z."

Mr. Fullerton—Yes, represented by those letters there.

The Witness—Mr. X, and Mr. Y and Z, meant these three gentlemen; is that what you mean, Sir?

Mr. Fullerton—Now, does that refresh your recollection as to what you said before the Committee with reference to these three gentlemen? Read it and see if it refreshes your recollection?

The Witness—I stated before the Committee these three gentlemen that he had said she had sexual intercourse with, and it is put in the form of X, Y and Z. I gave the names before the Committee.

Q. And then you were asked this question, "Did he state any reason for supposing that she had been criminally intimate with the other men that he named?" and you stated "No," you say? A. I said that was the way it was here.

Q. Yes, and don't you remember of so answering? A. He did; he told me that she had had intercourse with these other men.

Q. Now, do you remember of so answering before the Committee? A. I cannot say just how I answered the Committee, Sir, or remember just the precise words that I used.

Q. Now, when you were in the room with him, and he was relating this circumstance, or these things to you, did he say anything to the effect that Mrs. Tilton had confessed to this adultery with Mr. Beecher? A. He never said to me that she had confessed, but he said to me that he saw them—with Mr. Beecher—he didn't say that he saw her with these three other men.

Q. I am not talking about the three men; now, leave those out. Did he say anything to the effect that Mrs. Tilton had confessed the adultery with Mr. Beecher to him? A. At that time when I was in the room with him?

Q. Yes? A. I have a slight recollection of it, but I am not sure.

Q. Well, just state as near as—Your best recollection upon that subject. What did he say. A. I have stated what he said as near as I could recollect.

Q. No, upon that subject of confessing; you say you have a



slight recollection; please state, as well as you can, what he did say? A. I don't think I can state it, Sir.

Q. Well, state the substance of it. A. No, Sir; I don't think I can.

Q. Well, give us your best recollection. A. What he said about them was, as I remember it, that she had been what I repeated before about Mr. Beecher; that is what he said at that time.

Q. That is another subject, now, Miss Turner; we have gone all over that, and I have come to a different subject. I am now asking you as to what he said as to Mrs. Tilton's having theretofore confessed to him having committed adultery with Mr. Beecher? A. You want me to say whether I remember that he said that Mrs. Tilton had confessed adultery to him?

Q. Yes. A. I am not clear about that; I can't say, Sir.

Q. Well, have you no recollection upon the subject? A. No, Sir; I don't think I can say.

Q. Have you no recollection upon the subject?

Mr. Tracy—That is about the sixth time the question has been answered.

Mr. Fullerton—One moment; I object. This is an untimely interference.

Judge Neilson—He has a right to an answer.

Mr. Tracy—She has answered.

Mr. Fullerton—She has not answered; I submit that she has not answered, and your Honor ought to repress this interposition of the counsel.

Judge Neilson—I understand what she said.

Mr. Fullerton—They think it is an opportune time to come to her aid.

Mr. Tracy—No, Sir.

Judge Neilson—One moment—I understand what she said very well. I think the counsel has a right to interrogate, and to keep on interrogating, until he gets at all the recollection the witness has got on the point, less or more.

Mr. Tracy—The question is when a witness says "I cannot recollect;" when she changes it in answer to another question and says "I can't remember;" and when she changes again and says "I have no recollection"—

Mr. Fullerton—She has not answered that.

Mr. Tracy (continuing)—Whether that is not an answer to the question.

Mr. Fullerton—She has not said that.

Judge Neilson—I think counsel is entitled to further answer, so that it may certainly appear what, if any, recollection the witness has got. She has gone no further than to say that she is not clear in regard to that.

Mr. Tracy—I appeal to the record.

Mr. Fullerton—Well, the record had better not be discussed. Now, will you tell me whether you had any recollection—

Judge Neilson—There was a faint intimation that she has some recollection, and therefore the counsel has a right to pursue it and see what it is, if anything. That is proper, Mr. Tracy.

# A FAINT RECOLLECTION THAT CONFESSIONS WERE MENTIONED.

Mr. Fullerton—Have you any recollection upon the subject at all? A. I have, as I stated first, Sir, a faint recollection of something about a confession, but I am not sure about it; that is all that—the only way I can answer you, Sir.

Q. Can you not state something that he said upon the subject of a confession? A. No, Sir, I cannot.

Q. Did he state in substance that Mrs. Tilton had made a confession to him, although you cannot recall the words that he used? A. I have a faint idea—a faint recollection—that there was something about a confession.

Q. A confession of Mrs. Tilton? A. Confessions; I won't say whether it was Mrs. Tilton's or whose confessions, but that word is kind of in my mind with regard to the subject, and that is all I can say.

Q. Well, you had nothing to do but to pay attention to what he was saying then, had you? A. No, Sir.

Q. You recall very distinctly the story of the lounge and Mr. Beecher and the other three gentlemen? A. Yes, Sir.

Q. And you have been able to tell us what you suppose were the exact words used by Mr. Tilton upon that occasion? A. Yes, Sir.

Q. How does it happen that what he said upon the subject of confession is so faint in your recollection? Can you tell? A. I could not tell you, Sir.

Q. Is there any reason why you should not recall that with the same particularity that you did the other things? A. I assure you I am not purposely avoiding recollection. I would tell you if I recollected it, just as readily as I answered—as I told you about the other.

Q. Look at the part that I will mark here [showing book to witness] look at that which I have marked now, and see whether you gave such evidence. A. If this is the way that I stated it before the Committee it was a mistake, because he never said to me that Mrs. Tilton had confessed to him her criminality with Mr. Beecher, but had said to me that he saw them.

Q. Yes; that is a mistake, is it? A. If this is the way it is given it is a mistake; he never said to me that Mrs. Tilton confessed to him, but he told me that he saw them—saw Mr. Beecher; he did not say he had seen these other men.

Q. Was this question put to you before the Committee: "Did he, at any time on this day, say that she had made any confession to him in regard to Mr. Beecher," and did you answer as follows: "He said she had confessed to him that she had been criminally intimate with Mr. Beecher"? A. I can't remember just what questions were put to me before the Committee, or just how I answered them; but if I answered them that way it was a mistake, because he never said to me that Mrs. Tilton had confessed to him, but told me before her, in her presence, that he had seen Mr. Tilton—Mrs. Tilton and Mr. Beecher.

Q. Well, you need not repeat it—was this question put to you: "When was that?" and did you answer, "This all occurred on that one day that we went back; in the Fall of 1870?"

Mr. Porter—I assume Mr. Fullerton intends to ask whether she did not say also that Mrs. Tilton was present when he said that, and she said: "Oh! Theodore, Theodore, how can you tell that child such base lies——"

Mr. Fullerton—I don't expect to pass over anything.

Mr. Beach—Well, put the whole question.

Mr. Fullerton—Well, I will put the whole question although it will burden the record. [To the witness.] Was this question put to you: "Did he at any time on this day say she had made any confession to him in regard to Mr. Beecher?" and did you answer, "He said she had confessed to him that she had been criminally intimate with Mr. Beecher; she was present when he said that, and she said, 'Oh, Theodore, how can you tell that child such base lies!' and then she burst out crying?" A. She said, "Oh, Theodore"——

Q. No; was that question put to you, and did you give that answer? A. I said, Sir, that I could not remember just what question was put to me before the Committee, or just how I answered it; but if I answered it as it is there I was mistaken.

Mr. Fullerton—Mark this "to be continued," Sir, "in our next."

The Court then adjourned till eleven o'clock on Wednesday morning.

## FIFTY-FIRST DAY'S PROCEEDINGS.

### BESSIE TURNER'S CROSS-EXAMINATION ENDED.

THE MORNING SPENT IN CROSS-QUESTIONING—  
TESTIMONY OF GEORGE L. PERKINS IN REFERENCE TO MR. AND MRS. BEECHER'S ABSENCE FROM TOWN ON AN IMPORTANT OCCASION—GEORGE S. SEDGWICK AND CECIL CAMPBELL SWEAR TO HAVING SEEN MR. TILTON WALK WITH MRS. WOODHULL DURING THE ROSSEL PARADE—JOHN C. SOUTHWICK TESTIFIES THAT TILTON DENIED THE STORY OF MR. BEECHER'S ADULTERY WITH MRS. TILTON.

WEDNESDAY, March 24, 1875.

The manner of Miss Turner on the stand differed in no sense from her demeanor on preceding days, already fully described in THE TRIBUNE. She appeared to less advantage in the early part of today's cross-examination in consequence of misapprehension of the questions put to her. She was compelled to admit two or three discrepancies between her statements before the Committee and on the present trial; but explained, as she had done before, that she had gone before the Committee unexpectedly, without preparation, and had testified at random as to matters she had seen and heard and had been told, chiefly by Mrs. Tilton. Now, she had testified after preparation and thought, and had been re-

stricted to what she knew of her own knowledge. Once or twice during the proceedings the witness was afforded opportunity again to imitate Mr. Tilton and Mrs. Morse, and she did so in the same language and with the same gestures as on former occasions, and with equal effect on the audience.

Toward the close of the cross-examination Mr. Fullerton made a faint attack upon the witness's character, evidently with the design of showing that some of her associations had been bad, and that she lied in the fabrication of documents which had been produced in evidence. The first of these inquiries brought out a noteworthy fact still further illustrating the singular domestic affairs of Mr. Tilton's household; and the second finally led to the introduction on the cross-examination of evidence which for weeks past the defense have vainly tried to get into the case. The first incident alluded to was the introduction of the fact that Miss Turner had been employed several years ago at a place called the Dollar Store, which did not at that time bear a very enviable reputation, and that she had been discharged from that employment. Mr. Tilton during this part of the examination was handing written questions to Mr. Fullerton, and the witness, probably supposing that he was suggesting these unpleasant questions, took her little revenge by telling promptly that she was employed at the Dollar Store and was discharged, and then adding immediately that at the time she was a boarder in Mr. Tilton's house. The second incident occurred at the close of Miss Turner's testimony, and was its fitting climax. Her two letters to Mrs. Tilton exculpating Mr. Tilton—denying in guarded and equivocal terms the stories of insults and outrages he had offered the witness—were shown to her; and she was finally asked if the letters thus signed stated truth or falsehood. The purpose, of course, was to commit her to an unequivocal admission that they were falsehoods and that she had deliberately signed falsehoods. She gave a qualified answer, but the plaintiff's counsel insisted on striking out the qualification and letting the positive "Yes" stand as her answer. Mr. Porter and Mr. Tracy sprang to the rescue, and nearly half an hour was spent in an earnest and at times acrimonious debate, in which Judge Neilson finally took part, and suggested another form of question, which acted like oil upon the troubled waters. It was adopted and put by Mr. Fullerton. It was in effect

an inquiry "Why, if her letter was not true, she had signed it?" The witness instantly and unhesitatingly cried out, "Because I loved Mrs. Tilton and I wanted to do it, because she said if I would put my name to that paper I would get Mr. Tilton out of all his difficulties with Henry C. Bowen; that that story had got to Mr. Bowen's ears, and that all that was needed was my signature, and my retraction of that." The counsel for the plaintiff made no attempt to stop her, and thus she injected into the case the very evidence as to the purpose with which the letters were manufactured, which the defense have been using their best arts to develop. The counsel for the plaintiff made no attempt to stop her, and adjourned without moving to strike out the improper answer.

The cross-examination of Miss Turner was not resumed after recess. Mr. Hill stated that he was obliged to call his next witness out of order as the gentleman was compelled to leave the city. George L. Perkins of Norwich, Conn., then testified that in the first part of June, 1873, he saw Mr. and Mrs. Beecher leave an eastward bound Boston and Albany train at Worcester, Mass. He had fixed the date by means of a memorandum, and believed it to have been the 4th day of June, 1873.

Two witnesses were examined to refute the statement of Mr. Tilton that while in the Communitist parade in honor of Rosell he had walked arm in arm with John Swinton, instead of being with Mrs. Woodhull and Miss Claflin. George S. Sedgwick testified that he saw Mr. Tilton marching in the procession on Dec. 17, 1871, and that Mrs. Woodhull and Miss Claflin were walking on either side of him. Cecil Campbell gave like testimony, except that at the time when he saw the procession Mrs. Woodhull, Miss Claflin and Mr. Tilton were riding in a carriage. The testimony of these witnesses was very brief and their cross-examinations lasted only a few moments. Mr. John C. Southwick, a partner of Jackson S. Schultz, was the next witness. His testimony carried the jury back once more to *The Golden Age* times and to Mr. Tilton's declarations concerning Mrs. Woodhull, and his statements about the scandal published in her paper. The witness related the history of the establishment of *The Golden Age*, and told of the changes in the paper and its supporters, said to have been caused by the publication of Mr. Tilton's life of Mrs. Woodhull. When the witness reproached him for his course in this respect, Mr. Tilton had replied: "I took an

oath before Almighty God when I was oppressed by Henry C. Bowen that I would help the first oppressed creature that came to me, and the first one I met was Victoria Woodhull. And I believe she is a natural born lady and as pure as an angel." Mr. Southwick added that soon after the publication of the Woodhull scandal Mr. Tilton said to him, "I cannot deny it." On being asked whether the story was true the plaintiff said: "Mr. Beecher has not committed adultery with my wife, but I cannot deny the story, for there is a wheel within a wheel." Gen. Tracy then tried to have admitted the statements made to the witness by Mr. Franklin Woodruff in reference to the status of *The Golden Age*. A long argument ensued, Mr. Beach protesting most earnestly against the evidence. Mr. Evarts sought to have it admitted on the ground that Mr. Woodruff was acting as Mr. Tilton's agent in the matter. Judge Neilson finally admitted it, and reserved his decision on Mr. Beach's motions to have it struck out, after the witness had given it. By way of cross-examination, Mr. Beach read a highly complimentary note to Mr. Tilton, signed by the witness and by several other gentlemen, congratulating Mr. Tilton on the success of his paper. The witness acknowledged that he had signed the note, and the cross-examination ended at the hour of adjournment.

### THE PROCEEDINGS—VERBATIM.

#### MISS TURNER'S CROSS-EXAMINATION CONTINUED.

The Court opened, pursuant to adjournment, at 11 a. m. yesterday.

Miss Beebe Turner was recalled on cross-examination.

Judge Neilson—Is Judge Porter in yet?

Mr. Shearman—Judge Porter is here.

Judge Neilson—Mr. Shearman, shall we proceed?

Mr. Shearman—Yes, Sir; Mr. Evarts will not be here.

#### THE INTERVIEW IN MR. TILTON'S STUDY.

Mr. Fullerton—At the close of the examination yesterday, Miss Turner, we were speaking of what occurred in the room where Mr. Tilton took you and had a conversation about Mrs. Tilton? A. Yes, Sir.

Q. Will you state how long you were with Mr. Tilton in that room? A. I was with him until dark; we went up after we had had that scene in the parlor after dinner; and I was with him until dark, I think—some little time; we were some little time in the parlor.

Q. Well, that does not answer my question. How long do you think it was that you were in the room up-stairs holding this conversation? A. Well, I will have to see. I will have to think how long we were in the parlor first. We went in there

directly after dinner, but I guess we were there—we were there some little time, and then we went up-stairs; and he kept me there until dark, nearly dark.

Q. Well, now, please tell me about how long you were up there? A. Well, I could not tell just exactly how long; we were there from the time we left the parlor until nearly dark.

Q. Well, how long was it? I don't ask you to tell exactly; but give us your best judgment. A. It may have been two or three hours.

Q. Do you think it was as long as that? A. I am not sure.

Q. Well, what is your best judgment as to the time? A. It was some time.

Q. I am aware of that. A. I could not say whether it was three hours or four hours.

Q. Well, was it as much as three hours? A. It may have been.

Q. Do you think it was as much as three? A. I won't say just how many hours it was.

Q. Now, Miss Turner, you are aware that I don't ask you to say just how many hours; I ask your best judgment as to how long a time you were up there with him? A. Well, it was a long time.

Q. Yes; how long? A. Well, that, I say, I cannot tell you exactly.

Q. About how long? A. Well, it may have been two hours; it may have been three hours.

Q. Do you think it was two hours? A. I said I could not say just whether it was two hours or three hours.

Q. What is your best judgment upon the subject, as near as you can recollect it now? A. I won't say just how long I was there; I know it was some time.

Q. I don't ask you to say just how long? A. Why, I thought that was what you were trying to get at—just how long I was there.

Q. No, I ask your best judgment about the length of time you were up there; I don't want you to be exact, but give us the best of your recollection; that is all? A. Well, we were there some time; I can't say just how long.

Q. Well, do you think it was about two hours, or three hours? A. It may have been two hours; it may have been three hours; it may have been longer.

Mr. Beach—[In an undertone to Mr. Fullerton.] Make her answer.

Mr. Fullerton—Will you come nearer than that? A. No, Sir.

Q. No nearer than to say it may have been so long a time? A. It may have been two hours; it may have been three hours.

Q. Well, may it have been less than two hours? A. It might have been less than two hours; it might have been more.

Q. Might it have been less than one hour? A. Well it was more than one hour.

Q. Now, then, that is your best judgment, is it—that it was more than one hour? A. My best judgment is that I won't say how long it was, but I think it was more than an hour.

Q. You think it was more than an hour; very well; let it stand at that. Now, can you give us any more of the conversation that was had during that hour (if that were the length of

time) that you have already given? A. Oh! I didn't say an hour was the length of time.

Q. Well, you say it was more than an hour? A. It was more than an hour.

Q. Very well. A. You are fixing it at an hour.

Q. Well, I will alter the question and ask you whether you can give more of the conversation which took place during that period which was more than hour? A. Yes, Sir, I can; but I would rather not tell the rest of what was said, if you will excuse me; I would rather not repeat it.

Q. Well, I have asked you to tell the whole of it? A. He told me what sexual intercourse meant.

Q. In the presence of Mrs. Tilton? A. Mrs. Tilton was not there in that room; no, Sir; we had left Mrs. Tilton.

Q. Left Mrs. Tilton. Well, what else did he say? A. No, Sir; you will have to excuse me; I could not tell you.

Q. You would not tell me? A. I can't tell you, Sir; no, Sir. I could tell you, but I would rather not.

Q. Very well. You learned at that time, then, what sexual intercourse was? A. Yes, Sir.

Q. And from him? A. Yes, Sir.

Q. Now, what else did he say about Mrs. Tilton and Mr. Beecher during that period, which was more than an hour? A. I can't remember that he said anything more than I told you yesterday.

Q. Well, what was this period of more than an hour devoted to? A. Devoted to what I told you yesterday.

Q. Well, it didn't take an hour to tell that, did it? A. I could not tell you just how long it did take, Sir.

Q. Can't you tell me something that Mr. Tilton said during that period of time? A. Nothing more than I told you yesterday, and in regard to what he described to me about what I have named; that took a long time.

Q. Did he say anything in that conversation to the effect that Mrs. Tilton had confessed to him, or pretended that Mrs. Tilton had confessed to him? A. No, Sir, he did not.

Q. Not a word upon the subject of confession? A. No, Sir; no, Sir.

Q. Was there nothing said down-stairs in the parlor before you went up-stairs about confession? A. Mrs. Tilton's confession?

Q. Yes? A. No, Sir.

Q. He did not accuse Mrs. Tilton then—? A. No, Sir; he said that he had seen her—

Q. I understand; but nothing said about confession upon her part? A. No, Sir; not anything.

Q. Well, do you now, after reflection, recollect that you said anything to the effect that Mr. Tilton said, in the conversation in the parlor or up-stairs, that Mrs. Tilton had confessed to him her adultery with Henry Ward Beecher? A. Have I a recollection after the—

Q. No; of having said that before the Committee. A. No, Sir; no, Sir; the only way that I can account for having had that recollection for a moment yesterday, although I have thought of it since I got out of this room, that if I got—had any recollection or idea about Mrs. Tilton's confessions, it was from the papers; I had seen so much about Mrs. Tilton's con-

feeling to one and another, and that is the way that I must have gotten my idea; that is, if I said that before the Committee— if the report is true as I gave it; if that report that is in the book is correct, that is the only way that I can account for having said it.

Q. Have you talked with any one since the adjournment—? A. No, Sir, I have not.

Q. Oh! you haven't heard my question. A. But I knew what it was going to be.

Q. You did? A. Yes, Sir.

Q. You had better wait until you hear it, for you might be mistaken. A. Excuse me.

Q. Have you talked with any one since the adjournment about your evidence in this case? A. About my evidence?

Q. Yes? A. No, Sir; no, Sir.

Q. Have you talked with any one since the adjournment last night about the case at all? A. [Hesitating.] No, Sir; I have said—

Mr. Beach—No matter what you said.

Mr. Fullerton—What is your answer?

Mr. Porter—She said yes, Sir.

Mr. Fullerton—No; I think not. She said, "No, Sir."

Mr. Shearman—She said, yes, Sir.

Mr. Fullerton—Well, repeat your answer and I will understand it? A. I was going on to explain—

Q. I don't ask you to explain; I only want you to answer yes or no, whether you have talked about this case with any one last night? A. I have talked about the case, but not in regard to anything that I was going to say, or anything that I had in my mind about the Committee, or anything of that kind.

Q. Did anybody suggest to you how you must have—? A. No, Sir.

Q. Don't you think you had better wait until you hear the question? A. Yes, Sir; I will try and wait next time.

Q. Did anybody suggest to you how it happened that you made the mistake if you said that Mr. Tilton accused his wife of adultery—of confessing the adultery before the Committee; did anybody suggest that to you? A. No, Sir.

Q. Well, whom have you talked with since the adjournment last night? A. Whom have I talked with?

Q. Yes, about the case? A. I think Mrs. Tilton, and Mrs. Ovington and Mrs. Shearman, and Mr. Shearman.

Q. Any one else? A. No one else that I can think of now, Sir.

Q. Where did you spend the night? A. At Mrs. Ovington's.

Q. Talk with Mrs. Ovington alone upon the subject? A. Oh, no, Sir.

Q. Who were present when you talked with Mrs. Ovington? A. Mrs. Tilton and Mrs. Shearman—Mr. Shearman—

Q. Did you walk out with Mrs. Ovington? A. No, Sir; Mrs. Ovington does not walk out, Sir.

Q. Did you ride out with her? A. With Mrs. Ovington?

Q. Yes. A. No, Sir.

Q. Well, you say that if you did testify before the Committee that Mr. Tilton alleged that Mrs. Tilton had confessed her adultery, that you must have fallen into the error by having read statements or newspaper articles upon that subject? A. I

said that was where I must have gotten those ideas about that, or that recollection.

Q. Now, do you recollect where you got the ideas from—what source? A. About these confessions?

Q. Yes. A. Why, I saw these confessions in *THE TRIBUNE* and several other papers that were in the library.

Q. What were they in? A. In Dr. Taylor's institution.

Q. Where was that? A. Down in Beaver, Sir.

Q. How? A. In Beaver. Sir.

Q. In Beaver? A. Yes, Sir.

Q. In *THE TRIBUNE*, were they? A. I don't know whether it was *THE TRIBUNE*; I looked over several papers there, but I think *THE TRIBUNE* was among them; *THE TRIBUNE* and *The Herald*, and there were several papers there.

Q. Do you recollect from which paper you derived the information? A. No, Sir, I could not say whether it was from *THE TRIBUNE* or *The Herald*, or the other papers; they took a great many papers there; the table was full.

Q. Well, do you now recollect that you did testify before the Committee as to those confessions, or alleged confessions, of Mrs. Tilton? A. I don't remember, Sir, just what I testified before the Committee; all that I have to say about it is that if the report is correct—

Q. Well, you have said that once you know; that is on the record. Well, you have thought over all these facts, after you gave your evidence before the Committee, you say? A. Thought over all these facts that I have given here?

Q. Yes. A. Why, no, Sir; I only had ten minutes—

Q. After you were before the Committee, I say you thought over the facts that were within the range of your memory, didn't you? A. No, Sir; not just then—

Q. Just then; I say after—after you were before the Committee? A. No, Sir; no, Sir.

Q. Well, you told me yesterday that you were preparing yourself for that— A. Well, but not at that time.

Q. I don't speak before—after. A. About three weeks ago I said when I was preparing.

Q. That is, after your examination before the Committee? A. Yes, Sir; but not just after that.

Q. I don't say just after; I mean to embrace the whole time between your examination before the Committee and the present moment; you have thought it all over, didn't you? A. I have thought it all over since; yes, Sir.

Q. Well, didn't you recall what you testified before the Committee? A. No, Sir; no, Sir; I did not look at what I testified before the Committee.

Q. Didn't you recall it in your own mind? A. No, Sir.

Q. Didn't? A. No, Sir.

#### MR. TILTON'S MEETING WITH HIS WIFE AT MR. BATES'S.

Q. You have spoken of the visit of Mrs. Tilton to her mother when you discovered Mr. Tilton in the act of rising from his knees? A. Yes, Sir.

Q. Do you recollect the occasion? A. Yes, Sir.

Q. Where were Mr. and Mrs. Tilton at the time? A. Mr.

and Mrs. Tilton were sitting in Mr. Bates's parlor—front parlor—and Mr. Tilton was just in the act of rising from his knees—sitting down on the chair.

Q. Where were you? A. I was on the stairs.

Q. You could see them distinctly, could you? A. Yes, Sir; I could see them or else I would not have known that he was rising from his knees.

Q. You say he was in the act of rising from his knees? A. Yes, Sir.

Q. Could you tell distinctly and satisfactorily that he had been upon his knees? A. I should judge so from the position in which he was when I saw him.

Q. Then he was not actually on his knees when you saw him, but in the act of rising from his knees? A. Well, I wish I could show you, then I could tell you better. There was one knee downward the other up—just as you would rise from your knees.

Q. He was in a rising posture, one foot up and the other on the floor? A. If I was a man I could show you.

Q. I think it is lucky you are not; you are better off as you are. Did you hear anything said at that time? A. Well, I had been on the stairs all the time, and he was talking very earnestly to Mrs. Tilton, but I could not say that I heard what he said—I didn't hear what he said, only that he was talking very earnestly.

Q. Couldn't you hear anything that he said? A. No, Sir; I was not standing, all the time that I heard them talking, at the place where I was when I saw him rising from his knees. I was farther up on the stairs, and I kept coming down one step further all the time.

Q. How? A. I kept coming one step further down all the time.

Q. Wherever you were at that time, I want to know if you didn't overhear something that was said? A. No, Sir; I have said that I could not hear, except that he was talking low and in a very earnest tone.

Q. You could not distinguish any words at all? A. No, Sir.

Q. Could you see Mrs. Tilton when you stood there. A. Yes.

Q. Could you see Mr. Tilton? A. Yes, Sir.

Q. How far do you think you were from them? A. I was on the stairs and they were in the parlor.

Q. You could have heard if anything was said by Mr. Tilton? A. I might have heard if he had talked louder, but as it was I didn't hear; no, Sir.

Q. Did you testify before the Committee with reference to that interview as follows: "I went with her, and that same night, or the night after, he came around and got on his knees and vowed how much he loved her, and asked her if she would come back to his bosom again, and all that sort of nonsense." A. I remember speaking to the Committee of that occasion—at least I think I do—I don't know exactly; I can't tell just exactly what I told before the Committee.

Q. Read it where it is marked in red there and see if that refreshes your recollection that you did overhear what was said and did state that to the Committee? A. [After looking at the book.] If this is a correct statement I must have said it.

Mr. Beach—Well—

Mr. Fullerton—That is not what I asked you, Miss Turner. After reading that, do you now recollect having said it before the Committee? A. No, Sir; I don't recollect just the words that I used before the Committee.

Q. Now, that is not the question I ask you. A. No, Sir; I don't recollect just what I said.

Q. I didn't ask you that. I don't ask you if you could recollect just what you said. I ask you whether, after reading that, it refreshes your recollection, so that you could say that you did say that before the Committee?

Mr. Beach—Or the substance of it.

Mr. Fullerton—Yes, that, or in substance that. A. Well, I talked so fast before the Committee that I may have gotten in a great many things and gotten them mixed up, because I know that once or twice the man that was taking notes had to stop me, he could not keep track, the way I was talking.

Q. Do you think you talked so fast as to say you heard something that you didn't hear? A. [After a pause.] Well, I was perfectly truthful, as near as I could be, before the Committee. I didn't try to make up anything or say anything that I did not hear, but I may have got different things mixed together by talking so fast and not having thought over what I was going to say, or knowing anything about going before the Committee some time beforehand.

Q. Well, did you think that that condition of things which you have now intimated led you to say before the Committee that you heard things which you did not hear?

Mr. Shearman—One moment. I object to that question. There has been no foundation laid, there has not been anything shown to the witness which shows that she said she heard it. It is only intimated that she said that Mr. Tilton had said this—not that she had heard it.

Mr. Fullerton—Well, that is a suggestion that I don't think any of us can profit by it.

Judge Neilson—You want to get at the recollection of the witness.

Mr. Fullerton—Yes, Sir.

Judge Neilson—And you frame your question with that view.

Mr. Fullerton—Yes, Sir; with that view.

Judge Neilson—You ask the witness whether reading that so refreshes her recollection as to enable her to say whether she said that before the Committee, in form or in substance.

Mr. Fullerton—Yes, Sir; and her reply is that she talked so fast before the Committee that she may have gotten things mixed; and now I ask her if she talked so fast before the Committee as to be led to say that she had heard things that she had not heard.

Judge Neilson—Recurring to your question, which was correct in form, and to which the witness ought to attend, the witness will state to the jury whether, on reading that, it so refreshes her recollection that she can or cannot say whether, before the Committee, she said that, in form or in substance.

Mr. Fullerton—Now, answer that question. A. This refreshes my recollection, so that I can say, by looking at this, that I cannot remember just what I said before the Commit-

tee; but, whatever I did say at that time, I was trying to tell the truth, and did, from the best of my recollection at that time.

Q. Well, if you did say that you heard Mr. Tilton say—

Mr. Porter—Have you put your question?

Mr. Fullerton—Not yet.

Mr. Porter—I shall object to that question.

Mr. Fullerton—Well, you may object to that part of it if you like. [To the witness.] Now, if you did say before the Committee that you heard Mr. Tilton ask Mrs. Tilton "to come back to his bosom again, and all that sort of nonsense," was it true?

Mr. Porter—One moment.

Judge Neilson—He has a right to put that question.

A. I think very likely, Sir, it was.

Q. Is that as near as you can come to it? A. I only think so. That is as near as I can come to it. I think very likely that that was the state of facts, that he had asked her to come back to his bosom, yet I could not swear to it.

Q. What makes you think it very likely, if you heard nothing upon the subject? A. Mrs. Tilton may have told me something about it; I don't know.

Q. Is that all that you can say now upon the subject? A. That is all, Sir.

Q. Well, I think you told us something that Mrs. Morse said on that occasion; where was Mrs. Morse when Mr. Tilton was in the act of rising from his knees? A. She was on the stairs two or three steps ahead of me.

Q. Nearer to them, or further from them? A. Further from them.

Q. What occurred after he rose from his knees? A. He got up and was going out— Suppose this was the stairs going up this way [illustrating], and *here* were Mr. Tilton and Mrs. Tilton coming out, and Mrs. Tilton had hold of his arm, and he looked up—he had his large hat in his hand, and he looked up and said: "Good evening, Grandma." "Oh, Grandma," said she, "you infernal scoundrel! you perfidious wretch! you infernal hypocrite! you infernal scoundrel! I'll 'Grandma' you!"

Q. What did Mr. Tilton reply? A. "Why," he says, "Grandma you seem to be excited." "I'll excite you," said she, "I'll publish you from Dan to Beersheba," and she talked to him all the way going down the steps.

Q. Tell all that she said? A. Well, he went down the steps pretty fast, and she was saying, "I'll publish you from Dan to Beersheba."

Q. That did not prevent her from talking—his speed in going down the steps? A. It might not have prevented her from talking, but it prevented him from hearing,

Q. But it does not prevent you from telling what she said, if you heard it? A. I have told you what she said.

Q. But you say she continued to talk to him all the way going down the steps? A. She kept saying: "I'll publish you from Dan to Beersheba."

Q. Was that the last she said to him? A. That was the last she said.

Q. Have you given us all the reply that Mr. Tilton made to

that remark of hers? A. He said: "You seem excited, Grandma."

Q. Was that all? A. That is all that he said there; I don't know what he said afterwards to Mrs. Tilton.

Q. Was that all that you heard? A. Yes, Sir.

Q. Mrs. Morse was not in an amiable frame of mind, was she? A. I don't see how she could be.

Q. I do not ask you that; I ask for the fact? A. Well, I don't think she was.

Q. And she spoke angrily? A. I think she did.

Q. Did Mrs. Tilton make any reply to Mrs. Morse on that occasion? A. No, Sir; she held her head down and took hold of his arm.

Q. But she had hold of his arm when they came out? A. Well, she kept hold of his arm.

Q. Did Mrs. Morse say anything to Mrs. Tilton about going away? A. Yes, Sir; after Mrs. Tilton had gone down in the parlor, Mrs. Morse said, "Why, Elizabeth,——"

Q. No, no;—— A. I thought you asked me.

Q. I am speaking of the occasion when Mr. Tilton and Mrs. Tilton were going out of the door, and when Mrs. Morse was saying these amiable things to him. A. I don't remember her saying anything to Mrs. Tilton then; her attention was taken up with him.

Q. Did she say anything to Mrs. Tilton at that time about going away? A. Not at that time; but she did before.

Q. Before Mr. Tilton came? A. No, Sir; after he came and was down in the parlor. We saw him come in, and Mrs. Tilton went down to see him, and she came up to get her water-proof cloak, and Mrs. Morse plead with her about going back with him.

Q. She did not wish Mrs. Tilton to go back? A. No, Sir; she did not want her to go back.

Q. Did Mrs. Morse say anything then about Mrs. Tilton getting a divorce? A. At that time?

Q. Yes. A. No, Sir.

Q. Not a word upon that subject? A. Not a word, that I remember.

Q. After they arrived at home I understood you to say that Mr. Tilton told Mrs. Tilton that she looked tired and had better go to bed? A. Yes, Sir; he seemed to be pressing her to go to bed.

#### THE TALK WITH MISS TURNER AFTER THE WIFE'S RETURN.

Q. And after she went to bed he had another talk with you, did he? A. Yes, Sir.

Q. Where was that conversation? A. In the room next to the room that Mrs. Tilton had gone into. They were the two back bedrooms of the second story.

Q. How long did that conversation occupy? A. Well, I think it was between eight and nine o'clock when he came around, and they were talking a long time in the parlor—some little time in the parlor; and then he was talking a long time to me in his room; and after he left me I went into Mrs. Tilton's room where she had gone to bed with her two children; I think it was Alice and Carroll, and I told——

Q. No; don't state that; how long did the talk with you in that room occupy? That is my question. A. I guess he talked over an hour.

Q. With the door closed? A. His door was closed, and so was Mrs. Tilton's door.

Q. The doors of the room in which you were were closed? A. Yes, Sir; they were closed.

Q. Who closed them? A. Mr. Tilton; there was only one door to close.

Q. Well, that door was closed, was it? A. Yes, Sir.

Q. During that hour that you were in there were you sitting or standing? A. I think I was sitting.

Q. Was he sitting or standing? A. He was sitting—now, excuse me; it seems to me that he was walking up and down. I think that was the way, but I won't be positive.

Q. Very well. What was said first after you got into that room? State, as near as you can recollect, the substance of what was said first? A. I cannot tell you just how he began to talk, but he told me all about these—

Q. Don't repeat that language, because I want the particulars of that conversation now, as near as you can get at them? A. Well, the particulars were just as I have given them.

Q. Oh! you have not given the particulars of that conversation, Miss Turner? A. Well, it was the same conversation that he had told me before.

Q. Then you can repeat it? A. I was going to do it.

Q. Well, please repeat, as well as you can, the conversation that occurred in that room that night? A. He told me these—

Mr. Beach—Oh! that won't do.

The Witness—I thought you wanted me to tell.

Mr. Tracy—That is right. That is the way she introduces the conversation, and she is going on to repeat it.

Mr. Fullerton—What did he say? A. He said that Paul was not his child, that he did not own any of the children except Florence; and about Mr. Beecher and these three gentlemen.

Q. What about Mr. Beecher? A. Well, that he had seen them.

Q. Go on and tell it, please. A. Must I describe that again?

Q. I want you to tell what the conversation was; all he said. A. Why, he told me that he had seen them having sexual intercourse on the red lounge, time and again, and in the large red chair, and then he spoke of these three gentlemen.

Q. What did he say? A. He said she had sexual intercourse with those three gentlemen.

Q. He stated that distinctly? A. Yes, Sir; very distinctly.

Q. And he used that term with reference to those three gentlemen also? A. Yes, Sir; he did not say that he had seen it, but that she had it.

Q. But as to Mr. Beecher, he said he had seen it himself? A. Yes, Sir.

Q. Time and time again? A. Time and time again.

Q. Did he say where he was when he saw it? A. All he said was, "I have seen them." He did not say where he was; he must have been in the parlor or he could not have seen them.

Q. What else did he say during that hour? A. I cannot recall anything more than I have stated with regard to those three times that he took me in the room.

Q. I am not talking about the three times. Please confine yourself to this one occasion. After he had advised Mrs. Tilton to go to bed, and when he took you into that room, and remained one hour, I want you to tell all that was said on that occasion, as near as you can, during that hour? A. I think I have, Sir.

Q. Well, it didn't take an hour to tell what you have now told, did it? A. [Hesitating.] I think it did. We were there a long time it seemed to me,

Q. Did he say anything about Mrs. Tilton's return from the country in the July previous? A. No, Sir, I don't think—her return in July?

Q. Yes. A. No, Sir, I don't think he did.

Q. Do you know where Mrs. Tilton had been the July previous to that conversation before she went to Marietta? A. Well, that was in 1870 he told me this, and in 1869 Mrs. Tilton went to Monticello with Ralph.

Q. Oh! no, I didn't ask you that. I was talking about the July previous to this conversation, which would be July, 1870. Do you know where Mrs. Tilton was in July, 1870? A. Do I know where she was in July, 1870?

Q. Yes. A. No, Sir, I don't remember that I do, because I was at Mrs. Putnam's in July, 1870, and come on with Mrs. Tilton in the Fall, so I could not say where Mrs. Tilton was.

Q. Didn't you hear that she was in Cornwall? A. I don't remember that.

Q. Didn't Mr. Tilton tell you in that conversation that Mrs. Tilton had been to Cornwall during the Summer? A. I don't remember anything about that.

Q. Didn't he tell you, upon her return from Cornwall in July of that year, that she said something to him about her relations with Mr. Beecher? A. No, Sir, I don't remember any such conversation.

Mr. Beach—I am requested by the reporters to ask this witness to speak louder; they say they cannot hear her.

The Witness—It seems to me that I am speaking very loud, but I will try to speak louder.

Mr. Fullerton—In that conversation—this hour's conversation—didn't Mr. Tilton tell you that Mrs. Tilton returned from the country the July previous, and had confessed to him her criminality with Mr. Beecher? A. No, Sir, he never told me in his life about Mrs. Tilton confessing anything about criminality with Mr. Beecher.

Q. Nothing upon that subject? A. No, Sir.

Q. Where did you go after you left that room? A. I went right in Mrs. Tilton's room, or where Mrs. Tilton was sleeping.

#### THE PLACE WHERE THE LOCKINGS-UP OCCURRED.

Q. Now, will you state, so that we won't fall into any error about it, what room it was that Mr. and Mrs. Tilton were locked up in in 1867, 1868, and 1869, of which you spoke yesterday? A. The times when I particularized?

Q. Yes. A. Each time was in the front bedroom which was connected with the other room by folding door.

Q. By what name is it known in the house? A. By what name? I never knew there was any particular name for it, except it was the front bedroom.



Q. How was it designated in speaking of the room—in the family how was it designated? A. I don't remember that it had any particular designation. It was up in the front room.

Q. When you spoke of it down-stairs—if Mrs. Tilton sent you up to it what would she tell you, or how would she call it? A. If she sent me up to her room, she would say up in her room.

Q. Then it was her room, was it? A. It was both his room and her room.

Q. His room and her room? A. Yes, Sir.

Q. Was it so during all 1897, 1898 and 1899? A. That I could not say, Sir, whether they occupied it steadily all these three years, because they changed around.

Q. It was one room always that they were locked up in? A. These three times that I referred to; yes, Sir, it was in that room, but I could not swear that they slept in there all of those three years, because they sometimes slept in both of those rooms, not at the same time, though.

Q. Was it known as the front bedroom? A. The front room. I think that was the way it was spoken of.

Q. The front room? A. Yes, Sir.

Q. Was it a bedroom? A. Yes, Sir.

Q. Is there more than one front room? A. Yes, Sir; there are two front rooms. There is only one front bedroom. There was always a bed in there the year round.

Q. Do you recollect that the room was ever locked whilst you were in the house? A. That that room was ever locked?

Q. Yes? A. Why, yes, Sir; it was locked on these three occasions of which I have spoken.

Q. Don't you know you could not lock it? A. No, Sir; but I know I could lock it?

Q. You have locked it? A. Yes, Sir.

Q. Frequently? A. That I would not say, Sir, frequently. I have slept in there once or twice.

Q. Don't you know that during all that period those folding doors could not be brought together so as to lock them? A. No, Sir.

Q. And don't you know that when that room was fastened by any person on the inside, it was tied with a string or handkerchief around the knob? A. I never remember seeing a string or handkerchief around the knob.

Q. You are positive, then? A. I am positive it could be locked, because on these three occasions Mrs. Tilton unlocked it when I knocked at the door. I never saw a string or handkerchief around it at all.

Q. Now, when was it, in reference to this last conversation, that Mrs. Tilton went to New-Brunswick? A. Mrs. Tilton went to New-Brunswick, I think, in November. I think it was before this—this time I am speaking of was in December, if I remember correctly.

Q. Well, what is your answer? A. I think Mrs. Tilton went to New-Brunswick in November.

Q. Before this last conversation, or after, which was it? A. I think it was before; I won't be certain, Sir.

MR. TILTON SPEAKS LIGHTLY OF HIS WIFE'S HEALTH.

Q. When was it you had a conversation with Mr. Tilton in regard to Mrs. Tilton's health, when you made a — A. That was after Mrs. Tilton had come from New-Brunswick, that very night.

Q. That very night? A. Yes, Sir.

Q. Whom did she bring with her from New-Brunswick? A. I think she brought Miss Florry Tilton.

Q. Florence? A. I think she brought Florence home.

Q. Don't you remember that she brought Florence home? A. I think she did; I won't be positive, but I think she did.

Q. What did Mr. Tilton reply to this suggestion of yours on that occasion? A. What suggestion, Sir?

Q. That he should treat Mrs. Tilton kindly, that she was ill, &c. A. Oh! he rubbed his face, rubbed his hands through his hair, and said, "Oh, Elizabeth is as well as ever she was," that was her custom, to be crying all the time, and she was crying for her sin with Mr. Beecher. I said it was not natural for people to be crying all the time without they had something to cry about, and he said that she was crying for her sin with Mr. Beecher.

Q. Did you ask him any questions then? A. No, Sir, I was feeling very badly that night; I thought Mrs. Tilton was going to die.

Mr. Fullerton—Never mind.

The Witness—I didn't feel like asking him any questions then.

Q. Don't let us feel badly now about it. Did Mr. Tilton say what Mrs. Tilton's sin was? A. No, Sir, that was the remark he made that I have already told you.

Q. Was that the only remark that he made upon the subject? A. He also made a remark that Elizabeth was as well as ever she was.

Q. He did not state when the sin was committed, did he? A. No, Sir, he didn't state anything but what I have told you, Sir.

Q. Nor he didn't state how he described the sin that he spoke of? A. No, Sir.

Q. Did he speak of Mrs. Tilton's confession then? A. No, Sir; he never spoke to me about Mrs. Tilton's confession—any confession.

Q. And how long was that conversation? A. I could not say just how long, Sir.

Q. As near as you can recollect? A. I don't recollect, Sir, just how long it was.

MR. BEECHER'S CALL ON DECEMBER 30TH.

Q. I understood you to say that Mr. Beecher called at Mr. Tilton's house on Friday night after Mrs. Tilton's illness? A. He called on the 30th of December, on Friday; yes, Sir.

Q. How do you recollect the day of the month and the week? A. Because Mrs. Tilton was taken very ill on the 25th—the 26th of December, that was Saturday, and Christmas came on Sunday, and Monday, Oliver Johnson called, and Mr. Tilton went

with him on Monday morning. On Monday afternoon Mr. Moulton called—

Mr. Fullerton—That is not telling me how you remember it was on Friday.

Mr. Tracy—I submit it is.

The Witness—I was going on to explain how I came to remember it so well, because she was taken sick on Christmas Eve. Sunday was the 25th, Monday was the 26th, Tuesday was the 27th, Wednesday the 28th, and Thursday was the 29th, and Friday was the 30th.

Q. Did you look at any diary in regard to those dates? A. No diary.

Q. You have not consulted any one's diary? A. No, Sir, because it is strongly impressed on my mind, because she was taken sick on Christmas Eve.

Q. Yes. Did you see Mr. Beecher enter the house that night? A. No, Sir, I didn't see him come in.

Q. Where did you first see him? A. I first saw him in Mrs. Tilton's sick room sitting beside the bed.

Q. What occasion had you to go in? A. I don't remember whether I went to get something, or whether I walked into the room.

Q. How long did you remain there? A. I just walked in and walked out again, I think.

Q. What were they doing while you were there? A. I think Mrs. Tilton was talking to him.

Q. Did you see any writing materials there at that time. A. I don't remember about that, Sir; I don't remember seeing any.

Q. Could you hear anything that Mrs. Tilton said? A. No, Sir; I was not listening; I just went in and saw Mrs. Tilton was a kind of half reclining on pillows; she looked very sick.

Mr. Fullerton—No, don't tell us how she looked—I don't ask that. You saw no writing materials, and you heard nothing that was said? A. I don't remember of seeing any writing materials.

Q. How long did you remain there? A. I think I went in—walked in and walked out again; I may have remained, but I don't think that I did.

Q. Did you speak whilst you were in the room? A. Did I speak? no, Sir.

Q. Did you get anything whilst you were in the room? A. Not that I remember, Sir.

Q. Did you do anything whilst you were in the room? A. I don't remember that I did. I said my impression was that I walked in and walked out again; that I may have gone in for something, but I don't remember that I did.

#### THE PLANS FOR SENDING MISS TURNER TO SCHOOL.

Q. You have spoken of something that was said to you about being sent to school? A. Yes, Sir.

Q. When was that? A. That was in January, I think, Sir, or February; the latter part of January, or the 1st of February.

Q. Who first spoke to you upon that subject? A. Mrs. Tilton.

Q. Mrs. Tilton spoke to you first? A. Let me think a moment.

Mr. Fullerton—Yes.

The Witness—[Pausing.] Yes, Sir; I remember after the retraction—after signing that paper Mrs. Tilton spoke to me about it.

Mr. Beach—[To Mr. Fullerton.] "Retraction" she says. She says "after signing that retraction."

Mr. Fullerton—Yes.

The Witness—After making that retraction.

Mr. Fullerton—What day of the month do you recollect that was? A. The day of the month?—it seems to me it was the 10th or the 11th of January; it was in January some time.

Q. Did any one else speak to you upon the subject of going to school other than Mrs. Tilton? A. Yes, Sir; Mr. Tilton did.

Q. But Mrs. Tilton spoke to you first about it, did she? A. Yes, Sir, I think she did.

Q. When Mr. Tilton spoke to you upon the subject, what did he say? A. He said that he and Elizabeth were going to do something nice for me; they were going to send me to boarding school; how would I like to go to boarding school? I was very much surprised, and delighted, too. I said I thought that was too good to be true, and he said that he thought of sending me to Steubenville, as he knew the principal of the seminary there; he had been entertained very kindly and hospitably by the Rev. Dr. Reid and his wife, and he thought they would take particular interest in me as I was a ward of his; having known him they would take particular interest in me.

Q. I didn't understand you when you told me what Mr. Tilton first said to you? A. Mr. Tilton first said to me that he and Elizabeth were going to do something nice for me, they were going to send me to boarding school.

Q. Did he say that he and Elizabeth were going to do it? A. Yes, or Elizabeth and he; I don't know which it was.

Q. Didn't he say Elizabeth was going to do something nice for you? A. He said he and Elizabeth.

Q. You recollect that distinctly? A. Yes, Sir, because after he spoke of my being a ward of his.

Q. Didn't he say that she, Mrs. Tilton, had always intended to send you to school? A. No, Sir, he said that "they;" he put the two together.

Q. Be kind enough to look at your evidence upon the subject there [handing paper to witness], and see if it refreshes your recollection upon the subject? A. I don't think it will, because I cannot recollect just what I stated before the Committee.

Mr. Fullerton—Well, there is no harm in trying. A. Ye Sir, I will try, with regard to my—shall I state?

Mr. Fullerton—Please.

The Witness—With regard to my having forgiven him, when I said—

Mr. Fullerton—That is not the subject, Madam.

The Witness—I was going on to explain.

Mr. Fullerton—I know you were, Madam, and that is the reason I stopped you. I want you to testify in regard to what you said before the Committee as to who it was had suggested that you should go to school.

The Witness—I have not read it all yet.

Mr. Fullerton—Well, please read that part of it.

The Witness—This refreshes my memory, inasmuch as I

remember about stating to the Committee about their going to send me to school.

Mr. Porter—Please speak a little louder.

The Witness—This refreshes my memory, inasmuch as I remember having said something to the Committee about Mr. and Mrs. Tilton sending me to school—going to boarding school—but just what I said I could not state.

Mr. Fullerton—I will ask you this question—did you testify before the Committee as follows, or in substance as follows: "On one Sunday, I was up in his study, I think, and he told me that Mrs. Tilton was going to do something nice for me. Previous to this time she had said to me: 'Beside how would you like to go to a boarding school?' I said I would like it very much, but that the news seemed too good to be true. She said I might go anywhere I wanted to. I thought that was very nice. At the same time I wondered that night how they got money so quick, because Mr. Tilton had been turned out of *The Independent*, and he had no money, he said. I did not inquire into that, but I thought of this to myself. After Mrs. Tilton had talked to me this way, Mr. Tilton, one Sunday, up in the study, said that Elizabeth was going to do something nice for me; that she had always intended to send me to school, and that the time had come when she would do it." A. Well, I said, Sir, that Mrs. Tilton spoke to me first about it.

Q. Do you recollect so testifying? A. I cannot recollect just what I said before the Committee.

Q. Did you say this, in substance, before the Committee: "After Mrs. Tilton had talked to me in this way, Mr. Tilton, one Sunday, up in the study, said that Elizabeth was going to do something nice for me; that she had always intended to send me to school; and that the time had come when she would do it." A. I remember, Sir, stating before the Committee about sending me to school, but just the words I don't recollect.

Q. You don't remember of stating what I have just read? A. I don't remember just the words I used, but I remember stating to the Committee about their going to send me to school.

Q. Do you remember stating the words I have just read, in substance? A. I cannot state whether I gave those words or not.

#### MISS TURNER'S PRAISE OF THE TILTONS.

Q. Did you know a young lady at school by the name of Miss Vance? A. Miss Lou Vance?

Mr. Fullerton—I don't know what her first name was. The Witness—Oh! yes, Sir; we were great friends.

Mr. Fullerton—Did she visit Brooklyn while you were at Steubenville? A. Visit Brooklyn? No, Sir, not that I know of. I heard that she—

Q. Was she a schoolmate of yours? A. Yes, Sir.

Q. Did she say to you whilst you were at school together that she was going to visit Brooklyn? A. I don't remember—it seems to me she said something about coming East. She spoke two Summers about coming East, I think, but whether she said she was coming to Brooklyn, or not, I don't remember distinctly but— No, Sir, I don't think I remember about—

Mr. Fullerton—A little louder.

The Witness—I don't recollect her saying she was coming to Brooklyn particularly, but I recollect her speaking of coming East in the Summer.

Q. Don't you recollect of saying to her, that if she came to Brooklyn she must call upon Mr. and Mrs. Tilton? A. I may have said so, Sir; I don't recall it clearly now.

Q. Didn't you say to her in substance that they were very nice people indeed, and that you were very much attached to them? A. I have often spoken of—

Q. How? A. I have spoken—I spoke very kindly of Mrs. Tilton in the West always, because the last year when I left for school Mrs. Tilton—

Q. No, I don't want that; I want to know if you didn't say that to Miss Vance? A. That Mr. and Mrs. Tilton were nice people?

Q. Very nice people? A. I very likely said so, because I spoke of them very kindly to everybody.

Q. Didn't you say she would be delighted with Mr. Tilton—that he was such a perfect gentleman? A. I may have said so; I don't recollect about it.

Q. Just tax your recollection for a moment, and see whether you did not say so? A. I may have said so; I could not state positively.

Q. Did you not state that you had been brought up by the family, and that Mr. Tilton had always treated you like one of his own children, with the greatest affection? A. To Miss Vance?

Q. Yes. A. I may have said so; I told a great many that.

Q. Then you think you told her amongst others? A. I don't know; I may have done so, but I cannot state positively.

Q. Do you know a Mrs. Jones residing in New York?

Mr. Beach—No, she did live at New York.

Mr. Fullerton—Yes.

The Witness—Mrs. Abraham Jones?

Mr. Fullerton—I suppose so.

The Witness—Yes, Sir, she was a lady I boarded with on Staten Island when I first came from the South.

Mr. Fullerton—When was that? A. Oh! that was a long, long time ago.

Q. Well, how long? A. Well, I think when I left the South, as I remember going to her, I must have been between four and five years old, as near as I can remember.

Mr. Beach—How old? A. Between four and five, I think.

Mr. Fullerton—What was the family composed of? A. Mrs. Jones's?

Q. Yes. A. There was her daughter, Emma, and she had a son, Willie; a son and daughter; there were only two children, and Mr. and Mrs. Jones and myself.

Mr. Beach—Was Emma a widow?

Mr. Fullerton—Was the daughter a widow? A. Oh, no, Sir, she was quite young.

Q. Had she a widowed daughter living home with her? A. Mrs. Jones?

Q. Yes. A. She never had but the one daughter, I think, Sir, as I remember.

Q. Did you ever live with Mr. Libby? A. William Libby?

Q. Yes. A. Yes, Sir.

Q. When was that? A. Let me see. [Pausing]: I left Mrs. Haggerty's—

Mr. Porter—Speak a little louder.

The Witness—Oh! it was some time ago, Sir; I could not say just when.

Mr. Fullerton—Well, about what time was it? A. When I left the South I suppose I was about between four and five, I think I said; and then I boarded for some little time with Mrs. Jones; and then from Mrs. Jones I went to Mrs. Haggerty's on Staten Island; and I ran away from Mrs. Haggerty's with a lady that came to the house and advised me to run away from her because she was very cruel to me, and this lady took me.

Mr. Beach—Who was she?

Mr. Fullerton—Who was the lady? A. The lady; shall I give the name?

Mr. Fullerton—Yes.

The Witness—Mrs. Ward; she took me, as I remember, over to Jersey City to a friend of hers, and from Jersey City I went to—there Mr. Libby got me.

Q. How long did you live with Mr. Libby? A. I don't remember, Sir; I don't think I was there long.

Q. As near as you can recollect? A. I could not state; it may have been three or four months, and it may have been longer.

Q. How? A. I could not state positively; it may have been three or four months, and it may have been longer.

Q. Under what circumstances did you leave Mr. Libby? A. I don't remember, Sir, except that I was—I think I was lonesome and lonely out there. They lived in New Jersey, and I think I was dissatisfied; I don't know any other reason.

Q. Did you run away? A. Oh! no, Sir; Mr. Libby took me back to the lady's where he had gotten me first—took me back to Jersey City, if I remember right.

Q. Were you ever anywhere else other than the places you have spoken of? A. You are coming to the time after I left Mr. Libby?

Q. Yes. A. Well, after I left Mr. Libby, this lady that I was staying with, I—

Q. Mrs. Ward? A. No, Sir; this lady that I was staying with was a friend of Mrs. Ward's, where Mrs. Ward had got me.

Q. What was her name? A. Mrs. Sinclair I think her name was.

Q. Where did she live? A. She lived in Jersey City, and Mrs. Sinclair had a sister living here in Brooklyn by the name of Mrs. Jack; she was the wife of Col. Jack, the lawyer; he is dead now; he is not living.

Mr. Beach—When did you come there? A. Then I went to Mrs. Jack's.

Mr. Fullerton—How long did you stay there? A. Well, I guess I lived with them some little time; I don't remember just how long.

## HOW MISS TURNER CAME TO LIVE WITH THE TILTONS.

Q. Can you name any other place where you lived at any time before going to Mr. Tilton's? A. Yes, Sir; after I left—would you like to know the way I came to leave Mrs. Jack?

Q. Oh! no. A. Well, after I left Mrs. Jack—or while I was with Mrs. Jack—I met a lady on the street one day that knew me when I was a little girl on Staten Island—Miss Ansell her name was; there are two sisters of them. They are school teachers, and teach music, and teach French, and had a school on Staten Island; and I recognized them one day in the street, and they came to see me two or three times. I told them where I was, at Mrs. Jack's, and they did not like the looks of things there, and they advised me—at least one of them—Miss Ansell advised me to leave Mrs. Jack's and come and stay with her, and she would see about getting me a home, and it was through Miss Ansell that I went to Mr. Tilton's. They put an advertisement in the paper for me.

Q. Now, during this period, were you in a store in New-York? A. During this period?

Q. During any time before you went to Mr. Tilton's? A. I think— Yes, Sir, I was in the Dollar Store.

Q. In Broadway? A. On Broadway; yes, Sir; the Winter Garden Palace, it used to be.

Q. How long were you there? A. Well, some little time; I don't remember just how long.

Q. Well, about how long? A. Perhaps two or three months; it may have been longer, it may have been shorter; I cannot say just how long.

Q. Who were the proprietors of that store? A. It was kept by the Elias Brothers, I think their names were.

Q. Did you have any trouble there? A. No, Sir.

Q. How? A. I never had any trouble; no, Sir.

Q. Leave pleasantly? A. Yes, Sir. Well, I thought very strange when I left. Did you want to know how I left?

Q. Were you accused of anything? A. I was not accused of anything; no, Sir.

Q. Nothing at all? A. No.

Q. No difficulty between you and the proprietor? A. Never had a word; no, Sir.

Q. What was the occasion of your leaving? A. I was discharged, Sir.

Q. By whom? A. By the gentleman that paid the young ladies at the desk.

Q. He did not give you any reason for it? A. He did not give me any reason; no, Sir. The way we were paid—we were paid every Saturday night, and the money was put inside of a yellow envelope and sealed up, and we had a percentage on everything we sold, and we always tore open the envelopes as soon as we got them to see how much we had, and I tore open my envelope, and in it was a little note saying:

"Miss TURNER: Will require your services no longer," and then I went up to the gentleman and inquired about it; but I afterwards learned from one of the young ladies that I was—

Mr. Beach—No, no.

Mr. Fullerton—Oh! no.

Mr. Beach—How came she to go there?

Mr. Fullerton—How came you to go to the Dollar Store? A. I don't remember how I got the position.

Q. Do you remember through whom you got it? A. No, Sir, I do not. I don't remember how I came to go there.

Q. Have you no recollection as to the way in which you got that position? A. No, Sir, I don't think I have.

Q. Do you recollect any of the circumstances attending your going to that place? A. No, Sir; I don't recollect any.

Q. What was your age at that time? A. I don't remember, Sir, how old I was.

Q. How many years ago was it that you were there? A. If I could tell you what year it was I might be able to tell.

Q. Well, how many years was it before you went to Mr. Tilton's? A. Oh! I had been at Mr. Tilton's; it was during the ten years I was there; I had been living at Mr. Tilton's.

Q. Well, do you still think that you were at Mr. Tilton's ten years? A. Off and on for ten years. I left there two or three times.

Q. Well, you went there in 1864, didn't you? A. 1864; yes, Sir.

Q. Well, you left in 1870, didn't you? A. 1870; yes, Sir.

Q. Did not return after January, 1870, did you? A. What say?

Q. You did not return after January, 1870?

Mr. Beach—1871.

Mr. Fullerton—1871, I should say.

The Witness—I returned with Mrs. Tilton.

Q. After January, 1871, when you went to Steubenville, I mean? A. I went to Steubenville in 1871; yes, Sir.

Q. You did not return after that? A. No, Sir.

Q. Well, that is a good deal short of ten years. A. 64 and 10 are 74.

Q. Yes, but you have got by 1870. That is immaterial, however. A. Well, I am thinking. Well, this is 1871.

Q. Is it? A. This is 1875; 1875.

Q. Yes. A. Yes; well, I was away at school. I went there in 1864 and I was away at school about three years and a half. This is 1875. Yes, Sir, I was there about ten years.

Q. About ten years? A. Yes, Sir; that is, off and on. I would go there and then—I was there—

Q. Well, you left permanently in January, 1871? A. In January, 1871; yes, Sir.

Q. Very well; then between 1864 and January, 1871, it is not ten years. Now, how long was it after you left Mr. Tilton's that you went to the Dollar Store, or in what year was it? A. Well, I left Mr. Tilton's two or three times.

Q. Well, in what years was it that you went to the Dollar Store? A. I don't recollect, Sir.

Q. Was it during 1867, 1868 or 1869? A. No, Sir; 1867, 1868 and 1869. I think I was there permanently those three years.

Q. Well, was it in 1866 that you were in the Dollar Store, then? A. I cannot give you the date, Sir.

Q. Can you form no idea as to the time when you were there? A. Not the slightest idea.

Q. How many years was it before you went to Marietta? A. I could not tell you, Sir.

Q. Was it before or after you went to Southport? A. Oh! it was after I went to Southport, I think.

Q. Well, you were in Southport in 1868, I believe? A. I don't remember what date it was.

Q. Was it before or after you lived with Mr. David Dows? A. Before or after I lived with Mr. Dows?

Q. Yes? A. Let's see: I lived with Mr. Dows in 1868. It must have been before that.

Q. Before that? A. Some little time, I think, before that.

Q. Well, were you ever in a store in Brooklyn? A. Yes, Sir; I was.

Q. When was that? A. I was in Mr. Ovington's store.

Q. When was it? A. This Winter, during the holidays.

Q. Well, were you not there before that? A. Before the holidays?

Q. Before this present Winter? A. At Mr. Ovington's?

Q. Yes. A. No, Sir.

Q. Wasn't you in a Brooklyn store years ago? A. I was in another store, not in Mr. Ovington's, and I was only in Mr. Ovington's once, and then I was in another store besides Mr. Ovington's.

Q. What other store? A. Mr. Jones's.

Q. And when were you at Mr. Jones's? A. I don't remember. There are so many things I have to think of I cannot give all the dates.

Q. Well, as near as you can? A. No, Sir, I don't think I can.

Q. Was it after you came to Mr. Tilton's? A. I was at Mr. Tilton's; I was boarding at Mr. Tilton's when I was in the Dollar Store.

Q. Yes. A. And I think— Oh! yes, Sir, I was with Mr. Tilton when I was in Mr. Jones's, I think.

Q. Were you ever in Mr. Loesser's store? A. Mr. Loesser's?

Q. Yes. A. No, Sir.

Q. You don't remember that name? A. Oh, yes, I remember the name very well.

Q. But you were never there? A. Oh! no, Sir, only those two stores, Mr. Jones's and Mr. Ovington's.

#### MISS TURNER'S RETRACTIONS.

Q. You have mentioned, Miss Turner, that just before you left for Steubenville you wrote some letters, which were produced, I believe, and handed to you? A. Just before I left I wrote some letters?

Q. Yes. A. I wrote those—well one was a very short—it could not be called a letter, just a few lines, on a piece of paper—a retraction, and then one for Mr. Tilton.

Q. Which of those letters did you write first, for Mrs. Tilton or for Mr. Tilton? A. I wrote the one for Mr. Tilton, I think, first.

Q. Where were you when you wrote that letter? A. I was sitting in the— When I wrote that letter I was in the second

story back room—in his room, where there was a little gas stove.

Q. What occurred at the time of the writing of that letter?

A. We were talking about Mrs. Morse.

Q. I want you to tell what was said? A. Why, I think, that I told Mr. Tilton—I don't know how the subject began, but I think that I told Mr. Tilton that Mrs. Tilton had told Mrs. Morse all these—in my presence all these scenes—those terrible things that he had told me, those awful things about Mr. Beecher and other men.

Q. Mrs. Tilton had told Mrs. Morse in your presence? A. In my presence, yes, Sir; and that Mrs. Morse wanted me to go around and tell Mr. Beecher.

Q. Now, are you telling what Mrs. Tilton told Mrs. Morse in your presence? A. Oh I did you wish me to tell that? No, Sir, I am not; I am telling what I said to Mrs. Tilton at the time that I was—that he was fixing up that that he wrote about—that I wrote for him.

Q. Let me see now if you are not in error? A. No, Sir; I am not.

Q. Do you say that you were telling Mrs. Tilton? A. No, Sir; I was telling Mr. Tilton.

Q. You said Mrs. Tilton; it is a misstatement. A. Well, I meant Mr. Tilton.

Q. Very well; all right. A. Yes, Sir.

Q. Now, commence again so that we won't misunderstand, and state what conversation was had between you and Mr. Tilton when you wrote the letter to which you refer? A. I was telling you, Sir.

Q. Well? A. It was about Mrs. Morse, and that Mrs. Morse—that—I said that I thought I told him that Mrs. Tilton had told Mrs. Morse all these horrible scenes that he had described to me in the parlor, and that Mrs. Morse wanted me to go around and tell Mr. Beecher all that had happened, and I would not go around and tell Mr. Beecher. And then he spoke about Mrs. Morse—when I said that Mrs. Morse wanted me to go around and tell Mr. Beecher: "Well, then, that was bribing," he says, "that was bribing you;" and I said: "No, Sir, she did not bribe me, but she said would I—if I would go around and tell this to Mr. Beecher that she would give me something nice." And then he asked me if I would write that down on paper and put my name to it.

Q. Well? A. And I did so.

Q. Well, what did you say when he asked you that? A. I said that I would.

Q. You said that you would put it down on the paper? A. Yes, Sir; and sign my name.

Q. Well, did you put it down on paper? A. Yes, Sir; on that paper that you have.

Q. Yes. A. I wrote it. That was in January.

Q. That was in January? A. Yes, Sir.

Q. Where did you get the paper? A. I think he gave it to me, Sir. I think he brought me the paper, and a pen and ink.

Q. Yes; and then you wrote it? A. And then I wrote it; yes, Sir; from his dictation—he dictated it to me and I wrote it.

Q. He dictated it? A. Yes, Sir.

Q. Now, what do you mean by his dictating it? A. What I mean by dictating, he told me what to say and I put it down as he told me.

Q. He would repeat a few words, and then you would write it down? A. Yes, Sir.

Q. And then he would pause whilst you were writing it down? A. Yes, Sir; until he made up his mind what would go next.

Q. And then he would repeat something else? A. Yes, Sir.

Q. And you would write it down? A. Yes, Sir.

Q. And so you kept on until you finished it? A. Kept on until I finished it? Yes, Sir; it was not very long.

Q. Now, is your recollection quite distinct about that? A. Yes, Sir, very distinct.

Q. You cannot be mistaken? A. No, Sir.

Q. Didn't he write it out at first, and didn't you copy it? A. No, Sir; he dictated it to me; I am pretty sure of that.

Q. Well, now, just see how sure you are of it. A. Yes, Sir; I think that he dictated it to me; I don't remember copying it from his writing.

Q. In the direct examination did you state as follows: "He asked me if I would copy that off in my handwriting and put my name to it, and I did it"—in speaking of this very letter? A. It must have been that letter, because that was the only one that he asked me to copy.

Q. Well, do you remember of so stating in your direct examination? A. I remember stating about this—these few lines that I wrote—but I cannot remember just the language that I used, or just the words that I used, before the Committee.

Q. I am not speaking of the Committee, Miss Turner; I am speaking of what occurred here last week, when you were under a direct examination by Judge Porter. I ask you whether at that time, in speaking of this letter which is now the subject of inquiry, you did not say as follows:

Mr. Beach—Just read the whole of it.

Mr. Fullerton—[Reading:]

And then, after he got through about Mrs. Morse, and I had told him that Mrs. Morse had said she would give me something nice if I would go around and tell Mr. Beecher this story, he asked me if I would copy that off in my handwriting and put my name to it, and I did it.

A. Yes, Sir; copy off what I had been telling him about Mrs. Morse.

Q. He did not furnish you, then, with a copy, written out? A. No, Sir; I think not; the copy was from his mind; that is what I meant by copy.

Q. Well, did he state it correctly? A. What, Sir?

Q. Did he state it correctly as you copied it? A. He stated exactly as I copied it, Sir.

Q. Did he state it correctly? A. I don't understand what you mean by "correctly."

Q. He stated some events, did he not, for you to put upon paper? A. He stated just those events that I have been relating with regard to Mrs. Morse; yes, Sir.

Q. And did he state the truth as it had taken place? A. He stated just as it is written there.

Q. No, I am not talking about what is written. Did he state

§ correctly as you had told him in that interview? A. No, Sir; I don't know that he did state it correctly, because he—I think that it reads that Mrs. Morse bribed me. Well, Mrs. Morse did not exactly bribe me, for I did not tell the story; I did not go around and tell it.

Q. In every other respect was it correct, what he stated?

A BRISK DEBATE OVER THE TESTIMONY.

Judge Porter—I object to this; not as to the facts, as to whether any fact stated was true, but it is not a question for her— They cannot put the question in a general form, as to the contents of that letter, and whether the letter was correct, without placing the letter in her hands so that she can look at it.

Mr. Fullerton—I am speaking of his statement, Sir, irrespective of the letter.

Mr. Beach—We are not asking anything about the letter.

Mr. Porter—"Did he state it correctly in the letter that you wrote?"

Mr. Fullerton—No, I have not asked that; you cannot invent that.

Mr. Porter—I object to the question.

Mr. Fullerton—Well, Sir! [To the witness.] You had made certain statements to Mr. Tilton in regard to Mrs. Morse, had you, in that conversation? A. I had spoken to him about Mrs. Morse, yes, Sir, and told him that Mrs. Tilton had described all this that he had told me about her daughter.

Q. And Mr. Tilton wanted you to put that upon paper and sign it, did he—what you had told him? A. Well, he picked it out to suit himself, what he wanted me to put on paper.

Q. No, no; I am not asking you that. He wanted you to put that, whatever it was that you had said to him, upon paper, and sign it, did he not? A. He wanted me to put what he dictated; it was something like that; I don't know whether it was exactly, or whether he fixed—

Q. After you had made the statement to him, didn't he say, "Will you put that upon paper and sign it?" Is not that what he said? A. He wanted me to put what he dictated on paper; it was in regard to the conversation that I had had with him.

Q. Did he ask you to put what he dictated on paper? Is that what he asked you? A. He asked me if I would put that on paper; I think that was the way he expressed it, and sign my name.

Q. And by "that" he referred to what you had just told him about Mrs. Morse, didn't he? A. Well, but he didn't fix it exactly—

Q. Well, we will see about that. I will not go to that yet. A. Well, Sir.

Q. Now, when he came to dictate, as you term it, what you should write, did he repeat correctly what you had told him about Mrs. Morse? A. Oh! I don't know whether he repeated just the exact words that I used.

Q. Well, in substance, was it correct?

Mr. Porter—That I object to. Where what was dictated was written. I submit that the writing speaks as to what it was and that she is entitled to have the writing before her, and if

they wish to ascertain, clause by clause, whether it was correct or not, she should be examined with reference to it.

Mr. Morris—How would the writing show what she had stated to Mrs. Morse, whether that was correct or not?

Mr. Porter—What she had stated to Mrs. Morse?

Mr. Morris—The question asked was whether it was correct.

Mr. Porter—That is not what he is inquiring. I do not understand the gentleman to be inquiring at all about what she stated to Mrs. Morse.

Mr. Morris—Concerning Mrs. Morse—about Mrs. Morse.

Mr. Porter—Concerning Mrs. Morse is what appears in the letter.

Mr. Fullerton—No.

Mr. Porter—One moment.

Mr. Fullerton—Not by any means.

Mr. Porter—If he is inquiring for a conversation between her and Mrs. Morse, I have no objection. If he is inquiring for what Mr. Tilton then dictated, and she wrote, then I submit that what she wrote under his dictation should be before her.

Judge Neilson—Yes, Sir; that is so.

Mr. Morris—That is not the inquiry.

Judge Neilson—If, on the other hand, without its being confined to the letter, he is inquiring if Mr. Tilton asked her to write down what Mrs. Morse had said, I think he may do that without showing the letter.

Mr. Porter—Undoubtedly, but she states instead of that he dictated clause by clause.

Judge Neilson—Yes, Sir; still—

Mr. Fullerton—My inquiry relates to the period of time before it was put to paper.

Judge Neilson—Well, if that be so, interrogate her.

Mr. Porter—Well, I suppose the rule to be well settled that you cannot inquire as to what transpired during the period of time before an instrument—before words were committed to paper, when they were committed to paper and the paper itself is in evidence.

Mr. Morris—The question is whether it was committed to paper.

Mr. Fullerton—The objection is as foreign to this question as possible.

Judge Neilson—The object of the inquiry seems to be to ascertain whether the conversation of Mrs. Morse was adopted as the subject matter of the letter, in a general way—in a general sense.

Mr. Porter—The document shows for itself, as to two points.

Mr. Fullerton—We are not talking about the letter.

Mr. Porter—One is as to the truth of the letter, and the other is as to whether or not, in dictating it, he dictated it as she had previously told it to him. The witness should be treated fairly and should see what the words of the letter are; and your Honor sees very clearly, in view of her testimony, that Mrs. Morse's offer related to the stories against Mr. Beecher, whereas the jury will see that the letter relates to stories about Mr. Tilton.

Mr. Fullerton—That is not in order, and I object to it.

Judge Neilson—Now, there is one inquiry which Mr. Fullerton has made which has not been answered. She says:

"He asked me to write *that*." Now, he wants to learn whether the "that" used referred to what had passed between the witness and Mrs. Morse, and prior to writing the letter, it seems to me that might be given.

Mr. Porter—That I have no objection to.

Judge Neilson—Well, I don't think that has been answered fully.

Mr. Fullerton—How, Sir?

Judge Neilson—I don't think that inquiry has been answered fully.

Mr. Fullerton—No, Sir; it has not been answered. [To the witness.] Now, Miss Turner, will you be kind enough to tell me whether, in the dictation of Mr. Tilton, he stated correctly what you had told him in regard to Mrs. Morse?

Mr. Porter—Now, I object, your Honor; the question is put boldly and baldly.

Judge Neilson—Let her see the letter.

Mr. Fullerton—I am not talking about the letter, Sir.

The Witness—If you would let me see it, I might—

Mr. Porter—One moment; I object to the question.

Judge Neilson—No objection to showing her the letter, of course.

Mr. Fullerton—I have objections to showing it to her now, Sir. What have we got to do with the letter yet?

Judge Neilson—She had a conversation with Mrs. Morse.

Mr. Fullerton—Yes.

Judge Neilson—Now, she related that conversation to Mr. Tilton.

Mr. Fullerton—Yes.

Judge Neilson—I think you can show whether or not that was what he asked her to write, and if you go a step beyond that, you ought to show her the letter.

Mr. Fullerton—I have not : a step beyond that; I have not taken that step, and don't propose to quite yet.

Judge Neilson—Well, go on.

Mr. Fullerton—Nor will the counsel compel me to take that step, because when I take that step, I shall put my foot into it; and I don't mean to do anything of the kind.

Judge Neilson—I think she may answer that.

[Last question read by THE TRIBUNE stenographer.]

Mr. Porter—I object to that question as assuming what does not appear, that she knows what it was that he did dictate to her without the production of the writing in which it is recorded; and that she shall be examined generally as to her recollection of the contents of that which was dictated and written, without having the writing before her.

Judge Neilson—I think she can answer.

Mr. Fullerton—The writing has nothing to do with the dictation; I am going to ask her this: Whether she wrote it down as it was dictated.

Judge Neilson—It is an attempt at getting at the recollection of the witness about it, and is to be allowed. Now, repeat the question again and let the witness answer the exact question.

[Question again read by THE TRIBUNE stenographer.]

The Witness—Well, I put down just as he stated it.

Judge Neilson—That is not the point, Madam.

Mr. Fullerton—That is not the point, Madam.

Judge Neilson—Just recollect the question. In dictating to you, did he correctly repeat what you had told him about Mrs. Morse, or what Mrs. Morse had said? A. Well, Sir; I cannot recollect just whether he repeated it correctly or incorrectly; but, however, I put it down just as he repeated it.

Mr. Fullerton—Never mind "putting down," we are coming to that.

Mr. Porter—I submit that the answer is proper.

Mr. Fullerton—No; it is not.

Judge Neilson—I shall permit the answer to stand, just as she made it, Sir.

Q. Can't you recollect whether, in repeating what you had told him he repeated it correctly—substantially correctly?

Mr. Porter—I object to that as a repetition of a question immediately before the answer.

Judge Neilson—I think he has a right to put it to test her recollection further.

Mr. Porter—I except to your Honor's decision allowing him to repeat it again.

Judge Neilson—Now, repeat the question, please.

Mr. Fullerton—Can't you recollect whether, in repeating what you had told him he repeated it correctly? A. No, Sir; I don't think I can, whether he repeated correctly or incorrectly.

Q. In listening to his dictation did you discover that he had made any mistake in doing it? A. I don't remember, Sir, because he seemed very much excited—

Mr. Fullerton—Never mind.

The Witness—[Continuing]—just then, and I put it down.

Mr. Fullerton—Oh! well, never mind.

Judge Neilson—[To the witness.] By "mistake" he means departure from the statement about Mrs. Morse.

Mr. Fullerton—You paid attention to what he dictated, didn't you? A. I think I did, at the time; yes, Sir, but I don't recollect now whether—

Q. Now, one moment. Did you, at the time of his dictation, discover any error that he had fallen into in repeating the language, or the substance of what you had just told him?

Mr. Porter—I object to the second repetition in substance of that question. I submit there has been nothing in the bearing of the witness that calls for a repetition of a question once clearly and intelligently answered.

Judge Neilson—That is no reflection—

Mr. Fullerton—It is a wonder my friend don't claim she is insulted.

Judge Neilson—This is no reflection upon the witness, but merely goes to test her recollection.

Mr. Porter—I except to your Honor's decision that they may repeat the question.

Mr. Fullerton—I have not repeated the question; I ask now whether when he dictated, and she was paying attention to it, she discovered any error or departure from the words or the substance of the words which you had just told him? A. I may have discovered—I don't remember whether I did or not.

Judge Neilson—Well, do you recollect whether you did, or not? A. No, Sir; I don't recollect.

Mr. Fullerton—Well, if you had discovered any error that he had fallen into, would you not have corrected it?



Mr. Porter—I object to that question; that is reasoning with the witness.

Mr. Fullerton—No, it is not.

Mr. Porter—It is a purely psychological—a purely metaphysical inquiry—hypothetical. She is not bound to give her opinion as an expert as to the probabilities upon such a subject, or of the laws of memory. She is not here to speculate but to state what she remembers, and all that she remembers.

Judge Neilson—I think she may answer that question.

Mr. Porter—I except to the decision.

Mr. Fullerton—Now, will you please answer.

The Witness—Please repeat the question, Sir.

#### THE FIRST RETRACTION ANALYZED.

Q. If you had discovered, when he was dictating to you what to write, any error that he had fallen into in repeating your language or the substance of what you told him, would you have put it down as he dictated it, or would you have corrected the error?

Judge Neilson—Or called his attention to it?

The Witness—Well, he told it so fast—and yet I think if he was dictating a falsehood that, it seems to me now, my attention would have been called to it, but I don't recollect about that very well.

Q. But don't you think if your attention had been— A. But all I know is—

Q. One moment, excuse me.

Mr. Porter—I submit that she is entitled to answer. If the witness is called on for a reason she can state it.

Mr. Fullerton—Do you think if you had observed a falsehood that you would have written it down as dictated, or would you have called his attention to it? A. I don't— It seems to me I don't think I would have written down a falsehood, but he told it so quick and seemed to be so excited about it that I don't think I stopped to think anything about it.

Q. He did not tell it any quicker than you would write it, did he?

Mr. Porter—I object to that question.

The Witness—Well, I don't know, Sir, sometimes I can write fast.

Mr. Porter—One moment. When I object I desire you not to answer.

Judge Neilson—Well, I think we have that sufficiently.

Mr. Fullerton—Well, Sir, we have not had it at all. [To the witness.] Did he dictate faster than you could write?

Mr. Porter—She has already been examined on that question, and has said that he stepped for her to write; that she wrote it at once; that she wrote it under excitement.

Judge Neilson—Yes.

Mr. Fullerton—Did he dictate to you faster than you could write it?

Mr. Porter—I except to the decision permitting him to repeat the question.

The Witness—Shall I answer?

Judge Neilson—Yes.

The Witness—Did he dictate faster than I could write?

Mr. Fullerton—Yes.

The Witness—Yes, Sir; it seems to me he did. It seems to me I had to—that he had to stop once or twice, if I remember correctly.

Q. Yes; and what occasioned him to stop? A. Why, he was going on too fast, I think.

Q. Well, how did he find that out? A. Why, I found it out.

Q. You found it out; and what did you say to him? A. I don't recollect just what I said.

Q. In substance? A. Unless it was that he was speaking too fast; I can't swear positively to that; I could not swear, but that is the way I think it was.

Q. That is the way that you think it was; did you write all that he dictated? A. Yes, Sir; I wrote all, and just as he dictated it.

Q. Well, now, I will read and ask you some questions; I find the following sentence in the letter of Jan. 10, 1871. [Reading:] "Your mother, Mrs. Morse, has repeatedly attempted to hire me by offering me dresses and presents to go to certain persons and tell them stories."

Mr. Shearman—That is not all the sentence.

Mr. Fullerton—Isn't it?

Mr. Shearman—No, Sir.

Mr. Fullerton—I am glad you discovered it.

Mr. Shearman—[Reading:] "Injurious to the character of your husband."

Mr. Fullerton—I am glad you discovered it, because I cannot read the balance of it.

Mr. Porter—It has been printed.

Mr. Fullerton—Well, there is where you have the advantage of me, because I am reading her handwriting.

Mr. Porter—And I, too.

Mr. Fullerton—Printed in the letter—what is the word there?

Mr. Shearman—It is printed in your mind, but it is written on the letter.

Judge Neilson—The counsel asks what the word is as printed.

Mr. Shearman—"Injurious to the character."

Mr. Fullerton—"Injurious?" I will call it "injurious"—"to tell them stories injurious to the character of your husband." Was that true? A. That was not true then, if that is the way it was written, because Mrs. Morse had not repeatedly—Mrs. Morse had only on this occasion, when this horrible affair was related by Mrs. Tilton in my presence.

Mr. Fullerton—I don't want all that.

Mr. Porter—One moment. I submit that there is no occasion for interrupting her.

Judge Neilson—Her answer is that it is not true, because Mrs. Morse had only on one occasion made such request. That answers the question fully, it seems to me.

Mr. Fullerton—I read further [reading]: "I have been persuaded that the kind attentions shown me by Mr. Tilton for years, were dishonorable demonstrations"; was that true? A. That Mrs. Morse had said that?

Q. I read exactly as it is written. [Reading:] "I have been persuaded that the kind attentions shown me by Mr. Tilton for years, were dishonorable demonstrations." A. I supposed they were dishonorable demonstrations after Mrs. Tilton had told me that he had confessed to her—

Q. No; I don't ask you that. Is that true that you had been so persuaded that these kind attentions shown you by Mr. Tilton for years, were dishonorable demonstrations? A. There was no persuading about it; nobody persuaded me; I believed them when Mrs. Tilton told me that he had confessed to her.

Q. Then the statement in the letter is not true, is it?

Mr. Porter—She has not said that. She has said that was not true.

Mr. Fullerton—Is that statement in the letter true? A. That I had been persuaded?

Q. Yes. A. No, Sir, because nobody had persuaded me.

Q. Yes, that is not true. I read another sentence [reading]: "I never at the time thought that Mr. Tilton's caresses were for such a purpose." A. For a bad purpose?

Q. "For such a purpose;" was that true? A. No, Sir; I did not think so at the time.

Q. How? A. I had not any such thought with regard to him at the time; I did though, after he confessed it to Mrs. Tilton.

Mr. Fullerton—Well, never mind.

Judge Neilson—Never mind; the question is whether that particular statement is true.

Mr. Fullerton—Did you not think at the time that he proposed to put his hand in your neck that it was a dishonorable demonstration? A. I thought it was immodest; that was the term I applied to it.

Q. And you did not think it was dishonorable?

Mr. Porter—A dishonorable demonstration.

Mr. Fullerton—Dishonorable demonstration then?

The Witness—I thought it was improper demonstrations.

Q. Didn't you think it was a dishonorable demonstration? A. Dishonorable? That word didn't come into my head at that time that I know of; I thought it was immodest, and something that he ought not to do, and I told him so.

Q. I read again [reading]: "I do not want to be made use of by Mrs. Morse or any one else to bring trouble on my two best friends, you and your husband." Is that true? A. I did not want to bring trouble on Mr. and Mrs. Tilton; no, Sir.

Q. You didn't want to be used by Mrs. Morse for that purpose, did you, or any one else? A. I stated to him that I did not want to go and tell these stories.

Q. No; that is not what I am talking about. A. But it was n't put in that language.

Q. I am talking about the language in that letter. A. What is it you want me to answer, Sir?

Q. I ask you if this is true: "I don't want to be made use of by Mrs. Morse, or any one else, to bring trouble to my two best friends, you and your husband?" A. I don't think I stated that to Mr. Tilton, that "I didn't want to be made use of;" that was his own fabrication; the way he put it for himself; the way he dictated it.

Q. The way he dictated it? A. I suppose if that is my writing—I would like to see—

Mr. Fullerton—Certainly. [Handing letter to witness.]

Judge Neilson—Now, the inquiry is, whether that was the fact, Miss Turner, whether that was true.

The Witness—Whether what was true?

Judge Neilson—That clause: "I don't want to be made use of."

Mr. Porter—She has just answered that she did not want to be made use of to injure him.

The Witness—No, Sir; I did not want to be made use of; I did not want to injure him; that is—

Mr. Fullerton—That was on the 10th of January, 1871, wasn't it? A. This was on— Yes, Sir; 1871.

Q. When was the conversation with you in reference to going to school, before or after the writing of that letter? A. It was after, Sir.

Q. How long after? A. Well, I think I left in 1871 for Steubenville—the 13th day of February.

Q. About how long before you left was it that the conversation was about your going to school? A. How long before that?

Q. Yes. A. It was on Sunday, and I left for school, I think, two or three days afterwards.

Q. During the succeeding week, or the same week? A. The conversation was Sunday, and I think Thursday, or Wednesday, or Friday—I don't know which it was—I left.

Q. At the time of signing that letter did you regard the statement contained in it all correct?

Mr. Porter—I did not hear the question.

Mr. Fullerton—Did you at the time of signing that letter regard the statement contained in it as all correct?

Mr. Porter—I object to that question. You have questioned her in regard to this statement in detail, and she has proved that some of them were incorrect, and to ask her if she regarded them as correct, is going over the same ground, and putting the question in a form tending to mislead the witness, and, as I claim, to abuse the witness.

Mr. Fullerton—Well, the gentleman's claims are entirely unfounded. Nobody knows better than he does, that they are unfounded.

Judge Neilson—I think the witness may answer the question.

Mr. Fullerton—Of course she may.

Mr. Porter—I except to your Honor's decision.

Mr. Fullerton—Mr. Stenographer, please read the question, THE TURNER Stenographer read the question as follows:

"Did you at the time of signing that letter regard the statements contained in it as all correct?" A. I don't know that I thought anything about the statements in that letter. I had been talking with Mr. Tilton—

Q. That is an answer, Miss Turner, that is an answer to the question. Now, you observe an erasure in that letter; can you tell me what was written there before that erasure was made? A. No, Sir; it is so badly scratched out I cannot say what it is.

Q. You mean it is so well scratched out? A. Well, Sir, so well scratched out.

Q. Do you recollect the fact that you did erase something that you had written? A. No, Sir, I do not. It has been erased. I don't recollect anything about it.

## MISS TURNER'S SECOND RETRACTION.

Q. Well, I understand that you wrote another letter? A. I wrote a few lines; I don't suppose it would be called a letter.

Q. Who asked you to write that letter? A. The retraction; that short one?

Mr. Porter—The other letter.

Mr. Fullerton—Yes, the other letter. I refer to Exhibit D 10, the small letter? A. Who asked me to write the other one?

Q. Yes? A. Mrs. Tilton, Sir.

Q. Where was she when she asked you to write it? A. When she asked me to write it, she was in this same room where Mr. Tilton had dictated this other writing.

Q. Were you and she there alone? A. Yes, Sir, we were alone in the room. Mr. Tilton was pacing up and down in the hall.

Q. Well, did you write that without any assistance? A. I copied that from Mrs. Tilton's handwriting.

Q. Did Mrs. Tilton prepare the copy before she asked you to write it? A. No, Sir; Mr. Tilton prepared the copy.

Q. Mr. Tilton prepared the copy? A. Yes, Sir.

Q. When? A. That day, I think.

Q. Did you see him? A. No, Sir; I have Mrs. Tilton's word for it.

Mr. Fullerton—Ah! I move to strike that out.

Mr. Porter—I object to this being struck out. It was responsive to the question.

Judge Neilson—I think we will let it stand.

Mr. Fullerton—What, Sir! what she heard from Mrs. Tilton to stand here as evidence!

Judge Neilson—You are now busy with Mrs. Tilton about that letter, and she says that Mrs. Tilton said to her that Mr. Tilton prepared it.

The Witness—She didn't say it at that time.

Judge Neilson—Well, if she did not say it at that time, we will strike it out.

Mr. Fullerton—Very well, Sir; that is the reason that I moved to strike it out.

Q. Did she hand you the paper for you to copy? A. The letter paper, or her copy?

Q. Her copy? A. Yes, Sir.

Q. And you sat down and copied it as she handed it to you, did you? A. I think I read it over first.

Q. In whose handwriting was it? A. Mrs. Tilton's.

Q. Was she in the room when you copied it? A. Oh! yes, Sir; standing by the chair in which I was sitting.

Q. Did that paper embody a truth or a falsehood?

Mr. Porter—I object to that question. He has no right to assume that it embodied a falsehood, and no right to interrogate the witness upon the assumption that it did. He can inquire whether a certain thing was true, but that inquiry must be with the paper before the witness, so that she may see it.

Judge Neilson—I think your inquiry should be in reference to the letter.

Mr. Porter—It should be handed to her.

Judge Neilson—Yes, or read to her.

Mr. Fullerton—Well, Sir, I think that is the better course.

Mr. Fullerton—[Handing letter to witness.] Is that letter in your handwriting? A. Yes, Sir; that is what I wrote.

Mr. Fullerton—I will read it. [Reading:]

January 19th.

MY DEAR MRS. TILTON: The story that Mr. Tilton once lifted me from my bed and carried me screaming to his own, and attempted to violate my person, is a wicked lie.

Yours truly,

BESSIE T.

[To the Witness.] Now, had you heard of such a story as that before writing this letter? A. Why, it was on the paper before me; I read it, Sir.

Q. Is that the first that you had heard of such a story? A. Heard of such a story?

Q. Yes.

Judge Neilson—Such a story—such a statement?

The Witness—Why, I knew that he had carried me from my bed.

Mr. Beach—Oh! no; that is not what you are asked.

Mr. Fullerton—Was that the first that you had heard of the story that Mrs. Tilton had once lifted you from your bed? A. Mrs. Tilton?

Q. No, Mr. Tilton. Was that the first that you had heard of the story that Mr. Tilton had once lifted you from your bed, and carried you screaming to his own, and attempted to violate your person? A. Why, he had carried me from my bed; but he never carried me screaming.

Q. Was that the first that you ever heard of that story, in that form?

Mr. Beach—Being circulated?

Mr. Fullerton—Being circulated? A. Why, I never had seen it circulated, except on this little paper that Mrs. Tilton handed me to copy.

Q. Please answer the question.

Judge Neilson—That in part answers the question.

Mr. Fullerton—Yes, Sir, in part; but that does not satisfy me, Sir; I want the whole.

Judge Neilson—Go on, then.

Q. When you copied the paper that Mrs. Tilton handed to you, was that the first that you had ever heard of the story that Mr. Tilton once lifted you from your bed, and carried you screaming to his own, and attempted to violate your person? A. Well, I had told those persons about it myself; but not that he had carried me screaming.

Q. Now, that is not an answer to the question. I am not asking you what you told persons; I am asking you whether, when you copied that letter which Mrs. Tilton handed to you, that was the first time that you ever heard of the story in that form; and, by "that form," I mean that he carried you screaming? A. I don't think I ever heard anything about it until I saw it in this copy before me.

Q. Well, did you make any attempt to correct it? A. I read it over, and I turned around and said, "Why, I will be calling myself a liar," because it impressed me then that he had carried me from my bed, because he had confessed it to Mrs. Tilton; and I thought that my writing that would be calling myself a liar.

Q. Had he ever carried you from your bed screaming? A. Screaming? No, Sir.

Q. Had he ever attempted to violate your person? A. Well, he had never used any harshness—no, Sir—except when he knocked me down.

Q. Had he ever attempted to violate your person? A. Yes, Sir, he had.

Q. When? A. Because he confessed it to Mrs. Tilton.

Mr. Beach—Ah! We move to strike that out.

Judge Neilson—Yes.

Mr. Fullerton—We move to strike it out, Sir. It is constantly interjected, against all remonstrances.

Judge Neilson—The question is a very simple one, Miss Turner; please pay attention.

Mr. Fullerton—When did he attempt to violate your person?

A. Why, he wanted to harm me that first night that he came in, because he confessed it to Mrs. Tilton.

#### AN ARGUMENT OVER AN ANSWER.

Mr. Fullerton—I move to strike that out—"he confessed it."

Judge Neilson—Yes; the question, Miss Turner, is as to your own knowledge when, if ever, did he attempt to violate your person.

Mr. Porter—The word "attempt" in the question is evidently ambiguous in the sense—

Judge Neilson—"Attempt" means undertake.

Mr. Porter—But, your Honor, it implies Mr. Tilton's intention and act. Of course she cannot tell his intention—

Mr. Fullerton—Oh! yes, she can.

Mr. Porter—When she says that he had the intent, she judges from other circumstances.

Mr. Morris—Let the witness state what she judges from, and not the counsel.

Judge Neilson—The inquiry is put as to an attempt which means an undertaking; which is a plain and simple word and is, of course understood by the witness.

Mr. Porter—But she must answer according to the fact—

Mr. Beach—She has answered that question; she has answered that he did attempt it.

Mr. Porter—Then why ask it further?

Mr. Beach—We have not asked it further, Sir. The question was put to her whether Mr. Tilton did attempt to violate her person, and she said yes, and this argument is gotten up to divert the attention of the jury, and to interrupt our cross-examination.

Mr. Porter—She has answered "Yes," with the qualification, "because he confessed that purpose to Mrs. Tilton;" but she does not know it herself.

Mr. Beach—That is not her language.

Mr. Porter—They propose to—

Mr. Fullerton—The gentleman mistakes the testimony entirely for the purpose of making a foundation for an argument. The witness did not state what he says she said, at all.

Judge Neilson—There is no intention to misstate it, I think.

Mr. Beach—Mr. Stenographer, please to refer to the question so that we may see what the witness did say, and it will appear that the representation of the gentleman is entirely unfounded.

Mr. Porter—My representation is correct, and every juror

heard it. The counsel strikes out the latter part of the answer, leaving the first part to stand alone.

Judge Neilson—The word "yes" answers the question.

Mr. Porter—The word "yes" answers the question falsely, without the qualification. That is precisely it, and he cannot split the answer and make a "yes" qualified a "yes" absolute. Violation of the person may mean rape; violation of the person may mean seduction. She is at liberty to answer according to her understanding of the facts.

Judge Neilson—She can answer yes or no.

Mr. Porter—She can state the facts, but your Honor certainly cannot insist, when she gives the answer, "Yes; for Mrs. Tilton told me that he intended it,"—to split the answer.

Mr. Fullerton—That is not the evidence, Sir. There is nothing of that kind in the case.

Judge Neilson—This is very plain to me, gentlemen.

Mr. Morris—It is very plain to the counsel too.

Judge Neilson—It is very plain to me that whenever a question like this is put on cross-examination, the witness can answer yes or no. When the counsel interrogates her as to any conversation with Mr. Tilton she will have a right to give it, but not till then. The counsel has not asked anything about what Mrs. Tilton told her.

Mr. Beach—Will your Honor permit the Stenographer to read beyond the question and answer that was put, to see whether we have misrepresented the state of this question at all?

Judge Neilson—But even suppose the recollection of the learned counsel is correct?

Mr. Beach—Well, Sir, I want to show your Honor that it is incorrect—that it is totally mistaken.

Judge Neilson—I do not mean to say anything as to that. I merely mean to say that when a question of this kind is put on cross-examination, the witness can answer yes or no, and would not have a right to bring in what Mrs. Tilton said to her, and what is not pertinent to the inquiry.

Mr. Porter—Granted, your Honor. What I contend for is that they shall not insist upon retaining the "yes" alone, and striking out the qualification. I submit that if the answer is rejected at all it should be rejected entire.

Judge Neilson—So much of the answer stands as is responsive to the question.

Mr. Porter—No, Sir; not if it is falsified by striking out the qualification.

Mr. Beach—There is no qualification at all.

Mr. Porter—If, for instance, I am asked whether a person struck another on such an occasion, and I answer "yes; I was so informed immediately afterwards," would your Honor strike out the latter words, "I was so informed," and leave me in the false attitude of having affirmed, as of my own knowledge, what I had affirmed only on information and belief? Now, what I insist upon is, that if that part of the answer is to be struck out, then the question ought to be put anew, and as an independent question, so that the witness shall not be held to the answer "yes," when the answer would be "no," if she understood the question.

Mr. Beach—Now, I say to your Honor that the assumption of the gentleman is a total mis-statement—unconscious, un-

doubtedly, of the manner in which that portion of the answer was stricken out. When she was asked whether Mr. Tilton ever did attempt to violate her person she answered, "yes," without any qualification, and no part of her answer to that question was stricken out; and if your Honor will hear the record read, you will perceive how erroneous the gentleman's assumptions are. It is for the purpose of placing us in an unfriendly and improper attitude in the course of our cross-examination of this witness, that this point is raised, and the effort has been made repeatedly, and the counsel now appeals to your Honor and the jury, to remember things which do not appear upon the Stenographer's record. Therefore, I hope your Honor will hear the questions and answers read, so that the true attitude of this question may appear.

Judge Neilson—If you make the request, of course I shall comply with it. The Stenographer will read the question.

THE TILTON Stenographer here read the question and answer, as follows: "Q. Had he ever attempted to violate your person? A. Yes, Sir, he had. Q. When? A. Because he confessed it to Mrs. Tilton."

Mr. Porter—That is the precise fact which I claim.

Judge Neilson—The inquiry is for a date.

Mr. Porter—I know that, but it was an inquiry immediately following the preceding question, which she had answered "Yes," and the next answer shows that she answered upon what was evidence to her, but is not evidence to your Honor—shows that her affirmative answer rested upon the confession made to Mrs. Tilton. Now, you will bear in mind the allegation is violation of the person. In the ordinary acceptance of the term that might mean violence. This witness swore, in answer to the question whether there was an attempted violation of her person, that he never used harshness to her except on the occasion when he threw her against the door in the parlor conversation; so there is no violence. She has answered that he did on one occasion attempt to violate her person. "When?" "By his confession to Mrs. Tilton."

Mr. Morris—No, no; that is not the record.

Mr. Porter—Oh! but it has been just read.

Judge Neilson—Don't interrupt, gentlemen. Let us have this understood. I will hear you, whatever further you have to say, Sir.

Mr. Porter—Now, Sir, if your Honor thinks that in a case of this kind, where it is apparent by the examination of the witness that she answered "yes," founding her answer as to his intent and attempt upon that confession—if your Honor assumes that it is fair to the witness to say that she has sworn that he attempted to violate her person, and that that is to be the basis of further examination, then we have nothing to do except to submit to your Honor's decision, and except.

Judge Neilson—I shall not be wanting in the disposition to attend to any suggestion that Mr. Porter may make, because I have, of course, a proper degree of respect for counsel of his ability and eminence. My own view, however, is that this is a very simple question. My own view also, generally, is that this witness has not been cross-examined with undue severity, and I am not willing to suppose that

counsel intend to entrap the witness at all. The question is very simple, did he attempt to violate your person? and the witness answers "yes." Now, on re-direct, if not on cross-examination, you can draw out how it was. The next question after that answer was "When?" calling for a date which she could give, and she alone could give, and which she could give without reference to Mrs. Tilton. It was an act, if there was such an act at all, to which she was a party, and in respect to which she and she alone can give the date, or near the date. Therefore I think the inquiry as to the time when it occurred, if ever, did not call for any repetition by the witness of what Mrs. Tilton had said.

Mr. Tracy—Pardon me one word your Honor. I think we have fallen into this error by the manner in which the stenographer has recorded what transpired. As I recollect the question and answer it was precisely this. She was asked whether he had ever attempted to violate her person, and she said "yes," and then hesitated a moment, and there the counsel interjected the question "when?" and she then continued the original answer,—“for Mrs. Tilton told me so,” and then they stopped her. That explains the stenographer's notes and that is the situation and the true situation of this case. She was continuing her answer and the counsel interjected another question, and it is recorded between the first part of her answer and the second part.

Mr. Fullerton—The question we are discussing arose after all that.

Mr. Tracy—Oh no, Sir.

Mr. Fullerton—Let the stenographer read, and you will see.

Judge Neilson—One moment. Mr. Tracy, is it not quite obvious to you that a statement by Mrs. Tilton to this witness could not be received until the counsel asked for it?

Mr. Tracy—Undoubtedly, your Honor; but my point is this: The first answer of the witness, if it had been listened to and received before any other question was put, might have been properly stricken out, the answer being, "Yes; for Mrs. Tilton told me this;" but they ask now to have the first part of that answer struck out, leaving the latter part of it to stand alone as the answer. Now, that cannot be properly stricken out, because it is a qualification of the first part of the answer, illustrating the point that has been made by Mr. Porter. It seems to me that it must be clear to every person in this court room that the witness never intended to say "yes, he attempted to violate my person," without adding, "for he confessed it to Mrs. Tilton." That is the basis of her answer, and that is the only basis of it; because your Honor will see that she has testified that "he never used any harshness to me," which forbids the idea that she intended to say that he attempted to forcibly violate her person.

Mr. Fullerton—Perhaps she is better qualified to answer the question now than before. I will put it again.

Judge Neilson—My notion is, and I want to ask if it is not yours, Mr. Tracy, that upon the cross-examination of a witness of importance and intelligence, if a question be asked and be answered yes or no, and the witness proceeds to give a conver-

sation with some third person, a conversation not called for, it is competent to allow the answer to stand so far as it is responsive, and to strike it out so far as it is not responsive.

Mr. Tracy—Yes, if it be true that the answer would be the same without the qualification as with it, but if she answers, "yes, because I was told so," when if she were required to answer from her own knowledge she would say "no," then it is not proper to strike out the qualification and let the first part of the answer stand.

Judge Neilson—Is it not the office of the re-direct examination to correct such things? And, is not the only reason why we have a re-direct examination at all, simply that and nothing else? You have not a re-direct examination for new matter, but simply to correct and illustrate what has already come on.

#### MISS TURNER'S INTERPRETATION OF MR. TILTON'S OVERTURES.

Mr. Porter—We will take our exception, your Honor.

Judge Neilson—Very well.

Mr. Fullerton—Now, Miss Turner, I put this question to you. Did Mr. Tilton ever attempt to violate your person? I want you to answer it without reference to what anybody ever said to you upon this subject. A. Well, I don't think I could answer that just that way, unless you allow me to explain.

Q. I ask you: In your own view of what he did, can you say that he ever attempted to violate your person? A. In my own views?

Q. Yes? A. No, Sir; I don't think I could say truthfully, in my own view, because—

Mr. Fullerton—One moment; there is no "because" about it.

The Witness—Well, I could not—

Mr. Beach—Wait, Madam, when you are asked to.

Mr. Fullerton—You cannot say, then, in your own view of what he did, that he ever did attempt to violate your person?

Mr. Porter—She is stating.

Mr. Fullerton—Then, from your own view of the case, you cannot say that he attempted to violate your person; is that the answer? A. From my own view at the time of the occurrence, Sir?

Q. Well, from the view which you took of it, unaided by anything that anybody told you at the time you signed this letter, did you think that he had attempted to violate your person? A. At the time I signed the letter, I think I did think that he had.

Q. That is, from your own idea? A. Yes, Sir.

Q. That is, from your own idea?

Mr. Beach—And your own construction of his conduct?

The Witness—From my own ideas?

Q. Yes; from your own idea and construction of his conduct.

A. Not from my own idea. I did not suspect his design at the time.

Q. But, when you signed this letter, did you, from your own idea and uninfluenced by anything that was said to you, believe that he had attempted to violate your person? [A pause, but no answer.] Or, was this the statement of Mrs. Tilton? A. I cannot answer it in any other way than I have done

already; that, at the time of the occurrence, I had not any idea of his wanting to harm me; the thought never came into my head. That is the only way that I can answer that, Sir.

Q. Well, was it true that he had lifted you from your bed and carried you screaming to his room? A. It was true that—

Mr. Tracy—One moment.

Mr. Fullerton—Was that true?

Mr. Tracy—She is proceeding to answer.

Mr. Fullerton—And you are proceeding to interrupt her.

The Witness—It was true that he carried me from my bed to his own bed; but I didn't scream.

Q. Then he didn't carry you screaming. A. Well, carrying—

Q. Then that statement in the letter is not true? A. It is not true.

Q. Were you awake at the time that he carried you from your bed to his? A. No, Sir, I was not.

Q. You were unconscious of the fact, then, that you were being carried? A. Perfectly unconscious.

Q. And when you did become conscious, you were in his bed? A. I was in his bed, and he was standing over me.

Q. Now, why did you sign that statement if it were untrue, namely, that he once lifted you from your bed and carried you screaming to his own?

#### TROUBLE IN FRAMING A QUESTION.

Mr. Porter—I object to that question; because it assumes that the statement was true, when counsel have just shown that it was untrue.

Judge Neilson—She says the statement was untrue.

Mr. Shearman—She said that he never did lift her and carry her screaming.

Mr. Fullerton—And I now ask her why she signed such a statement. Mr. Shearman understands that perfectly.

Mr. Shearman—The counsel modifies his question.

Mr. Fullerton—I do not modify it, at all, Sir.

Judge Neilson—Why did you sign a statement that he carried you from your bed screaming to his own bed, if it was untrue? That is the question.

Mr. Porter—But she has not signed a statement of that kind that he carried her screaming.

Mr. Tracy—It was a denial.

Judge Neilson—The question is: "Why did she sign a statement which contains those words?"

Mr. Porter—But, your Honor, that is only part of the words. The counsel ignores her denial, which is contained in that very paper.

Mr. Beach—Those are the words.

Mr. Fullerton—I will change the question—

The Witness—I did not use those words.

Mr. Porter [to witness]—One moment. Wait till you hear the question.

Mr. Fullerton—Don't speak cross to the witness. That is something that I never do. [To the witness]: Why did you sign this paper, if it were untrue that he once lifted you from your bed, and carried you screaming to his own?

Mr. Porter—I object to that question. It is another palpable attempt to mislead the witness.

Mr. Fullerton—The gentleman is profuse in his charges of attempts to mislead the witness.

Mr. Porter—I shall repeat the charge as often as occasion arises, and call the attention of the Court and the jury and the public to the repetition.

Mr. Morris—It is harmless.

Mr. Fullerton—I supposed you were speaking for the public—I supposed that was the case. The suggestion that I am attempting to mislead the witness has no foundation in fact at all, I am attempting no such thing, and the counsel upon the other side will not in his calmer moments, accuse me of any such attempt. If he were not excited in making his speech for the public he would not have done it now.

Judge Neilson—The matter is simply this. According to her statement he did not carry her screaming; that appears very plainly. Now, then, the simple inquiry is how she came to sign a paper that contains that statement.

Mr. Porter—But it does not contain that statement. How came she to do what she swears she did not do?—that is the question that he puts.

Judge Neilson—But there is her signature on the paper.

Mr. Porter—It is not on the paper containing that statement.

Mr. Tracy—That is the point.

Mr. Porter—She does not assert that statement in that paper; she denies it.

Judge Neilson—Undoubtedly she denies it.

Mr. Porter—Then why does the counsel assume that she asserted it?

Judge Neilson—He does not. Let the stenographer read the question.

THE TRIBUNE stenographer read the question as follows: "Why did you sign this paper, if it were untrue, that he once lifted you from your bed and carried you screaming to his own?"

#### THE REAL PURPOSE OF MISS TURNER'S RETRACTIONS.

Judge Neilson—Now, can you tell why you signed it—why you signed that paper which contained that statement, if it was not true?

Mr. Porter—The paper does not contain that statement.

Judge Neilson—Mr. Fullerton, is the statement that you put in your question in that paper before you?

Mr. Fullerton—Yes, Sir; every word.

Judge Neilson—Please read it.

Mr. Porter—Read the letter.

Mr. Fullerton read the letter as follows:

Jan. 19th.

MY DEAR MRS. TILTON: The story that Mr. Tilton once lifted me from my bed and carried me screaming to his own, and attempted to viol to my person, is a wicked lie."

Yours truly,

EMERIE T.

Mr. Tracy—A lie—not the truth.

Mr. Fullerton—Certainly. [To the witness.] Now, why did that paper if there was no such story?

Judge Neilson [To witness]—That being untrue, how came you to sign that paper containing the statement?

Mr. Porter—The question is, why she signed a paper stating that a thing was untrue, which was untrue in fact?

Judge Neilson—[To the witness.] Can you answer that question?

The Witness—Because I loved Mrs. Tilton, I wanted to do it because she said if I would put my name to that paper, it would get Mr. Tilton out of all difficulties with Henry C. Bowen, that that story had gotten to Mr. Bowen's ears, and that all was needed was my signature and my retraction of that. That is why I signed it. [Applause.]

Mr. Fullerton—That is the result of that speech to the public a while ago. [Laughter.]

Q. You signed it, then, to please Mrs. Tilton? A. Yes, Sir; although I said I would be calling myself a liar. I did not refer to any particular words contained in the statement; I said to myself that he *did* carry me from my bed, but I did not think about the screaming.

Q. Did you regard that as calling yourself a liar when you signed it? A. I regarded as saying that he did not carry me, when he did, and I remonstrated with Mrs. Tilton, and then I signed it because she said, "Do it for me, darling; it will help Theodore." That is the reason I signed it.

Q. Haven't you stated that you regarded the signing of that paper as calling yourself a liar? A. Yes.

Q. And you were willing to do that to please Mrs. Tilton.

Mr. Porter—I object to that question. She has answered it frankly.

Mr. Fullerton—She has answered it already. I guess we will adjourn on that.

The Court here took a recess until 2:30 p. m.

#### MISS TURNER'S LAST MOMENTS AS A WITNESS.

The Court met at 2:30 p. m., pursuant to adjournment, and Miss Beale Turner resumed the stand.

Mr. Fullerton [To Judge Neilson]: I have no further question to ask the witness, Sir.

Mr. Porter—A single question, Miss Turner. What were you engaged at at Beaver? A. I was teaching the rudiments of music, Sir.

Q. In what department? A. In the musical department—the rudiments of music I was teaching at the Seminary in Beaver.

Mr. Porter—That is all.

Judge Neilson—That is all.

Mr. Fullerton—Were you discharged? A. What, Sir.

Q. Were you discharged from there? A. No, Sir; I expected to have resumed my position there last Fall, but when I went back, Dr. Taylor told me that he could not employ me; he thought just the same of me as he had always done, but that he could not employ me on account of the notoriety this scandal had given me; he feared the young ladies would be writing home to their parents that the notorious Beale Turner was there, and that would not do for the school, but he felt he had the same opinion of me. That is the reason I didn't go back.

Mr. Fullerton—That is all.

Mr. Porter—That is all, Miss Turner.

Mr. Hill—If the Court please, we ask its indulgence to examine a witness out of order somewhat, who happens to be in the city and has to leave very soon.

Judge Neilson—Yes, Sir.

#### TESTIMONY OF GEORGE L. PERKINS.

George L. Perkins called and affirmed on behalf of the defendant.

Mr. Hill—What is your residence? A. Norwich, Conn.

Q. How long have you lived there? A. Eighty-seven years.

Q. What is your business at present? A. I am treasurer of the Norwich & Worcester R. R. Co., and have been for about forty years, and director.

Q. Mr. Perkins, how long have you known Mr. Beecher, the defendant, in this case, so as to recognize him when you saw him? A. I don't understand your question.

Q. How long have you known Mr. Henry Ward Beecher so as to be able to recognize him when you see him? A. For many years. I have seen him in his desk here, and at other places.

Q. Have you any personal acquaintance with him? A. I have not. I knew his father about seventy years ago.

Q. Mr. Perkins, did you see Henry Ward Beecher about the 1st of June, 1873? A. Yes, Sir. Shall I state the circumstances?

Q. Please state where you saw him, and what the circumstances were, and when? A. In reading Gen. Tracy's opening for the defence of Mr. Beecher, I observed that he stated—

Mr. Beach—What was it.

Mr. Hill—Wait a moment. [To Mr. Beach]: In reading Gen. Tracy's opening—he was going on to make a preliminary statement, I suppose.

The Witness—I observed—

Mr. Beach—I object to that.

Mr. Hill—The preliminaries are objected to by counsel. You will simply state where and when you saw him, and under what circumstances? A. I was sure, on reading that statement, that I saw Mr. Beecher on the Boston and Albany railroad train; that I entered a car where Mr. Beecher and a lady were seated, and the train that he was on left New York—the New York and Boston Express train left New York at eight o'clock, and arrived in Boston by the way of New Haven, Hartford, Springfield and Worcester about five o'clock in the afternoon. The regular time for arriving at the Worcester station was about three and a half o'clock. When we arrived there Mr. Beecher left with a lady that I supposed to be Mrs. Beecher—not personally acquainted with her.

Q. You have seen her here in court to-day? A. Yes, Sir.

Q. Do you recognize the lady? A. The impression I received was, that she was a lady of the size, height, and very little or no color—pale. That was my impression at that time. I see to-day that I had a correct impression.

Q. You recognize Mrs. Beecher as the person who was with him? A. I thought there was no question about it.

Q. Now, please state the day when you saw him there. A. My impression was that I rode on the cars with Mr. Beecher about a year and a half previous, in the year 1873. I read the

statement a second time, and that brought me to thinking, and I determined the next day to examine the books in my office, expecting to find a record there of the expense.

Q. Of your trip? A. Of going to Boston on official business, I did not find any record, but I found entries in my handwriting on the 4th and 5th—on the 3d and 6th. On the 4th and 5th there were entries in the handwriting of my clerk both days. That is and was presumptive evidence that I was absent. I then supposed that I must have gone to Boston on my own private business, and I went to my family record for 1873, and under the date of the 6th of July—of June, and I found this entry: "Expense to Boston, June 4, \$5.83."

Q. Now, do you say that it was the 4th of June that you saw Mr. Beecher on the cars? A. Well, Sir, to be sure I might be mistaken about the 4th, but I am quite sure it was so. I wrote to the proprietor of the United States Hotel, where I stopped—

Mr. Fullerton—No, that is objected to.

Mr. Hill—That won't be received if it is objected to, and it seems to be.

The Witness—Well, Sir, I suppose the gentleman will allow me to tell the whole truth.

Mr. Fullerton—Oh! certainly.

Mr. Hill—State to his Honor and the jury if you are sure it was the 4th? A. I have no doubt about it. I wish to strengthen that assurance doubly, Sir; that is my only object.

Q. And you have assured yourself in those various ways? A. I had a letter from the proprietor of the United States Hotel—

Mr. Beach—Wait a moment.

The Witness—that I arrived at tea, and occupied room 51.

Mr. Fullerton—I move to strike that out.

Judge Neilson—I think I will let it stand.

The Witness—I didn't hear you. I am not very conversant with Court proceedings; very seldom I am in court. Excuse me.

#### CROSS-EXAMINATION OF GEORGE L. PERKINS.

Q. Mr. Fullerton—Where were you when you saw Mr. Beecher? A. Allow me to trace myself to that point—

Mr. Fullerton—Please name the spot first. A. I saw him at the Junction, on the Boston and Albany Railroad, at Worcester.

Q. At Worcester? A. At Worcester—the Junction.

Q. That is the first that you saw him, was it? A. That is the first.

Q. What time in the day was that? A. I suppose about—as it is the usual time for the train—this New York train to arrive, about twenty minutes past three.

Q. In the afternoon? A. In the afternoon.

Q. What time did the train leave New-York? A. Eight o'clock in the morning.

Q. Of the same day? A. Of the same day, due at Boston at five o'clock.

Q. Did you get on to the same train? A. On to the same train.

Q. And went to Boston? A. And went to Boston that night.



Q. Did you see Mr. Beecher after you got on the train? A. There is where I saw him; met him in the cars.

Q. After the train left Worcester did you see him? A. No, Sir; he got off the train at Worcester with a lady who was with him, who was, as I stated, about sixty years of age, of good size, and not much color.

Q. There is no mistake about the day? A. No, Sir.

Q. It is the same day you went to Boston? A. My record shows that.

Q. It is the same day you went to Boston? A. The same day I went to Boston, on the 4th of June, 1873.

Q. And your attention was not called to it until you read the opening in this case? A. No, Sir; of course I thought no more of it than meeting any other gentleman.

Q. Did I understand you that Mr. Beecher left the train as you got on it? A. No, Sir; I got on the train at the Junction, and we ran down about two miles, and he got off at the passenger station, in Worcester, of the Boston and Albany train. There he left with the lady who was with him, who I supposed was Mrs. Beecher. I knew Mrs. Beecher had a widowed sister residing there, the widow of Judge Martin.

#### RE-DIRECT EXAMINATION OF GEORGE L. PERKINS.

Mr. Hill—How long from Worcester Junction to Worcester City? A. How long from the Junction to the station where Mr. Beecher got off?

Q. Yes. A. It is perhaps ten minutes, more or less.

Q. You reside at Norwich? A. Norwich, Connecticut.

Q. And came up to the Junction that you have spoken of on your way to Boston? A. Yes, Sir; left at a quarter before twelve, and arrived there about three.

Mr. Hill—That is all, Mr. Perkins.

Mr. Hill—Is Mr. Sedgwick in court?

#### TESTIMONY OF GEORGE S. SEDGWICK.

George S. Sedgwick, called and sworn on behalf of defendant.

Mr. Evarts—You are a member of our profession? A. Yes, Sir.

Q. Practicing law in the City of New York? A. Yes, Sir.

Q. Where is your office? A. No. 11 Pine street.

Q. How long since you were admitted to the practice of the law? A. April, 1870.

Q. And have you pursued your profession ever since in the City of New-York? A. Ever since, Sir.

Q. Were you at any time, and, if so, for how long, an assistant in the office of the United States Attorney of that city—of that district? A. I was clerk there from July, 1869, until, I think, July, 1870, and when Judge Noah Davis came in I became an assistant, so-called.

Q. And continued until when? A. January, 1873.

Q. Were you in the United States Attorney's office at the time of the prosecution against Mrs. Woodhull and Miss Claflin? A. I knew them by sight long before that, Sir.

Q. How long had you known them before that? A. Well, I certainly had known them in the Summer of 1871.

Q. So that you knew their appearance? A. Oh! yes, Sir.

Q. And could identify them? A. Yes, Sir.

Q. Now, do you remember seeing the procession in honor of the Commune, or in honor of Roscel, whichever it is called, in the City of New-York? A. I do, Sir.

Q. When was that? A. That was on the 17th of December, 1871.

Q. How long have you been acquainted with the person, or appearance of Mr. Tilton? A. It is impossible for me to say, Sir.

Q. Get it as reasonably correct as you can? A. I knew Mr. Tilton by sight at that time.

Q. Now, Sir, did you see Mr. Tilton and Miss Claflin and Mrs. Woodhull in that procession? A. I did, Sir.

Q. How were they situated as towards each other when you saw them? A. To the best of my recollection Mr. Tilton was marching in the procession between Messames Woodhull and Claflin.

Q. And was there any banner of any kind carried, or supported, by the three, or any one of them? A. I have a decided impression on my mind that Mr. Tilton carried a banner.

Q. And how about the ladies? A. They marched on each side.

Q. Did you observe whether they carried the tassels, or not? A. That is my impression, but I won't be very positive.

Q. Now, where were you when you saw this, Mr. Sedgwick? A. I was on the corner of Waverly-place and University-place.

Q. And which way was the procession heading? A. It was heading—it was turning the corner, as I remember, of Waverly-place and University-place, on its way to Fifth avenue, to the best of my belief.

Q. How long did you stand and observe the procession? A. I should say for fifteen or twenty minutes, until it went by; I don't remember.

Mr. Evarts—That is all.

#### CROSS-EXAMINATION OF MR. SEDGWICK.

Mr. Fullerton—You cannot be mistaken about the identity of these women? A. No, Sir.

Q. You knew them that day? A. I did, Sir.

Q. And you saw them? A. I did, Sir.

Q. In the procession? A. Yes, Sir.

Q. You cannot be mistaken about the identity of Theodore Tilton. A. No, Sir.

Q. You knew him? A. Yes, Sir.

Q. And you saw him in the procession that day? A. I did.

Q. And do you now say positively that you saw him walking between these two women in that procession? A. To the best of my recollection.

Q. You are a lawyer, Mr. Sedgwick? A. Yes, Sir.

Q. And understand the import of my question? A. Yes, Sir.

Q. Do you now say positively that you saw Theodore Tilton walking between Mrs. Woodhull and Miss Claflin in the procession that day? A. I say positively that, as I now remember

it, I saw Theodore Tilton walking between Mrs. Woodhull and Tennie C. Claflin in that procession, as I remember it to-day.

Q. You do not say positively, then, that that was so, as I understand you? A. I can answer only in that way, Sir.

Q. You will not say positively, then, that you saw him there that day in that relative position. A. Yes, Sir, I will say positively—my memory is the best test I have—to the best of my recollection.

Q. You will say positively, to the best of your recollection. Will you swear it, without that qualification? A. No, Sir, I will not.

Q. Knowing these persons perfectly well, and seeing them that day, you are not enabled to say positively that you saw him in the attitude that you have named, are you? A. I am able to state and swear positively that, as I now remember, Theodore Tilton walked between Tennie C. Claflin and Mrs. Woodhull. I won't swear positively as to the fact, because my—

Mr. Fullerton—Very well.

The Witness—Because my memory is liable to—

Mr. Fullerton—That is all I want to ask you.

#### RE-DIRECT EXAMINATION OF MR. SEDGWICK.

Mr. Evarts—You made no memorandum of this? A. Not at all, Sir.

Q. And you have only your memory to rely upon? A. I have reason to doubt.

Mr. Beach—That is not an answer.

The Witness—That is all I have.

Mr. Evarts—Upon your memory have you any doubt that you saw those three persons together? A. No, Sir.

Mr. Fullerton—That is not a re-direct examination.

Judge Neilson—I think the answer may stand.

Mr. Beach [To Mr. Fullerton]: Won't you put this question to him, whether his memory is so accurate upon this subject that he will swear positively he saw him walking between those two women that day in that procession.

#### RE-CROSS EXAMINATION OF MR. SEDGWICK.

Mr. Fullerton—Now, I will put the question again. Is your memory so accurate upon this subject that you will swear positively you saw him marching between these two women that day in that procession? A. Yes, Sir, it is.

Q. Now, will you swear positively?

An *Eagle* stenographer—[To the witness.] What did you say?

The Witness—[To Mr. Fullerton.] Shall I tell the reporter?

Mr. Fullerton—Yes.

The Witness—[To *The Eagle* stenographer.] The Judge asked me if my memory was so positive—

Mr. Fullerton—No, so accurate that you could swear positively you saw him marching between these two women in that procession on that day? A. Yes, Sir.

Q. Now, you mean to swear to it positively, without qualification? A. Not without the qualification I gave before.

Q. Then your memory is not so accurate as to enable you to swear to it positively? A. Possibly not.

Q. Do you know Mr. John Swinton? A. I do not.

Q. Did you see Theodore Tilton marching in that procession with anybody else that day? A. Not to my recollection.

Mr. Fullerton—That is all.

Mr. Beach—Wait a moment.

Mr. Fullerton—In what part of the procession were they? A. Immediately behind the catafalque.

Q. Immediately behind it? A. I think so, yes, Sir; I remember seeing a colored man with them; I think they followed immediately behind, but I won't swear positively to that; to the best of my recollection.

Q. And to the best of your recollection he was carrying the flag? A. Yes, Sir.

Q. Are you positive about that? A. Qualified in the same way that I qualified my other answer, to the best of my recollection.

Q. And you think the ladies carried the tassels of that flag? A. That is my impression.

Q. And you qualify that in the same way? A. Yes, Sir.

Q. Can you state anything on that subject that you don't qualify? A. I can swear positively I saw Theodore Tilton marching in the procession with Woodhull and Claflin.

Q. Now, it is positive, is it? A. Yes, Sir.

Q. Without any qualification? A. Without any qualification. The only point I qualified was the banner part and the tassel part.

Q. You don't qualify the other parts, do you? A. No, Sir, I didn't intend to.

Mr. Fullerton—Now, I think, Mr. Sedgwick, you may be excused.

Mr. Evarts—That is all.

Mr. Morris—That is all.

Mr. Fullerton—[*Sotto voce*.] That is a pretty exhibition.

#### TESTIMONY OF CECIL C. HIGGINS.

Q. Cecil Campbell Higgins was here called and sworn in behalf of the defendant.

Mr. Evarts—You are a member of our profession? A. I am, Sir.

Q. And practicing in the City of New-York? A. I am, Sir.

Q. How long have you been admitted to the bar? A. Nearly two years.

Q. And where do you pursue your practice? A. No. 11 Pine street.

Q. Did you see the procession for the Commune or Roscel in December, 1871? A. I did, Sir.

Q. In the City of New-York? A. I did, Sir.

Q. You were then residing in the city? A. I was, Sir.

Q. Are you an old resident of the city? A. No, Sir; I have lived there nearly four years.

Q. Now, Sir, did you know the persons of Mr. Tilton, and of Miss Claflin, and of Mrs. Woodhull? A. I did, Sir.

Q. Did you see those three persons, or any, or either of them, in that procession? A. I saw all of them, Sir.

Q. And how were they situated toward each other at the time you saw them? A. They were riding in a carriage.

Q. Together? A. Yes, Sir.

Q. How were they in respect to a banner? A. I don't remember that.

Q. Now, where did you see these persons? A. At the corner of Fourteenth-st. and University place.

Q. Fourteenth-st. and University place? A. Yes, Sir, Union Square.

Q. Yes; at the corner of Union Square? A. Yes, Sir.

Q. Where the Lincoln Monument is? A. Yes, Sir, just there.

Q. How long did you observe that procession? A. I suppose I stood at the corner ten or fifteen minutes, I should say; I don't know precisely, but there was quite a crowd there, and I could not get through, and I had to stand some time there.

Q. You saw these persons together? A. Yes, Sir.

#### CROSS-EXAMINATION OF MR. HIGGINS.

Mr. Fullerton—Mr. Higgins, are you positive that you saw these three persons in a carriage? A. I am as positive as I can be about anything.

Q. You have not any doubt at all in your mind? A. No, Sir; none whatever.

Q. And you swear positively to that fact, do you? A. As positive as I can swear to anything in my own recollection.

Q. I don't know how positive that is? A. That is the best I can do.

Q. I don't want you to compare it with anything else in your recollection. Will you swear positively you saw Mrs. Woodhull, Miss Claflin, and Mr. Tilton in a carriage that day? A. Just as sure as I am that you are standing there.

Q. I don't know how sure you are of that. A. Well, my eyesight—

Q. I don't want you to compare it with anything? A. Well, I am positive.

Q. And you swear to it without qualification? A. I do.

Q. You saw these three persons in a carriage that day, riding in the procession? A. Yes, Sir; I think so.

Q. Are you positive? A. Yes, Sir, I swear to it positively.

Q. How long had you known Mr. Tilton? A. I didn't know him at all; I never have known him.

Q. You know what I mean. A. I have seen him on the street, and had him pointed out to me.

Q. How often had he been pointed out to you before that? A. Four or five times, I should say; perhaps more, not less.

Q. During what period of time have you had him pointed out to you before that? A. I should say, Sir, within a year, or eighteen months perhaps, at different times; I don't remember the times, but passing in the street—in Wall-st. and Broadway,

Q. In New-York? A. Yes, Sir.

Q. How often had you seen Mrs. Woodhull and Miss Claflin? A. I had seen them several times in the street, and had them pointed out in the same way.

Q. And that is the way that you knew these people? A. Yes, Sir.

Q. Was any one else in the carriage? A. My impression is there was a fourth person; I cannot swear to that, for I don't know who he was, of my own knowledge; I cannot swear positively to that.

Q. Now, their relative positions in the carriage—what were they? A. My impression is that Mr. Tilton and a fourth person, if there was any, were sitting on the front seat; it was a barouche, if I remember right, an open carriage, and the two ladies were in the back seat; I think so; I won't be positive about that.

Q. You say if you remember right. Please remember right, and tell me if it was an open carriage? A. As far as I can remember anything, those were the relative positions.

Q. Do you say it was an open carriage? A. Yes, Sir.

Q. It was not a clarence? A. No, Sir, it was an open carriage; I am quite sure about that; at least I think so; I cannot swear positively, but I think so.

Q. The two ladies—where were they sitting? A. On the back seat.

Q. How is it that you can be positive that you saw them sitting on the back seat, if you are not positive it was an open carriage? A. Well, Sir, you can see anybody through the door of a carriage.

Q. Did you see them through the door of the carriage? A. I think not; my recollection and belief is that they were sitting in an open carriage.

Q. Can you not speak positively on the subject? A. No, Sir; I would not like to swear positively to it.

Q. You don't remember distinctly whether it was an open carriage or a close carriage? A. I think it was an open carriage.

Q. You don't remember positively? A. I would not want to swear positively; no, Sir; I would not.

Q. Was there any banner? A. I don't remember any such thing; I don't remember anything about that.

Q. You have no recollection of it? A. None at all, Sir.

Q. You remember there were four persons in the carriage? A. I won't swear there were four; I think there were four.

Q. There were not more than four? A. No, Sir, I think not.

Q. You were familiar with the city? A. Yes, Sir.

Q. How far was that from the corner of Washington place; and University place? A. Waverley place is Sixth-st., I believe this was the corner of Fourteenth-st.

Q. How? A. Waverley place is supposed to be Sixth-st.

Q. Yes? A. It ought to be, in the relative position as to the rows of streets in the city, and, I think, was, the corner of Fourteenth-st.

Q. Yes; then it was eight streets from where Mr. Sedgwick saw them? A. Yes, Sir.

Q. To the spot where you saw them? A. Yes, Sir.

Q. When you saw them they were in a carriage? A. Yes, Sir.

Q. Now, which way was the procession going? A. My impression is that they were disbanding then, Sir, but I cannot swear positively to that; my impression is they came—they were coming from Fifth-ave. along Fourteenth-st.; but that is merely an impression.

Q. What time in the day was it? A. Sometime— It was after dinner. Sir: the dinner hour being one o'clock, I remember, at that time, my dinner hour on Sundays, and I think it was about between two and three.

Q. Two and three o'clock? A. Yes, Sir.  
 Q. Had you been in company with Mr. Sedgwick? A. I had not, Sir; I didn't know him at that time.  
 Q. Were you in company with any one that day? A. No, Sir; I was going up town.  
 Q. How? I was then going up town walking.  
 Q. Where had you been? A. Been to dinner, Sir.  
 Q. Where did you dine? A. Corner of Waverley and University place; No. 1, I think it is.  
 Q. How? A. No. 1, I think it is, corner of Waverly, on Washington Square—Waverley and University place.  
 Q. Did Mr. Sedgwick dine there that day? A. No, Sir; I didn't then know him.  
 Mr. Fullerton—I believe that is all.  
 Mr. Tracy—Mr. Southwick.  
 Mr. Shearman—Wait a moment, Mr. Higgins.

## RE-DIRECT EXAMINATION OF MR. HIGGINS.

Mr. Evarts—Mr. Higgins at the time that you saw them, or while you stood there, was the procession broken up, or breaking up, or coming to an end? A. That is my impression, Sir; that is my impression.  
 Q. That was the end of the procession? A. I think so, Sir.  
 Q. The time you saw them was as they came to that point, and then disbanded? A. Yes, Sir.  
 Mr. Tracy—Mr. Southwick.

## TESTIMONY OF JOHN C. SOUTHWICK.

John C. Southwick called and sworn on behalf of the defendant.  
 Mr. Tracy—Mr. Southwick, where do you reside? A. In New-York, No. 16 West 50th.  
 Q. Are you engaged in business in the City of New-York? A. I am, Sir.  
 Q. With whom? A. Jackson S. Schultz.  
 Q. You are a partner of Mr. Schultz? A. Yes, Sir.  
 Q. How long have you been engaged in business with Mr. Schultz? A. Twenty-three years, as clerk and partner; 18 years as partner, and 5 years as clerk.  
 Q. Did you formerly reside in Brooklyn? A. I did, Sir.  
 Q. For how many years did you reside in Brooklyn? A. Twenty-two years; 21 years, I think.  
 Q. When did you remove to New-York? A. I removed to New-York a year ago June—last June, I think.  
 Q. Do you know Franklin Woodruff? A. I do, Sir, very well.  
 Q. How long have you known him? A. I have known him, I should say, 15 or 16 years; perhaps longer.  
 Q. Do you know Theodore Tilton? A. I do, Sir.  
 Q. How long have you known him? A. About 7 or 8 years to speak with, and I should say 15 to 20 years by sight.  
 Q. Did the plaintiff at any time apply to you to aid him in the establishment of *The Golden Age*? A. He did, Sir.  
 Q. When was it? A. In the early part of 1871.  
 Q. Where did he make that application to you? A. At my house.  
 Q. Did any one come with him? A. Yes, Sir.

Q. Who? A. Franklin Woodruff.  
 Q. State what transpired between yourself, Tilton and Woodruff on that occasion? A. Mr. Woodruff came in one evening. I should say about half-past 7 or 8 o'clock, after tea, and said: "Mr. Southwick, I wish to have you"—  
 Mr. Beach—Who?  
 The Witness—Mr. Woodruff said to me—  
 Mr. Beach—Wait one moment; who was by?  
 The Witness—Mr. Tilton and Mr. Woodruff.  
 Mr. Beach—Well, you said Mr. Woodruff came in? A. I said Mr. Woodruff came in, not come in.  
 Judge Neilson—Was Mr. Tilton with him when he came in? A. Yes, Sir; he was.  
 Mr. Beach—What was that? What was that criticism you indulged on me?  
 Mr. Tracy—Go on. You can ask that on cross-examination.  
 Mr. Beach—No, Sir; I want to know what he said.  
 The Witness—I thought you reflected on me. You said Mr. Woodruff "come" in; I said "came" in.  
 Judge Neilson—The reason why counsel interfered and called your attention was that it appeared from your statement that Mr. Woodruff came in alone.  
 The Witness—I said Mr. Woodruff and Mr. Tilton.  
 Judge Neilson—No.  
 The Witness—Didn't I? I beg your pardon.  
 Mr. Tracy—The record will show.  
 Judge Neilson—It is immaterial what the record will show. I recollect perfectly, and it is proper that the counsel should ask.  
 The Witness—Yes, that is all right.  
 Judge Neilson—There is no reflection about it.  
 Mr. Tracy—The witness had preceded the statement—in the first part of his statement he said that Tilton and Woodruff came to the house together.  
 Judge Neilson—I remember what he said. At that moment it looked as if Mr. Woodruff came in alone.

## THE WORK OF STARTING THE GOLDEN AGE.

Mr. Tracy—Now, go on and state what occurred.  
 A. I said Mr. Woodruff and Mr. Tilton came to my house that night, and Mr. Woodruff said, "John, I wish to have you engage"—or "be"—"to help Mr. Tilton and myself and a few others. We will all start a paper for him!" Well, I said, "Mr. Woodruff"—in the presence of Mr. Tilton—"I am rather surprised to have you come and ask me to help Mr. Tilton." I felt well enough disposed towards him, but I did not know him well enough—I rather wondered at Mr. Woodruff coming to me. Mr. Woodruff says: "I wish you to loan me, or to loan Mr. Tilton, \$1,500, and I wish to have Mr. Schultz enlisted also." I said, after talking, as we did for half an hour, or three-quarters of an hour—I finally said to Mr. Tilton and Mr. Woodruff that I would loan the money—that I would see Mr. Schultz, and if Mr. Schultz would loan me the money, that I would do the same.  
 Q. Well, what further was said? A. Well that is about all that I recollect, the first night. Of course there was other talk; for instance—

Q. Was there anything said that night, and if so, what, on the subject of his having—the plaintiff having suffered from the treatment of Mr. Bowen? A. No, Sir. I would like one minute. Mr. Tilton, that night, laid out the plan; he said that he could edit a paper, that he could carry it on cheaper than almost anybody that he knew of, and spoke of it in that way, that he was very competent, and Mr. Woodruff said so. It was at the second interview that you asked—about Mr. Bowen.

Q. Well? A. At the second interview they had seen Mr. Schultz, and Mr. Schultz says: "If John wishes—if he will join, I will join," and I agreed; but before I agreed—To go back—before I agreed, I hesitated, and Mr. Woodruff said: "If you knew, John, what Mr. Tilton has suffered at the hands of Henry O. Bowen, you would loan him double that amount. I know you well enough to know that you would do that."

Q. That was at the second conversation? A. Yes, Sir.

Q. Well, you and Schultz finally agreed to loan \$3,000? A. \$1,500 each; yes, Sir.

Q. After that conversation did Mr. Tilton apply to you again on the subject of Mr. Claflin—H. B. Claflin—loaning him money? A. He did, Sir.

Q. Is Mr. Claflin a relative of yours? A. He is.

Q. What relation? A. My uncle.

Q. He is your uncle? A. Yes, Sir.

Q. What did Mr. Tilton say to you, if anything, about desiring the aid of Mr. Claflin? A. He said to me, "I would like to have the aid of your uncle, Horace B. Claflin." I told him that I did not think Mr. Claflin could be induced to go into the enterprise, and gave him my reason, that while Mr. Claflin hadn't anything perhaps against him, I didn't believe that he would; he had other enterprises, &c. Mr. Tilton made the special point: "I wish, Mr. Southwick, that you would ask Mr. Claflin to ask Henry Ward Beecher whether he, Mr. Beecher, will advise Mr. Claflin to take stock in *The Golden Age*, and he will do it." I went to Mr. Claflin. I then stated to Mr. Tilton in substance—

Q. Did you go to Claflin? A. Yes, Sir; I did go to Claflin.

Q. What did you say to Claflin? A. I told Mr. Claflin of the request which Mr. Tilton had made of me, and Mr. Claflin says: "I will ask Mr. Beecher." One Sunday after church, Mr. Claflin asked Mr. Beecher.

Mr. Beach—Wait one moment.

The Witness—Well, I was telling what I told Mr. Tilton.

Mr. Tracy—Go right on. I will get at it in a moment. Did you afterwards see Mr. Claflin after he had seen Mr. Beecher? A. I did, Sir.

Q. Did Mr. Claflin report to you that he had seen Mr. Beecher and spoken with him on the subject? A. He did, Sir.

Q. Did he tell you what Mr. Beecher had said? A. He did, Sir.

Q. Did you afterwards see Mr. Tilton? A. I did, Sir.

Q. Did you report to Mr. Tilton Mr. Claflin's reply? A. I did, Sir.

Q. What did you say to Mr. Tilton that Mr. Beecher had said on the subject of Mr. Claflin's subscribing? A. I merely said to Mr. Tilton that Mr. Beecher had said to Mr. Claflin that he could not advise him to take any stock in the paper, that he

treated it in an indifferent manner, and told him that he must treat it the same as he would any other enterprise.

Q. Now, Mr. Southwick, will you repeat more in detail, if you can, what Mr. Tilton said about Mr. Claflin's consulting Henry Ward Beecher on the subject of his subscribing for *The Golden Age*. I want Mr. Tilton's precise language, if you can repeat it. A. I have repeated it as near as I can recollect it, and I think that is correct; that he repeated—He said, "I wish to have your uncle join in this enterprise." I told him that I did not think that he could be induced to enter it—to go into it.

Q. Did he say—

Mr. Beach—Wait a moment.

Mr. Tracy—Did he give any reason why he desired Mr. Claflin's name? A. He did. He said: "I know he is a very strong friend of Mr. Beecher; I know he is—I wish to have him for his name and his influence."

Q. Why did he want him for his name and his influence? A. Well, he even expressed to me—

Q. Did he say? A. No; he said he wished to have him for his name and his influence; that is all.

Q. Did he say anything, and if so what, about Mr. Claflin being a friend of Henry Ward Beecher? A. He did, Sir; he said he was a very strong friend of Henry Ward Beecher.

Q. Now, what did he say, if anything, about Mr. Claflin's consulting Mr. Beecher on the subject of his subscribing, and what did he say Mr. Beecher would advise on that subject if consulted? A. I told it once. He said that Mr. Claflin—says he, "You tell Mr. Claflin to ask Henry Ward Beecher whether or not he, Mr. Beecher, will advise Mr. Claflin to join this enterprise, and I tell you"—he said in an emphatic manner—"he will advise him."

Q. That Henry Ward Beecher would advise him? A. That Henry Ward Beecher would advise Mr. Claflin.

Q. Well, when you reported to Mr. Tilton that Henry Ward Beecher did not advise Mr. Claflin to take stock in *The Golden Age*, what did Mr. Tilton say? A. Mr. Tilton said he was surprised and sorry. I did not tell Mr. Tilton exactly all that Mr. Claflin said; I told that to Franklin Woodruff; but I told him in substance that, that he refused, that he treated the matter in an indifferent manner.

#### MR. TILTON PROUD OF THE WOODHULL BIOGRAPHY.

Q. Now, when was this conversation between yourself and Tilton about Claflin's subscribing for the stock of *The Golden Age*? A. I hadn't any date. I didn't take any date or memoranda; I only know that it was shortly after—after Mr. Schultz and myself had been induced to go into *The Golden Age*.

Q. Well, was it before *The Golden Age* started? A. Yes, Sir, I should say it was.

Q. Before the issuing of the first number? A. Yes, Sir.

Q. Do you remember when the first number of *The Golden Age* was issued? A. Well, I think it was issued in 1871, somewhere about March.

Q. About March, 1871? A. I have got a bill of it. I could tell by looking at the date, but I think it was about March.

Q. March 4th, 1874, was the first number. Well, you say that you and Mr. Schultz subscribed \$3,000 to the stock of *The Golden Age*? A. Yes, Sir.

Q. Now, from that time on did you see Mr. Tilton from time to time? A. Yes, Sir; I used to meet him.

Q. Do you remember the publication of what is known as the *Life of Victoria Woodhull*? A. I do, Sir; very well.

Q. Did you see Mr. Tilton soon after the appearance of that life—that publication? A. I did, Sir.

Q. Where? A. I met him on the Wall-st. ferry-boat as I was going home.

Q. Did you have a conversation with him on the subject of his publishing that *Life*? A. I did, Sir.

Q. What was said? A. I met Mr. Tilton on the boat, spoke with him, and said, "Mr. Tilton, are you out of your mind?" He turned to me and said, "John Southwick, I know very well what you mean; you refer to my writing the life of Mrs. Woodhull." I said, "That is just what I did mean." He then said, putting his hand on my shoulder, and speaking in so loud a tone that I said to him, "Mr. Tilton, be a little quiet, because people may hear us," and he said in an emphatic manner, putting his hand on my shoulder, "John Southwick, I took an oath before Almighty God, when I was oppressed—on my bended knees, when I was oppressed by Henry C. Bowen, that the first poor creature who demanded assistance or aid from me I would give it to her, and that poor creature came in the person of Mrs. Woodhull, whom I know to be a natural born lady, and as pure as an angel."

Q. Well, did you have further conversation at that time in regard to Mrs. Woodhull? A. I did, Sir.

Q. How long did that conversation continue? A. It continued going from the boat up to Mr. Moulton's, where I left Mr. Theodore Tilton.

Q. At the house of Francis D. Moulton? A. Francis D. Moulton; yes, Sir.

Q. Was he during that walk engaged in talking about Mrs. Woodhull? A. He was, Sir.

Q. What was his manner of speech when speaking of Mrs. Woodhull? A. It was very earnest, very sincere I thought, and he continued the conversation going up the hill.

Q. What did he say further, if anything, in regard to his esteem and affection for her? A. He said in answer to a question of mine—I said, "Mr. Tilton, how is it that Mr. Woodruff, who certainly is a friend of yours, has shown himself to be such, because Mr. Moulton has been sick during the time that you have been trying to raise this money, and he has raised that money, a portion of the time at least, and he is the man—perhaps the most prominent one of all to help you; how is it that Mr. Jackson S. Schultz, who has always admired you very much, and how is it that Isaac H. Bailey, who is probably as intimate a friend as you have in New-York City, to say nothing of myself, in agreeing to loan the money—how is it that every one are all against you?" Mr. Tilton said to me: "What does Mr. Schultz know about Woodhull, or what does Bailey, or what does Woodruff, or yourself? you know nothing about her. I know the lady. I am ac-

quainted with her. I have written her life, and I glory in it.

Q. Did he assign to you, at that time, any reason, except what you have stated, for his writing or publishing the *Life of Woodhull*? A. No, Sir; I don't think he did, any reason at all; I know he did not; he never did.

Q. Now, was there anything said in that conversation, and if so what, about the effect that that publication would have upon the newspaper? A. Well, I cannot say on that occasion that there was; no, Sir.

#### MR. TILTON DENIES THE WOODHULL CHARGE OF ADULTERY.

Q. Do you remember the publication of what is known as the *Woodhull scandal*? A. I do, Sir, very well.

Q. Did you see Mr. Tilton soon after that publication? A. I did, Sir.

Q. Where did you see him? A. I met him opposite St. Ann's Church, on my way home, in Clinton-st.

Q. Did you speak to him on the subject of the scandal? A. I did, Sir; he spoke first to me about it, though.

Q. Well, what was said? A. He said—I think he said this: I won't swear—that I was the first man, but at any rate that I was among the first—

Q. Well, when was it? A. That was a few nights before the election. My impression is it was only two or three nights, because he coupled it with this remark. He said to me: "John Southwick, you are about the first friend that I have met to talk on this subject." I said to him, says I: "Of course you will deny it"—about these horrible statements, something of that kind. I said: "Of course you can deny it." "No," he says, "I cannot deny it." I said to him: "Has Henry Ward Beecher been guilty of adultery with your wife?" "No, he has not." "Why can't you deny it?" "I cannot deny it. There is a wheel within a wheel." I then asked him if it were true that Francis D. Moulton had taken a pistol to Henry Ward Beecher's head—had gone to his house." He says: "I can't answer that." I said then: "Mr. Tilton, if Mr. Francis D. Moulton took a pistol to Henry Ward Beecher's head, I think he is an informal coward, and as small a man as I am I would like to have him take a pistol to my head." Mr. Tilton then said emphatically: "John, there isn't one word of truth in that part of the statement, but I am all in a whirl, and I am going around to see Franklin Woodruff, who has a very level head." That is the exact language he used.

Q. That you say was before election? A. Yes, Sir; I am sure it was before election, and I think the very night—As I see, the election was on the 5th or 6th—the first Tuesday. I think it was Saturday night; it was at any rate within two or three nights.

Q. Did he say anything more, further than that there was a wheel within a wheel; did he amplify that at all? A. He said that his head was all in a whirl, and he was going around to see Franklin Woodruff. We talked half an hour.

Q. You say he said that he could not deny it, because there was a wheel within a wheel. Now, did he amplify that part of his statement any further than that? A. I don't recollect that he did. Those are the main strong points that struck me.

Q. What was his manner when you asked him—when he replied to you when you asked him: "At least you can tell me whether Henry Ward Beecher is guilty of adultery with your wife," what was his manner when he said that? A. He said: "No, Sir, he is not." He said it in a decided, positive way.

MR. SCHULTZ'S CHARGE OF BLACK-MAIL.

Q. Now, did you see Mr. Tilton again—did you see Mr. Tilton on New Year's Day, the first of January, 1873, at Moulton's house? A. I did, Sir.

Q. Did you have any talk with him that day about your partner, Mr. Schultz, having called him a black-mailer? A. I did, Sir.

Q. Well, tell us what was said then and there on that subject? A. I was calling on Mrs. Moulton, and another lady was there in the room, and Mr. Tilton came in and said: "I wish you a happy New Year. What is that you say about Beecher?" I had been speaking to Mrs. Moulton about Mr. Beecher's speech made on December 28d, the celebration of New-England, which came that year on Monday, and was on the 22d—what a remarkable, what a fine speech it was, and that it was all written on the bill of fare, the notes of which I had, I think, then in my pocket; and I said: "Mr. Beecher"—I was talking with Mrs. Moulton, and Mr. Tilton said, as he came in, "What is that you say about Beecher?" and I repeated to him what I had said to Mrs. Moulton. Mr. Tilton says: "Your partner has been pleased to call me, I understand, within a few days, a blackmailer." I said: "Mr. Tilton, if he has, I think he has had good cause for it." Says he: "He has not had good cause for it." I said: "Mr. Tilton, I know Schultz well enough to know that he is not a malicious man, he is as kind-hearted a man as ever lived, and I know what he has thought of you until lately, and if he has called you a blackmailer I think he has had good cause for it." Says he: "He has not, and Henry Ward Beecher has written," or "will write"; I am not sure whether he said, "has written," or "will write," one of the two—"has written," or "will write him a letter to-day, and he will retract that to-morrow." I said, "Mr. Tilton"—

Q. Whom did he mean by "he"? A. Jackson S. Schultz—that Mr. Beecher had written to Jackson S. Schultz.

Q. And that Jackson S. Schultz would retract the charge of blackmailing to-morrow? A. Yes, sir; I said to Mr. Tilton, if Mr. Beecher had been foolish enough to write Mr. Schultz, or should be induced to write Mr. Schultz, that he would get just as good as he sent, because I knew that Mr. Schultz would not make a charge without he had some ground; Mr. Tilton then again said: "He will retract it to-morrow." I then turned to Mr. Tilton and said: "Mr. Tilton, whether Mr. Schultz has made the charge or not, I don't think New Year's is the day, or the place in the presence of two ladies, for you to arraign my partner and bring your private griefs here," and I bade them all good morning; and that is the whole of it.

Q. Did you afterward see Mr. Tilton at your office? A. I did, Sir; yes, Sir; some time after.

THE TERMS OF THE SUBSCRIPTION.

Q. How many days after that did he come there and have an interview with Mr. Schultz? A. Well, I should judge it was two or three days after.

Q. Was that the occasion when Mr. Bailey was with him? A. Yes, Sir.

Q. You heard Mr. Schultz's evidence on the stand, describing the interview between himself and Mr. Tilton at that office? A. Yes, Sir.

Q. And was this the same interview? A. That was the same interview; yes, Sir.

Q. Now, Sir, you have stated that you and your partner subscribed to *The Golden Age*. Will you state the terms of that subscription? A. We were to loan—

Mr. Beach—I suppose that is in writing, Sir.

Mr. Tracy—No, there is no proof that it is in writing, yet. It was a verbal subscription, for aught that appears up to this time, and for which notes were subsequently given, as your Honor will remember, on the 16th day of September, 1871, the subscription having been made in the Spring or Winter previous, that is, the agreement to subscribe, and notes were given for half of it, \$750, on the 16th of September, 1871, I think. Those notes were taken up by subsequent—

Mr. Beach—Oh, well, it is not of any consequence, Sir. Go on.

Mr. Tracy—What were the terms of that subscription? A. We were to loan Mr. Tilton, each of us, \$1,500, for which we were to receive seven per cent. per annum. I drew the form of the notes, I think, and perhaps drew some of the notes; at any rate Mr. Woodruff sent up the form of a note, and I objected to it. It gave us permission to examine the books of *The Golden Age*, and the accounts, &c., as I recollect it, and I sent back to Mr. Woodruff that whatever money I loaned to Mr. Tilton I would rather loan to him right out, and I drew a form of note something like this: "To value received, I promise to pay John C. Southwick \$700, with interest at seven per cent., contingent upon the success of *The Golden Age*, of which I am the sole editor and proprietor." That form was adopted, and Mr. Woodruff said that I was right.

Q. When did you pay any amount on your subscription that you had made to *The Golden Age*; when did you pay it? A. I think Sept. 15th; I have looked at my books—

Q. Sept. 15th, 1871? A. I think that is the date of my check.

Q. And what did you receive for that check from Mr. Tilton? A. I don't recollect; I received afterwards—I received afterwards this note, signed in the—

Q. In the way you have stated? A. The form I have stated; yes, Sir.

Q. What proportion of that subscription did you pay at that time? A. \$750.

Q. One-half? A. Yes, Sir.

Q. And, as I understand, all the subscribers did the same? A. Well, half of what they agreed.

Q. Now, afterwards, was there any change made in your agreement about *The Golden Age*; and if so, when was it? A. The change was made in 1872; I think somewhere in the

Summer. Shall I—can I state what Mr. Woodruff—how it was brought about?

Q. Go right on? A. Mr. Woodruff came to my house and said—

Mr. Beach—You need not state that.

Mr. Tracy—Oh! yes; Mr. Woodruff was the agent of the plaintiff, who consummated that arrangement, as already appears in evidence.

Mr. Beach—We object to it. There is no such evidence in the case.

Mr. Tracy—You must forget the evidence of Mr. Woodruff, I take it.

Mr. Beach—No; I don't forget it.

Judge Neilson—Well, a change was made.

The Witness—A change was made; yes, Sir.

Judge Neilson—Can you say, without giving the conversation—can you say whether that was on the intervention of Mr. Woodruff? It was, entirely, Sir.

Judge Neilson—Now, go on.

Mr. Tracy—On the intervention of Mr. Woodruff? A. Yes Sir.

Q. What was the reason assigned for that change?

Mr. Beach—Objected to, Sir.

Judge Neilson—I don't think you can take the conversation.

Mr. Tracy—I don't ask for the conversation now. [To Mr. Shearman.] Can you turn to the testimony of Mr. Woodruff on that subject? I ask now for the reason that led to that change. I will take another question, preliminary, before we get to that. [To the witness:] Did you have a talk with Mr. Tilton about he change? A. I don't recollect that I did.

Q. Did you before or after it was made? A. I don't recollect that I did.

Q. Well, what was the change that was made then? A. Well, the change was made that we were to give up the notes which we held to Mr. Tilton; and then to be released from further payment of further moneys—any further amount.

Q. You were to give up the security that you had received for the one-half paid in? A. To make him a present in consideration of being released from any further payment.

Q. Yes; any further payment? A. Yes, Sir.

Q. Now, with whom was that arrangement made? A. With Franklin Woodruff.

Q. For whom did he claim to act in that arrangement?

Mr. Beach—That is objected to, Sir; wait a minute.

#### THE CONVERSATION BETWEEN MR. SOUTHWICK AND MR. WOODRUFF OBJECTED TO.

Mr. Tracy—Now, I propose to show that Mr. Woodruff claimed to act as the agent of Mr. Tilton; that the arrangement was consummated with Mr. Woodruff, and affirmed by Mr. Tilton, and the note returned, and the release given for the balance of the subscription.

Mr. Shearman—Mr. Tracy requests that I should read a little of the evidence of Mr. Woodruff. I read from page 349 of the printed book. [Reading:] Mr Tilton told me about his being thrown out of *The Union and Independent*, and Mr. Moulton had talked with me about the case of

Mr. Tilton's position, and Mr. Tilton was out of employment, and he expressed a wish that if he could only have a paper, and I, without thinking of it, asked him what it would cost to start a paper.

Then he proceeds to relate Mr. Tilton's conversation with him on that subject; then he goes on to tell how he went around and made the arrangement; and then he tells in relation to this very matter what was done between him and Mr. Tilton. [Reading:]

In June, 1872, Mr. Tilton says, one day, that *The Golden Age* is about paying its way, and that he only owed two or three hundred dollars, \* \* \* and I said to Mr. Tilton, "Now, instead of calling in for the rest of this money, wouldn't it be better for these people that have—for the contributions—for the notes—for the amount that has been paid in, that they should surrender them as a part of the loss that had been incurred in starting *The Golden Age*, and instead of calling in the other \$6,000, and you have \$12,000 in debt, not call it in, relinquish it, and be free of debt."

I beg your Honor's pardon, but this is not very intelligible.

Well, that was discussed, and he said he did not think they would do it. I said, "I think they would do it;" and he said it would be a very generous thing if they did. I told him I would try it; so I saw them, and that was the way it was disposed of.

Judge Neilson—I think this will go on, on that supposition.

Mr. Beach—That what?

Judge Neilson—I think he can proceed, on that, to state what the arrangement was, what Mr. Woodruff did.

Mr. Beach—Why, there was no constitution of an agent, Sir, there. Mr. Woodruff made the proposition, or suggestion, to Mr. Tilton that such an arrangement would be advisable in the then condition of the paper. Mr. Tilton accepted it as a very generous and beneficent offer, but said that he did not think that the subscribers would unite in it. Mr. Woodruff says: "I think they will, and I will try it."

Judge Neilson—Then Mr. Tilton assents to his making the experiment.

Mr. Beach—No assent to that; he did not assent or dissent.

Judge Neilson—Well, silence was an assent that he should try it.

Mr. Beach—Well, Sir, does that make him the agent of Mr. Tilton—that declaration?

Judge Neilson—Not for any extraneous conversation; but, for that particular thing, I think it does.

Mr. Beach—Well, Sir, I except to the ruling, if your Honor so rules.

Mr. Fullerton—It is a thing that Mr. Woodruff could do without the assent of Mr. Tilton.

Mr. Tracy—Oh! no.

Mr. Beach—What is the reason he could not?

Mr. Fullerton—He did not require Mr. Tilton's assent to do it; he simply stated the fact to Mr. Tilton that he was going to try to accomplish that end. Your Honor will perceive there is no agency established by anything that took place there at all.

Mr. Tracy—Shall I proceed, your Honor?

Judge Neilson—Yes, [To the witness.] Did Mr. Woodruff apply to you—

Mr. Tracy—Yes; did Mr. Woodruff apply to you to surrender the notes you held against Mr. Tilton in consideration of being released? A. He did, Sir.



Q. What did he say?

Mr. Beach—That is objected to.

Mr. Tracy—[To the witness.] On that subject, of course?

Mr. Beach—Well, Sir, that is objected to.

Judge Neilson—Well now, Mr. Tracy, suppose Mr. Woodruff proceeded to say various things that Mr. Tilton could not have anticipated he would say; use arguments that he could not have anticipated?

Mr. Tracy—Then it will have to be rejected after it is told.

Mr. Evans—Separate the wheat from the chaff.

Judge Neilson—He could do anything that was necessary to bring about that end.

Mr. Fullerton—If you go into it, suppose there is no grain of wheat there; then what?

Mr. Evans—Then do as with other testimony.

Mr. Tracy—Your Honor will remember the evidence. Mr. Woodruff expresses to Mr. Tilton a belief that that arrangement can be consummated. Mr. Tilton expresses a doubt; says it would be very advantageous to him if it could be, but he doubts whether it can be. Mr. Woodruff says, "I think it can, and I will undertake it," and thereupon Mr. Tilton assents. Now, he goes and undertakes it; he consummates it, and the notes are returned to Mr. Tilton and the subscription released. It seems to me that that makes Mr. Woodruff an agent, and that we are entitled to know what he said to Mr. Southwick on that subject to induce him to surrender that note.

Mr. Beach—Well, your Honor, it is a most extraordinary proposition that the declarations, the arguments, and the reasons which may have been presented to the mind of Mr. Southwick by Mr. Woodruff to induce him to comply with this arrangement are obligatory upon Mr. Tilton. Mr. Tilton is indebted to these parties; one of the creditors comes to him and says, "I think this indebtedness may be canceled if you will release the obligation of the subscription for the balance." Why, Mr. Tilton is ready to do that. "That will be generous on the part of my creditors who hold my notes; I will do that cheerfully, but I don't think they will do it." Mr. Woodruff answers, "I think they will; I am one; I will do it, and I will try and accomplish it with the others." Now, does your Honor rule, under just those circumstances, that Mr. Woodruff may make any declaration he pleases to Mr. Southwick, or any one of these creditors, and bind Mr. Tilton by the reasons which he then gives? Can your Honor find in this evidence anything like the creation of an agency? It is a voluntary undertaking on the part of Mr. Woodruff; he suggests it; he is the author of the idea, and he is the principal who, he says, will carry it out. Mr. Tilton is willing to accept the obligation, the generous gift on the part of his patrons, and that is all he says or does. Mr. Woodruff says, "I will undertake it." Of course Mr. Tilton

accedes to his undertaking it, but he confers upon him no authority to make representations, to make conditions, to make statements which shall bind him, and no authority is given to him except to follow out his own first suggested plan, if your Honor rules that to be an agency.

Judge Neilson—There was an agency as far as this, that Mr. Woodruff, it was understood (tacitly understood), was to proceed to try this experiment.

Mr. Beach—Undoubtedly.

Judge Neilson—And procure this arrangement if he could, and if he had proceeded and had, as it now appears, procured the arrangement to be consummated, his authority was sufficient to prevent Mr. Tilton from receding from it.

Mr. Beach—Undoubtedly, Sir.

Judge Neilson—It bound him so far.

Mr. Beach—Well, grant that.

Judge Neilson—Therefore, it savors of an agency; but I admit that independent declarations and conversations, not really necessary to that business, would not be admissible.

Mr. Beach—The thing to be done, Sir, was simple and plain. It was the surrender of the obligations of Mr. Tilton upon the equivalent surrender of the balance of the subscription. Now, no representations were to be made; it was a simple, naked proposition of the discharge and release of mutual obligations between the parties. Mr. Tilton owing his notes, these parties owing their subscription, the proposition is presented to Mr. Tilton, by Mr. Woodruff, that they can be canceled, mutually canceled. Mr. Tilton says: "I accept that as a generous proposition upon the part of these gentlemen; I am willing to accede to that." Now, does that willingness, Sir, to accept that gratuity upon the part of the gentlemen who had aided him, expressed to one of the parties, authorize that person to make statements or representations or agreements, beyond the simple fact of the surrender?

Judge Neilson—No; but it enabled him to do all that would be necessary to consummate that act.

Mr. Beach—It did not enable him, Sir, to make any representations to Mr. Southwick which could operate upon his mind to induce him to do that act. Mr. Tilton gave no authority to Mr. Woodruff to make any such representations, or to present any arguments. Your Honor will remember that Mr. Woodruff came as the principal actor and the proposer of this arrangement. It was not suggested by Mr. Tilton, it did not originate with him. Mr. Tilton is a passive recipient of this proposition upon the part of one of his creditors to cancel their obligations. And, of course, he says: "I will accept it with cheerfulness." But he confers no agency upon Mr. Woodruff; he accedes, acquiesces in the proposition of Mr. Woodruff to undertake to accomplish it, but he gives

no countenance or no authority as to the means which are to be used by Mr. Woodruff to accomplish it, and I submit to your Honor that there is no such agency, no such relation between the parties as authorized Mr. Woodruff to make any communication as on behalf of Mr. Tilton to this gentleman or any other, except that Mr. Tilton was willing to accept that arrangement.

Judge Neilson—Mr. Tracy, what do you purpose to prove by this witness?

Mr. Tracy—I propose to prove what passed between—Judge Neilson—Well, as to what?

Mr. Tracy—Between Mr. Woodruff and Mr. Southwick, which induced him to assent to this arrangement, and surrender Mr. Tilton's note which he held against him for \$750 to Mr. Tilton.

Judge Neilson—Now, as to what that was—what do you purpose to prove it was?

Mr. Tracy—I propose to show that Mr. Woodruff said to him that now was the time for him, Southwick and others, to get out of *The Golden Age*; that it was a bankrupt concern; that the publication of the life of Woodhull and Mr. Tilton's connection with the Woodhulls had killed it, and that he could consummate that arrangement with Mr. Tilton, and Mr. Tilton had authorized him to make that arrangement, by which he would release the balance of the subscription, if they would surrender the notes which they held, and thereupon he did it.

Mr. Beach—Now, you see, Sir, now you see Mr. Woodruff had been told by Tilton that there was only two or three hundred dollars of debt, and that *The Golden Age* had got to be a paying concern, and yet the counsel proposes upon what passed between Mr. Woodruff and Mr. Tilton to create an agency which authorized Mr. Woodruff to go to this gentleman and make statements which never occurred to the mind of Mr. Tilton, and which were untrue and directly antagonistic to the information that had been given by Mr. Tilton to Mr. Woodruff.

Mr. Evarts—If your Honor please, it will be remembered that Mr. Woodruff was the original agent of Mr. Tilton in making the arrangement whereby this aid was obtained from these munificent gentlemen in the establishment of *The Golden Age*. At a certain stage of the condition of that newspaper, Mr. Woodruff says to Mr. Tilton: "I think that it would be a judicious thing for you to have the obligations of these gentlemen to pay the further sums that their original subscription obliges them to, relieved by you, and they give up your notes for the past." Your Honor will remember that Mr. Tilton's obligation for the money that was acquired for his enterprise was an imperfect obligation, not an absolute obligation.

Judge Neilson—Contingent.

Mr. Evarts—Contingent entirely upon prosperity and means. In other words, it was a generous aid to be met in the same spirit by him if prosperity came, and if not he was not to be held as a debtor. Now, at that stage of the matter, to be relieved from the future prosperity's obliging him to return the money and to be relieved from, and to proceed free from, that obligation, Mr. Woodruff makes this suggestion to him, and Mr. Tilton accepts it as a valuable proposition, so far as he is concerned, but doubts whether it can be accomplished, and Mr. Woodruff says to him, "I think I can bring it about," or "I think I can accomplish it," proposing to him, therefore, that it was a transaction that would need some management, and some argument, and some influence, and that management, that argument, and that influence were to be at his service to gain a desired result for him. Mr. Tilton as much as says, "Well, if you can accomplish it, it will be a great thing for me," and leaves him to undertake it, and accepts the results and keeps them. Now, if that does not commission Mr. Franklin Woodruff to conduct that negotiation as the representative of Mr. Tilton and his interests and his side of the negotiation, it would be difficult to find any such authority if it were written out with a power of attorney under seal, *prima facie* you have, therefore, a right to show what this agent thus empowered did toward the result desired for his principal; it should be produced by the witness, and is my learned friend upon his suggestion, upon your Honor's inquiry as to what the scope of those influences and those arguments will be—is the extent of them such as to preclude them? Why, certainly not. He went to this man and used with him, for the accomplishment of an object in Mr. Tilton's favor, the statements of the facts as Mr. Woodruff understood them. Now, it is not for my learned friends to say that Mr. Franklin Woodruff was a false and deceitful agent. He undertook to deal for this principal of his, in the interest of that principal, by a shrewder business management than the principal himself could furnish, and the principal accepted him rather than himself to undertake it. And what he did with any one subscriber is, on the face of this matter, done by Mr. Tilton's authority. Now, unquestionably, when any agent undertakes to do business for a principal, the agent may do things that are outside of his authority, and for which his principal should not be held. But we are not in any such nice dispute as that. My learned associate has informed your Honor as to the scope of the representations which were all within the argument and tending to the result which was accomplished, and of which Mr. Tilton reaped the benefit.

Judge Neilson—Of what value to us, Mr. Evarts, is Mr. Woodruff's opinion about the effect of the Woodhull publication upon *The Golden Age*? That is the only

point evidently that Mr. Tracy has in view, as if it would be beneficial. Of what value would that be?

Mr. Everts—Well, the question—it is not for me to weigh testimony, and say how much and how important it is; your Honor understands that.

Judge Neilson—If his testimony is the expression of Mr. Woodruff's opinion upon that subject.

Mr. Everts—Supposing Mr. Tilton had personally said it. The question is, whether or no it is within the purview of the authority, and is covered by the original mandate, or the subsequent ratification. Now, on the face of it, if it is an argument that is used in good faith toward Mr. Tilton to accomplish the object or tends to the result—

Judge Neilson—There could be no subsequent ratification unless Mr. Tilton knew that Mr. Woodruff had made such a statement.

Mr. Everts—Well, they are to relieve themselves of it by showing that they did not know. You must have some principle by which, when errands are intrusted to messengers, the messenger speaks concerning his errand and binds his principal who sends with him. If he is sent only to put a letter in the post-office, that is the end of it. If it is to use influence and argument to induce creditors to surrender claims, and relieve the party for whom the negotiations are instituted, why, then the action of the party that makes the negotiation, keeping within the purview of the negotiation, tending toward the object desired, is the action of the principal himself.

Mr. Beach—I do not perceive, Sir, that the gentleman's argument has added any very valuable suggestion to this discussion. He assumes the fact of an agency, and with that premise admitted, it is not very difficult to reason to the conclusion that the declarations of the agent within the line and scope of his agency are admissible against the principal. But the primary question before your Honor upon this objection is, whether Mr. Woodruff was constituted the agent of Mr. Tilton to use arguments, to make suggestions, to enter into undertakings with Mr. Southwick beyond the simple question of the surrender of these notes out of this subscription or these subscriptions. What was the relation of these parties? They stood, Sir, in an antagonistic attitude so far as written obligation was concerned. If the proposition which they attempt to prove through this gentleman is true, why, then, Mr. Woodruff came to Mr. Tilton for the purpose of relieving himself and his co-subscribers to this paper from an unfortunate enterprise. His object was not to bestow a benefaction upon Mr. Tilton, not to be generous and liberal to Mr. Tilton, but to get himself and his co-subscribers relief from an onerous obligation under the assumption that this paper was in desperate and falling circumstances. Now, they stood, Sir, in directly oppos-

ing positions upon the ground of the question of interest. Mr. Woodruff, from whatever motive you may choose to assume, makes the proposition to Mr. Tilton to surrender the notes they hold against him upon the discharge of their subscriptions to this paper. Mr. Tilton says, "I accept that proposition cheerfully, Mr. Woodruff. It is generous and liberal, so much so that I do not believe your associates will assent to the proposition." Mr. Woodruff says, "I think they will; I think I can accomplish it." Now, according to the record, Mr. Tilton says nothing to that. But if you assume that by his silence he accepts the proposition that Mr. Woodruff shall make that effort, I then contend to your Honor that there is no such relation as that existing between principal and agent between these parties upon that subject. If there was, Sir, to what does it extend? Why to the simple proposition of surrendering one piece of paper upon the release of another. But to pretend that on the acceptance of that proposition by Mr. Tilton, and the suggestion of Mr. Woodruff that he will attempt to accomplish it, Mr. Woodruff shall be permitted to make declarations hostile to Mr. Tilton, not necessary to the accomplishment of the principal object, suggestions no way presented to the mind of Mr. Tilton and no way suggested by Mr. Tilton to Mr. Woodruff, that it gives Mr. Woodruff unlimited agency to make these declarations injurious and detrimental to Mr. Tilton will be, Sir, one of the most extraordinary propositions that was ever sustained in a court of justice. Recur, Sir, to the circumstances. As between Mr. Woodruff and Mr. Tilton the understanding is, "this paper is prosperous; it owes but \$200 or \$300. It is now upon a successful footing, and if you can get relief from your obligations to these subscribers to the amount of half their subscriptions upon condition of relieving the balance of the subscriptions, you will be free and and you can pursue your career of prosperity." Now, they pretend to prove that Mr. Woodruff goes to Mr. Southwick and represents to him that the prospects of this paper have been blighted by the publication of the Woodhull Life or Biography, that it is in desperate and falling circumstances, and to conclude, upon the general issues of this case—to conclude Mr. Tilton by a declaration of that character. Now, if there were any agency, Sir, is that within the line of the agency? If your Honor authorizes me to apply to a creditor of yours—pardon the assumption, Sir—

Judge Neilson—Well, it is not an unreasonable one, Sir, at all. [Laughter.]

Mr. Beach—Well, I hope it is, Sir. But if a gentleman applies to me, Sir, to make an arrangement with my creditor by which I shall be released from an obligation upon a certain consideration, and I authorize him to accomplish that project, does it constitute him an agent with the powers of an agent unlimited and discretionary

within the particular object to be accomplished? May he go to my creditor and make just such representations and statements as he please and bind me with them and by them as if I had communicated to him authority to make such statements? Why, the thing to be accomplished, Sir, is plain; it is not to be done by negotiation; it is the simple proposition of a naked fact, there is no complication about it, no arguments to be used; a proposition is to be submitted by Mr. Woodruff from Mr. Tilton to those subscribers—"I will surrender the balance of your subscriptions if you will surrender my notes." And that is the simple thing to be done by the agent, no persuasions to be added, no inducements to be offered, no other consideration to be presented, no arguments or reasons to be adduced, but the agency is to present to those gentlemen, if there be any agency at all, that simple, naked proposition of the mutual surrender of those papers, and that is all there is about it, Sir. He was authorized to do that, and authorized to do no more; it is simply to present that alternative or proposition to these gentlemen. Now, I submit to your Honor that it would be most dangerous and unjust to permit the declarations of Mr. Woodruff, the reasons which he may have presented to Mr. Southwick, or to any other gentleman, to be given in evidence before this jury upon the general issues of this case, those declarations not bearing upon this particular proposition, but having an undue and improper influence upon other questions which are to be agitated and discussed and decided in the case. I object to it, Sir.

Mr. Everts—Would your Honor allow me to make a simple suggestion?

#### THE CONVERSATION RECEIVED.

Judge Neilson—One moment. I think this closes the argument. I think I will take this testimony.

Mr. Tracy—Mr. Southwick, please proceed and state what Mr. Woodruff said to you on that occasion? A. Mr. Woodruff came—

Mr. Beach—That I object to, Sir, and reserve an exception.

Judge Neilson—Yes, Sir; proceed, Sir.

The Witness—Mr. Woodruff came to my house one evening and said, after talking about some other matters, "John we must get out of this *Golden Age* business."

Mr. Tracy—Louder.

The Witness—Mr. Woodruff said, "John, we must get out of this *Golden Age* business." I said to him, "I don't see how we can get out of it; we have agreed to give the money—\$750 more; I will give mine to-morrow, and Mr. Schultz will give his, and that is the end of the business." Mr. Woodruff said, "We must get out of it because"—I said, "How can we?" He says, "Theodore Tilton has not conducted the paper as he ought to

have done; he wrote the Woodhull Life." He then went very strongly—

Mr. Beach—Now, I object to these two last, Sir, specifically and move to strike them out.

Judge Neilson—Well, we will take the whole and then see on reflection whether that will be stricken out.

The Witness—He wrote the Woodhull Life and then he said, "he used his paper very strongly in the interest of Mr. Greeley." I said to Mr. Woodruff, "What have we to do with the Woodhull Life or with Mr. Greeley?" It was for that very reason that we drew up the notes so the notes would not be marketable; we put our money there so that would be the end of it, so that he could have no claim on us, and if he had wrote the lives of 50 women, and gone for Greeley ten times stronger, we had nothing to do with it. Mr. Woodruff then went on and made a severe charge against Mr. Tilton.

Q. What did he say?

Mr. Beach—I object to it Sir—"He went and made a severe charge against Mr. Tilton"—I object to it.

Mr. Morris—The agent making a charge against his principal, his principal bound by that?

Mr. Tracy—Oh! we are not protecting the agency of Mr. Woodruff.

Mr. Beach—Well, we are, Sir.

Mr. Tracy—Well, I know; we don't object to your saying that he misrepresented or made charges; we don't care anything about that; we are only showing what induced us to surrender that note; that is all.

Mr. Beach—Is that within the line of the agency, Sir, if you assume the agency? Is it within the line of the agency?

Judge Neilson—The agent to make a severe charge against Mr. Tilton?

Mr. Beach—Yes, Sir.

Judge Neilson—No, it is a novel way of presenting the action of an agent, of course. I think we will take this conversation and see what it amounts to, and strike out parts of it if on reflection it seems to deserve it.

Mr. Beach—If this is only an experiment, why, then, well and good.

The Witness—Mr. Woodruff said that ever since Theodore Tilton had slandered Mr. —, the name I would rather not call—a gentleman in Brooklyn of as high social standing and commercial standing in New-York as there is in Brooklyn—"ever since he made that statement I have lost faith in him, and I dare not trust him. If he will slander this gentleman he will slander somebody else." That was the cause and the whole cause to my mind, as Mr. Woodruff then put it to me, why we went out of *The Golden Age*; it was to save, as Mr. Woodruff says, the \$750.

Mr. Beach—Now, Sir, I move to strike out this answer.

Mr. Tracy—Wait a moment.

Mr. Beach—Why, no, we won't.

Mr. Tracy—Oh! I have not got all the conversation; the Judge said he would take it all.

Judge Neilson—Well, we will take it all.

Mr. Tracy—What did he say, if anything, about the release of your subscriptions if you would surrender the notes? A. Well, that was said afterward; afterward, the next time I saw him, Mr. Woodruff said to me—

By Mr. Fullerton—That is after the surrender, isn't it? A. No, no; after this meeting.

Mr. Beach—Now, your Honor perceives that this is a conversation where the question of the release of those notes or of those subscriptions was not suggested at all to Mr. Southwick, where, if there was any agency, he had not entered upon his agency.

Judge Neilson—Well, we will go to the next conversation now and see what that is.

Mr. Morris—Well, hadn't we better dispose of this one now.

Mr. Beach—Never mind.

The Witness—Mr. Woodruff said decidedly and distinctly, "Would you not, John, if you can be released from further payment of moneys, give up, make a present of these notes?" and I said "Certainly; that is business, and I would be very glad to do it."

Q. That was in the first conversation? A. Yes, Sir, in the first conversation.

Q. Then did you have a further conversation with him before the surrender was consummated. A. We had a further conversation; that I won't be sure; it was after that, at any rate, when Mr. Woodruff said to me in a joking, pleasant way: "Well," he says, "Johnny, you did n't come out so bad after all, for if you lost \$750 by going in, you made \$750 by coming out;" I told him it was a very queer way of making money, but I had no hard feelings against him so it was all pleasant.

Q. When did the surrender take place? A. I could not tell the date.

Q. How soon after this conversation with Mr. Woodruff? A. I should say it was two or three weeks; I could not tell you exactly.

Q. Was it that conversation that led to the surrender? A. It was so far as Mr. Woodruff and myself were concerned; I don't know what Mr. Woodruff said to Mr. Tilton.

Q. It was that conversation that led you to surrender Tilton's notes? A. Yes, Sir; and Mr. Schultz too.

Mr. Beach—I move now to strike out the first conversation; all of it.

Judge Neilson—Well, let the motion be entered; I will have an opportunity of reading it.

Mr. Beach—And I move also to strike out the second conversation.

Judge Neilson—You will save your right.

Mr. Beach—A separate motion.

Mr. Evarts—We shall wish to be heard on that motion Judge Neilson—It is a matter of secondary character quite collateral.

Mr. Evarts—Well, we shall ask to be heard.

Judge Neilson—Is there anything more? Do you want to cross-examine, Mr. Fullerton?

Mr. Beach—Yes, Sir.

## CROSS-EXAMINATION OF MR. SOUTHWICK.

By Mr. Beach (showing witness a paper)—Is that your signature to that paper? A. Yes, Sir, it is.

Q. Did you understand the paper when you signed it? A. I will read it if you will permit me; I have not read it since I signed it. [After reading the paper.] Yes, Sir.

Mr. Beach—I will read it. [Ex. 62.]

NEW-YORK, June 11, 1873.

Mr. THEODORE TILTON—Dear Sir: We, the undersigned, desiring to contribute to the loss sustained by you in establishing *The Golden Age*, do cheerfully return herewith the notes canceled which you gave for money loaned. Wishing you continued success and prosperity in the years to come, and congratulating you on having so securely founded the paper, and that you are now free from debt, we are, dear Sir, yours truly.

Mr. Beach—Following are the names of the subscribers, Mr. Southwick, the witness, among them. We have no questions for you, Sir.

Judge Neilson—That is all, Mr. Southwick.

The Court then adjourned until 11 o'clock on Thursday morning.

## FIFTY-SECOND DAY'S PROCEEDINGS.

### ALLEGED CONSPIRACY TO PUBLISH THE SCANDAL.

#### TESTIMONY OF THREE COLORED SERVANTS OF MRS.

WOODHULL IN REGARD TO MR. TILTON'S PERSONAL RELATIONS WITH MRS. WOODHULL—EVIDENCE OF MR. TILTON'S HAVING URGED THE PUBLICATION IN WOODHULL & CLAFLIN'S WEEKLY ON THE GROUND THAT PLYMOUTH CHURCH WOULD PAY \$100,000 TO SUPPRESS FURTHER DISCLOSURES—MRS. WOODHULL'S THREATS TO MAKE MR. BEECHER PRESIDE AT THE STEINWAY HALL MEETING—THE HUMORS OF CROSS-EXAMINATION.

THURSDAY, March 25, 1873.

The testimony in the Tilton-Beecher suit to-day was devoted exclusively to an examination into the personal relations between Mr. Tilton and Mrs. Woodhull, in support of Mr. Tracy's declaration in the opening address that the defense would show conspiracy between them to publish the scandal. Three colored servants of Mrs. Woodhull at the time of the publication were called to the stand with this view.

The first and most important of these witnesses was James B. Woodley, formerly a slave in Virginia, who came North in 1869 to invest his savings where he had heard people were paying ten per cent interest. This remark and a similar one later in the examination indicated the man to be of an economical and secretive character. Mr. Fullerton pressed him to tell how much money he had saved while in the South, but he refused to tell, and said by way of emphasis "that he wouldn't tell that to his wife, if he had one." His testimony, told in considerable detail, was to the general effect that Mr. Tilton and Mrs. Woodhull were intimate to an affectionate degree; that he had seen them "sitting together with their arms around each other," which, the witness added—when a little laugh was raised—he "thought was perfectly natural;" and, finally, that Mr. Tilton had almost habitually lunched with Mrs. Woodhull and her sister for months prior to the publication of the scandal. His most important testimony, however, was in the direction of establishing the alleged conspiracy. He swore that he had heard Mr. Tilton urge Mrs. Woodhull to publish the scandal, which at the time was in proof slips, on the ground that she could get \$100,000 from Plymouth Church to suppress the further details. This he had urged against the remonstrances of Mrs. Woodhull's husband, who said the result of such a publication would be that all would be sent to jail. This astounding piece of evidence the witness stuck to on the cross-examination. Both sides evidently laid great stress upon the testimony of Woodley, for Mr. Evarts in person conducted the direct examination, and Mr. Fullerton made long and continued efforts to break the force of what the witness said.

The examination was attended with several amusing incidents. On the resumption of the cross-examination after recess the witness appeared to have got over his timidity, and showed a tendency to speak his mind on various matters not connected with his evidence. Mr. Fullerton attempted to get at the witness's ideas as to what a proof sheet was. The witness, without saying whether he thought a proof was written or printed, hinted that he had told all he could on the subject. Mr. Fullerton pressed for an answer. "Well, I think we have taken up enough time on that matter," smilingly suggested the cross-examined. "Well, if you will answer the question we will not waste any more time on it," persisted his

interrogator. "Yes, but," objected the witness, "I do answer it you will have a thousand more just like it." "I shall have to ask your Honor's assistance," said Mr. Fullerton. "Well, the witness is the first one that has yet come to help me in this matter of wasting time," said the Judge, evidently well pleased with the witness's ideas on the value of time. The witness also showed a great aversion to repeating his account of scenes already described. "I thought we had got all through with that, and now we are going back to it," was his constant protest, and, "You have got three matters all mixed up together now, Sir," was his desponding comment on the result of the repetition.

The re-direct examination was devoted to an investigation of what the witness termed "the usual greeting" of Mr. Tilton and Mrs. Woodhull. "Well, what was their usual greeting?" asked Mr. Evarts. "Why, they used to bow and kiss, just as any two ladies do when they meet, you know," answered the witness, who made all haste to get away from the stand amid the laughter which followed.

Richard A. Gray, the second witness of the day, had also been a servant of Mrs. Woodhull, and testified to some conversations which he had heard between that lady and Mr. Tilton. In reference to the Steinway Hall meeting, he testified that he heard her say—alluding to Mr. Beecher—"He had better preside at that meeting, or I will make it hotter on earth than it will be in hell." And to this Mr. Tilton answered: "Oh! he will preside." The witness also described the affectionate manner in which Mr. Tilton and Mrs. Woodhull conducted themselves toward each other. There was no cross-examination of this witness.

Mrs. Lucy Ann Giles, also colored, had been a cook at Mrs. Woodhull's house. Her testimony related entirely to what she had seen of Mr. Tilton's visits to the house. She stated positively that he often remained there during the night, and that on one occasion she saw him and Mrs. Woodhull in the latter's room in the evening. He was partly undressed, and Mrs. Woodhull was in her night-clothes at the time. There was no cross-examination.

The clock of the court-room now pointed to a quarter before 4 o'clock. Judge Neilson was desirous that another witness should be called, and suggested that there was time for a "short" one. Mr. Shearman said to the Judge that they had no "short" witness to call. The Judge then consented with apparent reluctance to an adjournment

before the usual time, and announced that there would be no session of the Court March 26, so that those of the jury who desired to observe Good Friday might have an opportunity to do so.

# THE PROCEEDINGS—VERBATIM.

## THE MOTION TO STRIKE OUT SET ASIDE FOR THE PRESENT.

The Court opened at 11 o'clock, the jury having been called and promptly answered to their names.

Judge Neilson—Proceed, gentlemen. [After waiting several minutes for an answer.] Mr. Shearman, are you ready to proceed; have you any more witnesses?

Mr. Beach—There is a motion pending, if your Honor please, to strike out.

Judge Neilson—I think I will let that stand for the present; I will let it stand precisely as it is for the present.

Mr. Shearman then called James B. Woodley (colored), who was sworn on behalf of the defendant, and examined as follows:

## TESTIMONY OF MR. JAMES B. WOODLEY.

Mr. Evarts—James, where do you now live? A. 604 Classon-ave.

Q. How are you occupied this Winter? A. Well, I have been studying, trying to get some education this Winter, pretty much the best part of my time.

Q. Where were you born—a little louder, if you please? A. In Virginia.

Q. And how old are you now? A. I was born August, 1845.

Q. Were you a slave? A. I was, Sir.

Q. And when did you become free? A. In—when Lee surrendered.

Q. By the termination of the war you became free? A. Yes, Sir.

Q. When did you come North? A. 1869.

Q. And have lived at the North ever since? A. Ever since, Sir.

Q. In Summer have you any employment that takes you South? A. Well, I have been in the fruit and vegetable business, doing a small way.

Q. Between here and a Southern— A. Yes, Sir.

Q. Here and Norfolk? A. Yes, Sir; of late.

Q. Do you know Mr. Theodore Tilton? A. I do, Sir.

Q. Do you know Mr. Beecher at all? A. I know Mr. Beecher by sight, and I have been to his house once or twice.

Q. Very well; are you connected in any way with his church or congregation? A. No, Sir.

Q. Are you, with any church? A. Yes, Sir.

Q. What church is that? A. Baptist.

Q. In this place? A. Yes, Sir.

Q. And before you came North were you connected with the Baptist church? A. Yes, Sir.

Q. For how long have you been a member of a church? A. A member of the Baptist church nine years.

Q. After you came North were you engaged in any service or employment; and, if so, what? A. I came North—I first heard that they gave ten cents on the dollar for money; and I had a little money saved, and so I thought I would come here and see if I could not get it; and so I came, and I found that I could not get it; and so I didn't know exactly where to go; I boarded a while, and afterward it was costing me so much that I thought I had better try to get some employment, and so some one sent me to Mr. Douglass, the Children's Aid Society.

Q. In New-York? A. No, Sir; in Brooklyn here.

Q. And that was your first? A. That was my first; and so Douglass, he looked out for me to get a place for me up in the country in New-Jersey.

Q. Whose place was that? A. Mr. Beach—J. M. Beach.

Q. Did Mr. Beach carry on business in New-York? A. He carried on business in New-York as—

Q. New-York City? A. New-York City, as a crockery dealer, I think, Sir; his business was 43 Murray-st. then, at that time, I think.

Q. And you were in his service in the country? A. In the country.

Q. During the Summer of 1869, was it? A. Yes, Sir; I went there in the Spring, early in the Spring commenced repairing and doing up about the place there, until the Summer, and I found that it was a very good place—I thought I could make money, and so I stayed there.

Q. Never mind about that? A. Yes, Sir.

Q. And the next Summer were you also in his service? A. Next Summer I was also in his service.

## MR. ANTHONY COMSTOCK AND THE WOODHULL SCANDAL.

Q. Now, did you come to be, at any time, in the employment of Mrs. Woodhull? A. I did; from there I came to Mrs. Woodhull's.

Q. Yes. Now, were you in their employment, in the employment of Mrs. Woodhull, or Col. Blood, or Miss Claflin, the establishment there at the time that the Woodhull scandal was published? A. I was, Sir.

Q. Well, what happened to you in connection with it? A. Well, I got arrested at the Post-Office; Mr. Anthony Comstock—

Q. Never mind, you were arrested? A. Yes, Sir.

Q. For putting the papers in the Post-Office? A. Yes, Sir.

Q. And put into prison? A. Yes, Sir.

Q. Now, did your employment in their service end with that? A. Ended with that, Sir.

Q. And that was immediately after the publication, wasn't it? A. Yes, Sir.

Q. When you first went into the employment of Mrs. Woodhull were you employed at the house? A. At the house, Sir, as a steward.

Q. Where was that? A. In No. 15 East 38th-st.

Q. And what was your employment at that house? A. Well, my employments—wait, and tend, and do their shopping round about the house—marketing.

Q. Marketing? A. Yes, Sir.

Q. A steward—sort of steward? A. Yes, Sir.

Q. And waiter? A. Yes, Sir.

Q. Afterwards did you come to be employed in their business place down town? A. Yes, Sir; I did, Sir.

Q. And what did you do down there? A. I carried out the papers, fold papers, mailed papers and go errands collecting—whatever they wished me to do.

Q. You knew of their newspaper? A. I did, Sir.

Q. Did you know of *The Golden Age* and of Mr. Tilton, and have anything to do in connection with that paper, or with him? A. I never—I knew of *The Golden Age*, but I never had anything more to do with *The Golden Age*, more than sometimes they sent me up after some copies—I went up after some copies.

Q. Well, do you remember about the life of Mrs. Woodhull that was published? A. I do, Sir.

Q. And did you have anything to do about that for Mr. Tilton? A. I did, Sir.

Q. What did you have to do about the publication? A. I distributed them among the newsdealers.

Q. Yes, and did you collect any moneys for them? A. I did, Sir.

Q. And to whom did you pay it? A. I paid it to—Mr. Tilton told me, whenever I collected, to turn it to Miss Annie, Miss Annie Tilton, I think, it was, his sister, a very fine—

Q. She was the Secretary? A. She was the Treasurer.

Q. At his office—at *The Golden Age* office? A. Yes, Sir.

#### THE WITNESS'S INTRODUCTION TO MR. TILTON.

Q. Now, do you remember an occasion when you were introduced to Mr. Tilton, or first—

A. I do, Sir.

Q. [Continuing.] —shook hands with him, that is it? A. I cannot recollect the time and date, anything about it; I don't know exactly; I don't know whether it was in the last of February or the first of March; some time around about that time.

Q. In 1871? A. In 1871.

Q. No— A. 1870.

Q. Yes. A. That is 1870.

Q. No, in 1871. A. No, Sir, in 1870—1871.

Mr. Fullerton—Please let him state which it was.

The Witness—Yes, 1871.

Q. You went there in the Fall of 1870? A. Yes, Sir, in the Fall of 1870.

Q. Now, just state how you were first introduced to Mr. Tilton, and by whom? A. I was introduced to Mr. Tilton by Mrs. Woodhull.

Q. Where? A. She told me this was Mr.—

Q. Well, where? A. In her office.

Q. In— A. In Mrs. Woodhull's office.

Q. In the inner office or the outer? A. Yes, down in her office.

Q. Well, there were several rooms there? A. She was in the—  
It was in middle office sitting on a long sofa that they had sitting in there.

Q. In the middle office? A. In the middle office.

Q. Between the outer office and the— A. Yes, Sir, between the counting-room and the back room.

Q. Who was present at that time? A. Miss Claflin, and there might have been several others present.

Q. Well, Miss Claflin and Mrs. Woodhull were there? A. Miss Claflin and Mrs. Woodhull was there in person.

Q. And Mr. Tilton was there? A. Yes, Sir.

Q. Well, how were they seated? A. They were sitting—one was sitting on each side of Mr. Tilton.

Q. On this lounge that you spoke of? A. Yes, Sir; on the lounge.

Q. Well, how were you introduced then to Mr. Tilton, and what occurred between you and him, if anything? A. Mrs. Woodhull told me that this was Mr. Tilton, that had done so much for our people, the colored people, South.

Q. You mean the—

Mr. Beach—Oh! well, let him tell.

Mr. Everts—Our people? A. Yes, Sir; and said that he was the editor of *The Brooklyn Union*; I don't recollect whether she said he was the present editor then, but had been. Well, then, I taking a great liking to him at that moment—

Q. Well, no matter about that. You had seen him before? A. Yes, Sir, I had seen him before.

Q. Well, did you have any talk with Mr. Tilton then, and if so, what was it about? A. At that present time?

Q. At that time. A. Well, he asked me something about how we were getting along, and asked me was I ever a slave, and so on.

Q. Yes. And did anything then occur? A. That ended the conversation at that time.

Q. Now, after this had you any errands or employment of any kind between the Woodhull & Claflin office and Mr. Tilton's *Golden Age* room? A. I think it was between—some time in April or the first of May when I went up, I think, on an errand of getting some *Golden Ages* or something of that kind; she sent me up there and I— Then he told— Then I had a kind of a little interview with him on pretty much the same subject—of our people.

Q. Yes, very well. Do you remember afterwards, and when it was, that the Woodhull Life was published? A. The Life of Victoria C. Woodhull by Theodore Tilton?

Q. Yes. A. I do.

Q. When was that? A. Well, I don't remember, Sir, the month—the time—but it was some time, I think, about—I will say along in September—about that time; I cannot recollect just exactly at that time.

Q. In the same year? A. In the same year—same year.

Mr. Beach—[Repeating.] The Life was published in the same year, about September, 1871.

Mr. Everts—Now, do you remember about the Steinway Hall lecture? A. Yes, Sir.

Q. About when was that, as you remember? A. Well, I don't remember, Sir, what time that—what month that was in.

Mr. Beach—What is the last? Don't remember what? A. I don't remember what month it was in.

Mr. Everts—Well, about when, what year was it? A. 1871, I think.



MRS. WOODHULL TALKS WITH HER SERVANT  
ABOUT FREE LOVE.

Q. Now, at any time in the Fall do you remember a conversation at which Mr. Tilton was present in the office of Woodhull and Claflin, in which the matter of free love was spoken of? A. Yes, Sir.

Q. Who were present? A. Mrs. Woodhull and Miss Claflin.

Q. And Mr. — A. Mr. Tilton.

Q. Mr. Tilton? A. Yes, Sir.

Q. And where was that? A. That was in their office.

Q. Which office? A. Woodhull & Claflin's.

Q. Yes; but which room? A. In the middle room.

Q. The middle room? A. Yes, Sir.

Q. And on this same — A. Yes; on this same sofa.

Q. They were seated on the same sofa? A. Yes, Sir.

Q. Now, what was that conversation? A. Mrs. Woodhull asked me was I a free-lover. [Laughter.] I told her I didn't know what free love was.

Q. Well? A. Then she said, then I didn't know what free love was? I told her no. Says she: "Did you know Henry Ward Beecher was a free-lover?" "Don't know; I don't know anything about it." So she asked me had I ever heard him preach, and I told her I had not; I had heard talk of him, but I never heard him preach. Well, I ought to hear him—said he was a free-lover, and one of the greatest men that ever lived.

Q. Yes; what, if anything, passed between Mr. Tilton and Mrs. Woodhull while this conversation was going on? A. Yes, Mr. Tilton, he said something to Mrs. Woodhull, and then Mrs. Woodhull asked me about free love again, something concerning free love, and so I told her that I didn't know anything about it. So she said, then she would tell me, she would explain free love to me.

Q. Well, what did she say? A. She said that free love was, when man had a wife, or a woman—had a wife, and saw another one that they liked best, he thought it was their duty and place to leave and go to that one; that was free love.

Q. Yes. A. I told her I didn't believe in that; that doctrine I didn't believe in; that I thought it was always quoted by the Scripture says, "Whatever God put together let no man put asunder."

Q. Well, now you say that Mr. Tilton would speak to this lady? A. Yes, Sir; Mr. Tilton would speak.

Q. Did he speak so that you heard what he said? A. No, Sir; I could not understand what he said.

Q. He spoke to her? A. Yes, Sir.

Q. In a tone that you could not hear? A. Yes, Sir.

Q. And after that speaking, these questions were put to you, were they? A. Yes, Sir.

Q. Now, was anything further said, James, by you or Mrs. Woodhull, after she told you this about what free love was, about your hearing or wanting to hear Mr. Beecher? A. Well, I don't recollect anything particular; there might have been something said, but then I don't recollect it now; I never took to recollecting anything at the time; I heard so much about it all the time that I didn't take any notice of it.

Mr. Fullerton—Well, never mind.

The Witness—All right, Sir.

Mr. Evarts—Did you at any time after that hear Mr. Beecher preach? A. I did, Sir.

Q. How many times do you think you have heard him preach? A. Twice; I thought I would be convinced, any how.

Mr. Beach—Well, wait a minute.

MR. TILTON'S INTIMACY WITH THE WOODHULLS.

Mr. Evarts—Now, how frequently during the Summer, from the Spring on through the Summer of 1871, did you see Mr. Tilton at the office of Woodhull & Claflin? A. Well, sometimes two or three times a day; sometimes he would be there the best part of the day.

Q. Well, how frequently as respects the days, how many days in a week or— A. Well, sometimes every day in the week when—he was out of town pretty much—you could tell pretty much when he was away.

Q. By his not being there? A. Yes; by his absence from the office.

Mr. Fullerton—[To Mr. Evarts.] Yes; you helped him out well.

Mr. Evarts—Now, about lunching; what was his habit? A. Well, sometimes he used to be down there and lunch with them.

Q. Was the lunch always ordered for each day there? A. Yes, Sir; very apt to be ordered. Sometimes Mr. Tilton and Miss Claflin would go to Delmonico's or Curtis's, or somewhere there to lunch.

Q. Well, but usually lunch was there, was it? A. Yes, Sir; usually the lunch was at the office.

Q. And just state, now, whether Mr. Tilton was or was not in the habit of being at, or was frequently at, the lunch during that Summer? A. Yes, Sir; but he was a great part of the time; I think he was away some part along about midsummer, some time—a long time.

Q. How long did that habit of his of being at the office continue through that year? A. Well, all through that year, entirely through that year—very frequently.

Q. How frequently during that period—I am now speaking of the season of 1871 from Spring—how frequently during that period were you in the habit of being up at the 38th-st. house? A. Well, I was up there sometimes two or three times a week and stayed all night, and sometimes every night through the week.

Q. After you went to service at the office— A. Yes, Sir.

Q. This is my question: After you went to service at the office, did you continue to live at the 38th-st. house? A. No, Sir; I came over to Brooklyn then.

Q. With whom did you live here? A. I lived up here in Claason-ave.

Q. Boarding? A. Yes.

Q. But during this time you went up frequently to the 38th-st. house? A. Yes, Sir.

Q. How was it about Mr. Tilton at the 38th-st. house—how often did you see him there that Summer, or that season? A. Well, I saw him quite a number of times of an evening.

Q. How late at night? A. Well, as late as between 12 and 1 o'clock.

Q. In what rooms, on what story of the house? A. Sometimes he would be in Mrs. Woodhull's room writing, or else in one or the other of the parlors, or sometimes in Miss Claflin's room.

Q. On what floor were those rooms that you speak of as Mrs. Woodhull's room or Miss Claflin's room? A. Miss Claflin's was the front room on the second floor.

Q. Up one flight of stairs? A. Yes, Sir; up one flight of stairs.

Q. Where was Mrs. Woodhull's? A. Mrs. Woodhull's was at the back.

Q. On the same floor? A. On the same floor.

Q. Who else did you see in those rooms at the same time with Mr. Tilton, at any time? A. Well, sometimes Mrs. Woodhull, Miss Claflin, and Colonel Blood, or sometimes some other visitors probably might be there.

Q. Did you observe anything, or have anything to do with attending upon them, or carrying refreshments or anything of that kind? A. I did Sir; yes, Sir.

Q. State how that would happen in those rooms? A. Well, sometimes evenings after it would get quite late Miss Claflin or Mrs. Woodhull would want me to go out and get some oysters, or some cider, or something of that kind, and I would go out and get it and fetch it back again and serve it.

Q. Into what rooms would you carry these refreshments that you thus served? A. Up in Miss Claflin's room sometimes, and sometimes in Mrs. Woodhull's.

Q. How about the parlor—had they suppers or refreshments in the parlors? A. Hardly ever in the parlor.

Q. Generally on this floor? A. Yes, Sir.

Q. After they left the 38th-st. house where did they go? A. To 23d-st.

Q. Did they keep house there? A. Yes, Sir; Mrs. Myers was in charge.

Q. Was she a sister of Mrs. Woodhull? A. Yes, Sir.

Q. And she kept house there? A. Yes.

Q. You did not live there? A. Sometimes I was there two or three times a week, and sometimes every night through the week.

Q. But that was not your permanent home—your living place? A. No, Sir.

Q. Did you see Mr. Tilton at that house? A. Yes, Sir.

Q. How was he then in regard to the company, or the rooms of the house that you saw him in? A. Well, he was the same unusual—he was up there, and generally always with the ladies.

Q. After that where did they go? A. They moved from there to Irving-place.

Q. These did they keep house? A. Mrs. Myers—

Q. She kept house? A. Yes, Sir.

Q. And were they there at the time of the arrest or break-up? A. They were there at the time of the arrest, I think.

Q. Did you see Mr. Tilton at that house also? A. I did, Sir.

Q. And was your habit the same of being up at that house that you have spoken of in regard to the other houses? A. Tying there—yes, Sir.

Q. Your habit — A. I went up there once in a while. The last evening that I was there, before I was taken sick, he was there that evening, I remember.

Q. Very well, we will go on. You did not live at that house? A. No, Sir.

Q. You speak of your having been arrested at the time of this break up? A. Yes, Sir.

Q. Had you been before that, sick, and away from business? A. I had been sick for a week or two, or probably more.

Q. Were you then out for the first time? A. That was the first time. I came over on Friday afternoon for the first time.

Q. And when were you arrested? A. Saturday morning.

Q. And about how long had you been sick at that time? A. I don't remember exactly how long, but I think two or three weeks, probably more than that.

Q. And after this arrest, were you sick for some time? A. Yes, Sir; after the arrest they throwed me in Ludlow-st. Jail, in damp cells, where they had been repairing of the —

Q. Well, it was a damp cell? A. Yes.

Q. And were you seriously sick after that? A. Yes, Sir; seriously. I was taken with rheumatism, and so I am affected now by it very much.

#### CONSULTATIONS ABOUT PUBLISHING THE WOODHULL SCANDAL.

Q. Now, did you know of Mr. Tilton's being engaged in the political campaign of that year, 1872? A. Yes, Sir.

Q. And of his being away at times? A. Yes, Sir.

Q. Were you present at any time in that Fall, at any conversation in the office of Woodhull & Claflin, at which Mr. Tilton was present, and that had to do with the question of the publishing of the Beecher scandal, or anything of that kind? A. Yes, Sir; I heard them conversing on the subject of —

Q. Yes. Now, what time of day was it that you were in the room and heard whatever you did hear? A. I think, Sir, my memory, Sir—it was between—I think between twelve—between one and two o'clock, somewhere along that time.

Q. Who were present in the room at the time that you now refer to? A. Mrs. Woodhull, Miss Claflin, Col. Blood and Mr. Tilton.

Q. In which room was this? A. This was in the back office.

Q. What has been called the private office, I suppose? A. Yes; the private office.

Q. The innermost office? A. Yes, Sir.

Q. How came you to be in the room? A. Well, they called me in on some errand, to go and do some errand, and I was standing waiting for Col. Blood to give me the order.

Q. Now, what did you hear at that time? A. I heard Mr. Tilton tell Mrs. Woodhull if she would publish—"that thing" he said—I didn't know what it was, though—she would be a made woman by it—that he could not do it—if he done it that they would crush him.

Q. Was there anything said by him about Plymouth Church and its power? A. Yes, Sir; he said that Plymouth was a rich church and they would pay any amount to have it stopped

Q. Whom did he say that to? A. He said it to Mrs. Woodhull and Miss Claflin.

Q. Well, what did Col. Blood say—did he say anything about it? A. Well, Colonel Blood said that he would not do it—he opposed the article all the time.

Q. What did he say, if anything, about what would happen if they did it? A. He said that they all would get thrown in jail and it would get themselves in trouble; and Mrs. Woodhull went on at a great rate at Col. Blood because he wouldn't do it.

Q. When Col. Blood so answered Mrs. Woodhull, did she refer in any way to Mrs. Tilton? A. She did.

Q. What did she say? A. She told him, "Theodore knows all about it—knows all about Beecher's Church," and they would do it—they would pay anything to have it stopped.

Q. Was any sum of money mentioned that you remember? A. Yes, Sir; I heard her say a \$100,000—I heard that mentioned.

Q. Did Col. Blood—how did the matter end so far as Col. Blood was concerned or the company there? A. Well, I told him that I was waiting, so he gave me the order.

Q. You spoke to him then? A. Yes; I spoke to him.

Q. What did you say to him? A. I told him I was waiting for the order.

Q. Well? A. So I took the order and went out.

Q. Was it for lunch or what? A. For lunch.

Q. Now, in this conversation, while it was going on do you remember anything about Mr. Tilton and Col. Blood going apart and talking? Yes, Sir; in the afternoon, after they had their lunch.

Q. Well, the lunch came, I suppose, and were you there again? A. I was there when the lunch came.

Q. And was there any further talk about that subject? A. What, after lunch?

Q. Yes? A. Well, I saw him and Col. Blood had an interview about it in the middle office.

Q. Well, what they said you did not hear? No, Sir.

Q. What happened further about Col. Blood? Did he go off that day? A. It was the next day that they were talking about it. He came earlier the next day, and then they was conversing on the same matter, and I knew it was something that—

Mr. Beach—Wait a minute.

Mr. Evarts—Only what you heard and can remember are you to have anything to say about, and only when Mr. Tilton was present.

Q. But did Colonel Blood go off and not return that afternoon? A. Yes, Sir, he went off and did not return.

Q. That you know? A. Yes, Sir.

Q. Did you go up that night to the house? A. Yes, Sir.

Q. In Irving-place? A. Yes, Sir.

Q. Was Colonel Blood there then? A. No, Sir; he did not come back all night; next morning he was there down at the office.

Q. Did you see Mr. Tilton that night at Irving-place? A. I did, Sir.

Q. At the house? A. Yes, Sir.

Q. How late did you see him there that night? A. Between 12 and 1 o'clock.

Q. That night? A. Yes, Sir.

Q. In whose company was he there? A. Miss Claflin and Mrs. Woodhull.

Q. Did you spend the night there by yourself? A. I did, Sir; I spent the night there that night.

Q. Did you know at any time, at the 88th-st. house, when you saw Mr. Tilton there, whether he passed the night there or not? A. He was there next morning.

Q. Yes? A. At breakfast.

Mr. Evarts—At what hour? A. He was there to breakfast, between 7 and 8 o'clock.

Q. The morning following the night you had seen him there late, you mean? A. Yes, Sir.

Q. How often do you think you observed that at that house in 88th-st.? A. Quite a number of times.

Q. Now, you say that the next morning after this, at the office, Col. Blood was there? A. Yes, Sir.

Q. And who else? A. There was not any one there. The rest had not come down; they had not got up when I left Irving-place.

Q. At first, I mean? A. No, Sir.

Q. But afterwards was there any further interview or talk between Mr. Tilton and Miss Claflin and Mrs. Woodhull and Colonel Blood, or any of them, the next morning—anything in which Mr. Tilton took part? A. Any interview between Mrs. Woodhull and Miss Claflin, you mean?

Q. And Mr. Tilton? A. And Mr. Tilton, there was.

Q. And Colonel Blood, or any of them, in which Mr. Tilton took part? A. Yes, Sir.

Q. The next day? A. The next day.

Q. What was said at that time, if you remember, if anything, about this matter of the publication? A. Yes, Sir; they had an interview there about the same publication, and Mrs. Woodhull, she got provoked with Colonel Blood.

Mr. Evarts—I don't wish anything now unless Mr. Tilton was there.

The Witness—Yes, Sir, Mr. Tilton was present.

Mr. Evarts—Was present? A. Yes, Sir.

Q. Well, what passed? A. She asked him what was the matter with him, she asked Col. Blood what was the matter with him, she didn't know what had got into him; and Col. Blood said if they would publish that article that he would have nothing to do with it; they might do it, but he would not have anything to do with it, so he went off that day—he locked up the safe that night and went off.

Q. One of the jurors asks the question how long you were in jail? A. Fifteen days.

Q. Were you there? A. As a witness—United States witness.

Q. House of Detention? A. Yes, Sir.

Q. Or a place of detention for witnesses. Where was it—in Ludlow-st. Jail? A. In Ludlow-st. Jail.

Q. Lodged there as a witness? A. Yes, Sir.

## PROOF-SLIPS PRESENT AT THE CONVERSATION.

Q. At the time of this talk in the forenoon before the lunch—the talk about the publication that you have spoken of— A. Yes, Sir.

Q. Were there any printed slips or proof—

Mr. Fullerton—Now, I object to that.

Mr. Everts—Why?

Mr. Fullerton—Because it is leading.

Mr. Everts—I don't think it is leading; do you?

Mr. Fullerton—I think it is.

Judge Neilson—It is leading, I think.

Mr. Everts—How could I suggest that I wanted to talk about that subject otherwise than in that way? It don't certainly suggest to the witness which way to answer, yes or no. It is simply a question to him whether there were any—

Judge Neilson—Any printed slips; which can be answered yes or no.

Mr. Fullerton—Yes, Sir; and then he started the witness off on printed slips.

Mr. Everts—But it does not indicate whether the answer should be yes or no. I might ask whether you had a horse—

Mr. Fullerton—It is not necessary there should be an indication whether the answer should be yes or no, to make it a leading question.

Mr. Everts—I agree to that.

Mr. Fullerton—The gentleman wants to start off in this manner in his examination by proving there were printed slips there, and if he gets an affirmative answer he is well embarked in the line of examination to whatever else may be proved.

Mr. Everts—Of course.

Mr. Beach—If your Honor please, the evil of putting a leading question is already accomplished. It won't make much difference whether you overrule it or not.

Judge Neilson—I think the question is leading.

Mr. Fullerton—Yes, Sir.

Mr. Everts—Well, if your Honor please, I supposed the distinction between what is called a leading question and an indicating question, which points at the subject, is one that we all understood, and I intend, of course, to adhere to the latter proposition.

Mr. Fullerton—My friend intends to point to slips.

Mr. Everts—I intend to point the question to whether there were any there or not.

Mr. Everts—Now, James, at the time of this conversation was there present any paper of any kind with these parties? A. Oh! yes, there were; the proofs were all ready there to go to the press for their publication.

Q. Who had them in hand there? A. Miss Claffin, Mrs. Woodhull, and Mr. Tilton. Colonel Blood had gone off.

Q. Now, were you, or not, before that time, familiar with proofs and printed slips—I don't mean on this subject—this or any other subject; was that any part of your employment? A. Oh! yes, Sir; I was usually taking them up to the printing office.

Q. Was that part of your business to go back and forth to the printing office? A. Yes, Sir.

Q. Now, at that time, did you have in your hands, or see in

any way these printed slips? A. There were some printed slips around there, but I could not say—

Mr. Everts—I am not speaking of those very ones.

Mr. Fullerton—Let him answer the question.

Mr. Everts—I asked him about his habit of carrying printed slips? A. Yes, Sir.

Q. I am now speaking of the particular time when the conversation took place, and you said there were some slips there. Did you have those very ones in your hands in any way? A. I did have printed slips in my hands; but I don't know what they were or what they contained at all.

Q. And did you have those that you have spoken of as having been in their hands— A. Yes, Sir.

Q. —at the time of this particular conversation? That is my inquiry. A. I had all the proofs that were around there, and those printed slips, too.

Q. Now, after the publication of the scandal, as it is called, in their paper, did you know of that fact—did you see it in the paper? A. Did I see that publication?

Q. The publication; yes, in the paper after it was made? A. Well, the same talk was—it was not published at that time at all.

Q. I understand that; I am now talking of the time when it was really published, and when you were arrested? A. I didn't look at it at all—at the scandal. I heard them talking about it—of the Beecher scandal, and Luther—

Mr. Beach—Wait.

The Witness—Luther C. Chaffin.

Mr. Everts—And the Chaffin article? A. Yes, Sir.

Q. Now, when you saw Mr. Tilton and these ladies—Mrs. Woodhull—together at the office, or the house, did you see anything in their manner towards each other in respect to familiarity? A. Yes, Sir; I seen them sitting together talking, with their arms around each other.

Q. Both at the office and at the house? A. Yes, Sir; that was all very natural, I thought, at that time; I never thought anything about it. [Laughter.]

Q. And how frequently did you observe anything of that kind? A. Well, that was very often; near as often as he was there.

Mr. Everts—That is all.

Judge Neilson—Officer Rogers, you will have to take some special charge of this audience. Gentlemen and ladies think proper to laugh and giggle at the most trivial word that is uttered.

Mr. Everts—How long before the actual publication of what we call the Beecher scandal in their paper, when you were arrested—about how long before that was it that you heard this talk at the lunch time about a publication? A. I cannot remember, Sir.

Q. Well, about what time, as near as you can tell? A. I could not say; three, or four, or five weeks; I could not tell anything about it. Of course, I never took any remembrance of it—

Mr. Everts—That is all.

The Witness—For it didn't concern me.

The Witness—[To Judge Neilson.] Your Honor, can I speak to you a moment, Sir? I hope you will not let them keep me

too long; I have the rheumatism, and would not like to sit very long.

Judge Neilson—We never keep witnesses long; you will be discharged soon.

CROSS-EXAMINATION OF MR. JAMES B. WOODLEY.

Mr. Fullerton—When did you come North, James?

A. I came North in 1863.

Q. What season of the year? A. It was about the latter part of March, or the 1st of April, somewhere about that time.

Q. Where did you live from the close of the war up to the time—

The Witness—In Petersburg, Virginia.

Mr. Fullerton—James!

The Witness—Yes, Sir.

Mr. Fullerton—Don't answer before you hear the question. Where had you resided at the close of the war and before you came North in 1863? A. Petersburg, Virginia.

Q. With whom? A. I worked at my trade—carpenter trade.

Q. With whom? A. I worked with my uncle.

Q. What was his name? A. Archer Lowrey.

Q. During the whole of that period did you live with your uncle? A. Oh! yes, Sir, since I was able to work at all scarcely.

Q. No, during the whole of that period after the war and before you came North? A. No, Sir, he died a little after the war, and then I worked in a tobacco factory, making tobacco boxes for Osborn & Cheese.

Q. How long did you work in the tobacco factory? A. I worked there about a year, I guess.

Q. For whom? A. Osborn & Cheese.

Q. When did your uncle die? A. He died in 1865.

Q. What time in 1865? A. I don't remember; some time in the Spring; I don't remember the time.

Q. Do you remember when the war closed? A. Pretty much I do.

Q. When did it close? A. It closed in 18 and 64.

Q. How long did you work with your uncle after the close of the war, and before his death? A. I suppose about a year; I guess somewhere about that time.

Q. About a year? A. I think so.

Q. That is your best recollection? A. Yes, Sir; I don't recollect; I never have taken that to memory at all.

Q. About how long was it? You think it was about a year. That is satisfactory? A. I guess it was about a year.

Q. How? A. I guess about a year; I don't recollect at all.

Q. When did your uncle die? A. He died in 1865.

Q. What time in 1865? A. I don't recollect, Sir, at all.

Mr. Beach—In the Spring, he said.

Mr. Fullerton—Were you at the funeral? A. No, Sir.

Q. Did you tell me it was in the Spring of 1865? A. It was in the Spring; I was not at the funeral, though.

Q. It was in the Spring of 1865? A. Yes, Sir.

Q. You had, then, worked with him about a year, as near as you can tell? A. Yes, Sir.

Q. Since the close of the war? A. Yes, Sir.

Q. How do you recollect that it was in the Spring that he

died? A. I know I was going down to North Carolina on some business.

Q. How long had you been gone on some business. A. I had been gone about a week.

Q. Did he die during your absence? A. Yes, Sir.

Q. What business had you down in North Carolina? A. I went down there to see about some work down there.

Q. Then you had quit your uncle, had you? A. Yes, Sir, I had quit him at that time.

Q. How long had you been out of his employment, then? A. I had been out of his employment a very little while.

Q. How long? A. I don't know, Sir; I don't remember.

Q. About how long? A. I could not remember at all; I would not like to say without I had some recollection of it.

Q. Can't you give us some idea of the length of time you had been out of your uncle's employ when you went down to North Carolina? A. No, Sir; he had been sick for some time.

Q. Give us some idea of the length of time you had been out of his employ? A. I think it was along the latter part of the Winter. I was working with him.

Q. Have you no other recollection than that? A. No, Sir.

Q. How long had your uncle been sick when you left to go to North Carolina? A. He had been sick some—probably three weeks.

Q. Had he not been sick longer than that? A. I don't know, Sir; I don't know whether he had or not; he might.

Q. Did you remain with him until he got sick? A. I did, Sir.

Q. Did you quit his employ before he became sick? A. No, Sir; he was lingering some time before he got down.

Q. How long had your uncle been lingering, as you say, before he was taken down sick? A. I don't know, Sir; I have no recollection of the time, Sir, at all.

Q. Can't you give us some idea? A. No, Sir, I cannot.

Q. Whether it was a year or six months? A. No, Sir, I could not at all.

Q. You could not tell? A. No, Sir.

Q. Well, did he work while he was lingering? A. Yes, Sir; he worked some time before he was down.

Q. Did he work whilst he was lingering? A. Oh! yes, Sir; he worked while he was in poor health.

Q. All the time? A. Until he got down.

Q. Did he work until he got down sick? A. Yes, Sir, until he got down and had to have a doctor.

Q. Then, whilst he was lingering he was at work? A. Yes, Sir.

Q. And you were at work with him? A. I was at work with him.

Q. All the while? A. All the while.

Q. Up to the time he was taken down? A. Up to the time.

Mr. Fullerton—Ahem!

The Witness—I think up to just about the time, I guess.

Q. Just about the time? A. I think about that time, Sir.

Q. Can't you tell me exactly? A. No, Sir; I cannot, because I never took any note of it.

Q. What was the last work you did before he was taken down

sick? A. The last work we did we were building a house, and we finished that house that time.

Q. What house? A. We were building a house in the city.

Q. What house? A. In Petersburg. I don't remember the house at all, now.

Q. You don't recollect what house it was? A. No, Sir, I don't.

Q. Can you tell us what street it was in? A. I don't believe I can. The streets are changed; they have changed the names of the streets.

Q. What street was it on? A. I don't know, Sir.

Q. You don't know the street? A. No, Sir.

Q. Nor you don't know the name of the person who owned the house? A. No, Sir; I cannot.

Q. Can you tell what kind of a house it was, whether it was wood, or brick, or stone? A. It was a wood house.

Q. You say they changed the names of the streets since that? A. Yes, Sir, of some of them.

Q. Will you mention one street the name of which has been changed? A. I don't think, Sir—

Mr. Fullerton—Speak a little louder.

The Witness—I don't think it would be any use for me to go over and tell the change of the streets.

Q. Why not? A. Because I don't—because I don't remember.

Q. Well, then, it would not be any use. [Laughter.] Can you name any street in Petersburg the name of which has been changed since you were there? A. No, Sir; I cannot name any.

Q. How long did you live in Petersburg? A. I was there before the war and was there after the war.

Q. How long? A. Oh! about three or four years.

Q. And, after the war, how long did you live there? A. I lived in Petersburg until I came here.

Q. Well, how long—about how long were you living there the second time? A. I came here in 1869; you can tell by that very easy.

Q. Where did you go then? A. Where did I go then?

Q. Yes. A. I don't recollect that, either.

Q. When did you go there? A. When did I go there? I don't recollect that, either.

Q. What year did you go there? A. I don't know; I can't recollect the year I went there.

Q. How many years did you live in Petersburg, altogether? A. I don't recollect that, either.

Q. You lived there four or five years the first time, did you? A. I don't recollect the time, because I worked in the city and in the country, building all the time when I first commenced work.

Q. You got pretty familiar with Petersburg? A. I did, Sir.

Q. And yet you cannot tell me the street where that house was that you helped to build, nor the name of the owner? A. I helped to build several houses in Petersburg, and I cannot tell.

Q. I am speaking of the house, James, you built just before your uncle took sick, that particular house? A. I can't recollect.

Q. You can't recollect? A. No, Sir.

Q. Before the war, whom did you belong to? A. I belonged to a Miss House.

Q. And where did she reside? A. In Brunswick County.

Q. How far from Petersburg? A. About sixty-five miles.

Q. How long did you live with her? A. I never lived with her only when I was a small little boy.

Q. Well, after you left her where did you live? A. I was put out then.

Q. Where? A. I was hired out and put out until I got large enough to work, and then I went with my uncle and learned the carpenter trade.

Q. What is your age now, James? A. My age is thirty years old—going on thirty.

Q. Going on thirty? A. Yes, Sir.

Q. What time did you commence working with your uncle? A. I don't know; I was small.

Q. Did you know your age at that time? A. No, Sir.

Q. Don't you know how old you were at the time? A. No, Sir.

Q. Can you tell me who your uncle's physician was? A. Dr. May.

Q. Which Dr. May? A. Old Dr. May, an old white-headed gentleman, something like Mr. Beach there.

Mr. Fullerton—Don't institute any comparisons.

Mr. Beach—What did he say?

Mr. Fullerton—He said "an old white-headed gentleman, something like Mr. Beach there." [To the witness.] How was his eyesight at the time—Dr. May's? A. I don't remember.

Q. Did you see him? A. I have, Sir; often.

Q. Was he blind? A. No, Sir; I don't think he was blind; he could not see when he came to see his "patients," I don't think, if he was blind.

Q. Did you see him visit your uncle? A. I did; he attended me on a little occasion, too.

Q. Did you know Eliza Wordley in Petersburg? A. Eliza Wordley—a colored woman.

Q. Yes. A. I knew one.

Mr. Fullerton—I didn't ask if you knew two.

The Witness—But whether she would be the one I could not tell.

Mr. Fullerton—Did you know a woman by the name of Eliza Wordley in Petersburg? A. I did; she is dead, though. There is one that died before I came from there.

Q. Before you came from there? A. Yes, Sir.

Q. What time did she die? A. I don't know, Sir; I don't remember.

Q. Were you there when she died? A. I was in the city when she died.

Q. Now, when did you leave Petersburg? A. 18 and 69.

Q. Did you come directly to New-York? A. I came directly to New-York.

#### MR. WOODLEY'S SERVICES NORTH.

Q. Where did you go to live first after you came to New-York? A. I went over in New-York there a while in

some restaurant, and I found it was taking too much of my money—

Mr. Fullerton—Never mind the expense.

The Witness—Yes, Sir.

Mr. Fullerton—Where did you live? Where did you sleep?

A. I slept where I boarded.

Q. What street was it in? A. I don't know, Sir.

Q. Do you not know the name of the place—who kept it?

A. I don't know. After I came over here to Brooklyn I never saw the place any more; or, if I did, I didn't know it.

Q. How long did you board there? A. About three or four days.

Q. And you don't know what street it is in? A. No, Sir, I do not.

Q. How did you find the place? A. I was carried there by an officer.

Q. By an officer? A. Yes, Sir.

Q. What officer? A. A police officer.

Q. To this boarding place? A. Yes, Sir.

Q. And you stayed there three or four days? A. Yes, Sir.

Q. And cannot tell me the name of the people who kept it?

A. No, Sir.

Q. Nor what street it was in? A. No, Sir.

Q. When you left there, where did you go? A. I came to Brooklyn.

Q. Where did you go in Brooklyn? A. I went to Mr. Douglass. I think he is Superintendent, or Secretary, or something—Manager of the Children's Aid Society.

Q. How long did you live with him? A. I didn't live with him; I stayed there a while till he got a place for me.

Q. And where did he get a place for you? A. How is that? Where did he get a place for me?

Q. Yes. A. In Mr. Beach's.

Q. How long did you live there? A. I went up to Mr. Beach's the early part of the Spring—probably it might have been in the middle of the Spring—went up there and worked there until the Summer season. He was going to take in boarders for the Summer—Summer boarders—and I stayed up there all Summer.

Q. What street was that in? A. That was in New-Jersey—Caldwell, New-Jersey.

Q. What street was Mr. Douglass in? A. Poplar-st; it was named that then; I don't know the name of it now; I have not been there lately, and don't know whether it has been changed or not.

Q. When you left Mr. Beach's where did you go? A. When I left Mr. Beach's I came to Brooklyn again.

Q. With whom did you live in Brooklyn? A. With Mr. Holmes.

Q. How long did you live with him? A. I don't know how long.

Q. About how long? A. I came here in the Fall after I came from New-Jersey.

Q. What Fall was that? A. That was 1869.

Q. What time did you arrive here in New-York first? A. First?

Q. Yes. A. The first, I think—probably it might have been

the latter part—I think it was the latter part of March, or the first of April.

Q. And you stayed with Mr. Beach until what time in the Fall? A. I suppose it might have been the last of September, or probably the first of October.

Q. And then you came back to Brooklyn again? A. I came to Brooklyn again.

Q. Went to live with whom? A. I lived with Mr. Holmes.

Q. How long did you live with Mr. Holmes? A. I lived with Mr. Holmes until the next Spring.

Q. About what time in the next Spring? A. I don't remember.

Q. That is 1870? A. Yes, Sir, 1870.

Q. Then where did you go? A. I went from there after he got a team of horses, and he asked me could I attend to horses, and I told him I could not; I had not been accustomed to it.

Q. Never mind that; where did you go? A. I went to Mr. Broome's from there, James E. Broome, who used to be ex-Governor of Florida.

Q. Where did he live? A. He lived in 17th-st.

Q. In this city or New-York? A. In New-York City.

Q. How long did you live with him? A. I stayed there, I think it might have been about the 18th of June, and then I wanted to go up to the country again.

Q. Do you recollect whether it was the 18th of June? A. I am not certain, but I think somewhere along about that time.

Q. Did you go into the country from there? A. I did.

Q. Where? A. I went up to Caldwell, New-Jersey.

Q. With whom did you live at Caldwell, New-Jersey? A. With Mr. Beach—

Q. Again? A. Yes, Sir.

Q. Then you went up there in June, 1870? A. Yes, Sir.

Q. How long did you remain there? A. I remained there until Fall—the early part of the Fall, I think.

Q. As near as you can tell, what time was it? A. I could not tell; I don't know what time it was.

Q. But it was in the Fall of 1870? A. Yes, Sir.

Q. Where did you go from there? A. I came back here then, and came to this service, Woodhull & Claflin's, but I didn't know what place I was coming to in New-York. Some one hired me up there, but I don't know who it was.

Q. Hired you to come to what place? A. Gave me the address to come to 15 38th-st.

Q. You don't know who it was? A. No, Sir; it was a gentleman—a young man; he had dark whiskers.

Q. Did you come to New-York then? A. No, Sir, I didn't come then; I was not ready to come.

Q. How long after you had that address given you was it that you came to New-York? A. I think a month or two.

Q. What time did you come to New-York? A. I cannot tell.

Q. Winter time? A. No, Sir; it was in the Fall.

Q. Did you go direct to Woodhull & Claflin's? A. I did, but they were not at home.

Q. Then where did you go when you found they were not at home? A. I came down to Mr. Holmes's again and worked there a while again, and took out circulars, and by that time I

went up again to see whether they were home, and they were home.

Q. What time did you go up there the second time to see if they were home? A. I went up there in the afternoon.

Q. How? A. I went up there in the afternoon; I think it was in the afternoon; some time in the afternoon.

Q. About how late in the Fall was that? A. I don't know, Sir; I have never taken anything to memory, any of it at all, about the time.

Q. Don't you know when you commenced your service with them? A. No, Sir; I have no idea of it, no more than I know the date; I recollected when I commenced at the time, but after that I would forget it.

Q. Do you recollect what season of the year it was? A. It was in the Fall; what season of the year I could not tell, Sir.

Q. How long did you remain in their employ? A. Until 1872; that publication was dated November the 2d.

Q. '72? A. I know it was '72, but the date of the paper was dated November the 2d.

Q. What year? A. 18 and 72.

Q. You are sure of that? A. I am sure of it; I think I shall always recollect that any way, because I got throwed in jail by it.

#### THE WITNESS RETICENT ABOUT HIS PRIVATE AFFAIRS.

Q. Could you read at that time? A. Oh, a little.

Q. Knew figures when you saw them? A. Yes, Sir.

Q. Where had you learned to read? A. Why, I learned when I went to school, before I came here.

Q. Where did you go to school? A. In Virginia.

Q. What part of Virginia? A. Petersburg.

Q. When did you go to school in Petersburg. A. 18 and 66.

Q. '66? A. Yes, Sir.

Q. What street was the school in? A. I went to—I didn't go—it was a young man that was keeping—was teaching school there, at his own house.

Q. Where did he live? A. He was living then, way up in Sycamore-st.

Q. Sycamore-st.? A. Yes, Sir.

Q. You went to school to him? A. Yes, Sir.

Q. How long? A. I went nearly three months.

Q. Did you learn to read? A. Oh, yes, Sir.

Q. And could you read a newspaper? A. Yes, Sir.

Q. How? A. A little.

Q. What was the young man's name? A. John Matthews, now a Custom-House officer at City Point.

Q. I understood you to say that you came on expecting to get ten cents on a dollar on your money? A. I did, Sir.

Q. In what way? A. Well, they said they would give that interest; people was talking about it in Petersburg, and I thought I could get it.

Q. What interest were they paying in Petersburg at that time? A. About six per cent., as usual, I think.

Q. And you heard that they gave a higher rate of interest in New-York, did you? A. Yes, Sir.

Q. Ten per cent? A. Yes, Sir.

Q. How much money had you, James? A. Well, I had some enough, I thought, to try to take care of it.

Q. How much? A. I don't know as it is necessary to state to you how much it was, Sir.

Q. Well, I won't tell anybody of it if you will tell me. [Laughter.] A. Well, if I tell you I am afraid somebody else will hear before you do. [Laughter.]

Q. Well, I don't think that would do much harm. Could not you tell me about how much money you had? A. No, Sir. I wouldn't tell my wife, if I had one. [Laughter.]

Q. Well, I think you had better let me know about how much it was. A. No, Sir; I think not.

Q. How? A. No, Sir; I think not.

Q. You won't tell me, eh! how much money you had? A. No, Sir.

Q. Well, was it as much as a thousand dollars? A. Oh! well I can't state.

Q. Was it as much as a hundred? A. Oh! yes, Sir, it was as much as a hundred, and more, too.

Q. How? A. And more, too.

Q. How much was it? A. Well, I don't think I need to tell you at all, Sir.

#### WOODLEY'S LIFE AT THE WOODHULL'S.

Q. I won't press so delicate a subject as that any further. What were your duties when you first went to Woodhull & Claflin's? A. My duties was marketing and waiting and tending about the house.

Q. Did you do the marketing? A. I did, Sir.

Q. When did you first see Theodore Tilton at the house in 38th-st.? A. The first time I saw him there—I don't know whether it was three or four weeks after I was there—I don't know whether it was a lecture, or what it was, but one Sunday afternoon there was a congregation of people met there, and they had some kind of a lecture in the house, and I don't know what it was, because I didn't take notice; I never had any thought about it.

Q. Did you attend the lecture? A. No, Sir; I was at the door.

Q. You don't know how long you had been there, then? A. No, Sir.

Q. How long do you think you had been there then? A. I know I had not been there very long, but I don't recollect how long I had been there.

Q. Well, what season of the year was it? A. It was late in the Fall, I think, Sir.

Q. Late in the Fall? A. I think it was.

Q. Of what year? A. Of 18 and 70.

Q. Was it before or after the holidays? A. What, after Thanksgiving?

Q. Well, Christmas and New Year's. A. Oh! I know—I went down to the office at that time.

Q. How? A. I was down at the office at that time.

Q. You were at the office then? A. Yes, Sir.

Q. You were not at the house? A. No, Sir.

Q. When did you leave the house and go to the office? A.



That was that Winter, when Mrs. — it was after Mrs. Woodhull went to Washington and come back.

Q. When did she go to Washington and come back? A. She come back, I think, a few days before the holidays, to the best of my recollection.

Q. How? A. She come back a few days before the holidays, I think.

Q. And how long after she came back before you went down to the office? A. I suppose it might have been a week or two, probably.

Q. How? A. It might have been a week or so, probably; I don't know.

Q. Well, then you got down to the office before the holidays, I understand you? A. Yes; about that time, I think.

Q. About that time? A. I think somewhere along there.

Q. And you think a little before? A. I don't recollect just about the time. I don't like to state without I am certain about it.

Q. Then how long had you been at Mrs. Woodhull's before you went down to the office? A. I went there in the Fall, Sir; I don't know how long, Sir.

Q. About how long had you been with her. A. I don't know, Sir.

Q. As near as you can recollect? A. I haven't the least—not the slightest idea.

Q. Not the slightest recollection? A. No, Sir; as to how long it was.

Q. Had you been there some months? A. Oh! I had been there some months; I know I had been there over two months.

Q. How? A. I had been there over two months.

Q. Over two months? A. Oh! yes; I had been there over two months.

Q. When you left and went down to the office, had you seen Mr. Tilton there? A. More than once at that time.

Q. Yes. A. I had seen the gentleman come in, I think, sometimes of an evening.

Q. You think? A. I think.

Q. You are not positive? A. No, Sir; I am not positive about it.

Q. How long before you left was it that he was there at what you call the lecture? A. Before I left?

Q. Yes, Sir? A. They had the lecture before Mrs. Woodhull went to Washington.

Q. To Washington? A. Yes, Sir.

Q. And are you sure you saw him there then? A. I saw him there then, on Sunday.

Q. Positive? A. Yes, Sir.

Q. On Sunday? A. Yes, Sir; because I admired the gentleman.

Q. You did, eh? A. Yes, Sir.

Q. Was it before or after Thanksgiving? A. After Thanksgiving.

Q. Yes? A. I don't remember, Sir, at all.

Q. But you are not sure that you saw him there but once before you left and went down to the office? A. No, Sir; I am not sure.

Q. Now, have you any way of getting at the date when you went to the office, James? A. No, Sir.

Q. Do you recollect how the weather was when you went to the office? A. It was cold weather; I know that.

Q. Where did you board after you went to the office? A. Up to the house, and sometimes I boarded over here in Brooklyn.

Q. Sometimes at the house and sometimes you boarded in Brooklyn? A. Yes, Sir; I had taken my washing always over here, and so I thought I would stay over this side, where I could go to church.

Q. Where did you board here? A. In Clason-ave.

Q. What number? A. 604 Clason-ave.

Q. 604 Clason-ave? A. Yes, Sir.

Q. With whom? A. My mother.

Q. She lives there, does she? A. Yes, Sir.

Q. Now, didn't you board there regularly after you went to the office in New-York, with Woodhull & Claflin? A. No, Sir; I did not board there regularly at all.

Q. Well, did you quit boarding with your mother? A. No, Sir.

Q. Well, then, how do you mean? A. Well, I would be sometimes up to the house, and then over here. If I was ketch'd up at the house I would stay there; if I had any errands to do up that way I would stay up there.

Q. Then you were there irregularly, were you? A. At the house?

Q. Yes. A. Yes, Sir; I was not there all the time; sometimes two or three times a week, sometimes more; sometimes probably a whole week I would be up at the house.

Q. And would not come to Brooklyn at all? A. Not until about Saturday evening.

Q. Now, when did you next see Mr. Tilton there after this lecture? A. To the house or the office?

Q. To the house. A. Well, I saw him there after that—Mrs. Woodhull introduced him to me; I saw him there; I don't know whether it was along—I think it was some time along in the Spring, some time.

Q. In the Spring? A. Yes, Sir.

Q. In the following Spring? A. In the following Spring.

Q. What year was that? A. That was 18 and 71.

Q. '71? A. '71.

Q. Then from the time that you saw him there at the lecture, up to the Spring of 1871 you are not sure that you saw him there? A. I am not very positive about seeing him there any time only the lecture. I am sure of that.

Q. And then again in the Spring of 1871? A. In the Spring; I am not so very sure.

Q. Now, do you know what time it was in the Spring of 1871 when you saw him there next? A. No, Sir.

Q. How? A. No, Sir.

Q. When were you introduced to him? A. Down at the office.

Q. When? A. I think it might have been the latter part of February, or perhaps March; it was cold weather; I remember that very well. I had been out with my papers and had come in, making my return to Mrs. Woodhull and Miss Claflin.

Q. That is the first that you saw him at the office, was it? A.

That was my first acquaintance with him at the office, to my recollection.

Q. Had you seen him at the office before? A. I might have seen him there.

Q. But you don't recollect, though? A. No, Sir; I don't recollect it.

Q. How long after you were thus introduced to him was it that you saw him next at the house? A. I think it was some time along—it might have been the last of the Spring probably, and the first of June, some time that time. I could not tell what time it was.

Q. It was warm weather, was it not, James? A. It was quite warm.

Q. Wasn't it as late as July or August? A. I don't think that it was quite as late as that, Sir.

Q. Well, you are not sure, are you? A. I am not sure it was quite as late as that. I saw him there often before that.

Q. Where? A. Before as late as that, I should say.

Q. Where? A. Why, at the office, and up at the house too.

Q. Did you? A. Yes, Sir.

Q. Well, I was speaking of the time when you saw him at the house next after you saw him at the lecture? A. It was along late in the Spring, I think.

Q. How? If my memory serves me right, I think it was the latter part of the Spring.

Q. But you added a moment ago, I think, James, that it might have been as late as the first of June? A. Well, that is what I say, the latter part of May; that would be—that would end in June, wouldn't it?

Q. Yes, and I understood you to say that from the time you saw him at the lecture, up to the time when you saw him the latter part of May or June, whatever time it was, you were not sure that you had seen him at the house? A. I am not very sure, not very sure.

Q. Well, a moment ago, didn't you tell me that you had seen him at the house very often before that, or did you misspeak?

Mr. Evarts—He did not say before that, did he?

Mr. Fullerton—Yes, he did.

Mr. Tracy—The question, your Honor, of the counsel was July or August, when the witness said: "I had seen him a good many times before that at the house."

Mr. Fullerton—Now, when you say you saw him there the next time as late, probably, as May or June, I asked you if it might not have been as late as August when you first saw him there? A. Yes, Sir; you asked me that question, but I told you it was not so late as that.

Q. Are you sure it was not so late as that. A. It was not so late as that, Sir, when I first saw him there, Sir; it was not so late as that.

Q. And when do you mean to be understood now that you saw him frequently there—before May or June? A. It was about May, along some time in May; perhaps in June some time. I think it was about the latter part of May, along at that time, when he was more accustomed—

Q. When he was what? A. When I became more acquainted with him about the house.

Q. About the house? A. Yes, Sir.

Q. Now, James, let me put this question to you: When did you first see him at the house after the delivery of the lecture which you speak of? A. I might have—I am not positive that I saw the gentleman there particularly before the Spring; I am not so positive about it as to say truly, but I saw him after the lecture, I think I saw him after that, probably a number of times after that, but I am positive I saw him there in the Spring.

Q. As late as May or June? A. Somewhere along about the latter part.

Q. Now, when you saw him there in May or June, of which you are certain, do you recollect what took place? A. Well, he was accustomed always when—

Q. Well, go on. A. When he met the ladies they would greet him and he would greet them as usual.

Q. How often had you seen him greet them and him greet them before that visit in May or June, 1871? A. How often?

Q. Yes. A. Where at? If you please state where at, because you know I saw him at the office too, and at the house.

Q. And at the house? A. Yes, Sir.

Q. Before that? A. I hope you will make it plain to me, what you mean.

Q. Oh! yes, as plain as I can. A. Yes, Sir.

Q. I understood you to say that in May or June, whatever the month was, when you saw him at the house—the first time that you are sure that you saw him at the house, that he greeted them and they greeted him as usual? A. Yes, Sir.

Q. Now, I ask you the question, and I will make it as plain as I can, where you had seen them greet him and him greet them, before that visit at the house? A. At the office.

Q. At the office? A. Oh, yes, Sir; frequently at the office.

Q. Frequently? A. Yes, Sir.

Q. Had you seen them greet him and him greet them at the house before that visit in May or June? A. I don't know that I remember anything about it before.

Q. How? A. I don't remember anything about it before that.

Q. How frequently had you seen him at the office? A. Well, I had seen him there quite a number—number of times, at that time. He seemed to be very intimate with them at that time.

Q. In that Winter? A. Along through the Winter and Spring season.

Q. 1870 and 1871? A. That was—you are speaking now of 1871, I suppose?

Q. I am speaking of the same time that you are speaking of. A. Well, 1871.

Q. Very well. Had you seen him lunching there before May or June, 1871? A. Oh! yes, Sir, I had seen him lunching there.

Mr. Evarts—You mean by that, at the office?

Mr. Fullerton—Yes, Sir.

The Witness—At the office.

THE LUNCHESES AT DELMONICO'S.

Mr. Fullerton—At the office. Sometimes you say they went to Delmonico's to lunch? A. Yes, Sir.

Q. What Delmonico's; where? A. In Broad-st.

Q. At their eating house there? A. Yes, Sir.

Q. How many times have you seen them there? A. Well, I can't mention, Sir, how many times; I don't remember.

Q. Well, about how many? A. Oh, I couldn't remember; I know I saw him a number of times.

Q. Well, a half a dozen? A. Oh, more than that!

Q. Well, a dozen—a dozen times? A. Oh, yes, Sir; more too.

Q. Well, two dozen times? A. It might.

Q. How? A. It might; I know I saw him quite a number of times, but I couldn't tell.

Q. Where was he lunching in Delmonico's, in the upper or lower room? A. They went up in the upper room.

Q. In the upper room? A. Yes, Sir, in the upper room, I think, Sir.

Q. Well, you think it was as much as two dozen times? A. I guess perhaps it was; I don't know; I couldn't say.

Q. Well, as near as you can say, James? A. Well, I told you just about as near as I can say.

Q. Well, please repeat it. A. I told you I supposed it was more than a dozen times.

Q. More than a dozen? A. Yes, Sir.

Q. And that is as far as you can go? A. Yes, Sir; that is about as far as I can go.

Q. Where were you when you saw them go up in the upper room? A. Probably I— Sometimes I would want something from Mrs. Woodhull, or something of that kind, and Col. Blood would send me. He would generally stay at the office; he would be busy at the office, and would not go sometimes.

Q. You say "probably." A. Sometimes, I say, he didn't go with them to lunch; he would stay there; he would be busy writing, or some of his business, so he would not go; he would not go until they came back, and I might have to go after something.

Q. You say you might have to go after something? A. Well, I did.

Q. One moment. Do you recollect that you actually did go after something? A. I do.

Q. Where did you find Mrs. Woodhull and Mr. —? A. Sitting at the table.

Q. In Delmonico's? A. In Delmonico's.

Q. Up stairs? A. In Delmonico's; sometimes at Curtis's.

Q. Now, don't speak of Curtis's. I am at Delmonico's now. Did you find them up stairs at Delmonico's? A. Up stairs, Sir.

Q. Did you go up stairs to find them? A. Up stairs.

Q. How? A. I went up with the waiter.

Q. You went up with the waiter? A. One of the waiters.

Q. One of the waiters? A. In the place.

Q. In the place. How frequently did you go up stairs, and find them in Delmonico's? A. I could not tell how many times Sir; I have stated to you about as far as I can.

Q. Did it occur more than once that you went up stairs? A. Oh! yes, Sir; it occurred more than once, Sir.

Q. More than twice? A. Yes, Sir.

Q. How? A. Yes, Sir.

Q. More than half a dozen times? A. Yes, Sir.

Q. And as many as a dozen times? A. Oh! yes, Sir.

Q. More than that? A. I have been—I went up stairs quite a number of times, and I didn't go up there any time without it was I went up there for something concerning them, because I could get what I wanted down on the first floor.

Q. No, I am speaking of your going up stairs to find them. A. That is why I went; to find them.

Q. And you did find them up there? A. Yes, Sir.

Q. This was in Broad-st., was it not? A. Yes, Sir, in Broad-st.

Q. There are two floors, are there not, there? A. Yes, Sir.

Q. Where refreshments are served? A. Two floors.

Q. The upper floor consists of little tables in the room? A. Yes, Sir.

Q. Occupied by persons lunching, are they not? A. They was, Sir.

Q. Or is it a long table running through the centre of the room? A. I don't remember now, Sir, how it was arranged.

Q. Now, is there any table there in that room? A. There is tables in the room.

Q. Or do they stand up at the counter and lunch? A. There is tables in it, Sir, to my recollection.

Q. How? A. There was tables in the room to my recollection, Sir.

Q. Then it was not a long counter at which persons stood up and lunched? A. They wasn't standing up at all; they were sitting down.

Q. Sitting down? A. Yes, Sir.

Q. At a table? A. Yes, Sir.

Q. At a table occupied by them alone? A. By them alone.

Q. Now, that occurred, I understand you, in the Winter of 1870 and '71? A. No, Sir, don't put '70 there, Sir, if you please.

Q. Well, the Winter commences in December? A. I know it do, but then your question—of course you can't put '70 in with '71 at all, because I told you fully that my remembrance of seeing Mr. Tilton and being acquainted with Mr. Tilton first was in 1871. I saw him up at the house when he lectured there; he lectured or probably read a lecture or something.

Q. Or something? A. Or something of that kind.

Q. That was in 1871? A. That was in 1871.

Q. Now, when was it that you saw him lunching up-stairs in Delmonico's? A. That was '71 and '72.

Q. In the Winter of 1871 and '72, was it? A. Well, it might have been Winter and Spring, along there.

Q. When did you first see him lunching there; what year? A. When I first saw him lunching there it was in 1871.

Q. What time in 1871? A. I could not tell you, Sir.

Q. Spring, Summer or Winter? A. It commenced along in the Spring.

Q. It commenced along in the Spring? A. When I saw him lunching there.

Q. How? A. Along in the Spring, when I saw him lunching there.

Q. Did he lunch there continuous—along after you first saw him? A. A great many times; very often, Sir.

Q. Very often? A. Very often; he used to do a great deal of his work there.

Q. At Delmonico's? A. No, Sir, at Woodhull & Claflin's office.

Q. I am talking about lunching at Delmonico's, James. Did he lunch at Delmonico's right along after you first saw him there, from time to time? A. Oh! no, Sir; because they ordered it a great many times; they ordered it and had it come in; I went out very often to order it.

Q. Where did you go for it? A. Sometimes I went to Delmonico's, and sometimes to Curtis's.

Q. Did you ever see him and Mrs. Woodhull at Curtis's lunching together? A. I don't hardly remember whether I did or not.

Q. Well, how near do you come to remembering; do you think you did or did not? A. Well, I won't—I can't say—I won't say particularly, because I may not be right.

Q. Well, when you went up stairs and saw him lunching at Delmonico's, did you see any one else there whom you knew? A. No, Sir; Miss Claflin; they all three was together, Mr. Tilton and Miss Claflin and Mrs. Woodhull.

Q. They were all there? A. And there was other people in the room.

Q. Did you know any of them? A. No, Sir; I did not.

Q. How? A. No, Sir; I did not know them, Sir; gentlemen of business, of course, I could not expect —

Q. Were there other people sitting at the tables and lunching there? A. There was other people there; other people was lunching there.

Q. Now, how late or how long did Mr. Tilton continue to lunch from time to time with those women, or any one of them, at Delmonico's? A. Well, the last I saw of them it was, I think, 1872, the last I saw.

Q. What time in 1872? A. I don't know, Sir.

Q. Don't you know the season of the year? A. No, Sir; I don't remember at all the season of the year.

#### THE WITNESS DISCUSSES POLITICS.

Q. You don't remember the season of the year?

A. I know he was away, you know, a good part—after along in the Summer he was away on the campaign, a good deal.

Q. On what campaign? A. On the Presidential—the Greeley campaign, and I was very much surprised to find him—

Q. What Summer was that? A. That was 1872.

Q. How long was he absent? A. I don't know, Sir, how long he was absent; some time.

Q. When did he go away? A. I don't know, Sir; I missed him quite a good deal that Summer.

Q. Couldn't you tell me what time you missed him? A. No, Sir; I could not.

Q. Could you tell me what month you missed him; A. Oh! I missed him quite a good deal along in the Summer, and the first of the Fall along, I missed him quite a good deal.

Q. Well, it was a pretty warm campaign, wasn't it, James? A. It was a pretty warm campaign, Sir.

Q. You took some interest in it, didn't you? A. I did, so far as I was concerned in it.

Q. And didn't you notice what time Mr. Tilton went away to assist somebody? A. No, Sir; I didn't take any notice of it; only what I noticed—I noticed that he was taking sides on Mr. Greeley's side. I noticed that; I was surprised at the man that had done so much to—done so much good.

Q. Who had done so much good? A. Mr. Tilton, according to reputation.

Q. You were surprised that he supported Mr. Greeley? A. Yes, Sir, I was very.

Q. Didn't that occasion you to notice that he went away? A. No, Sir.

Q. He went away campaigning you say? A. I think that was it—I think he was on an election tour.

Q. Making speeches? A. I heard so. I heard them reading some of his speeches.

Q. And you cannot tell what time he went away? A. No, Sir, I can not, because he went away —

Q. You recollect the time of the election, don't you? A. I do Sir; I voted at that time.

Q. Yes. Well, didn't he continue his campaign speeches up to the time of the election? A. Up to the time of the election—I was in jail at the time.

Q. How? A. I was in jail, but I came out with an officer to vote.

Q. Do you recollect the day of the month when you were taken to jail? A. I do, Sir.

Q. What day was that? A. It was on Saturday, I think. Saturday was the second of November, I think.

Q. Now, prior to that, and for some time prior to that, don't you know that Mr. Tilton had been away on his campaign? A. I know that he had been away, and that is why I was so surprised.

Q. Well, the question that I ask you is this: whether a long time prior to your arrest, he had not been away campaigning for Mr. Greeley? A. I cannot tell about the time, nothing at all about the time.

Q. How long was it before you were arrested and taken to jail that you had seen Mr. Tilton? A. It might be four or five weeks, may be, or more.

Q. It might have been longer than that? A. Well, I was sick, I think—I was sick some time.

Q. Sick before you went to prison? A. Yes, Sir; I had just come out from a sick bed.

Q. How long had you been out? A. I came over Friday afternoon.

Q. And you were taken to jail? A. No, Sir, I was taken Saturday morning.

Q. To prison? A. Yes, Sir.

Q. And you only came out on Friday? A. I came out from a sick bed, came from Brooklyn, and went over there on Friday afternoon. Miss Claflin told me that she wanted to me to come over early—

Q. Never mind that; how long had you been sick? A. I don't remember how long I had been sick.

Q. About how long? A. It might have been three weeks or more.

Q. Confined to your bed? A. Yes, Sir.

Q. What was the difficulty with you? A. Well, it was a kind of a cold, I thought it was pneumonia, or something.

Q. Then you were pretty sick? A. I was quite sick.

Q. Did you have a doctor? A. I did.

Q. Who was your doctor? A. I had—I don't remember his name now, but he lived down here in Bridge-st.

Q. Can't you remember his name? A. No, Sir, I can't remember his name; he didn't come but once or twice.

Q. Don't you remember the doctor's name? A. No. He lived over there at the other side of the drug store, there on Bridge-st. near Sands.

Q. Repeat again where he lived? He lived the other side of the drug store—I think the drug store is on the corner of Bridge and—I think now—I won't be certain.

Q. How near does he live? A. He lives just over across here, or did at that time.

Q. Do you know how long he attended you? A. Twice; that is all.

Q. How? A. Twice; that is all.

Q. Twice? A. Yes, Sir.

Q. Is he the only doctor that you had during your illness? A. The only doctor until I went to Ludlow-st. jail.

Q. Where did you stay during that illness? A. I stayed at my mother's.

Q. The same place that you have spoken of already? A. Yes, Sir.

Q. But you cannot tell me how long you were sick? A. No, Sir.

Q. Now, how long before you were taken ill that time was it that you had seen Mr. Tilton? A. Well, it hadn't been but—it hadn't been, I don't think, very long, but I could not state how long.

Q. Some weeks? A. I don't know, Sir.

Q. How? A. I have no recollection at all about it.

Q. No recollection upon the subject? A. No, Sir; not upon that—not to say the time.

Q. As near as you can tell us? A. I cannot tell you.

Q. Do you think it was as much as a month? A. I have never had no memorandum or nothing—never have taken thought about it at all.

Q. Do you think it was as much as a month? A. I don't know, Sir.

Q. How? A. It would not have been very long, I think.

Q. Where had you been engaged up to the time that you were taken ill? A. At Woodhull & Claflin's.

Q. Were you engaged there up to the time you were taken ill? A. Yes, Sir.

Q. Were you engaged at the office or at the house? A. At the office.

Q. You say that Delmonico's is in Broad-st.? A. In Broad.

Q. How close to Woodhull & Claflin's office? A. Well, I suppose their office is between New-st., I think—New-st. and

Beaver, and Delmonico's is between New-st. and Wall, just down below the Exchange.

Q. About how many offices intervene between Woodhull & Claflin's and Delmonico's—between the two places? A. I don't know, Sir, how many there is.

Q. Then you are sure that Delmonico's that you speak of was in Broad-st.? A. In Broad-st., Sir. It runs back through to, I believe it is Exchange-pl.

Q. New-st., is it not? A. New-st.—it runs back—I don't know.

Q. To a street in the rear? A. Yes, Sir.

Q. Is it on the same side of the street with Woodhull & Claflin's office? A. On the same side of the street.

Q. Now, James, I understand that you cannot tell me how long it was before you were arrested, that you had seen Mr. Tilton? A. No, Sir, I cannot.

Q. Can you tell me where you had seen him last before you were arrested? A. The last time I saw him before I was arrested, it was at the office.

#### THE INTERVIEW ABOUT "THE BEECHER ARTICLE."

Q. Do you recollect what occurred the last time that you saw him before you were taken ill? A. Well, they were talking about this same publication that they had—it was a Beecher article; I didn't know what it was.

Q. You are sure about that? A. I am sure about that.

Q. Who spoke first in regard to that article? A. Who spoke first?

Q. Yes. A. When I first heard them, Mrs. Woodhull and Miss Claflin and Mr. Tilton was all standing together talking.

Q. Where were they? A. As soon as he came in.

Q. As soon as he came? A. Yes, Sir. They were in their office.

Q. What office were they in? A. It was in the middle office, I think.

Q. They were standing in the middle office? A. In the middle office.

Q. Are there three offices? A. There is a place where you go in at the counting room, and then there is another office between that and the back private office.

Q. And they were in that middle office? A. Yes, Sir.

Q. All standing up when he came in? A. All standing up when they first introduced the subject.

Q. Where were you? A. I was standing behind the counter, opening the exchanges.

Q. You recollect what you were doing at the time? A. Yes, Sir, opening the exchanges.

Q. And when he came in he joined them? A. He joined them; they didn't say anything about it at all, not till he came.

Q. And then they commenced talking about it? A. They commenced talking about the publication.

Q. He stood up with them on the floor? A. Yes, Sir, they were all standing together.

Q. What was said? A. They spoke—

Q. Don't say "they;" tell me who spoke? A. Mr. What and Mrs. Woodhull and Miss Claflin.

through

Q. What did Mr. Tilton say? A. He spoke about publishing "the Beecher article;" I didn't know what it was, though.

Q. The "article," or "the Beecher article?" A. The Beecher article.

Q. Did he call it the Beecher article? A. Yes, Sir.

Q. He made use of that term? A. Yes, Sir.

Q. Are you sure? A. I am sure, Sir.

Q. Did he speak first about it? A. He spoke first, to my recollection.

Q. Now, what did he say? A. I don't remember just the words—what was said.

Q. Well, the substance, James, the substance of the words? A. I don't know how it was introduced at all, more than that I heard him say—speak about publishing the article, and—he said, "I would do it"—said, "I could not do it—I would do it directly," but if I did it I would be crushed; they would crush me; I am a man; you are a woman; you can do it."

Q. What else was said then? A. Well, they talked about the same article and they said—

Q. Was that the first that you heard said? A. The first.

Q. Yes, you have given the first conversation that you heard, that you remember, have you? A. [After a pause.] I heard them talking about the conversation several times.

Q. Before that? A. Several times before that, and then at that interview they were speaking about the publication particularly; that was the one that I took particular notice of, because Colonel Blood was opposed to it.

Q. You have related the first conversation that you heard upon that subject that you remember, haven't you? A. I heard them talking about a conversation—

Q. Before that? A. Several times before that; but then at that interview, if you are speaking about the publication part, the one that I had taken so particular notice of, because Colonel Blood was opposed to it.

Q. Yes; but I say you have told us all that you remember that took place at that conversation, have you?—if not, tell the rest that you remember.

Mr. Evarts—You have not asked for all.

Q. Can you remember anything else that took place at that time? A. Oh! yes; I can remember things that took place.

Q. Well, please state it. A. I want to be sure and correct.

Q. Please state it.

The Witness hesitated, drummed with his fingers on the arm of the chair, and sat looking around—

Mr. Fullerton—Can you state it?

The Witness [looking at Mr. Fullerton]—I can state it, but then I want to be sure, just exactly.

Q. Well, I want you to be sure, too, James; I am not interfering with your being sure. A. To state just the words that was used.

Q. Well, can you now give them—just the words that were used? A. Well, they used the words that this—as I before told you that they told—Mr. Tilton said that, "Vickey, if you publish this thing, you will be a made woman on it; you will be a made woman if you publish it;" so then, she called  
first of all Blood—Colonel Blood was behind the counter  
t the same time when I was opening the exchanges;

and so they then went and had an interview together; she spoke to Colonel Blood about it; and so they went on about it—

Mr. Fullerton—A little louder.

The Witness—She talked with Colonel Blood about the matter; and then Mr. Tilton, taking Colonel Blood off and talked with him about it privately.

Q. Where did he take him? A. Took him onside, just took him onside; they both stood onside, and was talking about it.

Q. Well he didn't go so far but what you could hear, did he? A. Oh! I could not exactly understand everything was said.

Q. Oh! you could not exactly understand everything; but, could you understand some things? A. Well, I heard him say—he says, "Colonel, you publish it—you publish;" and Colonel Blood said, "No, I won't have anything at all to do with it."

Q. That is when they were standing by themselves? A. That is when they were standing by themselves.

Q. Now, you heard that; what else did you hear them say, when they were standing by themselves? A. Well, I heard him say that—what's the reason that he could not do it?

Q. Colonel Blood said this? A. No; that was Mr. Tilton.

Q. Mr. Tilton said to Colonel Blood? A. Yes, Sir.

Q. "What's the reason he could not do it?" A. Yes, Sir.

Q. Well, then, what did Colonel Blood reply? A. He said that he would not have anything to do with it.

Q. Then what did Mr. Tilton say? A. Mr. Tilton—they were there together—and they talked on—I don't recollect—

Q. No; what did Mr. Tilton say next, as near as you can recollect? A. I don't exactly recollect now, Sir.

Q. Well, give us the best recollection you have got upon the subject. A. Well, I don't want to give you the best recollection without I give it to you correct.

Q. Well, give us the best recollection you have got correctly, as near as you can recollect what it was. What else did Colonel Blood and Mr. Tilton say? A. Well, after they had an interview there, Mrs. Woodhull and all of them went back in the back office, and they talked there about it.

Q. Well, before they went back into the back office; can you state anything else that you heard Mr. Tilton and Colonel Blood say when they were standing by themselves? A. Well, I—

Q. How? A. Well, I could; I could state some things, but I want to be sure and correct whether—just in a straight line or not—

Q. Well, state those things, James, that you are sure of; what else did you hear them say, if anything? A. Yes, I did hear them say more.

Q. Well, now, please state what else you heard when Colonel Blood and Mr. Tilton were standing there by themselves? A. Well, they were talking about Mr. Beecher.

Q. They were talking about Mr. Beecher? A. Yes, Sir.

COL. BLOOD WASHES HIS HANDS OF THE WOODHULL SCANDAL.

Q. Now, what did they say about Mr. Beecher?

A. They were talking about Plymouth Church; Mr. Beecher's church was a rich congregation, and they could make \$100,000 by publishing—publishing that Beecher article; said they would pay any amount, they would pay any amount to have it stopped.

Q. To have it stopped? A. Yes, Sir.

Q. And what did Col. Blood reply to Mr. Tilton? A. He said no, that he would not have nothing to do with it; it would ruin them.

Q. Now, how far were the girls, the ladies, standing from them when Mr. Tilton and— A. They were standing talking; I don't remember how far they were standing at all.

Q. How far were they from Mr. Tilton and Col. Blood? A. I don't know, Sir; they might not have been standing further apart than you are from me probably.

Q. But this was a private conversation between Mr. Tilton and Col. Blood? A. That was a private conversation, yes, Sir, at that time.

Q. Well, did they talk in a lower voice than they did before? A. Yes, Sir; they were talking in a lower voice.

Q. Did you listen to hear what they said? A. No, Sir; I did not.

Q. You were engaged in opening the exchanges? A. I was engaged in opening the exchanges.

Q. Well, how long were you engaged in opening those exchanges? A. Oh, well, it probably took me—there was quite a number of them—it took me quite a while, because I would have to stop to go first one errand and then another.

Q. Well, Sir, did you stand there and open the exchanges until they got through with this conversation? A. But when I opened the exchanges, then I would look over and mark the certain articles that was in the papers.

Q. Yes; for what purpose did you mark them? A. Well, I knew that Col. Blood wanted to clip them a great many times.

Q. Yes; you made the selections? A. What I thought he would want to clip out.

Q. When you stood there either opening the exchanges or marking the papers? A. Yes, Sir.

Q. Until they got through with that conversation? A. They went in the office before they got through; they went in all of them, went in the back office,

Q. Went in the back office? A. Yes, Sir; had an interview there.

Q. Well, did you stand and open exchanges— A. I did, Sir.

Q. One moment. Did you stand and open exchanges, and mark the papers, until they went into the back office? A. I did, Sir.

Q. What was between you and them? A. What was between? There was a little door, a little small door, I suppose about as high as this cane, I guess, there, where we went back in the counting-room, behind the desk.

Q. And you stood— A. I was in between, standing at the desk—a high desk.

Q. And the desk was between you and them, wasn't it? A. Oh! no; not the desk wasn't between me and them.

Q. Were you standing with your back or face towards them? A. I was standing right just as I am sitting now, near the counter.

Q. Were the papers on the counters? A. The papers were on the counter.

Q. Then the counter was between you and them, wasn't it? A. No, Sir, the counter was not between me and them; there was a little door, as I was telling you, where you open and go in behind the counter.

Q. The door was connected with the counter, wasn't it? A. Yes, Sir, the door was connected with the sides of the—

Q. How? A. Yes, Sir, the door was connected not with the counter, but there was a little railing that went around.

Q. Well, how did you stand; facing them? A. No, Sir, I was standing sideways to them.

Q. Sideways? A. Yes, Sir.

Q. The table was *here* [illustrating], wasn't it, that you had your papers on it? A. That was not a table; it was a desk, a writing desk.

Q. Now, suppose you stood here, and the papers were before you on this desk, where were they? A. I was standing just pretty much as I am sitting now, and they were standing right off to my left.

Q. On your left? A. Yes, Sir.

Q. And the papers were in front of you? A. The papers were in front of me.

Q. Now, in looking over those papers, then, you marked what you thought Colonel Blood would want to cut or clip out? A. Yes, Sir; made selections to the best of my knowledge.

Q. Making selections? A. Yes, Sir.

Q. Well, you of course read what you marked before you marked it? A. Oh! I would always look at the heading to see what it was.

Q. And so marked it for him to clip out? A. Yes, Sir; what I thought he would like.

Q. Yes, cut out for publication in *The Woodhull & Claflin's Weekly*? A. Yes, Sir; from the exchanges.

Q. Now, where did you go when you left that desk, and got through with marking and opening exchanges? A. Before I got through—I done several things before I got through; I couldn't say; I was in the back office and out, and went in and out—

Q. How long had they been in the back office before you quit opening the exchanges? A. How long?

Q. Yes. A. Not very long before Mrs. Woodhull called me to go out; I know one errand I recollect—

Q. No, don't mix up errands; whenever you got through with opening the exchanges and marking them, what did you next do after they went in the back office? A. When I got through? I don't know as I was through. I don't know what time I got through; I don't remember what time I got through at all.

Q. Well, when you left that position first after they went into the back office, where did you go? A. I went into the back office; they called me.

Q. They called you? A. Yes, Sir.

Q. What did they call you for? A. To do something; I don't remember what.

Q. Did they tell you? A. Oh! yes, Sir, they told me.

Q. And did you go and do it? A. Yes, Sir.

Q. Right away? A. I had to wait some time for an answer.

Q. Yes; and who were in there when you went in there? A. Col. Blood and Mrs. Woodhull, and Miss Claflin and Mr. Tilton.

Q. Anybody else? A. Nobody else.

Q. And did you hear anything that was said in there? A. Yes, Sir.

Q. Well, they had talked this matter all over in the middle room, hadn't they? A. They was still talking.

Q. Still talking? A. Yes, Sir; talking on the same subject, as far as I could learn.

Q. Well, did you hear what was said when you were in there? A. Oh! I heard some—some talking about this same article.

Q. No, no; did you hear what was said? A. Did I hear what was said?

Q. Now, what did you hear in the back room? A. I heard them talking about publishing this same Beecher article.

Q. Now, tell me who spoke, and what was said? A. Why, all of them was talking.

Q. Well, tell us what all of them said, then? A. It is impossible for me to tell you what all of them said.

Q. Can you now distinguish and tell us any one thing that was said in the back room? A. I knew they were talking about publishing.

Mr. Beach—I would not allow that; I would have it stricken out. It has been repeated so often, I would not permit it.

Mr. Fullerton—Can you tell me any one thing that was said in the back room, after you went in there? A. I heard them talking Colonel Blood to publish—Mrs. Woodhull and Miss Claflin first; they were the first ones I heard speaking of the publishing of this Beecher article. "Why," she said, "why it will be the making of us." Colonel Blood said, "I won't do it; you can do it; I won't have nothing at all to do with it."

Q. That is about what you heard in the middle room? A. I heard that, and then they went—Mr. Tilton and Colonel Blood went and stood up there by the desk—they had a desk sitting in there, a large desk sitting there, and they stood about where the gas is, I think—the gas fixture is. They stood there near the window, and they conversed on the subject. Colonel Blood told him, "No, I won't have nothing to do with it."

Q. And then Colonel Blood and Mr. Tilton went by themselves twice, did they? A. Yes, Sir.

Q. In the middle office and in the back office, did they? A. Yes, Sir.

Q. And talked over the same thing, did they? A. Talked over—they was talking on the same thing.

Q. Using the same words? A. Using pretty much the same words, Sir; about the same publication.

Q. Now, which of them did you hear mention the word "Beecher scandal"? A. Which of them?

Q. Yes. A. I heard Mr. Tilton use the word; I heard Mrs. Woodhull and Miss Claflin use the word.

Mr. Evans—The "Beecher matter."

The Witness—The "Beecher matter," they didn't say anything about the "Beecher scandal."

Mr. Fullerton—Yes, the "Beecher matter," was it? A. Yes, Sir, the "Beecher article," they called it.

Q. The "Beecher article"? A. Yes, Sir.

Q. Now, which was it, James? A. I heard all—Mrs. Woodhull, Mr. Tilton, and Miss Claflin and Col. Blood.

Q. They all used that phrase, did they? A. They all used it.

Q. What phrase? A. The "Beecher article."

Q. The "Beecher article"? A. Yes, Sir.

Q. Well, you spoke of their using—talking about a Chellis article too, didn't you? A. I said they—I never heard anything about the Chellis article, not until I heard it was in the paper; I didn't see that at all; I never heard anything about the Chellis.

Q. They were not talking about the Chellis article at any time? A. I never heard anything about the Chellis article.

Q. How? A. I never heard anything about the Chellis article; not until it was published.

Q. Now, can you state any one thing that you did that day when you heard them thus talking? A. I know I went and ordered the dinner; I know when they were standing up there—Mr. Tilton and Col. Blood was standing there talking together—I was then waiting for an order to go and order lunch.

Q. That is what you were waiting for? A. Yes, Sir.

Q. And did you get the order to get the lunch? A. I got the order; Col. Blood filled all—or wrote the order and gave it to me to go to get the lunch.

Q. And where did you get it from? A. I don't remember whether I got it at Curtis's or Delmonico's that day.

Q. Now, James, could you tell us when that was? A. That was 1873.

Q. What month? A. Don't remember.

Q. What? A. It was before I was taken sick.

Q. Before you were taken sick? A. Yes, Sir; it was before I was taken sick.

Q. About how long before you were taken sick? A. I don't remember at all.

Q. Can't you give us any idea? A. No, Sir; I wish I could.

Q. Where were you boarding then? A. In Brooklyn.

Q. With your mother? A. With my mother.

Q. What? A. With my mother.

Mr. Fullerton—Yes; it is time for recess, Sir, I believe.

The Court here took a recess until two p. m.

#### OTHER CONVERSATIONS ABOUT THE BEECHER MATTER.

The Court met at 2 p. m., pursuant to adjournment, and the cross-examination of James B. Woodley was continued as follows:

Mr. Fullerton—How long, James, was it before this conversation which you have last testified to, when the Woodhull story,



or the Beecher story, or the Beecher article, was the subject of conversation, that you had seen Mr. Tilton at the office? A. How long had it been?

Q. Yes? A. Before the publication?

Q. No; before the conversation? A. I don't know, Sir, what you mean.

Q. You have spoken of a conversation in the office of Woodhull & Claflin? A. Yes, Sir.

Q. Between the ladies and Mr. Blood and Mr. Tilton; first in the middle room, and next in the back room. Do you recollect that? A. Yes, Sir.

Q. Now, how long before that conversation was it that you had last seen Mr. Tilton? A. How long had it been?

Q. Yes. A. Before I seen him, or—

Q. Up to that time? A. I don't understand.

Q. Had you seen him just previous to that conversation? A. Had I seen him? I think he had been away.

Q. Well, was that the first time you had seen him after his return? A. I think it was about the first time that I had seen him after his return; I think he had been away somewhere out of the city.

Q. Where do you think he had been? A. I don't know, Sir. I suppose he must have been off on this campaign tour, so far as I would know.

Q. How long, prior to that time, had you seen him lunching at Delmonico's with Mrs. Woodhull? A. How long had it been after that?

Q. Before that. Before that. A. Before—I saw him several times. It had been some time, though, since I had seen him lunching there.

Q. How long had it been? A. I could not give you any date nor time, nor anything about it, Sir.

Q. Could you give us no idea of the time at all? A. No, Sir, I could not.

Q. I understood you to say before recess that you had heard these parties talking about this same matter before that day? A. Yes, Sir, I did say that.

Q. Where were they when they were talking about that matter? A. They were at their office—Woodhull & Claflin's office.

Q. Do you remember the day? A. No, Sir, I don't remember the day.

Q. Where were they when they were talking about it? A. They were in their office.

Q. Which office? A. The office in Broad-st.

Q. Which of the offices in Broad-st? A. Well, I heard the interview several times; I don't remember how many times—

Q. No, I am talking about the interview next before the one which you have related the particulars of? A. Well, it had been some time before that.

Q. How long before that? A. I don't recollect.

Q. Months? A. Yes, Sir, months.

Q. Months before? A. Probably it might have been, may be two months, it might have been three; I don't recollect, Sir.

Q. They were in which of the offices when they were talking? A. Well, they was in the back office, and the front office, too.

Q. But not at the same time? A. No, Sir, not at the same time.

Q. What were you doing when that conversation took place? A. I had to be backwards and forwards, doing whatever I was told to.

Q. Did you hear the conversation? A. I did, Sir.

Q. Now, relate, please, what you heard? A. I think I related it to you, before recess, that—

Q. No; I am not talking about the interview which you have already described; I am talking about another interview, before the one that you have now spoken of. Don't make a mistake. A. I heard them speaking about Mr. Beecher and Plymouth Church, and different things.

Q. What time do you now allude to? A. When they were speaking about free love and so on, at different times.

Q. How long was that before the conversation that you have detailed already? A. Well, I heard that conversation several times before that.

Q. I am speaking now of the particular conversation, when they talked about Mr. Beecher and free love? A. There was so many times, that I could not relate to you at all.

Q. Was that two or three months before the conversation you have already related? A. It was mostly along in the Spring; along about that time.

Q. The Spring of what year? A. 1872.

Q. How early in the Spring? A. I don't remember, Sir.

Q. Well, Spring or Winter? A. In the Spring—generally—

Q. How? A. Along in the Spring, when it came to be common talk.

Q. You are sure it was not Winter? A. I am sure it was along in the Spring; when she wanted to get some way to get her paper up and going—

Q. Who were present when that conversation was held? A. There was several sometimes present.

Q. Oh! "sometimes present." I mean at that conversation who were present? A. Why, there was several conversations, so I don't know which one you mean.

Q. I mean the one where they were talking about getting their paper up? A. I heard it so often, Sir, I could not tell you—that she wanted—

Q. You heard that very often? A. Very often.

Q. But did you hear very often about the Beecher article? A. I never heard very much about the Beecher article; not until just before it was published.

Q. You did hear something about it in the Spring before that, did you not? A. I heard them talking about Mr. Beecher in the Spring, yes, Sir, in regard to free love and such things as that.

Q. But nothing about the article? A. Nothing about the article at all.

Q. Then you never heard them talk about the article but once, I understand you? A. If you understand me, I told you that they were talking about the article. The first time that I heard it, I think it was on Monday, and they had an interview about it the first time on Monday, and the next day was Tuesday; I think we were making up, then, the proofs to go to the press.

Q. Yes? A. Yes, those two days. I particularly noticed it

by Col. Blood—the action of Col. Blood made me take particular notice.

Q. Did I understand you that you heard the Beecher article talked about only on those two days, Monday and Tuesday? A. Monday and Tuesday—

Q. Answer me, please? A. Monday and Tuesday, those are the two days that I heard them talking about the Beecher article.

Q. Are those the only two days? A. The only two days, particular.

Q. Very well, let us go a little further. You never heard the Beecher article spoken of until the Monday that you have now mentioned? A. Till that Monday. I never heard it spoken of before then.

Q. And you heard it talked of again on the Tuesday following that Monday? A. The next day.

Q. Which was Tuesday? A. Yes, Sir.

Q. And after that you never heard it talked about? A. No, Sir; I was taken sick then, and I never saw him any more after Tuesday. I was taken sick some time after that; I didn't see him no more—I don't know when I saw him any more after that.

Q. How? A. I don't know when I saw him after that; I don't know as I saw him after that in some time.

Q. Mr. Tilton? A. Yes, Sir.

Q. Did you see him after that at all? A. Yes, Sir; I saw him several times since then; but—

Q. Not in regard to the Beecher article? A. No, Sir.

Q. You related before recess a conversation which you heard between these parties; was that conversation you heard on Monday or on Tuesday? A. On Monday and Tuesday.

Q. No, no, you don't understand me. You related before recess a conversation which you heard in the middle office, and which was afterward continued in the back office; did that conversation take place on the Monday or the Tuesday of which you have spoken? A. Well, on Tuesday was the last interview.

Q. I should suppose it was if— A. Well, I told you there was two interviews Monday and Tuesday.

Q. Understand my question, James, please. Before the recess you spoke of an interview between Mrs. Woodhull, Miss Claflin, Mr. Blood and Mr. Tilton? A. Yes, Sir.

Q. Which you overheard? A. Yes, Sir.

Q. And which commenced in the middle office and ended in the back office? A. In the back office.

Q. Now, did that interview take place on the Monday or on the Tuesday? A. That last interview was Tuesday.

Q. It certainly was, if the first one was on Monday. The interview which you described before recess, was that on Monday or on Tuesday? A. Was that on Monday or Tuesday?

Q. Yes. A. The last interview was on Tuesday.

Q. I have not any doubt about that, James. Do you understand my question? A. Well, I may not, Sir.

Q. Was it Monday or Tuesday that you stood at the desk, opening the exchanges and marking the articles? A. Both days, Sir, I was opening the exchanges, but Tuesday was the last day, as I mentioned, Sir.

Q. Certainly it was. We won't dispute that any longer; but I want you to tell me whether it was on Monday or Tuesday

that you overheard the conversation which you detailed to us before recess? A. That was Tuesday.

Q. It was Tuesday? A. Tuesday, Sir, was the last interview. [Laughter.]

Q. I want you to tell me whether that conversation was on Monday, or Tuesday? A. The two days, Monday and Tuesday—the same conversation—the Beecher article was discussed between them.

Q. Was it the same conversation on both days? A. The same conversation on both days. I tried to make you understand that. [Laughter.]

Q. It is my dullness, that I did not understand it before? A. No, I don't believe it is your dullness at all, Sir. [Laughter.]

Q. I understand it now. Were the same parties present on both days? A. The same parties, Sir.

Q. Did the conversation commence in the middle room on both days? A. Yes, Sir.

Q. And ended in the back room? A. In the back room.

Q. And both days you stood opening the exchanges and counting the articles? A. Both days I was opening the exchanges.

Q. And all of them standing up, as you described before? A. No, Sir; the first day, on Monday, they were sitting down on the sofa.

Q. In which room? A. In the middle office.

Q. And did they say the same things on both days? A. The same things—talking about this Beecher article.

Q. And used the same language? A. The same language, so far as I could see.

Q. A little louder. A. The same, so far as I could learn.

Q. Well, you heard it? A. Yes; I heard it. I would not have noticed it, though, if Colonel Blood hadn't—Colonel Blood was dissatisfied.

Q. Yes, I know that he was dissatisfied. You have not told us what occurred on the first day, have you, as distinguished from what occurred on the second day? A. I have not told you—certainly I have.

Q. Now, will you describe what took place on the day when you say you saw them sitting on the sofa? A. Didn't I tell you once or twice?

Q. Well, my memory is not very good, James, you will have to tell me again. That was Monday, was it? A. The first interview was Monday.

Q. Then they were sitting on the sofa? A. Sitting on the sofa.

Q. What took place? A. They were talking about this Beecher article.

Q. Who were talking? A. Mr. Tilton, Mrs. Woodhull, and Miss Claflin.

Q. What did Mr. Tilton say? A. Well, he told her that he had something for her to publish, and he wanted her to publish it.

Q. That he had what? A. He had an article that he wanted her to publish.

THE PAPERS READ TO MRS. WOODHULL.

Q. What did she say? A. Well, they read it over there, and they talked about it, and then she went and took Colonel Blood—

Q. I suppose she didn't know what it was when he spoke of it? A. She might have known, so far as I know.

Q. Well, so far as appearances were concerned, did she appear to know what it was? A. I guess she knew what it was.

Q. Well, he took it out and read it, did he? A. Yes, Sir; he read it.

Q. How long did it take him to read it? A. Oh! not very long.

Q. About how long? A. Oh! I could not describe at all.

Q. You could not describe it? A. No, Sir, I could not tell you how long it was.

Q. Was it written on foolscap paper? A. It was written on paper. I didn't take particular notice.

Q. Was it about this size? [Holding up a sheet of legal cap.] A. I didn't notice.

Q. Was it writing paper? A. It must have been writing paper.

Q. Did he read it out loud? A. He read it so that they could understand him; I could not understand what he read.

Q. You could not? A. No, Sir.

A. Couldn't you hear what he read? A. No, Sir; I could hear him reading, but I could not understand what he read.

Q. Where were you when he read it? A. I was backwards and forwards in each of the offices, attending to my work.

Q. You sometimes stood, still did you not? A. I was standing still sometimes.

Q. When you stood still could you hear what he read? A. I was not paying any attention.

Q. Could you hear what he read? A. No, Sir, I could not.

Q. Not a word? A. Well, probably I might have got one or two words, but that wouldn't do much good.

Q. Well, give us those one or two words. A. No, I could not do that, because I don't know the commencement or the endings.

Q. Well, you could give us the commencement and the endings of what you heard? A. No, Sir, I could not. There would be no sentence to that.

Q. Well, you could hear what they said where you stood? A. I could not hear some things.

Q. You heard them talking about the Beecher article? A. Yes, Sir; the Beecher article.

Q. You heard Mr. Tilton say that he had an article that he wanted her to publish? A. Yes, Sir.

Q. And then he commenced reading? A. Yes, Sir; they talked about it, and then he read it there.

Q. Didn't he read it as loud as he talked? A. No, Sir; I don't think he did.

Q. Then it was read in a low tone of voice? A. Yes, Sir.

Q. So that you could not hear? A. I don't know as it was read that way particularly about my hearing.

Q. How long did you stand at any one place where he was

reading? A. Oh! I was backwards and forwards, I don't know how long I stayed in one place; I was backwards and forwards.

Q. You cannot tell us a word that you heard? A. No, Sir.

Q. Can you tell us how many sheets of paper it covered? A. No, Sir. Sometimes he would write for their paper you know, but—

Q. I don't care anything about his writing for their paper. I am talking about that day when he was reading that article to them. How many sheets of paper did he appear to read from? A. I didn't notice at all.

Q. Well, he read something about "the Beecher scandal" or "the Beecher article?" A. He was reading, but I never heard him read it at all; and what it was I could not tell.

Q. Didn't you know what it was about? A. I didn't know what proofs they were at all.

Q. Well, they were proofs, were they? A. Surely they were proofs.

Q. Oh, then, he was reading from proofs? A. They were proofs that they were reading.

Q. Proofs that they were reading? A. Certainly they were proofs.

Q. Then it was not on foolscap paper? A. I do not know, Sir; I could not tell.

Q. Was it writing or print? A. They had printed proofs there, and written ones, too.

Q. What did he read from, printing or manuscript—writing? A. I don't know, Sir; I could not tell.

Q. You could not tell? A. No, Sir; I didn't take particular notice, because they had a whole lot of papers there by them; they had proofs for their weekly paper.

Q. Proofs for that weekly paper? A. Yes, Sir, they were making up their weekly paper.

Q. All the proofs for the weekly paper? A. They were getting up what they had, any way.

Q. How? A. They were getting up what they had.

Q. Who brought this paper there, that he read? A. He might have brought it himself.

Q. Don't you know who brought it? A. No, Sir, I don't know who fetched it.

Q. Was Colonel Blood there at that reading? A. He was not there with them when it was first read. Then, afterwards, Mrs. Woodhull got him, and he went there and sat down, and—

Q. Did he hear it read? A. Yes, Sir; I have no doubt but what he heard it read.

Q. Do you know? A. I don't know as he was taking particular notice. I don't remember whether he was sitting there present, when it was read, or not; I don't remember, Sir.

Q. Did Mr. Tilton, when he read, read from the proofs? A. I know that he was reading proofs that he had.

Q. Was he reading from the proofs when he did read? A. When he did read?

Q. Yes. A. He was reading the proofs that they had there?

Q. He was reading proofs that they had there? A. I don't know who fetched them, or anything at all about them?

Q. My question, James, is this: was he reading proofs?

whether he brought them there or not? A. [Emphatically]. He was reading proofs, Sir.

Q. Very well, we understand that. Now, what do you mean by proofs? A. Why, proofs for a newspaper..

Q. In what shape are they? A. Why, a large paper, like any editor would have.

#### THE WITNESS DEPLORES A WASTE OF TIME.

Q. I want you to explain to the jury. Do you mean the proofs are in writing or in print? A. They had printing proofs there and they had writing.

Q. Now, James, if you please, I don't care anything about the writing, if the proofs were in print. Were they in print—the proofs that he read? A. I don't know, Sir, whether they were in print or writing.

Q. Then there are written proofs, are there? A. I don't know, Sir; I told you I didn't know whether he was reading writing proofs or whether it was print.

Q. I am not talking about what he was reading. Do you understand that proofs may be either in print or in writing? A. That is what I am trying to explain to you now, Sir. [Laughter.]

Q. Try again. Do you understand that proofs may be either in writing or in print? A. I have told you that I didn't know what he was reading, whether it was print or writing.

Q. James, I am not asking you what he was reading; I am asking about proofs, what you understand by proofs. Do you understand that proofs are in writing or in print? A. Well, Sir, I have answered your question as far as I—

Q. I want your understanding about it? A. I have told you just as well as I can tell you.

Q. Excuse me, you have not told me. A. You are excusable, Sir; I hope you will excuse me. [Laughter.]

Q. I will if you will answer. A. Well; but I don't know what your meaning is; and you ask me so many times.

Q. You speak of proofs; you have seen proofs, haven't you? A. Yes, Sir.

Q. And you think you know what proofs are, don't you? A. I suppose I know what proofs are.

Q. Now, tell me what you suppose they are—whether they are in print or writing? A. Well, Sir, I think I have answered your question, probably as far as I think it need be— [Laughter.]

Q. Well, I want you to go a little further. A. No, Sir; I think it is taking up so much time I won't go any further. [Laughter.]

Q. James, it won't take you long to answer that question. A. But then you will have probably a thousand such other questions. [Laughter.]

Q. Then you will have to answer a thousand other questions. A. No, Sir; I have got a kind of sore throat, and I don't care to answer so many questions.

Q. Well, I will promise you not to ask you another question about proofs if you will tell me whether you understand proofs to be in writing or in print. A. Well, Sir, I think I am just about through with that matter.

Mr. Fullerton—I think I shall have to ask a little of your Honor's help. [Laughter.]

Judge Neilson—Well, the witness has come to my assistance in protesting against the waste of time. [Laughter.]

Mr. Fullerton—By wasting it.

Judge Neilson—No; he is the first gentleman that has helped me. [To the witness.] Now, the counsel wants to know whether the proofs which you speak of were printed paper or written paper, or both?

The Witness—I told him, that I didn't know whether it was print or writing paper they were reading.

Judge Neilson—You told him that you did not know whether the paper that they were reading was written or printed. That is not what he asked you. You spoke of proofs. Now, do you understand proof to be something that is printed or may it be something that is written? A. Well, proofs, I suppose we would say, was printed.

Judge Neilson—Well, that is what the counsel wanted you to answer.

Mr. Fullerton—That is what you understand by proofs, is it? A. That is what you call—

Q. How? A. Yes, Sir, so far as I know about it.

Q. That is as far as you know about it; is that your answer? A. That is my answer.

Q. Speak up, James. A. I says that, according, I suppose, to the rule of printing, the proofs are manuscripts struck out, I think.

Judge Neilson—Struck off in print—in type.

Mr. Beach—No; he does not say that. "Struck out," he says.

Mr. Fullerton—Struck out how?

Judge Neilson—In print.

The Witness—I don't know whether he was reading something that was printed or that was written.

Q. I am not asking about that. You saw what he held in his hand, did you? A. No, Sir; I saw him have a paper in his hand.

Q. You do not know whether that paper was in print or in writing? A. No, Sir.

Q. And you cannot tell us one word he uttered whilst he was reading it? A. No, Sir; I cannot, Sir.

Q. A little louder? A. I cannot, Sir.

Q. Before he commenced reading it, what did he say? A. Well, he was talking—he was there talking to the ladies.

Q. What did he say—what did he say? A. He said, "Vicky, I have got something here for you that will—that is one of the best things that you ever done," if my memory serves me right.

Q. Go on. A. I think I told you that, too.

Q. What did she say then? A. They had a talk together.

Q. No; what did she say; did she make any reply? A. Oh! yes, Sir; she made a reply.

Q. What did she say? A. She said a good many things.

Q. What did she say? A. So many things I could not explain, Sir. It is no use in me to go on and explain it.

Q. Can't you remember what she said? A. Oh, she talks very fast, you know, and she said a good many things.

Q. Do you remember anything she said in reply? A. Oh, yes, I remember.

Q. What did she say in reply, that you remember? A. I think she says, as near as I can recollect—she says: "Let's see it."

Q. Now, what did Theodore Tilton say? A. They all stood there a while talking, and then they went and sat down on the sofa.

Q. Well, was nothing more said before they sat down? A. Oh, yes, they stood there with a close interview together, talking.

Q. Now, after Mrs. Woodhull said, "Let's see it," who next spoke? A. Miss Claflin came up and spoke.

Q. And what did she say? A. Then they all went and sat down.

Q. Didn't she say something? A. Oh, yes.

Q. What did she say? A. I cannot tell you.

Q. Can you remember anything else that was said before they sat down on the sofa? A. There was some little interview, but I could not exactly say what.

Q. What day was this, Monday or Tuesday? A. That was Monday, the first interview.

Q. The first interview? A. Yes, Sir.

Q. How long did they remain on the sofa? A. Oh! for quite a while, quite a good while.

Q. Half an hour, or an hour? A. Well, half an hour, may be more; may be three-quarters of an hour, before they went in the back room.

Q. Did you hear them talking while they were on the sofa? A. Yes, Sir.

Q. What did they say to him? A. They were talking about

Q. What did they say? Don't tell me what they were talking about. A. Well, as I told you before, they were talking about

Q. No, no; tell what they said; who spoke, and what did he say, or she say? A. Well, he told her— Mr. Tilton said, "Vic., I want you to publish this."

Q. What did she say? A. That was the introductory conversation, as far as I could learn. He told her that he could not do it. Says he, "I wouldn't dare do it. I am a man, and you are a woman; you can do it; they won't do anything with you, but they will crush me." Those were the words that were used.

Q. After they sat down on the sofa? A. Yes, Sir, after they sat down on the sofa.

Q. What did Mrs. Woodhull reply? A. They was talking; I don't know hardly what she said.

Q. What did Col. Blood say? A. She went and got Col. Blood, and he was talking with Col. Blood. I don't know particularly just what their interview was at that moment. Then he came and sat down there—took a chair and sat down, and they all talked, and I saw Col. Blood put his hand through his hair, and says he, "Well, I won't have anything to do with it. You can all do like you mind to; I won't touch it; I know you will all get in trouble." And Mrs. Woodhull said at that time, "Oh! no. Theodore knows; he knows all about

it; he knows just exactly what it is, and how to do. Now you just go right ahead," she says, "and do it as I tell you to do it." So the conversation prevailed there.

Q. Is that all that you remember? A. Sir?

Q. Is that all you remember? A. They went into the back office after that.

Q. Shut the door, did they? A. Went in and shut the door.

Q. And did you go in there? A. I went in there.

Q. How long after they went in? A. I could not remember, Sir; I don't remember at all, how long.

Q. Pretty soon after? A. I might—it might have been an hour.

Mr. Shearman—Will the witness speak a little louder?

The Witness—I said it might have been an hour.

Mr. Fullerton—When you went in there, what were they doing? A. They were then talking about the same Beecher article.

Q. What did you hear after they went in? A. I heard him saying—talking to Col. Blood about it, prevailing on Col. Blood to take it in hand and publish it.

Q. What did he say to him? A. Col. Blood said no.

Q. What did they say to Col. Blood? A. They told him to do it and that would be the making of him. She says, "Beecher's congregation will pay you \$100,000"—Mrs. Woodhull said.

Q. For what? A. For publishing it.

Q. For publishing it? A. No, not for publishing, but if they published it they would pay \$100,000 to have it taken out, or anything. She said, "It is a rich congregation, and they wouldn't have that come out—nohow in the world."

Q. Who said that? A. That was Mrs. Woodhull.

Q. Who replied to that? A. Tennie.

Q. What did Tennie say? A. She told him "Yes," and Col. Blood says, "No, I won't have nothing to do with it."

Q. Who else spoke? A. Then Mr. Tilton he took Col. Blood up to the side of the window, as I told you before, right near the gas, and they talked there at the window.

Q. Yes; did you hear anything that was said then? A. I did.

Q. What did you hear said there? A. I heard him telling Col. Blood about publishing that—

Q. What did he say, what did he say? A. Mr. Tilton told Col. Blood if he would just take that thing—; says he: "If you publish that thing it will be the making of you." Col. Blood shook his head, "No, I don't see it."

Q. Then what took place? A. Then after that interview I went on then about my errand, and done what I had to do.

Q. That was on Monday? A. That was on Monday.

Q. And the interview that you gave me before dinner was on Tuesday? A. Gave you before dinner?

Q. Before lunch; yes, before recess.

Mr. Shearman—Before we went out.

Mr. Fullerton—Oh, never mind. Before recess. You know we have taken a little recess. A. Yes, Sir; we have taken a little recess.

Q. Before you went out you told me what took place on Tuesday, the last interview, did you not? A. Yes, sir; I told you. You have done with that now, haint you, Sir?

Q. How? A. You have done with that now, haint you, Sir?

[Laughter.]

Q. Very near; I want to see how near they were alike. Both days then they said about the same thing, did they? A. About the same thing, Sir, the next day.

Q. Went into the back room the same way? A. In the same way the next day.

Q. And Tilton called Blood out to the gas light? A. There was no gas light.

Q. Well, the gas fixtures? A. Yes, Sir.

Q. And told him the same thing there that he had told him on Monday, did he? A. Yes, Sir; they were talking there together on the same subject.

Q. How? A. They were talking there together on the same subject.

#### THE TIME OF THE INTERVIEW.

Q. Did they ever have a conversation of the same character on any other day? A. I never saw Mr. Tilton after Tuesday to my memory—after Tuesday night. I have never seen him since—after Tuesday.

Mr. Beach—What does he say?

Mr. Fullerton—After that Tuesday evening.

The Witness—Not in some time; I don't know as I saw him in a whole year; probably I might have seen him in a whole year after that; I don't know.

Q. You didn't see Tilton after that conversation which was on Tuesday, for a long time? A. No, Sir.

Q. Not again that same year, you don't think? A. I don't know as I seen him again that same year.

Q. Well, can you now tell how long that conversation was before the publication of the scandal? A. Well, I could not tell to save my life, Sir. I have no date, nor no time of it, and I have not committed it to memory at all, and so I could not tell you anything about it.

Q. Well, you recollect that it was before the scandal was published, wasn't it? A. Oh, it was some time before the scandal was published.

Q. Can't you tell now? You recollect the publication of the scandal, don't you? A. Yes, Sir; I recollect the publication of the scandal, and that scandal was out before I got—I came out at all.

Q. How? A. The scandal was out; I had been sick two or three weeks, probably more than that.

Q. Yes. A. And the paper was published—came out Thursday.

Q. Before you got out? A. Yes, Sir; I think it was out Thursday; it was out, I know, before I came out Friday.

Q. Well, do you know how long you had been sick at that time? A. No, Sir.

Q. About how long? A. It might have been three weeks or more; I don't know.

Q. Well, how long before you were taken sick was it that this conversation was had in the office, that you have related? A. I could not tell, Sir.

Q. Was it just before you were taken sick? A. I don't remember whether it was just before or not, Sir.

Q. Was it a month before? A. I hardly think; it might have been; I wouldn't say; I wouldn't dare to say.

Q. You couldn't give us any idea of it, could you? A. No, Sir.

Q. Now, did you hear anything about the Beecher article prior to those two conversations? A. Nothing about it, Sir.

Q. Never heard anything from anybody on the subject? A. No; no one on the subject.

Q. How? A. No one on the subject at all, only those two days, Monday and Tuesday, as I named.

Q. When did Mrs. Woodhall leave 28th-st? A. She left 28th-st., I think, Sir, if my memory serves me right, in '72—1872.

Q. What time of the year? A. I don't know what time of the year, but I think it was before May—I think.

Q. Before May of 1872? A. Yes, Sir; I think it was now; I won't be certain.

Q. And where did she move to? A. Moved in 23rd-st.

Q. How long did she live in 23rd-st? A. She was there—they moved from there—I don't know how long they lived there, but they moved from there down to Irving-pl.

Q. Can't you tell me what time they moved to Irving-pl? A. No, Sir.

Q. Did they remain in 23rd-st. more or less than a year? A. No, Sir; they did not.

Q. More or less than a year? A. It was less than a year, Sir.

Q. Less than a year? A. Oh! yes, Sir.

Q. Do you know what season of the year she moved from 23d-st. to Irving-pl.? A. No, Sir; I don't remember at all, Sir.

Q. Were you boarding with them at the time? A. I would go sometimes of a night and stay all night. My home was over in Brooklyn here.

Q. Yes, and you saw Theodore Tilton in 23d-st., did you? A. Yes, Sir.

Q. In what year did they move from 23d-st? A. In '72.

Q. You saw Theodore Tilton in 23d-st.? A. Yes, Sir.

Q. Very frequently? A. Yes, Sir.

Q. Now, did you ever see him there more than once? A. Oh! yes, I saw him there more than once.

Q. That you swear to positively? A. It might be perhaps half a dozen times; I don't know.

Q. Well, you will swear positively that you saw him there more than once? A. Oh! yes, Sir.

Q. There cannot be any doubt about that in your mind? A. No doubt at all, Sir.

Q. And then you saw him in Irving-pl. also. A. Yes, Sir.

Q. And you saw him there frequently, did you? A. About once; I don't think I saw him more than once.

Q. Not more than once in Irving-pl.? A. Not to my memory at all; I don't think more than once.

Q. What time did they leave Irving-pl.? A. I don't know what time. You know they didn't leave—I think they left Irving-pl. at the time of their arrest—at the time they were arrested, I think; I don't know.

Q. Very well? A. I didn't go there any more, I know.

Q. Well, you went to Irving-pl., did you not? A. Not after I was arrested.

Q. No, but up to the time of the arrest you went back and forth as usual, did you not? A. Oh! it had been some time; I was sick; I hadn't been there in some time.

Q. Well, up to the time you were taken sick you went to Irving-place? A. I went up there in the day, and came away.

Q. How? A. I went up there, but I was back to the office, and didn't go up there more than once, I don't think. I didn't see him there. I don't recollect of staying there—

Q. You are not answering what I asked you. Were you in the habit, up to the time that you were taken sick, of going up to Irving place as you had been in the habit of going to 23d-st.? A. Not so much as I did to 23d-st.

Q. But you did go up? A. Oh! I went up, but not to stay all night.

Q. I understood so. Did you go up there frequently? A. I don't know how many times I was up there. I don't remember.

Q. You never stayed all night there, you say? A. What, in Irving place?

Q. Yes. A. Certainly; I thought you understood me to say that I stayed all night there.

Q. Well, then you stayed all night there; how frequently? A. I don't think I stayed there—I don't think a half a dozen times, if I did that, in Irving place.

Q. Where did you see Theodore Tilton in Irving place? A. I saw him there at that house.

Q. What part of the house? A. Up-stairs.

Q. Up-stairs? A. Yes, Sir; up-stairs.

Q. What room? A. I don't remember; I don't know the rooms well enough to remember them.

Q. Was it a front or back room? A. I don't remember, Sir.

Q. Did you let him in? A. No, Sir; I did not let him in at all.

Q. How? A. I did not let him in at all; I didn't know he was there, not until they called me to go out to get—I think it was cider or something I went out after, between twelve and eleven o'clock, or eleven and twelve o'clock.

Q. What time did you see him there in the year? A. I don't remember, Sir, what time it was.

Q. How long was it before the publication of the scandal? A. Well, it might have been some time before that. I know that was the same time—the same time I saw him there, that was the Monday evening that they were talking over this matter.

Q. It was the same Monday evening? A. It was the same Monday evening. Why I had to go up was because Col. Blood went off that day—ran off that day, and didn't come back, and I had to go up to the house with the proofs; I had to call at the printing office and get the proofs.

Q. Did you get the proofs? A. I got what there were ready.

Q. Where did you take them? A. Taken up some from the office, and what they had ready from the printing office—took them up to Irving-place, to the house.

Q. And that was on Monday? A. That was Monday evening.

Q. And that Monday evening you saw Tilton there? A. Yes, Sir.

Q. So that you are enabled to fix the time, are you, now? A. No, Sir.

Q. Well, it was on that Monday? A. Yes, Sir, it was on that Monday.

Q. Are you sure it was on that Monday? A. I am sure it was Monday night, Sir.

Q. Who were with him when you saw him at Irving-place? A. Mrs. Woodhull and Miss Cladin.

Q. Who else? A. I don't know as there was any one else present.

Q. Were they in a room together. A. They were in a room together.

Q. Were they talking? A. Talking and reading.

Q. Reading what? A. Why they were reading their manuscripts, and proofs from the printing office, and whatever they had.

Q. When you got there? A. When I got there; when I went up-stairs.

Q. When you went up-stairs in the room they were reading the proofs and manuscripts, were they? A. Yes, Sir, they had a lot of them there on the desk, I think, or table, or something.

Q. Did you hear anything that was read? A. No, Sir; I didn't hear anything that was read.

Q. Did you hear anything that was said? A. No, Sir; not particularly.

Q. Can you remember one word that was said while you were there? A. They were more serious that evening than usual.

Q. More serious than usual? A. Yes, Sir. [Laughter.]

Q. Well, that is the reason why you cannot remember what they said? A. I wasn't thinking about it; all I was thinking about was about going to sleep.

#### THE STEINWAY HALL LECTURE.

Q. You were introduced to Mr. Tilton at one time? A. I was, Sir.

Q. And what was it that Mrs. Woodhull said to you when she introduced you? A. She said that was Mr. Theodore Tilton. I don't remember whether she said that he was then the present editor of *The Brooklyn Union* or had been, but she said he was the editor of *The Brooklyn Union*, and from that I looked more particularly at him, more than I did any one else.

Q. Yes; you had great respect for editors, I suppose? A. Well, for some of them I did; I did for Mr. Tilton.

Q. You remember the Steinway Hall lecture, do you? A. I remember a little something about it. I remember I fetched a note over inviting Mr. Beecher, just before their lecture was.

Q. Where did you deliver it? A. To Mr. Beecher's house, so far as I can recollect, Sir.

Q. Do you remember the year? A. I haven't taken any notice particularly, but I think it was 1871, I think, as nigh—

Q. A little louder. A. I don't remember just the year it was in.

Q. Don't you remember the year? A. I don't remember the year at all.

[Mr. Fullerton here consulted with his associates and then repeated the question.]

Q. Do you remember the year now? A. Sir?

Q. Do you remember the year, when it was? A. I don't remember the year, Sir.

Q. What season of the year was it? A. It was in the Fall.

Q. In the Fall? A. Yes, Sir; I think it was in the Fall.

Q. Was it the same Fall when you heard this conversation in Woodhull & Claflin's office about the Beecher article? A. No, Sir; I don't think it was; I think it was in 1871, if my memory serves me right.

Q. Well, was it before or after this conversation in the office of Woodhull & Claflin? A. Oh! that lecture was before her conversation was.

Q. The lecture was before the conversation? A. I think so, if my memory serves me right.

Q. Speak a little louder. A. Well, I say I think it was.

Q. The year before? A. I think it might have been the year before. If I had been like you I should have taken a note of it, and then I would have known, but I have never taken any notes about the time of it; I never thought enough of it to think about it.

Q. And is it for that reason that you cannot tell me the year when the lecture was delivered? A. Yes, Sir; that is just the reason. I never thought of it; I never paid no thought to it, whatever.

Q. Could the lecture have been as late as 1878? A. No, Sir; it could not have been as late as that, Sir, I am sure.

Q. Was it as late as 1873? A. I don't remember, Sir, when it was; what year it was in.

Q. When was it that you saw these women sitting upon the sofa with Mr. Tilton in between them? A. In between them? Why, several times. There wouldn't be no use for you to ask me that, for it was so many times.

Q. So many times? A. Yes, Sir.

Q. It was a very common thing, wasn't it? A. Yes, Sir; I thought it was rather natural for a person to be between two ladies.

Q. Who were in the office at the time when you saw them? A. Well, there were several persons sometimes, and sometimes, may be, there wouldn't be no one but them, and Col. Blood sometimes.

Q. Col. Blood was sometimes in there when that was done? A. Oh! yes, Sir.

Q. Well, the office was a public office, wasn't it? A. The office was a public office.

Q. A great many people coming in and going out? A. A great many people coming in; that is the reason I don't have no recollection about it.

Q. Well, when people were going in and going out, did they sit on the sofa in the attitude in which you have described them? A. Oh! yes; a great many of them, very particular friends.

Q. No, no; I am talking about the two women and Mr. Tilton? A. Oh! yes.

Q. He would sit there with his arm about them when they were coming in and going out? A. Yes, Sir.

Q. Right before the public? A. Yes, Sir; that is why I paid no more attention to it.

Q. Which room was the sofa in? A. There was a long sofa in the middle room.

Q. Is that the sofa that they sat upon, that you speak of?

A. That was the sofa, where they sat in sometimes; sometimes in the back office.

Q. How? A. There was a sofa in the back office too.

Q. Which was the one they were sitting on, as you have described? A. Which time do you mean, Sir?

Q. When they sat down and finished their conversation? A. Well, they had so many conversations I could not tell you which time you mean.

Q. The conversation which you described? A. Well, Sir, I thought you was through with the other interview, Sir. [Laughter.]

Q. Yes, well we have got back to it again. A. I don't think you have got back to it now, Sir; you have got two or three things all mixed up together. [Laughter.]

Q. Well, we will try to unmix them. You have described the two women and Tilton sitting on the sofa during the conversation in which they spoke of the Woodhull article? A. Well, Sir, I thought you was through with that, Sir.

Q. Now, where was the sofa; was that in the front room or in the back room? A. I will tell you again; the sofa was in the middle office. You understand that, Sir.

Q. Yes, but you say there was one in the back office too? A. I say there was one in the back office.

Q. But my question is— A. But that sofa was in the middle office where I told you the interview was.

Q. When they sat upon it? A. When they were sitting upon it.

#### MRS. WOODHULL'S TRIAL IN THE U. S. COURT.

Q. That was in the middle office. Very well. Were you a witness in the United States Court? A. I was, Sir.

Q. Gave evidence there, did you? A. I did, Sir.

Q. Mrs. Woodhull was on trial there, I believe, for sending improper matter through the mails, was she not? A. Yes, Sir, that is what they say.

Q. You were examined at length, were you not? A. Sir?

Q. You were examined as a witness at length, were you not? A. No, Sir; no Sir; it was the first time I was ever in any court in my life. Twenty-seven years old before I was ever in a court.

Q. When did you first tell any one what you knew about that? A. Well, that was the time, and when I spoke it then I wasn't thinking about it. They asked me about it; and I didn't know as I was arrested either at that time, and they arrested me at the Post-Office, and asked me to go up there and see the District Attorney. I didn't know who they were, and nothing at all about it, and I went up, and they questioned me all about it, and I told them that I thought Mr. Tilton wrote it; that was my opinion, but I wasn't thinking at that time at all.

Q. Didn't you tell them that you knew Mr. Tilton wrote it? A. No, Sir, I didn't tell them that I knew he wrote it, because Mr. Tilton was writing there a great deal, and I didn't know anything about that.



THE WITNESS THINKS MR. TILTON WROTE THE WOODHULL STORY.

Q. Didn't you tell the District Attorney or one of his assistants that Mr. Tilton wrote the Beecher article? A. No, Sir; I did not tell him that he wrote it; I told him that that was my opinion that he wrote it; I didn't think that Col. Blood wrote it at all.

Q. Did you say no more than that you believed that Tilton wrote it? A. No, not to my recollection, Sir.

Q. Didn't you tell them that Tilton wrote it, and you heard him read it? A. No, Sir, I don't believe they questioned me so particularly; they didn't question me so close as that, Sir.

Q. One moment; didn't you tell the District Attorney, or one of his assistants, that you heard Mr. Tilton reading the article in regard to Beecher? A. I told him I heard him reading some article—reading some proofs, or manuscripts, but in regard to that—and I told him that I thought he wrote it; that was my opinion.

Q. Now, James, you just pay particular attention to my question, so that you will be able to answer it. Did you not tell the District Attorney or one of his assistants that Tilton wrote that article, because you heard him read it to Mrs. Woodhull and Miss Claflin? A. No, I didn't say that he did write it, because it was impossible for me to say that he did write it, because I don't know what he wrote, because a person can write and write all the writing they want to, and I cannot tell what they are writing.

Q. Now, James, understand me, that I am not asking you whether he wrote it or not; I am asking you whether you did not tell the District Attorney or one of his assistants that he wrote it because you heard him read it? A. No, Sir; I didn't tell him.

Q. How? A. I did not tell him those words at all.

Q. Did you tell him in substance that? A. No, Sir; I told him that it was my opinion that he did write it.

Q. Didn't you add that you heard him read it? A. I told him I heard him reading, but I didn't say whether that was the article that he was reading or not, because I could not tell.

Q. Didn't you say what you meant to have them understood as implying, or meaning that Tilton wrote the article because you heard him read it? A. No, Sir, I did not.

Q. How? A. No, Sir.

Q. Didn't they ask you this question, "Did you hear Tilton read this article on Mr. Beecher?"—did they ask you that question? A. I think probably they did; they did, I think.

Q. Didn't you answer them that you were present and heard him read the article? A. I think I told them that I heard him reading something, and saw him reading, but what it was I didn't know.

Q. Did you tell them anything else about that article in connection with Mr. Tilton? A. I don't remember, Sir.

Q. Didn't you tell them that you carried the proofs to Mr. Tilton? A. I said that I carried the proofs from Woodhull and Claflin's, and Mr. Tilton was present, up to the printing office,

but whether they was the prints—was the proofs, at that time, I didn't know.

Q. Didn't you tell them that you carried the proofs of this article up, and delivered them to Mr. Tilton? A. No, Sir.

Q. Did not? A. No, Sir.

Q. How? A. No, Sir; I think not Sir; I don't remember anything about it Sir.

Mr. Everts—I understand this inquiry not as to statements in Court, but to the District Attorney.

Mr. Fullerton—To the District Attorney, or one of his assistants. [To the witness]: Now, when you came in court to give your evidence, were you asked anything about the Beecher article? A. I think I was, Sir.

Q. And what did you testify there in relation to it? A. Well, Sir, I don't remember; it was the first time I ever was in court, ever was sworn to anything, and I don't recollect anything about it.

Q. Were you asked there who wrote the Beecher article? A. I think probably I was, but I don't remember what was said.

Q. Didn't you answer them that Theodore Tilton did? A. No, Sir, I did not answer them that he did, because it was impossible for me to say that he did it.

Q. How? A. I could not swear. I won't say anything that I can't swear to.

Q. No, I don't want you to, you know, James. Didn't you say to them that you had heard Theodore Tilton read the Woodhull article; in court, now. A. I said that I heard him, and saw him reading—reading some of the manuscripts, or proofs, or something of that kind.

Q. But you did not say it was the Beecher article? A. I did not say it; I don't remember saying it was; I don't know.

Q. Now, when did you first tell any one what you knew about this case, what you have testified to now, other than at that time? A. Probably I might have talked with some one else about it, because I was so disgusted with it. [Laughter.]

Q. Well, I didn't ask you what you probably had done, James. I ask you what you really did do? A. What I really did do?

Q. Yes, in the way of telling people what you knew about the case? A. I don't know particularly that I told them anything.

Q. When did you first learn that you were to be a witness in this case? A. Not until I was subpoenaed.

Q. When was that? A. I don't know, Sir; I forgot what the date was.

Q. About how long ago? A. It was sometime—when I was subpoenaed I didn't know—

Q. Oh! about how long ago? A. Oh! I don't know, Sir, how long it is.

Q. A month ago? A. Oh, yes, it is a month ago.

Q. Where were you when you were subpoenaed? A. I was here in Brooklyn.

Q. Living where? A. The same place.

Q. Living at the same place? A. The same place.

Q. Now, if you will tell me what same place—where it was? A. 604 Nassau-st., Sir.

Q. With whom was you at work at that time? A. I was going to school.

Q. Where? A. To Mr. Dorsey.

Q. Where? A. C. A. Dorsey.

Q. When did you commence going to school to him? A. Last Fall.

Q. What time? A. I don't recollect, Sir.

Q. How? A. I don't recollect, Sir, what time it was.

Q. Who suggested that you should go to school? A. I suggested it myself, Sir.

Q. Nobody spoke to you upon the subject? A. No, Sir.

Q. Sir? A. No, Sir.

#### THE WITNESS'S OCCUPATION SINCE LEAVING THE WOODHULLS.

Q. Did you have any conversation with any gentleman about going to school before you went? A. Never, never. I had been in the fruit and vegetable business, and it was getting very scarce then, and I thought it was best—that the best thing I could do was to go right to school and try and get some education.

Q. And when did you see Mrs. Woodhull last? A. I have not seen Mrs. Woodhull since they were on trial in the United States Circus Court.

Q. When did you see Miss Claflin? A. Both were there the same time.

Q. Did you see Miss Tennie Claflin? A. No, Sir; I have not seen one of them since.

Q. Have you seen Colonel Blood since? A. Not one of them.

Q. Who subpoenaed you? A. Who subpoenaed me? I don't know, Sir, who it was; I don't know who subpoenaed me.

Q. Has any one talked to you about your evidence in this case since you were subpoenaed? A. Some of the lawyers have.

Q. When? A. To-day.

Q. How? A. To-day.

Q. To-day? A. Yes, Sir.

Q. Not before to-day? A. Oh! yes, Sir; some before to-day.

Q. Well, when? A. Yesterday.

Q. Before yesterday? A. There might have been some before yesterday.

Q. Speak louder. A. I might have had a little interview before yesterday.

Q. I don't ask what you might have had. Did any one talk to you about your evidence in this case before yesterday? A. They asked me—I was questioned about what I knew about it.

Q. When? A. This week?

Q. What day? A. Monday, and yesterday, too.

Q. Where? A. Up here.

Q. How? A. At Mr. Hill's office.

Q. In New York? A. No, Sir, here in Brooklyn.

Q. Here in Brooklyn? A. Yes, Sir.

Q. Who asked you to go to Mr. Hill's office? A. Mr. Whitney—Alderman Whitney.

Q. Where did Alderman Whitney see you? A. He came after me, and found me.

Q. Found you at school? A. No, Sir, I was not at school that morning.

Q. At home? A. Yes, Sir.

Q. Did you talk to anybody before you talked to Alderman Whitney about this case? A. I didn't talk in particular with him, because he didn't tell me; I didn't know what he wanted.

Q. Did you talk with anyone in regard to the evidence that you were to give in this case, before he came for you? A. No, Sir, because no one knew where I was; I tried to keep out of it; I gave no one my number.

Q. You tried to keep out of it? A. Yes, Sir, for I had enough of it before.

Q. Where did you go with Alderman Whitney? A. I came down to see Mr. Hill.

Q. When was that? A. I don't know.

Q. Eh? A. I don't remember, Sir.

Q. Where did you live after you left Woodhull & Claflin's? A. The same place, Sir.

Q. Whom did you work with? A. Whom did I work with? I worked at my own business—fruit and vegetable business.

Q. Where did you carry it on? A. I carried it on from Norfolk, Virginia, to New York.

Q. Where did you make your sales? A. Different places; sometimes in private families, and so on.

Q. Did you have any stand? A. No, Sir, no stand at all.

Q. No shop? A. No shop whatever. I would ship it and get it all engaged to people to take it, and ship it on here and get paid for it.

Q. What vessels did it come on? A. The Old Dominion Steamship Co.

Q. Where did they land? A. Pier 37.

Q. And have you been engaged in that business ever since you left Woodhull & Claflin? A. Off and on.

Q. Up to the time you went to school? A. Off and on pretty much while it was in season.

Q. Have you not followed your trade at all? A. No, Sir; I could not get anything to do.

Q. Did you work for no one after you left Woodhull & Claflin? A. I do jobs around.

Q. Where did you do jobs? A. Oh, several little places.

Q. Well, where? A. Where any one wanted me to do anything.

Q. Where did any one want you to do anything? A. Several places.

Q. Name those places, James; you are wasting time. A. I could not begin to name the little small jobs I did.

Q. Can you name any person for whom you worked after you left Woodhull & Claflin's employ? A. I worked for myself, on my own hook.

Q. Eh? A. I worked on my own hook; that is my principal business.

Q. Besides yourself whom else did you labor for? A. Oh! different small jobs I have done.

Q. Name the persons? A. I could not begin to name

to you the persons. Supposing you were to go do two or three little jobs —

Q. Name one little job, James? A. I could not begin to do that, Sir.

Q. How recently have you done any work for any man? A. How recently? Most any time.

Q. How long since you did one of these jobs? A. I did one this morning.

Q. Can you tell me for whom you did a job this morning? A. Yes, Sir.

Q. Who is it? A. Powsland, 344 Carlton-st.

Q. And the name? A. L. A. Powsland.

Q. Before that for whom did you do a job? A. Sir?

Q. Before that for whom did you do a job? A. I could not remember. There is no use of my undertaking to try to tell you, because I could not.

Q. Can you not name one person? A. I have named one. You asked me to name one person, and I did so. [Laughter.]

Q. Can you not name another one? A. No, Sir, I cannot.

Q. You cannot recall the name of any other person? A. I don't believe I could. I thought you wanted to ask me particular questions.

Q. Well, I do. I want to know for whom you have been working? A. But you are entirely out, now.

Q. Did you work more than one day for anybody? A. Yes, Sir, I did, several. If you have got a job for me to do, I will do it.

Mr. Fullerton—The job we have got we have on hand now.

The Witness—Have you not anything else?

Mr. Fullerton—Can you tell me whether you worked more than one day for any man since you left the employ of Woodhall and Claflin? A. I have; I have worked several days.

Q. Several days for one man, have you? A. Oh! yes, Sir.

Q. Can you not tell me the name of that man for whom you worked for several days? A. I will tell you one more, and I hope you won't ask me for any more.

Q. Tell me one more, James? A. That is J. B. Smith, the builder. I think you will find—I don't exactly know his number in New York.

Q. J. B. Smith? A. Yes, Sir.

Q. The builder? A. Yes, Sir; I think his office is 300 and something, Broadway.

Q. How long did you work for him? A. Oh, I used to work quite a good deal of jobs for him all the time he stayed in Brooklyn pretty much.

Q. Did he live in Brooklyn? A. He used to live in Brooklyn—in Baltic-st.

Q. From whom did you make purchases in Norfolk? A. Different people. When the sloop would come in I would go and buy whatever I wanted to buy. I didn't have any particular person to buy from; whoever I could get it from the cheapest.

Q. Did you go to Norfolk? A. Yes, Sir.

Q. How often? A. Once in a while—as often as I could afford it.

Q. To Norfolk? A. Yes, Sir.

Q. And you made your purchases and came back on the vessel here? A. Came back on the vessel here, Sir.

Mr. Fullerton—That is all.

# RE-DIRECT EXAMINATION OF JAMES B. WOODLEY.

By Mr. Everts—James. A. Yes, Sir.

Q. You have not seen or heard anything about your evidence that you gave in the U. S. Court, or what you told the District-Attorney or his assistant since that time, have you? A. No, Sir, nothing at all about it; I never thought about it since.

Q. Until you were asked here to-day? A. No, Sir; I never thought about it.

Q. Now, this Mr. Dorsey, to whom you go to school, does he keep a school for grown persons? A. No, Sir.

Q. Is he a colored man? A. Yes, Sir.

Q. Have you been to him before, any Winter? A. No, Sir.

Q. Or only this Winter? A. Only this one, Sir.

Q. Now, you have been asked about any job outside of the fruit and vegetable business that you have been engaged in since you left Woodhall & Claflin's? A. Yes, Sir.

Q. Since that matter came to an end, do you keep up a set of carpenter's tools? Do you profess to work at the carpenter business? A. No, Sir; I don't keep any; I never got any job, so I didn't keep any.

Q. And any jobs that you have done that have been inquired about, were they in the way of your trade as a carpenter, or in some other way? A. Sometimes it was, and sometimes it was the other way.

Q. This job this morning that you spoke of, what was that? A. I tended a furnace this morning.

Q. Now you have spoken about the habit of lunching—the frequency of Mr. Tilton being at lunch at the office, and you have spoken of lunches also—of their lunching at Delmonico's or at their office?—Delmonico's particularly. You spoke of its being a dozen times, or perhaps two dozen times. Do you mean that that was during the whole time that you were there, from 1870 to 1873? A. That is what I mean, Sir.

Q. From time to time? A. Yes, Sir.

Q. Was there any habit of their lunching at Delmonico's day after day, or did they lunch at their offices? A. They lunched at their offices most generally.

Q. Now, you have said that there was an occasion when a sort of lecture or assembly took place at No. 15 Thirty-eighth-st. A. Yes, Sir.

Q. What did you do about that?—what was your service there? A. My services, Sir, were opening and attending the door at that time.

Q. Did you sit at the door? A. I sat at the door part of the time.

Q. And were you then a stranger to most of the people that came there? A. I was a stranger, Sir.

Q. Had you ever seen Mr. Tilton before that occasion, do you think? A. If I did, I didn't know it, Sir.

Q. Not to your knowledge? A. No, Sir.

Q. You had not seen him. Do you remember how you found out that the gentleman whom you then saw was Mr. Tilton—was named Mr. Tilton? A. I heard—Mrs. Woodhull and Miss Claflin told me that that was Mr. Tilton.

Q. Was that after the assemblage had broken up? A. That was soon after—shortly afterward; I heard his name mentioned several times, but I had not been acquainted with the gentleman, and I was very anxious to see him.

Mr. Beach—Oh, well!

Q. You have spoken of two occasions of Mr. Tilton addressing Mrs. Woodhull as "Vickey?" A. Yes, Sir.

Q. Was that an ordinary thing with him? A. Oh, it was common—very common—usual to call her "Vickey."

Q. And how did she address him? A. Theodore.

Q. You have spoken of their greeting one another as usual? A. Yes, Sir.

Q. What was their usual mode of greeting one another? A. When they would come in they would bow and kiss, just the same as two ladies would meet. Of course you understand that.

Mr. Evans—That is all.

Mr. Fullerton—That is all.

#### TESTIMONY OF RICHARD ALLEN GRAY.

Richard Allen Gray called and sworn on behalf of the defendant:

By Mr. Hill—What is your age, Mr. Gray? A. I am in my 29th year.

Q. Where do you live? A. In the City of Washington.

Q. How long have you lived there? A. All my life.

Q. Born in Washington? A. Yes, Sir.

Q. What business are you engaged in in Washington? A. At present!

Q. Yes, Sir? A. Not any.

Q. Have you been in any public employment? A. Yes, Sir.

Q. What was the public employment in which you were engaged? A. I was clerk in the Board of Public Works in Washington.

Q. When was that? A. That was in 1873 and part of 1872.

Q. Now, Mr. Gray, have you spent any portion of your time in New-York City? A. Yes, Sir.

Q. When did you come to New-York? A. I came to New-York about the 20th of August, 1870.

Q. 1870? A. Yes, Sir.

Q. Where had you been working up to that time? A. At Willard's Hotel.

Q. In what capacity? A. In charge of the coat-room.

Q. The coat-room? A. Yes, Sir; and baggage together.

Q. How long were you employed at New-York? A. About 18 months, I guess.

Q. Do you recollect when you returned to Washington? A. Yes, Sir.

Q. When was it? A. The 24th December, 1871; I arrived in Washington on the 25th, and I left New-York on the 26th.

Q. For whom were you employed at New-York, here; in whose employ were you? A. Woodhull & Claflin's.

Q. All the while? A. Yes, Sir.

Q. Where were you employed? A. In Broad-st.; in their office—broker's office in Broad-st.

Q. I mean the place where you were when you were requested to come to New-York in their employment A. Willard's Hotel.

Q. Who requested you to come to New-York and enter their employment? A. Miss Tennie C. Claflin.

Q. You say that Miss Claflin requested you to come to New-York while you were at that hotel in Washington? A. Well, yes, Sir; she said—

Mr. Beach—Wait a moment.

Mr. Hill—I don't care to know what she said.

Q. She was at Washington when she asked you to come to New-York? A. Yes, Sir.

Q. At Willard's Hotel? A. Yes, Sir.

Mr. Beach (to Mr. Hill)—Was it in August, 1870, he says?

Mr. Hill—He so answered.

By Mr. Hill—Mr. Gray, what was your special duty at the office of Woodhull & Claflin while you were in New-York? A. I hardly had any special duty. I used to do most anything. I used to write the wrappers for the papers principally.

Q. And what else? A. Well, sometimes I would go errands; something like that. Anything they would ask me to do, if I had time to do it, I would do it.

Q. Where did you board while you were there? A. At her house.

Q. At what place was that? A. No. 15 East Thirty-eighth-st., if I mistake not.

Q. You slept at the house? A. Yes, Sir.

Q. Now, Mr. Gray, do you know the plaintiff, Theodore Tilton? A. Yes, Sir.

Q. How long have you known him? A. Well, I have not known him, I don't suppose, more than about two years; up to—

Q. What were you going to say? A. Up to this time I have known him; I knew him about two years ago.

Q. When did you first see him so as to know who he was? A. I first saw him in Mrs. Woodhull's office.

Q. When, so as to know who he was? A. Well, about the latter part of February, or the first of March, 1871.

Q. At that place? A. Yes, Sir.

Q. Now, how did you come to observe him? A. I was

writing one day, and he came in, and I looked up at him, and I says to a young man alongside of me, "Who is that?" He said, "That is Theodore Tilton; don't you know him? A great friend of Fred. Douglass." I said, "Is that so?" I looked up at him and said, "He has got hair long enough"—

Mr. Beach—You may as well stop that.

Mr. Hill—He was pointed out to you, then, by some one who you knew, as Mr. Tilton? A. Yes, Sir.

Q. Be kind enough to state how much you saw of Mr. Tilton after that? A. Well, after that I used to see him there sometimes once or twice a week; sometimes every day, until the weather began to get warm; then his visits became more frequent.

Q. Now, do you recollect any circumstance which will enable you to state about when it was that you are certain you first saw Mr. Tilton; if so, mention it? A. I don't know any other circumstance except the one I have already related, when he first came in the office.

Q. Do you remember going up to his office? A. Yes, Sir; I remember that. That was after I had seen him.

Q. When was that that you were sent up to his office? A. That was in March.

Q. The 1st of March, 1871? A. Yes, Sir, 1871.

Q. Do you remember what you went for? A. Yes, Sir; I went up there with a note.

Q. From whom? A. From Mrs. Woodhull.

Q. To Theodore Tilton? A. To Theodore Tilton.

Q. Do you recollect whether you brought anything away from their office? A. I think I brought some copies of the paper, if I mistake not.

Q. What paper was it? A. *The Golden Age* then.

Q. Well, state, Mr. Gray, whether you saw Mr. Tilton or not at the house of Mrs. Woodhull? A. Yes, Sir.

Q. How much? A. I saw him there several times.

Q. Well? A. Well, say half a dozen, any how.

Q. At what time of day or night? A. I don't know as I ever saw him in the day; I saw him there in the evening and night.

Q. And you came away how early in the morning? A. I came away in the morning about 7 or half past 7.

Q. To be down to the office early? A. Yes, Sir, went down to the office.

Q. How late at night did you say? A. I observed his being there until 12 o'clock two or three times.

Q. Well, what was he doing? A. Writing.

Q. Always, or in social intercourse? A. Once I remember he was talking to them.

Q. Do you know when that was? A. Sir?

Q. Do you remember when that was? A. Well, it was in warm weather; I don't know what month it was in. It was very warm weather, because they had all the windows up.

Q. Do you remember whether they rode out or walked out together? A. Yes, Sir; I seen them go out once riding.

Q. Do you know where they went? A. I do not know, except they went to the Park; yes, Sir; I heard they went to the Park; I don't know whether they did or not; I didn't follow them.

Q. Do you remember what kind of a vehicle they had? A. They had a phaeton, one of those low carriages, with a white horse.

Q. Whose horse was it? A. I suppose it was Mrs. Woodhull's; she had had it in charge.

Q. They started off together? A. Yes, Sir.

Q. How late at night was this? A. This was 6 or 7 o'clock; probably 8 o'clock in the evening; somewhere along there.

Q. When they started from the house? A. Yes, Sir.

Q. Do you remember when they came back? A. No, Sir.

#### MRS. WOODHULL THREATENS MR. BEECHER.

Q. You didn't see them. Now, Mr. Gray, do you remember the Steinway Hall speech which Mrs. Woodhull delivered? A. I know she did deliver a speech at Steinway Hall, sometime in November, 1871, I think.

Q. Were you present at it? A. Yes, Sir.

Q. Now, do you recollect of hearing any conversation between Mrs. Woodhull and Mr. Tilton in respect to Mr. Beecher, not long before the occurrence of that speech? A. I heard them talking very many times about Mr. Beecher—about his presiding at that Steinway Hall lecture.

Q. Well, Sir? A. I don't know what they said, but they were always talking about him, and I heard Mrs. Woodhull say—

Mr. Beach—Wait one moment.

Mr. Hill—To him? A. To him, Tilton?

Q. Yes; go on with it then? A. That he had better preside at that meeting.

Q. Who had better? A. Mr. Beecher; that he, Mr. Beecher, had better preside at that meeting, or that she would make it hotter on earth for him than hell was below. [Laughter.]

Q. Do you recollect an occasion when Mr. Tilton separated from her to go away, about that time. Oh, pardon me. Did Mr. Tilton make any reply to that? A. He said, "He has got to preside; he will do it, and I shall go over to Brooklyn to see about it."

Q. You are now giving Mr. Tilton's answer? A. Yes, Sir; and as he went out of the door his arm was half around her waist.

Q. Around Mrs. Woodhull's waist? A. Yes, Sir.

#### THE WRITING OF THE WOODHULL BIOGRAPHY.

Q. Well, Mr. Gray, do you recollect the biography of Mrs. Woodhull which is said to have been

prepared by Mr. Tilton? A. I heard that he was going to write—

Mr. Morris—No, one moment.

The Witness—He wrote her biography.

By Mr. Hill—Do you recollect the fact that it was published? A. Yes, Sir, or at least I heard it was.

Q. Now, do you know how long they were at work upon that biography? A. Well, I suppose—

Mr. Beach—Wait one moment. I object to that question.

Mr. Hill—To the question, Mr. Beach?

Mr. Beach—Yes, Sir.

Mr. Hill—What is the ground of objection?

Mr. Beach—The ground of objection is that you call for persons who are not named. "How long they were at work." I don't know who you mean by that question.

Mr. Hill—Do you know whether or not Mr. Tilton was at work upon it, either with Mrs. Woodhull or by himself? A. Yes, Sir.

Q. Well, how was it? Were they at work, or not? A. They were; Mr. Tilton was at work.

Q. Now, how do you know that fact, Richard? A. Because he was up at the house at work at night; he would be sometimes at her house writing, and sometimes at the office writing.

Q. Anything said about it? A. No, Sir, not that I heard.

Q. Then, you don't know from him that he was at work on the Life? A. Not from him.

Q. Now, Mr. Gray, won't you please describe to his Honor and the jury a little about the relative position of these rooms in the Woodhull office? On which side of Broad-st. was it, to start with? A. On the west side.

Q. What sort of room was it into which you entered from the street? What was in that room? A. What was in the room?

Q. Yes, what was it used for? A. It was used as a broker's office, the first room.

Q. What part of the brokerage business was conducted in that room—desks? A. Desks and other things there.

Q. Clerks there? A. Yes, Sir; all the clerks were there, a good many of them.

Q. Where was all your work done—in that front room? A. Yes, Sir.

Q. Now, how did you get into the back room, the next room behind this room? A. We went through a little door; there is a partition across there, and we went from there into the middle room.

Q. It was not a partition extending up to the ceiling? A. No, Sir.

Q. A low one? A. Yes, Sir.

Q. With a little gate? A. Yes, Sir, extending all the way round.

Q. Half door? A. Yes, Sir.

Q. Is that what you call the middle room? A. Yes, Sir; you entered into the middle room there.

Q. Well now, I understand there was another room? A. Yes, Sir, what they called their private office.

Q. Private office? A. Yes, Sir.

Q. How was that separated from the front office? A. There was a large glass window, which extended all the way from the floor to the ceiling.

Q. And what kind of a door? A. Well, the door was pretty much the same—a glass door like.

Q. Well, how late at night did you stay at this office ordinarily? A. Well, I stayed very late, stayed there until 7 or 8 o'clock, sometimes 9 o'clock; sometimes I stayed there until 10; I had not anything special to do, and I remained right there.

Q. Now, please state whether you observed any, and if so what, acts of familiarity between Mr. Tilton and Mrs. Woodhull at the office. A. I remember on one occasion I was there very late at night; the gas in the room that I was in was out; it had not been lighted; the gas in this private office was lighted, and they had been there some time, and when they got up to go they came near this door; I was sitting nearly opposite to the door, and I saw the motioning of arms and the heads moving backward; could see them distinctly; of course I became interested and I watched, and I could see the arms and the two heads moving together in a very lover-like manner.

Mr. Beach—In what?

Mr. Hill—In a very lover-like manner.

The Witness—Very lover-like manner, as though lovers were parting, something like that.

Q. How did you happen to be there so late? A. Well, I always stayed there because I used to lock the office sometimes.

Q. You used to wait to lock up the office? A. Yes, Sir.

Q. You were waiting for them to come out on that occasion? A. Waiting for them to come out; yes, Sir.

Q. Mr. Gray, do you recollect whether or not Mrs. Woodhull and Mr. Tilton came out from that room that night after you saw these shadows upon the glass? A. Yes, Sir.

Q. Let me understand you; the suggestion is made, did you see the forms of the people through the glass, or the shadows upon the glass? A. I saw it through; I could sit and look right through.

Q. Now I understand. A. Of course it reflected right through the glass—the whole action.

Q. Do you say that you saw them come out that night after they— A. Yes, Sir; they came out.

Q. What is it? A. Yes, Sir, they came out of the room.

Q. Do you recollect other occasions at evening or at night when they were in this back room together? A. Yes; Sir, they used to be there quite often.

Q. When the gas was not lighted? A. I remember once or twice when the gas was not lighted, and they

remained there, I think, until along about half past 6 or 7 o'clock.

Q. How late in the evening? A. Just about dusk, 6 or 7 o'clock.

Q. Could you hear them conversing? A. Sometimes I could, and sometimes I could not.

Q. Well, could you hear conversation in ordinary tones of voice, that occurred in the back room? A. Not at all times.

Q. But you could hear them conversing at one time? A. Yes, Sir.

Q. And then intervals when you did not hear them? A. Yes, Sir.

Q. And then you would hear them again? A. Yes, Sir.

Q. Now, please state what rooms in the Woodhull mansion you have seen Mr. Tilton in. A. In Thirty-eighth-st.?

Q. Yes. A. In Mrs. Woodhull's room, back room, second floor.

Q. What floor was that—second floor, front or back? A. Back room.

Q. Back room—how many times have you seen him there? A. I have saw him there some two or three times.

Q. Well, was that a bedroom or a library? A. It was a bedroom, Sir; it is where they slept; I supposed it was a bedroom.

Q. Have you seen him in other rooms about the house? A. Yes, Sir, saw him in the parlor.

Q. Name them—well, in the dining-room? A. Yes, Sir.

Q. Any others, if so, name them? A. Well, I saw him in her bedroom, in the parlor, and in the dining-room.

Q. Now, about how much did you see him at the house? A. Well, I used to see him there quite often; I sometimes would retire and leave him there and would find him there in the morning.

Q. What time in the morning? A. Well, when I left, about half-past seven, probably eight o'clock.

Q. How many times did you see him in the morning? A. Well, some two or three times.

Q. What is it? A. Some two or three times.

Q. What part of the house was he when you saw him in the morning? A. The dining-room.

Q. Was it at meals, at breakfast? A. Yes, Sir.

Q. In the dining-room? A. Yes, Sir.

Mr. Hill—That is all.

Mr. Pryor—[After consultation with Mr. Morris.] That will do, Mr. Gray.

# TESTIMONY OF LUCY ANN GILES.

Lucy Ann Giles (colored) was next called on behalf of defendant and sworn.

Mr. Hill—Where do you reside, Mrs. Giles? A. In Brooklyn.

Q. How long have you lived in Brooklyn? A. I lived in Brooklyn eight years.

Q. How long have you lived upon Long Island? A. Well, Sir, I was brought up out on Long Island.

Q. Raised on Long Island? A. Yes, Sir.

Q. Mrs. Giles, did you ever work in the family of Victoria Woodhull in New-York City? A. Yes, Sir.

Q. In what capacity? A. As cook.

Q. As a cook? A. Yes, Sir.

Q. Well, is that your ordinary business? A. Yes, Sir.

Q. Your employment? A. Yes, Sir.

Q. How long have you been engaged in that way? A. Well, ever since I was 22 years old.

Q. As a cook? A. Yes, Sir.

Q. Please state when you began your work at Mrs. Woodhull's as a cook? A. 1870.

Q. 1870? A. Yes, Sir.

Q. Do you remember Mr. Gray and James Woodley as being employed by Mrs. Woodhull at that time? A. Yes, Sir.

Q. Remember seeing them about the premises? A. Yes, Sir.

Q. Now, how long did you remain in Mrs. Woodhull's employ, Mrs. Giles? A. I was there one year and a month, Sir.

Q. And began in the Fall of 1870? A. Late in 1870; yes, Sir.

Q. Did you cook all the while; were you engaged as cook all the while, Mrs. Giles? A. No, Sir; I was cook there for six months steady in the kitchen; and then they had some difficulty in the family, and after that I came to do general housework.

Q. Now, do you know Mr. Theodore Tilton? A. Yes, Sir.

Q. How long have you known him? A. Well, I have knowed him for three years.

Q. Please state, Mrs. Giles, whether or not you saw Mr. Tilton coming to the Woodhull house while you were engaged there as cook? A. The first time I saw Mr. Tilton there was the 3d day of July.

Q. July; what year? A. 1871.

Q. The 3d of July? A. Yes, Sir.

Q. What time of day was it? A. Between 10 and 11 o'clock.

Q. In the morning or at night? A. In the morning, Sir, between 10 and 11.

Q. Do you remember how long he stayed, Mrs. Giles? If so, state, to his Honor and the jury. A. Yes, Sir; he came there and he was writing the life of Dr. Woodhull for Mrs. Woodhull; he was there the 3d of July; he stayed all the afternoon; he had lunch there, and he stayed all the afternoon, and he was there that evening.

Q. Do you know whether he spent the night in the house? A. Yes, Sir; he stayed all night and slept in the parlor.

Q. In which parlor, back or front parlor? A. In the front parlor, Sir.

Q. Do you know who made up his bed for him? A. Yes, Sir.

Q. Who did it? A. I did myself, Sir.

Q. In the back parlor? A. Yes, Sir; in the front parlor.

Q. In the front parlor? A. In the front parlor, Sir.

Q. Was it a bed-lounge or a bed made in the parlor? A. No, Sir; it was a bed-lounge that you could pull it out and put a mattress on to it.

Mr. Beach—Sofa-bed, as they are called?

Mr. Hill—Counsel asks if it was what they call a sofa-bed? A. Yes, Sir; it was a sofa-bed, and then one side you pulled out.

Q. Well, you spoke of bringing a mattress in and putting upon it; did you bring bed-clothes also? A. Yes, Sir.

Q. Sheets and such? A. Yes, Sir.

Q. Now, do you know whether he was there in the morning or not—the morning of the 4th of July? A. Yes, Sir; he was there to breakfast.

Q. You saw him in the dining-room? A. I set the table myself, and cooked the breakfast and carried it in, and waited on the table; I always stood at the head of the table to pour the tea and coffee.

Q. Now, do you know whether Mr. Tilton remained there during that day or not? A. Yes, Sir; he was there the Fourth of July day.

Q. All day? A. Yes, Sir; had a private dinner, himself and Mrs. Woodhull, in the front parlor; I carried it up; Col. Blood fixed the dinner; I carried it; he dished it, and Col. Blood fixed it, and I carried it up to them.

Q. Exactly. Now, do you remember whether Mr. Tilton stayed at Mrs. Woodhull's house that night? A. Yes, Sir, he did; he remained all night.

Q. Yes; do you know whether or not he occupied—whether he slept in the parlor that night? A. No, Sir; he did not sleep in the parlor that night.

Q. Do you know where Col. Blood slept that night? A. Yes, Sir; he slept up stairs.

Q. On what floor? A. On the second floor.

Q. Was that the same floor where Mrs. Woodhull slept? A. No; up above that; on the third floor.

Q. On the third floor? A. Yes, Sir.

Q. The second floor above that? Yes, Sir.

Q. Mrs. Giles, will you please state whether or not you have ever seen Mr. Tilton up stairs in the house? A. I saw Mr. Tilton up stairs in Mrs. Woodhull's room.

Q. How many times? A. Well, I saw him there quite a number of times; but this 4th of July night I noticed him more, because I never had seen him in that place before.

Q. You never had seen him in that place before? A. No, Sir.

Q. Now, how long did he continue to come there, Mrs. Giles? A. Well, he used to come there three or four times a week; he would be either to dinner or else to breakfast.

Q. Well, for how long a period of time—how long after this 4th of July did he continue to come? As long as you remained there as cook? A. Yes, Sir.

Q. As long as you remained there in any capacity? A. Yes, Sir; he used to come.

Q. As often as you mentioned? A. Yes, Sir; he would be there some weeks three times, some weeks four times, some weeks five times.

Q. Stay in the house all night? A. Yes, he would most generally stay all night when he came.

Q. Please state whether you ever called to Mrs. Woodhull's room to serve any refreshments at night? A. Yes, Sir; I was called—

Q. How many times? A. I was called 4th of July night up in Mrs. Woodhull's room, and Mr. Tilton was there, to carry up some refreshments—cake and champagne and ice water.

Q. Now, did you ever carry them refreshments upon any other occasion to that room? A. Yes, Sir, carried it quite a number of times.

Q. When Mr. Tilton was there at night? A. Yes, Sir.

Q. How late at night were these calls to the room when you brought refreshments? A. Well, 11, 12 and 1.

Q. Do you recollect of their going out to dine and returning late? A. Yes, Sir, remember of their going to ride out to Central Park.

Q. Do you remember of going to their room after their return from their ride? A. Yes, Sir, and carrying up broiled chicken and wine, and cake, champagne.

Q. You may state whether or not they were dressed when you so went to their rooms, upon all occasions. A. Well, when I went 4th of July night, Mrs. Woodhull was in her night garment and Mr. Tilton had his coat off and vest off, and was in his stocking feet. [Laughter.]

Mr. Hill—That is all.

Mr. Pryor (to the witness)—That will do.

Judge Nelson—Next witness. Find a short witness (it being near the hour of adjournment).

Mr. Tracy—We are trying to find as short a witness as we can, your Honor. We are disappointed in the examination of the last two witnesses.

Mr. Morris—I should think you would be.

Mr. Tracy—We are satisfied.

Mr. Beach—So are we.

Mr. Morris (to Mr. Tracy)—You are easily satisfied.

Mr. Shearman—I don't think we have any but long witnesses, and to go on about seven minutes would do no possible good. It would have to be an exceedingly short witness.

Judge Nelson—Gentlemen of the jury, in view of the fact that to-morrow is Good Friday, and of the further fact that the counsel are engaged on Saturday, we shall now adjourn to Monday morning at 11 o'clock.

The Court was then adjourned.



## FIFTY-THIRD DAY'S PROCEEDINGS.

## THE CONFESSION TO MRS. MOULTON.

**TWELVE WITNESSES EXAMINED—TESTIMONY IN REGARD TO A REMARKABLE PROPOSITION FROM MR. TILTON TO A MEMBER OF THE INVESTIGATING COMMITTEE—EFFORTS TO DULL THE POINT OF THE VERBAL CONFESSION TO MRS. MOULTON—A TELEGRAM DATED THREE WEEKS AFTER ITS RECEPTION.**

MONDAY, March 29, 1875.

The morning session of the Tilton-Beecher trial to-day was devoted to three witnesses, each called for a different purpose. Mr. David Dows, the New-York merchant in whose family Miss Turner resided for a month or two, was called to confirm the latter's testimony as to the length of her stay in his family. By reference to data he established that Miss Turner was right in her recollection of the time she was in Tarrytown, and correct in her statement that she had remained until the family of Mr. Dows had returned from their California trip.

John Winslow, ex-District-Attorney of Kings County, and a member of the Committee of Investigation appointed by Mr. Beecher, was called to testify to the fact that Mr. Tilton had proposed to him—as the only member opposed to it—a plan of silencing the scandal by the adoption of a report which Mr. Tilton had drawn up exonerating Mr. Beecher, Mrs. Tilton, and himself. On the cross-examination Mr. Fullerton endeavored to commit the witness to the statement that Mr. Tilton had proposed this plan in order to shield Mr. Beecher, but Mr. Winslow insisted that Mr. Tilton, without naming any person, had urged the acceptance of his plan on the ground that investigation would cause sorrow to a great many persons. Mr. Winslow testified that Mr. Tilton had accused Mr. Tracy of a breach of good faith in appearing against him after he had solemnly promised not to do so. Mr. Tracy had retorted that he had not done so without giving Mr. Tilton notice that he considered himself absolved from that promise when Mr. Tilton advanced his charge against Mr. Beecher from "improper solicitation" to "adultery." The further fact was brought out that in his action as counsel of the Committee Mr. Tracy had worked without pay or prospect of remuneration. On the cross-examination Mr. Fullerton made many inquiries as to the present whereabouts of the evidence taken before the Committee, but obtained no definite an-

swer. He also made inquiries as to alterations made by the Committee in Mr. Beecher's statement before giving it to the press.

Thomas James Turner, Mr. Beecher's farmer at Peekskill, was called to add another link in the chain of evidence which the defense relies upon to contradict the extraordinary statement of Mrs. Moulton relative to Mr. Beecher's verbal confession of his alleged offense with Mrs. Tilton. The minuteness with which Mr. Turner was examined and cross-examined indicates the importance which both sides attach to Mrs. Moulton's story; it is looked upon, indeed, as among the most vital points in the case. The defense do not hesitate to say that it was manufactured, and promise to prove an *alibi*; the plaintiff's counsel exhibit deep interest when the subject is touched upon by the witnesses.

The evidence of Mr. Turner yesterday shows that Mr. Beecher was absent from New-York from two o'clock on June 2 until nightfall on June 3; and that of Mr. Perkins, a few days ago, places him at Worcester, Mass., on an eastward-bound train. Only the morning of June 2 remains to be accounted for, and this is the important period; for Mrs. Moulton, on her direct examination, stated that the interview lasted for three or four hours; that he left her to go home to lunch, and that she saw him the next day or the day thereafter. On the cross-examination she stated that the interview was in the morning, and that she could not remember that Mr. Beecher had called the next day or the day after that, but she thought he called again during the week. So it now remains to show where Mr. Beecher was on the forenoon of Monday, June 2, 1873, and on Thursday, Friday, Saturday, and Sunday of the same week.

After recess Mr. Beecher's counsel resumed their line of defense by additional testimony as to Mr. Beecher's whereabouts during June 2, 3, and 4, 1873. Joseph S. Turner, a son of Mr. James Turner, corroborated his father's testimony that Mr. Beecher's arrival at Peekskill was on the evening of June 2. The witness had met Mr. and Mrs. Beecher at the depot, and driven them to their house. He was positive as to the date, and gave his means of fixing it.

James Rochford, a receiver at the Western Union Telegraph office in Brooklyn, identified the original dispatch which was produced by Mr. Hill in Mr. Beecher's handwriting as one of the dispatches received by him June 2, 1873. The production of this paper created some stir among the plaintiff's counsel. Mr. Beach and Mr. Fullerton exam-

ined it closely. The telegram was dated June 2, but the date was written in pencil, and the examination by the plaintiff's counsel disclosed the fact that the 2 had been changed from some other figure. The cross-examination was confined to this, and elicited the fact that the date had been written on the telegram two or three weeks ago by one of the operators at the office, and that he had changed it from June 1 to June 2. E. B. Denzler, a telegraph operator, also identified the dispatch, and swore that he had sent it between 8 and 9 a. m.

Ben. Kittridge, a farmer residing near Mr. Beecher's farm at Peekskill, swore positively that he saw Mr. Beecher at Peekskill on the evening of June 2, 1873. He fixed the date by a number of incidents which happened about that time, the recital of which afforded a very good specimen of the closeness with which the country people watched the movements of the Plymouth pastor when he visited his farm.

Thomas J. Tilney testified that Mr. Beecher married him in Brooklyn on Tuesday, June 3, 1873; and Frederick A. Putnam testified that he had seen Mr. Beecher and his wife taking the cars at the New-Haven depot early on the morning of June 4, 1873. The last witness on this part of the defense was Mr. Henry L. Hughes, manager of the Western Union Telegraph office in Brooklyn, who testified that he had found Mr. Beecher's telegram three weeks ago in the package of dispatches sent June 1, 1873. He had written the date upon it and was sure that it belonged with the dispatches of the day before. There was no cross-examination of these last witnesses.

Stephen V. White, a member of the Investigation Committee appointed by Mr. Beecher, was called to corroborate the testimony given by Mr. Winslow about Mr. Tilton's statements before the Committee. His account was substantially like Mr. Winslow's, but in one respect it differed—at least in the witness's own estimation. Gen. Tracy asked him, "Was anything said by Mr. Tilton about verbal confessions to him by Mr. Beecher?" "Well, I think they were recognized," answered the witness, who afterward explained that he had understood that Mr. Tilton had alluded to verbal confessions when he had declared that Mr. Beecher had asked him (Tilton) to give him an opportunity to leave the country in case the facts were published. Gen. Tracy insisted that this referred to the publication of the documentary evidence alone, but the witness replied that that was a matter of personal

opinion. Mr. White also gave an account of the quarrel between Mr. Tilton and Gen. Tracy over the latter's conduct in taking part in the case, and testified that the disputants had finally reached an amicable understanding on the matter.

The twelfth and last witness of the day was H. B. Claffin, who took the stand a short time before the adjournment. He was suffering from a very severe cold, which prevented him from raising his voice above a whisper. Mr. Shearman repeated aloud Mr. Claffin's answers to Gen. Tracy's questions, and the examination proceeded slowly. The witness began with an account of the discussion of the tripartite covenant made at the interview between Messrs. Tilton, Moulton, Wilkeson, and the witness, at Mr. Moulton's house.

## THE PROCEEDINGS—VERBATIM.

### TESTIMONY OF MR. DAVID DOWS.

At a few minutes past eleven the jurors were called and the day's work was begun.

David Dows was sworn on behalf of the defendant, and examined as follows:

Mr. Evarts—Mr. Dows, you are a merchant of the City of New-York? A. Yes, Sir.

Q. What is the name of your firm? A. David Dows & Co.

Q. What is your line of business? A. Produce commission business.

Q. And how long have you been a merchant of the City of New-York? A. Forty years and more.

Q. Are you the Mr. Dows in whose family Miss Bessie Turner lived at one time, as she has stated? A. Yes, Sir.

Q. How long was she in your family? A. I cannot tell you how long she was there.

Q. Well, about how long? A. Probably between two and three months; she came there in the Spring, and left in the Summer some time.

Q. Have you any personal recollection about it, or is that in your wife's affairs? A. I have no personal recollection distinct enough to tell you the time she came, nor the time she left.

Q. All matters between her and the family were between your wife and her, I suppose, or the other ladies, and not yourself? A. I heard nothing about—

Q. I am not talking about that—I mean only about what time; and the payment was with the ladies of the family, the — A. Memorandum as to the time when she came and left?

Q. And the payment, then the time she came and left, and as to — A. Well, I cannot tell you; I am not—

Q. Very well. That I understand. A. Neither have I any memorandum to show exactly the time she came; but she came some time in the Spring, and left in the Summer; I think in April or—

Q. Well, now, did you or some portion of your family go on



*Wm. Sterling*



the Pacific Railroad that spring? A. On the Union Pacific Railroad?

Q. On the Union Pacific? Or on a trip towards California, or what? A. Well, my family with others—party of gentlemen from New-York, went on a trip to Omaha, at the opening of the Chicago, Rock Island and Pacific Railroad.

Q. Yes; and the Pacific Railroad was not opened then, was it to California? A. I think the Pacific Railroad was not opened all the way through; I think it was not, although I am not certain.

Q. Now, do you know what day you left and what day you returned on that trip? A. We left on the 31st day of May, in the morning train, and we returned so that I was in New-York on the 12th of June. We returned, I think very likely, on the 11th, at night at Tarrytown where we lived; and on the 12th, in the morning, I came right through to New-York, and I was in New-York on the morning of the 12th of June.

Q. Have you examined your books and papers to— A. Yes, Sir. I have examined my letter book to refresh my memory.

Q. And the ladies of your family that went with you, they returned with you? A. Yes, Sir.

Mr. Tracy—That is all.

Mr. Fullerton—Nothing, Mr. Dows.

John Winslow was next called for the defense, and having made affirmation, was examined as follows:

TESTIMONY OF MR. JOHN WINSLOW.

Mr. Tracy—You are a practicing lawyer in this city, Mr. Winslow? A. Yes.

Q. Where do you practice; where is your office? A. New-York.

Q. Reside in Brooklyn. A. Yes.

Q. How long have you been a practicing lawyer? A. Oh! about 25 years.

Q. Formerly District Attorney of Kings County? A. Yes.

Q. Were you a member of the Investigating Committee appointed by Plymouth Church last Summer? A. Yes.

Q. And did you meet with that Committee? A. Yes.

Q. Were you present at the meeting when Mrs. Tilton was before the Committee? A. Yes.

Q. Can you tell us when it was? A. 6th of July, in the evening.

Q. Where was that meeting of the Committee at which she was present? A. At Mr. Ovington's.

Q. How came the meeting to be at Mr. Ovington's? A. The Committee met previously at Mr. Storrs's, and were notified by yourself that they could meet Mrs. Tilton at Mr. Ovington's.

Q. And did the Committee adjourn from Mr. Storrs's to Ovington's for that purpose? A. They did.

Q. You went with the Committee there, did you? A. Yes.

Q. Did Mr. Tracy accompany the Committee to Mr. Ovington's? A. He did.

Q. Will you tell us, Mr. Winslow, whether Mr. Tracy was absent from the presence of the Committee when they arrived at Mr. Ovington's house, on that night, before Mrs. Tilton gave her statement before the Committee; and, if so, how long he

was absent from the immediate presence of the Committee? A. Well, I missed him I think two or three minutes, more or less; I could not state very precisely.

Q. How long had the Committee been in the house, should you say, before Mrs. Tilton was in the presence of the Committee giving her statement? A. Well, I should think it might be from five to six minutes.

Q. Without asking you what was said or what questions were put, I ask you whether, as a matter of fact—by whom, as a matter of fact, most of the questions put to Mrs. Tilton that night were put; by whom were they put? A. By members of the Committee.

Q. You were present at the meeting of the Committee, when Mr. Tilton first appeared before the Committee? A. I was.

Q. Can you give us the date of his first appearance? A. That is the 10th of July, in the evening.

Q. Where was that meeting held? A. Mr. Storrs's.

Q. Did you listen to Mr. Tilton's talk with the Committee that night? A. Yes.

Q. Heard what he said, did you? A. Yes.

Q. What, if anything, did he say in regard to the evidence of his case against Henry Ward Beecher? A. Well, the talk was a conversational one.

Q. Well? A. He at first said he didn't think there had better be an investigation; didn't think there was any occasion for one, and doubted whether Mr. Beecher wanted one, or had authorized one. We assured him that he did. He still doubted it, and then one of the members of the Committee, Mr. Cleveland, showed him the letter of authority from Mr. Beecher, requesting this investigation. Mr. Tilton expressed surprise, and said that he was aware that he was a discredited person in this community, but that his case did not depend upon him; it was in writing, in documents and papers.

Q. At that point of the conversation did Mr. Tracy say anything to Mr. Tilton on the subject of what his evidence proved? A. If you will call my attention to the particular point that you refer to—

Q. Did Mr. Tracy say anything to Mr. Tilton that if his case was—

Mr. Beach—No, Sir, I object to his embodying the substance. The Witness—I now remember what was said.

Mr. Tracy—Well.

The Witness—Mr. Tracy said to Mr. Tilton that if his case was in writing, if he would produce the documents, we could judge of them as well as he could.

Q. Well, was anything said by Mr. Tracy on that occasion? A. Oh! there was a good deal said, but I do not now recall—

Q. Well, did Mr. Tracy say that he had seen the documents himself?

Mr. Fullerton—That is objected to.

Mr. Beach—That style and form of examination, Sir, is very objectionable as leading.

Mr. Tracy—On the ground that it is leading?

Mr. Beach—Why, yes, Sir; you know as well as we that it is leading.

Mr. Tracy—Well, I don't suppose this witness is one that is likely to be influenced very much.

Judge Neilson—That is not the point.

Mr. Morris—He don't need leading.

Judge Neilson—It is no reflection on the witness at all; you can ask whether anything was said on a given subject.

Mr. Tracy—Was anything said by Mr. Tracy upon the subject of his having seen the documents? A. I don't recall at this moment what was said about that.

Q. Was there anything said by Mr. Tilton on that occasion in regard to his case resting in any degree upon the verbal confession of Mr. Beecher? A. Not a word.

Q. Did he state anything upon that subject, as to whether Mr. Beecher had ever confessed to him verbally or to anybody else? A. No.

Q. Did Mr. Tilton—state whether or not Mr. Tilton read Mr. Beecher's letter asking for the appointment of the Committee that night? A. Did Mr. Tilton state?

Q. Did Mr. Tilton read it? A. He did.

Q. Had it in his hands? A. Yes.

Q. Read it more than once? A. Looked at it very carefully—took plenty of time.

Q. After that meeting did you have an interview with Mr. Tilton, a few days after that, on the subject of this investigation? A. Yes.

Q. When was that interview, and where was it? A. That was on the 13th, about sunset.

Q. 13th of July? A. Yes, in Montague-st., opposite the Academy of Music.

Q. Can you state whether or not that was on the day that Mr. Tilton published in *The Argus* his card saying that he should accept Mr. Beecher's challenge, and produce his proofs before the Committee? A. Same day.

Q. Same day? Had you read that card at the time of this conversation? A. Yes, just read it, and had the paper in my hands, and referred to it in our conversation.

#### MR. TILTON'S OFFER TO PREPARE A REPORT FOR THE COMMITTEE.

Q. What was said between yourself and Mr. Tilton on the subject of that investigation at that conversation? A. I met Mr. Tilton; he was passing toward the west, and I toward Court st., and I said to him, "Theodore, I have just read your letter." I had the paper in my hand and had just finished reading it. He said he would like to talk with me. I said, in a playful way, "Do you think it proper to talk to the court?" He said he wanted to talk to me. I then—we stopped. He said this investigation was all wrong, it ought not to proceed, and that it might be easily closed; he had a way of closing it; he said that he wanted the Committee to adopt a report that he had drawn—he said indeed he had drawn two or three reports, but he had one that he thought would be satisfactory, which provided for the exoneration of the three parties, himself, Mrs. Tilton and Mr. Beecher, and they could all go about their work. I told him that that was the first I had heard of any such project as that; that I did not know anything about the case, either on his side or on the other; I had never heard it stated. I told him I did not propose to know anything about it, except what I learned from testimony taken

by the Committee; that I considered it my duty to listen to that as if I were a Judge on the bench, and that I thought I could come to a conclusion after hearing it; if I did I should state it, hit where it might. He said he had understood that I would oppose it, and if I would not oppose it all the other members of the Committee would agree to it. I told him I thought he was mistaken, that I did not believe a member of the Committee would listen to it, and that I had not heard it mentioned by any member of the Committee. He said, "Well, do me justice." I said, "Certainly," and we separated.

#### MR. TILTON CRITICISES GEN. TRACY.

Q. You were also before the Committee the night he presented the sworn statement? A. Yes.

Q. Were you present also at his cross-examination? A. Yes.

Q. When was that—when did that occur? A. Well, the first—it commenced on the 30th and it ended on the 23d.

Q. I call your attention to the 23d, I think it was—at all events, I call your attention to an occasion, if you were present, when Mr. Tilton attacked Mr. Tracy? A. My impression is that that was on the 23d; that is my impression about it.

Q. On the 23d? A. Yes.

Q. Did you hear that attack? A. Yes.

Q. What was said? A. We had—it was in the afternoon; we had an afternoon session that day, not a regular session; it was an informal meeting—

Mr. Beach—I do not understand, Sir, the importance of this evidence, and I object to it.

Judge Neilson—We cannot very well tell what it will be until we hear it; I think we will have to hear it.

Mr. Beach—We gave no evidence whatever of any attack by Mr. Tilton upon Mr. Tracy before the Committee.

Judge Neilson—Well, it is a conversation with the plaintiff, and I think therefore we must take it.

Mr. Beach—It does not follow, Sir, because it is a conversation with the plaintiff upon a subject totally foreign and irrelevant to this issue, that it should be taken.

Mr. Tracy—It is not irrelevant; it is on the same subject.

Mr. Morris—He is calling for a personal difficulty now.

Mr. Everts—Oh, no.

Mr. Tracy—Listen to the evidence and you will see its materiality.

Mr. Beach—Well, go on.

The Witness—There had been no regular session that afternoon, that is to say, no regular testimony taken, and I think the stenographer took no minutes. We were on the point of separating—it was quite late in the afternoon—when Mr. Tilton suddenly burst out, sitting near you and opposite you, to this effect: "Mr. Tracy, you have no right to be here in collision with me; you made me a promise when you first knew this case, that if I and Mr. Beecher came in collision you would not appear against me." You answered: "Yes, but when I saw you changing your ground, changing the case from one of improper advances to the main charge, I notified you that that promise would not bind me, and ought not to." Mr. Tilton answered that that did not

make any difference, you had made the promise, and you were bound by it. That idea was repeated there in various forms, and you both got talking pretty loud, and showed some excitement. Then after that stormy conversation, if I may so characterize it, you went into the front parlor to speak to some gentlemen, and I also went there with some others. In a moment Mr. Tilton came in, looking very sweet and pleasant, and said: "Tracy, I forgive you, I like you better than any man in Brooklyn." He put his arm on your shoulder, or partly around your neck, and I think you—I am not quite sure whether you said anything about forgiveness or not—but you looked very good-natured. [Laughter.]

Judge Nelson—The audience will have to keep quiet. Do not signify that it pleases you, or displeases you.

The Witness—Mr. Tilton then said that the difference between you and him was, that he sometimes did wrong and asked forgiveness, and you sometimes did wrong and never did ask forgiveness. I think you then shook hands, and there was a general laugh all around. Mr. Tilton then left, and there was some laugh after he left.

Q. Was there anything said there on that occasion by Mr. Tracy as to what the nature of his charge against Mr. Beecher was at the time he stated it to me and got that promise? A. It was repeatedly referred to as a case of improper advances; that is to say, you put it so, and he did not deny it, but claimed that it made no difference. That was his position, that you were bound.

Q. Did Mr. Tracy also say to him that whether I was bound under the circumstances was a matter of judgment?

Mr. Beech—Well, that is all improper, Sir, putting occasions in that form.

The Witness—Oh, yes.

Q. Well, was there anything said by Mr. Tracy at that time as to whether that was a matter of judgment whether the promise under the circumstances was binding or not? A. Yes, that was said, and I think you said also that you had not acted without considering it, and asking other opinions or other views.

Q. Views of other lawyers on the subject? A. Yes.

Mr. Tracy—You may examine, gentlemen.

#### CROSS-EXAMINATION OF MR. WINSLOW.

Mr. Fullerton—When was the first meeting of that Committee, Mr. Winslow? A. We had an informal gathering on Sunday evening, June 28th.

Q. Any testimony taken that evening? A. No; a mere informal conversation.

Q. When was the first meeting of the Committee when evidence was taken? A. The 6th of July.

#### SECRETS OF THE INVESTIGATING COMMITTEE REVEALED.

Q. What means did the Committee adopt to perpetuate the testimony? A. We used a stenographer.

Q. Whom did you use? A. I think his name is Ellinwood; I am not personally acquainted with him.

Q. Was he present on July 6th? A. I think he was.

Q. And did he reduce to writing the evidence taken that night? A. I think he did; he seemed to be doing that.

Q. Was he present at every subsequent meeting of the Committee? A. So far as I remember.

Q. And did he take the evidence of all the witnesses produced before that Committee? A. I think he did, unless he may have substituted some one some day that he could not be there. I don't recollect.

Q. You don't recollect of any such instance? A. I have no distinct recollection of it. It may have occurred, though; but he was generally there.

Q. How many statements did Mrs. Tilton make before the Committee, either verbal or in writing? A. I think she was before the Committee twice.

Q. That does not answer my question, Mr. Winslow? A. That is all I saw of her and all the Committee saw of her, as a Committee.

Q. My question was, how many statements she made before the Committee, either verbal or in writing; your answer is that she was before the Committee twice.

Mr. Everts—How is that material, if your Honor please?

Judge Nelson—I don't know; it may be. I think we had better take it.

The Witness—She made two.

Q. Verbal or in writing? A. Verbal.

Q. On what night did she make the first one? A. 6th of July.

Q. Was that statement ever published? A. I never saw it.

Q. Do you know what became of the notes after they were written out? A. No.

Q. Have you ever seen them since? A. I never saw them at all.

Q. Do you know whether or not they were written out? A. No.

Q. Well, how many times was Mr. Beecher before the Committee? A. Mr. Beecher was before the Committee twice.

Q. How many statements, either written or verbal, did he make before the Committee? A. Two.

Q. Were they oral or written? A. Both; that is, mixed.

Q. Did he make two written statements before the Committee? A. His first statement, if you call it that, was an informal affair—

Mr. Beech—That we did not ask at all.

The Witness [continuing]: Which he read—

Mr. Fullerton—No; that is not asked.

The Witness—I am going to tell you what shape it was in.

Mr. Fullerton—Not until you are asked, I suppose?

The Witness—You did ask.

Mr. Everts—You asked whether he made a statement.

Mr. Fullerton—I did not ask whether it was formal or informal, or the manner in which he read it; I asked if he made two written statements before the Committee.

The Witness—Yes.

Q. When was the first statement? A. I think it was about the 15th of July.

Q. Where did the Committee meet when that statement was made? A. At Mr. Storrs's.

Q. Who of the Committee were present? A. My recollection is that they were all present, though some one may have been absent.

Q. Was the statement left with the Committee after it was read? A. No.

Q. Who took it away? A. Mr. Beecher; I suppose he took it away; I am supposing now.

Q. Who read it to the Committee? A. Mr. Beecher.

Q. Was that statement ever published? A. The substance of it was, afterwards—yes.

Q. No, no; I did not ask you that. Was that statement, as made, ever published? A. I think not—not so far as I know.

Q. Did the stenographer take notes of it? A. I really cannot say; I don't know whether he did or not.

Q. You were present? A. Yes.

Mr. Beach—Please reflect, Mr. Winslow, and see if you can recollect.

The Witness—I can tell you what I do recollect, and you can judge for yourself. Mr. Beecher read—

Mr. Beach—You were not asked that.

Mr. Fullerton—I am talking about the stenographer now, not about the reading. Did the stenographer take notes of it?

The Witness—I know. I want to give you the facts so that you may judge whether he did, or not. I cannot say whether he did or not.

Q. Have you no recollection on the subject? A. I have not.

Q. Do you recollect that the stenographer was there that night? A. I have no distinct recollection of it, only I know that he was generally there; that is all.

Q. Have you seen that statement since that night? A. No.

Q. Have you seen a copy of it since that night? A. No.

Q. Do you know whether the stenographer ever wrote out any notes that he took of that statement that night? A. I don't know.

Q. You have never seen any? A. No.

Q. Do you know where the minutes of the Committee now are? A. I do not.

Q. Who was the chairman of that Committee? A. Mr. Sage.

Q. Who had charge of them during the sittings of the Committee? A. Well, I think the stenographer took them, uniformly.

Q. Well, after he wrote out the testimony, what was done with it then? A. Well, we turned it all over to the Examining Committee of the Church.

Q. Do you mean to say that you turned over the whole of the evidence taken before the Committee to the Examining Committee? A. Yes; except I don't suppose that that brief statement referred to of Mr. Beecher was included—I don't suppose it was.

Q. Nor was the first statement of Mrs. Tilton included, was it? A. I presume it was; I merely presume that—I don't know.

#### THE DISPOSITION MADE OF THE EVIDENCE A MYSTERY.

Q. Did you hand over the evidence thus taken at the time the Committee made its report? A. That was the direction given; I didn't personally do it.

Q. Is that your understanding of the matter? A. Yes, Sir.

Q. Now, to whom were the directions given to pass over to the Examining Committee the evidence that you had taken? A. Some one member of the Committee, I think, took charge of that, but I cannot say positively who it was.

Q. Have you no recollection upon that subject? A. I could give a guess, that would be very satisfactory to me, but it would be a guess, though.

Q. What is your best recollection upon the subject without guessing? A. I have a best recollection about it, but it is not a distinct recollection; my impression is that Mr. Cleveland took it, and yet I may be mistaken.

Q. Have you seen the minutes of evidence since they were submitted to the Examining Committee? A. No; except as they have been printed.

Q. Printed where? A. Well, in these various pamphlets and newspapers.

Q. Do you know where the minutes of evidence are? A. No; it went out of our jurisdiction when it went to the Committee.

Q. Did you superintend the printing of any of the evidence? A. No.

Q. Or correction of proofs? A. No.

Q. Did you superintend the printing of Mr. Beecher's statement that was printed? A. No.

Q. Did you aid in its preparation for the printers? A. No.

Q. Were you present when it was being prepared for the printers? A. No.

Q. Were you present when any alterations were made in it? A. No.

Q. Do you know who did superintend it? A. No.

Q. Do you know whether it was all printed? A. That would depend, of course, upon my recollection of it.

Q. That is the reason I asked you? A. I should say, from my recollection, it was.

Q. You signed the report of the Committee, did you? A. Yes.

Q. Have you seen that in print? A. Yes.

Q. Do you know whether it is correctly printed in the book entitled "The Great Brooklyn Romance?" A. I know it is not correct; it is substantially so, but there are errors in it.

Q. You mean simply verbal errors? A. I think you would be able to detect the meaning through the mistakes; still there are errors in it.

Q. Do you know where the original report is? A. I know in whose hands it was the last time I saw it.

Q. When did you see it last? A. The day that the report was read at Plymouth Church.

Q. In whose hands was it then? A. Mr. Cleveland's.

Q. Do you recollect the examination of Mr. Beecher before the Committee? A. Yes.

Q. Who drew the report of the Investigating Committee? A. That is the work of several minds.



Mr. Fullerton—Well, that does not prevent you from answering the question.

The Witness—I made the first draft.

AN ERROR IN THE PRINTED REPORT OF THE TESTIMONY.

Mr. Fullerton—Yes. [Handing report to the witness.] Will you please look at the report, at that part of it commencing, "Mr. Belcher testified that he made," &c., and tell me who drew it, or that part of it? A. I think I did.

Q. You drew it then in conformity with the evidence, did you? A. I think there has a slight error crept in there. I had not Mr. Belcher's evidence at my elbow when I wrote that part of the report; I had other testimony, but not that, and I believe there was an error.

Q. Do you remember that error? A. Yes.

Q. Is it a matter of positive recollection? A. Yes.

Q. Have you got Mr. Belcher's evidence now? A. I have refreshed my memory by looking at it?

Q. When did you look at it? A. I looked at it a day or two after he testified here; I thought he made an error, and I wanted to see who was right.

Q. Where did you find it? A. I think Mr. Hill handed it to me.

Q. In what form was it? A. Manuscript.

Q. Written out by whom? A. I don't know; it was written out.

Q. Do you know it was correct? A. Well, it struck me to be correct—entirely correct.

Q. Was not your recollection as good when you drew that report as on the afternoon of those two or three days ago when you looked at Mr. Belcher's testimony? A. No; when this report was drawn quite a number of days had passed from Mr. Belcher's testimony.

Q. I ask if your recollection of his testimony when you drew the report, which was only a short time after he testified before the Committee, was as good as it was a few days ago, when you looked at some manuscript purporting to be his testimony? A. I don't think my recollection of his testimony was as correct as to verbal matters when I wrote this part of the report as it was after I had refreshed my recollection.

Q. Did you look at the evidence as written out by the stenographer? A. Of course I cannot say of my own knowledge who wrote that out; it was handed to me as stenographic copy; I don't know that it was; I have no doubt it was, however.

Q. I want you to speak independent of what you saw on that paper? A. It would be difficult to do it, for I had refreshed my memory somewhat.

Q. And then you discovered an error had crept into your report, the part of it which you drew; is that it? A. Yes, Sir; a slight error.

Q. Had you any evidence before you besides Mr. Beecher's at the time you discovered this error? A. Do you mean when the report was drawn?

Q. No; when you saw this manuscript in the hands of Mr. Hill? A. No.

Q. Do you know where that evidence came from? A. It came from Mr. Hill to me; that is all I know about it.

Q. You took it for granted that evidence was written out correctly? A. I assumed that to be so; I have no doubt it was so.

Q. Do you say from your recollection that it was so? A. Well, from my recollection refreshed I say yes.

Q. How? A. From my refreshed recollection I say yes.

Q. From your recollection before you wrote it? A. I can only say this, that it occurred to me when I heard Mr. Belcher's testimony read here that he made a mistake, and I was curious to see whether his memory or mine was at fault; and I thought it over somewhat, and came to the conclusion as to my own memory when I read Mr. Belcher's testimony.

Q. Now, irrespective of the testimony you have seen, or took before you, what did Mr. Belcher testify as to having seen the "True Story?" A. I don't think it would be fair for me to undertake to say I could state that irrespective of the testimony, because there came in the refreshing in connection with my general memory.

Q. Have you no recollection on that subject? A. I have a general recollection on it.

Q. Give us the best of your general recollection? A. As to what he testified to?

Q. Upon the subject of the having seen the "True Story?" A. My recollection is that Mr. Belcher referred to the paper that Mr. Tilton read to him, or extracts from it, and that he stated—he called it before the Committee a "document," and he called it a "statement," and in one instance he called it a "story;" but the phrase "True Story" he didn't use.

Q. Your recollection is distinct upon that subject? A. I have no doubt of it, at all; and yet I say to you that I would not be as positive if I had not refreshed my recollection in the manner I have stated.

Q. Well, you thought at one time he used the term "True Story." did you not? A. Yes; and I can easily see how that occurred.

Q. Well, inasmuch as I can see, I won't ask you how it was. Immediately after he gave his testimony before the Committee were you not under the impression that he used the phrase "True Story" in his testimony? A. I cannot testify as to the condition of my memory or my mind at that moment, because I did not refer to the testimony of Mr. Belcher again in my recollection specially until we came to make the draft of the report.

Q. When you drew that report, did you not think that Mr. Belcher had used the term "True Story" in his testimony? A. I must have confounded—

Q. I ask you? A. I must have had that impression, of course.

Q. You must have had that impression? Oh, I think so.

HOW THE REPORT OF THE COMMITTEE WAS REVISED.

Q. Now, different parts of the report were written by different members of the Committee, I understand you? A. As I said, I made the first draft. Then there was some amendment suggested.

Q. Discussed, was it? A. Well, yes, somewhat.

Q. Read over? A. Yes.

Q. Frequently? A. No.

Q. How frequently was it read over? A. The course pursued was this: The amendments suggested were considered, and either adopted or rejected. Then, after they had been settled, the report was read to the entire Committee, just on the point of their signing it.

Q. Yes. Any discussion then in regard to it? A. Not at that point.

Q. Were all the members of the Committee present? A. They were when it was signed.

Q. When it was read over? A. Yes.

Q. They were all present? A. Yes.

Q. And where was that done? A. The last piece of work was done in my office in New-York.

Q. When was it done? A. It was done two days before, I think, the report was made to the Church.

Q. Were you present at the Academy of Music when it was presented? A. Mr. Beecher's church you mean—Plymouth Church.

Mr. Fullerton—I beg your pardon—Plymouth Church.

The Witness—Yes.

Mr. Fullerton—It was there read at length, was it not? A. Yes.

Q. No exception taken to it at that time, was there? A. Yes.

Q. I mean by any member of the Committee? A. No.

Q. Was Mr. Tracy present when it was read over at your office? A. No.

Q. Was he present at any time when it was read over? A. No.

Q. Was he present at any time when it was discussed, or when any part of it was discussed? A. I think not when the Committee were present; I have no recollection that he was.

Q. When any member of the Committee was present and read it over, or discussed it, was he present? A. I think I had a casual conversation with Gen. Tracy in the street or in the office, just as it might happen, wherever I met him.

Q. On the subject of the report? A. Yes; part of the subject. We talked over the thing generally, and no doubt that was referred to.

Q. Did you ever read any part of the report to him in your office, or elsewhere? A. I think not.

Q. You have no such recollection? A. No.

#### MR. TILTON'S FIRST APPEARANCE BEFORE THE COMMITTEE.

Q. When do I understand you to say you first saw Mr. Tilton in regard to this matter—July 10th, was it? A. He came before the Committee July 10; yes.

Q. Voluntarily, or upon your invitation? A. He had received an invitation from the Chairman of the Committee.

Q. Now, what was it he said when he came there? A. Well, it was quite an extended conversation. I well remember the first remark he made, if you want that, but it is not very material.

Mr. Fullerton—Yes.

The Witness—He said he had hastened away from an engagement in New-York, and I understood him to say he had partially shortened that engagement for the purpose of coming over.

Q. I understood you to say he didn't want an investigation? A. I am telling you the first remark he made, which was that he hastened over so as to show no discourtesy to the Committee. That is almost the first remark he made.

Q. Did he say he didn't wish an investigation? A. He said he didn't think it was best to have an investigation.

Q. Did he give any reason for it? A. Well, his reasons were more in the way of insinuation than clear statement.

Q. Well, give us his insinuations, then, as he gave them to you. A. His insinuations were that it would be a very unhappy affair, make a great deal of unhappiness and trouble, and it really had better not proceed. That is about the idea.

Q. I want you to state all he said on that subject? A. Call my attention to anything you have in your mind.

Q. The reasons he gave you for saying it was not best to have an investigation? A. That was the idea, that he thought it would be a very unhappy affair, and cause a great deal of trouble and distress, and all that sort of thing.

Q. Did he say to whom it would cause trouble or distress? A. He thought it would cause trouble to a good many people.

Q. Did he say to whom? A. I don't know that he did specially; it was very obvious to whom.

Q. Did he say it would cause trouble to Mr. Beecher? A. I don't think he specified him; he referred to the general trouble it would make.

Q. Did he not specify Mr. Beecher? A. I think not.

Q. Did he say to whom trouble would come? A. I think not specifically.

Q. Did he say anything upon the subject of guilt? A. Not in any clear statement; it was by way of intimation.

Q. What was his statement upon that subject? A. The intimation was that there would be some very unhappy revelations which we would not like to hear. He didn't believe Mr. Beecher wanted them brought out—didn't believe Mr. Beecher wanted any investigation; and when we assured him he did, and requested it, he would not believe that, and then we showed him the letter.

Q. What did he say when he read the letter? A. He didn't say anything for some little time; he looked over the letter very carefully; he said he would reserve for further consideration the question whether he would make a statement; he said he would consider it, and then he, as you know, appeared afterwards.

Q. Did he then and there express an unwillingness to testify to what he knew upon the subject? A. He did.

Q. Did he not do so repeatedly? A. Yes.

Q. Did he give any reason for it? A. The general reason I have referred to, that it would make so much trouble, pain and sorrow.

Q. Did he say he didn't wish an investigation on account of his wife? A. I don't remember that he alluded to his wife or

to Mr. Beecher specifically, though of course we understood the allusion to be to both of them.

Q. Didn't he say, in substance, that he would withhold, or thought he would withhold testifying upon the subject, for the purpose of shielding his wife and family? A. Not as you state it now.

Q. How did he state it? A. As I have stated it.

Q. Won't you state it over again, because I don't recollect how you stated it? A. Because it would produce distress and sorrow among many people, and it had better not proceed; there was no occasion for it—ought not to go on.

Q. Did he say anything upon the subject of shielding his wife and family? A. I would not say he didn't speak of his family, yet I have no particular recollection of it; he may have done so.

Q. I am asking you the question about shielding his family—protecting his family? A. I am answering about that.

Q. Don't you recollect, in substance, that he said something of that kind? A. No, I don't.

Q. This was on the 10th of July? A. Yes.

Q. Was anything stated to Mr. Tilton at that time touching the nature of the statement which Mrs. Tilton made upon the 6th before the Committee? A. I have no recollection of it, yet it may have been referred to; I am very certain that I didn't refer to it; some one else may have done so.

Q. Tax your recollection, please, and tell me whether or not the subject of Mrs. Tilton's statement on the 6th was not communicated to Mr. Tilton on the 10th, when he was before the Committee? A. Not as I recollect, but some one may have made such a remark; I could not say it was not so; I know I didn't say it.

Q. Something was said at that time about documents and papers, I understood you to say? A. Yes.

Q. Who spoke of the documents and papers first? A. I think Mr. Tilton did.

Q. What did he say upon that subject? A. He said: "Gentlemen, I am well aware that I am a discredited person in this community, but my case rests in writing, documents and papers."

Q. And who replied to that? A. The conversation was quite general. Mr. Tracy had something to say, and other members of the Committee.

Q. What reply was made to that? A. We assured him we wanted to see the documents and papers; that we meant an honest and sincere investigation, and we wanted to know all he knew. He told us he didn't think Mr. Beecher did, and we told him Mr. Beecher certainly did, and that he had requested this investigation. He said he didn't believe that; at least he didn't say he didn't believe it, but he said: "I doubt it."

Q. Was anything more said in regard to the documents and papers of which he spoke? A. I don't now recall anything, and yet if you refer to a point I will tell you if I can.

Q. Was there anything said about producing them and letting the Committee judge for themselves? A. I think there was.

Q. What was said upon that subject, and who said it? A. It would be impossible for me to tell who said this or that in

that conversation. This was said: "We would like to see your documents and papers; we want you to produce them; we can judge as well as you can. Now, let us see what you have got."

Q. What reply did he make to that? A. He would not say, in reply to that, whether he would give the documents or papers, or whether he would testify; he wanted to consider it; he would reserve that for consideration, and he didn't decide until the 18th whether he would come or not.

Q. Have you any distinct recollection of that conversation? A. I can give you the substance of it, to the best of my recollection.

Q. You don't profess to adopt his very language? A. No; I do in part; yes.

Q. But not wholly? A. No.

Q. Are you prepared, at this date, to say whether Mr. Tilton said, "My case does not depend upon my recollection, but upon documents and papers," or did he say, "It does not alone depend upon my recollection—what I have to say, but upon documents and papers?" A. No; this was what he said: he was referring to documents and papers in connection with his own personal standing.

Q. He didn't say it didn't depend alone upon documents and papers? A. He said it rested in writing, upon documents and papers, and what I have already said was said in that connection.

Q. Did he say it depended alone upon documents and papers? A. He didn't use the word "alone."

Q. Didn't he say it depended principally upon documents and papers? A. No.

Q. Are you prepared to say he didn't use the word "principally?" A. Yes.

Q. Or any synonym of that word? A. Yes.

Q. That conversation was not taken down, was it? A. Well, I didn't watch the stenographer as he was there; I could not even say he was there.

Q. Have you any recollection? A. I have never seen any minutes of it, and I don't suppose it was taken down; I have no idea it was.

Q. Was it your intention to have it taken down? A. Well, I had no personal intention about it, one way or the other.

Q. Any direction given to the stenographer as to what he should record? A. The stenographer may have been there and he may have been taking notes, but I might not have even noticed him; I might have been engaged in conversation. If anybody says he was there I wouldn't deny it.

#### THE INTERVIEW IN MONTAGUE STREET.

Q. You speak of an interview with Mr. Tilton on the 18th of July, in Montague-st.? A. Yes, Sir.

Q. A casual meeting, was it? A. Yea, Sir.

Q. You had just read his letter in *The Argus*? A. Just read it, and had the paper in my hands.

Mr. Tracy—The reporters request you to speak a little louder, Mr. Winslow.

Mr. Fullerton—What did he say upon the subject of making a report, or writing a report for the Committee? A. He said

that he didn't think this investigation ought to go on—it ought to be closed; there was no occasion to have it go on in this way, and that he thought it could be closed by a short report, indeed that he had drawn two or three, and he had one that he thought would do, which substantially exonerated the three principal parties, Mr. Beecher, Elizabeth Tilton, and himself; and then he—there was one other remark that he made that I did not state before, that they could go before the Committee and support that by their statements, and so close it.

Q. Did he give any reason in that conversation for saying that the investigation ought not to go on? A. Well, he may have done so; I have had several conversations with Mr. Tilton in the course of the Summer, and I am in a little danger of confounding what he said on one with this occasion. I have a slight impression—it is only an impression—that he referred to the testimony which Mrs. Tilton had given on the 6th of July, as one of the reasons that made him feel kindly and lenient, and yet I may have confounded that with some other conversation.

Q. Did he, in that conversation in Montague-st., say anything to the effect that he wanted such a report made as would shield his family? A. No, not as you state it.

Q. How did he state it? A. Well, as I have stated it.

Q. Repeat it, please. A. A report that would substantially exonerate Mr. Beecher, Mrs. Tilton and himself, and let them go their way.

Q. Did he give any reason for that? A. He thought it was best.

Q. Did he give any reason why he thought it was best? A. He did not, unless to make the remark that I have just referred to; he may have made that remark on that occasion.

Q. Calling attention to Elizabeth's statement on the night of the 6th? A. Yes, he may have done that.

Q. Well, why did he draw the report; did he tell you? A. No, and I did not—well, I won't say.

Q. Did you see the report that he drew? A. No; he didn't show me any paper.

Q. Did you at any time see any report that he had prepared for the Committee? A. I never did, except as afterwards published.

Q. Well, you understood in that conversation, as I take it, that his desire was to protect the three persons implicated—Beecher, himself and his wife—by drawing a report that would effectuate that purpose, was it not? A. Well, I understand that he wanted done precisely what he said he wanted done—to exonerate, as I have stated.

Q. Didn't he state that after Elizabeth's evidence before the Committee that she could substantiate the report or agree with the report? A. His plan was to have, I think, all three support the report by a statement before the Committee.

Q. Yes. Did he say whether he had seen the other members of the Committee to know whether they would agree to such a report? A. No; he said he had understood what I have stated about that.

THE ALTERCATION BETWEEN MR. TRACY AND MR. TILTON.

Q. I now call your attention to the time when he was before the Committee, and presented his sworn statement, when something occurred between him and Mr. Tracy. A. Well, I don't think it was on that occasion; I think that was two or three days later. His sworn statement was on the 30th.

Q. On the 30th and ended on the 22d? A. Yes. My recollection is that the altercation occurred on the 23d.

Q. Where? A. At the Committee room, at the Storns house.

Q. What was Mr. Tilton doing there on that day? A. My recollection is that he had brought a bundle of letters there, and it was understood that there should be no formal proceedings that day, no testimony taken.

Q. Did he come there by appointment? A. I presume he did.

Q. Do you recollect whether he did not? A. Well, I think he did.

Q. An appointment with whom? A. With the Committee.

Q. Did the Committee all meet that day? A. Well, they were all there unless there might have been some one absent; I guess they were all there.

Q. And did they meet there for the purpose of receiving Mr. Tilton? A. Yes, and particularly to see his letters.

Q. Did he bring some letters there? A. He did; quite a large package.

Q. Exhibited them to you? A. He kept them in his hand and commenced reading some of them, and then the remark was made by some member of the Committee, "Well, what you are reading don't seem to be of very much pertinency here. Supposing that some of us look these letters over and see what are wanted," and that led to a discussion of how to manage that. Mr. Tilton said that he—I remember one proposition he made was to leave them in the hands of Judge Reynolds.

Q. Yes. A. And that we might look them over while in his possession; but the upshot of it was that I should see the letters at some subsequent time, and if any of them were important or pertinent that we should have copies.

Q. Now, what remark, if any, was made by Mr. Tracy which caused Mr. Tilton to attack him, to use your own language? A. Mr. Tracy was as still as he is now. It was an outburst; it surprised us all.

Q. Hadn't Mr. Tracy said anything in that conversation? A. Not that I remember. We were having a very quiet, cosy time.

Q. And are you prepared to state that he did not say something? A. I am prepared to state that I don't believe he did, for I have no recollection.

Q. Well, he was there? A. Tracy?

Q. Yes. A. Oh! yes; sitting right opposite Mr. Tilton.

Q. Come with the Committee? A. Well, he was there; he didn't come with the Committee particularly; he came in.

Q. Do you know who notified him to be there? A. Mr. Tracy?

Q. Yes. A. Oh! he attended all the meetings of the Committee; he was appointed to act for the Committee by the Committee, he and Mr. Hill, by a resolution, on record, of the Committee.

Q. Appointed by the Committee? A. Yes, Sir.

Q. To act for the Committee? A. Yes.

Q. As counsel? A. Yes.

Q. Was Mr. Hill there that day? A. I can't tell you; I think he was, but take his word about that.

Q. Now, what did Mr. Tilton say first to Mr. Tracy? A. Well, the substance of it was: "Mr. Tracy, you have no right to appear here in collision with me or against me; you promised me, when you first came into this case, that if Mr. Beecher and I ever came in collision you would not appear against me." That was the charge.

Q. What did Mr. Tracy reply to that? A. Mr. Tracy immediately said, "Yes, and I notified you when I saw you changing your case from one of improper advances to the main charge, that that promise would not bind me—ought not to bind me."

Q. What did Mr. Tilton reply to that? A. He said that that didn't make any difference; Mr. Tracy had made the promise, and he was bound by it.

Q. Did not Mr. Tilton say in substance, "You are prevaricating, Mr. Tracy; you know what the original charge was?" A. Oh! I don't think the word "prevaricating" was used.

Q. Did he say that in substance, omitting the word "prevaricating?" A. No, no; his idea was, it didn't make any difference. "You once made the promise, and you are bound by it."

Q. One moment, Mr. Winslow; I want his ideas, judged by his words? A. Well.

Q. Didn't he say in substance, "You know what the original charge was?" A. No.

Q. Nothing to that effect? A. Nothing to that effect; there was no disputation about that.

Q. But Mr. Tilton's reply was that it made no difference, was it? A. No difference; he was bound by the promise; that was the position he took.

Q. Now, what else was said between them before they broke up? A. Well, as I said before, that idea was repeated in various forms, but in substance the same; they did not agree at all about it, as to Mr. Tracy's obligation, and then they went into the front parlor, and this scene occurred which I have described.

Q. Yes; and then did it end? A. Mr. Tilton left.

Q. Was the lie passed between them that day? A. Nothing so vulgar as that.

Q. Well, how much short of it? A. "False" was used.

Q. Who used the word "false?" A. I think Mr. Tracy said with great vehemence, once, "It is false."

Q. What did he allege was false? A. Tilton's assertion that the promise was to be binding no matter what happened, or what was said.

Q. He said that was false? A. Yes, Sir.

Q. Did Mr. Tracy say he was not appearing against Mr. Tilton then? A. No.

Q. Nothing to that effect? A. No.

Q. Well, did he allege that he was appearing against him? A. That was taken for granted; it was assumed.

Q. Appearing against him by acting as counsel for the Com-

mittee? A. Mr. Tilton assumed that to be so, and Mr. Tracy made no point about it.

Q. Not a word upon that subject? A. No.

Q. Was not that point discussed as to whether in point of fact Mr. Tracy was appearing against Mr. Tilton by acting as counsel for the Committee? A. Mr. Tilton said he was appearing against him; that is all there was said about that; that is, in that form. He says, "You have no right to appear here against me."

Q. That was the charge? A. Yes.

#### THE WORK OF THE COMMITTEE'S COUNSEL.

Q. Now, what other counsel appeared before that Committee than Hill and Tracy? A. No other.

Q. No other party to be affected, or who could be affected by the investigation, was represented there by counsel? A. There was no party represented in the strict sense. We passed a resolution at our first meeting, I think, employing Messrs. Tracy and Hill to assist the Committee.

Q. What assistance were they to render the Committee? A. Oh, they were very useful.

Q. Well, I have no doubt about that, but I want to know in what line of business they were useful. A. Well, I judge of their work by what was done. I suppose they attended to the getting of witnesses and all that.

Q. Well, they could get the witnesses without being present before the Committee, I suppose? A. And examining witnesses also.

Q. Did they examine the witnesses? Yes, in conjunction with the Committee.

Q. Were they paid for their services? A. I don't know.

Q. Nothing been done in regard to that? A. No, not that I know of.

Q. Nothing said at the time of their employment about compensation? A. I can tell what our understanding was, but I really have no knowledge.

Q. How? A. I can tell you what our understanding was, but I have no knowledge.

Q. The understanding with the Committee? A. Yes, Sir.

Q. Well, what was the understanding with the gentlemen? A. That their services would be voluntary.

Q. To be voluntary? Yes, Sir.

Q. They agreed to that, did they? A. No distinct agreement that I know of. I cannot refer to any agreement. It is simply my understanding.

Q. This understanding that you speak of—do you mean that it was based upon anything that was said? A. No; there is simply a resolution upon the minutes to employ them. That is all the Committee did about it.

Q. Employ them without compensation? A. There was not a word said about it.

Q. Was there anything said or done from which you drew the conclusion that they were to work without compensation? A. Well, I think I have heard the remark made through the summer, whether from Mr. Tracy or from Mr. Hill, or somebody that heard them say, I could not distinctly say now—

Q. How? A. I could not distinctly say now whether the remark came directly from them to me or through third parties, that they had made up their minds to make no charge for their services.

Q. Inasmuch as the Committee did not expect to pay them? A. How?

Q. Inasmuch as the Committee did not expect to pay them? A. Well, we had nothing to pay with.

Q. No; and you don't know whether they have had any compensation or not? A. No; I have no knowledge.

#### THE WITNESSES BEFORE THE COMMITTEE.

Q. Do you recollect that Bessie Turner was before the Committee? A. Yes, Sir.

Q. I suppose her testimony was taken down by the stenographer, also, was it not? A. I presume so.

Q. Do you recollect distinctly her testimony before the Committee? A. Well, I have a general recollection of it.

Q. I want to ask you whether this question was put to her: "Did he [referring to Tilton] at any time on this day say that she had made any confession to him in regard to Mr. Beecher?" and did she give this answer in substance: "He said she had confessed to him that she had been criminally intimate with Mr. Beecher. She was present when he said that [that is, Mrs. Tilton was], and said: 'Oh! Theodore, how can you tell that child such base lies?' and then burst out crying." A. I think that was said.

Mr. Fullerton—That is all. Oh! one moment. Do you know anything about the West charges? A. Nothing.

Q. When did you first hear of them? A. I think the first time I ever saw them or knew what they were was a statement of them in one of the statements—Mr. Moulton's or Tilton's—purported to be the charges.

Q. Is that the first that you ever heard of them? A. Yes; the first that I ever heard of them except that I did hear in a general way about Mr. West and Plymouth Church, but I was not active in those matters, and would not be likely to know about that.

Q. Well, was it not discussed before the Committee at any time? A. Never alluded to in any way, that I ever heard.

Q. Do you know what offices the other members of the Committee held in Plymouth Church? A. I think it would trouble me to tell; I am not a member of the church.

Q. Then you don't know of your own knowledge? A. No.

Q. Was Mrs. Bradshaw before the Committee? A. She was not; we sent for her, but she declined to come.

Q. Was Mrs. Moulton before the Committee? A. No; we could not get her husband, and we thought we wouldn't send for her.

Q. You did get her husband, didn't you? A. Not to say anything.

Q. Not to say anything? A. He came and promised to say, but did not say.

Q. Was Mr. Bowen before the Committee? A. No.

Q. You could not get him, could you? A. I don't know.

Q. Did you try? A. I think not.

Q. That is what I think. That is all.

#### RE-DIRECT EXAMINATION OF MR. WINSLOW.

Mr. Tracy—In regard to the compensation of counsel before the Committee, don't you know that they were compensated by a resolution of thanks by Plymouth Church for their gratuitous services before the Committee? A. Whether that compensated or not, I don't know. We gave the thanks.

Q. For their gratuitous services? A. That phrase may have been used; if it was, it escaped my notice.

A. That is the only compensation you know of having been paid them? A. I say I don't know any, not even the thanks; I had forgotten it.

Q. Wasn't you present at the meeting? A. I suppose I was there, but I had forgotten about it.

Q. Now, this question of Bessie Turner, that you say Bessie Turner answered—the answer was made to a question read or asked her; was it at that time? A. That is my recollection.

Q. It was not in her narrative? A. No, it was question and answer, and quite a leading question, I should judge.

Q. And were a good many questions asked her? A. Yes.

Q. By various members of the Committee? A. Yes.

Q. And was there more or less confusion in the questions of one member of the Committee, and then another, and then another, following?

Mr. Beach—One moment, I object to that.

Mr. Tracy—What is the objection?

Mr. Fullerton—The objection is, the questions themselves will determine the fact whether there was confusion.

Mr. Tracy—I ask whether they were put by different members of the Committee, first one member putting a question, and then another, and then another? A. That was so.

Judge Neilson—You may state how that was, Sir.

The Witness—Yes, Sir; that was so.

Mr. Tracy—You say Mr. Tilton brought letters there on the 23d, and they were examined? A. Yes.

Q. And it was agreed that you should afterwards— A. They were not examined.

Q. He read some of them? A. He commenced reading some of them—what we might call affectionate letters.

Q. You say that it was agreed that you should have the privilege of examining the letters and selecting any that were relevant to the investigation? A. That was the final agreement; yes, Sir.

Q. Did he ever furnish you those letters? A. No.

Q. Did he refuse afterwards to furnish them? A. He did.

Q. On the evening of his sworn statement did he present any papers, any letters, accompanying that statement? A. No.

Q. At all? A. No.

Q. Even the letter he quoted from in the statement? A. No.

Q. They were not present. Did the Committee ever see what was known as the "Griffith Gaunt letter"? A. It did not. That was what I wanted to see, but failed to see, among other letters. I ought to add, perhaps, as a matter of justice—Mr. Tilton gave a reason finally for not furnishing it, which I thought to be a fair reason.

Q. Well, they can ask that, and I presume they will. Do you

remember, on the 23d, his presenting a letter to the Committee which has since been published, dated January 31st, 1837—1838—January 31st, 1838, in which his wife speaks of her sin—as being black with sin, or some phrase of that kind; do you remember a conversation that occurred about that letter? A. Yes, I remember you thought it a very important letter.

Q. Was Mr. Tilton asked for that letter on that day? A. Yes.

Q. Did he give it or refuse to give it? A. He did not give it.

Q. Did he ever give it to the Committee? A. Not to my knowledge.

Q. Was he asked what that reference of his wife—to what sin his wife referred in that letter? A. Yes, Sir.

Q. What answer did he make? A. O, I don't think he made any explanation.

Q. Do you remember whether or not his answer was, "I won't tell you?" A. It was something like that; he declined to tell us.

Q. Now, you say, Mr. Winslow, that Mr. Beecher did not refer to the documents that he saw in Mr. Tilton's possession at the time of that interview before the Committee as the "True Story?" A. Yes.

Q. Can you tell or explain how it was that you fell into the error of referring to his testimony as referring to the "True Story?" A. Yes.

Q. Will you? A. The Committee were constantly hearing of the "True Story"—

Mr. Beach—Wait one moment. We object to that.

Mr. Tracy—We think they have opened the question. They have proved by this witness that an error occurred in that report. Now, I asked him how it occurred.

Judge Neilson—I think you may explain.

The Witness—It occurred in this way; the Committee were constantly hearing about this—

Mr. Beach—I object to what the Committee were constantly hearing.

The Witness—Well, the Committee in my hearing were hearing about this "True Story," and Mr. Harman had testified about the "True Story."

Mr. Tracy—Calling it such? A. Yes, Sir; he called it that, and the newspapers were talking about it more or less.

Judge Neilson—The term had become familiar, I suppose.

The Witness—Yes, Sir; he became familiar, and when that part of the report was written, Mr. Beecher's testimony was not at hand, and therefore not referred to, as to the precise phraseology.

Mr. Tracy—That is the way the error of referring to Mr. Beecher as testifying to the "True Story," occurred? A. I think so.

Q. You have been asked about the details of the documents and the evidence before the Committee; what has become of it? A. I ought to add further that what attracted my attention to Mr. Beecher's testimony further was that I thought he made a mistake.

Mr. Beach—Oh!

Judge Neilson—We have that.

The Witness—No, I think not.

Mr. Tracy—There is another question. Do you remember whether or not before the Committee Mr. Beecher testified to Mr. Tilton's reading him the letter of his wife? A. He did as testify before the Committee.

Q. Before the Committee? A. Yes, Sir.

Mr. Beach—It is inadmissible, Sir, but it is of no great consequence.

Mr. Tracy—Testified to it there as he has here?

Mr. Beach—That is objected to.

Judge Neilson—Oh! no.

Mr. Beach—The question was inadmissible in itself.

# MR. BEECHER AND THE COMMITTEE.

Mr. Tracy—Now, in regard to the documents and the evidence before the Committee, I suppose you had nothing to do with that, Mr. Winslow? A. No, Sir.

Q. Your duties, or the part you took in the investigation was confined simply to what transpired in the room? A. That is all.

Q. In the presence of the Committee? A. Yes, Sir.

Q. And the drafting of the report afterwards? A. Yes, Sir.

Q. You have referred to a statement made by Mr. Beecher before the Committee, what you called on his appearance before the Committee. Did Mr. Beecher read from a paper that night? A. He read from a paper, whether from notes or a continuous paper I don't know.

Q. You never had that paper in your hands? A. No.

Q. And you don't know how much of his statement before the Committee was verbal and how much written? A. Well, I know it was both.

Q. Yes, but you never saw the paper? A. No.

Q. Now, do you know what led to Mr. Beecher's appearance before the Committee on that first occasion? A. Yes, Sir.

Q. And the subject of his coming there? A. Yes, Sir.

Q. What was it?

Mr. Beach—That is objected to, Sir.

Mr. Tracy—I think it is important for this purpose, your Honor.

Judge Neilson—Well, a general occasion to appear there is plain enough.

Mr. Tracy—Yes, but they have shown that Mr. Beecher appeared there and made a statement, which statement has not been published. Now, I propose to show that it never was intended for publication, and was not made for publication but was made for the information of the Committee to guide them in their investigation, simply.

Judge Neilson—Don't that follow from the mere fact that it was not published?

Mr. Tracy—Not necessarily; that is not the insinuation that was sought to be cast.

Judge Neilson—I don't think there was any insinuation. The simple question was whether Mr. Beecher appeared, and if so on two occasions, and whether he made his communication orally or written, and the answer was, both. Now, I don't think you can go beyond that. There is no insinuation in it.

Mr. Tracy—What I ask to show of this witness is this, your Honor, that after Mr. Tilton published his card in *The Argus*,

saying he should give a true statement, or that he should give a statement of the facts, &c., to the Committee. the Committee were investigating without knowing—Mr. Tilton had not made any statement, and been before the Committee and had declined to make any statement, and the Committee were investigating without knowing what the truth was in regard to Mr. Beecher's relation with Mr. Tilton's family, and they sent for Mr. Beecher and he came before them and made a brief statement concerning his relations there, but not intended for publication, but simply to guide the Committee in their investigation. That is the object and purpose for which we desire to offer it.

Judge Neilson—I think that sufficiently appears.

Mr. Tracy—Very well. Now, one word, Mr. Winslow; was it or was it not stated, in the collision between Mr. Tilton and myself on that occasion, that his statement to me at the time of procuring that promise was of—

Mr. Beach—Now, the gentleman will pardon me for interrupting him; I submit that it is a leading question and inadmissible to embody a statement in the question which is put to the witness.

Mr. Tracy—Was anything said as to the nature of Mr. Tilton's charge against Mr. Beecher at the time he obtained that promise from me? A. Oh! yes, Sir, that was the point of your argument.

Q. Was it repeated more than once? A. Oh! yes, Sir; several times.

Q. What was stated to be the nature of that charge?

Mr. Beach—Well, that is a mere repetition of the examination on the direct and the cross-examination.

Judge Neilson—I think we will take the answer.

The Witness—That his original charge against Mr. Beecher was improper advances.

Q. Was it or was it not stated that at that conversation anything more was charged? A. You asserted that nothing more was charged and he did not deny it.

Mr. Tracy—That is all.

#### RE-CROSS-EXAMINATION OF MR. WINSLOW.

Mr. Fullerton—Was it not about that that Mr. Tilton replied that it was false? A. Well, I am not sure that Mr. Tilton did say anything about anything being false, though he may have used that phrase; I cannot be sure about that.

Q. Well, was it not about that allegation that he made use of the term, if he did use it? A. I do not now remember that Mr. Tilton used the word "false." He may have done so, however.

Q. I understood you so? A. No; I said Mr. Tracy did. Mr. Tilton told Mr. Tracy that that promise was to bind him, no matter what happened. Mr. Tracy said, "That is false," and it was said with considerable force.

Q. Now, when Mr. Belcher was on the stand up to the time that he closed his testimony, was any statement talked of beyond what was termed the "True Story?" A. Up—any statement?

Q. Yes; before the Committee? A. Why, it was referred to in conversation in the Committee frequently.

Q. Referred to as the "True Story?" A. That there was such a thing as a "True Story."

Q. And sometimes it was called "a statement," wasn't it? A. I think the general phrase was "True Story."

Q. Sometimes wasn't it called "a statement?" A. I have no recollection that it was so called.

Mr. Morris—He has said so.

Mr. Fullerton—Was there anything talked of before that Committee as a "statement" or "story," except the "True Story?" A. Mr. Belcher spoke of this document.

Q. Now, I am asking you a question to which I want an answer. A. Well, yes, Mr. Belcher called it "a document" and "a statement" and "a story."

Mr. Beach—No, the point is this—the point is this—whether there was anything designated as "a story" before that Committee, except the "True Story"—as "a story?" A. I think Mr. Belcher called it "the story."

Q. Called what "the story?" A. The paper that Mr. Tilton read extracts from.

Q. Well, but the question is whether anything was designated as "a story" except the "True Story," with the exception of what Mr. Belcher said? A. No, I think not.

Mr. Fullerton—And do you now recollect with distinctness that he did not style it the "True Story?" A. I am sure of it.

Q. Sure of it? A. Yes, Sir, and indeed I might say I am certain of it.

Q. Whatever else you may have forgotten you don't forget that? A. Well, there are reasons why I might remember it very well, but of course when this report was drawn we had Mr. Hanson's testimony about the "True Story," and all that.

Q. Well, now, Mr. Winslow, you say there was some lack of clearness in the questions put to Beattie Turner—I understood you to say? A. I didn't say that.

Q. Well, that is the impression I received? A. Questions were piled pretty fast; that is all I meant to convey.

Q. How? A. The questions came pretty fast.

Q. Well, she got through answering one before another was put, didn't she? A. Yes; in a fashion.

Q. How? A. In a fashion.

Q. In a fashion? A. Her story excited a good deal of interest in the Committee, as it does elsewhere.

Q. Of course? A. And the Committee were asking questions.

Q. Well, was there any confusion in the question put to which she gave the answer which I read to you, and which you recognised? A. Well, I don't know of any particular confusion; no, I don't know that I could call it confusion.

Q. Do you recollect who put that question? A. About the confession?

Q. Yes.

Mr. Beach—Let him see the record and say whether—

The Witness—I was thinking whether I did or not.

Mr. Fullerton—Well, look at the record and see whether you did or not [handing book to witness].

The Witness—Very likely I did.

Mr. Beach—No, it was not you.

The Witness—Where is it?



Mr. Fullerton—At the bottom of the left hand page—no, you have got it there.

The Witness—I see, I commenced over on this page.

Mr. Beach—And then at the bottom of that page Mr. Tracy commenced.

The Witness—Yes, Sir, that seems to have been inspired by Gen. Tracy.

Mr. Fullerton—Yes, his questions were clear, were they not, although his services were gratuitous? [Laughter, in which the witness joined.] That is all.

#### TESTIMONY OF MR. THOMAS JAMES TURNER.

Thomas James Turner was then called for the defendant, and sworn.

Mr. Shearman—I desire to apologise to the Court and jury for being obliged to break a little in the order of evidence again, to accommodate two or three out-of-town witnesses; I think it will not take long. [To the witness.] Where do you reside? A. In Peekskill.

Q. What is your occupation? A. Well, I am a farmer and a little of everything; I have charge of Mr. Beecher's place.

Q. How long have you been in charge of Mr. Beecher's place? A. Fifteen years.

Q. Do you recollect who were employed on the farm in the Summer of 1873? A. Yes, Sir.

Q. State the names of the persons employed? A. Well, I cannot state all of them; I can state most of them.

Q. The persons employed on the farm, not in the house? A. Well, there was my son, was one—

Mr. Fullerton—Give us his name.

The Witness—Joseph S. Turner, Nicholas Sullivan, Timothy Ryan, George Tilford, and John 'Ayes, I believe, is the—

Q. John who? A. John 'Ayes—Hayes.

Mr. Fullerton—Hayes?

The Witness—John Hayes, yes, Sir; that is all I can recollect.

Mr. Shearman—By the courtesy of the opposite counsel I will exchange with Mr. Hill, for I have not talked with this witness.

Mr. Everts—Mr. Hill was engaged in court on the other side of the river, and was expecting to be here.

Mr. Hill—Do you recollect a visit of Mr. Beecher in the early part of June, 1873? A. Yes, Sir.

Q. On a Monday? A. On a Monday, Sir, June 3d.

Q. Monday, June 3d? A. Yes, Sir.

Q. Are you certain of that date? A. Yes, Sir.

Judge Neilson—Mr. Hill, the reporters request that your witness speak louder.

The Witness—[Repeating.] Yes, Sir.

Mr. Hill—Have you examined memoranda with a view of refreshing your recollection particularly with reference to that date, Mr. Turner? A. I have, Sir.

Q. So that you are certain of it? A. Yes, Sir.

Q. Do you recollect when Mr. Beecher arrived? A. In Peekskill?

Q. Yes. A. On June 3d.

Q. Yes, Sir? A. I think it was on the 3:43 train.

Q. 3:43? A. Yes, Sir, arrives in Peekskill at that time.

Q. It arrives in Peekskill? A. Yes, Sir.

Q. What time does that train leave New-York? A. Two o'clock, Sir.

Q. From what depot? A. The 43d-st. Hudson River Railroad.

Q. Who came with him upon that occasion? A. Mrs. Beecher.

Q. Do you recollect how long they remained at the farm that day? A. Yes, Sir, they remained—they remained part of that day and part of the next day, June 3d.

Q. How late into the next day, June 3d? A. I am not certain whether they came back on the 3:15 train, or the 4:30, either one or the other.

Q. You are certain that it was one or the other? A. One or the other; yes, Sir.

Mr. Fullerton—Come where?

Mr. Hill—Come back to New-York—are you certain whether—are you certain that they were there at dinner on Tuesday, the 3d? A. I am, Sir.

Q. Do you know whether they were there at any meal on the 3d? A. On the 3d, I presume they was there to tea, as I had got orders from Mrs. Beecher.

Mr. Fullerton—One moment. Just one moment.

Mr. Hill—Well, do you remember, or is it only a presumption? A. Well, I cannot say that I see them eating, because I was not in the house, perhaps, when they was eating, but I know they came—

Judge Neilson—They were there at tea time, I suppose?

The Witness—They were there at tea time, yes, Sir.

Mr. Hill—Do you remember of making provision for their meal? A. I did, Sir.

Q. Now, Sir, do you recollect of sending for Mr. Beecher to the train, which you have mentioned, on the 3d? A. I do, Sir.

Q. Had you been advised in any way that he was to come on that train? A. Yes, Sir; I received a telegram on June 3d.

Q. Do you remember whether you paid the expenses of bringing that telegram from Peekskill Village up to the farm? A. Yes, Sir.

Q. You paid it yourself? A. Paid fifty cents, yes, Sir.

Q. I will ask you this—when did Mr. Beecher return to the farm again after he left on the 3d of June? A. On the 16th of June, Sir, on Monday.

Q. Now, were you at the farm all the intervening time between the 3d, the time that he left, and his return on the 16th? A. I was, Sir.

Q. That is, about in charge of your ordinary duties? A. Yes, Sir, I was there all the time.

Mr. Hill—That is all.

#### CROSS-EXAMINATION OF MR. TURNER.

Mr. Fullerton—Were you in the habit of visiting New-York frequently at that time? A. No, Sir, I had not been to New-York at all that season, I believe, since—I was there early in the year—I believe I was down with my wife to a doctor here in New-York, early in the year.

Q. How early? A. Well, I could not say; perhaps in January; I don't think it was after that.

Q. In January? A. Yes, Sir, perhaps I might have been; I can't say that I was.

Q. Well, how do you know then what time the trains left New-York on the 2d of June? A. On the 2d of June?

Q. Yes, Sir. A. From the reason of this telegram I received, Sir; I should not have known particularly about the trains only I got a telegram from Mr. Beecher.

Q. Now, where is that telegram? A. The copy of it I believe—the copy of that telegram is, I believe, with Mr. Hill.

Q. Where is the one you received? A. Well, I haven't got it, but I saw a copy of that.

Q. Now, I am asking where the telegram is that you received? A. I haven't got it, Sir; I don't keep them; it is very seldom I keep telegrams, I receive so many.

Q. Well, that is enough; you didn't keep it? A. No, Sir.

Q. You destroyed it, did you? A. It is gone, Sir; I cannot find it.

Q. What time in the day did you receive it? A. I cannot say that, Sir.

Q. You don't know, of your own knowledge, then, what time the trains left New-York on the 2d of June that year? A. No, Sir, only as—

Q. That is enough.

Mr. Evarts—"Only," he says—

Judge Neilson—Is it necessary to the question?

Mr. Fullerton—Well, "only"—I don't care about "only," so long as he don't know of his own knowledge.

Mr. Evarts—Well, whether it is his own knowledge will appear by the answer. If he should say, "I only know the times they got there, and I know how fast they went," that is his own knowledge, just as much as if he knew when they started.

Mr. Fullerton—I take it for granted that he doesn't know how fast they went; he was not there.

Mr. Evarts—You don't know that; he knows a great deal better.

Mr. Fullerton—No; he had not been to New-York since January previous.

The Witness—I can't say that I was not, nor that I was; my wife was sick at the time, and I think I was in January, the last time.

Q. Now, that we have got; so you need not repeat it. Where did you see the copy of the telegram—what you say was the copy? A. I seen it here in New-York—in Brooklyn.

Q. In whose possession? A. In possession of Mr. Hill.

Q. When did you see it? A. About two weeks ago, Sir.

Q. Where were you when you saw it? A. In Mr. Hill's office.

Q. Yes. Did you remember before you saw the copy of the telegram what date it was that Mr. Beecher came to Peekskill? A. No, Sir; I did not at that time, until I began to get my recollections about me.

Q. Well, I am asking you whether, up to that time, you remembered what date it was that Mr. Beecher came to Peekskill? A. No, Sir; I did not particularly notice the time, not until after that, because I was not called upon about it—

Q. Now, that is enough; don't make a speech every time I ask a question; have you seen any other memorandum than the copy of the telegram that you speak of? A. Yes, Sir; I saw a memorandum in my book of 50 cents for a telegraph on June the 7th.

Q. Where is that book? A. That is in Peekskill.

Q. On June the 2d? A. No, on June the 7th; I charge my items always on a Saturday; that is, the end of the week.

Q. June 7th you charged the 50 cents for bringing the telegram from Peekskill up to the farm? A. Yes, Sir.

Q. That book is not here? A. No, Sir.

Q. On the 7th, then, you charged it from recollection? A. No, Sir, I kept a memorandum—put it down on a little memorandum, as I generally keep—

Q. Where is that memorandum book? A. I cannot tell where it is now.

Q. When did you see it last? A. Why, in that year, I suppose; I put it down on paper or—

Q. Now, Mr. Turner, don't; give me a chance to talk half the time. When did you see it last? A. I can't say, Sir.

Q. When did you see it last? A. I can't say, Sir.

Q. Did you see it last year? A. Last year was 1874—no, Sir; I don't keep those memorandums that I—

Q. In what year was it that Mr. Beecher came up there on the 2d of June? A. In 1873, Sir.

Q. 1873? A. Yes, Sir.

Q. How long after that did you see this memorandum book? A. Oh! perhaps it was not a book at all; I can't say it was a book; sometimes a sheet of paper will do for me to enter my little items.

Q. What did you use at that time upon which to enter memoranda? A. I can't say whether it was a memorandum book or sheet of paper.

Q. Can you say that it was either? A. Yes, Sir.

Q. May it not have been the fact that you didn't keep any memorandum at that time? A. I always did, Sir, for I had a good many items to charge at the end of the week.

Q. Well, do you recollect distinctly that on the 17th you made any entry in your book from the memorandum book? A. It must be, Sir.

Q. No, no; do you recollect it now distinctly? A. I cannot from my own recollection say now.

Q. Very well. That is enough, that is enough. Haven't you got the memorandum book either? A. No, Sir.

Q. Upon which you charged the 50 cents? A. Yes; it is a memorandum book—that is on the book that is up at the farm.

Q. That is not here? A. No, Sir.

Q. That is under the date of June 7th? A. Yes, Sir.

Q. Was Mr. Beecher in the habit of coming to Peekskill frequently about that time? A. Yes, Sir, he was; he was there several times.

Q. With the exception of your book of which you now speak, have you examined any other memoranda? A. Yes, Sir; I have examined the butcher's account, so as to remind myself that they was there—getting the meat there, you know. When the

family would come up I would always get my orders from Mrs. Beecher so as to get—

Q. Never mind that.

Mr. Hill—You called for it.

Mr. Fullerton—I did not call for any such thing.

Q. You have examined the books? A. Yes, Sir.

Q. The butcher's books? A. Yes, Sir.

Q. Not your own? A. No, Sir.

Q. When did you examine the butcher's books? A. I examined them about two weeks ago.

Q. A butcher in Peekskill? A. Yes, Sir.

Q. What is his name? A. Israel Larch; I think he is a Jew; Larch or Laritch.

Q. Do you know how it is spelled? A. I do not.

Q. Does he keep a stall there? A. Yes, Sir.

Q. In what street? A. In South-st.

Q. Have you named now all the memoranda that you have consulted? A. Well, I believe I have.

Q. What day was it that Mr. Beecher came to Peekskill? A. Do you mean in June?

Q. Yes; not the day of the month, but the day of the week?

A. On Monday, Sir.

Q. It was on Monday? A. Yes.

Q. You are sure of that? A. Yes, Sir.

Q. You recollect that, irrespective of your memorandum? A. I do, Sir.

Q. You recollect it was on Monday? A. It was on Monday.

Q. Before that, when was he there last? A. He was there on May 26th, on Monday.

Q. Between May 26th and June 2d had he not been there at all? A. No, Sir.

Q. That you are sure of? A. Yes.

Q. Had you any memorandum of May 26? A. No, Sir; I have no memorandum, but I know it from other circumstances.

Q. You did not resort to any book or any other memorandum to find that out? A. No, Sir; no, Sir; that is from memory.

Q. How are you enabled to tell the time of day that he came there on June 2d?

Mr. Hill—I did not hear the last question.

Mr. Fullerton—[Repeating the question]: How are you enabled to tell the time of day that Mr. Beecher arrived in Peekskill? A. So far as my knowledge serves me it was in the afternoon train leaving New-York at 2 o'clock.

Q. Well, there are trains that leave later than that. A. There is no train that leaves the depot until 4 o'clock. It is a general thing every year that the 2 o'clock train is the last train for Peekskill, excepting the 4 o'clock train.

Q. How long does it take to run from New-York to Peekskill? A. That 2 o'clock train gets into Peekskill in about one hour and thirty-five minutes or one hour forty-five. The express takes about one hour twenty minutes, but that is not an express, is a way train.

Q. What time does it take the 4 o'clock train to run to Peekskill? A. One hour twenty-three minutes.

Q. So that at 5 o'clock 23 minutes it would arrive at Peekskill? A. Yes, Sir.

Q. How long does it take to ride up from the Peekskill station to the farm? A. Well, Sir, with a good, fast team, I guess they might go up there in twenty minutes.

Q. Well, with such a team as you had, how long would it take? A. We hadn't a team; we had only one horse.

Q. How did Mr. Beecher get up to the farm? A. With that one horse; he drew him up. [Laughter.]

Q. Of course he did. Now, how long did it take him to draw him up? A. Likely it would take over half an hour.

Q. Then it would be past six o'clock when he got up there? A. Oh, no, Sir; getting to Peekskill at 8:48.

Q. But I am talking about the 4 o'clock train? A. Oh, the 4 o'clock train?

Q. Yes? A. Oh, yes; it would be; half an hour would bring it to a quarter past six.

Q. That was in the month of June? A. Yes.

Q. Do you recollect what time the sun sets in June? A. I don't recollect much about it. I don't study the almanac.

Q. I want you to study the almanac as well as the butcher's books. Don't you know that the sun sets very late in June? A. Yes, Sir; we have very long days then.

Q. Plenty of time to come to tea and yet leave New-York in the 4 o'clock train? A. Oh! yes, Sir; plenty of time.

Q. Do you know of any other train that leaves New-York in the afternoon and arrives at Peekskill besides the 2 o'clock train and the 4 o'clock train? A. I think there is one that arrives there about 6 o'clock; starts from New-York about ten minutes past 4—a way train.

Q. Don't you know that it is the Peekskill Special? A. Perhaps it is.

Q. And that it gets to Peekskill about 6? A. Perhaps it does; I cannot say for certain.

Q. Don't you know that there is another Peekskill Special leaving later in the afternoon? A. Yes, Sir; I know.

Q. What time does that arrive at the Peekskill depot? A. I don't know; it may be 7 or 8 o'clock, or after 8 o'clock, for all I know; I am not particularly posted about it.

Q. What time did Mr. Beecher usually go to Peekskill when he came from New-York? A. Well, sometimes in the morning, and sometimes in the evening; it depended greatly upon Mr. Beecher; he has come by all trains according as his business allowed him to come.

Q. Did he more frequently come in the morning than in the afternoon? A. When he came up to see me about his business he generally came in the morning, because he wanted to spend the day there.

Q. Now, as to his leaving on that occasion, when do you say he left? A. He left on June 2d, Tuesday.

Q. Do you know what time? A. It was either by the 2:15 train or the 4:30, or somewhere about that time.

Q. How do you know that he left at that time? A. I know that he left after dinner.

Q. Did you take him down to the depot? A. No, Sir, I did not.

Q. What have you got to guide you about the time that he

left—the day or the hour? A. I know they was there at dinner; I am satisfied of that, because I provided for them.

Mr. Fullerton—I believe that is all.

#### RE-DIRECT EXAMINATION OF MR. TURNER.

By Mr. Hill—Mr. Turner, you say that you had one horse; do you recollect what horse that was? A. Yes.

Q. What horse was it? A. It was Billy, a bay horse that Mr. Beecher reserved for use for the Summer; he sold the balance of them down here in Brooklyn before he went up.

Q. Do you recollect when that horse was sent up from New-York? A. Yes.

Q. When was it? A. May 29th.

Q. That would be on what day? A. On a Thursday; the day the family moved up.

Q. A Thursday; the day the family moved up? A. Yes, Sir.

Q. What family? A. Mrs. Beecher and the two girls.

Q. Servants? A. Servant girls.

Q. Do you recollect their coming up? A. I do, Sir.

Q. Do you recollect any loss of their baggage which gave you any trouble? A. Well, I recollect there was one of the girls that Mrs. Beecher brought up with her—they had sent the baggage by Westcott's Express, a trunk, and the trunk was not there when Mrs. Beecher left, and she telegraphed to me on the 31st, but the trunk arrived in Peekskill on the 30th; I have got the receipt of it.

Q. Did you pay the freight on that horse that was sent up? A. Yes, Sir.

Q. How much was the freight? A. \$4.50 for the horse and buggy.

Q. Have you consulted that memorandum as well? A. Yes, Sir; that is on my book.

Q. On what boat was the horse sent up? A. The steamer Christena.

Q. Who went down to the depot to meet Mr. Beecher on the second of June?

Mr. Fullerton—That I object to. That ground has been gone over once already.

Judge Neilson—You asked him if he went.

Mr. Fullerton—How?

Judge Neilson—I do not think it appears who did go down; you asked the witness if he went, and he said that he did not.

Mr. Hill—Who did go down? A. My son.

Q. What is his name? A. Joseph S. Turner.

Q. I think, Mr. Turner, that your wife died about that time? A. Yes, Sir.

Q. When was that? A. She died on May 29d.

Q. When was the funeral? A. On May 24th.

Q. Do you recollect Mr. Beecher's coming up there? A. I do, Sir.

Q. On what day? A. On Saturday.

Q. On the 24th? A. The 24th of May.

Q. Do you recollect of his being up again before the 2d of June? A. Yes, Sir.

Q. When was that? A. Monday, May the 26th.

Q. Was he up again until the 2d of June? A. No, Sir.

Q. Do you recollect, when he was up on the 2d of June, his giving you any directions about the strawberry beds? A. I do, Sir.

Q. Any special directions in reference to them? A. Yes, Sir, he told me—

Mr. Fullerton—No, no; I object to the strawberries.

Q. Now, do you recollect another circumstance to which I will call your attention—when your son Joseph first began to work for wages? A. Yes, Sir.

Q. When was that?

Mr. Fullerton—They are opening up new topics here all the time.

Mr. Hill—My friends have undertaken to throw doubt upon a matter about which Mr. Turner said he was perfectly certain.

Mr. Morris—What is that?

Mr. Hill—The date.

Judge Neilson—The question before us seems to be one of mere dates.

Mr. Hill—I know, Sir, and it is one which will bear considerable examination. My friends on the other side have endeavored to show that there has been other trips, and they are trying to confuse the recollection of the witness.

Judge Neilson—I do not think they have tried to confuse his recollection. I think you may ask this question.

Mr. Hill—Well, if I said that they had tried to confuse his recollection, perhaps that is a misstatement, but I say they are trying to show that there is an opportunity for a confusion of dates. [To the witness.] When did your son Joseph begin to work for wages? A. June 1st, 1873.

Q. That was Sunday? A. Yes, Sir.

Q. Now, can you recollect whether this going down to the depot and the work done that day, was the first work that Joseph did for wages? A. Yes, Sir.

Q. Soon following his mother's death and funeral? A. Yes, Sir.

Q. You were asked about the manner in which you keep memoranda of your expenses? A. Yes, Sir.

Q. You stated that you keep a book, and that sometimes you keep them upon loose sheets of paper? A. Yes, Sir, little memorandums through the week.

Q. Then what is done at the end of the week with the sheets of paper on which these memoranda are? A. I enter them into my book.

Q. On what day? A. Always on the Saturday when I pay the men.

Q. So that all the items upon your book are entered under the date of Saturday? A. Yes, Sir.

Q. Is this charge of a telegram entered on a Saturday? A. Yes, Sir.

Q. And that is the 7th of June? A. Yes, Sir, the 7th.

Q. Do you remember whether you received any other telegram that week at all? A. No, Sir, I did not.

#### RE-CROSS-EXAMINATION OF MR. TURNER.

Mr. Fullerton—Where did Joseph live before he commenced working for wages? A. Well, Sir, he lived with

ma. He was home for a year and a half before his mother died.

Q. Did he work for wages before that? A. No, Sir; he did not work at all; he came home because his mother was sick.

Q. He did nothing? A. Nothing at all—he would do errands or anything of that kind that I wanted him.

Q. And he would go down to the depot if you wanted him, wouldn't he, before he began to work for wages? A. Yes, Sir, he would if I wanted him.

Q. Where did he live after he commenced working for wages? A. He lived in Mr. Beecher's house—that is, he boarded.

Q. And before that he lived in the same place? A. Yes, Sir, in the same place.

Q. How are you enabled to tell that he went down to the depot for Mr. Beecher on the 3d of June—that that was the first service that he performed for wages? A. Because it was the first time that that horse was taken out of the stable after he arrived, and Joseph drove him.

Q. That was the first time that the horse was taken out? A. Yes, Sir, the first thing that he did was to go down and meet Mr. and Mrs. Beecher.

Q. And he arrived there when? A. May 29th, on Thursday.

Q. May 29th? A. Yes, Sir; on Thursday.

The Court here took a recess until 2:05 p. m.

TESTIMONY OF JOSEPH S. TURNER.

The Court met at 2:05 p. m. pursuant to adjournment.

Joseph S. Turner was called on behalf of the defendant, sworn, and examined as follows:—

Mr. Shearman—Where do you reside? A. At Peekskill.

Q. How long have you resided there? A. Fifteen years.

Q. Are you the son of the Mr. Turner who testified last? A. Yes, Sir; I am.

Q. How are you employed? A. At the present?

Q. At the present? A. I am not doing anything at the present time, only living with my father.

Q. How were you employed in June, 1873? A. I was doing the horses at the time—

Mr. Shearman—A little louder, please; I cannot hear you.

The Witness—I was attending to the horses and running errands.

Q. Where? A. To the village—running errands to the village.

Q. In whose employment? A. Mr. Beecher's.

Q. When did you commence to work for wages for Mr. Beecher? A. On June 1st, 1873.

Q. June 1st, 1873? A. Yes, Sir.

Q. Do you remember going down on June 2d, 1873, to the depot at Peekskill? A. Yes, Sir, I do.

Q. What day of the week was that? A. That was Monday.

Q. What time of day? A. In the afternoon.

Q. Do you remember what time in the afternoon? A. I went down for the 3 o'clock train that leaves New-York at that time and arrives at Peekskill at 3:45.

Q. You went down to meet that train? A. Yes, Sir, I did.

Q. What horse did you go down with? A. Bay Billy; one that came up on the 29th of May.

Q. The same horse that came up on the Thursday preceding? A. Yes, Sir.

Q. You only took down one horse? A. That is all.

Q. Did you meet that train? A. I did.

Q. Was that the first time that that horse had been driven out? A. That was the first time.

Q. Did you meet Mr. Beecher? A. I did.

Q. Did you meet Mr. and Mrs. Beecher? A. Yes, Sir.

Q. Where? A. At the depot.

Q. At the depot at Peekskill? A. Yes.

Q. Did you drive them up to their house? A. I did.

Q. About how long did it take you to drive them up? A. I think about half an hour.

Q. What kind of a road is it, a level road or a steep road? A. Rather steep.

Q. Rather slow work for one horse, is it not? A. Yes, Sir.

Q. You generally had two horses? A. Oh! sometimes one and sometimes two; we had only one horse at that time.

Q. When Mr. Beecher was up there permanently you generally had two horses? A. Yes.

Q. Do you remember when he left Peekskill? A. He left on the 3d of June, the next day.

Q. Tuesday? A. Yes, Sir.

Q. What time of day? A. In the afternoon, I think; after dinner.

Q. What time do you have dinner? What time did he have dinner? A. We generally have it about half-past twelve or one o'clock, as a general thing.

Q. Did you drive him down? A. I did.

Q. How soon after dinner did you drive him down? A. It must have been either for the 2:15 train or the 4:30 train, I cannot say which.

Q. Do you know whether Mr. and Mrs. Beecher spent that night between Monday and Tuesday at Peekskill? A. Yes, Sir; they did.

Q. Do you recollect when Mr. Beecher had been up there last previously to that visit? A. On Monday the 29th.

Q. Do you recollect the day when your mother died? A. Yes, Sir; on the 29d of May, '73.

Q. Do you recollect Mr. Beecher attending the funeral? A. Yes, Sir.

Q. When was that? A. On the 24th.

Q. That was Saturday? A. Saturday.

Q. And he returned to New-York that same Saturday? A. Yes, Sir; on the 2:15 train.

Q. Then he came up again on the following Monday, the 26th? A. Yes, Sir.

Q. And went down again? A. Yes, Sir; went down again in the afternoon.

Q. When did you next see Mr. and Mrs. Beecher after that Monday, the 26th? A. Not until June 2d.

Q. Mrs. Beecher—did not you see her there before June 2d? A. On the 26th.

Q. She came up without Mr. Beecher? A. She came up with the girls.

Q. And left the two girls at the house. A. Left the girls at the house.

Q. Didn't she go down next day, Friday? A. That I cannot say.

Q. But you did not see Mr. Beecher until Monday? A. No, Sir; I did not.

Q. How long was it after Mr. Beecher left on Tuesday, June 2d, before you saw him again? A. I did not see him back until after the 16th.

Q. The 16th of June? A. Yes, Sir.

#### CROSS-EXAMINATION OF MR. JOSEPH S. TURNER.

Mr. Fullerton—Had you any memoranda to guide your recollection of these events? A. No, Sir, I had not.

Q. You have none? A. No, Sir, none; I did not keep any.

Q. It is a mere matter of recollection then? A. That is all, Sir.

Q. How are you enabled to say that it was on the 2d of June? A. Well, as it being the first working day that I ever worked under wages, and it was the first time that the bay horse Billy was ever taken out of the stable after he came up, and I drove him down for Mr. and Mrs. Beecher on that day.

Q. How does that assist you in determining the day? A. The first of June was Sunday, and that was not a working day, and I know it by the first time that the horse went out, and I drove him.

Q. But the horse might have gone out on the first day of any other week, might he not? A. Certainly he might.

Q. How do you know that it was not a week later in June? A. Because I know it.

Q. How? A. It being the first working day that I worked, and the first time that the horse went out.

Q. You did work, though, before you worked for wages? A. Not to say work, Sir—I used to run errands occasionally down town; that is all.

Q. That is pretty hard work, 'aint it, sometimes? A. Not very hard.

Q. What time did you go down to the depot for Mr. Beecher? A. I went down for that 2 o'clock train.

Q. How do you remember that, because you drove Billy? A. Yes, Sir, and because my father told me to go, I know it because my father told me.

Q. How do you know it was not the 4 o'clock train? A. On account of the telegram.

Q. Did you see the telegram? A. I did at that time.

Q. And you have a recollection of its contents, have you? A. Yes, Sir.

Q. When did Mrs. Beecher arrive there? A. On June 2d, you mean?

Q. Did she come on June 2d? A. She came up with Mr. Beecher on June 2d.

Q. Had she been there before that? A. She was there on the 29th of May.

Q. When did she leave after coming on the 29th of May? A. That I cannot say; she might have left the next day, I cannot say that.

Mr. Fullerton—That is all.

Mr. Beach—Ask him what time they left on Tuesday.

Mr. Fullerton—What time did they leave on Tuesday the third? A. It might have been by the 2:15 train, or the 4:30 train.

Q. I don't ask what it might have been. Do you recollect? A. I don't know. It was in the afternoon.

Q. Did you drive Billy on that occasion? A. Yes, Sir, I drove him down.

Q. That is the second time you drove Billy down after he came there; now, why does not the second time you drove him refresh your recollection in regard to the hour of the day, as well as the first time? A. [After a pause.] I did not drive Billy that time; I had Lem.

Q. Then you had two horses there? A. Well, we never drove the gray horse much.

Q. Was that the first time you drove Lem? A. No, Sir, not the first time.

Q. The first time after you were employed for wages? A. No, Sir, not the first time that I drove Lem.

Q. When did you drive him? A. I drove him very often down to the village on errands.

Q. Did you drive him on Monday? A. The 2d of June?

Q. Yes. A. No, Sir, I drove Billy.

Q. Then it was the first time you drove that horse after you commenced to work for wages? A. Yes, Sir.

Q. Then I ask you why that first time, when you drove Lem, does not enable you to fix the time you went down to the depot on the third, if the first time you drove Billy enabled you to fix the time on the second? A. Because Billy was counted as a carriage horse, and Lem was counted as a farm horse; that was the difference.

Q. Is that the only difference? A. That is the only difference I can give.

Q. Because he was a carriage horse? A. Counted as a carriage horse.

Q. Did you take Mr. and Mrs. Beecher down to the depot on the 2d? A. Yes, Sir.

Q. You can tell the time of day? A. I cannot tell the time of day; it was in the afternoon, some time.

Mr. Shearman—It was to one of these two trains; either the 2:15 or 4:30 train? A. Yes, Sir.

Q. And you cannot tell which one? A. No, Sir.

Mr. Fullerton—Did you meet that train that first day, June 2d? A. Do you mean that train for Mr. Beecher?

Q. Yes? A. Yes, Sir.

Q. How long did you wait there for it? A. I suppose may be I waited ten minutes or fifteen minutes, I cannot say.

Mr. Shearman—That is all. Mr. Rochford, will you take the stand.

#### TESTIMONY OF MR. THOMAS ROCHFORD.

Thomas Rochford called and sworn in behalf of the defendant.

Mr. Hill—What is your age? A. 25 years.

Q. What is your business? A. Receiver in the Western Union Telegraph Office.

Q. How long have you been such receiver? A. About five years.

Q. In this city? A. No, Sir.

Q. Were you receiver of any office of the Western Union Telegraph Company in this city on the 3d of June, 1878? A. Yes, Sir.

Q. Do you recollect receiving on that day a message from Henry Ward Beecher? A. Yes, Sir.

Q. Just look at the paper now shown you and see if it is the message which you so received? A. Yes, Sir; that is my signature.

Q. See if that is the register? [Handing book to witness.] A. Yes, Sir; that is the book of that day—June 3d, 1878.

Q. Now, state to his Honor and the jury the ordinary course of business with reference to the receipt of a message and the entry of it in a book or in the register. When you receive a message do you immediately enter it in the book? A. Yes, Sir, at once, or in two or three minutes, perhaps.

Q. You keep either that book or one like it lying before you every day when you receive messages? A. Yes, Sir.

Q. Is that the book that was lying before you on the 3d June, 1878? A. Yes, Sir, that is the book.

Q. Is that message entered in it? [Referring to book.] A. Yes, Sir. [Reading.] "Message number 8, going to Peekskill at 8:38 in the morning. Paid, 45c."

Q. What is the number of the message? A. Number 8.

Q. Who sent the message? A. E. B. Dengler.

Q. Is he in court now? A. He is.

Q. I observe that the message itself, as written by Mr. Beecher, is not dated? A. No, Sir; he often sent messages up and they would not be dated, but we would date them and put them on the blanks.

Q. Does the book on which the message is entered enable you to fix the date? A. Yes, Sir; certainly.

Q. It is entered in the ordinary course of business, with other messages on that day? A. Yes, Sir; and they are filed away in a package by themselves.

Mr. Hill—I now offer to read the message itself in evidence. Your Honor will see that it is pinned to a blank of the Company. [The message was marked Exhibit 123 D.]

Mr. Hill read as follows:

[8] [8.38] [8.58]

THOMAS J. TURNER,

Peekskill, N. Y.

Send for us to train leaving New-York at two p.m.

(Sig.)

H. W. BEECHER.

10 paid, 45.

Q. See if these words, "10 paid, 45," are in your handwriting? A. Yes, Sir, in my handwriting.

Q. Do you know whose memorandum that is upon the book? A. I do, Sir; the operator's.

Q. The one that you have referred to? A. Yes, Sir.

Q. Do you know whether that message is in Mr. Beecher's handwriting? A. I could not say, Sir; I did not see it. It was sent up by a messenger.

CROSS-EXAMINATION OF MR. ROCHFORD.

Mr. Fullerton—Where is the record for June 1st?

A. We have got two books.

Q. Alternate days? A. Yes, Sir, every other day.

Mr. Beach—What did he say?

Mr. Fullerton—He says they have two books for alternate days.

The Witness—We have the other clerk who makes a daily report, and he has to use the other book while checking up.

Mr. Beach—I see there is no record here for May 31st.

The Witness—No, Sir, I will get you the other book.

Mr. Beach—We want that other book.

The Witness—Yes, Sir.

Mr. Fullerton—Is your office open on Sundays? A. Yes, Sir; open all the time.

Q. In whose handwriting is the memorandum, "June 3d?" A. That is the handwriting of the manager of the office. He took it out of that package, and dated it as he took it out. I did not date it as I put it in the package; I neglected to do so.

Mr. Beach—What is that?

The Witness—He took it out and dated it.

Mr. Fullerton—When did he take it? A. About two or three weeks ago.

Q. It was not dated then? A. No, Sir.

Q. That date was written in there then, was it? A. Yes, Sir, at the time he took it out.

Mr. Beach—Two or three weeks ago? A. Yes, Sir.

Q. It was first dated June 1st, was it not? A. Yes, Sir, I think it was.

Q. Look at it and see? A. Yes, Sir.

Q. And then it was altered to June 3d? A. Yes, Sir, he found out his own mistake, I suppose.

Q. Yes, I suppose so. You did not find it out? A. No, Sir.

Q. Are these entries here in your handwriting? A. No, Sir, very few of them.

Q. Which are yours? A. [Referring to book.] "Philadelphia," "New-York"—those are mine.

Q. Which of these of June 3d are in the handwriting? A. "Cleveland," is in my handwriting.

Q. Is "Peekskill," opposite the number 8, in your handwriting? A. No, Sir.

Q. You were not there when that message was received? A. I received the message and I handed it to another clerk to attend to, as I have somebody to help me all the time, being busy all the time.

Q. That is not your entry? A. No, Sir.

Q. Where is the book of June first? A. We shall get you that in the office.

[The witness rose to leave the stand.]

Mr. Hill—Wait a moment.

RE-DIRECT EXAMINATION OF MR. ROCHFORD.

Mr. Hill—That message, as received from Mr. Beecher by you, I understand was on the white piece of paper which is attached to the telegraph blank? A. Yes, sir.

Q. And that had no date on it at all? A. No, Sir.

Q. Now, Sir, are you enabled to swear that that white piece of paper bearing the message itself was received by you on the second day of June? A. Yes, Sir, it was.

Q. It is entered along in the ordinary course of business with other messages received that day? A. Yes, Sir, number 8 in the morning. We commence with number 1 in the morning, and follow it up to 100.

Q. And this message stands eighth in this entry on the 2d of June? A. Yes, Sir.

Q. Seven other messages were received that morning before this one? A. Yes, Sir. You will see that 96, or thereabouts, is the whole day's business.

Q. How many in number are there during the day? A. On that day, Sir, we received 106 messages, and the amount paid on that day was—

Q. I don't care about that. Please state whether there is on each message the number of the message entered upon the message itself and upon the book? A. Yes, Sir.

Q. And that is the fact in this case? A. Yes, Sir. New-York would not receive duplicate numbers from us, and we had to correct them at the same time.

[The entry in the telegraph book produced by witness was put in evidence and marked.]

Mr. Fullerton—In whose handwriting are the figures here, "8?" A. That is the messenger boy that we had at that time. He was pretty smart, and he used to help me once in a great while, perhaps two or three hours in a day.

Q. They are not in yours? A. No, Sir; not in mine.

Q. What is the significance in this memorandum on the back? A. That is the initials of the operators who sent it, and received it.

Q. I want to know whose initials they are. Whose initials are "D. R.?" A. "D. R.," Sir; those are his initials. He did that with his left hand while working the key with his right.

#### TESTIMONY OF EMIL B. DENSLER.

Emil B. Densler, called and sworn on behalf of defendant.

Mr. Hill—Where do you reside? A. 948 Columbia-st.

Q. What is your business? A. Telegraph operator.

Q. Were you a telegraph operator in the employ of the Western Union Telegraph Co. on the 2d of June, 1878? A. I was.

Q. Engaged in the Brooklyn office? A. Yes, Sir.

Q. Where was that office then located? A. 327 Washington-st.

Q. Here near the Post Office? A. Yes, Sir.

Q. Just look at that telegraphic message and say if you sent that message from New-York? [Handing telegraphic message to witness.] A. I did not.

Q. Is this your memorandum? [Handing memorandum to witness.] A. Yes, Sir.

Q. Do you know whether it was sent from the office that day? A. It was sent from Brooklyn, and not from New-York.

Q. To the office in New-York? A. Yes, Sir.

Q. Did you send it to the New-York office from Brooklyn? A. I did.

Q. On what day, can you tell? A. No, Sir, I cannot.

Q. You made no memorandum yourself of the date? A. No, Sir.

Q. This is your memorandum on the back? A. It is.

Q. Now, what does that mean: "D. R. 8:58 W?" A. "D. R." are my initials, "8:58" is the time it was sent, and "W" is the operator's signature that received it at the New-York office.

Q. What is the full name of the operator who received it in the New-York office? A. Roagers.

Q. The full name? A. Louisa J. Roagers.

Q. A lady? A. Yes, Sir.

Q. Now, I will ask you if you saw this message taken from the files of messages of the Western Union Telegraph Co. recently? A. I did.

Q. By whom? A. By Mr. Hughes.

Q. Mr. Hughes is whom? A. A manager of the Brooklyn office.

Q. How long ago did he take it from the files? A. I should calculate about two weeks ago.

Q. Are each day's messages put up in a separate file, or by the month? A. Separate days.

Q. In separate days? A. In separate days.

Q. From what day's messages was this selected. A. June 2d.

Q. I will return again to the pencil memorandum on the back, "D. R., 8:58, W." Does 8:58 refer to 8:58 in the morning, or in the evening? A. In the morning.

Q. That is the time you sent this message to the New-York office? A. Yes, Sir.

Q. Can you call Peekskill directly from here? A. No, Sir.

Q. So you have your message go over from here to the general office in New-York, and from thence to Peekskill? A. Yes, Sir.

Mr. Hill—That is all.

#### CROSS-EXAMINATION OF MR. DENSLER.

Mr. Beach—How do you know "8:58" means 8:58 in the morning? A. Judging by the number of the message.

Q. By its being No. 8? A. Yes, Sir.

Mr. Beach—That is all.

Mr. Shearman—That is all.

#### TESTIMONY OF BEN KITTRIDGE.

Ben Kittridge called and sworn on behalf of defendant.

Mr. Mallison—[To the witness.] Benjamin?

The Witness—Well, I think it is Ben; I always write it Ben?

Mr. Hill—Where do you reside? A. Peekskill.

Q. How long have you lived there? A. Ten years ago this month.

Q. What is your age? A. Fifty-four next July.

Q. How far did you live from Mr. Beecher's Peekskill residence? A. About 800 feet, I should think; 850 feet.

Q. State whether or not from the piazza of your house you can look all over the eastern slope in front of Mr. Beecher's house? A. Yes, Sir.

Q. And see most of his out-buildings? A. Yes, Sir.



Q. Over a large portion of his premises? A. When the foliage is very full we only see the out-buildings indistinctly; in fact we only see the house indistinctly when the foliage is very full.

Q. But the ordinary method of going to Mr. Beecher's house, that is directly in front of yours? A. Yes, Sir.

Q. And his house on one side of a lane and yours on the other? A. Yes, Sir, we own the avenue together.

Q. How long have you known Mr. Beecher, Mr. Kittidge? A. Ten years personally, and beyond that.

Q. You know that he had a Summer residence, a farm and dwelling near you in 1873 in June? A. Yes, Sir.

Q. On the 1st of June? A. Yes, Sir.

Q. And has ever since? A. Yes, Sir.

Q. Mr. Kittidge, can you state to his Honor and the Jury whether or not Mr. Beecher was at his farm on the 2d day of June, 1873? A. He was.

Q. You know that fact? A. Yes, Sir; I saw him.

Q. You are positive of it? A. I saw him.

Q. What is your business? A. Well, at Peekskill I am a farmer.

Q. You have occasion to come to New-York? A. I come to New-York three times a week, some times four.

Q. Had you been to New-York on that occasion, the 2d day of June? A. Yes, Sir.

Q. What train did you take to go home? A. Four o'clock.

Q. From New-York? A. Yes, Sir.

Q. Arriving at Peekskill about what time? A. I arrived at Peekskill about 4:15.

Q. 4:15 or 5:15? A. I should say 5:15; I am not speaking from recollection as to that, but the time that train arrived there would be about 5:15 or 17, a minute sooner or later.

Q. Now, please state, Mr. Kittidge, on leaving the cars whether you have to pass through a somewhat narrow entrance in order to reach the carriage-way on the outside ordinarily? A. Yes, Sir; moderately narrow; it a pretty good width; I should say it was—

Q. I don't care exactly, but it is comparatively a narrow space you have to go through? A. Yes, Sir, moderately narrow; I should think it was 100 feet wide; we have complained of its being narrow.

Q. You don't quite understand me. I mean the door from which you leave the depot yard to get out into the carriage yard on either side? A. Oh! well, that is a double door; sometimes one is open and sometimes both.

Q. Now, do you know whether Mr. Beecher was home at the time you arrived at home? A. He was. I saw Mr. Beecher with several other persons, I should say from four to six, south of his house at or about the time I turned into the avenue. I should think the point of turning was a little more than twice the distance from my house, and before I turned into my own gateway I could hear Mr. Beecher talking distinctly. We sometimes hear him when we don't hear the rest of the people.

Q. Now, Sir, did Mr. Beecher come up from New-York on that train with you? A. I think he could not possibly have come up unless—he sometimes drives very much faster than I do.

Q. You think he couldn't not have come up on that train with

you? A. Because I came home very quick; he could not possibly have come up on that train, I think, and be there when I got there.

Q. Did you see him the next day, June 3d? A. I saw him again the same day.

Q. How near were you to him? A. When I saw him the second time he was half way from his house to mine in his shrubbery, looking at his shrubbery.

Q. About what time in the day was that? A. I should say the time I saw him the second time—well, the first thing when I got home I went in to dinner. That I always do, the first thing when I get from the city. [Laughter.] We talked—

Mr. Hill—Well, Sir; so do I.

The Witness—We talked with reference to the fact. That was the subject of conversation at dinner.

Mr. Hill—That Mr. Beecher was at home? A. That Mr. Beecher was at home was the subject of conversation. After dinner I went out on to my porch or veranda, which looks over the same slope that he looks over to the river.

Q. And out towards his house as well? A. Yes, Sir, and up towards his house as well, and then I went up the bank to my garden, and I saw Mr. Beecher—well, I was tempted to speak to him, but I thought I would not disturb him, and I didn't disturb him.

Q. Any one with him at that time? A. No, Sir, he was alone. He strolled out to the shrubbery on the right side of the road as you go up to his house.

Q. Will you please state any circumstance that enables you to fix this date, the 2d of June? A. Well, I was very anxious to see Mr. Beecher about a little business. We had had some talk about it the 24th of June—

Q. Of May? A. Of May, I mean. The 24th of May I saw Mr. Beecher at his own house, and I then understood, either from him or from others—

Mr. Beach—Never mind; never mind what you understood.

The Witness—That he was going up—

Mr. Beach—I ask you not to state it.

The Witness—I beg your pardon.

Mr. Hill—You are possessed of circumstances which will enable you to fix the date? A. Yes, Sir.

Q. As the 2d of June? A. I can fix it otherwise.

Q. Very well? A. I had been to the city; I know that just a week had intervened from the time I saw him there before; I knew that his wife was there a week previous—the intervening week, on Thursday, and I know that in my own mind I associated her being there with its being preparatory to their moving up.

Q. For the Summer? A. For the Summer; and I know that in my own mind when I saw him there I associated it with the fact that I had seen his wife there, and that he was there for the Summer, and afterwards I saw the servants there, which fixed it that he was there for the Summer.

Q. Do you recollect that you were disappointed in the fact that he went back and did not return again for a week or ten days? A. Yes, Sir, I recollect that I went up to his house to see him, and he had gone.

Mr. Hill—[To Mr. Fullerton.] You can cross-examine him.

Mr. Fullerton—No, nothing.

## TESTIMONY OF THOMAS B. TILNEY.

Thomas B. Tilney was here called on behalf of the defendant, sworn, and examined as follows:—

Mr. Shearman—What is your occupation? A. I am a lawyer.

Q. Carry on business in New-York? A. I do.

Q. Where do you reside? A. In Brooklyn.

Q. Where did you reside in June, 1873? A. I resided in Brooklyn at that time.

Q. On Ninth-st.? A. On Montague-st.

Q. Now, Sir, were you married in June, 1873? A. I was.

Q. On what day? A. The 3d day of June.

Q. What day of the week? A. On Tuesday.

Q. About what hour of the day? A. About 7 in the evening.

Q. Who performed the marriage ceremony? A. The Rev. Henry Ward Beecher.

Q. Can you tell anything which you noticed about his appearance when he came to perform the ceremony? A. I noticed that he was in a—it is hard to describe a man's appearance, but he didn't seem to be arrayed as we would expect him to be on an occasion of that kind; I cannot say that his was a travel worn appearance, or anything of that sort, but he seemed to have come unprepared in respect to his dress.

Q. Didn't seem to be dressed for a wedding? A. So it struck me at that time.

Mr. Shearman—That is all.

Mr. Beach—That is all.

Mr. Fullerton—That is all.

Mr. Morris—That is all.

[Laughter.]

## TESTIMONY OF F. A. PUTNAM.

Fred A. Putnam was called on behalf of the defendant, sworn, and examined as follows:—

Mr. Shearman—What is your profession? A. I practice medicine.

Q. Where do you reside? A. 265 Fourth avenue, New-York; Twentieth street.

Q. Did you reside there in 1873? A. I did.

Q. Do you recollect Wednesday, the 4th day of June, 1873? A. The 3d day?

Q. No, the 4th day, or Wednesday of that week? A. Yes, Sir; I recollect the 4th day of June.

Q. The fourth day of June, 1873; did you leave New-York on that day? A. I did, Sir.

Q. Did you go by any railroad? A. I did.

Q. By what railroad? A. Harlem Railroad.

Q. Did you at that time know by sight the Rev. Henry Ward Beecher? A. I did.

Q. Did you know his wife? A. Yes, Sir.

Q. Do you recollect meeting Mr. and Mrs. Beecher on that day? A. I met Mr. Beecher between the railroads, the Harlem and the New-Haven.

Q. At what time of the day was that? A. In the morning.

Q. Before 8 o'clock, or after? A. Between 7 and 8 o'clock, I should think.

Q. What train were you going to take to go there?

A. I was going in the first train that went to White Plains; I didn't know exactly when I left my office when I would get there. I spoke to him and asked him if he was going home at once. He said, "No," he had a few minutes, and Mrs. Beecher was in the cars and he called her by her first name. I went in and spoke to her.

Q. You spoke to Mrs. Beecher in the cars? A. Yes.

Q. What train was that? A. They were on the express train of the New-Haven road.

Q. On the New-Haven train for Boston? A. Yes, Sir. When I went in first I did not recognize her, as she was veiled; and I said I didn't see her. He pointed her out through the window, and I went back and spoke to her.

Mr. Shearman—That is all.

Mr. Fullerton—Nothing to ask?

Judge Neilson—That is all.

Mr. Hill—I want to ask Mr. Turner one more question.

## THOMAS J. TURNER RECALLED.

Mr. Hill—Mr. Turner, please look at that paper [handing a paper to witness], and state whether the contents of the telegram which you received were the same as that? A. Yes, Sir.

Q. That you received on the 2d day of June, 1873? A. Yes, Sir.

Mr. Hill—That is all.

Mr. Morris—That is all.

Mr. Hill—[To Judge Neilson]: I have sent for the manager of the telegraph office, but he may be delayed for a few moments.

Judge Neilson—Meantime we can take up some short witness.

Mr. Hill—If your Honor will permit us to interrupt the examination of this witness when the other gentleman arrives, so that he can go back to his duties, I will be obliged to you.

Judge Neilson—Certainly.

## TESTIMONY OF MR. STEPHEN V. WHITE.

Stephen V. White called and sworn on behalf of the defendant.

Mr. Tracy—Where do you reside? A. Brooklyn.

Q. How long have you resided in Brooklyn? A. About ten years.

Q. Are you a member of Plymouth Church? A. Yes, Sir.

Q. How long have you been a member? A. Nine years the first Monday of January past, I think, Sir.

Q. What is your business? A. I am a stock operator—broker sometimes.

Q. And are engaged in that business now? A. Yes, Sir.

Q. In the City of New-York? A. Yes, Sir.

Q. You were a member of the profession formerly, I believe, Mr. White? A. Yes, Sir, I was.

Q. Practicing law? A. I was a member of the legal profession if you refer to that.

Q. Where did you practice? A. I practiced in Missouri and Iowa.

Q. Were you a member of the Investigating Committee of Plymouth Church, appointed last Summer? A. Yes, Sir.

Q. Were you present at the meeting of the Committee, July 6th, at the time Mrs. Tilton first made her appearance before the Committee? A. No, Sir.

Q. Were you present July 10th, when Mr. Tilton first appeared before the Committee? A. Yes, Sir.

Q. Was that his first appearance? A. As far as I know it was the first meeting of the Committee, as a Committee, that I attended, and I believe it was his first appearance.

Q. Did you hear the talk between himself and members of the Committee at that time? A. I did, Sir.

Q. Was there anything said by him on that occasion in regard to the nature of the evidence which he had against Mr. Beecher? A. Yes, Sir.

Q. What did he say on that subject? A. He said, among other things on that subject, that his case rested upon written evidence. He said that he would not ask the Committee to trust him, or to take his word for it, if he made the charges. He was asserting that he had a case against Mr. Beecher, as he stated it, and one that would convince the Committee, if he should state it to them, and he said that it was a case which he would not ask the Committee to take his word for, as he acknowledged or admitted that he was a discredited man in this community—Brooklyn—and that he rested upon documentary evidence or written evidence, under Mr. Beecher's own signature, or under his own signature.

Q. Was there anything said by any person present on the subject that, if his case against Mr. Beecher was in writing, the writings would speak for themselves? A. Yes, Sir, that reply was made by yourself.

Q. What did Mr. Tracy say on that subject? A. Well, Sir, you said that there might be a question about what the papers would show; that the Committee could judge better of that after they had seen them, and after a remark in reply to that, which I could not give the exact words of, and not even the substance, you made the further statement that if the charge which he should make was one of criminality between Mr. Beecher and his wife, that the paper which you had seen, if you had ever seen the paper which he relied on, you didn't think that it would sustain that charge.

Q. Was there anything said by him on that evening in regard to verbal confessions by Mr. Beecher? A. Well, I don't know that there was directly in those words, but there were statements made which recognized a verbal confession on the part of Mr. Beecher.

Q. That night? A. Yes, Sir; I feel very clear that there was, Sir. I think I can refresh your recollection on it.

Q. What was it? A. It was when Mr. Tilton had said to us: "Gentlemen you think there is no case, but there is;" and we then said: "Give it to us, then," and he said, "Don't ask me to; it is too horrible; it is too terrible to tell you." He said in that connection that Mr. Beecher had asked him, if it ever became necessary to make these declarations, to let him know that he might leave the country or take his life. I feel very clear that that was said on that night.

Q. Was that not in reference to the publication of the written paper which he claimed to have? A. Yes, Sir.

Q. And not in regard to a verbal confession? A. The construction is whatever you please. I said he didn't make any verbal confessions; he didn't claim any verbal confession in these express words, but that something was said by which there might have been inferred a verbal confession.

Q. Was he not speaking of the publication of the documents which he held against Mr. Beecher?

Mr. Morris—One moment.

Mr. Beach—Mr. White can tell the condition which it was.

Mr. Hill—In that statement, was he not speaking of the threatened publication?

Mr. Fullerton—He can state what was said.

Mr. Morris—I suggest that these leading questions ought not to be put; they are improper. The witness's attention should not be called to particular things.

Judge Neilson—I think he had better state the conversation.

Mr. Morris—Yes, all he recollects first.

Mr. Beach [To Mr. Tracy]: Why can you not ask him in what connection that was said?

Mr. Tracy—In what connection was that said?

Mr. Beach—Give the preceding remarks, if you can?

The Witness—I think I gave you, in substance, the preceding remarks. Mr. Tilton's manner was very—I won't say dramatic, but it was highly suggestive of something that was very severe if it should only come out. I remember his saying to us: "Your Committee is too large, gentlemen; I cannot make such a disclosure or tell such a story to so many. I will take you, Mr. Sage [pointing to him], if you please, and I will tell you in confidence my whole story. Your Committee is too large. I cannot tell it," and the statement was made after that, I think, as I have before referred to, that this matter didn't rest upon his word, that he would not ask us to believe him, and then we had urged him—Mr. Tracy had urged him, as was suggested before, to bring forward the papers that the Committee might judge and construe them, and I think his reply to that was that he would not be so cruel to Mr. Beecher. He said, "I don't want to hurt a hair of that old man's gray head; Mr. Beecher has before this asked me if it ever became necessary, if I should feel compelled to publish these papers, that then I should give him notice in order that he might leave Brooklyn, or take his life."

Q. Then it was in connection—

Mr. Fullerton—No, no, I object to that, Sir.

Mr. Tracy—Was it in that connection that he made use of this remark in the connection that you have just stated? A. I have stated it as nearly as I could, Sir, from my present memory.

#### MR. TILTON'S EXPLANATION TO THE COMMITTEE.

Q. Was he asked by the Committee to bring forward his documents and show them to the Committee? A. Yes, Sir, repeatedly.

Q. Was it in that connection that he said that the Committee was too large?

Mr. Beach—We object to that, Sir.

The Witness—Well, it was in regard to making his case

known to us; we were too many. There was a great deal said that you have not asked me for, that my answer would not be responsive to, if I told it, but as a part of the things that I have stated—or rather the facts which I have stated, are a part of those things in respect to which he said that the Committee was too large to know about it.

Q. Now, I repeat my question; did Mr. Tilton on that occasion state or pretend that he had any other evidence against Mr. Beecher except written evidence?

Mr. Morris—One moment. I object to it. He has not asked the witness to state what he said.

Judge Neilson—It needs no argument; it is a leading question.

Mr. Tracy—Is it objected to on the ground that it is leading?

Mr. Morris—Certainly.

Mr. Tracy—What did he say on the subject of having verbal evidence against Mr. Beecher, if anything?

Mr. Morris—One moment. Is it proper, until he has taken the witness's best recollection, to call his attention to the subject?

Judge Neilson—This is a very intelligent witness. I think he will have to state all that occurred that he remembers, and then put him particular questions.

Mr. Tracy—I will ask you to state what was said on the subject of his having verbal confessions of Mr. Beecher, if he said anything. A. There was no suggestion made, according to my best recollection, of any confession having been made at that time, aside from the inferential suggestion that I have before stated, that Mr. Beecher had requested him to give him notice.

Q. And you have stated the conversation in which he said that? A. I have stated the connection in which he said that.

Q. Now, what did he say, if anything, on the subject of deprecating an investigation? A. Well, he said a great deal, Sir; I could give, perhaps, considerable of what he said, and I might leave out something that was just as important. I will give you the best recollection of what he said. He said—he commenced his conversation on that subject—on that branch of the subject, by saying that his letter to Dr. Bacon had been called from him as a matter of defense of his own honor, from the attitude which had been assumed by Mr. Beecher and by Plymouth Church, that he had published so much of the—of a paper which he held against Mr. Beecher—signed by Mr. Beecher, as would show that he was not the creature of Mr. Beecher's magnanimity, but that Mr. Beecher was the creature of his magnanimity, if there was magnanimity between them, and that having exercised sufficient hostility in this matter to place himself right in that regard—those are not his words, but that is the substance of his idea—to place himself right in that regard, he did not feel called upon to say anything further until either Mr. Beecher or Plymouth Church should make further aggression upon him, in which case he would feel bound—he might feel bound to make still further disclosures, and went on to say that he had taken pains in the Bacon letter not to characterize what the charge was, and when we called for him—when we stated to him that we had been appointed on behalf of Plymouth Church to

investigate the question of what charges were referred to in the Bacon letter, he says, "Well, gentlemen, now you don't want that; Mr. Beecher does not want it, and as a matter of honor towards Mr. Beecher"—and then I think perhaps he brought in—it came in several times, in regard to his having no desire to harm Mr. Beecher or to hurt a hair of his gray head—he said that he didn't want any investigation further in regard to it and he deprecated it as being unwise and uncalled for.

Q. Did he say anything about disbelieving that Mr. Beecher had invited an investigation? A. He did, Sir.

Q. Was Mr. Beecher's letter conveying the Committee shown him there? A. It was, Sir.

Q. Did he read more than once? A. I could not say about that, Sir; I think he took long enough to have read it through carefully and scan it over again, perhaps, but I don't think he read it aloud. He looked at the paper, holding it for some time.

Q. What did he say that night as to whether he would appear before the Committee and furnish documents and proofs if he had any? A. Up to the time of reading that letter he absolutely declined, saying, "Gentlemen, you don't want me to talk" and once putting the question, "Do you want me? Suppose I know that Henry Ward Beecher has been guilty of adultery?" I would not state that at—that word being used, but "Suppose I know of his being guilty of a grave offense against my family," perhaps it was. "Do you want me to state it?" And the Committee replied, or some of the members of the Committee, "Yes, we want to know the worst, and exactly what it is;" and he continued to decline to give it, up to the time that he had read the letter. After reading the letter, he says, "I will think about this," and the last thing that he said as he was going away, "I will think about this; perhaps I may consent to come before you, but I will not decide that to-night."

Q. Did you afterward see his card published in *The Argus* saying that he would? A. Well, I saw it in some paper, Sir; I don't know whether it was *The Argus*, or what it was.

#### MR. TILTON DENOUNCES THE COMMITTEE TO ITS FACE.

Q. Now, were you present when he made his sworn statement before the Committee? A. Yes, Sir.

Q. Did he present any letters accompanying that report? A. No, Sir.

Q. None at all? A. No, Sir.

Q. Were you also present at the Committee rooms at the time that he attacked Mr. Tracy, or his position in the case? A. Yes, Sir.

Q. Did you hear what transpired between Mr. Tilton and Mr. Tracy? A. Yes, Sir.

Q. Will you state it? A. Well, my recollection of that is that it grew out, in the first place, of Mr. Tilton's reply to some questions which I had propounded to him on his cross-examination, and his becoming apparently irritated, or losing his temper, or getting out of patience with us. On the direct examination, the sworn statement, Mr. Tilton

ton's position seemed to be, as it impressed me, that he was—had been shielding Mr. Beecher and his family from exposure in regard to the relations which he charged had existed between Mr. Beecher and his wife; and I, on cross-examination, testing him as to whether or not he had, in good faith, tried to keep this scandal from becoming public, asked him whether he knew a man by the name of Charles A. Blanchard, son of President Blanchard, of Illinois; to that he replied that he had seen him, I think he said once; and I asked him whether or not, on the first occasion, when he had seen him, he had not said to Mr. Blanchard, in the Winter of 1870 or 1871, that he did not like Mr. Henry Ward Beecher, that he was a bad man, and that he preached to mistresses in his own congregation every Sunday; and whether further, he had not said to him that he was at liberty to publish that in his paper, a paper with which young Blanchard was connected in Chicago, and could give his name as authority; and Mr. Tilton had replied in the affirmative up to everything except the question as to whether or not he told him to publish it, and use his name as authority, when he did not remember that, but passed it over, I think by saying that if young Blanchard said so he should not deny it; it was not very distinct in his mind, what he did say to him. And he then suddenly turned upon us and said: "Gentlemen, you are not trying to get at the facts of this case. You have been here now—had me before you four or five different times, and you have not asked me in regard to those things which would really get at the facts in this case. You are asking about collateral things all the time;" and, says he, "I have not told you—I have not begun to tell you my case; I have told you but a small part of the evidence that I have against Mr. Beecher." I replied to him: "Well, now, Sir, the legitimate course to pursue, after you had taken time to prepare a sworn statement, was to cross-examine you in regard to the different parts of that statement, and the Committee, or at least I, for one of the Committee, had supposed that you had told your whole case in that, and I, as one of the Committee, now call upon you to state anything and everything that you may know that tends in the interest of truth and justice to throw light upon the question of the private and moral character of Henry Ward Beecher." After some other conversation immediately following this, Mr. Tilton suddenly seemed to lose his temper very considerably, and he turned upon Mr. Tracy and says, "and you promised me when I showed you this case years ago, that if ever Mr. Beecher and I clashed swords in any legal conflict in regard to it, that you would not appear as counsel for Mr. Beecher." Mr. Tracy's reply was not angry in that first instance, and did not particularly impress myself, except that he was inclined to reason the matter, and Mr. Tracy—Mr.—

Mr. Beach—Tilton?

The Witness—Tilton further made the charge and charged him with unprofessional conduct, and says, "You are guilty of unprofessional conduct in what you are doing now, Sir, and I will hold you to accountability for it." Whereupon Mr. Tracy said, "It is false; the case which you stated to me was that Mr. Beecher had made impure or improper proposals to your wife, and I notified you when I found," or—I wouldn't

say—I am not clear on that point, whether it was "when I found," or whether, "when I suspected that you were changing your indictment against Mr. Beecher, that if you changed the charge which you had made against him of impure proposals to the crime of adultery, I should feel myself exonerated from the promise which I had made you," or "freed from the promise which I had made you;" and Mr. Tilton's reply to that was, "It makes no difference in regard to it; you have got my case and you have no right to appear against me in this matter;" and Mr. Tracy replied to him, "Well, on that point I differ with you. I have taken the judgment of the best legal talent of my acquaintance in New-York and Brooklyn, and I am conscientious in regard to my course in this matter, and I am determined to pursue it as I have been pursuing it." Mr. Cleveland—it is not responsive to your question, but it settles that whole point, so far as it is in my mind—at that time made a remark, in course of this conversation between you and him, suggestive that you were not counsel for Mr. Beecher, saying that you were the counsel for the Committee in this case, to which neither he nor you made any reply, but each one of them—each one of you seemed to treat the difficulty over your unprofessional conduct as wholly unaffected by the question as to whose counsel you were there, or in whose interest you appeared.

Q. Well, where did this occur which you have been detailing?

A. At 34 Monroe-pl.

Q. Well, which room? A. That occurred in the back room where we generally had our sessions. You go through the hall and it was in the rear of the parlor, in the library.

Q. Afterwards did you see or hear a further interview between Mr. Tilton and Mr. Tracy that day? A. Yes, Sir.

Q. Where did that occur? A. That occurred in the front parlor close by the door, by the sofa.

Q. How soon after the first interview? A. Well, time to cool off, from 15 minutes to half an hour; something like that.

Q. What occurred there? A. Tilton came in, and I think threw his arm over your shoulder, and said that he liked—"I have nothing against you," or nothing against Tracy, and said, perhaps, "the members of the Committee; and now I take back what I have said." Perhaps those are not the words; they did not impress me very particularly, as the statement impugning your professional character—but I think he said, "I take back what I said: there is not a man in Brooklyn that I respect more," or "that I like better," or something to that effect; and you jokingly accepted the apology, if apology it were, and expressed sentiments of friendship; and then Mr. Tilton turned to the Committee and said: "Tracy and I are a good deal alike, after all; the difference between us is, that I do wrong, and am sorry for it, and say so; and Tracy does wrong, and is sorry for it, and he don't say so. [Laughter.]

Q. Well, was that the last of the interview on that day? A. That was the last of the quarrel, Sir, that I remember. I think it was the last of the interview on that day; yes, Sir.

## MR. TILTON'S DISTRUST OF THE COMMITTEE.

Q. Were you present on the day that he brought letters to the Committee? A. Yes, Sir.

Q. What was done with the letters that he brought them? A. He took them away with him.

Q. What was done in the Committee room by him? A. He started to read from them, and there seemed to be a very large folio, and reading fast there was no time for the Committee to digest them if they had bearing upon the case; and, after several letters had been read, including, for one, one of—early in 1868—I won't swear to dates: I have heard you say here to-day, Jan. 31st, 1868—but it only impressed me as being anterior by several months to Oct. 1868, in which Mrs. Tilton spoke of her wrong or her offense or her sin, or something or other in the matter; and I remember that one distinctly, because we asked "What does that refer to?" and he says, "You ask Elizabeth;" and then went on. After reading several of them, and owing to the fact, which seemed to be evident to the Committee, that it was impossible to give them any considerable legal weight, if they had such, or bearing upon the case, it was suggested that we should either have the letters left with us or—yes, that we should have the letters left with us to be returned; and that Mr. Tilton objected to, and said he was willing to place them in the hands of some person where the Committee could have access to them; and it was finally compromised or agreed upon that Mr. Winslow should be the representative of the Committee, or should be the eyes of the Committee to inspect this volume of letters, and that he would show them to Mr. Winslow upon his, Mr. Winslow's, request.

Q. Did he ever show to the Committee the Griffith Gaunt letter? A. He never showed it to the Committee as a Committee, Sir; I never saw it.

Mr. Tracy—That is all. You may examine.

Mr. Hill—If your Honor will permit me to examine the telegraphic manager.

Mr. Fullerton—I have only a single question.

Judge Neilson—Well.

## CROSS-EXAMINATION OF MR. WHITE.

Mr. Fullerton—Was Mr. Winslow at all of these conversations you have related? A. That is impossible for me to remember, Sir; I am sure he was present, Sir, at the quarrel, the first—at the first quarrel, and I feel very sure that he was present at the interview when Mr. Tilton came forward, before us for the first time, and declined to make a statement at that time.

Mr. Fullerton—That is all.

## TESTIMONY OF MR. HENRY L. HUGHES.

Henry L. Hughes, called and sworn on behalf of the defendant.

Mr. Hill—Mr. Hughes, what is your business? A. I am manager of the telegraph office.

Q. Western Union? A. Western Union, yes, Sir.

Q. How long have you been such manager? A. About six years.

Q. And engaged all the while in Brooklyn here? A. All the while, yes, Sir; that is during those six years.

Q. Do you know Mr. Densler and Mr. Rochford? A. I do, Sir.

Q. And you were superintendent of the office where they were engaged? A. I suppose you would call it superintendent—manager.

Q. Manager of the office? A. Yes, Sir.

Q. A telegram has been produced here, dated the 2d day of June, apparently, and signed by Mr. Beecher? A. Yes, Sir.

Q. Have you that with you now? A. I have; yes, Sir.

Q. A question has been suggested, or questions have been asked of the other witnesses with respect to the date of the telegram. Just look at the handwriting of the date. A. Yes, Sir.

Q. And state if it is your work? A. Yes, Sir.

## A MISTAKE IN DATING THE TELEGRAM.

Q. When did you make it? A. I made it about three weeks ago.

Q. Was there anything in that blank where you have now written that date, at the time you made that entry? A. No, Sir.

Q. None at all? A. No, Sir.

Q. From what bundle, that is to say, what days did you take this telegram in the files of the office? A. I took it from the package of messages containing the business for the 1st and 2d days of June. If you will notice, June the 1st is on Sunday, and June the 2d is Monday. Well, we place the business of Saturday and Sunday together, making one report for the days. Well, when I took the message out, I saw that there was no date on it, and I took it out of the package containing the business of the 1st and 2d, and naturally thinking that the 1st would be Saturday, because we place the two days business together, and enter them on the report the same day. I dated it the 1st. When I came to look at the calendar I knew that the 1st was Sunday, and Monday was the 2d, and if you will see that by placing the 1st with the Saturday's business would put one day of June in May's business, consequently I altered the date afterwards.

Q. Well, it is your work, and Mr. Beecher, or nobody representing him, had anything to do with it? A. I didn't know that message was there until I looked for it; that is to say, I could tell by the record.

Q. As to putting that date in nobody requested you to do it at all? A. No, nobody.

Q. It was your own work, altogether? A. Altogether, and it is correct, without a doubt.

Mr. Hill—That is all.

Mr. Fullerton—That is all.

Mr. Hill—Gentlemen, you requested the other book, and I will give you this. [Handing a book to Mr. Beach.]

TESTIMONY OF MR. HORACE B. CLAFLIN.

Horace B. Claflin was next called by the defense and sworn. He testified as follows:

Mr. Tracy—You reside in Brooklyn, Mr. Claflin, I believe? A. Yes, Sir.

Q. How long have you resided in Brooklyn? A. I have been here about thirty years, Sir, I think. I have got a very bad cold, Sir; I can hardly make myself heard.

Mr. Tracy—I don't know as it is possible for Mr. Claflin to make himself understood.

Judge Neilson—You can repeat the answers—About thirty years, you say? A. About thirty years; yes, Sir.

Mr. Shearman—I will sit by Mr. Claflin and repeat the answers.

Mr. Tracy—What is your business, Mr. Claflin? A. I sell dry goods in New-York.

Q. How long have you been engaged in that business? A. About thirty years in New-York; some time before in Worcester, Mass.

Q. Do you know the defendant, Mr. Beecher? A. Yes, Sir; Mr. Beecher? yes, Sir.

Q. How long have you known him? A. I have known him since he came here, Sir.

Q. Are you a member of his congregation? A. Yes, Sir.

Q. And have been how long? A. Ever since he came here, Sir, or within a short time after he came.

Q. Do you know the plaintiff, Theodore Tilton? A. I know him a little, Sir.

Q. How long have you known him? A. I should think a much less time; perhaps half that time.

Q. Do you know Henry C. Bowen? A. Yes, Sir.

Q. How long have you known him? A. I have known him—I knew him five years before I came to New-York—about thirty-five years, probably.

PRELIMINARIES OF THE ARBITRATION.

Q. Were you present at a meeting at Mr. Moulton's house, where Mr. Tilton, Mr. Moulton and Mr. Samuel Wilkeson were present, in the Spring of 1872, where a settlement or arbitration was talked of between Bowen, Beecher and Tilton? A. Yes, Sir.

Q. What day of the week was it that you first met on that business? A. That was Sunday, Sir.

Q. Who went to Moulton's house with you, if any one? A. I think I went alone, Sir.

Q. Whom did you find there? A. I found Mr. Wilkeson, Mr. Tilton and Mr. Moulton.

Q. Had Mr. Wilkeson any papers there at that interview? A. Yes, Sir.

Q. What papers had he? A. Well, Sir, I don't—I don't know whether Mr. Wilkeson had the paper—a paper was shown me, a press copy, which seemed to have been talked over by the three parties before I got there; they called it a "Personal Statement."

Q. Do you mean that it was a press copy or a press proof? A. A press proof, Sir; a press proof it was.

Q. It was in print? A. It was in print, yes, Sir.

Q. Was it the paper that has been referred to on this trial as the press copy from *The Golden Age*? A. Yes, Sir.

Q. Called "A Personal Statement?" A. Yes, Sir.

Q. That is the one—subsequently embodied in the tripartite agreement? A. Yes, Sir.

Q. Do you know whether it was the same identical paper that they had that night, that was afterwards embodied in the tripartite agreement? A. It was not the same, Sir; it was the substance of that paper—it was considerably changed after that.

Q. Ah! he has misunderstood the question; I mean the printed matter; was the printed matter that they had there that night—do you know whether it was the same identical slip of paper that they had there that night that was afterwards pasted on and constituted a part of the tripartite agreement? A. That was the same one, or one exactly like it.

Q. Exactly like it—had Mr. Wilkeson any other paper there that night? A. He had a rough draft, if I remember right, Sir, of what was afterwards called the "Tripartite Agreement."

Q. Was that draft read over, in the presence of the parties, by Mr. Wilkeson that night? A. Yes, Sir; it was read over, and talked over for some time.

Q. At this time had you seen Mr. Bowen? A. No, Sir; I had not.

Judge Neilson—Had you seen him on that subject? [To Mr. Tracy.] You mean had he seen him on that subject?

The Witness—No, Sir.

Mr. Tracy—On that subject, I mean.

Mr. Shearman—He says no, Sir.

Q. What was the subject of conversation that night between yourself and Moulton, Tilton and Wilkeson? A. Well, Sir, the subject was the publication of this statement that Mr. Tilton threatened to make in the next *Golden Age*, unless Mr. Bowen—unless he got a settlement with Mr. Bowen.

Q. A settlement of what? A. Of contracts he had with Mr. Bowen, involving an agreement with him for *The Independent* and *Golden Age*.

Judge Neilson—You mean *The Union*, do you not? A. *The Christian Union*, yes, Sir—*The Brooklyn Union*.

Judge Neilson—*The Brooklyn Union*?

Mr. Tracy—*The Brooklyn Union* and *The Independent*? A. *The Brooklyn Union* and *The Independent*.

Q. Was any amount stated that Mr. Tilton claimed to be due on those contracts from Mr. Bowen that night? A. I don't remember, Sir, but I think Mr. Tilton said, if I remember right, there was seven, eight, or nine thousand dollars due him or something like that, I am not quite certain as to the amount.

Q. Was there anything said on the subject of the efforts which he had already taken to compel Mr. Bowen to pay that amount? A. Yes, Sir; he said he had tried—he had tried to get a settlement with Mr. Bowen—get the payment of his claims, very hard; I think he said he had commenced a suit.

Mr. Shearman—[Repeating.] "Yes, Sir; he said he had tried to get a settlement of his claims with Mr. Bowen very hard; I think he said he would commence a suit." I do not remember word for word. [To the witness.] I cannot take a great deal.

Q. What did he say he would do, if anything, unless Mr. Bowen did settle and pay him the amount due?

Mr. Beach—I think, Sir, that this is an exceptional way of examining the witness.

Judge Neilson—You should take the conversation, Mr. Tracy, I think, without any suggestion whatever.

Mr. Beach—Every question is leading.

Mr. Tracy—No, I beg your pardon; I differ with you there.

Judge Neilson—At any rate, he thinks this one is leading.

Mr. Tracy—That may be; I don't doubt he thinks so; I am quite willing to do that, but I had assumed from Mr. Clafin's condition that it would be hardly possible for him to go on and make a full narrative; he gets relief by answering questions in a shorter manner than he can statements.

Mr. Beach—Undoubtedly he does, when questions are put that he can answer yes or no.

Mr. Tracy—That is the best answer always to a question.

Judge Neilson—Well, do the best you can.

Mr. Tracy—If Mr. Clafin thinks he can go on and narrate what took place there that night, I have no objection. [To the witness.] Just go on and detail, in short passages, what Mr. Tilton said about Mr. Bowen's claim—his claim against Mr. Bowen, and about paying it, or what he would do if he did not pay it? A. Well, Sir, Mr. Tilton said he would publish the article, or should publish it in the next paper, unless he got a settlement with Mr. Bowen; the money was his due and he ought to have it and would have it. I told him I thought there was no occasion for such a publication, that Mr. Bowen would no doubt do what was right about it; that the publication could do him no good and it would be a great shame that such a thing should be made public. I said I would intercede for him with Mr. Bowen, and an arbitration had been talked of, and I thought Mr. Bowen would readily come into it. That seemed to be satisfactory to Mr. Bowen, and, in fact, to all present.

Mr. Beach—I move to strike out that answer.

The Witness—Mr. Tilton—

Mr. Beach—Wait one moment; I move to strike out that answer; it is no part of the conversation, or what was said.

Mr. Tracy—It is no part of an answer to any question, because it is part of a narrative.

Judge Neilson—Well, it is that it seemed to be satisfactory—that is the objection—an estimate by the witness, and so it is stricken out.

Mr. Tracy—Well, I suppose it is only another way of saying that it was satisfactory.

Mr. Beach—Well, we will judge whether it was satisfactory from what was said.

Judge Neilson—Whatever was said.

Mr. Tracy—What was said, Mr. Clafin, by Mr. Tilton or the others present about that being satisfactory? A. Well, I think the agreement was not completed—it was not put in complete form; Mr. Tilton and Mr. Moulton thought something of that kind, substantially that, would answer the purpose.

Q. Was there anything said, and if so, what, by anybody there that interview as to the effect of such a publication? A. Yes,

Sir, Mr.—It was talked about very fully by myself and Mr. Wilkeson.

Q. Well, what did you say about it? A. Well, Sir, I said it ought not to be published; that no possible good could come from it; it would be a great shame to publish such a scandal as that.

Q. What further was said either by yourself or Mr. Wilkeson or anyone else? A. Well, Sir, there was a great deal said; I don't remember exactly what, but generally in that tone; that is about the substance of the conversation.

Q. What, if anything, did Mr. Tilton say in answer to your statement that it would be a shame to have such a scandal? A. Well, he said he would publish it notwithstanding.

Q. What time in the evening did that interview break up, Mr. Clafin? A. I don't remember, Sir.

Q. Well, was it late in the evening? A. I think it was; I should think it was ten o'clock, perhaps.

Q. Did you see Mr. Bowen afterwards on this subject? Or before answering that question—when you said that you would see Mr. Bowen for Mr. Tilton, what did Mr. Tilton say to that?

Mr. Beach—What? There has no such thing been said.

Judge Neilson. When he said he would see Mr. Bowen?

The Witness—Yes, Sir.

Mr. Tracy—What did you say, Mr. Clafin, on the subject of your seeing Mr. Bowen? A. I said that I would intercede with him, or with Mr. Bowen for him.

Mr. Tracy—That is what I understood the witness to say.

Mr. Shearman—Oh, yes, he said it.

#### MR. CLAFIN'S MEDIATION.

Mr. Tracy—Now, did you see Mr. Bowen on the subject of the settlement of this claim? A. I did, Sir; I don't know whether we had a meeting, Sir, a day or two afterwards.

Mr. Shearman [Repeating]—"I did, Sir—I don't remember—we had a meeting a day or two after."

The Witness—I don't remember whether I saw Mr. Bowen before the next meeting, but I think I did.

Q. Did you agree, before parting on that Sunday, to meet again? A. Yes, Sir.

Q. When were you to meet again?

Mr. Shearman—General, give me a chance. [Mr. Tracy having put the question before Mr. Shearman could repeat the last answer.]

Mr. Tracy—Excuse me.

The Witness—We were to meet Tuesday night.

Q. And you think you saw Mr. Bowen before the Tuesday night? A. I think I saw him, Sir—

Q. Do you remember whether or not—

Mr. Shearman—Wait a moment; he has not finished.

The Witness—I think I saw him the next day or the next evening.

Q. Do you remember whether or not you had with you the personal statement, this press proof? A. When I went to Mr. Bowen's, Sir, I had; I showed him that.

Q. What did you say to him?

Mr. Beach—Objected to.



Mr. Tracy—I submit that that is admissible; he had agreed to intercede with Mr. Bowen for Mr. Tilton.

Judge Neilson—I think that point would be covered by asking him if he did intercede—take a general answer; you cannot take a prolonged conversation in the absence of the party.

Mr. Tracy—Well, I will accept the suggestion of the Court. Did you intercede with Mr. Bowen for Mr. Tilton? A. I did, Sir.

Q. Did you meet the parties again on Tuesday night. A. I did.

Q. Who was present on the Tuesday evening? A. There were Mr. Moulton, Mr. Tilton, Mr. Wilkeson and myself.

Q. What paper had Mr. Wilkeson with him that night, if any? A. Mr. Wilkeson had the paper I have spoken of before engrossed and made complete, as they call it; that paper was read over and discussed for a considerable time. Finally Mr. Tilton said it was satisfactory, and he would sign it, and he was—in fact he was about to sign it but I suggested to him that he had better—it had better be left until Mr. Bowen had signed it; Mr. Bowen was the first mentioned in the paper. I said there was great propriety in Mr. Bowen signing first, and that I should tell Mr. Bowen, in carrying him the paper that if he would sign it, that I knew Mr. Tilton and Mr. Beecher would sign it.

Mr. Shearman [Repeating]—I should tell Mr. Bowen, when I carried him the paper, that if he would sign it that I knew Mr. Tilton and Mr. Beecher would sign it.

Q. What further was said? A. Well, Mr. Bowen didn't object to the paper much—

Mr. Beach—Wait one moment; I move to strike that out.

Mr. Tracy—Was there anything further—

Mr. Beach—Wait a moment.

Judge Neilson—Yes.

Mr. Tracy—Was there anything further said that night between yourself and Mr. Wilkeson, and Moulton and Tilton there before you went to see Mr. Bowen? A. There was; yes, Sir; there was a good deal said; there was a general conversation, we talked I suppose two hours—I don't know.

Q. What was said, if anything, by you on the subject of Mr. Bowen's consent to an arbitration? A. I said Mr. Bowen—I thought Mr. Bowen would consent to an arbitration, and Mr. Tilton differed with me a little about that, if I remember right—did not think he would.

Q. Go on; state anything further that you recollect that was said there before you went to see Mr. Bowen? A. I think I have given you, Sir, the substance of what was said; there was a good deal of talk there; the idea was that I was to see Mr. Bowen.

Mr. Beach—Oh! well, I object to that.

The Witness—And get him to consent to an arbitration if I could.

Mr. Beach—Wait a moment; I object to that—he can tell what was said.

Mr. Tracy—What was said on the subject of—

Mr. Beach—I move to strike out that.

Judge Neilson—Yes; now your question.

Mr. Tracy—What was said, if anything, on the subject of

your taking the paper to Mr. Bowen and presenting it to him? A. Well, Sir, I might have—I probably assigned some reasons why I supposed Mr. Bowen would sign it; I said he ought to sign it, it was such a paper as any three Christian men ought to sign. I believed that the quarrel had been gotten up between them on these matters of newspapers, and that there had been a good deal of misunderstanding, and that they ought to be peaceable—signing that paper and keeping it in good faith, what they promised to do, I thought it would be a very excellent thing.

Mr. Shearman—[Repeating]: "Signing that paper and keeping it, what they promised to do, I thought would be a very excellent thing."

Q. Was any reference made by you in that conversation to the fact that Mr. Bowen, being the owner of two papers, could not afford to have such a scandal as that publication would make? A. Yes, Sir; I remember urging that as one of the reasons; I said Mr. Bowen had two newspapers on hand—that he could not afford it.

Q. Could not afford what? A. To publish such an article, or to have such an article as that published.

Q. Was any reply made to that, and, if so, by whom? A. Well, I think Mr. Moulton and Mr. Tilton talked about that; they were very uncertain as to whether Mr. Bowen would do anything; they didn't believe in it much.

Q. Anything said by them, or either of them, or by Mr. Wilkeson, as to the effect that such a publication would be likely to have on Mr. Bowen's business? A. I said I thought it would injure him—injure the papers, and I think they all assented to that; I believe they all—

Mr. Shearman [repeating]: "I said I thought it would injure the papers, and they all assented to that."

Mr. Beach—"I think they all assented to—"

Mr. Shearman—Yes; "and I think they all assented to that."

Q. Well did you take that "Tripartite Agreement" to Mr. Bowen that night? A. I did, Sir; I think I took it that night.

Q. Did you return to this meeting after seeing Mr. Bowen on that night? A. Yes, Sir.

Q. What report did you make to them as to Mr. Bowen's disposition about settling this claim? A. Well, I said Mr. Bowen did not object to signing the paper, decidedly object; but he said he would like to read it over again after I left, and he would like to think of it a little. I told him there was great impropriety in his thinking of it, and I went—I talked with Mr. Bowen some little time.

Mr. Beach—Never mind what you talked with Bowen.

Mr. Tracy—Well, what did you say to them on returning about what you thought Mr. Bowen would do? A. I said I thought Mr. Bowen would sign the paper; and Mr. Wilkeson said that I had made a great mistake, if I remember right, in not getting him to sign it. I think it was Wilkeson said that; either Wilkeson or Tilton said that, that I should not have left it. I said there was no reason why I should not leave it—why Bowen should not think of it—take his time to consider of it.

Q. What was said about an arbitration, about arbitrating the claim? A. It was agreed—it was—

Mr. Beach—Just repeat that, "it was—"

Mr. Shearman—"It was agreed."

The Witness—I think Mr. Tilton or Mr. Moulton proposed Mr. Charles Storrs as one of the arbitrators, and then another party was talked of as the third, and by, I don't exactly know whose suggestion, but by general consent, Mr. James Freeland was agreed upon—Mr. James Freeland—as the third man.

Q. At what meeting, and at what stage of the meeting, if you remember, Mr. Claflin, was Mr. Freeland's name mentioned as one of the arbitrators? A. I think it was that evening, Sir.

Q. Tuesday night? A. Yes, Sir.

Q. Do you know whether it was before or after you had seen Mr. Bowen? A. I think I had talked with Mr. Bowen about Freeland before.

Q. And were the names of the three arbitrators agreed upon on Tuesday night?

Mr. Beach—Who between?

Mr. Tracy—Well, I will find out—after I find whether they were agreed upon I will ask.

Mr. Beach—Well, Sir, I object to the question.

Mr. Tracy—What is the objection?

Mr. Beach—The objection is that it does not call for an agreement between the parties, who were parties to this action, or parties to that claim.

Mr. Tracy—I don't care; if Mr. Tilton was present that is enough.

Mr. Fullerton—But it is not proper to ask if it was agreed upon; that we will judge of when we hear what was said.

Judge Neilson—Well.

Mr. Tracy—Well, were the three names selected that night?

Mr. Beach—Selected where?

Mr. Tracy—At this meeting at Moulton's house between Mr. Wilkeson, Mr. Moulton, Mr. Tilton and the witness? A. Yes, Sir.

Mr. Tracy—That is the interview I am inquiring of and no other. Was the time of the meeting of the arbitrators agreed upon that night? A. I think it was, Sir.

Q. Where were you to meet? A. At the same place; we were at Moulton's study, Sir, and we were to meet at the same place.

Mr. Tracy—It is after 4 o'clock, your Honor, and trusting that the witness will be better in the morning, I propose that we now adjourn.

The Court thereupon adjourned until 11 o'clock on Tuesday morning.

## FIFTY-FOURTH DAY'S PROCEEDINGS.

### THE TRIPARTITE AGREEMENT AGAIN.

TESTIMONY OF H. B. CLAFLIN, LOUISA J. WROEGER, MARY C. JOSEPHS, AND CHARLES STORRS—MORE PROOF OFFERED OF MR. BEECHER'S ABSENCE ON THE MORNING OF JUNE 2, 1873—MR. TILTON'S DETERMINATION TO "SMASH" HIS WIFE AND MR. BEECHER.

TUESDAY, March 30, 1875.

H. B. Claflin occupied the whole of the morning session to-day, chiefly in reciting for the second time, on the cross-examination, the story of the "Tripartite Agreement," the facts of which have already been made familiar by Mr. Wilkeson's testimony. Mr. Claflin still suffered from a severe cold, and Mr. Shearman interpreted his whispers until near the close of the session, when it was found that continuous talking had half cured Mr. Claflin, and his voice grew as strong as that of Mr. Shearman.

The matter elicited on the examination of Mr. Claflin was not new or curious. The most interesting fact brought out was that the first condition of the "Tripartite Covenant" was that all the papers bearing on the scandal were to be destroyed. This was not merely the first-named of the conditions, but the chief of all considerations. It did not apply merely to Mr. Tilton's letter of Jan. 1, 1871, quoting Mr. Bowen's charges against Mr. Beecher, but the letter of apology and other documents had been named and were to be included. Mr. Bowen insisted on having back his Woodstock letter. Another curious point in Mr. Claflin's evidence was the statement that when asked to subscribe for the establishment of *The Golden Age* he was told from Mr. Tilton to consult Mr. Beecher before refusing. On consulting Mr. Beecher the latter proved indifferent and laughed at the idea of his advising Mr. Claflin on a mere matter of business. Mr. Claflin was asked if he had ever denounced Mr. Tilton as a blackmailer, but the counsel for the plaintiff objected. The cross-examination of Mr. Claflin by Mr. Fullerton was of a searching character and evidently annoyed the witness. He took the first fair opportunity to hit back at Mr. Fullerton, and in so doing knocked down the whole array of lawyers on both sides. He had been asked how long it took to arrange the terms of the "Tripartite Agreement." "Not long," answered Mr. Claflin, "they stated their case in person—they were their own lawyers, and got

through quick." The hit was so palpable and the retort so fair, under the circumstances, that all joined in the first hearty laugh of the week.

The afternoon session opened with some additional testimony about Mr. Beecher's telegram to Peekskill on June 2, 1878. The defense completed their line of evidence on this point by tracing the dispatch from Brooklyn to the New-York office, and thence to the telegraph office in Peekskill. Miss Louisa J. Wroeger, an operator in the New-York office, identified a copy of the telegram as one of those which she had received from Brooklyn on that day at 8:58 a. m. She also explained the various marks on it by which she could fix its date and the time of its reception. Miss Mary C. Josephs, an operator at the Peekskill office, testified to having received the telegram at Peekskill. The plaintiff's counsel made no efforts to impair the effect of the testimony of these witnesses by cross-examining them.

George F. Williams of *The Herald* was called, and the defendant's counsel sought to show by him that Mr. Tilton had been engaged in the circulation of the Woodhull scandal, and had allowed proofs of the article containing it to be furnished to the newspapers of the city. The evidence was ruled out, and Mr. Williams left the stand without testifying.

Mr. Charles Storrs, the next witness, gave his account of the discussions between Mr. Tilton and his friends concerning the "Tripartite Covenant" and the arbitration of Mr. Tilton's claims against Mr. Bowen. He corroborated Mr. Claflin's testimony in respect to the agreement that the injurious papers should be destroyed, and related a conversation between Mr. Moulton and himself on that subject, after the arbitration, when Mr. Moulton, in answer to his inquiries said, with a laugh, "O yes; I have burned the papers—that is, Mr. Beecher thinks I have. But if I were to do that, what would Theodore do if any trouble should arise?" It appeared by Mr. Storrs's testimony that he had been on speaking terms with the plaintiff, and had conversed with him at various times during the scandal excitement last Summer. In July Mr. Tilton told the witness that Mrs. Tilton had left him, and added that he (Mr. Tilton) now "felt that the time had come for him to smash his wife and Mr. Beecher." Mr. Storrs also testified that Mr. Moulton had sent for him to come to see him at his house, and on his calling there Mr. Moulton had asked the witness to tell his brother not to sign the report of the

Church Committee, and said that Mr. Beecher was guilty and had confessed his adultery, and he (Mr. Moulton) was going to drive Mr. Beecher from Brooklyn. Up to this stage of the proceedings after recess, the evidence had been given with few objections from the plaintiff's counsel, and no arguments of any length. The defense now made an effort to contradict by this witness Mr. Moulton's testimony on cross-examination. Mr. Storrs was asked, "Did Mr. Moulton say Mr. Beecher is a liar and a libertine?" The witness replied, "He said that in substance." The plaintiff's counsel moved to strike out the answer. Mr. Tracy asked that the matter be left open till the next day, when they would cite authorities to show that they had a right to contradict a witness by showing what he said in substance if they could not give his original words. Mr. Fullerton made the point that the cross-examination of Mr. Moulton on this subject was on his exact words alone, and that he was not interrogated on the substance of his language, and, therefore, could not be contradicted by evidence of what it was. Mr. Tracy, amid a murmur of applause, read from the volume report of the trial a question put to Mr. Moulton as to the substance of his words about Mr. Beecher. Mr. Beach seized the book and instantly declared with some heat that the question which Gen. Tracy had read was on a different subject, and that his opponent had acted disingenuously in reading. Mr. Hill came to Mr. Tracy's assistance and declared that the citation was correct, but while he was speaking Mr. Tracy discovered his mistake and promptly acknowledged it, and Mr. Moulton's testimony remained unimpeached by this witness at least. Mr. Storrs's examination was not concluded at the adjournment of the court.

#### THE PROCEEDINGS—VERBATIM.

##### A SICK WITNESS TO BE EXAMINED IN BED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Nelson—Are you ready to proceed, Mr. Tracy?

Mr. Tracy—Yes, Sir.

Mr. Evans—If your Honor please, we regret to have occasion to state to the Court that a witness whom we regard as of importance, and whose attendance we have expected as a man ordinarily in good health, is very sick, and although we have delayed an application until we should be quite sure that we should be disappointed in our hope that he would be well enough to attend, we now feel that his own safety may require him to leave

the city, even. That is Mr. Henry M. Cleveland, who is a witness of a good deal of importance, and who is seriously ill, so that he could not attend Court without risk to his life, probably, and yet could sustain an examination where he could have the support of a couch or a bed. We desire that some arrangement should be made, as most acceptable to your Honor, and to our friends here, of least inconvenience to all concerned, for taking his testimony.

Judge Neilson—When is he expected to leave?

Mr. Evarts—Well, he will stay—I don't think he is able to leave now, but we should like to take his testimony as soon as possible.

Judge Neilson—Whatever may be agreeable to the counsel I will consent to. You might take an order to examine him; I will attend if desired.

Mr. Evarts—Yes, Sir; it is thought very desirable that your Honor should attend, and we will consult our friends if they will allow us, as to convenience to them.

Judge Neilson—Perhaps some afternoon at 4 o'clock would be agreeable, or some morning at 9.

Mr. Evarts—The afternoon is the only part of the day that his health would permit; in the morning he is too ill.

Judge Neilson—Any afternoon that you will agree upon, at 4 o'clock, I will go with you.

Mr. Fullerton—Well, Sir, if they could postpone it until Saturday it would be more agreeable to us.

Mr. Evarts—That would undoubtedly be possible, excepting, as I have stated, we shall have to name a somewhat late hour; probably not so late as 4, but as late as 2 we should have to name, on account of his health. His suffering is of a somewhat peculiar nature, and through the early part of the day he is quite sick.

Mr. Fullerton—Perhaps it would be better to leave the day and the hour of the day open for the present, and see what arrangement we can make.

Judge Neilson—Very well, Sir.

Mr. Fullerton—But Saturday would be more convenient, as it now strikes me, than any other day.

Mr. Evarts—It may take more than one day within his strength, I mean; he is very seriously sick, and we should like, therefore, to begin next Saturday if our friends think it possible to do so, and your Honor thinks so.

Mr. Fullerton—We may fix upon an earlier day after consultation.

Mr. Tracy—Mr. Claflin may take the stand.

#### HORACE B. CLAFLIN RECALLED.

Mr. Tracy—Mr. Claflin is still laboring under his severe indisposition, your Honor, and I shall have to ask Mr. Shearman to repeat his answers to-day as he did yesterday.

Judge Neilson—Yes, that is satisfactory.

By Mr. Tracy—You said last evening, Mr. Claflin, that you were to meet—the arbitrators were to meet at Mr.

Moulton's study. Did that meeting take place? A. Yes, Sir.

Q. Who were the arbitrators? A. Mr. James Freeland, Mr. Charles Storrs, and myself.

Q. Who of the parties were present at that arbitration? A. They were all present, Sir.

Q. Was Mr. Beecher present? A. No, Sir; I thought you spoke of the arbitrators, Sir.

Q. Who of the parties to the arbitration were present? A. Mr. Tilton and Mr. Bowen.

Q. Was Mr. Moulton also present? A. Yes, Sir.

#### THE ARBITRATION.

Q. State how the arbitration proceeded. A. Well, Sir, Mr. Tilton made a statement of his case—quite a long argument, perhaps thirty minutes—in which he stated his grievances and went over the whole ground with Mr. Bowen. After he had finished, Mr. Bowen stated his case, occupying much less time; if I remember aright, but a few minutes.

Q. What then was done? A. After they had got through, they left, and we took the matter into consideration.

A. Well, did you agree upon an award that night? A. In about half an hour we made up our minds what it should be.

Q. After having agreed upon the award, what was done? A. Well, Sir, we sent for the parties and announced to them what we had agreed upon.

Q. What persons were in your presence at the time you announced the award you had agreed upon? A. Mr. Bowen, Mr. Tilton, and Mr. Moulton.

Q. Who of the arbitrators made the announcement? A. I think I did, Sir.

Q. What did you state you had determined upon? A. I said we had made up our minds that they should first burn all the papers connected with the scandal, and that Mr. Bowen should pay Mr. Tilton \$7,000 and they should sign the covenant, the Tripartite Agreement, as we called it.

Q. Were any of the papers that were to be burned mentioned by you particularly? A. There was a talk, Sir, about a letter of apology, I think, and the letter was spoken of, prepared—which was then in print—prepared by Mr. Tilton, of the 1st of January, 1871.

Mr. Shearman—[Repeating]—And the letter was spoken of, which was then in print, prepared by Mr. Tilton on the 1st of January, 1871.

Q. Well, you say those letters were mentioned particularly—those papers? A. Those, Sir, and all the papers connected with the scandal were to be destroyed.

Q. Well, after you had announced your award, what was said by the parties—Mr. Tilton or Mr. Bowen, or either of them? A. Well, Sir, they—Mr. Tilton and Mr. Moulton—agreed to it; they seemed satisfied with the the sum awarded, and said they would acquiesce in the decision; and, as to burning the papers, Mr. Bowen said

he had no papers, but he would like the return of the Woodstock letter, which was agreed to.

Q. What else was said or done—anything said by Mr. Tilton about his signing the Tripartite Agreement? A. Well, after the award was made I brought out the paper for them to sign. Mr. Tilton said: "I want to alter that paper." "Why," I said, "Mr. Tilton, you perfectly understand that paper; it is just what you have agreed to." He acquiesced in that, but said, notwithstanding that, that he insisted upon altering it.

Q. Go on. A. Well, I asked him what alterations he desired to make, and he said he would soon—he took his pencil and said he would soon indicate what they were, and he interlined the paper, and I think he wrote—I think he put some part of it to some extract on another paper which was attached to it by—it was either pinned to it, or a seal, or something—it was some way attached to the agreement, so he understood how it read.

Mr. Shearman [Repeating]—Some way attached to the agreement so that we understood how it read.

Q. Well, what then? A. Well, the paper was then—the paper was then satisfactory; I asked Mr. Moulton and Mr. Tilton and Mr. Bowen—I believe they all said they were satisfied.

Q. What then occurred? A. There was considerable talk; it was prolonged for some time, and I took the paper and I carried it to Sam Wilkeson, as he had drafted the paper, to make a clean copy.

#### MR. BOWEN GIVES HIS CHECK AT THE ARBITRATION.

Q. Well, before proceeding to that, Mr. Claflin, did Mr. Bowen give his check to Mr. Tilton that night? A. Oh! Mr. Bowen gave his check on the spot, Sir.

Q. I present "Exhibit D, 108;" look at that check; is that the check given by Mr. Bowen on that occasion to Mr. Tilton? A. I don't know whether I saw the check, Sir, but I know that it was given; Mr. Bowen was very prompt about it, and he turned to me and said he didn't know how his—what the state of his exchequer was; he asked me if I would lend him the money, and I told him I would with pleasure.

Q. Well, what did he do then; did he fill out the check? A. He filled out the check immediately; it was done within a very short time—five minutes.

Q. What was done with the check after he filled it out? A. I don't know, Sir; I did not seem him pass it to Mr. Moulton or Mr. Tilton—I don't remember that I did; I presume it was handed.

Mr. Beach—"I presume" what?

Mr. Shearman [repeating]—"I presume it was handed!"

Mr. Tracy—Did you observe the date of the check? A. Yes, Sir; April 4, I think.

Q. Does that enable you to fix the date of this arbitra-

tion? A. Yes, Sir; it was the 3d or 4th, it must have been; I presume it was the 3d, for I think, as it was after bank hours, the presumption would be that that check was dated the next day.

Q. How soon after Mr. Tilton's altering the agreement, and saying it was satisfactory, did Mr. Bowen make out this check? A. Oh, it was done immediately, Sir; the check part of it. Mr. Bowen showed very great promptness and willingness in completing the arrangement.

Q. State whether or not the making out of this check was the last act that was done that night in closing the arbitration? A. I think it was, Sir; it was the last thing of any importance.

#### MR. CLAFLIN THE CUSTODIAN OF THE COVENANT.

Q. I understand you to say that you took the Tripartite Agreement away with you that night, and took it to Mr. Wilkeson? A. I took it to Mr. Wilkeson; yes, Sir.

Q. Did you take it that night or the next day? A. I took it away that night; I think I carried it with me away.

Q. When did you take it to Mr. Wilkeson? A. I took it the next day—probably the next day, I am not quite certain about it, but I presume I took it the next morning.

Q. Did you afterward receive a clean copy, or an engrossed copy of this Tripartite Agreement from Mr. Wilkeson? A. Yes, Sir.

Q. What did you do with it? A. I have forgotten who saw the paper first.

Q. You mean which of the parties saw it first? A. Yes, Sir; I think I carried the paper to Mr. Charles Storrs—that is my impression—to go to Mr. —, to take to Mr. Bowen, and that the paper was returned to me, if it did go to Mr. Storrs, without any signature, and I afterwards took it to Mr. Bowen, and Mr. Bowen signed it.

Q. What then became of it? A. I have forgotten who took it next, Sir, but I think Mr. Storrs took it.

Q. Well, was it afterwards returned to you with Mr. Tilton's signature? A. Yes, Sir.

Q. What did you then do with it? A. I took it to Mr. Beecher.

Q. Well? A. And he signed it.

Q. What then became of it? A. Then I kept the paper.

Q. You have been the custodian of the paper since, have you? A. Yes, Sir.

#### MR. CLAFLIN SOLICITED TO SUBSCRIBE FOR GOLDEN AGE STOCK.

Q. Now, Mr. Claflin, I desire to call your attention to a conversation between yourself and Mr. Southwick, in the early part of 1871, about your subscribing to the stock of *The Golden Age*; did you have a conversation with Mr. Southwick on that subject? A. Yes, Sir, I had.

Q. Was anything said to you by him about your consulting Mr. Beecher—

Mr. Fullerton—That is objected to.

Mr. Tracy [continuing the question]—as to whether you had better subscribe or not?

Mr. Beach—That is objected to.

Mr. Tracy—We consider that very material, your Honor, and admissible. The evidence of Mr. Southwick shows that Mr. Tilton requested him to solicit Mr. Claflin to subscribe to the stock of *The Golden Age*, and on Mr. Southwick's expression of doubt whether Mr. Claflin would do so, Mr. Tilton says to him, "You have Mr. Claflin consult Mr. Beecher as to whether he had better subscribe to the stock of *The Golden Age*, and Mr. Beecher will advise him to subscribe." "Well," says Southwick, "I will say so to Mr. Claflin." He says he did say so to Mr. Claflin, and that Mr. Claflin reported to him that he had consulted Mr. Beecher, and Mr. Beecher declined so to advise, and Mr. Southwick reported that fact to Mr. Tilton. Now, I ask the witness whether he did, as a matter of fact, apply to Mr. Beecher for advice, and what advice he received on that subject.

Judge Neilson—You cannot take the conversation. You can take the simple fact that, after conversation with Mr. Southwick, he did consider the question himself and did confer with Mr. Beecher, and that Mr. Beecher declined to advise him, if that was so. You can take the result simply.

Mr. Tracy—Yes, Sir; I will take the result of the conversation; I am satisfied with that.

Mr. Tracy—Did you have such a conversation with Mr. Southwick? A. I did, Sir.

Q. Did you, in pursuance of that conversation, apply to Mr. Beecher to know whether you should take stock in *The Golden Age*? A. I did.

Q. And you had a conversation with him on that subject? Yes, Sir.

Q. Did he, or did he not, advise you to so subscribe?

Mr. Beach—We object to that question, and take exception to its admission.

Judge Neilson—I think we will take it.

Mr. Shearman—[To the Witness]. You can answer. Did he, or did he not, so advise you?

Judge Neilson—Do not tell anything that was said except yes or no.

The Witness—Shall I tell what was said, Sir?

Judge Neilson—No; state the result.

The Witness—Yes, Sir. Well, he told me—

Mr. Fullerton—No, Sir.

The Witness—Well, he was utterly indifferent about it. Said he, "You know more about business matters than I do; it is purely a business matter; I am incompetent to advise you on any business matter."

Judge Neilson—Well, he did not advise? A. No, Sir; he did not.

Mr. Tracy—Did you so report to Mr. Southwick? A. I did.

Q. Mr. Claflin, do you remember the publication of what is known as the Woodhull scandal? A. Yes, Sir; I remember it.

#### THE SCHEME FOR A NEW NEWSPAPER

Q. Do you recollect the date of the publication? A. I think that was in—it was about the last of October, 1872, I think, Sir, just before I came from the country.

Q. In the December following, did you have a conversation with Frank B. Carpenter and others concerning a newspaper enterprise? A. Yes, Sir.

Q. Who applied to you touching that enterprise? A. I think Mr. Carpenter.

Q. Did you, in pursuance of his request, have a meeting with any gentlemen in Brooklyn, where that subject was discussed? A. Yes, Sir.

Q. Where was that meeting? A. That meeting was at Mr. Bowen's.

Q. When was it? A. That was—I think it was in December, 1872, Sir. It was—

Q. The fore part or the latter part of December? A. I should think it was the last of December. It was after the death of Mr. Greeley, I think, Sir.

Q. Who was present at that meeting at Mr. Bowen's house. A. Mr. Carpenter, Mr. Charles Storrs, Mr. Bowen and myself.

Q. How long had you known Charles Storrs? A. I had not known him very much, Sir, until about that time; until within a year or so of that time.

Q. As a merchant in New York residing in Brooklyn? A. Yes, Sir, I knew of him; I had not met him personally.

Q. Did you at that time know him as a friend of Mr. Tilton's? A. Well, I thought he was.

Q. And had you been for a long time well known as a friend of Mr. Beecher's? A. I suppose I had, Sir. I attended his church for a good while.

Q. How long? how late was that interview at Mr. Bowen's house protracted between you four gentlemen on the subject of a newspaper? A. It was quite a long interview, Sir: it lasted until late in the evening.

Q. What was the scheme that was canvassed and considered?

Mr. Beach—That is objected to.

Mr. Tracy—I expect, your Honor, to bring this conversation home to Mr. Tilton afterward. It is a mere question of the order of proof.

Judge Neilson—I think you have it sufficiently. It was the scheme of starting a paper; that is the subject that was considered.

Mr. Tracy—Was it the scheme of starting a new paper? A. Yes, Sir.

Q. Who were to be the parties to be interested in that paper?

Mr. Beach—I object to that.

Mr. Tracy—I do not ask what was the scheme; I ask who were to be the parties to be interested in it.

Mr. Beach—That he can only know from what was said.

Judge Neilson—Yes; we cannot take it. It does not yet appear that Mr. Johnson had any authority to speak for Mr. Tilton.

Mr. Shearman—Carpenter, your Honor, not Johnson.

Mr. Tracy—I shall show the conversation brought home to Mr. Tilton.

Judge Neilson—Very well. I think we cannot take it at present.

Mr. Tracy—After that conversation—I will ask you this fact, did you refuse to subscribe for the enterprise?

Mr. Beach—That is objected to.

Mr. Tracy—That is a fact.

Mr. Beach—Well, Sir, it is a fact that grows out of—

Judge Neilson—You can ask him whether he did or did not subscribe. His refusing, I think, is—

Q. Did you subscribe for that enterprise? A. No, Sir; I did not.

Q. Did you favor the enterprise?

Mr. Beach—We object to that.

Judge Neilson—That is immaterial.

Q. After this conversation, did you see Mr. Tilton? A. I don't remember, Sir, whether I did or not. Do you mean in relation to this enterprise?

Q. No. I ask you—I call your attention to a conversation where the subject of blackmail was talked about between yourself and Mr. Tilton—did you have such a conversation? A. Oh! Mr. Tilton came to my house one night, and said he had heard that I had called him a blackmailer; I asked him who told him so; he did not tell me who told him so; the conversation turned upon his relations with Mr. Beecher—

Q. Now, Sir, had you at any time before that called upon Mr. Tilton—

Mr. Shearman—Mr. Claflin had not finished.

Mr. Tracy—Ah, excuse me.

Mr. Shearman [to the witness]—Had you finished?

The Witness—Yes, Sir.

Q. Had you at any time before that called Mr. Tilton a blackmailer?

Mr. Fullerton—That is objected to, Sir.

Judge Neilson—We can't take that.

Mr. Tracy—I submit, your Honor, that that is admissible and material, for this reason, Mr. Tilton comes to Mr. Claflin and says: "I understand you have called me a blackmailer"—

Judge Neilson—Well.

Mr. Tracy—Now, I propose to show that in this conversation at Mr. Bowen's Mr. Claflin did say that Mr. Tilton was a blackmailer—

Judge Neilson—Well, you can give the conversation which occurred when Mr. Tilton was present.

Mr. Tracy—No, Mr. Tilton was not present, but the conversation had been repeated to him, and he comes and says to Mr. Claflin, "I understand you have called me a blackmailer." Now, I propose to show by Mr. Claflin that he had called him a blackmailer, and that the only conversation in which he had denounced him as a blackmailer was that conversation at Mr. Bowen's house, when this scheme of starting a newspaper was discussed.

Judge Neilson—It is a previous, independent conversation, where Mr. Tilton was not present, and I don't think we can take it. If the plaintiff came to this witness and inquired whether he had charged him with being a blackmailer and the witness made answer and avowed he had, that would be competent; but the independent fact lying beyond is immaterial.

Mr. Tracy—I will ask the question, and take your Honor's ruling on the subject. Will the stenographer please read the question, so that I may see whether it is in form?

THE TRIBUNE stenographer read the question as follows:

"Now, Sir, had you at any time before that called Mr. Tilton a blackmailer?"

Judge Neilson—That is ruled out, unless it was in Mr. Tilton's presence.

Mr. Tracy—Your Honor will be so good as to note our exception.

Judge Neilson—Certainly, Sir.

Q. State whether or not you had at this conversation at Mr. Bowen's house called Mr. Tilton a blackmailer?

Judge Neilson—The same ruling.

Mr. Tracy—I submit, if your Honor please, that the fact of that conversation—that he came to Mr. Claflin and asked him that question shows that this conversation had been repeated by some one or other to Mr. Tilton.

Judge Neilson—That might be. It may have been repeated to him, but not adopted by him.

Mr. Tracy—Your Honor will please note our exception. I will put another question. [To the witness.] In that conversation did you understand Mr. Tilton as referring to the interview that you had had touching the newspaper scheme at Mr. Bowen's house?

Mr. Fullerton—That is objected to.

Judge Neilson—That is ruled out, because we must take the understanding from what was said.

Mr. Tracy—Inasmuch as I could not get that—

Judge Neilson—You are at liberty to give the conversation Mr. Tilton had.

Mr. Tracy—That is all, I believe, on that subject. [To plaintiff's counsel.] You may examine the witness.

## CROSS-EXAMINATION OF HORACE B. CLAF-LIN.

Mr. Fullerton—Mr. Clafin, when do I understand you to say the first meeting was had between you and any other person in regard to this matter? A. The agreement, Sir, do you mean—this Tripartite Agreement?

Q. The first meeting that you had with any person with regard to this subject matter of which you spoke yesterday? A. I think the first meeting I had was at Mr. Moulton's.

Q. On what day of the month was it? A. It must have been one of the last days of March.

Q. Of what year? A. 1872.

Q. Now, will you name the persons who were present? A. Yes, Sir; they were Mr. Moulton, Mr. Tilton, Sam Wilkeson and myself.

Q. Mr. Bowen was not present then? A. No, Sir.

Q. At whose request did you attend at that meeting? A. I think Mr. Beecher asked me to go there, Sir; I am not quite certain, but before I went, I think Mr. Moulton sent for me or came around to the house. I think I was a little late, and they sent around for me; I am not certain about that.

Q. Had you seen Mr. Bowen before you went to that meeting? No, Sir.

Q. When was the next meeting between you and any of those gentlemen? A. The next meeting was a night or two after.

Q. Be particular, if you please, and state whether it was a night or two nights after. A. I think it was Tuesday night; I am not quite certain; I think it was Tuesday night. The first meeting was Sunday night, the second was Monday or Tuesday, I think it was Tuesday.

Q. Between those meetings did you see Mr. Bowen? A. That Sunday night I think likely I did, Sir.

Q. Is that as near as you can come to stating whether you actually saw him or not? A. Yes, Sir.

Q. You have no distinct recollection of having seen him? A. I am not positive whether I saw him before the next meeting; I think I did, however.

Q. It is merely an impression of yours? A. Yes, Sir.

Q. Now will you state what took place at the first meeting? A. Yes, Sir; at the first meeting Mr. Tilton showed me the press copy of the letter of 1871, called the "Personal Statement," which he said he would publish in the next *Golden Age* unless he got satisfaction from Mr. Bowen in the way of a settlement.

Q. In whose presence was that said; I mean who were present besides yourself? A. These gentlemen that I have mentioned—they were all present.

Q. Go on with the narration now as to what occurred at that meeting? A. Well, Sir, when I saw this article that he proposed publishing, I said it would be a very great wrong to all concerned to publish that, it could do him no good and might do much harm; it was a great scandal to be published to the world.

Q. I have asked you for the whole of what occurred at that interview, and when you get through I will put another question? A. Further than that Mr. Wilkeson proposed that they sign an agreement. I said I thought Mr. Bowen could be persuaded to pay Mr. Tilton—I told him so—what was his due, and Mr. Wilkeson said they must sign an agreement apiece. I told him I quite agreed with him, that it was quite time they had. Mr. Wilkeson produced a rough draft, if I remember aright, of such an agreement, and it was talked over for a long while, and it was finally concluded that if a settlement could be made with Mr. Bowen, that Mr. Tilton would sign it.

Q. No, I asked what was said, and not what was concluded. A. We only concluded from what was said—I had no other way to conclude except from what these gentlemen said.

Q. If you will tell us what was said, Mr. Clafin.

Mr. Shearman—One moment. I cannot talk to two at once.

Mr. Fullerton—You can keep quiet while I am talking.

Mr. Shearman—The witness said it was agreed they should sign it—that a settlement was had.

Mr. Tracy—I say that is an answer to the question.

Mr. Fullerton—I say it is not.

Judge Neilson—I think we will let it stand. You can repeat your question.

Mr. Fullerton—Is this witness to determine that there was an agreement there on that occasion?

Judge Neilson—No.

Mr. Fullerton—Well, he assumes to determine that important fact. I want him to tell us what occurred, and let the jury determine whether it amounted to the dignity of an agreement or not.

Judge Neilson—Well, the witness understands that now.

Mr. Tracy—If your Honor will pardon me—

Judge Neilson—I will let it stand, unless you insist on striking it out.

Mr. Tracy—Oh, I beg your pardon; I thought the ruling was the other way.

Judge Neilson—We will take the conversation.

Mr. Fullerton—Let his conclusion stand and take the conversation!

Judge Neilson—Yes.

Mr. Beach—We except to that ruling, if your Honor please.

Mr. Fullerton—I want you to state, Mr. Clafin, what was said by the parties at that interview, and let others determine whether it was an agreement or not. A. Mr. Tilton insisted all the way through that this publication would be made, and nothing could stop it except a settlement was made by Mr. Bowen. Mr. Bowen, he said, had treated him very badly in the discontinuance of this contract that had been made, and he was going to have satisfaction, and unless he had it he would publish that agreement.



Q. Publish that agreement? A. Publish that statement—"Personal Statement."

Q. Well? A. Well, Sir, there was considerable talk.

Q. That considerable talk is what I want. A. I cannot remember what it was; I could not give you the language; I could not of what I talked with my partner only yesterday on an important subject, but I know that that was the subject of the conversation.

Q. What you have now stated? A. Yes, Sir.

Q. And you have now stated all you can recollect? A. It was agreed that we should have a meeting the next evening.

Mr. Morris—No.

Mr. Fullerton—One moment.

Judge Neilson—That is a mere agreement.

Mr. Fullerton—Before you come to that I want to know whether you can relate all that you remember that took place between the parties in regard to the "Tripartite Agreement?" A. It was said by Mr. Wilkeson and myself that we had no doubt Mr. Bowen would come into an arrangement or a settlement in some way by arbitration, and that that being done it was understood that the papers that we were talking about, that Mr. Wilkeson had spoken of, should be burned.

Q. You are speaking now of the first meeting? A. Yes, Sir; Sunday night.

Q. If you remember anything else please state it? A. I think I have given you the substance of the conversation that night. It ran into the meeting of the next night very much.

Q. The conversation of the first night did not run into the meeting of the second night, did it? A. We proposed to continue the meeting the next night.

Q. Mr. Claflin, don't intermingle the two occasions. I want you to go on and state, until you have exhausted your memory, as to what occurred at the first meeting; leave the second meeting by itself. A. Yes, Sir. Well, Sir, I believe I have stated the substance of that meeting.

Q. A moment since you said that something was agreed upon there. Have you stated all that occurred there, and all that was said by any party to that meeting, from which you inferred there was an agreement? A. I spoke of an agreement alluding to the "Personal Statement." I correct myself there, Sir. When I spoke of his agreement I meant the "Personal Statement."

Q. You said, in effect, that something was agreed to in that conversation on the first meeting? A. Yes, Sir.

Q. Now have you stated all that was there said by any party there from which you inferred that something was agreed to? A. I said that Mr. Tilton and Mr. Moulton—

Mr. Fullerton—You are not answering my question.

The Witness—Won't you please give me the question again?

#### THE PAPER OFFERED BY MR. WILKESON.

Mr. Fullerton—Have you now stated all that occurred at that first meeting from which you in-

ferred something had been agreed to? A. Doubtless I have not, for the meeting lasted three or four hours; there was a great deal no doubt said that I have not told you, but I have given you the substance.

Q. Have you now stated all that you remember that occurred there from which you inferred an agreement had been made? A. I don't think of anything now, Sir.

Q. Very well; we will pass on. You have said that Mr. Wilkeson produced some paper that he had drawn up? A. Yes, Sir.

Q. Did he read it? A. Yes, Sir; I think he did.

Q. Was that the paper which you stated yesterday was satisfactory to all parties? A. Yes, Sir.

Q. Was that the paper which Mr. Tilton then proposed to sign? A. No, Sir; it was not.

Q. What paper, if any, did he propose to sign? A. A similar paper that had been made more complete.

Mr. Beach—No, no.

Mr. Fullerton—I am speaking of the first paper.

The Witness—No, Sir; he didn't speak of any paper that he was ready to sign that evening; he didn't propose to sign it; it was merely an agreement that seemed satisfactory. The next evening he spoke—

Mr. Fullerton—Now, don't get to the next meeting, I beg of you; you will get things mixed, if you don't keep quiet.

The Witness—Yes, Sir.

Mr. Fullerton—There was no proposition on his part to sign that paper on the first evening? A. It was not ready for signature.

Q. I don't ask you that; I want you to pay attention to my question. A. He expressed a willingness to sign a paper such as that, in effect; he was ready to sign it the next evening, which was finally agreed to; Mr. Tilton gave us the substance of that agreement as it was finally consummated—Mr. Wilkeson did; it was altered somewhat, but it was in substance the same paper.

Q. It is all irresponsible to my question, Mr. Claflin. Was there any proposition that Mr. Tilton should sign the paper which Mr. Wilkeson read at that first meeting? A. Yes, Sir.

Q. Who made that proposition? A. I don't know whether I did or Mr. Wilkeson; I think Mr. Wilkeson made it.

Q. What did Mr. Tilton say to that proposition? A. Mr. Tilton expressed his willingness to come into such an agreement as that; I don't know the language he used.

Q. What did he say to the proposition to sign that paper which Mr. Wilkeson read that night? A. I don't think it was proposed to sign the paper, for the paper was not ready for signature, as I remember.

Q. Did Mr. Tilton make any objection to any of the terms of the paper which Mr. Wilkeson read? A. I think he did propose to alter it, and I think it was altered.

Q. The first night? A. I think it was altered after Mr. Wilkeson produced it.

Q. Who made the alteration? A. I think Mr. Tilton made it, or suggested—I don't know whether he got it so far as to make it; I don't know that the paper was sufficiently complete to alter, but it was—

Q. Pray, Mr. Claflin, tell us whether any alterations were proposed or made that evening of that paper, as you remember? A. As I remember it, it was a rough draft of a paper.

Mr. Fullerton—That is not an answer to the question.

Mr. Tracy—He is proceeding to answer the question.

Mr. Fullerton—It is not an answer to my question.

Mr. Tracy—It is not an entire answer; he is beginning to answer it.

Mr. Fullerton—He begins wrong, then.

Judge Neilson [To Mr. Fullerton]—You had better repeat your question.

Mr. Fullerton—I ask you to tell me whether there were any alterations made to that paper there that evening by any one? A. Mr. Tilton, I think, made some suggestions as to what he would sign and what he would not, but the paper I don't think was sufficiently complete to really alter.

Q. Were any alterations suggested that night which were reduced to writing? A. I don't remember any, Sir, that night.

Q. Well, did they agree upon a form paper which would be satisfactory to Mr. Tilton? A. Yes, Sir.

Q. He stated that he would sign such a paper, if prepared? A. He said he would sign such a paper—a similar paper.

Q. A paper such as Mr. Wilkeson had prepared, with Mr. Tilton's amendments? A. Yes, sir; such a paper.

## THE SECOND MEETING ON THE ARBITRATION.

Q. Now, then, we come to the next meeting? A. Yes, Sir.

Q. That, you think, was on Tuesday evening? A. I think that was Tuesday.

Q. May it not have been on Monday? A. I think it was Tuesday.

Q. How positive are you upon that subject? A. Well, I am entirely positive.

Q. If it were not on Tuesday, then you think it was on Monday, do you not? A. It was within a day or two; it might have been Wednesday, possibly.

Q. Give us your best recollection upon the subject? A. My best recollection was Tuesday; I am almost certain it was Tuesday.

Q. If not Tuesday, then what do you think? Was it Monday or Tuesday? A. Well, I don't believe it was the next day after Sunday.

Q. Is that all that you can say upon that subject? A. Yes, Sir.

Q. And where did you meet, then, if it were Tuesday? A. We met at Mr. Moulton's study—the same place.

Q. And did Mr. Wilkeson produce the paper there in a perfect form? A. Yes, Sir.

Q. Embodying the suggestions of Mr. Tilton. A. Yes, Sir.

Q. Was it read over? A. Yes, Sir.

Q. By whom? A. Mr. Wilkeson I think read the paper.

Q. Now, in whose presence was that paper read? A. We were all present—these gentlemen mentioned—Mr. Moulton, Mr. Tilton, Mr. Wilkeson and myself.

Q. Mr. Bowen was not there? A. No, Sir, he was not there.

Q. When that paper was read over, what did Mr. Tilton say in regard to it? A. Mr. Tilton said he was satisfied with the paper and would sign it. Says he: "I will sign it five times or ten times," or something, "if Mr. Bowen will sign it once, but I don't believe Mr. Bowen will sign it."

Q. What else did he say in regard to signing it? A. Well, I said I thought Mr. Bowen would sign it. We still talked about it, and he thought he would not. There was considerable talk about it. Mr. Moulton was uncertain.

Q. Can you remember anything else now that Mr. Tilton said with respect to the signing of that paper, or anything that any one else said in regard to the signing of that paper at that second meeting? A. I think I assigned some reasons there, as they seemed quite certain he would not sign it. I assigned some reasons why I thought he would. I said Mr. Bowen had two newspapers—was the owner of two newspapers, and I thought it would be—the publication of this scandal that was threatened would injure him in his papers, and I thought, on the whole, Mr. Bowen would be disposed to do right, and that he would sign it.

Q. Mr. Claflin, I am asking you what was said at that second meeting in regard to Mr. Tilton signing that paper. Now, if you recollect anything else, I would be very much obliged to you if you would state it? A. I remember, Sir—the principal thing I remember about that is his readiness to sign it. He expressed an entire willingness to sign it; I think he took a pen to sign it.

Q. That is the point. A. I think he did.

Q. Now, tell me what he said when he expressed a willingness to sign it? A. Well, Sir, when he expressed a willingness to sign it, I think he took up his pen to sign it; I said to him: "Mr. Tilton, perhaps you had better not sign it now; I will take the paper to Mr. Bowen, and I shall tell Mr. Bowen that I am sure you and Mr. Beecher will sign it if he does; it is a sort of a peace offering all around, and I think it will be signed on the part of the whole of you."

Q. Now, what did Mr. Tilton say when he expressed a willingness to sign it, and took up a pen? A. Well, Sir, what I have said; he said he would sign it two or three times, or a dozen times, or twenty times, if Mr. Bowen would sign it once—I don't know how many times—quite emphatic.

Q. Did he say in substance "I will sign it, and I will sign it now half a dozen times if Mr. Bowen will sign it once?" A. Something like that.

Q. And on saying that he picked up the pen to execute his purpose? A. I think he did.

Q. Did you not restrain him from thus signing it? A. Yes, Sir; I said: "You had better not sign it."

Q. From what you observed don't you think he would have signed it if you had not made that suggestion? A. I have no doubt he would; I have no doubt at all.

Q. Now, Sir, will you be kind enough to state what occurred at that second interview upon any subject other than the signing of that paper—I mean something you have not related on your cross-examination? A. No, Sir, I don't think of anything; there may have been other things said. It was quite a long talk there.

Q. That don't satisfy me. I want you to state what you remember was said, and, if you cannot remember anything further, if you so state I will be satisfied? A. In the course of the evening I think I took the paper to Mr. Bowen some time.

Q. I want to know what occurred before you left with the paper to go to Mr. Bowen's? A. Well, Sir, I think I have told you the substance of all I recollect.

Q. You think you cannot recollect anything more? A. I don't think of anything at this moment.

Q. Nothing occurs to you that Mr. Tilton said that night that you have not related now? A. No, Sir; not at this moment.

Q. You took the paper and went to Mr. Bowen's, did you? A. Yes, Sir.

Q. And left it with him? A. I think I did that evening; yes, Sir.

Q. Left the paper with him? A. I left the paper.

Q. For his consideration? Yes, Sir.

Q. Did you return again to Mr. Moulton's house that evening? A. Yes, Sir.

Q. And were Mr. Wilkeson and Mr. Moulton there? A. They were all there; yes, Sir.

Q. Now, what occurred after you returned? A. Well, they were rather dissatisfied—

Mr. Fullerton—No, no.

The Witness—Well, Mr. Wilkeson said—

Mr. Fullerton—That is what I want.

The Witness—Mr. Wilkeson said I ought not to have left the paper; Mr. Wilkeson or Mr. Tilton said that, I have forgotten which of them—I am not sure about that—that I should not see the paper signed in the shape it was; I ought to have completed it on the spot; I said Mr. Bowen ought to have time to think of the thing and consider it, if he was going to sign the paper; it would be good for nothing; it would be of no value if he signed it without consideration, or something like that, and that I thought there was a propriety in leaving it.

Q. My question covers all that was said after your return from Mr. Bowen's, Mr. Claffin; don't forget that.

A. Yes, Sir; well, Sir, I talked with Mr. Bowen, and I am sure with these other gentlemen.

Q. Well, one moment, Mr. Claffin. Mr. Bowen was not at Mr. Moulton's house? A. No; but at his house.

Q. We have gone away from Mr. Bowen's and gone back to Mr. Moulton's? A. Yes, Sir.

Q. Don't get out of that house too suddenly. Tell me all that occurred after you returned to Mr. Moulton's house from Mr. Bowen's? A. Then it was proposed to have an arbitration, and Mr. Tilton, I think, proposed Charles Storrs; I think he had mentioned the name before.

#### THE NAMING OF THE ARBITRATORS.

Q. Now, who proposed the arbitration? A. I am not certain, Sir, but I don't know whether it was spoken of by me or by Tilton or Wilkeson first; I think it was by one of us—either Wilkeson or myself.

Q. Can you give the language that was employed in making that proposition? A. No, Sir.

Q. Was it something like this, whoever used it: "I now propose that the difficulty between Mr. Bowen and Mr. Tilton be submitted to arbitrators?" A. Probably it was, Sir; that would be about the language that would be likely to be used.

Q. Well, does that square with your recollection on the subject? A. I have no recollection about the language at all, not the slightest.

Q. How? A. I have not the slightest recollection what the language was.

Q. Well, have you any recollection of what Mr. Tilton's reply to the proposition was? A. No, Sir; except that it was agreed to.

Q. Well, did he say in substance, "I will agree to that?" A. Yes, I think he did; he or Moulton said, or both.

Q. Who named the first arbitrator? A. I am not certain, Sir. I think I named Mr. Freeland to Mr. Tilton and Moulton, and to Mr. Bowen when I went to see him.

Mr. Fullerton—One moment, I move to strike that out, Sir; I don't want the witness to interject anything.

Mr. Tracy—The answer evidently is not completed.

Mr. Fullerton—Well, we will strike out as far as it has got, any way.

Mr. Tracy—I submit it becomes responsive if the witness adds, "and I repeated his name there at that meeting to these parties."

Mr. Fullerton—Well, he has not added it, and I don't think he will, under your suggestion.

Mr. Tracy—You don't give him any opportunity to add it. You interrupted him, as is customary, in the midst of his answer.

Judge Neilson—I think the witness can answer very directly. Repeat your question.

Mr. Fullerton—Well, I want that stricken out.

Judge Neilson—That is stricken out.

Mr. Fullerton—Very well. Now, Mr. Claffin, will you

be kind enough to tell me who named the first arbitrator at that meeting at Mr. Moulton's house? A. I couldn't do it, Sir; it is impossible.

Q. Did you name any one? A. I don't remember. I think there were half a dozen names spoken of.

Q. Did you name any one? A. I don't remember naming any one but Mr. Freeland.

Q. Did you name Mr. Freeland? A. I did, Sir.

Q. Very well. Now, who did Mr. Tilton name? A. I think he named Charles Storrs.

Q. Who named the third man? A. I don't know that he was named, Sir. I don't know how I came in there, I am sure. I went there at the suggestion—

Q. No, I beg your pardon. I don't want you to tell me at whose suggestion you went there; I am talking about what took place after you got there. A. Yes.

Q. You didn't name yourself? A. No, Sir; I didn't name myself.

Q. And you don't know who named you? A. I don't know.

Q. Well, were you named that night? A. It was certainly understood—

Q. No, were you named that night as an arbitrator? A. I certainly didn't name myself, and I don't remember either of these gentlemen saying—

Q. No, Mr. Claflin; won't you bear in mind the question; were you named that night as an arbitrator after you returned from Mr. Bowen's, or were you named at some subsequent period in the history of that arbitration? A. I don't remember being named at all, Sir.

Q. That does not answer my question.

Mr. Shearman—Yes, it does, Sir.

Mr. Tracy—I submit it does. If he don't remember being named at all, he certainly don't remember being named that night.

Judge Neilson—I think that is so, Sir.

Mr. Fullerton—Well, Sir, I don't want it a subject of reasoning, I want it as a positive fact.

Mr. Tracy—That would require very little reasoning.

Mr. Fullerton—That is the reason you are capable of doing it. [To the witness.] Now, will you tell me whether you were named as an arbitrator that night? A. I don't recollect; I can't tell you; it is impossible to tell you.

Q. You have no recollection of having been named? A. I don't remember of having been named, Sir.

#### THE DRAWING OF THE PAPERS.

Q. Were any papers prepared that night in reference to the arbitration? A. The paper that I have spoken of; no other paper.

Q. Do you refer to the Tripartite Agreement? A. Yes, Sir; I don't remember any other papers. Mr. Tilton spoke of his agreements with Mr. Bowen.

Q. But I am speaking of the others. Mr. Claflin, you don't pay attention to my question.

Mr. Shearman—I beg pardon, Mr. Fullerton; you are asking about papers, and now he has been answering about papers. Agreements are papers.

By Mr. Fullerton—Were any papers prepared that night in reference to the arbitration after you returned from Mr. Bowen's? A. No, Sir; there were no writings in relation to the arbitration.

Q. That is what I want to get at. None whatever; I don't think there were.

Q. There was no submission drawn up and signed that night? A. No, Sir, not for the arbitration; there certainly was not; I think not.

Q. That is just the point of my inquiry. Were you present at a subsequent period when the arbitration papers were drawn up and signed? A. Yes, Sir; I was present when the arbitrators met.

Q. That doesn't answer my question. A. No, Sir; I was at no other meeting; there was no other meeting between that and the meeting in which the arbitrators met; there was no intermediate meeting, Sir.

Q. You don't answer my question, Mr. Claflin; were you ever present when arbitration papers were signed? A. No, Sir.

Q. How? A. No, Sir. There were no papers of that kind that I remember. I thought I answered that before, Sir.

Q. Wasn't there a submission to arbitration signed by both parties? A. No, Sir.

Q. By Mr. Bowen and Mr. Tilton? A. No, Sir; it was a verbal affair, Sir, entirely, as I remember it.

Q. How? A. It was a verbal affair entirely, as I remember it.

Judge Neilson—It would seem from that to have been a mere common law operation.

Mr. Fullerton—Yes, it seems from that.

Mr. Shearman—[*Sotto voce.*] "Seems, madam, nay, it is."

Q. Don't you recollect that after the arbitrators made their award that the written submission was given to Mr. Bowen, and he took it away with him? A. Written submission?

Q. Yes, Sir. A. Of the case to the arbitrators?

Q. Yes. A. I don't remember it, Sir.

Q. You have no recollection upon that subject? A. I haven't any recollection about that.

Q. Well, when did the arbitrators meet to hear the statements of the respective parties? A. They met the night following this Tuesday night, or else the next night Wednesday or Thursday night, I think, Sir.

Q. Well, did they meet the next night after that second meeting of which you have spoken? A. I am not certain, Sir; it was the first or second night after; I think the second.

Q. And where did they meet? A. At the same place.

Q. Who were present at the meeting of the arbitrators? A. Mr. Moulton, Mr. Tilton, Mr. Bowen, Mr. Freeland, Mr. Charles Storrs and myself.

Q. Statements were made by the respective parties, I understood you to say? A. Yes, Sir; they were their own lawyers, and we got through quick. [Laughter.]

Mr. Tracy (to Mr. Beach)—That was an unkind remark.

Mr. Shearman—I think we ought to move to strike that out.

### THE WRITING OF THE CHECK.

Mr. Fullerton—How long after the award was made before Mr. Bowen drew his check? A. It was immediately, Sir, as I remember.

Q. Had he a blank check with him? A. I don't know whether he had, or whether he borrowed one; I am uncertain about it.

Q. Did you lend him the money to pay the award? A. No, Sir, I did not; he did not need it; I agreed to; I remember his asking me. It was done so quick he said he didn't know what the state of his finances were, and he wanted to draw a check, and said he: "Will you lend me the money if I haven't the money?" and I said, "I will, with pleasure."

Q. He did not borrow it, or any part of it, from you? A. I think he came to my office the next morning and said he didn't want it.

Q. Do you recollect whether anything was said, when he drew that check, about dating it ahead? A. I don't remember, Sir.

Q. Tax your recollection, now, please? A. It might have been dated the next morning; it very probably was.

Q. No, I want your recollection upon the subject; I am not inquiring as to the probabilities of the case? A. I am quite sure that it was not dated ahead, for he certainly had the money; there was no occasion for dating it ahead, for I was going to give the money if he hadn't it.

Q. Now, I sincerely hope that you will answer my question, and not indulge in any reflections upon the subject. A. I was giving the reason why I supposed it was not dated ahead.

Mr. Tracy—I submit that the witness has answered.

Judge Neilson—The counsel asked him if anything was said about dating it ahead.

The Witness—There was not.

Mr. Tracy—He said there was not.

Mr. Fullerton—And he said a good deal more than that, and he added, it could not be possible because, and so on. [To the witness.] Now, I ask you what he said; do you recollect a suggestion of this kind, "I don't know whether I have got the money or not, and I will date my check ahead"? A. No, Sir.

Q. Did you see the check which was drawn? A. I don't think I did; I know it was drawn; I saw him drawing the check.

Q. Do you know whether or not the date was then and

there inserted as of the date when it was drawn? A. I think it was.

Q. Do you know, I ask you? A. I don't know that I saw the check; I couldn't say.

Q. Very well; that is what I want you to say. Was anything said to Mr. Tilton at the time of delivering that check as to when it should be deposited for collection? A. No, Sir.

Q. Do you mean by that that you don't recollect, or that you have a positive recollection that nothing was said? A. I don't remember that anything was said, Sir.

Q. Now, Mr. Claflin, have you stated all that was said between the parties, that you recollect of, in reference to the arbitration of the difficulties between Mr. Tilton and Mr. Bowen, on your cross-examination? A. No, Sir; I cannot have stated all that was said, for we talked about—

Q. Have you stated all that you can recollect that was said? A. All that I remember, Sir.

Q. I come now to the execution of the "Tripartite Agreement." You were present when some of the parties signed it, I understand you to say? A. I think I was present when Mr. Bowen signed it and when Mr. Beecher signed it; I was not when Mr. Tilton signed it.

Q. Which of the parties signed it first? A. I am not quite certain; I think Mr. Bowen signed it first—Mr. Bowen or Mr. Tilton; Mr. Beecher signed it last, I know.

Q. What became of this printed slip which you saw at the first meeting? A. That was attached to this agreement.

Q. The very one which you saw then was attached to the agreement? A. I think the very one, Sir.

Q. Do you recollect the fact that it was attached when you procured the signature of one of the parties to it? A. I think it was, Sir.

Q. And formed a part of the document, did it? A. Yes, Sir.

Q. Was that paper read over during any one of these conversations that you have related? A. I don't know whether it was read, Sir, aloud, but it was passed around and each one looked at it; I remember reading the paper myself, and I think it was read by the whole. I don't know but it was read aloud; I am not certain.

Q. Did not Mr. Tilton assert in those conversations, whenever that paper was alluded to, or upon some one of the occasions when it was alluded to, that its statements, so far as he was concerned, were true? A. I don't remember of his saying anything about it, Sir; I don't think he did, Sir.

Q. Was the truth of the statements discussed at all? A. No, Sir.

Q. You did not, nor did any one there, charge that they were untrue, did you? A. We did not go into that, I think.

Q. How? A. I don't think we went into that much, Sir

Q. That was not discussed then at all? A. I don't think it was, Sir.

Q. Do you know what became of the original draft of that proposed "Tripartite Agreement" which Mr. Wilkeson produced and read at the first meeting at Mr. Moulton's house. A. I don't know, Sir.

Q. Did you ever see it after that first meeting? A. No, Sir.

Q. Do you know what became of any proposed alteration, which Mr. Tilton prepared, to that agreement at any time, if he did prepare one? A. I don't remember about that, Sir. Mr. Tilton—the agreement that he interlined, when I spoke of his attaching another paper, and which was to be incorporated—that was at the second meeting.

Q. My question embraced any of these meetings? A. Yes, Sir; the second; I don't know what became of that paper, Sir.

Q. What did you do with the paper thus emended; didn't you take it to Mr. Wilkeson? A. I took that paper to Mr. Wilkeson; yes, Sir.

Q. When did you take it to Mr. Wilkeson? A. The next day, to have it complete.

Q. Well, did you take this printed slip also? A. Yes, Sir; I took the whole thing.

Q. Did you take the proposed amendment of Mr. Tilton? A. Yes, Sir.

Q. In his own handwriting, was it? A. Yes, Sir.

Q. And did you give those to Mr. Wilkeson? A. I did.

Q. Did you leave them with him. A. Yes, Sir.

Q. And have you seen them since? A. No, Sir.

Q. Do you know now where they are? A. No, Sir.

Q. You have no knowledge, then, I understand you, of either one of those papers after you handed them to Mr. Wilkeson to engross? A. No, Sir.

Q. And never saw them afterward? A. I never saw them afterward.

Q. Or either of them? A. I never saw either of those original papers.

#### TO WHOM THE COMPLETED COVENANT WAS SHOWN.

Q. Now, Mr. Claffin, I will take up another subject: Was anything said at any one of these conversations as to who should be the custodian of the "Tripartite Agreement" when executed? A. I think Mr. Tilton proposed to leave it with Mr. Moulton.

Q. Is that all that was said upon that subject? A. I think that was objected to. I proposed that Mr. Freeland or Mr. Storrs take the paper.

Q. I want the whole that was said upon that subject. A. That is all I remember, Sir.

Q. Well, who did finally take it? A. I took the paper, Sir.

Q. Well, did you take it without anything being said upon the subject? A. No, Sir; it was agreed that I should take the paper.

Q. Well, I ask you all that was said upon the subject of the custody of the paper? A. Well, it was agreed that I should take the paper.

Q. Well, who agreed? A. Mr. Freeland and Mr. Storrs.

Q. And did you in consequence of that take the paper? A. I took the paper; yes, Sir.

Q. Was there any arrangement entered into between you as to whether it should be kept a secret? A. No, Sir, nothing said about a secret.

Q. Was no obligation imposed upon you as to letting persons see it? A. No, Sir.

Q. Or giving a copy of it? A. No, Sir.

Q. Well, did you give a copy to any one? A. No, Sir.

Q. How long did it remain in your custody? A. All the while, Sir.

Q. How? A. It remained all the while in my custody. I don't know—I think Mr.—

Q. Up to what time? A. I think Mr. Storrs had the paper once a little while.

Q. When did he get the paper? A. I am not certain, but I think Mr. Storrs borrowed the paper this Winter some time.

Q. Did it remain in your custody up to that time? A. Yes, it was in my custody. I am not certain but Mr. Beecher might have borrowed the paper one day for a little while.

Q. Well, don't you remember whether he did or not? A. I remember his asking me—

Q. No, no; I don't ask about that. Did he borrow the paper? A. I am not certain, Sir, whether he did or not. When he asked me for it—

Q. No, I don't ask you that. A. If he asked me for it—

Q. Well, I don't ask you that. A. My recollection is rather that he sent and asked me for the paper.

Q. No, I don't ask you that; I asked you whether he ever got the paper from your possession. A. I don't remember, Sir, certain; I am not positive.

Q. What is your best recollection upon the subject? A. My best recollection is that I sent him the paper one day, and that he sent it back in a short time.

Q. Now, when was that? A. I don't remember, Sir, when that was.

Q. About what time was it? A. I think it was before Mr. Storrs borrowed the paper.

Q. That don't aid me in getting at the time at all. A. No! I have no recollection when that was; I could not say.

Q. What year was it in? A. I think it was not long after the paper was made; I am not certain about that.

Q. And the paper was made, was it not, in March, 1872?

Mr. Morris—April.

The Witness—Made in April, 1872.

Q. And your recollection is that Mr. Beecher sent for it, got it, and returned it soon after that. A. Yes, Sir.

Q. How long did he keep it? I think a very short time; I think it was sent back.

Q. Do you recollect when it was published in the newspapers? A. No, Sir; I have no remembrance.

Q. You recollect the fact that it was published in the newspapers, do you not? A. Yes, Sir; I remember it was published.

Q. And don't you recollect the year in which it was published? A. No, Sir, I could not; I could not say when it was published; I remember—

Q. Well, it was published in 1873, was it not? A. I am not sure, Sir; I don't remember.

Q. Don't you recollect that it was published the year prior to the appointment of the Investigating Committee? A. That would be 1874, wouldn't it, Sir?

Q. 1874, the appointment of the Investigating Committee? A. That would be 1874.

Q. The Investigating Committee was appointed in 1874. My question is, Do you recollect that the "Tripartite Agreement" was published the year prior to the appointment of that Committee? A. I do not remember, Sir, when that was published.

#### THE WITNESS'S ACQUAINTANCE WITH MRS. WOODHULL.

Q. Mr. Clafflin, do you know Victoria Woodhull? A. Yes, Sir, I know her a little.

Q. Well, how little or how much? [Laughter.] A. I have seen her on two or three occasions; she has called at my office once or twice.

Q. Did you return the call? A. Yes, Sir; I did once.

Q. Where did you call upon her? A. I called upon her in Broad-st.

Q. What number? A. I have forgotten the number; I could not say.

Q. When did you make your call? A. I think soon after she came here.

Q. That don't aid me in getting at the time. A. Well, I don't know when she came, I am sure.

Q. How? A. I don't know when she came. I remember calling there. Mr. Vall, of the Bank of Commerce—

Q. Now, don't, I beg, take anybody with you. A. I was going to say, Sir, that I could fix it from him, Sir, for he called with me.

Q. Well, we haven't time for you to go over there now and fix it. A. Yes.

Q. Have you no recollection of the year? A. I could not say the year, Sir.

Q. Was it soon after she established herself in Broad-st.? A. It was pretty soon after that, I know, because it was rather of a novelty—lady bankers there.

Q. Well, had you no other object, except to satisfy your curiosity in that regard, in calling there? A. She had been to my house and spoken to Mrs. Clafflin about their opening an office in New-York, and wishing to form an acquaintance; and as she urged very much that she

would ask me to call and see her, Miss Clafflin said she—

Q. You were not pressed, were you, when Miss Clafflin said this? A. No.

Q. Then we won't have any hearsay? A. That is what I was going—

Q. How long afterward did you call after she called at your office? A. She wrote me, I think, before that.

Q. I don't ask you about the letter; I ask you when she called? A. I could not say.

Q. How long after she called at your house, as you state? A. I think she called at my house—I am not certain whether it was the Winter or the Spring, but I was about to say, Sir, what I cannot say—

Q. How long after she called at your house did you call on her? Now, if you are about to say that, it will satisfy me? A. I think some weeks; perhaps months.

Q. How long after she called at your house was it that you called upon her? A. It was a good while.

Q. How? A. It was a good while; she called very soon at the office.

Q. Did you subscribe for the paper? A. She sent me the paper.

Q. Did you subscribe for the paper? A. No, Sir; she came to the office; I never subscribed for it.

Q. Did you pay for it? A. I don't know, Sir, whether I did or not.

Q. How? A. I don't know whether I did or not.

Q. Why, don't you recollect whether you paid for the paper? A. I remember there being an advertisement in the paper.

Q. No; did you pay for the paper, Mr. Clafflin? A. I am not certain.

Q. How? A. I am not certain whether she ever sent a bill.

Q. Did you ever pay for the paper? A. I don't know, Sir; if she sent a bill, I did.

Mr. Tracy—I submit he has answered that question.

Judge Nelson—He has answered, "I don't know whether I paid it or not."

The Witness—I don't know; if she sent the bill, I probably paid it. The paper came to the office and I saw the advertisement in the paper, and I sent down to ask them to stop the paper, and the advertisement had been put in gratuitously.

Q. You did not advertise in it? A. No, Sir.

Q. Well, did you see the advertisement in it of your business? A. Yes, Sir; it was a card simply.

Q. Simply a card? A. Yes, Sir.

Q. Do you know how many times it was inserted? A. I do not; it was stopped immediately.

Q. Did you go to Mrs. Woodhull's office at the suggestion of any one?

Mr. Tracy—I don't think much time should be wasted on such questions as those.

The Witness—I went in at the suggestion of Mr. Vall

we were passing along and Mr. Vall said, "Let us go in and see the lady bankers," I think.

Q. Did you go in at the suggestion of any one else? A. No, Sir; not at that time.

Q. You have heard it stated when Mr. Tilton made the acquaintance of Mrs. Woodhull, haven't you? A. No, Sir; I don't know that I have; I may have; I don't remember.

Q. Haven't you heard it stated that he made her acquaintance early in 1871? A. I have not; I have heard it, no doubt, but I don't remember it, Sir.

Q. And do you say that you had no connection with the insertion of this card, as you call it, in her paper? A. No, Sir, I did not; I had no idea it was ever published there until some of the clerks called my attention to it.

Q. Well, did you ever visit Mrs. Woodhull at the house? A. Yes, Sir; I went there with Mr. Bowen once.

Q. How often did you visit her at the house? A. That is the only time, Sir.

Q. But once? A. But once.

Q. Do you recollect when it was? A. No, Sir, I do not; I have nothing to fix it by.

Q. Do you recollect the year? A. I know it was the week that Lewis Tappan died, because Mr. Bowen came down to attend his funeral.

Q. Don't you know the year? A. I don't know, Sir.

Q. What time in the day was it you visited her? A. About 4 o'clock in the afternoon, I think; we met by appointment there, Sir, at 4 o'clock; we were to see some documentary evidence that she was going to show us.

Mr. Beach—Oh! well; we did not ask that at all; we move to strike it out.

Mr. Tracy—I object to that; the witness has a right to state his purpose and his object in going there.

Mr. Beach—He has not a right to state it on our examination.

Mr. Tracy—It is due to the witness to state it on your examination.

Judge Neilson—I don't think it is material to say it was to see some documents.

Mr. Tracy—Is it material to show that he went there, your Honor?

Judge Neilson—I don't doubt that being material.

Mr. Tracy—If it is material to show that he went there, is it not material, also, to show why he went there?

Judge Neilson—Well, the learned counsel has not asked that question.

Mr. Tracy—But it is due to the witness to state that he went there.

Judge Neilson—He has not been asked that question yet.

Mr. Beach—Is that part of the answer stricken out?

Judge Neilson—Yes, Sir.

Mr. Tracy—Your Honor will note our exception.

Judge Neilson—Yes.

Mr. Fullerton—At which meeting of you gentlemen was

it that it was first suggested that the papers connected with the scandal should be burned? A. I think it was suggested at all the meetings; I think we began with that.

Mr. Shearman—[Repeating]. I think it began with that.

#### RE-DIRECT EXAMINATION OF MR. CLAFIN.

Mr. Tracy—At whose request did you go to see Mrs. Woodhull at her house?

Mr. Beach—That is objected to.

Mr. Tracy—The question is, at whose request did you go to see Mrs. Woodhull at her house?

Mr. Beach—We object to that.

Judge Neilson—I think we will take that, Sir—at whose request, if at the request of any one?

The Witness—I went at the request of Mrs. Woodhull's lawyers, and of Mr. Bowen; I met those lawyers there, Mrs. Woodhull's lawyers, and three or four other friends of hers.

Q. That was the only time you say you were ever in her house? A. That is the only time, Sir.

Q. Where was it, Mr. Clafin, that Mr. Tilton proposed that this "Tripartite Agreement" should be left in the possession of Mr. Moulton? A. I think it was at—I think the last meeting, Sir, the meeting when the paper was finished—that is, when it was finally settled and agreed upon.

Q. What difficulties were submitted to the arbitrators, Mr. Clafin?

Mr. Beach—That is objected to.

Mr. Tracy—What is the objection?

Mr. Beach—The objection is that it calls not for what took place—for the language, for what was said—but for a conclusion.

Mr. Tracy—I call for a statement; that calls for him to state what difficulties were submitted.

Judge Neilson—You can inquire what was said on that subject.

Mr. Tracy—I do call for what was said on that subject.

Mr. Beach—That is but a mere reopening, Sir, of the subject matter, about which we have inquired nothing on our cross-examination.

Mr. Tracy—Oh, yes you have.

Mr. Beach—Not a word except for the conversation.

Judge Neilson—I think he might state generally what he can of the conversation in regard to the difficulties or the questions to be submitted, not his inference, but the conversation.

Mr. Beach—Well, is it admissible, your Honor, after the conversation had been gotten by each party on direct and cross-examination, to open the same subject again for re-direct?

Judge Neilson—Perhaps not; I think, however, in this instance he may ask that question.

Mr. Tracy—Go on.



The Witness—What is the question?

By Mr. Tracy—State what was said concerning—state what was said at any of these meetings touching the difficulties that were to be submitted to you, and what difficulties, and between whom. A. Well, Sir, the difficulties between the whole three.

Mr. Beach—No, Sir; no, Sir; it is calling upon you to state what was said, not your conclusions.

Judge Neilson—State what was said and by whom, Mr. Clafin.

The Witness—Well, it was said that the difficulties were to be settled in this way by arbitration; the paper was to be signed.

Q. Well, what difficulties and between whom? A. The papers—

Q. What difficulties and between whom?

Mr. Beach—"What was said about the difficulties?" I submit, is the question.

Mr. Tracy—That is the question I call for.

Judge Neilson—[To the witness]—Relate what was said.

Mr. Tracy—What difficulties, and between whom, was it stated were to be submitted to the arbitrators?

Mr. Beach—That is not a proper form of question; the question is, What was said in regard to the difficulties that were to be submitted.

Judge Neilson—Yes, Sir.

Mr. Tracy—And between whom?

Mr. Beach—Yes, between whom?

The Witness—Well, the conversation was between Mr. Bowen and Mr. Tilton, and Mr. Moulton, if you refer to the last—

Mr. Tracy—Who were the parties to the difficulties that were to be arbitrated.

Mr. Beach—I submit, Sir, that that is to be derived from what was said.

Judge Neilson—No; what was said?

Mr. Shearman—Mr. Clafin was going on; you did not hear him.

Mr. Tracy—Proceed.

Mr. Shearman—Go on, Mr. Clafin.

The Witness—Well, at the first meeting—do you refer to the first meeting, or all the way through?

Mr. Tracy—Yes; I refer to any of the meetings—any of the two first meetings? A. Well, Sir, Mr. Wilkeson said that the difficulties must be settled between—the whole difficulties between Mr. Beecher, Mr. Tilton, and Mr. Bowen; I quite agreed with him in that, and then the question was how they should be settled; Mr. Tilton said he would settle nothing until he got satisfaction from Mr. Bowen by the payment of the sums due him.

Mr. Shearman—If the jury hear, you can do without me.

Mr. Tracy—We have got to a point now where Mr. Clafin speaks louder.

The Witness—I am improved.

[The examination was then continued without the aid of Mr. Shearman to repeat the answers.]

Q. Now, you have stated who the parties were, Mr. Clafin, between whom there were difficulties to be settled; now, what were the difficulties to be settled, what were stated as the difficulties that were to be settled, and where were those difficulties referred to or stated—where had the difficulties been referred to or stated by any of the parties that were to be settled and compromised? A. Well, Sir, it was this—

Mr. Beach—No, Mr. Clafin.

Mr. Tracy—State what was stated by the parties, or referred to by either yourself or Mr. Wilkeson, in regard to the difficulties that were to be arbitrated? A. Well, Sir, the difficulties—

Judge Neilson—Give the conversation, Mr. Clafin.

The Witness—I could not give the language, Sir—the conversation—but the difficulties to be settled were the—

Mr. Beach—No, Sir; that is not the question—an answer to the question that is put.

Mr. Tracy—I submit it is.

Mr. Beach—I submit it is not.

Judge Neilson—The question is as to what was said about difficulties. If you cannot remember the precise words give the substance, not your inference, but the conversation—what was said.

Mr. Tracy—That is another form of answering, simply.

The Witness—Well, Sir, I think I have stated all that was said, that I remember.

Mr. Tracy—Well, I know; state again what was said in regard to the nature of the difficulties that were existing between Mr. Beecher, Mr. Tilton, and Mr. Bowen, to be settled?

Mr. Beach—When the witness answers that he has stated and told all that was said, is it admissible, your Honor, on the redirect examination to take him over the conversation? It only results in a cross-examination going over that again.

Mr. Tracy—It is entirely competent, I submit, for me to ask the witness to explain any ambiguity that has crept into his evidence on cross-examination.

Judge Neilson—There cannot be any ambiguity when the witness has confined himself to the conversation; there can be none now if he does that. [To the witness.] The counsel objecting understood you to say that you had stated all you could, Mr. Clafin; is that so?

The Witness—I think I have stated the substance, Sir, of the—

Judge Neilson—You have a right to ask him if anything more was said.

Mr. Tracy—My question to the witness is this: What difficulties between Mr. Beecher, Mr. Bowen and Mr. Tilton were you talking about at either of these meetings that were to be settled by arbitration?

Mr. Morris—That is objected to, and I understand the Court to intimate that that is not proper.

Judge Neilson—I think you should ask him for the conversation.

Mr. Tracy—I ask him for the conversation—what was stated in regard to the difficulties that were to be settled.

Mr. Fullerton—That ground has been all gone over on the direct and cross.

Judge Neilson—Yes, I think so; but still I think he may state what was said.

Mr. Fullerton—I shall go over it again, also.

The Witness—The difficulties arose from this paper that was to be published—

Mr. Beach—Wait one moment.

Mr. Tracy—Was that paper—I put this question, Sir—was there any paper referred to in that conversation, as stating the difficulties that existed between Mr. Bowen, Mr. Tilton, and Mr. Beecher, that required to be settled by arbitration? A. It was the "Personal Statement," Sir.

Q. It was the difficulties set forth in the "Personal Statement," was it? A. Yes, Sir, that is the only—that is it, Sir.

Q. What was said by either Mr. Wilkeson, or yourself, in regard to the nature of the difficulty set forth in that "Personal Statement?"

Mr. Morris—Now, that we object to.

Judge Neilson—Well, your witness has said that he has stated all he remembers or can state on the subject.

Mr. Tracy—Well, I am now asking—calling his attention to the specific point in the conversation, and ask him what was said on the subject, if anything was said on it.

Judge Neilson—Well, what can you say to that, Mr. Clafin?

The Witness—Well, Sir, what I said before, that I said it was a great scandal and shame that that should be published to the world, and that an agreement, a settlement, must be made; that Mr. Bowen—

Mr. Tracy—A settlement of what?

The Witness—A settlement of all difficulties between them.

Q. Difficulties as stated where? A. As stated in that "Personal Statement."

Judge Neilson—Now, we have had that several times.

Mr. Tracy—I think the other side discover the point of the examination.

Mr. Morris—No, we don't; we haven't discovered it yet.

Mr. Tracy—I didn't say you did.

Mr. Beach—Yes, we have made that happy discovery.

Mr. Tracy—Yes, I thought you did; so did I.

Judge Neilson—Proceed to something else.

Mr. Tracy—In that conversation, either of those first conversations on Sunday night, or on Tuesday night, Mr. Clafin, was there anything said by Mr. Tilton, and if so what, in regard to his having commenced a suit against Mr. Bowen?

Mr. Fullerton—Now, Sir, that subject has already been exhausted.

Mr. Tracy—I know it has, and I propose to re-exhaust it so far as that question is concerned.

Mr. Fullerton—If your Honor permits it why of course we—

The Witness—I think he said a suit had been commenced.

Mr. Tracy—Your Honor will observe that the counsel took the witness over all that was said at these conversations and asked him if he had repeated on his cross-examination everything that was said. Now, the witness omitted on his cross-examination to notice about the suit's having been commenced.

Judge Neilson—Well, it was equally omitted on your direct.

Mr. Tracy—Oh! no, your Honor.

Judge Neilson—Well, then, if it were omitted on the direct I don't think it need be repeated; I don't think it was stated on the direct that a suit had been commenced.

Mr. Tracy—My recollection differs with your Honor's on that subject, and it is the form of the cross-examination that now makes it necessary for me to recall this subject to the attention of the witness; that is all. [To the witness.] You said, Mr. Clafin, on your direct examination, that your best recollection was that you saw Mr. Bowen between Sunday night and Tuesday? A. I think—

Q. On your cross-examination you say that you have an impression that you saw Mr. Bowen between Sunday night and Tuesday; now do you mean to say that it is your best recollection that you saw him, or that it is a mere impression? A. Yes, Sir, it is my best recollection, but I am not quite certain; I think I expressed that both times.

Mr. Tracy—That is all.

Mr. Fullerton—I have nothing more.

Judge Neilson—That is all, Mr. Clafin.

The Court then took a recess until 2 o'clock.

#### TESTIMONY OF LOUISA J. WROEGER.

The Court met at 2 p. m., pursuant to adjournment.

Louisa Johanna Wroeger was called on behalf of the defendant, sworn and examined as follows:

Mr. Hill—What is your business? A. Telegraph operator.

Q. Were you a telegraph operator in the employ of the Western Union Company at their general office in New York in the month of June, 1873? A. Yes, Sir.

Q. Have you a message which you received from Brooklyn that day now in your possession? A. Yes, Sir.

Q. Please produce it. [The witness produced the paper.]

Q. Miss Wroeger, be kind enough to state the course of business in receiving a message at the general office, transmitted to you for the purpose of transmissi-

ther on. What is the first thing that you receive? A. The number of the message from the place it is sent from.

Q. Now, what was the number of that message? A. Number 8, from Brooklyn.

Q. What would come next? A. The figure "2," signifying the date of the month.

Q. What next? A. The person the message was sent to.

Q. And his address? A. Yes, Sir.

Q. Then what? A. The body of the message.

Q. Then what? A. The signature thereon.

Q. What else? A. The check—that is, the number of words and whether paid or "collect."

Q. Then these other characters—what are these? A. The signature of the operator sending the message to me, and my own.

Q. "D" is there signifying the other operator, and "W" signifying your own signature? A. Yes, Sir.

Q. Now, I notice that upon this paper the date is written out in full. First, there occur the words, "Brooklyn, 2," and then "3" is written in the blank, making it "1873;" did you receive that "3," or did you put it on yourself? A. No, Sir; I put it on; that is understood.

Q. Who put upon that message the date "June 2," written out? A. I did.

Q. That you do after you receive the figure indicating the day of the month? A. Yes, Sir.

Q. Now, what time was it received? A. At 8:58 in the morning.

Q. And handed to some one else to transmit it to Peekskill? A. Yes, Sir.

Q. Now, are you enabled to swear that you received that message from Brooklyn on the second day of June, at 8:58? A. Yes, Sir.

Mr. Hill—I propose now to read it in evidence. It is as follows:

Dated Brooklyn, — 2, 1873.

Received at — June 2.

To Thomas T. Turner, Peekskill, N. Y.:

Send for us to train leaving New-York at 2 p. m.

H. W. BEECHER.

10, paid. Dr. W.

[The message was marked "Ex. D. 124."]

Q. There are figures in the corner: "1 Pe;" what do they signify? A. The number of the message sent to Peekskill—it being number one sent to Peekskill on the 2d of June.

Q. That is the first Peekskill message sent from the general office to Peekskill that morning? A. Yes, Sir.

[Counsel for plaintiff did not cross-examine.]

#### TESTIMONY OF MARY C. JOSEPHS.

Mary C. Josephs was sworn on behalf of defendant and testified as follows:

Mr. Hill—Where do you reside? A. At Peekskill.

Q. What is your business? A. Telegraph operator.

Q. Were you the telegraph operator in charge of the

Western Union office at Peekskill in the month of June, 1873? A. Yes, Sir.

Q. Look at the paper now shown you and state whether you received a message from Henry Ward Beecher to Thomas J. Turner, on the 2d day of June, 1873? A. This is the message.

Q. Is that the message itself, or a letter-press copy of it? A. A letter-press copy of it.

Q. Was it written on a blank? A. Yes, Sir.

Mr. Hill—I offer to read it in evidence; it is as follows, [Reading.]

BROOKLYN, N. Y., June 2—8:28 a. m.

Thos. J. Turner: Send for us to train leaving New York at 2 p. m.

H. W. BEECHER.

15 pd. Z. C.

[The paper was marked, "Ex. D. 125."]

#### TESTIMONY OF GEORGE F. WILLIAMS.

George F. Williams was called on behalf of defendant, sworn and testified as follows:

Mr. Hill—What is your present business? A. Editor on a newspaper.

Q. On what newspaper? A. *The New-York Herald*.

Q. What is your position on *The Herald*? A. Law editor.

Q. How long have you been an editor or a journalist? A. I have been a journalist for 18 years.

Q. Mr. Williams, did you see the publication of *Woodhull & Claflin's Weekly*, under date of Nov. 2, 1872, which contained the article known as the Woodhull scandal about Mr. Beecher? A. I have seen that paper, Sir.

Q. Now, I desire to ask you if you saw proof-slips containing the substance of that article at any time before it was produced?

#### THE TESTIMONY OBJECTED TO AS IMMATERIAL.

Mr. Fullerton—That is objected to.

Mr. Hill—Before it was produced publicly, I mean, in the *Woodhull & Claflin Weekly*?

Mr. Beach—We would like to know, Sir, what the counsel propose to prove?

Mr. Hill—I propose to prove by this witness and two others that proof-slips containing the substance of the article which was published in *Woodhull & Claflin's Weekly*, under date Nov. 2, 1872, were distributed among newspaper men, to this gentleman and the other two witnesses in particular, one of them in the Spring, and another about May, 1872, and the third before the Summer of 1872 was over, and I suppose that they were the same publications which the witness Woodley has spoken of.

Judge Neilson—How do you connect the plaintiff with it?

Mr. Hill—Woodley connected the plaintiff with it.

Mr. Shearman—We should like to know what is the ground of objection.

Mr. Beach—Why, that it is totally immaterial, and that it is secondary, and calls for the judgment of the witness.

Mr. Shearman—You can dispose of that last ground, Mr. Hill, by another question.

Mr. Hill—Very well. [To the witness.] Did you receive some proof-slips, Mr. Williams, or printed matter from galley proofs, the subject matter of which was a scandal about Henry Ward Beecher?

Mr. Fullerton—That is objected to.

Mr. Shearman—Then we may as well get at the merits at once. We were trying to obviate your objection that it was secondary.

Mr. Hill—I propose to show the last of them in a moment.

#### ARGUMENT OF MR. SHEARMAN.

Mr. Shearman—If your Honor please, the witness Woodley has testified that he saw these slips and had them in his hand at some time previous to Nov. 2, 1872. I suppose we ought to produce our confirmatory evidence on that point before waiting for the rebuttal. We cannot tell, of course—no doubt, if the gentlemen are wise, they will not attempt to disprove that statement; but they may not be wise, and they may attempt to disprove it, and then, I suppose, if we come in with testimony in reply to their rebuttal they will say that that testimony ought to have been put in at this stage of the case. Now, we propose to show that those slips were in existence long before the publication of the Woodhull scandal; that they were known in newspaper offices. We have connected the plaintiff with those proofs six weeks or two months prior to their publication. We propose to show that such slips were in existence in order to make our story reasonable and to sustain the statement of Woodley that some of those slips were in his hands.

Mr. Beach—Show that they were in existence!

Mr. Shearman—Certainly we must show that they were in existence, in order to connect him with it; and now we propose to show that they were in existence, and thus to make reasonable and probable the story which Woodley told of their being in existence and in the plaintiff's sight some two months before the publication. All we are trying to show now is the existence, a considerable time prior to the publication, of proof-slips of these articles.

Mr. Beach—Showing the existence of them necessarily shows the contents.

Mr. Shearman—We propose to show their existence a considerable time prior to the publication of these articles and prior to the time when Woodley says he saw them in the possession of the plaintiff. It seems to me that this is entirely material.

Mr. Fullerton—It is not at all to be wondered at, Sir, that they have a desire to bolster up the witness Woodley, but at the same time they cannot do it in this way. They start off with the proposition that Woodley swore

that he had seen slips of this article, called or known as the Brooklyn scandal. Now, Sir, there is no such proof as that in this case. Woodley did not swear, as I recollect his testimony, to any such thing at all; but even if he did, it would not make this evidence admissible in this case. In the first place, Sir, in order to prove that these were printed slips of that scandal, they must prove the contents of the paper to which the witness's attention was called. And again, they do not propose to prove that these printed slips contained the scandal as it was published, but they propose to take the judgment of this witness upon the subject whether those slips did not contain "the substance" of the scandal, and therefore the proof is entirely irrelevant. The plaintiff has been connected in no way with the publication of what is proposed now to be proved by the witness as to the existence of these slips. If we should indulge in inferences, the inference would be that the paper which was put into the hands of this witness, and which he saw some time in 1872, was quite a different thing from what Woodley undertook to swear was in existence. At all events, Sir, before they can affect the plaintiff in this case by anything that was printed in the shape of a slip of this scandal, whether it contained the scandal itself or "the substance" of the scandal—whatever it may have been, they must show that he had some connection with the publication over and above what has been sought to be established by the witness Woodley.

#### ARGUMENT OF MR. HILL.

Mr. Hill—Now, may it please your Honor, we have this connection established—this connection of the plaintiff with this publication by the Woodhulls. First, the conversation in his presence in 1871, which Cowley heard and has testified to, wherein he listens approvingly—at least silently—while a scandal of that description is being circulated about his own wife. Secondly, we have the statement of Cook, at another time, I think at an earlier time than Cowley (the order, however, can make but little difference), in which the same thing is established; and then again, in 1872, we find from the testimony of Mr. Woodley that Mr. Tilton and Mrs. Woodhull are in the office together talking about this scandal, as I understand his testimony, and my learned friend strove very hard to get the witness into confusion with reference to this point—whether they were reading from manuscript or from proof-slips. Your Honor cannot fail to recollect the examination of Woodley upon that very point. Now, Sir, as confirming Woodley's statement about the existence of proof-slips at that time, we offer to show that they had been distributed among newspaper men, and were perfectly well known to newspaper men. We cannot, in any way that I know of, show that these papers were the identical papers which were there present, and which Woodley referred to, but it is competent for us, as it seems to me, to show the existence of proof-slips at that

time, as well by Woodley as by some one else. Having shown Mr. Tilton's animus in relation to proof-slips by these three witnesses, coming to a point and culminating with Woodley, it seems to me that then the onus at least is thrown upon the plaintiff to explain them. I have the examination of Woodley before me, and I read:

Q. Now, James, at the time of this conversation, was there present any paper of any kind with these parties? A. Oh, yes, Sir, there were. The proofs were all ready there to go to the press for their publication.

Q. Who had them in hand? A. Miss Claflin, Mrs. Woodhull and Mr. Tilton. Col. Blood had gone off.

Q. Now, were you or not before that time familiar with proofs and printed slips—I do not mean on this subject—this or any other subject—was that any part of your employment? Oh, yes, Sir, I was usually taking them up to the printing office."

Then in another place we find this question and answer:

Q. I am now speaking of the particular time when the conversation took place, and you said there were some slips there. Did you have those very ones in your hands in any way? A. I did have printed slips in my hands, but I don't know what they were or what they contained at all.

Q. And did you have those that you have spoken of as having been in their hands? A. Yes, Sir.

Then a step further, my learned friend, re-examining the witness, said:

"I understand. I am talking of the time when it was really published and when you were arrested? A. I did not look at all at the scandal. I heard them talking about it—the Beecher scandal."

So that they were, as I understand his testimony, talking about this Beecher scandal, and about proof-slips which were then present. Now, I can show by these three witnesses the contents of the proof-slips, and that they were identical in substance with the article subsequently published by Mrs. Woodhull.

#### GENERAL DISCUSSION.

Judge Neilson—I understood from the testimony of that witness that it was part of his business to carry from the office in Broad street up to the printing establishment the slips and proof-sheets of various papers, and he speaks there of carrying some up to be printed the next day. But I did not understand from his evidence that the Woodhull scandal, as it has been called, or the "True Story," or the publication about Mr. Beecher, or the "Beecher business," as it was called, was there in print. I understood those to be proof-slips having to do with the current business of the newspaper, and that he carried them to and from the office, as usual—

Mr. Shearman—That was the latter examination, your Honor, to show his familiarity with proofs and printed slips.

Judge Neilson [Continuing]—And he says that he did not read them and did not know the contents of any of them.

Mr. Shearman—Speaking generally.

Mr. Hill—I understood the evidence of Woodley to point directly to this very matter—that they were speaking of it. Why, Sir, let me remind you—

Judge Neilson—They were speaking of it, of course.

Mr. Hill—Well, they had these printed slips in their hands, and they were speaking about Mr. Beecher and this scandal, and their publication of it; and Col. Blood had gone away.

Mr. Tracy—Had gone away and taken the slips with him?

Mr. Hill—Had gone away, I believe, and taken the slips with him. So that there was this discussion, and unless I fail to remember Woodley's testimony, there was a statement that Plymouth Church was rich, and all that sort of thing.

Judge Neilson—Oh, yes; that it could pay \$100,000.

Mr. Hill—Now, that related only to this Beecher matter.

Judge Neilson—They were discussing this subject, but, for aught we know, it might have been discussed in the same way if there had been no slips there whatever; and, for aught we know, the slips that were there at the time of this discussion were for the current use of the paper—matter entirely different from the Beecher matter. I do not see the connection myself.

Mr. Hill—Let me suggest another thought in this connection, your Honor. If we show that they had proof-slips before them, and if we show that they were talking then about the Beecher matter, "the Beecher article," as Woodley called it, and then if we show by three witnesses that proof-slips relating to this matter beyond question were then and prior to that time in existence, it seems to me that the plaintiff will then be called upon at least to explain.

Judge Neilson—That may be; but it does not show the contents of the slips that the witness Woodley speaks about. They were the current slips of the newspaper, which he says he usually carried to and fro, between the office and the printer's, and he expressly says he did not know the contents of any of them.

Mr. Shearman—Allow me one moment, your Honor. Mr. Hill read the examination of Woodley up to a certain point, but on the cross-examination this is brought out very clearly. On Mr. Fullerton's cross-examination it appears that when they were having this conversation in the down-town office in 1872, when, as had been shown on the direct examination, they held these proof slips in their hands, they discussed the "Beecher matter" and the "Beecher article." I will read:

Q. The Beecher matter, was it? A. Yes, Sir, "the Beecher article" they called it.

That was the phrase they used while those papers were in Mr. Tilton's hands. And there is a good deal more on the cross-examination showing that that was the very subject that was under discussion—"the Beecher article"—while Mr. Tilton and Miss Claflin divided the copy or

the proofs between them; they looked upon these slips and talked about "the Beecher article" and discussed with Col. Blood the propriety of publishing it.

#### THE TESTIMONY RULED OUT.

Judge Neilson—I don't see the connection: I think I must rule that out. Slips may have been circulating in all the newspaper offices, and yet they may have been very different papers from those that were in Mrs. Woodhull's office, and very different papers from any that Mr. Tilton ever saw.

Mr. Hill—Well, Sir, my learned friends asked me the object of this proof, and I stated it, I believe, in full. Will your Honor enable us to save time by permitting me to make an offer to prove what I then stated?

Judge Neilson—Yes, Sir; consider that offer made and an exception taken, if you wish.

Mr. Hill—Yes, Sir.

Judge Neilson—That is all, Mr. Williams.

#### TESTIMONY OF CHARLES STORRS.

Charles Storrs was then called on behalf of the defendant, sworn, and examined as follows:

By Mr. Tracy—Where do you reside? A. In Brooklyn.

Q. How long have you resided in Brooklyn? A. About 25 years.

Q. What is your business? A. Commission merchant.

Q. Where have you carried on business? A. In New-York City.

Q. How long have you carried on business in New-York City? A. Some 25 years.

Q. What is your line of business? A. Commission merchant.

Q. What kind of business, dry goods? A. American staple dry goods, and—

Q. Do you know Theodore Tilton? A. I do.

Q. How long have you known him? A. I should think a dozen years or more.

Q. Have you been on friendly and intimate terms with him during that period? A. Yes, Sir; most of the time.

Q. Have you had business relations with him? A. I don't know as I can say exactly business relations; some times when he has been lecturing he has remitted his money to me for safe keeping, and paying out as he might direct.

Mr. Tracy—A little louder, Mr. Storrs, if you please. Mr. Storrs is not very well to-day, and I had designed to excuse him if I could.

Judge Neilson—You can repeat the answer.

Mr. Tracy—Just repeat the answer, Mr. Storrs, and repeat it a little louder.

Mr. Shearman—Let the stenographer read it.

THE TRIBUNE stenographer read the answer, as follows: "I don't know as I can say exactly business relations; sometimes when he has been lecturing he has remitted

his money to me for safe keeping, and paying out as he might direct."

Mr. Tracy—What years were those when he remitted money to you? A. I should think in the Winter of 1867-8, and '68-9, and perhaps previous years.

Q. During any portion of the period of your acquaintance, were you in the habit of seeing him frequently, and if so, how and where? A. Well, he was frequently at my house, but perhaps I saw him oftener in New-York, at lunch and in other ways.

Q. Where are you in the habit of taking lunch? A. At Delmonico's, at the corner of Chambers-st. and Broadway.

Q. For how many years has it been your habit to lunch there? A. I should think 16 or 17 years.

Q. During all the time you have known Mr. Tilton? A. Nearly; yes, Sir.

Q. Did he frequently lunch there? A. He did.

Q. Have you frequently lunched together? A. Yes, Sir.

Q. How frequently should you say you saw him on an average, Mr. Storrs, either at your house or in New-York, or elsewhere? A. Well, sometimes two or three times a week; sometimes perhaps oftener, and sometimes not that when we were in town.

Q. Were you in the habit of being with him elsewhere than at lunch or at your house? A. Oh, sometimes we would take a walk up Broadway to the bookstores or the picture galleries.

Q. Did you in that way come to be on intimate terms with him? A. Yes, Sir.

Q. So that you were in the habit of talking together concerning private affairs? A. Well—general affairs.

Q. During the time of your acquaintance with him was he employed on *The Independent*? A. Yes, Sir.

Q. And at any time did he hold any other position on any other newspaper? A. He was a while on *The Union*.

Q. When did you first learn that he had been discharged from *The Union* and *Independent*? A. I think it was the 2d of January, 1871, the day that was termed New Year's; Sunday, I think, was New Year's Day.

Q. From whom did you learn it first? A. I think, Mr. Freeland.

Q. Did you see Mr. Tilton on that day? A. Yes, Sir.

Q. Where? A. At his house in Livingston-st.

Q. How did you come to call there? A. I was making New Year's calls, and I was intending to call upon Mrs. Tilton.

#### MR. TILTON TELLS HIS TROUBLES TO A FRIEND.

Q. Well, did you call on Mrs. Tilton? A. I called at the door and the servant said she was sick, and said Mr. Tilton was in; and I said I would like to see him.

Q. Did you see him? A. I did.

Q. Where? A. In the parlor of his house.

Q. Did you have a conversation with him? A. Yes, Sir.

Q. Was anything said about his having been discharged; and, if so, what? A. I asked him if he had been discharged from *The Independent* and *The Union*, and he said he had.

Q. What was the manner in which he said that? A. Well, he bowed his head this way [illustrating]; he seemed somewhat depressed and dejected.

Q. Covering his face with his hand at the time he said he had been discharged? A. Yes, Sir.

Q. State whether or not he manifested feeling when speaking of his discharge from *The Independent* and *Union*. A. Well, he seemed depressed and dejected.

Q. What further was said? A. He rose, and said he wanted me to go right around to Frank Moulton's with him.

Q. Did you go? A. I did.

Q. With him? A. Yes, Sir.

Q. Did you have any conversation on your way there? A. We did.

Q. What was it? A. I asked him what the trouble was. Well, he said that Mr. Beecher, Mrs. Beecher and Mrs. Morse, had been talking against him to Mr. Bowen, and influencing him against him; and he also said that they had influenced his wife against him; and he said that a lady had made false charges to Mr. Bowen about him; but he said that the reverse was the truth, that the lady had made solicitations to him—he said it was Joseph and Potiphar's wife over again. I asked him who it was. He said he would not give the name, but the first letter of her name was "M." He said he would not say that they could not say some things against him, but he wanted justice; and he said that if he had seen me he should have come to me, but he had seen Mr. Moulton—Frank Moulton—and that he had put his matters between Mr. Bowen and Mr. Beecher into his hands for settlement, and that Mr. Moulton did not want him to say much about it.

Q. When you got to Mr. Moulton's house whom did you see? A. I saw Mr. Moulton.

Q. Did you have a conversation with Mr. Moulton and Mr. Tilton? A. Yes, Sir.

Q. Was anything said there in regard to Tilton's difficulty with Bowen? A. Mr. Tilton repeated, as he had said on the way, about Mr. Beecher and Mrs. Beecher and Mrs. Morse having influenced Mr. Bowen; and Mr. Tilton also then stated that Mrs. Morse and Mrs. Beecher had also influenced Bessie Turner to tell some things about him.

Q. About whom? A. About him, Tilton. And Mr. Moulton stated that it was all wrong, his being discharged, that it was a mistake; and that he, Tilton, should be reinstated. He said that Mr. Tilton was the same to *The Independent* as Mr. Greeley was to *THE NEW YORK*

*TRIBUNE*; and that he should see Mr. Bowen, to have him reinstate him. I think then Mr. Tilton left the room—Mr. Moulton I mean—and Mr. Tilton stated that Mr. Beecher said "he humbled himself before him as he did before his God;" says he, "and he shall." Mr. Moulton returned, and said he, "What have you been saying here? What have you been saying here?" "Oh!" said Mr. Tilton, "not much of anything; but I said that Mr. Beecher said that he 'humbled himself before me as he did before his God;'" and said he, "and he shall."

Q. Was anything further said? A. Not that I recall, except I expressed to him my regrets and sympathy, and told him if there was anything I could do for him I would be happy to do it, and he said he would like to see me again, and I think that is all I recall at this moment.

Q. Did you see Mr. Tilton again soon after that? A. I did, within a day or two.

Q. Had you any further conversation with him on the subject of his difficulties? A. Yes, Sir.

Q. What did he say to you? A. Well, he repeated about Mr. Beecher and Mrs. Beecher and Mrs. Morse having influenced Mr. Bowen against him, and then he said that he had told him about improper proposals by Mr. Beecher, and he said when he learned that, that he sent for Mr. Beecher by Mr. Moulton, to come to Mr. Moulton's house to see him, and he said that Mr. Beecher came there, and when he came there he made this charge against him of improper proposals to his wife, and he said Mr. Beecher seemed to be astonished, and said that could not be so, and Mr. Tilton made a motion as though he was taking something out of his pocket, and he said: "I took out a piece of paper;" I forget whether he said he read it or gave it to Mr. Beecher to read, and he said Mr. Beecher seemed surprised and said, "That could not be so;" said Elizabeth could not have said so, because it was not true; "Well," he said, "if you don't believe it, go and ask Elizabeth;" he said that Mr. Beecher did go and see his wife, and got from her a retraction, that there never had been any improper proposals, and said, "When I found it out I was very angry. I told Mr. Moulton, and he was very angry, and," he says, "Mr. Moulton went to Mr. Beecher with a pistol, and made him give it up and make an apology."

#### "IMPROPER PROPOSALS" THE ONLY CHARGE MADE.

Q. In the first conversation, on the 2d of January, either at Mr. Tilton's house or at Mr. Moulton's house, did Mr. Tilton assign any cause of complaint against Mr. Beecher except what you have stated? A. No, Sir, not that I remember.

Q. In the second conversation, when he spoke of Mr. Beecher having made improper proposals to his wife, did he assign any other cause of complaint against Mr.

Beecher than those that you have now stated? A. Not that I now remember.

Q. Did he charge him in any manner with adultery with his wife? A. No, Sir.

Q. Or make any such intimation? A. No, Sir.

#### MR. TILTON CONSULTS WITH MR. STORRS.

Q. Soon after this last conversation in January, 1871, did any person call upon you in regard to starting a newspaper scheme—a newspaper in New-York? A. Yes, Sir.

Q. Who was that person? A. Mr. Tilton and Franklin Woodruff.

Q. What was the paper to be started, and for whom?

Mr. Beach—Well, you had better let him tell what was said.

Mr. Tracy—State what was said. A. I think it was the name of *The Golden Age*, but I am not certain; it was a paper Mr. Tilton was about starting; whether he had got the name or not I won't be positive; and then I remember Mr. Woodruff wanted me to take some stock; I told him I had no money to take stock; but I would like to see Mr. Tilton succeed in his enterprise, and, to show him my friendliness in the matter, that I would give something out and out, but I didn't wish to subscribe to the stock.

Q. Did you afterward give anything to Mr. Tilton for *The Golden Age*? A. I think I did; I think the next day I sent him a check for \$250, as a gift toward it.

Q. In the Spring of 1872 did you see Mr. Tilton and have a conversation with him in regard to his troubles with Mr. Bowen? A. I did.

Q. Did he bring any paper to you at that time? A. He did.

Q. What was it? A. It was an article that he had prepared for his paper, *The Golden Age*.

Q. What was it called—how was it headed? A. "Personal Statement."

Q. Did you have a conversation with him at that time? A. Yes, Sir.

Q. When was that conversation, Mr. Storrs? A. I should think it was in the middle or last of March, 1872.

Q. Now, will you state what occurred and what was said between yourself and Mr. Tilton on that occasion? A. Mr. Tilton called and said that he had been out West on a lecturing trip, and he had been received rather coldly and indifferently, and the people didn't seem to understand why he had been so suddenly discharged from *The Independent* and *The Union*; and he said he didn't know as I understood about his writing the biography of Mrs. Woodhull, and he said he thought he must write a personal statement of the matter, and then he handed me an article he had prepared and wanted I should read it, and see what I thought of it.

Q. Did you read it? A. I did.

Q. Did you tell him what you thought of it? A. I did;

he wanted to know what I thought of it, and I told him I thought it was not a proper article to publish; I thought it would injure him more than anybody else, and I told him I thought if Mr. Bowen could be satisfied that he had wronged him in any way, that he would do what was right with him; and then I said to him: "I see Mr. Beecher denies all these charges." "Yes," he said, "he always did; I don't know that they are true, but Mr. Bowen told me so."

Q. To what charge did you refer when you said that? A. The article purported—that is, it included the letter that he wrote to Mr. Bowen of Jan. 1, 1871.

Q. You referred to the charges that Mr. Tilton said Mr. Bowen had made against Mr. Beecher, and which he had recounted in the letter of Jan. 1, 1871? A. Yes, Sir.

Q. You said to him that you saw what? A. I told him that I saw that Mr. Beecher denied all the charges. "Yes," he said, "he always did; I don't know whether they are true, but Mr. Bowen told me so."

Q. Was the fact stated in the article, that Mr. Beecher denied all the charges? A. Yes, Sir; I think it was.

Q. You called his attention to that paragraph in the article itself? A. Yes, Sir.

#### MR. STORRS EMPLOYED AS AN ARBITRATOR.

Q. Well, when you told him you thought Mr. Bowen could be induced to do him justice, what did he say to you? A. Well, Sir, it was either he or myself; I forget which, but something was said about arbitration; I insisted that I thought if Mr. Bowen could be satisfied he had wronged him, that he would settle it, and he finally suggested that he desired I should see Mr. Bowen, and I told him I would do so.

Q. See Mr. Bowen for what purpose? A. I thought he would settle with him in regard to the claim Mr. Tilton had against his papers.

Q. Did Mr. Tilton state to you what claim he had against Mr. Bowen at that time? A. Yes, Sir.

Q. What claim did he say he had against him? A. Six months' service, according to his agreement.

Q. Do I understand you to say that Mr. Tilton desired you to see Mr. Bowen and see if he could be induced to settle with him? A. Yes, Sir.

Q. Did he leave with you anything to show Mr. Bowen when you might see him? A. He left that article I set up called the "Personal Statement."

Q. The "Personal Statement"? A. Yes, Sir.

Q. He left that with you? A. Yes, Sir.

Q. For what purpose?

Mr. Beach—Let us hear what was said.

Mr. Tracy—For what purpose did he say he left it with you?

Mr. Beach—This is a very unusual mode of examining a witness.

Mr. Tracy—My modes are all unusual; there is no doubt about that.



Mr. Beach—If the gentleman's modes are all unusual, he had better make them a little more usual.

Mr. Tracy—I cannot.

Mr. Beach—Then if you cannot, the Court must make you.

Mr. Tracy—I ask you what he left with you, and for what purpose he left it with you? A. He said I could show it to Mr. Bowen.

Q. Did you see Mr. Bowen in pursuance of Mr. Tilton's request? A. I did.

Q. How long after that conversation? A. My impression is the next night, but I am not quite clear about it.

Q. Did you show him that "Personal Statement"? A. I offered to show it to him, but my remembrance is that he said he had seen it, or knew what it was.

Q. Did you have a conversation with Mr. Bowen on the subject of Mr. Tilton's claim against him? A. I did.

Q. What was said?

Mr. Fullerton—I object to that.

Judge Neilson—I cannot take that.

Mr. Tracy—Why not? The question is this: The witness has already testified that Mr. Tilton requested him to see Mr. Bowen, to see if he could not be induced to settle his claim, and he says he went and saw Mr. Bowen in pursuance of that request, and had a conversation with him about the settlement of Mr. Tilton's claim against him.

Judge Neilson—That states precisely what you will be at liberty to prove—that general summary of the business.

Mr. Tracy—But when the plaintiff has constituted the witness his agent—

Judge Neilson—For that purpose?

Mr. Tracy—To negotiate the settlement with him, it seems to me that we are entitled to what was said between the principal and the agent.

Judge Neilson—Don't you see how utterly you put a party at the mercy of a third person—Mr. Bowen or any one else—who, on being applied to, proceeds to make various statements, arguments, conversations, or charges?

Mr. Tracy—But that is a risk which all parties run when they employ agents to transact their business. If Mr. Tilton had gone and had this conversation with Mr. Bowen about the settlement of his claim, there would be no doubt it would be admissible.

Mr. Beach—Yes.

Mr. Tracy—Can there be any doubt, when he made Mr. Storrs his agent to go, and Mr. Storrs does go and have a conversation with Mr. Bowen about the settlement of his claim, that we cannot show what was said between the parties? I submit, your Honor, that we can.

Judge Neilson—Why should you show it? Nothing that Mr. Bowen could say on that occasion would be evidence against the plaintiff, or for the plaintiff, either way.

Mr. Tracy—Yes, Sir; but what this witness might say would be received.

Judge Neilson—No, not all. He would say, "Mr. Til-

ton sent me to see if we cannot adjust this matter." No, Sir, we cannot take it.

Mr. Tracy—I will put this question and take your Honor's ruling. [To the witness.] What was said between you and Mr. Bowen on the subject of the settlement of Mr. Tilton's case against him at that interview? [To Judge Neilson.] That I understand is objected to.

Judge Neilson—Yes, and ruled out.

Mr. Tracy—Your Honor will be so good as to note our exception.

Judge Neilson—You are at liberty to show by this witness that he did see Bowen, and show the general result, whether a failure or not.

Mr. Tracy—You say you saw Mr. Bowen? A. Yes, Sir.

Q. Did you have a conversation with him in regard to the settlement of Mr. Tilton's claim against him? A. Yes, Sir.

Mr. Tracy—I repeat my last offer, to show what was said on the subject, and we will take your Honor's ruling on it.

Judge Neilson—The same ruling.

Mr. Tracy—Please note our exception. [To the witness]—Did you afterwards see Mr. Tilton; after you had your conversation with Mr. Bowen, did you see and talk with Mr. Tilton on the subject? A. I did.

Q. Did you tell him what transpired between yourself and Mr. Bowen? A. Not all, but nearly all.

Q. Repeat what you said to Mr. Tilton of the conversation which had transpired between yourself and Mr. Bowen on this subject? A. I told Mr. Tilton I called on Mr. Bowen, and I said to him that Mr. Tilton had been West, lecturing, and found the people received him rather coldly, and didn't understand why he had been so suddenly dismissed from *The Independent and Union*, and that Mr. Tilton felt that he had not done him justice about his agreement, and that he had prepared an article to publish, and I offered to show this article to Mr. Bowen, but Mr. Bowen said that he had either seen it or read it, and I told him Mr. Bowen said that he never had received any such letter as that of Jan. 1, 1871, and that he had not said the things that were stated in that letter, and that Mr. Bowen said he felt he didn't owe him anything, and his lawyer said he had told him he didn't owe him anything, and I said to Mr. Bowen, "Suppose that you feel that you do not owe him, legally or morally, a dollar, would it not be better to settle with him? It will cost you something to litigate it, and he may beat you in the end, and you have got two public papers here, and it would make a scandal, and," said I, "would it not be wiser and better to settle with Mr. Tilton?" and he thought not; but after some talk with Mr. Bowen, either said, or I received the impression from him—

Mr. Fullerton—Did you tell this to Mr. Tilton? A. Yes,

Sir; I received the impression that he would arbitrate it or settle it.

Mr. Tracy—And you so told Mr. Tilton? A. Yes, Sir.

Q. Well, what did Mr. Tilton say to that? A. He said he hoped he would, as he wanted his money—he wanted a settlement.

Q. Was there anything said in this conversation about your acting as an arbitrator for him? A. Yes, Sir; I think it was in that same conversation he said if there was an arbitration he wanted to know if I would act as an arbitrator if he wanted me to. I told him I would.

#### THE CIRCUMSTANCES OF THE ARBITRATION AGAIN DETAILED.

Q. Did you afterward act as an arbitrator?

A. Yes, Sir.

Q. With whom? A. Mr. Claflin and Mr. Freeland.

Q. Where was the arbitration held? A. At Mr. Moulton's house.

Q. How soon after this last conversation that you then had with Mr. Tilton do you think that arbitration occurred? A. I could not state exactly; it might have been three or four days, or might have been four or five. It was not long.

A. How did you go to Mr. Moulton's house the night of the arbitration—do you know? A. Do you mean with whom I went?

Q. Yes, Sir, with whom you went? A. I think I went around with Mr. Bowen.

Q. When you arrived there, who was present? A. Mr. Tilton, Mr. Moulton, Mr. Bowen and myself.

Q. Was any one sent for Mr. Claflin and Mr. Freeland? A. Mr. Claflin and Mr. Freeland had not arrived, and it was suggested that I should go around and have Mr. Claflin come around, and I did so, and found Mr. Freeland there, and went around with them.

Q. So you three went together? A. Afterward.

Q. On your second appearance there? A. Yes, Sir.

Q. After you got there, what was said by you on the subject of Mr. Beecher being a party to that arbitration?

Mr. Fullerton—When Mr. Tilton was present?

Mr. Tracy—Yes.

The Witness—I said that I had just learned from Mr. Claflin that Mr. Beecher's matters were to be brought in, and I said that was the first that I had heard of it; that if Mr. Beecher's matters were to be brought in, I felt that etiquette required me to retire; that I could not sit in judgment upon a man who had not asked me to do so.

Q. Well, what answer was made to that, and by whom? A. Mr. Claflin replied that Mr. Beecher understood it—that they all understood it—that all the difficulties and matters between the three men were to be arbitrated, and he said there had been a paper prepared to that end, and then he took what is known as the "Tripartite Agreement," and, I think, read it, or at any rate we read

it; I think he read it; I am not quite clear whether he read it or whether we read it; at any rate, we read it.

Q. What did you say after that? A. I said, if that was so understood, why I would remain.

Q. That you say was in the presence of all the parties? A. Yes, Sir.

Q. What then was done? A. Mr. Claflin and Mr. Bowen went into another room, and when they were out I said to Mr. Tilton and to Mr. Moulton that I thought that that was not a fair paper, and I advised Mr. Tilton not to sign it; I said I thought that if what Mr. Tilton had told me was true, that Mr. Beecher was the most to blame, and I said: "This paper seems to be one-sided;" and I said I would not sign it, and I told Mr. Moulton to go into the other room and tell Mr. Bowen not to sign it, from what he had himself told me.

Q. Well, what occurred after that? A. Then Mr. Bowen and Mr. Claflin returned, and the papers between Mr. Tilton and Mr. Bowen—their contracts—were offered there were some statements made in regard to it; principally, so far as I remember, it was in relation to a percentage that Mr. Tilton was to have from *The Brooklyn Union* from Mr. Bowen.

Q. Well, go on. Did Mr. Bowen and Mr. Tilton make a statement before the arbitrators? A. Yes, Sir.

Q. What was done after they made their statements? A. They withdrew.

Q. Well, then, what was done? A. Then the arbitrators discussed the questions that had been presented.

Q. Did they come to an agreement? A. They did.

Q. After the arbitrators had come to an agreement, what was done then? A. Mr. Claflin called them in.

Q. Who came in? A. Mr. Tilton, Mr. Moulton, and Mr. Bowen.

Q. After they came in, what was done? A. Mr. Claflin made known to them the award.

Q. State what he said? A. He stated that the award was that the three parties, Mr. Bowen, Mr. Tilton, and Mr. Beecher, were to sign a paper called the "Tripartite Agreement," and that all the papers were to be burned that the three parties had that were likely to make any trouble hereafter, and that Mr. Bowen was to pay Mr. Tilton \$7,000.

Q. When Mr. Claflin was speaking of burning any papers, were any papers particularly enumerated that were to be burned? A. That was a little later in the conversation.

Q. Ah! very well. After Mr. Claflin had announced his award, or the award of the arbitrators, what was said? A. Mr. Tilton objected to signing the paper, and Mr. Claflin says, "Why, Theodore, you have agreed to it." "Well," Mr. Tilton says, "I know I have, but I wish to change it." And there was considerable discussion on that point for some 15 or 20 minutes, as I remember, and finally Mr. Tilton was allowed to amend the paper, and whether Mr. Bowen did I don't remember, and don't

know but he did. At any rate, Mr. Tilton wanted to make some alteration, and he was allowed to do so by the arbitrators.

Q. Were any further amendments to the award suggested? A. Mr. Bowen said he wanted what is termed the Woodstock letter, which, I think, was in June, 1863; he wanted that returned to him, and the arbitrators assented to that.

Q. That that letter should be returned, instead of being burned? A. Yes, Sir.

Q. When those two amendments had been made, what was said or done? A. Then the understanding was that Mr. Claflin was to take back what is called the Tripartite paper to Mr. Wilkeson and have it engrossed or re-written, and then they were to sign it.

Q. What then? A. Then there was a discussion who should be the custodian of that paper, and the understanding—they didn't come to any agreement, but the understanding was that they should agree, all three, upon some one party to keep it, and he was to keep it and not destroy it or give it up to either one of the parties without the consent of the whole; then Mr. Bowen said he wanted to close up the matter, and he gave his check to Mr. Tilton.

#### THE AGREEMENT TO BURN "ALL THE PAPERS."

Q. Now, I repeat the question again, whether at any time during that time any papers were particularly named that were to be destroyed? A. Yes, Sir, previous—after the paper had been amended, Mr. Claflin then asked them if they all agreed to the arbitration, and if they would burn all the papers; asked Mr. Tilton and Moulton, and I think Mr. Bowen said he had no papers.

Q. What did Tilton and Moulton say about burning the papers? A. They agreed to it.

Q. They agreed to it? A. Yes, Sir.

Q. Now I repeat the question: Were there any papers particularly named that were to be destroyed or burned? A. I am not clear; the papers were named while the arbitrators were in discussion, several times, and my impression is they were, but I am not clear whether Mr. Claflin specified; he did several times, in the course of our talk together, and when they came in he said "all the papers," and I think he named what is termed "Mr. Beecher's apology," and Mr. Tilton's letter to Bowen of January 1, and I think some others, but they were discussed so many times in the arbitration that I am not so clear about it; but at any rate all the papers that were liable to have trouble. Mr. Claflin was very tenacious about that point.

Q. Do I understand you to say that your best recollection is that the letter known as "Mr. Beecher's apology," and Tilton's letter to Bowen of January 1, were particularly named as two papers that were to be burned? A. They were particularly named in the discussion, and

think they were in the award, but I am not quite positive.

Q. What did Tilton and Moulton say to this proposition to burn the papers? A. It was agreed to.

Q. Was any check drawn that night by Bowen? A. Yes, Sir.

Q. Do you remember seeing Mr. Bowen and Mr. Claflin engaged in private conversation just before Mr. Bowen drew that check? A. I don't know whether it was private; I knew they did have a conversation about the check.

Q. Could you hear what was said between them? A. Yes, Sir.

Q. What was said? A. Mr. Bowen said he didn't know exactly how his bank account stood, and wanted to know if Mr. Claflin would loan him the money in the morning to make his check good if it was not—if he hadn't money enough, and Mr. Claflin said he would.

Q. And thereupon did Mr. Bowen draw his check? A. Yes, Sir.

Q. What was done with the check after he drew it? A. He gave it to Mr. Tilton.

Q. What further was done that night after the delivery of the check to Tilton? A. I don't call to mind anything at this moment.

Q. The parties separated? A. Yes, Sir.

Q. Did you see the check that night? A. I saw the check, but did not have it in my hands.

Q. Does the date of this check, April 4, 1872, enable you to fix the time of that arbitration? A. Only by inference; it would be only assuming; he spoke about loaning money to make the check good in the morning, but I didn't.

Q. Do you know Mr. Bowen's custom in regard to drawing checks and dating them, after three o'clock, one day ahead? A. No, Sir, I do not.

Q. Well, you separated, I take it, after that check was drawn? A. Yes, Sir.

#### MR. TILTON WANTS MR. MOULTON TO BE CUSTODIAN OF THE COVENANT.

Q. After you separated that night, did Mr. Tilton make any request to you, and if so what, in regard to the custody of this "Tripartite Agreement?" A. Mr. Tilton said to me that he thought Mr. Moulton should be the custodian of the paper, that he had known more about the matters than anybody else, and wanted me to speak to Claflin, Freeland, and Bowen to that effect.

Q. Did you speak to them in pursuance of that request? A. I did.

Q. Did they assent or dissent to that arrangement? A. They dissented.

Q. And who did become the custodian of the paper? A. I only know by hearsay, Sir, that it was Mr. Claflin.

A. After this arrangement, did you have a conversation

with Tilton and Moulton, at Mr. Moulton's house, on the subject of the arbitration? A. I did.

Q. How soon after the arbitration? A. I couldn't state exactly; I think it was ten or fifteen days.

Q. What was said there about it? A. Well, we were discussing the arbitration, and I said to him that Mr. Bowen felt that we brought in too much as the award—\$7,000—and that his sons felt aggrieved about it, as they were interested in *The Union*, and during this conversation Mr. Moulton said that Sam. Wilkeson, as he called him, had either seen him or written to him and requested him particularly to burn Mr. Beecher's "apology" and the papers, and Mr. Moulton said: "Oh, yes, I have burned the papers," and laughed, and he says: "Mr. Beecher thinks I have." Then he remarked: "If Sam. Wilkeson thinks I have burned all these papers he is mistaken. What would Theodore do in case of trouble?"

Q. Can you remember anything further that was said in that conversation? A. Not that I call to mind.

#### MR. TILTON REGRETS WRITING THE WOODHULL BIOGRAPHY.

Q. Do you remember the publication of what is known as the Woodhull scandal in November, 1872? A. Yes, Sir.

Q. Did you have a conversation with Mr. Tilton after the publication of that scandal, upon the subject of the scandal? A. I did.

Q. When was that conversation? A. I think that was the 12th of December, 1872.

Q. How are you able to fix that date? A. Well, mainly as my wife's brother had died very suddenly and she was away.

Q. What? A. My wife's brother had died very suddenly, and she was away, and from a letter that I had from her.

Q. Your wife was away attending the funeral at the time of this conversation? A. The funeral had passed, but she was away.

A. Had not yet returned? A. No, Sir.

Q. Where was that conversation between yourself and Tilton? A. In my house, in what is known as the "sleeping room."

Q. What was said; how did the conversation begin? A. Well, I think the conversation began—it was just after Mr. Greeley's death, and we were speaking about him and *THE TRIBUNE*, and then he spoke—

Q. Was the subject of Mr. Greeley's will also talked about? A. No, Sir.

Q. Were you an executor of Mr. Greeley's? A. Yes, Sir.

Q. And it began by talking about Mr. Greeley and *THE TRIBUNE*? A. Yes, Sir.

Q. And you know it was after Mr. Greeley's death, do you? A. Yes, Sir.

Q. When did Mr. Greeley die? A. It was the last days

of November or the fore part of December: I forget the exact date.

Q. Do you remember the date of the funeral? A. Not absolutely; I think it was the 4th of December, though.

Q. And it was after the funeral that you had this conversation with Mr. Tilton? A. Yes, Sir; it was the 12th. I am quite confident, Sir.

Q. Now what was said by Tilton to you in that conversation in regard to this Woodhull scandal? A. Well, he referred to the Woodhull scandal, and said it was an infamous article, and he said there had been so many lies and misrepresentations about it, about Mr. Beecher and his wife, that he was writing a true story of the whole matter. He said that he would not state but what Mr. Beecher had made improper proposals to his wife, but there never was anything criminally wrong. He said there was not a purer woman living than Elizabeth. Then he referred—

Q. Can't you speak a little louder, Mr. Storrs? We want the jury to hear. A. I will try to; I am not feeling very well.

Q. He said there was no purer woman living than Elizabeth? A. Yes, Sir.

Q. What followed that? A. Then he spoke of regret at having written the life of Mrs. Woodhull—the biography.

Q. Spoke regretfully of having written the life of Mrs. Woodhull? A. Yes, Sir.

Q. What did he say about that life? A. Well, he said that it damaged him more than \$10,000, and he wished he hadn't done it.

Q. Did you see him again after that conversation? Mr. Beach—What year is that?

Mr. Tracy—1872; the 12th of December, 1872, the conversation that he is now speaking of.

The Witness—Yes, Sir.

#### MR. TILTON THREATENS MR. CLAFLIN.

Mr. Tracy—How soon after this conversation of Dec. 12 did you see him again? A. I cannot think; it was within a few days; it might have been ten and it might have been less.

Q. Was there anything said in regard to the true story on that occasion? A. Yes, Sir; he handed out a manuscript and said he had written it, and offered to let me take it and read it. I told him I would not take it then; perhaps I would at another time.

Q. Did you ever read it? A. No, Sir.

Q. You never saw it? A. No, Sir.

Q. Now after this conversation that you have last mentioned between yourself and Tilton did you have an interview with Carpenter—Francis B. Carpenter or F. B. Carpenter? A. I did.

Q. You know Mr. Carpenter? A. Yes, Sir.

Q. How long have you known him? A. I think I have

knew him personally until about that time—within a month.

Q. Well, did he come to you and invite you to join in a scheme of starting a new paper in New-York? Yes, Sir.

Mr. Beach—We object to that, Sir.

Mr. Tracy—Did you have an interview with him and other gentlemen upon that subject? A. I did.

Mr. Beach—We object to that last answer, Sir.

Judge Neilson—I think that last answer might be taken; it don't go into the particulars. It has been ruled that you could not go beyond that, you know, in reference to the same matter.

Mr. Tracy—I shall not trespass upon the rule of your Honor, at least not intentionally. [To the witness.] Did you have more than one interview with Carpenter on that subject? A. Several.

Q. At any time did you meet other gentlemen than Mr. Carpenter upon that subject? A. I met at Mr. Bowen's; yes, Sir.

Q. Who was present at Mr. Bowen's? A. Mr. Claflin, Mr. Carpenter, Mr. Bowen, and myself.

Q. How came you to go to that interview? A. I went at the request of Mr. Carpenter.

Q. To meet whom? A. To meet some gentlemen, he said.

Judge Neilson—No, that won't do. Strike that out.

Mr. Tracy—I was not going into the details, or to ask him whom he was to meet, only he was to meet gentlemen.

Judge Neilson—We cannot take Mr. Carpenter's declaration that he was to meet Tilton.

Mr. Tracy—He was not to meet Tilton.

Judge Neilson [to the witness]—What was the answer you made?

The Witness—I said I did; I don't remember exactly his question; he wanted to know if I met gentlemen, as I remember.

Judge Neilson—And you told them you met?

Mr. Tracy—I asked, "to meet whom," and he said, "gentlemen."

Judge Neilson—I thought you said Mr. Tilton.

The Witness—No, I said gentlemen.

Judge Neilson—Very well. Go on. I think you have enough about that.

Mr. Tracy—Now, did you four gentlemen have a conversation upon the subject of that newspaper scheme at Mr. Bowen's? A. Yes, Sir.

Q. How long did that interview continue? A. I couldn't tell exactly; I should think three hours, nearly.

Q. Did you afterward see Mr. Tilton and talk with him upon the subject of that interview at Bowen's house that night? A. I did.

Q. What transpired between you and Mr. Tilton relative to that interview? A. Shall I state all the conversation?

Q. Yes, state, as far as you are able, all that you said to

Mr. Tilton about what had transpired between yourself and others at Bowen's house, relative to that newspaper scheme. A. Well, I said to Mr. Tilton that Mr. Carpenter had called on me to go around to Mr. Bowen's to meet some gentlemen about starting a paper in New-York for his benefit; that when I got there I found nobody but Mr. Claflin.

Q. Whose benefit? A. His benefit.

Q. You say "his benefit;" whose benefit? A. Mr. Tilton's.

Q. When you got around there you found nobody but Claflin? A. Yes.

Q. Well, go on. A. I asked Mr. Tilton—says I, "What is the matter with Claflin?" Says he, "Why?" Says I, "He didn't seem favorably disposed to the project, and rather talked against it than for it." Mr. Tilton says, "Claflin better look out; perhaps something can be said about him," and then he wanted to know what Bowen said. I told him Mr. Bowen seemed to be friendly, and favorably disposed to the enterprise; and I stated to him that Mr. Carpenter's scheme, or plan, was that he thought there was a great opening for a New-York daily paper, and that his scheme was to make Mr. Beecher an editor, and him (Mr. Tilton) a foreign correspondent, to go abroad and be gone two or three years, and then come back, and be an editor or the editor, I forget which, and that Carpenter was to take some business interest in the paper, and I told him that Mr. Bowen said if they were going to start a paper they had better buy some New-York paper, that it would be of great importance to be in the Associated Press news; that that was of great value; and Mr. Bowen said he thought *The New-York Express* was for sale, and could be bought at a reasonable price, and that Mr. Bowen had agreed to see the owners of the paper, and see if it could be bought, and at what sum, &c. and that after we got through that subject, *The Commercial Advertiser* was spoken of; and then I told him that Mr. Bowen would sell—wanted to sell—*The Brooklyn Union*, and said if he could do that he would take, as I remember, \$30,000 of the stock in it, and in that case Mr. Tilton was to be the editor-in-chief; and then Mr. Bowen said he didn't like the idea of starting a new paper; that he would rather go in and buy *The Eagle*; he would take some stock in *The Eagle*; and then Mr. Carpenter said if all these things failed, he wanted to know if he could not buy out *The Golden Age*, and have Mr. Tilton go abroad and be foreign correspondent for *The Independent* and *Christian Union*, and write an article once a week; I told him Mr. Bowen said he had some foreign correspondents, and didn't think he could take an article once a week, but he thought he could take one once a month; and as we rose to leave I told him Mr. Carpenter said that Mr. Beecher had said that he would take \$20,000 in the New-York paper, if that succeeded.

Q. What did you say that Bowen said on that same sub-

ject! A. Mr. Bowen said that he would not be outdone by anybody in Brooklyn, that he would do as much toward it as anybody.

Q. Do I understand you to say that you told Tilton that all these various schemes that you have mentioned were discussed there that night? A. Yes, Sir.

Q. One after the other? A. Yes, Sir.

Q. If you did not succeed then, the other was suggested as feasible? A. Yes, Sir.

Q. Now, what did Mr. Tilton say to that? A. Mr. Tilton said Mr. Carpenter had told him all about it. He said he thought there was a good opening for a paper, but he didn't know whether he would like to go abroad or not.

Q. Do I understand you correctly to say that in case you had determined to buy a Brooklyn paper, Mr. Tilton was to be editor-in-chief of that paper? A. Of the Brooklyn paper; yes, Sir.

Q. And Mr. Beecher was not to have anything to do with it? A. Nothing said about that.

Q. Mr. Beecher's connection with the paper was in case it was a New-York paper? A. A New-York morning paper.

Q. What further did Mr. Tilton say on the subject of his connection with the newspaper scheme than what you have stated? A. I don't at this moment call to mind anything.

Q. But do I understand you to say, Mr. Storrs, that as a matter of fact, these various schemes were talked about at Bowen's that night? A. Yes, Sir, more; more in detail.

Q. More in detail than you have stated here? A. Yes, Sir.

Q. And you were engaged in that conversation at Bowen's, how long do you say? A. As near as I can remember it was some three hours.

#### WHO WAS REPRESENTED AT THE MEETING ABOUT A NEW JOURNAL.

Q. Whose friend was Mr. Claflin known as or understood to be in that interview?

Mr. Beach—It is objected to.

Mr. Tracy—Who did Mr. Claflin represent in that interview?

Mr. Beach—Objected to. Your Honor has ruled out the interview and taken only what this gentleman said to Mr. Tilton.

Mr. Tracy—If I remember correctly, they proved by Mr. Moulton, whom I said I represented on a certain important interview.

Mr. Beach—Yes.

Mr. Tracy—And then they got in the interview, or Mr. Moulton's version of it.

Judge Neilson—It appeared previously that Mr. Moulton, in that instance, had authority to represent.

Mr. Tracy—That Moulton had authority?

Judge Neilson—Yes; in the instance that you refer to.

Mr. Tracy—The question there was whether I had authority to represent Mr. Beecher at that interview.

Judge Neilson—I recollect that very well.

Mr. Tracy—And Mr. Moulton said that I claimed to have authority from Mr. Beecher.

Judge Neilson—Well, this is a very different matter.

Mr. Tracy—Now, we have given some evidence, if your Honor please, on the subject of Mr. Carpenter's authority to represent Mr. Tilton on the subject of this negotiation for a newspaper, and it is drawn out from Mr. Moulton's evidence on that subject. We have also shown not only that this witness repeated to Mr. Tilton the most that transpired at that interview, and he approved the scheme and the substance of what was done, the only criticism being that he did not know whether he would care to go abroad, or whether he would like to go; and we have shown further, if your Honor please, that the plaintiff said that Carpenter had told him all about it—all about that interview. Now, that evidence taken together—first, the evidence that we have given touching Mr. Carpenter's authority; second, the fact that he assumed to act for him and did act for him, that this witness reported much of what was said approvingly to Tilton, and that Tilton said that Carpenter had told him all about what had transpired at that interview, I submit so far connects Tilton with what had transpired there as to enable us to prove what in fact did transpire there.

Judge Neilson—I think not, Sir. All that might occur and Mr. Carpenter be a mere intruder. It don't appear that he had any authority to represent the plaintiff.

Mr. Tracy—And this witness, your Honor will remember, said to Tilton that Carpenter had consulted him on the subject of starting a newspaper for his benefit.

Judge Neilson—Yes, and Mr. Carpenter might have done that voluntarily, of his own volition.

Mr. Tracy—Of course he might, but if the plaintiff afterward approved and adopted it, he adopted the agency.

Judge Neilson—He did not approve or adopt any agency. He did not disapprove or condemn the scheme, but there was no approval and no adoption?

Mr. Tracy—Well, your Honor will allow me to ask a question and take a ruling upon it.

Judge Neilson—Yes.

Mr. Tracy—Mr. Storrs, will you state what was said between yourself and Carpenter and Claflin and Bowen at that interview at Bowen's house in regard to the starting of a new paper in New-York. That is the question.

Mr. Beach—Objected to, Sir.

Judge Neilson—Ruled out, Sir.

#### MR. TILTON'S SHARE IN THE TRIBUNE.

Mr. Tracy—Your honor will be so good as to note our exception. [To the Witness]. Now, Mr. Storrs, do you know anything on the subject of the one share of

TRUSTEES stock which stood in the name of Mr. Tilton? A. Nothing only what I have heard him remark.

Q. Well, Sir, that is what I want to inquire about; what have you heard him say on that subject? A. On what particular point?

Q. As to the ownership of the stock, who owned it, in fact? A. Well, I understood it from him that his father owned it.

Q. How did you understand it from him? A. Well, in conversations, in talks with him; once I think he asked me, some time ago, when, my impressions are, it was selling at some seven or eight thousand dollars, and Mr. Tilton asked me what I thought of selling it, and investing it in other securities, and, as I remember, I advised him to sell it. There was some general talk of that—

Q. In that conversation did he say who owned it? A. He said his father owned it.

Q. Did you know of the transaction at the time the stock was purchased? A. No, Sir.

Q. You only knew it after it had been purchased, and from what he said to you? A. Yes, Sir.

Q. Do you know who in fact had the dividends on that stock? A. I know from what he said. I think once when he was away he left, or ordered the money—at least his sister came to me about it. I am not quite clear. At any rate his sister came to me about it, and my impressions are that he ordered me to pay it.

Q. To whom? A. To his sister, for his father and mother.

**MRS. TILTON AND MR. BEECHER TO BE  
"SMASHED."**

Q. Did you have a conversation with Tilton in July, 1874, at Mr. Ovington's house? A. I did.

A. Was it before or after his wife had left him? A. It was just after.

Q. Do you know how soon after? A. I think one or two days.

Q. What was said on the subject of his wife's having left him, and what he should now do to his wife and Mr. Beecher? A. Well, the conversation on that point was that his wife had left him, and he said he had not said anything about it, but he thought he must now smash Elizabeth and Mr. Beecher.

Q. What did you say to that? A. Well, I said to him at least I was sorry, and it was unfortunate.

Q. Did you have any conversation with Moulton the first of January, 1873, on the subject of this newspaper enterprise at his house? A. A little.

Q. What was said?

Mr. Fullerton—I object to that, Sir.

Mr. Tracy—Haven't we laid a foundation for that?

Judge Neilson—No.

**MR. MOULTON INCENSED AGAINST MR.  
BEECHER.**

Mr. Tracy—I will withdraw that question for the present, your Honor, until we can show—there seems to be a little doubt whether we have connected Mr. Moulton sufficiently on that subject. [To the Witness.] In August, 1874, were you sent for at any time to come to Mr. Moulton's house? A. Yes, Sir.

Q. What message did you receive that called you there?

Mr. Beach—Well, wait.

Mr. Tracy—From whom?

The Witness—Franklin Woodruff.

Q. On receipt of a message from Franklin Woodruff, what did you do? A. The next morning I waited at my house until about 9 o'clock, and, as I did not hear from Mr. Moulton, I sent around word to him, saying that I had received, the day before, a line from Mr. Woodruff, saying that he wanted to see me, and told him I was in readiness to see him.

Q. Well, what reply—did you get a reply to that note? A. He sent back a message saying that he had just arrived in town and would esteem it a favor if I would come there at his house.

Q. Did you go there? A. I did.

Q. Did you see him? A. I did.

Q. Who went with you? A. Mr. Proctor—John C. Proctor.

Q. Did you have an interview with Mr. Moulton that day? A. Yes, Sir.

Q. Where did that interview take place? A. Up-stairs, over the parlor, front room.

Q. What was said by him on your going into the room up-stairs?

Mr. Beach—That is objected to.

Judge Neilson—They interrogated Mr. Moulton on that subject.

Mr. Beach—Sir!

Judge Neilson—They interrogated Mr. Moulton as to this interview.

Mr. Beach—Did they?

Judge Neilson—I think they did.

Mr. Beach—Let us see; where is it? Oh! Yes, Sir, I remember.

Mr. Tracy—Do you withdraw your objection?

Mr. Beach—Yes, Sir; I had forgotten it for a moment.

Mr. Tracy—What was said, Mr. Storrs? A. Well, Mr. Moulton bade me the compliments of the day and explained why he sent for me, and laughed, and said he didn't know as I would come to see a blackmailer, and went up stairs, and he said he wanted me to tell my brother that he must not sign the Plymouth Church Committee's report; he said that Mr. Beecher had confessed his adulteries to him, and he could prove it; he said he was going to drive Mr. Beecher out of Plymouth Church and out of Brooklyn; he says, "I have always—"

Mr. Hill—Speak louder.

The Witness—He said, "I have always stood up by Mr. Beecher, but he has now called me a blackmailer, and said if Mr. Beecher had followed his advice it would have been all right; he said he had done what he could to oppose one of Mr. Tilton's statements, and he named the one, but I cannot tell you what one it was—and said that my brother must not sign that report; in some connection he said he wanted to be cross-examined or make some further statement to the Committee, and I said I supposed the evidence was all in, and that the report had been made. Well, he said I must tell my brother he must not sign that report; he says, "If he signs that report I shall make another statement, and," he says, "if I do, it will ruin a lady, a friend of yours"—he says, "somebody that will break your heart." I asked him if he meant so and so—

Judge Neilson—Don't mention any names.

The Witness—I will try not to. He said somebody would break my heart, and I asked who it was, and he said he wouldn't give any name, and I forgot whether—and I said to him that—

Mr. Hill—A little louder.

The Witness—That I had had nothing to do with the Plymouth Church report, and that I didn't intend to have; that they had urged me very strong to appear before them, but I would not, and I should have nothing to do with it; and I told him that I should not influence my brother to sign it, or not to sign it—I should have nothing to do about it; I told him any message he had for my brother I would take to him, but I should not influence him to sign it or not to sign it.

Q. Anything said to him by you as to the probability that your brother had already signed it? A. Yes, I told him—I told him I thought—I presumed, but I did not know—that I understood the meeting was to be held that night, and that I thought very likely he had. He said that he did not want him to stultify himself; that is the word he used.

Q. Did he explain why he did not want your brother to stultify himself? A. Didn't state, only as I have stated.

Q. What did he say, if anything, about Mr. Beecher having called him a blackmailer? A. Well, I cannot recollect definitely, but he said considerable upon that point—seemed to have some feeling on that point, but I cannot recollect all the—just all that was said.

Q. State whether or not he spoke of Mr. Beecher in this connection—of his having called him a blackmailer, with a good deal of feeling? A. Well, he seemed to have more feeling on that point than anything else.

Q. What was said, if anything, on the subject of his having been a friend of Mr. Beecher until Mr. Beecher had called him a blackmailer, and now he intended to protect himself—was there anything said on that subject, and if so, what? A. That is all that I call to mind

about it; he did talk, I think, more than what I have stated, but I cannot recollect clearly enough to—

Q. Well, do you mean to say that he said that Mr. Beecher having called him a blackmailer, he now intended to protect himself? A. That is the substance of the words, I forget which.

Q. And was it in that connection that he said he meant to drive him out of Plymouth Church and out of Brooklyn? A. Well, he said it in that connection, I think, just before, and then afterward he said it.

Q. What did I understand you to say that Moulton said about having been Mr. Beecher's friend up to the time he had made that charge? A. Well, he said he had always been a friend to him, and acted as his friend, and that there would have been no trouble if he had followed his advice, and then he said that he was opposed to some—I think he specified the article that Mr. Tilton made, or letter—I can't tell you exactly what, whether it was a statement or letter, and he said he was opposed to it, and did what he could to prevent Mr. Tilton's making it—something to that effect.

Q. Well, what did he say about his having been a friend to Mr. Beecher up to the time Mr. Beecher charged him with being a blackmailer? A. Well, that he should now take care of himself, or defend himself, or—

Q. Well, did he say he had been his friend up to that time? A. He so said—said he had been his friend and acted his friend up to that time.

Q. Do you know what time in August this interview was with Mr. Moulton? A. I can tell. [Referring to papers.] That was Aug. 28; Mr. Woodruff's letter is dated the 27th; it was the next day.

Q. Do you know how long that was after Mr. Beecher had published his statement before the Committee? A. No, Sir.

Q. Well, was it after? A. I can't tell you.

Q. It was on the 28th of August? A. Yes, Sir.

Q. Do you know whether Mr. Moulton had been absent from Brooklyn just previous to this conversation? A. I think he had; he so stated, I think.

Q. Where did he say he had been? A. I don't think he said—down East; I don't think he stated any more definitely.

#### MR. TILTON TALKS OF SUING PEOPLE FOR SLANDERING HIS WIFE.

Q. Any particular place— Now, Mr. Storrs, when, if ever, did you hear Mr. Tilton charge that Henry Ward Beecher had been guilty of adultery with his wife? A. Well, I don't know from him that I ever did unless it was by inference in that conversation at Mr. Ovington's in last July.

Q. When he said that, his wife having left him, he should now smash his wife and Mr. Beecher? A. Yes, Sir.



Q. That is the only thing you ever heard him say looking in that direction? A. Yes, Sir.

Q. I am requested to ask you, Mr. Storrs, whether you ever had a conversation with Mr. Tilton on the subject of suing any person for slander for having made a charge against his wife of having committed adultery with Mr. Beecher?

Mr. Beach—What was that, please?

Mr. Tracy—Whether he ever had a conversation with Mr. Tilton in which Tilton threatened to sue a party for slander for having charged that his wife had been guilty of adultery with Mr. Beecher. A. I think there was something of that sort.

Q. Do you know when it was? A. I do not exactly.

Q. Well, can you tell about when it was? A. Well, I should—my impressions are it was the last of 1871 or in 1872.

Q. The last of 1871, or the first of 1872, that Winter?

A. That is my impression.

Q. Winter of 1871-72. Now, what did Mr. Tilton say? I don't ask you to name names, but what did Mr. Tilton say about suing a party for slander for having said that? A. Well, he said he thought of suing a party for having slandered his wife—that she had committed adultery with Mr. Beecher.

Q. Where was that conversation? A. Well, I can't tell you the place.

Q. After the termination of a certain law suit against Mr. Moulton last fall, did he send for you again to come and see him? A. He did.

Q. Do you know when that was? A. I can tell. [Referring to papers.] I think it was Dec. 10, 1874.

Q. How soon was that after the termination of the suit of Miss Procter against him? A. I can't tell you definitely, but soon after.

Q. Soon after? A. Yes, Sir.

Q. Did you go and see him? A. I did.

Q. Who went with you? A. My brother went in with me.

Q. Did you have a conversation with him? A. Yes, Sir.

Q. Where did that conversation occur? A. Up stairs in his house, front room.

#### A QUESTION OF FACT DISCUSSED.

Q. Who was present at that conversation?

A. Nobody but Mr. Moulton and my brother and myself.

Q. State whether or not in that conversation he gave any expressions of feeling against Mr. Beecher.

Mr. Fullerton—I object to that.

Mr. Tracy—What is the objection?

Mr. Fullerton—I don't know as there is any foundation for it.

Mr. Tracy—Oh, yes; we examined on that subject.

Mr. Fullerton—Well, point it out.

Mr. Tracy—At least that is my memory.

Judge Neilson—I think the conversation was inquired

into both when Mr. Storrs was there and when they asked Mr. Moulton if he didn't say he would drive Mr. Beecher out of Brooklyn, and the like of that.

Mr. Tracy—Yes, that was it. You will find it on page 277—that conversation was inquired into.

Judge Neilson—Now you want to shape your inquiry with express reference to what was asked Mr. Moulton.

Q. In that conversation did Mr. Moulton say that "Mr. Beecher is a liar and a libertine, and, damn him, if personal violence would do any good, I would shoot him down," or something to that effect?

Mr. Fullerton—One moment—no objection.

A. I could state it better by stating what was said.

Mr. Fullerton—No; the question is whether he said that.

The Witness—He only used, as I remember, one of those words; he used other words, but only—he said he was a liar, and then went on and used other words, but not exactly the words he asked me.

Q. Well, in substance, those words?

Mr. Fullerton—That won't do.

Mr. Tracy—Oh! yes.

Mr. Fullerton—Oh! no.

Mr. Tracy—I submit that that is the rule in substance; that has been a ruling often enforced.

Mr. Beach—That was not the form; that is the objection.

Judge Neilson—You will first ask him a leading question with reference to the exact inquiry as made in respect to Mr. Moulton.

Mr. Tracy—If the objection was as to the form of my question—

Mr. Fullerton—The objection is not to the form.

Mr. Tracy—What did Moulton say in substance about Mr. Beecher's being a liar and a libertine?

Mr. Fullerton—That is objected to.

Judge Neilson—Well, the suggestion I made about the form of the question is this—you did not understand it—I think you first ought to ask in the very words put to Mr. Moulton, "Did he state so and so," and you are at liberty then to follow it up by asking him if he stated so in substance.

Mr. Tracy—I take your Honor's suggestion.

Judge Neilson—That last may not be necessary; the witness may remember it without.

Mr. Tracy—Yes, Sir [To the witness.] I ask you now if, in that conversation, Mr. Moulton said, "Mr. Beecher is a liar and a libertine?"

The Witness—Well, am I to state what he did say?

Mr. Tracy—No; you are to answer that question whether— A. He said that in substance, Sir.

Q. What? A. He said that in substance.

Mr. Beach—That I object to; it was not put to Mr. Moulton in that form.

Mr. Tracy—I submit that I read from the book, and do you mean that I did not read the whole question?

Mr. Beach—No, I don't—I don't mean that you did not read the whole question; I said no such question was put to Mr. Moulton.

Mr. Tracy—Why, the question is this: "Did you say to him within a month or thereabouts in your house, 'Mr. Beecher is a liar and a libertine?'"

Judge Neilson—Now, you are at liberty to ask that.

Mr. Beach—Now, I object to the answer because the witness replies in answer to the question calling for the exact language, that Mr. Moulton said that in substance, whereas Mr. Moulton was not interrogated as to the substance.

Judge Neilson—Whereas Mr. Moulton was not interrogated as to the substance.

Mr. Beach—No, Sir; he was asked as to the very words, the precise words.

Judge Neilson [to Mr. Tracy]—Well, you are confined to the words; go on.

Mr. Beach—I move to strike out that, Sir.

Judge Neilson—So far as he says he used it in substance.

Mr. Beach—To strike out the whole answer.

Mr. Tracy—I ask your Honor not to decide that tonight. When we have put the very words, we may nevertheless ask the witness whether the party did not say that in substance and we will support that proposition by authorities in the morning.

Mr. Morris—Well, you ask for the very words, and the witness answers that he said that in substance; that is the difference.

Mr. Tracy—We may ask the witness, notwithstanding we have asked the original witness, whom we are seeking to contradict, "Did you not say thus and so?"—we may nevertheless ask the impeaching witness or the contradicting witness whether he did not say that in substance.

Mr. Morris—But that is not your question; your question asks whether he said those precise words, and the witness answers that he said it in substance; that is the difference.

Mr. Tracy—I have put my question in pursuance of the suggestion of the Court, and if the witness gives a negative answer to that, then I shall put the question whether he did not say that in substance.

Judge Neilson—Well, that was my suggestion, as I supposed the examination ought to be, and I think you may put the question as to its being the substance because—

Mr. Morris—That is not the question he did put.

Judge Neilson—I know it is not the question, because many witnesses when interrogated would not be able to answer to the very precise words, to a syllable, and therefore you are obliged to fall back upon an answer in substance.

Mr. Tracy—Yes, Sir.

Judge Neilson—A degree of fairness is required in treating the witness.

Mr. Fullerton—But they take the responsibility of incorporating in their question the precise words to which they wish a response. Now, the witness must say either yes or no. He is not at liberty to say, "I said that in substance;" that is not an answer to what. Now, if they put the question to this witness whether Mr. Moulton did not say that in substance, why, they are putting a question to him that was not put to Mr. Moulton at all, and placing the witness in a false position. *Non constat* but that the witness Moulton would have said "Yes" if they had asked him if he had said that in substance.

Judge Neilson—And they did not ask him that!

Mr. Fullerton—No, Sir; they did not give him an opportunity to say that he said that in substance; all that they asked him was whether he didn't say this, embodying in their question certain words; he says, "No, I didn't say that;" that is all the answer he could give, and if they then wished to put him in the attitude of having decided that he said it in substance, they should have followed it up with another question, "Did you say that in substance, Sir?" Then, if he had said "No," they would have been prepared to put the question which they now put to him.

Mr. Tracy—Then, supposing we did. Reading—"Q. Did you say anything in substance like that. A. No."

Mr. Fullerton—That we haven't got to yet; that has not been developed at all.

Mr. Morris—The question is on the motion to strike out.

Mr. Tracy—I am just developing it.

Mr. Fullerton—You develop it after the argument.

Mr. Tracy—Certainly.

Mr. Beach—And the question and answer which the gentleman now reads has application to a different question from the one which was addressed to the witness.

Mr. Tracy—I understand that

Mr. Beach—You understand that, and you misapply it.

Mr. Tracy—I suggested five minutes ago that we should suspend that until morning, and find what we did ask the witness.

Mr. Beach—Your Honor will see the great impropriety there would be in permitting the witness to answer, or for them to ask the substance as inquired, to which they have directed his attention, when you learn that this further question was put to the witness and this answer given: [Reading]:

Q. Did you express any hostile sentiment toward Mr. Beecher in their presence? A. I think I did, Sir; I will tell you all I said as near as I recollect, if you would like to have it.

The witness was willing to tell what he remembered of the expression of hostile sentiment he then made

toward Mr. Beecher; but they would not receive it; they rejected it.

Mr. Tracy—All I have to say is, if your Honor please—

Mr. Beach—Excuse me. They put two questions to him. In the first place, "Did you say to him [that is Mr. H. S. Caldwell]—Did you say to him within a month or thereabouts, 'Mr. Beecher is a liar and libertine, and damn him,' &c.;" and the gentleman has put that question to Mr. Storrs upon the supposition that it was one which had been addressed to Mr. Moulton, while the question to Mr. Moulton was in reference to Mr. Caldwell. But, when you come to the question that was put in reference to the declaration of Moulton to Mr. Charles Storrs in the presence of his brother, it is modified in this form: [Reading]:

Did n't you say in their presence, at your house—since the termination of the libel suit of Miss Proctor against you—did n't you say to them in your house, that Mr. Beecher was a sneak and liar, and that if they said so, damn him, you would shoot him? A. That if what?

Q. If they said so? A. If they said so, I would shoot him!

Q. Yes.

Judge Neilson—Did you say that? A. I do n't exactly understand the form of the question. No, I did n't say that.

Mr. Tracy—Did you say anything in substance like that? A. No.

Q. Did you express any willingness to commit violence against Mr. Beecher in their presence. A. No.

Q. Did you say that he was a sneak and liar in their presence? A. I don't recollect that I said that.

Q. Did you express any willingness or disposition to commit violence against Mr. Beecher? A. No.

Q. Did you express any hostile sentiment toward Mr. Beecher?

And then came the declaration of the willingness of the witness—saying, "I think I did, Sir; and I am willing to tell you all I said."

Judge Neilson—Then I understand from your reading that the question now put applied not to a conversation with Mr. Storrs, but with Mr. Caldwell?

Mr. Beach—With Mr. Caldwell. I think the gentleman will see that. (To Mr. Tracy.) You read from the top of the page.

Mr. Tracy—[Reading]:

Do you know Mr. Caldwell? A. Yes, Sir; I know him.

Q. H. S. Caldwell? A. Yes, Sir; I know him.

Q. Did you say to him, within a month or thereabouts, in your house, "Mr. Beecher is a liar?"

Mr. Beach—You made a mistake.

Mr. Tracy—Yes; I did; of course, I did.

Mr. Beach—Then Mr. Hill has it his own way; I don't care about it.

Mr. Tracy—I made a mistake there.

Judge Neilson—Well, this last question and answer is stricken out. We shall start anew.

Mr. Tracy—I did put that question to Mr. Caldwell in the first instance; and then, after putting that question,

I asked him if he didn't express similar sentiments to Mr. Charles Storrs and Mr. Augustus Storrs.

Judge Neilson—Well, that is too vague; you cannot impeach a witness on "similar sentiments."

Mr. Tracy—What?

Judge Neilson—You cannot impeach a witness on "similar sentiments;" that is too vague.

Mr. Fullerton—We can adjourn, however, if your Honor pleases.

Judge Neilson—Do you think you can?

Mr. Fullerton—With your Honor's permission.

The Court thereupon adjourned until 11 o'clock on Wednesday morning.

## FIFTY-FIFTH DAY'S PROCEEDINGS.

### CHARLES STORRS AND MR. REDPATH TESTIFY.

#### EXAMINATION OF CHARLES STORRS CONCLUDED—

TESTIMONY OF MRS. MARY F. PERKINS REGARDING MRS. TILTON'S VISITS TO MR. BEECHER'S HOUSE; JAMES FREELAND, CORROBORATIVE OF MR. STORRS; MR. AND MRS. ROBERT T. MOORE, IMPEACHING KATE CAREY; AND JAMES REDPATH AS TO THE MANNER IN WHICH HE OBTAINED THE "TRUE STORY."

WEDNESDAY, March 31, 1875.

The testimony of Charles Storrs was unfinished on Tuesday, and nearly the whole of to-day's morning session was devoted to the further elucidation of the facts within his knowledge. Mr. Storrs was for many years the consistent friend of Mr. Tilton. Mr. Storrs's evidence was in keeping with the theory of the defense that the original offense of Mr. Beecher against Mr. Tilton was the former's advice to the wife of the latter to separate from her husband; that it was subsequently advanced to a charge of "improper proposals," and after that to the graver one of actual adultery. The examination of Mr. Storrs was throughout directed to the development of facts and conversations bearing out this theory. He swore that in January, 1871, Mr. Tilton had told him that Mr. Beecher, Mrs. Beecher and Mrs. Morse had influenced Mr. Bowen to discharge him by retailing flanders by women—one of whom was Miss Bessie Turner—against him, and had further influenced his own wife against him. Mr. Tilton further stated that he had then charged Mr. Beecher with making improper proposals to his wife, which Mr. Beecher had denied. Mr. Beecher had subsequently gone to Mrs. Tilton, who had written a de-

nial of the story; but Mr. Moulton had compelled Mr. Beecher, at the mouth of the pistol, to deliver it up and write an apology.

Mr. Storrs's attention being called to his action, jointly with Mr. Clafin and Mr. Freeman, as arbitrator in the Bowen-Tilton-Beecher matters, which were closed by the signing of the tripartite agreement, he corroborated Mr. Clafin in all the essential particulars of the affair. He swore that the conditions precedent to the signing of that covenant were the destruction of all the papers connected with the scandal, the return of the Woodstock letter to Mr. Bowen, and the payment of the \$7,000 award to Tilton. But Mr. Storrs on this point went further, and swore that, while Mr. Moulton was a party to the agreement, to burn all the papers, he had subsequently told the witness that he had not burned any of them, so that in the end only the Woodstock letter was suppressed by its being returned to Mr. Bowen. The substance of this was subsequently made public by Mr. Tilton through Mr. McKelway's agency.

A third important point in Mr. Storrs's evidence was the development of the fact that Mr. Tilton, as late as Dec. 12, 1872, a month after the publication of the Woodhull scandal, had declared that while he would not deny that Mr. Beecher had made improper proposals to his wife, there never was anything criminally wrong between them.

A still more striking piece of evidence was the threat of Mr. Moulton to shoot Mr. Beecher, if only Mr. Storrs so advised, and the further threat that if Augustus Storrs signed the Plymouth Church Committee's report, a statement would be made dragging in the name of a member of Mr. Storrs's family. Mr. Storrs also swore that Mr. Moulton threatened to drive Mr. Beecher out of Plymouth Church and Brooklyn.

The cross-examination of Mr. Storrs, which was conducted by Mr. Beach in the absence of Mr. Fullerton, was a labored effort to break the great force of this important testimony.

Mrs. Mary F. Perkins, a sister of Mr. Beecher, was called just before recess to testify to two points. In one of the statements published last Summer appeared what purported to be a letter from Mr. Beecher to Mrs. Tilton, saying that his wife would soon leave for the South. Mrs. Perkins testified that never during the absence of Mrs. Beecher in the Winter of 1871-2, and 1872-3, had Mrs. Tilton called at Mr. Beecher's house. Mrs. Perkins also testified to her constant attendance with her brother in Mas-

sachusetts from June 5 to June 12, 1873, a period covering a week subsequent to the time Mrs. Moulton swore he had confessed to her, and the week during which she said she had again seen him.

Mr. James Freeland, the next witness, was called to confirm the testimony of Mr. Storrs and Mr. Clafin as to the circumstances of the arbitration. His testimony did not differ from theirs materially; he was firm in his recollection that all the letters connected with the scandal were to be destroyed. The cross-examination had a very comical vein running through it, but was unimportant.

The impeachment of the witness Kate Carey, or Kate Smith, was begun by the calling of Mr. and Mrs. Robert T. Moore. They swore that they would not believe her under oath; and further, that Kate Carey had told them that while living in Mrs. Tilton's family she had never seen anything improper in the relations of Mr. Beecher and Mrs. Tilton.

James Redpath of Boston gave an account of the manner in which he obtained possession of the original of the "True Story." He had been a frequent visitor at Mr. Tilton's house during the latter part of the year 1872 and the beginning of 1873, and Mr. Tilton had showed him the MS. of the True Story. On one occasion when he called there he met Mrs. Tilton in the entry. She was looking very sad, and her face wore an expression of resolution, he said, which he had never noticed before. He went to Mr. Tilton's room and found him lying on the bed, and apparently suffering from great mental distress. Mr. Tilton had the MS. of the True Story in his hand. Mr. Tilton said that Mrs. Tilton had threatened that if the True Story was published, she would come out and deny it. Mr. Redpath then said, "You have not told me all," and Mr. Tilton replied, "No." The witness then tried to get the MS. into his own possession in order to prevent Mr. Tilton from publishing it. He told Mr. Tilton that if the latter desired the True Story to be made public he (Mr. Redpath) could easily get it published for him. Mr. Tilton, the witness said, refused to give him the MS., but had finally laid it down where the witness could get it.

The cross-examination of Mr. Redpath was very brief, Mr. Fullerton remarking that he would ask him no more then, as the witness was subpoenaed for Monday.

THE PROCEEDINGS—VERBATIM.

TESTIMONY OF CHARLES STORES RESUMED.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—Mr. Tracy, will you proceed now?

Mr. Tracy—Yes, your Honor. Mr. Storrs take the stand.

Mr. Tracy—Mr. Storrs, in the conversation between yourself and Mr. Moulton, in the presence of your brother, at his house in August last, did Mr. Moulton say to you in substance, speaking of Mr. Beecher, that Mr. Beecher was a sneak and a liar, and that if they said so, damn him, you would shoot him, or words in substance to that? A. Do you mean August or December?

Q. In December—in December, I mean. A. Well, he only used part of the words; he said that in substance, but not that exactly.

Q. Well, what part of the words did he use? A. Well, he used the word "liar."

Q. And did he say that if you said so he would shoot him? A. He said so.

Q. State whether or not he expressed a willingness to commit violence against Mr. Beecher in your presence?

Mr. Beach—That is objected to.

Mr. Tracy—What is the objection?

Mr. Beach—The objection is that it calls for the conclusion of the witness instead of the language.

Mr. Tracy—The question I put to the witness was, "Did you express a willingness to commit violence against Mr. Beecher in their presence?" That is the question I put to the witness on the stand, and he answered "No."

Judge Neilson—Well, now put that—

Mr. Beach—That does not authorize them to ask this witness for a conclusion.

Mr. Tracy—I ask him in the language of the question first; this is my first question in the language of the question. [Reading the question.]

Mr. Beach—That is not admissible, if your Honor please.

Judge Neilson—I think you ought to put to him the precise question you put to Mr. Moulton.

Mr. Tracy—I do; I read it from the book.

Judge Neilson—Take his answer.

Mr. Tracy—Do I understand the witness can answer.

Mr. Beach—They cannot, Sir, by putting a leading or other question to the witness they intend to assail, justify calling upon the contradicting witness for a conclusion. This does not call for language, for an expression of Mr. Moulton; it only calls from Mr. Moulton for the expression of a conclusion from what he might have said. That was inadmissible, and that will not justify them in pursuing the same course with the impeaching witness.

Judge Neilson—For the reason that what Mr. Moulton might think was in substance this witness might not so understand.

Mr. Beach—Certainly.

Mr. Tracy—There was no objection to the question put to Mr. Moulton, and he answers. Now, I have the right, I submit, to put to the impeaching witness the precise question which I put to Mr. Moulton, and have an answer.

Judge Neilson—Well, that is your first duty.

Mr. Tracy—That is my first duty. Now, I put that.

Judge Neilson—Now, what foundation have you laid for the next question?

Mr. Tracy—This question. I read the question. The question I put to Mr. Moulton was this: [Reading.] "Did you express any willingness to commit violence against Mr. Beecher in their presence?" He answers: "No."

Judge Neilson—Well, what else did you ask Mr. Moulton?

Mr. Tracy—I asked him [reading]:

Did you say that he was a sneak and a liar in their presence? A. I don't recollect that I said that.

Q. Did you express any willingness or disposition to commit violence against Mr. Beecher? A. No.

Q. Did you express any hostile sentiments toward Mr. Beecher in their presence? A. I think I did, Sir; I will tell you what I said.

Judge Neilson—Now, my ruling is that you must put your question in the precise form and terms of those questions.

Mr. Tracy—Exactly what I read to the witness.

Mr. Beach—But, your Honor, it was not necessary for us to object to the question that was put to Mr. Moulton. It was their duty to lay a proper foundation for impeaching contradictory evidence.

Judge Neilson—Yes. Well, now, so far they have a right to interrogate the witness, and not beyond that.

Mr. Beach—But I submit to your Honor that they have not laid the proper foundation when they ask the main witness a conclusion from acts or language which he may have done or used; that they must put the words or language which they intend to assert that he used before, the substance of it, and it was not necessary for us to object, because our time for objection is just this, when they come to their impeaching witness.

Judge Neilson—Now, Mr. Tracy, continue and put the very questions you have there *seriatim*.

Mr. Tracy—I will.

Judge Neilson—One after the other.

Mr. Tracy—Yes, Sir. [To the witness]: Did Mr. Moulton express any willingness to commit violence against Mr. Beecher in your presence?

Mr. Beach—I object to that question, as calling for the conclusion of the witness and not asking for the language or the substance of the language used by Mr. Moulton.

Judge Neilson—I think we will take it, Sir.

Mr. Beach—I except.

Mr. Tracy—What is your answer? A. He did.

Q. Did he say in your presence that Mr. Beecher was a

sneak and a liar! A. He said he was a liar, but did not use the word "sneak," that I remember.

Q. That is all on that subject. In expressing a hostile sentiment toward Mr. Beecher what did Mr. Moulton say? A. He said he would go and shoot him, if I said so.

Q. What further did he say than you have already stated on the subject of Mr. Beecher's being a liar? A. He said he was—

Mr. Beach—Of course they have not laid the foundation for that, Sir, but I don't care about it.

The Witness—He said he was a liar and a perjurer and an adulterer, and he knew it.

#### MISTAKES IN THE TESTIMONY CORRECTED.

Q. Now, I desire, Mr. Storrs, to call your attention to a few verbal errors that have crept into your evidence, either by being misunderstood, or otherwise, and I will ask you to correct them, and that will close my examination. In one part of your evidence, speaking of what Mr. Tilton said with regard to improper proposals, you are made to say that he had told him about improper proposals by Mr. Beecher. Did you mean to use the pronoun "he?" A. That his wife had told him.

Q. That his wife had told him about improper proposals by Mr. Beecher? Yes, Sir.

Q. In that connection—well, just repeat now, for the purpose of correcting it, what he said on that subject, not all of it, but in that connection, that sentence? A. Well, he said that his wife had told him Mr. Beecher had made improper proposals to her.

Q. And then followed what you detailed yesterday. A. Yes, Sir.

Q. Again, you are made to say, speaking of the life of Woodhull, that Mr. Tilton said "he didn't know as I—" that is you, witness, understood about the writing of the biography; did you so state? A. No, Sir; that the people did not seem to understand.

Q. He spoke of that in connection with his Western tour? A. Yes, Sir.

Q. Lecturing tour—again, speaking of the "Personal Statement" which you said Mr. Tilton left with you, you answer he left that article "I" set up called the "Personal Statement." Did you so state? A. If I did I did not intend it—that was set up; that he showed me.

Q. What? A. That he set up; the one that was prepared for the paper.

Q. The "Personal Statement" that he had set up is what you said? A. Yes, Sir.

Q. Again, you are made to say that a certain conversation which you describe as occurring at your house between yourself and Mr. Tilton occurred in "the sleeping room." Did you say sleeping-room? A. Smoking-room, Sir.

Q. Speaking of the various newspaper schemes that were canvassed in that meeting at Mr. Bowen's house between yourself, Carpenter, and Claflin and Bowen, you

are made to say if you did not succeed then, the other was suggested as feasible; do you mean to say that one of these schemes was first canvassed, and then if you didn't—if you could not succeed in establishing that, that the other was suggested? A. Yes, Sir.

Q. As a possible, feasible scheme? A. Yes, Sir.

Q. One was canvassed after the other? A. Yes, Sir.

Q. First canvassed one and then canvassed the other; again, in speaking of Mr. Tilton's having threatened to sue some one for slander for having charged that his wife had committed adultery with Mr. Beecher, your expression is not quite clear. Will you repeat what you said yesterday on that subject? A. Well, I said that he threatened to sue some one for having reported that his wife had committed adultery with Mr. Beecher.

Q. Threatened to sue a person whom he named? A. Yes, Sir.

Mr. Tracy—That is all.

#### CROSS-EXAMINATION OF CHARLES STORRS.

Mr. Beach—You spoke yesterday, Sir, of your long intimacy with Mr. Tilton; has that continued up to this time? A. Not quite as formerly, Sir.

Q. Do you recollect, in the Spring of 1873, meeting him in the streets of this city and failing to recognise him? A. I do not, Sir.

Q. In the Spring of 1873, did not your feelings change towards Mr. Tilton? A. They did, Sir.

Q. From the Spring of 1873 until the accidental meeting of which you spoke, at Ovington's, had you met Mr. Tilton? A. Not that I am aware of, Sir.

Q. That meeting, I understand, at Ovington's was in July, 1874? A. Yes, Sir.

Q. Mr. Storrs, you have given a narrative of various conversations; in doing so, do you assume to use the language of the various parties to them? A. As near as I could remember, Sir.

Q. Did you assume to remember the precise language they used? A. Part, and part the substance.

Q. Did you give the exact language, in so far as you recollected it, upon your direct examination? A. I did, Sir.

Q. Can you discriminate as between the portions in which you give the exact language and give only the substance? A. I probably could a part, and part perhaps not.

Q. Well, when you assume to give the exact language of the speaker, you can designate that part of his remarks which you so intend to repeat, can't you? A. I could by going over, probably.

Q. Well, you did that, I understand, on your direct examination, so far as you recollected the exact language? A. Yes, Sir.

Q. What do you mean by giving the substance of language? A. Well, the truth—the spirit of it; it might be changed in words.

Q. Well, do you mean anything more than that you give

the impression which you have preserved of a conversation, without being able to give the exact language? A. Well, both.

Q. No, Sir; in this part of the conversation, where you do not assume to give the exact language, do you mean by the term "giving the substance" anything more than giving the impression which you have preserved from your recollection—a general recollection—of the conversation? A. My impression—my remembrance.

Q. Remembrance. Well, you say you don't remember the exact language in the parts to which I am now asking your attention? A. Probably not every word; no, Sir.

Q. If you don't remember the precise language, you give, then, only the impression which was produced upon your mind? A. Yes, Sir.

Q. Yes, I suppose so. Can you take any one of the conversations you have narrated, and discriminate between those parts where you give the exact language, and those portions where you relate only the substance? A. I think I could.

Q. Well, take the first conversation then, that you spoke of—where was that? A. That—you mean on the New Year's, 2d of January?

Q. First conversation you spoke of on your direct examination? A. That was the 2d of January, 1871.

Q. And where was it? A. At his house—parlor, in his house.

Q. Well, now, Sir; give me that portion of that conversation in which you remember the exact language used, either by yourself or him, and give it in the words and in the order as near as you can in which it occurred? A. Well, after the compliments of the day, I asked him if he had been discharged from *The Independent and Union*. He said he had. I think these—

Q. Well, that is not the exact language, is it? A. Well, it is as near as I can remember.

Q. Well, do you say that that was the exact language? A. To the best of my recollection I believe it to be so.

Q. You must know, Sir, whether you recollect sufficiently to give the exact language? A. Well, I should not want to say absolutely every word, but that is the best of my—

Q. Very well, you don't mean to say that is the exact language? A. As near as I can.

Q. I don't ask that.

Mr. Tracy—I submit that is an answer to the question.

Mr. Beach—I submit it is not.

Judge Neilson—No, Sir; this is a cross-examination.

Mr. Tracy—I know it is.

Judge Neilson—And this witness is a very intelligent gentleman.

Mr. Tracy—I know he is.

Judge Neilson—And his recollection can be sifted, and that is to be done by the cross-examination.

Mr. Tracy—I know that, your Honor, but I submit that when a witness has said that "that is my best recollec-

tion, I have given you the substance of his words as near as I can," that that is a sufficient answer.

Judge Neilson—I understand; he is not asked as to the substance of the words; that is not the question.

Mr. Tracy—He has stated he has given the exact language as near as he can remember.

Judge Neilson—The counsel will proceed.

Mr. Tracy—I object to the question on the ground that the question has been once put and answered; your Honor will note my exception.

Judge Neilson—I do not think it has been answered, and I think the cross-examination ought to proceed.

Mr. Beach—In so far as you have now given that conversation, do you say that that was the exact language used? A. I could not state better than I have; that is my best remembrance; I think it was, Sir.

Q. Is your remembrance so clear upon this point that you will swear that that is the exact language? A. I should think if I swore it was not—should think I lied, Sir.

Mr. Beach—I move to strike out that answer.

Judge Neilson—Yes. Answer as well as you can, Mr. Storrs.

The Witness—Well, that is the best—

Q. If you will be kind enough to answer my question, Sir, we will get along very amicably and speedily. A. I am trying to do so, Sir.

Mr. Beach—Well, perhaps so. In so far as you have given that conversation, is your recollection of it so accurate that you are willing to swear that you have given the exact words used? A. I would not say the exact words; no, Sir.

Q. Very well; you have answered that. Now, go on. You asked him if he had been discharged from those papers, and he said he had. What next? A. Then he got up, and said that he wanted me to go right around to Frank Moulton's with him, and we started and went there.

Q. Is that all of that conversation? A. That is all that moment.

Q. How long was you conversing with him? A. Well, he got right up, and we went right around.

Q. How long was you conversing with him? A. But a very few minutes, Sir.

Q. Well, you went then to Mr. Moulton's? A. Yes.

Q. You recollect that conversation? A. Yes, Sir.

Q. Now, Sir, give me the portion of that conversation so far as you are willing to swear that you can repeat the exact words used by any party to it; omit all the rest; just give me that portion which you will swear you can repeat in the exact words of the parties. A. I would not want to say the exact words, because I might use a preposition, a "be," or an "of," or an "in" that would be different, but I can give it—what I believe the exact words.

Q. I am not asking for that, Sir; I am asking if you can

give any remark made in that conversation in the exact language used by any of the parties? A. Well, I say I think I can.

Q. You think you can—now give it! A. Well, I asked him what the trouble was.

Q. Is that the exact language? A. I think it is, Sir.

Q. Well! A. He said that Mr. Beecher and Mrs. Beecher and Mrs. Morse had been talking with Mr. Bowen against him.

Q. That is the exact language is it? A. I believe it is.

Q. Do you swear it is! A. I swear to the best of my knowledge.

Q. Ah! Sir; but do you recollect it so distinctly that you will swear positively! A. No, Sir.

Mr. Porter—One moment; I object to that question.

Judge Neilson—I think it is proper.

Mr. Porter—I submit that it is fully answered in the last answer.

Judge Neilson—No; I think it is proper.

Mr. Porter—Well, I ask your Honor to have my objection noted, and my exception, and I ask to have the question and answer read by the stenographer.

Judge Neilson—I understand it. My view of a cross-examination may differ from yours.

Mr. Porter—That may be, Sir; and that is the reason that I propose to take an exception.

Judge Neilson—The counsel has the right to test the recollection of the witness, no matter how respectable the witness is, and to make him distinguish between his recollection of the language actually used and his recollections of conversations in substance. I don't see any objection to the question.

Mr. Porter—Well, your Honor evidently does not appreciate my objection. I submit that the witness gave a direct, affirmative, clear, intelligent, and full answer to the last question; and I submit that the repetition of that question is improper, and I ask your Honor to have the previous question and the answer and the new question read, in order to see whether I am or am not right.

Judge Neilson—I think this question is proper, Mr. Porter.

Mr. Porter—I except.

Judge Neilson—I don't think that because a question is repeated with a slight difference of language, it is to be excluded as improper. I think this is within the scope of a cross-examination.

Mr. Beach—Now, Mr. Storrs, if you will please understand my purpose, I think we will get along more easily. I want to draw your attention to those portions of either of those conversations you have related, in regard to which your recollection is so clear and precise that you will swear that you can give them in the very words used by the parties! A. Well, I would.

Q. I don't want you to give those parts where you assume to give it to the best of your recollection, but those parts where your recollection is so accurate and clear

that you can give the precise language. A. Well, I would swear that he used the words, "Mr. Beecher," "Mrs. Beecher," "Mrs. Morse," and that they had been talking about him, and telling stories to Mr. Bowen.

Q. Now—

The Witness—[Continuing.] Excuse me; I can not explain myself any better; now, just in that relation, the names of the persons I am willing to swear to, but as to all the other parts, perhaps an hour hence I could not state the words exactly the same.

Q. That is just what I was trying to impress your mind with. A. Yes, Sir.

Q. Now, if there is any remark made by any party to that conversation, the precise language of which you can give, I ask you to do it. A. Well, I could go right over and state the evidence I did, and state the best I could. Some words I would remember absolutely, and others—perhaps I could not remember the exact words; and so it would be all the way through.

Q. That would be the way all the way through that conversation! A. Yes, Sir.

Q. Well, Sir, that is satisfactory and intelligent. So that in relating these conversations, some words in the remarks you recollected positively to have been used, and you have given your impression of the substance in the remainder! A. Yes, Sir.

Q. Mr. Storrs, when did you first hear of any arbitration as between Mr. Bowen and Mr. Tilton? A. I think from Mr. Tilton.

Q. When, I ask you?

A. Well, I cannot state the exact date. The conversation that we had, I think, was about the middle or the latter part of March; and then, as to the arbitration, it was merely discussed between him and me that night—I suggested whether there could not be some settlement. After that, when he came to me, and it was decided to have an arbitration—

Q. Wait a moment. You are getting beyond my question. I was endeavoring to get at the time when the first suggestion of an arbitration came to your knowledge! A. Well, I am not able to give you the exact date.

Q. You think it was in the latter part of March! A. It was when Mr. Tilton finally announced—

Q. Do you think it was in the latter part of March! A. Well, I think it was, or on the first of April. It was just before the arbitration.

Q. How long before should you judge! A. It might be two or three or three or four days. I could not state.

Q. And that was one of the conversations with Mr. Tilton which you have related! A. Yes, Sir.

Q. And where was that conversation! A. At my house.

Q. Will you please relate that! A. When he first came to me afterwards—

Q. You have told me, Sir, that you first heard of the arbitration a week or a few days before it was held—yes



heard it from Mr. Tilton at your house; now I ask you for that conversation? A. Well, I reported then that I had seen Mr. Bowen and reported to him what I had learned from Mr. Bowen, and he said he was glad to hear it, and then it was suggested, if there was an arbitration, whether I would be an arbitrator, and I told him I would.

Q. When next did you hear of the arbitration? A. I cannot tell you.

Q. Well, when next that you recollect? A. I have not a distinct recollection of it, only until we met.

Q. Well, you have a recollection of an arbitration after this conversation. A. Yes, Sir.

Q. Now, I ask you to give me the first recollection you have upon that subject. A. I cannot now tell you.

Q. You can give me your first recollection, can't you? A. I cannot tell you whether Mr. Tilton or Mr. Moulton notified me that they were to meet.

Q. I am not asking you that. After this conversation with Mr. Tilton, when he asked you if you would be an arbitrator, if any arbitration was held, when was the next time that you now recollect when you heard anything about an arbitration? A. I cannot give you the date.

Q. About how long after this conversation with Mr. Tilton? A. That I cannot tell you, whether it was one day, two days, or three days.

Q. What was the next thing you heard about the arbitration that you recollect? A. Well, that we met.

Q. That was when the arbitrators met? A. Yes.

Q. That is the point I wanted. Was you aware that there was a written submission to an arbitration as between Tilton and Bowen? A. No, Sir.

Q. Did you hear anything about it? A. I have no recollection of it.

Q. Was you aware that between Tilton and Bowen there were any papers executed in regard to an arbitration, or any papers executed in regard to an arbitration? A. No; only I think during that arbitration there was something said about papers being put in the papers.

Q. About what? A. I think there was something said at that arbitration, as I remember, I am not clear about it—something said about something that should appear in *The Independent* and *The Golden Age*—an exchange of courtesies, and so on.

Q. That is not the point. The question I ask you is, whether about the time of the award you had heard anything of any paper or papers having been executed as between Bowen and Tilton with reference to an arbitration? A. I have no recollection of that.

Q. Well, did you know of any papers being executed by them, or any writings passing between them, subsequent to the award? A. None, only those editorials that I have spoken of.

Q. Those are not papers passing between them, signed? A. No others that I remember.

Q. In the meeting of the parties and the arbitrators

was there anything said in regard to any charge made by Mr. Tilton against Mr. Beecher, beyond those which appeared in the "Personal Statement?" A. Not that I remember.

Q. Upon that occasion was there a word said in regard to the relations between Mr. Beecher and Mrs. Tilton? A. Not that I remember.

Q. So far as you recollect the "Personal Statement," was there anything said in it with reference to Mr. Beecher and Mrs. Tilton? A. Not that I remember, Sir.

Q. Then the subject of those relations between Mr. Beecher and Mrs. Tilton was not in any way suggested before those arbitrators? A. Not that I call to mind, Sir.

Q. You understood that this "Personal Statement" did implicate Mr. Beecher? A. Yes, Sir.

#### THE PAPERS IT WAS AGREED TO BURN.

Q. And you understood that all the papers relating to the charges, or matters contained in the personal statement were to be burned, destroyed? A. Yes, Sir.

Q. Did you understand anything further in regard to the destruction of papers? A. That all papers—as I said yesterday, during the conversation, Mr. Claflin specially mentioned the Beecher "apology," and the letter of Mr. Tilton to Mr. Bowen of Jan. 1, 1871, and, I think, others; but when he came to announce the award, my impression is that he named those—I am not positive that he did, but he said all papers that were likely to make trouble, and I think he named those, but I would not swear to it positively.

Q. "Papers that were likely to make trouble?" A. Yes, Sir.

Q. There are a great many papers that would be likely to do that? A. Well!

Q. Is that the language that he used? A. I think it was that language Mr. Claflin used.

Q. Well, you understood him, being one of the arbitrators, to refer to those papers which related to the subject-matter of the arbitration, I suppose? A. Yes, Sir; and—

Q. You did not assume to go beyond the matters which were submitted to you? A. Only what he named.

Q. Well, you are not quite certain that he named those? A. I am, in our discussions.

Q. I am not asking about your discussions; I am asking about the announcement of the matters submitted. A. I say I am not positive.

Q. Well, unless he named those papers, you, I suppose, as an arbitrator, understood him, by the phrase "all papers that were likely to make trouble," to refer to the subject-matter which was submitted to you as arbitrators, didn't you? A. Yes, Sir.

## THE AWARD TO MR. TILTON A JUST ONE.

Q. Was the award which you made in favor of Mr. Tilton the result of your conscientious judgment? A. [Pausing] Well, I perhaps would have to explain.

Q. Please answer me that question? A. Well, it was.

Q. Very well. Did you award to Mr. Tilton what you believed to be due him under the contracts? A. Yes, Sir.

Q. Just that and nothing more? A. Well, we jumped at it a little.

Q. Well, Sir, did you award to Mr. Tilton anything more than the amount you believed to be due him under the contracts? A. No, Sir; no, Sir.

Q. You have stated that Mr. Tilton and Mr. Bowen both made addresses to the arbitrators? A. Made some remarks.

Q. Well, presenting on one part Mr. Tilton's claim, and on the other Mr. Bowen's defense? A. Yes, Sir.

Q. What defense did Mr. Bowen present? A. He did not oppose the contracts at all, as I remember; but the discussion mainly was, as I remember, about the percentage that Mr. Tilton was entitled to on *The Union*.

Q. Exactly. A. Mr. Tilton, as I remember, claimed a little more than Mr. Bowen thought he was entitled to; that was the substance of it.

Q. Then the only point of difficulty between the two parties, in presenting their case to the arbitrators, was the amount of the percentage that Mr. Tilton was entitled to from the proceeds of *The Brooklyn Union* under the contract? A. Mainly, Sir.

Q. Mainly. Was there anything else; I want to know? A. Well, I don't recall.

Q. You do not recall anything else but that? A. No.

Q. Did Mr. Bowen make any charge of improper conduct against Mr. Tilton? A. Not at that arbitration.

Q. At that arbitration I am speaking of? A. No, Sir.

Q. Did he claim at that arbitration that Mr. Tilton was entitled to less on account of any incapacity or impurity of conduct? A. I don't think he did.

Q. Did not Mr. Bowen at that arbitration state that he had been willing a year ago to arbitrate? A. I—

Q. Please tax your recollection upon that subject? A. I should not dare to say yes or no. He might or might not; I don't remember it.

## THE CONVERSATION AT THE ARBITRATION.

Q. Will you please state any conversation, and the whole of it, when Mr. Tilton was present at the meeting of these arbitrators? A. That Mr. Tilton stated that!

Q. No; any conversation at which Mr. Tilton was present. A. At this arbitration?

Q. Yes. A. Well, do you want me to come back to the absolute language again?

Q. Well, as far as you can, Mr. Storrs, but I have ex-

hausted that as far as I wish. I want you to commence with that interview. A. And to go right through?

Q. Yes, go right through. A. Well, when I got there the first thing I said was that I had just learned from Mr. Claflin that Mr. Beecher's matters were to be brought into arbitration.

Q. Who was present then; all the parties? A. Yes, Sir.

Q. Mr. Bowen? A. Yes, Sir.

Q. Well? A. I said that was the first that I had heard that Mr. Beecher's matters were to be brought in, and that if his matters were to be brought in, *étiquette* would require me to retire; that I could not sit in judgment upon a man who had not asked me. Do you now wish me to go right on and repeat it all?

Q. Yes, if you will permit me to interrupt you once in a while. A. Mr. Claflin then said that Mr. Beecher understood it, and that all understood it, and that a paper had been prepared to settle all disputes and matters between the three men; that the paper had been prepared between the three men; and then he took this tripartite paper and read it, or portions of it, and it was handed around; and after that Mr. Claflin and Mr. Bowen went into another room, and then I said to Mr. Tilton—

Mr. Beach—If you will please pause there a moment!

The Witness—Yes, Sir.

Mr. Beach—When you made the remark in regard to Mr. Beecher's matters, and when Mr. Claflin made his reply, did you by that refer to the matters of Mr. Beecher which were contained in the "Personal Statement?" A. I referred to all the difficulties that might exist between Mr. Tilton and Mr. Bowen—all three of the parties, so far as Mr. Beecher was concerned.

Q. You didn't say so? A. No, Sir, I don't know that I did.

Q. There were matters of Mr. Beecher contained in the "Personal Statement?" A. Yes, Sir.

Q. And those were the only matters talked about upon the arbitration? A. I think they were.

Q. And yet when you made that remark you meant something else? A. All I could judge about was what Mr. Claflin said.

Mr. Beach—No; I am talking about you, and not about Mr. Claflin.

The Witness—I can only state that he said that all the matters between the three men, and then he said a paper had been prepared to that end, and so on, and I said, "If that is the case I will remain."

Q. In the tripartite statement there was nothing said in regard to the relations of Mr. Beecher and Mr. Tilton, was there? A. No, Sir; not that I remember.

Q. And yet you say that when you made the remark about Mr. Beecher's matters being brought in that you referred to something beyond what was contained in the "Personal Statement," and the "Tripartite Covenant?"

A. No, Sir; I only said that Mr. Claflin said that all matters were brought in.

Q. I am asking you! A. No, Sir; I didn't know unless except—

Q. Did you refer to anything else in making that remark, except the matters relating to Mr. Beecher contained in the "Personal Statement" and the "Tripartite Agreement?" A. Yes, Sir; I had in my own mind the difficulty that Mr. Tilton and Mr. Beecher had together; that was his improper conduct with his wife.

Q. Why didn't you express that? A. I didn't express about anything because Mr. Claflin said it was "all matters."

Q. All matters between the three men? A. Yes, Sir.

Q. The matters in the "Personal Statement" were between the three men? A. Yes, Sir.

Q. The matter between Mr. Tilton and Mr. Beecher was not between the three men, was it? A. Not directly, unless it was—

Q. Was it at all? A. Not that I know of; no, Sir.

Q. Then Mr. Claflin said that the matters relating to Mr. Beecher, and all matters as between the three men, were to be submitted to you? A. Yes, Sir.

Q. And then you went on and considered the matters in the "Personal Statement" and in the "Tripartite Covenant," and not a word was said in regard to the relations between Mr. Beecher and Mrs. Tilton? A. I don't think there was; I don't remember.

Q. Now, if you will please proceed. "They went into the next room," you said? A. Yes, Sir; then I stated to Mr. Tilton and Mr. Moulton that I thought that was not a fair paper, and I advised him not to sign it; I told him if what he had told me was true that Mr. Beecher was the most to blame, and I told Mr. Moulton to go into the other room and tell Mr. Bowen not to sign the paper; I said that I would draw up a paper, that the three men misunderstood the trouble, which I said would be fair, but I didn't think that that one was.

Q. Please proceed. A. Then we all met together, and these contracts were submitted, and then occurred the conversation.

Q. What contracts were submitted? A. Between Mr. Tilton and Mr. Bowen in regard to the paper, and then they made the statement to which I referred, and then they retired, and then we had the terms of the arbitration.

Q. Now, can you give the announcement of the award as it was made by Mr. Claflin, in the language in which he made it? A. That I believe to be just like the other; I would not swear absolutely.

Q. You would not swear absolutely to the precise language? A. No, Sir.

Q. You give the precise language to the best of your recollection? A. Yes, Sir; the fact I can state.

Q. Now, give the announcement made by Mr. Claflin? A. Mr. Claflin, when he called them in, said the award

was that the three parties—Mr. Beecher, Mr. Tilton and Mr. Bowen—were to sign this paper, and that all papers that the three parties had that were liable to make trouble were to be burned, and that Mr. Bowen was to pay Mr. Tilton \$7,000.

Q. Is that all of it? A. That is all up to that point.

Q. Well, that was the award as announced? A. Yes, Sir, that is as I remember it.

Q. Well, proceed? A. Then Mr. Tilton objected to signing the paper, and Mr. Claflin says: "Why, Theodore, you have agreed to it." He says: "I know I have, but I wish to change it," and that led to a discussion of some fifteen or twenty minutes before he altered it and it was accepted, and then I think the next thing was, Mr. Bowen said he wanted his letter called the Woodstock letter, which I think was in June, 1863. That was assented to, and then the understanding was that Mr. Claflin was to take what is known as the "Tripartite Agreement"—

Q. If you have got through with the conversation I want to ask you a single question. When Mr. Tilton, as you say, declined to execute the Tripartite Contract as it was, did he not make amendments to it? A. Yes, Sir, he made alterations.

Q. He made alterations? A. Yes, Sir.

Q. Didn't he, upon a separate slip of paper, draw an amendment or alteration to it? A. I think he did.

Q. That was attached in some form to the original paper? A. I believe it was.

Q. And Mr. Claflin took that paper, the original paper, with these amendments, or additions, or alterations, whatever they were, to carry to Mr. Wilkeson? A. Yes, Sir, that was the understanding.

Q. Did anything more take place there? A. Then the next talk was who should keep—who should be the custodian of this paper. It was not agreed upon, but the understanding was that they would agree—that they should get the consent of all the parties as to who should keep it, and that the party who should be the custodian of it should agree not to destroy it or give it up to any of the parties without the consent of the whole. Then Mr. Bowen, I think, drew his check.

Q. Was there anything said in regard to keeping the "Tripartite Agreement" secret? A. I don't think there was, Sir.

Q. What was done, Mr. Storrs, with the contracts that were submitted to the arbitrators? A. Well, Sir, I cannot tell you, but only my impression. I think Mr. Bowen took them, but I am not positive.

Q. Did you think Mr. Bowen took them? A. That is my impression.

Q. Was there any indorsement made on them at the time? A. I would not like to state.

Q. Did Mr. Bowen and Mr. Tilton execute any paper at that time, or make any writing except the check, I

mean? A. Either a receipt—Mr. Bowen said he wanted to close the matter.

Q. I am not asking what was said; I am asking whether there was any paper executed at the time between the parties except the check. A. My impressions are that there were, but I would not be positive about it.

Q. Do you think that a receipt or release was then executed by Mr. Tilton? A. Well, that is an impression, but I say I am not positive.

Q. You were all sitting around a table? A. Yes, Sir, or standing.

Q. Or standing. Such an act would not be likely to escape your observation, would it? A. It might, and might not. My impressions are that there were some form of receipts passed, because Mr. Bowen said he wanted to close the whole matter that night.

Q. Do you draw that conclusion from what Mr. Bowen said, or from any observation which you made of such an act? A. From the act and from my impressions.

Q. Now, Mr. Storrs, have you any recollection? A. Not positive.

Q. Of any receipts or releases being executed between Mr. Tilton and Mr. Bowen? A. Not positive.

Q. Have you any recollection? A. I say I have an impression that there was, but I am not positive on that point.

Q. Well, Sir, I don't know that I can make that any more distinct. There was no award in writing made, I understand? A. No, Sir.

Q. Was there any mode appointed or suggested in which the award should be carried out? A. Nothing further than I have stated.

Q. That was as to the execution of the "Tripartite Agreement," and its position? A. Yes, Sir.

Q. Now, in giving this award, and in relating this conversation, you have not stated any reference made to the "Letter of Apology." A. I don't know as I quite comprehend the question.

Q. In now giving your history of the transaction, you have not said anything in regard to any remark, or statement, or reference made to Mr. Beecher's "Letter of Apology." A. Yes, Sir; I stated we talked it over together.

Mr. Beach—I am not asking what you talked over together. [To Judge Neilson.] I move to strike out, "We talked it over together."

Judge Neilson—Yes.

Q. In the award? A. As I said, my impressions are that Mr. Claflin named it, but I am not positive.

Q. I want you, according to the best of your recollection, to give me the award as it was announced by Mr. Claflin? A. I can only repeat just what I have stated, so far as the award is concerned, and afterward Mr. Claflin asked all these parties about burning the papers; when he made the award he did not.

Q. How long was it after the award was made that Mr. Claflin suggested to the parties about burning these papers? A. It was said after, according to my remembrance, Mr. Tilton had amended his portion of the "Tripartite Agreement;" it was right following that, as I remember.

Q. Right following it? A. Yes, Sir.

Q. Had Mr. Bowen executed his check before that? A. No, Sir.

Q. About how long should you think that was after Mr. Claflin had announced the award? A. That he had spoken to him about it?

Q. Yes, Sir. A. I should think it was anywhere from 20 minutes to half an hour.

Q. That was after Mr. Tilton had finished his amendments to the "Tripartite Agreement?" A. Yes, Sir.

Q. Now, what was said upon that subject by Mr. Claflin or any party? A. Mr. Claflin asked Mr. Tilton and Mr. Moulton if they had accepted the arbitration, if they would burn all the papers, and, as I say, I think Mr. Claflin mentioned the Beecher "apology," and Mr. Tilton's letter to Mr. Bowen of January 1st, and some others, but I am not clear about that.

Q. As to be burned? A. To be burned; that is, I am not clear as to this specific paper; he said all the papers.

Q. Do you mean to say he mentioned the Woodstock letter as a paper to be burned? I understood you to state this now. A. No, Sir.

Q. It was a mistake, then? A. Yes, Sir; that was what we talked of in the arbitration.

Q. I want you to give me, as near as you can, what was said on that subject by Mr. Claflin? A. When we came to that point, Mr. Claflin asked Mr. Tilton and Mr. Moulton and Mr. Bowen if they accepted of the arbitration, and if they would burn all the papers; and then, as I tell you, I think he named this paper, but I would not like to say positively; I would not say positively, but that is the best of my impression, that he did.

Q. Is that all that was said on that subject? A. That's all I can recollect for the moment.

#### MR. TILTON'S WORDS ABOUT HIS WIFE ALWAYS KIND.

Q. Mr. Storrs, in all these conversations, so far as an allusion was made to Mrs. Tilton, did Mr. Tilton always speak of her in the highest terms? A. As a rule; yes, Sir.

Q. No, Sir; in all these conversations of which you have now spoken, whenever any reference was made to Mrs. Tilton, did Mr. Tilton always speak of her in the highest terms? A. I think he did. I shall have to qualify it. Virtually he always did; I don't know but he might sometimes have said—

Mr. Beach—I don't want what you don't know.

The Witness—That is the best of my recollection.

Mr. Beach—The best of your recollection is what?

The Witness—That he always did, but I cannot say that in some conversation he had not—

Mr. Beach—I don't ask what you can't say.

The Witness—No, and I am not saying it.

Mr. Beach—And I don't want you to force it upon me.

The Witness—I don't want to do so; I am trying as near as I can to answer your question, and that is, as a rule he always did, but I would not state that in some conversation he had not spoken some trifling thing—

Q. Do you recollect of a single word said by Mr. Tilton in either of these conversations to which you have alluded in the slightest degree disparaging of his wife? A. No, Sir; I don't recall it now.

Q. And to the best of your recollection he never used any such word? A. Not that I remember.

Q. And he always spoke, when referring to the relations between Mr. Beecher and his wife, of improper advances? A. Yes, Sir.

Q. Approaches, or whatever they were? A. Yes, Sir.

Q. Improper proposals made by Mr. Beecher to his wife? A. Yes, Sir.

Q. And didn't he state that his wife indignantly rejected them? A. I think he did.

Q. Didn't he state that those proposals or advances were repeated more than once? A. I don't think he ever stated to me but once.

Q. He never stated to you but once. Well, did he state with any particularity as to when the proposals were made? A. No, Sir.

Q. Did he specify them with any more particularity than as impure or improper proposals, whatever term you used? A. No, Sir.

Q. Did you know what part of the "Tripartite Agreement" it was that Mr. Tilton objected to and altered? A. No, Sir, I do not.

Q. You didn't understand it to be Mr. Bowen's part? A. No, Sir, Mr. Tilton's part, of course, as far as he was concerned.

Q. You didn't understand it to be Mr. Beecher's part? A. No, Sir.

Q. It was a part, you understood, relating to himself? A. Yes, Sir.

Q. Did you see the changes which he made? A. I think I heard them read, but I could not tell you what they were.

Q. Did you see the alterations he made as between the original paper? A. No, Sir, I could not.

Q. And his alterations. Well, with the amendments which he supplied at that time he avowed his willingness to sign the paper? A. Yes, Sir.

Q. And, as you understood, it was signed in the form in which it was then committed to Mr. Claflin? A. I heard so; yes, Sir.

Q. Have you ever seen it since? A. I saw it about twenty seconds once; that is all.

Q. But not to read it so that you— A. No, Sir.

Mr. Tracy [to Mr. Storrs]—It is requested, Mr. Storrs, by the reporters, that you should speak louder; they cannot hear you.

The Witness—I am not feeling well, but I will do the best I can.

Mr. Beach—Did you understand from Mr. Tilton in what way this TRIBUNE stock was purchased? A. He may have said, but—

Q. No, not what he may have said? A. I don't call to mind.

Q. And then you didn't understand from him with whose means the stock was purchased? A. Well, I understood him—

Q. You understood that it was his father's? A. Yes, Sir.

Q. But did he say anything to you in regard to the means furnished? A. My impression is that he did say it was his father's.

Q. Do you recollect it? A. I would not be positive.

Q. Do you recollect of his saying anything more to you upon that subject than that the stock was his father's, and you paying over, upon the occasion you speak of, the interest? A. I don't call to mind, Sir.

Q. And you don't understand, or know, the details, or manner of the purchase? A. No, Sir.

#### MR. TILTON'S THREATENED SUIT FOR SLANDER ON HIS WIFE.

Q. You spoke of an occasion when Mr. Tilton threatened to prosecute some one. When was that, Mr. Storrs? A. I could not tell you, Sir.

Q. What year was it? A. Well, I think it was in the last of 1871, or the fore part of 1872, but I am not absolute about that. I remember the conversation very well.

Q. The latter part of 1871 or the early part of 1872? A. Yes, Sir.

Q. Where was the conversation? A. I think one conversation was on Broadway.

Q. The one you spoke of on your direct examination is the one I mean? A. I think he spoke to me twice.

Q. I only want the one you referred to on your direct examination? A. I could not tell you, only my impressions.

Q. As near as you can, Sir? A. I say one conversation, I think, was when we were going to lunch at Delmonico's; it was in Broadway.

Q. I am only asking for the one you referred to on your direct examination, or did you embrace the two in what you said? A. I am clear about the conversation, but not as to when it occurred, or where it occurred.

Q. Whether it was one or the other, you don't recollect? A. No, Sir.

Q. Will you please relate to me that conversation, and all of it, as near as you can? A. Well, Sir, I should not like to give names.

Mr. Beach—Well, I am sorry, but I shall have to ask for them.

The Witness—I am willing to give them to you outside, or to the Court, but I think you or the Court would say I should not give them, if you knew the facts. I have no objection to give them to the Court or to yourself outside, but I think I should not give the names. [The witness here communicated the name to Mr. Porter in a whisper, and Mr. Porter communicated it to Mr. Beach.]

Q. You may omit the name, Sir, but give me the conversation. A. He said that a person had made a statement to another person in regard to Mr. Beecher and his wife of improper relations, and that he felt very much offended by it, and he thought of suing the party for reporting it.

Q. Do you recollect that the name of Mr. Curtis was mentioned—Mr. Curtis's family. See if you cannot refresh your recollection and tell. Did not Mr. Tilton in that conversation tell you that this nameless person went to the family of Mr. Curtis and reported that his wife was a lewd woman and had contracted a loathsome disease? A. I think he stated that.

Q. And that he went to the husband of this lady and told him of the statement, and that he knew no way but to prosecute for it. A. I think that is very near correct.

Q. Now, Mr. Storrs, recollecting that, I ask you to refresh your recollection, and see whether you have not confounded this conversation with some other one by introducing the name of Mr. Beecher? A. No, Sir, I think not.

Q. You say that Mr. Tilton told you that this person went to Mr. Curtis and charged his wife with being a lewd woman, and having contracted a loathsome disease? A. Yes, Sir; Mr. Beecher's name was used in connection with it.

Q. Give it to me in the connection? A. I cannot tell you definitely, but it was used in the connection.

Q. I want you, to the best of your recollection, admitting that Mr. Tilton told you what I have repeated, to connect the name of Mr. Beecher with it intelligently? A. I cannot tell you, only his name was used.

Q. But in what connection it was used you cannot tell me? A. No, Sir, I cannot.

Q. Have you given all of that conversation so far as you recollect it? A. All that I think of at this moment.

Q. Sir? A. All that comes to my mind at this moment.

Q. All that you now recollect, I ask you? A. Yes, Sir.

#### THE CONVERSATION WITH MR. MOULTON.

Q. I will trouble you, Sir, a moment or two further in regard to Mr. Moulton. You say that was in December, 1874—Dec. 10, I think you said, 1874, when Mr. Moulton indulged in those threats against Mr. Beecher. Who were present at that conversation? A. Mr. Moulton, my brother, and myself.

Q. Mr. Moulton, your brother, and yourself. And how

was that conversation introduced? You and your brother went there together, I understand? A. Yes, Sir.

Q. How was the conversation introduced? A. Shall I go on and give the whole conversation?

Mr. Beach—If you please.

The Witness—Mr. Moulton then went on to state to me that a part of his statement which he last published, that Mr. Tilton was opposed to it, that he never approved of it, and it was commenced in that way, and then he spoke of Mr. Beecher. In regard to that portion, he said—

Mr. Beach—Before you go to that—

The Witness—Excuse me, I will go on. He said he didn't believe it himself, but that Mr. Beecher said so, and Gen. Butler said he must put it in, but Mr. Tilton was opposed to it, and then he denounced him, and said Mr. Beecher was a liar, a perjurer and an adulterer, and he would go and shoot him if I said so.

Q. When you refer to this portion of the last statement you mean that portion of it which related to other parties than Mr. Beecher and Mrs. Tilton? A. Yes, Sir.

Q. And Mr. Moulton said that Mr. Tilton was opposed to that? A. Yes, Sir, to that part of it.

Q. To that part of it? A. Yes, Sir.

Q. But that it was true that Mr. Beecher had said so in regard to that third person, and Mr. Butler, as his counsel, insisted upon its going into his statement? A. Yes, Sir; he said he never believed it himself, but Mr. Beecher said so.

Q. He never believed it, but that Mr. Beecher said so? A. Yes, Sir.

Q. How long was that conversation? A. Oh, 15 minutes or half an hour. It was not a long conversation; it was a short one.

Q. There was more said, I suppose? A. There was; yes, Sir.

Q. Mr. Moulton complained that Mr. Beecher had publicly called him a blackmailer? A. Yes, Sir.

Q. He said that he had always been a faithful friend to Mr. Beecher? A. I don't know as he did in this conversation; it was in another conversation where he used that; he may have in this conversation, but it was in another conversation he used that.

Q. I will get it, then? A. Yes, Sir.

Q. But in this conversation, when Mr. Moulton alluded to the fact that Mr. Beecher had publicly charged him with being a blackmailer, did he not speak of the injustice of that accusation? A. Well, I think he did, but that part of the conversation I am not clear about.

Q. You think he did. When he did speak of it he spoke of it with feeling, didn't he? A. If he did, I am not clear about that portion of the conversation; I would not state he didn't state it, but I cannot recall it.

Q. You say you think he did. You said so while ago? A. He may have said so, but I don't recall it.

Q. You said a while ago you thought he did? A. It would be quite natural from his former conversation.

Q. Mr. Moulton, at any rate, was very much excited in regard to that charge, was he not? A. He was, in—

Q. No, in this conversation? A. It would only be by inference.

Q. Why, a man threaten to shoot another without being excited, do you mean to say, Mr. Storrs? A. Well, he would naturally be excited, I presume.

Q. I am asking you, Sir, from your recollection of that conversation? A. No; he was not as much excited as he was the other; no, he was pretty cool.

Q. Well, was the other before or after? A. Yes; the other was in August, and this was in December.

Q. The other was before then? A. Yes, Sir.

Q. And at the former conversation he manifested a great deal of excitement, you say, upon that subject of being charged a blackmailer? A. More than on any other portion of the conversation.

Q. And protested that he had been a true and steady friend? A. On the former conversation; yes, Sir.

Q. Well, in which conversation was it, or was it in both, that he said if Mr. Beecher had followed his advice this dispute would not have occurred, and did he not say it in both? A. I am not sure; it was in the August one, I think, that he said that.

Q. Well, are you certain whether or not he said it in the December conversation? A. I don't remember it then.

Q. You don't remember whether he did or not? A. No.

Q. Well, Sir, you considered it the threat of an angry man? A. Well, partially.

Mr. Tracy—Which threat are you speaking about?

Mr. Beach—I have heard of but one.

Mr. Tracy—Well, you are talking about two conversations.

Mr. Beach—No, I ain't.

Mr. Tracy—I beg your pardon.

Mr. Beach—No, I am not, I insist upon it; I know what I am talking about.

Mr. Tracy—You asked him if it was the threat of an angry man. You had last been talking about the conversation in August.

Mr. Beach—I have not heard of but one threat.

Mr. Tracy—You were last talking about the conversation in August, and the threat was made in December.

Mr. Beach—I am asking about a threat, and nothing else.

Mr. Tracy—It is fair to the witness that he should know what threat you are asking about.

Mr. Beach—[To the Witness]—Have you spoken of but one threat?

The Witness—Not of shooting.

Q. Have you spoken on your examination of more than one threat? A. No; not certainly about shooting.

Q. Well, have you spoken of any other? A. I don't call to mind.

Q. Very well, then; I am talking about that one.

Mr. Tracy—The witness certainly has, whether he calls it to mind or not; for the witness in the August conversation did say that Mr. Moulton said that he would drive Mr. Beecher out of Plymouth Church and out of Brooklyn. That is a threat.

The Witness—Well, in so far—

Mr. Beach—We are speaking, Sir, of a personal threat—a threat of personal violence. These interruptions only waste time. The witness knows what I refer to. [To the witness.] Did you not consider that threat to shoot Mr. Beecher, if you said so, as the threat of an irritated and angry man? A. Well, I hope he didn't mean it; I can only to state what he said.

Q. Mr. Storrs, that is not an answer to my question. You was there; you knew the feeling Mr. Moulton had in regard to the charge against him of being a blackmailer; you saw and heard him, and I ask you to say whether you did not understand that to be the threat of an irritated and angry man. A. Well, I did understand it as a man irritated, but whether he meant it literally or not I do not know.

Q. No? A. I say I hope he did not.

Q. No. Well, what did you say in answer to that? A. I did not make any answer.

Q. You hoped he did not mean it? A. Yes, Sir.

Q. And yet when he told you that he would go down and shoot Mr. Beecher if you said so, you did not feel that there was any cause for you to reply to that? A. No, Sir.

Q. What? A. I did not.

Q. Well, did you think he would do it? A. Well, I cannot say.

Q. Mr. Storrs, did you think he would do it? A. Well, I don't know as I could say I thought he would, and I don't know that he would not. I can only say what he said.

Q. I know you don't know that he would not, but you did not think he would; you did not see any occasion to make any remark, at any rate? A. I did not, I think.

Q. Well, you did not see any occasion to make any—did not feel that there was any occasion for you to say anything, did you? A. I probably thought it was better—

Q. Did you feel that there was any occasion for you to say anything? A. I cannot say how I felt; I did not make any.

Q. So far as you now recollect, did you feel that there was any occasion for you to make any remark? A. No, perhaps I did not.

Q. I think you have substantially answered what I desire in regard to the conversation in August, that Mr. Moulton was very considerably excited over the charge of being a blackmailer? A. Yes, Sir.

## MR. MOULTON'S VERSION OF THE CONVERSATION INCORRECT.

Q. I think you may repeat that conversation, if you please, Sir. A. The whole of the conversation!

Q. Yes, you may give the whole of it. A. Well, as I said, when we went up stairs Mr. Moulton apologized for sending for me; said he didn't know as I would call on a blackmailer.

Q. Well, is that the way he apologized? A. Well, that is as near the words as I can remember.

Q. Well, did he apologize to you in any other way than that? A. Well, he spoke of the reason why he did not come to see me.

Q. What did he say which you construe into an apology for sending for you? A. Well, he said he had just returned from East, and that he had not had his breakfast, and that he esteemed it a favor that I came around there, or he would have come and seen me.

Q. And then said that he did not know as you would call upon a blackmailer? A. Yes, Sir; it was said in a laughing way.

Q. Well, go on. A. Then when we got upstairs he said he wanted me to tell my brother not to sign the Plymouth Church Report, that Mr. Beecher had confessed his adultery to him and he had the proofs of it, and that he was going to drive him out of Plymouth Church and out of Brooklyn.

Q. Well, anything more? A. Yes, Sir, and then he said he had always been a friend of Mr. Beecher, but when Mr. Beecher called him a blackmailer he was going to take care of himself—defend himself.

Q. Anything else? A. Yes, Sir; shall I go on and give all!

Q. Certainly; I want all that conversation. A. And then he said—repeated several times—that my brother must not sign that report; and during this connection some time—I forget exactly where it came in—that he wanted to be cross-examined, or to make a further statement to the Committee, and I told him that I supposed the Committee's report—that the Committee had received all the evidence, and that the report was made; that I didn't know about it, but I presumed so; then he said that my brother must not sign that; if he did, he should be compelled to make another statement, and then went on and referred to another party, as I have stated.

Q. Give it all, Sir! A. He said if he did, he would have to mention the name of a lady; that would ruin a lady who was a friend of mine, or would break my heart; and I asked him who he meant, and he said he would not give any names; and I told him I knew nothing about the Plymouth Church investigation; that I had had nothing to do with it, and would not have; that I had been urged to come before it, but would not come before it, but any communication that he had for my brother, I would take it to him, but I would not use any influence for him to sign that report, or not sign it

Q. Well, is that all? A. All, I think, for the moment, Sir.

Q. Was your brother present at that conversation? A. No, Sir.

Q. Let me read a version of that conversation, and see how it corresponds with your recollection?

Mr. Tracy—What page do you read from?

Mr. Beach—When I find it I will tell you, Mr. Tracy.

Mr. Tracy—It begins at the bottom of page 278.

Mr. Beach—Yes, I have my eye upon that; it is something else that I want. I read, Sir, from page 280, the second column, near the bottom:

I said to Mr. Storrs that I understood that I was not to be cross-examined by the Committee; that I had come from Lowell for the purpose of that cross-examination, and that I did not want his brother to sign that report until I had an opportunity of being cross-examined by the Committee; for if his brother did sign that report without giving me an opportunity to be cross-examined, he could not possibly know the truth, and if that report was signed and it was against me, as I understood it should be, I should make a publication of facts in reply, and that publication, as I understood my counsel advised it, would perhaps cross the threshold of his family, and came to see him as a personal friend, telling him that I did not want to do any such thing, and I said to him: "I want you, Mr. Charles Storrs, to put it only upon the ground of my being cross-examined. Tell your brother that I don't want him to sign that report until I have had an opportunity for cross-examination, in order that the facts which I have stated in print may be fully known." That is what I said. I went to see Charles Storrs as a friend, Sir. I have given it as nearly as I recollect it.

Q. Now, was that substantially said in that conversation? A. I think not, Sir.

Q. What? A. I think not, Sir.

Q. What, not said in addition to what you have given? A. Not in that way.

Q. Not in that way; I ask you if that was substantially said? A. I think not, Sir.

Q. It was not, eh? Didn't he tell you that he wanted to be cross-examined? A. There was something said, but not one-tenth part of what he has down. There was very little said on that point.

Q. Didn't he tell you that he wanted to be cross-examined further? A. He did, or to make another statement.

Q. What? A. Or to make another statement; I don't know which.

Q. But did not he tell you that he wanted to be cross-examined? A. Or to make a statement.

Q. No, you said that he wanted to be cross-examined, or he should have to make a statement? A. Or make another statement; I said I didn't know which; one or the other.

Q. Well, it was substantially that? A. Yes, Sir.

Q. And if he was not further cross-examined, didn't he say that he would have to make a statement? A. He didn't say whether "if he was further cross-examined;"



he said—well, he might in that connection; he said he would have to make another statement.

Q. Exactly. A. He would have to make another statement.

Q. That is, if he was not permitted to go before the Committee on further cross-examination, or to make a further statement before the Committee, he would be compelled to make a statement? A. Well, he virtually said that, but he did not say it to that length.

Q. Well, that is just what I want "virtually;" and didn't he say in substance that, under the advice of counsel, that statement would cross the threshold of your family? A. No, he did not use that word.

Q. No, he did not use that word; but was not that the idea? A. Well, it referred to a party; yes, Sir, but he did not say anything about—

Q. That he would have to make a statement in regard to a party that would break your heart? A. Yes, Sir.

Q. Didn't he say that he did not want to do any such thing? A. Well, I don't call to mind that.

Q. Will you swear that he did not say so? A. No, I would not swear that he did not.

Q. What, in addition to what you have now stated, did he say? A. Well, I don't call to mind this moment.

#### MR. MOULTON'S REFUSAL TO BURN THE PAPERS.

Q. No, I think not. Now, Sir, in what conversation was it that Mr. Moulton told you that he would not or had not burned the apology; when was that? A. That was ten or fifteen days after the "Tripartite Agreement," as we call it.

Q. Ten or fifteen days after the award? A. Yes, Sir, as near as I can remember; it might have been a little more or a little less; I would not be positive.

Q. And at that conversation your brother was present? A. No.

Q. Wasn't he? A. No, Sir.

Q. I misunderstood; when he said that he had not burned? A. No, Mr. Tilton was present, Mr. Moulton and myself, nobody else.

Q. Well, I misrecalled. Well, that was ten days after the award, or fifteen, that Mr. Moulton said that he had not burned the apology of Mr. Beecher. Will you please repeat it? A. Well, this was the conversation as I said. It commenced about the tripartite settlement; as far as I now remember, I had not had any talk with him before, and I was telling him that Mr. Bowen felt that we brought in too large a sum, and that his sons felt aggrieved, and then Mr. Moulton during this conversation—Mr. Moulton said that Sam Wilkeson had either seen him or written him, I wouldn't be positive which.

Mr. Tracy—Speak a little louder, please, if you can.

The Witness—That Sam Wilkeson had seen him or written him that he wanted me to burn—to be sure to burn Mr. Beecher's apology and all the papers, and Mr. Moul-

ton says, "of course," says he, "I have burned all the papers," and laughed; and he says, "Mr. Beecher thinks I have;" and then he says, "if Sam Wilkeson thinks I have burned all the papers, he is mistaken. What would Theodore do with his trouble?"

Q. You told him that Sam Wilkeson had written to Mr. Moulton to burn the apology and all the papers?

Mr. Tracy—Oh, no; he has not said any such thing.

The Witness—No; that Moulton—

Mr. Beach—Will the stenographer read the answer?

THE TRIBUNE stenographer read the answer, as follows:

"That Sam Wilkeson had seen him or written him"—

Mr. Tracy—Begin just back of that.

Mr. Beach—No, begin just there.

THE TRIBUNE stenographer [reading]:

"That Sam Wilkeson had seen him or written him ~~that~~ he wanted him to burn—to be sure and burn Mr. Beecher's apology and all the papers."

Mr. Beach—Exactly.

Mr. Tracy—I submit that you read just back of that.

THE TRIBUNE stenographer [reading]:

As far as I now remember I had not had any talk with him before, and I was telling him that Mr. Bowen felt that we brought in too large a sum, and that his sons felt aggrieved, and then Mr. Moulton during this conversation—Mr. Moulton said that Sam Wilkeson had either seen him or written him, I wouldn't be positive which—

Mr. Tracy—Speak a little louder, please, if you can.

The Witness—That Sam Wilkeson had seen him or written him that he wanted him to burn—to be sure and burn Mr. Beecher's apology and all the papers.

Mr. Beach—Will you look over that letter of Mr. Wilkeson and see if there is anything said about "all the papers?" [Handing witness a letter.] A. I have never seen that.

Q. Well, I want to convince you that you made an inaccurate report. A. Well, I don't know anything about the letter; I can only state what Mr. Moulton said.

Q. Well, will you swear that in giving that remark you used the exact language of Mr. Moulton? A. I think I did, Sir, the exact language.

Q. The exact language of that remark? A. Yes, Sir.

Q. Now, repeat it in the exact language? A. Well, the whole conversation?

Q. No, Sir, that remark which you say you give in the exact language of Mr. Moulton; repeat it? A. Mr. Moulton said that some—

Q. He didn't say it in that language? A. Yes, Sir.

Q. He did; precisely that language? A. He called him "Sam Wilkeson."

Q. Mr. Moulton said that in that exact language. Go on? A. Well, I am only telling you our conversation this morning; I wouldn't state that every identical word was the same.

Q. Very well; then don't say that you can; that is the reason that I asked you to repeat it, because you said you

could? A. The most of it I can state absolutely; he says: "If Sam Wilkeson thinks"—

Q. The only point I want to know is, you stated that you gave that remark in the precise language in which Mrs. Moulton uttered it? A. Well, I think I did.

Q. Then I want you to give me the precise language of that remark? A. He says: "If Sam Wilkeson thinks I have burned all those papers he is mistaken;" that I believe to be exactly the way he said it.

Q. Sir? A. I believe that to be exactly the way he said it.

Q. Well, is that all in regard to the paper that you can give his precise language? A. Well, the whole that I have named I believe to be—

Q. No; I don't want what you believe, Sir. A. Well, as I said this morning—

Q. Well, if you put it on that ground, Mr. Storrs, I am perfectly satisfied. Now, you have not given quite all of it; will you follow out the conversation a little further. A. He says, "What would Theodore do in case of trouble?"

Q. Do you recollect anything more? A. I don't call to mind this moment.

Mr. Beach—That is all, Sir.

Mr. Tracy—One word, Mr. Storrs.

#### REDIRECT EXAMINATION OF MR. STORRS.

Mr. Tracy—You have stated on your cross-examination that you think you got notice of the arbitration; do you know from whom you got that notice? A. Not absolutely. That is not the talk that Mr. Beach refers to.

Q. You were referring to a conversation that you and Mr. Tilton had, when Mr. Tilton invited you to be an arbitrator, in case there was an arbitration. A. Yes, Sir.

Q. Now, were you invited by anybody to meet at Moulton's house before going over that night? A. I must have been; but I cannot recall to mind from whom I received the notice.

Q. You know you received a request from some one to go there? A. Yes, Sir.

Q. But from whom you don't know? A. I could not remember.

Q. When you said on your cross-examination that the matters between the three men were to be settled, what matters did you intend to be understood? A. Well, all matters that were in dispute.

Q. What? A. All matters that were in dispute between the three men.

Q. Between the three men or any two of them?

Mr. Beach—Well, that will not do, Sir.

Mr. Tracy—I submit it will.

Judge Neilson—The objection is that it is your suggestion. Put a question to your witness.

Mr. Beach—The gentleman insists that he should testify for the witness.

Mr. Tracy—No.

Judge Neilson—That is the suggestion.

Mr. Tracy—Did you understand that it included all disputes between the three men, or between any two of the three men?

Mr. Beach—I object to that question, Sir.

Judge Neilson—We will take it, Sir.

Mr. Beach—Take it? A question leading like that?

Judge Neilson—It is leading, but still—

Mr. Beach—Well, Sir, will your Honor take that on direct examination?

Mr. Tracy—It is cross-examination upon matters that you brought out. I am only asking him what he meant to be understood by the question that you put on cross-examination.

Judge Neilson—If you had asked him that there would be no question raised, that would be a proper question; but your question is leading.

Mr. Beach—That is all I insist upon.

Judge Neilson—Well, I think the witness may answer as it is put. There is a doubt about the propriety of it; still we will take it.

Mr. Tracy—Will the stenographer read the question?

THE TRIBUNE stenographer read the question as follows: "Did you understand that it included all disputes between the three men, or between any two of the three men?"

Q. You have stated, Mr. Storrs, that when you reported to Mr. Tilton the result of your interview with Bowen, when you had gone to him to see if Mr. Tilton's claim should be settled, that Mr. Bowen told you that he did not think he owed Mr. Tilton anything, and he always said he didn't owe him anything. Now, at the arbitration, state whether or not Mr. Bowen waived the question of his liability to Tilton and only raised the question of the amount of the liability?

Mr. Beach—I object to that question, Sir, as leading and not calling for what was said and done.

Judge Neilson—It is leading, and yet it covers a point that came out very clearly on your cross-examination.

Mr. Beach—I know it does.

Judge Neilson—There is no occasion for the question. It sufficiently appears, I think, but it is a leading question that you ought not to put. You might well ask him what Bowen did or said. It is a leading question. It is upon a point about which I think there need be no solicitude, because Mr. Beach examined him very closely upon that subject.

Mr. Tracy—Was there anything said by Bowen at that time, and if so what, as to whether he would raise the question or submit the question to the arbitrators as to his liability to Mr. Tilton? A. I don't think he raised the objection.

Q. You don't think he raised the objection there? A. No, Sir.

Q. Although he had raised it in your interview as you had reported it to Mr. Tilton?

Mr. Beach—That is objected to.

Mr. Tracy—[To the witness.] Do I understand you?

Judge Neilson—That appears.

Mr. Tracy—Well, that is all.

Judge Neilson—Mr. Storrs told us before that Mr. Bowen presented to them a question about the commissions on *The Union*. That was the burden of his plea.

Mr. Tracy—Now, you say that Mr. Bowen requested that the Woodstock letter might be returned to him instead of being burned. At what stage of the interview was that request made? A. Just after, I think, Mr. Tilton had finished his amendment to his portion of it.

Q. Well, it was at the same time that the question of the burning the papers was brought up, after Mr. Tilton had made his changes in the "Tripartite Agreement?" A. It was after Mr. Claflin had made known the award, and then Mr. Tilton made his objection, and then Mr. Bowen made that request, before Mr. Claflin further interrogated him.

Q. Did you have more than one conversation with Mr. Tilton about his bringing an action against this person for charging his wife with criminality? A. I said, I think, I had two conversations.

Q. Do you know where the two were? A. No, Sir.

Q. Where the second was? A. No, Sir.

Q. Well, in any one of these conversations was the charge for which he was to sue that Mrs. Tilton had committed adultery with Mr. Beecher?

Mr. Beach—That is objected to.

Mr. Tracy—What is the objection?

Judge Neilson—Leading.

Mr. Beach—It is leading, and calls for a conclusion instead of calling for what was said.

Mr. Tracy—What was said as to the nature of the charge that he was intending to sue this party for? A. Adultery, as I understood it, Sir.

Q. With whom?

Mr. Beach—He asked what was said, Sir; and that answer is not responsive to it at all.

Mr. Tracy—What was said; what did he say about the charge that had been made against his wife?

Judge Neilson—What did he say in respect to the subject matter of the suit he might bring. Isn't that it? Go on, Mr. Storrs.

The Witness—Well, it was the improper relations between—

Mr. Tracy—What did he say about it? A. Well, I cannot repeat all the conversation; but he said a person had made a charge of adultery between Mr. Beecher and Mrs. Tilton, and some other things, that Mr. Beach alluded to.

Q. But the charge was a charge of adultery between Mrs. Tilton and Mr. Beecher?

Mr. Beach—That I object to, Sir—a mere repetition by the counsel.

Mr. Tracy—That is all.

# RECROSS-EXAMINATION OF MR. STORRS.

Mr. Beach—Did you tell me, Sir, that you could not tell in what connection the word "Mr. Beecher" was used in that conversation? A. Not—

Q. Did you not tell me that, I ask you? A. Very likely.

Q. Don't you remember to have so answered? A. I don't remember exactly, but I could not tell you; that is, I could not tell you the exact conversation.

Q. I did not ask you that, Sir; don't you remember my asking you the question whether you could tell me the connection in which the name of Mr. Beecher was used? A. I say I cannot now.

Q. You cannot now? A. No, Sir.

Q. Didn't you answer that Mr. Tilton told you that this lady, which we do not name, had been to Mr. Curtis's family and reported that his wife was a lewd woman and had an impure disease, and that he did not know any remedy but to sue? A. And also the further—I said further.

Q. No; did you answer to me that he said that? A. He did; I think he did; yes, Sir.

Q. And, then, don't you remember my asking you to bring in the name of Mr. Beecher, and that you said you could not do it—do it, in the conversation? A. Well, not the exact conversation; I know—

Q. Didn't you say that you could not bring that in?

Mr. Tracy—I submit that the witness should be permitted to answer the question.

Mr. Tracy—He will not, Sir, so long as his answers are irresponsible.

Mr. Beach—Will the stenographer read the question?

Mr. Beach—The stenographer need not trouble himself to read it; Mr. Beach will speak it. [To the witness.] Didn't you, in answer to the question which I put to you after I had related these facts which you say Mr. Tilton stated—did you not say that you could not connect Mr. Beecher's name in the connection in which it occurred in that conversation? A. What I meant—

Q. I don't ask you what you meant; did you not say that? A. Perhaps I did.

Q. Don't you remember that you did? A. Likely, I did.

Q. Wait a moment. Don't you remember that you said it? A. Well, I think I did say it; but I wish to explain.

Q. Well, I don't want you to explain just now. A. Well.

Mr. Porter—I submit that he is entitled to explain.

Mr. Beach—I submit that he is not, Sir, in the midst of my examination; he may afterwards, if he chooses.

Mr. Porter—Elas he not the right, in answer to such a question, to say, "What I meant to say was—"

Mr. Beach—Yes; but he will not say what he meant, on my examination.

Mr. Tracy—Yes.

Mr. Beach—No, Sir.

Judge Neilson—They can ask him for the occasion.

Mr. Beach—Now, as your Honor has decided in my favor upon that point, you may state the conversation.

Mr. Tracy—Ah!

Mr. Beach—Ah! or Oh!

The Witness—Well, during this conversation, as I remember, it was the charge of adultery that he was going to sue for.

Q. Well, that is all the explanation you want to make, is it? A. That is all.

Q. Now, I understood you to say that Mr. Claffin, somewhere about the opening of this arbitration, said, in answer to the remark which you made about acting, that all the difficulties between the three men were to be submitted? A. Yes, Sir.

Q. Was that the language he used? A. I think it was.

Q. That is the substance of it, as near as you recollect? A. Yes, Sir.

A. And you understood that Mr. Beecher's name was involved through the "Personal Statement" and the "Tripartite Agreement"? A. Yes, Sir.

Q. Now, have you any other reason for saying that you understood the difficulties between any two of the men were to be settled, except that declaration of Mr. Claffin which you have just made, and that conversation which you have related? A. Nothing only the impression made upon me; that is all.

Q. Certainly—the impression made upon your mind? A. That is all.

Q. But that was an inference derived from what you have stated? A. Yes, Sir.

#### RE-RE-DIRECT EXAMINATION OF MR. STORRS

Mr. Tracy—One word. Now, you say that it was the charge of adultery that he was going to sue for; the charge of adultery committed with whom.

Mr. Beach—Is that proper upon a re-direct examination?

Mr. Tracy—It is a further explanation of the explanation that you asked for, or he has sought to give in answer to your question.

Mr. Beach—If your Honor please, upon the direct examination they inquired of this gentlemen in regard to that conversation; I cross-examined him. They then re-inquired upon the same subject, and I have cross-examined him again, and developed nothing new. Now, I submit that there should be an end to the direct examination, upon that point, of this gentleman.

Judge Neilson—I think so. At the same time, Mr. Storrs, you are at liberty to make any explanation that occurs to you.

The Witness—Well, he said it was with Mr. Beecher.

Mr. Tracy—And was the language about the loathsome disease in connection with that charge—used in connection

with that charge? A. It was all in one conversation; yes, Sir.

Q. Now, Mr. Storrs, you understood when you read the "Personal Statement" and first went to Mr. Bowen, that Mr. Beecher's name was involved in that Personal Statement, did you not? A. Yes, Sir.

Q. And you knew, when the arbitration was made concerning the matters therein stated in that Personal Statement, that Mr. Beecher was involved; you knew it then, as well as you know it at the time of going to the arbitration, did you not? A. Yes, Sir.

Q. Now, wasn't it the further fact that you learned that matters between Mr. Tilton and Mr. Beecher were to be submitted at that arbitration that led you to say that, if that was so, etiquette required you to retire?

Mr. Beach—I object to that question as leading—very offensively leading.

Judge Neilson—We have been over the subject and over it again. He stated before this why he assigned, suggested, that he might feel called upon to retire; it was that Mr. Beecher's name was mixed up in it, and he had not been requested by Mr. Beecher to act; and I think that is sufficient on that point.

Mr. Tracy—He has said that!

Judge Neilson—Oh! undoubtedly. Why repeat it?

Mr. Tracy—But counsel has sought to draw a distinction from the cross-examination of the witness that Mr. Beecher was mixed up only as a third party; and it was only so far as Mr. Beecher's matters were connected with the two other parties that they were to be submitted.

Judge Neilson—Now, the only way this witness could correct that, if he corrected it at all, would be by giving the conversation. Both counsel have interrogated him as to the conversation quite at large.

Mr. Tracy—Well, that is true; but he has not only been asked for the conversation on cross-examination, but he has been asked for what he understood at the time.

Judge Neilson—Well, if proper on cross-examination, would that be proper on your part?

Mr. Tracy—I submit it would be proper in explanation of what he said he understood. When they ask the witness what he understood by such a fact, that entitles me to ask a further question in regard to what he understood concerning the same subject matter.

Mr. Beach—That was asked, Mr. Tracy, upon my first cross-examination, and you re-examined in regard to it.

Mr. Tracy—And you re-examined in regard to it again on your last cross-examination.

Mr. Beach—I haven't.

Mr. Tracy—You have, Mr. Beach.

Mr. Beach—You are mistaken.

Mr. Tracy—You asked him as to what differences he understood were referred to in that arbitration.

Mr. Beach—I have not.

Mr. Tracy—I think you have.

Mr. Beach—I haven't, Sir; I only asked him if what I called his attention to, as to the declaration of Mr. Clafin—

Mr. Tracy—It is not of sufficient importance to have a dispute over; I will waive the question.

Judge Nelson—Very well; I think that is the correct course, Mr. Tracy. That is all, Mr. Storrs.

Mr. Tracy—That is all, Mr. Storrs.

TESTIMONY OF MARY F. PERKINS.

Mary F. Perkins was then called on behalf of defendant, and being duly sworn, testified as follows:

Mr. Shearman—Where do you reside? A. At present, in Boston, Sir.

Q. At present in Boston? A. That is my home at present.

Q. Where did you reside previously? A. Hartford was my home.

Q. Hartford, Conn.? A. Yes, Sir; many years.

Q. Will you speak as loud as you can; it is necessary to speak so loud as to seem a little painful to you in order to be heard. How long did you reside in Hartford? A. I resided during my married life there, Sir—about forty-six years in Hartford.

Q. Forty-six years? A. I think so.

Q. What was the name of your husband? A. Thomas C. Perkins.

Q. You are a sister of Henry Ward Beecher, I believe? A. I am, Sir.

Q. Are you an older or a younger sister? A. I am older, Sir—I am older.

Q. Older than Mr. Beecher? A. Yes, Sir.

Q. In the Winter of 1871 and 1872 did you visit your brother's residence, Mrs. Perkins? A. I spent most of the Winter, indeed, the whole Winter, at that time, with my brother.

Q. You spent most of the Winter? A. I spent the whole of that Winter.

Q. The whole of that Winter? A. Yes, Sir.

Q. From what time until what time? A. I went there the last of December, and left, so far as I recollect, the last of April.

Q. 1872? A. 1872.

Q. You went the last of December, 1871, and stayed until the last of April, 1872? A. Yes, Sir, 1872, and the same afterward the next year.

Q. Mrs. Beecher was absent during a part of that time, was she not? A. She was, during most of that time.

Q. Where was she? A. In Florida.

Q. She went for her health? A. For her health.

Q. Did you remain in that house during the whole period of Mrs. Beecher's absence? A. Yes, Sir; I did.

Q. What was the state of your health at that time, Mrs. Perkins? A. My health was delicate; I was not strong.

Q. What were your habits with regard to going out of the house during that period? A. Very seldom, indeed.

Q. Did you go out alone? A. I occasionally took a short walk for my health, but I never visited alone at all.

Q. On these short walks how long were you ever absent alone? A. Well, not more than ten minutes.

Q. Not more than ten minutes? A. No, Sir.

Q. When you went out on other occasions, with whom did you go? A. I went with my brother.

Q. Your brother, Henry Ward Beecher. A. Henry Ward Beecher.

Q. Was that your invariable practice? A. It was.

Q. Then, with the exception of these short walks, none of which exceeded ten minutes at a time, you were either in the house the whole time or in Mr. Beecher's company when you were absent from the house during that period? A. I was, Sir.

Q. Were you in the habit, during the period of Mrs. Beecher's absence in that Winter, of receiving Mr. Beecher's guests? A. Yes, Sir; I was.

Q. Now, Mrs. Perkins, during that entire Winter, did you ever see Mrs. Elizabeth R. Tilton? A. No, Sir.

Q. You were there again, were you not, some part of the Winter of 1872-'73? A. I was, Sir.

Q. How long were you there at that time? A. About the same length of time; I went the last of December and left some time in April or May; I do not recollect precisely.

Q. You did not leave in either Winter until Mrs. Beecher had returned, did you? A. The first Winter she had returned the first season; the second season she either had returned or was on her way home.

Q. I didn't hear that? A. The first Winter she had returned.

Q. And the second Winter she had been— A. It might have been a day or two before her return; I cannot recollect precisely.

Q. And the second Winter she either had returned, or was on her way home? A. On her way home.

Q. The last occasion you refer to was the Winter of 1872-'3? A. Yes, Sir.

Q. You remember that that was after the publication of the Woodhull scandal, that last Winter? A. Yes, Sir, it was.

Q. Now, Madame, did you, on this last Winter, ever see Mrs. Elizabeth Tilton? A. No, Sir.

Q. Did you on either Winter ever hear of Mrs. Tilton having been at the house? A. No, Sir.

Q. You have seen Mrs. Tilton? A. Yes, Sir.

Q. So that you can identify her? A. Yes, Sir.

MR. BEECHER'S ABSENCE FROM THE CITY  
IN JUNE, 1873.

Q. Now, do you remember June, 1873—the incidents of June, 1873? A. I think I do, some of them.

Q. Some of them. Can you recollect where you were in the first week of June, 1873? A. So well as I can

recollect I was in Roxbury, at my son's, and about that time my brother came for me with Mrs. Claflin—

Q. Your brother, Henry Ward Beecher? A. My brother, Henry Ward Beecher, came with Mrs. Claflin to invite me to make a visit at her house with him and with Mrs. Beecher.

Q. Who is Mrs. Claflin? A. Mrs. Gov. Claflin.

Q. The wife of ex-Gov. Claflin of Massachusetts? A. The wife of ex-Gov. Claflin of Massachusetts.

Q. And where does Mrs. Claflin reside; where did she reside then? A. At Newtonville.

Q. Newtonville, Mass.? A. Newtonville, Mass.

Q. Is that near Boston? A. Yes, Sir.

Q. About how far? A. I don't know; six or eight miles, as far as I recollect.

Q. Well, did you go with Mr. Beecher and Mrs. Claflin? A. I did.

Q. And how long a time did you spend with your brother on that occasion? I should think more than a week; I think we went on Thursday, so far as I can recollect; I think it was Thursday, and I remained there with him; he preached on Sunday at Park Street Church.

Q. Is that Mr. Murray's church—at that time? A. Exchanged with Mr. Murray.

Q. Rev. W. H. H. Murray? A. Yes, Sir.

Q. Was the pastor of that church? A. Yes, Sir; exchanged with him; and I remained there and heard my brother preach that Sunday.

Q. This Thursday to which you referred was the 5th of June, was it not? A. I am very poor on dates, but so far as I can recollect I should think it was.

Q. The first Thursday of June was the 5th of June, 1873? A. Yes, Sir.

Q. And it was that first Thursday in June? A. I think so; I think so.

Q. You know it was the Thursday before Mr. Beecher preached in the church of the Rev. Mr. Murray? A. I know that; I am very sure of that.

Q. And that was the second Sunday of June, 1873? A. Yes, Sir.

Q. You stayed with your brother on that Thursday, Friday, Saturday, and Sunday, did you not? A. I did.

Q. You heard him preach? A. I heard him preach.

Q. Then you stayed with him during part or all of the next week, did you not? A. During part of the next week; I cannot remember definitely how many days, but several days.

Q. Certainly Monday, Tuesday and Wednesday of the next week? A. I think so, certainly.

Q. Well, was Mrs. Stowe with you any part of that time? A. Mrs. Stowe was with us most of that time; she came after I did to Newtonville, and remained with us during the time that I was there.

Q. Now, Madam, was your brother ever absent during that period to which you have last referred—from the

Thursday on, was he ever absent from your sight, long enough to have gone to New-York? A. No, Sir.

Q. Was he ever absent long enough to have gone half way to New-York? A. No, Sir.

This closed the direct examination of Mrs. Perkins.

Mr. Fullerton—I have nothing to ask, Madam.

Judge Nelson—That is all, Madam.

Mr. Shearman—If your Honor please, the witness we have counted upon next stepped out, thinking he would not be wanted until after recess.

The Court here took a recess until 2 o'clock.

#### THE AFTERNOON SESSION.

The Court met at 2, pursuant to adjournment.

Judge Nelson—Proceed, Mr. Shearman.

Mr. Tracy—Is Mr. Freeland in Court?

Mr. Freeland—Yes, Sir.

Mr. Tracy—Take the stand, Mr. Freeland.

#### TESTIMONY OF JAMES FREELAND.

James Freeland was then called on behalf of defendant, and being duly sworn testified as follows:

Mr. Tracy—Where do you reside? A. No. 140 Columbia-st., Brooklyn.

Q. How long have you been a resident of Brooklyn? A. Thirty odd years.

Q. Are you a member of Plymouth Church? A. I am.

Q. How long have you been such member? A. Twenty-five or twenty-six years.

Q. Do you know Mr. Beecher? A. I do.

Q. And Mr. Tilton? A. Yes, Sir.

Q. And Mr. Bowen? A. And Mr. Bowen.

Q. How long have you known Mr. Bowen? A. Well, thirty years.

Q. Were you formerly a merchant, engaged in business in New-York? A. I was.

Q. You are now Collector of Internal Revenue of the First District? A. I am.

Q. How long have you been such Collector? A. Six or seven years. I am not exact, you understand, as to dates.

Q. It has been stated that you were one of the arbitrators in this difference between Mr. Beecher, Mr. Tilton and Mr. Bowen? A. I was.

Q. You met at Mr. Moulton's house? A. We did.

Q. How long before that arbitration actually occurred were you informed that you were to act as arbitrator? A. I could not tell.

Q. You went around to the house that night with whom? A. Mr. Claflin and Mr. Storrs.

Q. When you arrived there whom did you find there? A. I don't remember exactly. I know that shortly after I got there I noticed that Mr. Bowen and Mr. Tilton and Mr. Moulton were there, and Mr. Claflin and Mr. Storrs and myself.

THE HACKNEYED STORY OF THE ARBITRATION.

Q. What was done after you arrived? A. Well, Sir, I think we prepared to go to business.

Q. Do you remember anything said by Mr. Storrs about his not acting as an arbitrator? Yes, Sir, I think I do.

Q. What did he say on the subject of declining to act as an arbitrator?

Mr. Fullerton—One moment; we object to that.

Judge Neilson—It is proper, if it was in Mr. Tilton's presence.

Mr. Tracy—Oh! he has sworn that Mr. Tilton was present, and the whole evidence shows that he was present.

Judge Neilson [to the witness]—What did he say? A. Well, now, I cannot repeat the language, but I remember that he spoke of retiring in consequence of Mr. Beecher—some words in regard to Mr. Beecher—that he did not understand that he was to come into this arbitration—something of that kind, something of that nature, I don't remember particularly; and then Mr. Claflin spoke up.

Q. What did Mr. Claflin say? A. Mr. Claflin said that it was all well arranged—it seemed to be, from him—that Mr. Beecher and the whole matter was to come in the arbitration before us. I cannot remember the language that he used, but that was the effect of the whole thing—all that was said. Then Mr. Storrs, as I understood, excepted. Mr. Storrs said a good deal, but I could not repeat fifteen words, or ten words, that he said.

Q. But whatever it was, it was said in the presence of Mr. Tilton and Mr. Moulton and Mr. Bowen, was it? A. All the parties.

Q. After that did the arbitration proceed? A. It did.

Q. What did the parties do before the arbitrators? A. I think Mr. Tilton made a speech, but I don't remember a word he said. [Laughter.] And I think Mr. Bowen made a speech, but I can't repeat a word they said.

Q. Well, we have not asked you to repeat anything they said yet? A. No, Sir.

Q. We want to find out what they did. After they had made their speeches, what was done? A. I think they withdrew, and we went on with the arbitration.

Q. The arbitrators? A. Yes, Sir, the arbitrators.

Q. And made up your award? A. Yes, Sir.

Q. Did you agree upon your award that night? A. We did.

Q. After that award was agreed upon, what was done? A. We came in and asked the parties, I believe, to come before us again.

Q. Was the award announced by any one of the arbitrators? A. Yes, Sir, Mr. Claflin was the spokesman.

Q. Mr. Claflin announced the award? A. He did.

Q. What did he say the award was? A. Well, in substance, he said first that the papers were all to be burned relating to the scandal.

Q. Well? A. The next was—let me see, I don't exactly

—that was the first, I remember, that was spoken of. Then the award, I think, came.

Q. What was the award? A. \$7,000.

Q. Well, what next? Was there anything said about signing any paper? A. Yes, Sir.

Q. What was said about signing a paper? A. The Tripartite—that hard name that I cannot pronounce very well.

Q. Very well; we know what you refer to. A. That was to be signed.

Q. By whom? A. Henry Ward Beecher, and Mr. Tilton and Mr. Bowen, I think.

Q. Bowen? A. Yes.

Q. After Mr. Claflin had announced the award, what was said by either of the parties, if anything? A. I think they were satisfied; I think they seemed to be pleased; I recollect that Mr. Tilton laughed and smiled.

Q. Well, Tilton probably smiled at the amount; but what did he say about signing the "Tripartite Agreement?" A. Well, he said there was something there that he wanted to change—the phraseology or something—something in regard to that.

Q. Well? A. Well, I think Mr. Claflin replied—let me see now, I am a poor hand to recollect conversations, very.

Q. Well? A. I will give you the substance as near as I can. He said, "Mr. Tilton, you agreed to sign that—all satisfactory."

Q. What did Tilton say to that? A. Well, I think he said that he did, but he wanted it altered. Well, the amount of it at the end was that he did alter it. I think Mr. Claflin wanted to know if he was satisfied after it was done. I think he took a piece of paper and wrote on it, and it seemed to be attached to it.

Q. He did alter it, any way, and the alteration was accepted? A. I so understood it. It was all quiet; we were all very good-natured after we got through. All pleasant all around.

Q. No doubt of it; you were a very pleasant set of gentlemen. What was done about the Woodstock letter? A. I remember Woodstock was mentioned, and about a letter, and I think that Mr. Bowen wanted to have that returned to him.

Q. And not burned? A. And not burned.

Q. Well? A. And I think there was something about a letter of apology that was to be burned.

Q. What was said about a letter of apology that was to be burned? A. I think that was to be burned. All the papers as I understood were to be burned connected with the scandal.

Q. What particular papers were mentioned, if any? A. I think the apology, if I remember right, was mentioned, and this Bowen letter, and there was another letter, I think, but I don't remember what it was.

Q. Whose apology was it that it was said was to be burned? A. Mr. Beecher's.

Q. Mr. Beecher's letter of apology? A. Yes, Sir; I recollect that Mr. Claflin—Mr. Claflin was the spokesman.

Q. Where was that said, that that letter of apology was to be burned? A. Right there on the spot.

Q. In the presence of whom? A. All of them.

Q. What did Moulton and Tilton say in regard to burning the letter? A. I understood that they assented to it; I didn't hear any objection, not a word.

Q. Well, did they, or did they not assent to it? A. Yes, I understood so.

Q. Well, after that was done, what occurred. After you had altered the "Tripartite Agreement" to suit Tilton, and it was agreed that Bowen should have the Woodstock letter returned to him, and that the papers were to be burned, what then occurred? A. Then, I think, Mr. Bowen wanted to settle the matter up and give his check.

Q. Well? A. And he spoke to Mr. Claflin—I heard the conversation—he asked Mr. Claflin, says he, "Mr. Claflin, suppose I should not have money enough in my bank account to-morrow morning, will you lend it to me for this check? I want to close this matter up;" and Mr. Claflin said he would.

Q. What was done then? A. Well, I saw the check passed around, but I did not see who it was delivered to.

Q. Was the check filled out there? A. I think it was, I saw it lying on the table, but I did not take it in my hands.

Q. Did you actually see it pass to Tilton? A. No, I don't think I did.

Q. After the check was filled out, what was done or said? A. Well, I have got pretty near the end of my rope.

Q. Did you separate then soon after the filling out of that check? A. Yes, Sir; we had a pleasant chat.

Q. How long were you there, at Moulton's house, from the time you went there until you left it? A. I am not well versed in time; about three or four hours; I could not state.

Q. You don't remember? A. I don't remember the time; there was considerable time.

Q. Don't you remember about the time that you broke up that night and went home? A. Well, I think it was pretty late; it was late for me, surely.

Q. Do you remember whether you were afterward consulted by Mr. Storrs in regard to this "Tripartite Agreement" being deposited with Mr. Moulton? A. Oh, yes; there was some talk about that, and I said right off, "Mr. Claflin must keep that Tripartite"—I remember now I suggested Mr. Claflin.

Q. What was said, if anything, about Mr. Claflin's taking this Tripartite Agreement, after it had been altered by Mr. Tilton to Mr. Wilkeson, to have a fair copy made of it? A. Yes, Sir, that is so; Mr. Claflin was to take it and have a fair copy made of it.

Q. And did he take it away with him that night? A. Yes.

Q. When did you next see it? A. I don't think I ever saw it after that.

Q. You don't think you ever saw it? A. No.

Mr. Tracy—You may examine, gentlemen.

#### CROSS-EXAMINATION OF MR. FREELAND.

Mr. Fullerton—Mr. Freeland, when was this arbitration? A. Well, now, the best I can get at it is that it was the 3d of April, 1872—the 3d of April, 1872; it might have been—well, I think it must have been that time. I would not swear to it positively; it might have been a few days more or less, but that is my impression, as far as I can get at it.

Q. It might have been a few days before or a few days after? A. It might have been, but that is my impression. Well, I get at it in a measure from that check—the 4th.

Q. Have you seen the check? A. I saw the check there; but I heard it spoken about—I will tell you exactly—

Mr. Fullerton—Ah!

The Witness—Oh! I will stop, Sir, when you say so; I don't want to tell more than you ask.

Q. You say you will stop, but you don't? A. I'll shut my mouth up.

Q. But you don't; you are at it again. Did I understand you to say that you saw the check? A. I think I saw it on the table.

Q. Did you read it? A. I did not.

Q. Or any part of it? A. No, Sir.

Q. Then how does that enable you to get at the date? Now you can talk. A. Will you allow me?

Q. Yes. A. Well, Sir, I heard there was a check of Mr. Bowen's—I will tell you another thing—

Q. No; tell me that first. [Laughter.] A. I will; I am glad to see you laugh; I don't like to see cross folks; that is the best way to get along.

Q. Well, laugh after you explain that. A. I will.

Q. If you did not read the check, how does the check enable you to fix the date? A. I am afraid you will stop me if I undertake to tell you.

Mr. Tracy—Well, try it.

The Witness—[After a pause.]—I know Mr. Bowen very well, and I never knew him to give a check after 3 o'clock that he didn't date it the 4th; now, that is one of the strongest points in the matter.

Judge Neilson—That is, he would date it the next day!

Mr. Fullerton—Oh! your Honor—

The Witness—Yes; the next day.

Mr. Fullerton—He always dates them the 4th! A. So far as I know him.

Q. If he draws a check after 3 o'clock, he always dates the check the 4th? A. From my experience in business with him; I have had a good deal of experience with him in business.



Q. You say if he draws a check after 3 o'clock he always dates it the 4th? A. Yes; after 3 o'clock.

Q. Suppose it was the 30th day of the month, would he date the check the 4th? A. I guess he would take the day after, then.

Q. And not the 4th? A. I cannot say as to that. I want to tell you what is right. Don't ask me to talk too much if you please.

Q. Did you ever see him draw a check? A. Oh! yes.

Q. And you read it? A. He and I have exchanged checks.

Q. Have you seen him draw a check? A. Yes, and he and I have exchanged checks a great many times.

Q. Have you seen him draw checks after three o'clock? A. Yes, Sir, I think I have.

Q. Is there any other way that you can get at the date of that arbitration except by the date of that check which you did not see? A. My memory is very poor for dates; I cannot remember dates; it is the most difficult thing for me.

Q. That will be a good reason for your saying that you cannot do it? A. Well, I cannot say.

Q. That is an answer to the question. Is your recollection good in other respects than dates? A. Associations, they are my best—

Q. How? A. My remembrance comes through associations.

Q. Is that the way you recollect what took place before the arbitrators? A. No, not that; I am sure I was at the arbitration; that is firm in my mind.

Q. That you are sure of? A. I am.

Q. Are you equally sure of what took place after you got there? A. I am equally sure that I know the verdict we brought in.

Q. Are you quite sure that you remember what was said after the arbitrators came in? A. No, Sir; I could not say that I could repeat the language at all; I could give only the substance.

Q. What papers were before you as arbitrators? A. I think the article of agreement between Mr. Bowen and Mr. Tilton.

Q. What other papers were before you? A. I think the Tripartite.

A. The Tripartite was before you? A. I think it was—yes, I am sure it was.

Q. Was it signed? A. I don't remember.

Q. Can't you tell me whether it was signed or not? A. I don't know whether it was or not.

Q. You looked at it? A. I saw it, but I didn't read it.

Q. Didn't you see whether it was executed? A. I did not.

Q. They did not sign it there in your presence? A. That I cannot say.

Q. How? A. They might have signed it there, but I not see them sign it.

Q. You have no recollection on the subject of signing it at all? A. No, Sir.

Q. One way or the other? A. No, Sir.

Q. Did you see Mr. Tilton draw what purported to be an alteration of the Tripartite, there? A. I saw him take a pen and write there.

Q. Did you understand at the time that he was drawing an amendment to the "Tripartite Agreement?" A. I heard him say what he wanted to do, and he took his pen, and I saw him writing.

Q. What did he do with that which he wrote? A. It was on a paper, and it was put on that paper that he was examining—this Tripartite.

Q. It was annexed to the "Tripartite Agreement," was it? A. Yes, Sir; as I saw it.

Q. How was it annexed? A. I cannot say as to that. It seemed to be a piece of paper put on the larger paper.

Q. Was it pinned fast? A. I cannot say as to that.

Q. Was it annexed to that paper? A. I cannot say.

Q. Now, were there any other papers before the arbitrators? A. Not that I remember.

Q. The agreement between Bowen and Tilton, and the "Tripartite Agreement" were the only papers? A. I think they were, so far as I know. There may have been other papers that I did not see.

Q. You recollect none other? A. No, Sir.

Q. Well, were there any papers relating to the scandal there? A. No, I don't remember that there was.

Q. How? A. I don't remember that there was.

Q. Was there nothing attached to the "Tripartite Agreement" relating to the scandal? A. Not that I remember.

Q. Was that read over after you met? A. I think part of it was by somebody, but I remember very little about the papers; I don't think I took them in my hands.

Q. What part was read over? A. I cannot say.

Q. Cannot you repeat anything that was read over? A. I could not repeat one word.

Q. Not a single word? A. Not a single word, because I didn't read the paper myself or take it in my hand.

Q. Well, it was read over for the purpose of having you hear it, was it not? A. Very likely it was.

Q. So that you might know what it contained? A. Possibly.

Q. But whilst you can recollect the conversation, you cannot recollect anything that was in the paper? A. What conversation do you speak of?

Q. After the arbitrators came in? A. No, Sir. The substance of it I remember.

Q. Answer my question. Why can't you remember the substance of the paper as well? A. Because my memory is not good for repeating language; words I cannot use I have no faculty, I think, in my head for words.

Q. I think you have a pretty good one. Won't you tell me the substance of that paper? A. I could not tell you.

Q. You cannot tell the words nor the substance of it? A. No, Sir; I cannot—I cannot tell what the substance was; I didn't take the papers in my hands; I only know that the papers—it was said all—should be burned and destroyed; all that had this scandal—that related to this scandal in any form.

Q. The scandal between Mr. Bowen and Mr. Beecher? A. All the parties, Mr. Beecher, Mr. Bowen, Mr. Moulton, and so forth.

Q. Mr. Moulton, too? A. I don't know that Mr. Moulton's name was mentioned about the scandal papers, but all the papers were going to be burned.

Q. That you remember very distinctly? A. I do; because it was impressed very strongly on my mind.

Q. Yes. Now, what was said about signing the paper there in your presence? A. Mr. Claflin repeated that remark, as I said to you he did in my direct. When they came to sign it, Mr. Claflin said—

Q. But you don't recollect that they did sign it? A. No, Sir; I do not recollect, but, so far as regards—no, Sir; I do not recollect any signing of a paper; it was not signed there, as I understood it—the Tripartite—because the conversation was only about Mr. Claflin getting it—

Q. Taking it to Mr. Wilkeson? A. Yes, Sir.

Q. What was said about the Woodstock letter? A. Mr. Bowen or somebody said something about the Woodstock letter.

Q. Was it delivered up that night? A. I don't know.

Q. Didn't you see it delivered up? A. No, Sir.

Q. If it had been delivered up you would remember it, would you not? A. No; I don't think I should. I paid very little attention to the papers in any form.

Q. Did you hear any scandal spoken of there that night except the one that was contained in the letter of Jan. 1, 1871, called the "Personal Statement"? A. What we arbitrated upon so far as the scandal was concerned—

Q. What you arbitrated upon— A. So far as we arbitrated, you observe, Mr. Fullerton—

Q. I observe that you don't answer my question. A. Well, Sir!

Q. Was there any scandal talked of there that night, except that— A. No, Sir; I don't remember that the scandal was named.

Q. You have not heard half the question yet. Was there any scandal talked about there that night except that which was embodied in the "Tripartite Agreement," and contained in the paper called the "Personal Statement"? A. I don't think there was.

Q. Was it not the papers relating to that scandal that were to be burned? A. I did not so understand it—all papers.

Q. Relating to that scandal? A. To the scandal, so far as it had been going on.

Q. Had you heard of any scandal at that time? A. I think I had, before I came there.

Q. What was it; anything except what was in the letter of January 1, 1871? A. I cannot say as to that; I did not read it.

Q. You did not know what was in it that night? A. Mr. Fullerton, I have avoided reading everything I could.

Q. Now, you are sure that they spoke that night of the apology being burned? A. I am sure.

Q. You recollect that distinctly? A. I think it was called for, and seemed to come in some form—I think Mr. Bowen—

Q. Mr. Beecher was not there, was he? A. He was not.

Q. Who asked you to become an arbitrator? A. I don't know.

Q. Have you no recollection upon that subject? A. Not a word.

Q. Do you know how you came to go there? A. No, I do not. I only know that somebody sent word to me—whether it was Mr. Claflin, or Mr. Storrs, or whoever it was—the first thing I knew I was notified to meet at Mr. Moulton's, and I do not know who nominated me; I cannot say.

Q. You say you have been a member of Plymouth Church for about twenty-five years? A. Yes, Sir; I think I have.

Q. Have you filled any offices in that church? A. Yes, Sir.

Q. What offices have you filled during that period? A. I have had the honor of being President of the Board of Trustees; I think that is all of the offices I ever held there.

Q. Were you ever a Deacon? A. Never; ain't fit to be a Deacon. [Laughter.]

Q. Were you ever a member of the Examining Committee? A. I think I was for the first one or two years.

Q. A member of any other committee during that period? A. I don't remember, Sir.

Q. Can't you recall the fact now whether you were a member of any other committee? A. No, I really could not.

#### FUN BETWEEN COUNSEL AND WITNESS.

Q. Do you recollect being at Mr. Tilton's one night in company with Andrews—Pearl Andrews? A. No, Sir; I do not.

Q. You have forgotten that, eh? A. Yes, Sir; I have.

Q. Do you recollect being there one evening when Stephen Pearl Andrews was there, and Miss Augusta Moore? A. Very likely I was; but I do not remember it.

Q. That is what I asked you? A. I don't remember it; very likely I was; I have been to Mr. Tilton's a number of times.

Q. But you don't recollect that occasion? A. I don't; still I might have been there.

Q. Well, have you ever attended any of Mr. Stephen

Pearl Andrews's lectures? A. I don't remember that I ever did.

Q. Did he ever lecture at your house? A. Never to my knowledge.

Q. You cannot tell me now whether you ever heard him deliver a lecture? A. I really don't remember.

Q. You cannot remember? A. No; I cannot.

Q. Mr. Andrews is a noted lecturer, somewhat? A. He may be, as far as that is concerned.

Q. I don't ask what may be; I ask the fact whether he was or was not, within your knowledge? A. No, not within my knowledge, he has not.

Q. You never heard that he was a noted lecturer? A. Oh! I heard of his lecturing, and I may have heard him—may have heard him two or three times, but I don't remember at this moment of having heard him lecture, but I have heard him talk quite frequently.

Q. Where? A. He has talked at my house.

Q. At a gathering of people there? A. No.

Q. How? A. No, Sir.

Q. Well, did he deliver a lecture at your house? A. No, not to my knowledge; he never did.

Q. Can you not recall the fact that you were at Mr. Tilton's one night when there was a talk upon the subject of affinities, and spheres, and atmospheres, and all that sort of thing, when Miss Augusta Moore was there? A. I don't wish to swear as to that. I can remember that I have been to Mr. Tilton's house several times.

Q. I want to know about that particular occasion? A. Mr. Fullerton, I cannot accommodate you in that matter; my memory won't consent to it. [Laughter.]

Q. Have you no impression upon the subject? A. I have not, not a particle.

Q. Don't you recollect your son was there that night? A. My son—no, I don't remember that; I have not the least conception. Since I have heard Miss Moore testify here I have tried with all my might to bring that to my mind, and found it an impossible thing to do it. I never tried harder to do a thing in my life than to bring that to my mind, but I could not do it.

Q. Is it not your best impression that you were not there? A. Now, what do you want I should say in answer to that question? [Laughter.]

Q. I want you to answer according to your best impression. A. Haven't I given it to you?

Q. Your best impression is that you don't remember it. I want to know if you don't think you were not there at all. I will put the question in another form. A. Now, my dear friend—[Laughter.]

Q. Don't you think if you had been there that you would have remembered it? A. I would be just as likely not to remember it as to remember it. I discovered that things do slip out of my mind wonderfully.

Mr. Fullerton—Yes.

The Witness—I want to tell everything just as it is exactly. If I could remember it, I would give you the

pleasure of remembering it, if that would be any pleasure to you.

Q. Do you remember whether or not you are a Spiritualist? A. Yes, Sir; I am a Bible Spiritualist.

Q. A Bible Spiritualist? A. Yes, Sir; I believe in ministering spirits—guardian angels—I believe in.

Q. Do you believe that you communicate, or that any one else communicates, with the spirit world? A. Now, had you better go into that subject? Is it wise now to go into that subject? What is the benefit of it? [Laughter.]

Mr. Fullerton—I may be wiser by having your explanation of the matter.

The Witness—You won't be; you have got to experiment for yourself, if you want to be wiser.

Mr. Fullerton—Let me ask you this question.

The Witness—My dear friend, you can ask me any number of questions you choose. [Laughter.]

Q. Do you think you can communicate with the spirits in the other world? A. I have not made up my mind fully on that subject; I believe that spirits do communicate with this world; ministering angels are about. Most certainly I do; I certainly do, and I think it would be well for you to— [Laughter.]

Mr. Fullerton—Well, I am communicating with a spirit of this world now, and that is quite enough for my present occupation.

The Witness—The time will come when you will want a better one.

Mr. Fullerton—I want to ask you—

The Witness—My dear friend, the way for you to do is to go. Your friend Tilton there will take you. He has had some experience.

Mr. Fullerton—Well, I shall not go until I get through with you. Have you visited Spiritualists in the City of New-York? A. I don't know that I have visited a Spiritualist in a good many years.

Q. I didn't ask you within what time; I ask you if you have visited a Spiritualist in the City of New-York? A. I have; I believe in the phenomenon of Spiritualists.

Q. According to the significance of the term as now held. A. Not exactly.

Q. In what respect does your belief differ? A. Don't ask me to explain that, if you please; you don't want me to go into that.

Q. Why not? Why can you not explain it? A. I could not satisfy you or myself either.

Mr. Evans—If your Honor please—

Judge Neilson—I think, Mr. Fullerton, I would not pursue that any further.

Mr. Fullerton—Well, we will try another subject. Do you believe in the divinity of the Savior? A. Yes, Sir.

Q. Have you always believed in it? A. Now, you will want to ask me to go into a definition. I could not answer you that.

Q. Do you believe in the divinity of the Savior? A. I do.

Mr. Evarts—We submit that that is not a proper subject of inquiry.

Mr. Fullerton—It was a proper subject of inquiry when our witnesses were upon the stand.

Mr. Beach—It was a proper subject of inquiry when Mr. Tilton was on the stand.

Mr. Evarts—It was a proper subject of inquiry bearing upon his wife's feelings.

Mr. Fullerton—And bearing on his connection with them.

Mr. Beach—It was a proper subject of inquiry when Mr. Moulton was on the stand.

Mr. Fullerton—It was a proper subject of inquiry then for the counsel.

Mr. Evarts—I didn't inquire of Mr. Moulton in regard to that.

Mr. Beach—Yes, you did.

Mr. Fullerton—Do you believe in the deity of the Savior? A. Yes, Sir, I do.

Q. And has that been your belief for some years past? A. My belief has varied very much.

Q. In what respect? A. I cannot answer that.

Q. Why not? A. Because I cannot explain it to myself. I cannot answer you what I cannot explain to myself.

Q. Do you believe in the deity of a Savior as it is held by orthodox churches?

Judge Neilson—I think he has answered that; still I think you may pursue it.

The Witness—I have answered all I shall.

By Mr. Fullerton—Answer that question. A. I cannot answer it.

Q. Why not? A. I am a Liberal Christian. As to orthodox churches—when you come to talk about them, I believe in loving your neighbor as yourself.

Q. I am not talking about that. A. I have answered all I can on that subject.

Mr. Evarts—If your Honor please, it is a matter of some importance, but may not be in this case.

Mr. Fullerton—Inasmuch as Mr. Freeland cannot tell us, that is a good objection to not proceeding any further.

Judge Neilson—[To the witness]—That is all, Mr. Freeland.

The Witness—I am very much obliged to you, Mr. Fullerton.

Mr. Fullerton—You are very welcome, indeed. [Laughter.]

Judge Neilson—Officer Rogers, you will have to take charge of this audience; I cannot permit this to continue. Perhaps the reporters had better all retire, and we will then have a little more quiet time.

Mr. Shearman—Mrs. Moore.

#### TESTIMONY OF JENNIE MOORE.

Jennie Moore, called and sworn on behalf of the defendant.

Mr. Shearman—What is your husband's name? A. Robert F. Moore.

Q. Where do you reside? A. Hoyt-st., Brooklyn.

Q. Have you formerly resided in Smith-st.? A. No, Sir, Pacific-st.

Q. Where is your husband's place of business? A. Corner of Smith and Pacific.

Q. What is his business? A. Tea and grocery.

Q. Grocery business? A. Yes, Sir.

Q. How long have you been married? A. Eighteen months.

Q. Did you ever have a woman in your employ by the name of Kate Carey, or Kate Smith? A. Yes, Sir.

Q. Under which name was she employed by you? A. When she came to me first she gave her name as Smith-Kate Smith.

Q. When she came to you first she gave her name as Kate Smith? A. Yes, Sir; and afterward told me—

Mr. Fullerton—One moment.

Mr. Shearman—Go on.

Mr. Fullerton—No; she won't go on.

Judge Neilson [to the witness]—Tell what she told you! A. Afterward she—

Mr. Fullerton—One moment.

Judge Neilson [to Mr. Shearman]—You can shape the question so that the witness can understand, if you want the name simply.

Mr. Shearman—She first came by the name of Kate Carey, and afterwards tells the witness—

Judge Neilson—If she afterwards gave some other name, that you can ask.

Mr. Shearman—Talk about technicalities!

Mr. Fullerton—Well, you will learn something every day you live.

Q. Did she give any other name after? A. Yes, Sir.

Q. What name did she give? A. Carey.

Q. Kate Carey? A. Yes, Sir.

Q. Did she ever say anything to you about having been employed by Mrs. Tilton? A. Yes, Sir.

Q. Did she ever say anything to you upon this subject as to whether there was anything wrong between Mrs. Tilton and Mr. Beecher?

Mr. Fullerton—One moment.

Judge Neilson—[To Mr. Shearman.]—Do you find that in the book?

Mr. Shearman—Yes, Sir.

Judge Neilson—Turn to it, and put the precise question to her.

Mr. Shearman—Did you ever ask her whether there was anything wrong between Mrs. Tilton and Mr. Beecher?

Mr. Fullerton—One moment.

Mr. Shearman. Page 755. [To the Witness.]—Did you ever ask her that question?

Mr. Fullerton—One moment.

Judge Neilson—How does it read?

Mr. Shearman—It is printed "Mr. Moore." That is

mistake. [Reading.] "Do you remember telling Mr. Moore while there that you never saw anything wrong between Mr. Beecher and Mrs. Tilton? A. The same never was mentioned at Moore's."

Mr. Fullerton—I object to that.

Judge Neilson [to Mr. Shearman]—I think you can put that question.

Mr. Fullerton—How, Sir?

Judge Neilson—That question was put to the witness.

Mr. Fullerton—If it was put as he read it he has no right to ask it. The question was put to Kate Carey as to whether she had ever told "Mr. Moore" about it.

Mr. Shearman—We will satisfy you on that point by calling Mr. Moore also.

Mr. Fullerton—The more you call the better.

Mr. Shearman—We intend to call him.

Mr. Fullerton—If we are to abide by the record—

Mr. Beach—There is no doubt about it; it was asked.

Judge Neilson—The question was asked as to Mr. Moore.

Mr. Fullerton—Then they cannot give any evidence by this witness.

Judge Neilson—I don't know whether counsel believes it was a mistake or not.

Mr. Shearman—The witness went further. If there is any question about this, I won't dispute Mr. Beach's word, if he is positive, but the witness says the name never was mentioned at Moore's. [Reading.] "You are quite sure of that? A. I am sure of it, Sir. Q. You did not say anything of that kind? A. I did not, Sir." The natural person for a servant to converse with is a lady. The presumption is it would be Mrs. Moore.

Mr. Fullerton—Then you should not have asked her about Mr. Moore.

Judge Neilson [to Mr. Shearman]—I think you will have to pass that. It is a very technical point.

Mr. Beach—I submit it is not technical.

Judge Neilson—I say pass it. It is a thing that ought to be technically adhered to, the question put to the former witness.

Mr. Beach—If I am sought to be impeached as a witness, and am asked if I made a declaration to A B, can they prove that I made one to C D?

Judge Neilson—No; therefore I suggested Mr. Shearman should pass it; that it must be technically adhered to.

Mr. Evarts—It is purely a question of fact. Our proposition is that the question was whether she had so stated to Mrs. Moore.

Judge Neilson—Yes.

Mr. Evarts—And the print does not conclude us from proving that fact if there be a mistake in the print as to Mr. and Mrs. Moore, as well as upon anything else.

Judge Neilson—Do you see any way to correct it? I don't.

Mr. Evarts—By appealing to the recollection of counsel.

Judge Neilson—I have no recollection.

Mr. Evarts—By appealing to the recollection of counsel?

Our friends don't profess to say that they recollect it was Mrs. Moore and not Mr. Moore.

Mr. Beach [to Mr. Evarts]—Do you pretend to say you recollect it?

Mr. Evarts—I don't personally recollect it.

Mr. Beach—They don't make any stronger pretensions than we do.

Judge Neilson—That leaves us on the record, therefore.

Mr. Evarts—The answer, however, is given that nothing was said at the house to anybody. I agree that we must lay the foundation for asking the question.

Judge Neilson—I don't think that general statement lays the foundation.

Mr. Evarts—I agree that we must lay the foundation for asking the witness the question. It is a question of fact we will have to look at the record for.

Mr. Shearman—In case it should turn out that this should not be Mrs. Moore, we will make an offer to prove by this witness that Kate Carey or Kate Smith did say to Mrs. Moore, when in her employ, that she never saw anything wrong between Mr. Beecher and Mrs. Tilton, and that whoever said so was a liar. We make that offer.

Judge Neilson—If you find on the record the question was put to Mrs. Moore, instead of her husband, you can recall the witness at any time.

Mr. Shearman—But otherwise it is ruled out!

Judge Neilson—Yes.

#### THE WITNESS, KATE CAREY. IMPEACHED.

Mr. Shearman—Are you acquainted with the character of Kate Carey, or Kate Smith, for truthfulness and veracity? A. Yes, Sir.

Q. What is her character?

Mr. Fullerton—That is objected to.

Q. What was her character at the time she was employed by you?

Mr. Fullerton—I object to it.

Mr. Beach—That calls for personal knowledge.

Mr. Evarts—It is the ordinary question.

Mr. Beach—No, it is not.

Judge Neilson [to the Witness]—The character inquired about is the speech of people.

Mr. Fullerton—The general character.

Judge Neilson [to the witness]—Not your own knowledge—but what you heard other people say about her.

The Witness—As to her truthfulness?

Judge Neilson—Yes, the question is whether you know what her general character for truth and veracity is among other people? A. Yes, Sir.

Q. Independent of your own personal knowledge? A. Yes, Sir.

Judge Neilson [to Mr. Shearman]—Go on, Sir.

Mr. Shearman—What is her character in that respect?

Mr. Morris—She has not said she knows it yet.

Mr. Beach—Yes, she has.

**The Witness—What was it?**

**Mr. Shearman—**What was it at that time? **A.** Those that I have talked to about her would not believe her under oath in regard to her truthfulness.

**Q.** Would you yourself believe her under oath? **A.** No, Sir.

**Q.** You say No? **A.** Yes, Sir.

**Mr. Beach—**That is not the question.

**Mr. Shearman—**It is the uniform question.

**Mr. Beach—**It is not the uniform or the legal question. [To the Witness.] The question is whether, judging from that reputation, you would believe her under oath.

**Mr. Shearman—**Then I will ask her that now.

**Mr. Beach—**You have got it now.

**Judge Neilson [To Mr. Shearman]—**I have been studying practice under you, Mr. Shearman, a long time. I think you understand it, if any one does.

**Mr. Fullerton—**He wrote that practice for others.

**Mr. Shearman—**I asked each time the precise question which has been ruled a good many times by the Court to be the proper question, and the only proper question. [To the Witness.] When Kate Carey, or Kate Smith, was in that place—was employed by you—was she intemperate?

**Mr. Fullerton—**Objected to.

**Judge Neilson—**That is immaterial; besides she cannot testify at large.

**Mr. Fullerton—**When did she come to live with you, Mrs. Moore?

**Mr. Porter—**There are some authorities on the subject of the former question, your Honor. In Abbott's recent addition to the Digest there is an abstract of a decision in the 36th New-York. [Reading.]

It is not strictly necessary that the name of the person to whom he is alleged to have made the inconsistent declaration should be mentioned. While he is under examination it is enough if his attention has been called to the time, place and circumstance of the alleged conversation.

Rockwell agt. Brown, 36 New-York.

**Judge Neilson—**Yes; I see it.

**Mr. Porter—**Your Honor will remember that the witness was specifically interrogated as to her conversation upon that subject while she was in the employment of Mrs. Moore; she stated that there was no such conversation; that the name of Mr. Tilton and Mrs. Tilton was not mentioned. Now, we offer a witness in the person of the lady who employed her, with whom the conversation occurred, and ask her to state it. We submit that, according to the decision, we are entitled to the benefit of the rule.

**Mr. Beach—**If your Honor please, that decision announces, preceding the statement which is made by Mr. Porter, that the name of the person must be given; but if that is impossible, it is then admissible to ask the question without it. [To Mr. Porter.] Do you remember what number you read from, Mr. Porter?

**Mr. Porter—**Here the name is given.

**Mr. Beach—**Given wrongly.

**Mr. Porter—**The question is whether the inquiry was made by the husband or by the wife, and, if made by either, or both included, we are not concluded as to the witness, but we may prove the contrary. It may have been on a public occasion. We may only name the occasion and identify it sufficiently to call the attention of the witness to it, and then we may prove by every bystander that on that occasion the declaration was made.

**Judge Neilson—**Doubtless; but when you do name the particular person—Mr. Moore—and get your answer in respect to that question, can you depart from it? I don't know how the record is, in fact. Anything more from this lady?

**Mr. Fullerton—**Yes, Sir.

**Mr. Beach—**I am inclined to waive the objection, Sir, and let them take the evidence.

**Judge Neilson—**If you think the inquiry was made of Mrs. Moore—

**Mr. Beach—**It would only result in this, that Kate Carey would be recalled, and she would deny it, the same as she does to Mr. Moore. It seems to be making unnecessary trouble.

**Judge Neilson—**Then repeat your question, Mr. Shearman.

**Mr. Shearman—**Mrs. Moore, will you state whether you ever asked Kate Carey, or Kate Smith, whether she ever saw anything wrong between Mr. Beecher and Mrs. Tilton? **A.** Yes, Sir.

**Q.** What did she answer to that question? **A.** She answered me that she never had seen anything wrong, and whoever said so were liars.

#### CROSS-EXAMINATION OF MRS. JENNIE MOORE

**Mr. Fullerton—**When did Kate Carey commence living with you, Mrs. Moore? **A.** In the Fall of 1873.

**Q.** In the Fall of 1873? **A.** Yes, Sir; October.

**Q.** October, 1873? **A.** Yes, Sir.

**Q.** How do you recollect the month? **A.** Well, it was just after I was married.

**Q.** How long did she reside with you? **A.** Two months, and two days over her two months.

**Q.** Did she come with a recommendation? **A.** She had several recommendations.

**Q.** Several? **A.** Yes, Sir.

**Q.** Did you go to make inquiries in regard to her? **A.** No, Sir.

**Q.** Did she have one from Mrs. Tilton? **A.** No, Sir; not that I saw.

**Q.** Didn't she refer you to Mrs. Tilton? **A.** No, Sir.

**Q.** You are quite sure of that? **A.** Yes, Sir; she told me she had been living with Mrs. Tilton after she had been there a week or so.

Q. And she left in November some time, did she? A. Left where?

Q. Left your employ—or December? A. December.

Q. Of the same year? A. Yes, Sir; two months she was with me.

Q. Did you know her before she came there? A. No, Sir. I answered an advertisement in the paper, and got her.

Q. Did you make any inquiries in regard to her whilst she lived with you? A. Whilst she lived with me!

Q. Yes. A. No, Sir.

Q. Did you make any inquiries in regard to her after she left you? A. After she left me!

Q. Yes. A. In what way? I don't understand you.

Q. Did you make any inquiries in regard to Kate Carey in any respect after she left your service? A. No, Sir.

Q. How? A. No, Sir.

Q. Did you go to see any of the persons who had given her recommendations? A. No, Sir, I did not.

Q. You made no inquiries in regard to her, then? A. No, Sir.

Q. How did you learn her general character? A. I didn't trouble myself. She had three or four written recommendations, and that was all.

Q. How did you learn her general character when she lived with you, if in any way? A. I don't understand you.

Q. I understood you to tell the Judge that you knew her general character. A. Why, I found her out myself.

Q. How did you find her out? A. Through different parties.

Q. Through different parties? A. Yes, Sir.

Q. Whilst she lived with you? A. Yes, Sir.

Q. Name the different parties. A. Well, I cannot; I don't understand you exactly.

Q. You say you found her out through different parties? A. Yes, Sir.

Q. My question is, how you found her out? A. Well, by telling me that was on account of the reason she left.

Q. No; my question is— A. I didn't understand you.

Q. I will put it in a different form so that you will understand it. You found her out, you tell me, through different parties—through different persons? A. Yes, Sir.

Q. I want you to name those persons through whom you found her out. A. Well, through my own relations; through those in the house.

Q. Name the persons, please, Madam? A. It would not do you any good, I don't believe.

Mr. Fullerton—You must not stand upon whether it does me any good or not.

The Witness—My own friends.

Mr. Fullerton—Won't you name them, please? A. My aunt for one.

Q. What is her name? A. Mrs. Leahy.

Q. Where does she live? A. In Nassau-st.

Q. In Nassau-st., Brooklyn? A. Yes, Sir; and my brother-in-law.

Q. What number in Nassau-st.? A. 47.

Q. Did she know Kate Carey? A. She knew her through me.

Q. And your brother-in-law, you say? A. Yes, Sir; lived in the house.

Q. Lived in the house with you, or with your aunt? A. With me at Pacific-st. A while she was living with me and the parties that lived up-stairs in the house.

Q. Who were the parties that lived up stairs? A. Mrs. Sweetser; they live there now; they own the house.

Q. And your brother-in-law? A. Yes, Sir.

Q. He found her out while she was in the house? A. Through stories; I cannot tell you exactly; I don't understand exactly what you mean for me to say.

Q. You say you found her out through parties? A. Yes, Sir.

Q. It is a very simple thing for you to name the parties through whom you found her out? A. I have.

Q. Your aunt, and people in the house, and the Sweet-sers, who lived in the house? A. Yes, Sir.

Q. Did the Sweet-sers know her before she came to live with you? A. No, Sir; we found her out while she was in my employment.

Q. All you know about her you found out while she was living with you? A. Yes, Sir.

Q. Through those persons whom you have named? A. Yes, Sir; and myself.

Q. That is all you know about her? A. Yes, Sir.

Q. That is the way you learned her general character, was it? A. In regard to her truthfulness.

Q. That is the way you learned her general character? A. Yes, Sir; and what she said herself.

Q. And you have no other knowledge of her general character, except what you learned through those people? A. And what I know myself.

Q. What you know yourself and what you learned from those people? A. Yes, Sir.

Q. You judge in a great measure from what you know yourself? A. Yes, Sir; and in connection with myself in regard to her truthfulness.

Q. You judge in a great measure from what you observed and found out? A. Yes, Sir.

Q. While she lived with you? A. Yes, Sir.

Q. And do you not judge mostly from that, from what you observed yourself? A. Certainly; because I didn't know anything else about her, except what I judged from my friends.

Q. What church do you attend, Mrs. Moore? A. I am not a member of any church; I attend the Methodist Church when I do go to church.

Mr. Fullerton—That is all.

Mr. Beach—One moment.

Mr. Shearman—Robert T. Moore. [A new witness.]

Mr. Beach—For the purpose of saving our right, your Honor, we don't think the evidence of this last witness ought to stand in regard to impeachment upon the ground of general character. Her testimony shows she was not sufficiently acquainted with her general character.

Judge Neilson—I think that will be a subject for instruction to the jury.

Mr. Beach—Very well, Sir. I make that motion and take an exception to your Honor's ruling.

Judge Neilson—Yes; let the motion be entered.

#### TESTIMONY OF ROBERT T. MOORE.

Robert T. Moore called and sworn on behalf of the defendant.

Mr. Shearman—Mr. Moore, you are the husband of the last witness, I believe? A. Yes, Sir.

Q. Do you remember Kate Carey, or Kate Smith? A. Yes, Sir.

Q. She was employed in your family? A. Yes, Sir.

Q. Did you have any conversation with her on the subject of Mr. Beecher and Mrs. Tilton? A. On several occasions, and one occasion in particular.

Q. On several occasions, and on one occasion in particular? A. Yes, Sir.

Q. Did you ask her whether she ever saw anything wrong between Mr. Beecher and Mrs. Tilton, or anything to that effect? A. I asked her if she ever saw any familiarity between Mr. Beecher and Mrs. Tilton, or anything she considered wrong. She answered, "No, indeed."

Q. Now, Sir, is that all? A. I asked her also if she had seen Mr. Beecher there in the first place; she said yes; I then asked her if she saw him there often; she said, "Yes, quite often when Mrs. Tilton was sick," and spoke of him bringing a bouquet of flowers on one occasion; I then asked her in regard to the familiarity, and her reply was, "No, indeed."

Q. Are you acquainted with the general character of Kate Carey or Kate Smith as to truth and veracity? A. Yes, Sir.

Q. What is her character in that respect? A. For veracity, I should say it was very bad.

Q. Would you believe her under oath? A. No, Sir.

Mr. Shearman—That is all.

#### CROSS-EXAMINATION OF ROBERT T. MOORE.

Mr. Fullerton—Now, Mr. Moore, will you tell us how you learned her general character? A. From stories that she told while she was in my employment—stories that I heard her make.

Q. Falsehoods she told whilst she was in your employ? A. Yes, Sir.

Q. Is that the only way? A. That is the only way.

Mr. Fullerton—That is all. [To Judge Neilson.] Now I move to strike that out, Sir.

Judge Neilson—Let the motion be entered, and let—

Mr. Tracy—We have not got through with the witness yet.

#### REDIRECT EXAMINATION OF ROBERT T. MOORE.

Mr. Shearman—Have you heard other people talk about her character for truth?

Judge Neilson—That is a question you should have put before you got through on the direct.

Mr. Fullerton—Yes, Sir.

The Witness—Yes; I have heard my wife and brother talk in relation to that matter.

Mr. Shearman—Have you heard other people talk about the stories she told whilst she was living with you? A. Yes, Sir, I believe I have.

Mr. Shearman—That is all.

Mr. Beach—Wait a moment.

#### RECROSS-EXAMINATION OF ROBERT T. MOORE.

By Mr. Fullerton—Now, what people did you hear talk about the stories she told whilst she was living with you? A. My wife's relations, in Nassau-st.

Q. How did they hear the stories? A. She had been in their employ a short time.

Q. She had been in their employ? A. Yes, Sir.

Q. Do you know that of your own knowledge? A. Yes, Sir.

Q. Saw her there? A. Yes, Sir.

Q. What was their name? A. Lahy—spelled L-a-h-y.

Q. Which of them told you? A. I don't recollect, Sir.

Q. How? A. I don't recollect; I remember that there were some stories told, and I remember what the stories amounted to.

Mr. Beach—That is not the question that is put to you.

By Mr. Fullerton—I want to know the name of the person who talked to you about the stories she told when she lived with you? A. I cannot tell you just now.

Q. How many are there of them? A. There is quite a large family; I cannot tell you the number.

Q. How many talked to you? A. Probably two or three.

Q. Don't you know? A. As near as I recollect, two or three of them.

Q. Can you recollect the fact that two or three of them did talk with you about it? A. Yes, Sir.

Q. When? A. After she left me.

Q. After she left you? A. Yes, Sir, and after she left their employ.

Q. Whom else did you talk with? A. My own brothers.

Q. Your own brothers? A. Yes, Sir.

Q. Where did they live? A. They are living with me at present; we all live together.

Q. Where did they live at the time Kate Carey was living with you? A. No. 176 Pacific-st.



Q. How did they know her? A. They were living with me at the same time.

Q. They were living with you at the same time? A. Yes, Sir.

Q. In your family? A. Yes, Sir.

Q. Who else did you hear talk about her? A. I can't recollect just now.

Q. Did you hear any one else? A. Yes, Sir.

Q. How? A. Yes, Sir.

Q. Well, who were they? A. A party that she had been boarding with.

Q. How? A. A party that she had been boarding with.

Q. Who was that? A. I can't remember her name just now; she lived in the immediate neighborhood of my store.

Q. Where did you see her or him? A. I saw her on my way from the court one day—on my way from this court.

Q. This court? A. Yes, Sir.

Q. Since this trial commenced? A. Yes, Sir—on Pacific-st.

Q. She was here as a witness, wasn't she? A. Yes, Sir.

Q. And she talked with you about it? A. She was in the court; I can't say, of my own knowledge, whether she was here as a witness or not; but I saw her.

Q. When did you talk to your brother about it? A. Some time ago.

Q. How long ago? A. I cannot tell you exactly how long.

Q. About how long? A. It might be eight, or nine, or ten months ago.

Q. But you cannot state how long? A. No, Sir; I have had conversations with him since the commencement of this suit.

Q. Been to see them? A. Well, I see them every day; they are living in the house with me.

Q. Were you requested to talk with them? A. No, Sir.

Q. How? A. No, Sir, the conversation came around in the usual way.

Q. And did you go to see your other relatives? A. No, Sir.

Q. Have you talked with them? A. No, Sir.

Q. Haven't seen them upon the subject? A. Yes, Sir; I have seen them this morning, but not on this subject.

Q. Not upon this subject? A. No, Sir.

Q. So that her general character you have learned in the way that you have now described, have you? A. Yes, Sir.

Q. And you know it in no other way? A. No other way.

Q. Well, what did they say—these people that you talked with?

Mr. Beach—What did they say in regard to Kate Carey or Kate Smith?

Mr. Fullerton—Yes, her truth. A. Well, I recollect particularly what one of my brothers said, that if the evi-

dence that she gave was allowed to go uncontradicted it would be an outrage; the evidence in the court he had reference to.

Q. Yes; just repeat that, please. A. If the evidence she gave in this Court was allowed to go uncontradicted it would be an outrage.

Mr. Beach—This is what your brother said? A. Yes, Sir.

Mr. Fullerton—What is your brother's name? A. My brother's name is William.

Q. William Moore? A. Yes, Sir.

Q. Is he here as a witness? A. No, Sir, he is not.

Q. Where does he live? A. He lives with me.

Q. He lives with you? A. At least, in the same house.

Q. Now, what else did any other person say in regard to Kate Carey? A. I can't recollect exactly now what else.

Q. Can you recollect anything that was said? A. I recollect in one instance—

Mr. Beach—Oh! oh!

The Witness—I don't remember which of the—who the party was that told me, but it was one of my wife's relations, that she was an awful liar; she couldn't be trusted to—

Mr. Fullerton—When was that said? A. That was probably a year ago, or from nine to twelve months ago.

Q. Now, what else have you heard said against her? A. That is all that I recollect, Sir, at present.

Q. You cannot recollect anything else? A. Not at present.

Mr. Fullerton—That is all.

Mr. Shearman—James Redpath.

# TESTIMONY OF JAMES REDPATH.

James Redpath called and sworn on behalf of the defendant.

Mr. Shearman—Mr. Redpath, where do you reside? A. Boston.

Q. What is your occupation? A. I am a lecture agent and lyceum manager.

Q. A little louder, Mr. Redpath. A. I am a lecture agent and lyceum manager.

Q. Still we cannot hear you.

Mr. Evarts—Mr. Redpath, won't you speak so that the farthest juror can hear you?

The Witness—I am a lecture agent and lyceum manager.

Mr. Shearman—Are you acquainted with the parties to this suit? A. Yes, Sir.

Q. How long have you known Mr. Theodore Tilton? A. I have no memory for dates, Sir; I have known him since, I think, when he was an editor of *The Independent*, when Mr. Beecher was the editor, when Oliver Johnson was the editor of *The Anti-Slavery Standard*; I think 15 years, perhaps.

Q. About 15 years? A. Yes, Sir.

Q. You knew him before the war, did you not? A. Yes, Sir; before the war.

Q. Speak a little louder, Mr. Redpath. You have also been acquainted with Mr. Francis D. Moulton, have you not? A. Yes, Sir.

Q. How long have you known Mr. Moulton? A. I have known Frank since the Winter of 1873, I think, after Mrs. Woodhull's story was published.

Q. You mean the early Winter of 1873? A. Yes, Sir.

Q. The Winter of 1872-'3? A. I think I first became acquainted with him in January, 1873.

#### THE "TRUE STORY" SHOWN MR. REDPATH.

Q. Did you, about that time, have any conversation with Mr. Tilton on the subject of a narrative which he was preparing concerning Mr. Beecher's affairs and his own? A. Yes.

Q. By what name if any did Mr. Tilton describe that narrative? A. I don't remember that he described it all by any name. I went there one Sunday after being at Plymouth Church; I think it was early in January, or about that time; possibly it might have been in December. Moses Coit Tyler was there.

Q. Moses Coit Tyler? A. Yes, Sir—was in the house at the time. I was thoroughly drenched; it was raining very heavily, and I stayed there all night.

Q. Stayed where? A. I stayed at Mr. Tilton's all night.

Q. Mr. Tilton's house? A. Yes, Sir; I read the story that night, I think.

Q. What story do you refer to? A. The "True Story," the one that is called the "True Story."

Q. Who gave it to you? A. Mr. Tilton.

Q. What conversation, if any, did you have with Mr. Tilton at that time on that subject? A. I don't remember any conversation at all at the time. I went there, and of course that subject came up; and as far as I can recollect, Theodore said he would tell me the facts in the case, to answer the scandal, but then I don't remember the words, at all.

Q. But that is the substance? A. That is the substance, as far as I remember.

Q. And then he handed you this paper? A. No; yes, he handed me the paper to read after I went to bed—went to my room.

Q. Speak a little louder. He handed you this paper after you went to bed, do I understand? A. After I went to my room.

Q. Did you read it? A. Yes, Sir.

Q. Did you after that have any conversation with Mr. Tilton on that subject? A. Well, I say we; I suppose I must have paid twenty or thirty visits, perhaps more, to the house, during the months of January and February.

Q. 1873? A. 1873; and while I do not distinctly recall any one conversation, I know that the subject was repeatedly mentioned; that is all.

Q. Do you recollect any conversation in which he referred to this story which he had prepared, and said anything about Mrs. Tilton's views or wishes concerning it? A. When he gave me the story to read he said that he did not want Elizabeth to know that I was reading it, because she did not like to have people know about it.

Q. Did he say anything as to what she would do if it were published? A. Not at that time.

Q. Did he at any other time? A. I beg your pardon; one day I went over early in the forenoon, and as I was—as I passed up-stairs I passed Elizabeth in the entry—in the passage, up-stairs, coming out of one room on the right-hand side; she had an expression of extraordinary determination and resolution in her face that I had never seen there before, and I thought there had been some domestic row. I went into Theodore's room; he was lying on the bed stretched out, I think with a coverlid over him, without his coat or vest; I think his pantaloons were on; and he had a look of extreme sorrow, as if he had been stricken by some terrible blow. I was startled at the expression on his face, there was so much sorrow on it, and I went forward, and he had the roll of the "True Story," lying this way. [Illustrating.]

Q. Open? A. I think it was open. I said, "Theodore, what is the matter with you this morning?" He said, "I have had a talk"—or "conversation;" he did not use the word "talk," he used some word like "controversy"—"with Elizabeth." He said it was wonderful, the amount of resolution that that little woman had. "Well," I said, "What is the matter?" During this I was observing his face very closely, and was very much pained by the look of almost agony that there was on the face; I had never seen it there before. He said, "Elizabeth threatens if I publish it," or, "if it is published," I am not sure which, I think, "If it is published, that she will come out and deny it." I said suddenly, "Theodore Tilton, you have not told me the whole truth in this case, have you?" He dropped his eyes and said, "No." I said, "My God!" I went forward and put my hand on his head, stroked his hair. I found that his head was burning, his temple throbbing. I sat with him; I think neither of us said much—possibly ten minutes or a quarter of an hour—passing my hand over his head, and I thought then that the extreme mental strain that was on him was going to render him insane. Now, I had no cause for thinking that from anything he said, but simply from knowing his face well and from watching its expression then. Well, I acted on that belief for one whole week afterwards. He said either there or down stairs, "It ought to be published." By and by after he very soon became quieted, when I sat with him for a while, and I asked him to rise and go out and have a walk. He rose, and I noticed that as he walked across the floor he staggered. I got him down stairs as soon as I could, coaxing him to hurry up, and that about the 1st of

and went down stairs with him. We went over to Boston—to New-York together, and during—in going over the ferry, and in the distracted manner that he had, my impression was confirmed that this thing—that he was either in a fever or was going to become insane; he said in going—of course we talked a good deal; I am only saying now all that I am able to recall, because I have tried to think of it for the past few weeks; he said he was going—I think it was that same day, or the next day, perhaps—he was going on some lecture engagement, I think in Indiana or Kentucky as nearly as I remember, and he said that he was in such a state, his head—he was feeling so badly or his head was in such a state that he did not think he would go; I went over, and I think he spoke to Mr. Clark about it—Mr. Clark, the editor of *The Golden Age*.

Q. It is no matter. A. Well, I said that Theodore ought not to go, that if he did—I said to some one that if he did the first interviewer that he met would get the document out of him, and I believed it would ruin him and ruin his family. He did not go, and in the course of a few days I saw Frank Moulton, and said to him—

Q. No, this we have not a right to ask.

Mr. Beach—We have no objection.

The Witness—Well, I haven't told the story.

#### HOW THE COPY OF THE "TRUE STORY" WAS MADE.

Mr. Shearman—We only want to know whether you got that paper again? Well, I think either that day or the next day, with that belief, I wanted to get that paper out of his hands in order that he might not publish it. He said, I think, in the back parlor downstairs, that it ought to be published. I said: "Well, Theodore, I can easily get it published; let me have it." He said: "No, I could not; it would not do for me to give it to you. You might take it." I went over to *The Golden Age* office with him; I think that was the same day, and he left it in his desk, in the inner room of *The Golden Age* office, and pointed it out to me, as he went out, saying nothing, or saying "There it is." I took it and kept it as long as I could, making different pretenses for keeping it, until I could see Frank.

Q. Yes? A. Then I copied it; that is all.

Q. You took a copy of a portion of it, or the whole of it? A. No, Sir. I copied it until I got tired—until I could say that I had copied most of it. I know I did not copy nearly the whole of it.

Q. Will you look at the book which I now show you, and state whether that is the copy which you made of that "True Story" so far as you made one? [Handing witness a small blank book.] A. Yes, Sir; that is the copy.

Q. Have you read the paper purporting to be the "True Story," published in THE NEW-YORK TRIBUNE of

Saturday, March 6, 1873, which is "Exhibit D 114" in this case? A. Yes, Sir; I have seen that.

Q. Is that a correct copy of your copy, so far as it goes? A. I examined it to some extent and found it correct; yes, Sir.

Q. As far as your notes go? A. As far as it goes; yes, Sir.

Mr. Shearman [to Mr. Fullerton]—You can examine.

Mr. Beach—Do you give that copy in evidence?

Mr. Shearman—I will mark it for identification.

Mr. Beach [to the stenographer]—Has this "True Story" been printed in the case?

THE TRIBUNE stenographer—I don't remember, Sir.

Mr. Shearman—It has been marked "D 114," and to avoid all further question, though I am certain it was put in evidence, we put it in evidence now under that same number, "D 114."

Mr. Beach—They cannot put it in evidence under this witness's testimony.

Mr. Shearman—It was put in evidence before.

Mr. Beach—Well, I don't remember.

Mr. Shearman—We will now offer this book in evidence. [Referring to book shown the witness.]

Mr. Morris—It was not put in as a whole. [Referring to the "True Story."] It is in, but not as a whole. Mr. Evarts, in his questions, read the whole.

Mr. Evarts—Yes, it is in that form, and then it was supposed it came in under Mr. Harman's testimony.

Judge Neilson—Well, proceed, Mr. Fullerton.

Mr. Beach—I want it on the record; I want it printed.

Mr. Tracy—Is it marked?

Mr. Shearman—Yes, it has the stenographer's mark.

Mr. Beach—It cannot be printed as long as you keep it in your pocket. I am not talking about the mark. I am talking about delivering it and getting it into the record and printed. It has not been printed in anything that I have seen yet.

Judge Neilson—In other words, you have no copy?

Mr. Beach—No, we have no copy of it.

Judge Neilson [to Mr. Shearman]—Have you two copies of that particular paper?

Mr. Shearman—They will print it now in the record, your Honor. It is not our fault; it is in evidence—the point to which he recognized it. A part of it was proved by the production of the original paper. I don't believe it has been printed in the record. You will find it in the proceedings referred to and marked "D 114."

Mr. Beach—Well, it was not given in evidence before.

Mr. Shearman—It was not printed.

Mr. Beach—It was not given in evidence.

Mr. Shearman [to the witness]—You will see that is as far as you have copied, [showing witness "D 114," and also the small blank book.]

The Witness—It is all copied down to there, [pointing to a part of "D 114."]

Mr. Shearman—Suppose you put your initials there,

[The Witness marks with red lead pencil his initials "J. R." immediately following the words, "the friendship which I profess for him."]

Mr. Beach—I think it ought to be put in evidence now, for I am sure it was not before.

Mr. Tracy—It was put in evidence, but not read.

Mr. Fullerton—Is the book in?

Mr. Beach—No, it is printed in *THE TRIBUNE*.

Mr. Evarts—The fragments were produced by you.

Mr. Beach—Well, the whole of it was produced.

Mr. Evarts—Oh! yes, no doubt about that.

Mr. Shearman—Perhaps I better ask that one question. [To the witness]. The point at which you have marked this printed paper with your initials, in blue pencil, indicates the extent to which your copy makes a part of this paper.

The Witness—Yes, Sir. It is in red pencil.

### "THE TRUE STORY."

One day last month, when I was in the north of New-Hampshire, a scandalous publication burst like a cloud over my home in Brooklyn, and shed a sudden shadow on my wife's good name. A week afterward, when I returned and first saw the libel, I wrote a card denouncing the outrage, but acting on the advice of friends withheld it from the press and maintained a contemptuous silence. Moreover, no form of card that I could devise, though I drafted two or three, seemed an adequate answer to the circumstantial details of the calumnious indictment. Instead of a card, I then proposed an explanatory narrative, meeting the false heads point by point, but this also I was advised against, particularly by Mrs. Tilton, who from the beginning begged me to publish no vindication of her whatever. The ingenious and plausible statement put forth against her could be thoroughly refuted only by a plain recital of the True Story to contradict and refute the false one; and as the True Story involves a disagreeable reference to other names, some of which have not hitherto been mentioned in the case, she prefers to suffer obloquy herself rather than fling it off to fall as a stain upon others, and withholds from me her permission to unvell the whole facts. But even against her will I am going to put them in writing, not, however, for the use of the public, but only of a few personal friends. I do this for two distinct purposes: first, for her sake, because a constrained silence will permanently injure her reputation; and next, for my sake, because I owe to these friends a frank explanation of what they have deemed erratic in my public course for the last two years, or since my retirement from *The Independent* and *The Brooklyn Union*.

About 10 or 11 years ago, Henry C. Bowen, for whom I was then working as a subordinate in *The Independent* office, told me one evening while crossing the Fulton Ferry that Henry Ward Beecher was guilty of adultery, a practice begun in Indianapolis and continued in Brooklyn.

Between the years 1860 and 1870, Mr. Bowen repeated the accusation not less than a hundred times, frequently exhibiting the deep sense of a personal injury, and sometimes saying that if he were so minded he could drive Mr. Beecher from his pulpit. During part of this time, Mr. Beecher was editor in charge of *The Independent*, and I was his lieutenant. Afterward he retired, and I succeeded to the chair. Both before Mr. Beecher's re-

tirement and afterward, Mr. Bowen was in the habit of saying that the pastor of Plymouth Church was a dangerous visitor among the females of his congregation. These charges were not made to me in confidence, nor to myself alone. This gossip I always heard with unwilling ears, having no more taste for scandal then than now, and I would not note it here except that it is one of the pivots on which the ensuing history turns.

As a further statement still more unwillingly opened, yet necessary to an explanation of the subsequent complication of circumstances, I must say that in the Summer of 1870, a few months after I had undertaken, in addition to editing *The Independent*, to edit also *The Brooklyn Union*, Mrs. Elizabeth R. Tilton, my wife, made to me a communication concerning Mr. Beecher, which, to use her own words, lest I should wrong him by using mine, she afterward noted down in a memorandum as follows: "Mr. H. W. Beecher, my friend and pastor, solicited me to be a wife to him, together with all that this implies." I borrow the above fact from my wife's handwriting, and forbid myself from pausing at this point either to blacken it with an epithet or to lighten it with an explanation. The subject of my wife's recital was communicated a few weeks afterward by me to Oliver Johnson and Francis D. Moulton, and by my wife to her mother, and thence to some relatives. Mr. Beecher was absent from the State at the time, it being his vacation. During the Summer and Fall of the year 1870 I spoke of the case to a few friends, exhibiting more anger than charity toward Mr. Beecher, though to Mr. Bowen, whose two papers I was then editing, I was silent—unwilling to add any fuel to his indignation against the man whom he seemed preparing to destroy. At the same time, by other persons and from other quarters, stories were set afloat concerning Mr. Beecher of the same damaging kind; for instance, there came from Washington a statement, traceable I knew not to whom, that "Mr. Beecher preached every Sunday to a dozen of his mistresses."

My wife's mother now began to play an important part in my relations to Mr. Bowen and Mr. Beecher, and in the relations of these two persons to each other. This lady has been for years a chronic subject of manias and frenzies, and notoriously irresponsible in her tirades on any subject that excites her morbid feelings. One of her physicians, the late Dr. Barker of Brooklyn, recommended several years ago that she be treated in an institution for the insane. Among her eccentricities which I allude to, not to reprobate their author, whom disease may largely exempt from censure, she attempted, about that time, to take the life of her husband, the Hon. N. B. Morse, by clutching his throat and strangling him with such powerful energy that her grasp was loosened with difficulty by the inmates of the house, and her fury quenched with chloroform, a circumstance speedily followed by a legal separation between her husband and herself. In a less degree she had used violence toward other persons connected with her by blood or marriage, and had frequently written letters to me threatening my life. Her ingenuity of statement against her relatives during the spasms of her insane hysterics is cunning and malleous in the extreme. At the same time, in saying this, I bear testimony to the innate kindness and beautiful affection of her nature. By those who knew her well, her perversities are understood, but to her casual acquaintances they generally remain successfully hidden in the demeanor of one of the most peaceable and fascinating of persons.

The unhappiness which she has occasioned to every member of my own family had increased year by year, until, at last, Mrs. Tilton and I had been compelled to

forbid her to enter our house. As illustrations of the mischief which Mrs. Morse had wrought against us, she spoke of Mrs. Tilton two years ago to our oldest daughter, Miss Florence Tilton (then 13 years old), in terms of criminality revolting to any pure girl's mind, and most terrible when spoken to such a girl against her own mother, being nothing less than the central accusation in the great scandal, which another mad woman afterward published to the world. Mrs. Morse once went to a lawyer in Brooklyn and with a plausible air consulted him about a divorce between my wife and me—a fact which we only learned by accident, not until it had spread its bat's-wings and gone flying abroad. She wrote to sundry journalists anonymous letters to prejudice me in their estimation, and I trace to her fertile brain the tale that I once took my wife by the hair of the head and kicked her during illness. But I forbear to narrate a hundred instances which come to my mind of her mischief-making propensities. It is sufficient to say in reference to my case with Mr. Bowen and Mr. Beecher, and to the case of each against the other, that she made a careful and malicious use of the few facts in her possession and of the many fancies which these engendered in her diseased and unhappy mind.

Mrs. Morse, in plotting her insane mischief, chose a confederate for a brief time in Mrs. H. W. Beecher, another lady of abnormal type, whose peculiarities, having less aggravation, are also less pardonable than Mrs. Morse's. For 11 years Mrs. Beecher and I have not been on speaking terms, nor have I ever had so relentless an enemy. Strange it is, the cause of the hostility was an act of kindness which I performed for one of her children—an act for which her husband has never ceased to speak gratefully, and which he commemorated at the time by sending me a beautiful gift in bronze. She never spoke to me afterward. To the readers of these manuscript pages, which are chiefly for Brooklyn use, she needs no description here.

In the Fall of 1870, Mr. Bowen urged me to support in *The Union* Mr. E. D. Webster for Congress, a Republican nomination which many of the best citizens of that party had publicly repudiated, against one a meeting at the Academy had made, Judge George G. Reynolds being the chief speaker. I declined to support Mr. Webster, though, as I know nothing against him personally, I made no war on his character. Mr. Bowen repeated his plea in Mr. Webster's behalf, and I repeated my refusal. Mr. Bowen then said there was one way in which *The Brooklyn Union* could be made to support Mr. Webster, and that was by dismissing its editor. I answered: "Yes; but that is the only way." This was the first instance, in all my relations with Mr. Bowen, covering fifteen years, in which I had ever known him to attempt to bend the integrity of my mind. Mr. Webster was defeated, and he credited his misfortune to me, and maligns me for it to this day.

After this difficulty Mr. Bowen gave me to understand that as he owned two newspapers, he meant to edit at least one of them; accordingly he chose the lion's share, taking *The Independent* for himself and leaving *The Union* for me. He said that he could not reasonably hope for more than ten remaining years of active life, and that if he was to win any fame or position to bequeath to his children, he must do it within that time. So, without a murmur, I took off my crown and laid it at his feet, and said, "Live the King!" We then made a treaty, and two contracts were drawn up between us, by which Mr. Bowen was to be editor-in-chief of *The Independent*, as I had been, and I its leading special contributor, as Mr. Beecher had been in the days of the *Star Papers*—this

arrangement to last two years at \$5,000 a year. Furthermore, I was to be also the editor-in-chief of *The Union*, giving up my lectures, an arrangement to last five years at \$5,000, together with ten per cent of the net profits, which promised to be \$5,000 more, making, all told, my yearly income \$15,000.

When these negotiations were accomplished, I stated them privately to Oliver Johnson, my assistant on *The Independent*, and sent him my gold watch as a parting tribute to the faithfulness with which he had toiled at my side, and to the love which I cherished for the man. In answer to this token, there came the following fragrant, precious letter from his pen. [Here was inserted Mr. Johnson's letter.]

In addition to the above letter, which is the chief literary memorial I now cherish of long editorship of *The Independent*, I received from Mr. Bowen a gift of a gold watch, to replace the one I had given away. Then under date of Dec. 22, 1870, *The Independent* contained the following valdictory and response. [Here followed the articles of that date.]

Two days later, namely, Saturday, Dec. 24, Mr. Johnson mentioned to me that some strange tales concerning me had been planted like seeds in Mr. Bowen's ears, and that Mr. Bowen, without specifying them, was annoyed by them. Later on the same day, Mr. Johnson said that Mr. Bowen had received a report that I was about to abscond to Europe to join Mrs. —, who was already there. On the following Monday, Dec. 26, 1870, in a conversation with Mr. Bowen, Mr. Johnson being present, a budget of Mrs. Morse's ingenious fiction, together with some other gossip, was referred to and discussed, and Mr. Bowen dismissing the subject, said that as I was to be for five years the editor of *The Brooklyn Union*, he hoped hereafter that I would devote more attention than I had previously done to Plymouth Church.

He instanced my not attending service there any more, and begged me to be a constant witness of all the proceedings, with a view to make them topics of remark. I then informed him that I had not been at the church for months past, and should probably no more be seen inside its walls; whereupon I stated to him in a few words, in Mr. Johnson's presence, my wife's communication concerning Mr. Beecher.

Mr. Bowen's indignation at Mr. Beecher was extreme. He arose from his chair, talked vehemently, gestured angrily, and said that Mr. Beecher must be made to quit the pulpit. He then reiterated all the charges that he had made many times before, and said, in addition, that Mr. Beecher had, in February, 1870, confessed his adulteries to Mr. Bowen, and implored his forgiveness with tears. The interview at which this confession took place I think he said was held at Mr. James Freeland's house. "I forgave him," said Mr. Bowen, "but he still goes on with his crimes and criminal attempts just the same as ever. You ought to proceed against him instantly. Don't let him preach another Sunday. If I were as free to take action as you, I would expel him from his pulpit, and he should never write a word again for *The Christian Union*." I then said, "Mr. Bowen, why are you not still more free than I am?" "Because," said he, "Mr. Beecher made a confession to me and asked my pardon, which I granted, and I cannot reopen a settled quarrel; but if you will make a charge I will furnish the proof." At a later period of the conversation, and after Mr. Johnson had left, Mr. Bowen rose to a still higher heat, brought me pen and ink, and challenged me to write to Mr. Beecher, demanding that he should retire from the pulpit and *The Christian Union*. "I will bear a letter to him," said Mr. Bowen, "and will sustain the demand with proofs."

There will be no resistance. Mr. Beecher will not deny, cannot deny, dare not deny them."

Mr. Bowen put his case with such energy, and with such a passionate plea in it, that I would enable him, without his breaking his treaty with Mr. Beecher, to reopen his old warfare upon him, and excited within me such a revived remembrance of the wrongs which Mr. Beecher had done to my own heart that I wrote a draft of a note, which I altered and rewrote and left finally changed as follows:

DECEMBER 26th, 1870, BROOKLYN.

HENRY WARD BEECHER.

SIR: I demand that, for reasons which you explicitly understand, you immediately cease from the ministry of Plymouth Church, and that you quit the City of Brooklyn as a residence. (Signed.) THEODORE TILTON.

I put the above letter in Mr. Bowen's hands, to be immediately delivered by him in person to Mr. Beecher, and then I went home. During the afternoon Mr. Moulton called on me, and I mentioned to him the occurrence of the morning, ending with the letter. He called my act foolish, "because," said he, "you ought never to have written a letter at all; but if written, it ought to have had Mr. Bowen's signature to it as well as your own. You have left him a chance to play you a trick. You have made your demand all alone. What if he leaves you to support it all alone?" Mr. Moulton then took a sheet of paper and entered on it the following memorandum: "Brooklyn, Dec. 26, 1870.—T. T. informed me to-day that he had sent a note to Mr. Beecher, of which Mr. H. C. Bowen was the bearer, demanding that he (Mr. Beecher) should retire from the pulpit and quit the City of Brooklyn. The letter was an open one. H. C. Bowen knew the contents of it, and said that he (Bowen) would sustain T. in the demand. 3:45 p. m."

A day or two afterward, prompted by my wife's wish and Mr. Moulton's advice, I resolved that I would send for Mr. Beecher to meet me at a personal interview, either in their presence or with me alone. I dispatched to Mr. Bowen a messenger with a notification of this intention. On the receipt of this intelligence by Mr. Bowen, which I supposed would gratify him, he came into my editorial chamber, and with a look of desperation on his countenance such as I had never seen there before, and with an anger and passion to which I had never dreamed him liable, and with the manner more of an insane than of a rational man, began to threaten me that, if in any interview I might have with Mr. Beecher, either then or at any other time, I should divulge to Mr. Beecher what he (Bowen) had said against him, or should intimate that he (Bowen) had any hand in the letter requiring Mr. Beecher to vacate his pulpit, I would be cashiered from *The Independent* and *The Union*, and that the police should be called to cast me into the streets. After some words of indignation which I uttered in reply, Mr. Bowen abruptly retired from the office, leaving me in as great a state of astonishment as I ever experienced.

I informed my wife and Mr. Moulton, and afterward Mr. Johnson, of this incident, concerning which Mr. Moulton remarked that it did not surprise him in the least; and then, by the joint advice of all, I determined to summon Mr. Beecher to the contemplated interview. To this end Mrs. T. wrote a brief note, addressed to Mr. Beecher through me, stating that she had given me the disclosure of July 1, 1870, concerning him, and that her husband would speak to him face to face.

On Friday evening, Dec. 30, I went to Mr. Moulton's house. Mr. Moulton went after Mr. Beecher, and brought him. This was early in the evening, Mr. Beecher leaving his prayer meeting usual on that evening to go without his leadership. My interview was

with Mr. Beecher alone. I read to him my wife's letter, and said to him what I shall not here repeat. He sat like a statue under my brief remarks, and at the close bowed to me and said, "This is all a dream." He affected to disbelieve that Mrs. Tilton had written the letter, and denied everything with a royal negative. I then said, "It is but a few squares to my house; go and ask Mrs. Tilton for yourself whether or not she wrote the letter;" he went and returned in half an hour. I did not see him. Mr. Moulton asked him what had taken place at Mrs. Tilton's! He remarked that he had seen that lady; but he did nothing more, and left. This was about 11 o'clock at night.

Shortly after he left I left. On reaching home I found that Mrs. Tilton, who was then seriously ill and in bed, was agitated and distressed. She said that Mr. B. had been there, telling her that she had pursued and slain him; that he would be tried by a counsel of ministers and his career ended, and that he was a dead man unless she would save him from his fate. She said, moreover, that, after talking to her in this strain, and exhibiting great and terrible feeling, Mr. Beecher went to her writing desk, and taking out pen and paper, brought them to her bedside, and putting them into her nervous hands, dictated to her what she copied—a paper of which she could not recall the phraseology nor to a certainty the substance and meaning. Shortly after narrating to me the above occurrence she resumed her pen and ink and wrote the following statement: [Here follows Mrs. Tilton's letter to her husband, of midnight, Dec. 30, 1870.]

The next morning, in response to a note from me, Mr. Moulton came to my house, and, after an interview with my wife, received from her, in writing, a request to procure the return of the paper which, in her agitation, she had given to Mr. Beecher the night before—a paper all the more important, for, as it is seen, she was uncertain of its real design. That evening, which was Saturday, brought to me a new surprise, closing a week of sensations with one which fittingly capped the climax, namely, a notification from Mr. Bowen that my engagements with *The Independent* and with *The Union* would then and there terminate, and that he was ready to settle with me in full of all demands. In these words Mr. Bowen broke those two contracts which he had just made with me, and which were also then a week old, and to each of which was attached a provision that it could be terminated by death, or by six months' notice, or immediately on paying a forfeit of \$2,500; but in no other way. Mr. Bowen thus suddenly laid himself liable to pay \$5,000 for breaking his two contracts, together, of course, with 10 per cent. of *The Union's* profits due to me up to date, from May 1 to December 31, 1870—eight months.

I received this notification late in the evening of the last day of the year, after which I first informed my wife of it, and, bidding her not to be troubled, she sought Mr. Moulton's house; I invited him out of doors and placed with him the wintry streets, till the chimneys of St. Ann's rung out the old and rung in the new year. The next day I fashioned a New-Year's gift for Mr. Bowen in the shape of the following letter:

[Here follows the letter of Jan. 1, 1871.]

After writing the above letter, I gave it to Mr. Moulton to be by him delivered to Mr. Bowen; and, as I wished speedily to settle my affairs with my late employers, I asked Mr. Moulton to be one of the three arbitrators for the purpose. Mr. Moulton desired me to commit the whole case to his hands, lest in the hands of myself I should be tempted to do injury to Mr. Beecher. I consented to write the following:

BROOKLYN, Jan. 27.

HENRY C. BOWEN—*Sir*: I hereby authorize Mr. F. D. Moulton to act in my behalf in full settlement with you of all my accounts accruing out of my contracts for services to *The Independent* and *The Brooklyn Daily Union*.

THEODORE TILTON.

On the night of Jan. 1, 1871, Mr. Moulton called upon Mr. Beecher, and after a protracted interview returned and immediately gave me an account of the interview, which I took down from his lips in phonographic notes; these notes, after a lapse of two years, I now reopen for the first time, and digest therefrom the following report:

"I called at Mr. Beecher's. He was not at home. I left my card. Presently his son came running after me, saying his mother knew where his father was, and that he would go for him. I went back to the house, and Mr. Beecher came in; he invited me up stairs. I told him he would probably consider it the strangest interview he ever had with mortal man. Said I: 'Mr. Beecher, I wish to tell you first how minutely I recollect your conversation of last evening. I came to you as a friend, meaning to do you as good service as ever any friend did to another. On our way to my house I asked you if any one had seen the letter besides yourself, the letter of Theodore Tilton demanding your retirement from the pulpit; you said none, save one, besides myself. I asked if that one was Henry C. Bowen. You made no reply. You recollect it, do you not?' He said, 'I do.' 'I do not press any answer from you now; so far as you do not answer me you do not respond to the friendship which I profess for you.'"

[Here is a long break in the MSS.]

Mrs. Davis, in *The Springfield Republican*, Dec. 9, 1872:

A WITNESS WHO REPUDIATES.

"Mrs. Paulina Wright Davis of Providence was given as a chief witness in Mrs. Woodhull's scandalous Beecher-Tilton libel. But in a note just received from her in Europe, Mrs. Davis thus utterly repudiates, in gross and in detail, the statements concerning her relation to the case, and gives the most damaging direct blow to the whole libel that has yet been rendered." [This appears to be quoted.] "In relation to the Tilton versus Beecher affair, I have only this to say: I was never on any terms of intimacy with the families of either party; I never visited at Mrs. Tilton's but once in my life, and that was ten years ago, in company with Mr. and Mrs. Johnson. A year or two ago I called at Mr. Tilton's house for some books which I had lent to Mr. T. I then saw Mrs. Tilton for 10 or 15 minutes. I have met Mrs. Tilton two or three times at the house of mutual friends; but at no time has there been the slightest approach to a confidential conversation between us, nor have I insinuated that there had been. If Mrs. T. has ever in my presence spoken of Mr. Beecher, it has been in terms of respect, as a man of honor and her pastor. I did believe that Mrs. Woodhull was going to do a great work for woman; I am grieved that she has failed in what she gave promise of doing."

"I have not seen the original manuscript of Mrs. Davis's letter, as above printed, nor do I know to whom it was addressed; but a similar letter was sent by her from Paris to Oliver Johnson, which I have seen and here transcribe as follows."

Mrs. Stanton, in a letter to a friend in New-York, dated Boston, Nov. 5, 1872 (a few days after the Woodhull publication appeared) says:

[MRS. STANTON'S STATEMENT.]

"I have had a grand time visiting friends here, but my pleasure has been fearfully marred by this Woodhull paper. I thought it dead. 'False in one point, false in all.' is a good old Latin motto. The filthy language she puts into my mouth is utterly false. I never spoke to that woman but once on the subject, about five minutes, fortunately in the presence of one witness, a gentleman, and simply replied in general terms to a question that I had heard the rumor. Say this to T. T., and tell him I shall stand by him in the hour of need. With kind regards, ever yours, MRS. H. B. STANTON."

[Note.—I possess the original of the above letter.—T. T.] In addition to the testimony of Mrs. Davis and Mrs.

Stanton, above given, my wife's own solemn and truthful declaration is as follows:

[MRS. TILTON'S STATEMENT.]

The statement that Mrs. Davis was ever intimate with me, or a frequent guest at my house, is a fabrication. Many years ago, nearly a dozen, when we lived in Oxford-st., she once spent a part of a day with me, in company with Mary Ann Johnson. Two or three years ago she called for a few minutes with Mrs. Stanton at our house in Livingston-st. With these two exceptions, certainly ten years apart, Mrs. Davis has never been under our roof. I know her very slightly indeed. I never had a confidential talk with her on any subject, and never told to Mrs. Davis or to any other person the preposterous and wicked slander put upon me in Mrs. Woodhull's libel.

ELIZABETH R. TILTON.

My family and others by flinging these stories broadcast to all the world as she has since done. . . . To complete the chain of documents belonging to this case, I now insert the two of chief importance, namely the direct testimony of Mrs. Tilton and of Mr. Beecher as to the alleged criminality of their relations.

[MRS. TILTON'S STATEMENT.]

MR. MOULTON—*My Dear Friend*: For my husband's sake, and my children's, I hereby testify with all my woman's soul that I am innocent of the crime of impure conduct alleged against me.

I have been to my husband a true wife. In his love I wish to live and die. My early affection for him still burns with its maiden flame; *all the more* for what he has borne for my sake, both private and public wrongs. His plan to keep back scandals long ago threatened against me I never approved, and the result shows it unavailing. But few would have risked so much as he has sacrificed for others, ever since the conspiracy began against him two years ago.

Having had power to strike others, he has forbore to do it, and allowed himself to be injured instead. No wound to me is so great as the impression that *he* is among my accusers. I bless him every day for his faith in me, which swerves not, and for standing my champion against all adversaries.

ELIZABETH R. TILTON.

[MR. BEECHER'S STATEMENT.]

MY DEAR MR. MOULTON: I promptly comply with your suggestion of giving an explicit denial of the stories which connected my name criminally with Mrs. Tilton's. The very thought of being obliged to say anything to clear her fair fame shocks me. And I have hitherto acted under advice in refraining. Very truly,

HENRY WARD BEECHER.

BROOKLYN, Dec. 29.

I solemnly deny the scandalous charges made against me and Mrs. Eliz. R. Tilton. Especially and emphatically I deny that there has been any criminal intercourse or any color or reason for such a charge.

My acquaintance with Mrs. Tilton has inspired me with the highest esteem for her modesty, propriety, and womanly grace.

I authorize her or her husband and children to use this declaration.

I desire to state in addition that Mr. Tilton, during the whole of this shameful scandal, has uniformly spoken in the highest terms of his wife, and has shown to me the strongest proofs of friendship.

## CROSS-EXAMINATION OF MR. REDPATH.

Mr. Fullerton—When did that conversation take place between yourself and Mr. Tilton, a part of which you have related upon your direct examination?

A. I spoke of two conversations; which one, Sir?

Q. The first, please. A. The one in which I first read the statement—the True Statement?

Q. I refer to the first conversation with Mr. Tilton that you have related on your direct examination. A. I think it was early in January.

Q. Of 1873 or 1874? A. 1873, Sir.

Q. 1873? A. Yes, Sir.

Q. And it took place at Mr. Tilton's house, did it? A. Yes, Sir.

Q. Do you recollect whether any one else was in the house at the time? A. Moses Coit Tyler was there.

Q. Was he in the room where the conversation occurred? A. No, Sir, I think not; I think I spoke to Theodore in the evening about it.

Q. What evening, please? A. In the evening of that day; it was a Sunday.

Mr. Tracy—We cannot hear you, Mr. Redpath.

Mr. Evarts—These gentlemen complain, Mr. Redpath, that they cannot hear.

Mr. Fullerton—The reason is because there are other people making more noise than Mr. Redpath does.

Mr. Evarts—That may be.

Mr. Fullerton—Which they should not do. [To the Witness.] You say you spoke to him the evening before about it? A. On the evening of that day, of that Sunday, the first visit that I had made to Theodore since the publication of Mrs. Woodhull's story.

Q. It was on a Sunday? A. On a Sunday.

Q. And you spoke to him the evening before; Saturday evening, do you mean? A. No, Sir; on that same evening.

Q. Then it was the evening after the conversation up in his room, wasn't it? A. No, Sir; the conversation up in his room that I have described occurred perhaps five or six weeks, or three or four weeks, at least, after I had read the story.

Q. Well, what I want to get at, Mr. Redpath, is the first conversation that you had with Mr. Tilton, which you have described in your direct examination.

Mr. Beach—That I understand was in January, 1873; that was the first conversation? A. Yes, Sir; the first conversation was only a few words, you know; the other one, the long one, was much later on.

Mr. Fullerton—Now, I come to January, 1873, when you entered his room and found him lying upon the bed? A. Well, I don't think that was in January; that probably was in the first week of February, somewhere about that time; it was later on after I had been—

Q. Well, is that the first conversation that you spoke of in your direct examination? A. No, Sir, it is not.

Q. Well, that is the point I am inquiring about—the first conversation you spoke of in your direct examination?

Mr. Beach—That was the fore part of January or the latter part of December.

Mr. Fullerton—Well, I want you should say so—when he says that, I ask him the question if that is the first one he spoke of in the direct examination, and he tells me no. Now, let Mr. Redpath and me get along with this.

The Witness—The first conversation I spoke of was in reply to Mr. Shearman's question about when I first read it; I think I first read that story on my first visit to Theodore's house after the publication of Mrs. Woodhull's story; that, I think, was early in January, or it possibly might have been in December: I could find that out from the business records. The last conversation in which I

described him being sick on the bed, occurred several weeks afterward; that is what I mean.

Q. Well, now as to the first conversation; what took place on that first conversation? A. What do you mean by that, Sir?

Q. What was said by either of you? A. I went there and found Moses Coit Tyler there. Theodore was lying on the sofa looking very weary. He welcomed me very cordially.

Q. A little louder, please. A. Theodore was lying on the sofa looking very weary. He welcomed me very cordially. I was very wet and changed my clothing, I think and stayed there all night. My impression is that Mr. Tyler went away about 5 or 6 o'clock, or at least he did not stay. I have no recollection of his staying, and then, in the course of the evening, Theodore and I talked about the scandal. Well, all that I remember about it is that he would tell me—he would let me see the "True Story" about it. I think that was the time.

Q. Well, did he tell you what the "True Story" was? A. He did not say anything about it, Sir; the first that I knew about it, I don't think that Theodore ever spoke to me of it at all—that is to say, all our conversations were carried on from the knowledge that I had read his statement.

Q. His statement had then been published? A. No, Sir, his "True Story"—the manuscript of the "True Story."

Q. Did you read it that night? A. I think it was that night, Sir; that is the best of my recollection, but I stayed—I was very frequently at their house during the five or six weeks that I stayed in New-York at that time, and it possibly may have been at some other time, other than five or six weeks, although my recollection is that it was that first night.

Q. Well, now, when you read the "True Story" didn't Mr. Tilton at that time allege to you that it did not contain all the truth? A. No, Sir; Theodore said nothing about it at all—not at that time; it was afterward—it was afterward.

Q. Well, have you related all that you remember at that first interview? A. Yes, Sir.

Q. Between yourself and Mr. Tilton? A. Yes, Sir, because—yes, I have.

Q. Now, the second was when you found him upon the bed? A. Yes, Sir, that is the second conversation.

Q. And, as near as you can tell, when was that? A. Well, I think it was—the only way that I have of recollecting is from my business relations; I was in New-York preparing for Mr. Bellew, the reader, to come out, and I was at—I was frequently over to Mr. Tilton's during the whole of that time.

Q. Well, was it some weeks after? A. Yes, Sir; that is my impression.

Q. Have you stated all that took place on that occasion as near as you can remember it? A. In the bedroom?

Q. Yes, Sir. A. Yes, Sir, as near as I can remember it.



Q. When you asked Mr. Tilton if he had told you the whole truth, and he said "No," didn't he say something else?

Mr. Evarts—He has not said he did not tell him the whole truth. You asked him if he asked me that, and he said it was afterward.

Q. Well, what did you say upon that subject, Mr. Redpath—what did you say to Mr. Tilton in regard to his having told you the whole truth? A. I said, standing, looking at his face (that being the first time that I had any idea that he had any other theory of the "True Story"), I said: "Theodore, you haven't told me the whole truth!" I said it as a question.

Q. Yes? A. He dropped his eyes, and said in a low tone, "No."

Q. Did he tell you at that time what the whole truth was? A. He said no more; I did not ask any more.

Q. Was there no other conversation upon that subject? A. No, Sir; not at that time; not that I recollect.

#### DISCOVERY OF THE COPY OF THE "TRUE STORY."

Q. Now, you then were acquainted with the "True Story," were you not? A. Yes, Sir.

Q. And knew what the change in the "True Story" was? A. Yes, Sir.

Q. For that reason was it that you asked him? A. Yes, Sir.

Q. Whether he had told you the whole truth? A. Yes, Sir.

Q. What did you understand at that time the change in the "True Story" was? A. Improper proposals.

Q. Now, was there no other conversation before you took him down stairs? A. That morning?

Q. Yes. A. Not that I recollect, Sir; of course there must have been more conversation than that, because at least half an hour must have elapsed from the time that he gave me that answer to the time we went down stairs; in the first time I must have sat stroking his hair for at least ten minutes; he was feverish and I was trying to magnetize him.

Q. Did he say to you that he had not slept for some time? A. I don't remember, Sir; I don't remember.

Q. Just tax your recollection, please, Mr. Redpath; say whether he did not say to you that he had not slept for many nights. A. I can't recall it, Sir.

Q. Didn't he tell you why he was in that feverish and excited state? A. No, Sir; I did not ask him.

Q. Well, whether you asked him or not, didn't he explain the reason that he was in such a mental and physical condition? A. I have no recollection of it, Sir; he may have done so; he may have done so, I say; I have no recollection at all about it.

Q. Did he give any reason for having prepared the "True Story"? A. At that time?

Q. Yes. A. No, Sir.

Q. Did he say anything further in regard to what his wife had said about denying it if he published that statement? A. He said nothing further than what I have already repeated.

Q. But he did say that it ought to be published, did he not? A. Yes, Sir; he said that.

Q. But he gave no reason for saying why it should be published? A. He gave no reason at that interview, Sir; none at all.

Q. Did he at the second interview give any reason for desiring the publication of the "True Story"? A. Excuse me; I have been talking about the second interview now.

Q. Well, at that interview did he give any reason for it, for preparing the "True Statement"? A. No, Sir; the "True Story" itself contained the reason why he prepared it, and I don't think that I—I certainly had between—with Frank and Theodore I must have had 30 or 40 conversations that Winter, but I don't recollect that Theodore ever gave any reason, or that I ever thought of asking any. I thought the reason was perfectly satisfactory.

Q. Well, wasn't it elaborated in some of your conversations? A. I don't remember, Sir; I don't—it is possible—I don't.

Q. What did you do with your copy after you took it? A. I had it—I had a large number of papers; at the time I went to Philadelphia and Baltimore, I left them in New-York. On coming back I went to England, and sent it, with the other papers relating to Bellevue's accounts, to Boston. On my return I put it among other papers and forgot all about it; in fact, I never thought of it for—forgot all about it until it accidentally came up one time in that conversation with Mr. Beecher.

Q. Well, when was that? A. At Peekskill.

Q. When? A. It was in the Summer of last year.

Q. 1874? A. I think that was the first time; possibly it may not have been until I saw Mr. Beecher later on, at the White Mountains; at any rate, it was not at one of those times. In fact, it had passed out of my mind altogether.

Q. Mr. Redpath, is that letter in your handwriting. [Paper handed to Witness.] A. Yes, Sir; it is my handwriting. Shall I read it?

Mr. Fullerton—No, Sir.

Mr. Beach—Oh! let him read it.

Mr. Fullerton—For your own information, of course.

The Witness—I don't—

Mr. Beach—Oh! read it.

The Witness—I don't desire to—

Mr. Fullerton—I have no objection at all; I thought you meant to read it out loud, and I did not mean that you should do that.

The Witness—Yes, Sir.

Mr. Fullerton—Can you tell when you wrote it. A. I

wrote it after—I wrote it immediately after my return to Boston, after my visit to Peekskill.

Q. Please look at the date on the printed slip and see if it will refresh your recollection as to the month. A. That was about the time, Sir; July—in July, the middle of July.

Q. About the middle of July? A. Yes, Sir.

Q. Of 1874? A. Last year.

Q. Yes; where had you seen Mr. Beecher next before writing that letter? A. In his own house.

Q. Where, please? A. In Brooklyn.

Q. In Brooklyn? A. Yes, Sir.

Q. I thought you mentioned Peekskill just now? A. Well, but you asked me where last before; I had seen him last before in Brooklyn, and on the day before that at Peekskill.

Q. Oh, yes; you saw him on two occasions, then, two consecutive days? A. Yes, two consecutive days.

Q. In the month of July, 1874? A. Yes, Sir.

Q. And about the middle of July? A. I think it was about the middle; but that is easily—

Q. Was it before Mr. Beecher made his statement before the Committee? A. Yes, Sir.

Q. I believe you are under subpoena, are you not, for next Monday, Mr. Redpath? A. Yes, Sir.

#### MR. BEECHER THE NEXT WITNESS.

Mr. Fullerton—Then I won't ask you anything further.

Judge Neilson—That is all, Mr. Redpath.

Mr. Evarts [to Mr. Fullerton]—Will you allow me to see that? [i. e., the letter shown to Witness on cross-examination].

Mr. Fullerton—Well, you will excuse me, please, Mr. Evarts; it is not in evidence.

Mr. Evarts—Oh, I suppose it will be in evidence and I will see it.

Mr. Fullerton—Well, I will not now.

Judge Neilson—Well, that is all, Mr. Redpath. Next witness.

Mr. Evarts—We propose to put the defendant now, if your Honor please, upon the stand. Perhaps it is as well it should be done to-morrow morning, as it is so near the hour of adjournment.

Judge Neilson—As you wish; whichever you should prefer.

Mr. Evarts—We should prefer in the morning, unless there should some accident intervene.

The Court thereupon adjourned to 11 o'clock on Thursday morning.

## FIFTY-SIXTH DAY'S PROCEEDINGS.

### MR. BEECHER'S TESTIMONY BEGUN.

MR. REDPATH AGAIN CALLED—HIS TESTIMONY FOR THE PLAINTIFF—MR. PORTER AGAIN DENOUNCES MR. MOULTON—MR. BEECHER TAKES THE OATH IN THE NEW-ENGLAND FORM, "I SWEAR BY THE EVER LIVING GOD"—NARRATIVE OF HIS EARLY LIFE AND STRUGGLES DOWN TO 1870, AND THE BEGINNING OF THE PRESENT TROUBLES—HIS LETTER OF ADVICE TO MRS. TILTON TO LEAVE HER HUSBAND.

THURSDAY, April 1, 1875.

The plaintiff's counsel called Mr. Redpath. Mr. Fullerton had abruptly dismissed him on Wednesday afternoon after calling his attention to a letter which they had refused to read or to show to the opposing counsel when requested. Mr. Redpath detailed two conversations with Mr. Beecher subsequent to the appointment of the Committee of Investigation in 1874, and relative to a message which Mr. Redpath was authorized by Mr. Tilton and Mr. Moulton to carry to Mr. Beecher, to the effect that they were to hurl against him before that Committee the charge of adultery. Mr. Beecher answered in differently, that the matter was out of his hands, and he should await the verdict of his church's Committee, resolved if it were adverse to him to resign his pastorate. In the course of this conversation Mr. Beecher said that he did not deny that he had given Mr. Tilton cause of offense; "but," he added, "his woes are such as money can assuage." The testimony finally led up to the point at which Mr. Fullerton was aiming; he asked in a very deliberate tone, "Now, Mr. Redpath, I ask you this question: whether at the interview at Peekskill of which you have spoken, or at the interview at Brooklyn of which you have also spoken, Mr. Beecher denied the commission of adultery?" Mr. Evarts was instantly on his feet with an objection which he stated at some length, but before the Judge could decide, John K. Porter rose slowly in his place at Mr. Tilton's side, and energetically began to address the Judge, growing more emphatic as he proceeded. The Judge overruled the objection; the stenographer had repeated the question, and Mr. Redpath answered, "No, Sir; I did not ask him, for I did not believe it."

The plaintiff's counsel immediately moved, but in vain—to strike out the answer. In a few minutes Mr. Redpath left the court-room.

Mr. Evarts, turning to Mr. Beecher, said :

"Mr. Beecher, will you be sworn?"

The officer presented the Bible for him to be sworn, but he motioned it aside, and, turning full upon the Clerk, lifted up his right hand. The Clerk, supposing he desired to affirm, had begun to administer that form of oath, when Mr. Fullerton and Mr. Beach objected, unless Mr. Beecher should declare that he had conscientious scruples against swearing upon the Scriptures. A brief discussion between the Judge and Mr. Beach was brought to an end by Mr. Beecher himself, who declared that he had such conscientious scruples. The clerk then began again : "You solemnly affirm and declare"—when Mr. Beecher dropped his arm, and Mr. Evarts at the same moment explained that Mr. Beecher took the oath in the New-England form. Again the Clerk began, this time in slower and more impressive tones

"You solemnly swear by the ever-living God that the evidence you shall give in this issue joined between Theodore Tilton, plaintiff, and Henry Ward Beecher, shall be the truth, the whole truth, and nothing but the truth."

Mr. Beecher, with most reverential bow, his eyes cast down, answered, "I do."

Mr. Beecher's manner was entirely uncontrained. He sat most of the time with the two middle fingers of his right hand thrust in his vest. At noon, when the striking of the City Hall clock interrupted the proceedings, he took out his watch, as if to see how accurately it kept time. Once when he had occasion to look for a memorandum book, the officer behind him offered to relieve him of his cloak, and he surrendered it with, "Thank you." He was perfectly at ease. Once when referring to his literary labors he called himself "a very voluminous author," he half smiled, half blushed at what he evidently thought might be regarded as an egotistical expression. And a moment later his eyes twinkled and brightened just the least, and his old half smile came back, when he had to say that during a certain period he had made many political speeches, and "preached not a few political sermons." This irrepressible humor bubbled to the surface still later, when he was asked if he had not written many letters—was not, in fact, a great correspondent. He smiled as he hesitated a second or two before answering: "I should say not, if I should judge from my impression; but if they should begin to hunt over my letters I presume it would be found that I

had." This was the first allusion to his troublesome habit of writing long letters. Still later this humor found more extravagant expression. He had been asked if his first public discussion with Mr. Tilton had not been marked by considerable antagonism and asperity in the expression of their views. He answered, as if appreciating the joke: "Nothing that transcended what I see here in court." Even Mr. Beach unbent at this, and smiled with the Beecher party.

When asked about his early intimacy and companionship with Mr. Tilton, he answered, with great feeling, "It was common employments, companionship, and downright loving on my part;" and as he spoke these last words he glanced for the first time at Mr. Tilton. Still later in the morning, he evinced more feeling when questioned in regard to the occasion of the service rendered to his son in the army by Mr. Tilton. He said: "He was doing me little kindnesses that were very agreeable; but there was one that stood out beyond all others and was very specially valuable to me." After the word "very" there was a long pause; the words stuck in the witness's throat, and it was only with a great effort that he concealed the strong emotion which he felt. And on another occasion he was a long time in getting control of his voice so as to answer clearly the question as to the number of his children in the words:

"Four with me and five waiting for me."

The testimony of Mr. Beecher yesterday may be called preliminary. It was an outline narrative, an abridged history, of his early life and struggles, his subsequent religious and political services, his domestic relations, and his intimacy with Mr. Bowen, Mr. Tilton, and Mr. Moulton. It led from his birth down to the eventful period of December, 1870, when, according to the theory of the defense, the conspiracy began.

The growth of Plymouth Church from embryo to its present magnitude, with between 2,500 and 3,000 communicants; the building up of *The Independent* and *The Christian Union* (the latter from a circulation of 600 to 80,000 in a single year); the rapid production of thirty-five volumes—all these labors were merely mentioned as ordinary events. The great help which his wife had given him during all the years of their married life was, however, more fully dwelt on and emphasized.

A few minutes were occupied with the defendant's account of his early friendship with Mr. Tilton. Mr. Beecher's manner in giving the history of

their former intimacy was entirely devoid of the humor with which he had answered the unimportant questions of the morning, and his voice hesitated at times as though he were deeply moved. He also told of his first acquaintance with Francis D. Moulton, and this part of his narrative seemed to arouse once more his sense of humor, and he laughed outright as he described him as "a worshiper of James Russell Lowell and Shakespeare's sonnets." Mr. Beecher's first acquaintance with Mrs. Tilton was then explained. He had known of her when she was a girl, but had no personal acquaintance with her until she was to be married to Mr. Tilton. Then he called upon her at her husband's request. This stage of the inquiry elicited from Mr. Beecher an explanation of the circumstances under which some of his presents were made to Mrs. Tilton. The first of these was a Brazilian topaz brooch, which he had brought to her from Europe in 1860, where he had also purchased little presents for as many as thirty other friends. He also explained how he came to give her the picture of the trailing arbutus. The questions in regard to this period of Mr. Beecher's acquaintance occupied only a short time, and the narrator passed rapidly to the year 1870.

Mr. Beecher narrated the circumstances which led him in December, 1870, to write to Mrs. Tilton the note advising her to separate from her husband, which the defense affirm was one of the grounds of the letter of contrition. As much of the note as contained Mr. Beecher's advice was put in evidence, but the latter part of it, which contained Mr. Beecher's reasons for his advice was not read. Mr. Evarts made a strong effort to have the conversations between Mr. Beecher and Mrs. Tilton regarding Mr. Tilton's treatment of her admitted in the defendant's testimony. Mr. Beach objected strenuously, and arguments of considerable length followed on each side. About three-quarters of an hour were occupied with the discussion of this point, but after Judge Neilson had given his decision ruling out the conversations, Mr. Beach withdrew his objection, and they were admitted. Mr. Beecher was discussing this topic at the adjournment.

## THE PROCEEDINGS—VERBATIM.

### FURTHER CROSS-EXAMINATION OF JAMES REDPATH.

Mr. Fullerton—If your Honor please, I desire to examine Mr. Redpath somewhat further this morning.

Judge Neilson—Yes; is he present?

Mr. Fullerton—Yes, Sir.

Judge Neilson—Call him.

James Redpath was then recalled and cross-examined, as follows:

By Mr. Fullerton—I show you the letter which you had in your hand yesterday afternoon, and I ask you whether you had an interview with Mr. Beecher just prior to the writing of that letter? A. On the evening before.

Q. A little louder, please. A. On the evening before.

Q. And can you fix the date of that conversation? A. I can do it in this way: I called at Mr. Tilton's on Sunday; on the day following that Elizabeth left him. On the next day I was at Peekskill; Monday or Tuesday afternoon I had another interview with Mr. Beecher at his house; on the same evening I returned to Boston, and then I wrote that letter on the following morning; it was on a Sunday morning.

Q. Which was—

Mr. Evarts—Do you mean his house in Brooklyn?

The Witness—In Brooklyn.

Q. Now, the date of the letter that you wrote from Boston? A. It has no date at all.

Q. By referring to the printed portion, can you tell the date or approximate to it? A. Well, I approximate to it in that way. You know the date at which Elizabeth left Theodore, which was in Summer, in July.

Q. It was soon after the 11th of July, 1874, then? A. Yes, Sir.

Q. Now, I call your attention, in the first place, to the interview with Mr. Beecher at Peekskill; do I understand you to say it was on Monday? A. Well, in order to explain that I suppose I ought to tell my interview with Theodore Tilton and with Frank Moulton on Sunday.

Q. That would not be admissible, I suppose, Mr. Redpath, so you will have to confine yourself to the interview.

Mr. Beach—And state what he said to Mr. Beecher in regard—

Mr. Fullerton—Certainly if you detailed that interview or any part of it you can state it. A. I went to Peekskill on Monday forenoon, charged both by Theodore Tilton and Frank Moulton—

Mr. Evarts—No matter about that; you went there! A. Yes, Sir, I went there; I had an interview with Mr. Beecher in his study at Peekskill. He was seated at his table; I went forward and asked him if he was prepared to talk business; I went on business. He said, "Try me." Just at that time he was called out of the room by some one. As he went out I turned around in my chair, and, without intending to do so, saw a telegram, which I

read at one glance, that determined me to deliver a message that Mr. Tilton and Mr. Moulton had each given for me—given to me. The telegram said—

Mr. Evarts—No matter about the telegram.

The Witness—I said: “Mr. Beecher, would you like to know what that business is?”—the telegram referred to business—and was from a lawyer; he said, “yes.” I then told him that I had spent Sunday with Theodore, Elizabeth and Frank; that I saw Theodore at his house in the morning, Elizabeth about noon, and Frank and Theodore together at Mr. Tilton’s in the evening. Now, can I describe the conversation?

Mr. Fullerton—Now, state what occurred between you and Mr. Beecher, if you remember it? A. I said that in the morning I went to see Theodore and found him alone in the back room, lying on the lounge, and I went forward and struck him and said: “Hollo, Theodore;” he didn’t notice that I had entered; I suppose I told all this to Mr. Beecher.

Mr. Evarts—Well, it is only what you told Mr. Beecher that you are permitted to tell here.

The Witness—Yes, well—

Mr. Fullerton—It is all that I ask,

The Witness—I suppose that I—

Mr. Evarts—If you have no knowledge whether you said it or not, why, we would not like you to give it.

The Witness—I do not remember how much of the occurrences of that day I detailed to Mr. Beecher.

Mr. Evarts—It is only what you do so remember that you can state.

The Witness—Well, I said, after describing the interview, I think: “Theodore says he is going to charge you with adultery with Elizabeth, extending over two or three years.”

Mr. Beach—Speak a little louder. A. I said: “Theodore says he is going to charge you with adultery with Elizabeth, extending over two or three years.” Then I think I described the scene—

Mr. Beach—Well, give the description that you gave? A. Well, I am a little embarrassed; I don’t remember how much of that conversation I related to Mr. Beecher.

Q. Well, tell us according to your best recollection what you related to Mr. Beecher? A. I told him that Theodore—I think I told him that Theodore asked me—Oh! that—after I saluted him in that way he sprang up and greeted me very cordially and said: “James, I am glad to see you; tell me how to fight this battle.”

Mr. Fullerton—Who said this? A. Theodore.

# MR. TILTON SENDS A CHALLENGE TO MR. BEECHER.

Mr. Evarts—And you said it to Mr. Beecher, I suppose? A. I think I did, Sir; I think I did; I don’t—and that after some further conversation (because I am not sure that I related that to Mr. Beecher) he said: “Do you know how bad this case is?” I said: “No; I know

what you have always told me.” “Well,” he said, “it is adultery going over two or three years.” I think I then told him that I saw Elizabeth at Mr. Ovington’s in the forenoon; that in the afternoon Frank Moulton came to Theodore’s, and then I am pretty sure that I described the scene there.

Mr. Evarts—Well, unless you did, unless you remember that you told—

Mr. Fullerton—Well, he says he is pretty sure he did.

The Witness—I am not going to swear to what I don’t positively remember; I think I did.

Q. Well, Sir, then go on and describe it. A. Theodore was lying on the lounge, Frank was sitting near the fireplace, and I was sitting at the end of the lounge. Theodore said, “Redpath is going up to Mr. Beecher’s to see Mr. Beecher to-morrow.” Frank said, “Is he? What are you going up about?” to me. I said that I was going to try to get Mr. Beecher to arrange dates for lecturing. Theodore said, “Tell him that I am going to charge adultery.” Frank said, “No, don’t, Redpath.” I said, “I am not a fool, Frank; that would be a pretty way of introducing a business conversation; I have no intention of telling him that.” Theodore said, “Yes, you had better tell him.” At this time Frank had risen and was walking uneasily about the room, and suddenly he stopped before me—before us, and said, “Theodore was mad at me yesterday for saying that I loved Mr. Beecher more than”—then he stopped, “as much as I love you. I don’t care a damn, but much as I love both of them, Redpath, I would smite either of them to the earth,” or, “to the ground, if either one of them attempted to crucify the other. Tell Mr. Beecher that.” “No, I won’t;” I said, “you seem”—Yes, “you better, you better tell him.” He said, “Take that message from me.” I said, “Frank, you seem to forget that although Mr. Beecher—

Mr. Evarts—All this you told Mr. Beecher?—all this you told Mr. Beecher we understand; otherwise it has no place in your evidence.

The Witness—I beg your pardon; I am not sure that I told him.

Mr. Evarts—Well, how far back in this narrative? A. I think I did, Sir; but I am not sure about it.

Mr. Fullerton—Is it the best of your recollection that you told Mr. Beecher these messages? A. Yes, Sir; it is the best of my recollection.

Q. Very well, then, we will take it. A. Then Frank said—I said “You seem to forget that I have never spoken to Mr. Beecher on this subject, and I certainly should not introduce it.” He said, “You will find him ready enough to talk.” That is all I remember of now. Then they went to prepare that note, Frank Moulton’s first statement.

# MR. BEECHER TALKS OF HIS TROUBLES.

Q. Now, tell us if that is all; what Mr. Beecher replied, if anything, to this communication of

yours? A. When I was talking, as near as I remember, at this time, Mr. Beecher and I were sitting very close together—as near as I am to this gentleman, and he was fixing his mind upon me; I said, “I am nervous, and tired, and pained,” and I said, “Don’t fix your mind upon me, Mr. Beecher, I cannot think;” he said, “Try and think,” and he rested his hand upon the table; he began, after I had got through, “Well, I suppose you know all that Theodore has had to say on this subject;” I said, “Yes, Sir, I have known it for two or three years; I read the ‘True Story;’” he said—I think as I remember, or later in the conversation—I think upon this occasion, “Yes, he is probably very glad Elizabeth tore it up;” I said, “I have got a copy of that, I think, somewhere;” it had occurred to me that I had; I had forgotten all about it until that remark; I don’t remember the intermediate conversation; I think I said something then, but I cannot recall it; he went on: “I don’t deny that I have given Theodore cause of offense,” or “just cause”—I don’t remember the words; I had told him—oh! I had told him that Frank wanted him to do something—it was something about a card—I have forgotten exactly—but he said, “I shall be a party to no—but the matter is out of my hands now; I have put it in the hands of a committee composed of men—” I cannot recall his language, but the substance was this, that he had put it in the hands of men of high character who could not afford, by their social position, to be influenced at all to bring in any verdict other than in accordance with the facts; that he had left them absolutely free—had given no instructions whatever. Then he described one or two of the men; I didn’t know the men, and therefore the descriptions have left no impression upon my mind. He said: “If, in accordance with the facts and truth and honor, they find a verdict of acquittal, I shall go on. If there is the slightest or least censure, I shall resign my pastorate in 24 hours; but I shall be a party to no further compact—to no further compact that depends on the truthfulness, honor, good faith, or magnanimity of Theodore Tilton; he is a scoundrel.” He said—the language of the following I cannot recall—but this was the substance, that in this affair there had been a dozen crises; that whenever there was the least show—the least indication that the scandal would cease, Theodore was sure to do something to revive it. He gave one or two instances, but I only remember the “letter to the Complaining Friend.” Then he said, “But Frank, I think, is my friend;” it was pronounced as if an interrogation. I said, “Yes, Sir; I have no doubt of that.” “No,” he said, “I should have to revise, or reverse my theories of human nature if Frank Moulton should prove false,” or “prove a traitor”—“prove false,” I think was the word. Then he went on—he talked very rapidly—with a great deal of emotion, with tears in his eyes part of the time, and said that he had all his life tried to do good to his kind; that he loved his kind, and

that he had certainly never put himself above any man that his only ambition had been in life, that perhaps after he was dead he might leave something that would be—I don’t remember the words; the idea was a consolation to those in sorrow; that for four years—

Mr. Fullerton—A little louder, if you please.

The Witness—That for four years the windows of his soul, or heart, had been closed; the shutters closed, the blinds drawn up. Oh! that part occurred—I am mistaken there; that part occurred not at that time.

Mr. Evarts—Then we will strike that out. It is not to be given here.

#### TOKENS OF SYMPATHY RECEIVED BY MR. BEECHER.

The Witness—Yes, he said about that time that he had been—that in this furnace he had gone through, or affliction—I don’t remember the words—that he had been very much touched by receiving so many proofs of the good will of his countrymen.

Mr. Fullerton—A little louder, please.

The Witness—That he had received hundreds of letters from all parts of the country, and from people in all conditions of life, expressing their sympathy for him in his trials, and that only two or three of them were of an insulting character; he said what made it more touching to him was that so many of them, or the majority of them—I don’t remember which—were written as if the writers believed there was some truth in the stories against him; that he was particularly touched (he pointed to a bag, I think, or a large number of letters), but he said there was one he had received from a clergyman in New-York—an Episcopal clergyman. I think—that was particularly grateful to him; he looked for it, and went out of the room and brought it back, and read it to me, or that part of it. Well, we went on talking until dinner. Oh, I remember an incident.

Mr. Fullerton—Please a little louder; don’t drop your voice, or the jury will not hear you.

#### MR. BEECHER’S ESTIMATE OF MR. TILTON’S WOES.

The Witness—During this conversation three of his little grandchildren came to the window and cried, “Grandpa!” and he rose and went to a closet and got three oranges, and said some pleasant words—I remember the immense control of his face—and threw them out to them, and they went away; we went to dinner; he retired before the dessert; after a while, staying in the middle room, I went in, and he was lying on the bed, and his aspect had entirely changed; he looked up with laughing eyes; I said, “What are you reading, Mr. Beecher?” and he said, “Oh, I am reading one of Dumas’s novels; whenever I get bothered or worried, and tired, I go to one of these and forget myself;” that is all I recall of the conversation; no, in the course of this

conversation, talking about Theodore, he said, "Oh! yes, his woes are such"—he said, "his woes are such as money can assuage;" that and calling Theodore a scoundrel were the only bitter remarks he made in all the conversation.

Q. Did he say anything in that conversation about making a statement? A. No, Sir.

Q. Now, when did you see him next? A. When we went down in the cars together; Mrs. Beecher also went down, and Mrs. Beecher left at the depot; we rode down in the horse-cars, and he talked nearly all the way down on the platform; the only part of the conversation I remember was his reference to the Woodhull scandal—to his interview with Mrs. Woodhull at Tilton's; I think he said that he had only met her twice; that he went around one day and saw her at Tilton's, and she was all smiles; he said, "Let me show you," and he took both my hands in his and put them together in this way, and imitated a sentimental woman very funnily, and he said that she evidently expected him to say something about the scandal, but he made some commonplace remark and left. Then I went down, and he introduced me to Mr. Cleveland. That was the last. I had conversation with Mr. Cleveland, but that is all I had with Mr. Beecher that I remember.

Q. Did you have an interview with him at his house in Brooklyn? A. Well, I went over and stopped at Theodore's, and next morning I was feeling so badly about the whole case and Theodore's determination to prosecute it I thought I would go and see Frank Carpenter.

#### MR. BEECHER RESOLVES TO "VINDICATE ELIZABETH AND THEODORE."

Mr. Fullerton—Just omit that part. We cannot hear that. Did you see Mr. Beecher? A. At his suggestion and Mr. Cleveland's, I went to see Mr. Beecher at his house; I went there, I think, about three o'clock; I didn't see him for an hour or an hour and a half afterward; he was up stairs asleep; then we went down—then we went down to tea. Oh, I asked in the parlor—I asked him if nothing could be done to stop this yet.

He placed his hand on my knee and said: "O, that is all right now," or some expression like that; "I have made up my mind;" we went down to tea, and after tea he took me into the garden or yard, and went to the front part and talked a little about the cellars a minute, or the vaults underneath, and in going back he said—I forget the remark I made that led to it—he said: "I was with some of my friends until 2 o'clock this morning, and my mind was not clear."

Mr. Fullerton—Speak a little bit louder, if you please.

The Witness—"But when I awoke this morning I saw my way clear; I shall make a clean breast of it: I shall tell the whole truth; I shall take the whole blame on myself; I shall vindicate Theodore and Elizabeth." I said: "Well, Mr. Beecher, without any reference whatever—

without any reference to what the truth is, I am very glad of it." Then he asked me something about what the effect—what effect the scandal would have on the lecturing. I don't know how the question was phrased; I think it was then that I replied, "That without any reference to what the truth was he would find a stronger and better class of friends around him than he ever had before." By that time we were in the entry, and he simply said in going up, "I shall always feel very grateful for your sympathy." I then left the house, and finding that I had not time to see Theodore—

Q. Is that the end of your interview with Mr. Beecher?

A. That is the end of the interview.

Q. Did you see Mr. Beecher after that? A. I think I did not see Mr. Beecher after that until I saw him at the White Mountains—I think three times I saw him there.

#### A BRISK DISCUSSION OVER A QUESTION.

Q. Now, Mr. Redpath, I ask you this question, whether at the interview at Peekskill of which you have spoken, or at the interview at Brooklyn of which you have also spoken, Mr. Beecher denied the commission of adultery?

Mr. Evarts—I object to that question, if your Honor please. He has told us all that Mr. Beecher said, and has told us all that was said by him (the witness) that led to any answers of any kind, and this witness has no such relation toward Mr. Beecher as that there should be behind, in his knowledge and in Mr. Beecher's consciousness of his knowledge, anything that does not appear in the conversation itself. The question may be a harmless one, but the legal right of putting it is the question we are now discussing.

Judge Nelson—I think we will take it on the cross-examination.

Mr. Evarts—Then your Honor will please note our exception. This is not a cross-examination as to any interviews that we have introduced. This is their own evidence entirely.

Judge Nelson—Repeat your question, Mr. Fullerton.

Mr. Fullerton—Please repeat the question, Mr. Stenographer.

Mr. Evarts—If the Court please, we have got all that was said. Now, whether in that conversation, proceeding from the other party, or interchanged between them, there was any occasion for denying, is apparent from the connection and statement of the conversation, and this is their own interview that they bring in evidence, not a cross-examination concerning any interview that we have touched upon; and now they propose to ask a question which, on the general rules of evidence, is not admissible. It would answer for a cross-examination on our part if the situation were reversed.

Mr. Porter—Will your Honor permit me to add that the inquiry is as to the construction by the witness of the language he has given. That is a matter for the jury.

We shall insist that in the language he has given there is the clearest and the most emphatic denial of adultery. If he is permitted to give a construction, and it should be adverse to ours, what have we to call for, Sir? He has told all that was said; but who made Mr. Redpath juror in this case, to determine the issue that belongs to these twelve men? Is he to say whether certain words which he has repeated do or do not constitute a denial? He never charged Mr. Beecher with adultery. Mr. Beecher was not called upon to deny any such charge to him. All that he said is given. All that Mr. Beecher said has been repeated to the jury. It is for them to determine whether it was an admission or a denial of the foul accusation, imputed to him by Tilton, transmitted with Moulton's cunning, false, treacherous, message, and for a business purpose, to extort that money which *might* assuage Tilton's griefs.

Judge Neilson—The question is quite equivalent to asking if anything more was said upon a given subject; which is a common form of interrogatory.

Mr. Evarts—That we shall not object to.

Judge Neilson—It is equivalent to that, although it is in a different form.

Mr. Fullerton—Like questions have been put on the other side again and again, and answers have been given to them.

Mr. Beach—Under our objection.

Mr. Fullerton—Under our objection; and I suppose that the same rule is to be administered that has been applied to the other side.

Mr. Evarts—Now, if your Honor says that this question is equivalent to the form your Honor has stated, then we should like to have the question put in that form.

Mr. Fullerton—I do not propose to fashion my question to please my adversary.

Mr. Evarts—No; it is the Court.

Mr. Fullerton—No; his Honor says my question is equivalent to that, and I will put the equivalent.

Judge Neilson—I mean in substance it is equivalent. I will allow the witness to answer your question.

Mr. Fullerton—Commentaries upon the evidence will be more appropriate by and by.

Judge Neilson—Of course I concur with Mr. Porter that this whole matter goes to the jury for their construction, and I have not now nor shall I at any future time make any expression of opinion in regard to it. It is not my practice to do so.

#### NO ACTUAL DENIAL MADE BY MR. BEECHER.

Mr. Fullerton—Now, Mr. Stenographer, please read the question.

The Tribune stenographer read the question as follows: "Now, Mr. Redpath, I ask you this question, whether at the interview at Peekskill of which you have spoken, or at the interview at Brooklyn of which you have also spoken, Mr. Beecher denied the commission of

adultery? A. No, Sir; I did not ask him, because I did not believe it.

Mr. Fullerton—I move to strike that out.

Mr. Porter—And I insist that it shall not be struck out.

Judge Neilson—I think I will let it stand.

Mr. Fullerton—I did not ask him for his opinion, your Honor.

Judge Neilson—I know you did not, but I think we will let it stand.

Q. You did, however, convey to him the message that he was charged with adultery? A. Yes, Sir.

Mr. Porter—He has already sworn to that.

Mr. Fullerton—He has sworn to it now again.

Mr. Porter—I object to his swearing to it again.

Mr. Fullerton—You are too late, Sir.

Mr. Porter—It is not a question now.

Mr. Fullerton—Yes, it is.

Judge Neilson—Go on.

Q. Have you given all the reply that Mr. Beecher made when you said that he was to be charged with adultery? A. As nearly as I can recall it, Sir; I suppose if—

By Mr. Fullerton—That is an answer. The conversation at Brooklyn, if I understand you correctly, was after the conversation at Peekskill? A. Yes, Sir; the conversation at Peekskill occurred about noon, or 1 o'clock, on Monday; the conversation at Brooklyn occurred on the afternoon of Tuesday.

Q. The allegation of Mr. Beecher, then, that he should vindicate Theodore and Elizabeth, and take all the blame on himself, was after you had conveyed to him the message that he was to be charged with adultery? A. Yes, Sir—yes.

Mr. Fullerton—That is all.

By Mr. Evarts—This jurymen asks what date these interviews were; I think you have fixed them as soon after the 11th of July? A. I think the—

Mr. Beach—The 11th of July was the date that Mr. Tilton left the house!

The Witness—Then the interview was on the following Monday and following Tuesday.

Mr. Evarts—The Monday and Tuesday following the 11th of July.

Mr. Fullerton—Were they not all before the 14th of July? A. Yes, Sir.

Mr. Evarts—He says they were on the 11th and 12th—no, the 13th and 14th, Saturday was the 11th.

The Witness—Then Monday was the 13th, and on that day I was at Peekskill.

Q. On the next day too? A. On the next day I saw Mr. Beecher at his own house in Brooklyn.

Mr. Evarts—They were on the 13th and 14th of July of last year.

Mr. Shearman—That is all.

Mr. Evarts—One moment.

Mr. Shearman—One question. State what the business was upon which you went up to see Mr. Beecher on that



occasion. A. I had a contract—a verbal contract, with Mr. Beecher for a lecturing engagement in the following Fall.

Q. It was in reference to that? A. It was solely in reference to that.

Mr. Evarts—You stated, I think, that one part of your employment is that of a lecture agent? A. Yes, Sir.

Mr. Shearman—If your Honor please, I want to call attention to an error on the record as printed, which might be of some importance. In the testimony of Mr. Tilney, he stated that he was married about 7 o'clock in the evening, and it is printed 7 o'clock in the morning.

Judge Nelson—I think he said evening.

Mr. Shearman—It is a mere clerical error, but I call attention to it now.

[Here there was a consultation between Mr. Beecher and his lawyers.]

### HENRY WARD BEECHER CALLED TO THE STAND.

Mr. Evarts—Mr. Beecher, will you be sworn?

HENRY WARD BEECHER, the defendant, here took the witness stand. The officer offered him the Bible in the usual manner, but Mr. Beecher waved it away and rested his right hand as if to swear with the uplifted hand.

Mr. Beach—One moment, Sir.

The Clerk [to the Witness]—"You solemnly swear that you"—

Mr. Fullerton—One moment.

Mr. Beach—I object to this form of oath, Sir, unless Mr. Beecher shall declare that he has conscientious scruples against swearing upon the Scriptures.

Judge Nelson—Any form that Mr. Beecher says will bind his conscience.

Mr. Beach—That is the statute, Sir, that a witness shall be sworn upon the Scriptures unless he declares that he has conscientious scruples against swearing upon them.

Mr. Beecher—I have conscientious scruples against swearing on the Bible.

Mr. Beach—Very well.

The Clerk. [To the Witness.]—You solemnly affirm and declare—

### MR. BEECHER TAKES THE NEW-ENGLAND FORM OF OATH.

Mr. Evarts—No. He swears; he does not affirm and declare—he swears by the uplifted hand.

Mr. Beach—By the ever-living God.

Mr. Evarts—The New-England fashion is to swear by the uplifted hand, but it is the oath; there is the same distinction in New-England between the oath and the affirmation that there is with us.

Mr. Porter—The oath is, "You swear in the presence of the ever-living God."

The Clerk then read the oath to Mr. Beecher as follows:

"You solemnly swear by the ever-living God that the

evidence you shall give in this issue joined between Theodore Tilton, plaintiff, and Henry Ward Beecher shall be the truth, the whole truth, and nothing but the truth."

Mr. Beecher—I do.

### MR. BEECHER'S PARENTAGE AND EARLY LIFE.

Mr. Evarts—Where were you born, and when? A. I was born in Litchfield Conn., in 1813, as I am informed.

Q. Was your father the Rev. Lyman Beecher? A. Yes, Sir.

Q. At what age did your father die, and when? A. He died in the Fall, if I recollect right, Sir, of 1863, at the age of 86.

Q. And your mother at what age? A. My mother died when I was about three years old.

Q. How long did your family, and you as a part of it, live in Litchfield after your birth? A. My father removed from Litchfield in 1836, if I recollect right, making me about 13 years old when we went away.

Q. And where did your family and yourself, as a part of it, thereafter live? A. In Boston for eight years—the family lived.

Q. Was your father a clergyman of the orthodox faith in New-England? A. He was.

Q. And settled in Litchfield while you were there? A. He was.

Q. As a minister; and in Boston over what? A. He was first settled over the church that was called the Bowdoin Street Church. When that was burned down and rebuilt in another street it was called then the Hanover—no; it was called first the Hanover Street Church, and afterward the Bowdoin Street Church.

Q. It was rebuilt in Bowdoin street? A. Rebuilt in Bowdoin street—yes, Sir.

Q. It is now standing there. How numerous a family of children had your parents? A. Thirteen were born to them, and eleven were raised to man's estate.

Q. How many of those were men and how many women? A. Six boys and four girls.

Q. Besides yourself? How do you make out eleven? A. [After a pause.] I have never been able to tell it right without counting, Sir. [Laughter.]

Judge Nelson—Mr. Rogers, you must see to this. I won't have any applause of an answer to a question.

Mr. Evarts—Now, Mr. Beecher, were your brothers all clergymen as well as yourself? A. All of them.

Q. When did you go to college, and where? A. To Amherst College in the year 1830.

Q. And graduated in due course? A. In due course, in 1834—August.

Q. And thereafter did you pursue professional studies, and where? A. Three years at Lane Seminary, with the

exception of about six months, when I took charge of *The Cincinnati Journal*.

Q. Was Lane Seminary a theological seminary? A. It was.

Q. Was it under your father's charge? A. He was President of it.

#### MR. BEECHER'S ORDINATION AND FIRST PASTORATE.

Q. And where were you ordained as a clergyman? A. I was licensed as a clergyman, I think, in 1837.

Q. And when were you first settled over a charge? A. I was settled over a charge also the same year.

Q. Where? A. In Lawrenceburg, Indiana, Dearborn County.

Q. That is within how many miles of Cincinnati? A. Twenty miles below Cincinnati, on the Ohio River.

Q. Was it a small, inconsiderable town then? A. I should think it was a town of perhaps from a thousand to 1,500 inhabitants.

Q. Were there several religious societies there? A. There was a Baptist church, a Campbellite—no, there was a Baptist, a Methodist, and this Presbyterian church when I went there. Just at the close of my ministry there was organized an Episcopal church.

Q. How large a congregation was this of yours over which you were settled? A. The communicants of my church when I went there were 19, I think, possibly 20.

Q. And the attendance? A. Well, the attendance—the house, I think, would hold 300, possibly, if it was crowded; but I should say that from 150 to 200 was my audience.

Q. Were you in whole supported by your congregation, or was it a missionary field? A. I was a beneficiary under the care of the American Home Missionary Society.

Q. How long did you remain there? A. Two years and a fraction.

#### MR. BEECHER'S SECOND PASTORATE.

Q. And from there where did you go, and where have you been since? A. I went to the capital of the State, Indianapolis, in Marion County, Indiana.

Q. Were you settled over a congregation there? A. I was settled over the Second Presbyterian Church there.

Q. Was that a more considerable congregation and church, in numbers? A. No, Sir. It was a small church. It was at the time of the division, between the Old and the New Schools, and this was an offshoot from the First Presbyterian Church, which was called the Old School, and it was a comparatively small church; I cannot tell the number.

Q. And there, were you supported by your congregation, or continued as a missionary? A. I was supported by my congregation, at a salary of \$300 a year.

Q. How long did you remain there? A. About eight years—a little more or less.

Q. That brought you to about 1847 or 1848? A. The year 1847.

Q. From that time where have you lived, and in what service as a clergyman? A. I have lived in this city of Brooklyn, and as pastor of the Plymouth Church.

#### MR. BEECHER'S MINISTRY IN PLYMOUTH CHURCH.

Q. Were you the first clergyman of that church? A. Of the Plymouth Church?

Q. Yes. A. I was the first, and have been the only pastor.

Q. Was it founded, and were you called to it at the beginning of its existence, as a church with a pastor? A. I was called to the church by the gentlemen that purchased the property, and I told them that they could not call, that they had no authority; they therefore proceeded to form a church in order that they, having authority, might call me.

Q. And you were then called by the church? A. I was then called by the church.

Q. How large a congregation—how large a community of church members was this society when you were called? A. It think it was, perhaps—the church proper that called me—I should think had 20 members, or 25, perhaps, not over 25.

Q. Has there been any break or interruption in your service as pastor and preacher at that church from that time to the present? A. I have preached continuously from that day to this.

Q. Has there been any occasion of interruption on account of your strength or health during that whole time? A. The first year that I came to Brooklyn, and while the church in which we now worship was building, I exposed myself a little in visiting the church, and was sick with erysipelas, which enfeebled me for several months; but, with the exception of that sickness, I don't think I have lost five Sundays in 27 years.

Q. Have you within this period of your settlement, Mr. Beecher, had any absence abroad? A. Twice.

Q. At what times and for what length? A. In consequence of the continued weakness of the first sickness which I mentioned, I made a voyage with Capt. Knight, in the ship *New World*, to England, in 1850—the summer. I was gone not over three months, and inside of two, I think.

Q. You went out and back in a sailing ship? A. I went out expecting to come back in a sailing ship, but, in fact, returned on board the steamer *Asta*.

Q. Now, your second absence in Europe? A. My second absence in Europe was in June—if I recollect right—1863, and I returned the last of November of the same year.

Q. And your time was passed in England and on the



*A. W. Keeler*



continent of Europe, except during the voyages? A. Yes, Sir.

Q. What was the occasion of that visit? A. I had been worn out, in preaching, lecturing and editorial work incident to the coming on of the war, and the first years of the war, and my friends advised me to take the summer for recruiting, and be ready for the Fall and Winter campaign.

Q. Then you were not an invalid during that absence? A. No, Sir; nor before it—not exactly an invalid.

Q. It was a recreation? A. It was a rest, preparatory to larger labors.

Q. And you had occasion to make public demonstrations and perform services while you were abroad, had you not? A. Do you mean whether I did?

Q. Did, in fact? A. At first I refused, and with the exception of a few "breakfasts," as they are called in England, took no public service. I then went on to the Continent and spent one or two months there, and returned to England in September, determined to come home, but was led to agree to a line of public orations or discourses on American affairs.

Q. In some of the principal cities of England? A. In Manchester, Glasgow, Edinburgh, Liverpool and London.

Q. And all those occasions had to do with the public situation of our affairs here and the war. A. They did.

Q. How large is the congregation and how large the number of church members in Plymouth Church now, about? A. I cannot speak with positiveness, Sir; but I should say the congregation is limited only by the building, and has been so for 25 years; the number of communicants is, I suppose, over 2,500—between 2,500 and 3,000.

Q. And for how long has that number, or a similar number, been the list of your church members? A. I could not say definitely, Sir; it has been over 2,000, I suppose, for 10 years or more.

Q. What are and what have been your habitual labors as a clergyman in the direction and charge of this church and congregation? A. I have preached morning and afternoon, and conducted for a series of years a Wednesday-night lecture, a Friday night prayer-meeting, and what was called the Social Circle, or social meeting of the church.

Q. Where was the latter held? A. In the parlors of the church.

Q. And more recently have your services there been reduced in amount? A. The social meeting I have remitted to the charge of the young people.

Q. For how far back? A. O, I should say for 15 years.

Q. Well, the Wednesday evening lecture? A. The Wednesday evening lecture I dropped not far, I think, just before the time of the war; I may be inaccurate about that; I have no special memory.

#### MR. BEECHER'S EDITORIAL WORK.

Q. Now, within the period of your services as a clergyman here, what other public or literary employment have you had? A. I have been connected with journalism ever since I was in the pulpit; I have been connected with *The New-York Independent*, after my first year, not as a member of the staff, but as a contributor, having a column of my own; that was the understanding.

Q. And furnishing a paper for every issue? A. For every week.

Q. For every issue of that paper? A. For every issue of that paper. That was the contract arrangement. Afterward, in 1870, I took charge of *The Christian Union*, which had—

Q. Well, we will first go on with the time when you became the editor of *The Independent*? A. Yes, Sir, I think it was—I am not definite—I think it was the latter part of 1860 or early in 1861, the editors that had conducted *The Independent*, Dr. Bacon, Dr. Storrs, and the Rev. Dr. Thompson, resigned. I then made an arrangement with Mr. Bowen to conduct the paper editorially.

Q. And up to what time did you continue the responsibility of chief editor of that paper? A. Until the Fall of 1863, and a nominal editor until the fall of 1864, I think, Sir; a contributor, however, all the time.

Q. And up to what time thereafter, if at all, did you continue to be a contributor? A. Until the Fall of 1866.

Q. A constant contributor—a regular contributor? A. I cannot praise myself for constancy in that regard, Sir, but it would be considered a regular contributor.

Q. And then your connection ceased? A. My connection ceased.

Q. With that paper in 1866? A. In 1866.

A. And in the interval between your assuming the editorship of *The Christian Union*, had you any connection—responsible connection—with any public newspaper? A. No, Sir; there was a movement set on foot by the Congregational brethren to establish a journal, which, in view of other arrangements that were also in prosecution, was dropped, as these others were—I declining to take any position that would seem to put me in antagonism with *The Independent*.

Q. And how did your connection come about with *The Christian Union*—when did it take place? A. *The Christian Union* was called in its origin *The Church Union*, a paper that was founded to bring all Christian Churches together on one foundation, with the understanding—

Mr. Beach—I don't think—

The Witness—That is the—

Mr. Beach—One moment, Mr. Beecher.

Mr. Evans—It is not necessary to go into the details. That was the purpose? A. That paper passed into the hands of an intimate friend of mine, at a time when I was under contract to write "The Life of Christ." He came to me at Peekskill—

Mr. Beach—I think these details are inadmissible, Sir.

Mr. Evarts—Well, Sir, it is not necessary. You were applied to. A. I was applied to to take it, and declined, except conditionally at a future time, and circumstances arose which forced me to that position in the year 1870.

Q. And how early in that year? A. January.

Q. Now, when you took that paper, what was the extent of its subscription? A. Said to be 3,000, but it probably had 600 to 1,000 *bona fide* subscribers.

Q. Only? A. That is my impression, Sir; I never saw the books; that was what was told me.

Q. Very well. Now, during the first year—for I am limiting all inquiries now to a period anterior to December, 1870—during the first year, to what extent had the circulation of *The Christian Union* increased? A. I cannot give you the exact figures; it was over 30,000.

Q. Over 30,000? A. Yes, Sir.

Q. Besides your services as a clergyman, having a charge, and these editorial services, during the period of your residence in Brooklyn, have you had other literary labors? A. I have, if you include lecturing as a literary labor.

#### OTHER LITERARY LABORS.

Q. Well, what has been your habit in that regard—lecturing? A. I have been a very large lecturer, from—

Q. During a considerable period of years? A. From the second year of my settling here. I began in 1849 to lecture, I think—1848-'9—the Winter of 1848-'9, I think. I lectured for the Mercantile Library Association, of Boston, and got \$25 for it.

Q. Well, from that time until about when? A. From that time until this trial began I have been lecturing, principally Autumn, Winter, and Spring, seldom in Summer.

Mr. Evarts [to the Court]—Here is a letter asking a gentleman to be introduced into the Court, if your Honor please.

Judge Neilson—Officer, hand it here, please.

Mr. Evarts—It is addressed either to your Honor or myself.

Judge Neilson—It was very proper to give it to you first, Sir.

Mr. Evarts—I lost your answer, Mr. Beecher, to that.

The Witness—I have lost your question.

Mr. Evarts—Well, then, we will go on. I suppose the stenographer has them both.

The Tribune stenographer here read the last question and answer.

Q. During this period of your settlement over the Plymouth Church has there been any regular interval of vacations, and if so, at what part of the year, and for what length of time? A. My contract with the church called for the month of August as my vacation. That has, however, been extended, first by the fact that

I am subject to hay fever, which comes on the middle of August, and I seldom get so far free from it as to be fit to preach until toward the last of September; and gradually, by the force of circumstances, my vacation extended from the first of August to the middle of September; within the last five years, perhaps, the church, by special vote from year to year, has enlarged a little my vacation, sometimes sending me off in the middle of July, until the first of October, or as the case might be.

Q. And for what period of time have you had a fixed country residence for some part of the year? A. I should say 16 or 17 years; not in the same place always.

Q. No. How long has that been at Peekskill? I should say 13 or 14 years.

Q. Are your vacations passed at Peekskill for the most part? A. Just as much of them as I can get there.

Q. And then when the hay fever comes on, have you had any fixed habit of seeking a special climate? A. Until within four years I always stayed there only. Within the last four years I have gone to the White Mountains.

Q. Mr. Beecher, when were you married? Oh! I beg your pardon, I have not gone through with the literary labors. The lectures we disposed of. A. I omitted to state—

Q. Have you been the author and publisher of any works? A. Will you allow me to correct, by addition—I ought to have included in the answer to your question about lecturing, that I have, particularly in 1856, I think, by vote of my church, been set free as much as I thought it to be necessary to go into the field and lecture on politics, and that during all those stormy times immediately preceding—or from the time of the Kansas troubles, I was in the habit of making many political speeches and preaching not a few political sermons.

Q. Well, now, the authorship of books, Mr. Beecher? A. I have been a very voluminous author; I think there are about thirty-five volumes that stand in my name now.

Q. And all dating from within the period of your residence in Brooklyn? A. No.

Q. Some before? A. Some before.

Q. When was your engagement in reference to the work, "The Life of Christ," made; when was that undertaken? A. I think that was undertaken in the year—I have got a memorandum of dates, if the gentlemen will allow me to look at it.

Mr. Beach—Certainly Sir, certainly.

The Witness—I will submit my memorandum, as it covers pretty largely the whole ground, to your inspection, gentlemen, if you wish to see it.

Mr. Beach—No desire for it, Sir.

The Witness [After referring to memorandum]—I signed the contract for "The Life of Christ" in December of 1867, and the first volume was issued in the Fall—in September of 1871.

Q. Did the preparation of that work occupy your time and attention and studies to any definite or appreciable extent during this period? A. Very largely, Sir.

Q. The work is still incomplete? A. Yes, Sir; the first volume is published; the second volume is two-thirds done but not published.

Q. Now, when did you write your work of fancy. "Norwood?" A. That preceded this, Sir; it was [referring to memorandum]—appeared in *The Ledger* in 1867, and in a book form in 1868.

#### MR. BEECHER'S MARRIAGE.

Q. Mr. Beecher, when were you married?

A. The same year that I was settled; in 1837, I think it is, Sir.

Q. For how long a period before your marriage had you been acquainted with your affianced bride? A. Half as long as the patriarch for his two; I had been engaged to her for seven years. [Laughter.]

Q. And how old were you when you were married? A. I think I was 23; I am not good at figures.

Q. And what was your wife's age at that time? A. I think she was 23 also. A part of the year she is 24 when I am 23, and the rest of the year we are of the same age. [Laughter.]

Q. So that your engagement dates from the early age of 16 or thereabouts? A. I was engaged, I think, when I was between 16 and 17.

Q. You were in college then, or was it— A. I was in college; I think I was a freshman.

Q. How many children, Mr. Beecher, have you had of this marriage? A. I have four with me and five waiting for me.

Q. And now how many grandchildren have you? A. Eight.

Q. During the period of your marriage has there been any interval of absence or separation between yourself and your wife, except these that you have named of going to Europe? A. Except when I have been gone to Europe or out on lecturing tours.

Q. Of late years has your wife had occasion to visit the South in reference to her health? A. Yes, Sir, for—I think since the Winter of 1870 or 1871.

Mr. Beach—Each Winter, does he mean?

Mr. Evans—Since the Winter of 1870 or 1871? A. 1870 or 1871; I don't remember exactly in which it began.

Q. Every Winter? A. What, Sir?

Q. Has she gone South every Winter until now? A. Until this Winter, yes, Sir.

Q. While you were at Indianapolis was there any occasion when your wife went to Connecticut in consequence of sickness? A. Not to Connecticut; she went back to her home.

Q. In Massachusetts? A. In Sutton, Mass.

Q. And with those exceptions, there has been no interval? A. I do not recall any.

Q. Of break in your residence together, under the same roof? A. I do not recall any.

#### ALL MR. BEECHER'S SECULAR AFFAIRS IN-TRUSTED TO HIS WIFE.

Q. In regard to the conduct of domestic affairs, Mr. Beecher, what was the habit of your life in respect to your wife or yourself having charge of them? A. From a very early period I remitted to her almost entirely my secular affairs, so much so, that until within two years, since my son came to live with me, who was in business, I never even drew my own salary.

Q. Your wife did it? A. All checks were made out to her, and all the Treasurer's accounts were "Mrs. Beecher, Dr.," and I knew neither what money came nor what money went out, so far as my salary was concerned.

Q. Until within a recent period, was your wife's health and strength sufficient for all occasions of that kind? A. She had, for her, poor health, but it was with a strength and an amount of purpose that gave her, in effect, the strength of ten women, and until an accident which befell her, namely, being thrown from a runaway team against the stone steps of the bank in Brooklyn, she was in every respect, I always thought, sound and efficient far beyond the measure of ordinary women.

Q. What was your habit in regard to your correspondence being known to or managed in any respect or any degree by Mrs. Beecher during this period? A. Well, in the earlier period of my life, I had a very sensitive feeling in regard to the sacredness of letters; I would never open my children's, nor suffer anybody else to do it; I would never open hers, neither did I wish her to open mine; but within the last 15 years correspondence has so multiplied, and I grew careless through over-occupation, that that, little by little, passed into her charge, and for the last 15 years, if I was gone, or if there was any reason why, perhaps, somebody might suffer, she has always opened my letters, and to a very considerable degree answered them; if there were any about which she had any doubt she waited until I came home.

#### MR. BEECHER NOT A VISITING PREACHER.

Q. Mr. Beecher, during your settlement here, what has been your habit in regard to personal visits or intercourse with your parish at large, or with any narrower circle among your parishioners, or among other residents of Brooklyn? A. In my earlier years I attempted a good deal of visiting. As outside demands wasted my time, I made arrangements by which I could be seen at my house or at my church by whomsoever wished. Still, subsequent to that, I found it impossible either to visit or to receive multitudinous calls, and for the last twenty years I may say, with the exception of weddings and funerals, I have done very little visiting; now and then a paroxysm of visitation, but in general it may be said I am not a visiting preacher.

Q. Has there been any circle of intimacies between your family and other families of your congregation, or of your Brooklyn neighbors? A. Yes, Sir; I was cautioned against that, but I always stood for my rights on that subject. I have always said that because I was a minister I was not one whit less a gentleman, nor a citizen, and that I would have my circle for my enjoyment. I did not care who was jealous nor who made remarks.

Q. And these intimacies, were they of the whole families and with your whole family? A. Almost in every case.

Q. Were these intimacies entirely or principally confined to families of your own parish? A. I think of but a single exception.

Q. Had you any intimacies with any family of your brother clergymen? A. That is the exception—Dr. Storrs's family.

Q. Otherwise these intimacies were in your own parish? A. Altogether.

Q. During all this time—

Mr. Beach—I suppose he means by that the family intimacies.

Mr. Everts—Yes, I mean these family intimacies. A. Yes, Sir.

Q. Were confined to your parish? A. Yes, Sir.

Q. I was just proceeding to ask a question. During this time have you had a large personal acquaintance with men engaged in public affairs or in the affairs of religion and the Church? A. You mean in the nation at large?

Q. Yes, in the community at large? A. Yes, Sir, I have met very many; I have never formed particular intimacies or acquaintances with many.

Q. Has your correspondence been extensive? A. I should say not, if I should judge from my impression; but if they should begin to hunt over my letters I presume it would be found that I had.

Q. Now, during the last 20 years, Mr. Beecher, what has been the average of public occasions on which you have spoken during the period not embraced by vacation? A. I do not understand that last remark, Sir.

Q. During, say, running back to a time 20 years ago, what has been the average number per week of your public appearances during the times of the year not embraced in vacation? A. Yes, Sir; I should say that from the year 1844 until the year 1873 I have averaged about six times full-grown addresses a week.

Q. That counts two on Sunday and four—? A. During the week; yes, Sir.

Q. During the week? A. Oftentimes two a day, in different periods.

#### MR. BEECHER'S ACQUAINTANCE WITH MR. BOWEN.

Q. When did you first come to be acquainted with Mr. Henry C. Bowen? A. In the year 1847, if that was the year when I came to Brooklyn.

Q. And what relation had he to the religious society—to the charge of which you were before called? A. He was one of the constituent members, and a leading man.

Q. A leading man of the— A. The nascent church.

Q. Of the new project? A. Yes, Sir.

Q. Had you any business relations with him, and in what connection, otherwise than as pastor of the church of which he is a leading member? A. In connection with *The Independent*, and, in one instance, with the equipping of a regiment, which the Plymouth Church substantially did.

Q. At the outset of the war? A. Yes, Sir.

Q. Was Mr. Bowen the proprietor, or part proprietor, of *The Independent* during the whole period of your responsible connection with it? A. He was one—a co-proprietor during all the earlier period, but when I took the editorial charge I think he had become the sole proprietor.

A. And so continued until— A. This time.

Q. You left—until this time, as you understand? A. As I am informed.

Q. Were you intimate associates and friends, and if so, for what period of time? A. The first two weeks that I came to Brooklyn I was the guest of his house, and, subsequent to that, we worked hand in hand for years together in the establishment of the Plymouth Church, he more than any other one man being useful in the fiscal affairs of the church.

Q. During the period of your connection as editor with the paper of which he was proprietor, how close and familiar was your intercourse? A. I saw him almost every day, and was—I may be said to have been very intimate with him.

Q. And in his family also? A. Yes, Sir.

Q. And his family in yours? A. Not so much.

Q. When was your connection of any joint interest with Mr. Bowen dissolved, and in what manner? A. Do you mean when my business relations with him ceased?

Q. Yes. A. I should say in—, I gave notice according to the contract of the end of the contract in September, 1866.

Q. Prior to that time had any attitude of that paper towards yourself made a difference in your disposition toward Mr. Bowen and the newspaper? A. Yes, Sir.

Q. What was that? A. Well, do you ask me what led me finally to break up from the paper?

#### HOW MR. BEECHER CAME TO LEAVE THE INDEPENDENT.

Q. Yes, I ask what situation arose between the paper and yourself that led to a dissolution of your connection? A. During the period of the "Reconstruction Measures," as they were called, and after I had left *The Independent* as editor, it pursued a line which obliged it to criticize me with more or less decision, and in 1866, when I wrote the "Cleveland letter," as it is



called, which was written in August of 1866, *The Independent* criticised me in a manner so severe at a time when the whole public pretty much, with the exception of the Democratic party, were down on me that I felt that a paper that I had helped fashion from its birth was now being used to destroy me, and that I could not, with self-respect, maintain my connection with it; I terminated, therefore, or gave the notice of termination, according to the contract, and left.

Q. At that point, what was the form and extent of your connection—what publications did they make of your— A. I was under contract to furnish one sermon a week, and, I don't remember precisely, but I have an impression that I was also to furnish an article, either editorial or Star Articles, as they were called; I am not positive about that last, but that is my impression.

Q. And that was a definite contract, with pecuniary compensation? A. It was.

Q. And you dissolved it on this occasion? A. It was terminated according to the terms laid down in the contract.

Q. Now, from that time onward, Mr. Beecher, what were your personal relations with Mr. Bowen onward to 1870—to December, 1870? The questions are limited now to that period? A. From what, Sir; from 1866?

Q. After that dissolution of connection with him, what were your personal relations with Mr. Bowen up to December, 1870? A. Well, Sir; they were very much diminished, and there was a very considerable degree of coolness.

Q. Mr. Bowen continued all this time a prominent person in your church, I suppose? A. He was a pew-holder in my church; he was not an active man in the church affairs.

Q. He was a prominent pew-holder? A. Yes, Sir.

#### THE FIRST MEETING OF MR. BEECHER AND MR. TILTON.

Q. Mr. Beecher, when and how did you first form the acquaintance of Mr. Tilton? A. I recollect him, if I recollect aright, while he was an employe of *The New-York Observer*. If I recollect it aright, I became acquainted with him first in his office of reporter—he was a short-hand reporter.

Q. And in what connection with yourself did that employment of his bring him into your acquaintance? A. I don't remember whether he was reporting anything from Plymouth Church Pulpit for other papers; but my first recollection is that Daniel Burgess, then a member of my church and a publisher in New-York, procured him to report sermons for him.

Q. Your sermons? A. My sermons—he having the intention to publish a volume.

Q. And was the young man introduced to you in that connection, as you understand it? A. As I remember—I am—I cannot say about the special time of introduction—

I have known him so long that it seems as though I had known him always since I have been in Brooklyn; it seems as though it runs back very far to my beginning here.

Q. And what was his age and position in life at the time that you knew him first? A. I cannot say what his age—he was extremely—he was youthful, very youthful, and of an engaging manner, and a very comely appearance, and one that—whose address, I know, won my sympathy from the first.

Q. Now, from that time onward, in what forms and to what degree did you come to be associated with him in intercourse or employments? A. I saw him a great deal; I saw him for a year or two before 1860, because he had transferred his relation from *The Observer* to *The Independent*; then I used to see him after that several times a week, when I was in town.

Q. In connection with *The Independent*? A. In connection with *The Independent*.

Q. And how were your personal relations? A. Very cordial.

Q. On both sides? A. On both sides.

Q. How much were you and he in the habit of conferring together in regard to your common interests, or his prospects or purposes? A. Well, we—he was witty and amusing in conversation, and I always chatted with him on such matters before; but I did not come in to what may be called very close personal relations till I assumed the management of the paper in 1861; thereafter, for two years, or three, we were together almost every day.

Q. And was this intimacy of companionship as well as of common interests and employments? A. Well, it was common employments, companionship, and downright loving on my part.

Q. During all this time, how soon did you become aware of any desire or purpose of his to succeed you in *The Independent*? A. Succeed, or supersede, did you say, Sir?

Q. No; succeed? A. Succeed?

Q. Succeed. A. Oh, I don't know that—I have an impression it was my desire that he should, rather than his, that he should.

Q. And you so expressed it to him? A. Yes, Sir.

Q. And when did you first begin to plan and prepare for that position for him? A. It was in the year 1863, Sir.

Q. At that time was he definitely and publicly known as assistant-editor? A. Yes; oh, yes—it was one of the conditions on which I agreed to take the paper, that he should be my assistant.

Q. Made by you? A. Yes, Sir.

Q. When and how was the arrangement made by which you were to decline the place entirely, and in his favor? A. When the proposition to send me to Europe came up, my church were desirous that I should go, but it was necessary that I should have the consent of Mr. Bowen,

with whom I had a contract; and at that time an arrangement was made between me and Mr. Bowen by which I was to give up to him certain vested rights, in regard to that paper, and I was to have the liberty of absence, on condition of corresponding with it. I then also (since we were breaking the old arrangements) entered into one by which I agreed that if Mr. Tilton would take my place on my return, to carry on the paper for the year (my absence being a kind of probationary period of managing it), I would allow my name to stand for a year as nominal editor, and then he was to continue the editorship of it under his own name.

Q. And you withdraw? A. I was to withdraw.

Q. You were to withdraw as editor? A. I to withdraw my name as editor, and to withdraw my services as editor.

Q. But I understand you continued to have certain contracts for literary services? A. Yes, Sir.

Q. But you were to terminate, and did terminate that relation? A. Yes, Sir.

Q. This then was 1863 or 1864? A. Yes, Sir; I returned in the Autumn of 1863, and I was only nominal editor in 1864, though I had the right at any time in 1864 to put whatever I chose into the paper, editorially.

#### THE DEBATE BETWEEN MR. BEECHER AND MR. TILTON IN PLYMOUTH CHURCH.

Q. Now, prior to this time, Mr. Beecher, had there been an occasion when Mr. Tilton and yourself had come into some competition or collision in a public debate? A. Yes, Sir, in 1860.

Q. What was that occasion? A. The occasion was the question in Plymouth Church whether we should contribute funds to the American Board of Commissioners for Foreign Missions—a debate, I think, of three days, terminated by a general meeting in the church; I don't know but it was two days—two nights in the lecture-room and a third in the church; but that is not important.

Q. It was an occasion of publicity and interest? A. Yes, Sir; I can give you a brief statement of it, if you wish it.

Q. The point of controversy was what? A. The general point in controversy was whether Plymouth Church, which had signalized its devotion to the Anti-Slavery cause, should contribute to the American Missionary Association exclusively, which was an Anti-Slavery Missionary Society, or to divide its contributions between that Society and the American Board, which was then accused of being Pro-Slavery, or trimming. That gave rise to a very animated discussion among our people; and I did not speak on the subject during the time it was in the lecture-room, I think; but I did in the church, and was replied to by Mr. Tilton.

Q. And on that occasion there was a considerable

antagonism between you and Mr. Tilton, in views, and in their expression, was there? A. Yes, Sir; nothing that transcended what I see here in court at all. [Mr. Beach smiled.] A perfectly kindly feeling, expressed sometimes rather positively.

Q. Now, on this question, which side were you on, and which side was Mr. Tilton on? A. Mr. Tilton was in favor of throwing over the American Board; I was in favor of maintaining the right of my people to contribute to it if they wanted to.

Q. And had your society a habit of contributing to that? A. That was the old standing Board with us, and it was through my grace and favor that the other one ever got its ears inside the church; for it was a most unpopular thing at that time to pay a cent publicly for abolition purposes.

Mr. Beach—It was the old standing Board that was pro-slavery, I understand.

The Witness—It was alleged to be.

Mr. Evarts—And Mr. Tilton was on the other side, for the exclusive contribution to the new Anti-Slavery organization? A. I don't think that the debate showed that, Sir; that of course would be the moral effect; if I recollect right, Mr. Tilton confined himself to showing that the American Board was in complicity with Slavery; I think that was the drift of his argument.

Q. That was the matter agitated between him and you? A. Yes, Sir.

Q. What was the result in the church? A. O, the vote was in favor of maintaining the American Board; both of the societies were the beneficiaries of the church, and that state of things was to be continued by the church just as it had been.

Q. Just as it had been? A. Yes, Sir.

Q. The proposition was to cut off the old Board? A. Yes, Sir.

Q. And the resolution was to continue it? A. Yes, to continue it.

#### MR. TILTON'S SERVICE IN BEHALF OF MR. BEECHER'S SON.

Q. As before. Now, on that occasion, Mr. Beecher, at or about that time did you perceive in Mr. Tilton any growing views of rivalry or superiority on his part in respect to you?

Mr. Beach—I must object to that.

The Witness—No, Sir; I didn't believe in any such thing; I heard it often said, but I never believed it.

Mr. Beach—I don't think that is proper, Mr. Evarts.

Mr. Evarts—It has all been up in Mr. Tilton's examination.

Mr. Beach—I know you cross-examined him on that point, but you cannot ask this witness's observations or conclusions. We must have instances and facts.

Mr. Evarts—Now, at or about this time—this was about 1860, I think—did there come to be any interruption of

Mr. Tilton's intimacy or visiting at your house? A. In 1860, during the debate, do you mean?

Q. About this time; I am not speaking of this in connection with the debate; I am not referring to this; but I am only referring to the time of 1860 or 1861? A. Yes, Sir; I cannot say there was any very great interruption, because Mr. Tilton was never very much at my house; it was not a regular resort of his; we met at his house (but somewhat later) and at the office, or in the street, or in the picture shops, or wherever we had agreed to meet.

Q. Well, did there come to be an occasion or period after which he ceased entirely to be a visitor or caller at your house? A. Yes, Sir; but I cannot fix the date.

Q. And from that occasion, or that occurrence, it so continued until—? A. Yes, Sir.

Q. 1870—without any renewal of his habit of visiting at your house? A. Yes, Sir.

Q. About this time, early in the war, was there any occasion in which Mr. Tilton performed any act of kindness or friendship to you or your family that specially impressed you? A. Yes, Sir.

Q. And was the occasion of your feeling and expressing gratitude? A. Yes, Sir; he was always doing me little kindnesses that were very agreeable; but there was one that stood out beyond all others and was very specially valuable to me.

Q. And that was in reference to your son? A. Yes, Sir.

Q. It has been sufficiently referred to. Did you feel it very much? A. I did, and I do.

Q. And did you so express yourself toward him? A. I did, Sir.

The hour of recess having arrived, the Court adjourned until 2 o'clock.

#### THE AFTERNOON SESSION.

After the recess Mr. Beecher was recalled to the witness stand.

Mr. Evarts—If your Honor please, it is somewhat important to us in reference to Mr. Cleveland to have that matter of his testimony definitely understood, either by stipulation or by your Honor's order. We had expected it was to proceed this afternoon about 5 o'clock. I see that our friend Mr. Morris is not at this moment in court, and I may have to interrupt the witness perhaps when he comes in. As your Honor sees this afternoon, it is desirable to have us proceed, of course.

Judge Neilson—The last mention made of it here was that Saturday would be preferred.

Mr. Evarts—Here in court!

Judge Neilson—I think so.

Mr. Beach—No, Sir, no, Sir—Saturday the examination of the Court—

Mr. Evarts—I say in court.

Judge Neilson—The last mention made here on the subject.

Mr. Evarts—Yes, Sir, in court; but there was an idea

that we were to begin this afternoon because the witness's health perhaps requires several, at least two, sessions to take his testimony.

Judge Neilson—The only order I could make would be upon an affidavit which Mr. Shearman might prepare.

Mr. Evarts—Yes, that we understood; but that we supposed was not considered necessary.

Judge Neilson—No, I suppose not.

Mr. Evarts—So we would like to have it understood one way or the other, whether it is necessary or not. Will the stenographer read the last question and answer, so that we may know where we left off?

The Tribune stenographer's notes, taken before recess, not being in court, the question and answer were read by an *Eagle* reporter.

#### MR. TILTON DENIES INSINUATIONS IMPUTED TO HIM.

Mr. Evarts—Yes, I remember the subject. [To the Witness.] Now, in 1865, Mr. Beecher, or 1866, when the Cleveland letter and the comments of *The Independent*, which have been given in evidence on both sides here, were made public, did that affect, in any way, the relations between Mr. Tilton and yourself personally? A. Undoubtedly it produced some effect, Sir; but it did not produce any such effect as socially to separate us.

Q. Now, do you remember about that time in the year 1865, perhaps it was, an interview with Mr. Tilton, that had something to do with an interview he had had with Mr. Judson? A. I do, Sir.

Q. Mr. Judson was a witness on the stand, you remember, in this case? A. No, I was not present when he was—

Q. Well, I mean that Mr. Judson who has been a witness here? A. Yes, Sir.

Q. Now, what occurred between you and Mr. Tilton in that connection? A. I went over to *The Independent* office with some excitement, and told Mr. Tilton that Mr. Judson—

Q. You had seen Mr. Judson? A. That Mr. Judson had been at my house that morning and had reported that he, Mr. Tilton, had, as I recollect now, at a restaurant, while dining, made some statement respecting me—which bore an imputation of immorality; as I now recollect it was a statement of certain loose conduct with women.

Q. Yes; well? A. But, I will not be perfectly certain about it; and I came right to him with the matter, with some strong exclamations—he said that it was not true; that Mr. Judson either had—there was some mistake; that he would go right out and see Mr. Judson and know what the matter meant. He went, and after a time returned, or, at any rate, within a short time I saw him; he said that it was all a mistake; that Mr. Judson had explained the matter, and that the whole

thing was an utter mistake; that he had never made any such use—made use of any such language in respect to me.

Q. Did that end the matter? A. Yes, Sir.

Q. Between you and him, and remove the impression from your mind that he had said so?

Mr. Beach—I object to that, Sir.

#### MR. TILTON'S GRATITUDE FOR MR. BEECHER'S BENEFITS.

By Mr. Evarts—Well, it is not material.

Now, was this the time, about the time that he wrote you a letter—[handing witness a letter.] Look at that letter, and say if you received it from Mr. Tilton at or about the time it bears date. A. Shall I state the circumstances under which it was written?

Q. So far as they proceed from Mr. Tilton. A. We had some conversation afterward, Mr. Tilton and I, about that matter and about whether it was friendly or not friendly, and our terms of intercourse; and it was a very cordial meeting to me and very satisfying one; and it was said between us that there might be misconceptions on either—the part of either's friends. "Suppose you write and express to me your feeling, and I will express my own to you," and with that kind of lovers' quarrel, he wrote me this letter; and that was the end of it.

Mr. Evarts—You received it? [Reading.]

MIDNIGHT, BROOKLYN, Nov. 30, 1865.

Rev. Henry Ward Beecher.

MY DEAR FRIEND: Returning home late to-night, I cannot go to bed without writing you a letter. Twice I have been forced to appear as your antagonist before the public, the occasions five years apart. After the first I am sure our friendship, instead of being maimed, was strengthened; after this last, if I may guess your heart by knowing mine, I am sure the old love waxes instead of wanes. Two or three days ago, I know not how impelled, I took out of its hiding place your sweet and precious letter written to me from England, containing an affectionate message which you wished should live and testify after your death. To-night I have been thinking that in case I should die first, which is equally probable, I ought to leave in your hand my last will and testament of reciprocated love. My friend, from my boyhood up you have been to me what no other man has been, what no other man can be. While I was a student the influence of your mind on mine was greater than all books and all teachers. The intimacy with which you honored me for twelve years has been, next to my wife and family, the chief affection of my life. By you I was baptized; by you married; you are my minister, teacher, father, brother, friend, companion. The debt I owe you I can never pay. My religious life, my intellectual development, my open door of opportunity for labor, my public reputation—all these, my dear friend, I owe in so great a degree to your own kindness that my gratitude cannot be written in words, but must be expressed only in love.

Then, what hours we have had together! What arm-in-arm wanderings about the streets! What hunts for pictures and books! What mutual revelations and communings! What interminglings of mirth, of tears, of prayers!

The more I think back upon this friendship, the more am I convinced that not your public position, not your fame, not your genius, but just your affection has been the secret of the bond between us. For, whether you had been high or low, great or common, I believe that my heart, knowing its mate, would have loved you exactly the same. Now, therefore, I want to say that if, either long ago or lately, any word of mine, whether spoken or printed, whether public or private, has given you pain, I beg you to blot it from your memory and to write your forgiveness in its place. Moreover, if I should die leaving you alive, I ask you to love my children for their father's sake, who has taught them to reverence you and to regard you as the man of men.

One thing more; my religious experiences have never been more refreshing than during the last year. Never before have I had such fair and winning thoughts of the other life. With those thoughts you stand connected in a strange and beautiful way. I believe human friendship outlasts human life. Our friendship is yet of the earth, earthy; but it shall one day stand uplifted above mortality, safe, without scar or flaw, without a breath to blot or a suspicion to endanger it.

Meanwhile, O, my friend, may our Father in heaven bless you on the earth, guide you, strengthen you, illumine you, and at last crown you with the everlasting crown. And, now, good night; and sweet be your dreams of your unworthy but eternal friend,

THEODORE TILTON.

Mr. Evarts—What is the number?

Mr. Shearman—D, 126. [Letter marked "D, 126."]

Mr. Evarts—From the period onward from 1866 to the month of December, 1870, Mr. Beecher, what were the habits as to meeting or associating in one another's company between you and Mr. Tilton? A. Will you mention the dates again?

Q. From 1866 onward to the month of December, 1870? A. Well, Sir, we were in quite frequent association up till, perhaps, the year 1870; I met him in New-York, I met him at his own house, and I met him at divers meetings and on public occasions.

Q. Do you remember in the year, or after you took charge of *The Christian Union* in the beginning of 1870, and on through that year of 1870 did the fact of your being then an editor of a religious paper in the same sphere make any difference either in the frequency or the occasions of your meeting with Mr. Tilton, who was editing *The Independent*?

Mr. Beach—I think, Sir, that that calls for a judgment of the witness; that we should have the facts in regard to their intimacy or intercourse, or otherwise, without asking the witness to determine what was the cause of it—without giving us some statements of fact.

The Witness—I will state the fact, Sir.

Mr. Evarts—Subsequent to your becoming an editor of another newspaper, did the circumstances of your intercourse change in any way? A. I had no connection with him from July, about, until the end of the year—from January to that time; I have no recollection about either particular intimacy or the absence of it.

THE FRIENDS' RESPECTIVE ATTITUDE ON  
WOMAN'S SUFFRAGE.

Mr. Fullerton—You speak of 1870? A. Of the year 1870, Sir.

Q. Now, do you remember in the Winter of the year 1870 any situation you were brought into with him in regard to the different Women's Suffrage Associations, or was that in 1869? A. That is in 1869, Sir.

Q. Well, how was that matter of these women's suffrage societies in the year 1869? A. In reference to him and me, or with reference to themselves?

Q. Yes, with reference to him and you, and your relations to the two societies—what were the two societies? A. My association—

Mr. Beach—I don't see, Sir, how his connections with the suffrage societies are important here, except so far as he had connection with Mr. Tilton concerning them.

Mr. Evarts—Well, that is all I propose.

Judge Neilson—Well, it is with reference to that.

Mr. Evarts—It is very brief, and only in this connection.

The Witness—We co-operated on the subject up till 1869, he having meetings at his house of what was then the Equal Rights Association; there were several forms which it took in difference of names, but in 1869, what is called the Boston wing of the Female Suffragists had a convention in Cleveland, and formed a National Society, of which I was elected President, not knowing that there claimed to be another National Association in New-York by the New-York wing, and I thus found myself between two Female National Societies—I a President of the one, and I don't remember who was the President of the other; that after I had consented to let my name go before the Convention I recollect having discussions with Mr. Tilton, and that he was very urgent that I should not do it, and almost persuaded me to send a telegram withdrawing my name. After the formation of that society, and before the next May, a more thorough organization into a National Society by the absorption of the Equal Rights Society into a National one was formed by the New-York wing, and Mr. Tilton was elected the President of that, and in the May anniversaries of 1870 we appeared respectively at the head of our charges in two contiguous halls in New-York, and exchanged letters of courtesy, the overture proceeding from him to us, and then there was a courteous reply from us to him and his associates.

Mr. Beach—May anniversaries of 1870? A. May of 1870, I think it was.

## MR. PAIGE'S PORTRAIT OF MR. BEECHER.

Mr. Evarts—There has a letter been put in evidence already, Mr. Beecher, from you to Mr. Tilton, on the subject of religious opinions or religious experience. [To plaintiff's counsel.] Have you got that letter? [Letter produced.] That is "Exhibit D, 64," as

already marked; just look at that, if you please, so as to recall the nature of the letter to your mind. [Handing letter to witness.] A. I recall the letter.

Q. Now, that started by referring to a conversation, does it not? A. Yes.

Q. I will ask, however, another branch of the matter before I bring that in in that connection; I will go on now with these personal matters. You remember the occurrence of sitting for a portrait, to the artist Mr. Paige? A. I do.

Q. When was that? A. If you will allow me to look at my memorandum; I have got it here.

Mr. Evarts—I suppose there is no objection to his referring to his memorandum.

The Witness—It was this—1868-69; the Fall of 1868, and the Winter-Spring—early Winter—season of 1869.

Q. How did that come about between you and Mr. Tilton? A. I have no distinct recollection, except that he was desirous of having me go to Mr. Paige to sit for my portrait.

Q. Was Mr. Paige a friend of his? A. Yes, I suppose so, Sir; he spoke—he talked a good deal of him.

Q. Was he of yours before that time? A. Only in—he had married a woman from Hartford in whom all our family were interested, and I had met him a few times.

Q. Yes, and during what period, of what number of sittings, did you give this attention to that request? A. I can't give you the number.

Q. Well, was it considerable? A. It was a very great number; I should not—I would not be willing to say that it was more than fifty, but I should hardly be willing to say it was less.

Q. And was Mr. Tilton there at any times? A. Not unfrequently; several times, at any rate.

Q. And after that was finished, that portrait, did you see it in Mr. Tilton's house? A. I cannot say; my impressions are that I did.

MR. TILTON'S SERVICES IN PLYMOUTH  
CHURCH.

Q. Now, Mr. Beecher, what was the relation between Mr. Tilton and yourself, and Plymouth Church, from your early acquaintance with him onward: when did he become a member of the church, and how was he as to sharing in the religious duties of the church, and its benevolent action in the early days? A. In the early days, Sir—I cannot say when he joined; it was early—my impression is that he joined the church before he was married, and he was married in 1851.

Q. 1855? A. No; his wife joined the church in 1851; I don't know the—I have no record or anything else of his joining it.

Q. Previous to his marriage? A. She joined it.

Q. Previous to his marriage? A. Well, I have very little recollection, Sir, of his connection with the church previous; I only know that at a very early day he was,

for a limited period either the Superintendent or Second Superintendent of the Sunday-school, and I recollect that he used to be in our Friday night prayer meetings, which were conversation meetings, or conference meetings, as they call them in New-England, and used to take part both in speaking and in prayer, and I looked upon him as one of the men in the church that was destined to be very useful, and he continued to be useful, particularly in Sabbath-school work—well, I know not how many years.

Q. And up to about what time did this cordial or devout relation to the church continue? A. I think, Sir, that about the time Mr. Tilton began to be a public speaker he found himself so much absent and so much called upon that he gradually fell off from attending church—I should say somewhere before 1860—not that he absented himself or was regarded with disfavor, but that in the number of his employments, and in the nature of them, it was not in his way to be at church constantly as persons were that lived in town all the time.

Q. Well, when did you first know of any modification or changes of his religious opinions, on matters of faith or of church organization and action? A. Well, I think it was after he and I were on *The Independent* together, Sir.

Q. And were those matters among the subjects of your conversations and conferences? A. Not in the form perhaps which your question implies; the general themes of religious life and beliefs was a matter of conversation a great deal with us, more particularly in its relations to psychology, the practical development of it, and its adaptation to the times, the present time in which we live; I never recollect to have had a strictly doctrinal conversation with him—very likely my fault.

Q. Well, prior to the time at which this letter was written, which you perceive is 1867, had you become aware of changes in his religious faith or doubts in his mind concerning the substance of his former faith? A. I had.

Q. And in what way had you become aware of that? A. I found that his wife was distressed on the matter; I was called as pastor to confer about it; I never expostulated with him and so brought it out, and I accounted it simply that drift which a fruitful young mind takes often when passing through the transition from traditional beliefs to personal, and his own beliefs, and I believed that time and experience would certainly rectify it.

Q. And it was in that period that this letter was written? A. In that period, but the special occasion, if I do not misremember—I state it subject to correction—after assuming the responsibility of *The Christian Union* there appeared one or two articles—*The Independent*, I should have said. There appeared one or two articles which excited very great alarm, and, to my personal knowledge, excited distrust of him, which I thought was in over measure, and also was injuring the paper (and *The Independent* was always dear to me), and it was brought home to me, because in

the North-West, where my brother, Dr. Edward Beecher, lives, I was held responsible for his aberrations.

Q. For Mr. Tilton's aberrations? A. For Mr. Tilton's; yes, Sir. That led me to have some conversations with him; I don't recall them individually; I only recall them as connected, partly with the anxiety of his household, and partly as connected with his success in the conduct of *The Independent*, and my general idea was not in the slightest degree to circumscribe his liberty of investigation, but to put him upon his guard against accepting and acting upon unripe conclusions.

Q. But it was in that stage of the relations on your part and his opinions, that this letter was written? A. Yes, Sir.

#### MR. CLEVELAND'S TESTIMONY TO BE TAKEN THIS EVENING.

Mr. Shearman—Will your Honor allow me to interrupt the proceedings to say that I understand that Mr. Morris is willing to go to-morrow afternoon, if that will suit your Honor, to take Mr. Cleveland's testimony, and we now stipulate in open court that the testimony may be taken at 5 o'clock to-morrow afternoon; to proceed from day to day if necessary.

Mr. Beach—Well, that is not the stipulation, to proceed from day to day. It will be under your Honor's control when it gets before you.

Mr. Shearman—Oh, I didn't mean literally from day to day.

Mr. Evarts—From time to time.

Mr. Shearman—"From time to time" is preferable.

#### MR. BEECHER'S ACQUAINTANCE WITH THE MOULTONS.

Mr. Evarts—Now, Mr. Beecher, did you form the acquaintance with Mr. Moulton at the time of your sittings for your picture at Paige's? A. I don't know that I can say exactly that, Sir; I had seen him before, but I really did not know who he was until I met him there.

Q. How did it come about that you fell into his company in that relation? A. Mr. Moulton had already sat to Paige for a very excellent likeness, and Mrs. Tilton had been sitting for one also, and several of the family friends, and Mr. Moulton was interested in them all—his partner, Mr. George Robinson, and his wife, I think, were among them—and he went up as one familiar there, and I think perhaps twice or three times we were thrown together, and on going out from the studio we walked all the way down to Fulton Ferry together, and the conversation was very pleasant to me, and created each time a desire to see more of him.

Q. Did you walk more than once in that way? A. I remember once significantly; but my impression is that there were several—

Q. Several times? A. I won't be sure.

Q. Did you find him to be an educated, cultivated man?

A. Yes, Sir; and an acute man, with a good critical turn of mind, fond of art—a connoisseur rather than an artist, and passionately fond, apparently, of literature—able to quote a great deal, a worshiper of James Russell Lowell, and of Shakespeare's sonnets.

Q. And you found him an agreeable companion? A. Most agreeable, Sir.

Q. And formed a respectful opinion of his abilities and culture? A. I did; a very high opinion.

Q. Now, up to the end of 1870, was that the extent and form of your acquaintance with Mr. Moulton? A. Yes, Sir, as I remember.

Q. Prior to December, 1870, had you in any way formed an acquaintance with Mrs. Moulton? A. I knew her as I know a thousand persons, as seeing her in church and knowing her to belong to that set or neighborhood, but without being able to call her name, or more than that. My memory of names is poor, and I see so many people in so many places and am so little a pastor that I think it probable that one-half of my church whom I know to be my church members I could not call by name, and am acquainted with them only to that extent.

Q. You would recognize them as being members of your congregation, but not beyond? A. Yes, Sir; I should place them there.

Q. And that was all that you knew or saw of Mrs. Moulton prior to the time I have inquired about? A. Yes, Sir; I think it is; I don't remember anything else.

#### MR. BEECHER'S FIRST MEETINGS OF MRS. TILTON.

Q. Did you know Mrs. Morse, or Mrs. Richards as she then was, or her daughter Elizabeth, prior to the marriage of the latter? A. I don't remember, Sir.

Q. At the time of the marriage between Miss Richards and Mr. Tilton, of which the ceremony was performed by you, had you any knowledge of, or any personal acquaintance with, Mrs. Tilton? A. I only knew that she belonged to a set of girls that went to school together, and who associated with my daughter—not far from the same age—and that I used to hear Lizzie Richards spoken of among the girls—Annie Freedland and Hattie Beecher and Annie Howard, and all that class of young ladies that were growing up together, but I don't remember that I knew more than that.

Q. What is the age of your daughter, to whom you now refer? A. I don't know, Sir.

Q. Well, you know about it? A. No; I could not tell, I don't believe, within ten years. [Laughter.] She was born before I went to Indianapolis.

Q. Well, that will give us some idea. A. Yes, Sir; she was born before 184—what time did I say I went to Indianapolis?

Q. About 1840? A. No, 1836—

Q. About 1839, according to your chronology, you went

to Indianapolis? A. Yes, Sir; well, she was nearly a year old then—if you will be kind enough to cipher.

Mr. Fullerton—She is about thirty-five.

Mr. Evans—Thirty-six or seven.

Mr. Beach—Oh, you are making her older than she is.

The Witness—That is a part of the domestic economy that I spoke of as being remitted to my wife's attention entirely. [Laughter.]

Q. And that is all that you knew about this young Miss Richards, that she belonged to that set of girls? A. That is all that I now recall.

Q. At the time of the wedding, therefore, your interest in the affair was mainly, so far as personal acquaintance went, in Mr. Tilton? A. No, Sir; I remember that wedding as I would a beautiful picture; I was interested in Mr. Tilton, of course, and I was interested in the young lady, who was a member of my church, but I recall their coming into the church and their coming forward, and I recall distinctly feeling that it was one of the fairest pairs that I had ever married, and I had very strong sympathetic hopes for their future.

#### MR. TILTON SOLICITS VISITS FROM MR. BEECHER.

Q. Now, after their marriage, when first did you come to be brought into their home? A. I could not say—not immediately.

Q. When they lived in Oxford street how much? A. I visited twice, I think, only, there.

Q. Only twice there? A. I think only twice. I remember once, and I have an impression of again.

Q. And that visit, was it upon invitation or upon a suggestion? A. I have no recollection about the circumstances.

Q. Nothing occurred that is of any moment? A. No, Sir; the circumstances are gone, except the fact that I did.

Q. After they removed to Mrs.—after they returned from Oxford street to Mrs. Morse's house, and before they went to their own house in Livingston street, did you then visit them? A. Yes, Sir; I visited them there quite frequently.

Q. That brought them nearer to your home? A. Nearer; and I had been also gently and very kindly urged by Mr. Tilton.

Q. Now, in what form and at what time was it that Mr. Tilton began to invite or desire your visits to his house? A. I have not particularly looked back, but I should say, from my general impression of it, that it was as early as 1860, or about that time—when we began to be together a good deal in our editorial relations—perhaps it might have been a little earlier than that.

Q. But, as a matter of fact, not until after they went to Mrs. Morse's from Oxford-st. were you in the habit of visiting there? A. I don't think I was, Sir.

Q. How did Mr. Tilton speak on the subject of desiring

your visits at his house, or your better acquaintance with his wife? A. Well, he spoke very admiringly and simply of her; I mean by simply, I recollect having a pleasant feeling of how every man thinks that he has found the one woman of all the world; I recollect once, when he had been talking to me, thinking what a blessed constitution that was; and I recollect another time when he spoke of himself as being the fortunate diver of all others—he had brought up the pearl—and I recollect his speaking in this wise on one occasion: "You have no idea what a wife I have got;" and I have heard him say—he said to me on divers occasions: "Why don't you come down and see me just as you do your other friends?" I made the same reply to him that I make to a great many that have given me such invitations. He said: "We will do just as much for you as they will." And I replied: "I am afraid you will do too much; that is my great trouble in visiting where there is excitement; I cannot bear it in addition to my other work, and I must go where there is quiet." "Well," said he, "you shall be just as quiet as you are a mind to; we won't do anything for you." And on other occasions I recollect he said of his wife: "There is one little woman down at my house that loves you more than you have any idea of." And I heard him say on another occasion: "Lib"—no, something to this effect: "You have as fast a friend in Lib as one needs;" or something to that effect.

#### MR. BEECHER'S GIFTS TO MRS. TILTON.

Q. When did you first come to have a personal acquaintance with Mrs. Tilton, so that you understood her qualities of mind and character? A. I think it must have been subsequent to 1860; I have no very vivid recollection of visits made there, although I—that is, no special recollection; I have a general recollection that I was there more and more frequently, going there—

Q. Up to what period is it that you have no recollection? A. Up to the period 1863.

Q. Yes? A. On returning from Europe I recollect distinctly thinking of the personal friends to whom I should like to give a little souvenir of my foreign journey, and her name occurred to me, which could not have been unless I had been more or less in the habit of frequent, or quite frequent, intercourse.

Q. Did you on your return from Europe bring a variety of souvenirs for various persons? A. Yes, Sir; I brought moss-agates and garnets and various wood carvings—all that bric-a-bac folly that travelers that have never been abroad but once bring home with them.

Q. And on that occasion did you make a gift to Mrs. Tilton? A. I did.

Q. Of what? A. A topaz—a Brazilian topaz brooch.

Q. And you remember the fact and the occasion? A. I do. When I gave it to her she thought it was a pill-box that I had brought home from her husband, with pills. [Laughter.]

Q. Spoke of it in that way? A. Yes, Sir; I gave it to her and she did not look at it, and I was going away and I said to her, "Hadn't you better look at that?" and she opened it and burst out laughing—an immoderate laugh—and said I, "What is the matter?" I was a little abashed. "Well," she said, "I asked Dorey to bring me home some pills, and I thought he had sent them home by you." [Laughter.]

Q. Before that time do you remember any occasion of any gift or remembrancer from you? A. No, Sir. I had made presents to her husband, but not to her that I remember.

Q. When was it that the picture of the trailing arbutus was given—was that before this? A. That depends—that was about the time that they moved into their new house.

Q. They went into new house in 1866? A. Yes, Sir.

Q. That was my impression. Now, during the period while they were living at Mrs. Morse's, before they moved into the present Livingston-st. house, had you become an habitual visitor at their house, or was it subsequent to that after they went into the Livingston-st. house? A. I visited them a good deal at their house at Mrs. Morse's; I don't know but that I visited them as much there as I did subsequently.

Q. After their moving into their house, 174 Livingston-st., as it is now called, I think, do you remember an occasion of the gift of a picture and to whom that gift was made by you of a picture? A. I do not recall at this moment any picture but that of the trailing arbutus.

Q. Well, that was a picture? A. Yes, Sir; that was a very beautiful picture.

Q. Yes. Well, what was the presentation of that? A. Do you mean what was the history that led to it?

Q. What was the manner or form in which it was given? A. I was—I had written "Norwood," and in the earlier chapters of it I was about in despair, and I needed somebody or other that would not be critical, and that would praise it, to give me courage to go on with it, and I recollect going down to Mrs. Tilton once or twice in the opening chapters and read them to her, to see what impression they would produce. She was good enough to speak very enthusiastically of them, and was particularly delighted with that scene in which the heroine was born, when the old doctor had gone out into the fields and gathered a crown of trailing arbutus, and laid it by the side of the bed, that when the child was born she should find her crown, or he, as the case might be. She was especially delighted with that idea; and when the subsequent—the next time I visited Boston, and saw this by Miss Robbins—

Q. This picture? A. This picture—a charming one—it recalled her admiration of that chapter, and, partly as a contribution to the new house, and partly as a souvenir of that literary interview, I took it down and gave it to her.

Q. In what form or manner was it given? A. I don't



remember in any other way than I would give a picture to anybody.

Q. Well, did you put it yourself where it was hung? A. I have some recollection of counseling about that—I think, though, I set it upon the mantelpiece in the back parlor, and subsequently it was hung—I do not—

Q. Hung in that parlor? A. Yes.

Q. It was a framed picture? A. Yes, Sir; a picture about two feet long and about eight or ten inches wide, one of these long, side-long pictures.

Q. And it was a decoration on the wall of the house? A. Yes, Sir; I recollect its hanging there, and I recollect being afterwards there when it was not there.

Q. These presents that you brought from Europe were not confined to your own family? A. Oh! no, Sir.

Q. They extended to— A. I presented I suppose thirty or forty.

Q. Among your acquaintances? A. Yes, Sir; among the children of the families where I had been intimate, and among persons that I had frequently met, and with whom I had, in various ways, labored.

#### MR. BEECHER'S VISITS TO THE LIVINGSTON-ST. HOUSE.

Q. Now, during the period of the residence of this family at their last house in Livingston-st., what was the manner of your visits there, Mr. Beecher, say on to the year 1870? A. I cannot exactly tell the manner, because I don't know as there was any special manner, one way or the other. I know that the Post-Office used to be on the corner—near the corner of Washington-st. and Court, and that my habit was then to go down and take my letters—after I had got through my morning study—to take my letters in my hands, and read them as I went along, and drop in there for a half hour in the morning, or along there, and then make any little calls that I wanted to make, and frequently I rounded—I went over the ferry to New-York, and came back home to my dinner. It was a little exercise—a walk after my literary work of the morning.

Q. Was your habit then to complete your work in the morning? A. I have always been an early riser and an early worker.

Q. And you completed your literary work early? A. Yes, Sir; by ten o'clock I usually am done with my study.

Q. And then you went out for recreation or exercise? A. Yes, Sir, for exercise, or on errands, or to my editorial work, or any other.

Q. So that whatever calls you did make at this house were, as you understand, at that time of day, and in that connection? A. In the immense majority of instances.

Q. Now, have you any recollection, Mr. Beecher, of any habit of calling there in the evening, or of calls there in the evening? A. No, Sir; I do not, except when there

was company, or some consultation committee; in the years 1867, 1868, and 1869 I may have been there a few times, but it was not only contrary to my habit, but it was impossible; my evenings are mostly engaged in speaking, or in equivalent work.

Q. So that you had no habit of making calls in the evening anywhere? A. No, Sir.

Q. Your familiar calls with others—with other families of your intimates, were they in the daytime usually? A. Almost always, unless I strolled up to friend Howard's in the evening, after meeting with him, but the ordinary little neighborhood calls that I made usually, I made about 5 o'clock in the afternoon—I mean near people, near calls.

Q. How frequently did you see Mr. Tilton at his own house, do you think? A. I should think as often—he was there as often as he was not there; that is, I should think that half the time he might have been there, and half the time not, just as the case would be. When he worked in his own house—wrote, as he often did—then he would be at home.

Q. At those hours of your calls? A. Yes, Sir.

Q. Do you remember, early in the year 1870, taking Mrs. Tilton out to drive? A. I do.

Q. And how did the first occasion of that courtesy arise? A. I don't know how it arose; I only know I had bought a pair of fine grays, and it was not yet time to go up to my place, so I was keeping them here for a week or two; I went down one bright morning in the buggy and took her out to the Park; the only other time I recollect was—I don't know whether a fortnight later, but I met Mrs. Morse in the meantime, and she praised me, and begged that I would give Lib a ride, for I had no idea how much good it did her; and before I took the horses up to the farm—

Q. You went there a second time after this conversation with Mrs. Morse? A. I did.

Q. Whom did you see there then? A. Mrs. Tilton.

Q. And Mr. Tilton? A. Him first; I think he was in the window when I drove up, and he saw me come up; I did not get out of the buggy; he talked with me there on various things, that I don't remember; I said to him, "I have come to take Lib out to ride," or "your wife out to ride;" and he called her to the door; she was within the house; I then spoke to her and said, "Mrs. Tilton, I have called to see if you would not like to ride;" she declined, and he playfully reproached her and said: "Go, get your things—go! go! and get your things and take a ride;" thereupon she went in and came out, and I took her to ride.

Q. Did you say at this time anything about what her mother had said? A. I do not recollect.

Q. Now, during that year, 1870, prior to December, do you remember an occasion of being sent for to visit Mrs. Tilton—in August of that year is the time I refer to? A.

August of 1870 I was at Peekskill, and I received a little note from her, saying—

Mr. Fullerton—One moment.

Mr. Evarts—Have you that note? A. No, Sir.

Q. What became of it? A. I do not know, Sir.

Q. Is it lost or destroyed? A. Yes, Sir.

Q. It was not preserved? A. No, Sir.

Q. Well, what of it? A. At her request I went to see her.

Mr. Fullerton—One moment, Mr. Beecher. [After consulting with Mr. Beach.] There is no objection.

Mr. Evarts—I don't ask you what was in it? A. It was simply a request, that being sick she wished I would come and see her.

Q. Did you know she was sick before? A. No, Sir; I don't recollect that I did.

Mr. Beach—Did he say when this was?

Mr. Fullerton—August, 1870.

Mr. Evarts—August, 1870? A. Yes, Sir; I think it was the 4th of August.

Q. You were at Peekskill during vacation. A. Yes, Sir.

Q. In your vacation? A. Yes, Sir.

Q. And how long was it since you had seen her, do you remember? A. I do not remember.

Q. How long had you been up to Peekskill then? A. I can't say from any positive remembrance; I can only judge from my habit.

Q. And you knew nothing to the contrary of your having left here at the usual time that year? A. No, Sir, I had been probably there a fortnight or three weeks.

Q. Did you visit her when you came to town, or did you come to town on purpose? A. I had some other errands, but I came principally on that account, to see her.

Q. What time did you visit her, and how did you find the condition of her health? A. I found her lying in the up-stairs, second story, front room—the receiving room of the house, on the sofa, and she looked very pale and sick, and seemed to be very despondent, and she made some statements to me of her— No, it was not then; I do not recall any particular conversation we had then, except that she said that she was very much depressed in spirits, and she seemed to me like one that wanted to talk, and didn't.

Mr. Beach—I must object, Sir, to such remarks as that. I move to strike all that out.

Judge Neilson—I think the last remark must be stricken out.

Mr. Evarts—It is not important.

[To the Witness]—Well, did she confer with you? A. She conferred with me; not at any considerable length; and I then prayed with her and cheered her the best way I could.

Q. And left? A. And left.

Q. Did you see her again? A. I called the next day.

Q. Well, did you then see her? A. No, Sir.

Q. What occurred in respect of that visit? A. I sent

my name up, and the girl brought down a little bit of paper—a scrap—in which she said something like this, that it was best she should not see me to-day, but that she believed that the future would—that all would be right, or something, in the future.

Q. And that scrap of paper you did not keep? A. No, Sir.

Q. Now, during that Summer and Fall, prior to December, had you any—did you make any visits to or have any interview or meeting with Mrs. Tilton prior to December, 1870—after this August? A. Prior to December?

Q. Prior to December? A. No, Sir.

Q. What time did you return to the city yourself—the usual time? A. I suppose so.

Q. That would be about—? A. October.

Q. October. You have spoken of your coming back after your hay-fever, in October. Do you recover entirely from that malady when you return, or how long does it trouble you? A. Nobody is said to be themselves again until after they have had a very hard frost; but I got so that I could preach the last of September, but I was all the month of October so much invalidated that I always refused lectures, or, as a general thing, I refused lectures until after I went to the White Mountains; I refused to do anything in September and October.

Q. Did the impression of the disease remain upon you during October? A. Yes, Sir; it was all I could possibly do to go through my Sunday services.

Q. During that month? A. During the month of October; although I was gaining gradually every week, all the way.

Q. After clear weather? A. After November set in I always felt I was myself again.

#### MR. BEECHER SEES MRS. TILTON AT HER MOTHER'S.

Q. Now, in December, at, or about, or before the middle of December, 1870, did you have an interview with Mrs. Tilton, and if so, where and under what circumstances? A. I don't know; I have an impression that I did not see Mrs. Tilton after my return; I have an impression that she was out of town; but the first distinct recollection which I have of seeing her is somewhere about the middle of December, and in consequence of a request from her mother.

Q. And by what message and by what messenger were you apprised of her wish to see you? A. Bessie Turner came to my house.

Q. Came to your house, and did you learn where Mrs. Tilton then was? A. I did; that she was at her mother's.

Q. Did you know it before? A. I did not.

Q. Had you before that heard or known of any disposition or purpose of her separating from her husband in any way? A. I never had.

Q. Then what Bessie Turner said to you then was the first intimation or information on the subject that you

had? A. It was a revelation; I never dreamed of it before that I know of.

Q. Now, what did Miss Turner say to you on that occasion?

Mr. Beach—Wait one moment, Sir. [Consults with Mr. Fullerton.] We object to this question, Sir.

Mr. Everts—Consulted with Mr. Tracy and Mr. Shearman. Judge Neilson—How is that evidence, Mr. Everts?

Mr. Everts—My learned friends were in considerable doubt whether they would object, if your Honor please.

Mr. Fullerton—We have no doubt, however, about the validity of the objection.

Mr. Everts—I suppose so; nor of the validity of the evidence, if you had not objected.

Mr. Fullerton—No, if we had consented.

Mr. Everts—Your Honor thinks it is not admissible!

Judge Neilson—Yes.

Mr. Everts—I suppose it is admissible, at least to the extent that in consequence of what was said to him by Miss Turner he went to see Mrs. Tilton?

Judge Neilson—Oh, yes.

Mr. Everts—Well, the details of the conversation, not being allowed to be given, was the result of that, that you visited Mrs. Tilton? A. It was.

Q. Did you, before going, confer with any one else on the subject, or take any one with you? A. Not that I recall; I do not recall speaking to any one of it, and I know I did not take any one with me.

Q. You went to Mrs. Tilton's? A. I went to Mrs. Morse's, and found Mrs. Tilton.

Q. And Mrs. Morse also? A. Yes, Sir.

Q. Did you see them together, or Mrs. Tilton alone? A. Both; on the first visit, I think, I saw them together.

Q. And not Mrs. Tilton apart? A. That is my impression, Sir.

Q. Now, what was the interview between Mrs. Tilton and yourself on that occasion?

#### A CONVERSATION BETWEEN MR. BEECHER AND MRS. TILTON OBJECTED TO.

Mr. Beach—One moment, Sir. [Consults Mr. Fullerton.] We object to that evidence, Sir.

Mr. Everts—I suppose, if your Honor please, the intercourse between the defendant and Mrs. Tilton is the very issue in this case, concerning which any witness that saw them together could testify; and by the same necessity Mr. Beecher himself, being a witness of what passed between them, within his hearing and under his eye, can testify to any intercourse between himself and Mrs. Tilton, during the period of their acquaintance and before the period of this accusation in the end of December, and afterwards, I suppose, also—but certainly before then, as a direct matter in issue in this cause.

Judge Neilson—Even to the extent of their conversation?

Mr. Everts—Yes, Sir; that is, their intercourse; if a witness had heard it he could testify about it here.

Mr. Beach—That is a proposition we dispute.

Mr. Everts—It has no relation, as we understand it, to the question of hearsay evidence. It does not prove that anything Mrs. Tilton said was true, but it proves the intercourse between this defendant, who is accused of improper relations with this lady, and the lady herself, and we have a right I suppose to prove every single act and word that passed between them.

Judge Neilson—You have a right to prove every act, and you can also prove that this witness called on her, saw Mrs. Tilton, either with or without her mother, upon the subject of this separation, or any other subject, and you can add to that whatever did not occur. It seems to me that that is the extent of the interrogatory.

Mr. Everts—The definite way of ascertaining what did occur, affirmatively, and what did not occur, is by showing all that did occur; and I suppose that in this conversation, or others, so far as I know or understand the matter, what your Honor has referred to is all that is substantially material. Mrs. Tilton's statements to this witness, any more than to any other witness, would not be evidence against Mr. Tilton, against her husband here.

Judge Neilson—My only difficulty is the conversation.

Mr. Everts—But as an interview between this defendant and Mrs. Tilton, as a matter of direct affirmative proof of the relations between them, this interview, in common with every interview, it seems to me, may be portrayed in all its circumstances and all its interchanges and words.

Judge Neilson—Can it be done without the conversation; can it be done by the conversation? I think not.

Mr. Everts—The conversation is substantially the action of these two parties towards one another.

#### ARGUMENT OF MR. BEACH.

Mr. Beach—I understand the gentleman to have conceded, Sir, that the declarations made by Mrs. Tilton to the defendant at that time would not be competent evidence of the truth of the facts alleged. If not, upon what principle is it that her declarations are receivable? Why does the gentleman say that all the intercourse between these two parties by the nature of this litigation becomes competent evidence unless that evidence of such intercourse proves the facts which it covers? Now, I deny, Sir, the proposition that the nature of this action, or any rule of evidence, authorizes the defendant to give proof of his intercourse, conversation or actions as connected with Mrs. Tilton. We may give them in evidence; it is admissible upon our part as a portion of our accusing case; but they can give no part of that intercourse—especially no part of the conversation which occurred between these parties in the absence of Mrs. Tilton. Unless the gentleman can furnish us with some authority, or present to your Honor some

principle upon which your Honor can see that this general intercourse and these general conversations may be given in proof, in violation of the ordinary rule, why we submit to your Honor they should be excluded. Certainly the ordinary principles of evidence will exclude them; and I can see nothing in the nature of this action, as yet at least, which will justify the defendant accused of adultery, to exonerate himself by showing conversations he may have had with the victim of his adultery, and producing her declarations in exoneration of himself, if they have been made. Now, I am not disposed to deny, Sir, that where an accusation of this kind is made, the general association of the accused parties, their habits of intercourse when they meet, may be given in evidence, because they are acts which to a very great degree might enable one to draw inferences in regard to the nature of the intercourse or fellow feeling which existed between them; and that, I think, is a very considerable concession in favor of the defense; but I shall not be inclined to deny the admissibility of evidence to that extent. But beyond that I submit to your Honor it is not competent.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—We are entitled, if your Honor please, aside from the ground I have stated (and I do not perceive that my learned friend answers the proposition), that all the conduct between Mr. Beecher and this lady, if it could be portrayed by witnesses, from the time of their first knowledge of each other down to this period of which I am now inquiring, can be given before your Honor and the jury as bearing upon the question; that every act, every word being disclosed, then the conclusion was to be drawn whether there had been guilt, or whether there was innocence. Now, no one would doubt that, if that were possible in human evidence, we should have the perfect means of determining what the relation between this defendant and this lady was and has been from the first time he saw her until the last moment when he was accused. That is not possible; but it is possible, under the present rules of evidence that permits parties to interviews, although they also may be parties to the suit, to be witnesses of what occurred under their own observation, and in their own hearing—to wit, interviews in which they took part, to bring before a court and jury whatever human memory can remember and human language can reproduce; and I apprehend that there never has been any doubt, since this trial was commenced, that what did occur between this defendant and this lady, during the period of their acquaintanceship, was the very matter out of which was to be drawn the conclusion of the jury, whether or no there had been at any moment a guilty act, a guilty word, or a guilty purpose. Now I produce this interview as under that common and general head, and I have heard nothing in the observations of my

learned friend that tends to shake my confidence in that proposition. Of course counsel would not produce anything unless they thought it had some significance, either for or against the charge of guilt. It is not to occupy time nor to spread trivialities before the jury; but in an entirely different relation this evidence is admissible. We are entitled to show it, or else justice never can be administered in respect to this defendant toward this plaintiff, unless in approaching their intervention on this direct field of accusation, such as it may have been, the regrets or explanations, such as they may have been—the actual dealings between this defendant and this lady, known to the plaintiff, are also spread before this jury. So that when you come to the crisis of determination—what conclusions are to be drawn from what passed on the 30th of December, or the 31st of December, or the 1st of January, the attitude, the relation, moral, intellectual, actual, between these three parties may be in your Honor's mind, and in the jurors' minds, and before their eyes, as it was in the mind and before the eyes of this defendant, and form the subject and the inspiring cause of whatever he said or did, whatever he lamented, whatever he regretted. Now, if the matter that passed in the action of this wife, resenting her husband's treatment, and unfolding to her pastor her relations with him (her husband), and then what passed between the pastor and the wife, cannot be brought into evidence, why, then, they who are to judge over both Mr. Tilton in what he knew and what he did, and Mr. Beecher in what he knew and what he did, are to have excluded from their mind their intelligence, their power of appreciation, their power of analysis, their power of intellectual conclusions—what enters into the very marrow of the matter they are here to determine. Now, I have said, and it is too familiar to repeat, that what is recited to a person in the absence of another person does not bind that other person; but it is, nevertheless, just as distinct a fact in its being said to him, and producing upon his mind impressions and results, whether it binds third persons or not. If a messenger from the street rushes into the parlor of a peaceful citizen, and accosts him by saying that he has seen his neighbor coming out of his store with a sword red with the blood of the son of the man to whom he is talking, and that man rises and goes out with a pistol and meets this neighbor with the bloody sword and slays him, it may have been all a lie in respect to the information that was conveyed, or all a mistake; but upon the mental and moral fact that the conduct of the man in going into the street, and meeting and slaying a supposed enemy, whose sword was red with the blood of his son, is to be given in evidence, and has nothing to do with the question of hearsay evidence as affecting third persons—the question is on what statements and on what conclusions or actions from those statements is the conduct which is the subject of inquiry.

based. Now, your Honor and the jury are sufficiently familiar with the general nature of this important fact and state of the relations between Mr. Beecher and this plaintiff at which we have now arrived, and every one sees that the conduct of a wife in thus voluntarily making an issue and a separation from her husband, and resorting with complaints against him to the advice of Mr. Beecher, who stood in the relation of a friend of both, and her pastor, is a fact of grave import, as bearing upon the conclusions which rational men will draw upon the evidence that bears in the direction that at that time this wife was conscious of continued criminality on her part as toward her husband, or continued criminality on her part as with Mr. Beecher. Now, if the fact is an important fact, why then this is a clear mode of proving that fact, and it is the highest mode; it is the highest to this trial; it is the highest to Mr. Beecher, because it shows exactly what the situation was, and what its impression upon his mind, and is in place to have a due operation upon it, and subsequent interviews between Mr. Beecher and Mr. Tilton, in which the whole matter of the general relations between Mr. Beecher and the wife of Mr. Tilton forms the only subject and occasion of the interviews, and everything antecedent to the night of the 30th of December that is significant in respect to the dealing or the intercourse between Mr. Beecher and Mr. Tilton, in the relation of his family, of his interests, whatever they may be in his family, or in his business, is necessarily a composite part of the affair concerning which the interview of the 30th of December was held and about which it is to be judged. And I confess I am quite surprised at hearing an objection on the part of this plaintiff and his counsel to spreading facts which were operative upon Mr. Beecher's mind, and operative upon Mr. Tilton's mind, in this family crisis of Mr. Tilton, and Mr. Beecher's relation to it, and Mr. Tilton's resentments at it, that would exclude that from a trial which has for its purpose to get at the truth, without fear and without favor, as to whether there has been a great crime committed on the part of Mr. Beecher, or whether there has been either a combination of errors and delusions, or of malignant purpose, that has set up the show and appearance of criminality for the purposes of the prosecution. Now, give us the facts; and no man can feel that he can deal justly with the situation between these parties, as it is presented on the 30th of December, when they come together, without being put in possession of what constitutes in the mind of each the relations of each to the other in respect to the family of Mr. Tilton. In the case of *Gilchrist agt. Bale*, (8 Watts, 366; Penn. Supreme Court Reports):

In an action for enticing plaintiff's wife from him, defendants, to disprove the allegation in the declaration that she deserted her husband by their advice and solicitation, offered to prove by her physician that about ten days before she left her husband she complained of his

ill-treatment and showed marks on her arms which she said she received from his beating her, and asked what she should do, and he advised her to leave her husband. *Held*, that these declarations of the wife were admissible in connection with the advice given her by the witness. The general rule that the declarations of a husband and of a wife cannot be received in evidence against each other ["which was the only ground taken against it there,"] either civilly or criminally, cannot be extended to all possible cases, for where no confidence has been violated the law admits of some exceptions.

Now, there you have the precise situation.

Mr. Fullerton—The doctor was not the defendant there, I believe.

Mr. Evarts—That don't make any difference.

Mr. Fullerton—It does make all the difference.

Mr. Evarts—What difference does it make?

Mr. Fullerton—We will tell you soon.

Mr. Evarts—Not in the least. Here is a witness, who is a good witness; whatever he knows, he can swear to. Argument for allowing him to testify, in that he is the party out of whose lips or from whose pen is to be drawn inferences compatible only with guilty relations, when the actual situation of this party to this wife and this husband, and this husband to this wife, is to constitute the determining gauge as to what the relation was, only adds to the importance, and an independent ground why he (this defendant) should be heard. In the 21 Barbour, in our own reports (Bennett v. Smith, 21 Barbour, 439; Supreme Court Reports, 1856; opinion by T. R. Strong, J.):

In an action for enticing away plaintiff's wife, *Held* that the main question being whether defendant prevented the return of the wife to her husband at a certain period, within a few days after the marriage, the declarations of the wife then made expressing her wishes in relation to living with plaintiff as his wife, were admissible as part of the *res gestæ* in connection with other circumstances tending to prove that she was not then under restraint.

[Reading from *Hadley v. Carter*, 8 N. H., 40, 1835; opinion by Upham, J.]

Action by master for enticing away servant. *Held*, that though declarations of a servant, generally, would be inadmissible as hearsay, yet when they were made at the time of his leaving plaintiff's employ and expressive of motive for so doing, they were part of the *res gestæ*, and admissible. In this case his declarations were his communications to the witness of his design to leave, stating his reasons and asking advice.

I don't myself see the force of the other objection. A party can testify like any other witness anything he knows, I suppose.

#### ANSWERING ARGUMENT OF MR. BEACH.

Mr. Beach—I should have been content to have left this question to your Honor's decision without any argument, had it not been for the labored effort of my learned friend, and for the general reflections which he has made in the address to your Honor. Let us first see, Sir, what is the principle announced by the counsel, and what would be its effect upon the general rule of evi-

dence; because, except so far as the doctrine of cotemporaneous complaints, referred to in the last authorities produced by my friend, this question is to be determined in its application to this case precisely the same as to any other issue. My friend says, Sir, and I agree with that proposition, that if we could spread before your Honor, as by a vivid picture of art, all the intercourse between these parties from the time of its commencement to its iniquitous consummation, your Honor and the jury would be able more accurately to judge of the truth of the accusation made by this issue. Well, Sir, that same remark may be made in regard to any issue, no matter what the controversy may be between parties. If it could be presented in all its ramifications and incidents with the clearness and vividness of high pictorial art, why a court and jury could judge perhaps with more accuracy than under those rules of evidence which the wisdom and experience of the past have established. Now, Sir, that vague and dreamy and general way of arguing a legal proposition does not belong to this place and occasion. We are acting under fixed and established rules. It is impossible for us to get that perfect conception of any case which the gentleman supposes, and he admits the impossibility. We must get, then, our conceptions of this case in subordination to those rules and principles established for the administration of justice; and, applying those rules, what part of my friend's address has any application to the question before your Honor? They propose to give in evidence the declarations of this gentleman upon the stand and his alleged mistress, the wife of this plaintiff, in hostility to him. He was not present; they were not repeated to him; in no form have they received his approbation or acknowledgment; yet the accused party will be, if my friend's proposition succeeds, permitted not only to give the conferences and the confidences between himself and his alleged mistress in opposition to the husband, and in violation of a known and acknowledged principle of evidence; what more, Sir! This is to be done, Sir, after, under this proof, the fact of this seduction is established. They propose to give these communications between these guilty parties six months after the wife made her confession of the adultery. They are to be given in evidence two years after the witness on the stand made that confession, or a confession of an adultery committed two years before; and what is your Honor asked to authorize and approve? The parties against whom this evidence of adultery has been given, sufficient to carry this question to the jury, and upon which your Honor must judge, they are to be permitted to give in proof the conferences and confidences as between the guilty parties, in the absence of the accuser, to answer the charge. Well, now, my friend may be surprised that the objection should be made to testimony of this character on the part of the plaintiff; but, Sir, the proposition appears to me to

be astounding. Upon what principle will you do it? Are all the interviews, and is all the spoken intercourse between these parties open to examination upon this issue, as different from any other issue as between the parties? Does a different rule of evidence apply to cases of this kind, except in the particular to which the authorities presented by my friend allude—that is, cotemporaneous complaints, where the wife has been enticed from her husband, or deserts her house? I admit them to be competent, but this class of evidence now offered, Sir, falls under no such exception; but in the cases presented by my learned friend, the declaration is made that these communications between the parties and the declarations of the wife are not to be admitted generally, but only with the limitation of the particular circumstances to which they are applied. Now, your Honor has been appealed to, Sir, upon the ground of truth and justice, and my friend makes loud sounding interrogatories as to why we should be opposed to presenting to this court and jury all the facts. It hardly becomes the counsel, Sir, after the history of this trial, to indulge a reflection of that character. There has been very little effort upon the part of this plaintiff to exclude the facts. There have been very persistent and continual attempts upon the part of this defense to accomplish that object. We ask not to exclude the facts. We are perfectly willing that they should prove the fact of this gentleman's visit to Mrs. Tilton. If he chooses, he may prove any other fact which may be material to this issue, which will enlighten this jury in their deliberations. What we object to is, Sir, that these antagonistic parties, standing together in communion and confederacy in this court, co-operating against this plaintiff, shall be permitted to give their own declarations, made in our absence, in antagonism to us, and we ask your Honor to reflect whether that will be either in the pursuit of law or in the pursuit of truth or justice. I object to this evidence, Sir.

#### JUDGE NEILSON'S DECISION.

Judge Neilson—There is no doubt but that the defendant can testify in this matter precisely as any other witness can testify, and that it is competent for him to state the occasions of his visits, what called him there, and other circumstances connected with them, whom he saw, what occurred, and finally to add anything, upon interrogatory, that did not occur, and so give the jury, as far as that will enable him to do so, the character of the interview and of the intercourse. My only doubt from the first has been about receiving evidence of the independent conversations, conversations that do not form a part of any particular act. I was aware that there had been cases where on the occasion of a wife deserting her husband, her declaration assigning a cause was to be received, because it was a part of the act; and the cases cited are quite as apt. I should be very sorry indeed to make any extreme ruling

in this matter; but I think it leaves you free to prove what occurred to prove visits, and sufficiently to indicate their character, sufficiently to meet the imputation that anything wrong occurs, and all that without giving the conversation. That is how I feel as to this evidence.

#### THE OBJECTION WITHDRAWN AND THE CONVERSATION RECEIVED.

Mr. Beach—I now withdraw the objection and permit the conversation to be given. [Stir in the audience.]

Judge Nelson—Will the audience please be quiet!

Mr. Evarts—Now, Mr. Beecher, you were down at the house, and saw Mrs. Morse and Mrs. Tilton, and you were alone with them, I suppose? A. Yes, Sir.

Q. Now, be so good as to state what occurred there. A. The conversation was very little with Mrs. Tilton; it was almost entirely on the part of Mrs. Morse, in Mrs. Tilton's presence. It consisted in the general representation to me of the great unhappiness of that family.

Q. Of Mr. Tilton's family? A. Of Mr. Tilton's family; of his treatment of his wife, which she had borne, as the mother thought, with angelic patience, until it was no longer tolerable; and that, at last, she had been driven to the resolution of leaving him, and they wished counsel of me as it respects the propriety of such an act as that. I made comparatively few remarks; the interview was not long; I said, "This is a case in which I feel that a man can't give the best counsel; it is a case, it seems to me, where a woman is needed; and if you will allow me I shall be glad to bring my wife and let her hear, for I think much of her judgment about such things." Mrs. Morse—they both seemed quite excited, pleasantly; Mrs. Morse said, "Will she come? I will bless her, if she will come, as long as I live;" I said, "Surely she will come if I wish her;" and that constitutes—about that—the first interview.

Mr. Beach—If your Honor please, I ought to say that, having withdrawn my objection and permitted this conversation to be given, that the same principle of action will lead me to withdraw the objection which I made to an interview between the witness and Miss Bessie Turner. I do withdraw that objection, and offer to the counsel the privilege of proving all that was said at that interview.

Mr. Evarts—Now, Mr. Beecher—

Mr. Fullerton—One moment. The relation of what took place there ought to be stated with particularity, not in general terms, that Mrs. Morse made great complaints against Mr. Tilton in regard to the family.

Mr. Beach—We will get at that.

Mr. Evarts—You have a right to cross-examine on that. I have no objection. I will ask him [to the witness], can you state more particularly, Mr. Beecher, that conversation? A. I don't think I can, Sir; I have only a general recollection of it.

#### MRS. BEECHER'S ADVICE TO THE TROUBLED WIFE.

Q. Now, when did you next see Mrs. Tilton in connection with this subject, and with whom, and what occurred then? A. I think it was the next day, Sir; with my wife I visited them.

Q. You communicated to your wife what had happened, I suppose? A. I did.

Q. And then you went together? A. We went together.

Q. And whom did you see? A. Mrs. Morse and Mrs. Tilton.

Q. What occurred then? A. I am not clear as to the whole. The two circumstances that I recall are that after a few general remarks—and what they were I don't remember—Mrs. Tilton went up stairs with my wife, and they had an interview by themselves, Mrs. Morse staying with me, and repeating—

Q. Well, no matter. A. Charges and so on. Then after, I should think, about a half hour, Mrs. Tilton came down, and Mrs. Morse—

Q. Did Mrs. Beecher come with her? A. No, Sir; and Mrs. Morse went up to see her by herself, leaving her—

Q. Went up to see Mrs. Beecher? A. Yes, Sir—and myself. I have a recollection of only one single thing that I said to Mrs. Tilton.

Q. When alone? A. When alone. "How is it," I said, "that I have been so long with you and you never alluded before to me about distress in your household?" And she said that she—her general answer—I cannot give her words—was that she sought to conceal, in the hope that the difficulty would pass away; and then I talked to her in respect to the household relations. I recollect giving her some counsel as to bearing and continuing patient. "Let patience have her perfect work," and I joined with her in prayer, and most of the time that I was with her I was praying with her.

Q. On this occasion? A. While my wife and Mrs. Morse—their interview was not a prolonged one—up stairs.

Q. Well, did your wife and Mrs. Morse return to the room where Mrs. Tilton was? A. I don't remember about Mrs. Morse. My wife came down stairs, and after some few general remarks we said—I said, in behalf of myself and wife, that we would think this over and in a very short time give them some final word, that probably we would see them again.

Q. And then you left? A. Then I left, and the day, following that we had talked it all over between ourselves—

Q. That is Mrs. Beecher and yourself? A. Mrs. Beecher and I, and we agreed substantially in regard to the whole duty of the household and the relations of husbands and wives, and I said to her: "It is better that you should"—

Mr. Beach—To whom?

The Witness—What, Sir.

Mr. Beach—To whom did you say?

The Witness—The relation of husbands and wives—

Mr. Beach—To whom did you speak?

The Witness—I was talking to my wife at home after counselling with her.

Mr. Beach—I think we had better not have that conversation in detail.

Mr. Evarts—No; that I agree.

The Witness—After that consultation with my wife she was to go down again, and she went down while I was in company.

Q. That is, when you had company at your house? A. Yes, Sir; I was talking with several; she had her things on; she came and asked me—told me that she was going down. I could not allude to the subject without betraying it. I went to my table and wrote a little scrap, saying—

Mr. Beach—That has been put in evidence.

Mr. Fullerton—No.

Mr. Beach—I thought it had.

Mr. Fullerton—Oh, no; it has not.

Mr. Evarts—Well, here it is. It is in our minds, you know, because it is in the statement.

Mr. Beach—Well, I should be very sorry to believe that was evidence.

Mr. Evarts—How do you suppose it got in there?

Mr. Beach—It must be through you, I think.

The Witness—[Taking the note]—I wrote her this note.

Q. You gave that to your wife to take to— A. I gave that to my wife, not to be read to them, but as my judgment to her as to what I thought was best to be done—in that sense sent to them.

Mr. Beach—Do you know whether this was presented to Mrs. Tilton from your own knowledge?

The Witness—Only from my wife's statement.

Mr. Beach—We must object to that, gentlemen.

Mr. Evarts—You did not go with your wife, Mr. Beecher? A. I did not.

Q. Were you detained by your company or—? A. No Sir, not altogether; I was by my company, but I felt as though she—

Mr. Beach—Wait one moment.

Mr. Evarts—Whether you would have gone but for your company, or was Mrs. Beecher—

Mr. Beach—Wait one moment. I object to the question.

Mr. Evarts—Did you give this to your wife as your conclusion upon the right and duty of Mrs. Tilton? A. I did.

A. And this expresses the conclusion that you then came to? A. Yes, Sir.

[Mr. Beach and Mr. Evarts here consulted together, looking at the letter.]

Mr. Evarts—Well, you may state as far as this—if that expresses the conclusion you came to and the advice you gave so far as that goes—without reference to the latter part of it. [Showing witness a portion of the letter.] A. Yes, Sir.

Q. That was the conclusion and advice as to what ought

to be done? A. That was the conclusion, and the balance is the reasons that I gave.

Q. Exactly. Leave that out. The conclusion as to the advice, what was best to be done? A. Yes, Sir.

Mr. Beach—Now, you can read that part of it without objection.

Mr. Evarts—[Reading]—"I incline to think that your view is right and that a separation and a settlement of support {underscored} will be wisest." [To the witness.] By "your view," you mean Mrs. Beecher's view? A. I do—did.

Q. And this is a memorandum of the conclusion and advice you then came to? A. It is.

Q. And was written at the time? A. It was.

Mr. Fullerton—It ought to be understood that the paper is in evidence only so far as it is read.

Mr. Beach—The paper is not in at all.

Mr. Evarts—It is not necessary to put the paper in evidence at all.

Judge Nelson—You will have it on the minutes; that is all that is necessary. Get ready to retire, gentlemen.

The Clerk [Mr. Mallison]—The jurors can obtain their fees for the month of March by calling at the office of the County Treasurer in the room below, between 9 and 10 o'clock.

The Court then adjourned to Friday morning at 11 o'clock.

## FIFTY-SEVENTH DAY'S PROCEEDINGS.

### MR. BEECHER'S SOLEMN DENIAL OF GUILT.

THE FIVE GREAT EVENTS OF THE SCANDAL DESCRIBED BY THE DEFENDANT—THE FIRST CHARGE OF MR. TILTON AND HIS WIFE'S RETRACTION OF IT—THE PISTOL SCENE WITH MOULTON—THE CIRCUMSTANCES UNDER WHICH THE LETTER OF CONTENTION WAS WRITTEN.

FRIDAY, April 2, 1875.

Mr. Beecher's testimony in his own behalf in the suit of Theodore Tilton against him was continued throughout to-day's session of the City Court of Brooklyn. The defendant was called upon during the day to deny in specific terms the commission of any offense against Mr. Tilton or of any crime with his wife. He did so in the most positive and emphatic terms. He also described from his point of view the remarkable scenes which occurred during the Christmas week of December, 1870.

Mr. Beecher is the most deliberate of all the witnesses thus far called, he is also the most animated, except Miss Turner, in his manner of reciting the facts relative to which he is called to tes-



tify. He not only imitated yesterday the voice and illustrated the manner of Mr. Tilton, but when he came to describe the scene with Mrs. Tilton on Dec. 30, 1870 (when she made the retraction of the charge of improper proposals), his voice changed to the appealing tones of a weak and almost dying woman. He even threw back his head, closed his eyes, and folded his hands over his breast, as he described the position occupied by Mrs. Tilton. In detailing the conversation with Mr. Tilton on the same evening, Mr. Beecher took from his pocket a sheet of paper to show the size of the one which Mr. Tilton had produced as containing a copy of the charge of improper proposals, and as he went on describing Mr. Tilton in the act of tearing the paper to pieces, Mr. Beecher mechanically tore his slip into fragments and threw them upon the floor at the feet of the foreman of the jury.

The most dramatic scene of the morning session was Mr. Beecher's solemn assertion of his innocence of any and all of the charges brought against him from time to time by Mr. Tilton. Mr. Evarts led him by slow degrees to the culminating point, and the effect of the final declaration of innocence was thereby heightened. He was first questioned as to the scene described by the nurse, Mrs. Carey, wherein Mrs. Tilton was represented as sitting on Mr. Beecher's knee and as calling him "Dear Father." He gave a brief and emphatic denial to that statement. Again, as to Mr. Richards meeting them under suspicious circumstances, he declared that he could not recollect of ever having seen Mr. Richards while on a visit to Mr. Tilton's house. Mr. Brashier might have seen him on the stoop of Mr. Tilton's house at an early hour of the morning; but if so, the witness had no recollection of the visit. He denied the truth of Mr. Tilton's allegations concerning his acts on Oct. 10 and 17, 1868. Then Mr. Evarts, slowly and with marked deliberation, put the following questions:

Q. During your entire acquaintance with Mrs. Tilton, Mr. Beecher, and up to this month of December, 1870, had there ever been any undue personal familiarity between yourself and her? A. Never!

Q. Had you at any time, directly or indirectly, solicited improper favors from her as a woman? A. Never!

Q. Had you ever received improper favors from her? A. It was a thing impossible to her—Never!

Between each of the three questions there was a long pause, as if Mr. Evarts wished the jury to take in the whole force and meaning of the emphatic de-

nials which came in response to each. The last was given with increased emphasis.

After brief inquiries as to Mr. Beecher's early life, his regard for Mrs. Tilton, the circumstances of the death of the child Paul and the repetition in part of Bessie Turner's statements to him, which had been touched upon the day before, and the emphatic denial of the plaintiff's charges, as described above, Mr. Beecher was brought directly to the narrative of the main incidents which clustered around the eventful holidays of 1870-71. His task yesterday embraced mainly the rehearsal of the following incidents:

I. Mr. Bowen's delivery of Mr. Tilton's letter demanding his resignation.

II. Mr. Tilton's accusation against him on the night of Dec. 30, 1870.

III. The retraction by Mrs. Tilton on the same night.

IV. The pistol scene with Mr. Moulton.

V. The writing of the letter of contrition on the afternoon of Jan. 1, 1871.

The narrative did not differ materially from that of his elaborate statement before the Church Investigating Committee. At the close of the narrative of each incident Mr. Beecher's attention was called to the testimony of Mr. Tilton or Mr. Moulton, and many facts and assertions sworn to by them were directly and positively contradicted. His denials of all assertions implying guilt on his part, as quoted by Mr. Moulton or Mr. Tilton, were particularly emphatic, and the usual "No, Sir" of a witness was frequently varied by additional and stronger forms of negation. For instance, when Mr. Evarts asked: "Did you say that your sexual intercourse with Mrs. Tilton was a natural expression of your love for her?" Mr. Beecher answered "No, Sir,"—and then, as though the full meaning of the question had suddenly come upon him, he added, with increased warmth and a flushed face, "It is impossible that I could have ever used such language." At another time he repeated a like question, half aloud, as though in surprise, "Did I say that?—No, Sir; no, Sir." When asked if Mr. Moulton had accused him of criminal relations with Mrs. Tilton, he replied, looking directly at Mr. Moulton, who sat almost at his feet: "Moulton is not a fool, Sir; he is a sagacious man." Here Messrs. Beach, Fullerton, and Morris interposed the customary, "One moment! one moment, Mr. Beecher," and the witness

added quietly, "Well, I only meant that as a form of negation."

The scene with Mr. Bowen, which was first in the order of time, was described with great minuteness. It occurred on Dec. 26, 1870, in Mr. Beecher's present residence, and the conversation was opened by the delivery of Mr. Tilton's letter requiring Mr. Beecher to resign and leave Brooklyn. Mr. Bowen, in delivering the letter, had taken pains to represent that he was a voluntary messenger and ignorant of the contents of the letter. Mr. Beecher's first remark on reading it was: "This is sheer insanity; this man is crazy." Mr. Bowen on reading it was as indignant as Mr. Beecher, and a conversation followed, in which it was revealed that both gentlemen had heard of many matters discreditable to Mr. Tilton, and Mr. Beecher emphatically declared to Mr. Bowen that the retention of Mr. Tilton on *The Independent* and *Union* could not but be injurious to both journals. This, according to Mr. Beecher's testimony and the theory of the defense, was the first and only offense committed against Mr. Tilton, and the injury to him professionally which followed in his discharge by Mr. Bowen a few days later was the only injury which the plaintiff received, although Mr. Beecher was led at the time of signing the apology to imagine that there were other grounds of complaint. Mr. Evarts supplemented this recital with only two questions, to draw from the witness the statement that the delivery of this very threatening letter did not lead Mr. Beecher to seek an interview with either Mr. or Mrs. Tilton.

The description of the scene with Mr. Tilton at Mr. Moulton's house next followed. This event took place on the night of Dec. 30, 1870. Mr. Moulton (and not Mr. Tilton, as asserted by the plaintiff and his witness) locked the door and placed the key in the drawer of the hat-rack in the hall. Mr. Tilton had first of all recalled the letter sent by Mr. Bowen, with the remark that "it was a grand thing to write that letter; it would have been grander if I had not." He then recited his troubles with Mr. Bowen, charged Mr. Beecher with abetting in his removal by Mr. Bowen, then with having superseded him in his family, with alienating the affections of his wife, with corrupting his wife and teaching her deceitfulness, and finally, with having solicited her to immoral relations. Mr. Tilton here declared that the original of the paper which he produced had been destroyed "for shame and for pride's sake," and he

then deliberately tore up the copy "that there should never be a line or letter against the reputation of his wife." Mr. Tilton in his testimony swore that the destruction of this copy was a mechanical act; in his excitement he had picked it to pieces. Mr. Beecher also contradicted Mr. Tilton's statement that the latter had first suggested that he should go to Mrs. Tilton for verification of the accusation.

Accompanied by Mr. Moulton, who had volunteered to go with him, Mr. Beecher went at once to Mr. Tilton's residence. The whole conversation with Mrs. Tilton was admitted after an objection by the plaintiff, and the scene was described with great minuteness by Mr. Beecher. Mrs. Tilton, after hearing Mr. Beecher's story of what her husband had told him, had declared that "she could not help it;" that she "had been wearied out with his importunities," and that she knew the charge was "not true." At his suggestion, but not at Mr. Beecher's dictation, she had taken pen and written the letter of retraction, and had of her own volition added the postscript, which is a specific denial of the charge of "improper solicitation." Mr. Evarts plied Mr. Beecher with questions as to assertions made by Mr. Moulton on the stand relative to the conversation on the way home on that stormy night. The witness admitted that he might have said, "This comes upon me as though struck by lightning," and he might have used the expression, "This will kill me," but nothing was then said about the confession which Mr. Tilton had read to Mr. Beecher on the evening of Dec. 30. "Was anything said about sexual intercourse between yourself and Mrs. Tilton?" asked Mr. Evarts very slowly and solemnly. "No, Sir; no;" replied Mr. Beecher in his most earnest tones.

Mr. Beecher then passed on to describe his interview at his house with Mr. Moulton on Dec. 31. This was the "pistol scene." Mr. Moulton, according to the witness, reproached Mr. Beecher with having taken an unfair advantage in getting a retraction from Mrs. Tilton, and read a letter from her, asking that both her confession to her husband and her letter of retraction should be returned to her, in order that she might destroy them. Mr. Beecher hesitated to give up the paper, saying that he would be without defense; but Mr. Moulton represented that it would conciliate Mr. Tilton, and promised to be Mr. Beecher's friend. He assured Mr. Beecher that there would be no further trouble if the letter was given up. On these representations Mr. Beecher gave up the

letter to Mr. Moulton. Mr. Beecher explained that the room was warm, and after the conversation had lasted half an hour or more Mr. Moulton took off his overcoat, and as he did so Mr. Beecher noticed the hilt of a pistol in the pocket. Mr. Moulton took it out and laid it on the bureau, where it remained during the rest of the interview.

Mr. Beecher's testimony now reached its most important point in the description of the interview between himself and Moulton on Jan. 1, when the "letter of contrition" had its origin. Mr. Beecher described the grief which had overwhelmed him at that time as coming from three sources, his sorrow at having spoken evil of Mr. Tilton, who had done him a noble service and been his friend, his remorse at having believed the scandalous stories against his friend, and his self-reproach when Mr. Moulton assured him that they were false; and, lastly, his mortification and sorrow on coming to the conclusion, to which Mr. Moulton's declarations urged him, that through his want of foresight and prudence he had won the affection of Mrs. Tilton and come between her and her husband. His agitation over these thoughts, he explained, was the greater because his former conversations with Mr. Moulton had been diplomatic, but at this interview he had for the first time given vent to his pent up feelings. And his self-accusations were especially bitter when Mr. Moulton declared to him: "Mr. Beecher, Elizabeth loves your little finger more than all of Mr. Tilton." He broke forth in self-reproaches and expressions of sorrow. Mr. Moulton at this stage suggested that if Mr. Tilton could only hear him talking in that strain there would be peace once more between them. Mr. Moulton at length asked permission to make a memorandum of what Mr. Beecher said, so as to read it to Mr. Tilton. Mr. Beecher said that he was in too much of a whirl to write. It was nearly 5 o'clock, and in the dim light of the Winter twilight Mr. Moulton wrote some sentences on separate slips of paper. The supper bell rang at 5 and the interview had to come to an end. Mr. Moulton asked Mr. Beecher to sign what he had written. Mr. Beecher refused, saying that it was not his letter. Mr. Moulton then asked him to put his name to it so as to let Mr. Tilton know that it really came from him. And then, without reading or knowing what was on the paper, he wrote as near the bottom of the sheet and as far as possible from the other writing, "I have intrusted this to Frank Moulton in confidence," and signed his name to this separate

note. This concluded Mr. Beecher's account of the manner in which the letter of contrition was written.

### THE PROCEEDINGS—VERBATIM.

#### OTHERS OF MR. BEECHER'S INTIMATES.

The Court met at 11 a. m., pursuant to adjournment, and Mr. Beecher took the witness-chair.

Mr. Evarts—Mr. Beecher—

The Witness—Mr. Evarts, I wish to make a slight correction in my statement of yesterday. When you asked me whether the families in which I was intimate were, all of them, within the circle of my own congregation, I replied that they were, with the exception of Dr. Storrs's family; I should also have said the family of the Rev. Prof. Conant of the Baptist denomination, in whose family I was very intimate.

Q. And whose family came within that circle of intimacy with yourself and your family of which you have spoken? A. Yes, Sir.

Q. He is still a resident of Brooklyn, isn't he? A. They are—he is.

Q. Your relations are still—? A. Of the most intimate character.

Mr. Beach—Does he include Dr. Storrs and his family in that statement—

The Witness—I mentioned Dr. Storrs yesterday as the only one; I add this morning one other.

Mr. Beach—What I asked was, if he included in the statement that these family relations still continued intimate—Dr. Storrs and his family? A. I was not speaking of Dr. Storrs at all; but only, in answer to Mr. Evarts's question, said that my relations with Prof. Conant's family are as intimate as ever.

#### MISS TURNER'S INTERVIEW WITH MR. BEECHER.

Mr. Evarts—Now, Mr. Beecher, a subject which we introduced—but objection being made, the evidence was inadmissible—the objection now being withdrawn, I will call your attention to it; do you remember Miss Bessie Turner coming to see you in the early part of December, 1870? A. I do.

Q. Did she call more than once upon you in—at that period? A. She may have called once, but I—more than once, but I remember only once.

Q. Do you remember about when it was in December? A. I should say it was not far from the middle of December, rather earlier than later.

Q. You have already stated it was before your call at Mrs. Morse's. A. Oh, yes, Sir.

Q. In consequence of that. It is already in evidence you went to Mrs. Morse's; now, will you state, as you recollect, the interview between you and Miss Bessie Turner giving the words as

you can, or the substance as you remember? A. Allow me to say that in every interview that I shall narrate I profess to give only the substance, and if there be an exception, I will mention it. In regard to the visit of Miss Bessie Turner, she called upon me, I should think, about the middle of the forenoon as I recall it, and said that she was requested—she was sent to ask that I would go down and see Mrs. Tilton at her mother's house; that she had left her husband and did not intend to return, and that she wished to see me; I expressed amazement, and she then—perhaps I asked, "What is the occasion of such a step?" She told me that she was worn out with ill-treatment in her family; that Mr. Tilton had been for a long time, to her personal knowledge, treating her with great severity. She was not a little excited—

Q. You mean Miss Turner? A. Miss Turner was not a little excited in narrating to me some few incidents of this treatment. She spoke of—when I rather expressed a surprise, she replied, as if interpreting it into a doubt of her, that she was herself cognizant of his violence; I think she told me that he had struck her, but she certainly told me that he had on two occasions sought her company in her own bed or in his, and that he had told her that such expressions of love were as natural as kissing or as caressing; that, I think is the substance of her interview in a few words.

Q. Had you heard from any source anything of this kind concerning Mr. Tilton and Miss Turner before this?

Mr. Beach—That is objected to.

Mr. Evarts—Why is that objectionable?

Mr. Beach—Well, Sir, because it is immaterial what he may have heard from other sources.

Mr. Evarts—I ask whether he had heard; that is what I am asking him for.

Mr. Beach—I don't know what you are asking him for.

Judge Neilson—I think it is immaterial. Besides, he very clearly indicates that he had not.

Mr. Evarts—Well, that is all I want. He may answer yes or no; I don't call for what he heard.

Mr. Beach—You do in your question.

Mr. Evarts—No, I don't ask for what he had heard; his answer is yes or no.

Judge Neilson—I do not think we will take it, Sir.

Mr. Evarts—If your Honor please, we suppose the state of knowledge of the witness is a matter of fact, and that while evidence is not introducible that comes through hearsay, yet that the witness had received no knowledge or information otherwise is an admissible fact.

Judge Neilson—Knowledge is an important fact, unless it is derived from hearsay, which may be scandalous and false.

Mr. Evarts—I wish to prove that he had not received any knowledge, and it is for that reason that so frequently, not only in this trial, but always in the produc-

tion of evidence, the right of inquiry is properly limited to the answer "Yes" or "No" without drawing further upon the sources of evidence, and it is on that point that I ask this question.

Judge Neilson—I understand. I think we won't receive it.

Mr. Beach—I think the gentleman's object can be accomplished by a proper question. The objection to this question is that it asked for the witness's knowledge from other sources, of the same character as the communications made to him by Bessie Turner, and the answer, if it should be in the affirmative, would be giving hearsay of accusations made of unkindness against Mr. Tilton in his family. If the object of the counsel is simply to prove that this witness had received no communications of that character, that can very easily be reached, I think, by a question that would not be objectionable, as, for instance, whether he had heard any communication from any other source in regard to the relations of Mr. Tilton with his family; in some such form it might be gotten.

Mr. Evarts—That is too broad an inquiry; other matters are embraced in that. My point, and the only point to which I desire the information, is whether he had heard anything affecting this matter between Mr. Tilton and Miss Turner from any other source.

Mr. Beach—I don't make any objection to that.

Mr. Evarts—Well, of course.

The Witness—I had not.

#### MR. BEECHER'S SURROUNDINGS WHILE A CHILD "PURE AS CRYSTAL."

Q. Now, Mr. Beecher, I take up a few general points that I passed over. When did you become a professor of religion, and what church did you join, and with what church have you continued connected? A. I joined the Hanover Street Church, in 1828, about.

Q. In Boston? A. In Boston.

Q. Your father's church? A. My father was then pastor of that church.

Q. You were then about 15 years old? A. About 15.

Q. And from that time onward have you continued connection with the church until your more important connection with it as a clergyman? A. I have—not always with the same denomination, but either with the Presbyterian or Congregational Churches I have been in communion ever since.

Q. And maintained an active connection with the church? A. Yes, Sir.

Q. As a communicant? A. I have never been anything else but active.

Q. Now, in regard to the bringing up as a youth in your father's family, and up to the period of your marriage—engagement and marriage—in what degree of strictness of personal morality and purity had you been in the family instructed? A. I never was instructed at

all; the thought never entered my head to do anything else; the atmosphere of the household was as pure as crystal, and it was—I needed no instruction.

### THE FUNERAL OF THE CHILD PAUL.

Q. Now, do you remember the occasion of Paul's death and funeral at the house? A. I do.

Q. When was that? A. I think in 1848—in 1868.

Q. Midsummer? A. In midsummer.

Q. Did you come down from your place to attend? A. I think it was in August; my impression is that I came down; I think of it because I was beginning to suffer hay fever, and I came down on account of my friendship for the family, though I usually did not do pastoral work in that manner.

Q. And attended and conducted— A. I conducted the funeral service.

Q. You then saw both Mr. and Mrs. Tilton, I suppose? A. I did.

### MR. BEECHER'S PRESENTS OF FLOWERS.

Q. Now, in the subsequent Summer in June, the birth of the youngest child Ralph, as is in evidence, occurred, and something has been said in respect to flowers sent by you, and some visits made by you in the sick chamber; what, Mr. Beecher, is your recollection or knowledge on the subject of any such visits? A. I don't recall any specific visits; very likely—very probably I made them; I don't recall any of them.

Q. And how in regard to gifts of flowers at that particular occasion or time? A. Neither do I recall any of them; it is most likely that I sent flowers.

Q. Was sending of flowers to this family or to others an ordinary occurrence with you during the season of flowers? A. During all seasons.

Q. Well, you keep up the flower conservatories then through the Winter, I suppose? A. No, Sir; during the Summer I used to bring down bushel-baskets full of flowers from my grounds and distribute them right and left, and in the Winter season I not unfrequently bought flowers and sent to friends.

### KATE CAREY'S STORY DENIED.

Q. Now, mention has been made in the evidence to the visit you made to that household while the wet-nurse for that new-born child was in attendance, Mrs. Carey or Smith—do you remember any visit that you made at that time? A. I don't.

Q. Did any scene occur between you and Mrs. Tilton in which she sat on your knee, or in your lap? A. No, Sir.

Q. Did Mrs. Tilton on any such visit at that period address you as "Dear Father?" A. No, Sir.

Q. Or "Father Dear?" A. No, Sir; I don't recollect that Mrs.—I have answered your question.

Q. In what form of address did Mrs. Tilton in your visits accost you? A. "Mr. Beecher" and "My friend."

Q. Was there any other form of address between you? A. Not that I recollect.

Q. Between you—on her part towards you—than that? A. Only "Sir," "Mr. Beecher" ordinarily, but if we were talking and discussing, she frequently would turn and say, "Well, my friend," and go on with it.

### MR. JOSEPH RICHARDS NEVER SEEN BY MR. BEECHER AT THE TILTONS.

Q. Do you remember any occasion of an interview between yourself and Mrs. Tilton at which her brother, Mr. Joseph Richards, intervened in any way? A. Do you mean hindered us, or—

Q. No, I mean came upon you in any way that you noticed or remember? A. No, Sir; I don't remember any time when he was present at any visit of mine there.

Q. Now, Sir, something has been said of your being seen on the stoop of that house between seven and eight o'clock one morning; a gentleman, Mr. Braashier, a passer-by in the street, spoke of it. Have you any recollection or knowledge on the subject of that visit? A. No, Sir; I have no recollection of the visit; if I made one, and Mr. Braashier was passing by and looked at me, I have no doubt he saw me.

Q. There was no errand or occasion of such a visit that impresses itself upon your mind? A. There might have been, but nothing that I remember.

### FREQUENCY OF MR. BEECHER'S VISITS AT THE TILTON'S.

Q. During the period, say from the residence in the house 174 Livingston-st. up to the year 1870, with what degree of frequency are you able to state that you made any visits, either upon invitation, set occasion, or ordinary calls, at the house of Mr. Tilton? A. Do I understand you to limit it from 1867 to 1870?

Q. Yes, I will take it from 1866 on to 1870. They went into the house—I think it was in the Fall of 1866 they went into the house—during their residence at 174 Livingston-st. (which seems to be the period), down to the Summer of 1870, or down to the Spring of 1870—until you went into the country in the Summer of 1870? A. I should say, Sir, that, speaking of averages, I saw them once—from once in 10 days to once in three weeks.

Q. As averaging during the times that you were— A. That I was in town.

Q. That you were in town? A. Yes; my visits there were not more than about 13 times a year, according to the best computation that I can make of them; but that leaves out my Summer vacations, and my lecturing, and so on.

Q. Now, during these visits, what was the manner of them, and what were the subjects of conversation—in general, I mean? A. You ask two questions in one.

Q. Well, then, we will take the answer of both. A.

May I ask you to explain what you mean by the "manner?"

Q. I mean what was the manner between you and Mrs. Tilton during the visits, and what were the topics of conversation? A. Well, the manner was very much such as is my manner in my own house with my own family; it was very simple, and without the slightest formality; they kept an open, hospitable house, and left all their friends the utmost personal freedom; there was great propriety, with as little conventionality as I ever saw in a family; and therefore I felt perfectly free to go in and out as I chose, almost.

Q. How was it in regard to the presence of the children and their participation in your visits? A. They were almost always present; at any rate, I felt I had lost a visit if they weren't.

Q. And were your visits in part devoted to them? A. No, in considerable part of many of my visits, and sometimes altogether.

Q. Now, the subjects of conversation? A. As various as the interests of the church; of the phases of Bethel experiences; of the movements, the reformatory movements of the time, in which we are all engaged; of books, of literature, and, above all, of Theodore Tilton. [Laughter.]

#### MRS. TILTON'S GRIEF AT HER HUSBAND'S DEFECTION.

Q. Now, was the subject regarding her husband's religious opinions on any particular point, or, in general, a matter of conversation between Mrs. Tilton and yourself? A. It was, to my surprise, Mrs. Tilton—

Mr. Beach—One moment, Sir. We object to these conversations.

Mr. Evarts—Well, I don't care for the details of the conversations; I don't care to reproduce the conversations.

Judge Neilson—He is free to state the subjects.

Mr. Evarts—Yes, Sir; the subjects.

The Witness—I was only about to say, in explanation of my word "surprise," that Mrs. Tilton's habitual speaking of her husband was so eulogistic and so fond that I felt that she was but a shadow that he cast, and at that time—

Mr. Beach—This is inadmissible, Sir.

Mr. Evarts—Yes; well—

The Witness [continuing]—When, therefore, she disclosed to me a very serious difference between her and him, I was surprised—

Q. Difference in religious opinions? A. On religious subjects.

Q. Yes? A. I found her very firmly grounded—

Mr. Beach—I do not think, Sir, that this is admissible.

Mr. Evarts—Well, the matter has been gone into very fully, if your Honor please, and I wish to show by this witness how far he participated in this grief and griev-

ance on the part of Mrs. Tilton (which has been abundantly shown by Mr. Tilton himself), in regard to Mrs. Tilton's departure from the orthodox.

Judge Neilson—I think he can state generally.

Mr. Evarts—The orthodox faith, or on the subject of the divinity of Christ. Your Honor remembers that Mr. Tilton has gone into that very distinctly, and presented it very fully, no doubt.

Judge Neilson—He went into it largely on your examination, however; but still, Mr. Beecher can state the general features.

Mr. Evarts—Now, what passed, Mr. Beecher, between yourself and Mrs. Tilton at any of those interviews on that subject? A. I cannot tell you the detail; I can only say that she consulted me as to her duty, and as to her duty toward her children, on account of the growing defection of her husband from those views which are called orthodox. Her mind was seriously troubled as to her duty, and I attempted to enlighten her.

Mr. Beach—You attempted to what, Sir?

The Witness—Enlighten her.

Mr. Evarts—And did she ask you distinctly on any point for your advice and opinion? A. She did.

Q. How was that?

Mr. Fullerton—That is descending into particulars again, Sir.

Mr. Evarts—I mean of this matter. I don't want to go any further.

Judge Neilson—If she asked for advice, I think he may say whether or not he gave it to her.

Mr. Evarts—Well, was it in regard to the conduct and supervision of her children? A. It was specially with reference to the children.

Mr. Beach—I think we should have, upon that subject, what complaints Mrs. Tilton made, and what advice he gave her.

Judge Neilson—Very well.

Mr. Evarts—That is exactly what I am trying for. It is very brief.

The Witness—She asked me whether I thought it was right for her to bring up her children under the influence of a parent who had given up the divinity of Christ and who seemed to be losing faith in the Bible; and I said that I thought she should not on that ground make any difficulty; that I believed that time and growth and the guidance of God would bring things right.

Mr. Beach—We object to this, Sir.

Mr. Evarts—This conversation?

Mr. Beach—Yes.

Mr. Evarts—Can you fix the period of these consultations or conferences? A. I cannot fix them with very great definiteness; I think it was in the year—not far from the year 1867.

MRS. TILTON'S DEEP RELIGIOUS DEVOTION.

Q. During this long acquaintance with Mrs. Tilton did you come to have, as you supposed, an intimate knowledge of her character, her temperament, and her intelligence? A. I think I did.

Q. Now, what estimate did you form concerning her mental and moral character? A. At first I thought she was a woman of great simplicity and purity, and of fair intelligence. As I became better acquainted with her I admired her domestic traits; and that which only after some considerable acquaintance I found out, was a very deep and unusually religious nature, developing itself so differently from what we see ordinarily, that it struck me very much.

Q. In what regard did it strike you—what form of development? A. Well, it was—I don't know that I can tell it exactly unless by saying what are the usual forms that I perceive. Some religious characters develop themselves in ethical strength and conscientiousness in all duties; some persons develop themselves in their religious nature more largely in social enthusiasm and generosity, and some persons develop themselves in veneration and awe. Now, in her case it was a very unusual sight for me to see a person whose religious character developed itself in the two forms, of ecstatic devotion, serenity, peace and trust in God, and also in the form of generous social sympathy and excitement.

Q. Was Mrs. Tilton, under your observation, actively engaged in benevolent work? A. Incessantly.

Q. Were you aware of it all the while it was going on? A. Hardly a visit that she was not talking to me about some case that she had in hand, some poor man, or some family, or something of the class of married women of which she was then superintending in the Bethel, or at some period of the time was in connection with.

MRS. TILTON ALWAYS A DEVOTED WIFE.

Q. During this period of your acquaintance did any alienation of affection from her husband disclose itself to you? A. The very contrary; the very contrary. It was the matter of some gentle ridicule, her excessive addiction to her husband. It was the theme above all others that she seemed to love to talk about.

Q. Now, during this acquaintance of yours, did you at all become—did you become aware in any way, from Mrs. Tilton's manner or conversations with you, that her feelings or affections were specially enlisted toward you? A. Yes, Sir, I thought they were.

Q. In what form and degree? A. As her pastor, and as her friend.

Q. Did you observe, or did you entertain any surmise, that she had any other sentiments toward you of affection or regard than those you have thus described? A. Never—not in the slightest.

MR. BEECHER'S REGARD FOR MRS. TILTON.

Q. Now, Mr. Beecher, from this acquaintance, did you form sentiments of regard, esteem, and affection for Mrs. Tilton? A. Life-long sentiments of affection and respect for her.

Q. In what regard did those affections form themselves in your mind and feelings? A. In—I don't understand you.

Q. What character or form of affection, as you have named it, had you toward her? A. I had the utmost affection and respect for her as a Christian woman, and a mother, and a wife, surrounded by a lovely family—I felt proud of her confidence and affection.

Q. Had you any sentiment of affection or love toward her, as a woman, otherwise than in these connections? A. [Emphatically]. No, Sir; no, Sir!

WHERE MR. BEECHER SPENT OCTOBER 10 AND 17, 1868.

Q. The two dates of the 10th and the 17th of October, 1868, Mr. Beecher, have been specially referred to; are you able to say whether you were in the City of Brooklyn on both those days? A. On one of them I am pretty sure I must have been, namely, on the 10th.

Q. What occurred on the 9th, that you remember, as fixing any date? A. The Friday night prayer-meeting, and a meeting in the Academy of Music, to which I went after that.

Q. Yes, Sir. Now, do you remember seeing Mrs. Tilton at that meeting at the Academy? A. I think it was at that meeting—that is my best recollection—that I saw her after the meeting.

Q. And did anything occur between her and yourself then that fixes it at all in your memory? A. If that was the meeting, she spoke to me about being present at either a dinner or a reception that was to be given to the Rev. Morley Punshon, the English Methodist clergyman, that was then living in the country.

Q. Living in this country? A. I don't know; I think—

Q. Visiting this country, or living here? A. I think he was living here for a time.

Q. What was the suggestion as to your taking part in it, or attending it, or what? A. It was the expression, or a statement, that there was to be such, and an inquiry if I had been invited, and a hope that I would go if I was.

Q. He was known to you, was he? A. I never had met him, except to shake hands with him after a public preaching. I think it was in my own church that he stopped and shook hands with me; but besides that I had never met him. I much desired to do so.

Q. The 10th and 17th of October; of course the 10th was the Saturday, as you have now fixed it, after that Friday night lecture. Now, as to your being in town on the 17th. Have you any recollection of that? A. I have no recollection about that, Sir; I presume I was.

Q. You were at that season—that month—still living in the country, were you? A. In October—yes; my family were there still, and I spent usually a portion of the week, at any rate, at Peekskill, coming down on Friday afternoon to my Friday night conference meeting, usually.

Q. And remained over the Sabbath, of course? A. Usually; only in very busy seasons there did I go back again Saturday morning.

Q. And then you returned, if you went back Saturday? A. If I did; but there was seldom a busy season in the Fall.

Q. You mean busy at Peekskill? A. Busy on the farm.

Q. So that, so far as you have any recollection, on both those days, the 10th and the 17th, you were in the city? A. It is probable that I was, Sir.

Q. Now, what is the ordinary mode in which you spend your Saturdays? A. Well, it is my day for rambling in New-York, usually, or making excursions to the Park or to the green-houses, or something of that kind; I always make it the vacation day of the week.

Q. And that period of recreation—that day of recreation—how was it usually spent by you? A. I said either in—most generally in New-York, in the book stores or print shops, or up and down the street in matters of curiosity; and if not that, very frequently at the Park, or at Flushing, or at some place where there were green-houses.

Q. Was Saturday a day in which you made these usual or ordinary calls among your circle of friends here, or was it otherwise employed? A. Well, as a general thing, not.

#### A SQUARE DENIAL OF ALL MR. TILTON'S CHARGES.

Q. Now, Sir, have you any recollection of seeing Mrs. Tilton, either at your own house or at her house, on either of those days? A. I do not remember it.

Q. Did anything occur between you and her on either of those days, or during either of those weeks, that has impressed itself upon your mind at all? A. Nothing.

Q. During your entire acquaintance with Mrs. Tilton, Mr. Beecher, and up to this month of December, 1870, had there ever been any undue personal familiarity between yourself and her? A. [Emphatically] Never!

Q. Had you at any time, directly or indirectly, solicited improper favors from her as a woman? A. [Emphatically] Never!

Q. Had you ever received improper favors from her? A. [With great emphasis] It was a thing impossible to her—Never! [Applause.]

Judge Neilson—Wait a moment, Mr. Evarts. This must not occur again. Mr. Rogers, you will see to this. If you find any gentleman disturbing the peace of the court, you will have your men remove him, no matter who he is.

Mr. Evarts—Did you ever, during this period, have carnal intercourse, or sexual connection, with Mrs. Tilton? A. [With great emphasis and energy] No, Sir! Never!

#### THE LETTER DEMANDING MR. BEECHER'S RESIGNATION.

Q. Do you remember, Mr. Beecher, on or about Christmas day, or the day celebrated as Christmas that year, the 26th of December, a call from Mr. Bowen, and the presentation of a letter to you? A. I do, Sir.

Mr. Evarts—Exhibit No. 4, Mr. Morris?

Mr. Morris produced the letter [Exhibit No. 4].

Q. Did you receive that letter, Mr. Beecher? [Handing witness a letter.] A. I received such a letter; I cannot say that this is the very one; I received a letter in Mr. Tilton's handwriting.

Q. This is all in Mr. Tilton's handwriting? A. Yes, Sir; I don't know whether that is a copy.

Mr. Evarts—I think this was produced. This is understood to be the original.

Mr. Fullerton—Yes.

Mr. Evarts—That I suppose to be the original.

The Witness—If it is the original, I received it. I received a letter of this purport.

Mr. Evarts—This is the one that has been in evidence; I suppose it is the original.

Mr. Beach—No, that is the copy.

Mr. Evarts—I think this is an original. Well, it passes for an original, and I think Mr. Tilton spoke about it.

Mr. Fullerton—That is an original way of saying it.

Mr. Evarts—Yes [Referring to the record]. Yes, Mr. Moulton proves it. Mr. Moulton says:

In your testimony yesterday you spoke of a letter—Dec. 26, 1870—written from Mr. Tilton to Mr. Beecher, and of which Mr. Bowen was the carrier. Look at the paper I now show you and say whether it is the letter to which you then referred [handing witness a letter]. A. Yes, Sir.

Mr. Fullerton—I propose to read it.

Then he reads it, and it is marked "Exhibit 4."

Mr. Beach—I think from the indorsement on the back of it by Mr. Moulton that this was the original letter.

Mr. Evarts—Yes, there is no doubt. I remember exhibiting to Mr. Tilton the envelope, showing him that it had been sealed, and asking him if he did not give it open, and he stated that he did. [To the witness.] Now, Mr. Beecher, when and by whom was that letter brought to you? [Handing witness the letter]. A. By Mr. Henry C. Bowen.

Q. Where were you? A. At my present residence on Brooklyn Heights.

Q. Please state what Mr. Bowen said in bringing in and handing you the letter? A. He said that he had a letter for me from Mr. Tilton—that he was not aware of its contents, but as he was coming home, or coming this way, he had offered to bring it to me for Mr. Tilton.

Q. And did he sit while you opened it? A. He did.

Q. You opened it and read it? A. I did.

Q. What did you say to Mr. Bowen on reading it? A. I said substantially this: "This is sheer insanity; this man is crazy."



Q. Well, what did Mr. Bowen say to that? A. Well, he said he didn't know exactly what was in it, and with that I handed it to him and he read it.

Q. He took it and read it? A. He did. (*Sotto voce*). No doubt with surprise.

Q. Then what passed between you? A. I made some expression, but I cannot recall even the substance of it, except an expression—a sort of indignant surprise that Mr. Tilton should write me such a letter as that; and he then proceeded to say—

#### MR. BOWEN'S ATTACK ON MR. TILTON.

Q. Mr. Bowen? A. Mr. Bowen then proceeded to say that he and Mr. Tilton had had some differences themselves, and, without standing on the order in which the conversation went, he proceeded to give me an account of the—

[The town clock here commenced striking.]

Mr. Evarts—Wait.

The Witness—In consequence of the strength of my—or rather following the strong impressions that I used, Mr. Bowen fell in at once with me and commenced talking about Mr. Tilton, and not favorably; it gave rise to a conversation in which he said that he had—as I was aware—dismissed Mr. Tilton from the editorship of *The Independent*; he had become only a contributor to that paper; that when he had made up his mind to do that, it was on account of business reasons; Mr. Tilton's views were not acceptable, and that the paper was suffering in consequence of them, or was liable to suffer, I don't remember which; that, however, as soon as he had reduced him to a subordinate position on the paper, that man after man—multitudes, he said—came in to him with stories affecting Mr. Tilton's moral character—clouds, he said—and that he was amazed, he said; he never was so astonished in his life, and on making inquiry of one and of another, he said they seemed to grow thicker and thicker. He gave me an account, or rather he made a reference—he said there was a case of a woman and Mr. Tilton at Winsted; he made no particulars. He said there was another in the North-West. I have forgotten if he mentioned the place, but he said that in his own office, and in reference to a lady that was employed by him, when the contract was settled and she went into the office, she had informed him that Mr. Tilton turned the key upon the door and said: "Now, the opportunity has come that I have long wanted," and instantly made advances toward her of an improper nature. I was astonished, as you well might think, but not so much so as I should have been if I had not seen Bessie Turner, and told him so. He wanted to know what that was. I then narrated to him the substance of what Bessie Turner had told me. I also stated that there was another lady, about whose name in connection with Mr. Tilton rumor had been very busy; and some other incidental conversa-

tion of that kind took place between us, but I think—I say this with less confidence—I know that I said to Mr. Bowen: "I wish you would talk with my wife; she knows more about some things of this matter—some matters of this thing—than I do." I alluded to the interviews that she had had with Mrs. Tilton. He expressed some repugnance, thinking that my wife would not like to talk with him. I cannot say whether there was an interview, though I have a strong impression that he went into the back parlor and spent some moments talking with her about the matter; but of that I will not—

Q. Talking with her? A. With my wife.

#### MR. BEECHER'S ADVICE ABOUT MR. TILTON.

Q. Did you then—? A. I then said to Mr. — during the course of this conversation Mr. Bowen said that he had made up his mind that Mr. Tilton could not stay on *The Independent* in any relation, and that he was in grave doubt whether he could have him upon *The Brooklyn Union*; I said to Mr. Bowen that *The Independent* was dear to me, no matter what had come and gone between us—that it was the paper with which I had begun my life here in Brooklyn, and I felt a warm side toward it, and it was my judgment that a man that was tainted as Mr. Tilton was could not properly be retained on such a paper as that without doing it damage; as it respected *The Brooklyn Union*, I did not say anything to that, as it was a political paper, only that I thought Mr. Tilton an impracticable man, that he was not apt to agree with parties or with movements, except so far as he led them, and that I thought that as the editor of the Republican organ in Brooklyn he would be found to be a man that would get his paper into trouble.

Q. Did you mention to Mr. Bowen at this time anything regarding Mrs. Tilton's separation, or application in reference to separation, that had been made to you? A. I did; that was the point on which I referred him to my wife.

Q. Now, Sir, did anything more occur at that interview that you can rehearse to us? A. Nothing, except that Mr. Bowen grew more and more friendly, and in view of this attack, or rather this warning to send me out of town, I was not ready to go then, and expressed myself so to him—he said that he would stand by me as a friend.

Q. Do you remember what time of day this was? A. Well, it was just before dark, I should say.

Q. And the 26th? A. Yes, Sir; not far from five o'clock.

Q. Did Mr. Bowen, in presenting you the letter, say whether or no he had recently come from Mr. Tilton, or immediately? A. I will not say that he said that, but that was the impression produced upon me by his language, that he had had a session with Mr. Tilton, and that he had—that this letter had been given him by Mr. Tilton, with a request that he would take it to me.

Q. Between this interview, terminating thus, and the

night of the 30th of December, Mr. Beecher, did you either have or seek any interview with Mr. Bowen? A. No, Sir.

Q. Did you have or seek any interview with Mr. Tilton? A. No, Sir.

Q. Did you see or hear in any way from Mrs. Tilton? A. No, Sir.

#### MR. MOULTON'S UNCEREMONIOUS INVITATION ON DEC. 30.

Q. Now, Sir, on the 30th of December, what occurred, and how was the matter begun, and by whom? A. Not far from 7 o'clock in the evening Mr. Moulton called and was shown into my front parlor. I went in, the ordinary courtesies passing. He said that Mr. Tilton was at his house, and desired an interview with me immediately. I said to him that it was my prayer-meeting night, and that it would not be convenient for me to go down that night. He replied that it would be—it was a matter of so much importance that he thought I should do well to put somebody else in my place for the night and go with him. I sent or called upon—I don't remember which—Mr. George A. Bell, to take my place, and went with him.

Q. Did he live near you? A. Close by, a little below, in the house where I formerly lived—and went down to his house. When I had reached about the corner of Clinton and Montague streets, in that neighborhood, I said to him, "What is the subject upon which Mr. Tilton wishes to see me?" And he said, "He will better inform you himself." I went to the house—

Q. Did anything pass between you and him until you reached Mr. Moulton's house? A. Yes, Sir; there was some conversation passed between us, but it has left no important impression—the going down there does not leave any important impression on my mind.

Q. Was there any further conversation during that walk respecting the subject, or the reasons of or for the interview that Mr. Tilton sought? A. My impression is that there was something—some allusion made to Mr. Tilton's difficulties with Mr. Bowen, but I cannot recall any detail of the conversation. I reached the house. He then lived about five doors below St. Ann's, on Clinton-st., one of those little brick houses.

Q. Very well. Now, before Mr. Moulton saw you in your parlor that evening, had he ever been in your house, to your knowledge? A. I have an impression that he had called upon me upon the first of January calls, but I cannot affirm that.

Q. Otherwise than that had he ever been there? A. Not to my knowledge.

Q. Before you entered his house that night had you ever been in his house? A. No, Sir.

#### MR. BEECHER'S VERSION OF THE MEETING AT MOULTON'S.

Q. Now, what occurred after you entered? A. We entered the house and he locked the door, the front door, and said, "Mr. Tilton is in the room above the parlor, front room, waiting for you." I said to him—supposing, wishing a witness, believing that we were going to have a business discussion—I said to him, "I would rather you would go up with me, Mr. Moulton." He said, "You had better see Mr. Tilton alone;" I went up stairs, knocked, and opened the door; Mr. Tilton was standing—two windows fronting out on to Clinton-st., a bureau, I think, between them, and the gaslight there, and he was upon the far side of the bureau, and met me in the most stately manner. He pointed to a chair and asked me to sit down, which I did, near the door. He drew out from his pocket a little paper, very much that shape [producing a piece of paper about five inches by three], just about that size, a little narrower, and, on sitting down, said: "I have requested" or "I have summoned you," I think he said, to this interview on matters of importance. I suppose that you received from me, by Mr. Bowen, a letter demanding your resignation and departure from Brooklyn." "Yes," I told him, "I had received it." "I wish now to recall that letter, and I wish you to consider it as not written. It was a grand thing to write that letter; it would have been grander if I had not." He then began—

Q. At this part, Mr. Beecher, did you respond to this notice to you of the recall of the letter? A. Of course, with a bow.

Q. Well? A. He then began to allude to Mr. Bowen, the bearer of that letter, and of Mr. Bowen's treatment of him—not going into it in any considerable detail, but characterizing it as very base and very treacherous; he then charged me with having an understanding with Mr. Bowen in these matters and furthering them; I am not using his language, but only the substance of the things urged upon me by him—that I had accepted injurious stories of him, and that I had reported them again; that I had advised against him, and much more to that purport, which I cannot recall in detail; he—I think that at this point I was disposed to make some explanation, when he warned me silence—to be silent, and I was silent; and then he proceeded to say that I had not only injured him in his business relations and in his reputation and prospects, but that I had also insinuated myself into his family, and that under a covering of friendship I had wrought him worse mischief there. He said that I had in a sense superseded him and had taken his place, so that in matters of religious doctrine, and in matters of the bringing up of his children and of the household, his wife looked to me rather than to him; that I had caused her to transfer her affections from him to me in an inordinate mea-

were; that I had—that in consequence of the differences which had sprung up by reason of my conduct, his family had well nigh been destroyed; that I had suffered my wife and his mother-in-law to conspire for the separation of the family; that I had corrupted Elizabeth, teaching her to lie, to deceive him, and hide under fair appearances her friendship to me; and that I had made her to be—that I had—that he had married her one of the simplest and purest women that he ever knew, and that under my influence she had become deceitful and untrustworthy; he said that I that had tied the knot in the sanctuary of God, by which they were to be bound together in an inseparable love, had also reached out my hand to untie that knot, and to loose them one from the other; he then went on to say that not only had I done this, but that I had made overtures to her of an improper character; and again I expressed some surprise, probably, by my attitude—I don't recollect that I talked—but he drew from his pocket a strip of paper about that [producing a paper about five inches by one and a half]—like that, and read to me what purported to be the statement of his wife to him that Mr. Beecher had solicited her to become his wife, to all the intents and purposes which were signified by that term, or substantially that.

#### MRS. TILTON'S WRITTEN CHARGE DELIBERATELY DESTROYED.

He said that she had made a statement to him on the July before of her inordinate affection for me, or her exceeding affection; the phrase was not "inordinate"—but that he had, from the love he bore her, and from a general feeling of doubt or hesitation—I don't remember exactly the form—that he had suffered that to go on without meddling with it, but that recently she had renewed to him not only that statement but also had given him in writing the statement which he had just read; that he had for shame and for pride's sake burned up the original, and that now he would tear up the only copy that there was in existence, that there should never be a line or letter against the reputation of his wife; and with that he took the fragments in his hand and stepped to the side of the room and threw them down, in that way. [Mr. Beecher here tore the paper into pieces and threw the bits upon the floor.] "And now," said he, turning toward me, "I wish you to verify these charges by going down and seeing Elizabeth yourself; she is waiting for you at my house." I said—that last blow staggered me—I said to him: "Mr. Tilton, this is a dream. She never could have made in writing a statement so untrue."

#### MR. BEECHER INVITED TO SEE MRS. TILTON.

Said he: "It is but a few blocks off; go down to her yourself." I turned and went out of the door and walked down stairs, meeting Mr. Moulton at the foot of the stairs. He said to me: "Are you going down to see Mrs. Tilton?" "I am," I said to him. "I will go with you." He took his hat—I think he had his overcoat on—at any rate, my impression is that he had—and he went to the door to let me out, and it was locked, and he felt in his pocket for the key and it was not there, and he turned and went back to the clothes-stand in the hall, and took it from the drawer or from the table—from somewhere there, saying—a sort of *sotto voce*—that they did not want an interruption during this interview, and unlocked the door, and we went out, and went on our way.

Q. Did you in any manner invite Mr. Moulton to go with you to Mrs. Tilton's? A. No, Sir; I didn't want him.

Q. Did you in any manner inform him before he asked you whether you were going to Mrs. Tilton's, that you were going there? A. I did not.

Q. Now, he attended you to the door, did he? A. He did. To what door?

Q. To Mrs. Tilton's? A. He did.

Q. And on the way down did anything pass between you? A. Yes, Sir.

Q. What was that? A. I cannot recall it, Sir. I remember speaking something of the storm that was just breaking in the sky, and clearing away—Winter snow-storm, and there was other conversation. He said many things, but I was not in a state of mind to register, just then, a conversation that didn't relate to what had passed.

Q. Now, when you reached the door, what passed between you and Mr. Moulton in regard to his going in, or not going in? A. I don't know that there was anything said about his going in, or not going in. He asked me: "Will you call on your way back? Will you call at my house?" and I said I would.

Q. Have you answered? A. I told him I would.

Q. You told him you would. You then— A. I rang—

Q. Rang the bell. What happened then? A. It was opened by a woman, whom I supposed, by her dress and appearance, to be their housekeeper; I knew they had one.

Q. Was she a lady whom you personally knew? A. I do not know; no, I think not.

Q. Well, Sir? A. She told me to go up-stairs to Mrs. Tilton's room.

Q. Did you communicate to her any purpose, or make any inquiry about seeing Mrs. Tilton? A. I did not; I had no occasion to; she told me to go right up-stairs.

Q. Can you give any description of this lady who opened the door, so that we may be able to identify her in any way? A. No, Sir, I cannot; I only recollect that she

seemed to me to be a nice, tidy-looking woman, with a kind of authority in her face and manner, and well dressed.

Q. It was not Mrs. Mitchell, the nurse? A. No, Sir.

Q. Now, what did she say to you? A. She said either to me to go up, right up, to Mrs. Tilton's room, or else that Mrs. Tilton was in her room up-stairs; something to that effect.

#### MRS. TILTON'S RETRACTION.

Q. And you went up? A. I went right up and knocked.

Q. Was the door opened? A. The door was opened.

Q. From within? A. I believe so, Sir; I will not be positive.

Q. Well, what occurred then? How did you go in? A. There are two front rooms in Mr. Tilton's house, one of which is a sitting and receiving room, and communicating with the other one by folding doors, which usually stood open. Mrs. Tilton was in the one where the bed was placed, and which was the nearest to the stairs.

Q. When the door was opened were you left alone by the person that opened the door? A. I was; I went in from the door of the hall, and came, therefore, almost immediately to the bed, instead of going around through the other room.

Q. You came through the door that went immediately into the room where the bed was? A. I did.

Q. Were the folding doors closed at that time? A. No, Sir, they were open.

Q. They were then open? A. Yes, Sir; I think they were open then.

Q. Did they remain open? A. They remained open, I think, all the time.

Q. Was any person other than yourself and Mrs. Tilton in either of the rooms, to your knowledge, during the time of your interview with her? A. No, Sir; there was not.

Q. Describe the scene, as you saw it, as you entered the room? A. The bed was dressed in pure white; Mrs. Tilton was dressed in pure white, and her face as white as the bed, lying a little above a level, reclined on pillows, her hands in that form on her breast [the witness here placed his hands palm to palm], in a very natural way. I drew a chair, or there was a chair by the bedside. I sat down in it.

Q. Did she accost you in any way before she spoke? A. Not at all; her eyes were closed.

Q. Did you observe whether she was asleep or not? A. She was as one dead, and yet she was living. I sat down by her side, and said to her—

Mr. Beach—One moment, Sir.

Mr. Fullerton—One moment.

[Mr. Fullerton, Mr. Beach and Mr. Pryor held a consultation together.]

Mr. Beach—We object, Sir, to the conversation between this witness and Mrs. Tilton.

Judge Neilson—I think you will have to take it. We have in evidence that the witness received from Mrs. Tilton that evening a letter. That fact has been proved pretty clearly, though somewhat indirectly, and as part of that transaction, I think, we ought to take it; it is part of the act of receiving the letter.

Mr. Evarts—[To the Witness.] Proceed, Sir.

Mr. Beach—If your Honor please, I don't think the conversation is any part of the *res gestæ*. The only doubt I have had in my mind upon the admissibility of this evidence was that, according to the testimony of Mr. Beecher, he was requested by Mr. Tilton to go down and see his wife, and whether your Honor should hold that that was an adoption of what transpired between the parties, when—

Judge Neilson—It has some bearing on the point, doubtless.

Mr. Evarts—Mr. Tilton stated it in the same way.

Mr. Fullerton—No, Sir.

Mr. Evarts—Mr. Tilton didn't originate the interview, but he commences the matter by saying: "Go up and see Elizabeth." There is not the least difficulty on this point.

Judge Neilson—Mr. Tilton says the witness requested permission to go, and he gave it.

Mr. Evarts—Yes; but on the part of reference, it is a mere agreement between the parties.

Mr. Beach—Yes, Sir; but one relation would in some degree, perhaps, tend to constitute Mr. Beecher an authorized party from Mr. Tilton to hold this conversation with his wife, but I submit to your Honor that still there is not such a relation by that direction or consent of Mr. Tilton created as would authorize the details of conversation which passed between Mrs. Tilton and Mr. Beecher. But, Sir, without discussing the question, I see your Honor is disposed to admit this evidence, so we must record our objection and exception.

Judge Neilson—Yes, Sir.

Mr. Evarts—Mr. Beecher, proceed now. You drew a chair to the bedside and sat down? A. I said to her: "Elizabeth, I have just seen your husband, and had a long interview with him. He has been making many statements to me, and charges, and he has sent me to you in respect to some of them, that you should verify them." I then said: "He has charged me with alienating your affections from him. He has charged me that I have corrupted your simplicity and your truthfulness. He has also charged me with attempting improprieties—" it is a hard thing (shedding tears) for a man to speak to a woman whom he reveres such things, and I could not express myself very clearly. "Are these things so, Elizabeth?" She—there was the faintest quiver, and tears trickled down her cheek, but no answer. I said to her: "He says that you have charged me, Elizabeth, with making

improper advances. Have you stated all these things, and made the charges?" And she opened her eyes and said: "My friend, I could not help it." "Could not help it, Elizabeth! Why could not you help it? You know that these things are not true." "Oh, Mr. Beecher," said she, "I was wearied out. I have been—I have been wearied with his importunities," or something to that effect. "He made me think that if I would confess love to you it would help him to confess to me his alien affections," or words to that effect. "But," I said to her, "Elizabeth, this is a charge of attempting improper things. You know that that is not true." "Yes, it is not true," she says, "but what can I do?" "Do! You can take it back again." She hesitated, and I did not understand her hesitation. "Why can you not take it back? It is not true." She said something about she would be willing to do it if it could be done without injury to her husband, which I did not at all understand. "But," said I, "you ought to give me a written retraction of that written charge." She said she was willing to do anything if I would not use it against her husband. I said, "Give me paper." She pointed to the secretary in the other room, which stood between the windows. I went there; I knew it, and took from the secretary some note paper, pen and ink. I brought them to the bedside. She raised herself up a little and wrote the first part of the retraction. She signed it.

Mr. Evarts [To Mr. Morris]—Will you give me that exhibit?

Mr. Morris—Which one?

Mr. Evarts—No. 4.

Mr. Morris—No. 4 you have got.

Mr. Evarts—No. 6—5.

[Mr. Morris hands the exhibit to Mr. Evarts.]

Q. Look at that paper and see if it is the one which was there written [Showing paper to the witness]. A. This seems to be the one, Sir; I suppose it to be.

Q. Well, how far did she write in the first instance? A. Shall I read it?

Mr. Evarts—Yes, if you please.

The Witness [Reading]—

December 30, 1870.

Wearied with importunities, and weakened by sickness, I gave a letter inculcating my friend, Henry Ward Beecher, under assurances that that would remove all difficulties between me and my husband. That letter I now revoke. I was persuaded to it, almost forced, when I was in a weakened state of mind. I regret it and recall its statements.

E. E. T.

Q. During the writing, Mr. Beecher, did you in any manner dictate or suggest any of the language used? A. No, Sir; I suggested that she ought—in the beginning I suggested that she ought to make a recall of those charges that should cover them.

Q. Very well. Now, when she had written so far? A. She read it over, and then—

Q. To herself, or aloud? A. No; to herself. She looked it over, and then held out her pen for some more ink, which I had in my hand, and added this:

I desire to say expressly, Mr. Beecher has never offered any improper solicitation, but has always treated me in a manner becoming a Christian and a gentleman.

And this she signed with her full name, "Elizabeth R. Tilton."

Q. Did you in any manner suggest or request that additional writing? A. I did not; it was of her own mind.

Q. Did you in any manner dictate, or indicate any form of expression, or substance in that? A. I did not.

Q. Did you during this conversation, Mr. Beecher, say anything to Mrs. Tilton as to the form and manner in which injury might come to you from this charge? A. I did.

Q. What was that? A. When she spoke as objecting that it would make difficulty between her and her husband, I said to her that there should be no difficulty of that kind, so far as I was concerned, and I desired this in no sense as an offensive thing; but that some rumor of this matter might come to mischief-makers, it might get into the church, there might in the future be a call upon me, and that I wished something in my possession that in any such exigency as that would be a defense—in substance that.

Q. Did you say anything to her in regard to the injury to herself and her family that the prevalence or knowledge of such relations would occasion, as she had charged? A. I did; I said to her that it was not an injury to me that she had done alone—that no woman could make such a statement without injuring herself, and that it would be an injury both to herself and to her children should it be brought out and believed.

Q. When Mrs. Tilton was speaking to you of the view presented to her by her husband which induced her to yield and give this paper—accusation against you—did you or did she say anything more or further in regard to any comparison between himself and herself that Mr. Tilton had made? A. I don't recall, from your question—I don't recall anything.

Q. Have you stated, as far as you now recollect it, what she said in regard to the reasons or suggestions of her husband which had produced that written accusation? A. She said something more of them, Sir; but I cannot—I cannot recall them all or state them all.

Q. And the substance is as you have given? A. The substance is as I have given it.

Q. How long was this interview, Mr. Beecher, do you think? A. Time passes very fast when people are under great excitement—it seemed to me about ten hours—it was probably a half-hour.

Q. Now, this paper that you—after it was completed, in what form did you receive it from Mrs. Tilton; was it in an envelope or was it simply the paper? A. I think it

was just in this form; I don't remember enough about that; I only recollect putting it in my pocket.

Q. And did you take leave of her? A. I did. There was some little conversation further—I spoke some—I am afraid with severity sometimes; and in the converse preceding, and when I went away, I felt very sorrowful; I was sorry that I had said so, and I said to her that I hoped my visit would be for peace, and that it would not be the means of throwing her back in her sickness, and some other kind expressions.

Q. Did she reply to that? A. I don't know, Sir.

#### MR. BEECHER'S MOVEMENTS AFTER LEAVING MRS. TILTON.

Q. And you left the room and the house? A. Yes, Sir.

Q. Did anything pass between you and any one else as you went out? A. Nothing.

Q. Now, did you go back to Mr. Moulton's? A. I went right back to Mr. Moulton's; it was only half a dozen steps out of my way home.

Q. Well, what happened then? A. I rang and went in, and I sat down a moment in the parlor; and nothing was said of any consequence. I think Mr. Moulton, perhaps, asked me had I seen Mrs. Tilton, and I said yes.

Q. Was Mr. Moulton there when you went in, or did he come in? A. As I recollect it he was in the parlor.

Q. Mr. Tilton was not there? A. I don't remember him; I don't recollect seeing him again.

Q. And Mr. Moulton asked you if you had seen Mrs. Tilton? A. I think that is all.

Q. What did you reply? A. I won't be very sure that he even asked that, but I have an impression that he asked me if I had seen Mrs. Tilton; there was only a single syllable said, but I said that I would—I thought I would go home.

Q. And you either answered him that you had seen her, or you informed him that you had seen her? A. That is my impression, Sir.

Q. And then you said you would go home? A. Yes, Sir.

Q. What was then said or done by Mr. Moulton? A. Well, he rose and said he would see me home again.

Q. Did you suggest his going with you? A. No, Sir.

Q. Did he attend you to your house? A. He did.

Q. Did anything pass between you and him on the way? A. There was some conversation; I cannot report it accurately, however. I was not in a mood to think of anything else except the central matters in that figure; but there was some conversation between him and me about—I think the letter was mentioned of Mr. Bowen to me—Mr. Tilton's letter through Mr. Bowen to me—I think there was something said about Mr. Bowen's conduct toward Mr. Tilton; I think Mr. Moulton talked pretty much all the way home, and I answered him in monosyllables.

Q. That is, he did the talking? A. He did most of the talking.

Q. And your answers were only monosyllables? A. They were answers of courtesy to show that I was attending, when I was not attending very much.

Q. And do you remember what time of night you reached your house? A. I think, Sir, it was between nine and ten; I think it was not later than ten.

Q. Have you any mode of fixing the hour, or recalling it to your mind? A. Only as by computation of the time taken to walk the various distances, and my memory, about, of the time that it was—that it occupied.

Q. The length of the interviews? A. Yes, Sir.

Mr. Evarts—If your Honor please, the hour of recess has arrived.

The Court then took a recess until 2 o'clock.

#### THE AFTERNOON SESSION.

The Court met at 2, pursuant to adjournment. Henry Ward Beecher resumed the witness-stand.

Mr. Evarts—If your Honor please, we subpoenaed Mr. Isaac H. Bailey to attend, merely to give definitely some dates, the events occurring on which were referred to in the testimony of Mr. Schultz, I think, and perhaps other witnesses; and our learned friends have been kind enough to take Mr. Bailey's note, giving us the information, to the same effect as if he appeared and were sworn.

Judge Neilson—Yes.

Mr. Evarts—It will therefore, I suppose, be properly stated by the stenographer that the defendant put in evidence the fact that Mr. Isaac H. Bailey sailed for Europe in the steamship Oceanic, on the 3d day of June, 1871, and that the dinner given to him in reference to his expected departure was on the first day of that month of June.

Mr. Fullerton—The understanding was, as my friend will admit, that the letter of Mr. Bailey fixing those dates was to be taken with the same force and effect as if he appeared as a witness and swore to them?

Mr. Evarts—Exactly.

Judge Neilson—And no more?

Mr. Fullerton—No more.

Mr. Evarts—But then I supposed there was no doubt about the date.

Mr. Fullerton—I don't know that there is.

Judge Neilson—Perhaps the letter had better be marked.

Mr. Evarts—Well, we have it in the form I have stated, that this is to appear in the evidence to the same effect as though Mr. Bailey had testified to it.

Judge Neilson—Yes.

AN EXPLANATION OF MR. REDPATH'S TESTIMONY.

Mr. Evarts—The note is addressed to Mr. Fullerton. It is a mere personal matter. I wish to call attention also to a matter appearing in the evidence yesterday upon the cross-examination of Mr. Redpath. Mr. Redpath had occasion in giving his evidence to make a part of it an interview between himself and Mr. Beecher, at Peekskill, and a part of that interview was a recital to Mr. Beecher of what had been said to Mr. Redpath, the witness, by Mr. Tilton and Mr. Moulton, or one or both of them, as may be, and I observe a little indistinctness in the report that we are accustomed to rely upon, for the present at least, as the authentic report, though I suppose it is correctly enough stated here; but another publication on the matter has clearly shown that there may be ambiguity, by putting into Mr. Beecher's mouth what was said by Mr. Redpath to Mr. Beecher as coming from the mouth of Mr. Moulton or Mr. Tilton, and in a very important particular. I will now read the passage. Mr. Fullerton is cross-examining. [Reading.]

Q. Well, tell us, according to your best recollection, what you related to Mr. Beecher? A. I told him that Theodore—I think I told him that Theodore asked me—oh, that—[the witness hesitated, as we all remember, or as I remember]—after I saluted him in that way he sprang up and greeted me very cordially and said: "James, I am glad to see you; tell me how to fight this battle."

Mr. Fullerton—Who said this? A. Theodore. [This is what Mr. Redpath was telling Mr. Beecher as coming from Theodore.]

Mr. Evarts—And you said it to Mr. Beecher, I suppose? A. I think I did, Sir—I think I did; I don't—and after some further conversation (because I am not sure that I related that [the further conversation] to Mr. Beecher), he said: "Do you know how bad this case is?" I said: "No; I know what you have always told me." "Well," he said, "it is adultery, going over two or three years."

Now, that was part of Mr. Tilton's statement which Mr. Redpath repeated to Mr. Beecher, and one of the papers has stated it as part of the interlocution between Mr. Beecher and Mr. Redpath—which, of course, makes a difference. [To Mr. Beach.] I suppose there is no misunderstanding about that?

Mr. Beach—Well, I don't know, Sir. I do not think it is necessary for us to correct all the false statements of outside newspapers; we should be pretty busy if we undertook it.

Mr. Evarts—I do not wish that. I only call attention to the evidence itself, which is a little involved, in order that there may be no misunderstanding about it.

Mr. Beach—We cannot correct the evidence, Sir. There it stands.

Judge Nelson—The matter being somewhat delicate, it was desirable that you should call attention to it, of course; but this report of the testimony is being corrected

by Mr. Bigelow, upon whom the responsibility rests, and eventually it will be in proper shape.

Mr. Evarts—Yes, Sir; but the fact that a newspaper has put a misconstruction upon it shows that there was some little obscurity or involvement about it, as there is. The correct version is that this came from Mr. Tilton's mouth and was reported to Mr. Beecher, and not out of Mr. Beecher's mouth.

Judge Nelson—Yes.

MR. MOULTON CONTRADICTED.

Mr. Evarts—Mr. Beecher, this night of the 30th of December, which we have gone through with in your narrative, I wish to ask you some questions connected with what has been stated by another witness. Mr. Moulton has testified that you asked him on that night if he had seen ("have you seen") Elizabeth's confession; did you ask Mr. Moulton that question? A. I did not.

Q. Or any question of similar import? A. No, Sir.

Q. Or on the subject? A. No, Sir; nothing.

Q. Did Mr. Moulton ask you such a question, or one of similar import? A. No, Sir; there was nothing said between us about it.

Q. Was there anything said by you to him, or by him to you, about any confession of Mrs. Tilton's? A. No, Sir.

Q. Did you on that night, in conversation with Mr. Moulton, at any part of the evening, use any such expression as this: "This will kill me?" A. I don't recall any such; I might have done it.

Q. Did you tell Mr. Moulton that Theodore, or Mr. Tilton, had given you permission to go to Elizabeth for a confirmation of the story? A. I did not, Sir.

Q. On that night was anything said by Mr. Moulton to you, or by yourself to Mr. Moulton, on the subject of sexual intercourse between you and Mrs. Tilton? A. No, Sir; no, Sir!

Q. Was anything said concerning any confession of sexual intercourse between you and Mrs. Tilton? A. Not a word.

Q. On that night, did any one speak to you of, or did you speak to any one of, the subject or the fact of sexual intercourse between Mrs. Tilton and yourself? A. No, Sir; no, Sir! It is loathsome and odious stuff, that I don't talk about.

Q. On that night, Mr. Beecher, did you use any such expression, or make any such observation to Mr. Moulton, as this: "That this came upon you as if struck by lightning?" A. I may have; though my impression is that that was a phrase that I used on the 1st of January, but it may have been on that night.

Q. Did you on this night ask Mr. Moulton to be a friend to you? A. No, Sir, I did not.

Q. When next did you see Mr. Moulton, or Mr. Tilton? A. I did not see Mr. Tilton again that I remember until the 3d of January

Q. And you saw Mr. Moulton when? A. I saw Mr. Moulton on the 31st of December, the next night following this interview of the 30th.

#### MR. MOULTON GOES AFTER THE RETRACTION.

Q. Where was any interview between Mr. Moulton and yourself on the 31st? A. At my house.

Q. At what hour did it begin? A. Early in the evening.

Q. After dinner? A. Oh, no, in the evening; I dine at Christian hours.

Q. Was it late in the evening? A. About seven, I should think, or half-past.

Q. How did that interview occur and go on? A. He came to my house, rang, came in, called for me; I went up stairs with him, into my bedroom, and shut the door. He then went to the bureau where the gas-lights were burning, and took his position on the left hand side, and I stood on the other—that is as we went up to it, and he made some introductory remarks, which I now cannot give, but he drew a letter from out of his pocket from Theodore Tilton—purporting to be, in which Mr. Tilton stated that after going home last night he found that I had taken advantage of my interview to procure from his wife a retraction of the charges that had been made against me. That was the substance of it. There was some little more which I do not remember. He then proceeded to say in substance that he presumed that that was so. I said it certainly—that I had. He said that he thought I had acted a very indiscreet part—a dishonorable one; that I had no right to take advantage of such a situation, and to obtain such a retraction; and I claimed the right of self-defense. He then said that such a course was indiscreet and inexpedient on my part, no matter what my reasons were, that it tended to increase the difficulty between Mr. Tilton and his wife, and between Mr. Tilton and me, and that instead of leading to peace and quiet it tended exactly the other way, and that I ought to give up her retraction. I argued with him on that matter, and for some little time there was an interchange backward and forward of thought. He then drew from his pocket a letter purporting to be from Mrs. Tilton, requesting me or him—

Mr. Evarts—Wait a moment. We want that letter—Exhibits 1 and 6, Mr. Morris.

[Mr. Morris produced the letter.]

Mr. Evarts—This note that you are now proceeding to speak of, which Mr. Moulton took out and read, did you have it in your hands, or did he read it? A. I did not.

Q. Look at that and see if that is it as you remember? [Handing witness a letter.] This is, I think, the letter that was read to me.

Q. You did not at that time read it yourself, or have it in your hands? A. No, Sir.

Q. Well, he read you that note? A. I am quite sure, Sir.

Q. Please read it—it is short! A. [Reading.]

SATURDAY MORNING.

MY DEAR FRIEND FRANK: I want you to do me the greatest possible favor. My letter which you have, and the one I gave Mr. Beecher at his dictation last evening, ought both to be destroyed. Please bring both to me, and I will burn them. Show this note to Theodore and Mr. Beecher. They will see the propriety of this request.

Yours, truly,

E. R. TILTON.

Q. Well, is that it? A. I recognize it by one single word.

Q. Well, he read that to you? A. Yes, Sir.

Q. What succeeded? A. Well, I was perplexed a little at the existence of that letter, for Mr. Tilton had told me that the letter was destroyed, and Mr. Moulton, and Mrs. Tilton's note, implied the existence of that letter containing charges.

Q. The accusation? A. The accusation.

Q. Yes? A. However, that was a mere transient thought in my mind, and then, the end of the conversation being what would tend to peace and reconciliation—

Q. Go on with the conversation, please? A. There was considerable said; I said to Mr. Moulton that my objection to giving up that retraction was that I should be left open, without defense, if I were in any way brought to account on such a charge as that. He said in substance that he would stand between me and any such renewal of the accusation, that he would defend the documents, that he would burn them both in my presence, if I wished—

#### THE PISTOL SCENE.

Q. If you wished? A. If I wished, or he would keep them. After some little further parley I went to the drawer where the letter was, brought it out, and handed it to him. He had been sweating, and had his overcoat on, and about this point—perhaps as I came back with the letter—he took off his overcoat, and in doing so I saw the hilt of a pistol in the pocket, which he took out and laid on the bureau, without word, as I remember, and put his overcoat on the foot of the bed. After he had the documents he put it in his pocket, and we fell into a little conversation thereafter, not of any considerable duration. I have an impression that something that night made it necessary that our interview should be short, but there was some further conversation about Mr. Tilton or some of his affairs, but very brief.

Q. What was the tone and tenor of this latter conversation in regard to Mr. Tilton's affairs or their prospects, or future, or what not? A. He spoke of Mr. Tilton as a wronged man—that he was his friend and he meant to right him—that was the tenor of it; that was the general tenor.

Q. What was said, if anything, as to the wrong and from whom the wrong had come? A. I understood the wrong to be from Mr. Bowen at that time; but, of course, after



the scene of the night before, there was not excluded from my mind my own participation.

Q. In the injury? A. I did not enter into it.

Q. Now, this further letter, Mr. Beecher, was that also there? A. I do not recollect either seeing or hearing this; part of it is very much like the tenor of Mr. Tilton's letter; I am not sure but that he quoted something of this in his letter; but I remember no other letter from Mrs. Tilton except the one that I have spoken of.

Q. Now, this letter from Mr. Tilton that Mr. Moulton read was a letter to Mr. Moulton, I suppose? A. To Mr. Moulton.

Q. Not to you, and that you did not read or have in your hands? A. No, Sir.

Q. Now, after this promise—was it after this promise of Mr. Moulton that he would either burn the two papers, if you chose, or keep the two papers and defend you against the renewal of an accusation, that you gave him up the retraction? A. It was.

Q. When Mr. Moulton represented to you, as he did in some form, that it was an improper or dishonorable thing for you to take advantage of your visit to get this paper, what did you say to him on that subject as to your visit and your getting the paper? A. I don't remember that any particular words—I know, in general, that I said I thought I had a perfect right to procure a retraction from the source where the charge had come.

Q. Was anything said by you about Mr. Tilton's having invited you to go there? A. No, Sir; nobody at that time would have thought of making—

Q. No; that Mr. Tilton should have invited you to go to see his wife that night? A. I beg your pardon, Sir; I did not understand—

Q. Was there anything said about Mr. Tilton's having invited you to go down to see his wife that night? A. Oh, that was the very basis—

Q. Well, I mean the 30th? A. What?

Q. Was anything said at the interview, anything said by you, at the interview on the 31st, about Mr. Tilton's having invited you on the 30th to go down and see his wife? A. Mr. Moulton introduced it, that Mr. Tilton had sent me down to see his wife; there was no difference of opinion about it—if there is any, it is of later origin.

Q. Was anything said about its being dishonorable to keep the paper, whether it was so to get it or not? A. Yes, there was—there was, in the course of conversation (which was somewhat emphatic in spots) an unwillingness on my part to be convinced, and he tried to show that it would be a mean act in me to keep a paper procured under the circumstances from a sick woman; but I do not remember precisely the ground on which the pinch was made, but that there was such an imputation of meanness—of course it was not conveyed in a very bald way; it was done very gentlemanly; Mr. Moulton's conduct toward me was always that of a gentleman—I mean his manners, his address.

Q. Now, this matter of a pistol didn't figure in the scene, so far as it attracted your attention, any more than you have now stated? A. I did not see the pistol at all; I just saw him take it out on taking his overcoat off, and laying it on the bureau.

Q. Laying the pistol on the bureau? A. It was not fired off.

Q. On your giving up the paper, and before leaving, was anything said by Mr. Moulton as to your present conduct about the paper being this or that? A. Yes, Sir; he complimented me; he thought I had behaved very sensibly, and that he had no interest in this except as peace and harmony between us, and that he was very much gratified about it.

Q. Was anything said by him as to what effect toward peace or harmony this act of yours— A. He thought, he said, it would be a work of conciliation, and that it would tend very strongly—he represented that Mrs. Tilton was under the impression that I was an active enemy, and that any course on my part that was a course of self-defense, aggressively, in any way, or as holding a defense of myself in such a way as would be a rod over him, would be—it would strengthen that impression, and that every conciliation that I could make would weaken that impression and help him, Mr. Moulton, to hold Mr. Tilton to kindly thought and feeling about me.

#### NO SUGGESTION MADE OF UNTRUTH IN THE RETRACTION.

Q. Was anything said by Mr. Moulton to you that night about your having procured from Mrs. Tilton what you knew to be a lie? A. No, Sir; nothing.

Q. Was anything said by him about your having procured from her what he, Moulton, was justified in calling a lie? A. You mean, did he make any such expression?

Q. Yes, to you? A. No, Sir.

Q. Was there any charge or expression of that nature made to you that night? A. None whatever; it was the next day that we had a full interview on those points.

Q. Was anything said that night by Mr. Moulton to you in reference to your having obtained this letter, or anything that had passed between you, that that would not save you? A. There was—there was a distinct, and, if I recollect aright, repeated statement on his part that this was bad policy to obtain it, if peace and harmony between us two was the end in view; but if you mean by "save me," according to the later theories—

Mr. Beach—That I object to. I move to strike that out.

Judge Neilson—He wishes to know—

Mr. Beach—One moment, if your Honor please; I move to strike that out.

Judge Neilson—Strike that out. [To the witness.] He wishes to know, Mr. Beecher, whether that expression was used. A. No, Sir; I don't think that that expression was used.

Mr. Evarts—"That won't save you"—anything like that? A. No, Sir; I don't think any such expression.

Q. Was anything said at that interview about Mr. Moulton's not seeing much of the guidance of God in what you did? A. I don't know but there was something said toward the close about that, but I rather confuse that with expressions of that general character which occurred a great many times in our subsequent interviews.

Q. Do you mean that precise expression? A. No, but an expression in regard to a guiding Providence.

Q. Did Mr. Moulton say to you that night what I shall now read to you, or anything like it? [Reading.] "Mr. Beecher, I don't think that now you ought to take merely selfish counsel of yourself; the truth is the truth; you have got to abide by that!" A. The first sentence I think was one of the arguments that he used when I said that I should retain that for self-defense, and his statement was that I ought to take a generous view, and act so as should be for the interest of all the parties concerned; not stand selfishly merely on my own technical defense; he was after a reconciliation and harmonization of the discordant interests.

Q. Well, the latter part, the truth— A. Read it again, if you please, Sir.

Q. You have answered as to the former part; the latter part, "The truth is the truth, you have got to abide by that." A. I don't remember that, Sir—I think it is true.

Q. As a general fact? A. Yes, Sir.

Q. Now, did you say anything to him of these words, or of this nature, that your defense would be the technical one of general denial? A. No, Sir, I did not.

#### THE OVERTURES OF FRIENDSHIP ALL ON MR. MOULTON'S PART.

Q. Did you say anything about your defense being a mere denial? A. I don't recollect that I said anything about my defense at all, except in connection with the paper; that I retained that for my defense, should ever occasion require it; I can remember nothing in that interview that would call for such a remark.

Q. Did you say anything to him like this: "Since you know the truth, I will throw myself upon your friendship, and what I believe to be your desire to save me?" A. No, Sir; the overtures of friendship at this time were not on my part.

#### OTHER CONTRADICTIONS OF MR. MOULTON.

Q. At this interview that night was there any talk about your relation or intercourse with Mrs. Tilton? A. No, Sir.

Q. Was anything said at this interview about the love you had for Mrs. Tilton, or Mrs. Tilton for you? A. Not that I recollect, Sir.

Q. Now, Sir, did you use any figure or expression of this

kind—did you say at that interview anything about being on the brink of a moral Niagara? A. I hope not, Sir.

Q. Well, as matter of fact? A. I did not, Sir.

Q. Any figure like that, or that could be confounded with that? A. I think not, Sir; I don't remember any. It was a business interview, turning on the retraction—the return of that paper; there was a mere pendant to the interview about Mr. Tilton's condition, and that was the whole thing that was embraced in that conversation.

Q. Did you, in connection with the statement about a moral Niagara, say anything about your having no power to save yourself, and call upon him to save you? A. No, Sir, I didn't.

Q. Any expression of that kind in that interview? A. No, Sir; nothing that had that significance as you ask the question; at the close, or in the closing remark of the conversation, Mr. Evarts, there was something said by him of his power to serve both of us, he thought, if we were amenable to good sense and reason, and in reply to some such suggestion as that I may have said I should be very glad of his services.

Q. Did you in this interview with Mr. Moulton say to him that you considered your sexual intercourse with Mrs. Tilton as natural an expression of your love for her as the words you used? A. No, Sir; nothing of the kind; such language is simply impossible to me.

Q. Did you say you felt justified in it on account of the love you felt for her—

Mr. Morris—One moment—

Mr. Evarts [Continuing]—And which you knew she held for you? A. No, Sir; no such language; the topic did not come into conversation.

Q. Did you, at the close of the conversation, or otherwise, or at any other part of it, say that your life was ended? A. No, Sir.

Q. Now, Mr. Beecher, did you say on this occasion to Mr. Moulton, or anything like it, that you had loved Elizabeth Tilton very much; that through your love for her, if you had fallen at all, you had fallen? A. No, Sir.

Q. That the expression, the sexual expression of that love was just as natural, in your opinion—you had thought so, as the language that you used to her? A. Did I say that?

Q. Yes, did you say that? A. No, Sir.

Q. Did you then, either a first time or a second time, say that if you had fallen at all, you had fallen in that way—through love, and not through lust? A. No, Sir; no, Sir.

Q. Mr. Beecher, was anything of this kind said to you by Moulton [reading]—"Mr. Beecher, I don't see how you have erred as you have; I don't understand it. You have had criminal connection with Mrs. Tilton, and you go down and you get this paper; I don't see how you could have performed two such acts!" A. What is your question; whether I—

Q. Whether he said that to you? A. No, Sir; of course

he didn't; Mr. Moulton is not a fool, Sir; he is a very sagacious man—

Mr. Beach—One moment, Mr. Beecher, please.

The Witness—Well, I merely mean that as a form of negative.

Mr. Fullerton—Well, it is not necessary for you to swear to that fact in order to have it understood. [To Mr. Evarts.] He has no right to make use of such an observation as that.

Mr. Evarts—No; so I say. [To the Witness.] Did Mr. Moulton use either branch of this observation that I have put to you—"You have had criminal connection with Mrs. Tilton?" A. No, Sir.

Q. Now, on that night, Mr. Beecher, was there by Mr. Moulton any accusation, imputation, or insinuation that you had had carnal intercourse with Mrs. Tilton?

Mr. Beach—I object to that question as leading and as calling for a judgment instead of the conversation that occurred.

Mr. Evarts—I have a right to exhaust the negative that nothing was said on the subject or tending or referring to the subject.

Mr. Beach—It is very easy to ask whether anything more was said, but to put into the question what the gentleman has embodied in that question is utterly inadmissible, I submit to your Honor.

Mr. Evarts—It strikes me not, if your Honor please, so. I have given the conversation, and they have given the conversation on their part, and I don't want any room for suggestion—

Judge Neilson—That is understood.

Mr. Evarts—That this witness has not negated every form of imputation of his having had sexual intercourse with Mrs. Tilton.

Mr. Beach—I suppose it competent for the gentleman to ask, Sir, whether anything was said upon a given subject, or whether anything more was said upon an introduced subject than has been given by the witness; but I beg your Honor to listen to that question from the records of the stenographer, and see how much it requires of judgment and conclusion and construction on the part of the witness. If the gentleman merely intends or wishes to negative any declaration upon any subject in that interview by any party, it is very easy to do it, Sir, without any offensive question of this character.

Mr. Evarts—Read the question, Mr. Stenographer!

The Tribune stenographer read the last question.

Mr. Beach—I persist in my objection, Sir, to that question.

Mr. Evarts—I think I have a right to put that question, Sir.

Judge Neilson—I think you could improve it by adding a few words to it—"and if so, what was said?"

Mr. Evarts—And if so, what was said?

Judge Neilson—I think he may answer that.

Mr. Beach—I object to the question, and except to its admission.

The Witness—There was no such insinuation, or imputation, nor implication; and there was nothing said by him or by me on that supposition nor on that subject. [Applause.]

# MR. MOULTON PRAISES MR. BEECHER'S GENEROSITY.

Q. At this time, Mr. Beecher, before you separated, was anything said about any future visit or appointment? A. There was an understanding that I should see him the next day.

Q. There was? A. Yes, Sir.

Q. He was to call upon you the next day? A. Yes, Sir.

Q. How did that arise—by your request or by his suggestion? A. I don't remember; I only know that I expected him.

Q. Now, the next day was Sunday? A. It was.

Q. The first day of January. How and where did an interview occur between yourself and Mr. Moulton? A. After dinner, about three o'clock in the afternoon, the 1st of January, Mr. Moulton came to my house; we repaired together to the study, which is the back room of the third story, looking out over the bay.

Q. Well, Sir? A. After the salutations, Mr. Moulton introduced the subject of the effect of the mission of the last night upon Mr. Tilton, and his feelings—

Q. What did he say? A. He said that it had been an eminently wise thing in me to comply with his request, and that Mr. Tilton was—that he had received it very kindly; words to that effect.

Q. Now, during this interview, Mr. Beecher, how were you and Mr. Moulton disposed in this apartment; were you sitting, or standing, or walking, one or both of you? A. All ways, by turns.

Q. That is, yourself? A. I sat a part of the time, and part of the time I walked; and a part of the time he sat, and a part of the time he stood; I don't remember his walking much.

Q. Now, will you proceed with the interview as far as you call it to mind? A. Yes, Sir; although I can't give it exactly in the order, I will give it in such order as I can remember it—that is, in an order which assists my memory. I think that Mr. Moulton made some allusion, after finishing the immediate subject of the result of my returning the retraction—I think he proceeded to speak about Mr. Tilton and about his exacerbad feeling, not apologetically, but in, nevertheless, a courteous explanation of his insistence upon me of the last night's action, and so on, and spoke of the great trouble that had come upon him by the treachery of Mr. Bowen, or by his misconduct, and said—

Q. Mr. Bowen's misconduct, you mean? A. What, Sir?

Q. Bowen's misconduct you mean? A. Yes, Sir; Mr. Bowen's misconduct; and that it was not in human

nature for a man to lose at once his position and his reputation and his livelihood, and not labor under great excitement, and it was perfectly natural that he should extend that to me, if he had reason to think, as he had, that I had in some sense assisted in it. That gave rise to a conversation in regard to my whole relation, from the 26th, when the letter was brought to me by Mr. Bowen. I told Mr. Moulton that I certainly had been accessory to some part of the trouble, and that as far as in me lay I found—I thought it was my duty to retrace my steps and apologize, or to do anything that I could to repair the mischief; that I had had time for reflection about the matter. He then—or—he then went on to say that Mr. Bowen had dismissed Mr. Tilton upon false accusations, or something to that effect, and that they were lies, and that he could prove them to be lies, many of the charges that were made.

Q. He, Moulton? A. That Mr. Moulton could. He asked me, I think, what Mr. Moulton told me in the interview of the 26th. I gave him a description of that interview, and, as it was then quite fresh, probably more literally and full than I have given it here, but to the same general purport. I said that Mr. Bowen had brought that letter, and said that he brought it casually, as a kindness to Mr. Tilton, at his request; then Mr. Moulton said, using very strong language—expletive—that Mr. Bowen had proved treacherous, that Mr. Bowen was coupled with Mr. Tilton in the making of that letter, and that he had promised, if Mr. Tilton would send it to me, that he would back him up in the charges—and he spoke with emphasis upon that matter; I think that he then asked me what Mr. Bowen had charged to me were Mr. Tilton's offenses; I said that Mr. Bowen had represented to me that Mr. Tilton's opinions were becoming so loose that he found it was injuring or was likely to injure *The Independent*, and that he had found it necessary to dispossess him of his editorial position and put him in a subordinate position; that up till that time he had never heard a whisper—that is, Mr. Bowen never had—against the moral character of Mr. Tilton; but no sooner was it known that he had reduced Mr. Tilton, than there came in, pouring in upon him, stories from one and from another; he said he could not hardly cross the ferry, but somebody came to him, and congratulated him upon having put Mr. Tilton out of that position, and telling him some reason, in the form of a charge against Mr. Tilton, why he should have done it; I told him that he also said that, as a result of that first step, charges had been made against Mr. Tilton of the most shocking character; he instanced one or two cases—the Winsted, and one in the North-West, and one in—somewhere else—I have forgotten where, but stated as one that was fresh in his mind, and with some particularity of detail, an event that occurred in his own office of *The Union—The Brooklyn Union*; I then told him that it was a singular coincidence; I told him that I

told Mr. Bowen that it was a singular coincidence that there had come to my knowledge, within a very brief period, charges of a similar character; I related to him the interview between me and Bessie Turner; I related to him the interview between me and Mrs. Tilton and her mother; I went into detail about that; I narrated to him that there were current reports and rumors, which now seemed to me to gather force, in respect to another person; there was something—a considerable conversation around about that point; Mr. Moulton told me that, of his own personal knowledge, many of these stories were false; that he believed Mr. Tilton to be a man absolutely chaste and faithful to his marital relations, and asseverated that in various forms—pressed it upon me; the conversation occupied in this direction, perhaps, nearly an hour, going over the relations of Mr. Tilton's character and his standing.

#### MR. BEECHER'S REMORSE FOR HIS ADVICE TO MRS. TILTON.

I told him, however, that that was not the matter that hurt me the most; I felt very acutely that I had done wrong even in those respects toward Mrs. Tilton; on his assurances that Mrs. Tilton was blameless in these respects brought upon me a sense of wrong that was very hard to bear; if there was anything, I told him, in this earth that I abhorred, it was scandal, and talking, and rumors about people; that I had kept myself clean from them, and that there were few persons in the world dare tell me such things; and to find that I had been caught in the alum of them myself, was very hard for my pride; that I had listened to these stories, and that I had believed them, and that I was ashamed and mortified about it, and that it was all the worse because it was toward a friend whom I had known and whom I had loved, and whose household was to me like my own home, and that it was not the way that Mr. Tilton had treated me when I was in adversity; he dropped everything, and went for the service of me because it was my son, which was more than me; he dropped everything and went to Washington, and did a great office of kindness for me; but when he was in trouble I found that the first thing that I had done was to take sides against him, and add to the weight that was threatening to crush him, and that I could not bear that; and that as it regarded his household, I did not know hardly what to say; I could not understand it; how Elizabeth should have called me to a meeting to counsel her about a separation, without letting me know either before or at that interview that there had ever been discrepancy in the household, of such a kind as there had been, I could not understand; I was absolutely bewildered by 't, but that it seemed to me that if she had been led to transfer her affections from her husband, by reason of my presence, I could not but feel that I was blameworthy; that she was a woman, so quiet and so

simple, her exterior life was so far from that, that I had never suspected it, but that her conduct seemed to be now such as led me to feel that there had been—that the allegation was not untrue, that I had warped her affection, which her husband had made, in the interview of the 30th, and that it seemed to me that she must have been broken down in her moral nature, that such charges and retractions, and withdrawal of retractions—it was a pitiable thing, and indicated that great mischief had been done in that household, and that I had been the occasion of it was very plain and very evident, though I had not suspected it, and that led to some conversation in which I expressed my doubt of whether—this was the first time that I had given vent to all my thought and feeling. The other interviews had been, as it were, diplomatic, but I felt that Mr. Moulton was a friend to both sides, and for the first time I gave air to the pent-up feelings that I had; I walked about the room in great agitation and great self-condemnation. I said to him that I could not conceive of anything for which a man should blame himself more utterly than to intrude upon a household and to be the means of breaking it up; that my idea of friendship and love was that it gave strength, and that I had always supposed that my presence in their family was giving strength to all of them; that it was a blessing to the children; that it was a help to his wife in her duties, and that it was not without a beneficial influence to Mr. Tilton, in the long run, and that this came upon me like a thunder-clap, and I was amazed and bewildered by it; I think it was, perhaps, in that relation where I was somewhat doubting whether it could possibly be true that Mr. Moulton said to me, sitting in his chair [here Mr. Beecher put his leg over the arm of the chair in illustration], with an intelligent look, "Why, there is no doubt about that, Mr. Beecher; Elizabeth Tilton loves your little finger more than she does Mr. Tilton's whole body;" I accepted it; I had no means of contradiction; I said to myself, "It has been a smoldering fire, burning, concealed, and I knew nothing of it." I felt ashamed to say, "It is not my fault." I felt rather the impulse, I suppose which every gentleman will understand, to say, "I ought to have foreseen; I was the oldest man—the oldest person; I was the one that had had experience; she was a child. If she did not know that the tendrils of her affection were creeping up upon me, I ought to have known it;" and I expressed myself without measure, on that subject; and I alluded in the conversation to the conflict which I had, the sense of—the feeling that I had always had for her as of a saint-like person, and the conflict that now was in my mind in respect to her as one that had been broken down, and had brought these false charges against me, and taken them back, and was acting in a manner almost like one that was bereft of reason, and that the two images—I couldn't understand it.

# MR. BEECHER'S HISTORY OF THE "LETTER OF CONTRITION."

Much conversation passed backwards and forwards turning on this, that Mr. Tilton was set against me; that he felt that I was his enemy, and that I had done wrong to him, both in his business relations, and that I had sought to undermine his influence in the community. It was the harder because the implication was, or the statement, that I had made use of my acquired reputation, and my position as the head of a great church, and my relation to the community—that all those, aside from my mere personal action, had gone to overshadow and injure him. I protested against any such idea. That he had occasion to think that I had done him wrong in the matters of Mr. Bowen, I was ashamed to be obliged to admit. That I had done him intentional wrong in his family, I denied; but that I had wronged him there, it was very evident, it seemed to me, from the present condition and action of Mrs. Tilton. Well, we went over the same ground a good many times, running out a line and going into something else, and that bringing us back again, and, on the whole, I—Mr. Moulton was far less severe with me than I was with myself, and at times, as it were, deprecated my own strong language against myself, and said, as the interview drew toward a close, that I would only—that if Tilton could only hear what he had heard, he was satisfied that it would remove from his mind animosity and the conviction that he had that I was seeking his ruin. "Well," said I—I said to him, "State what you see and hear; I have opened my heart to you." Said he, "Write—write these statements, or some of them, to Mr. Tilton." and at first I thought I would, but I was in a whirl, and I couldn't. I said—I declined it. "Well," said he, "let me write it," or something to that effect, and I said: "I have no objection to your writing it," and he sat down at the table, but the conversation didn't stop. I amplified and went on, and finally he said to me, "Well, I will say to him"—and he made something—looked up and said, "I will tell Mr. Tilton so and so," as a sort of interpretation of what I had been saying. I said, "All right," and he made a memorandum of it. Then I went on from point to point, and sometimes he would say, "What about so and so?" and I would go on talking profusely and long, and he would jot down a memorandum about it; and that went through the whole memorandum. When he had gone through with it, it was about 5 o'clock; the bell rang for my supper. On Sundays I take tea at 5 o'clock, in order to have time to prepare my notes for the evening, and the bell rang for 5 o'clock. He rose up from the table and gathered up the papers; they were on separate sheets, and a sort of after-thought came to him, and he said: "Sign this"—"You better sign this." I said, "No, I cannot sign a letter that I have not written." "Well, but," said he, "it won't

have the influence with Mr. Tilton that it will if it has your name." "But," said I, "this is your memorandum; you take that and talk on those points to Mr. Tilton, and tell him what you have heard me say, and he believes you; you are his friend. "Well," he says, "it will be a great deal better if you just put your name to this in some way, to let him see that it is authorized," and so, on the edge of the paper, and remote as nearly as I could from the text, I signed my name to the statement that I committed this to Mr. Moulton in confidence; and at that stage I think that he gathered the papers up, made some remark of gratification, and went down stairs. It was about the time of gas-lighting when he went out; and that ended the interview.

Mr. Evarts [To plaintiff's counsel]—Give us Exhibit 2. Exhibit 2 was produced.

Q. Mr. Beecher, during that interview, was this memorandum read to you or read by you? [Referring to Exhibit 2.] A. Neither.

Q. Was any part of it read to you or read by you? A. No part of it; it was the last thing that was done.

Q. Say if that is the writing which you put upon the sheet? [Indicating.] A. I think that is, Sir.

Q. Now, this memorandum of Mr. Moulton—when did you next see it? A. In Court here.

Q. At this trial? A. Yes, Sir.

Q. And when did you next see what purported to be any copy of it, either in print or in writing, or partial copy? A. I think perhaps in the "Bacon Letter," in the Summer of 1874.

Q. But the paper itself or a full copy of it—the paper itself you have answered distinctly. When first did you see or know of—see or read or hear read any copy of this paper? The paper itself you never saw until this trial? A. No, Sir, never.

Q. When did you ever first see or know of the full text, or what purports to be the full text, of this paper? A. Not until the Summer of 1874.

Q. Not until the publications of the last Summer? A. No, Sir.

Q. As a part of some of the proceedings of last Summer? A. Yes, Sir.

[Defendant's counsel here consulted among themselves, and Mr. Evarts held the paper up toward the light and looked at it.]

#### MR. MOULTON'S PICTURE OF MR. TILTON'S WRONGS.

Q. During this conversation of this day did Mr. Moulton lay before you the condition of misfortune and disaster in which Mr. Tilton and his affairs were placed? A. Yes, Sir.

Q. Give, as near as you can, what he then depicted to

you? A. He spoke of Mr. Tilton as being a man of great ability and of great reputation, standing among the highest in the land, and that he had suddenly, by the ill-will or the misconduct of Mr. Bowen, been precipitated from, perhaps, the proudest position a literary man could aspire to; that he had not simply lost that place, but lost it under circumstances that damaged his reputation, and that not only had it, the means of his reputation, or, rather, not only had the means and influence gone with his reputation, but that, suddenly, with a large family on his hands, or expensive family—some word to that effect—his means were cut off, and he had no prospect in life except to rebuild, but all the accustomed channels were suddenly shut up to him. He then said that the man had no home to which he could fall back; that there was discord there and alienation, and that he not only thus lost all public position, but his domestic position was also stormed. He described the condition of his family and of the little children piteously.

Q. During this interview, was anything said by Mr. Moulton as to your blaming yourself more than you ought—anything of that kind? A. Yes, Sir; on several occasions he said he thought I was putting it too strongly; that the matter was not so severe as I had laid it upon myself. He thought that the family relationship might with kindly care be repaired.

Q. Did he, while you were stating to him what you understood to be the fault or misfortune from your connection with his family affairs, say that it was anything different or other than what you stated it? A. No, Sir; no, Sir; he did not. It was not a condemnatory interview; it was a sympathetic and most friendly interview between him and me. There was nothing in his tone, nothing in his manner, nor in his language or charges, that savored of that.

Q. What point or aim did he have in the interview, as you understood?

Mr. Fullerton—No; what did he say?

Mr. Beach—Oh, well.

Mr. Fullerton—Objected to.

Judge Neilson—"Did he say?" I think, was the question.

Mr. Evarts—How did he express himself as regards any object, or the result of the interview? A. He was laboring to bring to pass such a reconciliation between Mr. Tilton and me—such a better understanding, each of the other, as should avail for the peace of that family and the restoration of Mr. Tilton to prosperity and to good name.

MR. MOULTON MAKES LIGHT OF BESSIE TURNER'S STORY.

Q. Did Mr. Moulton attempt or offer any explanation of Miss Bessie Turner's story? A. Yes, though not at as much length as he did at a subsequent interview. That was—

Q. What? A. I was trying to prevent the fuller form in my mind; but he said that it was a harmless thing, misunderstood by the child; she was a mere child and she didn't understand; he didn't think if she had been left to herself she would ever have put any such interpretation upon it.

Q. Did he name any one else as having inflamed it? A. He did.

Q. Well, who did he say? A. Mrs. Morse.

Q. Did you say anything in this interview with Mr. Moulton about your feeling or thinking that you ought to write to Mr. Bowen? A. I did.

Q. What was that? A. I told him that as the result of the conversation that passed between him and me on the street, that had been told by me to Mr. Bowen, and on his assurance of the falseness of them, I said I felt that I was bound to call them back—at any rate that I would not stand on any statements that I had made, and that I would do it immediately.

Mr. Evarts—That letter, I think, is in evidence?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—That was written the next day?

Mr. Fullerton—No, Sir.

Mr. Evarts—It is in evidence, is it not?

Mr. Fullerton—Yes.

Mr. Evarts—Well, what is its date?

Mr. Fullerton—Third.

Mr. Shearman—January 2, Exhibit No. 3.

The Witness—I wrote it early the next morning.

Mr. Evarts—Early the next morning you wrote the letter? A. Yes, Sir.

Mr. Evarts—Where is that? Let us have that, No. 3.

Mr. Morris—That is not the right number.

Mr. Evarts—Is it not No. 3?

Mr. Fullerton—No, Sir.

Mr. Beach—He is mistaken.

Mr. Shearman—There are two threes.

Mr. Abbott—There are two threes; one is distinguished by a letter. It is on page 66 of the pamphlet.

Mr. Evarts—I will take it in this form, Mr. Morris, from the testimony.

Mr. Evarts—Mr. Beecher, look at the testimony; it is not convenient to find the paper. [Showing witness printed testimony.] There is the first part of the letter, and there is the rest of it, with the date in between.

The Witness—I don't need to read the debate.

Mr. Evarts—No, read the letter—those two fragments—and say if that is the letter which you spoke of intending to write, and afterwards did write.

Mr. Morris—Here is the letter, Mr. Evarts, No. 4 1-2.

Mr. Evarts—Here is the letter. This is the draft, I suppose, that we produced, is it not?

Mr. Morris—We produced it.

Mr. Evarts—Yes, you offered it in evidence.

Mr. Morris—And we produced it.

Mr. Evarts—Did you? Oh, yes; it is one of Mr. Moulton's archives.

The Witness—Well, Sir.

Mr. Evarts—This is the letter; I suppose that is the draft. Mr. Bowen would have the original.

The Witness—I was going to say I doubt if I sent this.

Mr. Morris—That is not the one that was sent.

Mr. Evarts—No, that is the draft or copy. [To the Witness.] That is in your handwriting? A. Yes, Sir.

Q. And it is the draft or copy of the letter which you sent? A. Yes, Sir.

Mr. Evarts [To Mr. Morris]—This is 4 1-2, you say?

Mr. Morris—January 2d?

Mr. Evarts—January 2d.

Mr. Evarts—When Mr. Moulton went off—before he went off with this memorandum which he had made—was anything said by him about his burning or returning it? A. Yes, Sir.

Q. What was that? A. He said—treated it as a mere memorandum to be read, and said after he had used it he would either return it to me or burn it.

Q. Was it taken from you after that statement by him? A. Yes, Sir. Well, excuse me.

Q. I mean taken away from the house? A. It never was in my hands—it could not be.

Q. I mean taken from the house? A. He had it in his possession all the time, and made that remark concerning it before he left.

Q. Before he left? And the use of it, with whom and to what end was it stated to be? A. It was to remove from Mr. Tilton's mind the impression that I was indifferent to his welfare, and that I was inimical to him.

Q. And was it to be used otherwise, or with anybody else?

Mr. Beach—I object, Sir.

Judge Neilson—What was said, if anything, I think.

Mr. Beach—I desire to be excessively indulgent.

Q. You said after using it he would burn it or return it? A. Yes, Sir.

Q. What use, and with whom? A. The understanding between us was—

Mr. Beach—One moment, Mr. Beecher. I must insist that you state what was said, or the substance of it.

Mr. Evarts—That is right. What "use" was spoken of by him or by you? A. He said he wished to make a memorandum from which he could represent my feelings, as he then perceived them, to Mr. Tilton; for which purpose he wished me to write, and I declined; and then he suggested that he would take a memorandum of points which he would expound to him.

Q. Now, when he left, what was the hour of day? how was the light? was the gas lit? A. Not in the study.

Q. Not in the room where you were? A. No, Sir.

Q. And was the sun set? A. I don't know; I don't know about that. It was mid-Winter, and I only know the hour by the fact that my 5 o'clock tea-bell rang.

Q. Now, was there any further statement in regard to this paper, its preservation, its return, or its use, made during that interview than what you have stated? A. No, Sir; I think not.

Q. During this interview, Mr. Beecher, was the word "crime" used, either by yourself or by Mr. Moulton, in regard to any conduct of yours? A. No, Sir.

Q. And was there anything said at that conversation, either by Mr. Moulton or yourself, in regard to any reparation you were ready to make, than as you have stated, for the wrong, or misfortune as you expressed it?

Mr. Beach—One moment. Mr. Stenographer, will you please read that question?

The Tribune stenographer read as follows:

And was there anything said at that conversation, either by Mr. Moulton or yourself, in regard to any reparation you were ready to make, than as you have stated, for the wrong, or misfortune, as you expressed it?

The Witness—Nothing that I remember. You ask me whether there was anything—you say, anything other than what I had already stated?

Q. Anything said in regard to the reparation, or wrong, or misfortune in Mr. Tilton's affairs or family that you were ready to make, except the wrong and misfortune as you had stated it? A. I do not still understand you quite—whether you mean—whether anything more than what I have stated that I would do was stated, or whether I would do something about other wrongs than those that are stated?

Q. Yes; the latter question. A. No, Sir; there was not.

Q. Did Mr. Moulton on this Sunday say to you, or did you say to Mr. Moulton on this Sunday, that Elizabeth Tilton had sent for you to come to her house, and told you that she believed that your relations were wrong,

and you told her or you told Mr. Moulton that you told her, "If you believe these relations wrong, then they shall be terminated;" and did you then further, tell Mr. Moulton that you prayed with her—prayed to God with her for help to discontinue your sexual relations? A. Pooh! No, Sir; I made a statement in respect to my visit with Mr. Moulton—in respect to that visit of July; I stated to Mr. Moulton, in regard to the allegation, that it was made by Mr. Tilton, that in the July preceding a conversation between his wife, or a written statement somewhat similar to the one made in December had occurred; and that when I went to see her in August, during her sickness, there was no word or hint of any such thing; that it was a matter of depression and mental trouble; and that I talked with her and prayed with her as I would with any other parishioner; and I marveled that if there had been any such statement, that I had got no word of it or hint of it.

Q. Was there any other allusion to an occasion of prayer between you and Mrs. Tilton than that that you have now given? A. I do not know, but I may have stated that I prayed with her when I went down to see her at her mother's, but I don't remember that I did; it is quite possible.

Q. Was anything said by you or in your hearing by Mr. Moulton on that Sunday that was of the nature of this statement that you and she prayed for help to discontinue your sexual relations? A. [Very decidedly] There was no such thing whatsoever, in any manner or shape, by Mr. Moulton or any other human being. [Murmurs of applause.]

Mr. Evarts—If your Honor please, it is so near the hour of adjournment.

Judge Neilson—Will gentlemen keep their seats until the Jury retire. [To the Jurors.] Gentlemen, please return at 11 o'clock on Monday morning.

Mr. Mallison [Clerk of the Court]—This Court stands adjourned until Monday morning at 11 o'clock.

The Court thereupon adjourned until Monday morning at 11 o'clock.



## FIFTY-EIGHTH DAY'S PROCEEDINGS.

## CONTRADICTIONS TO TILTON AND MOULTON.

MR. BEECHER'S VERSION OF SEVERAL INTERVIEWS WITH THE PLAINTIFF AND MR. MOULTON—NO INTERVIEW WITH MR. MOULTON ON JAN. 2—NO REFERENCES EVER MADE BY MR. TILTON TO THE OFFENSE NOW CHARGED—INDIGNANT AND EMPHATIC DENIALS AND CONTRADICTIONS BY THE DEFENDANT.

MONDAY, April 5, 1875.

Resuming at the point at which he had left off on April 2, and continuing the examination of Mr. Beecher, Mr. Evarts called his attention once more to the occasion of the writing of the letter of contrition. An introductory question or two led up to the denial that that document was in any sense the work of the witness; in no proper sense of the word had he dictated it; and then taking it up clause by clause, he went over it, declaring no single sentence of it to be his, and asserting in the most emphatic manner that nothing said by him resembled or warranted the expressions therein contained, except in three instances, and in these the words did not adequately express the intensity and passion under which he had uttered these reproaches against himself for having slandered Mr. Tilton and unwittingly come between him and his wife, and thus destroyed the peace of his house and family. Mr. Beecher's manner during this passage was full of feeling, and his expressions were intensely emphatic. Mr. Evarts closed this part of the examination with an attempt to explain Mr. Beecher's expression in a letter written in June, 1873, in which he spoke of this document as "my letter." Mr. Beecher explained that, down to June, 1873, he had never seen the document, and had always heard it referred to as his letter; and carelessly spoke of it as such. To explain the policy of suppression and silence subsequent to 1871, Mr. Beecher, in answer to Mr. Evarts's question, if in 1871 he had taken the blame upon himself of alienating Mrs. Tilton's affections from her husband, declared: "I continued to take it to myself until the year 1874."

## SPECIFIC CONTRADICTIONS OF MR. TILTON.

In the desire to present a narrative of the events of Dec. 30, 1870, in unbroken connection, Mr. Evarts omitted on April 2 to call Mr. Beecher's attention specifically to the declarations of Mr. Tilton in reference to their interview on that stormy night. The omission was remedied to-day. Mr. Tilton had sworn

that on that night Mr. Beecher, after hearing the accusation of adultery, had said, "Theodore, I am in a dream; this is Dante's Inferno." Mr. Beecher answered that he did not recollect using such language—did not use it; and he was proceeding to repudiate the style and metaphor, when Mr. Beach checked him promptly. Mr. Beecher then went on to deny in emphatic terms that there was any accusation of adultery, or any question of adultery raised; nothing but the charge of improper solicitation, which he pronounced false. Mr. Beecher's language to each question on these points—they were put one after another—were in nearly the same language, but the manner of delivering them varied. One was deprecatingly answered, as if the absurdity of the question ought to be apparent; another was with a shrug of the shoulder, as if he had suddenly become reconciled to the necessity of answering the catechism; and the last was indignantly repeated over and over again. But it was not until later in the day that his denials burst forth into indignant protest against the shame of having to answer insulting questions.

Mr. Moulton, in his direct testimony testified in regard to an interview with Mr. Beecher on Jan. 2, 1871, in his study up stairs, lasting some time and closing at 5 o'clock. In this interview Mr. Moulton swore that he told Mr. Beecher that Mr. Tilton was preparing for publication a letter to Mr. Bowen charging Mr. Beecher with adultery, and that the latter asked Mr. Moulton's advice about stopping the sale of Plymouth Church pews. Some testimony was taken early in the case for the defense, bearing upon the fact that Mr. Beecher received New Year's calls on the day in question from 10 a. m. until 7 p. m. Mr. Beecher, touching upon this point, said that he indistinctly remembered Mr. Moulton as among his ordinary callers, but he had no private talk with him. He positively denied that there was on that day any conference as to the sale of Plymouth pews or any reference to Mr. Tilton's letter.

## AN INDIGNANT OUTBURST.

Mr. Beecher's attention was next called to the interview on Jan. 2, at which both Mr. Moulton and Mr. Tilton were present, and concerning which each has testified. Mr. Beecher was first called upon to give his version of the interview. His attention was then called to specific statements by them in regard to the language used during the interview. He

never heard the remark which Mr. Tilton swore was employed when he refused to speak to Mr. Beecher, "as a man who has ruined my wife, broken up my home, and who then gets my permission in a sad and serious hour to visit that woman, and uses that permission for the purpose of dictating to her and making her write down a lie." He denied more emphatically still that any reference was made by Mr. Moulton to Mr. Beecher as one who had "humbled himself before you as he does before God." The sworn statements of Mr. Tilton that he had admitted his "great wrong done you and Elizabeth," and the assertion of the same witness that he had offered to retire from his pulpit, met with the sweeping denial that "the imputation of such language to me is a fiction." He denied that he had said that the renting of the pews should stop. The testimony of Mr. Tilton that Mr. Beecher had begged an opportunity before exposure to go abroad or commit suicide was contemptuously denied as a "foolish statement." When asked if he had ever begged the plaintiff not to let Mrs. Beecher hear of his crime, as she was Mr. Tilton's enemy and might readily become his own, he said calmly that there was no such statement as that, and that he had "never had one dread in his life" of his wife's becoming his enemy. But it was near the close of this part of the examination that Mr. Beecher expressed his greatest indignation, when called upon to deny the conversations sworn to by Mr. Tilton, in which the details of the alleged intimacy were talked over as a common every-day topic. "No, Sir," he exclaimed, "odiously false!" And when the question was put in another form he broke out with the interruption, "It is intolerable, almost, to be asked that question; but before Almighty God, no such question ever, by anybody, at any time, under any circumstances, was put to me, or, in conversation with me, alluded to."

#### CONTRADICTIONS OF THE PLAINTIFF'S TESTIMONY.

Mr. Evarts then reverted to the scene on Jan. 7, 1871, between Mr. Beecher and Mr. Moulton. Mr. Moulton testified among other things that on this day he read to Mr. Beecher a copy of Mr. Tilton's letter to Mr. Bowen, subsequently made part of *The Golden Age* article and attached to the Tripartite Agreement. In this letter Mr. Beecher's various alleged offenses against others than Mr. Tilton were

fully enumerated. Mr. Beecher denied that such a letter was read to him or that it was seen by him until 1872, after the close of the Tripartite Covenant. He also swore that instead of admitting Mr. Bowen's charges, he defied him to his face before all the world. Mr. Beecher also stated that the object of this interview was to help build up Mr. Tilton's fortunes, to induce Mr. Bowen to pay him his dues and to restore peace to his family, but in the end he discovered that Mr. Moulton was also endeavoring to restore Mr. Tilton to the editorship of *The Independent*. Mr. Beecher, at the close of this part of his testimony, was called upon to quote Mr. Moulton's report to him of what the latter had said to Mr. Bowen, and did it with close imitation of Mr. Moulton's gestures. Mr. Evarts said it was the hour of adjournment, though it lacked a few minutes of it, and the Court adjourned for recess.

The whole of the afternoon session was devoted to drawing from Mr. Beecher his version of various scenes and facts and letters respecting which Mr. Moulton and Mr. Tilton had testified.

In regard to the story that Miss Bessie Turner was sent away to school through Mr. Beecher's influence in order that she might not be able to repeat the scandal concerning him and Mrs. Tilton, Mr. Beecher swore in contradiction of Mr. Moulton that the latter never told him that he thought that it would be better to have her away. Mr. Beecher had never said that he "thought so too," Mr. Moulton never told Mr. Beecher that Mr. Tilton considered Bessie Turner as dangerous from her knowledge of Mr. Beecher's relations with Mrs. Tilton. And finally Mr. Beecher swore that he never knew anything about Miss Turner's going away to school until called upon to pay the first installment for her schooling.

When the subject of Mrs. Morse's letter declaring that Mr. Tilton intended to publish his story as soon as Mrs. Tilton was dead was introduced, Mr. Beecher swore that it was agreed among them that her letter was merely the hallucination of a woman laboring under a monomania.

Mr. Beecher also contradicted the testimony of Mr. Tilton and Mr. Moulton in regard to the existence of any understanding among them at that time that he was charged with having had criminal relations with Mrs. Tilton, or with preaching to forty of his mistresses. He also denied that he was told that Joseph Richards had gone to Mr. Tilton and asked him "if Mr. Beecher's visits to Mrs. Tilton were alto-

gether of a pastoral nature." Mr. Beecher's manner in making these denials was calm but emphatic.

#### A LETTER TO MRS. TILTON EXPLAINED.

Mr. Evarts now passed on to February 7, 1871, the day on which Mr. Beecher wrote the letter to Mrs. Tilton, beginning, "When I last saw you I did not expect ever to see you again—to be alive many days." Mr. Beecher said that Mr. Moulton represented Mr. Tilton as toiling hard to recover his lost position, but suffering from great annoyance at home from the sullenness of Mrs. Tilton. Mr. Moulton urged Mr. Beecher to write a letter to each of them. He had seen Mrs. Tilton last on Dec. 30, when she lay upon her sick bed. Mr. Beecher explained the opening sentence of the letter by saying: "I referred to the shortness of our days. She looked like one already spoken for by the angels, and after the fiery ordeal to which I had been subjected I did not expect to live long." Mr. Beecher spoke solemnly, with pauses between the words, and evidently his nature was stirred by the remembrance. Mr. Beecher accounted for the fact that he had not sent the letter to Mrs. Tilton by her husband by saying that Mr. Moulton suggested that if this were done Mrs. Tilton would have no faith in it, and the effect of the letter as a peace offering would be lost. The clause to the effect that it was written by Mr. Tilton's permission was also, Mr. Beecher said, a suggestion of Mr. Moulton. "Mr. Moulton was the engineer of the whole proceeding," was Mr. Beecher's emphatic summary of his explanation.

He further denied that there was any arrangement by which he and Mrs. Tilton were not to meet or correspond, but explained that there were two reasons that prevented him from cooperating openly to secure harmony in the Tilton family. His presence, as he then thought, would increase Mrs. Tilton's regard for him, and he thought that Mr. Tilton's pride would take offense at becoming reconciled with his wife through the instrumentality of the man for whom, as he then believed, she had confessed an affection.

Mr. Beecher then gave an account of an interview at Mr. Tilton's house about the middle of February, 1871. This it will be remembered was the date given by Mr. Tilton of an alleged conversation concerning the parentage of the boy Ralph. Mr. Beecher in his account of the conversation made no mention of any such discussion. His talk with Mr. Tilton, he said, was in reference to the stories about the

latter. Mr. Tilton repeated to him the stories of the Winsted and other scandals, denied them, and asseverated that he "had never violated his marriage vows, but had always preserved an immaculate chastity." Mr. Beecher again expressed his sorrow for believing in the scandalous reports. They had another reconciliation and then went to Mrs. Tilton's bedroom, where Mr. Tilton said to his wife, "Mr. Beecher has acted the part of a man and has taken all the blame;" and then turning to the witness had added, "and Elizabeth has done the same to you, Sir." Mr. Evarts then read from Mr. Tilton's testimony passages from an alleged conversation on the subject of Ralph's parentage. Mr. Beecher seemed restless as the reading of this testimony continued. He seemed impatient to speak and made several gestures of remonstrance. When at length the question was put, "Was there any conversation on that subject?" he answered: "Never, between me and Mr. Tilton alone nor in the presence of his wife. It is an absolute and monstrous falsehood." Mr. Fullerton was on his feet almost before the applause had ceased, and made some bitter reflections on the conduct of the spectators generally and the friends of the defendant. Mr. Evarts replied, and Judge Neilson ended the discussion by ordering a reinforcement of court officers, and threatening to punish the next offenders for contempt.

#### THE PROCEEDINGS—VERBATIM.

##### ANOTHER DEMAND FOR BETTER ORDER.

The Court met at 11 a. m., pursuant to adjournment.

Judge Neilson—I wish to say a word to the reporters—first that the suggestion about order which I now wish to make, and the fact that there may be interruptions hereafter, and that the Judge may scold the audience, be omitted from your notes—utterly omitted. I am admonished in that respect by a long letter received from a distinguished Judge in Toronto, covering three pages, and telling me how they arrange the courts there and wondering we haven't power, by the aid of the Sheriff, to remove persons who interrupt the proceedings. Therefore, I think, the record would appear much better if any casual interruption that may possibly occur (and I hope none will) may be omitted from the evidence, and that my requests for order may be omitted. In the same connection I wish to say to Mr. Rogers, the officer who has charge, that if he has not policemen enough here to aid him to keep order, he must order more. In case of any interruption such as did occur the last afternoon you were here, he must remove the person or persons who interrupt the harmony of the proceedings, and that must be done without respect to persons,

no matter who it is. These interruptions are unpleasant to the witness—unpleasant to each of the counsel on both sides; they distract the attention of the jury. Such persons are wanting in respect to the Court, and it must cease; that is all I have to say about it. Proceed, gentlemen.

Mr. Beecher was then recalled and his direct examination continued.

Mr. Evarts—Mr. Morris, have you Exhibit No. 2?

[Exhibit No. 2 produced by plaintiff's counsel and handed to witness.]

#### MR. BEECHER'S INJUSTICE TO MR. TILTON.

Mr. Evarts—Recurring now, Mr. Beecher, to the scene and date of the interview at your house in the study, when that memorandum you have in your hands was made, I now ask you when Mr. Moulton made the statements which you have given regarding Mr. Tilton's innocence in respect of the matters that had been imputed against his morality, the stories that had been told—what effect did those statements of Mr. Moulton produce upon your mind in regard to your belief on that subject, of those immoralities? A. Do I understand the question to mean whether Mr. Moulton's statements cleared my mind in regard to Mr. Tilton?

Q. Yes, what the effect of them was upon your mind in that regard? A. Why, I earnestly and with overgladness believed that they were true, and that his statement about Mr. Tilton was the truth about him, and I felt all the worse for believing it, because it made me, in some sense, an injurer of Mr. Tilton's innocence.

#### THE BASIS OF THE LETTER OF CONTRITION.

Q. Now, Sir, is that paper which you hold in your hand in any sense your composition?

Mr. Fullerton—Objected to, Sir.

Mr. Evarts—The paper is the memorandum made by Mr. Moulton, as testified to.

Judge Neilson—I think we will take that, though it substantially appears already.

Mr. Fullerton—Why, Sir, whether that is so or not will appear from the facts that he has already detailed; it is not his judgment that is to prevail upon that subject, it is the judgment of the jury.

Judge Neilson—Not to prevail, to be sure; but I think we will take it, Sir.

Mr. Fullerton—Whether in any sense that paper is his composition?

Judge Neilson—Yes.

Mr. Fullerton—Note the exception.

The Witness—In no sense whatever was it any composition of mine?

Q. Was it a copy or production of any dictation of yours? A. In no proper sense of the word "dictation," did I dictate it.

Q. I ask your attention now to the part, first clause in that memorandum, which reads thus, I suppose; I read from a print:

I ask through you Theodore Tilton's forgiveness, and I humble myself before him as I do before my God —

Q. Did you express that sentence in those words or their equivalent to Mr. Moulton that night? A. I did not. I did say that in view of the statements made I felt that I had wronged him and I had wronged his household, and that I would—I had humbled myself before God for it; and I was willing to humble myself before Mr. Tilton.

Q. This clause:

He would have been a better man in my circumstances than I have been—

Did you express that clause in those words, or any equivalent meaning or expression? A. I did, substantially that, a good many times over.

Q. In what connection and in reference to what topic concerning which you were speaking? A. In reference to the fact that I had, as it were, almost on the first blush, sided against Mr. Tilton and with Mr. Bowen. When I was in difficulty Mr. Tilton had instantly and with a most generous spontaneity dropped everything and gone to my service and help, and when he was in trouble I at once took sides against him.

Q. Was that your feeling at that time in comparing your conduct as it stood before you with his conduct, as you remember it, toward yourself? A. I remember it very distinctly, Sir; I shall not forget it to the Judgment Day.

Q. Did you express in these words this—what is—what appears as this clause in the memorandum:

I can ask nothing except that he will remember all the other hearts that would ache—

A. No, Sir; I did not make any statement which is expressed by that formula—I did, in that conversation, repel the idea that I was acting selfishly; and I did call up in various forms, and at different times in the conversation, and repetitiously, the relations which I sustained to other persons in my household and to his household, and to the friends in the church that loved me as if I belonged to their household.

Q. Did you express in these words, or in any equivalents, this—what is printed as this clause of the memorandum—what appears as this clause of the memorandum:

I will not plead for myself; I even wish that I were dead. But others must live and suffer.

A. Oh, that is not my phraseology, and it is a very pale and poor and feeble interpretation of the intensity with which I expressed my sorrow to lie in the sorrow of other people.

Q. What did you express carrying the idea that not for yourself but for others were you concerned? A. I don't take your question, Sir!

Q. What can you state as having been said by you carrying the idea that not what yourself would suffer, but what others would suffer, gave you concern? A. Well, Mr. Evarts, it should be recollected that I was not in a logical mood, and I did not measure my words, nor finish all my sentences, and I am afraid even mixed my metaphors. There was no intensity that I was capable of that I did not pass through in the various expressions of my feeling. Sometimes it was the laceration of my own heart at what it seemed to me I had done toward Theodore; sometimes it was the intense feeling that I had had at what my presence in the household had done toward Elizabeth; sometimes it was indignation that Elizabeth had done what she had toward me, and there was just that oscillation and vibration which takes place in a very highly excited state of mind; for if I had expressed indignation I was sorry for the indignation at the next mood, and went perhaps to the other extreme of excusatory statements.

Q. Did you dictate this clause:

I will die before any one but myself shall be inculpated. In those words or in any equivalent expression? A. Well, no, no such phrase as that. I have looked through this and I do not think I see a phrase in it that is mine, and yet I think I see the sources from which a good many of them were drawn. I did say that in certain—I cannot recall it definitely and certainly, but that I did express myself very strongly, that I had rather die than to have brought such trouble or than to increase such trouble; that so far as myself alone was concerned I counted life very small if I could make reparation, but it was not as anything practical and definite; it was the strong expression of surging feeling of regret and remorse at the mischief that seemed to have been committed by me.

Q. I ask your attention to the next sentence that appears in the memorandum:

All my thoughts are running toward my friends, toward the poor child lying there and praying with her folded hands.

The Witness—Yes.

Q. Did you express what is there—there appears as a clause? A. Very likely in substance, only this is a very poor expression, very meager.

Q. What did you say, and in what connection, on that subject? A. I don't know exactly what I said. I know that I felt like a father that was standing over the dead body of a child. I remembered her; she was like death when I saw her, and she had been a dear child and friend to me, and I seemed to have destroyed her, her reason, or her moral sense, and perhaps her life, for she was hovering on the edge of life and death; and I spoke as one would speak of the intensity of my distress.

Q. During this conversation were there any suggestions made by Mr. Moulton in regard to your feeling for others and not being exclusively concerned about your own position? A. He reasoned the night before, on the

31st, with me, on that ground, when I refused in self-defense to give up the retraction at first, and thought that that selfish consideration would be mean; and he very likely also at some point of the conversation may have dealt with me in the same way on Sunday afternoon. I do not now recall distinctly any passage of that kind; it is very likely to have happened.

Q. Did you use these words, or their equivalent, as contained in the next clause of the memorandum:

She is guiltless, sinned against, bearing the transgression of another?

A. Very likely, very likely; but I had lived in their household a life of intimate friendship for many years, and if I had alienated her affections in such a degree and manner as that it brought discord and such distress as even had paralyzed her moral sense, or rather her reason—if I had been the occasion of that, that mischief I took to myself. How could any man stand there and see this trouble—

Mr. Beach—This is matter of reasoning. One moment, Mr. Beecher.

The Witness—Well, I won't reason.

Mr. Beach—No; one moment, Sir.

Mr. Evarts—The blame of that you took to yourself? A. I took the blame to myself, and I continued to take it to myself until the year 1874.

Q. And the following clause, Mr. Beecher—are these your words or the expression of what you stated, in substance:

Her forgiveness I have; I humbly pray to God that He may put it into the heart of her husband to forgive me!

A. No, Sir; that sentence must go with all the rest—it is not of my parentage; the question came up of Mr. Tilton's feeling—the severity of his feeling; the drift of the interview was such a statement on my part, or such an exhibition of my mood and purposes, as should lay the foundation for a kind interference between us and a reconciliation, and Mr. Tilton's feelings, the strength of them, was justified; and when I had shown what my real feeling was, it led to conversation in respect to the feeling all around.

Q. Between you and Mr. Moulton? A. Between me and Mr. Moulton led—

Q. On that occasion? A. Yes, on that occasion; and it was in connection with Mrs. Tilton that I said, in many repeated forms, that I felt that I had done her an incalculable wrong, but that I had no doubt whatever of her forgiveness; but it was Mr. Tilton whose kindness and reconciliation I very much doubted, whose next friend, Mr. Moulton, was talking with me, and he was assuring me, too, that the difficulty with Mr. Tilton was that he had it firmly fixed in his mind that I was his mortal enemy—had been; and he himself was satisfied that if he could see how I did feel, as he believed I felt,

that it would work a very different state of feeling in Mr. Tilton.

Q. If Mr. Tilton could see— A. Yes, Sir.

Q. How you felt, as he (Moulton) saw, it would work a difference? A. Yes, Sir.

#### A REMARK ABOUT THE CONTRITION LETTER EXPLAINED.

Mr. Evarts [To Mr. Morris]—Please give me "Ex. 26."

["Ex. 26" was produced.]

Q. I call your attention, Mr. Beecher, to a phrase in your letter of June 1, 1873, which is "Ex. No. 26,"—this phrase: "The agreement was made after my letter through you was written." This is a letter to Mr. Moulton, of the 1st of June, 1873. [Showing witness a letter:] this single phrase, "made after my letter through you was written." Calling your attention to that phrase, in that expression, "letter through you," were you referring to this memorandum, or this occasion of Sunday, in which you had written—in which the memorandum had been written?

Mr. Beach—One moment, Sir; I submit that that question is leading. It should be, what he referred to.

Judge Neilson—If you would ask him what he referred to it would be doubtless correct.

Mr. Evarts—Well, it is only introductory, to know whether he was referring to it. I was going to ask him further.

Mr. Morris—What is the question?

Mr. Evarts—The question is—his Honor suggests—

Mr. Morris—The suggestion is that you should put it in another form.

Mr. Evarts—Yes, I agree. [To the witness.] The question is, in that clause what had you reference to when you speak of "my letter through you?" A. I had reference to this same memorandum that I have just had in my hands.

Q. Had you, up to that time, seen it in any form? A. I never saw it until I saw it here. I did not hear of it, as I now recollect; it never came up in conversation that I recollect; and I think the first time that I heard of it again was when Mr. Tracy, in December of 1872, I think it was—at any rate it was after he had been called in by Mr. Moulton—saw me, and he spoke of a letter that I had written. Afterward Mr. Claflin asked me about a letter that I had written. I think my brother Edward came to me about a letter, but the document had gone almost out of my mind; I had never seen it, and I used the same phraseology that I heard used.

#### ADULTERY NOT SUGGESTED ON DEC. 30.

Q. I recur now, for a moment, Mr. Beecher, to your interview with Mrs. Tilton on the 30th of December, before I pass to a later stage. Did you in that

interview use any expression, or make any reference of any kind on the subject of Dante's "Inferno?" A. I recollect none, and it don't agree with—

Mr. Beach—I object to that system of argument, Sir.

Mr. Evarts—Well, didn't you on that occasion? A. I should say I did not.

Q. During that whole interview between Mrs. Tilton and yourself, Mr. Beecher, which you have given your narrative of, and he has, did Mr. Tilton, in any form, accuse you of the crime of adultery with his wife? A. Most certainly he did not.

Q. Did he, by way of recital, or otherwise, say to you or intimate to you that his wife had ever accused you to him of adultery? A. He did not.

Q. Was there, at any time, during that conversation, raised between you, on his part, or on your part, the question whether you had committed adultery with his wife? A. There was no such question, no such allusion, no such topic, by intimation or by express language, or in any manner whatsoever.

Q. Was there any statement by him of either verbal or written accusation of or imputation against you by his wife, except the memorandum read about improper solicitations? A. Nothing but that.

Q. Was there during that conversation any reference to, recital, or suggestion of the arguments by which you had overcome her virtue and triumphed over her chastity? A. No, Sir; no, Sir; nothing.

#### ONE OF MR. MOULTON'S INTERVIEWS DECLARED FICTITIOUS.

Q. I come now, Mr. Beecher, to the 2d of January. How was that observed that day? A. According to the custom of years past in my congregation, as in others; my house was open to receive calls on that day from 10 o'clock until 7.

Q. And how were you personally occupied or taken up that day by that custom of visiting? A. I can't recall that specific day; I can recall the custom of those days; I am usually busy—

Mr. Beach—I submit, Sir, that that is not admissible.

Mr. Evarts—Well, according to your recollection of that day, Mr. Beecher. A. I have looked to see what memoranda I could find of the day, and according to my knowledge and belief I received about 800 callers that day.

Q. And through what hours of the day did that occupation run? A. Nominally from 10 until 7, but about from 11 to 7.

Q. Now, have you any recollection of any interview with Mr. Moulton on that day? A. Only the most shadowy impression that he called upon me as a caller.

Q. But as a conference, or interview with him, what recollection have you on that subject? A. There was no conference of any—there could have been no conference of any magnitude; there was none.

Q. Did you go up stairs away from your parlors into

your study with Mr. Moulton that day? A. No, Sir, I did not.

Q. Was there on that day any conversation between you in which you asked Mr. Moulton if he thought it would be safe to have the sale of Plymouth pews go on? A. No, Sir, nothing of the kind; it would have been simply absurd; I had nothing to do with the sale of Plymouth pews; that belongs to the Trustees.

Q. When was the sale for that year to take place? A. The sale takes place on the first Tuesday after the first Sunday in the month of January.

Q. Then it was to take place the following day? A. The next day.

Q. The following day? A. The next day.

Q. And it did take place, did it? A. I presume it did, Sir; I have never known a year in which they were not sold.

Q. What length of preliminary notice had been given of the sale? A. Two weeks always.

Q. Two weeks? A. Two Sabbaths in advance; the church is always open on the day of sale from morning to night for persons to come in and make a selection, and that is always advertised two weeks in advance.

Q. Was there anything discussed between you and him on that day in regard to any letter that Mr. Tilton was writing, or was to write, to Mr. Bowen? A. No, Sir; none.

#### MR. BEECHER'S ACTUAL APOLOGY.

Q. Now, Sir, on the following day was there an interview between you and Mr. Moulton—the 3d day of January, or thereabouts? A. Yes, Sir, there was, there or thereabouts.

Q. Within what time? A. Within a few days, but I think it was on the 3d.

Q. Where did it occur? A. At Mr. Moulton's house.

Q. Were you there by appointment or by chance? A. I cannot say.

Q. Where was it held? A. In Mr. Moulton's chamber.

Q. What was his condition of health? A. He was, I think, then—he was in bed, and I think it was on account of sickness. Sometimes he was in bed from late hours the night before, and sometimes from rheumatism, but I think this was the beginning—indeed, I know now—I am thinking—

Q. You think it was illness? A. I know it was illness now.

Q. But not such as to preclude him from seeing visitors? A. No, Sir; I never have seen him too sick to receive a call from me.

Q. While you were there with Mr. Moulton, did Mr. Tilton come in? A. He did.

Q. Had you seen him before since your interview on the 30th of December? A. I think not, Sir; I am pretty sure I had not—certainly not to have any intercourse.

Q. As he came in, what form of salutation, if any, passed on his part? A. With me!

Q. With you? A. None.

Q. And how did any conversation proceed in his presence? A. I think Mr. Moulton began by referring to my conversation, which I had—which had been passing between him and me; that was the beginning of it; Mr. Moulton was proceeding to tell something to Mr. Tilton, when I struck in myself.

Q. You had been talking with Mr. Moulton before Mr. Tilton came in? A. I had.

Q. What had you been saying to him? A. I had been speaking in respect to Mr. Tilton, and what he must have suffered, and what I regarded as the hardship of his position, and saying that I thought his self-restraint and his carriage of himself had been remarkable under the circumstances, as they then had been revealed to me. There was some—not a prolonged, but something of a conversation of that kind.

Q. Now, after Mr. Tilton came in, how did Mr. Moulton open the conversation—after Mr. Tilton came in? A. Well, it was in general that I had been saying very kind things of Mr. Tilton.

Q. He said this to Mr. Tilton? A. He said this to Mr. Tilton. Mr. Tilton was distant and gloomy in his aspect. I turned toward him—shall I give the conversation?

Q. Yes; what passed between you and him then? A. I turned to Mr. Tilton, and with far more words than I am using now—I epitomize now, and state the substance—I turned to Mr. Tilton and spoke to him of the profound regrets that I felt that I had in any way been a party or subsidiary to the injuries inflicted upon him by Mr. Bowen, and I also said that the disturbance in his household which had been occasioned by me was without intention and without my recognition at the time, but that I did regard it now as being very serious, and that I had the most profound sorrow for the disturbance that I had occasioned, the rupture between him and his family, and the miseries that he must have suffered; that I asked his pardon for the one, and for the other—that I felt I had been in the wrong, and that I ought to ask forgiveness for it.

Q. Did you say anything as to what you could do or would wish to do in respect to repairing it? A. I said that anything that lay in my power consistent with truth and honor I would be more than glad to do, to repair the mischief; and at that Mr. Moulton, with great emphasis, said to him: "Theodore, that is an apology which any gentleman can offer to another—that is, with self-respect, and that is an apology which any gentleman ought to accept."

Q. What did you observe then on the part of Mr. Tilton? A. Mr. Tilton was reluctant, and began to say something appealingly, as "How can I?"—"How can

speak"—well, referring to what he had borne from me—"How can I be reconciled?" was the idea. Mr. Moulton, with almost severity, and with an emphasis the most intense, said: "You *ought* to accept that apology. What can you expect of a man to do more than he has done, to express his regret for that which has passed, and his willingness in the future to repair the mischief?" And after some conversation between them, back and forth, Mr. Tilton did accept the apology.

Q. How did he indicate that? A. We shook hands.

Q. And the rest of the interview, what was the character of it? A. There was but little more. Mr. Tilton withdrew, I think—one of us withdrew.

Q. At this interview, Mr. Beecher, was any reference made by either of you to the charges or accusations made by Mrs. Tilton? A. I don't think there was, Sir. I do not recall any. I think we were talking of the matter in its whole, and did not go into particulars.

Q. Now, after Mr. Tilton left, Mr. Beecher, was there any between you and Mr. Moulton? A. There was, I think (a pause)—I don't recall anything that is special to that interview. Our interviews at these times—that is, what was said in earlier ones was resaid in many forms in the successive—the immediately successive and later ones. I do not—

#### WHAT WAS NOT SAID ON THE OCCASION OF THE ACTUAL APOLOGY.

Q. Do you remember in the observations that Mr. Moulton made to Mr. Tilton after you came in in which he spoke of what you had done, and that it ought to be satisfactory—do you remember any such phrase as this being used by Mr. Moulton?

He has, in my opinion, done everything that a man could do—up to the point of making a public statement of the facts.

A. No, Sir; there was no such thing said.

Q. Was there at any time during that interview, or before that time, any desire for, or propriety in, a public statement of the facts—

Mr. Fullerton—One moment. That is objected to.

Judge Neilson—The question is—what was said?

Mr. Evarts—Was there at any time, between you three, up to that time, a suggestion from anybody that a public statement of the facts ought to be made? A. So far from it, that the whole of every interview, and of this in particular, was that a public statement of the difficulties in that family ought to be concealed.

Q. Now, Sir, did Mr. Tilton at this interview, after Mr. Moulton had addressed him, say anything of this kind:

How can you expect me to speak to a man who has ruined my wife, broken up my home, and who then gets my permission, in a sad and serious hour, to visit that woman, and uses that permission for the purpose of dictating to her and making her write down a lie?

A. Was there anything like that said by Mr. Tilton to me?

Q. Yes, to you. A. Not a word of it.

Q. Now, did Mr. Moulton, following that, use expressions of this kind:

But, Theodore, you must remember that Mr. Beecher has sent you a letter through me, humbling himself before you as he does before God?

A. No, Sir; no, Sir!

Q. Now, Sir, at this interview did anything of this kind pass between you and Mr. Tilton—an observation of this kind, which Mr. Tilton imputes to you:

I know it was but words, and words are little or nothing, and no words of mine nor any act of mine can ever undo the great wrong that I have done to you and to Elizabeth?

And did you then say anything of this kind:

I do not put in any plea for myself but only for her. Indeed, if you wish to carry out the demand which was communicated to me in your letter of Christmas Day, that I should retire from my pulpit, you have only to say the word and I will retire!

A. The imputation of any such language as that to me is a wholesale fiction. It is absolutely false.

Q. Did you say:

The renting of the pews shall not go on—I will bow my head and go out of public life?

A. Nothing of the sort. You might as well—

Mr. Fullerton—Oh, wait.

Mr. Evarts—Well—

The Witness—Yes, I know I did not say it.

Q. Did you then proceed, in any such wise as this, to say further as I shall read, or anything equivalent to it:

I have this request to make, that if it be necessary for you to make a public recital of this case, that you will give me notice in advance of your intention to do so, in order that I may either go out of the world by suicide or else escape from the face of my friends by a voyage to some foreign land?

A. No, Sir, I made no such foolish statement as that; nothing of the sort, nothing on which any such statement can be founded.

Q. Was there any intimation or suggestion that anybody expected or wanted publicity given?

Mr. Beach—That is objected to.

Mr. Evarts—Why?

Mr. Beach—Because it is leading.

Judge Neilson—Was there anything said upon the subject of publicity?

Mr. Evarts—Was there anything said by anybody on the subject of publicity being expected or desired by Mr. Tilton? A. Not at that interview, anything on that subject.

Q. At all? A. Nothing at all on that subject, that I recall.

Q. Did you say this, or anything of this import or effect?

And furthermore I ask you to do me this favor, that whoever else in the wide world is to be informed of the facts of this case, at least my wife shall not know anything on the subject, for she is not only your enemy, but may very readily become mine.

A. Do I understand that this question was put after



my statement that I was going to commit suicide or going on a foreign voyage?

Q. This comes next? A. No, Sir; there was no such statement made.

Q. Was there anything of the kind said about informing your wife, or that she might become your enemy? A. No, Sir; no, Sir; I never had one dread of that in my life.

Q. Did you say this:

If you can spare her the pang of having these facts communicated to her, I will consider that it is an additional occasion of gratitude?

A. No, Sir; nothing of the sort.

Q. During this interview of this 3d of January, in Mr. Moulton's chamber, was there anything said of this kind—said by you to Mr. Tilton; and if so, what:

I do not beg at all for myself, but for her [meaning Elizabeth]; she was not to blame; I was altogether at fault; my sacred office and my years should have combined to have made me her guardian, not her tempter?

A. There was something of that sort said.

Q. In what way, or in what connection? A. I said that my feeling was not for myself alone; that my sympathy and feeling was for Elizabeth; that my age and experience should have enabled me to have seen and foreseen any mischiefs such as had taken place—such as I then thought had taken place.

Q. Such as had been reported to you? A. Such as had been reported to me, and such as the conduct of Mrs. Tilton led me to suppose must have taken place.

Q. Did you say to Mr. Tilton this—that the relationship which had existed between yourself and Elizabeth had not always been marked by sexual intimacy? No, Sir; no, Sir; odiously false!

Q. That the earlier years of it were free from any such taint and crime, and that only during the last year, or a little more than a year, and that year shortened by a country vacation, had that sexual intimacy existed—did you say anything of that kind? A. It is intolerable, almost, to be asked that question; but before Almighty God no such question ever, by anybody, at any time, under any circumstances, was put to me, or, in conversation with me, alluded to.

Q. Or any such statement made by you? A. Or any such statement made by me.

Q. Did you also say, or did you say, that you did not know how you could offer any mitigation or excuse for yourself, and yet you wanted him, Mr. Tilton, to believe for Elizabeth's sake, and also for his own, that you had never sought her for any vulgar end, but that your sexual commerce had been through love and not through lust? A. I never used any such language as that, Mr. Evans. It seems—

Q. Was there any such topic at that interview? A. No such topic at that interview, nor at any other, was, or was possible. I am obliged to hear these questions put in court. Such questions could never have been put in any of the interviews between the parties concerned.

Q. Did you, following this or at any time, say anything of this kind that you had sought companionship in her mind, that you had taken manuscripts to her that she might be your critic, and that the blame belonged to you and not to her? A. That there may have been conversation respecting my reading to her is very likely, though not at that interview. At other interviews I spoke of my—of the pleasure that I had derived from my intercourse with her. I never spoke of her being my critic.

Q. On that occasion, did you say to Mr. Tilton, this, or anything like it?

Tell me before you go, can you possibly ever reinstate Elizabeth in your respect and love?

A. I remember no such thing. It very likely may have been, but I remember no such thing.

Q. Do you remember burying your face in your hands, as you sat near the bed, and using a figure of this kind, in respect to which Mr. Tilton says:

I won't undertake to quote the exact words, but the picture was like this: He drew the figure of a man sitting on a brink, and said that he was dizzy, and was like one on the edge of hell.

Q. Did you use an expression of that kind? A. I did not. I might well have done it.

Q. During that conversation was this subject spoken of, in words like these, that you spoke to the effect that you were in great grief through Mr. Bowen's action in his case—the termination of his engagements with Mr. Bowen's papers—and that you felt that Bowen's suddenly changed mind had been largely owing to statements which Mrs. Beecher had made to Mr. Bowen, and to statements which you yourself had made, though you said that Mrs. Beecher had been more mischievous in her utterances than yourself—was there any talk of that kind? A. I think that is a very garbled statement of the early part of the interview, when I expressed my regrets for the interference with his affairs with Mr. Bowen; but so far as it regards my wife, I did not say that I regarded her interference as more mischievous than mine.

Q. Did you mention to him at this interview that you had voluntarily written a letter to Mr. Bowen that day or the day before, in which you had taken back some of the unkind utterances or injurious statements? A. I may have stated it; I don't remember. I had written the letter.

Q. And sent it? A. And sent it. I don't remember mentioning it in that interview.

Q. The day before you did that, the 2d? A. I did, early on New-Year's morning; that is, the secular new year, the 2d of January.

Q. How soon after this, Mr. Beecher, did you have an interview with Mr. Moulton or Mr. Tilton? This was on or about the 3d? A. On or about the 3d, I take it. I suspect there was not any time until the 13th or 14th, in which I didn't see Mr. Moulton every day; sometimes they

were short—conversations brief; sometimes they were long and serious; but this was the last interview, Mr. Evarts, I think, until some time in February, in which the subject of my relation to Mr. Tilton's disaster in business and distress in his household was discussed again. From this time forward our interviews concerned themselves, in reputation.

Q. In regard to Mr. Tilton's affairs? A. To rebuild—to restore Mr. Tilton to his position and to prosperity, and "to rebuild the household," were almost the catch-words.

Q. Now, did you have, about this time, between the 3d and the middle, or whatever limit you fix now your almost daily interviews—did you have a definite conversation with Mr. Moulton, about the 7th, or thereabouts, of January, in regard to Mr. Bowen? A. I did; I had several preliminary or sequential interviews; but there was one that stands out very distinctly in my remembrance; one before the interview of Mr. Moulton with Mr. Bowen, and one immediately following it, I think the very next day.

Q. What was the course of the interview between Mr. Moulton and yourself when this topic of Mr. Bowen was the prominent one? A. My impression is that it was a conversation in which Mr. Tilton and Mr. Moulton and myself were present in the parlor of Mr. Moulton's house. I know I had some conversations with Mr. Moulton separately; and I think they led to this very general conversation in the presence of Mr. Tilton; I think that they were the reasons of those; and they turned—the conversation turned on the subject of Mr. Bowen's treachery toward Mr. Tilton and toward me.

Mr. Beach—Do I understand that Mr. Tilton was present? A. I do think so.

Q. Is that the date, the 7th? A. It was somewhere before Jan. 10, I think.

Mr. Evarts—On or about Jan. 10? A. On or about. My only way of fixing landmarks is by my lecture engagements. I know by the situation of those about what the topics were, and then I have, on part of my lecture, the dates where I was and when I was out of town, and so I throw these conversations into the periods where they must have come. The dates I could not fix, except in some such way as that; and they are liable, most of them, to shift a day or two, except those of the 26th of December, 30th of December, 31st of December, and Jan. 1. Those are not movable feasts in the calendar.

Mr. Evarts [to Mr. Beach—That is an interview concerning which Mr. Moulton testified. I can refer you to the passage; it is one of Mr. Moulton's narratives. I suppose all the interviews between Mr. Beecher and Mr. Moulton during this period ought to be in evidence; but this is one about which Mr. Moulton spoke.

The Witness—All interviews were not with Mr. Tilton—not all.

## THE MEASURES FOR FORCING MR. BOWEN TO DO JUSTICE.

Mr. Evarts—Whether Mr. Tilton was present or not, they ought to be in evidence; but this is one about which Mr. Moulton has spoken. [To the witness.] Now, Sir, how did Mr. Moulton introduce this interview, or the topic about Mr. Bowen? A. Well, Mr. Moulton's mind was not resting any more upon me. He had secured a passable peace between Mr. Tilton and me, and we were all joining forces, in some sense, taking counsel how Mr. Tilton's mishaps might be repaired. I was earnestly desirous to do anything that—

Mr. Fullerton—That is not the conversation; that is objected to.

Mr. Evarts—How did the matter come up; how did Mr. Moulton introduce the matter? A. I cannot say how he introduced it; I can say what were the topics that were discussed, not precisely in their order, but the substance of the conversations; I can give the discussion, or rather the substance of the matter discussed, if you wish me.

Q. Well, was the subject of your previous relations with Mr. Bowen introduced by Mr. Moulton in any way? A. It was very thoroughly brought into view; he wanted me to give him an account of my difficulties and my relations with Mr. Bowen; he wanted to explore the ground, and see exactly where Mr. Bowen stood and where I stood, and I gave him therefore a succinct view of what I thought of Mr. Bowen; and then I went back and gave him a view of the principal points of the difficulty that had sprung up between Mr. Bowen and myself, and I gave him an account of the interview for the purpose of reconciling all difficulties that had taken place between Mr. Bowen and myself in January and February of 1870.

Q. At Mr. Freeland's house? A. At Mr. Freeland's house.

Q. Spoken of before? A. I answered all the questions that were put to me as to what Mr. Bowen's nature was, and how he was accessible, and what would be likely to follow, and if he would not be likely to fall with an endeavor to make him do justice to Mr. Tilton.

Q. Now, at that interview, was anything said to you about any letter that Mr. Tilton had written or was writing to Mr. Bowen? A. I understood that Mr. Tilton was preparing a documentary exhibit which it was hoped would bring Mr. Bowen to a discharge of his obligation; but no letter was ever shown me until the year 1872, but some of the subject matters contained in this exhibit, or document, or whatever it might be, were talked of between Mr. Moulton and Mr. Tilton in my presence; but it was rather the discussion—I heard it as something between them rather than anything addressed to me.

Q. That is the letter of January 1, from Mr. Tilton to Mr. Bowen, which you say you never saw until 1872? A.

I never saw the letter. I cannot say that letter is what they discussed, but I never saw any letter at that time, nor any written document at that time.

Q. On that subject? A. On that subject, and the letter which is included in what is called *The Golden Age* article I didn't see until after March of 1872.

Q. That letter, then, was subsequently appended with *The Golden Age* article, or as a part of *The Golden Age* article in the "Tripartite Agreement?" A. In the "Tripartite Agreement," yes, Sir.

Q. And before that time that letter you had not seen? A. No, Sir; I had never seen it.

Q. Had it been read to you, or had it been in your presence? A. I never saw any manuscript of that kind that I recollect. I heard that he was preparing a business document, and I heard of the topics that, more or less, were going into it discussed between Mr. Moulton and Mr. Tilton. I may have had single questions or answers put to me; if so I do not recall them as separable from the conversation about it between Mr. Moulton and Mr. Tilton.

Judge Neilson—But was the paper read in your hearing? A. The paper never was read in my hearing.

Mr. Everts—Never was in your presence? A. Never was in my hands, nor in my presence, nor read, nor any part of it read, although the contents that were to be were discussed in my presence.

Q. Now, what was said to you—was anything said to you by Mr. Moulton as to Mr. Bowen's motives or reasons for making any such charges against you? A. I don't recollect in that precise form anything of the kind. Mr. Moulton asked me distinctly whether the stories that Mr. Bowen had told Mr. Tilton, and which Mr. Tilton had read in some instances, whether there was any truth in them, and whether I was afraid of Mr. Bowen on account of those stories; and I told him, "No, I defy him to his face before the whole world." These stories I was not afraid of in the slightest degree?

Q. Now, Sir, in what terms did Mr. Moulton express himself after your conversation with him on these topics in regard to Mr. Bowen's conduct toward you and toward Mr. Tilton? A. Well, Sir, he exhausted language in the intensity of his condemnation of Mr. Bowen's course. He thought it to be dishonest and cruel and treacherous, and in every way mean, and these words were not spoken but fulminated; that is, they had adjectives before them.

Q. Did he say anything as to his view of Mr. Bowen's purposes in using Mr. Tilton against you, and you against Mr. Tilton? A. Yes, Sir; then and oftentimes.

Q. Well, what did he say? A. He said that he meant to employ Mr. Tilton to destroy me, and me to destroy Mr. Tilton. We were to have eaten each other up and left the track clear to him.

Q. Did you at this interview give Mr. Moulton a full account of your interview with Mr. Bowen at Mr. Freedom's? A. I did.

Q. And of its results? A. I did, and he was horror struck with the narrative that I gave; he questioned me whether it was possible.

Q. Did you mention to Mr. Bowen and Mr. Moulton at that time the conclusion in your public statement at the church of the settlement between Mr. Bowen and yourself? A. Yes, Sir; I gave him a very graphic account of the interview and its sequences, and of the reconciliation ratified in Plymouth Church at the close of the Friday night prayer-meeting between Mr. Moulton and myself.

#### MR. BEECHER LAUGHS AT MR. BOWEN'S CHARGES.

Q. Now, in whatever statements Mr. Moulton made to you containing any contents or proposed contents of the letter or document that Mr. Tilton was preparing for Mr. Bowen, were there any names or details given you concerning any of the charges against you? A. You will have to repeat that sentence again, Sir.

Q. In the conversation which occurred, in which Mr. Moulton said more or less about what was in or was to be in a letter or document Mr. Tilton was preparing for use with Mr. Bowen, were the particulars or names of the instances of charges against you mentioned? A. I do not know that it was mentioned in regard to their being included in that document; while we were talking about that we were also talking about Mr. Bowen and about his charges, and it was a general conversation, not historically and logically arranged at all, and in that conversation, which was part and parcel of his preparing this document, his charges were mentioned and discussed; they were not mentioned, however, to me *first*, as they appeared afterward in the letter.

Q. Well, did Mr. Moulton say that Mr. Bowen charged that you had confessed adultery to him? A. I—he did—yes, he said so. I was only hesitating as to whether it was in that interview or not. He said so at some one of the interviews and about that time.

Q. At about this time? A. Yes, Sir.

Q. Well, what did you reply to that? A. I think I laughed. I denied it. When I confess adultery to Mr. Bowen I am sure it would be impressed upon my mind.

Q. Did you say to him on that subject whether or no Mr. Bowen had ever made any such charge or imputation to you personally? A. I said to him that from the origin of the difficulties between Mr. Bowen and me, down to February, or January and February, 1870, and, again, December 26, there had been several adjudications, arbitrations, that is; there had been many conversations, but Mr. Bowen had never had any difficulty with me except business difficulties, and that he never under any circumstances had made a statement which implicated my moral character.

Q. Now, Sir, in this conversation what was said by Mr. Bowen in regard to the treatment or management of Mr. Tilton's pecuniary claim against Mr. Bowen—about its

being carried into court, or what not? A. He spoke of it, I recollect distinctly, as a thing which was inevitable; that he was bound to see justice done to Theodore Tilton. He spoke of it with an intensity and an enthusiasm that I admired, that excited my admiration for his fidelity to his friend, and as I am inexperienced in business I felt unbounded confidence in his resources to carry out a business arrangement, and listened to him with admiration.

Q. Now, did Mr. Moulton during this interview, or at any interview, say to you that he, Moulton, did not wish you to carry the claim of Mr. Tilton against Mr. Bowen into court if taking it into court was going to rip up your relations with Mr. Tilton's family? A. No, Sir; no, Sir; nothing—

Q. Nothing of the kind? A. Nothing of the kind; if you think of it when you come to another interview—

Mr. Fullerton—One moment.

Mr. Evarts—That is enough. One interview is enough in itself.

The Witness [to Mr. Beach]—I shall gradually learn to behave, Sir.

Q. Did Mr. Moulton tell you that he would rather pay Mr. Tilton what Mr. Bowen owed him than to rip up your relations with Mr. Tilton's family, or anything to that effect? A. No, Sir.

Q. Do you recollect, Mr. Beecher, during this conversation, when you were discussing the points and difficulties that had existed and been adjusted between you and Mr. Bowen, whether any memorandum of those points was spoken of and brought out in any way? A. Yes, Sir, it was spoken of. I told Mr. Moulton that I had at home somewhere (for then I kept a few of my own documents)—that I had a memorandum of the points which were in discussion at the interview between Mr. Bowen and myself—the last interview.

Q. At Mr. Freeland's? A. At Mr. Freeland's.

A. Well? A. He wanted me to bring them to him, and I think the next day probably, but immediately after, or very soon after, I hunted them up and brought them to him.

Q. Did you deliver that paper to Mr. Moulton at or about that time—at that interview, or soon after? A. It was at about that time that I began to put all my documents into his hands, and I put that in. It was the first fruits.

Mr. Evarts—That is Exhibit 107. It is marked only for identification.

Mr. Morris—Marked by you. I do not find it. You had it, and did not put it in. I have not seen it since. The original was marked for identification by you.

Mr. Evarts—That paper was in Bowen's handwriting? A. Yes, Sir.

Q. Just look at that [handing paper to witness] and see if that is your recollection of the contents of the paper? A. Yes, Sir.

Mr. Evarts—The original paper, if your Honor please,

was before us in court and was marked for identification, but between the counsel on one side and the other, it is not to be found.

Judge Nelson—Have you a copy, Sir?

Mr. Evarts—We have this printed copy, which we all know to be a copy.

Judge Nelson—I presume there will be no objection to your using that.

Mr. Evarts—We now put it in evidence, it being one of the papers which passed between Mr. Moulton and Mr. Beecher.

Mr. Fullerton—Subject to correction if we find the original.

Mr. Evarts—Oh, yes, Sir, of course. This memorandum is this—I believe it has been read, hasn't it?

Mr. Fullerton—No, Sir.

Mr. Evarts—[Reading.]

First—Report and publish Sermons and Lecture-room Talks.

Second—New edition Plymouth Collection, and Freeland's interest.

Third—Explanations to Church.

Fourth—Write me a letter.

Fifth—Retract in every quarter what has been said to my injury.

[To the witness.]—The words "use" and "my" mean Mr. Bowen there? A. I understand it so.

Q. Yes, it is his memorandum? A. It is his memorandum.

Q. Of the topics—and did those form the topics of the conversation had between you and Mr. Bowen, as you described it to Mr. Moulton? A. They did; I took each one of those and told Mr. Moulton what the substance of the conversation between Mr. Bowen and me was on each point.

Mr. Morris—The one following, Mr. Evarts, was marked for identification also. If you do not find it, we had better have it understood that either party may use that one also. It was marked by you for identification. [Showing book to Mr. Evarts.] We had better have it understood that, in case the original is not found, either one can use it.

Mr. Beach—I have a recollection that there was something else attached to this, [i. e., the document just read by Mr. Evarts.]

Mr. Morris—I am calling his attention now to the fact that they were marked for identification by them.

Mr. Beach—We want the same liberty you have to use it.

Mr. Evarts—Oh, yes; if the paper cannot be found.

Mr. Morris—There were two papers; I have not found them; whether you returned them or not I do not know, but they were both marked by your side for identification; I don't know whether we have them or you have them.

Mr. Fullerton—Well, substitute the original when Mr. Shearman produces it.

## MR. MOULTON AVERSE TO ARBITRATION.

Mr. Evarts—Now, after going through this matter of your and Bowen's affairs with Mr. Moulton on this occasion, do you remember then the subject coming up of your feelings in regard to any injury you had done Mr. Tilton? A. In that order of time do you mean?

Q. I mean after this conversation about Mr. Bowen with you was over between you and Mr. Moulton, whether that topic suggested any expression by you of your feelings in regard to having taken sides against Mr. Tilton with Bowen? A. I do not recall anything, Sir, at present.

Q. Was anything said by Mr. Moulton as to the occasion or propriety of you and Mr. Tilton combining? A. Yes, Sir; oh, yes, Sir; that was the—that flowed through every conversation, and was the leading idea—"you and Mr. Tilton must stand together."

Q. As toward or against whom? A. For the sake of the family and for the sake of his restoration, and for the sake of justice—justice from Bowen to him. Well, as I remember it—I suppose I can't tell, though, what I thought.

Q. No; only what passed between you. Now, did Mr. Moulton at this stage of the conversation, or during the conversation, state to you what he proposed to do and to what result or what effect he proposed to bring matters with Mr. Bowen? A. He spoke with the utmost confidence of compelling Bowen to disgorge. Mr. Bowen, as I understood from him, wanted to arbitrate; he did not want to.

Q. Mr. Moulton? A. Mr. Moulton; he did not tell me why.

Q. But he told you that he didn't wish to? A. Yes. that Mr. Tilton didn't want to, and, as I understand it, he did not, as his adviser; I understood that it was the—

Q. Well, do you remember the expression at this conversation that Mr. Moulton used on the subject of being able to bring Bowen to terms; do you remember any particular expression that he used as to what he would bring him to—bring Bowen to? A. Yes, Sir, a good many of them.

Q. Well, at this interview I am speaking of now? A. I think it was at this interview—it was at one, and I think it was at this—that he said that he would bring him to his marrow-bones; he spoke at this interview of their purpose being to bring Mr. Bowen into such a situation that he would do him justice of himself, without arbitration or legal proceedings; that was the point that they were aiming at, as I understood it.

Q. Now, was anything said—do you remember, Mr. Beecher, at this interview, anything of this kind being suggested by Mr. Moulton in regard to this letter to Mr. Bowen, if you named it:

Mr. Tilton wants to publish this letter, and feels that he has taken out of it all that concerns you and your relations with his family; he wants to leave, and he is willing to leave you and Bowen in conflict—

Do you remember his expressing Mr. Tilton's purpose in that way? A. No, Sir; no, Sir, he did not; there was no letter shown to me; there was no discussion that could have taken place.

Q. Do you remember his saying that he did not approve of such a course—he, himself, Moulton, did not approve of any publication? A. I do not remember it.

## MR. MOULTON UPBRAIDS MR. BOWEN.

Q. Now, Sir, in that same month of January and at a somewhat later period, did you have an interview with Mr. Moulton at his house, concerning an interview he had had with Mr. Bowen? A. I did, next day.

Q. The next after the interview with Bowen? A. Yes, Sir.

Q. Whenever that was—how did this interview between yourself and Mr. Moulton come about, and where was it held? A. I suspect it came about by my own wish to hear what happened between him and Mr. Bowen. I knew that he was going to see him; intermediately I had given him the document that he asked, and I knew of the interview.

Q. Now, do you remember whether he sent for you or not? A. No, I do not.

Q. Now, it was at his house, was it? A. It was.

Q. And where? A. In the parlor, down-stairs; he was, I think, in his dressing-gown and slippers; he was unwell, and he was not much out of his house during all of those days.

Q. About what time is this—about how long after? A. Well, I should say it was somewhere along the 12th or 13th of January, but I will not be certain of the date.

Q. Toward the middle of the month? A. Toward the middle of the month.

Q. Now, what did Mr. Moulton tell you at this interview as to what had passed between him and Bowen about Mr. Tilton's claim—where had he seen Mr. Bowen? A. At his house.

Q. Well, at whose house? A. At Moulton's.

Q. At his own house—Bowen had come there? A. He had already told me that Mr. Bowen had been invited to come two days before, and appointed the day after tomorrow as I understood at first; and on that night he told me that he was present and that a long and full conversation had passed between them, which conversation he described minutely and dramatically.

Q. Did he show you where Mr. Bowen sat? A. He did, and how he looked and what he said.

Q. Well, just give us this as far as you recall it, Mr. Beecher? A. He detailed to me with some particularity—with more particularity than I can rehearse it—the statement which he made to Mr. Bowen of his treatment of

Mr. Tilton, of the infamy of his conduct in procuring Mr. Tilton to write the letter of the 26th, and promised to back it, and then stepped from him to go over to my side; he went into that with relish and effectually. He then also opened, he said, on Bowen in regard to his treatment of me as a parallel instance of infamy that was almost without example. He rehearsed to him the different stories that he had reported of me, and that when I had had interviews with him, at one and another and another time, that he had never dared to mention one of those stories to my face, but only behind my back, and that they never came up except it was to settle some money difficulty between us, and that he then told Mr. Bowen that the last and grand settlement that had taken place between him and me at Mr. Freeland's, in the Spring of that year, or in the early season or months of the year—

Q. That is, of 1870? A. Of 1870—that at that time he says, “you went over the ground with Mr. Beecher, and you took up every cause of offense that you had against him, professedly, and you, after every one of them had been discussed, and had been settled amicably, and after Mr. Freeland had come out and shaken hands with both of you, and after you had walked with Mr. Beecher through the streets discussing how you might work together afterward in amity and peace, and after Mr. Beecher, in fulfillment of his promise, had gone to the house of God and had there, in the presence of his people, rehearsed the reconciliation that had taken place between him and you, and you went down and shook hands at the altar with him—how then, within 48 hours, you told a friend, his friend, that you had that that would drive Mr. Beecher out of town in less than 24 hours, if you should speak it; and,” said he, “I took that document in my hands,” said he, “and I shook it in his face, and he turned as pale as a ghost, and he said, ‘What, what shall I do?’ and I told him, said I, ‘It is not for me to tell you what to do,’ and he said, he looked up at the portrait that was hanging on the wall and said: ‘Why, I shall never be reconciled to that man; I shall never be able to be reconciled to that man again.’”

Q. The portrait of whom? A. My portrait; the Paige portrait, I think, was then hanging there, and he said that Mr. Bowen was ready to do anything. “Well,” said I, “why didn’t you get the money out of him?” Well, he said the time was not come—the time was not come. Said he, “What Bowen ought to do is to put Tilton back into *The Independent*—that is what he ought to do.”

It being now 1 o’clock, the Court took a recess until 2 o’clock.

#### THE AFTERNOON SESSION.

The court met at 2 o’clock, pursuant to adjournment.

Mr. Beecher was recalled, and his direct examination resumed as follows:

Mr. Ryarts—Mr. Beecher, when Mr. Moulton said, in

answer to your inquiry of, why in the mood he found Mr. Bowen he did not exact the money or bring him to the point of paying it—you said that Mr. Moulton said the time had not come yet; did he further explain or state what he meant by that, or did you understand in any way what he did mean? A. I did not understand; I was perplexed by it.

Q. Now, when in this interview he said to you that the proper thing for Bowen to do—to be accomplished with Bowen, was that Bowen should put Tilton back on *The Independent*—A. It was a part of the same—

Q. I say, when that was said—A. Oh, I beg pardon.

Q. When that was said, in that connection, or otherwise, in that conversation, was anything said by Moulton as to whether Tilton could work on *The Christian Union*? A. Not at that interview, I think, Sir; at one not far removed from that; it belonged to that period, and to that state of things.

Q. In the month of January? A. He never said exactly that; he spoke of what a grand thing it would be if Tilton and I could join forces on *The Christian Union*.

Q. Well, what did you reply to that? A. Well, my reply was that that was an absolute impossibility; the circumstances surrounding that paper, and the feelings of the persons engaged in it, would not permit such an association.

#### THE HARMONIZING EFFECT OF MR. MOULTON'S SICKNESS.

Q. Mr. Beecher, do you remember anything of a visit you made when Mr. Moulton was seriously ill, and meeting Mr. Tilton there, and having some passage between yourself and him? A. Well, I remember several; it was not an infrequent thing.

Q. Do you remember being there at a time when Mr. Moulton was regarded by you as seriously ill—dangerously ill? A. Yes, Sir.

Q. When, about, was that? A. It was in the—I think it was in—I cannot say whether it was January or February.

Q. Before he went South? A. Yes, Sir: it was before he went; it was partly in consequence of that sickness that he went; or mainly in consequence.

Q. During that illness, now, do you remember meeting Mr. Tilton there at the house during such a visit of yourself to Mr. Moulton when he was very sick, anything passing between you and him? A. I do not seem to recall anything more than that we met there, Sir.

Q. Mr. Tilton has spoken of it as an occasion in which you kissed him on the forehead. A. Oh!

Q. Do you remember anything concerning that? A. Yes, Sir; he is right by about four inches; I kissed him on his mouth. We came down—I came down from above where I had seen Frank—Mr. Moulton; he was suffering from rheumatism of the chest and of the heart, as I understand, and was in great suffering; and I was very ap-

prehensive; I don't know that it was the physician's judgment, but I was very apprehensive that in one of those attacks he might suddenly go off; and I felt very deep sympathy and concern, and when I came down stairs Mr. Tilton was in the parlor, and I met him, and spoke of him as a friend to both of us, and of what I felt to be—

Q. Spoke of Mr. Moulton? A. Yes, Sir.

Q. To Mr. Tilton? A. Yes, Sir; and what I considered to be his critical condition, and there were some words interchanged, I don't know what, but in the warmth of that sympathetic moment we kissed each other.

Q. Do you remember using any expression like this: "Theodore, Frank has saved my life, and I would willingly to-day give my life to save Frank's?" A. No, Sir, I don't remember any precise language like that; I may have said that I would be willing almost to give my life to save his.

Q. Do you remember any expression of this kind to Mr. Tilton on that occasion:

Frank is very sick; he is at the grave's edge; I am afraid he will die, and if he dies, Theodore, what will then become of your case and mine?

A. No, Sir, I don't recall any such.

Q. Mr. Beecher, I understand you to have said distinctly that the letter of Mr. Tilton to Mr. Bowen was not shown to you or read to you at any interview at this time? A. It was not.

Q. And then there was no interview at that time at which Mr. Tilton was present at which any such occurrence took place? A. No, not within my remembrance; I am sure I should have remembered it.

Q. Did any interview occur with Mr. Tilton or Mr. Moulton at this period, during January—this middle part of January, from the 7th onward—in which any relation that you had to that letter, or any connection which Mr. Tilton's and your affairs had with that letter, was the subject of conversation between you and either of these gentlemen? A. I did not know that there was any such letter until the Spring of 1872. I knew that there were steps in progress, documents forming, which were to bring a statement before Mr. Bowen, and an influence to procure a settlement, but that it took on the form of a letter, or that it was a letter that I had anything to do with, or that concerned itself with my affairs, I had no more idea of it than I had of things transacting in China.

#### BESSIE TURNER NOT CALLED A PRATTLER.

Q. Do you remember, Mr. Beecher, whether at any of the interviews spoken of, about this middle period of January, or at any time thereabouts, at any interview between Mr. Moulton and yourself, anything of this kind occurred on the subject of Bessie Turner. Did Mr. Moulton tell you that Mr. Tilton thought Bessie Turner was a dangerous person to have about; that she was

what Mr. Tilton termed a prattler, and knew of the facts as between Mr. Beecher and Mrs. Tilton? A. No, Sir. Shall I give a full knowledge of Miss Bessie Turner?

Q. No, not at the moment; I will inquire. A. No, Sir, nothing of that sort.

Q. Did anything of that kind occur? A. Nothing of that kind; that is, I am speaking with reference to her removal.

Q. This period in January? A. How?

Q. This period in January? A. During January Bessie Turner was spoken of, and her stories were spoken of.

Q. Yes? A. But I understand your question with reference to her necessary removal on account of her knowledge of my relations to Mrs. Tilton.

Q. Yes; the question was this— A. There was no such knowledge ever, in any way, brought to me.

Q. And did Mr. Moulton say anything of this kind to you: "I thought she was better out of the way than here!" and did you reply that you thought so too? A. He never said it, nor I never answered it in any such way.

Q. And was it represented to you by Mr. Moulton at any such interview that Mrs. Tilton said, as Mr. Tilton told him, that the best place for her was out West at school? A. No, Sir; I know nothing about her going out West to school.

Q. And did he tell you at that time that Mr. Tilton could not afford to pay her expenses, and did you say, "Well, I will pay the expenses," or, "I will do anything that is necessary to keep the story down," or anything of that kind? A. Nothing of that sort; there was no consultation with me of any sort or description in respect to the disposal of Bessie Turner. The first knowledge that I had of her whereabouts was when I was called upon to pay her first installment.

#### MRS. MORSE'S LETTER OF CHARGES.

Q. In the latter part of January of that year, Mr. Beecher, an interview has been spoken of both by Mr. Moulton and Mr. Tilton, at which a letter of Mrs. Morse was brought under consideration. [To Mr. Shearman.] What is the exhibit?

Mr. Fullerton—9.

Mr. Shearman—7.

Mr. Evarts—7?

Mr. Shearman—7.

Mr. Fullerton—Yes, 7, on page 9; that is it.

Mr. Evarts—Do you remember a letter of that kind, received by you, and handed by you to Mr. Moulton? A. I do.

Q. In the end of January—toward the end of January? A. I think it was that, Sir.

Mr. Morris—Did you state that it was "Exhibit 9"?

Mr. Evarts—7.

Mr. Fullerton—7, on page 9 of that book.

Mr. Evarts [to Mr. Shearman]—Are you sure it was 7? Mr. Morris—That must be it. [Producing "Exhibit 7."]

Mr. Evarts—Please look at that, Mr. Beecher, and see whether you remember that. [Handing witness "Exhibit 7."] A. I recollect this letter.

Q. Well, Mr. Beecher, you remember that letter? A. I remember that letter, Sir.

Q. Now, on receiving that letter what did you do with it, or about it? A. I carried it to Mr. Moulton.

Q. Did you have a conversation with him on the subject? A. I did.

Q. Did he read the letter? A. I presume he did, Sir.

Q. You handed it to him? A. I gave him the letter and he kept it.

Q. Yes, but as to your interview about it? A. Oh! Yes.

Q. Did you have a conversation about it? A. Yes, Sir.

Q. Well, did he read the letter? A. Yes, he read the letter.

Q. In your presence. What—

Mr. Beach—He didn't say so.

Mr. Evarts—Well, is that so? A. What, Sir?

Q. Did he read the letter in your presence before this conversation? A. He did.

Q. What then was said about it; did you ask him any advice, and did he give you any suggestion? A. I did; I asked him how the letter better be treated, and he said he thought it would be better that it should be treated mildly and kindly.

Q. What did he say, if anything, about Mrs. Morse? A. Well, he said Mrs. Morse was half crazy; he said that she imagined a great many things, that she hated Theodore Tilton, that she was in the habit of either telling stories or magnifying incidents so as that they did not represent the truth; that she was unrestrained except by her love of her daughter.

Q. Was anything said about the credibility of her charges in that letter, or his belief of any of them? A. There was—I don't think that there was then a specific denial; I received that at a subsequent interview with Mr. Tilton; but I think there was—it was assumed that these were to be treated—this whole letter was to be treated as the hallucination of Mrs. Morse; the charges were denied in so far as they respected Mr. Tilton's talking about affairs.

Q. Yes. Mr. Moulton said that that was not true, did he? A. Yes, Sir.

#### MR. BEECHER'S ANSWER TO MRS. MORSE.

Q. And afterward did you write an answer to that letter? A. I did, Sir.

Q. And did you show it? [To Mr. Morris.] Is that it, Mr. Morris?

[Mr. Morris produced the letter called for.]

Mr. Evarts—Was this written in Mr. Moulton's presence or shown to him, or how otherwise? That seems to be a draft. [Handing witness the letter.] A. I suspect this was written in his presence, Sir; it is not my paper.

Q. It is your writing. You mean— A. This is, I

suspect, the sketch that I drew up of the letter, and which he approved, and that I then went home and sent the letter to her; that I judge it to be; I never use ruled paper; I am particular in my paper.

Q. It is written in pencil? A. In pencil; yes, Sir.

Mr. Evarts—This is Exhibit E. [To the witness.] At this interview, or at any other interview where this letter was the subject of conversation, was Mr. Tilton also present? A. He was at one; I don't know whether it was one and the same or whether it was a subsequent one.

Q. At this interview was anything said about one passage in that letter which imputes to Mr. Tilton having stated that you preached to forty of your mistresses? There is a passage in that letter of Mrs. Morse which charges that Mr. Tilton stated it. A. Well, Sir, is that charge made in that letter?

Mr. Beach here shook his head negatively.

The Witness—[*Sotto voce.*] So I thought.

Mr. Evarts—I believe there is nothing in that letter, Mr. Beecher, on this subject? A. What, Sir?

Q. I believe there is nothing in that letter on that subject? A. That letter contains simply a charge of repeating the story of his domestic difficulties and troubles, as I recollect it.

Q. Now was there any conversation at this or either of these interviews at the end of January, if there were more than one, at which these topics were up, of Mrs. Morse, or her letter—was there anything said about whether or no Mr. Tilton had told more or less persons, 12 persons, I think is mentioned, of your (Mr. Beecher's) criminal relationship with Mrs. Tilton? A. No, Sir; there was nothing in the letter of that, and nothing in the conversation.

Mr. Beach—It is entirely irrelevant. I think the forepart of that answer, Sir, should be excluded.

Judge Neilson—Well, it may be excluded.

Mr. Beach—Strike it out.

Judge Neilson—It goes to the contents of the letter.

Mr. Evarts—Well, the letter will speak for itself.

Mr. Beach—It was not called for.

#### NO CHARGE OF IMPROPER RELATIONS BEFORE JANUARY, 1871.

Q. Well, at that interview and when that letter—was anything said—

Mr. Beach—Well, he has said that there was nothing said.

Mr. Evarts [continuing]—about your having told—about Mr. Tilton having told any number of persons, 12 or any other number, of your criminal relationship—it is printed here; it should be "relations"—with Mrs. Tilton? A. There was no such conversation about criminal relations to Mrs. Tilton.

Q. Was—at any time in any of these conversations, from the beginning on to the period we have now reached, say the end of January, 1871—any mention made in your hearing by Mr. Moulton or Mr. Tilton that there were



any criminal relations, or ever had been, between you and Mrs. Tilton? A. No, no mention and no implication.

Q. Was any word "crime," in regard to your conduct, used by either of those gentlemen, or any one else in your presence? A. No, none; no such term.

Q. Now, did anything of this kind occur at this interview, or either of these interviews at the end of January; did Mr. Tilton say to you:

I then said that after Mrs. Tilton had made her confession to me in July, 1870, that I had shortly after that informed Oliver Johnson and Mrs. Martha Bradshaw that during the Summer I had informed no other person, but I told him possibly 12 did know of that fact.

Was there any conversation of that kind that had anything to do with any criminal relations between you and Mrs. Tilton? A. No, nothing.

Q. Nothing? A. Nothing.

Q. No suggestion?

Mr. Beach—It seems to me, your Honor, that this is inadmissible.

Mr. Evarts. [To the witness.] Now, was there anything—

Mr. Beach—One moment. It seems to me that that question calls for the judgment of the witness. The question is whether anything of that kind was said, having anything to do with criminal relations. If the question is whether anything of that kind was said, that may be proper, but I submit that it is not proper to call for the judgment of the witness by asking what it related to.

Mr. Evarts—The examination of the witness, Tilton, makes the confession apply to criminal relations.

Mr. Beach—That follows from what was said.

Mr. Evarts—No.

Mr. Beach—Yes.

Mr. Evarts—The question is whether that subject was mentioned, and I have asked him about that, and he says nothing was said of that kind about any criminal relations.

Judge Nelson—You purpose, I suppose, to confine yourself to the specific statements of the other witnesses.

Mr. Evarts—Yes, Sir; that is my point.

Mr. Beach—That is very well, to confine himself to the specific statement of the other witness, but to ask whether that specific statement related to any criminal relations, is to ask for the conclusion of the witness, without calling for what was said.

Mr. Evarts—I think not. The conversation opens by the statement by Mr. Tilton that Mr. Moulton wanted to know whether he told 12 persons of Mr. Beecher's criminal relations with Mrs. Tilton, and Mr. Beecher says that no such question as that was asked, nor was that subject spoken of. Then there is considerable narrative by Mr. Tilton, of which there is no importance, at least for any purpose that I have in view, except to show that whether it occurred or not it had not anything to do with

criminal relations; and I asked Mr. Beecher, therefore, whether at that conversation anything was said about any communications that had been made to any other persons concerning any criminal relations between Mr. Beecher and Mrs. Tilton?

Mr. Beach—That is not the question. If it had been, I probably should not have objected to it.

Mr. Evarts—Well, that is perhaps my fault. Now, Mr. Beecher.

The Witness—No, Sir, there was no such—whatever it may be. [A pause.] Mr. Evarts, your question was so long, and it hung fire so while the discussion was going on, that I do not know that my answer fits exactly to it.

Mr. Beach—No, but your former answer did, Mr. Beecher. You answered the question before I got on in my objection.

Mr. Evarts—Now, were the names of Mr. Oliver Johnson and of Mrs. Martha Bradshaw, as persons to whom anything had been communicated, introduced at those conversations, or either of them, in the end of January? A. I think not, Sir; if they were, I do not remember it. Both of their names came in later, but I do not recall them as being mentioned as early as this.

Q. At either of those conversations was there anything said about Mr. Tilton having said or reported that you preached to forty mistresses, or any number of mistresses, in your church? A. No, Sir; not as late as the last of January.

Q. When did any conversation occur about that? A. I should think it was somewhere about during the first two weeks of January. I went to Mr. Moulton with a statement that Mr. Tilton had made that statement, that it had been brought to me by credible authority; and this was after things were in a train for harmonious adjustment. He denied it in behalf of Mr. Tilton.

Q. Moulton did? A. Yes, Sir; subsequently he explained to me that he had seen Mr. Tilton, and that Mr. Tilton had rectified the statement which he had made in the quarter it was likely to do injury.

Q. That is the conversation on that subject as you recollect it? A. Yes, Sir.

Q. Was anything said at these conversations, or either of them, in regard to information given by Mr. Tilton concerning relations between you and Mrs. Tilton to her mother, Mrs. Morse; were you informed at either of those conversations by Mrs. Tilton—by Mr. Tilton—that Mrs. Tilton had informed her mother, Mrs. Morse? A. I do not recall it.

Q. Was anything said about Mr. Joseph Richards, Mrs. Tilton's brother, having come to him (Tilton) and asked him whether or not he had noticed Mr. Beecher's visits to his house, and whether he was quite sure that they were altogether of a pastoral character—was there any conversation of that character? A. Between me and whom?

Q. And Mr. Tilton? A. No, Sir; no, Sir.

Q. Was there anything said to you by Mr. Tilton of this

nature, that Mrs. Morse was propagating the statement in this way, namely, that she was saying among her family and relatives that Theodore made such and such charges against Elizabeth, and that her method of denouncing Mr. Tilton for making such charges was a very fatal way of propagating the charges themselves! A. I shall have to hear that again, Sir: I did not get exactly the hang of the question.

Q. The question is whether, in this conversation, Mr. Tilton said to you— A. All these things!

Q. Anything of this kind. Whether he told you that Mrs. Morse was propagating the story in this way, namely, that she was saying among her family and relatives that Theodore made such and such charges against Elizabeth, and that her method of denouncing him (that is, Tilton,) for making such charges, was a very fatal way of propagating the charges themselves; that is, that Mrs. Morse's denunciation of him for making these charges against his wife was a mode of giving publicity to the charges themselves! A. I don't remember any such conversation. I think it is impossible for such a statement to be remembered, had it even been made; but I do not think that the substance that I seem to gather out from that question came into conversation between us. Various and divers were the conversations in respect to the animosity that Mrs. Morse had against him, and there may have fallen out, incidentally, one thing or another bearing upon it, but it was scattered up and down in the conversations in such a way that it has escaped my mind so that I cannot give it definiteness.

Q. But whatever may or may not have been said in regard to any propagation or statement of any story, was it said to you by either Mr. Moulton or Mr. Tilton that any such story was a story of criminal relations between you and Mrs. Tilton? A. Never. Mr. Tilton nor Mr. Moulton never stated to me that Mrs. Morse was circulating that I had had criminal intercourse with her daughter.

Q. Nor anything of that kind? A. Nor anything of that kind.

Q. You remember, Mr. Beecher, that there are three letters in evidence, all bearing date on the 7th of February, 1871? A. I do, Sir.

#### MR. BEECHER'S AID ASKED FOR THE GOLDEN AGE.

Q. Now, Sir, do you remember an interview shortly preceding that date, and with whom? A. With Mr. Moulton.

Q. Where was that? A. At his house.

Q. Was the subject of whether or no Mr. Bowen would restore Mr. Tilton to *The Independent* brought up by Mr. Moulton?

Mr. Fullerton—That is a leading question, and very objectionable.

Mr. Evarts—Why?

Mr. Fullerton—Well, because the witness recollects the interview, and should state what it was before a leading question is put.

Mr. Evarts—I don't want the whole of the interview.

Mr. Fullerton—Well, I don't want that part of it in that way.

Mr. Evarts—Well, that is the part I do want, and I have a right to it.

Mr. Fullerton—Will the stenographer please read the question?

The Tribune stenographer read the question as follows; "Was the subject of whether or no Mr. Bowen would restore Mr. Tilton to *The Independent* brought up by Mr. Moulton?"

Mr. Fullerton—You cannot find a leading question, if that is not one.

Mr. Evarts—It is a question that indicates the subject about which I asked whether it was or was not brought into the conversation.

Mr. Fullerton—And hence it is leading.

Mr. Morris—It calls for an answer yes or no.

Judge Nelson—You might ask whether anything was said on that subject, and if so, what. It is rather leading, I think.

Mr. Evarts—Was anything said at this conversation, as to whether or no Mr. Bowen would restore Mr. Tilton to *The Independent*? A. I don't recall it in connection with that interview.

Q. What was the commencement of that interview, as you do recollect it? A. I don't know; I don't remember what the commencement was. I remember the substance of it.

Q. Well, was Mr. Tilton's relations or expectations in regard to *The Independent* made the subject of conversation?

Mr. Beach—At that interview.

Mr. Evarts—At that interview.

The Witness—At that interview!

Q. Yes. A. My own impression is that they were not.

Q. Well, was anything said about any other paper? A. Yes, Sir.

Q. What was that? A. Well, *The Golden Age* was then under discussion. "Tilton is going to have a paper for himself," was the key-note, and it was desirable—shall I go on?

Q. Yes; you may go on. A. I don't pretend to give the order of thought, nor the language; but the body of the interview, or the discussion, was that Mr. Tilton must have an organ for himself, that he shan't be voiceless nor put out, and that with my influence and that of my friends, and that of his friends, a journal could be established; and if we were to stand together unitedly and if I would sincerely and cordially aid, everything might be accomplished that was desirable. At that interview he expressed more fully what he had intimated at several interviews, that one great hinderance to Mr. Tilton's

happiness and ease of working, was that Eliza beth did not do her part at home; that she was discontented and sullen, and that it was impossible to expect a man of genius (and Mr. Moulton spoke of Mr. Tilton as a man of genius), to work all day—"for," he said, "isn't it grand that he has just gone over there and taken off his coat and gone to work right at the bottom again, as if he had never had a position, and is trying to earn his bread?" He spoke of it as impossible for a man of genius to return home at night and find his wife crying or sitting at the head of the table sullen and unconvertible; and that it irritated him. He said, "Theodore is the easiest man to be led by his affections that ever lived. Elisabeth can do anything with him, and she must do her part, and you must help to make her." That was the general form of the counsel, and then he suggested that to unify ourselves and take away all friction, and to give to this new enterprise the advantage of perfect unity of feeling and counsel, it would be a good thing if I should write a letter to him, Moulton, for him to show to Mr. Tilton, expressive—committing myself on paper to the expression of my cordiality toward him, and also a letter to Mrs. Tilton (with whom I had more influence, he said, than any living being,) in order to bring her under Mr. Moulton's counsel, which would be concurrent with my counsel and judgment, and so the family would be brought in, Mr. Tilton would make a happy home for him—I would help him, Frank would help him, our friends would help him; and, with his power and experience and skill, he would have a journal that would be heard of all through the land; I thought that it was not an unwise plan; I wrote the letters to him and to her, and put them in Mr. Moulton's hands.

Q. Now, you have spoken heretofore, Mr. Beecher, of Mr. Moulton saying that the principal thing to be done or to be aimed at was that Mr. Bowen should put Mr. Tilton back on *The Independent*. Previous to this conversation that you now speak of, had you heard in any way from Mr. Moulton whether that expectation or plan had or had not been abandoned? A. He told me in the interview following the interview with Mr. Bowen that he had made that suggestion to Mr. Bowen, and that Mr. Bowen had not rejected it, but said he did now see how it could be—how he could put him back.

#### THE DESPONDENT LETTER TO MRS. TILTON PARTLY DICTATED BY MOULTON.

Q. And this had preceded your conversation about the new paper? A. That was the conversation somewhere about the 12th or 13th, and this was in February, just before the 7th.

Mr. Evarts—Now, these letters—what are the numbers of them, Mr. Morris?

Mr. Morris—I think a more convenient way will be to read the letters from the case.

Mr. Evarts—Perhaps we have them here on our notes, Mr. Morris—They are in, and have been read.

Mr. Evarts—Two of them are in; I do not know that all three are. [To the witness.] Mr. Beecher, there was a third letter of Mr. Tilton's to Mr. Moulton. [To Mr. Morris.] I think if you can get those letters conveniently it will be better.

Mr. Morris—What are the numbers?

Mr. Evarts [to Mr. Fullerton]—What are they?

Mr. Fullerton—9, 10 and 11.

[Mr. Morris produces the letters.]

Q. Please say if these are the two letters that you wrote? A. Yes, Sir; that is the one to Mr. Moulton, and this is the one to Mrs. Tilton.

Q. Now, there is a third letter from Mrs. Tilton to Mr. Moulton, of the same date. Please look at that and say whether you saw that at or about the time of its date, or when for the first time? A. I cannot say certainly whether I saw it immediately after that. There was no concurrent interview following the writing of these letters.

Q. No interview in which the three met, you mean? A. No, Sir; none.

Q. And your two letters were written independent of seeing this? A. Yes, Sir; without seeing that at all.

Q. This letter, Mr. Beecher, to Mrs. Tilton begins in this way:

My Dear Mrs. Tilton: When I saw you last I did not expect ever to see you again, or to be alive many days. God was kinder to me than were my own thoughts.

Q. When was the last time, prior to this 7th day of February, that you had seen Mrs. Tilton? A. I suppose I had not seen her since the interview of December 30.

Q. Well, that is your recollection? A. That is my recollection of the purport of this opening sentence.

Q. And of the fact that you had not seen her? A. Yes, Sir.

Q. And you used this expression: "When I saw you last I did not expect ever to see you again or to be alive many days;" now what was there in your situation that led you to have an impression of that shortness of your life? A. That was the shortness of both our lives, Sir. She looked to me as one already bespoken for by God's angels; and in the terrible whirl to which I was subjected—the fiery excitement—it did not seem to me that I could live long.

Q. And in that view it was of her life, and your own feelings, that you wrote that expression? A. Yes, Sir.

Q. In concluding this letter, Mr. Beecher, you say, "This is sent with Theodore's consent, but he has not read it." Was that the fact, as you understood it, that Mr. Tilton had not read the letter? A. Yes, Sir; I understood it so; but that close was the suggestion of Mr. Moulton, and—

Q. I was going on to the next sentence:

Will you return it to me by his hands? I am very

earnest in this wish, for all our sakes, as such a letter ought not be subject to even chance of miscarriage.

Was that clause the subject of conversation between you and Mr. Moulton in the preparation of the letter, or in advising the letter? A. It was, Sir.

Q. And was inserted in the letter? A. It was a suggestion of his, which I carried out. I can give you the reason stated.

Q. Stated by Mr. Moulton—well, what did he say in that connection? A. I cannot give you what he said, but I can give you what he suggested.

Q. Well? A. That Elizabeth would not likely receive a document from Mr. Tilton's hands, in—the idea was that if she thought that Mr. Tilton and I had got up this letter together, it would not have any influence with her.

Q. Yes! A. And that we had better suggest to her that he had not seen it, and therefore it was my letter, and was my judgment.

Q. And that was the fact? A. That was the fact; at least, so far as I know.

Q. And then as to the return of the letter—you left the letter with Mr. Moulton? A. I gave the letter to Mr. Moulton for disposal.

Q. To be sent by Mr. Tilton, apparently?

Mr. Beach—No, to be returned—

Mr. Evarts [Reading]—"This is sent with Theodore's consent?" A. Yes, Sir.

Q. Well, how did you know, or how were you advised as to that? A. Mr. Moulton—that is, Mr. Tilton—consented that I should write a letter to his wife with this general design, but he did not see the letter.

Q. And it was through Mr. Moulton that you received that information? A. Yes, Sir.

Q. That Mr. Tilton consented, and by his advice this letter was written? A. Yes, Sir.

Q. Did you request of Mr. Moulton to get Mr. Tilton's permission to write that letter? A. No, Sir.

Q. From whom did the communication on that subject first proceed? A. Mr. Moulton was the engineer of the whole proceeding.

Q. Now, in regard to any arrangement or agreement that you should not hold any communication with Mrs. Tilton—any correspondence with Mrs. Tilton—how did that arise if there was anything of that kind? A. It did not arise; there never was any such arrangement.

Q. What was said or done by you in that connection, if anything? A. I always said it was not—it was an improper thing for me personally to act in this matter with Mrs. Tilton; I was on several occasions—it was suggested as a natural thing by Mr. Moulton, that I should see her, and I declined always.

Q. What was suggested by Mr. Moulton? A. That I should bring my personal influence to bear upon Mrs. Tilton for the harmonization of our different interests.

Q. Yes! A. And my reply to Mr. Moulton was twofold; first, that if, as I then believed, Mrs. Tilton had

transferred to me an undue measure of affection, my presence would make matters worse; or if, using that influence, I brought her into more harmonious relations to her husband, the sensibility of a proud man would accept such services at the hand of another very ill, and it would make matters worse on that side, and that, therefore, for both reasons, I better not go.

#### MR. BEECHER'S INQUIRIES ABOUT MRS. TILTON.

Q. And so about any writing to her, were you put under any advice or restrictions? A. Under none.

Q. Mr. Beecher, Mr. Tilton says in the course of his direct testimony, in answer to this question [reading]:

Before going to that interview, I propose to ask you did you learn from Mr. Beecher why you were made the bearer of that letter from himself to Elizabeth [meaning this letter of the 7th of February, Mr. Tilton says] Mr. Beecher, whenever we met, particularly at that time, always asked after Elizabeth, after her state of mind, asked whether or not she could endure to live, asked whether or not I was restoring her in any degree to my respect; he put such questions as these, if that is an answer to your inquiry.

And Mr. Fullerton says "Yes" to that. Now, what did pass between you and Mr. Tilton on the subject embraced by that question and answer? A. Well, Sir, I always asked after Elizabeth with affectionate interest and respect.

Q. His statement is, you asked after her state of mind, "asked whether or not I was restoring her in any degree to my respect?" A. No, no; while yet her illness continued, I always asked whether she was ill, whether it seemed—she seemed likely to run down; there was a fear, at that time, that this illness would terminate in rapid consumption, and I had great solicitude, and I asked after her with that in my mind; and as to the other question, whether she was rising in his respect, I do not remember ever to have asked him that.

Q. Now, Mr. Tilton adds to this answer that I have already read to you, referring to you:

And he [meaning you] wanted me to be assured that Mr. Moulton, who was endeavoring to keep peace between us all, held her in kindly regard, and did not frown upon her because she had forfeited her honor. He was very anxious that Elizabeth should be assured of that fact.

Now, what passed on any such subject, or in any such connection? A. There was nothing; it is simply untrue.

## MR. TILTON DENIES THE STORIES TO HIS DISCREDIT.

Q. Now, Mr. Beecher, from and after this 7th of February, was there any disturbance, or discord, in the relations between yourself and Mr. Tilton and Mr. Moulton, during that season or up to the Summer? A. On the contrary, they were very much bettered between me and Mr. Tilton.

Q. Better than they had been— A. Any time previous?

Q. Prior to December? A. Yes, Sir, or had been for a year nearly.

Q. And at any of the interviews thereafter was the subject of any fault or wrong that you had done renewed as a subject of complaint or controversy? A. There was a memorable interview in the forepart of February; I cannot give any special date, but it was in the first half of the month, I think, in which our—

Q. Where was this? A. At Mr. Tilton's house.

Q. Well, I now proceed to that, then.

Mr. Beach—What year? A. 1871.

Mr. Evans—Well, in this month of February, or toward the middle of it? A. Yes, Sir, somewhere in that vicinity.

Q. Now, Sir, did you go to Mr. Tilton's house, and, if so how were you induced or held to go there? A. I don't know how; evidently by arrangement, but whether by his invitation or Mr. Moulton's suggestion I cannot recall; I remember going there about breakfast time in the morning.

Q. Now, you can go on and narrate what occurred. A. The conversation and the interview is rather more distinct than the external motion of things; we retired to his study, which was in the third story front room at that time.

Q. Well, you found them at breakfast? A. I did not go into the breakfast room, if I recollect, but I have an impression they were there.

Q. At breakfast? A. At breakfast; and Mr. Tilton met me as if he had expected me, and he—without being able to state precisely the language he employed—he introduced his conversation, by the recognition of the fact that we were to act harmoniously together, and that it was necessary, therefore, for a more perfect effectuation of that, that we should have a conversation in regard both to himself and to myself; there was a renewal—some renewal of the conversation in respect to the manner in which Mr. Bowen had treated him in a business point of view; I cannot recall that very distinctly; the other part impressed itself more upon my mind; he passed on from the statement of Mr. Bowen's having slandered me, to the statement that he himself had experienced a like treatment at the hands of Mr. Bowen. He proceeded to instance the stories that had been told by Mr. Bowen, if I recollect right, one by one.

Q. About you? A. No, about himself. It was an interview far more clearing himself than clearing me. He said that the story of his having made improper advances to a lady in the back office of *The Brooklyn Union* was an absolute falsehood; he denied it explicitly. He said that the story of his going with a woman to Winsted, in Connecticut, was absolutely false, and had no foundation in fact, and that he could not understand how it should have started except that there was another Tilton, bearing nearly the same initials as his, who was a dissolute man, and an intemperate man, and that he had been about the country, and that this story probably was true of him, and had been transferred by those who did not know the difference of personality to him. He said that the stories told of him by Mr. Bowen, or hinted, in respect to his improprieties in the West and North-West, he defied anybody to prove—they were absolutely false; he then went on to say that my wife was not altogether guiltless in the matter of propagating stories; that she and Mrs. Morse had joined hands against him; that Mrs. Morse had repeated stories of his intemperance, and of his improvidence, and of his neglect of his family, and one by one he gave to them explicit denial. What else did he say? [Reflecting.] He stated then to me, in regard to his family that, while he acknowledged that perhaps he had been at times hasty or inconsiderate, or something to that effect, he had never violated his marital vows; he declared that he had from his youth up been immaculate in chastity; he narrated to me the scene that took place between him and his father when he first began to launch out alone into the city, who took him and talked with him about the great dangers that he would have from the other sex, and from an undue intercourse with them; I cannot recall it; there was a considerable and very specific in that counsel of his godly and patriarchal father, as he represented to me, and he said that that made such an impression on his mind at that time that it had held him up ever since; he stated then that he did not know but that his life had come to a premature termination; his usefulness seemed clouded, his opportunities seemed shut up; his household seemed desolate. I spoke then words of sympathy and words of courage to him, and was profoundly impressed with his truthfulness, and I felt worse than I had ever felt before, that I had lifted my hand against a man who, whatever might have been his weaknesses or his follies, had not deserved any such treatment, and I expressed myself so to him, and we had a kind of recognition again; and he said that in view of what had taken place through the kindly offices of Mr. Moulton, through interviews with me, that, as we were to co-operate in the future, he wanted to have this conversation to say what he had said, and so on, and he wanted also to say that he should desire me to visit in his family again just as I had done in former days—before any of these troubles arose. This was not said just as I have said it—that is to say, it

was much more largely opened rhetorically, and yet this is the substance of it. We left the study and went down stairs. I have forgotten exactly how it came to pass that I found myself with him in the bed-room with Mrs. Tilton—in the back bed-room on the south side of the house; but there I recollect there was a supplementary conversation between us three, or rather there was a supplementary discourse to us two, in which he stated again to his wife that he had had a long and satisfying interview with me; he said that he did not know that he should ever again be put in such prosperity as he had lost, and spoke tenderly and sadly about that, and yet terminated with a kind of reassurance—he was young, and he was energetic, and he meant to recover himself; he spoke also in respect to his family—he said that he thought it only right to say to Elizabeth, addressing himself to her, that “Mr. Beecher, in all this difficulty, has acted the part of a man of honor toward you, and has taken in every case all the blame to himself; and I feel bound also to say to you, Sir,” said he, “that Elizabeth has pursued the same course toward you, and said, ‘If there is any blame it is mine.’” He said, then, that he did not know that he should ever be happy again—his home seemed to him to be a divided and a desolate home, but he did not know but that out of this very condition of things there would spring up again an affection that would be purer and stronger than if it had not been tried by these difficulties; and with that—we all kissed each other (laughing) and I departed.

#### MR. TILTON FINDS FAULT WITH MR. BEECHER.

Q. Now, thereafter, Mr. Beecher, were you again at the house in May, some time in May? A. Yes, Sir; I think it was in May.

Q. What part of May? A. Well, if nobody would question me sharply I should say about the last third, somewhere about the 20th.

Q. Past the middle, I suppose? A. Yes, I think it was; I think it was about that time; but I cannot swear to the date accurately.

Q. Well, what was there about that interview? how did that come? was that by invitation, or— A. Well, of that interview I have less recollection of the details of it. There was—I don’t know what difficulty had sprung up, some little—

One of the Court officers having opened one of the windows, Mr. Beach said, addressing the Court: We cannot stay here if that air blows on us in this way.

Judge Nelson—Let the window be closed, then. [To the reporters.] The reporters will not put that on their notes. [Laughter and applause.]

Mr. Evans—Well, Mr. Beecher, who were parties to this interview, this visit at the house? A. Well, first and last, Mr. and Mrs. Tilton and myself.

Q. Well, what occurred, do you recollect? A. No, I cannot exactly recollect what it was. There was some—there had been some—either they had not fulfilled some agreement, or there was some kind of dissatisfaction with me, but I cannot recall it, what it was. I only know that when I went in Mr. Tilton received me moodily, and then after a little conversation and explanations which took place, he became gracious, and we fell into an easy and unbusinesslike chat, and that in the course of it, sitting there in the old-fashioned way in his house, I went up and argued—sat down on his knee, as it were to make the appeal closer, and when I was sitting there, Mrs. Tilton came into the room and burst out laughing. I recollect that interview, and I think when she came into the room she came up and kissed me very cordially. That is but a skeleton interview, but I don’t remember the topic which had brought me there, only that it was something with which he was dissatisfied with me, as if I had not done the duty that was expected of me, and I have tried to remember it, but it won’t come.

Q. Now, during this Spring, and up to this time that you have now named, the latter half of May, did you understand that the ill-feeling between you and Mr. Tilton, or misunderstanding, was removed? A. I did; I thought the difficulty was all dissipated, and that the only thing remaining was the performance of the undertakings in which we had engaged.

Q. In regard to the future prosperity of Mr. Tilton? A. Of Mr. Tilton, the exoneration of his name from any imputations, as far as I could, of blame, and of upholding him by my influence as far as I legitimately could.

#### MR. BEECHER'S LAST VISIT TO THE TILTONS.

Q. Now, Sir, during this interval did you have any other visit to Mr. Tilton’s house in February of that year except the one that you have stated? A. I don’t recall any, Sir; I don’t recall but one other visit I made to the house from that day to this.

Q. And when was that? A. I cannot fix the date, Sir; it was an interview in which I saw Mrs. Tilton alone.

Q. How late was that—in what year? A. It was in the year 1871.

Q. In the Fall, was it? A. It might have been in the Fall; I have an impression that it was, but still I will not hold myself bound to that time.

Q. You don’t connect it with this period—with this Spring? A. Yes, it had connection with the difficulty that ran through that period.

Q. Yes, but you don’t connect it in date with this Spring—this period. If you do, I will inquire about it; if not, I will postpone it until that season is reached. A

Well, my impression is that it was an interview in the November of 1871, but that is a corrected impression.

#### THE INTERVIEW ABOUT THE CHILD RALPH A "MONSTROUS FALSEHOOD."

Q. Well, we will so treat it now; we won't inquire about that now. Now, Sir, I will read to you a passage in Mr. Tilton's testimony of an interview in February:

Mr. Beecher came to my house one morning about the first or second week, probably the second week, yes, certainly the second week in February, 1871; he had come in pursuance of a request which I had sent to him through Mr. Moulton; Mr. Beecher came in the morning while I was at breakfast; I rose from the table, and met him in the parlor, and told him to go up stairs into my study. He immediately went up, and I followed him. I closed the door behind me, and, after he took his seat, I said to him: "I have called you hither, Sir, in order that you may remove, if you can, a shadow from the future life of the little boy, Ralph. His mother has assigned to me a date at which your criminal intimacy with her began. This little boy was born a few months after that. If the date which his mother has given is correct, it will save a dishonor attaching to his name. I want you to tell me, as before God, whether or not that date is right. I want, if possible, to shield him, but I want, more than that, to know the truth. Tell me the truth;" and he [that is, you] told me on his word of honor, as before God, that the date which Mrs. Tilton had assigned was the correct date. At that moment Mrs. Tilton herself, who had followed me up stairs, came into the room, and when I stated to her the point of conversation, she burst into tears, and asseverated, as she had once or twice done before [but that was struck out, as she had once or twice done before] asseverated that the date she had given was correct.

Now, Mr. Beecher, did any such interview, in which that topic, that subject, of the spuriousness of the boy, or the adultery of the wife, was mentioned, ever occur? A. Can you not divide that question, and let me be asked whether a father asked the seducer of his wife—

Mr. Beach—One moment, if your Honor please; I must object to this.

Mr. Evarts—The question, Mr. Beecher, is simply for your answer whether any such interview, any such conversation, any such topic of conversation, was ever raised between you and Mr. Tilton. A. Never between me and Mr. Tilton alone, in the presence of his wife; never any such conversation, or anything out of which such a conversation could be made or imagined took place. It is a monstrous and an absolute falsehood. [Loud and continued applause.]

#### BITTER REMARKS ON THE FEELING SHOWN BY THE AUDIENCE.

Mr. Fullerton—If your Honor please, I think that a few words can be appropriately said at this juncture in regard to these unseemly and disreputable manifestations of applause. Your Honor's admonitions are entirely disregarded. The friends of the defendant seem

to be determined to emphasize this dramatic part of the scene here with their heels and their hands. I suppose are manifesting great pleasure that Mr. Beecher is enabled to deny these allegations, as if they were taken by surprise at his ability to do so. Now, Sir, however appropriate things of this kind may be in the church where they belong, their habits ought not to be brought into this Temple of Justice. It is wrong in every respect; it is an outrage. It seems that your Honor, by anything you may be able to say, cannot prevent this; but I think if officers were stationed in this room for the purpose of arresting and bringing to the bar of this court any person who committed such a violation of propriety, and having them punished for contempt, would put a stop to it. It is heralded forth to the world, through the public press, that there are manifestations of great applause and approbation whilst the defendant is giving his testimony and denying the allegations brought against him. I am perfectly willing that Mr. Beecher's testimony shall have what effect it is entitled to; I am willing it should be considered properly, calmly, and the truth or falsity of his statement, or the statement of any other witness in this case, determined in a proper and in a legal way; but to have people come here for the purpose of indulging in applause, that it may reach that jury box, and affect the minds of the gentlemen there, is not to be tolerated for a single moment, and we had either better break up this court and abandon this trial or else have order preserved.

Mr. Evarts—I believe, if your Honor please, the public judgment gives your Honor the credit of having preserved in an unusually meritorious degree, decorum, quiet, and order through this trial, although it is a trial that touches the sensibilities of men and affects greatly the dividing judgments of the friends or adherents of opposing opinions, and I believe, either in an illustration of the fickleness or of the division of sentiment, that there has been a somewhat impartial manifestation of applause for the eloquence and points of my learned friends, and now and then for some proposition of a witness successful in pleasing the attention, and finally in great and important asseverations of this witness, the defendant. I believe that the audience has been very temperate in all these manifestations in every form; that it has been but an instantaneous, as I suppose it was a wholly unpremeditated demonstration, whether it was drawn forth by the eloquence of my friend Mr. Beach, or by the wit of my friend Mr. Fullerton, or by the energy of the witness Mr. Moulton, or by the sharpness of Bessie Turner, or by the solemnity of Mr. Beecher. And you cannot suppress, on one side or the other, in a crowd of intelligent and feeling human beings, some natural indication of this kind; and if it is limited, as it seems to me in all candor we should believe, on both sides, to a mere momentary expression doubtless regretted and repented of by the offending portion of the audience when it has occurred, that we really

should not disfigure this trial that has been so orderly and creditable, as it seems to me, to your Honor's administration of the Court, by a suggestion that real and important infractions of decorum and impropriety take place.

Mr. Fullerton—This is the first instance, Sir, I ever knew in the administration of justice where the evidence of a witness has been the subject of repeated applause against the admonition of the court. I don't believe any, thing in the experience of my learned friend on the other side, or of your Honor, can call to mind any such occurrence. If your Honor had not admonished these people over and over again that it must not be repeated, then what the learned counsel says might be true, that it was involuntary and unintentional, repented of immediately after the thing occurred. But your Honor sees perfectly well that it is persisted in; it is repeated in the teeth of your Honor's threat to have them ejected from the room. They pay no more attention to what your Honor says upon the subject; they seem not to care what your Honor's wishes are in that regard; but it is repeated, and it is repeated for the purpose of having it go forth to the world, and to exercise an influence there, and by its reflex action to reach the jury-box. That I don't believe they can affect, but that is their object, and, inasmuch as it mars the harmony and propriety of the occasion, I hope and trust that your Honor will exercise all the power that is in your possession, and use all the force that the law puts within your Honor's reach, for the purpose of having this trial conducted throughout with that quietness and that decorum, and, I may add, with that decency which should always characterize proceedings in a court of justice, whatever may take place in a church, in the City of Brooklyn.

Judge Neilson—I feel indebted to counsel for calling attention to this circumstance, this disorder; I have myself on my own volition complained often, and have got tired complaining. I will endeavor to-morrow morning to make such arrangements as to effectually silence such interruptions.

Officer Rogers—I suggest to your Honor that I have made one or two arrests.

Judge Neilson—To-morrow morning you will bring in some additional officers for a day, by way of experiment, and, instead of making two or three arrests, if necessary make a dozen. Let us make a signal day of it.

Mr. Evarts—Mr. Beecher, subsequently, by a few questions, a further statement was made by Mr. Tilton, which I now ask your attention to :

Mr. Beecher asked me the date Elizabeth had named. I told him Elizabeth had named as the date at which their criminal intimacy began October 10, 1868. He replied that he had no faculty for dates, and had made no record, but he believed in his soul that she had told me the truth.

Did you say anything of that kind? A. No, Mr. Evarts, nothing of that kind.

Q. Were you asked any such question? A. No, Sir, I never was asked any such question.

Mr. Evarts—If your Honor please, we will not take up another subject.

#### LADIES REQUESTED NOT TO ATTEND THE TRIAL.

Judge Neilson—I ought to say to the ladies who are now present, and who are not immediately connected with the suit or the parties, that it would be well not to attend to-morrow morning. Friday morning and this morning I refused admission to a great number of ladies with regret. I think in some of the weeks to come there may be an opportunity, but just at present I think the ladies who are here, and who for one day have seen the place, might as well be content. Members of the Bar complain that they cannot get in. [To Officer Rogers.] See that the gentlemen keep their seats until the jury retire.

The jury will attend at 11 o'clock to-morrow morning. The Court then adjourned until Tuesday at 11 o'clock.

#### FIFTY-NINTH DAY'S PROCEEDINGS.

##### LETTERS AND INTERVIEWS EXPLAINED.

MR. BEECHER'S ADVICE TO MRS. TILTON TO LEAVE HER HUSBAND COMMUNICATED AT THE TIME TO GEORGE A. BELL—MR. MOULTON'S FIRST SUGGESTIONS THAT MONEY WAS NECESSARY TO KEEP PEACE—BESSIE TURNER'S EXPENSES AGAIN—AN INTERVIEW WITH MRS. TILTON SINGULARLY DESCRIBED—THE CLANDESTINE LETTERS EXPLAINED—MR. BEECHER'S INTERPRETATION OF A PECULIAR WORD.

TUESDAY, April 6, 1875.

Mr. Beecher's attention was first called to several minor and disconnected matters which had been previously overlooked. The object was to fill up little gaps in the evidence for the defense. The first inquiry was relative to Mr. Beecher's action in December, 1870, when called in by Mrs. Tilton and Mrs. Morse, to give advice as to the former's separation from her husband. It will be remembered that after some hesitation and consultation with his wife, Mr. Beecher finally suggested to Mrs. Tilton in writing, that she should separate from her husband, and not procure a divorce. Some objection was made to further inquiry on the subject yesterday, but finally it was brought out that Mr. Beecher had consulted with George A. Bell on the subject. Mr. Bell, who was at that time Superintendent of Plymouth Bethel, advised him that it was "not a case for meddling."



Inquiry was next directed to the occasion of Mr. Moulton's first suggestions to Mr. Beecher that he should lend aid in money to Mr. Tilton. Mr. Beecher replied that it was among the first suggestions made by Mr. Moulton after the storm of January, 1871, had passed—within that month, in fact. Mr. Moulton told him that there was a mortgage of \$7,000 on Mr. Tilton's house, and that it ought to be paid. Mr. Moulton knew of the existence of this mortgage, according to the defense, from the fact that his business firm held it. Mr. Beecher said that in answer to this suggestion he had offered to do his share whenever any movement was made to raise the amount.

Mr. Moulton's next demand for money was made in the Summer of 1871 for the amount of Miss Beatie Turner's school bills. He represented that he was paying out large sums of money for Mr. Tilton, and that he thought Mr. Beecher ought to help. Without any formality or arrangement as to paying other bills, Mr. Beecher paid the sum asked for, and when other bills were sent to him paid them without question or account of the expenditures. The only positive "Beecherism" of the day was uttered at this point, when the witness declared that he did not think he "had ever kept an account or a memorandum of any money on the earth."

In his testimony, Mr. Moulton swore that early in January, 1871, Mr. Beecher had suggested that Mr. Tilton ought to go to Europe for a few years. Mr. Beecher swore yesterday that there was some remark of that sort made by Mr. Moulton, casually dropped in ordinary conversation, but it made no serious impression on the witness's mind.

A part of Mr. Tilton's testimony was read relative to the scene at which he alleged the parentage of the child Ralph was talked over, and Mr. Beecher's attention called to the fact that, at the close of that interview, Mr. Beecher burst into tears, and expressed great grief and misery. Mr. Beecher not only denied that the conversation in any way referred to the child, but also asserted that it was a pleasant, hopeful interview, and at its close the "last thing that was done was to kiss each other, all three around, and," he added, "I did not burst into tears for that."

#### ADVICE TO MRS. TILTON IN 1871.

The next offer of Mr. Evarts was of a singular character and led to a long argument of an hour's duration. It was a proposition to give the incidents and conversation at an interview in

the Fall of 1871 between Mr. Beecher and Mrs. Tilton at the house of the latter. Objection was made, of course, but not until Mr. Evarts had brought out the fact that Mr. Beecher had gone thither at the request of Mrs. Tilton on a pastoral visit of advice. Mr. Fullerton sprang to his feet, declared this to be a new interview, before unheard of by the plaintiff and beyond his power to dispute. Mr. Evarts again proposed to give the whole scene "in its innocence and solemnity." Judge Neilson ruled out the conversation and permitted the facts of the interview only to be given. During the argument Mr. Beecher had turned to the clerk's desk at his left elbow, and taking up the Bible on which witnesses are sworn, had opened, read, and with his pencil marked a passage in the volume. Finally, when the decision was made, and Mr. Evarts had asked him what occurred between him and Mr. Tilton, Mr. Beecher answered, with great deliberation, still holding the open Bible in his hand, "I went into the parlor; I sat down; I listened; I marked a passage in the Bible; I got up; I bowed, and went home." There was an immediate attempt on the part of Mr. Evarts to have the passage read; but Mr. Beecher protested against "any scenic effects," and after a general dispute, the Judge ruled out the passage, recommending Mr. Evarts to use it in his summing up. The marked passage, 13th chapter, I., Corinthians, verses iv. to viii., read as follows:

- (4.) Charity suffereth long, and is kind; charity envieth not; charity vaunteth not itself, is not puffed up;
- (5.) Doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil;
- (6.) Rejoiceth not in iniquity, but rejoiceth in the truth;
- (7.) Beareth all things, believeth all things, hopeth all things, endureth all things;
- (8.) Charity never faileth.

#### THE CLANDESTINE LETTERS.

Mr. Beecher was next called upon to explain as far as he could the meaning of what have been called the clandestine letters. The first to be explained was the one in which the word "nest-hiding" occurred. Mr. Beecher said this was in no sense his word. He had never used it in conversation with Mrs. Tilton, and understood it at the time he received the letter to mean that the writer was hiding the troubles of her household.

Mrs. Tilton's letter beginning, "My dear Friend: Does your heart bound toward all as it used," was next explained. Mr. Beecher said that the date of this letter was March 8, 1871, and that this was the first letter that had passed between them since Feb. 7,

It was written by Mrs. Tilton to communicate to him the happier condition of affairs in the Tilton family, which had resulted from the efforts of Mr. Beecher, Mr. Moulton and Mr. Tilton to restore harmony to the family. The last clause in the letter—"When dear Frank says I may once again go to old Plymouth, I will thank the dear Father"—Mr. Beecher explained by saying that he thought at the time that it referred to some understanding between Mr. Moulton and Mrs. Tilton.

At this stage of the proceedings Mr. Beach requested leave to look at the memorandum of dates, which Mr. Beecher has had with him for reference thus far in his examination, and which at the beginning he offered to submit to the counsel. After glancing through it, Mr. Beach declared that it contained other matter than dates, and that the subjects of the witness's examination were classified there. Mr. Evarts insisted that it was proper for him to have it and handed it back to Mr. Beecher, who turned appealingly to the Judge and held out the papers for his Honor's examination; but Judge Neilson waved it aside and declared that the witness was free to use it.

The examination thus interrupted was then renewed, and Mr. Beecher was then questioned regarding the letter from himself to Mrs. Tilton, beginning: "The blessing of God rest upon you." It was written, he said, while his sister, Mrs. Perkins, was keeping house for him. By the expression "true inwardness" he meant Mrs. Tilton's religious experiences, of which he wished her to write to him fully. The words "it is permitted" had reference to the common understanding between himself, Mr. Tilton and Mr. Moulton, that he (Mr. Beecher) might renew his social relations with Mrs. Tilton. When he used the words "it will be safe for you," he merely meant that he would reveal to no one the outpourings of her inner nature.

The letter to Mrs. Tilton, dated Jan. 20, 1872, which was next inquired into, was written soon after the death of Mr. Tilton's brother. There was some objection to Mr. Beecher answering Mr. Evarts's questions as to whether or not the sentence, "My wife takes boat for Havana and Florida on Thursday," had any reference to a meeting with Mrs. Tilton in Mrs. Beecher's absence, but the witness was finally allowed to deny any improper meaning in the letter.

Mr. Beecher explained his note to Mrs. Tilton in which occur the words, "If I do not see you to-morrow night, I will next Friday," by saying that Fri-

day was his lecture night, and it was his custom to make appointments with and meet his parishioners on that evening after the lecture. As nearly as he could remember Mrs. Tilton wished to see him about her mother, and he had suggested that time as convenient. Mr. Beecher, in a few words, here gave a vivid picture of the scenes after lecture at Plymouth Church.

Mrs. Morse's letter to Mr. Beecher dated Oct. 21, 1871, which contained the question, "Do you know I think it strange you should ask me to call you son?" and which was signed "Mother," was the last of the letters explained to-day. These expressions, Mr. Beecher said, referred to an occasion when, on Mrs. Morse telling him her troubles, he had asked her to take counsel of him as of a son.

#### MR. BEECHER'S ACQUAINTANCE WITH MRS. WOODHULL.

The explanation of the documentary evidence against Mr. Beecher was then suspended to allow the defendant, by giving at this point his account of his acquaintance with Mrs. Woodhull, to keep up the perfect chronological order in which his testimony, thus far, has been given. Mr. Beecher accordingly began his testimony on this point. He said that soon after the publication of Mrs. Woodhull's card, on May 23, 1871, Mr. Tilton came to him and said that the card referred to his (Mr. Tilton's) family. Mr. Tilton declared that he had been to see Mrs. Woodhull, and, by using his utmost efforts of persuasion, had induced her not to continue her attacks upon him. Mr. Beecher's account of nearly all that Mr. Tilton said on this subject to him was in direct contradiction of the testimony given on this point by Mr. Tilton. Mr. Beecher testified that he had nothing to do with Mrs. Woodhull, except when she intruded herself upon him, or when he had to listen to eulogies of her from Mr. Moulton and Mr. Tilton. His denials of ever agreeing to conciliate her were especially earnest, and he explained this part of the testimony of Mr. Tilton and Mr. Moulton by declaring that they had put into his (Mr. Beecher's) mouth things which in reality were said only by themselves. Mr. Beecher explained his meetings with Mrs. Woodhull in a manner which seemed to convey the idea that the two first meetings were brought about by Mr. Moulton. The second occasion of his seeing her was on the afternoon of the excursion to witness the yacht race. He was invited by Mr. Moulton to dinner, and found Mrs. Woodhull there. She sat beside

him at the table. At this point Mr. Beecher broke off his narrative, and, looking around the court with a comical expression, added, "and the dinner was very good."

THE PROCEEDINGS—VERBATIM.

STERNE MEASURES FOR ENFORCING ORDER.

Owing to the tardiness of plaintiff's counsel, the day's work was not begun until 11:15 o'clock.

Judge Neilson—I wish to say to the people in the gallery that, unless there be perfect order there to-day, those doors will be closed to-morrow morning. It has not been our custom to have the gallery used, and in many trials here, civil and criminal, where there might be excitement, the galleries have not been opened; and if the officers cannot keep order, they will not be opened hereafter. I wish to say to people on this floor that the officers think there are too many chairs here, and too many people seated, and that better order could be observed if some chairs were removed, and fewer persons let in; and that course will be observed to-morrow morning, provided there is not perfect order to-day. The two officers stationed in the midst of this court will please observe the faces of the people, and make an example of any who offend. I have sometimes thought even the reporters might be a little more sedate; they are engaged in a very serious business, and if they were a little more sedate and attentive, I think their reports would read better. Will you proceed, Mr. Evarts?

Mr. Evarts—If your Honor please, in regard to the report of a few observations made at the close of yesterday, in what I had occasion to say, I came into the court with an intention of correcting what I supposed was an error of the report in making me ascribe some applause to Mr. Tilton when I supposed I had conferred it upon Mr. Fullerton. But upon seeing that all the papers have it Mr. Tilton, I suppose the slip was in my tongue and not in the report.

Judge Neilson—I thought not, Sir; I did not understand you to say that.

Mr. Evarts—I thought I very distinctly said the eloquence of my friend Mr. Beach, and the wit of my friend Mr. Fullerton; but all the papers have it my friend Mr. Tilton. I should not venture to allude in so familiar a manner to the opposing party in this suit.

Mr. Fullerton—Well, I divide the honor with Mr. Tilton.

Judge Neilson—The only thing I observe in reference to your remark, which was very appropriate and very happily expressed, was a want of regret and disapprobation. I had at the moment thought of asking you to continue your observations with that view.

Mr. Evarts—Until I had reached that point.

Judge Neilson—Yes; but I assume there was regret and a sense of disapprobation.

Mr. Evarts—I did not intend to favor the matter in the least, but simply I put it that I thought all through the trial that it has been done in an instantaneous manner, and not a persevering or a continuing one.

Judge Neilson—Something in the nature of spontaneous combustion.

Mr. Fullerton—It was too instantaneous after your Honor's admonition.

Judge Neilson—Yes.

Mr. Evarts—And of course I wish to add any authority or influence that I may have in securing entire immunity during the progress of the trial from any such manifestations on one side or the other.

TROUBLE ABOUT TAKING MR. CLEVELAND'S TESTIMONY.

Judge Neilson—That I have no doubt of at all. Mr. Morris, in this matter of closing Mr. Cleveland's evidence hadn't you better take an order of reference—to Judge Greenwood, for instance? I am really not well enough to attend to that. I go out of court tired and come in tired in the morning.

Mr. Morris—I will consult with my associates.

Mr. Beach—We will consult about that; of course it is merely for the cross-examination. [After consultation.] If your Honor please, there is some little difficulty in the proceeding for the examination of Mr. Cleveland, arising, I think, from a misapprehension between the gentlemen who are conducting it, and we wish to understand from your Honor whether the order, the informal order, under which he is examined is of such a character as to make his deposition, when it is offered, absolute evidence, although the witness may then be in a condition of health to appear and testify orally before the Court. I had supposed that the examination was to be taken the same as if an order for a *de bene esse* investigation had been made.

Judge Neilson—It stands so. I suggested to Judge Morris this morning, however, that with a view to close that, perhaps it might be referred to Judge Greenwood to take the testimony.

Mr. Beach—Oh, I think there would be no difficulty, Sir, in closing the examination, with the understanding that whenever the deposition shall be offered it shall be their duty, as in the ordinary case of an order, to show the incapacity of the witness to appear in Court.

Judge Neilson—Yes; that will be the course.

Mr. Morris—And that we can proceed in the cross-examination as the direct was proceeded with—where an objection is made to the question the objection is noted, and let the question be answered, and your Honor can pass upon the relevancy or propriety of the question and answer, when it is presented in court.

Judge Neilson—Or, to save delay in court, I might

hear counsel in Chambers as to those particular questions.

Mr. Morris—And there is another point of difficulty that arose between us; that is, the counsel for the defendant insists upon the right of the witness to correct his testimony by simply striking out and inserting. We contend that any corrections that he has to make should be made in the same way as if upon the stand here, by subsequent question and answer, so that the record should appear complete, and not corrected in that way, because it takes away a great deal of the force of testimony.

Judge Neilson—Isn't it the usual practice to make corrections in that way?

Mr. Morris—The same as the witness upon the stand.

Judge Neilson—Yes.

Mr. Morris—Well, I insist that should be the course pursued in the examination of Mr. Cleveland.

Judge Neilson—I think that should be so, Sir.

Mr. Shearman—Well, if your Honor please, we should very much desire to have your Honor's attendance, or the attendance of some Judge of the court, because Mr. Cleveland's health will not permit of four or five days' examination consecutively.

Judge Neilson—I will attend if you desire me.

Mr. Shearman—We will be very much obliged if your Honor will attend this afternoon, some time.

Judge Neilson—I will do so.

Mr. Shearman—At what time—half-past four?

Judge Neilson—At the time you agree upon, Sir, I will attend.

Mr. Shearman—What time will suit you, Judge Morris—five, half-past five?

Mr. Morris—Five o'clock, yes, Sir; but it will not be concluded to-day.

Mr. Beecher was then recalled, and his direct examination continued as follows.

#### GEORGE A. BELL ADVISES ABOUT MRS. TILTON'S TROUBLES.

Mr. Evarts—Mr. Beecher, I passed over by inadvertence an inquiry that I intended to have put to you when we were considering the occasion when Mrs. Tilton, toward the middle of December, raised the question about separation from her husband—that period. Did you, in connection with that resort of Mrs. Tilton to you for advice, besides introducing your wife into consultation, also refer to any gentlemen of the church or apply to any gentlemen of the church in the matter?

Mr. Beach—It seems to me, if your Honor please, that that question assumes various propositions which we contend are not established by the proof.

Mr. Evarts—Well, I don't care for including any of them. I suppose that the evidence we have given, in the witness's view of it, at least, covers them.

Judge Neilson—The inquiry, then, is whether—

Mr. Evarts—It is simply whether at that time you and Mrs. Beecher did, in fact, on occasion presented, see Mrs. Tilton and Mrs. Morse at her house—whether, pending that inquiry, you did or did not apply to any gentlemen of the church to take part in the matter? A. I did.

Q. Who was it? A. George A. Bell.

Q. What position did he then hold in the church? A. I can't say what position he held in the church; he had been an official member in one way and another almost since I could remember, and was then Superintendent of the Bethel, a near neighbor, and an intimate friend, and one of my chief counselors.

Q. And did he take part in the matter, in the conference with you? A. I made a suggestion to him that the deaconesses—

Mr. Beach—One moment.

Judge Neilson—Your answer would seem to give the conversation.

Mr. Beach—Very well; I am instructed by my associate to withdraw that objection.

Judge Neilson—Well.

The Witness—I made to him a statement of the facts, and made the inquiry what had better be done in regard to Mrs. Tilton; she was under circumstances, it seemed to me, that required near and close counsel, and I thought that it was a case in which the deaconesses of the church, perhaps, would be in the exercise of their proper function; he dissuaded me from it peremptorily and emphatically, and said it was a case for silence.

Q. And that was the end of— A. That was the end.

Q. Of that matter? A. I do not use his words, Mr. Evarts, when I say "silence;" I do not mean that he said that word, but that it was a case for not meddling—silence and letting alone, so far as they were concerned.

#### THE FIRST HINT THAT MR. TILTON NEEDED MONEY.

Q. Mr. Beecher, how early after these first weeks of the year 1871, did any questions arise between Mr. Moulton and yourself in regard to the use or the application of money in connection with Mr. Tilton's affairs? A. Do you ask me how early his first suggestions were, or the first suggestions after a given time?

Q. Well, I say after these early weeks in January that we were speaking of, or if it was during those early weeks in January, 1871? A. Among our earliest counselings was how a standing ground should be gathered—got for Mr. Tilton, for his household, so that he could be at ease, and go on with his work, so that his household should be in an assured position. I remember in a conversation his saying to me quite early, within the first two or three weeks, that there was a mortgage upon Mr. Tilton's house; that he thought that that ought to be removed, and that he thought he could then persuade Mr. Tilton to transfer that property to his wife, or make it over to her, and I said whenever any movement of that kind was made,

should wish to be counted in; that I should do my share.

Q. Did he mention to you the amount of the mortgage? A. I understood it to be about \$7,000, Sir.

Q. Did anything further become of that subject or conversation—that particular point or item? A. He never, that I recall, mentioned it to me again, but I did to him once or twice; but I can't tell how long spaces after; it was in a later period; that is, I asked him if anything had been done, or anything was going to be done.

#### BESSIE TURNER'S SCHOOL BILLS.

Q. Now, do you remember how any matter came up between you and Mr. Moulton in regard to any bills, or any payments on account of Miss Beattie Turner's education? A. I do remember the first one.

Q. Well, about when was that, or how in reference to any bill that was present? A. My impression is that it was some time in the Summer of 1871; I will not be at all certain about that; I could refresh my memory, probably. He said to me one day that he was paying a great deal of money out for Mr. Tilton, and that there was a bill that he thought it would be well if I would pay; he thought it would be a great help to Mr. Tilton—assistance to him, or something to that effect. There was no formality and no arrangement about it; he presented it to me, and I said: "Certainly, I will do that, or any other thing that you think will help the family; you let me know, and I should be glad to do it."

Q. Was there then present a bill, and was it connected— A. It was in connection with a—

Q. A bill that he had in his hands? A. I don't remember about that, Sir; it was in connection with a—some statement or account which—there was a definite sum, I remember, and whether I saw the account or not—I know I did not see the account, but whether I saw the papers I don't know.

Q. Now, before this introduction of the matter to you in this form of contribution by you, had you known or heard anything about Beattie Turner's arrangements? A. Nothing whatever; I should, perhaps, say that there was—that Mrs. Morse had made some allusion to it, either orally or by letter; I think it was in her letter of her being absent, but I did not know where she was gone, nor whether it was a mere visit, or for good or for long, and I knew in detail nothing about her being away to school until this came up.

Q. Had you taken any part in providing or arranging for her departure or location, wherever she was? A. None whatever.

Q. Now, in regard to any payments in the future on this account of Miss Turner, to be applied in this way, how did the matter go on, as you recall it? A. There was no arrangement made about it; from time to time, at intervals, Mr. Moulton would say, "Send me," or, "I wish you would give me so much;" sometimes he wrote it, and sometimes he said it; and when it was in a dry sea-

son—that is, when I was not lecturing—I did not always give it promptly; I sometimes paid two sums together; when it was in the Winter season, and I was lecturing at all, I most always sent him a check, or something of that kind, immediately; I made no inquiries about it, and I did not know anything about it, except that I understood that it would be a relief to Mr. Tilton not to be obliged to make this provision.

Q. Now, did you receive or have rendered to you any account of these expenditures? A. I don't recollect, any Sir.

Q. Did you keep any account or memorandum of them as an aggregate or otherwise? A. I don't think I ever kept an account or memorandum of any money on the earth that I ever had. I certainly did not make an exception in this case.

#### THE SUGGESTION ABOUT MR. TILTON GOING ABROAD

Q. During the early period and in connection with the talks about money, either about the mortgage or otherwise, was anything said between Mr. Moulton and yourself about Mr. Tilton going to Europe? A. Oh, nothing serious, Sir. I recollect to have heard the subject dropped.

Q. How do you mean? A. Spoken about.

Q. Spoken about? A. Yes, Sir; dropped by accident, as it were, in conversation, among the very many things that were talked about as to how to open the future—what to do.

Q. What did Mr. Moulton say, if anything, on that subject? A. Very early, I can't report, except I have a recollection that that subject came up, but it made no special impression on my mind. At a later period I do recollect what he said.

#### MR. BEECHER'S "MISERY" AT THE MEETING ABOUT THE CHILD.

Q. Well, I won't go on with that at present. There is a single further item of testimony in connection with that visit at Mr. Tilton's house, which I was last inquiring about at the adjournment yesterday. I read to you passages from Mr. Tilton's testimony, and asked you if anything of the kind occurred. You remember the interview where there was said to have been a discussion about the child? A. The interview of early February—the first two weeks!

Q. The first few weeks of February? A. Yes, Sir, I remember.

Q. Now, there was only one further observation, I think, in Mr. Tilton's testimony, and that perhaps not very important, but I will ask your attention to it. After the evidence had been given, to the whole of which I called your attention—given by Mr. Tilton—he is asked whether anything further took place, in this form:

Q. Omitting, then, that part of the interview to which

you have made reference, state what else occurred at that interview? A. Some remarks were made which I cannot exactly recall, which fell from Mr. Beecher's lips, expressing grief, misery, and he burst into tears; that was the actual remainder of the interview.

Now, Sir, on the occasion of that visit at his house in February, was there any occasion during the interview with him, or with him and his wife, in which you expressed grief or misery or burst into tears? A. I can't say that I did not express regrets, because in part the interview—the earlier part—passed over the Bowen difficulties, and I will not say that I did not cry; but I made no record of my tears in my memory, Sir, and I do not think, as the interview on the whole was a very hopeful and a very reassuring interview, I do not now remember any occasion to cry.

Q. Well, at the close of the interview, at any rate, was there any such— A. Do you mean of the interview in its first part or in its second?

Q. The interview just before you left the house, in the close of the interview. A. Why, Sir, the last thing that was done was to kiss each other, all three around, and I did not burst into tears for that. [Laughter.]

Judge Neilson—Mr. Evarts, allow me to suggest, if you think it is proper, to instruct the witness, who perhaps is not very conversant with this kind of proceeding, to answer, when he can do so, simply yes and no; it would perhaps be better received by the audience.

Mr. Evarts—The point, Mr. Beecher, is that when "yes" or "no" sufficiently disposes, as matter of evidence, of the truth, in answer to the question addressed to you, that that is the proper answer that the law requires; and expressions of amplitude or emphasis are extraneous. I suppose that is your Honor's view.

Judge Neilson bowed assent.

#### A NEW INTERVIEW OFFERED.

Q. Mr. Beecher, you mentioned in the course of the testimony yesterday that you had had one other interview at Mr. Tilton's house with Mrs. Tilton, and that it was alone with her. You remember that? A. I do.

Q. And supposed it was, as near as you could recall it, in the latter part of the year 1871, perhaps. I think you so stated? A. That is my supposition.

Q. Now, Sir, how did that interview arise? A. I cannot say, Sir, from any knowledge, but only I have an impression that I was sent for—

Q. By whom? A. [Continuing] from the nature of the interview, by Mrs. Tilton.

Q. Sent for by Mrs. Tilton, and went there and found her? A. Yes, Sir; she was there alone.

#### THE NEW INTERVIEW OBJECTED TO.

Q. Now, Sir, what passed between you and her on that visit?

Mr. Fullerton—I object to that. If I understand cor-

rectly, that is not an interview that we have inquired into at all.

Mr. Beach—It would not have been permitted.

Mr. Evarts—No, I suppose not.

Mr. Fullerton—We have made no inquiry.

#### ARGUMENT OF MR. EVARTS.

Mr. Evarts—I propose at least to offer to show everything in the shape of intercourse between this defendant and Mrs. Tilton that comes within my range of accusation or imputation, and so of exoniation, within the issues of this trial. Now, your Honor will remember that certain letters passing between Mr. Beecher and Mrs. Tilton during a period subsequent to this trouble raised, and forming so serious a matter of consideration, had been given in evidence, and something is said—something was said to considerable length, and with considerable point, in the opening of our learned friend, Judge Morris—on the subject of those letters, and that subsequent intercourse. We have no concern with anything that has been said outside of the limits of this trial, of course, on that subject; and I propose to show every interview that took place between Mr. Beecher and this lady, and to take up the subject of every note or paper that passed between them, that comes within this period which has been made the subject of imputation and of evidence on the part of the plaintiff. And I may say to my learned friends that I do not desire, nor have I any fact that would lead me to expect, to introduce any conversations of the wife that are in the nature of recital or hearsay concerning anything. It is the interview that took place ~~in present~~, and on the matter then in hand, that I propose to give; and if the generality of my question shall be objectionable, I of course can reduce it—

Mr. Morris—Oh, no, that is not objectionable.

Mr. Evarts—But it would seem to us a suppression of legitimate evidence, if, when subsequent intercourse is made the ground of accusation, I am not permitted by this witness to show what occurred between him and Mrs. Tilton on any visit that he made.

Judge Neilson—What occurred independently of conversation.

Mr. Evarts—Well, Sir, I suppose that the conversation was pretty much, as in general it is, all the intercourse that takes place between people.

Judge Neilson—Well, is not the objection as to confidential communications as binding and pressing upon you now as it was upon the plaintiff when he presented his case?

Mr. Evarts—Well, if that objection is raised—that is, you mean the confidential relations between a parishioner and a clergyman?

Judge Neilson—Confidential communications in respect to Mrs. Tilton, who is not here, that were under restraint.

Mr. Evarts—Oh, that I suppose is between husband and wife, if your Honor please. I know of no confidence be-

tween Mr. Beecher and Mrs. Tilton, except that of clergyman and parishioner.

Judge Neilson—Yes.

Mr. Evarts—And that has not been such, nor does the topic that I should advert to come within any such matter of evidence.

Judge Neilson—You have a right to account for every interview, and for every letter, and show what took place, or what did not take place.

Mr. Evarts—Well, I think that is so.

Judge Neilson—You can do that without giving the conversation. The counsel for the plaintiff have been quite liberal, I think, in the progress of this examination so far.

Mr. Evarts—Yes, Sir; I think so. I have every reason to recognize, in behalf of my client and ourselves, that disposition on the part of the counsel for the plaintiff. They have given a very great latitude to exculpation by disclosing all the facts bearing upon the case.

#### THE GROUND OF OBJECTION.

Mr. Fullerton—I suppose, if your Honor please, that the counsel claims to prove what occurred at the interview to which the witness's attention is now called, upon the strength of your Honor's ruling when the question came up as to what occurred at the interview somewhere about the middle of December, when Mr. Beecher was called in by Beadie Turner to the house of Mrs. Morse, and there had an interview with Mrs. Tilton; but your Honor will perceive that the reasons for admitting the particulars of that interview do not apply to the one to which attention is now drawn. That was an interview before the charge was made. It called for what occurred between Mr. Beecher and Mrs. Tilton with reference to a separation of Mrs. Tilton from her husband. It was admitted for the purpose of showing what her state of mind was as to her husband, and what the domestic condition of the family was at that time, anterior to the charge made by Mr. Tilton against Mr. Beecher, which was on the night of the 30th of December following. Now, your Honor will perceive that the charge was then and there made, whatever it was—a charge implicating Mr. Beecher and Mrs. Tilton; and it certainly would be a novelty if the interviews between these two persons, when the charge was then resting upon them, and there was every motive to vindicate themselves, or to put themselves in an attitude where they could vindicate themselves, could be given in evidence on the trial of this case. Certainly, if the evidence is admitted, it must be on a principle entirely different from that which enabled your Honor to decide that the interview of the 14th or 15th of December, whichever day it was, was admissible in this case. I cannot see for my life upon what principle this evidence can be admitted. The interview is said to have been in the Fall of 1871. It is an inter-

view that I never heard of before; I do not know how it was brought about, nor do I know what the object of the interview was; but surely it ought not to affect the rights of the plaintiff in this case, because, I repeat, the charge was then made, the difficulty then existed, and it became Mr. Beecher and Mrs. Tilton, whether the charge was the greater or the less offense, so to demean themselves when together, that they might vindicate themselves against that charge. Mr. Tilton ought not to be held responsible for, nor ought his rights to be affected in the slightest degree by what took place between these parties in the Fall of 1871, nearly one year after the charge was made. As a matter of course it would be very easy for parties, under these circumstances, to manufacture a state of things which would result to their benefit, and to the injury of the accusing party. The law does not favor such things, and therefore we object to the evidence.

#### WHAT IT IS PROPOSED TO SHOW.

Mr. Evarts—No doubt, if your Honor please, in the trial of causes items of proof are introduced, and properly introduced, which, in certain aspects only, are justifiably introduced, and only in those aspects are to have their weight with the jury and their consideration by the Court. The way that law protects the interests of justice in such cases is not by suppressing the evidence, because all of its aspects and every form of its consideration are not justifiable; but by introducing it, in order that it may have its application and its authority so far as the law allows its application and its authority; and, by the instructions of the Court, the minds of the jury are protected from those side influences which cannot properly be allowed to the evidence. Now, it is undoubtedly true that the situation of accusation and of suspicion on the part of the husband is definitely marked by the month of December, 1870, and it is quite true that this interview was later than that; and perhaps if by the plaintiff and his counsel, in the trial of this cause, in the opening of the cause—of their rightful grounds of accusation and of proof, and in the production of evidence, had limited themselves entirely to imputations and to facts that were bounded by this as the latest date of their evidence—to wit, December, 1870—there might have been more reason for the defendant and his counsel, when the explanation or exculpation supposed to have been rendered necessary by the force of the undisturbed evidence for the plaintiff makes it in turn for us to take up the case, to limit ourselves equally to that as the latest period of our evidence; but they have gone on further, and have intimated a removal of improper relations, and have supposed that they found, in some written correspondence, some equivocal, obscure, or concealed meanings of disastrous import, and they thus have opened this line and this scope of evidence and imputation, and have made it material

to the very issues and the evidence that they introduce in support of the issues (to wit, of the antecedent fault), that this subsequent period which is resorted to to furnish evidence, should be met by us by the only testimony in our power to give where Mrs. Tilton and Mr. Beecher alone were witnesses, and by such explanations or statements concerning any written documents which have been introduced, as the writer of the documents can furnish. Now, this interview is first described by the witness as the only visit at that house in which he had an interview with Mrs. Tilton (other than those he has already described), that took place after this December trouble, the publication of the strife between the parties. How that interview came about and what occurred at it I propose to show; and I can only say that it is not for the purpose of showing any recitals or statements on either the one side or the other concerning this alleged difficulty or guilt between these parties, but the interview is to be shown in its innocence and in its solemnity; and the law allows it, as I suppose.

Judge Neilson—Will you be kind enough to repeat your question?

Mr. Beach—Your Honor will be kind enough to hear us before passing upon it.

Mr. Fullerton—Let the question be read by the stenographer.

The Tribune stenographer then read the question as follows:

"Q. Now, Sir, what passed between you and her on that occasion?"

Mr. Beach—We desire to be heard, Sir, on this question.

Mr. Morris—We have the closing argument.

Mr. Fullerton—Yes; we close the argument.

Judge Neilson—The only trouble I have is this, and this is the point I want to submit to you, Mr. Beach: While I think it may be competent for the defendant to state that he was present on a certain occasion and date, and did see Mrs. Tilton, and, without giving the conversation, to state what occurred—what was done and what was omitted to be done; I should not feel inclined, as at present advised, to go beyond that; and the question is whether even that is proper.

#### CLOSING ARGUMENT OF MR. BEACH.

Mr. Beach—The proposition, if your Honor please, is to prove not only the declarations and the acts of Mrs. Tilton in the absence of her husband, but to prove the declarations and acts of the adversary party, in his absence. That is the simple proposition; it means that and nothing else. Now, upon what exceptional rule of evidence is that admissible? The general rule is that the declarations or acts of a party, in the absence of his antagonist, are not evidence unless those declarations and acts are connected with a subject which makes them a part of the *res gestæ*, explanatory, significant of an act,

and therefore admissible. Will your Honor settle the rule that the declarations of Mrs. Tilton upon the subject matter of this litigation are evidence against Mr. Tilton; that the declarations or acts of Mr. Beecher in the absence of Mr. Tilton are admissible as evidence against him? From the peculiarity of this action, the law allows certain declarations of the wife to be given in evidence, declarations of complaints, declarations exhibiting the state of the household, of the matrimonial relations, complaints of unkindness, or brutality, or neglect, accompanying her acts of desertion, or separation, or the act with which he is accused, as explanatory of that; but it is an indulgence which the law, from necessity, and with reluctance and qualification, extends even to that condition of things. But where, Sir, has it ever been heard, under any singular condition of circumstances, that the declaration of an adversary party in regard to the subject of litigation can be given in evidence when made in the absence of the opposing party? And upon what principle is it that Mr. Beecher, after the point of accusation made against him, shall be permitted, as I am entitled to suppose, to fabricate, by his declarations and by his acts, excusatory and exculpatory evidence against his adversary? And what has your Honor heard of principle or of reasoning on the part of my learned friend which justifies that departure from the cardinal rule of evidence and of justice? Why it is said, Sir, that we have not been content with our original accusation located about December, 1870, but in an obscure and indefinite and inexplicit way have charged a renewal of improper or criminal intercourse. We have done nothing of that kind, Sir; but in support of our original accusation against this defendant we have produced his own recorded letters written to Mrs. Tilton after that occasion, and it is true that we rely upon those letters as confirmatory of our accusation of primary and original offense. The gentleman says he is at liberty to explain them. I grant it. The gentleman says he is at liberty to show the circumstances surrounding those publications. I grant it. The law gives him that liberty, but under fixed and settled rules of evidence which shall secure the immunity of his adversary from improper proof. He cannot explain them by his declarations; he cannot explain them by the declarations of Mrs. Tilton; but the law does allow certain explanatory circumstances, those which immediately surround the transaction; those circumstances existing as facts—as a condition surrounding the acts, for the purpose of explaining their import, effect, and origin. But has your Honor ever heard that for the purpose of explanation the parties inculpated by the accusation made in the action may, by a conference between themselves, and by a communication of certain facts as between themselves, not cognizant to the opposite party, produce explanation, or answer the accusing evidence? Why, Sir, it is forbidden by the fundamental maxims of the law. It is abhorrent to our sense of justice that these two incul-



gated parties, Mr. Beecher and Mrs. Tilton, after the offense which we charge, shall be permitted to give their declarations, their own fabricated statements possibly, for the purpose of resisting the accusing evidence which we produce. Now, it is said that evidence of an interview between these parties was given with reference to advice submitted by Mr. Beecher to Mrs. Tilton upon the difficulties between her and her husband, advice looking to a separation. Well, that was proper, Sir—proper for the purpose of proving an act explanatory of the letters, and, as we say, the confessions of a higher offense made by Mr. Beecher. Mr. Beecher says he was applied to by Mrs. Tilton for advice upon that subject, that he gave the advice favoring a separation, with provision of allowance. Now, that evidence is made proper by the circumstance that that subject of a separation, as Mr. Beecher testifies, was a matter of communication between himself and Mr. Tilton. He says the onus of repeated conversations about that period, as between him and Mr. Tilton, referred to that very subject, and that the revelation was made by him to Mr. Tilton and Mr. Moulton of the fact of this advice, and therefore it became competent evidence. How far it would have been admissible in reference to the interview and the details of the interview between Mr. and Mrs. Beecher and Mrs. Tilton, except for that fact, has not been a question raised or discussed, because it could not well be under the circumstance to which I have alluded. Now, the counsel has very kindly conceded to us a liberal disposition in our indulgence upon the examination of this witness. For various reasons, Sir, not necessary to enumerate, we have been inclined to indulge that liberality, but when it comes to the details of interviews and conversations as between these two inculpated parties, not immediately surrounding the event of the original offense and its communication—our knowledge of it, to Mr. Beecher, we must, Sir, in the interests of justice and of legal propriety object. We have no means of answering it. We were not there. It was never revealed to us. What it may be we don't know. We have never had the opportunity of presenting against it our dissent and protest, or our explanation and qualification, but it stands, if given at all, as made by these two parties, without any possibility of answer. It places us in a position of injustice, which I think your Honor will not permit. Now, your Honor has intimated that conversations cannot be given. I suppose that must be clear. But your Honor has also said that it is possible that the acts of the parties in that interview may be admissible. Well, for myself, Sir, I am not particularly inclined to object to that. It is at the will of this defendant to deny the improper intercourse charged, and I suppose that covers all his acts and all his relations to this lady; and whether it shall be done by a general declaration of denial or by a relation of the

physical communication—the acts, as between these two parties when they met, it seems to me, is a matter of entire indifference. To that extent, so far as the conduct or the acts of the parties separate from their declarations made at the time, I see no particular reason for objecting.

#### JUDGE NEILSON ADMITS THE CIRCUMSTANCES.

Judge Neilson—In cases of this character, as intimated at earlier stages of this case, the correspondence between the husband and the wife, and her correspondence with other persons, is deemed admissible, either to be introduced by the plaintiff to show the harmony of his household and to indicate what is lost in the supposed disturbance; or, on the other hand, the defendant is equally at liberty to show, by correspondence and conversations prior to the supposed offense, want of harmony and a disturbed household; all of which goes to the mere question whether the plaintiff in the supposed disturbance, assuming it to have occurred, assuming the wrong to have occurred—whether the plaintiff really suffered much damage; and as I have on one occasion intimated, that class of evidence goes to the question of damage. I understand that to be the condition of the law of evidence; and one reason why acts and correspondence and conversations prior to the supposed offense are to be received, showing the condition of the household which the plaintiff alleges to have been disturbed, and therefore characterizing the damages either as great or little. And as to events and conversations and acts subsequent to the alleged offence, the law makes a marked distinction, and for a very obvious reason. But still, where the defendant is charged with improper conduct, alleged here to have taken place in October, and on divers days afterwards, I think he is at liberty, in reference to any interviews with this lady at any time, to state what occurred and to be interrogated as to what did not occur. Perhaps the general statement would cover it; and yet the learned counsel, as Mr. Beach seems to concede, might, if he deemed it necessary, inquire particularly as to each interview. But I cannot see that the conversation can be received. There is no authority of law nor rule of evidence nor principle, that would admit it. As, for example, as intimated the other day, when a wife abandons her house and determines to live apart, her declarations made at the time of leaving are a part of the act, and may be received in evidence in her favor, to show why she left; but it is because it is a part of the act, and proceeds upon the same principle that events and conversations may be received, because they are a part of the *res gestæ*; but if the wife, having left her home, is absent for days and weeks, and then has a conversation in the absence of the plaintiff, I cannot conceive that it is admissible. And moreover, this rule saves, in my judgment, the rights of the defendant perfectly. It leaves him at liberty to refer to

any interview at which he met this lady, and, without giving the conversation (which could not be evidence, and ought not to influence the jury, of course), to state what occurred, and, therefore, what did not occur, and thereby to help us upon the question of guilt or innocence, the only question that really concerns us, and to that extent I think I will allow the communication, but only to that extent.

Mr. Evarts—I will proceed within your Honor's ruling, and then raise my point in the form of a question. [To the Witness.] Mr. Beecher, do you remember what time of day this visit was? A. No, Sir.

Q. Was it in the hours of daylight or in the evening? A. Yes, Sir.

Q. It was in the hours of daylight? A. It was in daylight.

Q. Now was the subject or occasion of that interview suggested to you, or suggested by you? A. To me.

Mr. Fullerton—One moment; I did not understand the question. "Was the subject?"—

Mr. Evarts—Was the subject or occasion suggested to him or by him. [To the Witness.] It was suggested to you? A. Yes, Sir.

Q. What was the occasion and what the subject thus suggested to you?

#### ANOTHER FIGHT OVER THE INTERVIEW.

Mr. Fullerton—That comes within our objection, Sir, and your Honor's ruling.

Mr. Evarts—I think not, if your Honor please.

Mr. Morris—That calls for what was said to him.

Mr. Evarts—The point that we have in view, and about which it seems to me that there should be no difference of opinion, is that this interview, in its nature and occurrences, as separated from any reproduction at it of antecedent affairs, or of prospective arrangements—anything that characterizes this interview in its present occurrences as an act between the parties—may be disclosed. If it may be disclosed at all, it may be accurately disclosed, so as to be explicitly understood. There is no rule of evidence that puts us off with inaccurate and inexplicit productions of scenes. I shall confine myself to the exclusion of anything that is in the nature of recital, if anything of the kind occurred, and I am not advised that anything did—on the contrary, that it didn't at all; and I propose to show that this interview, in its whole character, was separated from any notion of its being a renewal of confidential, or affectionate, or social, relations in any form or degree; that it occurred after this period, according to this witness's evidence, in February, 1871. Mr. Tilton, in the presence of his wife, had expressly desired that the relations and the visits and the intercourse should be as it had always been before, and I don't know any evidence to the contrary on the part of the plaintiff; and yet I propose to show that this interview on both sides was of the utmost and distinct

reserve from anything like an encroachment upon the situation produced between them by this trouble that had been raised, and that that interview was only the resort for advice in moral troubles that the wife was in, and of the religious advice or instruction that was given at the time. Now, that is the mode of showing, without infringing upon the idea of conversation as distinguished from acts and intercourse of the parties then presently determining the character of that intercourse—of showing both what did take place and what didn't take place within your Honor's rule; and I apprehend that a strict protection of all the rights of this plaintiff will be maintained by a production of the scenes and the action of these two parties.

Mr. Beach—No.

Mr. Evarts—And the exclusion from it, if their comes out anything in the matter of recital or conversation that your Honor thinks is outside of your admission.

Judge Neilson—The counsel, of course, who have given attention to this subject, understand its bearings, and also the force of the principle involved, better than I do, of course, that question coming up to me suddenly; but apart from any artistic design in the examination of the witness, and looking at it from my simple manner, as if I were proceeding under this rule, I think I would be at liberty, under my ruling, to give in evidence what time of day this interview was, and where it was, how long it was; whether any act indicative of special affection occurred then and there, or was refrained from; whether any act questionable in a moral sense occurred, so characterizing it throughout, and then, as I understand your last argument, Mr. Evarts, the question will remain whether you could ask the general question whether the interview was simply upon a moral and religious subject, or otherwise. Have you not got it all, then?

Mr. Beach—Your Honor's suggestions are very practical and simple.

Judge Neilson—They are simple; there is no doubt of that.

Mr. Beach—And very practical, and I think in their simplicity and practical nature they embody a very considerable legal perspicuity and learning, and I think, if there was no artistic design on the part of my learned friend, it would be very easy to follow the line of inquiry which your Honor has suggested. But what is the question? Your Honor has ruled that the declarations of these parties called under these circumstances cannot be given in evidence for very obvious reasons, that their act may be, so far as there conduct and personal relation is concerned, was connected with that interview; but the gentleman now calls upon the witness, a party, to characterize that interview, its subject, the matter discussed, presenting in a still more odious form the evidence to which we object, because it would be a great

deal better and surer evidence, and address itself more to the approval of the law, to have what was really said than to have an interested party give a construction and a conclusion upon what was said. The latter would be the more objectionable, of course. The former your Honor has excluded. But will you look a little further at this, Sir? We have given no evidence of this interview; and what is the real situation presented by the proposition of the learned counsel? We charge that upon a certain precedent occasion there was an improper connection between these parties. We charge that it was confessed by both the parties, and to a great degree the confession standing in their own written words which cannot be erased or forgotten, and which we say cannot be explained. They come in with the answer that a year subsequent to those events they had a moral and a pious interview. They fabricate and introduce the interview in our absence, without any communication to us, as an argument, and for the purpose of answering the accusation they produce their own interviews and their own acts introduced by themselves, to which we have made no reference, directly or remotely, to conclude our rights. Now, there is a great deal in the idea, if your Honor please, that this interview is offered by themselves in the first instance. How does it reflect upon any letter that Mr. Beecher has written or upon any expression that he has used? How does it tend to explain or connect itself with any antecedent act of his, except as a conjoint and reciprocal act as between him and his inculpatory colleague, happening a year after the acts which we charge upon him? And is it possible, Sir, is there any rule of evidence which justifies accused parties in getting up an interview between themselves and giving evidence of their own acts in that interview for the purpose of answering a charge and accusation made against them? And upon what principle shall it be? Why, my friend says you must receive all evidence. Everything which reflects light upon the given transaction is to be presented to the court and to the jury, and under the instructions from the court the jury are to be protected from any injurious influence. That is not the law of evidence, Sir. Everything which by possibility might circumstantially affect a given transaction is by no means admissible. The law requires evidence of a certain character. The law imposes limitations upon proof which shall protect the rights of the opposite party, which shall put parties upon an equality of right, and wherever accusation or explanation is made, it shall leave to such the means of proof to answer the inculpation of another. And how do you place this plaintiff, Sir? Permitting these parties to give in evidence a private interview between themselves, a private act as between themselves with which we have no connection, and of which we had no knowledge, shutting our voice and our means of presenting the truth in regard to the alleged transaction. The law by

no means, Sir, permits any such injustice. Parties cannot themselves manufacture evidence, nor can they thus introduce their own acts, although they may be truthful and accurate in their representation. The law does not permit them to make proof in the absence of their adversary by which the just rights of that adversary may be overthrown, and yet that is the character of this evidence, Sir. In 1871, nine months after the accusing transaction, they ask the liberty to present to your Honor what they have done in private as between themselves to reflect light upon the prior transaction. I can perceive no rule, Sir, of equity or of law in such a proposition, and I very much doubt whether any of the details, so far as the acts of the parties are concerned, is competent or material evidence, except as it may be in connection with the inquiry whether there had been the criminal connection between the parties charged. And it is a novel way, Sir, it seems to me—[To Mr. Morris]—up to what time does our complaint charge seduction?

Judge Nelson—October, and on divers days afterward.

Mr. Morris—August, 1868.

Mr. Evarts—The commencement of the action.

Mr. Beach—We have given no proof of it, no matter what the complaint may charge, no matter what the pleadings in this case are, or what the opening of my learned colleague was. Their answering proof is confined to the accusing evidence which we have given. Now, we have attempted to give no such evidence. True, we have given the letters of Mr. Beecher, and to some extent the letters of Mrs. Tilton, in evidence, but not reaching over, I think, that period at which this conversation is located. Now, it seems to me very singular, Sir, that parties charged with adultery, where the proof locates the adultery in the year 1868, and reaching up possibly into the year 1870—it is very singular that the law should allow the parties accused to give proof, in answer to that accusation, that after the discovery and the charge of the wrong their intercourse has been perfectly proper and virtuous. And upon that principle I suppose they might reach their evidence up to this very instant, during the pendency of this trial, upon the same principle. Interviews between Mr. Beecher and Mrs. Tilton might be shown perfectly decorous and proper in their conduct. It is immaterial evidence; it don't tend to reach the point of accusation; it does not contradict or reflect upon the proof which we have given. We might say with great propriety, in answer to this evidence, "Why, of course, after a discovery of your criminal connection, and after they are charged upon you, we do not expect to find the illicit intercourse continue; we suppose your subsequent communications will be proper and decorous;" and I think your Honor will perceive that in this essence, independent of other considerations which have been urged upon your Honor, this evidence is improper.

Mr. Evarts—My friend does not bear wholly in mind

the opening of his learned associate upon the subject of this renewal of intimacy, but at any rate now we have a disclaimer that it continued incontinent, at least as thus charged.

Mr. Fullerton—I didn't charge that.

Mr. Evarts—No.

Judge Nelson—I think you are quite at liberty to prove, and that is as far as you can go, what occurred and what did not occur at this interview, or at any other interview you choose to call attention to.

Mr. Evarts—Yes, Sir, it is all a part of showing that there are no other interviews, and that at this interview only matters quite outside of any confidence of affection occurred.

Judge Nelson—Show the acts independent of the conversation.

Mr. Evarts—Now, I suppose, Sir, I could show that at such an interview as this, answering what the subject is, it is a very familiar mode of introducing a conversation, and going no further, that answers the whole question. If the witness answers the whole conversation was about the weather, and nothing else was said, why, that gives an innocent view to an intercourse, to know what it was; or if the question were whether it was about the sickness of a child, anything of that kind—and I am not supposing now cases of what did actually occur, but as illustrations of a right of a party, which is to put before court and jury the actual course of conduct between parties implicated, accused, during a period from which evidence, at least, is sought, by the line of my learned friends' preparation of the case, to throw light back upon the antecedent accusation; that I must be at liberty to show, and, if I can show in general, I can show in everything that took place that nothing from which imputation or a support of accusation could be rightfully drawn, in the judgment of sensible men or in the judgment of law, by the witness who can speak of it.

Mr. Fullerton—That is not charged.

Mr. Beach—The persistence of my learned friend, Sir, after the regular order of debate is closed, in presenting the subject to your Honor, compels me to add a word. Distinction is made, Sir, by the law and by your Honor's ruling, as between affirmative proof of what occurred at an interview and negative proof as to what did not occur, and there is a very clear distinction in principle between the two lines of proof. The one is giving inadmissible declarations made by parties; the other is simply proving a negative fact, and the latter is often admissible where the former would be excluded. Now, as to my friend's remark that the object is to show that in this interview there was no reference to precedent transactions, or to future contemplations, or preparations, or arrangements. If that is his only object, how easy it is to ask the witness upon the stand, in the manner suggested by your Honor, whether in that interview there was any reference to prior events or to subsequent arrangements, to

prove the negative fact, to establish the very idea which he says it is his object to prove by his inquiry! Now I don't think I should object to that, Sir; I am rather inclined to think it would be proper to ask this gentleman whether in that interview there was any reference to their relations, personal, or to contradict any other possible assumption as to what that interview may have been carried in its terms. I see no special objection to that, if the purpose of the gentleman is that which he has avowed it to be to me, that in addition to his proof within your Honor's ruling of the acts which transpired between the parties, I shall not object to his proving that certain subjects or matters were not referred to in that interview.

Mr. Fullerton [To Mr. Beach]—Would that be proper?

Mr. Beach—it would be proper if this was introduced by us, but I am inclined to concede its propriety in the present aspect of the question.

Judge Nelson—Well, Mr. Evarts, proceed and examine your witness as to what occurred, independent of conversations.

#### A SUCCINCT NARRATIVE OF THE INTERVIEW.

Mr. Evarts—What occurred between you and Mrs. Tilton on that interview as separated from any conversation between you, Mr. Beecher? A. I went into the parlor; I sat down; I listened; I marked a passage in the Bible; I got up; I bowed, and went home.

Q. What passage in the Bible did you mark?

Mr. Beach—That I object to.

Mr. Evarts—That is an act.

Judge Nelson—I think so; I think we will take that.

The Witness—I marked a passage in the I. Corinthians, xiii., from the fourth to the seventh verses.

Mr. Evarts—Will you read the passage that you marked?

Judge Nelson—Did he read it?

Mr. Evarts [To the witness]—Will you read it?

Judge Nelson—We are familiar with it.

Mr. Evarts [To the witness]—Will you read it? A. I will read it; I did not read it.

Mr. Evarts—No, I understand. You marked the passage and handed it to her, and that is his act.

Judge Nelson—Yes.

Mr. Evarts [To the witness]—Now, will you read the passage, or shall I read it?

Mr. Fullerton—That is something that took place.

Judge Nelson—I assume the counsel has read it elsewhere.

Mr. Evarts—We have read it, of course, but I don't think we read it by verse and chapter.

Judge Nelson—It can be read hereafter as a part of the case.

Mr. Evarts—It can be read here as part of the evidence.

Mr. Beach—I don't suppose we are to have any scenic effect.

Mr. Evarts—There is no scenic effect about it. I have been permitted to prove the act, and the act was not marking the Bible in general, but marking the particular passage and handing it to Mrs. Tilton, bowing and leaving without conversation.

Mr. Beach—That gets in, Sir, the whole acts of the parties at the time within your Honor's ruling, and it does not make the passage which he marked evidence in this case to be read as evidence by the witness on the stand.

Judge Neilson—No.

Mr. Evarts—Mark a passage and you cannot show what the passage was!

Mr. Beach—Exactly.

Mr. Evarts—That is a law of evidence with a vengeance.

Mr. Beach—It is a law of evidence with a vengeance, with truth, and with justice too. The communication was made by the marking of that passage to Mrs. Tilton, and the argument of the counsel, if it amounts to anything, is that by the marking of that passage those verses and the sentiments of those verses were communicated by Mr. Beecher to Mrs. Tilton at that time, and it is precisely the same as if he had repeated them from memory to Mrs. Tilton upon that occasion and is giving a part of the conversation.

Judge Neilson [to Mr. Evarts]—I think we won't read it now, Sir.

Mr. Evarts—Have you marked in this book the verses—is this your own book? A. No, Sir, it is the swearing Bible.

Mr. Evarts [handing Bible to the Judge]—I hand to your Honor the book that he has thus marked, and I offer to read to the jury the passage as in proof.

Mr. Beach—I object to its being read as in proof.

Judge Neilson—It cannot be read now, Sir; you can read it hereafter. You say I. Corinthians!

Mr. Evarts—It is marked there with a pencil.

Judge Neilson—It will do you no harm to read that as a part of your argument.

Mr. Evarts—I dare say, Sir, I shall do so.

Judge Neilson—It is immaterial to read it now.

Mr. Evarts—I also claim the right to read it as a piece of evidence which is introduced in this matter.

Mr. Beach—I object to it.

Mr. Evarts—And your Honor excludes it, and I shall take an exception.

Judge Neilson—Yes; the stenographer has the verses.

Mr. Evarts—Yes, Sir, chapter and verses. [To Mr. Beach.] Have you read it?

Mr. Beach—Yes, Sir; it is one of the most beautiful passages in the Bible.

Mr. Evarts—That closed the interview! A. With only the ordinary courtesies of gentlemanly farewell.

Q. Now, Sir, were you ever in the house since that time that you remember? A. I don't recollect any other visit there, Sir.

# LATER MEETINGS OF MR. BEECHER AND MRS. TILTON.

Q. Under what circumstances have you met or been in the company of Mrs. Tilton since this period of December, 1870, other than those that you have already given, of course; don't repeat them? A. I don't recall but two; there may have been others; I don't at this moment recall any others; I recollect once of meeting her at Mr. Moulton's house in December of 1872, I think.

Mr. Evarts—Yes, that has been spoken of by the other witness.

The Witness—November of 1872; I met her once last Summer, 1874; I think that is the only time that I can now recall.

Q. How as to meeting her in the street, or at your church or lecture room, or anything of that kind? A. I remember to have met her twice upon the street; I do not recollect other meetings than that.

Q. And do you know at what period of time, what year or months— A. I could not tell you.

Q. —either of those were? A. No, I could not tell you. I have merely the picture in the air of meeting her, and some transient conversation, without any special impression so far as my memory is concerned.

Q. Did you accost one another and converse in the street? A. Yes, Sir.

Q. For what length of time either of those interviews? A. In one case I think that I walked about a block with her; I met her on the Heights, and I think I walked out about as far as—I don't know, two blocks to Hicks-st.; she went one way and I the other; my impression is about that. In another case I was somewhere—my impression is I was going down Clinton, somewhere below or near Montague, in that vicinity, and then I walked around as far as her house, but I did not go in.

Q. Now, in connection with the Sunday-school, in the Fall of 1871, do you remember any meeting between you and her? A. Don't recall any.

Q. At the Sunday-school or— A. Don't recall any—very possible.

Q. Was it your custom to attend the Sabbath-school? A. No, Sir.

Q. Or did you occasionally attend it? A. No, Sir, except on rare festive occasions.

Q. And on no such occasion do you recall anything that passed between you and Mrs. Tilton? A. I do not recall anything, Sir; there may have been; I do not recall anything.

Q. Now, at your Friday evening meetings, do you remember any occasions in which there was any interview between yourself and Mrs. Tilton? A. I do not remem-

ber any interview, and yet I have an impression that I did meet her there; but it is only an impression, and I could not—

Q. Well do you mean an interview in which you spoke to one another? A. Nothing more than simply greetings.

Q. And on Sundays at the church? A. I don't recall meeting her to speak with her, and yet it may have happened; it was the habit in our church, both at the end of the Friday meeting and at the end of the Sabbath morning meeting, for persons having little errands with me, or little greetings, to speak; I sometimes am detained half or three-quarters of an hour, meeting from 10 to 40 or 50 persons, as it may be.

Q. Well, in these interchanges between yourself and your parishioners, do you recollect any meeting between Mrs. Tilton and yourself? A. I do not.

Q. Was Mrs. Tilton ever at your house after this period of December, 1870? A. Not with my knowledge.

Q. Not seeing you at your house? A. I never have seen her there.

Mr. Beach—Does that “never” apply to the time spoken of by Mr. Evarts, or embrace all times? A. What is that?

Q. Does the word “never” apply to all times, or to—  
A. No; only to this time; oh, I have seen her at my house.

Judge Neilson—You mean never since?

The Witness—I understood Mr. Evarts to limit it in time.

Mr. Evarts—Yes, the question is marked.

Mr. Beach—I did not know but there might be some misconception.

#### THE “CLANDESTINE CORRESPONDENCE” TAKEN UP.

Mr. Evarts—No, the only antecedent period, I believe, has been in general spoken of. [To Mr. Morris.] I ask you for Exhibits 13, 15 and 18. [Papers produced by Mr. Morris.] Mr. Beecher, look at that letter and say if you received it? A. I do not remember receiving it; I presume I did, though; it is in Mrs. Tilton's handwriting.

Mr. Evarts—This is produced by Mr. Moulton, isn't it, and handed by him to the plaintiff?

Mr. Fullerton—Yes, Sir.

Mr. Evarts—Well, was that letter preceded by any communication on your part? Look at the letter, please, and say whether that letter from Mrs. Tilton was preceded by any communication on your part? A. That I know nothing about; I don't recollect.

Q. Well, it is for you to say. A. I have no recollection whatever in regard to the matter.

Q. Do you remember giving it to Mr. Moulton?

Mr. Morris—What number is that?

Mr. Evarts—That is No. 12, I think.

The Witness—No. 14, I think.

Mr. Evarts—No. 14, Mr. Morris.

The Witness—I don't recollect giving it to him, Sir.

Q. Do you remember any habit or suggestion about

your giving letters? A. I remember a habit, but no suggestion—

Q. What was that habit—a habit on your part? A. The habit was on my part, Sir.

Q. Of carrying to Mr. Moulton the letters that you received? A. Whatever I considered proper; I did not carry him everything, but I carried him whatever I thought in honor I had a right to carry him, and that would throw light on the situation of which he was the man in charge.

Q. And if those letters were carried to him or given—this letter that I hold in my hand, No. 14, was given to him; it was given to him in that way. Was it? A. In that way, if I gave it; probably I did.

Q. Now, Sir, please read that letter through—please read that letter through, as I wish to ask you a question.

Mr. Fullerton—What is he reading?

Mr. Evarts—Exhibit 15. [To the Witness.] Do you remember receiving that letter? A. I do.

Q. Well, Sir, do you remember what you did with that? A. I gave that to Mr. Moulton.

#### THE WORD “NEST-HIDING” DEFINED.

Q. Was this letter from Mrs. Tilton to you—dated May 3d, isn't it, '71? A. Yes, Sir.

Q. Was that preceded by any communication from you to her? A. I don't recollect any, Sir—do you mean anything to which it was responsive—or any communication?

Q. Yes; anything leading to it?

Judge Neilson—Anything that would lead to it.

A. That is what I understood your question to be.

Mr. Evarts—I read this letter: [Reading.]

BROOKLYN, May 3, '71.

MR. BEECHER: My future, either for life or death, would be happier could I but feel that you forgave while you forget me—

Mr. Beach—“Forgave?”

Mr. Evarts—Yes.

Mr. Beach—It is not “forgive me.”

Mr. Evarts—No; “that you forgave while you forget me,”—“forgave” underscored.

In all the sad complications of the past year my endeavor was to entirely keep from you [underscored] all suffering; to bear myself alone, leaving you forever ignorant of it.

My weapons were love, a larger untiring generosity, and *nest-hiding*! [Underscored and with an exclamation mark.] That I failed utterly, we both know. But now I ask forgiveness.

This word—compound word “nest-hiding”—was it a word of any use by you, or with which you are conversant? A. No, Sir; it is not my word in any sense or way.

Q. Had it been a word used between you and Mrs. Tilton in any way before this letter? A. Not that I remembered—it was certainly not a common word.

Q. What did you understand by that word when you received this letter?

Mr. Beach—That is objected to.

Judge Neilson—I think we will take it, Sir.

Mr. Beach—We except, Sir.

Judge Neilson—Yes.

The Witness—I understood it to signify simply the hiding of the troubles in our household.

Mr. Beach [*sub voce*—That is an error in law.

The Court here took a recess until 2 o'clock.

#### THE AFTERNOON SESSION.

The Court met at 2, pursuant to adjournment.

Mr. Beecher was recalled and the direct examination resumed.

Mr. Evans—Mr. Morris, will you give me those letters of Mr. Beecher's?

Mr. Morris—The ones you had this morning?

Mr. Evans—Yes, Sir.

[Mr. Morris produced six exhibits.]

Q. Look at this, Mr. Beecher, if you please, and say whether you received that letter, and if the memorandum of the date of its reception is yours. [Handing witness "Exhibit 12."] A. At first I thought the memorandum of date was not, but it looks like my writing when I write very poorly.

Q. Well, you think it is? A. I think it is, Sir.

Q. And made at the time, you suppose? A. I think so, Sir.

Q. The note itself has no date? A. No, Sir.

Q. You may retain that letter. This date of March 8, 1871, Mr. Beecher, is the month following these February letters of 1871. Is it not? A. Yes, Sir.

#### ANOTHER LETTER READ FOR EXPLANATION.

Q. You remember the letter of Feb. 7, 1871, which was spoken of yesterday? A. Yes, Sir.

Q. I will read this letter which you have before you, and ask you some questions about it. [Reading.]

#### WEDNESDAY.

MY DEAR FRIEND: Does your heart bound *toward* all as it used? So does mine! I am myself again. I did not dare to tell you till I was sure; but the bird has sung in my heart these *four* weeks, and he has covenanted with me never again to leave. "Spring has come." Because I thought it would gladden you to know this, and not to trouble or embarrass you in *any* way, I now write. Of course, I should like to share with you my joy; but can wait for the Beyond!

When dear Frank says I may once again go to old Plymouth, I will thank the dear Father.

Now, Mr. Beecher, had any letter passed from you to Mrs. Tilton except that letter of the 7th of February, prior to your receiving this letter? A. None that I know of, Sir.

Q. Well, what is your recollection? A. I don't think there had any.

Q. This, then, is the first letter, so far as you know, that

you received from her after that letter of yours of the 7th of February? A. Yes, Sir.

Q. Which has been given in evidence—sent through her husband? A. Yes, Sir.

Q. Now, Sir, in this letter—the expressions of this letter—is there any reference which you recognized then, or now, of any special or covert meaning? A. No, Sir, I understood it perfectly then, and do now.

Q. What was your understanding of that letter then and now?

#### MR. BEECHER'S INTERPRETATION OF THE LETTER OBJECTED TO.

Mr. Beach—Well, we object to questions of that kind.

Mr. Fullerton—This letter is to be translated, Sir, in the light of events proved, and in no other way.

Judge Neilson—Suppose the person it was written to, understanding it in a certain way, took a certain step in reference to it; I think he might show that.

Mr. Beach—Well, Sir, that understanding must come from some fact, some event.

Judge Neilson—It might come from a misconception of the letter.

Mr. Beach—Well, of what consequence is that, Sir? The question is, What does this letter mean—what is its significance? Now, is that to be determined by the party-witness on the stand, who receives it, or by the jury, from the language of the letter, accompanied by such surrounding circumstances and facts as may be given in evidence?

Judge Neilson—It will have to go to the jury in that light, of course, but the question now is, How did he understand it?

Mr. Beach—What difference does it make, Sir, how he understands it? The question is how Mrs. Tilton understood it; what did she mean by the phrases she used in this letter? It is not for this gentleman to give construction to the instrument and to interpret the meaning of Mrs. Tilton or himself. It is for the jury to say what the instrument means—first, from its language, and second, from accompanying circumstances.

Judge Neilson—Oh, undoubtedly.

Mr. Beach—Very well, Sir. I do not see upon what principle, then, your Honor shall permit this witness to say how he understood this letter when he received it.

Judge Neilson—I think he may say how he understood it or misunderstood it, either, with a view to any subsequent act of his.

Mr. Beach—Ah! yes, Sir. If he had made a reply to this letter, if there was any act of his which was founded upon this letter, why it might be admissible in connection with his act or with his answer.

Judge Neilson—It is immaterial unless there is something of that kind behind.

Mr. Beach—Very well, Sir; unless there is something

of that kind shown, Sir; and it is immaterial I submit, if your Honor please, that it is not to be received. If evidence is in itself immaterial, the proposing party must show the circumstances which render it material, before your Honor will admit it. Now, I submit, Sir, with great respect, and with great earnestness nevertheless, that this witness's understanding of that letter, giving construction to its phraseology, and imputing to Mrs. Tilton a meaning which perhaps the language itself will not communicate, is utterly inadmissible.

Mr. Evarts—My learned friend overlooks the principal fact that the letter itself could not by any possibility be evidence as the mere act and meaning of Mrs. Tilton; it was only by its communication to Mr. Beecher that it comes to be in evidence at all, and its significance, as conveying intelligence to him, and his action or his reception of it, is the only point that can make evidence at all against him. Now, no doubt the letter has nothing in it but the English language, and, so far as I appreciate it, it is as innocent a letter as ever was written; but there is a proposition that there is an equivocal, a covert meaning, a reference to private yet common intelligence between Mr. Beecher and herself, that carried an expression that is inculpatory of the two parties in respect to their relations; to use the familiar phrase, that it is a letter which is to be read between the lines. Now, I propose by the party who is to be affected by such an imputation, drawn out of the fact that it bears and carries such an import, not to be treated as its innocent expressions go, that he is entitled to say whether or no there was any such meaning conveyed to his mind, or how he understood it; and your Honor, I believe, accords that right.

Mr. Beach—Not yet; he has not. Now, I disagree with counsel entirely, Sir, in the proposition that this letter becomes evidence, and significant only from the manner in which it was understood and received by the party to whom it was addressed. That is not the question, Sir. To be sure the letter, as the act of Mrs. Tilton, is only made evidence by the circumstance that it was communicated to, made known to Mr. Beecher, or addressed to and received by him, but the important question connected with the letter is, what were the sentiments of Mrs. Tilton as expressed represented in the letter, as communicated to Mr. Beecher, not how he understood it, Sir, not how he felt when he received it, but how Mrs. Tilton felt, and what were her feelings at the time, as represented in the letter. That is the important question. And now this gentleman, when he received that letter, may give any act of his. I suppose, Sir, he might give any expression of dissent or approbation which was uttered at the time he received the letter as a part of the act.

Judge Neilson—Of receiving it.

Mr. Beach—But for him as a witness to express what he understood by the language in the letter, and to give it

construction and effect, I submit to your Honor is inadmissible. And perhaps the statement I have made would go so far as this, toward an admission, and perhaps it may accomplish the object of my learned friend, to say by this witness, what he felt or what he expressed in regard to the letter when it was received. I do not believe, Sir, it is evidence; I think it is a violation of principle, unless there was some overt act, some declaration at the time, connected with the act of reception; I submit there is no principle upon which his understanding of the letter can be made admissible.

Judge Neilson—Was there any act connected with this letter?

The Witness—Yes, Sir.

Mr. Beach—It is suggested by my friend—which I did not remember at the time—the fact—

Mr. Fullerton—Thus far in this discussion, Sir, we have lost sight of the fact that there is an answer to this letter from Mr. Beecher to Mrs. Tilton in evidence, and I suppose that his interpretation of that letter is to be gathered from what he wrote at the time, and not from anything that he may utter now. Your Honor will bear in mind, Sir, that immediately after giving that letter in evidence, the reply was also proved and read; and, although there is no date to the reply, yet there is an internal communication or correspondence between the two productions which shows that the one is an answer to the other.

Mr. Evarts—That only shows the greater importance of ascertaining whether this note conveyed to Mr. Beecher any covert or secret meaning.

Mr. Fullerton—My reply to that is, that his answer at the time will show how he appreciated it and how he translated it.

Mr. Evarts—That answer is in evidence; that we shall deal with when we take it up. What we understand you claim is an answer.

Mr. Fullerton—But our claim is that they should deal with it alone, in order to get at his views of what the meaning of that letter was.

Judge Neilson—Certainly; both papers ought to be taken together.

Mr. Evarts—They are in evidence, if your Honor please, and they will each be taken up by themselves, I suppose.

Judge Neilson—And now you could show by this witness what he did or said on receiving the letter.

Mr. Evarts—Well, Sir.

Judge Neilson—You will get at your purpose in that way.

Mr. Evarts—I suppose so, and I know no indirections in the law. If I am entitled to get at it, I am entitled to get at it explicitly and plainly—

Judge Neilson—Certainly, plainly and explicitly.

Mr. Evarts—And straightforward.

Judge Neilson—But there are different modes of doing that.

Mr. Evarts—Yes.



Mr. Fullerton—Well, I have pointed out that way to my friend, in the written answer to the letter.

Mr. Evarts—How do you know that that is a written answer to the letter? It is no part of my case, by which—

Mr. Fullerton—Well, I know something that is not a part of your case.

Mr. Evarts—You know what you have undertaken to say, but I know what I am going to prove.

Mr. Fullerton—And I know what I have proved.

Mr. Evarts—What you think you have proved until another comes after and searches it.

Mr. Fullerton—Well, don't get too scriptural.

Judge Neilson—Well, examine him first as to his answer.

# THE INTERPRETATION OF THE NOTE RECEIVED.

Mr. Evarts—I asked him, if your Honor please, whether that conveyed to him any special or covert meaning, growing out of any previous relations between them.

Mr. Beach—Well, Sir, if that question had not been already answered, I should object to it.

Judge Neilson—I think he may answer that question.

The Witness—It conveyed to me a special, but no covert meaning. It was a letter which—

Mr. Beach—Wait one moment; let us have a question.

Mr. Evarts—What did you understand from the expressions of that letter?

Mr. Beach—That is just what we objected to.

Judge Neilson—There we come to the question of the construction of the English language, which you can judge of as well as the witness.

Mr. Evarts—I don't ask him what a word meant; I only ask him what the expressions of the letter meant in reference to subjects between them.

Judge Neilson—I rule it out, Sir.

Mr. Beach—Show the situation, and we can tell what it meant as well as he.

Judge Neilson—You have the vital thing.

Mr. Evarts—The imputation is made—

Judge Neilson—Well, now that imputation is denied by the witness. He says he understood no covert suggestion by that letter.

Mr. Evarts—An imputation is made of a meaning—

Judge Neilson—You can ask him then as to the imputation.

Mr. Evarts—Now, I ask him what meaning that letter conveyed to him.

Judge Neilson—He answered the last question, that it contained no covert meaning.

Mr. Evarts—Now, an imputation cannot be made and then withdrawn; we have a right to the meaning.

Judge Neilson—No doubt about that. Now, I needn't be told that.

Mr. Evarts—Well, I am arguing; I am arguing, Sir, not *ad hominem*; I am arguing points of evidence.

Judge Neilson—I don't think you have anything to complain of. You shall have my decisions without extorting them, demanding them, in a tone of complaint; I simply say this, that I think on the naked question of construction or meaning of the English language, and words, whether taken singly or collectively, you are to judge as well as the witness.

Mr. Evarts—That I agree.

Judge Neilson—Now, he says there was no covert meaning conveyed to him by that letter.

Q. Do any expressions of this letter, Mr. Beecher, refer to any matter of private intelligence between yourself and Mrs. Tilton? A. They do.

Q. Which are they? A. The whole letter.

Q. What? A. That she was—that the efforts made for—

Mr. Beach—One moment, Sir, if you please. I object to it.

Q. What were those matters?

Judge Neilson—I think he may answer that.

Mr. Beach—What the letter referred to?

Mr. Evarts—Yes; what those matters of private intelligence between him and her were.

Mr. Beach—Is n't it the proper way to get that, Sir, and the only way to get it, to use the common phrase, to show the surrounding circumstances out of which the letter arose, and then leave the Court and the jury to render the letter with reference to this explanatory evidence?

Judge Neilson—In one sense he is doing that now.

Mr. Beach—Why, no, Sir, it is not. We have got no proof of any facts or circumstances giving a particular significance to this letter. Nothing is stated of that kind by the witness. It is very easy, if there is any special relation or special fact connected with the writing of this letter, to prove it; and with the letter and with that fact, it is within the competency of the Court and jury to give significance to the writing; and it is only in that way, and not by taking the judgment or opinion of this witness in regard to the meaning of these words.

Judge Neilson—That is an inquiry into the very circumstances you suggest, I think.

Mr. Evarts—So intended to be.

Judge Neilson—Will the stenographer read the last question?

The Tribune stenographer read the last question.

Judge Neilson—What were those matters, Mr. Beecher?

The Witness—There had been formal efforts made by Mr. Moulton, Mr. Tilton, and myself to bring about a more wholesome state of feeling in the household. About four weeks had elapsed; I received this, the first letter from Mrs. Tilton, announcing the change that had taken place in her feeling. When Mr. Moulton returned from the South, I took the letter to him, and talked to him about the letter as indicating that there was a very happy

state of things now existing, as the result of his pioneering efforts.

Q. Did you make any answer to that letter? A. I do not remember that I did, Sir.

Q. This last clause of the letter, Mr. Beecher, have you got it before you? A. Yes, Sir.

Q. [Reading.] "When dear Frank says I may once again go to old Plymouth, I will thank the dear Father—" What did you know or understand about anything between Frank and herself? A. I did not know anything about it; that was their own business, that I do not recollect was communicated to me at all.

Q. Except in this letter? A. Yes; I saw there was something, but I did not know what it was.

Q. You were not a party to it? Did you speak to Mr. Moulton upon that clause of the letter? A. I do not recollect, Sir.

Q. Mr. Beecher, this memorandum of yours—it is the same one? A. Same one; yes, Sir.

Mr. Evarts [to Mr. Beach]—It is the one that he offered to show you.

The Witness—It is a mere memorandum of the date and events, and of the years; I have likewise here the printed letters and documents that I may be supposed to be questioned upon.

Q. These are— A. These are printed documents and letters.

Q. That are in the case?

Mr. Beach [after inspecting the memoranda]—Well, Sir, I find, as I supposed, that this is something more than dates, and that it contains subjects classified and arranged, suggestions of subject-matter to be spoken under particular heads, and I think it is incompetent as a memorandum.

Mr. Evarts—How can it be incompetent?

Mr. Beach—Because it is not competent for the witness to reduce his testimony to writing, either in whole or in part.

Mr. Evarts—This is the paper that was spoken of at the outset, and offered to your inspection.

Mr. Beach—Well, Sir; from delicacy I declined to inspect it, but when I began to think there was something in it of substance, I made an inquiry of Mr. Evarts in regard to it.

Mr. Evarts—Certainly, there is not any objection.

Judge Neilson—I think the witness can use it; it may be too full a memorandum, but yet I think—

Mr. Beach—Sir!

Judge Neilson—It may be too full for a memorandum, but I think he can use it.

Mr. Beach—Do you think he can use it if it is too full for a memorandum?

Judge Neilson—If he requires it; I think yes; he may use it for dates and such matters.

## THE "TRUE INWARDNESS" LETTER EXPLAINED.

Mr. Evarts—[To the witness.] Please look at No. 13, which is a letter of yours; this passage: "I am now at home here with my sister"—does that refer to the period at which Mrs. Perkins was your housekeeper in your wife's absence? A. It does, Sir.

Q. Was that letter written during that period? A. Yes, Sir.

Q. What was the period at which Mrs. Perkins was at your house—she has testified to it? A. She was with me two Winter seasons, or Winter and Spring seasons, and I think they were of 1862 and '63.

Mr. Fullerton—"72?"

The Witness—I meant—I beg your pardon.

Q. One of them, 1872 and 1873; and was the other one 1871-2? A. If I recollect right, though I am not prepared to state positively, but my impression is that she was with me in the Spring of 1872 and in the Spring of 1873.

Q. Very well, and not in the Spring of 1871? A. That is my impression—not.

Q. Well, it is in evidence; the evidence is explicit as to the times. A. Well, that is somebody else's evidence.

Q. Well, during this period of the interviews of the early Winter and Spring of 1871, between you and Mr. Moulton and Mr. Tilton, was your sister then your housekeeper? A. No, Sir.

Q. Well, now this letter, then, that you have in your hand must have been written in 1872 or 1873?

Mr. Fullerton—Well, that is argument, Sir.

Mr. Evarts—Well, it is an appeal to his memory.

Mr. Fullerton—But you say, "Then it must have been."

Mr. Evarts—Yes.

Mr. Fullerton—Well, that is passing an opinion upon the evidence.

Mr. Evarts—I do, upon the contents of the letter.

Mr. Fullerton—No, you may ask him—

Mr. Evarts—He writes in it, and he says, "I am here at home with my sister;" it was written during that residence of his sister as his housekeeper.

Judge Neilson—And then you make a remark which the counsel thinks might be the subject of question.

Mr. Evarts—Well, was it in '72 or '73 that that letter was written? A. In '72, Sir.

Mr. Beach—It might be the end of '71!

Mr. Evarts—Mr. Beach suggests it might possibly be the very end of 1871; how is that? What are the dates of Mrs. Perkins's—

Mr. Shearman—Mrs. Perkins was there from December, '71, until April, '72, and from January, 1873, to April, 1873, so stated, and these are the only periods when she was there.

Mr. Evarts—Well, I suppose that last is of no consequence.

Mr. Shearman—That was during the absence of Mrs. Beecher at the South.

Mr. Evarts—Has this letter which I have here any relation to that letter of Mrs. Tilton's to you of March 8, 1871? A. No, Sir, none.

Q. No connection?

Mr. Beach—Which is March 8?

Mr. Evarts—The one that has just been read.

Mr. Beach—No. 12.

Mr. Shearman—"Exhibit No. 12."

Mr. Evarts—This is not then an answer to that letter? A. It is not.

Mr. Evarts—I will read this letter, and ask some questions concerning it. [Reading.]

The blessing of God rest upon you! Every spark of light and warmth in your own house will be a star and a sun in my dwelling. Your note broke like Spring upon Winter, and gave me an inward rebound toward life. No one can ever know—none but God—through what a dreary wilderness I have wandered! There was Mount Sinai, there was the barren sand, there was the alternation of hope and despair that marked the pilgrimage of old. If only it might lead to the Promised Land!—or, like Moses, shall I die on the border? Your hope and courage are like medicine. Should God inspire you to restore and rebuild at home, and while doing it to cheer and sustain outside of it another who sorely needs help in heart and spirit, it will prove a life so noble as few are able to live! and, in another world, the emancipated soul may utter thanks!

If it would be a comfort to you, now and then, to send me a letter of true inwardness—the outcome of your inner life—it would be safe, for I am now at home here with my sister; and it is permitted to you, and it will be an exceeding refreshment to me, for your heart experiences are often like bread from heaven to the hungry. God has enriched your moral nature. May not others partake?

To what relation and situation between yourself and Mrs. Tilton and her family did that letter relate?

Mr. Beach—We object to that, Sir.

Judge Neilson—I think we will take it, Sir.

Mr. Beach—And I except.

The Witness—To that disturbed condition which Mr. Moulton and Mr. Tilton and I attempted to restore to order and to harmony again; that want of confidence between husband and wife which I thought I had been the occasion of impairing, and which I labored assiduously to restore, and encouraged her as her pastor, as well as friend, to use every endeavor within the compass of human nature to restore as the bright and particular object of her life.

Mr. Evarts—Now, there are—

Mr. Beach—One moment—no. [As if reflecting.] Very well; go on.

Mr. Evarts—Now, in the latter part of that letter, Mr. Beecher, there is a word underscored—"to send me a letter of true inwardness"—was there any special or conventional meaning of that word, as between you and Mrs. Tilton? A. There was a very special meaning in it on

my part, but no conventional or understood meaning between us; I did not want to encourage her in the slightest degree—

Mr. Beach—Well, I object to that.

Mr. Evarts—We won't take it in that way—what special meaning did you— A. That she should write to me about her religious experiences to the exclusion of every other.

Q. As distinguished from her external circumstances? A. Yes, Sir.

Q. Now, there is another phrase here: "true inwardness—the outcome of your inner life"—"it would be safe, for I am now at home here with my sister, and it is permitted to you," being underscored "permitted to you?" A. The permission was simply a reference to the fact that in—that by our past agreements, and by the understanding of all parties, there was—there need not be any hindrance to our social relations.

Q. This was subsequent to the interview you have given in February— A. That was in February, 1871, and this is in February, 1872.

Q. Now, on the subject of being safe, in what sense of safety did you use that expression? A. Well, Sir, when a woman is invited to pour out her innermost thoughts on religious subjects, it is—she has a right to the knowledge that it shall not be shown; it was to be one of those letters that I would not take to Moulton; there were several that I never did take to him, that I regarded—

Mr. Beach—This is not within the line of the inquiry.

Mr. Evarts—Well, this last observation. In that privacy—in that sense of privacy was the word "safe" used? A. Certainly.

Q. Can you now remember, Mr. Beecher, whether or not this letter was written subsequent to an interview which has been spoken of in Mr. Tilton's testimony—an interview which you had with him in the cars at Springfield? A. Well, I could not—I don't know that I could identify it in any such way.

Q. In January, 1872? A. January, 1872; I don't know that I could identify it in any such way.

Q. Well, you remember that you had an interview with him in the cars? A. Distinctly.

Q. And the date of that has been fixed, I think, by Mr. Tilton or by a letter? A. But there is no date to this, and I—

Q. No date to that, but this is while your sister was in your house? A. Yes, Sir.

Q. Now, can you, or not, recall whether or no that letter was written in that Winter 1872, subsequent to your interview with Mr. Tilton in the cars or not? A. I cannot recollect anything about that, Sir.

Q. Do you know how early in the Winter of 1872 your wife left your house? A. No, Sir, I cannot recall it.

Q. Did she leave as early as the beginning of January to go South? A. I could not say, Sir; it varied in different

years, and I have not looked to the point at all; I could very easily ascertain, if you thought it was important.

#### MR. BEECHER'S LETTER OF CONDOLENCE.

Mr. Evarts—Very well; that we can recall by some reference as to the date. [To plaintiff's counsel.] Have you that other letter of Mr. Beecher?

Mr. Fullerton—Give us the date.

Mr. Evarts—January 20, 1872. [Paper produced.]

Mr. Morris—18 is the one you refer to.

Mr. Evarts—Please look at that letter.

The Witness—Do you wish this to be kept?

Mr. Evarts—Yes, Mr. Morris, I will give you back that one. [To the witness.] Do you remember writing this letter, Mr. Beecher? A. Yes, I have a general recollection of it.

Q. I read it, as I wish to ask you some questions; it is dated the 20th of January, 1872, and commences with a quotation. [Reading.]

Now, may the God of Peace, that brought again from the dead our Lord Jesus, that great Shepherd of the sheep, through the blood of the everlasting covenant, make you perfect in every good work to do His will, working in you that which is well pleasing in His sight, through Jesus Christ.

This is my prayer day and night. This world ceases to hold me as it did. I live in the thought and hope of the coming immortality, and seem to myself most of the time to be standing on the edge of the other life, wondering whether I may not at any hour hear the call, "Come up hither!"

I shall be in New-Haven next week, to begin my course of lectures to the theological classes on preaching.

Mr. Beach—Theological class or classes?

Mr. Evarts—Classes it is here.

My wife takes boat for Havana and Florida on Thursday.

I called on Monday, but you were out. I hope you are gaining strength, growing stronger and happier. May the dear Lord and Savior abide with you.

Very truly yours, H. W. BEECHER.

Q. Do you now see the time, or about the time, at which your wife left for the South? A. I do.

Q. So that the former letter, to which your attention was just called, was written after that date where you speak of your sister—being at home with your sister? A. Well, it would depend on whether my sister—oh! it must have been.

Q. Well, it is for you to say. A. I say now; I beg your pardon.

Q. Now, Sir, here is a slip of paper that has been put in evidence—No. 21; you see that slip of paper? A. I do.

Q. That is your writing? A. Yes, Sir; that is my writing.

Q. Now, by memory, or in any other way, can you connect that slip or memorandum with any other letter, or as being inclosed in any other letter, or what not? A. I do not remember any.

Q. It does not connect itself in your mind or memory with any other communication? A. No, Sir.

Q. Now, Sir, will you state on what occasion, or under what circumstances, that letter of yours [showing witness letter]—it is the same letter which I have just read aloud to the jury—was written? A. Yes, Sir; why, I don't understand what you mean exactly, Sir; you mean what object—

Q. What occasion or circumstances in the family of Mrs. Tilton, or Mr. Tilton, had occurred? A. The death of his brother, Sir, had occurred not far from that time.

Q. The death of what? A. The death of Mr. Tilton's brother, I think, had occurred not far from that time.

Q. At their house? A. At their house, I understand, Sir; I did not attend the funeral.

Mr. Beach—Does he mean to say that this letter was written in reference to that circumstance?

The Witness—No; only it was with that—during that period.

Mr. Beach—I understood him to say that that circumstance gave rise to the letter.

Mr. Evarts—Well, that had just happened? A. That had just happened.

Q. In the household of Mr. Tilton? A. Yes; not within days, perhaps, but it was within that near time.

Q. Well, within what time? A. I cannot say, Sir.

Q. Was it very near in date? A. Well, I should say within a week or a fortnight.

Q. Well, in near proximity. Now, looking at that letter, do you recall any special circumstances to which that refers, which led to the writing of that quotation and the residue of the letter? A. Well, that was a letter written, as near as I can recollect, Sir, in furtherance of the same line of conversation that I have spoken of again and again and again, to keep heart and courage in Mrs. Tilton, and from time to time to let her know that I thought of her and prayed for her, and was looking to see the good fruit of her own endeavor; this was written on Saturday, and I was going to be gone week after week right straight along, and I wrote to tell her that I had called to see her—

Mr. Beach—I submit, Sir—

Mr. Evarts—Well, you did tell her that you had called to see her? A. That is in the letter.

Q. So stated in the letter? A. That is in the letter.

Q. Well, that speaks for itself, of course. Did you know, at the time of writing this letter, of the care and attention that Mrs. Tilton had given to the nursing of Mr. Tilton's brother? A. I did.

Q. You had been informed of that? A. I had.

Mr. Beach—How informed?

Mr. Evarts—How had you learned of that? A. I had learned it from Mrs. Morse, principally.

Q. But you had heard of it? A. I had heard of it.

Q. Was it a prolonged illness and nursing? A. I cannot say about that, Sir, definitely, but I remember his being a

very feeble person, from—in and out. I had seen him there for years before, from time to time, and knew him to be a very delicate and feeble person, and I heard of his being in the hospital, or in the retreat, and I heard of his death, and I heard also of Mrs. Tilton's great kindness to him.

Q. Now you had called upon her, had you? A. When this letter was written?

Q. Yes. A. Yes, Sir; called at her house.

Q. And did not see her? A. I did not see her; she was out, as was said.

Q. Now, you have said that you were to leave town for a considerable absence? A. It was to be an absence that would run until Spring, taking out the heart of each week.

Q. It was a prolonged occupation of certain days of the week? A. I had twelve lectures to deliver at New-Haven, week by week.

Q. Now, there is a reference to your wife's leaving for Havana; was there any special occasion or purpose in mentioning that?

Mr. Beach—I object to that, Sir.

Mr. Evarts—It has been made the subject of intimation here that there was a special occasion and purpose.

Judge Neilson—That fact could not have been the subject of any imputation, the mere circumstance that Mrs. Beecher left for Havana.

Mr. Evarts—I should think not; I should think not; but I cannot say what the imaginations of some parties here may lead them to.

Judge Neilson—He may state if that was the fact, that she was to leave.

The Witness—She was to leave.

Mr. Evarts—The imputation has been, if your Honor please, that this was an advertisement to Mrs. Tilton that it would be safe for her to make visits to his house, because his wife would be absent.

Judge Neilson—That would leave the event of Mrs. Beecher's going a clean, simple fact, nevertheless.

Mr. Evarts—That is the length and breadth of the imputation that has been made, and I ask him the distinct question whether that statement was made with any special purpose or intent.

Mr. Beach—And that is objected to because that is to be derived from the language of the letter.

Mr. Evarts—I think not. I do not see how the language of the letter—

Mr. Beach—Well, Sir, take the extreme instance, that Mr. Beecher had written a note in direct terms to Mrs. Tilton, inviting her to visit his house, for the reason that it would be safe, his wife being absent—can he come forward and deny the language of the letter by saying what his purpose or intent was, and are we not to derive that from his declarations and acts made at the time and not from any construction he may choose to place upon the language now?

Mr. Evarts—If your Honor please. If the language has no possible application other than its own terms, then any statement concerning it will not vary it, and is not to be introduced. But when, in a letter from a gentleman to a lady, a statement of a domestic fact, and a fact of entire publicity, that Mrs. Beecher was to leave at a certain time, is brought into the seriousness of the trial for the purpose of making an imputation that it was advance information to cover an assignation, and the party who wrote it is on the stand, why then it is competent by every rule of evidence to show that he had no such meaning.

Judge Neilson—You could inquire for that last circumstance, certainly—that last circumstance.

Mr. Evarts—Yes, Sir; and I ask your Honor's attention to this case of Michie against the Burlington Insurance Company, where, in a very intelligent opinion, the Supreme Court of Iowa says:

In his evidence, while admitting the statement of facts in the affidavit, he states the understanding he had of its language, and the idea he intended to convey in it. This is certainly not objectionable. If the language of the witness, either written or oral, is introduced to establish an admission, he has the privilege of giving his understanding of its import, and of stating its true meaning in the connection as used by him.

Judge Neilson—We have been doing that to-day in the other matters.

Mr. Beach—Yes, Sir; we have been doing a great deal more than that. The question reaches much further than that.

Mr. Evarts—That is all that I have ever claimed, as I understand it. [To the witness.] Now, Mr. Beecher, in this announcement of the fact of the proposed date of your wife's departure, was there any interest or purpose in respect of any visits of Mrs. Tilton? A. None whatever.

Q. And as a matter of fact was she at your house thereafter? A. No, Sir; she was not.

#### A NOTE APPOINTING A MEETING EXPLAINED.

Q. [Handing the witness a paper.] That little note refers to your seeing Mrs. Tilton "next Friday" if you "don't see her to-morrow." A. [Reading.] "If I don't see you to-morrow night, I will next Friday."

Q. Now can you, from that memorandum, recall any circumstance or date, or day of the week, on which that was written? A. I cannot fix it as to time definitely. I recollect the circumstance. I know Mrs. Tilton wished to see me about her mother, or some other matter, and I dropped this hasty note to say that if I did not see her on Friday night, I would the next Friday night.

Q. Yes. Well, the first Friday night mentioned was a future Friday night? A. Was to-morrow.

Q. So that your view is that that note was written on a Thursday? A. On a Thursday. I know there was such

an occurrence, and I suppose this to be the note referring to it.

Q. And where on "Friday next" would you have seen her? A. In the lecture-room or after the lecture.

Q. Is that the reference to Friday night? A. That is what I understand it, Sir.

Q. Well, at that time, as now, Friday night was the regular lecture or prayer-meeting night? A. Yes, Sir; it never has been any other. It is the regular prayer-meeting night, and it is the night of errands, incidents, and so on, at the close.

Q. Now, what is the habit of these interchanges between you, as pastor, and those of your congregation who present themselves; is there any privacy about it? A. No, Sir; that all takes place in the front, in the cluster of people.

Q. In the public room? A. Always.

Q. And in the presence of such as are there? A. Yes, Sir. They stop, from twenty to fifty, or sometimes a hundred of them, but generally there were from ten to twenty little errands or engagements of people that want to see me and ask what day they can call; other persons to know if I can attend a baptism, or if I have received a note, or if I will come out to tea, and a thousand little things of that kind. I am out of town so much that it is difficult to get at me.

#### HOW MRS. MORSE CAME TO CALL MR. BEECHER "SON."

Q. Please look at this letter, a letter from Mrs. Morse of Oct. 21, 1871 [Exhibit 40], and say if you remember receiving it and delivering it to Mr. Moulton? A. Is it in '71?

Q. October 21, 1871, seems to be the date. A. This is her handwriting. If you will allow me to read it rather in print, it is so much easier? A. Yes; you can turn to it.

Q. The date seems to be— A. Conjectural.

Mr. Evarts—Well, it seems to have been fixed in some way, satisfactory to all of us, I suppose.

Mr. Morris—It was at the time.

Mr. Evarts—Yes, at the time. Oh, it is dated October 24, and the year only is wanting.

Mr. Morris—Yes; and the year was fixed with reference to other circumstances.

Mr. Evarts—Have you it before you in print? A. I have it, Sir.

Q. Well, at the very end of it she says: "Do you know, I think it strange you should ask me to call you 'son'?" Do you remember anything that passed between you and Mrs. Morse, before this letter was written, to which that refers? A. Yes, Sir; I do.

Q. What was that? A. A conversation that I had with her at a wedding. She was under a great deal of feeling, and felt that she was—

Mr. Beach—I object to that.

Q. Well, she said something to you about her feelings? A. She did.

Mr. Beach—Well!

Mr. Evarts—It certainly is quite competent for us to show what passed between him and Mrs. Morse which led to that expression of hers, that she "thought it strange," &c.

Judge Neilson—Well, if the witness answers generally that it was an interview between himself and Mrs. Morse that led to this expression, would it be necessary then to take the conversation?

Mr. Evarts—To show what it related to. They introduced the letter for nothing else but this, to show that this entanglement or imbroglio in this family was in some way brought in, and that it gave rise to this. Now I only want to know what it was.

Judge Neilson—Well, the witness answers that it refers to an interview at a wedding. Now proceed.

Mr. Evarts—Well, what arose between you and Mrs. Morse? A. It was simply that she had no counselor, no one that she could go to—she could not go to her daughter even, and I said, "Take counsel of me as if I was your son." It was a complimentary and courteous statement, made offhand, without any consideration but that of kindness, but she seized upon it and—

Mr. Fullerton—One moment.

Mr. Beach—One moment.

Judge Neilson [to the Witness]—Well, you understand that to be the origin of that expression between you and Mrs. Morse? A. Yes, Sir; that was the origin of it.

Mr. Evarts—What wedding was this? A. I cannot say.

Q. Do you remember whether it was Miss Bradshaw's wedding? A. I am disinclined to think it was. I thought it was at first, but I think not now, Sir.

Q. Well, you cannot fix it otherwise? A. It may have been that wedding.

Q. It may have been Miss Bradshaw's? A. Yes, Sir; but I cannot affirm it at present.

Q. You say Mrs. Morse spoke of trouble, and of having no counselor—you have intimated that. What trouble was it that she referred to? A. Trouble in the family of her daughter, and her own troubles came up also, in relation to support, and what not.

Q. Was it a question of pecuniary—were they matters of pecuniary consideration that she was referring to? A. It was only in part that, Sir—

Q. Well, that gave origin to the phrase used by you to her concerning which she writes to you?

Mr. Fullerton—I object to that.

Judge Neilson—So far as you know?

The Witness—So far as I know.

Mr. Evarts—Well, the letter speaks of his having—says: "Do you know I think it is strange that you should ask me to call you son?"

Mr. Fullerton—Yes.

Mr. Morris—Yes, that is quite a different thing.

Judge Nelson—The witness now accounts for it.

Mr. Everts—That is all of that letter. [To the witness.] Did you at any time ever ask her to call you "son" in any other way than you have now stated—to counsel with you? A. No, Sir.

### THE TROUBLE CAUSED BY THE WOODHULL CARD.

Q. Mr. Beecher, do you remember in May, 1871, or thereabouts, anything arising in reference to a card of Mrs. Woodhull that had appeared in some of the New-York papers? A. I do.

Q. How was that brought to your notice, and by whom? A. I don't know, Sir; I saw it in the paper.

Q. You saw it yourself in the paper? A. Yes, Sir.

Q. About the time that it appeared? A. Within a day or two.

Q. Now, when did it come to be a matter of conference between you and Mr. Moulton, or you and Mr. Tilton? A. I think—well, within a few days—within a day or two—I have an impression the day following, but I cannot say quite certainly.

Q. Now, what occurred between you and Mr. Tilton or Mr. Moulton, or both of them, consequent upon the appearance of this card? A. The only thing I recollect was an interview with Mr. Tilton a day or two afterward, in which he gave me an account of his visit to Mrs. Woodhull.

Q. Well, state how he described that interview. A. Well, Sir, he said that as soon as he saw that card he was satisfied that it had reference to him and his household, and he determined that he would go right down himself personally, and, if possible, put a stop to that matter that it portended; he said that he prepared himself that he might see her at his best; he gave me an account, therefore, of how he got himself up, and went down and met Mrs. Woodhull, and asked if it was Mrs. Woodhull; she said it was; he told her who he was, and he proceeded to say that he had seen a card in the morning papers, and wished to ask whether that card referred to him and his family, and that she said it did; and then he said he never in his life brought to bear on any human being such an amount of personal influence as he did upon her; he was determined that he would carry her with him by his influence, and that after some considerable conversation he succeeded, and when he left it was with the understanding that all proceedings in the direction that were offensive to him of that kind should be adjourned or terminate—I don't know exactly which. That was the substance of the statement that he made to me.

Q. Did he mention any argument or inducement in regard to his own position in reference to her views that he had used with her? A. He did; he told me that he reproached her for attempting to make war on him, inasmuch as he, like her, was a sufferer from proclaiming sub-

stantially the same ideas of social philosophy and of divorce as she did. I didn't understand him to say the same full theories of social reorganization, but the same substantial theories of the liberty of the individual, and of divorce.

Q. Did Mr. Tilton ever give you any other account of any interview or visit to Mrs. Woodhull on this score, on this subject, than that that you have now given? A. You mean relating to that card?

Q. Relating to that card, or to an interview that he had had with Mrs. Woodhull in reference to that card? A. I don't recall any other.

Q. Did he tell you at any time that when he visited Mrs. Woodhull on the subject of the card that she turned to him after he had read the paper and asked him: "Do you know, Sir, to whom I refer in that card?" I said to him that I replied in a cavalier way, "How can I tell to whom you refer in a blind card like this?" I told him that she had then said, "I refer, Sir, to the Rev. Henry Ward Beecher and your wife." Did he give you a narrative of that kind? A. No, Sir.

Q. Nor resembling it? A. No, Sir.

Q. Did he say to you that when she said that to him that this announcement filled him (Tilton) with astonishment, and that "Mrs. Woodhull instantly said to me: 'I read, Sir, by the expression on your face, that my charge is true.'" A. He never said anything of that kind to me.

Q. Did he then say to you this, or its equivalent: "I told him that I could not remember in what words I had met and endeavored to throw off her accusation; that she instantly followed it up with a recital in vehement terms, in most excited manner, of a dozen or twenty particulars, extravagant and violent, all of which, or a portion of it, she afterward gathered together in the card of November the 2d, 1872." A. No, Sir; he went into no such details with me at all.

Mr. Everts—Mr. Tilton says that the last statement, of course, that "she afterward gathered together in a card of November the 2d, 1872," was not a statement that was then made, but was a description of what she had told him. I will qualify my question. [To the witness.] Now, did Mr. Tilton on this occasion give you this narrative as having been told him by Mrs. Woodhull: "The substance of the story which she told me was that there had been a criminal relationship between Mr. Beecher and Mrs. Tilton."

Mr. Morris—Objected to.

Mr. Everts—Why?

Mr. Morris—That is what Mr. Tilton testified to—conversations that he had with Mrs. Woodhull. He didn't testify he repeated that to Mr. Beecher. All that line of questions you have been putting is improper.

Mr. Everts—The previous one is not open to that objection.

Mr. Morris—Certainly; the same objection applies to them all.

Mr. Evarts—I will read it to you: “I told him that I had read it with a shudder, and that as soon as I had finished the reading of it and laid down the paper, she turned upon me and asked: ‘Do you know, Sir, to whom I refer in this card!’” every word said to have been stated by Mr. Tilton to Mr. Beecher. Now, I will call your attention to this. I suppose this was all stated to Mr. Beecher. It came in under the motion that it was what was said to Mr. Beecher. “I told Mr. Beecher that I had left Mrs. Woodhull’s to go to Mr. Moulton—”

Judge Neilson—It is not the intention to take any evidence of conversations between Mr. Tilton and Mrs. Woodhull.

Mr. Evarts—No; that is very plain.

Judge Neilson—That is an independent conversation. How any part of it got on the minutes, I don’t know.

Mr. Evarts—I am entitled to ask whether he did say it to him.

Judge Neilson—If you have got it there.

Mr. Evarts—And if the real intent of it is that he did not go, there is no harm. [To the witness.] Q. Did Mr. Tilton repeat to you, as of an interview, or the interview he had with Mrs. Woodhull, this, or anything like it:

The substance of the story which she told me was that there had been a criminal relationship between Mr. Beecher and Mrs. Tilton; that Mrs. Tilton had confessed it on her door-steps, I believe, to Mrs. Davis of Providence, and to other persons; and that when I had received the intelligence from her, I had used some violence upon her; that I had taken her down to Greenwood Cemetery, and, in the presence of the graves of her children, stripped her hand of the wedding-ring which I had once put there, and trampled it with my heel into the sod of the grave of one of her children; that I had become a drunkard in consequence of that calamity, and had on numerous occasions struck my wife; that I had kicked her during pregnancy; that I had in every way vilified and abused her; that I had brought this crime to the attention of Mr. Beecher through Mr. Moulton, and that he had gone down—he, Mr. Moulton, had gone down—to Mr. Beecher, and with a pistol pointed at his head or breast, had demanded back some papers at the peril of his life. She went on in that strain. I will not undertake to give all the particulars, but as I said before, I may repeat that I saw them afterwards gathered together in the article of November 2, 1872.

Now, in his account to you of his interview with Mrs. Woodhull, did he give you a narrative of that kind? A. He could not.

Mr. Morris—One moment. Now, Mr. Evarts, does Mr. Tilton say he related that to Mr. Beecher? He denied it.

Mr. Evarts—I don’t say he did.

Mr. Morris—We object to it, then.

Mr. Evarts—You draw the distinction, but we let it in on the idea that you were showing it.

Mr. Morris—I object to it.

Mr. Evarts—There was no other point of view in which you had a right to introduce it.

Mr. Morris—[To Judge Neilson.] My recollection on

the subject is that Mr. Tilton related no such interview to Mr. Beecher as has been related by Mr. Evarts.

Mr. Evarts—Mr. Beecher’s recollection will confirm it, perhaps.

The Witness—That is my recollection.

Mr. Morris—One moment. My point is that Mr. Tilton didn’t testify he related any such interview. That is the point of the objection.

Judge Neilson—If that is so, it would be a good objection.

Mr. Evarts—That is a matter to be debated hereafter.

Mr. Morris—No, it is to be settled now.

Mr. Evarts—Your Honor understands that it is suggested to the counsel that except in that light there was no propriety in introducing it.

Judge Neilson—I don’t know how it came on the minutes.

Mr. Morris—We deny that Mr. Tilton said he testified so to Mr. Beecher.

Mr. Evarts—It is right in the general narrative, preceded by what he stated and followed by what he said. It is his answer to a general question: “What occurred on that occasion?”

Mr. Fullerton—Perhaps it had no more business there than Jonah had.

Mr. Evarts [Reading]—“Please state what occurred on that occasion?” That is of your interview with Mr. Beecher, and not of your interview with Mrs. Woodhull.

Judge Neilson—I am very clear we didn’t intend to receive evidence of any conversation between Mr. Tilton and Mrs. Woodhull.

Mr. Evarts—No.

Judge Neilson—I don’t recollect this that has just been read, though it may have been a part of what he said he told Mr. Beecher. That ought to be ascertained in some form.

Mr. Evarts—We understand it is all in under this question: “Please state what occurred on that occasion,” which was an interview between Mr. Tilton and Mr. Beecher, in the presence of Mr. Moulton.

Judge Neilson—Well, you take the answer subject to the correction. It is to be struck out if you find it is wrong.

Mr. Evarts—I suppose that is the proper way. Then the plaintiff’s evidence ought to be struck out.

Mr. Beach—I guess not.

Judge Neilson—We will make that correction as called for.

Mr. Evarts—[To Mr. Beach]—Why not?

Mr. Beach—Because you cannot strike out evidence in that way. The Court has no power to do so.

Mr. Evarts—[Reading.]

I told Mr. Beecher that I had left Mrs. Woodhull to go to Mr. Moulton; that I had informed Mr. Moulton, briefly and hurriedly, of that strange interview; that Mr. Moulton had instantly said the woman must be crazy; she must be



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Mr. Beecher

or Mr. Moulton, or both, with your knowledge, in regard to Mrs. Woodhull? A. None whatever; I had nothing to do with that woman, except so far as she intruded herself upon me, and so far as concerned me in it, to listen to her eulogies at the hands of Mr. Moulton and Mr. Tilton. She never in any way whatever, by my counsel, was brought into this matter, nor did I in any way whatever propose any counsel, method, mode, machinery, or anything else for the use of her.

Q. Now, Mr. Beecher, this is stated by Mr. Tilton to have occurred in an interview between you and him:

Mr. Moulton said that his method was—his proposition was—to treat her with kindness, do some service for her, put her under some obligation to us. Mr. Beecher said that he would very cheerfully coöperate in that plan, and he thought it was the best and the only plan. He asked me (that is, Mr. Tilton) if I would coöperate. I said I would; and we agreed, as part of the method by which we should deal with Mrs. Woodhull, that we would become personally acquainted with her.

A. No, Sir; that is false. In explanation of their conduct, they told me that they thought the way to deal with her was to lay her under obligations to them, and they did ask me on one occasion if I would not co-operate, and I absolutely refused to have anything to do with her.

Q. Now, at this interview, did anything of this kind occur:

We agreed, also, that as she was a woman we would put her under the restraint of womanly acquaintanceship; in other words, that she should make Mrs. Tilton's acquaintance and Mrs. Moulton's. Mr. Beecher said it was impossible for him to do anything in that regard with Mrs. Beecher; that she would never make any alliance with him to any such ends; she was a hard woman to get along with, and she must be left out of that.

Did any such conversation about your respective wives take place? A. No, Sir; the only consultation of which that is true in any degree was the fact that after some considerable time Mr. Moulton and Mr. Tilton told me that they regarded her as one of the most extraordinary women that they had ever met, and that, surrounded as she was by bad influences, she acted from the lower plane of her nature, that if she could be put in communication with the upper influences of life, and her noble nature appealed to, they thought she would lead a revolution in the times in which she lived, and their eulogies were simply extravagant of her. I never counseled her association with Elizabeth Tilton nor with Emma Moulton—a world too good. I never thought of her coming to my house.

Q. Did you express this feeling or opinion to Mr. Tilton:

Mr. Beecher told me that he hoped that the two ladies (referring to Mrs. Tilton and Mrs. Moulton) would be able, with our help, to hold Mrs. Woodhull under kindly obligations to us, and that he hoped that neither of them would make any objection to her coming either to my house or to Mrs. Moulton's.

A. That is putting into my mouth what was said to me

self and Elizabeth." He that it broke his heart to bring Elizabeth's name into the world; for it was an

duce Mr. Tilton to re- and the latter's refusal after describing the in- tention was called to Tilton's testimony, and denied their correctness. Beecher, who had an- questions calmly, added er—purely imaginative— he varied the form by say that." In effect, all as to the details of that question.

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#### "RAGGED EDGE" LETTER.

asation in court when Mr. intiff's counsel to produce for many of those present te of the document which the "ragged edge" letter, ed upon as probably the

It is the desponding let- refers to his "great year of the newspaper, the book." ts of the damned," to his d ragged edge of anxiety, and "of his being alone," love and trust him. Mr. y narrating circumstances urday had reduced him to but not unusual depression. to his testimony, that the mpanies Sunday's work is ction on Monday, and that e always low and his moods

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ou had a— A. An interview that  
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ot less than ten.

e anything to say to her during that  
ct of these difficulties of Mrs. Tilton  
yourself? A. Not a word, not the

by you? A. Neither by her nor

#### SECOND MEETING.

d you next see her? De  
sion of an excursion? A: Yes,

warehouse inspection? A. Yes,

affair? A. It was a trip down  
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was it not?

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k again up to the warehouse  
, and then we were landed  
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sure party was that, by whom  
was invited by Mr. Moulton,  
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A. Mr. Tilton was present,  
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and Mrs. Tilton was not in

A. Well, after we landed  
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th Mrs. Woodhull was and-



thing said between you concerning this— A. No, Sir; we had no talk except at the table, and very little then.

Q. Now, when again did you ever see her? A. I think the only time afterward that I ever saw her, to speak with her, was when she came to have me preside at the Steinway Hall meeting.

Q. When was that affair? A. That was in the Fall of 1871. November, I think, if I am not mistaken.

Mr. Evarts—Well, Sir, it is four o'clock.

Judge Neilson—Hadm't you better finish this, Sir? I think you had.

Mr. Evarts—Well, we are feeling really the oppression of the air.

Judge Neilson—Well.

The Court then adjourned until Wednesday morning at 11 o'clock.

## SIXTIETH DAY'S PROCEEDINGS.

### VARIOUS LETTERS EXPLAINED.

THE ACQUAINTANCE AND RELATIONS WITH MRS. WOODHULL.—MR. BEECHER'S COMMENTS ON "SIR MARMADUKE'S MUSINGS"—THE EFFORT TO RESTORE MR. TILTON TO THE CHURCH—THE "RAGGED EDGE LETTER" EXPLAINED.—MR. BOWEN'S CHARGES UNKNOWN TO MR. BEECHER WHEN HE SIGNED THE TRIPARTITE COVENANT.

WEDNESDAY, April 8, 1875.

Resuming his explanations of the personal relations of Mr. Tilton, Mr. Moulton, and himself with Mrs. Woodhull, Mr. Beecher testified that his refusal to preside at the Steinway Hall meeting was positive, and that Mr. Moulton and Mr. Tilton both knew it to be absolute. His relations with her were not cordial, he did not agree with her social views and told her so, and refused positively to invite her to his house, although Mr. Moulton and Mr. Tilton received her at their homes. The relations of the last-named gentlemen and the wife of Mr. Moulton with Mrs. Woodhull were, on the contrary, intimate and affectionate; and on one occasion, at a dinner at Mr. Moulton's house, he had seen all three welcome Mrs. Woodhull with a kiss.

The poem by Mr. Tilton called "Sir Marmaduke's Musings" was next taken up, and Mr. Beecher testified that on seeing it in print he had expressed to Mr. Moulton his indignation at its publication, calling it "a dastardly thing," and declaring that it was "an ill bird that fouls its own nest." Mr. Beecher subsequently denied having said to Mr. Moulton, as alleged by the latter, "that it almost broke his heart to read it," and that he "considered it as virtually a

telling of the story of himself and Elizabeth." He explained that he had said that it broke his heart to have such things said, "bringing Elizabeth's name out in such a way before the world; for it was an arrow shot at her."

Mr. Beecher's efforts to induce Mr. Tilton to return to Plymouth Church and the latter's refusal were next explained. After describing the interview, Mr. Beecher's attention was called to several statements in Mr. Tilton's testimony, and without exception he denied their correctness. In one instance Mr. Beecher, who had answered all the previous questions calmly, added emphasis by saying, "Never—purely imaginative—the whole;" and in another he varied the form by saying, "I know he did not say that." In effect, all of Mr. Tilton's declarations as to the details of that interview were called in question.

In narrating the particulars of an interview in the cars with Mr. Tilton in January, 1873, Mr. Beecher examined in the same way, used almost the same language employed by Mr. Tilton (except in a few instances), but the meaning given to the words as interpreted by Mr. Beecher was totally different from that ascribed to them by Mr. Tilton. Mr. Tilton had sworn, among other things, that Mr. Beecher had reproached him for publishing the poem, "Sir Marmaduke's Musings," but Mr. Beecher declared to-day that he had never spoken to Mr. Tilton on that subject.

### THE "RAGGED EDGE" LETTER.

There was a decided sensation in court when Mr. Evarts called upon the plaintiff's counsel to produce the letter of Feb. 5, 1872, for many of those present knew that to be the date of the document which has come to be known as the "ragged edge" letter, and which all have looked upon as probably the most difficult to explain. It is the desponding letter in which Mr. Beecher refers to his "great year of sorrow," to "the Church, the newspaper, the book," to "suffering the torments of the damned," to his living on "the sharp and ragged edge of anxiety, remorse, fear, despair," and "of his being alone," if Mr. Moulton ceased to love and trust him. Mr. Beecher began his task by narrating circumstances which occurring on Saturday had reduced him to a state of extraordinary but not unusual depression, for it seems, according to his testimony, that the enthusiasm which accompanies Sunday's work is always followed by a reaction on Monday, and that his spirits on that day are always low and his moods

despondent. But on this occasion he was still more depressed, from the fact that on the previous Saturday he had been reproached by Mr. Moulton "in a tone that was very cutting" for failure to pay regard to Mr. Tilton's interests as he had promised, for not fulfilling the understanding and the common agreement to aid Mr. Tilton. In the depressed mood which followed two days later Mr. Beecher wrote this long letter which he described "as an exhibit of what he had done during the past year for Theodore."

Mr. Evarts then took up the letter and began to read it, stopping only to ask the witness to explain the meaning of certain passages. Mr. Beecher had a copy of the letter in his hand, and occasionally made corrections in Mr. Evarts's copy.

Mr. Beecher's explanations of each and all of the passages of these letters will be found below, but for the convenience of reference those of the two most vigorous paragraphs in the letter are given below in parallel columns:

#### The Letter.

God knows that I have put more thought and judgment and earnest desire into my efforts to prepare a way for T. and E. than ever I did for myself a hundred fold. As to the outside public, I have never lost an opportunity to soften prejudices or refute falsehoods, and to excite kindly feeling among all whom I met. I am thrown among clergymen, public men, and generally the makers of public opinion, and I have used every rational endeavor to restrain the evils which have been visited upon T., and with increasing success.

#### The Explanation.

Q. Now, what facts in your own conduct or effort does that clause refer to? A. It refers to the prolonged endeavor which I had made everywhere to say that the stories that Mr. Bowen had bruited, and that I had given currency to—that I believed them to be false; that I believed Mr. Tilton to be an honest and a thoroughly chaste and temperate man; that I believed him to be neither a lecher nor a drunkard; that I believed him to be in many things weak, I often said; that I thought that—but everywhere I attempted to do that which I had undertaken to do, to restate him as he was when he sat a brilliant man at the head of *The Independent*.

The paragraph in which Mr. Beecher suggested that he should "step down and out" was next read and explained.

#### The Letter.

But the roots of this prejudice are long. The catastrophe which precipitated him from his place only disclosed feelings that had existed long. Neither he nor you can be aware of the feelings of classes in society, on other grounds than late rumors. I mention this to explain why I know with absolute certainty that no mere statement, letter, testimony, or affirmation will reach the root of affairs and renebrate them. TIME and WORK WILL. But chronic evil requires chronic remedies. If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out. No

could not undertake to do some things without bringing up the whole matter in such a way that that would be disclosed. I could not undertake to clear his character in regard to his sentiments on socialistic questions; that I could not do. But if, in regard to the other, if in regard to his household, in regard to Elizabeth and the children—if he wished that, on my part, to be dragged out and to be made a subject of investigation, my opinion then was, and was through the whole of the years, that that could never come into the church without destroying that church; and I would "step down and out" before anything should

one can offer more than that. That I do offer. Sacrifice me without hesitation if you can clearly see your way to his safety and happiness thereby. I do not think that anything would be raised by it. I should be destroyed, but he would not be saved. E. and the children would have their future clouded.

#### The Explanation.

Q. Now, Sir, what did you refer to in regard to any step or conduct of your own in these clauses of your letter? A. I undertook to clear him from every imputation that affected his character, except those which belonged to his later associations with socialistic ideas and with the Woodhulls. It was a common ground between us that Elizabeth and the domestic troubles were to be shielded in silence. I

over destroy Plymouth Church. I had an exaggerated idea, but it was a real idea that anything of that kind—I would suffer anything, but that church should stand. And then, as for him and her and the children—this is not exactly the language of a literal and logical statement, but it is language, as when Paul said: "I could wish myself accursed from Christ for my brother's sake!"—as David for Absalom: "Would to God I had died for thee!" If my going out of the church and out of the ministry, and so, the destruction of my professional life, would restore things as they had been before, I had the feeling when I wrote this letter that I would give them all up willingly to put things back where they were.

Then followed the passage containing the familiar allusion to "the ragged edge."

#### The Letter.

In one point of view I could desire the sacrifice on my part. Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time. I look upon death as sweeter faced than any friend I have in the world. Life would be pleasant if I could see that rebuilt which is shattered. But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness, cannot be endured much longer.

Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time.

#### The Explanation.

Q. Was that clause an expression of your views, your feelings,

in view of the situation as you have narrated it? A. Yes, Sir. Feeble words! If there had been any stronger in the English language I would have put them in.

Q. What horror of great darkness did you spend much of your time in? A. I don't know; I cannot define it, nor describe it. I only know that I am subject to very profound darkness by times, and reactions: just as, at the other extreme, I am subject to very great exaltations. Mr. Evarts, I did not do right when I said, the most of my time. [With great emotion.] I lived very near to God then, and the most of my time I had peace. Most of my time I was above it; but there were days in which midnight came at midnight, and a horror of darkness.

### THE TRIPARTITE AGREEMENT.

After further explanations of another letter, which was written in a depressed mood, and which contained several Biblical quotations, Mr. Beecher's attention was called to *The Golden Age* article, of which Mr. Tilton's letter embodying Mr. Bowen's charges against Mr. Beecher formed a part. Mr. Beecher said that previous to this interview in the Spring of 1872, he had never seen Mr. Tilton's letter of Jan. 1, 1871, to Mr. Bowen.

The continuation of the examination on this subject led Mr. Beecher to his account of the part which he had taken in the arbitration and the Tripartite Agreement following it. Of the arbitration he had heard very little. It was suggested to him that it would be wise for Mr. Tilton to have the difficulties with Mr. Bowen submitted to the judgment of

others, and he had approved of the idea; but the first he knew of the result of the arbitration was when the Tripartite Covenant was brought to him for his signature. The whole affair, Mr. Beecher testified, was managed by others.

Mr. Beecher then testified in regard to a conversation which he had with Mr. Tilton in the Spring of 1872, immediately after the latter had broken off his friendly relations with Mrs. Woodhull, in consequence of her circulating what was known as the "Tit for Tat" letter. He contradicted Mr. Tilton's account of this interview by denying that he himself had then said that he thought Mr. Tilton had done an unwise thing in breaking off his acquaintance with her, and that there was no telling what she might do if they became her enemies. Mr. Evarts read a passage from Mr. Tilton's testimony, concluding with the following declaration: "But I say here, before God, that Mr. Beecher is as much responsible for my connection with Mrs. Woodhull as I am myself;" to which, almost before the reader had finished his question, Mr. Beecher replied: "I say before God that I was not responsible at all for it."

#### THE WOODHULL SCANDAL.

The narrative of the witness now turned to the supposed attempts made by Mrs. Woodhull to blackmail him. He had a call from an unknown old gentleman one evening, not long before the publication of the Woodhull scandal, and his visitor told him that there was something awful going to be published about him. What else occurred between them was not given, the plaintiff's side objecting. Mr. Beecher, however, was allowed to testify that no blackmail was levied on him to prevent the publication, and that his idea that the stranger had intended blackmail was derived from Mr. Moulton.

The first that Mr. Beecher knew of the publication of the Woodhull scandal was from Mr. McKelway. At that time Mr. Beecher, Mr. Moulton, and Gen. Tracy agreed that it was best for him to keep silent about it. Subsequently, in the presence of Mr. Moulton, Mr. Tilton had taken Mr. Beecher's hands and urged him to deny the stories everywhere. Mr. Beecher had suggested that the persons implicated in the scandal would do well to join in a card of denial, but nothing ever came of the proposition. Mr. Beecher contradicted Mr. Tilton's testimony in respect to the proposed card in THE TRIBUNE, stating

that the Woodhull scandal was only an outgrowth of the scandalous stories set afloat by Mr. Bowen. Nothing of the kind, Mr. Beecher testified, was thought of or suggested; nor had the witness ever told Mr. Tilton that since the publication of that story he had had no hope.

The narrative now reached December, 1872, when Mr. Beecher and Mr. and Mrs. Tilton had a conference at Mr. Moulton's house, for the purpose of coming to an agreement on separate cards denying the Woodhull scandal. Mrs. Tilton copied a card written for her by her husband. Mr. Beecher then asked to see Mr. Tilton's card, but Mr. Tilton declined to submit one, and Mr. Beecher then put his in his pocket, declining to contradict the story unless Mr. Tilton joined in the denial. The testimony of the defendant in regard to this interview was in direct contradiction to that of Mr. Tilton, who affirmed that Mr. Beecher was willing to join Mrs. Tilton in a denial, provided he had Mr. Tilton's word of honor that he would not overturn the denial by publishing anything to the contrary.

#### THE PROCEEDINGS—VERBATIM.

##### A RESPITE GRANTED MR. CLEVELAND.

The Court met at 11, pursuant to adjournment.

Mr. Beecher was recalled and the direct-examination resumed.

Mr. Evarts—If your Honor please, your Honor was so good as to attend yesterday upon the further conduct of the examination of Mr. Cleveland out of court, but the result at present of consideration of the matter, in which my learned friends concur, is that it will, perhaps, be better in regard to this witness that he should be allowed an opportunity to recover his strength and health by going into the country, for five or six days, or so, in the hope that he may then be able to be examined in court; and your Honor's observation of the witness, may perhaps, concur in that view as a suitable one.

Judge Nelson—That is my impression, Sir; he seems to be somewhat improving, I think.

Mr. Evarts—Yes, Sir, and with that view he will expect to return in a few days—say by the middle of next week—either to take the stand, or to complete the examination, if he is unable to come into court. That is satisfactory?

Mr. Beach—Yes, Sir, that is satisfactory, although it will be understood, I suppose, that our concurrence in that arrangement shall in no sense operate as a waiver of our right of cross-examination.

Mr. Evarts—Oh, that we understand. Mr. Cleveland is,

and always has been desirous of coming into court, and we have been desirous that he should come in, and our learned friends on the other side naturally prefer that he should. We all wish that.

**MR. BEECHER AND THE STEINWAY HALL MEETING.**

Mr. Evarts—I will direct attention to the last question and answer, but it is not necessary that it should be repeated in the record. After speaking of the meeting with Mrs. Woodhull at Mr. Moulton's dinner table, you were asked:

Now, when again did you ever see her? A. I think the only time afterward that I ever saw her to speak with her was when she came to have me preside at the Steinway Hall meeting, in the Fall of 1871—November, I think, if I am not mistaken.

Then we broke off the examination and adjourned. Now, Mr. Beecher, will you say when and where that interview occurred? A. It took place in the morning of the day in which she delivered her address at the Steinway Hall, and took place in the front chamber, or second story front room, of Mr. Moulton's house.

Q. Who were present? A. She and I.

Q. And at any part of the interview were others present? A. No, Sir; I narrated the interview to others afterward.

Q. What passed between you? It is not necessary to go into details.

Mr. Morris—Objected to.

Mr. Evarts—What was the subject of that interview, and had it any relation to the matter between you and Mrs. Tilton or Mr. Tilton or Mr. Moulton? A. It had reference entirely to presiding at the Steinway Hall meeting. I had an interview with her perhaps of twenty minutes, when she left, and I went down stairs and gave an account of the interview to Mr. Moulton and Mr. Tilton.

Q. Very well. Now, I will ask you—my learned friends will determine whether they will admit it or not—to state what occurred between you and Mrs. Woodhull?

Mr. Morris—We object to it.

Mr. Evarts—Did you afterward state it to Mr. Moulton and Mr. Tilton, or either of them? A. I did, both of them.

Q. When? A. Immediately after the interview.

Q. At Mr. Moulton's house? A. Yes, Sir.

Q. What had become of Mrs. Woodhull? A. I think she got into a coach and went to New-York.

Q. Before this—before you had the conference with these others? A. I think that was it, Sir.

Q. Very well; at any rate she was not present? A. No, Sir; she had gone.

Q. She was not present at the interview? A. I either then immediately—it was immediately—

Q. Now, you may state what you said to Mr. Tilton and Mr. Moulton on the subject? A. I said that she met me,

with some formality, and said in substance that she was engaged in an unpopular cause, and that she felt that she had a right to the sympathy of progressive men, and that she desired to make an exposition of her sentiments that night in a public lecture, and wished that I should preside at the meeting. I told her that even in respect to causes that were very near to my heart I very seldom allowed myself to preside in public meetings, and that I did not see any reason why I should make an exception in her case. She said that she was conducting a kind of forlorn hope; it was not that phrase, but it was an enterprise in which she, as a woman, was laboring for a better state of things in society; that I was aware of her ideas, and that I sympathized with them, and that she thought I ought to give my assistance in the time of the minority of the cause. I replied to her that in so far as her sentiments were concerned on suffrage I did sympathize with her, not in all the arguments employed, but in the general end; that I was in favor of woman's suffrage, but that so far as her ideas upon social matters were concerned, without pretending to be well informed on the subject, so far as I did know or understand her views, I did not agree with them. She handed me a large roll, if I recollect right, a printed paper, and said that she wished I would read that over, and I should there see what her views were. I took the roll in my hand; the conversation went on; she urged me by various considerations to withdraw my denial and to preside. I told her that I could not under any circumstances; I utterly refused to do any such thing. She then charged me with cowardice; that I was afraid to lose my influence; and that I was afraid to avow my sentiments. I told her that I had no sentiments that I was afraid to avow; and as to the charge of cowardice, I supposed I must lie under that imputation in her judgment; and that, in various forms, turned over and over and over, was the interview, when I rose, and she rose, and I walked toward the door, and she walked after me toward the door. I shook hands with her there, and she went out. On narrating this to Mr. Moulton, he disagreed; he said, he was very sorry; he thought I had lost a great chance to ally that woman to my—to friendliness, friendly feeling; and I said to him: "I cannot preside at such a meeting; I will not identify myself with any of those movements; I will not." Well, I didn't need to do that, he said; I didn't need to do that; it was an opportunity—it was an opportunity to show my admiration, or rather my principles in favor of freedom of discussion of all subjects, and he made some such expression as this: that for me, for Henry Ward Beecher, to preside at the public meeting in which was discussed a great social revolution, whether he did or did not believe in it, in part or in whole, would go out over the nation, and it would be a sublime example. That was the substance of it.

Q. How did the matter end, as between you and Mrs. Woodhull, in respect to the definiteness or finality of your

refusal? A. I made it absolute, and she knew it was absolute.

Q. Was there anything of this kind, as left by you with her, or stated by you to Mr. Moulton or Mr. Tilton, that you did not positively decline, but did not see how you could do it; nevertheless, if during the afternoon you came to a different conclusion, you would go and preside? A. No, Sir; there was nothing of that sort.

Mr. Beach—One moment. You put it whether, as occurring between himself and Mrs. Woodhull, or as stated to Tilton and Moulton. The first branch of that is—

Mr. Evarts—Well, did you state to Mr. Tilton and Mr. Moulton, or either of them, as a part of or the conclusion of your interview with Mrs. Woodhull, that you left it in that way—that you did not positively decline, but did not see how you could do it; nevertheless, if during the afternoon you came to a different conclusion, you would go and preside? A. No, Sir; that is altogether a mistake.

#### FAMILIARITIES BETWEEN MRS. WOODHULL AND THE MOULTONS.

Q. Now, on either of these occasions of meeting Mrs. Woodhull at Mr. Moulton's house, did you observe anything in regard to cordiality or familiarity in the intercourse between Mrs. Woodhull and Mr. Tilton, Mr. Moulton, and Mrs. Moulton? A. I did.

Q. Which occurrence was that? A. I think I was in the chamber when Mrs. Woodhull came to dinner.

Q. On the occasion of the dinner? A. Yes.

Q. Who was in the chamber then? A. I don't know that any person was, unless it was Mrs. Moulton; I have an impression that she was there, and we were talking; Mrs. Woodhull came in; Mrs. Moulton went up to her and kissed her, and afterward Mr. Moulton came in, and he went up and also kissed her, shaking hands very cordially and pleasantly.

Q. Did Mr. Tilton come? A. I have an impression that he did, but I have not so distinct a recollection of that; I can see Mr. Moulton doing it.

Q. Very well. Now, Mr. Beecher, in this interview that you had with Mrs. Woodhull, in reference to the Steinway Hall meeting, was there in that conference, or during that interview, any reference on your part, or any reference on Mrs. Woodhull's part, to your doing as she desired in connection with any difficulties, or affairs, or position of your own? A. Not in the interview; in the letter that she sent to me there was.

Mr. Beach—One moment! one moment!

Mr. Evarts—Well, no matter about the letter. Not in the interview? No.

#### MRS. WOODHULL'S LETTERS TO MR. BEECHER.

Q. Now, Mr. Beecher, did you receive letters from Mrs. Woodhull? A. I did.

Q. At what times and how many? A. I received one

in respect to going to Washington to speak at a meeting of women in favor of suffrage, during the session of Congress.

Q. Do you remember what year? A. It was—I can tell, with your permission, Sir. [Referring to memorandum.]

Q. Perhaps this?—here is a letter of 2d January, 1872, from you to Mr. Moulton, which is in evidence? [Handing witness a letter.] A. It was in the Winter—I was hesitating whether it was the Winter of 1870 or Spring of 1872.

Q. You mean the Winter of 1871? A. I meant 1871, or the Spring of 1872.

Q. Is that the letter which you now speak of as having been received from Mrs. Woodhull—is the letter of hers to which you refer in your letter to Mr. Moulton, and which you refer to and send him in your letter of January, 1872? [Handing letter to witness.] A. Is it what, Sir?

Q. Is the letter that you are now speaking of as having been received by you from Mrs. Woodhull the letter which you now refer to in your letter to Mr. Moulton of the 2d of January, 1872? A. No, Sir.

Q. Very well. Then we will pursue that inquiry in connection with this paper. You are speaking of the letter of suffrage? A. The letter of November, 1871.

Q. Was not the Steinway Hall letter about presiding at Steinway Hall? A. Yes, Sir.

Q. You were just now speaking of a letter asking you to go to Washington? A. That was in January.

Q. That is the letter I am desiring to talk about? A. I understood you to ask me if the letter I spoke of a moment ago, volunteering, was the letter that accompanied her invitation, or was in answer to which I answered about the Washington speech.

Mr. Evarts—No.

The Witness—Then I misunderstood you.

Mr. Beach—That was the question.

Mr. Evarts—No.

Mr. Beach—The question was whether the letter in reference to the Washington speech was the one he referred to in the letter to Mr. Moulton?

The Witness—I was mistaken, for whichever letter he asked me about I thought it was the other.

Mr. Evarts—You were speaking of a letter you received on the subject of your going to Washington? A. Yes, Sir.

Q. Now, was that letter of Mrs. Woodhull to you the one that you refer to in that letter to Mr. Moulton? [Handing witness a letter.]

Mr. Shearman—January 2d?

The Witness—I see; yes, Sir.

Mr. Evarts—The letter referred to in Exhibit 42. Now, you did receive a letter in regard to the Steinway Hall meeting also? A. I did.

Q. The date of Mrs. Woodhull's letter was somewhere

near the date of this letter of yours to Mr. Moulton, was it not? A. You mean the Washington letter?

Q. The one you refer to in your letter to Mr. Moulton? A. Yes, Sir; I think it was the day before, or the same day.

Q. Very well. Now, we will go to the Steinway Hall meeting. What was the date of that? A. November; if you will tell me the date of the—

Q. Was it the date of the meeting? A. I got the letter, I think, before.

Mr. Morris—The 20th; the meeting of the 20th!

Q. What was the time that you received that letter—how near the meeting? A. The first letter was within a day or two days, I cannot say which.

Q. Before the meeting? A. Before the meeting.

Q. And had reference to that meeting? A. It was entirely about that meeting.

Q. Did you receive any other from her? A. I did.

Q. At what time? A. It was later than either of these; was in the year 1872, I think.

Q. Was it after, or about the time of the publication of what is known as the Woodhull scandal? A. Not a great while before that; it was the Autumn of 1872 some time.

Mr. Evarts—That is already in evidence.

The Witness—Oh, no; it was June 3.

Mr. Evarts—Mr. Morris, Mr. Shearman thinks it is not in evidence.

Mr. Morris—It is in evidence.

Mr. Evarts—If it is we will take it up.

The Witness—I call it the Gilsey House letter.

Mr. Evarts—It is dated at the Gilsey House.

The Witness—I doubt if it is dated there.

Q. This letter was some time in the Summer of 1872, was it not? A. June of 1872.

Q. And with these exceptions—these three letters—did you receive any other letter from her? A. No, Sir.

Q. Now, Sir, how many and what letters did you write to her, and what dates? A. I wrote to her in reply to her Washington letter of Jan. 2, and I replied to the Gilsey House letter—the letter I call the Gilsey House, because it was a letter on that subject.

Q. The letter in June, 1872? A. Yes, Sir.

Q. And the Steinway Hall letter—was there any written reply to that? A. No, Sir; I had an interview.

#### MR. BEECHER DEPLORES THE SIR MARMADUKE POEM.

Q. An interview followed. Now, Mr. Beecher, do you remember the occurrence in the Fall of 1871, the publication of a short poem by Mr. Tilton under the heading of "Sir Marmaduke's Musings?" A. I do.

Q. How did you become aware of that publication? A. I saw it in the newspapers.

Q. Very near the time of its issue? A. I suppose so; I don't know.

Q. Now, Sir, did you have any conversation with Mr.

Moulton afterward concerning that publication? A. Yes, Sir.

Q. And how did that arise, and where? A. I don't know; it came up in the course of some visit or conversation.

Q. What was said between you about it? A. I said I thought it was a dastardly letter; it was an ill bird that fouls its own nest; and he said he thought himself it was very objectionable; he didn't attempt to make an apology for it.

Q. Did you in any interview with Mr. Moulton where this publication was the subject of talk, say to him that it almost broke your heart to read it, or that you considered it virtually a telling of the story of yourself and Elizabeth? A. No, Sir; I did not tell him that.

Q. Did you say anything bearing upon that point? A. I did.

Q. What did you say? A. I said that it broke my heart to see such things said, bringing Elizabeth's name out in such a way before the world; it was an arrow shot at her.

Q. Now, did you have any conversation with Mr. Tilton about this "Sir Marmaduke's Musings?" A. I don't recollect any.

#### MR. TILTON REFUSES TO RETURN TO PLYMOUTH CHURCH.

Q. In the month of December, 1871, do you remember the subject coming up between yourself and Mr. Tilton in any interview as to his retiring from Plymouth Church? A. I do.

Q. Where was that interview held? A. I don't know, Sir; I only remember the conversation.

Q. Now, will you state what passed between you at that period and on that subject, or at any conversation raised in which that subject was spoken of? A. Mr. Tilton complained to me that there was an unfriendly feeling manifested by my friends toward him, and thought that—he blamed me in a degree for it. That was only a part of many and frequent conversations at that time. They ran along from time to time. I had undertaken to do what I could to restore Mr. Tilton to the cordial good will of my church.

Mr. Beach—It seems to me, Sir, that these declarations are not responsive to the question, and are general expressions which are not fitting evidence. What passed in the conversation?

Mr. Evarts—They are only introductory to what did pass in the conversations. [To the Witness.] What did pass between you and Mr. Tilton—what had passed between you and Mr. Tilton on the subject of the restoration of good feeling toward Mr. Tilton in the church, if anything? A. I had said to Mr. Tilton that I could not hold myself accountable for the opinions and prejudices which had existed beforehand, founded on like or dislike of him; that I could not be responsible for them; that, however, I felt satisfied that the beginning mur-



murs and complaints in the church might all of them have been overlaughed and removed, if he felt his way clear to come back, as he used to do; and take part in the affairs of the church, and show a cordial feeling toward the members; and in one of our interviews he showed, I thought, a leaning that way, Sir, and inspired in me some hope that it might come to pass. In such condition I said, "I think I may guarantee to you a welcome that will set you high and dry above all these annoyances." At a later conversation, when he seemed disinclined, I urged him again to take his letter, but he said he didn't consider himself a member.

Q. What do you mean by his taking his letter? A. Taking a dismissal to some other church by letter; but he said he had not for a long time considered himself a member of the church. Very well; I asked him then to communicate that fact to the church. He said he could not do that. I said, "You can announce; you don't need to ask; you simply can announce that you are not a member, and then the further action of the church will ratify that;" but he declined.

Q. During what period of time, so far as you recall, did these conversations on this topic extend? A. On the particular church relation?

Q. Yes, this matter of either restoring or dissolving his relations with the church? A. Oh, I should say they ran on through two or three months; my general recollection is that.

#### OTHER NARRATED CONVERSATIONS DENIED.

Q. Now, Mr. Tilton has given a narrative of an interview which he puts in the early part of December, 1871, at Mr. Moulton's study, when you came there, and this subject of retiring from the church was spoken of as stated by him in detail. In that interview he says that you in the conversation used these words, or the substance of them:

That in view of the events of the Summer and Fall, by a publication of the Woodhull sketch [I suppose he means the Life], and my presiding at the Steinway Hall meeting, and the little poem called "Sir Marmaduke's Musings," there had grown up in the church a feeling on the part of the members and leaders that I had been an intense Spiritualist, that I had wholly abandoned the orthodox faith, and that I had not attended the church for a year or nearly two years, and as my name was being banded up and down the community, they felt that, as a church, there should be some inquiry made into the matter.

And then he says this:

Mr. Beecher said: You know, Theodore, how dreadful and distressing this is to my feelings, particularly as I understand how you have come into your disrepute; but what can I do? How can I explain to my church members? They are crowding me on every hand.

Now, did any such conversation as that take place between you and Mr. Tilton? A. Not between me and Mr. Tilton, Sir.

Q. Now, Sir, in this conversation, or in any conversation about his fixing in one way or the other his relations with the church, did you say this to him or did he say this to you:

Mr. Beecher, in reference to any criticisms made upon me because I have made a sketch of Mrs. Woodhull's life, or presided at a public meeting on her behalf, you know perfectly well the reasons that have led me to do it, and you have no right to make these reasons a thorn in my side now.

Did he say anything of that kind to you? A. Not a word, or anything like it.

Q. Now, Sir, was there any conversation, either as part of the interview that I have called your attention to, as narrated by Mr. Tilton, or in this period in which he spoke of dealing with any offense at the little verses called "Sir Marmaduke's Musings," saying:

You have only to treat it as a farmer treats a nettle; clutch it in your right hand and crush it; handle it boldly; put it into *The Christian Union*, or read it at your prayer-meeting; treat it as if it had been written by Mrs. Stowe, or by some of your friends; treat as if it was a matter not dangerous to you at all.

Was there any conversation or suggestion of that kind as to the treatment of it? A. No, Sir, nothing.

Q. Now, did there occur as a part of this interview, or during this period of conversation, anything like this, as stated by Mr. Tilton:

As to the only remaining thing—my retirement from the church—get rid of that in this way: "Say I told you a year and a half ago, as I did at one of my earliest interviews, that I had then abandoned the church; it is known as a matter of fact that I have never crossed the threshold of the church since then; assume a power and take my name from the roll, or have a new roll printed, with my name omitted. If it is dangerous to call attention to the fact that my name is there, get rid of it."

A. No, Sir.

Mr. Evans—Did he at this interview or in any interviews on this subject, at about this period, say that if he asked for a dismissal or wrote a letter on the subject, "it will impugn what I have been doing for the last year and a half; and, therefore," as he says he said to you, "you will remember distinctly I told you I would never again cross the threshold of your church." Now, Sir, did he make any statement of that kind to you? A. No, Sir; he did not.

Q. Now, Sir, in stating any reasons why he could not consistently ask for any letter of dismissal, during either this special conversation, as he narrates it, or during the conversations at this period on the subject of his relations to the church, did he say this as among the reasons why he could not consistently ask for a letter of dismissal:

You put your request to me on the ground that my views are different from those of my childhood. Certainly they are. But allow me to remind you that my views are not different from the views of many members of your church in good standing. I am not more radical in any of my views than Deacon Freeland or Mr. Claflin or any other member in good standing in your church; and it would be a

falsehood to say that I must retire from your church because of any liberality in my religious views, "for," I said, "your church is well known throughout Christendom as being an asylum for all looseness and liberality of Christian views; and if I retire from your church, particularly as criticisms have been made against me for verging toward liberality of Christian sentiment, people will say, well, if Theodore has grown so loose and liberal in his views that he must on that account leave Plymouth Church, where, then, will he go?"

Did he present views or arguments of that kind to you? A. Never—purely imaginative, the whole.

Q. Do you remember, as a part of this conversation, or of this discussion about terminating his relations to the church, his saying anything of this kind:

My views are liberal enough to entitle me to ask a letter of dismissal from an orthodox Congregational church, but they are too liberal to allow me to remain in good standing in the church; and on that ground I cannot ask any dismissal—but they are not too liberal to allow me to remain in good standing in the church, [your church, I suppose he means—your church, Plymouth Church,] and on that ground I cannot ask any dismissal.

Q. Do you remember his stating anything of that kind?

A. I remember that he did not.

Q. Now, this is also given as a part of the argumentation on the subject:

Furthermore, [Tilton says,] although you must remember I have been absent from your church for a year and a half, still my wife and daughters remain members, and their names are on the roll, and if I retire from the church leaving them in their membership, it will not produce upon the public the impression that family difficulties have been obliterated, but that family difficulties have been created.

Q. Do you remember any statement of that kind? A. No, Sir; there was no such—no such discussion.

#### THE INTERVIEW IN A RAILROAD TRAIN.

Q. Mr. Beecher, do you remember an occasion of meeting Mr. Tilton in a trip on a—on board the cars at Springfield, Mass., or on that road? A. I do.

Q. When was that? A. I think it was in January of 1872; somewhere in that neighborhood.

Q. Please state, Mr. Beecher, how that interview arose, and when it was? A. I was leaving Springfield for Boston; had not been a great while out before, sitting not far from the middle of the cars, I felt some one lay his hand on my shoulder, and, looking around, it was Mr. Tilton; and I was very much surprised and said, "How came you here?" He said that he had been lecturing the night before in, I think, Pittsfield, or some place back on the road, and had come right on after lecturing and took the morning train to Boston; he had an engagement in that vicinity; sat down by my side. We entered into some chat about lecturing, what he was lecturing on, what engagements he had in New-England, and how much he meant to go out, and all that kind of conversation; and that led insensibly to a conversation about affairs at home, his wife's health and children. We talked very pleasantly, for he was in one of his gracious

moods, and he said, toward the close of the conversation, that if it would be any pleasure, he should be very glad to have me visit at his house, just as I had done in former times—make it a kind of home to myself, that was the idea, and perhaps talked ten or fifteen minutes with me in that way. He then went back to his seat, and after we passed Brookfield, I think it was, I thought it was proper to return the call, and went, as we came in, and sat down by his side in his seat. He was writing; I asked him what he was writing, and he said his editorials; and then I questioned him as to whether he could write in the cars, and whether it was not bad for his eyes, and whether he could think, and all that kind of literary chit-chat. He had a book which he seemed occasionally to be looking into, and I asked him what it was, and he said it was John Woolman's life. I am ashamed to say it was the first time I had ever heard of it, and I asked what it was. He said it was one of the most charming books—of one of the most charming men that ever lived, he thought, and made some remark expressive of the serenity and the peacefulness of that man's nature, and the effect that it had upon him; and I said, "Well, if that is the kind of book, I mean to have it," and I went on to speak about the peculiar effect which certain classes of books had on my mind, quite independent of the ability of them, or the line of thought, saying that I thought it was perhaps a transfused magnetism from the nature of the man himself that happened to agree with mine—mentioned De Tocqueville's Letters, and Arnold's writings, Matt. Arnold and some others, and said I should be very glad to get any book that would add to my very little library of peace; and after that conversation ran along half an hour—longer than the other, I think. That was the substance of that interview.

Q. In that conversation was anything said by you as to your purpose of getting this book? A. Yes, Sir; and I did get it; and recommend every man to get it, and read it; it is a beautiful book.

Q. In this interview, or either of these interviews in the cars, did you say anything of this kind, when you asked him what he was writing, or in connection with what he was writing, that you hoped it was not another Sir Marmaduke's poem? A. No, Sir; I don't think I ever made an allusion to that to him.

Q. Now, Sir, in reference to this book of John Woolman, his life, I suppose—Life of John Woolman; in that connection, or in that conversation, did you say anything or do anything of this kind—[reading] "He" [that is yourself] "drew a long breath and said a fountain of peace! Tell me where it is. I want to drink of it." And then he replied: "If there is peace—" and then you continued: "If there is peace in this book, in Heaven's name I must read it, for I have come to the conclusion that there is to be no peace for me any more in this life." Did you use any expression of that kind? A.

I don't know but I drew a long breath, but the rest of it, I think, is imaginary. I certainly said to him that I should like that book if it was a quieting book, for that that was the class of books, owing to the excessive occupation through which I went, that I had sought for; that whenever I was fretted or wearied nothing rested me so much as to lie down and read De Tocqueville's Letters, or some book that had that charm of peace-inspiring.

Q. Now, as part of either of these conversations, did he say to you—after saying to you, "Go on with your work; have no apprehensions on my account"—did he say this—or in a conversation did he say this: "Of course my anxiety is not for your safety, it is for Elizabeth's; but in protecting Elizabeth I necessarily shield you." Was that a part of either of the conversations? A. No, Sir; not a word like it.

#### MR. BEECHER CUT TO THE HEART BY MR. MOULTON'S COLDNESS.

Q. Now, Mr. Beecher, soon after this interview in the cars you wrote a letter to Mr. Moulton referring to it. [Showing witness a letter.] The letter of Feb. 5, 1872. Have you a copy of it here? A. I have it copied.

Q. Before writing this letter to Mr. Moulton of Feb. 5, 1872, a long letter, had anything passed between you and Mr. Moulton which induced or led you to write it? A. Yes, Sir.

Q. How did that occur, and what was it? A. I went on a Saturday morning over to the office to see Mr. Moulton; it had been a troublous time from week to week all along there; things were breaking out; I went to see him on some one of these occasions. I sat for some length of time—some little time before he came in, and when he came in he did not see me—on purpose—and went about his business, continuing for—kept me waiting for a considerable length of time, and then gave me rather a cold recognition; he was passing out and I got up and went out with him—I must say I forced myself on him; he was very distant; he seemed more nearly in the mood of anger with me than I had ever seen him before, and when I entered into some conversation with him he was very abrupt, and even more; I began to make some explanation to him of Mr. Tilton's demands upon me that I should—that I was not fulfilling the understanding and the intent of our cordial agreement, and that my friends were also doing me a great deal of damage—Mr. Tilton's representation by—doing him a great deal injudiciously, too; Mr. Moulton replied with a tone that was cutting to me—the substance of it was it was very well for me that I had all that I wanted—wealth, and a home, and a church, and my friends—it was very well for me to slight or pay little regard to Mr. Tilton's condition and feelings; that he was without support; that he was suffering poverty; that he was being injured by those that were flattering me, and he

bore down with some severity upon me in the matter; the conversation was peculiarly trying to me; I was going to be absent the whole of the next week. I preached on Sunday, but on Monday morning I was in a profound reaction. Usually I do not feel the effect of the reaction till Monday night or Tuesday, if at all, but on Monday I was in a profound reaction, and I felt I could not go off and be gone a week without clearing myself in the court of honor for the fulfillment of every obligation that I had assumed. I determined that I would give him such a letter as would make him feel to his innermost man that I had done what a man ought to do for a friend in trouble, and under that condition I wrote this letter which may be considered as an exhibit—my exhibit of what I had done for the last year for Theodore and of my feeling of willingness to do whatever might become a man to fulfill every obligation that I had made, or every pledge of everything that love, friendship, or fidelity could require of a man; I was thoroughly indignant to be reproached for infidelity.

Mr. Evarts—I will now read this letter, as I wish to ask you some questions upon the subject.

#### MR. BEECHER ON THE "RAGGED EDGE" LETTER.

The Witness—You cannot understand it unless you understand exactly the gradually accumulating circumstances preceding which are the text of it.

Mr. Evarts—[Reading.]

MONDAY, Feb. 5, 1872.

MY DEAR FRIEND: I leave town to-day, and expect to pass through from Philadelphia to New-Haven. I shall not be here till Friday.

About two weeks ago I met T. in the cars, going to B. He was kind. We talked much. At the end he told me to go on with my work without the least anxiety, in so far as his feelings and actions were the occasion of apprehension.

On returning home from New-Haven (where I am three days in the week, delivering a course of lectures to the theological students), I found a note from E., saying that T. felt hard toward me, and was going to see or write me before leaving for the West.

Whom did you refer to under the initial E.? A. Elizabeth.

Q. Mrs. Tilton? A. Mrs. Tilton.

"She kindly added"—now comes a quotation from her letter, I suppose? A. Yes, Sir.

Mr. Evarts [reading]—

"Do not be cast down. I bear this almost always, but the God in whom we trust *will deliver us all safely*. I know you do and are willing abundantly to help him, and I also know your embarrassments." These were words of warning, but also of consolation; for I believe E. is beloved of God, and that her prayers for me are sooner heard than mine for myself or for her. But it seems that a change has come to T. since I saw him in the cars—indeed, ever since he has felt more intensely the force of the feeling in society and the humiliations which environ his enterprise.

The Witness—"Limitations."

Mr. Evarts—"Humiliations"—it should be "limitations." A. I think it should be "limitations."

Q. Yes, this is a misprint in the evidence—

And the limitations which environ his enterprise; he has growingly felt that I had a power to help which I did not develop, and I believe you have participated in this feeling.

How had you learned or gained the impression that Mr. Moulton participated in that feeling? Q. Well, I think I had occasion to on Saturday before.

Q. That you referred to? A. Yes, Sir.

Mr. Evarts [reading]—

It is natural you should. T. is dearer to you than I can be. He is with you. All his trials lie open to your eye daily. But I see you but seldom, and my personal relations, environments, necessities, limitations, dangers, and perplexities you cannot see or imagine. If I had not gone through this great *year of sorrow*, I would not have believed that any one could pass through my experience and be *alive or sane*.

The Witness—"And sane."

Q. "And *sane*." Well, "*and sane*" there.

[Reading.]

I have been the center of three distinct circles, each one of which required clear-mindedness and peculiarly inventive or originaive powers, viz:

1. The *great church*.
2. The *newspaper*.
3. The *book*.

The first I could neither get out of nor slight. The *sensitiveness* of so many of my people would have made any appearance of trouble or any remission of force an occasion of alarm and notice, and have excited, when it was important that rumors should die and everything be quieted.

The Witness—"Where," I think, Sir.

Mr. Beach—"Where" instead of "*when*."

The Witness—"Would have excited where it was important that rumors—"

Mr. Evarts—"Where"—well, it seems a very imperfect print.

The Witness—There is an elision in the sentence—"would have excited in quarters where—"

Mr. Evarts [reading]—

The newspaper I did roll off, doing but little except give general directions, and in so doing I was continually spurred and exhorted by those in interest. It could not be helped.

The "*Life of Christ*," long delayed, had locked up the capital of the firm, and was likely to sink them—finished it *must* be. Was ever book born of such sorrow as that was? The interior history of it will never be written.

During all this time *you*, literally, were all my *stay* and *comfort*. I should have fallen on the way but for the courage which you inspired and the hope which you breathed.

My vacation was profitable. I came back, hoping that the bitterness of death was passed. But T.'s troubles brought back the cloud, with even severer suffering. For all this Fall and Winter I have felt that you did not feel satisfied with me, and that I seemed, both to you and T., as contenting myself with a cautious or sluggish

policy, willing to save myself, but not to risk anything for T.

Had you observed any such indication on Mr. Moulton's part to which you there refer? A. I had; nothing that—it culminated in that.

Q. In that interview— A. I tried to make myself think that it was my impression, but on that Saturday's interview I gave interpretation to all the interviews going before from time to time.

Q. Through what period do you mean? A. I mean from the period of three or four months, or more, ever since—until after September, at any rate.

The letter proceeds: [Reading.]

I have again and again probed my heart to see whether I was truly liable to such feeling, and the response is unequivocal that I am not. No man can see the difficulties that environ me unless he stands where I do.

To say that I have a church on my hands is simple enough—but to have the hundreds and thousands of men pressing me, each one with his keen suspicion, or anxiety, or zeal; to see tendencies which, if not stopped, would break out into ruinous defense of me; to stop them without seeming to do it; to prevent any one questioning me; to meet and allay prejudices against T. which had their beginning years before this; to keep serene, as if I was not alarmed or disturbed; to be cheerful at home and among friends when I was suffering the torments of the damned; to pass sleepless nights often, and yet to come up fresh and full for Sunday—all this may be talked about, but the real thing cannot be understood from the outside, nor its wearing and grinding on the nervous system.

Now, Sir, what occasions, or subjects, or suspicion, or anxiety, or alarm, or disturbance, did you refer to in this passage? A. I referred to the anxiety which I had, these troubles in Mr. Tilton's family, and in which I had felt myself to be culpably careless—in their origination—should not (concurrently with his wishes and Mr. Moulton's)—that they should not be made a matter of publicity, and that they certainly should not be dragged into my church and be made the subject of church inquiry. It was that part of the trouble that throughout the letter was the occasion of poignant suffering. The preceding conversations and expostulations with me turned on this ground: that I had damaged Mr. Tilton's name, fame, position, and pecuniary resources; that I had given the weight of my great influence (as it was pleased to be called) to Mr. Bowen, and therefore to the propagation of these stories, which had tarnished him; and it was, therefore, only a reasonable thing for me to restore to him, as far as my influence went, the good name that he had—

Mr. Beach—It strikes me, your Honor, that this is argument instead of testimony, and I hope it will be restricted as far as possible.

The Witness—I can put it into the form of conversations with Mr. Tilton, if you please, because it was often and often talked of between us.

Mr. Beach—Well, I would rather have the conversations than have the ingenuity of your presentation by way of argument.

Mr. Evarts—The subject of the evidence is legitimate, but perhaps the witness may transcend, or escape from, the proper limitation.

Mr. Beach—I do not desire to be over-critical, but I desire it to be as restrained and moderate as may be.

Mr. Evarts—The letter proceeds: [Reading.]

God knows that I have put more thought and judgment and earnest desire into my efforts to prepare a way for T. and E. than ever I did for myself a hundred fold. As to the outside public, I have never lost an opportunity to soften prejudices or refute falsehoods, and to excite kindly feeling among all whom I met. I am thrown among clergymen, public men, and generally the makers of public opinion, and I have used every rational endeavor to repair—

Mr. Beecher—Restrain.

Mr. Evarts—Restrain!

Mr. Beecher [referring to his copy]—So I have it.

Mr. Evarts—It is not very material, though there is a difference in meaning. I am reading from the evidence in the case, which is likely to be correct.

Mr. Beecher—All right, Sir.

Mr. Evarts [reading]—"The evils which have been visited upon T., and with increasing success." Now, what facts in your own conduct or effort does that clause refer to? A. It refers to the prolonged endeavor which I had made everywhere to say that the stories that I had assisted—that Mr. Bowen had bruited, and that I had given currency to—that I believed them to be false; that I believed Mr. Tilton to be an honest and a thoroughly chaste and temperate man; that I believed him to be neither a lecher nor a drunkard; that I believed him to be in many things weak, I often said; that I thought that—but everywhere I attempted to do that which I had undertaken to do, reinstate him as he was when he sat a brilliant man at the head of *The Independent*.

Q. Before the occurrences of December, 1870? A. Before December.

Mr. Evarts—The letter proceeds: [Reading.]

But the roots of this prejudice are long. The catastrophe which precipitated him from his place only disclosed feelings that had existed long. Neither he nor you can be aware of the feelings of classes in society, on other grounds than late rumors. I mention this to explain why I know with *absolute* certainty that no mere statement, letter, testimony or affirmation will reach the root of affairs and reinstate them. TIME and WORK WILL.

But chronic evil requires *chronic remedies*. If my destruction would place him all right, that shall not stand in the way. I am willing to step down and out. No one can offer more than that. That I do offer. Sacrifice me without hesitation, if you can clearly see your way to his safety and happiness thereby. I do not think that anything would be gained by it. I should be destroyed, but he would not be saved. E. and the children would have their future clouded.

Now, Sir, what did you refer to in regard to any step or conduct of your own in these clauses of your letter? A. I undertook to clear him from every imputation that affected his character, except those which belonged to his later associations with socialistic ideas and with the

Woodhulls. It was a common ground between us that Elizabeth and the domestic troubles were to be shielded in silence. I could not undertake to do some things without bringing up the whole matter in such a way that *that* would be disclosed. I could not undertake to clear his character in regard to his sentiments on socialistic questions; *that* I could not do. But if, in regard to the other, if in regard to his household, in regard to Elizabeth and the children—if he wished that, on my part, to be dragged out and to be made a subject of investigation, my opinion then was, and was through the whole of the years, that that could never come into the church without destroying that church; and I would "step down and out" before anything should ever destroy Plymouth Church. I had an exaggerated idea, but it was a real idea, that anything of that kind—I would suffer *anything*, but that church should stand. And then, as for him and her and the children—this is not exactly the language of a literal and logical statement, but it is language, as when Paul said: "I could wish myself accursed from Christ for my brother's sake!"—as David for Absalom: "Would to God I had died for thee!" If my going out of the church and out of the ministry, and so, the destruction of my professional life, would restore things as they had been before, I had the feeling when I wrote this letter that I would give them all up willingly to put things back where they were.

Q. The letter proceeds: [Reading.]

In one point of view I could desire the sacrifice on my part. Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time. I look upon death as sweeter-faced than any friend I have in the world. Life would be pleasant if I could see that rebuilt which is shattered. But to live on the sharp and ragged edge of anxiety, remorse, fear, despair, and yet to put on all the appearance of serenity and happiness, cannot be endured much longer.

Was that clause an expression of your views, your feelings, in view of the situation as you have narrated it? A. Yes, Sir. Feeble words! If there had been any stronger in the English language I would have put them in.

Q. Now, here is an expression: [Reading.]

Nothing can possibly be so bad as the horror of great darkness in which I spend much of my time.

What horror of great darkness did you spend much of your time in? A. I don't know: I cannot define it nor describe it. I only know that I am subject to very profound darkness by times, and reactions; just as, at the other extreme, I am subject to very great exaltations. Mr. Evarts, I did not do right when I said, the *most* of my time. [With great emotion.] I lived very near to God then, and the most of my time I had peace.

Q. "Much of my time," it is. A. Yes. *Most* of my time I was above it; but there were days in which midnight came at midday, and a horror of darkness.

Q. Now, at the time of writing this letter, Mr. Beecher,

what was the condition of your spirit or temper in this regard—of depression or exaltation? A. Oh! I was in the very depths of the depths. It was a Monday letter, after such a Saturday!

Q. Now, Sir, in these clauses, or any of them, of this letter, as I have read them to you, was there present to your mind any thought, idea, or memory, of any criminal intercourse with Mrs. Tilton? A. No, Sir. None at all. None at all. I had no need of that. There was enough, to my thought, in hurting a friend, in destroying a household, in being unfaithful to the highest honor of obligations—there was enough in that to torment me with the torments of the damned; I know of no more horrible evil in this world than to betray or hurt a friend; I do not say that other things are not worse; but I say that I should suffer as much for that as I could for anything—as I had capacity to suffer.

Q. In this letter you say: [Reading.]

I am well nigh discouraged. If you, too, cease to trust me, to love me, I am alone; I have not another person in the world to whom I could go.

In reference to what relations with Mr. Moulton on this subject did you use these expressions? A. In reference to what, Sir?

Q. In reference to what relations to Mr. Moulton, or with this subject of your letter, did you use those expressions: "If you, too, cease to trust me, to love me, I am alone; I have not another person in the world to whom I could go." A. Oh, I could have gone to five hundred—

Mr. Fullerton—Oh! oh!

The Witness— there were five hundred thousand that wanted me to go to them. It was simply a recognition that I was shut up by the circumstances, to him, my friend, whom I believed to be a man of wonderful fidelity in friendship.

Q. By what circumstances were you shut up to him, as the matter then stood? A. By that policy of silence that all of us had entered into league to maintain, and which I did maintain.

Q. The letter proceeds: [Reading.]

Well, to God I commit all. Whatever it may be here, it shall be well there. With sincere gratitude for your heroic friendship, and with sincere affection, even though you love me not, I am yours (though unknown to you).

H. W. B.

Now, Sir, in this expression, "With sincere gratitude for your heroic friendship, and with sincere affection, even though you love me not," what is the reference of that phrase, "even though you love me not?" A. It was the sting of that Saturday, in me, when he turned away from me as he did. "Though unknown to you"—that was an intimation that my inward life, he had no idea of it, that he should treat me so, and charge me as he did—that I was not the man that he thought I was.

Q. Now, in the earlier part of this letter, you used this expression:

If I had not gone through this great year of sorrow, I would not have believed that any one could pass through my experience and be alive and sane.

What sorrow had oppressed you during that year? A. Oh, the everlasting resurrection of this trouble, in one and another form of aggravation! It was a thing settled that never would rest! In one shape or another it was still, either by the intrusion of outside parties or by the restlessness of parties within, brought again to the surface. I—I settled it, and rejoiced over it many times, only to meet it again in aggravated forms; and from year to year the complications grew worse.

Q. Well, we are recurring now to the past year, prior to this letter, not to the future. Had you any other sorrow, or cause of sorrow, or any other remorse, or cause of remorse, or any other fear, or cause of fear, than what you have stated, in reference to your relations to Mr. Tilton, in his affairs, and in his family? A. Yes; I had abundant cause for fear and trouble about myself.

Q. In what connection?

Mr. Beach—Oh, well, Sir, we object to that.

Judge Neilson—I think we will take it.

The Witness—Because I had an unspeakable dread of an imputation resting on me. I was a minister, and therefore a woman. To be—to have this matter brought out in such a way, that mischief-makers would get hold of it and bring it into my church—I supposed that it would give rise to at least three parties in the church—expulsions and trials, for which a Congregational church is less adapted than any other church on earth to be a judicial body; and I did not have a doubt that it would result in a conflagration that would destroy that church, and leave me—one party and another party—leave my reputation such that it would end my usefulness for life. And I also was in the midst of a community where we had been going through great partisan conflicts, and I had been an active man in them, and I felt the moment that this thing is bruited and my church takes it up, it will fall into a quick soil all over the land, for political reasons, and for other reasons theological, and it will be—there will be a crop of thorns; and I felt that I did not see how I could get out of it if things should come to that pass; I did not see how I could get rid of the most damaging results, if to all the stories that had been—that had assailed me through Mr. Bowen was to be added a charge, specific, by the husband of an injured woman (as he claimed), and backed up by a charge on her part; I did not see any way out, and I felt that the future was all full of fiery dangers and difficulties. For their sake I did do a great deal, Mr. Evans, but I did a great deal for my own sake, too; and yet for my own sake I would not have done a thing, but that I happened to stand as a representative of certain views, and truths, and great religious interests in the community.

Q. By the charge, do you mean the charge of improper advances? A. I do.

Q. Had any other charge been made against you at that time by either of these parties? A. No; but that is enough, I take it.

# MR. BEECHER'S GLOOMY HOURS, AND THEIR RESULTS.

Q. Well, that is all that was in your mind. Now, Sir, after this letter to Mr. Moulton, which I have read—before your note to Mr. Moulton of the 25th of March, 1872, which is Exhibit 56—[to Mr. Morris] I don't suppose it is necessary to look up that?

Mr. Morris—No.

Mr. Evarts—I call your attention—have you a copy of your letter of March 25, 1872, to Mr. Moulton? A. Yes, Sir; I suppose so. [Referring to memorandum.] Yes, Sir.

Q. Between this ~~even~~ on the 5th of February, 1872, and the letter now shown you of March 25, 1872, to Mr. Moulton, had any particular interviews or communications taken place between Mr. Moulton and yourself? A. Yes, Sir.

Q. What had occurred between you? A. Well, I think it was about that time, or preceding—just a little before that—that Mr. Moulton showed me, and I for the first time then read Mr. Tilton's letter to Mr. Bowen, what is called the "Golden Age article;" but that whole month was a month of agitation.

Q. What was the subject that was then talked about, or made the occasion of what you call agitation? A. It was the reinstatement of Mr. Tilton, but peculiarly some reinstatement in the matter of Mr. Bowen's difficulties with him, were in the mind at that time.

Mr. Beach—When was that?

Mr. Evarts—It was in the Spring of 1872.

The Witness—March, 1870. The "Tripartite Agreement" came in April.

Mr. Beach—The end of March, 1870?

The Witness—No, Sir; 1872. The "Tripartite Agreement" was made in April, 1872.

Mr. Evarts—This was the month of March preceding the early days of April in which the "Tripartite Agreement" was made? A. Yes, Sir.

Q. Now, I will read this letter to Mr. Moulton of the 25th of March, and ask your attention to some parts of it:

MY DEAR FRIEND: I sent on Friday or Saturday the portrait of Titian to the store for you. I hope it may suit you.

What was this gift, in what form—the portrait of Titian? A. Mr. Moulton had been at my house, and looking over my portraits and things, and found some grand old heads that I had, and had expressed a wish for one, and I had it framed, and left orders at the store to have it sent to him.

Q. [Reading.]

I have been doing ten men's work this Winter—partly to make up lost time, partly because I live under a cloud, feeling every month that I may be doing my last work, and anxious to make the most of it.

Q. What was there that induced the feeling that you there expressed that you might be doing your last work, and anxious to make the most of it? A. Well, of course, there was some special relation to this difficulty; but, Mr. Evarts, that is a state of feeling that I have most all the time; I don't think that there is a month or a week in the year that I do not think that I am near to the end.

Q. You use also the expression, "Because I live under a cloud." A. Yes, Sir; that is the local difficulty that then—this constantly recurring matter.

Q. A cloud of gloom, or a cloud as to repute, or on your own mind? A. No, it was a cloud on my own mind. Q. [Reading.]

When Esau sold his birthright he found [now you quote] no place for repentance, though he sought it carefully with tears.

Now, Sir, in reference to yourself, or any experience of yours, did you make this reference to Esau, and if so, what? A. It was a very natural reference for a minister to make; I had preached a great many times from it; and Esau sold his birthright time and time again to have it rein—to have himself reinstated, to have the matter bettered, and couldn't; I had tried over and over and over again to have the mistakes and errors I had fallen into in that family repaired, and they never would be repaired. I did not quote it as a literal matter, but rather as a sacredly ornamental passage.

Q. [Reading.]

But I have one abiding comfort. I have known you and found in you one who has given a new meaning to friendship.

This expression, Mr. Beecher, of your estimate and feeling in regard to Mr. Moulton in his relations to you, was it a true expression of your feelings and views? A. It certainly was; I regarded Mr. Moulton—I loved him like a brother; I do not mean by that that I saw nothing in Mr. Moulton to except to, but I thought him a splendid specimen of a man, in many respects, in his peculiar line, and he had qualities so utterly different from mine, and in which I thought that he surpassed; that, by the principle of counterparts, I suppose, I took to him very strongly; he did seem to me to have given a new meaning to friendship—and I think so still. [Laughter.]

Q. [Reading.]

As soon as warm days come I want you to go to Peekskill with me.

I am off in an hour for Massachusetts, to be gone all the week.

I am urging forward my second volume of the "Life of Christ," for "the night cometh, when no man can work."

With much affection and admiration, yours very truly,

H. W. B.

In this particular reference to the urgency of your second volume of this work—the reference, "for the night

something, when no man can work"—was there any special occasion of that reference, or was it only as to the uncertainty of life? A. Well, Sir, it was to that serious view of things which a Christian and reflective man ought to take, and which happens in me to run with my temperament, and which I do take.

Q. Now, Sir, was there an interview with Mr. Moulton, at which the "*Golden Age* article," as it was called, was considered and present? A. There was.

Q. In what shape was that article or paper? A. What we call a galley proof, Sir.

Q. And consisted—you recall it, I suppose, and know what it consisted of? A. I recall it.

Q. Mr. Bowen's letter, and some prefix and subsequent observations? A. Yes, Sir.

Mr. Evarts—It is before us, I think, Mr. Morris, only in the form of the "Tripartite Agreement"—annexed to the "Tripartite Agreement."

Mr. Morris—Oh, yes.

Mr. Evarts—Well, you have it in mind.

The Witness—Yes, Sir.

Mr. Morris—With Mr. Johnson's emendations, you recollect.

Mr. Evarts—Oh, yes. [To the witness.] Where was there an interview, and who were present at it? A. It was at Mr. Moulton's house; he was sick, in his back chamber and in his bed, suffering from this rheumatic affection to which he was liable.

Q. And how came you to be there? A. I have an impression that I had just come back from a lecture trip, and ran down to see him.

Q. Then you were not sent for, or came by appointment? A. I think not; I cannot say; I used to run down and see him most always when I had been gone.

Q. Was Mr. Tilton present? A. No, Sir; nobody present.

Mr. Evarts—Now, if your Honor please, I won't open this, it is so near the moment of adjournment.

Judge Neilson—Gentlemen will keep their seats until the jury retire. [To the jury.] Get ready, gentlemen.

The Court then took a recess until 2 o'clock.

#### MR. BEECHER SHOWN THE GOLDEN AGE ARTICLE.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Beecher was recalled, and the direct examination resumed.

Mr. Evarts—Mr. Beecher, won't you proceed now and give us the interview at Mr. Moulton's house with Mr. Moulton, in which this "*Golden Age* slip" was introduced? A. It was in the forenoon, if I recollect right. After the greetings I sat down by the side of his bed; he took the article and threw it carelessly over, and said he: "Read that and tell me what you think of it," and I took the article and read it through, and I was so astounded at the idea of his putting such an article be-

fore me that I said: "Good Heavens! what do you mean, Frank?" He said he wanted to know what the effect would be of the publication. "Well," says I, "the effect will be inevitable—it will just defeat everything that we have been trying to do. The publication of this matter is the disclosure of the matters, and the whole thing becomes public." "Do you think so?" said he. "Well, I know so." Well, there was but very little conversation on the subject between us, but that was about the substance of mine. We didn't argue it at all. He propounded it to me to see, and that is about the whole that passed between us.

Q. Did you read the whole of this slip, including the Bowen letter? A. I read the whole of the Bowen letter, and I read cursorily only the last part of it.

Q. Before this time had you seen the Bowen letter? A. No, Sir; it was my first sight of it. There was something said more, I recall now; that was about those charges, the infamy of those charges of Bowen's.

Q. Well, what was said? A. Well, I don't know, Sir; I expressed myself as strongly as a clergyman and a Christian could, without swearing, on that subject, but it was an intense oburgation.

Q. What was said by Mr. Moulton, if anything, on that subject? A. I don't remember; I don't recall any conversation.

Q. Now, Mr. Beecher, I will ask you whether at that time, or at any other time when either the Bowen letter in its text, or any of its contents mentioned as a subject was up, you ever admitted, with or without qualification, any of the charges therein contained? A. I never did.

Q. Was there any one of those matters that you admitted in any form or degree? A. Not one—

Mr. Beach—That is calling—

The Witness [continuing]—In any manner or shape, form nor degree.

Mr. Beach—Well!

The Witness [*Sotto voce*—] Very well.

#### WHAT MR. BEECHER KNEW ABOUT THE ARBITRATION.

Mr. Evarts—Now, Mr. Beecher, how much knowledge, as they were proceeding, did you have of the arbitration, the "Tripartite Covenant" and the settlement, or payment to Mr. Tilton? A. Very little of it, Sir.

Q. Won't you narrate to us what you had to do with any of its preliminaries.

Mr. Beach—Had to do with whom?

Mr. Evarts—With any one concerned in that "Tripartite Agreement."

Mr. Beach—Well, with Mr. Bowen, do you mean?

Mr. Evarts—It has been proved as a transaction, resulting in the joint action of the three parties, in a final cov-



enant—Bowen, Tilton, and Beecher—and including the pecuniary arbitration between Mr. Bowen and Mr. Tilton.

Mr. Beach—The question calls for anything the witness had to do with any party—or person, rather.

Judge Nelson—It is too broad in that respect.

Mr. Evarts—Any party to that agreement.

Mr. Beach—Well, what he had to do with Mr. Bowen we have nothing to do with.

Mr. Evarts—What had you to do, if anything, Mr. Beecher, toward having such an agreement made.

Mr. Beach—I object to that question, Sir, unless it was with Mr. Tilton, or Mr. Moulton as his agent.

The Witness—I had something to do with it in regard to Mr. Moulton, nothing with regard to any other parties.

Mr. Evarts—Very well, now, what? A. I had something to do with it before I knew what I was about—what it meant, namely: Mr. Moulton talked with me about whether there could not be an arbitration, and a quiet settlement of all our difficulties, including the payment of the debt owed by Mr. Bowen to Mr. Tilton, and the burying of all difficulties finally and out of sight, and wanted to know if it would not be a good thing to ask some of my influential friends in the church to act in the matter as a consulting committee, as I understood it. I said I thought it would be very good, if he would manage it, and he mentioned—I mentioned names. "Well," I said, "Mr. James Freeland is a friend of Mr. Tilton, and Mr. Cleveland is a friend of Mr. Bowen, and they are both upright men and I will trust anything"—as far as I was concerned I didn't know that there was anything to be trusted, but I expressed that they, I had no doubt, would do the thing perfect justice. And that was the first dawn, I think, of the matter on my mind. Afterward, when the matter took some more form, I then learned more about it, namely: that it was to be—

Mr. Beach—Well, Sir.

Mr. Evarts—From Mr. Moulton? A. From Mr. Moulton I learned that there was to be—that there had been, as I understood him—some preliminary meetings, and that they meant to draw up articles which should include us all, and have a final settlement. I knew no more, that I recollect now, from any party until I was called to sign it.

Q. Well, what was brought to you, and by whom, for your signature? A. I suppose, from what I have heard here in the trial, the first draft was brought to me—that is to say, the draft unchanged—in the article that concerns Mr. Tilton, because I recollect reading that distinctly, and I was inquired of if I would sign it; I said I would. Afterward the draft was brought me again by Mr. Claflin, who said that Mr.—

Mr. Beach—One moment, Sir; I object to what passed between Mr. Claflin and Mr. Beecher.

Mr. Evarts—Well, brought to you with what? A. With reference to some emendations on Mr. Bowen's part, to which I assented. It was then, after a time, brought to

me for signature, after the change had been introduced in Mr. Tilton's part of it, and I signed it. That is, I think, about my history in connection with that.

Q. And, personally, then, Mr. Beecher, you took no further part in that matter than you have now stated? A. No, Sir; I had no—I was merely a recipient, an obedient actor in it; it was managed wholly by others.

# MR. TILTON CUTS LOOSE FROM MRS. WOODHULL.

Q. Now, Mr. Beecher, do you remember anything arising, or brought to your notice, in reference to what has been spoken of as the "Tilt for Tat Article," proceeding from the Woodhull and Claflin press? A. I never saw it; I heard it spoken of.

Q. Was anything said to you about it, about its character, or the purpose of its publication—of the intention of its publication—the intention that it should be published—by Mr. Moulton or Mr. Tilton? A. I don't think that he—I have heard allusion made to it by Mr. Tilton, but not under that designation; I never heard that designation until I sat in court here.

Q. Well, how was it designated? A. I merely heard him make a statement that the occasion of his breaking with the Woodhulls was an article which they—as I understood—they proposed to publish, but which was going about in slips, and included in it the names of a great many respectable men and women, against whom charges were made, and that, on seeing that, he had gone down in great indignation and broken his connection with her as gloriously as he had formed it.

Q. He so stated to you? A. He represented to me as breaking it with great dignity, Sir, and circumstance.

Q. And about when was that statement to you by Mr. Tilton? A. I don't know; I cannot tell you, Sir; I could find out, but I don't recall now.

Q. Now, Sir, when Mr. Tilton was making any narrative to you about this article, and the subsequent termination of his relations with Mrs. Woodhull, did you say to him that you thought that he had done an unwise thing to break his acquaintance with that woman; that she had been "sufficiently dangerous even when we were on friendly terms with her, but there was no telling what she might do if we became her enemies"—did he say anything to you of that kind? A. Did he say anything to me?

Q. Did you say anything to him? A. No.

Q. Of that kind during an interview when he was telling you of his break with the Woodhulls? A. I did not; I thought he did well to break the connection, but I don't remember ever to have said so.

Q. Did you urge him to continue with Mr. Moulton the same kindly services in order to strengthen the same influence with Mrs. Woodhull? A. Just the other way; I never urged them at all; they were perpetually praising

her, and apologizing or explaining; I never urged them at all.

Q. Now, Mr. Tilton has said this:

I wish to say distinctly to the jury that my relationship to Mrs. Woodhull was a foolish one and a wrong one, as the event has justified, and I don't ask any man to defend me for it, but to blame me for it; but I say here, before God, that Mr. Beecher is as much responsible for my connection with Mrs. Woodhull as I am myself.

Now, what share— A. I say before God, Sir, that I was not responsible at all for it.

Q. Well, any connection with it? A. It was a surprise to me in the beginning.

Mr. Beach—Well, you have answered the question.

### MR. BEECHER AND THE WOODHULL SCANDAL.

Mr. Evarts—Now, Mr. Beecher, in reference to the occurrence in the end of October or the beginning of November, 1872, the publication in the Woodhull & Claflin paper of what has been known as the scandal—the Woodhull scandal—prior to the appearance of that paper, had you heard in any way or in any form the suggestion that there was to appear such a publication? A. I had.

Mr. Beach—Well, from whom?

Mr. Evarts—Well, we will take first the fact whether he had heard in any way.

The Witness—I had.

Mr. Evarts—In what way had that come to your knowledge?

Mr. Beach—Well, I object to that question, Sir. It may have come in some form which we had no connection with. I don't know.

Judge Neilson—Well, I think it is one of those general questions he might answer—if it came to his knowledge by speech or print. The only question will be whether it can be pursued afterward.

Mr. Beach—The question calls for rather more than that, Sir.

Mr. Evarts—It is a simple question.

Mr. Beach—I shall have to stop the witness then; that is all.

The Witness—My first was a mere—I cannot give it, except that I had a vague impression, and from what sources derived I cannot say; my first definite knowledge was the visitation at my house of a tall, thin, lank old gentleman of about 60 years of age, who came to tell me that there was an awful thing a-going to be published about it. [Laughter.]

Mr. Beach—One moment.

Mr. Fullerton—One moment; it is too awful to tell here, I guess.

Judge Neilson—Well, we can dismiss the gentleman, I think.

Mr. Evarts—Well, I don't know. I don't wish to pursue it against any indication of your Honor, but—

The Witness—He said they were getting up—

Mr. Beach—No; one moment.

Mr. Evarts—Well, if you saw it in this newspaper—this Woodhull & Claflin paper, that this announcement was made—I ask you whether it was in reference to a publication in this Woodhull & Claflin newspaper that this announcement by this stranger was made?

Mr. Beach—One moment, Sir. That calls for the substance of the communication. We have nothing to do with that, Sir.

Judge Neilson—We have nothing to do with this mysterious visitor.

Mr. Evarts—As it stands, perhaps.

Judge Neilson—I think we shall assume that there was no other but that paper.

Mr. Evarts—Mr. Tilton introduced the subject, if your Honor please, in his testimony. [Reading.]

Did you ever see or hear of that publication or any portion of it being in slips and proposed to be published before it was published? A. No, Sir; all I ever heard on that subject was after I got home, through Mr. Beecher, who said it had been presented to him, or, at least, he had been spoken to in advance of its publication, and, as I understood, some blackmail had been levied upon him.

Now, I want to show that he did not pay any blackmail in that transaction.

Judge Neilson—You can examine him on that statement, whatever is there.

Mr. Evarts—Now, Mr. Beecher, did you tell Mr. Tilton what had happened on that subject? A. Very likely; I don't remember it.

Q. Did you tell him that any blackmail had been levied on you? A. No; none had.

Q. What did you say on that subject to him, about blackmail? A. If I said anything I said—

Mr. Fullerton—Well, one moment.

Mr. Beach—He says he don't remember it.

Mr. Morris—Mr. Tilton has not said that there was any blackmail. He said this: "And as I understood some blackmail had been levied on him." That is what he said.

Mr. Evarts—Well, this generally disproves that.

Mr. Beach—That the witness denies.

Mr. Evarts—Yes, he does deny it.

Mr. Morris—That don't disprove that Mr. Tilton so understood it.

Judge Neilson [to the Witness]—Do you recollect that you said anything on the subject? A. To Mr. Tilton?

Q. Yes. A. I don't recollect anything, Sir. I think it more than probable that I did, but I do not recall definitely that I did.

Mr. Evarts—Now, Sir, I think it is competent for me to show what did occur in reference to any advertisement or notice to Mr. Beecher of any such intended publication.

Judge Neilson—The fact appears that he had notice from this mysterious visitor. Is not that sufficient?

Mr. Evarts—Except that it is not very definite or explicit.

Judge Neilson—We cannot make it very definite, as the person is a stranger and not connected with the suit at all in any form.

Mr. Fullerton—And from the description, probably a ghost; I don't know.

The Witness—Yes, there is something very curious.

Mr. Fullerton—I don't know what he had to do with this world's affairs.

Mr. Evarts—Mr. Tilton has also stated this: [Reading.

My impression is that he made a statement to the effect, a few days before it was published, that some person had called upon him and notified him that such a publication was going to be made, and that he considered the call in the light of a threatening visit, and had rebuffed the man.

Q. Sent him away! A. Yes, Sir, that is the substance of it.

The Witness—If you ask me that question about Mr. Moulton, I think I could tell you that I did tell him.

Q. Well, now, in regard to Mr. Tilton, I will ask you this: Do you remember whether you told him that? A. No, Sir.

Q. Or what he says made that impression upon him. Well, Sir, now did this call or this advertisement of the intended publication form the subject of any communication between Mr. Moulton and yourself? A. I rehearsed it to Mr. Moulton, Sir.

Q. What did you tell him about it? A. Well, I merely described the old gentleman, and told him that I saw from that that there was something coming; and that he seemed to be a great deal distressed, and said that he came over to see if the thing could not be stopped in some way.

Q. That is, this messenger, you mean? A. Yes, Sir; I told him that I saw no way to stop it; I thought the way was to let it go out; Mr. Moulton suggested that the man came over for blackmail; it hadn't quite occurred to me before, and then I fell in with that view; I supposed that the old man had come poking over there to find out whether I was disposed to compromise the matter.

Q. At any rate, that was the result of the transaction? A. That was the result.

Q. And communicated by you to Mr. Moulton; whether you told the thing to Mr. Tilton you have no recollection? A. I don't remember; my interviews were ten to one with Mr. Moulton.

Q. To what they were with Mr. Tilton? A. Mr. Tilton; yes, Sir.

Q. Now, Sir, when the publication itself took place, how was it first brought to your notice? A. I think the first that I heard of its actual occurrence was from Mr. McKelway, who came to me from *The Eagle* office, saying that—

Mr. Beach—One moment, if you please.

Judge Neilson—Well, he came to you from *The Eagle* office and gave you notice in reference to it; will that do? The Witness—No, Sir.

Judge Neilson—Go on, Mr. Evarts.

Mr. Evarts—Go on, Mr. Beecher.

Mr. Beach—We object, Sir.

Judge Neilson—Put a question that you regard as proper to be answered.

Q. The first notice that you had from Mr. McKelway, what did he advise you about this publication?

Mr. Beach—That is objected to, Sir.

Judge Neilson—We cannot take his conversation, I think. If he gave Mr. Beecher notice, I think we could take that simple naked fact.

Mr. Beach—The witness has said that the first notice that he had of the appearance of this publication was from Mr. McKelway.

Mr. Evarts—How did he give you that notice?

Mr. Beach—That I object to.

The Witness—I would change, then, the word "notice" to "information."

Judge Neilson—He called on you, did he? A. He called upon me, assuming that I had seen it.

Mr. Evarts—Well, did he speak to you of it? A. Yes, Sir.

Q. Called upon you and spoke to you of this publication, as already made? A. Yes, Sir.

Q. Had you then seen it? A. No, Sir.

Q. And before he thus spoke to you had you heard of its having been made? A. I don't think I had, Sir.

Q. Well, thereafter what did you have—how did you come into knowledge or action about it in any way? A. I repaired with him to Mr. Kinsella, and we had a conference.

Q. Was the article there? A. I don't recollect.

Q. Did you see it there? A. I did not see it; I understood it to be in the office.

Q. But you did not see it? A. I did not see it.

Q. And were you advised of its general nature or contents? A. Yes, Sir.

Q. By these gentlemen, or one of them? A. I was; I asked Mr. McKelway to give me the substance of it.

Q. And he did so? A. He did so.

Q. Now, when did you first see or read the article itself? A. Never have yet. I am select in my reading.

Q. Now, when did any matter of conference come up, consequent upon this—

The Witness—I, perhaps, ought to correct that, Mr. Evarts, by saying that after this trial had begun, and I was counseled to read everything about it, I undertook to read it one day and got a little way along with it, but I have forgotten it, and never have resumed it.

Q. When and how did it first come up as a matter of conference or consultation between you and Mr. Moulton and Mr. Tilton, or either of them? A. I went directly from *The Eagle* office to see Mr. Moulton about it.

Q. Did Mr. McKelway go with you? A. He did.

Q. And saw Mr. Moulton in his counting-house in New-York, or where? A. In New-York—yes, Sir; he was busy

when we went there, and after transacting his business, which took some little time, he then turned to me and we had some conversation about it behind the accountant's reticulated bar; and then we came out and walked toward home—we going over the Montague-st. Ferry, and Mr. McKelway going on, I think, over Fulton Ferry.

Q. Well, what was said between you then about that publication? Had Mr. Moulton seen it? A. I do not remember that he said that he had. He advised me to say nothing about it, and as that was a part of the errand of Mr. McKelway, to know what I thought or wished to say, I acted upon that counsel, and he left us.

Q. You so informed Mr. McKelway? A. I did.

Q. Was Mr. McKelway's errand in connection with the newspaper with which he was connected? A. It was professional entirely.

#### THE CONSULTATIONS ABOUT THE SCANDAL.

Q. Now, afterward was the question whether a publication or answer of any kind should be prepared the subject of consultation, and with whom, in which you took part? A. Not consultation, but of advice from many parties.

Mr. Beach—We object to what occurred with other parties.

Mr. Evarts—Did other parties offer you advice on the subject? A. There did.

Q. Voluntarily? A. They came to my house

Q. Voluntarily? A. Voluntarily.

Mr. Beach—We object to that

Mr. Evarts—I don't intend to show the advice.

Mr. Beach—But you do.

Mr. Evarts—I do not. You cannot see from anything he said whether he advised him or not to publish it.

Mr. Beach—You are mistaken. However, we won't discuss that.

Q. Did you receive advice from a variety of people? A. I did.

Q. Now, what part did you take, and with whom, in discussing or determining whether any answer should be made? A. With Mr. Moulton principally, and Mr. Tracy.

Q. Now, when did you see Mr. Moulton, and where? A. I saw him at his house, I suspect, the next day; it may have been that same evening—that evening or the next day.

Q. By a set appointment? A. I do not remember, Sir; I presume so.

Q. Was Mr. Tilton present at that? A. No; Mr. Tilton, if I recall it right, was not in town.

Q. What was the conference between you and Mr. Moulton on that subject, at that time? A. My own counsel was very little. He seems not to have had a doubt in his mind from the beginning; and his counsel was, first and last, to me, that the matter was to be treated with contemptuous silence.

Q. You have mentioned Mr. Tracy, Mr. Beecher; was he

connected with Mr. Moulton in this conference in any way? A. No, Sir.

Q. In what way did he have any connection with this matter? A. You ask me with whom I consulted for that, as I understand. If you will read the question I will tell you why I put that answer in.

Q. Well, was Mr. Tracy in connection with these numbers of people that you have spoken of as having advised you? A. Yes, Sir.

Q. Not with Mr. Moulton? A. No, Sir.

Q. Not with any conference? A. No, Sir.

Mr. Evarts—Well, that is substantially all excluded, I suppose. [To the Witness.] When next, or further, did any matter come up as to whether an answer was to be made, or the policy of silence still maintained, in which you took any part? A. I cannot give you any detail of it. It was a thing that was agreed upon at once, and there was within the week, I should say, or ten days, various conferences, or consultations rather, between Mr. Moulton and me and Mr. Tilton, in regard to it, but all of them eventuating alike.

Q. Well, now, when did any interview with Mr. Tilton first occur? A. On his return from his New-Hampshire trip.

Q. That was soon after? A. Soon after; yes, Sir.

Q. And what conference was there in which he and you both took part? A. A conference in Mr. Moulton's study in the morning. He came there very much excited.

Q. Were you there already? A. I think I was there when he came in; I think I was first with Mr. Moulton. I may be mistaken about that.

Q. Was this meeting, Mr. Beecher, one by appointment? A. I don't know.

Q. You were there with Mr. Moulton? A. Yes, Sir.

Q. And Mr. Tilton came in? A. I think that was so.

Q. Well, that you have stated. Before Mr. Tilton came in was there any conversation between you and Mr. Moulton on this subject? A. If there was any I don't recall it.

Q. After Mr. Tilton came in, what then occurred? A. Mr. Tilton denounced the matter with indignation, and declared that he should, wherever he went, deny it as an infamous and an atrocious thing. He spoke to my heart's content about it; and he took me by the hand, and I think by both hands, and authorized me, in his name, everywhere—he enjoined it on me to deny it as an infamous and an atrocious falsehood, and that in the presence of Mr. Moulton. The question of making this contradiction in the public papers was something different. It was understood that we should adhere—we should refrain from publication.

Q. As a part of this interview or conference was anything said by you of a wish or preference in regard to denial? A. I said I was prepared to make a written denial if it was thought best, but that it ought to be a denial that should go out from Mr. Tilton, and from me,

and from Mr. Moulton, as all of us were implicated in the statement, as I understood from what had been told me.

Q. How was that proposition received and disposed of by the gentlemen? A. Well, I thought that there was an inclination in the first interview—they took it into consideration; that is what I thought.

Q. That was the substance of the interview? A. That was the substance of the interview. It was to be denied, and if there was to be any card it must be something for further deliberation.

Q. How soon thereafter did any conference on that subject come up, and what occurred? A. Well, I cannot say exactly, but I should say in November or December, the last of the month or early in the month, there was a pressure which led Mr. Moulton to reopen the question whether something might not be appropriately done.

Q. In the way of publication? A. Yes, Sir.

Q. Well, how was that talked of, and what was the disposition to it? A. There was nothing came of it.

Q. Was there at any time any decision or agreement that there should be a publication? A. There was no agreement that there should be. We adhered still to our original purpose to let the thing die.

Q. Now, after this interview that you have spoken of, do you recall any further interview between you and these two gentlemen, or either of them, still on the subject of publication of denial or response? A. It was a matter of conversation, of course, every time we met. How frequently we met about that time I do not now charge myself to remember.

Q. Do you remember that it was a subject that was under consideration? A. It was.

Q. Several times, and several days? A. I told them what was said to me, and what was written to me, and they told me what they heard in their various perambulations, and we undertook to form a judgment of whether, or rather I deferred very much to Mr. Moulton's judgment in the matter; I always deferred as much as I could, and that was very generally, not always, to his judgment of things.

Q. And following this publication of the Woodhull matter, was there at any time a conclusion or decision to make a public response? A. There was something which I understood at first to mean that, but I was mistaken.

Q. Now, Sir, at either of these interviews, when Mr. Tilton was present, did this occur, as stated by Mr. Tilton:

Mr. Tilton said the reason why he felt that the best policy would be to say nothing on the subject in public was this, that if any denial was made it would only provoke the Woodhulls to reproduce the story in some other form, to reiterate it; that a denial would not quell it; that they evidently meant mischief, and that they would repeat it in one form or another; if it was denied once, it would have to be denied twice, and perhaps three times, and many times.

Do you remember anything of that kind occurring? A. No, Sir; I remember something akin, but different.

Q. How do you understand the matter? A. I only said this, as I recall it, that we had got to make up our minds not on a single fact, but on a system; that if we went into the newspapers to deny the newspaper reports, we would have to continue, for, having begun such a thing as that, we would have to follow it up, and it should be taken into consideration in forming our policy, not simply of this one, but of any.

#### THE PROPOSED CARDS RENOUNCING MRS. WOODHULL.

Q. Now, Sir, do you remember expressing an opinion at one of these conferences, at a meeting a little later, that you said you had changed your mind in regard to the policy of having nothing said in public, and that you said you thought Mr. Tilton ought to publish a card? Do you remember that stage of the matter? A. I always said from the first that if anything was done it was not for me to do it alone, that it was peculiarly necessary that Mr. Tilton should publish it in the defense of his family.

Q. Now, Sir, do you remember any consideration of the subject between you in which you expressed yourself in this way that—

That the time had passed when silence concerning the Woodhull scandal was a wise policy; there was so much clamor on the part of the public as manifested in the press, so much inquiry in the church and congregation—so many demands made upon you by your friends—that the pressure was getting to be unendurable.

And then that you advised a scheme of this kind:

Now, suppose we should appeal to that sentiment in the community—that is, the sentiment that where there is so much smoke there must be some fire, as stated in this connection—suppose, for instance, that some reputable paper speaking semi-officially as authorized by the parties in the case—say THE NEW-YORK TRIBUNE—should publish an editorial to the effect that there was some ground for Mrs. Woodhull's publications, not the ground which she stated, but that that ground existed in certain stories which Mr. Henry C. Bowen had told a year or two previous against Mr. Beecher, and which Mr. Bowen himself had in a written instrument six months before—namely, April 2, 1872—retracted. "Now," said he "suppose we get some semi-editorial utterances, not signed by our own names, to that effect, that there was this ground for those stories. Let that be stated, and let us cut from the Tripartite Covenant the section which Mr. Bowen signed, retracting those stories, and let us put that into the newspapers. It will satisfy public curiosity; people will say: 'Well, we always knew there must be something in the Woodhull story, and now we know what it is; it is a collection of stories which Bowen has told, and which Bowen has retracted.'"

Mr. Tilton gives the narrative, and closes it by speaking of you as "having suggested that as a device in the middle of the Winter of 1872, to meet and counteract the Woodhull tale." Now, Sir, did anything of that kind occur on your part in the suggestion, or proposition, or statement, or conversation? A. Not one solitary sentence, or thought, or suggestion—not one. It's absolute fiction so

far as I am concerned. I heard some parts of that suggested, but I was not the man that spoke it.

Mr. Evarts [to Mr. Morris]—Now, you have a card in evidence—the proposed renunciation of Mrs. Woodhull by Mr. Tilton in an unguarded enthusiasm. What is the number of that?

Mr. Morris—No. 23.

Mr. Evarts [to the Witness]—Is that among your papers?

The Witness—I don't know. What is the date of it?

Mr. Evarts—No date to it, but it is in December, 1872, I think, somewhere about that; November or December. [Handing book to witness.] There it is.

The Witness—Well, what do you ask me, Mr. Evarts?

Mr. Evarts—I call your attention to it, and then I will ask you a question, Do you remember about that as coming up? A. Yes, Sir.

Q. As a proposition for consideration at some one of these interviews? A. Not this card, but I remember cards.

Q. Were there various cards? A. Yes, Sir; that is to say, the conversation arose in Mr. Moulton's room, and I think Mr. Tilton was not present, and I said to Mr. Moulton, "It seems to me that Mr. Tilton will never get quit of this matter so long as he has among good people the reputation of believing in those women and in their doctrines, and my idea of deliverance is in a generous and manly act to cut himself loose from them." Mr. Moulton seemed to be struck with it, and said: "Well, suppose you draw up something such as you mean;" I sketched two or three forms, tentative forms, and one that I thought was pretty good, but that is not this one.

Q. Is that your sketch or not [handing a paper]? A. I cannot say; I made three or four little beginnings, and they were unsatisfying, and I finally fell on a form of statement that I liked better, and that was proposed and declined.

Q. Now, in reference to any—I will read this card—

Mr. Morris—Have you got the number of that?

Mr. Evarts—No; I will read this little one.

Mr. Morris—I will give you the original.

Mr. Evarts—Well, I don't care anything about it.

The Witness—I don't know whether this is one of those beginnings of cards or not, Sir; I cannot tell.

Mr. Evarts—Well, here is the original exhibit. [Handing paper to Witness.] That will show you whether it is your handwriting or not? A. I think this was the first attempt, the first idea, when it occurred to me.

Q. Well, that is your writing? A. Yes, Sir; I think that I wrote it in a blank book and tore out the leaf, and went to Mr. Moulton with it, and that that gave rise to something more, until something grew out of it.

Mr. Beach—Let me see that. [Taking the paper.]

Mr. Evarts—Now, this statement:

In an unguarded enthusiasm I hoped well and much of one who has since proved thoroughly unprincipled. I

shall never again notice her, and now utterly repudiate her stories made concerning me and mine.

That was proposed to be signed by Mr. Tilton, I suppose? A. Yes, Sir.

Q. Now, did Mr. Tilton, in reference to that card, and as an objection to its being published by him, say to you that you knew it was not an unguarded enthusiasm that led him, Tilton, to Mrs. Woodhull, but that he went for the purpose of protecting his family, and himself, and Mr. Beecher, from the result of a story which she originally threatened—was that said to you? A. No, Sir, it was not.

Q. Anything of the kind? A. Nothing of the kind. This was not designed, you know, to be a card of denial of the story.

Q. Well, it speaks for itself, that card does. Now, at any of these interviews, did you say to Mr. Moulton, after the publication of the Woodhull scandal, that you had come to consult with him, Moulton, as to what it was best to do with reference to the publication—what reply could be made, if any reply could be made—did you in that connection, or in any other way, say to him that you saw no hope for yourself since that story had been published? A. No, Sir.

Q. Did you say anything in connection with that subject, or how did you express yourself, if at all? A. I don't remember. I only remember what I didn't say.

Q. Nothing of that kind was said by you in regard to yourself? A. No, Sir.

#### FUN OVER THE DELIBERATENESS OF THE EXAMINATION.

Q. At this time, or during this period of interviews, do you remember—

[Mr. Evarts here consulted with Mr. Shearman.]

Mr. Evarts—Exhibit 47, gentlemen?

[Mr. Morris handed a paper to Mr. Evarts.]

Mr. Evarts—This is not the one that I refer to, Mr. Morris. That is the one. [Indicating on a memorandum.]

Mr. Morris—What is the number?

Mr. Evarts—I don't know.

Mr. Morris—If you will tell me the number I will get it.

Mr. Shearman—47.

Mr. Morris—47 is the one that I have produced.

[Consultation and delay on the part of defendant's counsel.]

Mr. Shearman—Try 46.

Mr. Evarts—46 is the one.

Mr. Shearman—Halliday's interview—it is 47. [Further delay.]

Mr. Fullerton—Perhaps I had better cross-examine a spell, Sir, until they get ready to go on. [Laughter.]

Mr. Beecher—I am ready.

Judge Neilson—We will do that if you will agree to close this afternoon. [Laughter.]

Mr. Fullerton—We will close, as some flowers do, at 4 o'clock, and open again next morning. [Laughter.]

Mr. Morris—Have you found the number yet, gentlemen?

Mr. Evarts—In the evidence it is marked as 46.

Mr. Morris—You called for 47.

Mr. Evarts—I know.

Mr. Morris—I give you the ones you call for.

Mr. Evarts—Yes. This is 46, isn't it?

Mr. Morris—That is 46.

Mr. Evarts—I have just discovered that memorandum down there. [To the Witness.] Now, Sir, please look at that note and recall to your mind that period, if you can. That refers to an interview between Mr. Halliday and Mr. Moulton as having taken place, does it not? A. Yes, Sir.

Q. Mr. Moulton reported to you that interview, didn't he? A. Yes, Sir; I believe he did.

Q. In connection with Mr. Moulton's reporting to you that interview, or any reference to these interviews taking place before it took place, did anything of this kind occur between you and Mr. Moulton—that Mr. Moulton was not to tell Mr. Halliday the facts? A. No, Sir; no, Sir; he didn't want to tell him any more than I did.

[Further consultation and delay.]

Mr. Morris [Impatiently]—The stenographer has got down that last answer, gentlemen.

Mr. Evarts—Look at that letter, Mr. Beecher, which is without date, and say how soon after this Woodhull scandal was made public that letter was written by you to Mrs. Tilton? A. Within three or four weeks.

Q. Was that written in pursuance of any conference or in any way? A. It was upon—no, not a conference; it was written—

Mr. Beach—Well, Sir, that was the question.

The Witness [Continuing]—Upon a suggestion, not a conference.

Mr. Evarts—Well, from whom did any suggestion come? A. I think Mr. Moulton said that it would be agreeable to Mr. Tilton if I would address to his wife a note of sympathy.

Q. Did you address it, and at that time? A. He said that if I wrote a note of sympathy, addressed to her, denying that I believed in the matters, he thought it would be agreeable both to Mr. Tilton and Mrs. Tilton, and I wrote this letter and handed it to Mr. Moulton, who was not satisfied with it.

Q. Well, what became of it?

Mr. Fullerton—What is that number?

Mr. Evarts—"D, 103."

A. He said that he had sent it; he told me afterward that he had explained to Mr. Tilton the point of view from which I had written it, as I had explained it to him. I found after I had left it with him, and when I saw him again, that they had expected that I would write a letter of denial to Mrs. Tilton, and I wrote that.

Q. Well, you handed it to him and he sent it to Mrs. Tilton, as you understood? A. Yes, Sir; as I understood.

#### PLANS FOR A TRIPARTITE DENIAL.

Q. Mr. Tilton has spoken, Mr. Beecher, of an interview—toward the close of December—he gives it 1872—the period that we are now at. Now, toward the end of this month of December, or during this month of December, 1872, or November and December, 1872, do you remember any conference between Mr. Moulton, Mr. Tilton and yourself at which the matter of some public denial in some form was considered, and any papers produced or read or examined? A. Nothing in November. There was a conference the last of December.

Q. The last of December? A. Yes, Sir.

Q. Where did that occur? A. At Mr. Moulton's house.

Q. And who were parties to that consideration—who were present? A. Well, Mr. Tilton, Mrs. Tilton, and myself, in the immediate consultation, and in the preparatory stage of it, Mr. Moulton; Mr. Moulton said to me that Mr. Tilton had got a plan, he thought, by which he could make some form of statement that would clear him of the imputations that were resting upon him, and, at the same time, that the whole matter could be set in such a way before the public as would be for the furtherance of the interests all around.

Q. Yes; very well. Now, at this time when Mrs. Tilton was present, Mr. Beecher, there were some letters, were there not? A. Yes, we had—I had been requested to prepare a letter of denial to accompany a statement, if such a one should be made; and Mr. Tilton was to make a statement, also, in denial, and Mrs. Tilton was to make a statement, or rather a denial to go into some sort of statement.

Q. But it was when some letters of that kind were up that Mrs. Tilton was present? A. Yes, Sir.

Q. Now, prior to that, was there an interview between yourself, Mr. Moulton and Mr. Tilton, at which the paper or document that has been called the "True Story" was read? A. No.

Q. Was there an occasion at which that was read? A. Yes, Sir.

Q. When was it? A. Later than that.

#### MR. BEECHER INDIGNANT OVER THE "TRUE STORY."

Q. You think it was later than that? Now, we will take that interview where the "True Story" was read. Who were present at that time? A. Mr. Moulton myself and Mr. Tilton.

Q. Where did the meeting take place? A. In Mr. Moulton's bed-room.

Q. Now state what took place there? A. Mr. Moulton told me that Mr. Tilton would come around and read a

statement that he had prepared; I had heard nothing of it, except that he was preparing something; I asked Mr. Moulton what it was; he said that he didn't know—he hadn't read it himself, but that Mr. Tilton was going to read it to him and to me that night; so I went there to hear it, and Mr. Tilton—shall I give you the interview?

Q. Yes; just state it. A. Mr. Tilton began, sitting on the sofa, to fix his papers, and opened the matter to me by saying that there was one single sentence that if I could stand, he thought I should be able to stand the whole document; and then he commenced reading; he did not read the sentence; he began reading what was called afterward the "True Story," and read on until he came to that passage in which I was charged with asking Mrs. Tilton to be a wife to me, with all that is implied in that term, and he looked up and said, "That is the sentence that if you can stand, the rest of the document won't hurt you;" I made no reply; I was lying on the bed, I think; he went on reading, I getting madder and madder, and when he had finished I got up and began to walk around the room, and said nothing; but finally I think he or Mr. Moulton asked me what I had to say. [Murmurs of applause among the audience.]

Judge Neilson—Gentlemen, please be quiet there. I think I see a storm rising.

Mr. Beecher [in an undertone]—It is a mistake this time. A. [continued]—I walked up and down the room, and finally I turned to him and said—

Q. To whom? A. To Mr. Tilton. I said, very quietly, "Mr. Tilton, it is not for me to say what you shall or you shall not publish, but I want you to understand that if you publish that statement and that sentence in it, I will not stand it, nor agree to it, and it is *the end*. I will not have any such statement as that come out, and not meet it peremptorily." At that he gathered himself up, lion-like, his face flushed, and he began to storm very loud on the subject, and Mr. Moulton took him in hand instantly, and I drew back out of it, and the lion and the tiger had the fight by themselves. It was a good lively discussion, and in respect to the structure of the whole document, and in respect to the insertion of that part of the time Mr. Moulton was in the ascendancy, and part of the time I thought that Mr. Tilton had the best of it, and it went on so for a very considerable period and ended unsatisfactorily to all three of us, I am persuaded. That was the substance of that interview.

Q. As the result of that interview was there any determination to publish that "True Story?"

Mr. Beach—Oh, well! ask what was expressed.

A. Nothing said.

Mr. Beach—Wait a moment.

Mr. Evarts—Nothing further said? A. No.

Q. Did you understand that it was to be published?

Mr. Beach—I object to that. Wait a moment.

Q. Was the result of that interview in respect of whether that was to be published or not?

Mr. Beach—I submit that he cannot state the result, except by stating what was said.

Judge Neilson—Certainly, that is so. What was said on that subject, if anything?

Mr. Evarts—Well, what was said further? A. Nothing.

Q. Before you broke up? A. Nothing that I remember; there was nothing said about printing it at any rate, first, middle, nor last, that I recall.

Q. Was not that paper read as one that was proposed for publication?

Mr. Beach—One moment; I object to that.

Judge Neilson—What was said on that subject?

Mr. Evarts—How was the matter introduced? Why was the paper read to you?

Mr. Beach—That is objected to, except so far as it calls for what was said.

Mr. Evarts—Well, what was said concerning that paper before it was read to you?

Mr. Beach—Why, I understood Mr. Beecher to say that in that interview before this he was requested to come there and hear a paper that was proposed to be published.

The Witness—Then I would like to correct that statement, Mr. Beach, so far as to say that I was to hear a statement that was drawn up by Mr. Tilton, and, while I understood that it was for publication, I should not be willing to say that that was stated as the object.

Mr. Evarts—I ask when was anything said about its being published?

Mr. Beach—He says there was nothing said.

Mr. Evarts—I now ask you the question when was anything said about this being published, to which you could reply if it was published, you would not endure it at all? A. I had the impression all the while—of course not because they said so, but why should they draw up a story but to publish?

Mr. Fullerton—Well, one moment.

The Witness—I said if this is published I will do so and so, but that don't follow that they said they were going to publish it.

Q. Well, when Mr. Tilton said to you, "If you can stand one passage in it, you can stand the whole"—A. Yes, sir.

Q. [Continuing] Did that convey the meaning to you that if you could stand the publication of it—

Mr. Fullerton—No, Sir; I object to that.

Judge Neilson—You cannot add to what was said.

Mr. Fullerton—Certainly not.

Mr. Evarts—I understand perfectly.

Mr. Beach—I don't think anybody will deny that Mr. Beecher understood it was proposed for publication; I certainly don't.

Q. Well, now, that being so, then at the close, or before



your interview terminated, in what position was the question of publication left?

Mr. Fullerton—That is objected to, Sir; there is one way of getting at that, and that is by what was said.

Mr. Evarts—Well, if nothing was said!

Mr. Fullerton—Then take that, and draw your own inferences.

Mr. Beach—The witness has told you that nothing was said except what he has related.

Mr. Fullerton—He cannot go on and add what position it was left in, if nothing was said.

Mr. Beach—What do you want to know?

Mr. Evarts—I want to know if that meeting broke up with that idea, or not? That is what I want to know.

Mr. Fullerton—Well, there was nothing said on the subject; so your knowledge will have to be derived from that.

Mr. Evarts—We are always permitted, I suppose, to prove the conclusion of a conference whether a word was said ending it—you don't end everything with a word—parties go off leaving the thing incomplete for further consideration without determination; that is all I wish to make out here.

The Witness—If you will allow me, Mr. Evarts; I left before the parties left.

Q. Before they left? A. Yes, Sir.

Q. Well, when you left— A. When I left they were at it.

Q. In a talk? A. Yes, Sir; more or less of it.

Q. Well, that disposes of the matter; then, you were not there at the end? A. I was not.

Q. Now, what was the last thing that you said on the subject of that statement— A. I think the first thing and the last thing were the same.

Q. Well, what were they, what was the last? A. That if that statement in it to which he had called my attention primarily, and which then, when he read the statement I heard, substantially this, was to come out in that document or to be published in that document, I would not stand it—that I should make fight.

Q. And was that all that was said during that interview by you on the subject? A. That was the substance of what was said during that interview by me. My remarks were not many.

Q. And you left then? A. Not then; I heard them—

Q. Well, you left? A. [Continuing.] Diplomitize for some time, and then I left.

Q. And left before they had concluded their discussion? A. Yes, Sir; it had become far more quiet and temperate, and I left.

Q. Well, now, did you ever see or hear read that paper again? A. Never.

Q. Was it ever brought before you or to your notice by Mr. Tilton or Mr. Moulton as a proposed publication? A. Never.

Q. Now, we will take the occasion, Mr. Beecher, at

which Mrs. Tilton was present a part of the time? A. That was preceding this, Sir.

Q. Yes, and when was that—at the end of December? Do you know the date of it? A. It was not far from that, I think; the last or among the last days of December.

Q. Where was this interview held? A. The back chamber of Mr. Moulton's house, second story.

Q. Was an appointment—had an appointment been made for that meeting? A. Yes, Sir, there had.

Q. And by whom and in what manner had the appointment been made? A. I don't know in what manner; Mr. Moulton had made it.

Q. Well, made it with you? A. Had made it with me and Mr. Tilton, as I understood, but I cannot say anything about that.

#### A MEETING ABOUT THE TRIPARTITE DENIAL.

Q. Well, made it with you, had he? A. I went to an agreed appointment at Mr. Moulton's house for the purpose of exchanging, or rather comparing and adjusting letters.

Q. For publication? A. For publication, if it should seem the best.

Q. Now, what occurred there, and who were present at the first occurrence? A. I cannot recall whether Mr. Moulton was present at first or not, Sir—if he was, he left soon, and Mr. Tilton and I were left, Mrs. Moulton also being in and out; and I think it was desired to have Mrs. Tilton present, and Mr. Frank Carpenter, the artist, coming in about that time, he was sent around to bring her—to bring Mrs. Tilton; and I think that some conversation followed—rather, from Mr. Tilton to me there was some remarks made on the proposed document, or some statement that he was drawing up, which I did not altogether understand, for it was not read to me nor shown to me—

Q. At this time? A. At this time; nor was it in a state of entirety. I recollect his speaking of it as something that was in the process of formation, and when Mrs. Tilton came, I then drew from my pocket a letter that I had prepared in consonance with an arrangement with Mr. Moulton.

Q. What is that letter?

Mr. Shearman—Exhibit 74.

Mr. Morris—I cannot find the original, but there is a copy.

Mr. Evarts—Well, we can use that, I suppose. [Showing book to the witness.]

Q. Do you recognize that as the— A. I think that is it, Sir.

Q. Now, was there any other letter produced there, and if so, by whom, and under what form? A. When Mrs. Tilton came she came up into the room, and I think Mr. Carpenter retired, modestly, and Mrs. Tilton sat down at a little writing-table on a side of the room, and Mr. Tilton brought to her a paper written in his handwriting—I did

not read the paper, but Mrs. Tilton turned and looked up at me and said, "My friend, ought I to write this? I said to her, "Elizabeth, if that expresses your sentiments—I don't know what is in it—but if it expresses your views, I don't know any reason why you should not copy it;" and with that she sat and copied the letter out from the paper in Mr. Tilton's handwriting and signed it in my presence. Then I asked Mr. Tilton for his letter—the understanding had been that there was to be a letter all round—and he said that he had not yet drawn up any; that he had not made up his mind. Then I said, putting my letter back in my pocket, "I will wait for further developments;" and that ended the interview substantially.

Q. Did you at that time read the letter of Mrs. Tilton, so that you can— A. No, Sir; I did not read it.

Q. Did not read it; you only saw her— A. I saw her copy a paper that was in the handwriting of Mr. Tilton; I neither read his paper, nor did I read her letter—her copy.

Q. So that Exhibit D, 44, you cannot say from your own knowledge that you have ever seen it? A. I don't know what Exhibit D, 44, is; I never saw the letter that Mrs. Tilton—

Q. Well, I only want to show you—I identify that for the purpose of the evidence. A. Well, I don't know anything about this, Sir; I never read it.

Q. At that time you never read it? A. Well, I don't know that I have read it since.

Q. Well, it has been in evidence. Now, at this interview at which Mrs. Tilton was present, the interview of the 29th at which Mrs. Tilton was present? A. Interview of what?

Q. Interview of the 29th? A. 29th; yes, Sir.

Q. Or thereabouts, at which Mrs. Tilton was present? A. Yes, Sir.

Q. Get that interview separate from the other—did you say anything of this kind to Mr. Tilton:

And Mr. Beecher said that if I would never turn back upon him he would join with Mrs. Tilton in making a denial, but it will be idle for me to deny this story, leaving you at liberty at any time to publish my letter to you through Moulton; but if you will give me your word of honor that you will never, under any circumstances, make denial of no effect, I will join in such a card.

A. No, Sir, nothing of the sort; nothing.

Q. Now, did you then and there write a card at Mr. Moulton's table—this letter of yours, did you write it there? A. I brought it down there to the house in my pocket, written.

Mr. Shearman—You did not find No. 74?

Mr. Morris—No; you can use the print just as well.

Mr. Shearman—Not quite so well; we wanted to see that.

Mr. Evarts—Now, in this letter of yours to which I have just asked your attention, the letter brought there by you, occurs this sentence: "My acquaintance with Mrs.

Tilton has inspired me with the highest esteem for her modesty, propriety, and womanly graces." Mr. Tilton, speaking of that letter, says: "Mr. Beecher put in the phrase about Mrs. Tilton at my request, and I was the author of that sentence"—is that true? A. I put that sentence in from my own heart, and Mr. Tilton had no more to do with it than he had with the formation of the angels; it is absolutely my own.

Q. And it was in the letter as you brought it? A. Yes, Sir.

Mr. Evarts—Well, that paper, Mr. Morris, is made up of two notes; one is Mr. Moulton's and one—

Mr. Morris—Which paper are you speaking of?

Mr. Evarts—I suppose it is proper to call it a card; the card is preceded by a note to Mr. Moulton.

The Witness—Mr. Evarts, is not that in your own—among your own papers?

Mr. Evarts—No; that is their exhibit.

Mr. Porter—They introduced it.

Mr. Evarts—We produced it, and they put it in evidence; it was a paper in our possession, not in their possession; but it was produced by us on their call, and put in evidence by them, and so marked.

Mr. Beach—Well, I understand that this preceding letter to Moulton was on the same piece of paper?

The Witness—It was.

Mr. Evarts—That is the reason why I want to get at the original.

Mr. Morris—It is here; it has got in the wrong envelope. Is that it, Mr. Evarts? [Producing a paper.]

Mr. Evarts—Yes, that, I suppose, is the whole paper; that is it; all one paper. This is the paper. [Showing witness a paper.]

Mr. Morris—Will you let us have the other letter, Mr. Shearman—Mrs. Tilton's letter?

The Witness—I thought that this letter was a rewriting of one that I brought down there from my house; on seeing this there was a conference between Mr. Moulton and me as to the substance of the letter that should be written and the purport of it, what ground it was to cover, and I drew one up and went down there, and if I recollect right, read it to Mr. Moulton before he went out, and I think that there was some suggestion made that it should be addressed to him, or that there should be some change made, and that I went into his study, and copied off my own letter, my other letter, with this change suggested by him; that is my present impression.

Q. That is, with this note? A. Yes, Sir.

Mr. Beach—You think now you did write it there, that particular paper? A. I think I wrote the paper in the house, but not in the presence of Mr. Tilton, nor under any suggestion; I recollect in sitting on the side of the bed and reading the letter to him while he took short notes on his knee, sitting on the other side, of the bed, of the letter; and that I took it away because I would not suffer that letter to go into his hand.

Q. Well, you took the letter away? A. I took the letter away.

Q. Wherever it was written?

Mr. Beach—Both of them?

The Witness—Well, they are on one paper.

Mr. Morris—No, there are two—the original draft.

Mr. Evarts—The original draft? A. Yes; well, about taking them away, I—the letter that I had prepared the final from I took away; I don't recollect anything about the original draft.

Q. And it was not left to be used, the other papers not being prepared? A. Furnished.

Mr. Beach—Well, he has expressed that.

Mr. Evarts—Now, was there any conversation of this kind, Mr. Beecher, at this interview, in reference to your card, or its publication? I read now from Mr. Tilton's evidence:

Mr. Beecher said to me in going away that there was only one danger in publishing his card (which I suppose means this paper), which was that, on some future occasion, if he and I should be at disagreement and I should publish his letter to me through Mr. Moulton, that his card would put him at a disadvantage before the public, because it would convict him not only of the original crime, but of a subsequent lie to hide it.

A. No, Sir; no, Sir; there wasn't a word of that kind—not a word.

Q. And as a part of that conversation, did anything of this kind occur on Mr. Tilton's part:

I told Mr. Beecher that the only possibility of his ever coming into collision with me, or of my ever coming into collision with him, would be in consequence of some injustice; that I should never lift my hand against him except in self-defense, and if he should refrain from striking me I should never do him any harm.

A. No, Sir, nothing of the kind.

Mr. Evarts having stopped to look among some papers, Mr. Morris said to the Court: It is near the time of adjournment, if your Honor pleases; I don't think the counsel will have time enough to ask another question to-night the way they have been going lately.

Mr. Beach—Mr. Morris is getting humorous.

Mr. Fullerton—They could put part of it, and finish it to-morrow.

Mr. Morris—They certainly cannot add another question in four minutes.

Judge Neilson—It is a good place to stay in; it is unpleasant outdoors—stormy.

Mr. Fullerton—How, Sir?

Judge Neilson—It is a good place to stay; it is unpleasant outdoors.

Mr. Morris—If another question gets started it will so far run over the time, I am afraid, that it will be an inconvenience to some one.

Mr. Evarts—It is not worth while to introduce any new topic this afternoon.

Mr. Morris—I knew you would agree with me.

The Court thereupon adjourned until 11 o'clock on Thursday.

## SIXTY-FIRST DAY'S PROCEEDINGS.

### IMPORTANT TESTIMONY FOR THE DEFENDANT.

MORE OF THE EVIDENCE OF MR. TILTON AND MR. MOULTON CONTRADICTED—MR. BEECHER'S VERSION OF THE BLACKMAIL CHARGE AND "GRACE, MERCY, AND PEACE" STORY—FURTHER EVIDENCE TO ESTABLISH THE ALIBI IN DENIAL OF MRS. MOULTON'S TESTIMONY OF THE CONFESSION—"THE DAY OF JUDGMENT" LETTER AND THE RESIGNATION EXPLAINED.

THURSDAY, April 8, 1875.

The proceedings opened quietly to-day, the odds and ends of the previous day's testimony being first taken up.

Mr. Beecher, in the first place, denied Mr. Tilton's testimony that he had repeated to the witness the details of the consultation with Dr. Storrs; that he had ever said to Mr. Tilton, as Mr. Moulton had sworn, that he "might just as well state the fact as to put it in that way"—as it was read to him in the "True Story;" that he had ever known of or consented to the consultations of Mr. Moulton with Mr. Tracy, as sworn to by Mr. Moulton. He corroborated Samuel Wilkeson and Oliver Johnson's statements in regard to the circumstances under which the latter was employed on *The Christian Union*, denying that Mr. Tilton or Mr. Moulton had suggested or been instrumental in making that engagement. Mr. Beecher's denials of these various matters were varied and emphatic.

Mr. Evarts next turned to the charge of blackmail, and elicited from Mr. Beecher his version of the payment of \$5,000 to Mr. Moulton in 1873 and the receipt from Mr. Tilton, immediately afterward, of the communication which is known as the "Grace, Mercy, and Peace" letter. His explanation of the whole matter was very simple. His version of the circumstances under which the \$5,000 was given did not differ materially from that of Mr. Moulton, Mr. Beecher adding only to the stock of information that the person tendering the stock and drafts was a lady, and that Mr. Moulton after showing them had said: "That's what I call friendship." Mr. Beecher, after thinking the matter over, had concluded that this language was intended to be suggestive, and after gently reproaching Mr. Moulton for not speaking plainly to him had given the money. The connection between this gift and the letter was not clearly established. Mr. Beecher met

Mr. Tilton's Sunday or two after the money was paid and found him in "a gracious mood." The letter breathing "Grace, Mercy and Peace," was found on his pulpit, but he could not tell when he received it; it might have been in 1873 for all he could say to the contrary. Mr. Tilton was called upon in his examination to fix the date of the delivery of this note, and put it about the 10th of June, or the Sunday following the publication of Mr. Beecher's card of June 2, 1873. The circumstances under which it was written were given in detail, and Mr. Tilton was committed to the statement that it was soon after the publication of the card of June 2. Mr. Beecher swore to-day that on the Sunday following the 2d of June he was preaching in Boston.

The card which was published in *The Brooklyn Eagle* on June 2, in the edition which goes to press at 8 o'clock, was introduced by a statement that it had been prepared the same morning; and Mr. Beecher swore to-day that he was with Mr. Kinsella from 10 to 11 o'clock preparing the card and arranging for its publication. This testimony for the defense covers the period named by Mrs. Moulton. Mr. Beecher, in giving his testimony to-day, claimed that there had been a brief interview between him and Mrs. Moulton on Saturday night, May 31, at which language similar to that testified to by Mrs. Moulton was used, but the meaning given was varied. This interview on Saturday night Mrs. Moulton does not admit. Mr. Beecher claims that it was the one at which she kissed him on the forehead—the only time she ever kissed him in the absence of her husband.

It was in connection with his recital of the above facts of his interview with Mrs. Moulton that Mr. Beecher gave his explanation of his letter of resignation. The original of this resignation has never been produced, but Mr. Moulton submitted a copy dictated to Mr. Tilton from memory and taken down by Mr. Tilton in shorthand. This alleged copy, which Mr. Beecher declared was not correct, reads as follows:

I hereby tender my resignation of Plymouth Church. I have stood among you in sorrow for two years in order to save from shame a certain household; but since a recent publication makes this no longer possible, I now resign my ministry and retire to private life.

Mr. Beecher endeavored to put in evidence his recollection of the letter as he wrote it, but Mr. Fullerton objected, and as proof of its destruction was not forthcoming, the witness's summary of its contents was ruled out under a familiar law gov-

erning evidence. But Mr. Beecher went on to explain that, instead of being, as represented, an expression of submission and virtually a confession of guilt, it meant to express his determination to fight the matter out. He explained that on the publication of the Tripartite Agreement, Friday, May 30, 1873, Mr. Tilton was gratified and well pleased until the afternoon papers came out, criticising him as allied with Mr. Bowen to defame Mr. Beecher who, according to the terms of the covenant, had generously forgiven both. Then Mr. Tilton had prepared for publication a card, in which the letter of contrition to Mr. Moulton was embodied in full, and threatened to publish it in *The Brooklyn Eagle* of the next day, Saturday. Mr. Moulton informed Mr. Beecher of this threat on Saturday morning, and the latter at once gave him notice that in that event he intended to fight the matter out to the end. On going home he immediately wrote his card of resignation, determined that his church should not be dragged into the fight with him—in fact in writing the letter of resignation he was stripping for the fight. Later on Saturday Mr. Moulton had stopped the publication of Mr. Tilton's proposed card, and on the same night the difficulties were once more patched up by the agreement of Mr. Beecher to publish the card to *The Eagle*, which relieved Mr. Tilton of any odium as the author of the various scandals then afloat.

Mr. Beecher's letter of June 1, 1873, sometimes termed the "Day of Judgment Letter," was next explained. Mr. Evans read it, and questioned the witness in reference to the meaning of its several passages. The expression, "one who has about finished his world life," was a reference, the witness said, to the feeling often experienced by him that he had not long to live. The words "devices by which we have saved ourselves" were declared to be a reference to the \$5,000 given to Mr. Tilton in April, 1873, in order to give the latter an opportunity to remove the prejudices against him and regain public favor. "But the term 'save ourselves,'" interposed Judge Neilson, when Mr. Beecher had concluded his explanation of the clause. "It was a partnership. We were all in the same boat;" replied the witness. The phrase, "He had condoned his wife's fault," was written, Mr. Beecher said, in reference to the undue affection which he had been made to believe Mrs. Tilton had conceived for him. And by the words, "not to betray his wife or leave his children to a blight," he meant, he said, the unhappiness

that would be brought upon Mr. Tilton's family should he—Mr. Beecher—reveal the supposed state of Mrs. Tilton's feelings toward him. Mr. Fullerton interrupted the explanation of this letter by frequent objections. "I shall write for the public a statement that will bear the light of the judgment day," was merely the expression, the witness said, of a determination which he had then formed. While writing the clause, "My last Sunday, and preaching my last sermon," Mr. Beecher declared he had no intention of making a reference to any thought of suicide. It was only the expression of the idea, often in his mind, that he had not long to live. In this connection Mr. Beecher spoke of the exaltation and depression of spirits which he often experienced. The latter in his youth had amounted almost to hypochondria, a disease with which his father and ancestors had suffered.

### THE PROCEEDINGS—VERBATIM.

#### VIGOROUS DENIALS RESPECTING THE TRUE STORY.

The Court met at 11, pursuant to adjournment.

Mr. Beecher was recalled and the direct examination continued by Mr. Evarts.

Mr. Evarts—Mr. Beecher, before leaving this end of December, 1872, in regard to the notes and the "True Story," which we were considering yesterday, I call your attention now to a matter spoken of in Mr. Tilton's testimony, in which he gives an account of an interview between himself and you, in which he made statements concerning a visit or consultation on his part with the Rev. Dr. Storrs. Did any interview on that subject between you and Mr. Tilton take place? A. At any given date, do you ask?

Q. I mean at this time, in this month of December. A. I don't think there was any interview took place at any time on any subject.

Q. You remember about a letter or memorandum dated the 16th of December, 1872—I mean, that is, in evidence—of a communication made to Dr. Storrs? I call your attention to that merely to—[showing witness the article referred to.] A. What is it you wish?

Q. I don't intend to ask you anything about that. You remember it as in evidence? A. No, I don't remember it; I suppose it is in evidence in the book.

Q. Very well; that is all that I ask attention to; it is not anything in which you are concerned, according to the evidence; but after that date of the 16th of December, and during any of these conferences toward the end of December, or at any time, did you ever have any inter-

view or conversation with Mr. Theodore Tilton concerning his visit to Dr. Storrs? A. I never did.

Q. Now, Mr. Beecher, when Mr. Tilton was reading what has been called the "True Story"—the paper that he read to you, as you have stated, and the reading of which he prefaced by a reference to a particular passage in it which, if you could stand all the rest—now, when he came to that passage, or at any time in that interview, did you say to Mr. Tilton in Mr. Moulton's presence, or say to Mr. Tilton on that occasion, "Theodore, you might just as well state the fact as to put it in that way?" A. No, Sir; I did not.

Q. Did you say anything on that subject, or in that relation? A. No, Sir; not to Mr. Tilton, nor at that time to anybody.

Q. Did you afterward, at any subsequent interview with Mr. Moulton, say nothing to him concerning that passage or part of this "True Story?" A. I did.

Q. When was that? A. I don't know; it was afterward.

Q. It was afterward; well, in that season, or— A. Yes, Sir; in the immediate—near vicinity.

Q. Now, what was said between you and him on that subject? A. Well, I cannot give any detailed conversation; I only recollect but a single thing; I said that Mr. Tilton was a blockhead, or else he thought that I was, to suppose that I would stand that sentence.

Q. And was that the substance of what passed between you? A. That was about it; it was a protest on the absurdity of the thing.

#### MR. BEECHER SURPRISED TO LEARN THAT LAWYERS WERE ENGAGED.

Q. Did Mr. Moulton at or about this period, or in relation to the situation of this period, ever say anything to you in regard to any consultation with Mr. Tracy in any of these matters? A. He did.

Q. About when was that? A. I cannot give you very definitely; it was some time in December of that year.

Q. It was in the vicinity of the conferences that you have spoken of? A. Yes, Sir.

Q. In point of time. Well, Sir, what passed between you and Mr. Moulton on that subject? A. We were talking about—something about the matters, and he dropped out incidentally that he had—his lawyers had advised him so and so, and I started with surprise. "Your lawyers!" "Yes," said he; "I have—the fact is, the responsibility of this case is such that I will not carry it along any further without legal advice; but," said he, "Mr. Tracy—I called in Mr. Tracy; he is a friend of yours." And then the conversation went on; I said nothing more about it.

Q. That was all that passed on that subject? A. That was all that passed on that subject.

Q. Had you been consulted in any way in advance

about Mr. Tracy being referred to or brought into the consultations? A. No, Sir.

Q. Was he in any way designated or pointed out or approved by you as a person to be consulted in your behalf or as your representative? There never was a word said to me about it, about him, or about any other body being called in.

Mr. Fullerton—No! One moment.

The Witness [continuing]—The universal understanding was that nobody was to be called in.

Mr. Fullerton—Don't go beyond answering the question.

Mr. Evarts—I call your attention now, Mr. Beecher, to some statements that Mr. Moulton has made on this subject:

I said to Mr. Beecher that my partner, Mr. Woodruff, was very anxious that I should make some statement with regard to the Victoria Woodhull publication, inasmuch as many of his friends and many of mine, or several of his friends and several of mine, had criticised my position in reference to the story; that they not only criticised me, but they criticised the firm for my relations to the story; and I said to Mr. Beecher that Mr. Woodruff recommended me, under the circumstances, to take counsel in the matter; and I said to Mr. Beecher that I had asked Mr. Woodruff whom he could recommend, and he said that he would recommend Mr. Tracy; and I said to Mr. Beecher that I thought Mr. Tracy was a good man to consult on the subject; that he had a good cool head on his shoulders, and I thought would give good advice; and I said to Mr. Beecher: "If you have no objection, I will consult with Gen. Tracy, but to consult with Gen. Tracy, and to get his best advice upon the subject, it will be necessary to tell him the truth. If you have no objection, then, I will assent to my partner's wish, and consult with Gen. Tracy;" and he said [that is, you said] that he had no objection if I thought it was best, and I said that I did not see that I had any other course to pursue; \* \* \* I informed Mr. Beecher afterward—I said to Mr. Beecher afterward that I had told my partner that I was willing to consult with Gen. Tracy, and that he had made an appointment with Gen. Tracy.

Q. Now, Sir, did any conversation of that kind occur? A. Oh, no, Sir; it is all imaginary; the memory dead and the fancy very active.

Q. Now, after an interview, did anything of this kind occur; that is, after a supposed interview between Mr. Moulton and Mr. Tracy? Mr. Moulton says:

I said to Mr. Beecher "I told Mr. Tracy the truth of the matter, I told him the fact in the case as it was, that you had been guilty of sexual intercourse with Mrs. Elizabeth Tilton, and he said in the presence of my partner that if that was true it must be concealed at all hazards!"

A. Who said?

Q. That was said to you by Mr. Moulton? A. That I said that!

Q. No; Mr. Tracy.

Judge Neilson—Commence your question anew.

Mr. Evarts—No, it is not; it is Mr. Beecher, said.

Judge Neilson—Better commence your question anew.

Mr. Evarts—Did Mr. Moulton say anything of this kind

to you after, or in reference to a supposed interview he had had with Mr. Tracy?

I told Mr. Tracy the truth of the matter, I told him the fact in the case as it was, that you had been guilty of sexual intercourse with Mrs. Elizabeth Tilton, and he [meaning Tracy] said, in the presence of my partner, that if that was true it must be concealed at all hazards.

Did Mr. Moulton make any such statement as that to you? A. No such statement; absolutely false, through and through, from end to end.

Q. And did he continue, or further say:

And I said [that is, Moulton] that Mr. Tracy said, that although he did not recommend lying, this was one of the cases in which lying was justifiable.

A. He never told me any such thing.

Q. Now, at any subsequent interview, did Mr. Moulton state to you that

We have had a consultation at my house in my study between Gen. Tracy, Mr. Woodruff, and myself, and between Gen. Tracy, Mr. Woodruff, Mr. Tilton and myself; and that at that interview I told Mr. Tracy again the truth, and have laid before Mr. Tracy the letter of contrition.

A. He never told me anything like—that is, that, nor anything from which that could be, even by distortion, fabricated; I never said anything to him on the subject, nor he to me, except what I have narrated.

Q. Did he also say, or did he say at all, that he (Moulton) had communicated the facts to Mr. Tilton; that he had told Gen. Tracy the facts in the case, and that Theodore Tilton had denounced him (Moulton) for so doing, and had said to me that I had no business to reveal the guilt of Elizabeth to Mr. Tracy without his consent, and that I had pacified Mr. Tilton by telling him that I had considered it my duty?

A. Wholly artificial and false.

Q. Now, Sir, did you say, by way of reply, or at all, to Mr. Moulton, that you were glad that Theodore had consented to that conference, and that you hoped some good would come out of it, but that you did not see yourself what reply could be made, and that you considered, perhaps, the policy of silence was the best for all concerned? A. No, Sir; there was no such statement; it is part and parcel of the whole lie.

#### OLIVER JOHNSON'S EMPLOYMENT ON THE CHRISTIAN UNION.

Q. Mr. Beecher, how long have you been acquainted with Oliver Johnson? A. Oh, I should think 25 years, or more.

Q. And in the years 1872 and 1873 were you aware of his position and employment in connection with the press? A. I was, Sir—Oh, I have been aware of his position ever since I have lived in Brooklyn, pretty—

Q. Had you any personal intimacy? A. Well, that degree of personal intimacy which all anti-slavery men had when they were fighting the battle.

Q. Now, will you give us the history of your engagement of Mr. Oliver Johnson in regard to *The Christian Union*?

Mr. Fullerton—One moment. That is not competent evidence in this case.

Judge Neilson—I think you ought to call specific attention to what Mr. Tilton said on the subject.

Mr. Fullerton—Undoubtedly.

Mr. Evarts—I do not, with great respect, if your Honor please, see that we need be confined to that. Your Honor will observe that we have introduced the subject of Mr. Beecher's employment of Oliver Johnson as for a purpose and object that bears upon the demonstration or confession of guilt.

Judge Neilson—And that there was some conference on that subject preparatory?

Mr. Evarts—Yes, Sir; and Mr. Johnson has been examined on the subject, and as the whole point or the whole matter of the Johnson employment bears upon Mr. Beecher's share and motives in it, and otherwise it is an immaterial inquiry, it seems to me that we are entitled to show by this witness exactly what part he did take in the matter.

Judge Neilson—You have a right to show the fact, the method and mode of employment by way of accounting for it, without giving the conversation with Mr. Johnson in plaintiff's absence, and the right to call special attention to anything Mr. Tilton said on that subject.

Mr. Evarts—That by way of contradiction we understand. But the whole point of the episode is what this witness, in intent and purpose and action, did about it.

Judge Neilson—Did, yes—well, you can prove what he did.

Mr. Evarts—The fact of what he did.

Mr. Fullerton—Oh, no; it is not that.

Mr. Evarts—What is it?

Mr. Fullerton—Well, it is whether Mr. Tilton's relation of it was true. I take it for granted that is it. We have nothing to do with it in any other aspect of the case. Your Honor will bear in mind that upon objection you shut out the conversation between Oliver Johnson and Mr. Beecher upon that very subject.

Judge Neilson—As we do now, of course.

Mr. Fullerton—Yes, Sir; if Mr. Tilton has stated anything in that regard which is untrue, or which they urge is untrue, and they wish to prove it untrue, then that particular allegation is to be brought to the attention of the witness, to the end that he may disprove it. But to have the whole relation gone into between Mr. Johnson and Mr. Beecher as to his employment upon *The Christian Union*, would seem to be introducing into this case something quite foreign to the issue.

Mr. Evarts—Well, if your Honor please, my learned friend is quite out in thinking that the only materiality in this case is whether Mr. Tilton has told the truth on this question. How did it become material for him to in-

troduce it at all? The question was what the fact was; Mr. Tilton had not said anything before it was introduced, so that was not the issue. And, now, another witness can tell the truth about an occurrence if Mr. Tilton could tell the truth about it, or was called to tell the truth about it. They introduced it in their own way, and told it in their own way, the whole point being not whether Mr. Johnson had this or that salary, or this or that employment—the whole point being the action and the motive, and so the inferences justly drawable from the action and the motive of this witness that is now on the stand; that is the essence—

Judge Neilson—It is very obvious, first, that you can contradict or correct anything Mr. Tilton said on that subject; and second, you can show, as has been shown, I think, by Mr. Johnson, the general fact, without giving the conversation, the general fact accounting for his employment.

Mr. Evarts—Of course; we don't wish to be prolix about it—

Judge Neilson—No, you would not be that, Sir, any way. But I only remind you that we excluded the conversation before, and yet let in the general fact how Mr. Johnson came to be employed or through whose instrumentality.

Mr. Evarts—Now, Sir, what part, if any, did you take in respect to the employment of Mr. Johnson on *The Christian Union*, and with whom? A. I think I can state it, Sir, without going into any conversation; I will try to. There was dissatisfaction with the editorial management of *The Christian Union*, which gave rise to many requests from the publishers to me that we should have a more experienced manager. I disregarded it for a long—

Mr. Fullerton—Well, that is more objectionable than the other, Sir, a good deal.

Mr. Evarts—I don't know why; it shows the situation on which he got a new editor.

Judge Neilson—Well, that is the introduction; it perhaps may stand as accounting for that. Now, the very fact, Mr. Beecher—

The Witness—In consequence of this, Mr. Wilkeson repeatedly mentioned to me the name—

Mr. Fullerton—Now, I object to it.

Judge Neilson—Well, Mr. Wilkeson took part—in consequence of this Mr. Wilkeson took part?

The Witness—Mr. Wilkeson took part.

Judge Neilson—Without giving his conversation.

The Witness—And Mr. Johnson's name was urged upon me.

Mr. Evarts—By Mr. Wilkeson? A. By Mr. Wilkeson.

Mr. Beach—Well—

Mr. Evarts—That is the very thing, and very proper.

Mr. Fullerton—And a very improper thing.

Mr. Evarts [emphatically]—Well, now, if your Honor please—

Judge Neilson—Proceed, let it stand. [To the Wit-

ness]—And he was employed? A. Not immediately; it ran along for months; at last, after Mr. Johnson had been sounded by Mr. Wilkeson, I went to see him.

Q. Well. A. As the result of my going to see him with sundry and divers motives, he agreed to go on to the paper. When the matter was on the eve of accomplishment I mentioned it to Mr. Moulton. He expressed himself as very much pleased, thought it would be a very good thing for the paper, and he thought it would be a very good thing all around.

Q. Now, Sir, had the employment of Mr. Johnson on that paper in your action, or in your motive, any connection with the troubles between you and Mr. Tilton? A. None whatever; I employed him purely on professional grounds.

Q. Had you at any time given any instructions to Mr. Johnson concerning the treatment of *The Golden Age*, or of Mr. Tilton, in that paper, having any relation to these matters? A. I told Mr. Johnson—

Mr. Beach—No.

The Witness—The instructions to the editorial—

Mr. Beach—That is objected to, Sir; your Honor shut that out before.

Judge Neilson—Oh, yes, we had that up before.

Mr. Evarts—My question is a negative; Mr. Beecher, you will attend to it; the stenographer will please read the question.

[The Tribune stenographer read the question.]

The Witness—No, I did not.

Q. Now, Sir, I call your attention to some statements of Mr. Tilton on the subject of this employment of Mr. Johnson, page 420 of the printed book; did you at any time, Mr. Beecher, say to Mr. Tilton that in your judgment it would be necessary to have some one in *The Christian Union*, some editor of your paper who could handle that journal with more skill in reference to the scandal? A. I did not.

Q. Did you say to him, "I cannot trust any of my editors to do it; they are not friendly to you, and they do not know any of the facts in the case, and that is a great misfortune?" A. No, Sir; I did not say any such absurd thing.

Q. Did he reply, or in that connection say to you, that he could point out a way to remedy the difficulty, and proceed:

In the first place, your paper is dull and needs improvement, and if you will take my office-editor, who used to be with me on *The Independent*, namely, Mr. Oliver Johnson, who knows all the facts in this case, or at least who knows the central fact, from my having confessed it to him in the Summer of 1870, and if you will make him your managing editor, he will greatly improve your paper for one thing, and he will handle this business with necessary skill and kindness for another thing.

A. A very stupid lie and falsehood.

Q. Now, Sir, did you report to Mr. Tilton the progress, or any part of the progress, of your plans or consultations in reference to the employment, and then the final

employment, of Mr. Johnson? A. No, Sir; he was not my counselor about it in any way whatever.

#### MR. MOULTON SOUNDS MR. BEECHER AS TO HIS FINANCES.

Q. Mr. Beecher, do you remember the fact of your giving to Mr. Moulton the sum of \$5,000? A. I do.

Q. That I think was the— A. April, 1873—or May.

Q. The very end of April—or—

Mr. Morris—First of May, 1873.

Mr. Evarts—The actual payment or deposit.

Mr. Morris—That is the 1st of May, 1873.

Mr. Evarts—The actual payment of the money was, accurately, the 1st of May.

Mr. Morris—The 1st of May.

Mr. Shearman—The payment was the 1st or 2d.

Mr. Evarts—Well, thereabout. Now, preceding that act, Mr. Beecher, of the payment of the money, had anything been said to you by Mr. Moulton in regard to the pecuniary circumstances of Mr. Tilton? A. Yes, there was—I was going to say there never was anything else said; there was a continuous stream—

Mr. Fullerton—Well, now, one moment; I don't want that continuous stream poured out upon us in that kind of way. I would like to know what was said, and we will see whether it is a continuous stream or not.

Judge Neilson—That question might have been answered yes or no.

Mr. Fullerton—Certainly.

Mr. Evarts—That is what I intended.

The Witness—I understood you to ask me for what were the conversations that led up to this.

Q. No; my first inquiry was whether they took place? A. They did.

Q. That is sufficient, then, and we will go on with it. Now, as a part of these conversations, or in connection with them, did Mr. Moulton at any interviews inquire concerning your own affairs? A. He did.

Q. What did he say? A. Well, it was a friendly chat about my condition; it was not all at one time—how the paper was getting along—

Q. *The Christian Union*? A. How many subscribers we had, what was our advertising receipts, and what the value of the stock; spoke a little, either he to me or I to him; I cannot remember about that—for him to take some of the stock or something, but at any rate—

Q. Was anything said about your lecturing, and the prosperity of that? A. Yes, Sir.

Q. What was said about that by him? A. Well, I don't recall any very definite conversation about it except that I was lecturing a considerable at that time, and with high prices, and he spoke of it as, doubtless, a source of a good deal of revenue to me.

Q. In that way? A. Yes, Sir, in that friendly way.



Q. And how did you reply on that subject? A. I don't know, Sir.

Q. Now, Sir, in the course of these conversations by Mr. Moulton in regard to Mr. Tilton's—

The Witness—I may, perhaps, correct my answer by one specification; I think that I did give him some more definite information as to sums that I had received for contract lectures, lecturing for the year; I had returned in that Spring from rather an extraordinary tour.

Q. Of lecturing? A. Yes, Sir.

#### THE GIFT OF \$5,000 TO MR. TILTON.

Q. Now, in the course of these conversations concerning Mr. Tilton's pecuniary condition and needs, was anything said by Mr. Moulton concerning your bearing any part in helping him? A. Well, he rather spoke in this way, that unless there was some help extended, this matter would break down on Mr. Tilton's hands, and that if his friends could get him over the bar, the difficulty, and get him into a certain position, he thought he could carry on the paper; otherwise it would have to be abandoned; somebody would have to buy it.

Q. Well, Sir, in reference to such suggestions as that—that suggestion or conversations on that subject, what reply, if any, did you make to Mr. Moulton? A. I don't remember any special reply, except the reply that I always made to Mr. Moulton, and said that wherever I could be of any avail practically to help him by hand or voice I should be very glad to do it.

Q. Was anything said in regard to any participation by you in pecuniary aid? A. Yes, Sir, I always—it was always understood as I—

Mr. Fullerton—No; one moment.

Mr. Evarts—No, what was it you said? A. Oh, I said often—often: "If anything will be of essential help—if in your judgment, anything will be of essential help, of a pecuniary kind, I will always act—be one of Mr. Tilton's friends to help in the matter."

Q. Was anything said by you as to Mr. Moulton's taking a part, or your taking the same part as he? A. I don't recall anything very special about that, Sir.

Q. Now, previous to this payment by you of the sum of \$5,000 to Mr. Moulton, was there any interview in which he had spoken about or shown you any contribution of any other person? A. Yes, Sir.

Q. Please state what occurred on that subject? A. It was one of several interviews which I had with him touching the present prospects and conditions—he had spoken of having to pay paper bills; he told me of cases where the exigency came and there was no money to meet it, and he had to advance it himself, and on one evening when I was in his house, in his back parlor, the subject came up, and in the course of some conversation he drew out of his pocket a letter and some checks, and he showed them to me, two of them were time drafts, and I understood from him that there had been a check which

was payable on demand, and had been used for \$2,000, and these were time drafts which, as I understood, were of the sum of two or three thousand dollars each, and he also handed me, or rather opened and read me, passages from a letter in which the donor, said that the check was all the money at present at their disposal, but presumed that these time drafts would be just as useful, and it would be in their power to meet them as they came around, and then he read—then he, reading that, brought his hand down on the table with a great emphasis and enthusiasm, and looking me in the face, says: "That is what I call friendship." Then he recurred to his letter again, or the letter, and read me a sentence—

Q. Perhaps that is not material about the rest of the letter; it don't relate to this money. Now, this person—was it a gentleman or a lady? A. Lady.

Q. What did Mr. Moulton say, if anything, or you to him—what did you say to him or he to you in regard to this money, or its use by Mr. Tilton? A. I understood it to be money to be applied to the furtherance of the interests of *The Golden Age*.

Q. Well, now, about this being taken or used by him, what was said? A. I understood him to say that the check was used, but that the other two—time drafts—would not be.

Q. Do you remember as a part of this interview between you and Mr. Moulton, what is here stated by Mr. Moulton:

I said to Mr. Beecher that I had spoken to Mr. Tilton about this gift, and that Tilton said he could not accept it; that he had no way of returning the money that he knew about; and I said also to Mr. Beecher that I could not honorably take this money from this person and apply it to Mr. Tilton's use without informing him about it, and I did not see how that money could be used, therefore.

That he gives as the substance of a conversation with you; do you remember anything of that kind? A. Not in connection with that transaction.

Q. Now, after this conversation what did you do in respect to this matter of pecuniary help? A. I went home and thought about it, and blamed myself for being so stupid. It occurred to me that is what I ought to have done—

Mr. Fullerton—One moment; well—

The Witness—I made it a matter of gentle reproach—that if he wanted money afterward he ought to tell me so.

Q. Reproach to him? A. I reproached him; I said I thought he had been acquainted long enough with me, that if he thought I ought, at any time, to help—to join in with him in what he was doing, he should tell me so—that that kind of delicacy ought not to hinder him.

Q. Very well? A. And then I said to him, "I will give \$5,000 if that will put him over this pinch;" and he didn't urge it; he was very delicate about it; and I at

once set on foot the operation to get the money—I hadn't got it.

Q. You went to work and got the money by a mortgage on your house? A. I did.

Q. I suppose that is the long and short of the matter; it has been given in evidence heretofore; and did you take the money to Mr. Moulton? A. I did, in rolls—in bills.

Q. What occurred between you and him when you gave it to him? A. He was—he expressed himself as extremely gratified with it; he thought it was a very—a most friendly act.

Q. How soon after that payment of this \$5,000 to Mr. Moulton did you have an interview with Mr. Tilton, and how did that occur? A. I think it was the following Sunday morning. When I went out of my house to go to church Mr. Tilton was waiting, apparently for me, on the opposite corner, and I joined him as I went over, and he walked down to the church with me, talking in the most affectionately cordial manner—went until we got to the corner this side of the church, just on the edge of the crowd, and he went his way and I went on.

Q. Can you give that conversation, or the substance of it? A. No, Sir; I cannot recall it.

[Mr. Evarts here searched among papers.]

Mr. Morris—Are you looking for that note?

#### THE "GRACE, MERCY AND PEACE" NOTE.

Mr. Evarts—Yes, that little note. It is our exhibit, I believe.

Mr. Morris—Well, it is simply the words "Grace, Mercy and Peace." That is the whole of it.

Mr. Evarts—That I understand. It is in evidence.

Mr. Morris—In evidence. "Grace, Mercy and Peace" are the words, and it is signed "T. T."

Mr. Evarts—Now, Sir, on that same Sunday, did you receive a slip of paper that has been made an exhibit here, with the words "Grace, Mercy and Peace" on it? A. I don't know. I received a slip of paper one Sunday, but I cannot identify the day.

Q. As the same Sunday? A. That was all there was of it.

Q. How did it come to your knowledge? A. I found it lying on my little table, on the platform, by my chair, inclosed in a sealed envelope, and on opening it—it was in Mr. Tilton's handwriting—on opening it there was simply that sentence.

Judge Neilson [To the witness]—Signed "T. T."

Mr. Evarts—I think it is, Sir.

Mr. Morris—It is, "Grace, mercy, and peace;" signed "T. T."

Mr. Fullerton—It is so.

Mr. Porter—It will show for itself.

Mr. Fullerton—It has shown for itself.

Mr. Evarts—It is in evidence.

Judge Neilson—I merely asked if the witness recollected that it was signed "T. T."

Mr. Evarts—My recollection is that it is signed "T. T."

The Witness [To Judge Neilson]—Do I understand you to ask whether I recollect it, from that Sunday, or from having seen it since?

Judge Neilson—Do you recollect whether it was signed "T. T." or not?

The Witness—Oh, I don't remember. I have seen it since, and it is signed "T. T."

Mr. Evarts—That is the same one you refer to? A. That is the one I refer to.

Mr. Fullerton—We don't claim for that reason that it is original, Sir.

Mr. Evarts—Look at that, and say if that is the memorandum? [Handing witness a scrap of paper.] A. Yes, Sir; this is it, Sir. It is scriptural.

Mr. Fullerton—Yes. You need not swear to that to make it evidence.

The Witness—I didn't know that you were familiar with that work. [In reply to a remark by Mr. Beach.] I assured Mr. Fullerton of that, to save him the labor of investigation.

Mr. Fullerton—That was said for Mr. Evarts's benefit. [Laughter.]

Mr. Evarts—The memorandum is: [Reading.]

H. W. B.: Grace, mercy, and peace. Sunday morning.  
T. T.

We will have this marked now, Sir. It does not seem to have been marked before.

[The paper was marked "Exhibit D, 129."]

Q. Mr. Beecher, here is a pencil memorandum on the back of this. I don't know whether it is in your handwriting or whose it is? A. Well, if it is, it is of no account.

Q. Well, is it or not in your handwriting, do you know? A. I should think it was, Sir, but there is no reliableness in it; I have an impression that I was using the back of that for some dates—tentatively, in an investigation, without knowing now exactly what it was.

Q. There is no date to this paper itself? A. No, Sir, no date on the paper; and that on the back has no authority; I don't know the date.

Q. But you suppose that memorandum, "April 7, 1872," to be your memorandum? A. That is my memorandum.

Q. You did not receive but one of these? A. No, Sir.

Mr. Fullerton—Do I understand him to say that he does not think that is a memorandum made at the time?

Mr. Evarts—Yes, he says that, as I understand him.

The Witness—I did not make any mark on the paper at the time that I received it.

Mr. Fullerton—Well, is that a memorandum made as at the time?

Mr. Evarts—I understand him the contrary. [To the

witness:] It was not made at the time that you now say!  
A. Yes, Sir.

Q. Now, this memorandum—has it any connection with the time it was received, or was it intended to have? A. No, Sir.

Q. Mr. Beecher, Mr. Tilton has given as the date of this letter—this note—being handed to you as the 10th or 12th of June, 1873. There was but one such paper? A. But one such.

Q. Now are you able to say from your recollection what part of June, or what part of May, or what time it was sent to you? A. I know it was not on the 10th of June, in 1873.

Q. How do you know that? A. Because I was preaching in Park-st. Church, in Boston.

Q. On that day? A. Yes, Sir.

Q. Or, at least, on the Sunday, if it was Sunday—Sunday was the 1st of June, and Sunday would be the 8th? A. Well, what would the next Sunday be?

Q. On the 8th of June you were preaching in Boston?

Mr. Fullerton—The 10th, he said.

The Witness—He made a mistake in the date. It was not on the Sunday that was nearest to the 10th, that is, it was not on the Sunday that the 10th would be the nearest to.

Mr. Evarts—Well, it is agreed that it was on Sunday, and it is dated Sunday morning.

Mr. Morris—What page is that?

Mr. Evarts—432.

The Witness—I was at home on the 1st and on the 16th, and the intermediate Sunday I was in Boston.

Mr. Evarts—Well, it is only of minor significance. We want to get at about the time it was. Do you think it was as late as the early part of June? A. I have no idea, Mr. Evarts. If they should say it was in 1872, I should not know but what it was; and if they should say it was in the Spring of 1874, I should not know but it was.

Mr. Fullerton. [Having referred to the record.]-Mr. Tilton did not fix it on the 10th of June at all.

Mr. Beach—You had better correct that, then.

Mr. Evarts—What does he say about it?

Mr. Fullerton—He says he cannot fix it.

Mr. Evarts—Well, he makes it near that. I don't mean to say that he says that it was exactly the 10th or 12th, and the record shows—

Mr. Fullerton—He says that he does not fix it on that day.

Mr. Evarts—I will read this. [Reading.]

I don't know that I could fix that little scrap of paper to the 10th or 12th of June.

Mr. Fullerton—Read the question before that.

Mr. Evarts—[Reading.]

Do you recollect anything that occurred between the 10th or 12th of June, soon after? A. The 10th or 12th of June?

Q. Yes; you recollect sending something to the church? A. Do you mean a little scrap of paper?

Q. Yes, Sir. A. I don't know that I could fix that little scrap of paper to the 10th or 12th of June. The circumstances as they lie in my memory are these: the publication of this little card of the 2d of June, 1873.

Mr. Fullerton—Yes, that is what he says.

Mr. Evarts—Well, I did not mean that he fixed it exactly.

Mr. Fullerton—Well, it is hardly worth while to prove that a certain thing did not take place on the 10th or 12th of June when it is not pretended that it did.

Mr. Evarts—It is stated, as I understand, by Mr. Tilton, as having occurred at or about that time.

Mr. Fullerton—No, Sir.

Mr. Morris—No, Sir, not at all. He says he cannot fix it at or about that time.

Mr. Evarts—The question was asked him as of the 10th or 12th of June.

Mr. Fullerton—Yes.

Mr. Evarts—And he says that he cannot fix it, but that it occurred in connection with, and in reference to, something that occurred on the 2d of June.

Mr. Morris—No, that is not correct; that is not the record.

Mr. Evarts—Well, certainly I can draw no other inference than that Mr. Tilton supposed it was some time in that month of June.

Mr. Morris—He did not pretend to fix it.

#### MR. BEECHER'S INTERCOURSE WITH MRS. MOULTON.

Mr. Evarts—Mr. Beecher, subsequent to September, 1870, did you become more acquainted with Mrs. Moulton than you had been before? A. I did, Sir.

Q. In what way did your acquaintance with her arise, and on what terms of acquaintance were you after that period? A. It arose from my frequent visits to her husband at her house, and continued throughout all this period until late in 1874. I was at their house, at some periods, every day. Sometimes once a week only; sometimes once in ten days, sometimes once a month, and sometimes not for four months; so that it was an exceedingly variable intercourse; for, although the story is condensed into unity, the facts stretch out through four years, interrupted by lecture courses, and by long vacations, and by the subsidence of the difficulties; and my visits to the house were at the critical periods, and almost, or with rare exceptions, only then. And in those visits I gradually became acquainted more with Mrs. Moulton. She was a very lady-like, companionable, frank person, and made my coming a matter of no trouble to herself, so that I did not feel that I was intruding at all upon her time or hospitality, and, little by little, I came to esteem her, and finally, learning from Mr. Moulton that she was aware of the difficulties and troubles that were in existence, I conversed with her on those subjects, though but seldom, and—

Q. Now, to what degree of cordial reception and conversation did you—on what footing of cordiality did your acquaintance with Mrs. Moulton come to be, in the course of these visits? A. Well, I was received, I might say, as if I had been a connection or relation in the household; that is, while I was shown usually in the parlor, after a time I went right up into her chamber, which was in the second story front room, most of the time, and she received me, in the absence of her husband, with that strict propriety which you might expect of a lady; but, after a year or two—after a year, perhaps, I cannot be sure of the time—she not infrequently kissed me, when I met her, in the presence of her husband—never but once except in his presence; and she used to say very kind and cordial things of me to him.

Q. In your presence? A. In my presence—yes; I will not say that she made a pet of me, because she was not exactly a person that had pets, but I would say that she treated me with that familiarity with which a cousin or a sister would have treated a cousin or a brother with whom they had not had life-long acquaintanceship. Her whole intercourse with me was such as to raise in me the greatest respect and esteem for her, and I never knew her to do an unladylike thing.

Mr. Evarts [to Mr. Morris]—Exhibit 37!

Mr. Morris—37—here it is.

Mr. Evarts—Here is a letter of yours, Mr. Beecher, which has been put in evidence, dated at Peekskill, July 14, 1873, to Mr. Moulton. It is Exhibit No. 37. Now, Sir, *there* [indicating in the letter] is an expression which you used in writing to Mr. Moulton concerning Mrs. Moulton. I call your attention to it, that it may be in your mind, and then I will ask you a question about it. A. I see, Sir. Let me read this letter, please, I want to get the run of it.

Q. You can retain it and read it. A. Yes, Sir. [Reads the letter.]

Q. Now, I will read this passage. After speaking of your obligations to Mr. Moulton, you say:

Not the least has been the great-hearted kindness and trust which your noble wife has shown, and which have lifted me out of despondencies often, though sometimes her clear truthfulness has laid me pretty flat.

Now, what trait of your intercourse with Mrs. Moulton, and in her character, did you refer to in that— A. In that sentence!

Q. In that sentence? A. Well, her whole—my whole intercourse with Mrs. Moulton was one which inspired in me a sense of affectionate respect and of gratitude, because she was very sympathetic, without being sentimental, and I had the impression that she was not a sentimentalist, and did not quite like it.

Q. Like sentiment? A. No, Sir; and I suspected that in my moods of outpouring I oftentimes offended her taste, and she oftentimes made one of those incisive remarks which a woman knows how to make, and which, it

is said, "lets the wind out of that bladder" [laughter] remember her saying something like this once to me—I was groaning and saying that it did not seem to me that I could live, and I didn't want to live—"H-m-m-m," said she, "you and Frank and Theodore are all agoing to die; first, Theodore is going to die, and then Frank comes home and he is going to die, and then you come and you are going to die—I notice you all like to live well enough;" that, and little things like that, which, when persons are "testing backward and forward, don't amount to anything, but when a man has been pouring out very strongly his sentimental feelings, and has a woman coolly take him up, or rather sharply take him up, don't feel good.

#### THE PUBLICATION OF THE TRIPARTITE COVENANT.

Q. Now, Mr. Beecher, do you remember the publication of a portion of what is called the "Tripartite Agreement"—do you remember the publication in the public prints? A. I remember the whole of it being published.

Q. Well, the whole was published, as Mr. Shearman corrects me. You remember the publication? A. I do.

Q. Now, do you remember about what time that occurred? A. I do.

Q. When was it? A. On the 30th of May, I think, it was published; on Friday morning, the 30th, if that was the 30th—the 30th of May.

Q. Yes, Friday was the 30th. Now, subsequent to that publication, and connected with it, were there any interviews between you and Mr. Tilton and Mr. Moulton? A. There were interviews between Mr. Moulton and me, and Mrs. Moulton.

Q. Was this in the morning papers of the 30th? A. Yes, Sir.

Q. The morning papers? A. In the morning papers of the 30th.

Q. Well, Sir? A. I saw Mr. Moulton on that day.

Q. Did you seek him? A. No, I think not; I won't say about that.

Q. Well, where did you see him? A. I cannot say about that; I merely recollect talking with him.

Q. Whether it was at his house or not? A. Whether it was at his house, or whether we were walking, I cannot say.

Q. Very well. Now, what passed between you on that subject? A. Well, he wanted to know about it—how it came out; I told him that I could not tell him; that all I knew was that I was approached about the middle of the week by Ed. Ford, who asked me if I had any objection to the publication of that "Tripartite Agreement," and I had said to him, "Well, we are thinking the time is coming when it ought to be published;" "but," said he, "suppose it were to be published in New-York without your having anything to do with it, or any responsibility about it, would you like it?" "Well," I said, "there is

not any copy there; they cannot make it;" I didn't care anything about that, but, said he, "Suppose it was published, would it interfere with any plan of yours?" I said to him, "I think it ought not to be published without some further consultation about the matter;" I told him further—I think on the same day Mr. Cleveland came to me, and I had turned the matter over in my mind, and said to him, "Now, Mr. Cleveland, you must go right over and stop that thing; it ought not to be published in any such way." I could not imagine—I didn't myself, but Mr. Cleveland seemed to know what the source of it was that it was published; well, I think I told him also of the interview that I had with Mr. Cleveland; I am pretty sure I did.

Q. Very well. If you told him so you may state it. A. He went to THE TRIBUNE office first, and tried to stop it, and then went on up to Sam Wilkeson's house, who was the man that was going to publish it, and who had sent it, and it was about midnight, and he woke him up, and told him what they had come for, and he said Sam got up in his red night shirt, and sat in the middle of the bed and swore till everything was blue in that room, and told them to go about their business; that nothing should hinder him; that it was his lookout, and he expressed my wish that it should not be published, and he said he didn't care a damn for Henry Ward Beecher, nor for any other man on earth; that that thing was going to be published. Well, Mr. Moulton said that he had rather not—some plans that they had in regard to the publication, but that it—they must let it go, and that was the general tenor of our conversation. I also understood from him to say it was a surprise to Mr. Tilton, but he was rather glad of it. That is what I understood Mr. Moulton to say.

Q. When you say "he" you mean Mr. Moulton? A. I understood from Mr. Moulton that the publication of it had been gratifying to Mr. Tilton.

Q. To Mr. Tilton? A. Yes, Sir; he had seen him, and I had not; I don't recollect seeing him on that day. Then the next morning I was sent for by Mr. Moulton.

Q. That would be the 31st? A. That would be Saturday morning the 31st. He told me that he had a devil of a time all night pretty near, as I understood him; that Mr. Tilton on seeing the evening papers had gone up to Curtis's, and that they had talked with him and told him that he never could stand it in the world, that that would kill him, that it would appear from that publication, as the evening papers had said, that he and Bowen had been in league together spreading dirty stories about me, and that they both agreed that they had been naughty, and promised they wouldn't do so any more, according to the reading of that "Tripartite Agreement." Well, I said to Mr. Moulton, he wrote his own article in it; it was written so as to cover every ground of difference between him and us; and when he found out that the money was sure, he slipped the article out, and, just like him, fixed it so that he could

keep his little grievance to use when he wanted to use it, and have acquittance in regard to all the rest, and, "now, if there was any complaint, he ought not to make that complaint." He said the devil was to pay, and "something has got to be done." I said to him that I had come to about the end of my patience, that I didn't intend to stand this thing any longer, and that if matters must come to a head, it was just as good a time to come to a head now as at any other, and that I would not take one single step in that matter. Well, I was unduly excited for a clergyman, and he soothed me somewhat and said the matter could be got over; that he had influence, he knew, enough to hold Mr. Tilton, for he informed me that Mr. Tilton was going to publish a card that night, and that he was going to include in it a part of that memorandum, letter of apology, or whatever name you choose to give it.

Q. Of the 1st of January, 1871? A. Yes, Sir, and that it would be a very dangerous and very damaging affair. I said to Mr. Moulton: "Well, let him publish it; I am not agoing to try to patch this thing up and hold on any longer." I said a great many more things that were more emphatic than prudent, and finally he said: "He won't publish it to-night; now, you may depend on it he ain't going to publish it to-night." "Well, how do you know? I think he will. He is in a towering passion, as you say, and he will do it." "No," he said, "I can hold him; I have seen Tilton in that way before; I can hold him, and if he don't publish it to-night we can arrange it so that he won't publish it at all." "Very well," said I, "if anything of that sort is going to be done"—I gained the idea from him that he had gone down to see *The Eagle* folks about the matter.

#### MR. BEECHER'S CARD OF RESIGNATION.

Q. Who had? A. That Mr. Tilton had gone, or was going. At any rate, there was something that led me to say to him: "You ought to go right down and see Mr. Kinsella yourself; there ought to be some consultation." The reason of that was not confined to this case alone; there were other matters between Mr. Kinsella and Mr. Moulton and Mr. Bowen which led to familiar and constant intercourse and consultations, and, therefore, made it the more natural to suggest that he should have this interview with Mr. Kinsella, and he agreed to do it. He took his hat—I rather insisted upon it; one of the rare cases in which I ventured to insist upon anything—and went with me out of the house, not far from—it was between 10 and 11 o'clock on Saturday morning, and went down to my house, went up in my bed room, the same room where the pistol scene was, and we chatted, and he refreshed himself and went down the hill to *The Eagle* office, as I understood afterward from him—went down there. Meanwhile I turned it over in my mind, and sat down and wrote a card of resignation, which has not been put in exactly as I wrote it, but

nearly that, and put it in my pocket. That evening I went down to his house, on Saturday evening, and went up into his study. He came up; I understood that Mr. Tilton was below, though I didn't see him, and we sat down and he gave me the account of the interview that he had had with Mr. Kinsella, and the general result was that nothing would be done certainly before Monday night, and he hoped before that time things could be arranged. I resumed the matter again and said: "Frank, I am not going to stand this matter any longer," and I drew out of my pocket that card, which was substantially this, that—

Q. It has been given in evidence, the substance of it.

The Witness—Never mind.

Mr. Evarts—Let him state it.

Mr. Fullerton—No, I object to him stating it.

The Witness—It was the card, that having—

Mr. Fullerton—No.

The Witness—You don't want me to state it!

Mr. Fullerton—No, I want to see the original.

The Witness—So do I, but I drew it out of my pocket and handed it to him, and said to him: "If that card comes out, and is as you say it is going to be, that is going to be my answer, my resignation to my church, and that is the reason." He took it in his hand, looked at it, and read it all the way through, and a sort of started back a little, and read it again. "Good God!" said he. He read it a third time. I took it from his hands as he rose; he left the room and told me to wait a moment, and went down stairs; then his footsteps had hardly ceased to be heard before Mrs. Moulton entered the room and closed the door, threw it back loosely, and we interchanged some words, but I was in rather a stern mood, and the conversation was not general at all; but after some few words, I sitting at the table with my back to the fire-place, I don't know—I was engaged in some paper, what it was I don't know, she came up behind me near my left shoulder and said: "Mr. Beecher, I don't believe the stories that they are telling about you; I believe that you are a good man." I turned a little toward her, and looked up, and said: "Emma Moulton, I am a good man, you may be sure of that; I am a good man," and with that she put her hand around my neck gently, so as to bring my head up a little, and kissed me on my forehead, and it was certainly a kiss of inspiration; still I thought it prudent not to return it, and I sat perfectly still at the table, and she sat down upon the sofa in a moment, and then after a little Mr. Moulton came back again, and we had some slight further conversation, and I got up and went home.

#### THE "DAY OF JUDGMENT" LETTER.

On the following morning I tried to write my sermon, but I could not, for the interview and state of facts was in my mind so that I could not keep it out, and I sat down and dashed off in a moment the letter

called the "Day of Judgment" letter of the 1st of June. Knowing that he had been up for two nights, or would have been, I inclosed it in a little note to her, saying, "Don't wake him up; it is not important he should see it," and then sent it away, and then made out my notes and went and preached; I didn't see him again until Monday night, when there was the suggestion of a card that should be published by me that should take that load off from Mr. Tilton which his own article in the "Tripartite Agreement" had brought to bear upon him when it was published. I took it home for consideration. It was agreed that Mr. Kinsella should be sent for to see me in the morning, and confer with me. He came about 9 o'clock in the morning. I told him what I told them, that this matter had been fooling—

Mr. Fullerton—We don't want the conversation with Mr. Kinsella.

Mr. Evarts—You laid before him the situation! A. I laid before him the situation, and under his suggestion—

Mr. Fullerton—No, I object.

#### MR. BEECHER WRITES THE PUBLISHED CARD.

The Witness—And being advised, I drew up the card that I published, refusing to publish the card that had been sent, on account of one sentence in it. After a conversation that lasted about an hour, he left. Then being on the eve of an absence of two weeks, I made some little arrangements in the house and left, and went over to *The Christian Union* office. Monday was the editorial day when I went there habitually, and there was an absence before me, therefore I had significant duties to perform. I saw several members of the firm, and the boys, as we call them, and had an interview with Mr. Cleveland in respect to the affairs, for he by this time had become quite conversant with matters, and was intimate with me, in regard specially to the Bowen side of it, and made some arrangements that he should send my letters to Boston, and papers, and some other incidents of that kind, and then I went out on errands, and to lunch, and to meet my wife at 42d-st., and at 2 o'clock went with her to Peekskill; remained over Monday night; came down on Tuesday afternoon, getting in just in time to marry Mr. Tinley on Tuesday night; left the house at half past six the next morning; went to Boston and stayed there all the week and the next, and left Friday, and came home on Friday night. That is the little history.

Q. From Friday night of the following week, which would be the 13th? A. Yes, Sir, I was gone at Gov. Claflin's house the whole time.

Q. Now, Sir, look at that paper and say whether that is

Mr. Tilton's handwriting. [Handing witness a paper.] A. It is.

Q. Whether that is the card that was proposed to you on that Saturday night to be published by you? A. I think this is it, Sir.

### A BITTER FIGHT BETWEEN THE ATTORNEYS OF RECORD.

Mr. Evarts [To Mr. Morris]—Exhibits 107 and 108, please, Mr. Morris.

Mr. Morris—I can't find them.

Mr. Evarts—We certainly need them; they are exhibits in evidence, and I would like to have them at recess.

Mr. Morris—You are entitled to them if I can find them.

Mr. Evarts—We are entitled to have them found.

Mr. Morris—I can't find them.

Mr. Evarts—You do not mean they are lost?

Mr. Morris—I don't know; I can't find them.

Mr. Evarts—We must have them; I would like to have them and have the testimony proved upon that basis.

Mr. Morris—I understand you would like to have them. I say I can't find them. I may find them after a mere thorough examination. Those envelopes have been out and passed around so frequently—

Mr. Evarts—We have not had anything to do with them at all.

Mr. Fullerton—If they can be found, they will be, and produced.

Mr. Morris—And if they can't, they won't.

Mr. Shearman—We asked for a paper yesterday, and Mr. Morris said it could not be found, and just as soon as Judge Fullerton asked for the paper yesterday it was found.

Mr. Morris—Mr. Fullerton didn't ask for it, and no such thing occurred as you state.

Mr. Fullerton [To Mr. Morris]—Don't say one word.

Mr. Evarts—We want those papers, and we are entitled to them, they being in evidence before the Court.

Mr. Fullerton—After the imputation of Mr. Shearman, I have nothing further to say about finding papers.

Mr. Shearman—The imputation is known to every one who sits here.

Mr. Morris—It is untrue.

Mr. Shearman—A paper we asked for yesterday was not produced, and he (Mr. Morris) said it could not be found, and within a few minutes afterward I saw Judge Fullerton lean over and ask for that paper, and it was produced instantly.

Mr. Morris—It is not true.

Judge Neilson—One moment, gentlemen; they will find them during the recess probably.

Mr. Evarts—Your Honor understands that we are entitled to those exhibits. They are no more their property for the purpose of this trial than ours.

Judge Neilson—Still there is liable to be confusion among so many papers.

Mr. Evarts—I understand that.

Judge Neilson—They will find them if they can during recess.

Mr. Morris—I have found every exhibit that has been called for as readily as I could, and counsel has put me to unnecessary trouble in calling for exhibits here when they could use the printed exhibits as well, but they have not used them, seemingly for no other purpose than to give trouble, and when the counsel undertakes to make any imputation that we have withheld any exhibit, we repel it. It is untrue.

Mr. Fullerton—The imputation ought not to rest for a moment upon Judge Morris, because yesterday, when the exhibit which was called for was found, Judge Morris stated immediately that it had got into the wrong envelope, with another exhibit—an explanation which Mr. Shearman ought to have accepted at once. I don't know why he should attempt to cast any imputation of that kind on the gentleman who has the charge of those very numerous papers, and who has produced them from time to time when they were wanted, with the greatest possible alacrity, although at very great inconvenience.

Mr. Morris—The exhibit which was called for, to which reference was made, was in the envelope with another exhibit, marked in the lower part of the envelope, and misplaced in the package, as your Honor will see, not marked as the others were, and there were two in the same envelope, and I didn't find it at the time. I looked over them again, and found it, and when Mr. Shearman makes the imputation that he does, I say it is utterly and absolutely false.

Judge Neilson—In other words, that he is mistaken, and ought not to have made it.

Mr. Morris—No, Sir; I say it is untrue.

Judge Neilson—Well, we will leave it there.

Mr. Fullerton—Counsel clothes his language so as to make it offensive.

Mr. Shearman—It cannot be blotted out.

Mr. Evarts—Nevertheless, we cannot consent to be put in the position of asking favors when we desire original papers which are put in evidence against us to be present at the trial for use by counsel.

Judge Neilson—Some one must keep the papers, which are very voluminous. There will may be delay in finding for them a given paper. The counsel should do all he can in that regard, and that is all.

Mr. Evarts—We cannot be put in the position of asking favors.

Mr. Morris—And we don't want you to ask in that offensive way, either.

Mr. Evarts—I have not asked for them in an offensive way.

Mr. Morris—Yes, you did; and you have been offensive in your persistency in reference to them, and casting an imputation that I didn't try to find them. I say it is offensive.

Mr. Evarts—Have you got the papers? if so, let me have them.

Mr. Morris—I will let you have them in due time.

Mr. Evarts—I will take them now.

Mr. Morris—You won't take them now.

Mr. Evarts—Well, the Court will direct you, the

Mr. Morris—Well, the Court will not direct me.

Mr. Fullerton—This ought to be enough. I stated to Mr. Evarts, in that courteous way I always try to address him, that if these papers were in existence, as doubtless they were, they would be found and handed to him. That is all he could ask of us. It is not an extraordinary thing, in handling so many papers as have been exhibited in this case, that some of them should be momentarily displaced; and after that was said, in a way which certainly gave no offense, and when it was given as an assurance of good faith, Mr. Shearman saw fit, purposely, to make a very offensive remark, entirely uncalled for, which did not facilitate the looking up of the paper or its production, but was calculated to annoy. Indeed, it was an insult, because the explanation which I have already said that Judge Morris gave yesterday, when that paper was found, ought to be satisfactory to any gentleman. Now, that Judge Morris is purposely keeping back exhibits in this case, is an insinuation that is absurd in the extreme. The paper has been given in evidence; it is on record, and what object could he attain by withholding it? None at all. As a matter of course he would feel as unpleasant as any person could possibly feel if one of these papers was lost. The paper, I say, they are looking for now, and which they desire, has been put in print, and although they may wish the originals, and are entitled to them, yet as a matter of course there would be nothing lost of advantage to the defendant if the papers were never found. But I repeat now, for Mr. Evarts's benefit, what I said before, that every exertion will be made to find these exhibits, and when they are found we will take great pleasure in passing them over to him. But to say that they want them now, and that they *must* have them now, and to make that demand, and to predicate that demand on what Mr. Shearman was pleased to say a moment ago in a very offensive way, and in language which I think he will regard when he comes to think of it, seems to me out of place.

Mr. Morris—I will say, further, that two of our exhibits, or one of our exhibits, has been lost. It was passed over to the other side, and marked by them for identification. Whether they have returned it, or not, I don't know; but I have looked through every paper connected with this case, and it cannot be found, and that is the statement made by Mr. Beecher (which it was understood could be referred to and put in evidence from the printed copy) of Mr. Bowen's terms, having been put in in that way by the other side a few days ago; these two papers have been lost. They were in their possession, passed over to them, and marked by them for identifica-

tion, and whether they have been returned, or not, I don't know, but I cannot find them.

Judge Neilson—There seems to be some confusion.

Mr. Shearman—I am prepared, your Honor, with an affidavit from my clerk, if necessary, that he returned them to Judge Morris.

Mr. Morris—They may be. I do not say they were not returned, but I say they are papers of the greatest importance to us, and that we want them, and they cannot be found.

Mr. Shearman—They have been returned, no doubt. They have been found; as to that there is no doubt, for I made inquiry specially in regard to them. With reference to what has been said about myself, may it please your Honor, I think I have said nothing more than what is perfectly consistent with the truth. I notice my friend, Judge Fullerton, has not denied the statement I made about him, which casts no imputation upon him at all.

Mr. Fullerton—When you cast an imputation upon Judge Morris, you are casting it upon me.

Mr. Shearman—Judge Morris has repeatedly cast imputations upon me, to which I have not before replied, and I am not now going to reply; but there is no reason in the conduct of Judge Morris in this case from the opening, toward me, that should call from me any special forbearance toward him.

Judge Morris—I don't ask it.

Mr. Shearman—But there was a reason yesterday why that paper should not be produced when we wanted it; we all saw it.

Judge Neilson—I recollect an occasion at the close of our proceedings one day, when Mr. Morris was quite persistent that counsel on the other side should return a certain paper; and, after some inquiry and consultation, he was assured it had been returned; Judge Morris took part in this assurance, and there may have been some mistake here, or there may have been some confusion with regard to the paper, and it would not be at all surprising if there should have been.

Mr. Porter—There was no mistake, and he found the papers, and I returned them with my own hands.

Judge Neilson—It is an easy matter to misplace a paper.

Mr. Evarts—I am always ready, if your Honor please, to concede the largest freedom to accident and circumstances; but, nevertheless, we do not wish to have it put as a favor that exhibits are produced to us.

Mr. Morris—Nobody has pretended to do anything of the kind.

Mr. Evarts—Well, that is all right.

Judge Neilson—We have proceeded hitherto so pleasantly, gentlemen, that I am quite persuaded counsel will, on reflection, understand each other, and that there will be no misunderstanding. Will gentlemen get ready to retire?



Mr. Morris [To Mr. Evarts]—Now, then, I ask you for the paper that you have now—I ask that it be returned.

Mr. Evarts—The witness produced it.

Mr. Mallison [Clerk of the Court]—The Court will now take a recess until 2 o'clock.

# THE CARD MR. BEECHER REFUSED TO SIGN.

The Court met at 2 p. m., pursuant to adjournment, and Mr. Beecher was recalled.

Mr. Evarts [To Mr. Morris]—Mr. Morris, have you those exhibits now?

[Mr. Morris produced the exhibits called for.]

Mr. Evarts—This exhibit, No. 75, Mr. Beecher, you say is the card that was shown to you [handing witness Exhibit No. 75]. Now, the next morning, was any card prepared that was actually published? A. Yes, Sir; the next morning after Sunday.

Q. The next morning after Sunday? A. Yes, Sir.

Q. Monday morning; and where was that card prepared that was actually published, and who took part with you in finally modeling it for publication? A. It was prepared in my study, at my house. Mr. Thomas Kinsella took part in it.

Q. And yourself? A. Yes, Sir.

Q. How came he to be there? A. On invitation through Mr. Moulton.

Q. In consequence of the call, as you understood, that had been made on Saturday? A. I understood Mr. Moulton would—

Q. Would call upon him? A. Would call upon him and suggest to him my wish.

Q. At any rate, he came to your house? A. Yes, Sir.

Q. Without any direct invitation from you on the subject other than that? A. Other than that.

Q. And do you know whether he brought with him that card, or the text of that card, or whether you had it already there? A. My impression is that I had it from the night before.

Q. Now, with that before you, was finally a card prepared and published? A. There was.

Q. At what time of day was this interview between you and Mr. Kinsella at your house? A. At 9, from 9 to 10.

Q. How long a time was occupied in it? A. About an hour—a little more or a little less.

Q. Now, look at this paper of Monday evening, June 2, and say if that card, as there printed, is the card as settled between Mr. Kinsella and yourself? [Handing witness a copy of *The Brooklyn Eagle* of June 2, 1873.] A. This is it, I should think, Sir; I think I recognise it.

Mr. Evarts—We ask to put this paper in evidence.

Judge Neilson—Well, Sir.

[The copy of *The Brooklyn Eagle* of June 2, 1873, was marked "D, 130."]

Q. Mr. Beecher, were you familiar with the hours of publication of the first issue of *The Brooklyn Eagle* at

that time? A. I know generally. I don't know how long my knowledge has extended back.

Q. What hour? A. Between one and two, the first edition, the editorial page.

Q. And others later? A. The first form goes between one and two, I always understood; the others later, and continuously, in successive editions, third and fourth.

Q. Now, Sir, what clause in that card as prepared—suggested in that form to you, as you have testified—is omitted here? [Referring to Exhibit D, 130.] A. As I published the card it reads: "If that document," alluding to the "Tripartite Agreement," "should lead the public to regard Mr. Tilton as the author of the calumnies to which it alludes, it will do him great injustice." As it was proposed and I refused, it was: "If that document should lead the public to regard Mr. Tilton as the author of the calumnies to which it alludes, or any other calumnies against me—" I would not put my pen to that.

Q. Now, at the commencement of the letter—[showing witness the paper.]

Mr. Shearman—The last clause of the letter.

Mr. Evarts—The last clause of the card as you published it, and the last clause as proposed to you; read the first clause as you published it. A. "I am unwilling that he (Mr. Tilton) should even seem to be responsible for injurious statements, whose—;" "I am unwilling that he should even seem to be responsible for injurious statements whose force was derived wholly from others."

Q. What was the final clause as proposed in the card that you rejected? A. "Mr. Tilton's course toward me has been that of a man of honor and integrity."

Q. Well, how about that clause? A. I wouldn't sign it.

Q. Now, Mr. Beecher, when on that Saturday night you informed Mr. Moulton that your resignation would be published if this matter were proceeded with, and he went down stairs, did he say anything about seeing Mr. Tilton, or did you know that he was going to see Mr. Tilton in any way? A. I probably knew he was going; I don't recall any significant conversation respecting it.

Q. Did you know Mr. Tilton was in the house? A. I knew it, Sir, but I cannot say certainly whether I knew it before—at the beginning or after.

Q. Now, after he had seen Mr. Tilton, did Mr. Moulton report to you any observation of Mr. Tilton's in connection with this resignation of yours? A. No, Sir; he did not.

Q. This paper, which was a draft or proposal of resignation—proposed resignation—what became of it. Mr. Beecher—this paper that you had, that you took out and read to him; what became of it? A. I don't know, Sir; it went the way of pretty much all my papers which I try to keep.

Q. You are not able to find it? A. No, Sir; it is destroyed, I have no doubt.

Q. Now, here is a supposed contents of it, which has

been given in evidence. Mr. Moulton has given this as the contents of that paper that you read. [Handing witness the book.]

Mr. Fullerton—Just one moment.

Mr. Evarts—Isn't it!

Mr. Fullerton—Yes.

Mr. Evarts—Well!

[Mr. Fullerton and Mr. Beach consulted together.]

Mr. Fullerton—Go on.

Mr. Evarts—Is that a correct statement of it? A. Not quite.

#### MR. BEECHER'S PURPOSE IN THE PROPOSED RESIGNATION.

Q. What variation would you make in it, or how would you state the resignation? A. It reads, "I tender herewith my resignation of Plymouth Church." It is difficult to resign a church that way; it should be "pastorate," or something to that effect. "I have stood among you in sorrow for two years," he says, "in order to save"—"striving to save," if I recall it right, "from disgrace"—they have it "shame"—"a certain household; but since a recent publication makes this no longer possible, I now resign my ministry, and retire to private life." I think, with those inconsiderable changes, this is substantially the card. When you made that proposition to Mr. Moulton of your purpose of resignation, did you so intend to do if this publication was made? A. Just as sure as the Lord lived I should have done it.

Q. What was your purpose in that resignation, under that contingency?

Mr. Fullerton—I object to that, Sir; that is not proper.

Mr. Evarts—What circumstances attended the situation which led you to plan and propose to execute the resignation of your place as pastor?

Mr. Fullerton—That is objected to, Sir; they are already given in evidence.

Mr. Evarts—No, they are not.

Judge Neilson—Well, if you ask what circumstances, if any, other than those already stated. Perhaps you have got it all.

Mr. Evarts—Well, if your Honor please, we have a great many circumstances that are given in evidence, but we have not as yet given in evidence what of those circumstances operated upon his mind. That is the only point of my inquiry.

Mr. Fullerton—He has already stated, Sir, the reason why he proposed to resign; it was the publication of that proposed card. Now, that is in evidence, and that seems to cover the whole ground. Beyond that he certainly cannot go. Any hidden purpose or meaning in his mind is not competent proof at the time which was unexpressed; therefore we object to it.

Mr. Evarts—Whenever the intent with which an act is to be construed becomes a proper matter of evidence, and since the laws of evidence have allowed the party

himself to speak, it has been well settled that he can speak concerning his intent.

Judge Neilson—As to all papers or contracts—papers or instruments which do not amount to a contract.

Mr. Evarts—Yes.

Judge Neilson—Or which do not create an estoppel.

Mr. Evarts—That we understand to be the limitation.

Judge Neilson—As to informal papers, I think he may state his intent. Well, let the witness answer this question.

Mr. Fullerton—Is he now permitted, Sir, to give a reason other than the one contained in the card itself?

Judge Neilson—There may be an additional reason. Yes.

Mr. Fullerton—One unexpressed at the time!

Judge Neilson—Yes.

Mr. Fullerton—Your Honor will bear in mind the card alleges the reason in order to save a family from disgrace.

Judge Neilson—"I have stood for two years," and so on. I think he may answer it.

Mr. Evarts—You may answer, Mr. Beecher.

The Witness—I don't—

Mr. Evarts [To The Tribune stenographer]—Won't you read the question?

The Witness—The question is some way back, and there has been something said since.

The Tribune stenographer read the last question, as follows: "What circumstances attended the situation which led you to plan and propose to execute a resignation of your place as pastor?" A. The publication of that card would compel at once a consideration of the whole subject by my church, and put me upon trial in that church, and, as I believed then, would destroy that church, and, at any rate, any defense of myself that should be necessary on the publication of that card I could make better standing as a private man, fighting a private man, than standing hampered by the restrictions and relations and duties of a pastor in that church.

#### THE "POISON" INTERVIEW OF JUNE 2 DENIED.

Q. Now, Mr. Beecher, what is your ordinary lunch or midday dinner hour? A. At 12 o'clock in the country and 2 o'clock in the city.

Q. What length of time, in your visits to Peekskill, was it your habit to allow for passing between your residence here, with your wife, to the station at Forty-second-st.? A. It would depend upon whether we went by the cars or by a hack; if we went by—or whether I went alone or with my wife.

Q. Well, I have spoken now of with your wife? A. When I went with my wife, two hours was the time we usually allowed—about two hours, walking down to the ferry, and then taking a conveyance on the other side.

Q. Now, what was your habit in regard—was this 2

o'clock train a frequent train taken by you? A. A regular train.

Q. A usual train? A. No, there was no—it depended—

Q. I only ask you, was it a frequent train with you in going to Peekskill? A. It was not an unfrequent train; it was one of the convenient trains. When I wished to spend the day at Peekskill I took the 8 o'clock train; when I wished to spend the forenoon in Brooklyn I took the 2 o'clock.

Q. And it was a common thing for you to take the 2 o'clock train? A. Yes, Sir.

Q. What was your habit in taking that train as to having your lunch or dinner at your house after leaving, or taking it as a part of your trip across? A. There was no habit about it; it was a matter of convenience. If we went over to *The Union* office, on my way up—that is provided it was a Monday, I should go over to *The Union* office and look after my editorials, and take my lunch, and then go up to the train.

Q. Now, Mr. Cleveland—I don't know whether it has been stated or not, but Mr. Cleveland was the managing editor of *The Christian Union*? A. He was the managing business man.

Q. Managing business editor, do you call it? A. No editor, Sir.

Q. Well, business manager? A. He was the business manager of *The Christian Union*, had charge of the printing presses, and the type room, and the paper, and everything of that sort, and saw to the whole mechanical execution, and also had a certain relation to the advertisements.

Q. At that time it was so? A. At that time.

Q. Now, at what hour of the day and for what length of time were you in Mr. Cleveland's company on this Monday? A. I was there about 11 o'clock, and, as near as I can recollect, spent from three-quarters of an hour to an hour; it was not all with him.

Q. Was it at the office? A. At the office.

Q. Now, during the forenoon of that Monday, the 2d of June, were you at Mr. Moulton's house? A. I was not.

Q. On your return to Brooklyn on Tuesday night, when you married one of your parishioners, I suppose, were you at Mr. Moulton's house? A. No, Sir.

Q. And did you see Mr. or Mrs. Moulton on that Monday, or on that Tuesday night of that week? A. Neither of them.

Q. Now, how soon after your return, which was the 13th day of June, as you have stated it, Friday of the succeeding week—how soon after that did you have any interview with Mr. Moulton? A. I don't recall, Sir.

Q. How soon with Mrs. Moulton? A. I don't recollect.

Q. Now, that morning, before Mr. Kinsella came and you were engaged with him, did you make any call, or go out of your house? A. No, Sir.

Q. Do you remember the time of sending the telegram? A. Yes, Sir.

Q. Who was the messenger that took that? A. My wife.

Q. And while she was away were you in the house? A. I was; I had my preparation to make for my absence—contemplated absence; I was going to have a little kind of vacation, which I looked forward to with great pleasure.

Q. What length of time does it take you, or do you allow usually in your movements, to go from your house to the office of *The Christian Union*, in New York? A. About three-quarters of an hour, varying. I could go there—if I was as young as I was 20 years ago—I could go there in 20 minutes.

Q. But as matter of fact? A. But as the dignity of age comes on, I make it longer and longer, until it takes now about an average of three-quarters of an hour.

Q. Now, on the morning of the 4th of June, following the evening of the marriage, by what train, and how, did you go to Boston? A. The 8 o'clock train in the morning, leaving my house at half-past six.

Q. And where and with whom were you resident during the whole period of your absence till your return? A. Gov. William Claflin's, at Newtonville, eight miles out of Boston.

Q. And what public occupations had you during that absence there? A. I went specially to deliver a sermon before the Society of Religious Inquiry in Harvard College. It was at the invitation of the students that I made that little trip, and then afterward, in order that I could preach it on Sunday and not a week day, I arranged an exchange with the Rev. Mr. Murray, then of Park Street Church. He preached for me in Brooklyn, and I preached for him in the morning at Park-st., and at night I went over to Cambridge and delivered the sermon before the students.

Q. The Monday following? A. No, Sir; Sunday night, of the same day.

Q. Oh! I beg pardon then. Now, on the 1st of June, which was Sunday, you left a letter there, with a note to Mrs. Moulton, you have stated? A. I did.

Q. Did you have any interview with Mrs. Moulton on that day? A. No, Sir.

#### AN ACTUAL INTERVIEW WITH MRS. MOULTON ON MAY 31.

Q. And on Saturday, the 31st, had you any other interview with Mrs. Moulton than that which you have stated, being in the evening of the 31st? A. Only a brief interview that I had with her in the morning.

Q. What time and under what circumstances? A. Well, it was waiting for Mr. Moulton to come in. He was out, for some reason, when I first went there.

Q. What hour of the day? A. Well, I should think it was between 8 and 9 in the morning.

Q. Did Mr. Moulton come in? A. He did.

Q. How long were you there with Mr. Moulton or Mrs.

Moulton, or both of them? A. Well, with both of them together I should think perhaps an hour. I left about 10 o'clock.

Q. And after that hour you were not there until the evening? A. No, Sir.

Q. What part of that hour was spent in Mrs. Moulton's company? A. I should think perhaps fifteen minutes or twenty.

Q. And how did that interview occur and go on, at their house—the interview with the one or the other? A. I don't remember the consecutive interview; it was an interview in which I did pretty much all the talking, and I spent my time in denouncing Mr. Tilton very largely.

Q. What was the subject of the interview between Mr. Moulton and yourself? A. Mr. Moulton!

Q. Mr. Moulton and yourself? A. Mr. Moulton and myself—the subject of the interview was the preparation—I mean the forthcoming card which I understood Mr. Tilton was preparing, and which I told him would be a finality, if it was to be such as he intimated it would be; and then came the discussion; he, as he often did, rebuked me for discouragement—that I never gave him any hope; that he had managed Tilton in many and many a passionate hour, and that he had it in his power to do it again, and he should do it; I won't say that it was at that interview—but no matter.

Q. Well? A. I don't recall it as belonging to that interview.

Q. Now, what part had Mrs. Moulton in any conversation or interview that morning? A. Only that which preceded this while I was waiting for Mr. Moulton.

Q. Well, what occurred at that time? A. There was nothing very significant, more than that I was more than usually angry rather than sorry, and I walked up and down the room, and said that this state of things was an intolerable state of things, that I had expended pretty much all the patience I had, and that I was not going to stand this thing much longer—that it was a living death, and a man might as well die at once as to be constantly ground and harrowed with these things—settled and never settled, arranged and never arranged; and that I believed Mr. Tilton kept this thing in hand all the time to make trouble, and that he leaked and leaked, and did it a purpose; and, when he was good-natured, made fair conversation and fair promises, but when the world went hard with him, or he fell into his passionate outbursts of anger, then he said ugly things, and they came to me, provoking my friends, and I would go to Mr. Moulton, and Moulton would smooth me down, and explain them away, and make me think there had been some mistake, and then it would come around precisely the same way again; and for my part I had borne it about as long as I intended to. It was about that.

Q. Mr. Beecher, here is a proposed card; it is in Mr. Tilton's handwriting, I suppose, is it not?

Mr. Morris—Is that the one you inquired about before recess?

Mr. Evarts—No; it is one you handed to me, No. 25. This is in evidence, as I understand. [To the witness.] Please look at that card and say whether that was shown to you, or considered by you, at this or any other period? A. I remember never to have seen this.

Q. That was not shown to you or made the subject of talk with you? A. No, Sir; I never saw that extract from what was called the "Apology" until I saw it in the "Bacon letter."

Mr. Evarts—That is all on this matter. There are two of those, Mr. Morris, [To the witness.] Oh, Mr. Beecher, this day, this 1st of June—2d of June, Monday—were your servants at the house, or had they already left? A. They went up the week before, on Thursday, to Peekskill. There was nobody in the house but my wife and myself.

#### THE LETTER OF JUNE 1 EXPLAINED.

Q. Mr. Beecher, have you a printed copy of this Exhibit 26, which is your letter of June 1, 1873? A. I have, Sir.

Q. I will read this letter, as there are passages in it that I wish to ask you about: [Reading.]

SUNDAY MORNING, June 1, 1873.

MY DEAR FRANK: The whole earth is tranquil and the heaven is serene, as befits one who has about finished his world-life. I could do nothing on Saturday—my head was confused. But a good sleep has made it like crystal. I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt changes, and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves. It is only fair that he should know that the publication of the card which he proposes would leave him far worse off than before.

The agreement was made after my letter through you was written. He had had it a year. He had condoned his wife's fault. He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife nor leave his children to a blight. I had honestly and earnestly joined in the purpose. Then this settlement was made and signed by him. It was not my making. He revised his part so that it should wholly suit him, and signed it. It stood unquestioned and unblamed for more than a year. Then it was published. Nothing but that. That which he did in private when made public excited him to fury, and he charges me with making him appear as one *graciously pardoned by me!* It was his own deliberate act, with which he was perfectly content till others saw it, and then he charges a grievous wrong home on me!

My mind is clear. I am not in haste. I shall write for the public a statement that will bear the light of the Judgment Day. God will take care of me and mine. When I look on earth it is a deep night. When I look to the heavens above I see the morning breaking. But, oh! that I could put in golden letters my deep sense of your faithful, earnest, undying fidelity, your disinterested friendship! Your noble wife, too, has been to me one of God's comforters. It is such as she that renews a waning faith in womanhood. Now, Frank, I would not have you waste

any more energy on a hopeless task. With such a man as T. T. there is no possible salvation for any that depend upon him. With a strong nature, he does not know how to govern it. With generous impulses, the undercurrent that rules him is self. With ardent affections, he cannot love long that which does not repay him with admiration and praise. With a strong, theatric nature, he is constantly imposed upon with the idea that a position, a great stroke, a *coup d'état*, is the way to success.

Besides these he has a hundred good things about him, but these named traits make him absolutely unreliable.

Therefore there is no use in further trying. I have a strong feeling upon me, and it brings great peace with it, that I am spending my *last Sunday* and preaching my *last sermon*.

Dear good God, I thank thee I am indeed beginning to see rest and triumph. The pain of life is but a moment; the glory of everlasting emancipation is wordless, inconceivable, full of beckoning glory. Oh! my beloved Frank, I shall know you there, and forever hold fellowship with you, and look back and smile at the past. Your loving,

H. W. B.

Q. Now, Mr. Beecher, the first sentence of this letter speaks of the earth as tranquil and the heaven as serene, "as befits one who is about to finish his world-life." Did you refer to yourself in that sentence? A. Yes, Sir.

Q. In what sense did you refer to yourself and your world-life as about finished? A. Mr. Evans, I never am carried up by excitement very high, that I do not feel as though I could touch the heaven by reaching my hand out. It is not an expression just characteristic of this alone, but characteristic of almost my whole life, and Sabbath days especially, and, above all, such Sundays as I see, looking out over the bay, and over all the Orange Hills, and the great sleeping city on the other side. I am lifted up, and it seems sometimes as if I was there—

Q. Does that refer to any purposed termination of your life?

Mr. Fullerton—One moment. The question remains unanswered. Let him answer the question.

Mr. Evans—Well, Mr. Beecher, you may answer further, then.

The Witness—What further?

Q. In what sense, I ask, do you there refer to yourself as one who has about finished his world-life? A. [Reading] "The whole earth is tranquil and the heaven is serene, as befits one who has about finished his world-life." I felt as though I was very nearly through for the hundredth time in that trouble.

Q. Has it any relation to any purposed or meditated termination of your life by yourself? A. Not the slightest. The last sentence ought to be an answer to that.

Q. Well, we will take the fact. Now, I ask your attention to this clause:

I have determined to make no more resistance. The doctor's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt changes, and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves.

Now, Sir, what situation and what devices had you in mind in that clause of your letter?

Mr. Fullerton—That I object to, Sir. There is no hidden or occult meaning in that passage at all which needs explanation. Surely this witness is not at liberty to go over this letter sentence by sentence, paragraph by paragraph, and give us some extraordinary poetic definition of terms used there, out of the ordinary sense, and violating the context. That is not admissible, Sir. It is very plain what this means. There can be no misunderstanding about it at all, and, therefore, I object to any translation of it into any other kind of language.

Judge Neilson—We had this question up on the direct examination of Mr. Tilton, and we did not confine ourselves to the mere question of ambiguity in reference to his letters; but, although the learned counsel opposed objected very strenuously, this doctrine was then applied of which he now takes advantage, and I ruled that Mr. Tilton, although he had written despairing letters, accusing himself and denouncing himself as unworthy, and closing with "Yours, despairingly," was at liberty to explain—to explain what he had reference to in using those extraordinary expressions, and I think I said something like this: that a writer could be allowed to state the circumstances and the state and frame of mind he was in when he wrote, as for example, that he had the gout, or had been three nights without sleep, or the like, and thereupon Mr. Tilton was allowed to explain those passages, and to explain his religious sensibilities in connection with them.

Mr. Fullerton—Well, Sir, if a man had the gout, that would explain everything that he might say of every kind, and it would not be necessary to put any questions on that subject; but your Honor will perceive that that is a different question from the one that is involved now, a very different question. Mr. Tilton was asked whether certain letters which he wrote were written at a period when his religious views were in a state of transition. That is all that he was asked upon that subject. I should have no objection to a kindred question being asked now; but that is not the question before the Court, and if your Honor will permit the stenographer to read it, you will see that it is a far-reaching question, and that it enables the witness to go out to the Orange Hills again—for aught I know, to go into an explanation entirely foreign from the real subject before us.

Judge Neilson—Take the expression in this clause, "the devices by which we have saved ourselves"—you agree that he could explain that?

Mr. Fullerton—Why, Sir, we have been now six weeks ascertaining what the devices were; I and my friends on the other side, I think, all agree upon that subject. They are very plain. I do not think, at this late day, there is any doubt about what the devices were which were spoken of here.

Mr. Evarts—Very well. We may ask what he had in his mind when he wrote this letter.

Judge Neilson—I think we will take it.

Mr. Fullerton—I suppose that the fair legal and natural inference would be that he had reference to those devices which had been practiced for several years prior, and which on very many occasions had been alluded to and had been the subject of conversation between these parties; and I don't think that he ought to be allowed to travel out of the record of these years to get at any other signification of the word "devices" or "device."

Mr. Evarts—I do not think my friend is right in stating, as a legal presumption, that a man always has in his mind everything that has occurred.

Mr. Fullerton—No; but if it is in reference to a lawsuit, then, perhaps, he had better keep it in his mind, if he is going to deal with it afterward. But here we have these parties meeting, day after day and week after week, closeted together, getting up scheme after scheme and device after device, to accomplish a given end. It goes on in that way for years and years, and then one party connected with the affair writes a letter in which he speaks of the device which they have resorted to, and now the witness is asked on the stand, if you please, what the word "device" means; when we have spent so much time here in proving these very devices—in showing what they were, who were the parties to them, and the objects to be accomplished by them. I think, Sir, that these transactions, running through these various years, ought to interpret themselves in the light of the surrounding circumstances which have been given in evidence.

Judge Neilson—Let the stenographer repeat the question.

The Tribune stenographer read the question as follows: Now, I ask your attention to this clause:

I have determined to make no more resistance. Theodore's temperament is such that the future, even if temporarily earned, would be absolutely worthless, filled with abrupt changes, and rendering me liable at any hour or day to be obliged to stultify all the devices by which we have saved ourselves.

Q. Now, Sir, what situation and what devices had you in mind in that clause of your letter?

Judge Neilson—We will take the answer, Sir.

The Witness—The *situation* was that of a man that had been bankrupted in every way, and whom we were endeavoring to recuperate and restore. The *devices* were, among others, \$5,000 in April; \$250 and \$500 at different times, along through the period; and various other things that helped him—the devices of soothing the prejudices against him, and of preventing men's talking to his disadvantage, and everything else that would help him to become a man again—a man, I mean, that had overcome distrust and become apparently, again, a man.

Judge Neilson—Well, the expression, "saved ourselves," Mr. Beecher—the last clause, what of that?

The Witness—It was a partnership, Sir. We were all in the same boat together. He had his reasons why he did not want matters to come out about his family, and I had my reasons.

Mr. Evarts—Now, I ask your attention to this clause:

He had condoned his wife's fault; he had enjoined upon me with the utmost earnestness and solemnity not to betray his wife, nor leave his children to a blight.

What fault of his wife, and what fact—in respect of what fact had he enjoined upon you not to betray his wife nor leave his children to a blight?

Mr. Fullerton—Now, if your Honor please, that is asking for an interpretation of Theodore Tilton's language, and not his own; and therefore I object to it.

Judge Neilson—I think that question is objectionable.

Mr. Evarts—The writer refers to some matters of fact in the expressions which he uses in this letter. My inquiry was simply to ask him what matters of fact they were that he thus referred to.

Judge Neilson—Well, I should allow you to put that; but that is not the question.

Mr. Fullerton—It is what matters of fact Theodore Tilton referred to; the question involves that.

Mr. Evarts—What matter of fact Mr. Beecher referred to. [To the Witness.] What facts did you refer to in those statements?

Mr. Fullerton—That is more objectionable than the other.

Judge Neilson—It struck me it was an improvement.

Mr. Fullerton—Well, it is an improvement the other way, Sir. What facts did Theodore Tilton refer to?

Judge Neilson—No; what facts did the writer refer to?

Mr. Fullerton—Ah, Sir; but he did not refer to any facts. Your Honor will see by reading the letter that the objection must be well taken. "He had condoned his wife's fault"—that is, Theodore Tilton; "he had enjoined upon me with the utmost earnestness and solemnity not to betray his wife, or leave his children to a blight"—it is what Theodore Tilton had done, what Theodore Tilton had said, and not the witness.

Judge Neilson—That of itself would be a fair subject of inquiry independently of that particular clause.

Mr. Fullerton—Well, Sir, it is recorded there what Theodore Tilton said; it is recorded by the witness; it is just exactly what he is quoting, the language of Theodore Tilton upon those subjects.

Judge Neilson—I think the counsel can ask him what facts and circumstances he referred to in writing that clause.

Mr. Evarts—That is the point. Mr. Beecher, you will answer, please. A. I understood the matter to be simply that, as I then understood it, and assuredly believed it was, that his wife had transferred to me—

Mr. Fullerton—I understand it is what Theodore Tilton said to him.

Mr. Evarts—That is my inquiry.

Mr. Fullerton—Yes; I understand that to be within your Honor's decision.

The Witness—He did not say anything of this kind to me; this is not Mr. Tilton's language; it is mine.

Mr. Fullerton—Borrowed, however, from him, as it appears by the letter itself.

Mr. Evarts—The second clause is the statement of the injunction that Mr. Tilton had—

Mr. Fullerton—Now, the answer of the defendant so far as it has gone seems to embrace all of his considerations growing out of what had transpired in a series of years, not what was said by Theodore Tilton in regard to matters involved in the question to him, and which led him to write that letter, or to employ that language in writing that letter, and therefore it is objectionable.

Judge Neilson—I admit it is not free from doubt, Sir; but I think we will take the answer; perhaps it is a nice question, and may need more consideration than has been given to it here.

Mr. Evarts—Now, Mr. Beecher!

The Witness—That was the fault that I understood—

Mr. Evarts—You haven't stated it yet.

Mr. Beach—Yes, he did.

Mr. Evarts—Well, read what he had stated. [To the stenographer.] Won't you read the witness's answer as far as it had gone!

The Tribune stenographer [reading]: "I understood the matter to be simply that as I then understood it, and assuredly believed it was, that his wife had transferred to me"—that is all.

Judge Neilson—I think the witness can go on from that point.

Mr. Evarts—From there, undoubtedly.

The Witness [continuing]—Her affection; that, in consequence of such transfer, she was led to the separation between herself and her husband, and to the almost breaking up of the household; that I regarded as her fault so far as he was concerned, and which he had forgiven.

Q. Now, in the next clause [reading]:

He had enjoined upon me with the utmost earnestness and solemnity not to betray his wife or leave his children to a blight.

A. That was a part of the interview of February of 1871, when we were in the study together, and when we had a very cordial interview in respect to his own character, if you will recall it, Sir.

Q. At his house? A. At his house, when he cleared himself before me of all the imputations and charges of impudicity and of intemperance, and of want of care of his household, and what not; and then alluded to the disagreement that had come up, and the misunderstandings that had passed between us, and desired in the most earnest manner that the state of things between him and his wife should not get out, and should not be known, especially that it should not be—anything get out that

had reference to the fact that Mrs. Tilton had left him at all, and come back again, under the plea of ill-usage.

Q. Now, you say in another clause lower down:

I shall write for the public a statement that will bear the light of the Judgment Day.

Did that express a purpose that you had at the time? A. Most certainly it did; I had never kept any of the documents, nor any record, nor made explanations, and I meant to do it.

Q. Now, toward the close of the letter you say:

Therefore there is no use in further trying. I have a strong feeling, and it brings great peace with it, that I am spending my last Sunday and preaching my last sermon.

Now, Sir, what fact or feeling in regard to yourself, or your health or condition, did you refer to in that clause? A. Nothing whatever, except that I felt so; for I felt so, not that time alone—those conversant with my ministry know very well what that is—

#### THE SIGNIFICANCE MR. BEECHER GAVE TO DEATH IN HIS LETTERS.

Mr. Fullerton—Well, now, I object to that.

Q. Not that time alone; but state what fact about yourself you have to— A. I have no other—no fact about myself except that that is the way I felt.

Q. When you wrote that? A. When I wrote that—poetic, perhaps.

Q. Now, Mr. Beecher, in regard to temperament, in respect to depressions of spirits, what is the fact in regard to yourself? A. I have the very best and highest—I pity anybody that has any worse ones than I do at the other extreme, although good spirits predominate, but illness or overwork and exhaustion continued bring me down sometimes into a single day, and sometimes into a consecutive week, of the most profound depression.

Q. Does it go to the extent of hypochondria? A. It did in my boyhood; I think as I have grown older and tougher that it stops in that of profound sadness rather than in the more developed form of hypochondria, which my father had and my ancestors.

Q. Now, have you at any time during this course of things had in mind any purpose of suicide? A. No, Sir; no, Sir.

Q. Have you ever expressed any such purpose to any one? A. No, Sir.

Q. In what sense, then, of death have you used expressions of being near the end of your life? A. In the sense of a sentiment or feeling, not of a purpose or a design.

Q. Now, Mr. Beecher, after the publication of the "Tripartite Agreement" to which we have been alluding, did anything of this kind occur at Mr. Moulton's house, on the part of Mr. Tilton saying to you:

Mr. Beecher, the publication of this "Tripartite Covenant" puts me in the position of a man having been forgiven by you for some crime. Now, you know that is not true; I cannot stand in any such position as that, nor I

won't stand in any such position as that. Now, I want you to set that right, or I will publish this card.

And Mr. Moulton proceeds to say:

And he had a card for publication into which was incorporated a part of the whole of the "Letter of Contrition" of January 1st, 1870—it is a misprint—"1871."

Now, Sir, at any interview at Mr. Moulton's house, this that you have spoken of, or any other that followed this publication on the "Tripartite Agreement," did any such thing as that occur between you and Mr. Tilton? A. It did not; I never saw the card nor the thing that he published; I only heard of it from others.

Q. Well, this card which incorporated part, or the whole of the "Letter of Contrition," you have already stated you did not see? A. I never saw it.

Q. Well, I don't know that Mr. Moulton says that you saw that, but did anything pass between you and Mr. Tilton of that kind, his saying that you put him in the position of a man having been forgiven by you for some crime—A. No, Sir.

Q. Or what did pass? A. No, Sir—nothing.

Q. Now, after Mr. Tilton had left, if he had been there, did you say to Mr. Moulton:

If Theodore Tilton publishes that letter it would simply be his death—

That is, your death? A. I did not.

Q. Now, when you were proposing that you would make a resignation if the publication was made, did Mr. Moulton say to you that that was a virtual confession of the crime, and it was an "act of cowardice on my part to do it"—that is on your part? A. No, Sir.

Q. You have said, Mr. Beecher, that a proposed card which included what has been spoken of as the "Letter of Contrition" was not shown to you—that you remember? A. I do.

A. Well, now, I ask you this: At this interview, Mr. Moulton says—A. At which interview?

Q. At an interview at which, as he says, this card was present, he says this—being asked by Mr. Fullerton, I suppose:

Q. Do you recollect whether anything was said about the erasure in that letter of Jan. 1, 1871, which appears there? A. Yes, Sir; Mr. Theodore Tilton said that the introduction of that clause, if I remember rightly, would be a virtual confession or statement of adultery between Mr. Beecher and his wife; and therefore it was stricken out.

Was anything of that kind said in your presence? A. I don't understand you, Sir—adultery between me and my wife! I—

Q. Well, Sir, if you will attend to my question. A. I attend to it, but I don't get the run of it, Sir.

Q. You have said that a paper that I have shown you (Exhibit No. 25), which was a proposed card which included a part of what is called the "Letter of Contrition," was not shown to you? A. Yes; I understand that.

Q. Very well, now! A. But you ask me now for something—

Q. Now, I ask you whether a certain thing was said in your presence? A. Well, Sir.

Q. Now, will you listen to that? A. I will.

Q. Was it said in your presence—was this said in your presence? A. I am all attention, Sir.

Q. [Reading.] "Mr. Theodore Tilton said that the introduction of that clause"—(being a clause of this "Letter of Contrition" which was embodied in his card)—"Mr. Theodore Tilton said that the introduction of that clause, if I remember rightly" (that is, Mr. Moulton's statement), "would be a virtual confession or statement of adultery between Mr. Beecher and his wife, and therefore it was stricken out." Now, my sole question is, whether anything of that kind was said in your presence? A. No, Sir, most certainly not—whatever it is. [Laughter.]

Mr. Morris—Well, do I understand you to say that that was stated?

#### MR. BEECHER TALKS WITH MRS. MOULTON ABOUT MRS. TILTON.

Mr. Evarts—No, I say it is a statement—I don't know that it is, but to exclude any conclusion that it was, I ask him if it was said in his presence; I don't understand him as having said it. [To the Witness.] Mr. Beecher, do you remember, if at all, how early there was any conversation between you and Mrs. Moulton concerning any of the matter which led to your visits to her husband? A. It was early in 1871, Sir.

Q. And when first and in what form was anything said between you and her? A. My impression is it was very soon after they moved into their new house in Remond-st., which would be May or June of 1871.

Q. Yes, and how did any conversation arise, and what was said? A. It arose in consequence of my asking her husband whether his wife was aware of the difficulties in the family—

Q. You had asked him—A. Whether it was—he thought it would be wise for me to say anything to her about it; he said he thought—he made no objection to it; rather encouraged it; I asked Mrs. Moulton when I met her another time whether her husband had spoken to her about the difficulties which existed in Mr. Tilton's family, and with which I was connected, and about which he was occupied, and she said he had, and I said to her that I was glad of it, because I was sorely distressed by the condition of Mrs. Tilton; that she was alone; there were reasons why her mother could scarcely see her much; she herself could not go out much; her health was feeble; I could not under the circumstances do much myself to alleviate her condition, and, besides, in such a matter as that, a woman's nature was needed for good counsel, and it would give me the greatest joy and I should feel the greatest gratitude if she would consent to be interested in Elizabeth and to do



those things for her which one sister would do for another in the way of counsel and of sympathy and of the inspiration of hope and courage; the condition of things made it improper, I thought, so far as I was concerned, for I then, as for years after, labored under the impression that Elizabeth loved me in over-measure, and it was necessary that somebody should take care of her, and I had that opinion of Mrs. Moulton which led me to believe that she, under the circumstances, was, providentially, the very woman.

Q. Now, in any conversation with Mrs. Moulton, did you express any feelings of grief on your part in reference to this situation of Mrs. Tilton or the family? A. Very great.

Q. And in what way and how did Mrs. Moulton respond, if at all, to such a statement? A. She responded in a way that commanded my esteem and gratitude; she said that she loved Elizabeth, that she thought highly of her, that she would be very cheerful, that she would very cheerfully take upon herself any offices of kindness; I told her that if in the strife with trouble and want there were any of the things that a woman should perceive to be necessary for her comfort or for her children, and that could not be supplied through her husband, any things that a woman would think of, only let me know, and she should be furnished with funds at any time; all I wanted was that she should be looked after by some one that loved her and would take care of her discreetly.

Q. Do you remember, Mr. Beecher, any occasions on which you sent any messages of any kind by Mrs. Moulton to Mrs. Tilton? A. I have no—I don't single out any special instances; I did send words of encouragement to her, exhorting her to build her house again and to renew the love of her youth; not to be discouraged; that God would take care of her and of the children, and such counsels as a pastor and a friend might send to a woman bedeviled with such trouble.

#### MRS. MOULTON'S KISS OF INSPIRATION.

Q. You have spoken, Mr. Beecher, this morning, about one interview in which Mrs. Moulton kissed you on the forehead; you spoke of it as a kiss of inspiration; what did you mean by that expression? A. I meant—well, it was a token of confidence; it was a salutation that did not belong to the common courtesy of life; neither was it a kiss of pleasure, or anything of that kind, but it was, as I sometimes have seen it in poetry—if you will excuse me—it was—it seemed to me, a holy kiss.

Q. You have said something about your not returning it? A. Well, Sir, I felt—I felt so deeply grateful that if I had returned the kiss, I might have returned it with an enthusiasm that would have offended her delicacy; it was not best, under the circumstances, that she and I should kiss.

Judge Neilson—I don't think any excuse is necessary. [Laughter.]

The Witness—I would not, for the world, have it—

Mr. Evarts [To the Court]—Well, Sir, it is a matter to show, to save from any impression that it was a discourtesy or offense on his part not to recognize it.

Judge Neilson—It is apparent from his examination that the kiss was given on an impulse—a natural and impulsive thing, I suppose, as a kiss usually is.

Mr. Evarts—That is the proper view of the matter, I suppose.

#### MR. MOULTON SEVERE TOWARD MRS. TILTON.

Q. Now, in your frequent visits at that house, how frequently, Mr. Beecher, did you have any conversations beyond those of salutation with Mrs. Moulton? A. Not unfrequently, Sir. I often went when Mr. Moulton had gone down to the warehouses in the morning, for he got up early sometimes, and then waiting for him to come I would go up stairs and lie down on the lounge, and she would take her sewing, or what-not, and sit in a chair, and we would talk on whatever topic happened to be current, sometimes one thing and sometimes another, seldom—less often on this subject than any other.

Q. Now, were you aware, or did you conceive yourself to be aware of an ill-disposition or ill-feeling on the part of Mr. Moulton toward Mrs. Tilton? A. Oh! I was not left to any doubt about it; after May of 1871, he spoke of her to me in the severest terms.

Q. In regard to her treatment of her husband, or her disposition in the family, or what?

#### DISCUSSION UPON A NEW CONVERSATION.

Mr. Fullerton—I don't think that is competent.

Judge Neilson—It is not competent unless the inquiry was made of Mr. Moulton.

Mr. Fullerton—There is no pretense that he did. This is the first time that this phase of the subject has appeared.

Mr. Evarts—I don't know that. It is introductory to a question I am going to ask him as to what passed between him and Mrs. Moulton.

Judge Neilson—Even then you ought to refer to something in regard to which Mrs. Moulton was interrogated.

Mr. Evarts—I don't know that, if your Honor please. Strictly, I suppose I am at liberty to make that inquiry. Indeed, the whole limit of my inquiry is as to the intercourse between Mr. Beecher and Mrs. Moulton. They have got what part of it they have seen fit, and I suppose I am at liberty to give any other that arises.

Mr. Fullerton—Certainly not, by any means. That would be an extraordinary rule.

Judge Neilson—Well, proceed.

Mr. Evarts—Not falling within the same; however, we won't discuss that proposition.

Mr. Beach—You are making it practical.

Mr. Evarts—Well, when we come to the practical question we will discuss that. [To the witness.] Now, Mr. Beecher, in your conversations with Mrs. Moulton had you anything to say to her in relation to her feelings toward Mrs. Tilton as compared with her husband's feelings, or her desire in that respect?

Mr. Fullerton—I object to that. We might as well have the question settled now. They certainly cannot go into conversations with Mrs. Moulton other than those to which we have called attention, in regard to which we have made inquiries. The counsel on the other side seems, by the nature of his insinuations, to regard everybody here as on trial, and to regard himself as at liberty to prove anything that anybody ever said to anybody else upon any subject. Now, so far as we have opened the door, and given any part of a conversation between Mrs. Moulton and Mr. Beecher, the gentleman can draw it up and get at whatever there is of that conversation not revealed; but as to any inquiry into any other conversation, he is not at liberty to do it at all.

Judge Neilson—Unless he interrogated Mr. Moulton or Mrs. Moulton on the subject.

Mr. Fullerton—Of course; but that he has not done. It is not pretended he has done that, so it is not necessary to discuss that.

Judge Neilson—I think the first branch of his inquiry might be correct. [To the Tribune stenographer.] Read the question.

The Tribune stenographer read the last question as follows: "Now, Mr. Beecher, in your conversation with Mrs. Moulton, had you anything to say to her in relation to her feeling toward Mrs. Tilton, as compared with her husband's feelings, or her desire in that respect?"

Judge Neilson—Now, this witness did speak to her about her feelings in regard to Mrs. Tilton.

Mr. Fullerton—That is not the subject of inquiry.

Judge Neilson—Of the first part.

Mr. Fullerton—It is a comparison as to their feelings toward Mrs. Tilton as between herself and her husband.

Judge Neilson—I think therein lies the objection to this question.

Mr. Fullerton—That is the reason I made it.

Mr. Evarts—Do I understand your Honor to understand the indication I gave as to the point on which I wish the witness's attention? That is all I used that for. I had, of course, to show that the witness was aware, or conceived he was aware, of a certain disposition of her husband toward Mrs. Tilton, and that one part of the offices of his conversation with Mrs. Moulton was that Mrs. Tilton should be treated by the wife, in a situation in which she was placed, with such attention and comfort as one lady could furnish to another, and because of the manner of having any such regard shown to her by the

action of Mr. Moulton. But it is only as drawing attention to the subject of the conversation, after all, that I have occasion to use this reference; but how I could do it without raising that situation I cannot perceive.

Judge Neilson—It already appears from this witness that at a certain time, or from a certain time, Mr. Moulton's regard for Mrs. Tilton had fallen off—he was not kind.

Mr. Fullerton—That does not help it.

Judge Neilson—So we have the answer to that.

Mr. Evarts—Yea.

Judge Neilson—Also he can suggest from his conversation with Mrs. Moulton any kind offices she might exert toward Mrs. Tilton—so we have all that.

Mr. Evarts—No doubt; but it is said Mr. Moulton complained of her as comparing Mr. Tilton's opportunities of restoring her position.

Mr. Fullerton—No.

Judge Neilson—We had that yesterday, and we have a further answer to-day on that point.

Mr. Fullerton—We have an answer to-day from Mr. Beecher that he was left in no doubt on that subject. That left us in doubt, however, as doubts run. There is no affirmative evidence on that subject.

Mr. Evarts—We have a right to clear that up.

Mr. Fullerton—No, you have not. If Mrs. Moulton said anything in addition to what we said on that subject they have a right to it. Beyond that they cannot go, by the rules of evidence, and here is an attempt to introduce into this case conversations between Mr. Beecher and Mrs. Moulton to which we have not directed attention and we have not made any inquiries.

Judge Neilson—And to which they have not made any inquiries.

Mr. Fullerton—Even if they had they could not, for it would be a collateral matter, and they could not give it, but they have made no inquiries on that subject.

Judge Neilson—Yet the answer to be given now might go to Mrs. Moulton's credit, because she had not been interrogated on that subject.

Mr. Fullerton—It might be due to her that she should be asked, in the first instance.

Mr. Evarts—No, it is nothing to the discredit of Mrs. Moulton.

Judge Neilson—We might think it would not, and yet it might to the jury. Within the rule you have a right to interrogate her, and give her a chance in regard to a matter in regard to which she might be contradicted.

Mr. Evarts—I can state my views in regard to the right given to us by their introduction of the intercourse between Mr. Beecher and Mrs. Moulton. I don't regard them as having put themselves distinctly upon definite conversations and interviews, defined in time and place and circumstances and language at all, either in respect of the intercourse between Mrs. Moulton and Mr. Beecher, or between Mr. Moulton and Mr. Beecher, or Mr. Tilton

and Mr. Beecher. They have opened a general relation of confidence and common understanding and common conversation, establishing a relation and a system of intercourse out of which they have felt at liberty to draw such generalisations as these in Mrs. Moulton's language and in Mr. Tilton's language, and, I think, in Mr. Moulton's language equally; that is to say, Mr. Beecher would often say so and so, giving a result, an impression of a general attitude and feeling and expression on the part of Mr. Beecher which is not a reproduction of a particular interview, but is an assignment and definition of a general attitude of Mr. Beecher on this subject out of which they draw imputations injurious. Now, when that is opened in that way, your Honor will perceive that, unless being the same form by showing what the whole tenor and manner of intercourse was, or by showing what the character and manner of supplementary interviews were, that they had left out of view; if we cannot do that, then we are placed at a great disadvantage in not being able to qualify and present in due colors the entire tenor of the intercourse on this subject between Mr. Beecher and Mrs. Moulton. Now, we can all agree that in a limited and defined interview that is described, within its own metes and bounds, which their light of dealing with this defendant as a party to it open to them and would exclude us from this as strangers, that the rule by which that does not give us an opportunity to introduce a separate and independent interview thus defined by its own metes and bounds is perfectly clear and understood; but your Honor understands how a particular interview that they should thus introduce might have had in it reference to previous interviews or previous relations, and that that would open to us a right to show what those private interviews and relations were, always under the control and discretion, to a certain extent, of the presiding Judge. Now, I do not conceive myself, in the inquiries that are opened to me as to the intercourse between Mr. Beecher and Mrs. Moulton, any more than in other cases that I have referred to, to be limited to the mere definite interviews that they have shown, because they have been allowed to go on, but I don't think it is objectionable, provided that the liberality is extended also to us to come into court and compare the general result, or nature, or character of Mr. Beecher's dealings as between him and Mrs. Moulton with this question of trouble or guilt, as the case may be. And it is in that view I confess that I have thought I had a right to go beyond the definite limits of express interviews, because of the relation or intercourse, as a whole, being what I suppose is the important matter to be discussed to this jury. For instance, here is a question to Mrs. Moulton [reading]:

Did he say anything to you in respect to the length of time that Elizabeth had permitted him to be in ignorance of the fact that she had confessed? A. He did.

Q. What did he say upon that subject? . . . Did

you ever say anything to Mr. Beecher about returning to the church?

Then she goes on and gives a considerable answer, made out of a variety of occasions in which she had talked to him—perhaps conversation or items of conversation, but not limited to a set interview on that subject, or restrained within any bounds of any particular interview. "Did he ever speak to you about Mrs. Tilton? A. Yes, Sir. Q. Please state what he said in regard to her." Then I interposed, "At either of these interviews?" Then Mr. Fullerton says, "At any time." I again interposed that a time should be fixed. And then the witness goes on and says, "He nearly always spoke to me of Elizabeth with great love, and wanted me to respect her and have great regard for her," &c.

Judge Nelson—I think you are right in regard to the description of the interviews referred to by the witness, which had not metes and bounds of time and place; undoubtedly you are right as to that, but is not your remedy after all to investigate this witness before you can inquire as to any specific statement made in that manner? There is your remedy, and it covers your case and protects you.

Mr. Fullerton—It is the subject matter of the conversation which is to control the gentleman, as a matter of course, in his examination of the witness. I fix no time and I fix no place, but when the evidence is given there is a subject matter about which they may inquire. They may ask this witness whether any such conversation took place as that. If he says no, there is an end of it. If he says yes, then they may ask whether at any time, and at that place, whatever that time and place was, anything further was said upon that or upon any other subject which was germane to that under consideration. In that way they get at all that was said upon any one particular occasion, when any particular subject was under review, and the gentleman is not taken at a disadvantage at all. He is not deprived of any of his legal rights, and so he might follow it up from conversation to conversation, and get at whatever else was said upon any one of those occasions.

Judge Nelson—It can be no disadvantage when he has a right to turn to any particular statement made by Mrs. Moulton and interrogate this witness in respect to it, and correct and contradict it, as the case may be.

Mr. Evans—Well, Sir, perhaps I would be able to—

Mr. Fullerton—He will think better of it by to-morrow, Sir.

Judge Nelson—Gentlemen, get ready to retire. [To the jurors.] Gentlemen of the jury, you will return at 11 o'clock to-morrow.

The Court then adjourned until 11 o'clock on Friday.

## SIXTY-SECOND DAY'S PROCEEDINGS.

## A TEMPORARY ADJOURNMENT.

THE PROCEEDINGS SUSPENDED, OWING TO THE ILLNESS OF MR. BEACH.

FRIDAY, April 9, 1875.

At the opening of the Court to-day, Mr. Beach and Gen. Pryor were not present, and, after a brief consultation between Mr. Morris and Mr. Fullerton, the latter informed the Court that he feared the senior counsel for the plaintiff was too unwell to be present and requested an adjournment until Mr. Beach should arrive. The defendant's counsel assented very courteously to the delay. Mr. Evarts suggested that such an arrangement might be especially agreeable to Judge Neilson, who had just received a telegram announcing the death of the widow of the late Judge Samuel Nelson at Cooperstown, N. Y. The Court accordingly adjourned until April 12.

## THE PROCEEDINGS—VERBATIM.

## AN ADJOURNMENT UNTIL MONDAY.

The court met at 11 a. m., pursuant to adjournment.

Henry Ward Beecher was recalled.

Judge Neilson—Will counsel proceed?

Mr. Fullerton—If your Honor please, we feel very much embarrassed this morning upon our side, in consequence of the absence of Mr. Beach, occasioned, I suppose, by his illness. He was exceedingly unwell all day yesterday—so much so that he could not participate in the incidental discussions of the day—in consequence of a very severe and painful attack of neuralgic headache. He did not join me this morning, as was his custom, and I presume he is confined to his house; he may be in, however, in a short time, and if your Honor will allow us to consult for a moment as to what we will do, we shall feel very much obliged.

[Mr. Fullerton, Mr. Morris, and Mr. Tilton here consulted together.]

Mr. Fullerton—If your Honor please, the importance of this case, and the great responsibility resting upon counsel on the part of the plaintiff, seems to make it proper that we should ask that this case lie over until Monday morning, unless Mr. Beach comes within a very brief period. We are without the aid of our other associate, Gen. Pryor, and so far as Judge Morris and myself are concerned we feel unwilling to take the responsibility of conducting this case, unaided by either of our other associates. As a matter of course, the evidence of the witnesses upon the stand is of very great importance in this case, and the events to which his attention is hereafter to

be called will have a very great influence upon the case, and we desire the presence of Mr. Beach before we shall proceed. Your Honor is probably aware that he is to present this case to the jury, and he would be taken at a great disadvantage if he were not present to hear the testimony given by the witness, and derive all of the advantages which flow from a presence in court when evidence is given. He may be here, Sir, within a short period; I don't know; I have had no message from him this morning, but if he is not, we shall ask the indulgence of the Court until Monday morning.

Mr. Morris—I feel quite sure, if the Court please, that Mr. Beach is detained at his house by sickness. Every day since the trial has commenced he has been very prompt, indeed ahead of time. I knew yesterday that he was suffering very severely; he was unable during the recess to partake of any food, and was in distress all day, and I hardly think that there is any probability of his arriving.

## MR. BEECHER'S DIRECT EXAMINATION TO BE CLOSED IN ANOTHER DAY.

Mr. Evarts—No doubt, if your Honor please, the suggestions of our learned friends are quite suitable to their position, as any similar occurrence on our side might be to ours. Mr. Beach, unfortunately, from a draft, took cold day before yesterday, I think, or perhaps even earlier than that, and intimated to me that he felt fears of some serious consequence of this kind attending such an exposure, that is, the neuralgic pains to which he is subject, though otherwise a very strong man, as we all know. Now, it is proper that I should say that the expectation was that we should be able to conclude the evidence of this witness to-day; we might have been disappointed; we did not expect to be; and it is also proper that I should intimate that there may arise some questions of some pressure in regard to the admission of evidence. Under that view, the day would perhaps be one where the attendance of your associates might be more than ordinarily important, and if the evidence closed, it would be incapable of reconsideration; and when your Honor sent down to me that telegram of the afflictive intelligence of the death of Mrs. Nelson, the widow of our late friend the eminent Judge, I did not know but your Honor intended, perhaps, to intimate some desire or feeling in regard to holding court to-day on that account, but I have heard nothing from your Honor on that subject.

Judge Neilson—I have a strong impression myself that Mr. Beach will not be here, from what he told me yesterday.

Mr. Porter—It is very evident, your Honor, that he ought not to have been here yesterday. I presume that he would have been here to-day if it had been even possible for him, for I never knew him on any occasion to fail at the

Post of duty unless it was an occasion of absolute and iron necessity.

Judge Neilson—The suggestion on his behalf is quite reasonable, and the kindly manner in which it is received upon the other side is very gratifying; and I think, that being the view of counsel, we will now adjourn. Will gentlemen get ready to retire? Adjourn to Monday morning at 11 o'clock, gentlemen.

The court then adjourned to Monday, the 12th inst., at 11 o'clock.

## SIXTY-THIRD DAY'S PROCEEDINGS.

### A DULL DAY AND AUDIENCE.

**FURTHER CONTRADICTIONS OF MRS. MOULTON—NO AFGHAN, NO POISON, NO SUICIDE, NO CRIME, AND NO CONFESSION—MR. BEECHER IGNORANT UNTIL JULY, 1874, THAT ADULTERY WAS EVER REFERRED TO OR CHARGED—ATTEMPTS TO CONTROL THE INVESTIGATING COMMITTEE BY MR. MOULTON AND GEN. BUTLER—A HITHERTO UNPUBLISHED STATEMENT BY MR. BEECHER—HIS "TRUE STORY" AS ORIGINALLY WRITTEN FOR THE INVESTIGATING COMMITTEE.**

MONDAY, April 12, 1875.

The day's testimony was dull and the audience was in perfect sympathy with the proceedings and with the weather. There was little to arouse interest, except near the close of the day, when Mr. Evarts offered a document written by Mr. Beecher which had not previously been heard of in the case. Preliminary references to it gave the audience the impression that it was the statement which Mr. Beecher had said he would write "to bear the light of the Judgment Day." But they were disappointed in this hope, for instead of a narrative of facts like Mr. Tilton's "True Story," it was general in character, a declaration of innocence, and a eulogy of Mrs. Tilton. Disappointment was manifested after the reading of this paper, and the day closed stupidly with Mr. Beecher still in the chair.

The audience was as large as usual, however, and several new faces were visible. Judge Sutherland from the General Sessions, New-York, sat on the bench with Judge Neilson. Ex-Senator Henry C. Murphy was in and out of the room during the day, as his wont has been throughout the trial. In the "Plymouth section" were Assemblyman L. Bradford Prince, Charles Gayler, H. B. Claflin, John T. Wood, who directed the excavations of the temple of Diana in Asia Minor, Dr. Gunn of the "Gunnery" school in Connecticut where Mrs. Tilton passed a few weeks in

the Summer of 1874, Mrs. Jones, who is a sister of Mrs. Beecher, William Sprague, and Mr. Zundel, the organist of Plymouth Church. It was whispered that Mrs. Harriet Beecher Stowe was also in attendance, but this was not true. Mr. Beach looked ill, and was evidently afraid of the drafts of the court-room. Gen. Pryor was absent; he is suffering from malarial fever. Mr. Tracy was employed in another court. The proceedings were opened and continued in the usual way, and were closed at the usual hour.

Some surprise was expressed at the orders to the officers given by Judge Neilson at the close of the morning session to see that the jury were not spoken to while entering and leaving court. On inquiry of the Judge it was learned that Mr. Morris had complained that some of the Plymouth members had been needlessly polite in saluting the jurors.

### FURTHER CONTRADICTIONS OF MRS. MOULTON.

The morning session was devoted to the completion of Mr. Beecher's contradictions of Mrs. Moulton's testimony of the "alleged interview" of June 2, 1873. This ground had been covered so closely on previous days that the inquiries yesterday attracted very little attention, except from Mr. Moulton, who sat throughout the session listening intently to the numerous and peculiarly emphatic denials of his wife's testimony. He smiled once or twice scornfully at the frequent compliments which accompanied the denials, and which jarred on the ears of others in the audience, coupled as they were with positive charges of perjury on the part of the lady. Mr. Beecher seemingly made these denials with the manner of a man who is doing a necessary duty of an obnoxious character, and he was apparently vexed at times when he was required to reduce his answer to a plain "No." Once or twice he warmed up, and became indignant, but this feeling passed away quickly as other questions attracted his attention. Among other declarations of Mrs. Moulton which Mr. Beecher denied were the assertion that she had tucked him up on a sofa and covered him with an Afghan; the statement that he had ever talked to her of suicide, by poison or otherwise, and that she had spoken freely to him of his "crime," "his adultery with Mrs. Tilton," &c. He testified that he had never said that it was on his account that Mr. Moulton cultivated the acquaintance of Mrs. Woodhull. There were many other contradictions, and

many forms in which these denials were put. Almost every incident and form of expression detailed by Mrs. Moulton as belonging to the interview of June 2, 1873, was as positively rejected as the date and the interview itself. Mr. Beecher admitted that a few expressions repeated by Mrs. Moulton resembled the language used at the interview of May 31, two days before, when he saw her only for a few minutes. Once Mr. Beecher broke out in his blunt way to the effect that Mrs. Moulton could not have used the expressions attributed to her, and then, probably remembering that she had sworn to them in court, he added, after a long pause, "of her own accord." This was lost on Mr. Evarts for a moment, but being reminded of it by one of his associates, he called attention to it, and tried to introduce Mr. Beecher's explanation of his words; but Mr. Beach objected, and threatened to have it struck out, and Mr. Fullerton said the meaning was clear enough and improper; so Mr. Evarts desisted. The context shows that Mr. Beecher meant to imply that she had sworn in accordance with some other person's wishes.

Mr. Fullerton called THE TRIBUNE reporter's attention to the fact that in the summary of the evidence on this point in Friday's issue it was stated that Mrs. Moulton had sworn that the interview of June 2 was brought to a close by the ringing of her lunch bell. On closer examination of the testimony of Mrs. Moulton it was discovered that the interview was closed by a remark about lunch, and not the ringing of the lunch bell.

#### AN IMPORTANT DENIAL BY MR. BEECHER.

Once more Mr. Evarts returned to the question whether or not Mr. Beecher had ever heard his offense against Mr. Tilton designated by anybody, previous to the calling of the Investigating Committee of 1874, as his "crime" or as "his adultery with Mrs. Tilton." Mr. Evarts was apparently anxious to impress upon the jury that during the whole period while the "policy of silence and suppression" prevailed, Mr. Beecher had been accustomed to hear of his offense as "improper solicitation," and to think and speak of it himself as the estrangement of Mrs. Tilton's affections from her husband to himself. Mr. Beecher's declaration that no living being had ever talked to him about a charge of adultery until June 13, 1874, after the Committee was appointed, was reiterated for the fourth or fifth time. When his attention was called to the West charges against Theodore Tilton, in one specification of which Mr. Tilton was accused

of having repeated to Mrs. Bradshaw the charge of adultery, Mr. Beecher swore that he had never seen those charges and specifications, and understood them to embrace only Mr. Bowen's slanders. All these questions finally led up to the declaration by Mr. Beecher that he had resolved when the Bacon letter, containing his apology as an admission of an offense, was published, to fight it out. Here again stress was laid upon his previous declaration. He had sworn that in May, 1873, he had threatened that if that apology were published he would take the case into court. In 1873, as a preparatory step, he had resolved to resign and had written his resignation. In 1874, after the apology was finally published, he cut short all further attempts at compromise and silence by calling the Committee and refusing positively to sign any more of the papers suggested to him by Mr. Moulton.

#### MR. BEECHER'S EYES OPENED.

Mr. Beecher's attention was then directed to some of Mr. Moulton's statements relative to the Investigating Committee. It appears from Mr. Beecher's story that Mr. Moulton had hopes of managing the Committee, and that he called upon Gen. Butler for advice at that juncture. The design was to have Gen. Butler make Mr. Beecher's counsel, as he was Mr. Moulton's, and as preliminary to that step Gen. Butler sent Mr. Beecher word that he was afraid the witness's counsel were not competent for their work, and that he "could carry him through, no matter what the facts were." Mr. Beecher's positive refusal to see Gen. Butler on the subject or to change his advisers seems to have been the first notice to Mr. Moulton that his services were not satisfactory. At any rate, Mr. Beecher and Mr. Moulton were not in communication after that, and the "policy of silence and suppression" was abandoned.

During this part of the examination Mr. Beecher was asked when he had become convinced that during all these four years he had been laboring under the delusion that Mrs. Tilton loved him instead of her husband. He answered, without betraying any evidence that his vanity was wounded in the least, that his eyes were opened by the lady's testimony before the Committee of Investigation in 1874.

#### MR. BEECHER'S "TRUE STORY."

The only "sensation" of the day followed the offer to submit the statement of Mr. Beecher first prepared for the Investigating Committee, and read to

Mr. Moulton. It was surmised that it was a new document and that it was a plain narrative, written before any of the evidence before the Investigating Committee was submitted. Mr. Fullerton, first, and Mr. Beach and Mr. Morris next, read it before consent was given to its introduction. They spent about a quarter of an hour over it, during which Mr. Evarts waited patiently. Mr. Beecher left the witness chair and joined his brother Edward, and after a word or two with him began pacing up and down behind the jury box as if to rest his legs by stretching them. Mr. Evarts was handed a caricature of himself; he passed it to Mr. Beach and the jury, and finally it was handed to the Judge, who referred it to Judge Sutherland, who decided that it was a good likeness, and then it went the rounds of the reporters and audience.

When the document had been examined the counsel for the plaintiff admitted it without objection and Mr. Evarts read the story. It proved to be in no sense a narrative, and was disappointing to the audience, who had anticipated that in this way Mr. Beecher was about to pour out his whole soul unrestricted by the rules of evidence. It is published in full on another page.

### THE PROCEEDINGS—VERBATIM.

#### A RAPID SUMMARY OF EVENTS FROM 1871 TO 1874.

The Court met at 11 a. m., pursuant to adjournment, and Mr. Beecher was recalled.

Mr. Evarts—Upon Thursday, if your Honor please, we were discussing some question of the admissibility of evidence when the adjournment took place, in regard to the form and manner in which there might be drawn from the witness statements concerning conversation or habits of intercourse between Mrs. Moulton and himself, in reference to this general subject, and precisely what the result was, if there was a result, I don't know that it was important now to consider, as perhaps the matter may come up upon questions as I shall ask them now. [To the Witness.] Mr. Beecher, I will ask you a question—I am not certain whether I have asked it in any form or not—as to the frequency of your visits at Mr. Moulton's house.

Mr. Beach—It has been gone over.

Mr. Evarts—Well, I won't spend any time.

The Witness—There was no regularity in the matter; at times I visited there every day, at times only once a week, or once a fortnight, and sometimes not for a month or two months, or three months even.

Mr. Beach—Four months, you put it!

The Witness—Well, I don't know but four months; I

will admit one more. I should think there might be times, including my vacation.

Mr. Evarts—This is only introductory to a question I wish to ask you. Now, Mr. Beecher, there have been given in evidence occasions in which there was solicitude and conferences, and so forth, and letters, and cards. Now, during the three years, or three years and a half, from the 1st of January, 1871, to the Spring or middle of 1874, for how large a part of the time were there intervals in which there was no discussion and no trouble of any kind? A. Do you mean what proportion to the whole amount?

Q. Yes. A. Well, I cannot state it, Sir; I don't know that I have ciphered that out, but there were long periods; for example, in 1871, after May, I think there was comparatively little until in the Autumn; in 1872 there was very little all Summer after May, during the campaign; you recollect, Sir, there was a political campaign, and very little was done during all the Summer until Autumn, until after the close of the campaign—until after the November election.

Q. Well, after the publication of the Woodhull scandal, what occurred thereafter up to the end of 1872—after that period until June, 1873? A. Well, after the publication of the scandal it was a pretty busy time, and it ran over into the Spring of 1873.

Q. And to the June affairs? A. And clear up to June, and soon after came my vacation.

Q. And thereafter, in the Autumn of that year of 1873, occurred whatever there was in regard to what has been named in this trial as the West charges. A. Yes, Sir, the West charges, with the sequent action—consultations of the Committee and action of the church.

Q. And then between that and the Bacon letter publication, in the Spring of 1874, was there anything? A. Well, a great deal. There occurred at that time from the interpellation of the sister churches the corresponding meetings in our church, which gave rise to a good deal of consultation and of conference with Mr. Moulton on my part. Then followed the calling of the Council, and that also was accompanied with what was called a period of letter-writing between me and two gentlemen, the pastors of neighboring churches. And then the Council itself in March, if I recollect right; and during that Council were the letters of Mr. Tilton; he felt himself aggrieved at certain implications in the Council; and after that Dr. Bacon's article appeared, running, I think, through five numbers; and then the Bacon letter on the part of Mr. Tilton.

Q. And then the course of things until the constitution and session of the Committee of Investigation? A. Yes, Sir.

Q. Through that Summer? A. The Bacon letter was preceded by no inconsiderable conferences between Mr. Moulton and myself; but so soon as it was published then the end came substantially.

## TALKS WITH MRS. MOULTON ABOUT MRS. WOODHULL.

Q. Now, I recur to occasions of interviews between yourself and Mrs. Moulton, and ask you if you ever had any conversation with her on the subject of Mrs. Woodhull, and how that occurred, if there was such a conversation? A. Yes, Sir, twice; I recall two conversations; one was not exactly a conversation, either; she made some pleasant and sly remarks in respect to what she regarded as the exaggerated enthusiasm of Mr. Tilton and her husband for that woman. At another time she asked me, when we were together in her chamber—in the front chamber, which was a kind of receiving-room—what I thought about Mrs. Woodhull, and I cannot use her language, but the language was such as carried with it a wish to know what I thought as compared with what her husband thought and the others. My reply was that I had no means personally of knowing anything about her; I derived my information from others, and that I did not believe in her views; I hoped that she was what they thought she was; and as she asked me about herself in relation to her (Mrs. Woodhull), I told her that I did not think she would ever do her any hurt; I did not think—it was a very sincere compliment which I paid to her, that I did not think she could be hurt by such women.

Q. In what connection did she refer to herself at this interview; in what connection did she refer to Mrs. Woodhull and herself—what association? A. Well, the conversation arose from the fact that Mrs. Woodhull frequented their house, and that she—she told me that Frank had desired it, and that she had consented to it. It was in such language that it left in my mind—that I understood it to mean that she received her on Frank's account, and because he wished it.

Q. Well, did she make any inquiry of you as to what you thought of her associating with Mrs. Woodhull, or Mrs. Woodhull being received at her house? A. It was in connection with the idea of her being received at her house.

Q. Well, how did she put it to you, in what way? A. I have already stated. She said substantially that she had—she did not herself fancy the woman, but that Frank thought very highly of her, and that she received her at her house because he wished it; and it was accompanied at that time, I think, by some after conversation on the subject of—that she thought she began her married life with too stringent views, and that she had changed her idea and thought it was better for her as a wife to conform as much as she could to her husband's wishes.

Q. In this conversation or in any other conversation in which the name or the visits or association of Mrs. Woodhull was introduced, was anything said by Mrs. Moulton to you about her husband wishing her to associate with or receive Mrs. Woodhull on your account? A. Never a word, Sir.

Q. Was the subject of anything being done, or needing to be done, with Mrs. Woodhull in reference to you or your affairs, spoken of by Mrs. Moulton? A. No, Sir; nothing at all.

Q. Did you, in any conversation between you and Mrs. Moulton on this subject of the Woodhull's association, say to her, "I think it is a duty you owe to Frank to coöperate with him in trying to keep the story quiet?" A. No, not a syllable of it.

Q. Did you, in reporting to Mr. Moulton any conversation you had had with his wife on this subject of Mrs. Woodhull, say to him that you had told her that you thought it to be her duty to coöperate with Mr. Moulton for the suppression of these stories concerning him and Mrs. Tilton—that you thought it to be Mrs. Moulton's duty to coöperate with her husband for the suppression of these stories concerning you and Mrs. Tilton? A. No, Sir: nothing of the kind; I talked with Mrs. Moulton on the subject of her—as far as it could be done with propriety—coöperating with her husband in his ordinary desires of company, and such things as that; it had no reference whatever to any—to this matter pertaining to me.

Q. That you have already spoken of. My present question is whether, in reporting to Mr. Moulton any conversation you had had with his wife on the subject of association with Mrs. Woodhull, you said to Mr. Moulton that you had told Mrs. Moulton that you thought it to be her duty to coöperate with her husband for the suppression of these stories concerning you and Mrs. Tilton? A. I never so talked with Mrs. Moulton, and I never told Mr. Moulton that I did.

## MRS. MOULTON'S ATTENDANCE AT PLYMOUTH CHURCH.

Q. Did you ever have any conversation with Mrs. Moulton on the subject of her attending your church, and, if so, what passed between you on the subject? A. Yes; I have talked with her on that subject of being in church various times and ways; I recollect her saying, telling me that—in 1871 it was on—I have forgotten how it was introduced, but I remember her speaking with some anxiety as it respects the securing a pew in that year; that Mr. Moulton had intended, or told her that he was going to have one, and she was solicitous to know whether—she thought Frank had forgotten it; she was afraid he had, or something to that effect; I know that in 1872 and in 1873 both she spoke to me of wishing seats; Frank did not want to take a whole pew, and wanted to know whether seats could be had; she wanted two; she did not think Frank would go with her much, but she might take her son, or, it might be, a friend would want to go; she wanted two seats; I referred her to Mr. Wells, the sexton of the church, saying that they could most always be procured in eligible pews, the owners of which sublet single seats; I also talked with



her; she was kind enough to express herself complimentarily of me for improving, as she thought, in preaching and partly on her own judgment and partly on what was told her, as I understood from her; and I recollect seeing her not infrequently in church, not regularly; twice I distinctly recall her coming to the pulpit steps and waiting for me after the congregation, after I had got through and while they were dispersing, bringing some errand from Mr. Moulton; he wanted to see me, or something to that effect. I recall talking with her on one occasion, in which she said in a very pleasant way—she had a sparkling and a pleasant manner, very sincere and simple and pleasant way—and she said: “You did not see me at church yesterday.” “I did,” said I; said I, “You are never at church, Mrs. Moulton, that I don’t see you, and it is always a very pleasant thing for me to see you in church, too,” or words to that effect.

#### MRS. MOULTON SEEKS MR. BEECHER’S SOCIETY.

Q. Now, Sir, what passed between you and her on occasions of your visits to the house by the way of invitation or suggestion on her part that you should make visits to her? A. I recollect twice—twice distinctly—but with a less positive recollection of once or twice besides; but I speak this of certainty, that she said to me once from the head of the stairs, and once up stairs in the chamber, “You always come—” once she says, “You always come to see Frank; why don’t you come to see me?” and I turned it off, understanding it to be a courteous jest, a little conception of welcome, and so on. At one time she spoke from the top of the stairs, as I had gone down stairs, and was near the clock-stand; she spoke to me in the same way and said, “Mr. Beecher, when are you coming to see me? I mean,” said she, “when are you going to make a visit, a social visit, on me, and not a business one?” or words to that effect.

#### CONVERSATIONS WITH MRS. MOULTON ABOUT MRS. TILTON.

Q. Now, Sir, do you remember any conversation you ever had with Mrs. Moulton in which the subject of your relations with Mr. Tilton, or his family, or his business was the subject of conversation? A. Yes; I recollect several; I do not know that I can separate them and tell what occurred in one and in another, and in another; I remember what the tenor of them and the—

Q. Won’t you be so good as to state that what did pass between you and her on this matter? A. The first conversation I had with her—have I related it?

Q. I think you have perhaps, where it was introduced? A. Yes.

Q. The inquiry whether— A. She was aware of the troubles that existed and the reason that I wanted her to talk with me?

Q. Yes, I think that has been given. A. Yes; at other times my conversations with her had almost, it may be said, four times out of five, had reference to Mrs. Tilton. I had requested her to act as her (Mrs. Tilton’s) next friend. I could not, her mother could not, and I wanted somebody that was interested and womanly. I thought Mrs. Moulton to be eminently a womanly and excellent person, and she would tell me that she (Elizabeth) had been around to see her on the day before. I would ask her how she seemed. Well, she seemed sometimes very cheerful and hopeful, and at other times very sad, desponding, so that the conversation would run upon that. She at times rather thought that she never blamed Elizabeth outright; I recollect conversations in which I thought that she, on the whole, felt that Elizabeth might do some better in some respects, but more often in the conversations that respected Elizabeth she spoke with some degree of severity about Mr. Tilton—gave me to understand in different conversations that she disapproved of his conduct and course.

Q. In respect of his wife, do you mean; in respect of his home? A. Well, I understood it to cover that, but not to exclude other—in other words I thought she thoroughly didn’t like him; and I recollect a conversation in regard to Mrs.—her—in which I spoke of her wants, her necessities.

Q. You mean Mrs. Tilton? A. Mrs. Tilton; and told her that I should be perfectly willing, if it might be done without indelicacy in any way—I should be very glad—to deposit funds with her, to be expended by her, when she saw any such wants as a woman’s eye would know—would recognize. I recollect on one case her speaking on the state of things that she found, which was very discouraging in the family, and she seemed quite sad about it, and said she, “I don’t see how Elizabeth can get along; I wouldn’t wonder much if she was to break out and go back to her mother;” and I told her that that, I thought, in the state of things, would be most fatal, and that she ought, by all means, to dissuade her from any such step as that; that it might be hard to bear, but it would be a great deal harder not to bear it—to that substance.

Q. Did you, at any time, have conversations with Mrs. Moulton as to how this trouble had arisen, and what degree of fault there had been on your part, and any discussion as to any fault on Mrs. Tilton’s part? A. Yes, Sir, I had a conversation with her on that subject; it was on the subject of having alienated from her husband, and won for myself, Mrs. Tilton’s affections, and it was an exposition of my feelings about it. I felt it very deeply, and I attempted, as far as I could, to let her know exactly how it was without any indelicate—without putting Mrs. Tilton in any relation that would be degrading or indelicate. I found it an embarrassing conversation to have, and it was much of it in that shadowy way in which we suppose an intelligent, intuitive kind of person un-

derstands what you mean, without any plain words or expressions, but I wanted her to understand distinctly that I had never consciously withdrawn Elizabeth's affection from her husband.

Q. Did you so express yourself? A. I did very distinctly, that—

Q. Did you in any of those conversations with Mrs. Moulton express to her the degree of grief or compunction that you had in reference to whatever had occurred? A. I did, Sir.

Q. And how did you express yourself in that regard? A. Well, I expressed myself as a man that was very sensitive on such, the honor of such a matter as that, would. I said that it was a grief as deep as my heart could feel; that I could not forgive myself seeing what mischief had been wrought, for I was all this time, as I was all the time, under the most profound conviction that I had done that, that I had, though unintended and unconscious, wrought in that quiet little woman a smoldering fire that had burned unknown to me within her, and finally broke out with such infinite mischief.

Q. What did Mrs. Moulton say in regard to the subject as you talked with her about it? A. Mrs. Moulton never said a great deal about it, about such conversations. She was not what, so far as I am concerned, a talker; she was a very patient listener, and she was very quick, apprehensive, but she did not generally talk one word to my twenty.

Q. Now, Sir, in any of these conversations did you say anything to her beyond the consideration, and your feelings upon that consideration, that mischief had been wrought in the family by your presence and intercourse in it? A. Did I say anything beyond it?

Q. Did you say anything beyond the consideration, and your feelings about that consideration, that your presence and intercourse in that family had brought this mischief upon it?

Mr. Morris—Well, one moment.

Mr. Beach—It is a pretty embracing question.

Mr. Evarts—You have spoken of the conversation which you had with her— A. Am I permitted to go on?

Q. Yes, you are permitted to go on. A. Yes; if by "beyond" you mean "other," I had a good many other conversations. If you mean by "beyond" if I talked with her in the direction of the theory of the plaintiffs, I did not.

Q. Now, what else passed on this subject in any other conversations that you had with her, that you can recall? A. I don't—I seem to myself to have covered the ground, unless some suggestion starts a new line of thought.

Q. Well, I have no suggestions to make on the subject; I only want to know whether you have covered the ground of the— A. This seems to me to give a fair, not an exhaustive by no means, but a fair inlook upon the tenor

of our intercourse touching Mrs. Tilton, and the occasions of her trouble.

Q. Now, Mr. Beecher, during all your interviews with Mrs. Moulton at that house, was anything ever said by Mrs. Moulton to you on the subject of your having been guilty of adultery with Mrs. Tilton, or having been guilty of crime with Mrs. Tilton? A. Mrs. Moulton was absolutely incapable of saying that in my presence, and never said it, neither by direct words nor by allusion—to her honor.

Q. Was there any conversation at any time between you and Mrs. Moulton in which that charge or imputation against you in respect to Mrs. Moulton, as made by anybody—

Judge Nelson—In respect to Mrs. Tilton.

Mr. Evarts—Mrs. Tilton as made by anybody, was the subject of conversation? A. Mrs. Moulton and I never conversed on that subject in that aspect and in those relations; she was a lady thoroughbred, to my apprehension, and I never heard her say a word that jarred upon my sense of the delicacy and the propriety of a lady's tongue.

#### SOME CONTRADICTIONS OF MRS. MOULTON'S TESTIMONY.

Q. Now, Sir, you have said that you had no interview with this lady on the 2d of June, and I now ask you whether, at any interview, any of the matters to which I shall specially direct your attention were said between Mrs. Moulton and yourself. Did you on any occasion say to Mrs. Moulton that the conversation you had with her—were then having with her—was probably the last conversation you should ever have with her? A. Referring to death, or probable death?

Q. Well, referring to anything as terminating the possibility or prospect of further conversations with her?

A. No, I never did.

Q. Did you say to her:

I feel if Mr. Tilton publishes my letter of apology, it is useless for me any longer to live this down—to try any longer to live this down?

A. No, Sir; I didn't.

Q. Did you say anything of this kind:

I have never felt that I had much to hope for from Theodore; he has been faithless; he is a faithless man; he seems to lose sight of the fact that in striking at me, or in stating the truth concerning me, he sacrifices his wife, and if that letter of apology is published I might as well go out of life; it is useless trying to live it down?

A. I never felt so, and I never thought so, and never said so. [Applause.]

Q. Did she in any such conversation say to you.

Mr. Beecher, there is something better for you to do than that; I think that would be a very cowardly thing for you to do. Go down to your church and confess your crime; they will forgive you!

A. She never said anything of that kind [smiling]; no, Sir.

Q. Now, Sir, did you say at any such conversation :

No, I can't do that for the sake of the woman who has given me her love, for her children, for my family, for my church, for my influence throughout the whole world—that I can never do; I will die before I confess it!

A. No, Sir; I never did. [Smiling.] Very triumphantly I affirm that.

Q. Did she say this to you :

Sooner or later the truth in this case will come out; it is much better that you should take your case in your own hands and state to your church, give to them a confession such as you could make to them, and I am sure they would forgive you!

A. Never, Sir; though I know something what that was made out of.

Q. Now, Sir, did you say in reference to this suggestion of hers, or in the conversation at all :

No, that I cannot do; I should be—my church would despise me; I could not go back to my house, and my church would not forgive me; they would not deal with me as you have done; there would be nothing left for me to do. My work would be finished; it would be better that I should go out of life than to remain any longer in it!

A. No, Sir.

Q. Anything of that tenor or effect? A. There was no such conversation; it was an impossible conversation for her or for me.

Q. Did she then suggest, or at all suggest, in any conversation :

You could write for your paper; you could go to your farm and write.

A. No, Sir; Mrs. Moulton never gave me such counsel, nor never entered into any diplomatic conversations with me of that kind whatsoever.

Q. And did you, in any conversation with her, say :

No; if they would not listen to hear me preach, they certainly would not read anything that I should write; besides, my position in life is that of a spiritual and moral teacher; if I can no longer hold that position, then there is nothing more left for me, and I am resolved to take my life; I have a powder at home, on my library table, which I prepared, which I shall take, and shall sink quietly off, as if going to sleep, without a struggle.

Did you have any conversation of that— A. That whole representation is preposterous and false.

Q. Had you any powder on your library table? A. I didn't.

Q. That you had prepared? A. The only powder that I know of was in gunpowder up-stairs. [Laughter.]

Q. And did you proceed to say in this connection, or say at all, in any interview :

I haven't any desire to live; I have nothing to live for; in fact, I pray for death as a happy release from all my trials and trouble, and I feel that if I publish now a card in *The Eagle* it will only be a temporary relief; that Mr. Tilton is likely to break out again at any other time, and I feel that physically and mentally I am unable any longer to bear this strain, and I probably shall never come to see you again!

I never had any conversation meaning

what that did, of that intent or purpose, although I perceive in that representation the conversations that were had, but entirely different and for a different drift.

Q. Now, did, in this connection, Mrs. Moulton reply :

Mr. Moulton will still stand by you, and, no matter what comes to you, I will always be your friend, and I am convinced that the only way out of this trouble for you is by telling the truth!

A. I don't remember any such conversation; no such—

Q. Did you thereupon, or in any conversation, say to her that you would come to see her on the day following; that you had some gifts that you wished to dispose of, some little mementoes for different people, something which you wanted her to bear to Elizabeth, something to different friends with messages which you wanted her to bear for "him," and you would come on the day following to see "me?" A. No, Sir; not a word; it is a pure absolute dream or fiction.

Q. Now, Sir; did you at this interview or at any interview say this to Mrs. Moulton—did you tell her, either with or without tears streaming down your face, that you had suffered the tortures of the damned; that you were obliged to go home and wear a cheerful smile; when you appeared in church you must appear at your best; the slightest indication of weakness was a confession on your part, so that she was really the only person to whom you could go and act your natural self, to whom you could unburden your whole heart's trouble—did you say anything of that kind? A. I said something like that, Sir, but not in any such relations nor pointing in any such directions as that is pointing—

Q. Well, now, Sir, please state in what connection and on what subject you did say anything that was of this nature at all. A. It was in the conversation of whether I should endure any longer the strain and struggle to carry forward this trouble in concealment, or by silence, under the incessant provocations and dispositions of Mr. Tilton to leak at every side and raise up new difficulties, and the time had come, I told her, when the matter had got to come to an issue; that I would not stand the wear and tear under any conditions much longer; that I might as well—it would wear me out; and that I should meet the matter and should bring it to the surface and have a disclosure and have the thing settled—to that substance.

Q. Now, when, if you can state, was any such conversation in which what you have last stated bore a part? A. It bore a part on Saturday morning, May the 31st, I think, Sir.

Q. At their house? A. At their house.

Q. At Mr. Moulton's house, I think you have stated about that interview? A. I have, Sir; but the question took me over the same ground again.

THE ALLEGED CONVERSATIONS BETWEEN  
MRS. MOULTON AND MRS. TILTON.

Q. Yes, Mr. Beecher, I call your attention now to some statements of Mrs. Moulton in regard to reports which she made to you concerning interviews she had had with Mrs. Tilton. Did Mrs. Moulton report to you any conversations she had had with Mrs. Tilton in these words, or of this nature and effect, that Mrs. Tilton had said that she felt very sorry for Mrs. Moulton, even more sympathy for her than for herself, because she, Mrs. Moulton, had lost faith in Mr. Beecher—because, she, Mrs. Moulton, was unable any longer to attend the church; and that she, Mrs. Tilton, begged her, Mrs. Moulton, to go back to the church and believe in Mr. Beecher; and Mrs. Moulton said “Elizabeth, how can you ask me to go back to the church; how can you ask me to take the communion from his hands knowing what I do of his life?” And she said, “I want you to believe in him, he is a good man; it was not his fault, he is not responsible for the crime; I am the one that is to blame; I invited it.” And Mrs. Moulton replied to Mrs. Tilton, “I think that I might hear Mr. Beecher preach, and perhaps derive some benefit from his sermons; but I can never go back to the church with the same faith I had in him years ago.” Did Mrs. Moulton report to you any such conversation, or interview, as having occurred between her and Mrs. Tilton? A. No, Sir; she never reported any such conversation as that; nor do I think that it was possible for her to have looked me in the face and said the half of it.

Q. Did she report to you any such conversation as this as having occurred between herself and Mrs. Tilton about the time, it is said, that Mr. Tilton appeared down at the church; I believe that was in 1873, was it not, Mr. Shearman?

The Witness—Friday night in October, was it not?

Q. Well, you remember the scene? A. Yes, Sir; in 1873.

Q. Did Mrs. Moulton report to you any such conversation as this as having occurred between her and Mrs. Tilton:

I called to see Elizabeth, and I said, “If you are called before the church, what are you going to do to save Mr. Beecher?” She said, “I shall sacrifice my husband and deny everything.” I said, “Will you allow your husband to go down with the truth?” She said, “I think I should be justified in stating falsely under the circumstances; I think, for the sake of Mr. Beecher, for the sake of the influence on the world, for my own position, for my children, I think it is my duty to deny it.”

A. Pure fiction, Sir; not a word of truth in it—not a word of truth.

Q. And did you, on any such report or in any way, say this to Mrs. Moulton:

Poor child, she is trying to repair the wrong she has done in confessing it—in confessing her sin. But it is too late.

A. No, Sir; I did not.

Q. Now, Sir, did anything of this kind pass between you and Mrs. Moulton; did you in any conversation with Mrs. Moulton use these words, or to this effect, that

It was very cruel that Elizabeth should have confessed at all; it was very unjust to him; he could not understand it; he didn't know why she should have done it. But that he should have allowed him to visit her for six months after she had confessed to her husband, was even a greater mystery to him—subjecting him to unpleasant greetings and meetings with Mr. Tilton; that he could not understand why she allowed him to visit her house without having told him that she had confessed to her husband.

A. No, Sir; in connection with confession, no such conversation.

Q. Did you in any conversation with her, in reference to any urgency or invitation on your part that she should come to your church, or in any other form or manner, say that you felt that you had repented of your sin and been forgiven, and that you were better fitted now than ever before in your whole life to do great good; do you remember anything of that kind? A. No, Sir, not from me to her; nor from me to anybody else.

Q. Did she ever say this to you, or anything to this effect:

I don't see how you can stand in your pulpit and speak to young men against the sin of adultery when you are implicated in it so deeply yourself.

A. Mrs. Moulton was a lady, and she never talked about adultery in my presence under any circumstances, nor made allusion to such a crime or such foul sins.

Q. Was there anything of the kind said by her respecting yourself? A. Never.

Q. And did you, in reply to any such observation or to any observation made, say:

Having suffered what I have, having passed through the experiences that I have, I feel that I am better fitted than ever before to preach!

A. I have said to somebody, whether it was to her or not, that my great troubles and trials, I felt, had deepened my nature, and brought me into such sympathy with suffering men that I felt I could preach better than I could before, and it seemed to me that God had led me through a dark way for that very purpose; but it was not with reference to the topic or the things that your question suggested.

Q. Was it in reference to any charge or imputation or any fact of adultery that you made any such observation?

A. To no such thing.

Q. Now, Sir, did this conversation ever occur, or anything of this nature, between yourself and Mrs. Moulton. I read now from Mrs. Moulton's testimony:

I once repeated to Mr. Beecher a conversation that I had had with Mrs. Tilton, when she felt that she could no longer remain with Mr. Tilton; that he was continually referring to this sin which she had committed; that he would not let it die out; that he would not give her an opportunity—and that she felt that she could not live with him any longer; that she was going home to live with

her mother. Mr. Beecher said: Tell Elizabeth forme, that for my sake she must continue to live with Theodore, to be to him a good wife, to make his home happy and as attractive as possible. I know it is hard, I know she has much to endure, but she must do it for my sake, for her own, and for the children. I have a family; she has nothing to hope for with me, and the only way in which she can ever see me is by living with Theodore, and being to him a true and good wife.

A. False, Sir! false!

Q. Now, Sir, did anything of this kind occur, and, if so. what was it; Mrs. Moulton says:

When I repeated to him my conversation with Mrs. Tilton, when she said it was not Mr. Beecher's fault it was hers, he said it is not her fault; it is my fault, I am to blame, Elizabeth was not to blame: she is a good woman, and I want you always to love her and respect her.

A. That was what I said in substance to her respecting the alienation of her affection.

Q. In the conversation you had with her? A. In the conversations that I had with her; so long as I thought that the mischief had been wrought by my influence in transferring her love from her husband to me, I always said that my age and experience should have led me to foresee and prevent any such trouble.

Q. Now, Mr. Beecher, did you have a conversation with Mrs. Moulton, or in which she took any part some time in the first half of the month of July, 1874, this last Summer? A. Yes, Sir, there was; it could hardly be called a conversation.

#### THE INTERVIEW ABOUT MR. MOULTON'S STATEMENT.

Q. Be so good as to state what happened? A. I don't know that I know what you refer to; I only recollect having a conversation in respect to some—to a paper that Mr. Moulton was to read before the Investigating Committee.

Q. Well, just state what you have to say on that subject. There was an interview between you and Mr. Moulton? A. There was.

Q. And was his "short statement," as it was called, read to you by him? A. It was read in my presence.

Q. Now, what, if anything, passed between yourself and Mrs. Moulton on that subject? A. Nothing except that when he came down he says to her: "Emma, I have read this paper to Mr. Beecher, and he thinks it will do," or something to that effect, and she said then that she was glad of it, or words to that effect. That was about the substance of the conversation; it was casual and transient.

Q. Did any interview occur in the month of July last between you and Mrs. Moulton of this nature. She says:

I said, "Mr. Beecher, what have you done that has offended Frank? He is very angry with you." He said, "I don't know." I said, "I am very sorry; is he not angry because you have called the Committee?" Then he

said, "I did not call the Committee; my people called the Committee; I certainly could not object to an investigation." I said, "I don't know what has happened, but Frank is very angry with you, and I am very sorry for it." He said, "I am very sorry; I have intrusted myself wholly to Frank throughout the case. I have been willing to be led by him, sometimes against my better judgment, but with relation to the church—I do not consider that he has anything to do with my management of the church affairs. Besides, I could not possibly object to have an investigation where my people wanted it."

Now, Sir, do you remember in the month of July having an interview with Mrs. Moulton of that character or tenor? A. I do not recall any such thing, and while there is most of that you have read to me that I could very easily have said, and very heartily; yet any statement made by her, or by any one, that the church had called the Committee, and that I could not prevent it, is entirely untrue. I never made such a statement to Mrs. Moulton.

Q. In fact, you had called the Committee, had you not? A. Of course, I had. I was the main starter of it. The Bacon letter no sooner came to my eye than I shot as quick as a man does that sees a partridge rise; I let fly at it instantly.

Q. Now, Sir, in regard to what you may have said about Mr. Moulton's statement, Mrs. Moulton gives this:

When I went up stairs I asked Mr. Beecher into the front room, and Mr. Moulton said to Mr. Beecher, in my presence, "Then you think my statement for the Committee an honorable one?" and Mr. Beecher said, "I do—perfectly so."

Did that occur? A. I said to Mr. Moulton up stairs that I thought that—he asked me if I thought that statement was honorable, and I said that he must be the judge of that himself; that I was not going to make any objection to it; and when he came down to the room below, Mr. Moulton said substantially this: "Emma, Mr. Beecher does not make any objection to my making that statement"—

Q. That you have given us. Now, Mrs. Moulton gives this narrative: that Mr. Moulton left and went down stairs, and then there was an interview between you and her, in which she said:

"Do you know what Mr. Tilton proposes to do—what he proposes in *The Eagle* to-night?" He said, "No." I said, "He proposes to give a statement of the facts to the public in 10 days, and if so it will ruin you." He said, "How so?" I said, "He proposes to publish your written confession." He said, "I have never put any confession in writing." I said, "But your letter to Frank?" He said, "If that letter is published it will be a breach of confidence." I said, "I don't know anything about that, but I think if the statement is published, as Mr. Tilton proposes, it certainly will ruin you, but if he falls in this he will take the case into court." He said: "He cannot take the case into court; he has forgiven his wife's offense, and has lived with her four years; he cannot convict me." I said: "He will—he can convict you;" and I said: "I don't think it is even now too late for you to go down and confess to the church;

there is no other way out for you; and if you had done it when I first advised it, it would have been better." He said: "I don't consider it so; I think your advice from first to last has been bad; the public are not prepared for a confession such as I would have to make." I said: "If you had confessed it then, you would have been better off. Now you have the original crime and four years of perjury and lying to answer for." He said: "I never will confess it; I will die before I confess it."

Now, did any such conversation ever occur between you and Mrs. Moulton? A. No, Sir; no such conversation.

Q. At this interview, or at any time—I mean at this period of time, this July period—did you say this, that you had always regarded Theodore as a faithless man; that you never felt that you had much to hope for from him, and then did you say, "No, I have made up my mind to let them come in and do their worst; they cannot convict me!" A. No, Sir; I should amend any such conversation, which was possible, for I don't remember it as taking place at any one time. I did not hesitate to say that I thought Mr. Tilton was a foolish man very often, and at the latter stage of the matter that he was a faithless man, and that if the matter should come to an open discussion I should worst them, but I never spoke that they could never convict me, carrying the implication that there was a crime, and that I could conceal it, and they could not disclose it. All that is—taint.

Q. Nothing of that kind? A. Nothing of that kind.

Q. Now, did anything of this kind, as given by Mrs. Moulton in connection with this same date, in July, occur? She states it thus:

After a conversation with Mr. Moulton in the front room, and after saying good-bye to us, he came to me and took my hand in his and said: "You are the best friend I have in this world; you are dearer to me than any sister I have, for you, knowing all the truth, knowing that I am guilty, still stand by me, while they believe me innocent!"

A. No, Sir, I never was guilty of making any such foolish speech as that.

Q. Did you say anything like that? A. I did not say anything—oh! I have told her that she was to me like a sister (if you leave all the rest out), and I have told her that in many respects I could come to her with matters that I could not go to any other one with—that is, in regard to the condition and feelings of the family of Mr. Tilton; as I had kept the vow of absolute silence, and with the exception of talking to Mrs. Moulton, I talked with no human being on the subject—in fact, but only with her, and it endeared her to me; I did feel for her the most sincere esteem and affection, and I therefore never marred that esteem and affection by permitting any such conversation to me, or making any such reply to her.

Q. Did anything of this kind occur between you and Mrs. Moulton? It is stated by her that once at her house you referred to the fact that you had brought so much trouble and sorrow to yourself and Elizabeth and the household; and thereupon she said, "I think a woman is

as much to blame as a man. She was the mother of five or six children, and it does not seem to me possible that she could have done what she had done without knowing what she was doing, and she is certainly as much to blame as you are;" and you said, "No, she is not to blame; it is my fault. I take all the responsibility, all the blame on myself." Did anything of that kind occur? A. No such conversation, as that is put together, occurred. There were discussions in my presence, not by her—that I remember distinctly—but there were conversations in respect to the new doctrines of sociology and the relative positions, independence, or culpability of men and women in various relations in life. Such conversations I have heard in the household, though I do not recall them in connection with Mrs. Moulton particularly; but as that is stated with the implication that that carries, no such conversation ever took place between her and me.

#### MRS. MOULTON'S INTERVIEW WITH MR. G. C. ROBINSON NOT RELATED TO MR. BEECHER.

Q. Now, Sir, did Mrs. Moulton ever report to you an interview between her and Mr. George C. Robinson, in these words, or to this effect, or of this nature? Mrs. Moulton says:

I told Mr. Beecher that Mr. George C. Robinson had spoken to me of his frequent visits at the office to see Mr. Moulton, and that he thought it very strange that he should select Mr. Moulton, who was not a church man—that Mr. Beecher, the first man in the city, having a host of friends at his back, it was very strange that he should go to the office to see Moulton, that he did not understand the reason, that he thought there must be some great trouble—he did not understand what it was; that he realized that his brother Jeremiah Robinson knew the facts, and Mr. Moulton and Mr. Woodruff, and he felt that I ought to tell him what the trouble was; that he was a leading man in Plymouth Church and had been a deacon, and was still attending Mr. Beecher's church, and meeting him constantly, and it was rather embarrassing for him, and he felt perhaps it might be embarrassing for Mr. Beecher, and he would like to know the truth. He said that sometimes he thought that Mr. Beecher had appropriated the church money, or had been guilty of theft, or something of that kind; that he realized it was some great crime which he had committed. I said, "No; it is not that; he has been guilty of adultery with Mrs. Tilton." He said, "Well, that I can hardly believe; it does not seem possible—a man that I have believed in for years, under whose preaching I have sat for so many years, and who has preached against that one particular sin—I cannot believe that it is possible that he is guilty." I said, "I am sorry to have to tell you that he is." He said, "How do you know it?" I said, "From confessions from both parties—both Mrs. Tilton and Mr. Beecher told me." I told Mr. Beecher that I had told Mr. Robinson, feeling that Mr. Beecher might be embarrassed, and that it might be easier for him to talk to Mr. Robinson, now that Mr. Robinson knew the truth, as he frequently met him in the office and at our house.

And Mrs. Moulton says that thereupon you said that you were very glad she had told him; that you were will-

ing to abide by anything she considered best. Now, did Mrs. Moulton ever give you such a narrative? A. She never gave me a narrative with one single solitary particle of that in it that is absolute—that is, so far as reporting to me; I don't undertake to say that she did not say all this to him, or he to her, but that she never said a word of it to me, not a word.

Q. You know this Mr. George C. Robinson? A. Well, I think I do—George C. Robinson, one of the excellent of the earth.

Q. And did he, and does he, continue his attendance at your church? A. He does. He was there at the pew-renting this year, and bid off a pew, and expressed himself—

Mr. Fullerton—Never mind. He expressed himself to the extent he was willing to give, I suppose. That is enough.

Mr. Evarts—Well, if you say that that is all he said, then I will get out what he did say.

The Witness—There was a good deal that he said—

Mr. Evarts—You need not state that.

Mr. Fullerton—Well, at an auction a man says a good deal—

The Witness—No; this was in conversation afterward; he said—

Mr. Evarts—Well, I don't ask you what passed between you and Mr. Robinson, nor what he said.

The Witness [in an undertone]—It will come out on the cross-examination, I suppose.

Mr. Evarts—But he continued all the while, and does continue his relations to your church? A. Certainly; Mr. and Mrs. George C. Robinson were there yesterday, I think, and have been all along regularly there—what I should call regular attendants.

#### OTHER CONTRADICTIONS REGARDING THE "POISON" INTERVIEW.

Q. Now, Mr. Beecher, I call your attention to some statements made by this lady on her cross-examination, being the same interview concerning which I have questioned you in respect to her statements on the direct examination—some differences in the statements which I will go through with—some matters of expression. Referring to an interview which she puts as of the 2d of June, as you remember, concerning which you have testified, had occurred; but at any interview do you remember saying anything of this kind—that you had had a sleepless night; that you were very much depressed; that you were utterly without hope; you felt you must have the sympathy or reconciliation of some friend, and as she was the only person who knew the truth in this case, you came to her? Do you remember any statement of that kind? A. That came pretty near being true, but it is not true.

Q. What did you say at any interview in regard to that? A. I expressed to her feelings that I had in fits of de-

spondency and in great trouble, and especially where the trouble rose from seeing the progressive mischief and ruin that was going on in the household; that I had no one to talk to about that family, and about the affair, but her, and it was a great relief to me, when everything looked dark and gloomy, to talk to her, for she was cheerful and hopeful.

Q. Then did she say anything of this kind: "Mr. Beecher, I am very sorry for you in this great trouble; there is only one way out for you, and that is by a confession and telling the truth; you cannot continue in this life of deception and hypocrisy; the truth will come out sooner or later." Did Mrs. Moulton ever address you in that way? A. No, Sir; it was not in her nature to say anything of that kind, and she never did—[after a long pause]—of her own accord.

Q. Now, in reference to any such suggestion on her part, what did you mean by "her own accord?"

Mr. Beach—No; we move that that be struck out.

The Witness—I understand you to say she said—

Mr. Evarts—I asked you if she said it.

The Witness—She didn't say it to me.

Q. Now, you used an expression, in answering the question, that she never said it of her own accord.

Mr. Beach—I move to strike that out.

Q. Did she ever say it at all to you? A. Only as I sat here in the audience; that was the first time I ever heard it.

Mr. Fullerton—That is not what he meant, by a good deal.

The Witness—It is exactly what I mean, by a great deal more.

Mr. Beach [to the witness]—We were contradicting the counsel in his construction of the matter.

The Witness—I beg your pardon; I thought it was addressed to me.

Mr. Evarts—I want to exclude the idea that she didn't say it spontaneously, but said it to him.

Mr. Beach—We understand what he meant.

Mr. Fullerton—There is but one meaning to be attached to it.

Mr. Evarts [to Mr. Fullerton]—Are you satisfied?

Mr. Fullerton—I am perfectly satisfied. Let it stand as it is without further explanation.

Q. Now, in this supposed conversation, in any conversation with Mrs. Moulton, did you express yourself in this form, that you could not confess, because your work would be at an end; that if you could not continue in your position as a moral and spiritual teacher there would be nothing left for you to do; for the sake of your children—it would be a disgrace to them if you should confess this crime; that you would have no hope, and that your church would not forgive you—did you use any expression of that kind? A. There is a single expression in that, but that sentence collectively is a false representation. It is not true that any such conversation

passed with any such intent. In discussing the question of editing a paper, I said in various conversations that I did not consider that to be my prime vocation; that I was a moral and religious teacher by the voice, but the idea of turning aside from my pulpit to edit a daily paper struck me as preposterous; I knew my function.

Q. Did you have any conversation with Mrs. Moulton in which that formed a part? A. I doubtless had conversations in her presence on that subject, because it was talked of frequently between Mr. Moulton and myself. The proposition was made to me, at two several times, to turn aside from the desk and take a paper, and that gave rise to conversations on that subject.

Q. Now, did she in this supposed conversation, or in any conversation in answer to your suggestion that they would not forgive you—that people would not forgive, at all, say: "I said that I thought they would forgive him; that he had done a great deal of good in the world, and that his church were bound to him like as one man almost, and I thought they would stand by him," and you replied: "No; that is a crime that they won't forgive; they won't treat me as generously and as kindly as you have done?" A. No, Sir; I never said any such thing.

Q. Now, Mrs. Moulton gives as a part of her narrative of a supposed interview: "On his part it was one long account of what he had suffered, and how he was unwilling to try to go on and endure it any longer; that he felt on that morning that the truth would come out, and that he could not live to meet it; he had not the strength, either physically or mentally," and she said: "I remember that I did endeavor to encourage him; I told him I thought it was a very cowardly thing to do to take his life." Now, did anything of that kind occur? A. No, Sir.

Q. I think you said, Mr. Beecher, that you did not see Mrs. Moulton either on that Monday nor on the Tuesday evening that you were in town, following? A. No, Sir, I did not.

Q. Do you remember any conversation in which Mrs. Moulton expressed the opinion that Mr. Tilton was treacherous? A. Yes, Sir. I don't remember conversations; I remember her to have used such phrases of him.

Q. That Mrs. Moulton expressed such an opinion? A. I recollect to have heard her express such sentiments of Mr. Tilton. I don't remember any particular conversations in which it came up.

Q. Now, in that connection of Mr. Tilton's treachery, did she say this to you: "I told him that I thought Mr. Tilton was filled with revenge and anger against him, and that often when questions were put to him he made a reply such as told the whole truth?" A. No, Sir.

Q. Mr. Beecher, you have spoken of seeing Mrs. Moulton on the 31st of May, in the morning, and also in the evening, and you were at the house in the evening also? A. I was.

Q. And saw Mr. Moulton? A. I saw them both.

Q. Now, Sir, on that 31st of May were you lying upon the lounge, with a pillow, and covered with an afghan or blanket? A. No, Sir; I was not.

Q. There was no interview on the 31st of May in which you were so disposed of? A. No, Sir; I never was so disposed of on the 31st of May.

Q. Now, Sir, there is a third statement about this interview—this supposed interview—in which she uses these expressions. Now, Mrs. Moulton states, after lying on the sofa a little while you got up and walked up and down the room in a very excited manner, with the tears streaming down your cheeks, and said—now I ask your attention to this—"He thought it was very hard, after a life of usefulness, that he should be brought to this fearful end; and I said that I thought it was—it was, very hard; there was only one way out of it for him, there was only one chance for him left, and that was by confessing it." Did any such conversation take place between you and her? A. No, Mr. Evarts; there was no such conversation between that woman and me then or at any time.

Q. [Reading.]

After walking up and down for some time he sat down in a chair. I stood behind him and put my hand on his shoulder: "Mr. Beecher, if you would only go down to the church, Frank will go with you; he will stand by you through everything; it does not matter what comes to you, he will always be your friend, if you would only go down to the church and confess, because that is the only way out for you; I am convinced of that; you can never cover such a crime as this and continue in the pulpit, except through a confession on your part. You have been guilty of crime, and you have got to take the responsibility on yourself, and suffer the penalty." And he said: "Well, I never gather much comfort from you; you are always to me like a section of the Day of Judgment."

Now, Sir, did you ever have such an interview? A. It is the last figure that I have, should ever have, appropriated to Mrs. Moulton, who was much more to me than a bank of Spring flowers; I never had any such interview with her; I never heard from her any such statements. They are absolutely inconsistent with the emotion of her nature and her disposition.

Q. Did it ever occur? A. It never occurred.

Q. And she proceeds:

And I said, "Well, I feel great sympathy for you; but I don't see how you can continue in this sort of life—living a lie—going into your pulpit and preaching Sunday after Sunday." I said, "I have never heard you preach since I knew the truth, that I even felt that I was standing by an open grave; I cannot express to you the anguish and the sorrow that it has cost me to know what I have of your life. I believed in you since I was a girl, believed you were the only good man in this world. Now it has destroyed my faith in human nature; I don't believe in anybody; I don't go to church—all my interest in the church and in you is gone, and I am sure I cannot respect you unless you manifest to me that you are sincerely repentant by going down to the church and confessing your crime."

A. Most melancholy falsehood.



Q. Nothing of the kind occurred? A. No, Sir; no, Sir; nothing.

Q. Now, the lady proceeds:

It is very hard for Mr. Tilton (she stating this to you) to be abused by your friends and to be charged with treating his family ill—his unkindness to his wife—while he feels that you are principally the cause of all his trouble. It is very hard for him; it is very hard for all concerned. If you are only amind to take this case into your own hands you can settle it by confession. Your people will stand by you; they believe in you; they will forgive this one crime that you say you have committed and which you have—which you say you have sincerely repented for, and you believe you have been forgiven, and you feel that you are better able now than ever before to do great good in this world if you can only be allowed to go on to the end of your life without all the particulars of this case being made known; that is all that you ask, and if the facts are to come out, you want to go out of life; that you cannot live; that you cannot endure it any longer; physically and mentally you are worn out; and it is only with great care that you have been able to preach from Sunday to Sunday!

Did she give you a statement of that character? A. No, Sir; nor none of it.

Q. Now, Sir, in connection with any such conversation, or as a part of it, did this occur:

Mr. Beecher then spoke to me of coming some time, either the next day—to bring me some mentioes which he wished to give to his friends—something to Mrs. Tilton—asked me always to respect her and care for her, and be kind to her; that she was not a bad woman at heart; that she had sinned through her affections.

Did anything of that kind occur? A. No, Sir; nothing.

Q. Now, Mrs. Moulton refers to a call made afterward by you in this form:

He came to me soon after; referred to his depression on that day, but said that he felt more hopeful; that he thought that his card in *The Eagle* was only temporary relief; he was living in a fear of—a constant fear and anxiety, not knowing at what time Mr. Tilton might break out with the truth.

Now, after this 31st of May, did you have any interview with Mrs. Moulton after you returned to New-York, or returned to Brooklyn from the East, or at any time in which that occurred? A. No, Sir; not with the words that are put in it; I often talked with Mrs. Moulton on the matter of the breaking out through Mr. Tilton of their domestic troubles, but I never spoke of it as a confession, or as a sin, or as a crime, or as anything of that kind.

Q. Breaking out of the truth? A. Nor the breaking out of the truth.

#### THE MESSAGES SENT TO MRS. TILTON.

Q. Now, Mrs. Moulton speaks of some messages that you sent to Mrs. Tilton, and speaks in this way in regard to the general subject:

Well, he always told me to say to her that she must refuse to talk with everybody of anything bearing on this case; while she was trying very hard to restore the damage she had done by a confession, she was all the time making it worse.

Did you say anything of that kind to Mrs. Moulton by way of message to Mrs. Tilton, or otherwise? A. I think quite likely something like that, communicating to Mrs. Tilton that she should avoid conversation on this matter, or allowing any one to come to her family and converse with her. I had heard that several persons intruded themselves upon her, and the conversation arose in consequence of that, and I sent messages by Mrs. Moulton when she was going there, and we talked the matter over—the impropriety of her doing it, and often told her to tell Elizabeth about it from me.

Q. Not to talk about it? A. Not to talk about it—not to allow people to talk.

Q. Did you say anything of the kind that, while she was trying to restore the damage that she had done by a confession, she was all the time making it worse? A. No, Sir.

Q. Now, Mr. Beecher, in all your intercourse with Mrs. Moulton did she at any time, in any conversation with you, either by words or by any implication, impute or suggest the crime of adultery or illicit sexual relations between you and Mrs. Tilton? A. She never did, neither by word nor by implication.

Q. Was that fact stated or imputed or supposed—was ever a topic of conversation or suggestion from you to her, or from her to you? A. It never was.

Mr. Evarts—Perhaps, if your Honor please, I can use the five minutes between now and 1 o'clock as well as arranging the next topic.

Judge Neilson [to Officer Rogers]—Mr. Rogers, place your men so that no person shall speak to the jury as they pass out. [To the audience.] Gentlemen, keep your seats until the jury retire. [To the jurors.] Gentlemen, return at 2 o'clock.

The Court here took a recess until 2 p. m.

#### WHEN "CRIME" WAS FIRST CHARGED.

The Court met at 2 p. m., pursuant to adjournment.

Mr. Beecher was recalled and the direct examination resumed.

Mr. Evarts—There was an interview between you and Mr. Moulton on the 31st of May, 1873, and with reference to any interview on that day with Mr. Moulton, without the presence of Mr. Tilton, or with Mr. Tilton, if Mr. Tilton was present, at any such interview, was there in any conversation between you and Mr. Tilton and Mr. Moulton, or with one in the presence of the other, any conversation regarding your affairs and their affairs, or what was to be done, or should be done, in which the word "crime" was used by either of those gentlemen, in regard to you, or the subject which was talked about? A. No, Sir.

Q. Now, Mr. Beecher, in all this matter between yourself and Mr. Tilton and Mr. Moulton going on from December, 1870, until the Summer of last year, when was

the first notice or intimation to you of a charge of crime, or of the use of the word "crime" in any conduct that you are charged with, on the part of Tilton or Moulton? A. It was conveyed to me through Mr. Redpath, at Peekskill, and there only, unless it occurred in the interview about the Bacon letter, but I do not think that the word was used in that interview.

Q. That the word "crime" was used in the interview about the Bacon letter? A. No, Sir, barely; but aside from that—and to the best of my recollection it did not occur then—my first hearing of it was through Mr. Redpath, at Peekskill.

Q. On the 13th of June, or about? A. I don't remember the date, Sir.

Q. Well, at Peekskill? A. Yes, Sir.

Q. When he saw you at Peekskill. He has fixed that. Now, was that the first notice or advertisement on the part of Mr. Tilton, or Mr. Moulton, that you were to be accused of adultery with Mrs. Tilton? A. It was.

#### INTERVIEWS CONCERNING THE BACON LETTER.

Q. Now, in regard to any conversation that immediately preceded or immediately followed the publication of what is known as the Bacon letter, were there such conversations in which you took part, and with whom? A. Yes; I had conversations with Mr. Moulton; I had ceased to have meetings with Mr. Tilton; they were very rare, if at all, but with Mr. Moulton I had conversations during all the time of the Council, in March of 1873, I think it was—of 1873 or 1874.

Mr. Beach—1874, Sir.

The Witness—1874, and in regard to the address which was reported in the papers, purporting to be Dr. Bacon's address to the Theological Class; and in regard to the five letters, if there were so many, or articles which Dr. Bacon published in *The New-York Independent*; and then in regard to the reply which Mr. Tilton was preparing to Dr. Bacon.

Q. Now, how was that matter introduced to you? Was the conversation to which you refer, or conversations, with Mr. Moulton? A. They were.

Q. With Mr. Moulton? A. Yes, Sir.

Q. Now, prior to the publication of the Bacon letter, what interview between Mr. Moulton and yourself can you recall as bearing upon that meditative— A. Well, I cannot give any one single interview, but I can give you the substance, the drift, of several, for they were substantially reproductions, with very little variations, of the same train of thought; Mr. Moulton was extremely unwilling that Mr. Tilton should write and publish a letter of that kind, and labored, as he told me, in various ways to dissuade him from it—that is, from the publication of it; he told me that it would, perhaps, be best to let him write it out, repeating what he had said on a former occasion substantially; that that

was the way to manage Mr. Tilton when he got into one of his violent dissatisfactions, to let him write out, and then when he had, in some sense, expended himself on the literary effort, to attack and to control him, and it was in one of those prior conversations that I learned from Mr. Moulton that it was Mr. Tilton's intention to introduce into his letter to Dr. Bacon the substance of the letter, or the apology—whatever name may be given to it—and we had several incidental conversations, one just preceding the publication, or, as it happened, though I did not—I think neither of us expected it would be published then, or I did not—in which he represented that Mr. Tilton and he had been in New-York the night previous at a friend's house, and that there had been several persons called in to consultation, and that they had all striven, as I understood, to prevent the publication of the letter, but that Mr. Tilton was confirmed in his determination to publish it; that when Mr. Moulton addressed himself to taking out of it some harsh expressions which he said were in the letter, and that he had finally succeeded, making it, he said, a great deal better than it would have been, there was an unnecessary severity in it, and that, I think, is the last conversation I had with Mr. Moulton on that subject until after the letter was published.

Q. Well, after the letter was published did you then have any conversation, with the letter before you, or in mind, between you, concerning what had been done by him in any change from what it would have been but for the change? A. I never read the letter from that day to this, Sir, as I recollect; I may have read portions of it since the trial began, but the letter was not written to me before.

Q. Was not shown to you? A. Was not shown to me; I knew nothing of its contents except as they were represented by Mr. Moulton, and after the letter appeared I was at Peekskill, and when it appeared, I think on Thursday, I telegraphed to Mr. Moulton immediately that I would see him the next day at 6 o'clock, at my house; and there was some telegraphing between us. I came down on the 2 o'clock train on Friday, called Mr. Cleveland to my house in consultation on my way, then announced and made the first steps toward the calling of an investigating committee, and telling him the plan which I meant to pursue.

Q. Telling Mr. Moulton? A. No, Sir, Mr. Cleveland, and also telling him—

Q. Well, it is no matter what you told him? A. Announcing simply that Mr. Moulton was to see me at 6.

Q. Very well. A. And at that time Mr. Moulton came to my house, and we had a conversation, of which I recollect very little, for I had dismissed from my mind wholly the idea that Mr. Moulton could be successful any longer as a friend of both parties. He brought, however, with him, a document which was, I believe—has it been

put in evidence ?—a document wishing me to admit that I had committed an offense.

Mr. Beach—Yes, it has been put in evidence.

Mr. Evarts—I don't know.

Mr. Beach—Yes, it has been put in evidence.

Mr. Evarts—It is known as the Carpenter card, isn't it?

The Witness—Yes, Sir; and I said to him, "I am going to have some friends here to-night, and I will confer with them, and I will see you again."

Mr. Evarts [to Mr. Shearman]—What is the number of that exhibit?

Mr. Shearman—34.

Mr. Evarts—Mr. Morris, will you be so good as to let us have 34?

Mr. Morris produced Exhibit 34.

Mr. Evarts—Just look at that, Mr. Beecher, and say if that is the paper or proposed card or statement that was brought to your attention [handing witness Exhibit 34]? A. I think that this is the card. You don't mean that this is in my handwriting?

Q. No; it was not in your handwriting? A. No.

### THE CARPENTER CARD.

Q. The card was brought to you, wasn't it?

A. The contents of this are familiar to me, and I suppose this to be the paper that was brought to me.

Q. Do you know the handwriting? A. I do not.

Mr. Evarts—I don't know whether— [To Mr. Morris.] Has it been stated?

Mr. Morris—Yes.

Mr. Evarts—It has been stated, I believe, to be in Mr. Carpenter's handwriting—Mr. Frank Carpenter's. Now, I will read this, as I wish to ask you questions about it:

This church and community are unquestionably and justly interested, through the recent publication by Theodore Tilton in answer to Dr. Leonard Bacon of New-Haven.

It is true that I have committed an offense against Theodore Tilton, and, giving to that offense the force of his construction, I made an apology and reparation such as both he and I at the time declared full and necessary. I am convinced that Mr. Tilton has been goaded to his defense by misrepresentations or misunderstandings of my position toward him. I shall never be a party to the reopening of this question, which has been honorably settled as between Theodore Tilton and myself. I have committed no crime; and if this society believes that it is due to it that I should reopen this already too painful subject, or resign, I will resign. I know, as God gives me the power to judge of myself, that I am better fitted to-day, through trials and chastening, to do good, than I have ever been.

There is an occasional change of ink here. I don't know whether it appears whose handwriting that is. [Consulting with Mr. Morris.] Now, Sir, with that before you, what was said by Mr. Moulton in regard to its publication by you? A. I don't remember much about what was said that first evening, Sir. My mind was running on other things, and Mr. Moulton had his plan, and

I had dismissed from my mind his generalship, and yet my personal relations were very cordial, and my confidence in him personally was very strong, and I didn't wish in any way to hurt him, or to be indifferent to what he really seemed to me to be laboring to accomplish; yet my mind was set; I had come to the end, and I meant to have no more intermediate stages, and I therefore, when this was first brought to my notice, said, "I will consider it; I will take it into consideration." That, so far as I recollect, was the first interview substantially.

Q. Now, can you fix the date of this interview? A. It can easily be fixed; I cannot in my memory fix it; I have got it in my pocket.

Mr. Evarts [to Counsel]—Well, has it been fixed.

Mr. Morris—I am not sure.

Mr. Evarts—June 26 it is said to have been fixed; is that so, Judge Morris?

Mr. Shearman—The "Bacon letter" was published Thursday, June 25.

Mr. Evarts—Well, it was immediately following the publication of the "Bacon letter," was it? A. It was [Referring to memorandum.] It was on Friday evening, June 26, according to my memorandum of dates.

Q. The "Bacon letter" was published on the 25th, it is said, and I suppose correctly. A. Yes, Sir.

Q. You took this card, did you, to consult with friends? A. Yes, Sir.

Q. How soon thereafter did you have any interview on the subject of the card, or its publication? A. I cannot fix the precise time, Sir, but it was not far off.

Q. What further passed between you and Mr. Moulton in regard to this card and its publication, and what could be done or would be done if you assented to it? A. At a later—at some interview later, Mr. Moulton urged me very strongly; as I recalled the conversation it was substantially this, that Mr. Tilton had bound himself in the presence of witnesses if I would publish that statement, that he would be content himself, and Mr. Moulton said if I would publish that statement he would burn every document that he had, and that if Mr. Tilton ever undertook to move again in the matter he would take sides with me and fight him. He expressed himself very strongly; I think the word he said, he would "smash" him.

Q. Did he say to you anything in regard to the power that he had over Mr. Tilton? A. Yes, Sir; many, many times, he said: "I have that—I can grind him to powder," he said imperatively, of his control over Mr. Tilton.

Q. Well, what was your answer in regard to your signing or publishing that card? A. I would never sign a card after the "Bacon letter" with that equivocal offense in it.

Q. Well, you told him that you would not, did you? A. I told him that I would not, and I did not.

Q. Well, what was the end of the matter about that

card and about its publication! Was there anything further about it; was the subject renewed and pressed in any way? A. I cannot say definitely. There was still, up to the very sessions of the Investigating Committee, more or less of an effort on the part of Mr. Moulton to accommodate matters. He thought that the publication of the Bacon letter had not brought things necessarily to a crisis. I thought it had, and he, with great assiduity and vehement zeal, thought that there could be a way struck out between extremes by which we could all go clear, even at that stage. I said we could not—that the thing must be tried now and looked into the bottom.

Q. Was this card intended or proposed for newspaper publication, or for reading to your church, or otherwise presenting to this Committee? A. I don't know that the particular mode of issuing it was a matter of consideration. I don't remember anything about it. In form it looked rather like being read to the church, but as I did not particularly regard it in any way—that is, I did not give much thought to it, except that the opening phraseology was an effectual bar to its being used by me in any way.

Q. Now, Mr. Beecher, do you remember anything about this card, of this kind. Mr. Moulton says that he submitted that paper to the consideration of Mr. Tracy upon his own suggestion; he does not say it was upon your suggestion; and then being asked this question: "And what was said by Mr. Beecher in regard to that act," that is, submitting it to Mr. Tracy, Mr. Moulton answers: "He approved of it;" and it comes out in the next question and answer a little more fully:

Q. What did he say and what did you say to him? A. I said to him that I had submitted the paper to Mr. Tracy, and he said nothing further in regard to it; I don't remember that he made any reply.

Which perhaps does away—I don't know how that is—but do you recognize any conversation between you and Mr. Moulton as to this paper having been submitted to Gen. Tracy, and your approval of it having been done? A. It may very easily have been. Sir, but I don't recall any such circumstance. There were a good many meetings, and there were a good many stages. Before the Bacon letter there was a card, you know, prepared in anticipation—anticipatory card—which was afterward modified, and attempted, I think, to be made the basis of this other one, and I am not clear in my recollection about that. I know there were many interviews and many suggestions and tentative forms produced, and before the Bacon letter was published I was not indisposed to consider it, but after it was published I was indisposed.

Q. Now, Sir, do you remember Mr. Moulton reporting to you any such interview between himself and Gen. Tracy as this? A. I don't remember it, Sir.

Q. As this? A. Oh! I beg pardon.

Q. This which I now state to you:

I met Mr. Beecher on July the 5th, I think, and I said, "Well, Mr. Beecher, you have not uttered from your pulpit, or anywhere given utterance to the words that I prepared for you; at least I have not seen any such expressions;" and he said, "No, you advised silence particularly." "Yes," I said, "I advised silence, but I think you have had a good opportunity to make that expression;" and I said, "At the Friday evening prayer-meeting your church seemed to be in entire sympathy with you, and I think you might have availed yourself of that occasion to have made that expression." And he said, "Well, I am not to blame for that. You advised silence, and I have followed the course you advised."

And then this card is put in evidence that you have just had in your hands, and the witness proceeds, and it is to this part that I wish to call your attention particularly:

I had a subsequent conversation with Mr. Beecher about it, and I told him that I had seen Gen. Tracy concerning a reply to the Bacon letter, and that I had asked Gen. Tracy if he had submitted the paper to him, and I said to Mr. Beecher that Mr. Tracy's reply was that he had seen a paper in which he thought he detected my handiwork, and that Gen. Tracy had said to me that the words, "I have committed no crime"—which is a part of this card, quoted from it—really said nothing in denial of the fact as alleged by Mr. Beecher against—or as to the fact between Mr. Tilton and Mr. Beecher—[the witness corrects himself]—or Mr. Beecher and Mrs. Tilton's relations; that as nearly as I could remember the words he said, "I have committed no crime," did not mean anything, because adultery was no crime under the common law. That is as nearly as I could repeat it, and I said to him that I had told Gen. Tracy that I did not think that was a good objection; that I thought the community would accept that card as a distinct denial—that utterance, rather; that that utterance would be accepted by the community as a distinct denial, and that it ought to be made, or some such utterance should be made, since Beecher assented—since Mr. Tilton assented to peace, if that utterance was made, or if silence was kept.

Q. Now, Mr. Beecher, do you remember a conversation in which Mr. Moulton brought to your attention an interview that he had had with Gen. Tracy on the subject of the force and effect of this card? A. I have no distinct recollection of any such statement as is made there.

Q. What was the objection that you stated to the publication of that card? A. My objection was that after the publication of the Bacon letter nobody could understand the offense—or everybody was at liberty to understand the offense as they pleased; certainly, that it was that I had made improper advances toward Mrs. Tilton, and I wouldn't stand it.

Q. And you would make no publication that contained that admission? A. I would not agree to any such statement; I would not sign any such statement; I would have nothing to do with anything that could so mislead the public.

Q. Now, whether the word "crime" was used or not in either of the conversations that Moulton had with you, preceding or following the publication of the Bacon letter. Was there at that time any suggestion or intimation from Mr. Moulton that the charge against you was any

other or different from what had been the subject of imputation—the improper advances? A. That was what he understood, and what he conveyed to me, and what I understood.

Q. So that the announcement made to you by Mr. Redpath as coming from Tilton and Moulton, that they intended to charge adultery, was the first notice of that imputation or charge on their part? A. It was the first statement to me; it was the first time, I suspect, that it was ever thought of.

Q. Well, the first statement to you? A. At any rate, I knew it then for the first time as a part of their plan.

#### THE WEST CHARGES.

Q. Now, Mr. Beecher, in regard to what have been known as the West charges. [To counsel.] Where are those papers? [Paper produced by Mr. Morris and handed to Mr. Evarts.] In regard to these West charges, was the text or form of them ever laid before you, or communicated to you? [Handing witness a paper.] A. No, Sir; I don't remember ever to have read them; I knew what they were; I mean at the time—that is, I knew the ground they covered, without knowing much about them particularly.

Q. Now, in the Spring, or early Summer, when the matter was first brought up, what did you understand the charges were confined to? A. I understood that they were charges brought against Mr. Tilton for having slandered me in reporting that I preached to forty mistresses, or some other number.

Q. Yes? A. And that they only related to what were called generally the Bowen slanders or charges.

Q. The Bowen slanders? A. Yes, Sir.

Q. Now, in the Fall, in regard to any third clause or item, how much knowledge had you on that subject? A. I don't think I had any; the ground I took was such that I could not very well have any knowledge about it.

Mr. Fullerton—Don't reason about it.

The Witness—I beg pardon.

Mr. Evarts—Now, in regard to the third charge or item that involved any relations with Mrs. Tilton—imputation against Mr. Tilton of having made charges in respect to Mrs. Tilton and yourself—was there any communication to you, in writing or otherwise, of any other charge in that relation than the charge of improper advances? A. No, Sir.

Q. Now, I call your attention, Mr. Beecher, to some statements of Mr. Tilton's testimony. Mr. Tilton speaks of an interview that he had with you, I imagine somewhere about October of that year; at any rate it was in the Fall. [After some consultation.] Now, Mr. Beecher, in reference to these West charges, and in that Fall, that Autumn, did you have any discussion or conversation with Mr. Tilton, in which Mr. Tilton's conversation with Mr. West about these charges and about your guilt was talked of? A. I don't know.

Q. Mr. Tilton says that he said to you in some such interviews, "that during the Summer he (Mr. West) had changed his mind on that subject, and had come to the conclusion that Mr. Beecher was the guilty man"—that is—I must go back a little further—"Mr. West had visited me during the Summer, and had substantially indicated to me, though he didn't say it in plain words, that he (Mr. West) had originally instituted these charges against me, in June, because he thought I was really guilty of slandering Mr. Beecher; that during the Summer he (Mr. West) had changed his mind on that subject and had come to the conclusion that Mr. Beecher was the guilty man, but that, having brought his charges before the Church in the regular way, he desired that they should be called up in the Autumn," and he urged him (Mr. Tilton) to appear before the Church to answer the charges; "that in answering them I would throw the blame where it belonged and clear myself." Do you remember any interview with Mr. Tilton in that Autumn, after those West charges were brought upon the carpet, in which any conversation of that kind occurred? A. I do not; I heard rumors, but they were rumors, I cannot tell from whom.

Q. Well, the question is whether you had any such conversation? A. I recollect no such conversation with Mr. Tilton.

Q. Do you remember Mr. Tilton's saying this: [Reading.]

I told him, however, that Mr. West was guarded in his expression and would not say absolutely that he believed in Mr. Beecher's guilt, only that if Mr. Beecher was guilty he was acting during the Summer as a guilty man would act, and exactly as an innocent man would not act!

A. I remember no such language, Sir.

#### THE CHURCH MEETING RESPECTING THE CHARGES.

Q. Now, Mr. Beecher, the end of all this matter, I understand it, occurred at some church meeting, or meeting of the church or society where Mr. Tilton was present and made some observations, an address, and you also followed him? A. What is the date of this?

Mr. Morris—October 31st.

Mr. Evarts—October 31st, 1873.

The Witness—Yes, Sir.

Mr. Evarts—Now, calling your attention to that scene, please state the matter as it occurred, as you recall it. A. Well, Sir, I cannot give you a very detailed statement of it—the question—certainly cannot without giving a statement of the position to which we had come in our church deliberations through the Committee. The Friday meeting was a meeting, if I recollect aright, to receive and act upon a report from the Examining Committee; and, as that report was essentially this, that the name of Mr. Tilton be dropped from the roll, and as I had talked with Mr. Moulton and with Mr. Tilton as to the pro-

gress of things, it was coming to that issue. He appeared in that meeting.

Q. Mr. Tilton did? A. Mr. Tilton; he went—asked permission of the Chairman to make some remarks, and as a courtesy it was granted, and he then proceeded to make some remarks in which that that I remember, and that which was the point of them, was, that he had not slandered the pastor of the church, or if he had—the pastor had—any charges to make on that subject against him, he was there to have them made then and there, or words to that effect—that was the substance of it; he assumed the position of a man not a member of the church, but declaring that he had not slandered the pastor, and if the pastor thought he had, he was there to receive those charges. I had not expected to speak in the evening, but I did; and, after making some remarks in respect to general principles of our church, I, in the close, alluded to the remarks that were made by him, and said that whatever differences had existed between Mr. Tilton and me had been honorably settled, and were, so far as I was concerned, buried; that I had no charges to make against him; and that I believed he had none to make against me; and with that the speech ceased, and then after the voting (I think he remained to the end)—after the voting in the meeting Mr. Tilton was congratulated on the successful termination of this difficulty and shook hands with my most intimate and cordial friends, and went home happy.

Q. Mr. Tilton? A. Mr. Tilton.

Q. In your observations did you— Mr. Stenographer, won't you read this last answer?

[The Tribune stenographer read the answer.]

Q. In what you said, Mr. Beecher, in regard to difficulties being buried, whatever they were, or however you spoke of them, was anything said by you to their being buried on Mr. Tilton's part? A. I cannot say—affirm—I said that they had been amicably settled between us, and, so far as I am concerned, they were buried; that I had no charges to make against him, and that I believed he had none to make against me.

Q. Now, Mr. Beecher, I call your attention to a statement of Mr. Tilton's in answer to this question, which will show you the subject. On the cross-examination by me the question was:

What was there in that situation that made Mr. Beecher responsible for any of those offenses against you that you find in Dr. Bacon's—it should be “in Dr. Bacon's statement? A. I will tell you, Sir. Mr. Beecher came out of his church one night, as I have described in my direct examination, meeting Mr. Moulton and me against the Iron rail—saying he could control his church; that they would do exactly what he wished; that he held them in his right hand; and any action which Mr.—I believe that is the end of what he says you said—“saying he could control his church; that they would do exactly what he wished; that he held them in his right hand”——

Q. Did you make a statement of that kind to Mr. Tilton? A. No, Sir; I did not.

Q. In reference to the situation after the Bacon letter, or any other time? A. I did not, Sir.

#### THE INVESTIGATING COMMITTEE APPOINTED.

Q. Now, Mr. Beecher, did there come to be an Investigating Committee last Summer? A. There did.

Q. After it was appointed, was an application made to you from that Committee for a statement before it of your relations with Mrs. Tilton? A. There was.

Q. Did you prepare and present to that Committee a statement on that subject? A. I did.

Q. Is that the statement concerning which Mr. Moulton speaks as having been read in part, at least, to him—He is asked this question—

I saw him several times at his house, yes; Sir. Q. In regard to what? A. In regard to the report which he should make to the Investigating Committee of his church. Q. State whether he had it prepared? A. He read to me, Sir, from a paper, what he proposed to say in regard to Theodore Tilton. Q. Was that the paper? A. It was.

Q. From which you read to Mr. Moulton? A. Yes, Sir.

#### MR. BEECHER'S STATEMENT.

Mr. Evarts—I offer that paper in evidence, Sir.

Mr. Shearman—We will have this marked “Exhibit D, 131.”

Mr. Fullerton—Inasmuch as it is disconnected, I think that every leaf ought to be marked.

Mr. Shearman—Very well.

[Accordingly each leaf of the paper was marked D, 131.]

Mr. Evarts—Please look at the date of this, Mr. Beecher, and then I will ask you a question. The date is “Wednesday, July 15, 1874.” Now, was this prepared by you after your interview with Mr. Redpath at Peekskill, which was on Monday, the 13th? A. Yes, Sir; what date does that bear.

Q. This bears date Wednesday, the 15th of July, 1874. A. Yes, Sir.

Q. According to Mr. Redpath's testimony, you, in that interview with him, spoke of a statement that you were going to make; is this the statement? A. Yes, Sir; that is the statement that I was going to make.

Q. And made after that interview? A. Yes, Sir.

Mr. Evarts—I will now read it, if your Honor please.

Mr. Beach—You read from a copy.

Mr. Evarts—Yes. [Reading.]

WEDNESDAY, July 15, 1874.

DEAR BRETHREN: When, at length, the time came that I could break the long silence of four years, I thought it proper, and in accordance with all the principles which Plymouth Church has defended, that I should speak to you, and through you to the Church, the only ecclesiastical tribunal whose authority I recognize as binding upon me. I asked the appointment of a large committee of able and impartial men, because, though my own statement was to be, in my judgment, the chief element, yet

there were many incidental and collateral questions which I desired to have investigated and finally determined.

I do not propose to enter upon the details of a history running through four years. I shall state the facts which concern the original troubles and leave alone the tangled sequences.

My acquaintance with Mrs. Elizabeth Tilton dates from her childhood; my intimacy in her family, from about 1862-3. Her nature was strongly devotional. She had a genius of religious sentiment. Had she lived in other days, and in the Catholic Church, she has always seemed to me to be one of those who would have inspirations and ecstatic visions. My interest in her increased, and she deserved the respectful affection which she won from me. I loved her as one would his own child. She had grown up under my teachings. She had never known any other religious teacher, and she had associated with my name, and illumined it by her imagination, whatever was worthy of affection and trust. Nor did I dream, for a long time, that, in such a gentle and appreciative nature, my admiration and sincere affection might beget an enthusiasm which would mar the entirety of the love which a wife should cherish for her husband. It was at length the sight of the unhappiness disclosed in the family, and the indignant reproaches of her husband, that aroused in me the full sense of the wrong done in winning any part of that affection which should belong to her household. Leaving to others the unwelcome task of refined moral criticism upon this gentle and pure-minded woman, it is for me explicitly to defend her from any charge of criminality of conduct, and to dissipate even the shadow if a reproach upon her untempted honor, and to join with her husband, who has again and again, with loyal affection and with justice, defended the personal purity of his wife.

Although the sincere affection which grew up in me for Mrs. Tilton was honorable in intent, I none the less condemn myself with unsparing severity for bringing upon the most sacred of human institutions—the household—great harm and distress, which have since flowed like a river. I do not measure the blame by a light standard. That our relations were not criminal in the ordinary and legal sense of the term, does not exonerate me from blame, nor does it relieve me of the sharpest pangs of sorrow. My age, my experience, my knowledge of her sensitive nature, should have been a shield to her, and my long and affectionate relations with Mr. Tilton. When the full realization broke upon me of a household deeply wounded by my imprudence, of possible and threatened divisions and scatterings, and the long train of evils that might befall father, mother, and the beautiful group of children, and that instead of happiness I had brought upon two persons with whom I had been in the most affectionate relations a torrent of misery whose influence might widen indefinitely—my distress passed all bounds. To a mutual friend I poured out my soul like water. I did not measure words. I took upon myself immeasurable blame. I wished him to convey to Mr. Tilton, in language overcharged with feeling, my profound regrets and apologies. The apology was accepted, a reconciliation was made, and kind social relations were for a time continued—and would have continued until this day, had not malign external influences interfered, in various unlooked-for ways, and spread abroad exaggerations, perversions, and falsehoods, whose direct evil was aimed at me, but whose indirect influence was to place Mr. Tilton in a false position, as one attacking me rather than as one injured by me.

Nor can any one who only looks upon affairs at the present stage of development be in a situation to judge of the motives and influences which have acted at various stages of a history, essentially private and domestic, and which, for the sake of society, of the family, of childhood, and of womanhood, should have had the privilege of seclusion, which those most injured most earnestly sought. The policy of silence has failed. But it was the right one, and ought to have succeeded.

I was called, at the earliest moment in this history, to determine my duty in other relations. I was pastor of a large church, the editor of a religious journal, and was engaged in important literary enterprises, besides the multifarious public and private duties of a miscellaneous kind, not strictly clerical, which fall upon clergymen in our day.

Profoundly suffering, it would have been an unspeakable relief if I could have laid down my burdens. It was not honorable or right to others to seek personal relief at their expense. I therefore determined to accept my sorrow as a schoolmaster sent of God, and to let no one know that I carried burdens, but to rise to every emergency, not only, but to grow stronger by the severe discipline laid upon me. It was in this mood that I wrote the "Life of Christ," which may well be called Benoni—child of my sorrow. I was led by my own suffering to a profounder sense of moral evil, to a pity and sympathy for those doing wrong, that I had never before known. The divine nature, in its compassion, and in its healing power, which before was only as a star, has grown to the orb of a sun. And in no part of my life has my ministry sprung from so profound a sense of God's mercy, nor gone forth with such an unspeakable compassion for the sorrowing, struggling human kind. It does not befit me to speak of my own work, but it is right to explain why I continued it under circumstances of very great trouble. I did not think that because I had done wrong I ought not to do right.

I ought also, solemnly and gratefully, to bear witness to the mercy of God. Every hour of anguish has opened at length into peace. The strife of tongues, the sorrow for others, the suffering for myself, have brought to me the "God of all consolation," and He has, from time to time, ministered a peace which passeth all understanding.

In conclusion, I am yet in vigor of health, with powers unimpaired. I have no use for myself, except to labor for the best interests of my country and my kind. If it please God, I shall make the Autumn of my life as energetic as my earlier years. But in what fields, or through what channels, I leave to the Divine Providence.

Now, Sir, I call your attention to some statements of Mr. Moulton. He says that after your reading to him some portion of this statement, I (Moulton) said to him, "Mr. Beecher, I think I may be able to induce Theodore Tilton not to write the statement which he is writing, if I express to him fully the ground that you take with regard to it, because I cannot see that you can do anything more, unless you confess absolutely to the Committee the crime which you have committed against him and his family." Now, Sir, did anything of that kind occur between you and Mr. Moulton? A. Nothing of the kind that is included in that last sentence at all.

Q. He says he made to you the observation: "Because I cannot see that you can do anything more unless you confess absolutely to the Committee the crime which you

have committed against him and his family." Did he say anything to you of that kind? A. No, Sir.

Q. Mr. Moulton proceeds to state that he said to you:

And I will try to influence Tilton upon the basis of what you have told me, and he [Mr. Beecher] said, "I hope you will succeed in doing that; if Theodore publishes the fact, as he has threatened to, or my relations with Mrs. Tilton, it will ruin him and it will kill me!"

A. No, Sir; there was no such conversation—no such representation from me.

Q. Now, Sir, I call your attention to this. Mr. Moulton states that when you handed him this memorandum, which has been marked Exhibit 49, he said:

Mr. Beecher, isn't there any member of your Committee besides Mr. Tracy, or isn't there any one in that Committee besides Mr. Tracy to whom you can tell the truth, to whom I could tell it, or to whom Mr. Tracy could tell it, in order that they might guide the action of that Committee properly in reference to the fact itself?

Couldn't you tell Mr. Sage? and he [that is you] said "No, it would kill him;" he said that it almost killed him when he told him that he had been guilty of an offense, when he made the explanation that he did to him of that. "Well," I [that is Moulton] said, "that is too bad; if you have not got one friend in that Committee to whom you can tell the truth, what is the use of your friends?"

Now, Sir, did any such conversation occur between you and Mr. Moulton? A. The conversation, but no such thing as that.

#### MR. MOULTON'S PLANS FOR MANAGING THE COMMITTEE.

Q. Well, please state the conversation as it did occur? A. Mr. Moulton still had a multitude of plans and suggestions; they swarmed; his brain was fertile, and he brought them to me, one and another; sometimes I thought of them, and sometimes I didn't, but in regard to this he said to me he thought that Committee could be managed yet, so as that there should not be—there should not be a direct clash between Mr. Tilton and me finally—something to that effect, and he wanted to know whether there was not somebody in that Committee to whom I could introduce him, and with whom he could talk, and whom he could influence in the matter. I said no, I didn't think there was. He mentioned Mr. Sage's name, and I told him he was the last man I thought in the Committee that he could influence or would; that Mr. Sage loved me, I believed, as well as he did his life, but that he was not a man who on that account would swerve from the task which had been imposed upon him; that he meant business, and that the whole Committee meant business; that I meant to have them transact business. I told him that the Committee was appointed after all other things had failed, that there was nothing else for me but that investigation, and that I was determined to have it, and that I appointed the Committee of men that would stand before the community unim-

peachable, and yet who had not been mixed up with any of the heated discussions in the church, and who would undertake to look at this whole question with a judicial investigation; I told him my purpose originally had been to have Judge Benedict on the Committee as the leading man on it, but that he had for private reasons (among others, that he was living on Staten Island at the time) declined the task, and that there had been appointed on it lawyers and others, besides these business men, who stood above all reproach, and that I had enjoined on them to make a thorough investigation, and I meant it, and they were going to do it, and that any attempt to turn them aside one way or the other would fail.

Q. Mr. Beecher, did you at this time, this month of July, stated to be somewhere between the 20th and 30th of July, have an interview between yourself and Mr. Moulton—have a conversation of this kind with him:

I told Mr. Beecher that Mr. Tilton never would have written that card if it had not been for the publication of his correspondence with the Committee and the desertion of his wife, and I said to Mr. Beecher at that interview, "Don't you know that you are doing yourself, or are liable to do yourself, a great hurt by keeping Elizabeth away from Theodore? Don't you know perfectly well the influence that that woman has had over him? If you keep her away from him it will only incense him, and you ought to send her back to him;" and he said, "That can be arranged if this other matter is fixed up properly!"

Did you have any such conversation as that? A. I did not, Sir; I did not.

Q. Was there any conversation in which your keeping her away from her husband was spoken of? A. No, Sir; of course there was not; I had nothing to do with her staying or going.

Mr. Fullerton—You have answered the question, Mr. Beecher.

Q. Did Mr. Moulton ever speak to you about, or impute to you the keeping of Mrs. Tilton away from her husband? A. He did not.

Q. Mr. Beecher, up to the time of your preparing and presenting this paper that has been read to the Investigating Committee, had you the opinion that you have heretofore expressed that this undue withdrawal of affection of the wife from the husband and attraction to yourself had taken place? A. I did.

Q. You retained that opinion up to that time? A. I retained that opinion; I retained that opinion some considerable time after that.

Q. When, if at all, did you change your view or opinion on that subject? A. Well, the feeling was so rooted and grounded in me that the change, after I was informed—

Mr. Beach—Oh, wait, wait!

Mr. Evarts—The question is the date.

The witness—It was after Mrs. Tilton's testimony before the Committee, and after representations were made to me by those who knew about her.

Mr. Beach—I object to this.



Q. When, in point of time, Mr. Beecher, was it? A. It was, I should say, in the August of 1874.

Q. Since that change have you—up to this time has that change continued? A. Yes, Sir.

#### GEN. BUTLER OFFERS HIS SERVICES TO MR. BEECHER.

Q. Mr. Moulton, Mr. Beecher, has spoken of a conversation on the 5th of July, which I will call your attention to, and ask you then to state the interview as you understand it. He says:

I told him I thought it was a mistake to have an Investigating Committee, but that we would try to get along with even that, and I told him that I thought I should take, or probably should have further counsel in the matter, and he said, "Who do you mean?" and I said "Gen. Butler." I had received a letter from him asking that there be silence, and he said, "Yes; I have heard something about that. A friend of him, or a Mr. Bowen of Washington, saw Gen. Butler, and he advises silence, and this Mr. Bowen told his father, and his father told me. He said he did not believe much in the moral sense of Gen. Butler; that he might be a good counselor, because he considered him a wise man, and that at all events his advice was good for silence," and Mr. Moulton adds, "and that is all that transpired at that interview."

Did you have an interview with Mr. Moulton at or about this time, early in July? A. I did.

Q. In which there was some reference to such a subject? A. Yes, Sir.

Q. If so, please state what that interview was? A. I think we were walking together up from his house, and the conversation, of course, was on this subject, and he expressed some regrets that I had, as he thought, precipitately called for this Investigating Committee, but as it was called, and it could not be helped, we must do the best we could, and then he said, putting his hand in his pocket, "I have a letter here; we are going to have another actor in this thing that will be a very strong man for us," and I said: "Yes, I suspect I know who you have allusion to." Said he: "Who?" I said: "Gen. Butler." "Yes," said he, "it is him." Says I: "I was advised of his intentions." Then he wanted to know what it was. I told him that Mr. H. A. Bowen had called upon me not a long time before, and had said that he came just immediately from Washington, and that Gen. Butler had sent word to me that he felt that I was not in the hands of good advisers, and that he felt a great interest in my case, and that he should be in New-York in about ten days, and that if I would like to see him he would meet me there, and that he thought he could carry me through the case no matter what the facts were [laughter; that was the message that was communicated to me by H. A. Bowen.

Q. And you told Mr. Moulton? A. I told Mr. Moulton—made that statement to him; and I also said to Mr. Moulton that it didn't seem to me necessary that I should see Gen. Butler.

Q. Well, Sir, that was the interview? A. That was the

interview; that is, that was that part of it; there were some other things stated, I don't know what just now.

Mr. Beach [to Mr. Evarts]—Let us go; it is time.

Mr. Evarts—Mr. Beach suggests that we might as well adjourn now, your Honor.

Judge Nelson—Gentlemen will keep their seats a moment until the jury retire.

Mr. Mallison [the Clerk]—The Court stands adjourned until to-morrow morning at 11 o'clock.

The Court thereupon adjourned until Tuesday morning at 11 o'clock.

#### SIXTY-FOURTH DAY'S PROCEEDINGS.

##### CROSS-EXAMINATION OF THE DEFENDANT BEGUN.

THE LAST LINKS IN THE CHAIN OF DIRECT TESTIMONY—MR. BEECHER AGAIN CALLED UPON TO DENY IN SPECIFIC TERMS THE COMMISSION OF ADULTERY—MR. MOULTON ANXIOUS TO KEEP BACK ALL MENTION OF THE GIFT OF \$5,000—MR. BEECHER ASKED TO EXPLAIN PASSAGES IN MRS. MORSE'S LETTERS—HE AGAIN RECITES MORE FULLY THE SCENES WITH MRS. TILTON AND THE INTERVIEW WITH MR. BOWEN IN DECEMBER, 1870.

TUESDAY, April 13, 1875.

Mr. Beecher's direct examination was concluded to-day at 12:15 p. m.; and Mr. Fullerton began the cross-examination. The direct testimony was fragmentary, including contradictions of ten or a dozen declarations by the various witnesses for the plaintiff. Mr. Fullerton carried the witness in his narrative, which is being repeated very fully, to the door of Mr. Moulton's house on the night of Dec. 30, 1870, and there stopped for the day.

##### CLOSE OF THE DIRECT EXAMINATION.

The dismal day had its effect on the number in attendance and the humor of the audience and actors. Mr. Beecher was somewhat disposed to be gloomy, if his temper could be judged by his manner. Mr. Evarts was late, and the proceedings were delayed for a quarter of an hour. When they were opened it was soon apparent that Mr. Beecher's direct examination had been virtually concluded the day before. A number of questions were asked him about matters in relation to which Mr. Tilton and Mr. Moulton had testified. By one series of questions and answers it appeared, according to Mr. Beecher, that Mr. Moulton had expressed anxiety that no mention should be made of the \$5,000 given by Mr. Beecher for the benefit of *The Golden Age*, and had said

that if mention were made of it he should deny having had it. Mr. Beecher denied that his card in the papers, calling on any person who had letters of his to publish them, was written at the suggestion of Mr. Moulton, and he affirmed that the original, which was intrusted to Mr. Moulton for publication, had been altered. Mr. Beecher, by another answer, intimated that Mr. Moulton had not produced in court all the letters which had been written to him by the defendant or intrusted to him. This was received by the plaintiff's counsel with indifference, as if little importance was attached to it. Mr. Beecher also explained, and Mr. Evarts insisted on his answer as material, that he had never read the Younger Dumas's novels, but had read in the Summer of 1874 the series of the Elder Dumas beginning with the "Three Guardsmen."

As has been his habit since Mr. Beecher has been on the stand, Mr. Evarts framed a climax; but as his final questions were repetitions of others asked at the beginning, and as the answers could be foreseen, the effect was rather tame. Mr. Evarts's art, however, was fully displayed even in this, for by his manner of putting the questions he secured their repetition in the hearing of the jury, which seemed to be his aim. The questions were those which were asked on the second day of his examination, as to whether Mr. Beecher had ever improperly solicited or obtained any improper favors from Mrs. Tilton, or committed adultery with her. After emphatic denials by Mr. Beecher, Mr. Evarts paused, as if to let the jury take it all in, and meantime glanced along the jury-box. Possibly he observed that the questions had been lost on one or more of the jury, for again turning to the witness he asked, as if preliminarily to another question, that THE TRIBUNE stenographer read the question. The reporter began with the last, but Mr. Evarts insisted upon his going back again, and the whole series was again read to the jury. Then Mr. Evarts, in a more rapid manner than he had previously displayed, closed with a series of questions, the answers to which were denials of adultery at any time, denials of confessions of adultery or criminality, and denials of participation in conversations in which adultery was charged. "That is all," said Mr. Evarts, nodding to Mr. Beach and his colleagues, and the direct examination of Mr. Beecher, which had lasted 7½ days, was concluded.

#### MR. BEECHER UNDER CROSS-EXAMINATION.

There was just the slightest stir of interest to indicate the close of the friendly inquiry and the opening of the hostile dissection of the defendant. All eyes were, of course, turned upon Mr. Beecher, and there were signs of anxiety in some faces, and of interest in nearly all, to know what effect the change in his relations to the examiner would make in Mr. Beecher. It would be untrue to say that Mr. Beecher *appeared* as unmoved when the cross-examination began as he had under Mr. Evarts's "coaching," for, however confident he may have felt, the signs of nervousness were manifest. It may have been nothing more than the nervousness natural to a change of positions—to the knowledge that instead of being led to the development of all that was favorable to his view of the case, he was now to be drawn into expressions detrimental, into admissions which might be construed to his disadvantage, into explanations of the more compromising passages in his correspondence, and, if possible, into a vexed state of mind, which would leave him incompetent to hear correctly, analyze promptly, and answer truthfully the intricate questions which were to be leveled at him. Whatever may have been its extent or cause, the nervousness was evident at the beginning of the cross-examination, though little remained of it at the close when Mr. Beecher had had an opportunity to warm up in describing the scenes of December, 1870. It is more difficult to describe these indications of nervousness positively than negatively. There was no trembling of hands or fingers; Mr. Beecher once asked for his memorandum-book, and opened and held it without the slightest agitation or tremulousness; his bouquet was as tenderly handled as ever and as frequently carried to his nose. Frequent hesitation in answering, occasionally a guarded answer as if the witness suspected a hidden meaning in the question, a gloomy and reserved manner, these were the chief and most marked indications that Mr. Beecher dreaded, in some degree at least, an ordeal which he admitted was new to him. It did not continue long—at least not to the close of the examination—and when he had left the witness-chair at 4 o'clock he said jocosely that he did not feel that his "hide had been taken off," "though," he added, "there's no telling what will come to-morrow."

The cross-examination by Mr. Fullerton took a wide range, and for the first two hours was rather rambling and confusing to the audience if not to the witness. His first determined effort was an elaborate attempt to draw Mr. Beecher into an unqualified

condemnation of Mr. Tilton's teachings as editor of *The Independent*, and an admission that, knowing that Mr. Tilton denied the divinity of Christ and was otherwise loose in his views on orthodox doctrines, and had indeed foreshadowed his views on marriage and divorce, the witness held him unfit to be the head of the paper. This was done with the intention, subsequently developed, of asking Mr. Beecher how he had come to place and sustain such a person at the head of a paper of which he was himself the nominal and responsible editor. But Mr. Beecher evaded the point by saying that he looked upon Mr. Tilton's as a crude mind passing through the state natural to all young reflective natures when traditional religious beliefs give way to personal beliefs. He did not think that Mr. Tilton was an unfit person to conduct such a paper as *The Independent*, which he described, in a dry, humorous way, as a secular, and "in some sense a religious paper." Mr. Fullerton passed to another topic.

First of all, he tried to commit Mr. Beecher to a positive statement as to when in 1871 Mrs. Beecher had left Brooklyn for the South. He could fix it no more definitely than "early in the year." The purpose of this was not seen until later in the day, when Mr. Fullerton read a letter from Mr. Beecher of Jan. 28, 1871, to Mrs. Morse, in which he spoke of Mrs. Beecher and himself still thinking a quiet course was wisest. The idea of Mr. Fullerton was doubtless to show that it was a false pretense that Mrs. Beecher was a party to the communication. But it was not shown that Mrs. Beecher had left Brooklyn for the South at this time.

A number of Mrs. Morse's letters were called up, and Mr. Beecher was asked to explain the meaning of certain passages in them, but he was unable to do so, saying if he had ever known their significance he had forgotten it. Rides and walks with Mrs. Tilton, visits at the house, the mode of salutation between minister and parishioner, and many minor matters of like import were made the subject of tediously minute inquiries. Mr. Fullerton then pierced the center of the case. He asked Mr. Beecher once more to narrate the incidents of Bessie Turner's visit to him, his conference with Mrs. Tilton, and his advice to her to separate from her husband, the visit of Mr. Bowen on Dec. 26, 1870, the threatening letter of Mr. Tilton, and the interview with Mr. Moulton which led up to the scene of Dec. 30, 1870, and the final accusation by Mr. Tilton. When he struck the first of these incidents Mr. Beecher's self-possession was fully

restored, and he gave the scenes more in detail than he had done before, and with fewer interruptions. The descriptions differed in no material sense from those of the direct testimony, but there was not the same form of construction or a similarity in language which notably marked the repetitions of some of the other witnesses.

## THE PROCEEDINGS—VERBATIM.

### GEN. BUTLER'S MESSENGER.

The Court met at 11 a. m., pursuant to adjournment.

Mr. Beecher was recalled, and his direct examination resumed.

Mr. Evarts—Mr. Beecher, this Mr. Henry A. Bowen that you have spoken of as having made some communication to you concerning Gen. Butler, which you had spoken of to Mr. Moulton—who is he; who is Mr. Henry A. Bowen? A. He is the oldest son of Mr. Edward Bowen, a member of my congregation.

Q. Was he a gentleman at any time connected with you in any way—Mr. Henry A. Bowen? A. No, Sir; I had known him since he was a boy, but he was in no way connected.

Q. And this communication that he volunteered to you is all that you know about what Mr. Butler had said? A. That is all; he was a messenger, and delivered his message.

### MR. TILTON PLEASED WITH HIS WIFE'S STORY TO THE COMMITTEE.

Q. Mr. Beecher, I call your attention now to a statement by Mr. Moulton concerning an interview between yourself and him after Mrs. Tilton had given a statement before the Committee of Investigation. Mr. Moulton says:

I said to Mr. Beecher that after Mrs. Tilton had made her statement to the Committee Mr. Tilton was very much incensed, and that Mr. Tracy, in a subsequent interview with him—in an interview subsequent to Mrs. Tilton's report to the Committee, or statement to the Committee—had so presented to him the influence which her statement had had upon the Committee that it melted the anger all out of Theodore Tilton, and he was perfectly willing to make a statement to the Committee which should not contain the fact of adultery between Mr. Beecher and Mrs. Tilton.

Was anything said to you by Mr. Moulton at that interview, or at any interview, on this subject, that Mr. Tilton was willing to make a statement to the Committee which should not contain the fact of adultery between Mr. Beecher and Mrs. Tilton? A. No, Sir; he did state to me the fore part of that conversation.

Q. Yes. I will get the conversation in a moment. Did he in any such conversation say to you that Mr. Tracy had said that it would not be hard to get from the Com-

mittee a report (unfavorable, it is true, to Mr. Beecher), on the ground of the offense, but which would really settle the whole business, and save all the parties concerned from dishonor in consequence of crime? A. No, Sir.

Q. Now, Sir, will you be so good as to state that interview between yourself and Mr. Moulton, as you recall it? A. I do not remember the special circumstances under which it took place, Sir, nor where. I recollect Mr. Moulton saying to me that Mr. Tilton was wonderfully incensed that his wife should go down and make a statement before the Committee, but that after he saw Mr. Tracy, and found out what was the substance of her statement, he on the whole, seemed to be well pleased.

#### MR. MOULTON WANTS THE GIFT OF \$5,000 KEPT SECRET.

Q. I call your attention now to a statement of Mr. Moulton of an interview with you, the circumstances of which will be sufficiently disposed of by my reading the statement itself. Mr. Moulton is asked:

"What did you communicate to Mr. Beecher?" and answers: "I told Mr. Beecher that Mr. Tracy wanted me to communicate the fact that I had received \$5,000 from Mr. Beecher to give Mr. Tilton, in order to stop him from the publication of his statement. I said when Mr. Tracy wanted me to tell Mr. Tilton that, that that would be a serious embarrassment to me personally, in consequence of my having received that money, and I said to Mr. Beecher that I told Mr. Tracy that I was perfectly willing to be guided by him with sound advice—with any moral, good reason—with any good reason, and I would co-operate with him to induce Theodore Tilton not to publish his statement, but I would not, on any such ground as that, undertake to stop its publication. Mr. Tracy told me that that would cause me trouble if it was published"—

Though I believe this is not a statement of what he said to you.

Mr. Beach—Yes, it is.

Mr. Evarts—Do you think so? [Reading.]

Mr. Tracy told me that that would cause me trouble if it was published, and I told him if it caused me trouble, it must cost me trouble; that I had done no wrong, and I didn't fear any trouble that would come from that.

I don't know whether that clause is what he said to you, but I have read you the whole of it. Now, Mr. Beecher, do you remember a conversation had with Mr. Moulton in which this matter of the \$5,000 was spoken of? A. I do.

Q. And how; please state how that occurred? A. I think it occurred, Sir, on that same Sabbath afternoon in which I returned from his house, but I will not be definitely certain about that time—in that neighborhood. He asked me suddenly, after we had been talking about one and another topic, whether I had mentioned that \$5,000 to anybody, and I said to him I had, and he wanted to know who, and I mentioned. Well, he said that would not do any hurt there, but I must not mention

that; that he should deny it; if anybody charged him with it, or stated it, that he should deny it.

Q. Did you tell him what you had said about it, and to whom? A. I did.

Q. What was it? A. What I had said about it!

Q. Yes; did you tell Mr. Moulton what you had said about it, and to whom you had stated? A. I did.

Q. What was it? A. I told him that I mentioned it to Oliver Johnson, and that I had mentioned it to Oliver Johnson because Mr. Johnson said that he had been visiting, as I understood it, at Mr. Curtis's in New-York, and heard censures upon my unwillingness to assist Mr. Tilton from time to time in his embarrassments and troubles, and I told him that it was not so—that I had always said, from the beginning, that I would do whatever would have any prospect—that is, within reasonable bounds—have any prospect of helping him in his difficulties, or out of them, and that I had recently advanced \$5,000 on the representation that it would set *The Golden Age* quite afloat.

Q. Did Mr. Moulton in this conversation with you express himself as to what he felt about your having told that to anybody? A. He asked me with solicitous emphasis if I had; and when I told him who I had he said, well, that would do no harm; that he was content with that; I am not giving his words; I am conveying the substance of his statement to me.

Q. Now, Sir, in regard to this conversation about Mr. Tracy, what had passed between Mr. Tracy and Mr. Moulton about this \$5,000 and his communicating it—and his (Mr. Tracy's) wishing that Mr. Moulton should communicate the facts about that \$5,000 to Mr. Tilton; do you remember whether that formed a part of the conversation? A. Oh, no, Sir; it did not.

Judge Neilson—Mr. Evarts, the reporters request that when you read a clause from the book you will take the trouble to give the page; they think it will facilitate.

#### MR. BEECHER'S CARD INVITING HIS ENEMIES TO THE FIELD.

Mr. Evarts—I have been reading from page 184 the last time, and from page 181 the former time—of the pamphlet. [To the witness.] Mr. Beecher, I call your attention to a card, "Brooklyn, June, 1873." There does not seem to be any other date to it—Exhibit No. 28. Just look at it and get the matter in your mind, and then I will ask you some questions about it. [Handing witness the exhibit.] This is on page 101. June 30 this publication seems to be. [To the witness.] Well, Sir, I call your attention to that card as it was prepared, and as it was published. Please state how that matter occurred. This is the card, if your Honor please, and the jury, in which Mr. Beecher says:

Application has been made to Mrs. Victoria Woodhull for certain letters of mine, supposed to contain certain information respecting certain infamous stories against

me. . . . These and all letters of mine in the hands of any other persons, they have my cordial consent to publish.

Q. Now, please state, Mr. Beecher, how that matter came up. A. Well, it came up on a report, I think, in *The Sun*; I did not myself read it, but heard that there had been published in *The Sun* an account of a visit—

Q. *The New York Sun*? A. *The New York Sun*; yes, Sir; an account of a visit of Mr. Bowen, accompanied by Mr. Claflin, to Mrs. Woodhull, in search of certain documents supposed to be damnatory; and, upon seeing that, Mr. Cleveland dropped in a morning after—a morning or two—I have forgotten exactly how long—and suggested to me—

Mr. Beach—That is not proper.

Mr. Evarts—No, if it is objected to.

The Witness [continuing]—the subject matter of a card; I thought his suggestion, or general direction, to be wise; and I went right into the study at Mr. Beach's house and drew up, substantially, that card—

Mr. Beach—Whose house?

The Witness—Mr. Beach's. I was there.

By Mr. Evarts—Mr. Moses Beach? A. Mr. Moses B. Beach, 96 Columbia Heights.

Q. You drew this card? A. I drew this card, the substance of it, and after I drew it I read it to a friend, Mr. Ford, within a few—within half an hour after writing it, I think. I then took it down to Mr. Moulton. Mr. Moulton was delighted with it; he told me that he read it to several persons, and they spoke of it with pleasure, as being apt and sufficient, and so on. I left it in his hands then to be published, with discretionary power. He wrote to me after I left on Monday morning—I think it was published on Monday afternoon—he wrote to me on the publication of that—

Mr. Evarts—That letter is in evidence, is n't it?

Mr. Morris—No, Sir.

Mr. Beach—No, the letter is not.

Mr. Evarts—Well, if it is a letter that is not in evidence you cannot refer to it. There is something about it—

The Witness—He repeated to me afterward the substance of what the letter contained; it was simply this, that if it was thought best that there should be a little prefatory matter put upon the card explaining the reason why there was something in it that I had not written.

Mr. Evarts—Well—

Mr. Beach—Oh, there is no objection to it.

Mr. Evarts—I understand you, then, that this card originated with yourself, and was carried by you to Mr. Moulton, and did not originate with him? A. It originated with me, and was carried to him, and then I left it with him to make in it unimportant changes—anything that would not invalidate the substance of the card.

Q. Mr. Moulton has said that he called attention to this publication about Mr. Bowen and Mr. Claflin going to Mrs. Woodhull, and that he saw you about it, and he says

that he said to you, "I think, Mr. Beecher, we can make very short work of such business; I think and you think that Bowen has not any evidence in his possession against you, and we had better publish a card in *The Eagle* calling upon anybody with any papers or evidence against you to produce them; and Mr. Beecher prepared a card?" A. No, Sir; he is mistaken about that Sir. The suggestion of it came from Mr. Cleveland, and I carried it to Mr. Moulton.

Q. The first introduction of the matter between you and him was your showing him the card you had prepared? A. Yes, Sir.

Q. Now, Sir, some alterations were made, which are apparent in the publication as actually produced and the card as originally prepared. Mr. Moulton says in respect of that:

I saw Mr. Beecher subsequently, and he said he approved of the alterations, and thanked me for my kind offices in the matter, and Mr. Beecher said to me furthermore, "Of course Mr. Tilton will not produce any documents." "Well," I said, "of course he won't; he has not got any that I know of, original documents, to produce, and of course I won't."

Did you ask any such question or receive any such answer? A. No, Sir.

Q. Did anything of the kind occur? A. No, Sir.

# STOPPING UP THE CHINKS IN THE DIRECT.

Q. Mr. Beecher you have spoken heretofore of your having received, I think, three letters from Mrs. Woodhull; do you remember now having received another letter? A. I do.

Q. When was that? A. I don't know; it preceded another meeting at Steinway Hall. I received a letter from Mrs. Woodhull inclosing one, I think, from my sister, Mrs. Isabella Hooker, and it was that they were—

Mr. Beach—One moment. Produce the letter.

Mr. Evarts—We have got the letter here.

Mr. Beach—You had better produce it, then.

Mr. Evarts—He has spoken about letters before in a general way, and you did not require that they should be produced.

Mr. Beach—We had learned of the others.

Mr. Evarts—Please find that, Mr. Shearman. [After a search.] That letter is not in court, but I will show it to you afterwards; if you want it produced we will produce it. [To the witness.] Are you able to state the time of that letter? A. No, Sir, I could easily ascertain it, but I have not had my attention called to it so as to inform myself about it.

Q. Was it in reference to a public meeting at Steinway Hall? A. It was.

Q. Of what? A. It was with reference to a meeting in Steinway Hall—

Mr. Fullerton—The letter will speak for itself.

The Witness [Continuing.]—For woman's suffrage.

Q. Of what society? A. It was what we should call

now the New-York wing of the suffrage movement, and woman suffrage movement.

Mr. Beach [To Mr. Fullerton.—Haven't we got a copy of that letter?

Mr. Fullerton—No, it is the reply.

Mr. Evarts—Mr. Beecher, Mr. Tilton says in the course of some testimony about the letter to a complaining friend and another brief letter to a friend at the West—in that relation, or as part of his statement concerning that, he uses the expression to which I now ask your attention. He says: "I will also say that during that month of December I prepared another statement, a long document, which has become technically styled, I don't know why, the 'True Story,' for it was not a true story, it was a false one," and then he says: "Mr. Beecher said he could not bear the publication of that, that it would kill him." Now, Sir, did you ever use an expression to Mr. Tilton that the publication of the "True Story" would kill you? A. I think not, Sir. I did tell him that I would not bear it.

Q. That you have stated. A. It was not that I could not bear it, but that I *would* not bear it.

Q. You used no such expression, then? A. No, Sir; not in any such sense as it is there.

Q. I ask your attention now to a statement of Mr. Moulton in reference to the period after the publication of the "Tripartite Agreement," and a proposed or threatened letter of Mr. Tilton in reference to that publication. You remember that situation and that time? A. Yes, Sir.

Q. Now, Mr. Moulton says that at that interview you used this expression, that "if Theodore Tilton published that letter it would simply be his [Mr. Beecher's] death." He was asked, "whose death?" and he answered, "Mr. Beecher's death." Now, did you say that to Mr. Moulton? A. No, Sir; I said to Mr. Moulton in regard to that whole matter, that the publication of that card, as I understood its contents, would be—that it would be a publication that no man, if it were made and believed, could stand up under—no clergyman; and that if he made that publication, it should be *the end*; that I would not stand it; that I would fight it.

Q. Then Mr. Moulton speaks about your showing him the draft of the resignation that you had prepared, and says he said to you "that that would not do at all; that that was a virtual confession of the crime, and that it was an act of cowardice on his (your) part to do it." Did he use any such language as that to you? A. No, Sir. He dissuaded me from publishing that card—

Mr. Fullerton—One moment. The question is answered.

Mr. Evarts—What did he say in any connection with dissuading you from the publication of that card? A. [Continuing.] As unnecessary; that the matter could be arranged, that by or through his influence with Mr. Tilton, and his restraining him, the matter need not come to such a crisis.

Q. Of your resignation? A. Of the presentation of that resignation or an equivalent.

Q. Mr. Moulton states an interview of this kind: he says that in this same connection of the resignation he had an interview with Mr. Tilton, and that he reported the substance of it to you, and he says, in answer to the question, "What did you say to him?" "I said Mr. Tilton strongly objected to the publication of the resignation, on the ground that it was a clear statement, in his opinion, of the shame of his wife;" and he says that you replied—no, he says he does not remember your reply, but that he said further, "Clearly that is the case, Sir; clearly, if the resignation should be published, it would be a virtual confession of the fact of your relations with Mrs. Tilton, and it ought not to be done." Did any such thing occur? A. No, Sir; that is, neither he nor I uttered any such words as that in my presence.

Q. Then he says further: "I told Mr. Beecher that Mr. Tilton was quite violent; Mr. Tilton said that he would shoot Mr. Beecher if he did it; I think that I mentioned that to Mr. Beecher; that is what Mr. Tilton told me, at all events." Did Mr. Moulton communicate that to you? A. I think he did not, and I know he did not.

Q. You never had any such threat as that communicated to you? A. Oh no, Sir; I had never any such warning.

Q. Please look at this letter, and see if it is the letter of Mrs. Woodhull that you referred to in your testimony this morning. A. Yes, Sir, I should think this is the letter; this is the contents of it; I am not familiar enough with her handwriting to say this is her handwriting.

Mr. Evarts—I will read this letter. [Reading.]

NO. 44 BROAD-ST., NEW-YORK, Feb. 7, 1872.

REV. H. W. BEECHER: From the inclosed letter you will perceive that Mrs. Hooker requests me to secure Steinway Hall for our May convention. I saw Mr. Steinway, who objects to letting our association have the hall, but will do so upon your recommendation, which, of course, you cannot object to giving, since it is for a cause in which many of your friends are engaged. Will you be kind enough to send me what you feel is right in the matter by the return mail, and very much oblige yours, sincerely,  
VICTORIA C. WOODHULL.

Have you any knowledge or recollection of any other letters than have now been referred to by you? A. I have not, Sir.

Q. Mr. Beecher, Mr. Moulton has produced here in evidence various letters that you wrote to him during the course of these years of your association with him; did you write other letters than those that have been produced? A. Yes, Sir, I did.

Q. I now call your attention to a statement of Mr. Moulton's. Mr. Moulton mentions an occasion on which you and he being talking, Mr. Jeremiah P. Robinson came along, and in reference to that interview he is asked to state whether Mr. Beecher knew from him at

that time that Mr. Robinson had been put in possession of these secrets, and Mr. Moulton says I told him that I had told both Mr. Woodruff and Mr. Robinson. Had you ever heard from Mr. Moulton that he had told them? A. He never told me any such thing about either of them. I had no knowledge in regard to either of them.

Q. Then he is asked, "What did you tell Mr. Beecher you had told Mr. Robinson," and he answered, "I told him that I had told him the fact concerning the relation between Elizabeth Tilton and himself." What did you tell him you had told Mr. Woodruff? A. The same.

Q. Had Mr. Moulton informed you before that time or at any time that he had told either of his partners? A. Neither before that time, nor at that time, nor at any time after.

Q. Now, Mr. Beecher, I call your attention to a statement of Mr. Moulton's of this kind:

I remember, Sir, having said to Mr. Beecher that I had been questioned by Mr. Baxter on the subject, and by others, whose names I don't now recollect, and that I had undertaken to mislead them by stating to them in the first place that if the story was true, it was infamous, and if it was false, it was diabolical; that if his life was not an answer to it, I didn't choose to make any, and that I didn't think it was necessary; but that being pressed close, I had denied the truth of the criminal intercourse with Mrs. Tilton, and said he was a pure man.

Then Mr. Moulton says, that in answer to that you thanked him—you said you thanked him for doing that, and you said there was only one way, since lying was necessary, and that was to lie sublimely. Did anything of that kind occur? A. I must dispute the parentage of that phrase, Sir.

Q. Did you say anything of that kind? A. I did not say anything of that kind. I never used that phrase at all, nor did I ever thank him for the special service which he alleged he rendered to me through Mr. Baxter. He did state to me that he had seen Mr. Baxter, and that he had told him that if my life of 25 or 30 years was not an answer to the Woodhull scandal, then character was good for nothing.

Q. Did you, in that conversation, or in any conversation, receive from him a statement that he had lied for you; and did you, in reference to any such statement, or in any manner, thank him for lying for you? A. No, Sir; I never did; nor did he ever say it, to give me an opportunity to do so.

Q. Did he ever say or intimate to you that in the statements of exoneration of you, which he had made to others, he had spoken falsely? A. No, Sir.

Q. Mr. Beecher, something was said by Mr. Redpath about his finding you reading a novel of Dumas's. A. It is a fact.

Q. Which of the Dumas, the elder or the younger?

Mr. Fullerton—Is that material?

The Witness—Dumas, the father; the old one.

Mr. Evarts—There is a very great difference between them.

Mr. Fullerton—Yes; in age.

Mr. Evarts—Yes; and in the character of their novels.

The Witness—I have never read anything of the younger Dumas.

Mr. Evarts—Do you know what novel of the elder Dumas this was that you were reading? A. I only know that that Summer I read the "Three Musketeers—" is it? or the "Three Guardsmen;" the "Count of Braganza"—isn't there something—?

Q. Well, you may state. A. There are three stories, connected in a series.

Q. Well, one of them is what?

Mr. Beach—One of them is "Twenty Years After."

The Witness—One is "Twenty Years After."

Mr. Evarts—One is the "Three Musketeers," and one "The Three Guardsmen," is it not?

Mr. Fullerton [virtuously]—I don't know; I have never read them. [Laughter.]

Judge Neilson—I think he has given them correctly. I have read them more than once.

The Witness—I have read them; I have also read "Monte Cristo."

Mr. Evarts—Well, it was one of those novels that you were reading? A. Yes, Sir; it was one of those novels.

Mr. Fullerton—I am not prepared to cross-examine in regard to this. [Laughter.]

Mr. Evarts—Oh, you can read up; you can read up.

Q. Mr. Beecher, in the early stage of this examination, when I had brought the matter down to December, 1870, in your relations with the various parties who figure in this matter, I inquired of you whether there had been any improper relations between Mrs. Tilton and yourself, in various forms of question; I now have to ask you whether since the 1st of December, 1870, and until the commencement of this suit, there have been any improper relations between Mrs. Tilton and yourself? A. None at all, Sir.

Q. Have you asked from her any improper favors? A. None whatever.

Q. Or received any from her? A. None whatever.

Q. Have you had any sexual intercourse, or carnal intercourse, with her since the period I name until now? A. No, Sir.

[A pause.]

Mr. Evarts [To The Tribune stenographer]—Will you be so good as to read my last question,—I don't want to leave any gap!

The Tribune stenographer read the question as follows:

Have you had any sexual intercourse or carnal intercourse with her since the period I name until now?

Mr. Evarts—Read what I stated before that.

The Tribune stenographer read the four questions and answers, as follows:

Q. Mr. Beecher, in the early stage of this examination, when I had brought the matter down to December,

1870, in your relations with the various parties who figure in this matter, I inquired of you whether there had been any improper relations between Mrs. Tilton and yourself, in various forms of question; I now have to ask you whether since the 1st of December, 1870, and until the commencement of this suit, there have been any improper relations between Mrs. Tilton and yourself? A. None at all, Sir.

Q. Have you asked from her any improper favors? A. None whatever.

Q. Or received any from her? A. None whatever.

Q. Have you had any sexual intercourse, or carnal intercourse, with her since the period I name until now? A. No, Sir.

Q. I will now ask you, Mr. Beecher, whether, from your first acquaintance with Mrs. Tilton until the present time, you have ever had any improper relations with her, received any favors from her unsuitable for a woman to grant, asked any such favors from her, or ever had any sexual connection with her? A. No, Sir, I never have. There has been nothing between her and me answering to any of those questions.

Q. Mr. Beecher, Mr. Tilton was asked this general question at the close of his direct examination:

Now, I want to ask you this general question, whether from first to last Mr. Beecher ever denied the criminal intercourse with Mrs. Tilton? He answered, "No, Sir."

I ask you, in connection with that question and that answer, whether Mr. Tilton ever used to you, or in your presence, any language of accusation, or imputation, or of intimation, that there had ever been criminal intercourse between yourself and Mrs. Tilton? A. Never did.

Q. Now, the answer proceeds with this statement—the answer of Mr. Tilton [after a pause], as it is stated here:

I would like to amend that answer, Mr. Fullerton, by saying that whenever he spoke of it he always said that the criminality attached to him alone, and not to Mrs. Tilton; always insisted that she was not to blame; he was the person on whom the condemnation should fall.

Did you ever make any statement of that kind or effect in connection with any accusation, imputation, or intimation of criminal intercourse between yourself and Mrs. Tilton, or in any answer you made to any such accusation, imputation, or intimation? No, I never did, Sir.

Q. And Mr. Moulton was asked at the close of his direct examination:

There is but one other question, Mr. Moulton, and it is this: In any of the conversations to which your attention has been called on your cross-examination by the other side, with Mr. Beecher, or to which your attention was directed upon direct examination, did Mr. Beecher ever deny to you his sexual intercourse with Mrs. Tilton? A. Never.

Now, Sir, did Mr. Moulton in all his intercourse with you, in any of his conversations with you upon the subject of your relations with Mrs. Tilton, or any of the subjects connected therewith that formed the topics of conversation between you at any time, make any accusation, or imputation, or intimation of sexual intercourse between yourself and Mrs. Tilton? A. He never did, Sir.

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END OF VOLUME TWO.